

THE ANNUAL HUMAN RIGHTS AND RACIAL EQUALITY

BENCHMARKING REPORT 2013/14



Executive Summary
June 2014

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Cover Photographs, left to right: children and young people from the Belfast Islamic Centre, Meriem Naili addressing the BME Parliament; meeting of the Indonesian Association- all the photos are of women

Introduction

The Northern Ireland Council for Ethnic Minorities (NICEM) is an independent non-governmental organisation monitoring racism and racial inequality in Northern Ireland. 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.¹ 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.

NICEM monitor and promote compliance with binding international and domestic human rights and racial equality standards emanating from the United Nations, European Union, Council of Europe and domestic law. NICEM have engaged extensively with a range of UN Treaty Monitoring Bodies, where shadow reporting processes have been utilised to mobilise and empower BME community members to understand their rights and how to exercise and enforce them. In addition to forming Delegations for the UN Committee on the Elimination of Racial Discrimination (ICERD) in 2011 and the UN Committee on the Elimination of Discrimination Against Women (CEDAW) in June 2013 comprised of BME community members, NICEM have also submitted high impact shadow reports to the UN Committee on Economic, Social and Cultural Rights (ICESCR) and the UN Committee Against Torture (UNCAT) through which we have identified inequalities and gaps in protection afforded to ethnic minorities on the ground.

NICEM's second Annual Human Rights and Racial Equality Benchmarking Report, should assist the government in adhering to guidance issued by the Office of the High Commissioner for Human Rights (OHCHR) which recommends monitoring progress on racial equality against indicators drawn from international human rights standards. This report has been structured primarily around UN Concluding Observations issued to the UK and the Departmental Audits of Inequality and Action Plans in order to benchmark advancement in racial equality, key inequalities and gaps in protection for ethnic minorities in Northern Ireland. NICEM note with concern the inability of Northern Ireland Government to counteract the adverse implications of decision making on reserved matters affecting ethnic minorities in Northern Ireland. This is despite immigration and asylum matters routinely interfering with transferred matters such as health, housing, employment and criminal justice. Whilst it is important not to neglect the responsibilities of Central Government and Westminster in this regard, recommendations within this report are directed primarily at ensuring the Northern Ireland Government work

¹ In this document "Black and Minority Ethnic Communities" or "Minority Ethnic Groups" or "Ethnic Minorities" shall be understood to mean people whether they are settled ethnic and religious minorities (including Travellers, Roma and Gypsy), migrants (EU and non-EU), or those with asylum seeker, refugee, or other immigration status. It has an inclusive meaning to unite all minority communities.

proactively within the scope of its devolved competence to maximise the realisation of rights for ethnic minorities.

1. Human Rights and Racial Equality in Northern Ireland:

The Committee recommends that the State party develop and adopt a detailed action plan, with targets and monitoring procedures, in consultation with minority and ethnic groups, for tackling race inequality as an integral part of the Equality Strategy, or separately provide an action plan for an effective race equality strategy.

(para 17, CERD Concluding Observations 2011)

- **OFMdFM should introduce as a matter of urgency a robust and comprehensive Racial Equality Strategy and adequately resourced the Action Plan, including additional Inter-Departmental Action Plan, with targets and monitoring procedures.**
- **The NI Executive should consolidate and strengthen racial equality legislation to bring protections in line with international standards and parallel protections under the Equality Act 2010 (GB);**
 - **The recommendations issued by the Equality Commission in its recent position paper on racial equality should be rapidly implemented.²**
- **The Northern Ireland Assembly should establish a Standing Committee on Human Rights and Equality to provide pre-legislative scrutiny and monitor compliance with international standards (i.e. complementary to Joint Committee on Human Rights at Westminster Parliament).**
- **A robust and inclusive Bill of Rights for Northern Ireland should be introduced to promote compliance recommendations issued by the Northern Ireland Human Rights Commission in addition to the Council of Europe and a series of UN Treaty Monitoring Bodies.**
- **The OFMdFM Minority Ethnic Development Fund should revise its eligibility criteria to target BME led groups. It should also operate with greater transparency and disclose grantees for the financial year 2012/13.**
- **Westminster should consider the devolution of immigration and asylum matters which routinely interfere with transferred matters to the Northern Ireland Assembly.**

