Just News

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Incitement to Hatred in Northern Ireland

The concept of incitement to hatred has a long and complex genealogy. Historically it was identified as a core element of the crimes against humanity associated with Nazism. In particular, the 'incitement to murder and extermination' of Julius Streicher - the editor of Der Stürmer and 'Jew-Baiter Number One' - was sufficient for him to be executed as a major war criminal at the Nuremberg IMT. This gives some sense of the seriousness of incitement. International standards and early legal interventions focussed on this form of racist incitement and its consequence in profound and systemic acts of violence including genocide.

Increasingly, however, the term gets conflated with a range of actions characterised as both 'hate crime' and 'hate speech'. More recently incitement has become increasingly permissive in reference – overlapping race with a whole range of other protected characteristics – sexuality, age, physical appearance and so on – as well as addressing incidents that appear comparatively trivial. In this context, it is often the target of populist attacks on 'political correctness gone mad'. Moreover, in this guise, it is often counterpoised with 'freedom of expression'. This dimension was brought into sharp focus recently with an apparent investigation into incitement to hatred in relationship to an anti-DUP placard at this year's Belfast Pride.

None of these wider developments or complexities makes the issue of addressing incitement to hatred in Northern Ireland a simple task. The crucial element in any assessment of what to do about incitement is the process of defining and delimiting that which is to be addressed as incitement. In terms of the seriousness with which such expression is regarded, we can identify a continuum of constructions from 'banter' to 'crimes against humanity'. We can also identify a key distinction between speech that offends and speech that harms. A key task for any human rights intervention on incitement is the assessment of where on the continuum any speech acts sits.

Incitement to Hatred has been unlawful in Northern Ireland since 1970. Legislation against incitement to hatred in Northern Ireland is currently framed by the Public Order (Northern Ireland) Order 1987. Part III of the Order is entitled 'Stirring up hatred or arousing fear' (unlike earlier legislation, it does not use the term 'incitement'). This legislation criminalises 'acts intended or likely to stir up hatred or arouse fear' in relation to groups defined by reference to 'religious belief, colour, race, nationality (including citizenship) or ethnic or national origins'.

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It also provides a definition of both fear and hatred: 'fear' means fear of a group of persons; 'hatred' means hatred against a group of persons.

Sexual orientation and disability were added to these protected characteristics by the Criminal Justice (No.2) (Northern Ireland) Order 2004. (Although the disability provision has never been used, its inclusion in incitement legislation is unusual and this offers the chance of ground-breaking intervention on disability and incitement.)

The research suggests there is copious evidence of hatred in Northern Ireland – particularly racism, sectarianism and homophobia – and its consequences, most obviously evidenced in what is characterised as 'hate crime'. The most egregious example – the 'genocidal imperative' – is found in almost every community in the form of the incitement to 'Kill all Taigs' or 'Kill all Huns'. Yet incitement legislation has resulted in a tiny number of prosecutions and convictions in nearly fifty years in the 'hate capital of the world'.

Moreover, these prosecutions have been for relatively minor offences in magistrate's courts. The consequence of this is a de facto decriminalisation of incitement. This undermines the seriousness of the offence as conveyed in international standards. In other words, we need to guard against a profusion of low level prosecutions while the worst and most damaging examples remain unaddressed.

More positively, there is a broad recognition across sectors that the approach needs to change. An ongoing Department of Justice review of 'hate crimes' legislation offers an opportunity to reboot the response to the 'stirring up offences'. Essentially the key intervention should be to move from a 'toleration' towards a 'zero-tolerance' policy on incitement to hatred. At present, the international standards are being ignored and there is not sufficient delegitimisation of the 'words and behaviour' and the impacts that such expression has. Rather there is a tendency to defend free speech primacy and downplay the harms on target groups. The risk that power to limit expression will be turned on its head and misused is a real one but the emerging international tests are designed to counterweight against this and are explicitly codified in relation to the issue of the power of the speaker.

