

To The Department for Justice and Equality, and the Department of State for Equality, Immigration and Integration

Cairde's public consultation review on the Prohibition of Incitement to Hatred Act 1989

Introduction

Cairde is a community development organisation funded by the HSE, working with migrants to provide advocacy support and information on access to health services. Our advocacy work is rooted in the principles of social determinant of health, taking into considering all social aspect affecting health.

This submission gives an account of individuals and communities we support, so policymakers can understand the social dimensions of hate speech from the viewpoints of those affectedⁱ

The phenomenon of hate speech is contingent upon institutionalisation. (Meyer and Rowan 1977, DiMaggio 1991)

Hate speeches are often deeply political, and its reach in society is wide and highly polarising. The extent of its reach accounts for the subtle distinctions between hate speech and hates crime experienced by those we support.

In our submission, hate speech and hate crimes are referenced interchangeably because, in practices, those presenting with complaints make no distinctions in their experiences.

We support a broad range of members of the migrant community through our Health Information and Advocacy services in Dublin and Balbriggan.

In the last ten years, we have provided support to over twenty thousand migrants, giving us an opportunity to meet and experience the diverse nature of these communities and their experiences, particularly, as the socio-political dynamics of Ireland changes, since the recession.

How our legislation on incitement to hatred should be updated to make it fit for purpose must be guided by the social processes that generate and sustain the problem of hateful acts, in communities.

It must include measures to prevent individual and group victimisations. Such a law while it is confronted with the opposing rights of free speech, must accord a balance with the rights

of victims of attacks, motivated by hate speech. It also must address the vast area of social media and the challenges in policing offences in the cyberspace.

Free speech and hate speech

Hate speech law has been the subject of numerous principled objections. It has been denounced by some legal scholars and practitioners as, among other things, devastating to liberty, disrespectful to autonomy, stifling to the discovery of truth and the acquisition of knowledge, inhibiting to self-realization, antithetical to free participation in the formation of public opinion. (Hate Speech Law A Philosophical Examination Alexander Brown 2015 p18)

Voltaire, the prominent representative of the French Enlightenment, considered the protection of offensive speech to be a moral duty. His often-cited philosophy was, "I might disapprove of what you say, but I will defend to the death your right to say it(German law journal).

His argument for freedom of speech is on the logic that minority groups must be guaranteed the rights to free speech as a medium to express their views.

In the context of the protection of minority groups we represent, if freedom of speech is motivated by hate or expresses hate, this right to free speech should not benefit from absolute constitutional protection as is the case in Germany and France with laws to prevent hate speeches. (German Law Journal vol4 no 1).

When freedom of speech is used to limit the rights of others as is the case in hate speeches, it has been restricted in other jurisdictions in Europe and Canada.

The right to freedom of speech should not be used to restrict the rights of others. In the words of the French revolutionary Antione Saint-Just, no freedom to the enemies of freedom.

Cairde supports the development of this area of law, particularly in the context of the welfare of those communities we represent.

The argument for hate speech law is, among other things, these laws help to avert damage to people's health (psychological and physiological), safeguard autonomy, reduce insecurity (objective and subjective), emancipate people from subordination, stand as a bulwark against oppression, underpin human dignity, protect and give public assurances of civic dignity, ensure recognition of cultural identity, facilitate respectful intercultural dialogue, and furnish real access to participation in the formation of democratic public opinion for all.(Hate Speech Law A Philosophical Examination Alexander Brown 2015 p18-9)

Not only that, many legislatures and courts across the world have determined that hate speech law can be effective, necessary, and limited in its chilling effects.(Hate Speech Law A Philosophical Examination Alexander Brown 2015 p18-9)

The welfare of people we advocate for has been seriously affected by anxieties resulting from hateful acts. In this respect, we agree that the introduction of a law in this area is of utmost importance in our current social climate. We welcome this initiative and are privileged to contribute to the process.

Cairde's work

We answer to complaints from people who have been subjected to discriminatory treatments, on the streets, at places of employment, in schools, on public transport services, in hospitals from other waiting patients or while receiving treatments from hospital staffs, even while making complaints at a Garda station, some clients have complained of disproportionate receptions.

