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## Hate Speech

Key concept paper

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Hate Speech: Key concept paper

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## **Executive Summary**

This paper explores the concept of hate speech, both theoretically and within the context of the MeCoDEM project's four country case studies: Egypt, Kenya, Serbia and South Africa. Instead of seeking to provide an objective definition of hate speech, the paper's empirical approach highlights that context matters. More specifically, analysis of the political and socio-economic context in which the speech act occurs and consideration of the nature of the speaker and audience – including their impact and transmission – allows for a nuanced and informed approach to evaluate hate speech, and how this impacts democratisation processes.

The paper presents:

- A general discussion of freedom of speech and its relationship with hate speech;
- A brief discussion on the definitions of hate speech and international legislation;
- A short discussion of hate speech in the four country contexts of the MeCoDEM project: Egypt, Kenya, Serbia and South Africa.

## **1. Introduction**

This paper will address the topic of hate speech as a key concept in the *Media, Conflict and Democratisation* (MeCoDEM) project. In general, hate speech can be broadly defined as a speech act that antagonises or marginalises people based on their identification with a particular social or demographic group. It is the result of communication processes that compromise human dignity, equality and human rights. However, definitions of hate speech can be contentious and problematic, given tensions between the labelling of a harmful speech act as such, which has the potential to antagonise or marginalise an individual or group, and those speech acts that contribute to a pluralistic debate on a particular issue. An examination of hate speech is therefore highly contextual, and defining it in absolute terms can present complicated philosophical discussions on the meaning of belonging, freedom of expression and dignity within a given culture or society. Furthermore, it can be shaped and influenced by the unique media landscape in specific country contexts – amplified by the growing usage of social media. This paper offers a brief background of hate speech in the context of freedom of speech and international legislation. Hate speech is then discussed in relation to the four case study countries that comprise the studies within the MeCoDEM project: Egypt, Kenya, Serbia and South Africa.

## **2. Freedom of speech**

The term “freedom of speech” is used to capture those discursive acts – often political in nature – that can be imparted or received, without constraint or censorship, particularly on the part of government authorities. It is also known according to other

terms such as “freedom of expression,” or in certain legislative contexts, “freedom of the press”. These can be in the form of spoken or written words, but can also be actions or thoughts expressed through artistic or performative means. Indeed, any channel can communicate these speech acts, including print, visual, broadcast, and online media. Freedom of speech is therefore a layered and multi-faceted concept, and encompasses several debates on fundamental political concepts and philosophies, their interpretation, as well as their regulation.

Tensions between hate speech and freedom of speech become apparent with speech acts that intentionally seek to violate or denigrate an individual’s membership to a particular socio-economic, demographic or political group. Navigating through these tensions invites a consideration of the repercussions of limiting or encouraging freedom of expression, including the defence of hate speech, and whether or not this significantly affects a person or group’s right to human dignity (Barendt, 2005: 5). The universal right to “human dignity” is therefore intrinsically connected to the protection of fundamental political rights and freedoms. Freedom of speech and hate speech then becomes a point of contention when the balance between opinion and violations of human dignity are shifted, raising the issue of hate speech and international legislation.

### **3. Hate speech and international legislation**

Hate speech is a type of discriminatory speech that arises when people from different social, ethnic, or religious groups interact with one another, or when one such

group asserts its power over others. There are many different ways of describing hate speech in more detail, but one definition is as follows:

Hate speech is defined as a bias-motivated, hostile, malicious speech aimed at a person or a group of people because of some of their actual or perceived innate characteristics. It expresses discriminatory, intimidating, disapproving, antagonistic, and/or prejudicial attitudes toward those characteristics, which include gender, race, religion, ethnicity, color, national origin, disability, or sexual orientation. Hate speech is aimed to injure, dehumanize, harass, intimidate, debase, degrade, and victimize the targeted groups and to foment insensitivity and brutality against them (Cohen-Almagor, 2013: 43).

The above description is a thorough explanation of how hate speech can be understood. Establishing a definition, however, is one element in understanding hate speech. How it is negotiated within a particular context, in a given society and at a particular point in time is equally important. An understanding of the political and socio-economic context in which the hate speech act occurs should also be supplemented with an analysis of the speaker and audience to fully gauge the likely impact of the discourse. For example, Benesch's (2013) dangerous speech framework also allows for analysis of the speaker and the degree of influence they have over the audience; the grievances and fears that the audience may have that the speaker is able to cultivate in the message; and the mode of dissemination, which may be influential in itself.

Negotiating hate speech is a delicate matter because, "from a human rights perspective, the right to life and the prohibition of discrimination are to be balanced against the freedom of expression" (Buyse, 2014: 796), and the sometimes

consequential need for tolerance of these multiple expressions.<sup>1</sup> In this way, a controversial case could be made for the protection of speech acts that are often divisive. Protecting hate speech, however, presents the risk of prejudices becoming entrenched in pluralistic societies (Hirvonen, 2013), which then compromise concepts of human dignity, defamation and human rights (Leo et al., 2011). Still, protecting hate speech does not only protect the speaker's rights but also allows the target of these speech acts to "speak back" (Mårtensson, 2013). Freedom of speech principles then need to be balanced by considering whether or not these speech acts are offensive or incite violence (Tsesis, 2013), and so the question of legalisation comes into play.

