



**TEJP** Traveller Equality  
& Justice Project

## **Traveller Equality & Justice Project Submission to the Department of Justice & Equality Public Consultation/Review on *the Prohibition of the Incitement to Hatred Act 1989***

The Traveller Equality & Justice Project (TEJP) is an innovative collaborative project between the Centre for Criminal Justice & Human Rights, UCC and a Traveller rights organisation, the Cork Traveller Women's Network (CTWN).

TEJP aims to highlight ongoing levels of discrimination experienced by Travellers in Cork, by mapping such cases and by providing legal research support to the CTWN. A key piece of work of the TEJP is securing equality for the Traveller Community. Our work supports Travellers who cannot access legal representation and addresses and assists Travellers to overcome the significant barriers in place in challenging discrimination. The TEJP is supported through the Irish Research Council's New Foundations Scheme.

The TEJP welcomes the opportunity to submit to the Department of Justice & Equality's Review of *the Prohibition of Incitement to Hatred Act 1989*. In recognising the deep-rooted and widespread prejudice faced by Travellers, the TEJP strongly feels that *the Prohibition of Incitement to Hatred Act 1989* is unfit for purpose and must be reformed in order to adequately respond to and combat 'the last acceptable form of racism' that is hate speech and prejudice directed at members of the Irish Traveller Community.

The TEJP welcome the Department of Justice & Equality's Review and hope that this will result in the establishment of strong infrastructure to combat racism in Ireland and the required reformed legislation with regard to hate crime and hate speech.

The Review guidelines note that the Department has identified key areas within which reform is needed. This submission will address these areas which are relevant to Travellers, and use case-studies to highlight how the current act is unfit for modern challenges such as social

media and broadcasting where this includes racism or hate speech directed at members of the Traveller Community. This submission will then make a number of recommendations intended to address the unsuitability of the Act with the aim of improving its applicability.

In relation to the recommendations made, the TEJP is conscious of the importance of free expression both under the Irish Constitution and the European Convention on Human Rights but notes the right to free speech is not absolute and must be balanced against other rights and interests.

## **1. The ‘Last Acceptable Form of Racism:’ Hate Speech and Prejudice against Travellers:**

The TEJP welcomes the long overdue recognition by the Irish State of Traveller Ethnicity in March 2017. However, despite this recognition, Travellers continue to experience widespread and systemic discrimination, racism and hate speech on a daily basis as one of Ireland’s heavily marginalised and disadvantaged groups.<sup>1</sup> Travellers as an ethnic minority continue to experience significant racism and discrimination by public and private actors with little specific State action intended to address such racism.<sup>2</sup>

Surveys of public attitudes to Travellers consistently reveal negative attitudes. Thus a 2000 survey found that “36% of Irish people would avoid Travellers; 97% would not accept Travellers as members of their family; 80% would not accept a Traveller as a friend; and 44% would not want Travellers to be members of their community.”<sup>3</sup> While a more recent survey found that 60.04% would not welcome a member of the Travelling Community into the family through kinship, and 79.4% would be reluctant to buy a house next door to a Traveller.<sup>4</sup>

The Economic and Social Research Institute has also previously recognised this, noting that “... the circumstances of the Irish Travelling people are intolerable. No humane and decent society, once made aware of such circumstances, could permit them to persist”. The ESRI further recognised that Irish Travellers are “... a uniquely disadvantaged group: impoverished, undereducated. often despised and ostracised. they live on the margins of Irish society”.<sup>5</sup> Although this report was written in 1986, little has improved in relation to the community,

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<sup>1</sup> Irish Human Rights and Equality Commission, *Ireland and the Convention on the Elimination of Racial Discrimination* (Dublin: 2019, IHREC)

<sup>2</sup> <https://www.ihrec.ie/app/uploads/2017/11/Who-experiences-discrimination-in-Ireland-Report.pdf> at p. 1.; All Ireland Traveller Health Study, Summary of Findings, September 2010, available at [https://www.ucd.ie/t4cms/AITHS\\_SUMMARY.pdf](https://www.ucd.ie/t4cms/AITHS_SUMMARY.pdf)

<sup>3</sup> Citizen Traveller Campaign in 2000.

