

Presentation at the Bangkok Workshop  
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The topic of this workshop on the prohibition of incitement to national, racial and religious hatred is an interesting subject to be discussed. How to protect the civil rights to freedom of expression and as well as to prohibit incitement to hatred? I believe that it is not a contradictory but a complementary issue. In the national laws of most countries in Asian and the Pacific region relating to the citizen rights, there are articles of ensuring the right to freedom of opinion and expression on one hand, and also there are articles of some restrictions when people exercise these rights on the other. (see Professor Vitit Muntarbhorn's background paper: "Study on the prohibition of incitement to national, racial or religious hatred: Lessons from the Asia Pacific Region, there are a lot of examples in this paper).

These regulations are in conformity with the principles embodied in the international human rights instruments, like the International Covenant on Civil and Political Rights (ICCPR), adopted by UNGA in 1966. In ICCPR Article 19, it affirmed that everyone has the right to freedom of expression, and at the same time, it emphasized that when people exercise this right they should consider "to respect the rights or reputations of others; and protect the national security or public order, or public health or morals", let alone say in its Article 20 that "any propaganda for war, any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law". That is to say, these kinds of "expressions" are exclusive from the "right to freedom of expression".

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We recognize that freedom of opinion and expression is one of the basic human rights which should be ensured by a state party. At the same time, incitement to hatred by using this right should also be prevented. Prohibition of incitement to hatred is not only benefit to the state or collective interests, but also to the insurance of better enjoyment of human rights by all people so that to build-up a harmonic society.

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One year earlier than ICCPR, the International Convention on Elimination of All Forms of Racial Discrimination (ICERD) adopted by UNGA in 1965 has similar articles governing these rights.

In Article 5 of the Convention, it affirms to guarantee the right of everyone, without distinction as to race, color, or national or ethnic origin, to equality before the law, to enjoy the basic human rights, including the right to freedom of opinion and expression.

And while in Article 4, it clearly points out that "State Parties condemn all propaganda and all organizations which are based on ideas or theories of superiority of one race or group of persons of one color

or ethnic origin, or which attempt to justify or promote racial hatred and discrimination in any form", and it obliges state parties, "with due regard to the principles embodied in the Universal Declaration of Human Rights", to adopt "immediate and positive measures" to eradicate these forms of incitement and discrimination. Specifically, it obliges parties to criminalize hate speech, hate crimes and the financing of racist activities, and to prohibit and criminalize membership in organizations that "promote and incite" racial discrimination.

The Committee on the Elimination of Racial Discrimination (CERD) regards this article as a mandatory obligation of State parties to the Convention. It regards the obligation as consistent with the freedoms of opinion and expression affirmed in the UNDHR and ICCPR and notes that such kind of acts mentioned above specifically outlaws inciting racial discrimination, hatred and violence. It views the provisions as necessary to prevent organized racial violence.

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Here, I should especially introduce you that in ICERD, there is a provision affirming the right to petition, that is Article 14.

Those State Parties which have declared to accept Article 14 of the Convention should undertake the obligations set in Article 14 and fully respect the right to petition of their citizens.

1/ The State Party is requested to "establish or indicate a body within its national legal order which shall be competent to receive and consider petitions from individuals and groups of individuals within its jurisdiction who claim to be victims of a violation of any of the rights set forth in this Convention and who have exhausted other available local remedies." and

2/ "In the event of failure to obtain satisfaction from the body established, the petitioner shall have the right to communicate the matter to CERD (the Committee) within six months."

In CERD, (a) "The Committee shall confidentially bring any communication referred to it to the attention of the State Party alleged to be violating any provision of this Convention, but the identity of the individual or groups of individuals concerned shall not be revealed without his or their express consent. The Committee shall not receive anonymous communications";

(b) "Within three months, the receiving State shall submit to the Committee written explanations or statements clarifying the matter and the remedy, if any, that may have been taken by that State."

This article of the convention not only provides guarantee of right to petition, but also points out the channels to make complains by individual or collective or organization petitioners who have suffered discriminations by all forms, including by inciting to hatred.

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Since the ICERD is a international convention mainly deal with the elimination of all forms of racial discrimination, the Convention maybe mainly focuses on the eradication of racial discrimination and how to protect and guarantee the rights of minorities and of those who are

discriminated. The Article 14 of the Convention provides such kind of guarantee. The CERD Committee had tackled some communications at its each session. For instance, the Committee received communication from a Danish-Somalian complaining a female Danish parliamentarian who incited hatred between local Danish people and the Somalian residents when she made a public speech on TV proclaiming she was harassed by the Somalian youngsters in Copenhagen.

Her believing reason is these youngsters came out from a Somalian bar. Since then, the local Somalian residents were discriminated by other Danish residents. And the Danish authorities concerned didn't make serious investigation upon request; finally, this petition was communicated to CERD. The CERD committee reviews the case and called on the Danish government to urge the authorities concerned to tackle the case and make serious investigation and report the result to the Committee within a certain time.

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I'd like to make the following suggestions for consideration:

1/ In order to have legal guarantee, all State Parties should make national legislation to ensure all citizens enjoy the right to freedom of expression, and to prohibit incitement to national, racial and religious hatred according to the principles embodied in the international human rights instruments;

2/ Call upon member states to access and ratify the major international human rights instruments, including the International Covenant on Civil and Political Rights, proclaim to accept the Article 14 of ICERD since a large number of State Parties to ICERD have not yet made such declaration.

3/ In State Parties, National education for all citizens should be strengthened so that to raise their awareness of the basic rights and obligations, and make clear and definite on how to keep balance between enjoyment of rights and undertaking responsibilities to the society.

4/ Considering the broad and serious impact and consequences to public and society, government officials and politicians at all level of state parties should specially should pay special attention to their words and deeds. Due to this, their offences inciting national, racial and religious hatred should be much seriously tackled by law, no matter in how higher position they are, because all citizens are equal before the law.