

NORTHERN IRELAND COUNCIL FOR ETHNIC MINORITIES

Response to Consultation on Race Crime and Sectarian Crime Legislation In Northern Ireland

I. Introduction

NICEM is a voluntary sector, membership-based umbrella organisation representative of minority ethnic groups and their support organisations in Northern Ireland. We are committed to collective action informed by people's experience and analysis of their circumstances. In pursuit of equality of opportunity and equality of treatment NICEM works for social change in relation to racism and in particular to the elimination of racial discrimination.

NICEM organised a consultation seminar on the consultation document: Race Crime and Sectarian Crime Legislation in Northern Ireland on 23 January 2003 at the Queen's University Common Room. This submission is a collective response from not only those who attended the seminar but also those who were unable to attend but who have had an opportunity to read the response and endorse it.

From NICEM's position it is important that the ethnic minority sector as a whole should have a united voice with support from the local voluntary and community sector. On that basis we present the following submission.

II. Background - Gravity of the problem of racist crime in Northern Ireland

NICEM has sought again and again to highlight to those with any responsibility for criminal justice in NI the grave problem of racist incidents and racist crime.

The harm caused by a racist incident goes deeper and wider than other crimes or anti-social acts. The individual victim is not chosen because of historic enmity, jealousy, gangs fighting over territory, but simply because she or he is Chinese, Pakistani, black, Traveller or asylum seeker. Victims can feel isolated and demoralised. But, unlike other types of crime, the impact is not merely on the victim but on his or her community as a whole - leading to widespread fear, intimidation and alienation – destroying any attempts at social cohesion – and possibly fuelling counter-attacks. And, unlike burglary or car thefts, there is nothing members of ethnic minority communities can do to protect themselves: they are victims because of who they are (or, reflecting on recent attacks on Sikhs mistakenly taken to be Muslims, they may be victims because of who the perpetrators think they are).

In our submission to the Independent Commission on Policing for NI in January 1999, we highlight the following issues:

“Institutional racism is still the daily life experience of black and ethnic minorities in Northern Ireland. Some Black African and Asians have received death threats and intimidation letters but are reluctant to report these to the police. A high proportion of police officers, from those in the lower ranks to very senior staff, regard Irish Travellers as criminals. Irish Travellers are subject to daily intimidation, harassment and attacks by both catholic and protestant. We witnessed the Chinese community living in one of the Housing Executive administered housing estates in the Belfast area, who were forced to leave the area due to constant racial harassment and attacks. We also witnessed another example of ethnic cleansing among the Asian community living in Craigavon

through vigorous arson attacks on their houses, Mosque and Women's Centre; which was only one hundred yards from the local RUC station. As a result, the entire Asian community left the area.” (Paragraph 1.5)

In our experience the numbers of racist incidents perpetrated against ethnic minorities, including Travellers, is very many times greater than the figures given in the consultation document, which are based on cases reported to the police.

As in GB particularly before some police initiatives following the Stephen Lawrence Inquiry, in NI there is a very great reluctance amongst ethnic minority communities to initiate any contact with the police, based on a long and unhappy history of distrust. In our evidence to the Independent Commission on Policing in Northern Ireland, we highlighted how institutional racism within the then RUC was manifest in police responses to reported racist incidents:

“Thus institutional racism is a fundamental issue within the RUC. We would like to highlight the following common examples of institutional racism within the police force. 1. Some police officers view black Africans as non co-operative and anti-authority. 2. Some police officers do not care whether the Chinese can speak and understand English or not. 3. Some police officers view it as just a joke when local children and young people put lit firecrackers through the letterbox of black and ethnic minority homes. As a result they do not treat it very seriously. 4. When victims of crime report that the incident was a racially motivated crime, officer insisted that it was not. 5. When a victim of crime reported that he was under attack at his take-away shop, the police who arrived at the scene arrested and charged the victim with grievous bodily harm simply because the perpetrators said that they had been injured by the owner, without further investigation. 6. When a victim of constantly racially motivated crime reported to the police yet another incident, their reaction was very slow. When the victim's son became angry and threw a stone at one of the perpetrator's cars the immediate response of the police was to arrest him. The boy asked why they reacted so quickly to this incident, but not to their car being smashed by the

same perpetrators when there were eyewitnesses to that incident. Yet the police did not to arrest them and took no action. The question was asked: why were we treated this way? Is it simply because we are black? 7. The police carry out indiscriminate raids on Travellers sites looking for stolen property during which the property of innocent Travellers has been destroyed or confiscated.” (Paragraph 3.2)

Therefore, we welcome the recognition in paragraph 3.2 of the consultation paper that the picture is a disturbing one and one that can no longer be allowed to continue. As we outline below, we do not accept, however, that the primary solution lies in the creation of new ‘racially aggravated’ offences.

