



Comments from the Equality Commission for Northern Ireland on the draft UK report to the United Nations under the International Convention for the Elimination of All Forms of Racial Discrimination (CERD)

March 2015

Abstract

The Equality Commission for Northern Ireland (ECNI) sets out its views on the key issues concerning racial equality policy in Northern Ireland as they align to the narrative presented in the draft UK State Party Report to the UN under CERD and highlights significant information gaps. ECNI's comments are focused on:

- the deficit in legislative protection in Northern Ireland vis-à-vis Great Britain (GB), race equality and integration policy (Article 2);
- discriminatory, sensational or unbalancing reporting of Black and Minority Ethnic (BME) communities in the press (Article 4);
- tackling hate crime; and representation of BME people in Police Forces and the Criminal Justice System; the Immigration Exception in equality legislation (Article 5 (a) – (d));
- economic, social and cultural rights (Article 5 (e)), including employment, housing, health, social security and education.
- the right to effective protection and remedies against racial discrimination (Article 6);

- Effective measures to combat prejudices leading to racial discrimination (Article 7).

Introduction

1. The Equality Commission for Northern Ireland (ECNI) welcomes the opportunity to comment on the information contained in the draft United Kingdom (UK) report (February 2015) to the United Nations with respect to rights set out in the International Covenant on the Elimination of All Forms of Racial Discrimination (CERD).
2. The views set out below are based on the our policy position paper *Racial Equality – Policy Priorities and Recommendations*, our associated position paper on the need for legal reform *Strengthening protection against racial discrimination* and our ‘*Response to the consultation by OFMDFM on ‘A Sense of Belonging - Delivering Social Change through a Racial Equality Strategy for Northern Ireland 2014-2024’*¹.
3. We have taken this opportunity to identify what we believe are the key issues concerning racial equality policy in Northern Ireland as they align to the narrative presented in the draft State Party Report and to highlight significant gaps in the information provided.
4. Our policy position on racial equality issues (which sets out key recommendations in areas such as education and health) was finalised last year, following extensive engagement with key stakeholders, including Black and Minority Ethnic (BME) individuals and organisations, as well as representatives of public authorities. The final policy position was shared with officials from the Office of the First Minister and the Deputy First Minister in advance of the issuing of the draft Racial Equality Strategy (RES) for consultation. In developing our response to the draft RES we drew on our policy priorities for racial equality, key statistics and reports, guidance issued by the United Nations Office of the High

¹ All three documents are available at: <http://www.equalityni.org/Delivering-Equality/Equality-Themes/Racial-equality.aspx>

Commissioner for Human Rights² and further engagement with stakeholders.

Article 2

Legislative protection

5. Paragraph 11 (page 6) of the draft State Party Report sets out that Northern Ireland has legislation on racial discrimination which, as in the rest of the UK, protects all individuals from unlawful racial discrimination. However the text does not address the substantive deficit in protection between Northern Ireland and Great Britain.
6. The need for reform of the equality legislation in Northern Ireland has been heightened by developments in Great Britain. Although it is important to note that prior to the Equality Act 2010, significant gaps between Great Britain and Northern Ireland equality law had already existed and these remain unaddressed in Northern Ireland, the introduction of the Equality Act 2010 in Great Britain in October 2010 has led to a widening of the gap.
7. The Equality Act 2010 has, for example, harmonised the race equality legislation so that individuals have the same level of protection on the grounds of colour and nationality³⁴, as on the grounds of race ethnic origin and nationality. In its consultation on a NI Single Equality Bill in 2004, OFMDFM recognised the need to increase protection from discrimination and harassment on these grounds and indicated its intention to rectify this gap in the legislation⁵. The issue was mentioned in OFMDFM's Racial Equality Strategy for Northern Ireland 2005-2010

² Office of the High Commissioner for Human Rights (2014): *Developing National Action Plans Against Racism*. Available at: www.ohchr.org/Documents/Publications/HR-PUB-13-03.pdf

³ Following from the case of *Abbey National PLC v Chagger* EAT/0606/07/RN.

⁴ In 2003 the UN Committee on the Elimination of Racial Discrimination recommended that the UK government extend the amending regulations that implemented the EU Race Directive to cover discrimination on the grounds of colour and nationality. It was concerned that a failure to do so would result in inconsistencies in discrimination laws and differential levels of protection and create difficulties for the general public as well as for law enforcement agencies.

⁵ A Single Equality Bill for Northern Ireland Discussion Paper (OFMDFM: 2004). Available at: <http://www.ofmdfmi.gov.uk/single-bill-consultation.pdf>.

which acknowledged that the regulations introduced to give effect to the EU Race Directive did not extend to all racial categories; specifically they did not cover colour and nationality. Despite a commitment to 'explore legislative options to rectify this anomaly as soon as possible, this reform has not yet been enacted, leading to situation in Northern Ireland allowing two tiers of protection i.e. less protection against discrimination and harassment on the grounds of colour and nationality than on other racial grounds than on the other racial grounds protected under the legislation; namely race, ethnic or national origins. The **main impact** of this 'two tier' level of protection is summarised in Appendix 1.

8. In addition, the 2010 Act has extended and harmonised and positive action measures so as to allow, but not require, employers, service providers and public bodies carrying out public functions in Great Britain to take a wider range of measures aimed at alleviating disadvantage experienced by under-represented groups. There is currently more limited scope for employers, service providers and public authorities in Northern Ireland, than those in Great Britain, to take positive action in the area of race equality.
9. The 2010 Act also strengthened the powers of employment tribunals as regards race discrimination complaints (and on other equality grounds). This enables an employment tribunal to make a recommendation which benefits the whole workforce and need not be limited to benefiting the complainant. This extended power only exists in Northern Ireland under the fair employment legislation (which covers religious belief and political opinion).
10. Furthermore, the 2010 Act extended protection for Councillors against discrimination on the grounds of race (as well as other equality grounds). Such protection for Councillors in local councils does not exist in Northern Ireland on the grounds of race.
11. Another feature of the 2010 Act, which is absent in the Northern Ireland legislation, is strengthened protection from victimisation for BME

pupils in schools. In particular, there is protection for BME children in schools from being victimized as a result of a protected act (such as making or supporting a complaint of discrimination) done by their parent or sibling.

