



NORTHERN
IRELAND
HUMAN
RIGHTS
COMMISSION

**Comments of the Human Rights Commission to the
Office of the First Minister and Deputy First Minister
on the draft Race Equality Strategy**

1. The Northern Ireland Human Rights Commission (the Commission) is a statutory body created by the Northern Ireland Act 1998. It has a range of functions including reviewing the adequacy and effectiveness in Northern Ireland of law and practice relating to the protection of human rights,¹ advising on legislative and other measures which ought to be taken to protect human rights,² advising on whether a Bill is compatible with human rights³ and promoting understanding and awareness of the importance of human rights in Northern Ireland.⁴ In all of that work the Commission bases its positions on the full range of internationally accepted human rights standards, including the European Convention on Human Rights (ECHR), other treaty obligations in the Council of Europe and United Nations systems, and the non-binding or “soft law” standards developed by the human rights bodies.
2. The Commission has taken a keen interest in the development of this Race Equality Strategy (the Strategy), not least because of its implications for the United Kingdom’s international human rights commitments. Before going on to discuss those commitments in more detail we wish to make some general

¹ Northern Ireland Act 1998, s.69(1).

² *Ibid*, s.69(3).

³ *Ibid*, s.69(4).

⁴ *Ibid*, s.69(6).

comments regarding this second draft of the Strategy. Overall, this second draft, while an improvement on the first, remains vague in terms of exactly what the people of Northern Ireland can expect from Government in tackling racial inequalities and ensuring human rights protections for all in the region. There is very little put forward in terms of action, and it reads largely as an overview of the current situation facing minority ethnic communities in the region with some information on what steps Government has taken to date in the area of racial discrimination. Too much is being left to the proposed implementation plan of action, and it is difficult to see how this current draft can provide the foundation upon which a detailed and transparent implementation plan can be devised. This Strategy ought to be one for which Government can be held to account in future, and the current draft does not meet that basic criterion.

3. The Commission therefore recommends that further details are provided on the concrete actions that Government intends to take in addressing the problems identified in the Strategy, rather than deferring this to a later stage via the implementation action plan. The implementation action plan ought to provide more specific information, such as targets, timescales and the Departments that are to take the lead in taking each action forward.
4. The Commission welcomes the reference to the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) and the 2001 World Conference Against Racism, Xenophobia and Related Forms of Intolerance (WCAR). However, it is disappointed that no mention is made of the Human Rights Act 1998, and strongly urges a specific reference in the section on "Legislative Framework". Indeed the Human Rights Act 1998 constitutes a major obligation for public authorities in the UK and to omit it might be misread as suggesting that the Northern Ireland Administration was not aware of those obligations.
5. In addition to the ICERD and the Human Rights Act, individuals from minority ethnic communities of course possess the rights enshrined in the wide range of human rights instruments to which the UK is a party. Those other instruments should also be referred to somewhere in the body of the Strategy.

6. Indeed, there is a serious lack of focus on human rights throughout the Strategy. The Commission wishes to see a strong assertion from Government that all individuals possess a fundamental human right to a life free from racism, racial discrimination and intolerance, and that Government recognises its corresponding duty to ensure the enjoyment of that right.
7. The Commission also notes the omission of its own name as one of the statutory agencies that have a particular interest in the development and implementation of the Strategy. Government is quite aware that this Commission has a keen interest in the development of the Strategy, and it has a statutory remit to monitor the human rights situation in Northern Ireland and advise the legislature accordingly. It is also involved in monitoring and reporting on international obligations, for example via the UN Committee on the Elimination of All Forms of Racial Discrimination. That being the case the Commission would have expected to be named alongside the Equality Commission of Northern Ireland as a key statutory agency working on race issues in the region.
8. Given that the Strategy purports to meet the UK's obligations under ICERD and those emanating from the WCAR, it would also be appropriate for the text of ICERD to be included by way of an appendix (at least its substantive provisions). There ought also to be a clear reference as to where readers can locate the full text of the Durban Declaration and Programme of Action (with hyperlink in electronic versions), and the Strategy should state that the OFMDFM will make these texts available upon request. Such additions would be of considerable help in allowing readers to assess the extent to which the Strategy satisfies the need.
9. With regard to the long standing position of this Commission on the Strategy the OFMDFM must, by now, be well aware of the Commission's concerns. These are summarised as follows and more detailed commentary is provided below:
 - The slow progress in developing the Strategy
 - The extent to which the Strategy falls short of the commitments made by Government at the WCAR

- The way in which the Strategy can and/or will address non-devolved matters, and its fit with the Home Office's Community Cohesion and Race Equality Strategy
 - The level of co-ordination required between the OFMDFM and the Northern Ireland Office (NIO) in order to achieve the aims of the Race Equality Strategy
10. This submission will not dwell on the disappointment of the Commission with regard to the slow progress of the Strategy and the unsatisfactory length of time it has taken to produce this second draft. It trusts that from this point onwards Government will show greater commitment to finalising the Strategy and implementing it, while taking on board the views expressed by members of the Race Equality Forum. In particular it is important that the deadline of 31 December 2005 for finalisation of the implementation action plan, as stated in this latest draft, is met.