III Tackling racist crime

The consultation document recommends adoption of legislation now in force in GB. NICEM submits that before moving to replicate GB legislation it is relevant to consider whether there are other positive lessons from GB.

The Stephen Lawrence Inquiry report which recognised the connection between institutional racism within the police service and other elements of the criminal justice system and the failure of that system to act effectively to prosecute and prevent racist crime.

Institutional racism is defined in the Stephen Lawrence Inquiry report as “the collective failure of an organisation to provide an appropriate service to people because of their colour, culture or ethnic origin. It can be seen or detected in processes, attitudes and behaviour which amount to discrimination through unwitting prejudice, ignorance, thoughtlessness and racist stereotyping which disadvantage minority ethnic people.”

The definition of a racist incident recommended by the Inquiry, “A racist incident is any incident perceived to be racist by the victim or any other person”, has been adopted and applied across all police forces in GB. Thus, if anyone perceives the incident to be racist that view prevails and makes it incumbent on the police to investigate and look for evidence that it was a racist incident.

Second big change at least in some police forces is a more systematic, professional, response by the police to racist incidents reported to them. This has included, in some forces, consultation with ethnic minority communities, development of coordinated working relationships with statutory and voluntary agencies, major publicity campaigns to encourage reporting of racist incidents and more effective, dedicated, procedures based on ACPO guidance for investigating such incidents. In England and Wales there has been a significant increase in the numbers of reported racist incidents, from 23,049 in 1998-99 to 53,090 in 2000-01. In our view these higher numbers do not mean a real increase in racist incidents -- although that could also be true -- but reflect at least in part the greater willingness of ethnic minority victims to come forward.

It is the submission of NICEM, that to achieve more effective prosecution and prevention of racist incidents and racist crime in NI, the priority must be to ensure appropriate and professional response by the police to any racist incident reported to them. If there were to be new criminal offences or if there were a statutory duty to take racial motivation into account in sentencing, these changes would have no impact whatsoever if the police remain ‘colour blind’: If they do not investigate a case as one in which race is -- or could be -- a factor, or if they deny the victim’s experience.

IV NICEM replies to questions in the consultation document

6.1 Do you consider current legislative arrangements in relation either to racial or sectarian crime to be satisfactory?

NICEM is able to comment only in relation to racist crime. In our view the current legislative arrangements are not satisfactory, although, as we have indicated above, we consider that the greater deficiency is current enforcement of the criminal law in relation to racist crime.

There are not in NI the same range of offences that are available to the police and CPS in GB to deal with racist crime. Specifically, not all of the offences that in the Crime and Disorder Act 1998 were recognised as suitable to constitute ‘basic offences’ for the new ‘racially aggravated offences’ exist in NI. Those that do not have equivalents in NI are sections of the Public Order Act 1986 in which conduct is directed at particular persons or is likely to affect one or more persons:

- section 4 (causing fear or provocation of violence),
- section 4A (intentional harassment, alarm or distress) and
- section 5 (conduct likely to cause harassment, alarm or distress).

These offences, without the formal addition of ‘racial aggravation’ could be used to prosecute the types of behaviour in NI that frequently comprise racist incidents.

Secondly, we recommend that there should be in NI a provision comparable to section 95 of the Criminal Justice Act 1991, which requires annual publication of statistics and other information showing the involvement of different racial groups in various aspects of the criminal justice system. The object of section 95 is to help criminal justice agencies avoid discrimination on grounds of race, sex or “any other improper ground”. Although disproportionality in stop and search in GB had been raised again and again by ethnic minority groups and civil liberties groups, it was only when annual figures were published under section 95 that police forces and the Home Office accepted that this was an issue that could not be ignored. In NI, where the relatively smaller ethnic minority population is less

likely to be listened to, it is even more important that there is a statutory requirement for ethnic monitoring of the administration of criminal justice and for publication of the results of this monitoring.

