

**COMMENTS AND RECOMMENDATIONS ON  
ECRI General Policy Recommendation No. 15  
on Combating Hate Speech**

**Dr. Agnes Callamard, Director,  
Global Freedom of Expression @Columbia  
May 20, 2015**

**Introduction:**

We are living in troubled and restive time. This is true for Europe as it is for the rest of the world. The deliberate attack on and executions of *Charlie Hebdo* journalists and on the customers of a Jewish supermarket in Paris in January 2015 further demonstrated not only the global outreach of the “terrorism” threat but also its intersection with freedom of expression and information, and religion. Three thunderous streams may be defining our era: expression and information (including on-line and media), religion and other forms of identity, and “terrorism” or national security. In 2015, these flows grew in force and volume against a backdrop of economic crisis, social and political unrest and rising inequality.

What constituted localized, small or larger, armed violence and escalating political violence in 2014 have now morphed into full-blown warfare, most often regional or international in nature and involving many parties in 2015. The latest Global Peace and Terrorism Indexes should show a notable deterioration in levels of peace, and a 61% increase in the number of people killed in terrorist attacks over the last year. Global analyses of freedom of expression in 2014, also highlight the worldwide deterioration in indicators and indexes. According to Reporters Without Border 2014 world press freedom index, *“Beset by wars, the growing threat from non-state operatives, violence during demonstrations and the economic crisis, media freedom is in retreat on all five continents. The indicators compiled by Reporters Without Borders are incontestable. There was a drastic decline in freedom of information in 2014. Two-thirds of the 180 countries surveyed for the 2015 World Press Freedom Index performed less well than in the previous year.”*

In Europe, according to the most recent report from Minority Rights Group, migrants, ethnic and religious minorities are blamed for the impact of the 2008 global financial crisis, government austerity measures and rising unemployment rate. This has translated into rising levels of violence and hate, anti-immigrant, anti-Roma and anti-Semitic rhetoric<sup>1</sup>. ENAR recently published report on racist crimes in Europe also document an increase in anti-Semitic crimes (particularly in Bulgaria, Denmark, Germany, Hungary, the Netherlands and Sweden) and Islamophobic crimes (particularly in France, England and Wales). The report also documents increasing forms of online incitement to hatred and/or violence. There were cases of violence, abuse or incitement to violence against Roma in almost all EU Member

---

<sup>1</sup> Minority Rights Group, State of the World's Minorities and Indigenous Peoples 2014, <http://www.minorityrights.org/12473/state-of-the-worlds-minorities/state-of-the-worlds-minorities-and-indigenous-peoples-2014.html>

States, and in particular those with a large Roma population. Crimes perpetrated by members of far-right groups are over-represented (49%) in racist crimes and complaints linked to political groups<sup>2</sup>.

The Fundamental Rights Agency 2013 report on the implementation of the European Union anti discrimination directive concludes: *“The data collected for different projects and areas show that despite significant legislative developments, there is still a considerable way to go in order to sufficiently improve daily reality. The available evidence shows that too many individuals’ social and economic achievement is significantly hindered and undercut by diverse forms of discrimination, including multiple and intersectional discrimination. This is the case, for instance, for ethnic minorities, migrants, refugees, asylum seekers and irregular migrants, in the areas of healthcare, education, employment and housing, as FRA’s research has shown. In addition, discrimination based on grounds other than ethnic origin, for instance, religion or belief, disability, age or sexual orientation remains a reality within the EU.”*

These are restive, dangerous, times, including for European values and fundamental freedom. They call for renewed energy, creativity and commitment.

### **Preamble to the Draft Policy Recommendation**

I. There is a fundamental difference between the French and English version of the document. In English, the policy seeks to “combat” Hate Speech. In French, it seeks to “resist” it. No doubt there is a long history of discussion behind the choice of these terms. But to state the obvious: to resist something is fundamentally different from combatting something even if the outcome may be similar. With regard to the most common variety of “hate speech”, I have no doubt that the word “resist” is far more appropriate than that of “combatting.” I may alter my position as far as the worse kinds of “hate speech” are concerned – those related to incitement, particularly incitement to commit violent acts. But in general, I will suggest that a preferable entry point and terminology are policies, measures, and capacities to *respond* to “hate speech” and *resist* their appeals and impact – rather than “combat” it.