<sup>4</sup> <https://www.kandle.ie/mac-greil-travellers-report/>

<sup>5</sup> Economic and Social Research Institute, *The Population Structure and Living Circumstances of Irish Travellers: Results from the 1981 Census of Traveller Families*, Paper no. 131 (Dublin: ESRI,1986).

despite the recognition of ethnicity. Indeed, denial of Traveller ethnicity remains common, at all levels.<sup>6</sup>

Travellers often refer to such experiences of racism as commonplace and ‘just the way it is’,<sup>7</sup> finding that such racist comments are ingrained and societally accepted. Speaking to this, Dr Sindy Joyce recognised the extent and impact on this for her community who are seen as ‘deserving’ or that such racism is warranted and therefore acceptable:

“A lot of people believe that the racism that we experience and the hate that we experience is actually not racism or hate at all, that it actually somehow comes down to ourselves, that it’s our own fault. So it becomes victim-blaming, and I suppose it’s constant, into a cycle, a never-ending cycle.”<sup>8</sup>

The TEJP recognises the damage which this ‘victim blaming cycle’ has created – many Travellers chose not to identify as Travellers, instead hiding their identity for fear of persecution. Unfortunately, this need for Travellers to hide their identity is a result of long-standing policies and historical State attempts to assimilate Travellers into the settled community or to ‘fix’ Travellers. The 1963 *Commission on Itinerancy*<sup>9</sup> resulted in policies of assimilation for Travellers and created policies aimed at acclimatising Travellers away from their own unique culture and heritage into a more settled way of life as “there can be no final solution to the problem created by itinerants until they are absorbed into the general community”.<sup>10</sup>

This approach to eradicating Traveller culture as ‘less than’ and treating their unique historical and cultural background as something to be eradicated permeated all aspects of State policy. For example, educational policy was adapted in light of the Commission’s report in 1963 with children being taught in segregated classrooms and showered and ‘deloused’ before entering the school. Some recall that this was often done in front of settled children, and that they felt humiliated, ashamed and like there were dogs. More worrying is that many of those implementing such policies did not see how this was problematic:

“The principal proudly described the “hygiene” element of the programme, which involved showering and delousing the children before

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<sup>6</sup> K. Doyle, “Presidential Candidate Peter Casey sparks outrage with his ‘racist’ remarks on Travellers”, 17 October 2018, Independent.ie

<sup>7</sup> <https://travellermovement.org.uk/archived-resources?download=9:jun-2015-gypsies-travellers-community-inequality-and-discrimination>

<sup>8</sup> C. Gallagher, ‘Public asked for views on proposed ‘hate crime’ laws’ 24<sup>th</sup> October 2019 <https://www.irishtimes.com/news/crime-and-law/public-asked-for-views-on-proposed-hate-crime-laws-1.4061810>

<sup>9</sup> Commission on Itinerancy, *Report of the Commission on Itinerancy*, (Dublin: 1963, The Stationery Office). For background see Irish Traveller Movement, *Review of the Commission on Itinerancy Report*, <https://itmtrav.ie/wp-content/uploads/2017/02/ITM-Review-of-the-1963-Commission-on-Itinerancy.pdf>

<sup>10</sup> Ibid at 111.

allowing them into segregated classrooms. When I suggested that providing washing facilities to Traveller families and educating the children together would be less discriminatory, I was told I did not understand the itinerant problem.”<sup>11</sup>

While State policy has shifted away from the harsh policies of assimilation, unfortunately much of the segregation that occurred during this period has made its mark and despite focused policies such as the National Traveller & Roma Exclusion Strategy, Travellers continue to be treated like second-rate citizens and persistent discrimination and racism continue in Ireland. Racism and discrimination are unfortunately lifelong everyday experiences for Travellers in Ireland. Any review of *the Prohibition of the Incitement to Hatred Act 1989* must be framed as part of Ireland's commitment to protect its citizens against racism and discrimination.

As a result of the deeply rooted discrimination which Travellers face, they are recognised as one of the named groups under *the Equal Status Acts* providing them with a legal recourse where they experience discrimination in goods and services access. However, the legal framework generally in relation to discrimination and racism is extremely limited in supporting Travellers in accessing justice. TEJP stress the inadequacy of the *Prohibition of Incitement to Hatred Act 1989* and highlight that the Act's ineffectiveness is compounded and demonstrated by the small number of convictions have been secured under the Act. When the Act was last reviewed, it was noted that during the first 27 years of operation only 10 cases had resulted in a conviction.<sup>12</sup> The Law Reform Commission, in its report on “Harmful communications and digital safety” noted this directly:

the 1989 Act has been subject to significant criticism for its perceived inefficacy, illustrated by the limited number of prosecutions that have been taken under it.<sup>13</sup>

### **1. Reform of the Act to adequately respond to Social media:**

The way in which we access and process information is changing; the increased role of social media and online news and media sources created new challenges in combating hate speech and hate crimes. A strong legislative basis for challenging sources and news outlets that give voice to racist views and content must be implemented without delay.

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<sup>11</sup> J. Jones, ‘Second Opinion: Ethnic status for Travellers – what’s stopping us?’

<https://www.irishtimes.com/life-and-style/health-family/second-opinion-ethnic-status-for-travellers-what-s-stopping-us-1.1776460> 29<sup>th</sup> April 2014.

