



Guidelines for Monitoring Hate Speech

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These guidelines developed in consultation with members of the fourth estate offer a reference point to presenters, editors and all persons working in the media when assessing for and guarding against hate speech perpetration in their work.

Monitoring
Hate Speech
in the
Electronic
Media in
Kenya



NATIONAL COHESION AND INTEGRATION COMMISSION

**GUIDELINES FOR
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HATE SPEECH
IN THE ELECTRONIC MEDIA
IN KENYA**

Preface

It has long been believed that hate speech in the mass media can incite hate crimes, and that this connection is the basis for a government monitoring and regulatory role vis a vis the media. Following the national widespread violence of 2008, Kenya realized the danger she faces in becoming a failed democracy through ethnic hatred and it is in this backdrop that the National Cohesion and Integration Act addresses negative ethnicity and criminalizes hate speech and also holds media liable for perpetrating hate speech. Yet the important role media plays in promoting the right to information must jealously be guarded particularly if Kenya is to remain a practicing democracy. It is thus important, for all, that media guards against liability under these legal provisions.

The purpose of the media monitoring is two-fold. Firstly, monitoring provides valuable information on media's performance in guarding against perpetration of hate speech, thereby offering additional contribution to the overall assessment of the process of guarding against the spread of the vice in Kenya. Secondly, the monitoring serves as a feed back to the media outlets themselves on their work and it may enhance their reporting skills for action against perpetrators.

These guidelines therefore underscore the commitment to firmly address negative ethnicity and thereby provide an enabling environment for building nationhood.

Dr. Mzalendo Kibunjia
Chairman, National Cohesion and Integration Commission

Definition of Terms

For purposes of these guidelines, the following definitions have been adopted:

Guidelines

Means set standards and procedures to be used

Ethnicity

Means any of the following namely colour, race, religion, nationality or ethnic or national origins

Employer

Means a person/institution that engages an employee to work wholly or partly in Kenya, (for a fee or not), for the employer

Racist/Tribalist

These two terms are used inter-changeably and mean a person who 'speaks' negative ethnicity

Speak/Speech

This term means oral, written, displayed and or acted out action

1. Introduction

The role of the Kenyan media in promoting access to information can never be understated. In addition the media is an opinion shaper as evident with the experience of media monitoring results covering the first ever multi-party elections in 1992 and the subsequent elections in 1997, 2002 the referendum elections in 2005, the general elections in 2007 which marked as a watershed of how the media became a tool for use in perpetuating hate that eventually escalated into conflict in 2007 and 2008. An unprecedented public debate has been raging in Kenya over the role of the media before, during and after the 2007 General Election. Therefore questions about media conduct continue to rise as the country attempts to define what it considers a desirable media.

Religious organisations, civil society, government departments and foreign missions are some of the interest groups that have spoken out about the role of the media in that period. They have accused the media especially the FM stations of incitement, promoting stereotypes and perpetuating hate messages, misreporting events and general misrepresentations and which is now seen as one of the causes of the post election violence and can also be blamed for heightening negative ethnicity.

The Media plays a critical or special role of informing the public and of disseminating views - and not only the views of the journalists, editors, directors, etc - but views of other persons from the general public. It follows that the media may host or publish views or statements of 'ethnic hatred,' etc, but what is the responsibility of the media? Building nationhood and adhering to the spirit and principles of the constitution which lays emphasis on national unity and provides against negative ethnicity is a tenet that must permeate all social political spheres. The media therefore must continue to conduct its primary role while guarding out against action that may expose it to liability. In order to be

effective, such monitoring must be based on both quantitative and qualitative analysis and aim at observing and assessing the extent to which media guards against perpetrating or originating hate speech or inflammatory language - either reported or originated by the media themselves - to assess whether the media acted as agents of pacification or rather contributed to increase any potential tensions related to ethnic relations.

2. Current Practice and Needs

Hate speech is a term which refers to a whole spectrum of negative discourse, stretching from hate or prejudice and inciting to hatred. Hate speech is designed to degrade, intimidate, or incite violence or prejudicial action against a person or group of people based on their race, ethnicity, nationality, religion, language ability, or appearance (such as height, weight, and hair colour). Although termed “speech”, it covers not only oral or written communication but also any other form of expression such as for example movies, arts, gestures (symbolic speech). There should be no doubt that these are not “only words”, but “words that wound” which lead to harm and violence. We could face it in Nazi Germany or in Rwanda, where hate propaganda and media brought unbelievable suffering and genocide, but even now hate speech occurs very frequently in modern democratic societies hurting ethnic, racial or sexual minorities.

According to Kenya National Commission on Human Rights, the 2005 referendum was characterized by deception, chauvinism and hate speech¹ enhancing the feelings of ethnic hatred among Kenyans. Monitoring of the 2007 elections also revealed that the campaigns were riddled with political propaganda and hate

¹ See KNCHR's Behaving Badly: Deception, Chauvinism and Waste during the Referendum Campaigns.

speech². The way the politicians handled the campaigns contributed to the climate of heightened ethnic hatred witnessed after the 2007 elections.

