



Cork City of Sanctuary

This submission is being made by the Cork City of Sanctuary Movement.

We contend that a new bill needs to address more problems than those of incitement to hatred, and, in particular, that there is a significant gap in our legislation that allows for racial and other forms of abuse to take place, without those who are victims of it having a route to recourse. While we see the need for reform of the incitement to hatred legislation, we see this as quite a narrow but significant crime, which requires new legislation to address changed circumstances and new technologies. We suggest that any new legislation be victim- as well as perpetrator- centred. Any new legislation should also address the consequences for the victim of racial or other abuse. We also believe that it should make it incumbent on the various public and private organs that a duty of care be a key component of operation.

Séamus Taylor reviewed the operation of the current legislation in 2010, and concluded that our operation of Incitement to Hatred legislation was purposefully narrow; this would appear to be the case in many jurisdictions, such as in Britain. Taylor also found that there were serious deficiencies in its policing; of note is that the CSO, in their review of the quality of crime data last year found that the Gardaí were not recording the motivations for the hate-crime.

We suggest that there are at least three areas beyond the questions that this review posed that need to be addressed:

- Instances of racial and other abuse that fall beneath the threshold of ‘Incitement to hatred’
- Policing of such crimes
- Punishment and redress, for perpetrator and victim respectively

Other jurisdictions appear to use a ‘layered’ approach, whereby their legislation ranks the nature of the crime into demarcations such as criminal law, administrative law and civil law, depending on the nature and severity of the incident or crime.

The Irish Council for Civil Liberties in 2018 documented that Ireland has amongst the highest rate of hate crime against people of African descent and Transgender people in the EU but with no laws to govern it. At the launch of *The Lifecycle of a Hate Crime: Country Report for Ireland in Dublin* on the 4th July 2018, Emily Logan, Chief commissioner for the Irish Human Rights and Equality Commission, reiterated the need for hate crime legislation to address perpetrators, stating:

“Hate Crime has a real-world, oppressive and damaging effect on those who fall victim to it. Hate Crime can cause people to withdraw from society and avoid expressing their identity. When unchallenged, hate crime carries consequences well beyond the immediate victim. It has the power to act as a ‘message crime’ – the ability to send out a message to an entire community – to warn off those who stray from the norm. It can also cause people to alter their daily lives to avoid further victimisation, including moving neighbourhood or job. It is not the responsibility of victims to avoid being targets of hate crime: the State, as the principal duty bearer – has a responsibility to send a clear message to society that hate crime is not tolerated.”¹

We suggest that those responsible for drafting this legislation use the Rabat principles when addressing the issue of incitement to hatred². We are recommending that comprehensive reports tabled by respective Civil Society organisations in collaboration with National Human Rights Authorities (NHRI), should be given adequate consideration to guide law makers to develop hate crime friendly legislations commensurate and aiding to international law standards.³ We refer you to the Camden principles (Article 19)⁴, regarding issues around freedom of speech: these principles address well the limitations and boundaries that should be placed on such freedoms. We also refer you to another Article 19 report “Responding to ‘hate speech’: A comparative overview of six EU countries”⁵. This report details many of the positive and negative outcomes from operation of Incitement to Hatred legislation across the six countries concerned, and points direction as to

Our responses to the questions posed follow:

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?

We suggest that areas such as those suggested be included. It should be borne in mind that attempts that were made to incorporate these into legislation in Poland and Italy have proved unsuccessful; This suggests the incorporation of other grounds into such legislation is not a trivial matter; the legislation needs to incorporate learnings from failures in other countries such as Poland and Italy, in their attempts to address issues around gender identity and disability.

¹ ICCL (4th July 2018) *Lifecycle of a Hate Crime: Country Report for Ireland*: [link removed]

² “Report of the United Nations High Commissioner for Human Rights on the expert workshops on the prohibition of incitement to national, racial or religious hatred”, UNHRC 2013

³ OSCE (2009) Hate-Crime Law: A practical guide. [link removed]

⁴ [link removed]

⁵ [link removed]

2. Do you think the term “hatred” is the correct term to use in the Act?

We suggest that ‘hatred’ is an appropriate term for use in cases of such crimes, as long as a strong and comprehensive definition of ‘hatred’ is included, as is recommend in the Rabat Principles.

Would there be implications for freedom of expression?

There are comprehensive guidelines on freedom of expression in the Camden Principles – these suggest, for example, that

...certain speech, for example intentional incitement to racial hatred, is so harmful to equality that it should be prohibited. Rules prohibiting such speech should be narrowly defined to prevent any abuse of restrictions, including for reasons of political opportunism.

Again, as with 1 above cognizance needs to be taken of problematic utilizations of such laws, as with the recent Polish legislation on responsibility for Nazi crimes.

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?

UNHRC has recognised that rights that people have offline are also guaranteed online.

The issue of online hate-speech has proven to be problematic, with countering notions of what constitutes a crime being recommended by differing European bodies, such as the European Court and the EU, in terms on whom responsibility falls. This would indicate that any wording used needs to be very carefully crafted.

What, in your view, should those changes be?

Much legislation to date would seem to focus on the efficient detection and removal of hate-speech online, rather than on the prosecution of perpetrators. The use of aliases further muddies the waters, a much hate-speech is conducted by effectively untraceable perpetrators.

A suggestion is that the focus should have at least the following components: firstly, to demand of online carriers that such aliasing and anonymised persona be eliminated; secondly that legislation explicitly reference online hate-crime; thirdly that our Gardaí, or whatever organ is to police this, be trained.

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

It would appear that in most European jurisdictions, this is the case in terms of ‘incitement to hatred’ legislation. We feel this should be preserved, in terms of those offenses that *are* intended to do precisely that. As mentioned above, several legislatures rank the offense, and apply differing rules and penalties, dependent on the severity or otherwise of the action. We think this is worth consideration

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

There is a further aspect to this, which is the perspective of those who are being targeted. The legislation should adopt an approach that is victim-centric. If the person or group concerned believe that they are the targets of hate-speech, and can substantiate it, then the policing organ should prosecute the crime. Even if such action does not directly involve a threat to them, it may have a significant impact on their individual or group persona, which needs to be addressed.

Some legislations include in their legislation terms such as ‘insult’ or ‘grossly offensive’ as being possible crimes also; this approach is worth considering.

There is also a need for a body beyond the Gardaí , such as the Irish Human Rights and Equality Commission, to be given a significantly greater adjudication role in cases that involve racial abuse that falls below the ‘hatred’ and incitement to violence threshold; i.e., those cases where abuse is a key component, but where hurt and psychological and social harm are the consequences, as opposed to threats or incitement to violence.