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The Global Regulation of Online Hate: A Survey of Applicable Laws

Special Report
December 2020

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Special Report

The Global Regulation of Online Hate: A Survey of Applicable Laws

*Prepared by Hogan Lovells
for PeaceTech Lab[♦]*

December 2020

[♦] In February 2020, Hogan Lovells selected PeaceTech Lab - a global non-profit organization that works in conflict zones around the world to promote peace through technology - as its new global 'Citizenship partner'. The partnership involves the firm supporting PeaceTech Lab through pro bono legal advice, fundraising and skilled volunteering, and comes at a time when a record seventy million refugees have been displaced by violence, and hate crimes are on the rise. New dimensions of conflict are increasingly found online, where disinformation, radicalization, and cyberbullying play an expanding role in ordinary people's lives.

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The information in *The Global Regulation of Online Hate: A Broad Survey of Applicable Laws*, has been compiled from sources accurate as at Dec 2020. However, this is an area of law that is rapidly developing and therefore, further legal expert legal advice should be sought before placing reliance on any of the information cited..

1. Introduction

The third decade of the millennium is witnessing the rampant misuse of online technology to bully, harass and harm minorities, to radicalize youth and to instigate violence and terrorism. Even as social media has grown to new heights as a way for billions of people to share information, to entertain and to communicate, it also has become in certain instances the launching pad for misinformation and campaigns of racism and hate of all kinds. The Internet has become a significant source of hatred.

PeaceTech Lab (PTL) is a global non-profit organization created to use the power of technology, data and media to save lives and promote peace around the world. Fighting online hate is a fundamental part of the PTL work. For PTL to combat online hate, it needs to understand the rules established worldwide to know what tools are available to it and the people served by it.

Thus, PTL has asked its pro bono partner law firm and global Citizenship partner, Hogan Lovells, to develop answers to a series of questions regarding the laws and regulations around the world governing online hate. Hogan Lovells has undertaken to analyze the questions in a number of relevant jurisdictions, covering more than 20 jurisdictions. This Special Report presents, in table form, the answers to the questions about the global regulation of online hate.

International Law

Before turning to specific national rules, we address the extent to which international law standards cover hate speech and explore whether there are relevant decisions on hate speech arising from the European Convention of Human Rights, the American Convention of Human Rights and the African Convention of Human Rights.

Definition of Hate Speech

In each of the places whose laws we assess, we set forth the definition of hate speech, if such a legal definition exists. Where there is such a legal definition of hate speech, we set forth whether the legal definition of hate speech requires threats of violence or incitements to violence. We also specify if the definition covers speech and behavior that incites hatred (but not necessarily violence) towards a group.

Bias Motivation for Hate Speech and Religious Exceptions

Where hate speech laws cover speech that draws on hateful, hostile, or supremacist beliefs directed at a group that is threatened and likely to cause them harm, we so specify. We also set forth whether the definition permits religious beliefs and speech that discriminates against particular communities, and if so, whether there are limits to such discriminatory beliefs.

Civil and Criminal Remedies, and Recourse through Online Platforms

Turning to individuals' right of recourse when people are victims of online hate, we set forth whether rights of recourse exist in each of the jurisdictions covered, and set forth civil legal remedies, if any. Conversely, we spell out the rights of those accused of hate speech. In addition, we set forth the remedies available to someone who witnesses online hate even whether civil and criminal remedies are not available, for example at the social media platform through which the online hate was disseminated.

We also address criminal legal remedies for hate speech.

Regulation of Media and Immunity from Liability

Turning to regulatory frameworks governing online media where they exist, we set forth whether individuals are allowed to complain. We also explore whether the test for hate speech used by any regulatory bodies is the same as the criminal law definitions, in places where both forms of regulation exist.

With respect to liability rules, we assess whether public and private institutions have to comply with the same duties to avoid hate speech liability. We also look at the contexts in which hate speech may be disseminated, e.g. at an event, in a place of work or online and set forth whether the rules are different

Recent Examples of Online Hate as a Backdrop to Our Work

Where severe online hate has been reported publicly, recent examples are provided for many of jurisdictions we assess to illustrate the pernicious nature of the problem around the world.

Importance of Free Expression Even Where Hate Speech is Regulated

Even as we assess the legal regime around the world governing online hate, we remain cognizant of the importance of free expression, and the potential for misuse, up to repression, that hate speech laws possess. A fundamental principle underlying our work, and most of the hate speech laws we assess, is that free speech requires limited and careful regulation.

* * * *

2. The Global Regulation of Online Hate: A Broad Survey of Applicable Laws

This section has been organised in the following order:

- i. International Law
- ii. The Americas
- iii. Europe
- iv. Asia-Pacific and the Middle East

3. Overview: The Tension Between Freedom of Expression and the Regulation of Hate Speech

The Internet, including especially social media, allows for enormous freedom of expression. In ways not imaginable in the pre-Internet era, people are free to express themselves in writing, with images and photography, and through recorded sound and video. Cheap technology and ubiquitous broadband access allow users to broadcast their output to millions of people around the world. And they are able to network with like-minded people and communities.

At the same time the Internet has become essential to communication, education and entertainment, it has become a vehicle for the distribution of hate. The Internet serves as a meeting place for those seeking to conspire against vulnerable communities. People misuse their ability to express themselves by attacking minorities and inciting violence in online posts, memes, music and video. They use the Internet to find and conspire with fellow haters.

As explained in a study of viral hate:

In the years since the advent of [social media], we have seen a sudden and rapidly-increasing wave of bigotry-spewing videos, hate-oriented affinity groups, racist online commentary, and images encouraging violence against the helpless and minorities – blacks, Asians, Latinos, gays, women, Muslims, Jews – across the Internet and around the world.¹

Thus, the tension between freedom of expression and the regulation of hate presents itself over and over again in the Internet era.

Many societies seek to protect freedom of expression *and* they seek to protect vulnerable people from hate and abuse. The difficult issue for governments is how to balance the right to free expression with the protection from the effects of hate, since both are recognized as fundamental human rights.²

The extent to which free speech is protected in practice varies significantly from nation to nation. Some countries are more aggressive than others in their legal attack on hate speech, where their constitutions permit, because of the increasing harm to society and to individuals caused by hate speech. The efforts to prosecute hate speech have increased significantly with the advent of the global Internet and social media. With hate inciting violence and even inflaming and emboldening armed combatants, governments increasingly are motivated to pass laws that regulate the Internet.

This compendium specifies the details of the differences in hate speech regulation in significant countries around the world.

The most notable example of a country where a constitution restricts regulation of free expression (even to protect individuals from hate) is the United States. The First Amendment to the United States Constitution is recognized as having the broadest protection of free expression among nations. In the US, hate speech only can be regulated if it is intended to incite imminent violence and is likely to do so.

Supreme Court Justice Oliver Wendell Holmes Jr. explained that the Constitution and the First Amendment are not just about protecting “free thought for those who agree with us but freedom for

¹ Foxman and Wolf, *Viral Hate: Containing its Spread on the Internet* (2013)

² The tension between freedom of expression and freedom from hate (often referred to as the right to human dignity) is well illustrated in the United Nations’ Universal Declaration of Human Rights. Even though the Declaration does not impose any specific legal obligations on countries, it has become highly persuasive and provides a basis for international norms. Articles 1 and 2 of the Declaration provides that all people are born free and are of equal dignity and rights, and shall not be subject to distinctions because of their minority status. Article 19 of the Declaration provides for freedom of expression. The Declaration does not suggest how to resolve conflicts between those articles.

the thought that we hate.³ The First Amendment enshrines the “marketplace of ideas” and conceptually, speech reacting to hate and explaining its deficiencies is expected to win out in the court of public opinion. Thus, in theory, regulation of hate speech *per se* is not deemed necessary.

The Internet, with its omnipresent hate speech, has called into question the theoretical precepts of the First Amendment. It is difficult, if not impossible, to address every instance of hate speech with rational explanations. Counter-speech is an insufficient antidote to hate. The use of the Internet and social media by those predisposed to attacking minorities has created an especially pernicious problem. Thus, while some scholars are examining the First Amendment anew in light of the Internet, lawmakers are asking social media companies to increase and improve their self-regulation of hate speech, using their legislative power as leverage.⁴

Outside the US, governments do not consider hate speech to be valuable public discourse, and such content often is banned, subject to criminal prosecution. The modern legal era of hate speech regulation began after World War II when nations that suffered the horrors of the Holocaust undertook to regulate the kind of hate speech that precipitated attacks on minorities culminating in genocide. Hate speech has been subject to some legal regulation for decades prior to the Internet, but controls have increased in response to the Internet. In the EU, countries have legislated regulation of online content, especially targeting Internet companies. The EU Commission has also relied upon Internet companies' self-regulation commitments to achieve progress in the combat against online hate and other harmful content.⁵ The EU is also on the verge of adjusting the legal principles that have governed liability on the Internet over the last two decades. 2021 is likely to be a turning point in the European region in the search for a new paradigm on the combination of both free speech and the fight against online hateful content.

With regard to the European Court of Human Rights, the limit to the protection of free speech is determined by Article 17 of the Convention, which contains a traditional impediment on the abuse of a right. Although the Court has not always applied Article 17 consistently, it generally tends to invoke it in order to ensure that the protection conferred by Article 10 is not extended to racist, xenophobic or anti-Semitic speech; statements denying, disputing, minimising or condoning the Holocaust, or (neo-)Nazi ideas. As such, the Court has routinely held cases involving these types of expression to be manifestly unfounded and therefore inadmissible.

With this introduction, we turn to the body of our work, the results of our research across global jurisdiction set forth on the specifics of national laws governing online hate.

* * * *

³ United States v. Schwimmer, 279 U.S. 644, 654-55 (1929) (Holmes, J., dissenting)
⁴ While lawmakers are not proposing to change the First Amendment, they are focusing on Section 230 of the Communications Decency Act, 47 USC § 230, which immunizes platforms from liability for the content posted by third parties and for editing content. Numerous lawmakers have made proposals to amend or rescind Section 230 because of the proliferation of online hate.
⁵ In 2016, the European Commission and four major social media platforms announced a Code of Conduct on countering illegal online hate speech. It included a series of commitments by Facebook, Twitter, YouTube and Microsoft to combat the spread of hate-filled content in Europe. The companies committed in particular to review the majority of valid notifications of illegal hate speech in less than twenty-four hours and to blocking access to such content according to national laws.

International Law



Jurisdiction: International law

Law Firm / Office: London and Paris

1. International and Regional Frameworks (NOTE: this section <u>only</u> to be filled up by the teams working on international and EU law)	
<p>1.1 What are the international law standards on hate speech with reference to the UN Conventions, General Comments and the decisions of the Thematic Mechanisms / Special Rapporteur reports?</p>	<p>Summary: International law does not define “hate speech” directly in any treaty or statute, leaving the standard to be set by a reconciliation of the need to allow for freedom of expression and open debate in a democratic society and the necessity to protect vulnerable communities and individuals from attacks which may weaken their ability to participate equally in public life. There have been attempts made by international organs such as the United Nations, the International Covenant on Civil and Political Rights and the Rabat Plan of Action to set out standards for the prohibition of discrimination and incitement of violence, which have informed the understanding of hate speech in international law.</p> <p>It has recently been a focus of attention at the UN. In May 2019, the Secretary General of the UN unveiled a Strategy and Plan of Action on Hate Speech. This document defines hate speech as <i>“any kind of communication in speech, writing or behaviour that attacks or uses pejorative or discriminatory language with reference to a person or a group on the basis of who they are, in other words, based on their religion, ethnicity, nationality, race, colour, descent, gender or other identity factor”</i>.</p> <p>In September 2020, the UN published “Detailed Guidance” on the implementation of its Strategy and Plan of Action on Hate Speech. This Guidance clarifies the definition of hate speech included in the Strategy. It breaks the definition down into three component parts: (a) the communication can be in any form (e.g. speech, writing, imagery, gestures, etc.) and distributed through any channel (e.g. online or offline); (b) it must attack or use discriminatory (e.g. prejudiced, bigoted etc.) or pejorative (e.g. contemptuous or demeaning) language and (c) must make reference to an identity factor (e.g. religion, ethnicity, race, gender, etc.).</p>



Jurisdiction: International law

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	<p>The Guidance also distinguishes between three categories of hate speech:</p> <ul style="list-style-type: none">(a) At the “Top Level”: incitement to genocide or “<i>racial or religious hatred that constitutes incitement to discrimination, hostility or violence</i>” is prohibited under international law.(b) At the “Intermediate Level”: certain forms of hate speech may be prohibited under international law, but only where the relevant restrictions are provided by law, pursue a legitimate aim and are necessary and proportionate.(c) At the “Bottom Level”: legal restrictions should not be imposed under international law on the dissemination of lawful expressions that are, for example, offensive, shocking or disturbing. <p>26 Special Rapporteurs and Independent Experts on human rights issues have joined together to publish an open letter in September 2019 calling on States and social media firms to take action to curb the spread of hate speech.</p> <p>As shown by the above definition, the prohibition and prevention of hate speech is closely related to the prohibition of discrimination, which itself can be tied to the Charter of the United Nations. Although the UN Charter does not address hate speech specifically, Article 1 of the UN Charter states that one of the United Nations' purposes is to “<i>achieve international co-operation in solving international problems of an economic, social, cultural, or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all <u>without distinction as to race, sex, language, or religion</u></i>” (underline added).</p> <p>The Universal Declaration of Human Rights proclaimed on 10 December 1948, which is not a legally binding document but is widely used as a reference in matters of human rights, is also relevant. It does not contain a provision on hate speech, but prohibits discrimination and the</p>
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Template for Answers to Questions

Jurisdiction: International law

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	<p>incitement to discrimination in article Article 7: "<i>All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and <u>against any incitement to such discrimination</u>" (underline added).</i></p> <p>The International Covenant on Civil and Political Rights of 16 December 1966 (the "ICCPR") also prohibits discrimination. Article 26 states that "<i>[a]ll persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status</i>".</p> <p>Going further, the ICCPR directly addresses hate speech in Article 20(2), which provides that "<i>any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law</i>".</p> <p>The International Convention on the Elimination of All Forms of Racial Discrimination of 21 December 1965 (the "CERD") relates to discrimination on a specific ground (race, colour and ethnic origin) and contains a detailed provision on hate speech related to race in Article 4:</p> <p><i>"States Parties condemn all propaganda and all organizations which are based on ideas or theories of superiority of one race or group of persons of one colour or ethnic origin, or which attempt to justify or promote racial hatred and discrimination in any form, and undertake to adopt immediate and positive measures designed to eradicate all incitement to, or acts of, such discrimination and, to this end, with due regard to the principles embodied in the Universal Declaration of Human Rights and the rights expressly set forth in article 5 of this Convention, inter alia:</i></p>
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Jurisdiction: International law

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	<ul style="list-style-type: none">a) <i>Shall declare an offence punishable by law all dissemination of ideas based on racial superiority or hatred, incitement to racial discrimination, as well as all acts of violence or incitement to such acts against any race or group of persons of another colour or ethnic origin, and also the provision of any assistance to racist activities, including the financing thereof;</i>b) <i>Shall declare illegal and prohibit organizations, and also organized and all other propaganda activities, which promote and incite racial discrimination, and shall recognize participation in such organizations or activities as an offence punishable by law;</i>c) <i>Shall not permit public authorities or public institutions, national or local, to promote or incite racial discrimination".</i> <p>In its most severe forms, hate speech may qualify as "<i>direct and public incitement to commit genocide</i>" under the Convention on the Prevention and Punishment of the Crime of Genocide of 9 December 1948. Article III(c) of this Convention states that such incitement to commit genocide shall be punishable as a criminal offence.</p> <p>When addressing hate speech, the standards applicable to the right to freedom of expression are also relevant insofar as the prohibition of hate speech may interfere with freedom of expression, which is protected by the UN Conventions.</p> <p>This is especially obvious in the ICCPR, which guarantees the right to freedom of expression in Article 19(2) while at the same time including limitations to this right in Article 19(3) and the aforementioned Article 20(2) related to hate speech.</p> <p>Striking the right balance between the prohibition and prevention of hate speech and the right to freedom of expression is a challenge. There is tension between the two, as one may be used to</p>
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	<p>justify abuse or to place unnecessary restrictions on the other. It has been pointed out that some domestic legal frameworks do not contain a legal prohibition of the incitement to hatred, thus falling short of Article 20(2) of the ICCPR, while others use broad legislation on hate speech as an excuse to overreach and arbitrarily restrict the right to freedom of expression, for instance to suppress political dissent, criticism or religious disagreement.</p> <p>This problem stems in part from the fact that conventional international law does not provide a precise legal definition of hate speech. While it is clear that the notions of "advocacy", "promotion" and "incitement" to discrimination, hostility and violence are central, the abovementioned provisions are open to various degrees of interpretation.</p> <p>The so-called Rabat Plan of Action on the prohibition of advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence (UN Doc. Ref. no. A/HRC/22/17/Add.4), adopted by UN experts on 5 October 2012 directly addresses this concern and makes several recommendations.</p> <p>Among others, the Rabat Plan of Action underlines that prohibition of hate speech by domestic legislations should comply with the three-part test (legality, necessity, and proportionality) that must be applied when assessing whether a restriction to a fundamental right is justified and which is stipulated in article 19(3) of the ICCPR when freedom of expression is concerned. The plan also recommends that hallmarks of hate speech offences such as hatred, discrimination, violence, hostility, among others, receive a precise definition in domestic law. It refers in this respect to the definitions proposed in the so-called Camden Principles on Freedom of Expression and Equality published by British NGO Article 19.</p> <p>The Rabat Plan of Action suggests a high threshold for criminalizing incitement to hatred. It outlines a six-part threshold test taking into account (1) the social and political context, (2) status of the speaker, (3) intent to incite the audience against a target group, (4) content and form of</p>
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Jurisdiction: International law

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	<p>the speech, (5) extent of its dissemination and (6) likelihood of harm, including imminence. Less serious cases should be addressed by other means than criminal law such as restrictions or civil suits.</p> <p>The UN’s Guidance on the implementation of its hate speech strategy, mentioned above, also makes clear that speech should only be criminalized where it meets these six criteria or the “Rabat threshold test”. It suggests that less severe forms of hate speech could be addressed by civil or administrative law-based restrictions or public policy responses by states.</p> <p>Other useful UN documents in connection with hate speech are:</p> <ul style="list-style-type: none">• General Comment no. 34 (2011) of the Human Rights Committee (UN Doc. Ref. CCPR/C/GC/34), which underlines that restrictions to freedom of expression, including article 20(2) of the ICCPR, must be exceptional and subject to narrow conditions.• The Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression of 7 September 2012 (UN Doc. Ref. A/67/357) provides insights on how to identify hate speech, among other things. It provides definitions and a threshold test to assess the seriousness of a hateful expression. According to the Special Rapporteur, only the most serious cases should be criminalized; other cases should be addressed by other means, such as civil law remedies. The Report also recommends non-legal measures to address hate speech.• The General recommendation no. 35 (2013) of the Committee on the Elimination of Racial Discrimination on Combating racist hate speech (UN Doc. Ref. CERD/C/GC/35) provides guidance on the application of Article 4 of the CERD by States and the implementation in national legislation. It also underlines the importance of education to address hate speech, as prescribed by Article 7 of the CERD.
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	<ul style="list-style-type: none"> The Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression of 9 October 2019 (UN Doc. Ref. A/74/486) seeks to distinguish hateful expressions that constitute advocacy or incitement from expression that, while involving some level of hatred or intolerance, do not meet the thresholds of Article 20(2) of the ICCPR or Article 4 of the CERD. The Report then goes on to address online hate speech and how to tackle it, and makes recommendations to States. 						
<p>1.2 Are there any relevant decisions on hate speech arising from the European Convention of Human Rights, the American Convention of Human Rights and the African Convention of Human Rights?</p>	<p>Summary:</p> <table border="1" data-bbox="922 820 2054 1311"> <thead> <tr> <th data-bbox="922 820 1187 887">Region</th> <th data-bbox="1187 820 2054 887">Approach to hate speech and case law</th> </tr> </thead> <tbody> <tr> <td data-bbox="922 887 1187 1083">The Americas</td> <td data-bbox="1187 887 2054 1083">The American Convention of Human Rights does not expressly prohibit hate speech but does protect the right to freedom of expression, while creating an offence for war propaganda and incitement to violence. Expression shall not be censored, but may be subject to liability if certain conditions are met.</td> </tr> <tr> <td data-bbox="922 1083 1187 1311">Africa</td> <td data-bbox="1187 1083 2054 1311">The right to receive and disseminate information under the African Charter of Human and Peoples' Rights may be subject to restrictions (e.g. to prohibit hate speech), so long as those restrictions are provided by law, serve a legitimate interest and are necessary in a democratic society. All three requirements must be met. <i>The case of Ingabire Victoire Umuhoza v. The Republic of Rwanda illustrates that the validity of the restrictions put in place by a country</i></td> </tr> </tbody> </table>	Region	Approach to hate speech and case law	The Americas	The American Convention of Human Rights does not expressly prohibit hate speech but does protect the right to freedom of expression, while creating an offence for war propaganda and incitement to violence. Expression shall not be censored, but may be subject to liability if certain conditions are met.	Africa	The right to receive and disseminate information under the African Charter of Human and Peoples' Rights may be subject to restrictions (e.g. to prohibit hate speech), so long as those restrictions are provided by law, serve a legitimate interest and are necessary in a democratic society. All three requirements must be met. <i>The case of Ingabire Victoire Umuhoza v. The Republic of Rwanda illustrates that the validity of the restrictions put in place by a country</i>
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Jurisdiction: International law

Law Firm / Office: London and Paris

	<p>Much like in the ICCPR, Article 13(3) allows restrictions to freedom of expression if they comply with the principles of legality, necessity and proportionality. Article 13(5) addresses hate speech specifically states that "[a]ny propaganda for war and any advocacy of national, racial, or religious hatred that constitute incitements to lawless violence or to any other similar action against any person or group of persons on any grounds including those of race, color, religion, language, or national origin shall be considered as offenses punishable by law".</p> <p>The Inter-American Commission on Human Rights has addressed the issue of hate speech, and in particular hate speech directed at LGBTI persons, (see "Hate speech and incitement to violence", in Inter-American Commission on Human Rights, <i>Violence against Lesbian, Gay, Bisexual, Trans and Intersex Persons in the Americas</i>, 2015), with particular attention to the need to balance freedom of expression and the protection of groups that may be the target of hate speech.</p> <p>In our research we could not find any decisions from the Inter-American Court of Human Rights directly addressing hate speech, but there are important opinions and rulings related to freedom of speech and restrictions thereto, such as:</p> <ul style="list-style-type: none">• Inter-American Court, <i>Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism</i>, Advisory Opinion OC-5/85 of November 13, 1985• Inter-American Court, <i>Palamara Iribarne v. Chile</i>, Judgment dated November 22, 2005. Series C No. 135• Inter-American Court, <i>Tristán Donoso v. Panama</i>, Preliminary Objections, Merits, Reparations and Costs. Judgment dated January 27, 2009. Series C No. 193
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	<p>African Charter on Human Rights. Article 9(2) of the African Charter on Human Rights states that "[e]very individual shall have the right to express and disseminate his opinions within the law". Article 2(2) of the African Commission on Human and Peoples' Rights' Declaration of Principles on Freedom of Expression in Africa (2002) expressly states that "any restrictions on freedom of expression shall be provided by law, serve a legitimate interest and be necessary in a democratic society."</p> <p>The African Court on Human and People's Rights has issued a landmark decision on freedom of expression in <i>Lohé Issa Konaté v. Burkina Faso</i>, App. No. 004/2013, Judgment of 5 December 2014. It has ruled that the conviction, imprisonment and substantial fine of a journalist in Burkina Faso was disproportionate and therefore found that Burkina Faso violated Article 9 of the African Charter on Human rights.</p> <p>With respect to hate speech specifically, the African Court on Human and Peoples' Rights delivered a judgement on 24 November 2017 regarding the case of <i>Ingabire Victoire Umuhoza v. The Republic of Rwanda</i>, App. No. 003/2014.</p> <p>The African Court found that Rwanda violated Victoire Ingabire Umuhoza's right to freedom of expression under Article 9(2) of the African Charter on Human and Peoples' Rights and Article 19 of the International Covenant on Civil and Political Rights by convicting her of terrorism and speech related crimes in January 2010, for minimizing the genocide. Although the African Court found that the law criminalizing the minimization of genocide may impose a legitimate restriction on the right to freedom of expression for purposes of preserving public order and national security, it found that Victoire Ingabire Umuhoza's speech did not minimize the genocide and that her sentence had imposed disproportional and unnecessary restrictions on her freedom of speech. Even if the African Court were to accept that there is a need for prohibitions on free speech to achieve a legitimate objective, those prohibitions must be as non-restrictive as possible to attain the intended objective. The African Court was of the opinion</p>
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Jurisdiction: International law

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	<p>that an assessment of necessity and proportionality under Article 9 of the African Charter and Article 19 (3) of ICCPR cannot be done in a vacuum and due consideration should be given to particular contexts in which the impugned expressions were made.</p> <p>European Convention on Human Rights. Article 17 of the European Convention on Human Rights (the “ECHR”) prohibits engagement in any activity that is aimed at the destruction of another’s rights or freedoms under the ECHR. While the ECHR also guarantees freedom of expression under Article 10, it acknowledges that this freedom carries “duties and responsibilities” and may be subject to restrictions, conditions, formalities or penalties, if those are prescribed by law and necessary in a democratic society. These may be put in place in the interests of national security, territorial integrity or public safety, prevention of disorder or crime, for the protection of health or morals, and for the protection of the reputation or rights of others, amongst other things.</p> <p>The European Court of Human Rights (the “European Court”) has acknowledged that freedom of expression applies to ideas that may “<i>offend, shock or disturb the State or any sector of the population</i>”, as that is a demand of pluralism in any democratic society (<i>Handyside v. the United Kingdom</i>). The restrictions and penalties mentioned above are lawful if targeted at expression which spreads, incites, promotes or justifies hatred based on intolerance (<i>Erbakan v Turkey</i>).</p> <p>A factsheet published by the European Court in March 2020 expressly states that protection under ECHR does not extend to ethnic hate, negations and revisionist opinions, racial or religious hate and threats to the democratic order. The European Court also has the power to examine whether the restrictions on freedom of speech under Article 10(2) meet the requirements of pursuing at least one legitimate aim and being necessary in a democratic society to achieve that aim. Case law has shown that the following types of expression meet</p>
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	<p>the requirements: incitement of hostility, propagation of homophobic beliefs, condoning of terrorism or war crimes, incitement to ethnic or racial hatred or religious intolerance.</p> <p>The European Court was first called to consider the liability of an internet platform for user-generated comments in <i>Delfi AS v Estonia</i>. The applicant platform had been held liable in national courts for offensive comments posted by readers, which had been removed six weeks after publication. The judgment held that where third-party user comments are in the form of hate speech or/and direct threats to the physical integrity of individuals, the rights and interests of others may entitle Contracting States to impose liability on internet portals, without contravening Article 10 of the Convention, if they fail to take measures to remove clearly unlawful comments without delay, even without notice from the alleged victim or from third parties. The national court's imposition of liability was considered proportionate when the following factors were taken into account: the extreme nature of the comments in question, the fact that they had been posted on a professionally managed news portal run on a commercial basis, the insufficiency of the measures taken by the applicant company to remove the comments without delay to ensure a realistic prospect of the authors of such comments being held liable, and the moderate sanction of 320 euros imposed on the applicant company.</p> <p>The <i>Delfi AS</i> case was distinguished in the case of <i>Magyar Tartalomszolgáltatók Egyesülete and Index.hu Zrt v. Hungary</i>, in which offensive comments had been posted on an online news platform regarding the business practices of two real estate websites. The European Court found that the Hungarian court's ruling against the platform was a violation of the latter's right to freedom of expression under Article 10 ECHR. It clarified that a balancing exercise between the competing rights of (a) the applicant to freedom of expression and (b) the real estate websites to the protection of their commercial reputations must be undertaken. This fell short of the standard set in <i>Delfi AS</i>, in which there had been incitement to violence. The later case of <i>Savva Terentyev v Russia</i> further elaborated on this, when the European Court held that</p>
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	<p>prohibition of provocative expressions of anger would amount to a violation of Article 10 if those expressions are not an actual call to physical violence.</p> <p>In June 2020, the ECHR adopted a lower threshold for hate speech that could be restricted by states, ruling, in the case of <i>Carl Jóhann Lillindahl v. Iceland</i> (application no. 29297/18), that it was reasonable and justified for the Icelandic Supreme Court to uphold the applicant’s conviction and fine for homophobic comments he had made in response to an online article. The applicant had expressed his disgust and used derogatory words for homosexuality in comments made in response to an online article concerning measures to strengthen education in schools on lesbian, gay, bisexual or transgender matters. The ECHR held that the applicant’s comments did not amount to the “gravest form of hate speech”, in that they did not appear to be aimed at inciting violence. However, the comments did promote the intolerance and hatred of homosexuals. As such, they fell within the category of speech that does not fall outside the scope of the protection of Article 10 but is speech that states can restrict, where doing so is prescribed by law, pursues a legitimate aim and is proportionate. In the <i>Lillindahl</i> case, it was justified and necessary to curb the applicant’s freedom of expression in order to counteract prejudice, hatred and contempt and protect the rights of social groups which have historically been subjected to discrimination.</p>
<p>2. Definition of hate speech</p>	
<p>2.1 What is the definition of hate speech in your country?</p>	<p>There is no single definition of hate speech in international law (see answer to question 1.1 above). Relevant definitions can be found in some human rights conventions, in particular :</p> <ul style="list-style-type: none"> • Article 20(2) of the ICCPR provides that "<i>any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law</i>".



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	<ul style="list-style-type: none">• Article 4 of the CERD refers to "<i>all dissemination of ideas based on racial superiority or hatred, incitement to racial discrimination, as well as all acts of violence or incitement to such acts against any race or group of persons of another colour or ethnic origin, and also the provision of any assistance to racist activities, including the financing thereof</i>". <p>The UN's Strategy and Plan of Action on Hate Speech proposes the following definition of hate speech: "<i>any kind of communication in speech, writing or behaviour that attacks or uses pejorative or discriminatory language with reference to a person or a group on the basis of who they are, in other words, based on their religion, ethnicity, nationality, race, colour, descent, gender or other identity factor</i>". Note that unlike the aforementioned conventions, this is not a binding document.</p>
2.2 Does the legal definition of hate speech require threats of violence / incitement to violence?	<p>Article 20(2) of the ICCPR requires an element of incitement to discrimination, hostility or violence. Under this convention, incitement to violence is one of the defining characteristics of hate speech. However incitement to violence is not strictly required, as it is but one of three alternative forms of incitement, besides incitement to hostility or incitement to discrimination, which qualify speech as hate speech under the ICCPR.</p> <p>Article 4 of the CERD takes a broader approach. Threats or incitement to violence is one of five types of speech or activities that State parties are required to adopt legislation against (see General recommendation no. 35, para. 14, UN Doc. Ref. CERD/C/GC/35). For instance, Article 4 of the CERD mentions incitement to violence, but also covers "all dissemination of ideas based on racial superiority or hatred". Therefore, incitement to violence is not strictly necessary for speech to be prohibited under the CERD.</p> <p>The definition of hate speech proposed by the UN's Strategy and Plan of Action on Hate Speech is also very broad. It includes any kind of communication that attacks or uses pejorative or discriminatory language, without any reference to threats of violence or incitement to violence.</p>



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<p>2.3 Would the definition cover speech and behaviour which incites hatred (not necessarily violence) towards a group?</p>	<p>Speech and behaviour which incites hatred but not violence may fall within the scope of Article 20(2) of the ICCPR if it incites to discrimination or hostility.</p> <p>Speech and behaviour which incites hatred but not violence may fall within the scope of Article 4 of the CERD if it is directed at a group on the basis of race, colour or ethnic origin.</p> <p>Lastly, such speech would also be covered by the definition of hate speech proposed the UN's Strategy and Plan of Action on Hate Speech.</p>
<p>2.4 Does hate speech cover speech that draws on hateful, hostile, or supremacist beliefs directed at a group that is threatened and likely to cause them harm?</p>	<p>Speech that draws on hateful, hostile, or supremacist beliefs directed at a group falls within the scope of article 4 of the CERD if the group is targeted because of race, colour or ethnic origin, regardless of whether actual harm comes to the group as a result of this speech or the speech is merely likely to cause harm.</p> <p>With respect to Article 20(2) of the ICCPR, hate speech requires a component of incitement. It may therefore be described as an "inchoate offence". In other words, hate speech does not require that actual harm comes to the targeted group. Again, speech that draws on hateful, hostile or supremacist beliefs but is merely likely to cause harm may very well amount to hate speech.</p> <p>That is not to say that the effect of the considered speech and actual results of the speech do not matter. It is often pointed out that while all forms of hate speech should be acted against by States, the effects of the speech on the targeted group shall be taken into account in the determination of remedies and the severity of punishment.</p>



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	<p>In this respect, the Committee on the Elimination of Racial Discrimination recommends that <i>"the criminalization of forms of racist expression should be reserved for serious cases, to be proven beyond reasonable doubt, while less serious cases should be addressed by means other than criminal law, taking into account, inter alia, the nature and extent of the impact on targeted persons and groups"</i> (see General recommendation no. 35, para. 13, UN Doc. Ref. CERD/C/GC/35).</p> <p>Accordingly, under international law standards, States are required to adopt legislation to combat hate speech but may reserve most severe punishments for speech that causes harm or is likely to cause harm.</p>
<p>2.5 Does the definition permit religious beliefs and speech which discriminates against particular communities – are there any limitations to religious beliefs and speech which discriminated against particular groups?</p>	<p>Religious beliefs and speech are protected by international law, for instance by Article 18 of the ICCPR. Article 18(3) of the ICCPR also states that religious freedom may be subject to limitations if these limitations <i>"are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others"</i>.</p> <p>When religious beliefs and speech discriminate against particular communities, they may infringe upon the rights of these communities and in particular the right to equality and non-discrimination protected by Article 26 of the ICCPR. States are therefore required to act against these types of beliefs and speech to comply with their duties under Article 26 of the ICCPR.</p> <p>This means striking a balance between religious freedom on the one hand, and the rights of the targeted communities on the other. As a result of this balance, only the most severe forms of religious hate speech may be prohibited:</p> <ul style="list-style-type: none">• No manifestation of religions or beliefs may amount to propaganda for war or advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence (see General comment no. 22 on Article 18 of the ICCPR, para. 7, UN Doc.



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	<p>Ref. CCPR/C/21/Rev.1/Add.4). These forms of religious speech must be prohibited and fought against.</p> <ul style="list-style-type: none"> Religious speech that does not meet the threshold of incitement to discrimination, hostility or violence on the other hand should be permitted, even if it is offensive (see the report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, para. 10, UN Doc. Ref. no. A/74/486). <p>Lastly, religious beliefs that discriminate against certain communities but are not followed by hate speech must be allowed. Article 18 of the ICCPR does not permit any limitations whatsoever on the freedom of thought and conscience or on the freedom to have or adopt a religion or belief of one’s choice. These freedoms are protected unconditionally, as is the right of everyone to hold opinions without interference in article 19.1 (see General comment no. 22 on Article 18 of the ICCPR, para. 3, UN Doc. Ref. CCPR/C/21/Rev.1/Add.4).</p>
<p>3. Remedies and recourse for hate speech</p>	
<p>3.1 If I am the victim of hate speech, what is my recourse?</p>	<p>There are recourses available under international law for victims of hate speech.</p> <p>Victims of hate speech may bring complaints or petitions against States before international human rights courts or bodies, provided that the States in question have ratified the relevant conventions and, where applicable, that States accept the right of individual application.</p> <p>Relevant bodies would be the African Court on Human and People's rights, the Inter-American Commission on Human Rights or the European Court of Human Rights.</p> <p>There are two situations to consider:</p>



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	<ul style="list-style-type: none">• Victims of hate speech may file complaints/petitions against a State if the State itself or a State emanation is disseminating or sponsoring hate speech and is thereby infringing on the victim's rights protected under the relevant international convention.• Victims of hate speech may also file complaints/petitions against States for failing to adequately protect them from hate speech coming from private individuals or organizations, provided that the State's failure to protect them amounts to a breach of the State's own duties under the relevant international convention. <p>Lastly, victims of hate speech may also use complaint or communication procedures created by the UN, many of which accept communications or petitions from private individuals or organizations, such as:</p> <ul style="list-style-type: none">• The Complaint Procedure of the Human Rights Council;• The Communications Procedure of the Special Procedure Mechanisms;• Procedures established by specific treaties and administered by the relevant treaty-monitoring body, such as the procedure under the Optional Protocol to the ICCPR, or the procedure set forth under Article 14 of the CERD. <p>These procedures may in some cases only be available if the State has ratified the relevant treaty and declared that it accepts individual complaints.</p>
3.2 What are the criminal legal remedies for hate speech?	There are no criminal legal remedies for hate speech under international law.



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3.3 Are there civil legal remedies available – compensation / damages – for hate speech?	There are no civil legal remedies for hate speech under international law.
3.4 Are there regulatory frameworks governing the online news media which allow individuals to complain?	N/A
3.5 Is the test for hate speech used by any Social Media / Press / Online regulatory bodies the same as the criminal law definitions?	N/A
3.6 Do public and private institutions have to comply with the same duties to avoid hate speech?	<p>Summary: Private and public bodies (the latter being a part of the State’s machinery) have different obligations under international law. International legal instruments and reports place obligations on States to comply with treaties but private bodies are not subject to the same duties, although it is expected that a State take action against human rights violations by private bodies within its jurisdiction. Guidelines and recommendations have been formulated for private bodies, but not directly enforceable obligations.</p> <p>International law does not specify precise duties of public or private bodies in relation to the prevention of hate speech, but the United Nations has published Reports of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression (A/74/486 and A/HRC/38/35) that set out State obligations on tackling hate speech and how private companies can ensure respect for human rights through content moderation. While the duty of implementing and enforcing laws in relation to freedom of expressions and restrictions to the same ultimately falls on each individual State, the reports recognise that guidelines are necessary to prevent abuse of power to criminalise political dissent or criticism. International law</p>



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	<p>provides a framework that must be kept in mind by both State and private bodies when they frame their laws and/or policies on tackling hate speech.</p> <p>Amnesty International published, in 2010, a discussion paper on Racist Hate Speech and Freedom of Opinion and Expression organised by the United Nations Committee on Elimination of Racial Discrimination, in which it sought to clarify States’ obligations under Article 4 of the CERD. It was acknowledged that States have the difficult and important tasks of separating protected from unprotected speech and introducing restrictions on freedom of expression that are provided by law and are necessary and proportionate to the aim.</p> <p>The United Nations High Commissioner for Human Rights has created Guiding Principles on Business and Human Rights (the Guiding Principles) which set out both the state duty and the corporate responsibility to protect human rights. While this does not mention prevention of hate speech specifically, the general principles it lays out may assist private organisations in promoting human rights, particularly the right to be free of discrimination.</p> <p>One of the foundational principles, arising out of the Guiding Principles, of corporate responsibility is “addressing the adverse human rights impacts in which they are involved.” The expectation is that organisations conduct themselves independently of States’ compliance with human rights obligations. The standard expected is above simple compliance with national laws and refers to internationally recognised human rights which include those set out in the International Bill of Human Rights and the International Labour Organization’s Declaration on Fundamental Principles and Rights at Work, at a minimum. Businesses are also asked to prevent or mitigate adverse human rights impacts that are directly linked to their operations, products or services, even they have not directly caused them.</p> <p>The last point is particularly relevant in the context of the responsibilities of online platforms and websites to moderate content posted on them by third party users. The regulation of online content is a contentious topic, especially as platforms are careful to act in ways that allow them</p>
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	<p>to avoid being labelled as “publishers” of information. The UN Report of the Special Rapporteur A/74/486, informed by the Guiding Principles, specifically sets out specific recommendations for online businesses, including:</p> <ul style="list-style-type: none">• having an ongoing process to determine how hate speech affects human rights on their platforms though the platform’s own algorithms;• drawing on internal and independent human rights expertise; and• regularly evaluating the effectiveness of their approaches to human rights harms. <p>The obligations placed on States and public bodies are broader than those of the private sector, as States are also expected to monitor and enforce human rights compliance within their jurisdiction. States are not per se responsible for human rights violations by private actors, but may breach their obligations if they fail to take appropriate steps to prevent, investigate, punish or redress private actors’ abuse.</p> <p>The above principles are relevant to the prevention of hate speech. They highlight points that both state bodies and private organisations must keep in mind when formulating a system of avoiding hate speech. While it ultimately falls on national law-making bodies to formulate specific duties in this respect, the above reports can be used to inform the approach taken.</p>
3.7 If I am accused of hate speech, what is my recourse?	International law does not set out specific recourse or remedies available if one is accused of hate speech. However, UN Report of the Special Rapporteur A/73/348 has recognised the potential for human rights violations if wrongful censoring takes place online, particularly as a result of a faulty algorithm where there is little human involvement. The problem has been



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	<p>compounded by the use of algorithms and AI in remedy systems themselves, which enhances the problem of lack of contextual analysis and access to effective remedies for false accusations.</p> <p>While no specific remedy is recommended by international organs for accusations of hate speech, it has been recommended in the above report that platforms publish data on content removals, including how often removals are contested and when challenges to removals are upheld. It has also been recommended that individuals have access to recourse of violation of their right to freedom of expression as a result of AI systems, and that human beings be the ones to conduct reviews of complaints relating to censorship.</p> <p>If the accusation of hate speech occurs in a country that is a party to the ECHR, it is possible to plead rights under Article 10 (freedom of expression) as a defence. When dealing with cases relating to hate speech, the European Court has adopted two approaches: firstly, exclusion from the protection of the ECHR, provided for by Article 17 and second, setting restrictions on protection, provided for by Article 10, paragraph 2, of the ECHR. The former approach is illustrated in the case of <i>Belkacem v. Belgium</i>, in which the applicant argued against his conviction for incitement to discrimination and violence on account of remarks he made in YouTube videos concerning non-Muslim groups and Sharia, stating that those remarks were simply an exercise of his right to freedom of expression. The European Court held that the application was inadmissible, as the comments had hateful content calculated to incite hatred, discrimination and violence towards all non-Muslims. The European Court's jurisprudence in the line of cases of which this is a part indicates that the right to freedom of expression will not be protected where it is thought that the applicant is seeking to cloak hate speech, which is against the spirit of the ECHR, under the guise of speech protected by Article 10 rights. The latter approach has an even more advanced line of jurisprudence, which has been discussed in section 1.2. It is also important to keep in mind that several European countries have implemented the ECHR into national law, making ECHR rights directly enforceable in national courts.</p>
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<p>3.8 If hate speech is occurring at my event/on my platform/in my place of work, what should I do about it?</p>	<p>International human rights laws, including Article 2 ICCPR and Article 6 CERD, require remediation for victims of hate speech and provide suggestions for how it can be provided. The UN Special Rapporteur has said that the “process of remediation must begin with an effective way for individuals to report potential violations of hate speech policies and must ensure protections against abuse of the reporting system as a form of hate speech.” International law is particularly concerned with remediation and corrective processes for hate speech that has taken place on online platforms and so that will be the focus of this section.</p> <p>International organs have become increasingly attentive to the fact that online platforms have had an enormous impact over the last few years on people’s ability to exercise their right to speech and expression. As a result, international organs have focussed on creating a framework for online content moderation.</p> <p>As discussed at section 3.6, reports by international organs have laid out requirements for how online platforms approach moderation of content and tackling of hate speech. The work done by an organisation requires a complex balancing exercise to be done between the requirement to protect right of freedom of speech and protection against discrimination, violence or incitement, and this leads to varying standards of what is considered hate speech across different organisations. The UN recommends that all organisations adopt content policies that tie hate speech directly to international human rights laws, rather than just national laws, so that enforcement is to the standard of UN treaties and the Rabat Plan of Action.</p> <p>The UN Special Rapporteur has proposed that platforms adopt the following measures for tackling hate speech:</p> <ul style="list-style-type: none">publicly identify the kinds of remedies that they will impose on those who have violated their hate speech policies and make those policies clear, with accessible language;
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	<ul style="list-style-type: none">• put in place graduated responses according to the severity of the violation;• de-amplify and de-monetize problematic expressions that do not meet the threshold to justify a ban;• develop programmes that require suspended users who wish to return to the platform to engage in kinds of reparations, such as apology, or other forms of direct engagement with others they harmed; and• following serious lapses, conduct impact assessments and update policies to better handle future issues. <p>Looking at hate speech beyond what is posted on online platforms, the Rabat Plan of Action and Human Rights Council resolution 16/18 also provide suggestions that companies and States may draw on in providing remedies for hate speech:</p> <ul style="list-style-type: none">• States should ensure that victims of hate speech have access to judicial and non-judicial remedies, including a cause of action that could result in damages;• The remedies provided should include a right of correction and a right to reply to the offending expression;• Staff and officials must be trained to learn how to tackle hate speech and amplify minority voices; and• There must be efforts made to educate the population on the harmful effects of hate speech and greater visibility of the mechanisms available to tackle hate speech.
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<p>3.9 If I have identified hate speech (online, in the media, etc.) what practical steps should I take?</p> <p><i>(For this question, we envision a “filtering” or “journey tree” (flow chart) where the first question is, “where did you see the hate speech” → if online then go here, if offline, then go here → do you have evidence of it (screenshot/link to the post, recording of the speech, etc.) → then what, etc.)</i></p>	<p>International organs do not specify particular steps that have to be taken if hate speech is encountered. As with setting of standard for restrictions curtailing freedom of expression, the onus of providing concrete steps for reporting hate speech falls on States and on private organisations that either publish or moderate online content.</p>
<p>3.10 Please provide recent (within 1 year) of examples of hate speech reported in the media, and if possible, establish how was this addressed, e.g. by legal remedies or non-legal remedies.</p> <p><i>(For this question, we are looking for case studies.)</i></p>	<p>N/A</p>
<p>3.11 Please provide examples of cases related to hate speech / incitement of violence.</p>	<p>N/A</p>

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1. International and Regional Frameworks (<i>NOTE: this section <u>only</u> to be filled up by the teams working on international and EU law</i>)	
1.1 What are the international law standards on hate speech with reference to the UN Conventions, General Comments and the decisions of the Thematic Mechanisms / Special Rapporteur reports?	N/A
1.2 Are there any relevant decisions on hate speech arising from the European Convention of Human Rights, the American Convention of Human Rights and the African Convention of Human Rights?	N/A



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2. Definition of hate speech	
2.1 What is the definition of hate speech in your country?	<p>“Hate speech” does not have an agreed-upon legal definition under U.S. law. There is no law that restricts speech solely for being “hateful,” distasteful, offensive, demeaning, or insulting.</p> <p>This is because, in the United States, speech is afforded significant protection under the First Amendment to the U.S. Constitution. “[A]s a general matter, the First Amendment means that government has no power to restrict expression because of its message, its ideas, its subject matter, or its content.” <i>Ashcroft v. American Civil Liberties Union</i>, 535 U.S. 564, 573 (2002) (internal quotation marks omitted). The U.S. Supreme Court has “said time and again that ‘the public expression of ideas may not be prohibited merely because the ideas are themselves offensive to some of their hearers.’” <i>Matal v. Tam</i>, 137 S. Ct. 1744, 1763 (2017) (citing 12 Supreme Court cases dating back to 1937). The Supreme Court has explained that “[s]peech that demeans on the basis of race, ethnicity, gender, religion, age, disability, or any other similar ground is hateful; but the proudest boast of our free speech jurisprudence is that we protect the freedom to express ‘the thought that we hate.’” <i>Matal v. Tam</i>, 137 S. Ct. 1744, 1764 (2017) (quoting <i>United States v. Schwimmer</i>, 279 U.S. 644, 655 (1929) (Holmes, J., dissenting)). This is based upon a belief that “in public debate [citizens] must tolerate insulting, and even outrageous, speech in order to provide adequate ‘breathing space’ to the freedoms protected by the First Amendment.” <i>Boos v. Barry</i>, 485 U.S. 312, 322 (1988).</p> <p>The right of free speech is not absolute, however. Limited restrictions upon the content of speech are permitted in a few narrowly defined areas, such as fraud, <i>Virginia Bd. of Pharmacy v. Virginia Citizens Consumer Council, Inc.</i>, 425 U.S. 748, 771 (1976), defamation, <i>Beauharnais v. Illinois</i>, 343 U.S. 250, 254–255 (1952), and obscenity, <i>Roth v. United States</i>, 354 U.S. 476, 483 (1957). Laws restricting speech for being “hateful” are generally only permissible if the speech (1) is “directed to inciting imminent lawless action and is likely to incite or produce such action,” <i>Brandenburg v. Ohio</i>, 395 U.S. 444, 447 (1969), (2) consists of specific and intentional threats of violence targeted against a person or group, also known as “true threats,” <i>Virginia v. Black</i>, 538 U.S. 343, 359 (2003), or (3) falls within the category of “fighting words”—words “which by their very utterance inflict injury or tend to incite an immediate breach of the peace,” <i>Chaplinsky v. State of New Hampshire</i>, 315 U.S. 568, 572 (1942).</p>



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	That said, the First Amendment only applies to restrictions imposed by the government. Online social media platforms such as Facebook, Twitter, and YouTube are free to, and often do, fashion their own definition of prohibited hate speech. See section 3.5 for more details.
2.2 Does the legal definition of hate speech require threats of violence / incitement to violence?	There is no legal definition of hate speech in the United States. But any law that limits speech on the basis that it is hateful, offensive, insulting, etc. is only permissible if the speech directly incites imminent lawless action (including violence) or consists of specific threats of violence.
2.3 Would the definition cover speech and behaviour which incites hatred (not necessarily violence) towards a group?	No. Inciting hatred alone is not enough to overcome the protections guaranteed by the First Amendment. Behavior that merely incites hatred, without more, has been found time and time again to be permissible speech in the United States. For example, the United States Supreme Court has protected racist speech directed towards minorities, holding that such speech could only be restricted if it poses an “imminent danger” of inciting violence. <i>Brandenburg</i> , 395 U.S. at 447. Other notable examples of hateful, yet protected, speech include a group of Nazis marching with swastikas on the streets of a community with a large Jewish population, <i>National Socialist Party of America v. Skokie</i> , 432 U.S. 43, 97 (1977) and <i>Collin v. Smith</i> , 578 F.2d 1197 (7th Cir. 1978), a person burning a cross on the lawn of an African-American family’s home, <i>R.A.V. v. City of St. Paul, Minn.</i> , 505 U.S. 377 (1992), and a group protesting funerals of service-members with hateful signs disparaging the military, LGBTQ individuals, Catholics, and the United States, <i>Snyder v. Phelps</i> , 562 U.S. 443 (2011). In each of these instances, U.S. courts held that the hateful speech was protected.
2.4 Does hate speech cover speech that draws on hateful, hostile, or supremacist beliefs directed at a group that is	The speech must be both directed to and likely to incite imminent lawless action or consist of specific threats of violence to be actionable. See <i>Brandenburg</i> , 395 U.S. at 447.



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<p>threatened and likely to cause them harm?</p>	
<p>2.5 Does the definition permit religious beliefs and speech which discriminates against particular communities – are there any limitations to religious beliefs and speech which discriminated against particular groups?</p>	<p>The freedom of speech guaranteed by the First Amendment applies equally to all. There are no limitations specific to religious beliefs or speech that discriminates against particular groups.</p>
<p>3. Remedies and recourse for hate speech</p>	
<p>3.1 If I am the victim of hate speech, what is my recourse?</p>	<p>Because there are limited legal restrictions on speech in the U.S. (see section 2), there is also limited legal recourse. Victims may report such incidents to law enforcement, non-governmental agencies (“NGOs”), or to the platforms themselves.</p> <p>Reporting to law enforcement (local police or the Federal Bureau of Investigation (“FBI”)). Victims of hate speech may report the incident to the FBI or local police. However, there are limited circumstances when law enforcement may act on such a report. If the hate speech is part of broader harassment, law enforcement may be able to pursue a criminal case on behalf of the victim under a state or federal cyberstalking law. If there is no action connected to make the event a hate crime or constitute cyberstalking, or the speech does not rise to the level of a “true threat,” or “fighting words” or incite imminent violence, then it is unlikely that law enforcement will be able to pursue any</p>



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action on behalf of the victim. See section 3.2 for more details.

If you think you have been the victim of a hate crime, you can contact the U.S. Department of Justice Civil Rights Division at:

U.S. Department of Justice, Civil Rights Division, Criminal Section
950 Pennsylvania Avenue, NW
Washington, DC 20530
(202) 514-3204
Fax: (202) 514-8336

Additionally, The US Department of Justice has a page to report hate crimes, but there is nothing specific for hate speech other than in K-12 settings. <https://www.justice.gov/hatecrimes/get-help-now>. Victims can also contact local law enforcement in the city or state of their residence.

Reporting to NGOs: Several non-governmental organizations that work to fight hate crimes have online forms to report incidents of hate speech and compile resources for victims of hate crimes/hate speech.

- The Victim Connect Resource Center lists several resources dedicated to helping victims (Center for the Prevention of Hate Violence, Anti-Violence Project, GLBT National Hotline, etc.): <https://victimconnect.org/learn/types-of-crime/hate-crimes/>
- Anti-Defamation League: <https://www.adl.org/reportincident>
- Human Rights Campaign: <https://www.hrc.org/resources/what-to-do-if-youve-been-the-victim-of-a-hate-crime>
- Southern Poverty Law Center: <https://www.splcenter.org/reporthat>
- US Commission on Civil Rights has a referral service to connect you to resources if you have a complaint: <https://www.usccr.gov/filing/complaint.php>

Reporting to Online Platforms: Private entities have more leeway for creating policies around unaccepted speech and have created processes for victims to request the removal of hate speech. Online social media platforms may remove content if it is found to violate their Terms of Service. Most online platforms have a self-regulatory process for



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	<p>dealing with complaints that include a reporting mechanism and a process for them to review reported content for removal. While some platforms review content regularly, most abusive content is found through user reports.</p> <p>If you feel that you have been a victim of hate speech in an online forum, you should follow the guidelines indicated in that platform’s policies regarding abuse or hateful content. Several online platform guidelines are listed below:</p> <p>Facebook has a “Find, Report, or Support” option in their drop down menu to report hate speech to administrators. To report a post, visit: https://www.facebook.com/help/reportlinks/</p> <p>Instagram has a policy prohibiting hate speech and has a reporting mechanism, either from within the app or via an online form if you don’t have an account. More information at: https://help.instagram.com/165828726894770</p> <p>WhatsApp does not appear to have a specific policy on hate speech but does have a system for reporting abuse: https://faq.whatsapp.com/21197244/. When you receive a message from an unknown number for the first time, you’ll have the option to report the number directly inside the chat. Once reported, WhatsApp receives the most recent messages sent to you by a reported user or group, as well as information on your recent interactions with the reported user.</p> <p>Twitter has a policy on abuse and a reporting process, found at: https://help.twitter.com/en/safety-and-security/report-abusive-behavior. You can report individual tweets, direct messages, and accounts.</p> <p>YouTube has guidelines for unacceptable content which include a section on hate speech. Their Official Blog describes their work in identifying and removing hate speech and other offensive content. https://youtube.googleblog.com/2019/06/our-ongoing-work-to-tackle-hate.html? Their reporting process can be found here: https://support.google.com/youtube/answer/2802027?</p>
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<p>3.2 What are the criminal legal remedies for hate speech?</p>	<p>Absent exceptional circumstances, there are no criminal legal remedies for hate speech in the United States. Hate speech is largely protected under the First Amendment. The exceptions are extraordinarily narrow. This leaves most victims of hate speech without criminal legal recourse.</p> <p>There are exceptions. Criminal legal remedies may be available where hate speech (1) directly incites imminent lawless action; (2) consists of “true threats” of violence targeted against an individual or a defined group; or (3) consist of “fighting words,” which are hypothesized to provoke an immediate reaction on the part of the listener. Sometimes referred to as the Incitement Doctrine, the exception permits laws that criminalize speech where the speech is “directed to inciting imminent lawless action and is likely to incite or produce such action.” <i>Brandenburg v. Ohio</i>, 395 U.S. 444, 447 (1969). The state is also permitted to prohibit “fighting words” or “true threats,” which are hypothesized to provoke an immediate reaction on the part of the listener. Laws to this effect are most likely to be found at the state or local level. For example:</p> <ul style="list-style-type: none"> • Georgia. Ga. Code Ann. § 16-11-39 (making it a crime of disorderly conduct for a person to “[w]ithout provocation, use[] to or of another person in such other person’s presence, opprobrious or abusive words which by their very utterance tend to incite to an immediate breach of the peace, that is to say, words which as a matter of common knowledge and under ordinary circumstances will, when used to or of another person in such other person’s presence, naturally tend to provoke violent resentment”). • Colorado. Colo. Rev. Stat. Ann. § 18-9-106 (making it a crime of disorderly conduct for a person to “[m]ake[] a coarse and obviously offensive utterance, gesture, or display in a public place and the utterance, gesture, or display tends to incite an immediate breach of the peace”). • Virginia. Va. Code Ann. § 18.2-416 (making it a crime to use abusive language to another “[i]f any person shall, in the presence or hearing of another, curse or abuse such other person, or use any violent abusive language to such person concerning himself or any of his relations, or otherwise use such language, under circumstances reasonably calculated to provoke a breach of the peace”). <p>Additionally, the federal government and many states have laws against cyberstalking or cyberharrasment, which may involve the use of hate speech. See e.g. Cal. Penal Code § 646.9; D.C. Code Ann. § 22-3133.</p> <p>In practice, prohibitions on fighting words or true threats do not result in the criminalization of hate speech because the</p>
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exceptions apply in the narrowest of circumstances. “Fighting words” are defined as “personally abusive epithets, which, when addressed to the ordinary citizens, are, as a matter of common knowledge, inherently likely to provoke violent reaction.” *Virginia v. Black*, 538 U.S. 343, 359 (2003) (internal quotations omitted). “True threats” are defined as “statements where the speaker means to communicate a serious expression of intent to commit an act of unlawful violence to a particular individual or group of individuals.” *Id.* In 2015, the Supreme Court held that social media speech only constitutes a criminal threat if the sender *intends* the content to be threatening, and that the subjective perception of threat by the recipient was not enough to sustain a criminal conviction. *Elonis v. United States*, 575 U.S. 723 (2015) (holding that under 18 U.S.C. § 875(c) a defendant must be found to have the intent to threaten, and that amateur “rap lyrics” published on Facebook which threatened harm to the authors ex-wife did not constitute a criminal threat).

The story is different when speech is accompanied by conduct. Hate crimes are often evidenced, in part, by the alleged perpetrator’s speech. But hate crimes do not strictly criminalize speech. Instead, hate crimes are traditional crimes with an element of bias which can be established in part by reference to hate speech.

The Federal Bureau of Investigation defines hate crimes as “a traditional offense like murder, arson, or vandalism with an added element of bias. . . a hate crime [is] a criminal offense against a person or property motivated in whole or in part by an offender’s bias against race, religion, disability, sexual orientation, ethnicity, gender, or gender identity.” Federal Bureau of Investigation, *What We Investigate: Civil Rights: Hate Crimes* (last visited May 25, 2020), <https://www.fbi.gov/investigate/civil-rights/hate-crimes>.

The Shepard-Byrd Act is the federal statute that governs hate crimes. 18 U.S.C. § 249. The Act “makes it a federal crime to willfully cause bodily injury, or attempt to do so using a dangerous weapon, because of the victim’s actual or perceived race, color, religion, or national origin. The Act also extends federal hate crime prohibitions to crimes committed because of the actual or perceived religion, national origin, gender, sexual orientation, gender identity, or disability of any person, only where the crime affected interstate or foreign commerce or occurred within federal special maritime and territorial jurisdiction.” The United States Department of Justice Civil Rights Division, Criminal Section, *Hate Crime Laws* (Mar. 7, 2019), <https://www.justice.gov/crt/hate-crime-laws>.



