

Countering Hate Speech

in **MYANMAR**

Human Rights
Capacity Building
Local Context

A report on the methods and challenges of countering hate speech in the local context of Myanmar, and key factors to leveraging human rights capacity-building toward a more peaceful, tolerant and democratic society.

Presented By

**Columbia University | SIPA
Capstone Workshop Program**

In Cooperation with

Equality Myanmar



CREDITS & ACKNOWLEDGMENTS

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The Countering Hate Speech in Myanmar Columbia | SIPA Capstone Team would like to extend our gratitude to our interviewees—Article 19, International Commission for Jurists, SMILE Myanmar and Yangon Based Media Monitoring Organization, our training co-developers, our pilot participants, and our advisors who made this project possible:

Kristina Eberbach, Director of Education at Columbia University's Institute for the Study of Human Rights and Adjunct Assistant Professor of International and Public Affairs, and Benedict Fleming, Adjunct Professor of International and Public Affairs at Columbia SIPA, whose advising and feedback guided us throughout this project.

Suzanne Hollmann, Saleha Awal, and the rest of the Columbia SIPA Capstone Program for their logistical support.

Our client, Equality Myanmar, and in particular: Juan Miguel Sanchez, Nay Oo Lwin, Chit Kaung, Set Naing Tun, Darren Moon, and Aung Myo Min.

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PART I: INTRODUCTION, CONTEXT, METHODOLOGY

Protecting freedom of expression while countering problematic and rights-violating speech is a difficult task in any context. For Myanmar, these challenges can be particularly complex.

How do you develop training to combat hate speech in a country where the right to freedom of expression is still finding its footing?

What tools can civil society use to reduce hate when ethnic and religious divisions pervade society?

How do you protect free expression while simultaneously discouraging problematic and rights-violating expression?

With social media identified as a hate speech facilitator, what offline factors may be overlooked?

These questions embody some of the most significant challenges Myanmar faces today.

The Myanmar-based human rights organization **Equality Myanmar (EQMM)** engaged our team in 2019 to assist its leadership and human rights trainers to better understand these challenges and develop training curriculum for countering hate speech—with the incorporation of local context as a key consideration.

From this dual mandate, the content of this Columbia | SIPA Capstone Workshop project were produced:

- A report to facilitate client subject-matter expertise and organizational effectiveness
- A daylong curricular module on the subject of hate speech to be used in EQMM's human rights training program.

In this section of our report, we explain the context and methodology used to accomplish our client's goals.

PROJECT CONTEXT

The EQMM Problem Set

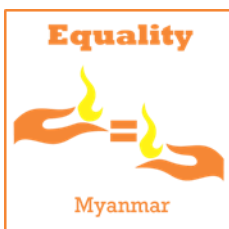
Protecting freedom of expression while combating problematic and rights-violating speech is a difficult task in any context. For Myanmar, the challenges are particularly complex as it emerges from decades of military rule and ethnic conflict, navigates a transition to democracy, and attempts to shed its historical isolationism for membership in an interconnected world.

Graduate students from Columbia University’s School of International and Political Affairs (SIPA) developed a training curriculum and report on countering hate speech in collaboration with [Equality Myanmar \(EQMM\)](#), a leading human rights organization in Myanmar that promotes transformative change through advocacy and human rights education programming. Both the report and the curriculum are guided by EQMM’s goal of “empowering the people of Myanmar through human rights education to engage in social transformation and promote a culture of human rights in order to make way for a peaceful, tolerant, and democratic society built on respect for dignity and human rights for all.”¹

The curriculum is supported by and grounded in desk and field research, and draws from existing international legal frameworks, various national understand-

ings of approaches to combating hate speech, and successful models of human rights education.

Together, the curriculum and report explore the relationship between hate speech, freedom of religion and belief, and freedom of expression; assess the different elements/definitions of hate speech; identify and analyze various approaches to addressing hate speech (legal and extralegal); and provide opportunities for engagement and learning. The documents function as a resource that will allow EQMM to increase the capacity of civil society and government to effectively defend and protect freedom of expression and religious belief, while finding effective ways to counter hate speech. The research section of this report provides relevant background information on hate speech under international human rights law, identifies key case studies, and summarizes the perspectives and activities of other human rights organizations currently focusing on hate speech in Myanmar. The training curriculum will help the participants analyze various definitions and manifestations of hate speech, contemplate laws, develop and promote policies and practices that respect human rights, and find a healthy balance between freedoms and restrictions upon expression.



About our Client

Mission: Empowering the people of Myanmar through human rights education to engage in social transformation and promote a culture of human rights in order to make way for a peaceful, tolerant, and democratic society built on respect for dignity and human rights for all.

PROJECT Methodology

Exploring hate speech for EQMM—conceptually, in local context, and comparatively.

In preparation for work on the ground in Myanmar, the team conducted desk research and consulted numerous scholars and practitioners working on issues of hate speech, expression, and freedom of religion and belief. The field work conducted in mid-March 2019 further informed the research presented in this report and the content of the curriculum, particularly as it pertains to the various definitions and understandings of hate speech and the challenges of combating hate speech in Myanmar. Semi-structured interviews were conducted with NGOs actively working on hate speech in Myanmar. Interviewees were identified through desk research

and consultations with EQMM and other civil society members. The curriculum is informed by the research in the report and was developed in collaboration with EQMM so as to help ensure that it is context appropriate and meets the needs of the organization and the training participants. The team co-facilitated aspects of the curriculum with EQMM trainers in Yangon in order to solicit feedback from civil society learners who had participated in previous EQMM trainings. The curriculum was then revised based on observations and direct feedback provided by the pilot participants.

Our research consists of three primary categories. Each category aims to provide insights to help solve EQMM’s problem set.

Case Studies: Myanmar’s relatively new civilian-controlled government and civil society ecosystem are still developing. By providing our client with an extensive (but highly curated) corpus of case studies—with an emphasis on Southeast Asian comparative examples—we present a narrative of how other nations have practically and legally dealt with hate speech and free expression.



Field Interviews: Our team goes to great lengths to ensure our reporting and curriculum serves our client’s needs as seen through their ground truth. While conducting field work in Myanmar, we consulted with a range of civil society groups and thought leaders who live and work in the local context, with an emphasis on local expertise.



Broad-Based Background Study: Hate speech in Myanmar is influenced by myriad factors that include international influence, Information Age innovations, historical cleavages, and local political dynamics. Our background research, which includes expert interviews and extensive literature review, dually acknowledges this reality; our work incorporates cross-field insights and external resources wherever applicable.



PART II: HATE SPEECH CONTEXT ANALYSIS

This portion of the report seeks to identify perspectives and approaches shared by some key local actors engaged in efforts to address and counter hate speech in Myanmar. The hope is that this information may aid in the coordination and collaboration of existing and emerging projects.

The following section represents a summary of the team's consultations with organizations working in this field, including the client, EQMM. The summary is representative, but not exhaustive. There exist other organizations and actors working on these issues in Myanmar. The nature and duration of the project did not allow for a full inquiry, but additional perspectives, insights, and criticisms would be valuable.

Additional thematic takeaways from these consultations from this field work are also included in this section.

Key Thematic Findings

Offline Hate: The international community has focused on the role of Facebook in the dissemination of hate speech. Offline forms of hate speech are prevalent in Myanmar, difficult to detect, and reflect deeply rooted socio-cultural narratives and norms that are in turn codified and reinforced through policy and law.

Complex Discursive Space: Contending with issues surrounding hate speech and freedom of expression are further complicated by the fact that there are words in the Burmese language that do not translate to the same meaning in English. For example, the word 'diversity,' in Burmese has a connotation of division rather than unity. Distinctions between hate speech and hateful, rude, and insulting speech are not well established. Globalization pressures have offered some common ground; Taylor Swift's popularity, for in-

stance, has translated into the Myanmar context.

Crowded NGO Environment: As concerns over hate speech and disinformation have increased in recent years, so has funding and the number of organizations aiming to tackle the issue. This phenomenon has raised concerns that programming is being duplicated and resources within the space are not being efficiently used.

Democratization Struggles: Many people in Myanmar understand democracy in theory, but not in practice, having never lived under a fully democratic government. In many instances, individuals understand democracy to mean "majority rule," which is used to justify discriminatory laws and actions taken against minority groups.

Organizations Consulted

Key Activities/Approaches to Addressing Hate Speech

Article 19

Founded in 1987, ARTICLE 19 is a human rights organization dedicated to defending and promoting freedom of expression and freedom of information worldwide.

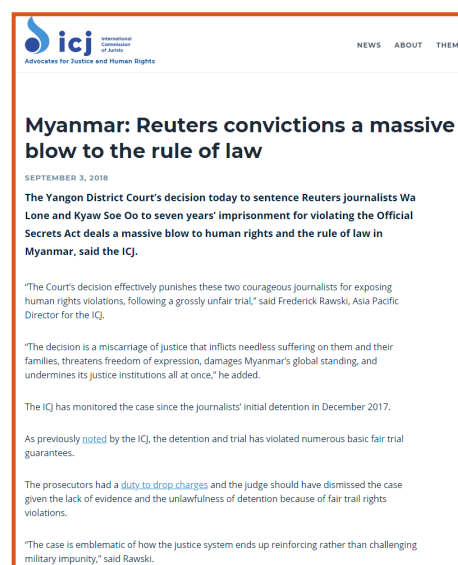
Article 19's work in Myanmar has focused on developing legal and policy evaluations and suggestions for protecting freedom of expression and freedom of religion and belief. To that end, Article 19 has published policy papers rooted in legal analyses and supported by advocacy efforts to encourage the Myanmar government to use international human rights laws as the standard for domestic laws and policies. In 2017, the organization responded to the Myanmar government's draft hate speech law stating that the proposed law 'endangers freedom of expression and will not prevent violence and conflict.'² Article 19 specifically recommends that the government refer to the Rabat Plan of Action as a guiding resource for future policies. The organization plans to further develop their activities and role in protecting freedom of expression in Myanmar and is already considered an active participant that has engaged with both civil society and the government in their work.

