

**Submission to the Independent
Commission on Policing
For Northern Ireland**

12 January 1999

1. INTRODUCTION

- 1.1 NICEM is a voluntary sector, membership-based umbrella organisation representative of minority ethnic groups and their supportive organisations in Northern Ireland. The membership includes the following black and ethnic minority communities: Chinese, Asian, African-Caribbean, Irish Travellers, Filipino, Muslim, etc. NICEM is committed to collective action informed by people's experience and analysis of their circumstances. In pursuit of equality of opportunity and equity of treatment, NICEM works for social change in relation to racism and in particular to the elimination of racial discrimination.
- 1.2 NICEM has worked with different departments of the RUC as part of our strategy to pursue racial equality policing services, such as community affairs, training and equality. We also have a working relationship with the Police Authority, in particular to pursue the setting up of a consultative structure with black and ethnic minorities on policing issues and policy.
- 1.3 NICEM warmly welcomes the establishing of an Independent Commission on Policing. We recognise that the policing issue is a highly contentious one. It has operated in an abnormal situation over the past thirty years where the State has imposed emergency legislation that derogates basic human rights of individuals and groups. We also recognise the high price paid by members of the RUC killed and injured during the course of the conflict. Not least, we are still living in a deeply divided society, both in terms of views, traditions and cultures, and physical segregation. Thus this creates a potential for threats and tension among the majority of the community.
- 1.4 This situation also affects the black and ethnic minority communities living in Northern Ireland. Black and ethnic minorities also become the victims of this conflict through the extension of sectarianism to racism, racial harassment and worst, racial violence.
- 1.5 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, regards 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.
- 1.6 We are of the view that any future policing must take into account international human rights standards. Thus, the creation of accountable, impartial and representative policing services must be the foundation of a new civic and democratic society in Northern Ireland. Moreover, the overall ethos of future

policing must change from the existing duties and functional basis to policing which is a kind of community service. This is a service that provides to all sections of the community. It thus creates a more neutral image to serve the community. As a result, the Commission's work is important in order to achieve these key aims and objectives.

- 1.7 Our submission will focus on the following areas: 1. International Human Rights Standards on Policing; 2. Policing and Black and Ethnic Minorities; 3. Policing and Travellers; 4. Policing and Racial Equality; 5. Policing and interpretation services; 6. Association of the Chief Police Officers' guide on Policing and Racial Equality; 7. Future Legislation on Racially Motivated Crime; 8. The Implication of the Lawrence's Inquiry to Northern Ireland and Recommendations.

2. INTERNATIONAL HUMAN RIGHTS STANDARDS AND POLICING

- 2.1 International human rights standards are central to our future policing. They provide a framework and human rights principles on policing; standard setting and guidance on certain controversial areas.
- 2.2 Both the United Nation Code of Conduct for Law Enforcement Officials (1979) and the United Nation Principles on the Use of Force and Firearms (1990) are the most important international instruments laying down standards for proper policing.
- 2.3 The Parliamentary Assembly of the Council of Europe Resolution 690 (the well-known Declaration on the Police) recognises that the police as individual citizens have a claim to their own human rights just as they carry heavy responsibilities for the protection of the human rights of others. The Council of Europe provides specific programme on policing. The current "Policing and Human Rights 1997-2000" Programme provides a framework within which national, bilateral and multilateral projects can be conducted in a coherent, co-ordinated and structured approach towards human rights and policing.
- 2.4 The Commission should look into these international frameworks, as well as other international human rights instruments on civil and political rights, torture and degrading treatment, and non-discrimination in order to develop our framework on future policing in Northern Ireland.

3. Policing and the Black and Ethnic Minorities

- 3.1 The relationship between the Police Service and Black and Ethnic Minorities is at an all time low. The fundamental issue is that the Black and Ethnic Minority community strongly feel that they have no confidence in the RUC based on two main reasons. First, it is rare for the RUC to bring perpetrators of crime against the Black and Ethnic Minorities to justice. It would be interesting to know if the RUC

can provide figures about the percentage of arrests, charges, successful prosecutions, as well as the percentage of cases closed as the result of no progress. Second, the community strongly feels that they do not receive the same treatment as local people either as the victims of crime or the alleged perpetrators of committed offences. As a result, some victims have stopped reporting incidents to the police, who have been unsympathetic and unwilling to investigate them effectively. This is the effect of institutional racism in relation to the response of the Police to the victims of racially motivated crimes.

