

**Submission on the General Scheme Criminal Justice (Hate Crime) Bill 2021**

Pavee Point Traveller and Roma Centre has been working to challenge racism and promote Traveller and Roma inclusion in Ireland since 1985. The organisation works from a community development perspective and promotes the realisation of human rights and equality for Travellers and Roma in Ireland. The organisation is comprised of Travellers, Roma and members of the majority population, who work together in partnership to address the needs of Travellers and Roma as minority ethnic groups experiencing exclusion, marginalisation and racism. Working for social justice, solidarity and human rights, the central aim of Pavee Point is to contribute to improvement in the quality of life and living circumstances of Irish Travellers and Roma.

**Introduction:**

Pavee Point Traveller and Roma Centre welcomes the introduction of the Criminal Justice (Hate Crime) Bill 2021 and the opportunity to contribute to this consultation process. Pavee Point has advocated for many years for effective legislation which acknowledges that hate speech and hate crime exist in Ireland with devastating impacts for victims. Travellers, Roma, and other groups need protection under the law and this protection must be meaningful and effective.

This submissionreviews the current General Scheme of the Criminal Justice (Hate Crime) Bill and provides key recommendations on Head 2: interpretation; Part 1: incitement to hatred; and Part 2: hate crime. The submission concludes by highlighting some of the key measures needed in conjunction with the legislation to ensure hate crime and hate speech are adequately addressed.

**Context:**

As minority ethnic groups, Travellers and Roma experience persistent racism and discrimination, in intersection with discrimination on the basis of gender and other equality issues such as disability. As a result, Travellers and Roma are among the most marginalised and excluded individuals and groups in Ireland. Due to this widespread racism and discrimination, both Roma and Travellersare subjected to hate crime and hate speech on a daily basis byprivate and publicactors (see Appendix 1 for a list of examples).

In 2020, the EU Fundamental Rights Agency (FRA) conducted a survey on Rights and Living Conditions of Travellers in Ireland as part of a wider European study. They found thatamong all surveyed Traveller and Roma groups, Irish Travellers (52%) have the third highest rate of hate-motivated harassment (such as offensive comments on the street or online)[[1]](#footnote-2).

INAR’s iReports on Racism in Ireland have consistently found low levels of reporting fromTravellers. Travellers reported 11% of discrimination cases, but almost no crime orother racist incidents[[2]](#footnote-3). Recent research in the UK[[3]](#footnote-4) highlights that hate speech and hate crime against Travellers and Roma often goes under-reported due to barriers such as low language and literacy levels, and distrust of authorities. Also, the research found that when Travellers and Roma do report these incidentsthere was a low level of response due to institutional racism.

Pavee Point believes strongly that hate crime and hate speech cannot be addressed in a vacuum and that the new legislation must be one tool within a wider, holistic approach to tackling institutional and structural racism and other prejudices within Irish society. The upcoming National Action Plan against Racism provides a timely frame for the associated actions and special measures immediately essential to support implementation of the Bill. Further ongoing mechanisms also need to be developed and implemented in collaboration with those groups affected by discrimination, prejudice and racism in order to find meaningful solutions to these significant and deep-rooted problems.

Pavee Point would also like to highlight the importance of taking an all-island approach to the issues of hate speech and hate crime, ensuring equal protections both north and south. Under the Good Friday agreement, the Government needs to ensure parity in equality and human rights protections both in the Republic and Northern Ireland.

**Analysis of the General Scheme**

**Head 2 Interpretation**

**Definition of Hatred:**In the current bill, hatred is defined as:

*“hatred” means detestation, significant ill will or hostility, of a magnitude likely to lead to harm or unlawful discrimination against a person or group of people due to their association with a protected characteristic”*

This appears to be a new definition not previously used in other legislation/policy. It is important that there is clarity and consistency in the definitions in the bill in order to ensure the legislation is effective and encompasses both hate speech and hate crime. Pavee Point suggests that the definition of hatred used should be in line with international standards, including the European Commission Against Racism and Intolerance[[4]](#footnote-5) and the UN Special Rapporteur[[5]](#footnote-6).

Another suggestion is to consider the removal of the words ‘significant’ and ‘magnitude’ from the current definition, as these words leave the law open to interpretation and could severely restrict the successful use and proportionality of the law.

**Protected Categories:** Pavee Point notes the inclusion of broad categoriesof race; colour; nationality; religion, ethnic ornational origin; sexual orientation; gender; and disability.We welcome that the legislation specifically acknowledges Traveller ethnicity. This is vital to ensure that this legislation is accessible and inclusive of Travellers.