<sup>12</sup> C. O’Keeffe, “Law to be reviewed regarding hate crime”, 17 December 2016, Irish Examiner. <https://www.irishexaminer.com/ireland/law-to-be-reviewed-regarding-hate-crime-435659.html>

<sup>13</sup> Law Reform Commission, Report on harmful communications and digital safety LRC 116-2016 (Dublin: 2016, LRC) at p.9.

Negative stereotyping of Travellers in the media (particularly broadcast chat shows) and also in social media, demonise and create a climate of hostility towards the community.<sup>14</sup> Online anti Traveller Hate speech in social media platforms is very common, with comments that describe Travellers as undeserving, 'uncivilised', thugs and criminals, dehumanised, compared to animals, and even advocating murder and violence or the eradication of all Travellers.<sup>15</sup> The word "knacker" which is a racialised highly-offensive insult referring to the Traveller community is also common and remains widespread in use in Irish slang and language.

Many news outlets use social media feeds and profiles to disseminate their articles and frequently encourage active engagement in order to spread their reach on such social media platforms. Unfortunately, many news outlets will engage in clickbait tactics to attract readers. Social media pages of news outlets therefore play an important role in channelling racist, anti Traveller contents through the comment threads on their posts.<sup>16</sup> Un-moderated comments pages allow any news story related to the Traveller community to become a space for racist speech. For example, in Cork following a local radio show on accommodation needs to Traveller families comments such as:

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- *"Inbreeding doesn't make you a race sweet heart (sic). Blacks are humans, knackers ain't."*
  - *"Dirty smelly knackers."*
  - *"Burn them out."*
  - *"Just bring in a tank full of slurry and start spraying."*
  - *"Send them to the shooting range. Good target practice for our boys in green."*
  - *"A few litres of petrol and a match would sort them out."*
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While under a recent local newspaper article on Cork Traveller Pride Celebrations, the first two comments were "*Traveller pride. Ha Ha. What have they got to be proud of?*" and a comment suggesting that Travellers are thieves and had stolen the items on display for Traveller pride.

Attempts to challenge such content highlights the weak and ineffective system currently in place. A complaint was made to a national newspaper in 2019 about social media comments

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<sup>14</sup> J. Okely, "Recycled (mis) representations: Gypsies, Travellers or Roma treated as objects, rarely subjects." *People, Place & Policy Online* 8.1 (2014).

<sup>15</sup> E. Siapera, E. Moreo, & J. Zhou, *HateTrack: Tracking and Monitoring Racist Hate Speech Online*, (Dublin: 2018 IHREC & DCU) <https://ihrec.ie/app/uploads/2018/11/HateTrack-Tracking-and-Monitoring-Racist-Hate-Speech-Online.pdf> at 36.

<sup>16</sup> *Ibid.*

posted onto the newspaper's Facebook page claiming that Traveller young people were criminals. However, CTWN was informed that the newspaper couldn't monitor its own posts:

"Comments posted under posts on any of our Facebook pages are not monitored or policed by [national newspaper] in any way - there is no legal, technical or physical means for us to do so, as the comments are posted to Facebook and not to [national newspaper]'s website."

The newspaper advised CTWN to report comments to Facebook's community standards page. Yet doing so is time consuming, not transparent and typically not effective; it is often met with a generic "the comment does not violate Facebook's community standards" response and places the onus for reporting such comments on the individual victims effectively removing any responsibility from the news outlet who provided the platform for such racist comments. This is compounded by the current system. The Press Ombudsman only deals with complaints about newspapers, magazines and some online news services, but not social media. Given the lack of regulation in this area, there is little incentive for news outlets to moderate their social media pages for hateful content as they are not required in law to do so and all comments boost their exposure online. Under the current system, it is down to victims of racism to patrol and report hate speech on social media. Attempts to call out hate speech on social media comments page typically lead to further abuse and racism. This must change.

The TEJP note that the onus for preventing racist content and providing those with racist views a platform lies with Editors of news and media. While the TEJP recognises the vital role which freedom of expression play in a modern Ireland, such rights cannot be used to justify racist content and hate speech. TEJP therefore urges the State to encourage the media industry to commit to a review of professional codes of conduct and to ensure that all content is not racist or may encourage or feed into racist rhetoric. TEJP echoes IHREC's position that codes of conduct and ethics must be updated to reflect Ireland's human rights obligations.<sup>17</sup> However, we also recommend that Editors take part in racism awareness training to further solidify the role of the press in preventing racism and the dissemination of racist views.