In parallel, there needs to be a broader conversation about what kind of 'hate speech' should be unlawful and what kind should remain tolerated – however vehemently disliked. Human rights discourse has a central part to play in this discussion, particularly the appropriate limits to 'free speech'.

Dr. Robbie McVeigh presents his research at the conference.

The recent joint conference between the Equality Coalition, CAJ, UNISON and the Queen's University George J Mitchell Institute for Global Peace, Security and Justice, that took place at Queen's University Belfast on Friday 13 October; marked a powerful start to this discussion. It is clear already that this conversation needs to recognise the breadth of expression involved – in this context expression includes not only things that are said or written but also other forms of expression like flags and emblems, bonfires and parades.

Once the elements of expression that are not to be tolerated are established – the broad threshold of what constitutes incitement to hatred - then the process of making sure that they are not made needs to be determined. For example, if we decide the injunctions to 'Kill all Xs' should be regarded as incitement to hatred and should not be tolerated, the immediate question is whose job is it to remove the speech act? And, who is to resource the process of removal? And who is responsible for an education programme that ensures the potential consequences of the speech act 'Kill all Xs' are understood? The current 'buck-passing' between different agencies must stop and be replaced with an integrated response to manifestations of incitement to hatred across Northern Ireland.

The research concludes with a series of broad recommendations. First, the current legislation should be more robustly enforced. A key part of the DoJ review must be to establish baseline data on the current use of the 'stirring up offences' in charging, prosecuting, sentencing and rehabilitation. Second, there is a case for legislative reform. Certainly, the legislation should outlaw incitement to discrimination. Gender and gender identity should also be included as protected grounds. Third, there needs to be a broader conversation around the limits to 'free speech' in the context of good relations and peacebuilding. In the 'grey zone' of offensive 'hate speech' we would expect local communities and councils and good relations officers to be making decisions around the limits to tolerance. In other words, the threshold on what is tolerable in terms of promoting good relations should be considerably lower than the threshold on incitement.

It bears emphasis, however, that this grey zone does not extend to incitement. There is no case for the decriminalisation of incitement – if any expression constitutes incitement, it should be addressed by the criminal justice system. With this approach, we should begin to see a response in which the specific obligations on incitement to hatred – rooted in international standards –are not lost amidst general concerns around different expressions that might be seen to constitute 'hate' or give 'offence'.

A conference report and this research by Dr Robbie McVeigh will be made available in the coming weeks.

CAJ's Annual General Meeting

will take place at 1pm on Tuesday 12th December in UNISON's Belfast Office at Galway House, 165 York St, Belfast BT15 1GD.

Members will receive detailed information in due course.
In the morning there will be a public launch of a CAJ research report into the enforcement of the public authority equality duty and in the afternoon input and discussion on Brexit and Human Rights.
Further details will follow.

The 8th amendment and abortion law in Ireland

Article 40.3.3, the 8th Amendment to the Irish Constitution, was introduced in 1983 and equates the life of a pregnant woman with the life of the embryo/foetus. This means that abortion services are unavailable even in the case of fatal foetal abnormalities or when a pregnancy results from a sex crime. It means that approximately 12 women per day are obliged to travel to the UK to obtain health services unavailable in Ireland.

Increasing numbers of women obtain the abortion pill online although medical abortion is prohibited and criminalised. As the importation of abortion pills remains illegal there are no records of how many abortions take place in Ireland using abortion pills. We do know however that in 2014, 1017 abortion pills were seized and in June 2016, 78 abortion pills were seized in just 1 week. These seizures by Customs and An Garda Síochána indicate the demand in Ireland for abortion pills.

The 8th Amendment and Irish law even impacts the availability of information on abortion in Ireland. The Abortion Information Act was introduced in 1995. It gives guidelines on how information on abortion access outside the State can be provided. One to one counselling, for example, has to give a pregnant person information on all options available to them. This means that even those who know they want to terminate their pregnancy must be told of all the alternatives. Similarly the Act prevents giving advice which could be interpreted as advocating or promoting abortion. This is at odds with the practise in many other countries.

