



NORTHERN
IRELAND
HUMAN
RIGHTS
COMMISSION

**Submission to the Committee for Justice's Call
for Evidence on the Criminal Justice (Sentencing
etc) Bill**

May 2026

Table of Contents

Table of Contents	2
Summary of Recommendations	3
1.0 Introduction.....	5
2.0 Part 6 - Clause 33 - Aggravation by Hostility.....	6
Definition of hate crime	6
‘By reason of’ threshold	9
Grounds of hostility.....	11
Sectarianism	13
Sex	14
Gender Sensitive Approach	16
Gender identity.....	17
Intersectionality	19
3.0 Part 6 - Clause 34 – Consequences of Aggravation by Hostility....	20
Effective Data Collection and Monitoring	20

Summary of Recommendations

The NIHRC recommends that:

- 2.13** the Committee for Justice brings forward an amendment to Clause 33(4) of the Criminal Justice (Sentencing etc) Bill, to include a comprehensive definition of hate crime to ensure prevention, prohibition, and remedy of all forms of hate crime. This definition should encompass bias, hostility, prejudice, bigotry, and contempt. Furthermore, the Committee may consider recommending that Clause 33 provides for statutory guidance to clarify the practical application of each element of the definition.
- 2.22** the Committee for Justice seeks assurance from the Department of Justice that it has considered fully whether the third threshold of “by reason of” under Clause 33(2) will limit the effectiveness of this legislation. In particular the Department should ensure that the legislation reflects fully the harm done to victims and their communities by offending based on immutable characteristics or identities. The NIHRC doubts whether the legislation will be effective and recommends additional scrutiny to satisfy the requirements in law and in practice.
- 2.23** the Committee for Justice seeks clarification from the Department of Justice as to why a “by reason of” threshold was included under Clause 36 of the Bill and not Clause 33. The Committee should seek assurances from the Department that this distinction will not create a discrepancy in protections between victims under Clause 33 and Clause 36.
- 2.32** the Committee for Justice ensures that the proposed grounds for aggravation by hostility under Clause 33(1)(a)-(d) are as comprehensive as possible, to ensure that all protected characteristics are recognised within the law and protected in practice.
- 2.38** the Committee for Justice seeks clarity from the Department of Justice that hostility motivated by sectarianism is protected under the existing grounds of racial group and/or religious group. The Committee may also wish to suggest that the Department, working

with the NI Executive, considers introducing a statutory definition of sectarianism that is sufficiently clear.

2.46 the Committee for Justice introduces an amendment to include sex as a protected characteristic under Clause 33(1) of the Criminal Justice (Sentencing etc) Bill.

2.57 the Committee for Justice introduces an amendment to Clause 33(1) of the Criminal Justice (Sentencing etc) Bill to ensure that gender identity is protected under hate crime legislation. This should be informed by consultation with affected individuals and their representative organisations.

3.6 the Committee for Justice seeks assurance from the Department of Justice that data emanating from Clause 34 of the proposed Bill will be incorporated into publicly available court statistics to systematically report on anonymised, disaggregated data on cases involving aggravation by hostility. This should also cover cases where such elements were discontinued or not proven in Court.

3.7 the Committee for Justice seeks assurance from the Department of Justice that it intends to regularly review hate crime provisions. These review periods should involve all affected groups, particularly victims, to ensure these measures remain effective throughout the criminal justice process, from reporting to sentencing.

1.0 Introduction

- 1.1 The Northern Ireland Human Rights Commission (NIHRC), pursuant to sections 69(1), 69(3) and 69(4) of the Northern Ireland (NI) Act 1998, reviews the adequacy and effectiveness of law and practice relating to the protection of human rights in NI. The NIHRC is also required under section 78A(1), 78A(5) and 78A(6) to monitor the implementation of Article 2(1) of the Windsor Framework.¹ In accordance with these functions, the NIHRC provides this advice on the Criminal Justice (Sentencing etc) Bill (the Bill) and refers to the version as introduced to the NI Assembly on 3rd March 2026.
- 1.2 The NIHRC bases its advice on the full range of internationally accepted human rights standards, including the European Convention on Human Rights (ECHR), as incorporated by the Human Rights Act 1998, and the treaty obligations of the Council of Europe (CoE) and the United Nations (UN).
- 1.3 The NIHRC also advises on the UK Government's compliance with its commitment in Windsor Framework Article 2 to ensure there is no diminution of rights, safeguards and equality of opportunity in the relevant section of the Belfast (Good Friday) Agreement as a result of the UK's withdrawal from the EU. The UK-EU Withdrawal Agreement, including the Windsor Framework, is binding under international law and given effect in UK law by section 7A of the EU (Withdrawal) Act 2018. Section 6 of the NI Act 1998 prohibits the NI Assembly from making any law which is incompatible with Windsor Framework Article 2. Section 24 of the 1998 Act also requires all acts of NI Ministers and NI Departments to be compatible with Windsor Framework Article 2.
- 1.4 The NIHRC welcomes the opportunity to respond to the Committee for Justice's call for evidence on the Criminal Justice (Sentencing etc) Bill. The NIHRC's advice on the Bill will focus on the introduction of the statutory aggravator model for hate crime, specifically in Clauses 34 to 36.
- 1.5 On 7 May 2026, the UK Supreme Court delivered its judgment in *Dillon*, which considers Windsor Framework Article 2.² The NIHRC is currently

¹ The Windsor Framework was formerly known as the Protocol on Ireland/Northern Ireland to the to the Agreement on the Withdrawal of the UK of Great Britain and NI from the EU and the European Atomic Energy Community, 24 January 2020 (UK-EU Withdrawal Agreement) (see Decision No 1/2023 of the Joint Committee established by the Agreement on the Withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community of 24 March 2023 laying down arrangements relating to the framework).

