



## **Re: Review of the Prohibition of Incitement to Hatred Act 1989**

**INAR** The Irish Network Against Racism, is a network organisation with 101 civil society member organisations in Ireland representing a range of affected communities including Traveller and Roma, migrants rights, anti-racist, Muslim, Jewish, asylum seeker, funded and grassroots organisations, community groups, as well as the principal trade unions in Ireland. INAR's flagship project is the iReport.ie racist incident reporting system from which we produce regular hate crime data reports, submit hate crime data to the OSCE/ODIHR, as well as monitoring other forms of racist incidents including hate speech in public, in the media, on social media platforms and in political discourse. INAR is the Irish Civil Society Partner in the EC's bi-annual monitoring exercise of online social media platforms' adherence to the EU's Voluntary Code of Conduct for social media platforms. INAR is also a longstanding partner in the Facing Facts programmes, developing resources for improving civil society and states' capacity to respond to hate crime and hate speech. This work is framed in the context of EU and international law, including EU Framework Decision on Racism and Xenophobia, Article 4 of the ICERD, CERD General Recommendation 35, ECRI GPR 15, and other international obligations, conventions and recommendations. INAR coordinates the Coalition Against Hate Crime, representing a range of affected identities. INAR supports the submission to the forthcoming consultation on Hate Crime being prepared collectively by the members of the CAHC.

Through its monitoring work, INAR is concerned of the marked increase in volume, intensity and vehemence of online hatred, hate activity and incitement, in particular since the "Peter Casey Moment" during the 2018 Presidential Election. Using resources, know-how and support from international far-right networks, extreme right-wing vloggers, 'journalists' and organisers in Ireland have been pushing to expand pockets of poisonous atmosphere in their multiple attempts to form a base from which to push for an electoral breakthrough. In this context, minorities in Ireland have experienced a number of hate crimes and racist mobilisations, including 4 separate arson attacks on the Merville and Rooskey sites earmarked for DP centres, several attacks on Traveller homes and a number of vehement hate-motivated violent assaults on minorities, including an incident where a white man drove on to the pavement at a south Asian family.



INAR considers the current application of the 1989 Prohibition of Incitement to Hatred Act to be ineffective in combating instances where there is clear incitement to hatred, in addition to being unfit for combating contemporary forms of online incitement to hatred.

INAR notes that more broadly Ireland does not currently have the range of tools, legislative and non-legislative, necessary for addressing the recent upsurge in hate speech, incitement to hatred, and hate crime. While noting that the current review of the 1989 Act began 19 years ago, we welcome the fact that the government is taking more steps now in addressing these inter-related but separate questions and we warmly welcome these opportunities to contribute to the improvement in policies. We consider it useful to separate out these questions while addressing them in their shared context.

#### *Hate speech vs incitement to hatred:*

INAR has urged the State to withdraw its reservation under Article 4 of the ICERD and bring forward, *inter alia*, measures to curb hate speech and incitement to hatred. However it shares the caution urged by fellow CAHC member the Irish Council for Civil Liberties that legislation prohibiting forms of speech- that is legislation to ban Hate Speech in its broadest definition- risks impinging on the right to freedom of expression. INAR considers that only the subset of forms of Hate Speech which would likely incite hatred or hostility towards a protected group in such a manner that they are likely to cause harm, or seriously impinge on members of that group's rights, should be criminalised. We consider that combating Hate Speech as a whole requires a range of measures, legislative and non legislative.

#### *Legislative measures to combat hate speech:*

Only criminalise speech that *incites* to hatred or hostility towards a protected group. Render effective the criminalisation of incitement to hatred by refining the 1989 Act to make it more workable, in terms of its ability to bring successful prosecutions. Replace 'incitement to hatred' with 'incitement to hatred or hostility', and give consideration to broadening the test from 'intended or likely to' to include 'or recklessly cause'. The Act should be updated with explicit wording to cover social media environments.



### *Non legislative measures for addressing hate speech:*

INAR's work with the European Commission, and others, on monitoring Social Media Platforms' ability to self-regulate demonstrates that the industry is structurally incapable of self-regulation.

With regards both to legislative and non-legislative measures, Ireland has a double responsibility to provide for effective mechanisms to appropriately monitor and regulate social media environments. The responsibility is double since Ireland is the site for the global or EMEA headquarters of the principal social media platforms. This responsibility provides an opportunity for Ireland to provide leadership on a contemporary global issue.

### *Protected categories:*

Categories covered by a refined 1989 Act must include disability, gender identity and gender expression, and may need to include more categories such as social class, where social class is defined as belonging to a marginalised community. The rationale for including protected categories should be restricted to those categories of people that the evidence shows are also groups that are marginalised in structural and institutional ways.

### *Hate Crime Legislation*

INAR is engaged in a number of projects relating to hate crime, hate crime practice and policy, as well as campaigning for hate crime legislation and being a member of civil society Coalition Against Hate Crime. Hate crime should be tackled together with hate speech and incitement to hatred, but should be addressed separately and the discussion merits a separate consultation process involving NGOs and expert groups. We forward to addressing all the issues in Hate Crime legislation by participating in the forthcoming NGO consultation on Hate Crime Legislation.

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