II. On May 6<sup>th</sup>, Le Monde published an editorial entitled *“Islam: une semaine ordinaire en France”*. It is about the Institutions and the representatives of the French Republic (a school, two mayors) involved in speech acts, that may or may not amount to “Hate Speech,” but are *altogether* creating a climate of intolerance. I cite: *“Les mises en causes publiques des musulmans sont devenues fréquentes dans notre pays.... Obsédantes, répétitives, détestables, ces controverses font le jeu de tous les intégristes. Ceux qui, très minoritaires au sein de l’islam français, se veulent en rupture avec la République, ses lois et ses valeurs. Ceux qui, au nom de la République, ne reculent devant aucun amalgame pour mieux stigmatiser l’ensemble des musulmans. Et attiser dangereusement l’intolérance, le rejet et la haine”*<sup>3</sup>.

Whether these daily occurrences constitute “Hate Speech” is, in many ways, not the right question to ask. The correct question, in my opinion, is how do we respond most effectively to these occurrences, alone or together, which are undermining the right to equality and creating a climate of hatred and intolerance that eats at the heart of European societies and

---

<sup>2</sup>European Network Against Racism’s latest Shadow Report on racist crime in Europe, May 2015

<http://www.enar-eu.org/Racist-crime-in-the-EU-increasing>

<sup>3</sup>[http://www.lemonde.fr/societe/article/2015/05/06/islam-une-semaine-ordinaire-en-france\\_4628687\\_3224.html](http://www.lemonde.fr/societe/article/2015/05/06/islam-une-semaine-ordinaire-en-france_4628687_3224.html)

values?

I will argue that in the current state of affairs, the label “Hate Speech” is of limited use because it has meant, more often than not, a heavy if not exclusive reliance on some kind of legal or judicial responses.

Have these legal instruments produced any tangible positive results over people’s rights to equality and inter-cultural, inter-religious understanding? The state of European societies in 2015 speaks for itself. They are ravaged by intolerance and marked by increasing inequality. And yet European governments have produced more laws and regulations on the prohibition of some forms or another of “Hate Speech” than any other regions, with the possible exception of the Middle East<sup>4</sup>, and they continue to do so, on-line and off-line.

Any policy recommendation on “resisting or responding to hate speech” ought to begin with a clear and honest assessment of what exactly has worked in the field over the last twenty years or so.

- Some legal interventions may have worked. If so, which ones?
- Which conditions meant that they succeeded in establishing stronger grounds for tolerance and equality?

This assessment should include clarity over what we are seeking to achieve, and why we are seeking to achieve this objective.

- What will a successful response/resistance to “Hate Speech” Look like?
- What will be its most desirable effects?
- Not all “hate speech” are the same: what should be the priorities? For whom? Why?
- How do we respond to the repeated expression acts that may fall short of meeting a “Hate Speech” threshold but which altogether are creating a climate where intolerance and inequality may thrive?
- How do we encourage and amplify the voices of those that are targeted? How can they be heard, listened to, called upon?
- If the communication space (Media, Internet, Political) is dominated and monopolized by one discourse only – that which rejects and hates – how do we counter it? How do we multiply the opportunities for other expressions, for other realities, for other messengers?
- What has been the main response to “Hate Speech” to date? How successful have they been?

The main response to “Hate Speech” date in a vast number of European countries has been through criminal or civil law. In my view, the sooner we recognize, and acknowledge clearly the limits of the criminalization or civil law responses, the sooner will we be able to identify alternative responses and devote energy, time and funds where they are most needed.

I therefore greatly welcome Paragraph 19 of the Preamble, which states that: “Recognising that not all hate speech should be criminalised and that criminal prohibitions are not sufficient to eradicate it but convinced that the latter are necessary in circumstances where hate speech is intended or is likely to directly incite or encourage discrimination, hatred, threats or violence against those who are the object of such speech.” I agree with both the spirit and the letter of the paragraph, which is also in keeping with most international

---

<sup>4</sup> See the OHCHR regional workshops on the prevention of incitement, which cumulated with the Rabat Plan of Action. <http://www.ohchr.org/EN/Issues/FreedomOpinion/Articles19-20/Pages/ExpertsPapers.aspx>

human rights standards, particularly those related to article 20.

Paragraph 22 goes on stating that “legislation implementing these prohibitions has been disproportionately used against members of vulnerable groups or used against them for the wrong reasons.” Not only is the legal response not effective, it is actually counter-productive.

I regret though that not much is done with these paragraphs. The Preamble is dominated by a legal approach and legal terms<sup>5</sup>. It also fails to explain clearly what we are seeking to achieve and why.

