



Media Against 'Hate Speech': Training Module



ONLINE MODULE 3

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Introduction

This Training Module aims to help media regulators and law enforcement authorities to carry out their mission while respecting the international freedom of expression standards. It is encouraged that this Training Module is used as a learning and discussion tool in their work.

Through case scenarios, the Module shows how international human rights standards on freedom of expression and equality should be applied in practice. The case scenarios outlined in this Module are inspired by real-life events. The Module refers to the original cases but facts have been slightly adapted to facilitate training and discussion.

The Training Module is a companion to 'Hate Speech' Explained: The Toolkit, published by ARTICLE 19, which contains a detailed analysis of international standards relating to freedom of expression, the right to equality, and 'hate speech'. It explains how to identify 'hate speech' and how to effectively counter it while protecting the rights to freedom of expression and equality.

WHAT IS 'HATE SPEECH'?

There is no uniform definition of 'hate speech' under international human rights law. Many would claim they can identify it where they see it, but the criteria for doing so are often elusive or

contradictory. 'Hate speech' is an umbrella term which captures a wide range of expression.

Under international law, it is necessary to distinguish different forms of 'hate speech' according to their severity. ARTICLE 19 argues that in order -to identify appropriate and effective responses to 'hate speech', the issue should be divided into three categories:

- 'Hate speech' that must be prohibited: international criminal law and Article 20 para 2 of the International Covenant on Civil and Political Rights (ICCPR) requires States to prohibit certain severe forms of 'hate speech' (**advocacy of discriminatory hatred that constitutes incitement to violence, hostility or discrimination**)” including through criminal, civil, and administrative measures. International standards suggest that the threshold for this should be established under six part test of incitement:
 - *Context of the expression* – in particular the existence of conflict in society, recent incidents of violence against the targeted group, the existence and history of institutionalised discrimination, media landscape (for example the proximity of election) as well as the degree to which the views of the targeted group are represented in formal political processes;
 - *Speaker*: the position of the speaker, and their authority or influence over their audience, the relationship of the audience to the speaker, and issues such as the degree of vulnerability and fear among the various communities;
 - *Intent* of the speaker to engage in incitement, intent to target a group on the basis of a protected characteristic, and having knowledge of the consequences of their action and knowing that the consequences will occur or might occur in the ordinary course of events
 - *Content of the expression*: what was said, including the form and the style of the expression, whether it contained direct or indirect calls for discrimination, hostility or violence, and the nature of the arguments deployed and the balance struck between arguments;
 - Extent and magnitude of the expression: in particular, its public nature, means and the intensity or magnitude in terms of its frequency or volume;
 - Likelihood of harm occurring as a result of expression, including its imminence.

- 'Hate speech' that may be prohibited: States may prohibit other forms of "hate speech," provided they comply with the requirements of Article 19(3) of the ICCPR;
- Lawful 'hate speech' which should be protected from restriction under Article 19(2) of the ICCPR, but nevertheless raises concerns in terms of intolerance and discrimination, and merits a critical response by the State.

INTERNATIONAL STANDARDS

There is no one blanket measure for addressing 'hate speech.' Under international law, State and non-state actors should undertake to create an enabling environment for freedom of expression and equality that addresses the underlying causes of 'hate speech' while maximising opportunities to counter it.

Only in exceptional circumstances, the State is obliged by international law to prohibit the most severe forms of 'hate speech', in particular incitement to violence, hostility and discrimination. For other types of 'hate speech', States may under international law place other restrictions on the expression. There must however put in place mechanisms to ensure that such prohibitions are not abused, and where sanctions are imposed they are appropriate and proportionate. Support and redress for victims should also be provided.

Coordinated and focused action taken to promote the rights to freedom of expression and equality is essential for fostering a tolerant, pluralistic and diverse democratic society in which all human rights can be realised for all people. ARTICLE 19 believes that ensuring that responses to 'hate speech' comply with international human rights law is crucial. Prohibitions that censor offensive viewpoints are often counter-productive to the aim of promoting equality, as they fail to address the underlying social roots of the kinds of prejudice that drive "hate speech." In most instances, equality is better-promoted through positive measures which increase understanding and tolerance, rather than through censorship.

