SOUTHEAST

Hate Speech in Southeast Asia
New Forms, Old Rules

2020

Asia Centre

Contents

Preface

'Hate Speech in Southeast Asia: New Forms, Old Rules' examines the current trends in hate speech in the region. The report provides the historical context, outlines new forms of hate speech and maps the legal and non-legal measures in the region. Also, it highlights the obligations of governments in ASEAN under the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), the role of technology companies and lists out a set of recommendations.

Over recent years, Southeast Asia has witnessed a surge of hate speech fueled by disinformation, especially on social media platforms operated by big technology firms. Countries that are relatively new to the virality of online content find themselves inadequately equipped to control or manage their media ecosystems. Examples, which have surfaced in the past few years across the region, highlight how online hate speech, reinforced by misinformation, go beyond hurtful content to potentially resulting in physical violence and socio-religious disharmony. This has led both governments and technological firms to pay attention to hate speech issues and to assess what their responsibilities are.

Drawing on recent scholarly research, media reports, official documents and speeches, this report highlights the historical background of hate speech in the region and identifies four main forms of hate speech being promulgated: Hate speech related to ethnic and religious issues, especially in multicultural societies, hate speech against foreign nationals, migrant workers and refugees, hate speech directed at those holding different political views; and against sexual minorities. The report presents its findings in the context of a spike in hate speech arising from the COVID-19 pandemic.

Apart from the rigorous analysis, the value of the report lies in the recommendations to stakeholders on how better to respond to hate speech. Among them the primary recommendation that there should be official recognition of newer forms of hate speech, and a set of secondary recommendations that encourage governments to formulate better laws and policies and encourage practices that uphold international human rights obligations and standards. Technology firms are also urged to take measures to stem the tide of hate speech.

Since 2019, Thai Media Fund has been pleased to cooperate with Asia Centre to promote digital and media literacy and raise awareness among stakeholders on the malign influences of disinformation. In 2020, we are pleased to support the Asia Centre in its work to highlight the issue of hate speech through a report, two webinars and an international conference in Bangkok, Thailand. We look forward to working with Asia Centre to promote digital and media literacy in Thailand and in the region.

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Thai Media Fund

Acknowledgements

List of Abbreviations

ASEAN   Association of Southeast Asian Nations

BRI   Belt and Road Initiative

CEDAW   Convention on the Elimination of All Forms of Discrimination Against Women

ICCPR   International Covenant on Civil and Political Rights

ICERD   International Convention on the Elimination of All Forms of Racial Discrimination

INGO   International Non-Governmental organisation

IRCC   Inter-Racial and Religious Confidence Circles

LGBTI   Lesbian, Gay, Bisexual, Transgender, Intersex

NHRI   National Human Rights Institution

OECD   Organisation for Economic Co-operation and Development

UN   United Nations

UNICEF   United Nations Children's Fund

UPR   Universal Periodic Review

Executive Summary

This report explains present day hate speech challenges by referring to the historical antecedents in Southeast Asia when traditional communities were displaced through mass migration to the region. This led to the early use of law and social segregation policies as a means to manage diverse communities.

In Southeast Asia, there are various types of hate speech, but there are 4 main forms. These are hate speech against 1) ethnic and religious groups; 2) foreign nationals, migrant workers and refugees; 3) political ideology and values; and 4) sexual minorities.

States in the region have introduced a mixture of legal and non-legal measures to address the issues related to hate speech. In terms of legal provisions, Malaysia, Myanmar, Philippines and Singapore have either revised or drafted dedicated bills aimed at securing social, racial or religious harmony. Other governments in the region use a range of existing laws to criminalize hate speech acts or to target such acts. Policies have been introduced to mitigate conditions that might give rise to hate speech. These include ethnic and racial policies, guidelines on religious practices and integration activities which are being undertaken by governments and community-based organizations to promote inclusion. Technology firms are also embroiled in global conversations about their role in fostering hate speech and inability thus far to tackle the problem effectively. Calls are being made upon Governments to set clear guidelines for the private sector technology companies on what qualifies as hate speech. In turn, governments are also cautioned against engaging in hate speech towards their critics that are being amplified online.

As a mark of international commitment, all ASEAN member states, except Brunei, Malaysia and Myanmar, have signed the ICERD. This treaty commits signatories to the elimination of racial discrimination and the promotion of understanding among all races. Nevertheless, there are certain discrepancies between domestic law and the treaty's obligations.

This report recommends a range of measures to alleviate these concerns. Recognising that presently measures against hate speech are framed in racial and religious terms, a primary recommendation is that there should be official recognition of newer forms of hate speech. These would include hate speech against migrants and refugees, those who espouse different political values and sexual minorities. Hence, laws and policies should be formulated to cover hate speech against these communities as well, while carefully balancing them with the fundamental right to freedom of expression.

A set of secondary recommendations would cover policies and practices related to government agencies and mechanisms, ethnic and racial issues, religious guidelines, language, LGBTI, integration, compliance to international treaty obligations and the responsibilities of the technology companies. Together they comprise a set of measures to promote tolerance and foster understanding of diversity and adherence to the obligations of ICERD and other international instruments. Policies and practices should not result in structural discrimination, segregation or rights infringement.

The study elaborates the above areas highlighted in the Executive Summary.

1. Introduction

There is no international definition of what constitutes hate speech. Even the encapsulation of what is hateful is problematic and controversial. Hate speech may be seen from the freedom of expression continuum - factual statements, campaign promises and opinions to politically-charged disinformation, libels and defamations.

On the origins of "hate speech" it has been noted that legal scholars have coined the term because it "provides a rough but nevertheless serviceable term to describe phenomena that have been the subject of legal sanctions, of one kind or another, since the Roman laws on group defamation" (Brown, 2017). Contemporary legal definitions of hate speech may be traced back, in part, to the United States (US), where prejudice, extreme discrimination and violence against minorities were prevalent since its independence. While the US Supreme Court has consistently upheld free speech of all kinds, ideas of "hate speech" and "hate crimes" were invented so that they could capture harm beyond the mere violent intent of individuals and include psychological harm to individuals and vulnerable groups (Holmes, 2018). This in and of itself restricts unfettered free expression. However, in today's world the virality of hate speech on social media and its deleterious effect on freedom of expression is a phenomenon that governments all over the world are tackling with difficulty and often in contradictory ways.

The United Nations' Strategy and Plan of Action on Hate Speech (United Nations, 2019) defines hate speech as "any kind of communication in speech, writing or behaviour, that attacks or uses pejorative or discriminatory language with reference to a person or a group on the basis of who they are, in other words, based on their religion, ethnicity, nationality, race, colour, descent, gender or other identity factor". Given the definitional challenge, international law instead shifts focus away from prohibiting hate speech to prohibiting the incitement to discrimination, hostility and violence. Incitement is dangerous in the sense that it can trigger 'action' and transform hate speech to hate crime. Hate speech that does not reach the point of incitement is not mandatory for the states to take action. Still, this does not make any hate speech less harmful, when it is not prohibited as it can divide communities.

This approach is based on the premise that in countries that have multi-ethnic and multi- religious backgrounds, hate speech has to be deterred to preserve racial and religious harmony. Most Southeast Asian countries already have legislations in place that criminalize incitement to discrimination, hostility and violence. Such legislation can be found in the countries' criminal codes or national security-related legislation. Presently, much of the attention given to the management of hate in Southeast Asia comes from the perspective of race and religion due to the region's historical and colonial experiences.

However, there have been developments on the identity front in Southeast Asia.

Globalisation has brought with it more categories of self-identification along political ideology and values, gender and sexuality, nationalities and citizenship and others spurred by health, natural and security emergencies. There is also a rise in mobile social media usage and the virality of content dissemination that adds to the complexity. Hence, governments in the region feel the urgent need to revise existing legal measures, come up with new ones or use existing laws to take action against hate speech disseminators. Governments are also resorting to policy measures to manage ethnic relations, guide religious practices and undertake community integration activities. Seven out ten ASEAN member states, except Brunei, Malaysia and Myanmar, have also signed the ICERD to signal their commitment to eliminate racial discrimination and promote ethnic diversity. However, the targets of these measures are still very much focused on the traditional racial and religious identities. Efforts need to be taken to also address hate arising from other new and emerging categories of self-identification as well as address discrepancies between domestic law and the treaty's obligations.

This study maps the hate speech challenge in Southeast Asia and the strategies to address it. The study begins with background to its evolution in Southeast Asia and efforts to manage diversity. Next the study examines the main forms of hate speech, the relevance of the ICERD and outlines the legal measures and non-legal measures. It then outlines briefly the role of technology companies in addressing this problem. It concludes by offering a primary recommendation and a set of secondary recommendations to manage contemporary hate speech challenges.