² In the matter of an application by Martina Dillon and others for Judicial Review [2026] UKSC 15.

reviewing this judgment and will provide further advice on Windsor Framework Article 2 and relevant EU obligations in due course.

2.0 Part 6 - Clause 33 - Aggravation by Hostility

- 2.1 Clause 33 of the Bill introduces statutory aggravation for prosecuting hate crimes in NI.³ The new provisions will allow for any criminal offence to be charged in its aggravated form.
- 2.2 The NIHRC welcomes the introduction of a statutory aggravator to charge and prosecute hate-motivated crimes, as recommended by the Marrinan Review.⁴ However, the NIHRC maintains concern regarding the effectiveness of the Bill, set out below.

Definition of hate crime

- 2.3 Clause 33(4) of the Bill sets out definitions for terms used in relation to the hostility aggravator.⁵ There is no definition of hate crime or hostility included in the draft legislation.
- 2.4 In his independent review of hate crime legislation in NI, His Honour Judge Desmond Marrinan recommended a definition of hate crime as a criminal act perpetrated against individuals or communities with protected characteristics based on the perpetrator's hostility, bias, prejudice, bigotry or contempt against the actual or perceived status of the victim or victims (Recommendation 1).⁶ The Explanatory Memorandum to the Bill identifies that the Justice Minister chose not to include an explicit definition of hate crime, and did not include attitudes of bias, prejudice, bigotry, or contempt as indicators of hate alongside hostility.⁷
- 2.5 Human rights standards do not require a particular definition of hate crime. However, the State has a duty to ensure all forms of hate crime are prevented, prohibited and remedied.

³ Clause 33, Criminal Justice (Sentencing etc) Bill.

⁴ Hate Crime Review Team, 'Hate Crime Legislation in NI: Independent Review' (DoJ, 2020).

⁵ Clause 33(4), Criminal Justice (Sentencing etc) Bill.

⁶ Hate Crime Review Team, 'Hate Crime Legislation in NI: Independent Review' (DoJ, 2020), at Recommendation 1.

⁷ Department of Justice, 'Explanatory and Financial Memorandum to the Criminal Justice (Sentencing etc) Bill as introduced in the Northern Ireland Assembly on 03 March 2026, (Bill 26/22-27)' at 13.

2.6 Article 20(2) of the UN International Covenant on Civil and Political Rights (UN ICCPR) states that “[a]ny advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law”. Similarly, Article 6 of the Framework Convention for the Protection of National Minorities requires States to “take appropriate measures to protect persons who may be subject to threats or acts of discrimination, hostility or violence as a result of their ethnic, cultural, linguistic or religious identity”.

2.7 Article 4 of the UN Convention on the Elimination of Racial Discrimination (UN CERD) requires States to “declare an offence punishable by law all dissemination of ideas based on racial superiority or hatred, incitement to racial discrimination, as well as all acts of violence or incitement to such acts”. The UN CERD Committee has recommended that the UK Government and NI Executive:

take all measures necessary to prevent and firmly combat racist hate crimes and hate speech and in particular ... adopt a comprehensive legal framework to combat racist hate crimes, take effective measures to ensure its implementation and provide continuous training to law enforcement officials, judges and prosecutors on addressing and investigating hate crimes.⁸

2.8 The UN Human Rights Committee has further recommended that the UK Government and NI Executive should “take steps to establish a clear and comprehensive legal framework to ensure that the prohibition of hate crimes applies to all protected groups ... by taking effective steps to promptly enhance hate crime legislation in NI”.⁹

2.9 The European Court of Human Rights (ECtHR) has held, applying Article 14 (in conjunction with articles 2, 3, 8 and 13) of the ECHR, that there is a positive obligation to investigate and unmask the biased motivation behind an offence and to establish whether hatred or prejudice may have played a role in the events.¹⁰

⁸ CERD/C/GBR/CO/24-26, ‘UN CERD Committee Concluding Observations on the Combined Twenty-fourth to Twenty-sixth Periodic Reports of the UK of Great Britain and NI’, 23 August 2024, at paras 20(a)-20(h).

⁹ CCPR/C/GBR/CO/8, ‘UN Human Rights Committee Concluding Observations on the Eighth Periodic Report of the UK of Great Britain and NI’, 3 May 2024, at para 17.

¹⁰ *Nachova and Others v Bulgaria*, applications Nos 43577/98 and 43579/98, judgment of 6 July 2005; *Bekos and Koutropoulos v Greece*, application No 15250/02, judgment of 13 December 2005; *Šečić v Croatia*, application No 40116/02, judgment of 31 May 2007, at para 66; *R.B. v Hungary*, application No 64602/12, judgment of 12 April 2016.