When we think about legislation, established laws and judicial systems are heavily reliant on Western paradigms, frameworks and institutions. American courts have been contending with issues on free speech for a few hundred years, whereas the European courts have been dealing with them within the last seven decades (Barendt, 2005: 55). When considering hate speech, there is a need to remember that human rights law does not dictate that freedom of expression is an unconditional right. Freedom of expression can be limited by protocols determined by documents like the International Covenant on Civil and Political Rights (ICPPR), the American Convention on Human Rights (ACHR), and the European Convention for Human Rights (ECHR) (Buyse, 2014: 791). With regards to discrimination, Article 20(2) of the ICPPR states: "Any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law" (OHCHR, 1976). Further clauses on racial discrimination are also found in the International Convention for the

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<sup>1</sup> For a thorough discussion on these themes, see: Hare, I. and Weinstein, J. eds. 2009. *Extreme Speech and Democracy*. Oxford: Oxford University Press.



Elimination of All Forms of Racial Discrimination (OHCHR, 1969). It is also evident that much has been written in the American and European contexts (Bleich, 2011), resulting in a need for more discussion in the non-Western contexts.

#### **4. In context: four countries**

The cases discussed in this paper offer much material that contributes to discussions on the media and free speech in general, and more specifically, themes on hate speech and international legislation on discriminatory speech. These discussions, however, primarily occur from a “Western” perspective, which is influenced by several factors: Western thought and philosophy, the Western model of political construction of democracy, and presumptions of what it means to have freedom and liberty of expression in these contexts. All of these tie into the role of the media and how these influence (or impede) the roles of citizenship and cultural identities. The MeCoDEM project’s aim, however, is to look at civic conflicts in country contexts that are – to varying degrees – to be viewed from other perspectives than the “Western” one. The selected countries are unique because they are in various stages of political development, where they are either negotiating democratisation, or in the process of democratising. The media play a fundamental role here because, “without doubt, freedom of speech and a free press are among the major achievements of democratisation. But the experience of many emerging democracies implies that under certain circumstances the media can also turn into an obstructive force that sharpens conflicts and might even trigger violence” (MeCoDEM, 2015).<sup>2</sup> This paper

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<sup>2</sup> For more information about the MeCoDEM project, please visit: [www.mecodem.eu](http://www.mecodem.eu).

will now discuss these discussions in the contexts of the four countries of the MeCoDEM project: Egypt, Kenya, Serbia and South Africa.

In the case of Egypt, we see that after the uprisings in January 2011, media freedom has been in flux, where discourses on contentious issues have become highly politicised and polarised. When we discuss hate speech in the Egyptian context, the matter of negative attention to religious groups and social minorities has played a key role in facilitating this media politicisation and polarisation. This in turn is affected by laws, which seemingly favour certain religions, leaving members of other religious communities as well as minority groups vulnerable to lack of protections that would otherwise be enforced by national and international laws on discriminatory speech.

The Kenyan case discusses the suppression of speech and what this means for a democratic participation of citizens in the media, as well as responsible journalistic practices. Kenya is a richly diverse nation, comprising of many languages and ethnic groups; some of which were the focus of directed hate speech and incitement to hatred during the 2007 elections. These sensitive issues, paired with a history of violent elections, mean that suppressing the media, even if it is for the “greater good”, in turn prevented democratic and legitimate discourses on politics in Kenyan society from taking place during the 2013 elections.

The Serbian case has to do with a legacy of struggle after the dissolution of Yugoslavia, and the consequential establishment of a new government. During Milošević’s regime, the use of propaganda citing “the enemy”, and manipulation of mainstream media was prevalent. After 2000, we see that the struggle for power and

conflict between political parties involved, normatively speaking, quite moderate use of language in the public domain, with hidden messages that often forged fear of each other. The lack of sustainable policy protecting the media has resulted in it not only receiving the lack of attention and funding needed for a robust media system, but also losing its status as a forum for democratic debate. This has resulted in acts of hate speech being prevalent in tabloids and the online milieu today, consequentially requiring a growing need for external support for projects educating the public on discriminatory speech and media literacy.

The case of South Africa presents unique challenges in delineating hate speech, due to the relationship between its recent history of the abolition of state-sanctioned racial segregation and racial repression known as Apartheid, and its current state as a nation in democratic transition. The South African case is unusual because it is one of the rare circumstances where suppressing speech (in some cases, speech which has been normalised for generations), is required to protect the dignity of members of the community in post-Apartheid terms, however, this suppression also can be interpreted as going against fundamental principles of freedom of thought and of expression; which are needed in order to foster a pluralistic environment.

Each of the sections that follow aim to shed light on the complex issue of negotiating and understanding language and conflicts that involve discriminatory speech and hate speech. The central threads that can be seen between these cases are the roles of ethnicity, religious affiliation and/or identity in politics, and how conflicts arise in cultures and societies that already suffer from profound divisions. These divisions are the result of a volatile history and sensitive issues to do with collective

and cultural memory. They are also consequences of divisions brought on by democracies that are in flux due to an ever-present struggle between political powers and an increasingly challenging civil society.

#### **4.1. Egypt: Hate speech in the post-January 25th Uprising (Yosra El Gendi)**

Since the *January 25<sup>th</sup> Uprising* in 2011, various forms of hate speech have been on the rise in Egyptian media. These can be divided into xenophobic, political, religious and cultural forms. Politically-induced hate speech contains hate speech against political groups for their political opinions (Zahraa, 2014: 162-174). It also includes hate speech based on nationalist discourses against some Arab nationals. Xenophobic hate speech is hate speech that incites the hatred or rejection of foreigners, particularly Westerners. Cultural forms of hate speech include forms of hate speech against religious groups, particularly religious minority groups (Allam, 2014), ethnic groups as well hate speech against members of the Lesbian, Gay, Bisexual, and Transgender (LGBT) community. This section will first examine some of the conditions leading to the upsurge of hate speech since 2011. Secondly, it will examine how hate speech is treated by Egyptian laws and examine the ways these laws are implemented.