CASE SCENARIOS

Case 1: Satirist and the denial of the Holocaust

Facts:

Satirist, well known for his fringe and provocative performances, holds a recital in a small underground theatre. He has invited Historian who has repeatedly been convicted for his views that deny the existence of gas chambers in concentration camps. During the performance, Historian is awarded with a prize for his ‘insolence’. The prize is given by an actor wearing clothes resembling those of a prisoner in concentration camps. Satirist does not voice any sort of support for denial of Holocaust but he encourages applause for the historian. Many journalists have been invited, although they have not been allowed to record or broadcast the show. However, several spectators record and share the whole event through Twitter’s Periscope service. The law enforcement starts a criminal proceeding against Satirist for incitement to hatred.

Review:

Under international human rights law, truth claims around historical events are not protected as such: importantly, international freedom of expression standards do not permit restrictions on the expression of opinions or ideas solely on the basis that those are “false” or “untrue,” even if these are deeply offensive. Truth claims are more reliably established through robust debate and inquiry, examining the evidence in support of competing claims and judging them on their own merit. Hence, memory laws (laws prohibiting any expression that denies the occurrence of historical events, often connected to periods of severe persecution, genocide or other violations of international criminal law) are problematic and rarely meet the requirements of international law. This said, the denial of historical events – such as the Holocaust– is often a vehicle for advocating hatred against victim-survivors and others associated with the victims of these crimes.

In order to determine whether the speech reaches **the threshold of incitement**, consider the following:

- **Context** – the assessment should examine what was the context of this incident happening in the country, the historical social, political, economic and cultural context, the climate in relation to racism and discrimination and similar issues;
- **Speaker** – the comedian is known as an extremist and a provocateur, however, he could only book an underground theatre for his event. His position should be examined and also how likely he was to influence a large audience to incitement;
- **Intent** – it must be determined what Satirist intended her: whether he indeed intended to incite to hatred or just wanted to cause scandal and attract attention;
- **Content** – there was no explicit call for hostility, violence or discrimination and the show purported to be political satire. It should be also examined how the message was or could be understood by the audience;
- **Extent and Magnitude** – the show took place in an underground theatre. It should be considered whether there was an impact beyond the limited crowd of fans of Satirist or whether the broadcast via Periscope expanded the audience;
- **Likelihood of resulting violence or discrimination** – it should be reviewed whether the show, as such, was capable to lead to violence against Jewish people.

On these basis, ARTICLE 19 suggests that Satirist should not be criminally prosecuted. Satirist is not a strong leader of opinion and his message had a limited audience of usual fans. Even if his real intentions could be discussed, the message is not likely to translate directly into actual violence or discrimination in the current context of the country (in the actual case, it was France). The speech should be protected.

However, the message is clearly offensive and preoccupying in terms of tolerance and equality. It calls for appropriate strong public reactions from opinion leaders, community leaders, religious leaders, politicians and civil society. Moreover:

- Journalists who attended the show have an ethical responsibility in the way they will report about it. Where available, they should follow ethical standards on how to write and speak about the issue of genocide, 'hate speech' and discrimination. In any case, they should explain why the show cannot be legally forbidden and why such speech nonetheless calls for appropriate positive measures to promote the right to equality and counter discrimination.
- The question is whether there should be a reaction to the broadcast of the show on Periscope. Legally, the question of whether such video is comparable to traditional broadcast and whether

it should be regulated by media regulatory authorities is still debated. ARTICLE 19 would oppose this. We believe that self-regulation of social media would be the appropriate approach here. Positive measures and clear condemnations from opinion leaders could also be expressed on Twitter.

Sources:

European Court of Human Rights, M'Bala M'Bala v. France, App. No. 25239/13, 20 October 2015.

Analysis of the decision is available on the Global Freedom of Expression Project of Columbia University, at <http://bit.ly/2tZNZCC>.