The Race Equality Strategy and the National Action Plan Against Racism

11. Unfortunately it is necessary for the Commission again to express its concern with regard to the plan to make this Strategy a replacement for a National Action Plan Against Racism (NAPAR), which Government committed itself to producing at the WCAR. The Commission notes that the draft Strategy states

We consider... that the present strategy reinforces the implementation of United Kingdom obligations under the International Convention for the Elimination of all forms of Racial Discrimination. We also consider that it contributes appropriately to meeting the UK Government's commitments to actions agreed at the 2001 UN World Conference Against Racism, Racial Discrimination, Xenophobia and Related Intolerance, including the development of a National Action Plan Against Racism.

12. The Commission is aware that the decision not to pursue a separate NAPAR emanated from the Home Office and that of course, the OFMDFM, being responsible for equality and human rights in Northern Ireland only, cannot pursue on its own such a

plan at national level. However, given that equality and human rights are matters devolved to the Northern Ireland Administration, the OFMDFM could to all intents and purposes honour many of the commitments made at Durban through this Race Equality Strategy.⁵ The Commission is aware of the OFMDFM's view that it wants a Strategy that "makes sense for Northern Ireland" and that it does not wish to pursue initiatives and proposals that have been taken forward in other jurisdictions unless they are appropriate in the Northern Ireland context. The Commission agrees entirely with that view, and indeed welcomes such an approach from the Office.

13. However, a close examination of the Durban Declaration and Programme of Action indicates that minority ethnic communities in Northern Ireland would benefit tremendously from the positive address of the recommendations and calls made in the documents. Indeed the Programme of Action and Declaration were drawn up with the input of governments, non-governmental organisations and national institutions from across the globe with a wealth of experience in addressing racism, and if they are not followed it would be a loss to minority ethnic communities in Northern Ireland.
14. Indeed, there is a great deal to be learned from the documents, and a closer examination of them would avoid the Strategy searching for answers to specific problems that have in fact already been answered at Durban, as the result of a vast amount of work by an unrivalled assembly of knowledge and expertise. In many other instances, the documents provide governments with a useful guide or starting point upon which to add initiatives tailored to local needs. The important point here is that by not absorbing the documents' recommendations, the OFMDFM may simply be re-inventing the wheel and/or overlooking key actions that need to be taken forward in this region.
15. Moreover, the fact remains that the UK has publicly and repeatedly committed itself to implementing a NAPAR, and that undertaking was praised by the UN Committee on the Elimination of Racial Discrimination in its Concluding

⁵ The Commission of course is aware that ratification of a number of international human rights treaties, and the withdrawal of certain reservations, as well as policy relating to immigration and asylum, fall outside the remit of the Northern Ireland Administration.

Observations of August 2003.⁶ The UK is expected to update the Committee on progress with regard to the NAPAR in its next periodic report, due in April 2006.

16. The assurance given by the OFMDFM is undermined by considering some of the key areas that States were urged to focus on in the Durban Programme of Action, but that this latest draft of the Strategy does not address.
17. To begin with, this Strategy is intended to be for Government Departments. At the May 2005 meeting of the Race Equality Forum, the idea was put forward by the OFMDFM that non-government bodies would have the option of "volunteering in" to the aims and objectives of the Strategy. However, that approach is not as pro-active as was envisaged in the Programme of Action. Indeed, the Programme of Action calls on states to implement very practical initiatives involving the private sector and the media in order to eradicate racism. Specifically, the Programme of Action:

Urges States and encourages the private sector to promote the development by the media, including the print and electronic media, including the Internet and advertising, taking into account their independence, through their relevant associations and organisations at the national, regional and international levels, of a voluntary ethical code of conduct and self-regulatory measures, and of policies and practices aimed at:

Combating racism, racial discrimination, xenophobia and related intolerance;

Promoting the fair, balanced and equitable representation of the diversity of their societies, as well as ensuring that this diversity is reflected among their staff;

Combating the proliferation of ideas of racial superiority, justification of racial hatred and discrimination in any form;

Promoting respect, tolerance and understanding among all individuals, peoples, nations and

⁶ CERD/C/63/CO/11

civilisations, for example through assistance in public awareness-raising campaigns;

Avoiding stereotyping in all its forms, and particularly the promotion of false images of migrants, including migrant workers and refugees, in order to prevent the spread of xenophobic sentiments among the public and to encourage the objective and balanced portrayal of people, events and history.⁷

18. The problems posed by the way various sections of the media sometimes portray minority ethnic communities and individuals are noted in the draft Strategy itself:

The impact of this stereotyping is difficult to quantify, but can help to create an environment where assaults, threatening behaviour and discrimination against the community which is subject to stereotypes are more likely to occur. Insensitive reporting on the media (and comments by local community representatives) have all too often reinforced these attitudes. There is a need for us all to challenge and combat myths and misinformation.