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	<p>Hate crimes are evidenced by hate speech, but speech alone cannot be the basis for prosecution. “[I]n 99% of cases reported to the police from 2004-2015, hate crime victims cite the language used by offenders.” Swathi Shanmugasundaram, <i>Hate Crimes, Explained</i>, SOUTHERN POVERTY LAW CENTER (Apr. 15, 2018), https://www.splcenter.org/20180415/hate-crimes-explained (citing U.S. Department of Justice, <i>Special Report: Hate Crime Victimization, 2004-2015</i> (Jun. 2017)). But the U.S. Attorneys’ Manual—the guide for federal prosecutors—makes clear that hate speech cannot be <i>the</i> reason to bring a criminal action: “No attorney for the government may make prosecution or declination decisions based solely upon the speech or expressive conduct of a subject, victim, or witness.” U.S. Attorneys’ Manual § 8-3.300. Such language can be <i>part</i> of the prosecuting decision, so long as it “inform[s] a reasoned, neutral decision about whether [the Shepard-Byrd Act]—or any other criminal statute—has been violated.” <i>Id.</i></p> <p>It should be noted that despite the availability of criminal prosecution for hate crimes under federal law, state governments are the principal actors in prosecuting hate crimes. Complicating matters, “[s]tates differ significantly in their definitions and enforcement of hate crimes.” Shanmugasundaram, <i>supra</i>. Victims of hate crimes would most likely see their perpetrators prosecuted by state governments rather than the federal government.</p>
<p>3.3 Are there civil legal remedies available – compensation / damages – for hate speech?</p>	<p>As there is no law against hate speech in the United States, there are no civil remedies either. However, some federal and state laws do provide for civil remedies for threats or acts of intimidation, which might cover hate speech depending on the context. For example, the Freedom of Access to Clinic Entrances Act (FACE) provides civil remedies for anyone who is threatened, intimidated, injured, or interfered with while attempting to obtain or provide reproductive health services or while exercising (or attempting to exercise) the right of religious freedom at a place of worship. 18 USC § 248(a). Individual litigants may seek permanent and/or injunctive relief as well as damages of \$5,000 per violation. 18 USC § 248(c)(1). The Ninth Circuit, for example, allowed for both compensatory and punitive damages under FACE against an organization which targeted abortion providers targeted posters and online content which the court held constituted death threats. <i>Planned Parenthood of Columbia/Willamette Inc. v. Am. Coal. of Life Activists</i>, 422 F.3d 949, 967 (9th Cir. 2005).</p> <p>Some speech-based torts also allow for civil remedies; however the First Amendment maybe used as a defense for</p>



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	<p>hateful speech in many of these instances. For example in <i>Snyder v. Phelps</i>, the court considered whether picketing a veteran’s funeral with signs that disparaged Catholics, homosexuals, and the United States constituted intentional infliction of emotional distress. Despite the documented negative impact on the family of the soldier, the Court held that this speech was protected by the First Amendment because it occurred in public and concerned a matter of public concern. As such, the father of the soldier could not recover damages for intentional infliction of emotional distress or any other tort. <i>Id.</i> In any instance where a victim attempts to bring a civil claim against another individual for hate speech, they will likely have to prove that the speech is not protected by the First Amendment to recover damages.</p> <p>Beyond the individual speaker, online platforms enjoy immunity from liability for content posted on their websites. Section 230 of the Communications Decency Act (“CDA 230”) prevents providers of interactive computer services from being held liable as the speaker for information posted by users of their services and also allows them to attempt to block or screen third-party content without liability. 47 U.S.C. § 230(c). Accordingly, in the United States, even if a user’s hateful speech were to cross the line into unprotected speech, online providers like Facebook and Google would not be held liable. See e.g., <i>Zeran v. Am. Online, Inc.</i>, 129 F.3d 327, 330-31 (4th Cir. 1997) (Finding no liability for an internet service provider for defamatory speech posted on their website and noting that “Congress recognized the threat that tort-based lawsuits pose to freedom of speech in the new and burgeoning Internet medium....Section 230 was enacted, in part, to maintain the robust nature of Internet communication and, accordingly, to keep government interference in the medium to a minimum.... None of this means, of course, that the original culpable party who posts defamatory messages would escape accountability.... Congress made a policy choice, however, not to deter harmful online speech through the separate route of imposing tort liability on companies that serve as intermediaries for other parties’ potentially injurious messages.”).</p>
<p>3.4 Are there regulatory frameworks governing the online news media which allow individuals to complain?</p>	<p>There is no regulatory framework governing online social media. CDA 230 (discussed in more detail in 3.3) largely prevents the regulation of these platforms.</p> <p>While there are no current regulations in this area, this is an active area of debate in both federal and state legislative and executive bodies. For example, the President of the United States released an executive order on May 28, 2020 which, among other things, called on the Federal Communications Commission (FCC) and Federal Trade Commission</p>



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	<p>(FTC) to issue regulations clarifying the limits of protection afforded to social media companies under CDA 230 and to evaluate potential action against social media platforms based on their regulation of content. The impact of this executive order and proposed state and federal legislation in this area remains to be seen.</p> <p>In the absence of any governmental framework, the terms and conditions and community standards set by each platform effectively operate as their self-regulatory frameworks. See section 3.5. Each major platform releases annual transparency reports which reveal how much content was removed for violations of their terms and conditions and community guidelines, including hate speech.</p> <ul style="list-style-type: none"> • Facebook Community Standards Enforcement Report: https://transparency.facebook.com/community-standards-enforcement#hate-speech • YouTube Community Guidelines enforcement: https://transparencyreport.google.com/youtube-policy/removals?hl=en • Twitter rules enforcement: https://transparency.twitter.com/en/twitter-rules-enforcement.html. <p>On May 6, 2020, Facebook announced a Content Oversight Board, an independent board which will hear appeals regarding complaints about a select number of difficult and highly emblematic content complaints and issue public opinions regarding their decision to remove or allow the content. More information available at https://www.oversightboard.com/.</p> <p>While there is little federal governmental oversight through the FCC, speech may still be regulated when concerning children’s safety or obscenity. In addition, several states have laws regarding content made available to children in public schools or libraries. However, as with section 3.1 above, complaints by individuals regarding online news media would need to be made to the corporate organization which owns the online site or channel.</p>
<p>3.5 Is the test for hate speech used by any Social Media / Press / Online regulatory bodies the same as the</p>	<p>No. As discussed in section 2.1 and 3.2, the government is constrained from regulating hate speech by the First Amendment. No such constraint exists for private social media companies, which have created their own definitions and tests for hate speech that go beyond the limits of speech not protected by the First Amendment. Information about the largest U.S. platforms can be found below, but many smaller social media platforms also post their definitions and</p>



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<p>criminal law definitions?</p>	<p>regulations of hate speech in their community guidelines. These platforms update their policies frequently and both their community guidelines and blogs should be reviewed for changes.</p> <p>Facebook defines 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.” Attack is defined as “violent or dehumanizing speech, statements of inferiority, or calls for exclusion or segregation.” These attacks are tiered by severity and Facebook specifically mentions hate speech as an example of “inappropriate or abusive things” that can be reported on their platform. More information at: https://www.facebook.com/communitystandards/hate_speech.</p> <p>Twitter prohibits “hateful conduct,” which it defines as “promot[ing] violence against or directly attack[ing] or threaten[ing] other people on the basis of race, ethnicity, national origin, caste, sexual orientation, gender, gender identity, religious affiliation, age, disability, or serious disease.” This includes the use of hateful imagery and display names. Twitter will review and take action against Tweets or direct messages which constitute or contain violent threats against an “identifiable target”; wishing, hoping, or calling for serious harm against a person or group of people; references to mass murder, violent events, or specific violence where protected groups have been the primary target; inciting fear about a protected category; use of racial slurs, epithets, sexist tropes, or degrading content; and hateful imagery. More information can be found at: https://help.twitter.com/en/rules-and-policies/hateful-conduct-policy and https://blog.twitter.com/en_us/topics/company/2019/hatefulconductupdate.html.</p> <p>YouTube defines hate speech as “content promoting violence or hatred against individuals or groups based on any of the following attributes: Age, Caste, Disability, Ethnicity, Gender Identity and Expression, Nationality, Race, Immigration Status, Religion, Sex/Gender, Sexual Orientation, Victims of a major violent event and their kin, [or] Veteran Status.” Content which encourages violence or incites hatred against individuals within any of those groups, dehumanizes individuals, praises or glorifies violence against individuals with these attributes, uses racial, religious, or other slurs or stereotypes, contains hateful supremacist propaganda, denies that a well-documented event took place, contains conspiracy theories against individuals with the defined attributes, or alleges superiority over of one group over another to justify violence, discrimination, segregation, or exclusion is not allowed on YouTube. More information</p>
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	at: https://support.google.com/youtube/answer/2801939?hl=en and https://youtube.googleblog.com/2019/06/our-ongoing-work-to-tackle-hate.html .
3.6 Do public and private institutions have to comply with the same duties to avoid hate speech?	<p>By and large, the answer is “yes”. Constitutionally permissible restrictions on hate speech in the United States must be followed by public and private actors. The one notable exception is for members of the legislative branch, who receive an extra layer of constitutional protection in addition to First Amendment protections.</p> <p>The U.S. Constitution’s Speech or Debate Clause provides for criminal and civil immunity for legislative acts. <i>Gravel v. United States</i>, 408 U.S. 606, 615-17 (1972) (“[T]he Clause provides protection against civil as well as criminal actions, and against actions brought by private individuals as well as those initiated by the Executive Branch.”). The idea behind the Speech or Debate Clause protection stems from separation of powers; it protects the legislative branch from executive and judicial overreach into legislative affairs. See, e.g., Todd Garvey, Cong. Research Serv., R45043, <i>Understanding the Speech or Debate Clause</i> (2017), https://fas.org/sgp/crs/misc/R45043.pdf. The immunity, for example, would cover hate speech on the floor of the Senate or House of Representatives spoken by a member of the legislative branch. But it would not necessarily include the same speech spoken during political activities outside of Congress.</p> <p>When the Speech or Debate Clause applies, it is an absolute bar to both criminal and civil proceedings. <i>Eastland v. U.S. Servicemen’s Fund</i>, 421 U.S. 491, 503 (1965). And even where absolute immunity is inapplicable, where, for example, the speech is not part of a legislative act, the Speech or Debate Clause can provide “evidentiary and testimonial privileges which may be invoked by a Member [of the legislative branch] to protect against the introduction of specific ‘legislative act’ evidence.” Garvey, <i>supra</i>, at 2. Therefore, in a scenario where hate speech would otherwise be impermissible even under the broad First Amendment protections, it may be permissible for a member of the legislative branch to engage in that speech without repercussion.</p> <p>As in other areas, much of the hate speech regulation of public officials in the United States occurs within social media companies. There is somewhat of a divide among their standards.</p>



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	<p>For example, public officials do receive greater leeway on permissible speech on Twitter. Under Twitter’s public-interest exception, “Tweets from elected and government officials” or “[c]andidates or nominees for political office,” may remain when Twitter would otherwise remove the post. Twitter, <i>Rules and Policies: About public-interest exceptions on Twitter</i> (last visited May 25, 2020), https://help.twitter.com/en/rules-and-policies/public-interest (“[I]n rare instances, we may choose to leave up a Tweet from an elected or government official that would otherwise be taken down. Instead we will place it behind a notice providing context about the rule violation that allows people to click through to see the Tweet.”). In fact, Twitter specifically identifies hateful conduct as an area where the company is “more likely to make exceptions.” <i>Id.</i> That said, Twitter is still likely to remove a tweet from an official if “[t]he Tweet includes a declarative call to action that could harm a specific individual or group.” <i>Id.</i> Twitter’s regulation of the speech of public officials stirred national controversy when they added a “glorifying violence” warning to a tweet by the president of the United States. See Dave Alba, Kate Conger, and Raymond Zhong, <i>Twitter Adds Warnings to Trump and White House Tweets, Fueling Tensions</i> (Updated Jan 3, 2020), https://www.nytimes.com/2020/05/29/technology/trump-twitter-minneapolis-george-floyd.html</p> <p>Facebook has a similar, but more undefined, exception for public interest speech. Facebook’s policy provides: “In some instances we allow content which would otherwise go against our Community Standards—if it is newsworthy and in the public interest. We do this only after weighing the public interest value against the risk of harm and we look to international human rights standards to make these judgments.” Facebook, <i>Community Standards: Introduction</i> (last visited May 25, 2020), https://www.facebook.com/communitystandards/. It is likely that hate speech perpetrated by public officials has a lesser chance of being removed than hate speech perpetrated by private persons.</p>
<p>3.7 If I am accused of hate speech, what is my recourse?</p>	<p>The options available to individuals accused of hate speech vary depending on the nature of the accusation.</p> <p>If you are faced with criminal charges or a civil lawsuit, you are entitled to force your accuser to bear the burden of proof and may raise any defense available under the law. In either situation, you may raise the defense that your speech is protected by the First Amendment. Because the U.S. Constitution is the “supreme law of the land,” the First Amendment pre-empts all other federal, state, or local laws, ordinances, or regulations. See U.S. Constitution, Article VI. Accordingly, even if a law expressly prohibits the speech you are accused of, the law itself can be struck down as unconstitutional.</p>



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	<p>Additionally, in the criminal context, you are guaranteed all the rights of due process that apply generally in criminal cases.</p> <p>More often, accusations of hate speech may take place through online social media platforms. Content you post online may be flagged and removed by the sponsoring platform as “hate speech” under their community standards and guidelines. If you believe that your content has been wrongfully removed, any recourse available is within the discretion of the platform. Many social media platforms now have an appeals process available to restore incorrectly flagged content. For example, per its Community Standards, when Facebook removes content that has been identified as hate speech, Facebook reportedly will notify the poster and give an option to request additional review. If the poster requests further review and Facebook’s content review team determines that a mistake was made, the poster will be notified and the wrongfully removed content will be restored.</p>
<p>3.8 If hate speech is occurring at my event/on my platform/in my place of work, what should I do about it?</p>	<p>Your course of action will vary depending on if the location of the hate speech is public or private and if violent conduct or conduct that incites violence accompanies the speech.</p> <p>As previously discussed, if hate speech is occurring in a public space, there are few limits which can be placed on the speech unless it constitutes a true threat, incitement to violence, or fighting words. See section 2, 3.2 and 3.3. However, the government may enforce reasonable time, place, and manner regulations against speech in public if such restrictions are narrowly tailored and content-neutral—which includes permits for public events. <i>McCullen v. Coakley</i>, 573 U.S. 464, 477 (2014); <i>Forsyth County v. Nationalist Movement</i>, 505 U.S. 123, 130 (1992); <i>United States v. Grace</i>, 461 U.S. 171, 177 (1983). The government also cannot require private organizers to host specific speech at their events, even if held in public. <i>Hurley v. Irish-Am. Gay, Lesbian & Bisexual Grp. of Bos.</i>, 515 U.S. 557, 574, 115 S. Ct. 2338, 2347, 132 L. Ed. 2d 487 (1995).</p> <p>If you have obtained a permit for your event in a public space, you may be able to have those participating in hate speech or who seek to promulgate hate speech at your event removed from the event space, especially if the hate speech is accompanied by violent or disruptive behaviour. See e.g. <i>Startzell v. City of Philadelphia, Pennsylvania</i>, 533 F.3d 183, 198–99 (3d Cir. 2008) (“The right of free speech does not encompass the right to cause disruption, and that</p>



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	<p>is particularly true when those claiming protection of the First Amendment cause actual disruption of an event covered by a permit. The City has an interest in ensuring that a permit-holder can use the permit for the purpose for which it was obtained. This interest necessarily includes the right of police officers to prevent counter-protestors from disrupting or interfering with the message of the permit-holder. Thus, when protestors move from distributing literature and wearing signs to disruption of the permitted activities, the existence of a permit tilts the balance in favor of the permit-holders.”)</p> <p>As the First Amendment only applies to government regulation of public spaces, if you are hosting an event in private space, you have the right to prevent or stop hate speech, or have those disrupting the event with hate speech removed. <i>Lloyd Corp., Ltd. v. Tanner</i>, 407 U.S. 551, 567 (1972).</p> <p>Additionally, the First Amendment does not apply to restrictions on speech placed by private actors. As such, employers in the private sector can fire an employee for hate speech at work. Additionally, many anti-discrimination and sexual harassment laws limit hate speech at places of employment. If hate speech occurs at your place of employment, you should report the speech to human resources or leadership you trust. If hate speech occurs on a platform you have set up online, as a private actor you are allowed to remove or ban such speech.</p> <p>In any of these instances, if violent behavior accompanies the hate speech or you believe the speech rises to the level of a true threat, fighting words, or incitement to violence, you should contact law enforcement.</p>
<p>3.9 If I have identified hate speech (online, in the media, etc.) what practical steps should I take?</p> <p><i>(For this question, we envision a “filtering” or “journey tree” (flow chart)</i></p>	<p>As discussed, there is limited regulation of hate speech in the United States. As such, your best course of action if you identify hate speech is to first record the speech, through a screen shot, video recording, or other archival method if possible. If such speech occurred online, you should report it to the platform through their specific complaint process. You can also report hate speech which occurs online or offline to local officials or the FBI if you believe it constitutes harassment, a true threat, or incitement to violence.</p>



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<p><i>where the first question is, "where did you see the hate speech" → if online then go here, if offline, then go here → do you have evidence of it (screenshot/link to the post, recording of the speech, etc.) → then what, etc.)</i></p>	
<p>3.10 Please provide recent (within 1 year) of examples of hate speech reported in the media, and if possible, establish how was this addressed, e.g. by legal remedies or non-legal remedies.</p> <p><i>(For this question, we are looking for case studies.)</i></p>	<p>1) Police determine Facebook post is not a crime (published June 17, 2019) As Watertown, NY prepared for a Gay Pride celebration, the police department investigated a Facebook post which said, "Watertown is having a LGTBQ celebration. For the love of God please let someone go on a mass shooting." Detective Lieutenant Joe Donoghue indicated that the poster had indicated his opinion and "realized from the comments coming back to him that maybe he shouldn't have posted it." The post was removed and the person's account was deactivated. Investigators from the counter terrorism unit determined that no crime had been committed and the post was in "poor taste" but not a crime. They found that the poster did not have access to weapons and was not conspiring with anyone. (published by wwnytv.com on June 17, 2019)</p> <p>2) Two Detroit police officers post shaming video of woman on Snapchat following traffic stop; they were fired but no criminal charges were filed (published Sept. 24, 2019) Two police officers who were fired for mocking a woman following a traffic stop will not face charges. Detroit Police Chief James Craig had requested charges of misconduct in office against two former police officers who recorded a woman walking away from a traffic stop, posting it on Snapchat with the tags "Bye Felicia" and "What Black Girl Magic Looks Like." Wayne County Prosecutor Kym Worthy indicated that the officers' conduct was "reprehensible, disturbing and unprofessional" but not criminal. Since the video was taken after the interaction and not using police property, no criminal misconduct had occurred and there was no evidence that the woman had been treated unfairly during the</p>



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	<p>official police interaction. (published by WWJ Detroit news, Sept. 24, 2019)</p> <p>3) Arizona authorities arrested a man posting on Facebook for people to use “lethal force” against local Navajo citizens; they indicted the man on “suspicion of attempting to incite an act of terrorism” (published April 7, 2020) Authorities in northern Arizona arrested a man for posting on Facebook accusing the Navajo people of carrying the coronavirus and calling for their deaths. The Page Police Department arrested the 34 year old man and charged him with suspicion of attempting to incite an act of terrorism after they received reports of a Facebook post urging people to use “lethal force” against local Navajo citizens because they were “100% infected” with the Covid-19 virus. The city of Page borders the Navajo Nation, the largest Native American reservation in the US. Page police released a statement saying that any unlawful hate speech will be “aggressively investigated,” adding that anyone who made retaliatory threats against the suspect would also be subject to investigation. (published by the Associated Press, April 7, 2020) An updated article was published in the Navajo Times on April 10, 2020 indicating that local sources report that the post was deleted several hours after it went viral and the suspect is thought to have an intellectual disability. It was not known at the time of reporting whether he had made his first court appearance.</p> <p>4) White man who wore KKK hood to grocery store won’t face charges (published May 12, 2020) A man who wore a Ku Klux Klan hood to a grocery store in northern California on May 2, 2020 will not face charges. The San Diego County Sheriff’s Department investigated and said the man “expressed frustration with people telling him what he can and cannot do” and that wearing the mask was “stupid” but not meant to be a racial statement. The Sheriff’s department reviewed the case with the San Diego District Attorney and the US Attorney and reported that “it was determined there was insufficient evidence” to charge the man, whose identity was not reported. (published by cnn.com on May 12, 2020)</p>
<p>3.11 Please provide examples of cases related to hate speech / incitement of violence.</p>	<p><i>Matal v. Tam</i>, 137 S. Ct. 1744, 1763 (2017) <i>Snyder v. Phelps</i>, 562 U.S. 443 (2011) <i>Virginia v. Black</i>, 538 U.S. 343, 359 (2003) <i>Ashcroft v. American Civil Liberties Union</i>, 535 U.S. 564, 573 (2002)</p>



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	<p><i>R.A.V. v. City of St. Paul, Minn.</i>, 505 U.S. 377 (1992) <i>Boos v. Barry</i>, 485 U.S. 312, 322 (1988) <i>National Socialist Party of America v. Skokie</i>, 432 U.S. 43, 97 (1977) <i>Virginia Bd. of Pharmacy v. Virginia Citizens Consumer Council, Inc.</i>, 425 U.S. 748, 771 (1976) <i>Brandenburg v. Ohio</i>, 395 U.S. 444, 447 (1969) <i>Roth v. United States</i>, 354 U.S. 476, 483 (1957) <i>Beauharnais v. Illinois</i>, 343 U.S. 250, 254–255 (1952) <i>Chaplinsky v. State of New Hampshire</i>, 315 U.S. 568, 572 (1942). <i>Robb v. Hungerbeeler</i>, 281 F. Supp. 2d 989 (E.D. Mo. 2003), <i>aff'd</i> 370 F.3d 735 (8th Cir. 2004) <i>Collin v. Smith</i>, 578 F.2d 1197 (7th Cir. 1978)</p>
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1. International and Regional Frameworks (NOTE: this section <u>only</u> to be filled up by the teams working on international and EU law)	
1.1 What are the international law standards on hate speech with reference to the UN Conventions, General Comments and the decisions of the Thematic Mechanisms / Special Rapporteur reports?	N/A
1.2 Are there any relevant decisions on hate speech arising from the European Convention of Human Rights, the American Convention of Human Rights and the African Convention of Human Rights?	N/A
2. Definition of hate speech	
2.1 What is the definition of hate speech in your country?	<p>In Mexico, the Supreme Court of Justice of the Nation ("<i>Suprema Corte de Justicia de la Nación</i>" or "SCJN") is the highest constitutional court of the country and it is head of the Federal Judicial Power. Among its responsibilities, the SCJN decides in a definitive manner issues that are transcendent for the Mexican society.</p> <p>On March 6, 2013, the SCJN issued a precedent defining hate speech are as follows:</p>



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	<p><i>“Hate speech is the one that incite violence - physical, verbal, psychological, among others - against citizens in general, or against certain groups characterized by dominant historical, sociological, ethnic or religious features.</i></p> <p><i>Such discourses are characterized by discriminating against individuals or groups based on any personal, ethnic, or social condition or circumstance.</i></p> <p><i>The social problem with hate speech is that the expressions of contempt and insult generate social feelings of hostility towards individuals or groups.”</i></p> <p>The SCJN established a difference between rejecting certain persons or groups and hate speech. (i) The first ones can turn out to be contrary to the beliefs and positions of the majority but their purpose is establishing a particular position, and do not include a call to action; and (ii) hate speech is directed to a practical end, consisting in the creation of a hostility climate that can be materialized in actions of violence.</p> <p>Consequently, <i>“hate speech go beyond the mere expression of an idea or an opinion and, on the contrary, they express actions that generates a climate of discrimination and violence towards the victims among the receiving public, creating spaces of impunity for violent behaviour.”</i></p> <p>As a note, Mexico ratified the following international conventions:</p> <ul style="list-style-type: none">i. Inter-American Convention Against Racism, Racial Discrimination and Related Forms of Intolerance. (A-68)ii. Inter-American Convention Against All Forms of Discrimination and Intolerance. (A-69)
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<p>2.2 Does the legal definition of hate speech require threats of violence / incitement to violence?</p>	<p>Yes.</p>
<p>2.3 Would the definition cover speech and behaviour which incites hatred (not necessarily violence) towards a group?</p>	<p>Yes, the definition given in point 2.1 above considers that hate speech is a social problem causes social feelings of hostility towards individuals or groups.</p>
<p>2.4 Does hate speech cover speech that draws on hateful, hostile, or supremacist beliefs directed at a group that is threatened and likely to cause them harm?</p>	<p>Yes.</p>
<p>2.5 Does the definition permit religious beliefs and speech which discriminates against particular communities – are there any limitations to religious beliefs and speech which discriminated against particular groups?</p>	<p>Discrimination against particular communities based on religious beliefs is not permitted.</p>
<p>3. Remedies and recourse for hate speech</p>	
<p>3.1 If I am the victim of hate speech, what is my recourse?</p>	<p>Victims have civil, criminal, and administrative recourses. The former two are addressed in the following questions. In the latter recourse, victims of hate speech may file a complaint before the National Council to Prevent Discrimination against the person, company, civil association or</p>



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	<p>authority who committed the hate speech (see <i>Ley Federal para Prevenir y Eliminar la Discriminación</i>, Article 9.XV and 43).</p> <p>Victims have one year as of the hate speech started or as of the victim knew of the hate speech (see <i>Ley para Prevenir y Eliminar la Discriminación</i>, Article 44). The Council do not accept anonymous complaints (see <i>Ley para Prevenir y Eliminar la Discriminación</i>, Article 50). Considering the severity of the hate speech, the Council might issue temporary injunctions (see <i>Ley para Prevenir y Eliminar la Discriminación</i>, Article 63ter).</p> <p>If the Council finds merits in the complaint, it might order the perpetrator to pay monetary compensation to the victim, to apologize, or guarantee not to repeat the hate speech (see <i>Ley para Prevenir y Eliminar la Discriminación</i>, Article 83bis). However, there is no consequence in not observing the Council's resolution.</p> <p>The victim can also file a complaint before the Commission of Human Rights (national or local) in case the perpetrator is an authority. If the complaint has merits, the Commission issues a recommendation (to rectify its conduct) to the authority; if the authority does not observe the recommendation, the Commission might file for criminal actions (see <i>Ley de la Comisión Nacional de Derechos Humanos</i>, Articles 25-46).</p>
<p>3.2 What are the criminal legal remedies for hate speech?</p>	<p>Each local state has its criminal law; thus, the criminal remedies depend on the place where hate speech takes place.</p> <p>Only 23 out of 32 local States criminally punish hate speech (see Aguascalientes, Baja California Sur, Mexico City, Chiapas, Chihuahua, Coahuila, Colima, Durango, Hidalgo, Jalisco, Mexico, Michoacán, Morelos, Oaxaca, Puebla, Queretaro, Quintana Roo, San Luis Potosí, Sinaloa,</p>



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	<p>Tabasco, Tlaxcala, Veracruz and Yucatan’s criminal law). The rest of the local States sanction discriminatory behaviors, in which might fit hate speech.</p> <p>Prison time for committing hate speech also varies depending on the local State law. The minimum prison time is 6 months, and the maximum is 6 years. Additionally, or in substitution of prison time, criminal law provides the imposition of fines (that range from US\$54 to US\$1,810) and/or community service time (that range from 25 up to 300 days).</p> <p>During the criminal procedure, the victim and the offender might reach a compensatory agreement (see <i>Código Nacional de Procedimientos Penales</i>, Articles 186-190).</p>
<p>3.3 Are there civil legal remedies available – compensation / damages – for hate speech?</p>	<p>Victims of hate speech might seek compensation (even punitive damages) based on affectation to feelings, beliefs, honour, reputation, or the regard others have for the victim (see <i>Código Civil Federal</i> and <i>Código Civil para el Distrito Federal</i> Article 1916).</p> <p>However, not all the local state’s civil laws provide these victims’ rights. Nuevo León and Zacatecas do not have any provision enabling victims to seek compensation.</p>
<p>3.4 Are there regulatory frameworks governing the online news media which allow individuals to complain?</p>	<p>The Public defender’s office has the obligation to receive complaints or grievances submitted in the following means: (i) orally, (ii) written, (iii) digital media (see <i>Código Nacional de Procedimientos Penales</i>, Article 131).</p> <p>In Addition, the Ministry of Protection and Security for the Citizens (“<i>Secretaría de Seguridad y Protección Ciudadana</i>” or “SSC”), provide different channels to make complaints (please note this entity just make a monitoring, patrolling and prevention of felony), the means are: Phone number: 088</p>



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	<p>Email address: @CEAC_SSPCMéxico Twitter: @CEAC_CNS Or through its website: https://www.gob.mx/policiafederal/acciones-y-programas/denuncia-por-internet?idiom=es</p> <p>In México City, the Government has a cybersecurity police department, which has also different means to file complaints or receive information about complaint reports, please note this entity just make a monitoring, patrolling and prevention of a felony. The means to do so are: Phone number: 52425100 extension: 5086, or 5208 9898 Email: policia.cibernetica@ssp.cdmx.gob.mx Twitter: @UCS_GCDMX</p> <p>Cybersecurity police and the SSC generate a "criminal notice" and notify the corresponding public defender's office to open an investigation file.</p>
<p>3.5 Is the test for hate speech used by any Social Media / Press / Online regulatory bodies the same as the criminal law definitions?</p>	<p>Local criminal laws that regulate hate speech have a broad definition of such criminal activity:</p> <p><i>"The person that provokes hate or violence due to race, ethnicity, religion, ideology, sexual preference, the colour of skin, or any other circumstance that affects human dignity, commit a hate speech crime."</i></p> <p>That definition is used, but the definition provided by the SCJN is more often cited.</p>



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<p>3.6 Do public and private institutions have to comply with the same duties to avoid hate speech?</p>	<p>Yes. The first article of the National Mexican Constitution establishes the prohibition of any discrimination based on ethnic or national origin, gender, age, religion or belief, as well as disabilities, social status, health conditions, religion, opinions, sexual preferences, marital status or any other status that infringes human dignity and is intended to nullify or undermine the individuals' rights and freedoms.</p>
<p>3.7 If I am accused of hate speech, what is my recourse?</p>	<p>In all legal procedures, defendants have rights of audience (see National Mexican Constitution Articles 14 and 16).</p>
<p>3.8 If hate speech is occurring at my event/on my platform/in my place of work, what should I do about it?</p>	<p>The host of an event or platform has no obligation to stop the hate speech. The host does not have any liability for its inactions. Nevertheless, if in a legal procedure, a court or any other authority issued temporary injunctions, the host must comply with them.</p> <p>In the case of the place of work, labour law is not clear on whether the employer is liable for not stopping hate speech (see <i>Ley Federal del Trabajo</i>, Article 994.VI). However, employers must implement protocols to prevent hate speech and other kinds of violence in the place of work (see <i>Ley Federal del Trabajo</i>, Article 132.XXXI). Employers might be subject to fines that range from US\$905 to US\$18,100 if it allows harassment (possibly, labour official might deem hate speech as harassment).</p>
<p>3.9 If I have identified hate speech (online, in the media, etc.) what practical steps should I take?</p> <p><i>(For this question, we envision a “filtering” or “journey tree” (flow chart) where the first question is, “where did you see the hate speech” → if online</i></p>	<ol style="list-style-type: none"> 1. Identify the hate speech, take an screenshot and copy the URL. 2. Make a complaint using digital means or attend physically to the public defender's office (please see 3.4). In some cases you must fill in the blanks with personal data and the description of the facts arose with the hate speech.



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<p><i>then go here, if offline, then go here → do you have evidence of it (screenshot/link to the post, recording of the speech, etc.) → then what, etc.)</i></p>	<p>a. In case you make a complaint by any digital means through the cybersecurity police department or the SSC, they will make cyber investigation and provide the public defenders’ office the results of it.</p> <p>3. The complaint of hate speech will be considered as a provocation of a crime and apology of it, and the omission to prevent a crime that attempts against the free development of personality, human dignity or physical or mental integrity. Please make sure your complaint describes every detail of the hate speech; if the hate speech has personal threats against you or your family, or somebody else specifically make sure to describe as much as possible the type of threat.</p> <p>4. The public defenders’ office will start the investigation after you make the complaint.</p>
<p>3.10 Please provide recent (within 1 year) of examples of hate speech reported in the media, and if possible, establish how was this addressed, e.g. by legal remedies or non-legal remedies.</p> <p><i>(For this question, we are looking for case studies.)</i></p>	<ul style="list-style-type: none"> The Mexican Senate approved the Olimpia Law on November 6, 2020. The fight for the law began in 2014 in the state of Puebla, where activist Olimpia Coral Melo suffered from digital violence when a video began circulating on social networks in which she, at just 18 years of age, was having sex with her boyfriend. <p>Olimpia suffered depression and attacks against herself, so she began to seek protection from digital violence.</p> <p>Digital violence will be considered as:</p> <p>"Any act through any media, which directly or indirectly promotes sexist stereotypes, advocates violence against women and girls or allows or produces a sexist hate speech".</p>



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	<p>For this reason, the criminal codes will be reformed, at federal and local level. The sanctions will go from 3 to 6 years of prison and economic fines.</p> <ul style="list-style-type: none"> • Hate speech against the women's movement in Mexico. As part of the celebration of International Women's Day, Mexicans came together to make a demonstration in different parts of the city, demanding to be heard and curb the current gender-based violence. In response, users of social media fuelled hate speech against women to physically assault them at the demonstration. <p>As a result, the cybersecurity entity in Mexico City started an online investigations against the individuals behind such hate speech. No further information about the public defenders' office was found.</p> <ul style="list-style-type: none"> • The Johnny Escutia case arose in Mexico due to the explicit violent content against women and death threats to a Mexican female blogger in his song lyrics. <p>The Ministry of the Interior stated that no incitation to violence against women will be tolerated and measures will be taken, the National Commission to Prevent and Eradicate Violence Against Women ("<i>Comisión Nacional para Prevenir y Erradicar la Violencia contra las Mujeres</i>" "CONAVIM") filed a complaint at the General Attorney of the Republic ("<i>Fiscalía General de la República</i>" or FGR"), against the rapper for inciting hatred against women.</p>
<p>3.11 Please provide examples of cases related to hate speech / incitement of violence.</p>	<ul style="list-style-type: none"> • Hate speech against the women's movement in Mexico. As part of the celebration of International Women's Day, Mexicans came together to make a demonstration in different parts of the city, demanding to be heard and curb the current gender-based



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	<p>violence. In response, users of social media fuelled hate speech against women to physically assault them at the demonstration.</p> <p>As a result, the cybersecurity entity in Mexico started investigations against the individuals behind said hate speech.</p> <ul style="list-style-type: none">• Hate speech against transgender people during the women’s movement in Mexico. During the march, there was physical aggression against transgender people by a group of people who only recognize women by the biological birth gender. Such aggressions have been encouraged due to hate speech by a self-denominated group called Transgender Exclusionary Radical Feminism.• Yalitza Aparicio, actress from Roma. As a result of her Oscar nomination she received hate speeches due to her race (indigenous) and in the past weeks she has been attacked because she published her first article in The New York Times.• In May this year, a rapper known as Johnny Escutia in Mexico that identified himself as “King of the Furia” streamed songs in Spotify with explicit violent content against woman and death threats to a Mexican Blogger. Several women have pointed out him as their stalker and Spotify removed Johny Escutia music around May 16, 2020 and are no longer available in the platform because his songs were considered as hate speech. Other platforms haven’t taken any actions regarding the removal of his music. <p>The Ministry of the Interior stated that no incitation to violence against women will be tolerated and measures will be taken, the National Commission to Prevent and Eradicate Violence Against Women (“<i>Comisión Nacional para Prevenir y Erradicar la Violencia contra las Mujeres</i>” “CONAVIM”) filed a complaint before the General Attorney of the</p>
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	Republic (“Fiscalía General de la República” or FGR”), against the rapper for inciting hatred against women.
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Region: Europe



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Jurisdiction: Europe

Law Firm / Office: Hogan Lovells Brussels

Disclaimer: This contribution is up-to-date as of 1st December 2020 and was prepared before the release of the proposal for EU Digital Services Act, which is therefore not reflected below.

1. International and Regional Frameworks (NOTE: this section <u>only</u> to be filled up by the teams working on international and EU law)	
1.1 What are the international law standards on hate speech with reference to the UN Conventions, General Comments and the decisions of the Thematic Mechanisms / Special Rapporteur reports?	N/A
1.2 Are there any relevant decisions on hate speech arising from the European Convention of Human Rights, the American Convention of Human Rights and the African Convention of Human Rights?	<p>The relevant decisions on hate speech arising from the European Convention on Human Rights ("Convention") are summarized in the recently (March 2020) published factsheet on hate speech, compiling the European Court of Human Rights' understanding of hate speech and its rulings on the issue in relation to the human rights articles of the Convention.</p> <p>The essence of the European Court of Human Rights' position with regards to hate speech is reflected in its judgment of 6 July 2006, Erbakan v. Turkey, where the Court affirmed that "[T]olerance and respect for the equal dignity of all human beings constitute the foundations of a democratic, pluralistic society. That being so, as a matter of principle, it may be considered necessary in certain democratic societies to sanction or even prevent all forms of expression which spread, incite, promote or justify hatred based on intolerance".</p> <p>The European Court of Human Rights has adjudicated various claims brought by individuals having been convicted for hate speech offences by their national judiciary who argued that their</p>



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	<p>conviction violated their right to freedom of expression. The right to freedom of expression is not unlimited, as shown by Article 10(2) of the Convention, which posits that the right may legitimately be restricted, provided that the restrictions are prescribed by law and are necessary in a democratic society. The cases described below show that there is a general tension between convictions for hate speech and the right to freedom of expression, which requires a case-by-case assessment. Indeed, the European Court of Human Rights's case law with relation to the freedom of expression and hate speech is very casuistic.</p> <p>Regarding the freedom of expression (protected by Article 10 of the Convention), the European Court of Human Rights has clarified that the right “<i>is applicable not only to ‘information’ or ‘ideas’ that are favourably received or regarded as inoffensive or as a matter of indifference, but also to those that offend, shock or disturb the State or any sector of the population</i>” (Handyside v. the United Kingdom), recognising that democratic society is not without its rough edges and pluralistic public debate necessarily involves disagreement and confrontation between opposing viewpoints. Thus, such disagreement and confrontation ordinarily fall within the scope of the protection offered by Article 10.</p> <p>In that regard, the limit to the protection of free speech is determined by Article 17 of the Convention, which contains a traditional impediment on the abuse of a right. Although the Court has not always applied Article 17 consistently, it generally tends to invoke it in order to ensure that the protection conferred by Article 10 is not extended to racist, xenophobic or anti-Semitic speech; statements denying, disputing, minimising or condoning the Holocaust, or (neo-)Nazi ideas. As such, the Court has routinely held cases involving these types of expression to be manifestly unfounded and therefore inadmissible.</p> <p>In particular, the Court found that there had been <u>no</u> violation of an individual's right to freedom of expression in cases of:</p>
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	<ul style="list-style-type: none"> - a member of an extreme right wing party for anti-Muslim hate speech displaying a poster depicting the Twin Towers in flames with the words “Islam out of Britain – Protect the British People” on the window of his flat (Norwood v UK, 2004); - a school teacher for incitement to racial hatred for an article in the school newspaper (Seurot v France, 2004); - an owner and editor of a newspaper for incitement to anti-Semitic racial hatred (Pavel Ivanov v Russia, 2007); - an author of a piece on Holocaust denial (Garaudy v France, 2003); - a comedian for anti-Semitic insults through performance (M’Bala M’Bala v France, 2015); and - an individual for posting a picture of a Nazi leader and swastika on a blog (Nix v Germany, 2018). <p>Nevertheless, the Court ruled that convictions for hate speech offences could in other situations violate an individual's right to freedom of expression. A number of noteworthy examples include:</p> <ul style="list-style-type: none"> - an individual having displayed a striped Arpád flag with controversial historical connotations near a demonstration against racism and hatred (Fáber v Hungary, 2012); - a leader of an Islamic sect defending the Sharia without calling for violence to establish it (Günduz v Turkey, 2003); or - a journalist having aided and abetted dissemination of racist statements in a televised interview of an extreme right wing group with a non-racist purpose (Jersild v Denmark, 1994).
<p>2. Definition of hate speech</p>	
<p>2.1 What is the definition of hate speech in your country?</p>	<p>In Europe, two non-binding Recommendations from the Council of Europe to its Member States have given a form of definition of Hate Speech (note that the Council of Europe is an international</p>



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	<p>organisation that is not to be confounded with the European Union; it has 47 Member States the bulk of which are located on the European Continent).</p> <p>In particular, Recommendation No R 97(20) 30.10.1997 of the Committee of Ministers of the Council of Europe on "hate speech", defines "hate speech" as <i>"all forms of expression which spread, incite, promote or justify racial hatred, xenophobia, antisemitism or other forms of hatred based on intolerance, including: intolerance expressed by aggressive nationalism and ethnocentrism, discrimination and hostility against minorities, migrants and people of immigrant origin"</i>.</p> <p>Moreover, the General Policy Recommendation No 15 on "Combating hate speech" adopted on 8 December 2015 by the European Commission against Racism and Intolerance (ECRI, a human right body of the Council of Europe) defines "hate speech" as <i>"the use of one or more particular forms of expression – namely, the advocacy, promotion or incitement of the denigration, hatred or vilification of a person or group of persons, as well any harassment, insult, negative stereotyping, stigmatization or threat of such person or persons and any justification of all these forms of expression – that is based on a nonexhaustive list of personal characteristics or status that includes "race", colour, language, religion or belief, nationality or national or ethnic origin, as well as descent, age, disability, sex, gender, gender identity and sexual orientation"</i>.</p> <p><u>Position of the European Union (EU)</u></p> <p>The EU Member States are bound by the European Council's Framework Decision 2008/913/JHA of 28 November 2008 on "combating certain forms and expressions of racism and</p>
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	<p>xenophobia by means of criminal law” and the European Council is in charge of assessing compliance by Member States with their obligations under the Framework Decision¹.</p> <p>The Council's Framework Decision, even without literally defining "hate speech", provides that <i>"each Member State shall take the measures necessary to ensure that the following intentional conduct is punishable: [...] publicly inciting to violence or hatred directed against a group of persons or a member of such a group defined by reference to race, colour, religion, descent or national or ethnic origin; [...] publicly condoning, denying or grossly trivialising crimes of genocide, crimes against humanity and war crimes as defined in Articles 6, 7 and 8 of the Statute of the International Criminal Court [...]"</i> and " in <i>"Article 6 of the Charter of the International Military Tribunal appended to the London Agreement of 8 August 1945 [...]"</i>.</p> <p>The definition of hate speech content could be impacted by the current works and reflection under the aegis of EU institutions in relation to the EU Digital Services Act; which is currently under preparation.</p>
<p>2.2 Does the legal definition of hate speech require threats of violence / incitement to violence?</p>	<p>No. The definition of "hate speech" contained in the Recommendations mentioned under answer 2.1 includes, but it is not limited to threats of violence/incitement to violence. Similarly, the European Council's Framework Decision 2008/913/JHA of 28 November 2008 applies to both violence and hatred.</p>
<p>2.3 Would the definition cover speech and behaviour which incites hatred (not necessarily violence) towards a group?</p>	<p>Yes. The definition of "hate speech" contained in the General Policy Recommendation No 15 on "Combating hate speech" of the Council of Europe covers forms of expression which incite the <i>"denigration, <u>hatred</u> or vilification of a person or group of persons"</i>.</p>

¹ The legal basis for the Framework Decision is Articles 29, 34 and 36 of the Treaty on European Union concerning police and judicial cooperation in criminal matters. As provided by Article 2 of the Treaty on European Union and Article 5 of the Treaty establishing the European Community, the EU may adopt measures, such as the Framework Decision, in accordance with the principle of subsidiarity where the objective of the measure can be better achieved by legislating at the EU level.



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	<p>Similarly, the definition of "hate speech" contained in the Council of Europe Recommendation No R 97(20) 30.10.1997 covers "all forms of expression which [...] <i>incite, [...] racial hatred, ...</i>".</p> <p>At EU level, the European Council's Framework Decision 2008/913/JHA of 28 November 2008 applies to both violence and hatred.</p>
<p>2.4 Does hate speech cover speech that draws on hateful, hostile, or supremacist beliefs directed at a group that is threatened and likely to cause them harm?</p>	<p>The definition of "hate speech" contained in the Council of Europe Recommendations mentioned under answer 2.1 is not limited to groups that are threatened and does not require the likelihood to cause harm to such groups.</p> <p>Similarly, at EU level, the European Council's Framework Decision 2008/913/JHA of 28 November 2008 is not limited to groups that are threatened or to speeches that are "likely" to cause harm. However, Article 1(2) of the Framework Decision states that "<i>Member States may choose to punish only conduct which is either carried out in a manner likely to disturb public order or which is threatening, abusive or insulting</i>".</p>
<p>2.5 Does the definition permit religious beliefs and speech which discriminates against particular communities – are there any limitations to religious beliefs and speech which discriminated against particular groups?</p>	<p>The Council of Europe Recommendation 1805 (2007) on "blasphemy, religious insults and hate speech against persons on grounds of their religion" clarifies (Recital 4) that "<i>with regard to blasphemy, religious insults and hate speech against persons on the grounds of their religion, the state is responsible for determining what should count as criminal offences within the limits imposed by the case law of the European Court of Human Rights. In this connection, the Assembly considers that blasphemy, as an insult to a religion, should not be deemed a criminal offence.</i>"</p> <p>Under the Recommendation, Member States are recommended to ensure that national law and practice: (i) "<i>permit open debate on matters relating to religion and beliefs and do not privilege a particular religion in this respect, which would be incompatible with Articles 10 and 14 of the Convention</i>"; (ii) "<i>penalise statements that call for a person or a group of persons to be subjected</i></p>



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	<p><i>to hatred, discrimination or violence on grounds of their religion as on any other grounds"; (iii) "prohibit acts which intentionally and severely disturb the public order and call for public violence by references to religious matters, as far as it is necessary in a democratic society in accordance with Article 10, paragraph 2, of the Convention"; (iv) "are reviewed in order to decriminalise blasphemy as an insult to a religion".</i></p>
<p>3. Remedies and recourse for hate speech</p>	
<p>3.1 If I am the victim of hate speech, what is my recourse?</p>	<p>No European-wide direct form of recourse is open to victims of hate speech. Rather, recourses for victims of hate speech are available at national level in the Member States of the Council of Europe and/or the EU.</p>
<p>3.2 What are the criminal legal remedies for hate speech?</p>	<p>In Europe, the criminal legal remedies for hate speech are established at national level in the Member States of the Council of Europe and/or the EU.</p> <p>However, at EU level, Article 3 of the European Council's Framework Decision 2008/913/JHA of 28 November 2008 provides that each Member State shall take the necessary measures to ensure that hate speech "<i>is punishable by effective, proportionate and dissuasive criminal penalties [...] of a maximum of at least between 1 and 3 years of imprisonment.</i>" Moreover, Article 8 of the Framework Decision requires Member States to "<i>take the necessary measures to ensure that investigations into or prosecution of the conduct</i>" of hate speech "<i>shall not be dependent on a report or an accusation made by a victim of the conduct, at least in the most serious cases where the conduct has been committed in its territory</i>". The Framework Decision</p>



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	<p>is complemented by the Victims' Rights Directive², which amongst other things aims to ensure justice, protection and support for victims of hate crimes and hate speech.</p> <p>After the adoption of the Framework Decision, the Council has actively monitored its implementation in the EU Member States and issued reports summarizing the findings of the monitoring activity and, in turn, making recommendations to EU Member States. In various occasions the Council has openly criticised Member States, identifying gaps in their legislations, for not explicitly prohibiting hate speech.</p> <ul style="list-style-type: none">• In particular, the Council published a report on Hungary in 2015 recommending that the Hungarian authorities should move to punish hate speech, that public leaders should take a hard stance against racist and homophobic speech, that a policy against segregation in school should be put in place and that the authorities should refrain from forcing out Roma from their homes without ensuring alternative housing.• Similarly, in 2015, the Council adopted a report on Poland finding that Poland's criminal code didn't explicitly prohibit incitement to violence, hatred and discrimination, or public insults and defamation, or the making of threats, on grounds of sexual orientation or gender identity. The Council recommended that the Polish authority should bring the country's legislation in line with the Convention, that the criminal code should be reviewed to punish racism and racial discrimination, and that the dignity and the equality of LGBT people be enshrined in the Polish law.• Moreover, in its report on Albania of 2015, the Council identified gaps in legislation, hate speech by politicians, increased used of internet for spreading racism and
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² Directive 2012/29/EU requires Member States to ensure a fair and non-discriminatory treatment of victims of crime, with particular attention to victims of crime committed with a bias or discriminatory motive. See the 2017 paper on key principles of victims' support for the links between the Victims' Rights Directive and the protection afforded against hate crimes; http://ec.europa.eu/newsroom/just/document.cfm?doc_id=48874.



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	<p>intolerance, incoherence in the strategies for Roma inclusion and intolerance vis-à-vis LGBT people similar to those identified in the cases of Hungary and Poland.</p> <ul style="list-style-type: none">• Furthermore, in 2019, the Council published a report on the Russian federation expressing its concerns that racist and homo/transphobic hate speech was commonly used by politicians and religious leaders and was widespread in Russian football. The Council found that racial profiling had not been defined and prohibited by law and this practice remained widespread, targeting in particular migrants from Central Asia and the Caucasus, as well as Roma. Among its recommendations, the Council requested that the anti-extremism legislation and its application should be revised to ensure that it is not used to suppress legitimate criticism of official policies, political opposition or religious beliefs. <p>In addition to the Council, the Commission has also monitored the transposition of the Framework Decision into the legal systems of the EU Member States. In its Communication COM(2020) 565 final, “A Union of equality: EU anti-racism action plan 2020-2025”, the Commission stated that <i>“Serious concerns exist about the extent to which national criminal codes correctly criminalise hate speech and hate crimes. As a matter of priority, the Commission will make a comprehensive effort to ensure a full and correct transposition and implementation of the Framework Decision across the EU, particularly where the definition of hate speech or the criminalisation of hate crime are not correctly transposed into national law and where necessary launch infringement procedures.”</i></p> <p>Lastly, in its Communication COM(2020) 698 final, “Union of Equality: LGBTIQ Equality Strategy 2020-2025”, the Commission stated that <i>“At European level, while the EU has adopted legislation criminalising hate crime and hate speech based on racism and xenophobia⁵³, there is no specific EU-level sanction for anti-LGBTIQ hate speech and hate crime. As a first important step, in 2021, the Commission will present an initiative to extend the list of ‘EU crimes’ under Article 83 (1) of</i></p>
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	<i>the Treaty on the Functioning of the European Union (TFEU) to cover hate crime and hate speech, including when targeted at LGBTIQ people.”</i>
3.3 Are there civil legal remedies available – compensation / damages – for hate speech?	<p>As indicated in response to the previous question, no European-wide direct form of recourse is open to victims of hate speech, including in respect of civil legal remedies. The civil legal remedies for hate speech are established at national level in the Member States of the Council of Europe and/or EU.</p> <p>The possibility for Member States of the EU to punish hate speech by imposing civil penalties is expressly provided for by Article 6 of the European Council's Framework Decision 2008/913/JHA of 28 November 2008. Article 6(1) provides indeed that each Member State shall take the necessary measures to ensure that a legal person held liable of hate speech "<i>is punishable by effective, proportionate and dissuasive penalties, which shall include criminal or non-criminal fines and may include other penalties, such as: (a) exclusion from entitlement to public benefits or aid; (b) temporary or permanent disqualification from the practice of commercial activities; (c) placing under judicial supervision; (d) a judicial winding-up order.</i>"</p>
3.4 Are there regulatory frameworks governing the online news media which allow individuals to complain?	<p>At EU level, there are various regulatory initiatives that govern internet hate speech. However, these do not call into being a direct means for individuals to complain about internet hate speech. Rather, these regulate how EU Member States are to implement measures under domestic law to criminalise internet hate speech and limit the liability of internet service providers hosting illegal content. The remedies available to individuals against internet hate speech will therefore be governed by national law in the EU Member States.</p> <p>It is, however, worth mentioning that the Council of Europe's Additional Protocol to the Convention on Cybercrime (28 January 2003) requires the ratifying states (all EU Member</p>



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	<p>States, except for Ireland) to criminalise, under their domestic laws, when committed "<i>intentionally and without right</i>", (a) "<i>distributing, or otherwise making available, <u>racist and xenophobic material to the public through a computer system</u></i>" ; (b) "<i>threatening, through a computer system, with the commission of a serious criminal offence as defined under its domestic law, (i) persons for the reason that they belong to a <u>group, distinguished by race, colour, descent or national or ethnic origin, as well as religion</u>, if used as a pretext for any of these factors, or (ii) a group of persons which is distinguished by any of these characteristics</i>"; (c) "<i>insulting publicly, through a computer system, (i) persons for the reason that they belong to a <u>group distinguished by race, colour, descent or national or ethnic origin, as well as religion, if used as a pretext for any of these factors</u>; or (ii) a group of persons which is distinguished by any of these characteristics</i>"; (d) "<i>distributing or otherwise making available, through a computer system to the public, material which denies, grossly minimises, approves or justifies acts constituting <u>genocide or crimes against humanity</u>, as defined by international law and recognised as such by final and binding decisions of the International Military Tribunal, established by the London Agreement of 8 August 1945, or of any other international court established by relevant international instruments and whose jurisdiction is recognised by that Party</i>" (Article 3).</p> <p>Furthermore, the EU Directive 2000/31/EC of 8 June 2000 (E-Commerce Directive) provides for the general legal framework for illegal content removal by hosting service providers³. Illegal content in the EU is: the incitement to terrorism⁴, xenophobic and racist speech that publicly</p>
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³ Building on this general legal framework, the Commission has reinforced and strengthened the fight against illegal content online with a series of regulatory and non-regulatory initiatives. The regulatory initiatives include the Directives combatting the child sexual abuse material 2011/93/EU, combatting terrorism (EU) 2017/541, as well as the recently agreed revision of the Directive on audio-visual media services 2016/0151 (COD), and the proposal for a Directive on Copyright 2016/0280 (COD). In addition, the Commission's Recommendation on measures to effectively tackle illegal content online C(2018)1177, and the Communication on tackling illegal content online COM 2017/555 cover all types of illegal content and offer guidance to hosting service providers and authorities.

⁴ Directive combatting terrorism (EU) 2017/541.



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	<p>incites hatred and violence⁵, as well as child sexual abuse material⁶. The European Commission may introduce fines and sanctions for platforms that repeatedly violate new obligations on managing illegal content online as part of the forthcoming Digital Services Act.⁷</p> <p>Moreover, different online platforms (Facebook, Microsoft, Twitter, YouTube, Instagram, Google+, Snapchat, Dailymotion and Jeuxvideo.com) have adopted the EU Code of conduct on countering illegal hate speech online, agreed with the European Commission. However, this Code of conduct does not provide for means for individuals to complain.</p> <p>Finally, although the European Council's Framework Decision 2008/913/JHA of 28 November 2008 does not specifically mention the Internet, it requests the EU Member States to ban any form of public display inciting to violence or hatred directed against certain groups, including display by "<i>public dissemination or distribution of tracts, pictures or other material</i>" and therefore also public display of xenophobia and racism on the web. Indeed, in relation to the draft proposal that the European Commission submitted to the Council in 2001, which was the basis for adopting the Framework Decision, the Commission confirmed its willingness to include the Internet in the scope of the Framework Decision. The Commission states on its website that, in relation to the draft proposal, it was intended to "<i>ensure that racism and xenophobia are</i></p>
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⁵ The Audiovisual Media Services Directive 2010/13/EU reinforces the protection of viewers (with particular regard to the safety of those most vulnerable, such as minors), extends the rules regarding hate speech to video-sharing platforms, and fosters cultural diversity in audiovisual media, at the same time as introducing new independence requirements for national media regulators and safeguarding media pluralism. In this regard, on 23 November 2020, the European Commission launched [infringement procedures](#) against 23 Member States and the United Kingdom for failing to transpose the Audiovisual Media Services Directive into national law. The deadline for transposition expired on 19 September 2020 and only Denmark, Hungary, the Netherlands and Sweden had notified transposition measures and declared their notification complete.

⁶ Directive combatting the child sexual abuse material 2011/93/EU.

⁷ [Members of European Parliament](#) call for a strict distinction to be made between illegal content, punishable acts and illegally shared content on the one hand, and harmful content on the other (the legal liability regime should concern "illegal content" only as defined in EU or national law). Harmful content, hate speech and disinformation should be addressed through enhanced transparency obligations and by helping citizens to acquire media and digital literacy regarding dissemination of such content. In terms of online content that is deemed "harmful" but not illegal, the Commission is likely to refrain from introducing stringent new rules even though this remains to be confirmed as draft new regulations are still under preparation and not public.



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	<p><i>punishable in all Member States by effective proportionate and dissuasive criminal penalties, which can give rise to extradition or surrender and, second, to improve and encourage judicial cooperation by removing potential obstacles. The proposal will also address the worrying issue of racist and xenophobic content on the Internet. The basic idea would be contained in the principle, what is illegal off-line is illegal online."</i> In its Communication COM(2020) 565 final, "A Union of equality: EU anti-racism action plan 2020-2025", the Commission further clarified that <i>"the Framework Decision requires Member States to criminalise public incitement to violence or hatred, on the grounds of colour, religion, descent or national or racial or ethnic origin, including when committed online."</i></p>
<p>3.5 Is the test for hate speech used by any Social Media / Press / Online regulatory bodies the same as the criminal law definitions?</p>	<p>The EU Code of conduct on countering illegal hate speech online recognises that the same test for hate speech applies to IT Companies and to the European Commission and EU Member States and that this test is the one contained in the definition of hate speech under the Framework Decision 2008/913/JHA of 28 November 2008.</p> <p>In particular, the Code of con</p> <p>duct states that <i>"(t)he IT Companies also share the European Commission's and EU Member States' commitment to tackle illegal hate speech online. Illegal hate speech, as defined by the Framework Decision 2008/913/JHA of 28 November 2008 on combating certain forms and expressions of racism and xenophobia by means of criminal law and national laws transposing it, means all conduct publicly inciting to violence or hatred directed against a group of persons or a member of such a group defined by reference to race, colour, religion, descent or national or ethnic origin. The IT Companies and the European Commission also stress the need to defend the right to freedom of expression, which, as the European Court of Human Rights has stated, "is applicable not only to "information" or "ideas" that are favourably received or regarded as inoffensive or as a matter of indifference, but also to those that offend, shock or disturb the State or any sector of the population".</i></p>



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<p>3.6 Do public and private institutions have to comply with the same duties to avoid hate speech?</p>	<p>No. At EU level, the European Council's Framework Decision 2008/913/JHA of 28 November 2008 differentiates between public and private institutions. Under Article 5 of the Framework Decision, legal persons must be held liable by Member States for hate speech. Legal persons, however, under the Framework Decision refer only to private institutions or to public institutions when they do not exercise their State authority. Indeed, under Article 5(4) of the Framework Decision, 'legal person' means "<i>any entity having such status under the applicable national law, with the exception of States or other public bodies in the exercise of State authority and public international organisations.</i>"</p>
<p>3.7 If I am accused of hate speech, what is my recourse?</p>	<p>An individual being condemned for hate speech in a Member State of the Council of Europe or the EU can file an application with the European Court of Human Rights alleging that the Member State has breached one or more of the fundamental human rights set out in the Convention and its Protocols.</p> <p>In particular, an individual can complain that he/she is entitled to the protection of Article 10 of the Convention (freedom of expression). Under Article 10, paragraph 2, of the Convention, the Court will examine if an interference in the freedom of expression exists, if this interference is prescribed by law and pursues one or more legitimate aims, and, finally, if it is "necessary in a democratic society" to achieve these aims. The Court will evaluate the admissibility of the complaint under Article 17 of the Convention.</p> <p>Furthermore, under national law, an individual can claim that accusations of hate speech are defamatory. In this case, national courts are required, under the Convention, to strike a fair balance when protecting the values of freedom of expression (Article 10 of the Convention) and the right to respect for private life (of which the right to protection of reputation is part (Article 8 of the Convention) if they come into conflict with each other (Axel Springer AG v. Germany, Judgment (Grand Chamber) of 7 February 2012, §§ 83-84). Individuals have recourse to the</p>



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	European Court of Human Rights in case they believe the national court did not strike such a fair balance.
3.8 If hate speech is occurring at my event/on my platform/in my place of work, what should I do about it?	<p>EU law does not prescribe actions to be taken in case of hate speech in a place of work or at an event. Different actions may be required by the national laws of the different EU Member States.</p> <p>Under the e-Commerce Directive, online platforms shall act "expeditiously" to remove illegal content after they have obtained knowledge of it. The Directive, however, does not define what this means in practical terms. In the current legal environment, this usually has to be decided on a case-by-case basis depending on the specific circumstances, in particular the type of illegal content, the accuracy of the notice and the potential damage caused. A Communication from the European Commission on "Stepping up the EU's effort to tackle illegal content online" of 28 September 2017 has called for faster action where serious harm is at stake, for instance in cases of incitement to commit terrorist acts.</p> <p>Following its Communication of 28 September 2017, the European Commission issued on 1 March 2018 a Recommendation on measures to effectively tackle illegal content online (such as hate speech). The recommendation requests online platforms to be more responsible in content governance and proposes a common approach to quickly and proactively detect, remove and prevent the reappearance of content online. In particular, this common approach consists of:</p> <ul style="list-style-type: none"> - clearer 'notice and action' procedures: online platforms should set out easy and transparent rules for notifying illegal content, including fast-track procedures for 'trusted flaggers'. Content providers should be informed about such decisions and have the opportunity to contest them in order to avoid unintended removal of legal content;



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	<ul style="list-style-type: none"> - more efficient tools and proactive technologies: companies should set out clear notification systems for users. They should have proactive tools to detect and remove illegal content, in particular for terrorism content and for content which does not need contextualisation to be deemed illegal, such as child sexual abuse material or counterfeited goods; - stronger safeguards to ensure fundamental rights: to ensure that decisions to remove content are accurate and well-founded, especially when automated tools are used, companies should put in place effective and appropriate safeguards, including human oversight and verification, in full respect of fundamental rights, freedom of expression and data protection rules; - special attention to small companies: the industry should, through voluntary arrangements, cooperate and share experiences, best practices and technological solutions, including tools allowing for automatic detection. This shared responsibility should particularly benefit smaller platforms with more limited resources and expertise; - closer cooperation with authorities: if there is evidence of a serious criminal offence or a suspicion that illegal content is posing a threat to life or safety, companies should promptly inform law enforcement authorities. Member States are encouraged to establish the appropriate legal obligations.
<p>3.9 If I have identified hate speech (online, in the media, etc.) what practical steps should I take?</p> <p><i>(For this question, we envision a “filtering” or “journey tree” (flow chart) where the first question is, “where did you see the hate speech” → if online</i></p>	<p>Actions to complain against hate speech are available at national level (not at EU or Council of Europe level).</p> <p>Some online platforms (Facebook, Microsoft, Twitter, YouTube, Instagram, Google+, Snapchat, Dailymotion and Jeuxvideo.com) have committed, by adopting the EU Code of Conduct on countering illegal hate speech online, to have in place clear and effective processes to allow for</p>



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<p><i>then go here, if offline, then go here → do you have evidence of it (screenshot/link to the post, recording of the speech, etc.) → then what, etc.)</i></p>	<p>notifications by users regarding illegal hate speech on their services so they can remove or disable access to such content. Therefore, a user of one of these platforms who may have identified hate speech can send a removal notification to the platform. Under the Code of Conduct, the platforms have committed to review the majority of valid notifications for removal of illegal hate speech in less than 24 hours and remove or disable access to such content, if necessary.</p>
<p>3.10 Please provide recent (within 1 year) of examples of hate speech reported in the media, and if possible, establish how was this addressed, e.g. by legal remedies or non-legal remedies.</p> <p><i>(For this question, we are looking for case studies.)</i></p>	<ul style="list-style-type: none"> • Altıntaş v. Turkey (10 March 2020) <p>This case concerned a judicial fine imposed on the applicant for an article published in 2007 in his periodical <i>Tokat Demokrat</i>, describing the perpetrators of the “Kızıldereli events”, among others as “idols of the youth”. The events in question took place in March 1972, when three British nationals working for NATO were abducted and executed by their kidnappers. The applicant was convicted in 2008 by the Criminal Court, which found that the article glorified the insurgents involved in those events. He complained in particular of a breach of his freedom of expression on account of his criminal conviction and sentence to a judicial fine.</p> <p>The Court held that there had been no violation of Article 10 (freedom of expression) of the Convention, finding that the interference with the applicant’s right to freedom of expression had not been disproportionate to the legitimate aims pursued. It took the view, in particular, that the expressions used in the article, about the perpetrators of the “Kızıldereli events” and their acts, could be seen as glorifying, or at least as justifying, violence. It took account of the margin of appreciation afforded to national authorities in such cases and the reasonable amount of the fine imposed on the applicant. Furthermore, it was important not to minimise the risk that such writings might encourage or drive certain young people, in particular the members or sympathisers of some illegal organisations, to commit similar violent acts with the aim of becoming, “idols of the youth” themselves. The expressions used had given the impression to public opinion – and in particular to people who shared similar political opinions to those</p>



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	<p>promoted by the perpetrators of the events in question – that, in order to fulfil a purpose that those individuals regarded as legitimate in terms of their ideology, the use of violence could be necessary and justified</p> <ul style="list-style-type: none">• Atamanchuk v. Russia (11 February 2020) <p>This case concerned a businessman’s criminal conviction for inciting hatred and enmity following statements about non-Russians in an article published in a local newspaper.</p> <p>The Court held that there had been no violation of Article 10 (freedom of expression) of the Convention, finding that the Russian courts had given relevant and sufficient reasons in the context of the case for prosecuting and convicting the applicant and that there had been exceptional circumstances justifying the sentences imposed on him. It noted in particular that the applicant’s sweeping remarks had not contributed to any public debate and agreed with the national courts’ assessment of them as stirring up emotions or prejudices against the local population of non-Russian ethnicity. Moreover, the courts had been justified in fining him and banning him from journalistic or publishing activities for two years, given that those sentences had been imposed in the context of legislation against hate speech. In addition, the sentences had not had any significant consequences for the applicant who was more of a businessman than a journalist.</p> <ul style="list-style-type: none">• Beizaras and Levickas v. Lithuania (14 January 2020) <p>The applicants, two young men who were in a relationship, alleged that they had been discriminated against on the grounds of sexual orientation because of the authorities’ refusal to launch a pre-trial investigation into the hate comments on the Facebook page of one of them. The latter had posted a photograph of them kissing on his Facebook page, which led to hundreds of online hate comments. Some were about LGBT people in general, while others personally threatened the applicants. The applicants submitted that they had been discriminated against on</p>
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	<p>the grounds of sexual orientation. They also argued that the refusal had left them with no possibility of legal redress.</p> <p>The Court held that there had been a violation of Article 14 (prohibition of discrimination) taken in conjunction with Article 8 (right to respect for private life) of the Convention, finding that the applicants had suffered discrimination on the grounds of their sexual orientation and that the Lithuanian Government had not provided any justification showing that the difference in treatment had been compatible with the standards of the Convention. It noted in particular that the applicants' sexual orientation had played a role in the way they had been treated by the authorities, which had quite clearly expressed disapproval of them so publicly demonstrating their homosexuality when refusing to launch a pre-trial investigation. Such a discriminatory attitude had meant that the applicants had not been protected, as was their right under the criminal law, from undisguised calls for an attack on their physical and mental integrity. The Court also held that there had been a violation of Article 13 (right to an effective remedy) of the Convention because the applicants had been denied an effective domestic remedy for their complaints.</p>
3.11 Please provide examples of cases related to hate speech / incitement of violence.	See 1.2.



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1. International and Regional Frameworks (NOTE: this section <u>only</u> to be filled up by the teams working on international and EU law)	
1.1 What are the international law standards on hate speech with reference to the UN Conventions, General Comments and the decisions of the Thematic Mechanisms / Special Rapporteur reports?	N/A
1.2 Are there any relevant decisions on hate speech arising from the European Convention of Human Rights, the American Convention of Human Rights and the African Convention of Human Rights?	N/A
2. Definition of hate speech	
2.1 What is the definition of hate speech in your country?	<p>The relevant Belgian regulation in respect of, among other offences, hate speech is spread across the so-called Anti-Racism Law of 1981 ("ARL"), the Anti-Discrimination Law of 2007 ("ADL") and the Gender-Equality Law of the same year ("GE").</p> <p>As such, the concept of "hate speech" itself is not defined. Rather, the ARL and ADL (when read in combination) serve the purpose of defining discrimination and racism offenses:</p> <ol style="list-style-type: none"> Both Acts seek to create a regulatory framework to combat discrimination on the basis of nationality, so-called race, skin color, provenance or national/ethnic heritage,



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	<p>age, sexual orientation, civil status, birth, wealth, religious beliefs or confession, political beliefs, trade union affiliation, language, health status, handicap, physical or genetic condition, gender or social background;</p> <p>2. In respect of the protected criteria contained in 1 above, the ARL and ADL prohibit any:</p> <ul style="list-style-type: none">a. Direct or indirect discrimination;b. Any directive to directly or indirectly discriminate;c. Any refusal to accommodate for a person with a handicap; ord. Any form of intimidation (ie. undesirable behavior related to one of the protected criteria under 1 above, the object or effect of which is to damage the person's dignity and create a threatening, hostile, abusive, degrading or offensive environment). <p>Hate speech would only be illegal in Belgium if (i) it relates to one of the protected criteria under 1 above (which is a very broad list), (ii) if it is either in the form of discrimination or in the form of intimidation and (iii) if done publicly and deliberately.</p> <p>Publicly is interpreted broadly and means:</p> <ul style="list-style-type: none">• Any <i>public</i> place;• Any place that is <i>not publicly</i> accessible to anyone but where a number of people with a right of presence are present to partake in discussions;• Any <i>place where – besides the victim of hate speech – a witness is present</i>;• Publicly also means any paper or digital text, image or symbol which the perpetrator distributes, sells or presents publicly; as well as paper or digital texts which, even if not publicly available/accessible, are made available to more than one person by the perpetrator.
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	<p>Deliberately means that the perpetrator "actively" encourages discrimination, hatred, violence or segregation. So his/her goal is to discriminate, hate, commit violence or segregate. It is not necessary for him/her to achieve that goal (see below, incitement).</p> <p>As will be discussed below, merely inciting hate is also a form of hate speech (see response to question 3.2.). However, inciting means: to urge, summon, ignite, or arouse someone against something or someone/some group. It is an incitement vis-à-vis others to focus hate or discrimination vis-à-vis one or more other identified persons/groups. In other words, criticism in respect of someone's political conviction, religious beliefs or other confession is thus not covered by the concept of "inciting hate speech".</p>
<p>2.2 Does the legal definition of hate speech require threats of violence / incitement to violence?</p>	<p>No – this is not required. The mere incitement to hatred, for instance, suffices to fall within the definition of hate speech (and thus commit a hate speech offence). In response to question 3.10 and 3.11, examples of precedent is provided in respect of which non-violent hate speech has been condemned.</p>
<p>2.3 Would the definition cover speech and behaviour which incites hatred (not necessarily violence) towards a group?</p>	<p>Yes. See the response to question 2.1 as well as the response to question 3.2.</p>
<p>2.4 Does hate speech cover speech that draws on hateful, hostile, or supremacist beliefs directed at a group that is threatened and likely to cause them harm?</p>	<p>Yes. See the response to question 2.1 as well as the response to question 3.2. Hate speech also covers speech that draws on hateful, hostile or supremacist beliefs directed at a group. In addition, to be a hate speech offence the decimator of the hate speech must effectively have (had) the intention to incite hate vis-à-vis a well-defined group. However, it is not required that said group is <i>threatened and likely to be caused harm</i>. It is worth mentioning, in that respect, that simple negation of the Holocaust, for instance, is itself a hate speech offence that can be punished by criminal sanctions.</p>



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<p>2.5 Does the definition permit religious beliefs and speech which discriminates against particular communities – are there any limitations to religious beliefs and speech which discriminated against particular groups?</p>	<p>As a general point, such religious beliefs and speech would be at odds with the protections granted by the ARL, ADL and GE Acts. In other words, religious beliefs and speech which discriminates against other/particular groups or communities <i>can be considered hate speech</i>.</p> <p>In the past, Belgian courts have condemned certain individuals for hate speech crimes which consisted of these individuals calling for discrimination, defamation and even violence vis-à-vis followers of other religions.</p>
<p>3. Remedies and recourse for hate speech</p>	
<p>3.1 If I am the victim of hate speech, what is my recourse?</p>	<p>A victim of hate speech has several possibilities of recourse under Belgian law:</p> <ul style="list-style-type: none"> - <u>Complaint with the police</u>: victims of hate speech offences can file a complaint with the police. The police may, after an initial investigation and depending on the gravity of the facts, transfer the complaint to the Public Prosecutor's Office. The latter can decide at its own discretion whether or not to prosecute the alleged offender. The victim can then intervene in the case as a "civil party" and request access to the file, request that additional investigative acts are performed, and in the end obtain potential damages. - <u>Bring a criminal case directly (through direct summons)</u>: victims of hate speech can directly summon the alleged offender before a criminal court. In this case; the evidence is not gathered by the judicial authorities (ie. Prosecutor), but by the injured party. This is a very exceptional approach under Belgian criminal law where, normally, the evidentiary burden is carried by the Public Prosecutor. The criminal court will rule both on the criminal and civil liability aspects of a case.



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	<ul style="list-style-type: none">- <u>Direct summons in a civil court</u>: victims of hate speech can directly summon the alleged offender before a civil court. This way, victims of hate speech can claim damages for the harm suffered.- <u>Complaint with Unia (the Belgian center for equality of rights)</u>: victims of hate speech can complain to Unia. Unia is an independent public institution fighting discrimination and promoting equal opportunities). <p>Unia prioritises freedom of speech and will only envisage taking legal action against hate speech when it is absolutely necessary (ie. when the hate speech in question is in breach of the ARL, ADL or GE Act). For instance, when a person or group deliberately incites others to discriminate, hate or use violence, Unia will likely act in favor of protecting victims of hate speech rather than in defence of freedom of speech.</p> <p>Moreover, the hate speech in question must be considered on the basis of one of the protected criteria of the ARL, ADL or GE Act (see above).</p> <p>In many instances, Unia's role is a supportive one. Unia will indeed privilege informing the people/groups involved about their rights and obligations under the Belgian legal framework coined by the ARL, ADL or GE Act. UNIA dedicates considerable resources and effort to reaching constructive, out of court resolutions of cases (discrimination cases in particular). =Unia's view is that this approach improves the chances of quick, permanent and structured solutions. In this way Unia aims at establishing a preventive approach to, among other, discrimination cases. Unia will nonetheless go to court if an amicable solution does not appear possible, if the case is highly relevant from a social point of view (to establish a legal precedent, for example, or clarify a point of law) or if the facts of the case are particularly serious (such as flagrant hate crime).</p>
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<p>3.2 What are the criminal legal remedies for hate speech?</p>	<p><u>Criminal legal remedies under the ADL</u></p> <p><i>The ADL (articles 22-26) provides for various criminal legal remedies for discrimination/hate speech.</i></p> <p><u>Article 22: Imprisonment from one month to one year and with a fine from fifty euros to one thousand euros (multiplied by 8) or with one of those penalties alone for the following offences</u></p> <ul style="list-style-type: none">• <i>Inciting discrimination</i> against a person because of one of the protected criteria (see section 1 above);• <i>Inciting hatred or violence</i> against a person because of one of the protected criteria (see section 1 above);• <i>Inciting discrimination or segregation</i> vis-à-vis a group, a community or its members because of one of the protected criteria (see section 1 above);• <i>Inciting hatred or violence</i> against a group, a community or its members because of one of the protected criteria (see section 1 above). <p>PLEASE NOTE THAT INCITING UNDER THE ADL AND THE ARL MEANS: to urge, summon, ignite, or arouse someone against something or someone/some group.</p> <p>PLEASE NOTE: that any of the above offences which has been grounded it <u>demonstrates hate</u> vis-à-vis someone's or some group's origin, sexual orientation, handicap or any of the other protection criteria (see above, question 1), will be <u>considered as an aggravating circumstance both under the ADL and the ARL.</u></p>
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	<p>Article 23: Imprisonment from <u>two months to two years</u> is the penalty when public officers or individuals with public authority or public power (or their superiors) are involved in the hate speech offences described above (in so far as these people are performing an offence while exercising their duties).</p> <p><u>Criminal legal remedies under the ARL</u></p> <p><i>The ARL (articles 20-28) also provides for various legal remedies for racism/hate speech.</i></p> <p>Article 20 and 21: Imprisonment from <u>one month to one year</u> and with a <u>fine from fifty euros to one thousand euros (multiplied by 8)</u> or with one of those penalties alone for the following offences:</p> <ul style="list-style-type: none">• <i>The same offences as article 22 ADL above; and</i>• <i>Denying, grossly minimizing, attempting to justify or approving of facts corresponding to a crime of genocide, a crime against humanity or a war crime</i> (ie. established by a final decision of an international court, knowing or presumed to know that this behavior is either a person, or could expose a group, community or members thereof to discrimination, hatred or violence based on one of the protected criteria or religion) – this is the so-called anti-negationism provision under Belgian law;• <i>Disseminating ideas based on racial superiority or racial hatred</i> <p>Article 22: Any person belonging to a group or association which manifestly and repeatedly proclaims discrimination or segregation on account of one of the protected criteria (see section 1 above), or which collaborates with such a group or association, shall be punished with</p>
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	<p>imprisonment of between <u>one month and one year</u> and a <u>fine of between fifty and one thousand euros (multiplied by 8)</u> or one of these penalties alone.</p> <p><u>Article 23</u>: Imprisonment from <u>two months to two years</u> is the penalty when <u>public</u> officers or individuals with <u>public authority</u> or <u>public power</u> (or their superiors) are involved in the hate speech offences described above (in so far as these people are performing an offence while exercising their duties). The same penalties shall be applied when the acts are committed against a group, a community or its members, because of one of the protected criteria.</p> <p><u>Article 24</u>: The person who, in respect of the availability of goods/services of a public nature, discriminates against a person/group on the basis of one of the protected criteria (see above), will be punished with imprisonment from <u>one month to one year</u> and with a fine of <u>fifty euros to one thousand euros (multiplied by 8)</u> or with one of those penalties alone.</p> <p>The same penalties are applied in case of discrimination against a group, a community or its members on the basis of one of the protected criteria.</p> <p><u>Article 25</u>: A person who, in the context of employment relations*, discriminates against a person or group on the basis of one of the protected criteria (see above) shall be punishable by imprisonment of between <u>one month and one year</u> and by a fine of between <u>EUR 50 and EUR 1,000 (multiplied by 8)</u>.</p> <p><u>Article 27</u>: In the event of infringement of Articles 20 to 26, the sentenced person may also be sentenced to <u>disqualification of public office</u> in accordance with Article 33 of the Penal Code.</p> <p>* employment relations context means: the context relative to employment, conditions for access to employment, the working conditions, the conditions for hiring/firing employees and all of that both in the public and private sector.</p>
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<p>3.3 Are there civil legal remedies available – compensation / damages – for hate speech?</p>	<p>Civil damage claims are available for victims of hate speech offences, provided that it can be demonstrated (either by the Prosecutor in the context of a criminal procedure or by the victim in the context of a civil procedure) that the offender inflicted actual damage on the victim, and that there is a causal link between the offence and the damage, i.e. the damage would not have occurred without the offence (article 1382 of the Civil Code).</p>
<p>3.4 Are there regulatory frameworks governing the online news media which allow individuals to complain?</p>	<p>No, there are no specific Belgian regulatory frameworks governing the online news media which allow individuals to complain.</p> <p>As such, the individual can report a hate speech offence occurring online to UNIA by using UNIA's reporting form and including a link and a screenshot of the message. UNIA will investigate whether the statements fall under the legal protection of free speech. If it is a case of incitement to discrimination, hate or violence, then these are statements that are punishable by law and UNIA can take further steps (see also above).</p> <p>In addition, reference is made to initiatives at EU level which have been covered in the EU/Europe response table.</p>
<p>3.5 Is the test for hate speech used by any Social Media / Press / Online regulatory bodies the same as the criminal law definitions?</p>	<p>This is largely the case. Indeed, the relevant Belgian legislation (ARL, ADL, GE) has been brought in line with EU initiatives such as the Framework Decision 2008/913/JHA of 28 November 2008 which contains a definition of hate speech that is similar to the definition in the EU Code of conduct on countering illegal hate speech online adhered to by Social Media companies (see above).</p>



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<p>3.6 Do public and private institutions have to comply with the same duties to avoid hate speech?</p>	<p>The abovementioned regulatory framework in Belgium following the ARL, ADL and GE is applicable both to private institutions and public institutions. This does not prevent any institution, however, of taking stricter measures against hate speech or other forms of discrimination.</p>
<p>3.7 If I am accused of hate speech, what is my recourse?</p>	<p>When I am accused of hate speech, assuming the accusation is unfounded, I have two forms of recourse:</p> <ul style="list-style-type: none">• Passive recourse: I simply await an action from my accuser and defend myself on the facts (this is less costly and actually efficient in cases one can clearly and undoubtedly demonstrate that a hate speech accusation is unfounded);• Active recourse: Being wrongly accused of hate speech (or another infringement of the ARL, ADL or GE Acts) is a form of infringement to the right of freedom of expression which is itself limited in certain cases. If I am wrongly accused of hate speech, I can actively pursue the perpetrator on the basis of Article 443 <i>et. Seq.</i> of the Belgian penal code which contains provisions relative to the unlawful and criminal attaint to someone's honor and/or good name; a victim of an unfounded accusation of hate speech can then either:<ul style="list-style-type: none">a. Bring a complaint with the police/public prosecutor;b. Summon the perpetrator directly in criminal court (rare);c. Summon the perpetrator directly in civil court (rare);d. Involve Unia.