PaveePoint would like to highlight that there are two terms used within the definitions: “ethnic origin” and “ethnicity”. For clarity within the legislation, our preference is for the term “ethnicity”.

**Part 1 Incitement to Hatred**

**The Offence of Incitement to Hatred**

**Head 3** states that: *(1) A person is guilty of an offence who –communicates to the public or a section of the public by any means, for the purpose of inciting, or being reckless as to whether such communication will incite, hatred against another person or group of people due to their real or perceived association with a protected characteristic.*

Pavee Point agrees with this definition of incitement to hatred. It is important that it covers both the *“real or perceived”*association with a protected characteristic, as this means the onus is not on the victim to prove membership of a protected group.

This definition also goes further than previous legislation, as it will be an offence to incite hatred, as well as *“being reckless as to whether such communication will incite”*

Finally, we welcome that this definition covers communications *“by any means”*as this ensures that hate speech by any medium, including online hate speech is covered under the law. This is particularly important for Travellers and Roma, as online hate speech targeting both communities is endemic in Ireland.

**The Defences for Publishing or otherwise Disseminating, or Broadcasting Hate Speech**

**Head 3 (5)** states: *in a prosecution for an offence under paragraph (3), it shall be adefence to prove that –(a) the material concerned consisted solely of*

* *a reasonable and genuine contribution to literary, artistic, political, scientific, or academic discourse*
* *an utterance made under Oireachtas privilege,*
* *fair and accurate reporting of court proceedings,*
* *material which has a certificate from the authorising body, in the case of a film or book*
* *a communication necessary for any other lawful purpose, including law enforcement or the investigation or prosecution of an offence under this Act*

Pavee Point has some concerns about the extension of this list of defences, which includes use for political discourse, and materials with a certificate from authorising bodies. The list of defences was much more concise in the 1989 Incitement to Hatred Act and we need to ensure defences are not overly broad.

* *material which has a certificate from the authorising body, in the case of a film or book*

It is not clear who the authorising bodies are for the production of films and books and how this is regulated. Are there named film and publishing bodies that provide such certification?

* *a reasonable and genuine contribution to literary, artistic, political, scientific, or academic discourse*

Unfortunately, we have seen in recent years in Ireland a more visible presence of far-right organisations and political parties. These groups use hate speech as part of their “political discourse” which incites hatred against a number of protected groups, including Travellers and Roma. We saw this in the racist political discourse used in 2018 in Peter Casey’s Presidential Campaign[[6]](#footnote-7).

Pavee Point also has questions about how *‘reasonable’* and *‘genuine’* contributions are to be assessed in this defence, and whether there will be accompanying standards/guidance for the judiciary?

**Part 2 Hate Crime**

**Head 4 – 6 Named Aggravated Offences**:

This General Scheme lists aggravated offences within the following amended acts: Non- Fatal Offences against the Person Act 97, Criminal Damages Act 91, Public Order Act 94.

Pavee Point welcomes these named offences; however, we believe that the legislation could extend this list to acknowledge the differences in how discrimination manifests for all protected groups. For example: people with disabilities experience higher incidences of theft/fraud and gender/disability groups more commonly report being victims of sexual offences[[7]](#footnote-8). These offences are currently not included in the aggravated offences list and should be considered.

The current list of offences was developed based on the Department’s wide consultation process, which Pavee Point welcomed and participated in. However, the consultations concentrated primarily on hate speech rather than hate crime, and this may have led to a narrower list of aggravated offences named in the Bill.

**Head 4-6 Offences Aggravated by Prejudice**

In the current bill the named offences are defined as being aggravated by prejudice when:

*..motivated by prejudice on the part of the perpetrator* ***against a protected characteristic*** *as defined by section 2 of the Hate Crime Act 2021.*

Pavee Point recommends that this wording is amended in line with the definition of incitement to hatred within this bill:

*..hatred against another person or group of people due to their* ***real or perceivedassociationwith a protected characteristic****.*

It is important to include the *‘real or perceived association’* within the definitions of aggravated offences as it provides consistency in the legislation. It alsoensures that the onus is not on the victim of a hate crime to prove membership of a protected group.

**Head 8 – Determining whether an offence was motivated by prejudice**

Currently, the Bill lists eight bias indicators that can be taken into account when determining the likelihood that an incident was motivated by hate. Pavee Point believes that these bias indicators would be better placed in a good practice guide which accompanies the act and is circulated to the judiciary, Gardaí and relevant NGOs.

If the legislationis to be effective, It is importantthat it includes both a **demonstration** and a motivation test of proof for hate crime offences. This would ensure an effective legal remedy, where demonstrations of hate (such as hostile language, gestures, communications etc) would be admissible as evidence of demonstrating hostility[[8]](#footnote-9).

