



Northern Ireland
**Council for
Racial Equality**

SUBMISSION

TO

MINISTRY OF JUSTICE

UN PERIODIC REVIEW 2022

27th JANUARY 2022

INTRODUCTION

NICRE is a black led membership-based organization. It is currently had 18 ethnic minority and migrant organizations as well as individual members. NICRE was set up to continue the policy work of the previous NICEM (NI Council for Ethnic Minority) which was under voluntary administration in November 2016.

NICRE aims at to promote good race relations and to endeavour the elimination of racial discrimination and the promotion of human rights and racial equality. Our vision is of a society where human rights are respected and guaranteed. Our mission is of a society that is fair and inclusive, where there is racial equality and justice for all.

We welcome the Ministry of Justice working alongside the Executive Office to run recent virtual social media platform consultation in Belfast. At the consultation numerous issues had been raised which is also form this submission, in particular the intersectionality of race, gender, disability, LGBTQ, religion.

1. International human rights norms

Devolution in the UK created a national Parliament in Scotland, a national Assembly in Wales and a national Assembly in Northern Ireland. This process transferred, and continues to transfer, varying levels of power from the UK Parliament to the 4 nations of the devolved administration. This complex transfer of power disguise the United Kingdom as a whole in terms of law, policy and practice under the treaty bodies Convention obligation for full implementation to all the devolved governments. **We urge the UK Government as the matters of urgency to ask the 4 nations of the UK government in the future report to provide information on all areas of devolved policy and good practice within their jurisdiction in order to compile with the Reporting mechanism of the treaty bodies Convention.**

Despite the clear links and overlap between UPR recommendations and recent conclusion observations from treaty bodies, there is little evidence that the UK Government is taking a co-ordinated, cross-government approach to its obligations under the international human rights framework.

NICRE urge the UK Government ratifying Article 14 of individual petition rights under CEDAW to the rest of treaty bodies. NICRE also urge the UK Government step up process of reviewing the reservations made to the international human rights treaties.

2. Equality and non-discrimination

NICRE urge the UK government ratifying Article 1 on the definition of discrimination under CERD, CEDAW, CRC, and CRPD. This will enhance the intersectionality of race with a true multi-discrimination mode. The UK Government must ensure that the authorities of Northern Ireland act without further delay to adopt comprehensive legislation prohibiting racial discrimination, including caste-based discrimination in accordance with the provisions of the Convention.

3. Bill of Rights for Northern Ireland, Brexit and Northern Ireland Protocol

The UK Government should expedite the process of adopting the Bill of Rights for Northern Ireland and must ensure that it is in line with the provisions of the Convention and other international human rights standards. Moreover, Northern Ireland Protocol aims at to protect human rights and equality under the Good Friday Agreement, the UK Government should honour the signed Brexit Agreement and Northern Ireland Protocol.

4. Data collection and policies to tackle racial discrimination

“While commending the collection of detailed disaggregated data in some of the devolved administrations of the State party, the Committee expresses concern that data are neither collected systematically in all fields where racial discrimination exists, nor uniformly across the State party’s jurisdiction, most notably in Northern Ireland, the British Overseas Territories and the Crown dependencies. It is also concerned at the lack of systematic and effective use of data to develop policies to tackle racial discrimination.... The Committee also notes the concern that a shift of the State party’s policies away from special measures that are targeted specifically towards vulnerable groups may, in the present circumstances, exacerbate the existing inequalities on the grounds of race, colour, descent, or national or ethnic origin (art. 2).¹

Given the importance of collecting accurate and updated disaggregated data to develop taken, the effective policies to combat racial discrimination and to monitor the impact of measures Committee recommends that the State party ensure that the governments of Northern Ireland, Scotland, Wales, the British Overseas Territories and the Crown dependencies systematically collect and publish disaggregated data on the enjoyment of rights by members of ethnic minorities in all fields of life, and to include such information in the next periodic report. The Committee also recommends that the State party

(a) Carefully review the impact of existing policies and programmes aimed at promoting integration so as to ensure that they do not constitute indirect discrimination;

(b) Consider adopting a detailed action plan with concrete targets, monitoring mechanisms and sufficient resources, including temporary special measures, to secure the adequate advancement of certain ethnic groups to ensure that persons belonging to such groups are able to enjoy their rights on an equal footing, taking into account the Committee’s general recommendation No.

