



Asia-Pacific Centre for the
Responsibility to Protect

**HATE SPEECH
LEGISLATION IN
THE ASIA PACIFIC:
A COMPENDIUM**



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FOREWORD

It is incredibly important to effectively address hate speech, thereby also helping to prevent it, as it may lead to the spread of hate and violence. It is also a part of our responsibility to protect populations from genocide, war crimes, crimes against humanity, and ethnic cleansing.

But how to strike the right balance between freedom of expression and prohibition of hate speech? And what role that of international and domestic law? Striking the right balance between the two is not merely an academic concern: it may mean the life or death of democracy in a country, as well as for parts of its population.

To strike the right balance here and now, in countries around the world, it is crucial to be aware of international law and standards, as well as various national laws that regulate freedom of expression and prohibit the spread of dangerous hate speech. This Compendium provides for both and is therefore useful in helping to attain a better understanding of the current challenges related to the role of law in the prevention of hate speech in the Asia Pacific region.

I firmly believe that this Compendium encourages further incorporation of international law and standards into national laws and practices, and I therefore highly recommend it. In today's digital world, and on various social networks, keeping freedom of speech and democracy alive, while preventing particularly dangerous forms of hate speech that incite hate and atrocity crimes, must be an ongoing effort

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This forward is written in Ambassador Šimonović's personal capacity and should not be construed as necessarily representing the position of the Government of Croatia.

TABLE OF CONTENTS

INTRODUCTION

Aim of compendium	1
Introduction	1
Background	1
Understanding hate speech	1
Protecting against hate speech	3
Hate speech in Asia Pacific	3

PART 1 HATE SPEECH AT INTERNATIONAL LAW

Background	5
Hate speech under Treaties	6
1 <i>International Covenant on Civil and Political Rights</i>	6
2 <i>International Covenant on the Elimination of All Forms of Racial Discrimination</i>	7
3 <i>Convention on the Prevention and Punishment of the Crime of Genocide</i>	7
4 <i>Rome Statute of the International Criminal Court</i>	7
Non-binding international instruments: plans of action	8
1 <i>Rabat Plan of Action on the Prohibition of Advocacy of National, Racial, or Religious Hatred that Constitutes Incitement to Discrimination, Hostility, or Violence.</i>	9
2 <i>Plan of Action for Religious Leaders and Actors to Prevent Incitement to Violence that Could Lead to Atrocity Crimes</i>	9
3 <i>UN Strategy and Plan of Action on Hate Speech</i>	9
Gaps and under-utilised aspects of these laws	10
Summary	10

PART 2 DOMESTIC LEGAL FRAMEWORKS IN THE ASIA PACIFIC REGION

Overview	11
Explanation of terms relating to international treaties	12
1 Australia	13
2 Bangladesh	16
3 Cambodia	18
4 Fiji	20
5 India	22
6 Indonesia	26
7 Malaysia	29
8 Myanmar	32
9 Papua New Guinea	34
10 The Philippines	35
11 Singapore	37
12 Sri Lanka	40
13 Thailand	42
14 Vietnam	44
Conclusion	46
Further Reading	47
Endnotes	48

Aim of compendium

This compendium showcases hate speech laws in the Asia Pacific to guide atrocity prevention practitioners in preventing human rights violations in the region. To that end, this compendium has four primary aims:

1. Act as an informative guide to understanding the practice of law on hate speech in the Asia Pacific region.
2. Provide a summary of important international legislation in respect to hate speech that arises from key international treaties and other documents.
3. Provide an account of legal frameworks of specific countries that might help counter illegal hate speech, noting local challenges in doing so.
4. List the available domestic laws in force in each country to combat hate speech.

Introduction

This compendium documents laws at international and domestic levels governing hate speech. It aims to guide atrocity prevention practitioners and human rights defenders to understand how law might be used to counter this human rights violation. It intends to show what laws are in force in specific Asia Pacific countries, and how these might help inhibit illegal forms of hate speech. The compendium also discusses how international treaties (and other international instruments) play a role as both a tool to combat hate speech, and as an influence on a country's domestic judicial system. It also reveals some of the difficulties of curbing hate speech via legislation in certain countries, given the politics and a nation's past.

The compendium is divided into two sections: the first sets out international law with a focus on treaties and other international instruments to counter hate speech. The second section identifies relevant domestic law. The compendium focuses on fourteen countries in the region: Australia, Bangladesh, Cambodia, Fiji, India, Indonesia, Myanmar, Malaysia, Papua New Guinea, The Philippines, Singapore, Sri Lanka, Thailand, and Vietnam.

Background

On 18 June 2019, UN Secretary-General Antonio Guterres launched the “United Nations Strategy and Plan of Action on Hate Speech” in recognition of the fact that over the last seventy-five years, hate speech has been a common precursor to atrocity crimes, including genocide. As a harmful form of expression directed against groups of individuals on the basis of inherent characteristics such as race, gender, ethnicity, religion or culture, the prevention of hate speech has, in recent times, become a key priority of the United Nations.¹

In its most serious form, hate speech seeks to incite discrimination, hostility, or violence against others, and undermines universal human rights. It can also lead to state and intra-state conflict. Combatting hate speech has been of particular importance for the Asia Pacific region that has, regrettably, experienced on numerous occasions the grave consequences that hate speech has upon minority groups. Genocide, ethnic cleansing, war crimes and crimes of aggression have occurred, or have been alleged to have occurred, in countries including Cambodia, Sri Lanka, Myanmar, Bangladesh, and China, and hate speech has played a role in these crimes. The risk of hate speech and its link with atrocity crimes, therefore, remains of immediate concern for the Asia Pacific due to the ongoing conflicts across the region, and the risk of others escalating into atrocities as is being seen in West Papua.

Understanding hate speech

Hate speech lacks a universally accepted definition. However, this report adopts the terminology of the UN's 2019 “Strategy and Plan of Action on Hate Speech” that understands hate speech to mean “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 factors.”² This description defines hate speech broadly, recognising that the practice of hate speech is highly contextual and that hatred can be conveyed through various forms of expression, not limited to written or verbal abuse.

Various thinktanks and institutions that work on combatting or theorising hate speech, realise that not all speech acts considered hateful are illegal. In fact, most hateful commentary, whether online or offline, and in any form, is legal due to well-established traditions of freedoms of speech enshrined in international and domestic law, most prominently (and influentially) the United States Constitution's First Amendment that recognises the importance of freedom of religion, speech, press, and assembly. However, the international community, including organisations such as The United Nations and the European Union, have come to understand that a small percentage of hateful content is to be deemed illegal due to its risk of inciting violence.

According to institutions and academics, including British-based thinktank Article 19, hate speech or hateful acts found either offline or online, can be divided into three categories: 1) hate speech that is legal and should be allowed to be expressed based on freedom of speech; 2) hate speech that might be curbed using legislation yet its regulation is dependent on circumstance; 3) hate speech that must be arrested using legislation due to its risk of inciting violence and gross human rights violations.

As the most egregious form of hate speech, signatories to international law such as the International Covenant on Civil and Political Rights, and other mechanisms, requires States to employ domestic legal means to prohibit incitement to discrimination, hostility, or violence.³ This reflects the dangers of incitement upon targeted groups where intense hateful emotions are communicated by a "hate speaker" to a public audience. This relationship, known as the "triangular relationship of incitement," is demonstrated in the figure below.

Whether a speech act amounts to incitement requires the act to meet a certain threshold. According to the UN's Human Rights Council, this involves consideration of: (1) the social and political context; (2) status of the speaker; (3) intent to incite the audience against a target group; (4) content and form of the speech; (5) extent of its dissemination and; (6) likelihood of harm, including imminence.⁴ If all of these factors are considered to be satisfied, the UN's Human Rights Council believes there needs to be regulation by domestic law.

Hate speech that falls below the threshold of

incitement, as per above, may also be restricted by law in certain circumstances. Restricting this level of hate speech using legislation aims to respect the rights of others or to protect public order, hoping to thwart the risk of human rights violations.⁵ For example (and the use of legislation for this middle tier of hate speech differs according to organisations, governments, and definitions), some recognise that hateful speech made in a private setting is still able to foster hatred towards targeted groups on the basis of their identity and should therefore be recognised as something that might need jurisdictional regulation. Laws that address this middle-ground of hateful acts are necessary, though tailored to specific jurisdictional outcomes. For example, anti-discrimination laws, harassment laws, certain terrorism and national security laws, and defamation laws may fall into this intermediary category of hate speech dependant on context or other factors. As international law enables States to exercise discretion over the regulation of this kind of hate speech, legal practice between States is highly divergent and often dependant on cultural and political factors that influence the right to freedom of expression and the safety of populations.

At the bottom of the hate speech hierarchy is lawful speech that may contribute to hate (and will be hurtful to some), constituting expression considered offensive, shocking, or disturbing, yet legal.⁶ To protect lawful freedom of expression, this type of speech, however ugly or hurtful, should not be prohibited by domestic law. This is because, as emphasised by the United Nations,⁷ the prohibition of hate speech is *not* about limiting free speech but rather about ensuring that the rights of every individual can be realised, without this extending to hate speech that incites violence against members of a particular group. This requires a balance be struck, as reflected in the three-tiered types of hate speech, between hateful acts that either "must," "may," or "should not" be regulated by domestic state law.

As there is ambiguity about whether certain speech acts fall into each of these categories, in 2012 the Office of the High Commissioner for Human Rights (OHCHR) set out to examine the relationship between freedom of expression and hate speech, guided by Articles 19 and 20 of the International Convention on Civil and Political Rights (ICCPR). It assessed legislation, jurisprudence, and national policies relating

to hate speech, finding that state practice is highly divergent and requires further global implementation to ensure consistency with international legal standards.⁸ This resulted in the formulation of “The Rabat Plan of Action on the Prohibition of Incitement to Hatred,” a guidance document that provides a comprehensive three-tiered strategy for ensuring that states meet their obligations at international law to prohibit hate speech. This three-tiered test is meant to determine if restrictions on freedom of speech are to be implemented by states, resting the decision on legality, proportionality, and necessity in regard to hate speech that might incite violence. Although not legally binding, this “soft law” document helps states determine the measures required to effectively govern hate speech, including through the use of legislation.

Protecting against hate speech

Hate speech presents challenges for regulation because the meaning of “hatred” can be highly contextual and is shaped by political, cultural, even religious, and philosophic influences. It is further dependent upon the content of the speech, the position or power of the speaker, the extent of emotive language employed, and the speech’s audience. Today, these challenges are accompanied by the relative ease by which individuals can disseminate hate through social media such as Facebook or Twitter, platforms that are often ill-equipped to regulate content.⁹ Combatting hate speech, therefore, requires a robust regulatory and normative response at the State-level to ensure that international laws are effectively implemented for a local environment, but that these laws are also consistent across the globe to ensure multinational corporations such as Facebook have a consistent jurisdictional guide to help regulate their content.

While protecting a person’s right to freedom of speech remains a foremost consideration, the spread of hate speech is evidently associated with heightened risk of atrocity crimes. The National Socialist German Workers Party proved that propaganda and hate speech is a contributing factor towards the commission of the most heinous of crimes, including genocide. This example is just one of multiple noted across the nineteenth, twentieth, and twenty-first centuries. Genocides in countries such as Rwanda, Bosnia, Sudan, Cambodia, and Australia all were, in some way, incited by hate speech spread via the media of the day (often state

sanctioned), and via populist technology of the day such as the newspaper, radio, television, and film screen.

The internet and social media present new challenges to combatting hate speech and incitement. This is due to social media’s widespread accessibility, its reliance on artificial intelligence, the phenomena of echo chambers, and the lack of regulation, to name some of the complications.¹⁰ Social media, akin to radio, film, television or even posters, relies on an audience to manipulate, yet the audience are also the agents of hate spreading, either through the posting of hateful content, or through subtle affirmation by reposting, liking, or adding comments. This new world of digital media, and its accompanying complexities, offers the legislator and the private company alike the need for new tools of protection. This has been achieved to varied success across the globe, with the global north, especially Europe and the United Kingdom, enacting legislation to help curb this social media problem. This is often legislation that puts pressure on both the user and the company itself. In the global south, especially in the Asia Pacific, this is not the case; in fact, there is little legislation that holds either those who incite violence via social media accountable or to help guide the private sector. Nor is legislation at regional, domestic, and international levels understood by many who wish to pursue legal recourse to either combat hate speech or to dissuade those who spread hate. It is here that this compendium might be of use.

Hate speech in Asia Pacific

Across Asia Pacific, a region enriched with extensive cultural, ethnic, and religious diversity, protection against illegal hate speech and its consequences needs to be a key priority to ensure that atrocity crimes do not occur.

To date, while Europe and the United Kingdom, including the European Union, have been actively implementing and enforcing legislation to help curb inciteful hate speech (and other forms of racist and bigoted acts), the global south has been slower to act, and this crime has proliferated by the shirking of responsibility by governments and social media companies alike. Often it seems as if the protecting of minority groups from hate speech is deemed the responsibility of the State by the private sector, or the responsibility of the private sector by the State.

Though social media companies such as Facebook regularly update their community standards and grow their regulatory workforce, there is still much lacking on social platforms to ensure safe practice. Similarly, the protection of persons from hate speech through legislation at either an international or domestic level is often hampered by government manipulation of these laws to their own political gain, hence the stalling of hate speech bills in The Philippines and Myanmar that, due to political factors, will not become applicable legislation.

This compendium, with its focus upon Asia Pacific, concurs with the findings that led to “The Rabat Plan of Action,” in that many countries do not have sufficient laws, policies, and enforcement mechanisms to protect against hate speech. This includes laws, either criminal or civil, that are capable of curbing hate speech on the internet platforms that dominate in the region, including Facebook, TikTok, Instagram, and Twitter.

PART 1 HATE SPEECH AT INTERNATIONAL LAW

Background

International law is the collective body of legal rules that governs relations between nation states, as well as between other international actors such as intergovernmental organisations, and corporations. As the principal mechanism for formalising state conduct and entrenching norms of behaviour in the international system, international law provides an overarching framework for regulating hate speech on a global scale. As Philippa Hall states: “International law provides a resource which nation-states can draw upon to shape domestic hate speech legislation and to monitor the implementation and effectiveness of legal regulations.”¹¹

At present, no individual instruments of international law provide a universally accepted definition for hate speech, or institutionalise an international legal means to tackle the problem, with the exception of the crime of incitement to commit genocide, and the crime against humanity of persecution, that might include hate speech as a form of persecution, both of which are governed by the Rome Statute.¹² Instead, international law adopts an approach that defers responsibility upon individual states to implement their own domestic legislation to prohibit hate speech. By contrast, the international legal position vis-à-vis conduct that constitutes genocide, crimes against humanity, war crimes and crimes of aggression, are directly prohibited under respective international instruments and these are a means to prosecute acts that have been the result of hate speech, rather than the hate speech itself. Breaches of those treaties, that include the crime of incitement to commit genocide, can result in enforcement proceedings in the International Court of Justice (ICJ) by a complainant state against the responsible state or, in some cases, criminal proceedings in the International Criminal Court (ICC) against individuals. However, the position with respect to hate speech specifically is considerably weaker, and the role of legislation in prosecuting those who devise and promote propaganda and other hateful speech acts has been murky and often contradictory, dependant on tribunal, judge, trialling body, and the interpretation of specific laws.¹³

There have been no judicial proceedings in the ICJ that have directly examined the adequacy or effectiveness of a state’s prohibitions against hate speech by reference to their international legal obligations due to a state’s ratification of the key treaties discussed below. Further, most hate speech, in the absence of an intention to directly and publicly incite others to commit genocide, or the commission of the crime against humanity of persecution, would fall outside the International Criminal Court’s remit.