International Commission for Jurists

The International Commission of Jurists (ICJ) is a non-governmental organization

advocating for justice and human rights since 1952. It is comprised of 60 eminent judges and lawyers and promotes and protects human rights through rule of law, by using legal expertise to develop and strengthen national and international justice systems.³ The ICJ has monitored the human rights situation in Myanmar for more than fifty years, and opened an office in Yangon in early 2014 following engagements with justice actors in-country starting in 2012.⁴

Freedom of religion and belief (FoRB) is a growing issue in Southeast Asia, which the ICJ is trying to address. The ICJ co-hosted an FoRB conference in Bangkok September 2018 and has held related [workshops](#) in Myanmar, including in September and November of 2018. The ICJ regularly comments on freedom of expression (FoE) and FoRB issues, among other human rights issues in Myanmar.⁵



⁵Typical example of ICJ commentary on FoE issues in Myanmar.

Organizations Consulted

Key Activities/Approaches to Addressing Hate Speech

SMILE Myanmar

SMILE Myanmar (SMILE), started in 2007, and is a nonprofit, non-governmental organization working with diverse peoples from all levels of Myanmar society to promote freedom of religion and belief and to protect the dignity and rights of religious minorities.^{6,7}

SMILE conducted media monitoring of hate speech until 2016, at which time, other organizations entered the space and began doing similar work.⁸ As such, SMILE shifted its focus towards democracy-building and countering narratives of hyper-nationalism. SMILE does this, in part, by highlighting moderate voices in Myanmar and through leveraging the influence of prominent activists, writers, activists and other public figures who can speak out against extremism, SMILE also conducts freedom of religion and belief trainings in Myanmar.⁹

Yangon-based Media Monitoring Organization

The team also met with representatives of a Yangon-based media monitoring organization, who asked not to be identified in this report. They expressed serious concerns about the country's repressive political climate and warned that repression of civil society groups and human rights activists was likely to intensify as the country approaches the 2020 elections.

Organizations Consulted: Thematic Takeaways

Hate Speech Offline

While the international community has focused on the role of Facebook¹⁰ in the dissemination of hate speech, EQMM and training participants reported that offline hate speech is just as rampant and potentially more dangerous because it is more difficult to detect. Offline forms of hate speech often reflect deeply rooted socio-cultural narratives and norms that are in turn codified and reinforced through policy and law, making it even more difficult to challenge. SMILE highlighted the difficulties that come with addressing an issue deeply rooted in a history that inextricably links religion with identity and manifests in sometimes undetectable aspects of society.

Complex Discursive Space

The discursive space for contending with issues surrounding hate speech and freedom of expression are further complicated by the fact that there are words in the English language that do not translate to the same meaning in Burmese. In this sense, the language that is used to guide international frameworks may not translate well into the Myanmar context. For example, the word 'diversity' in Burmese has a connotation of division, or separate-

Organizations Consulted: Thematic Takeaways

ness rather than unity, and does not contain within that word any implication of ethnicity. Thus, for example, if someone were to proclaim in Burmese that they were promoting diversity, this would still exclude ethnic minorities.¹¹ The organization preferring to remain anonymous also noted that one of the reasons why working on hate speech is difficult in Myanmar is because the term in Burmese is very broad. Distinctions between hate speech and hateful, rude, and insulting speech are not well established. A common language with common definitions is essential to responding to hate speech in any sector. If groups cannot agree on how to identify hate speech, it cannot be effectively addressed, noted the anonymous organization.¹²

A Crowded Space - Financing and Coordination Challenges

As concerns over hate speech and disinformation have increased in recent years, organizations throughout Myanmar have responded by developing their own programming to counter hate speech. This shift in programming is largely a result of changing donor priorities, as donors have demonstrated a greater willingness to fund new ventures and programs that specifically address hate speech. While in some respects a positive phenomenon, organizations with which the team consulted in Myanmar raised concerns over 'crowding', in terms of coordinating actions in response to hate speech, and in terms of

funding.

As observed by one NGO staff member, "until a year ago, there were very few actors working in this space. Now everyone who's anyone in Yangon is getting grants to work on hate speech and fake news."¹³

The representative raised concerns about the lack of coordination between these projects and emphasized the importance of working in coordination with existing actors. In particular, the representative stressed that many new organizations in the space are unfamiliar with the programming of other organizations and that the absence of background knowledge and coordination has led to many redundancies in terms of materials, trainings and general programmatic objectives between actors.

This rapid growth in programming has also raised questions as to whether or not all organizations are fulfilling their responsibility to 'do no harm.' It is important for actors to consider how their programming may increase government pressure on NGOs or encourage behavior that is dangerous for participants.¹⁴ Given Myanmar's current political environment -- in which the authorities frequently use national laws (like the Telecommunications Law, the Unlawful Associations Act, and the Official Secrets Act)¹⁵ to crackdown on political dissent, some of our interlocutors raised serious concerns about the ethics encouraging training participants to engage in counterspeech or take direct action to combat hate speech. They cautioned that the political environment in

Organizations Consulted: Thematic Takeaways

Myanmar would only become more tense as the 2020 election approaches and felt that encouraging activists to engage in activities like counterspeech might put them at risk. The organization emphasized a “do no harm approach” and to be cautious about advocating for legal measures or laws to deal with hate speech. “If you criminalize hate speech, NGOs and activists will be the first ones to go to jail,” the anonymous representative told us.¹⁶

Myanmar in the International and ASEAN Human Rights Context

In our meeting, a senior legal adviser with the ICJ addressed Myanmar within the context of the human rights situation in Southeast Asia. The legal adviser spoke of a deterioration of human rights standards in the last five years, along with the rise of authoritarianism in the region. This regional trend has several implications for Myanmar. A culture of non-interference in ASEAN still prevails and countries are generally loathe to criticize one another. The ASEAN Intergovernmental Commission on Human Rights (AICHR) lacks independence and there is no individual complaint mechanism. Moreover, the AICHR prefers to refer to its own ASEAN Human Rights Declaration, instead of the international declarations and treaties, which subjects the enjoyment of fundamental rights to a “balancing” with state-imposed duties on individuals. As a result, whenever ASEAN member states invoke the Declaration instead of universal standards, they risk eroding human rights protections and the

rule of law in the region.¹⁷

Freedom of expression and hate speech remain an issue even in the Southeast Asian countries that have ratified the IC-CPR. This is often due to a lack of political will, not only capacity, according to the ICJ. The increased use of the Internet in Southeast Asia, especially Facebook, in recent years, has contributed to the rise of protection of freedom of expression issues. This is particularly true in Myanmar where access to the Internet came almost overnight.¹⁸

From the ICJ legal advisor's perspective, there has been less pressure from the international community for Southeast Asia to improve its human rights record in the last few years. Traditionally liberal countries' interest in the region and in human rights more broadly have declined, making way for the more illiberal China to play a greater role in the region, including in human rights “advising” and “training”.

The capacity of the judiciary and the legal community varies greatly in Southeast Asia, according to the ICJ, independence and impartiality are also issues. Myanmar has a two-pronged problem of low capacity and political interference. The legal education system has historically emphasized rote-learning rather than critical thinking. When it comes to political cases, judges can be subject to coercive or implied directions from government officials and institutions, particularly the military and police. The problem is compounded by the fact that a number of Supreme Court Justices are appointed by the military.¹⁹

PART III: BACKGROUND & RESOURCES

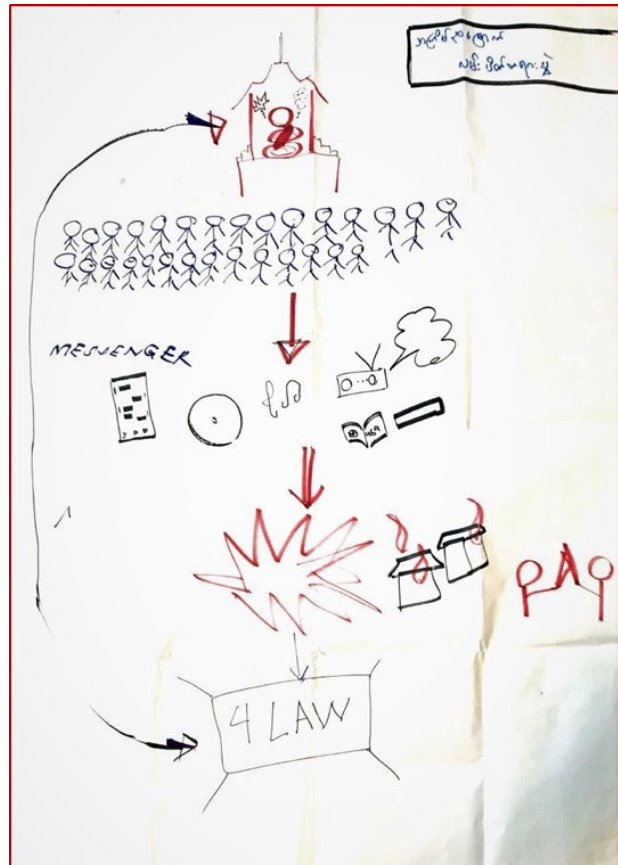
Knowledge that adds nuance to the understanding of hate speech in Myanmar—as an aide to trainers and facilitators using the curriculum associated with this report.