12. The 2010 Act prohibited bodies from discriminating when carrying out public functions across all racial grounds and as regards all functions except in some clearly defined limited areas⁶. However in Northern Ireland, protection against such discrimination is limited to four areas, namely social security, health care, social protection or social advantage. A range of important public functions, such as policing, planning control and licensing are outside the scope of the racial equality legislation in Northern Ireland.
13. Finally, the 2010 Act placed new duties on specified public authorities to publish annually⁷, from 2011 onwards, a wide range of equality information including, for example, information on the effect their policies and practices have had on employees⁸, service users and others from protected groups (including racial groups). This duty does not exist in Northern Ireland.
14. The gaps in equality law between the two jurisdictions have the effect that vulnerable and marginalised individuals in Northern Ireland who experience discrimination have significantly less protection against unlawful discrimination, harassment and victimisation than their counterparts in GB across a number of equality grounds.

⁶ There are some limited exceptions relating to judicial acts, decisions to institute criminal proceedings and the making, confirming or approving of legislation. There are also some public authorities which are excluded such as the Security Service and Houses of Parliament.

⁷ Public authorities with fewer than 150 employees are not required to publish information on the effect of their policies and practices on their workforce.

⁸ In relation to employment, the Guide to the PSED has made clear that information published should include the race, disability, gender and age breakdown and distribution of its workforce. See: Equality and Human Rights Commission (2011): *Equality information and the equality duty – A guide for public authorities*. Available at:

http://www.equalityhumanrights.com/sites/default/files/documents/EqualityAct/PSED/ehrc_psed_equality_information_web.pdf.

15. Further, employers and service providers who operate both in Northern Ireland and GB have to grapple with the increased inconsistencies and differences in equality law between the two jurisdictions. They also have to keep track of their responsibilities under differing legislative frameworks, as well as case-law emerging from separate legislative provisions.
16. ECNI has consistently called for the urgent reform of the equality legislation in Northern Ireland. Pursuant to our duty under the equality legislation to keep this legislation under review we have made a number of recommendations for change. These include recommendations for change to the race equality legislation⁹ issued in 2000 and engagement with the Office of the First Minister and the Deputy First Minister (OFMDFM) in 2004 with regard to the development of single equality legislation¹⁰.
17. In the absence of progress on single equality legislation, ECNI recommended in 2009 that, inter alia, the Northern Ireland Executive take forward harmonisation and strengthening of the race equality legislation so that individuals have the same level of protection against discrimination and harassment on the grounds of colour and nationality, as on the grounds of race, ethnic origin, and national origin¹¹.
18. In 2014, ECNI published a renewed call for reform of the racial equality legislation in Northern Ireland, *Strengthening protection against racial discrimination – recommendations for law reform*¹².

⁹ ECNI (2000): *Recommendations for Changes to the Race Relations Order 1997* (ECNI: Belfast).

¹⁰ Despite a commitment in the St Andrews Agreement in 2008 to 'work rapidly' towards the development of single equality legislation (see:

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/136651/st_andrews_agreement-2.pdf), no further progress has since been evident.

¹¹ Equality Commission for Northern Ireland (2009): *Proposals for legislative reform*. Available at: http://www.equalityni.org/ECNI/media/ECNI/Publications/Delivering%20Equality/Proposals_for_legislative_reform060209.pdf

¹² Available at: <http://www.equalityni.org/Delivering-Equality/Equality-Themes/Racial-equality.aspx>

19. In addition to calling for the extension of the provisions in the Equality Act 2010, referred to above, to Northern Ireland, ECNI also recommended a number of legal provisions additional to those in the Act.
20. For example, ECNI recommends that registered employers in Northern Ireland are required, under the fair employment legislation, to collect monitoring information as regards nationality and ethnic origin. Whilst the primary reason for this change is to ensure the continuing usefulness of the fair employment Monitoring Regulation, the collection of this data will, for example, assist employers in assessing the impact of their employment policies and procedures on particular ethnic groups in the workplace.
21. ECNI has also recommended increased protection for certain categories of agency workers against racial discrimination and harassment, as highlighted by the Northern Ireland Court of Appeal's decision in *Bohill v Police Service of Northern Ireland*¹³ and in the case of Great Britain of *Muschet v HM Prison Service*¹⁴.
22. In addition, ECNI has recommended that race equality legislation is strengthened so there is greater protection for employees against racial harassment by a third party, such as, by a customer or client of an employer.
23. Furthermore, ECNI has recommended the introduction of protection against inter-sectoral multiple discrimination so that there is legal protection for individuals who experience discrimination or harassment because of a combination of equality grounds, including racial grounds.
24. ECNI has also recommended the removal of the immigration exception in the race equality legislation which permits discrimination on the grounds of ethnic or national origins in the carrying out of immigration

¹³ [2011] NICA 2. Available at: <http://www.bailii.org/nie/cases/NICA/2011/2.html>

¹⁴ [2010] EWCA Civ 25. Available at: <http://www.bailii.org/ew/cases/EWCA/Civ/2010/25.html>

functions¹⁵ and that the restriction on persons of a particular birth, nationality, descent or residence being employed in the service of the Crown or certain bodies should be modified or removed.

25. With respect to our powers to issue Race Codes of Practice, we have recommended that these are extended to cover all areas, including goods, facilities and services, the exercise of public functions and education (at all levels).
26. ECNI has also recommended that, in line with provisions under the fair employment legislation, that our power to conduct a formal 'named person' investigation under the race legislation does not require a "belief" that an act of discrimination has occurred.
27. Finally, ECNI has recommended that the racial equality legislation is strengthened by providing increased powers for tribunals to make recommendations that benefit the whole workforce and not simply the person bringing the complaint.
28. Both the Advisory Committee on the Framework Convention for the Protection of National Minorities¹⁶ and the UN Committee on the Convention for the Elimination of All Forms of Racial Discrimination have highlighted the need to address legislative shortcomings within the racial equality legislation¹⁷.

¹⁵ See: Article 20C of Race Relations (Northern Ireland) Order 1997, as amended.

