Public Consultation: Review of the Prohibition of Incitement to Hatred Act 1989

Submission on behalf of AkiDwA

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For more information, please contact

Salome Mbugua, Head of Operations & Strategy

Salome@akidwa.ie

Katie Walker, Policy & Research Officer

PR_officer@akidwa.ie

Background

Established in 2001, AkiDwA is an ethnic minority-led national network of migrant women living in Ireland. The organisation advocates for migrant women's equal rights in Irish society, free of gender and racial stereotyping. In partnership with others, AkiDwA uses a holistic and gender-specific approach to promote migrant women's integration and provides support for access to mainstream services and initiatives. AkiDwA welcomes this opportunity to contribute to reform of current laws on hate speech and thanks the Department of Justice and Equality for their review of the current regime on hate crime in Ireland.

We represent migrant women - a group of society which is particularly vulnerable to the rising levels of hate speech we see in public and online. By reason of their race, background and gender, migrant women find themselves targeted in public simply for who they are. Migrant and minority women have to deal with the reality of being targets, but also their families being victims to racist hate speech too. Hate speech is psychologically harmful and silences and pushes women out of public spaces and debates. Not only is this harmful to individuals but it threatens principles of equality, non-discrimination and diversity which are so important to a democratic society. Further, incitement to hatred can and has resulted in attacks upon communities, threatening the physical safety of whole groups of people. AkiDwA has supported women and their families facing racism and sexism for nearly twenty years.

With the evolution of modern technology and the easy access to social media, many migrant women find themselves struggling with online sexual and racial abuse. Since its foundation, AkiDwA's work has focused on racism and discrimination, and cyber abuse has been reported to be of major concern. AkiDwA has delivered training in collaboration with Google, and conducted baseline research on migrant's experience with online abuse in Ireland. Our recent seminar with Google provided a reflective space for in-depth discussion with the aim to explore the impact of online abuse on migrant women. **A key major concern for the organisation remains on under reporting and lack of support for the victims.**

We present several recommendations for the reform of hate speech legislation and we look forward to any further opportunities to collaborate with the Department of Justice and Equality in developing the legislation and policy around hate crime more generally.

Our key recommendations:

1. Ireland should develop a comprehensive framework and strategies to address online hate speech, with complementary criminal and non-legal approaches.
2. Provide support to victims of racist abuse through counselling or a telephone reporting and information service.
3. Schools need education on online safety on the curriculum, which would specifically include lessons on cyber bullying and hate speech.
4. Promote public awareness campaign to educate the public on the privilege and the limits of free speech and the consequences of hate speech.
5. Expand the list of protected categories under the Incitement to Hatred Act 1989 in line with the Equality Status Acts to include gender, gender identity and disability.
6. Systematically collect all reports of racist and hate speech and abuse and analyse date to improve response.
7. Media professionals should adhere to journalistic ethical code of practice. Newspapers should not publish material or reports likely to cause or stir up hatred against an individual or group.

The current law and hate speech

It is generally agreed upon among many academic, legal and civil society actors that the Incitement to Hatred Act 1989 is ineffectual in its aims. There have been too few prosecutions, the operation of the law is poorly understood and law enforcement and the DPP rely on other criminal provisions to pursue convictions for racist crimes.[1] Conversely, hate crime is rising and spreading, particularly by means of online digital communications. The legislation cannot keep up with the reality of how hate is spread. AkiDwA regularly receives reports from our members on the racist, sexism and hateful, targeted abuse.

While there is no universally agreed upon definition of hate speech in international law, AkiDwA relies on the UNCERD understanding of the term 'hate speech' [2] as "a form of other-directed speech which rejects the core human rights principles of human dignity and equality and seeks to degrade the standing of individuals and groups in the estimation of society." We find that this definition places the potential harm to individuals and society at the heart of understanding acts of hate speech. Hate speech can have a direct impact on individuals in the immediate sense but can also have the consequence of degrading or dehumanising whole groups in society and over time result in their discrimination in all areas of life.