- 2.10 In its 2024 Recommendation CM/Rec(2024)4, the CoE Committee of Ministers agreed on a definition of “hate crime” as a criminal offence committed with a hate element based on one or more actual or perceived personal characteristics or status, where:
- (a) “hate” includes bias, prejudice or contempt;
 - (b) “personal characteristics or status” includes, but is not limited to, “race” colour, language, religion, nationality, national or ethnic origin, age, disability, sex, gender, sexual orientation, gender identity and expression, and sex characteristics.¹¹
- 2.11 Recommendation CM/Rec(2024)4 provides a broad approach to hate crime that addresses discrimination, hostility, violence, bias, prejudice, and contempt.¹²
- 2.12 As advised by the NIHRC, a statutory definition of hate crime should be included in the Bill as it provides greater certainty and enforceability than one set out in, for example, guidance.¹³ A clear definition is important for effective prohibition, prevention, and prosecution. Potential perpetrators must also understand what constitutes an aggravated offence and is consistent with the State’s obligations under Article 7 of the ECHR (principle of legal certainty).¹⁴
- 2.13 **The NIHRC recommends that the Committee for Justice brings forward an amendment to Clause 33(4) of the Criminal Justice (Sentencing etc) Bill, to include a comprehensive definition of hate crime to ensure prevention, prohibition, and remedy of all forms of hate crime. This definition should encompass bias, hostility, prejudice, bigotry, and contempt. Furthermore, the Committee may consider recommending that Clause 33 provides for statutory guidance to clarify the practical application of each element of the definition.**

¹¹ Council of Europe Recommendation CM/Rec(2024)4 on Combating Hate Crime (CoE, 2024).

¹² Council of Europe Recommendation CM/Rec(2024)4 on Combating Hate Crime (CoE, 2024).

¹³ Northern Ireland Human Rights Commission, ‘Response to Public Consultation on Improving the Effectiveness of Hate Crime Legislation in NI’ (NIHRC, 2022), at para 2.20; Northern Ireland Human Rights Commission, ‘Submission to Hate Crime Review Consultation’ (NIHRC, 2020), at para 2.15.

¹⁴ Article 7 of the ECHR requires offences and penalties to be clearly defined by law. Offences’ definitions and penalties must also be “reasonably... foreseen” (*Jorgic v Germany*, application No 74613/01, judgment of 12 July 2007, at paras 103-114). The ECtHR has stated that, under Article 7 of the ECHR, ‘quality of law’ is a key consideration regarding offence definitions and penalties. This requires law to have “sufficient precision as to enable the [individual]... to discern, even with appropriate advice, to a degree that was reasonable in the circumstances” (*Kafkaris v Cyprus*, application No 21906/04, judgment of 12 February 2008, at paras 150-152).

'By reason of' threshold

- 2.14 Clause 33(2) of the Bill does not include a third "by reason of" threshold for the aggravated by hostility offence, instead opting to retain the current thresholds of demonstration of hostility and motivation.¹⁵
- 2.15 While there is not an express requirement for such inclusion; it is clear that the right to an effective remedy must be effective in law and practice.¹⁶ The ECtHR has observed that:
- the scope of the obligation under Article 13 varies depending on the nature of the applicant's complaint under the Convention. Nevertheless, the remedy required by Article 13 must be "effective" in practice as well as in law, in particular in the sense that its exercise must not be unjustifiably hindered by the acts or omissions of the authorities of the respondent State.¹⁷
- 2.16 The UN Basic Principles of Justice for Victims of Crime and Abuse of Power provide that judicial and administrative mechanisms should be "strengthened where necessary to enable victims to obtain redress through formal or informal procedures that are expeditious, fair, inexpensive and accessible".¹⁸
- 2.17 In its guidance on hate crime, the Organisation for Security and Cooperation in Europe (OSCE) observed that "many States do not mention hatred or hostility at all in their hate crime laws" and instead require that the accused acted 'because of' or 'by reason of' the victim's protected characteristic.¹⁹ The broader provision was considered to be better as it "reaches those offenders who harboured no hostility but selected their victims based on prejudices or stereotyped information about victim vulnerabilities".²⁰ In the view of the OSCE, this is "easier to apply in practice and may do a better job of addressing the kind of harm that hate crime laws are intended to prevent", in particular:

¹⁵ Clause 33(2), Criminal Justice (Sentencing etc) Bill.

¹⁶ Article 13, European Convention on Human Rights 1950; Article 2(3)(a), UN International Covenant on Civil and Political Rights 1966; CCPR/C/21/Rev.1/Add.13, 'UN Human Rights Committee General Comment No 31: The Nature of the General Legal Obligation Imposed on States Parties to the UN ICCPR', 26 May 2004, at para 20.

¹⁷ *Ilhan v Turkey*, application No 22277/93, judgment of 27 June 2000, at para 97.

¹⁸ Principle 5, UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power 1985.

¹⁹ Organisation for Security and Cooperation in Europe, Office for Democratic Institutions and Human Rights, 'Hate Crime: A Practical Guide' (OSCE, 2009), at 48.

²⁰ Organisation for Security and Cooperation in Europe, Office for Democratic Institutions and Human Rights, 'Hate Crime: A Practical Guide' (OSCE, 2009), at 48.

the impact on the victim and members of the victim's community is usually the same, regardless of whether the offender acted out of hate... A victim who is targeted because the offender assumes that some protected characteristic of the victim makes him/her especially vulnerable to crime.²¹

2.18 In his Independent Review of Hate Crime Legislation, Judge Marrinan recommended that a third threshold of "by reason of" should be added to future hate crime legislation.²² In its consideration of how to best introduce hate crime legislation in NI, the Department of Justice opted not to include the "by reason of" threshold as it anticipated difficulty in obtaining evidence of a direct link between the alleged criminality and the reason for it by carried out.²³

2.19 Concerns have been raised regarding the effectiveness of the two thresholds of demonstration of hostility and motivated by hostility. In its 2013 investigation into racist hate crime in NI, the NIHRC observed that:

The majority of incidents investigated by the PSNI involved verbal abuse that met the 'demonstration of hostility' limb of the 2004 Order. However, PSNI officers rarely mentioned this aspect of the 2004 Order. Instead, there was a greater emphasis on the 'motivated by hostility' limb, which was considered difficult to prove.²⁴

2.20 The NIHRC recommended that hate crime legislation should include a 'by reason of' threshold to ensure that the law sufficiently reflects the harm done to victims and their communities through being targeted by reason of their immutable characteristics or identity.²⁵

2.21 It is notable that Clause 36 of the proposed Bill introduces a 'by reason of vulnerability' threshold for prosecuting an offence aggravated by vulnerability, including in relation to age or "physical or mental disability or illness".²⁶ The NIHRC is concerned that this distinguishes inappropriately

²¹ Organisation for Security and Cooperation in Europe, Office for Democratic Institutions and Human Rights, 'Hate Crime: A Practical Guide' (OSCE, 2009), at 48.

