

African Lawyers Association of Ireland

Africa Centre
9C Abbey Street
Dublin 1
Tel: 35318656951
Mob: 0857380948
Email: africanlawyers@gmail.com

SUBMISSIONS FOR THE REVIEW OF THE PROHIBITION OF INCITEMENT TO HATRED ACT, 1989

We, the African Lawyers Association of Ireland would like to make the following submissions in respect of the above review:

Issues 1:

In addition to the characteristics of protected groups such as race, colour, nationality, religion, ethnic or national origin, membership of the travelling community or sexual orientation,

Include: people of African descent.

Justification: Africans and people of African descent are an identifiable distinct group targeted for hate speech. The United Nations recognizes that "the international community is recognising that people of African descent represent a distinct group whose rights must be promoted and protected". Inclusion of 'people of African descent' in the characteristics of protected groups in the Act would be one way of fulfilling the recognised objectives of the UN Decade for People of African Descent.

Observation:

1. The elements of the crime of incitement to hatred should include *actus reus* such as soliciting, persuading, encouraging, requesting, or provoking individuals at large to commit crime targeted at certain identifiable groups of people or individuals such as groups of people identified in Issue 1 above. We also take the view that hate speech by the inciter, whether directed at an individual privately or in public should be prohibited.

Issue 2: Use of term 'Hatred' in the Act

The term 'hatred' should be retained in the aforesaid Act, but be given a clear meaning. The current interpretation given in the Act is not sufficiently clear and precise. It is our submission that the term 'hatred' should be given its ordinary meaning of 'strong dislike' of somebody or a group of people. It is our contention that no freedom of expression is breached if a person keeps his or her 'strong dislike of another person' and does not encourage, persuade, or solicit others to do the same. The meaning of hatred, which means 'strong dislike' should be clearly defined in the Act.

Issue 3: Application of the Act to online speech

Whilst the channels of distribution of hate speech such as 'broadcasting', 'publishing', 'recording', and 'distributing' are wide enough to cover the social media, it should include 'sending material through the social media to a person or group of people' likely to invoke or does invoke hatred as construed in Issue 2 above.

Issue 4: Proving intent or likelihood

The *mens rea* of intention should include recklessness because each person should be responsible for his / her actions involving other people. The usual defences would however apply where proved.

ANSWERS QUESTIONS

Question 1

It has been suggested that the identity characteristics include 'people of African descent'.

Question 2

The term 'Hatred' should be given its contextual meaning of 'strong dislike' as stated under issue number 2.

Question 3

The term 'incitement' should not be limited to public pronouncement and distribution. It should include individually targeted speech, whether publicly or privately as long as it is meant to influence another person or group of people to commit crime.

Question 4

The criminal element of intention, or likely to stir up hatred should include recklessness, or knowledge.

Question 5

It is our submission that the term "Incitement" is limited in its application as the *actus reus* simply means "encourage, persuade, solicit, or attempt to force" another person to commit a crime, whereas we are concerned with the actual "hatred" pronouncements directed at individuals and groups specified in Issue No. 1. It is our contention that if someone utters or makes pronouncements construed as hate speech, and construed as hateful and derogatory, be liable for criminal liability if directed at group identities in Issue 1.

The above are our submissions and observations. We hope the review group will consider them with due weight.

Yours truly

A handwritten signature in black ink, appearing to read "Ropafadzo Benjamin".

Ropafadzo Benjamin, B.L.
President, ALAI