²Equality Commission NI, 'Strengthening Protection Against Racial Discrimination in Northern Ireland: Recommendations for Change' (January 2014)

2. Enforcement Mechanisms - Public Sector Equality Duty

- The enforcement mechanisms should be enhanced for the public sector equality duty under Section 75 of the Northern Ireland Act. Schools should also be designated as public authorities and socio-economic status should be recognised as a protected characteristic.
- The Equality Commission should be more proactive in exercising its statutory duties under paragraph 10 and 11 of Schedule 9 of the Northern Ireland Act to investigate procedural and substantive breaches of Equality Schemes.

3. Multiple Discrimination and Intersectionality

The Committee recommends that the State party should revise its legislation in Northern Ireland to ensure that it affords protection to women on an equal footing with other women in the State parties' administrations. The State party should, therefore, recognise multiple discrimination.

(para 19, CEDAW Concluding Observations on UK, 2013)

- Intersectionality and multiple discrimination should be recognised under domestic law and mainstreamed into policy and practice.
- Government strategies which seek to address human rights and social inequalities (e.g. OFMdFM Racial Equality Strategy, NIHE Homelessness Strategy, OFMdFM Gender Equality Strategy etc) should recognise multiple identity issues and the implementation of associated Action Plans should adopt a joined up, coordinated and inter-agency approach.

4. Racist Hate Crime

States parties have not only to enact appropriate legislation but also to ensure that it is effectively enforced. Because threats and acts of racial violence easily lead to other such acts and generate an atmosphere of hostility, only immediate intervention can meet the obligations of effective response. (para 2)

Article 4 (a) [CERD] requires States parties to penalize four categories of misconduct: (i) dissemination of ideas based upon racial superiority or hatred; (ii) incitement to racial hatred; (iii) acts of violence against any race or group of persons of another colour or ethnic origin; and (iv) incitement to such acts (para 3)

(CERD, General Recommendation 15: Organised violence based on ethnic origin 1993)

- The EU Victims' Directive establishing minimum standards on the rights, protection and support of victims of crime must be transposed into domestic law by 2015.
- Specific race crime legislation should be introduced incorporating an offence of racially aggravated crime.³
- Preventative measures taken to combat hate crime must include longer term and holistic initiatives including sustained community engagement and educational programmes to challenge myths and misconceptions.
- The DoJ Code of Practice governing the Appointment of Independent Members to Policing and Community Safety Partnerships (PCSPs) and District PCSPs should be amended to include targeted recruitment measures to improve BME representation.
- The Working Group tasked with Good Relations under Together: Building a United Community (TBUC) should adopt 'tackling racial prejudice and intolerance' as a standing item.
- Criminal justice agencies should adopt integrated measures to improve clearance rates for racist hate crime which currently stand at 8.3 per cent in order to restore confidence of ethnic minority communities in reporting hate crime to the PSNI.
- Victim's information rights should be respected and special protection measures should be adopted on the basis of individualised assessment.
- The limited awareness and uptake of the NIHE Hate Incident Practical Action (HIPA) Scheme, and the lack of rapid referrals by the PSNI may cause delays in essential repairs, leaving the homes of victims vulnerable and insecure. The NIHE and the PSNI need to fully implement the HIPA scheme within their internal structures in order to ensure maximum uptake and compliance with commitments in the NIHE Audit of Inequalities Action Plan.
- The Department of Justice should review their Criminal Damage Compensation Scheme to improve its accessibility to victims of racist hate crime

³ McVeigh, 'Race and Criminal Justice in Northern Ireland: Towards a Blueprint for the Eradication of Racism from the CJSNI' (Jan 2013)

5. Racist Hate Speech and Negative Stereotyping

The Committee encourages self-regulation and compliance with codes of ethics by Internet service providers, as underlined in the Durban Declaration and Programme of Action.