²² Hate Crime Review Team, 'Hate Crime Legislation in NI: Independent Review' (DoJ, 2020), at Recommendation 6.

²³ Department of Justice, 'Improving the Effectiveness of Hate Crime Legislation in NI: A Public Consultation and Call for Views' (DoJ, 2022), at para 6.40.

²⁴ Northern Ireland Human Rights Commission, 'Racist Hate Crime: Human Rights and the Criminal Justice System in NI' (NIHRC, 2013), at 70.

²⁵ Northern Ireland Human Rights Commission, 'Submission to Hate Crime Review Consultation' (NIHRC, 2020), at para 2.14.

²⁶ Clause 36, Criminal Justice (Sentencing etc) Bill.

between victims protected under Clause 33 of the Bill, and victims protected under Clause 36.

- 2.22 **The NIHRC recommends that the Committee for Justice seeks assurance from the Department of Justice that it has considered fully whether the third threshold of “by reason of” under Clause 33(2) will limit the effectiveness of this legislation. In particular the Department should ensure that the legislation reflects fully the harm done to victims and their communities by offending based on immutable characteristics or identities. The NIHRC doubts whether the legislation will be effective and recommends additional scrutiny to satisfy the requirements in law and in practice.**
- 2.23 **The NIHRC recommends that the Committee for Justice seeks clarification from the Department of Justice as to why a “by reason of” threshold was included under Clause 36 of the Bill and not Clause 33. The Committee should seek assurances from the Department that this distinction will not create a discrepancy in protections between victims under Clause 33 and Clause 36.**

Grounds of hostility

- 2.24 Clause 33(1)(a)-(d) provides that an offence can only be aggravated by religious hostility, racial hostility, hostility related to sexual orientation or hostility related to disability.²⁷
- 2.25 The duty to criminalise and pursue perpetrators of hate crime is founded on the principle that human rights derive from the “inherent dignity of the human person”.²⁸ Article 14 of the ECHR guarantees the enjoyment of all the rights in the Convention “without discrimination on any ground”. Human rights standards include grounds of sex, gender, language, religion, political or other opinion, national or social origin, property, birth or other status as protected characteristics.²⁹

²⁷ Clause 33(1)(a)-(d), Criminal Justice (Sentencing etc) Bill.

²⁸ Preamble, UN International Covenant on Economic Social and Cultural Rights 1966; Preamble, UN International Covenant on Civil and Political Rights 1966.

²⁹ Article 2(2), UN Covenant on Economic, Social and Cultural Rights 1966; Article 2(1), UN Covenant on Civil and Political Rights 1966; Article 2, UN Convention on the Elimination of Racial Discrimination 1965; Article 2, UN Convention on the Elimination of Discrimination against Women 1979; Article 2, UN Convention on the Rights of the Child 1989; Article 5, UN Convention on the Rights of Persons with Disabilities 2006; Article 14, European Convention on Human Rights 1950. See also E/C.12/GC/20, ‘UN ICESCR Committee General Comment No 20: Non-Discrimination in Economic, Social and Cultural Rights’, 2 July 2009, at para 7; ‘UN Human Rights Committee General Comment No 18: Non-Discrimination’, 1989, at para 3; ‘UN CERD Committee General Recommendation No 20: Non-Discrimination in the

2.26 Article 26 of UN ICCPR states that “all persons are equal before the law and are entitled without any discrimination to the equal protection of the law”. Article 26 continues:

the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

2.27 The UN Human Rights Committee has recommended that the UK Government and NI Executive “take steps to establish a clear and comprehensive legal framework to ensure that the prohibition of hate crimes applies to all protected groups”.³⁰ The NIHRC agrees.

2.28 Clause 33(1)(a)-(d) protects individuals from hate motivated incidents on the grounds of religion, race, sexual orientation and disability, which is welcomed, however there are other individuals who may be targeted because of immutable characteristics who are not protected under this new provision.

2.29 The NIHRC notes that under Clause 35(1) of the Bill, the Department of Justice may by regulations amend Clause 33 to:

- (a) add further kinds of hostility by which an offence may be aggravated;
- (b) specify the circumstances in which an offence is aggravated by hostility of a kind added;
- (c) specify one or more offences in respect of which an allegation that the offence is aggravated by hostility of the kind added may not be made under section 33(1).

Implementation of Rights’, 1996, at para 1; CEDAW/c/GC/28, ‘UN CEDAW Committee General Recommendation No 28: Core Obligations under Article 2’ 16 December 2010, at paras 8-13; CRC/GC/2003/5, ‘UN CRC Committee General Comment No 5: General Measures of Implementation’, 27 November 2003, at para 12; CRPD/C/GC/6, ‘UN CRPD Committee General Comment No 6: Equality and Non-Discrimination’, 26 April 2018, at paras 4-7.

³⁰ CCPR/C/GBR/CO/8, ‘UN Human Rights Committee Concluding Observations on the Eighth Periodic Report of the UK of Great Britain and NI’, 3 May 2024, at para 17.

