

# **COMBATING RACISM IN NORTHERN IRELAND**

**A submission by the racism sub-group  
of the Committee on the Administration of Justice  
in response to the consultative document  
'Race Relations in Northern Ireland'**

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## Preface

The **Committee on the Administration of Justice (CAJ)** has had a long running concern about the absence of legislation in Northern Ireland to prohibit racial discrimination. In early 1991 the CAJ Executive Committee decided to establish a sub group on racism in order to advance our work in this area. Its membership includes representatives of the Chinese and Traveller communities, lawyers, academics, students, community activists and campaigners. In April 1991 CAJ raised the absence of anti-racism legislation at the **United Nations Human Rights Committee** session on the United Kingdom. In November of the same year the sub group organised Northern Ireland's first conference on racism which was attended by over 130 people. The conference heard presentations on the experiences of the Chinese and Traveller communities together with a number of presentations by experienced anti-racist practitioners from Britain. The United Kingdom's international obligations in respect of racism were also highlighted. The conference concluded that there was an urgent need for the introduction of *"comprehensive and appropriate anti-racist discrimination legislation for Northern Ireland."*

The sub group therefore welcomes the publication of **"Race Relations in Northern Ireland"** and urges the government to act quickly to put in place effective legislation.

In preparing our response to the document the sub group has engaged in extensive consultations with members of the various minority ethnic communities throughout Northern Ireland, the discrimination bodies and a variety of groups in the community and voluntary sector.







# Analysis of the Consultative Document

## Introduction

The consultative paper accepts that the size and distribution of the minority ethnic population in Northern Ireland is not well documented, but it cites '*some studies*' (without actually stating what those studies are) as having estimated that the total is '*in the region of 10,000*'. It then proceeds to provide a breakdown of the minority ethnic population into its constituent groups. Such figures can only remain vague estimates given that no ethnicity question is included in the Northern Ireland census (unlike Great Britain), and it is probable that the minority ethnic community numbers considerably more than 10,000. Indeed, the Chinese community, estimated in the document as totalling approximately 5,000 people, has been assessed at 7,000-8,000 by the Chinese community itself. Even this estimate is based on the size and scale of the Chinese restaurant industry and we are aware of other estimates placing the figure as high as 15,000.

We take the view that the need for legislation should not depend on the size of the minority ethnic population. Racism is unacceptable whether there is only one person of minority ethnic background in Northern Ireland or whether there are 100,000. Racism is objectionable in principle and its victims deserve to be protected from it.

We believe there is a strong argument for suggesting that smaller numbers of minority ethnic people are at greater risk given their smaller numbers and therefore the need for protection is increased.

Furthermore any such legislation will protect members of the white, settled, population as well as members of the minority ethnic communities. The **Race Relations Act 1976** protects white people in Britain as well as black and minority ethnic persons.

Any enforcement agency should take a broad view of the task of redressing racism against ethnic minorities. The **Commission for Racial Equality (CRE)** in Britain engages in anti-racist work with the white, settled community as part of its brief to improve the position of minority ethnic people.

Put simply, the focus should not be on the numbers of minority ethnic people in Northern Ireland but on the task of combating racism. During the course of our work on this issue we have gathered a large amount of evidence which suggests that members of ethnic minority groups in Northern Ireland do experience racism from members of the public and from official bodies. Examples which illustrate this are given in **Appendix 1**. We have never accepted the argument put forward by Government and repeated in para. 1 on page 1 that there was '*insufficient evidence of problems arising to warrant legislation equivalent to that in Great Britain.*' We are unaware of any steps taken by Government to investigate the incidence of such problems. We are also aware of the cultural barriers which often make it extremely difficult for people to make a complaint - if someone has little or no English it is extremely difficult for them to inform Government of the racism that they are experiencing. This point has been highlighted by **SACHR** in its **Second Report on Religious and Political Discrimination and Equality of Opportunity in N. Ireland**.



What is certain is that when minority ethnic people do experience racist discrimination in Northern Ireland, they have no recourse to a legal remedy for this. It is entirely unacceptable that it remains perfectly legal to discriminate against someone on the grounds of race in Northern Ireland.

The **CAJ** accepts that there is a specificity to racism in Northern Ireland, our analysis of racism and anti-racism must be informed by lessons from the experience in Great Britain which has had race relations legislation since 1965. It is unhelpful to attempt to insulate the debate about racism in Northern Ireland from that in Britain (page 1, para 5).

### **Existing Powers**

The document outlines the range of measures taken by Government over the years to protect human rights in Northern Ireland. We are pleased that Government *'is prepared to take further steps where it believes that they are necessary'* (page 3, para. 9) to protect human rights. We are of the view that there is a necessity for tough, effective anti-racism legislation to be introduced as quickly as possible.

It has to be said that much of the legislation contained in this section of the consultation document is irrelevant to the protection of the racial or ethnic status of people in Northern Ireland and its inclusion only serves to highlight the absence of anti-racist legislation.

The prevention of incitement to hatred legislation has proved wholly ineffective in combating racial hate speech. No prosecution has been taken under the **Public Order (NI) Order 1987** for race hate speech in spite of the fact that there have been several incidents of race hate speech which unambiguously incited hatred. (See **17th Report of the Standing Advisory Commission on Human Rights** pp 360 - 361).

The Ombudsman's Acts (The **Parliamentary Commissioner for Administration Act (NI) 1969** and the **Commissioner for Complaints Act (NI) 1969**) apply only to the public sector, and for whatever reason(s), no finding of maladministration sustaining injustice as a result of racial discrimination has ever been reported in the twenty-three year history of the office. Though this office was able to accept complaints of sectarian discrimination up to 1976 few complaints were made and it was largely ineffectual against sectarian discrimination. (See **SACHR 2nd Report on Religious and Political Discrimination**, paras. 5.25 - 5.37). Independent anti-sectarian discrimination legislation was needed to combat that form of discrimination.

The housing legislation has proved ineffective in preventing racial discrimination in the exercise of its powers. Travellers have, for example, been denied housing in particular areas on the ground that the quota of Travellers for that particular area had been reached. A letter from the Housing Executive illustrating this practice is contained in Appendix 2. The Housing Executive has since stated that the individual official involved was mistaken.

We are disturbed that Government fails to mention the most relevant international legal instrument to which it is a party, namely the **International Convention on the Elimination of All Forms of Racial Discrimination**. Article 2 (1) of this Convention provides that:





*'States parties condemn racial discrimination and undertake to pursue by all appropriate means and without delay a policy of eliminating racial discrimination in all forms and promoting understanding among all races, and to this end:*

- a) Each State Party undertakes to engage in no act or practice of racial discrimination against persons, groups of persons or institutions and to ensure that all public authorities and public institutions, national and local shall act in conformity with this obligation;*
- b) Each State Party undertakes not to sponsor, defend or support racial discrimination by any persons or organisations;*
- c) Each State Party shall take effective measures to review governmental, national and local policies, and to amend, rescind or nullify any laws and regulations which have the effect of creating or perpetuating racial discrimination wherever it exists;*
- d) Each State Party shall prohibit and bring to an end, by all appropriate means, including legislation as required by circumstances, racial discrimination by any persons, group or organisation;*
- e) Each State Party undertakes to encourage, where appropriate, integrationist multiracial organisations and movements and other means of eliminating barriers between races, and to discourage anything which tends to strengthen racial division.'*

The United Kingdom Government, therefore, has an international legal obligation to eliminate - 'without delay' - racial discrimination in Northern Ireland. (The full text of the Convention is contained in **Appendix 3**.) The CAJ urges Government to proceed immediately to introduce legislation which meets these obligations and ensures the legislative integrity of the new anti-racist Act or Acts.

## **Race Legislation**

The recognition in the document that:

*'... solely administrative measures would be inconsistent with the statutory basis for fair employment and sex discrimination measures in Northern Ireland and race relations in GB.'* (page 5, para. 16)

is to be welcomed however we are disappointed that there is no unambiguous commitment to introduce legislation. We believe that such a commitment was given by Mr. Alan Elliott from the **Department of Health and Social Services** in his address to the **With Not For** conference held in Newcastle, Co. Down in March 1992. We would point out that not only has the **Standing Advisory Commission on Human Rights** advocated legislation for Northern Ireland but so too has the **Commission for Racial Equality** in its **Second Review of the Operation of the Race Relations Act 1976** (pages 25 & 72).

Government appears to have a particular concern over how the enactment of anti-racism legislation for Northern Ireland will impact upon the white settled community. Government's concern appears to be that confusion between the remedies for racial and religious discrimination may result. This assumes that members of the two major religious traditions within the white settled community can argue that their religious identities amount to ethnic identities. This is by no means clear. The CAJ starts from the principle that racism in Northern Ireland is very different in substance from sectarianism. The historical roots of these inequalities are very different. Moreover, sectarianism involves groups of broadly similar size while racism involves a huge white and settled ethnic majority and a tiny,



marginalized Black and minority ethnic minority.

The simplest way to avoid any possible confusion is to extend the **Fair Employment Acts 1976 and 1989** in a way that ensures that the extended fair employment legislation parallels the race relations legislation. We also support the suggestion contained on page 9, para. 30 that the legislation against religious discrimination should be extended to cover the provision of goods and services.

Of the three options for legislation outlined on pages 6-7 of the consultation document, CAJ favours the first - that is the enactment of separate legislation, applying provisions corresponding broadly to the **Race Relations Act 1976**, with adaptations to take account of local circumstances. We would also argue that in drafting legislation for Northern Ireland account should be taken of the deficiencies of the **Race Relations Act 1976** which have been highlighted by the CRE itself and by academic commentators (**Appendix 4**). It would be entirely unacceptable to introduce legislation for Northern Ireland which has already proved itself unfit for the task.

We do not accept that the arguments for separate legislation are simply presentational (p 6, para 20); rather they are concrete and positive. The most important substantive argument is that this is what minority ethnic communities themselves want. The commitment to separate legislation is very strong in every minority ethnic community. Separate legislation also sends a powerful signal to both ethnic majority and minority communities that racism is no longer tolerable in Northern Ireland. This impact would be lost if anti-racism were to be tagged on to existing legislation. Separate legislation also acknowledges that racism is a specific problem requiring a specific response - it will allow measures to be sensitive to the specific needs of minority ethnic communities in Northern Ireland.

The second option - an amendment to the **Fair Employment Act 1976** (as amended) - is one which we consider totally unsuitable. Although the 1976 Act only deals with employment Government does admit that:

*'... it would be unrealistic to consider the implementation of race legislation in Northern Ireland without provision for goods, facilities and services and premises.'* (page 9, para. 29)

However, even if race is added to the categories of prohibited grounds of discrimination and the scope of the Act is extended to goods, facilities and services, and premises, at least for the purposes of race, it is possible that this development would leave minority ethnic communities unprotected in the field of education. It has been suggested that the definition of goods, facilities and services may include education or could be drafted in such a way as to include education. We would argue that the matter has to be put beyond doubt, as it is in the **Race Relations Act 1976** by expressly prohibiting discrimination in education.

We contend that legislation separate from that already enacted is necessary to combat racism. Indeed the argument, contained in the document, that:

*'... the potential overlap between discrimination on the ground of race and on the ground of religion could create confusion for complainants ...'* (page 6, para. 20)



becomes even more acute should amendments be made to the **Fair Employment Act 1976** (as amended) to allow race to 'sit' with religion.

One of the reasons cited in favour of putting 'race' with 'religion' is that it would allow individuals to make alternative pleas (page 7, para. 21). There is, however, no reason why an aggrieved individual could not make alternative pleas if the legislation was separate from the fair employment legislation. At present, individuals who feel they have been discriminated against on the grounds of both gender and religion may make alternative pleas to the appropriate tribunals.

We would wish to see such legislation enacted as separate primary legislation, in line with the **SACHR's** recommendation in its **Second Report on Religious and Political discrimination and Equality of Opportunity in NI** (paras. 7.9 & 12.58) SACHR justified the assertion that such legislation should be enacted for Northern Ireland by way of Act of Parliament because this allowed it to be debated and amended in Westminster. We would base our recommendation on the same principle. Such a process would facilitate a full and frank debate on the issues with the input of Northern Ireland's MPs, those MPs with a long interest and knowledge of the issues and the Black and minority ethnic community MPs. The Commission based its recommendation that such legislation should be separate on the need to ensure that sectarian discrimination and racial discrimination were not confused.

We would welcome further clarification from the government as to why the option of amendment to the **Fair Employment Act 1989** is so quickly dismissed (page 6, para. 19). This instant dismissal raises questions again about the 'second best' approach to racism in Northern Ireland. If these measures are necessary for addressing sectarian discrimination why are they so inappropriate as to be rejected *tout court* in the case of racism?

Given our preferred option for separate legislation we do not consider amendment of the **Sex Discrimination (NI) Order 1976** a suitable alternative.

## **Bill of Rights**

The CAJ has long campaigned for a Bill of Rights. Our draft bill (CAJ pamphlet no. 17) contains a specific anti-discrimination clause which reads as follows:-

*'The enjoyment of rights, whether referred to in this Bill of Rights or not, shall be secured without discrimination on any ground such as gender, race, colour, language, religion, political or other opinion, ethnic or national or social origin, association with a national minority, sexual orientation, property, mental or physical disability, birth or other status'*

We believe that a Bill of Rights containing such a clause should be implemented for Northern Ireland. If this were done it would play a key part in addressing the problem of racial discrimination. In the absence of a Bill of Rights we propose that consideration should be given to amending section 17(1) of the Northern Ireland Constitution Act 1973 to ensure that discrimination on the grounds of race be expressly prohibited. However the terms of the legislation should specifically protect the possibility of affirmative action measures.



## **Affirmative Action**

The consultation document is silent on the issue of affirmative action. We believe that Government must include appropriate affirmative action as part of a legislative package addressing racism in Northern Ireland. In line with the CRE's recommendations on the Race Relations Act in Britain, and in keeping with the fair employment legislation here, we recommend that employers be required to engage in affirmative action. Such action should be available as a remedy where, having reviewed the composition of their staff on racial grounds, it is apparent that members of a particular community are 'not enjoying, or not likely to enjoy, fair participation.'

Affirmative action would be action designed to secure fair participation in employment by members of all ethnic communities. We would recommend furthermore that affirmative action measures be required in the field of education and in the provision of goods, facilities, services and accommodation. This would require both public and private providers to assess whether fair participation and access was afforded to people in Northern Ireland on the basis of their ethnicity.

## **Enforcement Arrangements**

As regards the enforcement of the legislation it appears that there are only two 'live' possibilities; the extension of the remit of the CRE to Northern Ireland appears to have been rejected. The document is correct in saying that extending the remit of an existing body to include race:

*'... might be perceived by ethnic groups as giving less prominence than is justified to issues which affect them.'* (page 8, para. 25)

Our consultations with the minority ethnic groups have revealed a strong, widespread desire, within all communities, for the creation of a separate body. The reasoning is that combating racial discrimination should not be seen as low on Government's priority and that racial discrimination should not be confused with sectarian discrimination. We agree with the communities and would add further reasons for recommending the creation of a separate agency.

First, to include 'race' with 'religion' might prejudice future discussions about the creation of a multi-disciplinary discrimination agency for Northern Ireland. We are not necessarily against that idea - it has advantages and disadvantages. It is an idea, however, which is of such importance that it should be debated independently of this issue without that decision having been prejudiced by the enforcement regime created by any anti-racism legislation. It is interesting that the option of a single anti-discrimination agency is not even mentioned in the consultative document. It is therefore reasonable to assume that this is not high on the Government's agenda. Nor do we think it acceptable that protection for minority ethnic groups in Northern Ireland should have to wait until this matter is resolved. Action is required now.





Second, it is extremely unlikely that the **FEC** could become representative in any way of Black and minority ethnic groups. It is necessarily and correctly dominated by concerns about sectarian discrimination and cannot hope to involve minority ethnic people in a predominant way in its structures.

Third, from an administrative point of view the creation of an amalgamated agency is not necessarily a cheaper or easier option. In any case, cost considerations should not dominate Government's thinking. Government should commit itself to combating racial discrimination and properly resource that. Cost should not be presented as the 'spectre' preventing the creation of a separate agency until detailed costings have been prepared, presented and debated. Lessons from the fields of sex and religious discrimination in Northern Ireland and sex and race in Britain illustrate that one of the most effective ways to reduce costs is to ensure that government agencies themselves cease discriminating. If issues of cost are allowed to predominate then one can only conclude that race is the 'poor relation' in the discrimination field and discrimination on this ground is not as objectionable as other forms of discrimination.

This perception would be all the greater if as the document appears to suggest the powers of any enforcement body dealing with race will be less than those contained in the **Fair Employment Act 1989**. The prospect of the **Fair Employment Commission** dealing with race and religious discrimination but operating with inferior and restricted powers to deal with racial discrimination would graphically illustrate in a completely unacceptable way the relative priority given to these problems. Thus, the only acceptable enforcement body is a new agency, modelled on the **Commission for Racial Equality** in Britain but capable of addressing the very specific problems of racism in Northern Ireland.

### **Functions, powers and composition of the new agency**

The agency should be modelled on the **Commission for Racial Equality** (GB). In particular it should combine the enforcement and educational/development functions of anti-racist legislation. We are concerned at the suggestion contained on page 8, para. 23 that it might be possible to divide these roles. We believe that it is essential that educational and development work on anti racism and multiculturalism be statutorily required. The enforcement work of any agency should inform the educational and development work which is undertaken. From the perspective of the "consumer" we believe that it would be preferable to be able to deal with one agency rather than a number of different bodies. We are not however opposed to the prospect of existing agencies working in this area, perhaps receiving support from the new anti-discrimination agency.

The agency should have essentially the same powers as the **CRE** although these should be amended and strengthened to take account of the existing criticisms of **CRE** powers. In addition we would highlight the range of powers outlined in section 17 of the draft legislation produced by the **Dublin Travellers Education and Development Group** and contained in **Appendix 5**.

A majority of the members of the agency should be members or representatives of the minority ethnic communities in Northern Ireland. These persons should be chosen from within the representative organisations of the various communities through which they will



be accountable to the communities.

## Other Issues

Travellers should be specifically included as a group protected by any anti-racism legislation. We are concerned that the government appears to be equivocal on the ethnicity of Travellers (page 1, para. 2 & page 9, para. 27). Irish Travellers are an ethnic group and their ethnicity has been confirmed by academic research. There is no intellectual or academic evidence to suggest that Irish Travellers are *not* an ethnic group. We believe that the specific inclusion of Travellers in legislation is necessary to put the issue of the applicability of any anti-racist measures to Travellers beyond doubt.

We are encouraged that Government recognises that,

*'those who, while they may be now living as part of the settled community, nevertheless originate within the Travelling community and still identify with them'*

are part of the Traveller population (page 9, para. 27). However we are concerned at the sudden appearance of the prefix 'traditional' before the words 'Irish Travellers'. This suggests that there is a group of non-traditional Irish Travellers who could be excluded from protection under any legislation. We view this addition as unhelpful and unnecessary.

The CAJ repudiates the notion that there are problems with the definition of Travellers which might prevent their inclusion in any anti-racist legislation for Northern Ireland. We endorse the principle of self-definition of Travellers contained in the **Dublin Travellers Education and Development Group** draft equality legislation which is contained in **Appendix 5**. Notwithstanding this, we believe that Travellers fulfil the 'objective' criteria of ethnicity defined by the Mandla decision (**17th Report of SACHR 1992: page 356**). However, given the widespread failure to recognise Traveller ethnicity, we are convinced that Travellers must be named as a group which is protected by anti-racist legislation.

Any legislation should contain a section devoted to redressing racial discrimination endured by Travellers. This is because the disadvantaged position of Travellers will not be easily eradicated by anti-discrimination legislation alone. Such a section must contain legal requirements on state agencies and state service-providers to eliminate the disadvantage faced by Travellers. Specifically, a requirement should be imposed on those service providers in education and health care to monitor the educational and health standards among Travellers. The legislation should require educational and health authorities to set goals and timetables by which the education and health of Travellers is improved.

## Monitoring

As regards the question of monitoring, we believe that the legislation should contain provisions requiring monitoring. CAJ believes that it is desirable for the legislation to require the monitoring of the ethnic composition of workforces. As the consultation document acknowledges, monitoring is already carried out for religion and gender (even though the latter is not a statutory requirement), and the addition of race or ethnic status would not, in our opinion, be excessively burdensome for employers.



## **An amalgamated complaints tribunal**

We would wish to see the creation of an amalgamated discrimination tribunal which could hear complaints of sectarian, gender or race discrimination, in the availability of goods facilities and services, and accommodation as well as in employment. Such a system would remedy existing criticisms by the CRE and EOC of the inappropriateness of the County Courts as venues for redress in discrimination cases. With the extension of the fair employment legislation and the enactment of race discrimination legislation the restructuring of this element of the complaint mechanism is necessary. We would also urge Government to introduce specialised training for tribunal members to ensure that they are aware of racism and race issues. Though we are aware of, and indeed share, the reservations expressed by many about the way in which the Tribunal system operates we do not, at this stage urge wholesale reform of this procedure. However, if the Tribunal is to be an effective and realistic enforcement option then it is vital that the race discrimination agency be properly resourced so that lawyers can represent complainants.

## **Remedies**

The remedies available to a complainant should include the possibility of an order of the tribunal requiring the discriminatory practice to be abandoned and that the adverse effect be eliminated, not only for the employee in question, but also for future cases. It should also be possible for an award of damages to be made by the tribunal and we advocate setting the maximum limit of this award at £30,000, the current compensation limit under the fair employment legislation. In addition particular consideration should be given to the proposals made by the CRE in the **Second Review of the Race Relations Act 1976** (pp 55-62).

## **Departmental Programmes**

The appendix of the consultation document is correct to suggest that,

*'it is not likely that all the interests or needs of ethnic groups can be accommodated within a single legal framework, and there will always be a significant area of policy making and programme delivery which is undertaken by executive action'* (page 11, para.1).

The document goes on to suggest that Government has an admirable commitment

*'to ensuring that the equality of opportunity and equity of treatment permeate the whole process of policy formulation and the delivery of programmes'.*

However, the CAJ experience of working in this area and our own consultation with minority ethnic communities suggests that this formal commitment by Government very rarely informs administrative practice in government and quasi-government organisations.

