

# THE ANNUAL HUMAN RIGHTS AND RACIAL EQUALITY

**BENCHMARKING REPORT 2013/14**



**June 2014**



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*Cover Photographs, left to right; children and young people from the Belfast Islamic Centre, Meriem Naili addressing the BME Parliament; meeting of the Indonesian Association- all the photos are of women*

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## INTRODUCTION

The Northern Ireland Council for Ethnic Minorities (NICEM) is an independent non-governmental organisation monitoring racism and racial inequality in Northern Ireland. As an umbrella organisation we represent the interests of black and minority ethnic groups in Northern Ireland. Currently we have 29 affiliated black and minority ethnic groups as our full members; this composition is representative of the majority of black and ethnic minority communities in Northern Ireland.<sup>1</sup> Our vision is of a society where differences are recognised, respected and valued, a society free from all forms of racism and discrimination, where human rights are guaranteed. NICEM works in partnership to bring about social change, by achieving equality of outcome and full participation in society.

NICEM monitor and promote compliance with binding international and domestic human rights and racial equality standards emanating from the United Nations, European Union, Council of Europe and domestic law. NICEM have engaged extensively with a range of UN Treaty Monitoring Bodies, where shadow reporting processes have been utilised to mobilise and empower BME community members to understand their rights and how to exercise and enforce them.

In addition to forming Delegations for the UN Committee on the Elimination of Racial Discrimination (ICERD) in 2011 and the UN Committee on the Elimination of Discrimination Against Women (CEDAW) in June 2013 comprised of BME community members, NICEM have also submitted high impact shadow reports to the UN Committee on Economic, Social and Cultural Rights (ICESCR) and the UN Committee Against Torture (UNCAT) through which we have identified inequalities and gaps in protection afforded to ethnic minorities on the ground.

NICEM's second Annual Human Rights and Racial Equality Benchmarking Report, should assist the government in adhering to guidance issued by the Office of the High Commissioner for Human Rights (OHCHR) which recommends monitoring progress on racial equality against indicators drawn from international human rights standards. This report has been structured primarily around UN Concluding Observations issued to the UK and the Departmental Audits of Inequality and Action Plans in order to benchmark advancement in racial equality, key inequalities and gaps in protection for ethnic minorities in Northern Ireland.

NICEM note with concern the inability of Northern Ireland Government to counteract the adverse implications of decision making on reserved matters affecting ethnic minorities in Northern Ireland. This is despite immigration and asylum matters routinely interfering with transferred matters such as health, housing, employment and criminal justice. Whilst it is important not to neglect the responsibilities of Central Government and Westminster in this regard, recommendations within this report are directed primarily at ensuring the Northern Ireland Government work proactively within the scope of its devolved competence to maximise the realisation of rights for ethnic minorities.

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<sup>1</sup> In this document "Black and Minority Ethnic Communities" or "Minority Ethnic Groups" or "Ethnic Minorities" shall be understood to mean people whether they are settled ethnic and religious minorities (including Travellers, Roma and Gypsy), migrants (EU and non-EU), or those with asylum seeker, refugee, or other immigration status. It has an inclusive meaning to unite all minority communities.

## Background

Recent years have been characterised by successive waves of inward migration to Northern Ireland which have contributed to a burgeoning diversity of Black and Minority Ethnic (BME) communities. Recent Census data indicates that 4.5 per cent of the recorded population were not born in the UK or Ireland<sup>2</sup>. This shift in the demographic composition of Northern Ireland has been triggered primarily by EU enlargement and the accession of A8 States in 2004 and A2 States in 2007<sup>3</sup>. The guarantee of free movement and dissolution of transitional arrangements has opened up employment opportunities for migrant workers. This trend has been coupled with changes in global migration patterns, occupational shortages and skills gaps in the Northern Ireland labour market and the displacement of refugees and asylum seekers fleeing violence and insecurity.

The BME population of Northern Ireland is comprised of settled ethnic minority communities, the Irish Traveller, Gypsy and Roma communities, migrant workers (EEA and Non-EEA nationals), asylum seekers and refugees and vulnerable categories with irregular immigration status (e.g. refused asylum seekers, undocumented migrants). In light of the increasingly diverse population of Northern Ireland, it is essential to recognise and celebrate the rich contribution of BME communities to the cultural, religious, social, economic and political makeup of Northern Ireland.

However, BME communities continue to experience a multitude of barriers and are more likely to experience poverty and socio-economic disadvantage<sup>4</sup>. Indeed, drastic inequalities persist in access to education, employment, housing and health services which severely hamper the realisation of economic and social rights. Traveller communities for example, continue to experience disproportionately poor health outcomes including severely diminished life expectancy, exceptionally high infant mortality rates, maternal ill health and a higher incidence of mental health issues than the majority population.

Furthermore, insufficient measures have been taken to challenge the ubiquity of exploitative working conditions, racial harassment and discrimination in the workplace to better protect vulnerable categories such as agency workers or highly qualified migrant workers facing underemployment and occupational segregation in low skilled sectors. Particular difficulties have been noted for BME families struggling to access flexible working and affordable child-care<sup>5</sup>. BME communities are also likely to be adversely affected by welfare reforms and the deregulation of labour markets, exacerbated by a uniform lack awareness of basic rights and welfare entitlements<sup>6</sup>. Indeed, the failure to reintroduce the OFMDM Crisis Fund greatly

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<sup>2</sup> <http://www.nisra.gov.uk/census/2011census.html>

<sup>3</sup> Vargas-Silva C, *Briefing: Migration Flows of A8 and other EU Migrants to and from the UK* (Migrant Observatory, Oxford University 3rd ed. 2013) <http://www.migrationobservatory.ox.ac.uk/briefings/migration-flows-a8-and-other-eu-migrants-and-uk>

<sup>4</sup> McAra & Others, *Poverty and Ethnicity in Northern Ireland: An Evidence Review* (JRF Jan 2013) <http://www.jrf.org.uk/sites/files/jrf/poverty-ethnicity-northern-ireland-full.pdf>

<sup>5</sup> <http://www.nisra.gov.uk/census/2011census.html>

<sup>6</sup> Isal S, *The Experiences of Ethnic Minority Women in Northern Ireland: Prepared in Submission to CEDAW* (NICEM June 2013) <http://nicem.org.uk/wp-content/uploads/2014/03/EoEMWiNI-11.pdf>

heightens the risk of homelessness and destitution faced by vulnerable categories with insecure immigration status who lack recourse to public funds. Recent evidence has also emerged of forced labour in the fishing, food processing and agricultural sectors of such severity that it violates international human rights and labour laws. Issues include restricted movement and confinement, rural isolation, debt bondage, unlawful withholding of wages, retention of passports to inhibit escape and recurrent threats of denunciation to the authorities on the basis of irregular immigration status.

Despite the recent surge of political and media interest in human trafficking for the purposes of forced labour and sexual exploitation, the policy, legislative and sentencing response needs to be strengthened to consolidate and simplify disparate sources of legislation and promote compliance with international standards. BME victims are often subject to secondary victimisation, stringent immigration controls and institutional racism. The situation is worsened by deficiencies with the National Referral Mechanism and the absence of an effective UK-wide Rapporteur on human trafficking.

Northern Ireland has also witnessed an alarming rise in racist hate crime with families being displaced, homes and cars being destroyed in arson attacks and acts of violence. It is vital to note that hate crime is spurred by unreasoned prejudice and intolerance which must be combated through awareness raising, sustained community engagement and educational initiatives. These negative societal attitudes are driven by the anti-immigration rhetoric and xenophobic sentiment which saturate mainstream media and political discourse.

Furthermore, It is clear that on a policy and legislative level, multiple identity issues are routinely neglected and intersectional discrimination is not fully understood. BME women are disproportionately affected by domestic and sexual violence on the basis of both their gender and ethnicity. Indeed, they are differentially affected by “honour” based violence, forced marriage, intimate partner homicide, suicide, female genital mutilation and trafficking for the purposes of sexual exploitation. Their vulnerability is often aggravated by a lack of access to family and support networks, limited proficiency in English and mistrust of public authorities and criminal justice processes. These factors have generated a culture of impunity for offenders and under-reporting by victims, resulting in a uniform denial of access to justice and reduced uptake of essential support services.

In addition, BME young people and children are often overlooked and invisible despite intolerably high rates of racist bullying in schools driving absenteeism and educational under-attainment which serve to cement lifelong disadvantage and diminished employment opportunities, particularly for Roma, Traveller and Gypsy children. Indeed, there have been negligible efforts to address the scarcity of research on BME older people despite disproportionately poor health and employment outcomes and unmet housing and social care needs. This litany of racial inequalities highlights the urgency of breaking the cycle of disadvantage and ethnic penalties faced by BME communities.



## **GENERAL FRAMEWORK FOR THE PROTECTION AND PROMOTION OF HUMAN RIGHTS**

### **1. Human Rights and Racial Equality in Northern Ireland:**

The Committee notes the draft Bill of Rights for Northern Ireland, which includes economic, social and cultural rights which are justiciable, and calls for its enactment without delay.

(para 10, ICESCR Concluding Observations, 2009)

The Committee wishes to remind the State party that the obligation to implement the provisions of the Convention in all parts of its territory is borne by the State party. This makes the State party the duty bearer at the international level in respect of the implementation of the Convention in all parts of its territory notwithstanding the specific governance arrangements that it may have adopted. In this regard, the Committee recommends that the State party should take immediate steps to ensure that a single equality law and a Bill of Rights are adopted in Northern Ireland or that the Equality Act 2010 is extended to Northern Ireland.

(para 19, ICERD Concluding Observations on UK, 2011)

Efforts to design comprehensive anti-discrimination legislation in Northern Ireland, as well as a Bill of Rights for Northern Ireland, as foreseen in the St Andrews Agreement of 2006, have so far not yielded results. Consequently, there are significant discrepancies between anti-discrimination provisions in force in Northern Ireland and those in force in Great Britain.

Step up efforts to adopt a comprehensive and human rights-based anti-discrimination equality legislation for Northern Ireland.

Third opinion on the UK, of the Advisory Committee on the Framework Convention for the Protection of National Minorities, June 2011

### **Reform of Race Legislation**

It is essential that immediate measures are taken to consolidate and strengthen racial equality legislation in Northern Ireland to promote compliance with international standards, including the International Covenant on the Elimination of All Forms of Racial Discrimination (ICERD), the EU Racial Equality Directive and Employment Equality Directive and the EU Charter of Fundamental Rights<sup>7</sup>. Indeed, the Advisory Committee on the Framework Convention for the Protection of National Minorities and the UN Committee on the Convention for the Elimination of all forms of Racial Discrimination (CERD) have both stated the urgent need for legislative reform to remedy deficiencies and shortcomings in the Race Relations (NI) Order 1997 as

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<sup>7</sup> *Racial Equality Policy - Priorities and Recommendations* (ECNI August 2013)

[http://www.equalityni.org/ECNI/media/ECNI/Consultation%20Responses/2013/Racial\\_Equality\\_Policy-Priorities\\_and\\_Recommendations.pdf?ext=.pdf](http://www.equalityni.org/ECNI/media/ECNI/Consultation%20Responses/2013/Racial_Equality_Policy-Priorities_and_Recommendations.pdf?ext=.pdf)

amended<sup>8</sup>. Whilst half a decade has elapsed since the Northern Ireland Assembly voted unanimously in support of a review of the Race Relations (Northern Ireland) Order 1997, the resulting recommendations issued by the Equality Commission have been largely neglected. In the interim period, the RRO has been amended twice due to impending infringement proceedings from the European Commission. The Programme for Government 2011-2015 provides a robust commitment to producing a revised Racial Equality Strategy. It is our view that the aims of this forthcoming Strategy can only be effectively implemented through reform of race legislation.

In addition, the Equality Act 2010 does not extend to Northern Ireland and despite clear recommendations from the Equality Commission, a Single Equality Bill (SEB) is yet to be introduced in Northern Ireland. This is despite commitments in the St Andrews Agreement in 2006 to 'work rapidly' towards the introduction of a SEB for Northern Ireland. The limited scope of the RRO and failure to extend the Equality Act 2010 to Northern Ireland highlights the disparity in the level of protection afforded against racial harassment and discrimination in Northern Ireland. Indeed, the Equality Commission Northern Ireland have emphasised the need to strengthen protections against racial discrimination, harassment<sup>9</sup> and victimisation on the grounds of colour and nationality<sup>10</sup>.

NICEM also support recommendations to expand affirmative action measures, to enhance protection against intersectional multiple discrimination, to better protect agency workers, to remove unnecessary employment restrictions on migrant workers (e.g. curtailed access to civil, diplomatic, armed, security and intelligence services), to improve workforce monitoring under fair employment legislation (i.e. data collection disaggregated by ethnic origin and nationality), to remove the immigration exception to racial equality legislation which permits discriminatory racial profiling by immigration officials and to strengthen enforcement mechanisms available to the ECNI (e.g. increase tribunal powers to better promote access to justice in racial complaints and improve protections against victimisation and procedural barriers which inhibit pupils or their guardians from pursuing complaints in relation to racial discrimination in education)<sup>11</sup>.

### **Northern Ireland Bill of Rights**

NICEM support a robust and inclusive Bill of Rights for Northern Ireland. The Bill represents a tremendous opportunity to acknowledge the legacy of the conflict whilst looking beyond the 'two communities' paradigm to recognise the universality of human rights and burgeoning

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<sup>8</sup> *Third opinion on the UK, of the Advisory Committee on the Framework Convention for the Protection of National Minorities*, June 2011 [http://www.coe.int/t/dghl/monitoring/minorities/3\\_fcnmdocs/PDF\\_3rd\\_OP\\_UK\\_en.pdf](http://www.coe.int/t/dghl/monitoring/minorities/3_fcnmdocs/PDF_3rd_OP_UK_en.pdf)  
ICERD Concluding Observations on UK, 2011 at para 19

<http://www2.ohchr.org/english/bodies/cerd/docs/CERD.C.GBR.CO.18-20.pdf>

<sup>9</sup> i.e. protected grounds extended to nationality and colour, need for protection against third party harassment

<sup>10</sup> *Racial Equality Policy - Priorities and Recommendations* (ECNI August 2013)

[http://www.equalityni.org/ECNI/media/ECNI/Consultation%20Responses/2013/Racial\\_Equality\\_Policy-Priorities\\_and\\_Recommendations.pdf?ext=.pdf](http://www.equalityni.org/ECNI/media/ECNI/Consultation%20Responses/2013/Racial_Equality_Policy-Priorities_and_Recommendations.pdf?ext=.pdf)

<sup>11</sup> *Strengthening Protection Against Racial Discrimination in Northern Ireland: Recommendations for Change* (ECNI January 2014)

<http://www.equalityni.org/ECNI/media/ECNI/Publications/Delivering%20Equality/Raceequalityproposalsforlawrefo rm14-01-14.pdf>

diversity of Northern Ireland. The adoption of rigorous enforcement mechanisms would also give a voice to disempowered and marginalised sections of society. The rapid enactment of the Bill is also be critical to combating the intolerably high levels of inequality, racial discrimination and human rights violations experienced by BME communities in Northern Ireland.