But beyond the issue of abortion, the 8th amendment also has a huge impact on the care that pregnant women receive in Irish maternity services. This is the hidden impact of the 8th amendment, that often women only become aware of when they are consumers of maternity services, and their care and bodily autonomy is compromised where there is an actual or perceived conflict between the pregnant person's health and the right of the foetus to be born alive.

Developments in Abortion Law in Ireland

2017
The majority of the Citizens' Assembly (a group of one hundred citizens who advise the Oireachtas on major issues) recommended that abortion be provided without restriction up to 12 weeks. The findings of the Citizens' assembly are currently being discussed by an Oireachtas committee, ahead of a referendum expected to be held in May or June 2018.

2016
The UN Human Rights Committee finds that Ireland's abortion laws violated claimant Amanda Mellet's right to freedom from cruel, inhuman or degrading treatment, as well as her right to privacy. The ruling also finds that Ireland's abortion laws constitute discrimination against women on grounds of sex and denies them equal protection of the law. The ruling calls on Government to act promptly and effectively to redress the harm Ms. Mellet suffered and reform its laws to ensure other women do not face similar human rights violations.

2013
The Protection of Life During Pregnancy Act is signed into law. The Act is intended to implement the 1992 judgment of the Supreme Court in the X case and the 2010 ECtHR in the case of A, B and C v Ireland and provide for lawful access to abortion where a pregnant woman's life is at risk. 25 public hospitals are listed as appropriate institutions where a termination can be carried out.

2010
In the case of A, B and C v Ireland, the Grand Chamber of the European Court of Human Rights unanimously rules that Ireland's failure to implement the existing constitutional right to a lawful abortion when a woman's life is at risk violates Applicant C's rights under Article 8 of the ECHR.

2007
A 17-year- old known as Miss D, who is in the care of the State, discovers she has an anencephalic pregnancy and wishes to terminate the pregnancy. Miss D refuses to say she is suicidal and goes to the High Court to force the Health Service Executive to allow her to travel to obtain an abortion. In the High Court, Mr Justice McKechnie rules that she has a right to travel.

2002
Irish voters reject the Twenty-fifth Amendment of the Constitution (Protection of Human Life in Pregnancy) Bill, 2002 which would remove the threat of suicide as a ground for abortion and increase the penalties for helping a woman have an abortion. Voter turnout is 42.89% of total electorate. 50.42% vote against. 49.58% vote in favour.

1992
Following the X case judgment and the issues relating to travelling and information on abortion, the Government puts forward three possible amendments to the Constitution in a referendum. This referendum allowed for the freedom to travel outside the State for an abortion and the freedom to obtain or make available information on abortion services outside the State, subject to conditions. It also rejected a proposal to roll back the X Case judgment in order to remove suicide as a grounds for abortion in Ireland.

The impact of the 8th amendment on healthcare

Because of the 8th Amendment, women and pregnant people are not protected by the HSE Consent Policy. The HSE Consent Policy: All health and social care interventions involve decisions by patients or people availing of social care. Consent must be obtained before starting any treatment or investigation.

But Section 7.7.1 contradicts this. It says: “because of the Constitutional provisions on the right to life of the unborn [Article 40.3.3] there is significant legal uncertainty regarding a pregnant woman’s right to [consent]”. As a result, HSE staff are permitted to bring High Court challenges against any pregnant person, compelling them to receive treatment where they do not consent to proposed treatment plans.

This is a direct violation of the right of all women and pregnant people, including those who wish to carry their pregnancy to term, to be free from non-consensual medical treatment.

This article is written by Parents for Choice in Pregnancy and Childbirth a group of parents who campaign for the repeal of the 8th Amendment.

For more information http://parentsforchoice.ie/ **https://www.repealeight.ie/**

Protecting Human Rights while Countering Terrorism

In our June-July edition we reported that our Just News Editor, Professor Fionnuala Ní Aoláin, had been appointed UN Special Rapporteur for the Protection of Human Rights while Countering Terrorism. On 27 September 2017 her first report was presented to the UN General Assembly laying out her priorities for her term of office and we report on it here.