*Political hate speech:* There are several factors that led to the increase of political forms of hate speech in the aftermath of the *January 25<sup>th</sup> Uprising*. First, a state of “chaotic expression of opinions” resulted from the deposal of the Mubarak regime, and this was paired with low professional standards and professional ethics (Issawi, 2014: 69-70). This in turn led to an increase of unsubstantiated accusations and hate speech in the media discourse against political groups and political figures

(Zahraa, 2014: 178-179). Second, a variety of studies has pointed out that media ownership led to the lack of autonomy in Egyptian media. This led to a situation of media politicisation, which influenced its reporting (Issawi, 2014: 54). The political polarisation at the end of President Morsi's rule and the aftermath of the June 30<sup>th</sup> countrywide protests meant that both political groups resorted to extreme discourses against each other. It was not unusual to find different forms of conspiracy theories and unsubstantiated generalised claims circulating throughout the media, which were directed against specific political groups (Zahraa, 2014: 175-180). This also led to various forms of hate speech against members of different religious groups, particularly Christians; which resulted in several communal attacks against them in the aftermath of President's Morsi's deposal (EIPR, 2014: 70-75).

*Nationalist hate speech:* While political hate speech targets Egyptian opposition figures, factions or dissident nationalists, nationalist hate speech is a form of politically motivated hate speech that is mostly directed against Arab state nationals, for their political opinions on Egyptian politics and loyalty to one side or the other. The nationalist discourse, highlighting the strength of Egyptians to build their nation was also based on a strong conspiracy theory relating to the external "enemies of the nation". This is mainly directed against the Syrian and Palestinian residents (Uthman, 2014). TV hosts hurled threats at Syrian refugees if they intervened in Egyptian politics or took sides. A former parliamentarian appearing on TV has also called for imposing the death penalty on any non-Egyptian joining the protests. Hate speech against the Palestinian community has been based on accusations pertaining to the relationship between Hamas and the Muslim Brotherhood (Uthman, 2014). Nationalist hate speech is different from the xenophobic discourse that is based on colonial legacies.

*Xenophobic hate speech:* Xenophobic hate speech has increased since the *January 25<sup>th</sup> Uprising*. While xenophobic hate speech may emerge in periods of national crisis, different levels of xenophobia are rooted in an anti-colonial discourse that aims at liberating the Egyptian nation from the trends of Westerners and to maintaining local customs and traditions. After the *January 25<sup>th</sup> Uprising*, the rise in this discourse was partially a result of attempts to discredit democratic ideas and supporters of the uprising as being Westernised and thus inauthentic. This was also manifested in advertisements on TV that warned of the dangers of giving information to foreigners, perceived as potential spies (Uthman, 2014). In the case of a crackdown on civil society in 2011, a number of international NGOs (including the National Democratic Institute, International Republican Institute, Freedom House, Konrad Adenauer Foundation and others) were accused of operating illegally in Egypt (El Taraboulsi et al., 2013: 11), was an extension to this discourse. Thus, the increase of xenophobic sentiments after the *January 25<sup>th</sup> Uprising* in 2011 was conducive to the increase of xenophobic hate speech.

*Hate speech against religious groups:* Cases of religious blasphemy underwent a qualitative change after the *January 25<sup>th</sup> Uprising*. Prior to the uprising, reported cases of religious blasphemy were directed against notable thinkers, such as writers and novelists, as a way of restricting their freedom of conscience and freedom of expression. This was usually coupled with religious figures declaring them infidels, therefore constituting a lethal threat to them. In addition to notable thinkers, cases of blasphemy were also mostly directed against adherents of the non-Sunni Islamic faith (Ibrahim, 2013: 8). Investigating authorities resorted to questioning suspects on their

beliefs and faith, which was in violation of their right to privacy and freedom of conscience (Ezzat, 2014: 23). In the aftermath of the *January 25<sup>th</sup> Uprising*, there was a marked increase in reported cases of religious blasphemy. They rose particularly during periods surrounding political events, possibly due to the increased politicisation of religion. The cases extended to including petty fights between people, which developed into attacks on religions, or political discussions that were then interpreted as attacks on a religion. There was a noted failure by security forces which neglected to secure the protection of those accused of blasphemy from attacks by the wider community, for both the accused and their families (Ibrahim, 2013: 8-9).

A heated debate is whether certain forms of speech constitute hate speech against religious groups or criticisms against religion. This debate is based on different cultural perceptions. For example, the French magazine *Charlie Hebdo's* satirical cartoons of Islamic figures is considered by state-owned Egyptian newspaper *al-Ahram*, to be a form of contempt of religion and a misuse of freedom of expression. A number of *al-Ahram* articles stated that the failure of restricting insults to religions is the reason behind the January 2015 attacks on *Charlie Hebdo's* offices in Paris (Al-Sheikh, 2015). This is based on the understanding that the critiques of religion are not targeting the religion itself but the adherent of the religious creed, constituting hate speech. While Western notions stress the concept of freedom of expression when referring to *Charlie Hebdo*, it has been interpreted differently in other contexts.