¹⁶ See: *Third opinion on the UK, of the Advisory Committee on the Framework Convention for the Protection of National Minorities*, June 2011. The Advisory Committee expressed concern that, despite the commitment in the St Andrews Agreement, there has been no progress made towards adopting single equality legislation in Northern Ireland. In addition it highlighted that Northern Ireland legislation remains 'complex and piecemeal' and was concerned about significant discrepancies and inconsistencies that exist between Great Britain and Northern Ireland. The Advisory Committee 'urged the authorities to adopt harmonised, comprehensive anti-discrimination legislation in Northern Ireland in order to put an end to the disparity in protection against discrimination that exists between Northern Ireland and Great Britain'. See: http://www.coe.int/t/dghl/monitoring/minorities/3_fcnmdocs/PDF_3rd_OP_UK_en.pdf

¹⁷ *Concluding Observations of the Committee on the Elimination of Racial Discrimination on UK* (2011). Available at: <http://www2.ohchr.org/english/bodies/cerd/docs/CERD.C.GBR.CO.18-20.pdf>. and *Concluding Observations of the Committee on the Elimination of Racial Discrimination on UK* (2003). Available at: <http://www.refworld.org/docid/403e12c94.html>

29. The CERD Committee in its most recent comments regretted ‘that the Equality Act 2010 did not apply to Northern Ireland’ and reminded the State Party that ‘the obligation to implement the provisions of the Convention in all parts of its territory is borne by the State Party emphasising that this ‘ makes the State Party the duty bearer at the international level to ensure that the Convention is implemented in all parts of its territory notwithstanding the specific governance arrangements that have been adopted’ recommending that the State Party should take immediate steps to ensure that a single equality law is adopted in Northern Ireland or the Equality Act 2010 is extended to Northern Ireland¹⁸.

30. The draft UK State Party Report refers, at paragraph 12 (page 6), to the inclusion of a question in *Sense of Belonging: Delivering Social Change through a Racial Equality Strategy for Northern Ireland 2014 – 2024* about the need for legislative reform in Northern Ireland. However, although one of the overarching aims of the Strategy is to eliminate racism, racial inequality and unlawful racial discrimination and promote equality of opportunity in all aspects of life, the document does not commit to the legislative reform necessary to advance this aim.

31. ECNI would, therefore, welcome the inclusion in the State Party Report of further information on the steps to be taken to amend legislation in Northern Ireland to prohibit and bring to an end all forms of racial discrimination, specifically those prohibited in GB but currently permitted in Northern Ireland.

Race equality and integration policy

32. ECNI notes the reference, at paragraph 39 (page 24) to *Together: Building a United Community (TBUC)*, the new strategy to improve community relations and build a united and shared society.

¹⁸ *Concluding Observations of the Committee on the Elimination of Racial Discrimination on UK* (2011), paragraph 19, pages 4-5. Available at: <http://www2.ohchr.org/english/bodies/cerd/docs/CERD.C.GBR.CO.18-20.pdf>

33. However, whilst ECNI welcomed the statement, at paragraph 1.30 (page 18) of the strategy, that it ‘is not intended to replace or subsume our work on racial equality and good race relations. Rather it will complement and provide the co-ordinated framework for aspects of its delivery’, it was unfortunate that no further detail is provided as to how this will happen. Although the Strategy states that ‘Chapter 6 outlines how interventions to promote racial equality and good race relations will be co-ordinated and driven forward within the delivery architecture established under this Strategy’, this outline was not in fact included in the Chapter in question.
34. In its response¹⁹ to the consultation on *A Sense of Belonging- Delivering Social Change through a Racial Equality Strategy for Northern Ireland*, ECNI drew attention to the lack of alignment between the community relations and racial equality strategies, recommending a coherence of approach with the arrangements for implementation and accountability set out in T: BUC.
35. ECNI considers that, in order to provide evidence of the effectiveness of integration policy, it would be helpful if this section provides details of the number and percentage of applications and appointments of BME individuals to public positions and of the number and percentage of elected representatives (Councillors and Members of the Legislative Assembly) who are BME individuals.
36. Whilst ECNI acknowledges and welcomes the list of initiatives arising from the Northern Ireland Housing Executive’s Race Relations Policy, as listed at paragraph 42 (page 12) in the form of outputs, recommends that the State Party report include some information on outcomes achieved as a result of these initiatives.

¹⁹ Equality Commission for Northern Ireland (2014): *Response to the consultation by OFMDFM on ‘A Sense of Belonging- Delivering Social Change through a Racial Equality Strategy for Northern Ireland 2014-2024’*. Available at: <http://www.equalityni.org/Delivering-Equality/Equality-Themes/Racial-equality.aspx>

37. We welcome the investigation by the Northern Ireland Executive of research literature concerning the intersection between racism and sectarianism, as alluded to at paragraph 44 (page 13). However, ECNI considers that it would be helpful for the State Party Report to include information on the time scale for completion of this research and confirmation that the results will be placed in the public domain.
38. With respect to Section 37 of the Justice Act (NI) 2011 which makes sectarian of racist chanting at certain major sporting events an offence, it would be helpful for the State Party Report to provide information on the number of prosecutions and convictions achieved through use of the legislation, in order to provide evidence of the effectiveness of this measure.
39. Furthermore, it would be helpful for the State Party Report to draw out the relevance to racial equality of the work of the Youth Justice Agency concerning 'beyond sectarianism' resources and interventions (at paragraphs 46-47) and the impact of this work.

Article 4

40. With respect to the discussion on maintaining the right to freedom of speech and protecting individuals from violence and hatred, ECNI wishes to draw attention to the findings of the Leveson report (2012)²⁰ into press standards which found that 'when assessed as a whole, the evidence of discriminatory, sensational or unbalanced reporting in relation to ethnic minorities, immigrants and/or asylum seekers, is concerning... there are enough examples of careless or reckless reporting to conclude that discriminatory, sensational or unbalanced reporting in relation to ethnic minorities, immigrants and/or asylum seekers is a feature of journalistic practice in parts of the press, rather than an aberration'. The report

²⁰ Leveson (November 2012): *Criticism of the Culture, Practices and Ethics of the Press*, Chapter 6, paragraph 8.51. Available at: <https://www.gov.uk/government/publications/leveson-inquiry-report-into-the-culture-practices-and-ethics-of-the-press>

recommended that 'A new regulator will need to address these issues as a matter of priority, the first steps being to amend practice and the Code to permit third party complaints'. ECNI recommends that the State Party Report should detail the steps taken to address this recommendation.

