



GLOBAL ACTION AGAINST
MASS ATROCITY CRIMES

Platform for Prevention

PREVENTING HATE SPEECH, INCITEMENT, AND DISCRIMINATION

LESSONS ON PROMOTING TOLERANCE
AND RESPECT FOR DIVERSITY IN THE ASIA PACIFIC

Preventing Hate Speech, Incitement, and Discrimination:
Lessons on Promoting Tolerance and Respect for Diversity
in the Asia Pacific

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and Asia Pacific Study Group, August 2021

Available online at www.gaamac.org.

GAAMAC thanks its donors, in particular the Swiss Federal
Department of Foreign Affairs (FDFA), for their continuous
and generous support.



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ACKNOWLEDGMENTS

This report was developed by the Asia Pacific Study Group (APSG) of the Global Action Against Mass Atrocity Crimes (GAAMAC). The APSG would like to thank the following experts who contributed to the design and development of the report: Debbie Stothard (Altsean-Burma), Dan Goode (Altsean-Burma), Nickey Diamond (Fortify Rights Burma), and Mr. Paisit Pusittrakul (Chulalongkorn University Faculty of Law).

We are equally appreciative of the immeasurable technical and administrative support of the dedicated staff of the GAAMAC Support Office. Special appreciation also to Mô Bleeker, who introduced an online session of the APSG.

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ABOUT GAAMAC

ABOUT THE GLOBAL ACTION AGAINST MASS ATROCITY CRIMES

The Global Action Against Mass Atrocity Crimes (GAAMAC) is an inclusive network created in 2013 by States, civil society organizations and academic institutions with the support of the United Nations. It works collaboratively to provide a platform for the prevention of atrocities (genocide, war crimes, crimes against humanity and ethnic cleansing). GAAMAC assists interested States in operationalizing the prevention of atrocities at the national level through information-sharing, enhancing links among and between States, civil society and academia, and peer-to-peer support.

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ABOUT THE ASIA PACIFIC WORKING GROUP

The Asia Pacific Study Group (APSG) is one of the regional initiatives originally created during the GAAMAC II global meeting held in Manila, the Philippines, from 2-4 February 2016.

The APSG is made up of a cross-section of practitioners, academics and policy makers working on mass atrocity prevention in the Asia Pacific region. Specifically, the APSG works on raising awareness, building knowledge and understanding of mechanisms to prevent atrocities considering hate speech, incitement and discrimination as lead risk factors to the commission of mass atrocities in the Asia-Pacific region.

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INTRODUCTION

BY CECILIA JACOB, THE AUSTRALIAN NATIONAL UNIVERSITY, CAMBERRA
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The Asia Pacific region is home to multi-ethnic societies with rich and diverse civilisations, political culture, and history. While many states have achieved some degree of political stability and economic development, some states in this part of the world are still in the process of nation-building. Indeed, quite a number of them are also facing identity-based armed rebellion as well as ethnic and communal conflicts that remain unresolved because of deep-seated prejudices, lack of social trust, and persistent poverty and economic inequalities. With the growing use and influence of social media, intolerance and discrimination against minority groups have been exacerbated by the use of hate speech and fake news that contribute to incitement and violent attacks against vulnerable populations, including women.

This report documents and analyses the efforts of state and non-state actors in the region in dealing with the issue of hate speech and intolerance at home. It does this by presenting multiple case studies from across the region in which the authors identify specific factors that foster hate speech and incitement within societies that have at times fuelled serious violations of human rights, including the direct targeting of minority groups based on identity. The report includes in its analysis institutional, political, legal, and social mechanisms that foster resilience and mitigate the potentially violent consequences of hate speech to demonstrate where actors can invest in preventive measures in the specific area of hate speech.

The COVID-19 pandemic has exacerbated the problem of hate speech in many societies, and in some cases, has created new targets of hate speech due to rumours and misinformation regarding the source and spread of the disease.¹ This report includes a chapter dedicated to the impact of the COVID-19 pandemic on the trends and patterns of hate speech in Malaysia.

The report concludes by forwarding recommendations based on the case studies that may be useful for states and civil society groups in the region to consider in creating or enhancing their national action plans for preventing hate speech, incitement, and discrimination as part of preventing atrocities. It also forwards recommendations for regional organisations or subregional arrangements to consider in pursuit of a regional action plan for the prevention of hate speech, incitement, and discrimination and in promoting tolerance and respect for diversity in the region.

This introduction explains the concept of hate speech and its relationship to atrocity violence, contextualising efforts to combat hate speech, incitement, and discrimination within broader atrocity prevention strategies.

¹ United Nations Guidance Note on Addressing and Countering COVID-19 Related Hate Speech, 11 May 2020, <https://www.un.org/en/genocideprevention/documents/Guidance%20on%20COVID-19%20related%20Hate%20Speech.pdf>.

Hate Speech as an Indicator of Mass Violence

This report employs the definition of hate speech formulated in the UN Strategy and Plan of Action on Hate Speech, which is:

“... 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

There is not a direct causal pathway between instances of hate speech and the commission of atrocities. Other mediating factors are needed to determine whether hate speech increases the risk of violence.³ In societies with robust democratic mechanisms that both protect freedom of expression and religion, and have appropriate legal and institutional frameworks in place, hate speech is likely to be identified and countered through appropriate channels of redress. Where such mechanisms for resolving conflict and fostering tolerance are absent, where there is a history of social tension and impunity for historical injustice, hate speech can exacerbate discriminatory attitudes and polarisation in societies that can lead to an escalation in violence.

The presence of hate speech **serves as an indicator** of increasing social tensions and polarisation when it is employed in an orchestrated and strategic manner, and under certain conditions. In many cases of genocide and mass atrocity, hate speech has been present just before onset, leading researchers to conclude that there is a close correlation between political or religious campaigns of hate rhetoric aimed at minority groups and the likelihood of violence escalation. Hate speech that is voiced through leaders with a sympathetic audience, such as government, religious, or other influential elites, contributes to the dynamics of atrocity crimes by identifying and labelling a homogenous group (ethnic, religious, etc.) as the “enemy-other”.⁴

By defining a minority group as a threat to the preservation and/or purity of the targeting group, elites justify extreme strategies, including violence or extermination, to a given majority or targeting audience. References to Jews as ‘rats’ in Nazi Germany, and Tutsis in Rwanda as ‘cockroaches’ prior to genocide, are well-known examples of political leaders employing language to dehumanise minority groups and justify their extermination. Such narratives generate collective emotions and a logic of violence that is justified to the targeting group, often drawing on political reconstructions of historical narratives. The provocation of discriminatory attitudes through hate speech, therefore, provides fertile ground for incitement to violence, whereby a targeting group calls for, or condones, the routine discrimination and violence against a targeted group,⁵ and can be mobilised to participate in collective violence where criminal networks exist.⁶

² United Nations, “The UN Strategy and Plan of Action on Hate Speech,” 2018, <https://www.un.org/en/genocideprevention/documents/UN%20Strategy%20and%20Plan%20of%20Action%20on%20Hate%20Speech%2018%20June%20SYNOPSIS.pdf>, p. 2.

³ Scott Straus, “What Is the Relationship between Hate Radio and Violence? Rethinking Rwanda’s ‘Radio Machete,’” *Politics & Society* 35, no. 4 (2007): 609–37.

⁴ Jeffrey Stevenson Murer, “Constructing the Enemy-Other: Anxiety, Trauma, and Mourning in the Narratives of Political Conflict,” *Psychoanalysis, Culture & Society* 14, no. 2 (2009): 109–30.

⁵ Stefan Klusemann, “Massacres as Process: A Microsociological Theory of Internal Patterns of Mass Atrocities,” *European Journal of Criminology* 9, no. 5 (2012): 468–80.

⁶ Ward Berenschot, *Riot Politics: Hindu–Muslim Violence and the Indian State* (New York: Columbia University Press, 2011); Paul Brass, *The Production of Hindu-Muslim Violence in Contemporary India* (New Delhi: Oxford University Press, 2003).

Furthermore, systematic and orchestrated campaigns of hate speech signal *intent* to target a group. Hate speech feeds directly into three early warning signs before mass atrocities that need to be monitored and analysed in the context of atrocity prevention. These include 1) **Tension and polarisation** between groups where the “situation is charged with emotion, anxiety, and fear”; 2) **Apocalyptic public rhetoric** where “leaders claim they face a great danger and in doing so justify violence”; and 3) **Labelling civilian groups as the enemy**, whereby they are described as “dangerous, homogenous or worthless.”⁷

The key takeaway messages from the existing research is that:

- Hate speech is often used to create narratives and justify the use of violence against a target group based on a perceived homogenous identity and extenuated historical grievances. Monitoring hate speech is, therefore, crucial as part of early warning and atrocity prevention strategies.
- When linking hate speech to atrocity risk it is important to note that increased hate rhetoric and incitement are common (but not universal) in patterns of genocide and atrocities. The presence of hate speech and incitement are **indicators among other early warning signs** of genocide and atrocities that a community/state are at heightened risk of atrocities occurring.
- The presence of hate speech does not guarantee that atrocities will occur; atrocities may occur in the absence of hate speech, and not all instances of intensified hate speech and incitement lead to atrocities.
- An early warning analysis, therefore, will examine the presence of hate speech and incitement alongside other risk factors that would increase the likelihood of widespread violence if a ‘trigger’ event occurs (e.g. assassinations, elections, coup, change in conflict dynamic, crackdown on protestors, riots).⁸
- In many instances, the COVID-19 pandemic has exacerbated pre-existing tensions within communities. In some contexts, it has been a catalyst for discriminatory targeting of minority groups who are accused of spreading the virus.

Countering Hate Speech

Approaches to combatting deep-rooted hate speech and discrimination fall into the category of ‘structural’ or ‘downstream’ prevention where actions are taken to mitigate risk of atrocities in societies.⁹ Long-term efforts to combat hate speech include: ensuring sufficient legal protections for minority populations (such as a constitution, and specific laws to counter discriminatory behaviours); the fostering of tolerant and diverse societies, ensuring appropriate redress and

⁷ Scott Straus, *Fundamentals of Genocide and Mass Atrocity Prevention* (Washington, DC: United States Holocaust Memorial Museum, 2016), 76.

⁸ Straus, *Fundamentals of Genocide and Mass Atrocity Prevention*, 83-87; Scott Straus, “Triggers of Mass Atrocities,” *Politics and Governance* 3, no. 3 (2015): 5–15.

⁹ Serena K. Sharma and Jennifer M. Welsh, “Conclusion: An Integrated Framework for Atrocity Crime Prevention” in *The Responsibility to Prevent: Overcoming the Challenges of Atrocity Prevention*, ed. Serena K. Sharma and Jennifer M. Welsh (Oxford: Oxford University Press, 2015), 368–92.

protection mechanisms are in place (such as through the justice system and police); and addressing past legacies of violence through restorative and retributive justice mechanisms.¹⁰ Research demonstrates the importance of investing in local capacity and resilience at the domestic level to ensure that communities and states cultivate both institutions and a culture that mitigate the effect of risk factors.¹¹ This includes strengthening democratic mechanisms to mediate the impact of internal ‘shocks’ such as assassinations, coups, divisive elections, or mass protests that may catalyse atrocity events.¹²

Where hate speech is employed in emergency scenarios to instigate popular participation in violence, prevention strategies fall into the category of ‘direct’ or ‘targeted’ prevention.¹³ Interventions such as cutting radio frequencies and broadcasts that incite violence have been recognised as tools to disrupt popular mobilisation.¹⁴ In light of the strategic use of Facebook posts by military and religious leaders to incite violence against minority Rohingya populations in Myanmar, Facebook has also started to block posts and delete the accounts of military personnel to counter the spread of hate speech through social media.¹⁵ The potential for social media to be employed to spread hate speech widely in a rapid time frame is only recently starting to be realised in the field of atrocity prevention, but is one that is likely to have significant bearing on the spread and dynamics of conflicts in this hyper-digital age.

The international community does need to ensure that it does not place too much onus on domestic level strategies for prevention, however, and should not assume that societies are ‘prone’ to mass violence due to the presence of certain risk factors.¹⁶ Recent scholarship has demonstrated the limitations of local resilience for risk mitigation when international systemic pressures impose and reinforce structural conditions that exacerbate inequalities and grievances within societies.¹⁷ Inequalities such as those produced and/or reinforced through intervention, global financial and trade systems, or inadvertent consequences of aid are examples of international practices that compound structural drivers of conflicts within states. Exogenous ‘shocks’ such as a financial crisis or international conflict can trigger internal conflicts.¹⁸ The global COVID-19 pandemic is an exogenous shock that has placed major stress on societies and has prompted new waves of hate speech and intergroup tensions across the globe.¹⁹

¹⁰ See also United Nations, “The UN Strategy and Plan of Action on Hate Speech.”

¹¹ United National Secretary-General, “Responsibility to Protect: State Responsibility and Prevention, General Assembly and Security Council,” A/67/929-S/2013/399, 9 July 2013.

¹² Straus, “Triggers.”

¹³ Sharma and Welsh, “Conclusion.”

¹⁴ Gareth Evans, *The Responsibility to Protect: Ending Mass Atrocity Crimes Once and For All* (Washington, DC: Brookings Institution Press, 2008).

¹⁵ Camilla Buzzi, “Mass Atrocities in Myanmar and the Responsibility to Protect in a Digital Age,” *Global Responsibility to Protect* 13, no. 2-3 (2021): 272-96.

¹⁶ Susanne Karstedt, “Contextualizing Mass Atrocity Crimes: Moving Toward a Relational Approach,” *Annual Review of Law and Social Science* 9 (2013): 383–404.

¹⁷ Alexandra Bohm and Garrett Wallace Brown, “R2P and Prevention: The International Community and Its Role in the Determinants of Mass Atrocity,” *Global Responsibility to Protect* 13, no. 1 (2020): 60-95.

¹⁸ Straus, *Fundamentals of Genocide and Mass Atrocity Prevention*, 75.

¹⁹ Human Rights Watch, “Covid-19 Fuelling Anti-Asian Racism and Xenophobia Worldwide: National Action Plans Needed to Counter Intolerance”, 12 May 2020, <https://www.hrw.org/news/2020/05/12/covid-19-fueling-anti-asian-racism-and-xenophobia-worldwide>; Imran Awan and Roxana Khan-Williams, “Research Briefing Report 2020: Coronavirus, Fear and How Islamophobia Spreads on Social Media,” Cross Government Working Group on Anti-Muslim Hatred, United Kingdom, April 2020, <https://antimuslimhatredworkinggrouphome.files.wordpress.com/2020/04/research-briefing-report-7-1.pdf>; António Guterres, “UN chief Global Appeal to Address and Counter COVID-19 Related Hate Speech,” United Nations, 8 May 2020, <https://www.un.org/sg/en/node/251827>.

In sum, research in the area of early prevention points towards the importance of **building complementary strategies at domestic, regional, and international levels** to counter the broader contextual conditions in which hate speech may have a direct causal relationship with the outbreak of atrocity violence.

This report examines the occurrence of hate speech in the various case studies, paying attention to broader context, and provides analyses of the factors that contribute to the mitigation of risk to assess where local, national, regional, and international actors have been effective in fostering prevention strategies, or where greater attention needs to be paid. Where relevant, the case studies examine the following strategies for countering hate speech:

- Legal frameworks including constitutions, civil and penal codes that provide protection for minorities, and proscribing hate speech and discrimination.²⁰
- Political leadership²¹
- Institutional and policy environment²²
- Role of civil society and faith-based actors²³
- Transitional Justice and efforts to deal with legacies of impunity that foster divisions between groups²⁴
- Diplomatic and multilateral support at regional and/or international levels, supporting legal, governance and security sector reform, resourcing government and civil society to combat hate speech.²⁵

International Legal Framework on Hate Speech and Incitement

Most countries in the Asia-Pacific region have legal provisions for proscribing hate speech and discrimination through their constitution or criminal and civil laws. However, there is a great diversity of definitions, legal provisions, and degree of implementation across the region.²⁶ For this reason, the standards for the provision and protection of populations from hate speech and discrimination employed in this study are those found in international law.

²⁰ United Nations Human Rights Council, “Annual Report of the United Nations High Commissioner for Human Rights on the Expert Workshops on the Prohibition of Incitement to National, Racial or Religious Hatred,” A/HRC/22/17/Add.4, 11 January 2013, https://www.ohchr.org/Documents/Issues/Opinion/SeminarRabat/Rabat_draft_outcome.pdf.

²¹ Stephen McLoughlin, “The Role of Political Leaders in Mitigating the Risk of Mass Atrocities: An Analysis of Khama, Kaunda and Nyerere,” *International Affairs* 96, no. 6 (2020): 1547–64.

²² McLoughlin, “The Role of Political Leaders.”

²³ United Nations, “Plan for Action for Religious Leaders and Actors to Prevent Incitement to Violence That Could Lead to Atrocity Crimes,” 2017.

²⁴ United Nations, “Joint study on the contribution of transitional justice to the prevention of gross violations and abuses of human rights and serious violations of international humanitarian law, including genocide, war crimes, ethnic cleansing and crimes against humanity, and their recurrence - Report of the Special Rapporteur on the Promotion of Truth, Justice, Reparation and Guarantees of Non-recurrence and the Special Adviser to the Secretary-General on the Prevention of Genocide,” A/HRC/37/65, 6 June 2018, <https://undocs.org/en/A/HRC/37/65>

²⁵ UN Secretary-General, “The Role of Regional and Subregional Arrangements in Implementing the Responsibility to Protect,” A/65/877-S/2011/393, 28 June 2011; UN Secretary-General, “Fulfilling Our Collective Responsibility: International Assistance and the Responsibility to Protect,” A/68/947-S/2014/449, 11 July 2014.

²⁶ A detailed study is found in Vitit Muntarbhorn, “Study on the Prohibition of Incitement to National, Racial or Religious Hatred: Lessons from the Asia Pacific Region,” n.d., https://www.ohchr.org/Documents/Issues/Expression/ICCPR/Bangkok/StudyBangkok_en.pdf.

There is also a need to strengthen the existing peace, security, and human rights architecture that does exist in Southeast Asia to provide a more coherent regional approach to countering hate speech and related violence among its members.²⁷

Whereas domestic and international laws prohibiting hate speech are not always consistent (e.g. in the interpretation of freedom of speech), incitement to hatred and discrimination is prohibited in international law. The Universal Declaration of Human Rights²⁸ is pertinent to all countries, including those in the Asia-Pacific. Articles 18 and 19 guarantee the rights to freedom of religion and expression. The only limitations placed on these are those found in Article 29(2) in the case where the rights of others to exercise their freedoms are impeded, or where “just requirements of morality, public order and the general welfare in a democratic society” is threatened.

Article 19 of the International Covenant on Civil and Political Rights²⁹ (ICCPR) also guarantees the right of individuals to freedom of expression, with a commensurate limitation on this freedom found in Article 20 that states: “any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law”. Article III(c) of the Convention on the Prevention and Punishment of the Crime of Genocide³⁰ considers “direct and public incitement to commit genocide” a crime in recognition of the instrumental role that hate speech plays in inciting violence against a defined population group.

The strongest denouncement of hate speech and incitement to both discrimination and violence is found in the Convention on the Elimination of All Forms of Racial Discrimination,³¹ which prohibits all incitement of racism. Article 4 states:

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 the Convention, inter alia:

a) Shall declare an offence punishable by 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;

²⁷ Noel M. Morada, “ASEAN Regionalism and Capacity Building for Atrocities Prevention: Challenges and Prospects,” in *Implementing the Responsibility to Protect: A Future Agenda*, ed. Cecilia Jacob and Martin Mennecke (Oxon: Routledge, 2020), 89-108; Asia Pacific Partnership Atrocity Prevention, Working Group on Prevention of Hate Speech and Incitement in Southeast Asia meeting report, March 2019, <https://appap.group.uq.edu.au/files/1065/APPAP%20WG%20Hate%20Speech%20and%20Incitement%20Workshop%20Report%20%202019.pdf>.

²⁸ UN General Assembly, *Universal Declaration of Human Rights*, 10 December 1948, 217 A (III).

²⁹ UN General Assembly, *International Covenant on Civil and Political Rights*, 16 December 1966, United Nations, Treaty Series, vol. 999, 171.

³⁰ UN General Assembly, *Convention on the Prevention and Punishment of the Crime of Genocide*, 9 December 1948, United Nations, Treaty Series, vol. 78, 277.

³¹ UN General Assembly, *International Convention on the Elimination of All Forms of Racial Discrimination*, 21 December 1965, United Nations, Treaty Series, vol. 660, 195.

b) 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;

c) Shall not permit public authorities or public institutions, national or local, to promote or incite racial discrimination.

Given the clarity and customary character of the international legal standards in this area, this report proceeds with the assumption that the responsibility to prevent the spread of hate speech and to respond to incitement to discrimination and violence represents a core responsibility for not only states, but also civil society groups, and regional and international organisations. Living up to these responsibilities requires an acknowledgement by these respective actors of their responsibilities in this area, and the proactive investment in strengthening prevention mechanisms to mitigate and respond to violations.

Objectives and Methodology

Preventing Hate Speech, Incitement, and Discrimination: Lessons on Promoting Tolerance and Respect for Diversity in the Asia Pacific documents and analyses the current efforts of state and non-state actors in the region in dealing with the issue of hate speech and intolerance at home. It employs a case-study methodology, with chapters on six countries – Myanmar, the Philippines, Indonesia, Malaysia, India, and Pakistan.

The objectives of the case studies are to:

- Identify state and civil society preventive action and/or responses to hate speech and incitement by certain individuals or groups against vulnerable populations
- Examine the strengths and weaknesses of the identified preventive actions in containing the influence of hate speech
- Develop a set of recommendations that may be useful for states and civil society groups in the region to consider in creating or enhancing their home-grown action plans for preventing hate speech, incitement, and discrimination as part of preventing atrocities
- Develop a set of recommendations that may be useful for international and regional organisations, to consider in pursuit of a regional action plan for the prevention of hate speech, incitement, and discrimination and in promoting tolerance and respect for diversity in the region.

The chapters provide relevant historical, political, legal, and social context for each country. They then present case studies, which are specific events, incidents, or cases of hate speech and incitement over the last 5-10 years to provide an analysis of the context, instigators/perpetrators, triggering factors, target groups, and dynamics in the case study. The case studies examine the specific responses and/or actions taken by the government to prevent or halt hate speech and incitement, the strengths and weaknesses of these responses/actions, and whether there are existing laws or mechanisms already in place to combat hate speech/incitement.

The case studies also examine the role of traditional and social media in the spread of hate speech or incitement and what actions have been taken by relevant actors (including the government) to strengthen efforts in containing hate speech.

Where relevant, the case studies provide an analysis of the role of non-state actors (e.g. religious leaders, civil society groups, human rights defenders, community leaders) in combatting hate speech/incitement and their effectiveness in promoting tolerance and respect for diversity. Where relevant, case studies also include analysis of the role of regional and international actors/organisations in responding to hate speech/incitement in the country and the extent to which responses/actions have been effective in containing hate speech/incitement as part of averting violence or atrocities.

Each of the chapters outline a specific set of practical recommendations for stakeholders to create and/or strengthen national laws, mechanisms, institutions, or community-based initiatives to contain hate speech/incitement as part of national efforts in preventing atrocities. The conclusion below draws out a series of common recommendations.

Report Overview

The first chapter provides a case study on hate speech and incitement in Myanmar since the outbreak of the communal violence in Rakhine in 2012. It examines the domestic context, dynamics, and responses the problem of prejudice and intolerance against religious and ethnic minorities continue, and including in the context of the aftermaths of the 1 February 2021 coup. It shows that the main vehicle for the spread of hate speech and incitement, including fake or false information, is social media. The main perpetrators are Buddhist extremists, nationalist politicians, and members of the Tatmadaw (military).

Chapter Two examines hate speech, incitement to violence and discrimination against the Bangsamoro people or Filipino Muslims in Mindanao, focusing on the January 2015 Mamasapano Incident and the May 2017 Marawi Siege. This chapter overviews strategies by government actors at the national and regional level, and non-government actors, including civil society organisations (CSOs) and community actors, in combating hate speech and discrimination; and an outline of the objectives of some notable initiatives to initially identify linkages of different actor's strategies to address hate speech, incitement to violence and discrimination.

Chapter Three analyses the dynamics of hate speech in Indonesia, including the various government and civil society responses to hate speech, which are both equally important to deal with the phenomenon. It examines the dynamics of hate speech campaigns in the three case studies: incitement against Ahmadiyya, Shi'a, and Basuki Tjahaja Purnama alias Ahok, the Governor of Jakarta in the period 2014-2017. The chapter also looks at government efforts to issue regulations and establish institutions to deal with hate speech, and explains the role of civil society to complement the government measures in dealing with hate speech

Chapter Four examines the interplay between hate speech, COVID-19, and refugee movement in Malaysia. It starts with a regional overview of public attitudes towards foreigners and refugees before narrowing down to explain how and why Rohingya refugees have become the target of hate speech and incitement in Malaysia. It shows that the pandemic

is at the core of public anxieties, which exacerbated conditions that were conducive to the proliferation of hate speech and incitement to violence against foreigners that were perceived as intruders in the country.

Chapter Five examines the issue of hate speech and incitement leading to hate crimes in India. This chapter provides a historical background to contextualise the current situation of hate speech and violence against religious and ethnic minorities in India, followed by an analysis of the legal and policy framework in place concerning the regulation of hate speech and other forms of discrimination against minorities. In order to illustrate the dynamics and character of hate speech, incitement and violence, the chapter provides case studies of the 2020 Delhi riots, the targeting of the Tablighi Jamaat during the COVID-19 lockdown in 2020, and a discussion of hate speech and violence towards Christian and Northeast ethnic minority groups.

The final chapter examines the prevalence of hate speech in Pakistan and analyses the state policies, judicial frameworks, and lack of accountability mechanisms that have normalised nationwide incitement of hate speech on the basis of religion and/or ethnicity. The chapter reflects on the heightened sectarian divisions between the Shi'a and the Sunni Muslims and on the constant persecution of prominent religious minorities, particularly the Ahmadiyya community, Christians, and Hindus. Most of the cases of hate crimes in Pakistan are centred on the notorious blasphemy laws. Despite multiple efforts and appeals by civil society actors to amend these laws, hard line religious parties and organisations have continually obstructed these efforts. To demonstrate the severity and the injustices brought about by the blasphemy laws, this chapter focuses on two specific cases – conviction of Asia Bibi in 2010 and lynching of Mashal Khan in 2017. These cases gained considerable media attention, stirred public outrage, and provoked an international response that have generated wider debate of policy and legal reforms in Pakistan.

Each of the chapters provides a summary of key findings, and recommendations to actors relevant to the country context. Finally, the Conclusion draws together key cross-cutting themes from the report and offers broad recommendations for key state, non-state, and international organisations.

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MYANMAR

HATE SPEECH AND INCITEMENT IN MYANMAR

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This case study on hate speech and incitement focuses on Myanmar from the outbreak of the communal violence in Rakhine in 2012 up to the time that the National League for Democracy (NLD) government was ousted in a coup on 1 February 2021. Specifically, it examines the domestic context and dynamics of and responses to the problem of prejudice and intolerance against religious and ethnic minorities continue. The primary vehicle for the spread of hate speech and incitement, including fake or false information, is the social media. The main perpetrators are Buddhist extremists, nationalist politicians, and members of the Tatmadaw (military).

Key takeaways from this study:

Hate speech and incitement remain very serious concerns in Myanmar given the strong prejudice against the Rohingya in particular and the lack of trust amongst different religious and ethnic communities in general. The situation is not helped by the absence of mitigating factors, such as civilian control over the military, robust and independent accountability mechanisms, and the rule of law. In fact, the February 2021 coup has undermined whatever limited achievements were made under the precarious democratic transition in Myanmar since 2010 up until the ousting of the NLD government.

Since the eruption of communal violence in Rakhine in 2012, the problem of hate speech and incitement in Myanmar have not been adequately addressed by both the Union for Solidarity and Development Party (USDP) and NLD governments.

The NLD failed to legislate against hate speech and incitement. The current version of the draft law remains problematic as it fails to conform to international norms under the International Convention on Civil and Political Rights (ICCPR).

Much of the work in combating hate speech and incitement in Myanmar has been pursued through the joint efforts by non-state actors. However, the impact of these efforts remains to be seen, specifically in building trust and improving interfaith and communal relations among different religious and ethnic groups in Myanmar.

Despite calls made in the United Nations for the Myanmar government to take measures to address the issues of hate speech and incitement, discrimination, and prejudice against minority groups, the ousted NLD government failed to effectively adopt such recommendations. Under the junta, such measures are unlikely to be given priority as the Tatmadaw is preoccupied with restoring internal political stability amidst widespread anti-coup protests in the country.

Notwithstanding the absence of accountability mechanisms in the region and the reluctance of ASEAN to confront an erring member on atrocities committed in Rakhine, the regional organisation through its existing mechanisms is open to capacity building in areas that may be linked to human rights protection, atrocities prevention, and combating hate speech and incitement.

The February 2021 coup in Myanmar is a major setback to efforts by various stakeholders in the country in building awareness about the importance of preventing the use of hate speech and incitement to violence, which have been perpetrated mainly by soldiers and police forces against civilians who are defying the violent crackdown of the junta against coup protestors. While social media platforms have responded swiftly by indefinitely banning accounts identified with the military in Myanmar, hate speech and incitement to violence are likely to intensify even as the widespread protests in the country evolve into urban warfare against the junta. Anti-coup protestors have also used dehumanising language against soldiers and policemen, which could further perpetuate the cycle of hate and incitement to violence.

The next section of this paper provides an overview of the domestic context in Myanmar, a discussion of the political dynamics involved in the rise of hate speech following the eruption of communal violence in Rakhine, the responses of the USDP and NLD governments as well as non-state actors, as well as the responses of the international community and those of regional stakeholders to the situation in Myanmar. Although the NLD government is no longer in power following the military coup of 1 February 2021 and the political situation in the country remains volatile, it is important to understand the historical and cultural contexts as well as the political dynamics of hate speech and incitement in Myanmar.

Myanmar: An Overview

ETHNIC AND RELIGIOUS DIVERSITY

Myanmar (or Burma) is one of the most ethnically diverse countries in Southeast Asia. There are eight major groups called “ethnic national races” that are further subdivided into 135 ethnic nationalities. The ethnic national races are Burmese/Bamar, Chin, Kachin, Kayin (Karen), Kayah, Mon, Rakhine, and Shan. These categories are based on regions of the country rather than ethnic or linguistic identity. There are other races in Burma that are not officially recognised, such as Burmese Chinese and Panthay (which together comprise 3% of the population), Burmese Indians (2%), Anglo-Burmese, and Gurkha.

It is estimated that the Burmese/Bamar make up 68 per cent of the country’s population, followed by Shans (9%), Kayin (or Karen, 7%), Rakhine (or Arakanese, 1.7%), Chinese (2.5%), Mon (2.5%), Kachin (1.5%), Indians (1.25%), Rohingya (also referred to as Bengalis, 1.8%), and Kayah (0.75%). Other ethnic groups such as the Wa, Naga, Lahu, Lisu, and Palaung together comprise 4.5 per cent of Myanmar’s population. In Rakhine, there are small number of indigenous peoples like the Mro and Daingnet, as well as the Muslim Kamans, which are recognised by the state as among the 135 ethnic nationalities.

Based on the 2014 census, 89 per cent of Myanmar's population are Buddhists, 6.3% Christians, 2.3% Muslims, 0.5% Hindu, and 0.8% animists. If the non-enumerated populations in Rakhine (who are Rohingya Muslims) numbering over 1.2 million are included in the count, the Buddhist majority in Myanmar would be 87.9% and Muslims 4.3³²

1982 CITIZENSHIP LAW

In 1982, Burma passed a new law that defined who are entitled to automatic, associate, and naturalised citizenship. Under this law, a person must belong to any of the eight national races who settled in the country prior to 1824, which is the date of the first British occupation. Accordingly, because the Rohingya are not recognised as an ethnic or national race, the new law automatically revoked their Burmese citizenship based on the previous 1948 law and effectively rendered them “stateless”. Currently, they are also considered “foreigners” or “illegal migrants” if they fail to register as “Bengalis” in order to acquire national verification cards (NVCs) that would theoretically allow them to move around the country.

In 2017, following the recommendation made by the Rakhine Advisory Commission for the Myanmar government to consider the granting of citizenship to the Rohingyas, hardline Buddhist nationalists including the Arakan National Party staged a protest. They opposed changing the 1982 citizenship law that would recognise the Rohingya as an ethnic minority in Rakhine. Buddhist Arakanese and Burmese in general consider Bengali migrants from Bangladesh to be illegal.

MILITARY RULE AND ETHNIC ARMED CONFLICTS

For much of its history since independence from British rule in 1948, Myanmar has been under a military dictatorship. Some 21 ethnic armed organisations (EAOs) in the country have been battling Tatmadaw forces in an effort to assert their control over conflict areas that are rich in natural resources and to protect their respective communities from the military's counter-insurgency operations, land-grabbing, extortion activities, and atrocities against civilians. Whereas General Aung San in 1947 promised autonomy to Shan, Kachin, and Chin states in a federal union under the Panglong Agreement, this deal was not implemented by successor governments in Burma. Ethnic armed rebellions in the country ensued after independence and the fragile parliamentary democracy was ultimately overthrown in a coup led by Gen Ne Win in 1962.

Since the ratification of the 2008 Constitution drafted by the military, various peace talks and ceasefire agreements have been negotiated between the Tatmadaw and EAOs. However, these peace efforts did not pave the way for any political settlement of ethnic armed conflicts as the military remained adamant in refusing to give in to demands for autonomy by EAOs under a federal union. For the Tatmadaw, any peaceful settlement of the armed conflicts must be within the framework of the Constitution, which still gives the military enormous power without any accountability. In fact, even after the National League for Democracy (NLD) took

³² Republic of the Union of Myanmar, *The 2014 Myanmar Population and Housing Census: The Union Report: Religion, Census Report Volume 2-C* (Myanmar: Department of Population, Ministry of Labour, Immigration and Population, 2016).

over the government in 2016, the civilian government could not rein in the Tatmadaw or gain its full support for Aung San Suu Kyi's Panglong Conference II in pursuit of peace with EAOs. While the NLD government was open to idea of autonomy, the military insisted on EAOs laying down their weapons, converting their forces into border guard troops, and supporting the union under the 2008 Constitution.

Further complicating the ethnic armed conflicts in Myanmar was the refusal of both the NLD and the Tatmadaw to engage in a peace dialogue with the Northern Alliance of some four EAOs³³ that have not signed the national ceasefire agreement (NCA) with the military. China attempted to broker peace talks between the NLD government and the Northern Alliance in Kunming in December 2019 but the meeting failed.³⁴ The Northern Alliance includes the Arakan Army (AA) which, since late 2018, launched and intensified its attacks on the Tatmadaw in Rakhine and the nearby states of Kachin and Chin. The continuing violent encounters between the AA and Myanmar forces have resulted in more civilians being killed or injured, internal displacements, and other refugees fleeing to Bangladesh. It has also stalled the process of Rohingya repatriation to Rakhine due to safety concerns.

RELIGIOUS AND RACIAL PREJUDICE

Until the outbreak of communal violence in Rakhine in 2012, relations between the different ethnic and religious communities in Myanmar overall had been peaceful. In fact, the Arakanese and Rohingya communities were able to go about their daily lives in Rakhine, even as Buddhists and Muslims throughout the country were able to live in peace. In 2010, Rohingyas were allowed to vote and even had a representative from Rakhine elected as a Member of Parliament under the Union for Solidarity and Development Party (USDP). However, peaceful coexistence and tolerance among these different communities were disrupted in the aftermath of communal violence in Rakhine that started in May 2012. This event was apparently not a spontaneous one inasmuch as there was some alleged planning by local Rakhine Buddhist civil society groups, businessmen, and politicians to attack the Narzi village inhabited by Rohingya Muslims and raze it. Communal tension has been on the rise between ethnic Rakhines and the Rohingya, which is rooted in the former's resentment against the latter after they were allowed to vote in the 2010 elections.³⁵ In 2011 and subsequently, Rakhine nationalists held public seminars in Yangon and in northern Rakhine against what they claim as the "Rohingyanisation of Arakan".³⁶ The spread of communal violence outside of Rakhine was also due to incitement instigated by Buddhist nationalists led by Wirathu's "969" movement (a precursor to the MaBaTha), which were targeting the Rohingyas and other Muslim communities in Myanmar in the name of protecting the country's predominant race (Burmese) and religion (Buddhism).

Prejudice among different religious communities in Myanmar remained strong despite the ongoing democratic transition. In 2018, the People's Alliance for Credible Elections (PACE) published a report based on a survey of the democratic values of citizens in Myanmar, which

³³ The Northern Alliance is composed of the Kachin Independence Army, Ta'ang National Liberation Army, Arakan Army, and the Myanmar National Democratic Alliance Army.

³⁴ Lawi Weng, "Northern Alliance, Myanmar Govt Fail to Reach Deal at Latest Peace Talks in China," *The Irrawaddy*, 16 December 2019, <https://www.irrawaddy.com/news/burma/northern-alliance-myanmar-govt-fail-reach-deal-latest-peace-talks-china.html>.

³⁵ Carlos Sardiña Glache, *The Burmese Labyrinth: A History of the Rohingya Tragedy* (London and New York: Verso Press, 2020), 42-43.

³⁶ *Ibid.*, 43.

included tolerance and respect for diversity in the country. According to the report, people across the country felt more comfortable with those who shared the same religion. In particular, 81 per cent of more than 2,800 respondents said that they felt more comfortable having a Buddhist boss compared to 23 per cent if their boss was Christian, 12 per cent if Hindu, and only 8 per cent who said that they would be comfortable if their boss was a Muslim.³⁷ The same level of comfort was reflected when respondents were asked about having neighbours from different religions: 84 per cent said they would be comfortable with a Buddhist neighbour vis-à-vis neighbours who were Christians (26%), Hindu (14%), and Muslims (9%).³⁸

DEMOCRATIC TRANSITION AND ABUSE OF FREEDOM OF EXPRESSION

In 2010, Myanmar embarked on a democratic transition that saw the installation of a quasi-civilian government following its first general elections since 1990. The military-backed Union Solidarity and Development Party led by former military general Thein Sein won in a landslide and was the dominant party in the two houses of the national parliament where 25 per cent of the seats are allocated to appointed military representatives. President Thein Sein's cabinet was made up mostly of former military officers who previously occupied key positions in the military junta's State Peace and Development Council (SPDC). The key priorities of the USDP government upon assumption into office in 2011 were: 1) good governance and clean government; 2) promotion of democratic practices in government and society; 3) rule of law; and 4) efficiency in government and public services.³⁹ Thein Sein also spelled out his vision for Myanmar for the next five years (2011-2015), to wit: 1) to restore genuine, eternal peace in the country; 2) economic development that would end Myanmar's least developed country (LDC) status; and 3) for Myanmar to become a middle-income country by 2020.⁴⁰

The reformist agenda of the USDP government during this period saw the opening of the country's economy to foreign direct investments from Western countries, as well as opening of the democratic space for political activities including a free press, human rights advocacy, and minority rights protection, among others. Thein Sein also granted amnesty to more than 6,000 political prisoners in October 2011 and allowed the NLD to participate in the by-elections in 2012, which led to Suu Kyi's being elected MP after her party won 43 seats in parliament.

The opening of political space in Myanmar under the USDP to some extent also contributed to the rise of hate speech and incitement in the country. Access to the internet and the use of social media platforms became more widespread, with half of adults in the country regularly using Facebook by late 2013. By mid-2014, Facebook had become the principal platform for media organisations, government agencies, and politicians to reach the Burmese public. According to a Burmese historian, Facebook not only added to the "transparency of political life" but also to "a sudden coarseness in public discourse", as well as an easy means to mobilise violence.⁴¹ Freedom of speech or expression was abused primarily by Buddhist nationalists and their supporters through the use of social media to spread hate speech and rumours or fake news that incited violence against the Rohingya and the Muslim community.

³⁷ People's Alliance for Credible Elections–PACE, *Public Opinion on Democratic Aspirations* (Yangon: PACE, 2018), 18.

³⁸ *Ibid.*, 21.

³⁹ Ye Htut, *Myanmar's Political Transition and Lost Opportunities (2010-2016)* (Singapore: ISEAS, 2019), 47.

⁴⁰ *Ibid.*

⁴¹ Thant Myint-U, *The Hidden History of Burma: Race, Capitalism, and the Crisis of Democracy in the 21st Century* (New York: W.W. Norton & Company, 2020), 206.

Notwithstanding the political and economic reforms pursued by the USDP, Myanmar remained under the strong rein of the Tatmadaw whose power was unchecked even as it continued to operate with impunity. Its economic interests and business activities were protected, including those in illicit drug trade, land grabs, and other forms of extortion. The Rohingya issue under the USDP also became a major regional concern after communal violence in Rakhine erupted in 2012 and spread in other parts of the country in 2013-2015, resulting in deaths, injuries, and destruction of properties and houses of worship. It was also during this time that the Buddhist nationalist group MaBaTha emerged (ostensibly with the support of the military), which was primarily responsible for spreading rumours that led to violent attacks against the Muslim community in Rakhine and elsewhere in Myanmar.

The USDP was overwhelmingly defeated by the NLD in the 2015 elections, which led to Suu Kyi taking over as de facto leader of the country despite her being barred under the 2008 Constitution from assuming the post of president. Specifically, she assumed the State Counsellor position which was especially created for her by the NLD through a special law enacted in parliament. She also assumed four cabinet portfolios: foreign minister, minister of education, minister of energy and electric power, as well as presidential adviser.

During the 2015 election campaign, Suu Kyi promised to revive the Panglong Conference in order to pursue peaceful settlement of ethnic armed conflicts in the country. This idea was not supported by the Tatmadaw because it revives the grant of autonomy to ethnic armed groups as originally envisioned by her father Gen Aung San in 1947 in order to get the support of ethnic minority leaders to join the new union of Burma after independence. Under the NLD government, peace negotiations with the EAOs did not make any progress even as the Tatmadaw sustained its assault on ethnic armed groups, particularly in the northern part of Myanmar.

Meanwhile, amid strong international pressure, Suu Kyi was careful in dealing with the communal conflict in Rakhine. However, she took the bold step of setting up the Rakhine Advisory Commission headed by former UN Secretary-General Kofi Annan to generate a set of recommendations that would address the root causes of the communal conflict, which erupted once more in October 2016 following the attacks by the Arakan Rohingya Salvation Army (ARSA) that killed several border policemen and civilians. On 25 August 2017, another ARSA attack was launched in Rakhine the day that Kofi Annan submitted the Commission's report to Suu Kyi. It resulted in a mass exodus of Rohingyas into Bangladesh following the Tatmadaw's violent clearance operations against ARSA militants and their sympathisers. It is estimated that more than 6,000 Rohingyas were killed in the military's clearing operations, which included women and children. Some 700,000 fled to Bangladesh, bringing the number of Rohingya refugees in that country to over a million.

The next section of this paper looks into the Rohingya crisis and hate speech in Myanmar.

Hate Speech and the Rohingya Crisis

Notwithstanding the peaceful and orderly election in Myanmar in 2010, which was won by the pro-military United Solidarity and Development Party, the outbreak of communal violence in Rakhine in June and October 2012 not only overshadowed the achievements of the USDP in fostering political reconciliation but also presaged further escalation of violence against the stateless Rohingya people and the Muslim community in general. There were two outbreaks of communal violence in 2012 that resulted in close to 200 people being killed and over 100,000 Rohingyas displaced in Rakhine.⁴² Of these, 90 people were killed and close to 30,000 Rohingyas displaced in October 2012 after Buddhist extremist vigilantes attacked and burned homes and boats in the predominantly Muslim town of Kyaukpyu.⁴³ The communal violence was triggered by a reported robbery, rape, and murder of an ethnic Rakhine Buddhist woman on 28 May 2012, allegedly by three Muslim youths, who were later arrested by the local police. Some locals alleged that the young men were Rohingya Muslims. Subsequently, attacks by ethnic Rakhine Buddhists and Rohingya Muslims against each other's communities ensued, resulting in burning of houses and businesses. Riots continued despite increased security presence in Sittwe, Maungdaw, and Buthidaung, and a state of emergency was declared on 10 June 2012. By the end of June 2012, there were an estimated 80 deaths in Rakhine and some 90,000 people were displaced.⁴⁴ Riots broke out again in October 2012 that began in Min Bya nad Mrauk Oo and spread across the state. The fresh outbreak of communal violence, which also targeted other Muslim communities in Rakhine, saw more than 80 people killed and over 22,000 people displaced, as well as more than 4,600 houses burnt.⁴⁵

Further communal strife erupted in Rakhine and in central Myanmar in 2014, mainly due to continuing anti-Muslim campaigns by Buddhist nationalists. The central government did not seriously take efforts in cracking down on the activities of this group. In fact, the ruling USDP and the military tolerated the rise of the MaBaTha led by the notorious monk Wirathu, who was primarily responsible for pushing for the passage of four discriminatory laws under the "Protection of Race and Religion",⁴⁶ which were enacted by the union parliament in 2014.

Under the NLD government, violations of international human rights and humanitarian law continued, not just in Rakhine but also in other areas of the country. In the aftermath of the militant attacks against border policemen in Rakhine in October 2016 and subsequently on 25 August 2017, the military conducted clearing operations that resulted in more than 700,000 Rohingya refugees fleeing to Bangladesh; over 1,000 killed, which included militants and other non-Muslim civilians; and some 40,000 internally displaced persons. Médecins sans Frontières reported that over 6,700 Rohingyas were killed in the first week of violence in

⁴² Agence France Presse, "Top Islamic Body Warns of 'Genocide' in Myanmar," 18 November 2012, <http://www.google.com/hostednews/afp/article/ALeqM5h87pBk89l9t...n9seXXh4zkmt8g?docId=CNG.c6c18744bcf573f19c587e59b6e4fd3d.2b1>.

⁴³ Reuters, "Muslim Survivors of Myanmar's Sectarian Violence Relive Ordeals," *New York Times*, 28 October 2012, <http://www.nytimes.com/reuters/2012/10/28/world/asia/28reuters-myanmar-violence.html?ref=global-home>.

⁴⁴ Rights Group Slams Abuse of Rohingyas," Radio Free Asia, 7 July 2012, <https://www.rfa.org/english/news/myanmar/abuse-07052012172223.html>.

⁴⁵ "Burma violence: 20,000 displaced in Rakhine state," BBC News, 28 October 2012, <https://www.bbc.com/news/world-asia-20114326>.

⁴⁶ Hnin Yadana Zaw and Antoni Slodkowski, "Insight – Myanmar's radical monks shaping historic Election," Reuters, 1 November 2015, <https://www.reuters.com/article/uk-myanmar-monks-insight/insight-myanmars-radical-monks-shaping-historic-election-idUKKCN0SQ1A020151101>.

Rakhine in August 2017 based on the survey of 2,300 refugee households in Bangladesh. Of these, 69 per cent were killed by bullet wounds, 9 per cent were burned alive, and 5 per cent by fatal beatings.⁴⁷ The humanitarian organisation also reported allegations of rape committed by Myanmar soldiers against some Rohingya women and girls below 18 years old (including one as young as 9).⁴⁸

PERPETRATORS AND TARGETS OF HATE SPEECH AND INCITEMENT

The main perpetrators of hate speech and incitement against the Rohingya community and other minorities in Myanmar are Buddhist nationalists led by U Wirathu's MaBaTha (the organisation's name translates to "Protection of Race and Religion"). His 969 movement was primarily responsible for spreading rumours and hate speech through social media, which have contributed to incitement and violent attacks against Rohingyas in Rakhine since 2012. The MaBaTha was also responsible for instigating attacks against the Muslim community outside Rakhine that led to the eruption of intercommunal violence in 2013 in Meiktila and central Myanmar, as well as in 2014 in Mandalay. Specifically, in June 2014, a false report about the rape of a Buddhist woman by Muslim men resulted in two people being killed in Mandalay.

Apparently, the MaBaTha's actions were tolerated if not overtly supported by the pro-military USDP. The USDP, composed mainly of retired military officers, and the Tatmdaw cultivated strong ties with Buddhist nationalists in the country since 2011. In exchange for financial support and donations, the MaBaTha led by U Wirathu helped to enhance the image and popularity of the military.⁴⁹ No criminal charges were filed against Wirathu and his followers up until the end of Thein Sein's term. If anything, the USDP supported the initiative of the MaBaTha in enacting four laws on protection of race and religion, which were passed in 2014. These laws aimed to regulate inter-faith marriages, population control, and promote monogamy. In the 2015 elections, the MaBaTha campaigned for the USDP and attacked NLD supporters through the use of hate speech and incitement. Wirathu's resentment against the NLD springs from the latter's opposition to the four laws that were initiated by MaBaTha.⁵⁰

Wirathu continued to use hate speech against Muslims even after NLD took over the government in 2016. Specifically, he attacked the NLD government's policies aimed at curbing the MaBaTha's influence as well as the creation of the Rakhine Advisory Commission headed by Kofi Annan.

⁴⁷ Agence France Presse, "6,700 Rohingya killed in first month of Myanmar violence: Doctors Without Borders," Channel News Asia, 14 December 2017, <https://www.channelnewsasia.com/news/asiapacific/6-700-rohingya-killed-in-first-month-of-myanmar-violence-doctors-9498880>.

⁴⁸ Fiona MacGregor, "Rohingya Girls under 10 Raped While Fleeing Myanmar, Charity Says," *The Guardian*, 25 October 2017, https://www.theguardian.com/world/2017/oct/25/rohingya-children-fled-myanmar-violence-charity?CMP=share_btn_fb.

⁴⁹ Bibu Prasad Routray, "Analysis: Military and the Monks: Future of Civil-Military Relations in Myanmar," Mantraya Analysis No. 43, 2 March 2020, Mantraya.org, <https://mantraya.org/analysis-military-and-the-monks-future-of-civil-military-relations-in-myanmar/>. See also, Wa Lone, "USDP Candidate Donates Big to Ma Ba Tha," *Myanmar Times*, 3 September 2015, <https://www.mmimes.com/national-news/16287-usdp-candidate-donates-big-to-ma-ba-tha.html>.

⁵⁰ Wa Lone, "NLD Condemns U Wirathu for Hate Speech over Violent Video," *Myanmar Times*, 2 February 2016, <http://www.mmimes.com/index.php/national-news/18776-nld-condemns-u-wirathu-for-hate-speech-over-violent-video.html>.

OTHER PLATFORMS AND TARGETS OF HATE SPEECH

Apart from the use of social media, hate speech and incitement in Myanmar also utilise print media, videos, and music. According to a report by PEN Myanmar, various forms of hate speech took place in the country between January and December 2015, which were based on political beliefs, ethnicity, religion, and gender.⁵¹ For example, opposition groups and ethnic armed organisations were branded by government as “warmongers”, “border smugglers”, and “black marketeers or stooges”.⁵² Authorities also played up ethnic and religious differences in the country to divert the public’s attention from economic mismanagement, failure of the peace process, and human rights abuses.⁵³ In the run-up to the November 2015 elections, there was a significant increase in the use of hate speech against the National League for Democracy (NLD), which also targeted Suu Kyi and other women candidates who were characterised as “similar to prostitutes”.⁵⁴

The report identified the following patterns in the use of hate speech and incitement in Myanmar in movies or videos: 1) in the context of politics, movies characterised certain groups of people as animals (e.g. dogs), opposition or critics of government as enemies of the state and axes of foreign powers; movies produced by the state labelled ethnic armed groups or militias as terrorists; and action movies used hate speech and incitement that justified the use of violence against armed rebel groups as part of protecting the nation; 2) in the context of ethnic differences, movies produced by the military portrayed ethnic armed organisations used hate speech that characterised them as enemies of the state; they also used language that resembled ethnic minority people as animals (e.g., Karen rebels as cobras and vipers); Shans as thieves, rape perpetrators, and robbers; people of Indian ethnic origin as rape perpetrators, landowners, and loaners; and 3) in the context of religion, indirect speech acts portrayed Christian girls as “naughty” and Muslims as “rape perpetrators”.⁵⁵

In September 2018, the UN Independent and Impartial Fact-Finding Mission on Myanmar (IIFFMM) report pointed out that the MaBaTha’s hate speech has at its core theme the “Muslim threat” that undermines the nation’s Buddhist identity. Specifically, the group portrays the Muslims and the Rohingyas in particular as: 1) an existential threat to the country due to “mass illegal migration” and “invasion”; 2) a threat to Burmese racial purity due to interracial marriages, population growth of the Rohingya, and the practice of polygamy; and 3) as a threat to Buddhist religious sanctity because Muslim values and practices are incompatible or offensive to Buddhism.⁵⁶ These messages were based on various narratives that were spread through social media, videos, printed materials, and sermons by made by nationalist Buddhist monks.

Accordingly, the IIFFMM’s report underscored the inadequate response by the Myanmar government and the military in curbing hate speech and incitement against Muslims and the Rohingya population. In fact, the report identified deeply problematic statements coming

⁵¹ PEN Myanmar, “Hate Speech: A Study of Print, Movies, Songs, and Social Media in Myanmar,” n.d., accessed 13 September 2020, https://www.burmalibrary.org/docs21/PEN-Myanmar-2016-Hate_Speech_Report-en-red.pdf.

⁵² Ibid., 6.

⁵³ Ibid., 6-7.

⁵⁴ Ibid., 24.

⁵⁵ Ibid., 75-77.

⁵⁶ Independent International Fact-Finding Mission on Myanmar, “Report of the detailed findings of the International Fact-Finding Mission on Myanmar,” Human Rights Council, A/HRC/39/CRP.2, pp. 323-30.

from a variety of government officials or representatives, including those from the security sector, which demonstrate their discriminatory sentiments towards Muslims and the Rohingya community in particular. While they were less inflammatory statements, they nonetheless reflected the same narratives by the MaBaTha and other nationalist groups. In particular, they avoid the use of the term Rohingya, referred to victims of extrajudicial killings as “Bengali terrorists”, and associated Rohingya identity with terrorism and one that is inherently violent, especially in the aftermath of the ARSA attacks. The report also pointed out that most of the Myanmar authorities’ posts and communications also directly feed into the MaBaTha’s narrative of illegal migration and Islamic threat.⁵⁷

The IIFFMM’s report noted that while Facebook is able to connect people in Myanmar, its wide reach, relative user anonymity, and challenges to monitoring or removing posts make the social media platform suitable for spreading messages that may be considered hate speech, “including advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility, and violence.”⁵⁸ Apart from hate speech, Facebook was also used to disseminate misinformation or fake news, including by government officials and the Tatmadaw.⁵⁹

Buddhist nationalists continue to denounce the NLD government as being too soft on Muslims in Myanmar. They attempted to disrupt several religious ceremonies in urban centres. In 2017, a group of Buddhist hardliners attempted to stop a Muslim ceremony in Yangon in honour of Mohamad’s birthday. The organisers claimed that the police refused to intervene after they were called in.⁶⁰ In May 2019, a group of about 100 armed people that included Buddhist nationalists shut down Ramadan ceremonies in three temporary houses of worship also in Yangon.⁶¹

Apart from Muslim communities, and the Rohingya in particular, Buddhist nationalists also targeted other minority groups. For example, prior to the NLD assuming office in March 2016, the MaBaTha protested the appointment of Chin Christian Henry Van Thio as Vice President of Myanmar.⁶² In April 2016, a Buddhist monk erected a stupa and planted a Buddhist flag on a Christian church compound in Karen State. Encroachments by Buddhist nationalists through construction of pagodas in Christian and Muslim compounds have reportedly increased since the eruption of communal violence in Rakhine in 2012.⁶³

⁵⁷ Ibid., 331–40.

⁵⁸ Ibid., 341.

⁵⁹ Ibid.

⁶⁰ Agence France Press, “Buddhist Hardliners Stop Myanmar Muslim Ceremony,” *Frontier Myanmar*, 9 January 2017, <https://frontiermyanmar.net/en/buddhist-hardliners-stop-yangon-muslim-ceremony>.

⁶¹ “Armed mob in Yangon demands Muslims end Ramadan prayer services,” *Coconuts Yangon*, 16 May 2019, <https://coconuts.co/yangon/news/armed-mob-in-yangon-demands-muslims-end-ramadan-prayer-services/>.

⁶² Lawi Weng, “Buddhist Nationalist Monks to Protest Christian VP-Elect,” *The Irrawaddy*, 18 March 2016, <https://www.irrawaddy.com/news/burma/buddhist-nationalist-monks-to-protest-christian-vp-elect.html>.

⁶³ Agence France Presse, “Myanmar monk builds pagodas in church and Muslim areas,” *Channel News Asia*, 27 April 2016, <http://www.channelnewsasia.com/news/asiapacific/myanmar-monk-builds/2737768.html?cid=fbsg>.

Responses to Hate Speech and Incitement

USDP GOVERNMENT (2010-2015)

Following the outbreak of communal violence in Rakhine in 2012 and its subsequent spill over into other parts of Myanmar, President Thein Sein mainly pursued a security-oriented approach in dealing with the problem. Specifically, he declared a state of emergency and mobilised security forces to restore peace and order in the state by imposing a curfew in major townships. He also created a Rakhine Commission of Inquiry to investigate the root causes of the communal conflict, examine efforts in restoring peace and order, outline means to provide relief and implement resettlement programs, develop short- and long-term strategies to reconcile differences between affected communities, and create opportunities for fostering mutual understanding and peaceful coexistence among different religious and ethnic groups. In its report submitted to the government in April 2013, the Commission's recommendations among other things highlighted the importance of: **1)** strengthening border security and immigration control; **2)** ensuring the continued presence and capability of Tatmadaw forces in Rakhine to prevent further eruption of violence; **3)** expanding and strengthening the presence of the navy in coastal areas to monitor and patrol the security of the state; and **4)** for all affected communities to abide by existing laws of Myanmar as part of restoring peace and order, including compliance with immigration laws.⁶⁴

The Commission also stressed the importance of protecting the human rights of all affected communities, including the rights of illegal immigrants. Recognising the concerns of Buddhist Arakanese, it also called on the government to “urgently initiate the process of examining the citizenship status of people in Rakhine” and to ensure the implementation of the provisions of the 1982 Citizenship Law. More importantly, the Commission also said that the government “needs to ban the use of hate language against any religion” including “extremist teachings and activities.”⁶⁵

Based on the above recommendations, Thein Sein formed the Central Committee for the Implementation of Stability and Development in Rakhine State (CCISD). The main strategy of the CCISD was “stability first” and focused on restoration of peace and order, rehabilitation and resettlement, and socio-economic development. While the government was able to contain the eruption of violence until 2015, it failed to implement rehabilitation and resettlement because of the strong opposition of the Buddhist Arakanese to allow the Rohingyas to leave the 42 camps. At the same time, verification of citizenship of Rohingyas was not implemented because they refused register as “Bengalis.”⁶⁶ Until the end of his term in 2016, President Thein Sein failed to resolve the communal conflict in Rakhine and stop the campaign of hate speech and incitement against the Rohingyas and the larger Muslim community by Buddhist nationalists led by MaBaTha. Admittedly, the USDP was not able to contain the further deterioration of relations between Buddhists and Muslims, which led to more incidents of communal violence across the country. The growing radicalisation of Buddhists and Muslims in Rakhine also led to a number of conspiracy theories that explained away the inability of the government to handle the situation. These include allegations that: **1)** the communal violence was instigated by the hardline faction of the USDP to thwart Thein Sein's reform process; or **2)** it was intended to allow the Tatmadaw to return to power.⁶⁷

⁶⁴ Ye Htut, *Myanmar's Political Transition and Lost Opportunities*, 177-178.

⁶⁵ Ibid., 179.

⁶⁶ Ibid., 180.

⁶⁷ Ibid., 180-181.

In the run up to the 2015 elections, the USDP appeared to become more reluctant to deal with the communal conflict in Rakhine even as it also failed to stop the Buddhist nationalists from their incitement activities against the Rohingyas and Muslims throughout the country. In fact, the USDP accommodated the MaBaTha's push for the passage of the four laws in 2014 aimed at protecting race and religion in Myanmar.

NLD GOVERNMENT (2016-2021)

Preventive actions to counter hate speech by Buddhist nationalists gained public support after the NLD took over the government in 2016. At the forefront of these efforts were local civil society groups, human rights defenders, journalists, and advocates of interfaith dialogue. Moderate Buddhist monks also played an important role in calling out MaBaTha's Wirathu inflammatory speeches. A revised draft of the anti-hate speech law (titled Interfaith Harmonious Coexistence Bill) was submitted to the union parliament in September 2017 by the Ministry of Religious Affairs and Culture. It was originally drafted by Inter-Faith Dialogue Group in 2016 to counter incitement by Buddhist nationalists against the Rohingyas, Muslims in general, and other minority groups.⁶⁸ The draft law was reviewed by Suu Kyi with inputs from other countries before its submission to parliament for debate.⁶⁹ Some issues related to the drafting of the anti-hate speech law are discussed in a separate section below.

Accordingly, the NLD government shelved the anti-hate speech law after 2017, ostensibly because of the decline in the MaBaTha's influence after the group was banned by the Buddhist State Sangha and sedition charges were filed against Wirathu.⁷⁰ The focus of the government apparently shifted from hate speech to fake news or deliberate falsehood, which had become a more urgent problem in recent years according to authorities.⁷¹ It created a Social Media Monitoring Team (SMMT) in February 2018 with a budget of about USD 4.5 million. However, it has not made public its reports on its activities and its impact on containing hate speech and fake news in the country.⁷²

The NLD government filed sedition charges against Wirathu in 2019 and other Buddhist nationalists. He has been on the run and was tried in absentia for his attempts in inciting disaffection with the government.⁷³ The government also filed charges against another Buddhist nationalist monk in 2017, for instigating communal violence between Buddhists and Muslims in Yangon, including forcing the shutdown of temporary Muslim houses of worship in South Dagon township (he was arrested in June 2019 after being a fugitive for two years).⁷⁴

⁶⁸ DVB, "Anti-Hate Speech draft law submitted to Myanmar parliament," Coconuts Yangon, 28 September 2017, <https://coconuts.co/yangon/news/anti-hate-speech-draft-law-submitted-parliament/>.

⁶⁹ Pe Thet Htet Khin, "Daw Aung San Suu Kyi Alters Draft of Hate Speech Law," *The Irrawaddy*, 3 April 2017, <https://www.irrawaddy.com/news/burma/daw-aung-san-suu-kyi-alters-draft-hate-speech-law.html>.

⁷⁰ Nyi Nyi Kyaw, "Facebooking in Myanmar: From Hate Speech to Fake News to Partisan Political Communication," *Perspective* (ISEAS Yusof Ishak Institute), 2019, no. 36 (9 May 2019): 3.

⁷¹ Ibid.

⁷² Ibid., 5.

⁷³ Htun Htun, "Wirathu to be Tried for Sedition in Absentia," *The Irrawaddy*, 11 June 2019, <https://www.irrawaddy.com/news/burma/wirathu-tried-sedition-absentia.html>.

⁷⁴ Htet Khaung Lin, "Nationalist Monk Arrested After a Long Run," *The Irrawaddy*, 12 June 2019, <https://www.irrawaddy.com/news/burma/nationalist-monk-arrested-long-run.html>.

NON-STATE ACTORS

Various civil society groups and non-state actors in Myanmar have responded to the use of hate speech and incitement by Buddhist nationalists in the country. These include moderate Buddhist groups, interfaith religious leaders, human rights organisations, and even some parliamentarians.

INTERFAITH GROUPS

In March 2017, the Buddhist State Sangha of Myanmar – the MaHaNa – banned nationalist monk Wirathu from delivering public sermons for a year and distanced itself from the group. It also ordered the MaBaTha to disband and cease all activities by 15 July 2017, with a threat of legal action if it failed to comply.⁷⁵ The ban was precipitated by protests made by MaBaTha against the Minister of Religious and Cultural Affairs whom they accused of being biased in favour of Muslims in the country. These actions clearly signified the determination of the NLD government, the State Sangha, and civil society groups to put an end to the violent anti-Rohingya/Muslim campaign of the MaBaTha, which was to a large extent tolerated by the previous USDP government since the outbreak of violence in Rakhine in 2012.

However, despite the ban on the MaBaTha, Wirathu and his supporters remained defiant and continued to hold protests against the NLD government in Yangon and Mandalay.⁷⁶ He even accused Suu Kyi of being a threat to the national religion and identity of Myanmar. He also said that his group will oppose any effort to change the 1982 Citizenship Law to conform with the Rakhine Advisory Commission's recommendation to restore citizenship to the Rohingyas.⁷⁷

Interfaith solidarity groups composed of moderate Buddhist monks and Christian and Hindu religious leaders have also banded together in combatting hate speech and incitement. For example, U Bandatta Seindita, founder of the Asia Light Foundation, visited a Muslim community in Yangon following an attempt by a gang of Buddhist nationalists to shut down temporary houses of worship during Ramadan in May 2019. This act sparked an online campaign that created the White Rose Campaign aimed at spreading *metta* (or loving kindness) to show community resilience towards hatred and extremism.⁷⁸ Cardinal Charles Bo has also been at the forefront of combatting religious intolerance in Myanmar and has consistently called on religious leaders to be cautious and to avoid the use of hate speech. In 2015, he called upon the USDP government to do more to prevent the spread of hate speech and to do more to help the Rohingya refugees who were fleeing Rakhine.⁷⁹

⁷⁵ Mratt Kyaw Thu, "Ma Ba Tha Ordered to Cease All Activities by State Sangha Committee," *Frontier Myanmar*, 23 May 2017, <https://frontiermyanmar.net/en/ma-ba-tha-ordered-to-cess-all-activities-by-state-sangha-committee>.

⁷⁶ Kyaw Kha, "Religion Ministry Hits Out at Protesting Monks," *The Irrawaddy*, 4 August 2017, <https://www.irrawaddy.com/news/burma/religion-ministry-hits-protesting-monks.html>.

⁷⁷ Zarni Mann, "U Wirathu: Daw Aung San Suu Kyi a Threat to National Religion and Identity," *The Irrawaddy*, 5 December 2017, <https://www.irrawaddy.com/in-person/interview/u-wirathu-daw-aung-san-suu-kyi-threat-national-religion-identity.html>.

⁷⁸ "Buddhist monk visits Muslim community in show of solidarity after disrupted Ramadan services," *Coconuts Yangon*, 18 May 2019, <https://coconuts.co/yangon/news/buddhist-monk-visits-muslim-community-in-show-of-solidarity-after-disrupted-ramadan-services/>.

⁷⁹ Catholic News Service, "Myanmar's Cardinal Urges End to Hate Speech, Help for Rohingyas," *America: The Jesuit Review*, 28 May 2015, <https://www.americamagazine.org/issue/myanmars-cardinal-urges-end-hate-speech-help-rohingya>.

In April 2016, an interfaith group of 100 community leaders from different religions throughout Myanmar held a three-day meeting on “Interfaith Understanding and Peace Advocacy” in Yangon in an effort to combat hate speech and incitement. The organisers of the forum said that they were prepared to work with civil society groups and law enforcement to address interreligious conflict in Myanmar through enacting laws. They also pointed out that religious conflict in the country would continue if no legal action was taken against those who ignite religious tensions.⁸⁰

CIVIL SOCIETY ORGANISATIONS

Civil society groups and human rights advocates in Myanmar have also been active in countering hate speech in the country. In 2014, activists and former political prisoners led by Nay Phone Latt launched a campaign called Panzagar (literally flower speech) to tackle hate speech against Muslims in the country.⁸¹ A poet and executive director of the Myanmar ICT for Development Organisation (MIDO), he ran for a seat in the regional parliament in Yangon under the NLD and continues to work in combatting hate speech in Myanmar. Panzagar is supported by Burmese artists and journalists who have called on the local media to stop being used as “mouthpiece” for nationalist politicians and religious extremists.⁸²

In 2017, some 23 local civil society groups and international non-governmental organisations (NGOs) working in Myanmar met to share their methods of best practice and evaluate the impact of their counter-hate speech initiatives in the country. They developed a toolkit that identified some common strategies and initiatives, and recommendations on how to sustain and improve their work.⁸³ Included among the common practices of these organisations in combatting hate speech in Myanmar were monitoring online hate speech and intolerance, promoting interfaith dialogue, youth outreach, and education and training. They also engage with local public officials, media practitioners, and social media influencers as part of a strategy to mitigate fake news or false information. Some of them coordinate with critical stakeholders such as members of parliament, journalists, civil society advocates, activists, and social media influencers to develop capacity for early response to potential violence. Other strategies adopted by non-state actors involve direct counter-hate speech on social media platforms to refute false claims or hate speech; proactive hate-speech reduction campaigns at the grassroots level as part of building wider support for tolerance, as well as to promote counter-narratives and peace speech; peace promotion through production of videos/movies, books, and other materials that promote tolerance, coexistence, and peace;

⁸⁰ Lawi Weng, “Interfaith Leaders Call for ‘Legal Action’ against Hate Speech,” *The Irrawaddy*, 26 April 2016, <https://www.irrawaddy.com/news/burma/interfaith-leaders-call-for-legal-action-against-hate-speech.html>.

⁸¹ Thin Lei Win, “Myanmar Activists Launch Anti-‘Hate Speech’ Campaign,” Thomson Reuters Foundation News, 3 April 2014, <http://news.trust.org/item/20140403131148-4mqvg/>.

⁸² Thin Lei Win, “Burmese journalist beseeches brethren: Stop with the Muslim hate speech,” Thomson Reuters Foundation News, 13 March 2014, <http://news.trust.org/item/20140313074529-3vfw4/>.

⁸³ Search for Common Ground, “Myanmar Impact Toolkit: Monitoring and Evaluating Counter Hate Speech Initiatives,” n.d., accessed 20 January 2020, from https://www.sfcg.org/wp-content/uploads/2018/03/CFCG_Myanmar_Impact_Toolkit-English_version.pdf. The 23 organisations that worked together to develop the toolkit were: Center for Diversity and National Harmony (CDNH); Smile Education and Development Foundation; Peace and Development Society; Phandeeyar; Religions for Peace – Myanmar (RfPM); The Seagull: Human Rights, Peace & Development; CDA Collaborative Learning Projects; The 88 Generation Peace and Open Society – Meikhtila; Burma Monitor; Metta Campaign Youth; Metta Campaign; Kalyana Myitta Development Foundation; Judson Research Center of MIT; Phandeeyar; No Hate Speech Project by the Institute of War and Peace Reporting (IWPR); Myanmar ICT for Development Organization (MIDO); Youth Circle; Shwe Chin Thae Social Service – Shwebo; United States Institute of Peace (USIP); and Karuna Mission Social Solidarity/Caritas Myanmar.

and legal advocacy through building coalitions to put pressure on the government to adopt or amend existing laws or bills.⁸⁴

In 2018, six civil society organisations working on hate speech in Myanmar wrote an open letter addressed to Facebook CEO Mark Zuckerberg and in it complained about the inability of the company to moderate content on its platform. Specifically, they criticised Facebook's efforts for its heavy reliance on third parties, absence of a proper mechanism for emergency escalation, reluctance to engage local stakeholders around systemic solutions, and absence of transparency. They also raised concerns that Facebook does not have enough moderators who understand the Myanmar language and its nuances, as well as the context in which comments are made.⁸⁵

Overall, the impact of efforts by civil society groups in Myanmar in building awareness about the importance of preventing the use of hate speech and incitement remains to be seen. Currently, there are no published studies or reports that provide an analysis of the impact or positive outcome of various initiatives aimed at countering hate speech. International donors and stakeholders might consider setting up a mechanism that would provide assistance and capacity building for local advocates in Myanmar to enable them to monitor and measure the impact of their efforts in preventing the use of hate speech and incitement in the country. Although this may not be possible at this time following the coup of 1 February 2021, it should be considered a priority for the international community once the political crisis in Myanmar comes to a peaceful resolution.