This analysis reveals two key takeaways regarding the international legal position and hate speech. First, the international community considers hate speech less egregious than other acts such as genocide or torture, such that individual states retain freedom to regulate this human rights violation using their own domestic legislation. Second, in the absence of a uniform definition, enforcing the prohibition on hate speech remains difficult, where the meaning of “hate” is highly contextual and informed by varying cultural, religious, and political factors that differ from country to country. The scope of hate speech protection is further influenced by interrelated rights of speech and expression, which are balanced differently from country to country.

A timeline of the core instruments that establish and inform the international legal position on hate speech is provided below and are subsequently examined in subsections that follow.

Hate speech under treaties

Treaties, being international agreements concluded by states with intention to be legally binding, comprise of the vast majority of international legal obligations. In the case of hate speech, the following treaties provide the most significant obligations upon state parties at international law:

- International Covenant on Civil and Political Rights (ICCPR)
- International Covenant on the Elimination of All Forms of Racial Discrimination (ICERD)
- Convention on the Prevention and Punishment of the Crime of Genocide
- Rome Statute on the International Criminal Court

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

Article 20(2) of the ICCPR provides that “Any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law.”¹⁴ In effect, this provision imposes a legal obligation upon states to employ domestic law to prohibit advocacy of hatred that amounts to “incitement” of discrimination, hostility, or violence. As opposed to an “international prohibition,” Article 20(2) is drafted as a “decree to prohibit,” meaning that state parties themselves bear the onus of prohibiting conduct that constitutes incitement via domestic law.¹⁵ Due to the mandatory nature of the provision, nearly all state parties have implemented legislation that corresponds with their obligations under Article 20(2). However, the form and scope of the corresponding domestic legislation varies greatly, from criminal incitement offences to civil law prohibitions on speech and expression, or combinations of both.¹⁶

Article 20(2) falls within a broader section of the ICCPR that attempts to balance competing rights of freedom of expression with prohibitions against incitement of discrimination, hostility, or violence. To some degree, and somewhat ironically, Article 20(2) competes with the treaty’s Article 19(1 & 2) that states: “1. Everyone shall have the right to hold opinions without interference. 2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.”¹⁷ Restrictions need to be placed upon these freedoms, according to Article 19, when reputations and the rights of others might be compromised, or when national security or public order are at risk, all of which, at best, are ambiguously defined.

The Human Rights Committee, as the responsible body for monitoring compliance and issuing interpretations of the treaty, has thus been careful to ensure that fundamental freedoms of opinion, expression, and the freedom of the media, are respected concurrently with the prohibition against incitement. In General Comment No. 34 (2011), the Committee suggested that there is a high threshold for conduct such as hate speech

to fall within the ambit of Article 20(2) due to the importance placed on freedom of expression.¹⁸ While the General Comment reaffirmed the mandatory obligation for states to implement domestic law, it did not clarify any prescriptive requirements for domestic law to achieve compliance with the provision. Accordingly, there has been limited scrutiny by international bodies as to the adequacy or effectiveness of domestic law in achieving the purpose of Article 20.

ICCPR interpretative instruments do not always support the view that Article 20(2) contains a stand-alone right to be free from incitement of discrimination, hostility, or violence. Therefore, Article 20(2) is limited to an obligation on states to adopt laws that prohibit incitement, rather than a provision that might be relied upon to force states to halt hate speech specifically. There are also no examples of judicial or administrative enforcement by UN bodies concluding that a state has failed to comply with Article 20.¹⁹ The majority of proceedings that consider the Article are brought by inciters arguing that the state impermissibly burdened their freedoms of expression.²⁰ This is because Article 20(2) does not provide individuals with an avenue to seek redress for hate speech; it merely requires the *existence* of state laws preventing hate speech.

There are currently 173 state parties to the ICCPR, including approximately two thirds of all states in Asia Pacific region. None have made treaty reservations that have the effect of denying the mandatory obligation to implement domestic legislation to prohibit incitement.

[International Covenant on the Elimination of All Forms of Racial Discrimination](#)

Article 4(1) of the ICERD similarly imposes an obligation upon state parties to “condemn all propaganda and all organizations ... which attempt to justify or promote racial hatred and discrimination ... and undertake to adopt immediate and positive measures designed to eradicate all incitement to ... such discrimination.” It goes further than Article 20(2) in its specificity, requiring that states “declare an offence punishable by law ... all dissemination of ideas based on racial superiority or hatred.”²¹ Evidently, the purpose of Article 4 purports to protect against conduct of *racial* hatred, notwithstanding that hate speech also occurs along religious or

political lines, or against other types of minority groups. Similar to Article 20(2) of the ICCPR, the Article is drafted as a mandatory obligation upon states to implement domestic legislation to achieve the treaty's purpose. It does, however, require the legislation to be of a criminal, and not civil nature (under criminal law there is the risk of imprisonment as a crime might have been committed, rather than the seeking of resolution between disputes, which is the outcome of civil law).

The Committee on the Elimination of Racial Discrimination (CERD) has been considerably more inquisitive than the Human Rights Committee in reviewing individual state law for compliance with Article 4. CERD has criticised states whose domestic law does not go far enough to protect racial hate speech.²² It also considers that remedies in domestic law must be available to victims of racial hate speech as a means of states to achieve full compliance of this treaty.²³ In General Recommendation No 35 (2013), CERD noted the requirement for states to declare offences for the following:²⁴

1. All dissemination of ideas based on racial or ethnic superiority or hatred, by whatever means;
2. incitement to hatred, contempt or discrimination against members of a group on grounds of their race, colour, descent, or national or ethnic origin;
3. threats or incitement to violence against persons or groups on the grounds in (b) above;
4. expression of insults, ridicule or slander of persons or groups or justification of hatred, contempt or discrimination on the grounds in (b) above, when it clearly amounts to incitement to hatred or discrimination; and
5. participation in organizations and activities which promote and incite racial discrimination.

CERD's rigorous scrutiny of individual state law compliance has yet to be fully realised in the case of Article 20(2) of the ICCPR. This is a potential avenue by which existing hate speech protections at international law could be better protected and enforced in the future. Although the Human Rights Committee has not yet ruled that a state

has breached Article 20(2), recent cases suggest a move towards this direction, in contrast with earlier case law.²⁵

Convention on the Prevention and Punishment of the Crime of Genocide

Article III of the Genocide Convention provides that "direct and public incitement to commit genocide" shall be punishable under international law.²⁶ Generally speaking, public incitement means to encourage or persuade others to commit a certain act that is communicated to a public audience through speech (or other means). In the context of hate speech, incitement may involve encouraging others to commit offences against others on the basis of a personal attribute such as race, religion, or gender, though under the Genocide Convention those groups are limited to racial, ethnical, religious or national types. Incitement to commit genocide is typically much graver in severity than hate speech; however, proliferation of hate speech could indicate a person's intention to commit genocide. As outlined in a 2021 GAAMAC (Global Action Against Mass Atrocity Crimes) report, "systematic and orchestrated campaigns of hate speech signal *intent* to target a group."²⁷ The Genocide Convention itself does not establish international criminal laws, but rather state parties agree to prosecute and take measures to prevent acts of genocide occurring within their state at the level of domestic law. International prosecution of individuals for the crime of genocide instead requires countries to be parties to the Rome Statute of the International Criminal Court, or by consent.

There are currently 152 parties to the Genocide Convention, including most countries in Asia Pacific.

Rome Statute of the International Criminal Court

The Rome Statute (2002) establishes the world's first permanent international court with jurisdiction to try criminal offences of genocide, crimes against humanity, war crimes and crimes of aggression.²⁸ Hate speech or incitement to commit hate speech are not crimes that are triable under the Rome Statute, though incitement to commit genocide is legislated in Article 25(e), as is the crime against humanity

Country	International Covenant on Civil and Political Rights	International Covenant on the Elimination of All Forms of Racial Discrimination	Convention on the Prevention and Punishment of the Crime of Genocide	Rome Statute of the International Criminal Court
Australia	Ratified (1980)	Ratified (1975)	Ratified (1949)	Ratified (2002)
Bangladesh	Acceded (2000)	Acceded (1979)	Acceded (1998)	Ratified (2010)
Cambodia	Ratified (1992)	Ratified (1983)	Ratified (1950)	Ratified (2002)
Fiji	Acceded (2018)	Succession (1973)	Succession (1973)	Ratified (1999)
India	Acceded (1979)	Ratified (1968)	Ratified (1959)	Not signed
Indonesia	Acceded (2006)	Acceded (1999)	Not signed	Not signed
Malaysia	Not signed	Not signed	Acceded (1994)	Accession withdrawn (2019)
Myanmar	Not signed	Not signed	Ratified (1956)	Not signed
Papua New Guinea	Acceded (2008)	Acceded (1982)	Acceded (1982)	Not signed
The Philippines	Ratified (1986)	Ratified (1969)	Ratified (1950)	Ratified (2011) Withdrawn (2018)
Singapore	Not signed	Ratified (2017)	Acceded (1995)	Not signed
Sri Lanka	Acceded (1980)	Acceded (1982)	Acceded (1950)	Not signed
Thailand	Acceded (1966)	Acceded (2003)	Not signed	Signed (2000)
Vietnam	Acceded (1982)	Acceded (1982)	Acceded (1981)	Not signed

of persecution. Therefore, hate speech may be encompassed to some extent by conduct that constitutes an offence under the Rome Statute. Further progress towards a stronger position at international law could be achieved through the amendment of the Rome Statute to directly incorporate hate speech provisions.

There are currently 123 parties to the Rome Statute, only 19 of which are in Asia Pacific.

The table below summarises the status of these international treaties within the respective domestic legislation of Asia Pacific States. Further details can be found in the Annexure at the end of this compendium.

Non-binding international instruments: plans of action

[Rabat Plan of Action on the Prohibition of Advocacy of National, Racial, or Religious Hatred that Constitutes Incitement to Discrimination, Hostility, or Violence.](#)

In addition to the formal treaty instruments, hate speech has also been the subject of various international documents that are relevant to the development of the international legal position. The most significant of these is the aforementioned report, conducted by the UN Office of the High Commissioner for Human Rights following expert workshops across the

world in 2011 and 2012.²⁹ In summary, the report considered that Article 20 of the ICCPR and Article 4 of the ICERD establish the prohibition of incitement to hatred at the level of international law.³⁰ It noted that in many domestic legal frameworks, the kind of speech or conduct that constitutes incitement varies considerably from country to country. It is also often inconsistent, arbitrarily applied, or used for ulterior purposes, contrary to those specified under the treaties. The Plan recommends that states ensure that their legislation is expressly based upon the language used in the Articles, utilise guidance provided by the relevant UN Committees (such as CERD), and adopt comprehensive anti-discrimination legislation that includes preventive and punitive action to effectively combat incitement to hatred.³¹

It is important to note that the Rabat Plan of Action is not strictly binding at international law in itself. However, the document assists in understanding the obligations of states in relation to hate speech under the respective treaty instruments. It functions as an interpretive guide for states to follow to meet their legal obligations in establishing a three-tiered hierarchy as to how hate speech should be regulated in domestic criminal and civil law: assessing the legality, proportionality and necessity of restricting freedom of speech if there is the risk of incitement to violence.³² The Rabat Plan of Action therefore offers a six-part threshold test to help determine if speech acts or other forms of communication should fall into the category of speech acts that need to be legally, proportionally and out of necessity, restricted via legislation.

The six-part threshold test considers the:

1. context of the acts;
2. speaker's position or status;
3. intent of the communication;
4. communication's content and form;
5. extent to which this content can be spread;
6. likelihood or immanence of this act causing incitement to violence or discrimination, and therefore how it might contribute to harm.

[Plan of Action for Religious Leaders and Actors to Prevent Incitement to Violence that Could Lead to Atrocity Crimes](#)

In 2017, the UN published another plan of action, this time for religious leaders and religious actors to help guide them in curbing incitement to violence. The document is also intended to help prevent extremism and gender-based violence. Responding to meetings of senior religious leaders (with the first meeting held in 2015 in Fez, Morocco), this plan of action is a redraft of an original document called the "Fez Plan of Action." The document stipulates that the prevention of incitement to violence could derive from actions of religious leaders, their influence in local communities, the academic and education facilities these leaders are aligned to and, similarly, state institutions that revere and listen to these leaders.

This plan of action suggests going further than the implementation of legal means to curb the rise of hate speech, hence the reliance on religious leaders and their influence over communities, but the document does call on religious leaders to promote the use of legislation to curb gender-based violence that derives from hate speech. It also calls on religious leaders to influence States to repeal legislation that restricts freedom of speech. Similarly, the plan of action calls on religious leaders to "enforce existing laws that prohibit discrimination and incitement to violence on the basis of religion, race of any other form of identity."³³

[UN Strategy and Plan of Action on Hate Speech](#)

Quite a small document, this plan of action lists key measures and incentives that can be undertaken to prevent hate speech. This document is aimed at UN actors who can use these recommendations when working with global and country actors. The plan of action has 13 recommendations, most of which are relatively broad in their remit, such as monitoring hate speech and addressing root causes of hate speech.

Of all the 13 recommendations, legislation, even at an international level (that is, the promotion of the UN's own international legislative instruments), is at best obliquely referenced in talking on policies and ensuring that freedom of speech is not restricted. Overall, however, this plan of action does not consider legislation at the international or national level a core consideration for UN actors to either promote as a means of countering hate speech, or even as a preventative measure when engaging with governments or the private sector.

Gaps and under-utilised aspects of these laws

International law via treaties such as the International Covenant on the Elimination of All Forms of Racial Discrimination, is often colloquially referred to as “soft law,” suggesting that the law itself could be too broad and general to have any influence on regulation, and that its implementation is also easily thwarted. For example, even though a nation might have ratified a treaty, and therefore written domestic law to enforce this law, its usefulness is wholly dependent on the political power in the nation in question. There have been many examples of nation's violating their international obligations due to a change in government and regime. It means that these laws are wholly dependant on the domestic political situation. It has also been proven many times over that if a nation does not comply with the treaties their signatories to, there is often very little in the way of repercussion from the international community.

