

## Conceptualization of Hate Speech Inkenya

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**Abstract:** Hate speech is among the major contemporary issues in the modern society which if not kept in check could lead to violence. Hence, in Kenya, strategies have been put in place to curb hate speech including establishment of institutions like the National Cohesion and Integration Commission (NCIC) whose main purpose is to promote national unity and also counter hate speech. However, despite these strategies, the vice still exists. Little has been achieved from several investigations by police against hate speech suspects in Kenya. This study therefore sought to assess the conceptualization of hate speech and its effect on the fight against hate speech in Kenya. The objectives were to: analyze the perception of law enforcers on hate speech; assess how members of the public perceive hate speech; and determine how the conceptualization of hate speech affects the fight against hate speech in Kenya. Descriptive survey design was used. Using random sampling, stratified random sampling and purposive sampling, a sample size of 215 respondents (110 police officers, 100 civilians and 5 NCIC officers) was selected. Data was collected using a structured interview and two sets of questionnaires. Quantitative data was analyzed using descriptive statistics of frequency, percentage and mean while qualitative data was analyzed using thematic analysis guided by the study objectives. The findings revealed that the police officers could easily identify hate speech in a statement (Mean = 4.1; Std Dev = 0.8), but found it challenging to analyze hate speech for prosecution purposes due to its complexity occasioned by contextual variations in interpretations at (Mean = 3.6; Std Dev = 1.1). They opined that, a statement is considered hate speech if it calls for violence (Mean = 4.0; Std Dev = 1.2). The civilians affirmed that they mainly heard about hate speech from radio and television (73.3%), and the social media (54.4%). They also echoed the officers by affirming that they were aware that a statement is considered hate speech if it calls for violence (mean = 4.3; Std Dev = 0.8). The study concludes that although hate speech may be clearly understood, prosecution of those who propagate hate speech remains complex due to different interpretations that may be associated with different contextual settings and subjective conceptualization. The study recommends among other measures that, police officers and NCIC should work together to ensure that they achieve more objective ways of countering contextual distortion of hate speech to guarantee that the law is enforced in the fight against hate speech without discrimination (by tribe, position, relationship, gender etc), especially pertaining to arrest and prosecution of hate speech suspects.

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### I. INTRODUCTION

#### 1.1 Background to the Study

Freedom of expression (free speech) is a fundamental human right guaranteed in international as well as regional human rights instruments (Mute, 2008). Similarly, Sorial (2014) pointed out that freedom of expression is a prerequisite for a democratic society. All democratic societies in one way or the other grant some freedom of speech through constitutional rights in respect to given social context. However, Mihajlova, Bacovska, Shekerdjiev (2013) argued that if such freedom is left unchecked, it is likely to be abused and can transform into an entirely opposite phenomenon. Hate speech and hate crime are such phenomena which could lead to violence. The United States Holocaust Memorial Museum report (2014) noted that one of the earliest cases of hate speech could be traced in Germany during the Holocaust where approximately six million Jews were murdered by Hitler's Nazi regime between 1941 and 1945. In Africa, Mihajlova, Bacovska and Shekerdjiev (2013) noted that in countries that have experienced civil wars and genocide including Rwanda, DRC Congo, Libya, and South Sudan among others, such wars are often preceded by widespread hate speech. The history of hate speech in Kenya is long and unpleasant one. Mute (2008) noted that the post-election violence experienced in 2007/2008 resulting to the deaths of approximately 1200 people was preceded by ugly and demeaning hate speech perpetrated along tribal lines.

KNCHR (2008) has defined hate speech as any form of speech that demeans others, promotes hatred and encourages violence against a group of people on the basis of ethnicity, gender, religion, race and colour.

Hate speech is a controversial topic that is difficult to define. Gould (2005) observed that the concept is context dependent hence the likelihood of conceptualizing the term differently. Accordingly, some phrases that might be considered as a joke in one context can be construed to be demeaning when uttered in another context to different audience. Despite the complexity in the conceptualizations, different countries including Kenya has put in place several measures to counter hate speech.

