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Dear Mr Thornberry

Your committee has urged the United Kingdom to introduce a law criminalising incitement of religious hatred. This is a subject the British Humanist Association (BHA) has considered in detail so as to contribute to the work of the recent House of Lords Select Committee on Religious Offences.

The BHA supports the proposal for such a law but has strong views on the way it has implemented, which I should like to bring to your attention.

In an open and inclusive society the government has a duty to protect groups and individuals that are subject to hatred and violent attack. Incitement to violence is already illegal, but hatred stopping just short of violence is inimical to the values of a civilised society and the principles of reciprocal tolerance and cooperation, and can be devastating to the lives of individuals and communities. There is good evidence that Muslims, in particular, are at present suffering this sort of religious hatred, and that it is being incited by racists who find it a convenient way round the law on incitement of racial hatred.

Members of two religious groups (Jews & Sikhs) are already protected by the race hatred law, having been recognised as ethnic groups in the courts. This inequality is itself provocative.

But the race hate law, which is found in the Public Order Act, is an unsuitable model for a law on incitement of hatred on grounds of religion. I would also suggest that the shorthand phrase "religious hatred" is problematical as it suggests that religion is the target for protection rather than the people who follow it. The state owes no duty to religious beliefs, only to its populace.

The problem with the Public Order Act lies in the different natures of race (and also gender, disability, age and sexual orientation) and religion, in that religion is a cultural and intellectual characteristic while the other typical focuses of hatred are unalterable characteristics rooted in one's physical nature.

For example, taking race as the main comparator:

- Religions make extensive and often mutually incompatible claims about the nature of life and the world - claims that can legitimately be appraised and argued over. There is no parallel for race.
- Religions, unlike race, set out to and usually do influence their followers' attitudes and behaviour, often in ways which can be similarly controversial.
- Religions are in principle and often in practice in competition with each other: evangelists come to our front doors, set up television and radio stations and run crusades to make converts. This is plainly untrue of race.
- Religions are expressed through organisations that are often wealthy and powerful. They exercise that power in the name of their faith far outside the realm of religion - in influencing social attitudes and national and international policies (e.g. on contraception). This controversial influence has no parallel in race.
- Religious believers often feel under a duty to react strongly to any criticism or insult offered to their deities, prophets or beliefs, however mild or reasonable. This has little parallel in the case of race.
- Religions, unlike race, can be chosen or put aside. Very many people do abandon the religion of their upbringing or convert to another religion, sometimes under the influence of various exercises of free speech about religious matters.

It follows that the extent of legitimate discourse about religion, and religious beliefs and practices, is far wider than about race.

The problem with the Public Order Act model (which the Government proposed to adopt in the clause it dropped from the Anti-Terrorism Bill in 2001) is that in criminalising "threatening or abusive or insulting words or behaviour", with little regard to their motive, context or likely effect, it makes the means by which hatred may be incited fundamental rather than the actual incitement and assumes, subject to rebuttal, that abusive and insulting language will in fact incite hatred. Defendants are left in the hands of the jury, and as the Law Commission said "Delimitation of a criminal offence by reference to jury application of one or more of several adjectives (all of which necessitate subjective interpretation and none of which is absolute) is hardly satisfactory."<sup>1</sup>

"Abusive or insulting words" may not be an ideal way of conducting an argument, but what is abusive or insulting is very much in the ears of the hearer, and, as the already quoted Law Commission report said: "Ridicule has for long been an acceptable means of focussing attention upon a particular aspect of religious practice or dogma which its opponents regard as offending against the wider interests of society, and in that context the use of abuse or insults may well be regarded as a legitimate means of expressing a point of view upon the matter at issue."<sup>2</sup>

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<sup>1</sup> Criminal Law Offences against Religion and Public Worship (Law Commission no. 145), HMSO, 1985, para. 2.18

<sup>2</sup> op cit, para. 2.35

Context is important. Mockery in a late night routine delivered to willing customers in a comedy club is different from the same mockery shouted from a soapbox to passers-by in a town suffering from religious tensions. Those who of their own volition attend a public meeting of animal rights activists campaigning against ritual slaughter have only themselves to blame if their religious beliefs are outraged by what they hear. This is very different from the inflammatory leafleting and street-corner agitation that are the proper target of a new restriction of freedom of speech.

The need is to balance and regulate the various rights guaranteed by the European Convention on Human Rights (ECHR) and the Human Rights Act. For example, overprotection of rights to religion or belief under Article 9 could infringe rights to freedom of expression under Article 10. (There are other inherent conflicts - between freedom of religion and non-discrimination on the basis of sexual orientation, for example. It is to be hoped that the putative Commission on Equality & Human Rights will follow the Dutch model and create a forum for patient exploration and agreement of the boundaries of such conflicting rights.)

In the British Humanist Association's evidence to the House of Lords Select Committee on Religious Offences we ventured to propose an alternative draft on the following lines:

1. It is an offence for a person publicly to use words or behaviour or to display any material:-
  - a) by which he incites or intends to incite hatred against persons based on their membership (or presumed membership) of a religious group, or
  - b) in such manner and circumstances that a reasonable person would think that such hatred is likely to be stirred up.
2. For the purpose of section 1:
  - a) "religious group" means a group defined by reference to religion or belief or the absence of any, or any particular, religion or belief
  - b) "presumed" means presumed by the offender
  - c) "membership" in relation to a religious group includes association with members of that group.

The formula was commented on by the Committee in their report and no doubt can be improved on, but we think it has virtues:

- a) it places the emphasis on hatred on the grounds of religion or belief (as intention or effect) rather than on the nature of any words etc used, since context and manner can so alter the import of words;
- b) it casts the law directly in terms of hatred of people and avoids the phrase "religious hatred" (with its inevitable but unintended implication of hatred of religion or religious doctrines or practices);

- c) it uses the formula “religion or belief”, the phrase that is found in the ECHR. We see this as a virtue because it comprehends both religious and non-religious lifestyles: laws cast in terms of religion alone are very dubious in their application to the increasing number of people who choose a non-religious lifestyle.

This formula won the support of Justice and of the British Muslim Research Council in a joint briefing with ourselves for the recent House of Lords debate on the Select Committee’s report.

I hope that, insofar as you have influence with the UK Government, you will be persuaded by these considerations that they should not simply extend the Public Order Act.

If you wish to see a fuller treatment of this topic you may like to look at our memorandum to the Lords Select Committee which is reproduced in their report and is available at <http://www.publications.parliament.uk/pa/ld200203/ldselect/ldrelof/95/2071807.htm>. Annex I in particular includes a detailed critique of the Public Order Act model and the Attorney-General's draft guidance on it.

I am copying this letter for his information to Nigel Rodley, of the UN Human Rights Committee.

Yours sincerely,

Hanne Stinson  
Executive Director

cc: Nigel Rodley,  
Vice-chairperson, UN Human Rights Committee