



Submission to

**Department of Culture
and Language**

on

Cultural Awareness Strategy

March 2011

Introduction

NICEM is an independent non-governmental organisation monitoring human rights and racial equality in Northern Ireland. Our aim is to promote good race relations and to endeavour the elimination of racial discrimination and the promotion of racial equality.

Our vision is of a society where equality and diversity are respected, valued and embraced, a society free from all forms of racism, sectarianism, discrimination and social exclusion, where human rights are guaranteed. NICEM works in partnership, to bring about social change through partnership and alliance building, and to achieve equality of outcome and full participation in society.

As an umbrella organisation we represent the interests of black and minority ethnic groups in Northern Ireland. Currently we have 29 affiliated black and minority ethnic groups as our full members; this composition is representative of the majority of black and ethnic minority communities in Northern Ireland.

General comments

NICEM welcomes the Department published the consultation document “Cultural Awareness Strategy”. It shifts from the previous position exclude ethnic minority groups in this funding programme. The remit of DCAL, in particular Language Branch which is under Culture Division, is not for the two indigenous communities only, it serve for all communities, including ethnic minorities.

As highlights in DCAL’s website under Language and Cultural Diversity section “We recognise the importance of respect, understanding and tolerance in relation to linguistic diversity. There are many languages used in Northern Ireland, including indigenous minority languages (Irish Language and Ulster Scots), minority ethnic languages and British and Irish sign languages.”

We recognised the importance and the identity of both the Irish and Ulster Scot community in the post-conflict society in which deserve for more resources to maintain and to develop their languages. Equally important ethnic minority communities also enjoy the same rights as the two indigenous language communities. Therefore any language policy of the department should be inclusive without distinction; otherwise the proposed policy is discriminatory against ethnic minority community.

International human rights standards on religious, linguistic and cultural minorities

The right to maintain and develop their culture, and to preserve the essential of their identity, namely their religion, language traditions and cultural heritage is recognizable international human rights standards such as Article 27 of the

International Covenant on Civil and Political Rights, Article 15 of the International Covenant on Economic, Social and Cultural Rights, Article 5 of the Framework Convention for the Protection of National Minorities.

Any policies or practices aimed at assimilation of religious, linguistic and cultural minorities are in breach of the above international human rights standards. Any policies and practices are discriminatory and make distinction between groups are also in breach the same human rights standards.

EU and domestic law

The European Union also adopted Council Directive 77/486/EEC of 25 July 1977 on the education of the children of migrant workers (details see ANNEX). This piece of legislation regards as the linguistic diversity within the European Community in the 70s; particularly tackle the language conflicts of the French speaking and Flemish speaking communities in Belgium.

Article 3 of the Directive states that “Member States shall, in accordance with their national circumstances and legal systems, and in cooperation with States of origin, take appropriate measures to promote, in coordination with normal education, teaching of the mother tongue and culture of the country of origin for the children referred to in Article 1.”

DCAL has responsibility on language portfolio and fails to implement Article 3 to the current A8 and A2 migrant is actionable under EU law (as well as other EU citizens). At present there is no such funding programme to teach of the mother tongue and culture of these communities, except funding programme for Irish and Ulster Scot. Currently the ethnic minority communities use their own resources to provide a very limited teaching of their mother tongue and cultures for their children.

Article 45 of the Treaty on the Functioning of the European Union: the right of the free movement of workers has developed through secondary legislation (Regulations 1612/68) and case law well established that any policies that make distinction between national and other EU citizens are discriminatory and will be void. The “liability test” established under O’Flynn ¹ that any discrimination would count. O’Flynn principle is now translated into the EU Racial Equality Directive under the definition of “Indirect Discrimination”.

Article 2(b) of the Racial Directive “indirect discrimination shall be taken to occur where an apparently neutral provision, criterion or practice would put persons of a racial or ethnic origin at a particular disadvantage compared with other persons, unless that provision, criterion or practice is objectively justified by a legitimate aim and the means of achieving that aim are appropriate and

¹ Judgment of 23 May 1996 in Case C-237/94, O’Flynn v Adjudication Officer [1996] ECR 241

necessary.” The key word is “particular disadvantage”. The Racial Equality Directive has been translated into the domestic law under Race Relations Order (amendment) Regulations (NI) 2003 and 2009.

Therefore if the proposed programme assessment has any particular disadvantage to ethnic minority communities, it will be indirect discrimination within the meaning of the Race Relations (NI) Order.

3.4 Consultation Questions

3.4.1 Proposed Administration of the Cultural Awareness Strategy.

The Department is proposing that the budget is administered by Languages Branch located within Culture Division whose remit includes the enhancement and promotion of indigenous languages

Question 1 Do you agree with this element of the proposal?

We strongly disagree the certain elements of the proposal, as it is deliberately to exclude ethnic minority communities through conditions imposed. It is a discriminatory policy that is in breach of both EU and domestic law (see above), as well as violates international human rights standards. We also remind the duties under Article 3 of the Council Directive 77/486/EEC of 25 July 1977 on the education of the children of migrant workers. We urgently request the department to withdraw the proposed Strategy without delay otherwise NICEM is not rule out judicial review to challenge the Department.