In Kenya, the National Cohesion and Integration Commission (NCIC) is the statutory body that is responsible for countering hate speech. It was established under section 15 of the National Cohesion and Integration Act No.12 of 2008. Its functions as stipulated in the said Act include: facilitating and promoting harmony and peaceful coexistence of all persons regardless of their ethnic and community background; eliminating any racial and ethnic discrimination and discouraging people, institutions, political parties and associations from advancing discrimination among others. As far as the fight against hate speech is concerned, the Commission has demonstrated some efforts in dealing with the vice. Some of the activities being carried out by the Commission include and not limited to: sensitizing the public about hate speech as offences under the law, conducting media campaigns to discourage Kenyans from engaging in hate speech, training police officers on hate speech investigations, facilitating police officers with required resources including electronic monitoring devices while investigating hate speech cases among others. According to NCIC (2019), so far over 3000 individuals including high-profile personalities have been investigated. Most of these cases have been finalized while others are still pending before court.

Though it is well known that NCIC has put in place several strategies to counter hate speech which are implemented by the police, the vice still exists. A number of investigations have been launched by police against several individuals accused of hate speech. However, little has been achieved out of those investigations in terms of prosecution. Failure to successfully prosecute hate speech offenders encourages the crime to continue since deterrence is only achieved after successful prosecution. This raises the question on how hate speech is being conceptualized and how this is affecting the fight against hate speech. This is especially because, even with various provisions in the National Cohesion and Integration Act, hate speech is still rampant among Kenyans especially along tribal lines. However, few empirical studies have assessed the conceptualization of hate speech and its impact in the fight against hate speech in Kenya. An understanding of how people conceptualize hate speech is important if law enforcement on hate speech is to be achieved. Currently there is a dearth of empirical data on what makes it difficult to successfully prosecute hate speech cases. This study therefore assessed the conceptualization of hate speech in the light of the fight against hate speech in Kenya. The objective of this study was to analyze how hate speech is conceptualized and how this affects the fight against hate speech in Kenya. In this study it is perceived that a national consensus on interpretation of hate speech irrespective of the context is important for any successful prosecution.

## **II. LITERATURE REVIEW AND THEORETICAL FRAMEWORK**

The Doing Difference Theory was applied in this study. This theory was proposed by Barbara Perry in 2001 and argued that hate speech and hate crime is well understood as the extreme form of discrimination, and marginalization of people who are viewed different by others. Perry (2001) noted that power dynamics is an important factor when explaining hate speech. She further stated that within modern capitalists' societies power hierarchies are established by dominance over difference in terms of race, tribe and class amongst others. She observed that the concept of difference results from people perceiving themselves as members of groups with same or similar identity and different from others who do not share common characteristics.

Generally, in most communities, common characteristics and interests bind people to their cultural and ethnic identity such as tribes, religion, sexual orientation, or other such characteristics. For example, in Kenya, people identify themselves along tribal groups, religious groups or even regions where they come from. Members of such groupings view others differently and may be feared by others. According to Bowling and Philips (2003), such fear arises out of the assumption that those who are viewed as different will influence others' identity and dominate them. Perry (2001) emphasizes that ultimately, those who pursue this ideology may have little influence in the distribution of wealth and power. As such, this kind of discrimination against those perceived different can escalate to acts of prejudice such as hate speech leading to violence if such people are incited by their leaders to attack those they view different. For instance, in Rwanda, the 1994 genocide was as a result of differences of two tribes namely Tutsi and Hutus in sharing political power and resources. Similar views extend to the Holocaust genocide in Europe between 1941 and 1945 in which millions of Jews in Europe were killed by German's Nazi regime who under the influence of their leader Adolf Hitler hated the Jews because of their perceived entrepreneurship spirit that made them prosper in a foreign land.