One way Europe has enforced international law is through the European Union and its own regulatory and legislative practices that have adopted these treaties. It means that countries that are member states of the EU need comply to domestic law, the international laws they are signatory too, and laws that come with being a member of the EU; there is therefore some regulatory body to ensure nations do not violate their legal obligations.

In Southeast Asia (excluding some of the Pacific nations such as Fiji), that regulatory body could be The Association of Southeast Asian Nations (ASEAN). The ASEAN Charter provides the legal basis for the institution's formation. It sets out the organisation's foundational principles of unanimity, consensus-based decision-making,

non-interference in the internal affairs of member states and respect for regional cultural diversity.³⁴ By virtue of these principles, ASEAN has traditionally maintained a low profile in the area of human rights, and rather pledged general support for UN-backed instruments of international humanitarian law. However, ASEAN does not provide a specific framework nor legal mechanism for tackling hate speech. The ASEAN Human Rights Declaration, one of the few institutional ASEAN documents on human rights, does not include any specific reference to hate speech.

ASEAN is generally deferential to state-based attempts to combat hate speech, rather than proposing measures on its own initiative. It adopts a consultative role for member states to align their domestic approach to human rights in accordance with UN treaties, instead of establishing a regional framework.³⁵ Even on this metric, only three of the nine core UN international humanitarian law treaties have been ratified by all ten ASEAN members, none of which are the ICCPR, ICERD, or the Genocide Convention.

Summary

While international law covers a broad range of situations, the regulation of hate speech is predominately limited to two treaties, noting that neither explicitly use the phrase “hate speech.” Accompanying these treaties are Plans of Action, assisting states, religious leaders, and others, which determine whether acts of communication should be legally regulated as they might cause harm. While the Genocide Convention and its application in the Rome Statute make incitement to genocide an illegal act, these international provisions relate to exacting types of criminality and are hard to enforce or convict. Further, if a state has not ratified the above treaties and conventions, or enacted implementing legislation, then the treaties may be inapplicable.

PART 2 DOMESTIC LEGAL FRAMEWORKS IN THE ASIA PACIFIC REGION

Overview

This section of the compendium examines the domestic legal frameworks insofar as hate speech protection in countries across the Asia Pacific region. The following countries are examined:

- Australia
- Bangladesh
- Cambodia
- Fiji
- India
- Indonesia
- Myanmar
- Malaysia
- Papua New Guinea
- The Philippines
- Singapore
- Sri Lanka
- Thailand
- Vietnam

Each subsection showcases a comprehensive list of existing national laws for each country.³⁶ It also provides a summary, but not an exhaustive account, of the legal frameworks in place around these laws that protect against illegal hate speech. The summaries also note challenges faced in each country in regulating and implementing hate speech laws consistent with the international legal position discussed above.

Despite the extensive variety of legal systems across Asia Pacific (for example, common law, criminal law, civil law, Islamic law, traditional customs, and customary law systems), legislation enacted by national parliaments is the most common method used to protect against hate speech. In particular, most jurisdictions examined have criminal legislation containing specific offences that prohibit hate speech-related conduct. However, the extent and form of these offences under legislation is highly

divergent between countries and vary in terms of compliance with the international legal position. In noting this, some commonality in criminal legislation exists between formerly colonised countries that have retained colonial-era penal codes (for example, sedition offences in Bangladesh, Singapore, Malaysia, Sri Lanka, Myanmar, and India). Many of these offences were originally drafted to prevent communication that incited “hate” or feelings of hostility against the colonial governments of the time, rather than to prosecute hate speech in line with modern understandings.

The three main forms of domestic laws enacted by parliaments that are used to counter hate speech are criminal law, civil law, and constitutional law (which informs criminal and civil laws).

Criminal hate speech offences are often drafted extremely broadly and, as such, effectively criminalise lawful hate speech, free expression, religious intolerance, or governmental dissent. This has led to prosecutions made under the guise of protecting against hate speech, including in Cambodia, Indonesia, and Malaysia. Even in countries where hate speech offences operate, the practice is often not adequately enforced, or is selectively enforced due to political or religious factors (for example, in India, Malaysia and Sri Lanka). Criminal law determines whether a person has violated a state or federal law, thereby committing a crime against the state or nation’s criminal statute. Punishment for this crime could involve imprisonment.

Civil hate speech laws that provide legal remedies for individuals to sue those who engage in hate speech or discrimination is less common in the Asia Pacific region. Australia and Fiji both maintain legislative regimes that enable individuals to make civil complaints against other individuals for acts of hate speech. This provides a means for regulating the intermediary forms of hate speech that may constitute public harm. Across the region, civil laws or civil codes are often used in cases of defamation that, in some instances, constitutes hate speech, yet defamation is typically considered to fall outside the types of laws that directly protect against illegal forms of hate speech that lead to incitement. Civil law is between individuals and does not involve the government.

Constitutional law provides for the fundamental principles of governance by which all other laws derive their authority. Almost all countries in the Asia Pacific have a written Constitution which typically include provisions regarding the relationship between the individual and the state, human rights provisions and for core law-making functions. Some Constitutions are left over and mostly unchanged from a colonial past, such as Australia's Constitution, and some are copied from dominant constitutions such as the US Constitution, therefore they have much in common from country to country. Some Constitutions change with government; for example, Myanmar has had three Constitutions since 1947 when it was given independence. In almost every country, the Constitution is the single most important legal document.

Explanation of terms relating to international treaties

The following summaries showcase the status of international treaties relating to hate speech for each respective country. There are four possible statuses a treaty can be assigned: signed, ratified, acceded and succession.

These terms are explained below.

Signed: This occurs when a state agrees on the terms that describe and define the treaty: "By signing a treaty, a state expresses the intention to comply with the treaty. However, this expression of intent in itself is not binding."

Ratified: To ratify a treaty means that a state consents to the treaty being legally bound at a domestic level. The state then needs to enact domestic legislation to make the treaty legally binding.

Acceded: This has the same legal effect as ratification and is when a state agrees to be a party to the treaty, yet this occurs after the treaty has already been negotiated and signed by other states.

Succession: Succession occurs when one government is taken over by another, and the international treaties signed by the previous government remain binding under the new government. For example, in 1970 Fiji gained independence from Britain. The new government took succession of the laws inherited from the previous British government.³⁷

Australia's International Legal Obligations Relating to Hate Speech

Treaty Provision	Status	Comments
International Covenant on Civil and Political Rights, Article 20	Ratified in 1980	This provision is binding on Australia at international law.
International Covenant on the Elimination of All Forms of Racial Discrimination, Article 4	Ratified in 1975	This provision is binding on Australia at international law, but Australia retains a reservation to the effect that it considers it does not need to implement any further criminal offences to comply with Article 4(a).
Convention on the Prevention and Punishment of the Crime of Genocide	Ratified in 1949	This treaty is binding on Australia at international law.
Rome Statute of the International Criminal Court	Ratified in 2002	Australia accepts the jurisdiction of the International Criminal Court.

Criminal Code 1995 (Commonwealth)

Section 80.2A [Criminal]

(1) A person (the first person) commits an offence if:

- (a) the first person intentionally urges another person, or a group, to use force or violence against a group (the targeted group); and
- (b) the first person does so intending that force or violence will occur; and
- (c) the targeted group is distinguished by race, religion, nationality, national or ethnic origin or political opinion; and
- (d) the use of the force or violence would threaten the peace, order and good government of the Commonwealth.

Penalty: Imprisonment for 7 years.

(2) A person (the first person) commits an offence if:

- (a) the first person intentionally urges another person, or a group, to use force or violence against a group (the targeted group); and
- (b) the first person does so intending that force or violence will occur; and
- (c) the targeted group is distinguished by race, religion, nationality, national or ethnic origin or political opinion.

Penalty: Imprisonment for 5 years.

Section 80.2B [Criminal]

(1) A person (the first person) commits an offence if:

- (a) the first person intentionally urges another person, or a group, to use force or violence against a person (the targeted person); and
- (b) the first person does so intending that force or violence will occur; and
- (c) the first person does so because of his or her belief that the targeted person is a member of a group (the targeted group); and
- (d) the targeted group is distinguished by race, religion, nationality, national or ethnic origin or political opinion; and
- (e) the use of the force or violence would threaten the peace, order and good government of the Commonwealth.

Penalty: Imprisonment for 7 years.

(2) A person (the first person) commits an offence if:

- (a) the first person intentionally urges another person, or a group, to use force or violence against a person (the targeted person); and
- (b) the first person does so intending that force or violence will occur; and
- (c) the first person does so because of his or her belief that the targeted person is a member of a group (the targeted group); and
- (d) the targeted group is distinguished by race, religion, nationality, national or ethnic origin or political opinion.

Penalty: Imprisonment for 5 years.

Racial Discrimination Act 1975 (Commonwealth)³⁹

Section 9 [Civil]

(1) It is unlawful for a person to do any act involving a distinction, exclusion, restriction or preference based on race, colour, descent or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of any human right or fundamental freedom in the political, economic, social, cultural or any other field of public life.

Section 18C [Civil]

(1) It is unlawful for a person to do an act, otherwise than in private, if:

(a) the act is reasonably likely, in all the circumstances, to offend, insult, humiliate or intimidate another person or a group of people; and

(b) the act is done because of the race, colour or national or ethnic origin of the other person or of some or all of the people in the group.

Australia predominately takes a civil law approach to hate speech, drawing upon federal and state civil anti-discrimination laws that prohibit discriminatory acts on the basis of certain attributes such as race or religion. Upon ratifying the ICERD in 1975, the federal Parliament enacted the Racial Discrimination Act 1975 (RDA) to incorporate the treaty into domestic law. Section 18C of the RDA makes it unlawful, but not a criminal offence, to “do an act ... that is reasonably likely to offend, insult, humiliate or intimidate ... because of the race, colour or national or ethnic origin of the other person.”⁴⁰ The Australian Human Rights Commission is responsible for investigating breaches under the RDA, and has the power to investigate and facilitate conciliations to redress an aggrieved person. If unsuccessful in resolving the complaint, an application to hear the matter may be made to the Federal Court of Australia or Federal Circuit Court that have powers to make orders aimed at compensating the victim.⁴¹ Similar processes operate at the federal level in relation to sex, age and disability discrimination.⁴²

For example, in *Eatock v Bolt*,⁴³ one of the most high-profile racial hate speech cases in Australia, the Federal Court ruled that several newspaper articles written by columnist Andrew Bolt contained unlawful speech under 18C of the RDA. The Court held that the articles unlawfully conveyed that fair-skinned Aboriginal people choose to identify as Aboriginal to enhance their own opportunities. It was ordered that Mr Bolt and the newspaper be restrained from further publication of the articles. Injunctive orders to desist and/or apologise, as well as payments of compensatory damages, comprise typical penalties for breaches of civil hate speech provisions in Australia. In *Jones v Scully*,⁴⁴ the Federal Court ruled that Ms Scully had engaged in unlawful hate speech by distributing

antisemitic pamphlets, including statements that denied the Holocaust. She was similarly issued with a restraining order to prevent the continuation of such hate speech.

In terms of criminal laws, a draft offence in the RDA against promoting hostility or ill-will against persons by reason of race, colour or national or ethnic origin was rejected before the Act's passing in the Senate on the basis of free speech concerns.⁴⁵ Accordingly, Australia made a treaty reservation to Article 4 of ICERD stating:

The Government of Australia ... declares that Australia is not at present in a position specifically to treat as offences all the matters covered by article 4 (a) of the Convention. Acts of the kind there mentioned are punishable only to the extent provided by the existing criminal law dealing with such matters as the maintenance of public order, public mischief, assault, riot, criminal libel, conspiracy and attempts.

Notwithstanding this reservation, the Criminal Code 1995 (Cth) now includes offences of intentionally urging violence towards groups or persons distinguished by their race, religion, nationality, national or ethnic origin or political opinion, liable for up to 7 years imprisonment.⁴⁶ However, no examples of hate speech prosecutions under these sections could be located by this compendium.

Each sub-national Australian jurisdiction provides for their own criminal and civil hate speech laws, with the exception of Western Australia that only has criminal laws, and the Northern Territory that has neither.⁴⁷

The implementation of civil hate speech laws in Australian states and territories largely adopts the federal model. However, state and territory legislation typically protects a broader number of protected attributes such as discrimination on the basis of race, religion, sexual orientation, gender identity, HIV/AIDS status, and disability. Similar to the federal level, criminal laws against inciting hatred or vilification against persons or groups are infrequently prosecuted through state or territory Courts.⁴⁸ As at the time of this compendium, Western Australia is the only state to have had successful convictions, including for “conduct intended to incite racial animosity or racist harassment” involving publication, confrontation and harassment of the president of a Jewish student group in Perth.⁴⁹ The defendant was sentenced to three years imprisonment.

Bangladesh's International Legal Obligations Relating to Hate Speech

Treaty Provision	Status	Comments
International Covenant on Civil and Political Rights, Article 20	Acceded in 2000	This provision is binding upon Bangladesh at international law.
International Covenant on the Elimination of All Forms of Racial Discrimination, Article 4	Acceded in 1979	This provision is binding upon Bangladesh at international law.
Convention on the Prevention and Punishment of the Crime of Genocide	Acceded in 1998	This treaty is binding upon Bangladesh at international law.
Rome Statute of the International Criminal Court	Ratified in 2010	Bangladesh accepts the jurisdiction of the International Criminal Court.

Key Domestic Legal Provisions

Penal Code, 1860

Section 153A [Criminal]

Whomever by words, either spoken or written, or by signs, or by visible representations, or otherwise, promotes or attempts to promote feeling of enmity or hatred between different classes of the citizens of Bangladesh, shall be punished with imprisonment which may extend to two years, or with fine, or both.

Section 295A [Criminal]

Whoever, with deliberate and malicious intention of outraging the religious feelings of any class of the citizens of Bangladesh, by words, either spoken or written, or by visible representations insults or attempts to insult the religion or the religious beliefs of that class, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Digital Security Act 2018

Section 8: Power to remove or block some data information [Administrative]

1. If any data-information related to any matter under the jurisdiction of the Director General, being published or propagated in digital media, creates threat to digital security, the Director General may request the Bangladesh Telecommunications and Regulatory Commission, hereinafter referred to as BTRC, to remove or, as the case may be, block the said data-information.
2. If it appears to the law and order enforcing force that any data-information published or propagated in digital media hampers the solidarity, financial activities, security, defence, religious values or public discipline of the country or any part thereof, or incites racial hostility and hatred, the law and order enforcing force may request BTRC to remove or block the data-information through the Director General.