The greatest problem with combating hate speech is not the law, which is quite sufficient but its observance and application by the organs. It is caused mainly by the lack of awareness and underestimating the dangers of hate speech for the society as a whole but also the long lasting tradition of stereotypes and prejudice. Consequently, there is need to guard against perpetration of such speech, even where hate may not be the primary intention but is the result.

It can be argued that in the everlasting conflict of values free speech is important, but it is not the only value and it does not have priority over all other considerations. Those other rights, which are not less fundamental than the right to free speech, include - for instance - the right to live without fear and intimidation, the right to dignity (both on the personal and on the group level) and the right to be a member of society on an equal footing with others, without suffering discrimination and exclusion.

It is the media which shapes our perception of the social world. It is the field of a battle for cultural hegemony, a battle waged by racists/tribalists against democratic society. It is a matter of professional ethics not to give a free platform to ethnic hatred. The media must guard against becoming tools of ethnic propaganda.

² See KNCHR's On the Brink of the Precipice: A Human Rights Account of Kenya's Post-Election Violence.

3. Challenges

In implementing the mandate and provisions of the National Cohesion and Integration Act, 2008, the National Cohesion and Integration Commission has met a number of challenges. These challenges have arisen due to lack of proper definition of the parameters within which hate speech operates as well as lack of proper guidelines on identification of hate speech for media.

In order to address these challenges, the Cohesion Commission has decided to introduce guidelines to streamline classification of speech and information that may qualify as hate speech and thus face exclusion from the freedom of speech principle.

4. Overall Objective

The overall objective of these guidelines is to provide a clear checklist that will assist the media and those engaging the media to identify hate speech and thus curb its perpetration so as to guard against negative ethnicity that works against building nationhood.

5. Specific Objectives

These are to:

- a) Impart knowledge of the provisions of the National Cohesion and Integration Act in relation to hate speech
- b) Provide policy guidelines and standards applicable to identification and classification of hate speech
- c) Enable members of the media to apply practical/appropriate measures in identification of hate speech

- d) Develop skilled and professional media with appropriate knowledge and ability to identify and report hate speech
- e) Expose perpetrators of hate speech

6. Scope

These guidelines apply to all members of the media; media owners, editors, journalists, reporters, news anchors and talk show hosts and to all those engaging or relating with or using the media.

7. Guidelines applicable to the Media

7.1. Liability

The Media plays a critical or special role of informing the public and of disseminating views - and not only the views of the journalists, editors, directors, etc - but views of other persons from the general public. But many times, some media houses may host or publish views or statements that are stereotypical or viewed as hate speech.

But when such cases do occur, what factors should be considered in determining whether the media is also guilty or not guilty of 'hate speech' perpetrated by a member of the general public hosted or whose views are published or disseminated by a given Media house?

The following factors can be used to determine the case for the media:

(a) Whether the media distanced itself from, or condemned the hate speechⁱ

While airing the views for example, and a media house or presenter clearly states that those views are those of the person and not of the presenter or that the media house; or the presenter states that she considers the views offensive or against public policy; or even when the media house or presenter cautions the 'tribalist' against using the platform for purposes of spreading such propaganda

(b) The purpose or intent of the media programⁱⁱ

Where for example the program intends to educate the public on what ethnic stereo types entail and what hate speech is; or where the program intends to expose unsavoury language that consist hate speech; or where the program intends to expose bad leaders who use hate speech to stifle opposition

(c) In some certain circumstances, the media need to desist from providing hate speech, negative ethnicity and 'racists' with a platform.

For example where a person has been identified or labelled a hate speech perpetrator or is under investigation or prosecution for hate speech, media houses may chose to desist from covering such persons speech live or airing it but may chose aspects that does not constitute hate speech and include it in the body of the report read by the presenter.

Notwithstanding the media's duty to inform the public, in certain situations (e.g. where there is on-going violence targeting members of a group), it has to be very cautious in hosting 'racists,' or persons that have resorted to mass violence, lest the media becomes a vehicle for the dissemination of hate speech and the promotion or glorification of violence. This is more so because with the passing of

the new legislation; Section 62(2) of Kenya's National Cohesion and Integration Act, provides that any media house that publishes utterances intended to incite ethnic hatred, violence, hostility or discrimination commits an offence.

7.2. Characterizing What Constitutes Hate Speech

Not all speech or expression with racial or ethnic perspectives amounts to hate speech. In determining whether a certain speech is hate speech, or was intended to stir up or incite ethnic hatred, the inquiry is case-by-case, or factually driven. A number of factors may have to be considered beyond the mere fact that 'ethnicity' formed part of a given speech. In some exceptional circumstances, even somewhat 'neutral' statements based on ethnicity may meet the requirements of hate speech.