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	(See also the response to question 3.1).
<p>3.8 If hate speech is occurring at my event/on my platform/in my place of work, what should I do about it?</p>	<p>Either inform Unia or depending on the case, start judicial recourse along the lines of what has been set out in response to question 3.1. However, you should consider that:</p> <ul style="list-style-type: none"> • Whether to inform Unia or bring direct legal action will be the function of one's legal position (moderator of a forum, owner of a place where an event takes place, organizer of an event, etc.); • <u>Not</u> taking sufficient (legal) steps to combat hate speech at one's event/platform/place of work <i>can itself</i> be penalized as a form of aiding/tolerating hate speech under ARL, ADL and GE Act; • <u>Note that a hate speech accusation is a heavy accusation</u> and should be founded and not unlawfully discredit the honor and good name of a perpetrator (see response to question 3.7 above). Therefore it is always advisable to avoid making public hate speech accusations as much as possible to avoid being the subject of legal recourse.
<p>3.9 If I have identified hate speech (online, in the media, etc.) what practical steps should I take?</p> <p><i>(For this question, we envision a “filtering” or “journey tree” (flow chart) where the first question is, “where did you see the hate speech” → if online then go here, if offline, then go here → do you have</i></p>	<p>As indicated above, there is no different application of the ARL, ADL and GE acts in the off- and online environments, therefore we refer to the responses to questions 3.1 and 3.7 above.</p> <p>In sum, when you have identified hate speech (assuming it relates to a well-founded finding of hate speech in line with the ARL, ADL and GE Act), you should do the following:</p> <ol style="list-style-type: none"> 1. Does the hate speech relate to you personally? If yes, consider gathering evidence (if online, e.g. screenshots/link to the post) and consider to what extent you feel damaged;



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<p><i>evidence of it (screenshot/link to the post, recording of the speech, etc.) → then what, etc.)</i></p>	<ul style="list-style-type: none"> a. Bring a complaint with the police; b. Bring a complaint with Unia; <p>2. Does the hate speech <i>not</i> relate to you personally?</p> <ul style="list-style-type: none"> a. Consider gathering evidence (if online, e.g. screenshots/link to the posts); b. Bring a complaint with Unia.
<p>3.10 Please provide recent (within 1 year) of examples of hate speech reported in the media, and if possible, establish how was this addressed, e.g. by legal remedies or non-legal remedies.</p> <p><i>(For this question, we are looking for case studies.)</i></p>	<p>One of UNIA's tasks is to gather and disseminate court decisions which may be of use in evaluating the anti-racism and anti-discrimination legislation. Unia's Database is accessible and Dutch and in French and contains verdicts and judgements in criminal cases of discrimination, hate crime and hate messaging. The texts have been systematically anonymised and summarised. Legal and other users can access them through simple, fixed parameters or searches for specific words and text fragments.</p> <p>The database also contains verdicts and judgements in cases in which Unia was not involved in the proceedings. Unia has not received systematic information of every relevant judgement and so is unable to guarantee the database's completeness. It has, however, been a duty of the courts and employment tribunals since 2013, to inform Unia, pursuant to circular COL 13/2013 of the Board of Procurators-General, of all cases pending in relation to discrimination and hate crime and to send a copy to Unia of the verdicts and judgements delivered.</p> <p>A few recent examples include:</p> <ul style="list-style-type: none"> - Correctional Court Brussels, 3 November 2020: During the lockdown, the police went to an address where about ten people had gathered (which was forbidden at the time). A



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	<p>woman present became “hysterical”, started shouting and called a female policewoman a “dirty Arab”. She coughed and spitted on various police officers and claimed to have Covid-19. She was sentenced for insulting civil servants with aggravating circumstances.</p> <ul style="list-style-type: none"> - Belgian Court of Arbitration for Sport, 5 May 2020: At the end of a football match the opposing team's supporters shouted: "<i>les Wallons c'est du caca</i>" (free translation: the Walloons are poo-poo). The court ruled that there is no question of exercising the right to freedom of expression and that the speech was indeed insulting and offensive. The team whose supporters shouted the speech was sentenced to a fine of €1,000 with a one-year postponement. - Correctional Court Brussels, 21 April 2020: A man was being prosecuted for various offences. Upon arrest, he refused to enter the room where his counsel wished to assist him and hurled racist accusations at the lawyer of African origin. - Correctional Court Leuven, 14 February 2020: On a public bus, a passenger called out racist messages to a fellow passenger. The defendant was sentenced to six months imprisonment and a fine of €100. - Migrant boat capsized on the beach of "De Panne": Racist hate speech appeared on social media after the news that a boat with migrants capsized on the beach of "<i>De Panne</i>". On 23 January 2020, this was addressed by Prime Minister Sophie Wilmès, who announced that the federal administration is working on an inter-federal action plan against racism.
<p>3.11 Please provide examples of cases related to hate speech / incitement of violence.</p>	<p>Shortly after the amendment of article 150 of the Constitution (which provided that that press crimes motivated by racism or xenophobia are no longer adjudicated by an assize court but by an ordinary court) in 1999, "<i>Vlaams Blok</i>" (a right-wing political party) was prosecuted, not by the Public Prosecutor but by a direct summons from the Centre for Equal Opportunities and Opposition to Racism and the League for Human Rights. In the case of direct summons to a criminal court, evidence is not gathered by prosecutors, but by the injured party. On 21 April</p>



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	<p>2004, three non-profits, independent sub-organisations of the party, were convicted for infringements of the ARL by the Court of Appeal of Ghent. The ruling was as follows:</p> <p><i>"Vlaams Blok is a party that apparently and systematically incites discrimination. [...] You treat foreigners as criminals, evildoers, profiteers, unintegratable fanatics and a threat to your own people"</i>.</p> <p>The conviction was based on Article 3 ARL, which prohibits <i>"membership of and cooperation with an association which manifestly and repeatedly discriminates or proclaims discrimination"</i>. The Ghent Court of Appeal referred only to the proclamation of discrimination and stated that Vlaams Blok never actually practiced discrimination. In this case, the proclamation of discrimination was equated with two penalty provisions of the ARL: <i>"inciting hatred"</i> and <i>"inciting discrimination"</i>. The Ghent Court of Appeal found that Vlaams Blok incited hatred towards immigrants because, in order to convince the voter of its program, the party painted a stereotypical and negative picture of them. In turn, the incitement to discrimination consisted in offering the voter a political programme that the judges considered <i>"clearly discriminatory"</i>.</p> <p>Vlaams Blok stated that with this conviction the right to freedom of expression is too strongly restricted. After all, they would then no longer be allowed to criticise social problems related to immigration. However, in so far as it concerns <i>"inciting hatred"</i>, the conviction was based on the manner in which this was done.</p> <p>On 11 September 2004, the party's board declared that it would continue with the programme in any case, even if the party were to be condemned again. Vlaams Blok would then be renamed: Vlaamse Liga, Vlaams Belang, or something else. The positions would then be changed, so that a conviction would no longer be possible. Their political ideology would remain the same. Vlaams</p>
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	Blok resisted, and the matter came before the Court of Cassation, which confirmed the judgment on 9 November 2004.
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Note (December 2020): The Law Commission has recently published a consultation on Hate Crimes this September and has asked for submissions by December 2020 from stakeholders. This is a substantive development as the last publication by the Law Commission on Hate Crimes was in 2014.

International and Regional Frameworks (<i>NOTE: this section <u>only</u> to be filled up by the teams working on international and EU law</i>)	
What are the international law standards on hate speech with reference to the UN Conventions, General Comments and the decisions of the Thematic Mechanisms / Special Rapporteur reports?	
Are there any relevant decisions on hate speech arising from the European Convention of Human Rights, the American Convention of Human Rights and the African Convention of Human Rights?	
Definition of hate speech	
What is the definition of hate speech in your country?	<p>In England and Wales, there is no legal definition for "hate speech" per se however hate crime legislation protects against certain forms of threatening conduct (including speech) which stir up hatred in respect of three characteristics, race, religion and sexual orientation.</p> <p>The legislation does this in two ways: through aggravated offences, where the existence of racial or religious motivation behind an offence will be an aggravating factor; and through</p>



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	<p>enhanced sentencing provisions, which allow prosecutors to seek a more serious sentence where a crime is committed and appears to be motivated by hostility or prejudice, based on a person's disability or perceived disability; race or perceived race; religion or perceived religion; sexual orientation or perceived sexual orientation or transgender identity or perceived transgender identity.</p> <p>The above mechanisms are often employed in conjunction with “communications offences” under the Malicious Communications Act 1988 and the Communications Act 2003 which prohibit the sending of a message over a public network which is indecent or grossly offensive and is intended to cause the victim distress or anxiety. These communication offences would cover hate crimes but are not exclusively related to hate crime, and have wider application.</p> <p>The offence of stirring up hatred under the Public Order Act 1986, makes it an offence for a person to use or engage in threatening, abusive or insulting words or behaviour, or display any written material which is threatening, abusive or insulting where their intention was to stir up racial hatred; or having regard to all the circumstances, racial hatred was likely to be stirred up thereby.</p> <p>This offence extends to religious hatred and hatred based on sexual orientation, with the limitation that such words, behaviour and/or written material must be <u>threatening</u> as opposed to either abusive or insulting and there must have been an intention to stir up hatred based on religion or sexual orientation.</p> <p>There is also the offence under section 3 of the Football (Offences) Act 1991 for taking part in racist chanting at a football match.</p>
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<p>Does the legal definition of hate speech require threats of violence / incitement to violence?</p>	<p>Aggravated offences: This has the effect of making certain offences more serious if motivated by hostility towards a racial or religious group. Hostility is not defined but it can be interpreted widely, therefore not requiring threats or incitement to violence.</p> <p>Enhanced sentencing: This goes further and has the ability to enhance the sentence for any offence if motivated by hostility in relation to race, religion, disability, sexual orientation, and transgender identity. Again, hostility does not necessitate threats or incitement to violence.</p> <p>The offence of stirring up hatred under the Public Order Act: Stirring up racial hatred does not require threats or incitement to violence, as the legislation includes abusive and insulting words or behaviour.</p> <p>Stirring up hatred in relation to religion or sexual orientation does, however, require threatening words or behaviour.</p>
<p>Would the definition cover speech and behaviour which incites hatred (not necessarily violence) towards a group?</p>	<p>Aggravated offences, enhanced sentencing and stirring up racial hatred: Yes, though note that aggravated offences and enhanced sentencing require an underlying offence.</p> <p>Stirring up hatred in respect of religion or sexual orientation requires threatening words or behaviour <u>and</u> an intention to incite hatred towards the group under the Public Order Act 1986.</p>



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<p>Does hate speech cover speech that draws on hateful, hostile, or supremacist beliefs directed at a group that is threatened and likely to cause them harm?</p>	<p>Yes, both the enhanced sentencing provisions and Public Order Act offences are wide enough to cover this.</p>
<p>Does the definition permit religious beliefs and speech which discriminates against particular communities – are there any limitations to religious beliefs and speech which discriminated against particular groups?</p>	<p>In England and Wales, the prohibition of hate speech in respect of religion does still permit religious beliefs and speech which discriminates against particular communities. The Public Order Act sets out fairly broad protections in respect of religion.</p> <p>Specifically, section 29J of the Public Order Act states that the offences should not be read or applied "in a way which prohibits or restricts discussion, criticism or expressions of antipathy, dislike, ridicule, insult or abuse of particular religions or the beliefs or practices of their adherents, or of any other belief systems or the beliefs or practices of its adherents, or proselytising or urging adherents of a different religion or belief system to cease practising their religion or belief system."</p>
<p>Remedies and recourse for hate speech</p>	
<p>If I am the victim of hate speech, what is my recourse?</p>	<p>If you have been the victim of hate speech and it involves an incitement of hatred, you should report the offence to the police so the incident is investigated and properly recorded. The police may refer the incident to the Crown Prosecution Service to determine whether there should be a charge.</p> <p>If you have been victim of hate speech on social media, or another online forum you should report the post to the online platform using the "report" function available to users. This may lead the platform to remove, suspend the account or close the account down.</p>



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	<p>If you are unsure whether the hate speech involves an incitement of hatred to qualify as a hate crime, there are charitable resources such as Stop Hate UK, CST and TellMAMA which have help lines and online resources to assist you.</p>
<p>What are the criminal legal remedies for hate speech?</p>	<p>The aggravated offences and enhanced sentencing provisions are offence-specific. In both cases, the sentence would be harsher.</p> <p>Stirring up hatred offences under the Public Order Act are punishable by up to seven years' imprisonment, or a fine or both. Proceedings can only be instigated in relation to this offence with the consent of the Attorney General.</p> <p>The offence of racist chanting at a football match is punishable by a fine of up to £1000 and a football banning order which can prevent an offender from attending matches, including abroad, or even going to certain areas such as a pub or around the stadium.</p>
<p>Are there civil legal remedies available – compensation / damages – for hate speech?</p>	<p>There are a few civil causes of action which may have a "hate speech" aspect and give rise to a civil legal remedy such as compensation to the injured party (through damages), public declarations and/or an order that a person do or refrain from doing certain acts. These include:</p> <ul style="list-style-type: none">• Harassment: of which can include hate speech, where the speech is targeted at an individual, calculated and/or likely to cause harm and/or distress; and in all the circumstances is oppressive and unacceptable. The civil legal remedy for harassment is an injunction (an order to refrain from doing a certain act) and damages.



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	<ul style="list-style-type: none"> • Privacy/data protection: where a breach of privacy or data protection involves a publication of which unlawfully deploys sensitive personal data in a manner that is identifiable as "hate speech", the victim may have recourse to aggravated damages. • Employment law: hate speech targeted at an employee by another employee would likely constitute direct discrimination and give rise to a remedy of damages under the Equality Act 2010. The Act also places a duty upon employers to reasonably prevent such conduct. The victimised employee can thus bring a claim against its employer for breach of this duty and seek damages. • Private actions under the Equality Act 2010: the protections under the Equality Act 2010 also cover service providers (such as education) and occupiers of certain premises. A victim can also bring a claim under the Equality Act 2010 which arise out of such relationships and seek a remedy of damages and/or a declaration.
<p>Are there regulatory frameworks governing the online news media which allow individuals to complain?</p>	<p>There is no overarching regulatory framework for online news media in England and Wales. Whilst the Office of Communications is responsible for regulating broadcasted content, including broadcasted news content, there is no similar designated regulator for the online news media.</p> <p>Online news sources that are members of Independent Press Standards Organisation ("IPSO") and/or Independent Monitor for the Press ("IMPRESS") which are printed press organisations are subject to accuracy requirements but are not required to be impartial; whilst other online news content are self-regulated. IPSO and IMPRESS both have a framework to allow individuals to complain about published content.</p>



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<p>Is the test for hate speech used by any Social Media / Press / Online regulatory bodies the same as the criminal law definitions?</p>	<p>There is no general test for "hate speech" that is applied to Social Media outside of the criminal legal definition. In England and Wales, social media platforms are expected to be self-regulated. Tests for hate speech would differ accordingly.</p> <p>In terms of other Press / Online regulatory bodies, the test for hate speech is broader than the criminal offences. The test for hate speech generally covers the five protected characteristics in some form, being race, religion, sexual orientation, transgender identity and disability.</p> <p>In terms of broadcasted content (which includes online broadcasted content), hate speech is defined as all forms of expression which spread, incite, promote or justify hatred based on intolerance on the grounds of disability, ethnicity, gender, gender reassignment, nationality, race, religion or sexual orientation.</p> <p>IMPRESS and IPSO requires publishers not to make prejudicial or pejorative reference to a person on the basis of their age, disability, mental health, gender reassignment or identity, marital or civil partnership status, pregnancy, race, religion, sex or sexual orientation, or another characteristic that makes that person vulnerable to discrimination.</p> <p>IMPRESS members also have an obligation not to incite hatred, similar to the criminal law provision.</p>
<p>Do public and private institutions have to comply with the same duties to avoid hate speech?</p>	<p>There are no overarching regulations which impose duties on both public and private institutions to avoid hate speech.</p>



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	<p>However, the Equality Act 2010 enables private individuals to sue a person or institution (public and, in some cases, private) for discriminating against them on the basis of age, disability, gender reassignment, marital or civil partnership status, race, religion, sex or sexual orientation in various contexts, including in employment (including from the application and recruitment stage), in the provision of services, and in education. This duty to prevent discrimination would encompass, at least in part, an inherent duty to avoid hate speech on the institution.</p>
<p>If I am accused of hate speech, what is my recourse?</p>	<p>If you are accused of hate speech you should ensure you gather evidence of the incident and the context by either saving recordings, any screenshots of posts, and seeking the contact details of any witnesses of the incident.</p> <p>In terms of a criminal charge – one of the important factors will be your intention and whether you intended to stir up hate, or in respect of racial hatred, whether in the circumstances such hatred was likely to be stirred up. Accordingly, evidence of the context of the hate speech incident could be important in potentially proving a lack of intention. It is recommended you seek legal assistance.</p> <p>If no criminal charge is brought, and the post was published on social media, take down the post immediately and cooperate with the online platform to remedy the situation.</p>
<p>If hate speech is occurring at my event/on my platform/in my place of work, what should I do about it?</p>	<p>You should alert your manager or supervisor of the incident as well as the organisation and refer to the organisation's anti-discrimination policy and/or hate speech policy to determine the appropriate course of action.</p>



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	<p>Most institutions should have some form of hate speech or discrimination policy in place which will set out how the employer, event provider or platform should respond to such incidents and provide services the injured party can access i.e. counselling or time-off to recover.</p> <p>Inform someone of the incident as soon as possible. Hate speech can increase and intensify quickly, and this can damage the organisation’s reputation. A rapid response is of paramount importance to both the organisation and the group which is the target of hate speech.</p>
<p>If I have identified hate speech (online, in the media, etc.) what practical steps should I take?</p> <p><i>(For this question, we envision a “filtering” or “journey tree” (flow chart) where the first question is, “where did you see the hate speech” → if online then go here, if offline, then go here → do you have evidence of it (screenshot/link to the post, recording of the speech, etc.) → then what, etc.)</i></p>	<p>First, identify where you saw the hate speech.</p> <p>If online</p> <ul style="list-style-type: none"> • Create a body of evidence of the hate speech by taking screenshots, keeping a copy of the link to the post and taking a recording if it involves an online broadcast; • Report the hate speech to the administrator of the online platform or the online regulatory body using the reporting function on the website or by using the online complaints forum for an online regulatory body (i.e. for news media this may be IPSO or IMPRESS); and • If the hate speech is not removed from the online platform, consider contacting a third party reporting agency using a hotline such as Stop Hate UK, CST and TellMAMA who will assist you in getting the hate speech taken down or addressed. <p>If offline:</p>



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	<ul style="list-style-type: none"> • Create a body of evidence of the hate speech by taking a photo (if written or published), taking notes of the incident or taking a recording if you can do so safely; • If the hate speech was broadcast, report the hate speech to Office of Communications through the website; • If the hate speech was published in print media report the hate speech to IPSO, IMPRESS or the news organisation itself if it is self-regulated; • If the hate speech was viewed in person, report the hate speech to a third party reporting agency such as Stop Hate UK, CST and TellMAMA. <p>If the hate speech witnessed either involved a crime or appeared to stir up either racial hatred, religious hatred or hatred based on sexual orientation, report the incident to the police either by telephone or using the True Vision online reporting service.</p>
<p>Please provide recent (within 1 year) of examples of hate speech reported in the media, and if possible, establish how was this addressed, e.g. by legal remedies or non-legal remedies.</p> <p><i>(For this question, we are looking for case studies.)</i></p>	<p>In November 2019, the media reported on the accusation of hate speech against a transgender woman, Debbie Hayton for wearing a t shirt with a slogan "Trans women are men. Get over it!". Ms Hayton has lived as a transgender woman since 2012 however, unlike many people in the trans-community, Ms Hayton does not believe that her gender can be changed and is vocal about the fact she will always biologically be male. Ms Hayton sits on the LGBT committee of the Trades Union Congress ("TUC") and wore this t-shirt to an event organised by the campaign group Fair Play for Women in July 2019. According to the media, 12 members of the LGBT committee wrote to the general secretary of TUC complaining that Ms Hayton's t-shirt was propagating hate speech against the trans-community. One of the non-legal remedies that TUC was investigating is potentially expelling Ms Hayton from the committee. In December 2019, a TUC spokesman said: "The TUC is working with union</p>



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	<p>representatives from across our elected LGBT committee to hear everyone’s perspectives and find a way forward.” The media has yet to report an update and to date Ms Hayton still sits on the committee, listed as someone who takes a specific interest in trans issues.</p> <p>In February 2020, the media reported on the High Court ruling that Harry Miller's tweets did not classify as "hate speech" because they form part of the "legitimate public debate" and that the police's actions in investigating Mr Miller were disproportionate. In 2018 and 2019 Mr Miller had tweeted a series of tweets which were reported to the Humberside police by a member of the public for being trans-phobic, one example was a tweet which stated "I was assigned mammal at birth, but my orientation is fish. Don't mis-species me". Twitter later suspended his account in response to the complaint. In 2019, the Humberside police visited Mr Miller's workplace to interview Mr Miller about the complaints, where he was told he had not committed a crime but it would be recorded as a non-crime "hate incident". Mr Miller brought an action against the police department in 2019, and it was heard before the High Court in November 2019. The High Court in its decision confirmed that the police force's actions were a disproportionate interference with Mr Miller's right to freedom of expression. The media reported that the High Court's ruling "will make the job of policing such incidents increasingly challenging for the police. Where does a comment or statement leave the boundaries of free speech and become a hate incident short of a crime?"</p> <p>Recently, JK Rowling has been criticised for tweeting "'People who menstruate.' I'm sure there used to be a word for those people. Someone help me out. Wumben? Wimpund? Woomud?" in response to an article. The public and the media have identified the tweet as attacking trans men, and stirring up transphobia. Ms Rowling has since responded to the public and media criticism with a series of further tweets explaining how she did not believe her tweet was hateful, and setting out her own position on female issues. The media now appears largely divided on Ms Rowling's stance and both Warner Brothers and her publisher</p>
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	<p>have issued statements promoting diversity and inclusive culture but also encouraging free speech. The reaction to Ms Rowling's tweet illustrates the current tension between hate speech and freedom of speech.</p>
<p>Please provide examples of cases related to hate speech / incitement of violence.</p>	<p>In <i>R v Shepherd</i> [2010] EWCA Crim 65, the appellants S and W appealed against convictions for possessing, publishing and distributing racially inflammatory material contrary to the Public Order Act 1986 on the basis of jurisdiction. W had written material which questioned the existence of the holocaust and contained several derogatory remarks about a number of racial groups. S edited the material and uploaded it to a website with the intention of distributing the material to the public. The website was hosted on a California based server, but the material was available to be viewed and downloaded in a number of countries, including the UK. Some of the material was printed in the UK and distributed in print form. The appeal was dismissed, and the Court held that the fact that the website was hosted on a California server did not prevent the English Court from having jurisdiction where nearly all other elements of the incident related to the UK. The Court also confirmed that the offences of displaying, distributing or publishing racially inflammatory material did not require proof that anybody had actually read or heard the material.</p> <p><i>R v Burns</i> [2017] EWCA Crim 1466 concerned the applicant, L seeking an extension of time and for leave to appeal against his conviction under the Public Order Act 1986. In 2016, L was convicted for two offences under the Public Order Act 1986 for posting a series of racist updates, comments and links to a Facebook account he operated under an alias between August and September 2014. The comments contained deeply offensive comments directed at, in particular, the Jewish and Afro-Caribbean communities. The messages promoted militant action against them with the aim that they should be</p>



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	<p>eliminated, with a view to protecting what the applicant described as "an advanced warrior race consisting of white men and women". For context, L was a member of National Action, a far-right white supremacist group. In 2015, during a demonstration outside the United States Embassy, L spoke using highly inflammatory language directed towards non-white immigrants and Jews. He alleged the former were "rapists, robbers and murderers" and that the latter were "parasites and bankers" who wanted a "mongerlised" race. The speech was filmed and later posted on YouTube. L's defence at trial was that the posts and his speech were "private banter" and was not intended to stir up racial hatred and was unlikely to do so. L was convicted on both counts and sentenced to three years' imprisonment on the first count and a consecutive term of one years' imprisonment on the second count. A Criminal Behaviour Order was made for the period of six years. The Court of Appeal acknowledged the trial judge's finding that "whilst freedom of speech is a fundamental freedom of our society, the applicant's conduct in this case went far beyond what was regarded as acceptable. It was designed publicly to promote racial hatred, to mobilise the applicant's listeners, and to encourage them to move from ideas into action." However the appeal court granted L's application for leave to appeal, and taking into account L's age at the time of the offences (20 and 21 respectively) held that the sentence was "manifestly excessive" reducing the total sentence to 2 years and six months' imprisonment.</p> <p><i>R v Crown Prosecution Service</i> [2019] EWHC 3094 (Admin) concerned the claimant, C's application for judicial review of her conviction for breaches under the Communications Act 2003. C was convicted of three offences under the Communications Act 2003 for posting hyperlinks on her blog which took readers to YouTube videos of her performing anti-Semitic songs. C argued that her songs were satirical, however the Western Magistrates' Court found that the songs were "grossly offensive" and intended to offend Jewish people. She was sentenced to 20 weeks' imprisonment, suspended for two years with a social</p>
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	<p>media ban and 180 hours of unpaid work. C sought to appeal the decision arguing that the performance of the songs was grossly offensive but submitted that (i) posting a hyperlink was a neutral act which did not cause an offensive message to be sent; and (ii) in uploading a YouTube video, she had sent it to a server in California which was an inanimate object with which communication was not possible. Her appeal was dismissed by the Crown Court and she was directed that the correct procedure was by way of judicial review. She subsequently sought judicial review for the High Court's decision and her application was refused in 2019.</p>
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1. International and Regional Frameworks (NOTE: this section <u>only</u> to be filled up by the teams working on international and EU law)	
1.1	What are the international law standards on hate speech with reference to the UN Conventions, General Comments and the decisions of the Thematic Mechanisms / Special Rapporteur reports?
1.2	Are there any relevant decisions on hate speech arising from the European Convention of Human Rights, the American Convention of Human Rights and the African Convention of Human Rights?



2. Definition of hate speech	
<p>2.1 What is the definition of hate speech in your country?</p>	<p>There is no legal definition of "hate speech" under French Law.</p> <p>French MPs have recently tried to define which criminal offences should fall within the scope of "online hate content" in a Bill passed by the French National Assembly on 13 May 2020. However, on 18 June 2020, the French Constitutional Council censored many of the provisions therein, considering that they created a risk of infringement to freedom of speech notably because the scope of criminal offences listed was too broad (insult, sexual harassment, apology of terrorism etc.). Thus the law no. 2020-766 aiming at fighting against hate speech on internet was adopted on 23 June 2020 without its main provisions.</p> <p>As a result, in order to determine what could reasonably be considered as hate speech under French Law, one has to consider different legal provisions included in the Law on the freedom of press dated 29 July 1881:</p> <ul style="list-style-type: none"> • Article 24(5): glorification of specific crimes (crimes against humanity, crimes of enslavement or exploitation of an enslaved individual, crimes and offences of collaboration with the enemy). • Article 24(7): incitement to discrimination, hatred or violence against an individual or a group of individuals based on their origin or affiliation or non-affiliation with a particular ethnic group, nation, race or religion. • Article 24(8): incitement to discrimination, hatred or violence against an individual or group of individuals based on their gender, sexual orientation or gender identity or their



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	<p>disability or have incited, against the same individuals, to discriminations provided for in Articles 225-2 and 432-7 of the French Criminal Code.</p> <ul style="list-style-type: none">• Article 24 second: negationism.• Article 33 (3): insult committed against an individual or group of individuals based on their origin or affiliation or non-affiliation with a particular ethnic group, nation, race or religion, though one means mentioned in Article 23 of the said law (speech, shouts, threats made in public places or meetings; writings, prints, drawings, engravings, paintings, emblems, images or any other written, oral or image medium sold or distributed, offered for sale or exhibited in public places or meetings; by placards or posters displayed in public view; by any means of communication to the public by electronic means).• Article 33 (4): any insult committed under the same conditions as abovementioned under Article 33 (3) against an individual or group of individuals based on their gender, sexual orientation, gender identity or disability. <p>The criminal offence of glorification or incitement to acts of terrorism also amounts to hate speech (Article 421-2-5 of the French Criminal Code).</p> <p>This definition is likely to evolve following the adoption of two legislative projects:</p> <ul style="list-style-type: none">• the first one is the Digital Services Act, which should be presented by the European Commission on 15 December 2020,• the second one is the French Bill aiming at strengthening republican principles, which should be presented to the French Parliament by the end of the year.
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	Finally, please note that the above mentioned Law dated 23 June 2020 created an “online hate observatory” whose mission is to analyse and quantify online hate speech in France, to improve the understanding of its drivers and dynamics and to promote information sharing and feedback among stakeholders.
2.2 Does the legal definition of hate speech require threats of violence / incitement to violence?	It is one of the possibilities (Articles 24 (7) and 24(8) of the Law for the freedom of press - see <i>question 1.1</i>). There is no legal definition of "hate speech" under French Law.
2.3 Would the definition cover speech and behaviour which incites hatred (not necessarily violence) towards a group?	Yes (Articles 24 (7) and 24(8) of the law for the freedom of press - see <i>question 1.1</i>).
2.4 Does hate speech cover speech that draws on hateful, hostile, or supremacist beliefs directed at a group that is threatened and likely to cause them harm?	Yes (<i>see question 1.1</i>).
2.5 Does the definition permit religious beliefs and speech which discriminates against particular communities – are there any limitations to religious beliefs and speech which discriminated against particular groups?	No (Article 24 (7) of the law for the freedom of press - see <i>question 1.1</i>).



3. Remedies and recourse for hate speech	
3.1 If I am the victim of hate speech, what is my recourse?	<p>If I am a victim of hate speech, I have several means of recourse before the judicial authorities:</p> <ul style="list-style-type: none"> - <u>Criminal recourse</u>: I can file a criminal complaint against the author of the offence and/or the organization responsible for it. The police will then transmit it to the public prosecutor who will decide whether to close the case, investigate or press charges. The purpose of such recourse is mainly to punish the author(s) of the offence. <p>If I am facing illegal content published on the Internet (text, video, photo, commentary...), I can also report it via a government website. This is the case both if I am merely viewing hate speech content, and if I am the victim of hate speech content. The criminal authorities will then investigate and take action if needed.</p> <p>I will also be able to claim damages to compensate my loss by filing an application to join the criminal proceedings as a civil party.</p> <ul style="list-style-type: none"> - <u>Civil remedies</u>: I can file a civil lawsuit in order to claim damages and/or the removal of the content if hate speech is made in writing for example. <p>In addition, in case of illicit <u>online</u> content, I can notify it to the hosting provider. According to Article 6 of the Law for confidence in the digital economy, it will have the obligation to promptly remove "manifestly illicit content" lawfully notified. All of the provisions mentioned in question 2.1 as constituting hate speech are listed in Article 6 of the Law for confidence in the digital economy.</p> <p>On the French government's information website, there is a dedicated page to means available against hate speech for victims: https://www.service-public.fr/particuliers/actualites/A14112.</p>



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<p>3.2 What are the criminal legal remedies for hate speech?</p>	<p>Any individual who is a victim of hate speech can file a criminal complaint against the author of the offence and/or the organization responsible for it. The police will then transmit it to the public prosecutor who will decide whether to close the case, investigate or press charges. The purpose of such recourse is mainly to punish the author(s) of the offence.</p> <p>In case of illegal content published on the Internet (text, video, photo, commentary...), it is also possible to report it via a government website. The criminal authorities will then investigate and take action if needed.</p> <p>It is finally possible to claim damages to compensate the loss suffered by filing an application to join the criminal proceedings as a civil party.</p>
<p>3.3 Are there civil legal remedies available – compensation / damages – for hate speech?</p>	<p>Yes. It is possible to file a lawsuit :</p> <ul style="list-style-type: none">- in order to claim damages for any loss suffered (including non-monetary, image or moral loss)- in order to claim the removal of the content if hate speech is made in writing for example <p>In addition, in case of illicit <u>online</u> content, it is possible to notify it to the hosting provider. According to Article 6 of the Law for confidence in the digital economy, it will have the obligation to promptly remove "manifestly illicit content" lawfully notified.</p>
<p>3.4 Are there regulatory frameworks governing the online news media which allow individuals to complain?</p>	<p>The criminal system described above also applies to hate speech on online news media. Moreover, French law provides that any individual or legal entity which is named or appointed in a media may request to have his/her/its version of the facts published (so-called "right to reply").</p>



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3.5 Is the test for hate speech used by any Social Media / Press / Online regulatory bodies the same as the criminal law definitions?	Yes, there is no specific hate speech test for social media / press or online regulatory bodies.
3.6 Do public and private institutions have to comply with the same duties to avoid hate speech?	The criminal offences which may constitute hate speech are the same for everyone, including public institutions.
3.7 If I am accused of hate speech, what is my recourse?	If I am accused of hate speech and the public prosecutor chooses to press charges against me, I will have to be prepared to try my case before a criminal court in order to be able to demonstrate that the litigious speech does not amount to "hate speech". I could for example show that, even if the speech may have shocked or offended some people, it does not constitute hate content because it is not an insult or it does not incite hatred or discrimination.
3.8 If hate speech is occurring at my event/on my platform/in my place of work, what should I do about it?	If hate speech occurred: <ul style="list-style-type: none">- <u>At my event</u>: depending on the severity of the issue, it should be reported to the police who will in turn refer the matter to the public prosecutor so that he may bring the matter to the Court.- <u>On my platform</u>: if I am a hosting provider, I should remove the content if it is manifestly illicit and I was lawfully notified.- <u>In my place of work</u>: I should report to my employer/supervisor. French government publishes online some information in order to help people to fight against hate speech (click here for an example).



<p>3.9 If I have identified hate speech (online, in the media, etc.) what practical steps should I take?</p> <p><i>(For this question, we envision a “filtering” or “journey tree” (flow chart) where the first question is, “where did you see the hate speech” → if online then go here, if offline, then go here → do you have evidence of it (screenshot/link to the post, recording of the speech, etc.) → then what, etc.)</i></p>	<p>See chart below.</p>
<p>3.10 Please provide recent (within 1 year) of examples of hate speech reported in the media, and if possible, establish how was this addressed, e.g. by legal remedies or non-legal remedies.</p> <p><i>(For this question, we are looking for case studies.)</i></p>	<p>On 9 <u>January 2018</u>, the French Supreme Court ruled on hate speech that occurred in the media. In this case, the defendant was prosecuted for having put online, as an illustration of a text entitled "parody of justice", a drawing depicting a monkey with the features of the Minister of justice at the time. However, while the Court of Appeal had found the media to be guilty of inciting racial hatred, the French Supreme Court considered that, although the drawing in question was likely to characterize a racial insult, it did not contain in itself nor when analysed in the light of the extrinsic elements noted by the judges, even in implicit form, an appeal or exhortation to discrimination, hatred or violence (French Supreme Court, Criminal Chamber, 9 January 2018, Case no. 17-80.491).</p> <p>In another case, on <u>13 November 2019</u>, the French Supreme Court ruled on racism claims brought by associations before the Court. The French Supreme court had to consider different tweets from the defendant:</p> <ul style="list-style-type: none"> • <i>"Protecting French culture in 3 steps 1. Banning Negro music from the public media. 2. chase out English. 3. freedom of creation "</i> ;



Jurisdiction: France

Law Firm / Office: Hogan Lovells Paris

	<ul style="list-style-type: none"> • <i>"Because of cosmopolitanism, the coefficient of whiteness of the French football-team is in free fall."; "The melanisation of sport is dramatic for national identities."; If we love France, we must wish for the defeat of the French team of football against Portugal" ;</i> • <i>"How to francize the French team of football? 1. Expel the French from paper. 2. Suppress communitarianism".</i> <p>The French Supreme Court held that only the last message contained a statement calling for discrimination against a group of persons on the basis of their origin, while the others, although they may have been marked by racist feelings, did not, even implicitly, contain any call or exhortation to discrimination, hatred or violence. Therefore, the defendant was only convicted on this last count (French Supreme Court, Criminal Chamber, 13 November 2019, Case no. 18-85.371).</p>
<p>3.11 Please provide examples of cases related to hate speech / incitement of violence.</p>	<p><u>In February 2014</u>, in an interview with the French magazine <i>Charles</i>, Christine Boutin declared "homosexuality is an abomination". On 11 April 2014, the Inter-LGBT filed a complaint for "defamation" and "incitement to hatred", claiming that Christine Boutin "has been making these kinds of remarks for fifteen years". At the hearing before the Paris Criminal Court in October 2015, the Public Prosecutor requested a fine of EUR 3,000. Two months later, on 18 December, Christine Boutin was fined EUR 5,000 for incitement to hatred. In addition to the prosecutor's demands, she also had to pay EUR 2,000 of damages to the two associations that had filed civil lawsuits. This decision was finally overturned in 2018 because the French Supreme Court ruled that even if the litigious content is outrageous, it does not contain, even in an implicit manner, incitement to hatred or violence against homosexuals (French Supreme Court, Criminal Chamber, 9 January 2018, Case no. 16-87.540).</p> <p>The offence of incitement to discrimination, hatred or violence against a group of persons on account of their origin or affiliation with a particular ethnic group, race, religion or nation was held as characterized in the context of the publication of a text targeting Muslims and describing a</p>

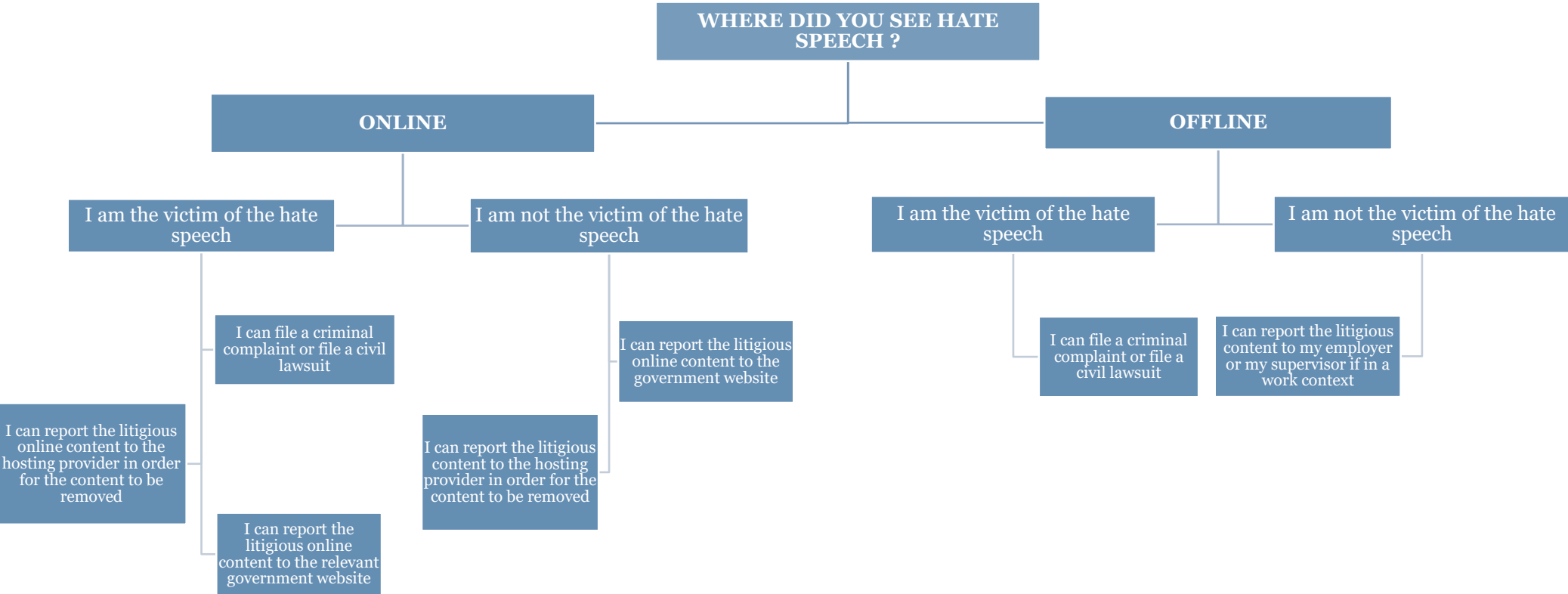


PeaceTech Lab: Pro Bono Research on Hate Speech

Jurisdiction: France

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	situation, as imagined by the author, of a state where the public practice of the Muslim religion would be prohibited under penalty of expulsion (French Supreme Court, Criminal Chamber, 28 March 2017, Case no. 15-87415)
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 Template for Answers to Questions

Jurisdiction: Germany

Law Firm / Office: HL Munich

1. International and Regional Frameworks (NOTE: this section <u>only</u> to be filled up by the teams working on international and EU law)	
1.1 What are the international law standards on hate speech with reference to the UN Conventions, General Comments and the decisions of the Thematic Mechanisms / Special Rapporteur reports?	
1.2 Are there any relevant decisions on hate speech arising from the European Convention of Human Rights, the American Convention of Human Rights and the African Convention of Human Rights?	
2. Definition of hate speech	
2.1 What is the definition of hate speech in your country?	<p>The term "hate speech" ("Hassrede" in German) is subject to a still very open definition. Due to the lack of a legal definition, it is considered a political term with more or less strong references to legal criteria.</p> <p>According to the German government, documented in a Bundestag document of 2018 (BT-Drucks. 19/1012 of 01.03.2018), "hate speech" and "incitement to hatred" ("Hetze") include the intentional disparagement and threats – in word, image and sound – against certain people or groups of people due to their affiliation to a minority, as well as all expressions of hatred,</p>



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Law Firm / Office: HL Munich

	<p>which are based on intolerance, which propagate or incite hatred, promote hatred or any justification of hatred.</p> <p>This understanding of the German government is based on a recommendation of the Committee of Ministers of the Council of Europe, according to which the concept of "hate speech" should be interpreted as "any expression propagating racial hatred, xenophobia, anti-Semitism or other forms of hatred based on intolerance, in order to instigate, promote or justify them, including the intolerance that is express aggressive nationalism and ethnocentrism, discrimination and hostility towards minorities, immigrants and persons of immigrant origin" (Council of Europe, Committee of Ministers Recommendation Rec(97)20 to Member States on "hate speech", 30 October 1997).</p>
<p>2.2 Does the legal definition of hate speech require threats of violence / incitement to violence?</p>	<p>The <i>political</i> definition (see 2.1) does not require threats of violence or incitement to violence for an expression to qualify as hate speech.</p> <p>As there is no uniform <i>legal</i> definition of the political term "hate speech" in Germany the question could be answered twofold with regard to criminal and civil law. In both respects there are legal concepts that would be applicable to behaviour falling under the political definition of hate speech without necessarily requiring threats of violence / incitement to violence:</p> <p>1.) In Germany, the fundamental right of freedom of expression is not unlimited. It finds its limits (already) when human dignity is attacked. The expressions of opinion subsumed under the term "hate speech" may therefore well <u>constitute criminal offences</u>. Below, we provide a (non-exhaustive) list of offences most likely relevant in the area of hate speech and the respective requirements with regard to threats of violence / incitement to violence:</p>



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	<ul style="list-style-type: none">• Incitement of masses § 130 German Criminal Code (Strafgesetzbuch/StGB, hereafter "GCC"): Included here are incitement to hatred, incitement to violence and arbitrary measures (No. 1) and particularly massive abuses (No. 2), if the object of attack is a national, racial, religious group, part of the population or an individual, and if the activity is carried out in a way that is likely to disturb the public peace. Threats of violence / incitement to violence are not a prerequisite for an action to qualify as an offence under Sec. 130 GCC.• Insult, Malicious Gossip and Defamation Sec. 185-187 GCC: No threats of violence / incitement to violence required.• Coercion Sec. 240 GCC: Threat of serious harm required.• Threatening commission of serious criminal offence Sec. 241 GCC: Threat against a person with the commission of a serious criminal offence against that person or a person close to this person.• Public incitement to commit offences, Sec. 111 GCC: It is forbidden to publicly incite to criminal acts - and the internet is as public as it gets. Depending on the specific offence to which the call is made, threats of violence / incitement to violence may therefore also be covered but are no constitutive prerequisite.• Revilement of religious faiths and religious and ideological communities Sec. 166 GCC: Whoever publicly or by disseminating material reviles the religion or ideology of others in a manner which is suitable for causing a disturbance of the public peace incurs a penalty of imprisonment [...]. No threats of violence or incitement to violence required.
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	<p>2.) Statements of hate speech not exceeding the threshold of criminal liability can nevertheless be "sanctioned" by private parties (especially operators of platforms, networks, associations, etc.) or their house rules/rules on membership etc., respectively, even if the expression at hand does not contain threats of violence / incitement to violence.</p>
<p>2.3 Would the definition cover speech and behaviour which incites hatred (not necessarily violence) towards a group?</p>	<p>Yes, the political term hate speech would cover for such behaviour.</p> <p>But also criminal offences entail such an incitement towards a group:</p> <p>Predominantly, "Incitement of masses" Sec. 130 (1) GCC: Accordingly, it is a criminal offence to incite hatred against parts of the population or to incite violent or arbitrary measures against them in a manner likely to disturb the public peace (No. 1) or to attack the human dignity of others by insulting, maliciously disparaging or slandering parts of the population (No. 2).</p> <p>The penalty is imprisonment from three months to five years. The offence of incitement of masses is an official offence, i.e. the concretely affected person does not have to feel insulted, and does not have to have any interest in prosecution. It is sufficient for someone to hear the insult and then report it to the police. The public prosecutor's office must then investigate ex officio and if necessary bring charges.</p> <p>Furthermore, different criminal offences cover behaviour which incites <u>violence</u> towards a group and towards individuals:</p> <ul style="list-style-type: none"> • Aggravated trespass, Sec. 124 GCC, Breach of peace, Sec. 125 GCC • Disturbing public peace by threatening to commit offences, Sec. 126 GCC



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Jurisdiction: Germany

Law Firm / Office: HL Munich

	<ul style="list-style-type: none"> • Instructions for committing criminal offences, Sec. 130 a GCC: The provision is intended to prevent the instruction on violent crimes in the socio-political debate; the object of protection is public peace. • Depictions of violence, Sec.131 GCC: The provision is directed against "excessive forms of depiction of violence", which may encourage imitation; Sec. 131 GCC is intended to prevent a "climate of violence" and thus prevent violent crime. It is a provision in advance of the actual violation of legal rights. The restriction of "verbal and visual violence" means a restriction of media freedom, although an exception is made for daily political and historical reporting.
<p>2.4 Does hate speech cover speech that draws on hateful, hostile, or supremacist beliefs directed at a group that is threatened and likely to cause them harm?</p>	<p>Yes. The political term hate speech as well as – for example – the definition of behaviour falling under Sec. 130 GCC both cover speech that draws on hateful, hostile, or supremacist belief directed at a group that is threatened and likely to cause them harm.</p> <p>"Incitement of masses" Sec. 130 (1) GCC: For the offence of incitement of masses to qualify as an official offence, i.e. the concretely affected person does not have to feel insulted and there is no need for directly caused harm, in the concrete case it is necessary and sufficient that the public peace is disturbed.</p> <p>Sec. 130 (1) GCC covers incited hatred against a national, racial, religious group or a group defined by their ethnic origin, against sections of the population or individuals on account of their belonging to one of the aforementioned groups or sections of the population. This latter term refers to all groups of persons living in Germany who, on the basis of common external or internal characteristics - e.g. ethnicity, religion, political or ideological convictions, social and economic conditions, profession, social function - present themselves as a population group that can be distinguished from the rest of the population and who are of some significance in terms of numbers.</p>



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	<p>In this context, it is irrelevant whether they are Germans or foreigners, and also whether the group is particularly at risk - the latter may, however, be of significance when it comes to the question of disturbing the public peace. According to case law, population groups within the meaning of Sec. 130 GCC are, for example, political groups, employers and employees, owners and possessing persons, unemployed persons, punks, disabled persons, farmers, civil servants or individual sufficiently delimitable groups of civil servants, the soldiers of the Bundeswehr, natives and displaced persons, emigrants and migrants, Swabians or Prussians, Catholics, Jews, foreigners living in the Federal Republic of Germany, guest workers or certain guest worker groups, asylum seekers, Sinti and Roma or people of "other skin colour".</p> <p>Hateful, hostile, or supremacist beliefs are therefore covered by this definition, regardless of the nature of any underlying racist belief.</p>
<p>2.5 Does the definition permit religious beliefs and speech which discriminates against particular communities – are there any limitations to religious beliefs and speech which discriminated against particular groups?</p>	<p>No, the definition of hate speech does not make exemptions to permit religious beliefs and speech which discriminates against particular communities.</p> <p>According to the German Constitution (Article 4), the freedom of faith and conscience and the freedom of religious and ideological confession are inviolable. According to the predominant opinion, this inviolability refers exclusively to the character of the associated fundamental rights as so called "defensive rights". On the basis of religious beliefs one can therefore claim individual protection (as for example, against revilement of religious faiths or of religious and ideological communities as well as against disturbance of exercise of religion etc. provided for in Sec.166 et seq. German Criminal Code). However, to actively discriminate particular other groups is thereby not permitted (neither by statute nor by case law).</p>



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Law Firm / Office: HL Munich

3. Remedies and recourse for hate speech	
3.1 If I am the victim of hate speech, what is my recourse?	Victims of hate speech can seek recourse through various means, with both criminal and civil law offering potential remedies to victims. The criminal law aims to prosecute the offender and eliminate hate speech. Victims may also claim the ceasing or removal of hate speech and – in severe cases – monetary compensation from the offender through a civil claim.
3.2 What are the criminal legal remedies for hate speech?	Anyone affected by hate speech can report to the police or file a criminal complaint with the public prosecutor's office. These authorities will then investigate the facts of the case and the public prosecutor's office will file charges against the offender if the hate speech fulfils the elements of a criminal law.
3.3 Are there civil legal remedies available – compensation / damages – for hate speech?	<p>Yes, when the hate speech is relevant under criminal law (e.g. the offences listed in 2.2. above) or violates the victim's personality rights. The personality right protects a wide range of rights such as the right to a name and honour, copyrights and the right to a correct representation of oneself in word, writing and pictures. Within this framework, it also protects against degradation and distortion of the image of life and character, for example through insult or abuse. Within this scope, there are different civil legal remedies:</p> <ul style="list-style-type: none"> • Deletion/modification: <p>If a statement, an online post or comment in social media has relevant content, there is a claim for the removal of the statement or for deletion or modification of the comment or post against the offender and – if relevant – against the provider of an online or social media platform. In the event of urgency, these rights can also be enforced in interim relief.</p>



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	<ul style="list-style-type: none"> • Cease-and-desist warning: The victim can request the offender by letter (the letter may be sent by a lawyer but does not need to be) to stop the hate speech and to make a declaration to cease and desist. The declaration may include a penalty for any breach of the declaration. Should the offender not make the declaration, the victim would then have to pursue the breach in a civil claim. • Information claim: If hate speech is made anonymously in the Internet, for example on a social media platform, the victim has a claim against the social media platform or the service provider for disclosure of the user's data. • Monetary compensation: In case of severe violations of personality rights, the victim may be entitled to monetary compensation. Whether a violation is severe needs to be assessed in the light of all the circumstances of the individual case. In particular, the nature and severity of the violation and the degree of fault, as well as the cause and motive for the action, must be taken into account. The amount of the compensation is ultimately determined by the court in each individual case on the basis of the court's own free judgment. In cases where compensation has been awarded for violations of the personality rights or insult, courts have awarded damages for pain and suffering amounting to low four-digit amounts.
<p>3.4 Are there regulatory frameworks governing the online news media which allow individuals to complain?</p>	<p>Yes.</p>



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	<p>The Act on the Improvement of Law Enforcement in Social Networks (<i>Netzwerkdurchsetzungsgesetz - NetzDG</i>) has been in force since 1 October 2017.</p> <p>The Act aims to combat hate crime, prosecutable false messages and other punishable content on social network platforms more effectively. This includes, for example, insults, libel, slander, public incitement to commit crimes, incitement of the masses, violence and threats. In order to encourage social networks to deal more quickly and comprehensively with complaints, especially from users about hate crime and other prosecutable content, the NetzDG stipulates legal compliance rules for social networks.</p> <p>These include a legal obligation for social network providers to report on how they deal with hate crime and other prosecutable content, guidelines on effective complaint management and the appointment of a domestic service agent. Violations of these obligations can be punished by fines imposed on the company and those subject to supervision.</p>
<p>3.5 Is the test for hate speech used by any Social Media / Press / Online regulatory bodies the same as the criminal law definitions?</p>	<p>Yes.</p> <p>The NetzDG applies to "<i>illegal content</i>". This term is legally defined in the NetzDG. It covers all content that fulfils certain enumerated criminal offences. These offences include, inter alia, insult, malicious gossip, defamation, incitement of masses and coercion.</p>
<p>3.6 Do public and private institutions have to comply with the same duties to avoid hate speech?</p>	<p>No.</p> <p>On the one hand, the NetzDG, which is the main German act to combat hate crime by establishing duties to the detriment of institutions, only applies to telemedia service providers which, for profit-making purposes, operate internet platforms which are designed to enable users to share any content with other users or to make such content available to the public. As its</p>



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	<p>scope is, thus, limited to commercial operators it is factually unlikely to apply to public institutions but rather focuses on private institutions only.</p> <p>On the other hand, statements made on behalf of public institutions generally have to comply with stricter standards compared to statements made on behalf of private institutions. According to German law, any attempt to combat hate speech is ultimately limited by the fundamental right of freedom of expression. Fundamental rights, however, only apply to private institutions. Public institutions, by contrast, have to align with the so called "principle of the rule of law" ("Rechtsstaatsprinzip"). According to this principle, public institutions are particularly obliged to behave neutral ("Neutralitätsgrundsatz") and objective ("Sachlichkeitsgrundsatz"). Therefore, critical or questionable opinions which might have to be tolerated when expressed on behalf of private institutions might be deemed intolerable when expressed on behalf of public institutions. Furthermore, according to the aforementioned principle and to the obligations derived thereof, public institutions have to make sure that establishments belonging to them are not misused as forums or stages in order commit crimes or to violate rights. As a result, public institutions have to avoid hate speech committed within such establishments. A duty of comparable scope to the detriment of private institutions does not exist according to German law.</p>
<p>3.7 If I am accused of hate speech, what is my recourse?</p>	<p>Possible recourses particularly depend on the way in which hate speech accusations are being pursued. In particular, the following applies:</p> <ul style="list-style-type: none"> • If you are faced with criminal charges based on hate speech accusations, the public prosecutor has to investigate the facts of the case while respecting the presumption of innocence. However, factually you will be obliged to defend yourself. This particularly applies, if the public prosecutor takes the accusation to court.



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Law Firm / Office: HL Munich

	<ul style="list-style-type: none"> If you are faced with civil law charges based on hate speech accusations, the plaintiff carries the burden of proof. Therefore, the plaintiff has to provide evidence in order to substantiate his claim. Only if he seems to be able to do so, you are obliged to defend yourself by providing respective counterevidence. <p>Moreover, any false or unverifiable accusation of hate speech can constitute a criminal offence itself according to German law. In particular, false accusations of hate speech could generally constitute</p> <ul style="list-style-type: none"> simulated offences according to Sec. 145d GCC; false suspicions according to Sec. 164 GCC; insults, malicious gossips or defamations according to Sec. 185-187 GCC. <p>Thus, anybody wrongly accused of hate speech is generally able to press (counter-) charges, thereby, seeking recourse through various means, with both criminal and civil law offering potential remedies as described above.</p>
<p>3.8 If hate speech is occurring at my event/on my platform/in my place of work, what should I do about it?</p>	<p>Besides several rather general options to react to hate speech, such as considering counter-speech or involving public authorities, the following actions should be considered:</p> <ul style="list-style-type: none"> <u>If hate speech occurs at your event</u>, particularly consider to pronounce a house ban to the detriment of the perpetrator(s). If the perpetrator(s) do not comply, consider informing the police in order to enforce the house ban.



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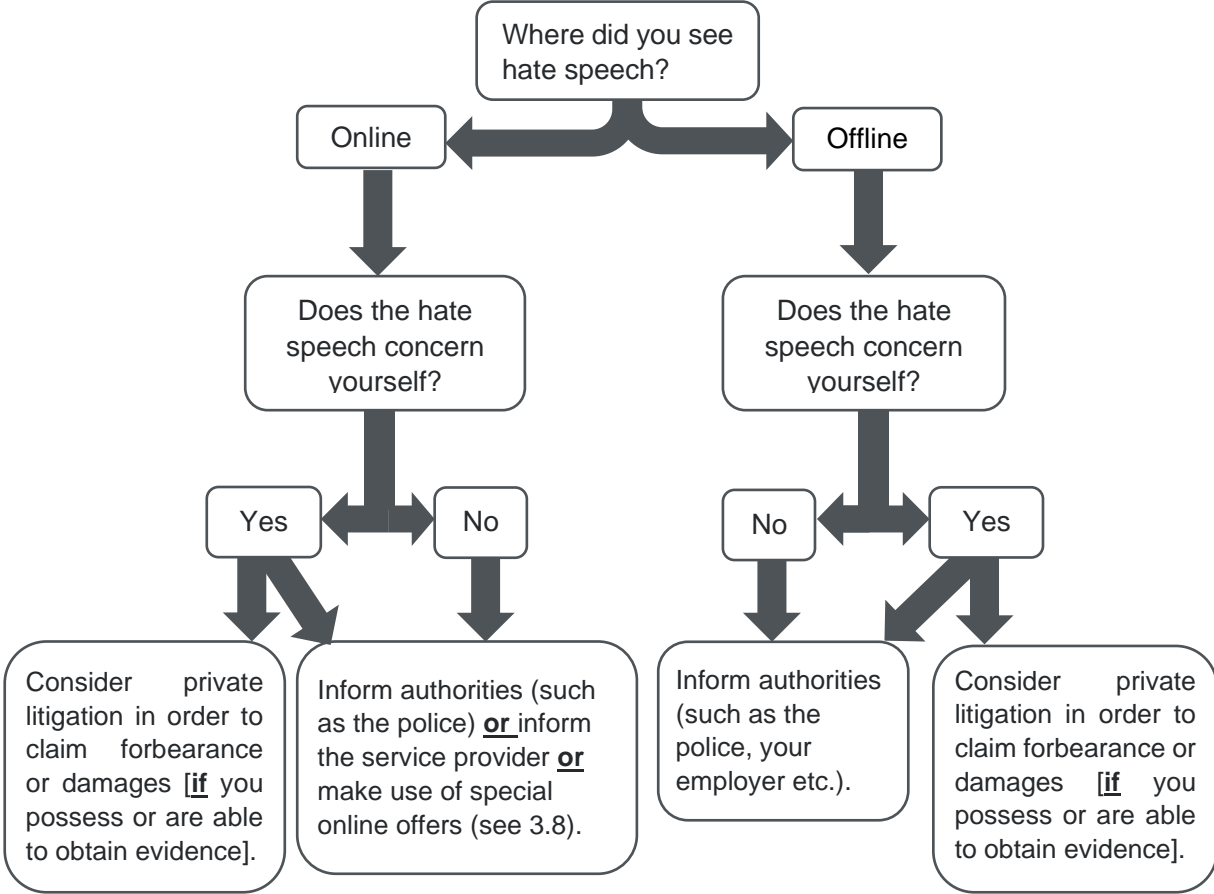
	<ul style="list-style-type: none">• <u>If hate speech occurs on your platform</u>, particularly consider to seek assistance from the platform provider. In general, platform providers offer assistance, e.g. by providing possibilities to report hate speech or to demand respective deletions. Furthermore, a number of specialized websites offers help to individuals who detected hate speech, e.g. by analyzing respective suspicions or by taking on respective (legal) steps (in German language, e.g.: <i>hassmelden.de</i>, <i>jugendschutz.net</i>, <i>fsme.de</i>, <i>hateaid.org</i>, <i>hassimnetz.info</i>, <i>internet-beschwerdestelle.de</i>).• <u>If hate speech occurs at your job</u>, particularly consider to inform your employer. According to German law, hate speech can constitute a ground for dismissal to the detriment of the perpetrator(s). Furthermore, according to German law any employer has an obligation to protect his employees from hate speech committed at work.
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Jurisdiction: Germany

Law Firm / Office: HL Munich

3.9 If I have identified hate speech (online, in the media, etc.) what practical steps should I take?

(For this question, we envision a “filtering” or “journey tree” (flow chart) where the first question is, “where did you see the hate speech” → if online then go here, if offline, then go here → do you have evidence of it (screenshot/link to the post, recording of the speech, etc.) → then what, etc.)





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<p>3.10 Please provide recent (within 1 year) of examples of hate speech reported in the media, and if possible, establish how was this addressed, e.g. by legal remedies or non-legal remedies.</p> <p><i>(For this question, we are looking for case studies.)</i></p>	<p>In the most recent past, two mayor cases of hate speech gained considerable interest in German media.</p> <p>1. Hate speech against German politician Renate Künast:</p> <p>Renate Künast, a German politician, was attacked within several Facebook-comments in the context of a statement on an attempt to legalize sexual intercourse with children that was falsely attributed to her. Said comments included a broad range of massive insults and (sexual) obscenities.</p> <p>In order to facilitate charges, Ms. Künast asked Facebook to provide information regarding the identity of said comment's authors. However, according to German law respective personal information must only be shared if related to crimes such as insults, malicious gossips or defamations. Against this background, the district court of Berlin had to clarify within a civil proceeding whether Facebook had to share information as requested by Ms. Künast viz. whether statements as included in said comments constituted insults, malicious gossips or defamations according to German law.</p> <p>In a first decision dated 9 September 2019 the District Court of Berlin decided that none of the statements as included in the concrete Facebook-comments met criteria of abovementioned offences. On 21 January 2020 the court partly overturned its decision after a respective appeal had been filed. The District Court of Berlin now found that six of said statements constituted criminal insults. After further appeal, on 11 March 2020 the Court of Appeal of Berlin found a total of twelve statements to constitute insults.</p> <p>In general, this case gained considerable interest because it obliged the District Court of Berlin to draw a line between the fundamental right of freedom of expression and the application of the abovementioned offences - a task which the court tried to complete by ascertaining whether concrete comments had an objective connection to the statement falsely attributed to Ms. Künast or not.</p> <p>2. Hate speech against Sawsan Chebli</p>
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Jurisdiction: Germany

Law Firm / Office: HL Munich

	<p>Sawsan Chebli, a German politician, was attacked within a YouTube-video that particularly addressed her migrant background and her Muslim religion. Within a criminal proceeding, the District Court of Berlin-Tiergarten had to decide whether the video constituted a punishable insult according to Sec. 185 GCC which the court on 27 February 2020 finally declined. Chebli appealed the decision. The oral hearing in the appeal case will be held in December 2020.</p> <p>Again, this case gained considerable attention as it was about distinguishing punishable hate speech from the mere usage of the fundamental right of freedom of expression.</p>
3.11 Please provide examples of cases related to hate speech / incitement of violence.	<ul style="list-style-type: none">• Proclaiming that "climate activists" are public parasites ("Volksschädlinge") that should be buried: German populist faces criminal charges.• Suggesting that Angela Merkel should be stoned within a Facebook-comment: Author sentenced to pay a fine amounting to EUR 2,000,-.• Establishing a connection between nowadays train drivers and the participation of German state railway in crimes committed in Nazi-times within a YouTube-video: Youtuber sentenced to nine months in prison on probation and a fine amounting to EUR 15.000,-.• Posting a YouTube video including violent scenes of people being shot: Youtuber sentenced to pay a fine.• Comparing Islam religion with a kind of cancer corrupting the free world: Author sentenced to pay a fine amounting to EUR 2.500,-.