Our team’s approach to curriculum development for countering hate speech centers around the idea that no curriculum designed in one country or culture will work seamlessly in another.

Given our emphasis on developing context-sensitive training for local use, to include nuances that facilitate both engagement and understanding, leveraging local expertise and insight was crucial to this portion of our project’s success.

Our curriculum, however, is based on a foundation of human rights concepts that are universal – and serve as a utility to human rights trainers as they engage in facilitation activities.

This section outlines those foundational principals and other resources that are critical to understanding – and countering – hate speech in any context.



Report + Curriculum Synergy

During a curriculum pilot test that asked learners to illustrate their conceptualization of hate speech in Myanmar, several learners drew processes that reflected and confirmed our team’s research findings. (Illustrated above: the process by which in-person hate speech is amplified by social and traditional media, which can increase the likelihood of inciting real-world violence.)

International Legal Framework

INTERNATIONAL LEGAL FRAMEWORK

There are four main international agreements that address freedom of expression, freedom of religion and belief, and hate speech: The Universal Declaration on Human Rights (UDHR), the International Covenant on Civil and Political Rights (ICCPR), the International Convention on the Elimination of all Forms of Racial Discrimination (ICERD), and the Convention on the Prevention and Punishment of the Crime of Genocide (CPPCG).

It has been argued that these agreements provide conflicting guidance on regulating speech and that international courts and the United Nations bodies have interpreted relevant treaty provisions in inconsistent ways. Considered within the context of Myanmar, other international provisions, state practice, jurisprudence, and scholarly opinions should also be used to inform Myanmar on how freedom of expression is interpreted and protected under international human rights law in relation to other rights and guide the country on how to develop effective laws and policies.^{20, 21}

[The Universal Declaration of Human Rights](#)

Although not a legally binding treaty, many of the rights, principles, and obligations articulated by the Universal Declaration of Human Rights have been subsequently enshrined into international law, both in the form of more specific human rights covenants, and as norms of customary interna-

tional law.²²

Article 19 of the UDHR protects freedom of expression. “Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.”²³

Article 18 of the Declaration protects the right to freedom of religion and belief. “Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance”.²⁴

[The International Covenant on Civil and Political Rights](#)

Articles 19 and 20 of ICCPR recognize the right to freedom of expression but also acknowledge certain instances where derogations and restrictions may be permissible.

Article 4 of the ICCPR allows states to take measures derogating from their obligations to protect the freedom of expression in times of “public emergency” or when “the life of the nation” is threatened, but only to the extent strictly required by the exigencies of the situation. Moreover, a derogation that discriminates “solely on the ground of race, colour, sex, language, religion or social origin” is prohibited. The meanings of these requirements are de-

Background & Resources

scribed extensively in international jurisprudence and through opinions provided by international treaty bodies.^{25, 26}

In addition to derogating from the right to free expression in times of emergency, nations may also limit free speech in accordance with Article 19 (2).

The right to hold an opinion, including hateful opinions, is an absolute right under Article 19(1) of the ICCPR, which ‘permits no exception or restriction’. However, freedom of expression, as provided for in Article 19(2), is not absolute and carries with it special ‘duties and responsibilities.’ Under international law, restrictions to freedom of expression must:^{27, 28}

1. Be “provided by law”: with sufficient precision to enable individuals to regulate their conduct accordingly;²⁹
2. Pursue a legitimate aim: specifically, the restriction must be “necessary for respect of the rights or reputations of others” or “the protection of national security or of public order (ordre public), or of public health or morals”;³⁰
3. Be necessary to society: requiring the State to demonstrate in a specific and individualised manner the precise nature of the threat, and the necessity and proportionality of the specific action taken, in particular by establishing a direct and immediate connection between the expression and the threat. That is, restrictive measures must be the least intrusive means of achieving the protective function, taking into account the form and means of dissemination.^{31, 32}

While States may restrict the freedom of

expression under Article 19(2), Article 20 of the ICCPR obligates states to prohibit (but not necessarily criminalize)³³ speech that constitutes “propaganda for war’ or “advocacy of national, racial, or religious hatred” by “adopting the necessary legislative measures prohibiting the actions referred to therein.” The Article is not concerned with hatred alone but with hatred that ‘constitutes incitement to discrimination, hostility, or violence. It has been described as being ‘among the strongest condemnations of hate speech’.^{34, 35, 36}

Article 18 of the ICCPR protects the right to freedom of religion and belief as a non-derogable right but religious manifestations (18(3)) may, in the same manner as expressions, be subject to limitations so long as they are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others.^{37, 38}

[The International Convention on the Elimination of all Forms of Racial Discrimination](#)

Under ICERD, States “shall declare an offence punishable by law all dissemination of ideas based on racial superiority or hatred, incitement to racial discrimination, as well as acts of violence or incitement to such acts against any race or groups of persons of another colour or ethnic origin.”³⁹ ICERD only prohibits discriminatory speech on the basis of race, and does not protect individuals or groups on the basis of nationality, religion, gender, sexual orientation, or, arguably, ethnic identity. The UN Committee on the Elimination Racial Discrimination (CERD) has recommended that crimi-

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nalization of forms of racist expression should be reserved for serious cases, while less serious cases be addressed by means other than criminal law.⁴⁰

[The Convention on the Prevention and Punishment of the Crime of Genocide](#)

Article III (c) of the Genocide Convention prohibits and criminalizes ‘direct and public incitement to commit genocide’. While the International Criminal Tribunal for Rwanda (ICTR) left the question of whether the prohibition of hate speech alone is customary international law, it acknowledged the Genocide Convention as customary international law in its totality, and therefore legally binding on all states.⁴¹

Relevance to Myanmar

Owing to its broad international acceptance, many provisions within the UDHR enjoy customary international law status, and are legally binding on all states, including Myanmar.⁴² The ICCPR and ICERD have similarly been widely ratified and many of their provisions now reflect customary international law. However, a large number of states have entered declarations and reservations to the articles on freedom of expression in the ICCPR and ICERD, and state practice is far from uniform. Thus, excepting the prohibition on incitement to commit genocide, international law provisions on the freedom of expression cannot be treated as customary international law.^{43,44,45}

That being said, international law provisions

can still function as international legal guidance for addressing freedom of expression issues in Myanmar. Moreover, Myanmar has accepted recommendations to accede to the ICCPR during the second cycle of its Universal Periodic Review, and should begin acting upon its provisions in good faith.⁴⁶ Myanmar is also a State Party to the Convention on the Rights of the Child (CRC) and the Convention on the Rights of Persons with Disabilities, which both include provisions, Articles 13 and 21 respectively, on the right to freedom of expression.^{47,48}

Myanmar is dually bound, both by ratification and by CIL to the Convention on the Prevention and Punishment of Genocide and must abide by its provisions.⁴⁹

NON-BINDING LEGAL GUIDANCE

Beyond the UDHR and the treaties, legal guidance can be found in agreements and documents that set out international normative principles. UN mechanisms, regional courts and commissions, and NGOs have all contributed to international legal guidance. The Camden Principles, the Rabat Plan of Action, and the Beirut Declaration are all examples of ‘soft law’ sources that provide guidance on freedom of expression and countering hate speech.

[Camden Principles on Freedom of Expression and Equality](#)

Developed in 2009 by the NGO, Article 19, the Camden Principles are an expansive explication of Article 19 of the ICCPR that have been recognized by the UN. The

Background & Resources

Camden Principles recognize that there is a tension between the freedom of expression and equality, but assert that more than anything, the two are mutually reinforcing and dependent rights. Freedom of expression is necessary to create equality and vice versa. The Principles emphasize this claim in three thematic sections: “The right to be heard and the right to speak; Promoting intercultural understanding; and Freedom of expression and harmful speech,” all of which highlight the idea that there needs to be careful and purposeful regulation of these rights to ensure they are protected. There are 12 Camden Principles that outline the ways in which legal frameworks, public policy, mass media and the state can collaborate to protect expression and equality as well as offer remedies in cases when those rights are violated.^{50, 51}

[Rabat Plan of Action](#)

The Rabat Plan of Action on the prohibition of advocacy of national, racial, or religious hatred that constitutes incitement to discrimination, hostility, or violence was created by the UN in 2013 to address the issue of balancing incitement and freedom of expression. At the time of its drafting, there were increasing levels of hate speech and concerns over how to address and regulate alarming speech. The introduction of the report states, “In many parts of the world, freedom of expression still faces formidable resistance from those who benefit from silencing dissent, stifling criticism or blocking discussion on challenging social issues.”⁵² Most countries did not have prohibitions on speech that incites hatred and of those that did, the language was “variable” and often

violated Article 20 of ICCPR. As a result, they concluded that there should be distinctions between speech that constitutes a criminal offense, speech that is not criminally punishable (but may be subject to a civil suit) and speech that is concerning to society but not subject to punitive legal intervention. Article 19 writes that the crux of the Rabat plan is the position that “more expression is the best antidote to intolerance, coupled with policies and laws to tackle the root causes of discrimination.”⁵³ Included in this plan are robust definitions of hatred, discrimination, violence, hostility, as well as the aforementioned set of recommendations to evaluate when restrictions on speech are necessary.