Relying on a motivation test alone could result in difficulties enforcing the legislation.It can be difficult to prove people’s thinking/motivation and this could lead to low levels of prosecution, as we saw with the Incitement to Hatred Act 1989.

Pavee Point suggests that the legislationshould aspire to the most effective practice and use, for example, a similar approach to the England and Wales, section 28 of the Crime and Disorder Act 1998[[9]](#footnote-10)which includes both motivation and demonstration tests, stating:

*An offence is****[******F1****racially or religiously aggravated****]****for the purposes of sections 29 to 32 below if—(a)at the time of committing the offence, or immediately before or after doing so, the offender* ***demonstrates towards the victim*** *of the offence hostility based on the victim’s membership (or presumed membership) of a****[******F2****racial or religious group****]****; or(b)the offence is motivated (wholly or partly) by hostility towards members of a****[******F2****racial or religious group****]****based on their membership of that group*

**Head 9: Denial or Gross Trivialisation of Crimes of Genocide**

Pavee Point welcome the inclusion of the offence outlined in Head 9. This is particularly important for the Roma community who were victims of genocide during the Second World War, with an estimated 500,000 Roma killed by the Nazi regime. Roma have also experienced a long struggle for their recognition as victims of genocide and these rights must be protected.

Pavee Point recommends that the offence should also be extended to includethe *public denial, trivialisation, justification or condoning of crimes of genocide, crimes against humanity or war crimes[[10]](#footnote-11)* in accordance with the European Commission Against Racism and Intolerance (ECRI) recommendation in Ireland’s 2019 ECRI report.

**Additional measures needed in conjunction with the Hate Crime Legislation[[11]](#footnote-12)**

In order for this legislation to be effective in preventing and addressing hate speech and hate crimes against minority ethnic groups, including Travellers and Roma, it is necessary for the Government to roll out special measures alongside the legislation.The upcoming National Action Plan against Racism provides a timely frame for some of these associated actions and special measures:

* Set and monitor annual **targets to reduce the number of race hate crimes**against protected groups, including members of the Traveller and Roma communities
* Provide **training to all Gardaí and Criminal Justice Personnel** on hate speech and hate crime and its impacts on all the protected categories named in the legislation
* Develop mechanisms to gather and publish**disaggregated data** regarding the prosecution and sentencing of hate crimes in line with human rights standards,
* Create a**public awareness campaign**to encourage members of the public to report hate crimes, considering the needs of the different protected groups
* Publish **guidelines** on the investigation, prosecution of hate crime, and working with victims, witnesses or offenders in a case involving a hate element.
* Ensure **anti-racism education and training** for An Garda Síochána includes anti-Traveller and Roma racism and discrimination and targets recruits/trainees and officials at all levels and ranks
* **Build trust and confidence** among Traveller and Roma communities in the Gardaí’s commitment to respond effectively to their complaints of race hate crime, including a commitment to a diverse **Garda recruitment policy inclusive of Travellers and Roma**

**Summary of Recommendations**

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| * Take an **all-island approach** to hate speech and hate crime legislation, ensuring parity of protections in both jurisdictions.
* Draft provisions in a clear and precise manner to ensure effectiveness of the legislation, with **definitions meeting international standards**, including ECRI, UN Special Rapporteur (footnotes 4 & 5 page 3).
* For clarity, use the term **‘ethnicity’** consistently within the legislation
* **Review the list of aggravated offences**, considering how discrimination manifests for all named protected groups, and consider the **inclusion of theft/burglary, and sexual crimes as named offences.**
* Ensure the legislation protects people who, due to their *real or perceived* association with a protected characteristic, are victims of hate crime. This is in line with the protections afforded to victims of incitement in Head 3
* **Review the broad list of defences** for publishing or otherwise disseminating, or broadcasting hate speech, particularly consider the removal of the defence of political discourse, and films and books approved by authorising bodies
* Within Head 8, **include both a demonstration, and motivation test of proof** for hate crime offences. This is vital to ensure the effectiveness of the legislation and the ability to bring successful prosecutions
* Extend the offence named in Head 9 to includethe public denial, trivialisation, justification or condoning of crimes of genocide, crimes against humanity or war crimes in line with international standards
* Roll out **special measures** alongside the legislation to ensure the legislation is implemented effectively and Travellers and Roma feel included and protected by the law. The upcoming **National Action Plan against Racism** provides a timely frame for these associated actions and special measures and this must be adequately resourced, with clear timelines and monitoring framework.
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**Annex 1: Examples of Hate Speech/Hate Crime Experienced by Travellers and Roma**

**Irish Examples:**

**Anti-Roma and Traveller Statements by Public Officials:**

1. In 2018, Presidential Election, candidate Peter Casey made a number of racist remarks about Travellers*[[12]](#footnote-13)* during his campaign. He came second in the election, with 23.25% of all votes.