## **2. Response to 'Issue 2: Use of the term "hatred" in the Act Under the 1989 Act:'**

In order to be an offence under the 1989 Act, the words or material complained of must be intended or likely to stir up "hatred" against one of the protected list of groups. The 1989 Act criminalises certain behaviour and expression that is likely or intended to 'stir-up' hatred against a group of persons. Direct abuse levelled at an individual on the grounds of a protected characteristic is not necessarily prohibited under the 1989 Act, in the absence of a wider intention, or likelihood, to stir-up hatred. This is a high threshold which has been problematic

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<sup>17</sup> E. Logan, IHREC CERD UN Submission October 2019.

in securing convictions under the Act. While this requirement is largely considered to be necessary to ensure that the Act is only applied to hateful behaviour that is *sufficiently severe* to reach the threshold for criminal prosecution, the TEJP notes that in light of growing levels of overt racism in Ireland that the Act must be more proactive. In particular, the term “hatred” is not defined and has its ordinary meaning, which has proven difficult in securing prosecutions. It is essential that a term such as this be defined in law

As aforementioned and as the Department has recognised, prosecutions under the 1989 Act have been relatively rare. However, this can arise both from a problem with the legislation itself as well as in relation to a failure of the authorities to effectively bring prosecutions and develop a workable system. The lack of litigation in itself limits the practical construction of the law.

The Department’s review notes that it is considering whether the requirement to stir up hatred should be replaced by another term (hostility or prejudice, for example). The TEJP notes that ‘hatred’ as defined by the Act is clearly too loose a term and reform is necessitated. The TEJP recommends that this be amended to ‘prejudice or discrimination’ which allows for clearer scope and application and would bring Ireland in line with both European and International consensus on what constitutes incitement to hatred. The Council of Europe Recommendation (97)20 defines hate speech as “covering all forms of expression which spread, incite, promote or justify racial hatred, xenophobia, anti-Semitism or other forms of hatred based on intolerance, including: intolerance expressed by aggressive nationalism and ethnocentrism, discrimination and hostility against minorities, migrants and people of immigrant origin.”<sup>18</sup>

The Article 19 Policy Paper on implementing those international obligations which prohibit all advocacy that constitutes incitement to discrimination, hostility or violence (“incitement” or “incitement to hatred”), as mandated by Article 20(2) of the International Covenant on Civil and Political Rights (“ICCPR”), recommends that instead of ‘incitement to hatred’ that an optimal definition could be that there is ‘incitement to discrimination, hostility or violence.’<sup>19</sup>

The TEJP would disagree with the Department that the wording of the 1989 Act is broad enough to cover incitement via modern technologies and online behaviour: ‘the definitions of

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<sup>18</sup> Council of Europe RECOMMENDATION No. R (97) 20 OF THE COMMITTEE OF MINISTERS TO MEMBER STATES ON "HATE SPEECH" (Adopted by the Committee of Ministers on 30 October 1997 at the 607th meeting of the Ministers' Deputies)  
<https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=0900001680505d5b>

<sup>19</sup> Article 19 Policy Paper Prohibiting incitement to discrimination, hostility or violence Policy Brief December 2012, <https://www.article19.org/data/files/medialibrary/3548/ARTICLE-19-policy-on-prohibition-to-incitement.pdf>

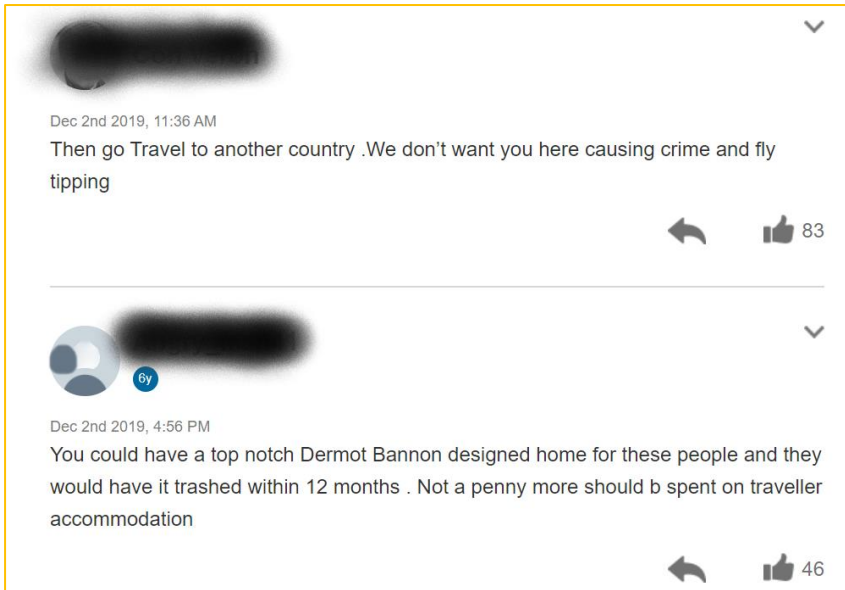
“broadcast”, “publish”, “recording” and “distribute” in the Act are wide enough to cover online broadcasting, publication and social media discourse.’ We would propose that inclusion of more explicit terms pertaining to online and social media content would result in more successful prosecutions under the Act. This is important as the majority of incidents of racist expression occur online.

