



Disablist Hate Crime and Ireland

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What is hate crime?



- The OSCE describe hate crimes as:
- “... **criminal acts committed with a bias motive**. It is this motive that makes hate crimes different from other crimes. A hate crime is not one particular offence. It could be an act of intimidation, threats, property damage, assault, murder or any other criminal offence. The term “hate crime” or “bias crime”, therefore, describes a type of crime, rather than a specific offence within a penal code. A person may commit a hate crime in a country where there is no specific criminal sanction on account of bias or prejudice.”
- Hate speech offences are separate to hate crime laws.

Disablist hate crime



- If someone commits a crime that is **motivated by hostility**, prejudice or bias towards the victim because of their **disability or perceived disability**, then the crime can be classed as a disability hate crime.
- In some jurisdictions, the demonstration of hostility, prejudice or bias towards people with disability in the course of committing an offence is sufficient for the crime to be considered a hate crime.
- People with disabilities may be targets of hate crime on other and multiple grounds

Forms of disablist hate crime



Category	Disability	Racial & Religious
Homicide	0.3	0.1
Offences Against Person	41.7	49.6
Sexual offences	6.2	0.2
Burglary	7.4	0.5
Robbery	9.5	0.8
Theft & handling	9.0	3.6
Fraud & Forgery	5.0	0.1
Criminal Damage	3.2	4.9
Drugs Offences	0.8	1.1
Public order	12.1	32.5

Complexities of disablist hate crime



- “**Mate crime**” is a particular feature of disablist hate crime: “...offenders can use deception to “befriend” individuals and then exploit them”
- Perpetrators are more likely to include **family**, friends and other significant ties.
- The intersection of “**vulnerability**” and hostility add complexity: If with disabilities are targeted because they are perceived to be more vulnerable is this still hate crime?

Prevalence of disablist hate crime



- Hate crime data for England and Wales 2014/15:
 - 52,528 hate crimes recorded by the police
 - 2,508 (5%) were disability hate crimes
 - Only 48% of all hate crime reported to the police

Impact of Hate Crime



- Hate crimes are more likely to be violent
- Hate crime victims are more likely to experience repeat victimisation
- England and Wales 2014/5: Victims of hate crime more likely to say they were emotionally affected by the incident (92%)
- England and Wales: More than twice as likely to suffer a loss of confidence or feel vulnerable, experience fear, difficulty sleeping, anxiety or panic attacks or depression compared with victims of overall crime.
- Psychological impacts last longer (FRA 2012; Home Office 2013)

The Ripple Effect



- Hate crime is understood as a message crime.
- We understand hate crime victimisation as an impediment to full and equitable participation in society.

“Disability hate crime and living independently are closely interlinked. As long as disabled people experience abuse, hostility and discrimination, this will undoubtedly impact on their aspirations and inclusion within their community. If a disabled person is continually harassed or is a victim of hate crime, then this will restrict their opportunities to participate in aspects of daily life: to go to their local supermarket, to use public transport, to leave their apartment. Furthermore, if the law enforcement agencies do not have appropriate and satisfactory methods to support and protect disabled people from such crime, then this will further marginalise and isolate them.”

European Network on Independent Living 2014.

International Responses to Disablist Hate Crime



- As of 2012 of 57 OSCE Participating States 16 collect data on disablist hate crime.
- As of October 2014 12 EU member states (Austria, Belgium, Croatia, Finland, France, Hungary, Lithuania, Netherlands, Romania, Slovenia, Spain, and the United Kingdom) explicitly recognise a disability bias motivation in their criminal law.

The social dimension of hate

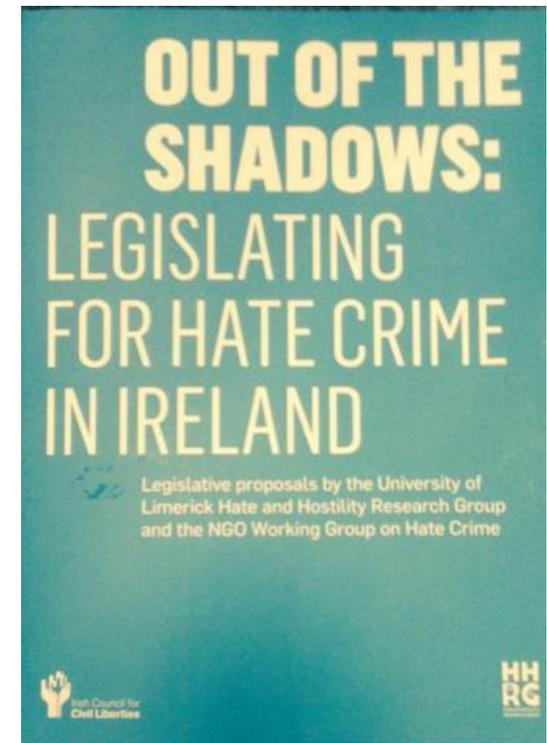


- Hate crime is understood to reflect and reinforce existing social hierarchies
- The UK's Disability Hate Network has identified a link between some disablist hate crime and discourses on “benefit fraud”.
- The UK's Equality and Human Rights Commission speaks of a “culture of disbelief” in relation to disablist hate crime as a phenomenon.

