

eskuraGAI

# Guide to understand hate speech



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**ESKURA** is a Pedagogical Resource Centre on Human Rights located in the Palacio de Aiete in Donostia / San Sebastian. It was created in February 2018 in collaboration between the Basque Government, the Provincial Council of Gipuzkoa and the City Council of Donostia / San Sebastian.

Eskura's **mission** is to promote an informed community, in which people have the possibility to know and understand our rights and be able to promote their exercise in the practice of our daily life, as well as to be aware of the past and present violations of human rights and injustices, being able to give a future response focused on the peaceful coexistence in the diversity of our society.

The **general objectives** in which the creation of the Pedagogical Resources Centre is framed are:

- To promote a society committed to human rights and with a critical capacity in the face of human rights violations.
- To offer educational and participatory alternatives to develop a pedagogy of peace and coexistence in diversity in our current context.

This Centre carries out **three types of activities**:

- *Collecting* educational resources, materials, supports and good practices in human rights.
- *To generate* pedagogical resources in human rights.
- *Disseminate* educational resources, materials, supports and good practices in human rights, in collaboration with educational agents, associations and institutions.

This is the first issue of **EskuraGAI**, a publication that in subsequent issues will address issues of interest in relation to human rights.

## Biography of the Author

**Paloma Viejo Otero** is a postdoctoral researcher for FUSE, at the National Anti-Bullying Research and Resources Centre of Dublin City University (ABC-DCU), where she explores the intersection between hate speech and bullying and where she prepares programs to tackle bullying for Primary and Post-Primary Schools in Ireland. Paloma's PhD explores the notion of hate speech, hate speech regulation models, and how social media governs hate speech. Her doctoral work led her to collaborate as an expert with the Council of Europe, where she co-produced the Manual, 'Yes We Can', for the Youth Department of the Council of Europe.

This manual aims to produce counter-narratives to diminish, counteract, or neutralize attraction and the impact of hate narratives, within the framework of the "No Hate Speech" campaign. Paloma obtained her MPhil in Race, Ethnicity and Conflict from Trinity College Dublin. Paloma also has extensive professional experience in the public and non-public sector: the Ministry of Foreign Affairs of Spain in Sudan and Guatemala (AECID); UNESCO at the Diversity for Cultural Expression department; Migrants Right Centre Ireland (MRCI) in Dublin; and with people at risk of social exclusion through the Peter McVerry Trust, Dublin.

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## INTRODUCTION

The rise of hateful expressions in recent years has surprised Europe, where important social consensus that were to be stable. Fundamental rights around discrimination are being violated, resulting in affected social groups being actively impeded from developing their lives with dignity

This guide arises from the need to correctly understand the concept of “hate speech”, a concept which was worked on at the II international seminar, organized by Eskura (Center on Human Rights Pedagogical Resources) in February 2020.

In the first two chapters, the author, Paloma Viejo, introduces us to the difference between “hate speech” and what we have called *“speaking hatefully.”* These two terms have become confused, using *“hate speech”* now to refer to both issues. These chapters will thus seek to clarify this misunderstanding.

The third chapter open with the dilemma regarding the limits of *“freedom of expression”* and *“hate speech”*, tracing its origin right up to the current formulation of “freedom of expression”, as laid out in the Declaration of Human Rights. The chapter then ends with a discussion of oppression and the situation of oppression that arises if not properly regulated, which, in many situations, is not easy, as we can see from the situation today. Chapter Four outlines the guide main ideas.

The guide then concludes with some pedagogical proposals for each chapter, which seek to complete and assimilate the theoretical sections. Although aimed primarily at professionals from public bodies and associations, they are also useful for anyone interested in understanding these issues.

We hope this guide helps us better understand all of the above terms and their importance and contributes to create a more just and fair society.

In addition, the guide intends to be a contribution and a complement to the rest of the documents and guides that address these issues.

Itsaso Andueza (Eskura Coordinator)

## CHAPTER I

# Hate

### 1.1 What do we mean by hate?

Hate has intrigued us since ancient times, where Aristotle (350 B.C.) distinguished between hatred and anger. For the philosopher, anger, along with scorn, fury, and wrath are passing emotions; associated with pain and directed against individuals. In contrast, hatred does not center itself on the individual experience, it does not generate pain in the person that hates, and it is directed against groups. Centuries later, Cicero (106 BC) thought of hatred as ancient anger, solidified. That is, hate is an ancient emotion turned into an idea. On their behalf, religious institutions - particularly Catholic institutions - used to distinguish between different forms of hatred: such as the distinction between hatred of others, against which their doctrine fought, and hatred professed by another religion, which their doctrine sometimes fostered.

According to the author, Daniel Lord Smiles, medieval jurisprudence also made a distinction between anger and hatred. Anger was deemed harsher than hatred, which was regarded as a positive value enjoyed by families and individuals, associated with honour and public reputation. Moving forward in time, already in the seventeenth century, Spinoza returns hatred to the world of emotions and highlights that hatred resembles pain and that it is activated for external reasons. Finally, in modernity, authors like Kernberg claim that hatred is both pathological and cognitive, with Allport placing prejudice at the threshold of hatred. Others such as Ahmed wrote in 2004 that hatred is part of the social fabric and that it hovers over groups.

Hate is therefore a concept that from antiquity to modernity is associated with both the world of emotions and the world of ideas, and that when we try to associate the two worlds we find ourselves dealing with very difficult questions:

- How and why does anger solidify as an idea?
- How does it circulate between groups?
- To what extent can we disaggregate the hatred of the emotion that sustains it?
- To what extent are ideas felt like emotions?