Looking at the extended areas of conflict, it reveals a unique problem with defining a comprehensive law in this area. The absence of a comprehensive applicable Hate Crime/Speech legislation makes it difficult to support our clients fully, in this wide area of social experiences.

A concern to note is some of these incidences or attacks may sometimes be perpetrated by children, especially in schools. This extension of the problem to include minors is also an area that requires a special approach through educational programs.

Our suggestion is the introduction of a policy in this area to be implemented in schools to address intercultural education, respect and empathy to other cultures.

Migrants concerns

Since the recession, many migrants have expressed anxieties due to changing relationships in their local areas of residence, particularly with their neighbours. The localities of Balbriggan, Tallaght, Blanchardstown, Lucan, for example, are areas of potential conflicts.

From our clients' complaints, we noticed some of these situations and sentiments are inadvertently created when people see themselves competing for the same resources. In such an atmosphere, the introduction of a catalyst through hateful messages can lead to social strifes.

The increasing housing crisis has also created another growing discontentment towards migrants, which is fueling a growing far-right sentiment in people made vulnerable by their social difficulties. Because of the complication in this vital social necessity, it requires government intervention through housing policies restricting hateful comments that can involve public behaviours.

Some areas have a history which must be considered. Examples like the local area of Summerhill in Dublin 1, used to be an area where many migrants were physically attacked by the local youths back in the early 2000s. While no attacks have been noted in recent

times, verbal attacks and insults are still common, and also intimidating or aggressive behaviours. Because of the inflammatory effects of hate speeches, if it were allowed into these areas it can potentially endanger lives.

We suggest that while looking at the right legislation to capture the problem, it is important to always consider the social development of Ireland in the last twenty years.

In Balbriggan, members of the community still remember when they worked at Mosney when it was a holiday camp before it became an Asylum Center. Some have expressed their disappointments for the lack of the local employments which existed in Mosney while it was a holiday Camp, to the disadvantage of the local population of Balbriggan and Meath.

Resentment from these social changes mentioned above are embedded in the memories of the social history and biographies of many other areas of the country, in many different contexts, which may surface as complex social relationships between the indigenous communities and the migrant communitiesⁱⁱ (Bill Rolston and Michael Shannon 2002)

Working with various communities in the society informs us that a Hate crime/speech legislation is paramount for the development of these unexpected communities, to design such a system to address every complicated situation that may arise in the society like the one described above, it would involve a proper evaluation of every community that is affected. (Charles Wright Mills, the sociological imagination)ⁱⁱⁱ

The complaints and difficulties in supporting people

Most people who make complaints of hate speech would be advised to make a report to An Garda Síochána because that is the effective pathway of support we can offer to them. Any development of the law needs to create a clear procedure to report hate speeches that is accessible and known to everyone, with a system of follow up.

The availability of a remedy thought it might not resolve every case; it gives everyone a feeling of care. Right now, the current feeling in the community is unclear as expressed by those we support, and it reflects their understanding of the law.

We are also aware of a difficult relationship between the Roma community and An Garda Síochána. The Roma community as a group suffers varying degrees of attacks. They're refused entry into various shops and supermarkets and often subjected to random abuse from the public.

Through our collaboration with FLAC, Cairde has supported at least two cases of discrimination and racism against members of the Roma community. We are aware of at least of those cases where the victims were still being bullied during the negotiation hearing. That is an area that requires specific attention because victim protection is paramount for their dignity and ability to report crimes.

Their mistrust of the system is certainly leaving the Roma community even more vulnerable, with no solutions to their complaints of hateful subjugations. Their fear for the Garda is compounding their difficulties to deal with other members of the public when they are racially attacked.

Cairde is building a rapport between a member of the Roma community and Store Street Garda Station, through a local Policing Forum hosted by Acts of Compassion(a mental health and Drug support organisation in the City centre of Dublin) Engaging communities in these contexts helps to provide an axis of communication for a better corporation.

Mental health and hate crime

As has been noted in the consultation review, being subjected to discriminatory treatment is a grave threat to a person's mental health. ^{iv}

This is an area of migrant concern we have observed carefully in the last for 6 years. Cairde's 'Be aware Be well, mental health program, was initiated due to an increasing number of migrants needing psychological support.