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Jurisdiction: Germany

Law Firm / Office: HL Munich

	<ul style="list-style-type: none">• Posting several hateful comments to German journalist Dunja Hayali's Facebook-profile: Author sentenced to cease and desist.• Wrongfully claiming that German newspaper "TAZ" willingly acquired property well below value: Author sentenced to cease and desist.• Publishing names and pictures of people criticizing German asylum policy: German newspaper "BILD" ordered to cease and desist.• Threatening to publish a private video containing intimate scenes: Perpetrator sentenced for attempted necessitation.• Wishing an "intermezzo " to a politician within a Facebook-comment while referring to the reference case of a girl who was raped and murdered: Author sentenced to pay a fine. <p>[Information contained in this answer based on media reports]</p>
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PeaceTech Lab: Pro Bono Research on Hate Speech
 Template for Answers to Questions

Jurisdiction: Italy

Law Firm / Office: Milan and Alicante

1. International and Regional Frameworks (NOTE: this section <u>only</u> to be filled up by the teams working on international and EU law)	
1.1 What are the international law standards on hate speech with reference to the UN Conventions, General Comments and the decisions of the Thematic Mechanisms / Special Rapporteur reports?	
1.2 Are there any relevant decisions on hate speech arising from the European Convention of Human Rights, the American Convention of Human Rights and the African Convention of Human Rights?	
2. Definition of hate speech	
2.1 What is the definition of hate speech in your country?	<p><u>Definition of Hate Speech</u></p> <p>The latest definition of hate speech in Italy is provided by Resolution no. 157/19/CONS, a document drawn up by the Italian Communication Authority ("AGCOM") in the elaboration of a shared regulation to combat the phenomenon of online hatred among radio and media service providers subject to the Italian jurisdiction ("AGCOM Hate Speech Regulation"): </p> <p><i>"Art. 1 letter n (n) 'hate speech' means the use of content or expressions likely to spread, propagandize or incite hatred and discrimination and instigate to violence against a certain set of 'target' people, through</i></p>



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Jurisdiction: Italy

Law Firm / Office: Milan and Alicante

	<p><i>stereotypes related to characteristics of group, ethnicity, territorial origin, belief religious, gender identity, sexual orientation, disability, condition, sexual orientation, gender identity, sexual orientation, personal and social, through the dissemination and distribution of writings, images or other material, including through the Internet, social networks or other telematic platforms."</i></p> <p>As for its scope, it should be noticed that the Regulation is only addressed to audio-visual and radio service providers, as well as to providers of video sharing platforms on 'hate speech.' This is because, as made clear in the explanatory memorandum to the Regulation, the topics discussed on media and radio services are increasingly becoming polarized and pushed towards extremes on social media.</p> <p>Content-wise, in the AGCOM Hate Speech Regulation, the offenses addressed to people or groups stereotyped for gender identity, sexual orientation, disability, personal and social conditions, through the dissemination and distribution of writings, images or other material, including through the Internet, social networks or other telematic platforms, are also regarded as relevant. The distinctive features of the conduct are characterized by the violence of verbal (and even non-verbal) expressions, directed towards other individuals who are variously discriminated against.</p> <p><u>Behind the definition: the Italian legal framework</u></p> <p>The above mentioned definition is to be read within the broader context of the Italian legislative framework (and its evolution over the time) as outlined below:</p> <p>The first provision which represented the basis for the introduction of restrictions on some form of hate speech is found in the <u>transitional provision</u> and in the subsequent <u>Law no. 645 of ("Scelba Law")</u>, which introduced for the first time the prohibition of racist speech in relation to the dissolved Fascist party;</p> <p>Following that, <u>Law no. 205 of 1993 ("Reale-Mancino Law")</u> was introduced. This is to date the main legislative instrument that the Italian legal system offers for the repression of hate</p>
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	<p>crimes. In particular, the Reale-Mancino Law prohibits the <i>"propaganda of ideas based on racial or ethnic superiority or hatred, or incitement to commit or commit acts of discrimination on racial, ethnic, national or religious grounds"</i>.</p> <p>On 4 November, 2020, the lower house of the Italian Parliament passed an anti-discrimination bill ("Zan Bill") with the aim of amending the Reale-Mancino Law, the Italian Criminal Code and the Italian Criminal Procedure Code so <u>as to</u> include crimes committed on the grounds of sex, gender, sexual orientation, gender identity or disability among hate crimes.</p> <p>For the Zan Bill to become law, the Senate has to give its final approval, possibly by the end of the year.</p> <p>More specifically, the Zan Bill:</p> <ul style="list-style-type: none">• Does not provide for a definition of "hate crime" or "hate speech", but introduces the following definitions:<ul style="list-style-type: none">- "Sex" shall mean biological or registered sex;- "Gender" shall mean any external appearance of an individual which is consistent or conflicting with social expectations related to sex;- "<i>Sexual orientation</i>" shall mean sexual or emotional attraction to individuals of the opposite sex, the same sex or both sexes;- "<i>Gender identity</i>" shall mean the perceived and manifested identification of individuals in relation to gender, even if not corresponding to their sex and regardless of their transition.• Aims at amending Articles 604-<i>bis</i> and 604-<i>ter</i> of the Italian Criminal Code and Article 90-<i>quater</i> of the Italian Criminal Procedure Code:<ul style="list-style-type: none">- Article 604-<i>bis</i> of the Italian Criminal Code, titled "<i>Propaganda and incitement to crime on racial, ethnic and religious grounds</i>", currently criminalizes the following conducts: (i) disseminating ideas based on racial superiority or hatred; (ii) inciting to commit or committing racially motivated acts of discrimination or violence; (iii) promoting, directing, participating or supporting racist organizations or groups; (iv) condoning, denying or grossly trivialising crimes of genocide, crimes against humanity and war crimes, as provided for by the Framework Decision 2008/913/JHA on combating certain
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forms and expressions of racism and xenophobia by means of criminal law. Pursuant to the Zan Bill, Article 604-bis ICC shall be amended so as to include crimes committed for reasons related to sex, gender, sexual orientation, gender identity and disability.

- Article 604-ter of the Italian Criminal Code, which currently provides for aggravating circumstances when a crime is committed due to racial, ethnic or religious discrimination shall be amended so as to also include discrimination based on one's sex, sexual orientation, gender, gender identity or disability.
- Article 90-*quater* of the Italian Criminal Procedure Code provides a definition of the term "*particular vulnerability*" , given that said term is often recalled by the Italian Criminal Code to protect individuals who are considered to be particularly vulnerable due, for instance, to their age or to the circumstances of the crime committed against them (*i.e.* discriminatory grounds). The Zan Bill aims at including victims of crimes committed on the grounds of sex, gender identity, gender, disability and sexual orientation.

Additional relevant provisions and institutions

In addition to the above, and although not specifically hate-speech related, the below mentioned legal texts shall also be taken into account when constructing the notion of hate speech in the Italian legal framework:

1. **Law no. 71/2017** ("*Provisions for the protection of minors to prevent and combat the phenomenon of cyberbullying*") This law addresses the phenomenon of "cyberbullying", referring to "*any form of pressure, aggression, harassment, blackmail, blackmail, insult, slander, defamation, identity theft, alteration, unlawful acquisition, manipulation, unlawful processing of personal data to the detriment of minors, carried out electronically, as well as the dissemination of online content concerning one or more*



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	<p><i>members of the child's family whose intentional and predominant purpose is to isolate a minor or a group of minors by carrying out a serious abuse, harmful attack, or their ridicule".</i></p> <ol style="list-style-type: none"> 2. Law 19 July 2019 n. 69 (Revenge Porn) This law, which aims to protect women from violence and stalking, punishes those sharing sexual images or videos of someone without consent. In particular, under the law, revenge porn is treated as a criminal offence with perpetrators facing up to six years imprisonment or fines of up to €15,000. Higher sentences are given in those cases where material is shared by those who are or were married and those in a relationship. 3. Moreover, an important role in countering hate speech through monitoring and positive measures is also played in Italy by two equality institutions: these are the "National Office Against Racial Discrimination" (UNAR) and the Observatory for Security Against Acts of Discrimination (OSCAD). UNAR's tasks include assisting victims of discrimination, receiving and monitoring complaints, promoting research in the area, running training courses, campaigning, and reporting annually to parliament and the government. OSCAD also receives discrimination complaints.
<p>2.2 Does the legal definition of hate speech require threats of violence / incitement to violence?</p>	<ul style="list-style-type: none"> • AGCOM Hate Speech Regulation - As mentioned in section 2.1 above, the latest and more specific definition of hate speech is provided by the AGCOM Hate Speech Regulation, and this covers the use of content or expressions likely to disseminate, propagandize or incite hatred and discrimination and incite violence against a specific target group and a certain set of 'target' people, through stereotypes related to characteristics of group, ethnicity, territorial origin, belief religious, gender identity, sexual orientation, disability, condition, sexual orientation, gender identity, sexual



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	<p>orientation, personal and social. In this sense, <u>the legal definition includes possible threats of violence or incitement to violence, but violence is not a requirement per se, which only appears in more extreme cases.</u></p> <ul style="list-style-type: none"> • Reale-Mancino Law – As in the AGCOM Hate Speech Regulation, in the Reale-Mancino Law which, as said, generally disciplines hate crimes in Italy, threats of violence and incitement to violence are not a pre-condition for the identification of a conduct which may be defined as hate crime. In fact, according to the Reale-Mancino Law hate crimes include "<i>propaganda of ideas based on racial or ethnic superiority or hatred, or incitement to commit or commit acts of discrimination on racial, ethnic, national or religious grounds</i>" (without specific reference to threats of violence or incitement to violence). • Scelba Law – Incitement to violence appears in the abovementioned Scelba Law, which, in prohibiting any form of reorganization of the dissolved Fascist party, prohibits any act aimed at "<i>exalting, <u>threatening or using violence</u> as a method of political struggle, advocating the suppression of the freedoms guaranteed by the Constitution, denigrating democracy, its institutions and the values of the Resistance</i>".
<p>2.3 Would the definition cover speech and behaviour which incites hatred (not necessarily violence) towards a group?</p>	<ul style="list-style-type: none"> • Yes – both the general definition of hate crimes provided by the Reale-Mancino Law and the specific legal definition of hate speech provided by the AGCOM Hate Speech Regulation cover the use of content or expressions which incite hatred. In particular, the AGCOM Hate Speech Regulation prohibits the use of content and expressions which incite hatred towards a specific 'target' group, in particular through the use of stereotypes related to characteristics linked to a certain group, ethnicity, territorial origin, religious beliefs, gender identity, sexual orientation, disability, personal and social conditions.



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<p>2.4 Does hate speech cover speech that draws on hateful, hostile, or supremacist beliefs directed at a group that is threatened and likely to cause them harm?</p>	<ul style="list-style-type: none">• Yes – see section 2.1 to 2.3 above for more details.
<p>2.5 Does the definition permit religious beliefs and speech which discriminates against particular communities – are there any limitations to religious beliefs and speech which discriminated against particular groups?</p>	<ul style="list-style-type: none">• No – the legal definition of hate speech provided by the AGCOM Hate Speech Regulation generally covers the use of content or expressions which incite hatred through any religious beliefs with no limitation to specific religious beliefs or groups.• Limitations to particular groups only appear in the above-mentioned Scelba Law to the detriment of the person who carries out such discrimination (and not to specific targets). In fact, Scelba Law specifically prohibits any form of reorganisation of the Fascist party including any form of speech which pursues anti-democratic aims of the Fascist party by "<i>exalting, threatening or using violence as a method of political struggle, advocating the suppression of the freedoms guaranteed by the Constitution, denigrating democracy, its institutions and the values of the resistance, by carrying out racist propaganda, or turns its activity to the exaltation of the exponents, principles, facts and methods of the aforementioned party, he makes external manifestations of a fascist character</i>".• Article 4 of the Zan Bill expressly provides that all the provisions described therein shall be applied "<i>without prejudice to the free expression of beliefs or opinions as well as to legitimate conduct that can be traced back to the pluralism of ideas or freedom of choice, as long as they are not suitable to determine the concrete danger of discriminatory or violent acts</i>".



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3. Remedies and recourse for hate speech	
3.1 If I am the victim of hate speech, what is my recourse?	<ul style="list-style-type: none">• In general, victims of hate speech can rely on both civil and criminal legal remedies depending on the specific case.• Depending on the specific circumstances of the case, a victim of hate speech may present an allegation for defamation ("diffamazione aggravata"), threat ("<i>minaccia</i>" or "<i>molestia</i>") or for propaganda and incitement to crime on racial, ethnic and religious grounds which in Italy are punished under Articles 595, 612 and 604-<i>bis</i> ICC of the Italian Criminal Code and Article 3, paragraph 1, of the Reale-Mancino Law with reclusion from 6 months up to 3 years, or a fine starting from 516 euros and that for crimes punished under Article 604-<i>bis</i> of the Italian Criminal Code can be up to 6.000 euros. Victims can therefore start a criminal proceeding before an Italian criminal court on those bases and claim compensation for damages within the criminal trial or start a separate civil defamation lawsuit (see more details in section 3.2 and 3.3 below).• With particular regards to the conduct of media and radio service providers, victims of hate speech may report a violation to a consumer association, which will then report the prohibited conduct to AGCOM, which may open an investigation (on the basis of such notification or if it autonomously detects a violation) as provided by the AGCOM Hate Speech Regulation. In particular, the violation of the principles of non-discrimination and hate speech, referred to in the AGCOM Hate Speech Regulation, may be episodic or systematic. In the first case, AGCOM limits its activity to reporting the case to the provider in question, also communicating this on its website. In the second case, or in the presence of particularly serious violations, AGCOM initiates a sanctioning procedure that may result in a warning to the media service provider not to repeat the unlawful conduct. In case of non-compliance, the Authority may apply an administrative sanction from Euro 10,300.00 to Euro 258,000.00, in accordance with



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	<p>Article 1, paragraph 31, of Law no. 249 of 31 July 1997.</p> <ul style="list-style-type: none">Finally, it is worth mentioning that one of the few Italian legal tech start-ups has recently started working in the field of hate speech. It's called Chi Odia Paga (or "COP"), which means "<i>who hates pays</i>", and it was launched in 2018. COP offers support to individuals who suffered hate speech online, defamation, cyberbullying or revenge porn to help them claim damages.
3.2 What are the criminal legal remedies for hate speech?	<p>As a preliminary remark it should be noticed that the notion of "hate speech" is not expressly defined within the Italian criminal legal system.</p> <p>That being said, several legal texts include provisions addressing hate-speech related conducts. Indeed, while such conducts are expression of the very same notion of hate speech elaborated in the AGCOM Hate Speech Regulation, they constitute autonomous and independent crimes and, as such, they are punished under Italian Criminal Law.</p> <p>Key provisions are outlined below:</p> <ol style="list-style-type: none">The first Italian criminal law provision specifically countering racism was introduced in the Italian criminal system by Article 3 of Law no. 654/ 1975 ratifying the ICERD Convention. The relevant offences, which have been amended several times over the years, are currently defined in Art. 604-bis of the Italian Criminal Code (in compliance with Legislative Decree no. 21/2018). In particular, Article 3 of the above mentioned Law no. 654/1975 punishes with imprisonment those who propagate ideas based on superiority or racial hatred, or incite to commit or commit acts of violence or provocation to violence, against people because they belong to a national, ethnic or



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	<p>racial group. Following an amendment made by Law no. 85 of 2006, there has been a reduction in the limits of prison sentences (previously reduced by the Reale-Mancino Law) as well as the provision of alternative financial penalties to imprisonment.</p> <p>2. Law No. 962 of 1967, in Article 8 sanctions "<i>the apologia of genocide</i>" and public incitement to commit one of the crimes of genocide provided for by the law itself. More recently, Law no. 115 of 2016 added a new paragraph to Article 3 of Law no. 654/1957, which provides for imprisonment from two to six years in cases where propaganda, instigation and incitement, committed in such a way that there is a real danger of spreading, are based "<i>in whole or in part on the denial of the Shoah or crimes of genocide, crimes against humanity and war crimes as defined by the Statute of the International Criminal Court</i>".</p> <p>3. Moreover, from a regulatory point of view, the rights of crime victims, included hate crime victims, have been enshrined into Italian legislation, by Legislative Decree 212/2015 transposing Directive 2012/29/EU (so called "Victims' Directive"). This has revolutionized our criminal justice system, as, till then, the process was centred on the balance of powers between prosecution and defence, on the figures of Judge, State Prosecutor and defendant with the interests of the victim being confined to compensation of damages. All victims are now granted specific rights, implying corresponding obligations, which in brief give voice to their needs to receive information, have an active role, be respected, protected, heard, helped in accessing justice, financially compensated and psychologically supported (Articles 90-bis, 90-ter, 90-quater, 134, paragraph 4 ; and Article 351, paragraph 1-ter, Italian Code of Civil Procedure).</p> <p>4. Moreover, when, as in the case of cyberbullying, online hatred is expressed not against a group of individuals, but against a specific person, the criminally relevant cases are the "classic" cases of defamation aggravated by the use of an advertising medium</p>
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	<p>(Article 595 of the Italian Criminal Code) and threat (Article 612 of the Italian Criminal Code) possibly aggravated (Article 339 of the Italian Criminal Code). In addition, Article 612-<i>bis</i> of the Italian Criminal Code punishes the crime of persecution (which also includes stalking), introduced in the Italian Criminal Code by Law Decree no. 11 of 23 February 2009.</p>
<p>4.1 Are there civil legal remedies available – compensation / damages – for hate speech?</p>	<p>In addition to the protections available under criminal law outlined at para. 3.3 above, victims of hate speech can either initiate proceedings within the criminal trial to claim compensation for damages or start a separate civil defamation lawsuit. In this latter respect, it should be noticed that regardless of the nature of the conduct (i.e. resulting in defamation, threat, persecutory acts, etc.), under Italian laws, it is the victim who must report the crime to the authorities and/or initiate a proceeding – criminal or civil – before the competent Courts.</p> <p>Moreover, administrative pecuniary sanctions are imposed in cases of defamation of religion/blasphemy, and a system of police warnings was established by a recent law protecting minors against 'cyberbullying' (Law no. 71/2017, above)</p>
<p>4.2 Are there regulatory frameworks governing the online news media which allow individuals to complain?</p>	<p><u>In the European Union</u></p> <p>On 31 May 2016, the European Commission, in cooperation with Facebook, Twitter, YouTube and Microsoft, launched a Code of Conduct, in order to combat online hate speech, which commits IT companies to put in place clear and effective procedures to investigate reports of hate speech by users of their services so that they can remove such content or make it inaccessible. In particular, as made clear by Monika Bickert, Head of Global Policy Management at Facebook "<i>We urge people to use our reporting tools if they find content that they believe violates our standards so we can investigate. Our teams around the world review these reports around the clock and take swift action.</i>"</p>



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	<p><u>In Italy</u></p> <p>The relevant provision is represented by AGCOM Hate Speech Regulation which provides a comprehensive definition of hate speech also including behaviours taking place online [<i>"hate speech", the use of content or expressions that are likely to disseminate, propagandize or foment hatred or discrimination and incite violence against a specific target group through stereotypes of group characteristics, ethnic, territorial origin, religious beliefs, gender identity, sexual orientation, disability, personal and social conditions, through the dissemination and distribution of writings, images or other material, including through the Internet, social networks and other telematic platforms</i>].</p> <p>The broadcast media regulator, AGCOM, is tasked with enforcing these provisions. However, it should be noticed that the Italian media regulator has limited powers to intervene and issue sanctions. For the most part, it only intervenes when violations regard the special provisions for the protection of minors. <u>Further, AGCOM has no legal powers to regulate content hosted by online intermediaries.</u></p> <p>On the other hand, AGCOM has however the power to set up the Permanent Observatory of Guarantees and Protection of Minors and the Fundamental Rights of the Person on the Internet, which monitors cases of incitement to hatred, threats, harassment, and cyberbullying on the Internet and drafts co-regulatory codes of conduct in cooperation with Internet companies and social media platforms. Moreover, AGCOM has also recommended the amendment of the existing European Union (EU) E-Commerce Directive to compel Internet hosts and providers to adopt self-regulatory or co-regulatory codes of conduct to monitor third-party content, with a view to protecting Internet users – and minors in particular – from harassment and incitement to hatred.</p>
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<p>4.3 Is the test for hate speech used by any Social Media / Press / Online regulatory bodies the same as the criminal law definitions?</p>	<p>Hate speech does not have a criminal definition within the Italian criminal legal system. As explained in sections 2.1 and 3.2 above, the AGCOM Hate Speech Regulation provided the first definition of hate speech only in 2019. The Reale-Mancino Law and Scelba Law, on the other hand, provide for a definition of hate crimes connected with the dissolved Fascist Party. Lastly, the Italian Criminal Code punishes conducts that are partly recalled by the definition of hate speech provided in the AGCOM Hate Speech Regulation, but that constitute crimes (i.e. defamation, threat, persecutory acts, etc.). Therefore, we can conclude that the test for hate speech is not the same as the criminal law definitions.</p> <p>By analysing some of the most known social media platforms, for instance, we noticed that the Italian policies relating to hate speech or cyberbullying do not specifically recall the definition provided by Italian laws:</p> <ul style="list-style-type: none">• Twitter has adopted specific policies that define hate speech as “<i>promoting violence against other people, attack or threaten them on the basis of race, ethnicity, national origin, caste, sexual orientation, sex, sexual identity, religion, age, serious illness or disability. In addition, we do not accept accounts whose primary purpose is to incite people to harm others on the basis of these categories</i>”. This definition is very similar to the one provided in the AGCOM Hate Speech Regulation.• Facebook published a series of information against cyberbullying. However, the (Italian) definitions adopted are generic and do not reflect the ones provided by Italian Law no. 29 of 29 May 2017 on cyberbullying. <p>With specific reference to the press:</p> <ul style="list-style-type: none">• Journalists are subject to additional obligations when conveying information that require them to refrain from publishing contents that may result in hate speech. Even though the AGCOM Hate Speech Regulation is not expressly recalled by the Regulation of Journalists’ Duties of 3 February, 2016, Article 7 of the latter document requires
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	<p>journalists to respect “<i>individuals, their dignity and not to discriminate against anyone on account of race, religion, sex, physical or mental condition or political opinions</i>”.</p> <ul style="list-style-type: none"> • In addition, as mentioned, the AGCOM Hate Speech Regulation establishes principles directed at media and radio service providers subject to Italian jurisdiction. Therefore, the press is subject to the principles set therein when information is conveyed through said services. • Lastly, pursuant to Article 596-<i>bis</i> of the Italian Criminal Code, the crime of defamation can be aggravated when perpetrated through the press. Under Article 57 of the Italian Criminal Code, newspaper directors and vice-directors can be subject to the sanctions provided for in Article 595 of the Italian Criminal Code (defamation) together with the authors of the defamatory articles, as they have a duty to control published contents. Therefore, in some ways we can say that the test for hate speech applied to the press does recall also criminal laws.
<p>4.4 Do public and private institutions have to comply with the same duties to avoid hate speech?</p>	<p>Yes, the thresholds established by laws and/or regulations to identify hate speech do not differentiate due to the public or private nature of the perpetrators.</p> <p>With regard to radio and media service providers, the AGCOM Hate Speech Regulation expressly refers to both private and public providers:</p> <ul style="list-style-type: none"> • Pursuant to Article 2, “Scope”, the principles and provisions established by the Regulation apply to all media and radio service providers subject to Italian jurisdiction. Hence, Article 2 does not differentiate between private and public institutions. • Pursuant to Article 5, “Initiatives to contrast hate speech” both public (paragraph 1) and private (paragraph 2) companies have to promote initiatives to promote social inclusion, human dignity, non-discrimination and fundamental human rights.



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<p>4.5 If I am accused of hate speech, what is my recourse?</p>	<p>It depends on the grounds the accusation is based on:</p> <ul style="list-style-type: none">• If I am a media and radio service provider, my conduct may be reported to a consumer association, which will then report it to AGCOM to open an investigation (on the basis of such notification of if it autonomously detects a violation) as provided by the AGCOM Hate Speech Regulation. In particular, the violation of the principles of non-discrimination and hate speech, referred to in the AGCOM Hate Speech Regulation, may be episodic or systematic. In the first case, AGCOM limits its activity to reporting the case to the provider in question, also communicating this on its website. In the second case, or in the presence of particularly serious violations, AGCOM initiates a sanctioning procedure that may result in a warning to the media or radio service provider not to repeat the unlawful conduct. In case of non-compliance, the Authority may apply an administrative sanction from Euro 10,300.00 to Euro 258,000.00, as provided for by Article 1, paragraph 31, of Law no. 249 of 31 July 1997.• If the allegation is based on a crime, such as defamation, threat or a hate crime, I may be punished under Articles 595 or 612 of the Italian Criminal Code and Article 3, paragraph 1, of the Reale-Mancino Law with reclusion from 6 months up to 3 years, or a fine starting from 516 euros. Victims can also claim compensation for damages within the same criminal proceeding or initiate a separate civil defamation lawsuit.
<p>4.6 If hate speech is occurring at my event/on my platform/in my place of work, what should I do about it?</p>	<p>As previously mentioned, hate speech can be “prosecuted” in different ways depending on the nature of the conduct and under different laws or regulation based on its receivers and consequences.</p> <p>For media and radio service providers hate speech can be sanctioned under the AGCOM Hate Speech Regulation. When the conduct becomes defamation or threat it can be punished under the Italian Criminal Code or the other Laws regulating hate crimes, such as the Reale-Mancino</p>



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	<p>Law or Scelba Law:</p> <ul style="list-style-type: none">• In the first case, pursuant to Article 6 of the AGCOM Hate Speech Regulation a sanctioning proceeding can be actioned upon the submission of reports by associations or other organisations representing the interests of consumers and by associations and bodies with a statutory commitment to fight discrimination. Therefore, if someone were to witness hate speech occurring in the context of an entertainment or news program, they could report it to the relevant consumer organizations (such as IAP, the Italian advertising self-regulatory body if hate speech occurred for instance in a commercial) that, after a first evaluation, can submit a complaint to AGCOM.• With regards to video sharing platforms, the AGCOM Hate Speech Regulation requires them to adopt code of conducts to prevent and regulate hate speech. Therefore, if someone were to witness such conducts on video sharing platforms, they could report it through the forms usually implemented by said providers. In addition, Law no. 71 of 29 May 2017, in establishing measures against cyberbullying, in Article 2 requires social media and websites, within 24 hours of receiving a complaint by a minor or his/her parents, to remove or block the minor’s personal data. When a response does not occur within 24 or 48 hours, the complainant can initiate a proceeding before the Italian Data Protection Authority. Article 5 requires school principals to inform parents of cyberbullying acts occurring to their children. Hence, this Law represents an additional remedy in the hands of parents and/or minors (older than 14).• When the speech occurs to <u>someone else</u>, out of the aforesaid radio and media framework, taking action as a third-party may be more challenging. Regardless of the nature of the conduct (i.e. resulting in defamation, threat, persecutory acts, etc.), it is the victim who must report the crime to the authorities and/or initiate a proceeding – criminal or civil – before the competent Courts.
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	<ul style="list-style-type: none"> Despite the above, the law does not forbid companies to adopt specific internal regulations to prevent hate crimes or hate speech happening among their employees and said internal rules may represent a first and more approachable solution to take action in case hate speech were to occur, for instance, at the workplace.
<p>4.7 If I have identified hate speech (online, in the media, etc.) what practical steps should I take?</p> <p><i>(For this question, we envision a “filtering” or “journey tree” (flow chart) where the first question is, “where did you see the hate speech” → if online then go here, if offline, then go here → do you have evidence of it (screenshot/link to the post, recording of the speech, etc.) → then what, etc.)</i></p>	<p>If I have identified hate speech in the context of media or radio services → I can report it to the relevant consumers associations → after having examined my report said associations can submit it to AGCOM → AGCOM will analyse the report and, if deemed necessary, start a sanctioning proceeding.</p> <p>If I have identified hate speech on the press → the AGCOM Hate Speech still applies, therefore I can report it to the relevant consumers associations that can submit it to AGCOM to start a sanctioning proceeding → OR I can file a complaint to the Italian Journalists Association.</p> <p>If I have identified hate speech on social media or online platforms → the AGCOM Hate Speech Regulation does not provide a legal discipline for this scenario but merely requires video sharing platforms to adopt code of conducts to prevent and regulate hate speech. → Hence, in such case, I can report it to through the specific forms that each platform provides to users to report hate speech based on their code of conducts (in accordance with the AGCOM Hate Speech Regulation).</p> <p>In addition to all the above, if I have identified a conduct that may be considered hate speech but also represents a crime (i.e. hate crimes, defamation, threat) → I can also report it to the authorities and initiate a proceeding before the competent Courts.</p>



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<p>4.8 Please provide recent (within 1 year) of examples of hate speech reported in the media, and if possible, establish how was this addressed, e.g. by legal remedies or non-legal remedies.</p> <p><i>(For this question, we are looking for case studies.)</i></p>	<p><u>"SEGRE CASE"</u></p> <ol style="list-style-type: none">1. On 26 October 2019, the Italian newspaper "<i>Repubblica</i>" published an article which caused a stir, once again drawing the public's attention to the hate phenomena taking place online - and especially on social media platforms. The piece, signed by Piero Colaprico, exposes the data collected by the Anti-Semitism Observatory in a web search, from which it emerges that life senator Liliana Segre receives an average of 200 hate messages a day, including "<i>political and religious attacks, insults, slander</i>". <p>The common denominator of these messages lies in anti-Semitic sentiment. Indeed, Liliana Segre, is a direct witness to the horrors of the Holocaust, who survived internment in the Auschwitz concentration camp when she was little more than a child.</p> <p>The news has aroused the reactions of public opinion and the Italian political class. In particular, Prime Minister Conte declared that he wanted to push Parliament to introduce "<i>rules to counter the language of hatred at all levels, in public debate and social communications</i>".</p> <p>The same Segre, moreover, is the first signatory of a <u>motion</u> for the establishment of an extraordinary Commission for the fight against intolerance, racism, anti-Semitism and incitement to hatred; the motion was approved in the Senate a few days after the article of <i>Repubblica</i>, on October 30, with 151 votes in favour, no votes against and 98 abstentions - those of the right and centre-right senators, who said they were worried about the possibility that such a Commission could end up restricting the freedom of expression even of those who wanted to express and spread nationalist ideas.</p> <p>The division that has formed around the motion demonstrates how difficult it is to reach agreement and a common vision on the measures to be taken against forms of hatred, since this is a matter inextricably linked to a fundamental human right, which is freedom</p>
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	of expression.
<p>4.9 Please provide examples of cases related to hate speech / incitement of violence.</p>	<p>1. <u>STORMFRONT CASE</u></p> <p>The disputed facts, according to the prosecution, were committed between 2011 and 2012 through the use of pseudonyms and the dissemination of slogans through the Italian "Stormfront forum". In particular, in the case at issue, the defendants were accused of disseminating messages, flyers, images, videos and audio recordings to support Holocaust denialism and to support the superiority of the white race and to express resentment towards those who help immigrants.</p> <p>More specifically, the claim made was that they associated themselves <i>"with the purpose of committing more crimes of spreading ideas through leaflets based on white race superiority, racial and ethnic hatred and incitement to commit crimes of discrimination and violence on racial and ethnic grounds"</i>.</p> <p>The sentences handed down in the first instance for four members of Stormfront, a website through which, according to the prosecution, the defendants spread online incitements to discrimination, ethnic, religious and racial violence, including through the dissemination of their thoughts, were confirmed, but with a slight reduction of their sentences.</p> <p>2. <u>CASAPOUND CASE</u></p> <p>In the case at stake, the action was brought after Facebook deactivated the party's account as well as the profile of the page's administrator without providing any notice or explanation. Facebook argued that the removal of Casa Pound's pages was legitimate on the grounds that they included content which constituted hate speech and</p>



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	<p>incitement to violence, in violation of Facebook's Community Standards.</p> <p>The Court of Rome ruled that Facebook had to reactivate the account and restore the pages of the Italian neo-fascist party CasaPound, also ordering for the platform to pay the legal costs and a penalty of €800 for each day the account remained inactive following the order.</p> <p>In particular, in its decision, the Court reasoned that, due to Facebook's dominance as a social media platform and its stated mission to uphold freedom of expression, the deactivation of CasaPound's page violated its rights as a political party to participate in public debate and "<i>contribute by democratic means to national policy</i>" under article 49 of the Constitution.</p> <p>The Court further stated that Facebook was bound to abide by Italian law, which limited its discretion in its contractual relationship with its users, until violations had been proved.</p> <p><u>3. INFRINGEMENT OF THE REGULATION ON RESPECT FOR HUMAN DIGNITY AND THE PRINCIPLE OF NON-DISCRIMINATION AND CONTRACT TO HATE SPEECH BY THE "FUORI DAL CORO" TRANSMISSION (NETWORK 4), 11 March 2020:</u></p> <p>Following the monitoring of some episodes of the aforesaid transmission in the months of September and October 2019, the AGCOM has found in the contents, in the use of graphic elements and in the methods of conduct on immigration issues related to subjects at risk of discrimination, the dissemination of inaccurate, summary, misleading and tendentious information.</p> <p>Elements have also been found that undermine the principles of loyalty, objectivity and</p>
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Jurisdiction: Italy

Law Firm / Office: Milan and Alicante

	<p>good faith in the reconstruction of events, also due to the association, sometimes improper, of news or facts aimed at establishing links between specific events and specific groups of people, risking consequently spreading instrumental, stereotyped and potentially encouraging representations of discrimination and intolerance.</p> <p>A specific notice of non-compliance with the provisions of the AGCOM Hate Speech Regulation has been sent accordingly to Network 4.</p> <p>4. <u>PROCEDURE NO. 07/19/DCA - PROC. 2726/AV – WARNING AGAINST SOCIETA' EDITRICE REPORTER II S.R.L, 31 July 2019:</u></p> <p>The proceedings was about the expressions used by the presenter Luca Casciani during the program "<i>Giorno per giorno ... cor veleno</i>" (Day by day ... poison) because they were considered likely to spread, propagandize or foment hatred and discrimination and incite violence against a specific group of people, through stereotypes related to group, ethnic, territorial origin.</p> <p>The company was warned not to repeat the unlawful conduct (pursuant to Article 7 of the AGCOM Hate Speech Regulation, and advised that failure to comply with the order given in this measure will result in the application of the pecuniary administrative sanction provided for in Article 1, paragraph 31, of Law no. 249 of 31 July 1997.</p>
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Template for Answers to Questions

Jurisdiction: Luxembourg

Law Firm / Office: Hogan Lovells (Luxembourg) LLP

1. International and Regional Frameworks (NOTE: this section <u>only</u> to be filled up by the teams working on international and EU law)	
1.1	What are the international law standards on hate speech with reference to the UN Conventions, General Comments and the decisions of the Thematic Mechanisms / Special Rapporteur reports?
1.2	Are there any relevant decisions on hate speech arising from the European Convention of Human Rights, the American Convention of Human Rights and the African Convention of Human Rights?
2. Definition of hate speech	
2.1	What is the definition of hate speech in your country?
	<p>Hate speech is defined by article 457-1 of the Luxembourg Criminal Code (the “LCC”).</p> <p>According to this article, hate speech is characterized when the two following conditions are present:</p> <ol style="list-style-type: none">1. an incitement to (i) refuse the supply of, enjoyment of and/or access to goods, refuse the provision of and/or access to a service, make the supply of and/or access to a good or a service or to make any other discrimination when of this



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	<p>supply, indicate in an advertisement the intention to refuse a good or service or to discriminate when supplying a good or service, hinder the normal exercise of any economic activity, refuse to hire or sanction/dismiss a person and/or make its/her access to work or all types of vocational training, working conditions, membership and engagement in an organization of workers or employers subject to one of the grounds cited below as provided for in article 455 LCC; or (ii) hatred or (iii) violence, concerning a natural or legal person, a group or a community, which is discriminated on the grounds listed in article 454 LCC (i.e. origin, skin colour, sex, sexual orientation, sex change, gender identity, family situation, age, state of health, disability, morals, political or philosophical opinions, trade union activities, real or supposed belonging to a certain ethnic group, nation, race, or a specific religion).</p> <p>2. Such incitement to a discriminative action as per article 455 LCC, hatred or violence shall be expressed by words, shouts or threats in public places or at gatherings, by writings, prints, drawings, engravings, paintings, emblems, images or any other medium of writing, speech or image sold or distributed, offered for sale or exhibited in public places or meetings, either by closets or posters exposed to the public eye, either by any audio-visual communication means.</p> <p>A few remarks and clarification are to be made with regards the above definition:</p> <p>1. The hate speech offence is composed of both a material and a moral element.</p> <p>The material element consists in the incitation to a discriminative action as per article 455 LCC, hatred or violence (i.e. the fact of causing a feeling of hatred, namely a violent feeling that makes the recipient of the message want evil, or a</p>
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Jurisdiction: Luxembourg

Law Firm / Office: Hogan Lovells (Luxembourg) LLP

	<p>deep aversion towards a protected category of persons) whereas the moral element consists in the willingness to deliberately provoke the hate reaction mentioned above in the public mind (i.e. be aware of the discriminative nature of such words).</p> <ol style="list-style-type: none"> 2. The law does not provide a detailed definition of the term "public" in relation to a statement made on Internet websites. Nonetheless, and according to case law, Facebook groups, for instance, can be considered as public even under private or closed status because groups of people are reached through them. 3. The European Commission against Racism and Intolerance ("ECRI") regretted in its last Luxembourg report that discrimination on the ground of language remains absent from the list of article 454 LCC despite several warnings.
<p>2.2 Does the legal definition of hate speech require threats of violence / incitement to violence?</p>	<p>No. Although threats of or incitement to violence may constitute a form of hate speech according to article 457-1 LCC, they are neither a constitutive element of the discriminative actions punished by article 455 LCC nor of hatred.</p> <p>Indeed, according to article 457-1 LCC, hate speech consist in: "an incitement to one of the discriminative action listed in article 455 LCC, hatred or violence, concerning a natural or legal person, a group or a community".</p>
<p>2.3 Would the definition cover speech and behaviour which incites hatred (not necessarily violence) towards a group?</p>	<p>Yes. As recalled under section 2.2, the legal definition also expressly covers hatred speech and/or behaviour towards a group or a community (as long as such hatred is based on one of the grounds listed in article 454 LCC).</p>



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<p>2.4 Does hate speech cover speech that draws on hateful, hostile, or supremacist beliefs directed at a group <u>that is threatened and likely to cause them harm</u>?</p>	<p>Yes. The legal definition does not make any difference between hate speech directed at a group and hate speech directed at a group that is actually threatened and likely to cause them harm. In other words, it is not even required for a group to be threatened or to be likely to be harmed to encompass the definition of hate speech.</p>
<p>2.5 Does the definition permit religious beliefs and speech which discriminates against particular communities – are there any limitations to religious beliefs and speech which discriminated against particular groups?</p>	<p>First of all, article 19 of the Luxembourg Constitution guarantees freedom of religious expression <u>subject to not committing any criminal offense</u> (like hate speech as per article 457-1 LCC).</p> <p>Moreover, according to the mere definition of hate speech (as described under point 1.3 and recalled under point 2.2), any person or group of persons inciting to a discriminative action as per article 455 LCP, hatred or violence towards a person, a group or a community based on one of the grounds provided for in article 454 LCC encompasses the risk of being punished <u>regardless of its own belonging to a group/community that is also likely to be discriminated on one of these grounds.</u></p>
<p>3. Remedies and recourse for hate speech</p>	
<p>3.1 If I am the victim of hate speech, what is my recourse?</p>	<p>Different channels are opened to help people facing hate speech. Depending on the media used to divulgate hate speech and your willingness or not to bring it to courts (which is however highly recommended at least for statistical purposes), victims of hate speech can either opt for a non-legal recourse or a legal recourse.</p> <p><u>Non-legal recourses</u></p> <ol style="list-style-type: none"> 1. For online hate speech:



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	<p>(a) on social medias - unwanted/offensive content (including hate speech) spread over a social media which has voluntarily signed the 2016 Code of Conduct on countering illegal hate speech online of the European commission (the "2016 EU Code of conduct") can directly be reported through that platform for suppression within the 24 hours. So far, the Code has been signed by Facebook, Microsoft, Twitter, YouTube, Instagram, Google+, Dailymotion, Snapchat and Webedia. However, no cooperation is planned with the Luxembourg authorities in case of recognition and deletion of the hateful content by the platform.</p> <p>(b) wherever over the internet - signal/report directly, online and anonymously via the Bee Secure Stoline (www.beesecure.lu). Its Stoline team checks each single report and transfers illegal content to the police. The signaler can follow the evolution of its report, be it legal if transferred to the police, via a case number provided to him/her by the platform. Bee Secure also set up a Helpline where victims can find free of charge professional, anonymous and confidential help. The Kanner-Jugendtelefon works on the same basis but is dedicated to the youth.</p> <p>2. For audiovisual/radio hate speech (i.e. contained in a radio, TV or cinema program): article 6.1.c of the Luxembourg modified law of 27July 1991on the electronic media recalls that audiovisual programs must comply with Luxembourg law (including article 457-1 LCC). In case of violation, complaints can be addressed for free to the Luxembourg independent audiovisual authority ("ALIA") with respect of the conditions/requirements set up in article 5 of its internal regulation (www.alia.lu). (Where complaints are declared founded, ALIA can decide to sanction its authors and/or defer the case to the competent authorities (article 9 of the above mentioned regulation).</p> <p>3. For hate speech in the press: complaints can be addressed free of charges to the complaint commission of the Press Council (www.press.lu) by individuals. (Where such complaints are declared founded, the commission can issue recommendation</p>
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	<p>addressed to the responsible and/or either emit a public or non-public reprimand to be communicated by the publisher).</p> <p>4. Regardless of the medium: you can report to an institution or organization fighting against discrimination and likely to provide you with all necessary information to be able to file a criminal complaint, if desired.</p> <p>Amongst them figure the Center for Equal Treatment (www.cet.lu) which plays a legal consultative role but cannot receive complaints of discrimination nor represent victims of discrimination before courts as well as the Human Right League (www.ldh.lu), which, in addition to its legal consultative role, can represent victims before courts.</p> <p><u>Legal recourses:</u></p> <ol style="list-style-type: none">1. You can file a complaint to the police or the public prosecutor (most efficient than the police since the later operates as a "filter" regarding the cases to be brought to the prosecutor). In such case, it is advised to keep evidences of the offense either in the form of screenshots, e-mails, initial version of an online article etc or;2. You can contact an association dealing with the ground of discrimination you have faced and which has approval to go to court. <p>They namely are (i) and ALOS-LDH (<i>Action Luxembourg Ouvert et solidaire – Ligue des Droits de l’Homme</i>) for discriminations based on any of the grounds listed in article 454 LCC, (ii) CLAE (<i>Comité de liaison des associations d’étrangers</i>) and ASTI (<i>Association de soutien aux travailleurs immigrés</i>) for racist and xenophobic discriminations and (iii) Info-Handicap and "Guide dogs for the blind" for discriminations based on the state of health or disabilities.</p>
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	<p>3. Report to the Bee Secure Stoptone (see comment 3.1.4 under non legal-recourse).</p>
<p>3.2 What are the criminal legal remedies for hate speech?</p>	<p>Article 457-1 LCC states that hate speech "is punished by imprisonment for eight days to two years and a fine of 251 EUR to 25,000 EUR or one of these penalties only" and that the confiscation of the medium used to spread hate speech will be declared in all case.</p> <p>A few remarks are to be made with regard the above:</p> <ol style="list-style-type: none"> 1. With regard the personal scope of article 457-1 LCC it is interesting to note that the criminal legal remedies are not only applicable to "direct" authors of hate speech, but also to whoever (i) <u>belongs to an organization whose objectives or activities are to commit hate speech</u> or (ii) <u>indirectly participates to the spread of hate speech</u> (by printing, manufacturing, holding, transporting, importing, exporting, manufacturing, putting into circulation on Luxembourg territory, sending from Luxembourg territory, delivering to the post office or to another responsible professional distribution of mail on Luxembourg territory or passing through Luxembourg territory any medium of writing, speech or image, likely to encourage hate speech). 2. The ECRI however regretted in its last Luxembourg report, that (i) article 457-1 LCC only criminalizes the participation in any organization whose objective or activities consist in the commission of hate speech and <u>not their creation</u> and (ii) article 457-1 LCC does not make racist or homo/transphobic motivation an aggravating circumstance.



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<p>3.3 Are there civil legal remedies available – compensation / damages – for hate speech?</p>	<p>Yes there are. Victims even have the choice of the legal path they wish to use in this regard (i.e. filing a complaint with constitution of civil party ("<i>constitution de partie civile</i>") to the prosecutor or directly initiating a distinct action before civil courts).</p> <p>In this regard, it is interesting to note that all the hate speech case law granting a civil legal remedy to victims that we have had the occasion to read (i) resulted from the constitution of civil party in the course of a criminal procedure (ii) were initiated by ASTI and that (ii) the latter systematically requested 1 symbolic EUR as civil compensation.</p> <p>Such compensation has been granted in all cases where hate speech had been confirmed by the criminal judge. However, so far we have not had access to sufficient case law to determine whether this is a "customary" compensation or whether higher compensations might be/have been requested and granted.</p> <p>In this regard, it should further be recalled that any query for compensation or damages is subject to the sovereign appraisal of the Luxembourg judges, based on the facts and circumstances but that the latter cannot grant more than what was requested.</p>
<p>3.4 Are there regulatory frameworks governing the online news media which allow individuals to complain?</p>	<p>As a preliminary remark, it is interesting to note that protection against hate speech does not figure as a limit to the journalists freedom of speech as listed in articles 10 to 20 of the amended Luxembourg law of 8 June 2004 on freedom of expression in the media but that it "only" figures amongst the journalists duties as per the 2006 Press of conduct elaborated by the Press Council per application of article 23.2.2 of the above mentioned law. We assume that such code does not differentiate between the paper and online press as it addresses to journalists without indication to the nature of their information support.</p>



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	<p>Therefore, at our knowledge, sole the (so far unmodified) 2006 Press code of deontology (we refer to point 3.5 for further explanation) and readers can complain to the Press Council on that base.</p> <p>However, we also are in the opinion that the 2016 EU Code of conduct might find application in the specific case where news is displayed by an online news media via its page on the platform of one of the signatories of that Code.</p>
<p>3.5 Is the test for hate speech used by any Social Media / Press / Online regulatory bodies the same as the criminal law definitions?</p>	<p><u>The test for social medias</u></p> <p>Autoregulation prevails for social media as there exist no equivalent to the ALIA for instance for Social Medias (i.e. there is no regulatory body per se).</p> <p>However, we are in the opinion that the test for hate speech on online media is very close to the criminal definition. Indeed, the 2016 EU code of conduct refers to "illegal hate speech, as defined by the Framework Decision 2008/913/JHA of 28 November 2008 on combating certain forms and expressions of racism and xenophobia by means of criminal law and national laws transposing it". If such definition seems pretty limiting at first sight, as it only targets discrimination based on race/color/descent/religion or ethnic origin, recital 10 of that framework-decision recalls that it does not prevent a Member State from broadening its hate speech definition with criteria other than of a racist nature, which article 454 LCC does.</p> <p>This seems, in a way, to amount to a referral of the signatories to the hate speech definition applicable in national laws. The fact that, in practice, hate speech on the grounds of sexual orientation or gender identity for instance can also be signaled on the signatories 'platforms comfort us in that interpretation (although it is not excluded that the signatories unilaterally decide to go beyond what is required by the framework-decision or even article 454 LCC by allowing report for discrimination based on language for instance).</p>



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	<p>Nonetheless, it is interesting to note that the online regulatory body (i.e. Bee Secure) might also <i>de facto</i> apply its own test (please see below the online regulatory section).</p> <p><u>The test for the press</u></p> <p>The complaint commission of the Press Council is the regulatory body in charge of realizing the hate speech test in case of complaint based on the 2006 Press code of ethics.</p> <p>In this regard, article 5 of the (so far unmodified) 2006 Press code of ethics states that "the press commits to avoid and oppose any discrimination on the grounds of sex, race, nationality, language, religion, ideology, ethnicity, culture, class or beliefs, while ensuring respect for fundamental human rights and not to admit or glorify crimes, terrorism and other acts of cruelty or violence".</p> <p>Such a definition differs from the legal definition of hate speech. Indeed, (i) the notion of incitement is absent, although it can be argued that per essence, a discriminative article/press drawing or image can influence or incite its reader, (ii) all means of discriminations are targeted (and not only those listed in article 455 LCC), no reference is made to hatred, (iii) "punishable" violence is not limited to violence on the ground of one of the mentioned discrimination grounds and (iv) other grounds of discrimination are listed (such as language) and some are missing (such as sex change and orientation and gender identity) with comparison to article 454 LCC.</p> <p><u>The test for online content</u></p> <p>Bee Secure is the governmental platform responsible for promoting a safe, responsible and positive use of new technologies by the large public. As such, it allows the report of illegal content spotted all over the internet (including social medias). Its definition of illegal content</p>
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	comprises "contents relating to racism, revisionism or discrimination" and the website explicitly refers to relevant criminal law provisions, including articles 454 to 457-1 LCC".
3.6 Do public and private institutions have to comply with the same duties to avoid hate speech?	<p>Yes, they do. Indeed, the criminalization of hate speech itself has been enacted with the aim to avoid hate speech committed by anyone. Its definition indeed targets whoever (including institutions and regardless of whether they are public or private) commits hate speech.</p> <p>However, it is interesting to note that based on article 456 LCC persons custodian of the public authority or entrusted with a service public mission are exposed to a higher criminal remedy than that applicable to other authors of hate speech (including private institutions) as per article 457-1 LCC.</p> <p>Indeed, their imprisonment length might go up to 3 years (instead of 2) and the fine up to 37.500 EUR (instead of 25.000 EUR) in cases where they (i) refuse the benefit of a right granted by law to or (ii) hinder the normal exercise of any economic activity of a natural or legal person, a group or a community based on one of the grounds referred to in article 454 LCC. This seems to reveal a higher political willingness to avoid hate speech in public institutions than in private ones, even though both must comply with the same duties.</p>
3.7 If I am accused of hate speech, what is my recourse?	<p>If someone is accused of hate speech and subject to legal proceedings, the person may defend himself/herself on the basis of criminal law procedure provisions (court hearings, production of evidence).</p> <p>In the course of such proceedings, the person might invoke its/her "freedom of speech" as defined in article 24 of the Luxembourg Constitution.</p>



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	<p>Such person should, in addition, prove that the constitutive elements of the hate speech offense (i.e. the material and/or the moral elements as described under point 2.1) are not met in the case at hand.</p>
<p>3.8 If hate speech is occurring at my event/on my platform/in my place of work, what should I do about it?</p>	<p>In all cases, we would recommend to be civic-minded and to report such content.</p> <p>That being said, we found surprising that the governmental website “beesecure.lu” mentions that (i) in some cases, ignoring is the best response (so that authors do not get the satisfaction of knowing that their message has been heard by someone) and (ii) also recommends not to take things personally (insults are not directed at you personally, but are pure projections) amongst other recourses. Below are the other suggested recourses.</p> <p><u>In my event/place of work (i.e. offline):</u></p> <ol style="list-style-type: none">1. Counter-Speech in the attempt to actively fight hate speech. In this way you show that to the authors that their discrimination/hatred/violence is not unanswered and to the victims that they are supported; and/or2. File a complaint (if you were victim) or invite the victim to file a complaint against the perpetrators/offer to testify if necessary (if you were a witness). <p>In this regard, it is advised to avoid calling the police emergency number unless you and/or the victim are facing concrete and repeated threats (i.e. immediate danger) and to try to record/collect as much evidence as possible.</p> <p><u>On my platform (i.e. online):</u></p>



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	<ol style="list-style-type: none">1. Block the author; and2. Counter-Speech; and/or3. Signal either on the platform or anonymously to the Bee Secure Stopline or both (if you are not directly concerned by the hate speech you cannot file a criminal complaint). In this regard, it is advised to provide them with as much evidence as possible (i.e. screenshots with the profile of the hate speech's author etc); and/or4. File a complaint (if you were victim) or invite the victim to file a complaint against the perpetrators or offer to testify if necessary (if you were a witness). Avoid calling the police unless you and/or the victim of concrete and repeated threats and are in immediate danger and record/collect as much evidence as possible.
<p>3.9 If I have identified hate speech (online, in the media, etc.) what practical steps should I take?</p> <p><i>(For this question, we envision a “filtering” or “journey tree” (flow chart) where the first question is, “where did you see the hate speech” → if online then go here, if offline, then go here → do you have evidence of it (screenshot/link to the post, recording of the speech, etc.) → then what, etc.)</i></p>	<p>We kindly refer to point 3.8.</p>
<p>3.10 Please provide recent (within 1 year) of examples of hate speech reported in the media, and if</p>	<p>Since Luxembourg is a small country, we have not identified very recent examples of hate speech.</p>



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<p>possible, establish how was this addressed, e.g. by legal remedies or non-legal remedies.</p> <p><i>(For this question, we are looking for case studies.)</i></p>	<p>That being said, we have summarized some cases where the Luxembourg judge came to the conclusion that the facts were constitutive of hate speech:</p> <ul style="list-style-type: none">• District Court of Luxembourg (correctional matter), 20 June 2007 (N°1976/2007): E-mails were circulating in Luxembourg showing photos of a dark-skinned female person setting herself on fire. Two advertisements were attached to the photo of this scene, one of which had the following text: "She too is all fire and flame for the new C3 (a new car)" and the other had the text: "Problems with the Ministry of Middle Classes? Turn to us with confidence, we will help you further". The Court came to the conclusion that X.) has committed the offence of having produced, held and circulated on Luxembourg territory images likely to incite the acts provided for in Article 455 of the LCC, hatred towards a natural person and a community.• District Court of Luxembourg (correctional matter), 6 March 2013 (N° 818/2013): In March 2012, the director of a newspaper publishing company was made aware that X.), an employee of his company, had shared on the newspaper's website r a publication which contained discriminatory passages. X.) was condemned for having printed and distributed in the mailboxes of certain farmers in the country a leaflet reproducing the advertisement "We've become slaves to foreigners". X.) was condemned on the basis of having put into circulation on Luxembourg territory writings inciting hatred against a group of persons on the basis of non-membership of the Luxembourg nation.• District Court of Luxembourg (correctional matter), 10 May 2012 (N°1754/2012): X.) was condemned for having committed an offence of having printed and distributed in several mailboxes a brochure reproducing a newspaper article named: "Strangers Outside...". These facts are constitutive of hate speech on the basis of the membership or non-membership, true or supposed, of a particular ethnic group, nation, race or
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Jurisdiction: Luxembourg

Law Firm / Office: Hogan Lovells (Luxembourg) LLP

	<p>religion, or on the basis of the true or supposed non-membership of residents and frontier workers of foreign origin of the Luxembourg nation.</p> <ul style="list-style-type: none">• Superior Court of Justice, 26 June 2013 (N°346/13 X): One person had distributed pamphlets inciting hatred against foreigners. She had exceeded the limits of freedom of expression by associating strangers with “shit”, saying that the Luxembourgers are oppressed by foreigners in their own country. It was also stated that they have become the slaves of the foreigners who constitute a danger to the Luxembourg nation which they intend to break down, that foreigners are responsible for certain consequences in terms of land use planning, land management, and the management of the waste, construction, water management, etc.• Superior Court of Justice, 6 December 2016 (N°596/16 V): One person was also condemned because she had dropped off in mailboxes (including from a police station) pamphlets containing a large number of claims that are deemed xenophobic and islamophobic and exceeding freedom of expression.• District Court of Luxembourg (correctional matter), 26 February 2014 (confirmed by Superior Court of Justice, 15 July 2014) (N°662/14 and N°345/14 V): A person was also condemned on the basis that she had published on a website several texts in which she criticized Jewish and Islamic convictions.• Superior Court of Justice, 1 March 2016 (N°134/16 V): One person had posted on a Facebook group called "For or against housing for refugees" texts containing denigrating terms on refugees. In the same Facebook group, another person had published pictures of a Muslim person suggesting to do a trick regarding this person and based on her religious convictions.
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Jurisdiction: Luxembourg

Law Firm / Office: Hogan Lovells (Luxembourg) LLP

	<p>We also note that there are some cases where the Luxembourg judge came to the conclusion that the facts do not constitute hate speech:</p> <ul style="list-style-type: none">• Superior Court of Justice of Luxembourg, 24 May 2011 (N°274/11 V): The Court came to the conclusion that It does not constitute incitement to racial hatred to publish on Internet a photo montage showing a person with the addition of the word "HASS" (hatred), the "SS" being written in the characteristic runes of the <i>Schutzstaffel</i> (the main major paramilitary organization under Adolf Hitler).• Superior Court of Justice of Luxembourg, 9 March 2011 (N°126/11 X): A radio program broadcasting a polemical position paper on the Israeli-Palestinian conflict has been deemed non-punishable. The Court recalled the principle of freedom of expression, in particular in the press, and carried out an overall assessment of the speech for the press. The Court noted that certain topics and terms may have caused discomfort, but that overall there was no provocation of a feeling of hatred towards the Jewish community.• Superior Court of Justice, 30 October 2018 (N°402/18 V): A person who said to a bus driver, "you're a shitty black guy, you have no right to be here, go back to your country, be careful, I'm going to hit you once" was not convicted of inciting the racial hatred. The facts were reclassified as insult subject to contravention.
3.11 Please provide examples of cases related to hate speech / incitement of violence.	Please see above.



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 Template for Answers to Questions

Jurisdiction: The Netherlands
Law Firm / Office: Amsterdam

1. International and Regional Frameworks (NOTE: this section <u>only</u> to be filled up by the teams working on international and EU law)	
1.1	<p>What are the international law standards on hate speech with reference to the UN Conventions, General Comments and the decisions of the Thematic Mechanisms / Special Rapporteur reports?</p> <p>N.A.</p>
1.2	<p>Are there any relevant decisions on hate speech arising from the European Convention of Human Rights, the American Convention of Human Rights and the African Convention of Human Rights?</p> <p>N.A.</p>
2. Definition of hate speech	
2.1	<p>What is the definition of hate speech in your country?</p> <p>There is no (statutory) definition of hate speech in the Netherlands. Rather, the Dutch Criminal Code (<i>Wetboek van Strafrecht</i>, "Sr") includes a series of articles that deal with several aspects of hate speech (articles 137c to 137g Sr). The most important ones are the prohibition to insult a group (article 137c Sr) and the prohibition to incite hatred, discrimination or violence (article 137d Sr).</p> <ul style="list-style-type: none"> Article 137c Sr prohibits, in short, to insult a <u>group of people</u> on account of their race, religion or belief, their heterosexual or homosexual orientation or their physical, mental or intellectual disability.



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	<ul style="list-style-type: none"> • Article 137d Sr makes it punishable to incite hatred, discrimination or violence against a person or a good on account of his or her race, religion or belief, their heterosexual or homosexual orientation or their physical, mental or intellectual disability. <p>Both article 137c and article 137d Sr applies to vocal, written or image expressions.</p> <ul style="list-style-type: none"> • Article 137e and 137f Sr criminalize the circulations of and support to such expressions. • Article 137g Sr makes its punishable to - in the exercise of his or her office, profession or business - intentionally discriminate against persons on account of their race. <p>In addition to these criminal provisions, some recent parliamentary documents contain references to hate speech. The government refers to hate speech as "<i>to incite hatred and violence</i>" (<i>Kamerstukken II 2018-2019, 30 950, nr. 158</i>) and "<i>discriminatory expressions</i>" (<i>Kamerstukken II 2018-2019, 30 950, nr. 176</i>).</p>
<p>2.2 Does the legal definition of hate speech require threats of violence / incitement to violence?</p>	<p>As explained under 2.1 above, a statutory definition of hate speech under Dutch law doesn't exist.</p> <p>The above cited articles from the Dutch criminal code do not require threats of violence or incitement to violence. But 137d Sr does specifically criminalise threats of violence / incitement to violence.</p>
<p>2.3 Would the definition cover speech and behaviour which incites hatred (not necessarily violence) towards a group?</p>	<p>Yes, that is covered by article 137d Sr. This article specifically states that the incitement to hatred to a person is punishable.</p>



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<p>2.4 Does hate speech cover speech that draws on hateful, hostile, or supremacist beliefs directed at a group that is threatened and likely to cause them harm?</p>	<p>Yes, please see the explanation above (under 2.1) on the prohibition to insult a group (article 137c Sr) and the prohibition to incite hatred, discrimination or violence (article 137d Sr).</p> <p>In addition, in 2014 the Dutch Supreme Court stated that articles 137c and 137d Sr not only cover expressions which instigate hatred, violence or discrimination but also expressions that instigate intolerance (ECLI:NL:HR:2014:3583).</p>
<p>2.5 Does the definition permit religious beliefs and speech which discriminates against particular communities – are there any limitations to religious beliefs and speech which discriminated against particular groups?</p>	<p>Yes, religious beliefs and speech which discriminates against particular communities made within the context of a religious belief may be permitted. This is linked to the freedom of speech and the freedom of religion as protected by European Convention on Human Rights ("ECHR"). The Dutch Supreme Court has held that the religious beliefs and speech can take away the infringing aspect of the beliefs and speech (ECLI:NL:HR:2001:AA9367).</p> <ul style="list-style-type: none">• By way of example we refer to a case in which a suspect expressed the sinful nature of homosexuality in light of the Islam. Based on an expert report in which the expert explained that the expressions made by this suspect were indeed traditional views of Islamic law in relation to homosexuals, the Court of Appeal stated that there were no insulting expressions in light of criminal law (ECLI:NL:GHSGR:2002:AF0667). The context of the religious beliefs and background of the Muslim prevented him from being criminally liable. The Court of Appeal also found relevant that the suspect also stated that the Islam forbid to hassle other people and to respect everybody. <p>Although religious beliefs and speech can be protected by freedom of speech based on article 10 ECHR, there are limitations to this freedom. Article 10 ECHR allows limitations. On the basis of established case law, Dutch law knows a three-step approach to determine whether an expression could be protected by freedom of speech or should be considered as a violation of articles 137c and 137d Sr. The three-step approach consist of the following three questions:</p> <ol style="list-style-type: none">1. <i>Is the expression on itself insulting?</i>



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	<ul style="list-style-type: none">• To assess whether a statement is verbatim offensive, an objective test should be carried out to determine whether it is insulting or not. The Supreme Court has considered that a remark is offensive if it is intended to put another person in a bad light with the public (ECLI:HR:2001:AB3143). <p>2. <i>If so, does the context take away the insulting nature of the expression?</i></p> <ul style="list-style-type: none">• The relevant context could be an attribution to the public debate, religious beliefs or the protection of artistic freedom.• Politicians are for instance allowed to hurt, shock or to disturb on the grounds of Community interest. This is however limited to the extent that the expressions aren't unnecessary offensive (ECLI:NL:HR:2018:541). <p>3. <i>If so, is the expression nevertheless unnecessary offensive or hurtful?</i></p> <ul style="list-style-type: none">• By way of example we refer to a case in which the District Court of Amsterdam had sentenced a suspect for discriminatory flyers (ECLI:NL:RBAMS:2019:13). These flyers stated that Muslims, Jews and Christians should unite against homosexuals and a connection was made between homosexuals and child abuser in reference to a (quasi) academic report. Although the Court held that the offensive statements were made in a religious context, the link made between homosexuals and child abuse (which is a very serious offense) made the flyers unnecessary offensive. Therefore the suspect was convicted for discriminatory expressions based on article 137d Sr.
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3. Remedies and recourse for hate speech	
3.1 If I am the victim of hate speech, what is my recourse?	<p>That is very depending on the factual circumstances of the case. But in general there are the following options.</p> <ul style="list-style-type: none">• The first option is to file a police report. It is then up to the police to investigate your report and the Public Prosecution Service (<i>OM</i>) may decide whether criminal charges will be pressed. If the Public Prosecution Service doesn't press criminal charges, the victim can force the prosecutor in court to do so.• The second option is to file a civil lawsuit against the person/organisation who may be guilty of hate speech. In a civil lawsuit a victim has several possibilities such as seeking for compensation and rectification.• See further under 3.2 to 3.4 below.
3.2 What are the criminal legal remedies for hate speech?	<p>A victim can file a police report and state that an individual acted in violence of article 137c to 137e Sr. It is also possible to file criminal charges against a corporate entity. According to Dutch law a corporate entity can act in violence of the Sr if acts of individuals can be attributed to the corporate entity.</p> <p>After filing a police report, it is within the discretion of the prosecutor to proceed with the case. Relevant policy considerations for the Public Prosecution Service on whether or not to prosecute are:</p> <ul style="list-style-type: none">• the seriousness of the fact;• dissemination in place and time (scope) within the Dutch legal order;• circumstances (quantity and consistency);



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	<ul style="list-style-type: none"> • social unrest in (parts of) the population. <p>If the prosecutor doesn't decide to prosecute, the victim of hate speech can ask the Court of Appeal to force the prosecutor to proceed with criminal charges. The victim of hate speech has a right to speak during trials and is allowed to file a compensation claim during the criminal case. It is therefore not necessary to start a separate civil lawsuit to seek for compensation when the criminal case is started.</p>
<p>3.3 Are there civil legal remedies available – compensation / damages – for hate speech?</p>	<p>There are various civil legal remedies:</p> <ul style="list-style-type: none"> • An injured party may choose to initiate damages claim on the basis of tort. Liability for unlawful expressions, including hate speech, is in principle no different from liability in tort in general. If there are more than one perpetrators, each of them is jointly and severally liable and the injured party can choose which of the perpetrators he will address and can also address all perpetrators. • In addition – if it concerns unlawful expressions made online – it is possible to turn to the platforms and providers on whose forums the expressions were placed. They are legally obliged to delete messages of which it is sufficiently plausible that there is unlawful content. If, upon request, they don't remove the unlawful content, they're acting unlawfully themselves and a police officer can enforce removal in a civil court of law. In addition, the civil court may order the provider in certain cases to disclose the name and address details of the person posting the unlawful expressions (article 6:196c Dutch Civil Code; ECLI:NL:HR:2005:AU4019). • If the unlawful expressions also concern personal data (for example photos or personal contact information), it is possible to file a complaint with the Dutch Data Protection Authority for a violation of the General Data Protection Regulation.

<p>3.4 Are there regulatory frameworks governing the online news media which allow individuals to complain?</p>	<p>First of all, the normal criminal system also applies to hate speech on online news media. There are no specific regulatory frameworks governing online news media which allow individuals to complain. There are however some private initiatives (sometimes funded by the government) which deal with complaints.</p> <ul style="list-style-type: none"> • There is a national reporting point for online hate speech in the Netherlands. This is the MiND (<i>Meldpunt Internet Discriminatie</i>, Reporting Point Internet Discrimination). The MiND allows individuals to complain about hate speech on the internet. The MiND doesn't act proactively. Only based on complaints the MiND will undertake action and investigate the reported hate speech. The MiND is a non-governmental organisation which receive funds of the Dutch Government. • If the unlawful expression is made by a journalist, it is possible to file a complaint with the Press Council in the Netherlands (<i>Raad voor de Journalistiek</i>). This is an independent body of self-regulation for the media, to which interested parties can turn with complaints about journalistic activities, which in their opinion have not been dealt with properly by the medium itself. The council assesses whether a journalist has done his work carefully and whether the boundaries of journalistic ethics have been exceeded with a publication. The council can only issue a ruling, not a sanction as it is not a disciplinary tribunal.
<p>3.5 Is the test for hate speech used by any Social Media / Press / Online regulatory bodies the same as the criminal law definitions?</p>	<p>Social Media / Press / Online regulatory bodies will use the regulatory framework as described in 2.1 to 2.5 regarding hate speech. We are not aware that a different approach regarding hate speech is used by any of them.</p>
<p>3.6 Do public and private institutions have to comply with the same duties to avoid hate speech?</p>	<p>There is in principle no difference between public and private institutions to avoid hate speech. However politicians are allowed to hurt, shock or to disturb on the grounds of Community interest.</p>



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	<p>This is however limited to the extent that the expressions aren't unnecessary offensive (ECLI:NL:HR:2018:541).</p>
<p>3.7 If I am accused of hate speech, what is my recourse?</p>	<p>If you are accused of hate speech there are various options:</p> <ul style="list-style-type: none"> • You can file a report to the police stating that the person incorrectly accusing you of hate speech is guilty of defamation (<i>belediging</i>) or slander (<i>smaad</i>). In the criminal proceedings the victim (accused person) can use his right to speak and claim compensation for any damages suffered. • It is also possible to file a civil claim on the basis of tort. The accused person may ask the court for example to prohibit the accuser by way of injunction to link the accused person with hate speech in the future and/or to remove any content already placed online. If the accused person suffered damages, these damages may be claimed in civil proceedings as well.
<p>3.8 If hate speech is occurring at my event/on my platform/in my place of work, what should I do about it?</p>	<p>We refer to the remedies set out under 3.1 – 3.4.</p>
<p>3.9 If I have identified hate speech (online, in the media, etc.) what practical steps should I take?</p> <p><i>(For this question, we envision a “filtering” or “journey tree” (flow chart) where the first question is, “where did you see the hate speech” → if online then go here, if offline, then go here → do you have</i></p>	<p>We refer to the remedies set out under 3.1 – 3.4.</p>



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<p><i>evidence of it (screenshot/link to the post, recording of the speech, etc.) → then what, etc.)</i></p>	
<p>3.10 Please provide recent (within 1 year) of examples of hate speech reported in the media, and if possible, establish how was this addressed, e.g. by legal remedies or non-legal remedies.</p> <p><i>(For this question, we are looking for case studies.)</i></p>	<ul style="list-style-type: none"> • A very famous and topical case regarding hate speech is the case against the right-wing politician and current Member of Parliament Mr Geert Wilders. During a political campaign he asked the crowd in a café in front of the cameras whether they would like to have "<i>more or fewer</i>" Moroccan people in the Netherlands, after which the – pre-instructed – crowd started to chant "<i>fewer, fewer, fewer!!</i>". Mr Wilders subsequently responded: "<i>Then we will take care of that.</i>" He was criminally convicted by the court in first instance for insulting a group of people on the basis of race (article 137c Sr) and incitement to discrimination (article 137d Sr). Although he was convicted, he didn't receive a sentence as the court felt that the main question in this process was whether Mr Wilders has crossed a line, which question was answered. With this, the court found that sufficient justice had been done. Mr Geert Wilders appealed the judgment in first instance. In appeal the criminal conviction for insulting a group of people on the basis of race was confirmed. In regards to the incitement to discrimination he was acquitted. Like in first instance he didn't receive a sentence. Mr Geert Wilders announced that he will take an appeal to the Supreme Court. The case receives a lot of media attention in the Netherlands, <i>inter alia</i> Mr Geert Wilders is claiming that this is a political trial. • In 2019 the Nashville statement was published and this caused a lot of fuss and resentment in the Dutch society. The Nashville statement is originally an American document in which gay marriage, homosexuality and transgenderism is disapproved. Several persons signed this statement including politicians, such as the leader of the Christian politician party from the Dutch parliament. The passages in the Nashville statement hurt a lot of people. However, we consider it unlikely that signing of this statement will lead to criminal charges. As previously discussed, religious expressions regarding progressive social developments are allowed, even if they hurt other people. This

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	<p>is an example of an expression that could lead to criminal liability on its own but is justified based on the religious context of the Nashville statement.</p> <ul style="list-style-type: none"> • A very recent example can be found in the context of protests and the most recent anti-racism and police brutality protests. During a protest in Amsterdam on 1 June 2020 one of the protesters yelled on an elevation that he would "<i>kick a person in the face who is imitating Black Pete</i>". Black Peter (<i>Zwarte Piet</i>) is a Dutch tradition, in which Saint Nicholas is attended by a black servant, who for many is an offensive caricature that perpetuates racist stereotypes harking back to slavery. After this statement several persons filed a police report and accused this protester of incitement of violence and hatred. The protester and his lawyer stated that the statements should be seen in context with the protests and the wider public debate on racism. It is unclear how this case will evolve as this happened very recent. However, based on case law it has to be said that despite the public debate and protests as context, statements which incite violence can be considered criminal (ECLI:NL:HR:2020:638). The Public Prosecution Service stated that the statements of the protester were considered criminal, but decided not to prosecute this protester. The protester distanced himself from his earlier statements in a public announcement. Therefore the Public Prosecution Service decided that if the protester would not commit a criminal offence within a year, he would not be prosecuted for incitement of violence. The decision not to prosecute the protester was received with criticism.
<p>3.11 Please provide examples of cases related to hate speech / incitement of violence.</p>	<p>We refer to 3.10.</p>



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1. International and Regional Frameworks (NOTE: this section <u>only</u> to be filled up by the teams working on international and EU law)	
1.1 What are the international law standards on hate speech with reference to the UN Conventions, General Comments and the decisions of the Thematic Mechanisms / Special Rapporteur reports?	N/A
1.2 Are there any relevant decisions on hate speech arising from the European Convention of Human Rights, the American Convention of Human Rights and the African Convention of Human Rights?	N/A
2. Definition of hate speech	
2.1 What is the definition of hate speech in your country?	<ul style="list-style-type: none"> • Relevant legislation is predominantly contained within the Public Order (Northern Ireland) Order 1987 Part III. • Public Order (Northern Ireland) Order 1987 Part III prohibits incitement to hatred. The Order includes offences of "stirring up hatred" or "arousing fear" against a group of persons on grounds of religious belief, sexual orientation, disability, colour, race, nationality (including citizenship) or ethnic or national origins.