LEGISLATING THE ANTI-HATE SPEECH LAW

Although the third draft of the anti-hate speech bill (aka “Interfaith Harmonious Coexistence Bill”) was shelved by the NLD, the draft law remains problematic based on an analysis of its contents and particular provisions. ARTICLE 19, an international NGO that advocates for freedom of expression, published a legal analysis of the Bill and found it to be non-compliant with international norms. Specifically, the report recommends that: 1) the Bill should be withdrawn in its entirety and the government instead pursue “a new approach that combines positive policy measures to promote and protect the rights to freedom of expression and equality”, including reform of the country’s Penal Code and “enactment of a comprehensive legal framework for the right to equality”; 2) the draft law’s “advocacy of discriminatory hatred that constitutes incitement to hostility, discrimination or violence should be prohibited in line with Articles 19(3) and 20(2) of the International Covenant on Civil and Political Rights (ICCPR)”, which establishes “a high threshold for limitations of free expression as set out in the Rabat Plan of Action, as well as the prohibitions on direct and public incitement to genocide and incitement to crimes against humanity”; 3) instead of limiting the scope of measures to address “hate speech” to ethnicity and religion, they should encompass protected characteristics under international human rights law; 4) the Bill should refrain from creating “politicised administrative bodies” aimed at identifying, investigating or initiating prosecutions for “hate speech” cases; and 5) Myanmar should sign and ratify the ICCPR and other major international human rights treaties without delay.⁸⁶

⁸⁴ Ibid., 15-16.

⁸⁵ Ibid., 341-342.

⁸⁶ ARTICLE 19, “Myanmar: Interfaith Harmonious Coexistence Bill (3rd version),” September 2017, Legal Analysis, p. 2, <https://www.article19.org/wp-content/uploads/2017/09/170907-Myanmar-Hate-Speech-Law-Analysis-August-2017.pdf>.

More important, there were specific recommendations made in ARTICLE 19's legal analysis of the draft law, such as changes to definition of legal terms. These include: 1) expansion of the notion of freedom of religion to include freedom of conscience and freedom of belief; 2) expansion of the concept of "ethnic groups" to be inclusive of "race, colour, ethnic or national origin"; 3) categorical recognition of all persons to be protected under the law regardless of status of citizenship; and 4) ensure that any definition of "hate speech" used to prohibit expression is narrowly defined and conforms to Articles 19(3) and 20(2) of the ICCPR.⁸⁷

With regard to the draft law's objectives, it was recommended that: 1) the Bill should give priority to the "promotion of values of diversity, pluralism, and inclusion through the protection of human rights, specifically freedom of expression, freedom of religion and belief, and non-discrimination"; 2) emphasise the critical importance of positive policy measures to build inter-communal interaction and trust, in accordance with the Rabat Plan of Action, in order to address the root causes of discrimination and violence; and 3) expressly make it clear that limitations on the right to freedom of expression "will only be considered as a last resort in accordance with Article 20(2) of the ICCPR, which will not be abused to restrict dissenting or minority ideas that fall short of constituting incitement to discrimination, hostility, or violence."⁸⁸

On criminalising "hate speech", it was recommended that: 1) Sections 10 and 2(j) of the draft law must be revised to meet the requirements of Articles 19(3) and 20(2) of the ICCPR, specifically removing references to "dissent" or "dissension" and to make clear that "there is a high threshold for limitations on expression as set out in the six-part test of the Rabat Plan of Action"; 2) Section 15 of the draft law must be revised "to remove minimum custodial sentences and set a limit to fines to ensure their proportionality" even as alternative criminal sentences such as community service should be made available; 3) consider inclusion of provisions for "civil causes of action against advocacy of discriminatory hatred" and "where necessary in the administrative law", thereby providing more "victim-centred alternatives to criminal prosecutions that can provide more effective remedies"; and 4) "criminalise the 'public and direct incitement to genocide' and incitement to crimes against humanity", in accordance with international criminal law and international human rights law.⁸⁹

Finally, with regard to the creation of new administrative bodies to implement the provisions of the draft law, it was recommended that: 1) the Central Committee's role should be limited to "ensuring inter-agency coordination" in rolling out positive policy measures "to address the root causes of hatred and discrimination", which should be developed in accordance with the Rabat Plan of Action and guided by the UN Human Rights Council (HRC) Resolution 16/18, and through a "transparent, inclusive, and participatory process with communities most affected by 'hate speech'"; 2) an independent body comprised of experts and with a comprehensive understanding of international human rights law (such as a reformed National Human Rights Commission compliant with Paris Principles) should be assigned to identify and monitor "hate speech" in Myanmar; and 3) specialist units within the police and prosecution services should be assigned the role of investigating and prosecuting "hate speech" cases, with appropriate and clear guidance given to these entities on ensuring the protection of the right to freedom of expression even as they are to be insulated from political pressures as they investigate and prosecute such cases.⁹⁰ Accordingly, it was also recommended that Section 14 (prohibitions) along with the sanctions in Section 19 of Chapter 7 be removed from the draft Bill.⁹¹

⁸⁷ Ibid., 12.

⁸⁸ Ibid., 13.

⁸⁹ Ibid., 16.

⁹⁰ Ibid., 18.

⁹¹ Ibid.

In a February 2020 Myanmar briefing paper on countering hate speech, ARTICLE 19 reiterated the above recommendations even as it also noted that the NLD government had stepped up efforts in pushing for the passage of the Bill for early adoption by the national parliament. It also called for a national consultative process “to design and implement positive, non-restrictive policy measures to address the root causes of discrimination” in accordance with the HRC Resolution 16/18 and the Rabat Plan of Action. The consultative process must ensure the full participation of civil society organisations, including representatives of groups and communities affected by hate speech and discrimination, even as it also called on the government to engage with influential actors from “legacy media, social media companies, as well as political and religious leaders”.⁹² It also recommended the repeal of all laws and policies that “formally or informally institutionalise discrimination and exclusion” and for the government to “enact a comprehensive anti-discrimination law” even as it reiterated the importance of reforming the Myanmar National Human Rights Commission in line with the Paris Principles as well as signing and ratifying the ICCPR and other international human rights treaties without delay.⁹³

NOVEMBER 2020 ELECTIONS

In the run-up to the November 2020 elections, the NLD government was under pressure to address the problem of hate speech and incitement, which were likely to intensify. Amid growing concern among various stakeholders in the country, the government in August said that it would adopt a hands-off policy on hate speech and not take action against people who post such material online, including fake news. Instead, it would leave everything up to the social media companies to police their own platforms. The only exception in which government would take action and ask social media companies to take down posts was when they violated specific domestic laws, such as against pornography and gambling.⁹⁴

On 1 September 2020, Facebook announced that in preparation for the upcoming elections, the company had put in place an improved system of detecting and removing hate speech and content that incites violence, as well as preventing the spread of misinformation. Specifically, it adopted a policy of removing from its platform verifiable misinformation and unverifiable rumours that were considered as potentially suppressing votes or damaging the integrity of the electoral process in Myanmar. For example, it would remove posts that falsely claim that a candidate is “a Bengali, not a Myanmar citizen, and thus ineligible”.⁹⁵ Facebook said that it took action against 280,000 pieces of content in Myanmar for violating standards against hate speech in the second quarter of 2020, which was up from 51,000 pieces that it took action against in the previous quarter.⁹⁶ It may be recalled that, in September 2017, Facebook banned the Arakan Rohingya Salvation Army (ARSA) from its platform and designated it as a “dangerous organisation” following the Myanmar government’s decision earlier to label the pro-Rohingya militant group as a “terrorist organisation” after its deadly attacks against border

⁹² ARTICLE 19, “Myanmar Briefing Paper: Countering ‘Hate Speech,’” February 2020, 1, 6, <https://www.article19.org/wp-content/uploads/2020/05/2020.02.04-A19-Hate-Speech-Law-Policy-Paper-final-3.pdf>.

⁹³ Ibid., 7.

⁹⁴ Min Wathan, “Myanmar Govt Adopts Hand-Off Policy on Hate Speech,” *Myanmar Times*, 21 August 2020, <https://www.mmtimes.com/news/myanmar-govt-adopts-hands-policy-hate-speech.html>.

⁹⁵ Kanishka Singh, “Facebook Improving Hate Speech Detection ahead of Myanmar Election,” Reuters, 1 September 2020, <https://www.reuters.com/article/us-myanmar-election-facebook-idUSKBN25S3H9>.

⁹⁶ Ibid.

police guards in August the same year.⁹⁷ In February 2019, Facebook added four ethnic armed groups – the Arakan Army (AA), Myanmar National Democratic Alliance Army (MNDAA), the Kachin Independence Army (KIA), and the Ta'ang National Liberation Army (TNLA) – to the list of “dangerous organisations” in Myanmar and banned them from using the platform. Subsequently, the Myanmar government designated the Arakan Army as a “terrorist group and unlawful organisation.”⁹⁸ A number of human rights activists in Myanmar denounced these bans as “pro-regime, anti-minority conduct, as well as a violation of freedom of speech”.⁹⁹

Notwithstanding efforts by the national government and Facebook to curb hate speech in the run up to the November elections, there were still reported incidents of hate speech in Myanmar, mainly by supporters of certain candidates. Accordingly, while some candidates avoided the use of hate speech online using social media, they were reported to have used hate speech offline during campaign rallies. For example, an independent candidate set up banners displaying “No Rohingya” in ethnically diverse Latha Township.¹⁰⁰ The Rohingya community and other ethnic minorities from Rakhine also became targets of hate speech during the second wave of the COVID-19 pandemic in August 2020 in Myanmar due to the rise of anti-migrant sentiments in the country.¹⁰¹

HATE SPEECH AFTER THE FEBRUARY 2021 COUP

In the aftermath of the 1 February 2021 coup and the Tatmadaw’s violent crackdown against protesters, hate speech and incitement to violence perpetrated mainly by the military forces increased significantly in Myanmar. This forced Facebook to remove accounts by the military from its platforms (including WhatsApp and Instagram) amid threats of violence, bullying, harassment, and misinformation against activists, human rights defenders, journalists, and deposed political leaders who were protesting against the coup. Facebook also prohibited indefinitely Tatmadaw-linked commercial entities from advertising on its platform using the UN Fact Finding Mission’s report in 2019 as a guide.¹⁰²

Since the coup, Facebook has disabled the Tatmadaw True News Information Team Page, MRTV, and MRTV Live pages for continuing to violate the social media platform’s policies “that prohibit coordinating harm and inciting to violence”.¹⁰³ Accordingly, social media accounts linked to the military that promote false claims of widespread election fraud and foreign interference in the November 2020 elections were removed by both YouTube and Facebook.¹⁰⁴ Armed soldiers and police in Myanmar were also using the video platform TikTok to deliver death threats to protesters against the coup, which also forced the Chinese video-sharing app to remove content that incites violence.¹⁰⁵

⁹⁷ Angshuman Choudhury, “How Facebook is Complicit in Myanmar’s Attacks on Minorities,” *The Diplomat*, 25 August 2020, <https://thediplomat.com/2020/08/how-facebook-is-complicit-in-myanmars-attacks-on-minorities/>.

⁹⁸ Ibid.

⁹⁹ Ibid.

¹⁰⁰ “Online hate speech in Myanmar: an evolving threat,” Minority Rights Group, 20 December 2020, <https://minorityrights.org/2020/12/20/hate-speech-myanmar/>.

¹⁰¹ Ibid.

¹⁰² Rafael Frankel, “An Update on the Situation in Myanmar,” Facebook, 11 February 2021, updated 14 April 2021, <https://about.fb.com/news/2021/02/an-update-on-myanmar/>.

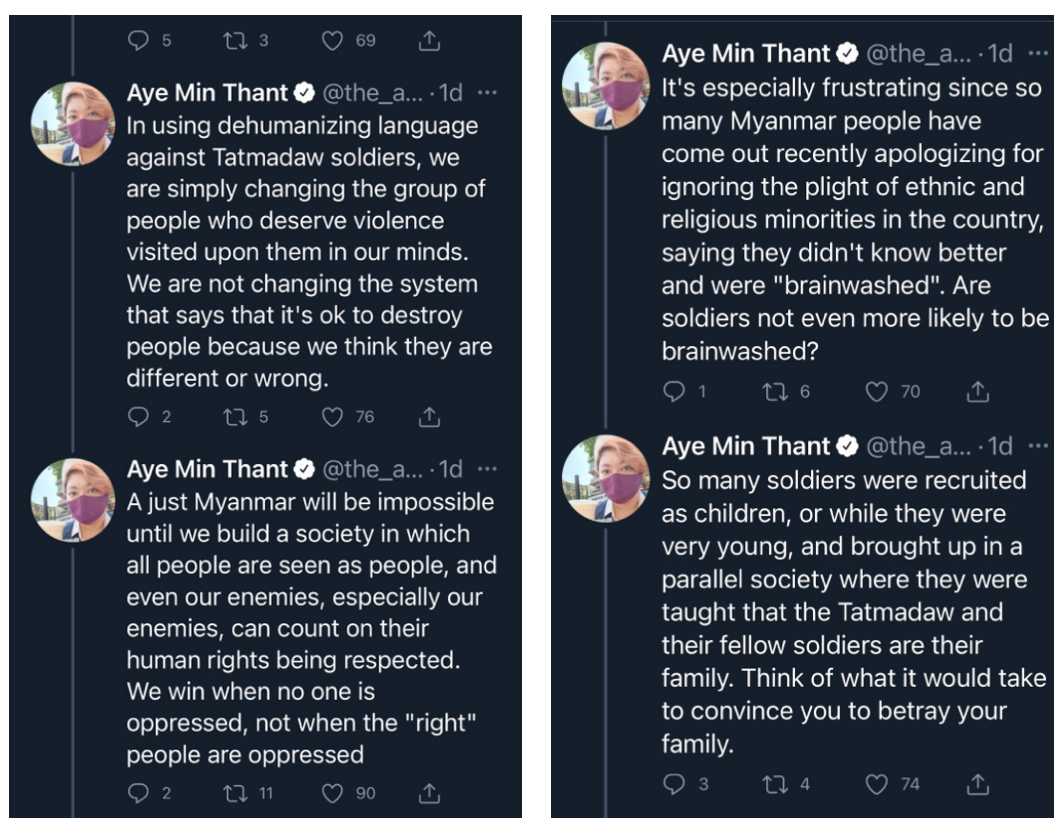
¹⁰³ Ibid.

¹⁰⁴ Megan Bunting, “YouTube and Facebook Remove Hate Speech and Misinformation Posted by Myanmar Military Following the Coup,” The Organisation for World Peace (OWP), 12 March 2021, <https://theowp.org/youtube-and-facebook-remove-hate-speech-and-misinformation-posted-by-myanmar-military-following-the-coup/>.

¹⁰⁵ Reuters Staff, “‘I will shoot whoever I see’: Myanmar Soldiers Use TikTok to Threaten Protesters,” Reuters, 4 March 2021, <https://www.reuters.com/article/us-myanmar-tiktok-idUSKBN2AW17X>.

Close to four months after the coup, over 800 people have been killed by Tatmadaw forces and over 5,000 arrested, with hundreds of those arrested considered to be *desaparecidos* or forcibly disappeared. Despite the ongoing violent crackdown, civilians continue to defy the junta and have supported the parallel government against the coup – the National Unity Government (NUG) – which has called for the creation of a federal army and people's defence forces to fight the Tatmadaw forces. As the anti-coup protest evolves into an urban armed struggle, hate speech and incitement to violence by protesters against Tatmadaw forces and police are also increasing. The use of dehumanising language against soldiers and police (e.g. calling them dogs) because they inflict violence against civilians may be justified by some. However, one Burmese-American and Pulitzer Prize winning journalist living outside of Myanmar considered this wrong and only perpetuating the cycle of hate and violence in the country. Her tweet below captures succinctly her views on the use of dehumanising language against soldiers.

Figure 1: Aye Min Thant (@the_ayeminthant), Twitter, 12 May 2021.



Source: Twitter.

The next section of this paper looks into international and regional responses to the crisis in Myanmar, including the issue of hate speech and incitement.

International and Regional Responses

In the aftermath of the August 2017 massive exodus of the Rohingya following the military's clearing operations against the ARSA insurgents, international and regional responses to the crisis in Rakhine have been largely about the pursuit of accountability and addressing the humanitarian needs of affected communities in Myanmar. The UN and its related agencies have been at the forefront of exerting international pressure on the Myanmar government to address the continuing human rights violations and atrocities being committed by the Tatmadaw not just against the Rohingya but also other minority groups in the country. The cases filed against Myanmar in the International Court of Justice (ICJ) and the International Criminal Court (ICC) demonstrate the resolve of the international community to hold the perpetrators of atrocities in Myanmar accountable notwithstanding denials by the NLD government and the Tatmadaw that genocide took place in Rakhine in 2017. Indeed, atrocities are still being committed in Myanmar by military forces as the Tatmadaw is engaged in fierce battle with a coalition of ethnic armed groups led by the Arakan Army, which has launched deadly attacks against security forces since late 2018.

Meanwhile, ASEAN's main preoccupation in engaging with Myanmar on the Rakhine crisis is about the safe, voluntary, and dignified repatriation of Rohingya refugees. However, this has been stalled by continuing conflict in northern Myanmar between the Tatmadaw and Arakan Army forces, including ASEAN's humanitarian assistance program for all affected communities in Rakhine. While there is a growing clamour among regional stakeholders for ASEAN to do more in responding to the crisis in Myanmar, its non-interference principle and consensus-decision making have constrained the organisation from crafting a more effective regional response. Although it has called on the Myanmar government to pursue impartial investigation of the human rights violations in Rakhine, ASEAN has stopped short of collectively endorsing international efforts in pursuing accountability for atrocities committed by the Tatmadaw in the ICJ and the ICC. Within ASEAN, there are no existing accountability mechanisms that could exert pressure on an erring member for human rights violations occurring within its territory; neither are there provisions within its charter for sanctions for human rights violations and for failing to uphold international human rights norms.

It is against the foregoing backdrop that international and regional responses in dealing with hate speech and incitement in Myanmar must be understood. For example, measures that may be part of the rulings by the ICJ and ICC aimed at preventing or halting atrocities against vulnerable groups in the country will have to rely on the cooperation of the Myanmar government to enforce them. This was already quite difficult under the NLD government as the Tatmadaw continued to operate above the law and not under the full control of the civilian government. Following the February 2021 coup, it would certainly be even more difficult to get the junta to cooperate in preventing the use of hate speech and incitement in the country given that security forces and its officials are also perpetrators and enablers of these hate speech acts.

UN AND RELATED AGENCIES

The clearing operations conducted by the Tatmadaw against ARSA militants in 2017 that led to atrocities committed against the Rohingya community were met with strong international outrage and condemnation. The UN Security Council and General Assembly were the main forums in which most member states expressed their condemnation of the Myanmar military's systematic human rights violations in Rakhine that resulted in the exodus of Rohingyas to Bangladesh. While there was failure in the Security Council to pass a resolution condemning Myanmar's actions due to lack of consensus among the Perm-5 members, the General Assembly was able to pass non-binding resolutions in 2017 and 2019 in which most member states overwhelmingly condemned the continuing atrocities being committed against the Rohingyas in Myanmar.

In the Human Rights Council, a resolution was passed in March 2017 which, among other things, called on the Myanmar government to address the problem of hate speech and incitement. Specifically, the resolution:

[s]trongly encourage[d] the Government of Myanmar to take the measures necessary to address discrimination and prejudice against women, children and members of ethnic, religious and linguistic minorities across the country, and to take further action to publicly condemn and speak out against any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence, and to adopt measures to criminalize incitement to imminent violence based on nationality, race or religion or belief, while upholding freedom of expression, and to increase efforts further to promote tolerance and peaceful coexistence in all sectors of society in accordance with Human Rights Council resolution 16/18 of 24 March 2011 and the Rabat Plan of Action on the prohibition of advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence by, inter alia, further facilitating interfaith and intercommunal dialogue.¹⁰⁶

It remains to be seen whether the Myanmar government would be responsive to the Human Rights Council's recommendations with regard to improving its record on human rights protection as well as in addressing continuing concerns related to hated speech and incitement against vulnerable groups. Myanmar is due for another round of Universal Periodic Review (UPR) in the Council in 2020.

The creation of the IIFFMM panel in 2017 was also part of the Human Rights Council's efforts to respond to the international community's outrage against the Myanmar government's and the Tatmadaw's lack of cooperation in investigating atrocities committed in Rakhine. The IIFFMM's detailed report on the use of hate speech in Myanmar to incite discrimination and violence against Muslims and the Rohingyas in particular served as an important record of the continuing inadequate response by the NLD government to hold accountable those who perpetrate hate, discrimination, and violence against minority groups in the country. In September 2019, the IIFFMM handed over to the International Investigative Mechanism on Myanmar (IIMM) its evidence for serious crimes under international law. The IIMM is mandated by the Human Rights Council to follow up and prepare files for criminal prosecutions.

¹⁰⁶ UN Human Rights Council, "Resolution adopted by the Human Rights Council on 24 March 2017," A/HRC/RES/34/22, 3 April 2017, p. 3.

In August 2020, Facebook said that it had shared data with the IIMM from pages and accounts associated with the Tatmadaw that it removed in 2018 in effort to stop hate speech against the Rohingya people. Earlier, the company blocked a bid by The Gambia, which brought a genocide case against Myanmar in the ICJ, from obtaining posts and communications by members of Myanmar's military and police. In 2018, Facebook removed 18 accounts and 52 pages associated with the Tatmadaw, including the page of its Commander-in-Chief Minh Aung Hlaing, but preserved these data.¹⁰⁷

The IIFFMM's comprehensive documentation of atrocities against the Rohingya and other minorities were significant inputs to support the cases filed against Myanmar in the International Court of Justice by The Gambia and in the International Criminal Court by Bangladesh. On 23 January 2020, the ICJ unanimously indicated four provisional measures that Myanmar should comply with under the 1948 Genocide Convention, to wit: 1) in relation to the Rohingya group within its territory, take all measures within its power to prevent commission of all acts within the scope of Article II of the Convention; 2) ensure that the Myanmar military and all groups under its control, direction, or influence do not commit acts under Article II of the Convention, including of conspiracy to commit genocide, of direct or public incitement to commit genocide, of attempt to commit genocide, or of complicity of genocide; 3) take effective measures to prevent the destruction and ensure the preservation of evidence related to all allegations of acts within the scope of Article II of the Convention; and 4) submit a report to the Court on all measures taken to give effect to its order within four months, and every six months thereafter, until the Court renders its final decision on the case.¹⁰⁸

In response to the ICJ's order, the NLD government reiterated that there had been no genocide in Rakhine even as it argued that it was important that the Court "reaches a factually correct decision on the merits of the case". It also accused some human rights groups of "presenting a distorted picture of the situation in Rakhine", which affected Myanmar's relations with some countries and "hampered [its] ability to lay the foundation for sustainable development in Rakhine."¹⁰⁹

In May 2020, the NLD government submitted its first report to the ICJ on the steps it was taking to protect the Rohingyas from killings and other atrocities as part of complying with the Court's provisional measures. The ICJ, however, has not made public the report submitted by the Myanmar government. The Tatmadaw reportedly provided input to the report even as it also started conducting court-martial proceedings against soldiers accused of committing atrocities against the Rohingya community in 2017.¹¹⁰ Earlier in the same month, the Myanmar government issued an order to all civil servants to stop using hate speech in social media even as it required them to monitor and report online behaviour to the central government. The directive also covered security forces and military servicemen who were ordered to refrain from engaging in hate speech or incitement to violence even as they were encouraged to participate in anti-hate speech campaigns. Human rights defenders and other civil society groups in Myanmar cautiously

¹⁰⁷ "Facebook shares data on Myanmar with UN investigators," ITN News, 26 August 2020, <https://www.itnews.com.au/news/facebook-shares-data-on-myanmar-with-un-investigators-552415>.

¹⁰⁸ Application of the Convention on The Prevention and Punishment of the Crime of Genocide (The Gambia v. Myanmar), International Court of Justice, 23 January 2020, <https://www.icj-cij.org/files/case-related/178/178-20200123-ORD-01-00-EN.pdf>.

¹⁰⁹ Press Statement on the decision by the ICJ on "provisional measures" in the case brought by The Gambia against Myanmar, Ministry of Information, The Republic of the Union of Myanmar, 23 January 2020, <https://www.moi.gov.mm/moi:eng/?q=announcement/23/01/2020/id-20583>.

¹¹⁰ Kwa Pyo Tha, "Myanmar Submits First Report to World Court on Provisional Measures to Protect Rohingya," *The Irrawaddy*, 26 May 2020, <https://www.irrawaddy.com/news/burma/myanmar-submits-first-report-world-court-provisional-measures-protect-rohingya.html>.

welcomed the government's directive, which they viewed as a direct outcome of international pressures following the ICJ ruling. For them, these measures must be effectively implemented on the ground and should not be aimed at easing international pressure on Myanmar.¹¹¹

In the aftermath of the February 2021 coup, it is unlikely that the junta in Myanmar will follow through with the submissions to the ICJ made by the previous civilian government. In fact, Myanmar under the junta may face more criminal charges for atrocity crimes being committed against civilians as it continues to pursue a violent crackdown against anti-coup protesters in defiance of international appeals by the UN and ASEAN to stop the killings, arbitrary arrests, and use of lethal weapons against unarmed civilians.

ASEAN AND OTHER REGIONAL STAKEHOLDERS

At the regional level, ASEAN has also expressed deep concerns over the violence in Rakhine since 2012. While it supported the efforts of the USDP and NLD governments in addressing the root causes of the conflict, the regional organisation has fallen short in effectively crafting a regional response that would have exerted more pressure in Myanmar to stop the violence and discrimination against the Rohingyas and Muslims in the country. Following the exodus of the Rohingyas in August 2017 to Bangladesh, ASEAN's collective position as reflected in its chairman's statements in 2018 and 2019 focused on two issues: 1) the safe, dignified, and voluntary repatriation of displaced peoples (referring to the Rohingyas); and 2) ensuring the impartial and objective investigation of human rights violations in Rakhine by the Independent Commission of Enquiry (ICOE) and for the Myanmar government to ensure that perpetrators of the human rights violations were held accountable. In general, ASEAN's engagement with the Rakhine crisis in Myanmar focused mainly on providing humanitarian assistance to all affected communities. Accordingly, ASEAN consciously avoided exerting too much pressure on the Myanmar government to address the human rights dimension of the crisis for fear that this would force the latter to totally disengage on the issue. Given the absence of a regional accountability mechanism in ASEAN, the regional organisation could only leave the matter of sanctions, accountability, and justice to existing international mechanisms under the UN.

Apart from high-level engagement with leaders and senior officials, ASEAN also uses existing mechanisms such as the ASEAN Inter-Government Commission on Human Rights (AICHR), the ASEAN Commission on the Promotion of Protection of Women and Children (ACWC), and the ASEAN Institute for Peace and Reconciliation (ASEAN-IPR) to engage Myanmar on issues related to human rights, gender and sexual violence, and peacebuilding and conflict prevention. Formal and informal discussions about the crisis in Rakhine in meetings organised by these ASEAN mechanisms have taken place. Education and training through seminars and workshops have been conducted in the region where issues related to prevention of hate speech and incitement, the responsible use of social media, and prevention of violent extremism have been included. Interfaith dialogue, protection of minority groups, and the role of women in promoting tolerance and respect for diversity are topics in regional conferences and seminars where non-state actors and civil society groups in the region have been invited to participate.

¹¹¹ "Myanmar Anti-Hate Speech Orders Aimed at Halting Discrimination against Rohingya," Radio Free Asia, 4 May 2020, <https://www.rfa.org/english/news/myanmar/hate-speech-05042020185042.html>.

Beyond ASEAN, other regional stakeholders have also contributed to raising awareness about the crisis in Rakhine and the importance of addressing human rights violations in Myanmar. The ASEAN Parliamentarians for Human Rights (APHR), for example, has organised several regional meetings, seminars, and workshops on freedom of religion and belief, prevention of hate speech, and protection of freedom of expression. Some local stakeholders in Myanmar, including parliamentarians, civil society groups, and minority protection advocates have participated in training and capacity-building activities geared towards understanding international norms and conventions on these issues.¹¹²

The Asia Pacific Partnership for Atrocities Prevention (APPAP) network of government, civil society, academic institutions, and think tanks in the region has also been actively engaging with various stakeholders in ASEAN and the larger Asia Pacific region to promote awareness of R2P and atrocities prevention, including understanding risk factors such as the use of hate speech and incitement against vulnerable populations. Public seminars, education and training, and regional and national dialogues are the main platforms used by APPAP to discuss hotspots in the region, such as the ongoing crisis in Rakhine. In 2019, APPAP created the Working Group on Hate Speech and convened its first meeting in Jakarta to identify strategies and programs for preventing the use of hate speech and promoting tolerance, respect for diversity, and interfaith dialogue. The Habibie Centre, a member of the APPAP network, is currently engaging with some stakeholders in Myanmar on promoting tolerance and respect for diversity, as well as conflict prevention and peacebuilding.¹¹³

Based on the author's participation in some of the above activities in the region, there is strong interest among stakeholders in Myanmar to have a deeper understanding of international norms, mechanisms, and strategies related to prevention of hate speech and incitement as part of upholding human rights protection and atrocities prevention. Track I and Track II mechanisms in ASEAN also have a strong interest in capacity-building projects and programs that would promote ASEAN's people-centred agenda, including human rights protection, culture of peace, and conflict prevention. Some representatives of ASEAN's three mechanisms (i.e. AICHR, ACWC, and ASEAN IPR) have also expressed strong interest in regular dialogues on human rights protection, women, peace and security, the Rabat Plan of Action, as well as linking UN agendas such as SDG with ASEAN's culture of prevention that includes containing the rise of violent extremism. Overall, there are existing opportunities within ASEAN's structure and mechanisms to engage in prevention of hate speech and incitement for capacity building, specifically education and training. ASEAN is also quite open to engaging with non-state actors and civil society groups/networks in the region on these issues not just in the context of Myanmar but also in managing similar issues or concerns in other countries in the region.

¹¹² Based on interview with staff member of ASEAN Parliamentarians for Human Rights (APHR), 9 November 2019.

¹¹³ Based on interviews with staff of The Habibie Centre in Jakarta, 9 November 2019.

Main Takeaways from the Case Study

Based on the foregoing discussion, it is clear that **hate speech and incitement remain as very serious concerns in Myanmar** given the strong prejudice against the Rohingya in particular and the lack of trust amongst different religious and ethnic communities in general. The situation is not helped by the absence of mitigating factors, such as civilian control over the military, robust and independent accountability mechanisms, and the rule of law. The coup staged by the Tatmadaw in February 2021 has undermined whatever limited achievements that had been made in Myanmar in preventing hate speech and incitement in the country under the precarious democratic transition that began in 2010 under the USDP and continued up until the ousting of the NLD government.

Since the eruption of communal violence in Rakhine in 2012, **the problem of hate speech and incitement in Myanmar has not been adequately addressed by the USDP and NLD governments**. As discussed in this case study, the USDP tolerated the activities of the MaBaTha led by Wirathu, who was responsible for attacks against the Rohingya and other Muslims in the country as well as the passage of the four discriminatory laws aimed at protecting race and religion. After assuming power in 2016 and despite its dominance in the parliament, the NLD made no effort to revoke these four laws, including the 1982 citizenship law that rendered the Rohingya and other minorities in the country “stateless”. To its credit, however, the NLD filed charges against leaders and supporters of MaBaTha. Wirathu surrendered to the authorities in November 2020 after more than a year in hiding.

Although the NLD initiated a draft law against hate speech, this was shelved from 2017 as it shifted its attention to monitoring fake news or false information. Nonetheless, **the draft law in its current version was deemed problematic by human rights and free speech advocates as it fails to conform to international norms under the International Convention on Civil and Political Rights (ICCPR)**. It is unlikely that the draft law will see the light of day following the February 2021 coup even as the junta remains preoccupied with restoring political stability in the country.

Much of the work in combatting hate speech and incitement in Myanmar has been pursued through the joint efforts of non-state actors, specifically moderate Buddhist monks and interfaith community leaders in the country. Civil society groups, media practitioners, activists, and former political prisoners, as well as some parliamentarians in Myanmar have also contributed to containing the use of hate speech and incitement through social media campaigns, education and training, engagement with local government and national officials, as well as grassroots campaigns to promote tolerance and use of peace language. However, the impact of these efforts by non-state actors remains to be seen, specifically in building trust and improving interfaith and communal relations among different religious and ethnic groups in Myanmar. The survey of democratic values in Myanmar cited in this case study apparently indicates that there is still a very strong bias or prejudice among different communities based on religion.

Following the coup of 1 February 2021, hate speech and incitement to violence increased significantly in the country, perpetrated mainly by Tatmadaw soldiers and police forces against anti-coup protesters. While social media platforms have responded swiftly by indefinitely banning accounts identified with the military in Myanmar, hate speech and incitement to violence are likely to intensify even as the widespread protests in the country evolve into

urban warfare against the junta. Buddhist monks in Myanmar are apparently split on the anti-coup protests in the country, with some ultra-nationalist factions supporting the Tatmadaw and adhering to the belief that the junta can protect the Buddhist identity of the country from the threat of Islamisation.¹¹⁴ The junta could therefore exploit these ultra-nationalist monks to once again fan the flames of hate speech and incitement not only against the Rohingya and other minority ethnic groups in the country but also against the majority Burmese population who continue to protest against the coup.

Meanwhile, anti-coup protesters have also used dehumanising language against soldiers and policemen, which could further perpetuate the cycle of hate and incitement to violence. **Clearly, the coup in Myanmar is a major setback to efforts by various stakeholders in the country in building awareness about the importance of preventing the use of hate speech and incitement to violence.**

International response to the Rohingya crisis in Myanmar under the framework of the UN and its agencies has focused on accountability and justice since August 2017. However, Myanmar under the previous NLD government was uncooperative in pursuing both and under the mechanisms set up by the Human Rights Council. **Following the February coup, it is highly unlikely that the junta will respond positively to international calls for the Myanmar to take measures to address the issues of hate speech and incitement, discrimination, and prejudice against minority groups.**

Meanwhile, at the regional level, ASEAN and other regional stakeholders could take advantage of opportunities to engage stakeholders in Myanmar to address the problem of hate speech and incitement. **Notwithstanding the absence of accountability mechanisms in the region and the reluctance of ASEAN to confront an erring member on atrocities committed in Rakhine, the regional organisation through its existing mechanisms are open to capacity building in areas that may be linked to human rights protection, atrocities prevention, and combatting hate speech and incitement.** This may be pursued through education and training, policy research, and regional/national dialogues that are aligned with ASEAN's priorities under its ASEAN Community blueprints, including the development of culture of prevention where hate speech and incitement could be addressed. More important, ASEAN is open to engaging non-state actors in the region through partnerships in projects, workshops, and seminars for government and non-government sectors.

¹¹⁴ Agence France Press, "Buddhist Monks in Myanmar Split on Anti-Junta Movement," *Frontier Myanmar*, 13 May 2021, <https://www.frontiermyanmar.net/en/buddhist-monks-in-myanmar-split-on-anti-junta-movement/>.

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THE PHILIPPINES

HATE SPEECH AND INCITEMENT IN THE PHILIPPINES

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Introduction

This study examines hate speech¹¹⁵, incitement to violence, and discrimination (HSIVD) against the Bangsamoro people or Filipino Muslims in Mindanao,¹¹⁶ focusing on the January 2015 Mamasapano incident and the May 2017 Marawi siege. The research team conducted key informant interviews with Initiatives for International Dialogue (IID) partners in Mindanao, and analysed comments by the general public on social media and the pronouncements of opinion makers and influencers, especially public officials, during and immediately after these two key events. In identifying this focus, IID's objective is to present the organisation's and its stakeholders' premises and assertions in choosing particular initiatives and strategies at certain periods, including government policies that we are currently engaging with.

This chapter thus provides an overview of the strategies by government actors, at the national and regional level, and non-government actors, including civil society organisations (CSOs) and community actors, in combating hate speech and discrimination; and an outline of the objectives of some notable initiatives to initially identify linkages of different actor's strategies to address HSIVD. The study, however, is not exhaustive, as it only focuses on information from IID's immediate partners and core programs and on the specific topic of hate speech and discrimination directed against the Bangsamoro people and Filipino Muslims. A more rigorous study must be undertaken to appraise the effectiveness of each initiative, and to evaluate the cohesion, or the lack thereof, among these parallel efforts.

Finally, the paper ends with a set of recommendations for different policy actors, which the Global Action Against Mass Atrocity Crimes (GAAMAC) may consider supporting in order to strengthen collective and multilevel efforts to holistically address and prevent HSIVD that may lead to atrocity crimes.

¹¹⁵ The United Nations Strategy and Plan of Action on Hate Speech definition is used for the case studies, whereby hate speech is "any kind of communication in speech, writing or behavior 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, color, descent, gender or other identity factor."

¹¹⁶ The collective term Bangsamoro people refers to the 13 Islamised ethnolinguistic groups of Mindanao, Sulu, and Palawan, namely the Badjao, Iranun, Jama Mapun, Kalagan, Kalibugan, Maguindanao, Palawanon, Maranaw, Molbog, Sama, Sangil, Tausūg and Yakan. They form the largest non-Christian majority population in the country, and comprise about 5 per cent of the total Philippine population, or 5 million people.

Key takeaways from this study and position of IID:

Hate speech, incitement to violence and discrimination remain very serious concerns in the Philippines given the strong prejudice among the Christian Filipino majority against the Bangsamoro people; and the deep-seated animosity between Indigenous Peoples and Muslim communities, on the one hand, and Christians, on the other.

Hate speech during and around these two events is rooted in and, therefore, cannot be divorced from a broader analysis of the historical and structural discrimination and injustices experienced by the Bangsamoro people, and such hate speech during these two events has in turn undermined the overall formal and informal peace processes that sought to address the root of HSIVD.

While hate speech against the Bangsamoro people is not new, the rise of online and social media use added a new dimension to the perpetuation of prejudices against them, as seen in the large volume of anti-Muslim messages circulated during and after the Mamasapano incident in January 2015 and the Marawi siege in May 2017. Notably, the messages online during these events mirror the anti-Muslim prejudice portraying them as “traitors”, “violent savages”, “juramentado”, “pirates”, “assassins”, “enslavers”, “cruel”, and “uncivilized” introduced during the Spanish and American colonisation and continued by the post-colonial Philippine state.

The Philippine government has not enacted a law against hate speech, incitement to violence and discrimination. There are no legal provisions against such kinds of speech as jurisprudence on freedom of expression cases mainly focus on libel, defined as the public and malicious imputation of an act that tends to discredit or dishonour another person and which currently exists under the Revised Penal Code. This penal law on libel was expanded by the Cybercrime Prevention Act of 2012 (Republic Act No. 10175) to apply to acts “committed through a computer system or any other similar means which may be devised in the future”.

In the context of state actors themselves being central to hate speech and discrimination and of the real threat of the use of laws to perpetuate marginalisation and to suppress dissent, a penal approach, such as criminalisation of libellous speech, offline and online, and its impact on freedom of speech remain a serious concern, the United Nations Human Rights Council (UNHRC) holds that the Philippines’s criminalisation of libel does not conform with the freedom of expression clause of the International Covenant on Civil and Political Rights (ICCPR).

On the hate speech and discrimination against the Bangsamoro people specifically, IID and its stakeholders situate the issues and the response to them within the broader and historical context of the anti-Muslim/Moro rhetoric, the subsequent Bangsamoro struggle for their right to self-determination, and the entire process of peacebuilding, reconciliation, and transitional justice in Mindanao. Therefore, civil society efforts emphasise a positive and transformative approach which is restorative and retributive rather than penal. These efforts have been pursued parallel to and at times jointly or in coordination with government agencies.

Government efforts, both at the national and the regional level, are also focused on transitional justice and reconciliation efforts, particularly in the Annex on Normalization of the Comprehensive Agreement on the Bangsamoro (CAB) of 2014, which, under Section H(1), created the Transitional Justice and Reconciliation Commission (TJRC): “mandated to undertake a study and to make recommendations with a view to promote healing and reconciliation of the different communities that have been affected by the conflict.” Many recommendations from the report of the TJRC, however, have not yet been acted upon. Following the passage and ratification of the Bangsamoro Organic Law (BOL) on 25 January 2019 and the establishment of the Bangsamoro Autonomous Region of Muslim Mindanao (BARMM), there is a huge burden on the national government and especially the Bangsamoro Transition Authority (BTA), as the caretaker regional government, in taking immediate, concrete, and visible steps to deliver the dividends of peace to the Bangsamoro people and the rest of the country, and in sustaining the momentum of the peace process, including in building trust and understanding among different religious and ethnic groups in Mindanao and the Philippines.

History of the Bangsamoro Struggle for Self-Determination

Scholars of Mindanao trace back the history of the discrimination against the Bangsamoro and their struggle for the right to self-determination to as early as the Spanish and American colonial period.

The Spanish colonisers used the word “Moro” as a derogatory term to refer to Muslim communities who resisted both colonial rule and Christianity. The term came from the word “Moors” referring to the Muslims who ruled the Iberian Peninsula whom the Spaniards fought for almost 800 years. Later on however, particularly during the emergence of the Moro National Liberation Front (MNLF) in 1969, “Moro” was “transformed ... into a byword of nationality and identity in ‘Moroland’”,¹¹⁷ hence, the term “Bangsamoro”. Moro, then, became a collective identity emblematic of the Bangsamoro people’s resistance against colonial rule including by the Philippine state.

Since the Spanish equated Christianisation with civilisation, conversion to Christianity was an important objective of the coloniser.¹¹⁸ This is apparent, for example, in the representations of Filipino Muslims as “the other” in cultural forms such as the Komedya or Moro-Moro play which was popular during town fiestas and used as a tool to propagate Christianity. Moro-moro/Komedya’s theme always touches upon the conflict between Muslims and Christians, and portrays the Moro as the villain and the Christian as the hero, ultimately being concluded with the triumph of Christianity over Islam and other religions in the country.¹¹⁹ These cultural portrayals and “othering” of the Moro and the continued Muslim resistance to Spanish rule contributed greatly to the presentation of Muslims in colonial writings as blade-waving, aggressive warriors who were quick to anger, ready to kill with little or no provocation, and could not be trusted.¹²⁰ The term “Moro” was then equated with, among other meanings, being a “traitor” and “pirate”.¹²¹

The American colonisers, likewise, perpetuated such negative images of the Bangsamoro people through their biased description of Muslims in their reports and in cartoons published in the American print media, depicting Bangsamoro people as assassins, violent savages, and immoral polygamists.¹²²

Given that education, cultural norms, and other forms of media and propaganda were effectively controlled by the colonial government, this shaped the perception of the rest of the colonised and Christianised Filipino inhabitants. In the course of Spanish and American colonial enterprises in the Philippines, religion became a salient feature of Filipino identity and a determinant of relationships between Muslims who resisted colonial rule and the majority who converted to Christianity. Images of Muslims as immortalised in colonial literature became the basis of the first written history books used in schools in the country. Filipinos, therefore, learned about themselves through the lenses of the colonisers and internalised the perception of their fellow Muslims, who were unlike them, as “the other”.¹²³ Because there was hardly any contact between Christian and Bangsamoro people

¹¹⁷ Jamail A. Kamlian, “Who Are the Moro People?” *Philippine Daily Enquirer*, 20 October 2012, <https://opinion.inquirer.net/39098/who-are-the-moro-people>.

¹¹⁸ Dasmarinas 1903, as cited in Vivienne S. M. Angeles, “Moros in the Media and Beyond: Representations of Philippine Muslims,” *Contemporary Islam* 4, no. 1 (April 2010): 33.

¹¹⁹ Tiongson 1999, as cited in Angeles, “Moros in the Media and Beyond,” 35-36.

¹²⁰ Angeles, “Moros in the Media and Beyond.”

¹²¹ Jubair Salah, *Bangsamoro, A Nation under Endless Tyranny*, 1st ed. (Mansoorah, Pakistan: Islamic Research Academy, 1984), 47-48.

¹²² Angeles, “Moros in the Media and Beyond.”

¹²³ Ibid.

outside of Mindanao, the colonial stereotypes of Muslim Filipinos in Mindanao dominated the consciousness of the broader Filipino public and policymakers in the capital. The negative perception of the Bangsamoro people did not remain in the field of ideas, but has framed the policies of and the treatment administered by the Luzon and Christian-dominated post-colonial government. When the United States finally granted the Philippines independence, Mindanao became part of the new Philippine government where the Bangsamoro people were treated as second-class citizens.¹²⁴

Of the various Philippine governments, perhaps the one under which the Bangsamoro people suffered the most was the Marcos dictatorship. The dictator's ill-treatment of the Bangsamoro people is highlighted by his encouragement of the creation of the Ilaga, a Christian extremist paramilitary group. Together with the Philippine Army, they were responsible for multiple massacres of the Bangsamoro people, such as the Manili Massacre in 1971 and the Malisbong Masjid Massacre of 1974. It was also during his term, particularly in 1968, that the infamous Jabitah Massacre occurred where at least 60 Muslim Filipinos undergoing military training were killed.¹²⁵

While the Marcos regime was particularly brutal, the structural discrimination against and disempowerment of the Bangsamoro people was common practice for the Luzon-centric and Christian-dominated Philippine governments.¹²⁶ Under the supposed independence from both the Spanish and American colonisers, the Bangsamoro and Indigenous Peoples (IPs) in Mindanao were displaced by the Christians from both Luzon and the Visayas as part of the resettlement programs of successive Philippine governments from the 1930s to the 1970s, continuing the American resettlement programs started back in 1903.¹²⁷ Mindanao's natural resources were extracted and plundered, with little revenue going back to the development of the Muslim and Indigenous peoples. These acts, which were perpetuated, enabled, and at times legitimised by the Philippine state, as well as the failure to address them have caused and continue to cause animosity and distrust between the Muslims and Christian communities. For the Bangsamoro people, this is merely a continuation of the colonisation of Mindanao.

The post-colonial Philippine administrations used both military repression and educational policy to lessen tensions.¹²⁸ However, efforts in this regard are perceived as ineffective and insincere. It has been found that government textbooks fail to address the Bangsamoro people's experience and do not contain information that addresses the negative image of Muslim Filipinos in Mindanao.¹²⁹ Faced with the systemic and historical discrimination and disempowerment of the Bangsamoro people by the government, native resistance grew.

¹²⁴ Salah, *Bangsamoro*, 115-19.

¹²⁵ Ibid., 134.

¹²⁶ The Ramos administration's massive retrenchment policies have taken a significant toll in regions of Mindanao. Between 1997 and 1998, extensive budget cuts in government resulted in reduced social services and increased unemployment rates. This exacerbated the disparity between the central government and the region, which furthered the sentiments of neglect of the government to the facilitation of development and poverty alleviation in Mindanao. The Estrada administration instigated an "all-out-war" policy against Muslim secessionists in April 2000. This policy took a heavy toll on human lives, physical infrastructure, and economic activities. Felipe Ramiro Jr, "Governance and Development in Mindanao," in *Philippine Governance Report: Studies on the Management of Power*, ed. J. I. Angeles (Makati City: Ateneo School of Government, Ateneo de Manila University, 2002), 315-70, <https://www.google.com/url?sa=t&source=web&rct=j&url=http://www.ombudsman.gov.ph/UNDP4/wp-content/uploads/2013/01/Chap8.pdf&ved=2ahUKEwi-yzv71ptzmAhWtGaYKHeB5B5gQFjAAegQIBBAB&usq=AOvVaw3nOHd6T05T5XuGgkvy1gRt&csid=1577672387194>.

¹²⁷ By marginalising Muslims in their own homeland through massive, government-sponsored in-migration, the Philippine government created a relatively impoverished regional minority resentful of the benefits provided to Christian migrants and highly suspicious of government motives. Thomas M. McKenna, "The Origins of the Muslim Separatist Movement in the Philippines," Asia Society, n.d., <https://asiasociety.org/origins-muslim-separatist-movement-philippines>.

¹²⁸ Jeffrey Ayala Milligan, "Islamic Education in the Philippines," in *Handbook of Islamic Education*, ed. H. Daun and R. Arjmand, International Handbooks of Religion and Education, vol. 7 (Cham: Springer, 2017), https://doi.org/10.1007/978-3-319-53620-0_34-1.

¹²⁹ Madale 1976, as cited in Milligan, "Islamic Education in the Philippines."

Colonial Legacy of Hate Speech, Incitement to Violence, and Discrimination

Given the non-inclusive and Luzon-centric narrative of history and the internalised assimilation policy of various Philippine administrations, it should not come as a surprise how negative the perceptions against Moros or Filipino Muslims were, nor how such perceptions continue to be pervasive among the predominantly Christian Filipino majority.

In the processes conducted by the Transitional Justice and Reconciliation Commission, that were marked with truth-telling and testimonials, stories shared about discrimination against them abound. Some talked about being teased by their Christian neighbours and schoolmates when they were young because they were Muslims.¹³⁰ As adults, one of the problems they face is the difficulty of getting jobs. As one participant in the listening process said, “We have to lie about our religion to be hired.”¹³¹ The mass media also play a role in creating negative stereotypes – when the suspects of crimes are Muslims, their religion is usually highlighted in news reports. Even the academic institutions have contributed in worsening the stereotypes like when the Moros are “portrayed as villains in the few books that feature them and circulate as part of the national curriculum for public schools”.¹³² The Bangsamoro peoples’ day-to-day experiences of discrimination and hate speech “...are expressions of a prejudice that is deeply embedded in the psyche of Philippine society at large and, particularly, among many civil servants”.¹³³ When striking events involving individuals of Bangsamoro background reach the headlines and become the centre of national attention, this prejudice becomes even more pronounced. Two recent events prove this to be the case: the Mamasapano incident and the Marawi siege.

While hate speech against the Bangsamoro people is not new, the rise of online and social media use added a new dimension to the perpetuation of prejudices against them, as seen from the abundance of anti-Muslim and violent messages circulated during and after these two events. Notably, the online messages posted during these events mirror the anti-Muslim prejudices initiated during the Spanish and American colonisation and continued by the post-colonial Philippine state.

We combed through and analysed social media messages during the period of the two incidents and for six months afterwards, respectively in January–July 2015 for the Mamasapano incident and May–November 2017 for the Marawi siege. We looked at comments in news articles posted on Facebook, YouTube, and Twitter by some of the leading Philippine media organisations in order to approximate and visualise the discriminatory, hateful, and violent rhetoric that was rampant during such times. We also looked at examples of discriminatory, hateful, and violent messages by public personalities including celebrities and government officials.

¹³⁰ Transitional Justice and Reconciliation Commission, *Report of the Transitional Justice and Reconciliation Commission* (Makati City: Transitional Justice and Reconciliation Commission, 2016). 19, https://www.menschenrechte-philippinen.de/tl_files/aktionsbuendnis/dokumente/weiterfuehrende%20Dokumentensammlung/Transitional_Justice_and_Reconciliation_Commission_-_Report_2016.pdf.

¹³¹ Ibid., 21.

¹³² Ibid., 28.

¹³³ Ibid., 19.

MAMASAPANO INCIDENT

On 25 January 2015, the Special Action Force (SAF) of the Philippine National Police (PNP) conducted an operation – Oplan Exodus – with the objective to arrest two top terrorists, Zulkifli bin Hir or Marwan and Abdul Basit Usman, in Mamasapano, Maguindanao. Both were said to have links with Jemaah Islamiyah. The SAF, however, did not coordinate with the Armed Forces of the Philippines (AFP) and the Moro Islamic Liberation Front (MILF) as stipulated in the peace agreement. Moreover, the President was also not forthcoming about this operation which eventually resulted in an encounter between the SAF and the Bangsamoro Islamic Freedom Fighters (BIFF) and the MILF. Sixty-seven individuals were killed including 44 SAF policemen, 18 MILF fighters, and 5 civilians.

News about the incident started coming out later that day followed by hateful comments against the BIFF and MILF in particular, and the Bangsamoro people more generally. Among the most common messages on social media were that Muslim Filipinos are traitors or cannot be trusted. Most messages pertained specifically to the MILF, including on mainstream media such as TV5, one of the three major TV networks in the country, such as this Facebook post on 27 January 2015:

*Masaker ng mga teroristang mga tarydor!!
D tlga pwede mag tiwala s mga grupong yan khit kelen*¹³⁴
[Massacre by terrorist traitors!
We really cannot trust this group no matter what.]

However, there were also messages generalising Muslims as traitors, like this comment on an ABS-CBN post on 16 February 2015:

*Mga traidor mga muslim.....d dapat pag kakatiwalaan...*¹³⁵
[Muslims are traitors. They shouldn't be trusted...]

In relation to a 27 January photo posted on the Facebook page of 24 Oras, when a Facebook user was trying to defend the MILF, another user replied that they are a race of traitors:

*Oh may isang terorista dito oh! Utak biya. Mga lahi nyo kasi traidor.*¹³⁶
[Oh, look, there is a terrorist here. Stupid. People from your race are traitors...]

Another common theme of the comments during the Mamasapano incident was that most, if not all, Muslim Filipinos are terrorists. Linked to the same photo on 24 Oras (27 January 2015), when one Facebook user complained that most of the comments were misinformed about who was responsible, observing that many mistakenly point their fingers to Muslim Filipinos, another argued that Islam is the religion of the terrorists causing trouble in all parts of the world:

¹³⁴ NE5.Ineraksyon.com, "Mga gamit ng nasawing PNP-SAF sa Maguindanao, ibinida sa social media," Facebook, 27 January 2015, <https://www.facebook.com/TV5manila/posts/d41d8cd9/10152683470096801/>.

¹³⁵ ABS-CBN News, "Autopsy report: 27 SAF troopers binaril sa ulo," Facebook, 16 February 2015, <https://www.facebook.com/abs-cbnNEWS/posts/binaril-sa-ulo-ang-27-sa-44-na-saf-troopers-na-namatay-sa-operasyon-sa-mamasapan/10152829534890168/>.

¹³⁶ Jun Veneracion, [digital image], Facebook, 27 January 2015, <https://www.facebook.com/24OrasGMA/photos/a.260261460724587/830729607011100/?type=1&theater>.

Totoo nmN eh anu b religion ng mga terorista n nanggullo sa buong mundo? Db Muslim¹³⁷

[It's true. What's the religion of the terrorists creating disorder around the world? They're Muslims, right?]

Even worse are the messages that say Islam is an evil religion and that Muslims are evil. One example is this comment on a TV5 post:

*Ang mga relihiyosong Islam ay ang una nilang pinagkakakitaan ay ang pag kidnap....
Pag hindi nagbayad ang mga biktima ng ransom...syempre naman pugot ulo!!
...At bago pugutan may proseso binabasahan ng libro ng Quran at magdadasal...
para magpasalamat....¹³⁸*

[The main source of income of religious Muslims is kidnapping.
If the ransom is not paid, they will behead the victim.
Before doing so, they will read from the Qur'an, pray and give thanks....]

In an ABS-CBN Facebook post, some of the comments included:

The truth about Islam it is not a religion but a satanic cult.

And:

*Ang Islam ay puro kasinungalin [sic], pag naiisip at na didinig mo pa lang ang salitang
Islam pumapasok na agad utak ng mga tao "murderer, rapist, sinungaling at traidor"¹³⁹*

[Islam is filled with lies. When you think and hear the word Islam, what come to people's minds are murderer, rapist, liar and traitor.]

Finally, many Facebook users were calling for an All-Out War, the policy of former President Joseph Estrada in 2000 with regards the MILF. Some examples are these comments on an ABS-CBN Facebook post:

Comment 1: All out war na.

Comment 2: #sad :-(all out war!!!¹⁴⁰

And on a TV5 post:

Bakbakan na yan katulad nong panahon ni erap¹⁴¹

[Give them war like during the time of Estrada.]

Another example is this Facebook user who commented on a **GMA News** post:

Sana magkakaroon ng presidenti katulad ni erap na polbusin ang mga yan..¹⁴²

[I hope we could have another president like Estrada who will turn them into dust.]

¹³⁷ Ibid.

¹³⁸ NE5.Ineraksyon.com, "Mga gamit ng nasawing PNP-SAF sa Maguindanao, ibinida sa social media."

¹³⁹ ABS-CBN News, "Autopsy report: 27 SAF troopers binaril sa ulo."

¹⁴⁰ ABS-CBN News, "Naulila ng mga commandos, bumisita sa morgue," Facebook, 28 January 2015, <https://www.facebook.com/abscbnNEWS/posts/10152774572440168>.

¹⁴¹ NE5.Ineraksyon.com, "Mga gamit ng nasawing PNP-SAF sa Maguindanao, ibinida sa social media,"

¹⁴² GMA News, "Pinuno ng PNP-SAF, inalis sa puwesto kaugnay ng Mamasapano 'misencounter'," Facebook, 27 January 2015, <https://www.facebook.com/gmanews/posts/10152739299141977/>.

But while some comments were calling for an All-Out War against the MILF, there were those who suggested that all Muslims in the Philippines should be eradicated, like these two Facebook users:¹⁴³

Comment#1: Wala nang peace talk peace talk... gyera na kung gyera... ubusan nalang ng lahi!

[Stop the peace talks. Give them war. Get rid of them all.]

Comment #2: Ubusin ang lahat ng muslim sa Pilipinas dahil lahat ng terrorist ay mga muslim.

Huwag nang ituloy ang BBL.

[Get rid of all of the Muslims in the Philippines because all terrorists are Muslims.

Stop the passage of the BBL [Bangsamoro Basic Law].]

A similar message was posted as comment on a GMA News Twitter post:

Nakikisimpatiya pa kayo sa milf/biff mga baboy kayong muslim Kyo!

Kill them all, let Allah sort them out!¹⁴⁴

[You even sympathise with the MILF/BIFF. You Muslims are pigs. Kill them all, let Allah sort them out!]

And also on this GMA News Facebook post on 30 January:

*EVACUATE all d civilians. If ayaw nilang sumama, damay damay na yan sa ALL OUT WAR. War lng tlgang ang solusyon dyan pra maubos na ang mga muslim...*¹⁴⁵

[If the civilians don't want to evacuate, let them suffer from the all-out war.

War is the only solution to get rid of all the Muslims.]

Many personalities also shared hate speech at the height of the Mamasapano issue. For example, actor/politician Richard Gomez wrote, in response to actor Robin Padilla's post supporting the passage of the Bangsamoro Basic Law (BBL):

*"Scrap the peace talks, scrap the BBL. Do what Pres Erap did, give them war!"*¹⁴⁶

Politician and former journalist Teddy Locsin, Jr, on the other hand, wrote in response to a tweet:

*"Plus the Mamasapano Operation was in accordance with International Obligation to Wipe out Muslim terrorists, only fuck*d up."*¹⁴⁷

Former President Joseph Estrada implied that the administration should implement the same aggressive policy against the MILF that he adopted before. In an online DZRH news article, Estrada was quoted saying:

¹⁴³ Veneracion, [digital image].

¹⁴⁴ GMA News, "Muslim Filipinos hurting after #MamasapanoClash too, [gmane.ws/1LGczY2](https://twitter.com/gmanews/status/570551823842430977)," Twitter, 25 February 2015, <https://twitter.com/gmanews/status/570551823842430977>.

¹⁴⁵ GMA News, "FULL TEXT: Transcript of PNP-SAF OIC Noli Taliño eulogy for the Fallen 44," Facebook, 30 January 2015, https://www.facebook.com/gmanews/posts/10152749743851977?_xts=%5B0%5D=68.ARBuXymjDTYmLbd9HTduLo-A13MPL-oNV_Np2K9NQ4dSG6T6f3WXtrCwfQaiM4D7gxiEZxESxc9enQECgNGkwOC1r1stfJd0epQBKYfmbpRC3cf12tNp-Dlz8eVGr-s_GUj9VVj7UscToxJMoh4X2i-niHr0Ac5AGRcvc1oUdzlghIEyX1.

¹⁴⁶ GMA News, "Robin Padilla, Richard Gomez share different views on Mamasapano incident," 12 February 2015, <https://www.gmanetwork.com/news/showbiz/pep/434630/robin-padilla-richard-gomez-share-different-views-on-mamasapano-incident/story/>.

¹⁴⁷ Teddy Locsin Jr (@teddyboylocsin), "Plus the Mamasapano Operation was in accordance with International Obligation to Wipe out Muslim terrorists, only fuck*d up," Twitter, 26 January 2017, <https://twitter.com/teddyboylocsin/status/824380122178351104?s=20>.

*Kung hindi makuha sa santong dasalan, eh di daanin sa santong paspasan.*¹⁴⁸

[A Filipino expression meaning: If it can be done a certain way, do whatever it takes even more fatal means.]

Several pronouncements from local politicians also surfaced at the height of the investigation on the Mamasapano incident. Former Senator, and 18th Congress House Speaker, Alan Peter Cayetano had expressed explicit concerns over what had transpired, accusing the MILF of merely wanting power more than peace and planning to put up a “totalitarian kingdom” that would be a safe haven for terrorists.

An article by [Inquirer.net](#) on 5 February 2015 quoted then Senator Cayetano saying:

I’m so convinced that the Moro Islamic Liberation Front hasn’t turned its back from becoming a terrorist group.¹⁴⁹

Meanwhile, [Rappler.com](#) reported that then Senator Cayetano expressed the following during a Senate hearing on the operation:

My point is we’re talking peace to the MILF but it’s so obvious they were protecting [Malaysian terrorist] Marwan, more than coordination, the question is: why is MILF territory becoming a haven for terrorists in Asia?

They are killing the police and military. We mourn because the MILF is coddling terrorists.¹⁵⁰

He was quoted saying the following during the same Senate hearing:

*Ang ultimate na may kasalanan dito ay ang MILF.*¹⁵¹

[MILF is ultimately responsible and to be blamed for the Mamasapano incident.]

The biases have impacted on their actions as public officials, such as the sudden withdrawal of support for the BBL by Senators Alan Peter Cayetano and J. V. Ejercito.

The same kind of discriminatory and violent messages against Muslim Filipinos were also apparent during and after the Marawi siege.

MARAWI SIEGE

On 23 May 2017, government forces conducted a raid on a suspected hideout of Abu Sayyaf leader Isnilon Hapilon in Marawi City. Hapilon asked for reinforcements from members of the Maute Group, an armed group that pledged allegiance to the Islamic State, leading to scattered firefights in different parts of the city with the military. President Duterte declared

¹⁴⁸ DZRH News, “Estrada to gov’t: Declare all-out war vs MILF,” 28 January 2015, <http://dzhnews.com.ph/estrada-govt-declare-war-vs-milf/>.

¹⁴⁹ Julliane Love De Jesus, “Cayetano: Mamasapano clash a terror attack, massacre,” [Inquirer.net](http://newsinfo.inquirer.net/670698/cayetano-mamasapano-clash-a-terror-attack-massacre), 5 February 2015, <https://newsinfo.inquirer.net/670698/cayetano-mamasapano-clash-a-terror-attack-massacre>.

¹⁵⁰ Ayee Macaraig, “Cayetano, Deles clash on MILF ‘terror links’,” [Rappler.com](http://www.rappler.com/nation/83523-cayetano-deles-clash-milf-terror-links), 10 February 2015, <https://www.rappler.com/nation/83523-cayetano-deles-clash-milf-terror-links>.

¹⁵¹ Bea Cupin, “Mamasapano: What ifs and what could have beens,” [Rappler.com](http://www.rappler.com/nation/83563-mamasapano-pnp-saf-afp-senate), 11 February 2015, <https://www.rappler.com/nation/83563-mamasapano-pnp-saf-afp-senate>.

Martial Law over all of Mindanao later that day, and the military followed with the aerial bombing of the city. The fighting lasted for several months until the city was declared liberated in October 2017. According to the United Nations High Commissioner for Refugees, 98 per cent of the population or 201,785 individuals (based on a 2015 census), mostly Muslims of Meranao descent, were displaced.

When news about the siege started coming out, many people across the country were initially sympathetic to the residents. Images of terrorists, burning structures, soldiers, and people fleeing the city were all over social media and the hashtag #PrayforMarawi was among the trending topics on Twitter. As the days went by, however, the deep-seated discrimination against Muslim Filipinos in Mindanao, and against the Meranaos in particular, started to surface both in mainstream media and social media.

When the *Philippine Star* posted a photograph of Philippine Navy personnel on its Facebook page, calling the Maute Group “pro-Islamic group militants”, one Facebook user argued that they should use the term “terrorist” instead of “pro-Islamic group”; another Facebook user replied “all terrorist are pro islamic!! all muslim supports terrorist!!” [sic].¹⁵²

A similar comment was posted on a YouTube video (3 October 2017) of Maute members:

*Para sakin nasa lahi nyu na talaga pagiging terorista.
Lumaki ako sa isang muslim community and masasabi ko
may ugali talaga kayo na di maganda*¹⁵³

[For me, being a terrorist is in your genes.
I grew up in a Muslim community and I can say
you really have attitudes that are not good.]

And in this footage of the Marawi clash (15 June 2017):

*Hanggat may mga muslim, hindi matatapos ang gulo sa mundo.*¹⁵⁴

[As long as there are Muslims, there will always be chaos in the world.]

Another common message posted on the internet was that Muslims are traitors and adhering to Islam is evil. One example is this comment on a YouTube video (14 August 2018):

*Mga tarantado kasi mga muslim nasa bibliya o quran nila na pumatay o patayin ang hindi muslim.*¹⁵⁵

[Muslims are bad. Their Qur'an tells them to kill those who are not Muslims.]

¹⁵² Bullit Marquez, “Philippine Navy commandos aboard a gunboat patrol in Lake Lanao as smoke rises from the area where pro-Islamic group militants are making a final stand amid a massive military offensive with government troops in Marawi City,” [digital image], *Philippine Star*, 19 October 2017, <https://www.facebook.com/PhilippineSTAR/posts/philippine-navy-commandos-aboard-a-gunboat-patrol-in-lake-lanao-as-smoke-rises-f/912056385614710/>.

¹⁵³ [GMA News], “Video ng ilang Maute na bitbit ang kanilang mga kasamang napatay sa bakbakan, na-retrieve ng AFP,” [Video file], YouTube, 3 October 2017, <https://www.youtube.com/watch?v=LsvuwwnY2SQ>.

¹⁵⁴ [khAm DenRiah], “Marawi Clash part 2. ACTUAL FIGHT FOOTAGE (HD Quality),” [Video file], YouTube, 15 June 2017, <https://www.youtube.com/watch?v=n328EYRrNdq>.

¹⁵⁵ [Luzviminda], “Marawi siege 1,” [Video file], YouTube, 14 August 2018, <https://www.youtube.com/watch?v=XS5wocoQQPo>.

The *Manila Times* (19 June 2017), on the other hand, shared on its Facebook page an article with the headline “Did the MILF Know about the IS-Linked Maute Plan to Take Over Marawi?” This gathered 74 comments, of which many agreed that the MILF knew about the plan, while others said it was expected because they belonged to the same religion. Again, sentiments generalising Muslim Filipinos as traitors were expressed:

Muslim is muslim..traydor sa usapan mga yan

[They are traitors/untrue to their words.]

Responding to the same headline, one even went on to suggest that the MILF, or even perhaps Muslim Filipinos in general, do not deserve peace but violence:

500% Sure they know! Why? They are ALL “ EVIL OF GOD EXTREMISTS
TERRORISTS ENEMY OF CHRISTIANS. This type of people do not deserve peace
but MARTIAL LAW. [sic]

One Twitter user, on the other hand, posted a tweet in response to this news, “Muslim leaders urge gov’t to stop aerial strikes in Marawi City #MarawiClash”:

kill them all. Terrorist doesnt deserve a 2nd chance. [sic]¹⁵⁶

One example of a message provoking violence was a comment to a news article entitled “Duterte Threatens to Purge Local Governments in Marawi”, posted on the *Philippine Star* Facebook page on 11 October 2017:

*Place the Marawi Government and their families inside one of the Tunnels and blow
up both ends of the Entrance and Exit. Problem solve [sic].*

Like in the Mamasapano incident, former President Joseph Estrada called on Duterte to implement an All-Out War policy in response to the siege, while expressing his support for the declaration of martial law in Mindanao.¹⁵⁷

Another common theme in the dominant messages was that the Filipino Muslims and Meranaos are the ones to blame and that they deserve what happened because they are sympathisers of the terrorists. One example is this comment on an I-Witness YouTube video (13 August 2017):

*Akala mo kawawang-kawawa yung mga civilian na muslim.
Mga pamilya at kamag anak naman nila yang mga
Maute terrorist na sumira sa lugar nila!¹⁵⁸*

[You would think these civilian Muslims are so pitiful but the Maute terrorists who destroyed their city are their relatives!]

¹⁵⁶ primal7ss78, “Killt hem all. Terrorist doesnt deserve a 2nd chance. O w8 CHR is crying and LP is ranting.....mwhahah,” Twitter, 16 June 2017, <https://twitter.com/primal7ss78/status/875390735800909828?s=20>.

¹⁵⁷ Rambo Talabong, “Estrada urges ‘all-out war’ vs terrorists: ‘It’s about time’,” *Rappler.com*, 25 May 2017, <https://www.rappler.com/nation/170946-estrada-duterte-all-out-war-against-terrorist-groups>.

¹⁵⁸ [GMA Public Affairs], “I-Witness: ‘Sa Pusod ng Digmaan,’ dokumentaryo ni Emil Sumangil (full episode),” [Video file], YouTube, 13 August 2017, <https://www.youtube.com/watch?v=TxbyN6hXoLM>.

Another similar message is this comment on a civilian's footage of the Marawi clash (15 June 2017):

*hahaha wasak ang mga bahay ng mga muslim,
yun ang reward nyo pag kumakanlong kayo ng mga terorista*¹⁵⁹

[Hahaha! The houses of these Muslims were ruined.
This is what you get for coddling terrorists.]