The TEJP, in recognising the damage and hurt that is caused by online ‘trolling’ and racist abuse of Travellers through social media such as Twitter, Facebook and other online social media applications, recommends that significant reform to the policy and regulatory environment is urgently carried out to address the current deficiencies in the policing of such platforms. The TEJP notes the long delay in reform to this area is compounded by the strong position which Ireland occupies as a country which is currently the base for major social media and technological giants such as Facebook, Google, Apple and Yahoo. Ireland is therefore well placed to significantly push for change and reform amid the oversight and supervision and removal of racist material from social media and other online platforms.

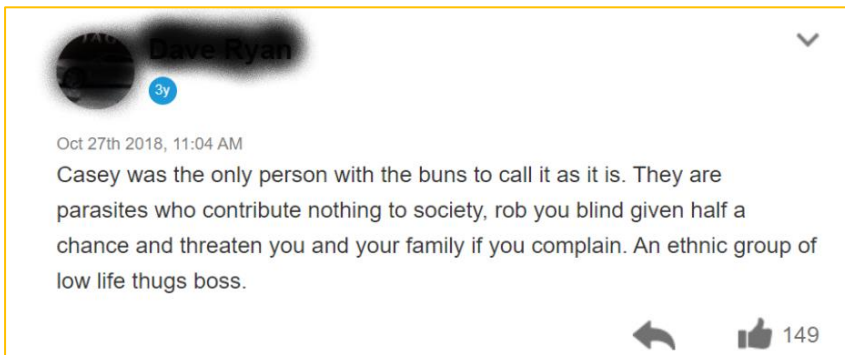
The TEJP also recommends that the Broadcasting Authority of Ireland (BAI), The Press Council of Ireland and Office of the Press Ombudsman are trained in adequately responding to racist content. These bodies are well placed to take a lead as statutory appointed supervision bodies for the press (print and online) in Ireland. The TEJP notes that a recent communication to the BAI about offensive comments on the Journal.ie by CTWN was unsuccessful as the BAI noted that it could not control online comments. The TEJP disagrees however and would highlight that comments are often disabled on the Journal.ie when the article contains sensitive information or ongoing trials – the TEJP would recommend that policy both within the BAI and its members be reformed to ensure that comments are disabled on news stories which may encourage negative engagement from commenters regarding the Traveller Community. While the Journal.ie and other engagement-based sites thrive upon active reader input/comments – they must recognise the platform that allowing a comment space provides. While the Journal.ie comments section includes the following statement ‘This is YOUR comments community. Stay civil, stay constructive, stay on topic. Please familiarise yourself with our comments policy [here](#) before taking part.’ TEJP notes that this is clearly insufficient to prevent prejudice comments and racist comments.

An example of this can be seen in a recent article about the poor conditions on a halting site:





The following example was taken from an article about Peter Casey, and his campaign support surge as a result of his comments about Travellers:<sup>20</sup>



While the Journal.ie and other such comment based online news outlets do apparently remove threats of violence, offensive wording and hate speech, the TEJP believes that they also have a duty to supervise comments and remove those that may cause offence or stir up hatred based on protected characteristics such as membership of the Traveller Community. This duty stems from Principle Eight of the Press Council of Ireland's Code of Practice which prohibits the publication of material intended or likely to cause grave offence or stir up hatred based on protected characteristics.<sup>21</sup>

<sup>20</sup> <https://www.thejournal.ie/peter-casey-4308991-Oct2018/>

<sup>21</sup> <http://www.presscouncil.ie/code-of-practice>

Furthermore, local radio stations are a distinct cause for concern for the TEJP as the coverage of Travellers on local radio chat shows, which aim to excite the public about topics to boost listenership, often stirs up and provides a platform for racist abuse of Travellers. For example, a Cork radio station ran a chat feature in 2018 responding to a letter they claimed to have received. The social media post that promoted and encouraged callers to phone in was framed as follows:

Headline: "THE NORTHSIDE IS RUINED":

From the article: "*I am sending this email as a distraught northsider who is sick of seeing the northside being ruined every day by travellers... now just wait for the bleeding hearts, the ethnic minority and the 'its our culture' campaigners to start...*"

This type of reporting aims to whip the public debate relating to Travellers into a type of moral panic and the unchecked complaints made against Travellers can cause serious hurt and harm to the community. Comments made by the public on these shows are generally not fact checked and the radio stations when challenged on their role in such prejudice and racist dissemination, state that they are not responsible for comments made on a public platform. The impact however is often huge particularly when these shows are aired on popular local radio shows in Cork, which are generally playing in local shops, garages, taxis and hairdresser. CTWN are typically inundated with phone calls from distressed Travellers, talking about the hurt and shame of being stereotyped and rejected in a community that they have lived in for all their lives when these shows are broadcast. Travellers talk about the embarrassment and hurt having to use local services, sometimes accompanied by their young children, while radio chat shows that encourage members of the public to phone in and air their gripes and suspicions against Travellers are being broadcasted in the background. TEJP asserts that radio coverage like this effectively normalises racist hate speech, that promotes prejudice against Travellers.

