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**Submission to Department of Justice consultation
on *Making a Difference: Improving Access to
Justice for Victims and Witnesses of Crime – A
Five-Year Strategy***

January 2013

1. Introduction

The Northern Ireland Council for Ethnic Minorities (NICEM) is an independent non-governmental organisation. As an umbrella organisation¹ we represent the views and interests of black and minority ethnic (BME) communities.² Our mission is to work to bring about social change through partnership and alliance building, and to achieve equality of outcome and full participation in society.

Our vision is of a society in which equality and diversity are respected, valued and embraced, that is free from all forms of racism, sectarianism, discrimination and social exclusion, and where human rights are guaranteed.

Since its foundation, one of NICEM's key functions and priorities has been to support and advocate on behalf of victims of racial harassment in Northern Ireland. In 2006 NICEM published its report *The Next Stephen Lawrence: Racist Violence and Criminal Justice in Northern Ireland* and this has been recently followed up by *Race and Criminal Justice in Northern Ireland: Towards a Blueprint for the Eradication of Racism in CJSNI* in 2013. In 2011, NICEM submitted to the Department's consultation on a new community safety strategy as well as to the Committee of Justice's inquiry into the criminal justice services available to victims and witnesses of crime in Northern Ireland. Since the closure of those consultations, there have been some key developments and therefore, NICEM is glad to have the opportunity to respond to this consultation.

We will begin by setting out some of the relevant human rights and equality considerations, which the Department must take into account in developing this strategy and then we will comment on the aims of the strategy as well as raising particular points under each theme.

2. Equality and Human Rights Context

Mainstreaming equality and human rights into all policies must remain a key priority for all public authorities. In this section, some of the key provisions in relation to equality and human rights, in terms of advancing race equality and respecting the rights of BME communities, will be set out.

According to the Equality Commission's Revised Guidance (2005):

¹ Currently we have 27 affiliated BME groups as full members. This composition is representative of the majority of BME communities in Northern Ireland. Many of these organisations operate on an entirely voluntary basis.

² In this document "Black and Minority Ethnic Communities" or "Minority Ethnic Groups" or "Ethnic Minority" has an inclusive meaning to unite all minority communities. It refers to settled ethnic minorities (including Travellers, Roma and Gypsy), settled religious minorities, migrants (EU and non-EU), asylum seekers and refugees and people of other immigration status.

“the main aim of section 75 is to ensure that equality opportunity is ‘mainstreamed’ by public authorities in their policy making, policy implementation and policy review.”³

The Commission’s 2012 Outline Guide highlights that:

“the Section 75 statutory duties aim to encourage public authorities to address inequalities and demonstrate measureable positive impacts on the lives of people experiencing inequalities. Its effective implementation should improve the quality of life for all of the people of Northern Ireland.”⁴

The Outline Guide goes on to consider the meaning of ‘due regard’ in the section 75 duty. According to the Guide, having ‘due regard’ and ‘regard’ means that the weight given to the need to promote equality of opportunity and good relations is proportionate to the relevance of a particular duty, to any function of a public authority. Therefore, having ‘due regard’ and ‘regard’ entails taking a proportionate approach in determining the relevance of equality opportunity and/or good relations to a particular function or policy.”⁵ It is also noted that the second limb of the section 75 duty, i.e. the good relations, is also particularly relevant in the context of criminal justice policy.

In this submission reference will be made to any potential adverse impacts on the race group as protected under section 75. NICEM would also like to draw the Department’s attention to the fact that persons affected by this strategy may have multiple identities and fall within two or more section 75 categories and may therefore be subject to multiple discrimination. For example, NICEM is aware that there has been a wealth of guidance produced by international human rights bodies in relation to child-friendly justice but we would like to point out that in accordance with Article 2 of the UN Convention on the Rights of the Child non-discrimination should be a guiding principle of all measures undertaken by Government relevant to children.

The principles of equality and non-discrimination underpin human rights instruments as well as the EU legal order. For example, Article 14 of the European Convention on Human Rights (ECHR) (which has been incorporated into domestic law by the Human Rights Act 1998 enshrines the concept of non-discrimination and the general principle of non-discrimination is enshrined in Article 21 of the EU Charter of Fundamental Rights recognises.