2. Background

Historically, Southeast Asia has long experienced diversity along ethnic and religious lines. European colonialism led to the establishment of new borders that displaced traditional communities and heralded mass labour migration from China and India which collectively introduced new social dynamics in the region. Singapore became Chinese dominated and the only country in the region with a non-indigenous core. This led to the early attempts to use legal means and social segregation to manage diverse communities. Colonial governments in the region introduced the well-known 'Sedition Act', originally to protect the Crown and government (Mohan, 2016). European colonialism was expelled by Japanese occupation during World War II, though the new colonial master continued with ethnic policies, which led to the empowering of the indigenous groups who would lead the anti- colonial struggle. These laws and 'ethnicization' of society were carried over into post- colonial Southeast Asia and are used today to quell any expression that would incur hatred, ill-feeling, and contempt between different races or classes of the population. Segregation also led to the development of distinctive community neighbourhoods in many countries around the region.

In the anti-colonial struggle, the region's nationalists appealed to and mobilised ethnic and religious identities in the push to expel the colonial masters. In the process new "national" identities were forged, such as "Indonesian", "Singaporean", "Malaysian", to name a few. In each case the new identity, organised around an indigenous core, was sometimes at the expense of some individual communities. New post-independence governments embarked on nation-building projects which saw governments introducing homogenising strategies to "synthesise" ethnic minorities into a nation in the name of building a national identity. After the Second World War, the Thai cultural mandates, or state customs, were proclaimed forcing ethnic minorities to use Thai as official, national language, and to avoid dressing according to their ethno-religious norms. The aim was to create a unified, civilized Thai culture (Ahmad 2018). Post-WWII in Indonesia, which comprises over 200 language groups, the people were exhorted to speak the Java-centric "national" language, Bahasa Indonesia. In the Philippines, the post-colonial period saw the implementation of 'Filipinization of education' by Ferdinand Marcos, which forced all Chinese schools to convert to Filipino schools with their Chinese-name taken down and Chinese curriculum was reduced to cover only language and literature.

To restore the demographic displacements caused by colonialism immigrant labour importation, dominant indigenous communities introduced policies to restore prime position in society. Malaysia, for example, following ethnic clashes in the late 1960s, adopted an affirmative action New Economic Policy in the early 1970s, with the acquiescence of the Chinese community, that sought to create a new Malay middle class to balance Chinese wealth and influence. Since then the "bumiputera" (Muslim Malays), sons of the soil, have enjoyed a privileged status, which has led to resentment among Chinese and

Indians today (Azman, 2005). In Myanmar, following the assassination of General Aung San in 1947, a pan-ethnic nation-building scheme - the 1947 Panglong Conference to create a unified state - was halted. After the military takeover in 1962, General Ne Win promoted the idea of a unitary state with Bamar identity as the founding pillar and began the 'Burmanization' policy that suppressed non-Bamar identities. Non-Bamar ethnic groups were forced to take in a myriad of Bamar cultural traditions and practices (Clarke, Myint, Siwa 2019). Up until this day, socioeconomic activities are dominated by the Bamars who live in the central plain while the ethnic minorities continue to take up arms in search for equality.

In terms of security, it was mostly affected by internal political and social troubles between ethnic groups, communist insurgency (largely identified with the ethnic Chinese), and separatist groups, such as the Muslim Moro community in the Philippines and the Muslim people of Aceh. Chinese and Indian diaspora had to co-exist or cooperate in the new nation-states and to adopt the new national identities. Indigenous suspicion of the economically dominant Chinese in particular, coupled with the anti-Communist Cold War struggle, led to their persecution through discriminatory laws, policies and practice (Malaysia) and even genocide (Indonesia). This troubled background would lead States to view ethnic strife and religious manifestations in "security" terms, which led to laws across the region such as internal security acts (Malaysia, Thailand, Singapore) and sedition acts (Malaysia, Singapore) that were used to pursue perceived threats to the new communities (Pawakapan, 2017). Social and religious harmony became vital to national security.

In terms of laws, religious harmony provisions, notably blasphemy laws, were included in Constitutions and legislations: Brunei's Shaira Code, the Indonesia's Law No. 1/PNPS/1965 on the Prevention of Abuse and/or Defamation of Religion, Myanmar's Penal Code (Sections 295A and 298), Philippines Penal Code (Article 133), Singapore's Penal Code, Maintenance of Religious Harmony Act (Cap 167A) and Sedition Act and Thailand's Sangha Act of 1962. ASEAN, created in 1967, reinforced this security-based order through an agreement to stop interfering in each other's affairs (Law Library of Congress, 2017). A pliant media across the region, mostly state controlled, has supported this security order. In addition, colonial era laws criminalizing homosexuality, notably the British Empire's Section 377 laws across the region, persisted well after the end of colonialism in India (once considered as part of Southeast Asia), Malaysia and Singapore. Similar attitudes persisted in other parts of the region.

Regulating communal relations has become more complex today. As economic development and prosperity increased in some countries, the arrival of foreign labour occasioned resentment as they were, and still are, viewed as "intruders" in newly built nations. Economic development in Singapore, Malaysia, Thailand brought increased demand for foreign labour, notably from Bangladesh, India and from China, but these dynamic also created tensions between the migrant workers and the locals who perceived them as low-

skilled workers fitting only 'dirty, dangerous and difficult' (3Ds) work and hosts of non-endemic diseases (Chalamwong, Raphaella, Khanittha, 2010). Responsive measures range from limits on freedom of movement, requiring foreign workers to remain with a single employer, to forceful crackdowns which led to mass deportations (OECD, 2009). Moreover, in contrast to the early 1990s, when most Southeast Asian labour went outside the region, today the majority go to Malaysia (Indonesians), Singapore (Filipinos) and Thailand (Burmese, Cambodians, Laotians and increasingly Filipinos). Despite this new trend, the public attitude of host countries towards migrant workers remains negative if not hostile (International Labour Organization, 2019).

Refugees also comprise an important part of the diverse ethnic mix of the countries. Post-colonial civil and international conflicts in the region led to large refugee movements, though many of its members have not ratified the 1951 Refugee Convention, including Brunei, Indonesia, Laos, Malaysia, Singapore, Thailand and Vietnam. Whereas Vietnamese boat people and Karen minority groups from Burma once dominated the headlines, today the Muslim Rohingya minority fleeing ethnic cleansing has occupied regional and international attention. They have been the victims of serious disinformation and hate speech, which have led to their persecution. Further stigmatization of the Rohingya and refugees in general results from their being processed under immigration laws resulting in the false perception that they are "illegal aliens".

The presence of mainland Chinese is particularly noteworthy in the context of the rise of China as a global power. Beijing's One Belt, One Road Initiative (or BRI) has led to greater attraction for Chinese capital and labour across the entire region. However, this also creates tensions between Chinese economic migrants and the local communities. Anti-Chinese sentiment has arisen recently for a number of reasons: claims that the influx of Chinese nationals has resulted in a rise in property prices, dominance of Chinese businesses in national economies and increased criminal activities (Hun, 2018).

In Southeast Asia, concern has arisen over Chinese, and East Asians being potential carriers of the COVID-19 disease, given past associations and experiences with the global SARS (Severe Acute Respiratory Syndrome) and H5N1 ('Bird Flu') health crises that both unfurled out of East Asia. Indonesia saw online posts on social media encouraging the population to stay away from places where Chinese Indonesians live and work, and the Ministry of Foreign Affairs of Japan reported that anti-Japanese discrimination and harassment is on the rise in the country with taxis, hotels, restaurants refusing to take Japanese customers. In Philippines, the Federation of Filipino Chinese Chambers of Commerce and Industry and the Trade Union of Congress issued statements against 'anti-China stereotypes and xenophobic attacks' related to the pandemic and the treatment of Chinese students at Adamson University, where they were required to quarantine themselves and avoid social contacts.

Furthermore, there are petitions from local communities to ban Chinese travellers from entering the countries, or hotels and restaurants express their unwillingness to accept Chinese customers in Malaysia, Thailand, and Vietnam. COVID-19 were also directed at other groups. In Malaysia, rumours about the coronavirus among Rohingya refugees prompted refusal to let a boatful of refugees land on Malaysian soil (Bangkok Post, 2020). The UN Special Rapporteur on minority issues and vulnerable groups sounded alarm in March 2020, at the rise in xenophobia against Chinese and other Asians (Fernand, 2020).

From this brief historical perspective on managing ethnic diversity in the region one can appreciate the long history of inter-communal suspicion that has bred hate speech, pitting one community against another. In the contemporary social media environment hate speech has increased exponentially. Hate speech has also expanded in form, as seen next.

3. Forms of Hate Speech

In contemporary Southeast Asia there are at least four forms of hate speech.

First, there is hate speech related to ethnic and religious issues which are often [more] pronounced in multi-ethnic, multi-religious societies. Cases in point in Southeast Asia are the decades long discriminatory hate campaigns targeting the Muslim community in Myanmar, managing religious extremism and intolerance against moderate Muslims, Christians and atheists in Indonesia, Buddhist Islamophobia against Muslims in Southern Thailand, singling out Muslims in the Philippines as potential terrorist threats and in Malaysia a dominant Malay/Muslim hegemony that divides its people along religious differences, vernacular education and bumiputra policies (preferential policies for Malays and indigenous people).