NICEM have been actively involved in campaigning for a meaningful and all-encompassing Bill of Rights since 2000. In recent years, NICEM have escalated the issue in its shadow reports to the United Nations Committee on the Elimination of Discrimination Against Women (CEDAW), the International Committee on Economic, Social and Cultural Rights (ICESCR), and UN Committee on the Elimination of Racial Discrimination (ICERD) in addition to its recent submission to the UK House of Commons and through our input into the Haass talks, helped to ensure the Bill of Rights was cited in the final output paper.

However, despite continuing support from an alliance of over 120 civil society organisations, cross-border approval<sup>12</sup> and sustained international pressure, the future of the Bill of Rights remains uncertain. The intensification of sectarian tensions surrounding flags and parades has introduced further delays and the disappointing outcome of the Haass talks in December 2013 reflect a missed opportunity. These setbacks reinforce the urgency of implementing the Concluding Observations of the ICESCR Committee in 2009 which call for the enactment of a Bill of Rights for Northern Ireland, which would include economic, social and cultural rights, without delay<sup>13</sup>. It would also note the Concluding Observations of the ICERD Committee in 2011 which urge the UK government take 'immediate steps to ensure that a single equality law and a Bill of Rights are adopted in Northern Ireland' and parallel recommendations issued by the Council of Europe in 2011<sup>14</sup>.

Consecutive UK administrations, from New Labour to the current Coalition Government have obscured the clear mandate for a heterogeneous Bill of Rights for Northern Ireland by concentrating on a UK-wide Bill of Rights. Moreover, the UK Government have purposefully sidelined advice presented by the Northern Ireland Human Rights Commission (NIHRC) to the Secretary of State on 10 December 2008 in fulfilment of its mandate contained in the Belfast (Good Friday) Agreement 1998. It is essential the Northern Ireland process is not subsumed into the UK process as this neglects the provisions of the Good Friday Agreement, an international Treaty which was voted for by the majority of the population.

Indeed, the introduction of UK-wide Commission for a Bill of Rights overlooks the unique political makeup and specific needs of Northern Ireland as a post-conflict society. It also detracts from the follow up work undertaken by the NIHRC, the Human Rights Consortium (to which NICEM is non-executive director) and across civil society, to dispel misconceptions and attach renewed urgency to the adoption of a Northern Ireland Bill of Rights<sup>15</sup>. Furthermore, the British

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<sup>12</sup> British Irish Parliamentary Assembly, who called on the UK government to fulfill its obligation to implement a Bill of Rights for Northern Ireland in December 2010.

<sup>13</sup> para. 10, Conclusion Observations of the Committee on Economic, Social and Cultural Rights on UK 14<sup>th</sup>, 15<sup>th</sup> and 16<sup>th</sup> Periodic Reports, E/C.12/GBR/CO/5 22, May 2009.

<sup>14</sup> *Third opinion on the UK, of the Advisory Committee on the Framework Convention for the Protection of National Minorities* (June 2011) ACFC/OP/III(2011)006 at para 19  
[http://www.coe.int/t/dghl/monitoring/minorities/3\\_fcnmdocs/PDF\\_3rd\\_OP\\_UK\\_en.pdf](http://www.coe.int/t/dghl/monitoring/minorities/3_fcnmdocs/PDF_3rd_OP_UK_en.pdf)

<sup>15</sup> *Is That Right? Fact and Fiction on a Bill of Rights* (NIHRC 2012)

Commission on a Bill of Rights has also fallen into deadlock over clear indications that any formulation of a British Bill of Rights would be exploited to repeal the Human Rights Act 1998 and diminish the level of protection afforded under the European Convention of Human Rights. In December 2009, we issued a position paper following the publication of a consultation document from the Northern Ireland Office, entitled “A Bill of Rights for Northern Ireland: Next Steps” where we highlighted the inadequacy of the NIO consultation process.

Another area of concern is the Ministry of Justice convening a wide-ranging review of the balance of competences between domestic law and EU law, particularly in reference to fundamental rights, and the domestic application of the EU Charter of Fundamental Rights and the Racial Equality Directive. Indeed, the consideration of ‘alternative models’ to Britain’s ‘overall relationship’ with the EU represents a clear threat of retrogressive measures being introduced<sup>16</sup>. The EU fundamental rights framework imposes necessary constraints on government to ensure they remain accountable and do not have unfettered discretion to adjudicate human rights issues. Moreover, it must be emphasised that the backdrop of economic recession does not provide a basis for regressive measures. Indeed, the UN Special Rapporteur on Extreme Poverty has stated in relation to a fact finding visit to Ireland, that ‘Human rights are not dispensable and cannot be disregarded in times of economic uncertainty. On the contrary, these are times in which people become more susceptible to potential infringements on their basic rights and have higher risks of falling into poverty’<sup>17</sup>.

### **Recommendations**

- **OFMdfM should introduce as a matter of urgency a robust and comprehensive Racial Equality Strategy and adequately resourced Action Plan, with additional Inter-Departmental Action Plans, with targets**
- **The NI Executive should consolidate and strengthen racial equality legislation to bring protections in line with international standards and parallel protections under the Equality Act 2010 (GB)**
  - **The recommendations issued by the Equality Commission in its recent position paper on racial equality should be rapidly implemented<sup>18</sup>**
- **The Northern Ireland Assembly should establish a Standing Committee on Human Rights and Equality to provide pre-legislative scrutiny and monitor compliance with international standards (i.e. complementary to Joint Committee on Human Rights at**

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<http://www.nihrc.org/documents/Fact%20and%20Fiction%20on%20a%20Bill%20of%20Rights-%20Is%20that%20Right.pdf>

<sup>16</sup> Ministry of Justice, *Call for Evidence on the Review of the Balance of Competences Between the United Kingdom and the European Union* (MoJ October 2013) p8

[https://consult.justice.gov.uk/digital-communications/boc-fundamental-rights-review/supporting\\_documents/fundamentalrightscallforevidence.pdf](https://consult.justice.gov.uk/digital-communications/boc-fundamental-rights-review/supporting_documents/fundamentalrightscallforevidence.pdf)

<sup>17</sup> UN Independent expert on poverty Magdalena Sepulveda, following visit to Ireland, January 2011

<sup>18</sup> Equality Commission NI, *Strengthening Protection Against Racial Discrimination in Northern Ireland: Recommendations for Change* (ECNI January 2014)

<http://www.equalityni.org/ECNI/media/ECNI/Publications/Delivering%20Equality/Raceequalityproposalsforlawrefom14-01-14.pdf>

Westminster Parliament)

- A robust and inclusive Bill of Rights for Northern Ireland should be introduced to promote compliance recommendations issued by the Northern Ireland Human Rights Commission in addition to the Council of Europe and a series of UN Treaty Monitoring Bodies
- The OFMDM Minority Ethnic Development Fund should continue to support BME and local groups to the next phase by setting action and target on the new Racial Equality Strategy
- The Northern Ireland Executive should consider to take a more active role on the immigration and asylum matters which routinely interfere with transferred matters (i.e. health, housing, employment, criminal justice) to the Northern Ireland Assembly<sup>19</sup>

## **2. Enforcement Mechanisms - Public Sector Equality Duty**

The Committee recommends that the State party develop and adopt a detailed action plan, with targets and monitoring procedures, in consultation with minority and ethnic groups, for tackling race inequality as an integral part of the Equality Strategy, or separately provide an action plan for an effective race equality strategy.

(para 17, ICERD Concluding Observations 2011)

The State party is invited to examine whether the legislative and policy framework for dealing with the situation in Northern Ireland could not benefit by being underpinned by the standards, duties and actions prescribed by the Convention and the Durban Declaration and Programme of Action on inter-sectionality between ethnic origin, religion and other forms of discrimination. The State party should inform the Committee in its next report of the results of its examination of the advisability of adopting such a holistic approach towards the fight against sectarianism and racism, while also reporting directly on measures to address racial discrimination experienced by vulnerable ethnic minority groups in Northern Ireland.

(para 20, ICERD Concluding Observations on UK, 2011)

It is crucial that human rights and racial equality are mainstreamed into law, policy and practice in Northern Ireland. This must be recognised as a priority particularly given the persistence and intensity of racial discrimination, socio-economic inequalities and entrenched community divisions within Northern Ireland as a post-conflict society. However, there is evidence that binding international and domestic commitments to human rights are being minimally enforced and overlooked by the NI Legislative Assembly and public authorities.

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<sup>19</sup> <http://www.bbc.co.uk/news/uk-northern-ireland-26212043>

The enforcement mechanism to ensure Section 75 duties are fulfilled is ineffective and rarely utilised. The Provision itself imposes a legal duty on public authorities to have 'due regard' to promoting equality of opportunity and good relations. However, this obligation is rarely understood through the lens of State Party obligations under the International Covenant for the Economic, Social and Cultural Rights to maximise available resources for the full realisation of rights. Paragraph 11 under Schedule 9 of the Northern Ireland Act 1998 provides a statutory basis for the Equality Commission NI to undertake investigations into substantive and procedural breaches of Equality Schemes, but this mechanism is not often invoked, and has only been utilised once in relation to racial equality.

Moreover, public authorities scarcely utilise the Equality Impact Assessment (EqIA) process to rigorously scrutinise policies on equality and human rights grounds, as it often digresses to a bureaucratic box-ticking exercise. Furthermore, the duty to collect equality-monitoring data on vulnerable groups who are likely to be adversely impacted by a policy is rarely invoked. As a result, the specific needs of BME communities are often neglected, alongside the unique structural, cultural, linguistic and religious barriers they may experience. Indeed, it reflects only a partial implementation of Article 1(3) and Article 2 (2) of ICERD. Furthermore, the unique vulnerability of ethnic minorities to socio-economic disadvantage and inequalities in access to healthcare, housing, employment and education could be more effectively addressed if socio-economic status was recognised as a protected category for the purposes of Section 75.

By comparison, the UK public sector equality duty enshrined in the Equality Act 2010 requires public authorities to 'eliminate unlawful discrimination' and provides a more robust enforcement mechanism. Similar measures have not been taken to harmonise and consolidate race equality law in Northern Ireland. The NI Assembly also lack a scrutiny mechanism comparable to the Joint Committee of Human Rights in the Westminster Parliament to monitor compliance with international standards. In addition, proposed reforms to judicial review criteria threaten to impose further restrictions on access to justice and diminish the accountability of Government in discrimination cases, particularly given the recent increase of asylum and immigration cases<sup>20</sup>. Moreover, the absence of a Bill of Rights or Single Equality Bill for Northern Ireland represents a further gap in possible enforcement mechanisms. This is compounded by the failure to transpose The ICERD into national law and the continuing refusal of the UK Government to make a declaration under Article 14 to allow for a complaints procedure and the right of individual petition for breaches of Treaty provisions.

Another critical concern is the significant lapse of time without an operational and up-to-date Racial Equality Strategy to provide an underlying legal and policy framework on racial equality in Northern Ireland. The previous strategy ran between 2005-2010 and there is yet to be a public consultation on a revised strategy.

### **Recommendations**

- **The enforcement mechanisms should be reformed for the public sector equality duty**

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<sup>20</sup> Citizens Advice Bureau, *Submission to Ministry of Justice Proposals for Further Reform of Judicial Review* (CAB Nov 2013) p2

[http://www.citizensadvice.org.uk/citizensadvice/responseonjudicial\\_review.pdf](http://www.citizensadvice.org.uk/citizensadvice/responseonjudicial_review.pdf)

under Section 75 of the Northern Ireland Act. Schools should also be designated as public authorities.

- The Equality Commission should be more proactive in exercising its statutory duties under paragraph 10 and 11 of Schedule 9 of the Northern Ireland Act to investigate procedural and substantive breaches of Equality Schemes.
  - The Statutory Investigations Committee should operate with greater transparency to ensure complainants are informed at every stage of the decision making process

### **3. Multiple Discrimination and Intersectionality**

The Committee urges the State party to take advantage of the review of the PSED to ensure that the gender equality component of the duty is properly prescribed for public authorities, including the application of the principle of substantive equality. In this regard, the State party should consider issuing statutory guidelines on PSED covering England, Wales and Scotland, which would provide uniform guidance on the gender equality duty. It further urges the State party to bring into force the provisions of the Equality Act relating to (a) the introduction of a new public sector duty on socio-economic inequalities; (b) the recognition of multiple forms of discrimination; and (c) the need to publicise gender pay information.

(para 17, CEDAW Concluding Observations on UK, 2013)

The Committee recommends that the State party should revise its legislation in Northern Ireland to ensure that it affords protection to women on an equal footing with other women in the State parties' administrations. The State party should, therefore, recognise multiple discrimination

(para 19, CEDAW Concluding Observations on UK, 2013)

Pay greater attention to the issue of multiple discrimination faced by non-citizens, in particular concerning the children and spouses of non-citizen workers, to refrain from applying different standards of treatment to female non-citizen spouses of citizens and male non-citizen spouses of citizens, to report on any such practices and to take all necessary steps to address them

(Para 8, CERD General Recommendation No.30: Discrimination Against Non Citizens)

It is essential to recognise the diversity and multiple identities which exist within minority ethnic communities. Indeed, certain groups may be vulnerable to multiple discrimination on the basis of multiple grounds, such as gender, racial or ethnic origin, religion or belief, disability, age or sexual orientation. Evidence from the European Fundamental Rights Agency indicates that ethnic minorities are almost five times as likely to experience multiple discrimination than



members of the majority population<sup>21</sup>. NICEM's recent research into the Experiences of BME Women in Northern Ireland (2013)<sup>22</sup> reinforces that ethnic minority women experience intersectional discrimination in access to a range of services and entitlements including employment, education and training, on the basis of gender and ethnicity<sup>23</sup>.

Inequalities are also reflected in the low level of economic activity amongst ethnic minority women (the 2011 census established that only 21% of Traveller women are economically active). Therefore, the prohibited grounds of discrimination (i.e. protected characteristics) are 'inextricably linked' and should not be regarded as discrete or independent of one another, as they often interact and may compound discrimination and intensify inequality<sup>24</sup>. The Concluding Observation of the UN Committee on the Elimination of the Discrimination Against Women (CEDAW), following the most recent UK examination in 2013, asserts that the UK should intensify its efforts to eliminate discrimination against ethnic minority women who are underrepresented in all areas of the labour market and political and public life.

In addition, despite CEDAW's General Recommendation No. 28 which recognises intersectionality as a 'basic concept' for understanding the State Party obligations, Northern Ireland are yet to provide legal recognition to multiple discrimination or intersectionality. The Office of the First Minister and Deputy First Minister has developed separate strategies for the protection of various vulnerable groups, notably the Racial Equality Strategy 2005-2010 and the Gender Equality Strategy 2006-2016.

However, there has been negligible attention to coordinating the implementation of these parallel strategies to strengthen protections against multiple discrimination and build greater awareness of intersectionality. These strategies lack correlation and often operate in isolation. This approach diminishes the level of protection afforded to the most vulnerable and marginalised sections of society. Indeed, recent research published by the Joseph Rowntree Foundation in 2013 notes the 'silo effect' and 'ad hoc approach' adopted in the development and delivery of 'key government strategy documents in Northern Ireland'<sup>25</sup>.