In our view, however, the primary failing is not the absence of laws on the statute book in NI but the lack of effective application of the existing offences to racist crime. The well-established offences, ranging from murder to common assault, from arson to minor criminal damage, and the more recent Protection from Harassment (NI) Order 1997, should offer the police sufficient means to prosecute perpetrators of most racist crimes. The basic concern of NICEM is the persistent reluctance of the police to listen to victims, to treat such crimes as serious, to respond promptly or at all, to investigate efficiently or at all. The consequence is that racist crime is permitted to continue with the serious harm to individuals and communities that should now be well known and understood.

We would contrast the different treatment that is now given to crimes involving domestic violence, which at every level – police, prosecution and court – are regarded as serious offences deserving full and careful attention.

6.2 Is there sufficient reason for Great Britain legislation on racially motivated crime not to apply in exactly the same way to Northern Ireland?

Yes. The benefit in not having copied the Crime and Disorder Act into NI law when it was being enacted in GB is that we can learn from the experience in GB; not to do so would run counter to the general, more careful, approach which the public sector is meant to have. So, it is useful to consider whether the legislation in GB demonstrates what its aims were said to be.

NICEM agrees that there may be some benefit in enacting new legislation on racially motivated crime; for example:-

- a) It would be a public statement of the gravity with which the government regards such behaviour
- b) It would focus the minds of the police, prosecution, magistrates and judges
- c) It would expose racist behaviour to public scrutiny

It is our view, however, having regard to the experience in England and Wales in relation to the specific 'racially aggravated offences' under sections 28 – 32 of the Crime and Disorder Act 1998, that the above benefits could be achieved in other ways.

Many of the legal and procedural problems identified by Burney and Rose in their report "Racist offences – how is the law working?"¹ are outlined in the present consultation document.

- a) Definition of 'racially aggravated': both of the definitions in section 28 of the 1998 Act are problematic.

The first definition makes conduct 'racially aggravated' when the basic conflict between the parties was not based on race, for example a 'road rage' incident in which one party uses language referring to the other party's race or ethnicity - "black bastard". While NICEM is fully aware that negative racist stereotypes that are normally suppressed often come to the fore in conflictive situations, nevertheless these are not the type of incidents that poses the greatest threat to ethnic minority communities in NI.

Further, since the definition requires evidence of hostility based on the victim's membership of a racial group at the time of the offence or immediately before or after, it is unlikely to be applicable where a hostile racist remark preceded the assault or criminal damage by a

¹ Home Office Research Study 244, July 2002

number of days. In our experience, such a scenario is not unusual; for example A makes racist comments about B within B's hearing; three day's later a brick is thrown through B's window and A is seen nearby.

The second definition requires proof that the offence is motivated, wholly or partly, by hostility towards members of a racial group based on their membership of that group. This makes such offences almost unique in including motivation as a matter, which must be proved beyond reasonable doubt. Our experience in challenging racial discrimination has illustrated how difficult it is for a complainant to prove what was in the mind of the alleged discriminator; what evidence would need to be produced, or what evidence would witnesses need to give?

b) Securing convictions

As the consultation document outlines, the research in GB has demonstrated problems in securing convictions for 'racially aggravated' offences and/or the basic offences, because of the different rules that apply in the Crown Court and in the magistrates' court and the impact such rules have on decisions by the CPS. For example, the following is an extract from the evidence by the Director of Public Prosecutions to the House of Lords Select Committee

For instance, in some cases, a Crown Court judge listening to a case of assault or criminal damage might well come to the view that, having heard the evidence, he was convinced that there was a racial element to the offence and so find in passing sentence, whereas now, if we have charged it and the jury acquit on the basis that they, the jury, are not quite sure, – and juries do have a tendency to compromise; they know they can convict of the simple offence and it may be easier to do so – maybe we are losing the opportunity of giving that message to individual defendants in some cases because, if it is an assault and we have not charged it, then the court is unable in passing sentence to take the racial aggravation element into account.