The belief that the Meranaos should be blamed for what happened in Marawi is shared and perpetuated by prominent media commentators and opinion makers like Ramon Tulfo. In his column "Marawi residents delay city's rehab" posted on the Philippine *Daily Inquirer* website on 20 October 2018, Tulfo said that:

Marawi City residents complaining about the delay in the rehabilitation of their city have only themselves to blame....

... In the first place, Marawi City residents didn't inform the police and military about the presence of strangers who entered the city in droves, bringing with them arms.

Many Maranaws knew beforehand the strangers were out to create trouble for the government but they chose to remain silent because they sympathized with the terrorists. They made their bed, they should lie in it.¹⁶⁰

These support what the TJRC said that the bias against the Bangsamoro people is deeply rooted in the psyche of many Filipinos. They are usually thought of as traitors and terrorists and that their religion is evil. These messages translated into discriminatory behaviour. In various consultations with civil society groups and partners, many Meranao internally displaced persons reported cases of discrimination, such as denial by non-Muslim and non-Meranao homeowners and village associations of rental by Meranaos of temporary homes.

Our analysis shows that many government officials carry this bias. This is problematic because when government officials think unfairly against the Bangsamoro people, these thoughts are reflected in policies for the Bangsamoro that are either tokenistic or, worse, that are unsympathetic and more detrimental to their plight. No less than the President himself shared the same negative view of the Meranaos. While giving a speech to the AFP in Sultan Kudarat, Duterte said:

*So galit talaga ako sa Marawi na yan kung bakit 'yung mga Maranao, pinayagan mga tao na pumasok doon at manggulo... Galit ako sa mga Maranaw na nagdala doon ng ibang klaseng tao, 'yung iba hindi pa Pilipino, hay nako. [sic]*¹⁶¹

[I'm really mad at Marawi, why these Maranaos let these people enter and wreak havoc. I'm angry at the Maranaos who brought a different type of people, some of them are not even Filipinos.]

¹⁵⁹ [khAm DenRiah], "Marawi Clash part 2."

¹⁶⁰ Ramon Tulfo, "Marawi citizens delay city's rehab," *Inquirer.net*, 20 October 2018, <https://newsinfo.inquirer.net/1044970/marawi-residents-delay-citys-rehab>.

¹⁶¹ ABS-CBN News, "Duterte hits locals who backed terrorist in Marawi," 7 June 2017, <https://news.abs-cbn.com/news/06/07/17/duterte-hits-locals-who-backed-terrorists-in-marawi>.

Linked to his bias against the Meranaos, last 24 April 2019, Duterte said, in mixed English and Filipino, that he believes that the government should not spend for the city's rehabilitation, as quoted by the Philippine Daily Inquirer article:

I don't think that I should be spending for their buildings ... Every Maranao, there is a businessman. Those who are into shabu are included. They have money. The debate there is whether I would be also building the same kind that they lost. I don't think I am ready for that. [with translation]¹⁶²

Moreover, the issuance of a Muslim identification card to identify Marawi residents was proposed in 2017. Groups such as the Tindeg Ranao, however, feared that such a policy would be used to further discriminate against the Meranaos.¹⁶³

More than two years after the battle ended with the virtual destruction of Marawi, many Meranaos remain as internally displaced persons (IDPs). Yet rather than focus on the Meranao IDP's calls for return, for participative rehabilitation of the city, and for transparent investigations into alleged abuses, many governmental and non-governmental efforts are directed towards policing, counter-messaging, and counter-recruitment among Meranao communities and Muslim Filipinos in Mindanao framed as "preventing and/or countering violent extremism (P/CVE)". While such efforts seem harmless, these are underpinned by the bias of the Philippine government and security sector that the Muslims, particularly Meranaos, are "vulnerable" to radicalisation and are themselves most probable threats to the security of the country. Even at the level of defining security and insecurity, the Bangsamoro people, who are at primary receiving end of atrocities and violence, are continuously sidelined and discriminated against.

Efforts to Address Hate Speech, Incitement to Violence and Discrimination

ON HATE SPEECH IN GENERAL

The Philippine government has not enacted a law against hate speech, incitement to violence and discrimination in general. There are no legal provisions against such kind of speech as jurisprudence on freedom of expression cases mainly focus on libel, defined in the as the public and malicious imputation of a discreditable act that tends to discredit or dishonour another person and which currently exists under the Revised Penal Code. This penal law on libel was expanded by the Cybercrime Prevention Act of 2012 (Republic Act No. 10175) to apply to acts "committed through a computer system or any other similar means which may be devised in the future". In January 2011, the UN Human Rights Committee held that the Philippines's criminalisation of libel is "incompatible" with the freedom of expression under Article 19(3) of the ICCPR.

¹⁶² [Inquirer.net](https://newsinfo.inquirer.net/1109961/duterte-to-let-rich-businessmen-spend-for-full-marawi-rehab), "Duterte to let rich businessmen spend for full Marawi rehab," 4 April 2019, <https://newsinfo.inquirer.net/1109961/duterte-to-let-rich-businessmen-spend-for-full-marawi-rehab>.

¹⁶³ Allan Nawal, "Bias feared over ID system," [Inquirer.net](https://newsinfo.inquirer.net/940099/bias-feared-over-id-system), 24 October 2017, <https://newsinfo.inquirer.net/940099/bias-feared-over-id-system>.

The Cybercrime Prevention Act of 2012 was passed under the Aquino administration, fuelling protests by citizens and media groups raising concerns over state surveillance and censorship. The law extended criminal libel to apply to acts “committed through a computer system or any other similar means which may be devised in the future”. It also increases the criminal penalties for libel in computer-related cases. In January 2011, the UN Human Rights Committee held the Philippines’s criminalisation of libel to be “incompatible” with the freedom of expression clause in the International Covenant on Civil and Political Rights (ICCPR).¹⁶⁴ Fifteen petitions challenged the law’s constitutionality before the Supreme Court; the Court struck down some provisions of the law, particularly those on the collection and recording of traffic data in real-time, but ruled that the provision on online libel is constitutional, subject to one condition: only the original author, not those who simply receive or react to the post, can be penalised.¹⁶⁵

A comprehensive Anti-Discrimination Bill (ADB) or House Bill 4982 was filed in the 17th Congress, expanding on a bill focused on acts of discrimination against people based on their sexual orientation, gender identity or expression (SOGIE). The ADB seeks to prohibit discrimination based on age, racial or ethnic origin, religious belief or activity, political inclination or conviction, social class, sex, gender, sexual orientation, gender identity and expressions, marital or relationship status, disability, HIV status, health status or medical history, language, physical features, or other status. The Bill was passed on its third and final reading on 20 September 2017 but failed to pass into law after not being picked up in the Senate. It was refiled in the 18th Congress on 1 July 2019 as House Bill 258.

However, in the context of state actors being central to hate speech and discrimination and the real threat of the use of penal laws to perpetuate marginalisation and to suppress dissent, a penal approach, such as criminalisation of libellous speech, offline and online, and its impact on freedom of speech, remains a serious concern.

ON HATE SPEECH AND DISCRIMINATION AGAINST BANGSAMORO PEOPLE

Specific to hate speech, incitement to violence and discrimination against the Bangsamoro people, IID and its stakeholders situate the analysis of issues and the response within the broader and historical context of the anti-Muslim/Moro rhetoric, the subsequent Bangsamoro struggle for their right to self-determination, and the entire process of peacebuilding, reconciliation, and transitional justice in Mindanao.

NATIONAL AND REGIONAL GOVERNMENT RESPONSE: TRANSITIONAL JUSTICE AND RECONCILIATION INITIATIVES UNDER THE BANGSAMORO PEACE PROCESS

After nearly two decades of negotiations between the Philippine government and the MILF, the two panels finally signed the Framework Agreement on the Bangsamoro (FAB) in 2012 and the Comprehensive Agreement on the Bangsamoro (CAB) in 2014. Included in the CAB

¹⁶⁴ Amnesty International, “Philippines: ‘Cybercrime’ Law Threatens Free Speech and Must be Reviewed,” 4 October 2012, <https://www.amnesty.org/en/latest/news/2012/10/philippines-cybercrime-law-threatens-freedom-expression-and-must-be-reviewed/>.

¹⁶⁵ Rappler.com, “Cybercrime law constitutional – Supreme Court,” 21 February 2014, <https://www.rappler.com/nation/special-coverage/full-text-supreme-court-decision-cybercrime-law>

is The Normalization Annex of the Comprehensive Agreement on the Bangsamoro which paved the way for the creation of the Transitional Justice and Reconciliation Commission.¹⁶⁶ The TJRC conducted “listening process” sessions in various communities in Mindanao and the Sulu archipelago involving no less than 3,000 individuals, both community members and officials,¹⁶⁷ to come up with a comprehensive and holistic set of recommendations that are included in its 2016 report.

Integrated within the TJRC report is a conceptual framework for Dealing With the Past (DWP), which recognises the “interdependence” of four key pillars: the right to know, the right to justice, the right to reparation, and the guarantee of non-recurrence. It is worth noting, however, that most of the existing governmental initiatives to address HSIVD can be argued to fall under the third and fourth pillars, the right to reparation and the guarantee of non-recurrence. The DWP framework is anchored on a conflict transformation lens in addressing impunity, grievances, and historical injustices committed and still being committed against a particular population. Civil society groups and peace movements particularly in Mindanao have in fact adopted this framework, embedding it in local, national, and regional conversations, listening processes, public consultations, and other bigger advocacy initiatives. During these consultations, the relationship between victims and perpetrators, stories of resilience by the victims of past atrocities, and affirmation of “historical truths” emerged.

Foremost among the recommendations of the TJRC is to create a National Transitional Justice and Reconciliation Commission on the Bangsamoro (NTJRCB) that will operate for six to nine years, whose mandate will include promoting “healing and reconciliation among the different communities affected by the conflict”.¹⁶⁸ It was recommended that this Commission be divided into four Sub-Commissions, two of which will be instrumental in addressing the discrimination against the Bangsamoro people. One of them is the Sub-Commission on Bangsamoro Historical Memory that will investigate cases of international human rights and international humanitarian law violations and publish reports regarding the investigations including reparations and reconciliation processes.¹⁶⁹ The second, and perhaps the one that is specifically geared towards resolving the problem of discrimination against Muslims, is the Sub-Commission on Bangsamoro Healing and Reconciliation which is aimed to “develop and promote a meaningful process for national reconciliation with a view to encouraging cultural and attitudinal change”.¹⁷⁰

Aside from the creation of the NTJRCB, the TJRC has also called on specific government agencies to participate in the reconciliation process, either in cooperation with the yet-to-be established Sub-Committees or the new Bangsamoro government. This includes calling on the Commission on Human Rights (CHR) and the Department of Justice (DOJ) to do their part in the investigation of international humanitarian law and international human rights law violations, and in conducting human rights education together with the Sub-Commission on Bangsamoro Historical Memory.

¹⁶⁶ The TJRC was “mandated to undertake a study and to make recommendations with a view to promote healing and reconciliation of the different communities that have been affected by the conflict.” Transitional Justice and Reconciliation Commission, *Report of the Transitional Justice and Reconciliation Commission*, x.

¹⁶⁷ *Ibid.*, xi.

¹⁶⁸ *Ibid.*, 74.

¹⁶⁹ *Ibid.*, 77.

¹⁷⁰ *Ibid.*, 78.

On the other hand, the Department of Education (DepEd), the Commission on Higher Education (CHED), the National Commission for Culture and the Arts (NCCA), the National Commission on Indigenous Peoples (NCIP), the National Commission on Muslim Filipinos (NCMF), and the Philippine Commission on Women (PCW) were recommended to create the Bangsamoro Center for History, Culture, and the Arts which will be tasked, among others, to produce and disseminate public educational materials about the Bangsamoro such as films and exhibits. Aside from this, these agencies were also recommended to integrate the history and literature of both the Bangsamoro and the Indigenous Peoples in the academic curriculum.

Since the publication of the TJRC report, there have been few developments in relation to the recommendations mentioned above. First, a bill on the creation of the NTJRCB was filed in Congress in 2017. Although there has not been significant movement with regards to this bill, different offices in Mindanao as well as a handful of government agencies have started taking actions in response to the recommendations.

The Regional Human Rights Commission, for instance, has already started transitioning into the Bangsamoro Human Rights Commission (BHRC). Since April 2019, they have already conducted consultations with civil society groups in the Bangsamoro Autonomous Region of Muslim Mindanao (BARMM). Gatherings have been held such as the Bangsamoro Human Rights Network Summit last July that brought together leaders of the Bangsamoro Transitional Authority, military, the PNP, and CSOs. This gathering produced a Memorandum Of Agreement whereby all the members agreed to do their part in the promotion of human rights through monitoring and reporting of violations and conducting human rights education among other actions.¹⁷¹

There are also some movements in the education sector. The Integrated History Act of 2016 (Republic Act No. 10908) was enacted on 21 July 2016. This law has legally paved the way for the inclusion of Bangsamoro and Indigenous Peoples' history in the basic and higher education curricula. To date, however, the Act still does not have an Implementing Rules and Regulation. In 2018, DepEd Secretary Leonor Briones announced that while peace is already incorporated in school curricula, they were still working on strengthening this aspect in the education system.¹⁷² The Commission on Higher Education, on the other hand, has already instructed colleges and universities last April 2019 to incorporate peace and Indigenous People's studies in school curricula beginning in the 2019-2020 academic year.¹⁷³

In the BARMM, the new Ministry on Basic Higher and Technical Education conducted an educators summit on 30 July 2019, gathering around 300 school principals to talk about various issues as well as updates on the recently created education ministry.¹⁷⁴ BARMM Education Minister Mohagher Iqbal has started to scout systems in Southeast Asia to learn from as they begin crafting the new education frameworks. At present, they are looking at three

¹⁷¹ Ana Sanchez, "Bangsamoro Human Rights Network Rallies Support for BHRC," *Mindanao Daily*, 10 August 2019, <https://www.mindanaodailynews.com/news/front-page/todays-top-stories/bangsamoro-human-rights-network-rallies-support-for-bhrc>.

¹⁷² Department of Education, "DepEd to Bolster Peace, Global Citizenship Education," Press release, 30 August 2018, <https://www.deped.gov.ph/2018/08/30/deped-to-bolster-peace-global-citizenship-education/>.

¹⁷³ Merlina Hernando-Malipot, "CHED Directs Colleges, Universities to Integrate Peace and IP Studies in Curricula," *Manila Bulletin*, 9 April 2019, <https://news.mb.com.ph/2019/04/09/ched-directs-colleges-universities-to-integrate-peace-and-ip-studies-in-curricula>.

¹⁷⁴ Bangsamoro Autonomous Region in Muslim Mindanao, "BARMM Eyes Better Education System," 30 July 2019, <https://bangsamoro.gov.ph/latest-news/2019/07/30/barmm-eyes-better-education-system/>.

countries as possible models: Brunei Darussalam, Indonesia, and Malaysia.¹⁷⁵ The outgoing ARMM government, on the other hand, opened a Bangsamoro museum in Shariff Kabunsuan Cultural Complex in February 2019 which houses relics that Governor Mujiv Hataman hopes to serve “as a basis regarding the true history of the Bangsamoro people”.¹⁷⁶

Other efforts that are aimed to promote Mindanao cultural heritage include the 2018 Kalinaw Kultura Mindanao that was organised by the NCCA and the PIA which showcased performances and art exhibits in different cities in Mindanao.¹⁷⁷ In September 2019, a Culture and Peace Colloquium was organised by the NCCA together with the National Economic and Development Authority, the University of Science and Technology of Southern Philippines (USTP), and other offices. The objectives of the colloquium included promoting cultural awareness in the region.¹⁷⁸

When it comes to the Bangsamoro Transition Authority (BTA), however, the momentum is only starting to pick up after the President’s issuance of EO 79, Implementing the Annex on Normalization under the CAB. In June 2019, the Inter-Cabinet Cluster Mechanism on Normalization (ICCMN) started to fast-track the normalisation annex which includes the transitional justice component.¹⁷⁹ In July 2019, the ICCMN held its first meeting in Cotabato. Also present during this meeting were the different BARMM ministers who pledged to implement programs to complement those of the ICCMN.¹⁸⁰

The transitional justice component of the BOL recognises the obligation of the government to provide reparations to victims of land dispossession to pave the way for healing and reconciliation, in August 2019, the BTA issued Resolution No. 33, and to support the filing and immediate passage of the House Bills No. 3543, 3418, and 3922 which seek to compensate the Marawi siege victims.¹⁸¹ With the presentation of a draft roadmap for transitional justice and reconciliation during the ICCMN’s November 2019 meeting,¹⁸² more developments are expected at the BTA level in the months to come.

Following the passage and ratification of the BOL and the establishment of the BARMM, there is a huge burden on the national government and especially the BTA, as the caretaker regional government, in taking immediate, concrete, and visible steps to deliver the dividends of peace to the Bangsamoro people and the rest of the country, and in sustaining the momentum of the peace process, including in building trust and understanding among different religious and ethnic groups in Mindanao and the Philippines.

175 Manuel Cayon, “BARMM looks to Asean neighbors for best practices in education,” *BusinessMirror*, 7 October 2019, <https://businessmirror.com.ph/2019/10/07/barmm-looks-to-asean-neighbors-for-best-practices-in-education/>.

176 Noel Punzalan, “Bangsamoro Museum Opens,” Philippine News Agency, 7 February 2019, <https://www.pna.gov.ph/articles/1061218>.

177 John Paul Soriano, “PIA, NCCA Set to Launch Kalinaw Kultura Mindanao,” Philippine Information Agency, 26 July 2018, <https://pia.gov.ph/news/articles/1010854>.

178 Recthie Paculba, “First-ever culture, peace colloquium to be staged at CDO,” Philippine Information Agency, 5 September 2019, <https://pia.gov.ph/news/articles/1026896>.

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181 Bangsamoro Transition Authority, Resolution No. 33, 30 August 2019, <https://parliament.bangsamoro.gov.ph/wp-content/uploads/2019/10/Resolution-33.pdf>.

182 Office of Presidential Adviser on the Peace Process, “Inter-cabinet and Inter-Governmental Relation Bodies Meet to Sustain Momentum of Normalization Track,” 28 November 2019, <https://peace.gov.ph/2019/11/inter-cabinet-and-inter-governmental-relation-bodies-meet-to-sustain-momentum-of-normalization-track/>.

COMMUNITY-BASED AND CIVIL SOCIETY INITIATIVES

Foremost among the efforts of CSOs and peace advocates led by those in Mindanao include: 1) providing advocacy support for the passage and the realisation of a Bangsamoro Law that is consistent with the agreements between the GRP and the MILF, 2) supporting the transition to the new BARMM government, and 3) campaigning for the realisation of the recommendations stipulated in the Transitional Justice Commission Report.

CSOs such as the Mindanao Peaceweavers (MPW), All-Out Peace (AoP), Friends of the Bangsamoro (FoBM) and the Friends of Peace (FoP) have conducted various advocacy campaigns in support of the peace process and dialogue. As early as the 2000s, CSOs have done consultations with the peoples in Mindanao, submitted proposals to the peace panels, and monitored the conduct of ceasefire agreements. In 2008, peace advocates called on the Mindanao communities and other CSOs to join them in pushing the government and the MILF to immediately resolve the Governance issue under the Ancestral Domain talking point for the immediate signing of the peace agreement. When skirmishes broke out in 2009, as a result of the issuance of a TRO against the signing of the Memorandum of Agreement on Ancestral Domain (MOA-AD) they immediately issued statements to re-implement ceasefire mechanisms, and expressed support for the resumption of peace talks. CSOs have also commended the peace panels, the Bangsamoro Transition Commission (BTC), the Office of the Presidential Adviser on the Peace Process (OPAPP), and all those who have worked towards the produced that the draft BBL.

Interfaith solidarity movements, whose objective is to counter the war messages, have also been strong during the time of escalation of violence. Since the use of social media was not as widespread at the time, these were held in the form of face-to-face dialogues such as in forums, churches, and masjids.

During the Mamasapano incident and the Marawi siege, CSOs organised activities to counter the violent rhetoric and discrimination against the Muslim Filipinos in Mindanao, and to highlight the need for the continuation of the peace processes to address the roots of the violent conflict. Amid negative sentiments against Muslim Filipinos and the wavering support of the public and some government personalities to the passage of the BBL, and to counter the prevailing calls for an “All-Out War” after the Mamasapano incident, a loose civil society-led and multi-sectoral campaign platform called the “All-Out Peace (AOP) Network” was established from another existing network called “Friends of the Bangsamoro”, with members from Luzon to Mindanao and in various levels from broad national formations to community-based organisations and unions. AOP organised public actions such as the “National Day Towards Healing for Unity and Peace” held on March 6, 2015. Simultaneous public actions were conducted in different cities nationwide during this day. Through joint lobbying of its members, both the Lower House and the Senate issued resolutions declaring 6 March as a National Day of Healing. Parallel and similar peace advocacy initiatives after the Mamasapano incident were organised by various other groups, such as the track-two advocacy by the eminent persons’ group “Friends of Peace (FoP)”, co-convened by the prominent Archbishop of Cotabato and the sole Cardinal in Mindanao, Orlando Quevedo, OM. The group was composed of prominent individuals and policy-influencers who are experts and are respected in their respective fields.¹⁸³

¹⁸³ Chetan Kumar, “Track-Two Initiatives of Nationally-Led Peace Processes: The Case of the Philippines,” *Issue Brief*, no. 5/2017 (UNDP, 2017), https://www.undp.org/content/dam/undp/library/Global%20Policy%20Centres/OGC/Issue_Brief_Philippines_PeaceProcesses.pdf.

While both CSOs sought to counter the violent and discriminatory rhetoric in public spaces and to rally support for the peace process including the passage of the then delayed BBL, the FoP capitalised on their prominent experts' influence and contacts. Instead, AOP aimed to broaden and strengthen support from the organised groups and other CSOs as a way of creating a critical mass of public support and, ultimately, for putting pressure on policymakers to address the root causes of the discrimination and violence in Mindanao.

Similarly in the aftermath of the Marawi siege, public solidarity actions were organised by various groups to counter hate speech and discrimination against the Meranaos in particular and Muslims in general, and to bring to the fore the plight and the calls of the affected communities in order to sensitise the general public and, ultimately, influence policymakers.

Groups such as IID, the Global Partnership for the Prevention of Armed Conflict (GPPAC)-Southeast Asia, and the Mindanao Peaceweavers (MPW), a broad network of peace networks in Mindanao, together with other partner- and member-organisations within and outside Marawi, held several missions to express their solidarity and listen to the stories of the families displaced as a result of the siege. During and following these missions, member CSOs called on the media to counter misinformation about Marawi, and to continue featuring the difficult situation experienced by the internally displaced persons who have been unfairly accused as coddlers of terrorists, and to put forward the demands of the victim-survivors including their immediate, safe, dignified, and voluntary return, an independent investigation on the abuses and excessive use of force of the military during the siege, and lifting of the Martial Law in Mindanao, as well as their participation in the rehabilitation and reconstruction of their city. Aside from these solidarity missions, these groups conduct lobbying activities and media events targeting both the general public and policymakers, linking the need for sustaining the gains from the peace process to the need to realise transitional justice for the Meranaos and the entire Bangsamoro during the transition to BARMM.

Aside from the various advocacy efforts for the passage of the BBL/BOL and the support for the Bangsamoro transition to the BARMM, huge effort among CSOs, such as Independent Working Group on Transitional Justice and Dealing with the Past (IWG TJ-DwP) and IID, are focused on transitional justice, including but not limited to support for the realisation of the recommendations stipulated in the Transitional Justice Commission Report, as well as conduct of independent community listening processes. For IID, it conducted listening process sessions in various Moro, IP, and settler communities in Mindanao to document crimes committed against peoples. The five case studies were compiled in a monograph that was launched in May 2019 entitled "HEALING THE PAST: Community Narratives on Resilience and Truth telling (In and Beyond the Bangsamoro)".

Other CSO efforts to address HSIVD include history education reform, such as the initiative of ForumZFD, Ateneo de Davao University, and the Al Qalam Institute for Islamic Identities and Dialogue in Southeast Asia to tackle the incorporation of Mindanaoan history in the national education system;¹⁸⁴ and production of various cultural and art forms to promote Bangsamoro history and peace, such as the film documentary entitled "The Quest for Peace in Mindanao: Bangsamoro". directed by Boyett Rimban and produced by K.A.K. Tri-Media

¹⁸⁴ ForumZFD, "Integrating Mindanao Perspectives in Philippine History Teachings in Schools," 10 August 2018, <https://www.forumzfd.de/en/integrating-mindanao-perspectives-philippine-history-teachings-schools>.

Productions, a media production outfit operated by independent artists.¹⁸⁵

These are various ongoing initiatives that have slowly contributed to a change of perceptions and attitudes towards the Bangsamoro by the mainstream populace and body politic. Re-enactments and memorialisations of timeless peace pacts among and between tribes, clans, and families have for example helped iron out relations at the community level that buttress the official mechanisms or trajectories for transitional justice even if they are not yet in place. The actors in the communities are directly or indirectly linked to the principal conflict actors such as the government or the revolutionary fronts like the MILF or MNLF.

The All-Out Peace campaign has helped douse the simmering all-out war rhetoric after the Mamasapano incident at least among the policy makers in the national government and among the security sector sections that needed a “graceful exit” from the bind that the unfortunate clash provided. The Senate passed a resolution supporting the AOP’s call for a “Day of Healing, Reconciliation and Justice” and the President was about to issue an Executive Order had the House of Representatives passed a similar resolution.

¹⁸⁵ Department of Education, “July 20, 2017 DA 176, s. 2017 – Showing of the Film, The Quest for Peace in Mindanao: Bangsamoro,” 20 July 2017, <https://www.deped.gov.ph/2017/07/20/july-20-2017-da-176-s-2017-showing-of-the-film-the-quest-for-peace-in-mindanao-bangsamoro/>; Office of the Presidential Adviser on the Peace Process, “Education on Moro history fights bias against Muslims,” *Official Gazette*, 23 September 2015, <https://www.officialgazette.gov.ph/2015/09/23/education-on-moro-history-fights-bias-against-muslims/>.

Recommendations

The peace process has taken huge strides. The BOL has already been passed and the Bangsamoro have started transitioning into the BARMM. Different government offices have been taking actions in response to the TJRC recommendations. However, there is still much that needs to be done. To significantly contribute to the fight against hate speech and discrimination against the Bangsamoro, efforts must have a strong focus on cultural and attitudinal change across the country. Providing a strong support to what has been and is still being done by the government can help speed up the process.

Below are the steps that can be taken to contribute to this endeavour:

FOR CIVIL SOCIETY ACTORS

- Sustain the engagement and public advocacy on the Bangsamoro Peace Process including the transitional justice and Bangsamoro political transition
- Monitor the compliance of different schools (from primary to higher education institutions, to Department of Education and Commission on Higher Education) with curriculum revision directives to include Moro and IP history as put forward by the Integrated History Act of 2016
- Strengthen peace media advocacy and community-led journalism
- Sustain inter-ethnic/interfaith dialogue spaces ensuring leadership and inclusion of Bangsamoro and Indigenous communities
- Reveal and document community narratives on historical and ongoing atrocities, and on community aspirations, current initiatives, and proposed solutions
- Adopt and sustain durable peace advocacy for internally displaced persons' safe and dignified return and reintegration.

FOR RELIGIOUS LEADERS

- Popularise the cooperation of two world religious leaders (Pope Francis and the Grand Imam of Al Azhar, Ahmad Al-Tayyeb in Abu Dhabi) as exemplified in the signing of "Document on Fraternity for World Peace and Living Together" in 2019 which promotes the "culture of dialogue" as a path towards tolerance and understanding
- Continue cascading agreements and achievements within their constituency and concretise them into programs
- Conduct regular meetings to assess developments and impacts of agreements.

FOR MEDIA ORGANISATIONS

- Integrate peace journalism in conflict reportage.

FOR THE EXECUTIVE BRANCH (NATIONAL)

- Form or identify a lead agency in ensuring awareness and understanding of the Bangsamoro narrative
- Conduct cultural sensitivity seminar/training/orientation in the workplace, universities, government agencies, and the security sector, as a compulsory requirement in civil service and student orientation
- Produce regular government national TV and radio programs in understanding the Bangsamoro narratives, history, culture, arts, and folklore
- Act on the legislation on the integration of Peace Education in formal curricula.

FOR THE DEPARTMENT OF INTERIOR AND LOCAL GOVERNMENT

- Set up a Bangsamoro historical and cultural museum in Manila and key cities.

FOR NATIONAL CULTURAL AND SPORTS INSTITUTIONS

- Include cultural and sports projects in their outreach programs to conflict-affected areas and forge institutional partnerships with national curators and historical archiv(ers) to embed in local museums the historical narratives of Muslim Mindanao (Bangsamoro), beyond culture.

FOR THE LEGISLATIVE BRANCH (NATIONAL)

- Pass the Bill on the creation of the NTJRCB, providing clear programs and allocating resources
- Pass the Marawi rehabilitation bills
- Pass the Anti-Discrimination Bill (House Bill 1579) in the 18th Congress.

FOR THE BANGSAMORO TRANSITION AUTHORITY

- Follow through with and act upon the TJRC recommendations
- Integrate the Marawi rehabilitation in the Bangsamoro Normalization process.

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The background features a light blue field with a large, white, stylized letter 'G' that is partially filled with a darker blue color. This 'G' shape is reminiscent of the Indonesian flag's colors and the letter 'G' in the word 'Gedung'.

INDONESIA

HATE SPEECH AND INCITEMENT IN INDONESIA

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Introduction

In the last decade, hate speech has increasingly escalated the likelihood and intensity of violent conflicts. Although hate speech is not a new phenomenon, there have been significant developments on how individuals, from private actors to government, use hate speech as an instrument to dehumanise and threaten their perceived opponents and settle conflicts or disagreements. The recent release of the 2019 United Nations Strategy and Plan of Action on Hate Speech is a testament to how global the concern over hate speech's role in aggravating conflicts has become. While recognising the lack of a commonly accepted definition, the document defines hate speech "as any kind of communication in speech, writing or behavior, 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, color, descent, gender or other identity factors."¹⁸⁶ The document in essence notes that incitements to discrimination, hostility, and violence carry inherent risks which can lead to atrocity crimes and terrorism, making hate speech an extremely pertinent issue to resolve by every government.

Indonesia is no exception. While championing herself as an example of how different races, ethnicities, and religions can live together under one nation-state, the country has seen several significant hate speech and incitement cases involving serious practices of violence and systemic discrimination against minority groups. While discriminative policies and the suppression of minority groups were particularly dominant under the authoritarian regime in the New Order era (1966-1998), these practices have continued to exist until today. To some extent, the leveraging of ethno-religious issues by political actors to secure votes during election periods have increased throughout Indonesia's democratic consolidation period. The vulnerability of the minority groups has become increasingly apparent as law enforcement and judicial institutions inconsistently implement justice to protect religious minorities – despite the existence of laws that oblige the protection of religious freedom.

This chapter aims to provide a comprehensive analysis of the hate speech phenomenon in Indonesia, including the various government and civil society responses to hate speech,

¹⁸⁶ United Nations Office on Genocide Prevention and the Responsibility to Protect, *United Nations Strategy and Plan of Action on Hate Speech*, (New York, NY: UN Headquarters, 2019), 2.

which are equally important to deal with the phenomenon. In doing so, the paper is divided into eight sections. The first section provides a brief methodological exposition of how this paper selects its case studies. The second section briefly explains the history of the targeted groups. The third section follows it up by identifying three common contexts that enable the escalation of hate speech campaigns. The fourth campaigns expound on the dynamics of hate speech campaigns in the three case studies: incitements against Ahmadiyya, Shi'a, and Basuki Tjahaja Purnama alias Ahok, the Governor of Jakarta in the period of 2014-2017. The fifth section then examines the characteristics of hate speech in Indonesia. The sixth section highlights government efforts to issue regulations and establish institutions to specifically deal with hate speech. The seventh section elaborates on the role of civil society to complement government measures in dealing with hate speech. The final section provides a conclusion and policy recommendations to governments and civil society actors.

Key takeaways from this study:

Contrary to what its instigators argue, the escalation of a hate speech campaign is not caused by an irreconcilable difference in ideological and/or religious belief as victims of hate speech campaigns have notably coexisted with others within society long before the campaign began.

Hate speech campaigns escalates in Indonesia because of three common enabling contexts: (a) a rise of conservative and legal-formalistic understanding of religion, (b) the existence of electoral incentives for politicians to support hate speech instigators' rhetoric, and (c) an increased perception that the targeted community/individual is threatening the hate speech instigator's socio-economic capital.

Despite its different triggers, the study finds that hate speech campaigns in Indonesia involve three common phases: (a) a trigger phase, (b) an escalation phase, and (c) a normalisation phase. It is important for government and non-government actors to quickly respond to hate speech and de-escalate it during its trigger phase.

Hate speech campaigns in Indonesia shares three common characteristics: (a) they use a "threat to survival" narrative, (b) they leverage state regulations to justify hate speech as legitimate discourse, and (c) they are increasingly using online media to conduct hate speech.

While government measures against hate speech exist, this study finds that their implementation is still problematic because of three reasons: (a) the large number of regulatory loopholes that make them prone to misuse, (b) the tendency of law enforcement and judicial institutions to partially or discriminatively implement regulations, and (c) the tendency to "pre-emptively" curb hate speech using the pretext of restoring public order – an act that is commonly counterproductive as this action often bridles legitimate public criticisms against government performance.

Although civil society initiatives against hate speech are useful in promoting a better public understanding of hate speech, their roles are still limited especially in advocating for the hate speech victims.

Brief Methodology

This study aims to understand “what are the general dynamics, contexts, and forms of hate speech in Indonesia? And what have governments and civil society actors done to respond to it?” While multiple papers and reports discussing hate speech in Indonesia exist, most of them only offer descriptive elaborations on specific cases.¹⁸⁷ Although their in-depth exposition of individual case studies provides novel and vital contributions to understanding the problem of hate speech in Indonesia, they lack an analysis of the general characteristics of hate speech which captures its overall dynamics, patterns, and context. When papers do conduct analysis using several cases of hate speech campaigns, they only discuss aspects that are tangential to hate speech, such as its policing or misuse by local political dynamics, but not hate speech itself.¹⁸⁸

To representatively conceptualise the general characteristics of hate speech campaigns in Indonesia, this study analyses the dynamics, contexts, and forms of several Indonesian hate speech campaigns using a cross-comparative method. Notably, there are multiple hate speech campaigns which target numerous vulnerable communities in Indonesia, among others are the minority religious sects within Islam (Shi’a, Ahmadiyya, Gafatar),¹⁸⁹ the ethnic Chinese group (Tionghoa), and the Christian communities. This can be extended to other groups, such as the alleged relatives/ acquaintances of the banned Indonesian Communist Party. However, to representatively capture the general characteristics of Indonesian hate speech campaigns, this study will limit its observations to three case studies that resulted in some of the worst human rights violations to their targeted vulnerable communities.

First is the hate speech campaign against the Islamic sect of Ahmadiyya (2005-2011). Second is the hate speech campaign against Shi’a Muslims (2006-2012). Lastly is the speech campaign against Jakarta’s Chinese-Christian governor Basuki Tjahaja Purnama, alias Ahok (2016-2017). These cases are particularly selected due to the success of their hate speech campaigns to significantly limit their target’s constitutional rights – in all of these cases, the targeted vulnerable minority were eventually subjected to violence, the threat of violence, and various regulations that ultimately limited their ability to exercise their constitutional rights as citizens. Analysing these cases is pertinent to understanding how hate speech campaigns succeed, and thus how hate speech campaigns can be effectively stopped.

¹⁸⁷ Muhammad As’ad, “Ahmadiyah and the Freedom of Religion in Indonesia,” *Journal of Indonesian Islam* 3, no. 2 (2009): 395; KontraS, “Laporan Investigasi dan Pemantauan Kasus Syi’ah Sampang,” (Surabaya: KontraS, 2012), 4; Leni Winarni, Dafri Agussalim, and Zainal Abidin Bagir, “Memoir of Hate Spin in 2017 Jakarta’s Gubernatorial Election: A Political Challenge of Identity against Democracy in Indonesia,” *Religio: Jurnal Studi Agama-agama* 9, no. 2 (2019): 148.

¹⁸⁸ Rizal Panggabean and Ihsan Ali-Fauzi, *Policing Religious Conflicts in Indonesia* (Jakarta: Center for the Study of Religion and Democracy (PUSAD), 2015), 107; Mohamad Iqbal Ahnaf et al., *Politik Lokal dan Konflik Keagamaan: Pilkada dan Struktur Kesempatan Politik dalam Konflik Keagamaan di Sampang, Bekasi, dan Kupang* (Yogyakarta: CRCS, 2015), 18.

¹⁸⁹ Gafatar or Gerakan Fajar Nusantara was a socio-cultural group established in 2011 comprised of 52 society groups from the eastern region of Indonesia. Its teaching was perceived as declaring the establishment of a new state and influencing Moslems not to conduct common Islamic rituals such as prayer and fasting. In 2015, 1,100 Gafatar members in two villages in Mempawah, West Kalimantan, were forced by the local communities to leave their homes, while their leaders were reported to police and eventually brought to court. In 2017, the court ruled out the separatist accusation but punished the group leaders for blaspheming Islam.

Short History of Targeted Groups

The communities/individuals that became the target of hate speech campaigns in Indonesia have long coexisted with their surrounding communities before the campaign of hate speech that targeted them started. Although there have been some accounts of tensions between Ahmadiyyas, Shi'as, and Ahok with other actors in society prior to the period of hate speech campaign noted in this paper, notably, none of these incidents ever escalated to the degree to which it did during such periods. This indicates that despite what its instigators would like many to believe, hate speech is not motivated by an irreconcilable difference in ideology and/or religious belief.

The Ahmadiyya, for example, has lived in Indonesia for almost a century — its preachers first arrived at Indonesia in 1924 and institutionalized the Jamaah Ahmadiyya Indonesia (JAI) in 1935.¹⁹⁰ Afterwards, the community slowly spread across various provinces in Java and Sumatra. Despite their distinct belief that Muhammad was not last prophet of Islam, between then and 2005, there was very little recorded hate speech against the Ahmadiyya. In fact, major Sunni Islamic organisations in Indonesia were originally friendly towards the Ahmadiyya due to their leaders' shared family ties.¹⁹¹ While the Indonesian Ulama Council (MUI) did issue a fatwa in 1980 and 1984 stating that Ahmadiyya was not part of Islam, it was not followed by virulent vilification and violence against Ahmadiyya communities.¹⁹² Instead, Ahmadiyya and mainstream Sunni organisations during this time attempted to resolve their differences through peaceful, public debates.¹⁹³

Similarly, the Shi'a community in Sampang, Madura, has lived in the district since late 1970s. The creation of a Shi'a community began when a well-respected Sunni Ulama, Kiai Makmun, converted to Shi'ism after he heard of the success of the Iranian revolution.¹⁹⁴ In the following years, Makmun sent his two sons, Tajul Muluk and Rois Hukama, to Shi'a madrassas outside of Madura. Muluk continued to go to Saudi Arabia and returned to Sampang in 1999 where he began proselytising and establishing a Shi'a madrasa, namely the Misbahul Huda.¹⁹⁵ By 2004 there were 30 Shi'a followers and by 2011, this number grew to 120 families.¹⁹⁶ Importantly, no recorded violence and/or threats were ever lobbied towards Makmun or the Shi'a community in Sampang during this period.

Ahok's presence in Jakarta politics also began quite some time before he was targeted with the intense hate speech campaign in 2016-2017. Specifically, Ahok was originally elected to power in 2012 as the deputy governor to Joko Widodo, alias Jokowi, but took over leadership of the Indonesian capital two years later when Jokowi participated in and won the 2014 presidential election.¹⁹⁷ Shortly after Ahok was sworn in as Jakarta's governor, the Islamic Defenders Front (Front Pembela Islam/FPI) did begin leading demonstrations arguing that "there should not be

¹⁹⁰ As'ad, "Ahmadiyah," 397.

¹⁹¹ Emi Budiwanti, "Pluralism Collapses: A Study of the Jama'ah Ahmadiyah Indonesia and its Persecution," *Asia Research Institute Working Paper Series*, no. 117 (2009): 12.

¹⁹² Ahmad Najib Burhani, "Treating Minorities with Fatwas: A Study of the Ahmadiyya Community in Indonesia," *Contemporary Islam*, no. 8 (2014): 292-293.

¹⁹³ Ahmad Najib Burhani, "When Muslims Are Not Muslims: The Ahmadiyya Community and the Discourse on Heresy in Indonesia" (PhD diss., University of California Santa Barbara, 2013), 206.

¹⁹⁴ Ahnaf et al., *Politik Lokal dan Konflik Keagamaan*, 18.

¹⁹⁵ Ken Miichi and Yuka Kayane, "The Politics of Religious Pluralism in Indonesia: The Shi'a Response to the Sampang Incidents of 2011-12," *TRaNS: Trans-Regional and National Studies of Southeast Asia*, no. 8 (2020), 55.

¹⁹⁶ Panggabean and Ali-Fauzi, *Policing Religious Conflicts*, 107.

¹⁹⁷ Nithin Coca, "The Fall of Ahok and Indonesia's Future," *The Diplomat*, 21 April 2017, <https://thediplomat.com/2017/04/the-fall-of-ahok-and-indonesias-future/>.

any leader who is a non-Muslim.”¹⁹⁸ By December 2014, FPI declared its own version of the new Jakarta governor, a Muslim and head of the Jakarta People Movement, Fahrurrozi, obviously without any legitimacy from the general public.¹⁹⁹ Despite these demonstrations, however, no organised campaign of hate speech occurred until 2016.

The Enabling Context of Hate Speech

As noted above, the communities/individuals that became the target of intense hate speech campaigns have all existed long before the campaign itself. To understand why these hate speech campaigns occurred when they did – 2005-2011 against the Ahmadiyya, 2006-2012 against the Shi’as, and 2016-2017 against Ahok – it is important to look beyond the narrative that its instigators provided (e.g. that there are irreconcilable and conflicting differences between the minority groups and larger society) and analyse the broader contexts that enable such campaigns to escalate. Although each campaign understandably has its own unique context, there are three significant elements in common.

CULTURAL AND RELIGIOUS PARADIGM SHIFT

The first mutually shared context that made it conducive for these hate speech campaigns to occur was the general rise of conservative understanding of Islam among Indonesia’s Muslim population with a focus on legal formalism. This conservative shift became evident around 2005 and was marked by the sidelining of “progressive” leaders in Indonesia’s major Islamic organisations such as NU and Muhammadiyah.²⁰⁰ Notably, in Muhammadiyah’s national congress in 2005, none of the progressive leaders were re-elected onto their board.²⁰¹ While progressive thinkers within the organisation still existed, largely in Muhammadiyah’s Jakarta and Yogyakarta chapter, they were only a minority compared to a majority of the congress participants who held largely conservative religious leanings.

Another notable marker of this conservative shift is the increased issuance of controversial fatwas by MUI, such as its 2005 fatwa that declared secularism, pluralism, and religious liberalism to be incompatible with Islam.²⁰² This shift was largely caused by the increase in conservative leaders in MUI, such as Amin Djamaluddin and Abu Deedat who had been active in anti-Christianisation and anti-apostasy movements, and the need for MUI to juxtapose itself against a liberal President Abdurrahman Wahid who wanted to stop providing MUI with government funds.²⁰³

¹⁹⁸ Tempo, “Kenapa FPI dan FBR menolak Ahok,” *Tempo*, 4 October 2014, <https://metro.tempo.co/read/611836/kenapa-fpi-dan-fbr-menolak-ahok/full&view=ok>.

¹⁹⁹ Fery F., “FPI Appointed Governor to Go on ‘Blusukan’ Agenda,” *Tempo*, 2 December 2014, <https://en.tempo.co/read/625905/fpi-appointed-governor-to-go-on-blusukan-agenda>.

²⁰⁰ Martin van Bruinessen, “Introduction: Contemporary Developments in Indonesian Islam and the ‘Conservative Turn’ of the Early Twenty-First Century,” in *Contemporary Developments in Indonesian Islam: Explaining the Conservative Turn*, ed. Martin van Bruinessen (Singapore: ISEAS Publishing, 2013), 3.

²⁰¹ van Bruinessen, “Introduction,” 8.

²⁰² *Ibid.*, 3.

²⁰³ *Ibid.*, 67-70.

In addition to this shift from a progressive to a conservative understanding of Islam, Indonesian Muslims beginning from the late 2000s also experienced a paradigmatic shift from a substantive-inclusive religious paradigm to a formal-legalistic religious paradigm.²⁰⁴ Within the former paradigm, the emphasis of Islam is located in the substantive value of the faith which focuses on the creation of an inclusive *ukhuwah* (brotherhood) among fellow Muslims, fellow citizens, and fellow humans. In practice, those Muslims who adopt a substantive-inclusive paradigm would maintain a sense of brotherhood among Muslims regardless of their nationality and among fellow citizens regardless of their religion – all within a human rights framework.²⁰⁵ Additionally, this substantive-inclusive paradigm also prioritises the actualisation of Islamic teachings through grassroots practice and the creation of norms, thus emphasising the need to develop cultural movements as opposed to political movements to practise Islam.

Within the formal-legalistic paradigm, which has gained more traction within the past three decades,²⁰⁶ the emphasis of Islam is located within the strict interpretations of Islamic texts which, if interpreted in this way, could push its adherents to believe that Islam is the only and most correct religion – inadvertently portraying non-Muslims as “enemies”. Additionally, this paradigm also emphasises the belief that to protect the sanctity of Islam and fully practise Islam as a whole (*kaffah*) there needs to be a formalisation of Islamic religious rules within the state body. Consequently, those who accept this paradigm commonly demand the state to legalise and formalise Islam through the creation of bylaws or regulations.

WIDENING POLITICAL AND ELECTORAL INCENTIVES

A second, mutually shared context in which the escalation of these hate speech campaigns occurred is the presence of electoral incentives for politicians to provide rhetorical and institutional support for hate speech instigators. In the three cases above, the escalation of hate speech was enabled through some form of rhetorical or logistics support by politicians. Politicians provide this support in the hope of courting instigators who were perceived to have significant influence over how local communities vote. By providing this support, politicians legitimise these instigator’s credibility and thus embolden their will to continue using hate speech – escalating and normalising hate speech in the process.

In the case of Ahmadiyya, the reason why hate speech against them only intensified in 2005 was in large part due to Indonesian president Susilo Bambang Yudhoyono’s support of MUI’s 2005 anti-Ahmadiyya fatwa. In July 2005, Yudhoyono lent this fatwa credence by opening MUI’s National Congress where he told the participants that:

“We open our hearts and minds to receiving the thoughts, recommendations, and *fatwas* from the MUI and *ulama* [Islamic scholars] at any time, either directly to me or the minister of religious affairs or to other branches of government. We want to place MUI in a central role in matters regarding the Islamic faith.”²⁰⁷

²⁰⁴ It needs to be noted that there is yet to be a consensus among Indonesian scholars on how to categorize Islamic thought in Indonesia. See more in M. Syafi’i Anwar, *Pemikiran dan Aksi Islam di Indonesia* (Jakarta: Paramadina, 1995).

²⁰⁵ Aru Lego Triono, “Rekomendasi Temu Nasional Gusdurian 2020 untuk Indonesia,” *NU Online*, 17 December 2020, <https://www.nu.or.id/post/read/125342/rekomendasi-temu-nasional-gusdurian-2020-untuk-indonesia>.

²⁰⁶ The authors thank a peer reviewer of an earlier version of this paper at the CSIS Paper Workshop, 8 March 2021 for pointing this out.

²⁰⁷ International Crisis Group, “Indonesia: Implications of the Ahmadiyah Decree,” *ICG Asia Briefing*, no. 78 (2008): 8.

Additionally, Yudhoyono also legitimised the fatwa by mobilising the government's institutional resources to accommodate what the fatwa demanded. Specifically, responding to the fatwa's demand for the government to ban Ahmadiyya activities, Yudhoyono ordered Bakorpakem to further investigate with MUI and FPI leaders whether the Ahmadiyya were deviants – an investigation that supported claims of Ahmadiyya's deviance and was used as a basis for its eventual ban.²⁰⁸

A key factor in Yudhoyono's decision to support MUI was his desire to maintain the coalition of Islamic parties that helped him get elected in 2004. Maintaining the support of these Islamic parties throughout his presidential term was particularly important because Yudhoyono's political party, *Partai Demokrat*, was relatively new and cannot independently fulfill the necessary vote percentage to propose a candidate in the 2009 election.²⁰⁹ Additionally, courting them as coalition partners would vitally prevent them from becoming potential sources of electoral competitions on their own.²¹⁰ Moreover, polls and opinion surveys in 2008 showed that Yudhoyono was losing ground to his one major political rival, former President Megawati Soekarnoputri. Supporting MUI's fatwa became a strategic political calculation that would help him secure the following election.

Similarly, in the Shi'a case, hate speech only intensified between 2006 and 2012 because, during this period, local ulamas were given rhetorical and institutional support from local politicians that aimed to court their support in upcoming elections. Particularly important was the support from the then Governor of Sampang, Noer Tjahja. Tjahja was keen on supporting Sampang's Sunni ulamas because he was running for re-election in Sampang's 2012 local election. Courting support from Sunni ulamas became a vital strategy to offset Tjahja's disadvantage as a non-ulama candidate vis-à-vis his rival candidates who did have ulama backgrounds.²¹¹

Consequently, Tjahja supported local ulamas' hate speech against Shi'a in several ways. First, Tjahja emboldened the ulamas by agreeing to provide a special budget to realise their demand to re-enrol Shi'a children from Shi'a madrassas to Sunni madrassas.²¹² Second, Tjahja helped Sunni ulamas spread their message by overtly using hate speech against Shi'as himself. For example, during a speech celebrating Maulid in February 2012, Tjahja explicitly stated:

"If there is a deviant sect here, get rid of them! Get rid of them! I will take responsibility! ... This is just like a market, if it doesn't sell well here, just close the stall... Pak Yusuf [Head of Strategy in Sampang Police] ... if they come here please arrest them. If you come here, don't look after it, get rid of it! ... In fact, I can't stand [this problem] anymore, I swear to Allah, ask Kiai Rois [Hukama] ... If I become regent again, [the problem] will be over!"²¹³

²⁰⁸ As'ad, "Ahmadiyah," 404; Ahmad Najib Burhani, "Fundamentalism and Religious Dissent: The LPPI's Mission to Eradicate the Ahmadiyya in Indonesia," *Indonesia and the Malay World*, no. 44 (2016): 150-157.

²⁰⁹ These Islamic parties include PKS, PAN, and PPP. See more in International Crisis Group, "Indonesia," 9.

²¹⁰ Fatima Zainab Rahman, "State Restrictions on the Ahmadiyya Sect in Indonesia and Pakistan: Islam or Political Survival?" *Australian Journal of Political Science* 49, no. 3 (2014): 420.

²¹¹ These rivals include Kiai Fannan Hasib and K. H. Jakfar Sodik. See more in Ahnaf et al., *Politik Lokal dan Konflik Keagamaan*, 25-26.

²¹² Ibid., 24-25.

²¹³ Ibid., 25.

Third, Tjahja also supported Sunni ulamas by pressuring local police to arrest Muluk in March 2012. Amnesty International notes that initially the local police were reluctant to charge Muluk but proceeded to do so after Tjahja pressured them.²¹⁴

In the case of Ahok, one important reason why hate speech against him gained so much popular traction was that political actors accommodated the demands of its instigators. This accommodation came in the form of politicians participating in the large demonstrations. For example, as noted above, the 4 November (411) and 2 December (212) demonstrations saw the participation and overt support of important political actors including Amien Rais, Fahri Hamzah, and Prabowo Subianto.²¹⁵ For these political actors, supporting the Islamist organisations who were conducting hate speech was seen as necessary to court support for their respective party's candidate running against Ahok in the 2017 Jakarta gubernatorial election. Amien Rais even explicitly stated that the Al Maidah 51 speech is "a momentum given by Allah to the Muslims" to defeat Ahok in the gubernatorial election.²¹⁶

Most important to these accommodations, however, was the central government's decision to give an audience to leaders of the National Movement to Defend Fatwas of the Indonesian Ulama Council (GNPF MUI). Notably, after the 411 demonstrations, Rizieq and other rally leaders were given an audience with Vice President Jusuf Kalla and other senior ministers. During the meeting, the GNPF MUI representative demanded Ahok be detained and, under pressure, the Vice President promised that there will be a decision on Ahok within two weeks.²¹⁷ Another crucial event occurred when President Jokowi along with, among others, his Vice President, Minister of Religious Affairs, and Minister of Politics and Security, attended the Friday prayer sermon that was held at the end of the 212 demonstrations.²¹⁸ Although the accommodation by the central government was indeed helpful in diffusing the demonstration and preventing political backlash against President Jokowi, it also lent credibility to the instigators of hate speech.²¹⁹

THREATENED SOCIO-ECONOMIC CAPITAL

The third mutually shared context that made it conducive for hate speech campaigns to occur was the increased perception by hate speech instigators that the targeted community/individual was threatening their access to their long-held socio-economic capital.²²⁰ Evidently, in the three cases, hate speech only began after instigators perceived that their influence on the community was challenged either by their targets' growing social influence

²¹⁴ Amnesty International, *Prosecuting Beliefs: Indonesia's Blasphemy Law*, (London: Amnesty International, 2014), 18.

²¹⁵ Winarni, Agussalim, and Bagir, "Memoir of Hate Spin," 144; Philips J. Vermonte et. al., "Gerakan 'Hibrida' Aksi Bela Islam: Aktor, Struktur, Motivasi, dan Pendanaan," *CSIS Working Paper Series*, no. WPSPOL –1/2020 (2020), 11.

²¹⁶ Ahmad Najib Burhani, "Plural Islam and Contestation of Religious Authority in Indonesia," in *Islam in Southeast Asia: Negotiating Modernity*, ed. Norshahril Saat (Singapore: ISEAS Publishing, 2018), 147.

²¹⁷ Greg Fealy, "Bigger than Ahok: Explaining the 2 December Mass Rally," *Indonesia at Melbourne*, 7 December 2016, <https://indonesiaatmelbourne.unimelb.edu.au/bigger-than-ahok-explaining-jakartas-2-december-mass-rally/>.

²¹⁸ Burhani, "Plural Islam and Contestation," 144.

²¹⁹ Fealy, "Bigger than Ahok."

²²⁰ Socio-economic capital is defined as "the aggregate of the actual or potential resources which are linked to possession of a durable network of more or less institutionalized relationships of mutual acquaintance or recognition ... [that is] made up of social obligations ('connections'), which is convertible, in certain conditions, into economic capital and may be institutionalized in the form of a title of nobility." Pierre Bourdieu, "The Forms of Capital" in *Handbook of Theory and Research for the Sociology of Education*, ed. by J. G. Richardson, (New York, NY: Greenwood Press, 1986), 241-58.

or their targets' active attempt to limit the instigator's access to economic resources. While the content of their hate speech suggests that these instigators were only motivated by irreconcilable religious values, the fact that many of these instigators managed to live side by side with their target for years prior to the campaign – despite their difference – suggests that this was not the case.

In the case of the Ahmadiyya, a rise in virulent hate speech against them was almost directly preceded by a perceived challenge to the social influence of traditional Sunni leaders in Bogor. This perception arises largely because of the Ahmadiyya organisation's growing membership.²²¹ This growth was largely caused by Ahmadiyya communities' ability to provide a close-knit sense of shared belonging to its members, one that enabled them to implement vital redistributive socio-economic activities – leading to overt development of specific Ahmadiyya villages.²²² For instance, in Manis Lor village, in West Java, acceptance of Ahmadiyya preachers was quickly accompanied by efforts to build houses for new members.²²³

This growth became particularly alarming in 2000 when Khalifa al Masih, Ahmadiyya's international leader, visited Indonesia and was received by then-President Abdurrahman Wahid. Upon al Masih's return to the United Kingdom, he said he “was convinced that Indonesia would have the largest Ahmadiyya community in the world by the end of the new century.”²²⁴ This reaffirmed local ulama's observations of Ahmadiyya's accelerating growth, prompting them to mobilise against Ahmadiyya via the use of hate speech and violence. Similar dynamics also occurred in Cikeusik where local ulamas started targeting Ahmadiyya with hate speech because of their fear that, despite the small numbers of Ahmadiyya in the area, JAI would potentially be able to recruit poor villagers through material rewards.²²⁵

Similarly, hate speech against Shi'a in Sampang was also preceded by the significant growth of Shi'a followers. Since Muluk returned to Sampang from Saudi Arabia in 1999, the number of Shi'a followers in Sampang grew rapidly to an extent that the local Sunni ulamas could not ignore.²²⁶ In three years, hundreds of villagers became followers of Muluk which, while not amounting to a significant percentage of the population, was a significant acceleration of growth compared to the previous two decades of Shi'a membership under Muluk's father, Kiai Makmun.²²⁷ Evidently, local Sunni ulamas' primary demand to the local government was to take back children of Shi'a families who were studying in Shi'a madrassas across Java and enrol them in madrassas led by Sunni ulamas.²²⁸ As one of them noted, the ulamas:

“already envisioned the future problem: one Muluk and there is already such a confusion. In ten years from now when people who were schooled at YAPI and Pekalongan come back, what would happen then?”²²⁹

²²¹ Burhani, “Treating Minorities with Fatwas,” 285.

²²² Burhani, “When Muslims Are Not Muslims,” 140-46.

²²³ Ibid., 144.

²²⁴ International Crisis Group, “Indonesia,” 2.

²²⁵ Panggabean and Ali-Fauzi, *Policing Religious Conflicts*, 68.

²²⁶ Miichi and Kayane, “The Politics of Religious Pluralism,” 55.

²²⁷ KontraS, “Laporan Investigasi,” 3.

²²⁸ Ahnaf et al., *Politik Lokal dan Konflik Keagamaan*, 24.

²²⁹ Panggabean and Ali-Fauzi, *Policing Religious Conflicts*, 110.

Additionally, hate speech against Shi'as in Sampang was also preceded by a more vocal Muluk. Unlike Kiai Makmun's activities, Muluk's sermons introduced new norms that directly threatened the traditional rituals that had become a core lynchpin of traditional Sunni ulamas' social and economic influence over Sampang communities. Particularly important was Muluk's criticism of Sunni ulamas' Maulid practice.²³⁰ Traditionally, during the whole Maulid month, Sunni ulamas would move from one house to another as they were invited to give sermons and bless each family's Maulid celebration event. Many Sunni ulamas argue that this institutionalised religious practice is an important means to maintain strong personal interaction with their followers.²³¹ Notably, this practice is also an important means for Sunni ulamas to secure economic income, as each family is expected to give the ulama an envelope with money for their sermons, commonly ranging from IDR 150,000 to IDR 500,000 per envelope.²³²

Muluk was particularly vocal against this practice. He criticised the Sunni ulamas for taking money from the poor in exchange for blessings during Maulid and insisted that such practice be stopped.²³³ Instead, Muluk proposed that Maulid should be celebrated communally in one place – at the mosque. In doing so, families could be relieved of their burden to individually host celebrations and pay Sunni ulamas, allowing them to save more for other important needs.²³⁴ By making such criticism, Muluk directly challenged and threatened an important traditional mechanism that upholds Sunni ulamas' social influence and economic wellbeing.

In the case of Ahok, hate speech was levied against him because his governance was limiting Islamist organisations' access towards formal patronage with the local government.²³⁵ Since Ahok was appointed as governor in 2014, the Jakarta government had been increasingly strict against — largely because of Ahok's vocal opposition to Islamist organisations. For example, in November 2014, Ahok explicitly called for the Ministry of Law and Human Rights to ban the FPI across Indonesia – hoping that other governors follow suit. He stated in a city hall meeting that,

“I have prepared an official letter to the Legal Bureau to send it to the Ministry of Law and Human Rights. I recommend that based on the law, FPI mass organizations be disbanded throughout Indonesia.”²³⁶

Additionally, Ahok's governance also planned to stop a crucial financial source of Islamist organisations. In September 2014, Ahok stated that his government would no longer fund mass organisations, including Islamist organisations, through grants and social assistance under Jakarta's government budget. Specifically, he stated that:

²³⁰ Maulid refers to the day of celebration of the Prophet Muhammad's birthday.

²³¹ Ahnaf et al., *Politik Lokal dan Konflik Keagamaan*, 19.

²³² Panggabean and Ali-Fauzi, *Policing Religious Conflicts*, 105-6.

²³³ Ibid.; Miichi and Kayane, “The Politics of Religious Pluralism,” 55.

²³⁴ Panggabean and Ali-Fauzi, *Policing Religious Conflicts*, 106.

²³⁵ Bastiaan Scherpen, “Is Hardline Islam Really Rising in Indonesia?” *New Mandala*, 24 January 2017, <https://www.newmandala.org/hard-line-islam-really-rising/>.

²³⁶ Resty Armenia, “Ahok: FPI Mempermalukan Islam, Bubarkan!” CNN Indonesia, 11 November 2014, <https://www.cnnindonesia.com/nasional/20141110161701-32-10618/ahok-fpi-mempermalukan-islam-bubarkan>.

“We have agreed that we no longer want to finance mass organizations just to support us. I would rather not be re-elected (to be governor), rather than having to finance (mass organizations).”²³⁷

More broadly, however, ever since Jokowi’s electoral victory in 2014 Islamist organisations had also been losing access to the lenience and support from Indonesia’s central government. Under the previous administration, the central government actively supported the legitimacy and logistical needs of Islamic organisations by providing them funds and legal protection.²³⁸ For example, Yudhoyono endorsed and accelerated the deliberation of the anti-pornography bill that, through its Article 21, opened the door for “society” to participate in the implementation of the law – effectively giving legal protection to Islamists organisations if they wanted to “enforce” the law.²³⁹ Moreover, starting from 2004, Yudhoyono provided MUI an annual stipend of IDR 3 billion and legitimised their role in issuing halal certifications.²⁴⁰

Jokowi’s administration, however, was sceptical of mixing religion and politics. As Jokowi consolidated his parliamentary coalitions and increased his popularity rating in mid-2016, Islamist organisations became fearful that Jokowi’s non-accommodation would continue to a second term.²⁴¹ By attacking Ahok, who was closely associated with Jokowi, Islamist organisations believed they would be able to rally support against Jokowi’s administration as well. The administration itself also realised this as they “quickly decided that Ahok must be charged and prosecuted expeditiously to lessen the risk of far worse unrest and limit the political blowback against the president.”²⁴²

²³⁷ Kurnia Sari Aziza, “Ahok: Lebih Baik Saya Tidak Jadi Gubernur daripada Biayai Ormas,” [Kompas.com](https://megapolitan.kompas.com/read/2014/09/25/15152111/Ahok.Lebih.Baik.Saya.Tidak.Jadi.Gubernur.daripada.Biayai.Ormas), 25 September 2014, <https://megapolitan.kompas.com/read/2014/09/25/15152111/Ahok.Lebih.Baik.Saya.Tidak.Jadi.Gubernur.daripada.Biayai.Ormas>.

²³⁸ Marcus Mietzner and Burhanuddin Muhtadi, “Explaining the 2016 Islamist Mobilisation in Indonesia: Religious Intolerance, Militant Groups and the Politics of Accommodation,” *Asian Studies Review* 42, no. 3 (2018): 7.

²³⁹ Mietzner and Muhtadi, “Explaining the 2016 Islamist Mobilisation,” 13.

²⁴⁰ Ibid.

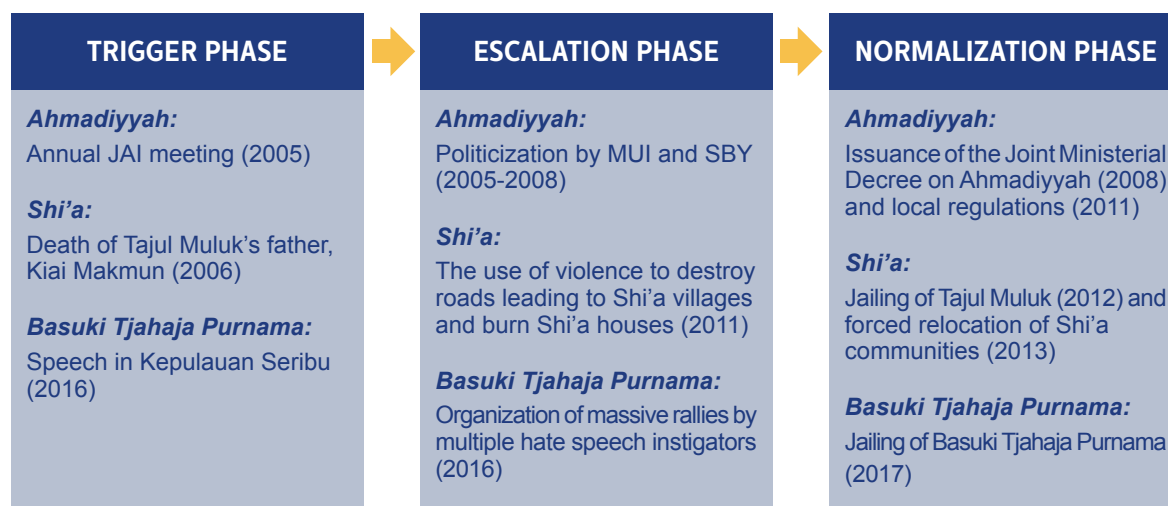
²⁴¹ Ibid., 15.

²⁴² Fealy, “Bigger than Ahok.”

Dynamics of Hate Speech

THE THREE PHASES OF HATE SPEECH CAMPAIGNS

Figure 1: Phases of hate speech campaigns in Indonesia



While the three hate speech campaigns studied in this chapter have their unique dynamics, they all involve three common phases. In the first phase, the hate speech campaigns are triggered. During this phase, instigators make use of the target's seemingly innocuous and routine activities to begin launching vilifying phrases against them. While these vilifications are nowhere near unimpactful, local governments and law enforcement often fail to adequately respond or, at times, even actively ignore them – allowing them to snowball. In the second phase, the hate speech campaigns escalate. During this phase hate speech intensifies as the campaign experiences at least one of three events: the transformation of hate speech to violent actions, the politicisation of hate speech by locally or nationally well-known politicians, and the organisation of disparate hate speech actors into one movement. In the third phase, the hate speech campaigns are normalised. During this phase, there is an increased acceptance that the victims of hate speech were legitimately targeted. This phase is often characterised by the issuance of a legal ruling and/or regulation from a government body that limits the rights of the victims of hate speech.

HATE SPEECH AGAINST AHMADIYYA (2005-2011)

The hate speech campaign towards the Ahmadiyya community first surfaced in Bogor around mid-2005. The trigger for this campaign was an annual meeting by the JAI on July 8.²⁴³ The next day, protesters led by the Islamic Research and Study Institute (LPPI) held a demonstration in front of JAI's building — shouting that Ahmadis were deviants, holding swords, and demanding

²⁴³ The JAI is a legal religious organization acknowledged by the government in their Ministry of Home Affairs Decision No. 75/DI/VI/2003 in 2003. See more in As'ad, "Ahmadiyah," 397.

local governments to ban them.²⁴⁴ One week later, a leader of the FPI led 3,000 people to JAI's headquarters and threatened to burn the building down if the Ahmadiis did not evacuate the premises. As the Ahmadiis evacuated, FPI members came in and burnt down several buildings regardless. The police took no action to prevent the destruction and in the following days, Bogor's local government issued a statement letter that forbade any activities of JAI in its district.²⁴⁵

What began as a local issue in Bogor, quickly escalated into a national issue that impacted Ahmadiyya communities across Indonesia. In late July 2005, the MUI issued a fatwa declaring Ahmadiyya to be "outside [of] Islam" and urged the government to stop the dissemination of Ahmadiyya teachings along with its activities.²⁴⁶ Responding to MUI's demands, Yudhoyono ordered the Team of the Coordinating Board for Monitoring Mystical Beliefs in Society (Bakorpakem) in 2006 to investigate whether Ahmadiyya was indeed "outside of Islam." After many discussions with Islamic organisations, including FPI and LPPI members, in 2008 Bakorpakem concluded that Ahmadiyya deviated from Islam and recommended that the government warn JAI to cease its actions or be dissolved.²⁴⁷

In June 2008, the government issued a Joint Ministerial Decree between the Ministry of Religious Affairs, the Attorney General, and the Ministry of Home Affairs which effectively banned the Ahmadiyya.²⁴⁸ Afterwards, hate speech directed towards Ahmadiyya throughout Indonesia was increasingly normalised as various local actors used this joint decree to justify more acts of hate speech and gave more explicit demands to ban their local branch of JAI. In Bekasi, Islamist organisations used the Joint Decree to pressure the mayor to issue and enforce an anti-Ahmadiyya regulation. In April 2011, the local police forcefully closed Ahmadiyya mosques in Bekasi.²⁴⁹ In Cikeusik, the Joint Ministerial Decree was used by a local ulama, Ujang Muhamad Arif, to revitalise a drawn-out campaign to expel the local Ahmadiyya community from the village.²⁵⁰ In February 2011, after a chain of text messages were distributed stating "the blood of the Ahmadiyya were halal", a mob of 1,000 people attacked Cikeusik's Ahmadiyya community, burnt down dozens of houses, and killed three of their congregation.²⁵¹ By the end of 2011, around half of Indonesia's provinces have issued regulations or statements that functionally banned the Ahmadiyya.²⁵²

²⁴⁴ Ahmad Suaedy and Rumadi, *Politikasi Agama dan Konflik Komunal: Beberapa Isu Penting di Indonesia* (Jakarta: The Wahid Institute, 2007), 229-30.

²⁴⁵ As'ad, "Ahmadiyah," 400-401.

²⁴⁶ International Crisis Group, "Indonesia," 2.

²⁴⁷ As'ad, "Ahmadiyah," 404; International Crisis Group, "Indonesia," 6.

²⁴⁸ These decrees are issued separately by the Ministry of Religion, the Attorney General, and the Ministry of Home Affairs, under the title Keputusan Bersama Menteri Agama No. 3/2008, Jaksa Agung No. KEP-033/A/JA/2006, and Menteri Dalam Negeri Republik Indonesia No. 199/2008, respectively. See International Crisis Group, "Indonesia," 1-2.

²⁴⁹ The regulation that was issued was the Peraturan Walikota No. 40/2011 on The Banning of Ahmadiyya Activities in Bekasi city. See more in Torhild Breidlid, "The Legitimization of Violence against the Ahmadiyya Community in Indonesia," *Kawistara* 3, no. 2 (2013): 171.

²⁵⁰ Panggabean and Ali-Fauzi, *Policing Religious Conflicts*, 70.

²⁵¹ Burhani, "When Muslims Are Not Muslims," 253-54; Panggabean and Ali-Fauzi, *Policing Religious Conflicts*, 68; Breidlid, "The Legitimization of Violence," 170.

²⁵² Cherian George, *Hate Spin: The Manufacture of Religious Offense and Its Threat to Democracy* (Cambridge: The MIT Press, 2016), 127.