And further:

There is a significant degree of ignorance and lack of understanding in Northern Ireland about the needs and concerns of minority ethnic people as well as a worrying level of prejudice against communities and individuals. The media has all too often reinforced these attitudes.

19. Despite this acknowledgement, the Strategy remains committed only to working with Government Departments. The Commission urges OFMDFM to reconsider that approach, in order to offer a more comprehensive strategy for dealing with racial inequalities and stereotyping in Northern Ireland.
20. The Programme of Action also recognises the role the private sector has to play in, for example, securing discrimination-free employment opportunities and working conditions; equal access to health care and equal participation in political, economic, social and cultural decision-making, and it accordingly

⁷ World Conference against Racism, Racial Discrimination, Xenophobia, and Related Intolerance: *Programme of Action* para. 144.

encourages measures by state actors to facilitate input from the private sector.⁸

21. The Commission welcomes the fact that the OFMDFM is not ruling out the possibility of the Strategy engaging with the private sector. However, it strongly recommends that specific acknowledgement should be made in the text of the Strategy of the role the private sector can and ought to play in addressing racial discrimination in Northern Ireland. More detailed indications of how Government intends to engage with the private sector and encourage its involvement could then be left to the implementation plan.
22. The Commission is aware of arguments that might be put forward in opposition to this recommendation: that a softer approach is required with the private sector, or that Government should be careful not to alienate the sector, or put it on the defensive by suggesting in any way that it is not respecting racial diversity, or indeed by accusing it of discriminatory practices. But putting in writing at this stage Government's expectations of the private sector, rather than being confrontational, would indicate a constructive and facilitative approach. It will give the sector a framework on which to base its response.
23. The private sector is of course not one homogenous, uniform entity, and while some companies offer very good practice examples of how to ensure respect and equal treatment of an ethnically diverse workforce, it must equally be acknowledged by Government that other companies do engage in discriminatory practices – some actively, and some through lack of information regarding what is expected of them. For race equality to become a reality in Northern Ireland, it is vital that Government sends very clear messages to each of these elements, and, more importantly, offers opportunities for guidance and support on how to accommodate changes in the make-up of the work force and indeed in the client base. This guidance is vital given the increasing number of migrants coming to Northern Ireland to take up employment within the private sector, and the increasing number of individuals from minority ethnic communities who rely on the private sector for the provision of goods and services that were traditionally provided by the public sector.

⁸ *Programme of Action*, see for example paras 104-112.

24. As for the other major 'social partner', the Durban Programme of Action recommends that governments work closely with trade unions, and it would be more than appropriate for the OFMDFM to do so in its attempts to reach the private sector through this Strategy.

The Race Equality Strategy and non-devolved matters

25. The Commission notes the reference in the Home Office's Community Cohesion and Race Equality Strategy to excepted matters in Northern Ireland. The Community Cohesion and Race Equality Strategy states that it is

...a strategy for Great Britain, and will apply in Northern Ireland only to those matters that are reserved or excepted under the provisions of the Northern Ireland Act 1998. It acknowledges that race equality and community relations are matters for the Northern Ireland Administration.

26. However, from this Commission's reading of the Community Cohesion and Race Equality Strategy it is unclear exactly how that Strategy's address of excepted matters will translate into the context of Northern Ireland. The Commission's areas of concern with regard to non-devolved matters can be divided into two main categories.
27. The first is those policy decisions that are made by the Home Office but which are exclusive to Northern Ireland. The key policy here is that of detaining some asylum and immigration applicants in prisons.
28. The second category includes those legislative and policy initiatives for which the Home Office has responsibility and which are applicable across the United Kingdom. These are, for example, the level of financial support available to asylum applicants, the social security benefits to which different categories of migrant workers have entitlements, the level and types of training that immigration officers must undergo, the broader developing policy of processing and deciding on asylum and immigration applications, including family unification for migrants, asylum seekers and refugees already in the UK, anti-terrorism legislation and the proposed introduction of identity cards. While beyond the remit of the Northern Ireland Administration these policies have obvious and crucial

implications for race equality in Northern Ireland, and this Commission as well as other members of the Race Equality Forum legitimately have major concerns regarding the legislative and policy initiatives to be undertaken by the Home Office in these areas.