Fionnuala pays tribute to the work of her predecessor, Ben Emerson, and highlights five key but interrelated areas of interest and concern as she takes up her mandate. These are:

- The problem of the normalisation of exceptional national security powers within ordinary legal systems
- The need for greater clarity about the relationship between national and international security systems and international human rights, humanitarian and criminal law
- Mainstreaming a gender analysis in all aspects of the mandate
- Advancing the rights and protection of civil space and civil society in their work of protecting human rights when targeted in the name of counter-terrorism

Normalisation of national security powers with ordinary legal systems

The Report notes that the Special Rapporteur is concerned at the absorption of normally exceptional national security powers and counter-terrorism measures into the ordinary law of many States. In this context, the dividing line between exercise of exceptional national security powers and the ordinary criminal and civil processes of some States becomes hard to distinguish, and the protection of rights becomes increasingly fraught and difficult to deliver in practice.The Report goes on to say that in such circumstances, we see the emergence of permanent states of emergency where ordinary legal regulation recedes and may be sidelined by the deployment of expansive executive powers, extensions of the criminal law to new categories of crime, the primacy of military, security and intelligence institutions over police power within states, and sustained limitations on a broad range of rights from assembly to association. All of these institutional practices pose significant challenges to the effective protection of human rights. Moreover, extended use of national security powers can particularly negatively affect the enjoyment of rights for vulnerable and minority groups.

The Report says that “temporary arrangements have a peculiar tendency to become entrenched over time and thus normalised and made routine.” It also notes the grave danger that where national security powers are piled up, essentially in a constant state of ratcheting powers upwards, government will take as its starting point the experience of extraordinary powers. The Report compares this to “the need to gradually increase the dosage of a heavily used medication in order to experience the same level of relief, so too with respect to national security powers: the perception may be that new, more radical powers are needed every time to fight impending crises.” The Report says that “the pressures on states to provide security are real, but long-term and sustained security will only follow when human rights have a central role in all aspects of the global fight against terrorism.”

Clarity on the interplay of legal regimes in the counter-terrorism sphere

The Report points to the formidable expansion of counter-terrorism institutions and laws since 9/11, culminating in the establishment of the UN Office of Counter-Terrorism in June 2017. It notes that the array of institutions, at an international and regional level, have produced a mass of regulations and norms designed to cope with an ever-transforming terrorism landscape. It expresses concern that this process may have out-paced the capacity for full consideration of the effects on the protection and promotion of human rights.

The Report points to the "explosion of legal norms at various levels of legal capacity since 2001 at global, regional, national and sub-national levels addressing counter-terrorism, countering violent extremism and more recently in preventing violent extremism." It goes on to say that "in this universe of expanding norms, human rights protections run real risks of being marginalised or drowned by the plethora of new international rules, regulations and obligations." It calls for a thorough mapping of this landscape in order to more precisely identify the relationship between the different bodies of law and to ensure that international human rights obligations are properly upheld.

Mainstreaming gender in the discharge of the mandate

The Report notes that terrorism typically does not discriminate between men and women and that its victims are equally gendered. However, it says that until relatively recently women have been broadly invisible in counter-terrorism discourse. The passing of UN Security Council Resolution 2242 and the Women, Peace and Security Agenda have gone some way to remedying that.

The Report says that it remains the case that when women come into view in terrorism and counter-terrorism policy, they typically do so as the wives, daughters, sisters and mothers of terrorist actors, or as the archetypal victims of senseless terrorist acts whose effects on the most vulnerable (women) underscores the unacceptability of terrorist targeting. Yet definitions of terror remain highly gendered, with deliberate acts of sexual violence when used by terrorist organisations as a method and means of terrorism going unrecognised by domestic legislation. This means in practice that these victims of terrorism are ignored, stigmatised and marginalised excluding them from the redress and support we recognise as vital for victims of terrorism. The role of women in counter-terrorism prevention, building women's civil society capacity to act as barriers to violent extremism and funding the empowerment of women in marginal communities are all matters that will be addressed during the course of the mandate.