The net result is less than perfect: in some cases a conviction and suitable punishment have been secured for what is unquestionably a racist crime; in other cases a person will have been prosecuted for conduct not based on racism but

which included some manifestation of racial hostility bringing it within the definition of 'racially aggravated'; and in some cases for evidential and/or procedural reasons there will be either no conviction or conviction for the basic offence (with no possibility of raising the issue of racial motivation at the time of sentencing).

Reported cases disclose that there have been convictions for racially aggravated offences where both perpetrator and victim are members of the same racial group. Burney and Rose comment in their report that there seemed to be "quite a regular pattern" of cases of 'racially aggravated' offences brought by the police; anecdotal evidence from defence lawyers supports this, with examples of cases in which white police officers complain of racially aggravated harassment which occurred when they were stopping or arresting a black person.

The statistics for the first years show very low rates of conviction for racially aggravated offences: less than 30 % compared to nearly double that for the basic offences, without the need to prove the hostility or motivation as defined,

A second way to look at outcomes is to trace the process from initial reporting of racist incidents.² Again the figures are not very persuasive:

In England & Wales for 1999/2000 there were 47,814 racist incidents recorded by the police. Fewer than half -- 21,750 -- were recorded as racially aggravated offences. Of these only 4,050 were prosecuted; the 1,205 successful conviction for racially aggravated offences represent only 5.5% of the total of offences recorded as racially aggravated.

It is the submission of NICEM that there is sufficient evidence in the findings of the Burney and Rose report and in the information contained in annual reports by

² Given the now accepted definition of a "racist incident" as 'any incident perceived to be racist by the victim or any other person', it is inevitable that not all racist incidents will constitute racially aggravated offences or criminal offences of any sort.

he Home Office, CPS and Her Majesty's Inspectorate of the CPS that we should look for a different approach in NI. As we set out in fuller detail in reply to question 6.5, we consider that any new statutory measures in NI should focus on the sentencing of racially motivated crime rather than seeking to create new 'racially aggravated' offences.

6.3 Should any action taken in respect of racially aggravated crime apply equally to sectarian crime too, or should provisions be modified in some way in respect of one or other category of offence?

It is the view of NICEM that if there is to be legislation dealing with racist crime, it should also deal with sectarian crime and other forms of 'hate' crime. The Northern Ireland Act 1998 places a legal obligation on public authorities in Northern Ireland to "have due regard to the need to promote equality of opportunity" on a number of grounds including race. NICEM recognises the need to promote equality generally and points to all the grounds mentioned in Section 75 of the Northern Ireland Act 1998 and in particular to grounds such as religious belief or sexual orientation. NICEM submits that if the proposed legislation were only to apply to ethnic minorities that this would have a disproportionately adverse impact on those affected by sectarian, homophobic or other forms of hate crime.

NICEM notes that sectarian crime has been a primary concern of the criminal justice agencies in NI for more than 30 years. While the UK government has made a number of exceptions to normal criminal procedures, including measures affecting civil liberties in NI, in order to combat sectarian violence and terrorism, the government does not appear to have considered it necessary, or useful, to create new criminal offences defined as 'sectarian' offences. Although we have no evidence on which we rely, we consider that in such cases the court would

have taken into account, as an aggravating factor, the fact that the perpetrator was motivated by sectarian hatred. Certainly the high priority and commitment of successive governments to combating sectarian crime in NI was very clear, without their seeing a need to create specific ‘sectarian’ offences.

If, however, the government is now contemplating legislation that gives particular status to racially motivated crimes, then it is difficult to argue why ‘sectarian’ crimes or other religiously motivated crimes and homophobic crimes should not enjoy similar status.

*6.4 Should any new offences concentrate on the motivation for offending, or should
6.5 they encompass behaviour/language which is related to, but not the cause of, the offence?*

As we indicate above, NICEM does not recommend the creation of new offences, but instead recommends that legislation should be focused on sentencing arrangements. For reasons made clear in the Burney and Rose report, neither definition of “racially aggravated” has been satisfactory in practice.

6.5 Is it better to proceed by introducing new categories of offence, or would it be preferable instead to look at the sentencing framework, and whether that could be modified to address the problem?

