



**Submission to the Minister for Justice
and Equality on the review of the
Prohibition of Incitement to Hatred Act
1989**

December 2019

About the Irish Council for International Students (ICOS)

This submission is made on behalf of the Irish Council for International Students (ICOS). ICOS is an independent advocacy organisation whose mission is to protect the rights of international students, and to contribute to a healthy and vibrant international education sector in Ireland which has the quality of the student experience at its centre.

ICOS has more than thirty institutional members, including all nine universities in the Republic of Ireland, many of the Institutes of Technology and all the major independent third level colleges. Our membership also includes the Union of Students in Ireland (USI).

ICOS' values include consultation, professionalism, collaboration and learning, and our goals are to influence policy and standards in international education; build the capacity of our members; empower international students to pursue their rights; and support and showcase the important contribution of international education to international development.

About this submission

In November, ICOS held a focus group with international students to get their views on the Prohibition of Incitement to Hatred Act 1989 and hear about their experiences of hate speech in Ireland. An online survey was also circulated to ICOS members and posted on ICOS' social media. Responses and comments from the focus group and survey have been included in this submission to assist in capturing the voices of international students.

Introduction

The Prohibition of Incitement to Hatred Act 1989 was enacted to protect the rights of certain minority groups in Ireland from discrimination on account of their race, colour, nationality, religion, ethnic or national origins, membership of the travelling community or sexual orientation. However, since 2010, there have only been 10 criminal prosecutions under the Act¹. Furthermore, the Act has been criticised for its limited scope in only protecting the rights of groups, and not the rights of individuals, as well as for its ineffectiveness in tackling everyday acts of hate speech.

ICOS welcomes the government's review of the Prohibition of Incitement to Hatred Act 1989 and hopes that some of the recommendations put forward in this submission may go towards strengthening hate speech legislation in Ireland.

¹ The Committee, Combined Fifth to Ninth Periodic Reports Submitted by Ireland under Article 9 of the Convention, para. 65

Hate Speech in Ireland

Over the last two decades, Ireland has undergone a massive transformation to become a highly diverse, multicultural and multi-ethnic society. According to the most recent CSO figures, 11.6% of the population was born outside of the state². Recently, there have been several significant legislative developments in areas such as same-sex marriage, abortion, and most recently divorce law. While most Irish people welcome the changes that have taken place, there are some who do not, and a small, yet growing, minority who completely oppose them.

The European Commission Against Racism and Intolerance (RCRI) has reported that there is an undercurrent of low-level racism in Ireland which has not been adequately addressed.³ Indeed, the current public consultation of the Prohibition of Incitement to Hatred Act 1989 has taken place amidst a backdrop of increased media attention and public debate over immigration. There have also been a few high-profile cases of politicians openly engaging in a racist discourse against refugees and immigrants.

On the international stage, Ireland's record in addressing hate-speech has been under scrutiny. At Ireland's examination under the Convention to Eliminate Racial Discrimination (CERD), Verene Shepherd, the UN rapporteur on the elimination of racial discrimination in Ireland, criticised the Irish Government for failing to reform its legal framework on hate crime and called for a "clear time-bound commitment" to make the necessary changes in law.

In the context of international students, external factors, such as the continued pressure on the provision of housing supply, have seen some negative comments directed towards international students from certain sectors. Earlier this year, one Dublin City Councillor suggested that purpose-built student accommodation was being developed to cater "for the sons and daughters of the global elite".⁴ Although the tone may be subtle, such comments from public office holders can create negative misconceptions in the public eye. The reality in this case is that international students are not one homogenous cohort and come from multiple different socio-economic backgrounds.

ICOS calls on the government to show leadership by enacting legislation which places greater accountability on politicians who engage in hate speech rhetoric and insidious public commenting.

²CSO 2016 <https://www.cso.ie/en/releasesandpublications/ep/p-cp7md/p7md/p7anii/>

³ <https://rm.coe.int/fifth-report-on-ireland/168094c575>

⁴ <https://www.irishtimes.com/news/social-affairs/dublin-student-residences-cater-for-children-of-global-elite-councillor-claims-1.3846119>

Modernisation of the Act

The Prohibition of Incitement to Hatred Act 1989 has proven to be ineffective resulting in only a handful of criminal convictions⁵. The lack of legislation and effective mechanisms to deal with hate speech lead many racist incidents to go unreported.

The necessity to prove that a person has engaged in hate speech and has sought to “incite” is difficult to prove. ICOS believes that the 1989 Act must have a broader definition of what constitutes hate speech and lay out clear terms of what is considered to be “inciteful”.

ICOS has received reports from international students who say they have been targeted by hate speech on an individual level, but have been left feeling helpless due to the inadequate measures in place to tackle hate speech. ICOS urges that the government include provisions in any new legislation on hate speech that will protect individuals as well as groups.