Section 28: Publication, broadcast, etc. of information in website or in any electronic format that hurts the religious values or sentiment [Criminal]

1. If any person or group willingly or knowingly publishes or broadcasts or causes to publish or broadcast anything in website or any electronic format which hurts religious sentiment or values, with an intention to hurt or provoke the religious values or sentiments, then such act of the person shall be an offence.
2. If any person commits an offence under sub-section (1), he shall be punished with imprisonment for a term not exceeding 5 (five) years, or with fine not exceeding Taka 10 (ten) lac, or with both.
3. If any person commits the offence referred to in sub-section (1) for the second time or repeatedly, he shall be punished with imprisonment for a term not exceeding 10 (ten) years, or with fine not exceeding Taka 20 (twenty) lac, or with both.

Section 31: Offence and punishment for deteriorating law and order, etc [Criminal]

1. If any person intentionally publishes or transmits anything in website or digital layout that creates enmity, hatred or hostility among different classes or communities of the society, or destroys communal harmony, or creates unrest or disorder, or deteriorates or advances to deteriorate the law and order situation, then such act of the person shall be an offence.
2. If any person commits an offence under sub-section (1), he shall be punished with imprisonment for a term not exceeding 7 (seven) years, or with fine not exceeding Taka 5 (five) lac, or with both.
3. If any person commits the offence referred to in sub-section (1) for the second time or repeatedly, he shall be punished with imprisonment for a term not exceeding 10 (ten) years, or with fine not exceeding Taka 10 (ten) lac, or with both.

Section 38: No responsibility for the service provider [Criminal]

1. No service provider shall be liable under this Act or rules made thereunder for facilitating access to any data-information, if he proves that the offence or breach was committed without his knowledge or he exercised all due diligence to prevent the offence.

Bangladesh is the world's third largest Islamic country, with Muslims constituting an overwhelmingly 90 per cent majority of the population. As a result, minority religious followers such as Hindus and Christians have increasingly been subject to discrimination and violence or accused of blasphemy against Islam. In 2021, at least seven people died and one hundred were injured during communal violence that originated from a viral video posted on social media showing the Quran placed at the foot of a Hindu statue during a Hindu festival in the city of Cumilla. This prompted extensive anti-Hindu sentiment across social media in Bangladesh and led to similar outbreaks of violence across other cities in the country.⁵¹ This demonstrates the real risks posed by hate speech to incite violence.

Despite religious tensions, Bangladesh has limited legal provisions to protect against hate speech. Section 153A of the state's colonial-era Penal Code maintains an offence of promoting feelings of enmity or hatred between different classes of Bangladeshi citizens, punishable by up to two years imprisonment.⁵² In 2018, Bangladesh introduced the Digital Technology Act that significantly increased punishment to up to 10 years imprisonment for intentionally hurting religious sentiments or values by way of internet communication.⁵³ The law has been subject to extensive criticism for restricting freedom of speech, with potential for political misuse by the Bangladeshi government.⁵⁴

Cambodia's International Legal Obligations Relating to Hate Speech

Treaty Provision	Status	Comments
International Covenant on Civil and Political Rights, Article 20	Ratified in 1992	This provision is binding upon Cambodia at international law.
International Covenant on the Elimination of All Forms of Racial Discrimination, Article 4	Ratified in 1983	This provision is binding upon Cambodia at international law.
Convention on the Prevention and Punishment of the Crime of Genocide	Ratified in 1950	This treaty is binding upon Cambodia at international law.
Rome Statute of the International Criminal Court	Ratified in 2002	Cambodia accepts the jurisdiction of the International Criminal Court.

Key Domestic Legal Provisions

Constitution of the Kingdom of Cambodia

Article 31(1) [Constitutional]

The Kingdom of Cambodia shall recognize and respect human rights as stipulated in the United Nations Charter, the Universal Declaration of Human rights, the covenants and conventions related to human rights, women's and children's rights. Every Khmer citizens shall be equal before the law, enjoying the same rights, freedom and fulfilling the same obligations regardless of race, color, sex, language, religious belief, political tendency, birth origin, social status, wealth or other status. The exercise of personal rights and freedom by any individual shall not adversely affect the rights and freedom of others. The exercise of such rights and freedom shall be in accordance with the law.

Article 41 [Constitutional]

Khmer citizens shall have freedom of expression, press, publication and assembly. No one shall exercise this right to infringe upon the rights of others, to effect the good traditions of the society, to violate public law and order and national security.

Criminal Code of the Kingdom of Cambodia

Article 265: Refusal to Supply Goods or Services [Criminal]

Refusing to supply goods or services to another person shall be punishable ... if the refusal is based on any of the following grounds: (1) membership or non-membership of a given ethnic group, nationality or race; (2) membership or non-membership of a given religion; (3) political affiliation; (4) union activities; (5) family situation; (6) gender; (7) state of health; (8) disability.

Article 305: Definition of Defamation [Criminal]

"Defamation shall mean any allegation or charge made in bad faith which tends to injure the honour or reputation of a person or an institution. Defamation shall be punishable ... if it is committed by any of the following means: (1) any words whatsoever uttered in a public place or in a public meeting; (2) written documents of pictures of any type realised or displayed to the public; (3) any audio-visual communication intended for the public.

Article 307: Definition of Public Insult [Criminal]

Insult shall mean outrageous expression, term of contempt or an invective that does not involve any imputation of fact.

Article 494: Existence of Incitement [Criminal]

Incitement is punishable when it is committed: (1) by speech of any kind, made in a public place or meeting; (2) by writing or picture of any kind, either displayed or distributed to the public; (3) by any audio-visual communication to the public.

Article 496: Incitement to discriminate [Criminal]

“Direct incitement ... to discriminate, to be malicious or violent against a person or group of persons because of their membership or non-membership of a particular ethnicity, nationality, race or religion, shall be punishable by imprisonment from one to three years and a fine from two million to six million Riels, where the incitement was ineffective.

Few countries have experienced the relationship between hate speech and the commission of atrocity crimes quite like Cambodia. During the Khmer Rouge period of the 1970s, Pol Pot’s regime employed hate speech propaganda to fuel an ideology of Cambodian racial superiority that drew upon strong anti-Vietnamese, anti-intellectual, anti-Chinese, and anti-colonial sentiment.⁵⁶ Such conduct would be considered to be incitement under international law today as hate speech was widely communicated by the Khmer Rouge, inciting discrimination and violence towards persons of perceived non-Cambodian ethnicities including Cham Muslims, Vietnamese, Chinese, Thai, French, and American persons. The result was the Cambodian genocide in which an estimated two million people were murdered, comprising approximately 15 per cent of the Cambodian population at the time.⁵⁷ Cambodia’s history, therefore, provides example that if left unregulated, hate speech presents a risk to the commission of atrocity crime.⁵⁸

After the Cambodian civil war and the establishment of a provisional UN government, Cambodia vowed to “recognise and respect human rights as stipulated in the UN Charter” in its 1993 Constitution.⁵⁹ Today, the country is party to most international human rights treaties, including those containing hate speech provisions like the ICCPR and ICERD. However, the extent to which individuals can argue breaches of international law in Cambodian courts is presently unclear, particularly in the absence of domestic legislation that incorporates treaty provisions.⁶⁰ This would suggest that individuals do not have legal redress available to them for breaches of hate speech provisions, further to those that already exist under Cambodian domestic law.

Cambodia’s Criminal Code provides an offence of incitement, meaning “to discriminate, or to be malicious or violent against a person or a group of persons, because of their membership or non-membership of a particular ethnicity, nationality, race or religion.”⁶¹

Incitement may be committed by speech of any kind, made in a public place or meeting; by writing or picture of any kind, either displayed or distributed to the public; or by any audio-visual communication to the public.⁶² This offence is punishable by one to three years imprisonment or via fine where the incitement was ineffective, and in some cases may involve the accused to pay compensation to victims. Cambodia further has similar criminal laws against defamation and public insults.⁶³

The application and effectiveness of domestic hate speech provisions in Cambodia remains uncertain, with limited examples of successful prosecutions and allegations of political misuse of criminal charges. In one example in 2019, the Phnom Penh Municipal Court convicted a journalist—who had worked on a documentary exposing the sexual exploitation of children in Cambodia—of incitement to discriminate under the Criminal Code. He was sentenced to two years imprisonment and ordered to pay damages to two of the documentary’s complainants, before the conviction was quashed and a retrial ordered in 2020.⁶⁴ International human rights observers considered the charges to be politically motivated to act as a deterrent to journalists seeking to uncover human rights violations in Cambodia.⁶⁵ The charge of incitement also rests uncomfortably with the journalist’s conduct, which did not appear to evoke hatred towards the sexually exploited children, nor their perpetrators, on the basis of their ethnicity or religion. This suggests that the nexus between hate speech provisions and conduct is applied loosely and subjectively by Cambodian authorities.

Fiji's International Legal Obligations Relating to Hate Speech

Treaty Provision	Status	Comments
International Covenant on Civil and Political Rights, Article 20	Acceded in 2018	This provision is binding on Fiji at international law.
International Covenant on the Elimination of All Forms of Racial Discrimination, Article 4	Succession in 1973	This provision is binding on Fiji at international law.
Convention on the Prevention and Punishment of the Crime of Genocide	Succession in 1973	This treaty is binding on Fiji at international law.
Rome Statute of the International Criminal Court	Ratified in 1999	Fiji accepts the jurisdiction of the International Criminal Court.

Key Domestic Legal Provisions

Constitution of Fiji

Section 17(2) [Constitutional]

Freedom of speech, expression, thought, opinion and publication does not protect – (c) advocacy of hatred that – (i) is based on any prohibited ground of discrimination listed or prescribed under section 26; and (ii) constitutes incitement to cause harm.

Section 17(3) [Constitutional]

A law may limit, or may authorise the limitation of, the rights and freedoms ... the right to be free from hate speech, whether directed against individuals or groups

Section 26 [Constitutional]

A person must not be unfairly discriminated against, directly or indirectly on the grounds of his or her— (a) actual or supposed personal characteristics or circumstances, including race, culture, ethnic or social origin, colour, place of origin, sex, gender, sexual orientation, gender identity and expression, birth, primary language, economic or social or health status, disability, age, religion, conscience, marital status or pregnancy; or (b) opinions or beliefs, except to the extent that those opinions or beliefs involve harm to others or the diminution of the rights or freedoms of others.

Crimes Act 2009

Section 66 [Criminal]

A “seditious intention” is an intention – (e) to promote feelings of ill-will and hostility between different classes of the population in Fiji.

Section 67 [Criminal]

A person commits an indictable offence if the person – (a) does or attempt to do, or makes any preparation to do, or conspires with any person do any act with a seditious intention; (b) utters any seditious words; (c) prints, publishes, sells, offers for sale, distributes or reproduces any seditious public; or (d) imports any seditious publication. Penalty – Imprisonment for 7 years.

Online Safety Act 2018

Section 24 [Criminal]

A person who – (a) posts an electronic communication with the intention to cause harm to an individual commits an offence.

Fiji's history of ethno-political tensions between iTaukei indigenous Fijians and Indo-Fijians presents an increased risk of racial hate speech, which demand robust laws to help prohibit it. Upon establishing a new Constitution in 2013, Fiji expressly incorporated a constitutional right to be free from hate speech, meaning "an expression in whatever form that encourages, or has the effect of encouraging discrimination on a ground listed [within the Constitution]."⁶⁷ Discrimination is described broadly and covers a range of protected attributes. As at the time of publication, no court cases have been brought arguing a breach of this right.

Hate speech that "promotes feelings of ill-will and hostility between different classes of the population in Fiji" is characterised as a seditious criminal offence,⁶⁸ albeit infrequently used. In a rare 2018 prosecution, three journalists were charged with sedition for publishing a column detailing historic crimes committed by Muslims. In a move welcomed by press freedom advocates, the Fiji High Court found the journalists not guilty of sedition by promoting feelings of ill-will between Muslims and non-Muslims in Fiji.⁶⁹ Fiji recently introduced an Online Safety Act to additionally protect against online harms, but no prosecutions have been made under the Act.⁷⁰

Individuals may also make complaints of contraventions of human rights or discrimination to the Fiji Human Rights and Anti-Discrimination Commission. This body has powers to investigate discrimination complaints and institute civil proceedings in the High Court against an individual. This provides individuals with an opportunity under civil law to seek damages.⁷¹

India’s International Legal Obligations Relating to Hate Speech

Treaty Provision	Status	Comments
International Covenant on Civil and Political Rights, Article 20	Acceded in 1979	This provision is binding on India at international law.
International Covenant on the Elimination of All Forms of Racial Discrimination, Article 4	Ratified in 1968	This provision is binding on India at international law.
Convention on the Prevention and Punishment of the Crime of Genocide	Ratified in 1959	This provision is binding on India at international law.
Rome Statute of the International Criminal Court	Not signed nor ratified	India does not accept the jurisdiction of the International Criminal Court.

Key Domestic Legal Provisions

Constitution

Section 19: Protection of certain rights regarding freedom of speech, etc. [Constitutional]

(1) All citizens shall have the right—

(a) to freedom of speech and expression;

(2) Nothing in sub-clause (a) of clause (1) shall affect the operation of any existing law, or prevent the State from making any law, in so far as such law imposes reasonable restrictions on the exercise of the right conferred by the said sub-clause in the interests of [the 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.

The Indian Penal Code

Section 153A: Promoting enmity between different groups on grounds of religion, race, place of birth, residence, language, etc., and doing acts prejudicial to maintenance of harmony [Criminal]

(1) Whoever:

(a) by words, either spoken or written, or by signs or by visible representations or otherwise, promotes or attempts to promote, on grounds of religion, race, place of birth, residence, language, caste or community or any other ground whatsoever, disharmony or feelings of enmity, hatred or illwill between different religious, racial, language or regional groups or castes or communities, or

(b) commits any act which is prejudicial to the maintenance of harmony between different religious, racial, language or regional groups or castes or communities, and which disturbs or is likely to disturb the public tranquillity, or

(c) organizes any exercise, movement, drill or other similar activity intending that the participants in such activity shall use or be trained to use criminal force or violence or knowing it to be likely that the participants in such activity will use or be trained to use criminal force or violence, or participates in such activity intending to use or be trained to use criminal force or violence or knowing it to be likely that the participants in such activity will use or be trained to use criminal force or violence, against any religious, racial, language or regional group or caste or community and such activity for any reason whatsoever causes or is likely to cause fear or alarm or a feeling of insecurity amongst members of such religious, racial, language or regional group or caste or community

shall be punished with imprisonment which may extend to three years, or with fine, or both.