Question 2 Have you any suggestions on this element of the proposal?

Withdraw the proposed Strategy and rewrite a new one which is inclusive for all minority language communities without distinction.

3.4.2 Proposed Objectives of the Cultural Awareness Strategy

It is proposed that the aim of the Cultural Awareness Strategy is to address historic tensions between the two main communities in order to promote tolerance, understanding and respect of and value for indigenous cultural traditions in Northern Ireland.

The Objectives of the strategy are to:

Build tolerance, understanding and respect for the indigenous cultural traditions in Northern Ireland

Address legacy issues arising from 30 years of conflict; and

Contribute to a shared and better future.

Question 1 Do you agree with this element of the proposal?

We strongly disagree with the proposal. The proposed Strategy is the general policy for the Department (under the name “Cultural Awareness Strategy”). The aim is biased on the two indigenous language communities and excludes ethnic minority communities. It is a discriminatory policy. It fails to promote culture diversity in Northern Ireland.

Question 2 Have you any suggestions on this element of the proposal?

Withdraw the proposed Strategy and rewrite a new one which is inclusive for all minority language communities without distinction.

3.4.3 Proposed Project Allocation.

It is proposed that the Cultural Awareness Strategy budget is used to fund two main projects/programmes one linked to each of the two main communities and which promotes tolerance, understanding and respect for an indigenous cultural tradition within that community.

Question 1 Do you agree with this element of the proposal?

We strongly disagree that the budget of the Strategy is used to fund two indigenous language communities only and exclude ethnic minority communities. It fails to promote culture diversity in Northern Ireland.

Question 2 Have you any suggestions on this element of the proposal?

Withdraw the proposed Strategy and rewrite a new one which is inclusive for all minority language communities without distinction.

3.4.4 Proposed Project Duration.

It is proposed that the Cultural Awareness Strategy budget is split equally between two main projects/programmes (one from each of the two main communities) over a period of one year (with the potential to extend funding for a further 3 years subject to annual evaluation of the organisations ability to meet approved objectives). This proposal is intended to:

- Allow for the development of projects/programmes which will maximise the impact on the objectives set out in paragraph 3.4.2, and
- Reduce resources required to administer the budget

Question 1 Do you agree with this element of the proposal?

We strongly disagree that the budget of the Strategy is used to fund two indigenous language communities only and exclude ethnic minority communities. It fails to promote culture diversity in Northern Ireland.

Question 2 Have you any suggestions on this element of the proposal?

Withdraw the proposed Strategy and rewrite a new one which is inclusive for all minority language communities without distinction.

3.4.5 Proposed Project Funding

It is proposed that funding will be awarded up to 75% of the direct project costs. The maximum amount payable to each organisation will not exceed a capped figure per annum which will be determined depending upon the budget available. Funding will not be allocated towards the payment of indirect costs of the project.

A definition of direct & indirect costs contained in paragraph 3.2 of the consultation document

Question 1 Do you agree with this element of the proposal?

We strongly disagree that the proposed Strategy is used to fund two indigenous language communities only and exclude ethnic minority communities. It fails to promote culture diversity in Northern Ireland.

Question 2 Have you any suggestions on this element of the proposal?

Withdraw the proposed Strategy and rewrite a new one which is inclusive for all minority language communities without distinction.

3.4.6 Stage 1 – Assessment of Project Scope

It is proposed that **Stage 1** of the assessment process will seek to identify projects/programmes run by organisations who have the ability to reach and influence a significant number of people from one of the two main communities in Northern Ireland. It is proposed that the assessment panel will use the following as a baseline to measure significance

- Membership numbers of applicant organisation more than 5000
- Evidence of the ability of the applicant organisation to stage 5 annual events attracting more than 10,000 people in total.

These baseline measures are intended as a guide only, proposals which demonstrate other evidence of the ability of organisations to reach and influence

a significant number of people from one of the two main cultural traditions will not be disadvantaged.

Question 1 Do you agree with this element of the proposal?

We strongly disagree that the proposed Strategy is used to fund two indigenous language communities only and exclude ethnic minority communities. It fails to promote culture diversity in Northern Ireland.

By imposing conditions such as membership numbers of applicant organisation more than 5,000 is in effect exclude all ethnic minority groups in Northern Ireland to apply such funding. Another condition is the evidence of the ability of the applicant organisation to stage 5 annual events attracting more than 10,000 people in total which has the same exclusion effect.

DCAL should aware that most of the ethnic minority communities are less than 5,000 in population. This policy implies that small population of ethnic minorities is not importance or worthwhile to fund these groups.

Therefore the condition imposed not only discriminatory but also disproportionate. It is the particular disadvantage of ethnic minority group compared with the two indigenous language communities within the meaning of the Race Relations (NI) Order. The proposed Strategy is clearly not compatible with the Race Relations law in Northern Ireland.