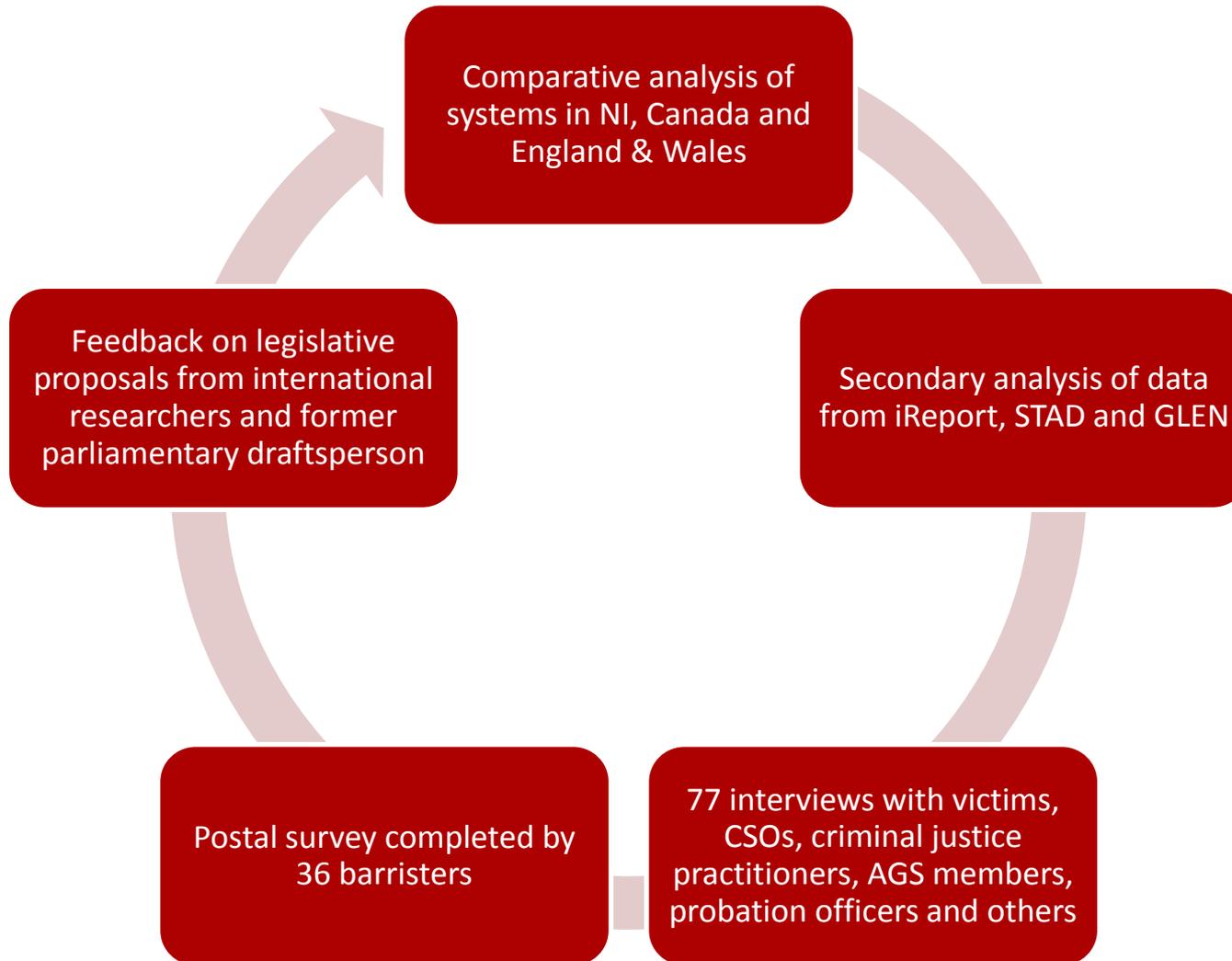
Out of the Shadows



- The Hate and Hostility Research Group at the University of Limerick
- Out of the Shadows: Legislating for Hate Crime in Ireland
 - Preliminary findings launched July 2015
 - Commissioned by the Irish Council for Civil Liberties, in association with the NGO Working Party on Hate Crime.
- The resulting Heads of Criminal Law (Hate Crime) Bill 2015 draws on the Victims' Directive to delimit protected groups.