Article 5 (a) – (d)

Tackling Hate Crime

41. ECNI recommends that the State Party Report includes some statistics reflecting recent trends with respect to racial hate crime in Northern Ireland. Such information would provide a yardstick to enable the measurement of the effectiveness of legislation and policies to tackle hate crime.
42. Police Service for Northern Ireland (PSNI) statistics show that race hate crime is the second most common form of hate crime in Northern Ireland. The number of racist incidents rose by 54 (7.8%) between 2011/12 and 2012/13. The number of racist crimes also increased, from 458 in 2011/12 to 470 in 2012/13²¹.
43. Latest statistics available from the Police Service of Northern Ireland show that, in 2013/2014, racist incidents²² reported to the police in Northern Ireland increased by almost a third (982 racist incidents, an increase of 30.9%²³) compared to the previous year.

²¹ Police Service of Northern Ireland (2013): *Trends in Hate Motivated Incidents and Crimes recorded by the Police in Northern Ireland from 2004/05 – 2012/13*, page 10.

²² A racist incident is defined as any incident which is perceived to be racist by the victim or any other person. A racial group can be defined as a group of persons defined by reference to race, colour, nationality or ethnic or national origins (this includes UK National origins i.e. Scottish, English, Welsh and Irish) and references to a person's racial group refer to any racial group into which he/she falls. Racial group includes the Irish Traveller community. Additionally the PSNI define racist incidents within the Hate incidents definition which is "any incident, which may or may not constitute a criminal offence, which is perceived by the victim or any other person, as being motivated by prejudice or hate".

²³ PSNI Statistical Press Notice: 1st April 2013 to 31st March 2014

44. Compared with the previous year there were increases in all but one of the six hate crime²⁴ types²⁵, with the majority of racist crimes involving violence against the person (48.6%) or criminal damage (45.7%)²⁶. Racist hate crimes were up by 221 (47.0%)²⁷ from the previous year.
45. In 2013/14, over half of all racist crimes were committed against people of the white ethnic group (51.6%)²⁸, particularly those of an Eastern European²⁹ nationality (28.5%). Racist crimes against those of an Eastern European nationality have risen by 5.3 percentage points from the previous year. In addition, racist crimes against black people have risen in the last five years from 5.7% in 2007/08 to 16.0% in 2013/14³⁰.
46. In 2013/14, the outcome rate³¹ for racist crimes was 17.2%³² (a decrease of 1.7 percentage points³³ from the previous year). In 2013/14, 15.1%³⁴ of all racist crimes resulted in a charge / court summons³⁵.

²⁴ Recorded crime covers all indictable and triable-either-way offences. Additionally, a few closely associated summary offences are included. In general attempting, conspiring, aiding, abetting, causing or permitting a crime a crime is classified under the heading of the crime itself, though in certain cases it is shown separately. Recorded crimes with a racist motivation include: Violence against the person; Theft offences; Criminal damage; All other victim-based offences (including other fraud), and; Other crimes against society. For a full list of recorded crimes please see PSNI (2014): *User Guide to Police Recorded Crime Statistics in Northern Ireland*, Appendix 1.

²⁵ Ibid

²⁶ PSNI (2014): *Trends in Hate Motivated Incidents and Crimes Recorded by the Police in Northern Ireland 2004/05 to 2013/14*, Annual Bulletin (PSNI: Belfast).

²⁷ PSNI Statistical Press Notice: 1st April 2013 to 31st March 2014.

²⁸ PSNI (2014): *Trends in Hate Motivated Incidents and Crimes Recorded by the Police in Northern Ireland 2004/05 to 2013/14*, Annual Bulletin (PSNI: Belfast).

²⁹ Includes Poland, Lithuania, Slovakia, Romania, Latvia, Czech Republic and Hungary.

³⁰ PSNI (2014): *Trends in Hate Motivated Incidents and Crimes Recorded by the Police in Northern Ireland 2004/05 to 2013/14*, Annual Bulletin (PSNI: Belfast).

³¹ For an outcome to be assigned to a recorded crime the following basic principles must apply: a notifiable offence has been committed and recorded; a suspect has been identified and has been made aware that they will be recorded as being responsible for committing that crime and what the full implications of this are; and one of the following outcome types applies, charge or summons, caution, offence taken into consideration, youth conference, penalty notice, the offence is 'indictable only' and the case cannot proceed and discretionary disposal. Prior to April 2013 outcome rates were mainly presented in the form of sanction detections and sanction detection rates which did not include discretionary disposals or indictable only offences where no action was taken against the offender.

³² PSNI (2014): *Trends in Hate Motivated Incidents and Crimes Recorded by the Police in Northern Ireland 2004/05 to 2013/14*, Annual Bulletin, paragraph 2.1, page 13 (PSNI: Belfast).

³³ Ibid.

³⁴ Ibid. Table 2.8, page 18.

³⁵ Ibid.

47. The latest hate crime statistics³⁶, published in November 2014, also show that racist incidents and crimes have **increased in the latest 12 months to September 2014** compared with the previous 12 months. There were 1,273 racist incidents, an increase of 43.3% on the previous year, and there were 905 racist crimes, an increase of 63.6% on the previous year. More than half of the increase in incidents and two thirds of the increase in crimes is concentrated within Belfast³⁷.
48. Higher levels were most notably seen in the months of October 2013 and in each month between May and September 2014, with these months accounting for more than one third of all racist incidents and crimes for the latest twelve months. The number of incidents recorded in May 2014 (152), June 2014 (161) and July 2014 (138) are currently the highest monthly levels recorded since the data series began in April 2004³⁸.
49. A recent report by the Northern Ireland Human Rights Commission (NIHRC) found that ‘underreporting of hate crimes by victims was commonplace’³⁹ and identified problems concerning telephone and online reporting facilities for victims with limited ability to speak English.

