



Northern Ireland  
**Council for  
Racial Equality**

**SUBMISSION**

**TO**

**DEPARTMENT OF JUSTICE**

**ON**

**HATE CRIME**

**28 March 2022**

## INTRODUCTION

NICRE is a black led membership-based organization. It is currently had 18 ethnic minority and migrant organizations as well as individual members. NICRE was set up to continue the policy work of the previous NICEM (NI Council for Ethnic Minority) which was under voluntary administration in November 2016.

NICRE aims at to promote good race relations and to endeavour the elimination of racial discrimination and the promotion of human rights and racial equality. Our vision is of a society where human rights are respected and guaranteed. Our mission is *of a society that is fair and inclusive, where there is racial equality and justice for all.*

NICRE welcomes the Department of Justice to consult the public on the reform of current hate crime law. The Justice Minister has received a comprehensive report from Judge Desmond Marrinan who chaired the Independence Review on Hate Crime in last December. However, the Law Commission in England and Wales published their consultation paper on the Hate Crime Final Paper in September 2020 which is much more progressive than that proposed by Judge Marrinan. We will not follow the consultation document to answer those questions, instead we highlight our proposal to reform the current hate crime law.

## REFORM HATE CRIME LAW IN NORTHERN IRELAND

### 1. Basic Hate Crime Law

**1.1** The purpose is to consolidate the existing laws on hate crime in England, Wales and Scotland which do not apply to Northern Ireland as well as the EU Council Framework Decision 2008/913/JHA on combating certain forms and expressions of racism and xenophobia by means of criminal law, 28 November 2008 in order to fulfil the UK Government obligations under EU Charter of Fundamental Rights as well as international human rights standards which was identified in the Belfast/Good Friday Agreement. The Brexit Agreement annexed the Northern Ireland Protocol which aims at to protect human rights and equality under the Good Friday Agreement and all the EU laws.

**1.2** Currently our legal approach is the “hatred motivation” model which will have significant disadvantage for disability. This is more the case of perceived “vulnerability” and the interpretation of “hostility”. Under the current aggravated offences in England, Wales and Scotland, the threshold is to test either by a hostile motivation or by the demonstration of hostility.

**1.3** In Scotland it is “evidences...malice and ill-will based on the victim’s membership (or presumed membership) [of a protected group, or] the offence is motivated (wholly or partly) by malice and ill-will towards [members of the protected group]”. In England and Wales and to certain extent Northern Ireland, it is “demonstrates...hostility...[or] the offence is motivated (wholly or partly) by hostility”.

**1.4** How we create a new parity of protection under the new Hate Crime law? The US model could be part of the solutions by using “group selection” model (also known as discriminatory model) through “by reason” test.

**1.5** We propose to use the “group selection” model also known as the ‘discriminatory model’. An offender must have “selected” his or her victim because of victim’s protected group characteristics. Evidence of the offender’s prejudiced or bias motivation is not required. Instead, it is considered that, by virtue of specifically targeting a victim because of the victim’s identity characteristics, the offender has evinced prejudice or bias towards that individual. For example, the Criminal Code in Illinois read as follows:

“Sec. 12-7.1. Hate crime

(a) A person commits hate crime when, **by reason** of the actual or perceived race, color, creed, religion, ancestry, gender, sexual orientation, physical or mental disability, or national origin of another individuals, regardless of the existence of any other motivating factor or factors, he commits assault, battery, aggravated assault, misdemeanour theft, criminal trespass to residence, misdemeanour criminal damage to property, criminal trespass to vehicle, criminal trespass to real property, mob action, disorderly conduct, harassment by telephone, or harassment through electronic communication...”<sup>1</sup>

And a penalty enhancement is applied where the offender has committed a basic offence by reason of one of the specified group identity characteristics.

## **2. Hate Crime and Public Order Offences**

**2.1** We are looking at Hate Speech and hate crime offences under Public Order law in the context of the EU Framework Decision on Racism, in particular the Incitement of Racial and Religious Hatred under the original 1987 Order, the international human rights standards under UN International Covenant on Civil and Political Rights (ICCPR), International Convention on the Elimination of all forms of Racial Discrimination (ICERD) and European Commission against Racism and Intolerance (ECRI) of the Council of Europe, in particular the UN Rabat Plan of Action<sup>2</sup> and ECRI General Policy Recommendation No. 15 on Combating Hate Speech<sup>3</sup>. We will also look at a second approach on the basic hate crime offences that based on the current approach in England and Wales, and Scotland with extension of the new grounds (characteristics) but give the defendant or defendants a defence to disapprove their charges which is based on the current Part III of the Public Order offences that shows the seriousness of both the crime committed and the corresponding punishment due to the harm to the society.