Furthermore, there is no reference to intersectionality or multiple discrimination within the OFMDFM Equality Scheme. In particular, there is a lack of awareness of the multiple disadvantage experienced by vulnerable groups on the basis of ethnicity and age. The OFMDFM Delivering Social Change for Children and Young People Strategy (i.e. Child Poverty Strategy) overlooks the high rates of socio-economic disadvantage experienced by BME children. It also neglects health, housing and educational inequalities which disparately affect BME children (e.g. low educational attainment and higher rates of absenteeism in Roma, Gypsy and Traveller

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<sup>21</sup> EU Fundamental Rights Agency, *EU Minorities and Discrimination Survey: Data in Focus Report 05 - Multiple Discrimination* (2010)

[http://fra.europa.eu/sites/default/files/fra\\_uploads/1454-EU\\_MIDIS\\_DiF5-multiple-discrimination\\_EN.pdf](http://fra.europa.eu/sites/default/files/fra_uploads/1454-EU_MIDIS_DiF5-multiple-discrimination_EN.pdf)

<sup>22</sup> Isal S, *The Experiences of Ethnic Minority Women in Northern Ireland: Prepared in Submission to CEDAW* (NICEM June 2013)

<http://nicem.org.uk/wp-content/uploads/2014/03/EoEMWiNI-11.pdf>

<sup>23</sup> McAreavey & Others, *Poverty and Ethnicity in Northern Ireland: An Evidence Review* (JRF Jan 2013)

<http://www.jrf.org.uk/sites/files/jrf/poverty-ethnicity-northern-ireland-full.pdf> p7

<sup>24</sup> para 18, CEDAW General Recommendation No.28

<sup>25</sup> McAreavey & Others, *Poverty and Ethnicity in Northern Ireland: An Evidence Review* (JRF Jan 2013)

<http://www.jrf.org.uk/sites/files/jrf/poverty-ethnicity-northern-ireland-full.pdf> p22



communities), and the disproportionately low parental income of migrant workers with children, which severely impede the ability of BME children to escape the cycle of poverty.

Alternatively, the Active Ageing Strategy 2014-2020 completely overlooks the health, housing and employment inequalities experienced by BME older people. There is also minimal awareness of prevailing social stigma and cultural norms which discourage BME older people from accessing essential healthcare services. This is despite compelling evidence of higher susceptibility of certain ethnic groups to a multitude of health complaints, and the negligible uptake of mental health services, statutory residential care, and support services for dementia.

In addition, CEDAW in its UK Concluding Observations highlighted the inadequacy of Section 75 in ensuring results-oriented equality for women in Northern Ireland. Combined with the failure to deliver a Single Equality Bill and introduce a long awaited Racial Equality Strategy for Northern Ireland is indicative of total failure on behalf of the government to formulate any policy that addresses the complex issue of multiple discrimination. It is firmly recommended that Northern Ireland seek to replicate legal protections against multiple discrimination adopted by other jurisdictions such as Canada and South Africa.

### **Recommendations**

- **Intersectionality and multiple discrimination should be recognised under domestic law and mainstreamed into policy and practice**
- **Government Strategies which seek to address human rights and social inequalities (e.g. OFMdfM Racial Equality Strategy, NIHE Homelessness Strategy, OFMdfM Gender Equality Strategy etc) should recognise multiple identity issues and the implementation of associated Action Plans should adopt a joined up, coordinated and inter-agency approach.**

### **4. Racist Hate crime**

**States parties have not only to enact appropriate legislation but also to ensure that it is effectively enforced. Because threats and acts of racial violence easily lead to other such acts and generate an atmosphere of hostility, only immediate intervention can meet the obligations of effective response.**

**Article 4 (a) [CERD] requires States parties to penalize four categories of misconduct: (i) dissemination of ideas based upon racial superiority or hatred; (ii) incitement to racial hatred; (iii) acts of violence against any race or group of persons of another colour or ethnic origin; and (iv) incitement to such acts**

**(Para 2-3, CERD, General Recommendation 15: Organised violence based on ethnic origin 1993)**

**Article 4 - States Parties condemn all propaganda and all organizations which are based on**

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

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

Article 5 - In compliance with the fundamental obligations laid down in article 2 of this Convention, States Parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of the following rights:

(a) The right to equal treatment before the tribunals and all other organs administering justice;

(b) The right to security of person and protection by the State against violence or bodily harm, whether inflicted by government officials or by any individual group or institution

UN Convention on the Elimination of All Forms of Racial Discrimination, Article 4-5

Ensure that non-citizens enjoy equal protection and recognition before the law and in this context, to take action against racially motivated violence and to ensure the access of victims to effective legal remedies and the right to seek just and adequate reparation for any damage suffered as a result of such violence (para 18)

Introduce in criminal law the provision that committing an offence with racist motivation or aim constitutes an aggravating circumstance allowing for a more severe punishment (para 22)

(CERD General Recommendation No.30: Discrimination Against Non Citizens 2004)

The State party is invited to examine whether the legislative and policy framework for dealing with the situation in Northern Ireland could not benefit by being underpinned by the standards, duties and actions prescribed by the Convention and the Durban Declaration and Programme of Action on inter-sectionality between ethnic origin, religion and other forms of discrimination. The State party should inform the Committee in its next report of the results of its examination of the advisability of adopting such a holistic approach towards the fight against sectarianism and racism, while also reporting directly on measures to address racial discrimination experienced by vulnerable ethnic minority groups in Northern Ireland. (para 20)

(CERD Concluding Observations on the UK, 2011)

**Article 8 ECHR imposes a duty on state authorities to protect the physical integrity of the person<sup>26</sup>**

**Article 3 ECHR imposes a duty on States to undertake ‘all reasonable measures to prevent the recurrence of violent attacks’<sup>27</sup>**

**Article 2 ECHR imposes a duty on state authorities to take reasonable measures to address a ‘real and immediate risk [known or imputed] to life of an identified individual from the criminal acts of a third party’<sup>28</sup>**

**Jurisprudence of the European Court of Human Rights (European Convention on Human Rights, Articles 2, 3 and 8)**

**In 2012, the UK Government accepted recommendations under the United Nations Universal Periodic Review (UPR) process to:**

**“continue to monitor hate crimes and to work with the community to increase understanding of the impact of such offences, and to pursue efforts to improve the police gathering of evidence of racist motivations”**

**Instances of hate crime are not diminishing. Although high numbers are undoubtedly connected to increasing reporting of these crimes by victims, they also indicate worrying levels of intolerance in some parts of society against groups such as Gypsies and Travellers, Muslims and some migrants and asylum- seekers. Certain media are fuelling and disseminating prejudices and biased information on persons belonging to minority ethnic groups.**

**Third opinion on the UK, of the Advisory Committee on the Framework Convention for the Protection of National Minorities, June 2011**

### **Prevalence in Northern Ireland**

This is no exhaustive or internationally agreed definition of racist hate crime. For the purposes of consistency, a uniform definition of hate crime has been adopted across criminal justice agencies in Northern Ireland which captures ‘any incident which constitutes a criminal offence perceived by the victim, or any other person, to be motivated by prejudice or hate towards a person’s race, religion, sexual orientation or disability’. It is also important to note that hate crime is an abuse of fundamental human rights which can devastate the quality of life of victims. It can also subject victims to the added trauma of knowing the perpetrator’s motivation is an impersonal group hatred. It is inflicted not just on the immediate victim but the entire community to which the victim belongs, creating a broader sense of fear, tension, insecurity and mistrust. Media reporting may also contribute to inciting further acts of racist hate crime.

It is vital to note that whilst racist hate crime is not a recent phenomenon, NICEM are concerned

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<sup>26</sup> *E.S. and others v Slovakia*, ECtHR, Application No. 8227/04 (15 December 2009), para 44

<sup>27</sup> *Opuz v Turkey*, ECtHR, Application No. 33401/02 (9 September 2009) para 162

<sup>28</sup> *Opuz v Turkey*, ECtHR, Application No. 33401/02 (9 September 2009) paras 129-130

by the persistence and frequency of racially motivated assaults, harassment, criminal damage and intimidation in Northern Ireland. Racist hate crime is a recurring issue which is often under-reported. It should not be used as a tool to intensify political divisions or create a climate of panic and fear for ethnic minorities. Statistically, the rate of hate crimes have risen and fallen year by year. In 2012/2013 racist incidents rose by 54 and racist crime rose by 12, however compared to 2010/11 racist incidents fell by 92 and racist crime fell by 61 in 2012/2013. In 2013/14, the official statistics still recorded 982 racist incidents (750 in 12/13), with 2-3 racist hate incidents being reported to the PSNI daily<sup>29</sup>. These included incidents ranging from acts of violence to arson attacks, vandalism and criminal damage. Furthermore, only 12 of 14,000 recorded hate motivated incidents have been prosecuted under existing hate crime legislation in the last 5 years<sup>30</sup>. The clearance rate for racist hate crimes are greatly disappointing with only 8.3 per cent of reported cases having been successfully prosecuted in the period January 2014 – April 2014.

Indeed, the Belfast Migrant Centre have also noted the escalation of racist attacks from the significant level of demand our Bilingual Hate Crime Advocacy Service to assist victims of racist hate crime. To indicate the breadth and frequency of recent hate crimes, in January 2014, four vehicles were burned out in the North of Belfast in a series of hate-crimes targeting Slovakian, Afghan and Polish families, with two households forced to flee in order to protect their children. In March 2014, a Polish family living in the Rathcoole Estate were terrorised by a loyalist gang and forced to flee after the windows of the family home were broken and a pipe-bomb was used to destroy an adjacent car<sup>31</sup>. In early May 2014 a Romanian cyclist had faeces thrown at him on the Newtownards road, followed by a Jamaican family targeted in a racist attack on their home later in the month. Indeed, most recently on 1<sup>st</sup> June 2014, two men were assaulted in a racist attack just hours after having the window of their home broken in a separate racially motivated crime in North Belfast forcing them to relocate to a safer area<sup>32</sup>.

The focus needs to remain on support services for victims and witnesses of racist crimes and incidents and how government departments and strategy embed this. Hate crime is not only a policing issue and it cannot be solved by arrests alone. The response to these heinous acts needs to be a unified one that comes from the whole community. Minorities cannot only be seen as victims of hate crime, they are full members of the community and this must be reinforced by government strategy, the absence of the Racial Equality Strategy leaves a vacuum and lends to reactive responses that are short lived and do not promote lasting change.

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<sup>29</sup> PBNI, *Annual Report 2013: Monitoring Compliance of the PSNI with the Human Rights Act 1998* (PBNI 2013)  
[http://www.nipolicingboard.org.uk/human\\_rights\\_annual\\_report\\_2013.pdf](http://www.nipolicingboard.org.uk/human_rights_annual_report_2013.pdf) p124

<sup>30</sup> Kilpatrick C, 'Forced out by racists: Rathcoole family terrorised by petrol bombs and smashed windows' *Belfast Telegraph* (18 March 2014)  
<http://www.belfasttelegraph.co.uk/news/local-national/northern-ireland/forced-out-by-racists-rathcoole-family-terrorised-by-petrol-bombs-and-smashed-windows-30100785.html>

<sup>31</sup> 'Racist Petrol Bombers Force Polish Family to Flee Home' *Irish News* (18 March 2014)  
<http://www.irishnews.com/news/racist-petrol-bombers-force-polish-family-to-flee-home-1343151>

<sup>32</sup> 'Belfast hate crime: Police to make arrests' *BBC News* (6 May 2014)  
<http://www.bbc.co.uk/news/uk-northern-ireland-27302020>

'Second racist attack at Belfast house within hours' *BBC News* (1 June 2014)  
<http://www.bbc.co.uk/news/uk-northern-ireland-27655794>

## **Legal and Policy Measures to Combat Racist Hate Crime**

In line with our recent research on Race and Criminal Justice in Northern Ireland (2013) and the NIHRC report on racist hate crime (2013), emphasis should be placed on the protection of victims, prohibition of racist hate crime, adoption of preventative measures and prosecution of offenders should be rigorously implemented to ensure victims have access to an effective remedy with a dissuasive and proportionate sanction imposed on the perpetrator<sup>33</sup>:

### **Protection of victims**

It is essential that victims are guaranteed access to information on their case, that protection measures are made available to mitigate the risk of secondary victimisation and victims have access to free support and advice services etc. Indeed, the EU Fundamental Rights Agency have recently published findings on the invisibility of victims of hate crime and need to enhance confidence of victims and vulnerable witnesses in the ability of law enforcement and criminal justice agencies to afford them sufficient protection when reporting hate crime or pursuing access to justice<sup>34</sup>.

### **Prosecution of Offenders**

It is crucial to ensure hate crime offences are rigorously enforced. The victim should also a central role in proceedings and being afforded a right to be heard. Measures should also be taken to improve accessibility of reporting mechanisms (e.g. third party reporting), to improve the accuracy of reporting and increase timely prosecutions to improve access to justice, ensuring the victim receives an effective remedy etc. Indeed, the PSNI NICHE system should ensure all racially motivated crimes are recorded prior to being reported to the PPS.

### **Preventative measures**

The Northern Ireland Government have an obligation under international law to refrain from violating an individual's rights and to undertake appropriate measures and exercise due diligence to protect them from harm, such as racism and racist hate crime. This may include measures such as the promotion of good relations, racial equality and non-discrimination, collection and analysis of disaggregated data, and rigorous monitoring and evaluation of the effectiveness of measures. NICEM recommend that measures taken to combat hate crime must therefore include longer term and holistic initiatives including awareness raising, sustained community engagement and educational programmes to challenge myths and misconceptions.

### **Prohibition of discrimination**

It is essential that measures are taken to criminalise of racist hate crime and racist hate speech, and ensuring sanctions imposed on perpetrators which are effective, proportionate and

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<sup>33</sup> 4Ps model advocated by the NIHRC in its recent report and endorsed by the All Party Group on Ethnic Minority Communities, which builds on our research into institutional racism in the criminal justice system: McVeigh, *Race and Criminal Justice in Northern Ireland: Towards a Blueprint for the Eradication of Racism from the CJSNI* (NICEM, Jan 2013)

[http://nicem.org.uk/wp-content/uploads/2014/02/Race\\_and\\_Criminal\\_Justice\\_2013.pdf](http://nicem.org.uk/wp-content/uploads/2014/02/Race_and_Criminal_Justice_2013.pdf)

NIHRC, 'Racist Hate Crime: Human Rights and the Criminal Justice System in Northern Ireland' (2013)

[http://nihrc.green17.tv/uploads/publications/103141\\_NIHRC\\_Racist\\_Hate\\_Crime\\_4\\_Combined\\_%282%29.pdf](http://nihrc.green17.tv/uploads/publications/103141_NIHRC_Racist_Hate_Crime_4_Combined_%282%29.pdf)

<sup>34</sup> *Making Hate Crime Visible in the EU: Acknowledging Victim's Rights* (FRA 2012) p13

[http://fra.europa.eu/sites/default/files/fra-2012\\_hate-crime.pdf](http://fra.europa.eu/sites/default/files/fra-2012_hate-crime.pdf)

dissuasive in line with case-law emerging from the Court of Justice of the European Union (CJEU). Under domestic law, the Criminal Justice (No.2) (Northern Ireland) Order 2004 ensures the perpetrators of racially aggravated crimes receive harsher sentencing. Indeed, part III of the Public Order (NI) Order 1987 criminalises incitement to racial and religious hatred under 5 separate offences. However, it is critical that discrete race hate crime is introduced, consolidating separate legislation on incitement to racial and religious hatred offences and racially aggravated criminal offences.