Expanding the list of protected characteristics

AkiDwA considers that the Incitement to Hatred Act 1989 should be amended to include protected categories and characteristics as defined in equality legislation (Equal Status Acts 2000-2015), which officially designates identities which are likely to experience discrimination.[3] In particular, the Act should extend its remit to include hate speech on the grounds of gender, gender identity and disability.

Intersectionality

How people identify themselves online affects how they are treated: as a woman, as a person of colour, as a person with a disability. These identities are often weaponised and make a person vulnerable to hate speech. The migrant women we represent, report to us experiences of being targeted and harassed because of their identities as women, as migrants, as people of colour, for seeking asylum etc. Intersectionality of identities amplifies the risk that a person will be targeted with hateful commentary in their daily life. Further, in their positions as mothers, women in our network often find themselves in the position of having to defend their own children from racist abuse, whether it is on the schoolyard, in public spaces or especially, on social media. In a widely publicised incident in 2019, images of schoolchildren were used to stir up distrust and hatred of migrant and minority communities and employed in anti-diversity rhetoric. While the post was eventually removed, no criminal action was taken for what was clearly an act of incitement, and further, the perpetrator still has the platform on the same social media sites. The Incitement to Hatred Act 1989 is underused to address this harmful pattern of behaviour which is gaining traction, forcing migrant women and their families to deal with this abuse on a regular basis.

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[1] Lifecycle of a hate crime: country report for Ireland, ICCL 2018, https://www.iccl.ie/wp-content/uploads/2018/05/Hate-Crime-Report-LR-WEB.pdf

[2] UN Committee on the Elimination of Racial Discrimination, General Recommendation No. 35 on combatting racist hate speech, 26 September 2013, CERD/C/GC/35, para 7

[3] Equal Status Acts 2000-2015

Sexist hate speech and gender based violence

Sexist hate speech is recognised by and defined by the Council of Europe as "expressions which spread, incite, promote or justify hatred based on sex".[4] This includes the communications which threaten women with rape, death and torture, and other comments reinforcing inequality and rape culture. This form of hate speech caused serious harm to those directly and indirectly at the receiving end – women suffer psychologically, and withdraw from the public forum of online spaces either removing themselves from those spaces or posting anonymously to protect themselves. They do not have the same freedom online, or freedom of expression because of the retribution and threat of sexist hate speech. A culture which allows sexist hate speech is a culture where women are more likely to suffer gender based violence, when hate speech escalates to harassment, intimate partner violence, cyber stalking and sexual violence.[5]

Recommendation: Expand the list of protected categories under the Incitement to Hatred Act 1989 in line with the Equality Status Acts to include gender, gender identity and disability.

Language and operation of the Incitement to Hatred Act 1989

Use of the term "hatred" in the Act

The 1989 Act does not define hatred, which is a vague and overly subjective term. ICERD Article 4 states that any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law.[6] The ICERD definition allows us to understand hatred in the context of inciting discrimination, hostility and violence. However, if we are really serious about stamping out racist rhetoric law reforms will address hate speech with a broader idea of what it means to attack a community. This includes statements which encourage discrimination, and which may result in protected groups experiencing disadvantage and exclusion in their daily lives, whether through loss of employment opportunities, discrimination in access to housing or direct harassment.[7]

Under European Court of Human Rights case law, there is a whole host of categories of hate speech categories and incitement to violence and hostility is only one of these. Hate speech also includes ethnic and religious hate, negationism and revisionism (e.g. Holocaust denial), threat to democratic order and condoning terrorism or war crimes. There is scope for law reforms to our 1989 Act to take a more human rights based approach and prohibit hate speech which contravenes the human rights of those in protected groups.

