



**AN BILLE UM THOIRMEASC AR GHRÍOSÚ CHUN FUATHA
CHINIÓCH, CHREIDIMH NÓ NÁISIÚNTA, 1988**
**PROHIBITION OF INCITEMENT TO RACIAL, RELIGIOUS
OR NATIONAL HATRED BILL, 1988**

EXPLANATORY MEMORANDUM

This Bill is necessitated by a provision in article 20 of the UN Covenant on Civil and Political Rights which requires that States ratifying the Covenant must prohibit by law "any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence". The Bill accordingly makes it an offence to engage in activities, including the use of words in public places or at public meetings, or publishing, distributing or broadcasting material, where these are threatening, abusive or insulting and are intended, or are likely, to stir up hatred on account of race, colour, nationality, religion or ethnic or national origin.

Section 1: This is the interpretation section. The definition of "broadcast" is based on the definition of this term in the Radio and Television Act, 1988.

Section 2: This is the main offences provision. This section makes it an offence to publish or distribute written material or to use words or behaviour, or to display written material, which may be heard or seen in a public place or at a public meeting, or to distribute, show or play recordings of images or sounds, if these are threatening, abusive or insulting and are intended, or are likely, to stir up hatred. "Hatred" is defined in subsection (3) as meaning hatred against a group of persons in the State on account of their race, colour, nationality, religion or ethnic or national origins. Defences are provided, including those for persons who were not aware of the content of the material in question or who did not suspect that the words or material might be threatening, abusive or insulting.

Section 3: This makes it an offence to broadcast material intended to, or likely to, stir up hatred ("hatred" having the same meaning as in section 2). Defences are provided for various cases, including those where the person concerned could not have known about the offensive material or could not have arranged for its removal. Provision is included also so that a script shall be evidence of what was actually broadcast. Under this section a Garda member, not below the rank of Superintendent, may make an order authorising any member of the Garda Síochána to require production of the actual script or record concerned.

Section 4: This makes it an offence to prepare or possess written material or a recording which is intended to, or likely to stir up hatred, with a view to its being distributed, published or broadcast. Defences are provided to cover cases where the person concerned was not aware of the content of the material. On the other hand, there will

be an initial presumption, where a person possesses material of this kind not intended for his personal use, that he intended it to be distributed, published or broadcast. In section 4 "hatred" means hatred against any group of persons on account of their race, colour, nationality, religion or ethnic or national origins and the definition will apply irrespective of where the group of persons in question are located. This provision is intended to make it possible to counteract activities, consisting of the preparation of racist material in the State for publication abroad. It has not been possible to prosecute in respect of these activities under the present law, but this will now be possible under section 4.

Section 5: This is a standard provision, excluding from the offences provisions reports of Oireachtas proceedings and reports of proceedings in courts or tribunals.

Section 6: This is the penalties provision for the offences created under sections 2, 3 and 4. It fixes a maximum fine of £1,000, or imprisonment for not more than six months, on summary conviction and a maximum fine of £10,000 or imprisonment for not more than two years, on conviction on indictment.

Section 7: Subsection (1) of this section provides that where an offence under the Act has been committed by a body corporate with the consent or connivance of a director, manager or other officer of the body corporate, then that person, as well as the body corporate, shall be guilty of an offence. *Subsection (2)* contains a similar provision in relation to members of a body corporate.

Section 8: This provides that proceedings in respect of offences under section 2, 3 or 4 may be instituted only by or with the consent of the Director of Public Prosecutions.

Section 9: This provides that a District Justice or a Peace Commissioner may issue a search warrant where there are reasonable grounds for suspecting that offensive material involving a breach of section 4 is in any premises, so that the Gardaí may seize the material and require persons found on the premises to furnish names and addresses. It also provides penalties for persons who obstruct or interfere with the Gardaí in this connection, or who fail to furnish names and addresses to the Garda concerned. A maximum fine of £1,000 and a maximum term of imprisonment of six months are provided for the offence.

Section 10: This provides that a Garda may arrest without warrant a person who he suspects has used offensive words or behaviour, or displayed offensive material, in a public place or at a public meeting, in contravention of section 2 (1) (b). It also gives a Garda power, where he suspects that a person has committed an offence under the Act, to require that person to supply his name and address and gives a power of arrest without warrant where this is not done.

Section 11: This provides that, following a conviction under section 2, 3 or 4, the offending material or recording may be forfeited by the court and may be destroyed or disposed of as the court may direct.

Section 12: This gives the short title of the Bill and states that it will come into operation one month after the Bill is passed.

*An Roinn Dlí agus Cirt,
Samhain, 1988.*