There are, however, a significant number of works that speak of forms of concrete hatred and which do provide answers. Concerning racism, misogyny, homophobia, aversion to functional diversity or hatred of poor or aporophobia, we have authors such as Angela Davis, Sarah Ahmed, Theo Goldberg, Stuart Hall, Philomena Essed, Paul Abberley, Maria Maies, Silvia Federici, and Adela Cortina, for whom hatred is part of the social structure, generating situations of oppression and inequality. If we know anything definite about hate, it is precisely this, that both its nature and its expression are intimately related to segregation, discrimination, and inequality in society.

## **1.2 Hate speech vs. the act of speaking hatefully.**

When we talk about hatred in this guide, we talk about segregation, discrimination, and social inequality. But what is hatred in relation to 'hate speech'?

We must distinguish the 'act of speaking hatefully' from 'hate speech'. While 'the act of speaking hatefully' refers to the set of discriminatory expressions emanating from individuals, 'hate speech' – strictly speaking – is a term of legal origin, whose aim is to regulate hatred and prevent discrimination. That is, 'hate speech' is associated with the social pursuit of equality, while 'the act of speaking hatefully' belongs to the field of communication, information, and linguistics, referring instead to the act of expressing hatred in order to generate or perpetuate inequality.

So why are both terms, 'hate speech' and 'hatefully speaking', known as 'hate speech'?

Naively, we think that university education does not accommodate racism. This innocence faded when racist posters began to appear in the hallways of American student residences in the 1980s, however. In response, the governing boards of numerous universities implemented a series of codes of conduct regulating the act of speaking or expressing racial hatred. Because the university's proposal focused precisely on the use of language and expression, libertarian civil groups feared that these codes would limit the individual's freedom of expression, as protected by the First Amendment of the American Constitution. Out of this fear, there was born a famous and hectic debate, which jumped from the legal academic field, into the public sphere. As radio and television publications and debates increased, the legal term 'hate speech' became popular and quickly began to be used interchangeably, both to talk about 'hate regulation' and to refer 'to the act of speaking hatefully'.



And so, 'hate speech' is a term that comes from the legal realm and encompasses all attempts to regulate hateful manifestations within society, whereas 'the act of speaking hatefully' is precisely the action of reproducing or creating expressions that seek to subordinate and discriminate against the other.

### **1.3 Thinking about hate speech.**

Today, the act of 'talking hatefully', and how to combat it, is quite popular. Over the past decade, and quite possibly due to the emergence and circulation of hateful messages on social media, didactic guides and videos that deal with how to combat *hate speech* have proliferated<sup>1</sup>. As such, there are numerous guides and videos now on how to create counter-narratives, how to build alternative narratives, how to act in case of racist or homophobic attacks in public places, how to act in case of gender violence or how to develop campaigns against discrimination, etc. However, we have less accessible, non-academic and relevant and enjoyable literature that treat 'hate speech' as a social technology or legal tool that seeks to regulate or control hate and discrimination.

Indeed, we talk a lot about 'the act of speaking hatefully', but we talk little about how to regulate hate. As a society, we leave this task to the experts in law and philosophy of law. Society is organized in this way, giving power and entrusting experts, which although has positive aspects, it is important not to forget the critical spirit or the ability of society to contribute to the elaboration of laws and regulations.

For example, if we approach with a critical mind how hatred is regulated in Europe we will see that there is a growing tension, where, on the one hand, we seek to protect groups that are frequent victims of discrimination and, on the other hand, we look to protect the right to freedom of expression of the individual. As such, we are seeing groups who are opposed to regulation against hatred. They defend instead freedom of expression, absolutism, and the principle of neutrality of American influence that tolerates the bigoted. Others are in favour of regulating hatred, but protecting all individuals equally, while others are seeking to protect particular categories, mostly historically oppressed groups. Thus, how to regulate hatred is a disputed territory and it is therefore important to think of hate speech as regulation. After all, 'hate speech' is a

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<sup>1</sup> Referring to the act of 'speaking hatefully'.

legal tool, a technology, or social instrument whose purpose is to obtain equality. The question, therefore, is to know if we want to regulate hatred or not and, if so, how do we want to regulate it.

So let's think about what hate is, how we understand hate, and how we want to regulate it. Indeed, let's think about what kind of society we want.

## CHAPTER II

# History of hate speech

## 2.1 A scattered and opposing story.

'Hate speech' is a Western concept, which evolved to the beat of the Cold War<sup>2</sup> and the ideological tensions of the time. To show how the dominant powers influenced hate regulation, the following sections below are dedicated to explaining the evolution of hate regulation from some relevant historical episodes.

## 2.2 Hate speech in the 1940s - Declaration of Human Rights.

In our most recent history, the notion of 'hate speech' is closely linked to the fight against discrimination, and to the Declaration of Human Rights. After the disasters committed by fascism, the will to create a system of regulation that prevented its recurrence was born. This task was entrusted to the United Nations, who prepared the Declaration of Human Rights as a way to protect the dignity of man and prevent the repetition of the horrors of another world war.

The Declaration was proclaimed by the United Nations General Assembly in Paris on 10 December 1948 and, although it was born as a 'common ideal for all peoples and nations', the drafting process was a political and human endeavour full of ideological tensions.