Second, there is hate speech against foreign nationals, migrant workers, and refugees. In Southeast Asia there is strong anti-Chinese sentiment in countries where China is seen to be aggressively expanding its influence via Belt Road Initiative investments such as Indonesia, Malaysia and the Philippines. In May 2019, after several people perished during the violent protest in Jakarta, messages circulated via social media suggesting the loss occurred because of police from China; the photo of masked police officers accompanied the claim with caption: China has sent security forces to Indonesia disguised as foreign workers (Chew, 2019). Sinophobia has surfaced in Cambodia as Chinese tourists and businesses activities increase exponentially. The concerns range from security risks, economic concerns given the dominance of China on the economy, inflated land prices and land grabs allegedly linked to Chinese groups. In labour-receiving countries or countries with lax immigration policies/ regulations there is also negative sentiment against foreign workers.

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4 FORMS OF HATE SPEECH

Race and Religion	Foreign Nationals, Migrant Workers, and Refugees
Political Ideology and Values	Sexual Minorities

For instance, in Malaysia, 2016, the agreement between Malaysia and Bangladesh to import more foreign workers caused an uproar and revealed deep xenophobia in Malaysia. Bangladeshi migrant workers are branded as perpetrators of crimes, especially sexual assault and terrorism, among other things, even though local authorities disproved the claim. The UNHCR has noted toxic narratives about refugees globally (Grandi, 2019). Thailand's and Malaysia's processing of refugees immigration laws, automatically renders them "illegal aliens" and targets them for discrimination and detention. In late 2017, a local monk in Thailand was forced to leave monkhood after he spread misinformation and hate speech against Rohingya refugees accusing them of undermining the country via Islamization, particularly in the Muslim-majority areas in the southern Thailand, urging the Thai Buddhists to cleanse them. In April 2020, as it was reported that Malaysia's authorities turned away a boat carrying 200 Rohingya refugees, hate speech and racist remarks against the Rohingyas filled in Malaysia's social media platforms, after a dubious report claiming them demanding citizenship (Augustin, 2020).

The third form of hate speech is based on political ideology and values where hate speech is weaponized to incite violence against individuals who challenge the political incumbents and are working towards regime change. Often it is the activists and members of opposition parties in authoritarian regimes that bear the brunt of this type of hate speech. In the Philippines, opposition senators such as Sen. Leila de Lima and Sen. Senator Antonio Trillanes IV, who dissent with the government's war on drugs and extrajudicial killings, have been subject to hate speech both online and offline. In Singapore, opposition members, political dissents, activists and government critics have been the targets of online hate speech by pro-ruling party trolls, if their activism or criticism deviate from government narratives. Meanwhile, Thailand has exhibited dramatic levels of hate speech by various political factions, including conservative politicians attacking more frivolously liberal-minded politicians, while pejorative terms such as "water buffaloes," "cockroaches," "serfs," "dogs" have been used by supporters of each political camps to dehumanize and insult one another; some of these incidents extend to incitement to violence. It is noteworthy that this type of hate speech based on political ideology extends to international organizations, INGOs and members of such organizations as well. Often, they are portrayed as 'foreign influence' interfering in a country's domestic affairs. A case in point is the disinformation and hate speech that was directed against the United Nations in Myanmar for their alleged bias towards the Rohingya community, victims of ethnic cleansing by Naypyidaw. Similarly, in Malaysia, the issue of ratifying the ICERD presented a golden opportunity for the conservative force to wrong-foot the new government, especially the Malaysian Islamic Party, who framed the ICERD, and by extension, the United Nations, as operating on "Zionist agenda".

Last but not least, there are growing incidents of hate speech aimed at sexual minorities. This is noticeable during election season when sexual minorities are used as political targets. In Indonesia, during the period leading to the presidential election in 2019, the main

opposition candidate, former General Prabowo Subianto, employed anti-LGBTI rhetoric as populist weapon to misinform the public and attacked the incumbent President Joko Widodo, making dubious claim such as to the latter's support for same-sex marriage. In November 2018, an anti-LGBTI mass rally occurred in West Sumatra with local authorities took on demands of protesters prominsing them to criminalize LGBTI behaviour. In Malaysia, after the Pakatan Harapan coalition surprisingly ousted the long-established Barisan Nasional in the general election in May 2018, anti-LGBTI rhetoric has been used to attack and discredit the new government. In July 2018, Numan Afifi, an interim press officer to Malaysia's Youth and Sports Minister Syed Saddiq Abdul Rahman, stepped down after facing public backlash and anti-LGBTI rhetoric because of his past LGBTI activism. While not exhaustive and they can overlap, the above four categories broadly signify the forms of hate speech in Southeast Asia.

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4. Legal Measures

A range of legal measures have been used to address hate speech. They include dedicated harmony bills and commissions, existing laws and recent COVID-19 temporary laws. These three sets together form the legal regime across the region to counter hate speech. As states in the region inherited the multi-ethnic and multi-religious societies from the colonial era, tensions arising from race and religion remain the main source of concern. Hence, governments enact these legislations to manage race and religious relations ostensibly to prevent the politicization of race and religion, interference with nation-building projects or upset dominance of the majority race. From a review in this section, we will see that these laws do not adequately recognize or capture the new forms of hate speech that are emerging that are equally detrimental to social harmony.

Harmony Bills and Commissions

Over the last few years, countries in Southeast Asia such as Malaysia, Myanmar, the Philippines and Singapore have introduced dedicated bills aimed at securing social, racial or religious harmony. The rationale for these specific set of laws range from the need to take into account the inappropriateness of current laws, fulfilling the obligations of signing up to ICERD and responding to the spread of hate speech over social media. Originally, the Sedition Act (1948) has been used to criminalize hate speech in Malaysia. However, due to a tendency to use this Act to persecute honest criticism, amendment and repeal of the law has been consistently suggested. The opportunity came in 2018 when the Pakatan Harapan coalition won the general election, paving a way for reform. Three bills—the National Harmony and Reconciliation Commission Bill, the Anti-Discrimination Act and

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"HARMONY" LAWS

MALAYSIA
Harmony Commission
Proposed 2020

MYANMAR
The Protection Against Hate Speech Bill
Drafted 2016

PHILIPPINES
House Bill 3672 'Hate Speech Act'
Filed 2019

SINGAPORE
Maintenance of Religious Harmony Bill(MHRA)
Revised 2019

the Religious and Racial Hatred Act—were proposed to better manage racial tension and hate speech, and strengthen social and religious harmony. In early 2020, the government decided that the National Harmony and Reconciliation Commission Bill is preferred over the other two legislations due to possible overlaps and overregulation, and would be introduced in the second half of 2020 (Razak, 2020). If successfully established, it will address racial and religious complaints that fall short of defamation and criminal crime.

In the Philippines, citing the examples of Christchurch mosque shootings and El Paso mass shooting in 2019 as triggered by online hate speech, Representatives Amihilda Sangcopan and Mujiv Hataman filed House Bill 3672 'Hate Speech Act' that would define hate speech as "expressions that discriminate against and incite or foment violence" and seek to punish the wrongdoers with the maximum of 6-year imprisonment. In early 2019, in the similar House Bill 6963 Rep. Amihilda Sangcopan noted Philippines' failures to fulfil its obligations under the International Convention on the Elimination of all forms of Racial Discrimination (ICERD) and International Covenant on Civil and Political Rights (ICCPR) to provide legal remedies regarding hate speech.

Since 2016, Myanmar has been drafting the Protection against Hate Speech Bill in order to manage religious hate speech (Bugher, 2020). According to the Ministry of Culture and Religious Affairs, the purpose of the law is to prevent the spread of hate speech and incitement of violence based on race and religion both in social media platforms and traditional ones such as radio, newspaper and television. More specifically, it seeks to function as a deterrence to demagogues or extreme religious groups, who could potentially use hate speech to stir up disharmony and ill-will between religious groups resulting in uncontrollable mob violence. As of 2020, the current draft is with the Ministry of Home Affairs, which is increasing its efforts to push the law for an early adoption by the parliament (Ministry of Foreign Affairs of the Republic of the Union of Myanmar, 2020). In late April 2020, following the stigmatization hate speech and false accusation of certain religious groups spreading COVID-19 virus on social media, Myanmar's president signed the Anti- Hate Speech Orders (Directive No. 3/2020) requiring state officials to monitor and report online hate speech to the central government and to denounce and prevent all forms of hate speech.