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	<ul style="list-style-type: none">• In terms of incitement: <i>hate speech itself does not constitute a crime</i>. You need the element of "stirring up" of hatred or "arousing fear" against a group to constitute an offence.• Sexual orientation and disability were added as protected categories under the Order by Criminal Justice (No.2) (Northern Ireland) Order 2004.• Gender and transgender identities are not covered by this legislation.• On 1 December 2020, the Northern Irish Department of Justice published "Hate crime legislation in Northern Ireland: Independent Review". This was an independent review, led by former County Court judge Desmond Marrian, which considered the adequacy of current hate crime and hate speech laws in Northern Ireland. The review found that the current Northern Irish hate crime and hate speech laws are generally ineffective and require urgent substantial reform, including legislative changes. The Final Report of the review makes a series of recommendations for reform which will now be considered by the Minister of Justice of Northern Ireland. Specifically of relevance to Northern Irish hate speech laws, the Final Report recommends that:<ul style="list-style-type: none">○ Age, sex, gender and variations in sex characteristics (including transgender identity) should be introduced as new protected characteristics in Northern Ireland.○ A number of steps must be taken to tackle Online Hate Speech, specifically implementing the "Online Harms" White Paper (2019), as addressed below.○ All hate crime and hate speech law should be consolidated into a New Hate Crime and Public Order (Northern Ireland) Bill.
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	<ul style="list-style-type: none"> ○ There should be post-legislative scrutiny by the Northern Ireland Assembly to monitor the effectiveness of any legislation on hate crime and hate speech, with a review occurring once every three years. ○ An office of a Hate Crime Commissioner for Northern Ireland should be established, dealing with specific hate crime and hate speech issues.
<p>2.2 Does the legal definition of hate speech require threats of violence / incitement to violence?</p>	<ul style="list-style-type: none"> ● S8 Public Order (Northern Ireland) Order 1987 Part III criminalises "acts intended or likely to stir up <u>hatred</u> or arouse <u>fear</u>", by reference to "religious belief, colour, race, nationality (including citizenship) or ethnic or national origins". Violence is not necessary. ● "<u>fear</u>" is defined as: fear of a group of persons defined by reference to religious belief, sexual orientation, disability colour, race, nationality (including citizenship) or ethnic or national origins. ● "<u>hated</u>" is defined as: hatred against a group of persons defined by reference to religious belief, sexual orientation, disability colour, race, nationality (including citizenship) or ethnic or national origins.
<p>2.3 Would the definition cover speech and behaviour which incites hatred (not necessarily violence) towards a group?</p>	<ul style="list-style-type: none"> ● As above S8 Public Order (Northern Ireland) Order 1987 Part III prohibits incitement of hatred and makes it an offence.



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<p>2.4 Does hate speech cover speech that draws on hateful, hostile, or supremacist beliefs directed at a group that is threatened and likely to cause them harm?</p>	<ul style="list-style-type: none"> • Public Order (Northern Ireland) Order 1987 Part III prohibits incitement to hatred. The Order covers offences of "stirring up hatred" or "arousing fear" against a group of persons on grounds of religious belief, sexual orientation, disability, colour, race, nationality (including citizenship) or ethnic or national origins. Therefore, yes, is those beliefs are shown to arouse fear or stir up hatred against a group.
<p>2.5 Does the definition permit religious beliefs and speech which discriminates against particular communities – are there any limitations to religious beliefs and speech which discriminated against particular groups?</p>	<ul style="list-style-type: none"> • Yes Criminal Justice (No.2) (Northern Ireland) Order 2004 embraces hostility based towards <u>religious groups</u> and sexual orientation, as well as race. • "<u>Religious group</u>" is defined as defined as "a group of persons defined by reference to religious belief or lack of religious belief".
<p>3. Remedies and recourse for hate speech</p>	
<p>3.1 If I am the victim of hate speech, what is my recourse?</p>	<ul style="list-style-type: none"> • Report to the Police Service of Northern Ireland (PSNI) yourself. • Or third-party reporting if someone isn't comfortable themselves to carry out the reporting. This can be done using the PSNI online form (https://www.psni.police.uk/crime/hate-crime/reporting-a-hate-crime/). • The offences you could try and capture hate speech under: <ul style="list-style-type: none"> • As above, Public Order (Northern Ireland) Order 1987 Part III. <ul style="list-style-type: none"> ○ Consider the relevant and applicable offence under the Order:



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	<ul style="list-style-type: none">▪ S9: Prohibition against the use of words or behaviour or display of written material to incite hatred.▪ S10: Prohibition against publishing or distributing written material to incite hatred.▪ S11: Prohibition against distributing, showing or playing a recording to incite hatred.▪ S12: Prohibition against broadcasting or including programme in cable programme service to incite hatred.▪ S13: Possession of matter intended or likely to stir up hatred or arouse fear. <ul style="list-style-type: none">• S127(1) Communications Act 2003: a person is guilty of an offence if he sends by means of a public electronic communications network a message or other matter that is grossly offensive or of an indecent, obscene or menacing character. If the hate speech is found to be grossly offensive (a very high threshold) then it could be caught under this act.• Article 3 Protection from Harassment (Northern Ireland) Order 1997: this makes it an offence to carry out a course of conduct which amounts to harassment. This could potentially be used if hate speech falls under the definition of harassment. This can be used against online behaviour that amounts to <u>harassment</u>.<ul style="list-style-type: none">○ <u>Harassment:</u> "harassing a person includes alarming the person or causing the person distress".
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	<ul style="list-style-type: none">• Ss4, 4A and 5 of the Public Order Act 1986: offences apply in Wales & England, but not Northern Ireland. There is a review considering whether to introduce the offences into the jurisdiction.<ul style="list-style-type: none">○ If this was to be included it would broaden the scope of what offences hate speech could be brought under.○ For example:<ul style="list-style-type: none">▪ S5 Public Order Act 1986 makes it an offence to display any writing, sign “or other visible representation” which is threatening, abusive or insulting “within the hearing or sight of a person likely to be caused harassment, alarm or distress thereby”.
3.2 What are the criminal legal remedies for hate speech?	<ul style="list-style-type: none">• Offences under the Public Order (Northern Ireland) Order 1987 Part III:<ul style="list-style-type: none">○ Summary conviction: imprisonment for a term not exceeding 6 months or a fine not exceeding the statutory maximum, or to both.○ Conviction on indictment: imprisonment for a term not exceeding 7 years or a fine, or to both.• Offences under the Communication Act 2003:<ul style="list-style-type: none">○ A person guilty of an offence under this section shall be liable, on summary conviction, to imprisonment for a term not exceeding six months or to a fine not exceeding level 5 on the standard scale.



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	<ul style="list-style-type: none"> • Offences under Protection from Harassment (Northern Ireland) Order 1997: <ul style="list-style-type: none"> ○ Summary conviction: imprisonment for a term not exceeding six months, or a fine not exceeding the statutory maximum, or both. ○ Conviction on indictment: imprisonment for a term not exceeding two years, or a fine, or both.
<p>3.3 Are there civil legal remedies available – compensation / damages – for hate speech?</p>	<ul style="list-style-type: none"> • There are no civil remedies under Public Order (Northern Ireland) Order 1987 Part III. • However, under Article 5 Protection from Harassment (Northern Ireland) Order 1997 damages may be awarded for (among other things) any anxiety caused by the harassment and any financial loss resulting from the harassment.
<p>3.4 Are there regulatory frameworks governing the online news media which allow individuals to complain?</p>	<ul style="list-style-type: none"> • The Independent Press Standards Organisation (IPSO) is the largest independent regulator of the newspaper and magazine industry in the UK. Many Northern Irish newspapers are regulated by IPSO (including The Belfast Telegraph and The Derry Journal). • IPSO will regulate anything which breaches their "Editor's Code" (https://www.ipso.co.uk/editors-code-of-practice/#Discrimination) . This includes not publishing inaccurate material and avoiding prejudicial or pejorative reference to an individual's, race, colour, religion, sex, gender identity, sexual orientation or to any physical or mental illness or disability.



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	<ul style="list-style-type: none">• Part of IPSO's website is dedicated to handling complaints: https://www.ipso.co.uk/complain/
<p>3.5 Is the test for hate speech used by any Social Media / Press / Online regulatory bodies the same as the criminal law definitions?</p>	<ul style="list-style-type: none">• Internet services and their regulation is a reserved matter (i.e. it is for the UK government to legislate in this area and any new legislative framework is to be applied on a UK wide basis). This is different to the other regulation we have seen so far, which has been applicable to Northern Ireland only.• The UK Government Recent White Paper Online Harms provided a detailed a set of plans for regulation of hate crime online.• The government will establish a new statutory duty of care to make companies take more responsibility for the safety of their users and tackle harm caused by content or activity on their services.• Compliance with the duty of care will be overseen and enforced by an independent regulator. All companies in the scope of the regulatory framework will need to be able to show they are fulfilling their duty of care. The regulator will set out how to demonstrate this in various codes of practice.• The recent Department of Justice independent review of hate crime and hate speech laws, published December 2020, has recommended that the proposals contained in this White Paper be introduced in full. In addition, the review has also recommended that:



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	<ul style="list-style-type: none"> ○ The law should be clarified to confirm that any online material downloadable in Northern Ireland is acknowledged to be within the jurisdiction of the courts of Northern Ireland; ○ There should be a legal requirement on social media companies to ensure that potential users who wish to avail of their services must provide verifiable personal information before they are permitted to use those services. ○ There should be a mechanism by which the offending behaviour must be removed from the internet by any offender, or through a court order imposed on the relevant social media company. ○ Article 3 of the Malicious Communications (Northern Ireland) Order 1988 should be amended to explicitly bring electronic communications within its ambit. ● Some articles may fall outside the remit of IPSO’s Editor’s code but would still constitute an attempt to "stir up hatred" under Public Order (Northern Ireland) Order 1987 Part III.
<p>3.6 Do public and private institutions have to comply with the same duties to avoid hate speech?</p>	<ul style="list-style-type: none"> ● Private institutions will not be bound by criminal legislation. They will be bound to ensure that employees are free from any discrimination based on protected characteristics (e.g. under the The Race Relations (Northern Ireland) Order 1997). They will also be subject to regulatory regimes (such as the new online regime outlined in Online Harms). ● Public institutions will also not be subject to criminal legislation. A public body may be subject to judicial review under the Human Rights Act 1998. Public bodies will also have to protect any employees from discrimination in an employment context.



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<p>3.7 If I am accused of hate speech, what is my recourse?</p>	<ul style="list-style-type: none">• If formally prosecuted, you will have a right to legal representation• Depending on the nature of the hate speech (e.g. whether or not it was online) you could make a formal apology or try and privately settle with those who you made the hate speech against.
<p>3.8 If hate speech is occurring at my event/on my platform/in my place of work, what should I do about it?</p>	<ul style="list-style-type: none">• At my event:<ul style="list-style-type: none">○ Report to PSNI directly or using third party reporting system (https://www.report-it.org.uk/northern_ireland_).○ Try and remove the hate speech or those spreading the hate speech from the event.○ Try and record evidence of the hate speech being made.• At my place of work:<ul style="list-style-type: none">○ Report to PSNI directly or using third party reporting system (https://www.report-it.org.uk/northern_ireland_).○ Record the hate speech/collect evidence.○ Immediately report to employer if employee, and (if relevant) notify a trade union representative.○ Discipline the employee (in line with company policy/guidelines) if you are the employer.



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	<ul style="list-style-type: none"> ○ Terminate the employee's employment contract if employer and in line with the terms of the employment contract. ● On my platform: <ul style="list-style-type: none"> ○ Report to PSNI directly or using third party reporting system (https://www.report-it.org.uk/northern_ireland_). The PSNI online reporting is seemingly quite well established for reports of online hate speech: https://www.belfasttelegraph.co.uk/news/northern-ireland/scale-of-online-hate-revealed-as-social-media-cited-in-13000-crime-reports-38875274.html ○ Try and remove hate speech as soon as possible. ○ Have a system for reporting hate speech. ○ Take evidence of the hate speech, e.g. screenshots.
<p>3.9 If I have identified hate speech (online, in the media, etc.) what practical steps should I take?</p> <p><i>(For this question, we envision a “filtering” or “journey tree” (flow chart) where the first question is, “where did you see the hate speech” → if online then go here, if offline, then go here → do you have evidence of it (screenshot/link to the post, recording of the speech, etc.) → then what, etc.)</i></p>	<ul style="list-style-type: none"> ● Where did you see the hate speech: <ul style="list-style-type: none"> ○ Offline: report immediately to PSNI by phone or online platform. Take evidence through photographs or video recordings. Get the details of anyone else who witnessed the hate speech. ○ Online: consider reporting to platform first (e.g. Facebook). Also consider reporting to PSNI immediately. Take evidence through screenshots and video recordings.



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<p>3.10 Please provide recent (within 1 year) of examples of hate speech reported in the media, and if possible, establish how was this addressed, e.g. by legal remedies or non-legal remedies.</p> <p><i>(For this question, we are looking for case studies.)</i></p>	<p>"Jayda Fransen: Ex-Britain First deputy leader convicted over hate speech" (https://www.bbc.co.uk/news/uk-northern-ireland-47750137):</p> <ul style="list-style-type: none">• Former deputy leader of far-right group Britain First has been convicted of stirring up hatred during a speech about Islam in Belfast over a speech at a rally in August 2017.• Jayda and four other defendants were accused of using threatening, abusive or insulting words intended to stir up hatred or arouse fear.• Jayda was handed community service for her contribution at the rally. The judge made the point that a custodial sentence would usually apply in this instance, but Jayda was better served by community service (https://www.belfastlive.co.uk/news/belfast-news/jayda-fransen-handed-community-service-16223171) <p>"Londonderry: PSNI treat bonfire material as "hate incident" (https://www.bbc.co.uk/news/uk-northern-ireland-49363571):</p> <ul style="list-style-type: none">• Police treated the display of flags and banners on a bonfire in Londonderry as a "hate incident".• Flags and banners carried messages motivating hostility towards people based on their religious or political background.• Evidence was collected and charges were pressed against key contributors.
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<p>3.11 Please provide examples of cases related to hate speech / incitement of violence.</p>	<ul style="list-style-type: none">• There is very little case law from Northern Ireland under Section III of the 1987 Order. There have been a very small number of prosecutions and convictions for incitement to hatred in Northern Ireland since 1970.• Case law analysis taken from: <i>Incitement to Hatred in Northern Ireland</i>, Dr Robbie McVeigh, Equality Coalition. <p>"Ballycraigy Bonfire" case [2016]:</p> <ul style="list-style-type: none">• This successful prosecution was brought on the grounds of race.• This was widely reported as a "landmark case" (http://www.irishnews.com/news/2015/08/17/news/landmark-hate-crime-prosecution-over-loyalist-bonfire-230609/)• In this case the defendant was convicted on displaying "racist slogans" on a bonfire in July 2014.• The defendant was found guilty of "displaying written material which was threatening, abusive or insulting, intending thereby to stir up hatred or arouse fear".• The conviction provides precedence for the use of the Public Order (Northern Ireland) Order 1987 to address incitement to hatred. It recognised that displaying written material – on a bonfire – constituted incitement to hatred or arousal of fear.
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	<ul style="list-style-type: none">• This conviction was regarded as progress for the utilisation and understanding of the Public Order (Northern Ireland) Order 1987.• The judgment from the case focussed on the "stirring up" elements of the surrounding events. The court found that the offensive expression clearly met the threshold to qualify as "incitement to hatred". This has significant implications in terms of the routine expression of incitement to hatred across Northern Ireland.• There have been thousands of comparable cases of "speech acts" at least as egregious as the "Ballycraigy Bonfire" but none of these have been prosecuted. This is either because of "lack of evidence" or for some other reason.• DPP v James McConnell [2016]:<ul style="list-style-type: none">• Judgement handed down on 5 January 2016.• Pastor McConnell broadcast anti-Islamic statements from a Church in Belfast. He was prosecuted under the Communications Act 2003, but the threshold for the comments to be "grossly offensive" was not met, and he was acquitted.• It is unclear why the Public Order (Northern Ireland) Order 1987 was not used in this case. It was acknowledged that the comments were broadcast, and thus would have fallen under s12 of the Order "broadcasting or including programme in cable programme service".
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	<ul style="list-style-type: none">• Although offensive, the Pastor's comments were ruled not to be "grossly offensive" under the Communications Act 2003. However, if analysed through the lens of the Public Order (Northern Ireland) Order 1987, the words of McConnell's sermon would likely have been accepted as stirring up hatred or arousing fear, particularly in drawing parallels between the IRA and "cells of Moslems right throughout Britain" which he described as a "new evil".• The Public Order (Northern Ireland) Order 1987 is more limited in precedent; it seems it might prove more useful in charging – and convicting – persons for incitement to hatred, rather than allowing instances to go unanswered because they do not meet the threshold required under other legislation.
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1. International and Regional Frameworks (NOTE: this section <u>only</u> to be filled up by the teams working on international and EU law)	
1.1	<p>What are the international law standards on hate speech with reference to the UN Conventions, General Comments and the decisions of the Thematic Mechanisms / Special Rapporteur reports?</p>
1.2	<p>Are there any relevant decisions on hate speech arising from the European Convention of Human Rights, the American Convention of Human Rights and the African Convention of Human Rights?</p>
2. Definition of hate speech	
2.1	<p>What is the definition of hate speech in your country?</p> <p>The Polish law does not include a definition of hate speech. Polish courts often refer to the definition adopted by the Council of Europe in the Recommendation No. R (97) 20 of the Committee of Ministers to Member States on "hate speech", 1997 (<i>the term "hate speech" shall be understood as covering all forms of expression which spread, incite, promote or justify racial hatred, xenophobia, anti-Semitism or other forms of hatred based on intolerance, including: intolerance expressed by aggressive nationalism and ethnocentrism, discrimination and hostility against minorities, migrants and people of immigrant origin.</i>).</p>



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2.2 Does the legal definition of hate speech require threats of violence / incitement to violence?	<p>There is no legal definition of hate speech, therefore it is assessed on a case by case basis. The majority of courts does not consider that a threat of violence / incitement to violence is required as they refer to the Council of Europe definition and say that inciting to hatred or discrimination is sufficient.</p> <p>Nonetheless, there are known cases where the prosecutor refused to prosecute the offender or the final judgment was acquitting due to the lack of threat of violence or incitement to violence. However, it is rather strictly related to the crime taken into consideration, since some of them indeed require threat or incitement to violence.</p>
2.3 Would the definition cover speech and behaviour which incites hatred (not necessarily violence) towards a group?	As indicated above – there is no legal definition of hate speech but in a majority of interpretations – yes.
2.4 Does hate speech cover speech that draws on hateful, hostile, or supremacist beliefs directed at a group that is threatened and likely to cause them harm?	There is no legal definition of hate speech, but in the vast majority of cases – yes.
2.5 Does the definition permit religious beliefs and speech which discriminates against particular communities – are there any limitations to religious beliefs and speech which discriminated against particular groups?	<p>There is no legal definition of hate speech, but it is rather not permitted to discriminate particular groups, also on the basis of the religious beliefs. Due to the lack of legal definition, the appropriate authorities always take into account all the freedoms and limitation in Polish law and they try to balance them.</p> <p>The Constitution provides for the freedom of religion and freedom of expression, but also it requires everyone to respect the rights and freedoms of others. The Penal Code also provides for the crime of insulting of the group of people on the basis of their nationality, ethnicity, race,</p>



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	religious belief or lack thereof.
3. Remedies and recourse for hate speech	
3.1 If I am the victim of hate speech, what is my recourse?	<p>You can:</p> <ul style="list-style-type: none"> report a crime to the police or prosecutor (sometimes you can proceed directly to the criminal court), sue the offender in civil proceedings, contact Polish Ombudsman and/or respective NGOs (they may help you proceed with the matter, but also act in civil and criminal proceedings as a supporting party)
3.2 What are the criminal legal remedies for hate speech?	<p>There is no crime specifically referring to hate speech. The ones presented below are the most commonly listed as potentially applicable in case of hate speech.</p> <ul style="list-style-type: none"> Article 119 of the Polish Penal Code Who uses force or an unlawful threat towards a group of people or an individual person because of their national, ethnic, racial, political or religious affiliation or lack of religious affiliation, is subject to the penalty of deprivation of liberty for between 3 months and 5 years. Article 190 of the Polish Penal Code § 1. Whoever threatens another person to commit a crime against this person or against this person's immediate family member, and the threat induces a reasonable fear in the threatened person that it will be carried out, is subject to a fine, the penalty of limitation of



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	<p>liberty or the penalty of deprivation of liberty for up to 2 years.</p> <ul style="list-style-type: none">• Article 190a of the Polish Penal Code § 1. Whoever, through persistent harassment of another person or their close relative, causes that person to feel justifiably threatened, humiliated or tormented or grossly violates their privacy shall be subject to imprisonment for a period from 6 months to 8 years. § 2. Whoever, by impersonating another person, uses their image, other personal data or other data by which they can be publicly identified to cause them material or personal harm shall be subject to the same penalty. § 3. If the aggrieved party attempts to commit suicide as a result of the act referred to in § 1 or 2, the perpetrator shall be subject to imprisonment for a period from 2 to 12 years.• Article 196 of the Polish Penal Code Whoever offends religious feelings of other persons by insulting in public an object of religious worship or a place dedicated to the public celebration of religious rites, is subject to a fine, the penalty of limitation of liberty or the penalty of deprivation of liberty for up to 2 years.• Article 212 of the Polish Penal Code § 1. Whoever imputes to another person, a group of persons, an institution, a legal entity or an organisational entity without a legal personality, such conduct or characteristics that may degrade them in public opinion or expose them to the loss of confidence necessary to occupy a given position, practice a given profession or operate a given type of activity, is subject to a fine or the penalty of limitation of liberty. § 2. If the perpetrator commits the act referred to in § 1 via means of mass communication, he is subject to a fine, the penalty of limitation of liberty or the penalty of deprivation of liberty for up to one year.
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	<ul style="list-style-type: none">• Article 216 of the Polish Penal Code § 1. Whoever insults another person in this person's presence, as well as in this person's absence but publicly or with the intent that the insult reaches this person, is subject to a fine or the penalty of limitation of liberty. § 2. Whoever insults another person via means of mass communication, is subject to a fine, the penalty of limitation of liberty or the penalty of deprivation of liberty for up to one year.• Article 256 of the Polish Penal Code § 1. Whoever publicly propagates a fascist or other totalitarian political system or exhorts to hatred based on national, ethnic, racial, religious affiliation or lack of religious affiliation, is subject to a fine, the penalty of limitation of liberty or the penalty of deprivation of liberty for up to 2 years. § 2. Whoever, with the purpose of dissemination, produces, records or imports, acquires, stores, possesses, displays, transports or transfers a printing, a recording or any other item that contains the contents referred to in § 1 or that is a carrier of fascist, communist or other totalitarian symbolism, is subject to the same penalty.• Article 257 of the Polish Penal Code Whoever publicly insults a group of people or an individual person because of their national, ethnic, racial, religious affiliation or lack of religious affiliation, or violates the personal inviolability of another person due to such reasons, is subject to the penalty of deprivation of liberty for up to 3 years. <p>The specific criminal legal remedies depend on the crime that is possibly involved. In the majority of cases, the victim should refer to the police and/or the prosecutor for them to initiate</p>
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	<p>the file charges against the perpetrator. Only after the prosecutor refuses twice to file an indictment against the perpetrator, the victim might do it themselves.</p> <p>There are a few crimes that the prosecutor does not handle as they are prosecuted only upon private indictment. They include: 212, 216</p>
<p>3.3 Are there civil legal remedies available – compensation / damages – for hate speech?</p>	<p>Yes, although due to the lack of legal definition of hate speech, they do not directly refer to hate speech.</p> <p>Under the Polish Civil Code, the person’s personal rights such as health, freedom, honour, freedom of religion are under the protection of civil law, regardless of protection provided in other legal provisions. In case of their breach by someone’s actions, the victim may request the perpetrator to stop, unless this activity is not illegitimate.</p> <p>In case the perpetrator is found guilty of the crime specified in Article 212 and Article 216 of the Polish Penal Code (please see question no. 3.3 above), the court may impose punitive damages for the victim, the Polish Red Cross or another social cause designated by the victim.</p> <p>If the infringement has already occurred, the victim may also request that its consequences are erased, in particular by the specific statement issued by the perpetrator. The victim may also request a pecuniary compensation or a payment of appropriate amount to the indicated social cause.</p> <p>Moreover, the employee may claim compensation for damages from the employer in case the hate speech constituted discrimination, mobbing or harassment in the workplace.</p>
<p>3.4 Are there regulatory frameworks governing the online news media which allow individuals to</p>	<p>On the basis of the Act on the provision of electronic services, the hosting entity can be held</p>



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<p>complain?</p>	<p>responsible for the content of illegal character or associated activity, if they had knowledge about their illegal character. They are also obliged to make such content immediately unavailable upon official notification or reliable information about its illegal character.</p> <p>Therefore, it gives basis for the individuals to complain to the hosting entity in general, regardless of whether it is news media. There is no regulatory framework specific for online news media.</p>
<p>3.5 Is the test for hate speech used by any Social Media / Press / Online regulatory bodies the same as the criminal law definitions?</p>	<p>Due to the lack of legal definition of hate speech, it is assessed on the case by case basis by all authorities engages in the given matter. Unfortunately, a change of the person heading the given authority often is associated with a change of interpretation of legal provisions.</p> <p>It is worth mentioning that the television and radio programs “<i>cannot popularize activities contrary to the law, Polish state interest as well as attitudes and views contrary with morality and welfare of the society, in particular they cannot consist of content inciting hatred or discrimination on the basis of race, disability, sex, faith or nationality</i>” on the basis of the Act on Radiophony and Television.</p>
<p>3.6 Do public and private institutions have to comply with the same duties to avoid hate speech?</p>	<p>Yes, since there is no legal definition of hate speech, every entity has to comply with the general anti-discrimination rules and respect of others rights and freedoms.</p>
<p>3.7 If I am accused of hate speech, what is my recourse?</p>	<p>Due to the lack of legal definition of hate speech, the recourse is most commonly associated with the arguments involving the absence of hate speech in the specific case. The decision is always based on the grounds of the balance between the rights and freedoms such as freedom of speech, expression and beliefs on the one hand and a right to dignity, honour and to have one’s freedoms respected.</p>



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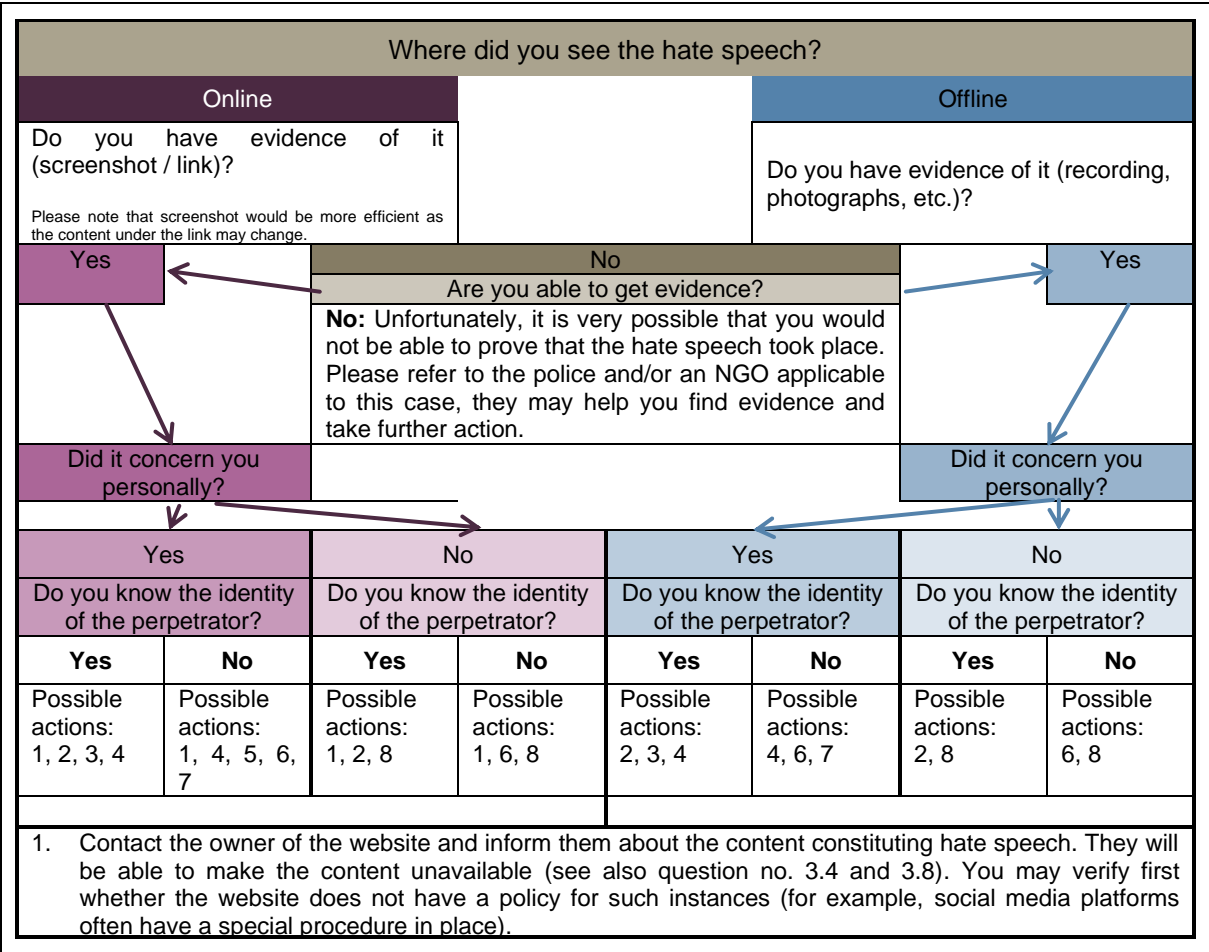
<p>3.8 If hate speech is occurring at my event/on my platform/in my place of work, what should I do about it?</p>	<p>In the majority of cases, you should take actions in order to stop it (certainly, it would be best to prevent it), because as:</p> <ul style="list-style-type: none">• an organizer of an event (in particular mass event), you are responsible for protecting public order on the basis of the Act on the Safety of Mass Events. It is considered that any expressions of hate speech (shouting, banners, etc.) constitute a breach of public order;• a platform owner you are responsible for the content that is infringing legal provisions from the moment that you are aware of them (see also question no. 3.4 above). The content constituting hate speech would in majority of cases be covered by this responsibility as they would be considered one of the crimes indicated above (see question no. 3.2) or an infringement of personal rights from the civil law (see question no. 3.3. above);• an employer you are obliged to prevent any type of discrimination, mobbing and harassment in the workplace on the basis of the Polish Labour Code. Otherwise, an employee may claim damages in the court proceedings. <p>If you are an employee or other participant/witness of hate speech you do not have any legal obligations to act. You may proceed as described in question no. 3.9.</p>
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3.9 If I have identified hate speech (online, in the media, etc.) what practical steps should I take?

(For this question, we envision a “filtering” or “journey tree” (flow chart) where the first question is, “where did you see the hate speech” → if online then go here, if offline, then go here → do you have evidence of it (screenshot/link to the post, recording of the speech, etc.) → then what, etc.)





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	<ol style="list-style-type: none"> 2. You may file a notification of a crime by a specified perpetrator to the Police for them to start criminal proceedings against the perpetrator. (see also question no. 3.2). 3. If you want to claim compensation for damages suffered by the hate speech, you may commence civil proceedings against the perpetrator (see also question no. 3.3). 4. If you are uncertain what to do, you may contact the Polish Ombudsman or an NGO applicable to your situation. 5. You have a legal interest in learning the identity of the perpetrator, because the hate speech concerns you personally. Therefore, you may contact the website and ask for the personal data of the perpetrator. In case they refuse to give it to you, you may complain to the Personal Data Protection Office. If you learn the identity of the perpetrator, you may proceed as in point 2, 3 above. 6. You may file a notification of a crime to the Police for them to identify the perpetrator and/or to start criminal proceedings against the perpetrator. (see also question no. 3.2) 7. If you want to claim compensation for damages suffered by the hate speech, you may also commence civil proceedings against the website / organizer of the event / employee (since you do not know the perpetrator) (see also question no. 3.3 and 3.8). 8. Contact the Polish Ombudsman or an NGO applicable to this situation, they would be able to take care of the matter (incl. act in the proceedings as representatives of the victims).
<p>3.10 Please provide recent (within 1 year) of examples of hate speech reported in the media, and if possible, establish how was this addressed, e.g. by legal remedies or non-legal remedies.</p> <p><i>(For this question, we are looking for case studies.)</i></p>	<ol style="list-style-type: none"> 1. <u>Online anonymous comments with threats and insults against a teen singer of Roma descent.</u> In December 2019, the comments consisting of hate speech towards a teen singer, Viki Gabor, were described in the media. The examples of the comments: <i>Doesn't anyone have an oil canister... One have to pull out the weed and This is now an obligation that each Pole has to be proud of the gypsy with German roots because otherwise one will end up in jail?</i> An NGO specializing in hate speech has filed a notification of a crime to the prosecutor, but the case was denied by the prosecutor. This decision was appealed to the court. 2. <u>Homophobic comments of "pro-life" activist made in one of the biggest News Channel in</u>



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	<p><u>Poland</u></p> <p>In May 2019, the “pro-life” activist said during the interview in one of the biggest News Channels in Poland that <i>Gays want to adopt children in order to molest and rape them</i>. It was widely covered by the media.</p> <p>In November 2019, 7 people supported by an NGO have filed a private indictment to the court. The matter is pending.</p> <p>3. <u>Placing photographs of members of the European Parliament on gallows during the manifestation organized by “National Movement” in Katowice</u></p> <p>In the end of 2019, this matter returned to the media, although the manifestation had taken place in November 2017. After long preliminary proceedings, in November 2019, the prosecutor decided to discontinue the proceedings and not to press charges.</p> <p>This decision was justified by the expression of criticism of the given members of the European Parliament. The prosecutor’s office decided that there was no crime, since the participants of the manifestation did not address any threats and did not call to commit a crime. It was also said that the <i>staging constituting of placing photographs of politicians on constructions similar to gallows had a symbolic character, referring to historical events of XVII century, presented on the painting of Jan Piotr Norblin</i>.</p>
<p>3.11 Please provide examples of cases related to hate speech / incitement of violence.</p>	<p>As above.</p> <p>There are no Supreme Court’s final and binding judgments that concern hate speech with incitement of violence.</p>



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Note: As of December 2020, a public consultation on amending existing hate speech provisions has been undertaken, which includes a review of the main piece of legislation dealing with hate speech (*The Prohibition of Incitement to Hatred Act 1989*), but no action has yet been undertaken to amend the existing legislation.

1. International and Regional Frameworks (NOTE: this section <u>only</u> to be filled up by the teams working on international and EU law)	
1.1	What are the international law standards on hate speech with reference to the UN Conventions, General Comments and the decisions of the Thematic Mechanisms / Special Rapporteur reports?
1.2	Are there any relevant decisions on hate speech arising from the European Convention of Human Rights, the American Convention of Human Rights and the African Convention of Human Rights?
2. Definition of hate speech	
2.1	What is the definition of hate speech in your country?
	There is no specific legislation, either criminal or civil, which legally defines the term 'hate speech'. The closest thing to a working definition can be found in s. 2, s. 3 and s. 4 of The Prohibition of Incitement to Hatred Act 1989 (the " Act "). These sections create the following criminal offences: Section 2



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Law Firm / Office: London

	<p><i>(a) to publish or distribute written material,</i></p> <p><i>(b) to use words, behave or display written material (i) in any place other than inside a private residence, or (ii) inside a private residence so that the words, behaviour or material are heard or seen by persons outside the residence, or</i></p> <p><i>(c) to distribute, show or play a recording of visual images or sounds,</i></p> <p><i>If the written material, words, behaviour, visual images or sounds, as the case may be, are threatening, abusive or insulting and are intended or, having regard to all the circumstances, are likely to stir up hatred.</i></p> <p>Section 3</p> <p><i>(1) If an item involving threatening, abusive or insulting visual images or sounds is broadcast, each of the persons mentioned in subsection (2) is guilty of an offence if he intends thereby to stir up hatred or, having regard to all the circumstances, hatred is likely to be stirred up thereby.</i></p> <p><i>(2) the persons referred to in subsection (1) are:</i></p> <p><i>(a) the person providing the broadcasting service concerned,</i></p> <p><i>(b) any person by whom the item concerned is produced or directed, and</i></p> <p><i>(c) any person whose words or behaviour in the item concerned are threatening, abusive or insulting.</i></p>
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Jurisdiction: Republic of Ireland

Law Firm / Office: London

	<p>Section 4</p> <p><i>(1) It shall be an offence for a person -</i></p> <p><i>(a) to prepare or be in possession of any written material with a view to its being distributed, displayed, broadcast or otherwise published, in the State or elsewhere, whether by himself or another, or</i></p> <p><i>(b) to make or be in possession of a recording of sounds or visual images with a view to its being distributed, shown, played, broadcast or otherwise published, in the State or elsewhere, whether by himself or another,</i></p> <p><i>If the material or recording is threatening, abusive or insulting and is intended or, having regard to all the circumstances, including such distribution, display, broadcasting, showing, playing or other publication thereof as the person has, or it may reasonably be inferred that he has, in view, is likely to stir up hatred.</i></p> <p>The criminal law definition of 'hate speech' therefore can practically be seen to include (1) actions likely to stir up hatred, (2) broadcasts likely to stir up hatred, and (3) preparation and possession of material likely to stir up hatred.</p>
<p>2.2 Does the legal definition of hate speech require threats of violence / incitement to violence?</p>	<p>The criminal definition applied in s. 2, s. 3 and s. 4 of the Act require the written material, words, behaviour, visual images or sounds to be 'threatening, abusive or insulting', and there must be an intention or a likelihood, having regard to all the circumstances, of stirring up hatred. On the face of it, there does not appear to be a requirement for a specific threat or incitement to violence in order for a criminal offence to have been committed.</p>



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2.3 Would the definition cover speech and behaviour which incites hatred (not necessarily violence) towards a group?	Yes – see above.
2.4 Does hate speech cover speech that draws on hateful, hostile, or supremacist beliefs directed at a group that is threatened and likely to cause them harm?	Yes - the definition of 'hatred' in the Act includes the following: <i>"hatred" means hatred against a group of persons in the State or elsewhere on account of their race, colour, nationality, religion, ethnic or national origins, membership of the travelling community or sexual orientation.</i>
2.5 Does the definition permit religious beliefs and speech which discriminates against particular communities – are there any limitations to religious beliefs and speech which discriminated against particular groups?	The definition does not permit religious beliefs and speech which discriminates against any of the group of persons outlined above.
3. Remedies and recourse for hate speech	
3.1 If I am the victim of hate speech, what is my recourse?	In its <i>Diversity and Integration Strategy 2019-2021</i> , the Garda (Irish police) confirmed that it has a positive duty under s. 42 of the Irish Human Rights and Equality Commission Act 2014 (the " IHRE Act ") to: <i>(a) eliminate discrimination</i>



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	<p><i>(b) promote equality of opportunity and treatment of its staff and the persons to whom it provides services, and</i></p> <p><i>(c) protect, promote and fulfil the human rights of its members, staff and the persons to whom it provides services.</i></p> <p>As a member of the public to whom the Garda provides services, the legal recourse for a victim of hate speech is to make a report to the Garda National Diversity and Integration Unit.</p> <p>Such a report will then be categorised as either a 'hate crime' or a 'hate incident'. A 'hate crime' is defined as 'any criminal offence which is perceived by the victim or any other person to, in whole or in part, be motivated by hostility or prejudice, based on actual or perceived age, disability, race, colour, nationality, ethnicity, religion, sexual orientation or gender'. A 'hate incident' is defined as 'Any non-crime incident which is perceived by any person to, in whole or in part, be motivated by hostility or prejudice, based on actual or perceived age, disability, race, colour, nationality, ethnicity, religion, sexual orientation or gender.'</p> <p>Whether a report of 'hate speech' is classified as a 'hate crime' or a 'hate incident' will depend on if any criminal offence has been committed.</p>
3.2 What are the criminal legal remedies for hate speech?	<p>The criminal penalties for hate speech as defined in s. 2, s. 3 and s. 4 of the Act are outlined in s. 6 and s. 7 of the Act.</p> <p>Under s. 6, a person guilty of an offence under s. 2, 3 or 4 shall be liable:</p> <p><i>(a) on summary conviction, to a fine not exceeding €1000 or to imprisonment for a term not exceeding 6 months or to both, or</i></p>



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	<p><i>(b) on conviction on indictment, to a fine not exceeding €10,000 or to imprisonment for a term not exceeding 2 years, or to both.</i></p> <p>Section 7 of the Act refers to offences by bodies corporate, and provides that:</p> <p><i>(1) Where an offence under this Act has been committed by a body corporate and is proved to have been committed with the consent or connivance of or to be attributable to any neglect on the part of a person being a director, manager, secretary or other similar officer of the body corporate, or a person who was purporting to act in any such a capacity, that person as well as the body corporate shall be guilty of an offence and shall be liable to be proceeded against and punished as if he were a director of the first-mentioned offence.</i></p> <p><i>(2) Where the affairs of a body corporate are managed by its members, subsection (1) shall apply in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of the body corporate.</i></p> <p>Criminal penalties for hate speech under the Act, which can include both fines and/or prison sentences, are therefore available for both individuals and corporate entities.</p>
<p>3.3 Are there civil legal remedies available – compensation / damages – for hate speech?</p>	<p>There is no civil legal remedy available for hate speech.</p>
<p>3.4 Are there regulatory frameworks governing the online news media which allow individuals to complain?</p>	<p>The online news media is regulated by the Press Council of Ireland, with complaints from the public being handled by the Office of the Press Ombudsman. Under Principle 8 of the Code of Practice, 'The press shall not publish material intended or likely to cause grave offence or stir up hatred against an individual or group on the basis of their race, religion, nationality, colour, ethnic origin, membership of the travelling community, gender, sexual orientation, marital</p>



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	<p>status, disability, illness or age.' If a complaint is made alleging a breach of Principle 8, the Office of the Press Ombudsman will investigate and if the complaint is upheld, then the publication concerned must publish the upheld decision in accordance with the provisions of the Press Council's Publication Guidelines.</p> <p>Journalists may also be prosecuted under s. 2 of the Act, whilst a news media corporation itself will come within the ambit of s. 7 of the Act, which means that if a news corporation is found to have committed one of the three hate speech offences laid out in the Act, and this 'is proved to have been committed with the consent or connivance of or to be attributable to any neglect on the part of a person being a director, manager, secretary or other similar officer of the body corporate, or a person who was purporting to act in any such a capacity, that person as well as the body corporate shall be guilty of an offence and shall be liable to be proceeded against and punished as if he were guilty of the first-mentioned offence.'</p> <p>In practical terms, this means that journalists as well as directors or managers of online news media corporations need to be mindful of the criminal law offences and penalties governing hate speech, as well as Principle 8 of the Code of Practice, as a complaint to the Garda could lead to criminal prosecution under the Act.</p>
<p>3.5 Is the test for hate speech used by any Social Media / Press / Online regulatory bodies the same as the criminal law definitions?</p>	<p>No - The test in Principal 8 of the Code of Practice actually goes further than the criminal law test under the Act. Principle 8 prohibits the publishing of material 'likely to cause grave offence', whilst 'marital status, disability, illness or age' are also included within the protected categories. There is no such prohibition in the Act. It is also worth noting that there is no explicit criminal law definition of 'hate speech', only 'hatred' relating to those specific offences described under the Act.</p>



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<p>3.6 Do public and private institutions have to comply with the same duties to avoid hate speech?</p>	<p>A public body must have regard to the positive duty under s. 42 of the IHRE Act to:</p> <ul style="list-style-type: none"><i>(a) eliminate discrimination,</i><i>(b) promote equality of opportunity and treatment of its staff and the persons to whom it provides services, and</i><i>(c) protect the human rights of its members, staff and the persons to whom it provides services.</i> <p>This would include having a positive duty to avoid hate speech.</p> <p>Under Principle 8 of the Code of Practice, the press also has a positive duty to avoid publishing hate speech.</p> <p>There is no such positive duty attributable to other private bodies, but the employees of such private bodies can be prosecuted under s. 2, s. 3 or s. 4 of the Act, whilst directors and managers of such private bodies must always be mindful of the criminal penalties relating to hate speech in s. 7 of the Act.</p>
<p>3.7 If I am accused of hate speech, what is my recourse?</p>	<p>There are a number of defences available that can exclude criminal liability for hate speech under the Act. These are as follows:</p> <p>Section 2 offence</p> <p><i>(2) (a) In proceedings for an offence under subsection 1, if the accused person is not shown to have intended to stir up hatred, it shall be a defence for him to prove that he was not aware of the content of the material or recording concerned, and did not suspect, and had no reason to suspect, that the material or recording was threatening, abusive or insulting.</i></p>



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	<p><i>(b) In proceedings for an offence under subsection (1) (b), it shall be a defence for the accused person to (i) prove that he was inside a private residence at the relevant time and had no reason to believe that the words, behaviour or material concerned would be heard or seen by a person outside the residence, or (ii) if he is not shown to have intended to stir up hatred, to prove that he did not intend the words, behaviour or material concerned to be, and was not aware that they might be, threatening, abusive or insulting.</i></p> <p>Section 3 offence</p> <p><i>(3) In proceedings against a person referred to in paragraph (a) or (b) of subsection 2 for an offence under this section, if the person is not shown to have intended to stir up hatred, it is a defence for him to prove -</i></p> <p><i>(a) that he did not know and had no reason to suspect that the item concerned would involve the material to which the offence relates, or</i></p> <p><i>(b) in a case other than to which paragraph (a) relates, that, having regard to the circumstances in which the item was broadcast, it was not reasonably practicable for him to secure the removal of the material aforesaid.</i></p> <p><i>(4) In proceedings against a person referred to in subsection 2 (b) for an offence under this section, it is a defence for the person to prove that he did not know and had no reason to suspect -</i></p> <p><i>(a) that the item would be broadcast, or</i></p> <p><i>(b) that the circumstances in which the item would be broadcast would be such that hatred would be likely to be stirred up.</i></p>
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	<p><i>(5) In proceedings against a person referred to in subsection 2 (c) for an offence under this section, it is a defence for the person to prove that he did not know and had no reason to suspect –</i></p> <p><i>(a) that an item involving the use of the material to which the offence relates would be broadcast, or</i></p> <p><i>(b) that the circumstances in which such an item would be broadcast would be such that hatred would be likely to be stirred up.</i></p> <p><i>(6) In proceedings for an offence under this section, it is a defence for the person charged to prove that he did not know, and had no reason to suspect, that the material to which the offence relates was threatening, abusive or insulting.</i></p> <p>Section 4 offence</p> <p><i>(2) In proceedings for an offence under this section, if the accused person is not shown to have intended to stir up hatred, it shall be a defence for him to prove that he was not aware of the content of the material or recording concerned, and did not suspect, and had no reason to suspect, that the material or recording was threatening, abusive or insulting.</i></p>
<p>3.8 If hate speech is occurring at my event/on my platform/in my place of work, what should I do about it?</p>	<p>If the event is being hosted by a public body, or a platform administered by a public body, or in a place of work that is a public body, then the hate speech should be reported to the public body as it will have a positive duty to act under s. 42 of the IHRE Act.</p> <p>If the event is hosted by a private body, on a private platform, or a private sector place of work, then the hate speech should be reported to the Garda National Diversity and Integration Unit. The hate speech will then be investigated and logged as either a 'hate crime' or a 'hate incident',</p>



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	<p>and appropriate actions will then be taken by the Director of Public Prosecutions if the threshold for criminal prosecution is met under the Act.</p>
<p>3.9 If I have identified hate speech (online, in the media, etc.) what practical steps should I take?</p> <p><i>(For this question, we envision a “filtering” or “journey tree” (flow chart) where the first question is, “where did you see the hate speech” → if online then go here, if offline, then go here → do you have evidence of it (screenshot/link to the post, recording of the speech, etc.) → then what, etc.)</i></p>	<p>The reporting of hate speech is streamlined, and the same process should be followed in both the online and offline space.</p> <p>If a public body is involved, then a report should be made to the public body as it will have a positive duty to act under s. 42 of the IHRE Act. Either you, or the public body, can then make a report to the Garda National Diversity and Integration Unit.</p> <p>If a private body is involved, then you can notify the private body and make a report to the Garda in the same way as above. Although the private body isn’t under a positive duty to act, it will have possible criminal liability under s. 7 of the Act if the hate speech constitutes a criminal offence under the Act, and so it will likely be proactive in taking steps to address the hate speech.</p> <p>If you do not wish to attend the local Garda station to report the hate speech, you can contact the Garda National Diversity and Integration Unit directly via telephone or email. The relevant contact details are below:</p> <p>Telephone: 01 6663150</p> <p>Email address: diversity@garda.ie</p> <p>The Garda National Diversity and Integration Unit will then keep you informed of developments throughout the investigation.</p>



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<p>3.10 Please provide recent (within 1 year) of examples of hate speech reported in the media, and if possible, establish how was this addressed, e.g. by legal remedies or non-legal remedies.</p> <p><i>(For this question, we are looking for case studies.)</i></p>	<p>I have not been able to find any examples of hate speech reported in the Irish media during the last year.</p> <p>The most recent examples I could find of hate speech being reported in the media, are an article from the Journal dated 10 November 2015, and an article from the Irish Examiner dated 25 November 2015 (links below), which discuss the case of journalist Brenda Power.</p> <p>According to the articles, the Director of Public Prosecutions announced that no proceedings would be brought against the journalist following complaints about a Daily Mail article she wrote in 2014, the subject of which was the prevalence of feuding and violence among the Traveller community.</p> <p>The complaint was made under the Act, and was made with the support of the Irish Council for Civil Liberties. This complaint led to a Garda investigation and an interview under caution, with the matter subsequently being referred to the DPP. The articles state that the journalist spent a year living with the very real possibility that she could end up with a criminal conviction, before the DPP ultimately decided to drop the charges.</p> <p>Irish Examiner article: https://www.irishexaminer.com/viewpoints/analysis/laws-against-hate-speech-muzzles-freedom-of-expression-366836.html</p> <p>the Journal article: https://www.thejournal.ie/brenda-power-article-2435584-Nov2015/</p>
<p>3.11 Please provide examples of cases related to hate speech / incitement of violence.</p>	<p>Dr Jennifer Schweppe and Dr Amanda Haynes, in their publication <i>Alternative Report to the Committee on the Elimination of Racial Discrimination on Hate Crime and Related Issues (Coalition Against Hate Crime 2019)</i>, provide a useful case study from 2011 of an attempted prosecution for hate speech under the Act. They identify the case as 'The Traveller Facebook Case', and the salient facts are as follows:</p>



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	<ul style="list-style-type: none">• Patrick Kissane, a barman from Co Kerry, created a Facebook page entitled, "Promote the use of Knacker Babies for shark bait". Having used a racist slur to describe infants of Traveller ethnicity, the page suggested that Traveller babies should be used as shark bait, and to feed zoo animals. It also suggested that Travellers could be used as test subjects for new drugs. Membership of the page grew to 644 people, until Facebook asked him to remove it.• Two members of the Traveller community made a complaint to the Garda, stating that they were "afraid for [their] own safety and for the safety of [their] children", although they said to the Judge that they had not been personally subjected to any hatred directly as a result of the creation of the page.• The case appears to have been the first time in which a prosecution was taken in relation to online material under the Act. Mr Kissane admitted creating the page, but contested the charge under the Act.• Judge O'Connor said the once-off insertion of material, while "obnoxious, revolting and insulting", could not be deemed to be an incitement to hatred. The Judge apparently held that a negative encounter with individuals of Traveller ethnicity, which prompted Mr Kissane to create the page, was an important element of his defence. Further, the fact that he had not contributed to the page after he created it, was taken into account.• Judge O'Connor ultimately held that there was reasonable doubt as to whether there had been intent to incite hatred against the Traveller community, and the case resulted in the charges being dismissed.
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	<p>Other than the two case study examples mentioned above, I have been unable to find further useful case studies relating to hate speech/incitement to violence. This is not surprising, as Dr Schweppe and Dr Haynes make the point that 'according to statistics published by the Courts Service of Ireland, there have been 44 prosecutions from which there have been only five convictions under the Act between 1989 and 2017. In the initial and second periodic reports from Ireland, it was reported that there were seven convictions in 2000 and 2001 alone, and two sentences of imprisonment since 2010. Whilst some of these convictions may have been overturned on appeal (and we are indeed aware of at least one case in which this happened), reliable data are required on outcomes of prosecutions under the Act.'</p> <p>This has caused the Coalition Against Hate Crime (Ireland) to recommend 'that accurate data on the outcomes of prosecutions under the 1989 Act, including the protected grounds against which hatred was alleged to have been incited, number of convictions, and sentencing outcomes should be published annually. The first publication of such data should be retrospective.'</p>
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1. International and Regional Frameworks (NOTE: this section <u>only</u> to be filled up by the teams working on international and EU law)	
1.1	What are the international law standards on hate speech with reference to the UN Conventions, General Comments and the decisions of the Thematic Mechanisms/Special Rapporteur reports?
1.2	Are there any relevant decisions on hate speech arising from the European Convention of Human Rights, the American Convention of Human Rights and the African Convention of Human Rights?
2. Definition of hate speech	
2.1	What is the definition of hate speech in your country?
	<p>There is no official definition of hate speech in Russia. There are several provisions in the Criminal Code of the Russian Federation ("Russian Criminal Code") and the Code of Administrative Offences of the Russian Federation ("Russian Code of Administrative Offences") which prohibit and envisage liability for various types of hate speech. Thus, hate speech may be understood as:</p> <ul style="list-style-type: none">- incitement to hatred and enmity as well as abasement of human dignity or dignity of a group of people based on sex, race, nationality, language, origin, attitude to religion and affiliation with any social group, performed in public, including using the media or



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	<p>telecommunication networks (such as the Internet) (Article 20.3.1 of the Russian Code of Administrative Offences and Article 282 of the Russian Criminal Code);</p> <ul style="list-style-type: none">- public calls for extremism, i.e. calls for provocation of social, racial, national or religious discord; propaganda of the exclusivity, superiority or inferiority of a person based on his/her social, racial, national, religious or language affiliation or attitude to religion; calls for violation of the rights, freedoms and legitimate interests of a person depending on his social, racial, national, religious or linguistic affiliation or attitude to religion; and production or issuance of the mass media containing calls for extremism (Article 13.15 of the Russian Code of Administrative Offences and Article 280 of the Russian Criminal Code);- production and dissemination of extremist materials (Article 20.29 of the Russian Code of Administrative Offences);- propaganda of Nazi attributes or symbols, or attributes or symbols of extremist organisations and rehabilitation of Nazism (Article 20.3 of the Russian Code of Administrative Offences and Article 354.1 of the Russian Criminal Code); or- public actions demonstrating obvious disrespect for society and intending to offend religious feelings (Article 148 of the Russian Criminal Code). <p>Also, hate speech may cover insult, i.e. humiliation of the honour and dignity of another person expressed in an indecent manner (Article 5.61 of the Russian Code of Administrative Offences), and defamation, i.e. disseminating knowingly false information prejudicial to the honour, dignity or reputation of another person (Article 128.1 of the Russian Criminal Code).</p>
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<p>2.2 Does the legal definition of hate speech require threats of violence / incitement to violence?</p>	<p>As described in paragraph 2.1 above, Russian law does not provide for an official definition of hate speech. Various types of hate speech are prohibited by a number of legal norms. However, hate speech does not necessarily require threats of violence or incitement to violence. Threats of violence may qualify for an aggravating circumstance for crimes related to hate speech and, consequently, result in more severe punishment.</p>
<p>2.3 Would the definition cover speech and behaviour which incites hatred (not necessarily violence) towards a group?</p>	<p>As described in item 2.1 above, Russian law does not provide for an official definition of hate speech. Various types of hate speech are prohibited by a number of legal norms. Hate speech may also cover any actions, including speech and other behaviour aimed at incitement to hatred towards both a person and a group of people.</p>
<p>2.4 Does hate speech cover speech that draws on hateful, hostile, or supremacist beliefs directed at a group that is threatened and likely to cause them harm?</p>	<p>The Russian Criminal Code provides for criminal liability for speech inciting hatred and enmity (political, ideological, racial, national or religious) or enmity against any social group (e.g., public calls for extremism; incitement to hatred and enmity as well as abasement of human dignity or dignity of a group of people).</p> <p>Also, it is an aggravating circumstance almost for any crime, if the crime is committed for the reasons of political, ideological, racial, national or religious hatred or enmity, or on the basis of hatred or enmity against any social group. In that case the liability is normally more severe.</p> <p>In the meantime, the following cannot be recognised as hate speech: speech based on facts of interethnic, interfaith or other social relations in scientific or political discussions and texts which is not aimed at inciting hatred or enmity, as well as degrading the dignity of a person or group of persons on the grounds indicated above.</p> <p>Also, criticism of political organisations, ideological and religious associations, political, ideological or religious beliefs, national or religious customs should not necessarily be regarded</p>



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	<p>as an action aimed at inciting hatred or enmity, and thus cannot in itself be regarded as hate speech.</p>
<p>2.5 Does the definition permit religious beliefs and speech which discriminates against particular communities – are there any limitations to religious beliefs and speech which discriminated against particular groups?</p>	<p>Russian criminal law contains a provision prohibiting public actions demonstrating obvious disrespect for society and intending to offend religious feelings. This provision was introduced to the Russian Criminal Code after a scandal with a Pussy Riot campaign in the Cathedral of Christ the Saviour.</p> <p>As indicated in paragraph 2.4 above, scientific or political discussions and texts should not in itself be regarded as hate speech unless it is aimed at inciting hatred or enmity, as well as degrading the dignity of a person or group of persons. Also, criticism of religious associations, religious beliefs or religious customs in itself should not be regarded as an action aimed at inciting hatred or enmity, and thus as hate speech.</p>
<p>3. Remedies and recourse for hate speech</p>	
<p>3.1 If I am the victim of hate speech, what is my recourse?</p>	<p>Recourse available for a hate speech victim depends on the actions occurred since different actions (offences) fall under hate speech under Russian law (see paragraphs 2.1 and 3.2).</p> <p>In general, recourse includes initiating an action in order to bring the offender to: (1) criminal liability; (2) administrative liability; and/or (3) civil responsibility. For more information see paragraphs 3.2 and 3.3.</p>



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<p>3.2 What are the criminal legal remedies for hate speech?</p>	<p>There are several provisions which constitute hate speech definition (see paragraph 2.1).</p> <p>Certain actions which are understood as hate speech and mentioned in paragraph 2.1 above entail criminal liability, while others entail administrative liability. Administrative liability is envisaged for the commission of administrative offences, i.e. wrongful, guilty actions (omission) of a person or legal entity which is administratively punishable under the Russian Code of Administrative Offences or the laws on administrative offences of constituent entities of the Russian Federation. Administrative liability is usually envisaged for less grave wrongdoing and provides for less severe punishment than criminal liability.</p> <p>The following actions (listed in paragraph 2.1 above) constitute administrative offences:</p> <ul style="list-style-type: none">- actions aimed at incitement to hatred and enmity as well as abasement of human dignity, or dignity of a group of people based on sex, race, nationality, language, origin, attitude to religion and affiliation with any social group, performed in public including using the media or telecommunication networks (such as the Internet) – but the person will be subject to criminal liability if he/she performs those actions within one year of being brought to administrative liability;- propaganda of Nazi attributes or symbols, or attributes or symbols of extremist organisations and rehabilitation of Nazism;- insult, i.e. humiliation of the honour and dignity of another person expressed in an indecent manner;- production or issuance of mass media containing calls for extremism; and- production and dissemination of extremist materials.
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	<p>Administrative penalties for these administrative offences, in particular, may be in the form of: (1) an administrative fine; (2) administrative arrest (up to 15 days); (3) community service; and (4) administrative suspension of activity (applicable to legal entities).</p> <p>The following actions (listed in paragraph 2.1 above) constitute criminal offences:</p> <ul style="list-style-type: none">- public calls for extremism, i.e. calls for provocation of social, racial, national or religious discord; propaganda of the exclusivity, superiority or inferiority of a person based on his social, racial, national, religious or language affiliation or attitude to religion; calls for violation of the rights, freedoms and legitimate interests of a person depending on his social, racial, national, religious or linguistic affiliation or attitude to religion;- actions aimed at incitement to hatred and enmity as well as abasement of human dignity or dignity of a group of people based on sex, race, nationality, language, origin, attitude to religion and affiliation with any social group, performed in public if the person commits the crime within one year of being brought to administrative responsibility for the same actions;- public actions which clearly disrespect society and are performed with a view to wounding religious feelings; and- defamation, i.e. disseminating knowingly false information prejudicial to the honour, dignity or reputation of another person. <p>A person who committed a criminal offence related to hate speech may be punished by: (1) a fine; (2) compulsory labour; (3) arrest; or (4) imprisonment with deprivation of the right to occupy certain posts or to engage in a certain activity.</p>
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	<p>Criminal cases on the abovementioned crimes are initiated by the competent authority if the reasons and the grounds stipulated by the Criminal Procedural Code of the Russian Federation exist. Criminal cases on such crimes as defamation are initiated only upon a complaint from the victim and are subject to termination in connection with the reconciliation of the victim with the accused person.</p>
<p>3.3 Are there civil legal remedies available – compensation / damages – for hate speech?</p>	<p>If a person has suffered moral damage (physical or moral suffering) as a result of those actions, the court may impose a duty to pay out monetary compensation for the said damage. Among other elements there must be a chain of causation between the inflicted moral damage and the actions understood as hate speech in Russian law. However, the awarded amounts of compensation, according to court practice, are low in Russia. At the same time, it is quite difficult to prove moral sufferings and their connection to hate speech.</p> <p>Also, if those actions caused damage to the business reputation of a person, this person is entitled to claim compensation as well. However, the same issues remain: the difficulty of proving the connection between losses and hate speech and low amounts of awarded compensation.</p>
<p>3.4 Are there regulatory frameworks governing the online news media which allow individuals to complain?</p>	<p>Usage of the media or telecommunication networks is an aggravating circumstance for hate speech unless using the media or telecommunication networks is an element of corpus delicti itself (e.g., incitement to hatred and enmity is an offence if it was committed in public or via news media).</p> <p>Russian law also prohibits abusing freedom of mass information including using of the media for the spreading of extremist materials and materials propagandising the cult of violence and cruelty.</p>



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	<p>A person has the right to refutation of the information discrediting his honour, dignity or business reputation unless the information is proved to correspond to reality. The right to refutation may be enforced by complaining to the media itself or by submitting a lawsuit to the court. The refutation procedure is regulated by the Civil Code of the Russian Federation and the Law of the Russian Federation on Mass Media.</p> <p>In case of detection in telecommunication networks (including the Internet) of:</p> <ul style="list-style-type: none">(1) information expressing in an indecent form (that offends human dignity and public morality) a clear disrespect for society, the state, the official state symbol of the Russian Federation, the Constitution of the Russian Federation or bodies exercising state power in the Russian Federation; or(2) information containing calls for extremist activities, <p>an affected person may submit a complaint to the appropriate prosecution authorities which could initiate the removal of such information through competent authorities.</p> <p>If the information is not removed, then access to the Internet resource will be restricted by the competent Russian authorities.</p> <p>Also, the access to the Internet resource may be restricted if the court recognises that the information on the website (for example) is prohibited for dissemination. In particular, it is prohibited to disseminate information which is aimed at the propaganda of war, inciting national, racial or religious hatred and hostility and also other information, the dissemination of which is subject to criminal or administrative liability.</p>
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<p>3.5 Is the test for hate speech used by any Social Media / Press / Online regulatory bodies the same as the criminal law definitions?</p>	<p>As described in paragraph 2.1 above, Russian law does not provide for an official definition of hate speech. Various types of hate speech are prohibited by a number of legal norms, including those contained in the Russian Criminal Code. The responsibility of the media is also regulated by the Law of the Russian Federation on Mass Media.</p> <p>We are not aware of any special bylaws used by any social media/press/online regulatory bodies with regard to hate speech. Thus, the relevant regulatory bodies should determine if certain actions fall under hate speech based on the Russian Criminal Code and the Russian Code of Administrative Offences.</p>
<p>3.6 Do public and private institutions have to comply with the same duties to avoid hate speech?</p>	<p>Under Russian law, public and private institutions should be treated equally when determining whether hate speech occurs. However, representatives of public institutions as well as non-state officials are subject to more severe punishment for the commitment of crimes and administrative offences related to hate speech.</p>
<p>3.7 If I am accused of hate speech, what is my recourse?</p>	<p>When considering hate speech violations, it is always an issue of finding the balance between freedom of speech and public interests. Therefore, it may be advisable to refer to freedom of speech, which may be limited only in exceptional cases.</p> <p>Further, the Russian Supreme Court held that the mere fact of publishing materials on the Internet which may qualify for hate speech should not be sufficient for imposing criminal liability. Courts should consider further factors indicating the public danger of the action and the motive for the crime. Therefore, a person may try to prove low public danger or the lack of motive.</p>



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<p>3.8 If hate speech is occurring at my event/on my platform/in my place of work, what should I do about it?</p>	<p>Russian law imposes no obligation to address hate speech violations when hosting an event or evidencing those as an employer. Owners of platforms (e.g. websites) must delete information qualified as hate speech only upon a relevant request from the Russian authorities (e.g. Federal Service for Supervision in the Sphere of Telecom, Information Technologies and Mass Communications ("Roskomnadzor")). However, some websites have their own terms of use where they prohibit <i>inter alia</i> hate speech and may voluntarily delete, for example, users' posts and comments which are considered as hate speech.</p> <p>We note that a draft law which obliges social media resources to delete content falling under hate speech based on user's request was submitted to the State Duma (the lower chamber of the Russian Parliament) in 2017; however, it is still subject to discussions.</p> <p>In October 2020, another draft law which provides for significant administrative fines for owners of platforms (e.g. websites) and web hosting providers for non-compliance with the obligation to delete content falling under hate speech passed the first reading in the State Duma.</p>
<p>3.9 If I have identified hate speech (online, in the media, etc.) what practical steps should I take?</p> <p><i>(For this question, we envision a "filtering" or "journey tree" (flow chart) where the first question is, "where did you see the hate speech" → if online then go here, if offline, then go here → do you have evidence of it (screenshot/link to the post, recording of the speech, etc.) → then what, etc.)</i></p>	<p>If hate speech occurs online in social media, it may be advisable to use the opportunities provided by Internet platforms to complain about this (e.g. to Facebook, Instagram, VK operating in Russia allow for such recourses), as it can help to resolve the matter quickly.</p> <p>In other cases of revealing online hate speech a possible step would be to approach the Prosecutor General (his deputies), who is entitled to initiate blocking of the online platform through Roskomnadzor or initiate criminal/administrative proceedings against the infringer.</p> <p>For both online and offline hate speech, it is also possible to apply to police authorities and/or file a claim with a court.</p>



PeaceTech Lab: Pro Bono Research on Hate Speech
Template for Answers to Questions

Jurisdiction: Russian Federation

Law Firm / Office: Moscow

<p>3.10 Please provide recent (within 1 year) of examples of hate speech reported in the media, and if possible, establish how was this addressed, e.g. by legal remedies or non-legal remedies.</p> <p><i>(For this question, we are looking for case studies.)</i></p>	<p>One of the latest cases of hate speech reported in the mass media concerned a gay couple as a symbol of threat to Russia during the campaign of political agitation in support of the changes to the Russian Constitution (https://www.znak.com/2020-06-04/youtube_zablokiroval_video_za_popravki_v_konstituciyu_v_kotorom_figuriruet_gey_para).</p> <p>The hate speech in the video was detected by the YouTube platform according to its internal rules.</p> <p>Another notable case related to a student being accused of insulting women on the Internet. The student posted photos and posts in social media which were recognised as hate speech against women. The mass media stated that the student was autistic. Initially, criminal proceedings were initiated against him based on abasement of the honour and dignity of women. The criminal case was further terminated because of the changes to the Criminal Code of Russia introduced at the end of 2018, whereby criminal liability may be incurred only after first being brought to administrative liability for similar actions (https://www.interfax.ru/russia/626834).</p>
<p>3.11 Please provide examples of cases related to hate speech / incitement of violence.</p>	<p>In 2019, Mr. Vladislav Sinitsa was accused of incitement to hatred for the tweet regarding children of police officers (https://meduza.io/en/feature/2019/09/03/five-years-for-one-tweet-the-article-is-in-English).</p> <p>Another Russian blogger was convicted of playing the game "Pokemon GO" in a temple and publishing relevant videos on his YouTube channel. He was convicted of incitement to hatred and enmity as well as abasement of human dignity or the dignity of a group of people and of performing public actions demonstrating obvious disrespect for society and intending to offend religious feelings (https://www.interfax.ru/russia/569625).</p>



PeaceTech Lab: Pro Bono Research on Hate Speech
Template for Answers to Questions

Jurisdiction: Scotland

Law Firm / Office: London

1. International and Regional Frameworks (NOTE: this section <u>only</u> to be filled up by the teams working on international and EU law)	
1.1 What are the international law standards on hate speech with reference to the UN Conventions, General Comments and the decisions of the Thematic Mechanisms / Special Rapporteur reports?	N/A
1.2 Are there any relevant decisions on hate speech arising from the European Convention of Human Rights, the American Convention of Human Rights and the African Convention of Human Rights?	N/A
2. Definition of hate speech	
2.1 What is the definition of hate speech in your country?	<p>There doesn't appear to be a definition for "hate speech" although there are definitions of "hate crimes".</p> <p>From Scotland Police website, the definition of hate crime (which can be verbal or physical) is: "Crime motivated by malice or ill will towards a social group by: race, sexual orientation, religion/ faith, disability, or transgender/ gender identity." It seems that the presence of prejudice against the victim on the basis of race, gender etc. serves as a statutory aggravating factor if found during the commission of any other offence (e.g. murder, m/s, rape etc.)</p>

Jurisdiction: Scotland

Law Firm / Office: London

From the [Scottish Government](#), the relevant legislation for hate crimes motivated by prejudice for statutory aggravations is:

- Race: [Section 96 Crime and Disorder Act 1998](#)
- Religion: [Section 74 Criminal Justice \(Scotland\) Act 2003](#)
- Disability: [Section 1 Offences \(Aggravation by Prejudice\) \(Scotland\) Act 2009](#)
- Sexual Orientation: [Section 2 Offences \(Aggravation by Prejudice\) Scotland Act 2009](#)

In the Independent Review of the Hate Crime Legislation in Scotland, cited in the Scottish Government's consultation, "[One Scotland: Hate has no home here](#)" on amending Scottish hate crime legislation, Lord Bracadale defined hate crime as "the term used to describe behaviour which is both criminal and rooted in prejudice."

