

**Joint submission by UK NGOs Against Racism to the UN Committee
on the Elimination of Racial Discrimination (CERD) with regard to
the UK Government's 18th and 19th Periodic Reports**

July 2011

With contributions from:

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Race Equality First
Detention Action
Indigenous People's Links

In collaboration with an additional group of NGOs who participated in NGO
consultation events across the UK, listed in Appendix C

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This report is a compilation of efforts from a broad range of anti-racist, community and human rights non-governmental organisations (NGOs). Each contributing organisation may not necessarily endorse every position set forth; rather the report reflects a collective vision of race equality and human rights in the UK.

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INTRODUCTION

This report brings together the responses of a broad range of UK non-governmental organizations (NGOs) to the UK Government's 18th and 19th Periodic Reports to the United Nations Committee on the Elimination of Racial Discrimination (CERD), and provides an NGO perspective on developments in race relations in the UK. Co-ordinated by the Runnymede Trust (www.runnymedetrust.org), this report has been produced collaboratively by UK NGOs Against Racism, a group of NGOs from across the UK working to promote race equality and human rights.

We welcome the opportunity to make this submission to the Committee in advance of its examination of the UK's compliance with the International Convention on the Elimination of all forms of Racial Discrimination (ICERD) in August 2011. The participating organizations seek to work constructively with CERD and the UK Government in order to move closer to turning the rights provided for in the Convention into a reality for the UK's minority ethnic communities. We would like to thank the Joseph Rowntree Charitable Trust for providing us with the support to engage with this process. We also wish to thank all the NGOs and individuals who have contributed to this collective exercise.

While we welcome the publication of the UK Government's 18th and 19th Periodic Reports, we note the failure of the UK Governments to submit a report to CERD every two years, as provided for by article 9(1b) of the Convention. The Government's Periodic Report was due to be submitted to CERD in 2006, but was only submitted in February 2010.

Although there remain some inadequacies in UK legislation on racial discrimination, in many respects the UK's legislative framework is relatively strong; the crucial challenge lies in ensuring that this legislation is fully implemented, and that our laws and policies lead to more equal outcomes for minority ethnic communities in the UK. In the UK, racial discrimination is still a significant barrier in the lives of too many people from a minority ethnic background. Although the situation is not uniform across different ethnic groups, many members of these communities experience disadvantage in ways which severely limit the realization of the rights provided for under ICERD. Evidence points to the fact that many minority ethnic communities, including migrants and asylum seekers, have significantly poorer outcomes than the rest of the population in key areas such as education, employment, health and housing.

It is important to note that since the submission of the Government's 18th and 19th Periodic Report to CERD, there has been a change of governing party. The State Party report was therefore written by the previous Government, and does not include developments initiated by the new Government which came into power in May 2010. Many of the measures initiated under the previous Government as outlined in its Periodic Report – which were making positive moves towards redressing some of the ethnic imbalances – have been discontinued by the current Government. In addition, many of the current government's policies and proposals have the potential not only to undermine any progress made in moving closer towards achieving more equal outcomes for minority ethnic individuals, but are likely in many cases to worsen the situation for these communities, taking us further away from the UK's fulfilment of its obligations under ICERD.

We acknowledge that some progress has been made since 2003, and that the previous Government acted on a number of the recommendations raised by the Committee at the last reporting session, notably the establishment in 2006 of a single equality and human rights body, the Equality and Human Rights Commission, and the enactment of the Equality Act 2010, intended to harmonise and simplify equality law.

However, in a number of areas, not only has the Government failed to address CERD's concerns since the last periodic review, but the situation has in fact deteriorated since the submission of the Government's report. We are particularly concerned about the impact of policies pursued in relation to the financial crisis and subsequent deficit reduction plans and their impact on minority ethnic communities. Whilst we recognise that the financial crisis in the UK presents a very significant challenge, it is vital that minority ethnic communities are not further marginalised and excluded as the UK begins to make an economic recovery. The programme of radical cuts implemented to tackle the financial deficit has the potential to disproportionately impact those from minority ethnic communities.

Key concerns arising from developments in government policy and action between the submission of the Government's Periodic Report in February 2010 and July 2011 that we believe will adversely impact on race equality include:

- A lack of government leadership to take the necessary steps to achieve race equality in the UK
- A lack of commitment to tackling ethnic inequalities in outcomes in areas of education, health, housing, and employment
- The disproportionate impact of the Government's spending cuts and reforms to social welfare on minority ethnic communities
- The significant reduction in the budget and proposed changes to the remit of the Equality and Human Rights Commission
- Proposals to remove or not to implement important provisions of the Equality Act
- Increasingly restrictive and discriminatory immigration and asylum policies

This report aims to highlight some of the most significant changes that have occurred since the Government report was submitted in February 2010, notably the policies and new proposals instigated by the Coalition Government which came into power in May 2010.

Report structure

The report firstly gathers our key recommendations for actions the Government should take to promote race equality and eliminate racial discrimination in accordance with the Convention. It then details our principle concerns under each article of ICERD, and notes where the Government has addressed or has failed to address the concerns raised in CERD's concluding observations from the last UK examination in 2003. We then outline our specific concerns under General Comment 25 on gender and General Comment 30 on non-citizens, where we set out issues relating to the discrimination experienced by women from minority ethnic backgrounds and migrants and asylum seekers respectively. Appendices A and B provide an overview of the situation in Northern Ireland and Scotland, and Appendix C lists the NGOs that participated in this collective exercise, to which we are very grateful for their valuable contributions.

ABBREVIATIONS

BNP	British National Party
CAT	Convention Against Torture
CBI	Confederation of British Industry
CEDAW	Convention on the Elimination of all forms of Discrimination Against Women
CERD	Committee on the Elimination of Racial Discrimination
CPS	Crown Prosecution Service
CRC	Convention on the Rights of the Child
CRE	Commission for Racial Equality
CRPD	Convention on the Rights of Persons with Disabilities
DCLG	Department for Communities and Local Government
DFE	Department for Education
DWP	Department for Work and Pensions
ECRI	The European Commission against Racism and Intolerance
EDL	English Defence League
EEA	European Economic Area
EHRC	Equality and Human Rights Commission
EMA	Education Maintenance Allowance
EMAG	Ethnic Minority Achievement Grant
ESOL	English for Speakers of Other Languages
FGM	Female Genital Mutilation
GP	General Practitioner, local doctor not situated in hospital
ICERD	International Convention on the Elimination of all forms of Racial Discrimination
ILO	International Labour Organisation
IPCC	Independent Police Complaints Commission
LGBT	Lesbian, Gay, Bisexual and Transgender
NHS	National Health Service
NGO	Non-governmental organization
NRPF	No Recourse to Public Funds
NUT	National Union of Teachers
OECD	Organisation for Economic Co-operation and Development
ONS	Office for National Statistics
PACE	Police and Criminal Evidence Act
PBS	Points Based System
PCC	Press Complaints Commission
RRA	Race Relations Act
RRAA	Race Relations (Amendment) Act
RSS	Regional Spatial Strategies
SEN	Special Educational Needs
UKBA	United Kingdom Border Agency
UN DRIP	United Nations Declaration on the Rights of Indigenous Peoples

1. RECOMMENDATIONS

Article 2

Government strategy on combating racial discrimination

- The Government urgently needs to establish and implement a strategy for the elimination of racial discrimination in consultation with race equality NGOs.

Spending cuts

- To comply with its statutory equality duty, the Government should consider the likely impact of proposed policy decisions (including proposals to cut public spending) for their impact on race equality. Where an adverse impact is discerned, the proposal should be reconsidered.

Equality Act

- The Government should ensure that any person who considers they have suffered discrimination, harassment, victimisation or other conduct prohibited under the Equality Act 2010 is able to receive free and timely skilled advice on their rights and assistance in seeking legal redress.
- The Government should adopt appropriate provisions to prohibit multiple discrimination and retain the important protection of employees against harassment by a third party.
- The Government should provide more effective leadership on equality in the private sector, by at minimum not referring to rights to equality and non-discrimination as 'burdens on business' and 'unnecessary red tape'.

Immigration/nationality exceptions

- The Government should include all immigration functions fully within the Equality Act, by repealing Schedule 3 paragraph 17 of the Equality Act 2010 and removing unjustifiable exceptions based on nationality.

Caste discrimination

- The Government should acknowledge caste discrimination as an aspect of race discrimination and implement protections against discrimination and harassment accordingly.

Protecting the rights of indigenous peoples

- The Government should take appropriate legislative or administrative measures (including independent monitoring) to prevent acts of trans-national corporations and financial entities registered in the UK that negatively impact on the enjoyment of rights of Indigenous peoples, in territories outside the UK.
- The Government should ratify International Labour Organisation Treaty 169 and ensure that UK registered companies and those funded by UK investments operate in a manner consistent with it and the UN Declaration on the Rights of Indigenous Peoples (UN DRIP).

Rural racism

- The Government should develop resources to support all public authorities working within rural areas, to address the particular needs of people from minority ethnic communities in consultation with local race equality NGOs.

Incorporating ICERD into UK Law

- The Government should ensure that the rights and obligations contained in ICERD are fully incorporated into UK law.

- The Government should introduce legislation requiring UK courts to consider provisions of ICERD whenever such provisions may be relevant to any question arising in any proceedings.

Article 3

- The Government should deliver a strategy which seeks to improve relations between people of different ethnic groups by creating greater levels of meaningful contact between people from different ethnic groups in consultation with race equality NGOs.

Article 4

Incitement to racial/religious hatred

- The Government should work with NGOs to establish effective community engagement strategies that address the threats of both Islamist extremists *and* racist far-right organizations.
- The Government (Attorney General) should publish the criteria for decisions regarding prosecutions under Parts 3 and 3A of the Public Order Act 1986.
- The Government should publish, annually, details of the number of cases referred/approved by the Attorney General for possible prosecution for inciting racial or religious hatred, and the number of people convicted.

Prejudice in the media

- The Government should establish a group of media practitioners, and representatives from the press, local authorities, and race equality NGOs, to initiate new strategies (e.g. media monitoring, campaign to promote use of more positive images) to combat racial prejudice in the media and negative public perceptions of minority ethnic groups.
- The Government should bring an end to the practice of releasing news about immigration policy measures to selected media outlets in advance of official announcements
- In the imminent review of the Press Complaints Commission, Government should address the need for greater accountability for the impact of negative media coverage/misrepresentation of minority ethnic groups on race relations.

Article 5

Racist violence

- The Government should collect and publish data on the victims of racially or religiously motivated crimes broken down by ethnicity and migration status.
- The Government should support the police, local authorities, anti-social behaviour units and NGOs to work more effectively together to tackle racist crime.
- In cases of racially/religiously motivated offences the Crown Prosecution Service should give careful consideration to evidence of aggravation before the basic offence only is accepted as a plea bargain.
- The police, in liaison with the Crown Prosecution Service, should ensure that victims of racist violence are promptly informed of any decisions relating to the prosecution of their attackers.
- The Government should take measures to build confidence in the police among victims of hate crime .

Police complaints

- The Government should report on the complaints of racial discrimination made to the Independent Police Complaints Commission and make these, and the outcomes of any disciplinary measures taken in relation to these complaints, publicly available.

- The Government should ensure that the ethnicities of all those who die in police custody are recorded.
- The Independent Police Complaints Commission should build confidence in its activities amongst minority ethnic communities.

Political participation

- Political parties should take positive action as permitted by law to increase the numbers of political representatives from minority ethnic communities.

Counter terrorism measures

- The Government should review its counter-terrorism legislation to ensure that it is implemented in a manner that does not discriminate in purpose or effect on grounds of race, colour, nationality or religion.
- The Government should assess the impact of any new counter-terrorism policies on race equality, and make any amendments where adverse impact is identified.

Criminal justice

- The Government should extend initiatives to improve police use of stop and search powers which make noticeable improvements in reducing ethnic disproportionality in the use of these powers.
- Laws permitting stop and searches without reasonable suspicion, such as Section 60 of the Criminal Justice and Public Order Act and Schedule 7 of the Terrorism Act should be reviewed due to the disproportionate effect they have on certain communities, including distrust created between the police and minority ethnic communities, and their lack of effectiveness as a crime reduction tool.
- The Government should fund research on alternatives to the use of stop and search powers.
- The Government should adopt a cross government approach to introduce measures to reduce the over-representation of minority ethnic groups in the prison population, and at all stages of the criminal justice system.

Gypsies, Roma and Traveller communities

- The Government should develop a strategy for the inclusion of Gypsies, Roma and Travellers including establishing effective ethnic monitoring of the impact of policy on these groups by all Government Departments.
- The Government should increase pressure on the media to ensure that it does not propagate negative images of Gypsies, Roma and Travellers which contribute to a climate in which hostility and prejudice can flourish.
- Planning for Gypsies and Travellers should be carried out at a wider than local level with clearer guidance for local authorities. The provision of accommodation for Travellers must be enforced through a national strategy.
- The Government should establish a fund to support specific work on improving Traveller education outcomes and set targets for improving the education outcomes of Gypsy, Roma and Traveller pupils in both primary and secondary schools.
- The Government must address the inequalities experienced by these communities in accessing health services. This should include setting health targets with targeted improvement programmes.
- The Government should adopt targeted employment training programmes designed with the specific needs of Gypsies, Roma and Travellers in mind.

Employment

- The Government should ensure that all public authorities meet their equality duties by using their purchasing power (procurement) to secure greater race equality in private sector employment.

- The Government should encourage more use of positive action in employment and review what can be learned from the use of affirmative action in the implementation of the Northern Ireland Fair Employment Act.
- The Government should ensure that legislation and practices to prevent discrimination in employment are applied and enforced in the public, voluntary and private sectors and ensure effective action where equality is absent.
- The Government should strengthen the specific duties of the Equality Act to require detailed employment monitoring across the public, private and third sectors.
- The Government should ensure that the current economic situation is not used to freeze or reduce the wages of those bearing the brunt of the economic crisis.
- The Government should ensure that policy attention is given to race equality in employment.
- The Government should abandon proposals to re-introduce an upper limit to compensation for discrimination.

Education

- The Government should encourage action to reduce the achievement gaps between people of different ethnic groups at schools and universities.
- The Government should deliver effective independent careers advice and guidance in order to give young people from minority ethnic communities access to a wider range of universities or the labour market on graduation.
- A preventative strategy to racist bullying should be adopted which aims to tackle the root causes of prejudice, creates an environment which fosters inclusion, and a curriculum which promotes equality and diversity.
- The Government should be required to report on the use of disciplinary powers by ethnicity of pupils and demonstrate how, in the use of such powers, they are meeting their statutory public sector equality duty.
- The Government should allow exclusions appeals panels to reinstate excluded pupils in schools if an appeal is successful, and the Education Bill should be amended accordingly.

Housing

- The Government should ensure that local authority housing benefit services are working in partnership with the social rented sector, private landlords and letting agents, advice providers, local community groups and NGOs, to mitigate the effects of the housing benefit cuts on people from minority ethnic communities.
- The Government should ensure that homes are of high quality and that housing regeneration initiatives adequately consider the views and needs of minority ethnic groups.
- The Government should address the problems of low home ownership rates among some minority ethnic groups by continuing to invest in affordable housing to promote home ownership.
- The Government should take action to combat disproportionate levels of homelessness amongst minority ethnic groups.

Health

- The Government should set clear targets in tackling race inequalities in service provision and public health in order to put the health outcomes of minority ethnic communities on a par with the general population.
- The Government should commission a yearly report on race inequalities in health and social care.
- The Government should develop a clear strategy for more effective consultation with minority ethnic communities to ensure that these groups are involved in the development of and evaluation of health and social care services.

- The Government should ensure that all general practitioners (GPs, local doctors not based in hospitals) are given the necessary training to work more effectively with people from different minority ethnic groups.
- The Government should ensure that cuts in spending do not disproportionately impact on minority ethnic communities and the community health organizations which are currently offering culturally appropriate health services for those marginalized from mainstream service provision.
- The Government should encourage improved health outcomes by investing in raising awareness among minority ethnic communities about health conditions and services.
- The Government should provide free access to primary and secondary healthcare to all asylum seekers while they remain in the UK, including for HIV treatment in England and Northern Ireland. This is currently the position in Scotland and Wales.

Article 6

Human rights body

- The EHRC should extend its existing statutory duties and powers in matters relating to human rights. Any issues of governance and management should be dealt with in an appropriate manner that does not undermine the statutory responsibilities and independence of the EHRC.

Article 9

Submission of Government's Periodic Report

- The Government should take its obligations to report to CERD seriously and engage with NGOs in disseminating the Committee's comments.

Article 14

Right to individual petition

- The Government should make a declaration under Article 14 of the International Convention for the Elimination of All Forms of Racial Discrimination (ICERD) to allow individuals the right to petition the Committee.

General comment no. 25: Minority ethnic women

- The Government should consider its health service obligations under equality legislation and take positive action measures to address the health needs of minority ethnic women.
- The Government should reform the Domestic Violence Rule so that all types of evidence of domestic violence are accepted and abolish the 'no recourse' requirement for abused women who have insecure status.
- The Government should assess the likely impact of cuts to specialist social and legal services on minority ethnic women. Where an adverse impact is discerned, action should be taken to ensure that inequalities are not deepened.
- The Government should ensure that the Female Genital Mutilation Act is fully implemented and should ensure that training in Female Genital Mutilation is part of all safeguarding practices for healthcare providers.
- The Government should review the success of the implementation of the Forced Marriage (Civil Protection) Act and support specialist agencies working with women who have experienced forced marriage.

General comment no. 30: Non-citizens

- The Government should reduce the barriers to settlement and citizenship for non-citizens in the UK. In particular, policies should not prohibit particular groups of non-citizens from coming to work for extended periods in the UK under Tier 2 of the Points Based System, or migrant domestic workers from moving towards settlement and citizenship in the UK.

- The Government should review the impact on race equality of the maintenance requirement, English-speaking countries list and skills requirement under Tiers 1, 2, 4, and 5 of the Points Based System.
- The Government should review the impacts of public spending cuts on migrant and refugee communities in the UK, with a view to minimizing the negative impacts on these communities.
- The Government should improve regulation of working conditions within sectors where there are high levels of migrant workers, in particular within the cleaning, care and construction sectors. In addition, the Government should ensure that where immigration regulations are exercised in the workplace, they do not lead to racial discrimination.
- The Government should take steps to ensure that frontline staff within housing services are familiar with entitlements of migrant groups within the UK, and that decision-making regarding entitlements to access housing and homelessness assistance in the UK is accurate. In addition it should ensure that the 'Operation Ark' system can be externally monitored by making the operational guidelines public.
- The Government should ensure that migrants are able to access the healthcare to which they are entitled in the UK and that any new guidelines published for healthcare providers fully encompass the need to provide a non-discriminatory service.
- The Government should address the under-reporting of physical attacks against asylum seekers.
- The Government should develop a public education programme to counter the inaccurate perceptions and negative attitudes that the general public have towards asylum seekers.

For recommendations specific to Northern Ireland and Scotland, please see Appendix A and Appendix B.

2. ARTICLE 2

2.1 Government strategy on combating racial discrimination in a period of austerity

2.1.1 Race equality strategy

The Government's report emphasizes the importance of a race equality strategy that has '*a strong legal framework, with effective enforcement; ensuring that work on race equality is an important feature of every public agency; more emphasis on transparency and accountability for outcomes on race equality; targeted work to address specific areas of concern*'.¹ However, the previous Government's race equality strategy 'Improving Opportunity, Strengthening Society' is now no longer in place, and the Department for Communities and Local Government (DCLG) has not developed a new race equality strategy. There have been action plans introduced on Lesbian, Gay, Bisexual and Transgender (LGBT) equality and violence against women, but to date no plans for the promotion or delivery of race equality. We are therefore concerned about the absence of strategic initiatives, work and leadership around race equality across Government.

We also have concerns about the Department's proposed 'integration strategy', particularly as this appears to be being offered as an alternative to a race equality strategy. In addition, it has been suggested to us that this strategy will be out this year. However, as far as we are aware, no race equality organizations have been consulted during the development of this strategy.

2.1.2 Government leadership and ministerial responsibilities

Despite holding named responsibility for race equality, the Department for Communities and Local Government has no mention of race equality in its business plan for 2011–2015.² As far as we are aware, there has been no substantive work on race equality by the Department since before the 2010 election.

We have been told by the Department that race equality work has now transferred from the Race Equality Unit at DCLG to a new 'Integration Division'. We believe that race equality is a separate issue to integration, particularly given that it is a protected characteristic under the Equality Act, and we are concerned that the Government is conflating the two.

We are concerned that to date DCLG and the Race Equality Minister, with whom responsibility for the promotion of race equality apparently lies, have not been prepared to enter into an effective dialogue with race equality NGOs.

Recommendation:

- The Government urgently needs to establish and implement a strategy for the elimination of racial discrimination in consultation with race equality NGOs.

2.1.3 The impact of the public spending cuts on minority ethnic communities

The Government report does not hide the fact that minority ethnic communities are disproportionately disadvantaged in education, employment, housing and health. Probably the most significant change since February 2010 when the Government report was submitted is the introduction of swingeing cuts to public spending at every level³ which, it is generally accepted, will

¹ UK Government Period Report (2010) paragraph 28, page 61

² Department for Local Government (November 2010) *Business Plan 2011-2015*, <http://www.communities.gov.uk/documents/corporate/pdf/1762476.pdf>

³ The government is requiring cuts to certain welfare benefits, legal aid, to central and local government funding of NGOs, including many race equality NGOs, to a wide range of local authority services including services for pre-school children, schools, youth services, services for older people, services for disabled people, cuts to funding of advice services, and all accompanied by major reductions in the workforces engaged in providing these services

exacerbate these disadvantages. In June 2010 the Minister for Equality wrote to the Chancellor in relation to the likely impact of public spending cuts. *'I fully share the objective of spending cuts. Equally it is important that fairness is at the heart of those decisions so that those most in need are protected. In this connection there are real risks that women, ethnic minorities, disabled people and older people will be disproportionately affected.'*⁴

At a time when public services are being cut at such a rate and 'race' is sliding off the political agenda, race inequality is likely to increase. Existing evidence has long indicated that minority ethnic people are more likely to suffer unemployment, deprivation and poverty than their White counterparts. If the cuts are to have a disproportionately negative impact on the poorest and most disadvantaged in the country, minority ethnic groups will be adversely affected. For information on the spending cuts and minority ethnic women, see section 9.1. For information on the spending cuts and migrants, asylum seekers and refugees, see section 10.1.6.