NICEM have sought to prioritise racist hate crime through our close coordination with criminal justice agencies, press and media contacts, policy and legislative scrutiny and through our research into racist violence and institutional racism in the criminal justice system<sup>35</sup>. The All Party Group on Ethnic Minority Communities, to which we provide Secretariat support, have held dedicated sessions on racist hate crime in November 2013 and May 2014 with representatives from the DoJ, PSNI, NIHRC and community groups including the East Belfast Alternatives and Northern Ireland Alternatives to seek to raise the visibility of racist hate attacks and stress the urgency of introducing a robust and comprehensive Racial Equality Strategy to improve the effectiveness and of the response.

Indeed, a series of independent anti-racism campaigns have been initiated in response to the recent crisis, with one event in late June attracting approximately 4000 participants<sup>36</sup>. NICEM have been coordinating with Amnesty International and the Irish Congress of Trade Unions on a March Against Racism on 7<sup>th</sup> June 2014 to demand a robust and comprehensive Racial Equality Strategy, the reform of racist hate crime legislation and the strengthening accountability under the Ministerial Code of the NI Executive and Code of Conduct of the Assembly members. This event was the most ethnically diverse march in the history of Northern Ireland, with approximately 8000 attendees<sup>37</sup>.

In May 2013, the NI Executive introduced the *Together: Building a United Community* (TBUC) Strategy to promote 'a united community, based on equality of opportunity, the desirability of good relations and reconciliation – one which is strengthened by its diversity, where cultural expression is celebrated and embraced and where everyone can live, learn, work and socialise together, free from prejudice, hate and intolerance'. However, it must be emphasized that this 'Strategy is not intended to replace or subsume our work on racial equality and good race relations'. As recommended by the APG on EMC in a letter to OFMdFM in April 2014, the Working Group tasked with Good Relations under *Together: Building a United Community* (TBUC) should adopt 'tackling racial prejudice and intolerance' as a standing item.

Furthermore, one of the overarching imperatives in the initial Racial Equality Strategy 2005-2010 was to 'eradicate racism and hate crime'. However, a revised Racial Equality Strategy is yet to be

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<sup>35</sup> McVeigh R, *Race and Criminal Justice in Northern Ireland: Towards a Blueprint for the Eradication of Racism from the CJSNI* (NICEM Jan 2013)

[http://nicem.org.uk/wp-content/uploads/2014/02/Race\\_and\\_Criminal\\_Justice\\_2013.pdf](http://nicem.org.uk/wp-content/uploads/2014/02/Race_and_Criminal_Justice_2013.pdf)

<sup>36</sup> 'Anti-racism rallies take place in Belfast and Derry' *BBC News* (31 May 2014)

<http://www.bbc.co.uk/news/uk-northern-ireland-27649102>

<sup>37</sup> 'Anti-racism rally held in Belfast' *BBC News* (7 June 2014)

<http://www.bbc.co.uk/news/uk-northern-ireland-27744882>



released for public consultation despite 4 years having elapsed since the previous strategy expired. The Racial Equality Strategy was effectively frozen in 2007 due to lack of cross party political support on the framework policy document “A Shared Future”. This document and the Racial Equality Strategy were designed as parallel policy documents. The “Shared Future” framework document brought both community relations (the relationship between Catholic and Protestant communities) and race relations (the relationship between the two majorities and ethnic minorities in Northern Ireland) into one platform. Therefore if the “Shared Future” document failed then the Racial Equality Strategy also failed. In June 2007 the Assembly held a Motion Debate on “Shared Future Framework”, which overturned the original cross-party endorsement of the document.<sup>38</sup> Despite the fact that support remained for the Racial Equality Strategy its implementation could not be taken forward.

These delays are particularly alarming in light of recent comments from the Head of the Racial Equality Unit at OFMDFM in March 2014 confirming that the list of priority issues under consideration at present remains ‘exactly the same as that compiled in 2003-04’ which is indicative of a profound lack of progress<sup>39</sup>.

It is important to note the Department of Justice have formulated a Community Safety Strategy 2012-2017 with a dedicated Hate Crime Action Plan to address under-reporting, increase effectiveness of support for victims, raise awareness, improve enforcement powers and deliver targeted early interventions and restorative mechanisms for offenders. However, the commitment to ‘take forward actions’ from recent NIHRC, NICEM<sup>40</sup> and NCR reports has not been sufficiently implemented. Policing and Community Safety Partnerships (PCSPs) and District Policing and Community Safety Partnerships (DPCSPs) play a key role in implementing Action Plans for the Department of Justice Community Safety Strategy 2012-2017. One of the key aims of the Strategy is to build ‘shared communities where each person’s rights are respected in a shared and cohesive community’ and specifically to ‘tackle all forms of hate crime through prevention, awareness and education, and support victims and communities’<sup>41</sup>. The NI Housing Executive have also developed a Community Safety Strategy 2014-2017 which places similar strategic emphasis on tackling racist hate crime.

PSNI Equality, Diversity and Good Relations Strategy 2012-2017 provides a commitment to ‘improve the prevention and detection of Hate Crime which acts as a signal to a community that

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<sup>38</sup> instead the Assembly passed the amendment Motion “*That this Assembly notes the strategic direction of and underpinning principles contained in the documents ‘A Shared Future’ (March 2005) and ‘A Shared Future: Triennial Action Plan’ (April 2006), and recognises that the Executive and the Assembly will wish to consider carefully the progress to date and bring forward detailed plans, consistent with the pledge of office, to promote the interests of the whole community towards the goal of a shared future and a prosperous, peaceful and settled society.*” “Motion Debate: Shared Future Framework”, NI Assembly, Minutes of Proceedings, Monday, 4 June 2007 (No. 8/07), Hansard. <http://www.niassembly.gov.uk/record/reports2007/070604.htm>

<sup>39</sup> OFMDFM Briefing on Racial Equality Strategy to Committee for OFMDFM (Hansard Report, March 2014) p2 per Ken Fraser

<sup>40</sup> McVeigh, *Race and Criminal Justice in Northern Ireland: Towards a Blueprint for the Eradication of Racism from the CJSNI* (NICEM, Jan 2013) [http://nicem.org.uk/wp-content/uploads/2014/02/Race\\_and\\_Criminal\\_Justice\\_2013.pdf](http://nicem.org.uk/wp-content/uploads/2014/02/Race_and_Criminal_Justice_2013.pdf)

<sup>41</sup> DoJ, Building Safer, Shared and Confident Communities: A Community Safety Strategy Northern Ireland 2012-2017 (2012) <http://www.dojni.gov.uk/index/publications/publication-categories/pubs-policing-community-safety/community-safety/reviews-strategies-action-plans/cs-strategy-20122017.pdf>

they are at risk' and the associated action plan desired outcome of 'increased satisfaction and confidence especially among underrepresented groups'<sup>42</sup>. The PSNI have identified hate crime as a priority issue under its Policing Plan and scaled up its investigations through Operation Rainer. In addition, the PSNI have introduced a dedicated phone line for reporting racist hate crime and increased patrols in high-risk areas. Indeed, Hate and Signal Crime Officers (HSCOs) operate within Neighbourhood Policing Units to investigate racially motivated hate incidents and crimes and are tasked with providing advice, reassurance and support to minority or vulnerable groups to build trust and confidence and encourage greater reporting. However, there is a failure to include key recommendations from *Criminal Justice Responses to Hate Crime in Northern Ireland* (November 2012) to which the DoJ contributed, *Racist Hate Crime: Human Rights and the CJS in Northern Ireland* (September 2013) undertaken by the Northern Ireland Human Rights Commission and our research, *Race and Criminal Justice in Northern Ireland: Towards a Blueprint for the Eradication of Racism from the Northern Ireland Criminal Justice System* (NICEM 2013) in the associated action plan.

The DoJ Equality Scheme 2011-2015 and PPS Equality Scheme, provide a general framework on adherence to the public sector equality duty the promotion of good relations under Section 75. However, they fail uniformly to stress the critical importance of good relations, equality and non-discrimination in the context of high rates of racist hate crime which deepen community divisions and create a climate of fear and intimidation which exacerbate the vulnerability and isolation experienced by ethnic minorities. Indeed, the associated Action Plans are weak and with minimal and unfulfilled commitments in relation to hate crime. In addition, whilst there is reference to addressing the under-reporting of hate crime in the DoJ Section 75 Action Plan, it has not been updated to reflect key recommendations from existing research.

It is essential that lessons are learned from previous awareness raising activities which are recognised not to have been cost-effective or sufficiently targeted. Future decision making on the awareness raising and preventative measures should be informed by meaningful consultation with ethnic minorities in high risk areas.

The DoJ have formulated a Victims and Witnesses Strategy (Making a difference to victims and witnesses of crime Improving access to justice, services and support – A Five Year Strategy 2013-2018) Furthermore, NICEM are concerned that the Department have adopted a restrictive definition of 'victim' instead of adopting the internationally agreed definition under the Council Directive of victim meaning any 'person who has suffered harm, including physical, mental or emotional harm or economic loss which was directly caused by a criminal offence'. Indeed, Appendix D does not include reference to victims of racially motivated hate crime in the list of intimidated witnesses. In addition, whilst NICEM welcome the introduction of mandatory sensitization training of staff across criminal justice agencies on the care and treatment of victims and witnesses as recommended under Article 25 of Directive 2012/29/EU establishing minimum standards on the rights, support and protection of victims of crime<sup>43</sup>, training could be

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<sup>42</sup> PSNI, *Equality, Diversity and Good Relations Strategy 2012-2017* (PSNI 2012)  
[http://www.psni.police.uk/equality\\_diversity\\_good\\_relations\\_strategy.pdf](http://www.psni.police.uk/equality_diversity_good_relations_strategy.pdf)

<sup>43</sup> Council Framework Decision of 15 March 2001 on the standing of victims in criminal proceedings (2001/220/JHA) superseded by Council Directive 2012/29/EU establishing minimum standards on the rights, support and protection of victims of crime  
<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2012:315:0057:0073:EN:PDF>



significantly enhanced through anti-racism training, equality training and specific hate-crime training.

The Department of Justice have recently convened a public consultation on amendments to Codes of Practice C and H in order to ensure Directive 2010/64/EU on the right to interpretation and translation in criminal proceedings is transposed into domestic law. The right to free and adequate linguistic assistance, including access to interpretation services and translation of essential documents in criminal proceedings in order to ensure the procedural dimension to the right to a fair trial and corollary rights to a defence and fairness of proceedings. It also provides rules on the execution of a European arrest warrant. However, the deadline for transposition is 2<sup>nd</sup> June and the Department have postponed the review and initiated a 3-week consultation period rather than the standard minimum of 12 weeks required under the DoJ Equality Scheme.

### **Ethics and Responsible Media Reporting**

It is vital to note that hate crime is motivated by intolerance, prejudice and negative societal attitudes. Indeed, the unacceptable levels of xenophobia and anti-immigration rhetoric in the mainstream media and political discourse continue to have an incendiary impact on public attitudes. Indeed, the ECNI Equality Awareness Survey 2011 provides evidence of 'high levels of negative attitudes towards certain racial groups; particularly Irish Travellers and Eastern European migrant workers' in Northern Ireland<sup>44</sup>. NICEM are concerned at issues surrounding irresponsible reporting and coverage of racist hate incidents in the media. The tendency to sensationalise hate crime can have an incendiary impact on the rate of racist attacks often spurring further offences and creating a culture of panic and fearmongering, which can leave ethnic minorities feeling more isolated and unsafe. Furthermore, efforts by journalists to seek contact with victims before they are able to access support services is highly intrusive and risks subjecting vulnerable community members to revictimisation and trauma. NICEM have engaged extensively with local media on issues of surrounding racist hate crime, placing an emphasis on the importance of adopting a joined up and interagency approach, and ensuring positive images of ethnic minorities are promoted in the media.

### **Sectarianism and Racism**

The UN Committee on the Elimination of Racial Discrimination highlights the intersectionality between racism and sectarianism which must be addressed in a holistic manner in Northern Ireland<sup>45</sup>. The now defunct Independent Monitoring Commission (IMC) acknowledged in numerous reports<sup>46</sup> that the UDA and UVF were 'targeting ethnic minorities'.<sup>47</sup> The PSNI and the Northern Ireland Affairs Committee have also acknowledged significant Loyalist paramilitary involvement in racist violence. Such links need to be tackled much more proactively by all agencies concerned.

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<sup>44</sup> Do you Mean Me? Discrimination: Attitudes and Experience in Northern Ireland, Equality Awareness Survey 2011, June 2012

<http://www.equalityni.org/ECNI/media/ECNI/News%20and%20Press/Articles/2012/Frontline-article-DYMM-June12.pdf?ext=.pdf>

<sup>45</sup> CERD Concluding Observations on the UK (2011) para 20

<sup>46</sup> Tenth report (March 2006), Thirteen Report (Jan. 2007), Fifteen Report (April 2007), Seventeen Report (Nov. 2007), Twenty-Second Report (Nov. 2009), Twenty-Third Report (May 2010), Twenty-Fifth Report (Nov. 2010).

<sup>47</sup> The Independent Monitoring Commission Report <http://www.independentmonitoringcommission.org/index.cfm>.

Moreover, one of the key findings emerging from a recent review of our advice services is the high volume of racial harassment cases involving victims being awarded points to relocate by the NIHE due to paramilitary intimidation<sup>48</sup>. The NIHE Equality Unit compiled their BME and Migrant Worker Mapping update in February 2014. It reveals that racist hate incidents have escalated from 696 incidents in 2011/12 to 750 in 2012/13 with greatest increase in East Belfast (20 per cent), North Belfast (18 per cent) and Craigavon (17 per cent)<sup>49</sup>.

However, due to fears over reprisals, victims and witnesses are often reluctant to pursue criminal prosecution or initiate civil proceedings against the perpetrators. Furthermore, the failure of the state to instigate constructive sustained programmes of regeneration in such deprived areas will mean that racial harassment and racist attacks will persist. The continuation of such activity highlights that the UK government is in breach of ICERD General Recommendations No. 30, Article 1(1) and Article 5(b). Furthermore, the failure of the state to instigate constructive sustained programmes of regeneration in such deprived areas will mean that racial harassment and racist attacks will persist. The continuation of such activity highlights that the UK government is in breach of ICERD General Recommendations No. 30.

A number of measures have been undertaken by the NIHE to address the housing needs of victims of racist hate crime. However, whilst the NIHE have continued representation on and support to the Hate Crime Thematic group and Tension Monitoring process with Belfast City Council, the NIHE BME Housing Forum has been disbanded, despite a commitment in the NIHE Audit of Inequalities to include community safety as a standing item for the Forum. They have also taken measures to disseminate information leaflets on the Hate Incident Practical Action Scheme (HIPA) which can assist victims who report hate crimes to the PSNI with protective measures. These include a minimum commitment to wind and watertight repairs to ensure their homes are secured, and where necessary alarms are installed. However, the limited awareness and uptake of the NIHE Hate Incident Practical Action (HIPA) Scheme, and the lack of rapid referrals by the PSNI may cause delays in essential repairs, leaving the homes of victims vulnerable and insecure. Indeed, the NIHE HIPA Scheme does not apply to vehicle damage. Moreover, the Department of Justice should review their Criminal Damage Compensation Scheme to improve its accessibility to victims of racist hate crime in such circumstances.