The following factors may be taken into account:

(a) The speech needs to be examined as one whole;

Picking out a section of the speech that is ambiguous and when heard on its own and could raise questions about the intention of the speaker does not help in defining hate speech. The entire speech must be taken into account.

(b) Attention may be paid to the actual language or tone of the language or expression (examining questions, such as whether the language intended to inflame or incite hatred or violence);

Questions that help one determine this include those such as was the speaker using allegory in the speech or was it direct? Was the tone one

intended to fan emotions or was it calm? What signs were used in the cause of making the speech, were they violent?

(c) The accuracy of the statement;

When a person is speaking historical or current fact or a likely interpretation of a clause it is unlikely to amount to hate speech. However when using stereotypes or lies then there is likely to arise hate, for example stating that traditionally members of a certain community were known to be long distance traders may be a historical fact. But stating that members of that community are known to move about aimlessly would be stereotyping and is not a fact and could excite hate against the community.

(d) The totality of the context;

The surrounding circumstances in which a statement was made could help define it. For example, if during a debate on whether leaders tend to fan ethnic hatred in their address a statement is made as an example, even though the statement itself may amount to hate, the speaker may not be perpetrating hate speech.

(e) The purpose of the speech or communication;

Where a statement made may constitute hate but was made to show the audience the folly of their action or stand then such a statement may not amount to hate speech. For example when a person is educating a group or the public on the need to embrace other ethnic communities, even those they do not traditionally hold in high esteem.

(f) **The likely impact or danger.**

When a statement that borders on hate speech is made within the confines of a small group of persons who are say engaged in designing peace programs for a targeted community, it may be less likely to stir mass hatred as compared to the same statement made to a group of idle youth who have attended a rally to discuss development and obstacles to their full engagement in national development.

8. Legal Provision

According to Section 13 of the National Cohesion and Integration Act, the threshold is underlined by proof that the speech or expression threatens, abuses or insults others based on their ethnicity, and must be intended to stir up ethnic hatred, OR, under S. 62, inciting ethnic hatred, hostility or violence.

Hate speech may be defined generally as speech or expressive conduct which insults an ethnic, racial or other identifiable group. Such speech or expressive conduct may suggest that the group is inferior to others, or may advocate that the group be excluded or discriminated against in different ways, e.g. by denying it access to employment, education, political positions, business, etc. Hate speech may also be narrowly defined as speech or expressive conduct which constitute incitement to ethnic, racial (etc) hatred.

9. Indicators Of Hate Speech

- i. Speeches that cause hatred;
The speech must be such that will solicit disdain against a person or group because of their ethnicity

- ii. Speeches or utterances that encourage ethnic, religious or group violence;
The speech must encourage the audience into some negative action.
- iii. Utterances that depict others as inherently inferior;
The speech must infer superiority and inferiority to parallel groups.
- iv. Utterances that degrade others;
The utterance must infer or state that another person is a lesser human.
- v. Utterances that dehumanizes
The utterance must state or infer that the other person is not human e.g. calling them a weed.
- vi. Use of cultural stereotypes
The generalization or categorization of a group while depicting them in a negative way.
- vii. Utterances that promote discrimination on the basis of tribe, colour, ethnic group, religious group;
- viii. Use of abusive, negative and insulting language;
- ix. Use of inciting and/or provocative language;
- x. Use of stories that profile people and communities negatively;
- xi. Use of imagery, poems, metaphor, proverbs etc which could stir up ethnic hatred;
- xii. Pictures published in media which could lead to ethnic, *religious*, or racial discrimination;
- xiii. Stories or essays used by the media houses to depict others less inferior or which could be used to propagate hatred;
- xiv. Ridiculing of another on basis of ethnicity, race or religious belief;
- xv. Use of alarming language.

10. Conclusion

The guidelines outlined in this document provide a comprehensive framework within which it is intended to institutionalize a well structured, effective and detailed checking system that will guard against hate speech.

The guidelines will however be reviewed from time to time to ensure relevance and effectiveness in countering the vice.

ⁱ For example, in the *Jerslid* case, the European Court of Human Rights overturned the conviction of a journalist for hate speech based on the journalist's interview with three 'racists' on a TV programme. In addition to underscoring that the introduction of the programme did not show that its purpose was to propagate racist views, the journalist had dissociated himself from the three racists he had interviewed. Two judges dissented, underscoring that the journalist had not done enough to condemn the racist views.

ⁱⁱ In overturning *Jerslid's* conviction (*supra*), the European Court considered, *inter alia*, that the programme was not intended to propagate racist views. In reaching its decision, the Court examined the programme as a whole from an objective point view. It also considered the programme's introduction. In construing Kenya's Act, any alleged 'hate speech' needs to be considered holistically and objectively.