The impact of the cuts in relation to specific policy areas of housing, employment, health and education are discussed in more depth in the relevant sections elsewhere in this report, and although little substantial data is yet available on the impact of the cuts on minority ethnic communities, from the data available it can be predicted that these groups are amongst those who will be hit hardest. Here we briefly highlight some of the key areas of concern:

- Black Caribbean and Black African men and women, and Pakistani and Bangladeshi women, are more likely to be employed in the public sector. Therefore it is likely that job cuts in the public sector will have a disproportionate impact on certain minority ethnic groups.
- Of the 17,000 voluntary and community organizations working with minority ethnic communities in the UK, 53% receive funding from statutory sources.⁵ Public spending cuts are therefore likely to have a negative impact on race equality NGOs, who rely on public sector funding to a greater extent than the voluntary sector as a whole.
- As highlighted in the section on housing, many minority ethnic groups are more likely to be social housing renters, and will therefore be disproportionately affected by the cuts to housing benefit. Bangladeshi, Black African and Black Caribbean communities in particular have higher rates of social renting.

Recommendation:

- To comply with its statutory equality duty, the Government should consider the likely impact of proposed policy decisions (including proposals to cut public spending) for their impact on race equality. Where an adverse impact is discerned, the proposal should be reconsidered.

2.2 Reforms to discrimination/equality legislation

In paragraph 15 of its concluding observations, the committee stated:

While noting the rapid implementation in domestic law of the European Race Directive, the Committee is concerned that, unlike the Race Relations Act, the amending regulation does not cover discrimination on grounds of colour or nationality. The Committee is therefore concerned that the emerging situation may lead to inconsistencies in discrimination laws and differential levels of protection according to the categorization of discrimination (i.e. race, ethnic origin, colour,

⁴ Minister for Equality to the Chancellor of the Exchequer (8th June 2010), Letter Correspondence

⁵ Voice4Change England (2010) *2010 Spending Review submitted to the Treasury*, http://www.voice4change-england.co.uk/webfm_send/18

nationality, etc.), and create difficulties for the general public as well as law enforcement agencies. The Committee recommends that the State party extend the amending regulations to cover discrimination on the grounds of colour and nationality. In this context, the Committee also recommends that the State party consider introducing a single comprehensive law, consolidating primary and secondary legislations, to provide for the same protection from all forms of racial discrimination, enshrined in article 1 of the Convention.

2.2.1 Equality Act – history and general background

The Government Report refers to proposals for a new Equality Act; this has now been enacted for Great Britain (not Northern Ireland). We broadly welcome the Equality Act 2010 which updated and simplified our equality legislation and removed anomalous distinctions. The Act harmonizes and simplifies the laws and regulations it replaces. It provides the same protections, prohibits the same conduct for nine ‘protected characteristics’ in the same areas of activity. Under s. 9 (1) Race includes (a) colour (b) nationality or (c) ethnic or national origins. Unlike the Race Relations Act (RRA) there is not a specific reference to ‘race’ but the definition is open-ended.

The Act prohibits direct discrimination, indirect discrimination, harassment, victimization, instructing, inducing or causing discrimination for all aspects of race; the inconsistencies of protection to which the Committee referred in its 2003 concluding observations no longer exist. The Act also prohibits such conduct for the protected characteristic of religion or belief, with the exception that outside the field of employment and further and higher education, there is no protection against harassment related to religion or belief. The Act maintains a specific reference to segregation because of race being direct race discrimination. For information on incitement to racial and religious harassment, see section 4.1.

2.2.2 Multiple discrimination

Following extensive lobbying by NGOs, the Equality Act (section 14) prohibits direct discrimination where it occurs because of the combination of two grounds. However, the Government announced in March 2011 that they would not implement even this limited provision as they considered it ‘would have cost business £3 billion per year’.⁶

2.2.3 Harassment

The protection against harassment under the Act is now wider than under previous legislation and now includes not only conduct referring to the person’s colour, nationality, ethnic or national origins but also conduct related, even remotely to ‘race’. For example, the law protects a person from insulting and offensive remarks about people of a particular ethnicity with whom the person has a close working or leisure relationship.

Many minority ethnic workers experience abuse not by fellow employees but by their customers, clients, pupils, patients or by employees of other employers who deliver goods, carry out repairs, etc. The Equality Act 2010 (section 40) made employers liable for harassment of their employees by ‘third parties’ subject to certain conditions. However, despite no evidence as to how this provision is working, what burdens, if any, it puts on employers or how frequently claims may be brought, the Government announced in March 2011 that it will consult to remove this ‘unworkable requirement’ which would ‘save £0.3 million’.⁷

2.2.4 Positive action: To overcome disadvantage, exclusion, discrimination

⁶ HM Treasury (March 2011) *Plan For Growth*, http://cdn.hm-treasury.gov.uk/2011budget_growth.pdf

⁷ Ibid.

The Equality Act offers important new possibilities for private and public sector bodies to take positive action to overcome disadvantage, exclusion or discrimination experienced by particular groups, for example a group defined by ethnicity. The positive action provisions are permissive and never mandatory; the Act therefore reflects Article 1(4) of ICERD, but does not provide for situations as envisaged in Article 2(2) of ICERD.

Under section 158 an employer, service provider, school, college, etc can take any action if the aim is to enable members of the target group to overcome or minimize disadvantage, to increase participation or to meet their different needs, provided that the action is a proportionate means of meeting such an aim.

Under section 159 an employer in recruitment or promotion can give more favourable treatment to a member of a disadvantaged or under-represented group, for example recruiting a person from a minority ethnic community rather than a White person, but only if that person is *as qualified to be recruited or promoted* as the White person. There are additional conditions that must also be met. For more information on discrimination in employment, see section 5.7.

2.2.5 Positive action: Selection of candidates by political parties to overcome under-representation

There continues to be unacceptable under-representation of people from minority ethnic communities in Parliament, in local government and as UK members of the European Parliament despite legislative changes. For more on political participation, see section 5.3.

2.2.6 The new public sector equality duty

In April 2011, the Equality Act replaced the race equality duty (s.71 RRA) and the disability and gender equality duties with a single equality duty (s.149) that applies to eight protected characteristics. Where the duty has not been properly met, the authority is liable to legal challenge. There have been more than 30 cases in the High Court and the appellate courts in which individuals or groups argued that public authorities had acted unlawfully, in breach of s. 71(1) RRA, by taking decisions or adopting policies without having due regard to the need to eliminate unlawful race discrimination and to promote equality of opportunity and good relations between different racial groups.

There are a range of decisions which have been successfully challenged (including by favourable settlements) as being in breach of s.71(1) RRA. However, there have been nine cases brought by or on behalf of Gypsies or Travellers relating either to refusals of planning applications or to enforcement/eviction actions, none of which were successful, the relevant authorities successfully demonstrating that they had in substance had due regard to the race equality duty.

The Equality Act enables a Minister, the Scottish Ministers or the Welsh Ministers, by order to impose specific duties on public authorities for the purpose of enabling better performance of the public sector equality duty. At the time of writing this report, there are many, detailed, specific duties imposed on Welsh public authorities. There is to be fresh consultation on proposed Scottish specific duties. For more on equality legislation in Scotland, see appendix B. A real concern is that central government departments and national and English public authorities may interpret the 'light touch' specific duties that apply to them as an indication that they need to do very little to comply with the new equality duty. This creates a real risk that public authorities will fail to give due regard to their race equality obligations in making decisions to reduce spending. For more information on spending cuts, see section 2.1.3.

As stated above, we welcome the Equality Act and the improvements it has made in terms of legal rights against discrimination, harassment and victimization and wider equality duties on public

authorities. However having a law on the statute book will do very little to eradicate discrimination, overcome disadvantage and achieve substantive equality if there are not real, effective and accessible means for enforcement. As discussed in section 2.1.3, current proposals to reduce public spending are likely to result in the closure of law centres and advice centres, a significant reduction in the resources and capacity of the Equality and Human Rights Commission as well as drastic restrictions on areas covered by legal aid. We are therefore greatly concerned that rather than this improved legislation enabling greater progress towards race equality, such progress will be reversed due to lack of means of enforcement.

2.2.7 Threats to the Equality Act 2010

In April 2011 the Government launched the Red Tape Challenge, a website which invites members of the public to comment on statutory rules and regulations. In the first two months the Government asked simply whether the Equality Act 2010 (primary legislation of 239 pages) should be scrapped or retained. Of the nearly 6000 responses 96% said do not scrap the Act. Then the Secretary of State for Equalities announced that the Government did not intend to repeal the Act.

This approach, especially when taken with the proposed changes to the role of the EHRC (consultation on the reform of the EHRC closed on 15/6/11) suggests that the Government are considering a significant watering down of both the Equality Act 2006 (which sets out the EHRC's duties, powers and remit) and the Equality Act 2010. Should this happen, rights to race equality will be significantly reduced.

We are concerned about the increasingly frequent classification of discrimination protection as unimportant and a 'burden on business', rather than as a basic right. If the Government believes that the obligation to treat people in a non-discriminatory way can be trumped by the demands of business to maximize profits, then it undermines the foundation of our democracy and risks its legitimacy to govern.

Recommendations:

- The Government should ensure that any person who considers they have suffered discrimination, harassment, victimization or other conduct prohibited under the Equality Act 2010 is able to receive free and timely skilled advice on their rights and assistance in seeking legal redress.
- The Government should adopt appropriate provisions to prohibit multiple discrimination and retain the important protection of employees against harassment by a third party.
- The Government should provide more effective leadership on equality in the private sector, by at minimum not referring to rights to equality and non-discrimination as 'burdens on business' and 'unnecessary red tape'.

2.3 The immigration/nationality exceptions

In paragraph 16 of its concluding observations, the committee stated:

The Committee is concerned about the application of section 19D of the Race Relations Amendment Act of 2000, which makes it lawful for immigration officers to 'discriminate' on the basis of nationality or ethnic origin provided that it is authorized by a minister.

2.3.1 Statutory exception for immigration functions

Section 19D of the Race Relations (Amendment) Act RRAA has now been replaced in almost identical form by Schedule 3 paragraph 17 of the Equality Act 2010 which permits race discrimination relating to nationality or ethnic or national origins in carrying out functions under immigration laws where

this is done by a Minister or authorised by a Minister or by primary or secondary legislation. Discrimination is not permitted when carrying out powers of entry, arrest, search seizure etc under ss. 28A to 28K of the Immigration Act 1971 or the power of arrest in s.14 Asylum and Immigration (Treatment of Claimants) etc Act 2004.

When s.19D was added to the RRAA, to allay general concerns about discrimination endorsed by law, under s.19E the Home Secretary was required to appoint an independent race monitor to monitor '(a) the likely effect on the operation of the exception in s.19D of any relevant authorisation relating to the carrying out of immigration and nationality functions which has been given by a Minister of the Crown acting personally; (b) the operation of that exception in relation to acts which have been done by a person acting in accordance with such an authorisation.'

In her five annual reports to the Home Secretary from 2003 to 2008 the Race Monitor raised concerns about practices of immigration officers at ports of entry and asylum caseworkers. There is no provision in the Equality Act equivalent to s.19E.

The independent Chief Inspector of the UK Border Agency (UKBA) reports on efficiency and effectiveness; one of the issues to be covered in the Chief Inspector's reports is 'how the agency meets its commitments on UK discrimination law'. The following extract from an inspection of border control at Manchester Airport shows that the problem of racial discrimination in immigration procedures persists ⁸

6.9 We observed more passengers from non-white ethnic groups were stopped by detection staff than those from white ethnic groups ... staff were unable to inform us precisely why.

2.3.2 Statutory authority exception for nationality

The RRA in its original form provided an exception for any act of discrimination done under statutory authority (s.41) whether the act of parliament or secondary legislation had been passed or made before or after the passage of the RRA. To comply with the EU Race Equality Directive 2000/43/EC (article 14) which required Member States to ensure that '*any laws, regulations and administrative provisions contrary to the principle of equal treatment are abolished*'. The RRA was amended so that the exception in s.41 ceased to apply in relation to race and ethnic or national origins, but continued to apply in relation to nationality (which is not covered by the EU Race Equality Directive). The Equality Act 2010, Schedule 23, paragraph 1 maintains that exception permitting direct discrimination because of nationality in any activity covered by the Act where this is done in pursuance of an act or regulation, or to comply with a requirement imposed by the executive, or a condition imposed by a Minister, or in pursuance of an arrangement made by or approved by a Minister. This exception has permitted National Health Service (NHS) hospitals to charge failed asylum-seekers and undocumented migrants for treatment.⁹

The Equality Act 2010, Schedule 23, paragraph 1 also permits indirect discrimination where the provision criterion or practice relates to the person's place of residence or the length of time they have been in or outside the UK or an area within the UK. Unlike indirect discrimination in other circumstances, there is no requirement to justify the provision, criterion or practice. This exception has permitted indirect race discrimination by local authorities requiring a fixed period of residence before a person is entitled to certain services – a practice likely to disadvantage refugees and other

⁸ Independent Chief Inspector of UKBA (5 - 7 May 2010) *An inspection of border control at Manchester Airport*, pages 27 – 28, <http://iciinspector.independent.gov.uk/wp-content/uploads/2010/03/An-inspection-of-border-control-at-Manchester-Airport.pdf>

⁹ Department of Health (2011) *National Health Service (Charges to Overseas Visitors) Regulations 1989 Consultation – Summary of Outcome*, Crown Copyright http://www.dh.gov.uk/en/Healthcare/Entitlementsandcharges/OverseasVisitors/Browsable/DH_074393

migrants. For more information on discrimination against migrants, see section 10.1.

Recommendation:

- The Government should include all immigration functions fully within the Equality Act, by repealing Schedule 3 paragraph 17 of the Equality Act 2010 and removing unjustifiable exceptions based on nationality.

2.4 Religious discrimination

In paragraph 20 of its concluding observations, the committee stated:

The Committee notes that the State party recognizes the ‘intersectionality’ of racial and religious discrimination, as illustrated by the prohibition of discrimination on ethnic grounds against such communities as Jews and Sikhs, and recommends that religious discrimination against other immigrant religious minorities be likewise prohibited.

The Equality Act 2010 includes protection from discrimination on grounds of religion or belief both in employment, further and higher education and access to goods and services. However, harassment related to religion or belief is only prohibited in the areas of employment and further and higher education.

2.5 Descent-based/caste discrimination

In paragraph 25 of its concluding observations, the committee stated:

The Committee recalls its general recommendation XXIX, in which the Committee condemns descent-based discrimination, such as discrimination on the basis of caste and analogous systems of inherited status, as a violation of the Convention, and recommends that a prohibition against such discrimination be included in domestic legislation. The Committee would welcome information on this issue in the next periodic report.

Section 9(5) of the Equality Act was added to the Bill at a late stage. It provides that a Minister of the Crown may amend this section 9 by order ‘so as to provide for caste to be an aspect of race’ and also ‘to provide for an exception to a provision of the Act to apply, or not to apply, to caste or to apply, or not to apply to caste in specified circumstances.’ The Government is currently considering whether they should exercise these specific powers to clarify that caste based discrimination is illegal.

A study commissioned by the Government¹⁰ found evidence of caste discrimination and harassment in Britain in areas relevant to the Equality Act 2010, namely in work and the provision of services. It also found evidence of caste discrimination and harassment in other areas, namely education (pupil against pupil bullying), voluntary work (dismissal), worship and religion and public behaviour (harassment in public places). The consequences of these forms of discrimination could be severe for the victims.

Recommendation:

- The Government should acknowledge caste discrimination as an aspect of race discrimination and implement protections against discrimination and harassment accordingly.

¹⁰ National Institute of Economic and Social Research (2010) *Caste discrimination and harassment in Great Britain*, <http://www.niesr.ac.uk/pubs/searchdetail.php?PublicationID=2893>

2.6 Protecting the rights of indigenous peoples

In paragraph 26 of its concluding observations, the committee stated:

The Committee regrets that no information on the implementation of the Convention in the British Indian Ocean Territory was provided in the State party's report. The Committee looks forward to receiving in its next periodic report information on the measures taken by the State party to ensure the adequate development and protection of the Ilois for the purpose of guaranteeing their full and equal enjoyment of human rights and fundamental freedoms in accordance with article 2, paragraph 2, of the Convention.

2.6.1 Chagos Islands

We cannot understand why the Government suggest in their report that the CERD convention does not apply to the British Indian Ocean Territory. Chagos Islanders were forcibly and unlawfully evicted from their homes on the Chagos Islands between 1967 and 1973 and have since been prevented from re-settling there. None of this means that the CERD Convention has ceased to apply to them.

In April 2010 the Government declared the area a special 'Marine Protected Area' with a blanket ban on fishing in order to prevent their return. We note that the Director of Overseas Territories in the Foreign Office has told the USA that the declaration of the Marine Protected Area would 'in effect put paid to the re-settlement claims of the archipelago's former residents'. This action has been taken despite the fact that the Chagos Islanders are currently taking their case to the European Court of Human Rights.

2.6.2 Actions of UK companies overseas

A significant number of UK registered transnational companies have operations within indigenous territories around the world. These operations and others which are funded by UK investors are associated with human rights violations.

In accordance with its previous recommendations to Canada, the US and Norway, it is suggested that the CERD draw attention to concerns in relation to the impacts of UK companies and investments on indigenous peoples' enjoyment of their rights recognized in ICERD articles 2. 1(d), 4 (a) and 5(e); and the general recommendation no. 23 (1997); the UN Declaration on the Rights of Indigenous Peoples (UN DRIP).

Recommendations:

- The Government should take appropriate legislative or administrative measures (including independent monitoring) to prevent acts of transnational corporations and financial entities registered in the UK that negatively impact on the enjoyment of rights of indigenous peoples, in territories outside the UK.
- The Government should ratify International Labour Organisation Treaty 169 and ensure that UK registered companies and those funded by UK investments operate in a manner consistent with it and the UN Declaration on the Rights of Indigenous Peoples (UN DRIP).

2.7 Rural racism

Whilst the population of minority ethnic communities in rural and remote areas is small relative to their incidence in the UK at large, there is now a settled minority population in every local authority area, including the most isolated and remote communities. This has been added to in recent years by

the growth of migrant workers from East and Central Europe (more than a million in all¹¹) and these in turn have supplemented the nomadic Gypsy and Traveller (Romany) populations which have long characterized many rural areas. All in all, minorities may be in excess of 5% of the population of local rural communities (minorities constitute 16% of the total UK population);¹² demographic trends suggest that rural minority populations are growing twice as fast as in the UK overall.¹³

At the same time, the organizational capacity of race equality NGOs in these areas is small and fragmented, their populations are – according to police statistics – subject to heightened levels of racism and discrimination,¹⁴ and they continue to be overlooked and marginalized in most policy and service development. The dispersed nature of rural minorities means that the cultural and social support available to their more densely populated urban counterparts is not available, and that they are placed at a further disadvantage. There are neither effective networks nor, typically, agencies specifically designed to respond to their needs; studies show up to half of all rural minority ethnic respondents have experienced racist abuse or attacks. The pattern of racial disadvantage is thus often quite different from that of urban minorities.

What Britain's minorities share is the experience of racism and discrimination at both an institutional and individual level but in the case of rural minorities, additionally, a failure of policy and service agencies to take their issues seriously.¹⁵ These agencies, including local government, Government's local offices and health and police departments frequently hide behind the notion of 'numbers', arguing that these are too few to take their needs effectively into account.¹⁶ The problems facing minorities are therefore fourfold:¹⁷

- a lack of information, research and monitoring;
- the attitudes of service providers, particularly government, which has no explicit policy for meeting the needs of minorities in rural areas;
- the 'invisibility' of communities (largely compounded by agency and policy inaction); and
- a failure to institute equal opportunities policies and an equation of minorities with 'problems', characterizing most statutory rural agencies.

Recommendation:

- The Government should develop resources to support all public authorities working within rural areas, to address the particular needs of people from minority ethnic communities in consultation with local race equality NGOs.

2.8 Incorporating ICERD into UK law

The Committee takes note of the State party's position regarding the non-inclusion of the full substance of the Convention within the State party's domestic legal order and that there is no

¹¹ Craig, G. (2007b) 'They come over here...and boost our economy', *The Yorkshire and Humber Regional Review*, Summer, 32-34; RSA (2006) *Migration: a welcome opportunity*, London: Royal Society for the Arts.

¹² Voice-East Midlands (2002) *Mapping the black and minority ethnic voluntary and community sector in the East Midlands*, Nottingham: Voice East Midlands.

¹³ Owen, D. (2003) *The demographic characteristics of people from minority ethnic groups in Britain*, in Mason, D. op. cit.

¹⁴ Craig, G. (2006a) *The development of Black and minority ethnic groups in North Yorkshire*, Easingwold: North Yorkshire Forum for Voluntary Organizations.

¹⁵ Chakraborti, N. and Garland, J. (eds.) (2004) *Rural racism*, Devon: Willan Publishing. Craig, G. and Ahmed, B. (1999) 'We shoot them at Newark', in Henderson, P. and Kaur, R. (1999) op. cit. Henderson, P. and Kaur, R. (eds.) (1999) *Rural racism in the UK*, London: Community Development Foundation/SiA. Williams, C. (2007) 'Revisiting the rural race debate', *Ethnic and Racial Studies*, Vol. 30 No. 5: 741-765.

¹⁶ Craig, G. (2001) 'Race' and welfare, Inaugural lecture as Professor of Social Justice, Hull: University of Hull.

¹⁷ De Lima, P. (2003) *Rural racism*, London: Commission for Racial Equality. Makda, F. and Milthorp, R. (2005) *The needs of black and minority ethnic communities in Craven*, Cross Hills: South Craven Community Action.

obligation for States parties to make the Convention itself part of their domestic legal order. It is concerned that the State party's courts will not give legal effect to the provisions of the Convention unless the Convention is expressly incorporated into its domestic law or the State party adopts necessary provisions in its legislation. The Committee recommends that the State party review its legislation in order to give full effect to the provisions of the Convention in its domestic legal order.

Although the UK is a party to CERD it has not been fully incorporated into UK domestic law nor does a right of individual petition arise from any breach of their terms by the UK. UK courts will consider UN Conventions including ICERD, but they are not bound by them unless there is a specific statutory requirement to do so. This does not exist in relation to ICERD.

Recommendations:

- The Government should ensure that the rights and obligations contained in ICERD are fully incorporated into UK law.
- The Government should introduce legislation requiring UK courts to consider provisions of ICERD whenever such provisions may be relevant to any question arising in any proceedings.

3. ARTICLE 3

3.1 Addressing racial segregation

The Equality Act 2010 specifically provides that segregation because of race is unlawful; it is a form of racial discrimination.

While government has not advanced efforts to promote social cohesion since its election, it has planned an integration strategy which will seek to address a lack of contact between people from different ethnic backgrounds. In the meantime, there appears to be little leadership (beyond rhetoric) in supporting initiatives to improve relations between people of different groups

Recommendation:

- The Government should deliver a strategy which seeks to improve relations between people of different ethnic groups by creating greater levels of meaningful contact between people from different ethnic groups in consultation with race equality NGOs.