While hate speech cannot be the sole catalyst for bad health, it is a powerful component from the view of our work evaluating the social determinants of health. Many of those we support have expressed a fear of being in public spaces.

We have clients who believed their houses were fitted with listening devices. This is because they are subjected to racist bullying by their neighbours, which has created a sense of grave insecurity and lack of privacy to them. The family's constant worries of intimidation from their neighbours was leading the client to a psychotic breakdown.

The mother of the household had to be treated for a serious mental health illness which we suspected was aggravated through her poor relationship with her neighbours. Some migrants have even had their front doors set on fire, including cars being burned. Victims are often left with no support, and their experiences become a source of fear to other members of their community.

The local Council's remedy is to relocate families, but the effects on the lives of these families are long-lasting, sometimes even several years after these attacks. We are aware that Dublin City Council does not record these attacks as hateful attacks but as antisocial behaviours.

Our concern is that the lack of proper documentation of these incidents will not inform the experts of the nature and mechanisms of attacks. This lack of proper recording of attacks might also affect how communities are protected and supported.

Since mental health is a highly stigmatizing condition and hates speeches can be a catalyst for such vulnerabilities, we are making the point that legislation governing hate speech should reflect the potentially damaging consequences to victims.

Comments on your questions:

On your question on the various categories; there are many smaller vulnerable groups within various communities with distinct vulnerabilities. Most of these people are invisible due to their immigration status. Their invisibility makes them more vulnerable, which can expose them to the risks of abuse.

Some of these people are domestic servants making them even more invisible. Identifying them as a category may be complicated and may lead to intersecting categorisations.

Our comment is; it is worthwhile for the services to be aware of how to support these very vulnerable sections of the migrant community who are often subjected to very inhuman treatments by their masters. They may never be able to report abuse for fear of their own situations. Some of these people have been found in the criminal underworld working in grow houses and are usually trafficked, traumatised and often in hiding.

In the context of hate speeches, these people live in fear and any negative comment on the media is a worry for them.

“Do you think the term **“hatred”** is the correct term to use in the Act? If not, what should it be replaced with? Would there be implications for freedom of expression? The term hatred, as understood in this context, should be included to include hateful behaviour.”

Hate motivated crimes have been assessed in other jurisdictions as a crime to transmit a message of fear to other members of the victim’s community. The term hatred used here is correct and expands the definition properly.

A hate crime is as an act of violence motivated by animus against persons and groups because of race, ethnicity, religion, national origin or immigration status, gender sexual orientation, disability(including for example HIV status) and age(Valerie Jenness 1991)

Racist behaviours are usually unexpected by victims, which can be explained by the use of ‘hatred’ in the legislation. Synonyms of the verb ‘to hate’ to include antipathy, ill feelings, resentment, hostility, revulsion, disgust, all these are feelings people who make complaints of racist subjugation explains. The term ‘hatred’ captures the behaviour properly.

We think the use of hatred in the legislation is within the context of the act and the motivation behind such behaviours. Regarding the freedom of speech, since it is not an absolute right, it must be looked at in relation to the actual impact of hate speech on the victim.

The US Supreme court had held that criminal conduct is different when it is motivated by discrimination. The EU regulations and UN charters of hate crime and hate speech all reflect the same view of the crime.

The cyberspace is a very broad area and requires very specific regulations to police offences in other jurisdiction which covers the expansion of cyberspace. The current law coverage of media material and publication is broad enough to capture social media publications. The problem is social media algorithms can publish materials to unintended persons who are friends of friends like in Facebook and WhatsApp group.

It is plausible to say that as a corpus of law, hate speech law is not merely variegated in form but also be broad in scope to cover cyberspace. This must reflect the current social media space and the ignorance of those using social media in their understanding of laws in this area.

Cyberspace is changing behaviours in a rapid way with is private access to a broader audience, and development of law in these areas must also include education, especially in schools.

In your view, does the requirement that an offence must be intended or likely to stir up hatred make the legislation less effective?