3.2 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.

3.3 Racism within the police can be both covert and overt. Racism can be detected in how operational policing decisions are arrived at and consequently implemented and indeed how existing policy is ignored or an individual officer's discretion results in racist outcomes. We believe that the existing culture, custom and practice within the RUC can result in wide scale discrimination both within service delivery, recruitment and detention practices, in particular when the RUC has no policy on race equality.

3.4 In *Amin -v- Entry Clearance Officer, Bombay* [1983] 2AC818 the House of Lords by a bare majority of three to two held that the expression "provision of goods, facilities and services" in the anti-discrimination statutes applied only to activities or matters analogous to those provided by private undertaking. This unnecessarily restrictive interpretation means that the entire criminal justice system is outside the remit of the race relations legislation. Thus it provides a breeding ground for racism to flourish.

3.5 As a result, an amendment of the Race Relations (NI) Order 1997 would be required, comparable to Article 17, making the Chief Officer of police and/or the

Police Authority liable for acts of discrimination by all constables in respect of any activities other than employment (see *Farah -v- Commissioner of Police of the Metropolis* [1997] 1 All ER289).

3.6 NICEM also has concerns about police immunity from negligence and disclosure by virtue of “Public Policy” considerations as further evidence to show that the police escape criminal proceedings and internal disciplinary actions. This follows the House of Lords decision in *Hill -v- Chief Constable of West Yorkshire* [1988] 2All ER 238. The Law Lords decided that the police in the absence of such “proximity” did not owe a general duty of care to individual members of the public to identify and apprehend an unknown criminal, even though it was reasonably foreseeable that harm was likely to be caused to a member of the public if the criminal was not detected and apprehended. Furthermore, even if such a duty did exist public policy required that the police should not be liable in such circumstances.

3.7 The police immunity from negligence and disclosure has become one of the major debates in the Stephen Lawrence Inquiry at the moment. NICEM holds the view that the longer the immunity exists, the longer the public will have neither confidence in the policing simply because any wrongdoing of the officer will redress to the victim nor any disciplinary action against the wrong doing officer. This norm and culture provides a further breeding ground for any form of discrimination, in particular towards the vulnerable black and ethnic minority communities.

3.8 However, a recent judgement of the European Court of Human Rights (ECHR) on *Osman -v- UK* held that the “exclusionary rule formulated in the Hill case” although serving a “legitimate” aim, should not be used as a “blanket immunity” when considering striking out actions. Such use could amount to a violation of human rights. It further decided on police immunity and proportionality and the ECHR made it clear that “it must be open to a domestic court to have regard to the presence of other public interest considerations” (The Times, November 5, 1998).

4. Policing and Travellers

4.1 Travellers experience extensive and virulent racism which is manifested in both social discrimination, public opposition to Travellers living in local neighbourhoods, refusal of access to social facilities, anti-Traveller incitement by local politicians or members of residents groups and sometimes intimidation, such as dumping of farm slurry next to Travellers caravans, verbal threats of violence, or occasional physical attacks, such as vandalism of Traveller property, petrol bomb attacks and the use of firearms. Widespread prejudice, discrimination and racism were defined as major obstacles to the Traveller community’s right to live their own cultural patterns in decent conditions with equality of opportunity and access to the range of societal institutions.

4.2 More recent studies by McVeigh (1992:372-374) and Mann-Kler (1997:81-84) have drawn attention to the continued existence of anti-Traveller prejudice within

the RUC. McVeigh cites Traveller informants who complain of harassment (a police car camped overnight at a Traveller camp playing music), stereotyping of Travellers as inherently criminal and consequent scapegoating of Travellers for offences committed by non-Travellers. Mann-Kler concludes “community relations between the Traveller community and the RUC at the moment seem non-existent”.