- Are we seeking a world free of “Hate Speech”? Is this a realistic policy goal?
- Are we seeking a world with less “Hate Speech” and if so what does “less” look like?
- Are we seeking a world where the impact of “Hate Speech” on equality and intolerance are mitigated? Weakened? Nullified even through a range of other interventions?

III. On the definition of “Hate Speech”: There is no universally accepted definition of the term “Hate Speech” in international law or indeed under European law, despite its most frequent use by a vast number of actors, including politicians, policy makers, lawyers, judges, civil society, the Media, etc. As well expressed by Bhikhu Parekh, a member of the British House of Lords, commenting on the vagueness of “hate speech”, *“Some of them express or advocate views but do not call for action. Some are abusive or insulting but not threatening. Some express dislike of a group but not hatred, and some of those that do are so subtle as not to be obviously abusive or insulting. Some take a demeaning or denigrating view of a group but wish it no harm and even take a patronizingly indulgent attitude to it... Hate speech is a distinct kind of speech and much conceptual confusion is created [...] by subsuming all forms of uncivil and hurtful speech under it...”*<sup>6</sup>

The Draft Policy Recommendation initially defines Hate Speech as follow: *“advocacy in a public context of the denigration, hatred or vilification of a person or group of persons by reason of “race”, colour, descent, national or ethnic origin, other personal characteristics, beliefs, sexuality or status, as well as the glorification of persons for having committed atrocities against any such person or group of persons;”*

But the Preamble then goes on to add or qualify the original definition:

- Par. 8: Hate speech may take the form of the denial, trivialisation, justification or condonation of crimes of genocide, crimes against humanity or war crimes;
- Par. 18: Stressing the need to prohibit organisations that facilitate the use of hate speech that is intended or is likely to directly incite or encourage discrimination or violence against those who are the object of it;
- Par. 19: in circumstances where hate speech is intended or is likely to directly incite or encourage discrimination, hatred, threats or violence against those who are the object of such speech;

---

<sup>5</sup> Paragraph 19 is thus followed by paragraph 20, which calls for prompt investigation and for “avoiding unduly restrictive interpretations of provisions concerning its use.” Why this reference? Is the Draft Policy seriously suggesting that there is more or too much “Hate Speech” because the Courts have failed to prosecute?

<sup>6</sup> The Content and context of Hate Speech, edited by Michael Herz and Peter Molnar, 2012

The recommendations further add to the confusion. The first two recommendations concern the implementation of two key normative frameworks, namely the Cybercrime Directive and CERD article 4 – both of which offer sensibly different definitions of “Hate Speech”.

As a result the Policy Recommendation is failing to provide the much-needed conceptual clarity it ought to deliver.

My recommendations regarding the definition and characteristics of “Hate Speech” are as follow:

1. The Preamble should recognise the absence of agreement over the term and its overall imprecision, legal or sociological.
2. All references to the term “Hate Speech” should use quotation marks to denote the vagueness of the term and the absence of agreement on its meaning.
3. As highlighted, I think the multiplicity of definitions in the document is confusing for the reader and no doubt the policy-maker. ECRI should propose a definition for “Hate Speech”, and acknowledge that there are other definitions and other forms of “Hate Speech” adopted by governments or civil society actors (such as genocide denial).
4. The proposed definition (in paragraph 6) is a possible approach – I appreciate the focus on advocacy and public context in particular – but it does require (either in footnotes or in an annex) defining all relevant concepts, including advocacy, public, trivialising, hatred, etc<sup>7</sup>.
5. In my view, the document (in a paragraph 7 following the definition) should then clearly posit that one form of “Hate Speech” is particularly egregious because of its potential direct impact on individuals or groups well-being – these are speech that “incite” others to commit acts of violence or discrimination. This is partially acknowledged under recommendation 10. I will recommend therefore that the Preamble already makes a distinction between “Incitement” to hatred and other forms of “Hate Speech”, acknowledging that the former is particularly serious. Acknowledging the seriousness of “Incitement Speech” and distinguishing it from other forms of “Hate Speech” also gives further credibility and justification to recommendation 10.
6. I will suggest that “Incitement to hatred” be defined by relying on article 20 of the ICCPR and on the relevant paragraphs of article 4 of the CEDR.
7. Following the two definitions (On Hate Speech and on Incitement Speech), the Draft Policy Recommendation should then explain in the Preamble that the use of the term “Hate Speech” is not meant to infer that all forms of “Hate Speech” must be banned or criminalised or that they should all be the objects of legal or judicial interventions. Other forms of interventions are available and required, to resist or respond to “Hate Speech”, either at the hands of governments, civil society, the business sector, or other actors. Different actors may play different roles.
8. The preamble should also distinguish “Hate Speech” from offensive, hurtful or distressing expressions. The Preamble should thus recognise that the boundaries between what may be defined as “Hate Speech” and what may be characterised as “offensive” are porous at best. Yet, it has been a repeated finding of courts around the world, including the European Court for Human Rights, that offensive statements should be protected. I think this is particularly important now given the