Similarly, the European Parliament secretariat (2015) carried out a comparative study on the European legal framework on hate speech in seven European countries which included Germany, Belgium, Netherlands, Hungary, Greece, Sweden and France. The participating countries were selected purposively since they had enacted laws against hate speech. The study involved a survey on how hate speech is understood, investigated

and prosecuted in each of the seven countries. Security experts, police, prosecutors and magistrates were interviewed. The study also found out that there was lack of clear terms in the definitions of hate speech which hindered the shared understanding of what constitutes hate speech by the police and prosecution leading to insufficient investigation and prosecution. A similar study carried out by Petnehazi (2012) in Romania on the analysis and impact of user generated hate speech of online newspaper expressed similar sentiments.

The study used a case study where 84 newspaper articles were purposively sampled and analyzed. The study observed that having an exhaustive definition of hate speech is difficult due to the fact that hate speech is relative hence a complex concept to define. The findings indicated that in Romania, detecting of hate speech by police officers is much easier than addressing or countering it. The study assisted the researcher in understanding that detecting and addressing hate speech is still a complex issue in many countries though some best practices can be borrowed from developed countries especially use of ICT to address hate speech. However, the study focused on detecting online hate speech and does not indicate whether the measures have been evaluated. The current study sought to evaluate measures to counter hate speech with focus on hate speech investigations.

Strachan (2014) conducted a research on evaluation of various methods used to sensitize members of public on the dangers of hate speech in Kenya. He analyzed both television and radio programmes including "Vionja Mahakamani". The findings indicated that hate speech is more prevalent during periods of political or economic disturbances. It also indicated that hate speech in different contexts can be interpreted differently thus problematic to law enforcers and courts in determining statements that are actually hate speech. However, it was a case study hence the findings cannot be generalized and focus was to create awareness of hate speech and preach peace. Nonetheless, the study informed the researcher on the complexity of interpretation of hate speech not only by law enforcers but also by members of public. This was also observed by Mzalendo (2012) that the concept of hate speech is relatively new and under explored in Kenya presenting difficulties in its enforcement thus informing this study.

### **III. RESEARCH METHODOLOGY**

The study was carried out on a heterogeneous population that consisted of police officers serving in the Directorate of Criminal Investigations and carrying out intelligence collection; key informants from NCIC; and members of the public.

#### **Study Design**

A descriptive survey using mixed method approach was used in this study since the method allows gathering of facts and description of the situation the way it is in its social setting rather than manipulating variables under study.

#### **Study Location**

The study was conducted in Nairobi County. The area was selected because it hosts the head offices of the targeted institutions including the National Police Service and NCIC which means that most of the decisions dealing with hate speech are made within this environment. Moreover, it is also a cosmopolitan city with people (members of the public) from different tribes who interact at different levels.

#### **Study Duration**

The study was conducted from October 2018 to October 2019.

#### **Sample Size**

The total sample size targeted for the study was 215 respondents.

#### **Sample Size Calculation**

This study employed random sampling, stratified random sampling and purposive sampling techniques to draw respondents from the target population. Stratified random sampling was used since police population is heterogeneous and exists in strata which are gazetted officers, members of inspectorate and junior officers. DCI headquarters, Serious Crime Unit being the coordinator of all criminal investigations fell in the sample by default. Therefore, a sample size of 110 officers who deal with hate speech were selected. Purposive sampling was also used to select 5 key informants from NCIC who are directly involved in facilitating of police programs on hate speech investigations. Random sampling was used to select a sample from members of the public in Nairobi whereby a sample size of 100 people was randomly selected. Therefore, the total sample size was made up of 110 police officers, 100 civilians and 5 officers from NCIC.

#### **Subjects and Selection Method**

The criteria for inclusion in this study was; officers within the National Police Service involved in investigating hate speech, officers from NCIC who play a direct role in facilitating police programs on hate speech investigations and prosecution, and the general public who are served by both institutions.