This analysis has been confirmed by the research we recently conducted asking different government departments, local authorities and public bodies about their anti-racist and multicultural policies. This research is detailed in **Appendix 6**. The research makes clear



that none of the departments and authorities have any substantive anti-racist or multi-cultural policies and practices. While many of our respondents supplied evidence of equality of opportunity policies with regard to employment, *none provided evidence of any more substantive work responding to the needs and demands of minority ethnic communities in Northern Ireland.* Regrettably, a number went so far as to say there was no problem with racism in Northern Ireland.

The individual examples of government intervention given in the Consultation Document Appendix cannot be held up as positive models of administrative practice addressing racism in Northern Ireland. In reality, each of the departmental programmes outlined in the consultation document is characterised by the *absence* of any effective anti-racist practice.

### **Department of the Environment**

With regard to Travellers, the 'designation' and 'toleration' policies of the **Department of the Environment** mentioned in the consultation document are in themselves racist rather than examples of 'equality of opportunity' and equity of treatment'. In Northern Ireland, a combination of deeply-ingrained anti-Traveller racism among settled people and an unco-ordinated approach to provision by local and central government has ensured that site provision has been woefully inadequate (**17th Report of SACHR**: pp 366-370). There are insufficient numbers of legal, serviced sites and the legal, serviced sites which do exist provide services of a very poor quality. Local government policy seemed intent on 'dumping' Travellers sites in the most marginalized settled communities and ensured that Traveller/settled tensions were exacerbated. The **CAJ** feels that the best way to circumvent localised anti-Traveller sentiment is for central government to assume a mandatory responsibility for site provision.

In Northern Ireland site provision by local councils has always been discretionary rather than mandatory. (This is not the situation in Great Britain where there is an obligation on councils to provide sites.) Our experience suggests that a more appropriate approach here would be an integrated plan for site provision along the lines of the recommendations of the **Standing Advisory Commission for Human Rights**:

*'responsibility should be transferred from District Councils to the Northern Ireland Housing Executive as part of a comprehensive plan and policy to establish, in consultation with the Travelling People, appropriate and adequately serviced sites'* (17th Report of SACHR:page 38).

A commitment by Government along these lines would confirm rather than deny its responsibility for site provision.

### **Department of Health and Social Services**

The consultative document suggests that there are certain current initiatives within the policies of the **Department of Health and Social Services Boards** which are designed to assist minority ethnic groups and address their special needs. However, the given examples illustrate the limited extent of such minority ethnic specific provision.





The broad remit of the **NICTP** and **Craigavon Traveller's Support Committee** means that they cannot be seen as the appropriate bodies to address the stark inequalities in health experienced by the Traveller population. The funding for this work is minimal and in any case the health care offered Travellers should be primarily the responsibility of the statutory agencies. The absence of any Traveller specific health policies is testament to the failure of government agencies to address the appalling standard of health care provision to Travellers.

The consultation document claims incorrectly that four **Health and Social Services Boards** jointly provide funding for a part-time interpreter's post with the Chinese Community (page 14). Only three boards agreed to provide partial *funding* of this project. In any case, one part-time interpreter is a pitiful response to a Chinese community of a minimum of 7000 people with 70% of first generation migrants able to speak little or no English.

The consultation document claims that the **Central Council for Education and Training in Social Work** has taken a particular interest in educating staff about minority ethnic issues (page 15). However, there remain serious questions about the effectiveness of this training. In the absence of an anti-racist infrastructure to provide support resources and access to services, changing the attitudes of social workers does very little to achieve equity of provision and minority ethnic specific policies.

The consultation document claims that the **Health and Personal Social Services Management Plan** is concerned with identifying and removing social barriers for disadvantaged groups. The document states that in future Government will give priority to identifying areas and groups with particular needs and ensuring that services are targeted accordingly. While it is important that these areas are dealt with, it is disappointing that they have not been dealt with already. There is no evidence to suggest that they will be dealt with other than this paper commitment. The Department *endorses* the need for a inter-agency and multi-disciplinary approach. However it would seem necessary to *require* such an approach in order to secure the necessary co-operation of all interested agencies. Policies cannot be left to the personal discretion of individuals, goals and timetables for better provision should be set.

### **Northern Ireland Office**

The document claims that the **RUC** is fully committed to the equitable treatment of all members of the public, irrespective of racial origin or religious belief (page 17). The RUC claim that links with Chinese, Vietnamese, Indians, Pakistanis, Jewish, Malaysians and the Travellers are close. The only evidence of such links supplied in the document is that the **RUC** is currently involved with the **Chinese Welfare Association** about concerns including burglaries and robberies. But this is perfectly normal and hardly an example of anti-racist policing - it would be profoundly worrying if police were *not* concerned about such crimes. Other than this inappropriate example, there is no mention of how the police maintain their close links with minority ethnic communities. Without appropriate mechanisms, any contacts made remain ad hoc and unsatisfactory. It is especially important that the police develop mechanisms which allow them to draw on the knowledge and experience of minority ethnic organisations.



The document suggests that the importance of complete impartiality is stressed at all levels of a police officer's training (Page 18, para. 20). But this ongoing training has failed to provide an accessible or acceptable police service for minority ethnic groups. The RUC training branch is currently planning a "cultural awareness" package which is to be welcomed. However, it should be supplemented with more focused anti-racist training and close consultation with the different minority ethnic communities about their concerns around policing.

While the document mentions racial harassment, it does so solely in terms of the **Public Order (N.I.) Order 1987**. There is increasing evidence of widespread racist harassment and incitement to hatred. Yet, incitement to hatred legislation, which has been in place since 1970 is totally ineffective. No-one has ever been prosecuted for incitement to racial hatred, let alone been convicted for it. Enquiries must be made of the police and the Director of Public Prosecutions (DPP) as to why no cases of incitement to racial hatred have ever been taken. Amendment to the legislation outlawing racial hate speech -the **Public Order (NI) Order 1987** - should be made. This legislation must be made effective. As part of this it should name Travellers as an ethnic group protected by the legislation. A specific responsibility for reviewing the DPP's record in pursuance of prosecution in cases of racial hate speech should be given to the new anti-racist agency. In addition to this, racist harassment has to be seen as a serious criminal offence which should be addressed with sensitivity and urgency.

There is little or no provision of translation facilities within the criminal justice system. Until this is remedied the most basic civil rights are being denied to members of minority ethnic groups.

### **Department of Education for Northern Ireland**

The document suggests that,

*"The provision made for the education of children from ethnic minorities who are attending primary or secondary schools would normally take the form of a more generous staffing ratio or the support of a teacher specialising in teaching English as a foreign language".*

There is no evidence, however, of any mechanisms to ensure that this is 'normal'. There is also evidence to suggest that schools are being punished with the new 'league tables'. If, for different reasons, minority ethnic children are perceived to lower overall school performance, there are additional pressures on schools to deny access to non-English speaking or Traveller children. These problems are particularly acute with regard to Traveller children.

Within schools non-English speaking children are often put in remedial classes simply because they are learning English as a second language. Communities need tutors to come to them. Minority ethnic communities feel that their traditions are rarely respected or cherished and that they are encouraged to accept white and settled norms and repudiate their own identity.

In Initial Teacher Training (ITT), cross-curricular work concerns itself with relations between



the Catholic and Protestant communities not with anti-racist or intercultural education. There is little 'education for mutual understanding' on race and racism. In the absence of adequate resources and direction, teacher training colleges and schools have failed to cover these areas. It seems unlikely that there will be any improvement without legislation enforcing and enabling the provision of multicultural and anti-racist education. Supplementary in-service training is needed to support ITT, especially for teachers who received no multicultural anti-racist training.

The points in the document regarding Traveller children are unconvincing (page 21, para. 31). The integration of Traveller and settled children is not being achieved at any level. Most children are in de facto segregated system or excluded from the education system altogether. Where children are formally integrated, the actuality is one of isolation and separation from peers. The reality of this segregation and exclusion is due, to a large extent, to the effects of anti-Traveller racism inside and outside the education system. There is no sense in which Traveller identity and culture can be said to be 'respected' or even 'tolerated' in Northern Ireland schools.

In general, Government needs to take a more proactive approach to addressing racism within the education system. Not only should discrimination in education be expressly outlawed but educational authorities should be required to adequately resource the teaching of English as a second language to members of ethnic minority communities who require such teaching. The authorities should also be required to monitor and report on the implementation of such programmes. We have found in our consultations with the various minority ethnic communities that this is of vital concern because educational disadvantage and poor educational attainment result from the failure to cater for the language needs of some minority ethnic people.

There should also be recognition of the fact that the education system has failed many minority ethnic people already. Thus, there is a need to encourage minority ethnic specific provision in further and higher education to facilitate the re-entry of minority ethnic adults to the education system.

### **Department of Economic Development**

The details on the admission of non-EC nationals in to the UK have no relevance with regard to racism and anti-racism. There are, however, serious problems with the **Northern Ireland Immigration Service** which, given the absence of any discussion in the document, appears not to have any policies on minority ethnic people and racism. The **CAJ** is aware of serious problems with the detention and treatment of foreign nationals in **Crumlin Road Prison**. Once again, translation facilities and anti-racist training are essential if conditions are to improve.

The **Action on Community Employment** programme does support workers with different minority ethnic groups but this support is equally available to similar white and settled groups. Unless training schemes and **ACE** posts are part of an integrated anti-racist package, they cannot be represented in any way as a government commitment to address the specific needs of the minority ethnic communities.



A specific drawback attached to **ACE** jobs and community development with minority ethnic communities is their short-term nature. People employed in **ACE** schemes are usually inadequately trained. By the time these workers have developed an understanding of the particular challenges of work with minority ethnic communities, their contacts have run out. This problem is faced by the Traveller Support Groups, the **Chinese Welfare Association** and the other minority ethnic groups. Without long-term core funding for such groups, effective community development and anti-racist training and practice is impossible.

### **Equitable Treatment?**

Groups in the Public Sector in Northern Ireland have failed to improve conditions for minority ethnic groups. Government agencies appear to be doing the barest minimum in terms of providing services to minority ethnic communities. This will continue to be the case until legislation requires that effective and comprehensive administrative changes are implemented. The Government's commitment in principle to equitable treatment - with minority ethnic specific provision where appropriate - has not been translated into effective practice. Strong and effective anti-racist legislation will provide the framework in which to develop an anti-racist culture which should inform the practice of every government agency at every level. This has not been achieved by any of the departments or agencies mentioned in the consultation process. We suggest that there should be extensive training for employees in the public sector along the lines of the examples of anti-racist training from Britain which are contained in **Appendix 7**.

The occasion of the enactment of this legislation is a good opportunity to remedy other deficiencies in Northern Ireland law relevant to ethnic minorities and to end anomalies between the law in Northern Ireland and Britain. We believe that there should be specific arrangements to ensure adequate funding for minority ethnic groups. We suggest that this enabling power and suitable financial resources be granted to the enforcement/developmental anti-racist agency created for Northern Ireland. This is crucial to the achievement of genuine change in the disadvantaged position of minority ethnic people.





## Conclusion and Main Recommendations

While the government states its commitment to, '*providing equality of opportunity and equity of treatment...*' (page 10, para. 31), it has to date failed to do this for members of ethnic minority communities in Northern Ireland. Legislation that merely prohibits persons from discriminating and that does not allow for positive action to meet the needs of the ethnic minorities will not meet the Government's stated commitment.

CAJ feels that the **Race Relations Act 1976** remains the template for anti-racist discrimination legislation in Northern Ireland. However there are several flaws in this legislation - some of which were discussed in the process of our detailed examination of the consultation document. These flaws need to be taken on board in formulating similar legislation here. There is also a specificity to the experience of racism and racial disadvantage in Northern Ireland which should inform the development of legislation for Northern Ireland.

In order to address these issues, the CAJ commissioned a piece of work carried out by Ms Vibiana Molina from **Columbia Law School** in New York which examined the **Race Relations Act 1976** in relation to our concern about the absence of legislation in Northern Ireland. This analysis has informed our comments on the consultation document and is contained in full in **Appendix 4**. Ms Molina's analysis is testament to the limitations of the 1976 Act and the need for several important advances if anti-racist legislation is to be effective in Northern Ireland. Our discussion of the appropriate legislation has also been informed by the **CRE Second Review of the Race Relations Act**. Thirty one recommendations are made in the CRE's second review of the 1976 Act and all but one of them are applicable to any legislation enacted for Northern Ireland. We would urge Government when enacting legislation for Northern Ireland to take these recommendations into account.

While the detailed comments and recommendations of the **CRE** and Ms Molina should be studied in depth and incorporated in full in any anti-racist legislation for Northern Ireland, there are certain elements which are fundamental to effective anti-racist policy and practice. Without these, legislation will be inherently flawed from the first. These are:

- 1) separate anti-racist legislation,
- 2) a separate anti-racist enforcement/development agency,
- 3) the specific inclusion of Travellers,

1) Our own consultation with minority ethnic communities suggests that they are very reluctant to see anti-racist and anti-sectarian legislation linked in any way. Yet it seems that reform of the **Fair Employment Act 1976** to cover racist discrimination is a "front runner" in terms on the options which the government are considering. The **Race Relations Act 1976** and the **Fair Employment Act 1989** are specifically excluded as legislative options in the consultative document on the basis that, '*neither option would be appropriate in the context of the particular circumstances and scale of race relations issues in Northern Ireland*' (p. 6, para. 19). The **Fair Employment Act 1976** failed to adequately address sectarian discrimination in employment and had to be strengthened by the 1989 Fair



Employment Act. *This legislation is already palpably inadequate and cannot be accepted if racist discrimination is to be tackled seriously.*

We suggest that the best practice in existing legislation should be adopted in a **Race Relations (Northern Ireland) Act**. In particular, this would draw on the operation of the **Race Relations Act 1976** and take account of the deficiencies which the Commission for Racial Equality have identified in respect of this legislation. In addition, it should take account of the strengths of Fair Employment and Sex Discrimination legislation.

*In short, we need legislation which is both separate from existing anti-discrimination legislation in Northern Ireland and comprehensive and strong enough to be effective.*

2) As noted above, our own consultation suggests that the minority ethnic communities in Northern Ireland are loathe to have anti-racist discrimination identified with the politicised atmosphere around sectarianism, discrimination in employment, and the **Fair Employment Commission**. This strengthens the argument for a separation of legislation and agencies. We feel that the **Equal Opportunities Commission (NI)** is no better equipped to deal with racism in Northern Ireland. A Race Relations (Northern Ireland) Act will also empower any enforcement agency to work in areas in which the **FEC** and **EOC** have little experience. These areas - particularly racist discrimination in housing, education, and goods and services - will require specific expertise.

We are concerned that anti-racist work in Northern Ireland should not be seen to be a 'poor relation' of other anti-discrimination issues. There is a serious danger that if monitoring racism were to be subsumed within an existing agency with a long-standing and developed ethos and focus, it would be completely lost. A dedicated and specific response to the equally invidious problem of racist discrimination is essential if effective protection is to be provided.

There must be an *appropriate* anti-racist monitoring body. We feel that the existing monitoring agencies (the **Equal Opportunities Commission** and the **Fair Employment Commission**) are inappropriate to anti-racist work. There is also consensus that it would not be appropriate to extend the remit of the **Commission for Racial Equality** (Great Britain) to Northern Ireland. Our preferred option for monitoring is thus a **Commission for Racial Equality** (Northern Ireland) which has basically the same remit as the **CRE** (GB) but is equipped to work in the very specific context of anti-racism in Northern Ireland.

Problems with boundaries and legislative definitions for Government should not obscure the importance of this principle. Nor should debates about the merits of combined anti-discrimination legislation and practice obscure the fact that until all are amalgamated here and across the water, there is no case for depositing the monitoring of racism with existing enforcement agencies which are ill-equipped to deal with the very different and specific problems attached to racism in Northern Ireland.

*In short, we need a properly resourced and empowered monitoring, enforcement and development agency which is separate from existing anti-discrimination agencies.*



3) **CAJ** is certain that legislation which does not specifically include Travellers as a named minority ethnic group will be inadequate. There is no room for ambiguity on this question - if Travellers, as the second largest minority ethnic group in Northern Ireland, are not protected, the legislation will have failed one of the most oppressed and marginalized groups and will be unacceptable. **CAJ** believes that the inclusion of Travellers as a *named* minority ethnic group is essential.

*In short, any anti-racist legislation must identify Irish Travellers as a minority ethnic group protected by that legislation.*









## APPENDIX 1

A few examples of allegations of racial discrimination which have been reported to CAJ in the last year.

### CASE 1

Mr. X was born in Sri Lanka. He is a British citizen and is married to a woman who was born in Northern Ireland. He has been living in the United Kingdom for many years. In 1975, he began to work for a manufacturing company in England. In 1989, he was transferred to Northern Ireland where he continued to work for the same company. Following a take-over, there was a change in management at the factory. Mr. X was made redundant in 1991. He felt that he was unfairly dismissed and that the main reason for his dismissal was the colour of his skin and the racial prejudice of the Managing Director of the company. Mr. X brought an action for unfair dismissal against his former employers. At the hearing before the Industrial Tribunal, his representative raised the allegation of racial discrimination. The Chairperson of the Tribunal indicated that the Tribunal had no authority to deal with the issue of race discrimination. The Tribunal found on another ground that Mr. X had a genuine case for unfair dismissal and the case was subsequently settled for £6,000 compensation. Mr. X felt frustrated that he could not bring his allegations of racial discrimination to a body specifically designed to investigate them nor to a Tribunal with power to award damages on that basis.

### CASE 2

Dr. Z was born in Iran and spent many years studying in the United Kingdom. He has been a British citizen for several years. He has completed his PhD in Engineering and has been applying for jobs in his field. He applied for a post with a large company in Northern Ireland. He was informed that he had been unsuccessful in his application for that post but that his details would be retained on their waiting list for consideration for future posts. Dr. Z did not hear anything further from the company for several months. During that time, he came to know of two individuals who had been offered a post as an engineer with the company. On the grounds of his race, Dr. Z cannot bring his allegations to any body, tribunal or court for investigation or determination. He feels frustrated and angry at the lack of protection against racial discrimination in Northern Ireland.

### CASE 3

Mr. S is Jamaican. He worked in England for a number of years and then took a job as a telephone engineer for a company in County Antrim. He worked there for two years and was then dismissed. He felt that he was dismissed because of his colour. He complained to the FEC and EOC, neither body could investigate his complaint. He also raised the issue with the CRE who could not deal with it as they have no power to act in Northern Ireland. Mr. S felt that he had no effective remedy for his allegation of racial discrimination.

#### CASE 4

Mr. C is of South Asian origin but was born and educated in Northern Ireland. He did a degree in Engineering at Queen's University. He subsequently applied for the same job as one of his former classmates who Mr. C knew to have inferior qualifications to himself but who is white. His classmate got the job. Mr. C says he originally felt that his failure to get the job must be due to his interview technique. However, he later met the classmate who got the job who also felt that Mr. C should have got the job - the classmate admitted that it was a case of racist discrimination - he had inferior qualifications but was deemed to, 'fit in better'. Mr. C feels that there is currently no venue for redress in his situation.

#### CASE 5

Mr. M was born in South America. He is married to a woman born in Northern Ireland and is a British citizen. He had been working for 10 months in a temporary post in the catering department of a large institution in Belfast when permanent posts in the same department were advertised. Mr. M was very well qualified for the post he applied for as he had trained and worked in the same area both in South America and in other parts of the United Kingdom. He had also been doing exactly the same job in a temporary capacity for the last 10 months and his supervisors had encouraged him to apply for the permanent position giving him excellent references. When Mr. M failed the interview and found out that "local" people had been given the jobs, some of whom had both less experience and less qualifications than him, he requested an explanation. He was told that on the basis of his failing to understand one question in the interview, he did not meet the final selection criteria. Mr. M had been doing the same job for 10 months. There had been no apparent difficulties with his English and a particular level of competency in English had not been a prerequisite of the job. The job itself involved no contact with members of the public. In view of this Mr. M felt that he had not been offered the permanent position on the grounds of his race. Mr. M tried to pursue his complaint of racial discrimination and was very angry when he discovered the lack of protection in Northern Ireland.

#### CASE 6

Ms. G was born in Northern Ireland and her parents are Hong Kong Chinese. When she obtained a place at Queen's University she began to look for accommodation to share with some other friends. She was told by three different landlords that they did not rent flats to Chinese people. On another occasion one of her white friends visited a flat and a verbal agreement was made to rent it subject to the agreement of his friends. When the group returned that evening and the landlord saw Ms. G he said that he had not been told that one of the group was Chinese. In light of this he would not rent the flat to the students. The group were very angry at this and the absence of any suitable remedy.

# Housing Executive

Northern Ireland Housing Executive  
Armagh District Office  
48 Dobbin Street  
Armagh BT61 700  
Telephone Armagh 523379

APPENDIX 2

Mr

Co. Armagh

date 16 September 1991

your reference

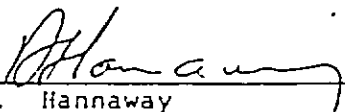
our reference AH/NG

Dear Mr

RE: Your request to exchange with Mrs Callanbridge Park, Armagh.

The Executive is unable to approve your request to exchange with the above tenant in Callanbridge. At present the number of travelling families who are tenants in the Callanbridge estate exceed the agreed quota. Therefore until that number reduces we cannot agree this exchange.