¹ Paragraph 13, CERD/C/GBR/CO/21-23, 26 August 2016

32 (2009) on the meaning and scope of special measures in the International Convention on the Elimination of All Forms of Racial Discrimination.²

It is vital to collect accurate and updated disaggregated data to develop policies to combat discrimination across all vulnerable groups. We urge the UK Government and Northern Ireland devolved Government to extend the monitoring mechanism of religion, political opinions and gender under current Fair Employment Law to the rest of vulnerable groups under section 75 of the Northern Ireland Act 1998.

5. Racist hate speech and hate crimes

“The Committee is seriously concerned at the sharp increase in the number of racist hate crimes especially in England, Wales and Northern Ireland in the weeks prior to and following the referendum on the membership of the European Union held on 23 June 2016. In particular, **the Committee is deeply concerned that the referendum campaign was marked by divisive, anti-immigrant and xenophobic rhetoric, and that many politicians and prominent political figures not only failed to condemn it, but also created and entrenched prejudices, thereby emboldening individuals to carry out acts of intimidation and hate towards ethnic or ethno-religious minority communities and people who are visibly different. The Committee remains concerned that despite the recent increase in the reporting of hate crimes, the problem of underreporting persists, and the gap between reported cases and successful prosecution remains significant. As a result, a large number of racist hate crimes seem to go unpunished. It also remains concerned at the negative portrayal of ethnic or ethno-religious minority communities, immigrants, asylum-seekers and refugees by the media in the State party, particularly in the aftermath of terrorist attacks, as well as the rise of racist hate speech on the Internet. Notwithstanding these challenges, the Committee regrets that the State party continues to maintain its interpretative declaration on article 4 of the Convention (arts. 2, 4 and 6).**”³

The Committee recommends that the State party, including the governments of Northern Ireland, Scotland, Wales, the British Overseas Territories and the Crown dependencies:

- (a) Investigate all reported acts of racist hate crimes, prosecute and punish the perpetrators with sanctions commensurate with the gravity of the offence, and provide effective remedies to victims;
- (b) Systematically collect disaggregated data on hate crimes, ensure that measures to combat racist hate crimes are developed with the meaningful participation of affected groups, and undertake a thorough impact assessment of the measures adopted to ensure their continued effectiveness;

² Paragraph 14, CERD/C/GBR/CO/21-23, 26 August 2016

³ Paragraph 15, CERD/C/GBR/CO/21-23, 26 August 2016

- (c) **Adopt concrete measures, in consultation with affected groups, to increase the reporting of racist hate crimes by ensuring that the reporting Mechanism is transparent and accessible, and that victims have trust in the police and the justice system;**
- (d) **Taking into account the Committee’s general recommendation No. 35 (2013) on combating racist hate speech, adopt comprehensive measures to combat racist hate speech and xenophobic political discourse, including on the Internet, particularly with regard to the application of appropriate sanctions, and ensure that public officials not only refrain from such speech but also formally reject hate speech and condemn the hateful ideas expressed so as to promote a culture of tolerance and respect;**
- (e) **Take effective measures to combat racist media coverage, taking into account the Committee’s general recommendation No. 35 (2013) on combating racist hate speech, and ensure that such cases are thoroughly investigated and, where appropriate, sanctions are imposed.⁴**

The Committee also reiterates its recommendation that the State party withdraw its interpretative declaration on article 4 of the Convention.⁵

Five and a half year on, there is little evidence to show that racist hate crimes and hate speeches are decreasing. **Moreover, institutionalized and structural racism become norms. Disparities do persist. Racism and discrimination remain a factor in shaping people’s life outcomes, and the adherent attitudes continues in our society’s institution and increasingly online. Institutional and Structural Racism continue to add the experience of BME and migrant people living in Northern Ireland. The McPherson Report defines Institutional Racism as**

**“The collective failure of an organisation to provide an appropriate and professional services to people because of their colour, culture or ethnic origin which can be seen or detected in processes; attitudes and behaviour which amount to discrimination through unwitting prejudice, ignorance, thoughtlessness, and racist stereotyping which disadvantage minority ethnic people.”
(McPherson Report 1999)**

The government evidence confirms that institutional racism does not existing is frankly disturbing. We challenge the Race and Ethnic Disparities Commission in its recent published Report which forced Tony Sewell to resign. **By denying the evidence of institutional racism and tinkering with issues like unconscious bias training and the use of the term ‘BAME’, the government have insulted not only every ethnic minority in this country – the very people who continue to experience racism on a daily basis – but also the vast majority of the UK population that recognize racism is a problem and expect our government, whether it is Central or our Regional NI, to contribute to eradicating it.**