HATE SPEECH AGAINST SHI'A (2006-2012)

The Shi'a community in Sampang which was led by Tajul Muluk became the target of hate speech from various Sunni ulamas and organisations beginning in 2006. The trigger to this hate speech was the death of Muluk's father – a well-respected figure in the area. That year, a local Sunni ulama named Abuya Ali organised a meeting with other Sampang ulamas to “clarify allegations of heresy over Muluk's Shi'a teachings.”²⁵³ They concluded that Shi'ism was a dangerous and deviant sect of Islam and thus it was best for Muluk and his followers to repent to “prevent physical and ideological clashes.”²⁵⁴ Hate speech against Shi'as further intensified in 2009. In October that year, Sampang's Department of Religion and local branches of Bakorpakem, MUI, and Nahdlatul Ulama (NU) forced Muluk to sign a joint letter agreeing that he was forbidden to conduct rituals and *da'wa* out of fear of generating unrest. This joint letter also carried veiled threats – stating that Bakorpakem, MUI, NU would subdue this “societal unrest and anarchy” only if Muluk abided with the demands.²⁵⁵

Beginning in 2011, however, hate speech against Shi'as escalated as it manifested in physical altercations and overt threats of violence. In February, thousands of protestors destroyed the road to Karang Gayam village where Muluk and his followers, in violation of the joint letter Muluk was forced to sign, were holding an event. The protestors demanded Muluk to halt all Shi'a activities and relocate away from Sampang.²⁵⁶ In April, the incumbent governor who was running for re-election the next year held a meeting with various Sunni ulamas and agreed to expel Muluk from Sampang.²⁵⁷ While Muluk did relocate to Malang in July, local ulamas were not satisfied as his madrassa, Misbahul Huda, was still operational.²⁵⁸ In December, an anti-Shi'a mob led by Rois Hukama marched to the house of a Shi'a follower, barricaded the whole family inside, and set the house on fire.²⁵⁹ A week later, a mob of 500 came to Karang Gayam and set the Misbahul Huda, Muluk's house, and several other Shi'a houses on fire.²⁶⁰ In the aftermath, the police evacuated 250 Shi'a followers to a nearby sports stadium where they lived for the next two years.²⁶¹

From 2012, hate speech was normalised as Sampang society increasingly viewed Shi'as as “a disease that must be removed.”²⁶² As an MUI Sampang representative analogised, Shi'as in Sampang were equated to diabetes that had affected a limb of a person's body – “if not cut off, it [the disease] would spread everywhere. And what would be left?”²⁶³ Despite already displacing Shi'as from their homes, local ulamas still campaigned to expel Shi'a further away

²⁵³ KontraS, “Laporan Investigasi,” 4.

²⁵⁴ Ibid., 4.

²⁵⁵ Ibid., 5.

²⁵⁶ Ibid., 6.

²⁵⁷ Institute for Policy Analysis of Conflict, “The Anti-Shi'a Movement in Indonesia,” *IPAC Report*, no. 27 (2016): 16; KontraS, “Laporan Investigasi,” 7-8.

²⁵⁸ Institute for Policy Analysis of Conflict, “The Anti-Shi'a Movement,” 16.

²⁵⁹ Rois Hukama proclaimed that he repented from Shi'ism in 2010 and has ever since become a key actor in Sampang's anti-Shi'a movement. It was speculated that the fallout between Rois Hukama and Tajul Muluk was caused by a family dispute when Tajul Muluk was matchmaking a girl who Rois Hukama wanted to marry to one of his Shi'a followers. See more in George, *Hate Spin*, 129; Ahnaf et al., *Politik Lokal dan Konflik Keagamaan*, 20.

²⁶⁰ Panggabean and Fauzi, *Policing Religious Conflicts*, 111.

²⁶¹ Ibid.; Institute for Policy Analysis of Conflict, “The Anti-Shi'a Movement,” 17; KontraS, “Laporan Investigasi,” 11.

²⁶² Panggabean and Ali-Fauzi, *Policing Religious Conflicts*, 112.

²⁶³ Ibid., 113.

from Sampang. In March 2012, Muluk was arrested under the 1965 Blasphemy Law and was jailed for two years. In August 2012, 500 people stormed a Shi'a village brandishing machetes and throwing Molotov cocktails which prompted the government to devise a lasting solution to the Sunni–Shi'a tension, one of which was a plan to transmigrate all Shi'a in Madura to another location.²⁶⁴ In June 2013, the local Sampang government forcefully migrated the Shi'a population to an overcrowded housing complex in Sidoarjo, East Java.²⁶⁵

HATE SPEECH AGAINST AHOK (2016-2017)

Basuki Tjahaja Purnama, alias Ahok, was Jakarta's first-ever Chinese-Christian governor and was occasionally the target of hate speech by various Islamic groups such as the FPI for his religion and ethnicity after his appointment in 2014.²⁶⁶ However, the sustained practice of hate speech against him which led to the successful limitation of his rights only began in 2016 as he ran for re-election in the 2017 Jakarta gubernatorial election.²⁶⁷ In late September 2016, Ahok gave a speech to public officials in Kepulauan Seribu where he briefly mentioned a verse in the Quran, Al Maidah 51.²⁶⁸ At the time, no one in the audience made an issue of the speech.²⁶⁹ A week later, a video of Ahok's speech was edited and uploaded online with the caption of "Blasphemy Against Religion?" – giving the impression that Ahok was accusing Muslim voters that they could be fooled by the Quran.²⁷⁰ Immediately after it went viral, an FPI ulama reported Ahok to the police for blasphemy, and on October 11 the MUI issued an edict stating that Ahok had committed blasphemy.²⁷¹ One month later, masses protested in front of Jakarta's city hall chanting "Kill Ahok! Kill Ahok!" arguing that Ahok had insulted the Quran and therefore Islam.²⁷²

Hate speech against Ahok escalated from November 2016 with the organisation of the 4 November (411) demonstration and the 2 December (212) demonstration. Both these demonstrations were organised by the National Movement to Defend Fatwas of the GNPf MUI, which was led by FPI leader Habib Rizieq, and garnered large numbers of participants from various Islamic organisations – 200,000 during the former and 525,000 during the latter.²⁷³ Throughout these protests, participants were heard calling Ahok "infidel" and demanding the government to "drag Ahok to court."²⁷⁴ Both these demonstrations were supported by notable political actors such as former leader of the National Mandate Party (PAN) Amien Rais, member of the Gerindra Party Fadli Zon, and member of the Social Justice Party (PKS) Fahri

²⁶⁴ Chiara Formichi, "Violence, Sectarianism, and the Politics of Religion: Articulations of Anti-Shi'a Discourses in Indonesia," *Indonesia*, no. 98 (2014), 23; Institute for Policy Analysis of Conflict, "The Anti-Shi'a Movement," 17.

²⁶⁵ Panggabean and Ali-Fauzi, *Policing Religious Conflicts*, 113.

²⁶⁶ Coca, "The Fall of Ahok"; Tempo, "Kenapa FPI dan FBR menolak Ahok."

²⁶⁷ Chris Chaplin, "Stuck in the Immoderate Middle," *New Mandala*, 8 November 2016, <https://www.newmandala.org/stuck-immoderate-middle/>.

²⁶⁸ Burhani, "Plural Islam and Contestation," 143; Sidney Jones, "Why Indonesian Extremists Are Gaining Ground," *The Interpreter*, 1 November 2016, <https://www.lowyinstitute.org/the-interpreter/why-indonesian-extremists-are-gaining-ground>.

²⁶⁹ Winarni, Agussalim, and Bagir, "Memoir of Hate Spin," 148.

²⁷⁰ Burhani, "Plural Islam and Contestation," 144.

²⁷¹ Mietzner and Muhtadi, "Explaining the 2016 Islamist Mobilisation," 17.

²⁷² Winarni, Agussalim, and Bagir, "Memoir of Hate Spin," 142-44.

²⁷³ Vermonte et al., "Gerakan 'Hibrida'," 2.

²⁷⁴ Mietzner and Muhtadi, "Explaining the 2016 Islamist Mobilisation," 1; Vermonte et al., "Gerakan 'Hibrida'," 2.

Hamzah.²⁷⁵ The demonstrations even saw the support of Prabowo Subianto, leader of the Gerindra Party, who frequently met with a GNPF MUI coordinator to discuss the “necessity” of the demonstrations.²⁷⁶

Ultimately, the hate speech against Ahok achieved what its instigators wanted. In May 2017, Ahok was found guilty of blasphemy and was jailed for two years.²⁷⁷ The whole process of the trial was notably marred with irregularities. The court bypassed important procedures for the sake of expediting the case and provided a harsher sentence than what the prosecutor demanded.²⁷⁸ Most importantly, the court’s ruling agreed with Rizieq’s interpretation that Ahok’s speech blasphemed the Quran – giving credence to the reason why hate speech was levied against Ahok.²⁷⁹ Additionally, partly because of the hate speech that framed Ahok as a blasphemer, Ahok lost his re-election despite his high approval rating. A survey conducted in February 2017 found that although 70 per cent of voters approved of Ahok’s performance, more than half of them would not vote for him because they felt he had offended Islam.²⁸⁰

Looking at the complexities, the next section scrutinises some hate speech characteristics which can be identified so far in Indonesia, their causes, and how state and civil society attempt to deal with this issue.

The Patterns of Hate Speech in Indonesia

THREAT TO SURVIVAL NARRATIVE

Three characteristics of hate speech campaigns are consistently present in the cases above. First, campaigns often frame their hate speech within a “threat to survival” narrative. In the three cases of hate speech campaign, instigators portray vulnerable minorities as the original offender who, through some action or speech, threaten the survival of the major religious and/or cultural norm – provoking them to vilify the vulnerable minorities in self-defence. By portraying themselves as the original victims, hate speech instigators are able to use more overt forms of hate speech and call for violence – often in “a force far greater than any measurable harm instigated by the original expression” they claim the vulnerable minorities to have done.²⁸¹

In the hate speech campaign against the Ahmadiyya, instigators initially portray the Ahmadis as a threat to Islam. For example, in Bogor, demonstrations against Ahmadiyya were filled with speeches emphasising how Ahmadiyya wanted to “hijack” and destroy Islam which forced

²⁷⁵ Winarni, Agussalim, and Bagir, “Memoir of Hate Spin,” 144.

²⁷⁶ Vermonte et al., “Gerakan ‘Hibrida’,” 11.

²⁷⁷ Winarni, Agussalim, and Bagir, “Memoir of Hate Spin,” 141.

²⁷⁸ The prosecutor initially only demanded a one-year suspended sentence. See more in Charlotte Setijadi, “Ahok’s Downfall and the Rise of Islamist Populism in Indonesia,” *ISEAS Perspective*, no. 38 (2017): 2-7.

²⁷⁹ Setijadi, “Ahok’s Downfall,” 7.

²⁸⁰ Krithika Varagur, “The Improbable Rise and Blasphemous Fall of a Christian Politician in Indonesia,” *Foreign Policy*, 25 April 2017, <https://foreignpolicy.com/2017/04/25/the-improbable-rise-and-blasphemous-fall-of-a-christian-politician-in-indonesia/>.

²⁸¹ George, *Hate Spin*, 3-4.

“good” Muslims to exterminate them.²⁸² In Lombok, the Ahmadis were often framed as the enemy of the Islamic faith because they insulted the Prophet Muhammad by recognising Mirza Ghulam Ahmad as a prophet – consequently forcing “true” Muslims in Lombok to defend their faith.²⁸³ Notably, these offence-taking hate speech narratives were quickly followed by a call for violence as Islamists were able to effectively justify more overtly provocative statements.²⁸⁴ For example, statements made at FPI rallies and in YouTube videos advocating that Muslims “must make war on Ahmadiyya, kill [them] wherever they are.”²⁸⁵

The hate speech campaign against Shi’as in Sampang was framed in similar narratives. Particularly prominent was the narrative that Shi’as were heretics who, by subscribing to their belief, theologically threatened the sanctity of the Prophet Muhammad along with his wives and companions.²⁸⁶ More than threatening the sanctity of Islam, however, hate speech against Shi’as also portrayed them as threats to good behaviour in society. For example, Sampang ulamas argued that Shi’a promote free sex in the name of *nikah mut’ah* (temporal marriage contract), framing them as aggressors to the region’s conservative norms.²⁸⁷ Another commonly repeated narrative was that Shi’as teach their followers to be liars and hypocrites through their faith’s *taqiyah* (conceal) doctrine.²⁸⁸ This was the narrative that ulamas used to explain why Muluk constantly violated his agreement to stop Shi’a rituals and da’wa with the local government.

Hate speech against Ahok was also framed in similar narratives – that Ahok was a non-Muslim who, by commenting on Al Maidah 51, had insulted the sanctity of Islam and provoked Muslims to respond.²⁸⁹ This narrative was most evident during the 411 and 212 rallies where interviews with its participants found that a significant majority of them participated as a means to “defend their faith against insult” – referring to Ahok’s comments on Al Maidah 51 – even though most of them did not know the specific details of the case.²⁹⁰ Aside from emphasising Ahok’s religious identity and comment, however, hate speech against Ahok also targeted Ahok’s ethnic identity as a Chinese – appealing to longstanding historical narratives that Chinese Indonesians are a foreign threat to Indonesia’s indigenous ethnicities.²⁹¹ In the 411 rallies, ulamas were heard calling for Muslims to “Crush the Chinese!”, and on online platforms, many pejoratively referred to Ahok as “Chinese infidel” or “Chinese pig”.²⁹²

²⁸² Burhani, “When Muslims Are Not Muslims,” 252-56.

²⁸³ Budiwanti, “Pluralism Collapses,” 13.

²⁸⁴ Ahmad Najib Burhani, “It’s a Jihad: Justifying Violence towards the Ahmadiyya in Indonesia,” *TRaNS: Trans-Regional and -National Studies of Southeast Asia* (2020): 1-3.

²⁸⁵ International Crisis Group, “Indonesia,” 6; George, *Hate Spin*, 127.

²⁸⁶ Ahnaf et al., *Politik Lokal dan Konflik Keagamaan*, 23.

²⁸⁷ Miichi and Kayane, “The Politics of Religious Pluralism,” 55.

²⁸⁸ The *taqiyah* doctrine is the practice of concealing one’s belief in order to avoid death or persecution. See more in Ahnaf et al., *Politik Lokal dan Konflik Keagamaan*, 23.

²⁸⁹ Winarni, Agussalim, and Bagir, “Memoir of Hate Spin,” 146.

²⁹⁰ Fealy, “Bigger than Ahok”; Vermonte et al., “Gerakan ‘Hibrida’,” 13.

²⁹¹ Fealy, “Bigger than Ahok.”

²⁹² Azira Mohamed, “Is Jakarta governor Anies Baswedan anti-Chinese,” *ASEAN Today*, 21 November 2017, <https://www.aseantoday.com/2017/11/is-jakarta-governor-anies-baswedan-anti-chinese/>; Christiany Juditha, “Hate Speech di Media Online: Kasus Pilkada DKI Jakarta 2017,” *Puslitbang Aplikasi Informatika dan Informasi Komunikasi Publik Kementerian Komunikasi dan Informatika RI*, (2017), 144.

LEVERAGING STATE REGULATIONS

The second characteristic of hate speech campaigns across these cases is the constant attempt by its instigators to leverage existing laws and government regulations into their offence-taking narratives. Commonly, this is done by framing vulnerable minorities as offenders of particular regulations, thus giving its instigators' provoked reactions legal legitimacy. This is largely made possible because regulations surrounding speech violations in Indonesia, such as but not limited to blasphemy, defamation, and hate speech, still lack clear definitions. As will be discussed in more detail below, it is this lack of clear definitions that then gives room for various actors to misuse them liberally.²⁹³

In the hate speech campaign against the Ahmadiyya, its instigators constantly leveraged the government's 1965 Blasphemy Law. For example, between 2005 and 2008 when the MUI, FPI, and LPPI met with Bakorpakem to advocate for the banning of Ahmadiyya, they explicitly used a 1994 and 1996 legal request that LPPI sent to the Supreme Court and the Attorney General to outlaw Ahmadiyya which was based on the 1965 Blasphemy Law.²⁹⁴ When Bakorpakem issued its final assessment on Ahmadiyya and advised the government to ban their activities, its content strongly resembled LPPI's legal requests and made effort to explicitly mention that its assessments were following Indonesia's 1965 Blasphemy Law.²⁹⁵ Accordingly, when the Joint Ministerial Decree to ban JAI activities was issued it was also rooted in the 1965 Blasphemy Law – it was issued as a necessary measure to prevent the misuse and disgracing of Islam.²⁹⁶

Similar to the hate speech campaign against Ahmadiyya, the hate speech campaign against Shi'as in Sampang also leveraged the 1965 Blasphemy Law. The MUI Sampang branch, for instance, issued a fatwa in January that described Muluk's teachings as deviant and thus blasphemous to Islam.²⁹⁷ Not long after, various local government bodies including the police, the military, Sampang's governor, and the local prosecutor's office held a series of meetings with local actors, including the MUI Sampang branch, after which they concluded that Muluk's "deviant" teachings could be prosecuted under the 1965 Blasphemy Law.²⁹⁸ On March 16, 2012, the police charged Muluk for blasphemy and by April found him guilty. Unsurprisingly, the main evidence used by the court to indict Muluk were the fatwas that the MUI Sampang branch issued which stated that Muluk's teachings were deviant.²⁹⁹

The hate speech campaign against Ahok also made a constant appeal to Indonesia's 1965 Blasphemy Law. By portraying Ahok's speech as an insult to Islam, Islamist groups could argue that Ahok had blasphemed Islam and therefore should be jailed. The MUI's edict, for

²⁹³ Alif Satria, "Regulating Religious Intolerance," *The Jakarta Post*, 27 January 2017, <https://www.thejakartapost.com/academia/2017/01/27/regulating-religious-intolerance.html>.

²⁹⁴ Burhani, "Fundamentalism and Religious Dissent," 156.

²⁹⁵ *Ibid.*, 157.

²⁹⁶ Budiwanti, "Pluralism Collapses," 16.

²⁹⁷ Amnesty International, *Prosecuting Beliefs*, 18.

²⁹⁸ *Ibid.*, 18-19.

²⁹⁹ These fatwas include the Letter of the Leadership of the Indonesian Ulama Council (MUI) of Sampang Regency No. A-037/MUI/SpG/II/2012 on the Teachings or Sect of Shi'a Imamiya Itsna Asyariyah and the Fatwa of the MUI of Sampang Regency No. A-035/MUI/SpG/II/2012 on the Teachings Spread by Tajul Muluk in Karang Gayam Village, Omben District, Sampang Regency, Are Heretical and Misleading, Constituting a Blasphemy and Desecration of Islam. See more in Pengadilan Negeri Sampang No. 69/Pid.B/2012/PN.SPg.

example, stated that “Jakarta Governor’s statement is categorised as (1) insulting the Qur’an and/or (2) insulting ulama which *certainly has legal consequences*.”³⁰⁰ Indeed, it was this edict that became the basis of the 411 and 212 rallies where many, amid the use of derogatory languages aimed to vilify Ahok, demanded the government to “drag Ahok to court.”³⁰¹ The propagators of anti-Ahok hate speech also formally sued Ahok under the 1965 Blasphemy Law – a court case that Ahok eventually lost.³⁰²

ONLINE DIMENSIONS OF HATE SPEECH

The third characteristic of Indonesian hate speech campaigns that has become increasingly prominent in the past decade is the pervasive use of online platforms to spread hate speech. As a caveat, this study acknowledges that the rise in online hate speech coincides with the increase of Indonesian social media users in the past decade. Nevertheless, the rise of online hate speech is still an important trend to acknowledge and address. Understanding that accurate data of online hate speech in Indonesia are unavailable, this study has used CrowdTangle, a public insight tool owned and operated by Facebook, to analyse online insults as a proxy to rudimentarily measure general trends of hate speech online (a brief methodology will be provided in Annex 1).³⁰³ While insults themselves are understandably not hate speech, they are a crucial component of hate speech in Indonesia as they are, as noted in the case studies above, commonly followed by more violent rhetoric and actions.

By using CrowdTangle, this research has found that interactions (i.e. Likes, Reactions, Views, Comments, and Shares) on posts within public Facebook groups which contain insulting phrases to Ahmadiyya, Shi’a, and Chinese Indonesians have all increased between January 2010 and December 2020. As shown in Figure 2, the majority of interactions to insulting posts occurred in the second half of the decade – 79.2 per cent of the interactions on posts insulting Ahmadiyya, 67.4 per cent of the interactions on posts insulting Shi’as, and 92 per cent of the interactions on posts insulting Chinese Indonesians. While there is a spike of online interactions on posts that insult Shi’as in 2013, largely caused by the decision of the Sampang government to relocate its Shi’a community to East Java,³⁰⁴ the number is not comparable to the overall number of interactions on posts insulting Shi’as since 2016.

³⁰⁰ Italics added. Burhani, “Plural Islam and Contestation,” 145.

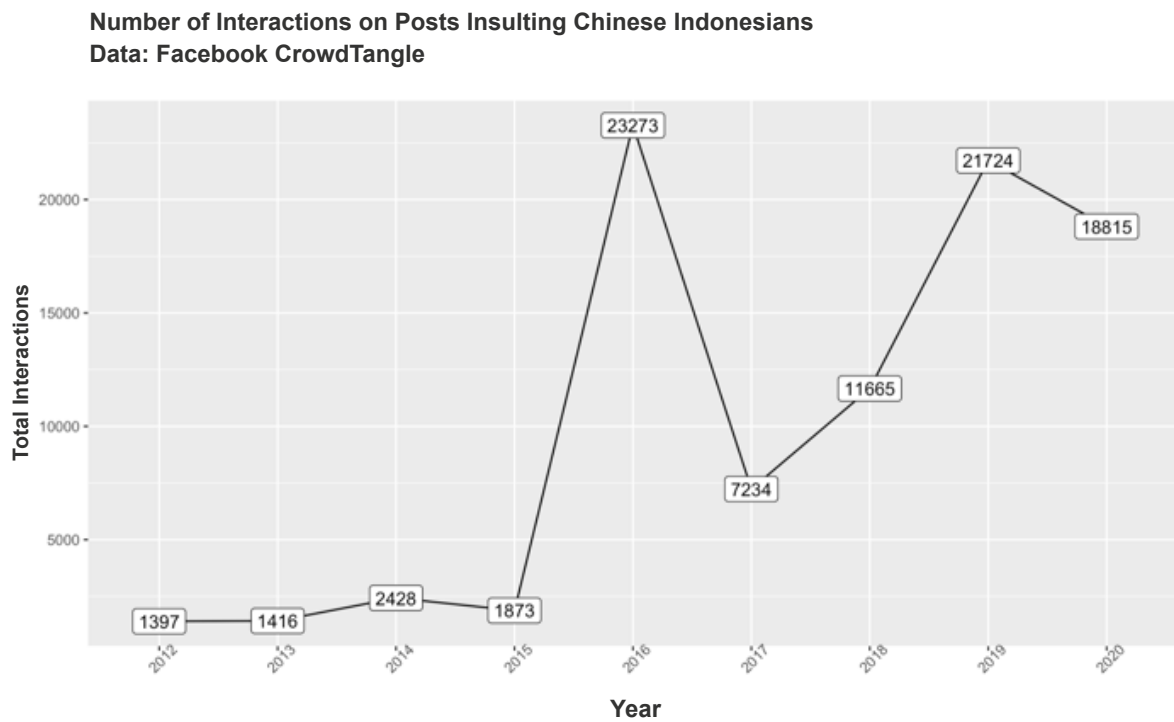
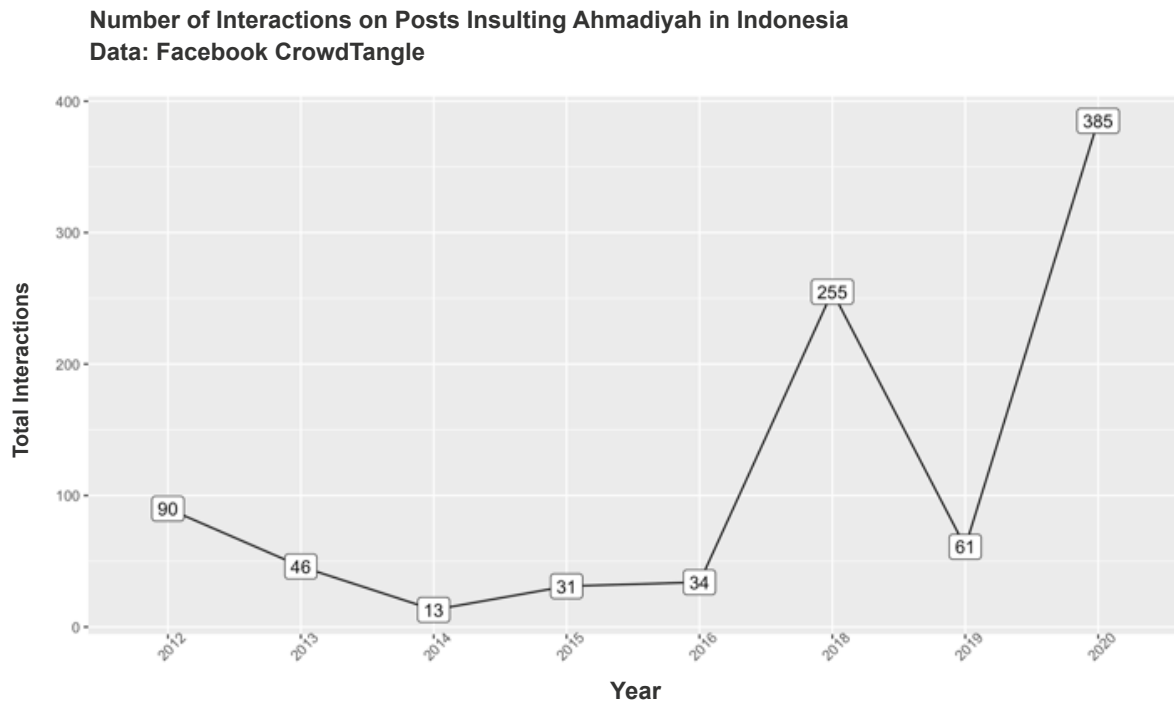
³⁰¹ Vermonte et al., “Gerakan ‘Hibrida’,” 2.

³⁰² Winarni, Agussalim, and Bagir, “Memoir of Hate Spin,” 143.

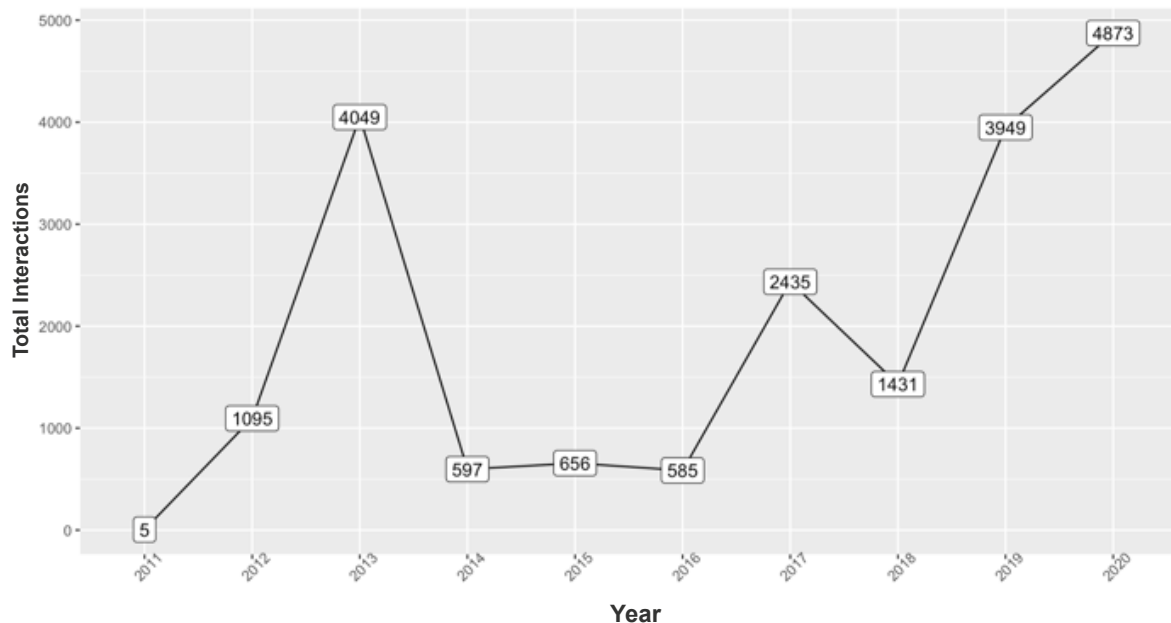
³⁰³ This study uses a conservative set of “insulting phrases” to collect the data. These include phrases such as “Ahmadiyah Kafir”, “Ahmadiyah Binatang”, “Cina Babi”, “Cina Tai”, “Cina Anjing”, “Syiah Kafir”, “Syiah Penyakit”, and “Syiah Sesat”. These phrases are chosen because they are the most commonly used phrases to reference the three vulnerable minority groups in this study.

³⁰⁴ Panggabean and Ali-Fauzi, *Policing Religious Conflicts*, 113.

Figure 2: Number of interactions on Facebook public group posts insulting Ahmadiyah, Chinese Indonesians, and Shi'as in Indonesia (2010-2020)



Number of Interactions on Posts Insulting Shi'as Indonesia
Data: Facebook CrowdTangle



Source: CrowdTangle Team (2020). CrowdTangle. Facebook, Menlo Park, California, United States. [1509365; 1509313; 1506719]

The increased significance of online hate speech was most evident, however, in the 2016-2017 hate speech episode against Ahok. In this particular campaign, websites and social media became one of the main platforms on which hate speech was spread.³⁰⁵ Multiple posts and comments were found, commonly labelling Ahok and his supporters as “infidels”, “Chinese infidels”, “infidel pig”, and “haram infidel”.³⁰⁶

This pervasiveness of hate speech in social media is partly caused by the inherent nature of the internet. The unprecedented outreach that social media provides to all its users has enabled instigators of hate speech to reach a wider range of audiences and reduce the cost to spread hate speech.³⁰⁷ Additionally, social media’s algorithmic predisposition to suggest contents that its users already consume has isolated users into their own virtual enclaves where hate speech is rarely challenged and is thus normalised.³⁰⁸ On the other hand, this pervasiveness is also caused by intentional actions from hate speech instigators to make use of the internet and social media’s algorithm. One prominent example of this is the creation of cyber troops/armies and the use of “buzzer” companies, such as the Saracen Cyber Team, who worked specifically to manipulate public opinion by amplifying an actor’s online narrative through the online use of bots or strategically framed articles.³⁰⁹ It was found that near the election, hate speech against Ahok was heavily propagated through anti-Ahok websites that were developed just before the election.³¹⁰

³⁰⁵ Merlyna Lim, “Freedom to Hate: Social Media, Algorithmic Enclaves, and the Rise of Tribal Nationalism in Indonesia,” *Critical Asian Studies* 49, No. 3 (2017), 418-19.

³⁰⁶ Lim, “Freedom to Hate,” 421; Juditha, “Hate Speech di Media Online,” 144.

³⁰⁷ Lim, “Freedom to Hate,” 423

³⁰⁸ Burhani, “Plural Islam and Contestation,” 154.

³⁰⁹ Jennifer Yang Hui, “Social Media and the 2019 Indonesian Elections,” in *Southeast Asian Affairs 2020*, ed. Malcolm Cook and Daljit Singh (Singapore: ISEAS-Yusof Ishak Institute, 2020), 158-61.

³¹⁰ Lim, “Freedom to Hate,” 418-19.

As the government implements various measures to curb online hate speech, incitements, and fake news spread on online platforms, there have been rising public concerns of regulatory misuse. On the one hand, for example, law enforcement authorities took some time to respond to overt hate speech and incitements conducted by FPI figures, but on the other hand, these measures have been swiftly used to restrict freedom of expression and legitimate public criticisms against government authorities or state institutions. The impacts of government measures will be further elaborated in a later subsection.

Government Responses to Hate Speech

The earlier section has explained how hate speech trends in Indonesia have been increasing, especially through social media platforms in the past ten years. To a certain extent, the government has carried out some counter-measures, particularly by issuing various regulations and strengthening the law enforcement capacities to curb hate speech and its incitements. This section aims to examine these measures, especially as to what extent they are effective in dealing with hate speech. Despite some successes, we notice that these measures are problematic for three reasons.

First, the existing regulations have become counterproductive to the way the government fights against hate speech as some measures have been misused by authorities for political reasons to limit freedom of expression. The Indonesian legal system tends to blur hate speech with acts of defamation, insult, slander, spreading fake news, discrimination, blasphemy, and even minor insults done by individuals without the potential to create public riot or disorder. This lack of a clear definition has confused Indonesian authorities in deciding what hate speech is and how to differentiate it from other types of speech. Second, is the tendency of law enforcement and judicial institutions to act partially as they preferred to process cases of alleged hate speech reported by members of majority groups. Third, while championing preventive measures against discriminative acts, which hate speech in Indonesia is mostly about, the ineffectiveness of the existing regulations and institutions to curb hate speech rests on the fundamental issue of the government's wrong perspective focused as it is on restoring public order and social harmony within plural society instead of protecting the exercise of citizens' constitutional rights including for minority groups.

The explanation of government responses to hate speech and its incitement is divided into two subsections. The first subsection examines various legal frameworks and specific agencies assigned to deal with hate speech and incitement. From these regulations, we can see the diversity in how the hate speech issues have been addressed in a broader setting, which therefore often creates confusion when monitoring and legally processing or taking action on the hate speech act. The second subsection scrutinises the impact of these existing measures in curbing hate speech, both the successes and failures, particularly the way state authorities often abuse some regulations to curb criticisms against the government on a certain policy.

REGULATIONS

Hitherto, Indonesia has no single law that regulates hate speech and its incitement. Instead, there are at least seven laws and two specific regulations issued by the National Police and Ministry for Information and Communication that address hate speech. However, it is important to note that certain regulations are problematic as they are often used both by certain groups or individuals and law enforcement authorities as a basis to take action against minorities or those who are critical of the government. Furthermore, the newer regulation, the Circular Letter from the Chief Police, that aims to provide a specific guideline for police personnel in dealing with hate speech has instead reaffirmed the broader definition which often blurs the difference between hate speech and other types of speech acts that are less threatening.

PENAL CODE (KITAB UNDANG-UNDANG HUKUM PIDANA/KUHP)

In this regulation, two articles, Article 156 and 157, are particularly pertinent to hate speech. Article 156 criminalises the expression of hatred against the government, while Article 157 mentions the sanctions on the action to spread hatred or to show enmity against a certain group. In conjunction with this, the Penal Code Regulation (Law No. 1/1946), Article 14(1) and (2) mentions that whoever spreads fake news deliberately to create disorder in the society can be sentenced to up to ten years in prison, while the act of negligence to spread certain information which may be fake is liable for a maximum sentence of three years. Most of the newer regulations still refer to the Criminal Code regarding the sentencing requirement.

Nevertheless, in practice, law enforcement authorities often have mixed responses as they categorise other types of speeches, particularly insults against state symbols, agencies, or even criticism towards state leaders as hate speech. Below is a table of various articles in the Indonesian Penal Code that are often used interchangeably to address hate speech besides Articles 156 and 157 as mentioned earlier.

Table 1: Articles regulating hate speech and other related types of speech crimes in the Indonesian Penal Code

Article	Contents
134, 137	An insult against the president or vice president
142, 144	An insult against state leaders from other countries
154,155	Showing enmity, hatred, or insult against the government
154a	An insult against state flag or symbols
156-157	Showing enmity, hatred, or insult against one or some groups based on race, country of origin, religion, birthplace or lineage, nationality, or status
161	Showing written statements to incite crimes, oppose ruling authorities using violence
207-208	Defamation against ruling authorities or state agencies
310-311	Defamation; slander against another person

ANTI-BLASPHEMY LAW (PENCEGAHAN PENYALAHGUNAAN DAN/ATAU PENODAAN AGAMA) – LAW NO. 1 OF 1965

The Anti-Blasphemy Law specifically regulates the prevention of religious misuse and blasphemy. Article 156(a) forbids actions that express feelings or acts which contain enmity, misuse, or that blaspheme against a certain religion. This law has long been criticised by civil society, as it was originally formulated to eliminate the so-called “deviant” branches of the five main religions admitted by the government. As has been explained in an earlier section, this law has been repeatedly used by radical Muslims to attack certain Islamic minority sects, such as Ahmadiyyah or Shi’a in Indonesia.

HUMAN RIGHTS LAW – LAW NO. 39 OF 1999

The Human Rights Law broadly addresses several aspects related to hate speech. On the one hand, it guarantees freedom of speech as part of fundamental human rights, although it should be observed according to certain accepted norms. Article 23(2) states that every person has the right to have, express, and spread their opinion based on their conscience, either through speech or in writing while considering the norms of religion, decency, public interest, and the unity of the nation. Then, Article 44 underlines that every person either individually or in a group has the right to share their opinion, request, or complain to the government to ensure good governance. Concerning hate speech, it can broadly be interpreted from the content of Article 91(1c). When Komnas HAM (the National Human Rights Institution) investigates a reported case of human rights violation, the investigation can be suspended if there is evidence that the report was made based on fake data, or with the intention to defame other people or create social unrest and public insecurity. In other words, if someone reports a case of human rights violation to Komnas HAM, and the report happened to be made with bad intentions, including to defame or showing enmity, Komnas HAM can stop the investigation.

LAW NO. 12 OF 2005 ON THE RATIFICATION OF COVENANT ON CIVIL AND POLITICAL RIGHTS

The Law was created as a consequence of Indonesia’s ratification of the International Covenant on Civil and Political Rights. Article 20(2) states that all actions that promote hatred based on ethnicities, race, or religion that contain incitements to discriminate, show enmity or violence are forbidden before the law.

LAW NO. 40 OF 2008 ON THE ELIMINATION OF DISCRIMINATIVE ACTS

As Indonesia ratified the International Covenant on the Elimination of Ethnic and Racial Discrimination, the Law provides a clear framework for the context of the hate speech act to happen. Article 4(b) includes the expression of hate or hatred against people because of their different races and ethnicity in various forms, whether through writings, pictures, speech, attributes, or physical actions of torture, murder, rape, and violation of freedom. Article 6 guarantees that protection of all citizens from discriminative acts is to be provided by the

government, local government, and all people. Then, Article 7 stipulates that the government must protect every citizen that faces discrimination and ensure the law enforcement process against every discriminative act. It must also ensure that every citizen is to receive assistance, resolution, and fair compensation. The government also has an obligation to promote efforts to eliminate discrimination including revising or withdrawing discriminative regulations.

According to PP (Government Regulation) 56 (2010) which is the operationalising regulation for this Law, the monitoring function is to be carried out by the National Human Rights Institution (Komnas HAM) (elaboration from the Law's Article 8). Komnas HAM is mandated to provide recommendations to local governments, the parliament, and whenever there is an indication for criminal activity resulted from the discriminative act, it should refer also to the national police.

LAW NO. 11 OF 2008 ON ELECTRONIC INFORMATION AND TRANSACTION

The Law on Electronic Information and Transaction was originally aimed to regulate the use of information technology in electronic transactions for trade and economic purposes, particularly to prevent criminal acts by misuse of digital information. Nonetheless, this law also regulates electronic information as the conduct of hate speech has been increasingly done through various forms of social media.

Article 27(3) mentions that one of the forbidden acts is to distribute or transmit electronic information that contains insult or defamation. Article 28 includes other activities such as deliberately spreading fake news and misleading information, information that aims to invoke hatred and enmity against individuals and groups due to different ethnicities, religions, races, and classes.

This Law is problematic because it has been repeatedly used by the government, especially the law enforcement authorities, to legitimise arrest against individuals or groups who are reported of insulting or defaming state leaders or officials – despite the fact these individuals might not necessarily represent or be a part of an organised political opposition. The revision of the Law into Law No. 19 (2016) has retained the problematic article although the maximum penalty has been reduced to four years instead of six years along with a lesser fine than stated in the 2008 version. Even worse, the revision has given the government more power to monitor the public use of social media, particularly against critical views against it. This can be seen from the additional Articles 40(2a) and (2b). Article 40(2a) stipulates that the government must prevent the spread and use of electronic information that includes contents banned by the Law. Then Article 40(2b) mentions that for prevention purposes, the government has the authority to cut off access and/or command the electronic system operator to block access to electronic information that contains information banned by the Law. The necessity for a law enforcement authority to secure permission from the local district court before conducting search and seizures against suspected activities as stipulated in Article 43(3) has been eliminated, which hence gives more discretion to law enforcement authorities, making the authorities prone to misuse the power to further silence critics against the government.³¹¹

The law is supplemented by the Implementation Regulation No. 71 (2019) which essentially regulates the obligations of different agencies, both government and private sector, related to the provision and monitoring of electronic information and transaction activities to ensure protection for the public.

³¹¹ Tempo, "Disahkan DPR, Ini Lima Kelemahan Revisi UU ITE," October 27, 2016, <https://nasional.tempo.co/read/815609/disahkan-dpr-ini-lima-kelemahan-revisi-uu-ite/full&view=ok>.

LAW NO. 7 OF 2012 ON SOCIAL CONFLICT MANAGEMENT

While acknowledging hate speech as one of the triggers for escalating social or horizontal conflict, the regulation on social conflict management (Law 7/2012) does not mention hate speech as one of the potentials leading to a conflict that needs to be mitigated. Instead, the Law only delineates that as part of conflict prevention, every person must develop tolerance and respect freedom of worship, respect differences in ethnicity, language, and traditions, recognise and treat human beings according to their dignity, equality among all people without differentiating ethnic, blood traits, religion, gender, social status, and skin color.

CIRCULAR LETTER OF THE CHIEF POLICE SE/6/X/2015 ON HANDLING HATE SPEECH

Compared to the other regulations mentioned above, this is the most direct regulation addressing hate speech. The Circular Letter aims to provide specific guidance for police personnel to have some basic understanding in order to handle acts of hate speech. The letter acknowledges that hate speech can lead to collective hatred, alienation, discrimination, violence, and even ethnic cleansing and genocide. It specifies various forms of hate speech, namely: a) insult; b) defamation; c) blasphemy; d) unpleasant acts; e) provocations; f) incitements; and g) fake news. Furthermore, it also identifies various aspects that make certain individuals or groups become the vulnerable target of hate speech based on tribes, religion, religious denominations, beliefs, race, skin colour, ethnicity, gender, disabilities, and sexual orientation.

Based on the letter, the national police are obliged to undertake various actions to deal with hate speech. Among others, the national police must utilise its intelligence function as part of early warning and early detection; educate people on hate speech and its negative impacts; and cooperate with key figures in society, such as religious leaders, local leaders, and academics. When finding potential for criminal acts, police have to monitor and detect seeds of conflict, approach the alleged perpetrator, mediate between the perpetrator and victims, and find the solution. If preventive action fails, then the police need to enforce the law and refer to Criminal Code (KUHP) particularly using Articles 156 and 157 related to the expression of hatred and enmity against any of the ethnic group in Indonesia in public, or Articles 310 and 311 related to attacking someone's dignity or defamation.

MINISTERIAL REGULATION (MINISTRY FOR COMMUNICATION AND INFORMATION) 19 (2014)

The Ministerial Regulation 19/2014 regulates that government, through the Ministry for Communication and Information can block websites that are proven to publish negative content, such as pornography and other illegal activities, of which hate speech is included. The action can be undertaken in response to reports submitted by the public, other ministries, the law enforcement authority, judicial institutions, or other relevant government agencies. As stated in Article 10c, reports from the public can be categorised as urgent if the cases are related to individual privacy, child pornography, violence, issues of ethnicity, religion, race,

and class (Suku, Agama, Ras, dan Antar-Golongan/ SARA), and other content that can cause social unrest. Since 2018, the Ministry has planned to develop specific regulations to monitor fake news and hate speech on social media platforms, such as Facebook. However, the plan has not yet been brought about as the higher implementing regulation that gives a legal framework for this ministerial regulation has not been signed by the President.³¹²

INSTITUTIONS

Aside from regulations, the initiative to create a better response to curb the spread of hate speech and incitement especially in social media has led to the development of a specific directorate within the National Police dedicated to dealing with cybercrime. In 2017, the Multimedia Bureau headed by a one-star police general was established with the main function to provide public education to the public regarding the healthy use of social media. Then, for the law enforcement task, in the same year, the sub-directorate for cybercrime, previously under the Directorate for Economic and Special Crimes of the Criminal Investigation Department, was elevated to the directorate level, also headed by a one-star general. These cyber police are responsible primarily to investigate cases of online fraud, publications of provocative content, and pornography. In 2019, the directorate launched the patrolisiber.id website to provide a platform for the public to report any criminal activities on the internet.

IMPACTS OF GOVERNMENT MEASURES

To a certain extent, government efforts have indicated its responsiveness to deal with hate speech and incitement. Based on the statistics published by the Cyber Patrol (<https://patrolisiber.id>) from January 2015 to October 2020, there were 7,460 cases of the spread of provocative content (in which hate speech is categorised) out of 20,033 cybercrimes reported to the police. Nevertheless, despite this achievement, some problems have arisen from the implementation of government measures to curb hate speech, which to a large extent have challenged the effectiveness of such measures.

The first problem relates to the loopholes created within these various pieces of legislation. Some laws, such as the Blasphemy Law and the ITE Law, have been extensively criticised as they are prone to be misused by certain individuals or groups, especially against minority ethnic and religious groups and those who are critical of the government. At the same time, in the Indonesian context, the existing laws and regulations have made hate speech something of a “catch-all” concept, specifically by including acts of insulting or defaming state leaders, public officials, and state institutions. Thus, the broad definition of hate speech has in practice given room to use the regulations as a legal basis to restrict criticisms or complaints, particularly against the government. This is problematic since it does not meet a key criterion for hate speech: the target or the hearer should be considered as vulnerable or powerless to defend themselves, which thus excludes government or state authorities.³¹³

³¹² Agus Tri Haryanto, “Kominfo Rancang Aturan Hoax dan Hate Speech di Facebook Cs,” [Detik.com](https://inet.detik.com/cyberlife/d-4149935/kominfo-rancang-aturan-hoax-dan-hate-speech-di-facebook-cs), 4 August 2018, <https://inet.detik.com/cyberlife/d-4149935/kominfo-rancang-aturan-hoax-dan-hate-speech-di-facebook-cs>.

³¹³ Katharine Gelber, “Differentiating Hate Speech: A Systemic Discrimination Approach,” *Critical Review of International Social and Political Philosophy* 24, no. 4 (2021), 16.

The second issue is the tendency of law enforcement authorities and judicial institutions to act partially or discriminatively as they prefer to process cases of alleged hate speech or incitements reported by members of majority groups, or those which are perceived as insults or threats against state authorities, symbols, or institutions. Meanwhile, cases that targeted minority groups tend to be ignored or watered down. As shown in the case of Basuki Tjahaja Purnama, the Governor of Jakarta (2014-2017) – famously known as Ahok – he was eventually sentenced to two years jail based on the allegation brought up by the FPI of blaspheming against Islam, as he misquoted the Quranic verse Al Maidah 51 during his campaign in Kepulauan Seribu in 2016. In contrast, the leader of FPI, Habib Rizieq Shihab, has never been investigated for conducting hate speech despite the abundant evidence to be found in his public speeches when instigating mass rallies against Ahok.

This partiality of law enforcement authorities and judicial institutions also affects the victims' rights to remedies. Indeed, Indonesia has several regulations stipulating the victim's rights to remedy. Article 7(b) in Law No. 40/2008 outlines the rights of citizens to receive assistance, settlement, and remedies to compensate for the loss and suffering derived from acts of racial and ethnic discrimination. Additionally, Article 18 also stipulates that perpetrators can receive extra sentence to provide restitution and rehabilitation of victims' rights. Despite these laws, very rarely do victims in the observed cases received remedies, as most of the discriminative acts conducted by the majority group have not been seriously dealt with by the police or brought to the court. For example, there has been no case where FPI members were ever brought to court for hate speech and attacks. When FPI leaders are detained, it was not done because of hate speech but a violation against the social gathering limitation during the COVID-19 pandemic and terrorism act.

Third, the ineffectiveness of preventive measures against hate speech and incitement correlates with the fundamental incorrectness of government mindset in dealing with the issue of discrimination against minority groups, which prioritises the restoration of public order and creation of social harmony instead of protecting all citizens' constitutional rights. Hate speech, as argued by Gelber, is a manifestation of systemic discrimination against a certain target group, which is different from the individual expression of dislike or insult against another person. Thus, concerning the second point mentioned earlier, fake news, hate speech, and incitement performed by majority groups against the minority - even when manifested as overt violence - were often neglected by authorities and their proponents not brought to justice for the sake of maintaining public order and social harmony. This has been shown in the examination of the three case studies. With the promotion of tolerance and the need to ensure public order and social harmony, state authorities stress that minorities should understand and be mindful of their activities among the majority, even to the extent of their practise of the rituals of their religions or beliefs as an expression of their identity. In an extreme case, the banning of Yasmin Indonesian Christian Church (GKI Yasmin) in West Java showed that the will of the majority even prevails over a formal court decision that ruled that the church has a legitimate permit to operate.³¹⁴ While the initiative to create a specific Act on Protection for Religious Believers is still uncertain. Thus, the government's lack of decisiveness to ensure protection against religious and ethnic minority groups has created the fertile ground for hate speech against them to flourish.

³¹⁴ The case started in 2012 after the local government revoked the permission for the church to operate due to the pressure from the radical Moslem groups in the community. Despite the local government's promise and effort to gather several representatives to settle the issue in 2020, the solution, to date, remains unknown.

Thus, with the tendency of authorities to broaden and often misuse the definition of hate speech, and the government's partiality for restoring order and social harmony when handling hate speech cases, there are certainly gaps to fill in. In this case, the role of civil society, the private sector, and the media is crucial, which will be elaborated on in the next section.

Civil Society Initiatives against Hate Speech in Indonesia

As elaborated earlier, while the government has implemented various measures to handle hate speech and incitement, these are limited with respect to prevention as most of the measures are focused on a “hard” approach conducted by law enforcement authorities to create a deterrence effect. These efforts have led to mixed results as there are some side effects as shown by many cases where a number of regulations are used to restrict criticism against certain government policies.

To fill this gap, the role of civil society, especially those that have actively promoted tolerance and fought against fake news is key. Their engagement has become more robust through collaboration with the private sector, particularly to provide public education to the young generation, as hate speech has been increasingly performed online on social media platforms or offline sources are recorded and made viral on the same platforms. CSOs have taken up various initiatives, such as organising discussion forums and training, and other creative ways, such as story-telling and short movies, that can be accessed freely.

One of the relatively young but very active CSOs is Masyarakat Anti Fitnah Indonesia [Indonesian Anti-Hoax Society] (MAFINDO). The CSO started as an online grassroots movement in 2015 and subsequently became an organisation in 2019. Its main areas to fight against fake news include providing digital literacy education, creating a website – [CekFakta.com](https://cekfakta.com) – accessible by the public to check whether certain news is fake or true, and running public campaigns to raise awareness about the spread and dangers of fake news.³¹⁵ MAFINDO has launched the turnbackhoax.id/ website as an online platform where people can check whether certain headline news is true or categorised as disinformation/misinformation. The other activity is creating a series of short films named “Anti-Hoax Family” and accessible through YouTube. In October 2020, Google through its corporate social program has donated USD 800,000 to finance the “Tular Nalar” program initiated by MAFINDO and the Maarif Institute. This program is to provide digital literacy for teachers and students to empower them in detecting disinformation and misinformation as a source of fake news that is often used as the basis for hate speech.³¹⁶

A think-tank institute, the Centre for the Study of Islam and Democracy (PUSAD Paramadina) based in Paramadina University, has engaged more in research and academic forum activities. One of its key contributions is to publish a guidebook titled “Melawan Hasutan Kebencian” [Fighting Against Hate Speech/ Incitement] in 2019. The book is published in collaboration with MAFINDO to educate the public to have a clear understanding of the definition of hate speech and incitement.

³¹⁵ MAFINDO, “About,” <https://www.mafindo.or.id/about/>.

³¹⁶ Arindra Meodia, “Google guyur Rp11,7 miliar berantas hoaks di Indonesia,” Antara News, 26 October 2020, https://www.antaranews.com/berita/1805257/google-guyur-rp117-miliar-berantas-hoaks-di-indonesia?utm_source=antaranews&utm_medium=mobile&utm_campaign=berita_pilihan.

Other CSOs took the initiative to create a discussion forum among civil society that invited key figures that champion tolerance as part of the effort to fight against hate speech. For example, in April 2019, the Nurcholish Madjid Society, Maarif Institute, Wahid Foundation, Jaringan (network) Gusdurian, and Terang Surabaya Foundation organised “Forum Titik Temu” in Jakarta to discuss the rising trends of intolerance, religious exclusivity, and hate speech. This event was inspired by the “Human Brotherhood” documents launched following the meeting between Islamic religious leaders and the Pope and hundreds of religious leaders in Abu Dhabi in February 2019.³¹⁷

Maarif Institute, for example, in collaboration with YouTube Creators for Change initiated a training “#1nDONESia: Cerdas Bermedia Sosial” [Indonesia: Smart in Using Social Media] which is aimed particularly to educate young people. As the main users of social media, youth need to be informed of how to be smart in selecting content as they are prone to be exposed to various negative content in online platforms, such as hate speech.³¹⁸

Another kind of civil society that is key in filling the gap of preventive measures against hate speech is victim-led civil society organisations. In the case of the Shi’as, the Indonesian Council of Ahlu Bayt Association (IJABI) and Ahlu Bayt Indonesia (ABI), the two main Shi’a organisations in Indonesia, were crucial in initiating and coordinating a network of religious pluralist NGOs, Sunni intellectuals, and politicians that would later become crucial in preventing future escalations of hate speech and violence to Shi’as.³¹⁹ After the first attack against Sampang Shi’as in 2011, IJABI and ABI with 46 other organisations coordinated to develop fact-finding teams and identify victims. Additionally, after 2012, ABI and other NGOs started building communications with the local ulamas and strongmen in Madura with the hopes of countering the socio-political influence that hate speech instigators had over them. In September 2013, ABI succeeded in getting Shi’a refugees and Sunni villagers to agree to a “People’s Peace Treaty”.³²⁰

Finally, at the regional level, the ASEAN Parliamentarians for Human Rights (APHR) has initiated a project on freedom of religion or belief, jointly undertaken with the International Panel of Parliamentarians for Freedom of Religion or Belief (IPPFoRB). The project aims to strengthen the capacity of parliamentarians and increase multi-stakeholder partnership to improve freedom of religion or belief situation in the region. Under the framework of the project, APHR and IPPFoRB has established a Southeast Asia Parliamentarians for Freedom of Religion or Belief (SEAPFoRB), which is comprised of 34 parliamentarians and politicians from Southeast Asian countries. SEAPFoRB has undertaken various initiatives to address various regional issues related to tackling hate speech, mitigation of religious tensions, and legislating religious freedom. The last Annual Meeting of SEAPFoRB in Bangkok in November 2020, for example, discussed matters related to atrocity crimes against the Rohingya in Myanmar; the rise of polarisation in Indonesia and its threat to democracy; the use of race and religion in Malaysian politics; and thorough discussion on the challenges for governments in combatting hate speech without violating fundamental freedoms.³²¹

³¹⁷ Yopi Makdori, “Eksklusivisme Beragama dan Ujaran Kebencian Jadi Bahasan Forum Titik Temu,” *Liputan 6*, 10 April 2019, <https://www.liputan6.com/news/read/3938318/eksklusivisme-beragama-dan-ujaran-kebencian-jadi-bahasan-forum-titik-temu>.

³¹⁸ Kristian Erdianto, “Ujaran Kebencian Picu Generasi Muda Jadi Intoleran dan Diskriminatif,” *Kompas.com*, 8 December 2017, <https://nasional.kompas.com/read/2017/12/08/18445061/ujaran-kebencian->.

³¹⁹ Miichi and Kayane, “The Politics of Religious Pluralism,” 57-61.

³²⁰ *Ibid.*, 59.

³²¹ ASEAN Parliamentarians for Human Rights, “Parliamentarians pledge to ensure stronger religious freedom protection in Southeast Asia,” 9 November 2020, <https://aseanmp.org/2020/11/09/stronger-religious-freedom-protection/>.

Conclusion

The investigation on three key case studies, namely the Ahmadiyya, Shi'a, and Ahok, indicates that there is a worrying sign due to the increasing hate speech trend in Indonesia. The fact that the three cases studies show that the hate speech campaigns progressed from an incipient stage in which the act did not seem to be harmful, and then escalated to a more violent stage in which targets are justified to be attacked, certainly shows the need for more serious attention both from the state as well as non-state actors. While an offence-taking characteristic seems to be clear in all cases, there is also another trend in which some perpetrators are misusing state regulations, such as the Electronic Information and Transaction Law and the Blasphemy Law, to frame their acts as legitimate. As Indonesia is one of the largest populations of social media users, the widespread use of social media as the platform to conduct hate speech is also likely to grow in the foreseeable future as there has been minimal control exerted by these online platforms.

Furthermore, instead of better protecting the vulnerable groups from hate speech and incitement, the effectiveness of government measures is still very much lacking. A concerning development is an increasing trend of the government misusing the blurred definition of hate speech to label legitimate criticisms against it as hate speech, resulting in the restriction of freedom of speech. In addition, the government's initiatives to prevent hate speech have become counterproductive as they are based on the incorrect mindset of prioritising public order and social harmony, which unfairly favours the majority instead of protecting the targeted minority groups. The ambiguous response shown by law enforcement authorities when handling evident acts of hate speech and incitement, especially those done by perpetrators who claim to be defending the majority groups' belief, is a grim reminder of this problem. Thus, the involvement of civil society is crucial as they can come with innovative ways to address hate speech – ranging from direct inputs to the government to spearheading preventive and educative measures. As always, to prevent is better than to cure.

Several recommendations can further help to improve the effectiveness of efforts against hate speech.

Recommendations

RECOMMENDATIONS TO GOVERNMENT

First, the government needs to create specific regulations that clearly define hate speech. This regulation should be something higher than merely the provision of guidelines for law enforcement authorities. There should be a clear differentiation between protected speech, speech that may be criminalised, and speech that must be prohibited in line with the International Covenant on Civil and Political Rights (ICCPR) and the Rabat Plan of Action. Specifically, hate speech needs to be criminalised when it amounts to incitement to discrimination, hostility, and violence – it is these kinds of speech that carries out the potential to turn into incitement and overt violence against the targeted groups. To prevent misuse of hate speech regulations, it is also important to distinguish it from other types of speech acts particularly using its specific element of systematic discrimination against powerless minorities or other vulnerable groups.

Second, there should be a more effective implementation of electoral regulations that aims to prevent or punish political actors supporting hate speech. As noted above, the support that political actors give is a crucial variable that helps hate speech instigators sustain and even escalate their campaigns. Political actors can provide these campaigns legitimacy through rhetorical support or even logistical support. While, admittedly, electoral regulations that bar the use of hate speech exist, they are not yet effectively implemented. To do so, it is necessary to provide the General Election Commission with increased logistical capacity and expertise to monitor, identify, and punish the use of online and offline hate speech during elections.

RECOMMENDATIONS TO CIVIL SOCIETY

First, increase collaboration between civil society and government bodies to counter and prevent hate speech. This can be done in various ways, such as advocating for a review of certain controversial regulations, designing training for law enforcement authorities, and reporting continuous hate speech against particular groups to government bodies, especially those on the social media platforms. Collaboration between civil society and specific units within the police to improve the latter's performance in dealing with real hate speech acts needs to be endorsed. Furthermore, civil society also needs to guide the initiative to issue the specific Act on Protection for Religious Believers that also incorporates specific article that outlaws hate speech and incitement.

Second, maintain constant and strong ties with vulnerable communities even when overt hate speech against them is not present. As noted above, the trigger phase of hate speech campaigns often begins in very local-level interactions and occurs in response to seemingly innocuous activities. However, if these local hate speech campaigns are not quickly flagged and responded to, they are at risk of being coopted by political actors and escalating into something larger. To prevent this, civil society needs to act as an early warning mechanism. To do so, it is vital that civil societies maintain close interactions with vulnerable targets even when they are not subject to intense hate speech campaigns to ensure that early warnings can be quickly administered.

ANNEX 1. BRIEF METHODOLOGY TO MEASURE ONLINE HATE SPEECH

CrowdTangle is a public insights tool owned and operated by Facebook that enables its users to search posts from across Facebook, Instagram, and Reddit. Additionally, CrowdTangle also gathers information on the number of interactions Facebook users have towards the posts. These include the number of Likes, Reactions, Views, Shares, and Comments. Two important caveats need to be noted. First, CrowdTangle only collects data across public accounts and pages within the CrowdTangle database (e.g. Facebook Pages, Facebook Public Groups, public Instagram accounts) – hate speech posts on Facebook users' private accounts will not show up in CrowdTangle search results. Second, CrowdTangle only collects data from posts that are still available on these accounts and pages – posts that are deleted because they violate Facebook's hate speech guidelines will not show up in CrowdTangle search results.

As a proxy to rudimentarily measure the volume of hate speech content online against Shi'a, Ahmadiyyah, and Chinese Indonesians, the study built a database of "insulting posts" – posts that contain "insulting phrases" – targeted against each of the vulnerable communities on public Facebook groups. Although only searching insulting posts on Facebook is indeed limiting, this endeavour could still provide a generally representative trend of the volume of hate speech online due to the large number of users of Facebook in Indonesia. A survey by We Are Social notes that, as per January 2020, Facebook is used by 82 per cent of Indonesia's population.³²² This places Facebook as the third most commonly used social media application in Indonesia after WhatsApp and YouTube — two applications which CrowdTangle does not have capacity to search content in.

Table 2: Insulting phrases against selected targeted vulnerable minorities in Indonesia

Vulnerable minorities	Insulting phrases	Total posts
Ahmadiyyah Indonesians	"Ahmadiyah Bukan Islam", "Ahmadiyah Kafir", "Ahmadiyah Binatang", "Ahmadiyah penista", "Ahmadiyah haram", "Ahmadiyah Sesat" ³²³	60
Shi'a Indonesians	"Syiah Kafir", "Syiah Penyakit", "Syiah Penista", "Syiah Sesat" ³²⁴	883
Chinese Indonesians	"Cina Babi", "Cina Tai", "Cina Anjing", "Cina Kafir" ³²⁵	1,300

³²² Simon Kemp, "Digital 2020: Indonesia," DataReportal, 18 February 2020, <https://datareportal.com/reports/digital-2020-indonesia>.

³²³ Respectively translates to: "Ahmadiyyah is not Islam", "Ahmadiyyah are kaffir", "Ahmadiyyah are animals", "Ahmadiyyah are blasphemers", "Ahmadiyyah are haram", "Ahmadiyyah are misguided".

³²⁴ Respectively translates to: "Shi'a are kaffir", "Shi'a are a disease", "Shi'a are blasphemers", "Shi'as are misguided".

³²⁵ Respectively translates to: "Chinese pigs", "Chinese are shits", "Chinese are dogs", "Chinese kaffirs".

The study built these databases through a two-step process. First, the study collected posts on public Facebook groups using “insulting phrases” (written in Indonesian language) as outlined in Table 2. These “insulting phrases” were selected because they were the most common phrases used as insults during the hate speech campaigns outlined in the qualitative case studies described above. The study also limited the search for these phrases to posts using Indonesian language and Facebook groups of all membership size. Second, the study manually cleaned the dataset by verifying the context in which these “insulting phrases” were posted. To do so, the study looked into the “Message” and “Description” variables of the constructed database and removed observations whose “insulting phrase” was not contextualised in a hateful narrative. After data cleaning, the study has collected a total of 2,243 posts.

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MALAYSIA

HATE SPEECH AND INCITEMENT IN MALAYSIA

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Introduction

This chapter examines how COVID-19 not only instigates hate speech and incitement but also increases the vulnerabilities of migrants and refugees in Southeast Asia. It starts with a regional overview of public attitudes towards foreigners and refugees before narrowing down to illustrate how and why the Rohingya populations have become the target of hate speech and incitement in Malaysia. The detailed examination of the Rohingya in Malaysia is motivated by the fact that hateful remarks were expressed by online social media users as if there was a consensus among the local population. It is thus highly significant to understand such a phenomenon. The findings reveal that the global pandemic heightened public anxieties and subsequently led to the proliferation of hate speech and incitement against “unwanted” foreigners perceived as intruders in the country. The situation was also significantly worsened by the wide spread of misinformation about victims of hate speech, which in turn resulted in incitement of violence.

Key takeaways from this study:

COVID-19 exposes and aggravates underlying discriminatory attitudes.

Hate speech can expand from targeting specific individuals to a whole ethnic group.

Migrants and refugees are extremely vulnerable to discrimination, hate speech, and incitement because of their ‘outsider’ status.

Dehumanising and denigrating discourses serve to discriminatorily deny protection of migrants and refugees.

Official rhetoric can be exploited by the public to justify hateful remarks and is therefore central to preventing hate speech and discrimination.

Methodology

This study is driven by three key research questions: what are public attitudes towards migrants and refugees during COVID-19 in Southeast Asia? What specifically instigated hate speech against the Rohingya community in Malaysia and how did the Malaysian government, civil society, regional and international organisations respond? Data on regional perception of migrants was gathered from large-scale surveys conducted and published in 2020 by the ISEAS-Ishak Yusof Institute and a coalition of the World Health Organization (WHO), the International Federation of Red Cross and Red Crescent Societies (IFRC), and the UN Office for Coordination of Humanitarian Affairs (OCHA). The surveys shed light on the public perception of migrants and refugees during COVID-19 in the region.

To undertake an in-depth examination of hate speech against the Rohingya in Malaysia, data was collected from social media platforms, predominantly Facebook. I initially mapped Facebook groups and posts with anti-migrant sentiment in Malaysia based on Reuters' reports.³²⁶ Subsequently, I followed updates from a public Facebook page called "Friends of Immigration", which was set up by immigration officials in their personal capacity. This page regularly provides immigration-related news, including the arrival of the Rohingya refugee boats during the pandemic, hence providing important access to investigate into online reactions to migrant and refugee issues. Recognising that members of the same Facebook group tend to express similar views, I triangulated data across and with public sources. I did so by incorporating online comments made in response to news articles on the Rohingya that were published by Malaysian presses.³²⁷ In total, I surveyed more than 5,500 online comments. This approach is helpful for revealing broad public perception and hate speech against the Rohingya community in Malaysia. In particular, the large sample size and repetition of similar content in the collected evidence allowed for constructing and confirming the generalisable pattern of hate speech as representative of public attitude discussed in Section VII.

Regional Attitudes towards Foreigners and Refugees during COVID-19

This section captures prevailing public attitudes within Southeast Asia towards foreigners and refugees. In January 2020, the ISEAS-Ishak Yusof Institute in Singapore released a region-wide survey, which assesses issues affecting Southeast Asia, ranging across great power rivalry, climate change, and refugees.³²⁸ The survey was completed online from 12 November to 1 December 2019. It drew a total of 1,308 respondents from all ten Southeast Asian countries. The target respondents were from five professional categories: research, business and finance, public sector, civil society, and the media. The rationale of such target

³²⁶ Rozanna Latiff and A Ananthalakshmi, "Anti-Migrant Sentiment Fanned on Facebook in Malaysia," Reuters, 14 October 2020, <https://www.reuters.com/article/uk-facebook-malaysia-rohingya-idUKKBN26Z0BP>.

³²⁷ These include Free Malaysia Today, The Star, Malaysiakini, Harian Metro and Sinar Harian.

³²⁸ Siew Mun Tang et al., *The State of Southeast Asia: 2020 Survey Report* (Singapore: ISEAS-Yusof Ishak Institute, 2020), 14.

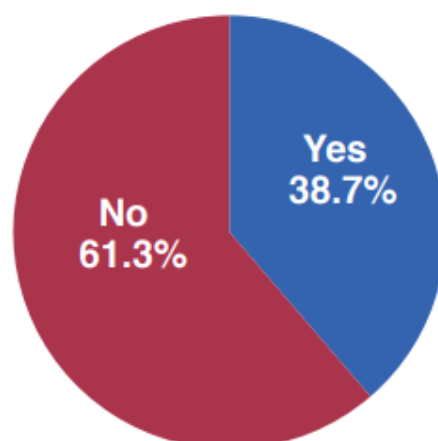
groups, as explained by the survey, is that these individuals are among those in a position to inform public policy. Their views can thus give significant insights on the public perception of and influence on refugee policies in Southeast Asia.

The survey asked respondents whether they were satisfied with the Association of Southeast Asian Nations' (ASEAN) response to solving conflicts in Rakhine State of Myanmar. This question not only illustrates popular perceptions of ASEAN but also indicates the level of empathy towards conflict resolution and protection of internally displaced populations such as the Rohingya. The results are split almost in the middle between those who desire to uphold ASEAN's principle of non-interference and those who desire to maintain ASEAN's credibility as an effective regional organisation in the eyes of Southeast Asian citizens and the international community. The survey result shows that 54.6 per cent of the respondents "strongly disapprove" or "disapprove" while 45.4 per cent "approve" and "strongly approve" the way ASEAN deals with the issue. Interestingly, the largest dissatisfaction comes from Malaysia (72.2%), Singapore (68.5%), and the Philippines (64.3%). Among Malaysian respondents, 38.8 per cent propose that ASEAN should mediate between the Myanmar government and the Rakhine and Rohingya communities and 31 per cent desire to see ASEAN step up diplomatic pressure on Myanmar. In contrast, the strongest supporters of ASEAN are found among Lao, Vietnamese, and Myanmar respondents.

Despite the large dissatisfaction with ASEAN's action, the survey result regarding Southeast Asians' perception of the Rohingya community reveals a different picture. The majority of respondents (61.3%) in Southeast Asia indicate that they do not support the resettlement of the Rohingya in their own respective country (see Figure 1). The strongest opposition is found among Lao and Cambodian respondents with 82.6 and 80.8 per cent respectively indicating they refuse to accept Rohingya refugees. In Malaysia, where Islamic affinities are often invoked by politicians, 68 per cent of respondents refuse to resettle the Rohingya. Surprisingly, this shows an inverse correlation with Malaysians' dissatisfaction towards ASEAN. The refusal rate from Malaysian respondents is even higher than that of Myanmar respondents, of which 66 per cent show their unwillingness to take in the ethnic Rohingya. Such a high level of unwillingness is alarming because if this view was shared by officials and leaders in Myanmar, it would make it very difficult to have viable solution towards the protracted displacement of the Rohingya and conflict in Rakhine State.³²⁹ In contrast, only respondents in the Philippines (61.3%) and Indonesia (56.1%) are more welcoming towards the Rohingya.

³²⁹ Ibid.