Thanks to the thorough task of United Nations' administrative staff, all discussions, agreements, and proposals that took place between 1943 and 1948 were transcribed onto paper. Reading them takes us to the backstage of an ideological and human process that demystifies the political process. From this reading, we can see, surprisingly, that it was the 'feared' Soviet bloc that called on human rights commissioners to have a non-sexist, non-racist, and anti-discrimination language. According to human rights expert, Johannes Mornsik, it was the Soviet bloc that presented the first draft of what we now know as 'hate speech', and did so before the Subcommittee on Prevention against Discrimination and The Protection

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<sup>2</sup> The Cold War is a period of political tension that arose as a consequence of the Second World War (1939-1945) and occurred mainly between the Soviet Bloc and the Western Bloc.

of Minorities, with the intention of this formula becoming Article 7 of the Declaration. The Soviet proposal read as follows:

*'any defense of national, racial and religious hostility or of exclusivity or hatred and national contempt, as well as any action establishing **privilege** or discrimination based on distinctions of race, nationality or religion, would constitute a crime' (emphasis added)*

This proposal was not accepted by the Western bloc, however. The Soviet idea, to its full extent, required the dismantling of the privileges of some social groups and also sought to empower the state and governments to define which groups could be considered minorities.

Fundamentally, some of the Western representatives did not trust the Soviet proposal and interpreted that the Soviet bloc sought laws to empower the state in order to identify and suppress ethnic groups that opposed the party on the other side of the iron curtain. Even when Western concerns raised a valid point, it can also be argued that the West had an added problem with the Soviet proposal, namely, including the word **privilege** within the proposal.

Unseeding privileges in the 1940s was a de facto problem for most Western countries. Indeed, the Soviet bloc understood privilege to be the benefits that are systematically granted to members of certain social groups or persons recognized or perceived as members of those groups, such as the historical privilege of the white man. Undoubtedly, this was a problem for the Western case, where there was de facto racial segregation in the United States, and where colonies still existed; indeed, apartheid reigned in South Africa, fascism in Europe had not been eliminated, and in most member countries women did not vote. Against this backdrop, how could the Western bloc accept a proposal such as that laid down by the Soviet bloc? How could Western countries untangle the privileges on which they were based or organized?

Mitigating the discussion, representatives of the Western bloc proposed an amended version of the Soviet proposal. The Western proposal, based on the rights of men and the Western individualistic tradition, proposed that, instead of protecting specific groups such as women or the population of the colonies, we should protect each and every human being individually from discrimination. This avoided the problem of regulating privileges and the problem of empowering the state over the definition of minorities.

The amendment was accepted, and voted on in a majority and is today known as Article 7 of Human Rights, which reads as follows: **'Everyone has the right to equal protection against all discrimination'** (*emphasis added*).

From this political process that occurred in the 1940s, we learn that the concept of <hate speech> was marked by an ideological tension or difference where, on the one hand, we see the trend that sought to protect historically privileged groups and, on the other hand, was the tendency that sought to protect all individuals equally. Although the issue was shifted towards the idea of protecting all individuals equally, continuing racial problems today remind us that these ideological tensions have never been solved.

## 2.3 Hate speech in the '60s - Convention on Minorities.

Just a few years later, in the 1950s, attacks on synagogues in various countries showed that some groups were more maligned than others. Taking advantage of this moment and perhaps encouraged by the American civil rights movements, the Convention on the Elimination of All Forms of Racial Discrimination and the Establishment of the High Committee for National Minorities was held between 1964 and 1969.

The question on this occasion was whether minorities could be defined and protected and, if they were, who would have the power to define them. As was the case during the process of drafting the Declaration of Human Rights, the Soviet bloc confronted the Western bloc head on. The winning argument was the one that said that minorities had to define themselves, that is, to fight for their category as an oppressed minority.

And what does this self-definition process consist of? There is no clear answer to this question, unfortunately. There is no universal protocol, as it is not a linear and established process but, instead, a struggle and social recognition that does not always occur in the same way. Sometimes, cultural recognition in others can be identity, etc. As an example, we could look to the Travelers in Ireland, who have fought for their distinction as an ethnic minority and who were recognized as such in 2017 after years of struggle.

Returning to the convention on minorities, one of the advances was to consider that hatred could be regulated when it comes to propaganda.<sup>3</sup> In particular, we refer to Article 4 of the

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<sup>3</sup> Propaganda was understood as a form of persuasive communication that seeks to obtain a response that satisfies its issuer (1986).

Convention, which protects groups from attacks of racial supremacy and expressions of hatred and that reads as follows:

*«States Parties condemn any propaganda in all **organizations** based on ideas or **theories of superiority** of a race or group of persons of a color or ethnic origin, or that attempt to justify or promote racial **hatred** and discrimination in any form” (Article 4) (emphasis added).*

Hate speech is therefore regulated when it comes to propaganda and specifically when based on ideas of superiority. However, lacking a “minority” definition, we return to the initial dilemma of Article 7. We have not officially identified which groups are privileged, nor have we officially defined who the minority groups that do not have access to privileges are. As such, all privileged and oppressed groups are regulated equally until they are officially recognized as such. That is, the propaganda of a white supremacy group could be theoretically treated equally to, say, the propaganda of the Black Panthers.<sup>4</sup>

## 2.4 Hate speech in the 1980s American college campuses.

The next event that has clearly influenced how we conceptualized hate speech involved events on American campuses in the 1980s and 1990s. We briefly stated earlier that, during this period, a series of racist and degrading messages against African-American students led the governing bodies of more than three hundred universities to implement codes of conduct against discriminatory expressions. The proliferation of these university regulations attracted the attention of the American Civil Liberties Union (ACLU), which regarded these codes as a significant threat to the freedom of expression, individual freedom, and academic freedom. An intense debate was opened, where several groups put forward motions, both for and against hate regulation on American campuses.