In 2019, Singapore updated its Maintenance of Religious Harmony Bill (MHRA) passed in 1990, to address derogatory remarks about religions and prevent religion from being exploited for political or subversive purposes (Ho, 2019). The Minister of both Law and Home Affairs gave a background on the amendment as to accommodate the challenge borne out of social media where it is easier for a person to cause offence and ill-will towards members of different faiths by spreading falsehoods. Essentially the revision will seek to 1) extend the boundary of Restraining Order (RO) requiring the person who disseminates inflammatory online content to take down the post; and 2) limit the influence of foreign actors on local religious organization by subjecting organizations under the RO and

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imposing listed leadership requirements on domestic religious organizations to keep foreign donations in check.

Use of Existing Laws

In most Southeast Asia countries, a range of existing laws are being used to address hate speech. These include penal codes, electronic information laws, cyber laws and telecommunications laws.

In Indonesia, hate speech is usually dealt with by Article 156(a) of the Penal Code (1969), which is infamously known as blasphemy law, and the Electronic Information and Transactions (ITE) Law. Initially, the Blasphemy section was conceived to punish deviation from the six-officially recognized religions in the country and defamation against these religions. The ITE Law was first introduced in 2008 to regulate the use of information technology and electronic transaction, but underwent an amendment in 2016 to be better equipped in response to disinformation and hate speech, with the government's rights to terminate access being added, and information that contains an incitement to violence was now a punishable offence.

In Myanmar, while the Protection Against Hate Speech Bill is still at a draft stage, Section 295(a) of Penal Code and Section 66(d) of the Telecommunications Law (2013) continue to be used to combat hate speech, particularly the discourses that disturb religious feelings, or beliefs, and those that would cause undue influence. Myanmar also uses internet shutdowns to manage ethnic conflicts in the country. Both Rakhine and Chin states have experienced internet shutdowns from time to time starting in 2019 to de-escalate conflict. However, such shutdowns deprive local communities access to information and connectivity to the outside world rendering humanitarian assistance much more difficult (Robertson, 2020). Under the COVID-19 health emergency, this poses further risks of catching and spreading the virus (Long, 2020). In Thailand, the main legal instrument to deal with hate speech is the Computer Crime Act (CCA), and to a lesser extent, Section 116 (sedition) of the Criminal Code. In general, the main focal agencies in charge are the Ministry of Digital Economy and the Technological Crime Suppression Department (TCSD), Royal Thai Police. In 2016, the CCA was amended to accommodate new challenges emerging from fake news and online hate speech; this means the court can strike down and remove information proved to be false and harmful to the public from the Internet.

For communist states such as Laos and Vietnam, both have mainly used their criminal codes to deal with hate speech. Article 118 (division of solidarity) of Laos' Penal Code criminalizes the act of causing resentment or division between ethnic groups or social strata with up to 5-year imprisonment and fines. Meanwhile, Vietnam's Penal Code Article 116 (undermining the unity policy) punishes anyone who sow hatred, ethnic bias and/or division and separation among Vietnamese nationalities with up to 15-year jail term. In the absolutist

monarchy, Brunei, the Syariah (Shari'a) Penal Code Order of 2013, stipulates the criminal offences of irtidad (apostasy) that also relate to blasphemy, deriding verses of the Quran, and the hadith (a collection of traditions containing sayings of the Prophet Muhammad), Those found guilty of such offenses are punishable by death or imprisonment for up to thirty years and corporal punishment, depending on the type of evidence. The Sedition Act is also available to regulate hate speech.

COVID-19 Laws

Hate speech against minorities and vulnerable groups has surfaced significantly with the advent of the COVID-19 health pandemic. A range of laws have been deployed, from state of emergency decrees specific to the pandemic, existing laws on national emergencies, to establishment of national committees to monitor and eliminate the threat. Of relevance to the control of hate speech, these laws generally seek to address fake news and disinformation about the virus and its origins, which may cause panic and violence.

Special State of Emergency decrees to deal with the pandemic have been enacted in Cambodia, Laos, the Philippines and Thailand. A Prime Minister's Order was adopted in Laos. Existing laws have been used in Indonesia and Singapore. National committees have been set up in Myanmar and Vietnam.

Unfortunately, this has not prevented the rise in hate speech against along ethnic and national lines, notably vulnerable groups such as migrant workers and refugees. On the contrary, hate speech has arisen, unreasonably, against groups suspected of spreading the virus. Religious leaders have sought to blame the LGBTI for the coronavirus, as a retribution from God (Greenhalgh, 2020). Migrant workers are also targets of suspicion and resulting discrimination. The laws enacted to fight COVID-19, may be useful in addressing health matters but clearly fail to address the newer forms of hate speech.

Laws Relevant to Technology Firms

Regulation of content on social media platforms operated by large corporations exists in the form of laws such as the cybersecurity laws of Vietnam and Thailand, Computer Crime Act in Thailand, Communications and Multimedia Act in Malaysia, the Sedition Acts in Malaysia and Singapore, the Protection from Online Falsehoods and Misinformation Act in Singapore and the Electronic Communications Act in Indonesia. While these have the potential to address harmful speech, the ever-present danger is that these laws may be used to stifle critical and dissenting voices.

In sum, we can see that the legal approach to dealing with hate speech in Southeast Asia is not uniform. States are trying to deal with the viral spread of hate speech over social media with some very harsh punishments, yet at the same time hate is still very much anchored

around the traditional race and religion parameters. There is also evidence that governments make use of such laws against their political opponents to prolong their stay in power. Given that there are different forms of hate speech, the legal definitions need to be widened in order to recognise the different forms of hate speech and also to note cases where punishments can be unduly harsh and used for political purposes when genuinely discussing issues related to hate speech.

5. Policies and Practices

In addition to legal measures, quasi-judicial government institutions, language policies, ethnic policies, guidelines on religious practices have been introduced and almost all of which approach it from a race and religion perspective. However in the policy arena, we can see there are opposing policy responses to demands of equal recognition by the LGBTI community. There are also some measures to support integration activities for migrant workers as they come to occupy a larger portion of the workforce in many Southeast Asian countries. Policy measures are often implemented through state funds (sometimes with international donor support), governmental mechanisms to monitor community tensions and social engineering policies, public education programmes and sponsoring interfaith dialogues and conferences. The range of measures and mechanisms are as follows.

Government agencies and mechanisms

Specific government agencies have been established across the region to handle social harmony, or ethnic minority affairs. For example, in Thailand, the Social Development for Special Groups Division was established under the Ministry of Social Development and Human Security (MSDHS) to promote and coordinate works related to ethnic minorities in accordance with the MSDHS's Co-existence Promotion in a Multicultural Society Plan (2018– 2021). Meanwhile in the Muslim dominated southern border provinces, the Southern Border Provinces Administrative Centre (SBPAC) is the focal point agency that implements social integration activities and socio-economic empowerment programs, such as vocational and marketing trainings, towards the vulnerable groups, especially women and children of

HATE SPEECH IN SOUTHEAST ASIA

POLICIES AND PRACTICES

Government Agencies and Mechanisms	Language Policy for Indigenous Community
Ethnic and Racial Policies	Policies Against the LGBTI Community
Guidelines for Religious Practices	Integration Activities
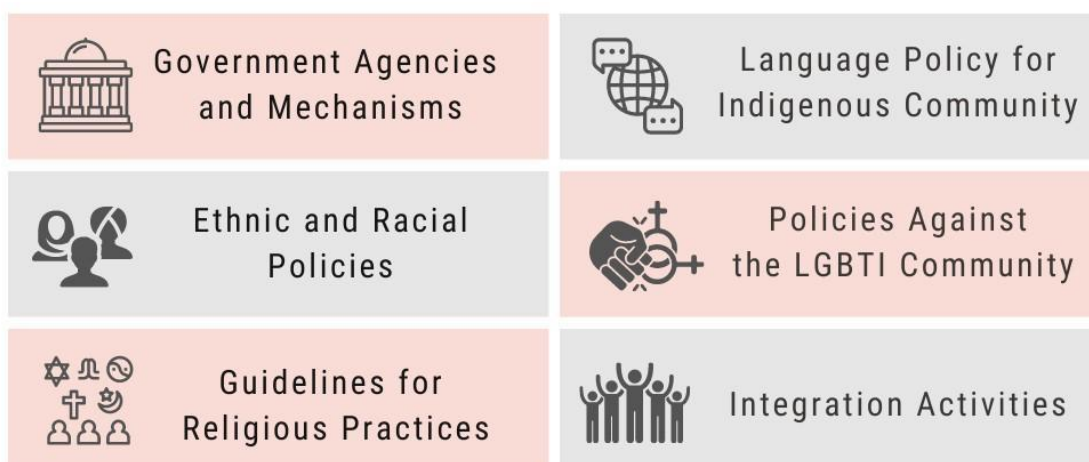
Malay ethnicity affected by the conflict. However, with the involvement of Internal Security Operations Command (ISOC) as a major implementing agency and its 'security-first' orientation and the Special Laws (e.g. Contingency Public Administration Emergency Decree the Internal Security Act, and the Martial Law), this rendered the government's efforts ineffective as rights-based approach agencies are overshadowed and compromised.