Methodology



Comparative analysis of systems in NI, Canada and England & Wales

Secondary analysis of data from iReport, STAD and GLEN

77 interviews with victims, CSOs, criminal justice practitioners, AGS members, probation officers and others

Postal survey completed by 36 barristers

Feedback on legislative proposals from international researchers and former parliamentary draftspeople

Hate Crime:

The position of the Irish State



- There are currently no laws criminalising the hate element of a crime in Ireland for any targeted group.
- Judges may choose to enhance sentences if a hate element is proven, but they are not required to do so.

Our Findings



- Hate crime lives in the shadows of Irish criminal justice a system-wide failure to recognise the harms of hate results in a “disappearing” of the hate element of many crimes in the criminal justice process and a failure to provide victims with appropriate protection under the law.
- This is most particular in the case of disablist hate crime

An invisible phenomenon



- Despite the absence of hate crime legislation, An Garda Síochána record motivations relating to hostility towards racist, religious, xenophobic, sectarian and homophobic hostility on PULSE.
- Disablist hate crime is not recorded by An Garda Síochána
- There are third party recording mechanisms for racist, religious, homophobic and transphobic hate crime.
- Currently no third party monitoring system records disablist hate crime.

NGO Perspectives



- Disability hate crime is a new concept for many organisations

“ ... if you think about it in terms of Autism this generation of persons diagnosed with Autism – this is the generation where we have adults in the community so what is going to happen is that the prevalence of these issues will increase because we will have much more people that are susceptible in the community. ... why it’s not high on the agenda [at the moment] ... is that it’s institutional and school based. And they have systems for handling that.”

Victim's Experiences



- We spoke to three people with disabilities and their families regarding experiences of disablist hate crime.
- Victims related experiences of criminal damage, harassment and assault.
- While not all of the victims were equally affected, impacts included enduring psychological distress and alterations to pre-existing behaviour, including limiting use of public space and moving home.
- Speaking of people with intellectual/developmental disabilities, Jim Winters of Inclusion Ireland, suggests that victimisation further concretises a pre-existing marginalisation within Irish society:
- *“... unfortunately the way our society is structured, the approach to people with an intellectual disability is one of quite often segregation and congregation and exclusion from the mainstream of society. So you can imagine that if a person with an intellectual disability who is participating on the fringes of society, if you like, and who isn't accepted into mainstream society through systemic discrimination, that when they're a victim of crime or a victim of abuse that that further marginalises them”.*

Experiences with the criminal justice system



- Victims cited relatively speedy and positive responses from individual members of An Garda Síochána.
- However, we found that Ethnic Liaison Officers were largely unfamiliar with the concept of disability hate crime.
- Victims encountered compounding obstacles to accessing justice.
- These included a lack of clarity regarding who is recognised as a person with a disability for the purposes of the courts.
- Tests of competency.
- A lack of clarity regarding available accommodations and as Edwards, Harold and Kilcommins (2012) attest no guarantee that the victim will not be forced to take the stand.

Heads of Criminal Law (Hate Crime) Bill 2015



- “Protected group” includes individuals who are identified on the basis of their race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, membership of the Traveller or Roma communities, property, birth, disability, age, gender, gender expression, gender identity, sexual orientation, residence status, or health.

Heads of Criminal Justice (Victims of Crime) Bill 2015 v Victims' Directive



- Race
- ~~Colour~~
- “Ethnicity” or ~~social origin~~
- ~~Genetic features~~
- ~~Language~~
- Religion or ~~belief~~
- ~~Political or any other opinion~~
- ~~Membership of a national minority~~
- ~~Property~~

- ~~Birth~~
- ~~Disability~~
- Age
- Gender
- Gender expression or gender identity
- Sexual orientation
- ~~Residence status~~
- ~~Health~~
- Physical or mental health issues
- Ability to communicate

Concerns with Heads of Bill



- Intellectual/developmental disabilities excluded
- The Law Commission in the context of hate crimes committed against those groups who are perceived to be vulnerable:
- *“[A] problem that can arise ... is the difficulty of distinguishing between offending motivated by hostility towards disability, on the one hand, and crimes which target a disabled person because their disability is perceived as making them less able to resist, and thus more vulnerable to a particular type of crime, on the other.”*
- **Further entrenching marginalisation of victims of hate crime**

Potential definition of ‘disability’ for purposes of legislation



- “disability, including any chronic illness, or any physical, psychological, mental, intellectual, developmental or sensory impairment.”

What is needed?



- Awareness raising
- Data collection
 - Police
 - Civil Society
- Effective hate crime laws
- Disability proofing of related transpositions
- Training for police, prosecutors and judges
- Disability proofing of training manuals and procedures.
- Supports for victims
- Educative interventions
- Restorative justice options

Where next?



- How do we progress these issues?
- If you would like to contact us about experiences of disablist hate crime or any other issues please email us at hhr@ul.ie