

JUSTICE COMMITTEE

HATE CRIME AND PUBLIC ORDER (SCOTLAND) BILL

SUBMISSION FROM AMNESTY INTERNATIONAL

1. Amnesty International is a global movement of more than 7 million people who campaign for a world where human rights are enjoyed by all. We reach almost every country in the world. Amnesty has had an office in Scotland for over 25 years and works regularly on a variety of human rights issues with the Scottish Government, Parliament and organisations and institutions across Scotland. Human rights are the fundamental entitlements and freedoms that we can, and should, expect in our lives. All governments have the obligation to respect, protect and fulfil human rights as the primary duty bearers. These rights are enshrined in the Universal Declaration of Human Rights, which was adopted by the United Nations General Assembly in 1948.
2. Amnesty International Scotland welcomes the opportunity to respond to the Justice Committee's call for evidence on the Hate Crime and Public Order (Scotland) Bill.
3. In 2016, Amnesty International launched our Against Hate campaign in response to the spike in hate crimes in England and Wales following the EU Referendum. In June 2017, we launched a briefing report "Tackling Hate crime in the UK: A background briefing paper"¹ which looked into hate crime incidence and laws in the UK and made recommendations to the separate legal jurisdictions. In 2018, we launched a report and In 2018, we launched a report and campaign Toxic Twitter², addressing the online violence and abuse suffered by women globally, but with a focus on the UK and US. A number of prominent women in Scotland participated in our research including the then female leaders of Scotland's main political parties Nicola Sturgeon, Ruth Davidson and Kezia Dugdale as well as prominent journalists, politicians and campaigners in Scotland.
4. We will not address all sections of the Hate Crime (Scotland) Bill here but will focus on those areas where our evidence and positions can make helpful contributions.

¹ <https://www.amnesty.org.uk/files/Against-Hate-Briefing-2.pdf>

² <https://www.amnesty.org/en/latest/research/2018/03/online-violence-against-women-chapter-1/>

General Comments

5. Amnesty welcomes the stated policy objective of the Bill to consolidate the majority of existing Hate Crime laws into one piece of legislation, improving clarity.
6. It is right that the Bill recognises intersex as entirely separate from a person's gender identity. Amnesty International believes that it is right to update terminology whenever there is the opportunity to reflect the appropriate usage of terms so long as the language used is defined by those communities themselves and in line with best practice.
1. We welcome provisions within part two of the Bill for the protection of freedom of expression, an Article 10 right set out in the European Convention of Human Rights. However, we do not believe that these protections go far enough as they are restricted to only two protected characteristics, does not make explicit links to Article 10 and Article 17 of the European Convention of Human Rights.
2. Amnesty would welcome clarification regarding whether the legislation will allow for self- identification by individuals and communities, including but not limited to Roma, Romanies, gypsies, Scottish, Irish and Highland Travellers, Romanichals and showmen.

Offences related to stirring up hatred

3. Amnesty agrees that the threshold for offences related to stirring up hatred should be retained as "threatening or abusive."
4. In our consultation response we outlined our rationale for this threshold stating:

While in some circumstances, "threatening or abusive" could be a low threshold and be too widely interpreted, we can see that taken with the recommendation for clear human rights based freedom of expression protections, this should enable the correct balance to be struck by the courts. We would agree that new stirring up offences should require that the conduct is 'threatening or abusive' as long as this is done in accordance with the three-part test – legality, proportionality and necessity.

5. The Rabat Plan of Action addresses intent with reference to Article 20 of the International Covenant on Civil and Political Rights and states that it requires the activation of a triangular relationship between the object and subject of the speech act

as well as the audience.”³ Amnesty therefore recommended that such a threshold require a clear showing of intent to stir up hatred.

6. We welcome provisions within part two of the Bill for the protection of freedom of expression, an Article 10 right set out in the European Convention of Human Rights. However, we do not believe that these protections go far enough as they are restricted to only two protected characteristics, does not make explicit links to Article 10 and Article 17 of the European Convention of Human Rights.
7. The right to freedom of expression may legitimately be subject to restrictions, provided that such restrictions comply with all elements of a stringent three-part test: they must be provided by law and demonstrably necessary and proportionate for the purpose of protecting specified public or the rights or reputations of others.
8. We reaffirm our position that a stringent three part test of legality, proportionality and necessity is necessary and would welcome further scrutiny from the committee into safeguards for freedom of expression. We would also like to see direct reference to Article 10 and 17 of the European Convention of Human Rights to ensure a maintained link with jurisprudence at a European level.

Race and National Identity

9. In our consultation response we highlighted the violence and harassment targeted towards Scottish Gypsy Travellers and the wider group of Roma and Gypsy/Travellers and recommended that this legislation be used as an opportunity to confirm the identity of Scottish Gypsy Travellers and that of Roma and Gypsy Travellers as an ethnic group and which is often the target of violence, abuse, harassment and negative stereotyping.
10. Amnesty would welcome explicit confirmation that this legislation will allow for self- identification by individuals and communities, allowing for identifications including but not limited to Roma, Romanies, gypsies, Scottish, Irish and Highland Travellers, Romanichals, and showmen.

Amnesty International
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³ Rabat Plan of Action on the prohibition of advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence:
<https://www.ohchr.org/EN/Issues/FreedomReligion/Pages/RabatPlanOfAction.aspx>