29. Despite those concerns, there is no mention in the Race Equality Strategy of how members of the Race Equality Forum can communicate their views to the Home Office, nor any indication that the Home Office is keen to hear of the effect its policies may have specifically in Northern Ireland. The Commission is aware that a representative of the Home Office has been asked to sit on the Race Equality Forum, and that the OFMDFM cannot compel the Home Office to take any action in connection with the Strategy. However, it is not sufficient that the OFMDFM simply absolves itself of responsibility for policies and legislation emanating from the Home Office. It ought to instead work to ensure that a representative of that Department with senior rank attends the Forum meetings and acknowledges the views expressed by its members.
30. The Commission also suggests that the Race Equality Strategy include an appendix detailing the Home Office's legislation and policy initiatives, including those outlined in the Community Cohesion and Race Equality Strategy that will impact on race relations in Northern Ireland. It is only with that information gathered together in one text that readers can gain an accurate picture of the actions Government is taking to eliminate racial discrimination and to ensure the equal enjoyment of rights by everyone in this region.
31. With regard to the Community Cohesion and Race Equality Strategy for Great Britain, it is also important to note that it does in fact make a commitment to Government working with the media and the private sector and in particular private sector providers of housing. The Commission asserts therefore that the absence of such initiatives in the Race Equality Strategy not only represents a shortcoming in relation to the UK's commitments made in at the WCAR but also represents a lesser degree of protection for minority ethnic communities in Northern Ireland in comparison to those living in Great Britain. The Commission urges the OFMDFM to again re-consider its decision not to include mention of the media and private sector in the text of the Strategy.

The OFMDFM and the Northern Ireland Office

32. The Commission welcomes the acknowledgement in the Strategy that much work still needs to be done between the OFMDFM and the NIO in tackling racial discrimination. The Northern Ireland Affairs Committee was highly critical of the level of co-ordination to date between the two Departments in tackling hate crime.⁹ It is vital that this Strategy becomes one of the ways in which Government addresses those criticisms.
33. The lack of monitoring to date of racist incidents has been of concern to this Commission and indeed many other organisations. The Community Safety Unit of the NIO is in the process of establishing a system for recording racist incidents (and other types of 'hate crime'), and there is some overlap between the membership of the advisory group for that project and that of the Race Equality Forum. The Commission wishes to see in the final Strategy an update on the work of the Community Safety Unit and an explanation of how its findings with regard to the level of racist incidents in the region, and the monitoring arrangements that it envisages, will inform the work of the OFMDFM and may impact more widely in efforts to combat racism.
34. The draft Strategy shows cognisance of the problems of policing in Northern Ireland, whereby much work has yet to be undertaken by the PSNI in establishing the trust of minority ethnic communities. The Commission appreciates that acknowledgement but also wishes to see further information on the level and type of anti-racism and cultural awareness training that the PSNI undergoes and the ways in which police officers accused of misconduct are dealt with. This information is important for readers in light of the Macpherson recommendations and the commitments made at the WCAR in 2001.¹⁰
35. We do not intend in this submission to address issues of funding in any detail. It would of course be appropriate for OFMDFM to continue to target funding on non-governmental organisations (NGOs) and in particular community-based initiatives, such as the 'welcome packs' recently produced for migrants. The overall

⁹ The Inquiry of the Northern Ireland Affairs Committee described the level of co-ordination as "disjointed, sluggish and lacking in vision".

¹⁰ See paras 71-24 and 74 of the Durban *Programme of Action*.

level of funding needs to increase to reflect the increasing demand, and it must be said that the present draft does not provide much reassurance for the NGO sector. Particularly given that the Police Service has itself acknowledged that it has difficulties in its relationships with minorities, the Office should expect that perceptions of the police in minority communities will not always accord with the official view. The Office should strive to avoid the appearance of censorship or political interference with the content of funded publications dealing with policing, or indeed other sensitive issues. While it would be quite proper to insist on a disclaimer, to require assurances about the factual accuracy and legality of the material, and to withhold permission for use of the departmental logo, nothing in the funding regime should impede the exercise of the right to freedom of expression. Funding decisions need to be made with regard to the overall utility and impact of a particular initiative, and with due respect for the views and ethos of the funded group, rather than in any way that might be taken to indicate a desire to undermine the independence of the community sector.

36. The Commission also takes this opportunity to support the view of those organisations that have called for the need for Government to have clear data on the present situation of minority ethnic communities. Again this information is very important if the Strategy and implementation action plan is to have real and positive impact on the lives of minority ethnic communities in Northern Ireland.

Conclusion

37. In conclusion, the Commission reiterates its calls for the Strategy to be taken forward as a matter of priority, and with thorough regard for the UK's full range of human rights commitments.

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