



Community Work Ireland is the new name for the  
Community Workers' Co-operative  
Continuing to work collectively to support and  
promote community work as a means of  
addressing poverty, social exclusion and  
inequality and advancing human rights

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## Review of the Prohibition of Incitement to Hatred Act 1989

### Community Work Ireland Submission to the Department of Justice and Equality

December 13<sup>th</sup> 2019

#### Introduction

Established in 1981<sup>1</sup> Community Work Ireland is the national organisation that promotes and supports community work/community development as a means of addressing poverty, social exclusion and inequalities. CWI is a membership organisation comprising over 800 individuals and organisations that support community work/community development and work in the most disadvantaged communities throughout Ireland. For 25 years Community Work Ireland, has played an important role in working to advance policy and programmes that meet the real and pressing needs of disadvantaged communities throughout Ireland seeking to ensure the meaningful participation of communities in the decision-making processes that affect their lives.

Nationally we participate as active members of the Irish Refugee and Migrant Coalition and represent the coalition on the Department of Justice committee on Community Sponsorship, we are members of the European network against Racism, the Community Platform<sup>2</sup> and through the Platform the Community and Voluntary Pillar<sup>3</sup>, the National Women's Council of Ireland, the SDG Coalition and the Far Right

<sup>1</sup> As the Community Worker's Co-operative

<sup>2</sup> The Community Platform is a network of 28 of the main national organisations working to address poverty, social exclusion, and inequality. Our objectives are to facilitate solidarity amongst the organisations involved, organise community sector participation in partnership arrangements with the State, and establish a critical voice for equality, rights and anti-poverty interests at a national level.

<sup>3</sup> [link removed]

Observatory. Internationally we are represented on the European Community Development Network<sup>4</sup> and the International Association for Community Development<sup>5</sup>.

Community development is a professional discipline and approach based on the principles of participation, collectivity, community empowerment, social justice & Sustainable development, human rights, equality & anti-discrimination<sup>6</sup>. It is an approach to addressing significant social and economic issues that emphasises early intervention and the involvement, engagement and participation of those affected by these issues in the process of needs identification and strategy/project development to address these needs.

Community development involves promoting the rights and voice of marginalised groups and those who experience particular forms of prejudice, inequality, discrimination and oppression including for example, refugees, asylum seekers, other people who are migrants, Travellers, Roma, other minority ethnic groups, , LGBTI people, older people and people with disability<sup>7</sup> . Community development recognises and seeks to address the multiple barriers and particular forms of oppression and discrimination experienced, by women from these communities.

It is within this context that CWI welcomes the opportunity to submit to the Department of Justice our views on the Review of the Prohibition of Incitement to Hatred Act 1989.

## Context

The consultation on the Review of the Act is timely coming as it does against a backdrop of increasing racist rhetoric in public and political discourse and at a time when a general election is on the horizon. Run up periods to local, general and presidential elections can be times when debates about the rights of minority groups come to the fore, frequently in ways which perpetuate hatred and fear of the 'other', and a sense of urgency to protect 'our own'<sup>8</sup>

Increasingly, there has been a growth of far-right elements who have deliberately and cynically infiltrated and manipulated concerns at proposals to locate direct provision centres in rural villages and small towns across Ireland<sup>9</sup>.

Far-right activity has emerged in Ireland in the context of austerity; plummeting trust in public institutions and the media; a growth in new technology; and losses on the right in recent referendums. Although still small, a number of groups are emerging and it is clear that in recent months what were once disparate and unorganised interactions, are increasingly evolving into quality connections between groups and individuals. There's also been a noticeable surge in violent rhetoric and threats being issued to individuals and organisations involved in calling out and organising against far-right activity.

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<sup>4</sup> [link removed]

<sup>5</sup> [link removed]

<sup>6</sup> All Ireland Standards for Community Work - [link removed]

<sup>7</sup> ibid

<sup>8</sup> [link removed]

<sup>9</sup> [link removed]

[link removed]

In September of this year, Community Work Ireland met with a number of local residents in a West of Ireland town where a direct provision centre was proposed and where local protests eventually stopped the planned centre. to discuss ways forward. A group of residents wishing to support the asylum seekers had already been meeting in Oughterard to discuss the provision of supports. None of the members of this group attended the protests.