The case for religious blasphemies, primarily against Islam, has led to much popular upheaval, which was promptly addressed by authorities. However, hate speech against other religious minority groups is rarely prosecuted. For example, an

anti-Muslim movie, *Innocence of Muslims*, was circulated on YouTube and provoked mass protests mobilised by the Islamist community in Egypt, as well as in other places in the Arab and Islamic world (Talaat et al., 2012). The producers of the movie were sentenced to death by the State Security Court for “provoking sectarianism, blasphemy and endangering national unity and social peace” (MENA, 2013). This ruling was approved by Egypt’s religious establishment (MENA, 2013). On the other hand, forms of hate speech directed against other religious and ethnic communities receive less attention. Forms of hate speech against religious groups were conducted at times by state-funded media, such as Egyptian TV, in the case of the Maspero protests on October 9, 2011 (Association of Freedom of Thought and Expression, 2014: 19). Other forms of hate speech against religious groups were also conducted by private channels (such as some Islamist channels) supporting the discourse that led to the lynching of four Shiites in Zawyat Abu Musalam, Giza, in 2013 (El-Gundy, 2013). A lack of protection of minorities has led to impunity of the perpetrators and the repetition of these incidents (Thabet, 2015).

*Hate speech against ethnic and LGBT groups:* As a conservative society, Egyptian mainstream culture rejects members of the LGBT community, viewing them as perverse and a threat to social peace. This has not only manifested itself in the media, but also in the prosecution of such conducts. While there is no law punishing LGBT acts, it is often prosecuted as a form of “debauchery” and public indecency (Whitetaker, 2014). Mainstream media programmes have presented this community as responsible for many social ills, as well the spread of diseases such as HIV (Kingsley, 2014).



The least prevalent form of hate speech is against African residents or refugees in Egypt and is based on racist perceptions of people of colour as violent. In this respect, a prominent newspaper entitled its report the “Niggers: The gangs of black horror” (Sharif, 2015). This form of hate speech is not tied to political ideas, unlike the nationalist form described above, which is politically motivated.

### ***Egyptian law and hate speech***

There is no particular law against hate speech in Egyptian legislation (Ezzat et al., 2014: 4). However, there are laws against religious blasphemy and against incitement to crime. The former protects Islam, Christianity and Judaism, which are recognised by the constitution as requiring protection from insult. These laws and their implementation fail to protect social, political and other religious groups.

*Religious blasphemy:* Religious blasphemy is an offence under the Penal Code of 58/1938 (Ezzat, 2014: 15). It is directed against insults or critique of Islam, Christianity, and Judaism, whose adherents are allowed to carry out their practices in public. In this respect, there are criticisms that it is discriminatory against other religions (Ezzat, 2014: 6), such as Baha’ism, which are not protected under the laws, nor are their followers allowed to practice their religions in public. Furthermore, it is criticised for being implemented in a discriminatory manner. While the text of the laws nominally protects Islam, Christianity, and Judaism from public criticism, it has mostly been implemented for the protection of Islamic beliefs from critique or insults. In this sense, its application has been restrictive of freedom of speech and freedom of conscience called for by international laws (Ezzat, 2014: 6), while failing to protect a large range of marginalised groups.

*Incitement.* Hate speech may sometimes be prosecuted if it includes incitements to commit a crime. The Penal Code gives a broad definition for incitement that includes all serious and petty crimes or offences. Offences must take place for this law to be applicable, otherwise there is no criminalisation of incitement in itself (Ezzat et al., 2014: 24). Second, in incitement for some serious crimes (e.g. murder), inciting to topple the regime, incitement of soldiers not to obey orders, incitement of discrimination and incitement to disobey laws, are forms of incitement that the Penal Code penalises where no crime needs take place (Ezzat et al., 2014: 26-27). The problem with this definition is that it is expansive and may provide unnecessary restrictions on freedom of speech (Ezzat et al., 2014: 4). Further, there is no clear definition of hate speech as a form of speech that should be restricted. Thus, the implementation of these laws has led to the restriction of freedom of speech, but not to the reduction of hate speech.

In conclusion, the aftermath of the *January 25<sup>th</sup> Uprising* in 2011 has witnessed a period of a chaotic state of media freedom, which in some cases has led to politicised discourses and low professional standards and professional ethics. This politicised discourse was polarised further by the political events leading to the June 30<sup>th</sup> 2013 incidents in Tahrir Square. Nationalist and xenophobic discourses have also been used as hate speech against foreigners. Furthermore, there is evidence that hate speech against religious groups has resulted in much popular upheaval since 2011. These different forms of hate speech have not been restricted due to deficiencies in Egyptian laws, which do not have provisions against hate speech *per se*. Current

provisions therefore led to the restriction of freedom of speech, but fall short of restricting all forms of hate speech.