In a case reported to CTWN, a young Traveller woman reported having started her first job as a trainee hairdresser. The woman had not mentioned her identity as a Traveller to her colleagues. While she was washing a client's hair, a local radio station featured a negative story about Travellers and invited callers to comment, some of whom compared Travellers to animals. The young woman was expected to continue washing the client's hair and have friendly conversation with the client on the topic "why Travellers are no better than animals and should be run out of town". The other staff present all agreed. The Traveller woman reported to CTWN that she suffered anger, shame and terrible stress. She still has not revealed her identity to her colleagues and lives in fear of being exposed.

Traveller parents report to CTWN that they fear for the mental health of their young people and the prevalence of negative stereotyping on line - especially on the social media pages of local news outlets - is affecting this:

"Its the feeling that they can say anything they want about us, event threaten our community with violence on line and there is nothing we can do about it. What is that saying to our children about what society thinks of us?"

There is a strong sense that hate speech in the media and on line, creates shame which leads some younger Travellers to feel they have to hide their identity in school and in work. Young people who are so connected to social media are left with a very negative impression of not being valued as part of society and parents fear that they may be more affected by this than adults, creating internalised oppression.

Therefore, while the TEJP is aware of the vital and fundamental part which the media play in Irish society, the application of Article 10 to instances of reporting on racism, xenophobia, anti-Semitism or other forms of intolerance is fully protected by the limitations integral to Article 10, paragraph 1; TEJP recommends that a greater onus for ensuring that content does not enable or promote a racist view, or stir up hatred based on protected characteristic must fall to the Editorial team's and their decision making process first and foremost. TEJP further recommends that TCAT training and anti-racism training be mandatory for editors of media outlets to avoid publication of content which is prejudicial or discriminatory or may incite or provide a platform for hate speech or racist comments. Where such content is published, there must be stronger sanctions created within the industry's supervisory bodies to adequately act as a deterrent from those who may choose to publish such material in pursuit of 'clickbait'. The TEJP also recommends the implementation of legislation which provides for prosecutions under incitement to hatred online in a more effective and applicable manner.

### **3. Response to 'Issue 4: Proving intent or likelihood to stir up hatred.'**

A critical element of all of the offences in the 1989 Act is the requirement to prove that the action was intended or likely to stir up hatred. The most high-profile Traveller related prosecution highlights the difficulty around this. The so-called *Traveller Facebook case*, in which offensive material relating to the Traveller community was posted on Facebook, was dismissed in the District Court in 2011 on the basis that there was a reasonable doubt that there had been intent to incite hatred against the Traveller community.<sup>22</sup> The court was persuaded by the limited engagement of the accused in the posting process – he had posted on the relevant site once, and shared it with three people. However, this case illustrates the

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<sup>22</sup> LRC report p.116

inadequacy of this provision in relation to social media platforms. A single post can reach a significant number of people and be shared and reshared with additional racist elements. In cases such as this, prosecutions are unsuccessful regardless of the actual effect of the action.

The TEJP recommends that the law in this area should be revised as part of a wider reform of hate crime which produces an effective hate crime/speech regime. The use of hate speech creates a climate in which racism, including racist violence and discrimination, are perpetuated against ethnic groups. Both online speech and media speech, protected as a right under both the constitution and the ECHR (Article 10), must be carried out in a way that respects other rights. It is not absolute; restrictions are therefore permissible and should be clearly legislated for to ensure an appropriate legal environment for both speech which is both free and free from hatred.

The ECtHR has made it clear that while speech is protected under Article 10, including speech that may “offend, shock or disturb” certain groups,<sup>23</sup> that does not mean that hate speech is permissible. In *Feret v Belgium*<sup>24</sup> the European Court of Human Rights (ECtHR) dismissed a complaint brought against Belgium by the chairman of the Front National political party that his right to free expression had been violated following his conviction for publicly inciting hatred. The leaflets distributed by the complainant as part of an election campaign had represented immigrant communities as being criminally minded and exploiting the welfare system in Belgium. While the court noted that elected representatives should have the right to free expression that did not allow them to use their speech to promote intolerance. The case should remind Parties to the ECHR that there is a public responsibility to prosecute those who use speech to further intolerance, and that the right to free expression is to be balanced against wider public interests.