In favour of establishing anti-hate regulatory codes were ‘The Critical Race Theorist’ (CRT), made up of authors such as Matzuda, Delgado, Lawrence, and Crenshaw. CRT defined hate speech as *‘any form of expression that perpetuates forms of social subordination’*. His central thesis is that The First Amendment of the American Constitution had been crafted by settlers and freedom of expression, being associated with individ-

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<sup>4</sup> Black Panthers, also known as the Black Panther Party, was a political organization founded in 1966 by Huey Newton and Bobby Seale to challenge police brutality against the African American community

ual freedom, does not contribute to emancipating oppressed groups such as the heirs of slavery or Native Americans, but shields the privileges of settlers and only allows the oppressed to fight for their rights. The question, therefore, that authors made after CRT is, why should we fight for our rights? Why is accessing the benefits of privilege for some a struggle and for others a status quo? This is precisely what Angela Davis refers to when she says that freedom "is a constant struggle", especially for people of colour.

In addition to the group of academics advocating for the implementation of codes, were a second group of liberal academics from both the left and right of politics. Taken together, the liberal group argued that it is dangerous to assume that all individuals, because they belong to a particular group, must feel oppressed when confronted with an expression; for example, a woman in the face of a misogynistic expression should not necessarily feel oppressed. That is, under this perspective, not all individuals perceived as oppressed feel as such, nor do all groups perceived as privileged enjoy such privilege. As such, for the liberal group, regulating hatred by means of codes that limit expression could become limiting and generate other forms of discrimination.

In turn, two groups came out of this group of liberals: those seeking to protect all individuals from discrimination and those who believe that there should be no regulation against discrimination. On the one hand, we have the Critical Race Theorists Group who advocated for the implementation of codes regulating discriminatory expressions. On the other hand, there was the liberal group who advocated for abolishing all codes and simply promoting freedom of expression (view of conservative liberals) or to regulate against discrimination and protect all individuals equally (view of the liberal left).

The debate between these two groups was sealed in favour of both conservative and left-wing liberals defending individual freedom of expression and the protection of all individuals equally. In this regard, says an American legal scholar, Walker, the argument for freedom of expression won the debate, not for a matter of reason and weight but because it took place on American soil where liberals are the majority.

We have reviewed hate speech in the 1940s, and the 1960s, and 1980s, or what is known as the cold War period. We have seen that, in this span of time, hate speech was a concept that originated in an internationalist and universalist context such as human rights, where there were attempts to protect historically oppressed groups that never proliferated by opting for

universal protection of individuals. We have also seen that instruments for regulating hatred were developed and refined in the American context because of the renown of its debate in the 1980s and its head-on collision with First Amendment rights.

Therefore, in analysing the historical context in which the notion of <hate speech> has developed, we see that it is the result of a battle between liberal and ideological ideologies of materialistic historical court. And although the liberal left won the debate, the historical materialists continue to find reasons. A prime example being: #Blacklivesmatter



## CHAPTER III

# Discourse of hate and freedom of expression.

### **3.1 Is freedom of expression a limitation with regards to hate speech?**

Freedom of expression is a concept that constantly appears alongside the concept of hate speech. It is often presented as a dilemma, where limiting hate speech is a limitation of freedom of expression and where freedom of expression without limits perpetuates hatred.

Generally, when we talk about a dilemma, we talk about a difficult situation where you have to choose between two or more possibilities and in which finding a solution requires making compromises. In turn, a dilemma implies that all possibilities are equal or have the same characteristics. The question then would be whether this is the case, whether we can consider that regulating hatred and enjoying freedom of expression is a dilemma. To do this, we will try to understand what the value of freedom of expression is, why it enjoys value and influence and we will try to understand why the relationship between freedom of expression and hate speech are seen as a dilemma. Therefore, the following section focuses on Freedom of Expression and we aim to answer the following questions.

- What is freedom of expression, what is its evolution?
- Why does freedom of expression have such an influence?
- Is hate regulation really a limitation with regards to expression?
- Can freedom oppress?

### **3.2 Freedom of expression as a social tool.**

Freedom of expression is a fundamental right that enriches us. It is linked to the word, the intellect, the public and private life of the individual, and art and imagination. His-

torically, it has allowed us to evolve, to learn, and to realize ourselves as individuals. It is therefore essential to defend freedom of expression, but at the same time, it is important to note that when we talk about 'freedom of expression', we are not only talking about freedom in a spiritual, artistic or individual sense of the word, but also talking about a legal tool that has been built for social purposes and for utilitarian purposes. For example, Foucault said that, in liberalism, freedom must be understood as freedom of movement of people and goods.

### 3.3 Brief history of freedom of expression.

In 1644, John Milton wrote *Aeropagitica*, where the doctrinal foundations of freedom of expression, against censorship and quite possibly modern Western democracy as we understand it today, are laid out. Milton focused primarily on protecting the word in English parliament. Forty years later, the expression of parliamentarians would be legally protected by article 9 of the 1689 Bill of Rights:

*“that freedom of speech and debates and procedures in Parliament should not be prevented or searched in any court or place **outside Parliament**» (emphasis added).*

The French revolution and the rights of man are an important second moment in the history of the right to freedom of expression. In particular, Article 11 of the Rights of Man of 1789 states:

*“The free communication of thoughts and opinions is one of man’s most valuable rights; therefore, **any Citizen** can speak, write and print freely, provided that he responds to the abuse of this freedom in the cases determined by the Law” (emphasis added).*

If we look closely, we will see that human rights have expanded freedom of expression to all citizens<sup>5</sup> while at the same time recognizing that the word could be limited in legally determined cases.