The Report goes on to note that men, maleness and masculinities as a category of analysis is also missing in the ways terrorist acts and organisations and anti-terrorism responses are understood. To prevent violent extremism effectively there is no avoiding the masculinity tropes that attract men on the basis of a certain form of male identity and power.

Protecting and promoting civic space and civil society while countering terrorism

The report says that in advancing the promotion and protection of human rights in any society, civil society is a necessary and much needed infrastructure. It can pave the way for more effective prevention strategies, with regard to both the temptation to have recourse to terrorist action and the attraction of radical or violent extremism. The Special Rapporteur affirms the value of civic space, public participation and critical engagement by civil society as an essential part of a human rights informed approach to counter-terrorism.

In conclusion, Fionnuala stresses her commitment to assist in enhancing the capacity of the United Nations to advance human rights as an integral component of collective and individual security.

Civil Liberties Diary - September

7th September

The Director of Public Prosecutions has said that health professionals in Northern Ireland who refer women to England for abortions will not be prosecuted. Barra McGrory QC confirmed the breakthrough in correspondence with human rights charity, Amnesty International. Mr McGrory stated that he could see "no risk of criminal prosecution of NHS employees" if they informed their patients of the availability of abortion services in England and Wales.

12th September

Northern Ireland's most senior judge, Lord Chief Justice Declan Morgan, has said that a secular marriage has the same equality of opportunity in the law, as a religious one. Sir Declan was commenting during the high-profile court battle involving model Laura Lacole and Leeds United and Republic of Ireland footballer, Eunan O'Kane, regarding the legal recognition of humanist marriages in Northern Ireland.

13th September

Workers in Northern Ireland will not benefit from the scrapping of the seven-year pay cap. Downing Street unveiled the proposals for a 1.7% hike for prison officers and 1% pay rise and one-off 1% bonus for police officers for 2017/18. However, as the issue of pay is a devolved matter, workers in Northern Ireland will not benefit from the change because the North currently does not have a working assembly or executive. Despite the lifting of the cap, trade unions have insisted the rise amounts to a pay cut considering the current inflation rate of 2.9%.

14th September

Calls have been made to the Northern Ireland Housing Executive to ensure that sprinkler systems are made compulsory in tower blocks across the North following the emergence that requirements are not as stringent in Northern Ireland as the rest of the UK. Research conducted following Grendfell tower block tragedy concluded that 2% of tower blocks in Britain have adequate sprinkler systems. However, none of the Housing Executive's tower blocks have sprinkler systems installed as they "are not currently a requirement of building control or fire regulations". Following calls to urgently review such regulations, the Housing Executive has said an independent reference group has been set up and will review fire safety within the tower blocks.

22nd September

The Human Rights Council of the United Nations has called for the British government to deal with legacy issues of the Troubles. The council has called for coroners to be resourced to allow for the investigation of conflict-related deaths and urged the implementation of the Stormont House Agreement.

22nd September

Campaigners in Belfast have called the two-child cap on tax credits and the so-called rape clause, an attack on women. Protestors held a rally outside the offices of the Communities Department, who are responsible for implementing the policy in Northern Ireland. Under the controversial policy, the UK Government limits the claiming of tax credits to the first two children only. One of the exemptions is the so-called "rape clause" which requires women to prove their third child was conceived through rape or an abusive relationship in order to qualify for the benefit. Campaigner Louise Kennedy described the policy as "cruel and inhumane".

25th September

Judena Leslie, the public appointments commissioner, has said that gender equality targets for boards of public bodies have been impossible to attain following the collapse of the Northern Ireland Assembly. Leslie has stated that efforts to improve diversity have stalled as new members cannot be recruited without ministers in place. Only one in five chairperson posts on public bodies in Northern Ireland are held by women.

Compiled by Sinead Burns from various newspapers

Just News

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