[Beirut Declaration](#)

In March of 2017, the United Nations Office of the High Commissioner convened religious leaders to draft the “Faith for Rights” framework. A follow up to the Rabat Plan of Action, the Beirut Declaration reaffirmed the role of religious leaders and communities to “counter discrimination and religious-based violence”.^{54, 55}

Participants in the event generated “18 commitments” that religious communities of all faiths were asked to uphold. Among the commitments include the responsibility to oppose policies that limit freedom of thought and expression; the commitment to promote equal treatment of all people in respecting the right to worship; the commitment to protect minority rights; and the commitment to reject any policy or advocacy that incites violence or hatred.^{56, 57}

Hate Speech: Definitions & Elements

The Elements of Hate Speech

There is no internationally agreed upon definition of hate speech, which makes identifying and responding to hate speech particularly challenging. The lack of consensus on a definition of hate speech stems from extensive disagreement on what constitutes hate speech. All expression is unique, and potentially problematic expression must be examined on a case-by-case basis through a compound lens that refracts geographical, cultural, temporal, jurisdictional, and other contextual components in order to determine a reasonable response (or even whether a response is needed at all). Fortunately, there is relative consensus in the field as to the factors to be considered in an analysis of hateful expression. These factors include:

- The **speaker** and **audience**:

The speaker's status and their relationship to the audience affects the power and influence of their expression. In general, the more privileged and powerful the speaker is relative to the targeted person or group, the greater the potential harm. In this respect, certain figures in the public domain, such as politicians and journalists arguably have a responsibility not to promote hate speech.^{58,59}

- The **context**:

When and where a speech is made is important. Analysis of the context includes placing the expression within the social and political context at the time it was made. For example, speech made in the aftermath of a tragic event, in a politically volatile en-

vironment, or in a post-conflict society, may be considered more dangerous than similar expressions in more stable or placid conditions.⁶⁰

- The **content, nature, and tone** of the expression:

Certain types of expression, such as political speech or commentary on public figures, will generally receive more protection as it goes to the heart of democratic governance. So public officials, including heads of state, are expected to withstand more extensive public criticism than ordinary citizens. Factors such as whether the speech was made in public or private, whether it was oral or written, online or offline, and whether it was spontaneous or premeditated are also important considerations.^{61, 62}

The content, nature and tone of the expression can also be assessed using the language of Article 20 (2) of the ICCPR. Accordingly, the speaker's expression must include:

- **advocacy**, which is understood as an "intention to promote hatred publicly towards the target group";⁶³ and
- **hatred** targeting a **protected group**.⁶⁴

Hatred should be understood to be a state of mind, characterized by the "intense and irrational emotions of opprobrium, enmity and detestation" towards a target group on the basis of a protected characteristic.

While Article 20 (2) only lists "national, racial or religious hatred", this should be inter-

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preted expansively to include discriminatory hatred against all protected characteristics which appear under non-discrimination provisions of international law, including but not be limited to: race, color, sex, language, religion, political or other opinion, national or social origin, property, birth, indigenous origin or identity, disability, migrant or refugee status, sexual orientation, gender identity or intersex status.⁶⁵

- The **harm caused**:

According to Article 20 (2), the expression must constitute incitement to **discrimination, hostility, or violence**.⁶⁶

- Hostility is “a manifested action of an extreme state of mind. Although the term implies a state of mind, an action is required. Hence, hostility can be defined as the manifestation of hatred – that is the manifestation of ‘intense and irrational emotions of opprobrium enmity and detestation towards the target group.’”
- Discrimination is “any distinction, exclusion, restriction or preference” based on any protected characteristic recognized under international human rights law, which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life.”
- Violence is “the intentional use of physical force or power against another person, or against a group or community that either results in or has a high likelihood of resulting in injury, death, psy-

chological harm, mal-development, or deprivation.”⁶⁷

Activity IV of our curriculum, “Be the Judge”, includes a discussion on factual examples of each of the three categories above.

- The **causal link** between the expression and the specific harm:

From the case law of the Human Rights Committee, there is no need to show that the harm incited – hostility, discrimination, or violence – actually occurred, But there needs to be a **likely and imminent danger of the acts of discrimination, hostility or violence** as a consequence of the advocacy of hatred.⁶⁸

The *United Nations’ Rabat Plan of Action Six-Part Severity Test* was designed to determine when the danger of violence, hostility, or discrimination is sufficient to justify criminalization of expression. The following criteria must be considered when assessing the severity of the speech: context, speaker, intent, extent and magnitude of the expression, likelihood of harm occurring, including imminence. All of these criteria mirror some of the elements of hate speech, with the notable exception of protected groups. A full description of the six-part test can be found in Annex 1.

- The **intent of the speaker**:

The Human Rights Committee and the CERD Committee have made clear that the intent of the speaker is a crucial element of incitement.⁶⁹

A speaker must:

- intend to engage in advocacy to hatred;

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- have knowledge of the likelihood that the audience will be roused to discrimination, hostility or violence;
- intend to target a protected group.⁷⁰

Negligence and recklessness are not sufficient for an expression to be deemed incitement. In essence, a triangulation between the speaker, the audience, and the offending action is required.⁷¹

Activity IV of our curriculum, “Be the Judge”, relies on a diagram, created by the NGO, Article 19, of this triangular relationship between the three principal actors in a scenario involving hate speech: the speaker, the audience, and the target group, and a corresponding description of the elements of hate speech.⁷²

Definitions of Hate Speech

Various definitions of hate speech have been proffered by organizations and individuals, but consensus remains elusive. In its absence, many are becoming reluctant to use the term ‘hate speech’ as its most commonly recognized usage is associated with extreme cases. In Myanmar, ‘hate speech’ is also broadly understood as an online phenomenon despite evidence that it occurs exceedingly offline as well. Harmful, hateful, insulting, dangerous or fear speech are examples of terms used in lieu of ‘hate speech.’ For the purposes of this report and curriculum, the term ‘hate speech’ will be qualified by a description of its categorization. For example, expressions will be characterized as “hate speech that must be protected”, “hate speech that may be restricted”, or “hate speech that must be restricted”.

While this report does not adopt a particular definition, examples of hate speech definitions put forward by other organizations provide useful guidance.

The United Nations Committee on the Elimination of Racial Discrimination (CERD) 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.”⁷³

YouTube refers to hate speech as ‘hateful content’ and in its community guidelines states: “Our products are platforms for free expression. But we don't support content that promotes or condones violence against individuals or groups based on race or ethnic origin, religion, disability, gender, age, nationality, veteran status, or sexual orientation/ gender identity, or whose primary purpose is inciting hatred on the basis of these core characteristics. This can be a delicate balancing act, but if the primary purpose is to attack a protected group, the content crosses the line.”⁷⁴

Facebook defines hate speech as: “We do not allow hate speech on Facebook because it creates an environment of intimidation and exclusion and in some cases may promote real-world violence. We define hate speech as a direct attack on people based on what we call protected characteristics — race, ethnicity, national origin, religious affiliation, sexual orientation, caste, sex, gender, gender identity, and serious disease or disability. We also provide some protections for immigration status. We define attack as violent or dehumanizing speech, statements of inferiority, or calls for exclusion or segregation.”⁷⁵

Mechanisms for Addressing Hate Speech

For a society to adequately respond to the problem of hate speech, it must have an array of tools at its disposal. No single approach is a panacea. Outlined below are different possible responses to hate speech. There are two principal categories of response: legal and extra-legal. The examples outlined here are not prescriptions or suggestions for how hate speech should be addressed in Myanmar, but rather a rundown of options that can be tailored, alone or in combination, according to context and need.

Legal Approaches

Legal remedies are an imperfect, yet at times powerful mechanism for addressing hate speech. When employed effectively, strong legal frameworks can establish positive norms around permissible speech and set clear penalties.

However, laws that govern permissible expression and criminalize hate speech are incredibly variable in their design and implementation. Poorly designed laws are often too restrictive and infringe on freedom of expression and other political rights that are enshrined in treaties like the ICCPR.

In authoritarian and transitional contexts, legal sanctions may be used to punish dissent or to target members of the political opposition and/or marginalized groups.

Functioning and impartial courts, democratic governance structures and a political culture which respects freedom of expression are therefore critical to the success of

legal remedies.

Criminal and Civil Sanctions

Across the world, countries have adopted various legal approaches to punish hate speech. Most countries have two separate ‘bodies of law’; civil and criminal. Civil law is typically reserved for cases that cause injury to private interests, while criminal law “deals with behavior that is or can be construed, as an offense against the public, society, or the state.”

Hate speech cases can be either criminal or civil in nature. Often times they are both. In some instances, victims of hate speech may pursue ‘damages’ in civil cases while the state prosecutes a criminal case against the perpetrator. The efficacy of these approaches, and the likeliness that just compensation or punishment will be dealt out is largely dependent on the strength of a nation’s judiciary and the way hate speech laws are constructed.⁷⁶

Countries also interpret hate speech differently and establish inconsistent guidelines on which groups or characteristics are protected by law. Therefore, the scope of the law and the elements that are included, largely determines which cases will be considered and how successful these cases may be in deterring or punishing hate speech.^{77, 78}

The potential outcomes of civil and criminal cases also differ widely, in terms of the types of punishments that are associated with both bodies of law. For example, victims who pursue civil law cases tend to

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seek monetary damages, while criminal law cases may result in significant fines or prison sentences. Extant legal, social and political norms in a country will often determine which course of action hate speech victims and human rights practitioners will pursue in the courts.^{78, 79}

Civil Sanctions

Many countries have adopted civil bodies of law that provide victims of hate speech with opportunities to seek monetary damages or other remedies against offenders. Generally, victims of hate speech submit formal claims against an individual or group. Depending on the context, a commission may review the claim, or it may be reviewed by the courts.⁸⁰

Victims of hate speech may seek “pecuniary and non-pecuniary damages”. Pecuniary damages are damages that have an inherent monetary value, while non-pecuniary damages are usually psychological in nature, and are subjectively difficult to quantify. Both are considered compensation for the “pain and suffering” endured by the complainant.^{81, 82, 83}