4. ARTICLE 4

4.1 Inciting racial/religious hatred and discrimination

Policies restricting dissemination of racist ideas play an important role in the prevention of racism. The right to freedom of expression though exceedingly important is not an absolute right. The Human Rights Act provisions of Article 10 with Article 17 regulate rights in relation to freedom of expression. Both the words of the ECHR and the jurisprudence of Commission and the Court show that restrictions are permissible.

While the Equality Act 2010 (s. 111) prohibits a person (including a legal person) from instructing, inducing or causing (race) discrimination or harassment, the application of this prohibition is far more limited than under similar provisions in the RRA. In practice it is likely to apply only within an organization, e.g. a manager instructing an employee to discriminate, but not, e.g. a manager instructing a recruitment agency to discriminate.

4.1.1 Far-right activity

The Government's negative position on 'state multiculturalism', their anti-immigration rhetoric and their ethnically-coded counter-terrorism policies have fed the xenophobia and Islamophobia that have become the rallying cry of far-right¹⁸ parties. As a result of the convergence in the rhetoric of mainstream and far-right parties, the last decade has witnessed the British National Party (BNP) making significant electoral gains at a local, national and European level. Forty-eight per cent of the 5054 respondents to a survey in 2011 said they would vote for far-right parties if they cracked down on immigration and Islamic extremists but also gave up violence.¹⁹

The BNP and latterly the English Defence League (EDL), a street-fighting far-right group, have succeeded in recruiting both White and non-Muslim minority ethnic members to its ranks. Many people see the EDL as the greatest threat to racial and religious tolerance in the UK today, with over 79,000 supporters on Facebook and the ability to bring anywhere from 100 to 3000 people onto the streets to demonstrate mainly in British cities with large Muslim populations. The threat to inter and intra-community relations is increasing as current public order legislation appears to be inadequate. The recent EDL demonstration in Bradford cost the police and local council £1 million to police.

Current UK government policy has failed to treat right-wing terrorism in the same way as 'Islamist' terrorism despite evidence of terrorist atrocities planned by members of the far-right groups. There is increasing concern that the links of the British far-right with neo-Nazi groups across Europe and beyond leave the UK open to the real threat of violent extremism. The increasing threat of White-supremacist violence has been acknowledged to be extremely serious by London's Metropolitan Police.²⁰ For information on counter terrorism measures, see section 5.4.

It is our view that proscription should be used as a measure of last resort as the curtailment of civil liberties has to be balanced against the rights of free speech that are an essential feature of any democracy. The provisions of the Public Order Act 1986 and the Terrorism Act 2006 could be used to curtail activities of far-right and neo-Nazi extremist organizations.

We note that under the Public Order Act 1986 the Attorney-General must agree to any prosecutions for offences concerning incitement of racial or religious hatred; our concern is that a member of the political executive has the final say as to how, if at all, the law may be used in such cases especially as such decisions are not reviewable by the courts.

4.1.2 Incitement to religious hatred

In paragraph 21 of its concluding observations, the committee stated:

The Committee is concerned about reported cases of 'Islamophobia' following the 11 September attacks. Furthermore, while the Committee takes note that the State party's criminal legislation includes offences where religious motives are an aggravating factor, it regrets that incitement to racially motivated religious hatred is not outlawed. The Committee recommends that the State party give early consideration to the extension of the crime of incitement to racial hatred to cover offences motivated by religious hatred against immigrant communities.

¹⁸ The term 'far-right' is used to denote organizations that explicitly espouse racist, xenophobic policies

¹⁹ Daily Mail (2011) *Half of Britain 'would vote for far-Right parties if they gave up violence'*, <http://www.dailymail.co.uk/news/article-1361068/Half-Britain-vote-far-Right-parties-gave-violence.html> Report on Searchlight Educational Trust, *Fear and Hope – the New Politics of Identity*

²⁰ John Yates, Assistant Commissioner of the Metropolitan Police to House of Commons Home Affairs Select Committee, September 2009 - quoted in MacShane, D. (2010) 'Foreword' in *Blood and Honour- Britain's Far Right Militants*, Meleagrou-Hitchens, A. and Standing, E., Centre for Social Cohesion, http://www.socialcohesion.co.uk/files/1266928262_1.pdf

NGOs had for some time highlighted the inequity that existed between Muslims and Sikhs/Jews since the latter, as racial groups, were protected against incitement to hatred under Part III of the Public Order Act 1986 but Muslims, as a religious group, had no similar protection. As the Government report states, the Racial and Religious Hatred Act 2006, came into force on 1 October 2007.

For religious hatred what must be proved is that the words, behaviour or written material is *threatening*, while for racial hatred the test is *threatening, abusive or insulting*. Possession, publication or distribution of inflammatory material is also an offence; the defendant must intend to stir up religious hatred. There is a freedom of expression defence which makes it more difficult to prosecute for inciting religious hatred as opposed to racial hatred. The number of prosecutions in relation to racial hatred or religious hatred, which require the consent of the Attorney General in each case, remains low.

Recommendations:

- The Government should work with NGOs to establish effective community engagement strategies that address the threats of both Islamist extremists *and* racist far-right organizations.
- The Government (Attorney General) should publish the criteria for decisions regarding prosecutions under Parts 3 and 3A of the Public Order Act 1986.
- The Government should also publish, annually, details of the number of cases referred/ approved by the Attorney General for possible prosecution for inciting racial or religious hatred, and the number of people convicted.

4.2 Prejudice in the media

In paragraph 13 of its concluding observations, the committee stated:

The Committee is concerned about the increasing racial prejudice against ethnic minorities, asylum-seekers and immigrants reflected in the media and the reported lack of effectiveness of the Press Complaints Commission in dealing with this issue. The Committee recommends that the State party consider further how the Press Complaints Commission can be made more effective and can be further empowered to consider complaints received from the Commission for Racial Equality as well as other groups or organizations working in the field of race relations. The Committee further recommends that the State party include in its next report more detailed information on the number of complaints of racial offences received as well as the outcome of such cases brought before the courts.

The role of the media in spreading prejudice against certain ethnic and religious groups in the UK remains a very serious concern. Muslims, migrants, asylum seekers and Gypsy and Travellers in particular, are frequently presented in a negative light in the mainstream media. The tabloid press is a particularly frequent source of these misrepresentations, and tend to depict Muslims as associated with terrorism, migrants as sponging off British society, asylum seekers as making bogus claims for protection and Gypsies and Travellers as being troublemakers.²¹ Certain ethnic groups are overly associated with criminality in biased media reporting. Research on the representation of race and ethnicity in the reporting of violent crime indicates that the media often uses popular understandings of race and crime which criminalize entire communities on the basis of their ethnic identity.²² A study on the coverage of Muslims and Islam in the media demonstrates that articles in the printed press

²¹ ECRI (2010) *ECRI Report on the United Kingdom* http://www.coe.int/t/dghl/monitoring/ecri/country-by-country/united_kingdom/GBR-CbC-IV-2010-004-ENG.pdf

²² Runnymede Trust (2008) *A Tale Of Two Englands, - 'Race' and Violent Crime in the Press* <http://www.runnymedetrust.org/uploads/publications/pdfs/TwoEnglands-2008.pdf>

that mentioned Islam or Muslims were classed as 91% negative, 5% cent positive, and 4% neutral.²³ Worryingly, research has indicated that the targeting of minority groups in the media has led to these groups being violently attacked.²⁴

4.2.1 Media coverage of migration

The preoccupation of national media with overall levels of immigration to the UK, especially since the 2004 expansion of European Union membership, has been a notable feature of media coverage of migration issues. Negative reporting of 'illegal immigrants' has become commonplace within the media, particularly inaccurate reporting that this group enjoys wide access to jobs and social benefits in the UK to which they should not be entitled.

It is possible that hostile media coverage of immigration issues is exacerbated by regular Home Office briefing of the media (in particular newspapers which regularly publish negative reports relating to migrants including the *Daily Mail* and *The Sun*) on new immigration proposals before making measures available to the general public via the Home Office website, or presenting them to the UK Parliament as could be expected.²⁵ This increases the likelihood that negative media messages around immigration can gain momentum before an official policy statement is made, building resentment and hostility towards immigrants among the general public. Senior ministers have additionally chosen to write hostile position statements on immigration in newspapers with a strong anti-immigration position, adding weight to this stance.²⁶ This approach is far from realizing the CERD's 2003 recommendation that the UK Government '*intensify its efforts to counter racial tensions generated through asylum issues, inter alia by... promoting positive images of ethnic minorities, asylum-seekers and immigrants*'.²⁷ For more on government messaging on immigration, see section 10.1.1.

4.2.2 Media coverage of asylum

In evidence to the UK Parliament's Joint Committee on Human Rights, the Commission for Racial Equality noted that 'in certain high circulation newspapers coverage of asylum in recent years has often been disproportionate, inaccurate and hostile'. It also highlighted the repetitive use of derogatory or negative words like 'flood', 'wave', 'bogus' and 'fraudulent' in association with asylum seekers.²⁸ The UK Independent Race Monitor also stressed that 'Repeated references to abuse and reducing the numbers of asylum applicants tend to reinforce popular misconceptions that abuse is enormous in scale when in fact it is a small proportion of people who enter the UK'.²⁹

²³ Greater London Authority (2007) *The Search for Common Ground: Muslims, Non-muslims and the UK Media* London: GLA p.18 <http://www.iengage.org.uk/images/stories/glacommonground.pdf>

²⁴ Ibid.

²⁵ Migrants Rights Network (February 2010) *Home Secretary makes sudden changes affecting foreign students*, <http://migrantsrights.org.uk/blog/2010/02/home-secretary-makes-sudden-changes-affecting-foreign-students>. On a further occasion on February 2011, the Daily Mail published information on its website regarding the immigration cap, £150,000 salary? You're welcome! High earning bankers and lawyers will be excluded from immigration cap, <http://www.dailymail.co.uk/news/article-1357465/150-000-salary-You-welcome-High-earning-bankers-lawyers-excluded-immigration-cap.html> which was reported on Radio 4's Today programme, before eventually appearing on the Home Office website alongside an official statement Home Office (15/02/2011) *Government outlines visa reforms for workers*, <http://www.homeoffice.gov.uk/media-centre/press-releases/visa-reforms?version=1>, Crown copyright

²⁶ E.g. Theresa May's comment article in the Sun, 22nd March 2011 '*I'm axing bogus diploma factories*' <http://www.thesun.co.uk/sol/homepage/features/3482624/im-axing-bogus-diploma-factories.html>

²⁷ UN (2003) *CERD Concluding Observations* [http://www.unhcr.ch/tbs/doc.nsf/\(symbol\)/cd515b6fbf9c7a12c1256e010056fdf4?opendocument](http://www.unhcr.ch/tbs/doc.nsf/(symbol)/cd515b6fbf9c7a12c1256e010056fdf4?opendocument)

²⁸ Joint Committee on Human Rights (2007) *The Treatment of Asylum Seekers*, 10th Report of the Session 2006-07, paragraph 344.

²⁹ Joint Committee on Human Rights, *op. cit.*, paragraph 348. Indeed, over the last 10 years just under half of all asylum seekers were recognized as being in need of some form of protection. Approximately 46% of asylum seekers were granted some form of protection. This is calculated by looking at the total number of cases granted Refugee Status, Exceptional Leave to Remain, Humanitarian Protection, Discretionary Leave or granted status on

The scale of the negative coverage of asylum seekers is illustrated in a media search carried out from 1 January 2001 to 1 January 2006, which found that four tabloid newspapers (*Daily Express*, *Daily Mail*, *Daily Star* and *The Sun*) published 8163 articles that mentioned asylum seekers. Over the five year period, across the seven UK tabloids, 713 articles referred to 'bogus asylum seekers' and the words 'crime' and 'asylum' appeared together 945 times. Some media outlets appear to be pursuing an anti-asylum agenda in their news coverage as well as their editorial and opinion pieces. For example, during one 3- day period in 2003, the *Daily Express* ran 22 negative asylum or refugee stories on its front page. Also in 2003, *The Sun* ran a series of 'asylum madness' stories as part of a 'Stop Asylum Madness' campaign which it said was supported by more than one million readers.³⁰

4.2.3 Media coverage of Gypsy/Roma/Traveller communities

Hostile media coverage of Traveller issues is exacerbated by regular negative comments by Government and senior ministers on Traveller issues.³¹ This is combined with Gypsy, Roma and Travellers being consistently presented in a negative light in the mainstream media; evidence from online media monitoring indicates that the majority of coverage is negatively dominated by the issue of accommodation.³² Romani groups are often criminalized by media reporting.³³ Highly offensive language continues to be used without always being deemed unacceptable by the press, statutory bodies and the wider public. Headlines such as the Sun newspaper's 'Stamp on the Camps' and 'War on Gypsy Free for All' were surprisingly found by the Crown Prosecution Service (CPS) not to incite racial hatred.³⁴ In the context of widespread hostility towards Gypsies and Travellers evident in the media it appears that this has translated into a general criminalization of the entire community.

4.2.4 Effectiveness of the Press Complaints Commission

Recent illegal phone-hacking by journalists has compounded concerns about the effectiveness of UK press regulation. The Press Complaints Commission (PCC)³⁵ has regularly been accused of being a 'toothless watchdog' which protects newspaper editors rather than the public.³⁶

In 2003, the Press Complaints Commission issued a new Guidance Note on Refugees and Asylum Seekers to ensure that correct terminology is used when referring to this group, which has been useful in curtailing the use of the term 'bogus asylum seeker', but has been ineffective in bringing to an end the association of asylum seekers with negative terms such as 'crime' and 'terrorism'.

appeal as a percentage of the total number of applications for each year. This is then averaged over the ten year period 2000-2009. Home Office (2010) Statistical Bulletin, *Control of Immigration Statistics United Kingdom 2009*, Excel table 2.1. <http://www.homeoffice.gov.uk/publications/science-research-statistics/research-statistics/immigration-asylum-research/hosb1510/hosb1510?view=Binary>

Furthermore, all the evidence indicates that of those who are found not to merit protection, the vast majority do have a genuine fear for their safety. For example, in 2010 around 70% of destitute refused asylum seekers in the UK were from just eight countries, all of which were either in conflict or had widespread and systematic human rights violations. These countries were Afghanistan, Eritrea, DRC, Iraq, Iran, Somalia, Sudan and Zimbabwe.

³⁰ UNHCR, *Refugees*, Issue number 142, pages 16-17, 2006.

³¹ For example, statement by Eric Pickles warning to all local councils of Travellers during bank holidays <http://www.telegraph.co.uk/news/politics/8446122/Eric-Pickles-gipsies-could-take-advantage-of-Royal-Wedding-bank-holiday-to-set-up-illegal-camps.html>

³² Irish Traveller Movement in Britain (ITMB) *Media Monitor*, <http://www.irishtraveller.org.uk/media>

³³ Equality (2010) 'What do we think of Romani people?', http://equality.uk.com/Resources_files/what_do_we_think_of_romani_people.pdf, Anstead, A.

³⁴ Richardson, J. & Ryder, A. (2009) 'Stamp on the Camps', *A Case Study of 'Moral Panic', 'Othering' and Political Furore in the UK – Conference paper on extremism and the Roma and Sinti in Europe: Challenges, Risks and Responses*, p. 13

³⁵ At the time of writing, the future of the Press Complaints Commission was under discussion.

³⁶ Guardian (2009) *Watchdog or lapdog?* <http://www.guardian.co.uk/media/2009/mar/30/press-complaints-commission-pcc>

In 2007, the Press Complaints Commission ratified a new Editors' Code of Practice for newspaper and magazine publishing in the UK. This required that the press 'must avoid prejudicial or pejorative reference to an individual's race, colour, religion, gender, sexual orientation or to any physical or mental illness or disability', and that 'details of an individual's race, colour, religion, sexual orientation, physical or mental illness or disability must be avoided unless genuinely relevant to the story'.³⁷ Individuals may lodge complaints with the PCC regarding breaches of this Code, but unlike broadcasting and advertising, it cannot accept third-party complaints. The PCC only recognizes racist reporting made against a specific individual, not groups. 'Collective' racism referring to whole groups is not recognized by the Code of Practice.

The Government states in its report that it has 'no role in the Press Complaints Commission, nor does it wish to do so, as that would interfere with freedom of the press'. Whilst we believe strongly in the freedom of political speech and public debate, it is not an absolute right which has no limits. The right to freedom of speech must not be abused in the competition for readers and viewers, by exploiting racial or religious prejudices. Therefore within the recently announced review of UK press regulation it is vital that the Government take an approach towards the print and broadcast media which strikes a better balance between freedom of speech and enabling the media to abide by rules of engagement that do not stir up prejudice or encourage racial discrimination.

We share the concern outlined in the Government's report that this continues to be a problem not unique to the printed press, but one which relates to the media more generally. The Press Complaints Commission itself has raised concerns about non-mainstream websites and user-generated content, where discrimination and racist comments are fairly common-place.³⁸

The Government's periodic report states that a Cohesion and Faith Unit, based in the Department for Communities and Local Government, established a media practitioners group in 2003 to advise the press on promoting community cohesion. Unfortunately the Cohesion and Faith Unit has now been disbanded with the change of government, and the Media Practitioners Group has gone with it.

Recommendations:

- The Government should establish a group of media practitioners, and representatives from the press, local authorities, and race equality NGOs, to initiate new strategies (e.g. media monitoring, campaigns to promote use of more positive images) to combat racial prejudice in the media and negative public perceptions of minority ethnic groups.
- The Government should bring an end to the practice of releasing news about immigration policy measures to selected media outlets in advance of official announcements.
- In the imminent review of the Press Complaints Commission, Government should address the need for greater accountability for the impact of negative media coverage/misrepresentation of minority ethnic groups on race relations.

5. ARTICLE 5

5.1 Racist violence

The incidence of racially motivated and religiously motivated crimes recorded in the British Crime Survey has stayed relatively stable, but there has been a fall in the number of cases reported to the

³⁷ Press Complaints Commission (PCC) (2011) *Editors' Code of Practice* for newspaper and magazine publishing in the United Kingdom, clause 12, Discrimination, <http://www.pcc.org.uk/cop/practice.html>

³⁸ Wattle, S. Council of Europe (2009) *'Speak out against discrimination' Campaign of the Council of Europe. Media and Diversity*, Final Report http://www.pcc.org.uk/assets/111/CoE_Diversity_Final_report_En_181209.pdf

police and referred to the Crown Prosecution Service.³⁹ Crimes of this type are still under-reported and the gap between British Crime Survey estimates and reports to the police is becoming wider. The proportion of racially and religiously motivated crime cases that result in a criminal charge is growing. In 2008/09, the rate of charging was 73% for racially and religiously motivated cases – up from 60% in 2006/07.⁴⁰

Official data may not accurately capture crimes against Gypsies and Travellers, as this group tends to be reluctant to report incidents, for fear of being treated in a discriminatory way by the police and courts.⁴¹

Hate crime is a relatively new concept, and due to the broadening of reports to ‘hate crime’, as opposed to racist crimes specifically, race specific data on hate crime have become less comprehensive over the past few years. There is currently no up-to-date government data on the victims of racially and religiously motivated crimes broken down by ethnicity. It is therefore not possible to draw conclusions on the extent to which different ethnic groups are victims of racist crimes. Data is available from the British Crime Survey on the risk of racially or religiously motivated victimization for different ethnic groups, but this data is now out of date.⁴²

Information on racial violence collected by monitoring UK media sources and published data identified 660 cases of racial violence in the UK that took place in 2009.⁴³ In cases where the ethnicity of the victim was known, just over 45% were Asian, 18% Black, 10% White British, 7% Polish, 1.25% Chinese and 1.25 % from Traveller communities; 1.8% of the cases examined were anti-Semitic, and in 7% of the cases the victims were Muslim. Although information on the victim’s immigration status is not always known, in 10% of cases the victims were migrant workers, refugees, or asylum seekers. Nearly 93% of the perpetrators were White, 3.8% were Asian and 2.8% Black. Although this data relates only to those cases covered in the UK news, it provides a clear picture that in the majority of cases, the victims of racial violence were from minority ethnic groups, and the perpetrators were White. The European Commission against Racism and tolerance (ECRI) has raised concerns about the lack of appropriate monitoring of incidents of religious hatred targeting Muslims in particular. ECRI also notes that in recent years, migrant workers have been the targets of racist violence in the UK.⁴⁴

In a number of cases, where attacks are initially recorded as racially motivated, the racial element is not actually brought before the court. This may be the result of plea bargaining where the defendant agrees to plead guilty to the basic offence without the allegation of racial motivation.⁴⁵ The police need to improve the way in which they gather evidence given the high evidential standards that must be met in order to prove racial or religious aggravation as defined under section 28 of the Crime and

³⁹ EHRC (2010) *Triennial Review: Chapter 7: Legal Security*, http://www.equalityhumanrights.com/uploaded_files/triennial_review/how_fair_is_britain_ch7.pdf

⁴⁰ EHRC (2010) *Triennial Review, Chapter 7: Legal Security*, http://www.equalityhumanrights.com/uploaded_files/triennial_review/how_fair_is_britain_ch7.pdf

⁴¹ Ibid.

⁴² Jansson, K. (2006) *Black and Minority Ethnic Groups’ experiences and perceptions of crime, racially motivated crime, and the police: Findings from the 2004/05 British Crime Survey*, Home Office Online Report 25/06, Crown Copyright

⁴³ Athwal, H., Bourne, J. and Wood, R., (2010) *Racial violence: the buried issue*, Institute of Race Relations (IRR) briefing paper no. 6, http://www.irr.org.uk/pdf2/IRR_Briefing_No.6.pdf

⁴⁴ ECRI (2010) *Report on the United Kingdom (fourth monitoring cycle)*, http://www.coe.int/t/dghl/monitoring/ecri/country-by-country/united_kingdom/GBR-CbC-IV-2010-004-ENG.pdf

⁴⁵ Athwal, H., Bourne, J. and Wood, R., (2010) *Racial violence: the buried issue*, Institute of Race Relations (IRR) briefing paper no. 6, http://www.irr.org.uk/pdf2/IRR_Briefing_No.6.pdf

Disorder Act 1998.⁴⁶ For information on attacks on asylum seekers please see section 10.2.1. For information on incitement to racial and religious hatred, see section 4.1.