#### **4.2. Kenya: Responses to electoral violence: The problem of hate speech, *peaceocracy* and censorship (Alisha Patel)**

Kenya has experienced electoral violence, particularly of an inter-ethnic nature, since the introduction of multi-party politics in 1991. In a political environment characterised by ethnic clientelism rather than a programmatic, or policy-based agenda, as well as a winner-take-all view of political power and its economic spoils – ethnicity has been heavily politicised, and violence diffused and easily ignited (Mueller, 2008). Since the adoption of multi-party politics, the language of political discourse emanating from political incumbents and aspirants increasingly became one of insult, threat and accusations, and sought to dehumanise and denigrate opponents. For example, in the early 1990s, Moi and his ministers used the rhetoric of fear to oppose multi-partyism, and “some regime supporters themselves appeared to advocate violence against political dissidents, publicly urging citizens to cut off the fingers of multi-party advocates, and to arm themselves with *rungu* (knobbed sticks) and spears to crush opponents of one-party rule” (Somerville, 2011). The Kenyan National Human Rights Commission report, *Still Behaving Badly* (KNCHR, 2007), stated that the 2007 election had been characterised by the continued use of insults against opponents, threats of violence, and effective incitement to violence. It reported covert hate speech, defamatory and unsavoury language continued largely unabated, and Kenyans continued to condone and cheer hate speech and had become active agents of proliferation of hate campaigns against politicians and fellow Kenyans (KNCHR, 2007).

The problem of hate speech in Kenya, and in particular the tensions between freedom of speech and dangerous and/or offensive speech, must therefore be considered in the context of a democratic transition in a deeply divided society with a long history of violent elections. The 2007 and 2013 elections reflect upon the difficulties of navigating this complex nexus of peace, conflict, consensus, debate, the right to protest and free and fair elections to achieve democratic outcomes and ideals.

The contested result of the 2007 presidential election, which saw the re-election of Mwai Kibaki as President, culminated in an unprecedented scale and spread of violence that left more than 1,200 people dead and over 600,000 displaced. This atrocity was fuelled by hate speech acts by multiple actors and in various arenas; for example, through the media, particularly vernacular radio stations, as well as through SMS messages, and at rallies. In this setting, hate speech took the shape of inflammatory speech acts that aroused suspicion, fear and hatred between ethnic groups – and ultimately incited inter-communal violence in an already deeply divided and ethnically polarised society. For example, Kass FM, one such radio station, broadcast comments by politicians and commentators on the need for the “people of the milk” to “cut grass” and their complaints that the “mongoose” had come and “stolen” their “chicken”, in what amounted to a clear attack on particular ethnic groups. At the same time, the mainstream media were accused of demonstrating a high degree of bias towards certain political actors, as well as failing to prevent the dissemination of party propaganda and the violent rhetoric of many political leaders (Somerville 2011).

The 2010 Constitution of Kenya, drafted in the shadow of the 2007 elections and post-election violence, makes explicit reference to hate speech. While not explicitly defined, it involves “advocacy of hatred that constitutes ethnic incitement, vilification of others or incitement to cause harm”. Further, the Constitution outlines that any right to “freedom of expression” which uses such language, does not extend to hate speech (KLR, 2010). The National Cohesion and Integration Commission (NCIC) was created in 2009 as a body that would tame the use of hate speech, and promote national cohesion and integration. The mandate of the Commission is to facilitate and promote equality of opportunity, good relations, harmony and peaceful coexistence between persons of different ethnic and racial backgrounds in Kenya and to advise the government in this respect (KLR, 2010). The 2008 National Cohesion and Integration Act (NCIA) defines hate speech as:

A person who –

[a] uses threatening, abusive or insulting words or behaviour, or displays any written material; [b] publishes or distributes written material; [c] presents or directs the performance the public performance of a play; [d] distributes, shows or plays, a recording of visual images; or [e] provides, produces or directs a programme; which is threatening, abusive or insulting or involves the use of threatening, abusive or insulting words or behaviour commits an offence, if such person intends thereby to stir up ethnic hatred, or having regard to all the circumstances, ethnic hatred is likely to be stirred up. Ethnic hatred means hatred against a group of persons defined by reference to colour, race, nationality (including citizenship), or ethnic or national origins. (KLR, 2008)

The constitutional regulation of hate speech, particularly in a transitioning democracy raises questions as to the reach of government control over political language – specifically, how far it extends over public opinion and journalistic practice.

Laws on hate speech – particularly given the context in which they have been drafted – have the potential to lead to either active or implicit censorship of political discourse in the name of fostering “peace”. This is important when it interplays with meaningful and important criticism on government policy agenda. These are all vital components of a vibrant and meaningful democracy.

The 2013 elections and electoral campaign must therefore also be viewed through the lens of the 2007 elections, and the terrible legacy of politically motivated ethnic violence. Given the role of hate speech in fuelling electoral violence, responses to this must be taken into consideration. The Umati project (2013), was one such initiative that monitored the dissemination and propagation of hate speech in the most prevalent languages spoken in Kenya, particularly through social media outlets. The need to study how this is done in several languages highlights the constant evolution of hate speech, as well as the need to monitor, analyse and regulate speech acts across a variety of forums, particularly given the growing importance of social media.

Having been accused of being partially responsible for the 2007 post-election violence, the traditional print and broadcast media also played a different role in this context. Arguably there was a heavier degree of self-censorship during the 2013 election campaign, with Kenyan journalists valuing “peaceocracy”, aligning this with responsible journalism, and in the process failing to fully engage with and scrutinise sensitive electoral debates, and therefore neglect to play an important role in achieving democratic outcomes. News coverage engaged heavily with political figures urging the public to ensure a peaceful election, and crucially, to accept the election result and not protest, and carefully avoided any content with the potential to trigger conflict; while

editorials and advertisements also highlighted the need for peace given the memory of the 2007 elections. This echoed the government's argument that any public speech likely to instigate instability or threaten national unity was illegitimate, irrespective of whether this might impinge journalistic independence and/or undermine democratic values.