2. In 2013, Fianna Fáil Councillor: “there should be an isolated community of them [Travellers] some place…”. The statement was backed by a Fine Gael Councillor who noted that “They [Travellers] can be sent to Spike Island for all I care”[[13]](#footnote-14).

3. In 2012, District Court judge and former Fianna Fail member of parliament: “[Travellers are] Neanderthal men … abiding by the laws of the jungle”*[[14]](#footnote-15)*

4. In 2013, a Dublin Circuit Criminal Court Justice: “I assume from his appearance that he’s from the Roma community who came here to do what all of them tend to do, to use the streets to beg”*[[15]](#footnote-16)*

**Anti-Roma Protests in Waterford, 2014:**

Over 100 people gathered chanting “Roma, out, out, out” and smashing windows and kicking doors in. Families had to be evacuated from their homes due to the violence[[16]](#footnote-17).

**Burning and Vandalising Travellers’ Homes:**

1. Donegal, 2013: A house allocated to a Traveller family was burnt in an arson attack to prevent the family from moving in. The events were followed by anti-Traveller statements made by local councillors on local radio[[17]](#footnote-18)

2. Tipperary, 2019: A Traveller family was allocated a house and was ready to move in when the house was vandalised with significant damage made to the house[[18]](#footnote-19).

**Online Hate Speech:** “Promote the use of Kn\*\*\*er babies for Shark Bait” – Court Case 2011: A Facebook page suggesting to use Traveller babies as shark bait and fed to zoo animals was found ‘obnoxious, revolting and insulting’ by the Judge but was not deemed to be incitement to hatred[[19]](#footnote-20).

**International Examples:**

1. In 2003, **Johnny Delany**, an Irish Traveller boy, was beaten to death by two teenagers who were heard to say that he deserved it because he was ‘only a Gypsy’. This was an example of where the police reported and investigated the incident as a race hate crime, but the judge disagreed that the attack was racially motivated, stating "What you did was not done because Johnny was a gypsybut was a spontaneous flare of violence between two groups of youths."[[20]](#footnote-21)

3. In the **“La Continassa” case[[21]](#footnote-22)**, the Turin Criminal Court found people guilty of a violent assault on a Roma camp. In this case the Italian court acknowledged the aggravating circumstance of the racist motivation. The court made reference to several factors which clearly revealed the anti-Roma motivation behind these acts such as insults, verbal racist abuse and threats of violence that clearly prove hate bias. The court also pointed to the failure of the authorities to protect the community from the attack, and that the small number of officers involved actually encouraged an upsurge in violence that led to the events condemned in this decision.

1. EU FRA (2020) Travellers in Ireland https://fra.europa.eu/sites/default/files/fra\_uploads/fra-2020-roma-and-travellers-survey-country-sheet-ireland\_en.pdf EU FRA (2020) Roma and Travellers in six countries https://fra.europa.eu/en/publication/2020/roma-travellers-survey [↑](#footnote-ref-2)
2. INAR (2020) iReport Reports of Racism in Ireland https://inar.ie/wp-content/uploads/2021/03/2020\_iReport.pdf [↑](#footnote-ref-3)
3. Bucks (2020) Hate: “As regular as rain” A pilot research project into the psychological effects of hate crime on Gypsy, Traveller and Roma (GTR) communities [↑](#footnote-ref-4)
4. ECRI (2016) General Policy Recommendation 15 Combatting Hate Speech*.* [↑](#footnote-ref-5)
5. UN Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression *“Hatred” is a state of mind characterized as intense and irrational emotions of opprobrium, enmity and detestation towards the target group”.* [↑](#footnote-ref-6)
6. Irish Independent (October 17th 2018) Casey sparks outrage with his 'racist' remarks on Travellers “Travellers should not be recognised as an ethnic minority because they are "basically people camping in someone else's land". [↑](#footnote-ref-7)
7. Crown Prosecution Services Annual Report (2018/19) https://www.cps.gov.uk/sites/default/files/documents/publications/CPS-Annual-Report-and-Accounts-2018-19.pdf [↑](#footnote-ref-8)
8. Consultation withLord Mayor of Dublin (2021) How to tackle hate crime and protect our people https://www.youtube.com/watch?v=i73hjnBf0AI [↑](#footnote-ref-9)
9. UK Public General Acts Crime and Disorder Act 1998 https://www.legislation.gov.uk/ukpga/1998/37/section/28 [↑](#footnote-ref-10)
10. ECRI (2019) ECRI Report on Ireland (fifth monitoring cycle) Recommendation 8 https://rm.coe.int/fifth-report-on-ireland/168094c575 [↑](#footnote-ref-11)
11. Measures are based on:

Traveller Movement (2016) Briefing: Hate Crime, discrimination and the Gypsy, Traveller and Roma communities. https://travellermovement.org.uk/phocadownload/userupload/Briefings/Hate-crime.pdf

 ICCL (2017) Lifecycle of a hate crime https://www.iccl.ie/wp-content/uploads/2018/05/Hate-Crime-Report-LR-WEB.pdf

European Commission (2021) Working Group on hate crime recording, data collection and encouraging reporting file:///C:/Users/jenli/Downloads/kgp\_on\_encouraging\_reports\_of\_hate\_crime\_layout\_final\_54AE7EA4-0F63-9881-A830B8AEC85CA82C\_75196.pdf

ECRI (2019) fifth report on Ireland https://www.coe.int/en/web/european-commission-against-racism-and-intolerance/ireland [↑](#footnote-ref-12)
12. ‘Travellers should not be recognised as an ethnic minority because they are basically people camping in someone else’s land, and that Travellers are not paying their fair share of taxes in society’’, in Loughlin, E., D. McConnell, ‘Peter Casey refuses to back down over Traveller comments’, *Irish Examiner*, 18 October 2018, https://www.irishexaminer.com/breakingnews/ireland/peter-casey-refuses-to-back-down-over-traveller-comments-876533.html. [↑](#footnote-ref-13)
13. Bohan, C., ‘FF councillor criticised for anti-Traveller comments’, *The Journal.ie*, 17 January 2013, https://www.thejournal.ie/fianna-fail-councillor-sean-mceniff-traveller-comments-758655-Jan2013/; ‘Councillor opinion on Travellers’, *The Irish Times*, 24 January 2013, https://www.irishtimes.com/news/councillor-opinion-on-travellers-1.965292. [↑](#footnote-ref-14)
14. ‘Calls for judge to resign over ‘Neanderthal’ comment on Travellers, *The Journal*, 12 September 2012, https://www.thejournal.ie/judge-travellers-comments-law-of-the-jungle-592523-Sep2012/. [↑](#footnote-ref-15)
15. McMahon, C., ‘He should never have been in our country’, *Irish Mirror*, 21 March 2013, https://www.irishmirror.ie/incoming/roma-gypsy-who-attacked-two-1777252. [↑](#footnote-ref-16)
16. Holland, K., ‘Waterford Anti-Roma Protests Criticised as ‘Cowardly and Racist’, *The Irish Times*, 27 October 2014, https://www.irishtimes.com/news/social-affairs/waterford-anti-roma-protests-criticised-as-cowardly-and-racist-1.1978572. [↑](#footnote-ref-17)
17. ‘Council’s €230k social housing property destroyed in fire’, *The Journal,* 12 February 2013, https://www.thejournal.ie/fire-house-ballyshannon-county-council-792065-Feb2013/. In 2013,Roma were subjected to a number of attacks on their houses, including windows being broken and threats being made, ‘Tallaght Roma girls’ family victims of racist attacks’, *The Journal*, 23 October 2013, https://www.thejournal.ie/roma-tallaght-racist-1144134-Oct2013/. [↑](#footnote-ref-18)
18. Kane, C., ‘Vandals attack home set to house Traveller family’, *The Irish Examiner*, 8 March 2019, https://www.irishexaminer.com/breakingnews/ireland/vandals-attack-home-set-to-house-traveller-family-909535.html. [↑](#footnote-ref-19)
19. O’Mahony, J., ‘Man cleared of online hatred against Travellers’, *The Irish Examiner*, 1 October 2011, https://www.irishexaminer.com/ireland/man-cleared-of-online-hatred-against-travellers-169325.html. [↑](#footnote-ref-20)
20. Traveller Movement (2016) Briefing: Hate Crime, discrimination and the Gypsy, Traveller and Roma communities. https://travellermovement.org.uk/phocadownload/userupload/Briefings/Hate-crime.pdf [↑](#footnote-ref-21)
21. ERRC (2015) Historic Criminal Conviction for a Violent Assault in a Roma Camp in Italy http://www.errc.org/press-releases/historic-criminal-conviction-for-a-violent-assault-to-a-roma-camp-in-italy [↑](#footnote-ref-22)