Recommendations:

- The Government should collect and publish data on the victims of racially or religiously motivated crimes broken down by ethnicity and migration status.
- The Government should support the police, local authorities, anti-social behaviour units and NGOs to work more effectively together to tackle racist crime.
- In cases of racially/religiously motivated offences the Crown Prosecution Service should give careful consideration to evidence of aggravation before the basic offence only is accepted as a plea bargain.
- The police, in liaison with the CPS, should ensure that victims of racist violence are promptly informed of any decisions relating to the prosecution of their attackers.
- The Government should take measures to build confidence in the police among victims of hate crime.

5.2 Police complaints

In paragraph 18 of its concluding observations, the committee stated:

While the Committee welcomes the initiatives taken for further reforms within the police force, including enhanced representation of ethnic minorities, it recalls its previous concerns about the disproportionately high incidence of deaths in custody of members of ethnic or racial minority groups. The Committee invites the State party to submit in its next periodic report detailed information on the new police complaints system; the new Police Complaints Commission (IPCC) which will be fully operational from April 2004; the number of complaints involving racial discrimination referred to IPCC, including deaths in custody; and the outcome of these complaints as well as the disciplinary measures taken in each case. It also encourages the State party to adopt measures conducive to integrating the different ethnic and racial representation within the police force.

5.2.1 Number of complaints involving racial discrimination

In the Government's submission there is no information in regard to the number of complaints involving racial discrimination referred to the Independent Police Complaints Commission (IPCC). Information in relation to complaints in general is available on the IPCC website,⁴⁷ however there is no information in relation to racial discrimination complaints specifically, the outcomes and disciplinary measures taken in each case.

5.2.2 Deaths in police custody

The recent IPCC report 'Deaths in or following Police Custody: An examination of cases 1998/99–2008/09'⁴⁸ stated that there had been 333 deaths in or following police custody. Of this number 7% were Black, 5% were Asian, 2% Mixed Race and 1% were Chinese or other ethnicity. It is of concern that in 9% of cases the ethnicity of those who died was not known. The IPCC made 10

⁴⁶ ECRI (2010) *Report on the United Kingdom (fourth monitoring cycle)*, http://www.coe.int/t/dghl/monitoring/ecri/country-by-country/united_kingdom/GBR-CbC-IV-2010-004-ENG.pdf

⁴⁷ Independent Police Complaints Commission (IPCC) *Police Complaint Statistics* <http://www.ipcc.gov.uk/en/Pages/research.aspx>

⁴⁸ IPCC (2010) *Deaths in or following police custody: An examination of the cases 1998/99 – 2008-09* http://www.ipcc.gov.uk/Documents/Deaths_In_Custody_Report.pdf

recommendations in relation to their study on deaths in police custody, reiterating recommendations made in 2008.⁴⁹

Further analysis of the report states that 'over one-third of cases in which a Black detainee died, occurred in circumstances in which Police actions may have been a factor, this rises to almost one-half in the cases of accidental death where the Police were present compared to only 4% of cases where the detainee was White'.⁵⁰

The Government report states that according to IPCC statistics there were 15 deaths whilst in police custody in 2008/2009 and of those that died three people were of Black or Black British and two people were of Asian-Indian ethnicity. However, this data is not consistent with that of independent research, which has found that there were 12 minority ethnic deaths in relation to police custody or other contact during the same recording period.⁵¹ Research has identified 87 minority ethnic deaths in police custody since 1998, and 123 such deaths since 1993.⁵²

In relation to the investigation outcomes⁵³, the IPCC found that police force policy and procedure on custody matters was breached in 91 cases; prosecutions were recommended against 13 police officers, who faced a total of 36 charges. Although making up just 7% of all cases, the 22 cases involving Black detainees accounted for seven of the 13 recommendations for prosecution of police officers. None resulted in a guilty verdict for police officers; one police staff member was prosecuted for misconduct, found guilty and sentenced to six months in prison.

Recommendations:

- The Government should report on the complaints of racial discrimination made to the IPCC and make these and the outcomes of any disciplinary measures taken in relation to these complaints, publicly available.
- The Government should ensure that the ethnicities of all those who die in police custody are recorded.
- The IPCC should build confidence in its activities amongst minority ethnic communities.

5.3 Political participation

The results of the UK's last general election in May 2010 saw a historic peak in the number of minority ethnic MPs elected to parliament, almost doubling from 14 to 27. The total number of minority ethnic Labour MPs is now 13, up 10 from 2005. Most strikingly, the number of minority ethnic Conservative MPs has leapt from 2 to 11. However, the Liberal Democrats still have no minority ethnic MPs in Westminster, having had only one minority ethnic MP in their history. The proportion of parliament MPs that are from a minority ethnic background is 4.2%, a figure nowhere near their proportion of the total UK population. The House of Lords remains slightly more

⁴⁹ Executive Summary 'Deaths in or following Police Custody an examination of cases 1998/99 – 2008/09', pages XI,X http://www.ipcc.gov.uk/Documents/Deaths_In_Custody_Report.pdf

⁵⁰ Minority Perspective (2011) *Black deaths in police custody: We should never forget*

<http://www.minorityperspective.co.uk/2011/04/13/black-deaths-in-police-custody-we-should-never-forget/>

⁵¹ Inquest (2011) *BAME deaths in police custody* <http://inquest.gn.apc.org/website/statistics/deaths-in-police-custody/bme-deaths-in-police-custody>

⁵² More recently there have been two high profile deaths in police custody being investigated by the IPCC. On March 15th 2011, *David Emmanuel AKA 'Smiley Culture' died after a police raid at his home. On March 31st 2011, Twenty-nine year-old Kingsley Burrell Brow died after being sectioned by the Police on the 27th March 2011.* The family has criticized the IPCC for failing to include the fact that he was sectioned on the day he called police.

⁵³ IPCC (2010) 'Deaths in or following police custody: An examination of the cases 1998/99 – 2008-09' http://www.ipcc.gov.uk/Documents/Deaths_In_Custody_Report.pdf

representative than the House of Commons, where 5.6 per cent of peers are from a minority ethnic background, being 41 out of 736 in total. There are only two politicians from a minority ethnic background in the entire Coalition Government. For information on minority ethnic women and political participation, see section 9.1.

Despite this progress minority ethnic groups remain underrepresented in parliament, and whilst the importance of representation has been noted by all major political parties, direct action is lacking. At current rates of inclusion it is estimated that it will take around 75 years for Parliament to become representative of the wider population.⁵⁴

The Equality Act 2010 makes clear that selection of candidates by a political party is a function of the party as an association (and not as an employer); Part 7 of the Act specifically prohibits discrimination, harassment and victimization by associations. Political parties are able to reserve places for people of different racial groups (as well as religious groups, of different sexual orientations, etc.) in their short lists for candidates, but may not reserve all places for people of a particular racial group, i.e. an all-Black shortlist is not permitted (all-women shortlists continue to be lawful and the Sex Discrimination (Election Candidates) Act 2002 has been extended until 2030).

No political party reserved places for minority ethnic candidates in shortlisting candidates to stand in the May 2011 local elections. We have had no indication of how parties will use these provisions in future. The Government is still considering whether to bring into force s.106 of the Act, which would require political parties to report on the diversity of their election candidates.

Recommendation:

- Political parties should take positive action as permitted by law to increase the numbers of political representatives from minority ethnic communities.

5.4 Counter terrorism measures

In paragraph 17 of its concluding observations, the committee stated:

The Committee is deeply concerned about provisions of the Anti-Terrorism Crime and Security Act which provide for the indefinite detention without charge or trial, pending deportation, of non-nationals of the United Kingdom who are suspected of terrorism-related activities. While acknowledging the State party's national security concerns, the Committee recommends that the State party seek to balance those concerns with the protection of human rights and its international legal obligations. In this regard, the Committee draws the State party's attention to its statement of 8 March 2002 in which it underlines the obligation of States to 'ensure that measures taken in the struggle against terrorism do not discriminate in purpose or effect on grounds of race, colour, descent, or national or ethnic origin'.

5.4.1 The Anti-Terrorism Crime and Security Act 2001

Paragraph 17 of the committee's 2003 concluding observations, which expresses the Committee's concerns regarding the provisions of the Anti-Terrorism Crime and Security Act 2001, was specifically quoted in the judgment of Lord Bingham of Cornhill when the UK House of Lords⁵⁵ by a majority of 9 to 1 quashed the order derogating from Article 5(1) of the European Convention on Human Rights. The decision ruled that section 23 of the 2001 Act, which permitted indefinite detention of a

⁵⁴ Operation Black Vote (OBV) (2008) *How to Achieve Better BME Political Participation*
<http://www.equalities.gov.uk/pdf/OBV%20Report%20-%202014-05-08.pdf>

⁵⁵ *A (FC) and others (FC) v Secretary of State for the Home Department* [2004] UKHL 56, 16 December 2004

‘suspected international terrorist’, was incompatible with the rights under Articles 5 (right to liberty) and 14 (non-discrimination) in that it was disproportionate and discriminated on the ground of nationality or immigration status. It is surprising that in paragraph 87 of its report, the Government did not inform the Committee of the reason that the detention powers under the 2001 Act had been replaced by the Control order regime under the Prevention of Terrorism Act 2005, which the Government describes in paragraphs 88–92 of its report.

5.4.2 Control orders

There has been widespread concern amongst NGOs in the UK regarding the Government’s control orders scheme, which enabled the Home Secretary to impose an almost unlimited range of restrictions on any person they suspect of involvement in terrorism. In a number of instances the appellate courts, giving proper consideration to the particular circumstances of the individual concerned, have held that a control order, or specific restrictions within a control order, are in breach of the person’s rights under the European Convention on Human Rights. The Parliamentary Joint Committee on Human Rights in their Ninth report⁵⁶ on Counter Terrorism Policy and Human Rights stated that the system of control orders was no longer sustainable in its current form. The Government’s review of counter terrorism powers presented to Parliament by the Home Secretary in January 2011, found that some aspects of the control orders under the Prevention of Terrorism Act 2005, were ‘neither proportionate nor necessary’, and concluded that the current control order regime can and should be repealed.⁵⁷ The Terrorism Prevention and Investigation Measures Bill 2010-2011, currently going through Parliament, proposes to replace control orders with ‘terrorism prevention and investigation measures’. Civil rights groups remain concerned that the re-branded powers would still restrict rights to privacy, movement and expression,⁵⁸ in much the same way as the previous scheme of control orders.

5.4.3 Disproportionate impact on Muslim communities

In addition to the fact that many laws and policies designed to counter terrorism in the UK have been found by the courts to be non-compliant with human rights, we are extremely concerned about the disproportionate impact of counter terrorism measures in the UK on Muslim communities. Research indicates that Muslims are treated as a ‘suspect community’ and feel alienated, isolated, vulnerable and anxious.⁵⁹

5.4.4 Prevent strategy

In particular, the Government’s ‘Prevent’ strategy, launched in 2007 as the preventative strand of the Government’s counter-terrorism strategy, CONTEST, has been widely criticized for its unfair targeting and marginalization of Muslims and for heightening community tensions. The Government’s counter terrorism review mentioned above also included the Prevent Strategy, the review of which was presented to Parliament in June 2011 and sets out a new Prevent strategy.⁶⁰ Whilst many of the concerns of the previous Prevent strategy remain, such as the conflation of extremism and terrorism, there are some positive new developments. The new strategy claims to prioritize according to actual

⁵⁶ Human Rights Joint Committee – Ninth Report (2010) *Counter-Terrorism Policy and Human Rights (Sixteenth Report): Annual Renewal of Control Orders Legislation 2010*, <http://www.publications.parliament.uk/pa/jt200910/jtselect/jtrights/64/6402.htm>

⁵⁷ HM Government (2011) *Review of Counter-Terrorism and Security Powers*, <http://www.homeoffice.gov.uk/publications/counter-terrorism/review-of-ct-security-powers/review-findings-and-rec?view=Binary>

⁵⁸ Liberty (2011) *Control Orders*, <http://www.liberty-human-rights.org.uk/human-rights/terrorism/control-orders/index.php>

⁵⁹ The Equalities and Human Rights Commission (EHRC) Choudhury, T. and Fenwick, H. (2011) *The impact of counter-terrorism measures on Muslim communities*, Research Report 72 http://www.equalityhumanrights.com/uploaded_files/research/counter-terrorism_research_report_72.pdf

⁶⁰ Home Office (2011) *Prevent Strategy 2011*, <http://www.homeoffice.gov.uk/publications/counter-terrorism/prevent/prevent-strategy/>, Crown Copyright

risk, rather than on the basis of demographics, as was the case in the past.⁶¹ This is a welcome change, as the previous strategy risked equating the extent of the problem with the size of the Muslim community. The recognition that integration and cohesion issues should not be conflated with counter terrorism is also a positive shift. While some aspects of the review are to be welcomed, the new strategy is based on much of the same assertions that were problematic in the old strategy.⁶² In a context of severe cuts to departmental and local budgets, the main concern lies in how it will be implemented at a local level in a manner which avoids the unfair and discriminatory targeting of Muslim communities. For information on the use of stop and search powers under the Terrorism Act 2000, please see section 5.5.1.

Recommendations:

- The Government should review its counter-terrorism legislation to ensure that it is implemented in a manner that does not discriminate in purpose or effect on grounds of race, colour, nationality or religion.
- The Government should assess the impact of any new counter-terrorism policies on race equality, and make any amendments where adverse impact is identified.

5.5 Criminal justice

5.5.1 Stop and search

In paragraph 19 of its concluding observations, the committee stated:

The Committee is concerned that a disproportionately high number of ‘stops and searches’ are carried out by the police against members of ethnic or racial minorities. The Committee encourages the State party to implement effectively its decision to ensure that all ‘stops and searches’ are recorded and to give a copy of the record form to the person concerned. The Committee invites the State party to address this issue in more detail in its next periodic report.

In its report the Government acknowledges that the disproportionality of some groups of minority ethnic people in the criminal justice system is a continuing problem. Evidence demonstrates that minority ethnic communities are over-surveilled and under-protected by the criminal justice system in the UK.⁶³ One of the areas in which this is most apparent is police use of stop and search powers. The disproportionate use of this police tactic on minority ethnic communities has been long been a racial discrimination concern in the UK, yet despite measures taken to deal with this problem, rates of disproportionality are still persistently high.

Police powers to stop and search members of the public are contained within various pieces of legislation. The majority of stops and searches in England and Wales are conducted under Section 1 of the Police and Criminal Evidence Act (PACE).⁶⁴ Black people are at least six times more likely to be stopped and searched than a White person under this legislation in England and Wales. Asian people are around twice as likely to be stopped and searched as a White person. These ratios continue to grow year on year despite years of initiatives aimed at tackling the problem.⁶⁵

In addition to being disproportionate, the Equality and Human Rights Commission has stated that the current use of stop and search powers under PACE may be unlawful, discriminatory and damaging to community relations. Police use of stop and search powers therefore neither protects human rights,

⁶¹ Policy Research Centre (07/06/2011) *Policy Focus, Prevent Review 2011*, <http://www.policyresearch.org.uk/policyfocus/PreventReview0611.php>

⁶² Ibid.

⁶³ Stopwatch (2011) *About Stopwatch*, <http://www.stop-watch.org/about.html>

⁶⁴ EHRC (2010) *Stop and Think: a critical review of the use of stop and search powers in England and Wales*, http://www.equalityhumanrights.com/uploaded_files/raceinbritain/ehrc_stop_and_search_report.pdf

⁶⁵ Ibid.

promotes equality nor contributes to making communities safer.⁶⁶ Many young Black and Asian men feel they are stopped and searched simply because they fit a general stereotype, and this is fueling anger and alienation amongst some communities.

In January 2010, the European Court of Human Rights ruled that searches undertaken under section 44 of the Terrorism Act 2000 were unlawful as police were not required to demonstrate reasonable grounds for suspicion.⁶⁷ Whilst the Government's decision to end the use of stop and search powers against individuals without suspicion under section 44 of the Terrorism Act 2000 is welcome, Section 44 has now been replaced by Section 47a of the Terrorism Act 2000 (Remedial) Order 2011. Although this reduces the period of authorization in line with the European Court of Human Rights Judgement, and limits the use of the power to circumstances where it is 'necessary' to prevent an act of terrorism, we are concerned that this stop and search power still leaves room for arbitrariness and potential abuse. We are also concerned that other powers which allow police to stop individuals without reasonable suspicion 'in anticipation of violence' give rise to arbitrariness, abuse, lack of monitoring and safeguards, and a disproportionate impact on minority ethnic groups. This applies to powers under schedule 7 of the Terrorism Act 2000, which allows stops in ports and airports for counter-terrorism purposes, and section 60 of the Criminal Justice and Public Order Act 1994.⁶⁸

People from minority ethnic communities are disproportionately stopped and held under an anti-terror law used in UK ports and airports. Schedule 7 of the Terrorism Act 2000 allows police to stop, question and detain people for up to nine hours without reason to suspect them of a crime.⁶⁹ More than 85,000 stops were carried out under Schedule 7 in 2009 and 2010, Of these stops, 2,201 lasted more than an hour and fewer than one in a hundred (0.57%) of them resulted in a detention.

The majority of Schedule 7 stops were targeted at people from minority ethnic groups. Asian people accounted for 25% of Schedule 7 stops, although they make up just 5% of the national population. Black people accounted for 8 per cent of stops, and make up 3 per cent of the population. People from other ethnic groups (including Chinese and 'mixed race') accounted for 22% of stops, though they represent only 1% of the population. The targeting of minority ethnic groups is even more marked when we consider the most intensive Schedule 7 stops. Of those stops that lasted more than an hour, 41% were of Asian people, 10% were of Black people and 30% were of 'other' ethnic groups, leaving fewer than 20% that were of White people.⁷⁰

We are concerned that the ethnic targeting of Schedule 7 stops is discriminatory and constitutes ethnic profiling. The use of this power is not based on reasonable grounds or being used in a transparent or accountable way, and its misuse can damage the relationship between the police and certain minority ethnic communities. For more information on counter terrorism measures, see section 5.4

Police powers to stop and search under Section 60 of the Criminal Justice and Public Order Act 1994 are being used disproportionately against minority communities.⁷¹ Data from the Ministry of Justice shows that the rate of section 60 stop and searches for Black people is 26.6 times the rate for White

⁶⁶ Ibid.

⁶⁷ Ibid.

⁶⁸ Stopwatch (2011) *About Stopwatch*, <http://www.stop-watch.org/about.html>

⁶⁹ Stopwatch (no date) *Black and Asian people unfairly targeted by anti-terror law*, <http://www.stop-watch.org/uploads/latest%20news%20and%20events/Schedule7PressRelease.pdf>

⁷⁰ Federation of Student Islamic Societies (FOSIS) (2011) *Black and Asian people unfairly targeted by anti-terror law*, <http://media.fosis.org.uk/press-releases/1388-black-and-asian-people-unfairly-targeted-by-anti-terror-law>

⁷¹ Stopwatch (2010) *Stopwatch's response to the proposed changes to the Police and Criminal Evidence Act 1984 (PACE) Code of Practice A*, <http://www.stop-watch.org/uploads/STOPWATCH-PACE.pdf>

people, and for Asian people it is 6.3 times the rate for White people.⁷² The number of stop and searches on Black people increased by more than 650% between 2005/06 and 2008/07.⁷³ The number of section 60 stop and searches resulting in arrest is, however, under 4%.⁷⁴ It is under Section 60 that police have the widest discretion to use their own beliefs and stereotypes about who should be stopped, and evidence indicated that is it where police officers have the most discretion that you find the greatest disproportionality and discrimination.⁷⁵

Research evidence suggests that racial prejudice and stereotyping are widespread within British police forces.⁷⁶ This has an effect on policing practice when these stereotypes result in the targeting of communities which are perceived as most likely to be involved in criminal activity. This is consistent with the contention that racial disproportionality in the use of police powers to stop and search is a result of unlawful racial discrimination.⁷⁷ The existence of racial discrimination in the police violates Article 2(1) a and d.

The high rates of disproportionality evident in police use of stop and search powers suggest that a degree of ethnic profiling is taking place. To the extent that law enforcement agencies engage in ethnic profiling, this infringes the guarantees of CERDs' general recommendation no. 31 on prevention of racial discrimination in the criminal justice system, (paragraph 20).

Recommendations

- The Government should extend initiatives to improve police use of stop and search powers which make noticeable improvements in reducing ethnic disproportionality in the use of these powers.
- Laws permitting stop and searches without reasonable suspicion, such as Section 60 of the Criminal Justice and Public Order Act and Schedule 7 of the Terrorism Act should be reviewed due to the disproportionate effect they have on certain communities, including distrust created between the police and minority ethnic communities, and their lack of effectiveness as a crime reduction tool.
- The Government should fund research on alternatives to the use of stop and search powers.

5.5.2 Over-representation in prisons

In addition to stop and search, another pressing criminal justice issue that is not addressed in the Government report is the over-representation of minority ethnic people in prisons in the UK. Black people are on average five times more likely to be imprisoned than White people,⁷⁸ and the proportion of Black people imprisoned in England and Wales is almost seven times greater than their share of the population.⁷⁹ The minority ethnic prison population has doubled in a decade, from

⁷² Ministry of Justice (2010) *Statistics on Race and the Criminal Justice System 2008/2009: A Ministry of Justice publication under sector 95 of the Criminal Justice Act 1991*, accompanying table S3.05a 0809. Population data taken from previous year: Ministry of Justice (2008), *Statistics on Race and the Criminal Justice System - 2006/7*, <http://www.justice.gov.uk/downloads/publications/statistics-and-data/mojstats/stats-race-and-the-criminal-justice-system-2008-09c1.pdf>

⁷³ Stopwatch (2010) *Stopwatch's response to the proposed changes to the Police and Criminal Evidence Act 1984 (PACE) Code of Practice A*, <http://www.stop-watch.org/uploads/STOPWATCH-PACE.pdf>

⁷⁴ Ibid.

⁷⁵ The Guardian (2003) *Black people 27 times more likely to be stopped*, <http://www.guardian.co.uk/society/2003/apr/21/equality.politics> Dodd, V.

⁷⁶ Bowling, B. and Philips, C. *Disproportionate and Discriminatory: Reviewing the Evidence on Police Stop and Search* in *Modern Law Review* http://www.stop-watch.org/uploads/articles_research_docs/modern%20law%20review.pdf

⁷⁷ Ibid.

⁷⁸ EHRC (2010) *Triennial Review, How Fair is Britain? Equality, Human Rights and Good Relations in 2010*, http://www.equalityhumanrights.com/uploaded_files/triennial_review/how_fair_is_britain_-_complete_report.pdf

⁷⁹ The Guardian (11th October 2010) *More black people jailed in England and Wales proportionally than in the US*, <http://www.guardian.co.uk/society/2010/oct/11/black-prison-population-increase-england> Ramesh, R.