4.3 NICEM also heard complaints of illegal evictions by some RUC officers who have taken it upon themselves to tell Travellers to leave an area where they are camped illegally, even though illegal camping is a civil offence and therefore a matter for the courts. Other complaints include the use of racially abusive language by some officers; statements relating to legal insurance claims being “lost”; heavy handed approaches to enforcing evictions, such as use of the DMSU in Downpatrick in 1985 in which one hundred officers were on hand to oversee an eviction of half a dozen families in Derry in 1987; indiscriminate raids on sites for stolen property during which the property of innocent Travellers has been destroyed or confiscated.

4.4 During NICEM’s routine cultural awareness training to all levels of the RUC personnel, prejudice against the Travellers is common at the training sessions, in particular the view that Travellers are inherent criminals. When the trainer challenges these attitudes, the reaction becomes more negative and aggressive. Thus, institutional racism against Travellers appears to be the norm within the RUC.

5. Policing and Racial Equality

5.1 The British Government has ratified both the United Nation Convention for the Elimination of all Forms of Racial Discrimination (CERD) and the Council of Europe’s Framework Convention for the Protection of National Minority (the Framework Convention) which create a positive duty for the British Government and the new Northern Ireland Assembly to implement its obligations under international law, including domestic law measures to eliminate racial discrimination, affirmative action and positive rights which are arising in the civil, political, economic, social and cultural spheres.

5.2 The international human rights instruments on race have been setting standards and principles on racial equality. Article 1 of the Framework Convention states that “the protection of national minorities forms an integral part of the international protection of human rights, and as such falls within the scope of international co-operation”.

5.3 Article 5(a) of CERD provides that “the right to equal treatment before the tribunals and all other organs administering justice”. Article 4 of the Framework Convention further states that “the Parties undertake to guarantee to persons belonging to national minorities the right of equality before the law and of equal

protection of the law. In this respect, any discrimination based on belonging to a national minority shall be prohibited”.

5.4 The above international instruments form the basis of NICEM’s Racial Equality Policing Service, which we continue to pursue. The main purpose of a non-discriminatory policing service is to ensure that no member of the public receives less favourable treatment on the grounds of race, colour, nationality, or national or ethnic origins, or are disadvantaged by conditions or requirements that cannot be shown to be justifiable. This non-discriminatory policing service must further be extended to cover religious belief, political opinion, gender, sexual orientation, age, marital status, disability and dependants.

5.5 In order to achieve the above non-discriminatory policing service, NICEM proposes new legislation on policing by establishing a positive right not to discriminate on any grounds, when police constables provide their service, otherwise it is actionable in law.

6. Policing and Interpretation Services

6.1 NICEM has concerns that for those who cannot speak English in using the policing service, either as the victims of crime or the alleged criminal offender, they will face less favourable treatment. First, the officer does not attempt to get an interpreter immediately. As a result, the victim of crime generally brings his or her own relatives or friends as interpreter. Second, the quality of interpreters provided by the RUC in the criminal investigation is questionable.

6.2 There is no standardisation of translation of the “Caution” into different ethnic minority languages. Thus, interpreters use their own way of understanding to interpret that could result in the miscarriage of justice. The fundamental issue is that there is no formal training for any interpreters to deal with the legal jargon on the one hand, understanding of the entire criminal investigation procedure and their roles on the other.

6.3 Moreover, officers can have the wrong impression that the interpreters can do everything for them. They do not even check whether the victims or the suspect of crime can understand the interpreter, take for example where most of the Chinese can only speak Cantonese and a Mandarin speaking interpreter is provided or vice versa.

6.4 NICEM has raised this issue for years without any positive response from the RUC. We have the strong view that interpreters must achieve national standards and must have mandatory training from the RUC on criminal investigation procedures and legal jargon. Otherwise, black and ethnic minorities may be the potential victims of the miscarriage of justice on the one hand, receiving less favourable treatment on the other.

6.5 NICEM is planning to standardise the training of interpreters by providing nationally accredited training for potential interpreters. Thereafter, we will request their registration in NICEM in order to recommend them on to public, voluntary and private sector.