(Para 42, CERD Committee, General Recommendation 35: Combating Racist hate speech 2013)

The Committee recommends that the State party:

(b) Implement the recommendations of the Leveson Inquiry, including those that seek to give powers to a regulator to intervene in matters of discriminatory reporting.

(Para 33, CEDAW Concluding Observations 2013)

- The UK Government should adopt recommendations contained in CERD General Recommendation no. 35 on the 'Combating Racist hate speech' including the promotion of internal accountability structures and codes of practice across public and private media and press outlets in order to remedy deficiencies in the scope and effectiveness of the Press Complaints Commission and Royal Charter.
- There is minimal awareness of the scope of application of incitement to racial and religious hatred under the Public Order (Northern Ireland) Order 1987 across criminal justice agencies. Guidance should be produced and disseminated to CJSNI actors.
- Further discussions should be initiated on the application of the Royal Charter in Northern Ireland as have been witnessed in Scotland, to ensure it is not sidelined by the Independent Press Standards Organisation which lacks accountability.
 - The Royal Charter's Recognition Panel should seek to include representatives from BME communities and devolved regions to promote decentralization.
 - Recommendations from the Cross-Party Draft Charter should be reconsidered, including a free arbitration system to improve accessibility, particularly for low income migrants.
- The UK Government should withdraw its interpretative declaration under Article 4 CERD and ratify and rigorously implement the Additional Protocol to the Council of Europe Convention on Cybercrime 2004, concerning the criminalisation of acts of a racist and xenophobic nature committed through computer systems

6. Violence Against Women

Recalling its general recommendation No. 19 (1992) on violence against women, and its previous recommendation, the Committee urges the State party to:

- (a) Ratify the Istanbul Convention, and criminalise forced marriage;
- (b) Increase its efforts in the protection of women, including black and minority women, against all forms of violence, including domestic violence, and the so-called honour killings; and
- (c) Continue public awareness-raising campaigns on all forms of violence against women, including black and ethnic minority women.
- (d) Intensify efforts to train police officers to eliminate prejudices concerning the credibility of victims of domestic violence; and
- (e) Revise its legislation to prohibit corporal punishment of children in the home.

(para 34, CEDAW Concluding Observations on UK, 2013)

Recalling its previous recommendation, the Committee recommends that the State party should:

- (a) Extend the concession to the “no recourse to public funds” policy to all women who are subjected to gender based violence and exploitation; and
- (b) Provide access to justice and healthcare to all women with insecure immigration status, including asylum seekers, until their return to their countries of origin.

(para 57, CEDAW Concluding Observations on UK 2013)

- The UK Government should immediately ratify the Council of Europe Convention on Preventing and Combating Violence Against Women and Domestic Violence (i.e. Istanbul Convention).
- A dedicated BME women’s sub-group to the Regional Strategy Group on Domestic and Sexual Violence should be established with BME community representatives and relevant agencies.
- Data collection with respect to ethnicity and violence against women must be improved. The Public Prosecution Service (PPS) should seek to record disaggregated data on the ethnicity or nationality of offenders and victims of domestic and sexual violence.
- In addition to the Multi-Agency Practice Guidelines on FGM, The DHSSPS should issue mandatory reporting guidelines on Female genital Mutilation for health professionals in acute hospitals and GP clinics across Northern Ireland. The Public Prosecution Service should formulate an Action Plan with performance indicators to increase prosecutions for FGM related offences in line with the Crown Prosecution Service.

- The Ministry of Justice and Department of Justice should ensure that forced marriage is criminalized.
- The evidential requirements attached to the Domestic Violence Rule under Immigration Rules are exclusionary and should be amended to ensure the burden of proof is a reasonable threshold for victims to meet.
- Due to the prohibitive cost of applications for indefinite leave to remain (ILR), fee waivers should be granted to all victims rather than those capable of demonstrating that they are 'destitute' and 'totally reliant on third party support'.