Figure 1: Willingness among Southeast Asians to accept the resettlement of the Rohingya population



Source: Siew Mun Tang et al., *The State of Southeast Asia: 2020 Survey Report* (Singapore: ISEAS-Yusof Ishak Institute, 2020), 14.

The survey by the ISEAS-Yusof Ishak Institute was conducted before the COVID-19 outbreak. To delineate the relationship between COVID-19 and Southeast Asian attitudes towards foreigners, an alternative survey is provided. The WHO, IFRC, and OCHA co-chaired a study to assess the impact of COVID-19.³³⁰ The report collected data from 4,993 respondents from Indonesia, Pakistan, Myanmar, and Malaysia from 29 May to 20 July 2020. Of these, 2,015 were Malaysian. Asked whether they think a specific group of people is responsible for spreading COVID-19, 50 per cent of Malaysian respondents “fully believe” that a specific group is responsible and another 19 per cent think that a specific group is “a little responsible.” Putting these two categories of respondent together, the data reveals that 69 per cent of Malaysian respondents believe a specific group of people is responsible for the virus outbreak. Despite the obvious origin of COVID-19 from China, the response rate reveals respondents’ tendencies in singling out a particular group of people in the spread of COVID-19. In comparison, this is significantly higher than the results from Indonesian, Myanmar, and Pakistani respondents with 55, 32, and 30 per cent respectively thinking a specific group of people is responsible for spreading COVID-19. Furthermore, Malaysian respondents also specifically named “Chinese people, returning migrants, foreign tourists, ‘illegal foreigners’, migrant workers and foreigners” for causing the spread of COVID-19.³³¹

The pandemic-induced discrimination and hate speech are not unique to Malaysia and can also be seen in the other two major migrant-receiving countries, Singapore and Thailand. In Singapore, offensive tweets against migrants surfaced in March and April 2020. However, the incident drew a strong condemnation from Law and Home Affairs Minister K. Shanmugam, and the offender was subsequently charged under Penal Code 298A with four counts of disrupting

³³⁰ Eloise Adsett et al., *Covid-19: Community Insights from the Asia Pacific Region* (Washington, DC: World Health Organization, International Federation of Red Cross and Red Crescent Societies, Office for the Coordination of Humanitarian Affairs, 2020), 12.

³³¹ Ibid.

racial harmony.³³² In Thailand, the second wave of COVID-19 in December 2020 brought a surge of discriminatory remarks against Myanmar migrant workers. Many social media users compared the outbreak with Thailand's loss of independence by invoking the state-sanctioned nationalistic school lesson in which Thai citizens were inculcated with the idea that the Burmese conquered and burned down Thailand's historic kingdom of Ayutthaya in the 18th century.

Interestingly, the preliminary survey of 440 online reactions to migrant worker-related COVID-19 clusters reported by *Thairath* (one of the highest circulating Thai newspapers) demonstrates a rather mixed picture of public attitude. Online reaction to the Thai state's discriminatory policy that strictly prohibited migrant movement but allowed Thai citizens to travel in and out of affected zones revealed that numerous Facebook users expressed objection as opposed to overwhelming support for such policies. Several users called the policy "stupid" and suggested that authorities ironically did not put sufficient effort into detecting cross-border movement as they were too preoccupied with cracking down on pro-democracy protests. Many Facebook comments also reminded the government that the virus did not discriminate against a particular nationality or ethnicity.³³³ In contrast, as shown in the following section, in Malaysia hate speech occupies a dominant position in online expression.

To reveal the experiences of migrants and refugees as targets of discrimination and xenophobia, we turn to data collected by the Mixed Migration Centre (MMC). The MMC provides a snapshot of the COVID-19 impact on the Rohingya in Malaysia. Between 1 and 22 May 2020, the MMC conducted phone interview with 64 participants, of which 44 were Rohingya and 20 were Bangladeshi migrants. The result indicates that 19 out of 44 Rohingya respondents experienced increased racism and xenophobia since the pandemic.³³⁴ Interestingly in comparison and not to suggest the absence of discrimination, the same survey showed that none of Bangladeshi migrants reported increased racism or xenophobia. This implies that hate speech and discrimination targeted the Rohingya community more than other groups during the pandemic.

Building on the first survey in May, the MMC conducted another survey in July 2020. Among 79 Rohingya respondents, 33 reported experiencing increased racism and xenophobia.³³⁵ These survey results further indicate that hate speech and racism is not only expressed online but also becomes something that refugees and migrants lived through in their time in Malaysia. For instance, during the pandemic, a Rohingya grass-cutter became the target of harassment by a local who abused him verbally and demanded proof of his Islamic faith.³³⁶ While this section encapsulates the broad perception of Southeast Asians, the following sections offer an overview of the Rohingya refugees' settlement and protection entitlements in Malaysia before examining hate speech and incitement against the Rohingya during the COVID-19 pandemic.

332 Shaffiq Alkhatib, "Man Allegedly Posing as 'Sharonliew86' Charged over Offensive Tweets against Racial Harmony," *The Straits Times*, 24 May 2020, <https://www.straitstimes.com/singapore/courts-crime/man-allegedly-posing-as-sharonliew86-charged-over-offensive-tweets-against>.

333 Thairath – ไทยรัฐออนไลน์, "#โควิด19 สมุทรสาคร คนไทยยังสามารถเดินทางไป #เลือกตั้งอบจ ได้ แต่ห้ามคนต่างด้าว เข้าออกจังหวัด เด็ดขาด," Facebook, 20 December 2020, <https://www.facebook.com/thairath/posts/10160146222632439>.

334 Mixed Migration Centre, "Understanding the Impact of Covid-19 on Rohingya and Bangladeshis in Malaysia (June 2020)," accessed 6 February 2021, https://drc.ngo/media/n4ilky1b/4mi_asia_june2020_2.pdf.

335 Mixed Migration Centre, "Understanding the Impact of Covid-19 on Rohingya and Bangladeshis in Malaysia (Update#2)," accessed 6 February 2021, <http://www.mixedmigration.org/resource/4mi-snapshot-understanding-the-impact-of-covid-19-on-rohingya-and-bangladeshis-in-malaysia-update2/>.

336 Free Malaysia Today, "Rohingya Grass-Cutter Harassed over Islamic Knowledge as Online Xenophobia Spills Over," 28 April 2020, <https://www.freemalaysiatoday.com/category/nation/2020/04/28/rohingya-grass-cutter-harassed-over-islamic-knowledge-as-online-xenophobia-spills-over/>.

The Rohingya Journey and Settlement to Malaysia

Malaysia hosts one of the largest urban refugee populations in the world. The country has a history of providing temporary asylum since the 1970s. For example, Malaysia accommodated Filipino refugees from Mindanao in the 1970s and 1980s; Cambodian and Vietnamese refugees in the late 1980s and 1990s; a small number of Bosnian refugees in early 1990s; and some Acehnese in early 2000s. As of December 2020, the United Nations High Commissioner for Refugees (UNHCR) indicates that Malaysia hosts 178,450 refugees and asylum seekers registered with the UNHCR. Approximately 153,800 are from Myanmar. Within this group, 102,020 are Rohingya, 22,440 Chins, and 29,340 other ethnic groups from conflict-affected areas or fleeing persecution in Myanmar. Of all Rohingya refugees, the 2014 statistics show 9,761 are children under the age of 17.³³⁷ In addition to refugees from Myanmar, approximately 24,650 refugees are from 50 countries in Central Asia, the Middle East, and Africa.³³⁸

The settlement of the Rohingya population in Malaysia can be traced back to the late 1970s. The exodus of the Rohingya community started after 1977 when the Myanmar government launched a campaign called *Nagamin* (King of Dragons). Citing unity of the country, the Ministry of Home and Religious Affairs sought to inspect identification cards and take “actions against foreigners who have filtered into the country illegally”.³³⁹ This campaign also demonstrates the nationalist military viewpoint that viewed the Arakanese Muslims as “illegal aliens” who needed to be screened out.³⁴⁰ It further reinforced the earlier attempts by the military government after the 1962 coup whose measures pushed the Rohingya to leave Burma by withdrawing their citizenship, restricting their freedom, and creating obstacles for the Rohingya who wanted to join civil service.³⁴¹ The *Nagamin* campaign created a humanitarian crisis, resulting in the internal displacement of Rohingya population. The majority of more than 200,000 Rohingya sought refuge in Bangladesh with some 200 to 300 “Burmese Muslims” reported to have crossed the Thai border into Malaysia at the beginning of 1981.³⁴²

The exodus of the Rohingya to neighbouring countries became increasingly visible following the 2012 communal violence. In May 2015, the plight of the Rohingya gained international attention with the discovery of a human smuggling and trafficking ring as well as the humanitarian boat crisis. In the former instance, smuggled Rohingya were trekking in the deep forest en route to Malaysia but found themselves trafficked and trapped in the prison jungle camps along the Thai-Malaysian border. On the Thai side, mass graves of at least 30 bodies were found, implicating many corrupt local officials. It also led to the biggest human-trafficking trials in Thailand, involving 102 defendants and 62 convictions.³⁴³

³³⁷ Equal Rights Trust, *Equal Only in Name: The Human Rights of Stateless Rohingya in Malaysia* (London: Equal Rights Trust, 2014), 15.

³³⁸ UNHCR, “Figures at a Glance in Malaysia,” accessed 6 February 2021, <https://www.unhcr.org/en-au/figures-at-a-glance-in-malaysia.html#:~:text=As%20of%20end%20October%202020,or%20fleeing%20persecution%20in%20Myanmar>.

³³⁹ Human Rights Watch, “Southeast Asia: Accounts from Rohingya Boat People,” accessed 6 February 2021, <https://www.hrw.org/news/2015/05/27/southeast-asia-accounts-rohingya-boat-people>.

³⁴⁰ Kazi Fahmida Farzana, *Memories of Burmese Rohingya Refugees: Contested Identity and Belonging* (New York: Palgrave Macmillan, 2017), 50.

³⁴¹ Human Rights Watch, “Southeast Asia: Accounts from Rohingya Boat People.”

³⁴² Sothi S. Rachagan, “Refugees and Illegal Immigrants: The Malaysian Experience with Filipino and Vietnamese Refugees,” in *Refugees: A Third World Dilemma*, ed. John R. Rogge (New Jersey: Rowman & Littlefield, 1987), 254.

³⁴³ Ruji Auethavornpipat, “Addressing the Root Causes of Conflict-Driven Human Trafficking in Southeast Asia,” *Asia Pacific Bulletin*, no. 396 (2017): 1.

In addition, authorities found 139 graves in a series of 28 camps on the Malaysian side.³⁴⁴ Within the same month, the international community kept a close watch on the Southeast Asian region due to a serious humanitarian “boat crisis” during which regional governments engaged in “human ping-pong” – pushing back boats carrying Rohingya refugees, leaving them stranded at sea with limited food and water and very poor sanitation. The journey was reported to take at least two months and an additional 3,000 to 4,000 people were estimated to still be at sea. In response, foreign ministers met on 21 May 2015 in Kuala Lumpur where Malaysia and Indonesia agreed to accept the boats. However, the agreement came with the one condition that the international community should provide humanitarian assistance and help resettle or repatriate all asylum seekers within one year.³⁴⁵

The disruption of trafficking rings along the Thai-Malaysian border made it more difficult for Rohingya refugees to rely on jungle routes and so the smuggling of Rohingya refugees has recently used a maritime passage. Escaping from crowded and poor living conditions in refugee camps in Cox’s Bazaar, Rohingya refugees need to make a down payment of approximately USD2,000, paid via mobile banking by a refugee’s husband or relatives in Malaysia.³⁴⁶ Refugees are then taken to the coast after bribing corrupt security forces at barb-wired security checkpoints. Departure points span from the Chittagong Division in Bangladesh to Rakhine State in Myanmar. In Rakhine, refugees depart from confined internally displaced persons camps and others from villages where their freedom of movement is seriously constrained. Rohingya refugees are then transferred to a small boat that hold about a dozen people before moving onto bigger boats that can hold about 1,000 people. These vessels are piloted by crews from Myanmar and smaller supply boats would bring them regular supplies such as food and drinking water.³⁴⁷ Following their departure, the vessels travelled south-east towards Malaysia.³⁴⁸ Indonesia, particularly Aceh, increasingly became a transit point where local fishermen-turned-smugglers transport the Rohingya into Malaysia via a narrow sea crossing that separates the two countries.³⁴⁹ In 2020, amid the COVID-19 border closure, it was reported that approximately 500 Rohingya made it to Malaysia in three vessels.³⁵⁰

As for the question of why Malaysia is a preferred destination, the data from the survey conducted by the MMC reveals an interesting contrast to the general perception that the Rohingya population deliberately and intentionally select Malaysia as a preferred destination country. Overwhelmingly, 75.7 per cent or 153 respondents out of 202 surveyed Rohingya in Malaysia indicated that the smuggler was the one who chose the route. Only 24 per cent or 49 Rohingya indicated Malaysia was recommended by their family and network, and even fewer respondents said travelling to Malaysia was the easiest or most cost-effective option.³⁵¹ As such, this raises questions of the smugglers’ operation and network across the region.

³⁴⁴ Human Rights Watch, “Southeast Asia: Accounts from Rohingya Boat People.”

³⁴⁵ Ibid.

³⁴⁶ AFP, “Rohingya Trafficking Network Sells Dreams, Delivers Violence and Extortion,” *Bangkok Post*, 15 December 2020, <https://www.bangkokpost.com/world/2035715/rohingya-trafficking-network-sells-dreams-delivers-violence-and-extortion>.

³⁴⁷ Ibid.

³⁴⁸ UNHCR, “Refugee Movements in South-East Asia 2018 - June 2019,” accessed 6 February 2021, <https://www.unhcr.org/5d91e2564.pdf>.

³⁴⁹ AFP, “Rohingya Trafficking Network Sells Dreams, Delivers Violence and Extortion.”

³⁵⁰ Ibid.

³⁵¹ Mixed Migration Centre, “Drivers and Protection Risks of Rohingya En Route to Malaysia,” accessed 6 February 2021, http://www.mixedmigration.org/wp-content/uploads/2019/07/067_snapshot_asia.pdf

While at sea, Rohingya refugees can be subject to numerous human rights abuses. Malaysia's Human Rights Commission (SUHAKAM) and a non-governmental organisation (NGO) called Fortify Rights reveal that rights violations can include deception, which Rohingya survivors described they were made to believe they would be transported to Malaysia for a single or no fee while some traffickers promised the offer of jobs and legal status together with lump-sum payments for their left-behind family members in Rakhine and Bangladesh. Rohingya are also subject to physical and sexual violence such as beating, torture, and rape, murder, death from food and water deprivation, and suicide.³⁵² The reliance on smuggling networks make the Rohingya vulnerable to rights violations, which does not end at sea as the difficulties of accessing rights protection is further aggravated by their immigration status once they arrive in Malaysia.

Criminalization of Refugees and Undocumented Migrants in Malaysia

Undocumented migrants, refugees, and asylum seekers are widely labelled in Malaysia as "PATI" (Pendatang Asing Tanpa Izin, translated as "illegal migrants" in English). Immigration matters are the purview of the Ministry of Home Affairs and the National Security Council. The entry of migrants and refugees without authorisation is considered a breach of immigration laws and is punishable by whipping, detention, imprisonment, and deportation. Section 6(3) of the Immigration Act 1959/63 states that a foreigner illegally entering Malaysia would be subject to a fine not exceeding RM10,000 or imprisonment for a term no greater than five years or both and subject to whipping of not more than six strokes prior to subsequent removal.³⁵³ Furthermore, when arrested or detained, interpretation service is often limited and the representation of refugees is uncommon as they are not entitled to a duty solicitor for remand, bail, and mitigation hearings, and the burden of proof rests on the accused. Migrants and refugees found in contravention of immigrations laws are subsequently sent to an immigration depot and deported once their prison sentence is completed.³⁵⁴ As of 2017, there were 47,092 detainees and 885 minors held in Malaysian Immigration Detention.³⁵⁵

Malaysia is not a state party to the 1951 Refugee Convention and so refugee status is not recognised by the state. Therefore, Malaysia does not have legal obligations and frameworks for dealing with asylum seekers and refugees. Without legal status, refugees are not formally entitled to rights such as employment, education, and healthcare. However, the UNHCR is in a unique position to advance some protection for refugees in Malaysia. In 2005, an Attorney General's Circular provided a certain degree of immunity from prosecution for asylum seekers and refugees registered with the UNHCR. The Circular states:

³⁵² SUHAKAM and Fortify Rights, *Sold Like Fish: Crimes against Humanity, Mass Graves, and Human Trafficking from Myanmar and Bangladesh to Malaysia from 2012 to 2015* (Kuala Lumpur: SUHAKAM and Fortify Rights, 2019), 26.

³⁵³ Immigration Department of Malaysia, "Frequently Committed Offences " accessed 6 February 2021, <https://www.imi.gov.my/portal2017/index.php/en/main-services/entry-requirements-into-malaysia/offences-frequently-committed-by-foreigners.html>.

³⁵⁴ Katrina Munir-Asen, *(Re)Negotiating Refugee Protection in Malaysia: Implications for Future Policy in Refugee Management* (Bonn: German Development Institute, 2018), 14.

³⁵⁵ Global Immigration Detention Observatory, "Malaysia Immigration Detention Data Profile," 2020, accessed 8 February 2021, <https://www.globaldetentionproject.org/wp-content/uploads/2020/12/Malaysia-Detention-Data-Profile-2020.pdf>.

all persons of concern who were registered with UNHCR prior to their arrest on immigration grounds should not be prosecuted in court, but should be released from all charges pertaining to illegal entry. For those who were registered with UNHCR after their arrest, the relevant court and prosecutor have the discretion whether to release them or not from prosecution and detention. In the meantime, UNHCR will negotiate with authorities for the release of those persons.³⁵⁶

As such, registration with the UNHCR is crucial for protecting asylum seekers and refugees from arrest, detention, and deportation. The government also previously attempted to grant employment rights to Rohingya refugees in 2006, which halted after 17 days. Another attempt was in 2016 when the government aimed to give working rights to 300 Rohingyas in the plantation and manufacturing sectors. Between 2015 and 2018, the government also carried out separate temporary residence and work rights programs for 3,000 Syrian refugees with the IMM13 permits for entire families. With this permit, children would be given access to education and the family would receive a 50 per cent discount for public hospitals.³⁵⁷

Yet despite ad hoc policies to support refugees' livelihoods, it is reported that immigration raids as well as detention of refugees and undocumented migrants persist. The UNHCR reported in 2015 that 5,648 asylum seekers and 2,282 refugees were detained and prosecuted for immigration-related violations. Between January and July 2018, it made 100 visits to detention centres to either register or release refugees.³⁵⁸ The raids also continued during the COVID-19 pandemic as at least 1,368 undocumented migrants were rounded up despite the government's previous reassurance that they had nothing to fear in coming forth for COVID-19 testing.³⁵⁹ As of 26 October 2020, the Home Minister stated 756 children were held in immigration detention facilities, including 326 from Myanmar detained without parents or guardians.³⁶⁰ The lack of legal status not only subjects migrants and refugees to punishments but it also makes them an easy target of hate speech and incitement, which is discussed in the following sections.

Causes of Hate Speech and Incitement in Malaysia

This section demonstrates how two specific events related to Rohingya refugees instigated an uncontrollable rise of online hate speech and incitement, subsequently sparking a backlash against the whole Rohingya community. Hate speech in Malaysia fits into the regional and global trend illustrated by academic studies revealing that migrants and refugees are often a target of hatred and discrimination.³⁶¹ In Malaysia, this is not the first time migrants have

³⁵⁶ Munir-Asen, *(Re)Negotiating Refugee Protection in Malaysia*, 15.

³⁵⁷ Puteri Nor Ariane Yasmin, "Opportunities for Refugee Access to Work in Malaysia," *ISIS Policy Brief*, no. 1-19 (2019): 1.

³⁵⁸ Munir-Asen, *(Re)Negotiating Refugee Protection in Malaysia*, 16.

³⁵⁹ Andika Wahab, "The Outbreak of Covid-19 in Malaysia: Pushing Migrant Workers at the Margin," *Social Sciences & Humanities Open* 2, no. 1 (2020): 5; Rozanna Latiff, "Malaysia Seizes Hundreds of Migrants in Latest Lockdown Raid," Reuters, 12 May 2020, <https://www.reuters.com/article/us-health-coronavirus-malaysia-migrants-idUSKBN2201T5>.

³⁶⁰ Human Rights Watch, "Malaysia: End Abusive Immigration Detention," accessed 6 February 2021, <https://www.hrw.org/news/2020/11/20/malaysia-end-abusive-immigration-detention>.

³⁶¹ Carlos Arcila Calderón, David Blanco-Herrero, and María Belén Valdez Apolo, "Rejection and Hate Speech in Twitter: Content Analysis of Tweets about Migrants and Refugees in Spanish," *Revista Española de Investigaciones Sociológicas* 172 (2020): 31.

experienced derogative remarks and exclusionary policies.³⁶² In the mid-1990s, migrants became demonised and portrayed as “undesirable aliens,” the depiction that served to generate a national imaginary against outsiders through ethno-nationalism.³⁶³

The pandemic has revived the undesirability of migrants and refugees in Malaysia. In particular, two major incidents contributed to the surge of hate speech and incitement: first, the arrival of refugee boats during the lockdown, and second, misinformation about a Rohingya activist. It should also be noted that despite the drastic increase of hate speech and incitement of violence, these two incidents fortunately have not created wide-scale communal violence between the host and Rohingya communities in Malaysia.

Before discussing the rise of hate speech, the context of COVID-19 in Malaysia is provided to describe the environment that both refugees and social media users were in. The COVID-19 pandemic broke out in China’s neighbouring countries in early 2020. As of January 2021, Malaysia has more than 130,000 confirmed cases and 551 deaths. Malaysia’s first three COVID-19 cases were reported on 25 January 2020 and associated with Chinese citizens entering the country via Singapore. The first local transmission subsequently began on 4 February 2020 and confirmed COVID-19 cases spiked from 14 March 2020 onwards (see Figure 2). The sharp increase of local cases was also connected to an Islamic gathering attended by 16,000 people in Kuala Lumpur.³⁶⁴

To control the virus, the government imposed the Movement Control Order (MCO) on 18 March 2020, closing all businesses except for essential services. The MCO in effect closed the border, prohibiting citizens from leaving and foreigners from entering.³⁶⁵ With the border shut, the arrival of refugees without proper medical screening became a source of anxiety among the general public, especially when the arrival was also interpreted as a direct threat to Malaysia’s border and security. As put by Malaysian Senior Minister Ismail Sabri Yaakob, “Prior to this, there was no issue with them [Rohingya] coming here. But of late, during the Movement Control Order (MCO) there have been many reports and videos on social media on the Rohingya to provoke public anger towards them”.³⁶⁶ The way in which this incident sparked hate speech is discussed in detail below.

³⁶² Ruji Auethavornpipat, “Explaining the Lack of Change in Southeast Asia: The Practice of Migrant Worker Rights in the ‘ASEAN Migration Field’,” *International Journal of Migration and Border Studies* 5, no. 3 (2019): 164.

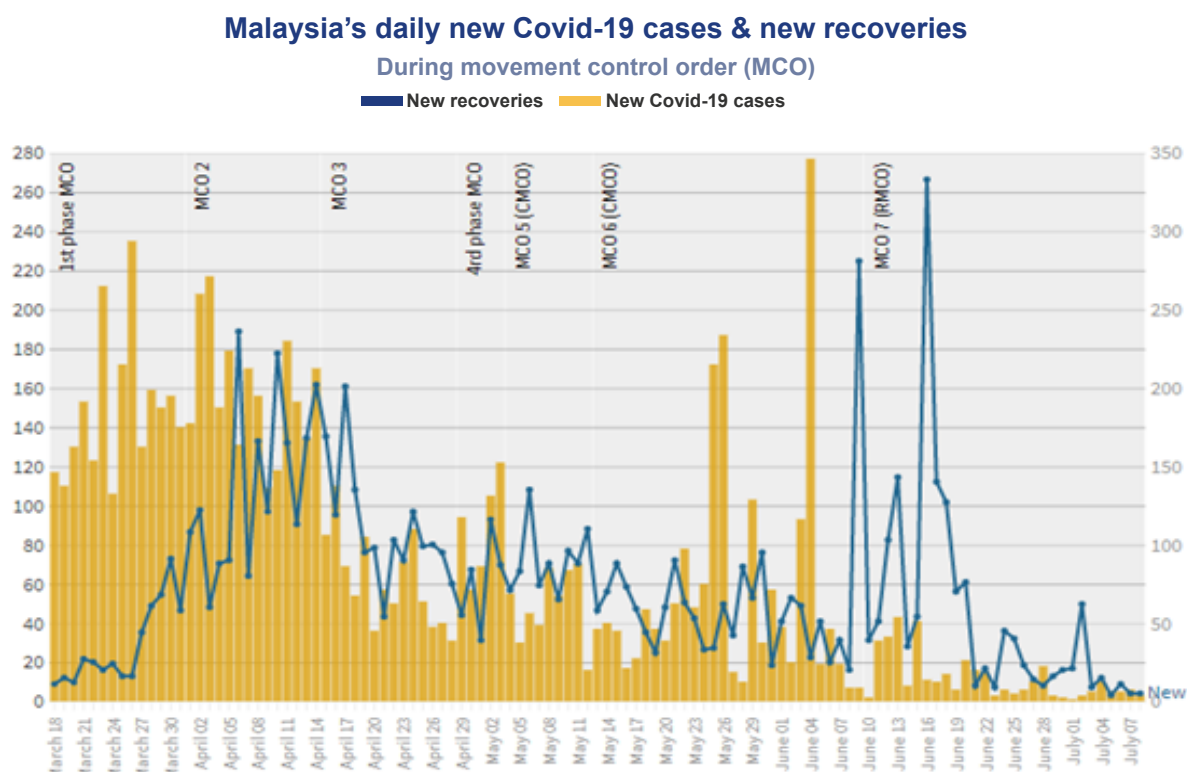
³⁶³ Lucy Healey, “Gender, ‘Aliens’, and the National Imaginary in Contemporary Malaysia,” *SOJOURN: Journal of Social Issues in Southeast Asia* 15, no. 2 (2000): 223.

³⁶⁴ Reuters, “Made in Malaysia: How Mosque Event Spread Virus to SE Asia,” *Al Jazeera*, 18 March 2020, <https://www.aljazeera.com/news/2020/3/18/made-in-malaysia-how-mosque-event-spread-virus-to-se-asia>.

³⁶⁵ Joseph Sipalan, “Malaysia Closes Borders, Schools and Businesses as Virus Tally Climbs,” *Reuters*, 16 March 2020, <https://www.reuters.com/article/us-healthcare-coronavirus-malaysia/malaysia-closes-borders-schools-and-businesses-as-virus-tally-climbs-idUSKBN2131JY>.

³⁶⁶ Faiz Zainudin, “Why All the Fuss over Rohingya Now, Asks Senior Minister,” *Free Malaysia Today*, 27 April 2020, <https://www.freemalaysiatoday.com/category/nation/2020/04/27/why-all-the-fuss-over-rohingya-now-asks-senior-minister/>.

Figure 2: Malaysia's COVID-19 cases in early 2020



Source: R. Loheswar, "With 78pc of Covid-19 Cases Now from Foreign Workers, Dr Noor Hisham Calls for More Attention on Their Poor Living Conditions," *Malay Mail*, 29 May 2020.

REFUGEE BOAT ARRIVALS DURING THE COVID-19 LOCKDOWN

The rise of xenophobic rhetoric started after a refugee vessel reached Malaysia's shore when the MCO was still in effect. On 5 April 2020, a boat carrying 202 Rohingya was found adrift near the northern resort island of Langkawi. In response, Malaysian authorities arrested 152 men, 45 women and 5 children on board before handing them over to the Immigration Department with plans for COVID-19 screening and subsequently deportation.³⁶⁷ Shortly after, on 16 April 2020, the Royal Malaysian Air Force (RMAF) identified another boat carrying 200 people about 130 kilometres west of Langkawi Island. Malaysian authorities forcibly pushed the boat back to sea after giving some food and water.³⁶⁸ Such official responses to Rohingya refugee boats represent a drastic shift from the previous Najib Razak administration (2009-2018), which was more accommodating to the Rohingya despite the criticisms that the government exploited the Rohingya cause for political motives.³⁶⁹

³⁶⁷ Associated Press, "Malaysia Detains Boatload of 202 Presumed Rohingya Refugees," *ABC News*, 5 April 2020, <https://abcnews.go.com/International/wireStory/malaysia-detains-boatload-202-rohingya-refugees-69983424>.

³⁶⁸ Rashvinjeet S. Bedi, "UNHCR Urges Compassion in Handling of Rohingya Boat People," *The Star*, 19 April 2020, <https://www.thestar.com.my/news/focus/2020/04/19/unhcr-urges-compassion-in-handling-of-rohingya-boat-people>.

³⁶⁹ Associated Press, "Malaysia PM Urges World to Act against 'Genocide' of Myanmar's Rohingya," *The Guardian*, 4 December 2016, <https://www.theguardian.com/world/2016/dec/04/malaysia-pm-urges-world-to-act-against-genocide-of-myanmars-rohingya>.

Official responses provided justification for rejecting refugees, which the public capitalised on in singling out the Rohingya community. The RMAF announced, "With their poor settlements and living conditions ... it is strongly feared that undocumented migrants who try to enter Malaysia either by land or sea will bring [Covid-19] into the country."³⁷⁰ Further reaffirming Malaysia's decision, UMNO (United Malays National Organization) Deputy President Datuk Seri Mohamad Hasan indicated that Malaysia "far exceeded" its capacity to host refugees and resources to support their well-being had been depleted. Moreover, the decision to tow back the boat was also to send a warning and cut off any future cross-border movement. Mohamad indicated that, "Receiving the Rohingya at times like this could open the floodgates for more foreign nationals and vessels to approach the Malaysian border and therefore hinder the government's effort to fight Covid-19."³⁷¹

News of boat arrivals during the lockdown led to opposition against the Rohingya community online. A common pattern of hate speech exhibits the locals' desire to refuse and eject Rohingya refugees from the country while asking the government to prioritize citizens' welfare. This is evidenced in a series of responses on Facebook to *The Star's* news report on UMNO Deputy President Mohamad's above remarks refusing the refugees entry.³⁷²

One Facebook user commented, "Get rid of those already here. They are the reason many of them keep coming."

Another Facebook user asked the government to take care of the locals first:

We have many more poorer of our own peoples and our peoples are not working at the moment of times and foods are not cheap nowadays as we are not working and our financial are very fast going down to zero and do we need to accept them [Rohingya] in our country at the moment of time. Don't let them into Malaysia.

Another Facebook user reiterated the same sentiment:

Charity begins at home. Blood is also thicker than water. Priorities should be given to our citizens not outsiders. Let the dust of cov19 settle before accepting them. Anyway we [are] already facing a problem in taking care of them. Anyway they are not very appreciative to us for giving them three meals per day.

Another user employed strong xenophobic language to construct a negative stereotype: "Rohingya in Malaysia is a nightmare compare to other races. Especially they throw rubbish everywhere they like without consideration for our host country."

This particular news report received one comment on Facebook in which violence was incited, "What you [UMNO Deputy President Mohamad did] is very good, next time try to 'shoot to kill' to minimise the risk of infecting us rakyats [peoples]."

³⁷⁰ Bedi, "UNHCR Urges Compassion in Handling of Rohingya Boat People."

³⁷¹ Sarban Singh, "Tok Mat: We Had No Choice but to Turn Away Boat of Rohingya Refugees," *The Star*, 19 April 2020, <https://www.thestar.com.my/news/nation/2020/04/19/tok-mat-we-had-no-choice-but-to-turn-away-boat-of-rohingya-refugees>.

³⁷² *The Star*, "Malaysia has 'far exceeded' its capacity to host refugees, said the Umno deputy president," Facebook, April 20, 2020, <https://www.facebook.com/TheStarOnline/posts/10156511997352255>.

Clearly perceived as a breach of border and health security, the arrival of the boats at the early stage of the lockdown sparked an outcry among online users in Malaysia. Hate speech would greatly increase with the spread of misinformation about Rohingya activists, as demonstrated below.

MISINFORMATION ON ROHINGYA COMMUNITY ACTIVISM

Following boat arrivals during the lockdown, misinformation on Rohingya activists in Malaysia exacerbated hate speech from late April onwards. In a campaign of misinformation, it was widely spread that the leader of the Myanmar Ethnic Rohingya Human Rights Organisation Malaysia (Merhrom), Zafar Ahmad Abdul Ghani, had demanded the Malaysian government grant citizenship to the Rohingya community.³⁷³ Zafar has denied he made claims for full citizenship and further explained that he only wanted ASEAN to put pressure on Myanmar to stop the persecution of the Rohingya and that he called for humanitarian aid for refugees already in Malaysia.³⁷⁴ Coupled with this incident, Zafar's letter submitted to the Ministry of Human Resources, dated 14 January 2020, was subsequently shared on the internet and used to negatively portray the Rohingya community. The letter simply outlined the difficulties the Rohingya faced in Malaysia and called for greater access to health, employment, development, and education.³⁷⁵ However, this list of demands was interpreted by local media as "stepping on the [Malaysian] host's head."³⁷⁶ This depiction of the Rohingya population was extremely offensive as the head in Malaysian culture is the revered part of the body and the feet, being dirty, should not be raised or put on anyone's head. In effect, the Rohingya population was portrayed as being ungrateful by overstepping their boundaries in making demands for their well-being.

Zafar's repudiation of the misinformation failed to stop the hateful rhetoric against him, personally, and the wider Rohingya community. Condemnations and threats were also directed at Zafar, his family and Merhrom committee members. Zafar himself was also accused of breaching the MCO during the pandemic. It was further reported that Zafar was living in fear as he became a direct target of online hate speech and death threats.³⁷⁷ As Zafar describes, "People have been calling me constantly saying they want to kill me ... It's mental torture and my kids are traumatised and can't study."³⁷⁸ A report by Free Malaysia Today on 25 April 2020 compiled reactions on Twitter and Facebook that targeted Zafar and the whole Rohingya community:

³⁷³ Robin Augustin, "Fake News Sparks Hateful Remarks against Rohingya Refugees," Free Malaysia Today, 4 April 2020, <https://www.msn.com/en-my/news/national/fake-news-sparks-hateful-remarks-against-rohingya-refugees/ar-BB13auC7#image=1>.

³⁷⁴ Arjun Mohanakrishnan, "Rohingya Association President Claims He Has Been Receiving Constant Threats," *The Sun Daily*, 25 April 2020, <https://www.thesundaily.my/local/rohingya-association-president-claims-he-has-been-receiving-constant-threats-EB2333413>.

³⁷⁵ Malaysia United, "Mereka Sudah Mula Tuntut Macam-Macam, Lelaki Dedah Surat Presiden Rohingya Kepada Kerajaan [They Have Started Demanding Various Things, Men Reveal the Rohingya President's Letter to the Government]," 23 April 2020, <https://www.malaysiaunited.my/mereka-sudah-mula-tuntut-macam-macam-lelaki-dedah-surat-presiden-rohingya-kepada-kerajaan/>.

³⁷⁶ Arini Saleh, "Seakan Pijak Kepala Tuan Rumah, Lelaki Dedah Antara Tuntutan Presiden Rohingya Malaysia [As if Stepping on the Host's Head, a Man Is Exposed to the Demands of the Rohingya President of Malaysia]," *OHBULAN!*, 22 April 2020, <https://ohbulan.com/seakan-pijak-kepala-tuan-rumah-ini-antara-tuntutan-presiden-rohingya-malaysia>.

³⁷⁷ Free Malaysia Today, "Rohingya Spokesman Lives in Fear after Fake News on Citizenship Sparks Death Threats," 24 April 2020, <https://www.freemalaysiatoday.com/category/nation/2020/04/24/rohingya-spokesman-lives-in-fear-after-fake-news-on-citizenship-sparks-death-threats/>.

³⁷⁸ Mohanakrishnan, "Rohingya Association President Claims He Has Been Receiving Constant Threats."

One Twitter user commented,

"I am Malaysian and I can be racist to those stinky scumbags who don't respect our deeds and laws. So go f*ck your Rohingyas' assess into the seas, most of us don't care and don't want Rohingya refugees. If you go to Malaysian facebook and forum, you will see our hatred."

Another Twitter user stated,

"Does the UNCHR card make them immune to the law? The time has come to cleanse this country of foreigners."

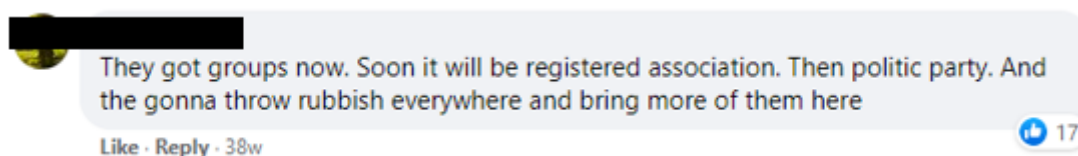
Similarly, a Facebook user commented,

"Chase the Rohingya refugees out, it is not our responsibility to look after them and they have become extremists and a threat to the social, security and health situation of the people and country."

The online reaction against the Rohingya also exhibited the backlash against broader human rights principles, "Don't disturb us Malaysians as we are facing an economic downturn and cannot afford to support Rohingya anymore. Don't use human rights as an issue to cheat and ask for help."

Such negative rhetoric is alarming. Amnesty International expressed concerns that the rising discrimination against the Rohingya only served to reinforce "stereotypes that they are disease carriers are xenophobic and completely unsubstantiated."³⁷⁹

The misinformation and hate speech has also done further damage to the Rohingya community's internal cohesion and solidarity. Other Rohingya groups deliberately distanced themselves from both Zafar and Merhrom. Specifically, 17 Rohingya groups released a joint apology statement, "strongly condemn[ing]" Zafar's statement and calling it "unrealistic and irresponsible".³⁸⁰ Surprisingly, Rohingya groups also urged Malaysian authorities to take harsh action against Merhrom to prevent Zafar from making additional remarks that disregarded Malaysia's "national interests and its peoples' feelings and sentiments". Their joint statement also discredited Zafar by claiming that he was never elected as their leader, thus he was not in position to issue any demands on behalf of the Rohingya people. Although this statement of apology was meant to avert future online hate speech and reconcile with the Malaysian host community, the Rohingya population received further negative reaction from internet users after its release. For instance, one Facebook user appears to be wary of all Rohingya organisations:



³⁷⁹ Augustin, "Fake News Sparks Hateful Remarks against Rohingya Refugees."

³⁸⁰ New Straits Times, "Rohingya Groups Apologise to Malaysia for Merhrom's 'Irresponsible' Statements," *New Straits Times*, 26 April 2020, <https://www.nst.com.my/news/nation/2020/04/587626/rohingya-groups-apologise-malaysia-merhroms-irresponsible-statements>.

Despite the attempt to mitigate online hatred, the Rohingya group is perceived as troublesome, not worthy of resettlement in Malaysia.

In addition to internal fragmentation, misinformation also damaged external support for the Rohingya community. In response to the demand made by the Rohingya, Malaysian Home Minister Datuk Seri Hamzah Zainudin stated:

Any organisation that claims to represent the Rohingya ethnic group is illegal under the RoS [Registration of Societies] Act, and legal action can be taken ... Therefore, Rohingya nationals who are holders of the United Nations High Commissioner for Refugees (UNHCR) card have no status, rights or basis to make any claims on the government.³⁸¹

In doing so, the Rohingya and refugees were classified as “illegal” migrants, deprived of rights and protection. More broadly, Human Rights Watch indicated that, “Numerous online petitions calling for the expulsion of Rohingya were launched on [Change.org](#) and other platforms. Some petitions garnered thousands of signatures. Online users threatened prominent Rohingya activists, as well as their supporters, with physical attacks, murder and sexual violence.”³⁸² Alarming, three out of five online petitions collected more than 360,000 signatures.³⁸³

Generalisable Patterns of Hate Speech against the Rohingya in Malaysia

While the previous section shows the online reaction towards two specific incidents, this section demonstrates the generalisable patterns of hate speech in the aftermath of such incidents. Three patterns of hate speech can be observed: first, online rhetoric dehumanises the Rohingya group; second, online rhetoric constructs the Rohingya community as a threat to Malaysia’s national security during the pandemic; and third, as a result of perceived threats, extraordinary measures such as incitement to violence should be enacted in response.³⁸⁴

PATTERN I: DEHUMANISING RHETORIC

Dehumanising and derogatory rhetoric can lead to political radicalisation and deteriorates intergroup relations.³⁸⁵ Haslam explains the process of dehumanisation, “[d]enying uniquely human attributes to others represents them as animal-like, and denying human nature

³⁸¹ Mazwin Nik Anis, “Rohingya Refugees Have No Right or Basis to Make Demands, Says Home Minister,” *The Star*, 30 April 2020, <https://www.thestar.com.my/news/nation/2020/04/30/rohingya-refugees-have-no-right-or-basis-to-make-demands-says-home-minister>.

³⁸² Human Rights Watch, “Joint Letter Re: End Violent Threats and Anti-Rohingya Campaign,” accessed 7 February 2021, <https://www.hrw.org/news/2020/05/11/joint-letter-re-end-violent-threats-and-anti-rohingya-campaign>.

³⁸³ Nicholas Chung, “Anti-Refugee Petitions Pulled Down after Breaching Policy on Hate Speech,” *Free Malaysia Today*, 28 April 2020, <https://www.freemalaysiatoday.com/category/nation/2020/04/28/anti-refugee-petitions-pulled-down-after-breaching-policy-on-hate-speech/>.

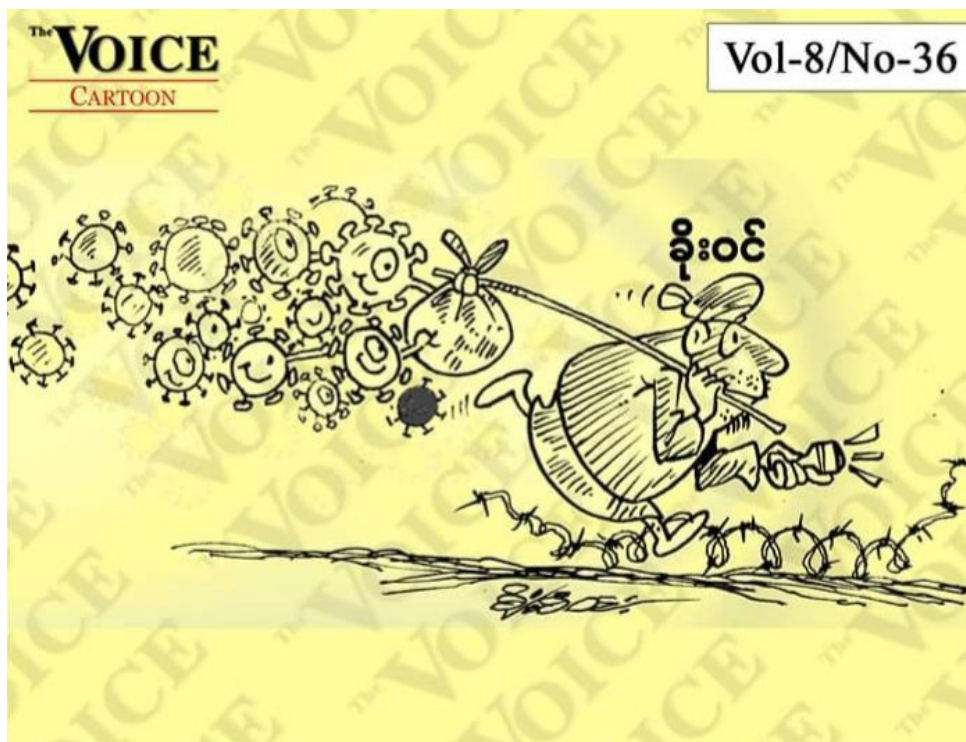
³⁸⁴ These three patterns are borrowed from the securitisation theory. See further, Alexander R. Arifianto, “The Securitization of Transnational Labor Migration: The Case of Malaysia and Indonesia,” *Asian Politics & Policy* 1, no. 4 (2009).

³⁸⁵ See Cecilia Jacob, Introduction. *Preventing Hate Speech, Incitement, and Discrimination: Lessons on Promoting Tolerance and Respect for Diversity in the Asia Pacific* (Geneva: GAAMAC, 2021).

to others represents them as objects or automata”.³⁸⁶ As such, a victim of dehumanising rhetoric is often compared to objects and animals such as apes, dogs, pigs, rats, parasites, or insects. Dehumanising language can also impart to an outgroup subhuman categories or negatively valued superhuman creatures such as demons, monsters, and Satan.³⁸⁷ By using dehumanising discourse, it constructs an outgroup as an inferior group of people.³⁸⁸ Dehumanised perception further leads to reduced empathy for the pain of victims with “psychological and legal denial of their human rights and extreme violence against them”.³⁸⁹ In other words, the victim of dehumanisation is considered as non-human, undeserving of the empathy or rights protection that humans deserve. Consequently, the victim is excluded from the moral community where moral values, rules, and fairness apply.³⁹⁰ This is strongly evidenced in online hate speech against the Rohingya community in Malaysia.

Dehumanising rhetoric most obviously targets the Rohingya community as a disease carrier during the COVID-19 pandemic. For instance, Figure 3 illustrates a derogatory cartoon published by a Myanmar news outlet called The Voice. It portrays a Muslim or Rohingya man illegally crossing barbed wire borders and bringing COVID-19 with him.³⁹¹

Figure 3: A Muslim or Rohingya man labeled as “illegal migrant” crossing borders with viruses



Source: Azim (@Azim42955748), “TheVoice has been one of the local media in myr that promote racist propaganda against Rohingya since 2012,” Twitter, 16 June 2020, 4.42 a.m., <https://twitter.com/Azim42955748/status/1272570133324554240/photo/1>.

³⁸⁶ Nick Haslam, “Dehumanization: An Integrative Review,” *Personality and Social Psychology Review* 10, no. 3 (2006): 252.

³⁸⁷ Daniel Bar-Tal, *Shared Beliefs in a Society: Social Psychological Analysis* (California: Sage Publications, 2000), 122.

³⁸⁸ Michał Bilewicz and Wiktor Soral, “Hate Speech Epidemic. The Dynamic Effects of Derogatory Language on Intergroup Relations and Political Radicalization,” *Political Psychology* 41(2020): 8.


³⁸⁹ Gail B. Murrow and Richard Murrow, “A Hypothetical Neurological Association between Dehumanization and Human Rights Abuses,” *Journal of Law and the Biosciences* 2, no. 2 (2015): 337.

³⁹⁰ Haslam, “Dehumanization: An Integrative Review,” 254.


³⁹¹ Azim (@Azim42955748), “TheVoice has been one of the local media in myr that promote racist propaganda against Rohingya since 2012,” Twitter, 16 June 2020, 4.42 a.m., <https://twitter.com/Azim42955748/status/1272570133324554240>.

Similar remarks are commonly found among the host community in Malaysia. The comment below are made in response to the Rohingya boat arrival during the pandemic:


 Tomorrow, imported +ve covid cases increase 200 +
Like · Reply · See Original (Malay) · 30w 13


 Illegal immigrants landed again.. Langkawi is finished with illness.. take care of the disease people come again..
Like · Reply · See Original (Malay) · 30w 6

Beyond the “disease carrier” depiction, Rohingya refugees are made comparable to criminals. The comment below was a reaction to a report in December 2020 on the arrest of four Burmese, suspected to be ethnic Rohingya, who were wearing medical masks in the picture:³⁹²

 Just show your face, post it in the media so you'll be embarrassed until no one wants to do it anymore, don't hide the face of a criminal
Like · Reply · See Original (Malay) · 3d 10

Hate speech also targets young Rohingya children. On 8 June 2020, Friends of Immigration shared pictures of men, women, and children being detained and sitting outside.³⁹³ The faces of young children are publicly shown and many comments were made that Rohingya children would grow up to be a criminal like the notorious “Long Tiger”, a Rohingya man who was arrested for extortion in Malaysia.



 Long tiger junior
Like · Reply · 30w

 Look at the face there is a chance to be a gangster
Like · Reply · See Original (Malay) · 30w

³⁹² Friends of Immigration, “Op Benteng,” Facebook, 2 January 2021, <https://www.facebook.com/Foimm2.0/posts/702272290486561>.



³⁹³ Friends of Immigration, “SELAMAT MALAM ROHINGYA,” Facebook, 9 June 2020, <https://www.facebook.com/Foimm2.0/posts/567512620629196>.


A very commonly used dehumanising label is PATI or “illegal migrants”. By using the label associated with an “illegal” status, it denies the Rohingya of legal personality and protection before law and hence the unauthorised entry into Malaysia should be punished as a criminal offence. This can be observed after the Friends of Immigration reported news of the Rohingya boat arrival on 9 June 2020 at the height of COVID-19 outbreak.


 Depot all illegal immigrants.
Malaysia cannot cope with too many PATIs
Like · Reply · 30w  1


The Rohingya are also being made comparable to demons and devils; microorganisms such as parasites; animals such as cats, dogs and ringworms; and objects such as garbage.

 this Rohingya is really evil boss.. big head should
not help to make a ball
Like · Reply · See Original (Malay) · 29w  8

 Dammm they are no wonder mymr's work killed them because their behavior and
they are giving birth like cats don't have control.. don't let them in here the more
they are here it's so hard not to backup...
Like · Reply · See Original (Malay) · 30w  2

 The parasites first came to the poor face and asked for equal rights for too long.
Like · Reply · See Original (Malay) · 22w

 No way to Rohingya. Talam dua muka.... Playing innocence. Ask for mercy. But in the
end , these dogs bite those hands whose feeding them. What a living demon....Look
familiar with this kind of behavior. Something....
Like · Reply · 38w  10

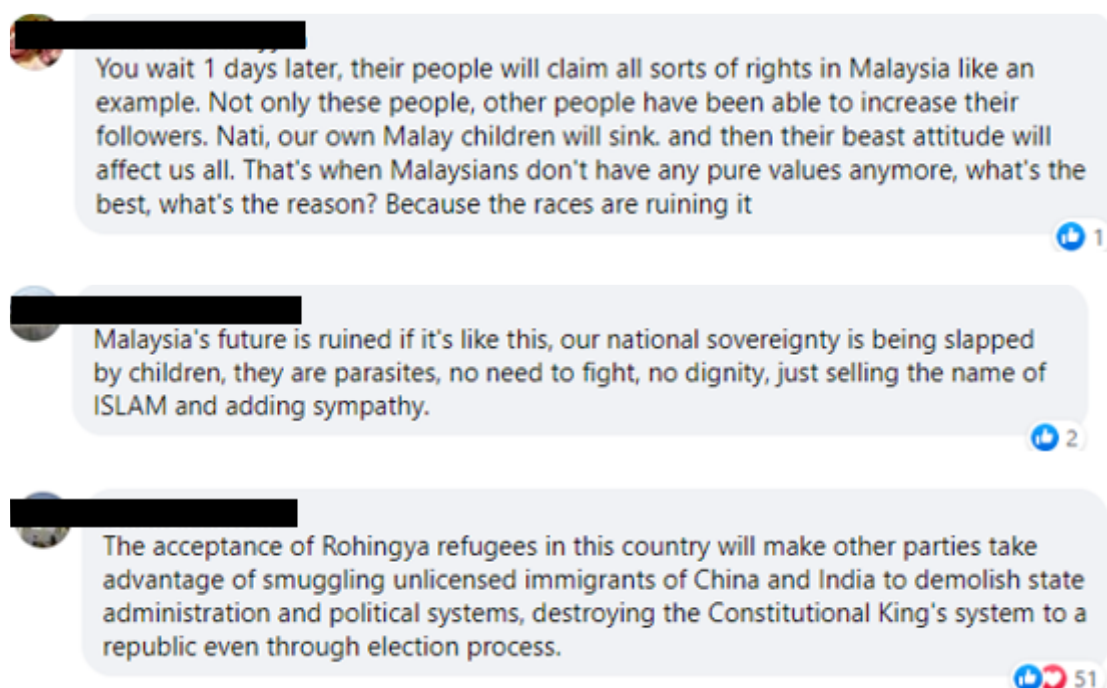
 Pity.. it's like a ringworm... later you'll be healthy biting the master..
Like · Reply · See Original (Malay) · 29w

 This illegal garbage race doesn't deserve to live in Malaysia's land
Like · Reply · See Original (Malay) · 7w

PATTERN II: THREAT PERCEPTION

The second observable pattern is that online hate speech constructs the Rohingya community as a national security threat. As observed in the online interaction below, the arrival and presence of refugees during the COVID-19 lockdown is perceived as a threat to the sovereignty and territorial integrity of Malaysia. Further, the Rohingya are thought to be a troublesome and ever-demanding group of people who would outnumber the locals and dismantle Malaysia's existing political order and social harmony. As a result of such anxieties and threat perceptions, this leads to the next step in which such threats should be met with collective mobilisation in order to safeguard Malaysia (see Pattern III below).

The set of comments below was in response to the Friends of Immigration's Facebook video showing the docking of the Rohingya boat due to engine problems.³⁹⁴ This post received 374 comments and 769 reactions in likes, angry, and laughing emojis. The comments particularly reveal the Rohingya are considered to be troublemakers who would eventually pull apart Malaysia's traditional values and political system of a federal constitutional monarchy and turn the country into a republic.



The following comment was written in reaction to the arrival of 269 Rohingya refugees in Langkawi as shared by the Friends of Immigration on 8 June 2020. The post received more than 1,000 comments, 480 shares, and more than 12,000 emoji interactions, with the majority being like and angry emojis. The comment depicts the Rohingya as conquering Malaysia and having equal rights as the locals.³⁹⁵

³⁹⁴ Friends of Immigration, "Maaf kan kami. Bot kami rosak...", Facebook, 9 June 2020, <https://www.facebook.com/Foimm2.0/posts/567793140601144>.

³⁹⁵ Friends of Immigration, "Rohingya mendarat di Langkawi," Facebook, 8 June 2020, <https://www.facebook.com/Foimm2.0/posts/567434920636966>.



These people have arrived at the peculiarities of this country. They conquered Malaysia for a long time, sharing equal rights. It's free to go here, let's go here. The place for them is already there, they have their own country Myanmar, just send them back

Like · Reply · See Original (Malay) · 30w



The comment below was made in reaction to the UN High Commissioner for Human Rights' call for compassion towards the Rohingya refugees after authorities pushed back the boat. The comment views the Rohingya as being disrespectful to the host community and at the same time giving birth at an uncontrollable rate.³⁹⁶



they came here and disrespectful towards Malaysians. they are poor but keep breeding uncontrollably and hope to get help frm goverment while many other malaysians goin through hard times. they know well abt malaysians heart and taking advantage of it. thats all.

Like · Reply · 39w



Similarly, this comment compares the Rohingya to rabbits, rapidly multiplying in number to the extent that Malaysians would be outnumbered.³⁹⁷



Agreed. Take in 1, another 100 will be coming. They will tell their families and friends to come over. They breed like rabbits and soon they will outnumber us.

Like · Reply · 39w

The threat perception related to the increasing refugee arrival also led to the idea that Malaysia's territorial integrity was being infringed. The following comment considers the landing point of refugee boats, Langkawi, as being turned into a "Rohingya island".



Langkawi island after becoming rohingya island

Like · Reply · See Original (Malay) · 30w



Even more serious, the following comment shows a threat perception that Malaysia would completely lose its independence and become "a Rohingya country".

³⁹⁶ *The Star*, "The United Nations considers the Rohingya as one of the most persecuted minorities in the world," Facebook, 19 April 2020, <https://www.facebook.com/TheStarOnline/posts/10156511570627255>.

³⁹⁷ *The Star*, "Malaysia has 'far exceeded' its capacity to host refugees, said the Umno deputy president," Facebook, 20 April 2020, <https://www.facebook.com/TheStarOnline/posts/10156511997352255>.

17
 Even those who are sitting are acting like thugs, criminals, killed, broke into other s' houses. This adds more that comes... after this Malaysia becomes a rohingya country. If you don't believe it, you'll see it later.
 Like · Reply · See Original (Malay) · 30w

The following set of comments was made in response to the Rohingya groups' apology over Merhrom's statement published by *The Star* on 26 April 2020.³⁹⁸ Several of them portray the Rohingya as conducting illegal activities in Malaysia. One comment promotes the idea that the Rohingya are troublemakers by referring to violence in Rakhine State and asks Malaysians to learn from history to prevent the same occurrence. The most popular comment justifies hate speech against the Rohingya by citing Aung San Suu Kyi who was perceived as willing to forgo her Nobel Peace Prize to fight against the Rohingya.

Harris Abdul Rahim it's pleasing to see now that even the Muslims in Malaysia are turning against them. Finally everyone is in the middle ground. They have undoubtedly created too many problems for us
 Destroying the fences for MCO purposes
 Illegal businesses
 Illegal settlement in Langkawi
 Provoking Malaysians .. just to name a few
 Like · Reply · 38w · Edited 4

Rakhine State was a safe place for them, they did the blunder, by killing the Hindus, Buddhist and the Christians, so the government have to step in. When the government took action, they distorted the news what happened there. If they are good people why no countries want them. Just look at Selayang.
 Like · Reply · 38w 100

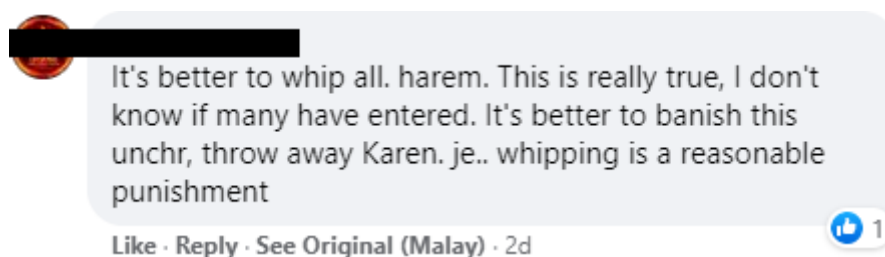
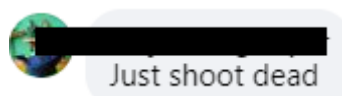
If Aung San Su Kyi was willing to forgo her Nobel Prize and many honours accorded to her fighting them, they are certainly not that simple and easy-going people as some would think.
 Like · Reply · 38w 212

³⁹⁸ *The Star*, "The statements had triggered 'unprecedented negative sentiments' among Malaysians against the Rohingya refugees in Malaysia, they said," Facebook, 27 April 2020, <https://www.facebook.com/TheStarOnline/posts/1015653667827255>.

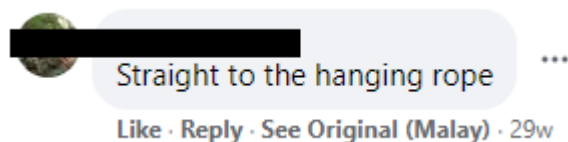
PATTERN III: INCITEMENT OF VIOLENCE

The third observable trend of hate speech is the radicalisation and incitement of violence. Perceived as a security threat, the Rohingya become the target of violence. Countless online remarks provoke physical violence such as spitting, shooting, whipping, hanging, and bombing against the Rohingya ethnic group. Many encourage the authorities to do so before the Rohingya reach the Malaysian shore. Some comments also describe Malaysians as being angry towards Rohingya refugees and provoke other Malaysian citizens to form a united front in fighting against the Rohingya community.

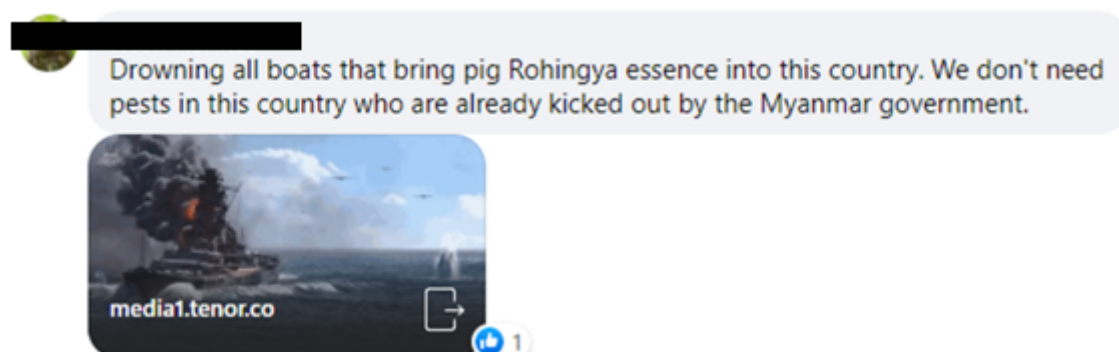
The following set of comments was made in reaction to the arrest of four undocumented migrants, believed to be ethnic Rohingya.³⁹⁹ It calls on authorities to punish the arrested by whipping and shooting.



One Facebook user urged authorities to hang refugees in response to a video showing boat arrival posted by Friends of Immigration on 9 June 2020.⁴⁰⁰



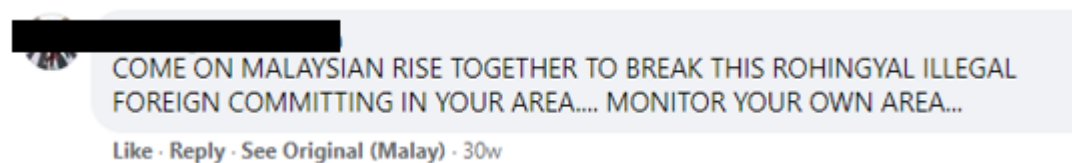
Similarly, one Facebook user posted a GIF image to illustrate that Malaysian authorities should bomb the boat and leave the Rohingya to drown.



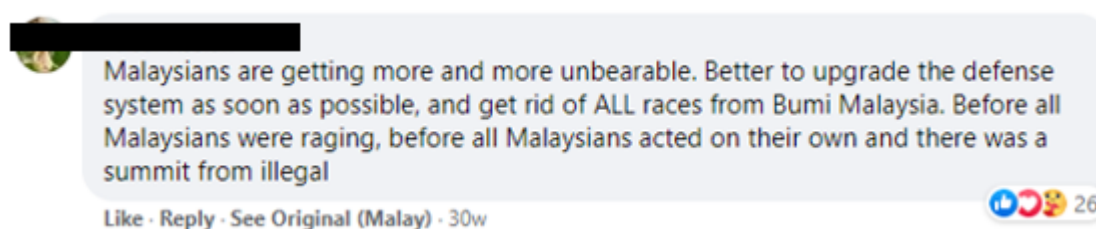
³⁹⁹ Friends of Immigration, "Op Benteng."

⁴⁰⁰ Friends of Immigration, "Maaf kan kami. Bot kami rosak..."

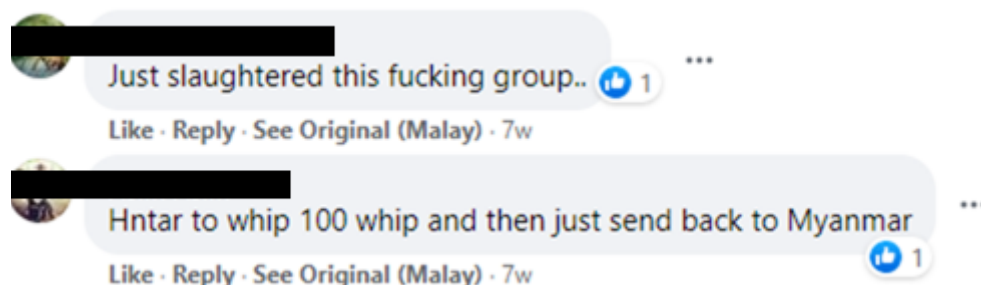
The following comment on Facebook seeks to mobilise Malaysian citizens against the Rohingya population. It asks the local to play a vigilante role to monitor the activities of the Rohingya and foreigners in their own neighbourhood.



Similarly, reacting to the arrival of 269 Rohingya in Langkawi, one Facebook user described the rage and frustration among Malaysians, asking to the government to upgrade the defence capabilities. Otherwise, Malaysians would start acting on their own.⁴⁰¹



Violence was also incited to kill off the whole Rohingya population. This can be found in a reaction to the news report on two Rohingya men being accused of rape:⁴⁰²



Worryingly, following the announcement that Malaysia would block the entry of refugee boats, this Facebook user urged the government to hand over all Rohingya in Malaysia to the extremist Buddhist monk Ashin Wirathu in Myanmar.⁴⁰³

⁴⁰¹ Friends of Immigration, "Rohingya mendarat di Langkawi."

⁴⁰² Friends of Immigration, "Dua lelaki Rohingya didakwa rogol remaja 15 tahun," Facebook, 12 November 2020, <https://www.facebook.com/Foimm2.0/posts/670987636948360>.

⁴⁰³ Friends of Immigration, "Malaysia tegas sekatan kemasukan Rohingya," Facebook, 27 June 2020, <https://www.facebook.com/Foimm2.0/posts/578757396171385>.

I recommend all the Rohingyas in Malaysia to be handed over to him. And the Malaysian government should pay tribute to him



Like · Reply · See Original (Malay) · 2 · 3

The three generalisable patterns of hate speech illustrated above show that dehumanising language can create a perception that a particular group of people such as the Rohingya refugees is a threat to security and sovereignty. Viewed as a serious security threat, hate speech further leads to incitement of violence in which a whole group of people should be eliminated. The next section discusses efforts to combat hate speech in Malaysia.

National, Regional and International Response

MALAYSIAN GOVERNMENT'S RESPONSE TO HATE SPEECH

Malaysia does not have specific legislation on hate speech. However, the Sedition Act, introduced by the British colonisers in 1948, contains relevant provisions. Article 3(1)(e) defines “a seditious tendency” to include an act to “promote feelings of ill will and hostility between different races and classes of the population of Malaysia” and violation can result in a three-year prison sentence. However, the law has been criticised for being used as an instrument to silence critics and dissent.⁴⁰⁴ The emphasis on hostility *between* different races of Malaysian populations further suggests that the law is not meant to regulate hate speech targeting foreign migrants and refugees. There have also been recent but failed attempts to replace the Sedition Act with new legislation to manage racial relations. To reduce racial and religious polarisation, the Najib administration (2009-2018) introduced a suite of three “National Harmony” laws drafted for consideration in 2014: a Racial and Religious Hate Crimes Bill, a National Harmony and Reconciliation Bill, and a National Harmony and Reconciliation Commission Bill.⁴⁰⁵ But they were subsequently abandoned following the election defeat in 2018.

The initiative to tackle discrimination and hate speech was reintroduced by the Pakatan Harapan government (2018-2020). The government planned to ratify the International Convention for the Elimination of Racial Discrimination. However, this was eventually scrapped in late 2018 after a strong domestic opposition argued that the ratification would dilute the privileges given

⁴⁰⁴ Human Rights Watch, “Malaysia: Sedition Act Wielded to Silence Opposition,” accessed 7 February 2021, <https://www.hrw.org/news/2014/09/14/malaysia-sedition-act-wielded-silence-opposition>.

⁴⁰⁵ Amrita Malhi, *Social Cohesion, Racial Campaigning and the Collapse of Pakatan Harapan: Malaysia's National Harmony Bills and Harmony Commission* (Canberra: New Mandala, 2020), 17.

to the majority ethnic Malays.⁴⁰⁶ Moreover, the government considered establishing a National Harmony and Reconciliation Commission to address “racial anxiety” surrounding racial and religious political campaigning.⁴⁰⁷ Prime Minister’s Department Senator P. Waytha Moorthy explained this independent commission would have the power to make peace between antagonistic groups without resorting to police action.⁴⁰⁸ The Commission would have 30 commissioners with the mandate to investigate unfair discrimination and act as a tribunal in charge of summoning people and evidence, issuing arrest warrants, and revealing findings of unfair practices.⁴⁰⁹ However, the initiatives did not progress with the collapse of the Pakatan government in February 2020. Since then, the initiative has been shelved by the Perikatan Nasional-led government (2020 onwards).⁴¹⁰ This government explained that existing laws⁴¹¹ were adequate for tackling ethnic and racial issues.

As for specific responses to hate speech against the Rohingya during COVID-19, opposition lawmaker Chan Foong Hin called for new hate speech legislation and in November 2020 specifically asked the Communication and Multimedia Ministry to outline steps to combat hate speech.⁴¹² However, the response from the Ministry appeared to divert responsibility to Facebook to moderate online content according to its term of usage. Reuters reported that the Ministry seemed to downplay hate speech as “misconceptions” or “fake news”.⁴¹³ Chan further indicated that current legislation was inadequate to tackle hate speech and, “The Ministry seems to be in denial and thinks that the hate speech as reported by Reuters is under control, and there is no need for any further control by law.”⁴¹⁴ Surprisingly, despite the lack of domestic legislation, Prime Minister Muhyiddin urged the rest of ASEAN countries to legislate against online hate speech and threats based on race, gender, sexual orientation, disability, and nationality at the inaugural ASEAN Digital Ministers’ Meeting in January 2021. This announcement was reported by Malaysian media as contrasting with Malaysia’s domestic stance on gender and sexual minorities in which the Shariah Courts Act 1965 may potentially be amended to give harsher penalty to the LGBTQ community.⁴¹⁵

Malaysia has other laws and mechanisms to address hate speech in addition to the Sedition Act 1948. The Communications and Multimedia Act 1998 and the Penal Code can be invoked but they have been criticised for being ineffective tools because of the vagueness of the legislation. Harris Zainul from the Institute of Strategic and International Studies Malaysia

⁴⁰⁶ Reuters, “Why Malaysia Backpedalled on ICERD Ratification,” *New Strait Times*, 24 November 2018, <https://www.nst.com.my/news/nation/2018/11/434078/why-malaysia-backpedalled-icerd-ratification>.

⁴⁰⁷ Malhi, *Social Cohesion, Racial Campaigning and the Collapse of Pakatan Harapan*, 4-5.

⁴⁰⁸ Bernama, “Bill to Set up Harmony and Reconciliation Commission Being Drafted,” *Free Malaysia Today*, 15 February 2020, <https://www.freemalaysiatoday.com/category/nation/2020/02/15/bill-to-set-up-harmony-and-reconciliation-commission-being-drafted/>.

⁴⁰⁹ Malhi, *Social Cohesion, Racial Campaigning and the Collapse of Pakatan Harapan*, 23.

⁴¹⁰ Ibid., 2.

⁴¹¹ Among existing laws cited were the Sedition Act 1948 (Act 15); Sections 504, 505 and 506 of the Penal Code (Act 574) and Section 233 of the Communications and Multimedia Act 1998 (Act 588). See Bernama, “Minister: Existing Laws in Malaysia Adequate, National Harmony Commission Bill Will Not Be Continued,” *Malay Mail*, 5 August 2020, <https://www.malaymail.com/news/malaysia/2020/08/05/minister-existing-laws-in-malaysia-adequate-national-harmony-commission-bil/1891354>.