According to Article 5 of the United Nations Convention on the Elimination of Racial Discrimination (CERD):

³ See Chapter 1 of the Revised Guidance for discussion on mainstreaming equality, at page 1.

⁴ Section 75 of the Northern Ireland Act 1998: A Guide for Public Authorities - An Outline Guide, 2002, Equality Commission for Northern Ireland, available at:

http://www.equalityni.org/archive/pdf/S75_Public_Authorities_Outline_Guide.pdf

⁵ *Ibid.*

States Parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of the following rights:

- (a) The right to equal treatment before the tribunals and all other organs administering justice; ...

The UN has also issued a “Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power”.⁶ Most importantly, on 25 October 2012, the EU published the Directive 2012/29/EU on establishing minimum standards on the rights, support and protection of victims and we feel this strategy presents a unique opportunity to ensure that the rights of victims, as set out in the Directive, are fully implemented. In that regard, and from NICEM’s perspective, Council Framework Decision 2008/913/JHA on combating certain forms and expressions of racism and xenophobia by means of criminal law is also relevant in this regard.

3. General remarks on the strategy

NICEM welcomes the strategy and commends the Department on attaching a timetable to the 50 deliverables set out in the strategy. NICEM has some concerns, however, about the relationship between victims and witnesses within the strategy. While it is recognised that both have similar needs in some instances, it is important that the distinction is more clearly defined since it is recognised internationally that victims of crimes have rights and therefore the concept of rights within the criminal justice system is no longer purely an issue relevant to only to the accused (i.e. the right to a fair trial). On the other hand, while witnesses play a crucial role in the criminal justice process, i.e. the trial, they are not seen as rights-holders. Nevertheless, it is essential that witnesses needs are met and they are supported and protected throughout the criminal justice process.

The title of the strategy includes the words “access to justice”. This can be quite a nebulous concept but NICEM recognises access to justice as a human right as set out in the human rights and equality context above. From NICEM’s perspective the right to access justice includes the provision of information about legal rights before a trial, the right to advice and legal representation in court as well as support for victims of crimes amongst other things.

The title of this strategy suggests that both the victim and witness are seeking to enforce the right to access justice. As NICEM understands it, there is an obligation on the State to respect, protect and fulfil victim’s rights in realising the the right to access justice and with respect to witnesses the State should put in place appropriate support measures throughout the criminal justice process. In addition, in setting out the aim of the strategy, there is no mention of the rights of victims and the concept of access to justice disappears.

⁶ Available at: <http://www2.ohchr.org/english/law/victims.htm#wp1020829>.

Recommendation: It is suggested that both the title and the aim of the strategy should be amended to reflect the fact that the rights of victims, including the right to access justice, must be realised and that witnesses should be supported through the criminal justice process.

4. Theme 1: the status and treatment of victims and witnesses

Firstly, the strategy, a victim is defined as a person “who is directly the subject of a crime”. This is not in line with the EU Directive’s definition which sets out that victim means “a person who has suffered harm, including physical, mental or emotional harm or economic loss which was directly caused by a criminal offence” and includes family members of a person whose death was directly caused by a criminal offence.

Recommendation: The Department should change the definition of victim in the strategy to include the concept of harm in line with the definition used by the EU Directive.

Secondly, NICEM welcomes the introduction of a Victim Charter and calls on the Department to include all the rights set out in Directive 2012/29/EU, namely Articles 3-24 of the Directive. In particular, NICEM calls upon the Department to fully implement the rights related to the provision of information and support, namely Articles 3-9 of the Directive.

Thirdly, NICEM welcomes the Department’s commitment to provide mandatory training of the care and treatment of victims and witnesses for all staff in the criminal justice organisations who interact with them. According to Article 25 of Directive 2012/29/EU this training should be provided to judges, prosecutors, lawyers and victim support organisations and should be both general and specialist to “increase their [practitioners] awareness of the needs of victims and to enable the to deal with victims in an impartial, respectful and professional manner”. From NICEM’s experience, we recommend that such training includes modules on anti-racism and equality as well as specific training on the impact of hate crime on victims and these elements should comprise part of the mandatory training. Moreover, we would recommend training on how to communicate effectively with victims and witnesses from black and minority ethnic communities. In terms of communication, this should look at how to ensure that information is communicated effectively and where necessary appropriate translation and interpretation services is provided for.

