

Submission to the Department of Justice and Equality: Hate Speech and Hate Crime

By the Immigrant Council of Ireland

13 December 2019

Working for **equality**



Immigrant
Council of
Ireland

Submission to the Department of Justice and Equality: Hate Speech and Hate Crime

BACKGROUND

The Immigrant Council of Ireland is an independent human rights organisation. It advocates for the rights of immigrants and their families, and acts as a catalyst for public debate and policy change. It works with and for immigrants, promoting their rights through its information and support helpline, Independent Law Centre, national advocacy, campaigning and research, as well as providing training in a number of areas, including unconscious bias and diversity matters. The Immigrant Council believes immigration is a permanent and positive reality in Ireland and continues to lobby for integrated, transparent, rights-based immigration and integration legislation and policies which reflect this reality. We have a Racist Incidents Support and Referral Service and have undertaken research into the experiences of racism in Ireland, in areas including public transport, social housing and on Islamophobia. We are partners in an annual joint campaign with Transport for Ireland to tackle racism on public transport and run many smaller scale campaigns with the aim of challenging racism.¹

INTRODUCTION

This submission is informed by reports to the Immigrant Council of Ireland's Racist Incidents Support and Referral Service and various research into racism we have undertaken.² We know from the reports we receive and ongoing work with migrant communities and partner organisations that hate speech is prevalent in Ireland and is the most prevalent category of racially motivated harassment and abuse reported in our experience.

¹ <https://www.immigrantcouncil.ie/campaign/anti-racism>

² Immigrant Council of Ireland: Taking Racism Seriously: Experiences of Racism and Racially Motivated Anti-Social Behaviour in Social Housing, 2017, <https://www.immigrantcouncil.ie/sites/default/files/2017-10/AR%202016%20Taking%20Racism%20Seriously%20-%20social%20housing.pdf>; Taking Racism Seriously: Experiences of Violence, Harassment and Discrimination in the Taxi Industry, 2017, <https://www.immigrantcouncil.ie/sites/default/files/2017-10/AR%202016%20Taking%20Racism%20Seriously%20-%20social%20housing.pdf>; Islamophobia: Experiences and How to Respond, 2016, <https://www.immigrantcouncil.ie/sites/default/files/2017-10/AR%20INT%202016%20Islamophobia%20in%20Dublin%20-%20Experiences%20%26%20How%20to%20Respond.pdf>; An Analysis of Racist Incidents Reported to the Immigrant Council of Ireland from July 2012 and July 2013, <https://www.immigrantcouncil.ie/sites/default/files/2017-09/AR%202013%20Report%20on%20racism%20stats%202012-2013.pdf>

We are also in an evolving context within political discourse. In recent political elections, racist sentiment has been employed by candidates³ and a previously disorganised far right element in Ireland has more effectively organised, most visibly occupying a vacuum in localities earmarked for direct provision centres.⁴ We are calling for a more effective response from the State to ensure we do not allow minority voices expounding hate and othering to infect public discourse and drive division and tension within local communities and Irish society at large.

Arising from our knowledge and experience, a central problem in Ireland is the under-reporting of hate incidents and resulting lack of data. Small scale reports and anecdotal evidence point to systemic issues of incidents in all aspects of life, including access to and while in employment; in education; housing; healthcare; social welfare and also engaging in local life for example while participating in sports, cultural activities, on public transport and in public spaces.

There is an overwhelming need for strategies to promote anti-discrimination nationally because of the lack of effective tools to tackle racism. The impact from the loss of the National Consultative Committee on Racism and Interculturalism (NCCRI) and neglect in renewing the National Action Plan Against Racism (NAPAR) is keenly felt in a society which, while welcoming, is not immune to fear and division. The lack of convictions resulting from the Prohibition of Incitement to Hatred Act 1989 and repeated delays in the publication of an ongoing legislative review on Ireland's hate crime laws mean too many victims cannot access justice.