³⁶ PSNI (2014): *Incidents and Crimes with a Hate Motivation Recorded by the Police in Northern Ireland* (Quarterly Update to September 2014) (PSNI: Belfast).

³⁷ Ibid.

³⁸ PSNI (2014): *Incidents and Crimes with a Hate Motivation Recorded by the Police in Northern Ireland* (Quarterly Update to September 2014) (PSNI: Belfast).

³⁹ Northern Ireland Human Rights Commission (2013): *Racist Hate Crime – Human Rights and the Criminal Justice System*, page 63 (Belfast: NIHRC). Available at:

http://www.fra.europa.eu/sites/default/files/frc-2013-g-sauberli-investigation_report_full_en.pdf

The report highlighted that between April 2007 and January 2012 only five race hate crimes had resulted in the use of the 2004 order to enhance the sentences. The NIHRC argued that the order had been underutilised. When hate crimes are investigated the legislation allow for both ‘motivation’ and ‘demonstration’ on the part of the accused to be considered. The Commission said that the PSNI over-relied on motivation – by nature difficult to prove. The *demonstration* of hostility, as it manifests itself in language and other behaviours, sets a lower bar for the attachment of the ‘aggravated by hostility’ descriptor, and the NIHRC argued that greater use of this part of the legislation would result in more hate crime being prosecuted.

50. Research has shown that hate crime legislation is used less often in Northern Ireland than in other parts of the UK. In Northern Ireland, despite the legislation allowing for an enhanced sentence to be passed by a court where a crime is proven to have been motivated by hate, only 12 enhanced sentences out of almost 13,655 complaints, have been passed under this legislation over the last five years⁴⁰.

51. Hate Crime in Northern Ireland has been the focus of a number of reports from human rights bodies, NGOs and statutory inspection bodies⁴¹ in recent years. It would be helpful for the State Party Report to acknowledge the responses by the Northern Ireland Executive and Departments to the key recommendations made in these reports.

⁴⁰ Jarman, N. (2012): *Criminal Justice Responses to Hate Crime in Northern Ireland*, (Belfast: Institute for Conflict Research), Figure 13, page 38. Available at: http://www.niacro.co.uk/filestore/documents/hate_crime_project_papers/01_Criminal_Justice_Responses_to_Hate_Crime_in_NI.pdf

⁴¹ For example see:

McVeigh, R. (2006): *The Next Stephen Lawrence?* (Belfast: NICEM). Available at: <http://nicem.org.uk/e-library/next-stephen-lawrence>

Criminal Justice Inspection Northern Ireland (2007): *Hate Crime in Northern Ireland – A Thematic Inspection of the Management of Hate Crime by the Criminal Justice System in Northern Ireland* (Belfast: CJINI). Available at: <http://www.cjini.org/CJINI/files/02/0272e50a-2218-482a-87e0-66a243a27900.pdf>.

Criminal Justice Inspection Northern Ireland (2007): *Hate Crime – A Follow-up Inspection of the Management of Hate Crime by the Criminal Justice System in Northern Ireland* (Belfast: CJINI). Available at: <http://www.cjini.org/CJINI/files/16/16f98312-469d-464f-adcc-f7b2513adda7.pdf>

Jarman, N. (2012): *Criminal Justice Responses to Hate Crime in Northern Ireland* (Belfast: Institute for Conflict Research). Available at: http://www.niacro.co.uk/filestore/documents/hate_crime_project_papers/01_Criminal_Justice_Responses_to_Hate_Crime_in_NI.pdf

Northern Ireland Council for Ethnic Minorities (2013): *Race in the Criminal Justice System in Northern Ireland* (Belfast: NICEM). Available at: http://nicem.org.uk/wp-content/uploads/2014/02/Race_and_Criminal_Justice_2013.pdf.

The Northern Ireland Human Rights Commission (2013): *Racist Hate Crime – Human Rights and the Criminal Justice System* (Belfast: NIHRC). Available at: http://www.fra.europa.eu/sites/default/files/frc-2013-g-sauberli-investigation_report_full_en.pdf

Montague, R. and Shirlow, P. (2014): *Challenging Racism Ending Hate*. Available at: http://www.qub.ac.uk/research-centres/iscts/filestore/Filetoupload_472425.en.pdf.

(Belfast: Unite Against Hate/Centre for Democracy and Peace Building).

Representation of Black and Minority Ethnic people in Police Forces and the Criminal Justice System

52. The Census 2011 revealed that people belonging to black and minority ethnic groups represent 1.8% % of the total population in Northern Ireland⁴².
53. ECNI notes that the NIHRC's recent report on *Racist Hate Crime – Human Rights and the Criminal Justice System* identified that 'the number of minority ethnic PSNI officers in 2013⁴³ did not meet the desired level of representation', commenting that this 'was a cause for concern and may impact on effective policing of racist hate crimes'⁴⁴.
54. We would welcome the presentation of statistical evidence in the State Party Report on the representation of BME people in the PSNI, Policing Board and other Criminal Justice agencies in Northern Ireland.
55. ECNI would also like to see further information in the section dealing with the NI Prison Service (paragraph 41, page 24) relevant to its interaction with BME individuals and communities.
56. Whilst paragraph 46 (page 25) states that the Macpherson Report's recommendations have led to improved treatment of victims and witnesses, ECNI notes with concern the finding, in recent research into the criminal justice system, that Northern Ireland remains in a 'pre-Macpherson' situation, lacking a 'blueprint' for dealing effectively with institutional racism within the context of criminal justice⁴⁵.

⁴² Northern Ireland Statistics and Research Agency (2012): *Census 2011: Key Statistics for Northern Ireland*, Table KS211NI, page 19. Available at: http://www.nisra.gov.uk/Census/key_report_2011.pdf

⁴³ 0.5%.

⁴⁴ The Northern Ireland Human Rights Commission (2013): *Racist Hate Crime – Human Rights and the Criminal Justice System*, page 34 (Belfast: NIHRC). Available at: http://www.fra.europa.eu/sites/default/files/frc-2013-g-sauberli-investigation_report_full_en.pdf

⁴⁵ Northern Ireland Council for Ethnic Minorities (2013): *Race and Criminal Justice in Northern Ireland: Towards a Blueprint for the Eradication of Racism from the Northern Ireland Criminal Justice System*, page 5. Available at:

http://nicem.org.uk/wpcontent/uploads/2014/02/Race_and_Criminal_Justice_2013.pdf.