An important third moment for freedom of expression takes place in America and is found in The First Amendment of the American Constitution, which reads as follows:

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<sup>5</sup> It must be taken into account that not everyone is considered a citizen. Citizenship is a legal status, and some individuals are being deprived of legal status.

*"Congress will **not be able to make any law** regarding the establishment of religion, nor prohibiting the free practice of it; **neither by limiting freedom of expression**, nor by press; nor the right to peaceful assembly of persons, nor to ask the government for compensation for grievances" (emphasis added).*

The influence of the First Amendment on the modern and contemporary world is undeniable. Its influence through cultural products such as films or music has given us the feeling that the United States has always been defined by the right of freedom of expression, however, and contrary to popular sentiment, freedom of expression and the cultural value of the First Amendment has not always enjoyed the popularity that it enjoys today.

Experts, Rabban and White, point out that freedom of expression was rarely a public concern before World War I. Until then, freedom of expression was an issue that concerned only federal governments and overlapped with defamation laws. The first case that the Supreme Court considered a matter relevant to the First Amendment was in 1919, with the case 'Schenk vs. United States'.<sup>6</sup> There were some loose cases in the inter-war period, where the First Amendment was used as a legal tool to defend workers with more 'radial' ideas, but it wasn't until the 1960s that the U.S. Supreme Court ruled on the importance of freedom of opinion and expression in the 'New York Times vs Sullivan' case.<sup>7</sup> In addition to its legal advancement, after World War II freedom of expression gained cultural and patriotic power. In the face of the world of totalitarianism, the United States made freedom its 'brand of the house' and, in particular, freedom of expression became the fundamental value of liberal Western democracy.

Freedom of expression has a long history within the history of modernity. We have seen that it has been fundamental to the individual and the evolution of society. However, in some countries, such as the United States, it has not always been a hegemonic or superior cultural value.

So, what happened to freedom of expression in human rights?

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6 The Court ruled in *Schenck v. United States* (1919) that speech that creates "clear and present danger" is not protected by the First Amendment. This decision shows how the Supreme Court's interpretation of the First Amendment sometimes sacrifices individual freedoms to preserve social order. In *Schenck v. the United States*, the Supreme Court prioritized the power of the federal government over an individual's right to freedom of expression.

7 *New York Times v. Sullivan* is a landmark 1964 case about freedom of the press. The Court held that the First Amendment protects newspapers even when they print false statements, as long as the newspapers do not act with "real malice."

### 3.4 Freedom of expression and freedom of information in Human Rights

In the context of human rights, freedom of expression also had weight. Let us go back to 1943, when the declaration was a web of political tensions, drafts, and ideas without agreements. At this time of disputes and debates, freedom of expression was associated with the notion of freedom of information. This association is relevant. We continually see the notion of freedom of expression being exchanged with the notion of freedom of information, which gives rise to the following question: are information and expression the same?

The short answer is no. For the present guide, expression refers to the act of creating thoughts, ideas, works, and opinions; while information refers to the act of receiving and issuing forms of expression, either through social media or any other means of dissemination. Therefore, the Commissioners of Human Rights, when they thought of freedom of expression, thought not only of what can be said, but of how it will be mediated and what is to be circulated. This is why the Drafting Committee drafted an article on freedom of *thought and expression* to be handed over to the Subcommittee on Freedom of Information. The text, after some modifications, read as follows:

*“Everyone shall have the right to **freedom of thought** and communication. This will include the freedom to have an opinion without interference; and search; receive and impart information and ideas by **any means** [meaning media], regardless of borders.”*  
(emphasis and explanation added)

It was pending whether this article would have any restrictions, so the Sub-Commission was asked, not only to value the content of the article, but also to consider whether there could be any particular restriction on freedom of expression, in particular those that had to do with categories that are generally most discriminated against. The request for the subcommittee to provide for some form of regulation read as follows:

*“that I will consider **denying this freedom** of publication and other means of public expression that seek or tend to cause injury, or incite prejudice or hatred, against individuals or groups by **race, language, religion or national origin**”*  
(emphasis added).

The Sub-Commission proposed two alternatives to the request for limitations. A first alternative, the most controversial and perhaps the most difficult to materialize, said

that one's freedom ends where the rights of others begins, while the second alternative was easier to materialize legislatively and delegated power to national laws and their cultural reality: *'to be responsible only for abuses of this freedom in cases determined by the law of nations'*.

Both the Czechoslovaks and the Soviets objected to how the Subcommittee on Information limited expression because, in their view, they were not sufficient, they did not bring any change that had an effect on structural hatred, and certainly did not contribute to any alteration of the power structures. However, their complaints went unheard and, by a majority, the article on freedom of expression was approved and included in the Charter of Human Rights as the well-known Article 19, which reads as follows:

*"Every individual has the right to **freedom of opinion and expression**; this right includes not being disturbed by your opinions, investigating and receiving information and opinions, and disseminating it, **without boundary limitation**, by any means [**meaning media**] of expression" (Article 19) (emphasis added)*

### 3.5 Freedom to express oppression and freedom that oppresses.

We noted earlier that freedom of expression is a right, but also a social technology, which serves, not only to manifest individual ideas, but as a tool for making social complaints. In many situations of oppression, the word, both oral and written, has been the only weapon that has left us aware of the un-justice that a person or population was going through. However, it is clear that under the right to freedom of expression, it can also be oppressed.

Prilleltensky defined oppression as:

*"a state of asymmetrical relations of power characterized by **domination, subordination and resistance**, in which the **controller** person or group **exercises its power** through processes of political exclusion and violence and through psychological dynamics of depreciation" (emphasis added).*

It could be said that oppression is more precisely understood as a psychological and political process in which subjugation manifests itself as a series of forced economic, social, material, and legal obstructions, and where, psychologically, the individual, for example, is

unable to contribute to a new society to which they have reached, leading to a feeling of inferiority, etc.