In Malaysia, in October 2019, the Unity Issues Management Committee (JPIP) was established to manage racial tensions at the national level, and operate as an official forum to identify sensitive, race-related issues and discourses that undermine national harmony (Malay Mail, 2019). The JPIP was the initiative of the National Unity and Integration Department with the cooperation of the National Security Council. In Singapore, the Constitution provides the Presidential Council for Minority Rights to scrutinize any Bill or subordinate legislation to ensure that it does not unfavourably affect particular racial or religious community and report any possible discrimination provision of the Bill or subordinate legislation to the Parliament (CERD, 2019).

In the Philippines, the National Commission on Indigenous Peoples (NCIP) is the designated entity that manages programs for the Indigenous Peoples/Indigenous Cultural Communities (IPs/ICCs) in the country. It has assisted in the formulation of Ancestral Domains Sustainable Development and Protection Plans (ADSDPP). In collaboration with civil society, the NCIP also constituted Provincial Consultative Bodies and has assisted Educational Assistance Program grantees as well as provided legal services and various socio-economic and cultural projects (CERD, 2008).

In Vietnam, the Law on the Organisation of the National Assembly of 2002 provides that the Ethnic Council be tasked with scrutinizing draft laws and ordinances related to ethnic issues and overseeing its implementation. It also functions as the focal point agency that coordinates the activities of government, ministries, and ministerial-level agencies concerning the development programs in ethnic minority areas. Some of these works are also shared by the Committee for Ethnic Minority Affairs, which is responsible for drafting laws for submission to the government and National Assembly. In Laos, three mass organizations—Lao People's Revolutionary Youth's Union (LPRYU), Lao Women's Union (LWU) and Federation of Lao Trade Unions (FLTU)—are official focal points for strengthening solidarity and mobilizing the social strata of all ethnic groups. These organizations implement social campaigns to promote ethnic harmony and educate communities about non-discriminatory practices.

National Human Rights Institutions (NHRI) are especially important protection mechanisms for human rights, particularly minority groups. In Cambodia, the government has agreed to set up an NHRI in accordance with the Paris Principles, which is being developed by the Cambodian Human Rights Committee (CERD, 2018). In Indonesia, the National Commission on Human Rights (Komnas HAM) has for a long time published and distributed booklets on

the Elimination of All Forms of Racial Discrimination (CERD, 2006). Komnas Ham has in recent years undertaken national inquiries, notably on gross violations of human rights against minority groups and indigenous peoples. The Philippines' Commission on Human Rights has called for government policy that leaves no one behind in the coronavirus crisis, including indigenous peoples and minority groups (Commission of Human Rights, 2020). Thailand's National Human Rights Commission, which was given a more restricted mandate in the 2017 Constitution, has an important role to play in monitoring the treatment of religious and racial minorities in the southern border provinces and in Northern Thailand (National Commission on Human Rights of Thailand, 2012), though it faces some difficulties performing its protection function.

Ethnic and racial policies

Approaches to ethnic and racial policy governance have varied depending on the political and security context of each nation. In Myanmar, the Rohingya Muslims in Rakhine state, have been living a life of segregation from the larger society in Myanmar. Claiming to preserve national security and unity, the government severely imposes restrictions on their movement and virtually all other aspects of their lives. A special permit is required to travel between townships and, even when they are allowed, arbitrary curfews are continually and harshly imposed in predominantly Rohingya areas. Except for extreme life-threatening cases, the Rohingyas are generally denied access to healthcare. If permitted, they are to travel under police escort and put in separate 'Muslim wards.' which is guarded by police. Since 2012, Rohingya children are not allowed to enrol in previously mixed government schools altogether; while government teachers often refuse to travel to Muslim areas.

Meanwhile, in Thailand, the decades-long conflict in the predominantly Muslim provinces bordering Malaysia has bred Islamophobia and precipitated the rise of nationalist Buddhist movement. As such, the government's policy to preserve social harmony and national unity, more often than not, borders on preventing sedition. In September 2019, it was revealed the Special Branch Bureau of the Royal Thai Police had secretly embarked on nation-wide racial profiling program, asking major universities to hand over personal data of Muslim students who are studying at their institutions. This occurred simultaneously with the security policy directive of the Internal Security Operations Command (ISOC) requesting all Muslim mobile users to re-registered their SIM card with facial-recognition system with the authorities, otherwise their numbers will be rendered unusable (Nanuam, 2019).

In Singapore, since 1989, the House and Development Board (HDB) has introduced of ethnic quotas for public housing to promote racial integration and social harmony (CERD, 2019). Under the EIP, limits are set on the total percentage of a block or neighbourhood that may be occupied by a certain ethnicity. This is to prevent any particular race from congregating in a location giving rise to enclaves, and promote interactions among races on a daily life basis. It applies to the sale and purchase of all new and resale HDB flats and implemented for all

ethnic groups. Although the EIP has been lauded as a success story in implementing multiculturalism, arguably it has created differential pricing based on race; given the ethnicity limits, Malays, Indians and others are forced to sell at valuation price because they could only sell to buyers from the same ethnicity; while Chinese sellers could set almost any price they want as it is easier for them to free up the limits. This has led to the scenario where the HDB units restricted to Chinese could be sold for prices that are 5% - 8% higher.

Guideline for religious practices

To manage religious sensitivities among the different communities, in some countries, certain practices are discouraged or even disallowed in public offices or public schools to promote social integration. In Thailand, traditionally, the Student Uniform Act (2009) standardizes students' uniform including the Muslim students. However, in 2018, a quarrel between school teachers and student's parents over wearing hijab in Pattani province has led to Ministry of Education's new directive, which stipulates that any educational institution situated on the land belonging to Buddhist temple, or was donated to the temple before, must comply with the temple's decision. This initially led to the banning of hijab, until the court overruled the decision later (Bangkok Post, 2018). In Singapore, Muslim female students are required to adhere to standard national school uniforms, and are not allowed to wear headscarves (tudungs) due to the secularist policy of Singapore.

As Myanmar does not recognize the Rohingya Muslims as citizens, they do not enjoy the right to freely profess and practice religion in the Constitution. In this regard, the construction of places of worship could only be permitted with informal approval which is usually withdrawn by township authorities when conditions change. Often, the requests are delayed or denied, and this affects not only the Rohingyas, but sometimes Bamar Muslim as well. For example, in 2019, Muslim residents agreed to close all three Muslim temporary places of worship in Yangon's South Dagon township at the request of local authorities, after a 200-strong mob surrounded one of the buildings. In Brunei, celebrating Christmas or using symbols associated with the feast are strongly prohibited according to the sharia law, lest Muslims could be led astray.

Language policy for indigenous community

As language is an important part of cultural identity, policy linked to language learning and education are often intertwined. Cambodia, for example, adopted an Education Strategic Plan, the Ministry of Education, Youth and Sports (MoEYS) has also developed a National Action Plan on Multi-Languages Education 2015–2018 in collaboration with UNICEF Cambodia and Cooperative for Assistance and Relief Everywhere (CARE), aiming to ensure all indigenous children are properly educated via multilingual education (CERD, 2018).

In Philippines, the National Indigenous Peoples Education Program continues to strengthen

the enabling conditions for culture-based education through capacity building for teaching and non-teaching personnel at all levels of governance, contextualization of the curriculum, development of culturally appropriate learning resources, and increase in budget allocation and education infrastructure (Human Rights Council, 2017). Similarly, the Philippine Statistics Authority embarked on awareness raising campaigns pointing to the importance of civil registry documents, establishing registration outlets near schools, marginalized areas, and indigenous communities.

Thailand enacted the Promotion and Conservation of Intangible Cultural Heritage Act B.E. 2559 (2016) and is a party to the 2003 Convention for the Safeguarding of the Intangible Cultural Heritage. The Office of Royal Society has spearheaded the preparation of a draft Strategic Plan to Drive Forward the National Language Policy to maintain and promote Thai, local and ethnic languages used in Thailand. The strategic plan would encourage ethnic children to study their own languages and use them as a foundation to study other languages including the Thai language and thus improve the efficiency of their learning and promote equitable access to higher education through a bilingual system (CERD, 2019). In partnership with the Language Institute of Mahidol University, the Ministry of Education provides assistance to ethnic children who register in primary schools in the marginalized, border areas in the form of bilingual education, their mother tongue and Thai language.

Since its independence, Singapore has maintained its bilingualism which is implemented through its education system. As English is the working language of Singapore, students are required to learn English as their first language and their respective mother tongues (Chinese, Malay and Tamil) upon joining the school.