There are two standalone "hate crimes" in Scotland, both of which are limited to racial prejudice:

- **Stirring up racial hatred:** Part III of the [Public Order Act 1986](#) (Sections 18 – 22) which applies to Scotland (as well as England & Wales) criminalizes acts intended or likely to stir up racial hatred, which is defined as "hatred against a group of persons defined by reference to colour, race, nationality (including citizenship) or ethnic or national origins".
- **Racially aggravated harassment:** [Section 50A Criminal Law \(Consolidation\) \(Scotland\) Act 1995](#), which defines an action as racially aggravated if either "(a) immediately before, during or immediately after carrying out the course of conduct or action the offender evinces towards the person affected malice and ill-will based on that person's membership (or presumed membership) of a racial group; or (b) the course of conduct or action is motivated (wholly or partly) by malice and ill-will towards members of a racial group based on their membership of that group."



PeaceTech Lab: Pro Bono Research on Hate Speech
 Template for Answers to Questions

Jurisdiction: Scotland

Law Firm / Office: London

	<p>NOTE that a new "Hate Crime and Public Order Bill" has been introduced in the Scottish Parliament. According to the Government website, the Bill may seek to do the following:</p> <ul style="list-style-type: none"> - Add "age" to the list of protected characteristics - Widen the "stirring up" offence beyond racial hatred to include stirring up hatred for any of the protected characteristics (namely age, disability, race, religion, sexual orientation, transgender identity and variations in sex characteristics) - Possibility of creating a new standalone misogynistic harassment offence
<p>2.2 Does the legal definition of hate speech require threats of violence / incitement to violence?</p>	<p>Looking only at the standalone hate crime offences in Scotland:</p> <ul style="list-style-type: none"> - Part III Public Order Act 1986: does not specifically require a threat of violence or an incitement to violence – it refers to stirring up "hatred" against a racial group (s. 17), which obviously could include violence but doesn't necessarily have to (you can evince hatred for a particular race without being violent towards them) - S. 50A Criminal Law (Consolidation) (Scotland) Act 1995: does not specifically refer to a threat of violence or incitement to violence; the offence is framed as "pursuing a racially-aggravated course of conduct which amounts to harassment" (s. 50A(1)(a)), with "harassment" being defined as "including causing the person alarm or distress" in s. 50A(6); again, a threat of violence/ incitement to violence could constitute "harassment" but it is conceivable that "harassment" can be non-violent
<p>2.3 Would the definition cover speech and behaviour which incites hatred (not necessarily violence) towards a group?</p>	<p>Looking only at the standalone hate crime offences:</p> <ul style="list-style-type: none"> - Part III Public Order Act 1986: yes- these offences are framed as stirring up (which can be read as synonymous as inciting) hatred towards a particular racial group



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 Template for Answers to Questions

Jurisdiction: Scotland

Law Firm / Office: London

	<ul style="list-style-type: none"> - S. 50A Criminal Law (Consolidation) (Scotland) Act 1995: arguably no – this offence is about harassment of a particular individual on racial grounds and is not really about inciting a broader hatred in society towards the racial group
<p>2.4 Does hate speech cover speech that draws on hateful, hostile, or supremacist beliefs directed at a group that is threatened and likely to cause them harm?</p>	<p>Looking only at the standalone hate crime offences:</p> <ul style="list-style-type: none"> - Part III Public Order Act 1986: could conceivably cover this type of speech (as it could be used to stir up hatred towards racial group) - S. 50A Criminal Law (Consolidation) (Scotland) Act 1995: could conceivably cover this speech as it could constitute harassment which could threaten/ cause harm to the victim)
<p>2.5 Does the definition permit religious beliefs and speech which discriminates against particular communities – are there any limitations to religious beliefs and speech which discriminated against particular groups?</p>	<p>Looking only at the standalone hate crime offences:</p> <ul style="list-style-type: none"> - Part III Public Order Act 1986: there are defences if the accused shows he did not intend his words or behaviour to be – and was not aware they might be – threatening, abusive or insulting, or that he was not aware and did not suspect that materials were threatening, abusive or insulting, or that he did not know/ have reasons to suspect that racial hatred would be stirred up; <u>however, none of these defences really permit or condone discriminatory religious beliefs if they are used in a racially prejudicial way to stir up/ incite hatred towards a race</u> - S. 50A Criminal Law (Consolidation) (Scotland) Act 1995: no defence given in the legislation
<p>3. Remedies and recourse for hate speech</p>	



PeaceTech Lab: Pro Bono Research on Hate Speech
 Template for Answers to Questions

Jurisdiction: Scotland

Law Firm / Office: London

<p>3.1 If I am the victim of hate speech, what is my recourse?</p>	<p>You can report it to the police by calling them, showing up at the police station, or reporting online.</p>
<p>3.2 What are the criminal legal remedies for hate speech?</p>	<p>For the standalone hate crime offences:</p> <ul style="list-style-type: none"> - Part III Public Order Act 1986: if found guilty on summary conviction shall be liable to fine not exceeding statutory maximum, or imprisonment for a period not exceeding 6 months, or both fine + imprisonment (s. 27(3)(b)); if found guilty on indictment shall be liable to a fine or imprisonment for period not exceeding 7 years, or both fine + imprisonment (s.27(3)(a)) - S. 50A Criminal Law (Consolidation) (Scotland) Act 1995: if found guilty on summary conviction shall be liable to fine not exceeding statutory maximum, or imprisonment for a period not exceeding 6 months, or both fine + imprisonment (s. 50A(5)(a)); if found guilty on indictment shall be liable to a fine or imprisonment for period not exceeding 7 years, or both fine + imprisonment (s.50A(5)(b)) <p>For crimes which are aggravated by hate:</p> <ul style="list-style-type: none"> - S. 96 Crime and Disorder Act: presence of racial aggravation during commission of offence must be treated as an aggravating factor during sentencing - S. 74 Criminal Justice (Scotland) Act 2003: presence of religious aggravation during commission of offence must be treated as an aggravating factor during sentencing - Sections 1 and 2 Offences (Aggravation by Prejudice) (Scotland) Act 2009: presence of hostility on basis of disability, sexual orientation or transgender identity must be treated as an aggravating factor during sentencing



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Law Firm / Office: London

	<p>NB: if the accused is convicted, the sentencing judge must take into account aggravating and mitigating factors when sentencing</p>
<p>3.3 Are there civil legal remedies available – compensation / damages – for hate speech?</p>	<p>Not directly. There are civil legal remedies in specific areas (like discrimination in employment law), but nothing that directly compensates a victim of hate speech.</p>
<p>3.4 Are there regulatory frameworks governing the online news media which allow individuals to complain?</p>	<p>The Independent Press Standards Organisation (IPSO) is the independent regulator of the newspaper and magazine industry in the UK and seeks to hold newspapers and magazines to account for their actions, protect individual rights, uphold high standards of journalism and maintain freedom of expression for the press.</p> <p>Individuals can make a complaint to IPSO for any alleged breach of IPSO's Editors' Code, which includes discrimination and harassment.</p> <p>Separately, the BBC has its own complaints framework (including escalation to Ofcom).</p>
<p>3.5 Is the test for hate speech used by any Social Media / Press / Online regulatory bodies the same as the criminal law definitions?</p>	<p>Not necessarily – IPSO says that there may be times when an article does not breach the Editors' Code yet may be very offensive and potentially criminal. In such a scenario, IPSO recommends that the individual file a complaint with the police.</p>
<p>3.6 Do public and private institutions have to comply with the same duties to avoid hate speech?</p>	<p>Public and private institutions are under different obligations to avoid hate speech:</p> <ul style="list-style-type: none"> - Private individuals are bound by the criminal legislation mentioned in Section 2.1;



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Template for Answers to Questions

Jurisdiction: Scotland

Law Firm / Office: London

	<ul style="list-style-type: none"> - Private institutions may be bound by different anti-discrimination duties (e.g. in an employment law context, per Equality Act 2010, or in a regulatory context – e.g. under IPSO), but companies/ other bodies that have limited liability will generally not be subject to the criminal legislation mentioned in Section 2.1 unless, exceptionally, they can be made liable under the "identification principle" of the doctrine of Corporate Criminal Liability – i.e. where the criminal act can be attributed to someone who at the material time was the "directing mind and will" of the company - Public institutions will not be subject to the criminal legislation mentioned in Section 2.1 because they cannot be prosecuted as such. However, if a public body uses hate speech against an individual, that individual may be able to bring a judicial review claim against the public body under the Human Rights Act 1998 ("HRA"), which by Section 6 imposes an obligation on public authorities in the UK to act compatibly with "Convention rights" (i.e. Articles 2-12, 14, Articles 1-3 First Protocol and Article 1 of Thirteenth Protocol of the European Convention on Human Rights, per s.1(1) HRA); although the individual's claim would have to be really strong, it is possible that such a claim could succeed if the hate speech was particularly egregious. The usual public law remedy is for the decision-maker to re-make their decision in a lawful way – so the institution which had used hate speech must re-do whatever it was doing without hate speech. <p>Additionally, public bodies are arguably under different kinds of duties to avoid hate speech – e.g. those under international law/ norms, and also public bodies will be subject to democratic accountability in the countries of the UK (including Scotland) via the ballot box</p>
<p>3.7 If I am accused of hate speech, what is my recourse?</p>	<p>If a formal charge has been brought against you, you have the right to defend the claim against the prosecution.</p>



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Jurisdiction: Scotland

Law Firm / Office: London

	<p>Depending on the context/ circumstances, you might be able to issue an apology, publish an article saying you recant what has been said etc. which could persuade the victim not to press charges.</p>
<p>3.8 If hate speech is occurring at my event/on my platform/in my place of work, what should I do about it?</p>	<p>At your event: report to police</p> <p>On your platform: report to police; take down hate speech content if possible; report to social media administrators (e.g. if the hate speech is on your Facebook page)</p> <p>At your place of work (where you are the employer): report to police, discipline/ warn employee (follow any employee code of conduct policies/ employee handbook guidelines), follow clauses in contract relating to this point (if any)</p> <p>At your place of work (where you are an employee): follow firm policy/ guidance on reporting hate incidents (if these exist), raise point with management/ dedicated team for handling these kinds of complaints, if necessary report to police</p>
<p>3.9 If I have identified hate speech (online, in the media, etc.) what practical steps should I take?</p> <p><i>(For this question, we envision a “filtering” or “journey tree” (flow chart) where the first question is, “where did you see the hate speech” → if online then go here, if offline, then go here → do you have evidence of it (screenshot/link to the post, recording of the speech, etc.) → then what, etc.)</i></p>	<p>1) Where did you see hate speech?</p> <p>2) If online -> may be able to report it to the website administrator (e.g. social media channels like Instagram or Facebook have dedicated reporting channels you can use to flag offensive content), else you can report it to the authorities (same as process for offline below)</p> <p>If offline -> can report a hate incident or hate crime to the police directly (i.e. by calling them or showing up to the police station) or can you use their dedicated online form</p>



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Law Firm / Office: London

	3) Whether you report online or offline, it is best to have evidence of the hate speech – (e.g. a picture, video, screenshot, etc.) that you can use to prove your claim
<p>3.10 Please provide recent (within 1 year) of examples of hate speech reported in the media, and if possible, establish how was this addressed, e.g. by legal remedies or non-legal remedies.</p> <p><i>(For this question, we are looking for case studies.)</i></p>	<p>Newsquest, 12 May 2019: FB banned the Scottish Defence League (SDL) with opposes Islam and refugees and has links to neo-Nazis. FB removed SDL2 – SDL's main FB page with 15k followers, saying the group violated community standards. SDL attracted criticism for anti-Muslim and homophobic comments in March 2019 following terror attacks on NZ mosques.</p> <p>Interestingly- FB says it deleted around 66k posts reported as hate speech per week on average – an average of 288k posts per month.</p> <p>[It doesn't appear as if any legal action was taken]</p> <p>Daily Record, 6 August 2019: Members of Perthshire's LGBT community have revealed they faced derogatory comments, heckles and complaints while advertising an upcoming Pride event. Comments included "this is not right", "you must be joking", and other heckles.</p> <p>[Note- nothing to suggest any hate crime has been alleged or that police have taken any action]</p> <p>Scottish Sun, 14 June 2019: Homophobic and biphobic hate crimes have risen for 4th year in a row to 1,176, up 5% in 2018/19. Racist incidents are the most common hate crime with 2,880 cases; crimes linked to religion numbered 529, disability hate crimes numbered 289.</p> <p>Scottish Daily Mail, 13 February 2020: Football fans told to stop using phrases like "you're playing like a girl" in a crackdown on homophobic banter. The Scottish FA has not said what sanctions would be, but club employees could face match bans or fines. Scottish FA is taking steps to educate clubs and players on what is hate speech and to increase their LGBTI awareness.</p>



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Jurisdiction: Scotland

Law Firm / Office: London

	<p>Scottish Daily Mail, 23 February 2020: Franklin Graham, controversial US preacher, is taking legal action against a Scottish venue, Glasgow's SSE Hydro, which cancelled Graham's May appearance. Graham has described homosexuality as a "sin" and is in favour of gay conversion therapy. Graham criticized the venue for discriminating against the religious beliefs of Christians. Some churches in Scotland/ England seem to support Graham whilst Glasgow City Council leader Susan Aitken believes that allowing Graham to speak could cause the council to breach statutory equality duties. Graham has brought an action in the Glasgow Sheriff Court to grant an interim order forcing the venue to host the event.</p> <p>Daily Record, 26 February 2020: Scotland is blighted by Islamophobia with 4/5 Muslims facing race hate incidents according to a nationwide probe led by Labour MSP Anas Sarwar. 1/3 of Muslims believe Islamophobia is an "everyday" issue in their lives. The investigation found racist prejudice is rife in workplaces, schools and streets with some Muslims withdrawing from public services and changing their looks to avoid hate crimes. Nearly 80% of those surveyed said they thought this form of racism is getting worse in Scotland, 83.4% said they had experienced Islamophobia, and over 90% of Muslims feared experiencing Islamophobia.</p> <p>Specific incidents mentioned: verbal abuse, milkshake spat at them, contemplating suicide, fears about job prospects and personal safety, changing names and looks to avoid drawing attention to Muslim identity, withdrawal from public services like schools.</p> <p>Next steps: phase 2 of inquiry.</p> <p>Daily Record, 6 March 2020: Hate crime reaches 4-year high in East Ayrshire – homophobic crimes rose by 33%, religious crimes by 44%, racial crimes by 13%, disability crimes by 17%.</p> <p>Glasgow Live, 18 March 2020: Alleged victim, Chinese PhD student at Glasgow University, is believed to have had clothes torn by three strangers after being called "coronavirus"</p>
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Jurisdiction: Scotland

Law Firm / Office: London

<p>3.11 Please provide examples of cases related to hate speech / incitement of violence.</p>	<p><u>Public Order Act 1986:</u> [2005] HCJAC 97 Wilson v Procurator Fiscal</p> <p>FACTS</p> <ul style="list-style-type: none">- Claimant (C) charged with distributing written material which is threatening, abusive or insulting and intended to stir up racial hatred contrary to s19(1)(a) Public Order Act 1986- C pled not guilty and went to trial- in October 2002 sheriff found appellant guilty and in November 2002 he was sentenced to 4 months imprisonment- The sheriff found that C had distributed threatening leaflets in a predominantly Pakistani/ Muslim area of Glasgow and that the written material "had clear racist overtones"- The sheriff made the following findings of fact which were questioned on appeal:- (1) Leaflet was threatening in character- (2) Leaflet contained information which was substantially inaccurate and which rendered it insulting and abusive to the Muslim population of Pollokshields. The inaccurate portrayal of the situation in Pollokshields was an affront to the dignity of the Muslims living in Pollokshields and undermined their position in the community- (3) The appellant distributed the leaflets in the knowledge that they would cause offence to the black, Muslim members of the community and alarm the white members of the community- (4) To insult and abuse the Muslim community in Pollokshields was to insult and abuse the black, Pakistani members of the community there- (5) In distributing the said written material, the appellant intended to provoke ill-feeling and hostility and to stir up racial hatred against the black Pakistani members of the community in Pollokshields on the basis of their colour and national origins.- C appealed <p>HOLDING</p>
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Jurisdiction: Scotland

Law Firm / Office: London

- The Appeal Court (High Court of Justiciary) rejected C's appeal that the sheriff was not entitled to make his findings of fact

S. 50A Criminal Law (Consolidation) (Scotland) Act 1995 cases:

Donnachie v Procurator Fiscal [2012] HCJAC 53

- This was an appeal from the decision of the sheriff
- The sheriff convicted the defendant (the accused) under s. 50A Criminal Law (Consolidation) (Scotland) Act 1995
- Facts: the accused and complainant were both students who lived in the same hall of residence; the complainant is Jewish and had a flag of Israel hanging over his bed; the accused and another student returned to the hall one night drunk; the accused went into the complainant's room whilst he was asleep and said "Israel is a terrorist state, the flag is a terrorist symbol and you are a terrorist"- he then put his hands down his trousers, pulled out public hair and wiped this in the middle of the flag; the accused then left the room but proceeded to loudly tell other students (outside the complainant's room) that Israel was a terrorist state, built on terrorism and that Israelis were all suicide bombers
- This was enough for the sheriff to conclude that there had been racially-aggravated harassment
- NB: The appeal concerned a different point – and in any case was rejected by the court

William John Moscrop v Morag McClintock [2011] SCCR 621

- This was an appeal from the decision of the sheriff
- The accused was convicted under s. 50A Criminal Law (Consolidation) (Scotland) Act 1995



Jurisdiction: Scotland

Law Firm / Office: London

	<ul style="list-style-type: none">- Facts: the accused broke into the complainant's back garden at 2.30 am, banged on his ferret cage, and shouted verbal abuse like "Die you fucking Georgie bastard" and "I'm going to fucking get you Georgie bastard"; the sheriff held that this constituted racial harassment under the Act – as being English counted as a race and clearly the accused was evincing malice towards the complainant on the basis of his origins from the Northeast of England- The accused's appeal was rejected by the court which accepted that it was open to the sheriff to find as a matter of fact that the accused had demonstrated malice and ill will towards people of English national origin (and that being English counts as a racial group) <p>Thomas Alexander Hunter vs. Alfred Vannet [2000] SCCR 131</p> <ul style="list-style-type: none">- This was an appeal from the decision of the sheriff- The accused pleaded guilty to s.50A Criminal Law (Consolidation) (Scotland) Act 1995 charge- Accused had barged into complainant's shop and called the complainant "a fucking Paki bastard" and a "black bastard"; the complainant told the accused to get out at which point the accused threw an Irn-Bru bottle at the complainant, striking him in the face, and continued to say "Paki bastard" and "black bastard"- The sheriff had found that despite the fact the accused was only 16 and had no prior criminal record, the charges were all serious and had "a very prominent racial element within them"- the sheriff also noted that there were two occasions when this had occurred- and thus found a course of conduct of racial harassment
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PeaceTech Lab: Pro Bono Research on Hate Speech
 Template for Answers to Questions

Jurisdiction: SPAIN

Law Firm / Office: Madrid / Munich

1. International and Regional Frameworks (NOTE: this section <u>only</u> to be filled up by the teams working on international and EU law)	
1.1 What are the international law standards on hate speech with reference to the UN Conventions, General Comments and the decisions of the Thematic Mechanisms / Special Rapporteur reports?	N/A
1.2 Are there any relevant decisions on hate speech arising from the European Convention of Human Rights, the American Convention of Human Rights and the African Convention of Human Rights?	N/A
2. Definition of hate speech	
2.1 What is the definition of hate speech in your country?	<p>According to Circular 7/2019 of 14 May from the State Prosecutor's Office on guidelines for the interpretation of hate offences under article 510 of the Spanish Criminal Code, <i>there is not a normative general definition on what is "hate speech", as it is an essentially evaluative concept, which must be attached to a social reality that, as such, is constantly changing.</i></p> <p>Nonetheless, the State Prosecutor's Office gives as a general interpretation criteria to understand "hate speech" the following characteristics:</p>



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Law Firm / Office: Madrid / Munich

	<ul style="list-style-type: none"> i. It can be expressed in many behaviours, such as the promotion or dissemination of ideas or opinions; the expression or performance of acts of contempt, discredit or humiliation; or incitement to physical or mental violence; the glorification of such acts or their perpetrators; or the justification, trivialization or denial of serious acts against humanity. ii. It should only extend to those relevant behaviours which infringe the legal interest protected or which are likely to generate a risk or danger for it, and iii. It must have a discriminatory motivation.
<p>2.2 Does the legal definition of hate speech require threats of violence / incitement to violence?</p>	<p>No. As the State Prosecutor's Office clarifies, "hate speech" exists as long as there is a discriminatory motivation underlying the actual behaviour, and this behaviour is relevant enough to infringe the legal interest protected or likely to generate a risk or danger for it.</p> <p>However, although it is not considered a requirement by the State Prosecutor's Office for the existence of "hate speech", article 510 (a) of the Spanish Criminal Code does include within the extent of "hate offences" the act of publicly encourage, promote or incite directly or indirectly hatred, hostility, discrimination or violence against a group, a part of it or a specific person.</p> <p>Accordingly, we must understand the incitement to violence as one of the ways "hate speech" may express itself, but not as a requirement for its existence.</p>
<p>2.3 Would the definition cover speech and behaviour which incites hatred (not necessarily violence)</p>	<p>Yes. As stated above, article 510 (a) explicitly refers to any public behavior which incites hatred towards a group as one of the main ways a person may commit a "hate offence".</p>



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<p>towards a group?</p>	
<p>2.4 Does hate speech cover speech that draws on hateful, hostile, or supremacist beliefs directed at a group that is threatened and likely to cause them harm?</p>	<p>Yes. Article 510 (a) completes the definition of "hate offence" specifying the reasons underlying the prohibited discriminatory act against a group, those being: "on the grounds of their membership of that group, on grounds of racism, anti-Semitism or other grounds relating to ideology, religion or belief, family status, membership of an ethnic group, race or nation, national origin, gender, sexual orientation or identity, or on grounds of gender, illness or disability".</p> <p>Specifically, as stated in question 2.1, the Public Prosecutor’s Office requires a note of "relevance" on the behaviour, in such way that it may infringe the legal interest protected or be likely to generate a risk or danger for it, in order to appreciate the existence of a "hate speech offence".</p>
<p>2.5 Does the definition permit religious beliefs and speech which discriminates against particular communities – are there any limitations to religious beliefs and speech which discriminated against particular groups?</p>	<p>No. As stated above, one of the specific underlying reasons that article 510 (a) considers to be essential to the existence of "hate offences" is precisely every ideology, religion or belief which discriminates any particular community or group on the grounds of thinking differently.</p>
<p>3. Remedies and recourse for hate speech</p>	
<p>3.1 If I am the victim of hate speech, what is my recourse?</p>	<p>As a victim of hate speech, you can use the following channels:</p> <ul style="list-style-type: none"> i. Contact with the official public institutions in charge of information, support and prevention of hate speech, which provide a victim (and also a witness) with relevant



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	<p>information on the channels to assess/report the facts. In this respect, there are available a number of e-mail addresses and telephones at national, regional or even local level.</p> <p>Notwithstanding the above, the main contact details for these purposes are (i) the telephone numbers of the Spanish Police (both <i>Policía Nacional</i> and <i>Guardia Civil</i>) – available in the following link: http://www.interior.gob.es/en/web/servicios-al-ciudadano/delitos-de-odio/denunciar-un-delito-de-odio-, as well as (ii) the contact information e-mail for victims support of the National Office against Hate Speech (<i>Oficina Nacional de Lucha Contra los Delitos de Odio</i>): asistencia.ondod@interior.es.</p> <p>ii. Use directly the criminal legal remedies provided by the law for hate offences (as previously defined by article 510 of the Spanish Criminal Code), which mainly consist in file a complaint (<i>denuncia</i>) and/or a criminal lawsuit (<i>querrela</i>), as the case may be, with the competent authority.</p> <p>This would also include the possibility of bringing civil action for the damages arising from the crime, which will entail the restitution, reparation or compensation for damages (material or moral) that may have caused the offender. This action also takes place within the criminal jurisdiction by following the civil rules typical of claims for damages.</p>
<p>3.2 What are the criminal legal remedies for hate speech?</p>	<p>As a result of Spanish Act 4/2015, of April 27, on the Statute of the Victim of Crime (<i>Ley 4/2015, de 27 de abril, del Estatuto de la víctima del delito</i>) (the “Act 4/2015”), victims of hate speech are entitled to their protection in a broad sense, which is not only limited to report the crime and to participate in the corresponding legal proceedings, as noted in the Practical Guide to Lawyers on hate crimes, published by the Spanish Lawyers Foundation (<i>Fundación Abogacía Española</i>) (available at the following link in Spanish: https://www.abogacia.es/wp-</p>



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	<p>content/uploads/2018/12/GUIA-DELITOS-DE-ODIO.pdf).</p> <p>In particular, the Act 4/2015 foresees the right to obtain material and moral reparation as well as non-re-victimization within the framework of criminal legal proceedings, in line with the human rights standards set forth in international regulations.</p> <p>Consequently, in addition to the guarantee of non-repetition of the crime regulated in article 510.6 of the Spanish Criminal Code (which requires the destruction of materials or removal of hate speech content), the Act 4/2015 establishes that, throughout the entire criminal process and even after its conclusion, the victims will also be entitled to the “<i>protection, information, support, assistance and care</i>” provided by official public institutions and services in order to guarantee recovery and reparation of the damages, as well as to “<i>receive respectful, professional, individualized and non-discriminatory treatment from their first contact with the authorities</i>” (article 3).</p>
3.3 Are there civil legal remedies available – compensation / damages – for hate speech?	
3.4 Are there regulatory frameworks governing the online news media which allow individuals to complain?	
3.5 Is the test for hate speech used by any Social Media / Press / Online regulatory bodies the same as the criminal law definitions?	



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<p>3.6 Do public and private institutions have to comply with the same duties to avoid hate speech?</p>	<p>The Spanish Constitution (Articles 1.1, 10 and 14, among others) recognizes equality as one of the supreme values of democracy and prevents any person from being discriminated against on the basis of race, sex and religion, among others. This imposes an obligation on all persons, whether natural or legal persons, to fight against and prevent hate speech, in order to guarantee equal treatment for all citizens. These obligations fall indistinctly on private companies and public institutions.</p> <p>From a legal point of view, there is no specific rule detailing and developing the actions that must be carried out to prevent hate speech, but rather there are generic rules (for example, the Criminal Code (Articles 170, 197 or 314, among others) or Law 62/2003 (Article 27 et seq.)) that prohibit this kind of actions or speeches when they constitute a hate crime by colliding with rights such as the right to honour, equality and non-discrimination. However, there is some specific legislation that details preventive measures but which are limited to certain groups or fields.</p> <p>This is the case, for example, of Law 19/2007, of 11 July, against violence, racism, xenophobia and intolerance in sport, which requires organizers of sports competitions (Article 3) the obligation to take appropriate measures to prevent the perpetration of racist, xenophobic or intolerant behaviour, such as actively collaborating in the location and identification of the offenders and perpetrators of prohibited behaviours or taking the necessary measures for the immediate cessation of prohibited actions, when security and control measures have failed to prevent or impede the perpetration of such actions.</p> <p>As we can see, there are no imperative legal guidelines that private companies must comply with, but rather the implementation of mechanisms to end the hate speech must be born of their own will (beyond, of course, the company's obligation to avoid any behaviour, either its own (as a company) or that of others (its workers), that promotes this hate speech and the obligation to report any crime that might be committed). To prevent this type of crime from</p>
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	<p>occurring in the business environment, many companies are promoting compliance measures.</p> <p>As far as public institutions are concerned, the analysis must be made from a twofold perspective:</p> <ul style="list-style-type: none">i. On the one hand, like any private company, public institutions, public officials and/or other workers of the public sector must ensure that they avoid this type of speeches and report any discriminatory behaviour; but,ii. On the other hand, certain public institutions, as guarantors of compliance with the law, non-discriminatory treatment and equality, have a duty to pursue, investigate and prevent this type of hate speech and hate crimes. <p>Among all the institutions, it is worth highlighting the work of four of them:</p> <ul style="list-style-type: none">- <u>The prosecution</u>. The Spanish judicial system has a prosecutor's office specializing in hate crimes and discrimination, which has a state coordination office and branches in each province. The main functions of the coordinating office are the identification of hate crimes, their statistical control, and the monitoring of the proceedings or proceedings that are initiated or prosecuted for hate crimes. Each provincial prosecutor's office is responsible for receiving complaints when criminal hate speech is involved, assessing them and processing them before the appropriate courts and tribunals. In addition, it is worth noting that a computer crime prosecutor's office has been set up to carry out specific investigative work during the processing of cases involving criminal content on the Internet.- <u>Ombudsman</u>. This is the High Commissioner of the Spanish General Courts in charge of defending the fundamental rights and public liberties of citizens by supervising the
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	<p>activity of the Public Administrations.</p> <ul style="list-style-type: none">- <u>The State Security Forces and Corps.</u> In the case of the National Police, it can receive complaints and investigate and prosecute acts with the appearance of crime. In this regard, the Ministry of the Interior has drawn up an Action Plan to Combat Hate Crimes which sets out the main lines of action of the State Security Forces and Corps, in order to prevent this type of behavior. Among the lines of action in the document we find: (i) training of the State Security Forces and Corps, (ii) prevention of hate incidents and crimes, (iii) care for victims, and (iv) effective and rigorous response to this type of incident and crime.- <u>The Subdirectorate-General for Equal Treatment and Non-Discrimination,</u> which is attached to the Ministry of Health, Social Services and Equality and is part of the autonomous body, the Institute for Women and Equal Opportunities (IMIO), seeks to combat discriminatory attitudes and all conduct or speeches that justify, encourage or promote racial hatred, xenophobia, anti-semitism or other forms of hatred that threaten the principle of equality and diversity in our society. In this case, the main measures are based on strengthening training, information and awareness-raising, protecting victims through specialized services, creating mechanisms for inter-institutional cooperation and collaboration with key actors in the public and private spheres, preparing guides and specific materials that provide information on the nature of discrimination and hate crimes so that citizens can learn about their rights and the existing remedies in the event that they wish to report any incident. <p>In addition, there are many other bodies such as the Spanish Observatory on Racism and Xenophobia or INJUVE, which try to raise awareness among the population, as well as bar associations that offer advice and legal assistance to victims of hate crimes.</p>
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<p>3.7 If I am accused of hate speech, what is my recourse?</p>	<p>The recourse of any person accused of hate speech could be, among others:</p> <ul style="list-style-type: none"> i. To defend his right of freedom of expression and/or his right of ideological freedom. <p>The right of freedom of expression is a fundamental right included in article 20 of the Spanish Constitution. However, this right is not absolute and its limits are analysed on a case by case basis. In particular, section 4 of article 20 of the Spanish Constitution expressly establishes that the freedom of expression is limited by the right to honour and the right to self-image.</p> <p>The right of ideological freedom is established in article 16 of the Spanish Constitution and it is also considered as a fundamental right.</p> <ul style="list-style-type: none"> ii. To prove that such hate speech has not taken place. For instance, for the criminal offence of hate speech to take place, it is necessary that a risk situation for the people, third parties' rights or for the freedom system in general is posed.
<p>3.8 If hate speech is occurring at my event/on my platform/in my place of work, what should I do about it?</p>	<p>In a scenario like those proposed, the first thing that shall be done is to communicate the behavior to the company/platform managers so that they can take the measures they deem appropriate. However, it is not enough to stop there; we should make an analysis to determine whether this hate speech can constitute a hate crime or an administrative offence, in which case it would be necessary to go further. To this end, we can ask ourselves some questions such as: Is it an isolated case? Has it been publicly disclosed? Who is the perpetrator? Depending on the answers to such questions, the seriousness will vary.</p> <p><u>Criminal proceedings:</u></p> <p>In Spain, victims of hate speech are able to report incidents of this kind directly to the judiciary.</p>



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	<p>In general, for those more serious cases in which a conduct could constitute a crime, criminal proceedings will have to be initiated. Thus, in order to denounce an event that you have witnessed, it will be necessary to file a complaint before:</p> <ul style="list-style-type: none">- A Court Guard,- The State Security Forces and Corps, or- The Prosecutor's Office- In some cases, it is also possible to go to an entity (association, NGO) so they can file the complaint from their legal services on behalf of the victim. <p>Notwithstanding the above, on many occasions we come across hate speech or discriminatory actions which, although serious, do not meet the characteristics to be considered as a crime. In these cases, there are other channels to prevent or stop this kind of hate speech. Some of the most common scenarios are the following:</p> <p><u>On social networks:</u></p> <p>Hate speech in social networks, for which the expression of cyber hate has been coined, has a series of particularities such as anonymity, content permanence or its multiplier effect that make it an uncontrolled phenomenon with a very high potential for damage. Therefore, it is necessary to know how to act in those cases where hateful speech occurs.</p> <p>In this sense, the social networks themselves, as a communication channel for hate speech, play a crucial role. As intermediaries in digital communication, they become the first and foremost arbitrator in determining what can and cannot be said. For this reason, the vast majority of social networks (with the exception of some messaging applications such as</p>
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	<p>Whatsapp) have mechanisms to prevent and/or stop these speeches and it is to them that we should turn to report the offensive content - despite the fact that, as we said before, certain conducts, due to its seriousness, may constitute a hate crime that should be reported directly to the judiciary.</p> <p><u>In the workplace:</u></p> <p>In those cases where the conduct affects the workplace, we will go through a fundamentally administrative channel that will investigate the conduct from a labor or social security perspective. There are different mechanisms for filing a claim for discrimination, whether you are a victim or a witness of a hate crime.</p> <ul style="list-style-type: none">- Labor and Social Security Inspection (ITSS). Any person who has knowledge of facts that could constitute an infraction in labor or social security matters can claim the services of the ITSS. The complaint may be submitted (i) in person, through the ITSS registers, or in the registers of other State or regional administration bodies; (ii) telematically, through the electronic headquarters of the Ministry of Labor; or by post, to the corresponding office of the Provincial Labor and Social Security Inspectorate.- Trade unions. Some trade unions have Equality Services that can be accessed through union membership. These are specific services for dealing with discrimination and offer various benefits, such as advice and information, and specifically monitor cases in which workers are victims of discrimination. They have legal services that offer comprehensive advice in the event of discrimination.- Social Courts. It should be noted that the Labor Procedure Act provides that discriminatory treatment on grounds of sex, age, ethnic or racial origin, disability, sexual orientation and identity, religion or belief shall be dealt with in accordance with the procedural method of protecting fundamental rights, which is particularly swift and
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	<p>protective for workers. In particular, this implies: (i) that the proceedings have an urgent character, being preferential to those followed in the courts or tribunals; (ii) there is what is known as a reversal of the burden of proof: it is not necessary to prove that you have been discriminated against, but it is sufficient that you provide evidence that you have been discriminated against, and it will then be up to the employer or business party to prove that its decision was not discriminatory but based on objective and reasonable grounds.</p> <ul style="list-style-type: none">- In certain cases where an employer has been required to engage in serious discriminatory behavior by the courts or administrative bodies and the employer fails to restore the situation of inequality, criminal proceedings may be brought under article 314 of the Spanish Criminal Code, which defines the offence of discrimination in employment. <p><u>In the educational field:</u></p> <p>Finally, it is also possible that some type of discrimination takes place in the educational field. In this case, it should be taken into account that educational centers should have coexistence plans with specific procedures for the resolution of this type of conflicts. Furthermore, it is also possible to communicate the facts to the Educational Inspection Services of the corresponding Autonomous Community (<i>Comunidad Autónoma</i>), and in the event that the incident has been committed by the center itself, it is possible to go to the Ombudsman or the Ombudsman for Minors of your Autonomous Community. Finally, as in the rest of the cases, there is always the possibility of filing a complaint before the Court or the Public Prosecutor's Office, in order to make them aware of the discrimination that has occurred so that they can study the case and take the appropriate measures.</p>
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<p>3.9 If I have identified hate speech (online, in the media, etc.) what practical steps should I take?</p> <p><i>(For this question, we envision a “filtering” or “journey tree” (flow chart) where the first question is, “where did you see the hate speech” → if online then go here, if offline, then go here → do you have evidence of it (screenshot/link to the post, recording of the speech, etc.) → then what, etc.)</i></p>	
<p>3.10 Please provide recent (within 1 year) of examples of hate speech reported in the media, and if possible, establish how was this addressed, e.g. by legal remedies or non-legal remedies.</p> <p><i>(For this question, we are looking for case studies.)</i></p>	
<p>3.11 Please provide examples of cases related to hate speech / incitement of violence.</p>	

Region: Asia-Pacific and Middle East



Jurisdiction: Australia

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1. International and Regional Frameworks (NOTE: this section <u>only</u> to be filled up by the teams working on international and EU law)	
1.1 What are the international law standards on hate speech with reference to the UN Conventions, General Comments and the decisions of the Thematic Mechanisms / Special Rapporteur reports?	N/A
1.2 Are there any relevant decisions on hate speech arising from the European Convention of Human Rights, the American Convention of Human Rights and the African Convention of Human Rights?	N/A
2. Definition of hate speech	



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Office: Hogan Lovells (Australia), Sydney and Perth offices

<p>2.1 What is the definition of hate speech in your country?</p>	<p>In Australia, hate speech is regulated at a Federal level and at the State level. The following responses consider the position Federally, and the position in New South Wales and Western Australia by way of example. Different provisions may apply in other States and Territories.</p> <p>Federal</p> <p>“Hate speech” is not defined in Federal law. However, there are several pieces of Federal legislation that deal with discrimination based on age (<i>Age Discrimination Act 2004</i> (“Fed ADA”)), disability (<i>Disability Discrimination Act 1992</i> (“DDA”)), race (<i>Racial Discrimination Act 1975</i> (“RDA”)), and sex (<i>Sex Discrimination Act 1984</i> (“SDA”)). All the Acts deal with discrimination in the context of equal opportunities at work, education etc. but not all address derogatory speech, violence and/or the incitement of hatred.</p> <ul style="list-style-type: none">• (Age) The Fed ADA does not address derogatory speech, violence or the incitement or hatred.• (Disability) The DDA makes it unlawful to harass someone on the basis of their disability in the context of employment, education and the provision of goods and services, but ‘harass’ is not defined.¹• (Race) The RDA makes it unlawful to do an act (otherwise than in private) that is reasonably likely to offend, insult, humiliate or intimidate another person or group of people and the act was done because of the race, colour or national or ethnic origin of the other person or some/all the people in the group.²• (Sex) The SDA does not address derogatory speech, violence (only sexual harassment) or hatred. <p>Additionally, the Commonwealth Criminal Code contained in the Schedule to the <i>Criminal Code Act 1995</i> (Cth) (“Criminal Code”) criminalises the use of the internet, social media, post and other forms of communication to bully, threaten to cause harm/kill a person and menace, harass or cause offence.³</p> <p>New South Wales</p>
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¹ Fed DDA div 3.
² *Racial Discrimination Act 1975* (Cth) s 18C.
³ *Criminal Code* pts 10.5–10.6.



Jurisdiction: Australia

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	<p>NSW currently has no legal definition of "hate speech", although certain forms of hate speech are likely to be covered by the following:</p> <p>Firstly, the <i>Anti-Discrimination Act 1977</i> (NSW) ("NSW ADA") provides that it is unlawful for a person, by a public act, to incite hatred towards, serious contempt for, or severe ridicule of, a person or group of persons on the ground of the race of the person or members of the group.⁴ Public act is broadly defined as any form of communication to the public. This includes, but is not limited to, speaking, writing, printing, displaying notices, broadcasting, telecasting, screening and playing of tapes or other recorded material. Any other conduct (not being a form of communication referred to above) observable by the public, including actions and gestures and the wearing or display of clothing, signs, flags, emblems and insignia, will fall within the scope of 'public act' for the purposes of the NSW ADA.⁵ The NSW ADA also has similar prohibitions which makes vilification on a number of other grounds (other than race) unlawful, including:</p> <ul style="list-style-type: none">(a) gender identity;⁶(b) sexual orientation;⁷ and(c) people with HIV/AIDS.⁸ <p>Secondly, the <i>Crimes Act 1900</i> (NSW) ("NSW Crimes Act") makes it an offence to conduct a public act that</p>
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⁴ NSW ADA s 20C.

⁵ Ibid s 20B.

⁶ Ibid s 38S.

⁷ Ibid s 49ZT.

⁸ Ibid s 49ZXB.

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intentionally or recklessly threatens or incites violence towards another person or a group of persons.⁹
Threatening or inciting violence towards a person on the following grounds is an offence:

- (a) Race;¹⁰
- (b) Religious beliefs;¹¹
- (c) Sexual orientation;¹²
- (d) Gender identity;¹³
- (e) Intersex Status;¹⁴ and
- (f) People with HIV/AIDS.¹⁵

Additionally, it is an offence for a person to use or threaten unlawful violence towards another and whose conduct is such as would cause a person of reasonable firmness present at the scene to fear for his or her personal safety. Other modes of threats, such as sending documents containing threats,¹⁶ intimidation or annoyance by violence,¹⁷ threatening to destroy or damage property¹⁸ are also prohibited under the NSW Crimes Act.

⁹ NSW Crimes Act s 93Z(1).

¹⁰ Ibid s 93Z(1)(a).

¹¹ Ibid s 93Z(1)(b).

¹² Ibid s 93Z(1)(c).

¹³ Ibid s 93Z(1)(d).

¹⁴ Ibid s 93Z(1)(e).

¹⁵ Ibid s 93Z(1)(f).

¹⁶ Ibid s 31.

¹⁷ Ibid s 545B.

¹⁸ Ibid s 199.



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	<p><u>Western Australia</u></p> <p>Similarly, Western Australia currently has no legal definition of "hate speech".</p> <p>The <i>Criminal Code Compilation Act 1913 (WA)</i> ("WA Criminal Code") covers "behaviour" associated with "racial vilification" which may include speech. The WA Criminal Code does not provide a concrete legal definition of "racial vilification", however, does criminalise possession, publication and display of written or pictorial material that is threatening or abusive with the intention of inciting racial hatred or harassing a racial group.¹⁹ The WA Criminal Code only addresses written and pictorial information, and does not expressly address verbal comments.</p> <p>The <i>Equal Opportunity Act 1984 (WA)</i> ("EOA") provides remedies in respect of discrimination on the grounds of sex, marital status, pregnancy or breast feeding, gender history grounds, family responsibility or family status, sexual orientation, race, religious or political conviction, impairment, age or gender history in the areas of work, accommodation, education, the provision of goods, facilities and services and the activities of clubs.²⁰</p>
<p>2.2 Does the legal definition of hate speech require threats of violence / incitement to violence?</p>	<p><u>Federal</u></p> <ul style="list-style-type: none"> • (Disability) No. In a recent case, the Federal Court of Australia held the word "harass" "bears its ordinary meaning which, without being exhaustive, involves a series of actions causing vexation and worry".²¹ Threats of violence or an incitement to violence is not required. • (Race) No. Based on the case law interpretation of the RDA, in order to be unlawful, the conduct must have "profound and serious effects not to be likened to mere slights".²² However, threats of violence or an

¹⁹ Criminal Code Compilation Act 1913 (WA) s 77-80.
²⁰ Equal Opportunity Act 1984 (WA) ss 8, 9, 10, 10A, 35AB, 35A, 35O, 36, 66A, 66V.
²¹ *Berry v State of South Australia* [2017] FCA 702, [10].
²² *Creek v Cairns Post Pty Ltd* (2001) 112 FCR 352, [16].



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	<p>incitement to violence is not required.</p> <ul style="list-style-type: none"> • (Criminal Code) Different for difference offences. There are offences that deal with threats of harm, which require threats of violence. Those that deal with harassment or menacing threats do not require violence,²³ but require a serious potential effect on the receiver, such as causing apprehension (rather than simply hurting or wounding the feelings of the receiver).²⁴ <p><u>New South Wales</u></p> <p>Under the NSW ADA, hate speech does not require incitement of violence or threats of violence to be unlawful, but requires some form of incitement of hatred towards, serious contempt for, or severe ridicule of a group of persons.²⁵ This is a lower threshold than threatening or inciting violence.</p> <p>However, for hate speech to be an offence under the NSW Crimes Act, it must intentionally or recklessly threaten or incite violence.²⁶</p> <p><u>Western Australia</u></p> <p>The WA Criminal Code does not require threats or incitement of violence to prosecute an individual for "racial vilification", nor does the EOA provisions require threats or incitement of violence to qualify for discrimination.</p>
<p>2.3 Would the definition cover speech and behaviour</p>	<p><u>Federal</u></p>

²³ *Monis v The Queen* [2013] HCA 4, [182].
²⁴ *Monis v The Queen* [2013] HCA 4, [161], [310].
²⁵ *NSW ADA* (n 1) s 20C.
²⁶ *NSW Crimes Act* (n 5) s 93Z.

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<p>which incites hatred (not necessarily violence) towards a group?</p>	<ul style="list-style-type: none"> • (Disability) Uncertain. It is an offence under the DDA for a person to incite the doing of an act that is unlawful under the DDA.²⁷ As such, speech/behaviour inciting discrimination against a person due to their disability (in areas such as education, employment etc.) would be unlawful under the DDA. However, there is little case law on what is covered by this offence. • (Race) Yes. Speech and behaviour which incites hatred towards a group based on their race, colour or national or ethnic origin would be covered by the RDA.²⁸ • (Criminal Code) Uncertain. Unless the offensive, menacing or harassing communications would have a serious potential effect on a reasonable individual, it would not be covered by the Criminal Code. <p><u>New South Wales</u></p> <p>Under the <i>NSW ADA</i>, it is unlawful to incite hatred towards a group of persons on the grounds of race.²⁹</p> <p>However, inciting hatred does not qualify as an offence under the <i>NSW Crimes Act</i>.³⁰</p> <p><u>Western Australia</u></p> <p>As stated in section Error! Reference source not found., the WA Criminal Code and EOA do not have a legal definition for "hate speech".</p> <p>Some offences in the WA Criminal Code require a person to create, promote or increase "animosity towards" or harassment of, a racial group, or a person as a member of a racial group.³¹ "Animosity towards" is a defined term</p>
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²⁷ *Disability Discrimination Act 1992* (Cth) s 43.
²⁸ *Toben v Jones* [2003] FCAFC 137, [28].
²⁹ *NSW ADA* (n 1) s 20C.
³⁰ *NSW Crimes Act* (n 5) s 93Z.
³¹ *Criminal Code Compilation Act 1913* (WA) ss 77-80.

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	<p>in the WA Criminal Code meaning hatred of or serious contempt for.³²</p> <p>The EOA provisions do not include incitement of hatred towards a particular group. The EOA, however, covers behaviour where the discriminator "treats" or would treat a person differently on the basis of a ground of public life, such as sex, marital status, pregnancy, breastfeeding, gender history, sexual orientation, religious or political convictions and impairment.³³ This includes, for example, requiring a pregnant person to comply with a requirement or condition which a substantially higher proportion of persons who are not pregnant are able to comply with.</p>
<p>2.4 Does hate speech cover speech that draws on hateful, hostile, or supremacist beliefs directed at a group that is threatened and likely to cause them harm?</p>	<p><u>Federal</u></p> <ul style="list-style-type: none"> • (Disability) Uncertain. The DDA prohibits harassment of a person based on their disability in specific circumstances (employment, education and the provision of goods and services). Unless the speech in question is said in the context of one of those three categories, it will not be covered by the DDA. Further, there is little case law determining what constitutes 'harassment'. • (Race) Yes. Acts which are reasonably likely to intimidate a group of people (including by hateful, hostile or supremacist speech) based on their race, colour or national or ethnic origin are covered by the RDA. • (Criminal Code) Yes. See sections 2.1 and 2.2 above regarding criminalisation of communications that would have a serious potential effect on a reasonable individual. <p><u>New South Wales</u></p> <p>Yes. The NSW ADA does cover speech which draws on hateful, hostile or supremacist beliefs, noting however that the threshold need not actually fall into one of these categories, but rather it is sufficient for the speech in</p>

³² Criminal Code Compilation Act 1913 (WA) s 76.

³³ Equal Opportunity Act 1984 (WA) ss 8, 9, 10, 10A, 35AB, 35A, 35O, 36, 66A, 66V.



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	<p>question to incite hatred, or cause serious contempt and ridicule of a person.³⁴</p> <p>Further, the NSW Crimes Act criminalises a public act that intentionally or recklessly threatens or incites violence towards specific groups of people. As referenced at section 2.1, these groups are: race, religious beliefs, sexual orientation, gender identity, intersex status, and people with HIV or AIDS.³⁵</p> <p><u>Western Australia</u></p> <p>The WA Criminal Code and EOA do not cover "speech" specifically. However, they cover "behaviour" which may include speech. The WA Criminal Code and the EOA do not cover speech which draws on hateful, hostile, or supremacist beliefs directed at a group that is threatened and likely to cause them harm.</p> <p>"Behaviour" in the WA Criminal Code includes behaviour which incites animosity or harassment towards a racial group.³⁶</p>
<p>2.5 Does the definition permit religious beliefs and speech which discriminates against particular communities – are there any limitations to religious beliefs and speech which discriminated against</p>	<p><u>Federal</u></p> <p>Section 116 of the Australian Constitution states that the Commonwealth government shall not make any law for establishing any religion, or for imposing any religious observance, or for prohibiting the free exercise of any religion, and no religious test shall be required as a qualification for any office or public trust under the Commonwealth.</p> <p>The Government is considering the introduction of legislation to prohibit discrimination on the ground of religious belief or activity in key areas of public life such as work, education and goods, services and facilities. It is contemplated that the legislation will not cover conduct by religious bodies, in good faith, that a person of the</p>

³⁴ Ibid s 20C.
³⁵ NSW Crimes Act (n 5) s 93Z.
³⁶ Criminal Code Compilation Act 1913 (WA) s 76.



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<p>particular groups?</p>	<p>same religion could reasonably consider to be in accordance with the teachings of their religion, which includes conduct giving preference to adherents of their religion. "Religious bodies" will include educational institutions, registered public benevolent institutions and any other bodies conducted in accordance with the teachings of a particular religion. There are other exceptions contemplated such as the conferral of charitable benefits and membership of religious clubs and voluntary bodies.</p> <p><u>New South Wales</u></p> <p>There is no provision in the <i>NSW ADA</i> which permits discrimination against, or limits the religious practice of, particular groups. Section 56 of the <i>NSW ADA</i> creates an exception for religious bodies to practice in the following circumstances:</p> <ul style="list-style-type: none"> (a) The ordination or appointment of priests, ministers of religion or members of any religious order.³⁷ (b) The training or education of persons seeking ordination or appointment as priests, ministers of religion or members of a religious order.³⁸ (c) The appointment of any other person in any capacity by a body established to propagate religion.³⁹ (d) any other act or practice of a body established to propagate religion that conforms to the doctrines of that religion or is necessary to avoid injury to the religious susceptibilities of the adherents of that religion.⁴⁰
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³⁷ *NSW ADA* (n 1) s 56(a).
³⁸ *NSW ADA* (n 1) s 56(b).
³⁹ *NSW ADA* (n 1) s 56(c).
⁴⁰ *NSW ADA* (n 1) s 56(d).



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	<p><u>Western Australia</u></p> <p>The WA Criminal Code and the EOA do not include or specifically permit religious beliefs and speech that discriminate against particular groups.</p>
<p>3. Remedies and recourse for hate speech</p>	
<p>3.1 If I am the victim of hate speech, what is my recourse?</p>	<p><u>Federal</u></p> <p>If you have been unlawfully discriminated against (as set out in the Fed ADA, DDA, RDA or SDA), you may lodge a complaint to the Australian Human Rights Commission (“AHRC”).⁴¹ The President of the AHRC may investigate into your complaint and potentially conciliate the complaint. If your complaint is terminated, you may commence proceedings at the Federal Court or Federal Circuit Court.⁴² If the Court is satisfied there has been unlawful discrimination, the Court may make such orders as it thinks fit, including an order:</p> <ul style="list-style-type: none"> (a) directing the offender not to repeat or continue his/her unlawful discrimination; (b) requiring the offender to perform any reasonably act/course of conduct to redress any loss/damage suffered by you; (c) requiring the offender to re-employ you; and/or (d) requiring the offender to pay you compensation for any loss/damage you suffered as a result of the offender’s conduct.

⁴¹ As regulated by the *Australian Human Rights Commission Act 1986* (Cth) s 46P.

⁴² *Ibid* s 46PO(1).



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	<p>Alternatively, if you have received communication involving a threat to cause you serious harm or offensive, harassing or menacing content, you may report it to the police.</p> <p><u>New South Wales</u></p> <p>If you are subjected to unlawful discrimination, your recourse options will be dependent upon whether the discrimination in question falls within the purview of the NSW ADA or the NSW Crimes Act. In NSW, there is a two-tiered regulatory system for racial vilification. The two-tiered system operates as:</p> <ul style="list-style-type: none">(a) civil - the Anti-Discrimination Board and the Administrative and Equal Opportunity Division of the NSW Civil and Administrative Tribunal, hear complaints under the NSW ADA; and(b) criminal - offences under the NSW Crimes Act can be prosecuted through the criminal justice system. <p>In the case of civil recourse, the process to lodge a complaint to the Anti-Discrimination Board typically progresses as follows:</p> <ul style="list-style-type: none">(a) the Anti-Discrimination Board provides an enquiry service to assist people who believe they have been discriminated against or harassed (the "Enquiry Officers");(b) the Enquiry Officers will advise the complainant whether the problem appears to be covered by the NSW ADA;(c) if the events outlined in the complaint are clearly not covered by the NSW ADA, the complaint may be declined at the point of enquiry and no further action is taken;(d) if the complaint is found to be within the jurisdiction of the ADA, it can be formally lodged;(e) complaints that are accepted are then investigated more thoroughly to see if they may involve a
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	<p>breach of anti-discrimination law; and</p> <p>(f) if the available evidence indicates a contravention of the racial vilification provisions, the President must investigate the complaint.</p> <p>Decisions of the Anti-Discrimination Board can be reviewed by the NSW Civil and Administrative Tribunal.</p> <p>The first step for prosecution of offences under the NSW Crimes Act is reporting a crime to the NSW police.</p> <p><u>Western Australia</u></p> <p>In Western Australia, a victim of racial vilification covered by the WA Criminal Code can report the crime to the Western Australian police. Criminal penalties for racial vilification in Western Australia have a maximum penalty of 14 years imprisonment and substantial fines.⁴³</p> <p>There are no civil remedies for racial vilification under the EOA. Victims of racial vilification may seek redress through a conciliation-based complaint mechanism to the Equal Opportunity Commission ("EOC"). Provided the complaint is not lacking in substance and is covered by the EOA, the EOC will attempt to conciliate the matter. This involves the EOC working with both parties to negotiate an agreement which is mutually acceptable. Complaints which cannot be conciliated will be terminated. The rights and status of complainants and respondents may need to be protected while a complaint is being investigated. In such circumstances, the State Administrative Tribunal ("WA Tribunal") may make an Interim Order.</p> <p>Where a complaint has not been resolved, a case report is provided to the EOC Commissioner by the conciliation officer. The EOC Commissioner may then refer a complaint to the WA Tribunal if either::</p> <p>(a) the complaint cannot be resolved by conciliation, attempts to resolve the complaint by conciliation have been unsuccessful, the EOC Commissioner is of the opinion that the nature of the complaint</p>
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⁴³ Criminal Code Compilation Act 1913 (WA) s 77, 79.

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	<p>is such that the matter should be referred to the Tribunal; or</p> <p>(b) the complaint was dismissed and the complainant requests a referral within 21 days.⁴⁴</p>
<p>3.2 What are the criminal legal remedies for hate speech?</p>	<p><u>Federal</u></p> <p>Criminal legal remedies only exist for certain types of conduct under each discrimination Act. For example, under the DDA, if someone threatens to subject you to detriment on the grounds that you are making a complaint against them to the AHRC or commencing proceedings against them, they may be imprisoned for up to 6 months. Under the RDA, they may be imprisoned for up to 3 months, fined up to A\$5,550 or both.</p> <p>Under the Criminal Code, if someone has used postal or other form of communications to threaten to cause you serious harm or kill you, they could be imprisoned from 7 to 10 years. If someone has used a form of communication to menace, harass or cause offence to you, they could be imprisoned for up to 3 years.</p> <p><u>New South Wales</u></p> <p>As with the Federal frameworks, the degree of criminal culpability for hate speech within NSW will vary greatly depending on the act. For example, if a person intentionally or recklessly threatens to incite violence on the grounds of race, then he/she could be liable for up to A\$11,000 or imprisonment for up to 3 years.⁴⁵ Conversely, use, or threatening use of unlawful violence resulting in the subject of that threat to have a reasonable fear for his/her safety, may result in up to 10 years imprisonment.⁴⁶</p> <p><u>Western Australia</u></p>

⁴⁴ Equal Opportunity Act 1984 (WA) ss 90, 93.

⁴⁵ NSW Crimes Act (n 5) s 93Z.

⁴⁶ Ibid s 93C.

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	<p>The WA Criminal Code provides high penalties for vilification related offences, with a maximum of 14 years imprisonment and substantial fines.⁴⁷</p> <p><u>Other Australian States and Territories</u></p> <p>Most states and territories in Australia have adopted a dual (civil and criminal) regulatory system for vilification, similar to New South Wales. The exceptions to this are:</p> <ul style="list-style-type: none"> (a) Western Australia, which does not have civil penalties; (b) Tasmania, which does not have any criminal penalties for its vilification laws; (c) ACT, which does not have any criminal penalties for its vilification laws; and (d) Northern Territory, which does not have any vilification legislation and therefore no criminal penalties for vilification.
<p>3.3 Are there civil legal remedies available – compensation / damages – for hate speech?</p>	<p><u>Federal</u></p> <p>As set out in section 3.1 above, if an Australian Court is satisfied that there has been unlawful discrimination (including harassment under the RDA or racial hate speech), that court may make an order requiring the offender to pay compensatory damages for any loss/damage you suffered as a result of the offender’s conduct.</p> <p><u>New South Wales</u></p> <p>A victim of hate speech can apply to the Administrative and Equal Opportunity Division of the NSW Civil and</p>

⁴⁷ Criminal Code Compilation Act 1913 (WA) s 77, 79.



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	<p>Administrative Tribunal for a civil legal remedy. Remedies can include:</p> <ul style="list-style-type: none">(a) damages of up to A\$100,000;(b) an order enjoining the perpetrator from continuing or repeating conduct rendered unlawful;(c) require the perpetrator to provide redress to the victim, including publishing an apology or performing any reasonable act or course of conduct to redress any loss or damage suffered;(d) requiring the perpetrator to attend a program aimed at eliminating unlawful discrimination; or(e) declare an agreement that breaches anti-discrimination provisions as void.⁴⁸ <p><u>Western Australia</u></p> <p>Western Australia has no civil remedies for its racial vilification laws under the WA Criminal Code.</p> <p>Western Australia also has no civil remedies under the EOA in its conciliation-based complaint mechanism to the EOC, as outlined in section Error! Reference source not found. If the matter is referred to the WA Tribunal, the WA Tribunal may dismiss the complaint or find the complaint substantiated; and:</p> <ul style="list-style-type: none">(a) award damages not exceeding A\$40,000;(b) make an order prohibiting the respondent from repeating the unlawful conduct;(c) order the respondent to redress any loss or damage; or
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⁴⁸ NSW ADA (n 1) s 108.



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	<p>(d) make a declaration that an agreement made in contravention to the EOA is void.</p> <p>The WA Tribunal may also grant exemptions from the operations of specified parts of the EOA.</p> <p><u>Other Australian States and Territories</u></p> <p>Tasmania and ACT do not have criminal sanctions for breach of racial vilification laws and therefore the only recourse available is via civil remedies.</p> <p>The Northern Territory has neither civil nor criminal mechanism to address hate speech and as such, no mechanisms for compensation or damages.</p>
<p>3.4 Are there regulatory frameworks governing the online news media which allow individuals to complain?</p>	<p><u>Federal</u></p> <p>The Australian Press Council (“APC”) is the principal body for responding to complaints about Australian newspapers, magazines and associated digital outlets. The APC has Statements of Principles which are binding on all publications subject to its jurisdiction, which, inter alia, includes a principle that publications “avoid causing or contributing materially to substantial offence, distress or prejudice, or a substantial risk to health or safety, unless doing so is sufficiently in the public interest.” Any person or organisation may make a complaint to the APC, though the APC does not consider complaints about advertising material, except where the complaint is that the material is not clearly identifiable as advertising. An individual may make a complaint to the APC without complaining to the publication. Typically, complaints should be made within 30 days of the first publication of the relevant material.</p> <p>If you are subject to, or aware of someone subject to cyberbullying, or you find illegal or harmful content on a website, you can make a complaint to the eSafety Commissioner. However online discrimination is generally dealt with by the AHRC.</p> <p><u>New South Wales</u></p>



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	<p>There are no NSW dedicated forums or regulatory frameworks to hear complaints regarding hate speech in the online news media. Notwithstanding this, the APC and the Australian Communications and Media Authority (ACMA), which are both federal bodies, are recognised as the regulators of NSW online media.</p> <p><u>Western Australia</u></p> <p>Western Australia does not have any formal regulatory frameworks governing the online news media allowing individuals to make complaints. An individual in Western Australia may make a complaint to the Independent Media Council ("IMC") which handles complaints by readers against specific funding bodies which are publishers of Western Australian print and/or online print media publications. As is the case in NSW, individuals in Western Australia may make a complaint to the APC as an Australian wide organisation.</p>
<p>3.5 Is the test for hate speech used by any Social Media / Press / Online regulatory bodies the same as the criminal law definitions?</p>	<p><u>Federal</u></p> <p>"Hate speech" is not addressed in the APC Statements of Principles.</p> <p>However, the Federal Government has appointed an eSafety Commissioner, an independent statutory office, with powers to investigatory powers in relation to cyber bullying, image-based abuse and illegal/harmful online content. The Commissioner has some limited enforcement powers which includes issuing directions for certain materials to be removed. The eSafety Commissioner's website notes that the Commissioner's role includes resolving complaints about material that is "likely to seriously threaten, seriously intimidate, seriously harass or seriously humiliate" and which is "more than merely offensive or insulting".⁴⁹ This reflects the standard required to prosecute under the relevant sections of the Criminal Code.</p> <p><u>New South Wales</u></p>

⁴⁹ 'FAQ about making a cyberbullying complaint', eSafety Commissioner (Web Page) <<https://www.esafety.gov.au/report/cyberbullying/making-a-complaint-faq>>.



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	<p>As stated in section 3.4, NSW does not have its own independent body regulating online media or social media publications.</p> <p><u>Western Australia</u></p> <p>As stated in section Error! Reference source not found., Western Australia does not have any formal regulatory frameworks governing the online news media.</p> <p>The IMC has published guidelines which are only applicable to the IMC and IMC funding bodies. The IMC guidelines do not have a test for "hate speech" and do not have guidelines pertaining to racial vilification which are similar to the offences outlined in the WA Criminal Code.</p>
<p>3.6 Do public and private institutions have to comply with the same duties to avoid hate speech?</p>	<p><u>Federal</u></p> <p>The APC Statement of Principles applies only to the constituent bodies who have agreed to provide funding for the APC, cooperate with the APC's consideration of complaints against them and to publish any resultant adjudication.</p> <p>The application of the discrimination legislation extends to public and private institutions (the relevant prohibitions and offences are based on a "person", which includes individuals, a body politic or a body corporate), but there is no separate regulatory framework for companies avoiding hate speech.</p> <p><u>New South Wales</u></p> <p>Similarly, the relevant prohibitions refer to "persons", and the inclusive definition of "persons" under the NSW Crimes Act extends the scope of the relevant provisions to include individuals as well as public and private</p>



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	<p>institutions.</p> <p>Under section 93Z of the NSW Crimes Act, corporations and individuals alike are similarly punished for intentionally or recklessly threatening or inciting violence towards another person or a group of persons.</p> <p><u>Western Australia</u></p> <p>Similarly, the relevant prohibitions refer to "persons", which is broadly defined under Western Australian law to include public and private institutions.</p>
<p>3.7 If I am accused of hate speech, what is my recourse?</p>	<p><u>Federal</u></p> <p>If you have been accused under a discrimination act, the AHRC will contact you and provide you with a copy of the complaint. The AHRC will ensure you have a fair opportunity to respond and resolve the complaint. Where appropriate, you will be invited to participate in conciliation.</p> <p>If you have been reported to the eCommissioner, you will potentially be investigated by both the eCommissioner and the national police agency where relevant. In such circumstances, the regular criminal procedures apply.</p> <p>If you have been accused under the Criminal Code, the regular criminal procedures apply.</p> <p><u>New South Wales</u></p> <p>If you are accused of contravening NSW anti-discrimination legislation, you will be contacted by the an investigative representative (also known as a complaint handler) who will provide a copy of the complaint and request you provide all necessary information for them to investigate that complaint. The complaint handler will then attempt to reconcile the dispute through numerous conciliation conferences. If the complaint cannot be conciliated, the complaint handler may inform the complainant that the matter be referred to the NSW Civil and</p>

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Administrative Tribunal.