Yours sincerely

  
\_\_\_\_\_  
A. Hannaway  
Senior Housing Officer (Housing)



## D. PREVENTION OF DISCRIMINATION

### 8. United Nations Declaration on the Elimination of All Forms of Racial Discrimination

*Proclaimed by General Assembly resolution 1904 (XVIII) of 20 November 1963*

#### *The General Assembly,*

*Considering* that the Charter of the United Nations is based on the principles of the dignity and equality of all human beings and seeks, among other basic objectives, to achieve international co-operation in promoting and encouraging respect for human rights and fundamental freedoms for all without distinction as to race, sex, language or religion,

*Considering* that the Universal Declaration of Human Rights proclaims that all human beings are born free and equal in dignity and rights and that everyone is entitled to all the rights and freedoms set out in the Declaration, without distinction of any kind, in particular as to race, colour or national origin,

*Considering* that the Universal Declaration of Human Rights proclaims further that all are equal before the law and are entitled without any discrimination to equal protection of the law and that all are entitled to equal protection against any discrimination and against any incitement to such discrimination,

*Considering* that the United Nations has condemned colonialism and all practices of segregation and discrimination associated therewith, and that the Declaration on the Granting of Independence to Colonial Countries and Peoples proclaims in particular the necessity of bringing colonialism to a speedy and unconditional end,

*Considering* that any doctrine of racial differentiation or superiority is scientifically false, morally condemnable, socially unjust and dangerous, and that there is no justification for racial discrimination either in theory or in practice,

*Taking into account* the other resolutions adopted by the General Assembly and the international instruments adopted by the specialized agencies, in particular the International Labour Organisation and the United

Nations Educational, Scientific and Cultural Organization, in the field of discrimination,

*Taking into account* the fact that, although international action and efforts in a number of countries have made it possible to achieve progress in that field, discrimination based on race, colour or ethnic origin in certain areas of the world continues none the less to give cause for serious concern,

*Alarmed* by the manifestations of racial discrimination still in evidence in some areas of the world, some of which are imposed by certain Governments by means of legislative, administrative or other measures, in the form, *inter alia*, of *apartheid*, segregation and separation, as well as by the promotion and dissemination of doctrines of racial superiority and expansionism in certain areas,

*Convinced* that all forms of racial discrimination and, still more so, governmental policies based on the prejudice of racial superiority or on racial hatred, besides constituting a violation of fundamental human rights, tend to jeopardize friendly relations among peoples, co-operation between nations and international peace and security,

*Convinced also* that racial discrimination harms not only those who are its objects but also those who practise it.

*Convinced further* that the building of a world society free from all forms of racial segregation and discrimination, factors which create hatred and division among men, is one of the fundamental objectives of the United Nations,

1. *Solemnly affirms* the necessity of speedily eliminating racial discrimination throughout the world, in all its forms and manifestations, and of securing understanding of and respect for the dignity of the human person;

2. *Solemnly affirms* the necessity of adopting national and international measures to that end, including teaching, education and information, in order to secure the universal and effective recognition and observance of the principles set forth below;

3. *Proclaims* this Declaration:

#### *Article 1*

Discrimination between human beings on the ground of race, colour or ethnic origin is an offence to human dignity and shall be condemned as a denial of the principles of the Charter of the United Nations, as a violation of the human rights and fundamental freedoms proclaimed in the Universal

Declaration of Human Rights, as an obstacle to friendly and peaceful relations among nations and as a fact capable of disturbing peace and security among peoples.

#### Article 2

1. No State, institution, group or individual shall make any discrimination whatsoever in matters of human rights and fundamental freedoms in the treatment of persons, groups of persons or institutions on the ground of race, colour or ethnic origin.
2. No State shall encourage, advocate or lend its support, through police action or otherwise, to any discrimination based on race, colour or ethnic origin by any group, institution or individual.
3. Special concrete measures shall be taken in appropriate circumstances in order to secure adequate development or protection of individuals belonging to certain racial groups with the object of ensuring the full enjoyment by such individuals of human rights and fundamental freedoms. These measures shall in no circumstances have as a consequence the maintenance of unequal or separate rights for different racial groups.

#### Article 3

1. Particular efforts shall be made to prevent discrimination based on race, colour or ethnic origin, especially in the fields of civil rights, access to citizenship, education, religion, employment, occupation and housing.
2. Everyone shall have equal access to any place or facility intended for use by the general public, without distinction as to race, colour or ethnic origin.

#### Article 4

All States shall take effective measures to revise governmental and other public policies and to rescind laws and regulations which have the effect of creating and perpetuating racial discrimination wherever it still exists. They should pass legislation for prohibiting such discrimination and should take all appropriate measures to combat those prejudices which lead to racial discrimination.

#### Article 5

An end shall be put without delay to governmental and other public policies of racial segregation and especially policies of *apartheid*, as well as all forms of racial discrimination and separation resulting from such policies.

#### Article 6

No discrimination by reason of race, colour or ethnic origin shall be admitted in the enjoyment by any person of political and citizenship rights in his country, in particular the right to participate in elections through universal and equal suffrage and to take part in the government. Everyone has the right of equal access to public service in his country.

#### Article 7

1. Everyone has the right to equality before the law and to equal justice under the law. Everyone, without distinction as to race, colour or ethnic origin, has the right to security of person and protection by the State against violence or bodily harm, whether inflicted by government officials or by any individual, group or institution.
2. Everyone shall have the right to an effective remedy and protection against any discrimination he may suffer on the ground of race, colour or ethnic origin with respect to his fundamental rights and freedoms through independent national tribunals competent to deal with such matters.

#### Article 8

All effective steps shall be taken immediately in the fields of teaching, education and information, with a view to eliminating racial discrimination and prejudice and promoting understanding, tolerance and friendship among nations and racial groups, as well as to propagating the purposes and principles of the Charter of the United Nations, of the Universal Declaration of Human Rights, and of the Declaration on the Granting of Independence to Colonial Countries and Peoples.

#### Article 9

1. All propaganda and organizations based on ideas or theories of the superiority of one race or group of persons of one colour or ethnic origin with a view to justifying or promoting racial discrimination in any form shall be severely condemned.
2. All incitement to or acts of violence, whether by individuals or organizations against any race or group of persons of another colour or ethnic origin shall be considered an offence against society and punishable under law.
3. In order to put into effect the purposes and principles of the present Declaration, all States shall take immediate and positive measures, including legislative and other measures, to prosecute and/or outlaw organizations which promote or incite to racial discrimination, or incite to or use violence for purposes of discrimination based on race, colour or ethnic origin.

*Article 10*

The United Nations, the specialized agencies, States and non-governmental organizations shall do all in their power to promote energetic action which, by combining legal and other practical measures, will make possible the abolition of all forms of racial discrimination. They shall, in particular, study the causes of such discrimination with a view to recommending appropriate and effective measures to combat and eliminate it.

*Article 11*

Every State shall promote respect for and observance of human rights and fundamental freedoms in accordance with the Charter of the United Nations and shall fully and faithfully observe the provisions of the present Declaration, the Universal Declaration of Human Rights and the Declaration on the Granting of Independence to Colonial Countries and Peoples.

### 9. International Convention on the Elimination of All Forms of Racial Discrimination

*Adopted and opened for signature and ratification by General Assembly resolution 2106 A (XIV) of 21 December 1965*

ENTRY INTO FORCE: 4 January 1969, in accordance with article 19

*The States Parties to this Convention,*

*Considering* that the Charter of the United Nations is based on the principles of the dignity and equality inherent in all human beings, and that all Member States have pledged themselves to take joint and separate action, in co-operation with the Organization, for the achievement of one of the purposes of the United Nations which is to promote and encourage universal respect for and observance of human rights and fundamental freedoms for all, without distinction as to race, sex, language or religion,

*Considering* that the Universal Declaration of Human Rights proclaims that all human beings are born free and equal in dignity and rights and that everyone is entitled to all the rights and freedoms set out therein, without distinction of any kind, in particular as to race, colour or national origin,

*Considering* that all human beings are equal before the law and are entitled to equal protection of the law against any discrimination and against any incitement to discrimination,

*Considering* that the United Nations has condemned colonialism and all practices of segregation and discrimination associated therewith, in whatever form and wherever they exist, and that the Declaration on the Granting of Independence to Colonial Countries and Peoples of 14 December 1960 (General Assembly resolution 1514 (XV)) has affirmed and solemnly proclaimed the necessity of bringing them to a speedy and unconditional end,

*Considering* that the United Nations Declaration on the Elimination of All Forms of Racial Discrimination of 20 November 1963 (General Assembly resolution 1904 (XVIII)) solemnly affirms the necessity of speedily eliminating racial discrimination throughout the world in all its forms and manifestations and of securing understanding of and respect for the dignity of the human person,

*Convinced* that any doctrine of superiority based on racial differentiation is scientifically false, morally condemnable, socially unjust and dangerous, and that there is no justification for racial discrimination, in theory or in practice, anywhere,

*Reaffirming* that discrimination between human beings on the grounds of race, colour or ethnic origin is an obstacle to friendly and peaceful relations among nations and is capable of disturbing peace and security among peoples and the harmony of persons living side by side even within one and the same State,

*Convinced* that the existence of racial barriers is repugnant to the ideals of any human society,

*Alarmed* by manifestations of racial discrimination still in evidence in some areas of the world and by governmental policies based on racial superiority or hatred, such as policies of *apartheid*, segregation or separation,

*Resolved* to adopt all necessary measures for speedily eliminating racial discrimination in all its forms and manifestations, and to prevent and combat racist doctrines and practices in order to promote understanding between races and to build an international community free from all forms of racial segregation and racial discrimination,

*Bearing in mind* the Convention concerning Discrimination in respect of Employment and Occupation adopted by the International Labour Organization in 1958, and the Convention against Discrimination in Education adopted by the United Nations Educational, Scientific and Cultural Organization in 1960,

*Desiring* to implement the principles embodied in the United Nations Declaration on the Elimination of All Forms of Racial Discrimination and to secure the earliest adoption of practical measures to that end,

Have agreed as follows:

PART I

Article 1

1. In this Convention, the term "racial discrimination" shall mean any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life.
2. This Convention shall not apply to distinctions, exclusions, restrictions or preferences made by a State Party to this Convention between citizens and non-citizens.
3. Nothing in this Convention may be interpreted as affecting in any way the legal provisions of States Parties concerning nationality, citizenship or naturalization, provided that such provisions do not discriminate against any particular nationality.
4. Special measures taken for the sole purpose of securing adequate advancement of certain racial or ethnic groups or individuals requiring such protection as may be necessary in order to ensure such groups or individuals equal enjoyment or exercise of human rights and fundamental freedoms shall not be deemed racial discrimination, provided, however, that such measures do not, as a consequence, lead to the maintenance of separate rights for different racial groups and that they shall not be continued after the objectives for which they were taken have been achieved.

Article 2

1. States Parties condemn racial discrimination and undertake to pursue by all appropriate means and without delay a policy of eliminating racial discrimination in all its forms and promoting understanding among all races, and, to this end:
  - (a) Each State Party undertakes to engage in no act or practice of racial discrimination against persons, groups of persons or institutions and to ensure that all public authorities and public institutions, national and local, shall act in conformity with this obligation;
  - (b) Each State Party undertakes not to sponsor, defend or support racial discrimination by any persons or organizations;
  - (c) Each State Party shall take effective measures to review governmental, national and local policies, and to amend, rescind or nullify any laws and

regulations which have the effect of creating or perpetuating racial discrimination wherever it exists;

(d) Each State Party shall prohibit and bring to an end, by all appropriate means, including legislation as required by circumstances, racial discrimination by any persons, group or organization;

(e) Each State Party undertakes to encourage, where appropriate, inter-racialist multiracial organizations and movements and other means of eliminating barriers between races, and to discourage anything which tends to strengthen racial division.

2. States Parties shall, when the circumstances so warrant, take, in the social, economic, cultural and other fields, special and concrete measures to ensure the adequate development and protection of certain racial groups or individuals belonging to them, for the purpose of guaranteeing them the full and equal enjoyment of human rights and fundamental freedoms. These measures shall in no case entail as a consequence the maintenance of unequal or separate rights for different racial groups after the objectives for which they were taken have been achieved.

Article 3

States Parties particularly condemn racial segregation and *apartheid* and undertake to prevent, prohibit and eradicate all practices of this nature in territories under their jurisdiction.

Article 4

States Parties condemn all propaganda and all organizations which are based on ideas or theories of superiority of one race or group of persons of one colour or ethnic origin, or which attempt to justify or promote racial hatred and discrimination in any form, and undertake to adopt immediate and positive measures designed to eradicate all incitement to, or acts of, such discrimination and, to this end, with due regard to the principles embodied in the Universal Declaration of Human Rights and the rights expressly set forth in article 5 of this Convention, *inter alia*:

(a) Shall declare an offence punishable by law all dissemination of ideas based on racial superiority or hatred, incitement to racial discrimination, as well as all acts of violence or incitement to such acts against any race or group of persons of another colour or ethnic origin, and also the provision of any assistance to racist activities, including the financing thereof;

(b) Shall declare illegal and prohibit organizations, and also organized and all other propaganda activities, which promote and incite racial dis-



crimination, and shall recognize participation in such organizations or activities as an offence punishable by law;

(c) Shall not permit public authorities or public institutions, national or local, to promote or incite racial discrimination.

#### Article 5

In compliance with the fundamental obligations laid down in article 2 of this Convention, States Parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of the following rights:

- (a) The right to equal treatment before the tribunals and all other organs administering justice;
- (b) The right to security of person and protection by the State against violence or bodily harm, whether inflicted by government officials or by any individual group or institution;
- (c) Political rights, in particular the rights to participate in elections — to vote and to stand for election — on the basis of universal and equal suffrage, to take part in the Government as well as in the conduct of public affairs at any level and to have equal access to public service;
- (d) Other civil rights, in particular:
  - (i) The right to freedom of movement and residence within the border of the State;
  - (ii) The right to leave any country, including one's own, and to return to one's country;
  - (iii) The right to nationality;
  - (iv) The right to marriage and choice of spouse;
  - (v) The right to own property alone as well as in association with others;
  - (vi) The right to inherit;
  - (vii) The right to freedom of thought, conscience and religion;
  - (viii) The right to freedom of opinion and expression;
  - (ix) The right to freedom of peaceful assembly and association;
- (e) Economic, social and cultural rights, in particular:
  - (i) The rights to work, to free choice of employment, to just and favourable conditions of work, to protection against unemployment-

ment, to equal pay for equal work, to just and favourable remuneration;

- (ii) The right to form and join trade unions;
  - (iii) The right to housing;
  - (iv) The right to public health, medical care, social security and social services;
  - (v) The right to education and training;
  - (vi) The right to equal participation in cultural activities;
- (f) The right of access to any place or service intended for use by the general public, such as transport, hotels, restaurants, cafés, theatres and parks.

#### Article 6

States Parties shall assure to everyone within their jurisdiction effective protection and remedies, through the competent national tribunals and other State institutions, against any acts of racial discrimination which violate his human rights and fundamental freedoms contrary to this Convention, as well as the right to seek from such tribunals just and adequate reparation or satisfaction for any damage suffered as a result of such discrimination.

#### Article 7

States Parties undertake to adopt immediate and 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 promoting understanding, tolerance and friendship among nations and racial or ethnical groups, as well as to propagating the purposes and principles of the Charter of the United Nations, the Universal Declaration of Human Rights, the United Nations Declaration on the Elimination of All Forms of Racial Discrimination, and this Convention.

#### PART II

#### Article 8

1. There shall be established a Committee on the Elimination of Racial Discrimination (hereinafter referred to as the Committee) consisting of eighteen experts of high moral standing and acknowledged impartiality elected by States Parties from among their nationals, who shall serve in their personal capacity, consideration being given to equitable geographical distribution and

to the representation of the different forms of civilization as well as of the principal legal systems.

2. The members of the Committee shall be elected by secret ballot from a list of persons nominated by the States Parties. Each State Party may nominate one person from among its own nationals.
3. The initial election shall be held six months after the date of the entry into force of this Convention. At least three months before the date of each election the Secretary-General of the United Nations shall address a letter to the States Parties inviting them to submit their nominations within two months. The Secretary-General shall prepare a list in alphabetical order of all persons thus nominated, indicating the States Parties which have nominated them, and shall submit it to the States Parties.
4. Elections of the members of the Committee shall be held at a meeting of States Parties convened by the Secretary-General at United Nations Headquarters. At that meeting, for which two thirds of the States Parties shall constitute a quorum, the persons elected to the Committee shall be nominees who obtain the largest number of votes and an absolute majority of the votes of the representatives of States Parties present and voting.
5. (a) The members of the Committee shall be elected for a term of four years. However, the terms of nine of the members elected at the first election shall expire at the end of two years; immediately after the first election the names of these nine members shall be chosen by lot by the Chairman of the Committee;
  - (b) For the filling of casual vacancies, the State Party whose expert has ceased to function as a member of the Committee shall appoint another expert from among its nationals, subject to the approval of the Committee.
6. States Parties shall be responsible for the expenses of the members of the Committee while they are in performance of Committee duties.

#### Article 9

1. States Parties undertake to submit to the Secretary-General of the United Nations, for consideration by the Committee, a report on the legislative, judicial, administrative or other measures which they have adopted and which give effect to the provisions of this Convention: (a) within one year after the entry into force of the Convention for the State concerned; and (b) thereafter every two years and whenever the Committee so requests. The Committee may request further information from the States Parties.
2. The Committee shall report annually, through the Secretary-General, to the General Assembly of the United Nations on its activities and

may make suggestions and general recommendations based on the examination of the reports and information received from the States Parties. Such suggestions and general recommendations shall be reported to the General Assembly together with comments, if any, from States Parties.

#### Article 10

1. The Committee shall adopt its own rules of procedure.
2. The Committee shall elect its officers for a term of two years.
3. The secretariat of the Committee shall be provided by the Secretary-General of the United Nations.
4. The meetings of the Committee shall normally be held at United Nations Headquarters.

#### Article 11

1. If a State Party considers that another State Party is not giving effect to the provisions of this Convention, it may bring the matter to the attention of the Committee. The Committee shall then transmit the communication to the State Party concerned. Within three months, the receiving State shall submit to the Committee written explanations or statements clarifying the matter and the remedy, if any, that may have been taken by that State.
2. If the matter is not adjusted to the satisfaction of both parties, either by bilateral negotiations or by any other procedure open to them, within six months after the receipt by the receiving State of the initial communication, either State shall have the right to refer the matter again to the Committee by notifying the Committee and also the other State.
3. The Committee shall deal with a matter referred to it in accordance with paragraph 2 of this article after it has ascertained that all available domestic remedies have been invoked and exhausted in the case, in conformity with the generally recognized principles of international law. This shall not be the rule where the application of the remedies is unreasonably prolonged.
4. In any matter referred to it, the Committee may call upon the States Parties concerned to supply any other relevant information.
5. When any matter arising out of this article is being considered by the Committee, the States Parties concerned shall be entitled to send a representative to take part in the proceedings of the Committee, without voting rights, while the matter is under consideration.

## Article 12

1. (a) After the Committee has obtained and collated all the information it deems necessary, the Chairman shall appoint an *ad hoc* Conciliation Commission (hereinafter referred to as the Commission) comprising five persons who may or may not be members of the Committee. The members of the Commission shall be appointed with the unanimous consent of the parties to the dispute, and its good offices shall be made available to the States concerned with a view to an amicable solution of the matter on the basis of respect for this Convention;

(b) If the States parties to the dispute fail to reach agreement within three months on all or part of the composition of the Commission, the members of the Commission not agreed upon by the States parties to the dispute shall be elected by secret ballot by a two-thirds majority vote of the Committee from among its own members.

2. The members of the Commission shall serve in their personal capacity. They shall not be nationals of the States parties to the dispute or of a State not Party to this Convention.

3. The Commission shall elect its own Chairman and adopt its own rules of procedure.

4. The meetings of the Commission shall normally be held at United Nations Headquarters or at any other convenient place as determined by the Commission.

5. The secretariat provided in accordance with article 10, paragraph 3, of this Convention shall also service the Commission whenever a dispute among States Parties brings the Commission into being.

6. The States parties to the dispute shall share equally all the expenses of the members of the Commission in accordance with estimates to be provided by the Secretary-General of the United Nations.

7. The Secretary-General shall be empowered to pay the expenses of the members of the Commission, if necessary, before reimbursement by the States parties to the dispute in accordance with paragraph 6 of this article.

8. The information obtained and collated by the Committee shall be made available to the Commission, and the Commission may call upon the States concerned to supply any other relevant information.

## Article 13

1. When the Commission has fully considered the matter, it shall prepare and submit to the Chairman of the Committee a report embodying its findings on all questions of fact relevant to the issue between the parties and

containing such recommendations as it may think proper for the amicable solution of the dispute.

2. The Chairman of the Committee shall communicate the report of the Commission to each of the States parties to the dispute. These States shall, within three months, inform the Chairman of the Committee whether or not they accept the recommendations contained in the report of the Commission.

3. After the period provided for in paragraph 2 of this article, the Chairman of the Committee shall communicate the report of the Commission and the declarations of the States Parties concerned to the other States Parties to this Convention.

## Article 14

1. A State Party may at any time declare that it recognizes the competence of the Committee to receive and consider communications from individuals or groups of individuals within its jurisdiction claiming to be victims of a violation by that State Party of any of the rights set forth in this Convention. No communication shall be received by the Committee if it concerns a State Party which has not made such a declaration.

2. Any State Party which makes a declaration as provided for in paragraph 1 of this article may establish or indicate a body within its national legal order which shall be competent to receive and consider petitions from individuals and groups of individuals within its jurisdiction who claim to be victims of a violation of any of the rights set forth in this Convention and who have exhausted other available local remedies.

3. A declaration made in accordance with paragraph 1 of this article and the name of any body established or indicated in accordance with paragraph 2 of this article shall be deposited by the State Party concerned with the Secretary-General of the United Nations, who shall transmit copies thereof to the other States Parties. A declaration may be withdrawn at any time by notification to the Secretary-General, but such a withdrawal shall not affect communications pending before the Committee.

4. A register of petitions shall be kept by the body established or indicated in accordance with paragraph 2 of this article, and certified copies of the register shall be filed annually through appropriate channels with the Secretary-General on the understanding that the contents shall not be publicly disclosed.

5. In the event of failure to obtain satisfaction from the body established or indicated in accordance with paragraph 2 of this article, the peti-

tioner shall have the right to communicate the matter to the Committee within six months.

6. (a) The Committee shall confidentially bring any communication referred to it to the attention of the State Party alleged to be violating any provision of this Convention, but the identity of the individual or groups of individuals concerned shall not be revealed without his or their express consent. The Committee shall not receive anonymous communications;

(b) Within three months, the receiving State shall submit to the Committee written explanations or statements clarifying the matter and the remedy, if any, that may have been taken by that State.

