

Submission to Scottish Government Independent Review of Hate Crime Legislation

from individuals who faced “racially aggravated” charges:

Niel Forbes, Vanesa Fuertes, Sofiah MacLeod, Mick Napier, Jim Watson

Question:

Should an aggravation apply where an offence is motivated by malice and ill-will towards a political entity (e.g. foreign country, overseas movement) which the victim is perceived to be associated with by virtue of their racial or religious group? Please give your reasons for your answer.

Answer:

Based on our own experience, and with regard to the submissions below, we consider that, if not carefully drafted, measures which on the surface might appear innocuous can in fact be deployed in order to silence legitimate criticism of political entities, including states. We would ask that in reviewing relevant legislation, the opportunity be taken to consider the impact of current and proposed measures on the ability to legitimately criticise political entities. We would also ask that consideration be given to the impact on the critics themselves, who face the constant threat of racially-linked prosecution even where their motivation is the opposite of racist.

Free speech and free association for Palestine advocacy in Scotland has been under sustained political and legal attack for some years; “adopting” the IHRA definition of anti-Semitism, as your consultation document appears to do, would be a political development for the worse.

1. An Edinburgh prosecution for racially aggravated conduct

For more than eighteen months until April 2010 Edinburgh prosecutors pursued charges of “racially aggravated conduct” against five Scottish Palestine Solidarity Campaign (SPSC) members following a protest against Israel’s blockade of Gaza during a performance by four “Distinguished IDF musicians” at the 2008 Edinburgh Festival.¹

The Crown case was finally revealed to rest on a claim that it is “racist” to say the words, “End the Siege of Gaza!”, “Genocide in Gaza!” in any public place and the offence is made more serious by repeating the phrases.²

All five accused were charged with evincing malice and ill will towards the Israeli Army’s “Distinguished Musicians” on the basis of their “Israeli nationality”, although such Israeli nationality is barred by several Israeli Supreme Court rulings as incompatible with the Zionist nature of the Israeli State.³

Fortunately for the five, the sheriff considered that the fiscal’s attempts to “squeeze” malice and ill will out of the agreed facts was “rather strained”. After discussion throughout the case of the significance even of facing a charge of racism, whether or not an acquittal results, ultimately the sheriff found the prosecution to be disproportionate and deserted the case simpliciter. The sheriff found that the protest was against the state of Israel, and considered that continued prosecution would be to undermine important rights to free speech.

2. The sequence of events leading to the above prosecution for racially aggravated conduct

- i. August 29, 2008 Five SPSC protestors arrested after a protest against the siege of Gaza and charged with Breach of the Peace. Court appearances followed.
More than five months elapse...
- ii. Tuesday February 17, 2009: the London Declaration promoting the EUMC working definition of anti-Semitism was agreed and announced from Lancaster House. The Declaration called on legislators to “expose, challenge and isolate political actors who...target the State of Israel as a Jewish collectivity.”⁴
Eight days later...
- iii. Wednesday February 25, 2009: PM Gordon Brown signs the London Declaration, adopting the EUMC Definition of anti-Semitism on behalf of the UK Government.⁵
Two working days intervene before...

Monday March 2, 2009 The five “were told [breach of the peace] charges would be dropped and new charges alleging they committed racially aggravated conduct raised against them”.⁶

It is impossible to say with certainty, but it is at least plausible that there may have been some causal link between the timing and nature of the above chain of events. Is it not possible, or even likely, that because of the vague meaning of the term in this context, “adoption” of the IHRA definition will prompt ambitious Procurators Fiscal to launch further unfounded “racial aggravation” charges against critics of Israel?

3. A Glasgow prosecutor’s idea of racism

For three years until July 2017 the Crown pursued charges including a “racial aggravation” against two SPSC members following a protest against an Israeli Dead Sea cosmetics company in Glasgow Braehead Shopping Centre shortly after Israel’s summer 2014 killing of 2,200 Palestinians in Gaza.⁷

The Crown claimed in Glasgow Sheriff Court that the red blood symbol on this poster did not refer to the 2,200 Palestinians recently killed but was in fact a hidden reference to Medieval anti-Semitic fantasies that Jews killed Christian children to use their blood to bake bread.



4. ‘Racism’ charges dismissed

- Two Scottish sheriffs showed common sense in distinguishing between hatred of a population and opposition to a political system. Racial aggravation charges were rejected in the Edinburgh case⁸ referred to in para 1, and deleted in the Glasgow case, para 2. The two Glasgow accused were convicted of aggravated trespass-related charges.