Case 2: Community radio and extremist religious lectures

Facts:

A local community radio station targeting a Muslim audience has been operating for the last five years. The station has no history of inciting to hatred. During the festivities of Ramadan, they usually broadcast long segments of religious lectures in order to cover for the time when presenters are not available. This year, the station has aired 25 hours of lectures by jihadi preacher Anwar Al-Awlaki. The lectures were downloaded from YouTube by a volunteer and were programmed for broadcast without full supervision of the station staff. In the rush and agitation of the preparation of Ramadan, the station staff only listened to half of the lectures before confirming the broadcast. Although the preacher, who was a well-known figure of radical Islam (he was considered by the UN to be closely associated with Al-Qaeda and was killed in a US drone strike), has not been identified on air, some segments of the lectures arguably incite to violence and discrimination. For example, he said that Jewish people were blasphemous people against Allah, holy war and military training were a religious duty, and called to clandestine operations to harm the enemies of Islam.

The media regulator received two complaints from unidentified members of the public and initiated a procedure to revoke the licence due to incitement to hatred. After they received formal

notification of the procedure, the station management repeatedly broadcast apologies and a strong condemnation of the lectures. However, the regulator revoked the licence of the radio arguing that it violated the provisions on incitement to hatred in the Broadcasting code. Two months before the broadcast, there was a terrorist attack inspired by Islamist extremism which made more than one hundred victims among concert-goers.

Review:

In order to determine whether the speech reaches **the threshold of incitement** prohibited in the broadcasting code, the regulator should consider the following criteria devised for assessing incitement cases:

- **Context** – it should be considered that the broadcast was done in a situation of international terrorism and a recent murderous terrorist attack in the country and in the country where the Muslim minority is often discriminated and racially profiled;
- **Speaker** – the radio is a community radio, it is composed of volunteers. The preacher has not been identified during the broadcast but he is a well-known figure.
- **Intent** – it should be examined whether the staff of the radio intended to incite to hatred or whether they made a mistake of not reviewing the uploaded material. As for the speaker, his association with Al-Qaeda and the intent to incite to violence might be presumed. But it is not clear for the radio staff and volunteers;
- **Content** – words used clearly call for military training and war, and clearly describe the Jewish people as an enemy of Islam. It should be assessed if the audience might however understand this as a merely symbolic message. It should also review whether the radio station took any form of measure to contextualise the broadcast or distance themselves from the lectures;
- **Extent and Magnitude** – the lectures were used to cover the absence of station staff during religious festivities. It should be assessed how much impact did the radio have on the local community in this period;
- **Likelihood of resulting violence or discrimination** – in the context of the country, it should be assessed whether the message could directly translate into actual violence or discrimination.

On these basis, ARTICLE 19 admits that the message could be considered as an actual call to violence on the basis of discriminatory hatred. However, it appears that the radio station staff did

not intent do incite to violence and that the likelihood of imminent violence was low.

In this case, the radio station may have failed to comply with obligations under the Broadcast Code adopted by the regulatory authority and the failure to check the downloaded material before broadcast can be considered a serious professional misconduct in that sense. ARTICLE 19 believes that the regulatory authority was right to initiate a procedure and a sanction was certainly in order.

However, we believe that the sanction (the revocation of the licence) was disproportionate in this case. The license revocation is tantamount to a death penalty for a broadcaster. It failed to take into account that the radio station had so far done good work in the service of diversity in the media and the community. A suspension might, for instance, have been a sufficient sanction to avoid the repetition of the event while maintaining a media presence for the local community. It is important to note that the proportionality of sanction needs to be examined in all cases, including in cases of advocacy of discriminatory hatred that incites to violence or discrimination (that is, where States have a duty to prohibit 'hate speech').

Sources:

United Kingdom, decision of regulatory authority Ofcom, available at <http://bit.ly/2voCTaE>. See ARTICLE 19's analysis of the case at <https://www.article19.org/resources/uk-ofcom-should-encourage-community-media-to-improve-their-practices-not-reduce-them-to-silence/>

Case 3: Religious Leader and the YouTube channel

Facts:

Religious Leader is the head of one of the most important monasteries in the country. He opens a YouTube channel that quickly attracts thousands of followers. In several speeches, Religious Leader mixes religious and political content. He continuously spreads rumours and unfounded

accusations that members of a local religious minority routinely conduct sexual assault against women. In the past years, members of this religious minority have been victim of frequent violent attacks by the government and the military. The religious leader calls for singling out shops and houses owned by members of his own religious group with a distinctive mark, in order to distinguish them from those owned by members of the religious minority.