If it is found that the accusation of hate speech lacks substance, or is indeed false, at any stage of the above process, the NSW Anti-Discrimination Board will confirm in writing to the complainant that the complaint is not sufficiently covered by NSW anti-discrimination legislation and dismiss the complaint.

Western Australia

As stated in section **Error! Reference source not found.**, the WA Criminal Code and EOA do not have specific laws pertaining to "hate speech".

If you have been accused or charged with an offence, regular criminal procedures apply.

There are defences to some of the racial vilification offences in the WA Criminal Code which may apply. It is a defence to a charge under section 78 or 80B of the WA Criminal Code to prove that the accused person's conduct was engaged in good faith, on reasonable standards, in:

- (a) the performance, exhibition or distribution of an artistic work; or
- (b) the course of any statement, publication, discussion or debate made or held, or any other conduct engaged in, for:
 - (i) any genuine academic, artistic, religious or scientific purpose; or
 - (ii) any purpose that is in the public interest; or
- (c) making or publishing a fair and accurate report or analysis of any event or matter of public interest.

It is also a defence under the WA Criminal Code, under section 80 or 80D to prove that the accused person



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	<p>intended the material to be published, distributed or displayed (as the case may be) reasonably and in good faith:</p> <ul style="list-style-type: none"> (a) in the performance, exhibition or distribution of an artistic work; or (b) in the course of any statement, publication, discussion or debate made or held, or any other conduct engaged in, for: <ul style="list-style-type: none"> (i) any genuine academic, artistic, religious or scientific purpose; or (ii) any purpose that is in the public interest; or (c) in making or publishing a fair and accurate report or analysis of any event or matter of public interest. <p>If a complaint has been made pursuant to the EOA, and the EOC undergoes a conciliation process between the parties, the respondent is provided an opportunity to participate with the aim of coming to a resolution agreeable to both parties.</p>
<p>3.8 If hate speech is occurring at my event/on my platform/in my place of work, what should I do about it?</p>	<p>If hate speech is occurring in your place of work, you may wish to consider your organisation's internal policies and internal reporting options (eg, supervisor or union). In all situations, you should consider reporting to the police or relevant regulatory authorities. We make specific comments below in relation to each jurisdiction, however, given there are a variety of laws in overlapping jurisdictions which may govern the relevant conduct, you may wish to report to local police or the AHRC at first instance.</p> <p><u>Federal</u></p> <p>If the 'hate speech' is in relation to discrimination, you should report it to the AHRC.</p> <p>If the 'hate speech' involves threatening behaviour, including threats of harm or violence, you should report it to</p>



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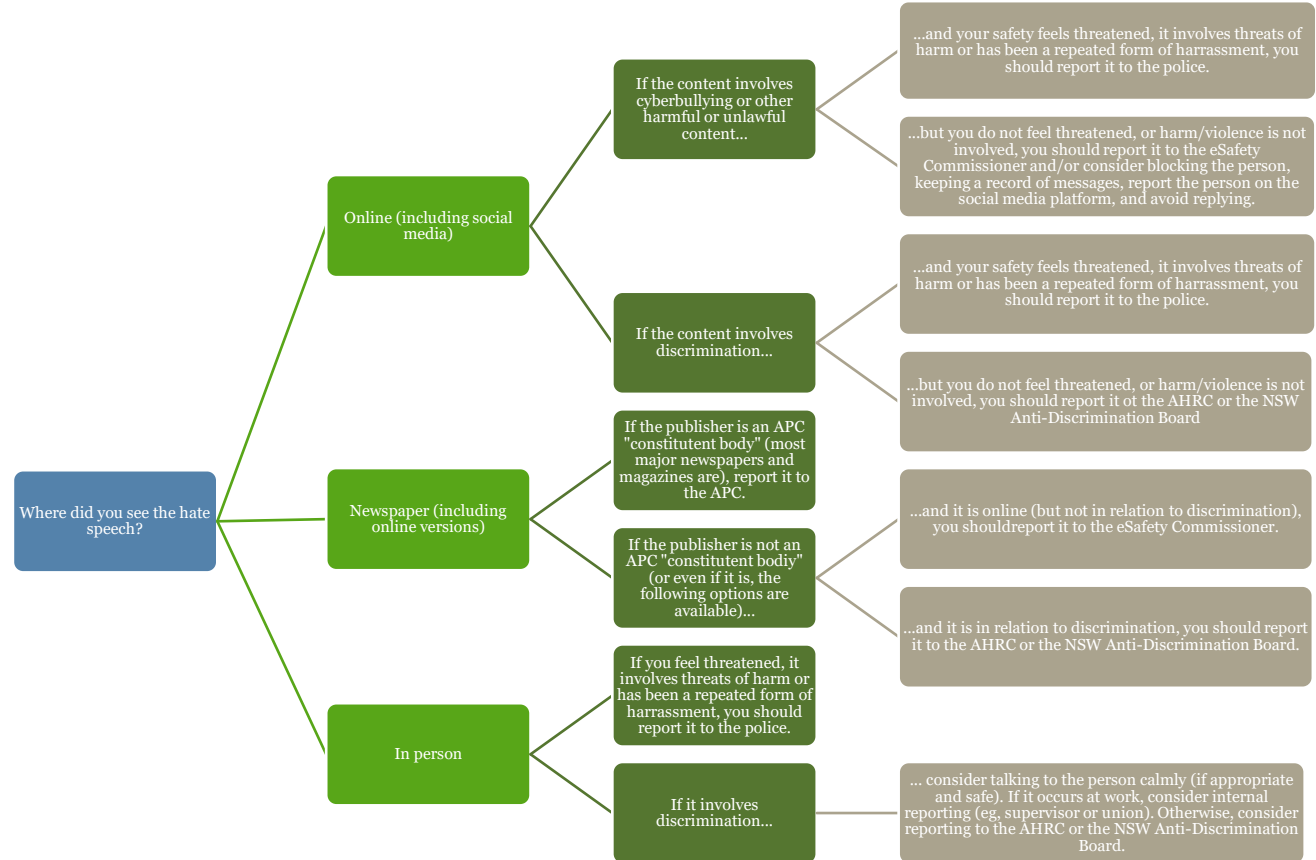
	<p>the police.</p> <p><u>New South Wales</u></p> <p>If you are observing any action which would breach a provision of the NSW ADA (as discussed herein), you should contact the police and inform them that the incident is currently taking place. Alternatively, if the action in question has already occurred, you should attend or call local police or the police assistance line.</p> <p><u>Western Australia</u></p> <p>As outlined in section Error! Reference source not found., victims or witnesses of racial vilification may file a complaint to the EOC. Provided the complaint is not lacking in substance and is covered by the EOA, the EOC will attempt to conciliate the matter. Where a complaint has not been resolved, a case report is provided to the EOC Commissioner by the conciliation officer. The EOC Commissioner may then refer a complaint to the WA Tribunal.</p> <p>If the hate speech involves racial vilification covered by the offences in the WA Criminal Code, the individual can report the crime to the Western Australian police.</p>
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3.9 If I have identified hate speech (online, in the media, etc.) what practical steps should I take?

(For this question, we envision a “filtering” or “journey tree” (flow chart) where the first question is, “where did you see the hate speech” → if online then go here, if offline, then go here → do you have evidence of it (screenshot/link to the post, recording of the speech, etc.) → then what, etc.)



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3.10 Please provide recent (within 1 year) of examples of hate speech reported in the media, and if possible, establish how was this addressed, e.g. by legal remedies or non-legal remedies.

(For this question, we are looking for case studies.)

Federal

In late February 2020, Mr James Lin was targeted while sitting on a train in Melbourne.⁵⁰ Four men pretended to cough around Mr Lin and verbally abused him, claiming he was infected as he was from overseas. Mr Lin said that while the taunts were verbal, he felt intimidated. Mr Lin did not make a formal complaint to the AHRC because the remedies involved reconciliation or mediation and it was “impossible to find those guys again”. In early April 2020, Ms Jennifer Li was physically and verbally assaulted and had threatening messages left on her mobile phone.⁵¹ The police were unable to make a prosecution. These are just two of many racist incidences reported on Australian media, yet none have been addressed by legal or non-legal remedies. The spike in racism due to COVID-19 has sparked debate in Australia of whether the AHRC has sufficient resources and power to carry out its function and whether the remedies are so low, they do not act as a deterrent to such behaviour.

New South Wales

In late March 2020, the Australian Broadcasting Corporation issued an article addressing the racial abuse of two Asian women. The article notes that the women were, amongst other racially influenced slurs, called "Asian dogs" who "brought corona here" and were subsequently spat on by a Caucasian women. It was reported that the Caucasian woman was also yelling "stay away from them, they've got coronavirus". NSW Police announced they were investigating and searching for the woman.⁵²

Separately, in late January 2020, the Herald Sun and the Daily Telegraph issued articles titled "Chinese Virus

⁵⁰ Matthew Doran, 'Coronavirus-fuelled racism prompts debate on whether Australia's laws are strong enough to protect victims', ABC News (Web Page, 7 May 2020) <<https://www.abc.net.au/news/2020-05-07/coronavirus-fuelled-racism-prompts-debate-on-australia-law/12220816?nw=0>>.

⁵¹ Chin Tan, 'COVID-19 has prompted a spike in racist attacks. We need to start tracking them better', ABC News (Web Page, 9 May 2020) <<https://www.abc.net.au/news/2020-05-09/coronavirus-covid-19-racist-attacks-data-collection-strategy/12229162?nw=0>>.

⁵² Frank Chung, 'Asian Dog, you Brought Corona here: Young Women Racially Abused, Spat on in Sydney Street', *News.com.au* (online, 31 March 2020) <<https://www.news.com.au/national/nsw-act/crime/asian-dog-you-brought-corona-here-young-women-racially-abused-spat-on-in-sydney-street/news-story/628e1cbadf94bfdd30fe6dfd4ebe81e8>>.

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	<p>Pandamonium [<i>sic</i>] and "China Kids Stay Home" respectively in reporting on the spread of COVID-19. Each were ordered by the regulatory body to apologise for the insensitive titles, but as yet no such apology has been issued.⁵³</p> <p><u>Western Australia</u></p> <p>In late January 2020, media platform PerthNow reported that members of the Chinese-Australian community were experiencing a sharp increase in level of bigotry and racism. The publication suggests that this spike has been caused first and foremost by the way in which media platforms have reported on the issue. The article draws attention to the efforts of a Chinese woman in Melbourne who has started a petition calling for news organisations to apologise for their coverage of the outbreak, including referring to the coronavirus as "Chinese virus", which she said had a negative impact on the Chinese community. The petition attracted more than 50,000 signatures.⁵⁴</p> <p>The news article did not state whether legal or non-legal remedies were sought.</p>
<p>3.11 Please provide examples of cases related to hate speech / incitement of violence.</p>	<p><u>Federal</u></p> <p>In <i>Eatock v Bolt</i> (2011) 197 FCR 261, it was found publications referring to the Australian indigenous community were in contravention section 18C of the RDA.</p> <p>On 15 April 2009, The Herald Sun published an article authored by columnist Andrew Bolt in its print edition, entitled "It's so hip to be black", and republished the article on its website with the title "White is the new black". On 21 August 2009, a second article authored by Bolt was published in print and online entitled "White fellas in</p>

⁵³ Hannah Blackiston, 'Criticism over 'Downright Offensive and Unacceptable Race Discrimination' in News Corp Coronavirus Headlines', *Mumbrella* (online, 31 January 2020) <<https://mumbrella.com.au/criticism-over-downright-offensive-and-unacceptable-race-discrimination-news-corp-coronavirus-headlines-615148>>.

⁵⁴ PerthNow, *Chinese-Australians Say Fears of Coronavirus Leading to More Racism and Discrimination from Community*, <<https://www.perthnow.com.au/news/australia/chinese-australians-say-fears-of-coronavirus-leading-to-more-racism-and-discrimination-from-community-nq-b881449432z>>.



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	<p>the black".</p> <p>The plaintiff a woman of Indigenous Australian descent, brought proceedings in the Federal Court of Australia against Bolt and the proprietor of The Herald Sun, The Herald & Weekly Times Pty Ltd, on her own behalf and on behalf of people with similar attributes (in this case those recognised as within the Indigenous Australian Community who have a fairer, rather than darker). Eatock alleged that the two publications authored by Bolt conveyed offensive messages about fair-skinned Indigenous persons, suggesting that they were not genuine Indigenous Australians and were pretending to be as such so they could access benefits that are available to those persons.</p> <p>The Court found that the articles did indeed contravene section 18C of the RDA as they focussed solely on "the race, colour or ethnic origin of those people" and as such, the Court ordered an injunction preventing publication or republication of the articles, and an apology from the newspaper. In issuing such orders the Honourable Justice Bromberg found that it was reasonably likely that an ordinary person within the group of persons with that specific attribute (fair-skinned indigenous persons) would have been offended and insulted by the newspaper articles. In particular, the Court focussed on the unjustifiable challenge to the legitimacy of the identity of those individuals based solely on skin colour as the defining determinant of racial identity. In addition, Justice Bromberg found that it was reasonably likely that the plaintiff would be "humiliated and intimidated by her perception of the capacity of the articles to generate negative or confronting attitudes to her from others".</p> <p>In <i>Jones v Toben</i> [2002] FCA 1150, the Federal Court of Australia found that material which 'cast doubt' on the Holocaust was more probable than not to engender in Jewish Australians a sense of being treated contemptuously, disrespectfully and offensively.</p> <p>The defendant was the creator and author of a publicly available Holocaust denial website. Using this platform, he posted materials which suggested homicidal gas chambers at Auschwitz were unlikely, that Jewish people offended by and who challenge Holocaust denial are of limited intelligence and that some Jewish people, for improper purposes, including financial gain, exaggerated the number of Jews killed during World War II and the circumstances in which Jewish persons were killed.</p>
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The Court, in effect, enforced the determination made by the Human Rights and Equal Opportunity Commission under the RDA, ordering that the defendant, within 7 days, remove all material pertaining to the abovementioned assertions. In addition the Honourable Justice Branson issued an injunction preventing the defendant from any further publication or republication of these, or substantially alike assertions.

New South Wales

In *Ekerawali v Nine Network Australia Pty Ltd* [2019] NSWCATAD 29, the NSW Tribunal dismissed an application under the NSW ADA for racially vilifying comments made by a high-profile television personality (Sonia Kruger). In dismissing the application, the tribunal considered three significant issues:

1. Were the comments vilifying?

The NSW Tribunal considered that Ms Kruger’s tone was calm and measured. She did use the term “fanatics” and made it clear she did not think every Muslim in Australia or overseas was a fanatic. She did say some of her best friends were peace-loving Muslims. However, despite the generally calm tone of the comments, the Tribunal concluded that the implications of what was said were that some members of the community were a threat. They noted that some ordinary members of the Australian population already harbour feelings of hatred towards, or serious contempt for, Australian Muslims as a whole by reason of the assumption that they are potential terrorists or sympathisers of terrorism and then said that “such feelings or emotions would be encouraged or incited amongst ordinary members of the Australian population by Ms Kruger’s remarks”.

As such, it was found that Ms Kruger’s comments “would likely encourage hatred towards, or serious contempt for, Australian Muslims by ordinary members of the Australian population”.

2. Were there any applicable exceptions under NSW ADA s 20C?

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	<p>Though there are differing exceptions available under s 20C of the NSW ADA, the NSW Tribunal afforded most of its consideration to the notion of allowing discussions of matters of “public interest”. Notably however, this is qualified by the requirement that the statement be made “reasonably and in good faith”. The Tribunal conceded that the matter was one of public interest, and that Ms Kruger was not shown to have borne particular malice or ill-will to the Muslim community, and hence that her statement was in “good faith”. But it found that it was not “reasonable”. They said that her comments that the sheer size of the Muslim population alone created a threat, were not logical.</p> <p>3. Is Islam a race?</p> <p>The Tribunal ruled that insufficient evidence had been presented by Mr Ekermawi (who had mainly spoken of his own views and life experience) for them to be able to conclude that as a matter of law Muslims were an “ethno-religious group” within the meaning of the NSW ADA. The standard to engage section 20C was therefore not engaged and the application was to be dismissed. The Tribunal did emphasise however that the result on this point might have been different had there been different or additional, objective evidence.</p> <p>In this instance, the NSW Tribunal emphasised that if it were not for failure of this final limb, the Applicant would likely have been successful. Irrespective, in failing to reach the requisite standard to satisfy the NSW Tribunal that the Islamic community should be recognised as a 'race' under the NSW ADA, the application was dismissed.</p> <p><u>Western Australia</u></p> <p>In <i>O’Connell v The State of Western Australia</i> [2012] WASCA 96, Brendon Lee O’Connell’s appeal was dismissed by the Western Australian Court of Appeal, upholding his conviction for a three year prison term (with eligibility for parole) for six racial hatred charges under the WA Criminal Code.</p> <p>On 2 May 2009, at South Perth, Mr. O’Connell engaged in conduct, otherwise than in private, which was likely to harass Stanley Elliot Keyser as a member of a racial group of Jewish people namely pursuing Keyser and making</p>
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Office: Hogan Lovells (Australia), Sydney and Perth offices

a series of statement to Mr. Keyser. Mr. O'Connell made statements that seriously or substantially abused or severely intimidated Mr. Keyser. The video footage was captured by O'Connell and later posted by him on an internet website. This is contrary to s 80B (racist harassment and incitement to racial hatred) of the WA Criminal Code.

On dates unknown between 2 May 2009 and 11 November 2009 at Maylands, O'Connell intended on six separate occasions to create or promote animosity towards a racial group engaged in conduct, otherwise than in private, namely publishing on the internet a series of statements concerning the Jewish people. This is contrary to s 77 of the WA Criminal Code. These concerned written blogs which were written by O'Connell and uploaded by him onto a website. Each was written after he was charged with offences arising out of the incident with Mr. Keyser and the posting of the video associated with that incident.

The Court found that in order for the appellant to be convicted of any of the charges brought against him, it was necessary for the State to prove beyond reasonable doubt that Jewish people are a racial group defined in the WA Criminal Code. The Court expressly acknowledged that it could not impose a term of immediate imprisonment unless the seriousness of the offending demanded it. It was found that terms of immediate imprisonment indeed was the necessary sentencing disposition in order to provide personal and general deterrence. The Court regarded the behaviour engaged in by the appellant as not only highly offensive to that section of the community to which it is directed, but has the potential to be catalytic of civil unrest.



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1. International and Regional Frameworks (NOTE: this section <u>only</u> to be filled up by the teams working on international and EU law)	
1.1 What are the international law standards on hate speech with reference to the UN Conventions, General Comments and the decisions of the Thematic Mechanisms / Special Rapporteur reports?	
1.2 Are there any relevant decisions on hate speech arising from the European Convention of Human Rights, the American Convention of Human Rights and the African Convention of Human Rights?	
2. Definition of hate speech	
2.1 What is the definition of hate speech in your country?	<p>There is no uniform definition of hate speech under Hong Kong law.</p> <p>Despite the domestic enactment of the UN International Covenant on Civil and Political Rights (“ICCPR”) through the Hong Kong Bill of Rights Ordinance (Cap. 383) (“BORO”), the United Kingdom (then on behalf of Hong Kong) has reserved the right not to introduce legislation in relation to Article 20 of ICCPR which prohibits hate speech, but to interpret said Article 20 consistently with the rights conferred by Articles 19 and 21 of ICCPR.</p>



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	<p>That said, as explained further below, Hong Kong has legislated laws relating to issues similar to hate speech in several ordinances.</p> <p><u>Race Discrimination Ordinance</u></p> <p>Under the Race Discrimination Ordinance, it is unlawful to discriminate, harass and vilify a person on the ground of his or her race.</p> <p>Race, in relation to a person, is defined as “<i>the race, colour, descent or national or ethnic origin of the person, and includes a race, colour, descent or national or ethnic origin that is imputed to the person</i>”. Racial group is defined as “<i>a group of persons defined by reference to race, colour, descent or national or ethnic origin</i>”.</p> <p>The Race Discrimination Ordinance offers protection in several areas including the following:</p> <ul style="list-style-type: none"> • Employment; • Education; • Provision of goods, facilities or services; • Disposal or management of premises; • Eligibility to vote for and to stand for election to public bodies, etc; and • Participation in clubs. <p>If the alleged hate speech is considered to be racially discriminatory in nature under the Race Discrimination Ordinance, a civil claim can be brought under s.70 Race Discrimination Ordinance: “(1) A claim by or on behalf of any person (the claimant) that another person (the respondent)— (a) has committed an act of discrimination against the claimant which is unlawful by virtue of Part 3 or 4;</p>
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	<p><i>(b) has committed an act of harassment against the claimant which is unlawful by virtue of Part 3 or 4;</i></p> <p><i>(c) has committed an act which is unlawful by virtue of section 45; or</i></p> <p><i>(d) is to be treated, by virtue of section 47 or 48, as having committed an act of discrimination or harassment referred to in paragraph (a) or (b) against the claimant or an act referred to in paragraph (c),</i></p> <p><i>may be made the subject of civil proceedings in like manner as any other claim in tort.”</i></p> <p>If the alleged hate speech constitutes serious vilification of a person or particular group(s) of persons on the ground of race under the Race Discrimination Ordinance, the person making the speech may commit an offence under s. 46 of the ordinance. The pertinent part of s. 46 provides that:</p> <p><i>"A person commits an offence if -</i></p> <p><i>(a) the person, by any activity, incites hatred towards, serious contempt for, or severe reticule of, another person (the second-mentioned person) or members of a class of persons, on the ground of the race of the second-mentioned person or the members of the class of persons;</i></p> <p><i>(b) the person intentionally incites such hatred, serious contempt or severe ridicule on such ground; and</i></p> <p><i>(c) the activity is an activity in public and consists of threatening physical harm, or inciting others to threaten physical harm –</i></p> <p><i>(i) towards, or towards any premises or property of, the second-mentioned person or the members of the class of persons; or</i></p>
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	<p><i>(ii) towards the premises or property of any other person to which the second-mentioned person or the members of the class of persons have access."</i></p> <p><u>Disability Discrimination Ordinance</u></p> <p>S.46(1) and (3) of the Disability Discrimination Ordinance provides that:</p> <p><i>"it is unlawful for a person, by any activity in public, to incite hatred towards, serious contempt for, or severe ridicule of, another person with a disability or members of a class of persons with a disability."</i></p> <p><u>Crimes Ordinance</u></p> <p>S.9(1) of Crimes Ordinance (Cao. 200) states that a seditious intention is an offence and it includes an intention –</p> <p><i>"(c) to bring into hatred or contempt or to excite disaffection against the administration of justice in Hong Kong; or (d) to raise discontent or disaffection amongst Her Majesty's subjects or inhabitants of Hong Kong; or (e) to promote feelings of ill-will and enmity between different classes of the population of Hong Kong; or (f) to incite persons to violence; or (g) to counsel disobedience to law or to any lawful order."</i></p> <p><u>Public Order Ordinance</u></p>
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	<p>S.17B(2) of the Public Order Ordinance provides that:</p> <p><i>"[a]ny person who in any public place behaves in a noisy or disorderly manner, or uses, or distributes or displays any writing containing, threatening, abusive or insulting words, with intent to provoke a breach of the peace, or whereby a breach of the peace is likely to be caused, shall be guilty of an offence and shall be liable on conviction to a fine at level 2 and to imprisonment for 12 months."</i>¹</p> <p><u>Sedition Ordinance</u></p> <p>s.3 Sedition Ordinance (1938) provides that:</p> <p><i>"(1) A 'seditious intention' is an intention-</i></p> <p><i>(a) to bring into hatred or contempt or to excite disaffection against the person of His Majesty, or His Heirs or Successors, or against the Government of this Colony or the government of any other part of His Majesty's dominions or of any territory under His Majesty's protection as by law established; or</i></p> <p><i>...</i></p> <p><i>(c) to bring into hatred or contempt or to excite disaffection against the administration of justice in the Colony; or</i></p> <p><i>...</i></p> <p><i>(e) to promote feelings of ill-will and hostility between [different] classes of the population of the Colony"</i></p> <p>The crime of sedition passed into law in 1938, last amended in the 1970s, and has been used</p>
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¹ A level 2 fine amounts to a sum of HK\$5000; see s.113B and Schedule 8 (Level of Fines for Offences) of the Criminal Procedure Ordinance (Cap. 221).



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	<p>rarely since the 1967 riots. Despite being a colonial-era offence, Ms Cheng Lai King, a member of the Democratic Party was arrested under the offence of sedition on 26 March 2020, over a Facebook post in which she called for “<i>an eye for an eye</i>” against the police officers.</p> <p><u>Ordinances relating to broadcasting and telecommunication</u></p> <p>Further, there are regulations targeted at television programme service licencees and sound broadcasting licensees against incitement of hatred, as follows:</p> <ul style="list-style-type: none"> • s.33(1)(a) of the Television Ordinance (Cap. 52) <i>“A licensee shall not broadcast any programme, advertisement, announcement or other material, or any part thereof, that is likely to incite hatred against any group of persons, being a group defined by reference to colour, race, sex, religion, nationality or ethnic or national origins...”</i> • s.13M(1)(a) of the Telecommunication Ordinance (Cap. 106) <i>“A licensee shall not broadcast any programme, advertisement, announcement or other material, or any part thereof, that is likely to incite hatred against any group of persons, being a group defined by reference to colour, race, sex, religion, nationality or ethnic or national origins...”</i> • s.36(1)(a) Broadcasting Ordinance (Cap. 562) <i>“A licensee shall not include in its licensed service a television programme, or any part thereof, that is likely, in Hong Kong, to incite hatred against any group of persons, being a group defined by reference to colour, race, sex, religion, nationality or ethnic or national origins...”</i> <p><u>National Security Law</u></p>
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	<p>On 28 May 2020, the Standing Committee of China’s National People’s Congress (the “Standing Committee”) decided to include a set of laws in relation to national security in Annex III of the Basic Law of HKSAR (HKSAR’s “mini-Constitution”). Subsequently on 30 June 2020, the Standing Committee passed the Law of the People’s Republic of China on Safeguarding National Security in the Hong Kong Special Administrative Region (“National Security Law”). It was annexed to Annex III of the Basic Law as part of the national laws that apply to HKSAR and took effect from 11pm on the same day.</p> <p>Since the National Security Law was promulgated in Chinese and the subsequent English translation as gazetted is not verified and was only “published for information”², please note that the original Chinese provisions shall prevail over the English provisions as quoted below in case of uncertainty.</p> <p>Insofar as hate speech is concerned, Article 29 (5) of the National Security Law (quoted below) could potentially cover hate speech against the Central People’s government or the Government of HKSAR which is likely to cause serious consequences.</p> <p><i>“A person who ... directly or indirectly received instructions, control, funding or other kinds of support from a foreign country or an institution, organization or individual outside the mainland, Hong Kong and Macao of the People’s Republic of China, to commit any of the following acts shall be guilty of an offence:</i></p> <p>...</p> <p><i>(5) provoking by unlawful means hatred among Hong Kong residents towards the Central People’s Government or the Government of the Region, which is likely to cause serious consequences.</i></p>
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² English translation of the National Security Law as gazetted can be found here: <https://www.gld.gov.hk/egazette/pdf/20202448e/egn2020244872.pdf>.



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	<p><i>A person who commits the offence shall be sentenced to fixed-term imprisonment of not less than three years but not more than ten years; a person who commits an offence of a grave nature shall be sentenced to life imprisonment or fixed-term imprisonment of not less than ten years.</i></p> <p>As there has been no reported cases brought under the above mentioned article, in order to provide more context, please note that Mr Zhang Xiaoming, one of the deputy directors of the Hong Kong and Macau Affairs Office, stated in the State Council Information Office Press Conference held on 1 July 2020³, that “a general sense of ‘hatred’ will not constitute a crime” under Article 29(5), but provoking hatred in such a way as to “cause serious consequences” may constitute a crime. As an example of the latter, Zhang cited a false rumour in 2019 that the Hong Kong Police Force had killed protestors at a Hong Kong subway station, which “led to social discontent against the Hong Kong police”.</p>
<p>2.2 Does the legal definition of hate speech require threats of violence / incitement to violence?</p>	<p>As explained in 2.1 above, there is no uniform definition of hate speech under Hong Kong law. That said, several ordinances stipulate provisions relating to hate speech. It is clear from section 2.1 that, threats of violence / incitement of violence is not a prerequisite factor for many causes of action.</p>
<p>2.3 Would the definition cover speech and behaviour which incites hatred (not necessarily violence) towards a group?</p>	<p>As explained in 2.1 above, there is no uniform definition of hate speech under Hong Kong law. That said, several ordinances stipulate provisions relating to hate speech. For some of the causes of action, speech and behaviour that incites hatred (not necessarily violence) is sufficient, e.g. section 70 of the Race Discrimination Ordinance; for some of the causes of</p>

³ See: http://english.scio.gov.cn/pressroom/2020-07/04/content_76236573.htm.



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	<p>action, incitement of violence is necessary, e.g. section 46 of the Race Discrimination Ordinance.</p>
<p>2.4 Does hate speech cover speech that draws on hateful, hostile, or supremacist beliefs directed at a group that is threatened and likely to cause them harm?</p>	<p>As explained in 2.1 above, there is no uniform definition of hate speech under Hong Kong law. Several provisions under various ordinances described in 2.1 may cover speech that draws on hateful, hostile, or supremacist beliefs directed at a group that is threatened and likely to cause them harm.</p>
<p>2.5 Does the definition permit religious beliefs and speech which discriminates against particular communities – are there any limitations to religious beliefs and speech which discriminated against particular groups?</p>	<p>There are limitations to religious beliefs and speech under Hong Kong law. As long as the religious beliefs and speech constitute discrimination, vilification or harassment of particular group(s) of people, or intentionally incite hatred towards, serious contempt for or severe ridicule of particular group(s) of people, such religious beliefs and speech will be prohibited under the Hong Kong law.</p>
<p>3. Remedies and recourse for hate speech</p>	
<p>3.1 If I am the victim of hate speech, what is my recourse?</p>	<p>The recourse of a victim to hate speech depends on various factors, such as:</p> <ul style="list-style-type: none"> - Where the hate speech occurred – online or in real life (in person) - How the hate speech occurred – verbal or written <ul style="list-style-type: none"> o If the hate speech occurred verbally, write down any and all of the details of the hate speech as soon as possible after the incident. - The context in which hate speech occurred – did it happen in the context of employment? Was it targeted at the complainant or to a wider group? - Does the hate speech intend to incite violence – does the victim need protection? - Is the law the only resort – is the speech/publication regulated by an online platform or a governmental department/organisation?



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	<p>Generally, a victim of hate speech may reach out to the moderator/regulator/governmental organisation monitoring the said speech to complain or have the speech removed. Subsequently or simultaneously, the said victim may take legal action to protect his/her rights, including reporting the incident to police officers or bringing civil claim against the wrongdoer.</p>
<p>3.2 What are the criminal legal remedies for hate speech?</p>	<p>There are various criminal legal remedies for hate speech. For example:</p> <p>Race Discrimination Ordinance</p> <ul style="list-style-type: none"> • Section 46(3): A person who commits an offence of serious vilification under section 46 (1) of the Race Discrimination Ordinance is liable on conviction to a fine at level 6⁴ and to imprisonment for 2 years. • Section 48(4): A person who knowingly or recklessly aids another person to do an act made unlawful under this ordinance commits an offence and is liable on conviction to a fine at level 4⁵. <p>Crimes Ordinance</p> <p>Section 10: Any person who is guilty of an offence of seditious intention shall be liable for a first offence to a fine of \$5,000 and to imprisonment for 2 years, and for a subsequent offence to imprisonment for 3 years; and any seditious publication shall be forfeited.</p> <p>Public Order Ordinance</p>

⁴ A level 6 fine amounts to a sum of HK\$100,000; see s,113B and Schedule 8 (Level of Fines for Offences) of the Criminal Procedure Ordinance (Cap. 221).

⁵ A level 4 fine amounts to a sum of HK\$25,000; *ibid*.



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	<p>Section 17B(2): Any person who in any public place behaves in a noisy or disorderly manner, or uses, or distributes or displays any writing containing, threatening, abusive or insulting words, with intent to provoke a breach of the peace, or whereby a breach of the peace is likely to be caused, shall be guilty of an offence and shall be liable on conviction to a fine at level 2⁶ and to imprisonment for 12 months.</p>
<p>3.3 Are there civil legal remedies available – compensation / damages – for hate speech?</p>	<p>There are various civil legal remedies available for hate speech. For example:</p> <p>Race Discrimination Ordinance</p> <p>Section 70: If the speech by a person is considered to be racially discriminatory in nature under the Race Discrimination Ordinance, a civil claim can be brought against that person.</p> <p>Disability Discrimination Ordinance</p> <p>Section 72: If the speech by a person is considered to be discriminatory in nature on the basis of disability under the Disability Discrimination Ordinance, a civil claim can be brought against that person.</p>
<p>3.4 Are there regulatory frameworks governing the online news media which allow individuals to complain?</p>	<p>The online news media and broadcasting agencies are regulated by their respective codes of conduct.</p> <ul style="list-style-type: none"> • The Hong Kong Journalists Association (“HKJA”) <p>HKJA has a Code of Conduct that applies to all journalists. The HKJA Code of Conduct provides protection against discrimination in clause 10:</p>

⁶ A level 2 fine amounts to a sum of HK\$5000; *ibid.*

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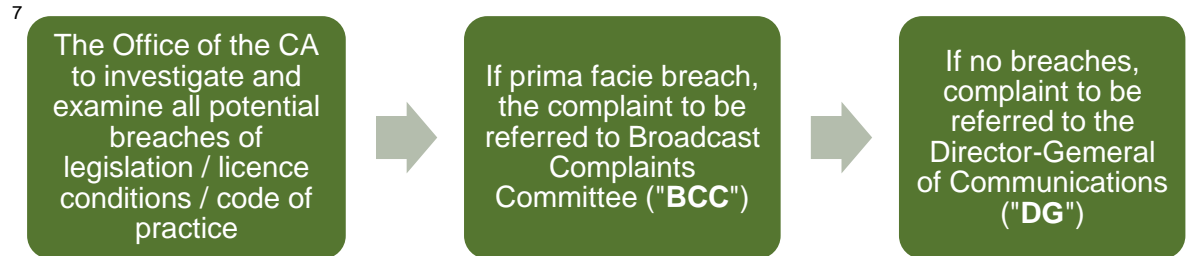
	<p><i>“A journalist shall not originate material which encourages discrimination on grounds of race, colour, creed, gender or sexual orientation.”</i></p> <p>If an individual intends to file a complaint with the HKJA in relation to the violation of its Code of Conduct, he/she shall send a copy of the original report and the written complaint to the Ethics Committee of HKJA, which comprises of three serving veteran journalists who receives and vets complaints against unethical reporting of the local media. A flowchart of the procedure can be found below:</p> <div style="text-align: center;"> <pre> graph LR A[Written complaint & copy of the report to be sent to Ethics Committee.] --> B[Committee to consider and refer to Code of Ethics before arriving at a judgement] B --> C[Committee to send judgment to all parties concerned and publish the same in "The Journalist" and online.] </pre> </div> <ul style="list-style-type: none"> • Radio Code of Practice on Programme Standards (May 2014) <p>The Radio Code of Practice on Programme Standards is <i>"issued by the Communications Authority (CA) pursuant to section 19 of the Broadcasting (Miscellaneous Provisions) Ordinance (Cap.391). All materials included in a sound broadcasting service licensed under the Telecommunication Ordinance (Cap.106) must comply with this Code. The CA has the power to impose sanctions on licensees who do not comply with the Code."</i> (para. 1)</p> <p>The Code of Practice requests that a licensee should not include <i>"any material which is likely to encourage hatred against or fear of, and/or considered to be denigrating or</i></p>
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insulting to any person(s) or group(s) on the basis of ethnicity, nationality, race, gender, sexual orientation, religion, age, social status, or physical or mental disability." (para. 7(b))

A complaint about any television or radio broadcast material for violation of the Radio Code of Practice on Programme Standards shall be done by lodging the complaint form in English/Chinese by fax, mail or email to the Communications Authority ("**CA**") as soon as possible. All such complaints will be dealt with in accordance with the Broadcasting (Miscellaneous Provisions) Ordinance. A flowchart of how the complaint will be handled can be found below.



For cases referred to BCC, BCC will consider and recommend to the CA appropriate sanctions according to the seriousness of the cases, including advice, warning, correction and/or apology, financial penalty and suspension of licences⁸. In relation to financial penalties, it shall not exceed HK\$200,000 for the first occasion a penalty is imposed,

⁷ See: https://www.coms-auth.hk/en/complaints/procedures/tv_radio/procedure/index.html.

⁸ For details on suspension of licence, see s.31 *Broadcasting Ordinance (Cap. 562)*.



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	<p>HK\$400,000 for the second occasion a penalty is imposed, and HK\$1,000,000 for any subsequent occasion a penalty is imposed.⁹</p> <p>If the complaint does not involve any breach of legislation, licence conditions or codes of practice, or falls outside the consideration of complaints by the BCC¹⁰, it is “trivial and frivolous” and classified as a minor breach. The case will then be referred to the DG, who shall “remind the broadcasters suitably”.</p> <ul style="list-style-type: none"> • Generic Code of Practice on Television Programme Standards <p>The Generic Code of Practice on Television Programme Standards dated 27 July 2018 was issued by the CA “pursuant to section 3 of the Broadcasting Ordinance (Cap.562). All materials included in a television programme service licensed under the Broadcasting Ordinance must comply with the Code.” This Code covers the following 4 categories, namely (a) domestic free television programme services; (b) domestic pay television programme services; (c) non-domestic television programme services; and (d) other licensable television programme services.</p> <p>As one of general principles in Chapter 3 of the Code, a licensee should not include in its programmes “any material which is likely to encourage hatred against or fear of, and/or considered to be denigrating or insulting to any person(s) or group(s) on the basis of ethnicity, nationality, race, gender, sexual preference, religion, age, social status, or physical or mental disability¹¹” (section 2(b)).</p> <ul style="list-style-type: none"> • Regulatory frameworks for online television and radio programmes
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⁹ For details on financial penalties, see: s.28 Broadcasting Ordinance (Cap. 562).

¹⁰ S.11 Broadcasting (Miscellaneous Provisions) Ordinance (Cap. 391).

¹¹ Generic Code of Practice on Television programme Standards (https://www.coms-auth.hk/filemanager/common/policies_regulations/cop/code_tvprog_e.pdf).



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	<p>Unfortunately, there are no regulatory frameworks for online television and radio programmes in Hong Kong.</p> <p>The matter was first considered in the HKSAR government press release dated 3 June 2015, in which the Acting Secretary for Commerce and Economic Development, Mr Godfrey Leung, stated that</p> <p><i>“Since internet service is exempted from the regulation under the Broadcasting Ordinance, it follows that it is not subject to the regulation of the Generic Code of Practice on Television Programme Standards issued by the Communications Authority (CA). On the other hand, as programmes of online radio stations are not sound broadcasting services transmitted via radio wave, they are not governed by the Telecommunications Ordinance (TO), and hence not subject to the regulation of the Radio Code of Practice on Programme Standards issued by the CA.”</i>¹²</p> <p>On 12 March 2018, the Legislative Council Panel on Information Technology and Broadcasting further reviewed, <i>inter alia</i>, the above said matter and “are of the view that Internet-based TV and radio programme services should remain not subject to the broadcasting licensing control”.¹³</p> <p>That said, online television and radio programmes are nevertheless subject to the general legal framework against hate speech currently in place in Hong Kong.</p> <ul style="list-style-type: none"> • Social media <p>There is currently no relevant code of practice in place for social media, save for those set</p>
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¹² See <https://www.info.gov.hk/gia/general/201506/03/P201506030620.htm>.

¹³ Legislative Council Panel on Information Technology and Broadcasting – Review of Television and Sound Broadcasting Regulatory Regimes, para 5 (<https://www.legco.gov.hk/yr17-18/english/panels/itb/papers/itb20180312cb4-701-4-e.pdf>).



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	by social media platforms themselves (e.g., Facebook Community Standards).
3.5 Is the test for hate speech used by any Social Media / Press / Online regulatory bodies the same as the criminal law definitions?	There is no uniform criminal law definition of hate speech under Hong Kong law. Based on the definitions of relevant criminal offences under various ordinances, it seems that the test for hate speech used by regulatory bodies has a lower threshold than the criminal ones. Some of the criminal offence (such as the offence of serious vilification under section 46 of the Race Discrimination Ordinance) requires the hate speech to contain a statement threatening physical harm or inciting others to threaten physical harm towards particular group(s) of people and/or their properties. This factor does not appear in the Codes of Conduct issued by regulatory bodies.
3.6 Do public and private institutions have to comply with the same duties to avoid hate speech?	Public and private institutions need to comply with the restrictions on speech imposed by the laws listed out in 2.1 above, some of which are similar to those imposed by regulatory bodies on news media and broadcasting agencies.
3.7 If I am accused of hate speech, what is my recourse?	The ordinances set out in 2.1 above do not specifically provide recourse, such as a defence or specific remedy, for a wrongly accused offender. Depending on the specific circumstances of the case, a person who was wrongly accused of hate speech may rely on tort claims such as defamation to restore reputation and claim for damages. For civil defamation claims, the burden is on the defendant to prove that his or her defamatory statement was true.
3.8 If hate speech is occurring at my event/on my platform/in my place of work, what should I do	If hate speech occurs in your event, upon the hate speech being brought to your attention / noticing the hate speech, you may:



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<p>about it?</p>	<ol style="list-style-type: none"> (1) Ask the person to refrain from making further hate speech; (2) Ask the person to be excluded from the event if he/she makes further hate speech despite the warning; (3) If the person refuses to be excluded from the event, request the security personnel at your event to have that person removed and to ensure he/she is banned from returning to the event. <p>If hate speech occurs on your platform (presumably online), upon the hate speech being brought to your attention/ noticing the hate speech, you should take the following steps:</p> <ol style="list-style-type: none"> (1) Review the alleged hate speech to see if it complies with the policies and standards of your platform and applicable codes of conduct and statutes regarding hate speech; (2) If the alleged hate speech falls short of any of the standards described above, remove the said content; (3) Issue a warning to / temporarily suspend the account of the user that posted such hate speech; and (4) If hate speech occurs again with the same user, you may consider permanently banning the user from using your platform.¹⁴ <p>If hate speech occurs in your place of work, you shall:</p> <ol style="list-style-type: none"> (1) Preserve the evidence of the alleged hate speech; (2) Contact Human Resources department to bring this matter to their attention and for them to handle further; (3) The Human Resources department shall thereafter investigate the incident and handle the incident according to the disciplinary measures in place at your workplace.
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¹⁴ Hong Kong-based owners of these platforms currently have no express legal obligation to report occurrences of hate speech to authorities.



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<p>3.9 If I have identified hate speech (online, in the media, etc.) what practical steps should I take?</p> <p><i>(For this question, we envision a “filtering” or “journey tree” (flow chart) where the first question is, “where did you see the hate speech” → if online then go here, if offline, then go here → do you have evidence of it (screenshot/link to the post, recording of the speech, etc.) → then what, etc.)</i></p>	<p>When one identifies hate speech, one should consider the factors listed out in 3.1 above and find out the method of making a complaint or reporting the material that is potentially hate speech, in order to bring the material to the attention of the relevant authority.</p> <p>For recourse in relation to online media, please see 3.4 above.</p>
<p>3.10 Please provide recent (within 1 year) of examples of hate speech reported in the media, and if possible, establish how was this addressed, e.g. by legal remedies or non-legal remedies.</p> <p><i>(For this question, we are looking for case studies.)</i></p>	<ul style="list-style-type: none"> • Reported case of teachers <p>During the recent unrest in Hong Kong, the Education Bureau received 171 complaints about possible misconduct of teachers in relation to teachers making hate messages, usage of indecent language and suspected engagement in illegal activities etc. The Education minister stated that some of the hate messages were not very improper judged by the standard of a society and the teachers were subject to a higher standard in their speech and actions as many pupils were still forming their own values.</p> <p>However, as there's no unified definition of hate speech in Hong Kong, it was also argued on what constitutes hate speech as many of the comments were what the teachers had shared privately with friends on social media platforms.</p> <p>It was unclear how those complaints related with hate speech have been dealt with, but for a general review of all the complaints, some teachers had resigned or had been suspended by their schools, and some were given warnings or condemnation.</p>



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	<ul style="list-style-type: none">• Reported case of trainee solicitor – <i>Re Chu Alfred [2019] HKCFI 2338</i> In August 2019, Hong Kong's Department of Justice demanded an explanation from a trainee solicitor after it received complaints about a statement supposedly inciting hatred against the police. He had published the comment on his social media account in July 2019, amidst protests in Hong Kong against a controversial and now-withdrawn bill that would have allowed for extradition to China. There was concern about whether the trainee solicitor was a fit and proper person to be admitted as a solicitor and eventually the judge who handled the case allowed the trainee solicitor's admission based on the explanation he offered. The judge commented that there was a professional standard for solicitors and this trainee solicitor should have been more careful in managing the social media account (it transpired that his girlfriend had posted the comment).• A potential case regarding “hate speech” involving RTHK The Communications Authority (CA) issued a “serious warning” to RTHK regarding a guest host on the opinion show "Pentaprisim" aired on November 20, 2019. CA alleged that the guest host had made inaccurate and unfair comments as he spoke about clashes between police and protestors at the Polytechnic and Chinese universities over the above-mentioned extradition bill, and that the broadcaster was negligent in failing to vet the accuracy of the statements. A police spokesman stated in a statement that the “<i>Police are willing to accept criticisms which are constructive and based on goodwill. However, Police absolutely do not accept inaccurate or misleading reports and remarks, and will follow up as appropriate</i>”. The spokesman did not elaborate on what action would be taken.
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<p>3.11 Please provide examples of cases related to hate speech / incitement of violence.</p>	<p>Secretary for Justice v Persons unlawfully and wilfully conducting themselves in any of the acts prohibited under paragraph 1(a) and (b) in the indorsement of claim [2019] HKCFI 2809</p> <p>In this case, the High Court granted an interim injunction order to prevent the abuse of internet-based platform for wilful dissemination of information for the purpose of encouraging the use or threat of violence intended or likely to cause bodily injury or damage to properties. In the judgement of Hon Coleman J dated 15 November 2019, it was stated that there is abundant evidence demonstrating the significant role of social media platforms in intensifying violence.</p> <p>In discussing the social and moral responsibility of social media, Hon Coleman J also cited that obiter by the Court of Final Appeal in <i>Oriental Press Group Ltd v Fevaworks Solutions Ltd (2013) 16 HKCFAR 366</i>, noting that "a platform provider must genuinely recognise and take all reasonable steps to protect the rights and reputations of persons from being unlawfully damaged by postings published on the forum...while an Internet intermediary may not be expected to police or filter the many-to-many discussions hosted, it is appropriate to require prompt action to take down the offending postings upon receiving a complaint or otherwise becoming aware of them."</p> <p>Reported case of incitement of violence</p> <p>Mr Siu Cheung-lung, a 32-year-old administrator of a Telegram group, faced three counts of incitement to commit wounding with intent and incitement to commit public nuisance in a Hong Kong court on 30 March 2020 for allegedly provoking others to murder officers and bomb police stations, among other violent acts. The case was adjourned until 25 May 2020 in Eastern Court.</p> <p>Ms Cheng Lai King, a member of the Democratic Party was arrested under the offence of</p>
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	sedition on 26 March 2020, over a Facebook post in which she called for “ <i>an eye for an eye</i> ” against the police officers. The police was also investigating her alleged breach of a court injunction banning the doxxing of police officers and their families.
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1. International and Regional Frameworks (NOTE: this section <u>only</u> to be filled up by the teams working on international and EU law)	
1.1	What are the international law standards on hate speech with reference to the UN Conventions, General Comments and the decisions of the Thematic Mechanisms / Special Rapporteur reports?
1.2	Are there any relevant decisions on hate speech arising from the European Convention of Human Rights, the American Convention of Human Rights and the African Convention of Human Rights?
2. Definition of hate speech	
2.1	What is the definition of hate speech in your country?
	The general understanding of hate speech is provided under Article 156 of the Indonesian Penal Code ¹ , stating: Article 156 Indonesian Penal Code <i>Any person who publicly expresses feelings of hostility, hatred, or contempt against one or several groups of the Indonesian population shall be subject to imprisonment for a maximum of</i>

¹ *Wetboek van Strafrecht* (Indonesian Penal Code).



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	<p><i>four years, or fines for a maximum of IDR 4,500.</i></p> <p><i>The term 'group' in this and the following article shall be understood as each and every part of the Indonesian population that is distinct from one or more other parts of that population by race, country of origin, religion, origin, ancestry, nationality, or constitutional standing.</i></p> <p>Varieties of hate speech are also provided under other articles in the Indonesian Penal Code, Law No. 40 of 2008 against racial and ethnic discrimination ("Law 40/2008")², and Law No. 11 of 2008 on Electronic Information and Transactions, as amended ("Law 11/2008")³.</p> <p>Article 156a was added to the Indonesian Penal Code to penalise hate speech against religious beliefs (colloquially, "blasphemy"), and Article 157 imposes a criminal sanction for the dissemination of hateful information, as follows:</p> <p><u>Article 156a Indonesian Penal Code</u></p> <p><i>Imprisonment for a maximum term of five years shall be imposed on any person who publicly expresses or commits an act:</i></p> <ul style="list-style-type: none"><i>a. which is principally of a character of being at enmity with, abusing or marring a religion adhered to in Indonesia;</i><i>b. with the intention to prevent a person from adhering to any religion based on the Belief in the Almighty God.</i> <p>It is worth noting that the phrase "Belief in the Almighty God" under Article 156a Indonesian Penal Code refers to one of the five fundamental principles of the Indonesian state ideology, the <i>Pancasila</i>, which is also regarded as the foundation of the basic norms of Indonesian law.</p>
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² Law No. 40 of 2008 on the Eradication of Racial and Ethnic Discrimination.
³ Law No. 11 of 2008 on Electronic Information and Transactions, as amended by Law No. 19 of 2016.



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	<p><u>Article 157 Indonesian Penal Code</u></p> <p>(1) <i>Any person who disseminates, openly demonstrates or displays writing or images that contains an expression of hostility, hatred, or contempt against or among groups of the Indonesian population, with the intent that such content is known or made more known to the public, shall be subject to imprisonment for a maximum term of two years and six months or fines for a maximum of IDR 4,500.</i></p> <p>(2) <i>If the defendant committed such offence when performing his occupation and before the lapse of five years since the conclusion of punishment for a similar offence, the defendant may be barred from performing such occupation.</i></p> <p>Under Article 4(b) of Law 40/2008, expression of racial and ethnic discrimination is defined as the following acts:</p> <p><u>Article 4(b) Law 40/2008</u></p> <p><i>Racial and ethnic discrimination may be in the form of expression of hate against a person for difference in race or ethnicity through the following conduct:</i></p> <ol style="list-style-type: none"><i>1. making a writing or image to be placed, displayed, or distributed in a public place or any other venue that can be viewed or read by other people;</i><i>2. making a speech, opinion, or saying certain words in a public place or any other venue that can be heard by other people;</i><i>3. wearing an attribute that displays objects, words, or images in a public place or any other venue that can be read by other people; or</i><i>4. committing a homicide, assault, rape, obscene act, aggravated robbery, or deprivation of one's freedom based on racial and ethnic discrimination.</i>
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	<p>A violation of Article 4(b) above is subject to an imprisonment for a maximum term of five years, and/or fines for a maximum amount of IDR 500 million. Restitution and rehabilitation of the victim's rights may also be granted.</p> <p>Hate speech through electronic means of communication is more specifically regulated under Article 28(2) and Article 45(2) Law No. 11/2008, which provides as follows:</p> <p><u>Article 28(2) Law No. 11/2008</u></p> <p><i>Any person [is prohibited from] deliberately and unlawfully disseminating information that is intended to give rise to hatred or enmity against a specific individual or community based on their ethnicity, religion, race, and group.</i></p> <p><u>Article 45A(2) Law No. 11/2008</u></p> <p><i>Any person who deliberately and unlawfully disseminates information intended to give rise to hatred or enmity against a specific individual or community based on their ethnicity, religion, race, and group may be subject to imprisonment for a maximum term of 6 (six) years and/or fines for a maximum of 6 (six) years and/or a maximum fine of IDR 1,000,000,000 (one billion Rupiah).</i></p>
<p>2.2 Does the legal definition of hate speech require threats of violence / incitement to violence?</p>	<p>No. the legal definition of hate speech does not necessarily require threats or incitement to violence.</p>
<p>2.3 Would the definition cover speech and behaviour which incites hatred (not necessarily violence)</p>	<p>Yes. The definition of hate speech under the Indonesian Penal Code requires an expression of "hostility, hatred, or contempt".</p>



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<p>towards a group?</p>	
<p>2.4 Does hate speech cover speech that draws on hateful, hostile, or supremacist beliefs directed at a group that is threatened and likely to cause them harm?</p>	<p>Yes. Under the Indonesian Penal Code, hate speech may cover speech that draws on hateful, hostile, or supremacist beliefs against a group.</p>
<p>2.5 Does the definition permit religious beliefs and speech which discriminates against particular communities – are there any limitations to religious beliefs and speech which discriminated against particular groups?</p>	<p>Yes, under Article 156(a) above, religious beliefs and speech which is intended to discriminate against a particular religion in Indonesia may be categorized as hate speech.</p> <p>The legal definition of "hate speech" itself does not impose limitations on religious beliefs and speech which discriminate against particular groups.</p>
<p>3. Remedies and recourse for hate speech</p>	
<p>3.1 If I am the victim of hate speech, what is my recourse?</p>	<p>In Indonesia, there are civil rights groups and legal aid institutes that offer legal assistance for victims of hate speech, especially those focusing on minorities' rights. The victim may also file a report to the police which will decide whether to proceed with criminal action against the offender (see Question 3.2 below).</p>
<p>3.2 What are the criminal legal remedies for hate speech?</p>	<p>As per Indonesian criminal procedure, a victim of hate speech may report a hate speech to the police, which will then decide whether to proceed with a preliminary investigation to determine whether an offense has been committed, and later an investigation to collect sufficient</p>



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	<p>evidence.</p> <p>Once the investigation is complete, prosecution may be made against the offender in a criminal trial. The panel of judges will then decide whether or not the offender is guilty under the relevant provisions of Indonesian criminal law (see section 2.1).</p>
<p>3.3 Are there civil legal remedies available – compensation / damages – for hate speech?</p>	<p>There is no known case law where civil legal remedies have been sought for hate speech. However, in principle, a victim could claim that hate speech constitutes an "unlawful act" under the Indonesian Civil Code, entitling the victim to damages.</p> <p>It is worth to note that, in practice, where a victim attempts to bring a claim for an unlawful act resulting from a criminal offence committed by the defendant, it would be favourable to the victim, as plaintiff, to first pursue criminal remedies, and present the final verdict made against the defendant in a criminal trial before the civil chamber to demonstrate the "unlawfulness" of the defendant's act.</p>
<p>3.4 Are there regulatory frameworks governing the online news media which allow individuals to complain?</p>	<p>Since 2018, the Indonesian Ministry of Communications and Information ("MOCI") has established the <i>AduanKonten</i> (Content Complaint) online platform, which allows individuals to report negative online content that demonstrates, among others, hate speech.⁴ The MOCI will then process the complaint and determine the appropriate action to be taken against the reported social or online news media, including blocking the particular content being reported.</p>
<p>3.5 Is the test for hate speech used by any Social Media / Press / Online regulatory bodies the same</p>	<p>The MOCI would refer to the criminal law definition of hate speech under Law No. 11/2008, where "hate speech" is defined as <u>"the dissemination of information intended to give rise to hatred or enmity against a specific individual or community based on their ethnicity, religion,</u></p>

⁴ The *AduanKonten* platform is accessible [here](#).



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as the criminal law definitions?	<u>race, and group".</u>
3.6 Do public and private institutions have to comply with the same duties to avoid hate speech?	Yes. Under Article 6 of Law 40/2008, the government and all members of Indonesian society have the obligation to protect Indonesian citizens from racial and ethnic discrimination, including avoiding the use of hate speech against particular groups.
3.7 If I am accused of hate speech, what is my recourse?	<p>In Indonesia, there have been several instances where courts are perceived to be somewhat unfair to minorities when applying the definition of "hate speech". For example, in 2018, a Buddhist woman asking a local mosque to lower the volume of the speaker when performing the Muslim call to prayer was charged with "blasphemy" and sentenced to 18 months imprisonment⁵ (see Question 3.10).</p> <p>The first recourse available when being accused is to appoint an attorney. If the accused is subject to imprisonment of over five years and cannot afford a defence attorney, the state will provide him/her with one. There are also civil rights groups and legal aid institutions that offer legal assistance to those wrongfully accused of hate speech.</p> <p>Before the trial commences, the accused may ask for a pre-trial where the judge will examine whether there have been procedural errors that would make the inadmissible. The accused can request a pre-trial on the following:</p> <ul style="list-style-type: none"> • the lawfulness of the arrest or detention of the accused; • the lawfulness of the determination of the accused as a suspect to the crime.



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	<p>Additionally, the accused may also claim for damages or rehabilitation of his/her rights in a pre-trial.</p> <p>The defence will largely depend on the circumstances of the case. It is also worth to note that where an accusation has been made, under the Indonesia Code of Criminal Procedure, the burden of proof is borne by the prosecution.</p>
<p>3.8 If hate speech is occurring at my event/on my platform/in my place of work, what should I do about it?</p>	<p>There is no legal obligation to take actions when hate speech occurs at your event, on your platform, or in your place of work. It should be noted the online platforms may be held criminally liable under Law No. 11/2008 if hate speech or discriminatory content is distributed through them (see Question 2.1), and it is most prudent for an online platform to have a mechanism in place to block or erase such content.</p>
<p>3.9 If I have identified hate speech (online, in the media, etc.) what practical steps should I take?</p> <p><i>(For this question, we envision a “filtering” or “journey tree” (flow chart) where the first question is, “where did you see the hate speech” → if online then go here, if offline, then go here → do you have evidence of it (screenshot/link to the post, recording of the speech, etc.) → then what, etc.)</i></p>	<p style="text-align: center;">Where did you see the hate speech?</p> <div style="display: flex; justify-content: space-around; align-items: center;"> <div style="text-align: center;"> <p>Online</p> <p>↓</p> <p>Report to <i>AduanKonten</i></p> </div> <div style="text-align: center;"> <p>Offline</p> <p>↓</p> <p>Report to the police</p> </div> </div>
<p>3.10 Please provide recent (within 1 year) of examples of hate speech reported in the media, and if possible, establish how was this addressed, e.g.</p>	<p>On 8 April 2019, the Indonesian Supreme Court rejected an appeal filed by Meiliana, a Buddhist woman who was charged with blasphemy and sentenced by the Medan District Court to 18 months' imprisonment for complaining to a local mosque about the volume of the</p>



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<p>by legal remedies or non-legal remedies.</p> <p>(For this question, we are looking for case studies.)</p>	<p>mosque's speakers when performing the daily Muslim calls to prayer.⁶</p> <p>The case began with an incident in July 2016 in Tanjung Balai, North Sumatra, when the city saw clashes between the local Muslim and Buddhist communities. During this time, Meiliana, who lived near a mosque, had asked the local mosque to lower the volume of the mosque's speakers. She said that the loud calls to prayer had caused disturbance. The local Muslim community confronted Meiliana, and filed a report to the local police against her for blasphemy under Article 156a of the Indonesian Penal Code.</p> <p>A non-legal remedy sought by the local Muslim community was to obtain a <i>fatwa</i> (a non-binding Islamic legal opinion) from the local chapter of the <i>Ulama</i> Council of Indonesia (<i>Ulama</i> refers to Islamic scholars). The <i>fatwa</i> decided that Meiliana's acts constituted blasphemy under Islamic law, and recommended the police prosecute Meiliana.</p> <p>After the investigation phase was completed, the prosecution against Meiliana began at the Medan District Court. The media reported that no recordings of Meiliana's complaint were presented as evidence, and the prosecution had only relied on witness statements.</p>
<p>3.11 Please provide examples of cases related to hate speech / incitement of violence.</p>	<p><u>Ahok Blasphemy Trial⁷</u></p> <p>Perhaps the most politically and socially controversial incident of hate speech in Indonesia is the case of former Jakarta governor, Basuki Tjahaja Purnama, who goes by the nickname "Ahok". In 2017, Ahok, a Christian and ethnic Chinese, was sentenced to two years in prison after a criminal trial concluded that he had committed blasphemy for referring to a Quranic verse in a statement that was perceived as discriminatory against the Muslim community. Using the verse, he publicly stated to local residents that they should not be deceived by</p>

⁶ For further information, please refer to the news article accessible [here](#).

⁷ For further information, please refer to the news article accessible [here](#).



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	people claiming that Muslims should not be led by non-Muslims. The statement incited a series of demonstrations in Jakarta, and led to a trial against Ahok.
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1. International and Regional Frameworks (NOTE: this section <u>only</u> to be filled up by the teams working on international and EU law)	
1.1	What are the international law standards on hate speech with reference to the UN Conventions, General Comments and the decisions of the Thematic Mechanisms / Special Rapporteur reports?
1.2	Are there any relevant decisions on hate speech arising from the European Convention of Human Rights, the American Convention of Human Rights and the African Convention of Human Rights?

2. Definition of hate speech	
2.1 What is the definition of hate speech in your country?	<p>Currently, there is no legislation specifically governing or regulating hate speech in the People's Republic of China ("China"). However, rules and principles scattered in various legal documents protecting ethnic equality, religious freedom and individual rights may apply to hate speech issues.</p> <p>The <i>Constitution of China</i> ("Constitution") provides the basis of general principles to regulate hate speech. Under these general principles, discrimination against any ethnic or religious group is expressly prohibited. Moreover, in exercising their freedoms and rights, citizens shall not undermine the interest of the state or society, or the legitimate freedoms or rights of other citizens:</p> <ul style="list-style-type: none"> • Art. 4 of the Constitution emphasizes ethnic equality and provides that <u>discrimination and oppression against any ethnic group are prohibited, and any acts that undermine ethnic unity or instigate division are prohibited.</u>¹ • Art. 36 of the Constitution provides that no state organ, social organization, or individual may compel citizens to believe in, or not to believe in, any religion, <u>nor may they discriminate against citizens who believe in, or not believe in, any religion.</u> • Art. 38 of the Constitution provides that, in exercising their freedoms and rights, citizens of the People's Republic of China shall not undermine the interests of the state or society, or the legitimate freedoms and rights of other citizens. <p>By extension, any speech discriminating against any ethnic or religious group violates the general principles of the Constitution. If the speech does not target any ethnic or religious group, but undermines social interests, or the legitimate freedoms or rights of other citizens, it will also violate the Constitution.</p>

¹ For the avoidance of doubt, Art. 4 of the Constitution does **not** mention "speech". It simply provides that discrimination and oppression against any ethnic group are prohibited, and any acts that undermine ethnic unity or instigate division are prohibited, and concerns ethnic equality, not freedom of speech. However, we can infer from its language that it regulates speech as a type of act.

2.2 Does the legal definition of hate speech require threats of violence / incitement to violence?	There is no definition of hate speech under the current rules. However, the Constitutional provisions stated above in 2.1 would appear to be wide enough to capture hate speech that does not involve threats of, or incitement to, violence.
2.3 Would the definition cover speech and behaviour which incites hatred (not necessarily violence) towards a group?	As stated above in 2.1, under the general principles provided by the Constitution, discrimination or oppression against any ethnic group is prohibited, and any acts that undermine ethnic unity or instigate division are prohibited. Discrimination against any religious group is also prohibited. That being said, any speech targeting any ethnic or religious group is prohibited and may be deemed as hate speech in violation of the Constitution.
2.4 Does hate speech cover speech that draws on hateful, hostile, or supremacist beliefs directed at a group that is threatened and likely to cause them harm?	Art. 4 of the Constitution of China prohibits such speech directed at any ethnic group. Under Art. 4 of the Constitution, discrimination and oppression against any ethnic group are prohibited, and any acts that undermine ethnic unity or instigate division are prohibited.
2.5 Does the definition permit religious beliefs and speech which discriminates against particular communities – are there any limitations to religious beliefs and speech which discriminated against particular groups?	As stated above in 2.1, under Art. 4 and Art. 36 of the Constitution of China, any speech that discriminates against any ethnic or religious group is prohibited. It is unclear which of these two provisions would take precedence in the event of a conflict.
3. Remedies and recourse for hate speech	
3.1 If I am the victim of hate speech, what is my recourse?	<p>As a victim of hate speech, you may seek help through the following means:</p> <ul style="list-style-type: none"> • If the hate speech is expressed on internet platforms, you may make a complaint to the platform operators in accordance with the relevant platform's community rules. For example, Weibo (the Chinese version of Twitter) has issued the Weibo Community Convention and other implementing rules ("Weibo Rules"). Under such rules, Weibo users cannot post or share content which violates the principles of the Constitution,

	<p>incites hatred towards ethnic groups, discriminates against ethnic groups, or sabotages ethnic unity or national religious policies, etc. The Weibo Rules also prescribe the compliance mechanism for such content or any other content that infringes on individuals' rights.</p> <ul style="list-style-type: none"> • So long as the hate speech is posted on a website hosted on domestic servers, you may also report to the Reporting Center for Illegal and Harmful Information of the Cyberspace Administration of China ("CAC Reporting Center") via email or its online reporting portal, reporting hotline, or reporting app. • You may report to the police if the content or speech incites hatred against any ethnic group, discriminates against any ethnic group, or openly insults² anyone. • Under Art. 47 of the <i>Law on Penalty for Public Security Administration of China</i> ("Penalty Administration Law"), any person who incites ethnic hatred, ethnic discrimination, or publishes ethnic discrimination or makes an insult in a publication or computer information network shall be detained for ten to fifteen days, and may be fined up to one thousand yuan. Under Art. 42 of the <i>Penalty Administration Law</i>, a person who openly insults another person or fabricates facts³ to slander another person shall be detained for no more than five days, or fined for no more than five hundred yuan; if the circumstances are serious, s/he shall be detained for no less than five days but no more than ten days, and may also be fined for no more than five hundred yuan. Art. 78 of the <i>Penalty Administration Law</i> provides that if, after receiving a report, complaint, claim or surrender, the police consider that it might constitute a violation of the <i>Penalty Administration Law</i>, they shall immediately conduct an investigation; if the police consider that it might not constitute a violation of public security management, they shall inform the informant, accuser, whistle-blower or the surrendered, and give
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² The use of the term "insult" here is derived from the prohibitions under the *Penalty Administration Law*, discussed in the following bullet point. The *Penalty Administration Law* does not define the term. However, its Article 42 indicates that it does not require a hateful nature.

³ This phrase is not defined under the *Penalty Administration Law*. However, Chinese criminal law relating to slander suggests it could refer to falsehoods that harm another's reputation.

	<p>reasons.</p> <ul style="list-style-type: none"> • Under Art. 997 of the <i>Civil Code of China</i>, which will become effective on January 1, 2021, you may apply for an injunction at the court if you have evidence to prove that someone has delivered the hate speech that violates your personal rights, such as rights to name, portrait, reputation, honor, privacy or other rights derived from personal freedom and human dignity, or is planning to do so, and that the failure to timely stop such act will cause irreparable harm to your legitimate rights and interests. • You may also report to the local procuratorate if any hate speech discriminates against women openly. Under the <i>Notice on the Establishment of a Cooperative Mechanism for Jointly Promoting the Protection of the Rights and Interests of Women and Children</i> issued jointly by the Supreme People's Procuratorate and the All-China Women's Federation, the People's Procuratorate may make a procuratorial recommendation or file a civil public interest lawsuit, if it identifies an act which has been committed through the public media or other means that degrades or impairs the human dignity of women. • As indicated below in 3.2 and 3.3, you might also file civil or criminal complaints if such hate speech results in any personal damages.
<p>3.2 What are the criminal legal remedies for hate speech?</p>	<p>Under the <i>Criminal Law of China</i> ("Criminal Law"), the following charges may be applicable for hate speech.</p> <ul style="list-style-type: none"> • <u>Crime of inciting ethnic hatred or discrimination</u>: individuals inciting ethnic hatred or discrimination in "serious circumstances" shall be punishable by imprisonment, detention, surveillance⁴, or deprivation of political rights⁵ for a term not exceeding three years; in particularly serious circumstances, imprisonment for a term no less than three

⁴ "Surveillance" refers to a criminal punishment whereby the offender is subject to the supervision by local and national authorities.

⁵ "Deprivation of political rights" refers to a criminal punishment whereby the offender is deprived of their: (1) right to vote and to be elected; (2) right to freedom of speech, of the press, of assembly, of association, of procession, and of demonstration; (3) right to hold office in State bodies; and (4) right to hold leadership positions in State-owned companies, enterprises, institutions, and people's organizations.