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<sup>1</sup> France, Bulgaria and Denmark use a version of the discriminatory selection model: see OSCE, Hate Crime Laws – A Practical Guide (Warsaw: OSCE, 2009).

<sup>2</sup> Report of the United Nations High Commissioner for Human Rights on the expert workshop on the prohibition of incitement to national, racial or religious hatred”, General Assembly, A/HRC/22/17/Add.4, 11 January 2013

<sup>3</sup> ECRI General Policy Recommendation No. 15 on Combating Hate Speech, Council of Europe, Strasbourg, 21 March 2016

**2.2** In our Briefing Paper: The Reform of Hate Crime Law in Northern Ireland- Hate Speech & Negationism<sup>4</sup> that based on the Framework Decision on Racism and Xenophobia (Framework Decision).<sup>5</sup> The uniformity of the Union law requires Member States to ensure that hate speech with intentional conduct is punishable when directed against a group of persons or a member of such a group defined by reference to race, colour, religion, descent or national or ethnic origin:

- Publicly inciting to violence or hatred, including by public dissemination or distribution of tracts, pictures or material;
- Publicly condoning, denying or grossly trivializing
  - Crimes of genocide, crimes against humanity and war crimes as defined in Article 6, 7 and 8 of the Statute of the International Criminal Court (ICC) or
  - The crimes defined in Article 6 of the Charter of the International Military Tribunal appended to the London Agreement of 8 August 1945.

**2.3** According to the international best practice from Article 20 of the International Covenant Civil and Political Rights and Article 4 of the International Convention for the Elimination of all forms of Racial Discrimination as well as the European Commission against Racism and Intolerance of the Council of Europe provides a comprehensive analysis which identifies issues and concerns to reform the current law that based on the legal case study. We endorse this approach and form the basis to reform the hate crime law in the context of incitement to violence and hatred whether it is a speech or a behaviour.

**2.4** The new Hate Crime law in Northern Ireland should rectify the followings gaps within the current Framework Decision on hate speech and hate crime:

- Public incitement to violence or hatred (Article 1(a));
- Public condoning, denial or gross trivialisation of genocide, crimes against humanity and war crimes (Article 1(c));
- Public condoning, denial or gross trivialisation of the crimes defined in the Charter of the International Military Tribunal (Article 1(d))

**2.5** Accordingly, Hate Speech under the new Hate Crime law should read as follows:

#### **Public Incitement to violence or hatred**

In this Part-

Meaning of “fear” of a group of persons defined by reference to colour, race, nationality (including citizenship) or ethnic or national origins or descent, religious belief, sectarian, language, gender, gender identity, sexual orientation, disability, and age.

Meaning of “hatred” against a group of persons defined by reference to colour, race, nationality (including citizenship) or ethnic or national origins or descent, religious belief, sectarian, language, gender, gender identity, sexual orientation, disability, and age.

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<sup>4</sup> <https://nicre.org/wp-content/uploads/2019/09/The-Reform-of-Hate-Crime-Law-in-NI-Part-II-Final.pdf>

<sup>5</sup> Council Framework Decision 2008/913/JHA on combating certain forms and expressions of racism and xenophobia by means of criminal law, 28 November 2008.

Meaning of “violence” against a group of persons defined by reference to colour, race, nationality (including citizenship) or ethnic or national origins or descent, religious belief, sectarian, language, gender, gender identity, sexual orientation, disability, and age.

**2.6 Use of words or behaviour or display of written material or display of an object or display of flag**

**Article XX (1) (a) he intends thereby to incite hatred, violence or arouse fear, or  
(b) having regard to all circumstances hatred or violence is likely to be stirred  
up or fear is likely to be aroused thereby**

Based on the formula under Article XX (1) above and a defence is available for defendant or defendants to rewrite the rest of the Part III, including Article 1(c) and 1(d) of the Framework Decision. We also propose a protection clause for those public servants and contractors of work for the specific purpose to remove flags, objects, displayed materials, etc. and/or at bonfire for the purpose of public safety, public health and public security. For those who attacks the public servants and/or contractors of work should have higher sentencing than the current public order offences under Part III.

**END**

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