- 2.30 Clause 35(5) specifies that regulations under subsection (1) may not be made unless “a draft of the regulations has been laid before, and approved by a resolution of, the Assembly”.³¹
- 2.31 Judge Marrinan in his review report observed that the present hate crime legislation in NI had developed in a piecemeal and uncoordinated way over many years, influencing his recommendation for a consolidated piece of legislation on hate crime.³² The NIHRC advises that the Department should reconsider including the full range of protected grounds on the face of the Bill now, rather than to wait to create fragmented legislation.
- 2.32 **The NIHRC recommends that the Committee for Justice ensures that the proposed grounds for aggravation by hostility under Clause 33(1)(a)-(d) are as comprehensive as possible, to ensure that all protected characteristics are recognised within the law and protected in practice.**

Sectarianism

- 2.33 Clause 33(1) does not include a direct reference to offences of hostility motivated by sectarianism.³³
- 2.34 In relation to sectarianism, the CoE Advisory Committee on the Framework Convention for the Protection of National Minorities noted that rights “should be guaranteed in a fair and transparent manner without leaving a political margin of appreciation and space for sectarianism”.³⁴ In the context of addressing hate crimes, including those that are motivated by sectarianism, the CoE Advisory Committee recommended that the UK Government and NI Executive:

further increase training for police and prosecutors on recording and prosecuting hate-motivated offences, to work with civil society to gather disaggregated data on these offences, build confidence in the mechanisms available and redouble efforts in developing the targeted measures to address the root causes of these offences.³⁵

³¹ Clause 35(3), Criminal Justice (Sentencing etc) Bill.

³² Hate Crime Review Team, ‘Hate Crime Legislation in NI: Independent Review’ (DoJ, 2020), at Recommendation 31.

³³ Clause 33(1), Criminal Justice (Sentencing etc) Bill.

³⁴ ACFC/OP/V, ‘CoE Advisory Committee on the Framework Convention for the Protection of National Minorities: Fifth Opinion on the UK’, 25 May 2023, at para 169.

³⁵ Ibid, at para 140.

- 2.35 Human rights law has not provided a definition of sectarianism. The UN CERD definition incorporates “race, colour, descent, or national or ethnic origin”.³⁶ The European Commission Against Racism and Intolerance adds “language”, “religion” and “nationality” to this list.³⁷
- 2.36 In his Independent Review of Hate Crime Legislation in NI, Judge Marrinan recommended that a definition of sectarianism be adopted in NI, citing as a good starting point the Scottish Hate Crime Review and its proposed definition of sectarianism.³⁸ That definition is “hostility based on perceived a) Roman Catholic or Protestant denominational affiliation; b) British or Irish citizenship, nationality or national origins; or c) a combination of a and b”.³⁹ Judge Marrinan recommended that a statutory aggravator of sectarianism was added to hate crime legislation.⁴⁰
- 2.37 The current Bill does not provide for a statutory aggravator of sectarianism. Previously, the NIHRC recommended that hate crime legislation should recognise the specific harm of sectarianism as a particular characteristic of hate crime under the umbrella of racism and racial discrimination.
- 2.38 **The NIHRC recommends that the Committee for Justice seeks clarity from the Department of Justice that hostility motivated by sectarianism is protected under the existing grounds of racial group and/or religious group. The Committee may also wish to suggest that the Department, working with the NI Executive, considers introducing a statutory definition of sectarianism that is sufficiently clear.**

Sex

- 2.39 Clause 33(1) does not include sex as a protected ground under the aggravated by hostility model.⁴¹

³⁶ Article 1, UN Convention on the Elimination of All Forms of Racial Discrimination 1965.

³⁷ European Commission against Racism and Intolerance, ‘Policy Recommendation No 7: National Legislation to Combat Racism and Racial Discrimination’, 7 December 2017, at para 1.

³⁸ Hate Crime Review Team, ‘Hate Crime Legislation in NI: Independent Review’ (DoJ, 2020), at Recommendation 12.

³⁹ Scottish Government, ‘Final Report of the Working Group on Defining Sectarianism in Scots Law’ (Scottish Government, 2018).

⁴⁰ Hate Crime Review Team, ‘Hate Crime Legislation in NI: Independent Review’ (DoJ, 2020), at Recommendation 13.

⁴¹ Clause 33(1), Criminal Justice (Sentencing etc) Bill.

- 2.40 Article 2 of the UN Convention on the Elimination of Discrimination against Women (UN CEDAW) requires States to pursue by “all appropriate means and without delay a policy of eliminating discrimination against women”.⁴²
- 2.41 The UN CEDAW Committee has observed that:
- gender based violence against women... remains pervasive in all countries, with high levels of impunity. It manifests itself on a continuum of multiple, interrelated and recurring forms, in a range of settings, from private to public, including technology mediated settings and in the contemporary globalised world it transcends national boundaries.⁴³
- 2.42 The UN CEDAW Committee recommended that the NI Executive “adopt legislative and comprehensive policy measures to protect women from all forms of gender-based violence” in NI.⁴⁴
- 2.43 The UN Convention Against Torture (UN CAT) Committee recommended that the UK Government and NI Executive should “take effective measures ... to ensure that all cases of gender-based violence ... are thoroughly investigated, that the alleged perpetrators are prosecuted and, if convicted, punished appropriately”.⁴⁵
- 2.44 In 2018, the then UN Special Rapporteur on Violence against Women, Dubravka Šimonović, noted that “despite the benefits and empowering potential of the Internet and ICT, women and girls across the world have increasingly voiced their concern at harmful, sexist, misogynistic and violent content and behaviour online”.⁴⁶ She recommended that States “apply a gender perspective to all online forms of violence, which are usually criminalised in a gender-neutral manner, in order to address them as acts of gender based violence”.⁴⁷
- 2.45 Judge Marrinan recommended that “sex/gender be included as a protected characteristic” within hate crime legislation in NI, making clear that this

⁴² Article 2, UN Convention on the Elimination of Discrimination against Women, 1979.