Ireland is under a clear obligation to reform its hate speech legislative framework, given that in its 2014 report on the implementation of the Framework Decision on combating certain forms and expressions of racism and xenophobia by means of criminal law, the EU Commission highlighted that online hate speech in particular was a highly prevalent mechanism through which racist and xenophobic attitudes were disseminated. They noted that Member States should have a means to intervene in such cases,<sup>25</sup> yet the current legislative framework is clearly inadequate to meet this requirement. Overall, we agree with Schweppe and Haynes when they say that

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<sup>23</sup> *Handyside v United Kingdom* (1976) 1 EHRR 737 at para 49.

<sup>24</sup> (2009) (App No. 15615/07)

<sup>25</sup> Commission to the European Parliament and Council, Report on the implementation of Council Framework Decision 2008/913/JHA on combating certain forms and expressions of racism and xenophobia by means of criminal law (January 2014) at p.8.

While the 1989 Act criminalises incitement to hatred, it is a hate speech provision and purposefully narrow in its scope and thus not suited to addressing the daily criminal manifestations of bias faced by people in Ireland.<sup>26</sup>

#### **4. Responding to Racist Political Discourse and Institutional Racism:**

At the recent Convention on the Elimination of Racial Discrimination (CERD) Hearing in Geneva, the Irish State accepted that in addition to any new anti-racism legislation planned it should include specific diversity training for the Gardai and the judiciary. The TEJP welcomes this acceptance and the implicit recognition that state institutions need to respond to racism. As Pavee Point highlighted at the 2019 CERD hearings

There are serious concerns around ethnic profiling of Travellers and Roma by the police (an Garda Síochána), but no legislation to prohibit it .... In 2019, the European Commission against Racism and Intolerance (ECRI) raised concerns about ethnic profiling of Roma by the police, and urged the State to clearly define and prohibit it with legislative measures.<sup>27</sup>

The TEJP stresses that in Cork particularly, many Travellers have had adverse experiences with members of the Gardaí and judiciary where derogatory language is used without a means of challenging this. We are therefore highly cautious of how such training would be developed and stress that Traveller Representatives must be involved in the drafting and creation of such training to ensure that it is not a 'box-ticking' exercise. Such training could be modelled on the highly successful Traveller Cultural Awareness Training offered to those working with Travellers within the HSE. Furthermore, the TEJP stress that any proposed training for the Judiciary and Gardaí should be mandatory and continuously monitored to ensure that it is effective.

In addition, it is vital that the proposed reforms to the legislation ensure that use of prejudice and racism within political campaigns must be adequately responded to and challenged to prevent candidates running on campaigns of hatred. The increased visibility of campaigning which channels racist and xenophobic ideas and materials, particularly prevalent since the 2018 Presidential campaign, highlights the growing importance of this. Where racist speech becomes normalised and mainstreamed it can lead to increasing hate crimes including actions that go beyond discriminatory practice.

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<sup>26</sup> J. Schweppe, & A. Haynes, *Lifecycle of a hate crime: Information for prosecutors* (Dublin: 2017, ICCL) <https://www.iccl.ie/wp-content/uploads/2018/04/Life-Cycle-of-a-Hate-Crime-Information-for-Prosecutors-Ireland-English.pdf>

<sup>27</sup> Pavee Point, Submission to CERD, December 2019 <https://www.paveepoint.ie/wp-content/uploads/2019/11/Pavee-Point-Alternative-Report-to-CERD-Committee-01112019.pdf>

## 5. Conclusion

The TEJP proposes, in line with recommendations made from IHREC to the UN CERD hearing in 2019, that reform of the Act is needed to ensure that legislation for hate speech not just be of a criminal nature but should also include 'other policy and regulatory measures to encourage non-discriminatory discourse, to educate the public on the harm of hate speech and to ensure that its extent and impact are adequately tracked.'<sup>28</sup> The Article 19 Policy Paper notes that:

Only in the most serious cases, when the authorities conclude that the particular incitement reached the highest level of severity, should criminal sanctions be imposed; criminal law should not be the default response to instances of incitement if less severe sanctions would achieve the same effect.<sup>29</sup>

Furthermore, the Council of Europe (Rec No. R (97) 20 recommends that State's adopt a blended approach to combatting hate speech, drawing upon criminal, civil and administrative legal framework which 'enable administrative and judicial authorities to reconcile in each case respect for freedom of expression with respect for human dignity and the protection of the reputation or the rights of others'.<sup>30</sup> They note that such a system would 'enhance the possibilities of combating hate speech through civil law, for example by allowing interested non-governmental organisations to bring civil law actions, providing for compensation for victims of hate speech and providing for the possibility of court orders allowing victims a right of reply or ordering retraction'.<sup>31</sup> The TEJP agrees with the need for a legal framework composed of civil, criminal and administrative provisions.

