

**Northern Ireland Council  
for Ethnic Minorities**

**Submission to**

**the Northern Ireland Office**

**in consideration of**

**Consultation on the Draft  
Criminal Justice (NI) Order 2004**

**March 2004**

## 1. Introduction

1.1 NICEM is an umbrella organisation representing the interests of black and minority ethnic groups in Northern Ireland. Currently we have 23 affiliated black and minority ethnic groups as our full member, which represents most of the black and ethnic minority communities in Northern Ireland. Our vision is of a society where differences are recognised, respected and valued, a society free from all forms of racism and discrimination, where human rights are guaranteed. NICEM works in partnership, to bring about social change, by achieving equality of outcome and full participation in society.

This submission is a collective response, prepared by NICEM and endorsed by the organisations listed in Annex 1.

1.2. NICEM organised a consultation seminar on the consultation document: Race Crime and Sectarian Crime Legislation in Northern Ireland on 23 January 2003. Following this consultation a submission was produced, which was endorsed by 23 organisations, including black and minority ethnic groups as well as Trade Unions and local community and voluntary sector organisations. We were pleased to see the cross-sectoral support for our submission.

1.3. Much of the following is based on that initial consultation and submission. We are pleased to see that the legislative proposal takes much from that original paper. However, we are concerned about a lack of response to our concerns regarding the use of legislation: **“In our view...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 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.”** (NICEM response to the consultation on Race and Sectarian Crime, 2003)

1.4. In this context we very much welcome the recognition in the recent Policing Plan of the need for “the police service to have in place proper procedures and practices to provide an appropriate level of response” to hate crime. Such a recognition is essential to begin the process of addressing institutional racism within the PSNI, and indeed the wider criminal justice system. We look forward to actions that can make this a reality.

1.5 Also welcome is the inclusion in the policing plan of a specific performance indicator in relation to the number of crimes and incidents of a racist or homophobic nature, and a specific target “to monitor the number of incidents of a racist or homophobic nature and continue to work towards an accurate baseline of racist and homophobic crimes”. This is one element of the strategy, drawn in part from the Stephen Lawrence Inquiry, that we recommend in this submission. (See further below)

1.6 The explicit inclusion in the Policing Plan is important for a number of reasons, not least because of the link to resources. We hope that the content of this submission,

as well as the number of previous submissions we have made in relation to this subject<sup>1</sup>, can assist in informing progress on meeting this important target.

1.7 In addition, we have an outstanding case now being brought to the attention of the Secretary of State, where a Muslim father was viciously attacked by his neighbours' son and his peers the day after September 11<sup>th</sup> 2001. The police gathered all the evidence, yet the DPP Office refused to prosecute. No reason has been given. Following the decision, we brought the case to the Police Ombudsman's Office who examined the case and concluded that there is a strong case for prosecution.

1.8. Also of concern is the lack of action from Government on the **Race Equality Strategy**, which contains specific aims in relation to combating racism and racist crime, and would form the basis of action across all government departments. The consultation on this concluded some time ago, and we are aware that the final document is awaiting Ministerial approval. NICEM is keen to see action on the basis of the Strategy, and the longer it sits on the Ministers desk, the longer that will take.

## **2. Background-the Extent of Racist attitudes in Northern Ireland**

The following data highlights the serious need for action to address racism and racist crime in Northern Ireland. It also highlights the fact that such action is long overdue.

2.1. The Northern Ireland Research and Statistic Agency commissioned a number of researches to ascertain the extents of racism in Northern Ireland. The following data is from **Connolly & Keenan, 'Racial Attitudes and Prejudice in Northern Ireland' 2000, one of the five volumes of the research papers.**

2.2 Responses to general questions provided generally positive responses:

- 83% of those surveyed supported the need for effective equal opportunities policies for minority ethnic people in relation to employment and housing;
- 87% felt that school children should be taught about minority ethnic people's traditions and cultures in schools.

2.3 However, when questions related to attitudes to specific groups, the situation changed dramatically:

- 25% or over were unwilling to accept either a person of African Caribbean, Chinese or South Asian origin as a resident in their local area;
- Over 40% were unwilling to accept a member of any of these three groups as a close friend;
- 54% were unwilling to accept a person of South Asian or Black African origin as a relative by way of marriage
- 53% were unwilling to accept a person of Chinese origin as a relative by way of marriage.

2.4. With regard to levels of prejudice, Irish Travellers fared the worst:

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<sup>1</sup> Including NICEM Submission to the Independent Commission on Policing in Northern Ireland 1999; NICEM & CAJ joint submission to the Council of Europe Advisory Committee on the Framework Convention for the Protection of National Minorities, 2000; NICEM submission on the PSNI Equality Scheme 2002; NICEM submission on the consultation on Race and Sectarian Hate Crime in Northern Ireland 2003.