Policies against the LGBTI community

Regarding LGBTI communities, a delicate balancing act has been pursued but one fraught with challenges that lead to policies that negatively affect vulnerable groups in conservative societies. Arguing LGBTI lifestyle to be against Islamic principles and values, Malaysian authorities have taken actions in the name of preventing social discord in the Muslim-majority country. Some of these policy directions included issuing an e-book on LGBTI rehabilitation, organizing camps encouraging participants to abandon homosexual behaviours (Mukhayyam programme), formulating and implementing a five-year Action Plan to Address Social Ills - LGBT Behaviour (Kamal, 2018) and refusal to acknowledge LGBTI people in public sphere such as removing portraits of LGBTI activists from an art exhibition (BBC News, 2018) and cancellation of the International Conference on Gender and Sexuality 2019 (Palansamy, 2019).

In Indonesia, anti-LGBTI sentiment has increased since 2016 and attacks on LGBTI community were portrayed as amar maruf nahi munkar (commanding good and forbidding evil, to save the people from sin). The "politics of gay-bashing" was noted by the Jakarta Post

in January 2018 as politicians appealed to fundamentalist religious sentiment and groups. The Indonesian Government even developed the Smart Pakem, a "heresy app", to report on groups that practice unrecognised faiths and unorthodox interpretations of religions (Jakarta Post, 2018).

Singapore, Thailand, Philippines and Vietnam practice non-committal stance towards the LGBTI community, meaning that they do not officially recognize the community, but do not actively discriminate against them in a systematic way either. Nevertheless, in March 2020, the Singapore High Court dismissed challenges to Section 377(a) of the Penal Code which criminalises consensual sex between men. While Singapore does not actively apply the law, critics have noted its socially corrosive impact and consequent discrimination (Sim, 2020). Thailand is moving towards same-sex marriage with 'Civil Partnership Bill,' which is in final drafting stage, as a first step.

Integration activities

States also use various activities and programs to promote social integration such as cultural events or inclusive dialogues aimed at better integration of multicultural societies. This can be done in partnership with embassies, chambers of commerce, or friendship organizations which represent the ethnic minority in the country, or through the state apparatuses.

In Singapore, for example, a National Steering Committee on Racial and Religious Harmony seeks to build close relationships at the highest levels of community, government, ethnic and faith leaders. It has built up a network of community leaders that enhances inter-racial and religious understanding. Inter-Racial and Religious Confidence Circles (IRCCs) foster friendships and build mutual respect and understanding, and are important bridges between racial and religious community groups. In 2019, Singapore's Ministry of Culture, Community and Youth supported the first International Conference on Cohesive Societies that was opened by the president of Singapore, Halimah Yacob (Linette, 2019). The three- day conference aimed to offer a platform for discussions on building stronger interfaith understandings and crafting new ideas to forge greater harmony in societies. In Singapore, all schools also observe Racial Harmony Day in July every year.

In 2018, the Provincial Office of the Ministry of Culture of Thailand in Narathiwat organized the first Multiculturalism Youth Camp with the aim to build social harmony and peace, bringing in 70 students from different faiths (e.g. Christianity, Buddhism, and Islam) together (MGR Online, 2018) to participate in the three days activities. Subsequently, this is followed by the first Reconciliation Youth Camp between Buddhists and Muslims in Narathiwat in January 2019 (MGR Online, 2019). To address the ongoing conflict, the Government is pursuing various strategies including an Integration Plan on Prevention and Solution for the Problems in the Southern Border Provinces B.E. 2561–2565 (2018–2023), under a "Bring Home People Project".

This seeks to help people accused of instigating violence in the Southern Border Provinces or taking part in violence, including those facing criminal charges, by organizing social reintegration activities, vocational training, as well as legal and other necessary assisting measures.

In 2017, the Ministry of Religious Affairs and Culture of Myanmar convened a 2-day interfaith dialogue in Yangon to serve as an example of religious harmony to all religious groups in conflict and to "fight against extremism and the spread of fabricated stories meant to foment hate" (Dipananda, 2017). The dialogue was attended by 132 religious leaders and diplomats from 32 countries. This is in accordance with the State Counsellor Aung San Suu Kyi's vision for promoting interfaith dialogue as a measure to achieve understanding of religious and cultural diversity and lasting peace (Nyein, 2019).

Once again, we can see that the approach is still much centred around race, religion and language. In fact, in some countries, measures to manage race and religious difference can lead to institutional racism being implemented. Although not stated in law, we can see that in terms of policies, there is a move to engage with issues related to the LGBTI community but this engagement is quite divided across Southeast Asia. Apart from general opportunities for non-citizens from other communities to organise cultural activities, integration activities with the large migrant worker force is limited. Engagement with refugees, illegal immigrants and those with different political and values are not addressed.

6. ICERD

The International Convention on the Elimination of all forms of Racial Discrimination (ICERD) is of especial relevance. The UN Strategy and Plan of Action on Hate Speech, announced in 2019, is premised on the need to safeguard democratic values, social stability and peace. Combating hate speech, noted Secretary General Antonio Guterres, required more speech, not less, to combat xenophobia, racism and intolerance – including rising anti-Semitism, anti-Muslim hatred and persecution of Christians. All of the core UN human rights treaties stipulate the right to equality and freedom from discrimination. It has been ratified by 182 countries who have committed, inter alia, to not sponsor, defend or support racial discrimination by any persons or organizations; to take effective measures to review governmental, national and local policies; and to amend, rescind or nullify any laws tending towards racial discrimination; and to protect endangered racial groups when the circumstances warrant it.

In Southeast Asia, Brunei Darussalam, Malaysia and Myanmar, as shown in Table 1, are among the countries that have not signed the ICERD, and therefore are not legally bound by this treaty. In May 2019, the Pakatan Harapan (PKH) coalition won the general election and replaced the long-established UMNO, ushering a so-called 'New Malaysia' period. One of the electoral pledges was building an inclusive society and maintaining the harmony of multi-racial and multi religious Malaysia. In delivering this, the government attempted to ratify the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), before it backtracked after huge protests in the capital from the conservative Malays who feared their predominant status and Islamic affairs would be disturbed.

HATE SPEECH IN SOUTHEAST ASIA

INTERNATIONAL CONVENTION FOR THE ELIMINATION OF RACIAL DISCRIMINATION (ICERD)

Signatories		Non-Signatories
PHILIPPINES (1967)	INDONESIA (1999)	BRUNEI
LAOS (1974)	THAILAND (2003)	MALAYSIA
VIETNAM (1982)	TIMOR LESTE (2003)	MYANMAR

However, it should be noted that even in countries that have signed ICERD reservations have been made to exempt themselves from certain obligations they may need to follow. For example, Vietnam and Indonesia do not consider themselves bound by Article 22, which concerns a dispute settlement by means of the International Court of Justice. Meanwhile, Singapore reserves the right to apply its policies concerning the admission and regulation of foreign work pass holders, with a view to promoting integration and maintaining cohesion within its racially diverse society. Thailand only withdrew its reservation in 2016. Previously, it interpreted Article 4 of the Convention as requiring a party to the Convention to adopt measures in the fields covered by subparagraphs (a), (b) and (c) of that article only where it is considered that the need arises to enact such legislation.

Table 1: Southeast Asian States Reports to the CERD

Countries	Number of Reports	Reports submitted*	Accession
Cambodia	4 State Party Reports and 1 Reply to List of Issues	1985, 1997, 2009, 2018	1983
Indonesia	1 State Party Report	2006	1999
Laos PDR	4 State Party Reports and 2 State Party reports on Follow-up to Concluding Observations	1978, 1984, 2004, 2011	1974
Philippines	10 State Party Reports	1970, 1972, 1974, 1976, 1978, 1980, 1982, 1985, 1997, 2008	1967
Thailand	2 State Party Reports and 1 State Party report on Follow-up to Concluding Observations	2011, 2019	2003
Singapore	1 State Party Report	2019	2017
Vietnam	4 State Party Reports and 2 State Party reports on Follow-up to Concluding Observations	1983, 1993, 2000, 2011	1982

Source: Office of the UN High Commissioner for Human Rights (2020), UN Treaty Body Database. Available: https://www.ohchr.org/EN/HRBodies/CERD/Pages/CERDIndex.aspx
*Upon ratification, member states are obligated to submit a report within one year and every two years thereafter.

When drafting and implementing such laws, states— particularly those who are signatories to the ICERD —must ensure that national legislation is aligned with international treaty obligations. But a disconnect exists for different reasons. Some countries, which signed ICERD years ago, may have signed the treaty for political reasons rather than a real commitment to adhere to international standards. This disconnect affects the effectiveness of international treaty obligations and their ability to protect and promote human rights and point to the human rights challenges embedded in existing national laws. Indeed, each signatory state reports to the Committee on the Elimination of Racial Discrimination (CERD), but the low frequency of reporting (Table 1) leads to questioning of their effectiveness in combatting racial discrimination (Oette, 2018). Moreover, reports are submitted late, with several reports submitted at one time in order to "catch up" on missed reporting obligations.