The discriminatory nature of hate crime

⁴ Paragraph 16, CERD/C/GBR/CO/21-23, 26 August 2016

⁵ Paragraph 17, CERD/C/GBR/CO/21-23, 26 August 2016

The Chair of the All Party Group on Ethnic Minority Community, Dr. Steve Aiken MLA OBE, has sponsored the Private Member's Bill on Hate Crime in February 2020. In his Irish News⁶ interviews he warned the Justice Minister Naomi Long MLA in her plan to introduce legal protection on hate crime is too late until next Assembly which have already been outpaced by extensions to legislation in England and Wales. The Justice Minister has received a comprehensive report from Judge Desmond Marrinan who chaired the Independence Review on Hate Crime in last December. However, the Law Commission in England and Wales published their consultation paper on the Hate Crime Final Paper in September 2020 which is much more progressive than that proposed by Judge Marrinan.

What is the proposed purpose or policy objective?

The purpose is to consolidate the existing laws on hate crime in England, Wales and Scotland which do not apply to Northern Ireland as well as the EU Council Framework Decision 2008/913/JHA on combating certain forms and expressions of racism and xenophobia by means of criminal law, 28 November 2008 in order to fulfil the UK Government obligations under EU Charter of Fundamental Rights as well as international human rights standards which was identified in the Belfast/Good Friday Agreement and the subsequent signed Brexit Agreement and the annexes to Northern Ireland.

We propose to use the "group selection" model also known as the 'discriminatory model'. An offender must have "selected" his or her victim because of victim's protected group characteristics. Evidence of the offender's prejudiced or bias motivation is not required. Instead, it is considered that, by virtue of specifically targeting a victim because of the victim's identity characteristics, the offender has evinced prejudice or bias towards that individual. For example, the Criminal Code in Illinois read as follows:

"Sec. 12-7.1. Hate crime

- (a) A person commits hate crime when, **by reason** of the actual or perceived race, color, creed, religion, ancestry, gender, sexual orientation, physical or mental disability, or national origin of another individuals, regardless of the existence of any other motivating factor or factors, he commits assault, battery, aggravated assault, misdemeanor theft, criminal trespass to residence, misdemeanor criminal damage to property, criminal trespass to vehicle, criminal trespass to real property, mob action, disorderly conduct, harassment by telephone, or harassment through electronic communication..."⁷

The Law Commission in England and Wales on 7 December 2021 announced recommendations to reform hate crime legislation to ensure that disabled and LGBTQ victims, criminalise extremist misogynist "incite" material, and safeguard free speech. The Commission is also to protect women and girls. This includes extending the offences of stirring up hatred (behavior that incites others to

⁶ <https://www.irishnews.com/news/northernirelandnews/2021/02/18/news/-bring-in-race-hate-crime-before-it-is-too-late---assembly-members-urge-justice-minister-naomi-long-2227302/>

⁷ France, Bulgaria and Denmark use a version of the discriminatory selection model: see OSCE, Hate Crime Laws – A Practical Guide (Warsaw: OSCE, 2009).

hate entire groups) to cover sex or gender and has recommended that the government consider the need for a new offence to tackle public sexual harassment.

The reform packages of the Law Commission on hate crimes and hate speech should extend to the devolved Government in Scotland and Northern Ireland. We urge the UK Government and devolved Government in Northern Ireland, Wales and Scotland to introduce comprehensive legal protection without any delay.

6. Racism and sectarianism in Northern Ireland

“The Committee notes the complex interplay between racism and sectarianism in Northern Ireland and welcomes the adoption of “Together: Building a United Community Strategy” in May 2013 to tackle racism, sectarianism and other forms of intolerance. **The Committee however reiterates its previous concern that measures to tackle racism and sectarianism are kept outside the framework of protections against discrimination provided by the Convention and the Durban Programme of Action (arts. 2 and 4)⁸.**”

The Committee recommends that the State party consider the standards, duties and actions prescribed by the Convention and the Durban Declaration and Programme of Action on inter-sectionality between ethnic origin, religion and other forms of discrimination in its measures to combat racism and sectarianism. It requests the State party to provide, in the next periodic report, information on concrete measures adopted to address racial discrimination in Northern Ireland, and on the impact of the “Together: Building a United Community Strategy” in addressing discrimination experienced by ethnic minority groups⁹.”

In my Oral Statement at the CERD hearing, **I highlighted the implications of Brexit. Firstly, it is highly likely that the border issue, whether it will be a physical one for custom duties or for immigration control under the UK-Ireland Common Travel Area.** The sudden Brexit will increase (currently it is random check without a physical check point) racial profiling for any potential white (EU citizens) or non-white who cross the border to the other side or vice versa. The potential victims of racial profiling will also include both the Irish, as well as the British. Any border change will also destabilise the constitutional settlement in Northern Ireland (see attached Additional Information), in particular from the Catholic side.

