

**Submissions to the Independent Review**

**Of the Enforcement of UK  
Anti-discrimination Legislation**

**29 July 1999**

## **INTRODUCTION**

NICEM is a voluntary sector, membership-based umbrella organisation representative of minority ethnic groups and their supportive organisations in Northern Ireland. The Council 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.

NICEM is also the lead body to campaign race relations legislation in Northern Ireland. Currently the Executive Director of NICEM is also the Deputy Chair of the Commission for Racial Equality for Northern Ireland. NICEM also builds up the network in the UK, on the island of Ireland and the European Union fighting against racism, xenophobia and anti-semitism with other NGOs. Currently, NICEM is a key member of the Starting Line Group (the Executive Director is the Chair of the Group), the pan-European NGOs network which is campaigning the Directive on Racial and Religious Discrimination, the Black Human Rights Network (UK) which is campaigning racism is the violation of human rights under the Human Rights Act 1998 and the Platform Against Racism (Ireland) which is campaigning legislation on the island of Ireland to eliminate any form of racial discrimination.

### **1. Examples of situation in which anti-discrimination legislation has been helpful in briefing about change? If so, how?**

The Race Relations (NI) Order has been implemented since 1997. So far the Commission for Racial Equality for Northern Ireland has not yet developed much case law in the area. We are still waiting a couple of key testing cases before we can make any conclusion about change. In general, legislation has positive effect to set standard of acceptable behaviour which is the desirable change as the case law developed in the area. The crucial issues are: How effective and efficiency of the existing anti-discrimination legislation are in terms of scope of protection, enforcement procedure, power of the enforcement bodies and the neglected area: capacity building of the victims and its community and organisations. These general areas will be discussed more details in the next question.

### **2. Problems experience in using or complying with anti-discrimination legislation?**

These have been details in our submission (see Annex 1) to the Home Secretary for consideration of the Third Review of the Race Relations Act 1976. We would like to highlight a couple of areas of concerns:

#### **(a) Scope of Protection**

1. Discrimination by planning authority is outside the remit of the Race Relations (NI) Order in Northern Ireland, but not the Race Relations Act 1976. Currently, the Commission supports a testing case for the Travelling community who has applied for a planning permission to build a Traveller site.
2. Public authority who performs the statutory function is outside the remit of the service provision under race, gender and religious discrimination legislation based on the decision of Amin and the latest decision of Farah. NICEM concerns the

widespread of institutional racism in Northern Ireland, in particular the RUC; Immigration office; Prison service; Department of Environment; Department of Health and Social Services and their Non-Departmental Public Body (NDPB) such as regional Health and Social Service Boards and local Health and Social Services Trusts; Department of Education and their NDPB such as regional Education and Library Boards, etc.

3. Definition of Indirect Discrimination - The definition of indirect discrimination in the UK anti-discrimination legislation is unsatisfactory and requires fundamental change. In light of the “Burden of Proof” Directive and the proposed Directives to implement Article 13 of the Amsterdam Treaty (see Annex 2), it is suggested to adopt the EU approach which is based on “**Liability Test**” rather than statistical evidence.
4. Harassment in the work place should be defined in the legislation as currently proposed under Article 13 Framework Directive to combat discrimination in employment and occupation (see Annex 2): “Harassment which produces an intimidating, hostile, offensive or disturbing working environment in relation to any discriminatory ground should be considered as discrimination.” The same also apply to the definition of victimisation which is unsatisfactory under UK anti-discrimination legislation.
5. Procurement tendering and awards contracts - Discrimination on any grounds in any of the stages of procurement process be unlawful where the contract exceeds a de minimus exception.
6. Exception in relation to employment in the public service ought to be removed.
7. Positive action - Government and the public sector should provide a comprehensive positive action on employment in the following areas: education and training; housing and accommodation; health and social services; and police, fire-brigade, prison and immigration following the ECJ judgement on Marschall. The current provisions on discriminatory training by certain bodies i.e. “positive action”, lack of clarity and are consequently ineffectual. Clarifying these provisions is a task which must be undertaken with sensitivity in order to ensure that comprehensive and workable provisions with a broad base of support are produced.
8. NICEM endorses the affirmation of a positive right to be free from any forms of racial discrimination (Article 2 of CERD and Article 4 of the Framework Convention).

## **b. Enforcement Procedure**

1. Complaints and formal investigation concerning discrimination in education - The notification of the Secretary of State or the Minister in education cases is unnecessary and should be removed.
2. Following the forthcoming implementation of the “Burden of Proof” Directive, the existing burden of proof which is in favour of the alleged discriminator, should be change accordingly.
3. Time limits for lodging complaints of discrimination in employment case should be extend to six months, instead of three months.