The group was deeply concerned at the ongoing divisive and destructive protests against the proposed Direct Provision Centre in their town. They felt it was necessary to come together in response to the dangerous influence of right-wing elements in the protests, the racist rhetoric that was used, the stimulation of fear amongst the community, the spreading of rumour and mistruths and the suppression of alternative voices leading to potentially lasting divisions in the community<sup>10</sup>. Those that attended the meeting with CWI did not want to speak publicly for fear of backlash and potential intimidation.

CWI is a member of The Far-Right Observatory. The FRO is a group of civil society members, academics, and activists who have established a coordinated space for civil society action. Members of FRO have been gathering evidence and documenting far right activity since early 2019. FRO notes that the escalation of digital distortion/'fake news' and hate content material is noticeable and creating the conditions for fostering of lies, confusion, fear - leading to a growth in racism conspiracy theories, justification of hate crimes and offensive opinions. This approach primes persuadable people for far right targeting and disrupts rationale debate and discussion.

Whilst these developments are relatively recent in an Irish context, Traveller rights organisations, supported by organisations such as Community Work Ireland, have long called for the strengthening of Ireland's Incitement to Hatred legislation deeming our current law to be ineffective in addressing the persistent and deep seated oppression of Travellers and the racist and hate spreading language consistently directed at the community.

Whilst acknowledging the Departments recognition of the importance of tackling hate crime through new legislation the apparent growing acceptance of hate speech and its intrinsic link to hate crime makes the imperative for strong and effective legislation to address both, a matter of urgency.

## Responses to Questions

CWI's responses to these questions are based on CWI's work and ongoing work with communities experiencing discrimination, prejudice and oppression, discussions with our members, analysis and engagement with members of the CWI Direct Provision sub-group. In making these recommendations we are cognisant of national and international bodies who have commented on Ireland Incitement to Hatred legislation including for example;

*The UN Committee for the Elimination against Racism General recommendation 35*<sup>11</sup> which provides a useful framework for the establishment of effective legislation and calls on states parties to take into account the following contextual factors on the qualification of dissemination and incitement as offences punishable by law;

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<sup>10</sup> [link removed]

<sup>11</sup> [link removed]

- **The content and form of speech:** whether the speech is provocative and direct, in what form it is constructed and disseminated, and the style in which it is delivered.
- **The economic, social and political climate prevalent** at the time the speech was made and disseminated, including the existence of patterns of discrimination against ethnic and other groups, including indigenous peoples. Discourses which in one context are innocuous or neutral may take on a dangerous significance in another: in its indicators on genocide the Committee emphasized the relevance of locality in appraising the meaning and potential effects of racist hate speech.
- **The position or status of the speaker in society and the audience to which the speech is directed.** The Committee consistently draws attention to the role of politicians and other public opinion-formers in contributing to the creation of a negative climate towards groups protected by the Convention, and has encouraged such persons and bodies to adopt positive approaches directed to the promotion of intercultural understanding and harmony. The Committee is aware of the special importance of freedom of speech in political matters and also that its exercise carries with it special duties and responsibilities.
- **The reach of the speech, including the nature of the audience and the means of transmission:** whether the speech was disseminated through mainstream media or the Internet, and the frequency and extent of the communication, in particular when repetition suggests the existence of a deliberate strategy to engender hostility towards ethnic and racial groups.
- **The objectives of the speech:** speech protecting or defending the human rights of individuals and groups should not be subject to criminal or other sanctions.

*The CERD Concluding observations on the combined fifth to ninth reports of Ireland*<sup>12</sup> notes with regard to hate speech that 19. The Committee is concerned about the increasing incidence of racist hate speech directed against Travellers, Roma, refugees, asylum seekers and migrants, particularly through the Internet and social networking platforms. It is also concerned about the frequent incidents of racist hate speech made by politicians, especially during election campaigns. It is further concerned that the Prohibition of Incitement to Hatred Act 1989 has been ineffective to combat racist hate speech, particularly on-line racist hate speech (arts.4 and 5).

20. Recalling general recommendation No. 35 (2013) on combating racist hate speech, the Committee recommends that the State party: (a) Strengthen its legislation on racist hate speech with a view to effectively combating racist hate speech in all forms of expression and means of communication; (b) Intensify its efforts to tackle the prevalence of racist hate speech on the Internet and social media, in close cooperation with the Internet service providers and social media platforms; (c) Ensure that the online safety and media regulation bill, which is under development, is in line with international human rights standards and expeditiously enact the bill; (d) Effectively investigate and, as appropriate, prosecute and punish acts of hate speech, including those committed by politicians during election campaigns; (e) Ensure that the mandate of the Electoral Commission, once established, includes provisions on the prohibition of racist hate speech in the context of elections; (f) Inform and sensitize the public about racist hate speech.