The UN High Commissioner for Human Rights noted in 2012, "Currently, however, only 16 % of States parties report on time; and even with this low compliance rate, four out of nine treaty bodies with a reporting procedure are facing significant and increasing backlogs of reports awaiting consideration" (OHCHR, 2012).

Such reporting can contribute to positive development, as in Thailand's report in 2011, which for the first time recognized ethnic groups "which have not officially existed for over one hundred years, most interestingly the Lao of Isan (Northeast Thailand) and the Malay of the Deep South." This same report recognised a total of 67 minorities in Thailand (Draper, 2016). Thus, as it pertains to the ICERD, countries in Southeast Asia that have not signed up to the treaty should be encouraged to do so. At the same time, it is also important to recognise some of the core principles in the ICERD can apply to other identity, apart from race and religion, other UN instruments may also be relevant to move against other forms of hate speech.

While ICERD addresses questions of race, language and religion, other forms of hate speech may be addressed by additional UN mechanisms such as the Universal Periodic Review of the UN Human Rights Council. The UPR is useful in the sense that it holds UN member states accountable to human rights obligations whether they are the parties to the ICERD or not and reminds states that the implementation of one rights often necessitates another family of rights. Consequently, states may have to fulfil their obligations in other treaties such as ICCPR and CEDAW as well. UN Special Rapporteurs - on minorities, on LGBTI persons, on human rights defenders, on Indigenous peoples, on Myanmar, on racism - also shine a sharp light on troubled spots. Their analyses of county or thematic situations and recommendations also feed into the UPR process (OHCHR, 2019). In this vein, in March 2020, the Special Rapporteur on Contemporary Forms of Racism issued the statement encouraging states to take action against COVID-19 induced hate speech (OHCHR, 2020). In 2019, she also shed light to global extractivism and racial equality in an annual report submitted to the General Assembly.

Equality and non-discrimination principles at the heart of ICERD apply also to hate speech against the LGBTI community. The UN Office of the High Commissioner has reminded States of the core legal obligations of States with respect to protecting the human rights of LGBT people:

- ◆*Protect* individuals from homophobic and transphobic violence.
- ◆*Prevent* torture and cruel, inhuman and degrading treatment.
- ◆*Repeal* laws criminalizing homosexuality and transgender people.
- ◆*Prohibit* discrimination based on sexual orientation and gender identity.
- ◆*Safeguard* freedom of expression, association and peaceful assembly for all LGBT people (OHCHR, 2019).

A Human Rights Council resolution of 2016, "[s]trongly deplores acts of violence and discrimination, in all regions of the world, committed against individuals because of their sexual orientation or gender identity" (OHCHR, 2016). Earlier, in 2012, the Council held its first panel discussion on ending violence and discrimination against individuals based on their sexual orientation and gender identity. During the discussion, many States "expressed their concern at the gravity or prevalence of violence and discrimination based on sexual orientation and gender identity" (OHCHR, 2012).

Whether on the basis of race or minority status, adherence to the ICERD comprises a vital tool in eliminating hate speech. Given, there are other forms of hate speech, other UN instruments can also be relevant in putting the spot on incidents. Finally, it will also be important to bring ICERD and other international human rights instruments to bear on the technology firms that operate social media platforms, which harbours most of the hate speech today.

7. Role of Technology Companies

The private sector, specifically technology companies, wittingly or unwittingly are vicariously responsible for harm inflicted by hate speech in all its forms in that they allow such speech to be spread on their platforms. The responses of technology companies have come belatedly and there is scant evidence of any progressive impact. Moreover, the COVID-19 pandemic has led to a spike in hate speech content over their platforms, in particular towards vulnerable communities.

They are increasingly called upon to make strong efforts to take down, counter and prevent hate speech on their platforms. Facebook, for example, has been called out globally for not addressing hate speech and incitement to violence against the Rohingya community in Myanmar and elsewhere, such as Sri Lanka (Emmanouilidou, 2018). It has been mired in controversy regarding its flexible approach to its own policies in relation to incendiary statements by political figures. It has been arm-twisted into reviewing its policies by major companies threatening to withdraw ads from the platform. Twitter responded to the same by not censoring but placing a warning that the content may not be accurate or may be inciting violence.

How are they to address hate speech, while preserving fundamental rights? Technology firms face a range of laws and policies that respond to online fake news and hate speech. In addition to existing defamation, blasphemy, media, communications and cybercrime laws they now face fake news legislation. A key concern is balancing the right to freedom of expression against the need to address fake news in all its forms, including hate speech campaigns generated by individuals, politicians and Governments. This dichotomy occurs as business organisations are increasingly called upon and committed to adhere to their human rights responsibilities consistent with the UN Guiding Principles on Business and Human Rights.

HATE SPEECH IN SOUTHEAST ASIA
ROLE OF TECHNOLOGY COMPANIES

Flagging Content

Content Management

Accounts Suspension

The belated responses, after considerable harm and polarization of communities, has led to various approaches. Facebook, in response to criticisms, has initiated a strategy to counter fake news and hate speech comprising three components: remove, reduce, and inform (Mizzima, 2020). The first refers to removing "the most harmful misinformation on the platform. That misinformation can actually lead to violence or physical harm." Facebook has turned to artificial intelligence to detect and eliminate harmful misinformation in Myanmar, and elsewhere (Washington Post, 2018). The second refers to limiting the "type of misinformation that doesn't necessarily violate our policy which is still inflammatory or spamming or really low-quality content." Limiting the distribution is a key goal. The third refers to providing people with correct information. Facebook noted that some 50,000 pieces of content related to hate speech were removed in quarter 4 of 2019 as opposed to 55,000 the year before that (Mizima, 2020). In Myanmar, the company has started to work with communities, the election commission and political parties on how to better engage with the Facebook platform. Whatsapp, owned by Facebook, is also subject to the above strategy (Kijewski, 2018). Whatsapp is one of the most used social media apps in Southeast Asia.

Twitter, which has recently emerged as more proactive in fighting hate speech, has suspended fake accounts in Cambodia, for example. In 2018, it took down some 6000 fake accounts or automated accounts (bots) in that country alone. Bots are being used to send out fake news targeting specific communities like the Rohingya and political opponents (Kijewski, 2018). The problem of bots in Sri Lanka and Malaysia is well documented, in the latter case on their influence in affecting elections in 2018. A surge in anonymous accounts has been noted in Cambodia, Vietnam, Myanmar, Thailand, Hong Kong, and China (Seiff, 2018).

Google and Twitter, have sought to counter negative content in collaboration with governments, notably the Indonesian government. Google and the Communications and Information Technology (ICT) Ministry agreed "to run a [content reporting] system called Trusted Flagger". Special reporting channels have been established.   Trusted Flagger is a new program "that allows organizations or governments to notify Google about content that violates local guidelines or laws." (Diela, 2017). Twitter has set up "a special channel for the government to report content it deems inappropriate or illegal" (Diela, 2017). This of course bears close scrutiny given the obvious potential implications for free speech.

Criticism of the technology companies, has led to a request for greater clarity on the definition of hate speech. Mark Zuckerberg of Facebook has called on the government to set baselines for what is prohibited and to require companies to build systems for keeping harmful content to a bare minimum. Free speech purists insist that this would be an infringement on their rights.

In crafting their responses, technology companies and business entities in general must make sure that these are consistent with international human rights standards on preventing hate speech and at the same time ensuring such responses do not stifle legitimate critical commentary. In this regard, it has been noted that corporations themselves have resorted to strategic litigation aimed at avoiding criticisms and protecting their business interests (Kendall, 2019).

8. Recommendations

Having laid out the context, the forms of hate speech, laws, policies and practices, the need to accede to the ICERD as well as the role of technology companies, the report introduces a number of suggestions framed as a set of interconnected primary and secondary recommendations for national governments in Southeast Asia and global technology firms to consider.

Primary recommendation

At the primary level, the definition of hate speech should be broadened. Hence governments in Southeast Asia are encouraged to recognize new forms of hate speech and put in place protections via law, policy and international obligations for all groups that could be targeted and discriminated not only on the basis of their race or religion, but also political values, sexual-orientation and other affiliations and identities. It is also important that the definition of hate speech should:

- Be considered in close connection with the concept of free speech, freedom of expression, and human rights and to strike a balance between the two.
- Take into account attempts to criminalise and suppress hate speech without addressing the root causes such as bias, hatred, inequality and the social structures that endorse hate speech could backfire.
- Be informed by evidence-based knowledge and digital and media literacy.

HATE SPEECH IN SOUTHEAST ASIA

RECOMMENDATIONS

Primary

Broaden the definition of hate speech beyond race and religion.

Recognise hate speech based on nationality, immigration status, political values, sexual-orientation and others.

Secondary

Adopt this broad definition of hate speech into law, policy, practice and in international obligations.

Together, this should address discrimination and incitement to hate which should be investigated and adjudicated independently.

