

Department of Justice and Equality open Consultation - Review of the Prohibition of Incitement to Hatred Act 1989 - Submission by New Communities Partnership

1. NCP as an organisation and new communities in Ireland

NCP was formed in 2003 by a group of community leaders who wished to represent and empower new communities (including ethnic minorities) and their organisations in Ireland. They shared the common goal of striving to overcome the obstacles and difficulties that arose for people building a new life in Ireland. Almost 20 years later, some of these barriers have remained visible within the changing landscape for migrants in Ireland, which has become an increasingly diverse country. Migrants and people of Migrant origin make up 17% of the population, making Ireland one of the highest concentrations of new communities in the EU, and marking a 50% increase from the figures released by the CSO in 2012. The ESRI (2018) has revealed that the complex nature of this new Irish population brings its own challenges.¹ These include discrimination in accessing the labour market, lack of cultural support, and feelings of segregation, and indeed, manifestations of racism and hatred. With 1/8 residents born elsewhere, demand for skilled and unskilled workers is rising, and so is pressure within social services, including housing, education, health, and family welfare services.

This is where the relevance of NCP's work comes at play. To do so, we provide 5 different services in our Dublin and Cork offices. These are tailored towards new communities at different stages of their integration trajectories in Ireland. We fill gaps in service provision towards migrants encountered at local and national levels. This includes support with: Access to the labour market, information on child protection and safeguarding, cultural support, social inclusion, youth work, citizenship and immigration support, among others. Throughout, we support a range of people from new communities, including vulnerable children and families, asylum seekers and refugees, migrant workers, long-term non-nationals resident in Ireland, migrant groups, ethnic minority communities, Roma, people experiencing homelessness and domestic violence, among others. We provide support to stakeholders and partnering organisations, including NGOs and statutory agencies at local and national levels.

2. Revision of the Prohibition of Incitement to Hatred Act 1989

NCP welcomes the initiative of the Department of Justice and Equality to review existing legislation in this area, and the subsequent opportunity provided to input into it by means of public consultation. Throughout this brief submission, our intention is to highlight issues and opportunities for improvement within the current act which would bring its scope into meeting the needs of new communities within an increasingly diverse country. In doing so, we consider the types of protection which the revised act should prioritise, and the groups through which the current act does not offer sufficient protection, but ought to throughout its revision, including groups we work directly with throughout our services. Moreover, we note the

¹ ESRI (2018) Monitoring report on Integration

importance of the revised legislation in ensuring that Ireland complies with its international human rights obligations.

We structure this submission according to the four issues listed for discussion within the public consultation document. We include observations noted through our own work in addition to policy and other literature in the area. We further reinforce previous submissions and statements made by other NGOs and statutory bodies, and hope that the state will fully consider the issues raised in the recent examination conducted by the UN CERD committee, likewise through implementation of the forthcoming recommendations made by the committee pending review.²

3. Issues Presented for discussion

The Prohibition of Incitement to Hatred Act 1989 makes use of criminal law to discourage and prohibit discriminatory discourse. It remains the sole piece of legislation within the state which criminalises hostility on the grounds of race, colour, nationality, religion, ethnic or national origin, membership of the Traveller community, or sexual orientation. Nonetheless, as highlighted previously by NGOs and statutory bodies, some forms of direct abuse taken at an individual on grounds of a protected characteristic are not necessarily prohibited under the current act, as per absence of a wider intention or likelihood to stir-up hatred. Moreover, the limited scope of the act does not sufficiently take into account members of other targeted groups, such as persons with disabilities from ethnic minority communities who might experience hatred on combined grounds, neither it addresses contemporary forms of hate speech or incitement to hatred, such as those occurring online. In all, NCP believes that there is significant need for reform of both policy and regulatory environment in the area.

Additionally, the Act has been unsuccessfully invoked in criminal cases where racism was claimed to be the motivating factor. As mentioned by INAR, the act was not designed to apply to such cases, meaning that the low level of prosecutions seen since its implementation does not accurately represent the widespread seriousness of the issue³. This is particularly visible within the case of online hate speech, as the act does not have an adequate basis to identify, investigate or prosecute the bias element of these type of criminal occurrences, as previously raised by the Law Reform Commission.⁴ With the increase in anti-migrant sentiment, including at the political sphere, reform of the act needs to fully consider the current political and social landscape to the review of how the law may be strengthened against hate speech and hatred. Moreover, previous research has cemented that discourses centred on dehumanising and stereotyping groups such as Roma and Travellers continues to be ‘pervasive’.⁵ In anecdotal terms, we also see this through some of our services, in particular our Migrant Family Support Service (MFSS), where we

² See: Siobhan Mullaly (2019) Ireland’s record on hate speech faces scrutiny by the UN. Available at: [link removed]

³ INAR (2019) Alternative report on Racial discrimination in Ireland . Available at: [link removed] see p.11

⁴ Law Reform Commission (2016) Report on Harmful communications and digital safety

⁵ Siopera et al., *Hate Track*, pp.35–36.

support families who are experiencing child protection interventions from the state under implementation of the Child Care Act. We have seen this happening particularly in relation to Roma and Muslim families, who face additional barriers on overcoming these discourses. The answers below are taken according to the manner questions were formulated within the consultation document.