---

<sup>7</sup> My own view is that a simple definition is probably the best, eg all forms of expression which incite (covered by another definition), spread, promote or justify hatred on the basis of (the usual categories). The focus of the Policy Recommendation is not on offering the best legal reading of “Hate Speech” but on identifying policy recommendations.

propensity of a range of countries to criminalise perfectly legitimate political expressions or political dissent on the basis that they constitute “offensive” speech or indeed “Hate Speech.”

9. The prohibition should stress that legal prohibition of “Hate Speech” should be used to protect individuals and groups, not particular beliefs, ideologies or religions. This recommendation is in keeping with fairly well established European traditions and values and is particularly vital in view of the abuse of “blasphemy” and “apostasy” charges around the world, which have been well documented and evidenced.

IV - On the role of politicians: Paragraph 13 states: *Recognising that politicians and others in public life have a particular responsibility in this regard because of their capacity to influence a wide audience through both releasing and discouraging xenophobic and other hostile behaviour*

I have a few comments:

- First, the paragraph seems to assume that politicians do not engage in “hate speech” or incitement speech. The paragraph seems to infer that they engage in different forms of speech, which may encourage or discourage “xenophobic or other hostile behaviour”. Why a focus on a specific form of racism for this paragraph? Why a focus on behaviours? (This is the first time this is mentioned)
- Second, the role of Politicians in both inciting or in hate speech should not be ruled out. Arguably, given their influence over society, their potential role, as “hate speaker” or “Incitement speaker,” should be particularly highlighted. I have made a specific recommendation in the draft document.
- Thirdly, the paragraph appears to state that Politicians may fall short of meeting the definition of “incitement speech” or “Hate Speech” but that they are nevertheless doing or saying something problematic (because they “release” hostile behaviour). This requires some clarification or elaboration.

### **Recommendations of the Draft Policy Recommendations**

This section of the document is particularly interesting and I welcome the clear commitment to think outside the box and explore new areas of interventions. I have already stated my conviction that far too much emphasis and reliance in the past has been placed on the legal (particularly criminal) response to “Hate Speech” with little demonstrated effect<sup>8</sup>. I thus welcome the many recommendations that are focusing on non-legal interventions, including by strengthening capacity of a number of actors to respond to “Hate Speech” and engage with the speakers.

From this standpoint, I find the first two recommendations disappointing – there has been no mention of these particular conventions or frameworks in the preamble, no discussion and evidence provided that their implementation will address and respond effectively to “Hate Speech” (and all of them places most emphasis on criminalisation). These Conventions offer different definitions of “Hate Speech” thus adding further to the confusing state of affairs as far as defining and regulating “Hate Speech.”

---

<sup>8</sup> This does not mean that there is no place for legal interventions. But these ought to be for the “worse” cases – meaning cases where the speaker has particular influence, where the medium of communication have been large, and where others may have been incited to commit illegal acts, including violence. See ARTICLE 19, Prohibiting incitement to discrimination, hostility or violence, London: Article 19, 2012

I have attached a powerpoint document that summarises the findings and recommendations which participants to a EU forum on “Tolerance Trumps Hate” generated. It includes a range of recommendations, which have not been considered by the Draft Policy Recommendations.

I will highlight here a few areas that could be further explored.

### **Blocking, filtering, deleting and the responsibilities of Internet Intermediaries**

The draft document recommends blocking or deleting websites, social media entries, accounts and (under recommendation 8) clarifying the scope of civil responsibilities for a range of Internet Intermediaries. I must confess finding recommendation 8 particularly obscure and recommendations related to the blocking or deletion of sites or accounts unhelpful and ineffective.

Some issues regarding Internet Intermediaries may be worth highlighting.