HATE SPEECH

Earlier this year the United Nations provided a definition of hate speech: "The term hate speech is understood as any kind of communication in speech, writing or behaviour, that attacks or uses pejorative or discriminatory language with reference to a person or a group on the basis of who they are, in other words, based on their religion, ethnicity, nationality, race, colour, descent, gender or other identity factor. This is often rooted in, and generates intolerance and hatred and, in certain contexts, can be demeaning and divisive."⁵

It is often remarked there is a tension between the right to freedom of expression and legislating against hate speech. However there are many precedents acknowledging the two coexist, with a clear demarcation as to when the right to enjoy freedom of expression falls into the realm of hate speech, as outlined within Article 20 of ICCPR,⁶ UN General

³ Elaine Loughlin and Daniel McConnell, Peter Casey refuses to back down over Traveller comments, *Irish Examiner*, 18 October 2018, <https://www.irishexaminer.com/breakingnews/ireland/peter-casey-refuses-to-back-down-over-traveller-comments-876533.html>; Conor McGrave, FG candidate Verona Murphy apologises for saying some asylum seekers need to be 'deprogrammed', *TheJournal.ie*, 18 November 2019, <https://www.thejournal.ie/verona-murphy-apologises-4895323-Nov2019/>

⁴ Conor Gallagher and Sorcha Pollak, How the far-right is exploiting immigration concerns in Oughterard, *Irish Times*, 23 September 2019, <https://www.irishtimes.com/news/ireland/irish-news/how-the-far-right-is-exploiting-immigration-concerns-in-ouughterard-1.4026612>

⁵ UN Strategy and Plan of Action on Hate Speech, June 2019, <https://www.un.org/en/genocideprevention/documents/UN%20Strategy%20and%20Plan%20of%20Action%20on%20Hate%20Speech%2018%20June%20SYNOPSIS.pdf>

⁶ ICCPR, Article 20, <https://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>

Comment no. 34⁷ and a recent compendium of cases relating to hate speech from the European Court of Human Rights.⁸

TERMINOLOGY

It is worthwhile noting research from the Hate and Hostility Research Group states that while ‘hate’ is accepted terminology there is some evidence to suggest replacing it with the word ‘bias’ could result in more workable, effective legislation.⁹ “We further suggest that the term ‘bias’ then be defined in the legislation as including ‘hate, hostility, bias, prejudice and contempt.’”¹⁰

HATE CRIME LEGISLATION

The key difference between hate speech and hate crime is that in the context of the latter, hostile language is relevant only where it has been used in the course of committing a criminal offence. When discussing effective legislation to combat hate speech it is therefore a necessity to consider introducing comprehensive and effective hate crime legislation.

Ireland’s current approach to hate motivated crimes does not adequately meet its international obligations. The Prohibition of Incitement to Hatred Act 1989 is outdated and inadequate to effectively address hate speech that calls for a response in criminal law, as has been acknowledged by the Irish Human Rights and Equality Commission (IHREC) and the Hate and Hostility Research Group, University of Limerick.^{11,12}

Since 2010 there have been 12 cases prosecuted under the Prohibition of Incitement to Hatred Act, 1989, resulting in two sentences of imprisonment.¹³ While we are not seeking excessive use of this legislation, such low conviction rates provide a strong indication Ireland is not effectively tackling this type of activity. While it does not specifically exclude online activity, there are indications the legislation is not sufficiently equipped to respond to incidents regarding online incitement.¹⁴ The Law Reform Commission found the ‘Facebook Traveller Group’ case “illustrates the difficulties with online hate speech compared to its offline equivalents”.¹⁵ We endorse the Irish Human Rights and Equality

⁷ General Comment 34, ICCPR, para 21, <https://www2.ohchr.org/english/bodies/hrc/docs/gc34.pdf>

⁸ European Court of Human Rights, Factsheet- Hate Speech, October 2019, https://www.echr.coe.int/Documents/FS_Hate_speech_ENG.pdf

⁹ Hate and Hostility Research Group, University of Limerick, Out of the Shadows: Legislating for Hate Crime in Ireland, 2015, P.66,

https://ulir.ul.ie/bitstream/handle/10344/4751/Schweppe_2015_shadows.pdf?sequence=2

¹⁰ Ibid, P. 67.