Indeed, the fabric of why these political, psychological, and social characteristics exist is complicated and we could not cover it in what this guide covers. However, we can talk about some authors such as María Maies and Silvia Federici who claim that the modern history of the West is a story of oppression. Maies and Federici argue that women and populations in the colonies have been systematically expropriated and their condition of inferiority has always been needed by the capitalist system. They are the heirs of these conditions who are considered historically oppressed groups. Moreover, and outside the history of capitalism, history has presented other groups such as LGBTIQ+ as 'hateful' for opposing or being different from the doctrinal and moral position of the dominant powers.

For all historically oppressed groups, freedom of expression has been, along with hate regulations, allies towards the freedom project, but it is increasingly common to hear voices speaking to us of a freedom of expression that, paradoxically, also oppresses.

Would we therefore blindly defend freedom of expression, even if it sometimes generates oppression? Or should we ensure the protection of historically oppressed groups? For philosopher and linguist, Judith Butler, languages does not oppress. Language is a set of words that we use with a particular intent. It is the intention and the effect on the person who receives it.

Although we can recognize Butler's words, unfortunately the lines are not so clear and the issue is not so easy to solve. Indeed, a woman might not feel individually oppressed when she faces a misogynistic slur, however the expression itself perpetuates ideas of subordination against a group. Therefore, what we consider to be individual, subjective, and linguistic is confronted with what we consider social, structural, and this line, this delicate line, is the one that has been confronting hate regulation with freedom of expression all these years, because freedom of expression places emphasis on the individual. However, hatred, as Aristotle points out, is not only against individuals, it is also against groups.

## CHAPTER IV

# What has this guide shown us?

- There is a difference between the act of speaking hatefully and hate speech. Where the first refers to the expressions that create or perpetuate hatred, the latter refers to the set of rules that regulate hatred and discrimination.
- The will to fight discrimination was born during the drafting process of the Declaration of Human Rights.
- The definition of hate speech is marked by the ideological tensions formed after the Second World War and during the Cold War.
- The guide has explored why those who defend Freedom of Expression are opposed to hate speech regulation.
- The guide has shown that there are three tendencies to regulate hatred:
  1. Hate speech must regulate all expressions that perpetuate social subordination over groups (materialistic historical perspective)
  2. Hate speech must regulate discriminatory expressions and must protect all groups equally (liberal perspective)
  3. Hate is not to be regulated. We must base ourselves instead on the right to freedom of expression (Absolutist perspective)
- We have explored the notion of freedom of expression, and its importance to the individual.
- We have established the difference between freedom at an artistic or spiritual level and freedom of expression as a social technology.
- We have explored the entanglement between freedom of expression and freedom of information.
- We have explored how freedom of expression can liberate, but also oppress.





## Activities Chapter I / **Activity 1**

# Hate as an idea

**Duration:** 30 to 40 minutes.

**Material:** Adhesive notes, Markers.

**Difficulty level:** medium, low.

**Objective:** The function of this exercise is to think about how hate is articulated in the form of ideas. The central question of exercise is to differentiate between hatred in emotions and hate turned into ideas. Note to the facilitator (hereinafter "the facilitator"): emphasize how hatred can also manifest itself in the form of 'love'. Example: 'I love my nation pure and clean.'

**Activity:** The facilitator will write in sticky notes or cards the phrases suggested below, which can be modified depending on the group. The facilitator will divide the group into 5 small groups that will discuss each sentence based on the following question: is hatred in this sentence an emotion or an idea?

### **Suggestions for the facilitator.**

- I hate cheese.
- I love my nation pure and clean.
- Women can't drive.
- Black people dance very well.
- All the deaf are suspicious.
- I hate to travel to Italy.
- I hate French football.

## Activities Chapter I / Activity 2

# Speaking hatefully<sup>8</sup>

**Duration:** 30 to 40 minutes.

**Material:** Adhesive notes, Markers.

**Difficulty level:** medium.

**Objective:** The purpose of the activity is to understand how the act of speaking hatefully makes other feel.

**Activity:** The facilitator will distribute to the groups a tab with the diagram provided (diagram 1). Cards will be given to individuals that list different hate phrases that the facilitator will have previously prepared according to the needs of the group. The phrases will be placed in relation to how the individual would make him feel. Facilitate a dialogue among the members of the group.

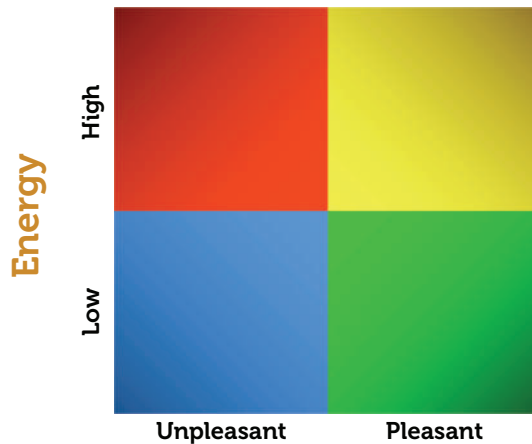


diagram 1

<sup>8</sup> <https://hackinghate.eu/toolkit/content/how-do-i-recognise-hate-speech/social-and-emotional-learning/social-and-emotional-learning/?from=resources&resource=5>

## Activities Chapter I / **Activity 2.1**

# Would you regulate these phrases?

**Duration:** 20 to 40 minutes.

**Material:** Adhesive notes, Cardboard, slate or whiteboard.

**Difficulty level:** medium.

**Objective:** The objective is to confront each participant with the decision to regulate the act of speaking hatefully.