#### **4.3. Serbia: Hate speech and a legacy of the past (Davor Marko)**

When discussing hate speech in the Serbian media, the first thing that comes to people's minds is the period of the 1990s. During that time, the most influential media constituted the so-called "patriotic front" with directors and editors-in-chief loyal to Slobodan Milošević and his regime, enabling him to control over 90 per cent of the media space (Mazowiecki, 1995: 35). The Milošević regime misused mainstream media for the sake of propaganda, by employing explicit hate speech and portraying others as enemies (Kurspahić, 2003; Thompson, 1999). Using the media as a tool for manipulation over Serbian citizens, Milošević's regime of fear manipulated information, with the intention to re-direct the audience's attention from the real problems (economic and political), and focusing it elsewhere, such as on the fear of Islam, or from inner or external political enemies. Describing the role of propaganda in the Serbian regime, Podunavac refers on Tacitus' "corrupted discourse", known today as propaganda, and outlining the division between friend and enemy (minority vs. majority, Serbs and others, citizens and patriots, nationalists and cosmopolitans), as the basic reproductive principle of power (Podunavac, 2006: 261-286). Propaganda, used during the war(s) in the former Yugoslavia, was based on several principles: the purity of collective identities, the synergy of ethnicity, religions, and nationality, the notion of the "enemy", and the narrow interest of political elites. "Communities of fear

were created out of communities of interest”, where ethnic hatred and fear were the result and those feelings still remain today (Ignatieff, 1997: 38-54).

*Democratisation and media:* Democratisation in Serbia took place only after 2000, when Milošević’s regime was overthrown. The newly elected, pro-European government established a new legal framework for the media, under the influence and guidance of the European Union, The Council of Europe, and the Organization for Security and Co-operation in Europe. Within the first, usually labelled as modernisation, phase of media policy in Serbia, which lasted from 2000 to 2003, political actors established a consensus on EU accession and applied European standards in the sphere of the media; in terms of privatisation, self-regulation, establishment of public service, and using expertise from civil society and professional associations (Matić and Valić Nedeljković, 2014). This is the period when the most important laws, including those that regulate hate speech, were adopted.

The Serbian Constitution guarantees freedom of opinion and expression, as well as the freedom to seek, receive and impart information and ideas through speech, writing, art or other manner (Constitution of the Republic of Serbia, 2006: Article 49). The right to freedom of expression may be restricted by law only in certain cases, in order to protect the rights of others. The criminal charge of “provoking ethnic, racial and religiously based animosity and intolerance” carries a minimum six months prison term and a maximum of ten years (Republic of Serbia, 2014: Articles 174,176,177).

*Debates in 2000s - for and against the EU:* As a part of the Milošević legacy, Serbian society has been characterised with severe divisions even after the formal



process of democratisation had begun. Prominent public debates, along ideological and political lines during the 2000s were shaped within the paradigm of the “first” (backward and nationalistic) and “second” (citizen-oriented) Serbia. This paradigm derived from the 1990s when the entire society, as well as the media, was divided between those who supported the regime of Milošević and those who opposed it (Čolović and Mimica, 1992).

On the eve of the general elections in 2008, these lines of divisions were mirrored in mutually exclusive discourses on the future of Serbia. The harsh debate was forged by three dominant political streams, each representing unique, and mutually excluding, ideological orientations. The Democratic Party (DS) with its coalition partners (later including the “reformed” Socialistic Party of Serbia, whose founder and President was Slobodan Milošević), opted for the European path for Serbia which they considered as an ultimate political goal, which would bring prosperity and wealth to Serbian society. The DS through its affiliate media employed the language of fear, warning Serbian citizens that two other, conservative and anti-European, political blocs would lead Serbia to isolation, with no economic prosperity and direct investments.

Two other blocs, one conservative (led by The Democratic Party of Serbia, DSS) and the other ultra-nationalist (represented by The Serbian Radical Party, SRS) were not in favour of EU integration. While DSS and its allies claimed that Serbia had more important things to do, mainly to protect its territory in Kosovo and Metohija

(“Kosovo is heart of Serbia”) was the main message of this political option).<sup>3</sup> SRS blamed both political parties for causing economic, political and identity crisis during the eight years of their government. Both sides opted for cooperation with Russia. There were not many explicit examples of hate speech during the 2008 election campaign, but mutual accusations and sophisticated language was employed. These were messages that polarised the Serbian public and were framed within tensions and deeply rooted emotions and collective memory.<sup>4</sup>

*Current practices:* According to the International Research & Exchanges Board Media Sustainability Index for 2015, Serbia has an unsustainable mixed media system. This means that “the country minimally meets objectives, with segments of the legal system and government opposed to a free media system” (IREX, 2015: 116). Compared to previous years, there is a drastic drop in rankings in each of the categories, primarily due to economic and political downturns. Following the elections of March 2014, in which the leading Serbian Progressive Party won 158 out of 250 seats in the National Assembly (with 48.35 per cent of the popular support), the media landscape in Serbia was affected by constant political and economic problems. This situation in Serbia “... has had an adverse effect on the media, with an extension of control and censorship, including an increase in self-censorship, which pervades the media industry: critical reporting is deemed seditious” (IREX, 2015: 115). There has been no serious effort by the current regime to improve conditions for freedom of

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<sup>3</sup> Public speeches of the former DSS president Vojislav Koštunica are available on: <http://dss.rs/category/govori-i-analize/page/11/>