¹¹ Irish Human Rights and Equality Commission, CERD UN Submission, 2019, P. 8,

https://www.ihrec.ie/app/uploads/2019/11/IHREC_CERD_UN_Submission_Oct_19.pdf

¹² Hate and Hostility Research Group, University of Limerick, Out of the Shadows: Legislating for Hate Crime in Ireland, 2015, P.6,

https://ulir.ul.ie/bitstream/handle/10344/4751/Schweppe_2015_shadows.pdf?sequence=2

¹³ The Committee, Combined Fifth to Ninth Periodic Reports Submitted by Ireland under Article 9 of the Convention, Due in 2014, 2018, para. 65, http://www.integration.ie/en/ISEC/ICERD_C_IRL_5-9_6513_E.pdf/Files/ICERD_C_IRL_5-9_6513_E.pdf

¹⁴ Irish Human Rights and Equality Commission, CERD UN Submission, 2019, p.41

https://www.ihrec.ie/app/uploads/2019/11/IHREC_CERD_UN_Submission_Oct_19.pdf

¹⁵ Law Reform Commission, Report on Harmful Communications and Digital Safety, 2016, paras 2.246, 2.247.

<https://www.lawreform.ie/fileupload/Final%20Report%20on%20Harmful%20Communications%20and%20Digital%20Safety%2021%20Sept%20PM.pdf>

Commission recommendation to modernise the current legislation, the Prohibition of Incitement to Hatred Act 1989, to ensure it effectively addresses online incitement and hate speech.¹⁶ We also endorse the Law Reform Commission’s recommendation that hate speech should be addressed as part of the general reform of hate crime law.¹⁷

A considerable source of criticism as regards the current Prohibition of Incitement to Hatred Act 1989 and its potential to achieve convictions is the general need to demonstrate a clear causal link between what is said in person, in printed material or online and a crime or act which demonstrates hostility towards a minority group. There may be at times clear causal links between hate speech in one medium and the carrying out of a violent act or criminal damage, but in many instances, while this link can be inferred, it is not clear. We refer to the submission made by the Hate and Hostility Research Group which analyses this area and endorse their recommendation for a broader interpretation of the Act, namely for there to be “no absolute need for the persuasion to be successful for any of the offences to be established” and that it should be enough “that the intent was there or that the views or opinions expressed were likely, having regard to all the circumstances, to stir up hatred”.¹⁸

New hate crime legislation must better address hate or prejudicial motivation in crimes. While there are limited provisions within the criminal justice system, because it is reliant on judicial discretion in sentencing, this places limitations on the justice system’s ability to deal effectively with hate crime. “In its recent report on Ireland, the European Commission against Racism and Intolerance (ECRI) observed that the lack of provision on racist motivation constituting an aggravating circumstance ran contrary to its standards.”¹⁹

In relation to potential models for effective hate crime legislation we would point towards the excellent work undertaken by the Hate and Hostility Research Group. The principles set out in *Out of the Shadows*²⁰ would form a solid basis to develop effective hate crime legislation.

ADDITIONAL CONSIDERATIONS

Supporting measures to tackle hate speech

The State’s response to hate speech should not only make use of criminal law, but should also encompass other policy and regulatory measures to encourage non-discriminatory discourse, educate the public on the harm of hate speech, and ensure that its extent and impact are adequately tracked.²¹

¹⁶ Irish Human Rights and Equality Commission, CERD UN Submission, 2019, p.41

https://www.ihrec.ie/app/uploads/2019/11/IHREC_CERD_UN_Submission_Oct_19.pdf

¹⁷ Law Reform Commission, Report on Harmful Communications and Digital Safety, 2016, para 2.256.