Section 153B: Imputations, assertions prejudicial to national integration [Criminal]

(1) Whoever, by words either spoken or written or by signs or by visible representations or otherwise,

(a) makes or publishes any imputation that any class of persons cannot, by reason of their being members of any religious, racial, language or regional group or caste or community, bear true faith and allegiance to the Constitution of India as by law established or uphold the sovereignty and integrity of India, or

(b) asserts, counsels, advises, propagates or publishes that any class of persons shall, by reason of their being members of any religious, racial, language or regional group or caste or community, be denied, or deprived of their rights as citizens of India, or

(c) makes or publishes and assertion, counsel, plea or appeal concerning the obligation of any class of persons, by reason of their being members of any religious, racial, language or regional group or caste or community, and such assertion, counsel, plea or appeal causes or is likely to cause disharmony or feelings of enmity or hatred or ill-will between such members and other persons,

shall be punished with imprisonment which may extend to three years, or with fine, or with both.

Section 295A: Deliberate and malicious acts, intended to outrage religious feelings of any class by insulting its religion or religious beliefs [Criminal]

Whoever, with deliberate and malicious intention of outraging the religious feelings of any class of [citizens of India], [by words, either spoken or written, or by signs or by visible representations or otherwise], insults or attempts to insult the religion or the religious beliefs of that class, shall be punished with imprisonment of either description for a term which may extend to 9 [three years], or with fine, or with both.

Section 298: Uttering words, etc., with deliberate intent to wound religious feelings [Criminal]

Whoever, with the deliberate intention of wounding the religious feelings of any person, utters any word or makes any sound in the hearing of that person or makes any gesture in the sight of that persons or places any object in the sight of that person, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or both.

Section 505: Statements conducing to public mischief [Criminal]

(1) Whoever makes, publishes or circulates any statement, rumour or report,

(a) with intent to cause, or which is likely to cause, any officer, soldier, [sailor or airman] in the Army, [Navy or Air Force] [of India] to mutiny or otherwise disregard or fail in his duty as such; or

(b) with intent to cause, or which is likely to cause, fear or alarm to the public, or to any section of the public whereby any person may be induced to commit an offence against the State or against the public tranquillity; or

(c) with intent to incite, or which is likely to incite, any class or community of persons to commit any offence against any other class or community,

shall be punished with imprisonment which may extend to [three years], or with fine, or with both.

Representation of the People Act 1951

Section 8: Disqualification on conviction for certain offences [Administrative]

(1) A person convicted of an offence punishable under -

- (a) Section 153A (offence of promoting enmity between different groups on ground of religion, race, place of birth, residence, language etc., and doing act prejudicial to maintenance of harmony) ... or sub-section (2) or sub-section (3) of section 505 (offence of making statement creating or promoting enmity, hatred, or ill-will between classes or offence relating to such statement in any place of worship or in any assembly engaged in the performance of religious worship or religious ceremonies) of the Indian Penal Code

shall be disqualified [from standing for election], where the convicted person is sentenced to:

- (i) Only fine, for a period of six years from the date of such conviction;
- (ii) Imprisonment, from the date of such conviction and shall continue to be disqualified for a further period of six years since his release.

Section 123: Corrupt Practices [Administrative]

The following shall be deemed to be corrupt practices for the purposes of this Act -

(3A) The promotion of, or attempt to promote, feelings of enmity or hatred between different classes of the citizens of India on grounds of religion, race, caste, community, or language, by a candidate or his agent or any other person with the consent of a candidate or his election agent for the furtherance of the prospects of the election of that candidate or for prejudicially affecting the election of any candidate.

Section 125: Promoting enmity between classes in connection with election [Criminal]

Any person who in connection with an election under this Act promotes or attempts to promote on grounds of religion, race, caste, community or language, feelings of enmity or hatred, between different classes of the citizens of India shall be punishable, with imprisonment for a term which may extend to three years, or with fine, or with both.

The Protection of Civil Rights Act 1955

Section 7: Punishment for other offences arising out of “untouchability” [Criminal]

Whoever –

- (c) by words, either spoken or written, or by signs or by visible representations or otherwise, incites or encourages any person or class of persons or the public generally to practice “untouchability” in any form whatsoever; shall be punishable with imprisonment for a term of not less than one month and not more than six months, and also with fine which shall be not less than one hundred rupees and not more than five hundred rupees.

The Religious Institutions (Prevention of Misuse) Act 1988

Section 3: Prohibition of use of religious institutions for certain purposes [Criminal]

No religious institution or manager thereof shall use or allow the use of any premises belonging to, or under the control of, the institution

- (g) for the doing of any act which promotes or attempts to promote disharmony or feelings of enmity, hatred or ill-will between different religious, racial, language or regional groups or castes or communities;

Although notionally a constitutionally secular state, hate speech in India is predominantly driven by opposing views on religion, namely Hinduism, Islam and Christianity, which are often leveraged for political gain in public debate. The proliferation of hate speech in recent years has been aided by increasing religious nationalism, a lax and selective approach to enforcement of hate speech laws, and a general reluctance of Indian courts to impose restrictions on free speech. Consequently, hate speech has resulted in violence against minority groups, despite the existence of criminal hate speech laws to prohibit such conduct.

India’s Penal Code provides for numerous hate speech offences that are premised on the basis of maintaining societal and religious harmony. The language of these provisions share similarities with other former British colonial countries in prohibiting words that promote “disharmony or feelings of enmity, hatred or ill will” between different groupings of society, including on the basis of religion, race, caste or language. The Penal Code contains five separate offences against hate speech,⁷³ with most overlapping each other to a significant extent, resulting in criticism that the practice of curtailing hate speech via legislation is over criminalised in India.⁷⁴ Nevertheless, the Law Commission of India in 2017 recommended further offences be inserted in the Penal Code to specifically

punish hate speech incitement and provocation. In their view, this required two new offences of “prohibiting incitement to hatred” and “causing fear, alarm, or provocation of violence.”⁷⁵

The landmark 2017 report of the Indian Law Commission was the result of a referral from the Supreme Court in 2014 to examine and make recommendations to Parliament to strengthen protections against hate speech laws. In that case, the Court viewed that the problem of hate speech in India was not due to the absence of relevant laws, but rather the lack of their effective execution.⁷⁶ Hate speech issues have frequently arisen in Indian courts, dating back to 1957 when the Supreme Court upheld the constitutional validity of s295A of the Indian Penal Code, but qualified the provision to state that:

the provision does not punish every act of, or attempt to, insult religious belief of a class of citizens but only those aggravated forms of abuse to religion which are executed with the deliberate and malicious intention of outraging the religious feelings of a class of citizens.⁷⁷

This decision is reflective of a reluctant attitude of Indian courts to implement hate speech laws that restrict freedoms of speech. Recent courts have emphasised the importance of the “variable context” when considering allegations of hate speech, in one example stating that:

the offending material must be judged from the standards of reasonable, strong-minded, firm and courageous men, and not those of weak and vacillating minds, nor of those who scent danger in every hostile point of view.⁷⁸

Recent court judgments have also rejected criminal charges of hate speech spoken by politicians during speeches and suggested that the threshold of criminality for hate speech is higher during election periods.⁷⁹ This is notwithstanding the existence of a specific offence that criminalises promoting enmity between classes by electoral candidates.⁸⁰ Further, persons convicted of certain hate speech offences under the Penal Code are prohibited from standing for election.⁸¹ However, the vast majority of cases of hate speech in India still arise in connection with electoral communication.

This is particularly problematic for religious minorities in India, such as Muslims, who have long been subjected to increased hate speech at times of political debate. In February 2020, anti-Muslim riots resulted in deaths and violence across India, including in the capital New Delhi. The riots coincided with speeches made by prominent leaders of India's ruling political party advocating Hindu nationalism. Criminal investigations into alleged hate speech made by two politicians in connection with the riots were later dismissed by the Delhi High Court.⁸²

Indonesia's International Legal Obligations Relating to Hate Speech

Treaty Provision	Status	Comments
International Covenant on Civil and Political Rights, Article 20	Acceded in 2006	This provision is binding on Indonesia at international law.
International Covenant on the Elimination of All Forms of Racial Discrimination, Article 4	Acceded in 1999	This provision is binding on Indonesia at international law.
Convention on the Prevention and Punishment of the Crime of Genocide	Not signed nor ratified	This treaty is not binding on Indonesia at international law.
Rome Statute of the International Criminal Court	Not signed nor ratified	Indonesia does not accept the jurisdiction of the International Criminal Court

Key Domestic Legal Provisions

Criminal Code

Article 156 [Criminal]

Any person who publicly gives expression to feelings of hostility, hatred or contempt against one or more groups of the population of Indonesia, shall be punished by a maximum imprisonment of four years or a maximum fine of three hundred Rupiahs

Article 156A [Criminal]

By a maximum imprisonment of five year shall be punished any person who deliberately in public gives expression to feelings or commits an act,

- a. which principally have the character of being at enmity with, abusing or staining a religion adhered to in Indonesia;
- b. with the intention to prevent a person to adhere to any religion based on the belief of the almighty God.

Article 157 [Criminal]

Any person who disseminated, openly demonstrates or puts up a writing or portrait where feelings of hostility, hatred or contempt against or among groups of the population of Indonesia are expressed, with intent to give publicity to the contents or to enhance the publicity thereof, shall be punished by a maximum imprisonment of two years and six months or a maximum fine of three hundred Rupiahs.

Elimination of Racial and Ethnic Discrimination (Law No 40/2008)

Article 4 [Civil]

Actions of racial and ethnic discrimination are in the forms of:

(b) showing hatred or sense of hate to the people because of the racial and ethnic differences in the form of:

1. making your writings or pictures to be placed, affixed, or shared in a public place or other place that can be seen or read by others;
2. addressing, revealing, or catapulting certain words in a public place or other place that can be heard by others;
3. wearing something in the form of objects, words, or images in a public place or other place that can be read by other people; or
4. conducting the deprivation of the life of the person, assault, rape, fornication, theft with violence or deprivation of freedom based on racial and ethnic discrimination

Article 13 [Civil]

Everyone has the right to file a lawsuit against compensation through the State Court over racial and ethnic discrimination that harms themselves.

Article 14 [Civil]

Everyone individually or jointly has the right to file a lawsuit against compensation through State Court over racial and ethnic discrimination that harms themselves.

Article 15 [Criminal]

Every person who deliberately do a distinction, exclusion, restriction, or an election based on race and ethnicity resulting annulment or reduction of the recognition, the acquisition or exercise of human rights and fundamental freedoms in the an equality in civil, political, economic, social, and cultural fields as referred to in Article 4 point a, shall be sentenced with imprisonment for a maximum of 1 (one) year and/or a maximum fine of Rp100,000,000.00 (one hundred million rupiah).

Article 16 [Criminal]

Every person who intentionally shows hatred or sense of hate to others based on racial and ethnic discrimination as referred to in Article 4 section b point 1, point 2, point 3, or shall be sentenced with imprisonment for a maximum of 5 (five) years and/ or a maximum fine of Rp500,000,000.00 (five hundred million rupiah).

Law No 39 of 1999 on Human Rights

Article 1 [Criminal]

Discrimination means all limitations, affronts or ostracism, both direct and indirect, on grounds of differences in religion, ethnicity, race, group, faction, social status, economic status, sex, language, or political belief, that results in the degradation, aberration, or eradication of recognition, execution, or application of human rights and basic freedoms in political, economic, legal, social, cultural, or any other aspects of life.

Information and Electronic Transaction (Law No 11/2008)

Article 28 [Criminal]

Any Person who deliberately and without authority disseminates information with intention for inflicting hatred or dissension on individuals and/or certain groups of community based on ethnic groups, religions, races, and inter-groups (SARA) shall be punished by a maximum imprisonment of six years or a maximum fine of IDR 1,000,000,000 (one trillion Rupiahs).

Since establishing its independence in 1945, Indonesia has experienced numerous religious and ethnic conflicts among its diverse faith-driven population. Contemporary examples include anti-Chinese riots in the 1990s, communal violence between indigenous and migrant populations in Kalimantan province on Borneo, and the East Timorese and West Papuan conflicts.⁸⁴ The ethnic and religious

dimensions of these conflicts remain unresolved today, demonstrating Indonesia's susceptibility to outbreaks of hate-speech fuelled violence and discrimination. Typically suppressed by strong law enforcement mechanisms, Indonesia has adopted a predominately criminal-based approach to crack down on hate speech. However, civil causes of actions also provide for individual legal remedies.

Article 156 of the Criminal Code (*KUHP*) establishes a criminal offence of publicly giving expression to “feelings of hostility, hatred or contempt against one or more groups of the population of Indonesia,” punishable by imprisonment of up to four years.⁸⁵ The subsequent section, s156A of the *KUHP*, is known as the Blasphemy Law that prohibits expression that abuses or stains a religion practised in Indonesia.⁸⁶ This section is routinely prosecuted to prevent speech critical of Islam, including against the high-profile former Chinese-Indonesian governor of Jakarta, Ahok. After losing his 2017 re-election bid, he was charged with blasphemy for suggesting that a Quranic verse did not state that Muslims could not be led by a non-Muslim.⁸⁷ The Court considered this to be illegal hate speech and sentenced Ahok to two years imprisonment. Applying the three-tiered test for the criminalisation of hate speech, this type of expression arguably lacks the six criteria of incitement as per the Rabat Plan of Action. Rather, it suggests that shocking or offensive speech in Indonesia pertaining to religion is criminalised, despite the international legal position requiring such conduct to remain lawful.

In 2015, the Indonesian police chief issued a controversial interpretative guide, known as a circular, which focused on how hate speech should be prosecuted and prevented by local authorities.⁸⁸ While a circular is not legislation under Indonesian law, it provides guidance and directives on the implementation of existing laws. Circular SE/O6/X/2015 was intended to respond to a perceived need to better manage hate speech police operations to prevent escalation into violence. However, the types of hate speech covered in the circular went far beyond existing laws and included slander, libel, defamation, blasphemy, antisocial behaviour, provocation, and dissemination of false news. This attracted controversy from democracy and free speech activists who viewed the circular as an attempt by the Widodo government to crack down on criticism.⁸⁹ Nevertheless, the Circular brought the issue of hate speech to the forefront of political attention in Indonesia and was welcomed by supporters of religious freedoms. It also symbolised a positive step towards state responsibility in implementing hate speech laws and for improved protection of minority religious groups in a strongly Muslim-majority country.

In 2016, Indonesia amended the Law on Information and Electronic Transaction to insert a new offence against hate speech that focused upon the dissemination of hatred online. A challenge to the constitutionality of the law due to free speech guarantees in the Indonesian Constitution, failed on the basis that the new offence was necessary to tackle digital hate speech and achieve social peace.⁹⁰ In recent years, the Indonesian Parliament has also debated a draft Bill on a new Criminal Code that significantly improved hate speech provisions, balancing freedoms of speech with rights to be protected from illegal hate speech.⁹¹ The amended text (which is underlined below) expands the types of societal groups that hate speech is aimed at, and recognises and modifies penalties on the basis of whether the hate speech caused violence.⁹²

Draft Article 261 (currently Article 255 KUPH)

Any person who publicly gives expression to feelings of hostility, hatred or contempt against one or more groups of the population of Indonesia based on ethnic groups, religions, races, and inter-groups or against groups based on genders, ages, mental disabilities, or physical disabilities shall be punished by a maximum imprisonment of one year.