These rulings were in line with the outcome of many other cases brought by pro-Israel campaigners on grounds of supposed anti-Semitism

- All ten complaints of "anti-Semitic" harassment brought against the UCU (University and College Union) by a member who is Director of Academic Friends of Israel were rejected outright. After 20 days of evidence, a three-judge tribunal "greatly regret that the case was ever brought. At heart it represents an impermissible attempt to achieve a political end by litigious means...underlying it we sense a worrying disregard for pluralism, tolerance and freedom of expression...It would be very unfortunate if an exercise of this sort were ever repeated."⁹

- Three UK councils - Leicester City, Swansea City and Gwynedd - were cleared of anti-Semitism by the High Court after they imposed boycotts on Israeli goods. Presiding judge Lord Justice Simon said: "The council resolutions did not override, or even affect, the lawful exercise of its public functions in relation to public supply or works contracts."

Campaign group Jewish Human Rights Watch, however, likened the council action to the boycott of Jewish shops in 1930s Nazi Germany.¹⁰

5. Background

The surreal nature of the charges, together with the desperate measures to which the Crown, and pro-Israel campaigners have been resorting for some time, should be seen in the wider context of:

- a bill making its way through the US Congress that will impose fines of up to \$1 million and decades-long prison sentences for the US equivalents of those Scots who campaign in support of the Palestinian BDS Call.¹¹
- some European Governments passing legislation that criminalises BDS campaigning while others have protected such peaceful, democratic political activity.¹²
- some UK universities banning events on Israel/Palestine or putting them on special measures.¹³

- churches and other traditional public meeting spaces in Scotland and elsewhere beginning to cancel meetings for pro-Palestine groups that have been hitherto unobjectionable.¹⁴

6. IHRA Definition¹⁵ predecessor – the EUMC Working Definition of anti-Semitism¹⁶

As noted above, the IHRA Definition on anti-Semitism has a predecessor, the EUMC Working Definition of anti-Semitism. Virtually identical to the IHRA version, it was adopted by Prime Minister Gordon Brown¹⁷ in February 2009 on behalf of the UK Government, shortly after a major Israeli Army massacre of 1,400 Palestinians in Gaza.¹⁸ Prime Minister Gordon Brown's signature was never annulled – has the UK Government now adopted two virtually identical definitions of anti-Semitism?

The EUMC document and the London Declaration on Combatting Anti-semitism¹⁹ within which it is embedded contain a list of unremarkable proposals to combat anti-Semitism, but they smuggle in some anti-democratic initiatives which aim to criminalise BDS campaigning.

The London Declaration on Combatting Anti-Semitism (2009) proposed to extend state protection to Zionist political ideas and to criminalise democratic critiques of Israeli policy and Zionist theory and practice. Examples of propositions which the London Declaration and the EUMC Working Definition sought to criminalise include:

- Israel should evolve into a state of all its citizens, rather than one for Jews internationally over Palestinian Israeli citizens.²⁰
- The existence of the State of Israel is a racist endeavour.²¹
- Contemporary Israeli policy can be compared to that of the Nazis.²²

7. The IHRA definition reads:

Antisemitism is a certain perception of Jews, which may be expressed as hatred toward Jews. Rhetorical and physical manifestations of antisemitism are directed toward Jewish or non-Jewish individuals and/or their property, toward Jewish community institutions and religious facilities.

Religion and ethnicity are already protected characteristics. It is clearly legitimate to identify a racially-aggravated component in physical attacks on certain buildings such as cultural centres, mosques, or synagogues. Allowing political critiques of “community institutions” to be treated as racist offences is a very radical step; blurring or erasing the distinction between a population and institutions that claim, perhaps imperfectly or even falsely, to be based within or even to represent a population will criminalise previously legitimate political activities.

Hateful words or actions against Catholics, Jehova's Witnesses, Muslims, Palestinians or Jews on the basis of supposed characteristics of those populations should be a hate crime; critiques of the activities of any church, Muslim institution, Palestinian organisation, or the Jewish National Fund must be protected free speech.

8. Free speech rights of Palestine solidarity campaigners need to be protected against the IHRA (1)

In 2011, Jeremy Corbyn and the then-Father of the House of Commons, Gerald Kaufman, proposed an EDM (Early Day Motion)²³ in the House of Commons that 66 other MPs signed. The motion supported the work of SPSC and others to highlight the crimes of this self-proclaimed “Jewish Community Institution”.

That this House welcomes the *Stop the Jewish National Fund (JNF) Campaign* launched on 30 March 2011 by the Palestinian Boycott National Committee, the International Jewish Anti-Zionist Network, Scottish Palestine Solidarity Campaign and others to inform the public about the JNF - Karen Kayemet L'Yisrael, its ongoing illegal expropriation of Palestinian land, concealing of destroyed Palestinian villages beneath parks and forests, and prevention of refugees from returning to their homes; notes that the JNF's constitution is explicitly discriminatory by stating that land and property will never be rented, leased or sold to non-Jews; further notes that the UN rejected the JNF USA's application for consultative status with the Economic and Social Council on the ground that it violates the principles of the UN Charter on Human Rights; regrets that the Prime Minister is a JNF honorary patron; and believes that there is just cause to consider revocation of the JNF's charitable status in the UK.