⁴³ CEDAW/C/GC/35, UN CEDAW Committee General Recommendation No 35: Gender Based Violence against Women’, 26 July 2017, at para 6.

⁴⁴ CEDAW/C/GBR/CO/8, 'UN CEDAW Committee Concluding Observations on the Eighth Periodic Report of the United Kingdom of Great Britain and Northern Ireland', 14 March 2019, at para 30(b).

⁴⁵ CAT/C/GBR/CO/6, 'UN CAT Committee Concluding Observations on the Sixth Periodic Report of the United Kingdom of Great Britain and Northern Ireland', 7 June 2019, at para 57(c).

⁴⁶ A/HRC/38/47 'UN Special Rapporteur on Violence against Women, its Causes and Consequences, Dubravka Šimonovic, Report on Online Violence against Women and Girls from a Human Rights Perspective', 18 June 2018, at para 14.

⁴⁷ Ibid, at para 102.

was inclusive of gender identity.⁴⁸ Judge Marrinan recommended that variations in sex characteristics, such as intersex, be included as a protected characteristic.⁴⁹

2.46 **The NIHRC recommends that the Committee for Justice introduces an amendment to include sex as a protected characteristic under Clause 33(1) of the Criminal Justice (Sentencing etc) Bill.**

Gender Sensitive Approach

2.47 The UN CEDAW Committee, UN CAT Committee and UN Special Rapporteur on Violence Against Women and Girls, make it clear that all forms of gender-based violence should be prohibited, protected against and effectively remedied.⁵⁰ This obligation applies to a range of settings, such as public, private, online and violence that transcends national boundaries.⁵¹

2.48 Human rights standards are clear that a gender-sensitive approach should be taken to address gender-based violence.⁵² Human rights are also clear that existing gender-neutral laws and policies should be examined “to ensure that they do not create or perpetuate existing inequalities and repeal or modify them if they do so”.⁵³ The CoE Group of Experts on Action against Women and Domestic Violence (GREVIO) Committee has recommended that the UK Government and NI Executive “ensure a gender-sensitive implementation of laws and policies on all forms of violence against women covered by the Istanbul Convention”.⁵⁴ Similarly, the CoE Group of Experts on Action against Trafficking in Human Beings

⁴⁸ Hate Crime Review Team, ‘Hate Crime Legislation in NI: Independent Review’ (DoJ, 2020), at para 7.138.

⁴⁹ Hate Crime Review Team, ‘Hate Crime Legislation in NI: Independent Review’ (DoJ, 2020), at para 7.139.

⁵⁰ CEDAW/C/GBR/CO/8, ‘UN CEDAW Committee Concluding Observations on the Eighth Periodic Report of the United Kingdom of Great Britain and Northern Ireland’, 14 March 2019, at para 30(b); CAT/C/GBR/CO/6, ‘UN CAT Committee Concluding Observations on the Sixth Periodic Report of the United Kingdom of Great Britain and Northern Ireland’, 7 June 2019, at para 57(c); CEDAW/C/GC/35, UN CEDAW Committee General Recommendation No 35: Gender Based Violence against Women’, 26 July 2017, at para 6; ‘Oral End of Mission Statement by the UN Special Rapporteur on Violence against Women, Rashida Manjoo on Visit to the UK and NI’, 16 June 2015; A/HRC/38/47 ‘UN Special Rapporteur on Violence against Women, its Causes and Consequences, Dubravka Šimonovic, Report on Online Violence against Women and Girls from a Human Rights Perspective’, 18 June 2018, at para 14.

⁵¹ CEDAW/C/GC/35, UN CEDAW Committee General Recommendation No 35: Gender Based Violence against Women’, 26 July 2017, at para 6.

⁵² CEDAW/C/GC/35, UN CEDAW Committee General Recommendation No 35: Gender Based Violence against Women’, 26 July 2017; A/HRC/38/47 ‘UN Special Rapporteur on Violence against Women, its Causes and Consequences, Dubravka Šimonovic, Report on Online Violence against Women and Girls from a Human Rights Perspective’, 18 June 2018, at para 102.

⁵³ CEDAW/C/GC/35, UN CEDAW Committee General Recommendation No 35: Gender Based Violence against Women’, 26 July 2017, at para 32.

⁵⁴ CoE Group of Experts on Action Against Violence Against Women and Domestic Violence, ‘Baseline Evaluation Report on Legislative and Other Measures Giving Effect to the Provisions of the CoE Convention on Preventing and Combating Violence Against Women and Domestic Violence (Istanbul Convention): UK’ (CoE, 2025), at 9.

(GRETA) Committee note the requirement on member states to ensure gender mainstreaming in the development and implantation of measures to prevent human trafficking.⁵⁵

- 2.49 Reflecting that gender-based abuse and violence is violence that is directed at a woman because she is a woman or that affects women disproportionately,⁵⁶ specific obligations are set out within relevant human rights standards. However, general non-discrimination protections apply to sex and gender more broadly.⁵⁷ The UN CAT Committee acknowledges that men can also be subject to gendered violations of human rights.⁵⁸ This can include being subject to human rights violations “on the basis of their actual or perceived non-conformity with socially determined gender roles”.⁵⁹ The UN CAT Committee is clear that States should ensure that any situations of gender-based violence are identified and measures taken to punish and prevent them.⁶⁰ It identifies “continual evaluation” as “a crucial component of effective measures”.⁶¹
- 2.50 The NIHRC stresses that the UN CAT Committee’s comments should not be used as a basis to adopt a gender-neutral approach. The issues affecting women and girls are largely different to those affecting men and boys; this should be reflected as such in law and practice. For a gender-sensitive approach to be effective, gender-based issues should be dealt with in a gender sensitive way that recognises each issue as its own separate entity.