### **Recommendations:**

- **The EU Victims' Directive establishing minimum standards on the rights, protection and support of victims of crime must be transposed into domestic law by 2015**
- **Specific race crime legislation should be introduced incorporating an offence of racially aggravated crime.**<sup>50</sup>
- **Preventative measures taken to combat hate crime must include longer term and holistic initiatives including sustained community engagement and educational programmes to challenge myths and misconceptions.**

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<sup>48</sup> [http://www.nihe.gov.uk/race\\_relations\\_policy.pdf](http://www.nihe.gov.uk/race_relations_policy.pdf) p9

<sup>49</sup> Black and Minority Ethnic and Migrant Worker Mapping Update (NIHE Equality Unit, Feb 2014)  
[http://www.nihe.gov.uk/black\\_and\\_minority\\_ethnic\\_and\\_migrant\\_worker\\_mapping\\_update\\_february\\_2014.pdf](http://www.nihe.gov.uk/black_and_minority_ethnic_and_migrant_worker_mapping_update_february_2014.pdf)

<sup>50</sup> McVeigh, 'Race and Criminal Justice in Northern Ireland: Towards a Blueprint for the Eradication of Racism from the CJSNI' (Jan 2013)

- The DoJ Code of Practice governing the Appointment of Independent Members to Policing and Community Safety Partnerships (PCSPs) and District PCSPs should be amended to include targeted recruitment measures to improve BME representation
- The Working Group tasked with Good Relations under Together: Building a United Community (TBUC) should adopt 'tackling racial prejudice and intolerance' as a standing item.
- Criminal justice agencies should adopt integrated measures to improve clearance rates for racist hate crime which currently stand at 8.3 per cent in order to restore confidence of ethnic minority communities in reporting hate crime to the PSNI<sup>51</sup>.
- Victim's information rights should be respected and special protection measures should be adopted on the basis of individualised assessment<sup>52</sup>.
- The limited awareness and uptake of the NIHE Hate Incident Practical Action (HIPA) Scheme, and the lack of rapid referrals by the PSNI may cause delays in essential repairs, leaving the homes of victims vulnerable and insecure. The NIHE and the PSNI need to fully implement the HIPA scheme within their internal structures in order to ensure maximum uptake and compliance with commitments in the NIHE Audit of Inequalities Action Plan.
- The Department of Justice should review their Criminal Damage Compensation Scheme to improve its accessibility to victims of racist hate crime.

## **5. Racist Hate Speech, Negative Stereotypes and Xenophobic Sentiment in the Media**

Take steps to address xenophobic attitudes and behaviour towards non-citizens, in particular hate speech and racial violence, and to promote a better understanding of the principle of non-discrimination in respect of the situation of non-citizens (para 11)

Take resolute action to counter any tendency to target, stigmatize, stereotype or profile, on the basis of race, colour, descent, and national or ethnic origin, members of "non-citizen" population groups, especially by politicians, officials, educators and the media, on the Internet and other electronic communications networks and in society at large (para 12)

**CERD General Recommendation No.30: Discrimination Against Non Citizens**

<sup>51</sup> PSNI progress report on racist hate crime - All Party Group on Ethnic Minority Communities (13/05/14) *Figures from January-April 2014, (i.e. see comments by Chief Inspector Emma Bond from Policing with the Community and Chief Superintendent Mark McKeown)*

<sup>52</sup> [http://nihrc.green17.tv/uploads/publications/103141\\_NIHRC\\_Racist\\_Hate\\_Crime\\_4\\_Combined\\_%282%29.pdf](http://nihrc.green17.tv/uploads/publications/103141_NIHRC_Racist_Hate_Crime_4_Combined_%282%29.pdf)

Under article 7, States parties undertake to adopt immediate and effective measures, particularly in the fields of teaching, education, culture and information, with a view to combating prejudices which lead to racial discrimination and to promoting understanding, tolerance and friendship among nations and racial or ethnic groups, as well as to propagating universal human rights principles (para 31)

The Committee recommends that educational, cultural and informational strategies to combat racist hate speech should be underpinned by systematic data collection and analysis in order to assess the circumstances under which hate speech emerges, the audiences reached or targeted, the means by which they are reached, and media responses to hate messages. International cooperation in this area helps to increase not only the possibilities of comparability of data but also knowledge of and the means to combat hate speech that transcends national boundaries. (para 38)

Informed, ethical and objective media, including social media and the Internet, have an essential role in promoting responsibility in the dissemination of ideas and opinions. In addition to putting in place appropriate legislation for the media in line with international standards, States parties should encourage the public and private media to adopt codes of professional ethics and press codes that incorporate respect for the principles of the Convention and other fundamental human rights standards. (para 39)

Media representations of ethnic, indigenous and other groups within the purview of article 1 of the Convention should be based on principles of respect, fairness and the avoidance of stereotyping. Media should avoid referring unnecessarily to race, ethnicity, religion and other group characteristics in a manner that may promote intolerance. (para 40)

The Committee encourages self-regulation and compliance with codes of ethics by Internet service providers, as underlined in the Durban Declaration and Programme of Action. (para 42)

(CERD Committee, General Recommendation 35: Combating Racist hate speech 2013)<sup>53</sup>

The Committee recommends that the State party:

- (a) Continue to engage with the media to eliminate stereotypical imaging of women and their objectification in the media, particularly in advertising; and
- (b) Implement the recommendations of the Leveson Inquiry, including those that seek to give powers to a regulator to intervene in matters of discriminatory reporting.

(Para 33, CEDAW Concluding Observations 2013)

The Committee is concerned at reports of an increase in virulent attacks on, and negative portrayal of, ethnic minorities, immigrants, asylum seekers and refugees by the media in the State party. The Committee accordingly regrets that the State party continues to maintain its

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<sup>53</sup> ICERD General recommendation No.35 Combating Racist Hate Speech (September 2013) CERD/C/GC/35 <http://nhri.ohchr.org/EN/Themes/Durban/Documents/CERD%20Recommendation%20No.%2035.pdf>

restrictive interpretation of the provisions of article 4 of the Convention which the Committee has determined as being of a mandatory character in its general recommendation No. 15 (1993) on article 4 of the Convention, which, inter alia, deals with organized violence based on ethnic origin (arts. 2, 4 and 6).

The Committee notes the State party's own recognition that the rights to freedom of expression and opinion are not absolute rights, and recommends that the State party withdraw its interpretative declaration on article 4 in the light of the continuing virulent statements in the media that may adversely affect racial harmony and increase racial discrimination in the State party. The Committee recommends that the State party closely monitor the media with a view to combating prejudices and negative stereotypes, the unchecked expression of which may result in racial discrimination or incitement to racial hatred. The State party should adopt all necessary measures to combat racist media coverage and ensure that such cases are thoroughly investigated and, where appropriate sanctions are imposed.

(para 11, ICERD Concluding Observations on UK, 2011)

The State party should take energetic measures in order to combat and eliminate... [negative public attitudes towards Muslim members of society] and ensure that the authors of acts of discrimination on the basis of religion are adequately deterred and sanctioned. The State party should ensure that the fight against terrorism does not lead to raising suspicion against all Muslims.

(para 16b, UN Human Rights Committee/CCPR Concluding Observations on the UK, 2008)

All forms of expression which spread, incite, promote or justify racial hatred, xenophobia, anti-Semitism or other forms of hatred based on intolerance, including: intolerance expressed by aggressive nationalism and ethnocentrism, discrimination and hostility against minorities, migrants and people of immigrant origin.

(CoE ECRI Recommendation No. R(97) 20 of the Committee of Ministers to Member States on Hate Speech: 30 October 1997)

Take more resolute measures to combat the instigation and dissemination of prejudices and intolerance through the media and in the political arena; take further steps to combat Islamophobia and other manifestation of racism and intolerance; continue to pursue a proactive approach in combating hate crime.

(Third opinion on the UK, of the Advisory Committee on the Framework Convention for the Protection of National Minorities, June 2011 )

### **Media and Political Discourse with Anti-Immigration Rhetoric**

The economic downturn has had a significant impact on race relations in Northern Ireland. Misplaced resentment towards migrants in the wake of growing unemployment has contributed towards growing hostility aimed at migrants. NICEM notes with concern the prevalence of anti-immigration rhetoric in the mainstream media. Such coverage is likely to increase xenophobic

and racist sentiment, and distort public perception of migrant workers particularly in low skilled industries. In reality, myths surrounding 'benefit tourism' and 'A2 migrants flooding to the UK to claim benefits' should be assuaged by figures on A8 immigrants who triggered similar concerns in the run down to EU enlargement in 2004.<sup>54</sup> Figures from the UCL Institute for Fiscal Studies reveals that A8 migrants were '59% less likely than natives to receive state benefits or tax credits' and '29 per cent less likely to live in social housing'<sup>55</sup>. Moreover, research undertaken by the Joseph Rowntree Foundation indicates that 'three-quarters of employers felt EU enlargement had been good for business, bringing a larger labour pool'<sup>56</sup>. Media rhetoric against immigration has escalated further alongside a wider concerted political campaign to consider an exit from the European Union (EU) altogether, which would likely have serious consequences for human rights protection in the UK. The absence of such EU instruments as the Charter of Fundamental Rights, made legally enforceable under the Treaty of Lisbon in 2009, would inevitably detract from rights enjoyment in the UK.

The Committee on the Elimination of Racial Discrimination has expressed concern at the 'increase in virulent attacks' on ethnic minorities, including migrants, in the UK media. It has directly linked this negative stereotyping with a potential increase in racial discrimination within the State. Ethnic minorities frequently find themselves to be scapegoats during times of economic hardship in this way, with political rhetoric on immigration becoming harsher. This rhetoric is received in Northern Ireland, which does not have devolved control over immigration, through media coverage of current political affairs in the wider UK. The reality of concerted media targeting of ethnic minorities has been recognised in the comprehensive Leveson Inquiry, which stated that many ethnic minority groups are 'targets of press hostility and/or xenophobia'.<sup>57</sup> The inquiry also reported that this practice is engrained in the culture of reporting, stating that it is "a feature of journalistic practice...rather than an aberration". Leveson also highlighted inadequacies in the accountability structures of example outlets, such as an absence of staff responsible for ethical compliance, which could seriously limit the capacity of outlets to regulate negative stereotyping.

The three main parties in Westminster finalised a Royal Charter as a response to the findings of the Leveson Inquiry.<sup>58</sup> The Charter aims to address the Leveson findings by establishing a Recognition Panel to oversee the approval of new press Regulators. However, the Charter does not specifically address the internal accountability structures within outlets that allowed unethical practices to proliferate. Furthermore, it is unclear how the new Recognition Panel and Regulators will avoid becoming disconnected from the reality of outlets' actions in the same manner as the PCC. NICEM reasserts its position, originally presented in a 2011 statement at the

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<sup>54</sup> Migrant Rights Network, 'A2 Migrants and the UK Benefits System - Is the government tilting at windmills' *MRN Blog* (18 February 2014)

<http://www.migrantsrights.org.uk/blog/2013/02/a2-migrants-and-uk-benefits-system-government-tilting-windmills>

<sup>55</sup> Dustmann & Others, 'Assessing the Fiscal Costs and Benefits of A8 Migration to the UK' (2010) IFS 31(1) p1

<sup>56</sup> Anderson & Others, *Fair Enough? Central and East European migrants in low-wage employment in the UK* (JRF London 2006) p1

<sup>57</sup> Lord Justice Leveson, *An Inquiry into the Culture, Practices and Ethics of the Press*, 2013, p.668

<sup>58</sup> The full text of the Royal Charter is available at:

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/254116/Final\\_Royal\\_Charter\\_25\\_October\\_2013\\_clean\\_Final\\_.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/254116/Final_Royal_Charter_25_October_2013_clean_Final_.pdf)



79<sup>th</sup> session of CERD, that the PCC insufficiently addresses complaints regarding ethnic discrimination. Any reformation of the PCC could draw from the Code of Practice utilised in the Republic of Ireland, which recognizes breaches where content is likely to cause grave offence. Further regarding the Charter, it is notable that various functions proposed in the Cross-Party Draft Charter, such as a free arbitration system, have been omitted from the final version of the instrument. The omission of a free arbitration system in particular represents a step-down in accessibility for applicants with less disposable income, as will be the case for many migrant individuals. Moreover, NICE strongly endorse General Recommendation 35 on the 'Combating Racist hate speech' issued by the International Committee on the Elimination of Racial Discrimination in late 2013 which recommends that in 'addition to putting in place appropriate legislation for the media in line with international standards, States parties should encourage the public and private media to adopt codes of professional ethics and press codes that incorporate respect for the principles of the Convention and other fundamental human rights standards'<sup>59</sup>.

This approach represents a balanced and proportionate approach which does not unduly interfere with freedom of expression. Moreover, international standards indicate that hate speech should only be criminalised in severe cases contingent on the political makeup of the State, the status and influence of the speaker in society, the level of deliberate intent, the content of the speech, the size of the audience and the likelihood of inciting hate incidents<sup>60</sup>. Within Northern Ireland, the Public Order (Northern Ireland) Order 1987 outlines five separate offences which criminalise acts intended or likely to stir up hatred or fear. The definition of hate speech captures 'threatening, abusive or insulting words or behaviour, or displays any written material which is threatening, abusive or insulting' and includes religious belief, colour, race and nationality as protected categories. In terms of the severity of sentencing provisions, offenders on summary conviction are liable to 6 months imprisonment and the maximum statutory fine, whilst offenders convicted on indictment are liable to 2 years imprisonment and the maximum statutory fine<sup>61</sup>. However, the Northern Ireland Human Rights Commission have raised concerns over the enforcement of the Order with criminal justice agencies adopting a restrictive interpretation of the provisions and demonstrating a uniform lack of awareness of the scope of hate speech. Indeed, the reach of sanctions does not extend to organisations which the Commission also noted as a source of concern<sup>62</sup>.

It should be noted that the Convention on Cyber Crime 2004 provides a framework for states to criminalise the dissemination of racist and xenophobic material through computer systems on a domestic level. However, with numerous social networking websites available and the accessibility of the internet, it is very easy to post racist comments online and it may take a long time for such views to be noticed and subsequently dealt with. There have been a spate of

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<sup>59</sup> ICERD General recommendation No.35 Combating Racist Hate Speech (September 2013) CERD/C/GC/35 <http://nhri.ohchr.org/EN/Themes/Durban/Documents/CERD%20Recommendation%20no.%2035.pdf> para 39

<sup>60</sup> The Rabat Plan on Action on the prohibition of advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence, Rabat, Morocco (5 October 2012)

<sup>61</sup> Articles 9-11 of Part III of the Public Order (Northern Ireland) Order 1987

<sup>62</sup> NIHRC, 'Racist Hate Crime: Human Rights and the Criminal Justice System in Northern Ireland' (2013) p45

incidents where social media sites have been used to incite racial abuse in recent months<sup>63</sup>. Indeed, Anna Lo MLA has been targeted by racist abuse on social media on a number of occasions in recent months. It is essential that more effective monitoring mechanisms are put in place in line with international standards to shut down sites with racist content. PSNI should also be actively involved in this process to prevent racist and xenophobic views from gathering support and wider circulation.