Question 2 Have you any suggestions on this element of the proposal?

Withdraw the proposed Strategy and rewrite a new one which is inclusive for all minority language communities without distinction.

3.4.7 Stage 2 – Assessment of Project Objectives

It is proposed that at **Stage 2** of the assessment process a panel will assess the projects/programmes ability to:

- 1) Promote tolerance; understanding and respect for a cultural tradition predominately linked to one of the two main communities in Northern Ireland with members of that community.
- 2) Promote tolerance, understanding and respect for a cultural tradition predominately linked to one of the main communities in Northern Ireland with the members of the other main community.
- 3) Promote tolerance, understanding and respect for a cultural tradition predominately linked to one of the main communities in Northern Ireland among persons of all Section 75 categories.
- 4) Ensure that projects lead to positive engagement when delivering the project between the organisation proposing the project and another

organisation from the other main community approved for funding under the revised Cultural Awareness Strategy.

Question 1 Do you agree with this element of the proposal?

We strongly disagree with this element of the proposal as it used to fund two indigenous language communities only and exclude ethnic minority communities. It fails to promote culture diversity in Northern Ireland.

Question 2 Have you any suggestions on this element of the proposal?

Withdraw the proposed Strategy and rewrite a new one which is inclusive for all minority language communities without distinction.

3.4.8 Assessment Panel

It is proposed that the assessment process will be carried out by an independent panel set up by DCAL.

Question 1 Do you agree with this element of the proposal?

Please circle the appropriate answer

We strongly disagree with this element of the proposal as it used to fund two indigenous language communities only and exclude ethnic minority communities. It fails to promote culture diversity in Northern Ireland.

Question 2 Have you any suggestions on this element of the proposal?

Withdraw the proposed Strategy and rewrite a new one which is inclusive for all minority language communities without distinction.

For further information or inquiry of this submission, please contact the followings:

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ANNEX

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Council Directive 77/486/EEC of 25 July 1977 on the education of the children of migrant workers Official Journal L 199 , 06/08/1977 P. 0032 - 0033 Finnish special edition: Chapter 16 Volume 1 P. 0031 Greek special edition: Chapter 05 Volume 2 P. 0189 Swedish special edition: Chapter 16 Volume 1 P. 0031 Spanish special edition: Chapter 05 Volume 2 P. 0139 Portuguese special edition Chapter 05 Volume 2 P. 0139

COUNCIL DIRECTIVE of 25 July 1977 on the education of the children of migrant workers (77/486/EEC)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,
Having regard to the Treaty establishing the European Economic Community, and in particular Article 49 thereof,
Having regard to the proposal from the Commission,
Having regard to the opinion of the European Parliament (1),
Having regard to the opinion of the Economic and Social Committee (2),
Whereas in its resolution of 21 January 1974 concerning a social action programme (3), the Council included in its priority actions those designed to improve the conditions of freedom of movement for workers relating in particular to reception and to the education of their children;
Whereas in order to permit the integration of such children into the educational environment and the school system of the host State, they should be able to receive suitable tuition including teaching of the language of the host State;
Whereas host Member States should also take, in conjunction with the Member States of origin, appropriate measures to promote the teaching of the mother tongue and of the culture of the country of origin of the abovementioned children, with a view principally to facilitating their possible reintegration into the Member State of origin,
HAS ADOPTED THIS DIRECTIVE:

Article 1

This Directive shall apply to children for whom school attendance is compulsory under the laws of the host State, who are dependants of any worker who is a national of another Member State, where such children are resident in the territory of the Member State in which that national carries on or has carried on an activity as an employed person.

Article 2

Member States shall, in accordance with their national circumstances and legal systems, take appropriate measures to ensure that free tuition to facilitate initial reception is offered in their territory to the children referred to in Article 1, including, in particular, the teaching - adapted to the specific needs of such children - of the official language or one of the official languages of the host State.

Member States shall take the measures necessary for the training and further training of the teachers who are to provide this tuition.

Article 3

Member States shall, in accordance with their national circumstances and legal systems, and in cooperation with States of origin, take appropriate measures to promote, in coordination with normal education, teaching of the mother tongue and culture of the country of origin for the children referred to in Article 1. (1)OJ No C 280, 8.12.1975, p. 48. (2)OJ No C 45, 27.2.1976, p. 6. (3)OJ No C 13, 12.2.1974, p. 1.

Article 4

The Member States shall take the necessary measures to comply with this Directive within four years of its notification and shall forthwith inform the Commission thereof.

The Member States shall also inform the Commission of all laws, regulations and administrative or other provisions which they adopt in the field governed by this Directive.

Article 5

The Member States shall forward to the Commission within five years of the notification of this Directive, and subsequently at regular intervals at the request of the Commission, all relevant information to enable the Commission to report to the Council on the application of this Directive.

Article 6

This Directive is addressed to the Member States.

Done at Brussels, 25 July 1977.

For the Council

The President

H. SIMONET