7. Human Trafficking

The Committee urges the State party to:

- (a) Adopt a comprehensive national framework to combat trafficking in women and girls; and**
- (b) Identify any weaknesses in the National Referral Mechanism and ensure that victims of trafficking are properly identified and adequately supported and protected.**

(para 39, CEDAW Concluding Observations on UK, 2013)

- NICEM note with concern the lack of reference to a UK wide Rapporteur on human trafficking in the Department of Justice Human Trafficking Action Plan 2014/15, despite calls for a Legislative Consent Motion (LCM) to extend the scope of the Rapporteur under the Modern Slavery Bill to Northern Ireland. An LCM should be brought forward without delay to enhance the independence and statutory investigatory powers of the Rapporteur required under EU Directive 2011/36/EU.
- The National Referral Mechanism should be strengthened to ensure decisions affecting trafficking victims are made entirely independently of asylum and immigration decisions and specialist support for victims is provided on a statutory footing in line with the proposed Scottish Survivors Service.
- The Northern Ireland Executive should comply with the recommendation from the UN Rapporteur on Human Trafficking on the seizure of assets from criminal gangs involved in trafficking and ring-fencing of criminal proceeds for victim support.

8. Employment

The Committee urges the State party to:

(b) Take targeted measures to facilitate the access of black and ethnic minority women to the labour market in order to alleviate their concentration in low-paid jobs.

(para 59, CEDAW Concluding Observations on UK, 2013)

The Committee recommends that the State party intensify its efforts to narrow the employment gap for ethnic minorities. The Committee therefore recommends that the State party prepare a detailed delivery plan of how it will further narrow the ethnic minority employment gap in all areas and at all levels of employment.

(para 25, ICERD Concluding Observations on UK, 2011)

- **The UK Government should transpose Directives 2009/52 and 2004/81 and ratify both the UN International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (1990) and the ILO Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143).**
- **Reform of race legislation should incorporate enhanced protections for agency workers and curtail exploitation of seafarers not protected under the transit visa system.**
- **The remit of the Home Office Gangmasters Licensing Authority should be extended to cover all labour providers (i.e. catering, administration, retail, fisheries, food processing etc).**
- **Civil Legal Aid should be made available in industrial tribunals in cases of racial harassment or discrimination in employment**
- **The UKBA should reduce the fees applicable to Tier 2 work permit holders and their families to reduce the excessive financial toll on vulnerable migrants at risk of poverty**
- **The atypical working patterns and chronic job insecurity experienced by many low skilled migrant workers often interferes with childcare responsibilities. Targeted recommendations issued in our 'Believe in Childcare' (2013) research should be implemented as a priority.⁴ Childcare should be available on a subsidised and statutory basis and the Bright Start Strategic Framework should be updated to address the specific needs of BME carers.**

⁴ Kernaghan, 'Believe in Childcare? An Investigation into the Childcare Needs of Ethnic Minority Communities in Northern Ireland' (NICEM & Barnardos, March 2014)

9. Housing and Social Security

(a) Assess and evaluate the impact of the welfare reform in relation to the right to adequate housing of the most vulnerable individuals and groups, in light of existing data and evidence; consider whether particular measures are having a disproportionate impact on specific groups

(g) Increase regulation and enhance information and accountability in relation to the private rented sector; adopt regulatory tenancy protections, including minimum length of contracts, restraints on rent increases and strict limits on eviction; encourage the use of standardized human rights-compliant rental contracts; enhance mechanisms of registration of landlords and letting agents, and establish clear accountability mechanisms to eliminate discrimination in the private rented sector;

(h) Strengthen efforts to address stigma and discrimination for the Gypsy and Traveller communities in relation to the wider spectrum of rights, starting with the recognition that cultural adequacy in housing is a pillar for inclusion, and that legislation and policy are not enough to overcome local obstacles;

(j) Promote and protect the right to adequate housing without discrimination on any grounds; in particular, refrain from establishing mechanisms that can result in indirect discrimination against migrants or Roma in access to adequate housing.