The law enforcement authorities do not react, claiming that they are protecting freedom of speech.

Discussion:

In order to determine whether the speech reaches **the threshold of incitement**, consider the following:

- **Context** – in that country, the religious minority targeted by the speech is commonly victim of violence and harsh discrimination, notably from public officials and the army. He has a great influence the impact that the message will have on the general public;
- **Speaker** – he is a well-known religious leader with a massive following, what sort of influence will they have on the public;
- **Intent** – it should be examined if the Leader specifically intended to engage in incitement. This can be assessed based on this and previous conduct, and the fact that he is broadcasting well known false rumours and unfounded accusations
- **Content** – while the call to action seems to be limited to a merely protective attitude, it should be considered what is the meaning that is really conveyed to the followers;
- **Extent and Magnitude** – the considerations should be given to the fact that this message is being spreading on a massive scale to large group of followers;
- **Likelihood of resulting violence or discrimination** – it should be considered what the followers will understand from the message (possibly beyond its formal meaning), and how high is the probability that the YouTube lectures will lead to additional violence or discrimination against the minority in that particular community.

On these basis, ARTICLE 19 considers that this speech amounts to incitement and as such, should be prohibited. This is an influential public figure intentionally conferring legitimacy to pre-existing frequent violence and discrimination against the religious minority.

Even if he avoids to engage into openly calling to violence against the minority, it is likely that this implicit meaning will be understood by his followers, which will likely lead to further violence and discrimination. In any case, the adoption of a sign of visible distinction between the religious group can only lead to discrimination.

Additionally, this is a situation where public authorities should deploy a broad range of positive measures to promote equality and bring an end to discriminations. The adoption of legislation on anti-discrimination, proper training on equality for all staff of all public authorities (including police and armed forces, and the judiciary), and measures to end impunity for discrimination cases. All public figures should openly and strongly condemn the violence and discrimination against the minority, and support mechanisms that facilitate mutual understanding and tolerance between religious groups.

The media have an important ethical responsibility in choosing the way they report on these events. The way they portray members of the minority - and the presence of members of the minority at all levels of staff in media houses - can contribute to promoting equality. Where available, media should follow the recommendations of Press Councils on how to report on issues of discrimination and hate speech.

Self-regulation would be the proper approach to the moderation of content social media (You Tube). In the absence of an institution of self-regulation for social media, social media companies should be encouraged (by civil society organisations) to integrate international standards in their terms of service and community guidelines. It would be useful for these companies to have consultations with local CSOs to build the strong understanding of the local context that will inform the application of their internal rules.

Sources:

K. Hodal, *Buddhist monk uses racism and rumours to spread hatred in Burma*, The Guardian, 18 Apr. 2013, <https://www.theguardian.com/world/2013/apr/18/buddhist-monk-spreads-hatred-burma>

Case 4: Television debate and violence against LGBTI communities

Facts:

A talk show on a state-owned TV channel broadcasted a debate on the episodes of violence against LGTBQI communities that surrounded the first edition of a local 'Queer Festival' in recent days. During the show, the audience was invited to send SMS messages that would be displayed on the ticker (scrollbar at the bottom of the screen). The television company charged 1 EUR for each SMS received, and all texts were shown on screen with no form of moderation whatsoever. There was a sudden flood of SMS insulting LGBTI communities and threatening them with more violent aggression. Examples of such messages included: "homosexuality is a disease, it must be cured"; "just try and organize another parade, we are waiting for you, we will beat you"; "the country is sick of you, you should be ashamed of yourselves"; "I'm waiting to shoot you perverts". The LGTBQI communities demand the prosecution of the authors of those SMS messages and of the staff of talk show for allowing incitement to hatred on the broadcast.