<https://www.lawreform.ie/fileupload/Final%20Report%20on%20Harmful%20Communications%20and%20Digital%20Safety%2021%20Sept%20PM.pdf>

¹⁸ Jennifer Schweppe and Dermot Walsh, Combating Racism and Xenophobia through the Criminal Law, 2008, NCCRI

¹⁹ Irish Human Rights and Equality Commission, CERD UN Submission, 2019, p.42

https://www.ihrec.ie/app/uploads/2019/11/IHREC_CERD_UN_Submission_Oct_19.pdf

²⁰ Hate and Hostility Research Group, University of Limerick, Out of the Shadows: Legislating for Hate Crime in Ireland, 2015,

https://ulir.ul.ie/bitstream/handle/10344/4751/Schweppe_2015_shadows.pdf?sequence=2

²¹ Irish Human Rights and Equality Commission, CERD UN Submission, 2019,

https://www.ihrec.ie/app/uploads/2019/11/IHREC_CERD_UN_Submission_Oct_19.pdf

Efforts to combat and monitor racism in Ireland were seriously undermined in 2008 when the State discontinued funding to the National Consultative Committee on Racism and Interculturalism (NCCRI), which led to its subsequent closure. The closure of the NCCRI left the State without a countrywide independent monitoring body of racist incidents or national provider of anti-racism training - gaps which NGOs have been forced to try and fill but without sufficient resources. It also deprived Ireland of an independent expert body focused on policy development on racism and interculturalism. In June 2019, the Department of Justice and Equality announced it would be establishing an Anti-Racism Committee. The focus and remit of the proposed committee have not been confirmed, but no budget has been allocated and its scope will be necessarily limited. In the same year the NCCRI closed, the most recent National Action Plan Against Racism²² expired. The loss of an active NAPAR represents a huge loss of momentum in the area of tackling racism, and means Ireland has no integrated, strategic mechanism or stated goals for government action. The National Migrant Integration Strategy, launched in 2017, does not include sufficient focus or dedicated resources to effectively tackle racial discrimination.

The comprehensive National Action Plan Against Racism should include:

- Cultural competency training for public services frontline staff;
- Mandatory diversity strategies in all sectors;
- Ring-fenced funding for an independent support/ helpline for victims of racism;
- Public awareness campaigns tackling unconscious bias and promoting the benefits of cultural diversity;
- A dedicated section focused on tackling Islamophobia.

Recent developments in public discourse, including rhetoric in recent political elections and on the subject of the direct provision system²³ (which accommodates those seeking international protection) show the increasing and very pressing need for proactive efforts to tackle racist attitudes and behaviour within Irish society. A new NAPAR is needed, informed by those directly affected, best practice approaches and including a clear objective about improving the recording of hate crimes and effective anti-racism public messaging campaigns. Research from the EU Agency for Fundamental Rights found Ireland is one of three countries with the worst records in the EU of racism based on skin colour.²⁴ Research from the Irish Human Rights and Equality Commission and Economic and Social Research Institute found just under half of adults born in Ireland believe some cultures to be superior to others while 45% believe some races are born harder working than others. The same research found support for Muslim and Roma immigration is lower in Ireland than the average for ten other Western European countries surveyed.²⁵

Extending the scope for victim identification

²² Department of Justice, Equality and Law Reform, Planning for Diversity: The National Action Plan Against Racism 2005-2008, <http://www.justice.ie/en/JELR/NPAREn.pdf/Files/NPAREn.pdf>

²³ Kevin Doyle, Presidential candidate sparks outrage with his racist remarks on Travellers, *Irish Independent*, 17 October 2018, <https://www.independent.ie/irish-news/presidential-election/listen-presidential-candidate-peter-casey-sparks-outrage-with-his-racist-remarks-on-travellers-37428508.html>; Michael Clifford, Racist politics won't get you far here, *Irish Examiner*, 20 July 2019, <https://www.irishexaminer.com/breakingnews/views/columnists/michael-clifford/racist-politics-wont-get-you-far-here-938208.html>