#### **Procedure methodology**

The divisional commanders were first consulted for approval to avail the investigators who filled the questionnaires. A briefing on purpose of study was first done to ensure that participants were aware of what is

expected of them before engaging them in the study. Once a participant gave consent to be engaged, the data collection tool was administered to them. Different data collection tools were administered to different categories of participants. A structured interview schedule was used to conduct interviews with the key informants from NCIC due to its flexibility to gather in-depth information from sensitive topics and clarify issues. Two different sets of questionnaires were also used to collect data from police officers and members of the public. The first set was administered to selected categories of police officers including gazetted officers, members of inspectorate and junior officers who carry out general investigations and intelligence collection duties on hate speech. The other set was administered to members of public.

**Statistical Analysis**

Mixed analysis method was used since the study drew both quantitative and qualitative data. Quantitative data was analyzed using descriptive statistics which were in form of frequency tables, graphs, measures of central tendencies and percentages. The qualitative data was coded thematically and then analyzed statistically by use of content analysis into emerging phrases or themes based on the objectives of the research. It was presented in prose form.

**IV. RESULTS**

**Response Rate**

After administering the respective research instruments to each category of the targeted respondents, those who duly filled and returned the questionnaires were: 84 police officers (76.4%) and 92 members of the public (92%). In addition, all the 5 targeted NCIC officers (100%) consented to be interviewed using the interview guide. Therefore, responses were collected from a total of 181 respondents out of the targeted 215 respondents, which translates to an overall response rate of 84.2%. The response rate was considered adequate for the study in line with Fincham (2008), who recommended that a study should seek to achieve a response rate of at least 60%.

**Demographic Information**

Table 1 presents the demographic information of the respondents.

**Table 1: Respondents’ demographic information**

Aspect	Police officers		Members of the public	
	Frequency	Percent	Frequency	Percent
<b>Gender</b>				
Male	66	78.6	51	55.4
Female	16	19.0	41	44.6
No response	2	2.4	-	-
<b>Rank</b>				
Gazetted officer	12	14.3	-	-
Members of inspectorate	18	21.4	-	-
Other ranks	51	60.7	-	-
No response	3	3.6	-	-

As reflected in Table 1, among the police officers who participated in the study, 66 (78.6%) were male while 16 (19%) were female. This implies that majority of the police officers in Nairobi are men. This resonates with Prenzler and Sinclair (2013) whose survey revealed that male police officers far outnumbered the female officers in the police departments, attributing the male dominance to powerful stereotypes regarding the nature of police work, which presume that police work requires symbolic authority and physical force only exercised by men. However, research and experience has shown that women police officers given opportunities to lead like peacekeeping missions have done equally as well as their male counterparts (UNDP, 2007). This means that gender has no effect on effectiveness of an officer in policing work.

Concerning their ranks, 14.3% of the police officers were gazetted officers, 21.4% were members of the inspectorate while majority (60.7%) were in other ranks. This indicates that majority of the officers handling hate speech in Nairobi are from the low ranks which include senior sergeants, sergeants, corporals and police constables. A similar trend has been reported in other countries including the U.S where Bruns and Magnan (2014) found that, 73.8% of police officers were in the lowest rank (non-commissioned officers) while those in the highest rank (commanders) constituted only 1.6%. The trend is informed by the fact that police service is an organization that is hierarchical. Accordingly, officers in the low cadre who are the majority are mostly deployed in operational duties including carrying out patrols, general investigations, guard duties and

apprehending offenders among others (Maguire et al., 2003). On the contrary, senior officers are mostly involved in strategic planning activities.