1. European Laws limit the liability of Internet Intermediaries if they are not aware of the content, and if once they become aware, they remove the offending material. However, the requirement that, given notice, the providers will be liable, often leads to preventive censorship by the providers with little or no process. For example providers such as YouTube or Facebook may remove materials from their sites merely upon receiving a letter claiming a copyright violation, or hate speech, without due process or seeking a reply from those who have allegedly committed the offence<sup>9</sup>.
2. European courts may be transforming this state of affairs through various rulings prefiguring a more segmented and diverse legal understanding of “intermediary,” one which recognizes the multiplicity of their forms, mandates, control of and interaction with content<sup>10</sup>.
3. Many European human rights activists have demanded that Intermediaries refrain from any kind of content regulation that is unchecked and not the object of a proper court order – thus requesting state intervention and public policy. The privatisation of censorship is as serious a concern for the free flow of information and one that may and could concern the voices of those fighting Hate Speech.
4. It is unclear to me whether ECRI is recommending that greater censorship power be attributed to Internet Intermediaries, outside any court orders, and without any reference to due process. This, to me, will not be acceptable. If there is one thing History has taught us, is that the principle and practice of due process (and of the rule of law) are essential to the response and resistance to “Hate Speech”...
5. If different forms of liability are to be ascribed to different forms of Intermediaries, this process must be left to tribunals. Internet Intermediaries themselves can also propose different forms of self-regulation over content going through their technology, provided due process and rights of appeal are respected.

As far as the blocking and deleting of content is concerned, a review of the literature on Internet and “Hate Speech” and “Extremism” highlights the following characteristics:

1. The Internet offers easier, faster and inexpensive ways to connect, communicate and Validate: “it provides a feeling of empowerment that comes from finding out

---

<sup>9</sup> ARTICLE 19 brief on intermediary liability, 2013

<sup>10</sup> Agnes Callamard, Are Courts re-inventing Internet regulation?, Discussion paper, Global Freedom of Expression at Columbia, May 2015

*that feelings are widely shared*<sup>11</sup>. It acts, more often than not, as an ‘echo chamber’ where “individuals find their ideas supported and echoed by other like-minded individuals<sup>12</sup>”. They create a collective identity, often across national borders, and a new digital territory.

2. There is ample evidence that hate and extremist groups are now more sophisticated in use of communication technologies but it varies across groups and countries. For instance, 50% of 157 “hate” sites surveyed last year in the US included multimedia materials<sup>13</sup>. ISIS videos (see for instance Lend Me Your Ears and Grand Theft Auto) demonstrate a thorough technical knowledge and understanding of marketing
3. On the other hand, Internet is not a monolithic bloc. It is important to distinguish between websites; chat rooms; facebook pages; twitter; Instagram; YouTube; SMS; etc. All of them carry different forms of expressions and may be sued for different purposes. A lot of incitement or radicalisation may take place through “Chat rooms” for instance, as opposed to other forms of internet-based exchange.
4. Intelligence Experts around the world concur in this assessment: Systematic, large-scale deployment of take-down or filtering measures is impractical, and even counterproductive. The offenders relocate, rename or mutate... and so does the “Hate” or Incitement speech. Accounts usually splinter and re-appear very quickly under different names. There are severe limitations on the effectiveness of the take-down response, given the speed with which new data is uploaded and the limited capacity of law enforcement agencies.
5. On the other hand, taking down websites or accounts may be disruptive. This may be an objective worth achieving, although this does not amount to a long-term effective strategy of response to “Hate Speech.”
6. In view of the above, ECRI should not place such emphasis on the take down and deletion measures. These are not effective enough at responding (or combating for that matter) Hate Speech to justify such a reliance. They may play a role, but this should be better defined, as part of an effective strategy of response.

### **Counter speech**

The Preamble refers to them but there is no specific recommendation to that effect. Arguably, this is a new type of intervention for many actors. It goes beyond the traditional awareness raising campaign to focus specifically on “countering” the speech that creates a climate of intolerance. ECRI should take a stronger lead in recommending further investment into “counter-speech” from all concerned actors, including civil society and social media platforms.

In my experience, to date, too many instances of “counter-speech” and public awareness campaign are missing their targets and thus proven of limited effect. They are driven by a “feel good” approach, speak to those that are already convinced, and fail to engage convincingly with either the speakers of “Hatred” or their audiences.