<sup>4</sup> As the 2008 elections demonstrated, the pro-EU bloc led by the Democratic Party gained 38.42 per cent of the votes, while anti-EU parties got 41 per cent - 29.46 per cent of the voters supported the Serbian Radical Party while 11.62 per cent of citizens voted for the Democratic Party of Serbia. See: Republic of Serbia - Republic Institute for Statistics. Parliamentary Elections 2008. [Online]. Available from: [http://webrzs.stat.gov.rs/WebSite/repository/documents/00/00/24/45/Parlamentarni\\_Izbori\\_2008.pdf](http://webrzs.stat.gov.rs/WebSite/repository/documents/00/00/24/45/Parlamentarni_Izbori_2008.pdf)

expression and access to information. In spite of the adoption of new laws, there was no adequate response to violations against the media. In the past year, the most popular political programmes on several television stations that fostered public debates were cancelled. Critical discussions are limited to social networks, while authorities have also reportedly favoured tabloids and newspapers that provide salacious content (IREX, 2015: 118).

Hate speech in the Serbian context has now moved to the online sphere, and traditional Serbian media (television, radio, press) no longer entertain that kind of public language, with the exception of a few tabloids that are closely tied to the incumbent regime and instructed on how to humiliate and blame political others. In the online sphere, hate speech takes the form of comments on social networks and websites. The State of Serbia is taking active measures against hate speech on the internet, primarily through a National Committee for the Fight Against Hate Speech, and by joining the *No Hate Campaign*, launched in 2013 by The Council of Europe. Through the activities of this national committee, more than 10,000 high school students have participated in workshops, as well as activities promoted by an online campaign called “No hate speech” (Council of Europe, 2015).

#### **4.4. South Africa: Reflections on hate speech (Wallace Chuma)**

The issue of racist (and other forms of) hate speech in South Africa today must be considered against the historical context of legislated racial segregation commonly known as Apartheid. Before the attainment of democracy in 1994, many of the country’s laws were overtly racist. The country’s transition to democracy was birthed by negotiations between the progressive liberation movements and the *ancient*

*regime*. As is the case with negotiated transitions, compromises are made in the process, with the effect that the new dispensation will consist of strong elements of both the new and the old, which often sit uneasily together.

With regard to hate speech, especially racist hate speech, the sensitive history of racism and the desire to create a post-Apartheid democratic “rainbow nation” characterised by among other things non-racialism, non-sexism, etc., the country’s founding fathers included a clause in the Constitution outlawing it, while at the same time being careful not to infringe freedom of expression. Section 16(1) of the Constitution makes very liberal and explicit provisions for freedom of expression, but this is subject to the limitation that such freedom must not extend to: a) propaganda for war; b) incitement to imminent violence and c) *advocacy of hatred that is based on race, ethnicity, gender or religion*, and that constitutes incitement to cause harm.

In addition to the Constitution, the regulation of hate speech is also enforced through laws such as the Film and Publications Act and the Promotion of Equality and Prevention of Unfair Discrimination Act.<sup>5</sup> Section 10 of the latter, for example, prohibits any person from publishing, propagating, advocating or communicating words directed against another person based, amongst others things, on that other person’s race, sex, gender, sexual orientation or foreign nationality; or if those words could reasonably be construed to demonstrate a clear intention to be hurtful, be harmful or to incite harm; [or] promote or propagate hatred.

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<sup>5</sup> See, for example: Section 16 (d) of Films and Publications Amendment Act, 2009. [Online]. Available from: [http://www.gov.za/sites/www.gov.za/files/a3\\_2009.pdf](http://www.gov.za/sites/www.gov.za/files/a3_2009.pdf); and the Preamble to the Promotion of Equality and Prevention of Unfair Discrimination Act 4 of 2000. [Online]. Available from: <http://www.justice.gov.za/legislation/acts/2000-004.pdf>

Conceptually, the issue of defining and regulating hate speech in the context of a transitioning democracy with a history of repression presents an existential conundrum where on the one hand freedoms of expression so inalienable to democracy must be respected, and on the other forms of expression which bring back memories of yesteryear or lead to marginalisation or physical harm to others, need to be censored one way or the other. Hate speech may deter political and social participation by its victims, while banning it may likewise deter participation by some, hence the conundrum.

Neisser (1994: 108) suggests two approaches to hate speech: the ethical or intrinsic perspective which condemns unjustified harm to others, “whether or not this harm has pragmatic consequences for the life of the community”, or the instrumental, consequentialist or utilitarian perspective, which focuses on the societal consequences without making *a priori* moral judgements. Each of these approaches has its pros and cons. South Africa offers some interesting recent instances of hate speech, which reflect the complexities of drawing lines around hate speech.

*Racist hate speech:* One fairly recent case which attracted emotive public debate about hate speech, involved the singing of a struggle song, “Shoot the boer, shoot the farmer” by former African National Congress (ANC) Youth League Leader, Julius Malema (De Vos, 2011). The song was a rallying song during the anti-Apartheid years. However, in the post-Apartheid era, was there a place for these kinds of songs? This was the question. The matter was brought to court against Malema by the pro-Afrikaner activist group Afriforum, and the Judge ruled that the song constituted hate speech and therefore should not be sung. This ruling attracted criticism from the ANC

and its members continued to defy the ban, in some cases modifying the tunes. Ironically, Malema became a sort of celebrity out of this. One of the central questions arising out of this case is whether having strict hate speech codes may be detrimental to the historically oppressed, while mustering sympathy for bigots, racial or otherwise. In South Africa, for example, the country's poor often invoked anti-Apartheid narratives (including songs, *toyi-toyi* dancing, etc.) during the so-called "service delivery protests", to highlight the continuation of "Apartheid-type" restrictions to basic services in the context of neoliberal economics. Would branding some of these songs as forms of hate speech, where anti-Apartheid songs could not conceivably ignore the issue of race anyway, not have the effect of marginalizing the formerly oppressed who still live below the poverty line and have not yet experienced the material benefits of democracy two decades later? The other, related question would be whether strictly legislating against hate speech in this case would curtail the possibility of inter-group dialogue necessary to reduce discrimination.