If the courts or respective committee’s rule in favor of the victim, the aggrieved party may receive compensation in the form of a payment made by the offender. Or the legal authority may order the offender to retract their claim, participate in volunteer or training programs, issue a formal apology to the victim, or complete any of numerous other compensatory actions.^{84, 85}

Civil laws vary widely in their usage and application around the world. The distinc-

tion is generally informed by the social and political culture of a country and how civil laws are written. Almost every country has varying limitations set on what types of hate speech claims can be made in court. For example, in Austria, claims are only able to be made “on the grounds of gender and ethnicity”. In Japan, hate speech is only defined in terms of “unfair discriminatory speech and behavior against persons originating outside Japan.” Other groups or characteristics not included in the law are therefore not protected and are likely unable to seek remedy.^{86, 87}

While civil law can be effective at deterring hate speech, in many contexts civil law remedies are rarely pursued by victims. Common reasons include high legal costs, long trials, and a general belief that civil sanctions do not ‘go far enough’ in punishing hateful speech and expression. Despite these limitations, civil law remedies can help set legal and cultural standards on what constitutes ‘acceptable’ and non-permissible speech. In particular, court required apologies and retractions can correct records and set community standards while the reputation cost that may be associated with a guilty conviction of hate speech, can be an effective deterrent.^{88, 89, 90}

Criminal Sanctions

Cases of hate speech may occasionally warrant stricter criminal sanctions. Countries with hate speech laws typically adopt elements of Article 20(2) of the ICCPR, by criminalizing actions that incite hostility, discrimination or violence. However, coun-

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tries with criminal laws tend to interpret Article 20(2) in their own way. Consequently, criminal laws around the world are inconsistent in their application of Article 20(2) directives.

Relative to civil law, criminal law allows for harsher punishments, including large fines and prison sentences. Criminal laws, like civil laws, tend to include language that protects certain characteristics such as gender, ethnicity, religion, and sexual orientation. Countries with criminal laws sanctioning hate speech tend to also incorporate 'public interest' clauses in their incitement tests. To satisfy this test, the public interest must be under threat; therefore, criminal hate speech cases are generally more severe than civil. However, public interest clauses can also be problematic, as legal authorities have full discretion over what constitutes the 'public interest'. In some cases, criminal sanctions may be pursued by the government against parties engaging in otherwise protected speech. They may also fail to recognize or underestimate the severity of speech made against marginalized persons or communities.^{95,96,97,98,99}

According to Article 19, harsh criminal punishments are not ideal. Many criminal laws tend to feature over-broad definitions of hate speech that lead to arbitrary application, misuse or the criminalization of otherwise protected speech. Criminal hate speech laws may also be inconsistently interpreted by national courts, resulting in troublingly disparate punishments. This problem is exacerbated by the fact that many countries fail to include exhaustive

lists of protected characteristics and groups within their expression laws. By failing to do so, many criminal and civil laws do not provide adequate levels of protection for wide classes of persons.^{100,101,102,103}

While criminal sanctions pose significant threats to freedom of expression, strict punishments may effectively deter extremely problematic speech. In countries with histories of violence or discrimination against marginalized groups, criminal laws can also communicate a country's strong willingness to protect these populations.^{104,105}

International Remedies

The international law remedies for hate speech flow from the aforementioned rights and restrictions under the three treaties governing freedom of expression. The implementation of the ICCPR and ICERD is monitored by the UN treaty bodies, the UN Human Rights Committee (CCPR) and UN Committee on the Elimination of Racial Discrimination, respectively (CERD). Disputes arising under the Genocide Convention can be adjudicated by the International Court of Justice (ICJ) and individuals can be investigated and tried for committing genocide under the International Criminal Court.^{104,105,106,107}

Where states have failed to comply with their treaty obligations under the ICCPR or CERD, individuals from States that have ratified the additional protocols of the two conventions can submit complaints to the CCPR and CERD, after all domestic reme-

Mechanisms for Addressing Hate Speech

dies have been exhausted. As stated, Myanmar is not a party to either the ICCPR or the ICERD, and therefore individuals in Myanmar would not have access to international treaty body remedies.

Myanmar is, however, a party to the 1948 Genocide Convention. Under Article IX of the Convention, any contracting party may submit a dispute between it and another contracting party relating to the interpretation, application, or fulfilment of the Convention to the ICJ, including disputes about the responsibility of a state for incitement to commit genocide. In principle (albeit unlikely), any contracting party to the Genocide Convention could bring an ICJ case against Myanmar as long as the state can establish the existence of a dispute between it and Myanmar over the subject matter of the claim.¹⁰⁸

It should be noted that a UN Fact-Finding Mission found in its September 2018 report that there was sufficient evidence to warrant the investigation and prosecution of senior officials in Myanmar for the crime of genocide. Among other recommendations, the Mission urged the UN Security Council to refer the situation to the International Criminal Court (ICC) or to establish an ad hoc international criminal tribunal. While Myanmar is not a party to the Rome Statute of the ICC, a Pre-Trial Chamber determined that the ICC may have jurisdiction over Myanmar for certain crimes and a preliminary examination into the situation has been announced.^{109,110}

Regional Remedies

As a member of the Association of South-east Asian Nations (ASEAN), Myanmar has access to the regional body's human rights system. The ASEAN Intergovernmental Commission on Human Rights (AICHR) was established in October 2009 and it adopted the ASEAN Human Rights Declaration in 2012. The Declaration has been described as 'a roadmap for the regional human rights development' and is not a legally binding document.^{111,112}

The Declaration does include freedom of expression and FORB provisions. Article 22 of the Declaration provides for the 'right to freedom of thought, conscience and religion', while Article 23 provides for the 'right to freedom of opinion and expression, including freedom to hold opinion without interference and to seek, receive and impart information...'.¹¹³

The notion that human rights are universal and to be applied in the same way in all states regardless of regional or national particularities has been called into question by governments in various regions in the world, including ASEAN member states. This cultural relativism, known in East Asia under the rubric of 'Asian Values' has been embraced in the Declaration with a reference to the need to consider rights in the 'regional and national' context. Civil society has criticized such language that limits the protection of certain fundamental rights in this manner. Rights groups claim that the notion of 'Asian Values' has been used to justify discrimination and deprivation of human rights on the basis of social, cultural, and religious grounds.^{114,115}

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Unlike other regional human rights systems, to date, there is no Southeast Asian regional human rights court or mechanism for hearing human rights complaints at a regional level. Despite this, civil society organizations have submitted several complaints to the AICHR, requesting it respond to human rights violations in the region, including on press freedom in Indonesia and the Ampatuan Massacre in the Philippines.^{116,117}

Non-Legal Approaches

Counterspeech

Counterspeech is often cited as an important strategy for combating hate speech. According to the Dangerous Speech Project, “counterspeech is any direct response to hateful or harmful speech which seeks to undermine it.” The central idea is that the best way to counter hate speech is with more speech, and this approach is particularly popular in the West, where it is a central tenet of the free expression tradition.¹¹⁸

Counterspeech can have a positive effect on the speaker -- changing their mind and convincing them to stop the harmful speech -- or it can limit the impact of the speech, by making it socially unacceptable or by providing alternative viewpoints.¹¹⁹

There are two varieties of counterspeech to consider: (1) organized counter-messaging campaigns, and (2) spontaneous, organic responses.

Organized counter messaging campaigns, or Dangerous Speech Interventions (DSIs),

should aim to:

- Reduce the likelihood that audiences will accept and spread dangerous speech;
- Reduce the likelihood that audiences will condone or participate in group-targeted harm;
- Increase willingness among audience members to speak out against efforts to foment group-targeted hate.¹²⁰

Spontaneous, organic counterspeech responses can be conducted in person or on social media. Recommended strategies include: warning of the consequences of hate speech for the speaker, shaming and labeling the speech as problematic, and trying to generate empathy by explaining how the speech is hurtful, and using humor.¹²¹

Counterspeech can be an important tool in combating hate speech, but, as the Internet and social media have transformed how people communicate and receive information, the efficacy of traditional counterspeech efforts has deteriorated. While the internet and social media have democratized media by lowering traditional barriers to entry, the traditional gatekeepers and enforcers of quality control have been dislodged or become inadequate. The result of this has been more “fake news,” which can travel at lightning speed and be used to target impressionable individuals.

Algorithmically-driven search and social media technology further creates “echo chambers,” meaning that individuals have a diminished ability to distinguish between legitimate and false news and be exposed

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to factual counterspeech.¹²²

Others have noted that the counterspeech strategy creates a false equivalence and that it is only valuable to those who already hold a position of security and privilege in society, and can produce counter speech without fear of violence or other repercussions.¹²³

According to research on using counterspeech on the social media platform Twitter, U.S. and Canadian investigators found that “hateful and other extremist speech was most effectively undermined by counterspeech rather than by removing it.”¹²⁴

While counterspeech is an often-cited strategy for combating hate speech, based on our field research and consultations, we have decided to take a “Do No Harm” approach to our curriculum and thus our learning activities do not include training in counterspeech. However, we have included key sources on this topic identified during the course of our research and have included them in the Resources section of this report.