7. (a) The Committee shall consider communications in the light of all information made available to it by the State Party concerned and by the petitioner. The Committee shall not consider any communication from a petitioner unless it has ascertained that the petitioner has exhausted all available domestic remedies. However, this shall not be the rule where the application of the remedies is unreasonably prolonged;

(b) The Committee shall forward its suggestions and recommendations, if any, to the State Party concerned and to the petitioner.

8. The Committee shall include in its annual report a summary of such communications and, where appropriate, a summary of the explanations and statements of the States Parties concerned and of its own suggestions and recommendations.

9. The Committee shall be competent to exercise the functions provided for in this article only when at least ten States Parties to this Convention are bound by declarations in accordance with paragraph 1 of this article.

#### Article 15

1. Pending the achievement of the objectives of the Declaration on the Granting of Independence to Colonial Countries and Peoples, contained in General Assembly resolution 1514 (XV) of 14 December 1960, the provisions of this Convention shall in no way limit the right of petition granted to these peoples by other international instruments or by the United Nations and its specialized agencies.

2. (a) The Committee established under article 8, paragraph 1, of this Convention shall receive copies of the petitions from, and submit expressions of opinion and recommendations on these petitions to, the bodies of the United Nations which deal with matters directly related to the principles and objectives of this Convention in their consideration of petitions from the inhabitants of Trust and Non-Self-Governing Territories and all other terri-

ories to which General Assembly resolution 1514 (XV) applies, relating to matters covered by this Convention which are before these bodies;

(b) The Committee shall receive from the competent bodies of the United Nations copies of the reports concerning the legislative, judicial, administrative or other measures directly related to the principles and objectives of this Convention applied by the administering Powers within the Territories mentioned in subparagraph (a) of this paragraph, and shall express opinions and make recommendations to these bodies.

3. The Committee shall include in its report to the General Assembly a summary of the petitions and reports it has received from United Nations bodies, and the expressions of opinion and recommendations of the Committee relating to the said petitions and reports.

4. The Committee shall request from the Secretary-General of the United Nations all information relevant to the objectives of this Convention and available to him regarding the Territories mentioned in paragraph 2 (a) of this article.

#### Article 16

The provisions of this Convention concerning the settlement of disputes or complaints shall be applied without prejudice to other procedures for settling disputes or complaints in the field of discrimination laid down in the constituent instruments of, or conventions adopted by, the United Nations and its specialized agencies, and shall not prevent the States Parties from having recourse to other procedures for settling a dispute in accordance with general or special international agreements in force between them.

#### PART III

#### Article 17

1. This Convention is open for signature by any State Member of the United Nations or member of any of its specialized agencies, by any State Party to the Statute of the International Court of Justice, and by any other State which has been invited by the General Assembly of the United Nations to become a Party to this Convention.

2. This Convention is subject to ratification. Instruments of ratification shall be deposited with the Secretary-General of the United Nations.

#### Article 18

1. This Convention shall be open to accession by any State referred to in article 17, paragraph 1, of the Convention.

2. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.

#### Article 19

1. This Convention shall enter into force on the thirtieth day after the date of the deposit with the Secretary-General of the United Nations of the twenty-seventh instrument of ratification or instrument of accession.

2. For each State ratifying this Convention or acceding to it after the deposit of the twenty-seventh instrument of ratification or instrument of accession, the Convention shall enter into force on the thirtieth day after the date of the deposit of its own instrument of ratification or instrument of accession.

#### Article 20

1. The Secretary-General of the United Nations shall receive and circulate to all States which are or may become Parties to this Convention reservations made by States at the time of ratification or accession. Any State which objects to the reservation shall, within a period of ninety days from the date of the said communication, notify the Secretary-General that it does not accept it.

2. A reservation incompatible with the object and purpose of this Convention shall not be permitted, nor shall a reservation the effect of which would inhibit the operation of any of the bodies established by this Convention be allowed. A reservation shall be considered incompatible or inhibitive if at least two thirds of the States Parties to this Convention object to it.

3. Reservations may be withdrawn at any time by notification to this effect addressed to the Secretary-General. Such notification shall take effect on the date on which it is received.

#### Article 21

A State Party may denounce this Convention by written notification to the Secretary-General of the United Nations. Denunciation shall take effect one year after the date of receipt of the notification by the Secretary-General.

#### Article 22

Any dispute between two or more States Parties with respect to the interpretation or application of this Convention, which is not settled by negotiation or by the procedures expressly provided for in this Convention, shall, at the request of any of the parties to the dispute, be referred to the International Court of Justice for decision, unless the disputants agree to another mode of settlement.

#### Article 23

1. A request for the revision of this Convention may be made at any time by any State Party by means of a notification in writing addressed to the Secretary-General of the United Nations.

2. The General Assembly of the United Nations shall decide upon the steps, if any, to be taken in respect of such a request.

#### Article 24

The Secretary-General of the United Nations shall inform all States referred to in article 17, paragraph 1, of this Convention of the following particulars:

- (a) Signatures, ratifications and accessions under articles 17 and 18;
- (b) The date of entry into force of this Convention under article 19;
- (c) Communications and declarations received under articles 14, 20 and 23;
- (d) Denunciations under article 21.

#### Article 25

1. This Convention, of which the Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited in the archives of the United Nations.

2. The Secretary-General of the United Nations shall transmit certified copies of this Convention to all States belonging to any of the categories mentioned in article 17, paragraph 1, of the Convention.

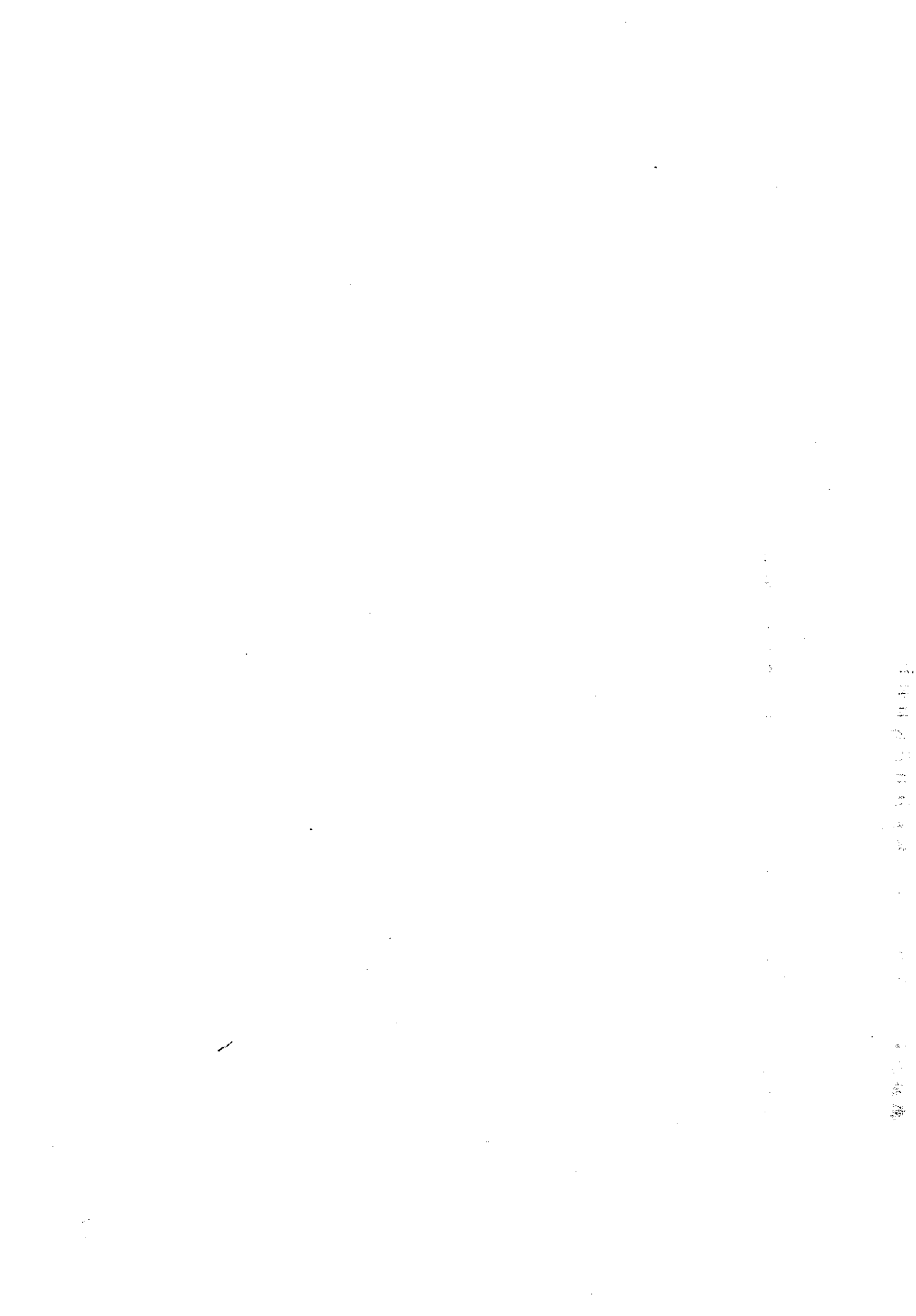
### 10. International Convention on the Suppression and Punishment of the Crime of Apartheid

*Adopted and opened for signature and ratification by General Assembly resolution 3068 (XXVII) of 30 November 1973*

ENTRY INTO FORCE: 18 July 1976, in accordance with article XV

*The States Parties to the present Convention.*

*Recalling the provisions of the Charter of the United Nations, in which all Members pledged themselves to take joint and separate action in co-*



## THE RACE RELATIONS ACT--A DEFECTIVE LEGISLATIVE WEAPON

The Race Relations Act 1976 broadened the existing anti-discrimination legislation in the United Kingdom. By creating the Commission for Racial Equality (CRE) and strengthening parts of the Act, the government of the United Kingdom seemed to be publicly declaring its commitment to the battle against racial discrimination, a problem which has continued to plague the United Kingdom over the years.

The Race Relations Act 1976 was not, however, extended to Northern Ireland, which, at present, still has no legislation making racial discrimination illegal. While it is urgently necessary to extend some sort of anti-race discrimination legislation to Northern Ireland, it is worthwhile looking at the Race Relations Act 1976, whose defects have made it a largely ineffective law in the rest of the United Kingdom, before wholeheartedly embracing the Act here in Northern Ireland.

It was noted in the Policy Studies Institute's (PSI) report Racial Justice at Work, that the Race Relations Board (the specialised agency established to investigate breaches of, and to secure compliance with, the first Race Relations Act) itself summarised the role of the anti-discrimination legislation: Amongst the functions of the legislation, the Board stated that it was to be an unequivocal declaration of public policy; that it was to protect and give redress to minority groups; and that it was to reduce prejudice by discouraging certain behaviours.<sup>1</sup> Despite these goals, the Race Relations Act has not been able to accomplish what it was intended to do.

The Race Relations Act has failed to protect and give redress to minorities or to discourage such behaviour in that, while declaring discrimination illegal, it has made it difficult for minorities to gain adequate compensation, has provided no legal aid to those alleging discrimination, places the entire burden of proof on the person discriminated against, and imposes little sanction to discriminators. The law has allowed discriminatory patterns of behaviour to continue and offers only a weak protection and small compensation for individuals.

As this law is insufficient and inefficient in Great Britain, so would it be in Northern Ireland if adopted here without modifications. The problems in Northern Ireland would be further compounded by the special situation of Irish Travellers, who are as yet unrecognised as a distinct minority ethnic group.

Despite the government's claims to the United Nations' Committee on the Elimination of Racial Discrimination and other international bodies, racial discrimination does exist in Northern Ireland. The Committee on the Administration of Justice (CAJ) recently published a pamphlet entitled "Racism in Northern Ireland" documenting many such instances of discrimination and calling for the introduction of legislation. Such legislation is needed in order to make that "unequivocal declaration of public policy" against prejudice. But, if the Race Relations Act is implemented in Northern Ireland without remedying the defects, it will be, as in Britain, a largely ineffective law.

<sup>1</sup> As noted in PSI's Racial Justice at Work (1991) at page 3.

placating victimised groups, yet failing to penalize and therefore end the underlying and pervasive patterns of discriminatory behaviour.

#### THE DEFECTS IN THE RACE RELATIONS ACT 1976

Many of the defects in the Race Relations Act 1976 stem from its deficient protections, inadequate enforcement procedures, and its inefficient incentives to not discriminate. There are, however, other problems with the Act, which stem from the Act's perspective on race discrimination.

The Race Relations Act virtually ignores the social reality of discrimination against entire groups of people. Instead it is generally focused on the individual and isolated incidents of discrimination as opposed to the eradication of the underlying prejudice against classes of individuals. It does not recognise class actions or other group remedies. This highly individualistic perspective, in the words of Alan Freeman, "...presupposes a world composed of atomistic individuals whose actions are outside of and apart from the social fabric and without historical continuity... The law views racial discrimination not as a social phenomenon, but merely as the misguided conduct of particular actors."<sup>3</sup> In order to be an effective law, the Race Relations Act needs to address the collective problem of racism in such ways as making anti-racist policies to compulsory in all government bodies and attaching anti-racist conditions to government contracts.

Racism and prejudice are a part of the present day social framework of the United Kingdom, including Northern Ireland. Individuals are taught from a young age to stereotype racial groups and make unconscious preferences in hiring, promotions and other social activities. This is exemplified by the denial of employers that they had participated in discriminatory behaviour, as noted in Racial Justice at Work, even after tribunal rulings against them. Racism is not logical or economical. It is not practised solely against individuals, but against groups. As stated by Richard H. Fallon and Paul C. Weiler, "Civil rights law is not just to compensate individual victims of specific acts of discrimination, but to provide race-conscious relief to undo or prevent the classwide effects of racial injustice."<sup>5</sup> If the government wants the present legislation to achieve its self-proclaimed function of providing protection and redress while discouraging discriminatory behaviour in which prejudice finds its expression, the following defects must be remedied.

1. The Act does not repeal or supersede any existing legislation which is

<sup>3</sup> As quoted in the article by Alan C. Freeman, Legitimizing Racial Discrimination Through Antidiscrimination Law: A Critical Review of Supreme Court Doctrine 62 Minnesota Law Review 1049 (1978)

<sup>4</sup> PSI's Racial Justice at Work at p. 260

<sup>5</sup> As quoted in the article by Richard H. Fallon and Paul C. Weiler, Firefighters v. Stotts: Conflicting Models on Racial Justice Supreme Court Review 1 (1984).



discriminatory in nature.

The Race Relations Act is a civil rights law guaranteeing basic rights to all individuals. As such, its provision should take precedence over all past and future legislation by outlawing discriminatory laws, whether already in existence or proposed. If the government should decide that discrimination should be expressly provided for by statute, certain instances, such discrimination should be expressly provided for by statute. Silence in the law should presuppose an obligation to equal opportunities of all racial and minority ethnic groups.

This is of special concern in Northern Ireland where the Race Relations Act would not repeal existing legislation which is discriminatory towards Travellers. Amongst these laws are the Caravan Sites Act (NI) 1969, which makes halting sites discretionary, and the Local Government (Miscellaneous Provisions) (NI) Order 1985, which restricts the freedom of movement and residence of Travellers. Such laws are unjust. Any anti-race discrimination legislation in Northern Ireland should eradicate such legislation.

2. The Race Relations Act 1976 exacts an inordinately high burden of proof from those alleging discrimination

After the establishment of a prima facie case of direct discrimination, the burden of proof should lie with the person against whom the discriminatory behaviour is alleged to show non-racial grounds for his/her action. The necessity for such a shift is made evident by one CRE official quoted in Racial Justice at Work: "The tribunals don't realise the importance and the complications of race and sex discrimination cases...unlawful discrimination is very often never admitted. It has to do with what goes on in a person's mind...The burden of proof is such that it is not easy to meet."<sup>5</sup>

American jurisdictions have recognised the difficulties of proving discrimination. In Griggs v. Duke Power Co., 401 US 424 (1971) it was accepted that after setting out a prima facie case of discrimination, the alleged discriminator had to prove there was a good reason for the practice.

Some American jurisdictions have also accepted a shifting of the burden of proof in other cases where it is difficult for the complainant to meet the ordinary evidentiary criteria. Such a shift has occurred in "whistle blowing" cases, where employees claim unfair dismissal for having revealed illegal business practices to the authorities. (see Melchi v. Burns International Security Services 597 F. Supp. 575) In Melchi, as in discrimination cases, it was up to the employer to present an alternative and legitimate reason for his/her behaviour upon the presentation of a prima facie case.

In such situations as "whistle blowing" and discrimination, it is very difficult for many complainants to prove the offence without such a shift of the burden of proof.

The absence of an obligation to monitor the racial composition of the work force makes such a shift even more important, since applicants do not have the benefit of statistical evidence of patterns of discrimination.

3. The Act does not require racial monitoring of places of employment, nor does it require the furnishing of such statistics in racial discrimination cases.

There is a need for racial monitoring in places of employment along the lines of the religious monitoring already in place in Northern Ireland. The monitoring of minority ethnic and racial groups would serve three purposes. It would provide those alleging discrimination with a vital piece of information to their cases; it would give the CRE and other governmental bodies data with which to check on performance of employers and to check the efficacy of existing law; and it would give employers a chance to monitor themselves.

Though the population differences in Northern Ireland and Britain may call for different approaches to the methods of monitoring, some sort of statistical reference is needed in both. At present, the situation in the UK with regards to monitoring is both ironic and somewhat nonsensical. As demonstrated in the case of Carrington v. Hellix Lighting Ltd. (1990) IRLR 6, an employer can not be made to produce statistics on the racial composition of his/her work force if the statistics do not already exist. In other words, an employer who voluntarily monitors his/her work force can be compelled to produce the statistics, while an employer who does not voluntarily monitor his/her workplace cannot be forced to do so. This situation gives an incentive to purposeful discriminators to not keep monitoring statistics on their work force, since such statistics might be used against them in a race case.

Furthermore, such a situation denies a complainant a vital piece of evidence with which to prove discrimination. As Paul Brest stated in his article on anti-discrimination, "Because race dependent decisions are so often concealed, racially disproportionate impact has customarily been offered as evidence that ostensibly non-discriminatory decisions are in fact race dependent." The pattern of racial discrimination in a place of employment may be the final proof needed to seal a complainant's case.

In Northern Ireland, the existence of religious monitoring proves that it is neither too time consuming nor grossly uneconomical for employers to keep statistics on their work force. When race legislation is introduced in Northern Ireland, it should contain such an obligation to monitor along the lines of that already in place with regards to religion. Racial monitoring would also help the government and the CRE in their goals to eradicate the underlying circumstances of racial discrimination. American jurisdictions have noted that the purpose of Title VII of the Civil Rights Act of 1964 was not merely to correct racially motivated acts, but discriminatory results as well.

7 As quoted in the article by Paul Brest, Forward: In Defense of the Antidiscrimination Principle 90 Harvard Law Review 1 (1976)

"Congress directed the thrust of the Act to the consequences of employment practice, not simply the motivation." Griggs v. Duke Power Co., 401 US 424 (1971). American courts have also acknowledged the inefficiency of a race law that only protects against isolated instances of discrimination. In Norwalk CORE v. Norwalk Redevelopment Agency, 395 F.2d 920 (1968), the court declared that "equal protection of the laws means more than merely the absence of governmental action designed to discriminate...we now firmly recognize that the arbitrary quality of thoughtlessness can be as disastrous and unfair to private rights and the public interest as the perversity of a wilful scheme."

American courts have also struck down practices which result in discrimination despite lack of evidence of intent by stating that it was "not necessary that actual intent or motive be directly proved where no compelling state interest can possibly justify the discriminatory result..." Hawkins v. Town of Shaw, Mississippi, 437 F. 2d at 1292 (1971).

As in the United States, the government and courts here should recognise that the redress of some individuals through the tribunal system will not eradicate the larger and more insidious practices of racial discrimination. By requiring racial monitoring, the government bodies, which are responsible for the eradication of discrimination, will be able to themselves monitor employers, determine the efficacy of existing laws, and develop strategies to further the goal of equal opportunities. Finally, racial monitoring in the workplace will allow those employers who are attempting to offer equal opportunities to the general population to determine their own progress in this area. Again, even if such wide scale, mandatory monitoring would be difficult to impose on the large population in Britain. The existence of mandatory religious monitoring in Northern Ireland proves that it is more than a mere possibility here.

Racism is often an unconscious, irrational, learned behaviour. Monitoring would allow all involved--workers, government bodies and employers--to detect patterns of racial discrimination in order to eliminate them.

4. The Act does not apply to many government bodies such as the police, the prison system, the courts and immigration.

The Act, by immunising these areas of government activity, unjustly leaves the individual prone to victimisation. Policing, the prisons, the courts and immigration control are areas of public life for which there is no alternative in the private sector. When faced with discrimination from these government bodies, an individual has neither the opportunity to seek the same services elsewhere, nor protection and/or redress from the Act.

There are further concerns regarding such exemptions for government bodies which exercise great control over the lives of citizens. By placing much of the criminal justice system outside its purview, the Act protects the system from legal sanctions even if it is, in fact, found to be discriminatory. Infamous cases such as the Tottenham Three, the Birmingham Six and the Guilford Four are examples of the system's immunity from abuses for which it should be accountable.

The Race Relations Act should be applicable to all government bodies. If the government were to decide that discrimination should be allowed in some area within its control, that discrimination should be expressly provided.

5. There is no discrimination division, and thus no expertise, in the Industrial Tribunal system.

Racial discrimination hearings, like those for sex and religious discrimination, entail a certain training and expertise on the part of those representing and hearing the cases. As statistics show, race discrimination cases fare quite differently from other cases heard by industrial tribunals in that they are more complex and less likely to be successful, especially when the applicant is unrepresented.<sup>8</sup> Applicants in race cases should be given the same opportunity as other complainants to bring their cases before an adequately trained and specialised board.

When race legislation is introduced in Northern Ireland, it should provide for the training of all public officials in the subtleties and special problems of race cases. Without proper training, public officials, who themselves have never experienced racial discrimination, may bring misconceptions and learned prejudices into the Tribunal, thereby depriving the applicant of a fair hearing. The experience in Great Britain has shown that by subsuming race cases into an already established and untrained system, victims of discrimination are given neither adequate protection nor sufficient redress.