**Perception of Law Enforcers on Hate Speech and Its Effect on the Fight against Hate Speech**

Ten statements on how officers perceive hate speech were used where the officers were required to rate them on a scale of 1 to 5. The mean score rating was analyzed whereby the higher the mean (closer to 5), the higher the prevalence of the subject aspect as expressed and vice versa. Standard deviation (Std dev) measured the extent of unanimity in responses, where low standard deviation indicated similar or close to similar opinions among the respondents and vice versa. Table2 presents the findings.

**Table 2: Police officers' perception on hate speech**

Statements	Strongly disagree	Disagree	Neutral	Agree	Strongly agree	Mean	Std Dev
Analyzing hate speech is a complex issue to me since what might be considered hate speech in one context might not in another context	7.2	9.6	15.7	50.6	16.9	3.6	1.1
I can easily identify hate speech in a statement	-	8.3	7.1	53.6	31.0	4.1	0.8
I am aware that the National Cohesion and Integration Act criminalizes and regulates hate speech in Kenya	3.6	6.0	6.0	30.1	54.2	4.3	1.1
The definition of hate speech in the NCI Act which defines it as use of threatening, abusive or insulting words or publication or display of any written material that is intended to stir up ethnic hatred is not clear since it does not state the conditions under which hate speech occur.	3.6	10.8	9.6	50.6	25.3	3.8	1.0
The above definition does not guide me adequately when analyzing hate speech due to lack of proper clarity	6.1	11.0	9.8	58.5	14.6	3.6	1.1
A statement is considered hate speech if it calls for violence	3.8	15.4	7.7	24.4	48.7	4.0	1.2
The position of the speaker of hate speech in the society e.g a politician is an important factor while analyzing hate speech	2.4	8.5	7.3	40.2	41.5	4.1	1.0
The influence the speaker of hate speech has in the society is an important consideration when analyzing hate speech.	-	6.2	4.9	40.7	48.1	4.3	0.8
I am not sure what constitutes hate speech in a statement	40.7	40.7	4.9	12.3	1.2	1.9	1.0
I have not been trained on how to identify hate speech	19.3	19.3	9.6	33.7	18.1	3.1	1.4
Average						3.7	1.1

The officers' agreement or disagreement with the allegation in each of the statement about their perception on hate speech was scored on a scale of 1-5 where: 5 = strongly agree, 4 = agree, 3 = neutral, 2 = disagree and 1 = strongly disagree. Based on this scale, the mean score for each statement was determined as well as the standard deviation (Std dev). The mean and the Std. dev were then used to describe the officers' perception whereby: a mean of 3.5 to 5 indicated that they agreed with the allegation as expressed in the statement; a mean of 1 to 2.4 indicated that they disagreed with it while a mean of 2.5 to 3.4 indicated that they neither agreed or disagreed with it.

Overall, police officers' perception on hate speech was rated at an aggregated mean of 3.7 with a standard deviation of 1.1. Based on the scoring, findings revealed that most of the officers were aware that the National Cohesion and Integration Act criminalizes and regulates hate speech in Kenya (Mean = 4.3; Std Dev = 1.1). However, they expressed that the definition of hate speech as provided in the NCI Act is not clear to them (Mean = 4.3; Std Dev = 1.1). This could probably explain why despite majority of officers admitting that they can easily identify hate speech in a statement (Mean = 4.1; Std Dev = 0.8), some of them indicated that

analyzing hate speech for prosecution purposes is complex to them since what might be considered hate speech in one context might not in another context (Mean = 3.6; Std Dev = 1.1).

This was also echoed by the interviewed NCIC officers where one of them asserted that, ‘...*what would be considered hate speech in one place may not be hate speech in another context.*’

The quote suggests that one may make a statement and be considered a criminal offence in one region but the same statement when made in another region may not amount to an offence.

Nevertheless, most of the officers indicated that they understand what constitutes hate speech in a statement (Mean = 1.9; Std Dev = 1.0). In their opinion, a statement is considered hate speech if it calls for violence (Mean = 4.0; Std Dev = 1.2). This is an indication that what is mostly considered as hate speech by the officers is primarily any remark that incites violence.