Proving criminal intent even in other cases of physical violence can be difficult for many reasons, including the mitigating factors. In the case of hate speech, since it is difficult to relate a hate speech and a hate act explicitly, it must be considered in other ways to limit over the subjugation of laws. The current requirement of likely to stir up hatred is sufficiently broad to capture the action. The problem exists in the defence to an offence in the current act. It is easy to make a successful defence because the current defence is very broad.

If so, what changes would you suggest to this element of the 1989 Act (without broadening the scope of the Act beyond incitement)?

Without broadening the scope of the Act, a resolute definition of 'intent and likely to stir hate' under the act should be revisited after understanding the experiences of those subjected to hateful act. In the current political climate, the extent of inflammatory comments always remains open to interpretation which should also be a note during this process. Because of the relatively recent emergence of social media and social media laws, it is important to remember that this area is completely new to the public and remain private to the understanding of many people. It is recommended that mass education be

implemented in use and limits of social media communications relating to hate speech and hate crimes.

Recommendations

One important aspect we have noted of the nature of hate attacks which, in our opinion, needs proper consideration, is how difficult in it in the current legislation to pursue a complaint judiciously. The current law gives a lot of vague defences and lacks a proper definition of the critical criminal law ingredient of intent. It is important to consider that a lot of racist attacks happens in a context that the victim may not be able to report the crime for several hours which may affect the criminal law ingredient of intent.

When a person is subjected to a racist attack on the streets with no eyewitnesses, it becomes difficult for the victim to report the crime, several minutes or hours later. Most of the evidence is difficult to collect or described to the Garda. It is also important to acknowledge the embarrassment of being racially abused, which also affects how victims respond to the crime.

This is an area that requires particular attention in any subsequent development of the current law. It may require careful study of the victims account of the hateful act to capture the mechanism of the crime.

It is a problem understanding a racist mind, but the act is unmistakable. To truly understand racism, you must have been subjected to it. The feeling is unlike none, and it is better understood by matching the feeling with the expression of disgust from the offender. (Cairde's client)

How existing legislation on incitement to hatred can be improved

The current law can be improved with education. Laws and policies fail to meet their intended effect when there are poor knowledge and understanding of the law. Since the logic of laws is not to increase the numbers of criminals in the system but to reform society and improve cohesion to rules, the current law can benefit from such a strategy.

Ireland has a silent history of a passive stigmatising attitude against other communities which can be traced back to the time of the 'Black Baby' in schools. While this practice has stopped, the effect of those times are still with the older generation (Bill Rolston and Michael Shannon 2002)

A national campaign against hateful behaviours and the impact on the mental health and civil liberties of the migrant communities should be put as an agenda. This campaigns should be run in all areas of the society, especially schools and public transport services, to improve the relationships amongst the various communities.

Health and illness reflect the nature of the interface between ourselves and the environment. The fact that most, if not all, diseases have some environmental cause means

that their initiation, or the course of the disease process, is an expression of the interaction between us and our surroundings(Wilkinson 2005)

As already mentioned, hateful behaviours have a profound effect on the mental health of its victims. Many persons from the migrant communities would only use public transport as a last resort because of the high risks of being subjected to racist bully or attacks.

These are social problems with a greater health impact on many people, particularly older members of the migrant communities.

Cairde welcomes the Department of Justice's efforts in addressing this very important and complicated area of law. With the rising community anxiety in Ireland and the UK, social relationships among communities is definitely an area of special interests.

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ⁱ Making hate a crime, from social movement to law enforcement(Valerie Jenness and Ryken Gratte)

ⁱⁱ Encounter(How Racism Came to Ireland Bill Rolston & Michael Shannon)

ⁱⁱⁱ The sociological imagination (Charles Wright Mills)

^{iv} The impact of inequality, *how to make a sick society healthier* (Richard Wilkinson)

References

1. Making hate a crime from social movement to law enforcement(Valerie Jenness and Ryken Gratte)
2. Encounter(How Racism Came to Ireland Bill Rolston & Michael Shannon)
3. The sociological imagination (Charles Wright Mills)
4. The impact of inequality, *how to make a sick society healthier* (Richard Wilkinson)
5. German law journal vol 4 no 1
6. Hate Speech Law A Philosophical Examination Alexander Brown 2015 p18