6. There is no entitlement to legal aid in discrimination cases

At present, legal aid has not been extended to discrimination cases, yet the statistics indicate that representation in these cases is of the utmost importance. In Racial Justice at Work it was noted that, "Prospects of success are considerably better for applicants with legal representation than others. Indeed, legal representation seems to be almost a prerequisite of a successful outcome." The CRE, in its Second Review of the Race Relations Act 1976, also made the same observation<sup>9</sup> that those who do not have legal representation in race cases are rarely successful. An individual who wishes to fight a race case is in a difficult position. If the CRE cannot take the case and if no Trade Union will, the individual must him/herself pay for a lawyer. Faced with the high burden of proof, the problems surrounding the extraction of evidence from alleged discriminators, and the low level compensation, it is not unlikely that many will choose not to pursue their cases rather than to expend time and money for what, even if successful, may become another financial burden.

<sup>8</sup> PSI's Racial Justice at Work at pp. 147, 177 and \_\_\_\_\_

<sup>9</sup> CRE's Second Review of the Race Relations Act 1976 (June 1991) at paragraph 51.

7. The Act does not adequately compensate victims of discrimination

The maximum award payable in British race cases is £9,000. In contrast, in Northern Ireland, the maximum award payable to a victim of religious discrimination might be as high as £30,000. One cannot justify the reasons for the differences between the two. The low compensation in racial discrimination cases indicates that the government has no real intention of providing redress for victims of discrimination or of punishing those that discriminate against them. The law functions as a mere conciliatory gesture.

Higher compensation for victims of racial discrimination would demonstrate the government's commitment to the problem, the seriousness of the offence, and would further reinforce the government's policy. Also, higher compensation would deter employers and others in private services from discriminating against minority ethnic groups.

8. The Act is centred on the individual and does not adequately protect groups as a whole.

The remedies in the Act are directed towards the redress of individual cases of discrimination. A complainant, if successful, may receive monetary compensation. Often times, the dispute is settled. The tribunal does not, however, have any power to proscribe any future discriminatory behaviour by the employer. In fact, the employer may continue discriminatory practices until he/she decides that it is economically unsound to do so. Given the small amount of compensation given to successful complainants, and given how few race cases even get to the tribunal stage, the economics of discrimination are not heavily placed against the employer. In order to effectively halt the underlying patterns of discrimination, and in order to prevent repeat cases, any race legislation introduced in Northern Ireland should provide for class actions. Class actions would allow for a single issue, pertinent to many persons, to be adjudicated in one hearing. It would rectify the discriminatory situation in a particular place for the group as a whole as opposed to merely for the individual bringing the case. Furthermore, it would allow for the elimination of practices which result in indirect discrimination against ethnic minorities. By recognising that racism is something that happens continually to an entire class of persons as opposed to being an isolated event, these actions would go a long way in fighting the more insidious and endemic strains of discrimination in society.

9. There are no real penalties and, therefore, no real incentives not to discriminate.

In 1987, John J. Donohue noted the Heckman/Paynor report which found that there had been a 20% increase, by 1970, in the number of blacks working in the South Carolina textile industry after the US passage of Title VII of the Civil Rights Act

of 1964.<sup>10</sup> In noting other such changes in the composition of the American work force, he found a common factor: federal pressure. In the United States, businesses who are looking for federal monies and government contracts must comply with Title VII or else face heavy pressure from federal agencies such as the Equal Employment Opportunity Commission (EEOC). PSI reported in Racial Justice at Work on a number of US cases where the EEOC successfully threatened businesses with intervention in order to challenge discrimination.<sup>11</sup> In the United Kingdom, no such similar incentives exist, no body exerts such enforcement power. The government would do well to consider holding the carrot of government contracts as a way to eliminate racial discrimination in both Britain and Northern Ireland. As mentioned above, in light of the difficulties faced by complainants, the low level compensation and the lack of any real penalties, the Race Relations Act does little to induce employers to change their behaviour. The withholding of government contracts, along with state pressure, could undoubtedly help here as it has in the United States.

#### THE ESTABLISHMENT OF A SEPARATE MONITORING BODY

When race legislation is introduced in Northern Ireland, a body must be established with the responsibility for implementing the law. This body, like the CRE, should be separate and autonomous. The body should have the duty to advance equal opportunities for minority ethnic groups in Northern Ireland. The necessity for a separate, specially trained division in sex discrimination cases has already been recognised as is evident in the creation of the Equal Opportunities Commission. Furthermore, such a need in religious discrimination cases has been recognised in Northern Ireland where the Fair Employment Commission exists in order to deal with this specific issue.

Just as sex and religious discrimination cases have been given their own, specialised monitoring body, so too should race cases have a distinct agency responsible for the implementation of race legislation. As mentioned above, it has been shown that race discrimination cases fare quite differently from other cases heard by industrial tribunals and that special expertise is needed in both the representation and hearing of these cases. By giving an existing body the responsibility over race cases, the government would deprive victims of racial discrimination of effective help. The creation of an independent monitoring body would also prove the government's commitment to the elimination of racial discrimination in Northern Ireland. Race issues would be seen to be of equal importance as the already recognised problems of sex and religious discrimination. A separate and autonomous

<sup>10</sup> As noted in the article by John J. Donohue, Further Thoughts on Employment Discrimination Legislation: A Reply to Judge Posner 136 University of Pennsylvania Law Review 523 (1987).

<sup>11</sup> PSI's Racial Justice at Work at page 256.

body would be more accessible to ethnic minorities in Northern Ireland. Furthermore, if the government were merely to create a racial discrimination division in an established body such as the FEC, ethnic minorities might not seek its aid. Minority ethnic groups might associate the FEC with sectarian problems in Northern Ireland and may wish to disassociate from the minority issue. A body like the CRE would be more accessible to members of the ethnic community and should be established to handle the subtleties of racial discrimination with the expertise and understanding which it requires.

### THE TRAVELLERS IN NORTHERN IRELAND

Travellers, an ethnic minority group which experiences great discrimination, will be little helped if the Race Relations Act 1976 is implemented in Northern Ireland without modification. The aforementioned defects in the Act effectively legitimise the present status quo with respect to Travellers. Furthermore, developments in case law in the United Kingdom have issued ominous forebodings to Travellers who in the future might use the Act to fight discrimination.

As mentioned above, the Act does not repeal existing discriminatory legislation. Because of this, the Caravan Sites Act (NI) 1969 would remain on the books. This act makes the provision of halting sites discretionary in Northern Ireland, as opposed to obligatory as they are in Great Britain. This Act therefore legitimises the exclusion of Travellers from certain communities by restricting their legal access to land on which to set up residence.

Also unaffected by the Race Relations Act would be the Local Government (Miscellaneous Provisions) (NI) Order 1985 which defines designated areas (the halting sites) outside of which the Travellers do not have free access to residence or to movement. This law applies specifically to Travellers and is based on discrimination and prejudice.

Another public policy which might be allowed to remain in effect under the Race Relations Act is the DHSS "signing on" policy for Travellers, which segregates them in their access to welfare benefits. Though the DHSS has stated that the policy is in effect for certain administrative advantages rather than to discriminate against Travellers, the arguments presented above would require that the policy be nevertheless abandoned despite any innocent motive.

In order to gain better protection from any race legislation introduced in Northern Ireland, the Travellers must be recognised as an minority ethnic group. The House of Lords put forward the criteria defining an ethnic group as: 1) a long shared history of which the group was conscious; 2) a cultural tradition of its own including family and social customs; 3) descent from common ancestors; 4) a common language; 5) a common religion and; 6) being a minority or an oppressed group in the larger community. (Mandla v Dowell Lee (1983) IRLR 209) The Travellers fulfill every condition presented.

The importance of recognising the distinct ethnicity of the Travellers is emphasised by the recent decision in Commission for Racial Equality v. Dutton (1989) IRLR 8. In that case, while it was found that gypsies could, in fact, be a distinct ethnic group within the meaning of the Race Relations Act 1976, a nomad, or one that "habitually wanders or has the habits of someone who does not stay for long in

"one place", is not. Discrimination against nomads, it was held, was not racial discrimination.

The Court of Appeal in Dutton went on to note that signs such as "No Travellers" could not be understood to apply to ethnic gypsies that had become house dwellers, but applied to all nomads equally, whether gypsies or not, and were therefore not directly discriminatory. The disturbing implications of this ruling for Travellers is apparent.

The ruling legitimises the routine exclusion of Travellers from public places and gives no incentives to private citizens to change their behaviour. In fact, the ruling gives impetus to the further attempts to assimilate the Travellers into a settled, home dwelling community by local authorities at the price of the extinction of their culture. The Court of Appeal did note, however, that gypsies are an identifiable group of persons defined by reference to ethnic origins within the meaning of the Act. The Court of Appeal also stated that such signs could amount to indirect discrimination due to the adverse impact on nomadic gypsies. This emphasises the need to recognise Irish Travellers as a distinct ethnic group. Without such a distinction, they will be unable to argue indirect discrimination in that they shall be unable to differentiate themselves culturally from the non-ethnic persons who chose to lead a nomadic life.

It should again be noted that if the Race Relations Act 1976 is looking to not only redress individual acts of discrimination, but to eradicate the situations and societal patterns which reinforce such behaviour, discriminatory results of innocently motivated policies cannot be upheld. Dutton fails to grasp the overwhelming discriminatory nature of such signs as "No Travellers" and other similar conduct that routinely excludes Travellers and keeps them a persecuted minority. The recognition of the Travellers unique cultural identity is paramount to eliminating the oppression under which they live.

#### UK INTERNATIONAL OBLIGATIONS

The inefficiency of the Race Relations Act 1976 does not only call into question the UK's commitment to the elimination of discrimination, but also its commitment to its international responsibilities. The United Kingdom has freely undertaken obligations to effectively eradicate all forms of racial discrimination from its territories. As demonstrated above, it has yet to do so.

Though there have been a number of treaties, declarations and conventions on racism amongst the European Community, on the whole, international European accords have been deficient in the protection of economic and social rights for ethnic minorities. The United Kingdom is, however, bound by other international conventions such as the United Nations International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) and the International Convention on Civil and Political Rights.

The United Kingdom is a party to the 1969 ICERD. The ICERD defines racial discrimination in Article 1 as any distinction or exclusion which nullifies or impairs the recognition and enjoyment of human rights and fundamental freedoms in "the political, economic, social, cultural or any other field of public life." The United Kingdom is, therefore, under an obligation to eliminate discrimination in such areas as education,



planning, housing, and employment.

The United Kingdom is also under an obligation to engage in no practice of racial discrimination against persons or groups of persons and to ensure that "all public authorities and public institutions, national and local, shall act in conformity with this obligation," as per Article 2(a). The United Kingdom is therefore in breach of this provision by placing large areas of the public criminal justice system outside the ambit of the Race Relations Act. The government is bound by the ICERD to eliminate discrimination in the prison systems, in the courts and in policing as these are public authorities. The United Kingdom's insistence on keeping these governmental bodies outside the reach of the Race Relations Act is also potentially in violation of Article 5(a), which declares the right to equal treatment before tribunals and all other organs administering justice.

The United Kingdom is also bound to "review governmental, national and local policies, and to amend, rescind or nullify any laws and regulations which have the effect of creating or perpetuating racial discrimination wherever it exists," as per Article 2(c). Under this provision, the government has the responsibility of eradicating all discriminatory legislation.

As far as Northern Ireland is concerned, this would seem to call for the elimination of the laws which unjustifiably discriminate against any minority group, including Travellers. Noting that Article 2(c) speaks as to the effects of the legislation, and not its motivation, it does not matter that a law was passed without discriminatory intent. If it results in the exclusion or restriction based on race, colour, descent, or national or ethnic origin, the law is in violation of ICERD, whether passed by national or local authorities.

Article 6 of the ICERD further requires that state parties "assure to everyone within their jurisdiction effective protection and remedies, through the competent national tribunals... against any acts of racial discrimination... as well as the right to seek from such tribunals just and adequate reparation or satisfaction for any damage suffered as a result of such discrimination."

As noted in the discussion of the defects of the Race Relations Act, victims of racial discrimination who are successful in their cases receive £9000 maximum compensation as compared to the £30,000 maximum received by victims of religious discrimination in Northern Ireland. The UK government has recognised in Northern Ireland that discrimination is a grievous injury that requires sufficient monetary compensation. Its refusal to extend such recognition to racial discrimination could well put the government in violation of the ICERD.

Furthermore, it has been demonstrated that the lack of legal aid plus the lack of understanding and expertise in the industrial tribunal system, along with inadequate compensation, work together to make the available remedies for racial discrimination ineffective. The United Kingdom has set up a token race law in Great Britain as opposed to a working system of redress and is therefore in violation of Article 6 in the mainland UK.

The present absence of any race law at all in Northern Ireland is a further violation by the United Kingdom through its refusal to recognise the existence of racism in the region. Victims of racial discrimination in Northern Ireland have no remedy at all. This situation must change.

The International Convention on Civil and Political Rights, which entered into force on March 23, 1976, reiterates the United Kingdom's obligation to extend an efficacious race law to all of its territories. Articles 2(2) and 2(3) place a duty on the governments party to the convention to pass laws protecting the rights of citizens under the covenant. One of these rights, found in Article 26, is the equality before the law and the equal protection before the law. Article 26 prohibits any discrimination on any ground.

The United Kingdom is further bound by this Covenant to pass a law protecting all of its citizens, which would include those in Northern Ireland, from discrimination. It must also provide effective remedies for breaches of rights under the covenant, which again would lead to the call for reform of the Race Relations Act so that it might, indeed, become an effective race law.

## CONCLUSION

There is an urgent need for anti-race discrimination legislation in Northern Ireland. Contrary to popular impressions, minority ethnic communities in Northern Ireland daily experience personal and cultural discrimination. The Government has now accepted in principle that there should be some sort of anti-race discrimination legislation in the region. The citizens of Northern Ireland deserve to have a law along the lines of the Race Relations Act 1976 extended to this territory. As noted above, however, the Race Relations Act is defective and changes should be made to it in order to provide actual protection to ethnic minorities. Furthermore, the CRE has made other detailed suggestions for legislative changes in its pamphlet Second Review of the Race Relations Act 1976. These recommendations should also be seriously considered.

It is recommended that:

1. A separate and autonomous monitoring body be established with responsibility for the implementation of the anti-race discrimination legislation in Northern Ireland. This body should parallel in function the Fair Employment Commission and the Equal Opportunity Commission.
2. The anti-race discrimination legislation should supersede any existing law and should further repeal any existing discriminatory legislation. The law should, therefore, invalidate present laws which operate to the detriment of Travellers. To this effect, the CAD has previously proposed a Bill of Rights (see CAD Pamphlet No. 17, Making Rights Count) which would comprehensively prohibit discrimination, including that on the basis of race and ethnic origin.

3. The law should shift the burden of proof to the alleged discriminator once the complainant has set out a prima facie case of racial discrimination.
4. The law should require racial monitoring of places of employment along the lines of the religious monitoring requirement already in place in Northern Ireland.
5. The law should apply to all government bodies, state and local, and should

not exclude any government body from the ambit of the legislation.

6. The law should require all public bodies in Northern Ireland to adopt anti-racist policies, and should require training for public officials. This training should extend to Tribunal officers in order to give them the expertise necessary to understand the subtleties of race cases.

7. Compensation for victims of racial discrimination should be raised from £9,000 to £30,000 as is provided for victims of religious discrimination in Northern Ireland.

8. The law should allow for class actions or some other form of group remedy.

9. The law should establish the provision of legal aid to those who wish to bring a complaint of racial discrimination.

10. The legislation must include Travellers and recognise their distinction as an ethnic group in Northern Ireland. It follows from this that all legislation which discriminates against Travellers would be nullified.

11. The law should make the acceptance of public monies and government contracts contingent upon compliance with the race law and policies which outlaw racial discrimination.



# APPENDIX 5

## Chapter 5

### A Draft Equality Bill — To protect Minority Ethnic Groups and Groups Suffering Discrimination on the Basis of Skin Colour.

*Drafted by Tom Cooney in consultation with the Committee and Relevant Organisations.*

#### EQUALITY (PROTECTION AGAINST RACISM) BILL

AN ACT TO PROVIDE MINORITY ETHNIC GROUPS AND GROUPS SUFFERING DISCRIMINATION ON THE BASIS OF SKIN COLOUR WITH LEGAL PROTECTION AGAINST UNLAWFUL DISCRIMINATION; TO PROTECT AND RESOURCE CULTURAL DIFFERENCE AND TRADITIONS; TO PROVIDE FOR THE SPECIFIC NEEDS INHERENT IN THE NOMADIC WAY OF LIFE OF TRAVELLERS AND THEIR CULTURE; TO GIVE EFFECT IN IRISH LAW TO THE PRINCIPLES STATED IN THE UNITED NATIONS CONVENTION ON THE ELIMINATION OF ALL FORMS OF RACIAL DISCRIMINATION, WHICH ENTERED INTO FORCE IN 1969; TO ESTABLISH A BODY TO BE KNOWN AS THE HUMAN RIGHTS COMMISSION AND TO DEFINE ITS FUNCTIONS; TO ESTABLISH A BODY TO BE KNOWN AS THE HUMAN RIGHTS TRIBUNAL AND TO DEFINE ITS FUNCTIONS; AND TO PROVIDE FOR OTHER MATTERS CONNECTED WITH THE MATTERS AFORESAID.

BE IT THEREFORE ENACTED BY THE OIREACHTAS AS FOLLOWS:

#### PART 1

#### PRELIMINARY AND GENERAL

##### Title

1. This Act may be cited as the Equality (Protection against Racism) Act, 1993.

##### Interpretation

2. In this Act, except where the context otherwise requires —

“affirmative action” means action designed to achieve equal opportunity and equality of resources for ethnic groups and groups identified as suffering discrimination on the basis of skin colour by means including the adoption of plans, programmes, practices and policies encouraging such equal opportunity and equality of resources, and the modification or abandonment of practices or policies that



have or may have the effect of restricting or discouraging such equal opportunity and equality of resources, or that contribute to the infringement of rights;

“the appropriate day” means the day on which this Act comes into force;

“equal concern and respect” includes the principle that no otherwise qualified person shall, by virtue of his status as a member of a particular ethnic group or group identified on the basis of skin colour, be excluded from participation in, or denied the benefits of or be subjected to discriminatory treatment in respect of, basic autonomy, opportunities, rights, entitlements or liberties, but shall be entitled to equal concern and respect;

“ethnic group” (which phrase includes the Traveller community) means a group of people who regard themselves, and are regarded by the general community, as a distinct group, as a result of common history or social actions or language or religion;

“Human Rights Commission” has the meaning assigned to it in Part 3 of this Act;

“Human Rights Tribunal” has the meaning assigned to it in Part 3 of this Act;

“the Minister” means the Minister for Equality and Law Reform;

“significant” means over and above a 20% difference in impact;

“Traveller” means a person who belongs to the Traveller community and who identifies as a Traveller and is accepted as such by the community in which he or she lives, regardless of whether he or she enjoys a nomadic habit of life or has fixed residential base within a particular area;

“Traveller community” means an identifiable group of people identified both by themselves and by other members of society as people with their own shared history, culture and traditions, including, historically, a nomadic way of life;

#### Commencement

3. — (1) This Act shall come into operation on such day as may be fixed by an order of the Minister.

(2) On the commencement day there shall come to be established bodies to be known as the Human Rights Commission and the Human Rights Tribunal (in this Act referred to as the Commission and the Tribunal respectively) to perform the functions assigned to them by this Act.

#### Regulations

4. — (1) The Minister may make regulations prescribing any matter or thing which is referred to in this Act as prescribed or to be prescribed or in relation to any matters referred to in this Act as the subject of regulations or for the purpose of giving full effect to this Act.

(2) Every regulation made under this Act shall be laid before each House of the Oireachtas as soon as may be after it is made and, if a resolution

annulling the regulation is passed by either such House within the next subsequent twenty-one days on which that House has sat after the regulation is laid before it, the regulation shall be annulled accordingly but without prejudice to the validity of anything previously done thereunder.

## PART 2

### DISCRIMINATION FOR THE PURPOSES OF THIS ACT

#### Unlawful Discrimination

5. — (1) In this Act, “discrimination” means

- (a) discrimination on the grounds of membership of an ethnic group or a group identified on the basis of skin colour,
  - (b) discrimination by way of victimisation
- and the term “discriminate” shall be interpreted accordingly.

(2) It is unlawful for a person to do any act involving a distinction, exclusion, restriction, or preference based on membership of an ethnic group or of a group identified on the basis of skin colour which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of any human right or fundamental freedom in the political, economic, social, cultural or any other field of public life or the purpose or effect of denying equal concern and respect on the grounds of membership of an ethnic group or a group identified on the basis of skin colour in the context of public policy or administration.

(3) For the purposes of this Act, unlawful discrimination shall be taken to occur in any of the following —

- (a) where by reason of his status as a member of an ethnic group or of a group identified on the basis of skin colour, or because of his association with a member of an ethnic group, or a group identified on the basis of skin colour, a person is treated less favourably than another person,
- (b) where because of a characteristic that appertains generally to such a status a person is treated less favourably than another person,
- (c) where because of a characteristic that is generally imputed to such a status he is treated less favourably than another person,





- (d) where because of his status as a member of an ethnic group or of a group identified on the basis of skin colour, a person is required to comply with a requirement or condition:-
  - with which a significant higher proportion of persons who do not have the status comply or are able to comply,
  - which is not strictly necessary for compelling reasons having regard to the circumstances of the case, and
  - with which the person does not or is not able to comply.
- (e) where a person because of his status as a member of an ethnic group or of a group identified on the basis of skin colour is required to accept any practice, policy, programme, action, or situation, which has an adverse impact on his group.
- (4) Unlawful discrimination by way of victimisation shall be taken to occur where a person is penalised for having in good faith —
  - (i) made a complaint under this Act,
  - (ii) opposed by lawful means an act or direction or order which is unlawful under this Act,
  - (iii) given evidence in any proceedings under this Act, or
  - (iv) given notice of an intention to do anything referred to in subparagraphs (i) to (iii),
 and cognate words shall be construed accordingly.