[4] Council of Europe, "CoE Factsheet Hate Speech", 2017, available online at http://www.echr.coe.int/Documents/FS_Hate_speech_ENG.pdf
[5] See also: Council of Europe Recommendation CM/Rec(2019)1, Preventing and Combating Sexism https://rm.coe.int/prems-055519-gbr-2573-cmrec-2019-1-web-a5/168093e08c
[6] https://www.ohchr.org/en/professionalinterest/pages/cerd.aspx
[7] See also: CERD General Recommendation No. 35 on combatting racist hate speech (2013) https://www.refworld.org/docid/53f457db4.html

Proving intent or likelihood to stir up hatred

From a case law and prosecution perspective, the legislation does not offer sufficient detail to understand the essential elements of the crime (i.e. should hate be stirred or likely to be stirred). Without this necessary clarity, prosecutors may be unwilling to pursue cases. Legal practitioners find the burden of proof under current legislation to be too high or difficult to understand. [8]

However reforms of the legislation should offer clear guidance to the public, to prosecutors and to the judiciary on the burden of proof and the extent of causation required to prove incitement to hatred and prejudice.

Journalist code of practice and ethics

> *"The media was saying a lot of things about us – portraying us – as spongers, that we are here spreading diseases and all that. So those are the things that were really frustrating us, because we have noticed that people, they would not understand why we are here and we were not here maybe to take over, but we are here to be part of the community and give back to the community when we're given a chance to do so."*
>
> – Participant in AkiDwA's Let's Talk research project on mental health of refugee women[9]

Reporting by journalists has previously taken subtle forms of racial bias, such as racial stereotyping and paying a disproportionate level of attention to stories which paint people from minority ethnic communities in a negative light. For example, in 2008 Kevin Myers, Irish journalist and writer, wrote an article in the Irish Independent paper, *Africa has given the world nothing but AIDS.* In a radio interview in November 2011, Councillor Scully, public representative and former mayor of Naas, said that he would no longer represent "black Africans" living in his area. He implied that they are 'aggressive' and 'bad mannered'. This has been the case in the last few months with public representatives using their platform to fuel hate and discrimination. Media outlets should consider carefully the impact which an editorial spreading such views can have on a community. Harmful discourse should not be published or broadcast unchecked but should be accompanied by fact-checking and countering views from the community. Failure in this editorial responsibility should result in a penalty for a media outlet.

Recommendation: Media professionals should adhere to journalistic ethical code of practice. Newspapers should not publish material or reports likely to cause or stir up hatred against an individual or group.

Balance with Freedom of Expression

We recognise that freedom of expression is a greatly important human right. It is a signal of a functioning, democratic society that citizens are free to express themselves and share their

[8] Haynes and Schweppe (2018) Life Cycle of a Hate Crime, ICCL, p. 55 https://www.iccl.ie/wp-content/uploads/2018/05/Hate-Crime-Report-LR-WEB.pdf
[9] Forthcoming January 2020

views. However there are very few rights which come without any limits, and freedom of expression cannot be upheld at the expense of the safety, security and equal treatment of others in society.

The European Court of Human Rights lays out in extensive case law, the conditions under which the freedom of expression (Article 10) may be limited. Broadly speaking, freedom of expression can be limited where it contravenes the rights and values held enshrined elsewhere in the Convention such as tolerance, social peace and non-discrimination.[10]

The test elaborated by the Court and which should be adopted in Irish law for an interference with freedom of expression is as follows: has there been an interference with article 10? Is it prescribed by law? Does it pursue a legitimate aim and is it necessary in a democratic society? This approach well-established with an extensive case law elaborated for the Irish courts to consider. Considering reforms to our laws against these measures, it should be well within the limits of the law to make our laws protecting from hate speech more robust and better elaborated to protect.

Social Media

Most of our members continue to suffer with online abuse through social media sites like Twitter, YouTube and Facebook. Online attacks have a huge impact on psychological wellbeing of individuals. Online hate speech must be addressed immediately and directly. Companies must have clear and effective process to address hate speech on their service. Many big social media tech firms have signed up the European Union's Code of Conduct on countering Illegal Hate Speech Online.[11] Progress has been made in the past few years[12] in moderation of illegal content however some moderation policies and decisions remain opaque to users.

Where there is consistent use of a platform to commit clear acts of hate speech and a company continuously refuses or is unable to take the necessary action to remove and moderate this content (i.e. protect its users) then this should be seen as amounting to giving a platform to hate and harmful, illegal behaviours and there should be criminal consequences for the service provider. We understand that such criminal response may be difficult to prosecute and we hope that voluntary, proactive approaches by social media firms will be sufficient; however this is still not the case. The law needs to reflect the serious harm that complacency and inaction can cause for the targets of hate speech.