Education

Human Rights Education

Human rights education is an important tool for strengthening society's understanding of, and ability to advocate for, human rights and is essential to systematically combating hate speech.¹²⁵

The United Nations defines Human Rights Education (HRE) as education about,

through and for human rights. HRE human rights provides individuals with knowledge of fundamental rights and protections, based on international standards (about); ensures that the mechanisms used within systems of education respect the rights and dignity of all teachers and learners (through); and encourages learners to take action in ways that promote human rights for themselves and others (for). This section focuses on HRE within formal education settings, but recognizes that non-formal and informal human rights education is also essential.^{126,127}

A 2017 report from the World Program for Human Rights Education notes that “by promoting respect for human dignity and equality and participation in democratic decision-making, human rights education contributes to the long-term prevention of abuses and violent conflicts.” Article 19 further explains that “Accurate information can dispel popular myths and misconceptions, and equip individuals with greater confidence to identify and challenge manifestations of intolerance in their day-to-day interactions.”^{128,129}

The United Nations has affirmed the right to human rights education through a number of declarations and treaties. In 2011, the General Assembly adopted the United Nations Declaration on Human Rights Education and Training. Article 1 states that “Everyone has the right to know, seek and receive information about all human rights and fundamental freedoms.” Article 7 affirms that states have an obligation to uphold this right, and Article 8 calls upon states to implement HRE programs and

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training, using the World Programme for Human Rights Education as a guiding framework. In addition to recognizing the right to education, Article 13 of the ICESCR also notes that all systems of education should ultimately, “strengthen the respect for human rights and fundamental freedoms.”^{130,131}

Unfortunately, education systems are often used to reinforce myths and misconceptions that can lead to incitement to discrimination, hatred or violence. For example, in Myanmar, a number of civil society organizations expressed concern last year over the discriminatory nature of a civics curriculum being used in primary schools. A March 2019 report from the Special Rapporteur on the situation of human rights in Myanmar made specific note of discriminatory school curriculum, citing a primary school lesson that stated, “we loathe those of mixed blood, for they prohibit the progression of a race.” The report expressed concern that “teaching children these ideas promotes racial superiority and communal disharmony.” The report recommends that Myanmar “immediately remove all discriminatory material from the national elementary school curriculum and all textbooks,” and “ensure that minimum core obligations under ICESCR are met.”^{132,133,134,135}

OHCHR and UNESCO provides a self-assessment guide that government entities can use to evaluate schools and curriculum. The self-assessment highlights five areas for evaluation including, “(1) education policies, (2) policy implementation, (3) the learning environment, (4) teaching and learning processes and tools, and (5) edu-

cational and professional development of school personnel.” HRE USA also offers a guide to incorporating HRE curriculum into schools. Although the guide is in many ways tailored to American educators, it also provides sample lesson plans that could prove useful in other contexts.^{136,137,138,139}

Media & Information Literacy Education

Media Information and Literacy (MIL) is used as a means of ensuring that individuals are able to make informed decisions, and are less susceptible to misinformation. MIL has become increasingly important in an age where social media silos and algorithms often dictate what individuals do and do not see online. UNESCO has developed a MIL curriculum designed specifically for Myanmar, which includes skills that can be used to combat hate speech. Among these skills are the ability to “understand the role and function of media in democratic societies” and the ability to “critically evaluate media content in the light of media functions.”^{140,141,142}

In the context of social media, it is important to understand the ways in which different communities vary in how they experience digital spaces. Studies have shown, for example that misogyny and racism is highly present in digital spaces, which affects the ways in which women of color, and other female minorities use and experience media platforms. Digital media is often a reflection of the embodied spaces we live in. For example, with the advent of the internet, there were many who felt that the digital world could become a space of equity, free from gender stereo-

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types, given that it existed beyond beyond the physical world. However, gender theorists quickly found that this was not the case. Misogyny existed, and was reinforced in digital spaces. In this sense, it is important to understand digital information, not as fact, but as reflections of the world around us, complete with all the biases we experience in the physical world. Such biases require media users and consumers to think critically about the information that they consume. This kind of critical thinking can help prevent harmful actions inspired by hate speech. Some key components to consider when critically analyzing sources include who produced the content, who it was produced for, what is being said, and the intended purpose of the content.^{143,144,145,146,147}

In addition to teaching critical analysis, the UNESCO curriculum also aims to teach learners how to “engage with media for self-expression and democratic participation.” While this is an important skill to hone, it is critical, as one study notes for learners to, “be made fully aware of the risks, not only to themselves but to others, when entering a social media environment.” As the counterspeech section of this report notes, there are risk associated with social media engagement.^{148,149}

The U.S.-based Brookings institution in 2017 formulated a spectrum of non-regulatory best practices for government, private sector, and civil society organizations can take to combat misinformation at the grass-tops level.¹⁵⁰ **These Include:**

Government: Encourage independent, professional journalism. Avoid crackdowns on the media's ability to cover news or otherwise limit freedom of expression. Avoid content censorship and making content platforms liable for misinformation.

News Media: Focus on high-quality journalism that builds trust and attracts greater audience. Call out fake news and disinformation without legitimizing them.

Technology Firms: Invest in technology to find fake news and identify it for users through algorithms and crowdsourcing. Change policies to weaken financial incentives for bad content, false news, and disinformation. Strengthen online accountability through real-name policies and enforcing policies against fake accounts.

Educational Institutions: Fund efforts to enhance news literacy; governments should take a lead role in this endeavour. Start education as early as possible; once an individual's beliefs are set, counter disinformation efforts may even have an inverse effect.¹⁵¹

Additional Resources

There are several curriculum that may be adapted to teach critical analysis of media in the Myanmar context. Organizations such as the United State Holocaust Memorial Museum (USHMM) have created media literacy curriculum specifically designed to analyze harmful forms of speech such as propaganda. Among USHMM's intended learning outcomes is the ability through critical analysis of Nazi propaganda to, “gain an understanding of the impact of context on the effectiveness and potential consequences of propaganda.” In 2018, the Stanford History Education Group designed curriculum with the Poynter Institute to address the issue that American high school and college students demonstrate remarkably poor media and information literacy skills.^{152,153,154}

PART IV: CASE STUDIES

The following case studies are examples of how hate speech or freedom of expression issues have arisen in different countries and the various mechanisms of addressing such.

These real world examples illustrate the complexities of the right to freedom of expression and its restrictions as well as demonstrate the continuum on which hate speech and its repercussions lie.

The case studies are specifically focused on the ASEAN region in the hopes that these examples will be more relevant to Myanmar.

Case Studies

THAILAND: Lèse-majesté Laws & Proportionality

SRI LANKA: Terrorism & Censorship

VIETNAM: Extreme Facebook Censorship

GERMANY: Regulating Online Platforms to Combat Hate Speech

AUSTRALIA: Anti-Discrimination & Civil Law

SOUTH KOREA: Counterterrorism Restrictions in a Strong Democracy

MALAYSIA: The Passage and Impact of the World's First "Anti-Fake News" Law

CAMBODIA: FoE Progress Halted by Resurgent Government Control

Case Study: Thailand

Lèse-majesté Laws & Proportionality

Summary: International law allows for certain limitations of free speech in order to “respect the rights and reputations of others.”

These limitations commonly take the form of defamation laws, which allow a person who harms another person’s reputation to be sued in civil or criminal court, and sedition laws, which make it a crime to insult the government. In many nations laws protecting the rights and reputations of others make it a crime to insult one of the “Three Rs” -- rulers, religion, and royals.

In many cases, these laws do not meet the standards for restricting expression laid out in international law. General Comment No. 34, which helps interpret Article 19 of the ICCPR, states that restrictions on expression “must conform to the strict tests of necessity and proportionality.”

Thailand, for example, has particularly strong Lèse-majesté laws, which criminalize defaming members of the Thai royal family that have come under criticism from human rights activists for not meeting these standards.

Context: Article 112 of Thailand’s Criminal Code states that anyone who “defames, insults or threatens the king, the queen, the heir-apparent or the regent” will be punished with up to fifteen years imprisonment. While this law has been in place since 1908, it has been used increasingly since the Thai military seized power. Since 2014, at least 105 people have been arrest-

ed on Lèse-majesté charges, which are often used to punish dissent.

For example, in 2015, two students were jailed for two-and-a-half years for their participation in a theater performance featuring a fictional one-eyed king, after a Thai court deemed that the play mocked the nation’s monarch -- King Bhumibol -- who lost an eye as a young man in a car accident. Another man was charged by a military court for mocking the King’s favorite dog.

Sedition laws are also used by the Thai government to crackdown on political opposition. In April of 2019, Thanathorn Juangroongruangkit, an increasingly popular political opposition leader, was accused of breaking Article 116 of the Criminal Code, (the equivalent of sedition). He faces up to nine years in prison if found guilty by the military court. The charge dates back to 2015, but Juangroongruangkit was only released a week after the election, which has led human rights observers to suggest that this was politically motivated.

Reflections and Considerations

- Limitations on speech to protect “the rights and reputations of others” can have benefits. For example, defamation, slander, and libel laws prevent the spread of false information and character assassination.
- The Thai case shows that while these laws can be useful, they are often used in ways that do not meet the criteria of necessity or proportionality. Thailand’s

Case Study: Thailand

Lèse-majesté Laws & Proportionality

Criminal Code carries up to fifteen years imprisonment for insulting the royal family and these penalties can apply to each Lèse-majesté charge. For example, in 2017 a man was sentenced to 70 years in jail for multiple Lèse-majesté charges. It is worth considering whether punishment this severe would apply elsewhere.

- Sedition is speech or organization aimed at fomenting insurrection against the government. While laws prohibiting insurgency or uprising may have benefits for maintaining public order and rule of law, Thailand and many countries “have criminal sedition laws that make it a crime to insult the government specifically. Throughout history, sedition laws have been used to silence minority views. Gandhi, Galileo, and Nelson Mandela were all at one time prosecuted for sedition.”