<u>Legal Measures</u>

Legislative measures designed to address discrimination, or respond to incitement to discrimination, hostility, or violence should:

- ◆ Adopt laws and related measures that specifically address the problem of hate speech, including discrimination and violence towards the targets of newer forms of hate speech and that seek to ensure compliance with existing human rights standards.
- ◆ Amend existing vaguely-worded legislation or administrative orders so as to prohibit all discrimination based on the identification of individuals with certain groups, including, inter alia, groups defined by religion or belief, ethnicity, race, gender, sexual orientation and gender identity.
- ◆ Prohibit the advocacy of hatred that leads to incitement to discrimination, hostility, or violence, employing criminal penalties only as a measure of last resort.
- ◆ Ensure that the domestic legal framework concerning the incitement to hatred is guided by express reference to article 20, paragraph 2, of the ICCPR which prohibits by law "advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence…".
- ◆ Ensure the three-part test – legality, proportionality and necessity – for restriction of rights also applies to measures to address cases of incitement to hatred.
- ◆ Set a high threshold for restrictions of the right to freedom of expression in line with Articles 19(3) and 20(2) of the ICCPR.
- ◆ Ensure that criminal penalties are justified, proportionate, setting limits on fines and giving alternative to criminal sentences such as community service.
- ◆ Ensure compliance with stipulations on non-discriminatory education in international conventions.

Secondary Recommendations

Next a set of closely-related secondary recommendations are encouraged for governments and stakeholders to adopt. The secondary recommendations relate to policies and practice, international obligations and technology firms that can help all affected individuals and groups to not fall victims of hate speech, prevent violent incidents against them and instead positively impact them. These include:

<u>Policies and Practices</u>

Similarly, non-legislative measures, such as public policies and related government- supported initiatives should address hate speech of all forms in the areas identified above. Governments should:

National Policy level

- Adopt a national plan of action that seeks to protect all groups and individuals that are vulnerable to discrimination, regardless of citizenship status.
- Adopt specific policies to address and to clearly differentiate the nature of the harm done by critical speech. Clear distinctions should be made between three types of expressions in all public policies and public documents: expression that constitutes criminal offense; expression that is not criminally punishable, but may qualify a civil suit or administrative sanctions; expression that does not constitute criminal offense, nor civil or administrative sanctions, but still pose concern to tolerance, social harmony, and the rights of others.
- Ensure that business organisations adhere to their responsibility to uphold human rights standards by rooting out hate speech along their value chains. Guidelines for business organisations on this can be developed based on the UN Guiding Principles on Business and Human Rights.
- Progressively incorporate Sustainable Development Goal 16 - peace, just and inclusive societies - into national policies.
- Adopt national guidelines for technology companies that provide a working definition of hate speech, how to recognise it and on how to best respond to hate speech on their platforms, grounded in the UN Guiding Principles on Business and Human Rights.

Government agencies and mechanisms

- Avoid the establishment of politicised administrative bodies for the purpose of identifying, investigating or initiating prosecutions for 'hatred' or 'hate speech'.
- Set up an independent multi-stakeholder body with the collaboration from all concerned sectors, composed of qualified experts, to monitor the dissemination of hate speech and the implementation of the law or policies. The body should collaborate closely with international and regional human rights mechanisms and processes.
- Institute a mandatory national training initiative to train government authorities, especially law enforcement officials and education officers, on effective plans to promote tolerance and address incitement.
- Ensure that national human rights institutions place hate speech (definitions, legal and policy implementation) in their work plans.
- Seek advice on drafting hate speech policy and laws, and on human rights generally, from the ASEAN Intergovernmental Commission on Human Rights.

Ethnic and Racial Policies

- Undertake an all of government review of institutionalised racism in policy and administrative orders.

- Adopt the 'positive' framework in international guidelines such as HRC Resolution 16/18 and the Rabat Plan of Action, by: creating constructive networks to foster mutual understanding and encourage dialogue and inspire collaborative action; establishing mechanisms within government's organs to identify and deal with latent areas of tension between members of different races and faiths, and assisting with conflict prevention and mediation.

Religious Guidelines

- Ensure that minorities enjoy the right to freedom of thought, conscience, religion or belief and respect for culture and tradition and that these are never used as pretexts to justify discrimination and violence.
- Widely promulgate, including at all governmental levels, constitutional and international guarantees of freedom of religion or belief.
- Ensure that State directives never serve to control, influence or otherwise restrict the freedom of religion or belief.

Language Policy

- Ensure that all policies related to language adhere to non-discrimination provisions established by international human rights standards.
- Ensure that at the national level all minority communities have access to education, literature and media content in their own languages.

LGBTI

- Officially recognise the newer forms of hate speech, including anti-LGBTI, anti-migrants, anti-refugees and adapt or apply existing laws as necessary.
- Widely promulgate resolutions of the Human Rights Council on LGBTI rights.

Integration Activities

- Ensure that integration activities are undertaken from the perspective of the rights of the individuals and groups and not primarily on national security grounds.
- Create a regional network of higher education institutions related to human rights that can impartially advise and implement integration activities and help to prevent discrimination.
- Support integration of minority communities through digital and media literacy programmes to promote pluralism and diversity in society and in the media.

International Obligations (ICERD)

- Encourage signatories to honour and be diligent in their reporting obligations under the ICERD. Non-signatories states should sign, ratify and honour the obligation under the ICERD.
- Non-signatories should sign and ratify the ICCPR and all other major international human rights treaties to holistically address discrimination and hate speech.
- Use guidance provided by other international human rights mechanisms, including the Universal Periodic Review (UPR), the Committee on the Elimination on Racial Discrimination, and the respective special procedures mandate holders of the Human Rights Council to address hate speech and discrimination.

Technology Companies

- Ensure community standards related to hate speech on social media platforms capture that which is hurtful and incites by ensuring the standards are applied uniformly to all users.
- Deploy adequate resources to monitor hate speech and take them down in a timely manner before they lead to undue harm.
- Take responsibility to effectively tackle hate speech and not rely on the government to formulate regulation.
- Adhere to guidelines on business and human rights to ensure that hate speech does not harm the fundamental rights of people.

9. Conclusion

Hate speech is a challenging issue for countries in Southeast Asia to address as the COVID- 19 pandemic has added an unusual spike to the situation. This report provides to the reader the context within which Southeast Asia has to deal with the issue of hate speech. The treatment of hate speech has been shaped by a post-independence emphasis on nation-building and communal harmony. Consequently, the main forms of hate speech were related to ethnicity, race and religion. This still remains a problem and all countries in the region are called upon to adopt and preferably implement the ICERD.

The forms of hate speech have diversified more recently, encompassing four main forms today: hate speech related to ethnic and religious issues, especially in multicultural societies; hate speech against foreign nationals, migrant workers and refugees; hate speech regarding political ideology and values; and against sexual minorities.

To combat these forms of hate speech, a primary recommendation made in this report is for governments to adopt laws and policies that recognise the new forms. Secondary recommendations were offered related to government administration, ethnic and racial policies, religious practices, language policy, integration activities, the LGBTI community and technology firms. Care must be taken to prevent such policies and practices from generating undesirable outcomes that perpetuate hate speech.

It is hoped the recommendations would go in some way to stimulate actions that can be rolled out to address the various dimensions of the issue. At the same time, the incitement to violence has moved online and on occasions has become viral. Here the role of technology companies in combating hate speech is critical.

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Abstract

Hate speech, often disseminated online, is increasingly a problem in Southeast Asia with consequences of violence and communal strife. As a result, several countries in Southeast Asia such as Singapore, Malaysia, Myanmar and Thailand have introduced or are revising bills aimed at securing social, racial or religious harmony. Non-legal measures to foster social cohesion, interfaith dialogues and social harmony activities have also been used to address hate speech and promote cross-communal understandings. A majority of states in Southeast Asia have also signed the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) to signal their committment to to the elimination of racial discrimination and the promotion of understanding among all races. This report recommends a range of measures to alleviate these concerns. Among them, is a primary recommendation to officially recognise newer forms of hate speech and a set of secondary recommendations to promote understanding and diversity.

Asia Centre

Asia Centre, a not-for-profit organisation, was founded in 2015 in Bangkok, Thailand. It aims to create social impact in the region through its programme of activities. To this end the Centre has organised conferences, roundtable discussions, seminars and workshops as well as undertaken evidence-based research producing books, commentaries and reports. The Asia Centre has standing MOUs with universities, think-tanks, INGOs and other established entities and has achieved visibility through its engagement with international media as a commentator on regional issues.

Thai Media Fund

Established in 2015, the Thai Media Fund was conceived to campaign, promote and support the development of safe and creative media, based on the belief that for children and youth to become decent, responsible members of society, the right media ecosystem is needed. Specifically, this means enhancing media literacy skills, monitoring malign influence in the media ecosystem, and building a network between the government, private sector and civil society through its activities and grant programmes.