It is the view of NICEM that the benefits of demonstrating the government’s concern about increasing racist crime, highlighting the wider harm caused by ‘hate crimes’ and focusing the attention of the police, prosecution and courts can be achieved by legislation similar to that in section 153, Powers of Criminal Courts (Sentencing) Act 2000. This section requires magistrates and judges in the Crown Court when sentencing for offences other than those in section 29 –

32 of the Crime and Disorder Act 1998 (that is other than specific racially aggravated offences) to treat 'racial aggravation' as an aggravating factor justifying an increase in sentence.

As motivation is a matter that is considered at the time of sentence - but not normally in proving guilt -- we submit that legislation should provide that when sentencing for an offence that was motivated by hostility towards the victim's racial group, denomination or membership/non-membership of a religious group, or sexual orientation the court should be required to treat such motivation as an aggravating factor affecting the severity of the sentence, and to state in open court that they have done so.

6.6 Are there other arrangements which would address effectively the issue of racially motivated or sectarian crime in Northern Ireland?

As we have outlined above, the crucial change that needs to occur is within the police service. With the establishment of the PSNI, there should be scope for rigorous attention to the eradication of institutional racism, at every level. The PSNI and all of the agencies within the NI criminal justice system need to accept and adopt the Stephen Lawrence Inquiry definition of a racist incident. The police must give credence and validity to reports of racist incidents, and must have effective systems for sensitive, prompt and thorough investigation including investigation of evidence of racial motivation. The PSNI and other statutory agencies need to communicate openly and honestly with ethnic minority communities. As the Stephen Lawrence Inquiry put as their first recommendation, it should be a key priority for the PSNI to increase the trust and confidence of ethnic minority communities in NI. We set out below some short term and longer term measures that we consider necessary to address the issue of racist crime in NI

Short term	Long term
<p>Reporting issues: (i) the need to modify the initial police response to possible criminal offence and police disposition/ attitude to the victim is pre-eminent in any confidence building exercise. Managing the victim's distress in a non-victimising manner is fundamental. The use of low-level intelligence by PSNI which could be eg fed to local schools/businesses to highlight incidents reported was considered vital. This must be reinforced by (ii) efficient recording of events with (iii) investigative proceedings following a clearly delineated management pathway/ protocol which (iv) incorporates access to interpretation service and support of individual reporting by representative from community of origin. The use of the crime stoppers tele no was discussed but felt to be generally inappropriate as language barriers may thwart any attempt to progress.</p> <p>Reinforcement for the media's use of the Equality Commission's code of practice is integral to combating racial intolerance within the fabric of NI society.</p> <p>The PSNI should immediately establish the multi-agency working group for victim support .</p>	<p>Education and awareness raising is required for both police and ethnic minority communities on available legislative and non-legislative measures to combat this range of criminal and anti-social behaviour. The objective of this to both remove barriers to accessing service and to establish confidence of ethnic minorities in the system of law enforcement. This should extend to (i) local area community groups especially youth clubs and local schools (ii) representatives and groups for ethnic minorities (iii) joint training initiative involving police and NICEM and other Section 75 representative organisations. Such education and awareness raising should be continuous; it should be developed with a clear delineation of training objectives and arrangements for long-term co-ordination.</p> <p>The efforts by wider community groups like community watch, residents groups, local civic leaders and politicians and church leaders, should be recruited in a concerted effort to reject racism, bullying and discrimination in all its various forms.</p> <p>The Equality Commission should consider reviving advocacy efforts to reinforce the profile of racially motivated crime.</p>

If you have further questions about this submission, please contact:

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The following Organisations endorse this submission:

- Al –Nisa Association NI
- Belfast Islamic Centre
- Belfast Traveller Support Group
- Belfast Travellers Education and Development Group
- Chinese Welfare Association
- Craigavon Travellers Support Group
- Indian Community Centre
- INTERACT (NI)
- Mandarin Speakers Association
- Muslim Families Association
- Northern Ireland Filipino Association
- Oi Kwan Chinese Women's Group
- Pakistani Cultural Association
- Sikh Women and Children's Association
- Traveller Movement (NI)
- A.T.G.W.U.
- Age Concern Northern Ireland
- Coalition on Sexual Orientation
- Equality 2000
- NI Anti-Poverty Network
- Women into Politics
- Women's Support Network
- Youthnet