Recommendation: NICEM calls on the Department to carry out training in line with Article 25 of Directive 2012/29/EU. In addition, NICEM calls on the Department to include anti-racism and equality, hate crime and communication.

5. Theme 2: Communication and information provision

Firstly, NICEM would like to welcome the establishment of the Victim and Witness Care Unit and looks forward to the results of the review of this pilot scheme. Since NICEM has not seen all the detail of the plans for this unit, it is not clear if this is envisaged or already in existence, but NICEM would like to call for the inclusion of bi-lingual workers in the care unit. While we acknowledge that interpreters may be provided, NICEM would like to emphasise that in our experience in some circumstances, such as victims of hate crime or domestic violence, it is more appropriate to support the victim through the use of a bi-lingual worker. Such a tool is already being used by the PSNI through the bi-lingual advocacy worker in the area of hate crime.

Recommendation: NICEM recommends that bi-lingual workers form part of the Victim and Witness Care Unit.

Secondly, NICEM welcomes the production of information leaflets and flowcharts etc. We would be interested to know if the Department plans on translating any of these documents and if the Department would also consider including some information in the leaflets which explains a bit more generally how the criminal justice system works in Northern Ireland for the benefit of people who are not from Northern Ireland and may not therefore be aware of how the system operates.

Recommendation: As well as the training under theme 1, it is suggested that a Code of Practice should be drawn up in terms of how to communicate effectively with victims and witnesses from black and minority ethnic communities, including guidance on the use of translation and interpretation services.

6. Theme 3: Support provision and special measures

Firstly, NICEM welcomes the introduction of a formal needs assessment procedure. While we understand the need for a case-by-case analysis, NICEM is also aware that in Appendix D to the strategy a list of intimidated witnesses is set out but does not include victims of racially motivated hate crime.

Recommendation: Victims of racially motivated hate crime should be added to the list of intimidated witnesses.

Secondly, NICEM notes that the action point 22 to improve understanding of gaps in support services has not been prioritised for immediate action. On the other hand, action point 32 prioritises the development of advocacy services to support victims. In the past, NICEM has provided comprehensive racial harassment support to victims of racially motivated hate crimes but in recent times there has not been any funding available to provide the level of support required to meet the demand.

Recommendation: The Department should carry out action point 22 immediately in order to have a better understanding of what services are available as this will help with the development of new services.

7. Themes 4 & 5: Participation and improved understanding; Collation of information and research on the experiences of victims and witnesses

Under theme 4, NICEM welcomes all measures to ensure the effective participation of victims and witnesses of crime in the criminal justice system as well as improved understanding, provided that appropriate support measures, as outlined above, are provided for.

In relation to theme 5, NICEM welcomes action point 46 and the particular mention of gaining an insight into the experiences of victims of hate crime. Indeed, in 2012, the UK Government accepted recommendations under the United Nations Universal Periodic Review (UPR) process to “continue to monitor hate crimes and to work with the community to increase understanding of the impact of such offences, and to pursue efforts to improve the police gathering of evidence of racist motivations”.

In relation to research in this area, NICEM would like to draw the Department’s attention to our recent research report *Race and Criminal Justice in Northern Ireland: Towards a Blueprint for the Eradication of Racism in CJSNI*,⁷ which includes experiences of victims of hate crime. In addition, NICEM would like to draw the Department’s attention to two recent research reports of the EU Fundamental Rights Agency published in November 2012. In *Data in Focus report: Minorities as victims of crime* an EU-wide survey revealed that every fourth person from a minority group had experienced criminal victimisation. This report also includes key learning for survey and data policy, which may be useful to the Department in the development of its methodology.⁸ In addition, the agency published a report on the victims of hate crime entitled *Making hate crime visible in the European Union: acknowledging victims rights*.⁹

8. Further Information

For further information in relation to this consultation response please contact:

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⁷ Available at: http://nicem.org.uk/uploads/publications/Race_and_Criminal_Justice_2013.pdf.

⁸ Available at: <http://fra.europa.eu/en/publication/2012/eu-midis-data-focus-report-6-minorities-victims-crime>.

⁹ Available at: http://fra.europa.eu/sites/default/files/fra-2012_hate-crime.pdf.