This was also reflected by one of the NCIC officers who was interviewed and affirmed that ‘...*a statement would be considered hate speech if the words inflict injury or tend to incite violence.*’

As the quote suggests, such words would be said to inflict injury if they negatively affect the social and psychological well-being of the society. Negative impact includes family disintegration especially in intertribal or interracial marriages, political sycophancy leading to suicides or self-inflicted harm among others.

In determining the role of speaker of hate speech, majority of the officers were categorical that the influence the speaker of hate speech has in the society is an important consideration when analyzing hate speech (Mean = 4.3; Std Dev = 0.8). Moreover, they asserted with a mean of 4.1 that the position of the speaker of hate speech in the society is an important factor while analyzing hate speech. This is important since in most cases, the speakers have followers and are considered role models hence what they say can highly provoke action and especially in a politically charged crowd.

This was also echoed by one of the respondents among the NCIC officers interviewed who highlighted that there is especially

‘...*more impact if hate speech is made in a politically charged and ethnically paralyzed environment.*’

The quote suggests that the consideration of the culprit’s position and influence in the society by police officers while analyzing hate speech in Kenya is very critical since leaders are considered to have a lot of influence on masses especially in a political environment.

Based on the findings, it is evident that police officers perceive hate speech as words or statements that could incite different groups or individuals against each other therefore creating disorder in the society. Towards this end, a person who makes statements that amounts to hate speech ought to be investigated and prosecuted according to the law. However, based on the fact that hate speech is context specific, it may present challenges during such investigations and subsequent prosecution.

**Perception of Members of the Public on Hate Speech and Its Effect on the Fight against Hate Speech**

Other than the police officers, the study also sought to understand how members of public conceptualize hate speech. This was important since some of them assist in prosecution of hate speech cases by testifying as witnesses in court. Therefore, their perception of hate speech has some impact on hate speech investigation and subsequent prosecution. Seven statements were presented to them, which they rated on a similar scale of 1 to 5 as used in assessing the police officers perception. Table 3 presents the findings.

**Table 3: Perception of members of the public on hate speech**

Statement	Strongly disagree	Disagree	Neutral	Agree	Strongly agree	Mean	Std Dev
I am aware that there is National Cohesion and Integration Commission that deals with hate speech.	5.5	3.3	3.3	11.0	76.9	4.5	1.1
I am aware that a statement is considered hate speech if it calls for violence.	-	5.6	5.6	41.1	47.8	4.3	0.8
I am aware that I can report any incident of hate speech to police.	1.1	4.4	29.7	29.7	35.2	3.9	1.0
I’m not able to identify hate speech in a statement.	27.3	19.3	30.7	14.8	8.0	2.6	1.3
I am aware of a hate speech case in court.	8.3	7.1	21.4	28.6	34.5	3.7	1.2
I am aware of a hate speech case which was investigated and prosecuted successfully	33.7	21.7	18.5	17.4	8.7	2.5	1.3
I’m not happy with the way hate speech cases	13.0	13.0	18.5	25.0	30.4	3.5	1.4

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are handled by the police

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Most of the members of the public unanimously asserted that they were aware of the existence of National Cohesion and Integration Commission that deals with hate speech (Mean = 4.5; Std Dev = 1.1). They echoed the officers by affirming with a mean of 4.3 and a minimal Std Dev of 0.8, that they were aware that a statement is considered hate speech if it calls for violence. Furthermore, just like the officers, majority of them disagreed that they were not able to identify hate speech in a statement (Mean = 2.6; Std Dev = 1.3). The findings indicate that the understanding of hate speech among members of the public is not different from how the officers understand it; as any statement that incites people to violence.

Moreover, many of the respondents attested that they were aware that they can report any incident of hate speech to police (Mean = 3.9; Std Dev = 1.0). Nonetheless, few could testify of any hate speech case in their knowledge that has been investigated and prosecuted successfully (Mean = 2.5; Std Dev = 1.3) which means that prosecution of hate speech culprits often fail.