Discussion:

In order to determine whether the speech reaches **the threshold of incitement**, consider the following:

- **Context** – the broadcast should be examined in the light of the situation of LGBTI communities in the country;
- **Speaker** – the authors of the texts remain anonymous. The broadcast took place on a public television channel (hence, broadcasting with the symbolic authority of government);
- **Intent** – it should be assessed if there was any form of intention beyond the possible desire to maximise sales for the programme or if it was possible that the broadcast took place without a clear understanding of the consequences it might lead to;
- **Content** – each message was an anonymous expression of hatred. However, it should be determined if they could be understood as actual threats of violence, especially since there was a continuous flow of such messages all through the show;
- **Extent and Magnitude** – the impact of public TV in the country should be assessed, especially

in the light of a large flow of hateful messages;

- **Likelihood of resulting violence or discrimination** – beyond the fact of contributing to feeding a general climate that allows for discrimination and occasional violence against LGBTI, it should be considered if the broadcast of such messages on public television could lead directly to violence or discrimination. It can also be considered in the light of future LGBTQI events after the broadcast.

ARTICLE 19 admits that the broadcast of a continuous flow of such messages on public television – with the symbolic force of the State – is highly likely to cause further negative opinions and stigmatisation of the LGBTQI community in the country, especially if this community is already marginalised and discriminated.

Although it is unlikely that the requirements of the likelihood and intent on the side of the TV station staff would warrant criminal sanctions, under the broadcasting law, it can be expected that the Broadcast Code of the country includes appropriate provisions on the prohibition of ‘hate speech’. The television company station may have failed to comply with other obligations under the Broadcast Code and the failure to check the texts before displaying them on the ticker can be considered a serious professional misconduct in that perspective. This in itself would justify an appropriate and proportionate sanction from the regulatory authority.

Sources:

The original story happened in Bosnia-Herzegovina. See Council of Europe, *Media Regulatory Authorities and Hate Speech*, June 2017, p. 30-33, available at <https://rm.coe.int/media-regulatory-authorities-and-hate-speech/16807338f5>

Case 5: A caricature of indigenous people

Facts:

As a result of three hundred years of colonisation and discrimination, the indigenous peoples of the country have become a marginalised minority that is stricken by poverty, drugs and crime. Gorgeous George, a cartoonist working for a famous newspaper, publishes a short cartoon video depicting members of the indigenous community as irresponsible drunkards. In the cartoon, drawn in his usual style, the racial features of the characters are exaggerated. The cartoon is published on the newspaper's website. Members of indigenous community protest against the offensive content. The Press Council receives more than 1000 complaints related to the cartoon, from individuals and also from associations that represent the indigenous community.

Discussion:

ARTICLE 19 considers that this expression does not amount to incitement to hatred or violence that would warrant sanctions under the criminal law. The State has no duty to prohibit it.

The question remains if this expression can be sanctioned by other means and whether the state can prohibit it. ARTICLE 19 considers other measures (than restriction) are in order – for instance, in the original story, the press council promoted the publication of open editorials that explained the views of indigenous people on why the cartoon was offensive.

This case may have violated ethical code of the press council. It may be interesting to consider the distinction between the law and ethics: ethics – not a restriction enforced by the State, but the result of a voluntary agreement between private parties – could include a broader restriction of 'hate speech' than is permitted under international standards: it could promote a responsible attitude of the press towards discrimination by prohibiting stereotypes or prejudices in reporting.

In any case, this is a context where public authorities would need to adopt positive measures to promote an effective respect of the right to equality.

Sources:

A. Meade, *Press Council declines to sanction the Australian for Bill Leak cartoon*, The Guardian, 6 Sept 2016, <http://bit.ly/2wi3i67>; see also the decision of the Australian press council at <http://www.presscouncil.org.au/media-release-6-sept-2016/>

Case 6: Broadcasting the radical words of others

Facts:

For the last five years, a mainstream public TV in a country has been hosting a morning show where members of the local youth are interviewed. The host, a well-regarded Pakistani journalist that has won many professional awards for this programme, has decided to interview young members of small extremist religious group. During the interview, the guests voice their support for a radical-conservative interpretation of the sharia and the superiority of man over woman, and the journalist inserts cuts from amateur videos produced by the young extremists, in which they justify violence against women “to keep them in line with their religious duties”. All through the show, the journalist neither contradicts the guests nor contrasts their views with other viewpoints or philosophies. The journalist is subsequently prosecuted for incitement.