Such activity should not be criminalised. MPs enjoy Parliamentary immunity. Campaigners in the wider society should have their rights to free speech protected, including the right to criticise or call for the abolition of any institution of any kind.

9. Free speech rights of Palestine solidarity campaigners need to be protected (2)

Gerald Kaufman eloquently spoke²⁴ in the House of Commons during an Israeli massacre of 1,400 Palestinians in January 2009. His widely shared speech violates the letter and spirit of the IHRA Definition's prohibition on comparing Israel's current behaviour to an earlier bestial regime:

My parents came to Britain as refugees from Poland. Most of their families were subsequently murdered by the Nazis in the holocaust. My grandmother was ill in bed when the Nazis came to her home town of Staszow. A German soldier shot her dead in her bed.

My grandmother did not die to provide cover for Israeli soldiers murdering Palestinian grandmothers in Gaza. The current Israeli Government ruthlessly and cynically exploit the continuing guilt among gentiles over the slaughter of Jews in the holocaust as justification for their murder of Palestinians. The implication is that Jewish lives are precious, but the lives of Palestinians do not count.

On Sky News a few days ago, the spokeswoman for the Israeli army, Major Leibovich, was asked about the Israeli killing of, at that time, 800 Palestinians—the total is now 1,000. She replied instantly that, "500 of them were militants."

That was the reply of a Nazi. I suppose that the Jews fighting for their lives in the Warsaw ghetto could have been dismissed as militants.

The individuals submitting this document prefer to view Israel through the framework of a settler-colonial state – South Africa, Australia, North America, etc. – with a built-in tendency for systematic violence towards the native people and a potential for genocide which may or may not be realised. We usually avoid comparisons with Nazi Germany, but that doesn't mean the comparison should be criminalised.

10. Politically-driven allegations of anti-Semitism

There remains strong political pressure from pro-Israel lobbyists and their political supporters to criminalise BDS campaigning. This is often backed up by exaggerated or even wholly fabricated examples of anti-Semitism, of which two of the most egregious and obviously dishonest must stand as examples:

- The broadcasts of this year's Church of Scotland General Assembly debates record a contribution by Dr Michael J Stewart in front of 6-700 attendees in which he claims that Palestine solidarity supporters shouted "Kill the Jews" extensively on Princes Street, Edinburgh.²⁵

Preposterous as his claim is, impossible to imagine and disavowed by Police Scotland in a private communication available on request, Stewart's wild and baseless accusations are not unique or unprecedented, but possibly a feeble-minded utterance encouraged by others who encouraged him.

- The Scottish Council of Jewish Communities (SCoJeC) works with the Israeli Embassy and some openly-racist Friends of Israel groups, to promote a political Zionist agenda. SCoJeC is one of the bodies Review staff met with and consulted.

It is noteworthy that SCoJeC has invented anti-Semitic outrages in the past; following one invention, SCoJeC had to pulp 6,000 copies of one of their publications²⁶ because the pamphlet falsely defamed Scottish Palestine Solidarity Campaign as "demonising Jews" (see attached letter from First Minister Alex Salmond).

Pro-Israel lobbyists are, of course, politically-committed Zionists, often of an extreme stripe²⁷. Religious and secular Jewish Zionists often have a political motive to stress, exaggerate or invent anti-Semitic outrages since they wish ideally that all Jews should leave Europe for Israel. Christian fundamentalist Zionists,

although relatively rare in Scotland, occupy leading positions in Scottish pro-Israel agitation to further their goal of ingather Jews in Palestine based on their Christian eschatology.

SCoJeC's record of exaggerating anti-Semitism in Scotland has been ably critiqued from inside the Scottish Jewish community.²⁸

11. Zionists and Jews

Most Zionists are not Jews and most Jews are not Zionists, i.e. they show no sign of following the Zionist injunction to give up their citizenship, leave their native lands and move to Israel/Palestine.

The deliberate vagueness of the IHRA definition, however, together with the carefully crafted content of the IHRA definition encourages the confusing of hostility to the actions of the State of Israel with racism towards Jews.

12. Public opinion has long run against Israel

Public opinion in Scotland, the UK and across Europe and most of the world is running strongly against the State of Israel as a result of its violent and aggressive actions²⁹. Having lost the public debate, pro-Israel lobbyists are making efforts to close down public spaces for discussion of Israel/Palestine or to keep criticism of Israel within limits acceptable to Israel's supporters.