Questions:

- What would you consider to be a proportionate sentence for violating a Lèse-majesté or sedition law?
- How would you describe the interests that such laws are protecting to make such a punishment necessary?
- Can you describe any similarities or differences between Lèse-majesté and sedition laws with hate speech laws based upon Article 20(2) of the ICCPR?

Case Study: Sri Lanka

Terrorism and Censorship

Summary: Over the past few years, Sri Lanka has experienced an increase in communal violence, and anti-Muslim riots. In March 2018, during one particular escalation of violence, the government responded by temporarily shutting down Facebook and WhatsApp. While Sri Lanka has four key laws on the books that regulate speech, they have done little to prevent violence, and instead have been misused to crack down on legitimate dissent.

Context:

Sri Lanka has four laws that regulate speech. The first is the International Covenant on Civil and Political Rights Act (2007). This act is based on ICCPR Article 20, using, “incitement to discrimination, hostility or violence” as a threshold for defining when speech becomes hate speech. Sri Lanka’s penal code also regulates speech, and prohibits “uttering of words with the intent to wound religious feelings” and “deliberate and malicious acts intended to outrage religious feelings,” both of which are criminal offenses. The Prevention of Terrorism Act and the Police Ordinance are used to regulate speech as well.

- Sri Lanka is a Buddhist majority country with Muslim, Hindu and Christian minority populations. In the years since the end of violent conflict in 2009, anti-Muslim violence has increased. In 2014, Aluthgama, a town in the western region of the country experienced riots against the Muslim community. This violence and tension has been fueled by Buddhist nationalism. For example, in

2017, a group of Buddhist Monks executed an attack against Rohingya refugees living in a shelter located in Colombo. These monks were part of a nationalist group called Sinhale Jathika Balamuluwa.

- In March 2018, hate speech against Muslims spread across social media. One message post online read, “Kill all Muslims, don’t even let an infant of the dogs escape.” The government placed blame on Facebook and responded by shutting the platform down. The government did not use any of the laws above to prosecute offenders.
- Although no legal action was taken against rioters, Sri Lanka has used legal means to prosecute certain forms of speech. For example, In 2008, a magazine editor was publishing articles on the mistreatment of Tamil civilians at the hands of the government. Tissainayagam was given a 20 year prison sentence, after being found guilty under the Prevention of Terrorism Act of fomenting discord between groups. Eventual outcry led Tissainayagam to be pardoned in 2010.

Reflections and Considerations

- While the Sri Lanka’s legal framework, which is designed to regulate speech could potentially protect minorities from violence, the events of March 2018 show that they are not being used for

Case Study: Sri Lanka

Terrorism and Censorship

this purpose.

- The use of the Prevention of Terrorism Act to crack down on dissent demonstrates that these laws can harm civil society and hinder free expression.
- The government's diametrically opposed responses to rioters versus the magazine editor demonstrate that the laws are not being equally applied, and that government action is not proportionate to the infraction.

Questions:

- Are there any drawbacks to shutting down Facebook accounts associated with 'hate groups' or armed militias?
- For example, when Facebook shut down accounts of numerous armed groups in Myanmar, human rights advocates had a much harder time protecting civilians because they could no longer track the trajectories of conflict. Without such information they could not warn communities that violence might be coming to their areas.
- Does the existence of a law, such as the one in Sri Lanka based upon the ICCPR, serve any purpose if it is unenforced? Consider the opposite: What does the use of the anti-terrorism law tell us about the value of having a law on the books?

executed across Sri Lanka, with coordinated bombings targeting churches and hotels on Easter morning. The government responded by temporarily shutting social media platforms including Facebook and Whatsapp in order to prevent the spread of misinformation. ISIS claimed responsibility for the attacks, while the government originally identified a local, radical Muslim group as the perpetrator. Since that time, the government has issued a state of emergency, and has taken steps to limit religious freedoms including banning face veils. The local Muslim community has also faced backlash in the form of communal violence. The government response illustrates a consistent trend of limiting fundamental rights in the name of fighting terror, and in the name of preventing hate from spreading. Continued acts of communal violence would indicate that these tactics are not working.

163,164,165,166,167,168,169,170,171,172,173,174,175,176,177,178,179

A Note on Current Context

On April 21, 2019, terrorist attacks were

Case Study: Vietnam

Extreme Facebook Censorship

Summary: Over the past decade, Vietnam has ramped up its efforts to crackdown on 'anti-government' speech. In 2019, the country passed a cybersecurity law that requires all social media companies to delete pages, groups and content that are 'anti-government' in nature.

Context: The Communist Party of Vietnam, the country's only party, introduced a law in 2013 that prohibits content that is deemed 'anti government' and undermines national security. The government's definition also includes vague language that criminalizes speech that promotes "hatred and conflict" or "hurt[s] the prestige of organizations and individuals."

In 2017, Vietnam encouraged all companies conducting business in the country to stop posting advertisements on Facebook and Youtube, due to high levels of anti-government content on the sites. In 2019, Vietnam's cybersecurity law went into effect. It requires Facebook and other social media sites to delete pages, groups and content that are considered anti-government within 24 hours of receiving a request from the Ministry of Information and Communications or the Ministry of Public Security. The law also criminalizes speech or activity that disrupts or damages the 'political' and 'socio-economic' activities of the State.

Human rights organizations and civil society organizations have largely criticized Vietnam's most recent cybersecurity initiatives, arguing that it effectively criminalizes

dissenting and critical speech. In February 2019, Duong Thi Lanh, a prominent critic of the law and advocate for free speech, was arrested and detained without further explanation by the government.

Reflections and Considerations

- Under the new law, citizens who advocate for a wide array of values and beliefs - including free speech, freedom of expression, democracy - are subject to arrest and detainment.
- As written, Vietnam's cybersecurity law justifies restrictions on speech in order to preserve the nation's economic and political development. This sets a dangerous precedent, as other countries consider arguments for punishing 'disinformation'.
- Under Vietnam's new law, Facebook, Youtube and other social media sites are required to submit data to the Vietnamese government and respond in a timely manner to their content removal requests.

Questions

- What range of speech can be considered anti-government in nature? For example, is supporting an opposition candidate considered anti-government?
- If Myanmar were to pursue a similar policy, what issues would be particularly sensitive?

180,181,182,183,184,185,186,187,188,189

Case Study: Germany

Regulating Online Platforms to Counter Hate Speech

Summary: In 2017, Germany’s national legislature ultimately decided that corporations are responsible for identifying and deleting hate speech on their own platforms. In response, the national legislature drafted and passed a bill that requires companies to actively regulate hateful content.

Context: Germany’s ‘Netzwerk Durchsetzungsgesetz’ law, otherwise known as NetzDG, effectively requires social media and other websites with similar ‘forum’ like functions to actively monitor and delete speech deemed hateful by the government within 24 hours.

According to Human Rights Watch, over 2 million companies and organization operating within German internet ‘space’ are required to become compliant. When content is deleted, companies are also obligated to provide justification for the removal. The bill also requires that companies create a streamlined and simple to use complaint system that allows users to report potentially hateful speech.

In an effort to promote compliance, the bill also includes fines that can reach up to 50 million euros. In the wake of the law, Facebook has hired hundreds of new staff members to ensure that they can effectively review and resolve user and government complaints.

Reflections and Considerations

- Critics of the law argue that it restricts freedom of expression and criminalizes

protected speech.

- European Digital Rights (EDRi) has argued that NetzDG violates EU digital law and threatens to disturb the common ‘digital market’. Similarly, EDRi has also expressed concerns over the short period in which companies must respond to hate speech, positing that companies operating under time crunches will simply delete content, instead of properly reviewing it.
- Human Rights Watch and other leading human and digital rights organizations believe that NetzDG has set a dangerous precedent. Other countries, including Singapore, Russia and the Philippines, have implemented comparable laws that could lead to more troubling violations of freedom of expression.
- In contrast to the several hundred staff hired to monitor content in Germany, Facebook had only committed to hiring a hundred native Burmese speakers as content monitors despite the extent of hate speech issues in Myanmar and the similar number of Facebook users in both countries. 20 million of Myanmar’s 53 million citizens use Facebook, while 23 million of Germany’s 80 million citizens have an account.

Questions

- The law requires a corporation to remove content deemed hateful by the government. What if the hateful content is coming from the government or a member of the government?

190,191,192,193,194,195,196,197,198,199,200,202,203

Case Study: Australia

Anti-Discrimination and Civil Law

Summary: In the late 80s and early 90s, Australia suffered a wave of hate speech against members of the LGBTQ and indigenous Aboriginal communities. In response, each of Australia's states and self-governing territories drafted and passed criminal and civil hate speech laws.

Context:

Australia's criminal hate speech laws generally criminalize behavior that " incites hatred, serious contempt or severe ridicule, and simultaneously involves physical harm or the threat of harm". Despite their existence, very few criminal cases are pursued in Australia; in Western Australia, one of the country's major states, only 3 hate speech crimes have been tried since 2015.

Instead, victims of hate speech tend to exercise their right to pursue civil law cases. To initiate a case, victims of hate speech must submit a formal complaint, which is reviewed by a local commission of jurists that deal specifically with anti-discrimination and human rights cases. The board attempts to reach a settlement between the aggrieved party and the defendant, with the offender often accepting to pay a fine or to attend an educational program.

If an agreement is not reached, the victim has the option to cancel their complaint and submit another complaint to a local or federal tribunal. The tribunal reviews the case and if it rules in favor of the victim, it can order the offender to pay damages or

to issue a public apology.

While hate speech laws exist, the number of reported instances of hate speech is considerably lower than what is reported by marginalized communities in the country. Experts suggest that this discrepancy exists because the process of actually submitting a complaint can be traumatizing and energy-consuming; many civil hate speech cases can also last months or even years. Similarly, many individuals do not believe that civil hate speech punishments are effective at deterring at hate speech.