*Hate speech and xenophobia:* The xenophobic violence of 2008 and 2015 in South Africa attracted, among other things, debate about whether certain forms of expression had either ignited or exacerbated the violent acts against Black non-South Africans living in South Africa. In 2008, for example, the tabloid *Daily Sun* was brought before the Press Ombudsman for consistently reporting on foreigners as "aliens". The complainants, who included the Media Monitoring Project and the Consortium for Refugees and Migrants in South Africa argued that the continuous deployment of the "alien" term had the effect of further generating hatred towards foreign nationals. Although the Press Ombudsman ruled in favour of the newspaper, the case drew widespread public attention (and in some cases condemnation), and interestingly in

its coverage of the xenophobic attacks in 2015, the same paper was more cautious and avoided the “alien” label.

The other, more recent case, relates to the utterances of the Zulu King Goodwill Zwelithini in March 2015. Addressing his subjects, the King said that foreigners (non-South African Blacks), were messing the streets and must go back to their countries of origin. A few days after his speech, xenophobic attacks began in KwaZulu Natal, his province, before spreading to the region of Gauteng, and critics have argued that these attacks were at least in part fuelled by the Zulu king’s utterances. The King was taken to the Human Rights Commission, and the matter is currently being investigated. Constitutional law expert Pierre de Vos (2015) has argued that there are sufficient grounds to convict King Goodwill Zwelithini on contravention of the Promotion of Equality and Prevention of Unfair Discrimination Act. The King has, of course, denied inciting any violence, and argued that he was expressing an opinion. What the South African case studies above suggest, is that in transitioning democracies emerging from racial repression, regulating hate speech presents the conundrum of promoting and facilitating freedom of expression while at the same time ensuring that particular forms of expression do not transcend certain sensitive borders with the possible outcome of undermining the very foundations of the democracy.

## **7. Conclusion**

This key concept paper has outlined the idea of hate speech, its relationship to freedom of speech, as well as the legislation that elucidates the concept at the national and international level. The concept of hate speech is central to debates over the role

of the media in fostering democratic processes and outcomes, and is unique to the specific media landscape, journalistic practices of a country, and the degree of government control of the media. Through an exploration of events and debates in the four country case studies of the MeCoDEM project: Egypt, Kenya, Serbia and South Africa, this paper has highlighted that considerations of the context in which debates over hate speech occur are extremely important, particularly in those countries that are transitioning to democracy and with a history of conflict. A comparative approach therefore invites further discussion on a number of themes to better understand the nature, as well as transmission and impact of hate speech.

Firstly, all four case studies highlight that the issue of hate speech becomes more salient and prevalent during periods of political and/or economic upheaval. In the case of Egypt, this was during the uprisings and continued impact of the Arab Spring on political transitions and government responses. Hate speech has taken on xenophobic, political, religious and cultural forms. In Kenya, elections proved deadly given histories of ethnic grievances and conflict, as well as a winner-takes-all system of politics. In Serbia and South Africa, we are also able to see the problem of hate speech becomes particularly contentious during periods of economic downturn, contributing to xenophobic speech. The precarious economic and political situation of transitional societies exacerbates the risks of practices such as hate speech to be allowed by parties motivated by the desire for political power.

Secondly, the case studies highlight the relationship between hate speech and the media. In most – if not all – of these expositions, the media is far from being an independent facilitator of democratic outcomes, performing a challenging and



educational role for the public. Instead, government control of mainstream media channels has led to high levels of censorship as well as hostility towards certain political or socio-economic groups – crystallising the issue of journalistic best practice. For instance, the tight grip of Milošević over the Serbian media led to propaganda that was centred upon the fear of Islam, and internal or external political enemies. Government control of the media contributes to an environment where hate speech continues unfettered and reflects the government view of certain minority groups. In this way, governments are able to set the terms of the political debate, constraining various opinions, which are important for the realisation of a meaningful and vibrant democracy. The media can often serve as the direct transmitter of dangerous speech acts, which have uniformly led to violent outcomes. This most notably occurred in Kenya during the 2007 elections and post-election violence, where journalists and radio stations presented overt, albeit coded, messages to attack and kill certain ethnic groups following the result.

Hate speech is also linked to memory. Crucially the historical context in which the hate speech act occurs has lessons for the present. In South Africa, the pernicious and widespread effects of Apartheid not only shape legislation on hate speech today, but also have led to grave socio-economic imbalances. In Serbia, the impact of the Milošević regime has led to severe divisions between groups, and therefore widespread impact on democratisation processes as well as the forms that hate speech takes. Appreciation of the historical context in which instances of hate speech and alleged hate speech occur, as well as the reactions to it cannot be underestimated. This paper has highlighted that context is integral to fully understanding hate speech, as this outlines the specific relationships between ethnicity, religious affiliation, identity

and political environments; and how conflicts regarding these arise in cultures and societies that are already burdened by internal divergent factors.

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