	<p>years but not exceeding ten years. (Art. 249 of the Criminal Law)</p> <ul style="list-style-type: none"> • <u>Crime of publishing works that discriminate against or insult ethnic minorities</u>: If a publication contains content that discriminates against or insults ethnic minorities in serious circumstances, and causes serious consequences, the person directly responsible shall be sentenced to up to three years imprisonment, detention or surveillance. (Art. 250 of the Criminal Law) • <u>Crime of insult</u>: If a person publicly insults another person by threatening violence or other means and in serious circumstances, the person shall be sentenced to imprisonment, detention, surveillance, or deprivation of political rights for a term not exceeding three years. Such charge shall be brought by the victim unless the alleged act has seriously affected social or national interests (in which case the State would bring the charge). (Art. 246 of the Criminal Law) • <u>Crime of picking fights and troubles</u>: Whoever reviles or intimidates another person through an information network (e.g., the Internet), resulting in execrable circumstances and disrupting social order, shall be sentenced to imprisonment of no more than five years, criminal detention or surveillance. (Art. 293 of the Criminal Law, Art.5 of the <i>Interpretation on Several Issues concerning the Specific Application of Law in the Handling of Defamation through Information Networks and Other Criminal Cases</i> issued jointly by the Supreme People's Court and the Supreme People's Procuratorate)
<p>3.3 Are there civil legal remedies available – compensation / damages – for hate speech?</p>	<p>Currently, there is no specific cause of action for hate speech. Unless the content or speech constitutes an insult, slander or defamation, hate speech <i>per se</i> is not actionable. Moreover, if hate speech leads to a situation where any legitimate right is breached, for example personal injuries caused by violence incited by hate speech, the victim can make a complaint against such violation.</p> <p>As stated above in 3.1, you may also request an injunction if you can provide evidence to prove that the hate speech violates your moral rights and will cause irreparable harm if not stopped in time.</p>

<p>3.4 Are there regulatory frameworks governing the online news media which allow individuals to complain?</p>	<p>Yes. The Cyberspace Administration of China ("CAC") is authorized by the State Council to regulate and supervise online information content. Under the provisions issued by the CAC, online news service providers shall establish the mechanism for the public to complain and report information or content that: (1) violates the general principles of the Constitution, (2) incites ethnic hatred, ethnic discrimination, or discrimination against any group or region, (3) undermines the national religion policies, or (4) insults or defames anyone and causes damages to the reputation, privacy, or other legitimate rights of such person.</p> <p>The <i>Provision for the Administration of Internet News Information Services</i> ("Online News Administration Provisions") issued by the CAC in 2017, governs the provision of online news services in China.</p> <p>Under the Online News Administration Provisions:</p> <ul style="list-style-type: none"> • online news services shall comply with the Constitution, laws and regulations, and online news service providers and users shall not produce, copy, publish, or disseminate information content prohibited by laws or regulations (Art. 3 and Art. 16); • online news service providers shall accept public supervision, establish complaint reporting channels for the public, set up a convenient complaint reporting portal, and handle public complaints and reports in a timely manner (Art. 18); • any organization or individual may report to the national or local CAC if they find the online news service provider violates the Online News Administration Provisions (Art. 20); and • national and local CAC shall publish the manner of receiving reports to the public, and upon receipt of the reports, the CAC should handle the reports properly in accordance with the law. The news service providers should cooperate with the CAC. <p>In December 2019, the CAC issued the <i>Provisions on Ecological Governance of Internet Information Content</i> ("Internet Ecology Provisions"), which has entered into effect since March 1, 2020 and governs more generally the Internet information content including online news.</p>
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	<p>Under the Internet Ecology Provisions:</p> <ul style="list-style-type: none"> • producers of online information content – be they organizations or individuals – should not produce, copy, publish illegal information that violates the principles of the Constitution, incites ethnic hatred or discrimination, undermines the national religion policies, or insults or defames anyone and causes damage to the reputation, privacy or other legitimate rights of such person (Art. 6); • producers of online information content shall take measures to prevent and prohibit the production, reproduction and publication of information that incites discrimination against any group or region (Art. 7); • Internet information content service platforms (e.g., TikTok, Weibo, etc.) should not disseminate information regulated under Art. 6, and should prevent and prohibit the dissemination of information regulated under Art.7, and shall take measures immediately once such information is identified and report to the supervisory authorities (Art. 10); • Internet information content service platforms should set up a convenient complaint reporting portal in a prominent position, publish the complaint reporting method, receive and handle public complaints in a timely manner and provide feedback for or results of complaints (Art. 16). <p>Art. 2 of both the Online News Administration Provisions and Internet Ecology Provisions state that they apply to activities within China's territory. Neither instrument contains an (express) provision that would enable it to have extraterritorial effect.</p>
<p>3.5 Is the test for hate speech used by any Social Media / Press / Online regulatory bodies the same as the criminal law definitions?</p>	<p>As stated above in 2.1, there is currently no legal definition of hate speech.</p> <p>Comparing the illegal content regulated under Criminal Law in 3.2 and by CAC in 3.4, the scope of regulated content by CAC is broader than that under the Criminal Law.</p>
<p>3.6 Do public and private institutions have to comply with the same duties to avoid hate speech?</p>	<p>Yes. Moreover, certain government organs are also under duties to regulate, supervise or enforce against illegal or harmful information.</p>

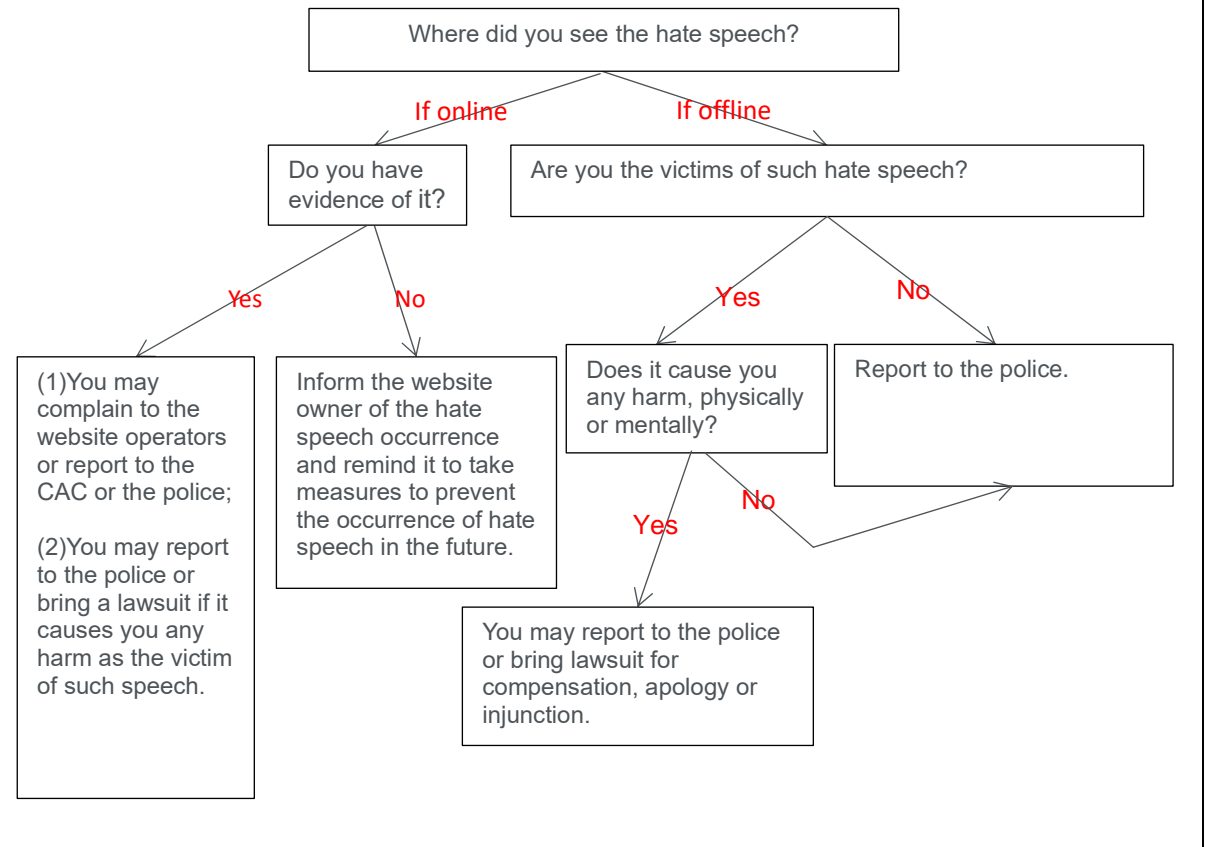
<p>3.7 If I am accused of hate speech, what is my recourse?</p>	<p>If the accused determines an allegation of hate speech to be false or baseless:</p> <ul style="list-style-type: none"> • If the allegation was made in civil litigation procedure, you may bring a counter claim for malicious litigation; • If the allegation was part of a criminal investigation or prosecution, and you were detained or any damage was caused to you due to that (false) allegation, you may also file an administrative lawsuit against the enforcement agency; • If is the allegation was made by administrative decision, you may sue the enforcement agency under the administrative litigation procedure. <p>If the allegation has some merit and was made in litigation, such as a civil suit or criminal prosecution, you may rebut the claim by proving the relevant content or act was not serious, that the damage was not caused in serious circumstances or that the damage did not constitute a violation of specific legal rights.</p>
<p>3.8 If hate speech is occurring at my event/on my platform/in my place of work, what should I do about it?</p>	<p>As the operator of an online platform, if you find any information transmitted on your platform that clearly: (1) violates the general principles of the Constitution, (2) incites ethnic hatred, ethnic discrimination, or discrimination against any group or region, (3) undermines the national religion policies, (4) insults or defames anyone and causes damages to the reputation, privacy or other legitimate rights of such person, or (5) contains any contents that is prohibited by laws or regulations, you shall immediately stop the transmission, keep the relevant records, and report to the relevant state organs, such as the CAC.</p> <p>If you are the organizer of an event, you have a duty of care to protect the safety of the participants in your event under the <i>Torts Law of China</i>. If hate speech occurs at your event, the <i>Torts Law of China</i> requires that you shall try to mitigate any negative impact or conflicts caused by such speech to avoid violence occurring at your event. Moreover, depending on the type of the event, there might be an additional obligation to supervise and report improper content or speech at the event. For example, under the <i>Regulation on the Administration of Commercial Performances</i>, performance venue operators and performance organizers shall immediately stop the performance and report to the competent cultural department and the</p>

police, if they find that the performance opposes to the principles of the Constitution, incites ethnic hatred, ethnic discrimination, undermines the religion policies, insults or defames others, or violates the legitimate rights of others.

Art. 12 of the *Labor Law of China* stipulates that employees shall not be discriminated against on the basis of ethnicity, race, sex, or religious belief. Generally employers will implement such policies in the employee handbook, if an employee violates such code in a serious manner, the employer may terminate the employment contract with him/her. Therefore, if hate speech appears to discriminate anyone based on ethnicity, race, sex, or religious belief, as an employee you may report to the HR department of the company. If such hate speech is delivered by the employer, you may also report to the local labor protection authorities. Under Art. 9 of the *Regulation on Labor Protection Supervision*, employees have the right to complain to the administrative department of labor protection if they believe their legitimate rights and interests were violated.

3.9 If I have identified hate speech (online, in the media, etc.) what practical steps should I take?

(For this question, we envision a “filtering” or “journey tree” (flow chart) where the first question is, “where did you see the hate speech” → if online then go here, if offline, then go here → do you have evidence of it (screenshot/link to the post, recording of the speech, etc.) → then what, etc.)



<p>3.10 Please provide recent (within 1 year) of examples of hate speech reported in the media, and if possible, establish how was this addressed, e.g. by legal remedies or non-legal remedies.</p> <p><i>(For this question, we are looking for case studies.)</i></p>	<ul style="list-style-type: none"> • On January 30, 2020, Zhuanghe Municipal Public Security Bureau received a report that a citizen posted hate speech against the people of Wuhan. The police immediately found the citizen Mr. Wang and demanded him to delete the post before it was forwarded. Mr. Wang was given an administrative punishment for five days in detention for insulting others on Wechat, a Chinese social medial platform. • On February 28, 2020, actress Zhao Liying won two cases in the First Instance Court, claiming damage to personal reputation. The Court held that the defendants, Gao Long and Yang Hong, have damaged Zhao Liying's reputation by posting publicly insulting and making defamatory statements against Zhao Liying. The Court ordered the defendants to apologize publicly and compensate Zhao Liying for damages and the cost of litigation.
<p>3.11 Please provide examples of cases related to hate speech / incitement of violence.</p>	<ul style="list-style-type: none"> • In January 2016, Mr. Zhu publicly posted insulting and discriminatory comments against Muslims and Islamists in a QQ group (group number: 478xxx70), an online chat group. The Court considered that such comments objectively hurt the feelings of the Muslim groups and undermined ethnic equality and ethnic unity, which violated Art. 249 of the Criminal Law and constituted the crime of inciting ethnic hatred and discrimination. • In December 2015, Li Tong set up a QQ group named "GDI Armor Research Department" (group number: 530705200), and attracted more than eighty people to join such QQ group. In this group, Li Tong posted news of Muslims committing crimes in China and hate speech against Muslims many times, and discussed how to attack black people and Muslims, inciting the ethnic hatred among the group members. Li Tong also purchased controlled knives and artificial guns, inciting group members to prepare for attacks on Muslims, while raising money among the group members to establish an anti-black ethnicity and anti-Muslim organization. In 2018, the Court made the decision that Li Tong incited ethnic hatred and discrimination via Internet. The circumstances were serious and Li Tong should be punished according to law. • In June 2019, Duan Ming posted a short video of Duan Xinlu with negative comments on his WeChat Moments, an online platform to share information or post with friends, and asked others to forward it. Duan Xinlu sued Duan Ming for reputational damage.

	<p>However, the Court held that WeChat Moment is a private social platform limited to a specific group of people. Duan Ming's behavior did not cause serious damage to Duan Xinlu's reputation, and Duan Xinlu failed to provide sufficient evidence to prove that his reputation was severely damaged. Thus, the court ruled that the damage of Duan Xinlu's reputation cannot be established.</p>
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1. International and Regional Frameworks (NOTE: this section <u>only</u> to be filled up by the teams working on international and EU law)	
a. What are the international law standards on hate speech with reference to the UN Conventions, General Comments and the decisions of the Thematic Mechanisms / Special Rapporteur reports?	N/A.
b. Are there any relevant decisions on hate speech arising from the European Convention of Human Rights, the American Convention of Human Rights and the African Convention of Human Rights?	N/A (although note that Southeast Asia has a non-legally binding human rights framework – the ASEAN Human Rights Declaration; in December 2019, the ASEAN Intergovernmental Commission on Human Rights organised a consultation on Article 22 of that Declaration concerning the freedom of religion and belief).
2. Definition of hate speech	
a. What is the definition of hate speech in your country?	There is no single definition of "hate speech" in Singapore, as a matter of law or otherwise. However, our view is that the term tends to be understood in a relatively expansive manner. For example, Lexico, the Oxford University Press' online dictionary, defines the term as "[a]busive or threatening speech or writing that expresses prejudice against a particular group, especially on the basis of race, religion, or sexual orientation". ¹

¹ https://www.lexico.com/definition/hate_speech



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	<p>The United Nations Secretary-General, meanwhile, stated in 2019 that it referred to "any kind of communication in speech, writing or behaviour, that attacks or uses pejorative or discriminatory language with reference to a person or a group on the basis of who they are, in other words, based on their religion, ethnicity, nationality, race, colour, descent, gender or other identity factor".²</p> <p>Singapore's current Minister for Law and Home Affairs defined it, during a speech in 2019, as "all forms of expression which spread, incite, promote, or justify racial hatred, xenophobia, or other forms of hatred based on intolerance".³ In making that statement, the Minister drew from a recommendation that the Council of Europe's Committee of Ministers made to Member States in 1997.⁴ However, Singapore's approach to hate speech – and the related concept of free speech – has more often than not diverged from the "West". In the very same speech, the Minister went on to state that Singapore is "told regularly that [it] should be more like the US and the UK, which set the gold standard for free speech. But their experiences suggest that serious consequences can follow when you are lax about hate speech".</p> <p>In the main, Singaporean law, policy, and discourse on legitimate speech has been shaped by the dominant narrative of the country's past and present, one that emphasises its diversity and the apparent ease with which it can turn into discord unless a stringent approach is adopted. No less an authority than the <i>Constitution</i> provides that Singaporeans' freedom of speech and expression is subject to:</p>
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² See further, <https://www.un.org/en/genocideprevention/documents/UN%20Strategy%20and%20Plan%20of%20Action%20on%20Hate%20Speech%2018%20June%20SYNOPSIS.pdf>.
³ See further, <https://www.mha.gov.sg/newsroom/in-parliament/parliamentary-speeches/news/ministerial-statement-on-restricting-hate-speech-to-maintain-racial-and-religious-harmony-in-singapore-speech-by-mr-k-shanmugam-minister-for-home-affairs-and-minister-for-law>.
⁴ See further, <https://rm.coe.int/1680505d5b>.



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	<p>"[...] such restrictions as [Parliament] considers necessary or expedient in the interest of the security of Singapore or any part thereof, friendly relations with other countries, public order or morality and restrictions designed to protect the privileges of Parliament or to provide against contempt of court, defamation or incitement to any offence" (<i>articles 14(1)(a) and (2)(a)</i>).</p> <p>What emerges is a country that is both commended for its order and criticised on civil rights. The legal provisions discussed below and, indeed, our research as a whole reflects this dichotomy, the strong upper hand that "order" holds in it, and the small but significant disruptions that appear from time-to-time that give the country pause for thought.</p> <p>First, there are laws that focus on hate speech as traditionally understood, being speech the law views as problematic or potentially problematic due to the way in which it relates to themes such as race and religion. The most relevant in terms of subject matter and / or usage (and, thus, for the purposes of this section 2) are as follows:</p> <ol style="list-style-type: none">1. <i>Section 298 of the Penal Code</i> provides that "[w]hoever, with deliberate intention of wounding the religious or racial feelings of any person, utters any word or makes any sound in the hearing of that person, or makes any gesture in the sight of that person, or places any object in the sight of that person, or causes any matter however represented to be seen or heard by that person" commits an offence.2. <i>Section 298A(a) of the Penal Code</i> provides that a person commits an offence where he, "by words, either spoken or written, or by signs or by visible representation or otherwise, knowingly promotes or attempts to promote, on grounds of religion or race, disharmony or feelings of enmity, hatred or ill-will between religious or racial groups". A person will also commit an offence, under <i>section 298A(b)</i> by committing "any act which he knows is
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	<p>prejudicial to the maintenance of harmony between different religious or racial groups and which disturbs or is likely to disturb the public tranquillity".</p> <ol style="list-style-type: none"> 3. <i>Section 267C of the Penal Code</i> provides that a person commits an offence if he "makes, prints, possesses, posts, distributes or has under his control any document", or "makes or communicates any electronic record", "containing any incitement to violence or counselling disobedience to the law or to any lawful order of a public servant or likely to lead to any breach of the peace". 4. <i>Section 4(1)(b) of the Seditious Act</i>, a piece of legislation from the colonial era, makes it an offence to "utter any seditious words". In this context, <i>sections 2 and 3(1)(e)</i> provide that the term "seditious words" refers to words having a "seditious tendency", including the "tendency to promote feelings of ill-will and hostility between different races or classes of the population of Singapore". 5. The <i>Maintenance of Religious Harmony Act</i> is a framework that enables the government to issue restraining orders against persons whom it deems have committed, or are attempting to commit, certain acts. These acts include the act of "causing feelings of enmity, hatred, ill-will or hostility between different religious groups" (see <i>sections 8 and 9</i>, in particular). Orders cannot be judicially reviewed (<i>section 18</i>). <p>Second, Singapore has laws that do not concern hate speech as traditionally understood, but which can significantly impact the contours of legitimate speech generally. In brief, they include defamation law (<i>section 499 of the Penal Code</i> and its civil counterparts), the law against uttering obscene words in public (<i>section 294 of the Penal Code</i>), the <i>Protection from Harassment Act</i> (the "PHA"), and the "fake news"-centric <i>Protection from Online Falsehoods and Manipulation Act</i> (the "POFMA"). The <i>POFMA</i>, in particular, has been invoked with remarkable frequency ever since it came into force in October 2019. We discuss some of these laws – and the controversies that have arisen from them – in the sections below.</p>
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<p>b. Does the legal definition of hate speech require threats of violence / incitement to violence?</p>	<p>No – the bar is considerably lower than that.</p> <p><i>Sections 298 and 298A of the Penal Code</i> do not require a specific threat of, or incitement to, violence. The two provisions focus on the alleged offender's intent. Provided that such intent exists, a wide range of speech could suffice, from a religious slur to a provocative critique of race relations in Singapore.</p> <p>Similarly, <i>section 267C of the Penal Code</i> does not require a specific threat or incitement. The provision is wide enough to capture acts prior to either – a person may trigger the offence if he makes, prints, possesses, or has under his control a document containing threats or incitements, or if he makes an electronic record containing such content.</p> <p><i>Section 4(1)(b) of the Sedition Act</i> offence also does not require a specific threat or incitement. It is enough that the speaker utters "seditious words", being words that tend to promote ill-feeling between races or classes. As per <i>section 3(3)</i>, the speaker's / person's intention is irrelevant.</p> <p>Meanwhile, the <i>Maintenance of Religious Harmony Act</i> enables the government to issue restraining orders where it deems a speaker is attempting to cause ill-feeling between religious groups. That is to say, the law licenses intervention where the speaker has yet to cause such ill-feeling.</p> <p>See further, the examples at sections 3(j) and (k) below.</p>
<p>c. Would the definition cover speech and behaviour which incites hatred (not necessarily violence) towards a group?</p>	<p>Yes. The definitions mentioned above are sufficiently wide to cover speech and behaviour that incites hatred towards a group without inciting violence (see further, the examples at sections 3(j) and (k) below).</p>



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<p>d. Does hate speech cover speech that draws on hateful, hostile, or supremacist beliefs directed at a group that is threatened and likely to cause them harm?</p>	<p>Yes. The definitions discussed previously cover these forms of speech.</p>
<p>e. Does the definition permit religious beliefs and speech which discriminates against particular communities – are there any limitations to religious beliefs and speech which discriminated against particular groups?</p>	<p>The definitions do not constrain the substance of religious beliefs. Rather, they constrain the expression, by speech or otherwise, of those beliefs where it could have adverse outcomes. For example, the <i>Maintenance of Religious Harmony Act</i> licenses the government to issue orders against those whom it deems to have committed, or attempted to commit, acts that cause ill-feeling between religious groups. Accordingly, the legislation provides grounds to act against a person who preaches in a discriminatory manner. However, it would not affect a person who makes no outward expression of his (discriminatory) beliefs.</p>
<p>3. Remedies and recourse for hate speech</p>	
<p>a. If I am the victim of hate speech, what is my recourse?</p>	<p>Singaporean law provides for various possible avenues of recourse in terms of both criminal and civil law – see further, sections 3(b) and (c) below. However, due to the limited number of hate speech cases the mainstream press reports, it is difficult for us to determine the consistency and regularity with which the following criminal and civil legal remedies for hate speech are enforced.</p>
<p>b. What are the criminal legal remedies for hate speech?</p>	<p>Persons can report incidents of hate crime to the police for investigation. If the police deem an incident a chargeable offence, the alleged perpetrator will be arrested. The attorney-general will then determine whether to exercise its prosecutorial discretion to pursue the case in court. A list of key offences follows.</p>



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	<p>1. <u>Penal Code</u></p> <p>Where someone deliberately intend to wound the religious or racial feelings of any person, utters any word or makes any sound in the hearing of that person, or makes any gesture in the sight of that person, or places any object in the sight of that person, or causes any matter however represented to be seen or heard by that person, <i>section 298 of the Penal Code</i> provides that he shall be punished with imprisonment for a term which may extend to three years, or a fine, or both.</p> <p>A person may be charged under <i>section 298A of the Penal Code</i> if he (a) by words (either spoken or written), signs of visible representations, or otherwise, promotes, on grounds of religion or race, disharmony or feelings of enmity, hatred or ill-will between different religious or racial groups; or (b) commits any act which he knows is prejudicial to the maintenance of harmony between different religious or racial groups and which disturbs or is likely to disturb the public tranquillity. If convicted, the offender shall be punished with imprisonment for a term which may extend to three years, or a fine, or both.</p> <p>A person commits an offence under <i>section 267C of the Penal Code</i> if he (a) makes, prints, possesses, posts, distributes or has under his control any document; or (b) makes or communicates any electronic record, containing any incitement to violence or counselling disobedience to the law or to any lawful order of a public servant or likely to lead to any breach of the peace. The offence is punishable by imprisonment for a term of up to five years, a fine, or both.</p> <p><i>Section 294 of the Penal Code</i> makes it an offence for a person to utter any obscene words in or near any public place to the annoyance of others. The offence is punishable by imprisonment for up to three months, a fine, or both.</p>
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	<p>2. <u>Sedition Act</u></p> <p>Under <i>section 4(1) of the Sedition Act</i>, a person who utters any "seditious words" can be punished with a fine not exceeding \$5,000, to imprisonment for a term not exceeding three years, or both. The imprisonment term increases to a maximum of five years for repeat offences.</p> <p>For completeness, <i>section 4(1) of the Sedition Act</i> also makes it an offence for a person to: (a) do or attempts to do, or make any preparation to do, or conspire with any person to do, any act which has or which would, if done, have a seditious tendency, (b) print, publish, sell, offer for sale, distribute or reproduce any seditious publication, or (c) import any seditious publication.</p> <p>As discussed above at section 2(a), the term "seditious words" refers to words having a "seditious tendency", including the "tendency to promote feelings of ill-will and hostility between different races or classes of the population of Singapore". Other such tendencies are: (a) the tendency to bring into hatred or contempt or to excite disaffection against the Government; (b) the tendency to excite the citizens of Singapore or the residents in Singapore to attempt to procure in Singapore, the alteration, otherwise than by lawful means, of any matter as by law established; (c) the tendency to bring into hatred or contempt or to excite disaffection against the administration of justice in Singapore; and (d) the tendency to raise discontent or disaffection amongst the citizens of Singapore or the residents in Singapore.</p> <p>3. <u>Maintenance of Religious Harmony Act</u></p> <p><i>Section 8 of the Maintenance of Religious Harmony Act</i> allows the government to issue a restraining order against a religious figure who: (a) causes feelings of enmity, hatred, ill-will or hostility between different religious groups; (b) carries out activities to promote a political cause, or a cause of any political party while, or under the guise of, propagating or practising any religious belief; (c) carries out subversive activities under the guise of propagating or practising</p>
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	<p>any religious belief; or (d) excites disaffection against the President or the Government while, or under the guise of, propagating or practising any religious belief.</p> <p>More generally, <i>section 9 of the Maintenance of Religious Harmony Act</i> allows the government to make a restraining order against any person who incites, instigates, or encourages any religious group or religious institution or any religious figure to commit the acts outlined in the preceding paragraphs. In addition, the government may also issue a restraining order against any person who has committed or is attempting to commit those acts him- or herself.</p> <p>Any person who breaches a restraining order shall be liable to a fine not exceeding \$10,000 or imprisonment for a term not exceeding two years, or both. These punishments increase to SG\$20,000 and three years, respectively, for repeat offences.</p> <p>4. <u>Protection from Harassment Act</u></p> <p>The <i>PHA</i> contains various offences that are relevant to hate speech, although they do not specifically discuss thematic issues such as race or religion. In particular, <i>section 3(1)</i> provides that an individual or entity must not, with intent to cause harassment, alarm, or distress to another person: (a) use any threatening, abusive, or insulting words or behaviour; or (b) make any communication of that nature, which causes that or any other person harassment, alarm or distress.</p> <p>On a related note, <i>section 3(2)</i> provides that an individual or entity must not: (a) use any threatening, abusive, or insulting words or behaviour; or (b) make any communication of that nature, which is heard, seen, or otherwise perceived by any person likely to be caused harassment, alarm, or distress.</p>
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	<p>Those convicted of the <i>section 3(1)</i> offence face a maximum punishment of up to SG\$5,000, imprisonment of up to six months, or both. Meanwhile, those convicted of the <i>section 3(2)</i> offence can be fined up to SG\$5,000. There are enhanced penalties for repeat offenders.</p> <p>5. <u>Criminal defamation</u></p> <p>A person who, by words, signs, or visible representations, makes or publishes any imputation concerning another person, broadly intending to harm the reputation of that other person, is said to defame him under <i>section 499 of the Penal Code</i>. Such an act is punishable by imprisonment of up to two years, a fine, or both.</p>
<p>c. Are there civil legal remedies available – compensation / damages – for hate speech?</p>	<p>The following are the main civil remedies for hate speech under Singaporean law.</p> <p>1. <u>Protection from Harassment Act</u></p> <p><i>Section 11 of the PHA</i> provides that a victim under certain sections of the legislation, including the above-mentioned <i>section 3</i>, can bring civil proceedings against the alleged offender. If the court is satisfied on the balance of probabilities that the alleged offender contravened the relevant section(s) as alleged by the victim, it may award such damages as it thinks just and equitable having regard to all the circumstances of the case. <i>Section 11</i> is worded such that a victim may prevail in a civil case despite the failure of the corresponding criminal case. The <i>PHA</i> also enables a victim to seek various orders from the court to limit the spread of the communication in question (see further, section 3(d) below).</p> <p>2. <u>Civil Defamation</u></p> <p>A statement is defamatory if it lowers the addressee in the estimation of right-thinking members of society, causes the addressee to be shunned or avoided, or exposes the addressee to hatred,</p>



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	<p>contempt or ridicule. In such cases, the addressee may bring a civil suit against the statement-maker. The court can award the addressee monetary damages taking into account factors such as the gravity of the statement and the extent of its publication. There are two strands to defamation, which is a common law tort (modified by the <i>Defamation Act</i>) – libel, for words in permanent form, and slander, for words in transient form. Libel is actionable <i>per se</i> without proof of special damage, while slander would typically require such proof.</p>
<p>d. Are there regulatory frameworks governing the online news media which allow individuals to complain?</p>	<p>There are several regulatory frameworks governing online news and social media. Although they tend to focus on different issues, they regularly overlap. The most significant of them are set out below.</p> <ol style="list-style-type: none"> 1. The <i>Broadcasting Act</i> and its subsidiary legislation contain the main regulatory framework governing online news media. Under the <i>Broadcasting Act</i>, no person may provide a "licensable broadcasting service" in or from Singapore without a licence granted by the Info-communications Media Development Authority ("IMDA") – a government agency. Licensable broadcasting services include "computer on-line services", such as online news media services. <ol style="list-style-type: none"> a. Most of these services are subject to the <i>Broadcasting (Class Licence) Notification</i> (the "Class Licence"), which applies automatically. The <i>Class Licence</i> requires licensees to use their "best efforts" to: <ol style="list-style-type: none"> i. Ensure that their services comply with the IMDA's <i>Internet Code of Practice</i>. The <i>Internet Code of Practice</i>, in turn, requires licensees to use their best efforts to ensure that "prohibited material is not broadcast via the Internet to users in Singapore". Such material is "material that is objectionable on the grounds of public interest, public morality, public order, public security,



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national harmony or is otherwise prohibited by applicable Singapore laws". Factors to be considered in determining whether material is prohibited include whether it "glorifies, incites or endorses ethnic, racial or religious hatred, strife or intolerance" (notably, another is whether it "advocates homosexuality or lesbianism").

- ii. Ensure that their services are not used for any purpose, and do not contain any programme, that "is against the public interest, public order or national harmony" or "offends against good taste or decency".

Licensees are required to remove, or prohibit the broadcast of, programmes that do not fulfil these conditions, as instructed by the IMDA. Similar obligations apply to persons who provide websites on which others are invited to contribute or post programmes of their own. Moreover, certain providers of online news media services that engage in the "propagation, promotion or discussion of political or religious issues relating to Singapore" must register with the IMDA.

- b. The *Class Licence* enables the IMDA to exclude providers of online news media services that exceed a prescribed level of popularity and broadcast Singapore-related news programmes on a regular basis. As a result, these service providers must apply to the IMDA for their own licences if they wish to operate in Singapore. We have not been able to obtain a copy of these licences or the identities of the current licensees. However, a 2013 government publication indicates that the licences are stricter than the *Class Licence*, requiring their licensees to remove content that is in breach of content standards within 24 hours (whereas the *Class Licence* and *Internet Code of Practice* do not contain a time limit for takedown) and to post a performance bond of SG\$50,000 (approximately US\$35,000). The publication also stated that there were 10 licensees, including all major providers of



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	<p>online news media services on Singapore (for example, channelnewsasia.com, sg.news.yahoo.com, and straitstimes.com).⁵</p> <ol style="list-style-type: none"><li data-bbox="898 533 2078 788">2. The <i>POFMA</i> contains a regulatory framework that focuses on "fake news" and social media. It enables the government to issue correction, takedown, and / or blocking directions to internet users and intermediaries in respect of content that contains or comprises "false statements of fact". The government must also be "of the opinion that it is in the public interest" to issue a given direction, with the legislation stating that "it is in the public interest to do anything if the doing of that thing is necessary or expedient – [...] (e) to prevent incitement of feelings of enmity, hatred or ill-will between different groups of persons". The directions are backed by various sanctions, including criminal offences.<li data-bbox="898 823 2078 1043">3. The <i>PHA</i> contains a further regulatory framework concerning "fake news" and social media. However, in this case, it is the subjects of "false statements of fact" who must apply to the court for correction, takedown, and / or blocking orders. The court will issue an order where it is satisfied that the relevant statement was made and it is just and equitable to make the order. The <i>PHA</i> also enables the court to make interim orders based on <i>prima facie</i> evidence. The intentional breach of an order is a contempt of court. The legislation does not discuss thematic issues, such as race and religion.<li data-bbox="898 1078 2078 1267">4. The above-mentioned <i>Maintenance of Religious Harmony Act</i> is of general application and does not focus on online and social media <i>per se</i>. However, we include it here for completeness. The framework enables the government to issue restraining orders against persons whom it deems have caused, or are attempting to cause, feelings of enmity, hatred, ill-will or hostility between different religious groups. Non-compliance with a restraining order is an offence.
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⁵ Most of these service providers are State-linked – <https://www.gov.sg/article/what-is-the-licensing-framework-for-online-news-sites-all-about>.



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	<p>These frameworks do not spell out specific avenues for individuals to complain. However, individuals can make complaints to the relevant authority, such as the IMDA (for the purposes of the <i>Broadcasting Act</i>)⁶, the POFMA Office (for the purposes of the <i>POFMA</i>), or the police (for the purposes of the <i>PHA</i> and <i>Maintenance of Religious Harmony Act</i>). The authority will then decide whether to use its regulatory powers.</p>
<p>e. Is the test for hate speech used by any Social Media / Press / Online regulatory bodies the same as the criminal law definitions?</p>	<p>No. There are various tests in both the criminal and regulatory contexts. However, on the whole, and as might be expected, tests in the former tend to be narrower than in the latter. In particular, we can see this difference in terms of:</p> <ol style="list-style-type: none"> 1. Intention required – the criminal law tests (i.e., those under <i>sections 298 and 298(A) of the Penal Code</i>, and the "fake news"-oriented <i>section 499 of the Penal Code</i> and <i>section 14D of the Miscellaneous Offences (Public Order and Nuisance) Act</i>) require the accused to have had the requisite state of mind in committing it. In contrast, intention is irrelevant under the regulatory tests (i.e., those in the <i>Broadcasting Act</i> and its subsidiary legislation, the <i>POFMA</i>, the <i>PHA</i>, and the <i>Maintenance of Religious Harmony Act</i>). 2. Standard of proof – Singaporean criminal law generally requires the prosecution to prove its case beyond a reasonable doubt. No such standard is applicable to regulatory bodies when determining whether their own tests have been made out. If their determinations are subsequently challenged in court by way of judicial review, the case will turn on the balance of probabilities (a lower standard than in criminal law).

⁶ As per the Frequently Asked Questions section of the agencies website: "[i]f you come across a website with offensive material, you can bring it to the attention of the Info-comm Media Development Authority (IMDA), the regulatory authority for Internet content" (<https://va.ecitizen.gov.sg/cfp/customerPages/IMDA/explorefaq.aspx>).



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	<p>However, as highlighted previously, both the criminal and regulatory tests are capable of covering a very wide range of speech.</p>
<p>f. Do public and private institutions have to comply with the same duties to avoid hate speech?</p>	<p>The legislation discussed above generally applies to private institutions. However, it is not clear whether they apply to public (i.e., government) institutions. Some of the legislation, such as the <i>Broadcasting Act</i>, <i>PHA</i>, and <i>POFMA</i>, enables the government to exempt persons from their application. We have yet to identify any such exemptions.</p> <p>There are occasions when legislation has been imposed on private institutions that have ties with public institutions. For example, the websites of Singapore's major newspapers must abide by the <i>Broadcasting Act's</i> licensing regime despite the government retaining significant influence over their operations. That being said, such legislation appears to serve more as a means for government to control these institutions than as a means of keeping government itself in check.</p> <p>Practically speaking, enforcement against public institutions is rare. Members of civil society also regularly point out questionable statements from government or government-affiliated persons that go largely unpunished, such as a comment in 2016 by a ruling party Member of Parliament that labelled groups of migrant workers "walking time bombs and public disorder incidents waiting to happen".⁷</p> <p>In contrast, journalist Kirsten Han has highlighted how she regularly receives hate speech for her writing on contentious social issues in Singapore. The abuse, which refers to rape, torture, and</p>

⁷ As the remark was made in Parliament, it would likely have been covered by parliamentary privilege. However, it is notable that the incident was not investigated by Parliament's Committee of Privileges (the body designed to investigate such incidents), The Member of Parliament in question, Denise Phua, subsequently apologised – <https://www.todayonline.com/singapore/mp-denise-phua-apologises-describing-large-crowds-little-india-walking-time-bombs>.



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	execution, has not been subject to any enforcement action. ⁸ Quite the opposite, Han herself has been subject to <i>POFMA</i> correction direction for her reportage on government-related issues. ⁹
g. If I am accused of hate speech, what is my recourse?	The defences relating to the provisions mentioned in sections 3(b)-(d) above are limited. For example, <i>section 3 of the PHA</i> is one of the few provisions that contain a specific defence (of reasonableness on the alleged offender's part). Accordingly, those accused will need to rely on legal arguments to narrow the scope of liability under what are often-fairly widely drafted laws and / or factual arguments in light of the applicable burden of proof. Alleged statement-makers should seek advice from a lawyer on the appropriate courses of action. If such accusations are made public but ultimately deemed false, he could consider filing a defamation suit or civil claim under the <i>PHA</i> in response.
h. If hate speech is occurring at my event/on my platform/in my place of work, what should I do about it?	Bearing in mind the different ways in which hate speech is defined, it is hard to prescribe a one-size-fits-all response. However, in the workplace (including workplace platforms and events), it is generally open to a victim or witness of hate speech to inform his human resources department. In the event of inaction by that department or where those involved, potentially including the department, feel escalation is warranted, they can inform the organisations and authorities set out in section 3(i) below.

⁸ See further, <https://wethecitizens.substack.com/p/-dealing-with-trolls-in-which-i-dish>.

⁹ See further, <https://www.pofmaoffice.gov.sg/documents/media-releases/2020/January/MHA%20CD%20Statement.pdf>. On this occasion, the government invoked *POFMA* to demand that a Malaysian human rights advocacy group "correct" its vivid allegations about the Singapore Prison Service's execution protocols. The allegations had been made on the basis of unnamed whistleblowers' reports. The advocacy group did not acquiesce, leading to its website being blocked in Singapore. The group has initiated legal proceedings in Malaysia against the Singaporean minister responsible. The government also invoked *POFMA* to demand "corrections" from Singapore-based journalists who reported on the story, including Han. The fact that journalists had sought comment from the Singapore Prison Service prior to the publications of their articles, and that the Singapore Prison Service had not replied, was no protection.



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<p>i. If I have identified hate speech (online, in the media, etc.) what practical steps should I take?</p> <p><i>(For this question, we envision a “filtering” or “journey tree” (flow chart) where the first question is, “where did you see the hate speech” → if online then go here, if offline, then go here → do you have evidence of it (screenshot/link to the post, recording of the speech, etc.) → then what, etc.)</i></p>	<p>Again, there is no one-size-fits-all response to hate speech. However, victims and witnesses of hate speech should consider the following steps:</p> <ol style="list-style-type: none">1. Make a copy of the relevant statement where possible. This step is likely to be applicable where the statement was made in writing or online, in which case you should be able to obtain a photograph, screenshot, and / or web address of the statement. It may also be possible to obtain a recording of an oral statement. However, avoid broadcasting your copy of the statement as that could constitute hate speech in and of itself.2. Consider the context in which the statement was made:<ol style="list-style-type: none">a. If the statement was made in the workplace, your human resources department should likely be your first point of recourse.b. If the statement was made in a setting other than work, your likely point(s) of recourse will be as follows:<ol style="list-style-type: none">i. If the statement was made on a social media platform, such as Facebook¹⁰, Twitter¹¹, or Instagram¹², the platform will typically have its own means of reporting hate speech. The platform will also typically have standards regarding what it deems to be acceptable speech, which apply to its users (for example, Facebook has its "Community Standards; Twitter has its "Twitter Rules"; and Instagram has its "Community Guidelines").ii. If the statement was made elsewhere online or via other forms of telecommunications, such as SMS or MMS, you can contact the IMDA. Its
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¹⁰ See further, <https://en-gb.facebook.com/help/reportlinks/>.

¹¹ See further, <https://help.twitter.com/en/safety-and-security/report-abusive-behavior>.

¹² See further, <https://help.instagram.com/192435014247952>.



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	<p>website provides contact details, including an email address through which you can refer hate speech to the IMDA.¹³</p> <p>iii. If the statement appears to be a false statement of fact that could have wider public consequences, you can contact the POFMA Office. Its website provides contact details, including an email address through which you can refer such statements to the POFMA Office.¹⁴</p> <p>iv. In general, you can make a police report setting out the details of the incident along with any supporting evidence you may have.</p> <p>v. The government-affiliated Media Literacy Council contains contact details of specialised organisations that victims of hate speech can contact for wider assistance. These organisations include the Legal Aid Bureau, to AWARE (advice for women), and Help123 (a hotline for youth cyber wellness issues).¹⁵</p>
<p>j. Please provide recent (within 1 year) of examples of hate speech reported in the media, and if possible, establish how was this addressed, e.g. by legal remedies or non-legal remedies.</p>	<p>Recent examples of hate speech reported in the media include the following:</p> <p>1. In November 2020, following terrorist attacks in France, the Singaporean government announced that it had increased its efforts to fight radicalism. In particular, it announced that it had investigated 37 locals and foreigners, and repatriated 16 foreigners repatriated on security grounds.¹⁶</p>

¹³ See further, <https://www.imda.gov.sg/Who-We-Are/contact-us>. See also, <https://va.ecitizen.gov.sg/cfp/customerPages/IMDA/explorefaq.aspx> (Home → Tips and Guides for Consumer → Internet and Broadband Services → Offensive Content; and Home → Tips and Guides for Consumer → Unsolicited Communications → Protection Against Nuisance / Offensive Content).

¹⁴ See further, <https://www.pofmaoffice.gov.sg/contact-us/>.

¹⁵ See further, <https://www.betterinternet.sg/Resources/Get-Help>.

¹⁶ See further, <https://www.straitstimes.com/singapore/calm-credible-voices-needed-to-drown-out-hate-speech-says-shanmugam>



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(For this question, we are looking for case studies.)

The 37 persons had caught the authorities' attention for their suspected radical inclinations and / or comments that incited violence or stoked communal unrest – for example, many had supported the beheading of French teacher Samuel Paty and subsequent terrorist attacks in Europe, sought to incite violence against France and its President in retaliation for their defence of Charlie Hebdo, and made derogatory remarks against Muslims.¹⁷

The government stated that, while freedom of speech was quite absolute in France, including the "right to blaspheme", Singapore adopted the position that the right to speak freely and the duty to act responsibly had to go together. It added that it treated all religions neutrally and would not allow any religion to be attacked or insulted.

2. In June 2020, a student at Temasek Polytechnic made several Instagram posts that expressed delight at having had a dream about killing Muslims and made derogatory remarks about a rape victim.¹⁸ Temasek Polytechnic has commenced an investigation into the issue, while the police have acted on reports by commencing an investigation of its own, arresting the student, and seizing his electronic devices. The police also released a statement stating that it "will not condone any acts that threaten racial and religious harmony in Singapore", and that "[a]ny person who makes remarks that can cause ill-will and hostility between the different races and religions will be dealt with swiftly and firmly".¹⁹ It is unclear whether the student's remarks about the rape victim are also under investigation.

¹⁷ See further, <https://www.straitstimes.com/singapore/37-people-investigated-16-foreigners-deported-in-wake-of-recent-terror-attacks-abroad-mha>

¹⁸ See further, <https://coconuts.co/singapore/news/temasek-polytechnic-investigates-student-over-instagram-hate-speech/>.

¹⁹ See further, <https://www.channelnewsasia.com/news/singapore/youth-arrested-for-inciting-violence-posting-racist-comments-12816724>.



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	<ol style="list-style-type: none">3. In April 2020, during the COVID-19 lockdown period, the government issued a correction direction regarding a Facebook post stating that police officers had fined an e-delivery service's rider SG\$300 for wearing a cloth as a mask and / or for illegally parking. The government clarified that the post was false (the police in fact rendering assistance to the delivery rider who had approached them for help). The government stated that such allegations are "highly irresponsible and hurt public confidence and trust in the Police. [...] Let us stand united, instead of sowing division and discord". The incident is indicative of Singapore's expansive approach towards hate speech, which appears to include disinformation against the government.²⁰4. Returning to a more traditional conception of hate speech, the police in March 2020 investigated a Facebook post on a page titled "NUS Atheist Society" suggesting that the Bible and Quran be used in the event of a toilet paper shortage (at the time, it had been reported that the outbreak of COVID-19 had led to people hoarding toilet paper). The page had around 1,000 followers. On the government's request, Facebook disabled access to the post. There have been no further developments as yet.²¹5. In mid-2019, an advertisement for a government e-payments service contained an actor from Singapore's ethnic Chinese majority played certain ethnic minorities in "brownface". In response:<ol style="list-style-type: none">a. Internet celebrities Preeti and Subhas Nair posted an online music video (to the tune of Iggy Azalea's "Fuck It Up") criticising the advertisement and raising the issue of racism in Singapore at-large. The video went viral.
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²⁰ See further, <https://www.gov.sg/article/factually-clarification-on-falsehood-posted-by-ttr-on-food-delivery-rider>.

²¹ See further, <https://www.channelnewsasia.com/news/singapore/nus-atheist-society-facebook-post-offensive-shanmugam-police-12560286>.



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	<ul style="list-style-type: none">b. In the days that followed, the company that ran the advertisement apologised and removed the minority characters from it. Meanwhile, the IMDA demanded that the Nairs take down their video, which they did (before releasing a further spoof apology based on the company's).c. The police received reports about both the advertisement and the video. On advice from the Attorney-General's Chambers, it took no further action in respect of the former. It continued to investigate the latter, ultimately issuing the Nairs conditional warnings under <i>section 298A(a) of the Penal Code</i>. The Nairs also posted an apology (non-spoof).d. The wider community's reaction to the incident has been mixed. The government has criticised the Nairs' video (and spoof apology) for being racist itself and causing social unrest. However, several commentators have commended them for speaking out about racism in Singapore.²²
k. Please provide examples of cases related to hate speech / incitement of violence.	Other recent examples of hate speech-related cases in Singapore include the following: <ul style="list-style-type: none">1. The COVID-19 crisis has given rise to a substantial amount of hate and other discriminatory speech directed at blue-collar foreign workers. For example, a South China Morning Post article noted how a letter published in a Singaporean Chinese-language broadsheet stated that "[m]any of them come from backward countries", adding that "[t]hey like to gather and have poor personal hygiene. Aren't migrant workers themselves responsible for this state they're in now?".²³ The letter drew condemnation from government. However, comments of this nature and worse continue to circulate on social media.

²² See further, <https://www.bbc.com/news/world-asia-49205225>.

²³ See further, <https://www.scmp.com/comment/opinion/article/3080987/rise-coronavirus-cases-brings-light-singaporeans-racist-attitudes>.



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	<ol style="list-style-type: none">2. In March 2019, the government cancelled the permit for a concert that Watain – a Swedish black metal band – was due to perform. The government had initially permitted the concert on the condition that Watain not perform offensively, but subsequently changed its mind after complaints from members of the Christian community. It also took into account the "broader security implications" of those complaints.²⁴3. In 2017, the government rejected the applications of two foreign Christian preachers to speak in Singapore owing to the "denigrating and inflammatory comments" they had made previously of other religions. The government stated that the move was necessary to safeguard social harmony and cohesion.²⁵4. In 2017, a foreign preacher at a mosque recited a supplication calling for God to grant victory over Jews and Christians (the supplication not being part of the Quran). A video of the incident was uploaded, shared, and commented on online, which led to the police issuing several people with police warnings. The preacher himself was convicted and fined SG\$4,000 under <i>section 298A(b) of the Penal Code</i>. He also had his work permit revoked and was deported from Singapore. He apologised to various religious communities before departing.²⁶5. In 2015 and 2016, teenager Amos Yee was convicted under <i>section 298 of the Penal Code</i> for posts on social media that made vulgar comments about Christians and Muslims (as well as former Prime Minister Lee Kuan Yew and the longstanding People's Action Party government generally). The US granted Yee asylum in 2017 on the ground that he had
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²⁴ See further, <https://www.channelnewsasia.com/news/singapore/watain-concert-cancelled-christian-community-reaction-shanmugam-11399434>.

²⁵ See further, <https://www.channelnewsasia.com/news/singapore/2-foreign-christian-preachers-barred-from-speaking-in-singapore-9199180>.

²⁶ See further, <https://www.todayonline.com/singapore/imam-who-made-offensive-remarks-leaves-singapore>; and <https://www.straitstimes.com/singapore/imam-who-made-offensive-remarks-against-christians-and-jews-charged-in-court>.



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	suffered, and continued to have a well-founded fear of, political persecution. The Singaporean government has criticised the decision. ²⁷
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²⁷ See further, <https://www.straitstimes.com/singapore/amos-yee-prerogative-of-the-us-to-take-in-people-who-engage-in-hate-speech-says-singapore>.



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Jurisdiction: United Arab Emirates

Law Firm / Office: Dubai

1. International and Regional Frameworks (NOTE: this section <u>only</u> to be filled up by the teams working on international and EU law)	
1.1	What are the international law standards on hate speech with reference to the UN Conventions, General Comments and the decisions of the Thematic Mechanisms / Special Rapporteur reports?
1.2	Are there any relevant decisions on hate speech arising from the European Convention of Human Rights, the American Convention of Human Rights and the African Convention of Human Rights?
2. Definition of hate speech	
2.1	What is the definition of hate speech in your country? Under Federal Decree-Law No. 2/2015 (the “ Anti-Discrimination Law ”), “hate speech” is defined as “ <i>any speech or conduct which may incite sedition, prejudicial action or discrimination among individuals or groups</i> ”. For the definition of “discrimination”, see section 2.5 below.
2.2	Does the legal definition of hate speech require threats of violence / incitement to violence? No threats of violence are required to fall within this definition.



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<p>2.3 Would the definition cover speech and behaviour which incites hatred (not necessarily violence) towards a group?</p>	<p>Yes. Under Article 11 of the Anti-Discrimination Law, provides that creating, selling or promoting any content that disseminates hate speech constitutes a criminal offence:</p> <p><i>“Any person who produces, manufactures, promotes, offers for sale or circulates products, goods, publications, recordings, movies, tapes, discs, software, smart applications or information in the field of electronic service or any other industrial materials or other things involving the means of expression, which may incite to commit blasphemy, or provoke discrimination or hate speech, shall be sentenced to imprisonment for a period not exceeding seven years and to a fine of not less than five hundred thousand dirhams and not exceeding two million dirhams.”</i></p> <p>Furthermore, possessing such content is a criminal offence under Article 12 of the Anti-Discrimination Law:</p> <p><i>“Any person, who acquires or possesses documents, publications, recordings, movies, tapes, discs, software, smart applications or information in the field of electronic services or any industrial materials or other things involving the means of expression that are intended for distribution or open for public aiming to offend religions, provoke discrimination or hate speech, shall be sentenced to imprisonment for a period not less than one year, and to a fine not less than fifty thousand dirhams and not exceeding two hundred thousand dirhams. Moreover, the same punishment shall apply to any person who acquires or possesses any means of printing, recording, storage, sound or visual recording devices or other means of publication, broadcasting or promotion that are used, with his knowledge, in the commission of any of the crimes set forth in the present Federal Decree.”</i></p>
<p>2.4 Does hate speech cover speech that draws on hateful, hostile, or supremacist beliefs directed at a</p>	<p>Yes, it appears that this would be covered by the definition under the Anti-Discrimination Law.</p>



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<p>group that is threatened and likely to cause them harm?</p>	
<p>2.5 Does the definition permit religious beliefs and speech which discriminates against particular communities – are there any limitations to religious beliefs and speech which discriminated against particular groups?</p>	<p>The Anti-Discrimination Law defines “discrimination” as follows: <i>“Any distinction, restriction, exclusion or preference among individuals or groups based on the ground of religion, creed, doctrine, sect, caste, race, colour or ethnic origin.”</i></p> <p>However, “religion” for the purposes of the Anti-Discrimination law only encompasses Islam, Christianity or Judaism. Therefore, it appears that individuals of other religious beliefs or of no religious belief are not protected from hate speech or discrimination on the basis of their religion. Furthermore, gender, disability, age and sexuality are not protected characteristics under the Anti-Discrimination Law.</p> <p>There appear to be no particular limitations on religious beliefs which are inherently discriminatory against certain groups (e.g. women) and notably discrimination on the basis of gender or sexuality is not prohibited by the Anti-Discrimination law. However, regardless of source, discrimination (as defined above) is a crime under Article 6 the Anti-Discrimination law which provides: <i>“Any person, who commits any act of discrimination of any form by any means of expression or by any other means, shall be sentenced to imprisonment for a period not less than five years, and by a fine not less than five hundred thousand dirhams and not exceeding one million dirhams or either one of these two penalties.”</i></p>
<p>3. Remedies and recourse for hate speech</p>	



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<p>3.1 If I am the victim of hate speech, what is my recourse?</p>	<p>Victims of hate speech only appear to have recourse to criminal remedies under UAE law. Hate speech should be reported to the UAE police, for potential onward referral to the prosecutorial authorities, or redress can be sought by filing legal proceedings in court.</p>
<p>3.2 What are the criminal legal remedies for hate speech?</p>	<p>If the hate speech occurs online, the offender will be liable to pay a fine of between AED 500,000 and 1,000,000 or imprisonment, pursuant to article 24 of Federal Decree-Law 5/2012 on Combatting Cyber Crimes ("Cybercrimes Law"), which provides:</p> <p><i>"Shall be punished by temporary imprisonment and a fine not less than five hundred thousand dirhams and not in excess of one million dirhams whoever establishes or administer or runs a website or publishes on a computer network or any information technology means which would promote or praise any programs or ideas which would prompt riot, hatred, racism, sectarianism, or damage the national unity or social peace or prejudice the public order and public morals".</i></p> <p>Under the Anti-Discrimination law, individuals can face up to 7 years' imprisonment or a fine of AED 500,000 to 2,000,000 for producing material that contains hate speech.</p> <p>Under the Anti-Discrimination Law, individuals can face prison time of at least one year or a fine of AED 50,000 to 200,000 for acquiring or possessing material that contains hate speech.¹</p>
<p>3.3 Are there civil legal remedies available – compensation / damages – for hate speech?</p>	<p>No – the UAE legal regime regarding discrimination and hate speech is a criminal regime and there are no provisions for addressing it in civil law.</p>

¹ To the best of our knowledge these laws cannot be applied extraterritorially. The relevant legislation makes reference to crime committed in the State, meaning the physical territory of the UAE.



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<p>3.4 Are there regulatory frameworks governing the online news media which allow individuals to complain?</p>	<p>National Media Council (NMC) is the federal government body entrusted to oversee and undertake the media affairs in the United Arab Emirates on the mainland and in free zones.</p> <p>According to the NMC Chairman's Decision No. 20 of 2010 Concerning Media Content Standards, all the audio, visual, print and digital media institutions in the UAE should adhere to media content standards contained in the Federal Law No.15 for 1980 Concerning Press and Publications and other media regulations in force (see, in particular, section 73, which states that: "<i>[a]ny material which incites persons to commit a crime, raise hatred or cause dissent among the society's citizens shall be prohibited from publication</i>". The Chairman's decision emphasises national standards for prohibited media content as set out in the Press and Publications Law.</p> <p>The NMC sets national standards for media content and requires all local mass media institutions operating in the UAE to abide by them. Complaints about content can be made to the National Media Council.</p>
<p>3.5 Is the test for hate speech used by any Social Media / Press / Online regulatory bodies the same as the criminal law definitions?</p>	<p>Could not be determined from publicly available sources.</p>
<p>3.6 Do public and private institutions have to comply with the same duties to avoid hate speech?</p>	<p>All persons in the UAE must comply with the Anti-Discrimination Law. However, as per sections 3.10 and 3.11 below, there have been no public reports to date about its usage. Accordingly, it is unclear how the Anti-Discrimination Law (or other laws this research mentions) would apply to public, as opposed to private, bodies.</p>
<p>3.7 If I am accused of hate speech, what is my</p>	<p>The Anti-Discrimination Law encourages anyone involved in any activity that violates the law to</p>



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<p>recourse?</p>	<p>submit themselves voluntarily before the authorities – i.e., the police department in each Emirate – and has provisions allowing the courts to waive penalties in such cases.</p> <p>A Court may waive a penalty if the perpetrator of an activity proscribed under the Anti-Discrimination Law self-reports to the police department before a complaint regarding the relevant activity is made.</p> <p>In the event the penalty is not waived, an accused person should engage counsel to contest the charge. Practically speaking, however, it would appear that an accused person's self-report would render difficult any subsequent attempt to contest the charge.</p>
<p>3.8 If hate speech is occurring at my event/on my platform/in my place of work, what should I do about it?</p>	<p>A complaint can be made to the organiser of the event or the manager of the office. If no action is taken, a police report can be made.</p>
<p>3.9 If I have identified hate speech (online, in the media, etc.) what practical steps should I take?</p> <p><i>(For this question, we envision a “filtering” or “journey tree” (flow chart) where the first question is, “where did you see the hate speech” → if online then go here, if offline, then go here → do you have evidence of it (screenshot/link to the post, recording of the speech, etc.) → then what, etc.)</i></p>	<p>If the hate speech is in a news media or other type of media channel, proof of the hate speech should accompany a complaint to the National Media Council. If the hate speech is on another channel, such as social media, for example, it can be reported to the social media channel itself. Evidence of the hate speech should be taken, in case a police report needs to be made.</p>
<p>3.10 Please provide recent (within 1 year) of examples</p>	<p>An Emirati person was arrested for disseminating hate speech online in April 2020. However</p>



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<p>of hate speech reported in the media, and if possible, establish how was this addressed, e.g. by legal remedies or non-legal remedies.</p> <p><i>(For this question, we are looking for case studies.)</i></p>	<p>there have been few details released about the case, though it is clear that the case is being dealt with as a criminal offence. There are no reports as to which offences under the Anti-Discrimination law, Cyber Crime Law (or any other law) have formed the basis of the case.²</p>
<p>3.11 Please provide examples of cases related to hate speech / incitement of violence.</p>	<p>Could not be determined from publicly available sources.</p>

² See further: <https://www.khaleejtimes.com/news/crime-and-courts/uae-media-person-arrested-for-hate-speech-->

1. International and Regional Frameworks (NOTE: this section <u>only</u> to be filled up by the teams working on international and EU law)	
1.1	<p>What are the international law standards on hate speech with reference to the UN Conventions, General Comments and the decisions of the Thematic Mechanisms / Special Rapporteur reports?</p>
1.2	<p>Are there any relevant decisions on hate speech arising from the European Convention of Human Rights, the American Convention of Human Rights and the African Convention of Human Rights?</p>
2. Definition of hate speech	
2.1	<p>What is the definition of hate speech in your country?</p> <p>There is no official definition or concept of hate speech under Vietnamese law.</p> <p>Generally speaking, Vietnamese law protects the honor, dignity and reputation of individuals, and this principle is reflected in a number of statutory laws including the Civil Code, Labor Code, Law on Protection of Consumers' Rights, Law on Cyber-security and Penal Code. Hate speech may therefore be characterized to some extent as an act of harassment or humiliation¹ that adversely affects the honor, dignity or reputation of an individual (collectively referred to</p>

¹ There is no official definition of the term "humiliation" under Vietnamese law.

	herein as " act(s) of humiliation ").
2.2 Does the legal definition of hate speech require threats of violence / incitement to violence?	An act of humiliation does not require threats of violence / incitement to violence.
2.3 Would the definition cover speech and behaviour which incites hatred (not necessarily violence) towards a group?	Because the above-mentioned Vietnamese laws relating to acts of humiliation are aimed at protecting individuals, speech and behavior which incites hatred towards a group in general would most likely not be covered. ² However, if such speech was targeted at a specific individual (e.g. speech inciting hatred toward a class a people that is sent directly to an identifiable member of that class), it may constitute an act of humiliation and to that extent could be considered hate speech.
2.4 Does hate speech cover speech that draws on hateful, hostile, or supremacist beliefs directed at a group that is threatened and likely to cause them harm?	Because the above-mentioned Vietnamese laws relating to acts of humiliation is aimed at protecting individuals, speech directed at a group in general would most likely not be covered. ³ However, if such speech was targeted at a specific individual (e.g. speech directed at a group that is sent directly to an identifiable member of that group), it may constitute an act of humiliation and to that extent could be considered hate speech.
2.5 Does the definition permit religious beliefs and speech which discriminates against particular communities – are there any limitations to religious beliefs and speech which discriminated against particular groups?	Local laws respect freedom of religious beliefs but do not permit discrimination against particular communities. Generally speaking, religious beliefs are not as strongly protected as in other countries, meaning such beliefs are less likely to be used to successfully shield speech or behavior that would otherwise be considered hate speech.
3. Remedies and recourse for hate speech	
3.1 If I am the victim of hate speech, what is my recourse?	Victims of acts of humiliation (i.e. statements that adversely affect the honor, dignity or reputation of a person) have both criminal and civil recourse, including filing a complaint with the local police, taking legal action at a local court for any act of humiliation or, if the humiliating speech was posted online, requesting the social media or website provider to remove the post

² Neither are we aware of any national security laws or similar that would be applicable in such cases.

³ Neither are we aware of any national security laws or similar that would be applicable in such cases.

	in question.
3.2 What are the criminal legal remedies for hate speech?	Under the Vietnamese Penal Code, any person who seriously humiliates another person shall receive a warning and be subject to a fine of VND 10 million to VND 30 million (USD 430 – USD 1,290) or up to 3 years' probation. Aggravating factors (e.g. committing the offence more than once, targeting multiple persons, using a computer network or electronic device, or actions that result in the victim's suicide) may lead to the imposition of a term of imprisonment of up to 5 years.
3.3 Are there civil legal remedies available – compensation / damages – for hate speech?	<p>The Vietnamese Law on Administrative Sanctions imposes fines of between VND 100,000 and VND 300,000 (approx. USD 4 to USD 13) for: (i) any gesture or use of cruel words or provocations that results in teasing or insulting the honor and / or dignity of an individual but not to the extent of criminal liability; or (ii) offending the honor and dignity of an individual who prevents, detects and/or reports domestic violence, and / or helps a victim of domestic violence.</p> <p>Victims may also take legal action at a local civil court to request the court to issue a denial, require the person who made the offending speech to make a public apology and / or rectify and compensate for the resulting damages.</p>
3.4 Are there regulatory frameworks governing the online news media which allow individuals to complain?	Yes. Individuals may complain to social media / website providers and request them to take down content that adversely affects their honor, dignity or reputation. In addition, individuals may also report to the relevant regulators (such as the Ministry of Public Securities and the Ministry of Information and Communication) to investigate any social media users who slander, distort information relating to or damage the prestige, honor and dignity of other organizations, authorities or individuals. If such violation is established, the social media users in breach will be subject to a penalty from VND 10 million to VND 20 million (USD 430 – USD 860) and the regulator may enforce the removal of such false, misleading or violating information. ⁴
3.5 Is the test for hate speech used by any Social	There is no publicly available test for or definition of hate speech (or act of humiliation under

⁴ We note that Vietnam has an anti-"fake news" law – Decree No. 15/2020/Nd-CP dated 3 February 2020 (effective 15 April 2020). The Decree concerns penalties for violations of regulations on certain communications and transactional services. However, it is not considered a complete framework for the governance of the online news and / or social media space, and must be read in conjunction with the laws mentioned in section 2.1 above.

<p>Media / Press / Online regulatory bodies the same as the criminal law definitions?</p>	<p>Vietnamese criminal law). Social media / press / online regulatory bodies (such as the Ministry of Public Securities and the Ministry of Information and Communication) would typically formulate their own standards, which may refer to Vietnamese legal concepts, such as "humiliation".</p>
<p>3.6 Do public and private institutions have to comply with the same duties to avoid hate speech?</p>	<p>The legislation discussed above generally applies to private institutions and individuals. However, it is not clear whether they apply to public (i.e., government) institutions. Practically speaking, there should be no differentiation in duties between public and private institutions in terms of requirements to avoid hate speech. However, enforcement against public institutions is rare.</p>
<p>3.7 If I am accused of hate speech, what is my recourse?</p>	<p>There is no available specific defence for any person who is accused of humiliation under Vietnamese law. However, claimants or regulators will bear the burden of proof when accusing any person of humiliation. The accused persons should also look to use legal arguments that narrow the scope of liability. Alleged statement-makers should seek advice from a lawyer on the appropriate courses of action. If such accusations are made public, but are ultimately deemed false, they could consider filing a civil claim for any loss incurred for such false accusation.</p>
<p>3.8 If hate speech is occurring at my event/on my platform/in my place of work, what should I do about it?</p>	<p>Organizers / owners of event / platform / workplace should identify by themselves whether the information amounts to humiliation of a person using their own assessment criteria / test, possibly with advice from lawyers. If it is certain that such information amounts to a humiliation, they should remove the content and report to the relevant regulators (such as the Ministry of Public Security and the Ministry of Information and Communication). If they are not certain, they may report to the relevant regulators for assessment and action.</p>
<p>3.9 If I have identified hate speech (online, in the media, etc.) what practical steps should I take?</p> <p><i>(For this question, we envision a “filtering” or “journey tree” (flow chart) where the first question is, “where did you see the hate speech” → if online then go here, if offline, then go here → do you</i></p>	<p>If hate speech is online, you should report to the website owner or social media / platform provider. If hate speech is offline, you should report to the owner or manager of the place where you found the hate speech. They have the responsibility to review the content, take down the content if necessary and / or report to the relevant regulator (such as the Ministry of Public Security and the Ministry of Information and Communication).</p> <p>If the website owner or social media / platform provider makes a decision that you do not agree</p>

<p><i>have evidence of it (screenshot/link to the post, recording of the speech, etc.) → then what, etc.)</i></p>	<p>with, you may first try to complain with them. If they do not make any action or settle this claim at your satisfaction, you may report to the relevant regulator (as per the previous paragraph) for investigation.</p>
<p>3.10 Please provide recent (within 1 year) of examples of hate speech reported in the media, and if possible, establish how was this addressed, e.g. by legal remedies or non-legal remedies.</p> <p><i>(For this question, we are looking for case studies.)</i></p>	<p>Save for as stated in section 3.11 below, we were unable to locate any detailed cases of hate speech reported in the media. There are, however, some reported statistics regarding the number of recent hate speech victims in Vietnam.</p> <p>The Vietnam Programme for Internet and Society (VPIS) carried out research in 2017 on hate speech in the media and announced that out of 1,000 responses received, 78% of participants asserted that they were the victims or knew of incidents of hate speech on social networks in Vietnam. 61.7% of social network users had witnessed incidents of hate speech or became victims of hate speech criticizing, cursing and insulting specific individuals. Rates of fabricating stories, sex discrimination, disability discrimination and religious discrimination were 46.6%, 29.03%, 21.76% and 15.09% respectively.</p> <p>VPIS also reported that most victims opted for non-legal remedies. For examples, users of social media sites such as Facebook, Twitter and YouTube primarily relied on those sites' notification channels to report untrue and/or hateful contents even though deleting such content would take time and would sometimes fail to satisfy real time demands. Some victims also requested hate speakers to apologize and self-remove offending contents, while others asked government regulators to help sanction hate speakers or brought a claim to court for compensation.</p> <p>The regulators in Vietnam tend to be more proactive in handling hate speech cases that relate to politically sensitive issues. In these cases, most violations are handled administratively with monetary fines assessed. For example, Decree 28/2017/ND-CP imposes a fine of between VND 5,000,000 and VND 10,000,000 (approx. USD 230 to USD 460) for acts of falsifying the content of an image with a view to distorting history and offending national heroes, country leaders and cultural figures. The use of social media to post information that harms national security and social order will also be subject to monetary fines.</p>
<p>3.11 Please provide examples of cases related to hate</p>	<p>Some reported examples of cases related to hate speech / incitement of violence include:</p>

speech / incitement of violence.

- a young Vietnamese girl who was unable to answer a basic cooking question on the “Who wants to be a millionaire” TV show and subsequently received thousands of hateful Facebook comments; and
- a girl who was pictured covering her nose and mouth with a bra as she escaped a deadly fire at a karaoke bar in Hanoi was harassed online just because she worked as a waitress there, a job considered dishonorable in Vietnam.

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