

## Freedom of expression and the fight against hate speech

Under international human rights law, the limitation of hate speech seems to demand a reconciliation of two sets of values : democratic society's requirements to allow open debate and individual autonomy and development with the also compelling obligation to prevent attacks on vulnerable communities and ensure the equal and non-discriminatory participation of all individuals in public life.

Article 19 (1) of the International Covenant on Civil and Political Rights protects the right to hold opinions without interference, and article 19 (2) guarantees the right to freedom of expression, that is, the right to seek, receive and impart information and ideas of all kinds, regardless of frontiers, through any media.

Since the freedom of expression is fundamental to the enjoyment of all human rights, restrictions on it must be exceptional, subject to narrow conditions and strict oversight. Any limitations must meet three conditions : legality, legitimacy, necessity and proportionality.

Under article 20 (2) of the Covenant, States parties are obligated to prohibit by law "any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence". "Hate speech", a shorthand phrase that conventional international law does not define, has a double ambiguity. Its vagueness and the lack of consensus around its meaning can be abused to enable infringements on a wide range of lawful expression. This also applies to "online hate speech." When the phrase is abused, it can provide ill-intentioned States with a tool to punish and restrict speech that is entirely legitimate and even necessary in rights-respecting societies. Some kinds of expression, however, can cause real harm. It can intimidate vulnerable communities into silence, in particular when it involves advocacy of hatred that constitutes incitement to hostility, discrimination or violence.

It is on the platforms of Internet companies where hateful content spreads online, seemingly spurred on by a business model that values attention and virality. Companies have for too long avoided human rights law as a guide to their rules and rule-making, notwithstanding the extensive impacts they have on the human rights of their users and the public. A limitation of speech can amount to public silencing or a failure to deal with incitement can facilitate offline violence and discrimination. Under the Guiding Principles on Business and Human Rights, businesses should, among other things, have an ongoing process to determine how hate speech affects human rights on their platforms (principle 17), including through a platform's own algorithms. The lack of transparency is a major flaw in all the companies ' content moderation processes. There is a significant barrier to external review (academic, legal and other) of hate speech policies as required under principle 21: while the rules are public, the details of their implementation, at the aggregate and granular levels, are nearly non-existent. Companies should assess whether their hate speech rules infringe upon freedom of expression by assessing the legality, necessity and legitimacy principles identified above.

In light of the above<sup>1</sup>, the following questions can be discussed :

1. What means can be used against states or companies that, under the pretext of fighting the spread of hate speech, excessively limit freedom of expression ?
2. What are the principles of Christian doctrine that underpin freedom of expression and the fight against the spread of hate speech ? Is there a hierarchy between them?
3. Doesn't the fact that the Holy See has its own diplomacy expose it to the difficulty of any State in finding a good compromise between freedom of expression and the fight against the spread of hate speech (especially today with regard to the Uyghur population of Xinjiang) ?
4. Does the history of the Dominican Order provide illuminating examples of defending freedom of expression and combating the spread of hate speech ? And examples of the opposite ? On the whole, does the tradition and charism of this Order favor one over the other or does it favor a balance ?

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<sup>1</sup> The following reflections are taken from the report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression submitted to the seventy-fourth session (October 2019) of the General Assembly of the United Nations (A/74/486).