7. The Association of the Chief Police Officers' (ACPO) guide on Policing and Racial Equality

7.1 Over the years, the RUC has developed new initiatives aimed at working with black and ethnic minority communities. We welcome this positive change. We also recognise their initiation of ethnic monitoring of racially motivated crime, which is an important step towards standard setting for racial equality policing in Northern Ireland.

7.2 Although the ACPO guide provides a framework for racial equality policing, it has not materialised in Northern Ireland for the following reasons :

1. There is no written racial equality policy within the force;
2. There is no structural support to implement the ACPO guide, even though it does describe clearly the responsibilities in the police service from the Chief Constable down to individual officers. This is a major fatal blow to the whole ethnic monitoring of racially motivated crimes.
3. There is no formal training for individual officers, including senior staff officers, on ethnic monitoring. As a result, the officers either do not know that such a system exists or use their own ways to handle racially motivated crime. This in turn affects the data collection and under-reported cases of racially motivated crime.
4. The definition of racially motivated crime in the ACPO guide was designed to take into account the views of victims/witnesses and their perception of the crime. Too many officers ignore this victim centred definition. Police officers tend to allow their prejudice to influence their perception of the credibility of allegations of racist attacks.
5. Members of the black and ethnic minority communities are not aware of ethnic monitoring of racially motivated crime or the victim centred definition.

7.3 NICEM has a strong view that the ACPO guide must be fully implemented in the future policing service in Northern Ireland as the first step towards challenging institutional racism within the force. NICEM is willing to support the RUC to implement the guide in areas such as developing anti-racist policy, training, target setting, and action plans.

7. Future Legislation on Racially Motivated Crime

8.1 The current concerns and practice on racially motivated crime is more focused on supporting the victims. More recently, the focus has looked at the perpetrators. As a result, legislation has been introduced in Great Britain. These include the

Criminal Justice and Public Order Act 1994 which introduced offences relating to racial violence and harassment; and Crime and Disorder Act 1998 which introduced heavier sentencing for crimes of violence and damages that are "racially aggravated". The legislation that aims to tackle racial harassment and racial violence, does not extend to Northern Ireland.

8.2 Moreover, the Housing Act 1996 provides that racial harassment constitutes specific grounds for eviction and can provide valuable help in the fight against racial violence and harassment in the local council housing estates. Most of the racial violence, attacks and harassment in Northern Ireland happen in these housing estates. However the 1996 Act does not extend to Northern Ireland. This raises the fundamental issue of regional inequality resulting in black and ethnic minorities in Northern Ireland failing to have the same protection as in Great Britain.

8.3 The Home Office Research Study "The perpetrators of racial harassment and racial violence (Research Study 176, 1998) suggested a multi-agency approach to tackle racial harassment and racial violence. In order to tackle individual perpetrators' actions within the functionality of racism that attempts to reduce or prevent racial harassment, it introduced three "concentric" strategies for tackling racial harassment (p.106-111):

1. **the identification of an effective action against perpetrators;**
2. **the identification of potential perpetrators and the development of strategies to divert them from actually becoming perpetrator; and**
3. **development of a range of strategies for consistently addressing the perpetrator community's general attitudes towards ethnic minorities.**

8.4 A multi-agency task force on racial motivated crime should be established to implement the above strategies through action plans, monitoring racial motivated crime and monitoring the proposed legislation. The task force should include participation from the black and ethnic minority communities.

8.5 It would be helpful if the Commission recommends in your final report to extend provision for these offences to Northern Ireland, adopts the above strategies and sets up a multi-agency task force to tackle the increasing trend of racial harassment and racial violence.

9. The implication of the Lawrence's Inquiry in Great Britain to Northern Ireland

9.1 The Part 2 of Sir William Macpherson's Inquiry on the death of Stephen Lawrence has an enormous implication for our situation. It dealt with the lessons to be learned from racially motivated crime. There will be recommendations for the future management of cases involving racially motivated crime. NICEM expects that the recommendations will fundamentally change the whole practice of the force on racially motivated crime which is very relevant to our situation. The Report of the Lawrence Inquiry's will be published by the end of February.