**Employment Discrimination Prohibited**

- 6.— (1) A person or body who is an employer or who engages another person under a contract personally to execute any work or labour or who obtains under contract with another person the services of employees of that other person shall not discriminate against an employee, or a prospective employee, or an employee of that other person, in relation to access to employment, conditions of employment, training or experience for or in relation to employment, promotion or re-grading in employment or classification of posts of employment.
- (2) An employer shall not, in relation to his employees or to employment by him, have rules or instructions which would discriminate against an employee or class of employee, and shall not harass or otherwise apply or operate a practice, procedure or condition which results or would be likely to result in discrimination.

- (3) Without prejudice to the generality of subsection (1), a person shall be taken to discriminate against an employee or prospective employee in relation to access to employment if —
  - (a) in any arrangement he makes for the purpose of deciding to whom he should offer employment, or
  - (b) by specifying, in respect of one person or class of persons, entry requirements for employment which are not specified in respect of other persons or classes of persons where the circumstances in which both such persons or classes would be employed are not materially different,
 he contravenes subsection (1).
- (4) Without prejudice to the generality of subsection (1), a person or body shall be taken to discriminate against an employee or prospective employee in relation to conditions of employment if he or it does not offer or afford to a person or class of persons the same terms of employment, the same working conditions and the same treatment in relation to overtime, shift work, short time, transfers, lay-offs, redundancies, dismissals and disciplinary measures as he offers or affords to another person or class of persons where the circumstances in which both such persons or classes are or would be employed are not materially different.
- (5) Without prejudice to the generality of subsection (1), a person or body shall be taken to discriminate against an employee in relation to training or experience for or in relation to employment if he or it refuses to offer or afford that employee the same opportunities or facilities for employment counselling, training (whether on or off the job) and work experience as he offers or affords to other employees where the circumstances in which that employee and those other employees are employed are not materially different.
- (6) Without prejudice to the generality of subsection (1), a person or body shall be taken to contravene that subsection if he or it discriminates against an employee in the way he or it offers or affords that employee access to opportunities for promotion.
- (7) Without prejudice to the generality of subsection (1), a person or body shall be taken to contravene that subsection if he or it, being an employer, employment agency, trade union, or government or private training agency
  - (a) discriminates against any individual in consideration for admission to, or employment in, any programme established



to provide apprenticeship or training or, including any on-the-job training scheme, or

(b) prints, publishes, advertises or disseminates in any way, or causes to be printed, published, advertised or disseminated in any way, any notice or advertisement with respect to employment, membership of, or any classification or referral for employment or training by any such organisation or body, which indicates an unlawful discrimination.

(8) Without prejudice to the generality of subsection (1), a person or body shall be taken to contravene that subsection if any employee of that person or body engages in unlawful discrimination as set out in this section.

(9) Nothing in this section shall make it unlawful for any person or body to arrange for or provide, as part of a positive resourcing or affirmative action plan or policy, special provision for minority ethnic groups or for groups identified as suffering discrimination on the basis of skin colour.

#### using Discrimination Prohibited

— (1) A person shall not discriminate:

(a) by interrupting, terminating, or failing or refusing to initiate or conduct any transaction in real property, including but not limited to the rental, lease or sale thereof, requiring different terms for such transaction; or falsely representing that an interest in real property is not available for transaction;

(b) by refusing to lend money, guarantee the loan of money, accept a deed of trust or mortgage, or otherwise refusing to make available funds for the purchase, acquisition, construction, alteration, rehabilitation, repair or maintenance of real property; or by imposing different conditions which are unreasonable in the circumstances on such financing; or by refusing to provide title or other insurance relating to the ownership or use of any interest in real property;

(c) by including in the terms or conditions of a transaction in real property any discriminatory clause, condition or restriction;

(d) by refusing or restricting facilities, services, repairs or improvements for any tenant, lessee, or owner; or

(e) by making, printing, publishing, advertising or disseminating in any way, or causing to be made, printed or published,

advertised or disseminated in any way, any notice, statement or advertisement with respect to a transaction or proposed transaction in real property, or with respect to financing related to any such transaction, which unlawfully indicates exclusion, limitation or adverse discrimination.

#### Exceptions and Exclusions to Section 7

8. — (1) Notwithstanding any other provision of this Act, it shall not be a contravention of this Act for any person to use procedures for determination of financial capability to enter into real property transactions, so long as those procedures are strictly necessary for compelling reasons.

(2) Notwithstanding any other provision of this Act, it shall not be a contravention of this Act for a religious body to limit the sale, rental, or occupancy of dwellings in respect of which it has not received public funds and which it owns or operates for other than a commercial purpose to persons of the same religion or from giving preference to such persons.

(3) Notwithstanding any other provision of this Act, it shall not be a contravention of this Act for a private club not open in fact to the public and not in receipt of public funds which as an incident to its primary purpose provides lodgings which it owns or operates for other than a commercial purpose, from limiting the rental or occupancy of such lodgings to its members, or from giving preference to its members.

(4) Notwithstanding any other provision of this Act, it shall not be a contravention of this Act for a person to own or operate housing accommodation in which rooms are leased, subleased or rented only to persons of the same sex, when such housing accommodation contains common lavatory, kitchen or similar facilities available for the use of all persons occupying such housing accommodation.

(5) Notwithstanding any other provision of this Act, it shall not be a contravention of this Act, for a person to sell, rent, lease, or occupy any dwelling designed and operated exclusively for elderly adults and their spouses, unless the sale, rental, lease, or occupancy is further restricted on account of a person having a status covered by the prohibited grounds.

#### Business and Services Discrimination Prohibited

9. — (1) A person shall not discriminate

(a) by denying any person the full and equal enjoyment of the goods, services, facilities, privileges, advantages and accommodations of any business or services establishment or public accommodation;



- (b) by making, printing, publishing, advertising or disseminating in any way any notice, statement or advertisement with respect to any business establishment or public accommodation which indicates that a person is doing or will do anything which this section prohibits.
- (2) For the avoidance of doubt, the term "services establishment" includes shops, shopping centres, cinemas, theatres, public houses, hotels and hospitals (including visits to a hospital).

**Central Government, Statutory and Semi-State Body Discrimination Prohibited**

10. — (1)

A government department, statutory body or a semi-state body shall not discriminate by denying any person the full and equal enjoyment of, or by imposing different terms and conditions on the availability of:

- (a) the use of any government department, statutory body or semi-state body facility or service, or
- (b) any service, programme or facility wholly or partially funded or otherwise financially supported by a government department, statutory body or semi-state body.
- (2) Government departments, statutory bodies and semi-state bodies shall develop policies and initiatives to work for the elimination of discrimination and to promote equal opportunity and good relations between ethnic groups and between groups identified on the basis of skin colour and shall include a progress report in this regard in any reviews or annual reports prepared.
- (b) Government departments, statutory bodies and semi-state bodies shall engage in and report on this work both in terms of their own internal structures and procedures and in terms of their relationship to the general public in the content and delivery of any facilities and services provided.
- (c) Government departments, statutory bodies and semi-state bodies will be guided in this work by anti-discrimination codes prepared by the Commission.
- (d) Government departments, statutory bodies and semi-state bodies shall be bound by all sections of this bill not to engage in unlawful discrimination.
- (3) For the avoidance of doubt discrimination shall be taken to occur in any of the following cases —

- (a) where a government department, statutory body or semi-state body provides for members of an ethnic group or of a group identified on the basis of different skin colour on a segregated basis where such segregation is not a matter of individual choice for those receiving this provision and is not designed to advance positive resourcing or affirmative action policies.
- (b) where a government department, statutory body or semi-state body makes policy or provision that excludes to a significant degree members of any ethnic groups because of failure to take account of ethnic diversity in the design and planning of such provision or policy.
- (4) A government department, statutory body or semi-state body shall be taken to contravene subsection (1) of this section if any of their employees engages in such unlawful discrimination.

**Local Government Discrimination Prohibited**

11. — (1)

A local authority shall not discriminate by denying any person the full and equal enjoyment of, or by imposing different terms and conditions on the availability of:

- (a) the use of any local authority facility or service.
- (b) any service, programme or facility wholly or partially funded or otherwise financially supported by a local authority.
- (2) Every local authority shall, within a period of one year beginning on the date of commencement of this Act, develop policies and initiatives to work for the elimination of discrimination, and to promote equal opportunity and good relations between ethnic groups and between groups identified on the basis of skin colour and shall report on an annual basis on progress in this regard.
- (b) Every local authority shall engage in and report on this work both in terms of their own internal structures and procedures, and in terms of their relationship to the general public in the content and delivery of any facilities and services provided.
- (c) Every local authority shall adopt an anti-discrimination code as prepared by the Commission.
- (d) Every local authority shall be bound by all sections of this Bill not to engage in unlawful discrimination.



the Department shall be guided by standards set in an anti-discrimination code prepared by the Commission.

- (3) Schools and other educational institutions that engage in unlawful discrimination or that fail to apply the standards set by the Department of Education shall not be eligible for public funding.

- (4) For the avoidance of doubt, discrimination shall be taken to occur in any of the following cases—

- (a) where schools discriminate in their terms of application, admissions policy and in their distribution of resources;
- (b) where the Department of Education or teacher training establishments have failed to ensure that all training courses for teachers include modules on inter-cultural themes and methods;
- (c) where members of any ethnic group are provided for on a segregated basis where such segregation is not a matter of individual choice on the part of the parents of those receiving this provision;
- (d) where the Department of Education fails to implement systems that provide and allow for services to be provided on an equal basis to Travellers who wish to retain their nomadic lifestyle;
- (e) where the Department of Education fails to establish programmes to ensure all ethnic groups and groups identified on the basis of skin colour are equally and adequately represented within the teaching professions.

#### Legislative Integrity

15. — (1) If, by reason of any statute, or provision of a statute, any ethnic group or group identified on the basis of skin colour does not enjoy a right or benefit that is enjoyed by the broader community, or enjoys a right or benefit to a more limited extent than the broader community, then, notwithstanding anything in that statute, members of that group shall, by virtue of this section, enjoy that right or benefit.

16. — (1) The Oireachtas shall, when enacting statutes, have particular regard to the impact of any proposed statute on minority ethnic groups and groups identified as suffering discrimination on the basis of skin colour.

- (2) The Government shall be responsible for the preparation of an equality impact statement identifying, describing and assessing the likely effects of proposed legislation on minority ethnic groups and groups identified as suffering discrimination on the basis of skin colour.

- (3) The Oireachtas shall have regard to the equality impact statement mentioned in subsection (2) when deliberating upon proposed legislation.

#### Affirmative Action

17. — (1) Notwithstanding any other provision of this Act, it shall not be a contravention of this Act for any body, statutory or private or voluntary, to implement a positive action or resourcing programme designed to relieve hardship or past discrimination or to assist groups or persons that have been disadvantaged by discrimination to achieve or attempt to achieve, with due regard to their own ethnic identity, culture, traditions and history, equal opportunity or that is likely to contribute to the elimination of unlawful discrimination.

- (2) Any such body charged with creating or implementing or monitoring a positive action or resourcing programme shall do so in partnership and dialogue with the relevant group having an interest in the programme. Access to such programmes shall be on the basis of voluntary participation and shall not be obligatory in any way.

### PART 3

#### HUMAN RIGHTS COMMISSION AND HUMAN RIGHTS TRIBUNAL

##### Establishment of Human Rights Commission

18. — (1) On the commencement day there shall be established a body known as the Human Rights Commission (in this Act referred to as “the Commission”) to perform the functions assigned to it by this Act.

- (2) The provisions of the First Schedule to this Act shall have effect in relation to the Commission.

##### Functions of Human Rights Commission

19. — (1) The Commission shall have, in addition to any functions assigned to it by any other provision of this Act, the following general functions in particular—

- (a) to advance the policy that the dignity and worth of every person be recognised and that equal rights and opportunities and resources be provided without discrimination that is contrary to law;





- (b) to promote an understanding, acceptance of, and compliance with the provisions of this Act;
- (c) to recommend for consideration a special plan or programme designed to provide affirmative action or positive resourcing;
- (d) to develop and conduct programmes of public information and education, and undertake, direct and encourage research designed to identify and eliminate discriminatory practices that infringe the rights protected by this Act;
- (e) to establish consultative bodies involving members of the Commission and of those organisations representing groups protected by this legislation for the purposes of reviewing and developing strategies to combat discrimination and to provide affirmative action or positive resourcing;
- (f) to examine and review any Act or regulation, and any programme, procedure, or policy made by or under an Act, and make recommendations on any provision, procedure, programme or policy, that in its opinion is inconsistent with the purpose of this Act;
- (g) to identify, investigate and keep under review patterns and trends of public and private sector practices and activities to determine if they reveal, or create conditions for, or operate or result in discrimination, to eliminate this discrimination and to assist in the process of planning how to achieve equality;
- (h) to investigate incidents of discrimination based upon identification by membership of a group protected by this Act, that may arise in a community and to encourage, outline and coordinate plans, programmes, responses and activities to eliminate or prevent such problems;
- (i) to receive complaints made under the provisions of this Act and, when requested, to identify and support appropriate action to eliminate the discrimination and to make compensation where necessary in a process of conciliation;
- (j) to prepare codes of practice for the prevention of discrimination and the promotion of equality in public and private sector areas;

- (k) to promote, assist and encourage public, central government, local government or private agencies, organisations, groups or persons to engage in programmes to eliminate discrimination and promote affirmative action or positive resourcing;
- (l) subject to the decisions of the Circuit Court, if any, to enforce this Act and orders of the Human Rights Tribunal;
- (m) to perform the functions assigned to it by this Act or any other Act;
- (n) to submit an amicus curiae brief to any court on a matter connected to any of its functions under this Act;
- (o) to assist and advise those seeking to bring a complaint under this Act before the Tribunal;
- (p) to finance and pursue test cases that raise matters of legal principle in relation to this Act; and
- (q) to take and present a case before the Tribunal.

#### Review of Legislation

20. — (1) Where in the opinion of the Commission the working or effect of an Act, any provision of such an Act, or any statutory instrument made under such an Act is likely to discriminate or impede the elimination of discrimination or the promotion of equality of opportunity between groups protected by this Act and other members of the community, the Commission may if it thinks fit, and shall if required by the Minister, carry out a review of such an Act, provision or instrument or of its working or effect.
- (2) For the purpose of assisting it in making a review under this section, the Commission shall consult with the groups concerned through consultative bodies established for such a purpose.
  - (3)
    - (a) where the Commission makes a review under this section it may make to the Minister a report of the review, and shall do so where the review was required by the Minister.
    - (b) a report under this subsection shall contain recommendations for amending any statute, statutory instrument or administrative provision so reviewed.



### Investigatory Role

21. — (1) The Commission may, of its own initiative or at the request of any person, carry out an investigation into public and private sector practices and activities to determine if they reveal evidence of discrimination.
- (2) For the purpose of assisting it in the conduct of a particular investigation the Commission may employ one or more than one person having qualifications which in the opinion of the Commission relate to that investigation.
- (3) An investigation may be conducted by one or more than one Human Rights Officer authorised by the Commission for this purpose.
- (4) The Commission shall have recourse to the views of the appropriate consultative body established for this purpose by the Commission in determining recommendations arising from an investigation.
- (5) The Commission shall publish the findings of any such investigation along with recommendations for any action required to eliminate discrimination identified.
- (6) In any proceedings under this Act the relevant investigation, its findings and recommendations shall be taken into account in determining the result of those proceedings.
- (7) The Human Rights Officer may for the purposes of an investigation do all or any of the following things—
- (a) require any person, by notice delivered to him personally or by registered post, to supply to him such information as he specifies in the notice and requires for the purpose of the investigation;
- (b) require any person, by notice delivered to him personally or by registered post, produce to him or to send to him, any specified document in his power or control;
- (c) examine witnesses who may have information relevant to the complaint; and
- (d) enter business premises on foot of a warrant granted by a Judge of the District Court.

- (8) If the Human Rights Officer is refused entry or access to documents, the Commission shall have power to apply to the District Court for a warrant to enter premises and to search for documents; but a person shall not be compelled for the purposes of investigation to give any information or produce any document which he could not be compelled to give in evidence or produce in civil proceedings before the High Court.

(9) A person who, without lawful authority or reasonable excuse, obstructs the Commission or any member or officer of the Commission in the performance of its or his functions in connection with the investigation (including circumstances where it or he acts on foot of a warrant of the District Court), shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding £700 or to imprisonment for a term not exceeding six months or to both.

### Filing a Complaint

#### 22. — (1)

A member of the public who believes that he has been discriminated against or harassed in any of the areas and on the grounds covered by this Act may complain to the Commission.

- (2) Reprisals or actions against any person who complains to the Commission or who participates in any proceeding with respect to a complaint or any breach of a settlement of a complaint shall also be grounds for a complaint to the Commission.

#### 23. — (1)

Any person who wishes to have a complaint concerning unlawful discrimination considered by the Commission shall himself or through his lawyer make a complaint in relation thereto orally, or send or give it in writing, to the Commission at the office of the Commission within six months of the date of the unlawful discrimination.

- (2) On receipt of a complaint by the Commission, an officer of the Commission shall record it forthwith, together with the date and time of its receipt, provide an acknowledgement in writing of its receipt to the complainant and notify the chief executive of the complaint, and a Human Rights Officer shall be available to discuss a complaint with a complainant if a complainant so requests.

- (3) Where an actual or prospective complainant requests the Commission in writing for advice in relation to prospective proceedings under this Part, the Commission shall give him such advice unless it considers that the request is frivolous.



- (4) Where, in relation to proceedings or prospective proceedings under this Part, an individual who is an actual or prospective complainant applies to the Commission for assistance under this subsection, the Commission shall consider the application and may grant it, if it thinks fit to do so on the ground that —
  - (a) the case raises a question of principle; or
  - (b) it is unreasonable, having regard to the complexity of the case or the complainant's position in relation to the respondent, or another person involved, or to any other matter including lack of access to the necessary financial resources, to expect the applicant to deal with the case unaided, or by reason of any other special consideration.
- (5) Assistance given by the Commission under subsection (4) may include—
  - (a) giving advice to the complainant;
  - (b) procuring or attempting to procure the settlement of any matter in dispute;
  - (c) arranging for the giving of advice or assistance by a lawyer;
  - (d) arranging for the representation of any person, including all such assistance as is usually given by a lawyer, in the steps preliminary or incidental to any proceedings, or in arriving at or giving effect to a compromise to avoid or bring to an end any proceedings, or in taking a case to the Human Rights Tribunal; and
  - (e) any other form of assistance which the Commission may consider appropriate.
- (6) When a complaint is made by the Commission, a complaint form shall be filled in and signed by the Chief Executive.

**Refusal by the Commission to Deal with a Complaint**

- 24.—(1) The Chief Executive shall have a discretion to refuse to deal with any complaint if—
- the complaint is not within the Commission's jurisdiction;
  - the subject matter of the complaint is trivial, frivolous, vexatious or made in bad faith;

the facts upon which the complaint is based occurred more than six months before the complaint was filed; but the Commission may, if it thinks it reasonable and just, investigate a complaint made after the expiration of that period, if of the opinion that there are special circumstances which make it proper to do so; or there is a more appropriate procedure for dealing with the matter under another Act.

- (2) If the Chief Executive decides not to deal with a complaint, he shall notify the complainant in writing, giving the reasons for his decision and advising the complainant of the right to have the decision reviewed.
- Processing of a Complaint**
- 25.—(1) After a complaint of unlawful discrimination has been filed with the Commission, the Chief Executive shall assign the complaint to a Human Rights Officer.
- (2) The Human Rights Officer shall furnish a copy of the complaint to all parties against whom the complaint is made (the respondents).
  - (3) The Human Rights Officer shall ascertain the potential for a conciliation process to be initiated. Where all parties are willing the Human Rights Officer shall initiate such a process.
  - (4) Where the potential for such a conciliation process is found to be absent the Human Rights Officer shall report to the Commission. The Commission shall then prepare the case for reference to the Tribunal.

**Conciliation**

- 26.—(1) Following agreement by all parties the Human Rights Officer shall have discretion to meet with the parties together and separately review the complaint, and attempt to conciliate the complaint.
- (2) In order to ensure in each instance that the public interest has been served, cases that are conciliated, settled or otherwise resolved shall be placed before the Commissioners for their approval or disapproval, as they consider fair and just, provided that no conciliation, settlement or resolution shall be placed before the Commissioners without the consent of all the parties.
  - (3) Any complaint that cannot be conciliated, settled or otherwise resolved shall be reported by the Human Rights Officer to the Commissioners for their decision whether or not to refer the case to the Human Rights Tribunal.



(4) A conciliation, settlement, or resolution which is in writing, signed by the parties, and approved where appropriate by the Commissioners shall be binding upon the parties, and breach of the conciliation, settlement or resolution shall be a ground for referral to the Human Rights Tribunal.

(5) The conciliation, settlement or resolution may include:-

- (a) identified actions to be carried out by the respondents to eliminate unlawful discrimination; and
- (b) identified actions to be carried out by the respondents to make reparations for unlawful discrimination engaged in.

#### Referral to the Tribunal

27. — (1) Proceedings shall be brought before the Human Rights Tribunal by the Commission, as it deems appropriate, and shall be commenced either within six months from the date of the offence or at any time within three months from the date on which evidence, sufficient, in the opinion of the Commission, to justify proceedings comes to its knowledge, whichever is later. Proceedings may not be commenced later than five years from the date on which the offence was committed.

(2) A certificate signed by or on behalf of the person instituting the proceedings as to the date on which the necessary evidence came to the knowledge of the Commission shall be prima facie evidence thereof.

(3) The Commission shall provide the assistance necessary and allowed under this Act to the complainant in the preparation of the case to be presented before the Human Rights Tribunal.

#### Review

28. — (1) When the Commissioners refuse to refer a complaint to the Human Rights Tribunal, or the Chief Executive refuses to proceed with a complaint, the complainant may request, within fifteen days of the date the refusal was posted to him, the Tribunal to review the decision.

(2) An application for review shall include a statement of the facts upon which the application is based.

(3) The Chief Executive of the Commission shall notify the respondent that the complainant has made a request for review, and he shall also be given an opportunity to reply.