57. Furthermore, the report found that *‘the key statistics necessary to facilitate, the performance of those engaged in the administration of justice to avoid discriminating against any persons on the ground of race are still not being produced’*⁴⁶.

Immigration Exception under equality legislation

58. As noted above, ECNI is on record as having recommended the removal of the immigration exception in the race equality legislation which permits discrimination on the grounds of ethnic or national origins in the carrying out of immigration functions⁴⁷

Article 5 (e) – (f)

59. ECNI welcomes the acknowledgement in the consultation paper for the Race Equality Strategy 2014-2024 of the need for specific challenges and vulnerabilities facing particular groups such as Irish Travellers and the Roma (as detailed in paragraph 8, page 29) and look forward to learning about the specific details of these programmes as these are developed during 2015.

60. ECNI recommends that the State Party Report provide further details of the challenges and vulnerabilities faced by the Travellers and Roma in this section of the report in order to appropriately describe the context for the proposed interventions.

61. Furthermore, ECNI also recommends that the State Party provide further details of the particular challenges and vulnerabilities experienced by the wider black and minority ethnic population with respect to the enjoyment of economic, social and cultural rights.

⁴⁶ Ibid.

⁴⁷ Equality Commission for Northern Ireland (2014): *Strengthening protection against racial discrimination – recommendations for law reform*, page 42. Available at: <http://www.equalityni.org/Delivering-Equality/Equality-Themes/Racial-equality.aspx>

62. ECNI's *Racial Equality – Policy Priorities and Recommendations* (2014) found that with respect to **employment** that Racial harassment in work remains an issue^{48 49} while research⁵⁰ also suggests that issues impacting on migrant workers include underemployment, recognition of overseas qualifications, lack of English language skills, problems in accessing childcare, gaps in legal protection, racial harassment, severe exploitation and forced labour.
63. For Irish Travellers, issues include a lack of recognition of Traveller culture; low expectations and fear of losing benefits⁵¹.
64. We are also concerned about the exclusion of asylum seekers from labour market while awaiting a decision on their Refugee application⁵².
65. With regard to the information on employment-related services in Northern Ireland at paragraphs 17-23 (pages 33-34), it would be helpful for the State Party Report to include some quantitative or qualitative information to illustrate the uptake of these services and their impact with respect to BME individuals.
66. With respect to **housing**, ECNI is concerned that there is an undersupply of accommodation and lack of basic amenities for Irish Travellers with no key driver of provision⁵³.
67. ECNI recommends that the section of the draft State Party Report (paragraph 25, page 39) dealing with **accommodation** for Travellers in

⁴⁸ Northern Ireland Council for Ethnic Minorities (2012): *Bayanihan: the Filipino community in Northern Ireland*. Available at: <http://nicem.org.uk/e-library/bayanihan-filipino-community-northern-ireland>, pages 22- 23.

⁴⁹ BBC (16th December 2013): 'Sharp increase in racist attacks'. Available at: http://www.bbc.co.uk/news/health-25368332#story_continues_1

⁵⁰ Joseph Rowntree Foundation (2013): *Poverty and Ethnicity in Northern Ireland*. Available at: <http://www.jrf.org.uk/publications/poverty-ethnicity-northern-ireland>

⁵¹ Ibid.

⁵² The majority of families researched for the report were waiting for four years on average for an outcome on their initial application for refugee status.

⁵³ Equality Commission for Northern Ireland (2009): *Outlining minimum standards in Traveller accommodation*, page 9. Available at: <http://www.equalityni.org/Delivering-Equality/Addressing-inequality/Housing-communities/Researchinvestigations>

Northern Ireland includes quantitative and qualitative evidence of the extent to which provision meets need.

68. Evidence has also shown that Migrant Workers experience overcrowded accommodation provision, insecurity of tenure and poor standards as well as incorrect decision-making by public authorities regarding entitlement to assistance⁵⁴.
69. ECNI is aware that Roma experience overcrowding in housing as well as tensions with local communities⁵⁵.
70. Issues for refugees appear to include a lack of time to find suitable alternative housing once granted refugee status and difficulties in providing deposits or a suitable guarantor with regard to housing in the private rented sector⁵⁶.
71. ECNI recommends that the State Party Report includes information on the extent to which housing need among the BME communities, including migrants and Roma is being monitored and addressed, highlighting key statistics as appropriate.
72. ECNI also recommends that the reference (at paragraph 26, page 39) to the Social Security Agency's Make the Call campaign be strengthened by supporting evidence that Roma, Gypsy and Traveller groups have benefited from this scheme.

⁵⁴ ECNI (2007): Op. Cit.

Northern Ireland Council for Ethnic Minorities (2013): *Submission to DSD consultation on 'Facing the Future'*:

Housing Strategy for Northern Ireland (Belfast: NICEM). Available at:

http://www.nicem.org.uk/uploads/publications/NICEM_DSD_Consultation_on_Facing_the_Future.pdf

⁵⁵ Anecdotal evidence from those working closely with the Roma community suggests that over half live in accommodation with 10 or more people. If these figures are considered in tandem with the small number working and deriving a small income, and acknowledging the absence of Housing Benefit entitlement for Roma families, it is highly likely that shared accommodation has been driven by need rather than choice.

⁵⁶ Conversation between Equality Commission for Northern Ireland and the Northern Ireland Community of Refugees and Asylum Seekers of 4th February 2014.