Draft Article 262 (currently Article 256 KUPH)

Any Person who broadcasts, displays, or attaches a text or graphic so as to be publicly visible or to make the tape publicly heard or disseminated by means of an information technology means containing a hate speech with the intention that its content be known or more generally known to one or several groups of the Indonesian population which may be determined by race, nationality, ethnicity, color, and religion, or against groups by sex, age of mental disability, or physical disability that causes violence against persons or goods shall be punished by a maximum imprisonment of four years.

Despite several attempts, the draft Bill has yet to be passed into law and the status of a new Indonesian Criminal Code remains unclear.

Malaysia's International Legal Obligations Relating to Hate Speech

Treaty Provision	Status	Comments
International Covenant on Civil and Political Rights, Article 20	Not signed nor ratified	This provision is not binding upon Malaysia at international law.
International Covenant on the Elimination of All Forms of Racial Discrimination, Article 4	Not signed nor ratified	This provision is not binding upon Malaysia at international law.
Convention on the Prevention and Punishment of the Crime of Genocide	Acceded in 1994	This treaty is binding upon Malaysia at international law.
Rome Statute of the International Criminal Court	Accession withdrawn, not ratified	Malaysia acceded to the Rome Statute in March 2019, but withdrew its notice of accession less than two months later, prior to it coming into effect in Malaysia.

Key Domestic Legal Provisions

Penal Code 1976

Section 298: Uttering words, etc., with deliberate intent to wound the religious feelings of any person [Criminal]

Whoever, with deliberate intention of wounding the religious feelings of any person, utters any word or makes any sound in the hearing of that person, or makes any gesture in the sight of that person, or places any object in the sight of that person, shall be punished with imprisonment for a term which may extend to one year or with fine or with both.

Section 298A: Causing, etc., disharmony, disunity, or feelings of enmity, hatred or ill will, or prejudicing, etc., the maintenance of harmony or unity, on grounds of religion [Criminal]

1. Whoever by words, either spoken or written, or by signs, or by visible representations, or by any act, activity or conduct, or by organizing, promoting or arranging, or assisting in organizing, promoting or arranging, any activity, or otherwise in any other manner -
 - a. causes, or attempts to cause, or is likely to cause disharmony, disunity, or feelings of enmity, hatred or ill will; or
 - b. prejudices, or attempts to prejudice, or is likely to prejudice, the maintenance of harmony or unity, on grounds of religion, between persons or groups of persons professing the same or different religions,
 - c. shall be punished with imprisonment for a term of not less than two years and not more than five years.

Section 505: Statements conducing to public mischief [Criminal]

Whoever makes, publishes or circulates any statement, rumour or report - ... (c) with intent to incite or which is likely to incite any class or community of persons to commit any offence against any other class or community of persons, shall be punished with imprisonment.

Sedition Act 1948 [including 2015 Amendments]

Section 3: Seditious tendency [Criminal]

A seditious tendency is a tendency –

- (a) to bring into hatred or contempt or to excite disaffection;
- (b) to excite the citizens of Malaysia or the residents in Malaysia to attempt to procure in Malaysia, the alteration, otherwise than by lawful means, of any matter as by law established;
- (d) to raise discontent or disaffection amongst the citizens of Malaysia or the residents in Malaysia;
- (e) to promote feelings of ill-will, hostility or hatred between different races or classes of the population of Malaysia;
- (ea) to promote feelings of ill-will, hostility or hatred between persons or groups of persons on the ground of religion.

Section 4(1): Offences [Criminal]

Any person who –

- (a) does or attempts to do, or makes any preparation to do, or conspires with any person to do, any act which has or which would, if done, have a seditious tendency;
- (b) utters any seditious words;
- (c) prints, publishes or causes to be published, sells, offers for sale, distributes or reproduces any seditious publication; or
- (d) imports any seditious publication,

shall be guilty of an offence.

Section 4(1A) [Criminal]

Any person who –

- (a) does or attempts to do, or makes any preparation to do, or conspires with any person to do, any act which has or which would, if done, have a seditious tendency;
- (b) utters any seditious words;
- (c) prints, publishes or causes to be published, sells, offers for sale, distributes or reproduces any seditious publication; or
- (d) imports any seditious publication,

and by such act causes bodily injury or damage to property shall be guilty of an offence.

Section 10: Power of court to prohibit circulation of seditious publications [Administrative]

Whenever on the application of the Public Prosecutor it is shown to the satisfaction of a Sessions Court Judge that the making or circulation of a seditious publication –

- (b) appears to be promoting feelings of ill will, hostility or hatred between different races or classes of the population of Malaysia; or
- (c) appear to be promoting feelings of ill will, hostility or hatred between persons or groups of persons on the ground of religion,

the Sessions Court Judge shall make an order prohibiting the making or circulation of that seditious publication.

Malaysia's national identity has long been tied to certain races and religions, namely ethnic Malay people (known as Bumiputera) and Islam, which both enjoy a pre-eminent status in the country's Constitution. Despite a diverse ethnic and religious population, Malaysia is not a party to either the ICCPR or ICERD. This presents an increased risk of hate speech as Malaysia lacks accountability to treaty bodies such as the Human Rights Committee responsible for scrutinising compliance. Malaysia should accede to one, or both, of these treaties to better protect against hate speech.

As a Muslim-majority country, hate speech laws in Malaysia are frequently used to prohibit the practice of blasphemy (meaning to cause insult or show disrespect towards religion).

Although Malaysia's laws are similar to those in Singapore, judicial interpretation of speech critical of Islam is broad and commonly prosecuted. In 2015, the Sedition Act was expanded to include promoting "feelings of ill will, hostility or hatred between persons or groups of persons on the ground of religion" within the definition of "seditious tendency."⁹⁴ The Court of Appeal later ruled that Section 3(3) of the Act, stating that the intention of a person charged under the Act was "irrelevant," was unconstitutional.⁹⁵ This development brings Malaysian law closer to the six part Rabat threshold test for criminal hate speech offences.

Nevertheless, the vast majority of Malaysian case law demonstrate a trend towards suppressing criticism of Islam, rather than prohibiting

speech likely to incite violence or discrimination against certain groups on the basis of protected attributes. For example, in 2015, Malaysian authorities arrested a lawyer under the Sedition Act for criticising a government Islamic development body (JAKIM) and the introduction of sharia-laws in the state of Kelantan.⁹⁶ In another 2015 example, a blogger was charged under the Act for posting provocative comments and pictures online of people eating pork during Ramadan.⁹⁷ In 2019, a man was found guilty under s298A of the Penal Code for posting offensive comments about Islam and the Prophet Mohammed on Facebook and was sentenced to ten years imprisonment. On appeal, the sentence was reduced to six years, but the judge considered that the accused had committed a serious crime against racial harmony in Malaysia.⁹⁸ Similar examples of speech deemed insulting towards Islam published on Facebook, Instagram and YouTube in recent years have been successfully prosecuted under hate speech laws, typically resulting in prison sentences.⁹⁹

Malaysia has also experienced an increased wave of hate speech during the COVID-19 pandemic targeting Rohingya refugees and undocumented migrants. Accused of contributing to surging infection numbers, online hate speech on Facebook, encouraging members of the public to take action against them, has led to rising anti-Rohingya sentiment and xenophobia.¹⁰⁰ As a result, the Malaysian government has been criticised for failing to protect Rohingyas from hate speech by prosecuting such offences as it does for hate speech relating to Islam.

Myanmar's International Legal Obligations Relating to Hate Speech

Treaty Provision	Status	Comments
International Covenant on Civil and Political Rights, Article 20	Not signed nor ratified	This provision is not binding upon Myanmar at international law.
International Covenant on the Elimination of All Forms of Racial Discrimination, Article 4	Not signed nor ratified	This provision is not binding upon Myanmar at international law.
Convention on the Prevention and Punishment of the Crime of Genocide	Ratified in 1956	This treaty is binding on Myanmar at international law.
Rome Statute of the International Criminal Court	Not signed nor ratified	Myanmar does not accept the jurisdiction of the International Criminal Court.

Key Domestic Legal Provisions

Constitution of Myanmar

Section 348 [Constitutional]

The Union shall not discriminate any citizen of the Republic of the Union of Myanmar, based on race, birth, religion, official position, status, culture, sex and wealth

Section 364 [Constitutional]

The abuse of religion for political purposes is forbidden. Moreover, any act which is intended or is likely to promote feelings of hatred, enmity or discord between racial or religious communities or sects is contrary to this Constitution. A law may be promulgated to punish such activity.

Myanmar Penal Code

Section 295A [Criminal]

Whoever, with deliberate and malicious intention of outraging the religious feelings of any class of persons by words, either spoken or written, or by visible representations, insults or attempts to insult the religion or the religious beliefs of that class, shall be punished with imprisonment for a term which may extend to two years.

Section 297 [Criminal]

Whoever, with the intention of wounding the feelings of any person or of insulting the religion of any person ... shall be punished with imprisonment which may extend to one year.

Section 499 [Criminal]

Whoever, by words either spoken or intended to be read, make or publishes any imputation concerning any person, intending to harm, or knowing or having reason to believe that such imputation will harm ... is said to defame that person.

Section 505 [Criminal]

Whoever makes, publishes or circulates any statement, rumour or report - (c) with intent to incite, or which is likely to incite, any class or community of persons to commit any offence against any other class or community, shall be punished with imprisonment which may extend to two years, or with fine, or with both.

Institutionalised hate speech against non-Buddhists has long been a defining feature of Myanmar's political landscape that has been perpetrated by prominent actors in the government and military. In particular, the narrative of perceiving Islam as a violent foreign religion that poses a threat to Buddhism has fuelled hatred, violence and discrimination against minority ethnic populations, most notably the Rohingya.¹⁰² The prevalence of hate speech correlates with the extent of significant human rights violations in Myanmar including killings, sexual violence, persecution and displacement of ethnic minorities typically targeted by hate speech.¹⁰³ The state of human rights in Myanmar has garnered global condemnation, including at the International Court of Justice that in 2020 imposed provisional measures against Myanmar to prevent the commission of acts prohibited by the Genocide Convention.¹⁰⁴ The gravity of hate speech, combined with credible reports of the commission of atrocity crimes, demonstrates that Myanmar is one of the highest risk countries for hate speech in the Asia Pacific.

The hate speech crisis in Myanmar has been accentuated in the wake of the 2021 military coup d'état of the Tatmadaw, which presents ongoing challenges for the effectiveness of existing legal protections and enforcement mechanisms against hate speech. Nevertheless, the former Aung Sung Suu Kyi civilian government were largely ineffective in implementing laws to regulate hate speech and implicit in failing to condemn such acts conducted by members of Myanmar's military and political elite.¹⁰⁵ This is despite laws protecting against hate speech, such as a constitutional prohibition against "any act which is intended or is likely to promote feelings of hatred, enmity or discord between racial or religious communities."¹⁰⁶

The Penal Code also contains criminal offences against incitement, criminal defamation laws and an offence of "intending to outrage religious feelings."¹⁰⁷ The existence of hate speech laws has not, however, resulted in a decrease in the practice of hate speech. Rather, these provisions have been frequently used to suppress dissent and constrain freedom of expression.

The vast majority of hate speech prosecutions relate to prohibiting criticism of Buddhism, rather than uniformly applying the law to all races and religions. For example, in 2015, a National League for Democracy officer was sentenced to two years imprisonment for violating s 295A of the Penal Code by accusing Buddhist organisations of extreme nationalism.¹⁰⁸ In contrast, hate speech directed towards Islam is rarely prosecuted.

The hate speech situation in Myanmar has been aided by the ease of propagation through platforms such as Facebook, on which local Burmese language content is poorly regulated. In 2015, Facebook had just four Burmese-speaking content moderators for over 7.3 million active Facebook users in the country.¹⁰⁹ Accordingly, propagators of ultra-nationalist hate speech have increasingly turned to Facebook to spread their message, using racial slurs to advocate for rape and murder of the Rohingya to "cleanse" the country. This presents a significant contextual challenge for prohibiting against hate speech in Myanmar, requiring cooperation between local government and non-state online content providers

Papua New Guinea’s International Legal Obligations Relating to Hate Speech

Treaty Provision	Status	Comments
International Covenant on Civil and Political Rights, Article 20	Acceded in 2008	This provision is binding on Papua New Guinea at international law.
International Covenant on the Elimination of All Forms of Racial Discrimination, Article 4	Acceded in 1982	This provision is binding on Papua New Guinea at international law.
Convention on the Prevention and Punishment of the Crime of Genocide	Acceded in 1982	This treaty is binding on Papua New Guinea at international law.
Rome Statute of the International Criminal Court	Not signed nor ratified	Papua New Guinea does not accept the jurisdiction of the International Criminal Court

Key Domestic Legal Provisions

Constitution of Papua New Guinea

Section 36: Freedom of conscience, thought and religion [Constitutional]

- (1) Every person has the right to freedom of conscience, thought and religion and the practice of his religion and beliefs, including freedom to manifest and propagate his religion and beliefs in such a way as not to interfere with the freedom of others, except to the extent that the exercise of that right is regulated or restricted by a law that complies with Section 38 (general qualifications on qualified rights).

Section 45: Freedom of Expression [Constitutional]

- (1) Every person has the right to freedom of expression and publication, except to the extent that the exercise of that right is regulated or restricted by a law—
 - (a) that imposes reasonable restrictions on public office-holders; or
 - (b) that imposes restrictions on non-citizens; or
 - (c) that complies with Section 38 (general qualifications on qualified rights).

Papua New Guinea does not have any specific legal protections against hate speech. PNG should implement legislation reflective of its international commitments to the ICCPR and ICERD by enacting domestic means for protecting against hate speech.

The Philippines¹¹¹

The Philippines' International Legal Obligations Relating to Hate Speech

Treaty Provision	Status	Comments
International Covenant on Civil and Political Rights, Article 20	Ratified in 1986	This provision is binding on the Philippines at international law.
International Covenant on the Elimination of All Forms of Racial Discrimination, Article 4	Ratified in 1969	This provision is binding on the Philippines at international law.
Convention on the Prevention and Punishment of the Crime of Genocide	Ratified in 1950	This treaty is binding on the Philippines at international law.
Rome Statute of the International Criminal Court	Ratified in 2011 Withdrew in 2018	The Philippines withdrew from the Rome Statute in 2018 after previously accepting the jurisdiction of the International Criminal Court between 2011 and 2018.