Discussion:

In order to determine whether the speech reaches **the threshold of incitement**, the review should consider the above listed six-part test criteria. In particular, what was impact on the general public is such programme bound to have; the role of public service television and well-reputed journalist, the fact that it was a morning show, on public television, about local youth and other factors.

ARTICLE 19 considers that this expression cannot be deemed to amount to advocacy of discriminatory hatred inciting to violence, discrimination or hostility. The focus should be on the programme in which the aggressive misogynistic views were voiced: this is an information programme run by an experienced and award-winning journalist. Even if he did not contextualise the expression of the show’s guests, he did not approve them either: he was reporting on the

existence of a youth group with extremely violent views. The show might shock or offend viewers, but its goal was to bring knowledge to the audience, not to incite to violence or discrimination. He should not be criminally prosecuted.

As for possible sanction against the TV channel broadcasting the programme for violations of the Broadcasting Code, the conclusion would be that there is no justification for restricting such message. Under international standards, it is part of media's editorial freedom to decide on how to report on current events and social movements in society. It is also the right of the public to receive such information. The highly violent nature of the speech should not impair the press's right to objectively inform about its existence.

Professional standards or the Broadcast Code adopted by the regulatory authority might demand that a journalist gives a warning to viewers (especially for the protection of young audiences) when shocking content is about to be aired. The violation of this rule could only justify a very light sanction (a warning for instance).

Sources:

European Court of Human Rights, *Jersild v. Denmark*, 23 September 1994, at <http://bit.ly/2tUtK58>

See an analysis of the judgement on the Global Freedom of Expression project at <http://bit.ly/2hjke9W>.

Case 7: An official defending racial superiority

Facts:

In an interview published in a weekly economics journal, a former member of the board of directors of the country's central bank states that the biggest ethnic minority within the country has no productive function ("except for picking up fruit and vegetable") and is characterised by an aggressive and ancestral mentality. He further claims that the minority is going to conquer

the country by means of their very high birth-rate and that “these people are here to replace the original, rightful inhabitants”. These opinions are quoted extensively in Twitter by the far-right party as an argument in favour of its racial supremacy theories.

There are demands that the board member and the editors of the economic journal are prosecuted for incitement to hatred.

Discussion:

In order to determine whether the speech reaches **the threshold of incitement**, the review should consider the above listed six-part test criteria. In particular, what was the impact on the general public is such discourse bound to have in the context of the country, what was the role of the magazine as an elite publication, the position of the speaker and other factors.

ARTICLE 19 considers that the actions of the journal’s editors cannot be deemed to amount to incitement. It is the role of the media to report on current events. Professional standards of ethics might have stronger rules on the prohibition of ‘hate speech’, and the press council might have recommendations on how to report on ‘hate speech.’

Whether the speech of the board director could amount to incitement would depend on the careful assessment under the six part test. In any case, this is clearly the kind of message that should trigger a strong counter reaction from all influential public figures, from high-profile politicians to community leaders.

References

M. Dellatore, *Case Watch: The Sarrazin Affair and the Limits of Free Expression*, 24 June 2013, <https://osf.to/2vf48Uf>.

OTHER RESOURCES:

■ Hate Speech Explained: The Toolkit, available at: <https://www.article19.org/data/files/medialibrary/38231/'Hate-Speech'-Explained---A-Toolkit-%282015-Edition%29.pdf>

- Access to the Airwaves, Principles on Freedom of Expression and Broadcast Regulation, 2002, available at <https://www.article19.org/data/files/pdfs/standards/accessairwaves.pdf>
- Freedom and Accountability Safeguarding Free Expression Through Media Self-Regulation, March 2005, available at <https://www.article19.org/data/files/pdfs/publications/self-regulation-south-east-europe.pdf>
- Self-regulation and 'hate speech' on social media platforms, available at: <https://www.article19.org/resources/self-regulation-hate-speech-social-media-platforms/>
- Detailed information on ethical standards for journalism can be found at <https://www.accountablejournalism.org>

Before engaging into a discussion of the cases presented here, trainers should ensure that participants have properly read and understood the principles presented in the toolkit and other ARTICLE 19's documents listed above.