*The European Commission against Racism and Intolerance* which stated that *'The Prohibition of Incitement to Hatred Act 1989 is seldom used and is particularly ineffectual in combating online hate speech. Hate speech involving verbal abuse in public places is quite common. There is an undercurrent of low-level racist violence which is not adequately recorded or addressed'*<sup>13</sup>.

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<sup>12</sup> [link removed]

<sup>13</sup> [link removed]

## Questions

1. *Are there other groups in society with shared identity characteristics, for example disability, gender identity, or others, who are vulnerable to having hatred stirred up against them and should be included in the list of protected characteristics?*

Community Work Ireland is of the view that the list of protected characteristics in the Act should be expanded to ensure protection for all those who are vulnerable to having hatred stirred up against them including all of those covered under the 9 grounds of Ireland's equality legislation with additional identity characteristics such as for example, gender identity or intersex status, Roma, language, migrants, asylum seeker or refugee status.

2. *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?*

Community Work Ireland is of the view that the Act does not adequately define key terms including the term hatred itself. A range of international bodies have commented on the importance of clear definitions in relation to terms in legislation and it is imperative that clarity of meaning is pursued in the review of the legislation. Terms such as hostility, bias and prejudice should be included and defined as key elements of hatred.

3. *Bearing in mind that the Act is designed only to deal with hate speech which is sufficiently serious to be dealt with as a criminal matter (rather than by other measures), do you think the wording of the Act should be changed to make prosecutions under for incitement to hatred online more effective? What, in your view, should those changes be?*

CERD Recommendation 35 states that 'Informed, ethical and objective media, including social media and the Internet, have an essential role in promoting responsibility in the dissemination of ideas and opinions. In addition to putting in place appropriate legislation for the media in line with international standards, States parties should encourage the public and private media to adopt codes of professional ethics and press codes that incorporate respect for the principles of the Convention and other fundamental human rights standards<sup>14</sup>.'

Given the global and national rise in the use of online communications tools by the far right, the increasing use of facebook groups for spreading fear and hostility and the power of social media to immediately spread messages to a vast and disparate audience, CWI recommends that the Act be amended to include online incitement to hatred.

4. *In your view, does the requirement that an offence must be intended or likely to stir up hatred make the legislation less effective?*
5. *If so, what changes would you suggest to this element of the 1989 Act (without broadening the scope of the Act beyond incitement)?*

A key barrier to securing convictions under the Act has been identified by national and international bodies as being the requirement to prove an intent to, or a likelihood of stirring up hatred<sup>15</sup>. The standard of proof here it is argued makes securing convictions extremely difficult rendering the Act less effective.

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<sup>14</sup> *ibid*

<sup>15</sup> [\[link removed\]](#);

Community Work Ireland recommends that the requirement for an offence to be intended or likely to stir up hatred be reviewed and the burden of proof be reduced to recklessness as recommended by IHREC<sup>16</sup>.

### **National Action Plan against Racism**

Community Work Ireland would like to draw attention to the Irish Human Rights and Equality Commission comment in their submission to this consultation process which states that ‘While criminal sanctions are necessary for condemning severe forms of hate speech, the human sentiment of hatred cannot be eliminated by legal prohibition alone. What is ultimately required is to address and counter the conditions conducive to the use of hate speech. As the guidance of human rights and equality bodies has emphasised, criminal sanctions are therefore only one component of the required response to hate speech’.

In this context and in support of the above, Community Work Ireland calls for the development and implementation of a new National Action Plan against Racism to address some of the issues raised in this submission. At a time when racism is on the rise, we need to send a clear message that racism and hate have no place in our communities and that our society should be inclusive of all. An Action Plan against Racism will demonstrate the Irish Government’s commitment to proactively tackle hate crime, find effective ways to address all forms of racism and prejudice and build a society where society where entire communities feel safe and hate speech has no hold over the cohesion and fabric of our shared community.

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Combined 5<sup>th</sup> to 9<sup>th</sup> reports submitted by Ireland under Article 9 of the convention. paragraph 65;  
Hayes, A, and Schweppe, J., (2017) Lifecycle of a Hate Crime: Country report for Ireland. Irish Council for Civil Liberties.

<sup>16</sup> [link removed]