Secondly, the rise and legitimisation of anti-migrant racism is increasing. Although we do not have immediate upsurge of racist violence after the Brexit, we did have one high profile harassment and language abuse case against a Palestinian activist who is a professional nurse when he walked into the Belfast city centre the day after Brexit. The fewer attacks or language abuse in compare with England and Wales were also in the context of the timing as we were approaching the annual July 12 Parade - the main sources of sectarian violence in Northern Ireland. Over the last five years the sentiment against migrant workers who were scapegoat to take their jobs, their house and lazy to work for benefits are the mindset of local Catholic and Protestant. This partly explained the increase of racist attacks in our submission to CERD this time, as well as the incitement of religious hatred by our First Minister (see para. 10.1 to 10.7).

⁸ Paragraph 36, CERD/C/GBR/CO/21-23, 26 August 2016

⁹ Paragraph 37, CERD/C/GBR/CO/21-23, 26 August 2016

Thirdly, it is the threat to repeal Human Rights Act and also the possibility to withdraw the European Convention of Human Rights. Brexit will destabilise the constitutional settlement in Northern Ireland resulting from the repeal of the Human Rights Act and the border issue. **My additional information to the Rapporteur highlighted the complex of the political settlement in Northern Ireland through the Belfast Agreement.**

Five and a half year on Brexit is the only issue destabilise Northern Ireland politics in the sea border. The recent high profile of the DUP alongside Loyalist paramilitary illustrates this. Over the past two decades, Loyalist paramilitary targeting Black and Minority Ethnic (BME) with organised racist attacks, Islamophobic hate and anti-semitism. Therefore, the Brexit Agreement and the Northern Ireland Protocol are the only safeguard of Good Friday Agreement, in particular human rights and equality protection of people living in Northern Ireland.

7. Irish Traveller, Gypsy and Roma Communities

NICRE urge the UK Government collecting disaggregated data on Irish Traveller, Gypsy and Roma and devise policies targeting the specific needs of persons belonging to those groups. We also urge the UK Government to have effective measures to guarantee equal access to education which ends segregated Irish Traveller schools and to enhance the achievements of pupils belonging to ethnic minority communities, with particular attention to Irish Traveller. Gypsy and Roma children and young people.

8. Employment

NICRE urge the UK Government to collect disaggregated data on employment, unemployment and activity rates of individuals from ethnic minority groups, and adopt and implement targeted measures to address unemployment, occupational segregation and discriminatory practices in recruitment, salaries, promotion and other employment conditions. We also urge the UK government to intensify targeted initiatives to maximise the participation of minority ethnic groups in employment, training and career progression.

9. Education

“While noting the adoption of guidance on bullying and exclusion, the Committee remains concerned at continued reports of racist bullying and harassment in schools across the State party, as well as the disproportionate rate of school exclusion of pupils from Gypsy, Traveller, Roma or African Caribbean communities. The Committee also expresses concern at the lack of balanced teaching in the State party’s schools about the history of the British Empire and colonialism, particularly with regard to slavery (arts. 2 and 5)¹⁰.

1. The Committee recommends that the State party ensure that the

¹⁰ Paragraph 34, CERD/C/GBR/CO/21-23, 26 August 2016

governments of Northern Ireland, Scotland and Wales:

(a) Strengthen its efforts to eliminate all racist bullying and harassment in the State party's schools, including by requiring schools to collect qualitative and quantitative data on bullying and school exclusions on grounds of race, colour, descent, or national or ethnic origin, and to use the data to develop concrete strategies;

(b) Ensure that schools comply with their public sector equality duty under the Equality Act 2010 and Section 75 of the Northern Ireland Act 1998 to challenge racist bullying and to promote respect for diversity, including through the training of educational personnel;

(c) Ensure that the school curricula across its jurisdiction contain a balanced account of the history of the British Empire and colonialism, including slavery and other grave human rights violations¹¹."

We also urge the UK Government to ensure that, in co-operation with minority ethnic groups, curricula, textbooks and other teaching materials reflect appropriately the ethnic diversity and historical presence of all minority ethnic groups in Northern Ireland. Staff of all schools shall be effectively trained to accommodate diversity in the classroom and promote intercultural respect and understanding in schools.

END

Any inquiry about this submission, please contact Mr. Patrick Yu, Secretary of the Trustees Board by post to the following address:

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¹¹ Paragraph 35, CERD/C/GBR/CO/21-23, 26 August 2016