(4) After the Tribunal has considered the views of all the parties, they shall make a final determination of the application for reconsideration.

(5) The determination (and the reasons for that determination) of the Tribunal shall be communicated in writing to the complainant and the respondent by the Chief Executive of the Commission.

#### Anti-Discrimination Codes

29. — (1) The Commission shall prepare codes of practice for the prevention of discrimination, and the promotion of equality of opportunity and resources in the different areas of public and private sector activity. In this the Commission shall have recourse to the views of the appropriate consultative body established by the Commission for this purpose.

(2) The Commission shall publish codes as they are for the time being in force and shall take such steps as it considers necessary to publicise these codes.

(3) A failure on the part of any person or organisation to observe any provision of the code shall not of itself render him or it liable to any proceedings; but in any proceedings under this Act the relevant code shall be taken into account in determining the result of those proceedings.

#### Accounts and Reporting

30. — (1) The Commission shall, in such form as may be approved by the Minister with the concurrence of the Minister for Finance, keep all proper and usual accounts of all moneys received or expended by it.

(2) Accounts kept in pursuance of this section shall be submitted annually by the Commission to the Comptroller and Auditor General for audit at such times as the Minister, with the concurrence of the Minister for Finance, directs and those accounts, when so audited shall (together with the report of the Comptroller and Auditor General thereon) be presented to the Minister, who shall cause copies of the audited accounts and the report to be laid before each House of the Oireachtas.

31. — (1) The Commission shall in each year, at such date as the Minister may direct, make a report to the Minister of its activities during the preceding twelve months ending on that date, and the Minister shall cause copies of the report to be laid before each House of the Oireachtas.

(2) The Commission shall include in its annual report assessments from organisations representing groups protected by this Act on the activities of the Commission during the preceding twelve months ending on the date referred to in subsection (1).

(3) The Commission shall supply to the Minister any information as he may from time to time require regarding its activities.





- (4) The Commission shall include in every annual report an assessment of whether or not it has adequate staff and funding to carry out its functions.
32. — (1) In each financial year there may be paid to the Commission out of moneys provided by the Oireachtas a grant of such amount as the Minister, with the concurrence of the Minister for Finance, may sanction towards the expenses of the Commission in the performance of its functions.
- (2) The Commission may invest money in such manner as the Minister may approve.
33. — (1) The Commission may, with the consent of the Minister, given with the concurrence of the Minister for Finance, borrow temporarily by arrangement with bankers such sums as it may require for the purpose of providing for current expenditure.
34. — (1) The expenses incurred in the administration of this Act shall, to the extent as may be sanctioned by the Minister for Finance, be paid out of moneys provided by the Oireachtas.
- Human Rights Tribunal**
35. — (1) There shall, by virtue of this section and by regulations, be established on the commencement day an independent adjudicative body, to be known as the Human Rights Tribunal and in this Act referred to as the Tribunal, to perform the functions assigned to it by this Act.
- (2) There shall be -
- (a) a President of the Tribunal.
- (b) a Vice-President of the Tribunal.
- (c) a panel of ten judges of the Tribunal.
- who shall each be appointed by the Government and shall exercise the functions respectively conferred on them by or under this Act or any other Acts.
- (3) A person shall not be qualified for appointment under subsection (1) unless he is a judge of the District Court or the Circuit Court of not less than two years standing.
- (4) The President of the Tribunal shall from time to time appoint a tribunal to consider such matters as may be referred to it under the provisions of this Act.

(5) More than one tribunal may be appointed under subsection (4) of this section.

36. — (1) (6) The provisions of the Second Schedule to this Act shall have effect in relation to a tribunal.

(2) When a conciliation, settlement, or resolution of a complaint is not reached, or if the respondent refuses to cooperate in the investigation, the Commissioners shall evaluate the evidence, and may refer the complaint to the Tribunal, provided that the complainant and the respondent are notified beforehand of this decision.

(3) The Chief Executive shall determine the particular breach or breaches of this Act to be alleged against the respondent before the Tribunal.

(4) The Chief Executive shall notify each member of the Tribunal of the breach or breaches of this Act aforesaid and the names and addresses of the witnesses whom he wishes to attend before the Tribunal.

(5) The Tribunal shall hold an inquiry into the complaint, unless the breach or breaches alleged in the complaint concerned is admitted by the respondent.

37. — (1) The parties to an inquiry by the Tribunal shall include:

- the Chief Executive of the Human Rights Commission;
- the complainant; and
- the respondent

(2) The Tribunal shall have discretion to add other parties to the proceeding as it sees fit.

38. — (1) The Tribunal shall commence its inquiry within thirty days of receipt of the determination of the breach or breaches concerned.

(2) It shall hear evidence given under oath, and make a finding based on the evidence, as to whether any provisions of this Act have been contravened.

39. — (1) If the Tribunal finds that there has been a breach or breaches of this Act, it shall issue a non-discrimination order to ensure compliance with the Act in respect of the complainant's case and in respect of future practices.

(2) The Tribunal shall have discretion to order compensation not to exceed the sum of £100,000 for loss to the complainant and where the breach or breaches have been engaged in recklessly or willfully, may order the



Payment of up to £30,000 to the complainant for mental anguish and violation of dignity.

40.—(1) If the Tribunal finds that there has been no breach or breaches of this Act, the complaint shall be dismissed.

41.—(1) A non-discrimination order shall -

- (a) specify the act or omission constituting the discrimination,
- (b) require the person on whom it is served not to commit the discrimination,
- (c) specify what steps the Tribunal requires to be taken by the respondent in order not to commit the discrimination, and
- (d) require the respondent to inform the Commission, within a period specified in the notice, and any other persons so specified, of what steps are taken in order to comply with the order and to supply, within a period so specified, the Commission with any other information so specified.

(2) A non-discrimination order shall be served on a person by sending it by post in a prepaid registered letter, or by any other form of recorded delivery service prescribed by the Minister, addressed to him at the address at which he ordinarily resides or, in the case in which an address for service has been furnished, at that address.

42.—(1) A person on whom a non-discrimination order has been served may appeal on questions of fact and law to the Circuit Court within 21 days of the date of service against the order or any requirement of the order.

(2) Where an appeal under subsection (1) is not made, a non-discrimination order shall come into operation on the expiry of the 21-day period referred to in that subsection.

(3) Where the Court has heard an appeal under subsection (1), it may either confirm or modify the order in whole or in part (with or without an amendment of the order) or allow the appeal, and the decision of the Court in the matter shall state or be accompanied by a statement of reasons for the decision.

(4) Where the Court confirms a non-discrimination order, the order (as so confirmed in whole or in part) shall come into operation on such date as the Court shall fix.

(5) Where the Court allows an appeal under subsection (1), the non-discrimination order appealed against shall cease to have effect.

#### FIRST SCHEDULE Human Rights Commission

1.—(1) The Commission shall be a body corporate with perpetual succession and power to sue and be sued in its corporate name and to hold and dispose of land.

(2) The Commission shall be independent in the exercise of its functions.

2. The Commission shall consist of a director general and three other directors (in this Schedule referred to, respectively, as "the director general" and "the directors") and ten ordinary members.

3. The director general may at any time resign his office by letter addressed to the Taoiseach and his resignation shall take effect as soon as and from the date of receipt of the letter by the Taoiseach.

4.—(1) The Government may at any time, for due cause, remove the director general from office.

(2) The term of office of an ordinary member of the Commission shall be five years and, subject to the provisions of this Schedule, a member of the Commission shall be eligible for re-appointment as such member.

5. Where the director general or a director or an ordinary member of the Commission becomes a member of either House of the Oireachtas, he shall, upon his becoming entitled under the Standing Orders of the House to sit therein, cease to be the director general or director or such ordinary member.

6. A person who is for the time being entitled under the Standing Orders of either House of the Oireachtas to sit therein shall be disqualified from being either the director general or director or an ordinary member of the Commission.

7. The director general and the directors shall be appointed by the Government on a whole-time capacity and shall hold office under such terms and conditions as the Government determines with the consent of the Minister for Finance.

8. The director general and directors shall be paid, out of moneys provided by the Oireachtas, such remuneration and allowances and expenses incurred by them as the Government, with consent of the Minister for Finance, may determine.



9. Of the ordinary members of the Commission -
- (a) five shall be representatives of groups protected by this Act, appointed by organisations representative of these communities as invited by the Minister, and
  - (b) the remaining five shall be appointed by the Minister from a pool of nine candidates selected by a committee consisting of the Chief Justice, the President of the Incorporated Law Society of Ireland, the Chairman of the Bar Council of Ireland, the President of the Executive Council of the Irish Congress of Trade Unions, and the President of the Irish Council for Civil Liberties.
10. Each ordinary member of the Commission shall be a part-time member and shall hold office on such terms and conditions as the Minister determines with the consent of the Minister for Finance.
11. The Minister may at any time, for due cause, remove an ordinary member of the Commission from office.
12. An ordinary member of the Commission may resign his office as such member by letter addressed to the Minister and the resignation shall take effect as on and from the date of the receipt of the letter by the Minister.
13. A member of the Commission shall be disqualified from holding and shall cease to hold office if he is adjudged bankrupt or makes a composition or arrangement with creditors or ceases to be ordinarily resident in the State.
14. Each ordinary member of the Commission shall be paid, out of the moneys provided by the Oireachtas, such expenses as the Minister, with the consent of the Minister for Finance, may sanction.
15. The Minister shall appoint one of the directors of the Commission to be deputy-director general of the Commission with the function of acting as director general of the Commission with the function of acting as director general in the absence of the director general.
16. Where a casual vacancy occurs among the protected group representatives on the Commission, the Minister shall forthwith invite the organisation which previously nominated that member to nominate a person for appointment to fill the vacancy and the Minister shall appoint the person nominated to fill the vacancy.
17. — (1) The Minister, with the consent of the Minister for Finance, may appoint such officers and servants as he thinks necessary to assist the Commission in the performance of its functions. Such officers and servants will be selected on the basis of open recruitment.
- (2) There shall be a Chief Executive Officer of the Commission (who is referred to in this Act as the Chief Executive).
- (3) The Chief Executive shall be appointed by the Minister after a process of open recruitment.
- (4) The Chief Executive shall perform the functions conferred on him by this Act and such other functions (if any) as may be assigned to him by the Commission.
- (5) The functions of the Chief Executive under this Act may be performed during his temporary absence by such officer of the Commission nominated for that purpose by the Commission.
- (6) The officers and servants so appointed shall hold office on such terms, and receive such remuneration, as the Minister for Finance determines.
18. — (1) The Commission shall hold such and so many meetings as may be necessary for the performance of its functions and may make arrangements for the regulation of its proceedings and business.
- (2) Such arrangements may, with the approval of the Minister, provide for the discharge, under the general direction of the Commission, of any of its functions by a committee of the Commission.
19. (1) The Minister may fix or sanction the date, time and place of the first meeting of the Commission.
20. The quorum for a meeting of the Commission shall be six members.
21. At a meeting of the Commission-  
 (a) the director general shall, if present, chair the meeting;  
 (b) in the absence of the director general or, if the office of director general of the Commission is vacant and the deputy director is not present or the office of deputy director is vacant, the members of the Commission present shall choose one of their number to chair the meeting.
22. The chairman, directors and each ordinary member of the Commission attending a meeting of the Commission shall have one vote.



23. Every question at a meeting of the Commission shall be determined by a majority of the votes cast on the question and, in the case of an equal division of votes, the chairman of the meeting shall have a second or casting vote.

24. The Commission may act notwithstanding one or more than one vacancy among its members.

25. Subject to this Schedule, the Commission shall regulate its procedure and business, and shall provide that the burden of proof in claims concerning unlawful discrimination rests upon the respondent or alleged discriminator.

26.— (1) The Commission shall, as soon as may be after its establishment, provide itself with a seal.

(2) The seal of the Commission shall be authenticated by the signature of the director general or some other member of the Commission authorised by it to act in that behalf and by the signature of an officer of the Commission authorised by it to act in that behalf.

(3) Judicial notice shall be taken of the seal of the Commission and any document sealed with the seal shall be received in evidence.

## SECOND SCHEDULE Human Rights Tribunal

1. A tribunal of the Human Rights Tribunal shall consist of three judges.

2. The chairman of a tribunal shall be such member of the tribunal as a majority of the members thereof may determine.

3.— (1) A tribunal shall hold sittings and at the sittings may take evidence and may receive submissions by or on behalf of the parties concerned.

(2) Sittings of a tribunal shall be held in public.

4. A witness whose evidence has been or is being or is to be given before a tribunal shall be entitled to the same privileges and immunities as a witness in a court.

5. A decision of a tribunal may be by a majority of its members.

6. The chairman of a tribunal may—

(a) direct in writing the witness concerned to attend before the tribunal on a date and at a time and place specified in the direction;

(b) direct in writing any other person whose evidence is required by the tribunal to attend before the tribunal on a date and at a time and place specified in the direction and there to give evidence and to produce any document or thing in his possession or power specified in the direction;

(c) direct that other person to produce to the tribunal any specified document or thing in his possession or power; and

(d) give any other directions for the purpose of the proceedings that appear to him reasonable and just.

7. The reasonable expenses of witnesses directed under paragraph 6 of this Schedule to attend before a tribunal shall be paid out of money provided by the Oireachtas.

8. A person who—

(a) having being directed under the said paragraph 6 to attend before a tribunal and, in the case of a person so directed under subparagraph (b) of that paragraph, having had tendered to him any sum in respect of the expenses of his attendance which a witness summoned to attend before the District Court would have entitled to have tendered to him, without just cause or excuse disobeys the direction;

(b) being in attendance before a tribunal pursuant to a direction under the said subparagraph (b), refuses to take the oath on being required by the tribunal to do so or refuses to answer any question to which the tribunal may legally require an answer;

(c) without just cause or excuse disobeys a direction under subparagraph (b) of the said paragraph 6 in relation to the giving of evidence or the production of a document or thing or a direction under subparagraph (c) or (d) of the said paragraph 6; or

(d) does any other thing in relation to the proceedings before a tribunal which, if done in relation to proceedings before a court by a witness in the court, would be contempt of that court, shall be guilty of an offence and shall be liable on summary conviction





to a fine not exceeding £700 or to imprisonment for a term not exceeding six months or to both.

9. If a person gives false evidence before a tribunal in such circumstances that, if he had given the evidence before a court, he would be guilty of perjury, he shall be guilty of that offence.

10. The procedure of a tribunal shall be subject to the constitutional right of fair procedures and to the provisions of this Act, be such as shall be determined by the Tribunal by rules made by it with the consent of the Minister, and the rules shall without prejudice to the generality of the foregoing, make provision for-

- (a) notifying the complainant, the respondent and the Chief Executive of the Commission of the date, time and place of the relevant sitting of the tribunal;
- (b) giving the respondent concerned a statement of the unlawful discrimination alleged, the names of the witnesses whom it is proposed to call to give evidence before the tribunal relating to the complaint, a copy of each statement intended to be used at the tribunal and an indication in writing of the nature and source of any information relating to the matter which has come to notice in the course of the investigation of the complaint;
- (c) enabling the respondent and the complainant to be present at the relevant sitting of the tribunal and enabling the respondent concerned to present his case to the tribunal in person or through another person or a legal representative;
- (d) enabling written statements to be admissible as evidence by the tribunal with the consent of the respondent concerned;
- (e) enabling any signature appearing on a document produced before the tribunal to be taken, in the absence of evidence to the contrary, to be that of the person whose signature it purports to be;
- (f) the examination (on oath or otherwise as the tribunal may determine) of witnesses before the tribunal by the tribunal;
- (g) the examination and cross-examination (on oath or otherwise as the tribunal may determine) of witnesses before the tribunal by or on behalf of the complainant, the chief executive and the respondent concerned;

(h) the determination by the tribunal whether evidence at the tribunal should be given on oath;

(i) the administration by the chairman of the tribunal of the oath to witnesses before the tribunal;

(j) the announcement at a sitting of the tribunal of the decision or decision of the tribunal in relation to a matter referred to it; and

(k) the making of a sufficient record of the proceedings of the tribunal, and the provision of a written statement of reasons of the decision of the tribunal.







## APPENDIX 6

### RESEARCH INTO ANTI-RACIST POLICIES AMONG GOVERNMENT DEPARTMENTS, LOCAL AUTHORITIES AND PUBLIC BODIES.

The following Government Departments, local Authorities and Public Bodies were surveyed.

DEPARTMENT OF AGRICULTURE ( N.I.)  
NORTHERN IRELAND CIVIL SERVICE COMMISSION.  
DEPARTMENT OF ECONOMIC DEVELOPMENT  
DEPARTMENT OF EDUCATION (N.I).  
DEPARTMENT OF THE ENVIRONMENT(N.I).  
DEPARTMENT OF FINANCE AND PERSONNEL.  
DEPARTMENT OF HEATH AND SOCIAL SERVICES.  
HARBOUR AUTHORITIES.  
AGRICULTURAL MARKETING BOARDS.  
ARTS COUNCIL FOR NORTHERN IRELAND.  
COUNCIL FOR CATHOLIC MAINTAINED SCHOOLS.  
EDUCATION AND LIBRARY BOARDS (H.Q.).  
    BELFAST EDUCATION AND LIBRARY BOARD  
    SOUTHERN EDUCATION AND LIBRARY BOARD  
    WESTERN EDUCATION AND LIBRARY BOARD  
    NORTH EASTERN EDUCATION AND LIBRARY BOARD  
    SOUTH EASTERN EDUCATION AND LIBRARY BOARD  
ENTERPRISE ULSTER.  
FISHERIES CONSERVANCY BOARDS FOR (N.I).  
INDUSTRIAL TRAINING BOARDS.  
LABOUR RELATIONS AGENCY.  
LAGANSIDE CORPORATION.  
LIVESTOCK MARKETING COMMISSION FOR (N.I.).  
LOCAL ENTERPRISE DEVELOPMENT UNIT.  
NATIONAL BOARD FOR NURSING, MIDWIFERY AND HEALTH VISITING.  
NORTHERN IRELAND ELECTRICITY BOARD.  
NORTHERN IRELAND FIRE AUTHORITY.  
NORTHERN IRELAND HEALTH AND SOCIAL SERVICES TRAINING COUNCIL.  
NORTHERN IRELAND HOUSING EXECUTIVE.  
NORTHERN IRELAND SPORTS COUNCIL.  
NORTHERN IRELAND TOURIST BOARD.  
NORTHERN IRELAND TRAINING EXECUTIVE.  
TRUSTEES OF THE ULSTER FOLK AND TRANSPORT MUSEUM.  
TRUSTEES OF THE ULSTER MUSEUM.  
FAIR EMPLOYMENT COMMISSION FOR (N.I.).  
INDEPENDENT COMMISSION FOR POLICE COMPLAINTS FOR (N.I.).  
POST OFFICE (N.I.).  
THE LAW SOCIETY OF NORTHERN IRELAND.



EQUAL OPPORTUNITIES COMMISSION FOR (N.I.).  
GENERAL CONSUMER COUNCIL FOR (N.I.).  
MENTAL HEALTH COMMISSION.(N.I.).  
ANTRIM BOROUGH COUNCIL.  
ARDS BOROUGH COUNCIL.  
ARMAGH DISTRICT COUNCIL.  
BALLYMENA BOROUGH COUNCIL.  
BALLYMONEY BOROUGH COUNCIL.  
BANBRIDGE DISTRICT COUNCIL.  
BELFAST CITY COUNCIL.  
CARRICKFERGUS BOROUGH COUNCIL.  
CASTLEREAGH BOROUGH COUNCIL.  
COLERAINE BOROUGH COUNCIL.  
COOKSTOWN DISTRICT COUNCIL.  
CRAIGAVON BOROUGH COUNCIL.  
DERRY CITY COUNCIL.  
DOWN DISTRICT COUNCIL.  
DUNGANNON DISTRICT COUNCIL.  
FERMANAGH DISTRICT COUNCIL.  
LARNE BOROUGH COUNCIL.  
LIMAVADY DISTRICT COUNCIL.  
LISBURN BOROUGH COUNCIL.  
MAGHERAFELT DISTRICT COUNCIL.  
MOYLE.DISTRICT COUNCIL.  
NEWRY & MOURNE DISTRICT COUNCIL.  
NEWTOWNABBAY BOROUGH COUNCIL.  
NORTH DOWN BOROUGH COUNCIL.  
OMAGH DISTRICT COUNCIL.  
STRABANE DISTRICT COUNCIL.

**GOVERNMENT DEPARTMENTS, PUBLIC BODIES AND LOCAL  
AUTHORITIES WHICH HAVE REPLIED TO THE SURVEY TO DATE:**

COUNCIL FOR CATHOLIC MAINTAINED SCHOOLS  
DEPARTMENT OF ECONOMIC DEVELOPMENT  
DEPARTMENT OF EDUCATION (N.I).  
N.I. SCHOOLS EXAMINATIONS AND ASSESSMENT COUNCIL

EDUCATION AND LIBRARY BOARDS (H.Q).  
BELFAST EDUCATION AND LIBRARY BOARD  
WESTERN EDUCATION AND LIBRARY BOARD  
NORTH EASTERN EDUCATION AND LIBRARY BOARD  
SOUTH EASTERN EDUCATION AND LIBRARY BOARD

FISHERIES CONSERVANCY BOARDS FOR (N.I).  
NATIONAL BOARD FOR NURSING,MIDWIFERY AND HEALTH  
VISITING.  
NORTHERN IRELAND FIRE AUTHORITY.





NORTHERN IRELAND HEALTH AND SOCIAL SERVICES TRAINING  
COUNCIL.

FAIR EMPLOYMENT COMMISSION FOR (N.I.).

EQUAL OPPORTUNITIES COMMISSION FOR (N.I.).

GENERAL CONSUMER COUNCIL FOR (N.I.).

LOCAL GOVERNMENT STAFF COMMISSION FOR NORTHERN  
IRELAND

TRUSTEES OF THE ULSTER MUSEUM

ARDS BOROUGH COUNCIL.

ARMAGH DISTRICT COUNCIL.

BALLYMONEY BOROUGH COUNCIL.

BANBRIDGE DISTRICT COUNCIL.

BELFAST CITY COUNCIL

CASTLEREAGH BOROUGH COUNCIL.

CRAIGAVON BOROUGH COUNCIL.

