

One-pager on “incitement to hatred”

Legal framework:







Article 20, paragraph 2 of the International Covenant on Civil and Political Rights (ICCPR) states that “any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law.”

Definitions:

- The terms ‘**hatred**’ and ‘**hostility**’ refer to intense and irrational emotions of opprobrium, enmity and detestation towards the target group;
- The term ‘**advocacy**’ is to be understood as requiring an intention to promote hatred publicly towards the target group; and
- The term ‘**incitement**’ refers to statements about national, racial or religious groups, which create an imminent risk of discrimination, hostility or violence against persons belonging to those groups.

Threshold test:

Article 20 of the ICCPR requires a high threshold because limitation of freedom of expression must remain an exception. The [Rabat Plan of Action](#) (A/HRC/22/17/Add.4, appendix) suggests that each of the six parts of the following threshold test needs to be fulfilled in order for a statement to amount to a criminal offence:

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- (1) **Context:** Context is of great importance when assessing whether particular statements are likely to incite discrimination, hostility or violence against the target group, and it may have a direct bearing on both intent and/or causation. Analysis of the context should place the speech act within the social and political context prevalent at the time the speech was made and disseminated;
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- (2) **Speaker:** The speaker’s position or status in the society should be considered, specifically the individual’s or organization’s standing in the context of the audience to whom the speech is directed;
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- (3) **Intent:** Article 20 of the ICCPR anticipates intent. Negligence and recklessness are not sufficient for an act to be an offence under article 20 of the ICCPR, as this article provides for “advocacy” and “incitement” rather than the mere distribution or circulation of material. In this regard, it requires the activation of a triangular relationship between the object and subject of the speech act as well as the audience;
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- (4) **Content and form:** The content of the speech constitutes one of the key foci of the court’s deliberations and is a critical element of incitement. Content analysis may include the degree to which the speech was provocative and direct, as well as the form, style, nature of arguments deployed in the speech or the balance struck between arguments deployed;
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- (5) **Extent of the speech act:** Extent includes such elements as the reach of the speech act, its public nature, its magnitude and size of its audience. Other elements to consider include whether the speech is public, what means of dissemination are used, for example by a single leaflet or broadcast in the mainstream media or via the Internet, the frequency, the quantity and the extent of the communications, whether the audience had the means to act on the incitement, whether the statement (or work) is circulated in a restricted environment or widely accessible to the general public; and
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- (6) **Likelihood, including imminence:** Incitement, by definition, is an inchoate crime. The action advocated through incitement speech does not have to be committed for said speech to amount to a crime. Nevertheless, some degree of risk of harm must be identified. It means that the courts will have to determine that there was a reasonable probability that the speech would succeed in inciting actual action against the target group, recognizing that such causation should be rather direct.

The Rabat Plan notes with concern that perpetrators of incidents, which indeed reach the threshold of article 20 of the ICCPR, are not prosecuted and punished. At the same time, members of minorities are *de facto* persecuted, with a chilling effect on others, through the abuse of vague domestic legislation, jurisprudence and policies. Political and religious leaders should refrain from using any incitement to hatred, but they also have a crucial role to play in speaking out firmly and promptly against hate speech and should make clear that violence can never be tolerated as a response to incitement to hatred (see also the [18 commitments on “Faith for Rights”](#)).