**Activity:** The facilitator will draw up a total of ten sentences that reflect the group's way and needs. These will be distributed among the participants, who in turn have to decide whether or not to regulate the phrase, and why.

<b>I would regulate them</b>	<b>I would not regulate them</b>
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## Activities Chapter I / **Activity 3**

# Think, feel, do and say.

**Duration:** 20 to 40 minutes.

**Material:** Adhesive notes, Cardboard, slate or whiteboard. Markers.

**Difficulty level:** medium.

**Objective:** The function of this exercise is to learn to observe how we think and feel in a given situation where discrimination can occur. This exercise seeks to observe the scope of our knowledge, the power of our prejudices, and how we act accordingly.

**Activity:** The person who facilitates the session will distribute cards or folios with the following two given situations. Individually, you have to think about the situation and respond honestly. Each individual must observe what he or she would think in each situation, what the situation would make them feel, and what action they would take. The answers will then be placed in a box and, anonymously, the facilitator will be able to choose one to comment with the rest of the group. It may also be proposed that anyone can voluntarily agree to discuss their case.

### **Suggestion for the facilitator:**

- 'I've got lost in a central neighbourhood of a city I don't know. I see a person on the street who doesn't meet the visual characteristics of a local person. Would you ask him if he could give me the address?'
- After the attacks on London Bridges in 2019, Muslims in several countries came out with posters on the street, covered their eyes, and offered a hug. What would you do in that situation?'

## Activities Chapter I / **Activity 4**

# Regulate under generic categories or regulate privilege?

**Duration:** 40 to 50 minutes.

**Material:** Adhesive notes, Cardboard, slate or whiteboard. Markers.

**Difficulty level:** medium high.

**Objective:** The role of this exercise is, on the one hand, to differentiate hate speech from the act of speaking hatefully and, on the other hand, to understand that there are different trends in hate regulation. This exercise seeks to show the importance of how hate regulation is formulated.

**Activity:** The two definitions of hate speech will be written on a whiteboard, cardboard, or whiteboard (Figure 1). They are different approaches to hate regulation. Each group will then be given a list of hate speeches and a stack of sticky notes. Each group will write the list of expressions in the notes and paste them under definition 1 or 2.

**Suggestion for the facilitator:** The first definition does not contemplate subordination, while the second definition does. In the first case we see the 'reverse effect'; where a white man could accuse a black man of racism or violence from woman to man.

### **Suggestion of phrases for the facilitator:**

- All white men are shit.
- A person in a wheelchair cannot represent their country at the Olympics as a 'healthy' person.
- Migration should not have access to social security.
- The man is the victim of gender-based violence.
- Gender-based violence is sexist violence.

- We Europeans are a minority on our own continent.
- White people are a minority in South Africa.
- Homosexuals are very sensitive people.
- Spaniards are not people I would give a position of responsibility to

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**Definition 1)** Hate speech should be understood as the use of one or more specific forms of expression that discriminate on the basis of race, colour, language, religion or belief, nationality or national or ethnic origin as well as ancestry, age, disability, sex, gender, gender identity, and sexual orientation.

**Definition 2)** Hate speech should be understood as any form of verbal expression that contributes to social subordination and sustaining privilege.

Figure 1

## Activities Chapter II / Activity 1

# The circus

**Duration:** 90min. Full activity 120 to 160 min.

**Material:** audio-visual room or similar.

**Difficulty level:** medium high.

**Objective:** To illustrate the Soviet bloc's ideas about racist hatred and ethnic diversity.

**Activity:** Viewing and Colloquium of the film "The Circus" (1936) Directed by Grigory Aleksandrov, Isidor Simkov (Co-director) and written by Grigory Aleksandrov.

**Plot:** Orlova plays an American circus performer who, after giving birth to a black baby (played by James Lloydovich Patterson), immediately becomes a victim of racism and is forced to remain in the circus, but finds refuge, love and happiness in the USSR. His black son is hugged by Soviet friendlys. The film culminates in a lullaby sung to the baby by representatives of various Soviet ethnic groups who take turns<sup>9</sup>.

### **Suggestion for the facilitator:**

The film is available with English subtitles

(see <https://www.youtube.com/watch?v=FVAN0A6OWE4>)



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9 Source imdb

## Activities Chapter II / Activity 2



## BlackKlansman.

**Duration:** 125 min. Full activity from 160 to 180 min.

**Material:** audio-visual room or similar.

**Difficulty level:** medium high.

**Objective:** To illustrate racial tensions in the United States and the approach to racism compared to Soviet.

**Activity:** Viewing and Colloquium from a BlackKlansman (2018) directed by director Spike Lee. Written by: Charlie Wachtel, David Rabinowitz.

**Plot:** Ron Stallword is an African-American cop from Colorado Springs, who infiltrates the Ku Klux Klan with the help of a Jewish infiltrator. Based on real events<sup>10</sup>

**Suggestion for the facilitator:** Both the film The Circus and BlackKlansman could be shown in the same cycle. You could after viewing both films organize a panel or roundtable where a discussion could compare the differences between the Soviet vision and the American vision.

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<sup>10</sup> Source imdb



## Activities Chapter II / **Activity 3**

# Blacklivesmatter vs Allivesmatter

**Duration:** 90 min.

**Material:** audio-visual room or similar.

**Difficulty level:** medium high.

**Objective:** The idea is to deepen the idea of #blacklivesmatter and why liberal protection of the left, that is, the one that protects generic categories but not specific groups, is not satisfactory for a case like #blacklivesmatters but has given way to movements such as #allivesmatters.