DERRY CITY COUNCIL.

DOWN DISTRICT COUNCIL.

LISBURN BOROUGH COUNCIL.



## Analysis

67 Agencies were contacted.

28 of these replied.

Of the agencies which replied, none had any anti-racist or multi-cultural policies other than a standard equal opportunities policy statement in terms of their employment practice which sometimes included the term 'race'. The following is typical of this kind of response:

'I enclose a copy of the Council's Equal Opportunities Policy Statement which you will see covers all forms of discrimination, including discrimination on the grounds of race'

The CAJ was pleased to find that many agencies have paper anti-discrimination policies committing them to equal opportunity and eschewing discrimination on the grounds of race. However, *not one respondent offered any evidence of this being supported by proactive intervention to investigate and respond to the specific needs of minority ethnic groups.* Thus there is effectively *no* evidence from our survey of any existing substantive anti-racist practice in any area of national or local government or public body in Northern Ireland. This suggests that, whatever the rhetoric of ongoing administrative changes, current practice within government agencies is woefully inadequate. Without anti-racist legislation and an effective anti-racist agency, there is little prospect of the administrative changes which are so desperately needed.



What is Racism?

# 1. RECOGNIZING RACISM

## APPENDIX 7



Stelano Cajmin

Racism is a toxic that causes very strong feelings in people. When this is an unjust argument, often based on the idea that people are not equal, it is a racist argument. Racists, most of us do not in fact, if someone suggested that we were promoting in a racist way, we would be offended and/or angry. These feelings often stop us thinking clearly about racism.









### EXAMPLE ONE CONCEPTS

1. In each space write down words that you feel best describe/define the concept. Make your personal list (15 minutes).
2. Reach a group consensus for each concept and prepare a group list of definition of each concept using words from your lists.

MULTI-CULTURAL/RACIAL SOCIETY

MULTI-CULTURAL/RACIAL APPROACH

EQUAL OPPORTUNITIES

RACE EQUALITY

PREJUDICE

DISCRIMINATION

RACE RELATIONS

ANTI-RACIST APPROACH

EMPOWERMENT

Debriefing skill of the trainer/s or facilitator/s is essential for this exercise

### EXAMPLES OF DESIGNING EXERCISES

In the past four years the Race Equality Unit – Personal Social Services (National Institute For Social Work) has developed and designed a number of exercises on race equality and social work issues. Some of these exercises are quoted below as examples. All the following exercises have been used by the Unit Staff and its Associates as part of a training programme. Evaluation of these exercises has been positive. I hope that the examples assist EOT designers to develop the exercises further.

Example one is based on workshop on concepts, which are often used by social work (and other) workers in a way as if all these concepts are co-terminous and interchangeable, lacking clarity and creating confusion. Yet words are not just words, particularly if they are used by members of staff in a workplace situation, and each concept has different meanings to different staff trying to achieve the same goal. This exercise refrains from a prescriptive presentation of definitions of concepts and encourages participants to explore their own thoughts and feelings in describing the words individually and as a group. The process enables participants to take part in a dialogue at their own level and pace, and sharpens their listening and analytical skills in reaching a group consensus



Example two is an useful exercise for an EOT programme aiming to inform participants about Council or Departmental Policy on Equal Opportunity and targeting to involve participants in indentifying the implications of policies for them. This exercise can be adapted for any policy or legal documents or any section of these documents. The strength of this exercise is in pushing the participants in making connections between their work and policies or legislation and taking on the professional responsibility for themselves, instead of trainers spoon-feeding them with policy implications for practice.

### **EXAMPLE TWO IMPLICATIONS OF POLICIES/LEGISLATION FOR ANTI-RACIST PRACTICE**

Please make sure your group considers the following.

1. Identify and list those issues that are **DIRECTLY** related to your group and work from the Policy Paper. (You may wish to select specific statements from the policy paper)
2. Identify and list those issues that are **INDIRECTLY** related to your group and work from the Policy Paper.

(For numbers 1 and 2 use a flip chart paper to make a list under headings of "DIRECT" and "INDIRECT".)

3. Focus on those statements and issues that are directly related to your group and work and **IDENTIFY**—

(Work either on your own or in pairs for the first 20 minutes and then work as a group. Try to reach a consensus.)

- (a) Who is/are responsible for implementing the statements and pursuing the issues at **PERSONAL / PROFESSIONAL/ MANAGEMENT and TEAM LEVEL**
- (b) How can your group be responsible for implementing the statements and pursuing the issues at **PERSONAL/ PROFESSIONAL/MANAGEMENT and TEAM LEVEL**
- (c) What can your group contribute to making decisions about implementing the statements and pursuing the issues.
- (d) How is your group going to make these contributions.
- (e) What changes does your group anticipate in promoting race equality and reducing racism or any other forms of oppression and discrimination.
- (f) Do these changes relate to your work and group members – How?
- (g) How is your group going to deal with these changes at **PERSONAL / PROFESSIONAL / MANAGEMENT and TEAM LEVEL**.

The following two examples provide a general format for designing Anti-Racist (or Anti-sexist or Anti-disablist) Staff Development and Training Programmes. The examples are specifically related to trainers or facilitators themselves.

### **EXAMPLE THREE**

Design an Anti-Racist Staff Development and Training Programme for Staff involved in recruitment and promotion of staff.

1. Aims and objectives of your Training Programme.
2. Discriminatory (direct/indirect) factors in recruitment proceedings and mechanisms for promotions.
3. Composition of existing workforce in relation to ethnicity, gender, disability, status, position etc.
4. Job Description and expectations – e.g. Roles, Tenets, Qualifications, terms and conditions of employment etc.
5. Advertisement – e.g. language, message, choice of press, internal-external advertisement, reaching potential applicants and gaining their confidence.
6. Shortlisting/Interviewing/Selection process – e.g. Criteria for selection, methods of interviews, panel members, keeping records, appeal.
7. Workplace competence.
8. Supervision, management and support.
9. Performance Appraisal.
10. Training Opportunities.
11. Grievance/Disciplinary procedures.
12. Monitoring and Evaluation of race equality in recruitment and promotion of Black and Minority Ethnic Staff.

Your Group may wish to add on further considerations.



"BRITISH RACISM MEANS ...."

- 1 Believing that Black people have set characteristics, eg All West Indians are good at sport or All Chinese people gamble.
- 2 Hating Black people, Jews etc, as Nazi groups do - believing they have no right to be in Britain and trying to force them out.
- 3 Expecting Black people to fit into the "British Way of Life".
- 4 Going out of your way to stop Black People getting the same opportunities as whites.
- 5 White people having the power in society, and controlling it to exclude Black people.
- 6 Being patriotic and sticking up for your own kind.
- 7 Doing nothing when white people call Black people "Paki", "Darkie", etc.
- 8 Discrimination against Black people is built into the laws of the country.
- 9 Believing that Black women are more oppressed than white women.
- 10 Supporting fascist organisations like the British Movement.
- 11 Perceiving the cultural backgrounds of Black people as exotic, strange, etc.
- 12 Putting up with a system which discriminates against Black People and not trying to change it.
- 13 Blaming Black people for poor housing conditions, rising crimes, etc.
- 14 Believing that Black people are inferior to whites, less intelligent, not capable of doing the same job.
- 15 Believing that "British Culture" is in danger of being swamped due to Black people.









WORKSHEET 2

EXERCISE 2

GROUP .....

List four or five statements from Worksheet 1 which most accurately describe what "Racism in Britain" means.

1

2

3

4

5



"RACISM IN BRITAIN MEANS ...."

<u>INFORMATION</u>	<u>OBJECTIVE(S)</u>
<p>Nature of Activity: Small group exercise followed by general discussion.</p> <p>Time: 1<sup>3</sup>/<sub>4</sub> hours approximately.</p> <p>Materials required:</p> <ul style="list-style-type: none"> <li>* Notes for students</li> <li>* Worksheets 1 and 2</li> <li>* Overhead projector transparencies</li> </ul>	<p>By the end of this exercise students should have appreciated the distinction between:</p> <ul style="list-style-type: none"> <li>* racialism</li> <li>* prejudice</li> <li>* racism</li> </ul> <p>They should have noted the distinction and accepted their validity.</p>

As in Exercise 1 a detailed introduction will not be necessary. The reason for this is that students are still being asked to discuss with one another and then record their own understandings and their own definitions. However, at the end of this exercise, during the plenary discussion, it is recommended that tutors display overhead projector transparencies 1 to 4 which present our definitions, in a very abbreviated form, of some key concepts.

It is recommended that students are given the notes and the worksheets accompanying this exercise, arranged into small groups for the specific task of examining 15 statements and choosing 4 or 5 of them (or less if necessary) which describes most accurately each group's notion of racism in Britain. Having noted these, the group convene in plenary discussion for the purpose of further clarification.

SCHEME FOR THE EXERCISE

<u>Description</u>	<u>Content</u>	<u>Suggested Timing</u>	<u>Actual Timing</u>
Introduction	Brief introduction, distribute materials, make clear time available.	10 mins	
Small Group Activity	15 statements considered and 4-5 selected which best describes racism in Britain	30 mins	
Plenary Discussion	Group statements compared. Definitions presented on overhead projector and discussed.	60 mins	



# WHAT IS RACISM?

## Recognizing Racism

### What is racism?

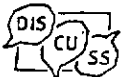
In order to think clearly about racism, we need to know what it is we mean by the word.



Read through the following statements. Each gives a different view of what racism is. Tick the one that is closest to your own point of view.

- 'Racism means hating black\* people, Jews, etc., as Nazi groups do. It means believing that they have no right to be in Britain, and trying to force them out.'
- 'Racism means believing that black people are inferior to whites, i.e. not capable of doing the same jobs, less intelligent, etc.'
- 'Racism means going out of your way to stop black people getting the same opportunities as whites.'
- 'Racism means putting up with a system that discriminates against black people, and not trying to change it.'
- 'Racism means being patriotic and sticking up for your own kind.'

The quotes show that people may have very different ideas about what racism is. If you went out and asked ten people what they think racism is, you would probably get ten different answers.



Think for a minute about what you understand by racism, and write your own definition here:

Even dictionaries give differing definitions of racism, so it's not really surprising that people often disagree when they talk about what racism is. However, most of the definitions of racism contain one or more of the following features:

- (a) Division of people into groups, usually according to their physical appearance.
- (b) These groups are then called 'races'.
- (c) The belief that one group is naturally superior to the others.
- (d) The use of this belief to justify the fact that the other groups get inferior opportunities or treatment.

From this we can draw up one basic, simple definition of racism:

Racism is the belief that one group of people, who can usually be identified by their physical appearance, is naturally superior to the other groups. This belief is used to justify the fact that the other groups get inferior opportunities and or treatment.

This definition does not cover all aspects of what racism means, and as you work your way through these materials you may want to add to the definition to make it more clear or comprehensive. (Some

other words are often used when racism is discussed, like 'prejudice', 'discrimination', etc. Simple definitions of these words are given at the end of this topic.) But, for the time being, we can use our definition to check whether actions – our own or others – are racist. You will notice that all of the following examples are about racism and black people. Racism can, of course, affect other groups, such as Jewish people. We have concentrated on the effects of racism on black people, as these are most evident in Britain today.

### Recognizing racist actions

Some actions are very clearly racist, but with others it is much more difficult to tell, as Case Studies A–E show.

#### CASE STUDY A

An estate agent has been asked to handle the letting of a new block of flats in a very pleasant area. She believes that black people would be less good tenants than white people. She instructs the staff not to give details of the flats to any black callers. Do you think the estate agent behaved in a racist way?



\*The word 'black' is used to include people of Afro-Caribbean and Asian origin. We use this term because we believe it is most generally acceptable to people from those groups, though some may prefer other terms, e.g. 'coloured'.

\*\*page - this term is defined at the end of this topic



The *intention* of the estate agent is clearly to give inferior opportunities to black people. This is based on the belief that all black people are less good tenants than white people.

The *method* of the estate agent is clearly racist. S/he does not apply the normal tests of a good tenant (e.g. references from previous landlord, bank, etc.) to black applicants. The only test is the colour of the applicant's skin.

The *effect* of the estate agent's actions is clearly based on racism. Black applicants are not given the chance to rent a flat.

### CASE STUDY B

A local authority housing department has a policy of scattering black tenants throughout its estates. The reasons given for this policy are: to ensure that there is no discrimination against black applicants, leading to them being allocated to worse estates; and to encourage racial mixing, and good 'race' relations.

- Do you think there is anything racist about this?

The *intention* of the housing department is to prevent discrimination against black tenants, and to encourage good 'race' relations. This intention is *not* racist.

The *method* used is racist. Instead of taking action to make sure that the housing allocation officers do not discriminate (for example, by issuing a policy statement and instructions to staff, and then monitoring to see that it is being observed), the authority has decided to apply different allocation procedures to black tenants than to whites. So, a black tenant may be refused a house on the estate of their first choice, even when one is available, because the quota of black tenants on that estate is already filled. This method also assumes that there is a link between good 'race' relations and the numbers of black tenants on an estate. It assumes that larger numbers of black tenants on an estate will cause bad 'race' relations.

The *effect* is clearly based on racism, as black tenants are not allowed equal choice in where they live compared to white tenants.

The beliefs underlying the policy are also racist. They assume that it is all right to treat black tenants less well than whites, even though they state that their intention is to do the opposite.

This example is very complex. It shows that anti-racist intentions are not enough. If you are not very careful about the method used, you may produce an effect that is unintentionally racist.

### CASE STUDY C

A company finds that, at a time of high unemployment, it has more applicants for unskilled jobs than it has vacancies. In the past some of these jobs have been given to Asian workers who do not speak, read or write English fluently. They have been able to do the work satisfactorily and the company has said that there was no need for language training for these workers. Now that there are more applicants to choose from, the company has decided to ask all applicants to pass a test in basic written and spoken English before they can be offered a job.

Do you think this is racist?

The *intention* of the company is not stated, but it would appear to be to recruit better educated workers. This is not racist.

The *method* of giving language tests to all applicants, black and white, appears not to be racist. Black people are being treated in the same way as whites. However, why is the company using this test if it is not relevant to the jobs to be done, and has not been used before?

As the test is not relevant to the jobs, the only effect it will have is to exclude non-English applicants, who in the past have been mainly Asians. The effect is clearly racist, and one might guess whether or not the unstated intention of the company is racist.

You can see from Case Studies A, B and C that it is possible to act in a racist way because you intend to (A), when you don't intend to (B), and when you deny that you intend to (although we can't be certain from the information presented in Case Study C).

The methods that lead to racist actions may be clearly racist (A and B), or they may appear not to be racist (C).

In each of the three cases we can see, by looking at the effects of the actions, that they are racist.



Now read through Case Studies D and E, and see whether you think that the intention, the method and/or the effect are racist. Tick the answers you think are correct.

### CASE STUDY D

A company has several applicants for a supervisor's job, all of whom are equally well-qualified. All of the applicants are called for interview except one, who is black. The company says that its intention is to get the best person for the job, and they are not interviewing the black applicant because they don't believe that the white workers would accept him. The company does not normally ask the workers whether they like applicants for management jobs.

- Is the effect racist? Why?  
Yes  No  Don't know
- Is the method racist? Why?  
Yes  No  Don't know
- Is the intention racist? Why?  
Yes  No  Don't know

In Case Study D, the company is changing its recruitment procedures because one of the applicants is black. We can guess that management would not agree if the workforce asked to be allowed to have a say in the choice of all supervisors. So management are blaming the workforce for forcing them to take a racist action when they were under no obligation to take that action. Management are also assuming that the workforce will support their racist intentions, and so will not challenge what they are doing.

### CASE STUDY E

A company has a vacancy for a supervisor in a department where 60% of the workers are Asian. The supervisor's job will include explaining to other workers how to do new jobs, filling in reports and order forms, etc. The company says that all applicants for the job must pass a test to show that they have the level of spoken and written English necessary for the job. They do not demand a test of the ability to speak Asian languages fluently.

- Is the effect racist? Why?  
Yes  No  Don't know
- Is the method racist? Why?  
Yes  No  Don't know
- Is the intention racist? Why?  
Yes  No  Don't know

In Case Study E the company is applying an English language test, as was done in Case Study C. In this case the method does not appear to be racist because it is testing skills needed for the job. However, you may ask whether it is not racist to demand tests of skills in English, but not in the Asian languages of 60% of the workers whom the supervisor would manage.

The case studies illustrate some of the difficulties in assessing whether or not an action is racist. Some of the confusion arises because people are unaware that their actions can have a racist effect without them deliberately intending to be racist. So, they feel that they are being unfairly accused of being racist. By looking carefully not only at intentions, but also at the methods and effects of actions, we may be able to overcome this problem.





## WHAT IS RACISM?

### Recognizing Racism

As the case studies have also indicated, racism is not something that is just shown in the actions of individuals. The established systems and practices of large organizations, and indeed of government, may also have a racist effect. In later sections of this resource pack we will be looking at some institutions, and the ways in which racist practices can be identified and changed.

#### Definitions

**'Race':** The definition of this term as applied to humans has never been very clear. Sometimes the word is used for convenience to define *social* groups, such as people from different parts of the world, or with some special characteristic (e.g. black skin or hair colour, but not people who wear glasses or who are left-handed). Some people use the term to define *biological* groups, as if they were varieties of cabbages or cows. However, many scientists argue that the biological differences between humans are so superficial, and so spread out and intermingled, that the term is meaningless. So, we have to be careful how it is used. Because of this we have always put the word in inverted commas in this resource pack.

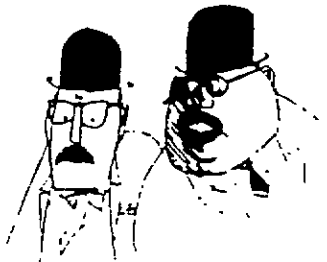
**Prejudice:** A prejudiced person is someone who holds views about an individual or group of people which are not based on fact. S/he is unwilling to change these views even when s/he has evidence to suggest that they are wrong.

**Discrimination:** Discrimination occurs when a person is treated differently from others simply because of his or her membership of a particular group. So, we can have racial discrimination, sex discrimination, etc.

**Racialism:** Some people use the word 'racialism' when they are talking about acts of discrimination based on racism. They would then use the word 'racism' to refer to the beliefs only. Other people use the word 'racism' to cover both beliefs and actions. In these materials we have chosen to use just the word racism, as we felt it was clearer and less confusing.



*"You have to face it...."*



*....Enoch Powell is simply saying what everyone in the country thinks...."*



*....I don't think that way, of course...."*



*....but everyone else does!"*







## DISCUSSION

Begin this session by recording on a flip chart, blackboard or overhead projector, each group's set of statements. During the piloting of these materials, we came up with the following based upon the 15 statements. The students agreed that Racism in Scotland involved:-

- 1 A belief that black people have set characteristics and behaviour.
- 2 A belief in white superiority.
- 3 Power to enforce these beliefs.
- 4 A system of government and society based on a belief of white superiority.
- 5 Acceptance of a system which discriminates against black people.

Having spent some time in discussing students views, it is recommended that tutors begin to express their own views on the topic which, hopefully, will not be widely different from the writers of this package.

Before going into definitions, tutors may find it helpful to refer to the outline presented overleaf of a short talk given by Dr John Whiteford, a sociologist from Moray House College of Education, Edinburgh in Glasgow in January 1986. Dr Whiteford points out that his perspective owes a good deal to the Institute of Race Relations.



## Exercise 13 Commitment to Combat Racism

### Goals

1. To assess participants' commitment to combat racism.
2. To help participants generate ideas about actions they can take.

### Materials needed

Copies of "Commitment to Combat Racism," sheets 1 and 2 (pages 171 and 173)  
Pens or pencils

### Instructions

1. Hand out copies of "Commitment to Combat Racism," sheet 1.
2. Ask participants to check those items on which they have taken action.
3. Ask them to share their lists.
4. Discuss the following:
  - a. Reactions to the list and the items.
  - b. The kinds of actions that can be taken on institutional and personal levels.
5. Hand out copies of "Commitment to Combat Racism," sheet 2. Develop through brainstorming additional kinds of actions that can be taken.

### Note to facilitator

1. At the start of this exercise participants may feel overwhelmed by the commitment to action. This exercise should help them realize that they can take action on various levels and in various ways. They gain a sense of support when they understand that they do not have to do something grandiose or take on a whole system in order to begin combating racism.
2. Sheet 2 lists action strategies that were developed by a group of students in a college dormitory. They can be adapted for other systems and institutions. Encourage the participants to adapt the list to fit their own settings.

Time 30 minutes

170

## Commitment to Combat Racism Sheet 1<sup>1</sup>

Indicate whether you have taken action on the items listed below.  
Check appropriate column.

	Yes	No
1. Have I aggressively sought out more information in an effort to enhance my own awareness and understanding of racism (talking with others, reading, listening)?	<input type="checkbox"/>	<input type="checkbox"/>
2. Have I spent some time recently looking at my own racist attitudes and behavior as they contribute to or combat racism around me?	<input type="checkbox"/>	<input type="checkbox"/>
3. Have I reevaluated my use of terms or phrases that may be perceived by others as degrading or hurtful?	<input type="checkbox"/>	<input type="checkbox"/>
4. Have I openly disagreed with a racist comment, joke, or action among those around me?	<input type="checkbox"/>	<input type="checkbox"/>
5. Have I made a personal contract with myself to take a positive stand, even at some possible risk, when the chance occurs?	<input type="checkbox"/>	<input type="checkbox"/>
6. Have I become increasingly aware of racist TV programs, advertising, news broadcasts, etc? Have I complained to those in charge?	<input type="checkbox"/>	<input type="checkbox"/>
7. Have I realized that White Americans are trapped by their own school, homes, media, government, etc., even when they choose not to be openly racist?	<input type="checkbox"/>	<input type="checkbox"/>
8. Have I suggested and taken steps to implement discussions or workshops aimed at understanding racism with friends, colleagues, social clubs, or church groups?	<input type="checkbox"/>	<input type="checkbox"/>
9. Have I been investigating political candidates at all levels in terms of their stance and activity against racist government practices?	<input type="checkbox"/>	<input type="checkbox"/>

<sup>1</sup>Developed by James Adler, University of Maryland.