In deciding what form such reform could take, the TEJP submits that the ECRI's *Report on Ireland (Fifth Monitoring Cycle)*<sup>32</sup> may be informative. The ECRI suggest that new offences could be created such as:

public incitement to violence and to discrimination and defamation'; the public expression, with a racist aim, of an ideology that claims the superiority of, or which depreciates or denigrates, a group of persons on grounds of their race; the public denial, trivialisation, justification, or condoning of crimes of genocide, crimes against

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<sup>28</sup> IHREC Submission to UN CERD, October 2019 – full report available at:

[https://www.ihrec.ie/app/uploads/2019/11/IHREC\\_CERD\\_UN\\_Submission\\_Oct\\_19.pdf](https://www.ihrec.ie/app/uploads/2019/11/IHREC_CERD_UN_Submission_Oct_19.pdf)

<sup>29</sup> Article 19 Policy Paper Prohibiting incitement to discrimination, hostility or violence Policy Brief December 2012, <https://www.article19.org/data/files/medialibrary/3548/ARTICLE-19-policy-on-prohibition-to-incitement.pdf>

<sup>30</sup> Council of Europe RECOMMENDATION No. R (97) 20 OF THE COMMITTEE OF MINISTERS TO MEMBER STATES ON "HATE SPEECH" (Adopted by the Committee of Ministers on 30 October 1997 at the 607th meeting of the Ministers' Deputies), Principle 2, <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=0900001680505d5b>

<sup>31</sup> Ibid.

<sup>32</sup> European Commission Against Racism and Intolerance, ECRI Report on Ireland (fifth monitoring cycle), CRI(2019)18, <https://rm.coe.int/fifth-report-on-ireland/168094c575>

humanity, or war crimes; the creation or leadership of a group that promotes racism, support for such a group and participation in its activities; and racial discrimination in the exercise of one's public office or (private) occupation.<sup>33</sup>

The creation of such offences under reform of the 1989 Act and the creation of Hate Crime legislation would, it is submitted, be in line with both European consensus and would prevent and deter those who may seek to profit from racism in populist campaigns such as Peter Casey from making such comments. The TEJP welcomes this review of the 1989 Act and encourages the State to take appropriate steps to combat hate speech on the basis of the principles laid down in this recommendation and to ensure that such steps form part of a comprehensive approach to hate speech and hate crime, creating the necessary responses to target the social, economic, political, cultural and other root causes of hate speech and racism in Ireland. The TEJP therefore supports the Department's position that specific legislation for hate crimes is necessary in Ireland.

### **Key Recommendations:**

A number of recommendations can be drawn from this submission, which the TEJP believes will both improve and strengthen responses to both hate speech and hate crime in Ireland:

- The TEJP notes that 'hatred' as defined by the Act is clearly too loose a term and should be amended to 'prejudice' which allows for clearer scope and application and would bring Ireland in line with both European and International consensus on what constitutes incitement to hatred.
- The TEJP notes that Travellers do not have faith in the current Act - based on the Act's failure to respond to and prevent hate speech in the Irish public, media and digital media realms. Traveller groups must be included at all levels of the reform process to ensure that active Community engagement and to encourage faith in the proposed reforms.
- The TEJP recognises to complete failure of the current act to respond to hate speech online both on social media and media platforms. Reform of the act must address the serious issue of hate speech on line and is fit for purpose, including reference not only to traditional media forms, but to social media platforms.
- The TEJP notes the use of 'hot topics' as click bait on online news media publications. The TEJP considers that ultimately the responsibility for policing content which may encourage or allow a platform for racial abuse, hate speech and prejudiced comments,

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<sup>33</sup> Ibid at p.11.

be subject to greater Editorial scrutiny. Anti-racism training must be delivered to all BAI members in Ireland to encourage greater engagement with editorial responsibility in the publication of such content.

- The TEJP notes that specific training must be delivered to the Gardaí and judiciary in order to encourage those involved in the prosecution of hate speech to be mindful of their important role in creating a society where racism is not tolerated. Steps must be taken in particular to address racial profiling both within the judiciary and An Garda Síochána.
- The TEJP encourages the State to take appropriate steps to combat hate speech on the basis of the principles laid down in the ECRI's *Report on Ireland (Fifth Monitoring Cycle)* recommendation to create new offences and to ensure that such steps form part of a comprehensive approach to hate speech and hate crime, establishing the necessary responses to target the social, economic, political, cultural and other root causes of hate speech and racism in Ireland.

These recommendations are made by the TEJP within the context of severe and widespread racism directed at the Traveller Community. Such hate speech, prejudice and racism has become normalised as part of the day-to-day experience of Travellers. Racism directed at Travellers is 'the last acceptable form of racism' and recent events, where political candidates have seen surges in popularity after making racist and anti-Traveller remarks compound this. Reforming the Act and changing the wording to 'prejudice' sends a clear message to those who engage in such racist rhetoric that it is not acceptable in a modern Ireland. Reform is therefore not only necessary for protection of vulnerable and often marginalised groups, but also to reframe the narrative and act as a deterrent.