Gender identity

- 2.51 Clause 33(1) does not include gender identity as a protected ground under the aggravated by hostility model.
- 2.52 The then UN Independent Expert on Sexual Orientation and Gender Identity, Victor Madrigal-Borloz, has recommended that the UK Government and NI Executive:

⁵⁵ CoE Group of Experts on Action against Trafficking in Human Beings, ‘Fourth Evaluation Round on Measures to Prevent and Detect Vulnerabilities to Human Trafficking: UK’ (CoE, 2026), at para 34.

⁵⁶ ‘UN CEDAW Committee General Recommendation No 19: Violence Against Women’, 1992, at para 6.

⁵⁷ Article 14, European Convention on Human Rights 1950; Preamble, UN Convention on the Elimination of All Forms of Racial Discrimination 1965; Articles 2(1) and 26, UN International Covenant on Civil and Political Rights 1966; Article 2(2), UN International Covenant on Social, Economic and Cultural Rights 1966; Article 2, UN Convention on the Rights of the Child 1989; Article 3(g), UN Convention on the Rights of Persons with Disabilities 2006.

⁵⁸ CAT/C/GC/2, ‘UN CAT Committee General Comment No 2: Implementation of Article 2 of the UN CAT by State Parties’, 24 January 2008, at para 22.

⁵⁹ Ibid.

⁶⁰ Ibid.

⁶¹ Ibid, at para 23.

ensure, through all necessary means, that homophobic, BI phobic and transphobic hate crimes are effectively investigated, accurately categorised and prosecuted, and that those found guilty are punished with sentences commensurate with the gravity of the offence, whereas victims are provided with effective remedies.⁶²

- 2.53 The UN High Commissioner for Human Rights reported on the scale of violence experienced by transgender people and noted that “violence motivated by homophobia and transphobia is often particularly brutal, and in some instances characterised by levels of cruelty exceeding that of other hate crimes”.⁶³
- 2.54 The Parliamentary Assembly of the Council of Europe adopted a resolution on the discrimination of transgender people in Europe called on states to explicitly “prohibit discrimination based on gender identity in national non-discrimination legislation” and to “enact hate crime legislation which affords specific protection for transgender people against transphobic crimes and incidents”.⁶⁴
- 2.55 Principle 5 of the Yogyakarta Principles on the right to security of the person makes clear that “everyone, regardless of ... gender identity, has the right to security of the person and to protection by the State against violence or bodily harm, whether inflicted by government officials or by any individual or group”.⁶⁵ Under these Principles, States should “take all necessary policing and other measures to prevent and provide protection from all forms of violence and harassment related to sexual orientation and gender identity” and to “take all necessary legislative measures to impose appropriate criminal penalties for violence, threats of violence, incitement to violence and related harassment, based on the... gender identity of any person or group of persons”.⁶⁶
- 2.56 In his Independent Review of Hate Crime Legislation in NI, Judge Marrinan was satisfied that transgender identity required protection under hate

⁶² A/HRC/56/49/Add.1, ‘Report of the Independent Expert on Protection against Violence and Discrimination Based on Sexual Orientation and Gender Identity: Visit to the UK of Great Britain and NI’, 11 April 2024, at para 90(a).

⁶³ A/HRC/29/23, ‘Report of the Office of the United Nations High Commissioner for Human Rights on Discrimination and Violence against Individuals based on their Sexual Orientation and Gender Identity for Human Rights’, 4 May 2015, at para 23.

⁶⁴ CoE Parliamentary Assembly, ‘Resolution 2048 on Discrimination against Transgender People in Europe’, 22 April 2015, at para 6.1.4.

⁶⁵ Yogyakarta Principles on the Application of International Human Rights Law in Relation to Sexual Orientation and Gender Identity 2006.

⁶⁶ Ibid.

crime law. Judge Marrinan noted that hate crime legislation in England and Wales currently includes transgender identity as a protected ground, noting that it “is important, where possible, to offer similar levels of protection to groups throughout the United Kingdom”.⁶⁷ In Recommendation 9 of the Independent Hate Crime Review, Judge Marrinan recommends that “sex/gender and variations in sex characteristics” be included as protected characteristics under the hate crime aggravator, specifying that “the protected characteristic of sex/gender includes transgender identity”.⁶⁸

- 2.57 The NIHRC recommends that the Committee for Justice introduces an amendment to Clause 33(1) of the Criminal Justice (Sentencing etc) Bill to ensure that gender identity is protected under hate crime legislation. This should be informed by consultation with affected individuals and their representative organisations.**

Intersectionality

- 2.58 Clause 33 of the Bill does not capture multiple and intersectional forms of hostility. Clause 33(3) makes clear that, for the purposes of subsection (2), it is irrelevant if the alleged perpetrator’s hostility is based to any extent on any other factors not mentioned within subsection (2).⁶⁹
- 2.59 Human rights standards recognise the specific harm caused by hostility on the grounds of two or more particular characteristics. The UN CEDAW Committee, UN CRPD Committee and UN CERD Committee have recognised the overlapping harms of multiple and intersectional discrimination.⁷⁰
- 2.60 Recognising multiple and intersecting forms of hostility benefits hate crime legislation in several ways. It offers acknowledgement of the experience of the victim in its entirety. In *BS v Spain*, the ECtHR observed that the State failed to take account “of the applicant’s particular vulnerability inherent in

⁶⁷ Hate Crime Review Team, ‘Hate Crime Legislation in NI: Independent Review’ (DoJ, 2020), at para 7.131.