Recommendation: Ireland should develop a comprehensive framework and strategies to address online hate speech, with complementary criminal and non-legal approaches.

[10] *Handyside v the United Kingdom*, 7th December 1976, s. 49.
[11] Code of Conduct on Countering Illegal Hate Speech Online https://ec.europa.eu/info/sites/info/files/code_of_conduct_factsheet_7_web.pdf
[12] Monitoring Rounds of the EU Code of Conduct https://ec.europa.eu/info/policies/justice-and-fundamental-rights/combatting-discrimination/racism-and-xenophobia/eu-code-conduct-countering-illegal-hate-speech-online_en

Data collection and systematic reporting

Ensure implementation of hate crime laws and improve recording and data collection of hate crime incidents. This also applies to the recording of hate crime throughout criminal proceedings to ensure that a bias motivation at point of reporting a crime to Gardaí is not lost throughout the process on the way to final sentencing. Having accurate statistics allows us to see how big the problem is and to address any emerging trends.

Further, it is essential that there is a mechanism in place to report and record hate speech independently of the Gardaí. Most of the migrant women we work with are more comfortable reporting to groups and organisations, for several reasons including trust, language barriers, fear of reporting affecting their immigration status and cultural competence of authorities. A national mechanism to systematically record incidents of hate speech, could produce a data set that could be analysed for patterns and help to formulate a more robust response to racist abuse. It is essential that this system would be widely advertised and reports issued publicly on a regular basis.

Recommendation: Systematically collect all reports of racist and hate speech and abuse and analyse date to improve response.

Support for victims of hate speech

Any consideration of our current regime on incitement to hatred and hate speech should place the victim at the centre of any measures. Migrant women affected by hate speech are left with a feeling of insecurity and helplessness, affecting their self-esteem and confidence. Migrant women also have to stand up for their children and family in general, and the emotional labour this requires has a negative impact on mental health and wellbeing. Based on engagement with our members on this issue, AkiDwA established our You Are Not Alone (YANA) project in support of victims of racism. Most often this is migrant women affected by hate speech with nowhere to turn to. They find themselves pushed to the margin of the society.

Support should recognise the reality that most racism is daily and it is pervasive. It is a daily reality for migrant women and their families, having to deal with everything from low level insults to targeted harassment to broad statements on entire communities. Reports of racist and sexist hate speech should be taken seriously.

Specific measure of victim-centred support could include counselling and support in making statements for criminal investigations. A free telephone phone service where people can call and report incidents of racism would be of great help to those in distress. Many migrant women lack information and lack access to information on where to report and what their rights are. Others fear involving the Gardaí because of past experiences with police in their home countries, or indeed, in Ireland.

Recommendation: Provide support to victims of racist abuse through counselling or a telephone reporting and information service.

Education and awareness-raising

Any change to the legislative framework on hate speech, and indeed any change to the definition in Irish law of what constituted hate speech should be accompanied by public awareness campaigns. This is especially true for schools and can be integrated into seminars on online safety. Children should be taught how to be safe online, how to maintain their mental health in the face of online trolls and also how to treat each other with respect while online. This is particularly important in promoting responsible use of social media and connecting the dots between hateful or violent comments made online and the harmful consequences they can have on victims. They should also know what consequences exist for online bullying and racist hate speech. Further, human rights education and the promotion of interculturalism in school curriculums and in higher education institutes can help people embrace diversity and inclusion.

Awareness-raising on understanding hate speech and its impact on society should be delivered at all levels of society. Outside of schools the general public need to be aware of what is and what is not a crime. They should be educated on the law, on the policies and on the harm which is caused by discriminatory speech spread online and the criminal punishment for perpetrators.

Recommendation: Schools need education on online safety on the curriculum, which would specifically include lessons on cyber bullying and hate speech.

Recommendation: Promote public awareness campaign to educate the public on the privilege and the limits of free speech and the consequences of hate speech.