73. ECNI acknowledges the detail provided in the section of the State Party Report dealing with healthcare provision in Northern Ireland (paragraphs 5 -26, pages 40-45).
74. However, we would welcome further information on the health inequalities experienced BME communities in Northern Ireland, including Roma and Travellers and the extent to which the various initiatives described have reduced these inequalities
75. With respect to the right to **public health, medical care, social security and public services**, the ECNI remains concerned⁵⁷ about the low life expectancy and the high levels of suicide and infant mortality experienced by the Irish Traveller community highlighted in the All-Ireland Travellers Health Study (AITHS)⁵⁸. The Health and Social Wellbeing Thematic Action Plan for 2013/14 and 2014-15 (at paragraphs 17-18, page 43) is described as reflecting AITHS priorities and includes arrangements for monitoring, evaluation and research. It would be helpful for the State Party Report to refer to the outcomes of this evaluation. In order to provide evidence of the effectiveness of the interventions set out in the Plan.
76. We are also aware that maternal and infant mortality is higher among BME groups and that there are difficulties for some groups in accessing primary and secondary health care⁵⁹.

⁵⁷ Equality Commission for Northern Ireland (2011): *Shadow Report to the UN Committee on the Elimination of Racial Discrimination (CERD) on the UK Government's 18th Periodic Report*, page 24.

Available at: <http://www.equalityni.org/consultationresponses?subject=Race&type=&year=2011>

⁵⁸ Kelleher, C. et al. (2010): *All Ireland Traveller Health Study*, University College Dublin (Department of Health and Children & DHSSPS). Available at:

http://www.dohc.ie/publications/aiths2010/ExecutiveSummary/AITHS2010_SUMMARY_LR_All.pdf?direct=1

Equality Commission for Northern Ireland (2001): *Response from the Equality Commission for Northern Ireland to the consultation on 'The Final Report of the Promoting Social Inclusion Working Group on Travellers*.

⁵⁹ Department for Health, Social Services and Public Safety (2011): *Equality Action Plan for the Department of Health Social Services and Public Safety*.

Wright, D. (undated): *Roma Health and Wellbeing in Northern Ireland*. Available at:

<http://www.publichealth.hscni.net/sites/default/files/Denise%20Wright%20-%20Roma.pdf>

Belfast Health Development Unit (2010): *Barriers to Health – Migrant Health and Well-being in Belfast*. Available at: <http://www.belfasttrust.hscni.net/pdf/Migrant-Health-Strategy.pdf>

77. Research into migrant health and wellbeing in Belfast suggested that key barriers included lack of awareness; low levels of GP registration with GP; fears about entitlements; frustration and stress in accessing healthcare; and negative attitudes etc⁶⁰.
78. The limited evidence that is available suggests that health outcomes are generally worse for Roma than for majority population⁶¹..
79. ECNI welcomes the confirmation that the Health and Social Care Board is taking forward a project, including the development of guidance, to improve ethnic monitoring on a number of key Health and Social Care systems. However, we understand that the Department for Health, Social Services and Public Safety is currently the only Government department in Northern Ireland which is taking forward action to put ethnic monitoring arrangements in place.
80. ECNI would welcome the provision of further information in the State Party Report of proposals by the Northern Ireland Executive and Departments to put in place arrangements for effective ethnic monitoring.
81. With respect to **education** (paragraphs 53-61, pages 56-58), ECNI has long been concerned^{62 63} about racist bullying, high rates of non-

Law Centre (2013): *The case for free healthcare for asylum seekers*. Available at <http://www.lawcentreni.org/Publications/Frontline/Frontline-90.pdf>

BBC Democracy Live (3 December 2013): 'Call for universal healthcare for failed asylum seekers'.

Available at: <http://www.bbc.co.uk/democracylive/northern-ireland-25223423>

Institute of Conflict Research (2012): *The Horn of Africa Community in Belfast - a needs assessment*.

Available at: <http://www.conflictresearch.org.uk/Resources/Documents/HAPANIapril12.pdf>

⁶⁰ Belfast Health Development Unit (2010): *Barriers to Health – Migrant Health and Well-being in Belfast*.

Available at: <http://www.belfasttrust.hscni.net/pdf/Migrant-Health-Strategy.pdf>

⁶¹ Wright, D. (undated): *Roma Health and Wellbeing in Northern Ireland*.

Available at: <http://www.publichealth.hscni.net/sites/default/files/Denise%20Wright%20-%20Roma.pdf>

⁶² Equality Commission for Northern Ireland (Nov 2008): *Every Child an Equal Child – Statement on Key Inequalities in Northern Ireland and a strategy for Intervention*.

Available at:

<http://www.equalityni.org/ECNI/media/ECNI/Publications/Delivering%20Equality/Keyinequalitiesineducation2008.pdf>

⁶³ ECNI (2011): *Shadow Report to the UN Committee on the Elimination of Racial Discrimination on the UK Government's 18th Periodic Report*, page 2.

Available at: <http://www.equalityni.org/consultationresponses?subject=Race&type=&year=2011>

attendance at school, high drop-out rates and poor educational outcomes experienced by Irish Travellers.

82. ECNI is also aware that Newcomer and Roma or refugee children can also lack English language skills; encounter difficulty accessing school or adapting to school regimes; have high levels of nonattendance and can have limited participation in the school community and experience racist bullying⁶⁴.
83. ECNI recommends that the State Party Report include statistics on the attendance and attainment levels of ethnic minorities, including Irish Travellers and Roma in this section.
84. ECNI has previously drawn attention to the bullying experienced by minority ethnic pupils in its policy paper *Promoting Racial Equality – Priorities and Recommendations*⁶⁵.
85. We consequently welcomed the Department of Education’s recent consultation on ‘Addressing Bullying in Schools’ (referenced at paragraph 58, page 57), and its three key proposals for legislative change: to provide a legal definition of bullying; to require schools to record incidents of bullying and the motivating factors behind these; and

⁶⁴ The Equality Commission (March 2012): *Inequalities in Education*.

Available at: http://www.equalityni.org/archive/pdf/EveryChildIndicators_FinalMainReport250412.pdf

Education and Training Inspectorate (2009): *An Evaluation of the Provision to Support Newcomer Pupils in a range of primary and post-primary schools*.

Available at: <http://www.etini.gov.uk/index/surveyevaluations/surveys-evaluations-primary/surveys-evaluations-primary-2009/an-evaluation-of-the-provision-to-support-newcomer-pupils-in-a-range-of-primary-and-post-primary-schools.pdf>

Connolly, P. And Keenan, M. (2000): *Opportunities for All: Ethnic Minority People’s Experience of Education, Training and Employment in Northern Ireland* (NISRA).