### **Alarming Rise in Support for Far Right Political Parties**

There has been a rise in public support for rightwing political parties in the UK, including the British National Party (BNP) and UK Independence Party (UKIP). Both political parties propagate racist and xenophobic ideologies, endorse retrogressive immigration policies and campaign for the withdrawal of the UK from the European Convention of Human Rights. There are numerous documented incidents involving UKIP officials making highly offensive racist remarks<sup>64</sup>. Over the last number of years, UKIP and BNP have gained an increased amount of political support and respectability in GB. Indeed, the economic downturn, high unemployment rates and increasingly low educational attainment amongst Protestant working class males has enabled racist and xenophobic sentiment to take root.<sup>65</sup> NICEM believes that support for these Far Right political parties poses a serious threat to race relations in Northern Ireland. Furthermore, it is alarming to note that in the recent European Parliamentary Elections the UKIP secured 24 MEP seats and 27.5 per cent of the vote. Indeed, UKIP are set to intensify their campaign efforts in the run down to the General Election in 2015.

### **Recommendations:**

- **The UK Government should adopt recommendations contained in CERD General Recommendation no. 35 on the 'Combating Racist hate speech' including the promotion of internal accountability structures and codes of practice across public and private media and press outlets in order to remedy deficiencies in the scope and effectiveness of the Press Complaints Commission and Royal Charter.**
- **There is minimal awareness of the scope of application of incitement to racial and religious hatred under the Public Order (Northern Ireland) Order 1987 across criminal justice agencies. Guidance should be produced and disseminated to CJSNI actors.**
- **The inflammatory and Islamophobic statements issued by the First Minister provide an impetus to strengthen the Ministerial Code of the Northern Ireland Executive to ensure it provides commensurate accountability with Ministerial Codes adopted in Wales and Scotland.**

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<sup>63</sup> 'Alliance MLA Anna Lo speaks out over abuse' *BBC News* (19 February 2014) <http://www.bbc.co.uk/news/uk-northern-ireland-26258574>

<sup>64</sup> Glen Owen, 'UKIP's vile Mandela 'slave' rant exposed: Disgusting remarks made about South African president and murdered teenager Stephen Lawrence 'reveal true face of party' *Daily Mail* (11 January 2014) <http://www.dailymail.co.uk/news/article-2537834/UKIPs-vile-Mandela-slave-rant-exposed-New-racism-storm-following-remarks-former-South-African-President-murdered-teenager-Stephen-Lawrence.html>

<sup>65</sup> Report on Educational disadvantage and the Protestant working class, issued by Dawn Purvis MLA, March 2011 <http://www.dawnpurvis.com/wp-content/uploads/2011/03/A-Call-to-Action-FINAL-March2011.pdf>



- The UK Government should withdraw its interpretative declaration under Article 4 CERD and ratify and rigorously implement the Additional Protocol to the Council of Europe Convention on Cybercrime 2004, concerning the criminalisation of acts of a racist and xenophobic nature committed through computer systems

## **6. Violence Against Women**

The Committee urges the State party to:

- (a) Ensure effective access by women to courts and tribunals, in particular women victims of violence;
- (b) Continuously assess the impact of the reforms to legal aid on the protection of women's rights; and
- (c) Protect women from informal community arbitration systems, particularly those which violate their rights under the Convention.

(para 23, CEDAW Concluding Observations 2013)

Recalling its general recommendation No. 19 (1992) on violence against women, and its previous recommendation, the Committee urges the State party to:

- (a) Ratify the Istanbul Convention, and criminalise forced marriage;
- (b) Increase its efforts in the protection of women, including black and minority women, against all forms of violence, including domestic violence, and the so-called honour killings; and
- (c) Continue public awareness-raising campaigns on all forms of violence against women, including black and ethnic minority women.
- (d) Intensify efforts to train police officers to eliminate prejudices concerning the credibility of victims of domestic violence; and
- (e) Revise its legislation to prohibit corporal punishment of children in the home.

(para 34, CEDAW Concluding Observations on UK, 2013)

The Committee reiterates that the State party should ensure the full implementation of its legislation on FGM. The Committee recommends that the State party should ensure that the Crown Prosecution Service is provided with the necessary support to effectively prosecute perpetrators of FGM, including supporting the action plan on improving FGM prosecutions released by the Director of Public Prosecutions in November 2012.

(para 37, CEDAW Concluding Observations on UK, 2013)

Recalling its previous recommendation, the Committee recommends that the State party should:

- (a) Extend the concession to the “no recourse to public funds” policy to all women who are

subjected to gender based violence and exploitation; and  
(b) Provide access to justice and healthcare to all women with insecure immigration status, including asylum seekers, until their return to their countries of origin.

(para 57, CEDAW Concluding Observations on UK 2013)

The Committee recommends that the State party reinforce its measures to combat violence against women. It further recommends that the State party intensify its efforts to raise awareness of the gravity of this offence and the mechanisms available to victims of domestic violence, to improve training for police and law enforcement officials and judges in relation to rape cases, and to increase the support services for victims at the local level. The Committee further recommends that the State party take appropriate measures to ensure that complaints of rape are diligently and impartially investigated and prosecuted without any inherent bias or scepticism towards alleged victims. The Committee reiterates its recommendation that physical punishment of children in the home be prohibited by law.

(para 24, ICESCR Concluding Observations on UK, 2009)

By virtue of being both an ethnic minority and a woman, BME women often experience greater vulnerability to domestic and sexual violence and greater barriers in accessing services and the criminal justice system, there may be cultural, religious, linguistic or immigration related issues. Many BME women face greater isolation by virtue of not having informal support structures of friends and family, limited proficiency in English and mistrust of public authorities and criminal justice processes. They are differentially affected by “honour” based violence, forced marriage, intimate partner homicide, suicide, female genital mutilation and trafficking for the purposes of sexual exploitation. These factors have generated a culture of impunity for offenders and under-reporting by victims, resulting in a uniform denial of access to justice and minimal uptake of essential support services. There is also a greater need to provide specialist services to certain ethnic groups, including South Asian women, Traveller, Roma and Gypsy women and refugee and asylum seekers. Indeed, protection measures need to be in place for child victims and children of victims. We have worked to prioritise and mainstream intersectional and multiple identity issues affecting BME women in our Strategic Advocacy Project. In 2013, NICEM conducted extensive research on BME victims of domestic violence and escalated key concerns in our submission to the UN Committee on the Elimination of Discrimination Against Women<sup>66</sup>. NICEM have experienced a sharp increase in the number of ethnic minority women seeking advice and support services as victims of domestic violence and abuse with recent figures from Women’s Aid reflects a 22% increase in demand between April 2012 and March 2013.<sup>67</sup>

### **Negative Stereotyping**

It is essential the UK Government and devolved administrations provide appropriate training to staff of public services and interpreters, to ensure there is an effective response to victims of domestic violence, and that victims are not re-victimised by prejudicial attitudes such as racism

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<sup>66</sup> McWilliams & Yarnell, *The Protection and Rights of Black and Minority Ethnic Women Experiencing Domestic Violence in Northern Ireland* (NICEM 2013)

<sup>67</sup> Women’s Aid, *Annual Report 2012-2013*, 2013, p.41

and sexism. Indeed, the Beijing Declaration and Platform for Action urges state authorities to 'adopt all appropriate measures, especially in the field of education, to modify the social and cultural patterns of conduct of men and women, and to eliminate prejudices, customary practices and all other practices based on the idea of the inferiority or superiority of either of the sexes and on stereotyped roles for men and women'<sup>68</sup>.

Insufficient measures are being taken to challenge the perpetuation of gender roles and stereotypes which portray women as financially dependent on men, which are reinforced through existing policies, such as social security entitlement and employment protections. Indeed, deficiencies in the social security system should be resolved to ensure that victims of domestic violence are able to access child benefit entitlements if the initial claim was processed under the male partner's name. Employment policies should also foster the economic independence of BME women by allowing for reasonable adjustments to accommodate childcare needs, such as flexibility working, part-time contracts, access to affordable childcare etc. This should actively assist victims of domestic violence who have fled abuse, and wish to balance family responsibilities with employment.

### **Scarcity of Disaggregated Data**

At present, the failure to ensure rigorous data collection and monitoring of BME victims of domestic violence, makes it difficult to undertake targeted measures or dedicate sufficient resources to address their needs through prevention and protection activities. Indeed, unlike the Crown Prosecution Service in England and Wales, the Public Prosecution Service (PPS) do not record disaggregated data on the ethnicity or nationality of offenders and victims of domestic or sexual violence. Indeed, there are no targeted measures in the Equality Scheme for the Department of Justice on addressing the needs of BME women and domestic violence. Furthermore, whilst the Sexual Assault Referral Centre (SARC) provides a much-needed holistic service for victims of sexual violence, which includes the provision of specialist medical attention, specific support and specialised evidence gathering, NICEM emphasise the need for data to be gathered on the ethnic background of gender-based violence cases and feels that SARC should be resourced to develop a template for doing so. Indeed, there should also be a coordinated approach between the Sexual Assault Referral Centre (SARC) and the PSNI in terms of gathering comprehensive data on the ethnic background and nationality of victims.

### **Insecure Immigration Status**

A lack of political awareness persists around the difficulties faced by ethnic minority domestic abuse victims which has been particularly highlighted in a "Questions that Matter" event organised by the All-Party Group on Ethnic Minority Communities in Autumn 2013, wherein 3 politicians expressed shock at learning that women with unsecure migrant status cannot access benefits to fund refuge from violent partners. This situation is exacerbated by the fact that the OFMDFM Crisis Fund has not been operational in the last financial year. In addition to this, a new regulation was introduced on 6<sup>th</sup> April 2011 which states that anyone applying for settlement in the UK must be free of criminal convictions (however minor); this includes women

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<sup>68</sup> Beijing Declaration and Platform for Action, Strategic Objective D, para 24(k)

fleeing domestic violence. Many migrant women are financially reliant on their husbands, as much of the work available for migrants in Northern Ireland is agriculturally based. Such women face geographical isolation as well as language barriers and financial dependency. The Northern Ireland Executive should address the issue of why the allocation of emergency funds (i.e. OFMDFM Emergency Fund) has been interrupted over the past year and to ensure that the government renews the Northern Ireland Crisis fund for refuge provision to ensure that there are adequate protective and support services for women with insecure immigration status. In addition, our research into the vulnerability of BME women to sexual and domestic violence highlights the unique housing needs (e.g. NIHE sanctuary scheme) and refuge needs, particularly for those without recourse to public funds who are at risk of destitution. BME women victims and survivors of domestic violence often have difficulties in accessing services including appropriate housing, due to a lack of sensitivity to their linguistic and cultural needs.

Furthermore, the eligibility criteria and evidential requirements attached to the Domestic Violence Rule under Immigration Rules are exclusionary and do not provide sufficient protection to the majority of BME victims. They should be amended to ensure the burden of proof is a reasonable threshold for victims to meet. Indeed, the evidential criteria must be cognizant of the trauma and distress experienced by victims who have often been subject to diffuse forms of sexual and domestic violence and abuse. In addition, the prohibitive cost of applications for indefinite leave to remain (ILR) for victims of domestic violence leaves BME women with insecure immigration status acutely vulnerable. Fee waivers are only granted when a woman is capable of demonstrating that she is 'destitute' and 'totally reliant on third party support'. Women who do not meet this criteria may be forced to remain in the abusive relationship at considerable risk to save sufficient funds to meet the costs of the ILR application, and must pay additional fees to ensure their dependent children are entitled to remain in their care. Indeed, tragically, Hansard figures reveal that over a five year period 67 per cent of applicants are unsuccessful.

### **The Istanbul Convention and Criminalisation of Forced Marriage**

The UK Government have signed but are yet to ratify Council of Europe Convention on Preventing and Combating Violence Against Women and Domestic Violence (i.e. Istanbul Convention).

The Council of Europe have defined the core obligations of the Convention as follows:

- train professionals in close contact with victims;
- regularly run awareness-raising campaigns;
- take steps to include issues such as gender equality and non-violent conflict resolution in interpersonal relationships in teaching material;
- set up treatment programmes for perpetrators of domestic violence and for sex offenders;
- work closely with NGOs;
- involve the media and the private sector in eradicating gender stereotypes and promoting mutual respect<sup>69</sup>.

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<sup>69</sup> [http://www.coe.int/t/dghl/standardsetting/convention-violence/brief\\_en.asp](http://www.coe.int/t/dghl/standardsetting/convention-violence/brief_en.asp)

In contrast to the rest of the UK, forced marriage is not criminalised in NI. We are deeply concerned at the impact of differential standards of law in the devolved regions. The DOJ must ensure that the substantive law provisions within the Istanbul Convention are incorporated in to domestic legislation. In addition, the EU Victims' Directive establishing minimum standards on the rights, protection and support of victims of crime must be transposed into domestic law by 2015.

### **Female Genital Mutilation (FGM)**

Female genital mutilation (FGM) is a deeply harmful cultural practice which violates human rights and inflicts severe physical and psychological harm on women and girls. The practice of FGM breaches a range of international and domestic human rights standards. The World Health Organisation (WHO) have noted that the practice can result in incontrollable bleeding and death, extreme trauma and distress and other disorders and complications<sup>70</sup>. The practice is often conducted in unsanitary conditions and without medical expertise, often resulting in a increased risk of generalised infections.

FGM violates the right to non-discrimination and gender equality enshrined in Article 2 of the UN Convention on the Rights of the Child. It also breaches the prohibition on all forms of mental and physical violence contained in Article 19(1) and right to the highest attainable standards of health under Article 24. Moreover, Article 37 (1) demands that States take effective measures to abolish harmful traditional practices which are prejudicial to the health of children, including FGM. FGM is also profound manifestation of gender inequality and breaches Articles 2, 3, 5, 12 and 13 of the Convention on the Elimination of All Forms of Discrimination Against Women. It is also proscribed under General Recommendations 12, 24 and 19. Indeed Article 2 of CEDAW expressly states 'violence against women shall be understood to encompass, but not limited too... (a) Physical, sexual and psychological violence occurring in the family including... female genital mutilation and other tradition practices harmful to women'. In addition, Article 5(a) of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) demands that States undertake 'all appropriate measures to modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or superiority of either of the sexes or on stereotyped roles for men and women'.

Due to migration patterns and the Diaspora of asylum seekers and refugees from high-risk countries, it is estimated that over 20,000 under the age of 15 are at high risk of FGM each year across England, Scotland and Wales, with at least 66,000 women living with the consequences. However, there is a scarcity of data collection and monitoring of victims of FGM in Northern Ireland. In the absence of reliable figures from the DHSSPS (i.e. no available data from the statistics branch or child protection unit) or Health and Social Care Trusts (HSC Trusts), NICEM have engaged health professionals who specialise in obstetrics. A senior obstetrician at the Royal Victoria Hospital and Lagan Valley Hospital, who specialises in the treatment of victims of FGM and receives a high volume of related referrals, indicated that approximately 2 new women present with FGM when accessing maternity services every month in the Royal/Lagan Valley

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<sup>70</sup> <http://www.who.int/mediacentre/factsheets/fs241/en/>

hospitals. The number of women seeking treatment is steadily rising with the ethnic and demographic makeup of victims being predominately women, typically aged 18-35 and of Sudanese and Sub-Saharan African origin. She has only encountered one victim under 20 but due to inadequate screening, it is difficult to identify and treat victims who are children/young women. Victims are often powerless and invisible due to under-reporting and the negligible prosecutions fosters a culture of impunity for perpetrators.