²⁴ Mary Carolan, Ireland among worst EU states for racial violence, *Irish Times*, 12 May 2019, <https://www.irishtimes.com/news/crime-and-law/ireland-among-worst-eu-states-for-racial-violence-based-on-skin-colour-1.3889478>; EU Agency for Fundamental Rights, Being Black in the EU, 2019, <https://fra.europa.eu/en/publication/2018/eumidis-ii-being-black>

²⁵ Irish Human Rights and Equality Commission, Attitudes to Diversity in Ireland, 2018 <https://www.ihrec.ie/irish-attitudes-to-diversity-highlighted-by-new-study/>

In addition to the nine grounds codified within Irish Equality Acts, we would suggest further research be undertaken on the issue of widening the scope of victim identification to ensure all marginalised categories of people are protected.

Ongoing education and training

Enhance education [training] for authorities –Key actors in the criminal justice system, including the judiciary, prosecutors and investigators, must be fully equipped in order to best serve and meet the needs of minority ethnic communities. This means ensuring there is effective resourcing for any new/amended legislation, including the provision of training and guidelines for An Garda Síochána and the Director of Public Prosecutions (DPP), as well as victim supports. All training must be operationalised and measured. In practice this means that in respect of DPP training and guidelines, there includes a requirement that any solicitor prosecuting has attended appropriate training and the DPP is required to confirm it has applied the guidelines in making decisions to prosecute/ not to prosecute.

Recording hate incidents

In addition to recording crimes, we would strongly urge for An Garda Síochána to be compelled to record ‘hate incidents’: “Any non-crime incident which is perceived, by the victim or any other person, to be motivated by a hostility or prejudice based on a person’s race or perceived race [or religion, sexual orientation, disability, transgender].”²⁶

Improve monitoring, recording and reporting

The Immigrant Council understands An Garda Síochána is now recording certain characteristics of victims on PULSE and we recommend that details of whether the victim of crime is a member of a protected group is recorded in addition to an indication as to whether a crime has a “hate” motive. We believe the State should collect and publish details of reported crimes and the nationality and ethnicity of those reporting such crimes, as well as reasons for non-prosecution. It should also publish details of reported crimes, the nationality and ethnicity of those reporting such crimes and reasons for non-prosecution. The State should take steps to hold social media businesses accountable for harmful and illegal online content and should consider the appointment of a digital safety commissioner.

Alternative reporting mechanisms

Arising from our knowledge and experience, a central problem we identify in Ireland is the under-reporting of incidents of hate speech and harassment, and the resulting lack of data. Small scale reports and anecdotal evidence point to its prevalence in all aspects of life: in the workplace; in education; housing; healthcare; social welfare and also engaging in local life for example while participating in sports, cultural activities, on public transport and in public spaces. We would therefore call for the establishment of a central reporting and support function where this data can be gathered. This national independent entity must be sufficiently resourced and well-advertised so those affected are aware of who to contact and how. This will help ensure reliable data on the prevalence and type of hate speech is produced, which can in turn inform State policy, guidelines and activity to best tackle hate incidents. It would also provide a valuable support and referral service for victims.

Regulate online sphere with non-statutory guidelines

Develop a comprehensive regulatory framework to combat prejudicial and discriminatory content and hate speech online.

²⁶ Hate and Hostility Research Group, University of Limerick, Out of the Shadows: Legislating for Hate Crime, 2015, P.5, https://ulir.ul.ie/bitstream/handle/10344/4751/Schweppe_2015_shadows.pdf?sequence=2

Improve standards within the media

Encourage the media to update codes of professional ethics and press standards, including through training and sanctions, to combat the circulation of prejudicial and discriminatory content.

Further consultation

Meaningful consultation with groups affected by hate crimes and with civil society organisations must be undertaken to fully inform new measures to tackle hate speech and hate crime.

Review of legislation introduced

Provide for formal, funded independent review of any legislation introduced to include review of the functioning and effectiveness of any regulatory bodies established under such legislation.

We thank the Department of Justice and Equality for this opportunity to provide input and look forward to continued engagement with the consultative and legislative process to better tackle hate speech and introduce effective hate crime legislation.

ENDS

© Immigrant Council of Ireland, 2019