11,332 in 1998 to 22,421 in 2008 in England and Wales. Although minority ethnic groups make up 11% of the population in England and Wales, 25% of the prison population is now from a minority ethnic background.⁸⁰

Recommendation:

- The Government should adopt a cross government approach to introduce measures to reduce the over-representation of minority ethnic groups in the prison population, and at all stages of the criminal justice system.

5.5.3 Disproportionality in DNA recording

The National DNA Database was established by the Home Office as a tool for the police to store the DNA of convicted criminals.⁸¹ Two changes in the law in 2001 and 2003 have led to a massive expansion of the database. These changes mean that DNA samples and records can be routinely collected from anyone from the age of ten arrested for any recordable offence. The samples and records can be retained indefinitely regardless of whether the person was charged or convicted.⁸² The UK Government has now built a vast DNA database which at the end of 2010 contained computerized DNA profiles and linked DNA samples from over 6 million individuals in the UK (nearly 10% of the UK population).⁸³ The UK's DNA database is now the largest database per capita in the world.⁸⁴

The numbers of innocent Black people profiled on this database bears no relation to the actual offending rates for this group.⁸⁵ A Black person in the UK is three times more likely to have their details stored on the database than a White person, About 4 out of every 10 Black men have a record on the database, compared to about 1 in 10 White men. For young Black men, the racial bias is even worse: about 3 out of 4 young Black men, aged between 15 and 34, have records on the DNA database.⁸⁶ NGOs are concerned that the DNA database criminalizes the UK's Black communities on an unprecedented scale, and creates a climate of distrust in law enforcement agencies amongst these communities.⁸⁷

DNA profiles can be used to track individuals, and those recorded on the database are treated as suspects for future crimes. The disproportional numbers of Black people on the DNA database constitute yet another way in which Black people are discriminated against by law enforcement agencies and are over-represented in the criminal justice system. In any case, the efficacy of the DNA database in helping to solve crime has been highly questioned. Very few crime detections result from matches with DNA profiles and despite the fact that the database has more than doubled over the last seven years, the number of crimes detected using DNA has not increased.⁸⁸

⁸⁰ EHRC (2010) *Triennial Review, How Fair is Britain? Equality, Human Rights and Good Relations in 2010*, http://www.equalityhumanrights.com/uploaded_files/triennial_review/how_fair_is_britain_-_complete_report.pdf

⁸¹ The Runnymede Trust (2010) *Ethnic Profiling: The Use of 'Race' in UK Law Enforcement*, <http://www.runnymedetrust.org/uploads/publications/pdfs/EthnicProfiling-2010.pdf>

⁸² Genewatch UK (no date) *Facts and Figures*, <http://www.genewatch.org/sub-539481>

⁸³ Public Service (04/04/211) *Government store of DNA over 6 million*, http://www.publicservice.co.uk/news_story.asp?id=15673

⁸⁴ The Runnymede Trust (2010) *Ethnic Profiling: The Use of 'Race' in UK Law Enforcement*, <http://www.runnymedetrust.org/uploads/publications/pdfs/EthnicProfiling-2010.pdf>

⁸⁵ Ibid.

⁸⁶ They Work For You (28/02/2008) *National DNA Database*, House of Commons Debate, <http://www.theyworkforyou.com/debates/?id=2008-02-29b.1425.0#g1425.2>

⁸⁷ The Runnymede Trust (2010) *Ethnic Profiling: The Use of 'Race' in UK Law Enforcement*, <http://www.runnymedetrust.org/uploads/publications/pdfs/EthnicProfiling-2010.pdf>

⁸⁸ Ibid.

5.6 Gypsy, Roma and Traveller communities

In paragraph 23 of its concluding observations, the committee stated:

The Committee expresses concern about the discrimination faced by Roma/Gypsies/Travellers that is reflected, inter alia, in their higher child mortality rate, exclusion from schools, shorter life expectancy, poor housing conditions, lack of available camping sites, high unemployment rate and limited access to health services. The Committee draws the attention of the State party to its general recommendation XXVII on discrimination against Roma and recommends that the State party develop further appropriate modalities of communication and dialogue between Roma/Gypsy/Traveller communities and central authorities. It also recommends that the State party adopt national strategies and programmes with a view to improving the situation of the Roma/Gypsies/Travellers against discrimination by State bodies, persons or organizations.

There remains no national strategy in place to address discrimination against Gypsies, Roma and Traveller communities as recommended by CERD. There have been a number of adverse policies adopted by Government which have the effect of placing Gypsies and Travellers in an even more vulnerable position.

5.6.1 Accommodation of Gypsies, Roma and Travellers

The huge difficulties Gypsies and Travellers face in securing culturally appropriate accommodation is a central aspect of the multidimensional deprivation which Gypsies and Travellers experience. Based on the latest caravan count 20% of Gypsies and Travellers are legally homeless, living on unauthorized sites.⁸⁹ In July 2010, the Government announced the revocation of Regional Spatial Strategies (RSSs) in all regions of England.⁹⁰ There has been widespread concern at the implications of the loss of the strategic regional dimension to planning. The Parliamentary DCLG Select Committee concluded that a number of strategic planning issues, including planning for Gypsies and Travellers need to be addressed at a larger than local level.⁹¹ Only 1 out of 100 local councils interviewed believe the Government's strategy will make planning for Gypsies and Travellers easier, while 55 local councils thought it would make provision more difficult. Forty per cent of local councils specifically expressed concerns about increased local opposition to development for Travellers under the community-based planning system. The report concludes that the measures will make the situation for Gypsies and Travellers even worse in terms of insecurity, homelessness, unauthorised development and evictions whilst at the same time increasing community tensions.

5.6.2 Education of Gypsies, Roma and Travellers

Roma and Traveller pupils are the lowest achieving groups within schools in the UK.⁹² Studies have revealed a high incidence of discrimination and bullying experienced by Gypsies and Travellers in school.⁹³ Twenty per cent of Gypsy, Roma and Traveller pupils fail to transfer from primary to secondary school. Just over half of Gypsy, Roma and Traveller pupils dropped out of secondary school and only 38% of Irish Travellers reach statutory leaving age. Racist bullying acts as a barrier to

⁸⁹ See the comprehensive survey, (EHRC 2009) Cemlyn et al, *Inequalities experienced by Gypsy and Traveller Communities*, pages 5-34.

⁹⁰ *Cala Homes V. Secretary of State for Communities and Local Government*, 10 November 2010. The court found that the Secretary of State had exceeded his powers in attempting to abolish the whole national structure of RSSs and in doing so without carrying out any Strategic Environmental Assessment.

⁹¹ Paragraph 43 of The Parliamentary DCLG Select Committee report

⁹² DfE (2010), *Improving the outcomes for Gypsy, Roma and Traveller Pupils: final report*, <https://www.education.gov.uk/publications/RSG/AllRsgPublications/Page11/DFE-RR043>

⁹³ ITMB (2010), *Roads to Success: Economic and Social Inclusion for Gypsies and Travellers, executive summary*, p. v http://www.irishtraveller.org.uk/wp-content/uploads/2011/03/Roads_to_Success-15-11.pdf

participation in school. Parents often remove children from schools when this occurs.⁹⁴ Cuts to spending have meant that the Home Access Scheme (HAS) will no longer be available to support low income or mobile pupils, only those children with disabilities and Special Educational Needs (SEN). This will have a disproportionate impact on Gypsy and Traveller pupils.⁹⁵ Whilst there is no Government plan to dismantle Traveller Education Support Services (TESSs) their continued future existence will be at the discretion of local authorities who will have discretion as to how to allocate the funding to deprived students. A recent survey found a third of local authorities have no identified support for the education of Gypsies, Roma and Travellers and in most other areas staff numbers have been reduced and roles have been restricted, and/or extended to other areas of support.⁹⁶

5.6.3 Health of Gypsies, Roma and Travellers

Statistical data are not currently collected within the National Health Service about the needs of Gypsies and Travellers or the services they receive, so national data is not available. However, studies have found that the health status of Gypsies and Travellers is much poorer than the general population and also poorer than others in socially deprived areas.⁹⁷ This situation has not improved and has not been supported by widespread Government intervention to rectify the situation. Travellers also face high levels of depression; poor psychological health is often seen in the context of multiple difficulties, such as discrimination, racism and harassment, as well as frequent evictions and the instability caused by this.⁹⁸ Poor quality or inappropriate accommodation as a result of forced movement inevitably exacerbates existing health conditions as well as leading to new problems. However, despite greater health need, Gypsies and Travellers use mainstream health services less than other members of the population because of practical difficulties, such as complex procedures for registering and accessing services and others allegedly refuse to register them.⁹⁹ Gypsies have a lower life expectancy rate than the rest of the population.¹⁰⁰ This is partly due to difficulties in accessing health services, low literacy levels and lack of awareness of the availability of existing services, lack of community trust and the drawing of GP boundaries which often restrict traveller sites.¹⁰¹ Maternal and infant mortality in the Gypsy and Traveller community is significantly higher than the national average.¹⁰²

5.6.4 Employment and economic inclusion

Gypsies and Travellers continue to suffer from high rates of economic and social exclusion. From 2003 onwards there have been reports of growing unemployment and welfare dependency amongst Gypsy and Traveller communities.¹⁰³ Gypsies and Travellers are not categorized as a minority ethnic

⁹⁴ Ibid, executive summary, p. v- Fifty five per cent of the sample of 95 interviewees experienced bullying and discrimination during their time in education http://www.irishtraveller.org.uk/wp-content/uploads/2011/03/Roads_to_Success-15-11.pdf

⁹⁵ ITMB (2011) *Gypsy Roma and Traveller Education: Improving outcomes* <http://www.irishtraveller.org.uk/wp-content/uploads/2011/06/ITMB-Traveller-Education-Briefing-June-2011.pdf>

⁹⁶ NUT (2010) On-line NUT survey November 2010 (unpublished)

⁹⁷ Parry, G. et al (2004) *The Health Status of Gypsies and Travellers in England*, http://www.sheffield.ac.uk/polopoly_fs/1.43713!/file/GT-report-summary.pdf Report of Department of Health Inequalities in Health Research Initiative, University of Sheffield.

⁹⁸ Ibid.

⁹⁹ EHRC (2009) *Research Report 12: Inequalities experienced by Gypsies and Traveller Communities: A Review*, http://www.equalityhumanrights.com/uploaded_files/research/12inequalities_experienced_by_gypsy_and_traveller_communities_a_review.pdf, Cemlyn, S. et al

¹⁰⁰ Local Government Improvement and Development (2010) *Health Needs of Gypsies and Travellers* <http://www.idea.gov.uk/idk/core/page.do?pageId=17917440>

¹⁰¹ Ibid.

¹⁰² EHRC (2009) *Research Report 12: Inequalities experienced by Gypsies and Traveller Communities: A Review*,

http://www.equalityhumanrights.com/uploaded_files/research/12inequalities_experienced_by_gypsy_and_traveller_communities_a_review.pdf, Cemlyn, S. et al

¹⁰³ ITMB (2010), *Roads to Success: Economic and Social Inclusion for Gypsies and Travellers*, executive summary, p. v http://www.irishtraveller.org.uk/wp-content/uploads/2011/03/Roads_to_Success-15-11.pdf

group by the Department for Work and Pensions (DWP) and are presently categorized as a 'disadvantaged group' alongside Ex-Service Personnel and Ex-Offenders. Not acknowledging Gypsies and Travellers' ethnic minority status has resulted in them being excluded from DWP research and interventions focused on minority ethnic groups. This has resulted in a severe lack of economic and social targeted support such as training for the Gypsy and Traveller communities from the UK Government. As was highlighted earlier, the pervading racism which cuts across all areas of life for Travellers is also reflected in employment opportunities. Research evidence notes that Gypsies and Travellers who live on a site, or who are known to be members of local Gypsy or Traveller families encounter discrimination when applying for paid work; 'whilst hard evidence is (unsurprisingly) hard to come by, examples abound of people not being called for interviews or of jobs being mysteriously filled'.¹⁰⁴ Racist experiences negatively impact across all areas of economic inclusion including educational, employment and training opportunities.

Recommendations:

- The Government should develop a strategy for the inclusion of Gypsies, Roma and Travellers including establishing effective ethnic monitoring of the impact of policy on these groups by all Government Departments.
- The Government should increase pressure on the media to ensure that it does not propagate negative images of Gypsies, Roma and Travellers which contribute to a climate in which hostility and prejudice can flourish.
- Planning for Gypsies and Travellers should be carried out at a wider than local level with clearer guidance for local authorities. The provision of accommodation for Travellers must be enforced through a national strategy.
- The Government should establish a fund to support specific work on improving Traveller education outcomes and set targets for improving the education outcomes of Gypsy, Roma and Traveller pupils in both primary and secondary schools.
- The Government must address the inequalities experienced by these communities in accessing health services. This should include setting health targets with targeted improvement programmes.
- The Government should adopt targeted employment training programmes designed with the specific needs of Gypsies, Roma and Travellers in mind.

5.7 Addressing racial discrimination in employment

NGOs are concerned that occupational segregation, low pay, discrimination in seeking and during employment are still key factors in deficit differentials in employment for minority ethnic people.

5.7.1 Unemployment

For the period July 2008 to June 2009 the minority ethnic unemployment rate in England was almost double the rate than that for White people; 12.1% compared with 6.3%. However, the differential between minority ethnic unemployment rate and the White unemployment rate is greatest in London, where the minority ethnic rate is 2.11 times greater than the White rate¹⁰⁵.

¹⁰⁴ EHRC (2009) *Research Report 12: Inequalities experienced by Gypsies and Traveller Communities: A Review*, p.40

http://www.equalityhumanrights.com/uploaded_files/research/12inequalities_experienced_by_gypsy_and_traveller_communities_a_review.pdf, Cemlyn, S. et al

¹⁰⁵ Black Training and Enterprise Group (BTEG) (2010) *An equal race for skills and jobs?: A BTEG Policy briefing paper*, http://www.bteg.co.uk/downloads/Publications/BTEG%20Publications/bteg_policy_document_-_skills.pdf

Research in January 2010¹⁰⁶ noted that unemployment among Black groups had risen 13% since March 2008, compared with 8% among White people and 6% among Asians.¹⁰⁷ That trend echoes the recession in the early 1990s where unemployment among minority ethnic communities rose by 10%, compared with a 6% increase overall.

5.7.2 The employment gap

There are differing estimates of the size of the employment gap. The Government report put this at 14 percentage points in 2009. The National Audit Office (2008)¹⁰⁸ and the Business Commission Report (2007)¹⁰⁹ of the National Employment Panel reported that the minority ethnic employment gap has fluctuated since 1985 between 9 and 21% and the only conclusion they could draw was that improvement was slow – they estimate that the gap will take 25–30 years to eradicate. For information on minority employment and ethnic women, see section 9.1. For information on employment and Gypsy, Roma and Traveller communities, see section 5.6.4. For information on employment and migrants, see section 10.1.6.

The Business Commission made 13 recommendations¹¹⁰ to government on policies and measures to increase the recruitment, retention and progression for people from minority ethnic communities in the private sector; these included that as the major purchaser the Government should use its leverage over the private sector and should establish a public sector-wide procurement policy. The public sector equality duty in the Equality Act 2010¹¹¹ (discussed in section 2.2.6) applies to procurement; despite guidance by the European Commission and the CRE as well as action by some local authorities and parts of the NHS, there is no evidence that Government is prepared to act on the Business Commission recommendations.

5.7.3 Discrimination in entry to employment

A government funded research report in 2009¹¹² of a ‘testing’ operation where candidates from different ethnicities applied in similar terms for the same jobs clearly shows that employers’ discrimination is still rife, but that legislation can help:

‘Of the 987 applications with a White name, 10.7 per cent received a positive response. This compared to 6.2 per cent of the 1974 applications with an ethnic minority name – a net difference of 4.6 percentage points. That is, 74 per cent more applications from ethnic minority candidates needed to be sent for the same level of success.’ (P2)

Public sector employers were found to have a discrimination level of 4% while private sector employers had a discrimination level of 35%.

5.7.4 Self-employment and small/medium minority ethnic led business

There are currently around 360,000 self-employed people from minority ethnic groups in the UK, representing nine per cent of the self-employed population. Whilst minority ethnic groups overall have a self-employment rate similar (7%) to British and other White groups (8%), there is a wide

¹⁰⁶IPPR (2010) *Youth unemployment and the recession*, <http://www.ippr.org/uploadedFiles/events/Youth%20unemployment%20and%20recession%20technical%20briefing.pdf>

¹⁰⁷ Data from the Labour Force Survey - a quarterly sample of about 60,000 households.

¹⁰⁸ National Audit Office (2008) publication for Department for Work and Pensions ‘*Increasing employment rates for ethnic minorities*’, http://www.nao.org.uk/publications/0708/increasing_employment_rates_for_ethnic_minorities.aspx

¹⁰⁹ Ibid

¹¹⁰ Ibid page 41

¹¹¹ Section 155 of the Act enables regulations to impose specific equality duties in connection with public procurement; to date it is only Welsh public authorities who have been given such duties

¹¹² DWP (2009) Research Report No 607 *A test for racial discrimination in recruitment practice in British cities*, <http://research.dwp.gov.uk/asd/asd5/rports2009-2010/rrep607.pdf>, Wood, M. et al

variation between ethnic groups. Black Caribbean (4%) and Black African (5%) people have lower self-employment rates than Pakistani (12%), Indian (8%) and Chinese (10%) people.¹¹³

Minority ethnic businesses 'face persistent barriers to obtaining procurement contracts'.¹¹⁴ minority ethnic businesses are more likely to have financial applications rejected compared to White-owned businesses and this could be exacerbated by reluctant lenders in the current climate. Undercapitalization is the single most important cause of failure among small firms¹¹⁵ and business failure rates among micro- and small enterprises are higher in the UK than in other Organisation for Economic Co-operation and Development (OECD) countries.¹¹⁶ We welcome the Government's intention to start a mentoring scheme in June 2011. However there needs to be a more concerted drive to ensure the inclusion of minority ethnic people in entrepreneurship.

5.7.5 Protection against racial discrimination in employment

In the face of these findings, the Government has decided to close down the Ethnic Minority Employment Taskforce. NGOs express concern at the potential loss of focus on these persistent inequalities.

Government proposes to cap compensation for discrimination awarded by employment tribunals.¹¹⁷ NGOs and trade unions are very concerned about this. In 2010 the median award by an employment tribunal in a race discrimination case, including compensation for loss of earning including future loss, injury to feelings and interest, where applicable, was £7865 and in 2009 was £3000. The average award in 2010 was £16,566 and in 2009 £15,780.¹¹⁸ Within the UK, discrimination compensation used to be limited to the same maximum sum as was payable in respect of unfair dismissals. However, in the case of *Marshall v Southampton and South West Hampshire Area Health Authority (no 2)*¹¹⁹ the European Court of Justice ruled that this was an unlawful restriction and consequently the domestic restrictions on compensation for both sex and race discrimination were removed.

A central part of the 2011 budget statement was a detailed Plan for Growth. This included a number of regressive proposals affecting rights against discrimination, in all of which cases the justification was reduction of costs:

- *The Government will exempt micro businesses (i.e. businesses with fewer than 10 employees) and genuine start-ups from new domestic regulation. The moratorium will last for three years, affecting all regulation due to start from 1 April 2011 onwards.*
- *The Government will not implement Equality Act dual discrimination rules, estimating they would have cost business £3 million per year;*
- *The Government will consult to remove the 'unworkable' requirement in the Equality Act for businesses to take reasonable steps to prevent persistent harassment of their staff by third parties as they have no direct control over it, which would save £0.3 million.*
- *The Government will launch a major drive to revise burdensome EU regulations and directives.*

¹¹³ Department for Business, Innovation and Skills (BIS) analysis of ONS Labour Force Survey data 2009, rate out of all adults, UK.

¹¹⁴ EHRC (April 2010), *London 2012: Good practice guidelines Procurement and employment*, http://www.equalityhumanrights.com/uploaded_files/employers/london_2012_good_practice_guidelines.pdf

¹¹⁵ Hall & Young

¹¹⁶ Gavron et al.

¹¹⁷ News Distribution Service (NDS) *Next steps in review of employment law*, <http://nds.coi.gov.uk/content/Detail.aspx?ReleaseID=419433&NewsAreaID=2>

¹¹⁸ Equal Opportunities Review, (June 2011) Issue 213, Michael Rubenstein Publishing

¹¹⁹ Case C-271/91, [1993] ECR I-4367.

- *To significantly reduce the burden of existing regulation, the Government will seek the public's views on over 21,000 UK Statutory Instruments currently in effect.*

For more information on other measures intended to cut costs which are likely to adversely affect rights against discrimination, see section 2.2.7. For information on employment and positive action, see section 2.2.4.

Recommendations:

- The Government should ensure that all public authorities meet their equality duties by using their purchasing power (procurement) to secure greater race equality in private sector employment.
- The Government should encourage more use of positive action in employment and review what can be learned from the use of affirmative action in the implementation of the Northern Ireland Fair Employment Act.
- The Government should ensure that legislation and practices to prevent discrimination in employment are applied and enforced in the public, voluntary and private sectors and ensure effective action where equality is absent.
- The Government should strengthen the specific duties of the Equality Act to require detailed employment monitoring across the public, private and third sectors.
- The Government should ensure that the current economic situation is not used to freeze or reduce the wages of those bearing the brunt of the economic crisis.
- The Government should ensure that policy attention is given to race equality in employment.
- The Government should abandon proposals to re-introduce an upper limit to compensation for discrimination.

5.8 Addressing racial discrimination in education

The current Government's position with regards to race equality in education so far has been characterized by a lack of reference to race or ethnic inequalities at all. Nonetheless, education indicators such as educational achievement at age 16 and exclusion rates differ measurably between different ethnic groups.

Despite the Government's proclaimed commitment to reducing inequality and increasing opportunity in education, the Government's education reforms are likely to exacerbate existing inequalities, particularly those which run along the lines of race and social class. Whilst the Education White Paper does address disadvantage in terms of socio-economic backgrounds, it does not attempt to address the racial inequalities in education outcomes.¹²⁰

5.8.1 Educational achievement

Educational attainment varies significantly between ethnic groups. The picture is complex, with some minority ethnic groups falling significantly behind, and others achieving above the national average. In England at Key Stage 4 (age 16) the lowest achieving groups are Traveller of Irish heritage pupils and Gypsy/Roma pupils, with 9.2% and 9.1% of these groups achieving 5 A*–C grade GCSEs respectively.¹²¹ Among larger minority ethnic communities, the lowest achieving groups were Black Caribbean, Pakistani, Other Black and pupils from a Mixed White and Black Caribbean background. These groups achieved 39.4%, 42.9%, 41.2% and 42.3% A*–C grade GCSEs respectively.