A. *the list of protected characteristics covered by the Act and whether these should be changed*

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?

NCP notes, citing Haynes and Schweppe, that Transphobic, gender and disablist hate speech are not included within the current act.⁶ Other visible groups, such as asylum seekers and refugees and conceivably, the Roma community, are also not distinguished within the list of groups in the act. Additionally, despite the historical recognition by the Irish state to Traveller ethnicity on March 2017, legal effect has still not been given to traveler ethnicity recognition. The revised act should make a priority to enhance protection afforded to these groups. This should further be acted upon through disaggregated data collection regarding the experiences of hate speech faced by these groups once and if a revised act comes into force. This should include those who might experience hate speech on account of having various shared identity characteristics, such as women from ethnic minority communities, migrants with intellectual disabilities and trans or intersex migrant workers.

B. *the use of the term ‘hatred’ in the Act and whether this should be changed*

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?

We endorse the recommendations of the European Commission against Racism and Intolerance (ECRI) in this sense, namely, that amendment of the current legislation should include a wider-range of expression based offenses.⁷ As it currently stands, Hatred is defined in the act in ways which leave a fundamental gap, as hate speech is not *per se* prohibited, as The 1989 Act makes it a criminal offence solely to publish, broadcast and distribute material which incites hatred. This gap can be seen in relation to online hate speech, with expressions of racism and xenophobia online have become pervasive considering the ineffectiveness of hatred as currently defined within the act. Reform in this sense would require a modest amendment to the act in relation to how it defines hatred, expanding its scope to tackle online manifestations of hate speech in particular.

C. *whether the wording of the 1989 Act is adequate to deal with online communications*

⁶ Amanda Haynes and Jennifer Schweppe, *Lifecycle of a Hate Crime: Country Report for Ireland* (ICCL 2017)

⁷ ECRI (June 2019), *Report on Ireland (Fifth Monitoring Cycle)*, 12.

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?

The wording in the act is not adequate to deal with online hate speech.⁸ Migrants and members of new communities are regular victims of online hatred and hate speech, and the revised act should aim to address this contemporary and frequent reality. Literature corroborates this by noting that the majority of hate speech occurrences happen online, internationally and in Ireland.⁹ Furthermore, anti-immigrant and anti-refugee discourses have become increasingly more common in the Irish public and political life, with openly racist and inflammatory language being used by politicians and electoral candidates towards these groups.¹⁰ A resurgence in anti-migrant commentary has been particularly visible in the government's more recent actions on Direct Provision.¹¹

While civil society and human rights bodies have tackled the issue of hate speech through a range of substantive initiatives, these are not able to fully address the extent of online hate speech present nowadays. Additionally, the state presently plays a limited role in monitoring and addressing online hate speech, mainly through the scope of the Broadcasting Authority of Ireland, which deals solely with broadcast media. Increasing the scope for protection by expanding the remit of the Broadcasting Authority, or creating a new oversight body to monitor and act upon hate speech (including online) is therefore essential.

D. the need to prove the intent or likelihood of stirring up hatred and whether this should be changed

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

The requirement makes the legislation less effective considering its broad scope and vagueness, which have allowed for competing and fragmented interpretation. Additionally, the requirement is less effective if read in conjunction with the fact that Ireland still does not have standardised ethnic data collection practices, and ethnic identifiers across all of its administrative systems. This causes challenges for policy makers and

⁸ see: See PILA (5 October 2011), 'Irish District Court dismisses Traveller Facebook hate speech case'.

⁹ INAR recorded 125 hate speech incidents in the period July–December 2017 and 113 of these occurred online. See L. Michael (2018), *Reports of Racism in Ireland: 17th+18th Quarterly Reports of iReport.ie, July–December 2017*, p.7

¹⁰ Mark Hilliard (2019) Alt-right groups stir local unease about immigrants. Available at: [link removed]

¹¹ RTE (2019) What is driving protest against Direct Provision centres?. Available at:[link removed]

government authorities when it comes to assessing equality related issues, including in relation to crime. Improving the act in relation to this may increase the changes of making the legislation more effective.

Our brief Recommendations:

1. Implementation of a new revised Act should be prompt and a matter of urgency considering the issues listed above and the delayed actions in reviewing the act since the UNCERD committee's recommendation in 2011.¹²
2. Enactment of any forthcoming legislation in this area should be done with relevant civil society actors, including ethnic minority groups affected by hatred and hate speech (such as asylum seekers and refugees, roma, trans and intersex migrant workers, amongst others)
3. Inclusion of groups such as asylum seekers and refugees, Roma, and inclusion of characteristics such as gender identity and disability should be included to expand protection within the 1989 act.
4. Inclusion of hate speech and the contents of the revised 1989 act in obligations arising under Section 42 of the Irish Human Rights and Equality Commission Act 2014
5. Provision of annual figures containing the number of prosecutions made under the 1989 act, including after implementation of its revision. These figures should be ethnically disaggregated
6. In line with the recommendations regarding revision of the 1989 Act, NCP further recommends statutory provision to be made in relation to introducing Hate crime legislation within the state by considering substantive hate-motivated criminal offenses in line of issues presented above.

¹² Irish Human Rights and Equality Commission (2019) Ireland and the Convention on the Elimination of Racial Discrimination