**Activity:** First, three videos will be screened, two from Malcom X and a third video from Beyoncé. In the first video, Malcom X explains the reasons of why he uses the X, in the second video, Malcom X explains how he is against discrimination against any race and in favour of universal equality, but also explains how the African-American population is located or part of a disadvantaged position to access universal equality. The third video is Beyoncé's video from the 2016 Superb Bowl, where she exhibits Black Panther clothing and where she incorporates an X in honour of Malcom X.

After the viewing, the following headline will be displayed on a cardboard:

*"New York City protest planned against the half-time performance of the Beyoncé Super Bowl"<sup>11</sup>*

*Time Magazine, February 9, 2016 10:57*

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11 Titulo original : "New York City Protest Planned Against Beyoncé's Super Bowl Halftime Performance"

The activity consists of contrasting the videos with the owner in relation to #blacklivesmatter and #alllivesmatter.

### **Suggestion for the facilitator:**

**The Malcom X on his last name** video can be found <https://www.youtube.com/watch?v=-X9yMnhM6w> Subtitles have to be activated

The video **Malcom X on Front Page Challenge, 1965:** CBC Archives/ CBC can be found on <https://www.youtube.com/watch?v=C7IJ7npTYrU>

**Beyoncé & Bruno Mars Crash the Pepsi Super Bowl 50 Half-time Show video NFL** can be found in <https://www.youtube.com/watch?v=SDPITj1wlk>

## Activities Chapter III / **Activity 1**

# Write in impossible conditions<sup>12</sup>

**Duration:** between 40 and 50 minutes.

**Material:** computers or telephones to do internet searches.

**Difficulty level:** medium.

**Objective:** Explore the concept of freedom of expression. Understand the value of freedom of expression as a social value and its scope.

**Activity:** The group or groups will look for examples of people who have used freedom of expression to denounce situations of oppression or injustice. Encourage them to discuss who these people are, what they have read about them, and what those people have written about.

### **Suggestion for the facilitator.**

- BulelaniMfaci, Armando Valladare, Wole Soyinka, Irina Ratushinskaya, Victor Jara, Hugh Lewin, Nawal El Saadawi, Zarganar, Partaw Naderi, Faraj Bayraqdar, Jack Mapanje

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<sup>12</sup> <https://www.amnesty.org.uk/resources/lessons-writing-impossible-circumstances>

## Activities Chapter III / Activity 2

# Express yourself freely<sup>13</sup>

**Duration:** between 30 and 40 minutes.

**Material:** Sticky Notes, Felt pens, Computer and a projector.

**Difficulty level:** medium.

**Objective:** The objective of the activity is to bring the individual closer to freedom of expression, and to learn to see the difference between the expression that expresses ideas and the expression that subordinates the other.

**Activity:** The facilitator will distribute to the groups a card with the diagram provided (diagram 1) and separately, on cards, a list of different expressions that will be given to the individuals. The sentences will be placed on the diagram.

**Suggestion for facilitator:**

As the text says in the theoretical section, this activity does not have a correct answer but must be worked with criteria and a critical spirit. With it, dialogue is sought on how to regulate hate and how to regulate expression.

Figure 1) Author Santiago Sierra. Franco in the fridge

Figure 2) Sign in London pub

Figure 3) Digital Alert holder. 'Racial triumphant imperial Spain humiliate the afro- Franco selection'

Figure 4) ABC newspaper headline. 'Almost half of the Moroccan living in Spain are unemployed'

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<sup>13</sup> Source of activity: <https://hackinghate.eu/toolkit/content/how-do-i-recognise-hate-speech/social-and-emotional-learning/social-and-emotional-learning/?from=resources&resource=5>

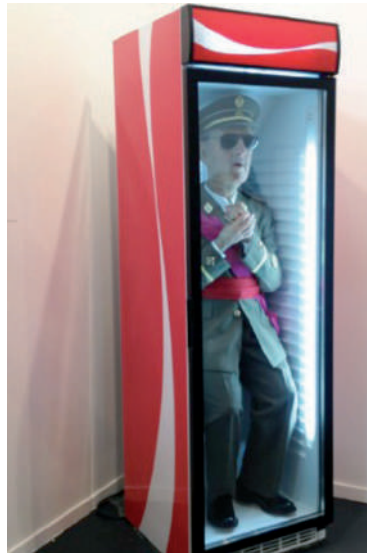


Figure 1



Figure 2



Figure 3



Figure 4

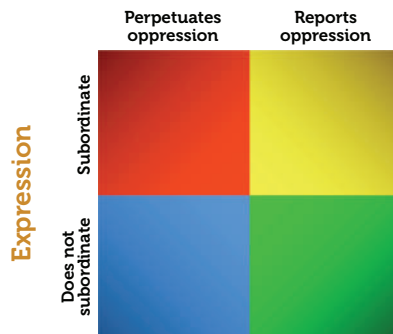


Diagram 1

## Activities Chapter III / Activity 3

# Would you regulate these expressions?

**Duration:** between 20 and 40 minutes.

**Material:** Sticky Notes, Cardstock, chalkboard or whiteboard.

**Difficulty level:** medium.

**Objective:** The objective is to confront the participant with the decision to limit these expressions.

**Activity:** the facilitator will work with the images that have been organized in the scheme of the previous activity. Participants have to answer the following questions:

1. Would you limit these types of expressions?
2. Would you limit the issuer?
3. Would you protect the referent of the images?

I would regulate the image and only the image	I would regulate who or whom produces the images
I would protect the affected group or person of this image	I would neither regulate or protect

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