¹²⁰ Race Equality Teaching (2011) *Response to the Importance of Teaching and the Education Bill 2011*

¹²¹ Department for Children, Schools and Families. *Key Stage 4 Attainment by Pupil Characteristics, in England 2008/2009*, (London: DCSF, 2010) <http://www.education.gov.uk/rsgateway/DB/SFR/s000900/sfr34-2009v2.pdf>

Since 2006, the gaps between these groups and the attainment of all pupils have decreased. Notably, the gap between Black Caribbean pupils and all pupils has decreased from 14.5 percentage points in 2006 to 11.3 percentage points in 2009. The ethnic groups which achieved the highest in 2009 were Chinese, Indian and Mixed White and Asian pupils, who achieved 71.6%, 67% and 62.3% respectively.¹²² For more information on education and the Gypsy, Roma and Traveller community, see section 5.6.2.

A new measurement, the English Baccalaureate, has been recently introduced for schools in England. This requires pupils to achieve A*-C grades in five specified subjects. While 15.4% of White British pupils achieved the English Baccalaureate benchmark in 2010, the figures for many minority ethnic groups were far lower, at 10.4% for Black African students, 10.3% for Pakistani students, 9.3% for Bangladeshi students, and 8.5% for mixed White and Black Caribbean students.¹²³

5.8.2 Higher education

The proportion of university places taken by minority ethnic students has increased from 13% of students in 1994/95 to 23% in 2008/09, a figure broadly proportionate to their size in the young population.¹²⁴ All minority ethnic groups, with the exception of students from Chinese backgrounds, are more likely to attend less prestigious institutions.¹²⁵ The Russell Group Universities (a group of 20 of the UK's leading research universities) have for many years recruited very low numbers of minority ethnic pupils. Eight per cent of all Black university students attend Russell Group universities compared to 24% of all White students. In 2009 only one Black Caribbean student was accepted to study on a course at Oxford University.¹²⁶

These trends have an impact on graduate employment prospects and earnings. Minority ethnic graduates are more than twice as likely to be unemployed after graduation compared to White students.¹²⁷ Many of the universities with the highest minority ethnic populations have the lowest employment rates, and given the currently poor prospects for graduates generally, this is likely to have an adverse effect on minority ethnic employment, which in 2010 stood at 12% less than White British employment.¹²⁸ Studying at a Russell Group University has been found to boost a graduate's earnings by between 3 and 6% compared to studying at a 'new' university.¹²⁹ Graduate under-employment and labour market disadvantages therefore make the economic returns of studying for a degree for many minority ethnic graduates less than for their White counterparts.

5.8.3 Racist bullying

Research has found that prejudice related bullying based on students' identities is a widespread problem, and that this has a negative impact on educational achievements.¹³⁰ The report found that racist bullying is the most widely recognized and addressed of all forms of identity-based bullying.

¹²² Department for Children, Schools and Families. *Key Stage 4 Attainment by Pupil Characteristics, in England 2008/2009*, (London: DCSF, 2010) <http://www.education.gov.uk/rsgateway/DB/SFR/s000900/sfr34-2009v2.pdf>

¹²³ <http://www.guardian.co.uk/commentisfree/2011/jun/12/black-pupils-held-back-baccalaureate-race>

¹²⁴ EHRC (2010) *Triennial Review, How Fair is Britain? Equality, Human Rights and Good Relations in 2010*, http://www.equalityhumanrights.com/uploaded_files/triennial_review/how_fair_is_britain_-_complete_report.pdf

¹²⁵ The Runnymede Trust (2007) *Not Enough Understanding? Student Experiences of Diversity in UK Universities*, <http://www.runnymedetrust.org/uploads/file/Not%20Enough%20Understanding%20-%20final.pdf>

¹²⁶ University of Oxford 2010

¹²⁷ The Runnymede Trust (2007) *Not Enough Understanding? Student Experiences of Diversity in UK Universities*, <http://www.runnymedetrust.org/uploads/file/Not%20Enough%20Understanding%20-%20final.pdf>

¹²⁸ The Runnymede Trust (2010)

¹²⁹ The Runnymede Trust (2007) *Not Enough Understanding? Student Experiences of Diversity in UK Universities*, <http://www.runnymedetrust.org/uploads/file/Not%20Enough%20Understanding%20-%20final.pdf>

¹³⁰ EHRC (2010) Research report 64, *Prevention and response to identity-based bullying among local authorities in England, Scotland and Wales*, Tippett, N. et al, http://www.equalityhumanrights.com/uploaded_files/research/64_identity_based_bullying.pdf

Central government intends to drastically reduce their guidance and monitoring of prejudice related bullying. The previous Government rejected an amendment to the Equality Bill which would have made schools legally liable to race-related pupil to pupil harassment (including bullying). It is important that all schools comply with their obligations under the public sector equality duty in carrying out their various functions to promote good relations, which should involve responsibilities to stamp out racist bullying.

5.8.4 Support for students in further education (16–19)

The abolition of the Education Maintenance Allowance (EMA) is an important change to the financial support available to young people when undertaking post-compulsory education. The EMA provided much welcome support for young people who faced barriers to educational participation and attainment, and research has indicated that it significantly improved the educational outcomes of its recipients,¹³¹ evidence the Government has chosen to ignore. The EMA, which totalled £560m annually, has been replaced with the new 16–19 bursary scheme totalling just £180m, and the criteria for entitlement have been narrowed. There had been high take-up of EMA among young people of minority ethnic groups, particularly those from Bangladeshi, Pakistani and African backgrounds. Given that research has indicated that the EMA had a positive effect on the educational attainment of several ethnic groups, including Black students in particular, it is particularly regrettable that these groups are not specifically targeted by the new fund.

5.8.5 Ethnic Minority Achievement Grant

The Ethnic Minority Achievement Grant (EMAG) was set up to narrow achievement gaps for pupils from the minority ethnic groups who are at risk of underachieving, and to meet the needs of bilingual pupils. In April 2011, EMAG was abolished in its current form. It has been mainstreamed into the ‘dedicated schools grant’, removing its ring-fenced status. This means that schools will now have the power to reduce the level of specialist provision to minority ethnic children at their discretion. The risk is that schools will use the already limited funds targeting at raising the achievement of minority ethnic pupils and spend them on other areas.

5.8.6 Exclusions and discipline in schools

Rates of permanent exclusion are highest for Gypsy/Roma pupils (0.38% of the school population), Travellers of Irish Heritage (0.30% of the school population) and Black Caribbean pupils (0.30% of the school population). Black Caribbean pupils are three times more likely to be permanently excluded than the school population as a whole.¹³² Proposed reforms to the exclusion appeals process are likely to have a disproportionate impact on these ethnic groups. The proposals include removing the possibility for appeals panels to reinstate pupils who have been unfairly excluded. It establishes new review panels with significantly different powers from the previous appeals panels, which can recommend or direct a responsible body to reconsider their decision, but cannot order reinstatement. By stripping exclusions panels of their ability to reinstate a pupil in their school if found innocent, the ability to effectively hold a school to account is substantially reduced and a vital safeguard against miscarriages of justice is removed. It is also unclear how these changes will bring about a reduction in the number of exclusions, which impact disproportionately on Black ethnic groups.

The legislative proposals include changes to the way that behaviour and discipline issues are handled in schools, including giving members of staff powers to search pupils in schools. Evidence suggests

¹³¹ Department for Education and Skills (2005) *Evaluation of Education Maintenance Allowance Pilots: Young People Aged 16 - 19 Years. Final Report of the Quantitative Evaluation*, Middleton, S et al, DfES Research Report RR678, <http://www.crsp.ac.uk/downloads/publications/ema/rr678.pdf>

¹³² Department for Education (2010) *Permanent and Fixed Period Exclusions*, <http://www.education.gov.uk/rsgateway/DB/SFR/s000942/index.shtml>

that Black Caribbean students are over-represented in other areas of discipline and are routinely punished more harshly, and that teachers' attitudes towards Black children could be a contributory factor.¹³³ It is therefore likely that they will be disproportionately searched under this new power. If Black pupils are searched more than other pupils, or feel unfairly targeted, this could undermine trust and potentially lead to an increase in negative behaviour in the classroom, which in turn can have a detrimental impact on educational achievement.

Recommendations:

- The Government should encourage action to reduce the achievement gaps between people of different ethnic groups at schools and universities.
- The Government should deliver effective independent careers advice and guidance in order to give young people from minority ethnic communities access to a wider range of universities or the labour market on graduation.
- A preventative strategy to racist bullying should be adopted which aims to tackle the root causes of prejudice, creates an environment which fosters inclusion, and a curriculum which promotes equality and diversity.
- The Government should be required to report on the use of disciplinary powers by ethnicity of pupils and demonstrate how, in the use of such powers, they are meeting their statutory public sector equality duty.
- The Government should allow exclusions appeals panels to reinstate excluded pupils in schools if an appeal is successful, and the Education Bill should be amended accordingly.

5.9 Addressing racial discrimination in housing

5.9.1 Cuts to housing benefits

The welfare reform package announced by the Government in 2010 included making £50m a year savings on housing benefit, as well as large cuts to building new affordable homes and the provision of housing-related help to vulnerable people. In its equality impact assessment of the changes, the Government conceded that a disproportionate number of minority ethnic households, making up 121,800 people, were among the groups who stood to lose an average of £624 a year under the housing benefit cuts.¹³⁴ Whilst 17% of White households and only 7% of Indian households are social renters, 47% of Bangladeshi households, 44% of Black African, and 41% of Black Caribbean households lived in social housing in England in 2008.

5.9.2 Other housing issues

There is considerable variation in the housing conditions of different ethnic groups. Minority ethnic households are over-represented across a wide range of housing indicators, including poor quality housing, overcrowding, insecure housing,¹³⁵ and homelessness. It is notable that minority ethnic people are twice as likely as White people to live in substandard homes, as defined by general unfitness, disrepair or the need for modernization.¹³⁶ In many cases, this corresponds with residential clustering in areas that are more generally deprived, and that are in need of greater investment.¹³⁷

Some minority ethnic groups are more likely to be overcrowded and to have larger household sizes compared to the average of 2.2 people per household for White groups. This is a well-observed point

¹³³ Department for Education and Skills (2006) *Priority Review: Exclusion of Black Pupils, Getting It. Getting It Right* <http://www.emas4success.org/acrobat/WholeSchoolPlanning/DCSFGuidance/Gettingitgettingitright.pdf>

¹³⁴ The Runnymede Trust (2011) 'A House of Cards', *Runnymede Bulletin Issue 364* <http://www.runnymedetrust.org/projects-and-publications/bulletin/the-bulletin-archive/bulletin-winter-2010.html>

¹³⁵ Ibid.

¹³⁶ Platt, L. (2007) *Poverty and Ethnicity in the UK*. York: Joseph Rowntree Foundation

¹³⁷ Runnymede Trust (2008) *Financial Inclusion and Ethnicity: An Agenda for Research and Policy Action*

for groups such as Bangladeshis (4.5), Pakistanis (4.1) and Indians (3.3),¹³⁸ but it is increasingly discussed in the context of certain types of new migrants from Eastern Europe, where housing costs may also be a factor for why more than one family lives in single family dwellings.¹³⁹ Almost all minority groups are also less likely to own homes. Fifty per cent of minority ethnic households are owner occupiers in comparison to 70% of White households.¹⁴⁰ Some minority ethnic groups have particularly low home-ownership rates, especially Bangladeshi, Black African and Black Caribbean groups.¹⁴¹

5.9.3 Homelessness

In early 2011, of all applicants who were eligible for assistance, unintentionally homeless, or were from a specified priority group, 66% of those accepted were White and 29% were from a minority ethnic group – 15% Black, 7% Asian, 3% mixed and 4% another ethnic group.¹⁴² Compared to the population as a whole, there is a higher incidence of acceptances onto social housing lists due to homelessness amongst minority ethnic groups than amongst the White population. The recession and expected increases in unemployment in 2011 may feed into higher levels of homelessness. A number of studies on the impact of past recessions suggest that minority ethnic groups are much more vulnerable.¹⁴³ For information on accommodation and Gypsy, Roma and Traveller communities, see section 5.6.1. For information on housing and migrants, see section 10.1.8.

Recommendations:

- The Government should ensure that local authority housing benefit services are working in partnership with the social rented sector, private landlords and letting agents, advice providers, local community groups and NGOs, to mitigate the effects of the housing benefit cuts on people from minority ethnic communities.
- The Government should ensure that homes are of high quality and that housing regeneration initiatives adequately consider the views and needs of minority ethnic groups.
- The Government should address the problems of low home ownership rates among some minority ethnic groups by continuing to invest in affordable housing to promote home ownership.
- The Government should take action to combat disproportionate levels of homelessness amongst minority ethnic groups.

5.10 Addressing racial discrimination in health

5.10.1 Health inequalities

Evidence indicates that minority ethnic communities experience poorer health outcomes and access to health care in comparison with the general population in the UK. We welcome that the Government's report includes comprehensive data on the health inequalities that persist amongst certain minority ethnic groups, and that it acknowledges that certain minority ethnic communities experience disproportionately high rates of certain health conditions. We are particularly concerned about the following trends:

¹³⁸ Based on 2001 Census data: see www.statistics.gov.uk

¹³⁹ Runnymede Trust (2008) *Financial Inclusion and Ethnicity: An Agenda for Research and Policy Action*

¹⁴⁰ ONS Labour Force Survey (2008) *Tenure by ethnic group of household reference person, England*

¹⁴¹ Ibid.

¹⁴² Communities and Local Government (2011) *Statutory homelessness March Quarter 2011 England*, <http://www.communities.gov.uk/publications/corporate/statistics/homelessnessq12011>, Crown Copyright

¹⁴³ The Runnymede Trust (2011) 'A House of Cards', *Runnymede Bulletin Issue 364* <http://www.runnymedetrust.org/projects-and-publications/bulletin/the-bulletin-archive/bulletin-winter-2010.html>

- Rates of detention under the Mental Health Act are higher than average for Black Caribbean, Black African, Other Black, Mixed, Other White and Pakistani groups (in some cases by 20% to 36%).¹⁴⁴
- Prevalence of stroke among African Caribbean and South Asian men is 70% higher than the average.¹⁴⁵
- The risk of cardiovascular and renal complications is greater in patients from South Asian backgrounds, with 50% higher mortality rate.¹⁴⁶
- People from minority ethnic communities are up to six times more likely to develop diabetes.¹⁴⁷
- Infant mortality rate in England and Wales for children born to mothers from Pakistan is double the average.¹⁴⁸
- Black African communities are disproportionately affected by HIV compared to other minority ethnic groups in the UK. It is estimated that around two-thirds of new diagnoses in 2008 acquired heterosexually were among Black Africans.¹⁴⁹

Aside from noting the difficulties Gypsies and Travellers have in accessing health care, the Government report does not comment more generally on the widespread barriers that many minority ethnic communities face when it comes to health services. For more information on health and Gypsies, Roma and Travellers, see section 5.6.3. Evidence shows that many minority ethnic communities have poor access to health and social care services and that effective engagement is often limited by factors such as lack of access to interpreters and health information, and a lack of culturally sensitive services.¹⁵⁰ As well as factors relating to social deprivation and exclusion, evidence also indicates that racial discrimination has a detrimental impact on individuals' and community health, and that people from minority ethnic groups can experience poor treatment due to the negative attitudes of others towards them.¹⁵¹

Regretfully, the Government report does not mention migrants or asylum seekers in the section on health. Poor access of migrants to health care is a concern in the UK. Barriers to migrants' health and access to health care in comparison to UK-born groups include: low income; sub-standard housing; poor health and safety practices in some industries which employ migrants; inadequate information on how to access health services; lack of knowledge about or denial of entitlement to primary health care; inadequate language support and the cultural insensitivity of some health care providers.¹⁵² We are also concerned about the low level of support and difficult access to health care for rejected asylum seekers and undocumented migrants, especially with regard to availability of HIV/AIDS

¹⁴⁴ Healthcare Commission (2008) *Count me in 2008: Results of the 2008 national census of inpatients in mental health and learning disability services in England and Wales*, http://www.cqc.org.uk/db/documents/Count_me_in_census_2008_Results_of_the_national_census_of_inpatients_in_mental_health_and_learning_disability_services.pdf

¹⁴⁵ Race for Health (2008) *Race equality in health: the key to world class commissioning*, http://www.raceforhealth.org/pdf/Race_equality_in_health.pdf

¹⁴⁶ *Ethnic minority communities: Insight presentation*. Department of Health, 2008

¹⁴⁷ All Party Parliamentary Group for Diabetes and Diabetes UK (2006) *'Diabetes and the disadvantaged: reducing health inequalities in the UK'* World Diabetes Day 14/11/2006,

¹⁴⁸ Race for Health (2008) *Race equality in health: the key to world class commissioning*, http://www.raceforhealth.org/pdf/Race_equality_in_health.pdf

¹⁴⁹ Health Protection Agency, (2009) *HIV in the UK: 2009 Report*, p. 3, http://www.hpa.org.uk/web/HPAwebFile/HPAweb_C/1259151891830

¹⁵⁰ Race Equality Foundation (2010) Better Health Briefing 18, *Effective methods of engaging black and minority ethnic communities within health care settings*, <http://www.better-health.org.uk/sites/default/files/briefings/downloads/health-brief18.pdf>

¹⁵¹ Race Equality Foundation (2007) Better Health Briefing 3, *Ethnic inequalities in health: the impact of racism*, <http://www.better-health.org.uk/sites/default/files/briefings/downloads/health-brief3.pdf>

¹⁵² Race Equality Foundation (2010) Better Health Briefing 19, *Health and access to health care of migrants in the UK*, <http://www.better-health.org.uk/sites/default/files/briefings/downloads/health-brief19.pdf>

treatment, as noted by the Committee on Economic, Social and Cultural Rights in 2009.¹⁵³ For information on minority ethnic women and health, see section 9.1.

5.10.2 Patient involvement in health care

The Government proposes to substantially reform the National Health Service (NHS). Certain aspects of the proposals have the potential to meet the needs of minority ethnic communities, such as plans to shift power from the centre to local areas and to put patients and the public at the heart of healthcare. However, other aspects of the plans raise a number of concerns for minority ethnic community and voluntary sector organizations working in the field of health and social care.¹⁵⁴ It is unclear how the new structures and processes proposed will address race equality and whether the specific needs of minority ethnic communities will be met.

The Government report recognizes the patient surveys which indicate that patients from minority ethnic backgrounds are more likely than White patients to report that they are not as involved as they would like to be in decisions affecting their care and treatment. We are therefore concerned that the proposals do not provide enough information on how the voices of the most marginalized members of communities will be heard within patient and public involvement processes.

Further evidence indicates that minority ethnic groups face problems in accessing culturally appropriate services and information from their GPs (General Practitioners, local doctors not situated in hospitals). Therefore, the Government's plans to give greater power to GPs by devolving responsibility for commissioning services through GP Consortia may adversely impact minority ethnic communities.

Recommendations:

- The Government should set clear targets in tackling race inequalities in service provision and public health in order to put the health outcomes of minority ethnic communities on a par with the general population.
- The Government should commission a yearly report on race inequalities in health and social care.
- The Government should develop a clear strategy for more effective consultation with minority ethnic communities to ensure that these groups are involved in the development of and evaluation of health and social care services.
- The Government should ensure that all general practitioners (GPs, local doctors not based in hospitals) are given the necessary training to work more effectively with people from different minority ethnic groups.
- The Government should ensure that cuts in spending do not disproportionately impact on minority ethnic communities and the community health organizations which are currently offering culturally appropriate health services for those marginalized from mainstream service provision.
- The Government should encourage improved health outcomes by investing in raising awareness among minority ethnic communities about health conditions and services.
- The Government should provide free access to primary and secondary healthcare to all asylum seekers while they remain in the UK, including for HIV treatment in England and Northern Ireland. This is currently the position in Scotland and Wales.

¹⁵³ UN (2009) *Concluding Observations of the Committee on Economic, Social and Cultural Rights from its review of the UK, Forty-second session*, paragraph 27,

[http://www.unhcr.ch/tbs/doc.nsf/\(symbol\)/cd515b6fbf9c7a12c1256e010056fdf4?opendocument](http://www.unhcr.ch/tbs/doc.nsf/(symbol)/cd515b6fbf9c7a12c1256e010056fdf4?opendocument)

¹⁵⁴ Afiya Trust (2010) *Equity and Excellence: Liberating the NHS, Response to the White Paper*

<http://www.runnymedetrust.org/uploads/policyResponses/AfiyaTrustResponseToNHSWhitePaperOct2010.pdf>

6. ARTICLE 6

6.1 Human rights body

In paragraph 22 of its concluding observations, the committee stated:

While reiterating its satisfaction in connection with the enactment of the Human Rights Act of 1998, the Committee notes that no central body has been established to implement the Act. The Committee considers that the absence of such a body may undermine the effectiveness of the Act. The Committee refers to the earlier commitment of the State party to consider establishing a Human Rights Commission in order to enforce the Act and the possibility of granting such a commission comprehensive competence to review complaints of human rights violations, and recommends an early decision in this regard.

The Government's report (paras 323–333) reflects on the enactment of the Equality Act 2006 and on the establishment, role, remit and funding of the Equality and Human Rights Commission (EHRC) for Great Britain. Under para 327, the report notes that the EHRC 'has extensive new powers to enforce equality laws in the UK including the ability to take legal action to prevent breaches of the human rights act and the power to launch official enquiries formal investigations. Their role includes making sure that public authorities carry out their legal duties to tackle discrimination and promote equality.' Under para 328, it is reported that the EHRC had a provisional budget for 2008/09 of £70.3 million and that £46.1 million had been allocated for research, policy development, legal enforcement investigations, and to fund their grants programme and that the EHRC had provided £10 million funding to organizations to help them in projects promote equality and human rights.

We welcome the establishment of the EHRC but are extremely concerned about the proposals published by the Government in March 2011.¹⁵⁵ The Government proposes substantive amendments to the Equality Act 2006 and the statutory role and remit of EHRC. The effect of these proposals would lead to a fundamental regression in the Commission's remit and lead to the EHRC focusing disproportionately on just the implementation of the Equality Act 2010; this approach would potentially undermine: a) compliance with international race obligations to which the UK is subject (i.e. the EU race directive and the ICERD); and b) the EHRC's ability to look at equality and civil rights related legislation linked to the promotion of race equality and human rights. The proposed funding cuts of more than 50% against the EHRC's 2008/9 budget will, if implemented, undermine the statutory remit of the EHRC and reduce the EHRC's effectiveness and ability to tackle racism and promote race equality, equality and human rights.