- 40% felt that the nomadic lifestyle of Irish Travellers was an invalid one that should not be supported or resourced by government
- 57% were unwilling to accept Irish Travellers as residents in their local area;
- 66% were unwilling to accept an Irish Traveller as a colleague at work;
- 70% were unwilling to accept a Traveller as a close friend;
- 77% were unwilling to accept a Traveller as a relative by way of marriage.

2.5. Racial Prejudice appears to be around twice as significant as sectarian prejudice in the initial attitudes of the population of Northern Ireland.

- Respondents were around twice as likely to be unwilling to accept and mix with people from a minority ethnic background than they would be with those of the other main religious tradition (i.e. Catholic or Protestant)

2.6 The following data is taken from **Connolly & Keenan 'Opportunities for all' 2000**

2.7 Racist Harassment is a common experience for a significant proportion of minority ethnic people interviewed. Racist Harassment and bullying in schools also appear to be a common experience for many of the minority ethnic children interviewed.

- 44% had experienced verbal abuse;
- 29% had experienced damage to their property;
- 10% had actually been physically assaulted because of their racial identity.

2.8 The Equality Commission for Northern Ireland's Report on '**A wake-up call on race: implications of the Macpherson Report for Institutional Racism in Northern Ireland**', 2002 further consolidates Connolly & Keenan's findings in the institutional setting. These are that:

- Racism is not seen as an important issue, either in Northern Ireland generally or in the sectors (private, public and social partners) in which the respondents were involved (P.9);
- There is a general acceptance of Macpherson's definition of institutional racism, but some unease and occasional opposition (P.13);
- Many of the comments were based on relative ignorance and lack of thought, essentially because people have not been confronted by the need to discuss this issue (p.13);
- It seems self-evident that we cannot begin to tackle institutional racism until we know what it is and understand how it works (p.14);

These figures above give a disturbing picture of the levels and scope of racism within Northern Ireland, the reality of which for black and minority ethnic peoples' daily lives must be recognised and addressed if action against racist crime is to be effective.

### **3. DRAFT CRIMINAL JUSTICE (NORTHERN IRELAND) ORDER 2004** COMMENTS SUBMITTED BY NICEM ON ARTICLES 2, 3 AND 4 OF THE DRAFT ORDER

3.1 NICEM welcomes the recognition by government of the growing and serious problem of racist crime and other forms of hate crime in NI.

3.2 Action to combat racist crime is long overdue, and NICEM regrets that while government has been assessing the scale of the problem and the need for action, more people have been victims of racist attacks.

3.3 The proposed legislation is an important step, but, as we explain more fully below, on its own a new criminal justice order will not prevent or deter racist crime unless it is accompanied by major changes to the attitudes and practices of the agencies that form part of the criminal justice system in NI.

3.4 NICEM supports the decision to use legislation, rather than to rely on common law, to ensure recognition of the gravity of hate crime publicly as well as within the criminal justice system. By creating a statutory framework the proposed order should focus the minds of the police, the prosecution and the courts. By requiring a statement in open court, the proposed legislation should make the public more aware of the nature and extent of racist and other hate crimes and how the criminal justice system in NI is responding to these crimes.

3.5 NICEM agrees with the decision to adopt an approach for NI that is not a copy of the legislation which has proved problematic in GB. In its response to the earlier consultation on Race Crime and Sectarian Crime Legislation in Northern Ireland, NICEM urged that NI should learn from the experience in GB; in particular we recommended against enacting specific racially aggravated offences when there was already good evidence of major problems that have been encountered in England and Wales in trying to secure convictions for such offences.

3.6 NICEM endorses the proposal to include hostility based on race, religion and sexual orientation in the draft order, to include both presumed and actual membership of a racial, religious or sexual orientation group, and to define membership of such group to include association with members of that group.

3.7 NICEM is aware of high rates of victimisation and attacks on disabled people, and we recommend that there should be immediate consultation with disability groups and that consideration should be given to amending the draft order so that it also refers to hostility based on membership of a group defined by reference to disability or a particular disability, as is now the case in GB (section 146, Criminal Justice Act 2003).

3.8 NICEM endorses the approach of the draft order to use increased sentences as the primary sanction, so that where any offence is aggravated by hostility, the court is required to treat that fact as a factor that increases the seriousness of the offence, and is also required to state in open court that the offence was aggravated for this reason.

3.8 NICEM agrees that any offence should be “aggravated by hostility” and liable to an increase in sentence either if

- (a) the offender demonstrates hostility towards the victim based on his/her membership of a group defined by race, religion or sexual orientation, or if
- (b) the offence is motivated by hostility towards members of a racial/religious/sexual orientation group based on their membership of that group.

These are matters which, provided the evidence has been obtained, can appropriately be drawn to the court's attention and given proper consideration after conviction.