The objectives of counter-speech may be listed as follow:

- Denounce “Hate” speech and Incitement
- Provide alternative and progressive interpretation

---

<sup>11</sup> Abraham Foxman and Christopher Volf, *Viral Hate: Containing Its Spread on the Internet*, Palgrave Macmillan, USA, 2013, p.30

<sup>12</sup> RAND Corporation, *Radicalization in the Digital Era*, 2014

<sup>13</sup> Phyllis B. Gerstenfeld, Diana R. Grant, Chau-Pu Chiang, *Hate Online: A Content Analysis of Extremist Internet Sites*, in *Analyses of Social Issues and Public Policy*, Vol. 3, No. 1, 2003, pp. 29—44



- Bust myths, refute through counter-examples
- Discredit (in particular rumors)
- Plant ‘seeds of doubt’
- Highlight the risks linked to the use of violence or discrimination

These are broad and distinct objectives, all of which require different kind of messages, messengers and medium.

Some possible recommendations (which will need further elaboration and guidelines) include:

1. For all actors to take some risks around the use of “counter speech”: this is arguably a new form of intervention, which requires thinking outside the box and taking some leaps. On the other hand, there are experiences from other fields (e.g. peace building; communication, psychology) that could be built upon. The key message is that the communication space cannot be monopolized by one viewpoint, one speech or one perspective only. The space must be occupied; there must be far more messages countering insidious or direct speech - whether racist, xenophobic, hateful or inciting.
2. In particular, social media platforms should be encouraged to explore, develop, implement new strategies to respond to the use of their platforms by Hate speakers. As elaborated below, taking down these messages or accounts is ineffective – it may disrupt but will have limited impact in the medium term, let alone long term. What are the other responses that social media platforms could implement that will “fill up” the space and ensure that there are alternative viewpoints being proposed? There are some attempts and examples. More should be developed. For instance:
  - a. Google search engine has placed text on its site that apologizes for the ranking of certain websites (in this case, anti-Semite) and gave users a clear explanation of how search results are obtained, to refute the impression that hateful websites were somehow being validated as a reliable source of information<sup>14</sup>.
  - b. Google You tube has developed videos to counter hatred and offer different viewpoints<sup>15</sup>
  - c. Facebook is currently studying positive messages and identifying key elements such as the Importance of target audience; who is the most effective speaker; right format for a message to go viral; positive, funny or satirical tone<sup>16</sup>.
3. Civil Society organisations as well should be encouraged to invest in “counter-speech” which will target the speakers and audience of “Hate Speech,” offer support and solidarity with the victims of “Hate Speech”, etc.
4. Counter narratives must address topics upon which hate speech strives. These include immigration, Islam, the Roms, etc. The strategy of response cannot shy away from the difficult or sensitive areas.
5. Thorough evaluations of these “counter speech” should be encouraged and funded: this is a new area of work and there is great need to study them and identify recommendations for greater use and development. There is also a need to

---

<sup>14</sup> Cited in: Foxman, Abraham H.; Wolf, Christopher (2013-06-04). *Viral Hate: Containing Its Spread on the Internet* (Kindle Locations 1377-1382). Palgrave Macmillan. Kindle Edition.

<sup>15</sup> See for instance, entire playlists on YouTube dedicated to [Islam against Extremism](#); or a New anti-Jihad YouTube animated series called [Abdullah X](#)

<sup>16</sup> Monika BICKERT, Facebook, Presentation at Tolerance Trumps Hate event, Brussels, 8 May 2015

determine how “counter speech” differs from awareness raising campaigns and from “propaganda.”

### **About Monitoring**

The proposed recommendations are well taken. I will suggest though two additional issues for consideration:

1. Monitoring should not be an end in itself – it needs to integrate a response and action strategy – Monitoring for which purpose? The data collected needs to be useful for policy and action development. It must also feed into trends and quantitative analysis with the view of extracting findings above and beyond particular instances
2. Monitoring should aim at unpacking the mechanics of “Hate Speech.” This requires a strong focus on the audience, not just on the speakers and the medium of communication. Who listens, reads, responds to “Hate Speech”?

### **About “Hate Speech” Jurisprudence**

ECRI should recommend that, when “Hate Speech” or preferably “Incitement is the object of charges and a trial, tribunals (be they national or regional) should engage into better argued, better developed arguments and legal reasoning. The Hate Speech jurisprudence is actually very poorly argued, thus adding to the state of confusion. Judges should “adapt the law to the complex circumstances of each case with sensitivity and good judgements. The resulting case law elucidates the law’s key concepts, explores the full range of its meaning and implications, and builds up an appropriate tradition of discourse on it.<sup>17</sup>” This is the theory. It is fair to say that judges have largely failed to provide this required guidance when it comes to “Hate Speech.”

---

<sup>17</sup> Bikhu Parekh, “Is there a case for banning Hate Speech?” in Herz and Molnar, 2012, p.53