⁴¹² Rozanna Latiff, “Calls to Outlaw Online Hate Speech over Abuse of Rohingya in Malaysia,” *Business Live*, 20 November 2020, <https://www.businesslive.co.za/bd/world/asia/2020-11-24-calls-to-outlaw-online-hate-speech-over-abuse-of-rohingya-in-malaysia/>.

⁴¹³ Ibid.

⁴¹⁴ Reuters Staff, “Malaysian Lawmaker Calls for Hate Speech Law after Reuters’ Rohingya Report,” Reuters, 24 November 2020, <https://www.reuters.com/article/us-facebook-malaysia-rohingya-idUSKBN2840LZ>.

⁴¹⁵ Jerry Choong, “Muhyiddin Urges Asean to Legislate against Online Hate Speech, Threats Based on Race, Gender, Sexual Orientation,” *Malay Mail*, January 21, 2021, <https://www.malaymail.com/news/malaysia/2021/01/21/muhyiddin-urges-asean-to-legislate-against-online-hate-speech-threats-based/1942613>.

explains that due to the lack of clarity, it “reduces the normative value of government signalling to the public that creating and sharing false information and hate speech is unacceptable and fails to deter would-be creators”.⁴¹⁶ An alternative mechanism is to rely on the government’s fact-checking outlet [Sebenarnya.my](https://sebenarnya.my) which is the main online platform for debunking misinformation. In 2020, it exposed approximately 400 cases of misinformation on COVID-19 but it fell short when it came to disinformation related to the Rohingya, which made up for only six fact-checks.⁴¹⁷

CIVIL SOCIETY’S RESPONSE TO HATE SPEECH

Civil society’s efforts to combat hate speech are notably seen with a transnational campaign that aims to prompt the Malaysian government for action. Following the proliferation of online hate speech, 84 organisations submitted a joint letter on 11 May 2020, addressing Prime Minister Myhyiddin and urging the Malaysian government to reduce the threat of violence and hateful remarks against the Rohingya in Malaysia.⁴¹⁸ Among the signatories are local human and migrant rights NGOs such as SUARAM (Suara Rakyat Malaysia), Tenaganita, and Women’s Aid Organisation. This campaign was led by an international NGO named ARTICLE 19, which works to promote and protect human rights through dedicated campaigns in Malaysia. The advocacy group demanded the government live up to its commitment to protect the rights of equality, non-discrimination, life and security of a person under the Universal Declaration of Human Rights. Moreover, one of the recommendations called the government to support the rights of Rohingya by emphasising “their status as refugees” and by playing an active role in condemning hate speech and intolerance.⁴¹⁹ The joint letter also pressed the government to ratify core international human rights treaties, pass anti-discrimination legislation, and promote intercultural understanding in line with the Human Rights Council Resolution 16/18 and the Rabat Plan of Action.

Another noteworthy campaign is from Amnesty International Malaysia. While ARTICLE 19 and NGO partners targeted policymakers, Amnesty took a bottom-up approach to build inter-ethnic and cross-cultural understanding among social media users. On 13 May 2020, Amnesty launched the “End Violence Towards Refugees and Migrants – Another Way is Possible” campaign.⁴²⁰ It sought to mobilise Malaysians to voice their solidarity for migrants and refugees in and en route to Malaysia. As part of the campaign, Amnesty encouraged Malaysians to use a hash tag, #MigranJugaManusia (migrants are humans too), on Saturday 16 May 2020. Among many campaign visuals, one specifically raised the issue of xenophobia against migrants and refugees (see Figure 4). As such, the hashtag and visuals are meant to reverse the dehumanising trend online in combating hateful rhetoric. In particular, the slogan “migrants are humans too” portrays refugees as humans who also deserve protection from threats of violence. In reaction to the online campaign, it is no surprise that such messages gained both support and opposition at the height of COVID-19. Besides the endorsement,

⁴¹⁶ Harris Zainul, “Disinformation and Xenophobia Target Malaysia’s Rohingya,” *East Asia Forum*, 11 July 2020, <https://www.eastasiaforum.org/2020/07/11/disinformation-and-xenophobia-target-malaysias-rohingya/>.

⁴¹⁷ Ibid.

⁴¹⁸ Human Rights Watch, “Joint Letter Re: End Violent Threats and Anti-Rohingya Campaign.”

⁴¹⁹ Ibid.

⁴²⁰ Amnesty International Malaysia, “End Violence Towards Refugees and Migrants – Another Way IS Possible!” Facebook, 13 May 2020, <https://www.facebook.com/AmnestyMy/posts/2907790289306466>.

numerous Facebook users asked Malaysia to eject migrants and refugees while others invoked the slogan of “Malaysia for Malaysians” and others labelled migrants and refugees as “criminal” or “a threat to the locals” in responding to the campaign.

Figure 4: Amnesty International Malaysia’s campaign visual



Source: Amnesty International Malaysia’s Facebook post on 13 May 2020.

ASEAN'S RESPONSE TO HATE SPEECH

ASEAN has several regional agreements that provide normative foundations for combating hate speech and incitement. In 2017, ASEAN leaders adopted the Declaration on the Culture of Prevention for a Peaceful, Inclusive, Resilient, Healthy and Harmonious Society under the ASEAN Social Cultural Community pillar. The Declaration works to prevent violence and promote intercultural understanding, tolerance, and diversity in the region at the grassroots level, especially engaging youth through public seminars, education and training, and online social media, as well as policy-relevant research.⁴²¹ It also signals ASEAN leaders' aspiration to eradicate extremism and fake news. It explicitly recognises that racial and religious discrimination, among other factors, is at the root cause of violence and thus a threat to regional peace and stability.⁴²² Following the adoption of the Declaration, a dedicated Facebook page was created in January 2018 as part of the outreach program. Then, in May 2019, senior officials of the ASEAN Socio-Cultural Pillar met in Chiang Mai, Thailand, to discuss ways to translate the Declaration into an action plan.

ASEAN has not adopted any agreement specifically on hate speech but there are regional initiatives to combat disinformation and create a responsible consumption of media. In 2018, ASEAN Ministers Responsible for Information (AMRI) adopted the Framework and Joint Declaration to Minimise the Harmful Effect of Fake News to implement the 2014 Declaration on Social Responsible Media for a Peaceful and Prosperous ASEAN Community. The Framework explicitly acknowledges the role of social media in contributing to the polarisation of people with conflicting ideas. Under the Framework, ASEAN seeks to address the negative impact of fake news through education and public awareness; detection and response; community participation; and development of new laws, norms, and guidelines against fake news.⁴²³ This regional framework has been reaffirmed by ASEAN governments since the COVID-19 outbreak. For instance, the Chairman's Statement at the 36th ASEAN Summit on 26 June 2020 noted, while avoiding any reference to the Rohingya, ASEAN countries "recognised that the onset of COVID-19 has resulted in the spread of fake news and misinformation which have created a climate of distrust and intolerance and fear".⁴²⁴ This recognition then led to adoption of the Joint Statement of the ASEAN Ministers Responsible for Information to Minimise the Negative Effects of Coronavirus Disease 2019 (COVID-19) in August 2020 in which ASEAN sought to establish a shared platform to facilitate information exchange to root out fake news.⁴²⁵

Two additional ASEAN mechanisms are worth noting: the ASEAN Institute for Peace and Reconciliation (AIPR) and the ASEAN Intergovernmental Commission on Human Rights (AICHR). The AIPR has a mandate of fulfilling research activities on regional peace and conflict resolution. Reinforcing the 2017 Declaration on the Culture of Prevention, the AIPR can serve as a focal point for raising awareness among the public about the danger of hate speech and

⁴²¹ ASEAN, "ASEAN Declaration on the Culture of Prevention for a Peaceful, Inclusive, Resilient, Healthy and Harmonious Society," accessed April 13 2021, https://asean.org/storage/2017/11/9.-ADOPTION_12-NOV-ASCC-Endorsed-Culture-of-Prevention-Declaration_CLEAN.pdf.

⁴²² Ibid.

⁴²³ ASEAN, *Framework and Joint Declaration to Minimise the Harmful Effects of Fake News* (Singapore: ASEAN, 2018).

⁴²⁴ ASEAN, *Chairman's Statement of the 36th ASEAN Summit* (Vietnam: ASEAN, 2020).

⁴²⁵ ASEAN, *Joint Statement of the ASEAN Ministers Responsible for Information to Minimise the Negative Effects of Coronavirus Disease 2019 (Covid-19)* (Jakarta: ASEAN, 2020).

its potential to disrupt peace and harmony in the region. One important activity that the AIPR carried out was an interfaith dialogue in November 2019. The event brought together almost 100 participants, from official delegates within and outside the region and the wider public, to workshop the role of women in building an inclusive and peaceful society.⁴²⁶ Another regional mechanism is the AICHR. Founded in 2009, AICHR has the overall responsibility to promote and protect human rights in the ASEAN region. Each of the ten AICHR representatives is nominated by their respective government.

AICHR draws on the 2012 ASEAN Human Rights Declaration to incorporate hate speech into its activities. It refers to Article 22 on the freedom of thought, conscience, and religion and Article 23 on the freedom of opinion and expression to promote tolerance. The response to hate speech during COVID-19 is particularly seen with the activities of Indonesian Representative Yuyun Wahyuningrum. Yuyun has been vocal in both the prevention of hate speech and the protection of refugee rights. Her outspoken style is facilitated by the open selection process that allowed the representative to be relatively independent and less constrained by state interests and institutions.⁴²⁷ On 20 June 2020, Yuyun seized the opportunity of World Refugee Day and released a public statement urging ASEAN members “to take specific steps to counter xenophobia and hate speech against the refugees”.⁴²⁸ Furthermore, she put pressure on ASEAN members by demanding ASEAN states ratify the 1951 Refugee Convention in order to fulfil ASEAN’s commitment to Article 16 of the 2012 ASEAN Human Rights Declaration. This was followed by AICHR Indonesia’s outreach campaign on Facebook and Instagram on 22 July 2020. As part of the mobilisation, AICHR Indonesia reminded ASEAN citizens that “countering hate speech requires a collective and coordinated response as well as individual participation ... To stop its spread, it should end with us”.⁴²⁹ Such public and online campaigns have strong potential to reach a broad audience who are central to social change. To generate public awareness and impact, Yuyun expressed the intention to transform social media engagement into a more substantive interaction through workshops where young people can learn and engage with the issue in-depth.⁴³⁰

UN RESPONSE TO HATE SPEECH

The UN Office of the High Commissioner for Human Rights (OHCHR) released a public statement in response to both hate speech and the crackdown on undocumented migrants and refugees in Malaysia. On 21 May 2020, the OHCHR pressed the Malaysian government to “strongly oppose xenophobia and hate speech against migrants”.⁴³¹ In the same statement, the Special Rapporteur on the human rights of migrants Felipe González Morales revealed his

⁴²⁶ ASEAN, *ASEAN Women Interfaith Dialogue: Promoting Understanding for an Inclusive and Peaceful Society* (Jakarta: ASEAN Institute for Peace and Reconciliation, 2019), preface.

⁴²⁷ Dio Herdiawan Tobing, “Introduction: The Human Rights Body of ASEAN,” in *The Evolution of the ASEAN Human Rights Mechanism: Institutional and Thematic Issues Within*, ed. Randy Wirasta Nandyatama, Dio Herdiawan Tobing, and Shah Suraj Bharat (Yogyakarta: Universitas Gadjah Mada, 2019), 2.

⁴²⁸ AICHR Indonesia, “Statement of the Representative of Indonesia to the ASEAN Intergovernmental Commission on Human Rights (AICHR), Yuyun Wahyuningrum, on the World Refugee Day 2020,” Facebook, 20 June 2020, <https://www.facebook.com/IndonesiaAICHR/posts/3210068882370060>.

⁴²⁹ AICHR Indonesia, “The cases of Hate Speech have increased to a worrying level. What can we do to counter and eliminate it?” Facebook, 22 July 2020, <https://www.facebook.com/IndonesiaAICHR/posts/3303213423055605>.

⁴³⁰ Interview with Yuyun Wahyuningrum on 19 April 2021.

⁴³¹ OHCHR, “Malaysia / Covid-19: ‘Stop Crackdown on Migrants, Journalists and Civil Society’ – UN Rights Experts,” accessed 7 February 2020, <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25900&LangID=E>.

surprise, “I am alarmed by what is happening in Malaysia after the initially positive attitude of the government towards an inclusive response to the pandemic.” He expressed his concerns that hate speech was becoming more serious and that it not only targets migrants and refugees but also human rights defenders and journalists who support refugee and migrant rights. He further indicated that “Such threats and hateful comments have also been made by individuals affiliated with the government, political parties and public officials.”⁴³² At the same time, OHCHR spokesperson Rupert Colville urged the Malaysian government to avoid pushing back refugee boats and to show compassion for migrants in distress at sea.⁴³³ Similar remarks were also made by Indrika Ratwatte, Director of the UNHCR Asia-Pacific region, stating that the agency was “increasingly concerned by reports of failure to disembark vessels in distress and of the grave immediate risk this poses to the men, women and children on board” and asking the government to carry out search and rescue with prompt landing of refugee boats.⁴³⁴ Similar to ARTICLE 19’s campaign, these public statements take a top-down approach and mostly target decision-makers in Malaysia.

⁴³² Ibid.

⁴³³ Bedi, “UNHCR Urges Compassion in Handling of Rohingya Boat People.”

⁴³⁴ Al Jazeera, “Do Not Push Rohingya out to Sea Amid Coronavirus Emergency: UNHCR,” Al Jazeera, 23 April 2020, <https://www.aljazeera.com/news/2020/4/23/do-not-push-rohingya-out-to-sea-amid-coronavirus-emergency-unhcr>.

Recommendations

TO THE GOVERNMENT

- Condemn hate speech, as opposed to migrants and refugees, in preventing extremism and violence
- Promote intercultural understanding through public dialogue and information campaigns
- Consider integrating the plight and contribution of migrants and refugees into public education to reshape public attitudes
- Avoid using language that contributes to discrimination and publicly condemn the use of such language
- Raise public awareness on the negative effects of hate speech, discrimination, and stereotyping
- Commission a comparative study of hate speech laws and examine the benefits of such legislation.

TO THE ASEAN

- Consider establishing an inter-sectoral body to coordinate and centralise efforts to tackle hate speech (for instance, between AMRI, AICHR, ACMW, ACWC, SOMTC, AMMY, and AIPR)
- Promote an 'ASEAN identity' that builds on the tolerance and diversity of Southeast Asian cultures
- Publicise through AICHR the human rights-based understanding of hate speech and incitement
- Create outreach campaigns to educate the public on the vulnerabilities of migrants and refugees to promote tolerance.

TO CIVIL SOCIETY

- Create outreach activities to educate the public about the experiences and contribution of migrants and refugees in the host community to promote tolerance
- Work with national human rights institutions and the media to monitor misinformation, negative stereotyping, and discrimination
- Engage with national governments on the importance of awareness campaigns in combating hate speech and incitement.

TO THE MEDIA

- Establish a “complaints portal” where journalists and citizens can report the media’s use of hate speech and discriminatory language
- Consider adopting a code of conduct to guide the reporting on minority and vulnerable groups for the purpose of preventing hate speech
- Organise training and workshops on hate speech, ethical reporting, and use of language
- Report journalists’ use of hate speech to relevant or national media authorities.

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INDIA

HATE SPEECH AND INCITEMENT IN INDIA

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Introduction

*... any person if we are driving a car, we are a driver, and someone else is driving a car and we're sitting behind, even then if a puppy comes under the wheel, will it be painful or not? Of course it is. If I'm a chief minister or not, I'm a human being. If something bad happens anywhere, it is natural to be sad.*⁴³⁵

Narendra Modi, 2013.

This chapter examines the issue of hate speech and incitement leading to hate crimes in India. Violence against minorities on the basis of religion and ethnicity has been a regular feature throughout India's modern history. The rise of the Hindu nationalist movement, and particularly the mainstreaming of the Hindu nationalist party, the Bharatiya Janata Party (BJP), has fostered a political climate that is conducive to hate speech. This hate speech has regularly transformed into calls for violent action, rioting, and pogroms through which thousands of people have been subjected to horrendous atrocities. India has been particularly affected by the COVID-19 pandemic, with significant costs in terms of lives lost, damage to the national economy, and an overrun health system. As this chapter illustrates, the pandemic also exacerbated underlying social tensions, hate speech is on the rise across the country, as are the numbers of hate crimes targeting vulnerable minority groups.

Key takeaways from this study:

Hate speech follows the contours of a historical narrative of communal identity, and a violent Hindu nationalist ideology expressed routinely through mainstream politics that associates Indian nationhood with Hinduism.

Impunity for past episodes of major communal violence and pogroms is pervasive throughout the political establishment along all sides of politics, and is deeply institutionalised in national and state level policing.

⁴³⁵ In a highly publicised example of hate speech in the political mainstream, former Chief Minister of Gujarat during the 2002 violence and current Prime Minister Narendra Modi compares Muslims to dogs when asked by Reuter's journalists in an interview, 'Do you regret what happened?'. Ross Colvin and Sruthi Gottipati, "Interview with BJP leader Narendra Modi," Reuters International, 12 July 2013, <http://blogs.reuters.com/india/2013/07/12/interview-with-bjp-leader-narendra-modi/>.

Hate speech and violence along religious and ethnic lines has increased sharply since the election of Prime Minister Narendra Modi and his Hindu nationalist party BJP in 2014 and again in 2019.

Hate speech expressed at the highest levels of political authority remain unchecked, and new policies have exacerbated a climate of intercommunal tension and impunity for offenders.

Social media platforms such as Twitter and Facebook have facilitated the spread of hate speech in new and pervasive ways, accelerating the pace of misinformation, fear-mongering, and spread of prejudice.

There is a dearth of accountability mechanisms both nationally and at the regional or international level, nor meaningful national reconciliation strategies to address historical impunity and intergroup grievances.

This chapter provides a historical background to contextualise the current situation of hate speech and violence against religious and ethnic minorities in India, followed by an analysis of the legal and policy framework in place concerning the regulation of hate speech and other forms of discrimination against minorities. In order to illustrate the dynamics and character of hate speech, incitement and violence, the chapter provides case studies of the 2020 Delhi riots, the targeting of the Tablighi Jamaat during the COVID-19 lockdown in 2020, and a discussion of hate speech and violence towards Christian and ethnic minority groups in the Northeastern states. It concludes by forwarding recommendations based on a summary of the findings.

Historical Background: Communal Violence in India⁴³⁶

... it was also clear enough to me that what have been called Hindu–Muslim riots in India are misnamed, that they could not have been carried out with such force in so many places, in many cases for extended periods of time, and repeatedly, with the complicity of the police and the failure of political parties in control of government and the administrative and police officers in the district to prevent or at least to contain them once they have begun. In short, what are called Hindu–Muslim riots in India are, in fact, more like pogroms, and have recently, in Gujarat and elsewhere taken the form of genocidal massacres and local ethnic cleansing as well.⁴³⁷

To understand the nature of hate speech and, in numerous cases, ensuing patterns of incitement, riots and pogroms in India, it is important to understand the context of communal

⁴³⁶ This section is based on Cecilia Jacob, “The Politics of Protecting Religious Minorities: The State and Communal Violence in India,” in *Civilian Protection in the Twenty-First Century: Governance and Responsibility in a Fragmented World*, ed. Cecilia Jacob and Alistair D. B. Cook (New Delhi: Oxford University Press, 2016), 107–26.

⁴³⁷ Paul Brass, *Forms of Collective Violence: Riots, Pogroms, and Genocide in Modern India* (New Delhi: Three Essays Collective, 2006), xv–xvi.

politics that have made religion one of the most volatile issues shaping the current political landscape. Constitutionally, India is a secular state; however, Hindus are by far the largest religious group at 80 per cent of the population. Muslims are the largest minority group at 14 per cent of the population, followed by Christians (2.3%), Sikh (1.72%), Jain (0.37%), and others/none (less than 1%).⁴³⁸ Communal violence between Hindus and Muslims is the most prevalent, although there have been significant instances of communal violence targeted at other minorities, such as the 1984 anti-Sikh pogrom and the 2008 anti-Christian riots in Orissa state. Although with strong ideological overtones defined by Hindu nationalism, communal violence is often exacerbated by electoral politics, often the need by Hindu nationalist groups to galvanise support across its wide caste-base along religious lines.⁴³⁹

Historian Gayendra Pandey⁴⁴⁰ has argued that communal difference in India is a product of colonial knowledge generated through the classification practices of the British during their colonisation of Greater India. The classification of population groups along the lines of religion shaped group consciousness of communal difference that spurred nationalist movements headed by the Muslim League and the secular Indian National Congress party that were central to the creation of Pakistan as a homeland for Muslims (including East Bengal – now Bangladesh) and India in 1947. Unprecedented communal violence between Hindus, Muslims, and Sikhs occurred during the 1947 Partition and became constitutive of the nationalist ideology that coloured the nation-building programs of both states following Partition.⁴⁴¹ In the decades that followed, both sides of the political spectrum have periodically leveraged communal identities both at central and state levels to advance their political goals.⁴⁴² The high levels of impunity within the security sector and justice system that have become hallmarks of India's communal violence today are a result of the deep politicisation of communalism during these early years.

The Hindu nationalist (*Hindutva*) movement has its origins in the early 20th century independence movement against British colonialism. Independence activist Vinayak Damodar Savarkar developed the political philosophy of Hindutva in the 1920s, defining the essence of Indian national identity in the Hindu religion – it is a far-right organisation that has been backed by the voluntary paramilitary organisation Rashtriya Swayamsevak Sangh (RSS) since 1925. In the 1960s, Sangh Parivar was created as the umbrella organisation for a family of right-wing Hindu nationalist organisations in the country. Among its key institutions are the BJP (the political wing), the RSS (the paramilitary wing), the Bajrang Dal (the youth wing), and the Durga Vahini (the women's wing). They have been responsible for orchestrating and actively participating in much of the communal violence that has taken place in India over the past decades.⁴⁴³

⁴³⁸ According to the most recent census data in 2011. See Census Organisation of India, "Religion Census 2011," *Indian National Census* (2011), <https://www.census2011.co.in/religion.php>.

⁴³⁹ Ashutosh Varshney, *Ethnic Conflict and Civic Life: Hindus and Muslims in India*. (New Haven, CT: Yale University Press, 2002); and Steven I. Wilkinson, *Votes and Violence: Electoral Competition and Ethnic Riots in India* (Cambridge: Cambridge University Press, 2004).

⁴⁴⁰ Gayendra Pandey, *The Construction of Communalism in Colonial North India* (Delhi: Oxford University Press, 1992).

⁴⁴¹ Ritu Menon and Kamla Bhasin, *Borders and Boundaries: Women in India's Partition* (New Brunswick, NJ: Rutgers University Press, 1998), 67-129; and Gayendra Pandey, *Remembering Partition: Violence, Nationalism, and History in India* (Cambridge: Cambridge University Press, 2001), 21-44.

⁴⁴² Lance Brennan, "The State and Communal Violence in UP: 1947-1992," in *Politics of Violence: From Ayodhya to Behrampada*, ed. John McGuire, Peter Reeves, and Howard Brasted (New Delhi: Sage, 1996), 127-41.

⁴⁴³ John McGuire, Peter Reeves, and Howard Brasted, eds, *Politics of Violence: From Ayodhya to Behrampada* (New Delhi: Sage, 1996); and Martha Nussbaum, *The Clash Within: Democracy, Religious Violence and India's Future* (Cambridge, MA: Belknap Press of Harvard University Press, 2007).

The Hindutva movement rose as a significant political force in India during the 1980s and 1990s, and was accompanied by a rise in communal violence orchestrated by member organisations of the Sangh Parivar that continues to shape the contours of modern politics and political violence today.⁴⁴⁴ As a sign of the formal mainstreaming of Hindu nationalist ideology in the domestic political landscape, the BJP was in government from 1998 to 2004 under Prime Minister Atal Bihari Vajpayee, and has again been in government under Prime Minister Narendra Modi since 2014.

Hate speech propagated by Hindu nationalist leaders that exemplifies their exclusionary agenda includes statements such as those by BJP and RSS leader Rajeshwar Singh that “Muslims and Christians will be wiped out of India by December 31, 2021.”⁴⁴⁵ The use of terms such as “wiping out” has been interpreted as a statement of intent for ethnic cleansing by observers.⁴⁴⁶

Rather than denouncing this kind of hate rhetoric and diffusing inter-religious tensions, the current Prime Minister has cultivated an environment for such hate speech to flourish. In his own election speech on 1 April 2019 in Wardha, Modi stated:

Tell me, when you heard the word Hindu terrorist, did you not feel deeply hurt. In a thousand-year history there has been no instance of a Hindu committing an act of terrorism ... Brothers and Sisters, a few days ago decisions have revealed the truth. Congress' conspiracy to the country. Congress for trying to insult Hindus, of staining the basic tenants of our culture, making thousands of our country/people look smaller in front of the world... The ones they called terrorists have awakened. The ones of our peace-loving hindu culture, the Hindus that live for brotherhood, the Hindus that love everyone in the world as their family, have been called terrorists. Joined terrorism with hindus....

The speech was intentionally divisive along religious lines,⁴⁴⁷ and many complaints were filed to the Election Commission of India (ECI) against the speech for stirring majoritarian Hindu sentiment and communal passion. The ECI gave a clean sheet to the Prime Minister, with one dissenting opinion (30 April 2019). *India Today* filed a Right To Information request to disclose the text of the ECI opinion; however, the ECI refused the request on the basis that “disclosure will endanger the life and physical safety of the person or identifies.”⁴⁴⁸ Such lack of accountability at the highest level of political authority has emboldened Hindu nationalists to employ polarising language, and therefore pursue the objectives of their agenda.

⁴⁴⁴ The most significant being the Bombay riots (December 1992–January 1993) in which some 900 people were killed in the wake of the destruction of Babri Masjid (mosque) – one of the most disputed sites between Muslims and Hindus, with Hindus claiming the site to be the birthplace of Hindu god Ram – and the 2002 violence in Gujarat where an estimated 2,000 mostly Muslims were killed.

⁴⁴⁵ “Muslims and Christians will be wiped out of India by December 31, 2021: BJP leader Rajeshwar Singh” *Sabrang India*, 14 December 2014. <https://sabrangindia.in/article/muslims-and-christians-will-be-wiped-out-india-december-31-2021-bjp-leader-rajeshwar-singh>.

⁴⁴⁶ Ibid.

⁴⁴⁷ Jeffrey Gettleman, Kai Schultz, Suhasini Raj, and Hari Kumar, “Under Modi, a Hindu Nationalist Surge Has Further Divided India.” *New York Times*, 11 April 2019, <https://www.nytimes.com/2019/04/11/world/asia/modi-india-elections.html>.

⁴⁴⁸ Government of India, Right to Information Act, 2005, Section 8(1)(g), <https://rti.gov.in/rti-act.pdf>.

Context of Communal Divisions, Hate Speech and Violence in India

Hundreds of episodes of communal violence occur in India every year. The National Crime Records Bureau recorded over 4,500 episodes of communal or religious riots from 2016 to 2019.⁴⁴⁹ Although official records show a decrease in the number of such riots in recent years, the number of riot victims increased by 22 per cent from 2017 to 2018, indicating that these riots have become more deadly.⁴⁵⁰ Further, statistics collected by the organisation Statistica show that the number of hate crimes on the basis of caste, ethnicity or religion reported in the media have increased significantly, from 8 crimes reported in 2010 to 92 reported in 2018.

Religious and communal tensions have come under intense scrutiny since the election of Modi in 2014, and accordingly the flow of information on religiously motivated incidences has been curtailed. The Ministry of Home Affairs ceased releasing annual data on the communal and religious rioting in recent years, and a number of independent databases that were tracking religiously motivated hate crimes have been shut down, including the Hate Tracker website published by the *Hindustan Times* in September 2017, with the forced resignation of the editor-in-chief occurring shortly after a meeting between the newspaper's owner and the Prime Minister.⁴⁵¹ In September 2019, the award-winning Hate Crime Watch database was removed from its website *IndiaSpend*.⁴⁵² Journalists and human rights advocates have also been targets of threats and intimidation for their vocal opposition to state-sponsored communal violence and impunity.⁴⁵³

Far from mitigating instances of inflammatory hate speech, the current BJP government has fostered an environment where hate speech is not only tolerated but also rewarded. NDTV conducted a survey of "statements that are clearly communal, casteist, and calls to violence" made by politicians and public figures. They found that hate speech by public figures increased by 490 per cent in the first four years of BJP rule, with 90 per cent of the politicians involved being members of the BJP.⁴⁵⁴ Most of them go unpunished; some of them are even rewarded. For example, in 2016, BJP Member of Parliament from Karnataka state, Ananth Kumar Hedge was recorded as saying: "As long as we have Islam in the world, there will be no end to terrorism. If we are unable to end Islam, we won't be able to end terrorism." He was promoted as the Union Minister of Skill Development and Entrepreneurship in 2017 and continues to espouse far-right nationalist views through social media and public statements.⁴⁵⁵

⁴⁴⁹ Bharath Kancharla, "The intriguing case of data on 'communal incidents' in India," *Factly*, 8 November 2019, <https://factly.in/the-intriguing-case-of-data-on-communal-incidents-in-india/>; and Press Trust of India, "952 cases of communal, religious rioting in 2018-19:Govt," *The New India Express*, 10 March 2021, <https://www.newindianexpress.com/nation/2021/mar/10/952-cases-of-communal-religious-rioting-in-2018-19-govt-2274869.html>.

⁴⁵⁰ Mukesh Rawat, "Riots in India are decreasing but becoming more intense: NCRB data," *India Today*, 22 October 2019, <https://www.indiatoday.in/india/story/ncrb-crime-in-india-2017-report-rioting-cases-data-1611821-2019-10-22>.

⁴⁵¹ Wire Staff, "After editor's exit, Hindustan Times pulls down controversial 'Hate Tracker'," *The Wire*, 25 October 2017, <https://thewire.in/media/hindustan-times-hate-tracker>.

⁴⁵² Scroll Staff, "FactChecker pulls down hate crime database, IndiaSpend editor Samar Halarnkar resigns," *Scroll.in*, 12 September 2019, <https://scroll.in/latest/937076/factchecker-pulls-down-hate-crime-watch-database-sister-websites-editor-resigns>.

⁴⁵³ Front Line Defenders, "Judicial Harassment of Teesta Setalvad," 2017, <https://www.frontlinedefenders.org/en/case/judicial-harassment-teesta-setalvad>; and Wire Staff, "Teesta Setalvad's organisation calls for help as she faces threat to personal freedom," *The Wire*, 7 March 2018, <https://thewire.in/rights/teesta-setalvads-organisation-calls-for-help-as-she-faces-threat-to-personal-freedom>.

⁴⁵⁴ Nimisha Jaiswal, Sreenivasan Jain, and Manas Pratap Singh, "Under Modi Government, VIP Hate Speech Skyrockets – By 500%," *New Delhi Television (NDTV)*, 19 April 2018, <https://www.ndtv.com/india-news/under-narendra-modi-government-vip-hate-speech-skyrockets-by-500-1838925>.

⁴⁵⁵ Ibid.

While only a small percentage of communal riots escalate to large-scale killings and displacement, such as the Hindu–Muslim violence in Mumbai in 1992 and Gujarat in 2002, there is a consistency and familiarity between these episodes in terms of the social and political dynamics through which they are mobilised. Common among these are the exacerbation of hate rhetoric along the contours of the communal divisions that were concretised during Partition and inflamed through extremist political ideologies. Hate speech turns to the spreading of rumours to instil fear among communities during periods of tension, followed by a systematic mobilisation of populations to participate in riots by local criminal networks, often in the wake of a triggering event, such as the desecration of a holy site such as a temple or mosque (real or orchestrated) or an assassination of a leading religious figure. Many of these riots, or acts of communal violence, have transformed into pogroms as mob leaders exploit the popular unrest to engage in targeted violence.⁴⁵⁶

Major episodes of communal violence have caused the deaths of hundreds, in some cases thousands of people, such as the riots in Ahmedabad in 1969, the anti-Sikh riots across India in 1984, the Bhagalpur riots in 1989, the Mumbai riots in 1992 following the destruction of the Babri Masjid in Ayodhya, and the Gujarat riots in 2002. The official death toll of each event sits between 1,000 and 3,000. Tens of thousands of people have been displaced during these periods, and thousands of homes, businesses, and places of worship have been destroyed. In addition to targeted killings, victims of communal violence suffer from brutal sexual violence, including the gang rape of women and children and destruction of fetuses in pregnant women, and the mutilation, torture, and burning of women and children who have been raped.⁴⁵⁷

Prominent scholars who have written on communal violence in India have, at times, documented the genocidal logic operating during periods of extreme communal violence when the direct targeting, torture, killings and forced displacement of populations according to their religious or ethnic identities were defining features of the violence.⁴⁵⁸ Despite prosecution of a small number of individuals accused of specific attacks, there is an overall trend of persistent impunity, notably for security forces, and the absence of meaningful accountability and reconciliation mechanisms for the populations affected.⁴⁵⁹

Police in India are often complicit in communal violence, either through actively aiding the violence (such as providing weapons), committing acts of violence themselves, or abetting the violence on orders by senior officials. High levels of impunity for political leaders, at both central and state levels, and police units who engage in aiding or abetting communal violence continue to undermine the performance of the security sector in India at protecting civilians on an impartial basis from religious and other identity-based violence.⁴⁶⁰ As the three case studies discussed below demonstrate, the historical impunity exercised by state security forces has only deepened since 2014.

⁴⁵⁶ Ward Berenschot, *Riot Politics: Hindu–Muslim Violence and the Indian State* (New York: Columbia University Press, 2011).

⁴⁵⁷ Mohammad Ali, “Gang-Rape Stokes Tensions in Muzzafarnagar,” *The Hindu*, 5 November 2013; Brass, *Forms of Collective Violence*; Martha Nussbaum, “Rape and Murder in Gujarat,” in *Violence and Democracy in India*, ed. Amrita Basu and Srirupa Roy (Calcutta: Seagull Books, 2007); Nussbaum, *The Clash Within*; Raj K. Raj, “UP Riots: Rape Victims Tell Their Tales,” *Hindustan Times*, 5 January 2014; and personal interview by Cecilia Jacob with human rights activist seeking justice for victims of the 2008 Kandhamal violence in Orissa, India, 2012.

⁴⁵⁸ Amrita Basu and Srirupa Roy, “Beyond Exceptionalism: Violence and Democracy in India,” in *Violence and Democracy in India*, ed. Amrita Basu and Srirupa Roy (Calcutta: Seagull Books, 2007), 1–35; Brass, *Forms of Collective Violence*; and Nussbaum, “Rape and Murder in Gujarat,” 44–51.

⁴⁵⁹ For a detailed account of the justice, see Priti Gulati Cox, “Fifteen years after the 2002 Gujarat Pogrom, the fight continues for accountability and justice continues,” *Countercurrents*, 1 March 2017, <https://countercurrents.org/2017/03/fifteen-years-after-the-2002-gujarat-pogrom-the-fight-for-accountability-and-justice-continues/>.

⁴⁶⁰ Zoya Hasan, “Mass Violence and the Wheels of Indian (In)justice,” in *Violence and Democracy in India*, ed. Amrita Basu and Srirupa Roy (Calcutta: Seagull Books, 2007), 198–222; Taylor C. Sherman, *State Violence and Punishment in India* (Abingdon: Routledge, 2010); and K. S. Subramanian, *Political Violence and the Police in India* (New Delhi: Sage, 2007).

In addition to national political cleavages, there are a number of explanations for the persistence of communal violence in India. First is the presence of ‘institutionalised riot systems’, through which political elites mobilise networks to orchestrate ‘riots’ by spreading rumours and instigating violence that appear spontaneous. The production of riots is used to shape the trajectory of local politics, and they are an integral aspect of political life in a number of Indian cities where communal tensions are endemic.⁴⁶¹

Second, a direct correlation between communal violence and electoral politics in India has also been found through quantitative studies, and scholars have argued that riots help to galvanise Hindu constituencies that are divided by caste conflict around a homogeneous Hindu identity.⁴⁶² Finally, other socio-political factors that account for the consistent reoccurrence of communal violence in India include the mobilisation of communal difference in day-to-day routine political transactions;⁴⁶³ variations in the level of civic engagement across communal lines;⁴⁶⁴ and historical impunity for policing and law enforcement complicity in communal violence and other widespread human rights violations such as torture and extrajudicial killings.⁴⁶⁵

Despite the large body of evidence showing the complicity of India’s political and security establishment in communal violence, India has been subjected to little accountability for the persistent levels of religious persecution and violence. India’s record has been scrutinised through the Universal Periodic Review (UPR) process within the Human Rights Council (HRC) where the problem of hate speech, violence against religious, tribal, and Dalit communities and restrictions on religious freedom has been routinely raised.⁴⁶⁶ However, India has persistently disregarded the recommendations of the HRC, and the HRC’s lack of enforcement mechanisms to ensure that India follows through on its human rights obligations under international law reinforces the absence of a meaningful recourse to accountability of the state at the international level.

⁴⁶¹ Paul Brass, *The Production of Hindu–Muslim Violence in Contemporary India* (New Delhi: Oxford University Press, 2003).

⁴⁶² Ornit Shani, *Communalism, Caste and Hindu Nationalism: The Violence in Gujarat* (Cambridge: Cambridge University Press, 2007); and Wilkinson, *Votes and Violence*.

⁴⁶³ Berenshot, *Riot Politics*; Gayendra Pandey, *Routine Violence: Nations, Fragments, Histories* (Stanford: Stanford University Press, 2006).

⁴⁶⁴ Varshney, *Ethnic Conflict and Civic Life*.

⁴⁶⁵ Beatrice Jauregui, “Law and Order: Police Encounter Killings and Routinized Political Violence.” in *A Companion to the Anthropology of India*, ed. Isabelle Clark-Decés (West Sussex: Wiley-Blackwell, 2011), 371–88; Sherman, *State Violence and Punishment in India*; and Rachel Wahl, “Policing, Values, and Violence: Human Rights Education with Law Enforcers in India,” *Oxford Journal of Human Rights Practice* 5, no. 2 (2013): 220–42.

⁴⁶⁶ The most recent recommendations to India in which these themes are addressed are found in UN Human Rights Council, “Report of the Working Group on the Universal Periodic Review: India,” A/HRC/36/10, 17 July 2017, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G17/193/56/PDF/G1719356.pdf?OpenElement>.

CONSTITUTIONAL STATUS OF HATE SPEECH IN INDIA

The provisions dealing with hate speech are incidental to the provisions dealing with state authority, law and order, and infringement of individual liberties as enshrined in the Constitution. Accordingly, in the Indian Constitution, the right to freedom of speech and expression under Article 19 is enshrined in Part III, which pertains to the fundamental rights of the individual. This right is subject to 'reasonable restrictions' as given in clauses (2) to (6) of Article 19 which subject the right to restriction on grounds of: "sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, decency or morality or in relation to contempt of court, defamation or incitement to an offence."

At the outset it may be noted that within the Constitution no separate section deals with hate speech, instead different laws and penal articles deal with offences which may be understood as hate speech. Thus, as the Law Commission of India notes, hate speech is not defined in the Constitution.⁴⁶⁷ The 267th report of the Law Commission of India was an outcome of the directives issued by the Supreme Court of India (SCI) to look into the definition, if necessary, of hate speech under the Constitution.⁴⁶⁸ As the Commission in its report subsequently noted, the concern that the SCI has with defining hate speech is the restriction and curtailment of free speech which may result from misuse of such legislation or definition.⁴⁶⁹ Specifically, the SCI has held that in order to breach the limits of Article 19(1) a differentiation must be made "between discussion and advocacy from incitement," and further that incitement must amount to incitement to violence,⁴⁷⁰ otherwise restrictions would not apply.

In its report, the Law Commission annexed a proposed Criminal Law (Amendment) Bill, 2017, recommending an amendment of the Penal Code to include two new provisions to address hate speech, which it defined as: "incitement to hatred primarily against a group of persons defined in terms of race, ethnicity, gender, sexual orientation, religious belief and the like". Thus, "hate speech is any word written or spoken, signs, visible representations within the hearing or sight of a person with the intention to cause fear or alarm, or incitement to violence."⁴⁷¹

The Commission proposed to add two sections – 153C (prohibiting incitement to hatred) and 505A (causing fear, alarm, or provocation of violence in certain cases) – to the Indian Penal Code and make the necessary changes in the Criminal Procedure Code. The proposal included punishments of limited jail terms and a fine.⁴⁷² To date, however, the recommendations of the Commission have not been accepted.

⁴⁶⁷ B. Chauhan, G. Narayana Raju, S. Chandra, S. Singh, S. Sivakumar, and R. R. Tripathi, "Hate Speech," *Law Commission of India Report*, no. 267 (2017): 5, <https://lawcommissionofindia.nic.in/reports/Report267.pdf>.

⁴⁶⁸ *Ibid.*, ii.

⁴⁶⁹ *Ibid.*, 9.

⁴⁷⁰ *Ibid.*, 13.

⁴⁷¹ *Ibid.*, 49.

⁴⁷² *Ibid.*, 52-53.

For the purposes of this chapter we may note that the following legislation penalises hate speech:

THE INDIAN PENAL CODE, 1860 (IPC)

The IPC contains provisions which deal with deliberate acts intended to outrage the feelings of any community so as to incite violence or to create animosity, based on grounds which include religion. (Sections 153A, 295A, 298, 505(1) and (2))

It also deals with provisions which penalise acts (including speech) prejudicial to national integration (i.e. sedition). (Sections 124A, 153B)

THE REPRESENTATION OF THE PEOPLES ACT, 1951 (RPA)

This Act deals with elections, and the specific provisions under Sections 8, 123(3A), and 125 that prohibit and result in disqualification of people indulging in electoral malpractice on the grounds of the illegitimate use of freedom of expression to create enmity on grounds which include religion, race, caste etc.

THE CODE OF CRIMINAL PROCEDURE, 1973 (CRPC)

Section 95 empowers the state to penalise and forfeit publications prosecutable under the above provisions of the IPC.

Sections 107 and 144 empower the administration to censor or prevent a breach of peace or disturbance of the public order on account of offences and acts which may include or occur on account of hate speech.

THE SCHEDULED CASTES AND SCHEDULED TRIBES (PREVENTION OF ATROCITIES) ACT, 1989

“Section 3. Punishment for offences of atrocities (1): Whoever not being a member of a Scheduled Cast or a Scheduled Tribe,-

(r) intentionally insults or intimidates with intent to humiliate a member of a Scheduled Caste or a Scheduled Tribe in any place within public view.”

DRAFT PREVENTION OF COMMUNAL VIOLENCE BILL

Communal violence continues to be highly politicised in India. In the lead up to the 2014 general elections, the United Progressive Alliance, led by the Congress party, attempted unsuccessfully to reintroduce the Draft Prevention of Communal Violence (Access to Justice and Reparations) Bill to the Upper House in the last parliamentary session, inflaming political debate. The original Bill, drafted by secular civil society actors and adapted without their approval, was introduced into the Lower House of parliament in 2011 where it was rejected. The BJP is ideologically opposed to the Bill, and their position is defended on the basis that the definition of ‘majority’ communities in India discriminates against Hindu populations. The BJP also argued that the Bill would enable the central government to encroach on state-level jurisdiction for policing and that provisions in the existing Constitution, Criminal Code, and Penal Code provide adequate protection for populations without requiring further legislation.⁴⁷³ Secular activists rejected the original Bill, arguing that the changes made to the text were too ambiguous and that it was too draconian given the heightened power it allocated to the central government to intervene in states.⁴⁷⁴

India experienced violent communal riots in Muzzafarnagar in the swing state of Uttar Pradesh in September 2013, where there was a tardy police response, and over 50,000 people were displaced. The event provided the impetus for the then ruling Congress party to reintroduce the Bill in the last sitting of parliament before the election in December 2013. The revised 2013 Bill contained provisions to address deficiencies in the Constitution, the Penal Code, and the Criminal Code by offering additional protections to religious and other minority communities from persecution, by providing compensation and rehabilitation rights for victims, and by including penalties for district-level officials. The revised version also removed a clause that gave the central government additional powers to intervene in state jurisdictions during communal violence, and enhanced the authority of the National Human Rights Commission. Despite the persistence of communal tensions throughout the country, the draft bill was rejected in parliament, and was removed from the agenda after the election of the BJP to government in 2014.

DISCRIMINATORY LEGAL PROVISIONS AND POLICIES UNDER THE BJP GOVERNMENT

Since the BJP came to power in 2014, and notably after the 2019 election in which the BJP won a majority government, a number of discriminatory policies and laws have been enacted. These are widely interpreted to target minorities, most notably Muslim populations, but also other non-Hindu minority religions and ethnic minorities. These moves by the BJP have signalled their support for Hindu nationalist groups and has created a political space in which hate speech has flourished and hate crimes have burgeoned across the country. The most controversial provisions are summarised below, before turning to the case studies.

⁴⁷³ Vinay Kumar and Smriti Kak Ramachandran, “Bill on communal violence invites strident debate.” *The Hindu*, 6 December 2013.

⁴⁷⁴ Javed Anand, “Targeting the Lawbreakers.” *Economic and Political Weekly*, 66 no.34 (2011): 19–21..

CITIZENSHIP (AMENDMENT) ACT, 2019 (CAA)

The Citizenship Amendment Bill was passed in December 2019. The amendment provides a pathway for illegal migrants from six different religions, Hindus, Sikhs, Buddhists, Jains, Parsis, and Christians, from Afghanistan, Bangladesh, and Pakistan, who have fled their country to escape from religious persecution. However, the Bill is the first to legislate exclusionary religious qualifications for defining persecution and protecting minorities. The exclusion of Muslims has been especially controversial, as the Bill has been seen to directly target Muslims from gaining citizenship in India, whereby persecuted Muslims in the region⁴⁷⁵ are denied the same pathways for formal citizenship. Furthermore, those opposed to the CAA argue that it violates Article 14 of the Indian Constitution that guarantees the right to equality and undermines India's secular status. Protests against the CAA were the major impetus for the 2020 Delhi riots examined below and are evidence of increased religious polarisation instigated by the BJP government since it secured a majority government in the 2019 general election.

NATIONAL REGISTER OF CITIZENS

The rollout of the National Register of Citizens (NRC) in the state of Assam in the North Eastern Region of India left millions excluded from the formal register, particularly poor citizens who lacked formal registration documents, or those with minor irregularities in their documentation who were designated as 'doubtful citizens'.⁴⁷⁶ The precarious status of these populations raised international concerns that alongside rising hate speech against minorities in Assam, the NRC process would "exacerbate the xenophobic climate while fueling religious intolerance and discrimination in the country."⁴⁷⁷ United Nations experts not only challenged the legality of the practice, but also called on the Indian government "to take resolute action to review the implementation of the NRC and other similar processes in Assam and in other states, and to ensure that they do not result in statelessness, discriminatory or arbitrary deprivation or denial of nationality, mass expulsion, and arbitrary detention."⁴⁷⁸

The NRC, if implemented nationwide in tandem with the CAA, would create a tenuous situation for millions of Muslims who would have to provide legal documentation proving their Indian citizenship, in a country where the system of birth registrations and formal documentation is not reliable.

JAMMU AND KASHMIR MEDIA POLICY

In August 2019, with the support of the BJP and other right wing political parties, the government of India stripped Muslim-majority Jammu and Kashmir of its autonomy granted under Article 370 of the Indian Constitution. In a continuation of policies that target Muslim populations, the

⁴⁷⁵ Such as Shia, Balochi, and Ahmadiyya Muslims in Pakistan and Hazaras in Afghanistan who face persecution, but also persecuted Rohingya Muslims from Myanmar and Tamils from Sri Lanka.

⁴⁷⁶ United States Commission on International Religious Freedom (USCIRF), "India: USCIRF – Recommended for Countries of Particular Concern (CPC)," in *Annual Report* (Washington, DC: USCIRF, 2020): 21.

⁴⁷⁷ Ahmed Shaheed, Fernand de Varennes, and E. Tendayi Achiume, "UN Experts: Risk of Statelessness for Millions and Instability in Assam, India," OHCHR, 3 July 2019, <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=24781&LangID=E>.

⁴⁷⁸ Ibid.

government cited security reasons (countering foreign terrorism) as a rationale for taking federal control of the long-disputed region. The government imposed a curfew, cut communications, deployed large numbers of security forces to the region, and restricted the freedom of movement and assembly. The government arrested Kashmiri politicians and religious leaders. Despite efforts to challenge the government actions through the Supreme Court, and international concern over the restriction of freedom and access to information, the government of India succeeded in changing the status of the region into two Union Territories.

COW PROTECTION

Many states in India already have laws that criminalise the slaughter of cows, considered sacred in the Hindu religion. While the issue of cow protection is longstanding and divisive, it has become particularly prominent through the BJP's leadership and RSS activism. Vigilante groups of self-proclaimed 'cow protectors' have mobilised campaigns of violence, targeting Muslims, Christians, and Dalits suspected of eating beef, slaughtering cows, or transporting cattle for slaughter.⁴⁷⁹ According to the US Commission on International Religious Freedom: "Since the BJP came to power in 2014, there have been over 100 attacks, amounting to over 98 percent of such attacks since 2010. Lynching victims, rather than the perpetrators, are often arrested under these laws."⁴⁸⁰

These figures show both an upward trend in the mobilisation of hate crimes through inflammatory rhetoric, backed by political ideology of the far-right BJP nationalist agenda, combined with an environment of widespread impunity for perpetrators, and for police groups that have been unwilling to intervene to halt assaults on victims, or have themselves been complicit in acts of violence.⁴⁸¹

ANTI-CONVERSION LAWS

The Indian Constitution protects the right to "propagate" one's religion (Article 25); however, since the 1960s, and increasingly since 2000, numerous states have moved to enact laws that criminalise forced conversions of religion (known as freedom of religion laws). These laws have been promoted by Hindu-nationalist groups, and the implementation of the laws has focused on the conversion of Hindus to other religions, primarily Christianity and Islam. Therefore, where these laws are controversial in practice is in the default acceptance that conversion into Hinduism is a natural progression for the national identity and constitution of India, and the use of such laws to restrict the religious practices and freedoms of religious minorities in the country. As such, the laws have been used to cause intimidation and fear among religious minorities, and also Non-Governmental Organisations whose activities are closely scrutinised to ensure they are not carrying out proselytisation.⁴⁸² The US Commission on International Religious Freedom reports that:

⁴⁷⁹ Human Rights Watch (HRW), "India: 'Cow Protection' Spurs Vigilante Violence," News Release, 27 April 2017, <https://www.hrw.org/news/2017/04/27/india-cow-protection-spurs-vigilante-violence>; and USCIRF, "India," 21.

⁴⁸⁰ USCIRF, "India," 21.

⁴⁸¹ For evidence of cooperation between authorities and vigilante groups, the inadequacy of judicial processes for perpetrators of such violence, and the targeting of those who publicly campaign against the cow protection movement, refer to the report from Human Rights Watch, "India: 'Cow Protection' Spurs Vigilante Violence."

⁴⁸² For a fuller discussion see USCIRF, "Limitations on Minorities' Religious Freedom in South Asia," USCIRF Special Report, November 2018, <https://www.uscifr.gov/sites/default/files/Limitations%20on%20Minorities%20Religious%20Freedom%20in%20South%20Asia.pdf>.

Hindutva groups pursue mass conversions through ceremonies known as ghar wapsi (homecoming), without interference from authorities. Empowered by anti-conversion laws and often with the police's complicity, Hindutva groups also conduct campaigns of harassment, social exclusion, and violence against Christians, Muslims, and other religious minorities across the country. Following attacks by Hindutva groups against religious minorities for conversion activities, the police often arrest the religious minorities who have been attacked.⁴⁸³

The ideological rejection of conversion to any other religion than Hinduism is not only enshrined in the laws of some 10 states across India, but also manifested in the nature of hate speech targeted at religious minorities. Through vitriolic social media slogans, popular protests, and Hindu nationalist political campaigns, the anti-Muslim campaign 'love-Jihad' perpetuates false claims that Muslim men intentionally lure Hindu girls into romantic relations so that they will marry and convert to Islam.⁴⁸⁴ In November 2020, the state of Uttar Pradesh passed the Prohibition of Unlawful Religious Conversion Ordinance, giving the state effective control over any decision to convert. The law has been used to harass, separate interfaith married couples, and arrest individuals suspected of breaching the law.⁴⁸⁵

Case Study: Delhi Riots

The violence in Delhi which took place from 23 February to 27 February 2020 came about as fallout from the protests against India's Citizenship (Amendment) Act which the Muslim community perceived to be aimed at them.⁴⁸⁶ The following case study is divided into four sections, the first deals with the extant provisions in the Indian Constitution dealing with hate speech, the second deals with the hate speech issued by various figures before the violence spread including the speech which triggered the violence, and the third deals with the use of social media to mobilise and incite violence by examining the video of Ragini Tiwari who arrived at the main scene of violence. A concluding section notes the observations from the case study.

CONTEXT: CONTINUUM OF VIOLENCE

This section uses data from the Delhi Minorities Commission (DMC) fact-finding committee report⁴⁸⁷ and alternative news media reports on Delhi riots of 2020 which took place on 23 February and continued unabated for the next few days. These sources highlight how

⁴⁸³ USCIRF, "India," 21.

⁴⁸⁴ Ghazala Wahab, "How 'Love Jihad' Went from being Propaganda to Policy," *The Indian Express*, 15 April 2021, <https://indianexpress.com/article/opinion/columns/how-love-jihad-went-from-being-propaganda-to-policy-7273946/>.

⁴⁸⁵ Geeta Pandey, "'Love Jihad': What a reported miscarriage says about India's anti-conversion laws," *BBC News*, 17 December 2020, <https://www.bbc.com/news/world-asia-india-55314832>.

⁴⁸⁶ Jayshree Bajoria, "Shoot the Traitors: Discrimination against Muslims under India's New Citizenship Policy," Human Rights Watch, 9 April 2020, <https://www.hrw.org/report/2020/04/09/shoot-traitors/discrimination-against-muslims-under-indias-new-citizenship-policy>.

⁴⁸⁷ M. R. Shamshad, "Report of the Fact-Finding Committee on North-East Delhi Riots of February 2020," (New Delhi: Delhi Minorities Commission, Government of NCT of Delhi, 2020), <https://ia801906.us.archive.org/11/items/dmc-delhi-riot-fact-report-2020-Delhi-riots-Fact-Finding-2020.pdf>.

violence was triggered by hate speeches⁴⁸⁸ widely disseminated over social media targeting the Muslim minority in India's capital coinciding with the Delhi Assembly elections. What these reports identify is the way in which the government machinery both failed to respond appropriately and was in many ways complicit in the outbreak of violence resulting from hate speech.⁴⁸⁹ Furthermore, social media also played a significant role in the mobilisation of people and incitement of communal violence, primarily by way of live broadcasts and large-scale dissemination of hate speech.⁴⁹⁰ Mass protests against India's controversial Citizenship (Amendment) Act were painted by the ruling dispensation as anti-national (read anti-Hindu) and ably assisted by the mainstream media which amplified government narratives and fuelled communal hatred. The violence was preceded by hate speeches by members of the ruling BJP party who were campaigning for the Delhi elections. The Election Commission had already censored and flagged two star campaigners for violation of the Model Code of Conduct.⁴⁹¹ These speeches and precedents of violence should have indicated the tense and combustible atmosphere surrounding the anti-CAA protests and ideally led the government in Delhi to set up countermeasures and safeguards.

BUILD-UP: "GOLI MARO SAALON KO"

The slogan "Goli Maro Saalon Ko" became associated with all incidents of violence triggered by hate speech and inflammatory media coverage of anti-government and anti-CAA protests.⁴⁹² The violence can be mapped on a continuum stretching from police brutality against students of JMI University⁴⁹³ to individual acts of violence perpetrated by pro-CAA individuals around the protest site in at Shaheen Bagh⁴⁹⁴ which eventually escalated into a full-scale pogrom in the aftermath of inflammatory speeches given in the course of the Delhi election campaigning. The general contours of campaigning especially by BJP revolved around the juxtaposition of anti-CAA protesters as Pakistanis against pro-CAA government supporters as patriotic nationalists. Kapil Mishra continued to tweet aggressively during the campaign including likening the election to an India-Pakistan cricket match as well as accusing the opposition of creating 'mini Pakistans' in the form of Shaheen Baghs around the capital and the rest of the country.⁴⁹⁵ He further alleged that 5 lakh rupees were being given as a bounty to assault police officers and indulge in anti-CAA protests.⁴⁹⁶ Multiple Union ministers including Union Home Minister Amit Shah kept issuing statements in the same frame resulting in an acute atmosphere of polarisation.

⁴⁸⁸ Ibid., 26-29 and 32.

⁴⁸⁹ Ibid., 99-103.

⁴⁹⁰ Sagar, "Delhi Violence Unmasked: Part One," *The Caravan*, 1 March 2021, <https://caravanmagazine.in/politics/part-one-how-rss-bjp-members-invoked-hindu-identity-to-mobilise-hindutva-mobs-at-maujpur>; Sagar, "Delhi Violence Unmasked: Part Two," *The Caravan*, 1 March 2021, <https://caravanmagazine.in/politics/part-two-how-modi-speeches-fomented-hate-aided-hindutva-mobilisation-against-anti-caa-protesters>; and Sagar, "Delhi Violence Unmasked: Part Three," *The Caravan*, 1 March 2021, <https://caravanmagazine.in/politics/how-bjp-and-youth-wing-bjym-used-delhi-elections-to-mobilise-hindutva-mobs>.

⁴⁹¹ Shamshad, "Report of the Fact-Finding Committee on North-East Delhi Riots of February 2020," 31.

⁴⁹² Bajoria, "Shoot the Traitors."

⁴⁹³ Ibid.

⁴⁹⁴ Shamshad, "Report of the Fact-Finding Committee on North-East Delhi Riots of February 2020," 29-30.

⁴⁹⁵ NDTV, "'India vs Pakistan': BJP leader Kapil Mishra tweets on Delhi polls," YouTube, 24 January 2020, <https://www.youtube.com/watch?v=gZbck5Ez-zA>.

⁴⁹⁶ Ibid.

On 27 January 2020 in an election rally, the Home Minister of India, Amit Shah, asked the attendees to press the voting button with such ferocity that the protesters at Shaheen Bagh would “feel the current”. Shah said: “Your vote to BJP candidate will make Delhi and the country safe and prevent thousands of incidents like Shaheen Bagh.”⁴⁹⁷

On 28 January 2020, in a televised interview, Member of Parliament from the BJP, Parvesh Verma, said the following with reference to Muslim males:

The people of Delhi know that the fire that raged in Kashmir a few years ago, where the daughters and sisters of Kashmiri Pandits were raped ... caught on in UP, Hyderabad, Kerala, the same fire is raging in a corner in Delhi. Lakhs of people gather there. This fire can reach the residences of Delhi anytime. People of Delhi will have to decide wisely. These people will enter your houses, rape your sisters & daughters, kill them. There's time today, Modi ji & Amit Shah won't come to save you tomorrow...⁴⁹⁸

On 29 January 2020, Tarun Chugh, National Secretary, BJP, tweeted: “We will not let Delhi become Syria and allow them to run an ISIS-like module here, where women and kids are used. They are trying to create fear in the minds of people of Delhi by blocking the main route. We will not let this happen. (We will not let Delhi burn). #ShaheenBaghKaSach.”⁴⁹⁹

These events culminated with a call to open violence in the campaign by one of the Union ministers, Anurag Thakur. Thakur's speech on 20 January 2020 openly advocated shooting the traitors of the country and equated opposition parties and anti-CAA protesters with traitors who support Pakistan.⁵⁰⁰ In the speech he repeatedly asks the crowd “Desh ke Gaddaron ko?” [the traitors of the nation?] to solicit the response from the crowd, to which they obliged him by saying “goli maaro saalon ko” [shoot those scoundrels].⁵⁰¹ He shared the podium with other members of the party and another Union minister, Giriraj Singh. The Election Commission sent warning notices and eventually struck Thakur and another fellow party member from the campaign roster in Delhi.⁵⁰²

TRIGGER: KAPIL MISHRA

The immediate trigger for the violence was the following speech given by Kapil Mishra on 23 February wherein he threatened to take the law into his own hands if the Delhi police failed to clear the roads of anti-CAA protesters. Mishra had mobilised a crowd via live broadcast

⁴⁹⁷ Rohini Chatterji, “Press button with such anger that Shaheen Bagh feels current, says Amit Shah,” *Huffington Post*, 26 January 2020, https://www.huffpost.com/archive/in/entry/delhi-assembly-elections-2020-amit-shah-shaheen-bagh_in_5e2e62d9c5b67d8874b4f4d7.

⁴⁹⁸ FE Online, “Delhi Election 2020: BJP MP says Shaheen Bagh will be cleared in an hour if BJP comes to power,” *Financial Express*, 28 January 2020, <https://www.financialexpress.com/india-news/delhi-election-2020-bjp-mp-says-shaheen-bagh-will-be-cleared-in-an-hour-if-bjp-comes-to-power/1837215/>.

⁴⁹⁹ PTI, “Won't Allow Delhi to become Syria, Says BJP Leader Tarun Chugh on Shaheen Bagh Protest,” *National Herald*, 30 January 2020, <https://www.nationalheraldindia.com/india/wont-allow-delhi-to-become-syria-says-bjp-leader-tarun-chugh-on-shaheen-bagh-protest>; and ANI, “Shaheed Bagh means Shaitan Bagh: BJP's Tarun Chugh,” *Asian News International*, 30 January 2020, <https://www.aninews.in/news/national/politics/shaheen-bagh-means-shaitan-bagh-bjps-tarun-chugh20200130115030/>.

⁵⁰⁰ NDTV, “Prime Time with Ravish: ‘Goli Maaro’ slogans at Union Minister Anurag Thakur's rally,” YouTube, 27 January 2020, 1:10-1:48. <https://www.youtube.com/watch?v=1ndq79y1ar4>; *India Today*, “Gun down traitors of country: Anurag Thakur's open provocation caught on camera,” YouTube, 28 January 2020, https://www.youtube.com/watch?v=6u9P1J_WopU; and Shamshad, “Report of the Fact-Finding Committee on North-East Delhi Riots of February 2020,” 27.

⁵⁰¹ Ibid.

⁵⁰² *India Today*, “EC cracks whip against BJP leaders' hate speech against anti-CAA protesters in Delhi,” YouTube, 30 January 2020, <https://www.youtube.com/watch?v=7A37uTuyRxY>.

on social media and had them assemble in the Maujpur area of Delhi near the sit-in site of anti-CAA protesters and proceeded to give the speech.⁵⁰³

This is what they wanted. This is why they blocked the roads. That's why a riot-like situation has been created. From our side not a single stone has been pelted. DCP is standing beside us. On behalf of all of you, I am saying that till the time [US President] Trump goes back [from India], we are going to go forward peacefully. But after that, we will not listen to the Police if roads are not cleared after three days. By the time Trump goes, we request the Police to clear out Jafrabad and Chaand Bagh. After that, we will have to come on the roads. Bharat mata ki jai! Vande Mataram! [Victory to mother India!⁵⁰⁴ Long live the motherland!]"⁵⁰⁵

Within a few hours of the speech, systematic and targeted violence took place at various localities in Delhi's North East district, beginning in the area threatened in the speech itself.⁵⁰⁶ What is significant in this case is that while giving the speech he was flanked on his right by the Deputy Commissioner of Police of Delhi Police, as visible in the video, and yet though existing provisions allowed the police to censor the speech and place him in preventive detention, no such action took place. Further, the charge-sheet filed by the police fails to mention these hate speeches, especially the one given by Kapil Mishra. The High Court also noted this strange occurrence and sought clarification on the matter from the Delhi police and central government.⁵⁰⁷ This points us towards another peculiarity in this case, wherein because Delhi is the National Capital Territory and not a fully fledged state, the law enforcement falls under the control of the Union Home Ministry and not the elected Delhi government. Thus, in relation to the Delhi riots, malpractice and a nexus between the central executive and law enforcement in Delhi seems highly probable.

INCITEMENT AND MOBILIZATION: MEDIUM AND MESSAGE IN THE DELHI RIOTS

Other than Kapil Mishra, many other individuals also began issuing threats and polarising speeches over live broadcasts on social media. Among them, the case of Ragini Tiwari, a volunteer BJP worker, is pertinent.⁵⁰⁸ What is significant in this case is that other than just issuing speeches she joined the pro-CAA Hindu factions and began mobilisation on the ground, streaming it on live broadcast over Facebook. As with Kapil Mishra, she also is not mentioned in the charge-sheets of the Delhi police. Below is the transcript of one such broadcast from Maujpur in North-East Delhi wherein she calls for the mobilisation of Hindus and incites the crowd to violence:

⁵⁰³ Shamshad, "Report of the Fact-Finding Committee on North-East Delhi Riots of February 2020," 30.

⁵⁰⁴ In right-wing iconography India is conceptualised as a mother goddess.

⁵⁰⁵ India Today Web Desk, "Won't listen after 3 days: Kapil Mishra's ultimatum to Delhi Police to vacate Jafrabad roads," *India Today*, 23 February 2020, <https://www.indiatoday.in/india/story/won-t-listen-after-3-days-bjp-kapil-mishra-ultimatum-to-delhi-police-to-vacate-jaffrabad-chand-bagh-roads-1649271-2020-02-23>; Wire Staff, "BJP's Kapil Mishra Has Issued an 'Ultimatum' to the Delhi Police. But Who Is He?" *The Wire*, 2 February, 2020, <https://thewire.in/communalism/kapil-mishra-delhi-bjp>; and Mojo Story, "Kapil Mishra among these 4 videos Delhi High Court made police watch on hate speeches by politicians," YouTube, 28 February 2020, <https://www.youtube.com/watch?v=M1RcLjP9068>.

⁵⁰⁶ Shamshad, "Report of the Fact-Finding Committee on North-East Delhi Riots of February 2020," 33-67, 99-101.

⁵⁰⁷ Live Law (@LiveLawIndia), "When you've registered FIRs for damages to property, why aren't you registering it for these speeches," Twitter, 26 February 2020, 9:42 p.m., <https://twitter.com/LiveLawIndia/status/1232616828045643776>; and Shamshad, "Report of the Fact-Finding Committee on North-East Delhi Riots of February 2020," 32.

⁵⁰⁸ Vijayta Lalwani, "Who is Ragini Tiwari whose video threatening protesting farmers has gone viral?" *Scroll.in*, 13 December 2020, <https://scroll.in/article/981110/who-is-ragini-tiwari-whose-video-threatening-protesting-farmers-has-gone-viral>.

Aree Delhi Police lath Bajao Hum thumare Saath Hain. Aree mote mote lath bajao hum tumhare saath hain. Zaroorath padi toh hume bulao hum tumhare saath hain. Aree Kya hua? Kya Hua? Jo bi gaddar hai Kat dalo usko. Katt dalo. Ye Bheemti hai kya? Kon Hai be Tu? Boht Hua Sanatan par var. Ab nahi sahenge var. Arr par ki ladai, Sabhi sanatani bahar aao. Maro ya Mar dalo, badh mai dekhi jayegi. Boht hua. Khun na Khola Khun nahi wo pani hai.⁵⁰⁹

[Translation] Delhi Police use your batons we [pro-CAA Hindu mobs] are with you. Use heavy batons we are with you. If you require then call upon us we are with you. What happened? What happened? Whoever the traitor is cut them down. Cut them down. Is she a Bheemti? [referring to a person of the lower caste who supports Ambedkar]. Who are you? Enough of the attacks on Sanatan [Hinduism]. No longer shall we suffer attacks. Come out all Sanatanis [i.e. Hindus]. This is the fight for now or never. Kill or be Killed, whatever happens will see afterwards. Enough of this [tolerance]. Blood which doesn't boil is water.

In the video she openly advocates for violence and bloodshed and goads the Delhi police to undertake violence. She also goads the mob on the basis of defence of Hindu religion. This is happening live and broadcast on Facebook, and no action is taken by the administration to stop it or take into cognisance the effect this may have in further exacerbating the situation. All this is happening while she stands surrounded by paramilitary and reserve police personnel in full riot gear. It takes place on the very first day of violence on February 23. Another video is captured by a journalist who records her in the act at one of the sites of violence in Delhi where she is seen repeating the same sentiments and hurling stones to stoke violence, which had apparently abated.⁵¹⁰

The DMC report has noted the complicity⁵¹¹ and inaction of the Delhi police in the riots,⁵¹² and in its recommendations asked the government to make the Delhi police accountable.⁵¹³ Given the mounting evidence and ample availability of these mobilisation videos covered in investigative reporting,⁵¹⁴ the undefined contours of hate speech, and the targeting of minorities in these speeches, the anti-Muslim bias of law enforcement in Delhi represents a singular challenge to the provisions dealing with hate speech in the Indian Constitution. However, the only ray of hope seems to be the report commissioned by the DMC as it is a statutory body of the Delhi government, and the report may be used by courts in judgement of the case.⁵¹⁵

⁵⁰⁹ The video of Ragini Tiwari was shared by fact-checking handles on Twitter including this one by Mohammed Zubair (@zoo_bear), "Here is the video of Ragini Tiwari," Twitter, 18 July 2020, 5:24 p.m., https://twitter.com/zoo_bear/status/1284388654077493248; see also APB News, "Delhi Violence: Ragini Tiwari spews poison, instigates riot through social media," 28 February 2020, <https://www.abplive.com/news/india/delhi-violence-ragini-tiwari-controversial-social-media-video-1314399>; and Lalwani, "Who is Ragini Tiwari whose video threatening protesting farmers has gone viral?"

⁵¹⁰ The Wire, "Delhi riots witness who filmed Ragini Tiwari's violent acts asks why police has not arrested her," YouTube, 17 September 2020, <https://www.youtube.com/watch?v=NMkBY-Rh1C8>.

⁵¹¹ Shamshad, "Report of the Fact-Finding Committee on North-East Delhi Riots of February 2020," 68-80.

⁵¹² Ibid., 101-104.

⁵¹³ Ibid., 108.

⁵¹⁴ Sagar, "Delhi Violence Unmasked: Part One"; Sagar, "Delhi Violence Unmasked: Part Two"; and Sagar, "Delhi Violence Unmasked: Part Three."

⁵¹⁵ See also Sofi Ahsan, "Can't have Parallel Judicial System: Centre on Plea in Delhi HC against Fact-Finding Reports," *The Indian Express*, 24 February 2021, <https://indianexpress.com/article/cities/delhi/cant-have-parallel-judicial-system-centre-on-plea-in-delhi-hc-against-fact-finding-reports-7201799/> on the status of various fact finding reports and objections to them raised by the prosecution.