(Section VII (a)-(j), Report of the Special Rapporteur on Adequate Housing - Mission to the United Kingdom of Great Britain and Northern Ireland, March 2014)

- **The Ad Hoc Committee on Equality and Human Rights should seek to mitigate the differential adverse impacts of welfare reform on EEA migrants which has been documented in Great Britain, including lower rates of pay or the imposition of extra restrictions or requirements.**
- **The newly imposed restrictions under the Habitual Residency test should be removed in order to comply with Regulations EC /987/2009 and EC/883/2004**
- **Measures should be taken to investigate further the potential high percentage of negative decisions overturned on appeal regarding access to social security by BME individuals.**
- **The OFMdfM Crisis Fund should be reinstated as a matter of urgency to assist individuals with insecure immigration status and no recourse to public funds, to mitigate the risk of homelessness and destitution.**
- **The NIHE should consider revising the criteria for Full Duty Applicant (FDA) status (i.e. eligibility for homelessness assistance) in line with the Scottish model which does not require individuals to satisfy ‘unintentional homelessness’ and ‘priority need’ criteria.**

- In line with recommendations from the UN Rapporteur on the Right to Adequate Housing, the Vagrancy Act 1935 should be repealed to decriminalise begging in order to protect vulnerable categories including Roma community members, children, and those with complex needs and mental health issues.
- The Housing (Anti-Social Behaviour) Bill 2014 should also be drastically amended to ensure recipients of Anti-Social Behaviour Orders are not automatically denied access to social housing and homelessness assistance as this may carry differential impacts on Roma and Traveller communities, and ensure that landlords are not entitled to expedite repossession proceedings without granting a tenant Article 6 rights under the ECHR.
- The Northern Ireland Assembly, DSD and NIHE should work to ensure that immigration monitoring duties are not imposed on social landlords, and the pilot proposed within the Immigration Act should not be extended to Northern Ireland.
- The NIHE BME Housing Forum should be reconvened and should adopt an annual action plan.

10. Health

The Committee urges the State party to:

- (a) Strengthen the implementation of programmes and policies aimed at providing effective access for women to health-care, particularly to women with disabilities, older women, asylum-seeking and Traveller women;**
- (b) Pay special attention to the health needs of women with disabilities, ensuring their access to prenatal care and all reproductive health services; and**

(para 53, CEDAW Concluding Observations on UK, 2013)

- The DHSSPS, HSCB and HSCTs should update their Audits of Inequality and Action Plans to focus attention on health inequalities and specific needs of BME communities including:
 - BME mental health.
 - BME maternal health
 - BME older people - health needs and respite provision
 - Traveller and Roma community health needs
- The Provision of Health Services to Persons Not Ordinarily Resident Regulations (Northern Ireland) 2005 should be revised to ensure those with insecure immigration status are able to access primary and secondary health services, including but not limited to maternity services, mental health services and dementia services.

- The DHSSPS should formulate an action plan on addressing the barriers that ethnic minority women experience when accessing healthcare.
- The Northern Ireland Assembly should seek to limit the scope of application of the Immigration Act in relation to transferred matters;
 - DHSSPS should ensure access to primary and secondary healthcare is not curtailed on the basis of insecure immigration status.

11. Education

The Committee recommends that the State party ensure full protection against discrimination on any grounds, including by: (b) Strengthening its awareness-raising and other preventive activities against discrimination and, if necessary, taking affirmative actions for the benefit of vulnerable groups of children, such as Roma and Irish Travellers' children; migrant, asylum-seeking and refugee children; lesbian, bisexual, gay and transgender children (LBGT); and of children belonging to minority groups;

The Committee... is concerned that significant inequalities persist with regard to school achievement of children living with their parents in economic hardship. Several groups of children have problems being enrolled in school or continuing or reentering education, either in regular schools or alternative educational facilities, and cannot fully enjoy their right to education, notably children with disabilities, children of Travellers, Roma children, asylum-seeking children, dropouts and non-attendees for different reasons (sickness, family obligations etc.)