In response to the negligible attention to FGM in Northern Ireland, the Department of Finance and Personnel (DFP) published draft multi-agency practice guidelines on Female Genital Mutilation (FGM).<sup>71</sup> It is essential that an adequately resourced multi-agency action plan is formulated to ensure the guidelines are effectively implemented and commitments are upheld.

### **Inadequacy of Funding and Resource Allocation**

The UN Special Rapporteur on Violence Against Women, on the basis of her Country Mission to the UK in March 2014, has highlighted that 'third sector service providers working at the community level are now forced to devote more time and human resources to comply with more burdensome fundraising, bidding, and reporting processes' and as a result are forced to make drastic cuts to frontline services. Indeed, it was noted that 'additional duties undertaken by third sector organizations, such as in their involvement in Multi Agency Risk Assessment Conferences (MARAC's) is not accompanied by more government funding' and that this needed to be examined closely to identify potential adverse impacts against BME women<sup>72</sup>.

Moreover, it is essential that in addition to the Joint Domestic and Sexual Violence and Abuse Strategy, and the Multi-Agency Practice Guidelines on FGM, the DHSSPS and DoJ should provide adequate funding to resource and promote the participation and empowerment of BME women. Furthermore, the NI Government should seek to establish sustainable funding to NGOs such as Women's Aid and NICEM to enable them to provide protection and support for BME women experiencing, or having who experienced, domestic violence, and to foster grassroots leadership to challenge customs and norms in relation to domestic violence within BME communities. In particular, a dedicated BME women's sub-group to the Regional Strategy Group on Domestic and Sexual Violence should be established with BME community representatives.

### **Recommendations**

- **The UK Government should immediately ratify the Council of Europe Convention on Preventing and Combating Violence Against Women and Domestic Violence (i.e. Istanbul Convention)**
- **A dedicated BME women's sub-group to the Regional Strategy Group on Domestic and Sexual Violence should be established with BME community representatives and relevant agencies.**

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<sup>71</sup> Department of Finance and Personnel, *Multi-Agency Practice Guidelines on Female Genital Mutilation*, 2014.  
<http://www.dfpni.gov.uk/multi-agency-practice-guidelines-on-female-genital-mutilation.pdf>

<sup>72</sup> [http://gallery.mailchimp.com/6d6f0f3015d0d24a616ee4c72/files/Final\\_press\\_statment\\_UK\\_15\\_Apr\\_VAW.pdf](http://gallery.mailchimp.com/6d6f0f3015d0d24a616ee4c72/files/Final_press_statment_UK_15_Apr_VAW.pdf)

- Data recorded with respect to ethnicity and violence against women must be improved. The Public Prosecution Service (PPS) should seek to record disaggregated data on the ethnicity or nationality of offenders and victims of domestic and sexual violence
- In addition to the Multi-Agency Practice Guidelines on FGM, The DHSSPS should issue mandatory reporting guidelines on Female genital Mutilation for health professionals in acute hospitals and GP clinics across Northern Ireland. The Public Prosecution Service should formulate an Action Plan with performance indicators to increase prosecutions for FGM related offences in line with the Crown Prosecution Service
- The Ministry of Justice and Department of Justice should ensure that forced marriage is criminalised.
- The evidential requirements attached to the Domestic Violence Rule under Immigration Rules are exclusionary and should be amended to ensure the burden of proof is a reasonable threshold for victims to meet.
- Due to the prohibitive cost of applications for indefinite leave to remain (ILR), fee waivers should be granted to all victims rather than those capable of demonstrating that they are 'destitute' and 'totally reliant on third party support'.

## **7. Human Trafficking**

The Committee urges the State party to:

- (a) Adopt a comprehensive national framework to combat trafficking in women and girls; and
- (b) Identify any weaknesses in the National Referral Mechanism and ensure that victims of trafficking are properly identified and adequately supported and protected.

(para 39, CEDAW Concluding Observations on UK, 2013)

41. The Committee urges the State party to revise its legislation by shifting the burden of proof from the prosecution to the purchaser of sexual services. The Committee recommends that once the prosecution proves that the child was over 13 and under 18, and the accused purchased sexual services from the child, the purchaser should be required to establish that the purchaser did not reasonably believe that the child was under 18 years.

(para 41, CEDAW Concluding Observations on UK, 2013)

Please provide statistical data, including in the Overseas Territories and Crown Dependencies, disaggregated by sex, age, socio-economic background, ethnic group and urban and rural residence for 2011, 2012 and 2013 on: (a) Reports of sale of children (disaggregated by the purpose of the sale) child prostitution and child pornography, together with information on the action taken in response to these reports and penalties imposed; (b) The number of child



**victims provided with recovery assistance and having received compensation in accordance with article 9, paragraphs 3 and 4, of the Optional Protocol. (Para 1)**

**Please provide information on the measures to develop holistic and victim-centered methods to identify children, such as unaccompanied children entering the State party, who are, or who are at risk of becoming, victims of child trafficking, sale, prostitution and pornography. (Para 10)**

**UNCRC List of Issues in Relation to UK Report on Optional Protocol to the UNCRC on the sale of children child prostitution and child pornography (Oct. 2013)**

Victims of the purposes of sexual exploitation, forced labour, domestic servitude, and other forms of exploitation are routinely subjected to human rights violations which inflict tremendous physical and psychological harm. However, victims of human trafficking are often powerless and invisible due to under-reporting and the negligible prosecutions for related offences which creates a culture of impunity for offenders. In response to these challenges, the UK is obligated to comply with the EU Directive 2011/36/EU on *preventing and combating trafficking in human beings and protecting its victims*. The UK is also a party to both the Council of Europe (CoE) Convention on *Action against Trafficking in Human Beings* and the United Nations Protocol to *Prevent, Suppress and Punish Trafficking in Persons, especially women and children: Palermo Protocol* in addition to other instruments relating to violence against women and girls and forced labour. Moreover, it is essential the policy and legislative response to human trafficking conforms with a human rights based approach centred on 3 Ps (i.e. Prosecution of traffickers; Prevention of human trafficking; and Protection of trafficking victims). Indeed, it remains imperative that international obligations are fully and effectively implemented.

### **Policy Developments**

Following the ratification of the Council of Europe Convention against trafficking in December 2008, there has been a significant intensification of measures to combat human trafficking across the UK and Northern Ireland. It is crucial to recognise progress stemming from a significant expansion in the institutional architecture, policy and legislative response to trafficking in Northern Ireland. An All Party Group on Human Trafficking was established at the Northern Ireland Assembly in 2012 to which Amnesty International UK provide Secretariat support. The Department of Justice have a dedicated Human Trafficking Team and have formulated a Human Trafficking Action Plan 2013-2014 followed by a progress report from the Justice Minister and an updated Action Plan 2014/15 to promote inter-agency partnership, secure legislative reforms, strengthen community engagement and undertake targeted awareness raising activities. It also seeks to resource prevention work, strengthen victim support and protection, and improve investigation and prosecution rates, and promote closer analysis of emerging trends in human trafficking. In addition, the DoJ recently initiated a public consultation on human trafficking and slavery to strengthen Northern Ireland's response<sup>73</sup>.

In terms of targeted awareness raising and engagement activities to support prevention, Belfast Policing and Community Safety Partnership (PCSP) successfully organized training across key

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<sup>73</sup> <http://www.dojni.gov.uk/human-trafficking-and-slavery-strengthening-northern-irelands-response>



sectors (e.g. taxi drivers), educational resources for schools have been compiled and disseminated to raise awareness and build civil responsibility of children in identifying the warning signs surrounding human trafficking. Generalised e-training has also been rolled out to over 4000 PSNI officers in 2013/14 and Multi-agency training was made available to NGO engagement group members in September 2013. In addition, the PSNI have rolled out Operation Eagle, alongside a field manual for PSNI officers. In 2013/14 the Organised Crime Task Force (OCTF) also conducted a training needs analysis of relevant statutory agencies.

### **Legislative Framework**

NICEM endorse recent proposals from the Department of Justice to consolidate and simplify existing offences which criminalise trafficking for the purposes of sexual exploitation, forced labour and other forms of exploitation, which remain fragmented across disparate pieces of legislation. NICEM recommend the following provisions are repealed and replaced with a single consolidated trafficking offence:

- Sections 57 to 59 of the Sexual Offences Act 2003
- Section 71 of the Coroners and Justice Act 2009
- Section 4 of the Asylum and Immigration (Treatment of Claimants, etc) Act 2004

At present, Sections 57 to 59 of the Sexual Offences Act 2003 (the 2003 Act) prohibits attempts by a person to intentionally arrange or facilitate the arrival or entry into the UK of another person with the intent of sexual exploitation, or in the belief that another person is likely to exploit them sexually upon arrival. Section 4 of the Asylum and Immigration (Treatment of Claimants, etc) Act 2004 Act criminalises human trafficking in respect of all forms of non-sexual exploitation, including forced labour, forced criminality, forced begging, domestic servitude or organ harvesting. Section 71 of the Coroners and Justice Act 2009 makes it an offence to knowingly hold someone in slavery or servitude or to require them to perform forced or compulsory labour. These offences apply to both internal trafficking and extend the extra-territorial scope of trafficking offences in cases where victims are trafficked outside of the UK.

In addition, there have been a number of recent reform proposals surrounding human trafficking legislation. The Criminal Justice Bill (CJA) was passed by the NI Assembly in April 2013 with the aim of bringing the UK into compliance with the EU Directive 2011/36/EU on *preventing and combating trafficking in human beings and protecting its victims*. It introduced an extraterritorial jurisdiction clause to ensure UK nationals and habitual residents in Northern Ireland who traffic victims from within and outside of the UK can be prosecuted, and criminalised internal trafficking for the purposes of non-sexual exploitation. However, NICEM expressed its concerns to the Justice Committee over the limited scope of clause 5 and 6 which criminalise acts of “arranging” or “facilitating” the movement of persons within and outside UK, rather than adhering to the broader definition in Article 2(1) of the EU Directive. This view is supported by the CoE Convention monitoring body (GRETA) in its recent evaluation report on the UK’s compliance with the Convention published on 12 September 2012. The 2013 Act was followed swiftly by the introduction of the Human Trafficking and Exploitation (Further Provisions and Support for Victims) Bill by Lord Morrow in June 2013 which sought to remedy deficiencies in the CJA by consolidating recovery, support and reintegration mechanisms for victims of trafficking and criminalising the purchase of sexual services from prostitute or victim

of trafficking<sup>74</sup>. Deficiencies in this legislation will be scrutinised in more detail below.

In light of the piecemeal and fragmented legislative framework governing trafficking offences, it is essential to introduce a consolidated offence which adopts a broad and inclusive definition of 'exploitation' in compliance of Article 2(3) of the Directive:

*Exploitation shall include, as a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, including begging, slavery or practices similar to slavery, servitude, or the exploitation of criminal activities, or the removal of organs.*

A robust definition covering all elements of trafficking will assist with law enforcement and aid prosecution in terms of identification of victims and indeed offenders. According to the Council of Europe monitoring body, GRETA, steps should be taken to "address the consequences of having numerous pieces of legislation on human trafficking" and point out that "dedicated legislation ... would provide legal status to victims of trafficking ... which reflect the human rights based approach to action against trafficking".

This was followed swiftly by the introduction of the Human Trafficking and Exploitation Bill by Lord Morrow in June 2013 which sought to remedy deficiencies in the CJA by consolidating recovery, support and reintegration domestic servitude. This does not reflect the equal treatment afforded to different manifestations of trafficking under Article 6 of CEDAW, which compels State Parties to suppress "all forms" of trafficking in women. There are concerns the legislation is overly moralistic by seeking to conflate criminalisation of prostitution with trafficking offences.

The Modern Slavery Bill 2014<sup>75</sup> adopts similar provisions to anti-trafficking legislation in Malaysia and Finland by providing immunity to victims who have been coerced into committing criminal offences as a direct result of being trafficked.<sup>76</sup> The Bill also seeks to establish an Anti-Slavery Commissioner to 'challenge, scrutinise and strengthen Government and law enforcement's response to human trafficking and slavery'<sup>77</sup>, though it will require a Legal Consent Motion (LCM) to extend the remit to Northern Ireland. It also proposes a new sentencing framework where human trafficking and slavery offenders may be subject to life sentences and public protection sentences. The Bill also creates civil orders to place restrictions on individuals on those who have been prosecuted for or involved in human trafficking or slavery offences.

### **Cross Border Dimension**

There is some evidence of cross-jurisdictional coordination between the PSNI and the Garda Síochána in the Republic of Ireland (ROI) with cross-border nature of representation on the Organised Crime Task Force (OCTF) currently chaired by the PSNI. In addition, the Cross-Border

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<sup>74</sup> Annison, In the Dock: Examining the UK's Criminal Justice Response to Trafficking (ATMG June 2013) [http://www.antislavery.org/includes/documents/cm\\_docs/2013/i/inthedock\\_final\\_small\\_file.pdf](http://www.antislavery.org/includes/documents/cm_docs/2013/i/inthedock_final_small_file.pdf)

<sup>75</sup> Annison, In the Dock: Examining the UK's Criminal Justice Response to Trafficking (ATMG June 2013) [http://www.antislavery.org/includes/documents/cm\\_docs/2013/i/inthedock\\_final\\_small\\_file.pdf](http://www.antislavery.org/includes/documents/cm_docs/2013/i/inthedock_final_small_file.pdf)

<sup>76</sup> Chapter 17, Section 7(2) of the Criminal Code of Finland; Section 25 of the Anti-Trafficking in Persons Act 2007

<sup>77</sup> <http://www.dojni.gov.uk/human-trafficking-and-slavery-strengthening-northern-irelands-response>

Forum on Human Trafficking is comprised of Ministers, government officials, law enforcement representatives and civil society groups from Northern Ireland and Repub. The Forum seeks to foster a collaborative approach on building awareness, delivering training and promoting educational initiatives. It is also crucial to note that UKBA 'Operation Eagle' which monitors the movement of irregular migrants across the land border is ongoing<sup>78</sup>. However, the latter initiative has been subject to opposition for the interrogation of detainees which is likely to aggravate trauma and distress experienced by victims of trafficking. Moreover, it is essential that measures are taken to minimise the risk of secondary victimisation<sup>79</sup>. In addition, the reliance on crude racial profiling and the increasingly aggressive approach to immigration enforcement and instigation of removal proceedings is evident in the 'increased detection of "illegal immigrants" by over 60% with over 70% of the 300 or so people intercepted... removed from the UK' in 2012<sup>80</sup>. Furthermore, the clandestine nature of operations at airports and ports often lack transparency. This is compounded by the minimal public disclosure of information on the number of people detained and/or removed from Northern Ireland without access to independent legal advice to determine whether they have been detained lawfully or whether they may be a victim of trafficking or a potential refugee.