Key Domestic Legal Provisions

Revised Penal Code, 1930

Article 133: Offending the Religious Feelings [Criminal]

The penalty of *arresto mayor* in its maximum period to *prisión correccional* in its minimum period shall be imposed upon anyone who, in a place devoted to religious worship or during the celebration of any religious ceremony shall perform acts notoriously offensive to the feelings of the faithful.

Article 139: Sedition [Criminal]

The crime of sedition is committed by persons who rise publicly and tumultuously in order to attain by force any of the following objects: ...

4. To commit, for any political or social end, any act of hate or revenge against private persons or any social class;

Article 140: Penalty for Sedition [Criminal]

The leader of a sedition shall suffer the penalty of *prisión mayor* in its minimum period and a fine not exceeding 10,000 pesos.

Article 142: Inciting to Sedition [Criminal]

The penalty of *prisión correccional* in its maximum period and a fine not exceeding 2,000 pesos shall be imposed upon any person who, without taking any direct part in the crime of sedition, should incite others to the accomplishment of any of the acts which constitute sedition, by means of speeches, proclamations, writings, emblems, cartoons, banners, or other representations tending to the same end.

The Philippines presently has limited legal protections against illegal hate speech and incitement to violence or discrimination. This is particularly concerning considering that the Philippines has been a long-term party to both the ICCPR and ICERD and its Constitution vows to adopt “generally accepted principles of international law.”¹¹² Instead, the country’s legal system upholds a strict approach to preventing laws that inhibit free speech, being a feature that has remained since American colonial occupation. The Revised Penal Code contains outdated sedition types of offences intended to prohibit criticism of the American government; however, these are not commonly prosecuted.¹¹³ As a result, the Philippines presently lacks sufficient laws to prosecute individuals that commit those forms of hate speech that require criminal offences to deter and punish the practice.

In 2019, the Philippines became one of the first jurisdictions to introduce an entire piece of legislation that aimed to “define and punish acts constituting hate speech on the basis of ethnicity, race and religion.” The draft Hate Speech Bill directly referenced the Philippines’ need to uphold its international commitments contained within Article 20(2) of the ICCPR and Article 4 of the ICERD, particularly in the wake of hate crimes such as the Christchurch mosque shooting.¹¹⁴ The draft law was modelled upon best-practice understandings of hate speech at international law and included the following provisions:

Draft Section 3

“Hate Speech” refers to all forms of expressions that discriminates against and actively incites hostility or foments violence against any person or group of persons on the basis of ethnicity, race, and religion.

Draft Section 4

Any person committing, consenting to, or allowing the commission of hate speech by means of any of the following shall suffer the penalty imposed by this Act:

(a) Words, oral or in writing, or displays of behaviour or depiction;

(b) Publication or distribution of written material to the public or through social media, broadcasting or other forms of communication;

(c) Public performance of plays, shows, recordings of audio or visual images.

Draft Section 5

Any person liable under this Act shall be meted a penalty of imprisonment of six (6) months and (1) day to six (6) years imprisonment.

The Draft Hate Speech Bill was introduced to the House of Representatives in early 2019, but its status remains pending as at the date of this compendium. A similar Bill was also introduced in the Senate, but also remains in draft stage.¹¹⁵ It is presently unclear as to whether either of these Bills will be formally voted in to become law.

Singapore's International Legal Obligations Relating to Hate Speech

Treaty Provision	Status	Comments
International Covenant on Civil and Political Rights, Article 20	Not signed nor ratified	This provision is not binding upon Singapore at international law.
International Covenant on the Elimination of All Forms of Racial Discrimination, Article 4	Ratified in 2017	This provision is binding upon Singapore at international law.
Convention on the Prevention and Punishment of the Crime of Genocide	Acceded in 1995	This treaty is binding upon Singapore at international law.
Rome Statute of the International Criminal Court	Not signed nor ratified	Singapore does not recognise the jurisdiction of the International Criminal Court.

Key Domestic Legal Provisions

Constitution of Singapore

Article 12(2) [Constitutional]

There shall be no discrimination against citizens of Singapore on the ground only of religion, race, descent or place of birth in any law.

Article 14(1)(a) [Constitutional]

Every citizen of Singapore has the right to freedom of speech and expression ... (2) Parliament may by law impose – (a) on the rights conferred by clause (1)(a), such restrictions as it considers necessary or expedient in the interest of the security of Singapore or any part thereof, friendly relations with other countries, public order or morality and restrictions designed to protect the privileges of Parliament or to provide against contempt of court, defamation or incitement to any offence.

Sedition Act 1948 [to be repealed]

Section 3 [Criminal]

A seditious tendency is a tendency –

- (a) to bring into hatred or contempt or to excite disaffection against the Government;
- (b) to excite the citizens of Singapore or the residents in Singapore to attempt to procure in Singapore, the alteration, otherwise than by lawful means, of any matter as by law established;
- (c) to bring into hatred or contempt or to excite disaffection against the administration of justice in Singapore;
- (d) to raise discontent or disaffection amongst the citizens of Singapore or the residents in Singapore;
- (e) to promote feelings of ill-will and hostility between different races or classes of the population of Singapore.

Section 4 [Criminal]

Any person who –

- (a) does or attempts to do, or makes any preparation to do, or conspires with any person to do, any act which has or which would, if done, have a seditious tendency;
- (b) utters any seditious words;
- (c) prints, publishes, sells, offers for sale, distributes or reproduces any seditious publication; or
- (d) imports any seditious publication, shall be guilty of an offence.

Penal Code 1871

Section 298 [Criminal]

Whoever, with deliberate intention of wounding the religious or racial feelings of any person, utters any word or makes any sound in the hearing of that person, or makes any gesture in the sight of that person, or places any object in the sight of that person, or causes any matter however represented to be seen or heard by that person, shall be punished with imprisonment for a term which may extend to 3 years, or with a fine, or with both.

Section 298A [Criminal]

Whoever, (a) by words, either spoken or written, or by signs or by visible representations or otherwise, knowingly promotes or attempts to promote, on grounds of religion or race, disharmony or feelings of enmity, hatred or ill will between different religious or racial groups; or (b) commits any act which he knows is prejudicial to the maintenance of harmony between different religious or racial groups and which disturbs or is likely to disturb the public tranquillity, shall be punished with imprisonment for a term which may extend to 3 years, or with fine, or with both.

Internal Security Act 1960

Section 20(1) [Administrative]

Where it appears to the Minister charged with the responsibility for printing presses and publications that any document or publication ... is calculated or likely to lead to a breach of the peace, or to promote feelings of hostility between different races or classes of the population ... he may prohibit either absolutely or subject to such conditions as may be prescribed therein the printing, publication, sale, issue, circulation or possession of such document or publication.

Maintenance of Religious Harmony Act 1990

Section 8 [Administrative]

The Minister may make a restraining order against any priest, monk, pastor, imam, elder, office-bearer or any other person who is in a position of authority in any religious group or institution or any member thereof for the purposes specified in subsection (2) where the Minister is satisfied that that person has committed or is attempting to commit any of the following acts:

- (a) causing feelings of enmity, hatred, ill-will or hostility between different religious groups;
- (b) carrying out activities to promote a political cause, or a cause of any political party while, or under the guise of, propagating or practising any religious belief;
- (c) carrying out subversive activities under the guise of propagating or practising any religious belief; or
- (d) exciting disaffection against the President or the Government while, or under the guise of, propagating or practising any religious belief.

Internet Code of Practice

Section 4

(1) Prohibited material is material that is objectionable on the grounds of public interest, public morality, public order, public security, national harmony, or is otherwise prohibited by applicable Singapore laws. (2) In considering what is prohibited material, the following factors should be taken into account: ... (g) whether the material glorifies, incites or endorses ethnic, racial or religious hatred, strife or intolerance.

Protection From Online Falsehoods and Manipulation Act 2019

Section 7 [Criminal]

A person must not do any act in or outside Singapore to communicate a statement knowing or having reason to believe that it is a false statement of fact, and the communication of that statement is likely to ... incite feelings of enmity, hatred or ill-will between different groups of persons.

Section 12(1) [Criminal]

A Stop Communication Direction is one issued to a person who communicated the subject statement in Singapore, requiring the person to stop communicating in Singapore the subject statement by the specified time.

Since its independence in 1965, the city-state of Singapore has prided itself on principles of racial and religious harmony owing to its diverse heritage comprising of Chinese, Indian, Malay,

and British elements.¹¹⁷ Accordingly, Singapore has an extensive legal framework that focuses upon prohibiting racial and religious hate speech. This is despite the country not being a party to

the ICCPR and only recently ratifying the ICERD in 2017. The hate speech framework in Singapore has, however, received criticism for its broad scope and governmental overuse on the basis that such laws unnecessarily curtail freedom of expression and stifle political debate.¹¹⁸ Nevertheless, Singapore's position generally enjoys domestic support and has been fiercely defended in the nation's Parliament by the Law and Home Affairs Minister.¹¹⁹

Singaporean hate speech law has a strong emphasis on maintaining racial and religious harmony. The Sedition Act 1948, originally enacted during British rule to prevent domestic uprising against the colonial government, criminalises seditious acts and speech, and the printing, publication, sale, distribution, reproduction, and importation of seditious publications.¹²⁰ The Act defines a "seditious tendency" to include those that "promote feelings of ill-will and hostility between different races or classes of the population of Singapore." The law has been subject to significant academic and public scrutiny, noting that the offender's intention is irrelevant, the low threshold of "feelings" as a benchmark for imposing criminal penalties, and lack of proof that the offending act had a likelihood to cause violence.¹²¹ This falls below the threshold for criminal offences established by the six-part Rabat test that requires the consideration of a speaker's intent, the degree of provocation caused, and the likelihood or imminence of a crime.¹²²

Nevertheless, Singaporean authorities have actively prosecuted offences under the Sedition Act. Courts have also stressed the seriousness of acts that promote ill-will and hostility between different races or classes of the population, and typically hand down custodial sentences.¹²³ For example, in 2005 two men were convicted under the law by mocking Muslim customs and beliefs, and comparing Islam to Satanism on the internet, acts which were considered to be anti-Malay and anti-Muslim.

They were sentenced to one month and one day's imprisonment respectively.¹²⁴ In 2009, a Christian couple were found guilty of possessing and distributing seditious publications that "promoted Protestant Christianity and denigrated Islam." A constitutional argument that the law was inconsistent with the constitutional guaranteed freedom of speech was rejected and the couple were sentenced to eight weeks imprisonment.¹²⁵

In 2015, a Singaporean man and Australian women were sentenced to eight months imprisonment for negative internet posts about Filipinos living in Singapore.¹²⁶

The Sedition Act is complemented by similar criminal hate speech offences under the Penal Code.¹²⁷ The Internal Security Act and the Maintenance of Religious Harmony Act also provide the government with further mechanisms to issue restraining orders and impose conditions on media publications and religious officials to prevent hate speech.¹²⁸ In a surprise move, a bill to repeal the Sedition Act was passed in November 2021 but the Act remains in force as at the date of this publication. No date has been set for its repeal, but laws against promoting feelings of ill-will and hostility will remain in Singaporean law through amendments to the Penal Code.¹²⁹ The practical effect of this change remain unclear, noting that similar offences against religious and racist hate speech exist under other legislation.

However, it suggests that Singapore is moving towards requiring intention as an element of hate speech offences as per offences under the Penal Code in line with the Rabat threshold test.

Singapore has also taken a leading role in the region to prevent the dissemination of hate speech online including through the 2019 Protection from Online Falsehoods and Manipulation Act. Under this Act, Singaporeans are prohibited from communicating statements through the internet that "incite[s] feelings of enmity, hatred, or ill-will between different groups of persons" including via private messages. The Minister of Communications may issue a stop communication direction if they are of the opinion that it is in the public interest to prohibit such communication.¹³⁰ These new laws signify an approach to hate speech that sees the government take a more proactive role in regulating internet communications, which has traditionally been the responsibility of multi-national internet providers such as Facebook and Twitter.¹³¹ In particular, this approach raised questions of individual privacy, censorship of free expression, and the appropriateness of government entities determining the thresholds of hate speech. It also demonstrates that Singapore considers existing internet codes of conduct do not go far enough to protect hate speech and requires government intervention to best suit the Singaporean context.

Sri Lanka's International Legal Obligations Relating to Hate Speech

Treaty Provision	Status	Comments
International Covenant on Civil and Political Rights, Article 20	Acceded in 1980	This provision is binding on Sri Lanka at international law.
International Covenant on the Elimination of All Forms of Racial Discrimination, Article 4	Acceded in 1982	This provision is binding on Sri Lanka at international law.
Convention on the Prevention and Punishment of the Crime of Genocide	Acceded in 1950	This treaty is binding on Sri Lanka at international law.
Rome Statute of the International Criminal Court	Not signed nor ratified	Sri Lanka does not accept the jurisdiction of the International Criminal Court

Key Domestic Legal Provisions

International Covenant on Civil and Political Rights Act No. 56 of 2007

Section 3 [Criminal]

(1) No person shall propagate war or advocate national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence. (2) Every person who—

- (a) attempts to commit;
- (b) aids or abets in the commission of; or
- (c) threatens to commit, an offence referred to in subsection (1), shall be guilty of an offence under this Act.

(3) A person found guilty of committing an offence under subsection (1) or subsection (2) of this section shall on conviction by the High Court, be punished with rigorous imprisonment for a term not exceeding ten years.

Penal Code

Section 120 [Criminal]

Whoever by words, either spoken or intended to be read, or by signs; or by visible representations, or otherwise excites ... to promote feelings of ill-will and hostility between different classes of such People, shall be punished with simple imprisonment for a term which may extend to two years.

Section 291A [Criminal]

Whoever, with the deliberate intention of wounding the religious feelings of any person, utters any word or makes any sound in the hearing of that person, or makes any gesture in the sight of that person, or places any object in the sight of that person, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

Section 291B [Criminal]

Whoever, with the deliberate and malicious intention of outraging the religious feelings of any class of persons, by words, either spoken or written, or by visible representations, insults or attempts to insult the religion or the religious beliefs of that class, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Prevention Of Terrorism (Temporary Provisions) Act

Section 2 [Criminal]

Any person who

(h) by words either spoken or intended to be read or by signs or by visible representations or otherwise causes or intends to cause commission of acts of violence or religious, racial or communal disharmony or feelings of ill-will or hostility between different communities or racial or religious groups ... shall be guilty of an offence under this Act.