Hate Speech and Violence During the Covid Pandemic: The Tablighi Jamaat Case

In India the spread of COVID-19 was disproportionately and specifically associated with Muslims because a significant number of Tablighi Jamaat members were diagnosed with the disease. This association of COVID-19 with Muslims occurred in an already charged atmosphere of xenophobic hatred. The discourse on the coronavirus pandemic morphed and superimposed itself on local prejudices in India. This case study looks at the case of Tablighi Jamaat, the world's largest Muslim missionary organisation, and the hate mongering which witnessed the targeting of Muslims as primary carriers and spreaders of the coronavirus in India. The hate-filled coverage and comments targeting Tablighi Jamaat aimed at painting the whole Muslim community as the main carrier of the coronavirus and, further, Muslims were attributed as having done so intentionally as an act of "Jihad" (holy war). The most perturbing thing about this event is that politicians across the entire political spectrum partook in criminalising the group and attributing malicious intentions to Tablighi Jamaat and by extension giving ample space to the media and the central executive to target the community. This took place with the backdrop of a massive state failure to properly execute its lockdown plan because of which *lakhs* of labourers were stranded across interstate borders in India.

THE EVENT

The Tablighi Jamaat is headquartered at Nizamuddin Markaz in New Delhi where, apart from being a guest house, they annually conduct the consultation program over its activities with its international members. In 2020 the program was scheduled to take place between 14 and 16 March. No prior screening was conducted at the airports before letting in the members who had arrived from across the world. On 13 March the Delhi government, invoking the colonial era Epidemic Diseases Act of 1897, banned gatherings of more than 2,000 people. However, it was only three days later that the ban was extended to religious gatherings, and by then Tablighi's consultation program was over and many of its members had begun dispersing across the country as a matter of practice while some had stayed back.⁵¹⁶ By the time the Prime Minister had announced a civil curfew (Janata curfew) on 19 March, reports had begun trickling in about the members of Tablighi Jamaat who were diagnosed with the virus in different parts of the country.⁵¹⁷

Meanwhile the relocation of members from the premises became a problem as the Jamaat representatives made appeals to the local administration who instructed them to stay in place and shut the gates of the Markaz.⁵¹⁸ On 30 March it was reported that the Chief Minister of Delhi had instructed the police to bring criminal charges against the group,⁵¹⁹ and the following day the Delhi police charged its head Maulana Saad and six other Jamaat officials for "deliberately, wilfully, negligently and malignantly" disobeying its orders in holding a mass gathering without

⁵¹⁶ Seema Chishti, "The Nightmare: The Modi Government's Persecution of the Tablighi Jamaat," *The Caravan*, 30 January 2021, <https://caravanmagazine.in/politics/nightmare-persecution-tablighi-jamaat>.

⁵¹⁷ Ibid.

⁵¹⁸ Ibid.

⁵¹⁹ PTI, "Nizamuddin congregation: Arvind Kejriwal orders FIR against maulana," *India Today*, 30 March 2020, <https://www.indiatoday.in/india/story/nizamuddin-congregation-arvind-kejriwal-orders-fir-against-maulana-1661514-2020-03-30>.

proper social-distancing norms and without recourse to necessary sanitary mechanisms.⁵²⁰ On 2 April the federal government moved to blacklist as many as 960 foreign members of the group for infringement of visa norms and directed the heads of all state police forces, including the Delhi police, to take legal action on the basis of the Foreigners Act, 1946 and Disaster Management Act, 2005.⁵²¹ Subsequently, extending over a couple of weeks, the mainstream media joined the chorus with the Union government in claiming that Tablighi Jamaat and, by extension, the Muslim community had been instrumental in spreading the coronavirus in India.⁵²²

MEDIA NARRATIVES: “SUPER SPREADER” TO “CORONA JIHAD”

Union minister of the BJP Mukhtar Abbas Naqvi called the Tablighi Jamaat activities a criminal act wherein by dispersing across the country the Tablighi Jamaat had acted as “coronavirus carriers.”⁵²³ However, it was the ruling Aam Aadmi Party (AAP; seen as a liberal opposition to the right-wing BJP) in Delhi which had sought to initiate and criminalise the Tablighi Jamaat’s negligence.⁵²⁴ Providing an opening to the Union government of the BJP and its media cohorts, the mainstream media flooded the television screens and social media platforms of Twitter and Facebook with inflammatory hashtags aimed at demonising the Muslim community.⁵²⁵ Some analysts began linking the so-called “Corona Jihad” to the broader “designs” of Muslims on India historically.⁵²⁶ Inflammatory headlines to equally bigoted TV segments pushed the narrative that Tablighi Jamaat had used religion to endanger the nation, brought the pandemic to devastating proportions and increased the risk and speed of spread of the virus in the entire country. The “investigative” coverage of the Tablighi Jamaat from Zee News’s title reads “Crona Jihad का ‘Maulana’ कब होगा गरिफ्तार? | Escaped | Maulana Saad | Coronavirus | Most Wanted” (Corona Jihad’s Maulana, when will he be arrested?).⁵²⁷

The YouTube description of the video reads: “Maulana Saad is hiding after spreading the Coronavirus to thousands of people. It has been over 142 hours since Maulana escaped and the police are still looking for him. When the ‘maulana’ of ‘Corona Jihad’ will be arrested?” Aside from the bombastic graphs and amateur movie effects, the discourse which the channel pushes turned an event of negligence into a well-thought-out criminal conspiracy on the part of the group’s head, Maulana Saad, and tried to link this to the conception of holy war in Islam by using terms like “Corona Jihad.”⁵²⁸ TV anchors gave polarising coverage to focus on this instance, which resulted in a charged atmosphere. Following is an excerpt from the opening segment of one of the most popular Hindi news channels in India (Zee News), widely available on YouTube:

⁵²⁰ Chishti, “The Nightmare.”

⁵²¹ Ibid.

⁵²² Ibid.

⁵²³ India Today Web Desk, “Coronavirus in India: Tablighi Jamaat’s criminal act cannot be forgiven, says Mukhtar Abbas Naqvi at e-Agenda,” *India Today*, 30 May 2020, <https://www.indiatoday.in/india/story/coronavirus-in-india-tablighi-jamaat-s-criminal-act-cannot-be-forgiven-says-mukhtar-abbas-naqvi-at-e-agenda-1683674-2020-05-30>.

⁵²⁴ Sweta Goswami, “Kerjiwal warns of rise in cases after Tablighi Jamaat episode,” *Hindustan Times*, 1 April 2020, <https://www.hindustantimes.com/delhi-news/kejiwal-warns-of-rise-in-cases-after-tablighi-jamaat-episode/story-WBnlqyYQgzfGoX3jrxADN.html>.

⁵²⁵ Ritika Jain, “Covid-19: How fake news and Modi government messaging fuelled India’s latest spiral of Islamophobia,” *Scroll.in*, 21 April 2020, <https://scroll.in/article/959806/covid-19-how-fake-news-and-modi-government-messaging-fuelled-indias-latest-spiral-of-islamophobia>.

⁵²⁶ New Delhi Times, “India faces Coronavirus Jihad,” YouTube, 11 April 2020, <https://www.youtube.com/watch?v=qCEi-WFyyfo>.

⁵²⁷ Zee News, “Crona Jihad का ‘Maulana’ कब होगा गरिफ्तार? | Escaped | Maulana Saad | Coronavirus | Most Wanted,” YouTube, 6 April 2020, <https://www.youtube.com/watch?v=PRsx843BDzk>.

⁵²⁸ Ibid.

Dunya ka koi bi Dharm ho wo Qanoon tod ne ki baat nahi karta. Koi bi Dharm Desh ko dhokha dene ke liye nahi kehta. Aur koi bi Dharm jhoot Bol ne ke liye nahi kehta. Lekin bahrat ko coronavirus ke naye khatre ki taraf dakel ne wale Tablighi Jamaat ne Dharm ke naam par yehi sab kuch kia hai. Pure desh ke saath dhokha dia hai. Desh ko jhoot bola hai. (0:09-0:32s)⁵²⁹

[Translation] No religion of the world talks about breaking laws. No religion teaches to betray the nation. No religion teaches to speak lies. But in pushing India towards the new danger of coronavirus, Tablighi Jamaat in the name of religion has done exactly all this. [They have] Betrayed the entire nation. [They have] lied to the nation.

Another English news channel debate show openly pushed falsified information, attributing violence and misdemeanour to the Tablighi Jamaat people against the medical staff, quarantine personnel and the police.⁵³⁰ At one point even the official police handles on social media had to step in and flag biased and fake news reporting by news channels.⁵³¹ Various other vernacular news channels ran similar polarising coverage to that in Karnataka, generating the image of Muslims as “others” who were carrying the virus.⁵³² Old videos shared over social media without context and edited subheadings also became a cause of rising xenophobia wherein viral clips showcasing Muslims as breaking social-distancing norms and protocols were shared countless times over platforms such as Tik Tok and WhatsApp.⁵³³

AFTERMATH

Many unfortunate acts of violence took place against Muslims as a consequence of the narratives being generated over the media.⁵³⁴ As for the foreign citizens the cases were ultimately quashed by the courts after prolonged hearings, in many cases noting the frivolous and malicious nature of the charges brought by the police and the government against the accused.⁵³⁵ It is important to note the role of various embassies in pressuring the Indian government for the release of their citizens⁵³⁶ as well as pressure from the Organization of Islamic Cooperation noting the incessant Islamophobia in India.⁵³⁷ Mike Ryan, the Emergency Program Director of the World Health Organization, also

⁵²⁹ Zee News, “DNA: तबलीगी जमात का देश से ‘वश्वासघात’? | Sudhir Chaudhary | Analysis | Tablighi Jamaat Coronavirus,” YouTube, 1 April 2020, <https://www.youtube.com/watch?v=VYmqyKQyKFg>.

⁵³⁰ Republic World, “Arnab Goswami Debates: Tablighi COVID-19 scare continues,” YouTube, 7 April 2020, <https://www.youtube.com/watch?v=PQCzxkOBv7Y>.

⁵³¹ NL Team, “Firozabad police refute Zee News claim that medical staff escorting Tablighi Jamaat men was pelted with stones,” Newslandry, 6 April 2020, <https://www.newslandry.com/2020/04/06/firozabad-police-refute-zee-news-claim-that-medical-staff-escorting-tablighi-jamaat-men-was-pelted-with-stones>; and Wire Staff, “Police say Zee News reports on medical workers, Tablighi Jamaat members being attacked is false,” *The Wire*, 7 April 2020, <https://thewire.in/media/firozabad-police-zee-news-tablighi-jamaat>.

⁵³² Prajwal Bhat, “‘Tablighi Virus’, ‘Pakistan devils’: Hate speech in Kannada media coverage documented,” *The News Minute*, 21 September 2020, <https://www.thenewsminute.com/article/tablighi-virus-pakistan-devils-hate-speech-kannada-media-coverage-documented-133574>; and Vikhar Ahmed Sayeed, “Lapdog narratives of the Kannada media,” *Frontline*, 9 October 2020, <https://frontline.thehindu.com/the-nation/lapdog-narrative/article32633273.ece>.

⁵³³ The Quint, “Old video shared as Muslims licking plates to spread coronavirus,” YouTube, 3 April 2020, <https://www.youtube.com/watch?v=UNBN97p6jW8>; Ritika, “Covid-19”; and Siddhartha Roy, “Hate Goes Viral in India,” *The Diplomat*, 4 May 2020, <https://thediplomat.com/2020/05/hate-goes-viral-in-india/>.

⁵³⁴ Al Jazeera English, “India Muslims targeted in attacks over coronavirus,” YouTube, 3 May 2020, <https://www.youtube.com/watch?v=EC2zNBDmLas>; DW News, “Muslims in India accused of ‘corona jihad’ | Interview with Arundhati Roy,” YouTube, 17 April 2020, https://www.youtube.com/watch?v=x8Psit-wr_U; and Times Now, “Muslim woman activist attacked while distributing food, accused of ‘spreading Coronavirus’,” YouTube, 7 April 2020, https://www.youtube.com/watch?v=4D64h_YqMDk.

⁵³⁵ Chishti, “The Nightmare.”

⁵³⁶ Ibid.

⁵³⁷ OIC-IPHRC (@OIC-IPHRC), “1/2 #OIC-IPHRC condemns the unrelenting vicious #Islamophobic campaign in #India maligning Muslims for spread of #COVID-19,” Twitter, 19 April 2020, 8:53 p.m., https://twitter.com/OIC_IPHRC/status/1251826155939926017?s=20.

intervened to highlight the disapproval of the handling of the coronavirus in India: “Having Covid-19 is not anybody’s fault. Every case is a victim. It is important that we do not profile the cases on the basis of racial, religious and ethnic lines”.⁵³⁸ No other religious gathering received such attention as Tablighi Jamaat in the media despite happening at the same time and with a broader scope of infection.⁵³⁹ No retraction or apology was rendered for the trauma inflicted upon the members of Tablighi Jamaat or any responsibility allocated to the mainstream media’s misreporting of the event. This, even after multiple fact-checking sources debunked most of the malicious vitriol spread by the news channels and social media platforms.⁵⁴⁰

To conclude, the majoritarian context in India and a sensationalist media form a bulwark against a genuine reporting of events, simply by way of the volume and repetition of news and the lack of accountability placed by the executive. This case demonstrates that the tacit nexus between the media and the central executive is a serious challenge to the maintenance of ethical norms of media reporting. Further, judicial enforcement remains circumscribed on account of executive inaction and non-compliance.

The Tablighi Jamaat case also shows that while outsiders who share the same faith as Muslims become subject to local prejudices, embassy support and international pressure is remedial for these cases, whereas the local Muslim residents are exposed to prolonged stigmatisation. In sum, the absence of external pressure and demands for accountability from outside India leave a protection gap for minorities within the state, a lacuna that is consistent also in the cases of the Christian and Northeastern ethnic minorities discussed below.

Hate Speech Targeting Christian Minorities

The two case studies presented above document the relationship between hate speech, incitement, and the unfolding of violence in the case of Muslim minorities, the most significant minority group targeted by Hindu nationalists. However, other religious minorities in India, including Christians, Sikhs, and Jain, and ethnic minorities such as those in the North-Eastern states are subjected to hate speech and violence. These next two sections briefly describe the situation of Christians and ethnic minorities to demonstrate the breadth and consistency of the patterns of hate speech and targeted violence in India that capitalise on the Hindu nationalist ideology, and these will feed into the chapter’s recommendations attending to the extent of this issue in the country.

Christianity has been practised in India since the 1st century AD, and there are some 24 million Christians in the country according to 2011 census data. Christians have faced persecution in India for many years. However, the international profile of Christian persecution in India rose significantly in the late 1990s, concurrent with the rise of the BJP in mainstream politics, when a string of attacks

⁵³⁸ Rasia Hashmi, “No one’s fault, don’t profile COVID-19 along religious lines: WHO,” *The Siasat Daily*, 8 April 2020, <https://www.siasat.com/no-ones-fault-dont-profile-covid-19-along-religious-lineswho-1871048/>.

⁵³⁹ Roy, “Hate Goes Viral in India.”

⁵⁴⁰ News Laundry, “Corona & Sudhir Chaudhary’s Jihad: TV Newsance Episode 81,” YouTube, 15 March 2020, <https://www.youtube.com/watch?v=OVaHOTAHqY>; News Laundry, “Tablighi Jamaat versus Amab Goswami: TV Newsance Episode 84,” YouTube, 4 April 2020, <https://www.youtube.com/watch?v=JXU8PuTGkUk>; Media Scanner, “Fake Alert: Long list of Islamophobic fake news which is going viral during Coronavirus pandemic,” *Media Scanner*, 9 May 2020, <https://mediascanner.in/fake-alert-long-list-of-islamophobic-fake-news-which-is-going-viral-during-coronavirus-pandemic/>; and Syeda Zainab Akbar, Divyanshu Kukreti, Somya Sagarika, and Joyojeet Pal, “Temporal Patterns in COVID-19 Misinformation in India,” University of Michigan, 2020, <http://joyojeet.people.si.umich.edu/temporal-patterns-in-covid-19-misinformation-in-india/>.

on Christian churches was publicised in the international media.⁵⁴¹ As with the Muslims, Christians are targets of the Hindu nationalist ideology that seeks to establish a national identity based on Hinduism.

In 1999, Hindu nationalists from the Bajrang Dal youth organisation killed Australian missionary Graham Staines and his two young sons by burning them to death in their car in Orissa state, drawing high profile international media attention. In 2021, the charity Open Doors ranked India 10th in the world for the persecution of Christians,⁵⁴² in this case on the basis of religious nationalism. The most recent example of Christian persecution escalating into widespread, targeted violence was the 2008 Orissa violence. Hindu nationalist groups targeted Christian communities in the Kandhamal district through a planned and tightly orchestrated campaign of systematic violence, for which RSS and Bajrang Dal members had prepared for several years in advance.⁵⁴³ A people's tribunal found that at least 39 Christians were killed, 232 churches destroyed, 600 villages ransacked, 5,600 houses looted and burnt, and 54,000 people forcibly displaced – human rights organisations claim that the actual figures are much higher.⁵⁴⁴ The nature of the violence was very cruel, involving rape, torture, and mutilation, alongside efforts at forced mass conversion to Hinduism.⁵⁴⁵

Christian persecution, including inflammatory hate speech and intimidation leading to direct acts of violence, has increased since the BJP came to power in 2014. RSS-led accusations of forced Hindu to Christian conversions misuse the anti-conversion laws to intimidate Christian communities and spread misconceptions among Hindu populations that Christians are a threat to their religion.⁵⁴⁶ The Evangelical Fellowship of India's Religious Liberty Commission (EFIRLC) recorded a 57 per cent increase in hate speech and violence against Christian minorities in 2018 as evidence of a steep rise in targeted religious violence across the country.⁵⁴⁷ Harassment, intimidation, and lynching of Christians are also reported to have increased significantly during the pandemic lockdown. The organisation Persecution Relief recorded a 41 per cent rise in hate crimes against Christians during the first half of 2020 compared to the same period in 2019, with 293 cases recorded. Noting that most hate crimes go unreported for fear of retribution, these figures included six killings, five rapes, and 51 crimes of a "heinous nature" against women and children.⁵⁴⁸ Despite these trends, there has been little response from police to accept reports, and there is documented evidence that police have directly participated in using violence to harass and arrest Christians.⁵⁴⁹ In sum, the contours of hate speech and targeted violence that support a majority Hindu nationalist ideology are familiar and consistent across Muslim and Christian communities. The emphasis on forced conversion has

⁵⁴¹ Dugger, Celia W. "Attacks on Christians Are Increasing in India," *The New York Times*, 23 January 1999, <https://archive.nytimes.com/www.nytimes.com/library/world/asia/012399india-christians.html>.

⁵⁴² Open Doors, "World Watch Map: The 50 Most Dangerous Countries to Follow Jesus," 2021, <https://www.opendoors.org.au/persecuted-christians/world-watch-list/>.

⁵⁴³ Cecilia Jacob, personal interview with former RSS prechavak (RSS preacher/promoter) from Kandhamal district, India, January 2012.

⁵⁴⁴ Priya Ramani, "'They don't feel sorry': Revisiting Kandhamal 10 years after the violence against Christians," *Scroll.in*, 26 August 2018, <https://scroll.in/article/891587/they-dont-feel-sorry-revisiting-kandhamal-10-years-after-the-violence-against-christians>.

⁵⁴⁵ Ibid.; Gethin Chamberlain, "Convert or We Will Kill You, Hindu Lynch Mobs Tell Fleeing Christians," *The Guardian*, 19 October 2008, <https://www.theguardian.com/world/2008/oct/19/orissa-violence-india-christianity-hinduism>; International Christian Concern, "Martyrs of the 2008 Orissa riots continue to inspire the Church of India," Persecution, 3 April 2019, <https://www.persecution.org/2019/03/04/martyrs-2008-orissa-riots-continue-inspire-church-india/>; and PTI, "2008 Kandhamal Nun Gang-rape Case: 3 People Convicted, 6 Acquitted," *Times of India*, 14 March 2014, <https://timesofindia.indiatimes.com/india/2008-kandhamal-nun-gang-rape-case-3-people-convicted-6-acquitted/articleshow/31998696.cms>.

⁵⁴⁶ France24 English, "Sharp rise in attacks on India's Christian minority," YouTube, 3 April 2018, <https://www.youtube.com/watch?v=KYM7LSrYDHk>.

⁵⁴⁷ Ibid.

⁵⁴⁸ Ziya Us Salam, "Christians as Targets During the lockdown," *Frontline*, 28 August 2020, <https://frontline.thehindu.com/the-nation/christians-as-target/article32284946.ece>.

⁵⁴⁹ CBN News, "Pastor murdered, church burned, anti-Christian violence on upswing in India," YouTube, 24 January 2018, <https://www.youtube.com/watch?v=tCskTtTyMl>; see also Al Jazeera English, "Indian Christians accuse police of 'taking sides'," YouTube, 5 October 2008, <https://www.youtube.com/watch?v=OCHPmzk0kEQ>.

prompted the spread of misinformation and rumour that have tainted Hindu perceptions of Christians and cultivated sympathy for RSS-led harassment and intimidation of this population. These trends have only intensified during the pandemic lockdown.

Hate Speech Targeting Ethnic Minorities in the North East

RACISM AGAINST NORTH EASTERN PEOPLES

The peoples from the North Eastern Region have long been subject to racial stereotyping and profiling in many parts of India. In general they have been subjected to abuse and racial slurs such as “chinky”, “Chinese”, “momo”, and “chowmein” and treated as outsiders.⁵⁵⁰ Many young people from the eight states that make up India’s North East travel in search of employment and higher education to metropolitan centres like Delhi and Bengaluru.⁵⁵¹ As such they are subject to harassment from landlords and employers.⁵⁵² Women from this region are subject to unwarranted attention and sexual harassment, in many cases stereotyped as sex workers.⁵⁵³ Under Indian law the punishment for racial abuse is imprisonment for up to five years or a fine, or both. However, because of an absence of laws specifically targeting racial discrimination against these ethnic minorities, the people from these regions prepare themselves to face discrimination in the Hindi heartland of the country.⁵⁵⁴

RACIAL DISCRIMINATION AND THE PANDEMIC

In the recent COVID-19 crisis, Chinese and East Asian peoples became the centre of attention in a global threat discourse. However, the implications went far beyond the Chinese nation-state and extended to average Chinese citizens and anyone who shared the facial features of far-eastern peoples. These people became subject to racist attacks which jeopardised their person irrespective of whether they were Chinese or had any part in the spread of the virus. The pandemic brought out multiple cases of profiling and bigotry aimed at racial minorities in India. The people from the North East who share similar facial features with East Asian peoples became victims of pre-existing biased attitudes towards them and were treated as unhygienic carriers of the coronavirus.⁵⁵⁵ During the pandemic many persons from these ethnic minorities came under attack and were literally called “coronavirus,” spat on and in many cases told to leave their accommodations without notice.⁵⁵⁶ In places they were barred from entering

⁵⁵⁰ Annie Banerji, “Spat On and Abused: Coronavirus Fuels Racism against India’s Northeasterners,” Reuters, 20 June 2020, <https://www.reuters.com/article/us-health-coronavirus-india-discriminati-idUSKBN23Q2JS>.

⁵⁵¹ See Alana Golmei, “Let’s Talk About Racism: Don’t Call Us ‘Chinky, Momo, Chowmein’ Says a Northeastern Woman,” *Hindustan Times*, 23 May 2017, <https://www.hindustantimes.com/india-news/let-s-talk-about-racism-don-t-call-us-chinki-momo-chowmien-asks-a-northeastern-woman/story-SJckp4InptNV6Te29dltJ.html>.

⁵⁵² Ibid.

⁵⁵³ Ibid; and Banerji, “Spat On and Abused.”

⁵⁵⁴ Golmei, “Let’s Talk About Racism.”

⁵⁵⁵ Ibid; and Linda Chhakchhauk, “Another pandemic: Northeasterners in India face racist harassment, assault,” *The Citizen*, 27 March 2020, <https://www.thecitizen.in/index.php/en/NewsDetail/index/9/18503/Another-Pandemic-Northeasterners-in-India-Face-Racist-Harassment-Assault>.

⁵⁵⁶ Ibid.

supermarkets because of racial profiling.⁵⁵⁷ Many faced harassment and undue screening for coronavirus when they had no symptoms and were seeking treatment for other ailments.⁵⁵⁸

LEGAL FRAMEWORKS

Although India has signed the International Convention on the Elimination of All Forms of Racial Discrimination, it lacks legislation specifically aimed at racism.⁵⁵⁹ In the aftermath of the brutal murder of Nido Tania (from Arunachal Pradesh in India's North East) in 2014, the home ministry and the North Eastern Council set up a committee to advise on the legal mechanisms to combat racism.⁵⁶⁰ The M.P. Bezbaruah Committee gave recommendations on how to combat racism; however, these recommendations are yet to be comprehensively implemented via legislation.⁵⁶¹ The Bezbaruah Committee recommended introduction of specifically anti-racial legislation which would be "gender-neutral" and would recognise these instances as non-bailable offences.⁵⁶² Among other institutional measures, it pointed out the need to sensitise law enforcement personnel to the nature of these crimes.⁵⁶³

To conclude, the hate speech/ slurs aimed at these ethnic minorities have a predominantly racial bias. The racial bias is further aligned to a discrimination based on linguistic difference, at local levels. The pandemic has exacerbated the already prevalent biased attitudes towards these minorities, especially in the Hindi heartland. The anti-discrimination laws that exist do not seem to be alleviating the discrimination against ethnic minorities because they are rarely implemented. A comprehensive policy is needed in order to rectify these legal shortcomings, taking into account the recommendations of the Bezbaruah Committee at both central and state government levels.

Summary of Findings and Recommendations

LEGAL AND POLICY REFORM

The DMC report identified the cases of institutional bias prevalent in law enforcement in the previous instances of communal violence and this time as well noted the complicity and uncooperative nature of the Delhi police in the violence. As argued in the recommendations of Law Commission in its 267th report, measures to address the problem of hate speech in India need to take into account the broader context of law enforcement and cross-border jurisdiction for prosecution in such instances.

⁵⁵⁷ Sharan Poovanna, "Covid-19: People from northeast face discrimination in Karnataka," *Mint*, 29 March 2020, <https://www.livemint.com/news/india/covid-19-people-from-northeast-face-discrimination-in-karnataka-11585479540806.html>.

⁵⁵⁸ Kimi Colney, "Indians from the Northeast Face Intensified Racism as Coronavirus Fears Grow," *The Caravan*, 4 April 2020, <https://caravanmagazine.in/communities/coronavirus-increases-racism-against-indians-from-northeast>.

⁵⁵⁹ Ibid.

⁵⁶⁰ Ibid.

⁵⁶¹ Sukanya Singha, "Governments have failed to address racial abuse of people from the northeast," *The Wire*, 14 May 2020, <https://thewire.in/rights/governments-have-failed-to-address-racial-abuse-of-people-from-the-northeast>.

⁵⁶² Ibid.

⁵⁶³ Ibid.

Legal responses to the problem of hate speech and incitement to violence are needed. First, the government should repeal policies and laws that are clearly discriminatory both in motive and application, including the Citizenship (Amendment) Act, the Cow Protection policies, anti-conversion laws, and restrictions on media and personal freedoms in the Jammu and Kashmir region, through which minorities are targeted. Second, the government of India should, in consultation with representatives from minority groups and civil society, introduce legislation to address the problem of hate speech, and to provide protections for minority groups from acts of violence.

Sweeping reforms in the law and practices within the legal system are needed to address the problem of impunity and partiality in its rulings, from state to federal level.⁵⁶⁴ A growing partiality has become apparent within the Supreme Court of India since 2014.⁵⁶⁵ To this end, constitutional reforms should be introduced to disincentivise political influence over the judiciary, such as a prohibition on joining political parties or holding additional ad hoc government appointments.

Further, **India should appoint a senior government official as an R2P Focal Point to take the lead on developing a national atrocity prevention strategy.** This should include those implementation measures needed to increase India's resilience to future atrocities, and accountability measures to ensure the non-recurrence of atrocities in communities at risk. The R2P Focal Point should be supported with high-level political will, a strong mandate and resources to facilitate their work.

IMPUNITY

As this report has documented, and many studies have shown, there remains a high level of impunity for hate speech, including incitement to violence, and often for the violence itself. Politicians, government officials and high profile individuals remain unaccountable for inflammatory rhetoric in the public domain, creating an atmosphere of impunity that is conducive to the spread of hate speech across media and social media sites.

Impunity of police forces that aid or abet violence against minority groups is likewise a historical problem in India, feeding into renewed cycles of violence and a culture of impunity. The permissive environment created by the abetment or involvement of police in acts of violence during periods of rioting leads to the rapid escalation of violence and systematic targeting of minorities that would not otherwise be possible if police were playing an impartial role.

This report **recommends deep reform of the security sector in India to address bias and impunity and to improve the professional capacity of the police force at both state and federal level to investigate, monitor and de-escalate intergroup tensions in an impartial, just and timely manner.** Transparency in the appointment of senior leadership and in interactions between organisations such as the RSS and Bajrang Dal and the civilian population is also needed to increase the accountability of the police force and increase the level of trust in the population.

⁵⁶⁴ Valay Singh, "After Ayodhya, another mosque-temple dispute brews in India's UP," Al Jazeera English, 9 April 2021, <https://www.aljazeera.com/news/2021/4/9/after-ayodhya-another-mosque-temple-dispute-brews-in-indias-up>; and Akash Bisht, "Babri mosque demolition case: India's BJP leaders acquitted," Al Jazeera English, 30 September 2020, <https://www.aljazeera.com/news/2020/9/30/indian-court-acquits-all-accused-in-babri-mosque-demolition-case>.

⁵⁶⁵ Shubhankar Dam, "Second Innings: How Post-Retirement Ambitions Imperil Judges' Integrity," *The Caravan*, 1 February 2020, <https://caravanmagazine.in/reportage/retired-judges-gogoi-integrity-corruption-supreme-court>; and Atul Dev and Nikita Saxena, "Supreme Charge," *The Caravan*, 20 April 2019, <https://caravanmagazine.in/law/former-supreme-court-employee-accuses-cji-ranjan-gogoi-sexual-harassment>.

TRANSITIONAL JUSTICE AND RECONCILIATION

India's population has experienced decades of impunity for past atrocities committed based on religious, ethnic, and caste identities. Not only have formal investigations and prosecutions taken place in an inconsistent and often prejudiced manner, but reconciliation at the local level and intergroup peacebuilding efforts are absent.

The report **recommends the creation of peacebuilding committees across locations in India where there is a history of communal violence, and for these committees to undertake consultations with local communities with a view to understand the kinds of measures that would increase justice for past grievances, including the possibility of creating transitional justice processes, reparation and long-term peacebuilding activities.**

CIVIL SOCIETY, FAITH-BASED ORGANISATIONS AND THE MEDIA

Notably since the 1980s, civil society groups including human rights activists, faith-based groups, and independent media outlets have been integral to strengthening democracy in India and holding political actors to account. One of the most concerning trends in recent years has been the imposition of increasingly harsh restrictions on the civil liberties of these groups.⁵⁶⁶ The failure of the government to condemn these restrictions, such as the suspension of social media accounts, personal threats and physical attacks, has curtailed the ability of civil society to hold the government to account and advocate for human rights and peacebuilding across ethnic, religious and other social divisions.⁵⁶⁷

This report **recommends that the government of India condemn threats, intimidation and acts of violence targeted at civil society, including human rights defenders, faith-based and media groups. It should proactively protect the freedoms and physical integrity of these groups, ensuring that perpetrators face appropriate sanctions for their actions, and it should promote tolerance for diversity of opinion and expression that is consistent with the Constitution of India.**

SOCIAL MEDIA

Hate speech in the age of digital media and instant accessibility has proved particularly debilitating in prevention of hate crimes, rather it has proved to be exceptionally potent in the mobilisation and incitement to violence.

Many cases, including those of Kapil Sharma and Ragini Tiwari, highlight the potency of social media platforms particularly live video broadcast on individual smartphones in communication, receiving mobilisation, and command on ground.

Videography of state complicity and evidence of various instances of negligence highlight the fundamental incapability in majoritarian contexts to secure just remedies from the ruling dispensation. In this regard, we may note that the increasing restrictions on and exit of foreign

⁵⁶⁶ Amrita Basu, "Whither Democracy, Secularism, and Minority Rights in India?" *The Review of Faith & International Affairs* 16, no. 4 (2018): 34-46.

⁵⁶⁷ Paul Cheyney, "India at the Crossroads? Civil Society, Human Rights and Religious Freedom: Critical Analysis of CSOs' Third Cycle Universal Periodic Review Discourse 2012-2017," *The International Journal of Human Rights* 24, no. 5 (2020): 531-562.

NGOs, especially those who monitor human rights abuses, have serious consequences (e.g. Amnesty India was forced to wind up its operations in the first term of the current BJP government).

Finally, the role of social media giants such as Facebook and Twitter is under intense scrutiny⁵⁶⁸ as regards their ability to stop and curtail hate speech⁵⁶⁹ or, in this specific instance, direct incitement and mobilisation of violence.⁵⁷⁰ **The government of India and social media corporations should pass measures to improve their ability to monitor, regulate and withdraw hate speech and incitement to violence.**

INTERNATIONAL RESPONSES

International engagement with the issue of religious and minority persecution is limited. The United States Commission on International Religious Freedom releases an annual report in which it monitors religious freedom in India and makes recommendations. The issue of hate speech and the targeting of religious and minority groups has also been raised regularly at the UN Human Rights Council through the Universal Periodic Review. International human rights groups, such as Human Rights Watch and Amnesty International, have also documented persecution of religious and ethnic minorities in India and called on the government to take action. However, India has no formal obligations and is not subject to sanctions for not adhering to these recommendations. By and large, it has been able to circumvent international attention and pressure, particularly as India's rapid economic growth and political significance has meant that governments around the world have prioritised political relations and trade with India over its human rights record.

Given the historical precedence of intergroup conflict escalating into major riots and pogroms in India, **members of the international community, including international organisations and governments, should pay greater attention to the recent spike in instances of hate speech, communal violence and the passing of numerous discriminatory laws.** Coinciding with the leadership of a far right government, these legal provisions have engendered an atmosphere of fear and mistrust between communities, and fuelled the targeting of minority groups, on several occasions escalating into major episodes of targeted violence and displacement. **Members of the international community should use available tools to increase the level of accountability and pressure on the government of India to make relevant reforms in political rhetoric, law, security, and regulation of the media, including social media, to prevent the continued proliferation of hate speech, incitement and violence targeting minorities.**

⁵⁶⁸ Yuthika Bhargava, "Indian Laws Must be Followed: Government to Twitter," *The Hindu*, 11 February 2021, <https://www.thehindu.com/news/national/indian-laws-must-be-followed-government-to-twitter/article33798461.ece>; and K. Venkataramanan, "Explained: Why Has the Centre Issued a Notice to Twitter, and What Are the Laws Governing the Cyber World?" *The Hindu*, 7 February 2021, <https://www.thehindu.com/sci-tech/technology/the-hindu-explains-why-has-the-centre-issued-a-notice-to-twitter-and-what-are-the-laws-governing-the-cyber-world/article33770912.ece>.

⁵⁶⁹ Newley Purnell and Jeff Horowitz, "Facebook's Hate-Speech Rules Collide with Indian Politics," *The Wall Street Journal*, 14 August 2020, <https://www.wsj.com/articles/facebook-hate-speech-india-politics-muslim-hindu-modi-zuckerberg-11597423346>; and Niharika Sharma, "Allegations of Favouritism in India Couldn't Have Come at a Worse Time for Facebook," *Quartz India*, 18 August 2020, <https://qz.com/india/1893001/zuckerbergs-facebook-under-fire-over-hate-speech-modis-bjp/>.

⁵⁷⁰ Anam Ajmal, "Kapil Mishra's Speech on CAA Example of Inciting Violence: Zuckerberg," *The Times of India*, 7 June 2020, <https://timesofindia.indiatimes.com/india/kapil-mishras-speech-on-caa-example-of-inciting-violence-zuckerberg/articleshow/76240114.cms>.

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The image features a light blue background with several thick, dark blue curved lines that sweep across the frame. In the center, the word "PAKISTAN" is written in a bold, white, sans-serif font.

PAKISTAN

HATE SPEECH AND INCITEMENT IN PAKISTAN

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Introduction

This chapter reflects on the prevalence of hate speech in Pakistan by critically examining the ideological foundations of the constitutional and legal framework, the unfortunate rise of hard-line religious parties, and the lack of rigorous accountability measures, all of which have normalised and encouraged widespread incitement of hate speech in the name of religion, oftentimes leading to the gross violation of human rights. The formation of Pakistan can be traced back to the historical struggle of the All-India Muslim League that materialised the vision of a separate homeland for the Muslims of British India. Throughout the early and the mid-twentieth century, the socio-political landscape of the subcontinent was underlined with intense Hindu–Muslim tensions which eventually led to the abrupt partition of British India into two sovereign states of India and Pakistan. While the creation of Pakistan is premised on protecting and advancing the rights of Muslims, the politicisation of Islam in the subsequent years has fostered a culture of intolerance, intense discrimination, and fanaticism against the religious minorities, also deepening the divide between sectarian and ethnic minorities.

Key takeaways from this study:

The hate speech rhetoric in Pakistan is a remnant of the colonial legacy which fostered a communal mentality by highlighting religious differences between the Hindus and the Muslims of the subcontinent, also facilitating the rise of far-right religious groups that exert strong political influence today.

Religious leaders have played a crucial role in defining Pakistan's constitutional history and fomenting discriminatory attitudes that underline the current social fabric of the society.

The political history of Pakistan indicates how successive governments have encouraged a culture of politicising religion to maximise their electoral significance by appeasing the religious groups that legitimise extremist ideologies.

Despite weak electoral power, the religio-political parties of Pakistan maintain a strong influence through exerting street power and are known to propagate derogatory narratives that incite violence against anyone that they denounce as an 'infidel', 'non-believer', or 'enemy of Islam'.

Hate speech and violence against religious and sectarian minorities is an outcome of years of radical religious indoctrination that surfaced during the presidency of General Muhammad Zia-ul-Haq who sought to 'Islamise' Pakistan under his dictatorial rule from 1977 to 1988.

The vaguely worded discriminatory laws that criminalise blasphemy-related incidents and outlaw the Ahmadiyya community for self-identifying as Muslims, have resulted in a pervasive culture of vigilantism, mob violence, and fear-mongering.

There is a lack of implementation of rule of law in the country since sources that exacerbate hate speech, incite violence, and abet crimes are not usually held accountable.

In recent years, the use of social media platforms such as Facebook and Twitter have facilitated the rise of hate speech that targets religious and sectarian minorities which has led the government to authorise social media censorship at the expense of curtailing freedom of speech.

The rise of hate speech and violence during the pandemic has reiterated the peripheral status of minorities in the country.

The following section provides a historical background of hate speech and incitement in Pakistan to contextualise the burgeoning religious extremism and violence. Hence, this case study begins with examining how religion was threaded into the constitutional and legal framework of Pakistan to cement the national identity of an ethnically and religiously diverse nation. This is supplemented by an analysis of the Islamic revivalist movement that emerged under the military dictatorship of General Zia-ul-Haq during the 1970s and 1980s, an era which is often equated with Pakistan's descent into religious intolerance since its after-effects have consumed the society to this day.

Consequently, this chapter highlights intrareligious and interreligious tensions across Pakistan that contribute to the tense social fabric of the country. The most evident tensions are between the Shia and the Sunni sects of Islam where the former continues to experience targeted persecution at the hands of the hard-line Sunni ideologues. The intrareligious tensions are further exemplified by the divergent views of the two subsects of Sunni Islam – Deobandi and Barelvi – concerning the religious interpretations of the Islamic doctrine. Alternatively, Pakistan is home to a very small percentage of prominent religious minorities that include the Ahmadiyya, Christians, Hindus, and others, who are usually deemed as 'infidels' by the Sunni extremists based on which they are subjected to extreme forms of oppression and harassment. These negative trends that hinder the conditions of religious freedom explain why Pakistan is listed as one of the 14 "Countries of Particular Concern" (CPC)⁵⁷¹ by the United States Commission on International Religious Freedom (USCIRF).⁵⁷²

Since the indicators of hate speech in Pakistan are extremely diverse, a collective analysis of all the indicators will be a complex task. While the religious minorities remain one of the most subjugated groups of the society, discriminatory behaviours are also prevalent against ethnic minorities whereas

⁵⁷¹ A country's government that has "engaged in or tolerated systematic, ongoing and egregious violations of religious freedom" is designated as a CPC by the US Department of State (<https://www.state.gov/frequently-asked-questions-irf-report-and-countries-of-particular-concern/>).

⁵⁷² United States Commission on International Religious Freedom, *Annual Report, 2020* (Washington DC: USCIRF, April 2021), <https://www.uscifr.gov/sites/default/files/2021-04/2021%20Annual%20Report.pdf>.

gendered hate speech against women is so insidious that it has become a normalised feature of everyday public discourse – making intersectional discrimination a common feature. Nevertheless, to highlight the gravity of hate speech inciting violence, this chapter focuses on the intense anti-religious attitudes in Pakistan which have been fostered in the wake of the controversial blasphemy laws that act as one of the primary contributors in aggravating biased attitudes and continue to intensify divisiveness in the country along religious and sectarian lines. Multiple efforts and appeals have been made in recent years to modify or repeal the archaic laws; however, this has met with continuous resistance by the religious groups that have hindered any possibility of progress.

Hence, to demonstrate the severity and the injustices brought about by the exploitation of the blasphemy laws, this chapter outlines the case study of Asia Bibi, a Christian woman who was convicted for blasphemy in 2010. Asia Bibi's eight-year-long ordeal received considerable media attention, stirred public outrage, provoked an international response, and pushed for the greater debate of policy and legal reforms in Pakistan. The case study examines the strengths and weaknesses of the measures taken by the government, non-state actors, and international actors to combat hate speech and incitement in Pakistan. The chapter then concludes with the overall findings and proposes a set of recommendations that must be adopted to circumvent the rise of inhumane practices against religious minorities that are carried out in the name of Islam.

Historical Background

Pakistan was carved out of British India almost seven decades ago in 1947. Alongside the British rule, the political dynamic between the Indian National Congress and the All-India Muslim League was crucial in defining the imminent fate of the region. While the Congress had a more secular outlook and vowed to represent all Indians regardless of their religious or ethnic affiliation, the Muslims who comprised one-fourth of the Indian population sensed a lack of representation which motivated them to form the Muslim League in 1906. The secular ideals of the Congress were often challenged by the personal beliefs of the various political elites who throughout history relied on Hindu symbolism to strengthen Indian nationalism that mobilised and appealed to the Hindu identity at the expense of other religious minorities.⁵⁷³ This gradual shift from Indian nationalism to Hindu nationalist sentiments led to the formation of the Muslim League that intended to safeguard and advance the political rights of the marginalised Muslim community in the region. Although the political party advocated for Hindu–Muslim unity in an independent India, it was not until the 1940s that the narrative of a separatist movement gained prevalence after Hindu–Muslim antagonism peaked during the 1920s and the 1930s.

This time period is characterised by extreme atrocities committed by both the Hindus and the Muslims undermining each other's religious beliefs and practices as a result of which the hate speech rhetoric gained serious momentum in the subcontinent. The desecration of temples and mosques, creating chaos during each other's religious processions, insulting holy figures and monuments, and widespread distribution of polemic content became a frequent

⁵⁷³ Anil Baran Ray, "Communal Attitudes to British Policy: The Case of the Partition of Bengal 1905," *Social Scientist* (New Delhi) 6, no. 5 (1977): 44.

occurrence.⁵⁷⁴ Moreover, there was an increase in religiously motivated groups, movements, and organisations which later on carried their legacies to modern-day India and Pakistan where they continue to contribute to the countries' atmosphere of intense religious nationalism. For instance, the right-wing Hindu-nationalist parties such as the Hindu Mahasabha and the Rashtriya Swayamsevak Sangh (RSS) established their roots in colonial India but exert a strong influence on Indian politics today with an agenda to promote *Hindutva*. Similarly, the right-wing Islamist political party Jammat-e-Islami was founded before the partition but went on to play a crucial role in designing the first Constitution of Pakistan. Today, the party has political significance and continues to promote its agenda by advocating for the absolute Islamisation of the 'Islamic' state.

Since it became increasingly difficult to contain the communal and religious tensions between the Hindus and the Muslims, an abrupt decision was made to partition British India into a Hindu-majority India and a Muslim-majority Pakistan, resulting in a rather hasty demarcation of the borders. As a result, India and Pakistan share a complex social fabric today, mired in religious, ethnic, and sectarian divisions.

When it comes to Pakistan, the *us* versus *them* dynamic is deeply ingrained in a society that constitutes a diverse group of people. For instance, Pakistan is home to six major ethnicities that include Punjabi (44.7%), Pashtun (15.4%), Sindhi (14.1%), Saraiki (8.4%), Muhajir (7.6%), and Balochi (3.6%), who due to various socio-political factors have contributed towards the intense ethnic tensions that consume the society today.⁵⁷⁵ As desired by the Muslim League, today Pakistan is a Muslim-majority country accounting for 96.28 per cent⁵⁷⁶ of the population; however, the age-old sectarian division between the Sunni majority of 85-90 per cent⁵⁷⁷ and the Shia minority of 10-15 per cent⁵⁷⁸ is another contention that underlies the fractured society since the Shia community continually experiences violence at the hands of the Sunni extremists and radical groups that have gained institutional legitimacy over the years. Hence, the severe formal and informal restrictions that Pakistan places on religious freedom and its failure to provide adequate protection for religious minorities have tarnished the state's international reputation when it comes to its compliance with human rights.⁵⁷⁹ The religious communities that often become victims of proselytisation and face extreme forms of oppression include Hindus that make up 1.60 per cent of the population, Christians that account for 1.59 per cent of the population, the Ahmadiyya community that contributes 0.22 per cent, and others at 0.32 per cent.⁵⁸⁰

⁵⁷⁴ B. R. Ambedkar, *Pakistan or the Partition of India* (Bombay: Thacker, 1946), 153-75.

⁵⁷⁵ John Misachi, "Ethnic Groups in Pakistan," WorldAtlas, last modified 30 July 2019, <https://www.worldatlas.com/articles/ethnic-groups-in-pakistan.html>.

⁵⁷⁶ "Population by Religion," Pakistan Bureau of Statistics, accessed 12 April 2021, <https://www.pbs.gov.pk/sites/default/files/tables/POPULATION%20BY%20RELIGION.pdf>.

⁵⁷⁷ Pew Forum on Religion and Public Life, *Mapping the Global Muslim Population* (Washington DC: Pew Research Center, October 2009), accessed 12 April 2021, <https://www.pewresearch.org/wp-content/uploads/sites/7/2009/10/Muslimpopulation.pdf>.

⁵⁷⁸ Ibid.

⁵⁷⁹ Bureau of Democracy, Human Rights, and Labor, "Pakistan 2020 Human Rights Report," *2020 Country Reports on Human Rights Practices*, Washington DC: US Department of State, March 2021, <https://www.state.gov/wp-content/uploads/2021/03/PAKISTAN-2020-HUMAN-RIGHTS-REPORT.pdf>

⁵⁸⁰ "Population by Religion," Pakistan Bureau of Statistics.

Religion in the Constitution

It is imperative to note that religion has always played a crucial role in Pakistan's constitutional history, which in hindsight established the foundation of discriminatory attitudes in the country. The current atmosphere of hate speech and incitement to violence can be traced back to some of the provisions that have been added over the years. Although Pakistan was envisioned as a secular state by the leader of Muslim League, Muhammad Ali Jinnah, it became a point of contention after his untimely death only a year after partition. Considering the vacuum of leadership after Jinnah's death, the fate of Pakistan depended on the secular-liberal and the conservative religio-political elites who debated their interpretations of Jinnah's vision for Pakistan's future. While the former were descendants of Jinnah's Muslim League and advocated for a democratic state rooted in Islamic principles, the latter represented a group of *ulemas*⁵⁸¹ alongside Jamaat-e-Islami and "argued for a modern totalitarian theocracy as the appropriate blueprint for an Islamic state."⁵⁸²

ROLE OF RELIGIOUS LEADERS

Since its inception, Pakistan has formalised three different constitutions – in 1956, 1962, and 1973 – which are reflective of the nation's trajectory of transitioning from an 'Islamic Republic' into an 'Islamic state'. Pakistan's constitutional history is indicative of the strategic role played by the religious groups and individuals who have significantly contributed towards its nation-building and continue to exert their schismatic influence through street politics today. Hence, the question regarding the role of Islam in governing Pakistan significantly delayed the formalisation of the first Constitution. Moreover, once the draft version was shared by the Prime Minister, it faced widespread criticism and protests by the ulemas and the Jamaat-e-Islami claiming that it was too secular in nature and even "un-Islamic".⁵⁸³ In order to prioritise the role of religion in the Constitution, the ulemas from different schools of thought united in hopes to gain leverage within the parliament while Jamaat-e-Islami took to the streets to mobilise public support in their favour which was then used to pressurise the government into accepting their demands.⁵⁸⁴ Although sectarianism is pervasive in Pakistan, it is common for religious leaders and parties to form informal alliances to pressure the government into submission and achieve political concessions.⁵⁸⁵

OBJECTIVES RESOLUTION

The first Prime Minister of Pakistan gave into the pressures of the religious groups and proposed the *Objectives Resolution* which is undoubtedly the most important document in Pakistan's constitutional history, acting as the preamble to all the successive constitutions.

⁵⁸¹ Religious Islamic scholars who are trained in Islamic law and theological interpretations.

⁵⁸² Imran Ahmed, "Writing Islamic Constitutions: Lessons from Pakistan," *Round Table* (London) 107, no. 3 (2018): 321.

⁵⁸³ Fakhr-ul-Islam and Muhammad Iqbal, "Islamizing the Constitution of Pakistan: The Role of Maulana Maudoodi," *Al-Idah* 27 (2013): 63.

⁵⁸⁴ *Ibid.*, 62.

⁵⁸⁵ Ahmed, "Writing Islamic Constitutions," 321.

The document highlights the importance of religion in governing the affairs of the state. It opens with the affirmation that “sovereignty over the entire universe belongs to Allah Almighty alone and the authority which He has delegated to the State of Pakistan through its people for being exercised within the limit prescribed by Him is a sacred trust”.⁵⁸⁶ Further, it elucidates that “the Muslims shall be enabled to order their lives in the individual and collective sphere in accord with the teachings and requirements of Islam as set out in the Holy Quran and the Sunna”.⁵⁸⁷ Although the document favoured that the state must function as per Islamic values and principles, it emphasised that “adequate provision shall be made for the minorities freely to profess and practise their religions and develop their cultures”.⁵⁸⁸ According to the Constitution, the religious minorities of Pakistan are guaranteed many protections even today “from freedom of worship to the right to equality and non-discrimination”; however, the reality suggests otherwise.⁵⁸⁹ Over the years, as the religious militant groups and radical nationalist sentiments took root in Pakistan, the protection of minorities has suffered immensely.

STATUS OF RELIGIOUS MINORITIES

The first Constitution of Pakistan was formalised in 1956 and was premised on the principles of the Objectives Resolution alongside declaring Pakistan as an ‘Islamic Republic’. While it gave due attention to the fundamental rights of professing and practising any religion, it did highlight the paradox that no law can be passed if it is not in compliance with the teachings of the Quran or the Sunnah.⁵⁹⁰ This was a celebratory outcome for the religio-political leaders of Pakistan but highly contested by religious minorities and Muslims who upheld relatively secular values. One of the provisions that deeply disturbed the minority groups was mandating that only a Muslim can become the Head of State, which diminished any possibility of a non-Muslim ever assuming office, officially reducing their status to second-class citizens. The Hindu minorities in particular opposed the restrictive provisions, rightfully predicting that it would cause the religious minorities of Pakistan to live in a constant state of insecurity and inferiority in their own country.⁵⁹¹ One of the Hindu representatives from East Pakistan lamented the unfortunate political dynamics of the state:

What I hear in this Resolution is not the voice of the great creator of Pakistan, the Quaid-i-Azam (may his soul rest in peace), nor even that of the Prime Minister of Pakistan ... but of the Ulemas of the land.⁵⁹²

Considering the tensions between the various actors involved, the first Constitution was abrogated within two years after martial law was imposed. This was superseded by the Constitution of 1962 promulgated by the then President of Pakistan who made efforts to

⁵⁸⁶ “The Objectives Resolution,” *Islamic Studies* 48, no. 1 (2009): 91.

⁵⁸⁷ *Ibid.*, 91.

⁵⁸⁸ *Ibid.*, 91.

⁵⁸⁹ Minority Rights Group International, *Freedom of Religion or Belief in Pakistan* (London: Minority Rights Group International, October 2016), accessed 12 May 2021, <https://stories.minorityrights.org/pakistan-religious-minorities/chapter/chapter-2/>.

⁵⁹⁰ Islam and Iqbal, “Islamizing the Constitution of Pakistan,” 64.

⁵⁹¹ Mahfuzul Haq, “Some Reflections on Islam and Constitution-making in Pakistan: 1947-56,” *Islamic Studies* 5, no. 2 (1966): 218.

⁵⁹² Martin Lau, “Islam and the Constitutional Foundations of Pakistan,” in *Constitutionalism in Islamic Countries: Between Upheaval and Continuity*, ed. Rainer Grote and Tilmann J. Röder (USA: Oxford University Press, 2012), 189.

neutralise the overt influence of Islamist ideology in the Constitution by deliberately omitting any “references to the nation as an Islamic Republic.”⁵⁹³ However, once again, the government gave in to the pressure of the religious groups as the president “soon realized that his approach was too radical for the country’s more conservative opinion leaders” resulting in a constitutional amendment to reinstate the word ‘Islamic’.⁵⁹⁴ In Pakistan’s struggle between the modernists and the traditionalists, the latter have always enjoyed an upper hand by amassing public support and resorting to demonstrations. This remains true even today since various political factors have enabled the religious parties to strengthen their legitimacy over time.

While the Islamic provisions that underline the Constitution of Pakistan were made in the best interests of the Muslim population to preserve an Islamic identity in the aftermath of the partition, they also cultivated an atmosphere of discrimination against anyone who did not identify as a Muslim. Although the constitutions of 1956 and 1962 sowed the seeds of religious intolerance, it did not manifest until after the Constitution of 1973 was adopted that officially declared Islam as the state religion and fostered an environment conducive to hate speech and violence.

Context of Hate Speech and Incitement: Islamisation of Pakistan

The Constitution of 1973 was enforced in the aftermath of the 1971 war which led to the secession of East Pakistan (now Bangladesh) from West Pakistan, under the populist leader Zulfikar Ali Bhutto. While Bhutto was inclined towards establishing a secular state, he was bound by the pressures of the religious groups and wider public opinion to preserve the status of Pakistan as an Islamic state. To ensure the longevity of his administration, Bhutto used religion for his own political gain by appeasing the conservative groups who maintained their strong influence in society. As a result, he went to the extent of accepting the irreverent demands of the Islamist parties to make a constitutional amendment and declare Ahmadis as non-Muslims, a group who self-identify as Muslims.⁵⁹⁵

However, the religious parties remained dissatisfied with Bhutto’s support and implementation of socialist policies across Pakistan. As a result, an alliance of nine religious and conservative political parties was formed under the name of the Pakistan National Alliance (PNA) to contest as a single bloc against the popular leader in the 1977 elections.⁵⁹⁶ The PNA campaigned for its right-wing political agenda that appealed for Islamic revivalism in the country and used religious slogans demanding that the state must be governed on the basis of *Nizam-e-Mustafa* (the system of the Prophet Muhammad).⁵⁹⁷ Although the PNA enjoyed public support, they suffered a massive defeat in the elections and accused the opposition of electoral fraud; extreme civil unrest in the country followed as voter sentiments were heightened and led to

⁵⁹³ Lawrence Ziring, “From Islamic Republic to Islamic State in Pakistan,” *Asian Survey* 24 no. 9 (1984): 935.

⁵⁹⁴ Ibid., 935.

⁵⁹⁵ Nadeem F. Paracha, “The 1974 Ouster of the ‘Heretics’: What Really Happened?” *Dawn*, 21 November 2013, <https://www.dawn.com/news/1057427>.

⁵⁹⁶ Sunita Kumar, “The Role of Islamic Parties in Pakistani Politics,” *Strategic Analysis* 25, no. 2 (2001): 275.

⁵⁹⁷ Mohammad Qadeer, “The Evolving Structure of Civil Society and the State in Pakistan,” *Pakistan Development Review* 36, no. 4 (1997): 751.

violent street demonstrations.⁵⁹⁸ Consequently, Bhutto was overthrown in a military coup, and the Chief of Army Staff General Zia-ul-Haq assumed power for the next 11 years.

Being a devout Muslim himself and to enhance his political legitimacy, Zia-ul-Haq supported the demands of the PNA and sought to enforce Nizam-e-Mustafa which led to the notorious decade of Pakistan's 'Islamisation'. Under his dictatorial rule, he made adjustments that accommodated the *Sharia* or Islamic law in judicial courts, facilitated religious militants, funded the expansion of *madrasahs* or Islamic seminaries, and modified the colonial blasphemy laws, alongside other exclusionary reforms that crippled the rights of the already subjugated religious and sectarian minorities. Evidently, after the widespread institutionalisation of discriminatory policies, Pakistan became a breeding ground of hatred against anyone who did not comply with the orthodox version of Sunni Islam.

POLICY AND LEGAL REFORMS

Following the divisive policy and legal reforms made under Zia-ul-Haq's military rule, sectarian violence became a permanent feature of Pakistan's socio-political landscape. Moreover, religious leaders were offered a platform to promote their agendas that normalised derogatory and inflammatory rhetoric against religious minorities often labelling them as 'heretics', 'infidels', or 'enemies of Islam'. This eventually cultivated a culture of forced conversions, mob violence, and targeted and extrajudicial killings, which has only become worse with time.

The judicial, educational, economic, and social reforms imposed by Zia-ul-Haq immediately weakened the status of Shia Muslims, religious minorities, women, and any other individual whose views were not compatible with the imposed interpretation of Islam. As far as judicial reforms are concerned, he was quick to enforce Sharia law by establishing the Federal Shariat Court and expanding the Council of Islamic Ideology (CII)⁵⁹⁹ – enlisting many conservative ulama to ensure that none of the laws were repugnant to Islam.⁶⁰⁰ Today, the CII plays a defining role when it comes to crucial legal matters concerning human rights and protection of religious minorities. Furthermore, drastic measures were made to completely reform the education system from the primary level through to the tertiary level to make it more compatible with the teachings of Sunni Islam.⁶⁰¹ The vision to do so was twofold, first, to curb the growing Western influence in the country,⁶⁰² and second, to counter the prevalence of ethnicism that defined Pakistan's political fabric at the time.⁶⁰³ As a result, Zia-ul-Haq relied on religion to strengthen the national identity and to signify the importance of Muslim brotherhood.

On the contrary, this fanned sectarian debate between the Shia and the Sunni Muslims where the former protested against the streamlining of the Sunni worldview through education.⁶⁰⁴

⁵⁹⁸ Rizwan Ullah Kokab and Muhammad Arif Khan, "Religious Motivation behind Political Movement: A Case Study of Nizam-e-Mustafa Movement," *Pakistan Vision* 19, no. 1 (2018): 128.

⁵⁹⁹ A constitutional body to review that the legislature is in compliance with the Islamic principles.

⁶⁰⁰ Asia Watch Committee (US), *Double Jeopardy: Police Abuse of Women in Pakistan* (New York: Human Rights Watch, 1992), 17.

⁶⁰¹ Marie Lall, "Educate to Hate: The Use of Education in the Creation of Antagonistic National Identities in India and Pakistan," *Compare* 38, no. 1 (2008): 106.

⁶⁰² Umair Jamal, "Zia-ul-Haq and the 'Islamization' of Pakistan's Public Universities," *The Diplomat*, 28 March 2017, <https://thediplomat.com/2017/03/zia-ul-haq-and-the-islamization-of-pakistans-public-universities/>.

⁶⁰³ Lall, "Educate to Hate," 110.

⁶⁰⁴ *Ibid.*, 111.

The Shia-Sunni divide deepened after economic reforms concerning *Zakat* (a religious obligation of almsgiving) were imposed as it was mandated according to the Sunni school of thought while the Shia *fiqh* (Islamic jurisprudence) differed in their understanding of giving *Zakat*.⁶⁰⁵ Shia-Sunni tensions were minimal prior to Zia's rule, however, disparaging the role of Shia Muslims through the skewed policies led to the first large-scale sectarian violence in 1983 and then in 1984. The persecution of Shia Muslims increased in the aftermath of the Iranian revolution amidst state suspicions that the Shia organisations of Pakistan "were being provided monetary and weapons assistance by Shia Iran."⁶⁰⁶

The education reforms also sought to revise textbooks in a way that perpetuated anti-Hindu bias, framing them as 'traitors' of the state who are covertly linked to neighbouring India. Hindus are also described as the 'enemies of Islam' whose religious beliefs are rooted in 'injustice and cruelty' as opposed to the Islamic tenets of 'peace and brotherhood'.⁶⁰⁷ Hence, these state-sanctioned books have been crucial in conditioning the masses into believing that the Hindu minorities are a threat to Islam and the state. Recently, in 2011, provincial governments implemented small-scale reforms to remove discriminatory references,⁶⁰⁸ however, state-wide education reforms are essential to combat hate speech in the long term.

RISE OF MADRASSAHS

A few political factors also favoured Zia's vision of 'Islamising' Pakistan at the time. For instance, the significant growth of madrassahs or religious schools in Pakistan is often linked to the Soviet invasion of Afghanistan and the Iranian revolution. The madrassahs were initially funded by Saudi Arabia to train the Afghan *mujahideen* but later to materialise their agenda of propagating and strengthening the puritanical teachings of Sunni Islam across the Muslim world, following the rise of Shia Iran.⁶⁰⁹ The estimated number of seminaries that were established under Zia's regime alone amounted to 12,000,⁶¹⁰ which has increased to approximately 32,000⁶¹¹ madrassahs today. Considering that most of these institutions were funded by Saudi Arabia, they adopted the stricter doctrine of Sunni Islam that espoused intolerance against non-Muslims which "is encapsulated in the line that Muslim pupils in radical madrassas chant at the morning assembly: 'When people deny our faith, ask them to convert and if they don't, destroy them utterly.'"⁶¹²

Such indoctrination of religious fundamentalism cultivated an extremely problematic narrative against non-Muslims, first by dehumanising other religions and second by justifying violence against them. Before Zia's Islamisation of Pakistan, madrassahs were known to provide moderate religious education and were mostly viewed as traditional centres of learning.

⁶⁰⁵ Riaz Hassan, "Islamization: An Analysis of Religious, Political and Social Change in Pakistan," *Middle Eastern Studies* 21, no. 3 (1985): 279.

⁶⁰⁶ Syeda Haider, "The Specter of Intolerance: Understanding Religious Violence in Pakistan," *Honors Scholar Theses* (Spring 2014): 29.

⁶⁰⁷ AP, "Pakistan Schools Teach Hindu Hatred," *Dawn*, 9 November 2011, <https://www.dawn.com/news/672000/pakistan-schools-teach-hinduhatred>.

⁶⁰⁸ Qaiser Butt, "Mortal threat: Reforming Education to Check Extremism," *The Express Tribune*, 15 January 2011, <https://tribune.com.pk/story/104066/mortal-threat-reforming-education-to-check-extremism>.

⁶⁰⁹ Madiha Afzal, "Saudi Arabia's Hold on Pakistan," Policy Brief, Brookings, May 2019, accessed 23 April 2021, <https://www.brookings.edu/research/saudi-arabias-hold-on-pakistan/>.

⁶¹⁰ Ian Talbot, *Pakistan, a Modern History* (New York: St. Martin's Press, 1988), 279.

⁶¹¹ Diaa Hadid, "Pakistan Wants to Reform Madrassas. Experts Advise Fixing Public Education First," NPR, 10 January 2019, <https://www.npr.org/2019/01/10/682917845/pakistan-wants-to-reform-madrassas-experts-advise-fixing-public-education-first>.

⁶¹² Dilip Hiro, *Apocalyptic Realm: Jihadists in South Asia* (London: Yale University Press, 2012), 162.

However, a militant approach was adopted after the Soviet invasion “encouraging students to sacrifice themselves for their faith” and to save “Islam from Western and domestic infidels.”⁶¹³ Hence, extremist madrassahs are known to preach hard-line ideologies that foster a culture of hate speech, incitement, and subsequent violence against anyone who is denounced as an ‘infidel’ or considered to be an ‘enemy of Islam’. Zia-ul-Haq’s government also incentivised traditional religious education by offering financial assistance and making it more accessible to the impoverished pockets of society, which significantly impacted the radicalisation of young men across Pakistan and supplemented the rise of religious militancy.⁶¹⁴

Rise in Hate Speech and Violence

Zia’s legacy has made a profound impact on what Pakistan is today since it has not been possible to challenge most of his reforms which are perceived as “divinely ordained” by the religious lobbies.⁶¹⁵ One such example is the discriminatory provisions that were introduced in the legal framework:

BLASPHEMY LAWS

The laws that penalise blasphemy are inherited from the British legal system as enshrined in Section 295 of the Pakistan Penal Code (PPC), however, a number of clauses were introduced by Zia-ul-Haq during the 1980s to specifically protect the status of Islam, disregarding the significance of other religions. The most commonly invoked laws are Section 295B and 295C: the former mandates life imprisonment for anyone who desecrates a copy of the Holy Quran while the latter enforces the death penalty for defiling the name of the Prophet.⁶¹⁶ Soon after the new clauses were introduced, there was an evident increase in the number of blasphemy-related cases. Only 14 cases⁶¹⁷ were reported prior to 1986, however, more than 80 cases⁶¹⁸ were filed in the next two years until the end of Zia-ul-Haq’s dictatorship. According to the data collected by Pakistan’s Centre for Social Justice (CSJ), 1,855 people⁶¹⁹ have been accused under Section 295B and 295C from 1987 to 2020 which is only expected to increase in future if no efforts are made to amend the laws. The highest number of cases were reported in 2020 alone, amounting to 200.⁶²⁰ Although no one has been executed under the blasphemy law to date, at least 78 alleged blasphemers have become victims of extrajudicial killings.⁶²¹

⁶¹³ Haider, “The Specter of Intolerance: Understanding Religious Violence in Pakistan,” 34.

⁶¹⁴ Hiro, *Apocalyptic Realm*, 162.

⁶¹⁵ I. A. Rehman, “40 Years of Zia and the Far-Reaching Repercussions of the 1977 Military Coup,” *Dawn*, 5 July 2018, <https://www.dawn.com/news/1342765>.

⁶¹⁶ Osama Siddique and Zahra Hayat, “Unholy Speech and Holy Laws: Blasphemy Laws in Pakistan – Controversial Origins, Design Defects, and Free Speech Implications,” *Minnesota Journal of International Law* 17, no. 2 (2008): 311.

⁶¹⁷ Tabinda Siddiqi, “Timeline: Accused under the Blasphemy Law,” *Dawn*, 19 September 2012, <https://www.dawn.com/news/750512/timeline-accused-under-the-blasphemy-law>.

⁶¹⁸ Asad Hashim, “Explained: Pakistan’s Emotive Blasphemy Laws,” *Al Jazeera*, September 21, 2020, <https://www.aljazeera.com/news/2020/9/21/explained-pakistans-emotive-blasphemy-laws>.

⁶¹⁹ Staff Reporter, “Blasphemy Cases Have Inflated in 2020, Says CSJ,” *Dawn*, 5 February 2021, <https://www.dawn.com/news/1605527>.

⁶²⁰ Ibid.

⁶²¹ Ibid.

The culture of mob violence and lynching in Pakistan stems from the glorification of killing a non-believer or an apostate to protect Islam's and, mostly, the Prophet's honour. This is followed by the narrative endorsed by Islamic clerics who have assumed the responsibility of declaring *takfir* and mandating killings under the pretext of *wajib-ul-qatal*. The idea of *takfir* is to label another Muslim group as *kafir* or 'disbeliever' if their theological understanding of Islam contrasts with the widely accepted interpretations. Hence, the far-right ulemas often preach that it is *wajib* (a religious duty) to *qatal* (kill) someone who is found guilty of apostasy which has been used to justify the widespread persecution against the Shia and Ahmadi Muslims of Pakistan. This call for violence is extended to individuals that are found guilty of blasphemy. Moreover, the idea of *wajib-ul-qatal* is encouraged by promising heaven to anyone who fulfils this religious duty. The debate regarding this ruling being a divine concept versus a manmade one is extremely complex and can only be settled by engaging well-informed theologians and academic experts who specialise in the subject matter.

Considering the influential status of the ulemas, the narrative is propagated through TV channels, madrassahs, mosques, religious sermons, by religio-political leaders, and even textbooks. It is common for clerics to impose *fatwas* against the killings of alleged apostates and blasphemers; a fatwa is "a formal ruling or interpretation on a point of Islamic law given by a qualified legal scholar (known as a mufti) ... usually issued in response to questions from individuals or Islamic courts."⁶²² In general, the fatwas authorised by official religious bodies and well-versed legal scholars are considered to be credible; however, in recent years radical leaders with no rigorous training and minimal religious education have been known to impose fatwas that trigger hate speech against vulnerable groups and incite violence.⁶²³ This new source of fatwas increases the need for official bodies to monitor the types of fatwas that are being imposed and assess their authenticity. While some people engage in vigilante behaviour as per their intense religious sentiments harboured over years of religious indoctrination, the vast majority is known to exploit the blasphemy laws by making false accusations to settle personal scores. However, there is a dearth of legal mechanisms in place to account for these misleading accusations. As of 2018, around 46.3 per cent of the people charged under the law are Muslims while 51.9 per cent of the accused are known to be religious minorities.⁶²⁴

ANTI-AHMADIYYA LAWS

The Ahmadiyya community of Pakistan faces persecution based on their unconventional stance regarding the finality of Prophet Muhammad as the last prophet of Islam. Their belief in the possibility of a succeeding prophet contrasts the mainstream Muslim view and defies the constitutional definition of being a Muslim which refers to an individual "who believes in the unity and oneness of Almighty Allah" and in the "unqualified finality of the Prophethood of Muhammad (peace be upon him)." Consequently, Zia-ul-Haq introduced 'Ordinance XX of 1984' in the PPC which criminalises the community for preaching their faith and for referring to themselves as Muslims under Section 298B(2) and 298C resulting in a punishment of at least three years of imprisonment.⁶²⁵

⁶²² "Fatwa: Islamic Law," Britannica, accessed 6 June 2021, <https://www.britannica.com/topic/fatwa>.

⁶²³ Canada: Immigration and Refugee Board of Canada, *Pakistan: The issuance of "Fatwas"; Reports of Fatwas Issued against Muslims and Non-Muslims (January 1998 – November 2004)*, 19 November 2004.

⁶²⁴ Najam ud Din, *Study on Challenges in Exercising Religious Freedom in Pakistan*, reviewed by Peter Jacob (Lahore: Centre for Social Justice, December 2019).

⁶²⁵ Siddique and Hayat, "Unholy Speech and Holy Laws," 310.