(Para 15 & 66, UNCRC Concluding Observations on UK 2008)

The Committee encourages the State party to take all necessary steps to eliminate all racist bullying and name-calling in the State party's schools. The Committee urges the State party to introduce awareness-raising campaigns in the State party's schools with a view to changing the mindset of pupils, and to promote tolerance and respect for diversity in the education sector. (para 23 ICERD 2011)

The Committee recommends that the State party adopt an intensified approach towards preventing exclusion of Black pupils and set out in detail its plans for addressing under-achievement for those groups which have been identified as most affected, notably Gypsy and Traveller children and Afro-Caribbeans.

(para 24, ICERD Concluding Observations on UK, 2011)

- DENI should implement the recommendations issued by the Equality Commission NI on combating inequalities in education for BME pupils.⁵

⁵ 'Every Child and Equal Child' (2008) racial equality position paper (2014)

- Schools should be designated as public authorities for the purposes of Section 75 to strengthen protection of BME pupils from racial discrimination and harassment.
- DENI should impose a mandatory monitoring duty on schools to collect disaggregated data on incidents of racist bullying in order to strengthen the effectiveness of responses and intervention. The Education and Libraries (NI) Order 2003 should be amended to require DENI to publish and regularly update guidance on racist bullying in schools.
- The implementation of the DENI Traveller Child in Education Action Framework and Traveller Education Support Service (TESS) Delivery Plan should be monitored through annual progress reports.
- Additional measures should be implemented by the Department of Education to address the prevalence and persistence of racist bullying in schools and the disproportionately low attendance rates, high levels of illiteracy and educational underattainment experienced by Traveller and Roma children.
- The Department of Education should seek to ring-fence funds for newcomer children and establish a contingency fund for new arrivals not captured the Aggregated Budget.
- The performance of the regional Inclusion and Diversity Service (IDS) should be evaluated due to ongoing shortcomings in meeting targets.
- Targeted measures should be undertaken to alleviate cultural barriers which impede the uptake of Free School Meal Entitlement by BME children.
- Education and Library Boards should ensure that disaggregated data is collected on the composition of boards of governors, and affirmative action measures should be considered to promote the representation and inclusion of BME parents.

Specific Vulnerable Groups


The situation of Gypsies and Travellers, particularly in the field of access to accommodation, is of particular concern. There is a persistent shortage of sites and some reluctance from local authorities in many places to provide or refurbish sites. Gypsies and Travellers also frequently face difficulties when requesting planning permission, resulting in frequent evictions and illegal encampment. This situation also generates tensions between Gypsies and Travellers and the majority population, sometimes fuelled by politicians and the media.
(Third opinion on the UK, of the Advisory Committee on the Framework Convention for the Protection of National Minorities, June 2011)

12. Roma, Traveller and Gypsy Communities

- The Thematic Sub-Group on Traveller Issues under the OFMdfM Racial Equality Panel should be reconvened and include Traveller representatives. Additional measures should be taken to improve Traveller participation in public and political life and improve rates of employment and economic activity, particularly for Traveller women.
- The NIHE should comply with the Housing (Northern Ireland) Order 2003 and ensure that the socio-economic conditions and basic living standards on halting sites are drastically improved to guarantee access to electricity, clean water and adequate sanitation and washing facilities in line with the right to an adequate standard of living.
- The NIHE should publish the findings of the 2014 Comprehensive Traveller Needs Assessment.

13. Asylum Seekers

- The current publically funded ESOL and essential skills provision for refugees and asylum seekers should be augmented with a contribution towards childcare costs and transport expenses. DEL should also provide additional funding for accredited training and entry into further education.
- MLAs should be authorised to correspond with UKBA/Home Office on asylum and immigration matters arising from their constituencies, not just MPs.
- The NI Executive, Departments and relevant public authorities (i.e. Central Procurement Directorate, Procurement Board) should ensure the legal and policy framework governing public procurement improves accountability and safeguards compliance with UN Guiding Principles on Business and Human Rights and international human rights standards.



● Northern Ireland Council



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