Sri Lanka's history of ethnic and religious tensions, particularly between Sinhalese and Tamils during the three decade long civil war, provides context for understanding the occurrence of hate speech in the country today. Despite the war formally ending in 2009, relations between different ethnic and religious groups remains tense and have at times escalated into localised violence and discrimination in recent years. This includes the rise of anti-Muslim hate speech from the Buddhist majority population, a trend that increased significantly following the 2019 Easter Sunday attacks.¹³³ Despite this, Sri Lanka's legal system provides an adequate framework for protecting against hate speech that directly incorporates key provisions of international law into domestic legislation. The problem is rather one of enforcement, with limited examples of prosecutions or punitive consequences for those disseminating hate speech.¹³⁴ Accordingly, hate speech remains a significant concern in Sri Lanka.

In terms of legislation, the ICCPR Act demonstrates best-practice implementation of international law in which the wording of Article 20(2) is directly mirrored into local law. Article 3 of the ICCPR Act provides a criminal offence, liable to up to ten years imprisonment, for advocating "national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence."¹³⁵ The Penal Code also contains separate offences specific to religious hate speech.

The Provision of Terrorism (Temporary Provisions) Act provides a broad offence against words "causing or intending to cause acts of violence or religious, racial or communal disharmony or feelings of ill-will or hostility."¹³⁶ There are limited examples of prosecutions under these laws and a lack of reported Sri Lankan judgements, including following recent examples of ethnic and religious hate speech leading to violence.¹³⁷

The rapid uptake of Facebook in the country has also contributed to a rise in online hate speech. This is largely due to insufficient local language content moderation and slow take-down times for hate speech content, akin to the situation in Myanmar. To dissipate the problem, the Sri Lankan government has periodically wholly blocked access to Facebook, raising concerns of a disproportionate response that undermines freedoms of speech. In one example, the government accused Facebook of allowing rampant anti-Muslim hate speech to circulate freely, which led to deadly 2018 riots in the city of Kandy. Facebook later apologised for its role in the violence and condemned the misuse of the platform.¹³⁸ However, the incident provides an example of the broader debate as to the responsibility of state governments in contrast to internet platforms to regulate local hate speech content online.

Thailand's International Legal Obligations Relating to Hate Speech

Treaty Provision	Status	Comments
International Covenant on Civil and Political Rights, Article 20	Acceded in 1966	Thailand made a treaty reservation that the term "war" in Article 20(2) means war in contravention of international law.
International Covenant on the Elimination of All Forms of Racial Discrimination, Article 4	Acceded in 2003	Thailand originally made a treaty reservation to the effect that measures to adopt racial discrimination may only be considered as the need arises to enact such legislation. In 2016, Thailand withdrew this reservation.
Convention on the Prevention and Punishment of the Crime of Genocide	Not signed nor ratified	Thailand has not signed or ratified this Convention.
Rome Statute of the International Criminal Court	Signed in 2000, not ratified.	Despite signature, this treaty is not binding upon Thailand at international law.

Key Domestic Legal Provisions

2017 Constitution

Section 27 [Constitutional]

All persons are equal before the law, and shall have rights and liberties and be protected equally under the law. Men and women shall enjoy equal rights. Unjust discrimination against a person on the grounds of differences in origin, race, language, sex, age, disability, physical or health condition, personal status, economic and social standing, religious belief, education, or political view which is not contrary

to the provisions of the Constitution, or on any other grounds shall not be permitted.

Section 34 [Constitutional]

A person shall enjoy the liberty to express opinions, make speeches, write, print, publicise and express by other means. The restriction of such liberty shall not be imposed, except by virtue of the provisions of law specifically enacted for the purpose of maintaining the security of the State, protecting the rights or liberties of other persons, maintaining public order or good morals, or protecting the health of the people.

Criminal Code of Thailand

Section 116 [Criminal]

Whoever makes an appearance to the public by words, writings or any other means which is not an act within the purpose of the Constitution or for expressing an honest opinion or criticism in order ... to raise unrest and disaffection amongst the people in a manner likely to cause disturbance in the country ... shall be punished with imprisonment not exceeding seven years.

Section 326 [Criminal]

Whoever, imputes anything to the other person before a third person in a manner likely to impair the reputation of such other person or to expose such other person to be hated or scorned, is said to commit defamation, and shall be punished with imprisonment not exceeding one year or fined not exceeding twenty thousand Baht, or both.

Thailand has a long history of frequent legislative and constitutional change following changes of government, military coups, and political instability in the country. As a result, Thailand's legal framework for protecting against incitement to hate speech is weak, relying upon provisions of criminal and constitutional law that could, at a general level, encompass conduct constituting hate speech.¹⁴⁰ The absence of explicit hate speech incitement laws, in accordance with Thailand's obligations as a state party of the ICCPR, therefore presents an increased risk for the country's diverse population, comprising of over 62 different cultural and ethnic groups.¹⁴¹

As a flashpoint of political tensions in Thailand's recent history, the Constitution has been subject to numerous iterations, most recently in 2017 as a result of the Thai military's 2014 coup d'état. Nevertheless, no prior Thai Constitution has included a specific provision on tackling hate speech or incitement. Notably, a ban on hate speech was specifically considered by the Constitutional Drafting Committee for inclusion in the new 2017 Constitution, citing the need to curb the exercise of social divisions in society and hatred among citizen, including through social media.¹⁴² This was exemplified during the 2013-2014 Thai political crisis in which language was frequently used to insult and attack opposing political figures and societal groups. The ban was later dropped from the new Constitution on the basis that such provision might restrict media freedom.¹⁴³

Instead, the 2017 Constitution provides a broadly worded prohibition against "unjust discrimination" against a person on grounds of specific identity factors including race, origin, language and religious belief.¹⁴⁴

The Criminal Code also provides criminal defamation offences for imputations "likely to impose such other person to be hated or scorned,"¹⁴⁵ and a broadly defined offence of raising "unrest and disaffection ... likely to cause disturbance in the country."¹⁴⁶ These laws do not appear to enable aggrieved individuals to seek remedies for conduct amounting to hate speech. Thailand also does not have any form of racial discrimination laws. In contrast, specific legislation was passed in 2015 to affirm Thailand's commitment to gender equality,¹⁴⁷ demonstrating that similar legislation could be implemented in response to hate speech.

Vietnam's International Legal Obligations Relating to Hate Speech

Treaty Provision	Status	Comments
International Covenant on Civil and Political Rights, Article 20	Acceded in 1982	This provision is binding upon Vietnam at international law.
International Covenant on the Elimination of All Forms of Racial Discrimination, Article 4	Acceded in 1982	This provision is binding upon Vietnam at international law.
Convention on the Prevention and Punishment of the Crime of Genocide	Acceded in 1981	Vietnam has provided a reservation to the effect that it does not accept the jurisdiction of the International Court of Justice to adjudicate disputes regarding the Convention.
Rome Statute of the International Criminal Court	Not signed nor ratified	Vietnam does not recognise the jurisdiction of the International Criminal Court.

Key Domestic Legal Provisions

Constitution of the Socialist Republic of Vietnam

Article 16 (2) [Constitutional]

No one shall be discriminated against based on his or her political, civic, economic, cultural or social life.

Article 25 [Constitutional]

The citizen shall enjoy the right to freedom of opinion and speech, freedom of the press, of access to information, to assemble, form associations and hold demonstrations. The practice of these rights shall be provided by the law.

Article 26(3) [Constitutional]

Sex discrimination is strictly prohibited.

Criminal Code

Article 116: Sabotaging implementation of solidarity policies [Criminal]

1. Any person, for the purpose of opposing the people's government, commits any of the following acts shall face a penalty of 07 - 15 years' imprisonment:
 - (a) Sowing divisions between the classes of people, between the people and people's government, the people's armed forces, or socio-political organizations;
 - (b) Causing hostility, discrimination, secession, infringement upon equality rights among the ethnic communities of Vietnam;
 - (c) Sowing division between religion followers and non-followers, between religions, between religion followers and people's government or socio-political organizations;
 - (d) Sabotaging the implementation of international solidarity policies.
2. A less serious case of this offence shall carry a penalty of 02 - 07 years' imprisonment.
3. Any person who makes preparation for the commitment of this offence shall face a penalty of 06 - 36 months' imprisonment

Law on Cyber Security

Article 16: Prevention of and dealing with information in cyberspace with contents being propaganda against the Socialist Republic of Vietnam; information contents which incite riots, disrupt security or cause public disorder; which cause embarrassment or are slanderous; or which violate economic management order [Criminal]

1. Information in cyberspace with contents being propaganda against the Socialist Republic of Vietnam comprises:
 - (b) Psychological warfare, inciting an invasive war; causing division or hatred between [Vietnamese] ethnic groups, religions and people of all countries; Any Internet service provider can be penalized for failing to remove flagged content within 24 hours of receiving a request to do so. The penalty is not explicitly stated in the law but will be specified at a later point; however, failure to comply could result in fines and criminal liability.

Despite being a party to both the ICCPR and ICERD, Vietnam has limited laws against hate speech or incitement to discrimination, hostility, and violence on grounds of protected attributes. The Constitution provides for general prohibitions on discrimination, but there is limited data on the practical effectiveness of these provisions.¹⁴⁹ Section 116 of the Criminal Code provides for lengthy imprisonment terms for those that “for the purpose of opposing the government” cause “hostility, discrimination, secession, infringement upon equality rights among the ethnic communities of Vietnam.”¹⁵⁰ It is unclear whether this would extend to illegal forms of hate speech that were not “for the purpose of opposing the government.”

The limitations of current domestic legislation has been noted by both by the Human Rights Committee and the Committee on the Elimination of Racial Discrimination during the country’s most recent compliance reviews.¹⁵¹

In 2019, it was recommended that Vietnam should “bring its legislation in conformity with the Covenant” and “take measures to prevent, and swiftly and effectively respond to all acts of undue interference with the freedom of religion, and any incidents of hate speech, incitement to discrimination, violence or alleged hate crime, and ensure those responsible are brought to justice.”¹⁵²

CONCLUSION

Countering hate speech cannot be the remit of legislation alone. Nor can governments be wholly responsible for curbing this human rights violation given its proliferation on privately owned social media. Yet legislation, as society's prevailing means of governing the modern world, thereby guiding what is criminal and what is not, should be better implemented to counter this problem. In doing so, it needs to be determined in its language with regard to the litmus tests that assesses what hate speech should be held accountable via law and, similarly, in there being consensus across the region, and the globe, as to what legislation needs to be adopted.

As outlined in this compendium, unlike the Europe Union, hate speech legislation in the Asia Pacific is vague and differs from country to country. Countering hate speech relies on numerous types of legislation, from constitutional to criminal to civic codes, some of which are informed by international law and others that are not. Overall, these laws are often murky in what they allow as a means of countering hate speech and are at the mercy of the politics and the history of the many nations that make up Asia Pacific. In that, some countries are more advanced than others, with some seriously lagging in applying any form of law that might help counter illegal hate speech.

This is where larger governmental entities such as ASEAN could play a key role in centralising and helping enact legislation, advocating for rules that have applicability across the region. This organisation can work towards persuading regional governments to become signatories and then ratifying various international instruments; in the case of hate speech, those four key treaties, statutes, and conventions discussed above.

Yet there is still onus upon multinational companies such as Facebook to not take advantage of a region's lack of law, or to mould the wording of legislation in favour of decisions that benefit their profit rather than tackle illegal forms of hate speech. There is a responsibility upon companies to also advocate for legislation that is uniform, clear in its articulation, and policed convincingly by all nations. This will only make the private sector more willing to complement its policies and community standards with the region's legislation.

Hate speech as a tool towards the commission of an atrocity crime will forever be a risk. Yet there are many routes taken by society that can help mitigate this risk. Legislation via international and domestic laws is one important step towards ensuring these risks lessen.

FURTHER READING

Below is a list of other readings that help explain international and domestic laws related to hate speech and atrocities (in no particular order):

1. Gregory S. Gordon's book *Atrocity Speech Law: Foundation, Fragmentation, Fruition*, published by Oxford University Press, 2017.
2. The Asia Centre's report "Hate Speech in Southeast Asia: New Forms, Old Rules," published in 2020: <https://asiacentre.org/wp-content/uploads/2020/07/Hate-Speech-in-Southeast-Asia-New-Forms-Old-Rules.pdf>
3. Philippa Hall's chapter "Dialogues and Diversity in Korea, Japan and France: The Contribution of International Law to Hate Speech Legislation in National and Transnational Contexts," published in *Hate Speech in Asia and Europe: Beyond Hate and Fear*, edited by Myung Kang, Marie-Orange Rivé-Lasan, Wooja Kim and Philippa Hall, and published by Routledge, 2020.
4. The Global Action Against Mass Atrocity Crime's report, "Preventing Hate Speech, Incitement, and Discrimination: Lessons on Promoting Tolerance and Respect for Diversity in the Asia Pacific," published in 2021: https://www.gaamac.org/media-uploads/Regional%20Initiatives%20publications/_APSG_REPORT_FINAL.pdf
5. The Future of Free Speech's toolkit, "Global Handbook on Hate Speech Laws," compiled by Natalie Alkiviadou, Jacob Mchangama, and Raghav Mendiratta, and published in 2020.
6. Viera Pejchal's and Kimberley Brayson's chapter "How Should We Legislate Against Hate Speech? Finding an International Model in a Globalized World," published in *The Globalization of Hate: International Hate Crime?* edited by Jennifer Schweppe and Mark Austin Walters, and published by Oxford University Press, 2016.
7. Helani Galpaya's and Ramathi Bandaranayake's article "Tackling the Information Disorder," published in the *East Asia Forum* on 2 July 2022, <https://www.eastasiaforum.org/2022/07/02/tackling-the-information-disorder-in-asia/>

Endnotes

- 1 “United Nations Strategy and Plan of Action on Hate Speech,” Advising and Mobilizing, Office on Genocide Prevention and the Responsibility to Protect, last modified 18 June, 2019, https://www.un.org/en/genocideprevention/documents/advising-and-mobilizing/Action_plan_on_hate_speech_EN.pdf.
- 2 “United Nations Strategy and Plan of Action on Hate Speech: Detailed Guidance on Implementation for United Nations Field Presences,” Advising and Mobilizing, Office on Genocide Prevention and the Responsibility to Protect, last modified September 2020, https://www.un.org/en/genocideprevention/documents/UN%20Strategy%20and%20PoA%20on%20Hate%20Speech_Guidance%20on%20Addressing%20in%20field.pdf.
- 3 International Covenant on Civil and Political Rights, signed 16 December 1966 UNTS 999 (entered into force 23 March 1976) art 20(2).
- 4 Human Rights Council, 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 (11 January 2013), 8.
- 5 International Covenant on Civil and Political Rights, signed 16 December 1966 UNTS 999 (entered into force 23 March 1976) art 19(3).
- 6 Office on Genocide Prevention and the Responsibility to Protect “United Nations Strategy and Plan of Action on Hate Speech: Detailed Guidance on Implementation for United Nations Field Presences,” 16-17.
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