## V. DISCUSSION

It is apparent in the findings that the definition of hate speech as provided in the NCI Act is not clear to most police officers. This concurs with findings by Mute (2008) who highlighted that the definition of hate speech in the NCI Act has been criticized since it fails to define the conditions under which hate speech operates hence a difficult term to conceptualize. It was also revealed that hate speech is context specific making it difficult to apply the law objectively. Accordingly, the findings denote that despite the definition of hate speech being provided in the Kenyan law, there are still disparities in practice regarding to what should be regarded as hate speech and what should not. This concurs with the findings by Petnehazi (2012) whose study in Romania indicated that an exhaustive definition of hate speech is difficult due to the fact that hate speech is relative hence a complex concept to define.

Accordingly, handling of hate speech cases is subject to the context where it is being handled and the person handling it. This infers that hate speech investigations is complex hence presents difficulties to investigators as well as to prosecutors. This complexity may lead to subjective investigations as police officers may interpret hate speech in their own discretion hence a challenge in prosecuting the same. Lack of objective definition creates loops that are likely to be exploited by the offenders to defeat justice. There is therefore need for more comprehensive and encompassing definitions for clear conceptualization to facilitate effective strategies for countering hate speech.

The findings also indicate that most police officers primarily consider as hate speech any remark that incites violence. Similarly, members of the public also perceive it as any statement that incites people to violence. This affirms the findings by NCIC (2011) that most people understand hate speech as use of words that stirs prejudice and advocates for violence against a particular group of people. The findings also resonates with those of a survey by the European Parliament secretariat (2015) in seven European countries (Germany, Belgium, Netherlands, Hungary, Greece, Sweden and France) that revealed that although there is no universal definition of hate speech in different countries, it is commonly perceived as the intent to provoke hatred and eventually cause harm. However, it is apparent in the findings that hate speech does not only incite people to physical violence but can cause social and psychological harm to both the society and individuals. This means understanding hate speech is more than analyzing the mere words that are uttered but also the harm caused by such words. This implies that definition of hate speech should go beyond physical harm and include psychological harm.

The findings reveal that it is important for police officers to consider the culprit's position and influence in the society while analyzing hate speech because leaders tend to have a relatively stronger influence on masses especially in a politically charged environment. This is in line with the Doing Difference theory by Perry (2001) that considers power dynamics as a vital factor in analyzing hate speech. Perry (2001) emphasizes that the person's dominance can escalate to acts of prejudice like hate speech leading to violence when people are incited by their leaders to attack those they view different. This is attributed to the fact that people tend to believe influential people in the society and as a result, a statement of incitement by persons in dominance may create a perception of difference in the people leading to violence (Perry, 2001).

Apparently, the findings also imply that hate speech cases rarely undergo successful investigation and prosecution. This concurs with the findings by the European Parliament secretariat (2015) that indicated that there was often insufficient investigation and prosecution of hate speech cases mainly attributed to the lack of clear terms in the definitions of hate speech. This means that the lack of clarity in the definition of hate speech as provided in the law may hinder thorough investigations and thus undermine the prosecution of the culprits of hate speech. The fact that hate speech is context specific could also be a hindrance since it makes it hard for investigations to remain objective.

## VI. CONCLUSION AND RECOMMENDATIONS

From the findings, most of the police officers were aware that the National Cohesion and Integration Act criminalizes and regulates hate speech in Kenya. However, they asserted that the definition of hate speech as provided in the National Cohesion and Integration Act is not quite clear to them. It was also established that there is high awareness among members of the public on hate speech. In their opinion, the officers consider a statement to be a hate speech if it calls for violence. The influence that a speaker of hate speech has in the society was affirmed to be an important consideration when analyzing hate speech. Even so, it was revealed that disparities exist in practice regarding to what should be regarded as hate speech and what should not. This makes it hard for coming up with a consensus that would effectively influence prosecution.