NOTES

1. <http://www.scotsman.com/news/palestinian-protesters-face-racism-charges-for-concert-outburst-1-832052>
2. <http://www.scotsman.com/news/hecklers-at-israeli-concert-have-racism-charge-thrown-out-1-798827>
3. Israeli authorities have created a list that includes 137 possible nationalities. So a citizen may have Jewish, Georgian, Russian, Hebrew, Arab, Druze, Abkhazi, Assyrian or Samaritan 'nationality' but not Israeli.
<http://www.jonathan-cook.net/2006-11-20/along-the-fault-line/>
4. <http://webarchive.nationalarchives.gov.uk/20121011101040/http://www.communities.gov.uk/documents/corporate/pdf/1151284.pdf>
5. <https://www.jta.org/2009/02/25/news-opinion/world/brown-signs-declaration-against-anti-semitism>
Brown "noted that the Department for Communities and Local Government is organizing...to look in detail at how the government can implement the declaration."
6. <http://www.scotsman.com/news/palestinian-protesters-face-racism-charges-for-concert-outburst-1-832052>
7. <https://www.middleeastmonitor.com/20170714-opposing-zionism-is-not-racism-rules-scottish-court/>
8. http://news.bbc.co.uk/1/hi/scotland/edinburgh_and_east/8609737.stm
9. <https://www.timeshighereducation.com/news/tribunal-slams-academic-for-bringing-anti-semitism-case/2002841.article>
10. <http://www.independent.co.uk/news/uk/israel-boycott-ban-three-councils-cleared-of-anti-semitism-over-boycott-of-israeli-goods-a7107691.html>
11. <http://nymag.com/daily/intelligencer/2017/07/senate-bill-would-make-it-a-federal-crime-to-boycott-israel.html>
12. <http://www.independent.co.uk/news/world/middle-east/eu-right-bds-boycott-israel-palestine-protected-free-speech-federica-mogherini-a7394536.html>
13. <https://www.theguardian.com/education/2017/feb/27/university-wrong-to-ban-israeli-apartheid-week-event>
14. http://www.heraldscotland.com/news/15183803.Bishop_of_Edinburgh_accused_of_censoring_Palestinian_rights_group_after_Church_meeting_called_off/
15. https://www.holocaustremembrance.com/sites/default/files/press_release_document_antisemitism.pdf
16. <https://www.google.co.uk/search?q=eumc+definition&sa=X&ved=0ahUKEwjLxZi9NLXAhWqAcAKHSzvCcoQpBclJg&biw=1344&bih=710>
17. <https://www.jta.org/2009/02/25/news-opinion/world/brown-signs-declaration-against-anti-semitism>
18. <https://imeu.org/article/operation-cast-lead>

19. <http://jfjfp.com/?p=44050>
20. <https://www.haaretz.com/opinion/the-battle-for-a-state-of-all-its-citizens-1.22915>
21. <https://imeu.org/article/discrimination-against-palestinian-citizens-of-israel>
22. <http://www.jpost.com/Israel-News/Politics-And-Diplomacy/IDF-general-in-bombshell-speech-Israel-today-shows-signs-of-1930s-Germany-453142>
23. <https://www.parliament.uk/edm/2010-12/1677>
24. <https://publications.parliament.uk/pa/cm200809/cmhansrd/cm090115/debtext/90115-0013.htm>
Video here: <https://www.youtube.com/watch?v=qMGuYjt6CP8>
25. <http://stream1.churchofscotland.org.uk/about-us/general-assembly/archive/joint-report-of-the-world-mission-council-and-church-and-society-council-2> (31m17s in)
26. <http://www.scottishpsc.org.uk/smears/those-who-accuse-the-ucu-of-anti-semitism-have-a-record-of-reckless-accusations?highlight=WyI2LDAwMCIsImNvcGllcyIsIjYsMDAwIGNvcGllcyJd>
27. <http://www.scottishpsc.org.uk/israel-s-image/scottish-labour-and-snp-leaders-endorse-event-by-those-celebrating-euthenasia-of-palestinians>
28. <https://www.theguardian.com/commentisfree/2010/jun/09/scottish-antisemitism-row-divisive>
29. <http://www.telegraph.co.uk/news/worldnews/middleeast/israel/1445904/Israel-is-No-1-threat-to-peace-says-EU-poll.html>

"Italy's foreign minister, apologised for the results on behalf of the EU, saying they would not shape Middle East policy. The Simon Wiesenthal Centre said the poll was proof that Europe has swallowed the media's vilification of Israel. The Israeli embassy in Brussels was "not only sad but outraged. Not at European citizens but at those who are responsible for forming public opinion."