The proposed statutory remit for the EHRC makes no reference to ICERD or relevant requirements in the EU Race Directive. As currently drafted, we believe that the proposals could undermine compliance with key provisions in the EU Race Directive, particularly the requirements set out in paragraph 19, articles 13 (1) and 13 (2). We are equally concerned that the proposals, if implemented, would undermine the UK's ability to comply with the ICERD particularly Articles 2, 6 and 7. We do not believe that the EHRC's role should focus on a very narrow interpretation of regulation and only regulation in relation to the Equality Act 2010. We believe that implementing these proposals would restrict the ability of the EHRC to effectively address racism and promote race

¹⁵⁵ EHRC (2011) *The Equality and Human Rights Commission's response to the Government consultation paper: Building a Fairer Britain: reform of the Equality and Human Rights Commission*
http://www.equalityhumanrights.com/uploaded_files/aboutus/ehre_geo_response.pdf

equality. We believe that it is essential that the EHRC retains its existing duties and powers and that these are not undermined in the manner proposed.

The EHRC does not have comprehensive competence to address human rights complaints. In our view appropriate further powers should be:

- the power to support individuals in human rights claims, where the EHRC believes that the case is strategic, similarly to the current section 28 power under the Equality Act 2006;
- the power to conduct investigations as to whether a body or organization has breached the Human Rights Act, similar to the power to conduct investigations under section 20 of the Equality Act 2006 in relation to the breaches of the Equality Act 2010;
- the power to conduct inquiries under section 16 of the Equality Act 2006 in relation to the intelligence services (currently this is not possible, Schedule 2 paragraph 20). This is important as a number of alleged violations of human rights have allegedly involved the intelligence services;
- the power to promote and ensure the harmonization of national legislation, regulations and practices with the international human rights instruments to which the State is a party, and their effective implementation. This power would be consistent with the requirements of the Paris Principles;
- the power to encourage ratification of the international human rights instruments or accession to those instruments, and to ensure their implementation. This would be consistent with the requirements of the Paris Principles.

Recommendation:

- The EHRC should extend its existing statutory duties and powers in matters relating to human rights. Any issues of governance and management should be dealt with in an appropriate manner that does not undermine the statutory responsibilities and independence of the EHRC.

7. ARTICLE 9

7.1 Submission of Government's Periodic Report

In paragraph 31 of its concluding observations, the committee stated:

The Committee recommends that the State party submit a combined eighteenth and nineteenth periodic report, due on 6 April 2006, and that the report address all points raised in the present concluding observations.

We are concerned that the previous Government did not report in 2006 and it was difficult to get information about what was happening. NGOs have done more to publicize the concluding comments from last time and to organize consultations for this CERD report. We would like the committee to urge the Government to be much more transparent about its interactions with CERD and to publicize the concluding observations from this time together with an action plan for how they will address the points made. We do not have knowledge of how the previous Government specifically acted on the concluding comments from 2003.

Recommendation:

- The Government should take its obligations to report to CERD seriously and engage with NGOs in disseminating the Committee's comments

8. ARTICLE 14

8.1 Right to individual petition

In paragraph 28 of its concluding observations, the committee stated:

The Committee notes that the State party is currently reviewing the possibility of making the optional declaration provided for in article 14 of the Convention and invites the State party to give high priority to such a review and to give favourable consideration to making this declaration.

We are particularly disappointed that the Government continues to refuse to make a declaration under ICERD Article 14, in order to allow individual petitions to be made under the Convention. These rights of individual petition would provide an important enforcement mechanism. We cannot see how the Government can continue to justify refusing to allow the right of individual petition to be made under the Convention when they have made equivalent declarations under the Convention on the Elimination of all forms of Discrimination Against Women (CEDAW), Convention Against Torture (CAT), Convention on the Rights of the Child (CRC) and Convention on the Rights of Persons with Disabilities (CRPD).

Recommendation:

- The Government should make a declaration under Article 14 of the International Convention for the Elimination of All Forms of Racial Discrimination (ICERD) to allow individuals the right to petition the Committee.

9. GENERAL COMMENT NO. 25: GENDER-RELATED DIMENSIONS OF RACIAL DISCRIMINATION

9.1 Discrimination against minority ethnic women: general concerns

In recognition that there are some forms of racial discrimination which affect women to a different degree than men or which have a specific impact on women (one of the important reasons for protection against multiple discrimination discussed in section 2.2.2), there are a number of issues we would like to highlight in connection with CERD's general comment number 25 on gender-related dimensions of racial discrimination.

Below is a list of concerns relating to issues which have been previously raised in this report which affect minority ethnic women to a different degree than men. Sections 9.1 to 9.3 then go on to outline some of the issues not previously dealt with in the report which have a specific impact on minority ethnic women.

- Employment: Only about half of all minority ethnic women are in employment (and just a quarter of Pakistani and Bangladeshi women) compared to 70% of minority ethnic men and 73% of White women.¹⁵⁶
- Poverty: About 40% of minority ethnic women live in poverty, twice the proportion of White women. Poverty extends to more than a third of Black women and almost two-thirds of Pakistani and Bangladeshi women.¹⁵⁷

¹⁵⁶ Moosa, Z and Woodroffe, J. (2009) *Poverty pathways: ethnic minority women's livelihoods*, Fawcett Society, <http://www.fawcettsociety.org.uk/documents/Povertypathways.pdf>

¹⁵⁷ Ibid.

- Pay gaps: All minority ethnic women had pay gaps relative to White British men, but they were lowest for Chinese (9%) and Black Caribbean (14%) women, and highest for Pakistani women (26%).¹⁵⁸
- Female migrants: The points based system has been found to discriminate against migrant women from low-income countries.
- Spending cuts: Spending cuts are more likely to impact on minority ethnic women as the public sector workforce contracts, and because they are more likely to be living in poverty and have a more acute need for services.
- Health: Minority ethnic women more generally are more likely to report ill-health than other groups in the population. Pakistani and Bangladeshi women appear to have particularly acute needs, and are three times as likely to report health problems.¹⁵⁹ Gypsy and Traveller women have higher rates of maternal and infant mortality than the rest of the population.¹⁶⁰
- Political participation: Minority ethnic women are under-represented in Parliament and in other decision-making forums. For example there are currently around 20,000 local councillors in England of whom about 30% are women. However, less than 1% are minority ethnic women despite the fact that they make up more than 5% of the population.¹⁶¹

There are a number of other specific issues relating to the racial discrimination faced by minority ethnic women:

9.2 No recourse to public funds

For a significant number of minority ethnic women, the absence of recourse to public funds (NRPF) in immigration and welfare law prevents them from making use of the right to remain in the UK under the 'domestic violence rule'. Those with NRPF have no entitlement to welfare benefits, public housing or Home Office support for asylum seekers, and are likely to be highly vulnerable and in need of information and advice.¹⁶² Crucial protection and support is denied where at-risk women are not eligible for the benefits required to access a refuge, safe housing or the subsistence to escape domestic violence or forced marriage.¹⁶³ The Sojourner Project, funded by the Home Office, is a scheme aimed at women with no recourse to public funds, who entered the UK on a spousal or partner visa and are eligible to apply for Indefinite Leave to Remain under the Domestic Violence Rule. The project is not extended enough in its geographical reach, and has a restricted remit; for example, it does not include migrant workers who experience abuse.

9.3 Spending cuts and closure of specialist services

Cuts to legal aid are likely to have a disproportionate impact on minority ethnic women in need of access to legal remedies. Changes in eligibility for free ESOL classes (English for Speakers of Other Languages) are also likely to adversely affect minority ethnic women in particular. The proposed cuts to specialist women's services such as organizations providing support in the areas of mental health,

¹⁵⁸ EHRC (2008) Longhi, S. and Platt, L., Research Report 9, *Pay Gaps Across Equalities Areas*, http://www.equalityhumanrights.com/uploaded_files/pay_gaps_accross_equalities_areas.pdf

¹⁵⁹ Salway, S. et al (2007) *Long-term ill health, poverty and ethnicity*, Joseph Rowntree Foundation, <http://www.jrf.org.uk/sites/files/jrf/1995-health-ethnicity-poverty.pdf>

¹⁶⁰ EHRC (2009) *Inequalities experienced by Gypsies and Traveller Communities: A Review*, Cemlyn, S. et al, http://www.equalityhumanrights.com/uploaded_files/research/12inequalities_experienced_by_gypsy_and_traveller_communities_a_review.pdf

¹⁶¹ Government Equalities Office (2011) *Evaluation of the Black, Asian and Minority Ethnic Women Councillors Taskforce*, Research report, <http://www.homeoffice.gov.uk/publications/equalities/research/evaluation-bame-taskforce?view=Binary>

¹⁶² East of England Local Government Association (no date) *Strategic Migration Partnership: Health, Housing and NRPF* <http://www.eelga.gov.uk/campaigns-and-projects/strategic-migration-partnership/health-housing-and-NRPF.aspx>

¹⁶³ Imkaan (2008) *No Recourse, No Duty to Care?* http://www.imkaan.org.uk/index_htm_files/No%20Recourse%20-%20No%20Duty%20to%20Care.pdf

forced marriage and 'honour' based crime support services are a serious concern for minority ethnic women. Minority ethnic women are not only more at risk in these areas, but are more reliant upon specialist provision due to barriers relating to language, cultural differences, and immigration status which affect their ability to access mainstream frontline services. For more on the spending cuts, see section 2.1.3.

9.4 Female Genital Mutilation (FGM)

FGM is a practice carried out on women from certain minority ethnic communities and an estimated 66,000 women living in England and Wales have undergone the procedure. Despite being illegal to practice, 24,000 girls under the age of 15 remain at risk.¹⁶⁴ FGM has been internationally recognized as a violation of the human rights of girls and women¹⁶⁵ and is associated with a series of immediate and long term health risks.¹⁶⁶ The Female Genital Mutilation Act came into effect in the UK in March 2004.

9.5 Forced marriage

The Government's Forced Marriage Unit dealt with around 1,600 reported incidents of suspected forced marriage in 2008 and studies¹⁶⁷ report that as many as 3,000 women may be forced into marriage in the UK every year. The Forced Marriage (Civil Protection) Act came into force in 2007 and provides the courts with powers to make Forced Marriage Protection Orders to stop someone from forcing another person into marriage. The law also allows the courts to protect victims who have already been forced into marriage, and support them get out of that situation. However, we are concerned that the Government is not doing enough to support the implementation of the Act and to provide support to those women who experience forced marriages.

Recommendations:

- The Government should consider its health service obligations under equality legislation and take positive action measures to address the health needs of minority ethnic women.
- The Government should reform the Domestic Violence Rule so that all types of evidence of domestic violence are accepted and abolish the 'no recourse' requirement for abused women who have insecure status.
- The Government should assess the likely impact of cuts to specialist social and legal services on minority ethnic women. Where an adverse impact is discerned, action should be taken to ensure that inequalities are not deepened.
- The Government should ensure that the Female Genital Mutilation Act is fully implemented and should ensure that training in FGM is part of all safeguarding practices for healthcare providers.
- The Government should review the success of the implementation of the Forced Marriage (Civil Protection) Act and support specialist agencies working with women who have experienced forced marriage.

¹⁶⁴ FORWARD (2007) *A Statistical Study to Estimate the Prevalence of Female Genital Mutilation in England and Wales*, <http://www.forwarduk.org.uk/key-issues/fgm/research>

¹⁶⁵ HM Government (2011) *Multi-Agency Practice Guidelines: Female Genital Mutilation* <http://www.fco.gov.uk/resources/en/pdf/travel-living-abroad/when-things-go-wrong/multi-agency-fgm-guidelines.pdf>

¹⁶⁶ FORWARD (2007) *A Statistical Study to Estimate the Prevalence of Female Genital Mutilation in England and Wales*, <http://www.forwarduk.org.uk/key-issues/fgm/research>

¹⁶⁷ The Guardian (08/03/2008) '3,000 women a year forced into marriage in the UK, study finds', <http://www.guardian.co.uk/politics/2008/mar/08/religion> Revill, J & Asthana,

10. GENERAL COMMENT NO. 30: NON-CITIZENS

10.1 Discrimination against migrants

10.1.1 Political context and messaging

Since 2003, consecutive governments have expressed increasing concern about the contribution and impacts of immigration flows to the UK. This has been largely aimed at reducing high levels of public anxiety about immigration and mistrust of government management of immigration since the late 1990s¹⁶⁸. Accompanying broad reform of the immigration and asylum systems under the Labour Government, government messaging about migration since the last CERD examination of the UK has been increasingly characterized by a control agenda. This has broadly welcomed the contribution made by migrants to the UK economy, whilst making clear the need for government to secure greater control over their movements into and within the UK where possible.

Negative political messaging around immigration has become more explicit since the change of government in May 2010, when the Coalition Government agreed the overall policy objective of reducing net immigration levels by the end of the current parliamentary term in 2015¹⁶⁹.

10.1.2 Migrant workers from outside the European Economic Area (EEA)

The introduction of the Points Based System (PBS) for work and study in the UK in 2008 has to some extent rationalised the management of economic migration from outside the EEA to the UK, with the aim of making it clearer for applicants to understand. However, the PBS has also been criticised on the basis that it introduces wide scope for discrimination on the basis of nationality and national origin, and that regular rule changes arising from its flexibility, result in unfair treatment of migrants entering the UK under this system. The following aspects of the PBS should be considered against standards required under the CERD General Recommendations, and in relation to Recommendation 14 of the 2003 Recommendations to the UK.¹⁷⁰

10.1.3 Discrimination against people from low-income countries

The PBS introduced a new financial maintenance requirement for most applicants.¹⁷¹ Such sums would likely be untenable for many applicants from low-income countries. The PBS maintenance requirement should be reviewed with regards to its compatibility with CERD General Recommendation 9.

Applicants under the PBS are required to pass an English language threshold, the level of which is dependent upon the Tier under which they are applying. The UK has a list of countries considered majority English speaking, but this does not include the many countries where English is an official language and where English is widely spoken which are excluded from this list, including Nigeria, Zimbabwe, Ghana, Hong Kong and Uganda. The limited nature of the official UKBA list is likely to result in direct discrimination against nationals of these countries when applying to come to the UK.

¹⁶⁸ For detailed analysis of public opinion on migration, see Migration Observatory (2011); *UK Public Opinion toward Immigration: Overall Attitudes and Level of Concern*, <http://www.migrationobservatory.ox.ac.uk/briefings/uk-public-opinion-toward-immigration-overall-attitudes-and-level-concern>, Oxford University

¹⁶⁹ Cabinet Office (2010) *The Coalition: our programme for government*, <http://www.cabinetoffice.gov.uk/news/coalition-documents>

¹⁷⁰ UN (2004) CERD, *General Recommendation No.30; Discrimination Against Non Citizens*, <http://www.unhcr.ch/tbs/doc.nsf/%28Symbol%29/e3980a673769e229c1256f8d0057cd3d?Opendocument>

¹⁷¹ Supplementary memorandum submitted by Immigration Law Practitioners Association (ILPA), September 2008 <http://www.parliament.the-stationery-office.co.uk/pa/cm200809/cmselect/cmhaff/217/217we46.htm>

UK Border Agency management information cited in a review of the PBS indicates that two thirds of out of country visas issued for Tier 1 in 2009 were to men, rising to 78% of Tier 2 visas.¹⁷² The PBS may structurally discriminate against migrant women from low-income countries, by favouring 'hard' rather than 'soft' skills in its application process and again through its previous earnings requirement for applicants.

Under the PBS, the position of workers within particular, female-dominated sectors such as domestic work, and the care sector, remains insecure. Advocates within these sectors argue compellingly that the operation of the PBS has made workers (usually women) under these categories far more vulnerable, as it ties them to employers, and makes them subject to regular rule changes.¹⁷³

10.1.4 Family reunification

On 29th November 2010, a new pre-entry English language requirement came into force, for spouses and civil partners from non-majority English-speaking countries applying to join a settled person or British citizen in the UK.¹⁷⁴ The new requirement means that applicants for a spouse visa are now required to demonstrate that they have English language skills at level A1 proficiency ('basic user' level) of the common European Framework of Reference for Languages, usually by passing a test at an approved test centre. However, the requirement to take this test potentially results in discrimination against those people from countries where they cannot to take the test at the required level. In addition it potentially discriminates against British citizens who have married people from countries not exempt from the English language test requirement, as other European Union nationals bringing their spouse into the UK are not subject to the requirement. Overall, this measure is a disproportionate means of pursuing the legitimate aim of facilitating integration of diverse communities.

Legal advice offered in October 2010 by a prominent UK barristers chambers, before the new requirement came into force, advised that there were serious grounds for concern about the compatibility between the UK's obligations under the European Convention on Human Rights Articles 8 and 14 and the positive obligations imposed on the UKBA as a public authority by the Race Relations Act 1976.¹⁷⁵ This will be the subject of a judicial review in July 2011.¹⁷⁶

10.1.5 Settlement and citizenship

Efforts to tighten up access to settlement and citizenship within the UK have threatened an impact on community relations, with negative repercussions for migrants at local level. New proposals from the Government in June 2011 indicate that settlement for overseas workers will be significantly limited. It is likely that the majority of migrant workers entering the UK under Tier 2 (skilled migration) will be required to leave after a maximum of five years in the UK. By being prevented from applying for settlement in the future these groups will be unable to ever attain the rights which accompany permanent status in the UK. As a result there will be an increased scope for their exploitation, and likely an increase in the number of non-citizens who become irregularly resident in the UK and thereby fall outside the system. These proposals are entirely at odds with the spirit of

¹⁷² CentreForum report, <http://www.centreforum.org/assets/pubs/points-based-system.pdf>

¹⁷³ See Kalayaan, Ending the Abuse, May 2011, <http://www.kalayaan.org.uk/>

¹⁷⁴ The relevant Statement of Changes in the Immigration Rules CM 7944 was introduced on 1st October and came into force on 29th November 2010

¹⁷⁵ <http://www.liberty-human-rights.org.uk/news/2010/the-unfairness-of-english-tests-for-overseas-spouses.php>

¹⁷⁶ <http://www.no5.com/news-publications/news/barristers-from-no5-chambers-represent-two-claimants-in-landmark-immigration-ruling>

CERD General Recommendation 30, which points towards the value of reducing barriers to citizenship for non-citizens¹⁷⁷.

10.1.6 Impact of spending cuts on migrant and refugee integration in the UK

It is encouraging that, in its 2007 report to the CERD Committee, the UK Government recognized the need for investment to support positive community relations between migrants and wider communities, as well as wider integration. However, since this report there has been a substantial drop in financial investment towards this goal. In particular, budget cuts across government departments under the Coalition Government are likely to undermine the full and equal integration of migrants into local communities.

In November 2010 the Government released proposals to substantially cut English for Speakers of other Languages (ESOL) provision, effective from September 2011.¹⁷⁸ Full funding for ESOL courses will be only be available for ESOL students from 'settled' communities, or for those receiving 'active' welfare benefits. In addition, asylum seekers who have not received a decision on their application after six months will be able to receive full funding for ESOL classes. However, most asylum seekers and migrants will be required to pay 50% of the costs of ESOL course fees. From September, the costs of providing English language tuition within workplaces will also have to be borne by the students or employers themselves.

The reduction in ESOL provision will undermine the integration of newcomers to the UK, and have a knock-on effect on their children. At the time of writing, the Government has not released an Equality Impact Assessment relating to the effects of this change.

The Legal Aid Sentencing and Punishment of Offenders Bill is currently going through Parliament. It will substantially reduce eligibility for legal aid as well as reducing the budget for legal aid. The Governments Equality Impact Assessment clearly showed that the changes would have an indirectly adverse impact on migrants and minority ethnic people.¹⁷⁹

Cuts to local government budgets have additionally had a substantial impacts, resulting in reduced funding to many migrant and refugee community organizations, as well as budgets for interpretation and translation services among other aspects. Although it is too early to chart the full effects of this, a reduction in the support structure for people from migrant backgrounds is likely to have a negative impact on wider integration. For more information on the spending cuts more generally, see section 2.1.3.

10.1.7 Migrant access to employment

UK employment law is unique in Europe as it makes the legitimacy of an employment contract dependent upon the individual's immigration status. There have been many cases reporting abuse against migrant workers which have been nullified by reference to an illegal contract on the basis that the individual was working unlawfully. This greatly increases the vulnerability of migrants to abuse and exploitation.

Evidence indicates that migrants face a highly varied picture in terms of their employment in the UK,

¹⁷⁷ UN (2004) CERD *General Recommendation 30, Section IV*, <http://www.unhcr.ch/tbs/doc.nsf/%28Symbol%29/e3980a673769e229c1256f8d0057cd3d?Opendocument>

¹⁷⁸ Department for Business, Innovation and Skills (November 2010) *Skills for Sustainable Growth and Investing in Skills for Sustainable Growth*, copyright: the Skills Funding Agency <http://skillsfundingagency.bis.gov.uk/news/pressreleases/skillsforsustainablegrowthinvestinginskillsforsustainablegrowth.htm>

¹⁷⁹ Ministry of Justice (2010) *Proposals for the Reform of Legal Aid in England and Wales*, <http://www.justice.gov.uk/consultations/docs/legal-aid-reform-consultation.pdf>

with a high proportion of highly skilled migrants working in low-skilled occupations, indicating discrimination against them within the UK labour market. Eastern European migrants from the 'A8 countries' have been shown to face particular discrimination in the UK labour market, often working within sectors such as cleaning, agricultural manual work and hospitality, in occupations far below their skill and education levels. An in-depth inquiry into the meat and poultry processing sector in the UK, released in 2010 by the Equality and Human Rights Commission, exposed widespread and serious mistreatment and exploitation of workers. One third of the permanent workforce and over two thirds of agency workers in the industry are migrant workers.¹⁸⁰

In addition, sectors with a high preponderance of employment agencies have also been linked to low payment of these workers, in addition to poor working conditions and unfair treatment. Most Roma in the UK that migrated from A8 countries find employment through recruitment agencies.¹⁸¹ Many of these agencies take large fees for finding what are often temporary contracts. Some demand repayment from future wages and withhold travel documents. In February 2008, the UK Government brought into force measures included in the Immigration, Asylum and Nationality Act 2006, which extended the responsibility of employers for the immigration status of their workers throughout their period of employment. Both the Commission for Racial Equality and the Confederation of British Industry drew attention to the risk of discrimination arising out of the reformed illegal working regime during the passage of the Bill through Parliament. Accounts since the introduction of this change indicate that requiring employers to check immigration status of their workers may have had a discriminatory impact against minority ethnic UK nationals, as well as migrants, in the workplace.¹⁸² As yet no formal review of discriminatory impacts has been carried out.