3.9 In principle NICEM endorses the provisions in the draft order that increase maximum sentences for certain offences of assault, criminal damage and harassment, which are necessary to give the courts sufficient scope for increased sentences where such offences are aggravated by hostility. NICEM's main reservation is that if there is already any disparity in sentencing based on race or religion (see our comments below), then careful monitoring will be essential to know whether these new tariffs increase further any such inequalities.

3.10 NICEM supports the inclusion of sexual orientation to Article 8 of the Public Order (NI) Order 1987. We are aware that few prosecutions are brought for stirring up hatred or arousing fear on grounds of race or religion, and some of the training and monitoring measures we discuss below may shed light on why this is the case. Nevertheless we believe that with evidence of increasing rates of homophobic attacks it is right to extend this protection to groups defined by sexual orientation. (We are puzzled by the statement in the Explanatory Document that maximum sentence for conviction on indictment for such offences is 2 years imprisonment, as we understood that this had been increased to 7 years under section 41 of the Anti-Terrorism, Crime and Security Act 2001).

**3.11 NICEM submits that it is essential for government to acknowledge that the proposals in the draft order on their own are not a sufficient response to the urgent problem of racist crime.** The draft order will have little or no real impact if no cases 'aggravated by hostility' reach the courts for sentencing because of gaps or failures at earlier stages in the process. In our previous submission we expressed our concern regarding the lack of commitment, training and supervision within the PSNI (and the RUC) to respond promptly and effectively to reported racist incidents or to give ethnic minority victims of such incidents any real confidence in police investigation. We are also concerned that without dedicated training neither the PSNI nor the DPP will collect, analyse and present to the court sufficient relevant evidence to trigger their power of increased sentence.

3.12 Under the existing law as well as under the proposed draft order, there is urgent need to focus on how well equipped -- in terms of awareness, policies, procedures, practices, supervision, monitoring -- the PSNI and the DPP are to respond to, investigate and prosecute racist and other hate crime. In this context the experience and developments in GB offer some useful models. We assume that the PSNI is already developing for NI guidance on racist and other hate crimes comparable to that produced by ACPO, that the DPP is considering how a version of the CPS Racial Incidents Monitoring Scheme might be relevant in a NI context, and that in both services there are already plans and resources to provide necessary training. We highlight certain changes, drawn in part from the Stephen Lawrence Inquiry Report, that we recommend:

(a) Formal acceptance by the PSNI of the Stephen Lawrence Inquiry definition of a racist\* incident - *any incident that is perceived to be racist by the victim or any other person*

(b) Encouragement of reporting of racist\* incidents and crimes, including consultation and co-operation by the PSNI with other agencies and local communities

(c) Careful and systematic recording and monitoring by the PSNI of reported racist\* incidents, including both crimes and non-crimes;

(d) Prompt and thorough investigation of racist\* incidents and crimes, giving credence and validity to the report by the victim, providing timely appropriate interpretation or translation support;

(e) Careful and systematic recording and monitoring by the DPP of racist\* crimes including all decisions regarding the discontinuation of such cases.

(f) A comprehensive programme of anti-racism training (as opposed to the softly-softly approach of cultural awareness) covering the whole of the criminal justice system, including the PSNI and DPP. This training must be compulsory for serving officers as well as new recruits.

(g) A statutory duty needs to be placed on the DPP to give reasons in the case of non-prosecution of hate crime.

\* and/or sectarian or homophobic crimes

3.13 NICEM is all too well aware that among the ethnic minorities in NI there are strongly held beliefs, based on their daily experiences, that they are treated unequally and less favourably by the NI criminal justice system. Much needs to be done to establish greater confidence of ethnic minority communities in the criminal justice system. An important step, which was recommended in the major *Review of the Criminal Justice System in Northern Ireland* (2000) (paragraphs 3.38 and 3.41), and endorsed in the April 2002 NI Omnibus Survey, is to institute equity monitoring, that is monitoring of the criminal justice system as it affects people by community background, gender, ethnic origin, sexual orientation and disability and regular publication of the outcome of such monitoring. There is clear statutory authority for the publication of such monitoring in Article 56, Criminal Justice (NI) Order 1996; all that appears lacking is the commitment to carry it out. In GB, the publication of ethnic monitoring data under section 95 Criminal Justice Act 1991 and the exposure of significant disparities based on race/ethnicity has reinforced the Stephen Lawrence Inquiry recommendations and has made a major contribution to changing practice within each of the criminal justice agencies.

#### **4. Conclusion**

4.1 In summary, NICEM welcomes and endorses the provisions in the proposed draft order as an appropriate legislative response to the problems of racist and other hate crime in NI. However, NICEM also cautions that to have any real impact the new legislation must be accompanied by suitable training, guidance, supervision and monitoring to bring about changes to attitudes and practice within the PSNI, DPP and other agencies of the criminal justice system. Without this the legislation will have little or no impact on the daily experience of black and minority ethnic people in Northern Ireland.

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