However, proponents of the civil hate speech laws in Australia argue that hate speech has indeed declined over the years; cases of racially motivated hate speech in New South Wales declined from 55 complaints in 2001-2002 to 22 in 2009-2010. While again, this decline may be an example of under-reporting, evidence suggests that the mere existence of civil hate speech laws discourages hate speech.

Reflections and Considerations

- Over the past two decades, civil cases have become incredibly high profile and widely reported on in the country. In one case, a prominent radio host who repeatedly made discriminatory remarks towards the LGBTQ community was brought to court and forced to publicly apologize on his radio show.
- Experts who have studied the Australi-

Case Study: Australia

Anti-Discrimination and Civil Law

an case argue that these cases have deterred overt examples of hate speech. Similarly, these public victories have increased the belief in targeted communities that their complaints will be heard; in turn, support of hate speech laws remains high amongst marginalized communities.

- Lastly, observers argue that hate speech laws in general have helped to combat discriminatory behavior in public. The study shows that organizations have largely internalized the law and have clear policies on what can and cannot be said in print, resulting in a clear “shift” in language.

Questions:

- Imagine that the Myanmar government is considering a similar civil hate speech law. What factors should be considered? For example, how does the government impose civil fines against monks or nuns? Are there other alternatives for redress?

204-220

Case Study: South Korea

Counterterrorism Restrictions in a Strong Democracy

Summary: South Korea has strong democratic institutions. It's constitution guarantees freedom of the press and association and the country boasts a robust civil society. South Korea however, restricts certain forms of speech and expression on the grounds of national security.

Context: South Korea is considered one of Asia's most robust democracies. Freedom House, a US-based organization which conducts research about democracy and political freedom, ranks South Korea as "free" with "regular rotations of power and robust political pluralism... Personal freedoms are generally respected, though the country struggles with minority rights and social integration."

Despite the strength of its democratic institutions, South Korea restricts some forms of expression on the grounds national security. The country's National Security Law criminalizes positive comments about the North and the spread of North Korean "propaganda." Although prosecutions are rare, criminal penalties of up to seven years in prison can be imposed on those who "praise, encourage, or cooperates with anti-state groups."

Reflections and Considerations

- South Korea provides an example of a strong Asian democracy, which still restricts certain forms speech and expression on the grounds of public safety and national security.
- While South Korea does face insecurity

due to its tense relationship with the North, human rights monitors say that the law is disproportionate and vague enough to be used to restrict opposition as well as threats to national security. The term "anti-state groups" used in the The National Security Law is not clearly defined in the law, and according to Human Rights Watch, has been applied "to everything from North Korea itself to organizations that simply express ideological views at odds with those of the South Korean government."

Questions

- What additions to the law would you consider to decrease its opacity?
- North Korea and South Korea marched together in the last Olympic Games. Could the person who originally conceived of this idea have been prosecuted?

221-223

Case Study: Malaysia

The Passage and Impact of the World's First 'Anti-Fake News' Law

Summary

Malaysia's government passed a law specifically outlawing "fake news" in April, 2018. The law defines fake news as news, information, data and reports which is or are wholly or partly false, and an offender as somebody who by any means knowingly creates, offers, publishes, prints, distributes, circulates or disseminates any fake news or publication containing fake news.

Context

The bill was introduced by then-Prime Minister Najib Razak in order to enhance "state security". Najib claimed the bill was necessary because fake news and misinformation, especially via social media, have been used in Malaysia (and around the world) by local and international actors for malign ends, like influencing elections and fomenting civil strife. The bill was passed one month before Malaysia's parliamentary election; one of the first individuals investigated under the law's provisions was Mahathir Mohamad, the leading opposition candidate in the election. Mahathir ended up winning the election; Najib's party, which still controls Malaysia's senate, has blocked attempts to repeal the law. According to international observers: "The law's scope and vagueness have unleashed a wave of backlash from critics claiming it will curb dissent and free speech." The first person convicted under the law, a citizen blogger named Saleh Sulaiman, received a one month jail sentence for posting a YouTube video in which he exaggerated the time it took police to respond to a shooting.

Reflections and Considerations

- This law illustrates that legislation ostensibly designed to reduce public harm by restricting certain kinds of speech can be

used by governments for other purposes, including suppressing dissent or opposing political views.

- Under Malaysian law, citizens who voice legitimate grievances (like complaining about police response times) risk prosecution for any factual inaccuracy.
- As governments grapple with ways to reduce the harm caused by false information (at a time when individuals can widely disseminate false information on platforms with the same reach as traditional media), lawmakers must balance mitigating the harm of false information with the benefits of free speech and democratic principles that underpin it.
- The law runs counter to international guidelines on both free speech and countering misinformation set by ICCPR and the UN's Joint Declaration on Freedom of Expression and Disinformation.

Questions

- What are appropriate responses to fake news? In a free society, should false information be a criminal offense? If so, what are appropriate restraints and limitations on this power?

224-228

Case Study: Cambodia

FoE Progress Halted by Resurgent Government Control

Summary

Freedom of the press, expression, and assembly has seen sharp curbs by the government over the past several years, rolling back incremental gains moved forward by the country's 1993 constitution which was drafted after U.N. supervised elections and incorporates international human rights standards into national law. Cambodian Prime Minister Hun Sen, who has led the country since 1985, has forced the closure or takeover of free press and sponsored legislation against political expression online since his party's narrow electoral victory in 2014.

Context

- The Cambodian government blocks and filters speech online—both individual and press—through an opaque process administered via "proclamation" rather than the passage of legislation.
- Parts of Cambodia's penal code, which conflict with its constitution, criminalize speech that includes infringing the "dignity" of public officials or causing public disruption. In practice, the penal code has relied on vague definitions to crack down on dissenting speech.
- Other areas of Cambodia's legal framework — namely its tax code — have been used to shutter dissenting press and civil society organizations, including English language online newspapers like Cambodia Daily.
- After opposition political parties made strides in the country's 2014 election, in part buoyed by youth engagement

online, Cambodia has instituted laws that enable all internet traffic to be monitored by government officials.

Reflections and Considerations

- Despite a constitution that enshrines international human rights standards into Cambodia's legal framework, institutions dominated by Hun Sen and his Cambodian People's Party have prevented laws from being enforced.
- With political cover from China, Cambodia's largest international patron and investor, Hun Sen's government has been able to avoid substantive interference from abroad.

Questions

- Without substantive internal or international pressure, how can a country with ostensibly strong human rights laws be compelled to follow them? Security and public order has been used to justify criminalizing dissent; with complete government control over the media environment, and the threat of force used against individuals who seek to uphold Cambodia's constitution, how can individual citizens or political leaders change the status quo without endangering themselves or others?

229-232

CURRICULUM

A Note on the Companion Product To This Report

This report has been designed to be a companion document to the curricular modules that were created alongside it and informed by it.

Our team’s approach to curriculum development for countering hate speech centered around the idea that no curriculum designed in one country or culture will work seamlessly in another.

Given our emphasis on developing context-sensitive training for local use, to include nuances that facilitate both engagement and understanding, leveraging local expertise and insight was crucial to this portion of our project’s success.

Developing curriculum for use in Myanmar required close cooperation between our team and EQMM. The majority of our learning activities were developed and pilot tested in Myanmar—hand-in-hand with experienced local human rights trainers.

For the full curriculum, please see **Countering Hate Speech In Myanmar: Curriculum – Annex 1**.

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25. UN Human Rights Committee (HRC), CCPR General Comment No. 29: Article 4: Derogations during a State of Emergency, 31 August 2001, CCPR/C/21/Rev.1/Add.11.
26. UN General Assembly, The International Covenant on Civil and Political Rights No.14668 (Article 4), December 19, 1966
27. UN Doc. CCPR/C/GC/34, Human Rights Committee, General Comment 34 on Article 19 of the ICCPR, Freedoms of opinion and expression, adopted at the 102nd session, 12/9/11, para. 9.
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 - (a) For respect of the rights or reputations of others;
 - (b) For the protection of national security or of public order (ordre public), or of public health or morals. UN General Assembly, The International Covenant on Civil and Political Rights No.14668 (Article 19), December 19, 1966
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47. "1. The child 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 the child's choice. 2. The exercise of this right may be subject to certain restrictions, but these shall only be such as are provided by law and are necessary: (a) For respect of the rights or reputations of others; or (b) For the protection of national security or of public order (*ordre public*), or of public health or morals." UN General Assembly, Convention on the Rights of the Child (Article 13), 20 November 1989, United Nations, Treaty Series, vol. 1577, p. 3.
48. "States Parties shall take all appropriate measures to ensure that persons with disabilities can exercise the right to freedom of expression and opinion, including the freedom to seek, receive and impart information and ideas on an equal basis with others and through all forms of communication of their choice, as defined in article 2 of the present Convention, including by: a) Providing information intended for the general public to persons with disabilities in accessible formats and technologies appropriate to different kinds of disabilities in a timely manner and without additional cost; b) Accepting and facilitating the use of sign languages, Braille, augmentative and alternative communication, and all other accessible means, modes and formats of communication of their choice by persons with disabilities in official interactions; c) Urging private entities that provide services to the general public, including through the Internet, to provide information and services in accessible and usable formats for persons with disabilities; d) Encouraging the mass media, including providers of information through the Internet, to make their services accessible to persons with disabilities; e) Recognizing and promoting the use of sign languages." UN General Assembly, Convention on the Rights of Persons with Disabilities : resolution / adopted by the General Assembly, (Article 21), 24 January 2007, A/RES/61/106.
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