10.1.8 Access to housing

The myth that immigrants are prioritised for social housing persists. A study published in 2009 by the Institute for Public Policy Research outlined social housing allocation for migrant communities and concluded that no evidence could be found for the view that social housing allocation policies favour foreign migrants over UK citizens.¹⁸³

In fact, some migrant groups may be subject to discrimination in accessing social housing to which they are entitled in the UK. Anecdotal evidence indicates that widespread discrimination against housing applicants from A8 countries regularly occurred under the former Worker Registration Scheme, despite being eligible for housing assistance if registered under the scheme. Between 2004 and 2007, 35% of A8 nationals applying for homelessness assistance were successful, as compared with 47% of all applications nationally.¹⁸⁴

The removal of homeless European nationals from the UK by the UK Border Agency in conjunction with local authorities has been underway under a pilot project called 'Operation Ark' since 2010. By June 2010, 116 European Economic Area (EEA) nationals had been issued with 'Minded to Remove' notices, 40 had been served with 'Immigration Decision' notices and 13 had been removed from the UK. The Government has made assurances that this practice does not discriminate against people of

¹⁸⁰ EHRC (2010) *Inquiry uncovers mistreatment and exploitation of migrant and agency workers*, <http://www.equalityhumanrights.com/news/2010/march/inquiry-uncovers-mistreatment-and-exploitation-of-migrant-and-agency-workers/>

¹⁸¹ Equality (2009) *The Movement of Roma from new EU Member States: A mapping survey of A2 and A8 Roma in England*, http://equality.uk.com/Resources_files/movement_of_roma.pdf

¹⁸² Migrants Rights Network (2008) 'Papers Please' *The Impact of the Civil Penalty Regime on the Employment Rights of Migrants in the UK*, http://www.migrantsrights.org.uk/downloads/policy_reports/papersplease.pdf

¹⁸³ IPPR (2009) *Social Housing Allocation and Immigrant Communities*, Rutter, J. and Latorre, M. http://www.ippr.org/index.php?option=com_ippr&view=publication&id=1715&Itemid=55

¹⁸⁴ EHRC (2009) Research report: 19, *The equality implications of being a migrant in Britain*, Kofman, E. et al

any particular nationalities. However, this is currently impossible to externally monitor as the operational guidelines for frontline UKBA staff working on this have not been made public.

10.2 Discrimination against asylum seekers

10.2.1 Attacks against asylum seekers

In paragraph 14 of its concluding observations, the committee stated:

The Committee remains concerned at reports of attacks on asylum-seekers. In this regard, the Committee notes with concern that antagonism towards asylum-seekers has helped to sustain support for extremist political opinions. The Committee recommends that the State party adopt further measures and intensify its efforts to counter racial tensions generated through asylum issues, inter alia by developing public education programmes and promoting positive images of ethnic minorities, asylum-seekers and immigrants, as well as measures making the asylum procedures more equitable, efficient and unbiased.

In a 2007 report, the UK Parliament's Joint Committee on Human Rights concluded that it was 'concerned about the negative impact of hostile reporting and in particular the effects that it can have on individual asylum seekers and the potential it has to influence the decision making of officials and Government policy. We are also concerned about the possibility of a link between hostile reporting by the media and physical attacks on asylum seekers'. For more on media coverage of asylum seekers, see section 4.2.2. These concerns have unfortunately been realized. Reports detail the deaths of 77 asylum seekers attributed to racial attacks, being denied health care, destitution and lack of access to social services.¹⁸⁵ This report also found that twenty eight asylum seekers took their own lives after their asylum claims were turned down during this five year period.

The cases in the report are likely to severely underestimate the total number of deaths over the period reviewed.¹⁸⁶ Physical attacks against asylum seekers are likely to be under-reported as the victims will often not know how to make a report or have the language skills or confidence to do so. There is no systematic information on hate crime experienced by asylum seekers and migrants, but evidence indicates that refugees and asylum seekers are reluctant to report hate crime due to fear that reporting crime to the police will affect their immigration status.¹⁸⁷

It is welcome that the Association of Chief Police Officers Hate Crime Group and Race for Justice have produced an action plan which highlights asylum and refugee communities as one of four groups where there is a need for a special response in order to build confidence among victims of hate crime and improve the service.¹⁸⁸ However, the UK Government's report to CERD does not specify how this will be done. For more information on racist violence, see section 5.1

10.2.2 Measures to promote positive attitudes to asylum seekers

In its last report, the CERD recommended that the UK Government 'adopt further measures and intensify its efforts to counter racial tensions generated through asylum issues, inter alia by developing public education programmes and promoting positive images of ethnic minorities, asylum-seekers and immigrants' (paragraph 14 of the concluding observations). In 2007, the UK Government undertook to raise awareness of the UK's role both in the establishment of the slave trade and its

¹⁸⁵ Institute of Race Relations report (2010) *Driven to Desperate Measures: 2006-10*, http://www.irr.org.uk/pdf2/DtDM_2006_2010.pdf

¹⁸⁶ Ibid.

¹⁸⁷ EHRC (2010) *Triennial Review: Chapter 7: Legal Security*, http://www.equalityhumanrights.com/uploaded_files/triennial_review/how_fair_is_britain_ch7.pdf

¹⁸⁸ UK periodic report to CERD, 9 March 2010, paragraph 118

abolition as part of the bi-centenary on the abolition of the slave trade. It supported community projects, issued a statement of regret over the UK's involvement in the slave trade, made the slave trade a compulsory part of the national curriculum, had a commemorative service and was involved in many other events across the UK. A similar concerted effort is needed to dispel some of the hysteria and myths surrounding asylum seekers and to actively promote the case for providing protection to people who are fleeing persecution or other serious human rights violations. This year is the 60th anniversary of the 1951 Convention relating to the Status of Refugees and provides an excellent opportunity to do this, but there is no indication in the UK's report to CERD that this opportunity will be taken.

Recommendations:

- The Government should reduce the barriers to settlement and citizenship for non-citizens in the UK. In particular, policies should not prohibit particular groups of non-citizens from coming to work for extended periods in the UK under Tier 2 of the Points Based System, or migrant domestic workers from moving towards settlement and citizenship in the UK.
- The Government should review the impact on race equality of the maintenance requirement, English-speaking countries list and skills requirement under Tiers 1, 2, 4, and 5 of the Points Based System.
- The Government should review the impacts of public spending cuts on migrant and refugee communities in the UK, with a view to minimizing the negative impacts on these communities.
- The Government should improve regulation of working conditions within sectors where there are high levels of migrant workers, in particular within the cleaning, care and construction sectors. In addition, the Government should ensure that where immigration regulations are exercised in the workplace, they do not lead to racial discrimination.
- The Government should take steps to ensure that frontline staff within housing services are familiar with entitlements of migrant groups within the UK, and that decision-making regarding entitlements to access housing and homelessness assistance in the UK is accurate. In addition it should ensure that the 'Operation Ark' system can be externally monitored by making the operational guidelines public.
- The Government should ensure that migrants are able to access the healthcare to which they are entitled in the UK and that any new guidelines published for healthcare providers fully encompass the need to provide a non-discriminatory service.
- The Government should address the under-reporting of physical attacks against asylum seekers.
- The Government should develop a public education programme to counter the inaccurate perceptions and negative attitudes that the general public have towards asylum seekers.

APPENDIX A: NORTHERN IRELAND

Northern Ireland is a separate country in the UK with a devolved administration. It has different equality legislation, as well as a different demography of ethnic groups vulnerable to racial discrimination. These groups include the Irish Traveller community, the small Gypsy and Roma communities, migrant workers, asylum seekers and refugees, as well as those undocumented persons who are living in Northern Ireland.

The Northern Ireland Council for Ethnic Minorities (NICEM) has made separate submission to CERD. Please refer to NICEM's submission for a more detailed discussion on the specific situation in Northern Ireland. The numbers in brackets below correspond to the relevant sections of the NICEM report, making it possible to find more information about the concerns on which the following recommendations are based.

Recommendations specific to the situation in Northern Ireland:

GENERAL

- The devolved administrations should introduce a mechanism comparable to that established by the Westminster Parliament in the form of the Joint Committee on Human Rights to all the devolved administrations in the United Kingdom [2.1.1]
- The UK Government should make a declaration under ICERD Article 14 and introduce a right of individual petition [2.1.1]
- The UK Government should put forward a new consultation document on the Bill of Rights for Northern Ireland based on the advice from the Northern Ireland Human Rights Commission as outlined by the Good Friday Agreement [2.2]
- The UK Government should amend Section 75 of the Northern Ireland Act 1998 to include strong enforcement mechanisms, strong compulsory equality monitoring and auditing and assessments of equality impacts [2.3]
- The devolved Northern Irish Government should develop an integrated policy approach incorporating monitoring mechanisms and positive action measures in order to tackle multiple forms of discrimination, particularly gender and race based discrimination [2.4]
- The devolved Northern Irish Government should adopt a strategy to tackle violence against minority ethnic women (including victims of trafficking) in Northern Ireland. The Government should also establish a crisis fund to assist vulnerable migrants with no recourse to public funds [2.5]

ARTICLE 1

- The devolved Northern Irish Government should remove discriminatory practices towards migrants, most significantly vulnerable A2 nationals and non-EU nationals in relation to accessing services such as health, education and social welfare [3.1]
- The devolved Northern Irish Government should put measures in place to tackle social deprivation in areas with a high frequency of racist attacks. In addition, stronger provisions should be put in place to govern the conduct of elected representatives whose conduct may amount to incitement to racial hatred [3.2]
- The UK Government should review the current immigration detention policy and proposed arrangements for detainees in Northern Ireland as a matter of urgency [3.3]
- The devolved Northern Irish Government should provide greater actions and adequate resources to address the social disadvantage, social exclusion and consequently low life expectancy of Irish Travellers, Roma and Gypsies in Northern Ireland. Dedicated measures should be adopted to increase the capacity of these vulnerable communities [3.4]

- The devolved Northern Irish Government did not include categories of significant minority ethnic groups such as Polish, Black Portuguese and Filipino in the 2011 Census. Such missed opportunities for monitoring will be detrimental for service provision for such communities [3.5]

ARTICLE 2

- The devolved Northern Irish Government should set up a legislative timetable to rectify the current deficiencies of the Race Relations (NI) Order 1997 so as to bring the legislation in Northern Ireland in line with that of the rest of the United Kingdom. The process of developing a Single Equality Bill for Northern Ireland should be restarted [4.1]
- The devolved Northern Irish Government should guarantee that the process of developing a new Racial Equality Strategy with a dedicated budget will be completed by March 2012 [4.2]

ARTICLE 4

- The devolved Northern Irish Government should put measures in place to monitor and prevent the rise in xenophobic right wing nationalism in Northern Ireland [5.1]
- The UK Government should consider a new independent regulatory regime to tackle prejudice in the media instead of the current self-regulatory regime. Measures should be put in place to tackle cyber hate crime, particularly racist sites targeting Northern Irish/UK based people/groups which are registered outside of the UK [5.2 ~ 5.3]

ARTICLE 5

- The devolved administration should put measures in place to improve clearance rates for racist hate crime and restore the confidence of minority ethnic people to report hate crime to the police [6.1]
- The devolved Northern Irish Government should produce standardised guidelines on appropriate practice for schools with regard to the notification of the right to opt out of religious education [6.2]
- The devolved Northern Irish Government should put in place measures to alleviate poverty and prevent exploitation of migrant communities in Northern Ireland [6.3]
- The devolved Northern Irish Government should put in place measures to prevent the exploitation of Agency workers and ensure that employers are jointly liable with agencies outside the UK for breaches of the rights of migrant agency workers [6.4]
- The devolved Northern Irish Government should introduce measures to improve the accessibility of the justice system so that vulnerable migrant workers can pursue their protected rights [6.5]
- The devolved Northern Irish Government should introduce measures to ensure that minority ethnic individuals who are entitled to health care services receive them in line with international human rights legislation [6.7]
- The devolved Northern Irish Government should introduce measures to tackle racial and religious bullying in schools and improve the educational attainment of minority ethnic pupils [6.8]
- The devolved Northern Irish Government should address the disparity between GB and Northern Ireland and introduce accessible English classes for migrants and vulnerable asylum seekers [6.9]
- The UK Government should take into account the lack of approved English language test providers in Northern Ireland when assessing applications for extension of leave from spouses resident in Northern Ireland [6.10]
- The devolved Northern Irish Government should make specific measures to support and promote the language and cultural identity of minority ethnic communities in Northern Ireland [6.11]

APPENDIX B: SCOTLAND

Scotland is a separate country in the UK with a devolved administration. The Scottish Government has equality legislation that differs from that of the rest of the UK in certain respects. The minority ethnic population in Scotland is distinctive within the UK in terms of size and ethnic composition. It includes Pakistanis, Chinese, Indians and Africans, Eastern European migrants from A8 countries, Gypsies, Travellers and Roma, asylum-seekers and refugees, Irish Catholics and other communities.¹⁸⁹

Many of the issues faced by minority ethnic communities in the UK as a whole are also shared by minority ethnic groups in Scotland. There are however, a number of issues which are particularly pertinent to the Scottish context, which are outlined below.

ARTICLE 2

The Scottish Government's programme of work on race equality

The UK Government's Periodic Report outlines the Scottish Government's programme of work to promote race equality and tackle racial discrimination in Scotland.

The Scottish Government's anti-racism campaign, 'One Scotland: No Place for Racism'¹⁹⁰, aims to tackle racism in Scotland. We welcome the campaign's previous initiatives to raise awareness of racism in Scotland, and we are keen to have more information on how the Scottish Government plans to move the campaign forward in the future.

Local Government is a devolved matter, and the UK Government's department responsible for race equality, the Department for Communities and Local Government, does not deal with Scotland. Therefore the UK Government's previous race equality strategy 'Improving Opportunity, Strengthening Society' developed by the Department for Communities and Local Government and now no longer in place, did not cover Scotland. In 2008, the Scottish Government published its own Race Equality Statement¹⁹¹ which outlined the Scottish Government's priorities for race equality over 2008-2011. It also developed a Race Equality Scheme 2008,¹⁹² which set out its arrangements for meeting the statutory duty to promote race equality between 2008 and 2011.

The Scottish Government Equality Unit's Race, Religion and Refugee Integration funding stream¹⁹³, funded a range of projects working on race and faith equality and refugee integration, aimed to improve the lives of minority ethnic and faith communities and refugees, asylum seekers and migrants. The funding was due to run from July 2008 up until March 2011, but we welcome the news that this funding stream will be continued for another year until March 2012.

Equality legislation

The UK Government's Equality Act 2010, the bulk of which came into force in the UK on 1 October 2010, came into force on 5 April 2011 in Scotland. The Equality Act 2010 introduced a new public sector general equality duty which has now become law in Scotland. The general equality duty requires Scottish public authorities to pay 'due regard' to the need to: eliminate unlawful discrimination, victimisation and harassment; advance equality of opportunity and foster good

¹⁸⁹ Joseph Rowntree Foundation (2011) *Poverty and ethnicity in Scotland: review of the literature and datasets*, <http://www.jrf.org.uk/publications/review-poverty-and-ethnicity-scotland>

¹⁹⁰ One Scotland campaign <http://www.scotlandagainstracism.com/onescotland/2.1.1.html>

¹⁹¹ Scottish Government Race Equality Statement
<http://www.scotland.gov.uk/Topics/People/Equality/18934/RaceEqualityStatement>

¹⁹² Scottish Government Race Equality Scheme <http://www.scotland.gov.uk/Publications/2008/11/28092741/0>

¹⁹³ Race, Religion, and Refugee Integration Funding Stream
<http://www.scotlandagainstracism.com/onescotland/366.10.223.html>

relations. These requirements will apply across the 'protected characteristics' including race and religion and belief.

On 8 March 2011 the Scottish Parliament's Equal Opportunities Committee voted against introducing the proposed specific equality duties under the Equality Act 2010, but the Scottish Government expects to undertake further consultation and impose new specific duties later in 2011.¹⁹⁴

ARTICLE 5

Unequal outcomes

As in other parts of the UK, minority ethnic groups in Scotland have unequal outcomes in relation to several areas. These include inequalities in educational achievement; lack of accessible and affordable housing; barriers to employment and discriminatory employment practices; health inequalities; and racial harassment.¹⁹⁵ All minority ethnic groups in Scotland appear to be disadvantaged on one or more indicators of poverty. On income-based measures, Pakistani, Bangladeshi and Black households in Scotland have higher rates of poverty than other ethnic groups.¹⁹⁶

Gypsies, Travellers and Roma

Scottish Gypsies and Travellers remain one of the most marginalised groups in Scotland. A number of research reports highlight the severe levels of prejudice faced by this group¹⁹⁷, and we are concerned about the lack of progress made by the Government in addressing the discrimination experienced by this community.

There is also evidence that the Roma Community in particular areas of Glasgow in Scotland are particularly vulnerable, and that the Scottish Government has failed to safeguard the rights of the Roma as a recognised ethnic group. Government agencies have not provided adequate protection in the areas of employment, housing and social benefits, leading to the increased vulnerability of this marginalised community.¹⁹⁸

Human trafficking

Human trafficking is a serious concern in Scotland. The Association of Chief Police Officers in Scotland has estimated that Scotland has 13.5% of the UK's trade in human beings, yet constitutes less than 10% of the UK population.¹⁹⁹ Despite evidence suggesting that it is on the increase, there have been no successful prosecutions for human trafficking in Scotland, although there have been 48 convictions in England, and 6 convictions in Wales. There is a concern that victims of trafficking in Scotland are not being properly identified and without acceptance of their status they cannot access appropriate services.²⁰⁰

ARTICLE 6

¹⁹⁴ The Scottish Government Public Sector Equality Duties

<http://www.scotland.gov.uk/Topics/People/Equality/PublicEqualityDuties>

¹⁹⁵ Joseph Rowntree Foundation (2011) *Poverty and ethnicity in Scotland: review of the literature and datasets*, <http://www.jrf.org.uk/publications/review-poverty-and-ethnicity-scotland>

¹⁹⁶ Ibid.

¹⁹⁷ EHRC (2009) *Research Report 12: Inequalities experienced by Gypsy and Traveller Communities, a review* http://www.equalityhumanrights.com/uploaded_files/research/12inequalities_experienced_by_gypsy_and_traveller_communities_a_review.pdf

¹⁹⁸ Lynne Poole and Kevin Adamson (2008) *Report on the Situation of the Roma Community in Govanhill*, Glasgow, School of Social Sciences, University of the West of Scotland

¹⁹⁹ Amnesty International (2008) *Scotland's Slaves*, http://www.amnesty.org.uk/news_details.asp?NewsID=17865

²⁰⁰ Ibid.

Human rights body

There continues to be a confusion over the separation of responsibilities between the Scottish Human Rights Commission and the Equality and Human Rights Commission. Whilst human rights issues relating to devolved matters (including criminal justice, health, housing, local Government and education) are within the remit of the Scottish Human Rights Commission, it does not have the power to support individuals in claims or legal proceedings, nor does it have the power to instigate judicial review proceedings in its own name. The former Commission for Racial Equality has previously stated: 'the Scotland shaped hole which has been carved out of the Equality Act in relation to human rights has not been filled by the human rights body created by the Scottish Parliament.'²⁰¹

ARTICLE 9

UK Government's coverage of Scotland in its Periodic Report

The UK Government's 18th and 19th Periodic Report neglects to include data in relation to the specific situation of minority ethnic communities in Scotland in the areas of housing, employment and educational achievement.

It is not always clear in the UK Government's report, which initiatives are English, which relate to the UK as a whole, and whether information included under the heading 'Scotland' applies only to this jurisdiction or not. The jurisdiction of law and policies with respect to the devolved administrations is therefore not always sufficiently clear.

Recommendations:

ARTICLE 2

- The Scottish Government should ensure that its 2008-2011 programme of work on race equality, including its Race Equality Statement and its Race Equality Scheme, are continued in the future.
- The Scottish Government should continue to assess the impact of its policies on race equality in the intervening period before the Scottish Government imposes specific duties.

ARTICLE 5

- The Scottish Government should develop policies to improve the outcomes of Scotland's minority ethnic communities in the areas on health, education, housing and employment.
- The Scottish Government should develop a strategy to tackle the discrimination experienced by Scotland's Gypsy, Traveller and Roma communities
- The Scottish Government should take a multi-agency approach to identification and the care and treatment of trafficked persons

ARTICLE 6

- The Scottish Government should work with the Scottish Human Rights Commission and the Equality and Human Rights Commission to clarify which responsibilities are contained within the remits of each of these human rights bodies.

ARTICLE 9

- The UK Government should include more data on the specific situation of minority ethnic communities in Scotland in its next Periodic Report.
- The UK Government should increase clarity in its next Periodic Report on which countries in the UK specific information relates to, and should adopt a more consistent system of reporting in relation to devolved administrations.

²⁰¹ CRE (March 2007) shadow report to FCMN

APPENDIX C: PARTICIPATING ORGANIZATIONS

In addition to those organizations listed on the front cover which directly contributed to the report, this was produced in collaboration with the following NGOs who participated in NGO consultation events across the UK:

African Peoples Advocacy
All Keighly Communities Together
Amina MWRC
Apna Haq
Ask Identity
AWSP Foundation
B Strong
BA Basketball
Bath Spar University School of Education
Birmingham United
BRAMU
Brighton & Hove Black Women's Group
Bristol University
British Association for Adoption & Fostering
Cambridge Racial Incident Support Project
CEMVO Scotland
Central Scotland Racial Equality Council Ltd.
Chamberlain Forum
Change Institute
CHRC
Cyfanfyd
Ewart Communications
Falkirk Council CLD
Foundation for Refugee Education
Freshwinds
GCC South East CPP
Glasgow Life
Gypsy and Traveller Voice
Hale Project
Ileto Caribbean People's Network
Joseph Rowntree Charitable Trust
Keighly Advisory Committee
Kingston Race Equality Council
Laco Eastern European Migrants Project
Lancashire BME Pact
Learn Too
Leeds Race Equality Council
LGBT Scots Community Group
London Deanery
Mashriq Challenge
MCRC Ltd.
Midlands Community Association
M-Prez Enterprise
Muslim Women's Association of Edinburgh
National Secular Society

New Beginnings Refugee Project
One North West
Ouidah Arts
Oxfam
Pakistan Association Huddersfield
Parenting Apart Together
People Matters (UK) Ltd
Polish Expats Association
Public and Commercial Services Union
Race on the Agenda
Racial Justice in North Yorkshire
Rainbow Care and Support
Refugee & Migrant Forum of East London
Saheli Women's Group
Sandwell Council
Score Scotland
Scottish Trades Union Congress
Slough Equalities Commission
Somali Integration Society
South People's Project
Staying Put
Strathclyde Police
Strathclyde University
Supporting People BME Communities
The Peacemakers
Third Sector Research Centre
Trident Reach
Unison
Unite
Valleys Regional Equality Council
Welsh Refugee Council

Thanks also to all those who attended the NGO consultation events as committed individuals not representing any organisation.