⁶⁸ Hate Crime Review Team, ‘Hate Crime Legislation in NI: Independent Review’ (DoJ, 2020), at Recommendation 9.

⁶⁹ Department of Justice, ‘Explanatory and Financial Memorandum to the Criminal Justice (Sentencing etc) Bill as introduced in the Northern Ireland Assembly on 03 March 2026, (Bill 26/22-27)’ (DOJ, 2026), at 28.

⁷⁰ CEDAW/C/GC/35, ‘UN CEDAW Committee General Recommendation No 35: Gender Based Violence against Women’, 26 July 2017, at para 12; CRPD/C/GBR/CO/1, ‘UN CRPD Committee Concluding Observations on the Initial Report of the United Kingdom of Great Britain and Northern Ireland’, 29 August 2017, at para 15; ‘UN CERD Committee General Recommendation No 25: Gendered Related Dimensions of Racial Discrimination’, 20 March 2000, at para 3.

her position as an African woman working as a prostitute”.⁷¹ The ECtHR did not expressly mention multiple or intersectional forms of discrimination, but recognised that a person’s sex, race and socio-economic status was relevant and should be considered.⁷²

- 2.61 Taking account of multiple and intersecting forms of discrimination will enable more robust data collection which would provide an evidence base should the Minister for Justice wish to add to the list of protected characteristics at Clause 33, per the powers granted under Clause 35.⁷³ Finally, the recognition of multiple and intersecting forms of discrimination will aid in the allocation of resources to support victims and effectively address hate crime in NI.
- 2.62 Judge Marrinan recommended in his Independent Review of Hate Crime Legislation in NI, that “any new legislation should provide appropriate recognition of the importance of intersectionality and be reflected in the drafting of the statutory aggravations to existing offences”.⁷⁴

3.0 Part 6 - Clause 34 – Consequences of Aggravation by Hostility

Effective Data Collection and Monitoring

- 6.6 Clause 34 of the Bill requires that, upon conviction, the court must state that the offence is aggravated by the offender’s hostility and provide reasons for this finding.⁷⁵ The court must also record the offence as aggravated, consider this aggravation as increasing the seriousness of the offence when determining the sentence, and explain how it affects the final sentence.
- 6.7 The UN International Covenant on Economic, Social and Cultural Rights (ICESCR) Committee has clarified that States have an obligation to

⁷¹ B.S. V Spain, application No 47159/08, judgement of 24 July 2012, at para 62.

⁷² Ibid.

⁷³ Clause 35, Criminal Justice (Sentencing etc) Bill.

⁷⁴ Recommendation 11.

⁷⁵ Clause 34, Criminal Justice (Sentencing etc) Bill.

monitor effectively implementation measures to comply with the right to non-discrimination and equality.⁷⁶

6.8 The UN CERD Committee recommended that the UK Government and NI Executive:

e) systematically collect disaggregated data on racist hate crimes, including cases involving intersectional motivations, ensure that measures to combat racist hate crimes are developed with the meaningful participation of groups affected, and undertake a thorough impact assessment of measures adopted.⁷⁷

6.9 The CoE Advisory Committee recommended that the UK Government and NI Executive:

further increase training for police and prosecutors on recording and prosecuting hate-motivated offences, to work with civil society to gather disaggregated data on these offences, build confidence in the mechanisms available and redouble efforts in developing the targeted measures to address the root causes of these offences.⁷⁸

6.10 Effective data collection, monitoring and reporting across the criminal justice process is essential to assess the effectiveness of legislative measures against hate crime. Anonymised and disaggregated data emanating from the provisions should be systematically incorporated into publicly available court statistics. Furthermore, reports should present information on the number of offences charged as aggravated by hostility, including cases where the aggravating elements were later withdrawn or determined to be unproven to aid with monitoring the effectiveness of this legislation.

6.11 The NIHRC recommends that the Committee for Justice seeks assurance from the Department of Justice that data emanating from Clause 34 of the proposed Bill will be incorporated into publicly available court statistics to systematically report on anonymised, disaggregated data on cases involving aggravation by

⁷⁶ E/C.12/GC/20, 'UN ICESCR Committee General Comment No 20: Non-discrimination in Economic, Social and Cultural Rights', 2 July 2009, at para 41.

⁷⁷ CERD/C/GBR/CO/24-26, 'UN CERD Committee Concluding Observations on the Combined Twenty-fourth to Twenty-sixth Periodic Reports of the UK of Great Britain and NI', 23 August 2024, at paras 20(a)-20(h).

⁷⁸ ACFC/OP/V, 'CoE Advisory Committee on the Framework Convention for the Protection of National Minorities: Fifth Opinion on the UK', 25 May 2023, at para 140.

hostility. This should also cover cases where such elements were discontinued or not proven in Court.

6.12 The NIHRC recommends that the Committee for Justice seeks assurance from the Department of Justice that it intends to regularly review hate crime provisions. These review periods should involve all affected groups, particularly victims, to ensure these measures remain effective throughout the criminal justice process, from reporting to sentencing.

Contact us

For inquiries: [REDACTED];
[REDACTED]

www.nihrc.org | info@nihrc.org | +44 (0)28 9024 3987
4th Floor, Alfred House, 19-21 Alfred Street, Belfast, BT2 8ED