NICEM requests that the Police Commission should fully examine the Report of Sir William Macpherson's Inquiry and incorporate the relevant recommendations to Northern Ireland for the following reason:

1. The Inquiry examines the wider issue of the institutional racism within the force and recommends a model of good practice for the future;
2. The handling of the death of Stephen Lawrence by the Metropolitan Police shows the same attitude as the RUC handling the victims of the racially motivated crime in Northern Ireland; and
3. The relationship between the Black community and the Metropolitan Police is the same scenario as in Northern Ireland between the Catholic community and the RUC. The situation is almost identical to black under-representation in the Metropolitan Police, in particular among the higher ranking; harassment and intimidation against black officers is common, blacks are over-represented in both custody and prosecution cases and under-represented in caution cases.

9.2 The RUC may argue that we do not have the same kind of seriousness of offence in Northern Ireland. The issue is not the seriousness of the offence committed such as with the death of Stephen Lawrence, but how institutional racism operates within RUC, in particular in the handling of the victims of racial motivated crime. Racism within the RUC can be both covert and overt. Racism can be detected in how operational policing decisions are arrived at and consequently implemented and indeed how existing policy is ignored or individual officers' discretion results in racist outcomes.

RECOMMENDATIONS

- 1. International human rights standards are central to our future policing. The Police Commission should look into these international instruments in order to develop our framework on future policing in Northern Ireland.**
- 2. The RUC should set up a race equality policy, personnel structure, action plan, time-table, targets and monitoring system to tackle institutional racism, in particular working with the Traveller community.**
- 3. The Police Commission should propose to amend the Race Relations (NI) Order 1997 making the Chief Officer of police and/or the Police Authority liable for acts of racial discrimination by all constables in respect of any activities other than employment as a consequence of the House of Lords decision on the Amin case.**
- 4. The Police Commission should make recommendations to end police immunity from negligence and disclosure by virtue of "Public Policy" considerations as further evidence shows that the police escape criminal proceedings and internal disciplinary actions. This action will be corresponding to the European Court of Human Rights decision on Osman - v- UK which held that the exclusionary rule formulated in the Hill case**

although serving a "legitimate" aim, should not be used as a "blanket immunity" when considering striking out actions. Such use could amount to a violation of human rights. Therefore police immunity and proportionality must be open to a domestic court to have regard for the presence of other "public interest consideration".

- 5. The Police Commission should propose new legislation on policing by establishing positive rights not to discriminate on any grounds when police constables provide their service and activities, otherwise it is actionable in law.**
- 6. The RUC should provide high quality interpretation service including the training of interpreters in criminal proceedings and a standardised translation of the "Caution" into different ethnic minority languages in order to avoid miscarriage of justice.**
- 7. The Police Commission should recommend the full implementation of the ACPO guide with additional resources in training and management structure, in order to provide race equality policing service.**
- 8. The Police Commission should recommend the consolidation of those criminal offences which are now applicable in England and Wales, but not in Northern Ireland, such as racially-aggravated offences under section 28-32 of the Crime and Disorder Act 1998 and racial violence and harassment offences under the Criminal Justice and Public Order Act 1994.**
- 9. The Police Commission should recommend enacting the same provision under the Housing Act 1996, which provides that racial harassment constitutes a specific grounds for eviction.**
- 10. The Police Commission should recommend setting up a permanent consultation structure between the future police force and the ethnic minority communities in relation to police matters.**

For further information about this submission, please contact with Mr. Patrick Yu, Executive Director of NICEM at 73 Botanic Avenue, Belfast BT7 1JL.

APPENDIX:

- 1. Research Paper 98/44, The Crime and Disorder Bill [HL], Bill 167 of 1997-98: Anti-social neighbours, sex offenders, racially motivated offences and sentencing drug-dependent offenders, p.45-61, Home Affairs Section, House of Commons Library, 6 April 1998.**
- 2. New Law Journal December 11 1998 "The definition of a racial incident" by Peter Fepson.**
- 3. BBC East programme 'The Hidden Troubles'.**
- 4. Farah v Commissioner of Police of the Metropolis 2WLR 1997, CA**
- 5. 'Stephen Lawrence's Legacy', the Economist January 30th 1999.**
- 6. Newspaper cutting on policing and ethnic minority**