⁶⁵ Equality Commission for Northern Ireland (2014): *Racial Equality – Policy Priorities and Recommendations*, paragraphs 4.15 -4.17. Available at: <http://www.equalityni.org/Delivering-Equality/Equality-Themes/Racial-equality.aspx> The Commission made a number of recommendations for schools to address racist bullying including that the Department of Education considers placing a duty on schools to record disaggregated data on incidents of bullying in order to improve their understanding of, and responses to, prejudice-based bullying. Any duty placed on schools should include appropriate safeguards to encourage schools to be open about reporting incidents of bullying. The Commission also recommended that the Department ensures that schools provide regularly updated in-service training to staff on the impact of racist bullying and on the strategies to tackle and prevent it and that training on prejudice-based bullying is incorporated within teacher training.

to place a legal obligation on schools to be responsible for anti-bullying policies and processes within schools.

86. With respect to the section of the draft State Party Report which refers to the receipt by schools of additional factors in their schools budgets for their Traveller and Roma pupils, ECNI understands that each full time pupil designated on the day of the school census as being of the Traveller community will generate an additional allocation for the school.

87. However, we have previously expressed concerns that this is problematic as Traveller children may not be in school on the day of the school census or may attend another school in the same year. Furthermore, we have also expressed concern that as the money is not ring fenced, it may be appropriated for the general school budget. It is unclear whether the use of this extra funding is monitored⁶⁶. It would be helpful for the State Party Report to confirm whether such arrangements are in place and, if so, to make reference to any conclusions arising from monitoring and evaluation of the scheme.

Article 6

88. With regard to the reference to the Police Ombudsman for Northern Ireland (paragraphs 5-8, pages 59-60) it would be helpful for the State Party Report to provide statistics on the number of complaints made by BME individuals received and the outcome from these.

Article 7

89. With regard to the obligation on State Parties to adopt effective measures, particularly in the fields of teaching, education, culture and information, with a view to combating prejudices which lead to racial discrimination and to promote understanding and tolerance, and various

⁶⁶ Equality Commission for Northern Ireland (2006): *Mainstreaming Equality of Opportunity for Travellers in Education – Towards a Strategy*, paragraphs 34-35, pages 13-14). Available at: http://www.equalityni.org/ECNI/media/ECNI/Consultation%20Responses/2006/Mainstreaming_Equality_for_Travellers_Education.pdf?ext=.pdf

initiatives described with respect to Northern Ireland, it would be helpful if the State Party Report provided information on any arrangements in place to evaluate the effectiveness of these and the outcomes of any such evaluations.

Article 14

90. Although the draft State Party Report indicates (at paragraphs 1-2, page 68) that Government remains to be convinced of the practical value to people in the UK of rights of individual petition under CERD, ECNI notes that the UK Government has ratified a similar right under optional protocols to the Convention on the Elimination of All Forms of Discrimination Against Women (2004) and the United Nations Convention on the Rights of Persons with Disabilities (2009).

91. ECNI is aware that the benefits of establishing the right to individual petition include:

- improving on and adding to existing enforcement mechanisms;
- improving States' and individuals' understanding the Convention;
- stimulating States to take steps to implement the Convention;
- stimulating changes in discriminatory laws and practices;
- enhancing existing mechanisms for the implementation of human rights within the UN system;
- creating greater public awareness of human rights standards.

ECNI

3 March 2015

Appendix 1

The impact of the two tier level of protection under the Race Relations (Northern Ireland) Order 1997 as amended.

The **main impact** of this 'two tier' level of protection is summarised below:

1. The statutory definition of **harassment** which applies to the grounds of race, ethnic or national origins, in a wide range of areas (including employment and the provision of goods and services), **does not** extend to the grounds of colour and nationality. As a result, it is **more difficult** for individuals to bring complaints if they are subjected to offensive or degrading comments on the grounds of their colour or nationality;
2. Whilst the race legislation prohibits **public bodies** from discriminating on the grounds of race, ethnic or national origins when exercising their public functions, this prohibition **does not extend** to the grounds of colour or nationality;
3. Although the race legislation prohibits discrimination against **office holders**, such as chairpersons or board members of non-departmental public bodies, this prohibition **does not exist** on the grounds of colour and nationality;
4. A more **restrictive definition of indirect discrimination** applies to the grounds of colour and nationality than on the other racial grounds. This means it is more difficult for claimants alleging unlawful discrimination on the grounds of colour and nationality to successfully prove their case. Effective protection against indirect discrimination is particularly important in challenging systemic or institutional racism; where policies and practices of an employer, service provider or public authority may, without justification, have a particular adverse impact on BME individuals;

5. There are also differences in relation to the **exceptions** under the race equality legislation, depending on the racial ground in question. For example, the exceptions relating to employment for the purposes of a private household and genuine occupational requirement only apply to the grounds of colour and nationality; and not the grounds of race, ethnic or national origins.

Appendix 2

The Equality Commission for Northern Ireland

1. The Equality Commission for Northern Ireland (the Commission) is an independent public body established under the Northern Ireland Act 1998. The Commission is responsible for implementing the legislation on fair employment, sex discrimination and equal pay, race relations, sexual orientation, disability and age.
2. The Commission's remit also includes overseeing the statutory duties on public bodies under Section 75 of the Northern Ireland Act 1998 (Section 75) and under the Disability Discrimination Act 1995.
3. The Commission is empowered under Schedule 9 of the Northern Ireland Act 1998 to, inter alia, offer advice to public authorities and others in connection with the duties imposed by Section 75 of the Act. It is also empowered to authorise investigations into alleged failures by such authorities to comply with equality scheme commitments.
4. The Commission has particular duties under the Race Relations (Northern Ireland) Order 1997, ('RRO 1997') as amended. It has a duty to work to eliminate unlawful racial discrimination and harassment, to promote equality of opportunity, to promote good relations between persons of different racial groups and to keep the working of the legislation under review.
5. In addition, the Equality Commission, together with the Northern Ireland Human Rights Commission, has been designated under the United Nations Convention on the rights of Persons with Disabilities (UNCRPD) as the independent mechanism tasked with promoting, protecting and monitoring implementation of the Convention in Northern Ireland.