The present scope of the Act only offers protection to certain groups. It is the view of ICOS and international students that protected characteristics of the Act should be amended to include refugees, transgender and people with disabilities. Incorporating these, and other minorities, into the legislation will offer necessary legislative protections for these groups.

Feedback from ICOS’ consultations

“Hate is too general”

“Hate can be interpreted in different ways”

“I think that there is no point in reporting hate speech [at the moment]”

“There is nothing the gardai can do”

“The government is looking the other way”

⁵ <https://www.irishtimes.com/news/crime-and-law/courts-service-reveals-five-convictions-for-hate-crime-since-1989-1.3124352>

Online Hate Speech

The 1989 Act currently does not contain adequate provisions to combat online hate speech. Since its enactment, Ireland has undergone a massive transformation in all aspects of life, not least in how we interact and communicate.

Online hate speech is often perpetrated by offenders who hide behind aliases and use multiple accounts allowing them to freely dissimulate hate speech content, many times under the guise of “freedom of speech”.

It is ICOS’ view that social media providers must also be held more accountable for monitoring online hate speech, and there must be joined-up thinking alongside government and other stakeholders, including civil society. ICOS recommends that the government develop an online hate speech strategy, framework and codes of conduct which providers should be encouraged to implement.

Feedback from ICOS consultations

“On social media it happens more individually”

“[The authorities should] follow up hate speech in online comments on news articles on Facebook. Videos of people inciting bad behaviour. No matter if they are teenagers or adults”

“Intention can be denied”

“[They] should expand to cases when a person is being attacked, and against toxic malicious campaigns (to target the abusing online group) and should target the wording that motivates and triggers and pushes people to criminal acts”

Penalties under the Act

Adopting a self-regulated opt-in framework and code of practices may not be enough to ensure adequate levels of monitoring on the part of social media providers. There is already a Press Council and Broadcast Authority, yet no such watchdog for online communication exists. The government could consider creating a new independent body to act as a watchdog to ensure that social media companies comply with the proposed codes of conduct. Failure to do so will result in fines.

In cases of low-level online hate speech against individuals, ICOS proposes that the government explores different means of penalties, such as fines, or forms of community service. For example, the offender could work in the community which the hate speech was directed against. ICOS also proposes that the government establish a restorative justice system to allow dialogue between victims of hate speech and offenders.

ICOS believes that the government should adopt a hard line on serious cases of hate speech and persistent offenders and recommends that all acts of hate should be considered as aggravating factors in cases that go to court.

Feedback from ICOS consultations

“I support freedom of speech, but there should be consequences”

“I think people will be less likely to offend someone if the law is against it”

“I think creating campaigns against hatred behaviour should help people understand why they should not offend people who are different to them”

“There should be consequences as long as there is proof”

Conclusion & Recommendations

Successive governments have overlooked renewing Ireland’s National Action Plan against Racism. A new strategic plan to combat racism and hate speech needs to be developed as a matter of urgency.

From a long-term perspective, the best way of combating hate speech is through education. Research has shown that those with higher levels of education are more positive in their assessment of the impact of immigration⁶. Likewise, as people engage more and more on social media as a source of information and news, it is important that young people are educated to develop critical thinking skills about race and racism.⁷

As Ireland’s current International Education Strategy 2016-2020 aims to significantly increase the number of international students studying in Ireland, it is important that we have hate speech legislation in place that protects international students and other minorities at risk of discrimination. While everyone is entitled to free speech, there must be

⁶ <https://www.ihrec.ie/app/uploads/2018/03/Attitudes-to-diversity-in-Ireland.pdf>

⁷ <https://www.ihrec.ie/app/uploads/2018/11/HateTrack-Tracking-and-Monitoring-Racist-Hate-Speech-Online.pdf>

real consequences for engaging in hate speech, and a legislative and judicial system that is equipped to deal with offenders.

ICOS recommends the following:

1. New hate speech legislation must clearly define new grounds under which hate speech is prohibited, including provision to protect individuals from hate speech, on and off line;
2. Include refugees, transgender and people with disabilities on the list of protected characteristics;
3. Develop a hate speech strategy, framework, and codes of conduct for social media providers and users;
4. Engage with social media providers, and other stakeholders, to ensure that they are accountable for policing their sites and their users' content;
5. Implement a restorative justice system and promote education across society;
6. Develop a new National Action Plan against Racism;
7. Enact hate crime legislation to protect people from discrimination and to tackle individuals and groups that perpetrate acts of hate;
8. Implement IHREC recommendations from CERD report.

Feedback from ICOS consultations

"[The government] needs to strengthen the education"

"There needs to be awareness about how to report"

"Deliberate or not deliberate, there needs to be accountability"

For Further Information Contact:

Brian Hearne

Communications Officer

bhearne@icosirl.ie

01-2315325