Based on the findings, the study recommends that the government should invest more on civic education for the public to be educated more on hate speech. In this regard, they should organize for regular public campaigns in different places in the country especially in areas known to be highly polarized by political affiliations. In such campaigns, the public should be strongly encouraged not to allow political leaders or any other key personalities to address them through incitement into violence against others. Police officers and the NCIC should also work together to ensure a more encompassing definition for hate speech to ensure that the law is enforced in the fight against hate speech without discrimination (by tribe, position, relationship, gender etc), especially pertaining to arrest and prosecution of hate speech suspects. This can greatly help to enhance a common perception on hate speech in different contexts.

## REFERENCES

- [1]. Bowling, B. & Philips, M. (2003). *Racist Victimization in England & Wales*. Cambridge: University Press.
- [2]. European Parliament, (2015). *European legal framework on hate speech, blasphemy, and its interaction with freedom of expression*. Brussels Press.
- [3]. Fincham, J. E. (2008). Viewpoints: Response rates and responsiveness for surveys, standards, and the journal. *American Journal of Pharmaceutical Education*, 72(2), 1-3.
- [4]. Gould, J. B. (2005). *Speak no evil: The triumph of hate speech regulation*. Chicago Press.
- [5]. Hew, T. S. & Kadir, S. L. S. A. (2016). Behavioural intention in cloud-based VLE: An extension to channel expansion theory. *Computers in Human Behavior*, 64, 9-20.
- [6]. KNCHR (2008). *The need for hate speech legislation for Kenya*. Nairobi: Kenya National Commission on Human Rights.
- [7]. Mihajlova, E., Bacovska, J. & Shekerdjiev, T. (2013). *Freedom of expression and hate speech*. Skopje: Polyesterday
- [8]. Mugenda, O. M., & Mugenda, A. G. (2003). *Research methods quantitative and qualitative approaches*. Nairobi: Acts Press
- [9]. Mute, L. (2008). *Legislation, hate speech and freedom of expression in Kenya*. Retrieved February 15, 2018 from <https://pambazuka.org/images/articles/403/KNCHR>.
- [10]. National Cohesion and Integration Commission (2011). *Police training manual on the enforcement of the law on hate speech*. Nairobi: NCIC.
- [11]. National Cohesion and Integration Commission (2019). About us. Retrieved from: <https://www.cohesion.or.ke/>
- [12]. Perry, B. (2001). In the name of hate: Understanding hate Crime. *New York Routledge Quarterly* 19.
- [13]. Petnehazi, I. (2012). *User generated hate speech: The case of Romania*. Hungary: University of Toronto.
- [14]. Prenzler, T. & Sinclair, G. (2013). The status of women police officers: an international review. *International Journal of Law, Crime and Justice*, 41(2), 115–131.
- [15]. Röcker, C. (2012). Informal communication and awareness in virtual teams - Why we need smart technologies to support distributed teamwork. *Communications in Information Science and Management Engineering (CISME)*, 2(5), 1 – 15.
- [16]. Sorial, S. (2014). Free Speech, and the problem of (Manufactured) Authority. *Canadian Journal of Law and Society*, no. 51
- [17]. Strachan, A. L. (2014). *Interventions to counter hate speech*. GSDRC Helpdesk Research Report 1116. Birmingham, U.K: GSDRC, University of Birmingham.
- [18]. United States Holocaust Memorial Museum (2014). *Protecting Free Speech: Practical Strategies to Prevent Genocide*. Report of the 2014 Sudikoff Annual Interdisciplinary Report Seminar, USA: Skjodt Centre for the Prevention of Genocide.

Emily Wangari. " Conceptualization of Hate Speech Inkenya." IOSR Journal of Humanities and Social Science (IOSR-JHSS). vol. 24 no. 11, 2019, pp. 38-45.