Irrespective of their significance during the creation of Pakistan, the Ahmadiyya community is the most persecuted minority group in the country. The legalised discrimination is supplemented by institutional policies that belittle the community's status. For instance, the issuance of passports and national identity cards for all Pakistani citizens is conditional on signing a declaration form that recognises Ahmadi's as non-Muslims and identifies the movement's founder as an imposter.⁶²⁶ Moreover, they are publicly declared as 'kafir' and 'wajib-ul-qatal' by religious clerics who incite violence through both broadcast and print media, public sermons, and digital networks without being held accountable. In 2014, one of the religious leaders, Syed Arif Shah Owaisi, commented in a popular television show that "the sect of Qadiyani" is an enemy of the state and of Islam, "blaspheming against the holy prophet."⁶²⁷ Consequently, an Ahmadi person was shot dead by a person in his village who was provoked by the comments of the leader.⁶²⁸ Terms such as 'Qadiani' and 'Mirzai' derived from the name and birthplace of the community's founder are used as racial slurs, whereas the term 'Qadiani' is ingrained in the Constitution as well. The systematic persecution of Ahmadis has led to various targeted killings, desecration of their mosques and burial sites, and other extreme forms of violence which often go unnoticed by the government.⁶²⁹ Hence, the injustices against this community have caused many of them to flee the country and seek asylum abroad while those in Pakistan usually conceal their identity to fit into the society.

PERSECUTION OF RELIGIOUS MINORITIES

Alongside Ahmadis, the Christian and the Hindu communities remain two of the most persecuted minority groups in the country that become victims of brutal acts of violence based on suspicions of being the enemies of the state. While Hindus are portrayed as the 'traitors' whose loyalties are with India, Christians are classified as 'Western agents' who are believed to assist foreign countries in undermining the status of Islam.⁶³⁰ These minority groups also face false blasphemy accusations which have intensified incidents of mob violence against them under the justification that anyone who dishonours Islam and its religious figures are 'wajib-ul-qatal'. According to the most recent data from 2018, at least 253 Christians and 31 Hindus are serving sentences for allegedly committing blasphemy.⁶³¹ The majority of Hindus and Christians are settled in the rural areas of Pakistan which makes them a relatively easy target considering their lower socio-economic status. Hence, underage girls often become victims of forced abductions and conversions through marriages to Muslim men; they then fear death threats by religious groups in case they renounce their new faith and are found guilty of committing apostasy.

Throughout history, houses of worship have also been constantly targeted by state authorities, terrorist groups, and mobs which has increased the fear of discrimination and intimidation

⁶²⁶ "Pakistan: Surge in Targeted Killings of Ahmadis," Human Rights Watch, last modified 26 November 2020, <https://www.hrw.org/news/2020/11/26/pakistan-surge-targeted-killings-ahmadis>.

⁶²⁷ Reuters Staff, "Man from Ahmadi Religious Minority Killed in Pakistan after Muslim Leader Calls Them 'Enemy,'" Reuters, 28 December 2014, <https://www.reuters.com/article/us-pakistan-ahmadis-idUSKBN0K50GF20141227>.

⁶²⁸ Ibid.

⁶²⁹ "Pakistan: Surge in Targeted Killings of Ahmadis," Human Rights Watch.

⁶³⁰ International Federation for Human Rights (FIDH) and Human Rights Commission of Pakistan (HRCP), *Minorities under Attack: Faith-based Discrimination and Violence in Pakistan* (Lahore: FIDH; HRCP, 2015).

⁶³¹ Ud Din, *Study on Challenges in Exercising Religious Freedom in Pakistan*, 29.

amongst the communities who rightfully complain that the government fails to provide them with adequate protection against such atrocities. The most recent case of the vandalising of an ancient Hindu temple took place in December 2020 when, incited by local Muslim clerics, a charged crowd of 1,000 to 2,000 people set fire to the holy site.⁶³² The Supreme Court had ordered the restoration of the pre-partition temple; however, a local Islamic institution issued a fatwa declaring the reconstruction to be “against the spirit of Islam.”⁶³³ As a result, once the construction process began, the clerics instigated the people of the village to destroy the temple themselves. The act was condemned by the government and political figures who promised to take action against the perpetrators, which led to the arrests of 109 people including the Muslim cleric who incited the mob, alongside suspension of 92 police officials who were on duty at the time.⁶³⁴ Nevertheless, state authorities are also responsible for the demolition of various Hindu temples for commercial purposes over time. A survey conducted by the All-Pakistan Hindu Rights Movement in 2014 found that temples have been reduced from 428 pre-partition to only 20 in 2019.⁶³⁵ Hence, state-level discrimination supplemented by the radical calls to violence by the Islamist groups has created an extremely suffocating environment for the religious minorities of Pakistan.

On the other hand, the Open Doors’ World Watch List 2021 has declared Pakistan as the fifth most dangerous country for Christians, who are subjected to extreme forms of oppression.⁶³⁶ The government continues to reiterate the second-class status of the Christian community by advertising positions for the discriminatory job of sewage workers specifically reserved for them. Almost 80 per cent of sanitation workers are Christians while the remaining positions are occupied by the Hindu community who have to work under unpleasant and often unsafe conditions.⁶³⁷ The status of Christians in Pakistan originates in pre-partition India when members of the lowest Dalit caste of Hinduism, commonly referred to as ‘untouchables’, became converts.⁶³⁸ The British government had provided them with an incentive to convert to Christianity to elevate their status in society; however, the concept of ‘untouchables’ is still prevalent in Pakistan. Consequently, Christians are derogatorily known as ‘choora’, ‘chamaar’, or ‘bhangji’ which are references made to their former Hindu Dalit castes. Today, many conservative Muslims do not share their utensils with Christians citing reasons of contamination and impurity – a practice evident in the case of Asia Bibi as discussed later in this chapter. Alternatively, the concept of impurity has a religious connotation whereby Muslims avoid sharing utensils as per the Islamic doctrine that outlines rules regarding ritual purity and hygiene – based on which non-Muslims are often rendered as ‘impure’.

⁶³² Hannah Ellis-Petersen and Shah Meer Baloch, “Mob Attacks And Sets Fire to Hindu Temple in Pakistan,” *The Guardian*, 31 December 2020, <https://www.theguardian.com/world/2020/dec/30/mob-tears-down-hindu-temple-and-torch-holy-shrine-in-pakistan>.

⁶³³ Hannah Ellis-Petersen, “Islamic Activists Halt Construction of First Hindu Temple in Islamabad,” *The Guardian*, 8 July 2020, <https://www.theguardian.com/world/2020/jul/08/pakistan-shri-krishna-hindu-temple-construction-halted-islamabad>.

⁶³⁴ M. Ilyas Khan, “Hindu Shrine Desecration: Can Pakistan Protect its Religious Minorities,” BBC News, 12 January 2021, <https://www.bbc.com/news/world-asia-55545524>.

⁶³⁵ Zahid Gishkori, “95% of Worship Places Put to Commercial Use,” *Dawn*, 25 March 2014, <https://tribune.com.pk/story/686952/95-of-worship-places-put-to-commercial-use-survey>.

⁶³⁶ “The World Watch List,” Open Doors, accessed 28 May 2021, <https://www.opendoorsusa.org/christian-persecution/world-watch-list/>.

⁶³⁷ Zia ur-Rehman and Maria Abi-Habib, “Sewer Cleaners Wanted in Pakistan: Only Christians Need Apply,” *The New York Times*, 4 March 2020, <https://www.nytimes.com/2020/05/04/world/asia/pakistan-christians-sweepers.html>.

⁶³⁸ Rafia Zakaria, “A Death Sentence Over a Cup of Water?” *The New Republic*, 17 October 2018, <https://newrepublic.com/article/151723/death-sentence-cup-water>.

HATE SPEECH AND SECTARIAN VIOLENCE

Pakistan has witnessed various waves of sectarian violence over the years in which the Shia sect of Muslims have repeatedly been targeted by extremist militant groups, religio-political parties, and anti-Shia organisations that continue to operate with impunity. Shia Muslims remain subjugated because of their religious beliefs that are not in tune with the mainstream Sunni views regarding the first successor of the prophet as the caliph of Islam. Hence, hate speech against Shias is mobilised in pervasive ways on political and institutional levels which abets violence on grounds of heresy. The hatred against the Shias is so insidious that they are synonymously referred to as ‘kafirs’, which has minimised their status in society. However, the recent wave of anti-Shia sentiment is perceived to be one of the most frightening after the events that took place last year.⁶³⁹ In September 2020, massive rallies were organised by mainstream religious groups in the city of Karachi that gathered approximately 30,000 demonstrators⁶⁴⁰ chanting slogans of “Kafir! Kafir! Shia Kafir!” These rallies spiralled out of control after a Deobandi-led anti-Shia organisation, the Ahle Sunnat Wal Jamaat (ASWJ), accused a Shia orator of blasphemy and influenced the arrest of a person who was found reciting a salutatory prayer specific to the Shia doctrine.⁶⁴¹ The events further fuelled anti-Shia sentiments across the country leading to 5 killings, 30 blasphemy charges, and an attack on a religious congregation.⁶⁴²

Historically, it is mainly the Deobandi-oriented groups that have directed violence against the Shia community. However, the recently founded Barelvi-oriented groups now target the community on the basis of blasphemy. In simple terms, the Deobandi subsect of Sunni Islam adheres to puritanical interpretations of the Islamic doctrine which facilitated the spread of religious militancy under Zia’s regime. In contrast, the Barelvi subsect is known for its more tolerant approach rooted in Islamic mysticism, intercession, and veneration of saints, deemed impermissible by Deobandi followers. However, the recent radicalisation of Barelvi Islam has eroded the already compromised social fabric of the country. A far-right political party, Tehreek-e-Labbaik Pakistan (TLP), emerged during Asia Bibi’s trial in 2015. It was created with one purpose: to protect the country’s stringent blasphemy laws by politicising Barelvi’s deep reverence of the holy prophet of Islam. Ever since its inception, TLP has been at the forefront of inciting hatred and violence by encouraging vengeance against people accused of blasphemy, which has contributed to the significant rise of vigilantism in Pakistan. The role of TLP is discussed later under the case study section.

ROLE OF SOCIAL MEDIA

In recent years, the far-reaching user base of online spaces and multiple social media platforms allow people to freely express their views that have amplified the stereotypes and the derogatory terms used against the minority groups in Pakistan. The two most commonly used platforms for inflammatory hate comments and fomenting hatred are Facebook and

⁶³⁹ Jaffer A. Mirza, “The Changing Landscape of Anti-Shia Politics in Pakistan,” *The Diplomat*, 28 September 2020, <https://thediplomat.com/2020/09/the-changing-landscape-of-anti-shia-politics-in-pakistan/>.

⁶⁴⁰ Kunwar Khuldune Shahid, “What Role Does the State Play in Pakistan’s Anti-Shia Hysteria?” *The Diplomat*, 17 September 2020, <https://thediplomat.com/2020/09/what-role-does-the-state-play-in-pakistans-anti-shia-hysteria/>.

⁶⁴¹ Mirza, “The Changing Landscape of Anti-Shia Politics in Pakistan.”

⁶⁴² Ibid.

Twitter. Bytes for All (B4A), a Pakistan-based human rights organisation and a research think-tank that focuses on information and communication technologies (ICTs) has authored a detailed report⁶⁴³ on online hatred in Pakistan reflecting on hate spikes linked to crucial events over a period of 10 months from September 2019 to 2020. The report is commissioned by the Minority Rights Group (MRG) as part of the Coalition for Religious Equality and Inclusive Development (CREID). The Pakistan Hate Speech Monitor was developed collaboratively to mine hate speech data from Twitter and Facebook, targeting a set of inflammatory keywords.⁶⁴⁴

The findings of the report confirm the incendiary narrative propagated against the persecuted groups of Pakistani society where people are found to be “more charged with religious sentiments after attending Friday sermons.”⁶⁴⁵ Moreover, the hate speech monitor detected over 10,000 conversations on a daily average where keywords of extreme hatred such as ‘Kafir’, ‘Qadiani’, ‘fitna’, and ‘Wajib-ul-Qatal’ are tweeted the most. The term ‘Wajib-ul-Qatal’ is found in over 1,011 mentions, mainly linked to the Ahmadiyya community and, to a lesser extent, the Shia Muslims. Some of the tweets were traced back to the comments made by high-level political figures in a Facebook video where the Federal Minister for Religious Affairs Noor-ul-Haq Qadri and the State Minister for Parliamentary Affairs Ali Muhammad Khan publicly accused the Ahmadis of *fitna* or rebellion. The State Minister also amplified the hate message by a later deleted tweet “*Gustakh-e-Rasool ki aik hi saza, sir tan se juda, sir tan se juda...Allahu Akbar!*” suggesting that “Beheading is the only punishment for whoever disrespects the Prophet...Allah is the greatest!” This is a commonly used chant during street protests against people accused of blasphemy. In 2020, the government took some remarkable yet drastic measures to combat online hate speech which severely restricts freedom of speech and hinders dissent as discussed in the next section.

HATE SPEECH DURING COVID-19

The recent pandemic has reiterated the peripheral status of minorities in Pakistan after Shia Muslims were accused of spreading the virus while Christians and Hindus were denied relief based on their faith. The hashtag #Shiavirus started trending on Twitter after a group of pilgrims returned from Iran, spreading hate against the community. In particular, the chairman of the anti-Shia organisation ASWJ singled out two Shia government ministers and held them responsible for the spread of the virus after their return.⁶⁴⁶ As a result, the Shia community faced discrimination in workplaces and social circles as they were being forced to go on leave⁶⁴⁷ and were repeatedly called out as the cause of the rampant transmission of the virus in Pakistan.

⁶⁴³ Bytes for All, *Online Hatred Pushing Minorities to the Periphery: An Analysis of Pakistani Social Media Feeds Sep 2019 – June 2020*, Pakistan; UK: Bytes for All, MRG, CREID, March 2021, <https://minorityrights.org/wp-content/uploads/2021/03/Hate-speech-targeting-minority-faiths-report-090321-EW-1.pdf>.

⁶⁴⁴ The word bank of keywords – blasphemy, blasphemous, blasphemer, ghustakh, gustakhi, Christianity, Christian, Esai, Maseehi, Ahmadi, Ahmadiya, Ahmedi, Ahmadya, Qadiani, Qadiyani, Qadian, Mirza Ghulam Ahmad, Kafir, Infidel, Takfiri, Kufr, Hindu, Hinduism, Bhagwan, Sikh, Gurdawara, Wajib Ul Qatal, Wajibul Qatal, Lynching, Rabwah, Dr Abdul Salam, Khatm-e-Nabuwat, Khatum-i-Nabuwat, Islam, Muslim, Yasu Masih, Yahudi, Choor, Chura, Chooray, and Churay.

⁶⁴⁵ Bytes for All, *Online Hatred Pushing Minorities to the Periphery*, 13.

⁶⁴⁶ Jaffer Abbas Mirza, “COVID-19 Fans Religious Discrimination in Pakistan,” *The Diplomat*, 28 April 2020, <https://thediplomat.com/2020/04/covid-19-fans-religious-discrimination-in-pakistan/>.

⁶⁴⁷ Ibid.

Simultaneously, a renowned welfare organisation, the Saylani Welfare Trust (SWT), prepared ration bags which were denied to the Hindu patrons after the volunteers checked their identity cards.⁶⁴⁸ Reportedly, the workers were instructed by a Muslim cleric heading SWT's operations that the bags must only be given to Muslims. In another account, Christians were denied access to food until they recited the *kalimah* (Islamic declaration of faith).⁶⁴⁹ Similar incidents are witnessed across Pakistan as the pandemic continues today, followed by a pattern where "some religious figures are enforcing their views on welfare organizations" and influencing aid workers to provide relief only to the Muslims.⁶⁵⁰ Hence, not holding these clerics liable for their actions highlights the greater weakness of state mechanisms that are unable to fulfil the guaranteed protection of minority groups.

Legal Framework: Restricting Hate Speech

HATE SPEECH VS. FREEDOM OF SPEECH

As observed earlier, the current Constitution of Pakistan declares Islam as the state religion and is premised on the provisions of the Objectives Resolution. Considering the rise of religious intolerance in the country, the line between hate speech and freedom of speech is often blurred which necessitates the need to recognise their relevance in the legal context. As per the Constitution of 1973, freedom of speech is guaranteed under Article 19. However, it is severely exploited on the basis of the "reasonable restrictions" subject to the "glory of Islam" and national security and is frequently used by the government to quell the voices of journalists, activists, and minorities.⁶⁵¹ This explains why Pakistan is ranked 145 out of 180 countries as per the 2021 World Press Freedom Index published by Reporters Without Borders (RSF), dropping down six places from 2018.⁶⁵² Moreover, freedom of speech in Pakistan has been particularly challenged in the past year after the following regulations were approved by the government:

CITIZENS PROTECTION (AGAINST ONLINE HARM) RULES, 2020

This was introduced under the already existing Pakistan Telecommunication (Re-Organization) Act, 1996, and the Prevention of Electronic Crimes Act, 2016 (PECA). At the outset, these rules aim to curb online hate speech, anti-state criticism, and misinformation but grant unprecedented powers to the Pakistan Telecommunication Authority (PTA) to censor online media. The criterion of censorship under the seven rules is worded vaguely and is open to arbitrariness. A detailed legal analysis of these problematic rules is conducted by the Digital Rights Foundation (DRF) highlighting its constitutional violations.⁶⁵³

⁶⁴⁸ Ibid.

⁶⁴⁹ Ibid.

⁶⁵⁰ Ibid.

⁶⁵¹ Sadaf Liaquat, Ayesha Qaisrani, and Elishma Noel Khokar, *Freedom of Expression in Pakistan: A Myth or a Reality*, Working Paper no. 159 (Islamabad: Sustainable Development Policy Institute, October 2016), <https://think-asia.org/bitstream/handle/11540/6749/Freedom-of-Expression-in-Pakistan-a-myth-or-a-reality-W-159.pdf?sequence=1>.

⁶⁵² "2021 World Press Freedom Index," Reporters Without Borders, accessed 20 May 2021, <https://rsf.org/en/ranking>.

⁶⁵³ Digital Rights Foundation, "Citizens Protection (Against Online Harm) Rules, 2020: Legal Analysis," Pakistan: DRF, February 2020, <https://digitalrightsfoundation.pk/wp-content/uploads/2020/02/Legal-Analysis-Harm-Rules-1.pdf>.

REMOVAL AND BLOCKING OF UNLAWFUL ONLINE CONTENT (PROCEDURE, OVERSIGHT AND SAFEGUARDS) RULES, 2020

These rules sought to replace the above ones after widespread domestic and international criticism, however, only minor modifications are made. PTA is given immense authority to interpret any content that it deems to be ‘unlawful’ without defining the parameters to assess the illegality of the content that it censors, which is believed to threaten activists, state critics, and vulnerable groups. An in-depth legal analysis of these rules can be found in the report published end of last year by Media Matters for Democracy (MMfD).⁶⁵⁴

The parent Act of these rules, PECA, was enforced to penalise anyone who is found to spread information online that intends to praise terrorist organisations, an accused person, or to incite hatred along ethnic, sectarian, or religious lines. However, the ambiguous provisions of the Act caused significant concerns among the community of activists as it “could lead to curtailment of free speech and unfair prosecutions.”⁶⁵⁵ The Act was criticised for violating Article 19 after renowned journalists and human rights defenders were arrested and became victims of forced disappearances.⁶⁵⁶ The most recent incident is when journalist Bilal Farooqi was arrested under PECA on the grounds of promoting sectarianism and anti-state rhetoric when he tweeted against the anti-Shia demonstration that broke out in Karachi in September 2020. This demonstrates the misuse of PECA, which authorises the state to persecute freedom of speech in the guise of combatting hate speech. Hence, there is a pressing need for a universally accepted or country-specific definition of hate speech that will encourage states to tease out relevant ambiguities in their legal frameworks.

LEGAL PROVISIONS RESTRICTING HATE SPEECH

As far as hate speech is concerned, there are no specific sections in the Constitution that deal with the issue directly; instead, different legal provisions penalise offences that might be understood as hate speech. These include:

THE PAKISTAN PENAL CODE (PPC), 1860

The PPC outlines a few provisions to deal with incidents that incite violent riots, create animosity between religious groups, insult a specific group or defile their place of worship, trespass burial sites, and engage in hateful speech or disseminate polemical content with an intention to outrage religious feelings. These acts are punishable by imprisonment or with fines under Sections 153-A, 295, 296, 297, 298, and 505 (2).

⁶⁵⁴ Sadaf Khan, Zoya Rehman, and Salwa Rana, *The Removal and Blocking of Unlawful Online Content (Procedure, Oversight and Safeguards) Rules 2020: A Legal Analysis*, edited by Hija Kamran and Aimun Faisal, Pakistan: Media Matters for Democracy, November 2020, <https://www.digitalrightsmonitor.pk/wp-content/uploads/2021/01/Social-Media-Rules-2020-Legal-Analysis.pdf>.

⁶⁵⁵ Reuters Staff, “Pakistan Passes Controversial Cyber-Crime Law,” Reuters, 12 August 2016, <https://www.reuters.com/article/us-pakistan-internet-idUSKCN10N0ST>.

⁶⁵⁶ Shmyla Khan, “Year in Review: PECA,” Digital Rights Foundation, August 11, 2017, <https://digitalrightsfoundation.pk/year-in-review-pecar/>.

ANTI-TERRORISM ACT (ATA), 1997

This Act primarily deals with issues of terrorism; however, there is a clause that intends to discourage hate speech. Section 8 outlines “prohibition of acts intended or likely to stir up sectarian hatred”, under which a guilty person is punishable for up to seven years of imprisonment.

NATIONAL ACTION PLAN, 2014

The National Action Plan was drafted after the brutal attack on the Army Public School in Peshawar by Tehrik-e-Taliban. It is a 20-point plan where the fifth point promises “strict action against the literature, newspapers and magazines promoting hatred, extremism, sectarianism and intolerance.”

PROVINCIAL SOUND SYSTEM ACTS, 2015

The Punjab Sound System (Regulation) Act and the Sindh Sound System (Regulation) Act prohibits the use of systems that “generates any loud, unnecessary or unusual noise or any noise which annoys, disturbs, injures, or endanger the comfort, repose, health, peace, or safety of persons in or beyond the vicinity.”

PREVENTION OF ELECTRONIC CRIMES ACT, 2016

As mentioned above, the ambiguous provisions of PECA have been used to violate freedom of expression and speech. However, the Act criminalises online issues of hate speech under Sections 9 and 11 if someone is found guilty of glorifying or disseminating information that is “likely to advance interfaith, sectarian or racial hatred.

Although these legal provisions are present in writing, the implementation and the effectiveness of the rule of law in Pakistan is questionable since the system is often exploited by religious, political, and social elites.

REJECTION OF AMENDMENT BILLS

In recent years, a few bills have been proposed to enhance the overall safety of religious minorities which have repeatedly been turned down on the insistence of the religious parties and groups.

BLASPHEMY LAWS (2010)

Multiple appeals have been made to amend or repeal the blasphemy laws; however, it has always met with intense backlash by both the religious parties and the wider population. In the aftermath of Asia Bibi's conviction in 2010, Sherry Rehman, who is an influential Pakistani politician, submitted a bill to the National Assembly Secretariat to bring an end to the harsh death penalty. Moreover, she sought to "amend the codes to ensure protection of Pakistan's minorities and vulnerable citizens, who routinely face judgments and verdicts in the lower courts where mob pressure is often mobilised to obtain a conviction".⁶⁵⁷ As a result, the right-wing religious parties got together and threatened the government with extreme consequences if the Bill was not withdrawn. Ms Rehman also faced accusations of blasphemy and received death threats from Islamist militants which eventually forced her into hiding. Even her party members were not supportive of her, and the Prime Minister requested her to withdraw the proposed Bill. Although the government had pacified the religious leaders by stating that no amendments will be made, approximately 40,000 demonstrators took to the streets in Lahore to rally against the Bill.⁶⁵⁸

CRIMINAL LAW (PROTECTION OF MINORITIES) BILL (2016)

Considering the surge in forced conversions of young Hindu and Christian girls in recent years, the Criminal Law (Protection of Minorities) Act was passed by the Provincial Assembly of Sindh in 2016 to prohibit forced religious conversions. The Bill was proposed by a Hindu member of the assembly, Nand Kumar Goklani. However, in reaction to the new law, all the leading religious parties of Pakistan met in a conference, concluded that the provisions were against Islamic principles, and "threatened to lay siege to the Sindh Assembly" if the law was not repealed within 15 days.⁶⁵⁹ Amidst the pressure of these demands, the Governor of Sindh returned the Bill to the Assembly suggesting a revision of a few clauses that were reportedly impinging on Islamic principles. Hence, a revised version of the Bill was submitted in 2019 but was rejected since most of the ministers voted against it to avoid any contention with the Islamist groups.

PROTECTION OF THE RIGHTS OF RELIGIOUS MINORITIES BILL (2021)

A private bill was passed in February this year by a member of the Senate, Javed Abbasi, who insisted that minorities must be able to visit their places of worship without the fear of persecution and that Pakistan is not a state that would ever condone acts of forced conversions. However, the religious groups met again and concluded that the current laws already provide adequate protection to minorities alongside the right to practise their religion freely, due to which the Bill was declared redundant and rejected by the Senate Standing Committee on Religious Affairs and Inter-faith Harmony.⁶⁶⁰

⁶⁵⁷ Quoted in, "Sherry Submits Bill for Amending Blasphemy Laws," *Dawn*, 30 November 2010, <https://www.dawn.com/news/587351/sherry-submits-bill-for-amending-blasphemy-laws-2>.

⁶⁵⁸ Zia Khan, "Blasphemy Law Amendment: Sherry Rehman to Withdraw Bill, Says PM," *The Express Tribune*, 3 February 2011, <https://tribune.com.pk/story/113445/blasphemy-law-amendment-sherry-rehman-to-withdraw-bill-says-pm>.

⁶⁵⁹ Zia Ur Rehman, "Religious Parties Threaten to Lay Siege to Sindh Assembly," *The News International*, 7 December 2016, <https://www.thenews.com.pk/print/170265-Religious-parties-threaten-to-lay-siege-to-Sindh-Assembly>.

⁶⁶⁰ Correspondent, "Senate Panel 'Turns Down' Bill on Minorities Rights," *The Express Tribune*, 2 February 2021, <https://tribune.com.pk/story/2282277/senate-panel-turns-down-bill-on-minorities-rights>.

Case Study: Asia Bibi

The discussion of blasphemy laws in Pakistan is often incomplete without examining the case of Asia Bibi which attracted international condemnation of the law for the first time. The high-profile case sheds light on the state's complex governance structures, its struggle to counter heightened religious sentiments that incite violence, and the barriers to implement rule of law.

CONTEXT

In November 2010, Asia Bibi became the first woman to be convicted under the blasphemy laws and was later sentenced to death by hanging. Asia Bibi, a Roman Catholic, belonged to the Sheikhpura District of Punjab and came from the lower end of the social hierarchy. She worked as a farmworker in her district and was often suggested by her Muslim co-workers to convert to Islam. In June 2009 while they were picking berries, the women took a break and requested Asia to fetch some water from the nearby well. However, on her way back she took a sip of water from the metal cup which ignited a religious debate between Asia and her co-workers. The Muslim women accused her of contaminating the water and further undermined her faith insisting that she should convert to Islam. According to one account, Asia Bibi responded with the following: "I believe in my religion and in Jesus Christ, who died on the cross for the sins of mankind. What did your Prophet Muhammad ever do to save mankind?"⁶⁶¹ Hence, she was accused of blasphemy as she allegedly defiled "the sacred name of the Holy Prophet Muhammad (peace be upon him)" according to Section 295C of the PPC.

HATE SPEECH AND INCITEMENT TO VIOLENCE

Following the incident, the women informed the local Muslim cleric, Qari Muhammad Salim, and also spread the word throughout the village regarding Asia Bibi's alleged blasphemy which eventually led to her arrest. There are two accounts of her arrest, the first one claims that Asia Bibi confessed to committing blasphemy after she was brutally beaten by a mob in the presence of police before being arrested on blasphemy charges.⁶⁶² The other account mentions that the cleric went to her house along with a few other men and threatened her with the worst possible consequences after which Asia's family informed the police who then took her into custody for her own safety.⁶⁶³ The contradictions in these two versions are also

⁶⁶¹ Anne Isabelle Tollet, "I'm Afraid She'll Be killed Very Soon if Nothing Happens," interview by Sarah Eekhoff Zylstra, *Christianity Today*, 23 September 2013, <https://www.christianitytoday.com/ct/2013/september-web-only/asia-bibi-pakistan-blasphemy-im-afraid-shell-be-killed.html>.

⁶⁶² Shumaila Jaffrey, "Asia Bibi: Pakistan's Notorious Blasphemy Case," BBC News, 1 February 2019, https://www.bbc.co.uk/news/resources/1dt-sh/Asia_Bibi.

⁶⁶³ Jürgen Schaflechner, "Blasphemy and the Appropriation of Vigilante Justice in 'Hagiohistoric' Writing in Pakistan," in *Outrage: The Rise of Religious Offence in Contemporary South Asia*, ed. Paul Rollier, Kathinka Frøystad, and Arild Engelsen Ruud (London: UCL Press, 2019), 214.

reflected in the statements⁶⁶⁴ made during the trial which makes it difficult to decipher the factual accuracy of the events that followed.

In an exclusive interview with the French journalist Anne Isabelle Tollet, Asia Bibi remembers that the mob approached her house by chanting “Death! Death to the Christian!” followed by “Filthy b*tch! ... You insulted our Prophet! You’ll pay for that with your life!” Other members of the mob hurled comments like “She insulted our Prophet, she should have her eyes torn out!” “Put a rope around her neck and drag her through the village like an animal!” Asia Bibi also recalls being grabbed by two men who dragged her away followed by other members of the crowd hitting her furiously.⁶⁶⁵ The village cleric confronted her about her blasphemous comments and gave her two options to redeem herself – conversion or death. After refusing to convert, the cleric threatened that “since you won’t convert and the Prophet cannot defend himself, we shall avenge him”, which incited the already angered mob to continue the beating.⁶⁶⁶

After Asia Bibi was sentenced to death by a local court in Sheikhpura, the judge received a standing ovation by the crowd in the courthouse who shouted slogans of “Kill her, kill her! Allahu Akbar!”⁶⁶⁷ Consequently, Bibi’s lawyers appealed to the Lahore High Court which was rejected in 2014. During this time, various human rights organisations, liberal Pakistanis, and religious minorities united in their efforts to publicly condemn the death sentence and called to repeal the law. The President of Pakistan at the time, Asif Ali Zardari, was also willing to use his presidential pardon in Bibi’s case but was barred by the High Court since a decision regarding her appeal was underway.⁶⁶⁸ The president’s action significantly angered the religious groups who feared that Asia Bibi’s sentence might be reduced. As a result, the right-wing political parties formed their own alliance and took to the streets across Pakistan chanting slogans to “Hang Asia, the insolent!” and boasting placards with a noose around her picture. The religious fervour heightened after one of the clerics Maulana Yusuf Qureshi, also an active member of Jamaat-e-Islami, offered a reward of Rs 500,000 (approximately \$5,800 USD at the time) “for the loyal follower of Muhammad who beheads Asia Bibi” in case the court does not go through with the death sentence.⁶⁶⁹ This call to violence was also endorsed by the newspaper Nawa-e-Waqt, Pakistan’s Urdu daily newspaper that has a wide readership.⁶⁷⁰ However, neither the cleric nor the newspaper faced any consequences for inciting violence which highlights a culture of impunity in the country. As a result, Asia Bibi’s safety was severely compromised which forced her into solitary confinement, keeping her safe from other inmates who also called for her to be hanged.

⁶⁶⁴ Zain Siddiqui, “These 7 Points Explain the Supreme Court’s Decision to Free Aasia Bibi,” *Dawn*, 21 December 2019, <https://www.dawn.com/news/1442634>.

⁶⁶⁵ Asia Bibi and Anne-Isabelle Tolle, “Conversion or Death,” *Christianity Today*, 29 August 2013, <https://www.christianitytoday.com/ct/2013/september/conversion-or-death.html>.

⁶⁶⁶ Ibid.

⁶⁶⁷ St John Hal, “Ten Million People Now Want to Kill Me,” *Catholic Herald*, 14 June 2012, <https://web.archive.org/web/20131204163407/http://www.catholicherald.co.uk/features/2012/06/14/ten-million-people-now-want-to-kill-me/>.

⁶⁶⁸ Reuters Staff, “Pakistan PM Barred from Pardoning Christian Woman,” Reuters, 29 November 2010, <https://www.reuters.com/article/us-pakistan-blasphemy/pakistan-pm-barred-from-pardoning-christian-woman-idUSTRE6AS1L020101129>.

⁶⁶⁹ Nasir Habib, “Pakistan Parties Protest Possible Blasphemy Law Changes,” *CNN*, 23 December 2010, <http://edition.cnn.com/2010/WORLD/asiapcf/12/23/pakistan.blasphemy.protest/index.html>.

⁶⁷⁰ Declan Walsh, “Cleric Puts Price on Head of Pakistani Woman,” *The Guardian*, 6 December 2010, <https://www.theguardian.com/world/2010/dec/06/cleric-pakistani-christian-woman-blasphemy>.

INCITING VIOLENCE: KILLING OF PROMINENT FIGURES

This section demonstrates how not even the political elites are safe when it comes to cases of blasphemy. Asia Bibi's eight-year-long ordeal has garnered both domestic and international attention, some supporting the death sentence while many against it. Thus, her case has costed the lives of the Governor of Punjab, Salman Taseer, and the Minister of Minorities Affairs of Pakistan, Shahbaz Bhatti, who stood up in her support and critiqued the blasphemy laws.

SALMAN TASEER

The Governor of Punjab, a Muslim by faith, was at the forefront of supporting Asia Bibi's plea for mercy. He played an important role in convincing the president to pardon the accused on grounds of human decency as he found the punishment to be "extremely strict and oppressive".⁶⁷¹ He continuously appealed to revise the blasphemy law and at one point referred to it as *kala qanun* or 'black law' in a televised interview which triggered the far-right of the country who concluded this very statement to be blasphemous.⁶⁷² As a result, Taseer was murdered by one of his own bodyguards, Mumtaz Qadri, who identified himself as a follower of the Barelvi subsect of Sunni Islam.

Taseer is one of the few politicians who publicly voiced against the legal blackholes and insisted on prioritising humanity over religion. However, due to his unconventional support towards Asia Bibi and criticism of the blasphemy laws, the leading ulemas of the country deemed him as a 'blasphemer', 'enemy of Islam', and a 'Western agent'. His religious and moral character became a subject of scrutiny amongst the clerics who declared his way of life as 'un-Islamic' referring to "his habit of eating pork or drinking alcohol" and non-compliance with the religious duties of fasting and praying.⁶⁷³ This implies the reductionist view of the ulemas who suggest that only people who according to them lead an un-Islamic way of life can "think of siding with a convicted blasphemer".⁶⁷⁴

TRIGGER: MUFTI HANIF QURESHI

Mufti Hanif Qureshi is a renowned religious scholar from the Barelvi sect who frequents traditional media as a speaker in political and religious talk shows. Like many other scholars, he gives sermons across Pakistan that usually attract massive gatherings which are often recorded by the attendees and posted on social media platforms, Facebook and Twitter being the most common ones. Salman Taseer's assassin Mumtaz Qadri claimed that he was inspired by Qureshi's sermons, one of which incited him to take the governor's life. Alongside scholars of other denominations, Qureshi strongly condemned Taseer's support for Asia Bibi and fatwas were issued to declare him as *wajib-ul-qatal* for disrespecting the laws that penalise blasphemy. Moreover, Qureshi delivered an extremely passionate and inflammatory speech just a few days before Taseer was murdered in broad daylight:

⁶⁷¹ Schaflechner, "Blasphemy and the Appropriation of Vigilante Justice," 214.

⁶⁷² Ibid., 215.

⁶⁷³ Ibid., 217.

⁶⁷⁴ Ibid.

Don't you know that we say openly that we are not afraid of anything! If the law in our country does not call for the death penalty for a blasphemer, for 295-C, then Allah gave us the power that we take the weapons in our own hands. We know how to shoot a gun, or how to cut a blasphemer's throat ... Are we Sunnis not able to do this? Remove the cowardice from yourself! Allah has given us so much power and courage. We can strangle the blasphemer, we can cut his tongue, we can dismember his body with bullets. No law can catch us! The punishment for blasphemy is death! ... Somebody who insults the prophet has no right to live.⁶⁷⁵

Considering Qureshi's influential status amongst his Barelvi followers, this speech was bound to foment religious zealots as it explicitly condones brutal acts of violence, undermines the significance of the legal system, and justifies extrajudicial killings in the name of protecting the Prophet's honour. This is indicative of how hate speech can incite violence, as Qadri took the law into his own hands and murdered Salman Taseer in an affluent marketplace of the capital city Islamabad by shooting him with 26-28 bullets on 4 January 2011.

GOVERNMENT RESPONSE

The government took prompt action to condemn one of the most high-profile assassinations of Pakistan's history. Mumtaz Qadri was arrested immediately after the incident and later pleaded guilty for the murder, citing that his reason for taking the law into his own hands was due to the state's incompetency in holding Taseer accountable for blasphemy. As a result, Qadri was sentenced to death for murder and was executed on 29 February 2016, mainly to set a precedent that no one is above the law. The government also took drastic measures and heightened security by deploying police contingents and closing marketplaces ahead of Qadri's funeral to thwart the possibility of widespread demonstrations across the country. This was followed by a media blackout during which the local news channels were discouraged from broadcasting the funeral for fear that it would incite religious hatred and promote violence.⁶⁷⁶ While some commended the efforts of the government others were critical of the draconian censorship. Although Qadri was arrested for the crime, Mufti Hanif Qureshi and other such scholars did not face any consequences for delivering inflammatory speeches against the Governor of Punjab. The police did open an investigation against the clerics however they were granted pre-arrest bail by the Anti-Terrorism Court on the basis of insufficient evidence and lack of intention to directly instigate the killer.⁶⁷⁷ Hence, no such actions are taken to curb the indirect influence that the sermons may have on the attendees.

⁶⁷⁵ Ibid., 219, translated by Schaflechner.

⁶⁷⁶ Mehreen Zahra-Malik, "As Pakistan Bars Extremists from Airwaves, Some Fear Creeping Censorship," Reuters, 23 July 2016, <https://www.reuters.com/article/us-pakistan-media-militants-idUSKCN1021NI>.

⁶⁷⁷ Express, "Taseer Murder Case: 'Inspirational' Clerics Given Bail," *The Express Tribune*, 21 January 2011, <https://tribune.com.pk/story/106934/taseer-murder-case-inspirational-clerics-given-bail>.

PUBLIC RESPONSE

Both of these incidents, Taseer's murder in 2011 and Qadri's execution in 2016, divided the nation into two extremes – the liberal Pakistanis sympathised with the murder while the more conservative population applauded Qadri's courage and hailed him as a hero. Taseer's assassination was condemned internationally as thousands of mourners proceeded to attend his funeral. In contrast, almost 500⁶⁷⁸ clerics issued statements to their followers to block the funeral procession followed by warnings that whoever offers condolences to the family could suffer a similar fate.⁶⁷⁹ Some of the religious parties even went to the extent of declaring that sympathising with the death of a blasphemer is also an act of blasphemy.⁶⁸⁰ This is a common tactic used to create fear among the conservative population who may not be fully aware of the authentic religious teachings, and often leading them to believe in a narrative offered by the so-called religious leaders of the society.

On the other hand, Mumtaz Qadri's death sentence was followed by large-scale protests throughout the country mobilised by multiple religious parties such as Jamaat-e-Islami, Jamaat-e-Ahle Sunnat, Jamiat-i-Ahle Hadith, and Sunni Tehreek. Thousands of protestors pleaded for a presidential pardon for Qadri reframing him as a 'soldier of Islam' who fought to protect the nation's ideology, however, the plea was denied. Taseer's assassin was also defended by many lawyers of the country who showered him with rose petals and praised him for his act of bravery during the initial court hearings.⁶⁸¹ Hence, receiving encouragement on an institutional level suggests how personal religious affiliations can hinder effective implementation of the law and normalises the incitement of violence in the name of religion. Despite the overwhelming support that Qadri received, he was sentenced to death by the District and Sessions Judge Pervez Ali Shah who was immediately sent abroad after receiving death threats from the far-right groups of the country.⁶⁸²

The religious fanaticism was even more pronounced after Qadri's execution which once again led to nationwide backlash and violent protests, mainly carried out by the Barelvi-oriented hardliners of now banned Sunni Tehreek and Tehreek-e-Labbaik Pakistan (TLP). Qadri's funeral in Rawalpindi witnessed a crowd of approximately 100,000⁶⁸³ people who hailed him as a *ghazi* (warrior) and *shaheed* (martyr) – honorific titles for a Muslim who fights against the enemies of Islam or someone who sacrifices their life in the path of Allah. The glorification that Qadri received for his actions sends a dangerous message to the wider society by desensitising the brutality of taking another person's life and normalising extrajudicial killings to protect the Prophet's honour. Although the government managed to contain the escalation of violence on the day

⁶⁷⁸ Declan Walsh, "Salman Taseer, Aasia Bibi and Pakistan's Struggle with Extremism," *The Guardian*, 9 January 2011, <https://www.theguardian.com/world/2011/jan/08/salmaan-taseer-blasphemy-pakistan-bibi>.

⁶⁷⁹ BBC, "Salman Taseer: Thousands Mourn Pakistan Governor," BBC News, 5 January 2011, <https://www.bbc.com/news/world-south-asia-12116764>.

⁶⁸⁰ Ibid.

⁶⁸¹ AP, "Lawyers Shower Roses for Governor's Killer," *Dawn*, 5 January 2011, <https://www.dawn.com/news/596300/lawyers-shower-roses-for-governors-killer>.

⁶⁸² Zulqernain Tahir, "Qadri Case Judge Sent Abroad," *Dawn*, 24 October 2011, <https://www.dawn.com/news/668688/qadri-case-judge-sent-abroad>.

⁶⁸³ Jon Boone, "Thousands of Funeral of Pakistani Executed for Murdering Governor," *The Guardian*, 2 March 2016, <https://www.theguardian.com/world/2016/mar/01/funeral-pakistani-mumtaz-qadri-executed-salmaan-taseer>.

of the funeral, they remained underprepared to face 25,000⁶⁸⁴ demonstrators a month later who took to the streets to commemorate Qadri's *chehlum* which marks the end of the 40-day mourning period as practised in the Islamic culture.⁶⁸⁵ The protestors resorted to violence by setting fire to trucks, removing blockades, and damaging public property across Islamabad before 2,000 of them staged a sit-in outside the parliament and delivered extremely passionate anti-government speeches.⁶⁸⁶ The protestors refused to move until their demands were met, which included immediate implementation of Sharia law, national recognition of Qadri as a martyr, and execution of Asia Bibi.⁶⁸⁷ Struggling to contain the violent outburst, the government had to request the military to intervene as the police fired tear-gas shells and used batons "to disperse the stone-pelting crowd from the high-security zone outside the parliament building."⁶⁸⁸

Despite government efforts to dispel the admiration that Qadri received, supporters built a shrine around his grave to commemorate his death for years to come. This was followed by a mosque and a seminary built in the same vicinity under his name, largely funded through public donations.⁶⁸⁹ Today, thousands of Pakistanis visit the shrine to gain the blessings of the deceased and observe his *urs* annually, which is a popular Barelvi tradition to celebrate the death anniversary of a Sufi saint. Once again, such extreme forms of glorification for a convicted murderer justify the killing of Taseer in the eyes of the public, and may also inspire other people to take the law into their own hands in the hopes of receiving similar admiration and of being recognised as a 'ghazi' or 'shaheed' after their death. Moreover, the government did not take any action against the building of the shrine fearing an extreme fallout that could severely impact the country's law and order. This highlights the fact that, despite short-term military success in fighting extremists, little progress has been made in tackling the root causes of radicalisation in Pakistan.⁶⁹⁰ Hence, there is a pressing need for the country to shift its focus on implementing long-term reforms that can efficiently deal with issues of radical religious indoctrination, hate speech, and incitement to commit violence.

SHAHBAZ BHATTI

The Minister of Minorities Affairs of Pakistan, Shahbaz Bhatti, and the only Christian member of the Cabinet was killed only two months after Taseer's assassination on 2 March 2011. Bhatti was vocal in his support for Asia Bibi and advocated for the abrogation of the blasphemy laws that, according to him, victimised the religious minorities of the country. Hence, Tehrik-i-Taliban (TTP), a militant organisation, claimed responsibility for the killing, reasoning

⁶⁸⁴ Shereena Qazi, "Pakistan Army Called In to Quell Blasphemy Law Protest," Al Jazeera, 28 March 2016, <https://www.aljazeera.com/news/2016/3/28/pakistan-army-called-in-to-quest-blasphe-my-law-protest>.

⁶⁸⁵ Jon Boone, "Mumtaz Qadri Supporters in Islamabad Defy Calls to Disperse," *The Guardian*, 30 March 2016, <https://www.theguardian.com/world/2016/mar/30/mumtaz-qadri-protesters-islamabad-defy-calls-disperse>.

⁶⁸⁶ Irfan Haider, AFP, Imtiaz Ali, and Haseeb Bhatti, "Nearly 2,000 pro-Qadri Protesters Continue Sit-In outside Parliament," *Dawn*, 27 March 2016, <https://www.dawn.com/news/1248261>.

⁶⁸⁷ Boone, "Mumtaz Qadri Supporters in Islamabad."

⁶⁸⁸ Haider et al., "Nearly 2,000 pro-Qadri Protesters Continue Sit-In."

⁶⁸⁹ Asad Hashim, "In Pakistan, a Shrine to Murder for 'Blasphemy,'" Al Jazeera, 10 February 2017, <https://www.aljazeera.com/features/2017/2/10/in-pakistan-a-shrine-to-murder-for-blasphemy>.

⁶⁹⁰ AFP, "Shrine to Taseer's Murderer Mumtaz Qadri Reveals Pakistan's Challenges," *Gulf News*, 27 February 2017, <https://gulfnews.com/world/asia/pakistan/shrine-to-taseers-murderer-mumtaz-qadri-reveals-pakistans-challenges-1.1985339#>.

that he was a blasphemer. The spokesperson for the TTP told BBC Urdu that “this man was a known blasphemer of the Prophet [Muhammad]” and that “we will continue to target all those who speak against the law which punishes those who insult the prophet. Their fate will be the same.”⁶⁹¹ Hence, incidents and warnings like these are what discourages the general society to voice their concerns against the stringent laws. Most Pakistani’s prefer to stay silent to protect themselves and their loved ones.

After Asia Bibi was sentenced to death, Bhatti committed himself to her cause and advocated for her release both domestically and internationally. Subsequently, he met with the US Secretary of State Hillary Clinton in Washington and later with the Canadian Prime Minister Stephen Harper to express his thoughts on promoting religious freedom in the country, and also sought clemency for Asia Bibi. Bhatti’s obvious support for Bibi, combined with his campaign to reform the harsh blasphemy laws, made him a target for the religiously motivated radicals of Pakistan. As a result, he received continuous death threats to deter him from the cause. Bhatti recorded a video to be released in the event of his death confirming that “these Taliban threaten me.”⁶⁹² Four months after the video was released, he was declared dead when two gunmen shot his car in Islamabad, hitting him with at least eight bullets. The men left behind a few pamphlets signed by “Taliban al-Qaida Punjab” which read “with the blessing of Allah, the mujahideen will send each of you to hell.”⁶⁹³ Furthermore, the pamphlet referred to Bhatti as a “Christian infidel” who deserved to be killed for challenging the sacred law of the country.⁶⁹⁴ The inflammatory statements issued by the spokesperson of TTP and the language used in the pamphlet are indicative of openly inciting violence against anyone who dares to question the controversial laws. The statements also sanction common civilians to terrorise or kill anyone who is a blasphemer in their eyes, normalising the exploitation of the law to settle personal vendettas.

Although Bhatti’s assassination was condemned by the government, the killers were never held accountable and his case still remains unresolved⁶⁹⁵ despite assurances from the Islamabad police that a few suspects were taken into custody who were allegedly responsible for the shooting.⁶⁹⁶ In another account, Bhatti’s murder is linked to “an extremist mindset that has, with the sponsorship of some institutions of the state, spread far and wide in Pakistani society”,⁶⁹⁷ where the ‘institutions’ refer to the state’s strong intelligence agencies who abet crimes but remain largely unchecked for their actions.⁶⁹⁸ Bhatti’s murder also witnessed violent protests by the Christian community for the first time across Punjab; they took to the

⁶⁹¹ BBC Urdu, “Pakistan Minorities Minister Shahbaz Bhatti Shot Dead,” BBC News, 2 March 2011, <https://www.bbc.com/news/world-south-asia-12617562>.

⁶⁹² Al Jazeera English, “Exclusive footage of Shahbaz Bhatti’s interview,” YouTube, 2 March 2011, <https://www.youtube.com/watch?v=oBTBqUJomRE>.

⁶⁹³ Declan Walsh, “Shahbaz Bhatti: Another Voice Against Pakistan’s Extremists Dies,” *The Guardian*, 3 March 2011, <https://www.theguardian.com/world/2011/mar/02/shahbaz-bhatti-shot-dead>.

⁶⁹⁴ Ibid.

⁶⁹⁵ Helen Haft, “Shahbaz Bhatti’s Murder Cannot Remain Uninvestigated,” *The Nation*, 4 March 2020, <https://www.thenation.com/article/world/shahbaz-bhattis-murder-anniversary/>.

⁶⁹⁶ Umer Nangiana, “Breakthrough?: ‘TTP Militant’ Confesses to Shahbaz Bhatti’s Murder,” *The Express Tribune*, 17 September 2013, <https://tribune.com.pk/story/605344/breakthrough-ttp-militant-confesses-to-shahbaz-bhattis-murder>.

⁶⁹⁷ From the Newspaper, “Another Tragedy,” *Dawn*, 2 March 2011, <https://www.dawn.com/news/610305/another-tragedy>.

⁶⁹⁸ Declan Walsh, “Pakistani Christians Protest after Assassination of Shahbaz Bhatti,” *The Guardian*, 4 March 2011, <https://www.theguardian.com/world/2011/mar/03/pakistan-christians-shahbaz-bhatti-assassination>.

streets and demanded justice by burning tyres.⁶⁹⁹ Bhatti was later honoured as a ‘martyr’⁷⁰⁰ after the bishops of Pakistan appealed to Pope Benedict for the recognition, and his cause for beatification was formally opened five years after his death.⁷⁰¹

The two high-profile assassinations that occurred during Asia Bibi’s case indicates the web of violence that unfolds when it comes to supporting an accused blasphemer or questioning the laws that penalise blasphemy. The hate speech narrative endorsed by the various religious parties is a reflection of deeper root causes in the society that presses the need for large-scale social and institutional reform instead of one-off military interventions to curb the violence that follows.

INTERNATIONAL RESPONSE

Ever since her conviction, Asia Bibi’s case became a topic of international concern ranging from Pope Benedict XVI’s and Pope Francis’s pleas for clemency to world leaders demanding immediate abrogation of the blasphemy laws. Considering Bhatti’s crucial role in pushing Bibi’s case onto the world stage, international actors publicly condemned the brutal killings of the two politicians and repeatedly urged Pakistan to reform the laws that supplement the rise of extremism in the country.⁷⁰² Among the various organisations and institutions, the World Council of Churches (WCC) remained one of the most persistent in demanding justice for Asia Bibi. Initially, the General Secretary of WCC wrote to the Prime Minister of Pakistan about his concerns regarding “the use and misuse of the blasphemy laws” and requested the government to “take all necessary measures to provide safety and security to the Christian minority in Pakistan, and other minorities, and not to be deterred by the violent crimes committed by religious extremists.”⁷⁰³ The organisation stood firm in its support during the rejection of her appeal in 2014 and, later, through her acquittal.

Asia Bibi’s case received greater attention through several international organisations that are committed to creating increased awareness and that work towards defending the rights of persecuted Christians and religious minorities across the globe. Several petitions were initiated by the Voice of Martyrs, Open Doors, International Christian Concern, and Aid to the Church which resulted in an overwhelming number of signatories worldwide.⁷⁰⁴ Simultaneously, humanitarian organisations such as Amnesty International and Human Rights Watch led the way in advocating for Bibi’s release and called out on Pakistan’s

⁶⁹⁹ Ibid.

⁷⁰⁰ CNA, “Pakistan Bishops Urge Pope to Name Shahbaz Bhatti a Martyr,” Catholic News Agency, 29 March 2011, <https://www.catholicnewsagency.com/news/22224/pakistan-bishops-urge-pope-to-name-shahbaz-bhatti-a-martyr>.

⁷⁰¹ David Alton, “Why Has Pakistan Failed to Bring Shahbaz Bhatti’s Murderer to Justice?” Independent Catholic News, 5 March 2018, <https://www.indcatholicnews.com/news/34453>.

⁷⁰² AFP, “World Community Condemn Bhatti’s Murder,” *Dawn*, 2 March 2011, <https://www.dawn.com/news/610121/british-pm-condemns-unacceptable-pakistan-murder>.

⁷⁰³ Rev. Dr Olav Fykse Tveit to Yousaf Raza Gillani, “Shock at Assassination of Pakistan Government Minister Bhatti,” World Council of Churches, 2 March 2011, <https://www.oikoumene.org/resources/documents/shock-at-assassination-of-pakistan-government-minister-bhatti>.

⁷⁰⁴ Gerard O’Connell, “Pakistani Christians Fear Violence after Asia Bibi’s Blasphemy Death Sentence is Overturned,” *America* magazine, 31 October 2018, <https://www.americamagazine.org/faith/2018/10/31/pakistani-christians-fear-violence-after-asia-bibis-blasphemy-death-sentence>.

incompetency in curbing religious extremism.⁷⁰⁵ On the state-to-state level, the EU parliament motioned a resolution on Pakistan's blasphemy laws listing a set of provisions necessary to defend human rights in the country alongside making its GSP+ status conditional to the compliance of the 27 core international conventions.⁷⁰⁶ Although the imposed international pressure did not result in far-reaching outcomes, it did assist with the cause of Asia Bibi over time, eventually leading to her acquittal on 31 October 2018.

In such cases that are often triggered by hate speech and lead to adverse consequences, international pressure has been significant in dealing with isolated incidents by placing impositions to influence government behaviour. However, a long-term solution would require the international actors to directly engage academic experts, political elites, faith-based leaders, and other relevant personalities from Pakistan to initiate a dialogue or a goal-oriented plan to curb the intensification of discriminatory rhetoric in the country, potentially by adopting and implementing the OHCHR Rabat Plan of Action.

ACQUITTAL OF ASIA BIBI

Considering how emotive the blasphemy laws are in Pakistan, the decision of Asia Bibi's release was not well received and met with a three-day nationwide protest encouraged by the far-right Islamist party Tehreek-e-Labbaik Pakistan (TLP). Although the government took necessary measures to ward off the demonstrators by suspending mobile phone signals in major cities,⁷⁰⁷ violent protests brought the country to a standstill.⁷⁰⁸ Alongside TLP, supporters of other religious parties such as Jammāt-ud-Dawa and Jamaat-Ulema-e-Islam took to the streets to deliver inflammatory speeches against the accused and the government for the landmark decision.⁷⁰⁹ The protestors blocked all the major roads across Pakistan, burned vehicles, and demanded the decision be reversed immediately. At the forefront were both the leader and founder of the TLP, Khadim Hussain Rizvi and Mohammad Afzal Qadri, who instigated the demonstrators to take the lives of the three Supreme Court judges involved in acquitting Asia Bibi by justifying that they are "liable to be killed under religious edict"⁷¹⁰ and urged that their domestic workers must carry out the act.⁷¹¹ As a result, the lawyers were forced to leave the country amidst constant death threats by the religious extremists.

While the ultraconservative groups were appalled by the decision to set Asia Bibi free, the current Khan government applauded the verdict and worked towards ensuring that the hardliners of the country do not wreak further havoc concerning the acquittal. In a public

⁷⁰⁵ Julie McCarthy, "Christian's Death Verdict Spurs Holy Row in Pakistan," WBUR News, 14 December 2010, <https://www.wbur.org/npr/132031645/christian-s-death-verdict-spurs-holy-row-in-pakistan>.

⁷⁰⁶ "2014/2969(RSP): Resolution on Pakistan: Blasphemy Laws," European Parliament, last modified 27 November 2014, [https://oeil.secure.europarl.europa.eu/oeil/popups/ficheprocedure.do?lang=en&reference=2014/2969\(RSP\)](https://oeil.secure.europarl.europa.eu/oeil/popups/ficheprocedure.do?lang=en&reference=2014/2969(RSP)).

⁷⁰⁷ Asad Hashim, "Protests Continue for Third Day after Aasia Bibi's Acquittal," Al Jazeera, 2 November 2018, <https://www.aljazeera.com/news/2018/11/2/protests-continue-for-third-day-after-aasia-bibis-acquittal>.

⁷⁰⁸ Memphis Barker and Aamir Iqbal, "Asia Bibi: Anti-blasphemy Protests Spread across Pakistan," *The Guardian*, 2 November 2018, <https://www.theguardian.com/world/2018/nov/01/asia-bibi-anti-blasphemy-protests-spread-across-pakistan>.

⁷⁰⁹ Ibid.

⁷¹⁰ Asad Hashim, "Pakistan PM Calls for Calm after Aasia Bibi Cleared of Blasphemy," Al Jazeera, 31 October 2018, <https://www.aljazeera.com/news/2018/10/31/pakistan-pm-calls-for-calm-after-aasia-bibi-cleared-of-blasphemy/>.

⁷¹¹ Mubasher Bukhari, "Pakistan Opponents of Death Row Christian's Blasphemy Acquittal Get Bail," Reuters, 14 May 2019, <https://www.reuters.com/article/pakistan-blasphemy-idINKCN1SK1G4>.

speech, the Prime Minister warned that the actions of the religious groups are “not the service of Islam, this is enmity with the country. Only anti-state elements talk like this, that kill the judges, start a revolt in army ... they are only trying to beef up their vote bank.”⁷¹² He also threatened that any extreme reactions will “force the government to have to take action.”⁷¹³ This eventually led to a brutal clash between the protestors and the police as the religious leaders incited the huge crowds to take revenge for the verdict and called to overthrow the army chief of Pakistan – an unimaginable comment considering that the “army normally does not tolerate such dissent.”⁷¹⁴

Hence, the government agreed to strike a deal with the TLP officials and accepted most of their demands on the condition that the nation-crippling protests would come to an end. Some of the agreed demands included the release without charge of TLP protestors who were arrested over the three days, that the government will not block the appeal against the acquittal ruling, and that Asia Bibi must be placed on the Exit Control List (ECL) which will bar her from leaving the country.⁷¹⁵ Although the Supreme Court agreed to hear the appeal against the ruling, it upheld its verdict and dismissed the ‘review petition’ on 29 January 2019.⁷¹⁶ The government then took Asia Bibi into protective custody until arrangements could be made to fly her out of the country given that many Western countries such as Italy, France, Spain, Australia, and Canada had offered her and her family asylum. Hence, four months later, it became public knowledge that Asia Bibi had left Pakistan and arrived in Canada – a decision that was widely appreciated by the international community and sparked hope for Pakistan’s future.

The case of Asia Bibi has been witnessed by three successive governments which indicates the inconsistency in the legal responses when dealing with the hard-line Islamist groups. While Mufti Hanif Qureshi did not face any consequences for his incendiary sermons that incited Mumtaz Qadri to murder Salman Taseer, TLP leaders Khadim Hussain Rizvi and Afzal Qadri were arrested along with 3,000 protestors on terrorism charges for inciting violence, destroying property, and setting fire to vehicles,⁷¹⁷ but the leaders were later granted bail. However, the TLP leader Rizvi passed away at the end of last year, and while his son tried to carry on his legacy he remained unsuccessful since the TLP got banned under the anti-terrorism law in April 2021 as the government deemed its intentions as “very horrifying”.⁷¹⁸ This has been considered a remarkable effort by the Pakistani authorities in combatting a phase of incitement to violence that has gripped the country ever since the TLP was founded in 2015 with the sole purpose to protect the blasphemy laws.

⁷¹² BBC, “Asia Bibi: Imran Khan Attacks Hardliners over Court Case,” BBC News, 31 October 2018, <https://www.bbc.com/news/world-asia-46048433>.

⁷¹³ Hashim, “Pakistan PM Calls for Calm after Aasia Bibi Cleared of Blasphemy.”

⁷¹⁴ Syed Raza Hassan, “Pakistan to Press Terrorism Charges against Leaders of Hardline Islamist Group,” Reuters, 2 December 2018, <https://www.reuters.com/article/pakistan-politics-idINKCN1O03DS>.

⁷¹⁵ News, “Pakistan Blasphemy Protests to End after Deal Struck,” Deutsche Welle, 3 November 2018, <https://www.dw.com/en/pakistan-blasphemy-protests-to-end-after-deal-struck/a-46141302>.

⁷¹⁶ BBC, “Asia Bibi Blasphemy Acquittal Upheld by Pakistan Court,” BBC News, 29 January 2019, <https://www.bbc.com/news/world-asia-47040847>.

⁷¹⁷ Hassan, “Pakistan to Press Terrorism Charges against Leaders of Hardline Islamist Group.”

⁷¹⁸ Dawn.com, “Government bans TLP under anti-terrorism law,” Dawn, 15 April 2021, <https://www.dawn.com/news/1618391>.

Role of Civil Society Actors

The positive outcome in Asia Bibi's case and the ban imposed on the TLP are very recent developments, the impact of which will only be realised in the distant future. However, despite immense international pressure, the blasphemy laws remain untouched until today. There are various international and domestic non-governmental organisations (NGOs), human rights activists, and faith-based organisations across Pakistan that work towards improving religious freedom in the country and provide remedies to the persecuted communities. However, the civil society actors remain at risk for helping the vulnerable groups as their activities are closely monitored by the government. The law enforcement and intelligence agencies of Pakistan are notorious⁷¹⁹ for enforced disappearances of human rights defenders or civil rights activists which limits the impact of implementing a long-term solution for tackling hate speech rhetoric in the country. Moreover, the Khan government is caught between enforcing a democratic order in the country and appeasing the religious groups simultaneously. Hence, foreign-funded NGOs have been declared as enemies of the state as they are said to promote liberal values that go against the teachings of Islam – a narrative adopted from the conservative groups of the state.⁷²⁰ Consequently, almost 18 international NGOs have been shut down in the past few years with 20 more to follow,⁷²¹ which threatens humanitarian work and poses a significant challenge to effectively combatting hate speech and religious intolerance in the country.

⁷¹⁹ Patricia Gossman, "End Pakistan's Enforced Disappearances," Human Rights Watch, 22 March 2021, <https://www.hrw.org/news/2021/03/22/end-pakistans-enforced-disappearances>.

⁷²⁰ Haroon Janjua, "Why is the Pakistani Government Cracking Down on NGOs?" Deutsche Welle, 11 February 2021, <https://www.dw.com/en/why-is-the-pakistani-government-cracking-down-on-ngos/a-56537755>.

⁷²¹ "Pakistan Shuts Down and Kicks Out 18 International NGOs, with 20 Others Facing Expulsion," CIVICUS, last modified 13 December 2018, <https://www.civicus.org/index.php/media-resources/media-releases/3670-pakistan-shuts-down-and-kicks-out-18-international-ngos-with-20-others-facing-expulsion-2>.

Recommendations

As demonstrated in this chapter, the prevalence of hate speech and incitement in Pakistan is quite concerning which can exacerbate even further if adequate measures are not made to effectively combat the root causes of hate speech and promote tolerant approaches to neutralise intense religious sentiments embedded in the country. Hence, considering the main takeaways of this chapter, the following recommendations are made:

- The government must **reassess the Islamic reforms** introduced under Zia-ul-Haq's rule and abolish all discriminatory policies that foster an environment conducive to hate speech and violence.
- **Education reform** – State-level and federal-level education must be revised and vetted for discriminatory references, these should be replaced with lessons that promote religious pluralism and interfaith harmony. The government must also reassess the education curricula of madrassahs and work towards standardising religious education that follows a more tolerant approach.
- **Legal reform** – Ideally, Section 295B, 295C, 298B(2), and 298C that punish blasphemy and the Ahmadiyya community must be repealed. However, considering the possibility of a severe backlash from the population, dialogue must be initiated to amend the laws by teasing out legal ambiguities.
- **Media reform** – The Pakistan Electronic Media Regulatory Authority (PEMRA) must screen and monitor broadcasting of TV shows and newspapers that publicly express hatred towards a specific group of the society.
- **Social media** – The government must ensure that any legislative mechanisms to combat hate speech are in compliance with the international human rights law and do not threaten freedom of speech.
- **Accountability mechanisms** – The government must counter the culture of impunity by strengthening legislative and administrative mechanisms to penalise false blasphemy allegations, and to punish Muslim clerics along with high-level political figures who are guilty of propagating hate speech and inciting episodes of violence.
- **Monitor content of religious sermons** – The moderate faith-based leaders and organisations must convene to draft a list of criteria that mandates the kind of content that can and cannot be preached during religious sermons, strictly prohibiting use of hateful terms that can incite violence against vulnerable groups. Moreover, the content of Friday sermons must be standardised across all the mosques following a similar list of criteria.
- **Monitor issuance of fatwas** – Official religious bodies must monitor all the fatwas that are being imposed by Muslim clerics and ensure that they are not incendiary in nature. Only qualified legal scholars with years of training must be allowed to impose fatwas based on the condition that it does not incite hatred.

- **Establishing partnerships** – Civil society actors must establish partnerships with well-informed and experienced theologians and academic experts on Islamic studies from across the world who can dispel the misinterpretations regarding the commonly used terms of ‘kafir’ and ‘wajib-ul-qatal’ which must be communicated to the public, potentially through sermons.
- **International pressure** – International pressure has proven to be successful in the case of Asia Bibi due to which the EU’s conditional GSP+ status must stay in place to encourage Pakistan to work towards improving its conduct with minorities and eventually eliminate incidents of hate speech in the long-term.

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CONCLUSION

As this report shows across the six case studies, the specific drivers and dynamics of hate speech are complex, and highly contingent. However, broad patterns can be identified. First, legacies of impunity for historical injustices perpetuate cycles of discriminatory attitudes and violence. The contours of hate speech in these countries draw on national narratives of the perceived “other” that are politicised to justify extreme ideological objectives. These historical narratives generate the perception of threat to justify and rationalise hate speech and language that incites violence.

Second, the institutional arrangement of governance and legal frameworks within the country also determines whether the context is conducive to hate speech, and whether the government has the capacity to mitigate the escalation of hate speech into incitement and acts of violence. Politicians and public figures with influence can significantly fuel or restrain hate speech, which is crucial for promoting tolerance and respect for diversity within the given institutional and legal frameworks.

Third, the report shows that non-state actors, such as NGOs and faith-based communities, can be crucial actors in mitigating and de-escalating hate speech. However, their ability to manoeuvre and influence social outcomes is contingent on the broader political context. International actors have limited scope to change the internal dynamics of inter-group conflicts and discrimination; however, sustained international attention and pressure to discriminatory violence can ameliorate the situation if sufficient levers are available, including providing support for local level actors.

Fourth, across the report, we find that social media is one of the main drivers of hate-speech as it enables widespread dissemination of false/misleading information, fosters discriminatory attitudes, and provides an avenue for new “influencers” with extreme views to gain a wide audience. Given that domestic and international regulatory frameworks for mitigating hate speech are currently underdeveloped, it is important that states and other stakeholders give priority to building and strengthening regulatory frameworks to prevent the use of hate speech and incitement in social media platforms and other mediums of public dissemination.

Finally, sections of the case studies investigate the impact of the COVID-19 pandemic on hate speech, identifying instances where increased social tension has exacerbated hate speech, and this is therefore an important consideration in the formulation of responses to mitigate the impact of hate speech.

RECOMMENDATIONS

Based on the case studies covered in this report, the following are the key recommendations in combatting hate speech and incitement in the region:

1. States need to give priority attention to building and strengthening regulatory frameworks to prevent the use of hate speech and incitement through legislation. However, they need to ensure that policies and domestic laws dealing with these issues conform to international norms on protecting freedom of speech, freedom of the press (media), and freedom of religion and belief. Where domestic laws are already in place but remain vague on what constitutes hate speech and incitement in the context of using both traditional and social media, they should be amended accordingly in consultation with relevant stakeholders.
2. States should also ensure the protection of minority groups who are vulnerable to hate speech and incitement by individuals or groups that espouse violence based on racial, ethnic, or religious prejudice. Specifically, mechanisms must be set up to hold perpetrators accountable and give victims access to remedy and justice.
3. In the context of historical communal conflicts, states should continually address the root causes of such conflicts through comprehensive policies and allocation of relevant resources. This includes setting up and strengthening mechanisms for transitional justice, truth, and reconciliation with the support of all stakeholders, particularly religious and community leaders in conflict-affected areas.
4. Governments should adopt a whole-of-nation approach to developing a comprehensive action plan to preventing hate speech and incitement by engaging with relevant stakeholders and non-state actors; providing adequate resources for education, training, and capacity building for state agencies, educational institutions, and local government units; strengthening existing laws, judicial and law enforcement agencies, and human rights protection institutions; and creating early warning and early response mechanisms to monitor and prevent incitement and violence.
5. Efforts by civil society groups and other non-state actors should be supported by providing adequate resources to their peacebuilding, conflict prevention, confidence-building, and human rights protection advocacies, especially at the community level. They should be viewed by states and government agencies as indispensable partners in promoting peace, tolerance, and respect for diversity especially in multi-communal societies.

6. At the regional level, ASEAN, SAARC, and other sub-regional groupings should consider developing relevant action plans to combat hate speech and incitement as part of a comprehensive approach in ensuring human rights protection, developing a culture of peace, and promoting tolerance and respect for diversity. Member states of regional organisations should also demonstrate their commitment to regional and international norms and conventions in upholding these values by adopting policies, enacting laws, and strengthening institutions to prevent the use of hate speech and incitement against vulnerable populations.
7. The United Nations and its relevant bodies should foster and sustain regional dialogue on preventing hate speech and incitement, protecting freedom of speech, expression, and religion and belief, as well as promoting tolerance and respect for diversity. Specifically, the UN should engage with states and non-state stakeholders by holding regular dialogues and meetings aimed at monitoring progress and implementation of international agreements, declarations, and conventions on human rights protection, atrocities prevention, peacebuilding, and conflict prevention. For example, the UN Office of Genocide Prevention and the Responsibility to Protect (OSAPG) could take the lead in monitoring the implementation of relevant agreements and action plans on prevention of hate speech and incitement in the Asia Pacific, in partnership with states, think-tanks, academic institutions, and civil society organisations.



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