### **The Limitations of National Referral Mechanism (NRM)**

The current system for the identification and protection of victims of trafficking and provision of support in NI is not sufficiently victim-centred. Significant deficiencies persist in the effectiveness of identifying victims through the National Referral Mechanism and the attendant denial of access to justice for victims in Northern Ireland. Indeed, in light of wide ranging criticism of the effectiveness of the NRM, the Home Secretary has convened a review of the NRM in April 2014.

The Department of Justice and DHSSPS coordinate the anti-trafficking response in Northern Ireland.<sup>81</sup> NICEM are concerned that victims of trafficking with insecure immigration status would be reticent to make a self-referral due to fears over deportation. In addition, current trafficking legislation is fragmented and the scarcity of existing case-law generates gaps in legal expertise on trafficking cases. It also risks subjecting victims to asylum and immigration procedures rather than addressing their needs as victims of crime, which is highly likely to exacerbate trauma<sup>82</sup>. Indeed, the persistence of racial profiling and increasingly aggressive role of immigration enforcement and removal is a further cause for concern.

There is also evidence of prima facie discrimination in the drastic discrepancies in positive conclusive ground outcomes for UK and EEA nationals (i.e. 80 per cent) when compared against third country nationals (i.e. less than 20 per cent) with insecure immigration status. Indeed,

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<sup>78</sup>Annison, In the Dock: Examining the UK's Criminal Justice Response to Trafficking (ATMG June 2013) [http://www.antislavery.org/includes/documents/cm\\_docs/2013/i/inthedock\\_final\\_small\\_file.pdf](http://www.antislavery.org/includes/documents/cm_docs/2013/i/inthedock_final_small_file.pdf) p125

<sup>79</sup> Annison, In the Dock: Examining the UK's Criminal Justice Response to Trafficking (ATMG June 2013) [http://www.antislavery.org/includes/documents/cm\\_docs/2013/h/hidden\\_in\\_plain\\_sight.pdf](http://www.antislavery.org/includes/documents/cm_docs/2013/h/hidden_in_plain_sight.pdf) p56

<sup>80</sup> OCTF 2012 Annual Report and Threat Assessment

<sup>81</sup>Annison, In the Dock: Examining the UK's Criminal Justice Response to Trafficking (ATMG June 2013) [http://www.antislavery.org/includes/documents/cm\\_docs/2013/i/inthedock\\_final\\_small\\_file.pdf](http://www.antislavery.org/includes/documents/cm_docs/2013/i/inthedock_final_small_file.pdf) p123

<sup>82</sup> Annison R, *Hidden in Plain Sight: Three years on: updated analysis of UK measures to protect trafficked persons* (Anti Trafficking Monitoring Group, October 2013) [http://www.antislavery.org/includes/documents/cm\\_docs/2013/h/hidden\\_in\\_plain\\_sight.pdf](http://www.antislavery.org/includes/documents/cm_docs/2013/h/hidden_in_plain_sight.pdf)

there are concerns that the fast-tracking of asylum and immigration proceedings would deprive victims of their entitlement to the full recovery and reflection period of 45 days.

Furthermore, the expertise deficits and lack of specialisation of frontline officers investigating trafficking cases following recent reforms is a further ground for concern. It remains to be seen whether the adoption of an information sharing protocol across devolved and non-devolved government departments coupled with the roll out of Operational Eagle by the PSNI from October 2013 will help to address deficiencies in existing data collection and data interrogation methods within Northern Ireland to provide a more accurate picture of the nature and scale of human trafficking in Northern Ireland.

The Serious Organised Crime Agency (SOCA) published its annual strategic assessment on human trafficking, which indicated that UK wide only half of suspected trafficking victims were referred to the NRM. Indeed, trafficking data collection has been the subject of an inquiry by the All-Party Parliamentary Group on Human Trafficking and Modern Slavery, which recommended that the Home Office UK Visas be removed as a competent authority.<sup>83</sup> Moreover, a recent report by the Anti-Trafficking Monitoring Group (ATMG) identified an alarming decrease in the number of potential victims referred to the NRM from Northern Ireland (i.e. only 8 cases referred from Northern Ireland between April 2012 – January 2013<sup>84</sup>) and the lack of access to justice for victims with only two successful convictions for trafficking offences in Northern Ireland in September 2013<sup>85</sup>. This can be attributed in part to ‘structural changes within the PSNI in 2011’ which entrusts the ‘identification of victims and NRM referrals.. [to the reporting of sporadic encounters by frontline officers who have until recently only been provided with an optional online training module rather than specialised training] rather than undertaking ‘targeted and proactive investigations’ through dedicated human trafficking teams<sup>86</sup>.

The Department of Justice and Organised Crime Task Force (OCTF) recently published a progress report on the implementation of its action plan. In terms of the support and protection of victims, 38 potential victims of human trafficking were successfully recovered in 2013/14. The OCTF Immigration and Human Trafficking Sub Group has also been constituted which is comprised of key stakeholders including the DoJ, DHSSPS, PSNI, UKBA and UKHTC continue to formulate responses to human trafficking crime and immigration matters. This includes ‘providing a victim centred and culturally aware support package for potential victims of human

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<sup>83</sup> All-Party Parliamentary Group on Human Trafficking and Modern Day Slavery, *Inquiry into the Collection, Exchange and Use of Data About Human Trafficking and Modern Slavery*, 2014  
<http://www.lscbchairs.org.uk/sitedata/files/APPGTraffickingFINALInquir.pdf>

<sup>84</sup> SOCA, *UKHTC: A Strategic Assessment on the Nature and Scale of Human Trafficking in 2012, 2013*, p.5  
<http://www.nationalcrimeagency.gov.uk/publications/15-ukhtc-strategic-assessment-on-human-trafficking-in-2012/file>

<sup>85</sup> Annison R, *Hidden in Plain Sight: Three years on: updated analysis of UK measures to protect trafficked persons* (Anti Trafficking Monitoring Group, October 2013)  
[http://www.antislavery.org/includes/documents/cm\\_docs/2013/h/hidden\\_in\\_plain\\_sight.pdf](http://www.antislavery.org/includes/documents/cm_docs/2013/h/hidden_in_plain_sight.pdf) p54

Group of Experts on Action against Trafficking in Human Beings, Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Brings by the United Kingdom (September 2012)

<sup>86</sup> Annison R, *Hidden in Plain Sight: Three years on: updated analysis of UK measures to protect trafficked persons* (Anti Trafficking Monitoring Group, October 2013)  
[http://www.antislavery.org/includes/documents/cm\\_docs/2013/i/inthedock\\_final\\_small\\_file.pdf](http://www.antislavery.org/includes/documents/cm_docs/2013/i/inthedock_final_small_file.pdf) p123

trafficking'<sup>87</sup>. Indeed, secure accommodation and support packages consisting of medical treatment, psychological assistance, counseling and information to victims through third party service providers. Translation, interpreting and legal services are also available to victims, and a multilingual advice pack has been produced for victims with limited proficiency in English.

### **UK Rapporteur on Human Trafficking**

The UK are under an obligation to introduce a UK Rapporteur on Human Trafficking to ensure compliance with Article 29(4) of the Council of Europe Convention on Action against Trafficking in Human Beings which requires 'Each Party shall consider appointing National Rapporteurs or other mechanisms for monitoring the anti-trafficking activities of State institutions and the implementation of national legislation requirements'. The UK are also under an obligation to introduce a UK Rapporteur on Human Trafficking under Article 19 of the Council Directive 2011/36/EU (2011) which stipulates that 'Member States shall take the necessary measures to establish national rapporteurs or equivalent mechanisms. The tasks of such mechanisms shall include the carrying out of assessments of trends in trafficking in human beings, the measuring of results of anti-trafficking actions, including the gathering of statistics in close cooperation with relevant civil society organisations active in this field, and reporting'.

Clause 16 of Lord Morrow's Bill does seek to introduce a NI Rapporteur on Human Trafficking to discharge this requirement<sup>88</sup>. However, the deviation of Northern Ireland's anti-trafficking efforts from standardised procedures in place across the remainder of the UK is a cause for concern. This approach is likely to generate inconsistencies and jurisdictional confusion which may be detrimental in relation to the effective coordination of anti-trafficking efforts. Indeed, Justice Minister David Ford has urged caution over this provision suggesting that it may not easily align with the existing national rapporteur structure<sup>89</sup>.

The role of the UK Rapporteur is currently being assumed by the Inter-departmental Ministerial Group on Human Trafficking (IDMG) comprised of political representatives. NICEM are concerned that this mechanism lacks independence and does not adequately fulfil the requirement of the Directive to introduce a national monitoring system on anti-trafficking. The role of the IDMG is merely 'managerial and supervisory' providing a monitoring role in relation to the National Referral Mechanism<sup>90</sup>. It provides no wider data collection or monitoring function. Moreover, the IDMG only meets twice a year, and it is highly doubtful whether the Group can sufficiently and effectively address numerous issues arising from human trafficking<sup>91</sup>.

Therefore, it is essential that the mandate for the UK Rapporteur on Human Trafficking be expanded to improve its statutory powers and better promote compliance with international human rights standards. Indeed, the Dutch National Rapporteur, Corinne Dettmeijer-Vermeulen was reported to have attributed the 'long-standing effectiveness' of her post to its 'statutory

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<sup>87</sup> [http://www.dojni.gov.uk/index/public-consultations/archiveconsultations/doj\\_s75\\_action\\_plan\\_2011-15 -  
\\_summary\\_of\\_responses.pdf](http://www.dojni.gov.uk/index/public-consultations/archiveconsultations/doj_s75_action_plan_2011-15_-_summary_of_responses.pdf)

<sup>88</sup> NI Assembly, 24 September 2013, vol 87(6), p.56

<sup>89</sup> Statement by Damian Green (Minister of State for Immigration), HC Deb, 13 June 2012, vol. 546, col. 481W

<sup>90</sup> ATMG, *Briefing: National Rapporteur on Trafficking in Human Beings* (ATMG 2011)

[http://www.antislavery.org/includes/documents/cm\\_docs/2011/n/national\\_rapporteur.pdf](http://www.antislavery.org/includes/documents/cm_docs/2011/n/national_rapporteur.pdf) p1

<sup>91</sup> Professor Tom Obokato, *Analysis of Current Responses to Human Trafficking in Northern Ireland* (NICEM Belfast 2012) p25

independence and the trust engendered as a consequence'<sup>92</sup>. Furthermore, the mandate should include statutory investigatory powers to request and access data on trafficking, including authorisation to access anonymised information on victims of trafficking who have withheld consent to be entered into the National Referral Mechanism. The remit of the UK Rapporteur should be expanded to provide rigorous scrutiny of the compliance of the Government response to human trafficking meeting human rights standards.

### **Sentencing Framework for Trafficking Offences**

NICEM recognise that EU Member States are obligated to provide an effective remedy to victims of human trafficking and ensure that sanctions leveled on perpetrators of trafficking are effective, proportionate and carry dissuasive effect. It is important to note that despite delays, the Public Prosecution Service for Northern Ireland (PPSNI) launched its Policy for Prosecuting Cases of Human Trafficking in October 2013. However, the negligible prosecutions for trafficking offences across the UK is a grounds for concern.

The DoJ's recent consultation on human trafficking suggests that the imposition of discretionary custodial sentences are the only effective mechanism to safeguard the public from harm. However, these sentences contravene international human rights standards on the basis that they are excessively punitive, exceed the threshold of proportionality, increase the likelihood of extreme miscarriages of justice and may be exploited to deprive offenders of liberty indefinitely, negating the prospect of rehabilitation or release. Moreover, the European Court of Human Rights have ruled that indeterminate life sentences are unlawful if they deprive offenders of access to rehabilitation programmes required to be considered for release. Indeed, the Ministry of Justice in Great Britain have confirmed its intention to abandon indeterminate life sentences and replace them with severe fixed term sentences.

Clause 3 of Lord Morrow's Bill provides an overview of aggravating factors in sentencing of trafficking offences which do not correspond with Article 4 of Directive 2011/36/EU on aggravating factors:<sup>93</sup>

- (a) was committed against a victim who was particularly vulnerable, which, in the context of this Directive, shall include at least child victims
- (b) was committed within the framework of a criminal organisation within the meaning of Council Framework Decision 2008/841/JHA of 24 October 2008 on the fight against organised crime ( 1 );
- (c) deliberately or by gross negligence endangered the life of the victim; or
- (d) was committed by use of serious violence or has caused particularly serious harm to the victim.

Additionally, Further regarding sentencing, Clause 4 of the Bill aims to introduce a minimum

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<sup>92</sup><http://www.publications.parliament.uk/pa/jt201314/jtselect/jt slavery/166/16607.htm>

<sup>93</sup> Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA



sentence for individuals convicted of a trafficking offence. While there do exist comparators in some other jurisdictions, namely the United States (US) and Canada, the provisions in these states are less expansive.<sup>94</sup> The introduction of a minimum sentence for these offences risks creating a hierarchy of victims in a state that has not elsewhere legislated for minimum sentences. Indeed, a recent DoJ consultation on trafficking issues has emphasised that the Minister of Justice objects to the proposed minimum sentence.<sup>95</sup> It is also notable that Clause 4 misses an opportunity to raise sentences that are lower in Northern Ireland than elsewhere in the UK; for example, summary convictions for forced labour under the Coroners and Justice Act 2009. Clause 7 aims to ensure that those involved in the investigation and prosecution of human trafficking are provided with appropriate training. Similar provisions exist in other jurisdictions, such as in the US, under the US Violence Against Women Reauthorization Act 2013. However, the DoJ has objected to Clause 7, asserting that training is not the Department's responsibility and that Clause 7(1) entails placing a duty on the DoJ that it "cannot deliver".<sup>96</sup>

NICEM notes with concern that Clause 8 imposes restrictive and arbitrary criteria (i.e. satisfaction of one of eight conditions) which are not contained in the wording of Article 8 of Council Directive 2011/36/EU. These additional caveats limit the level of protection available to victims of trafficking who may be disinclined to make a self-referral due to concerns over being prosecuted for cases of forced criminality, particularly in cases of cannabis cultivation. NICEM is also concerned that Clause 11 of the Bill, which would oblige the DoJ to adopt procedures for the compensation of trafficking victims, does not explicitly prohibit compensation from becoming dependent upon victims' cooperation with police authorities; it is not unimaginable that this could occur, as the statutory compensation system in France requires that victims report the crime.<sup>97</sup> Indeed, the compensation system could also incorporate time limits for reporting the crime, as is the case in Romania. Naturally, considering the particular difficulties trafficking victims face in reporting their experiences and the Article 15 obligation of the Council of Europe Convention on Action Against Trafficking in Human beings on compensation for victims, the NI government should take explicit legislative measures to avoid this kind of conditional compensation.

## **Recommendations**

- **NICEM note with concern the lack of reference to a UK wide Rapporteur on human trafficking in the Department of Justice Human Trafficking Action Plan 2014/15, despite calls for a Legislative Consent Motion to extend the scope of the Rapporteur under the Modern Slavery Bill to Northern Ireland<sup>98</sup>. An LCM should be brought forward without delay to enhance the independence and statutory investigation**

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<sup>94</sup> Massachusetts HB 2808 (2011); Criminal Code (R.S.C., 1985, c. C-46)

<sup>95</sup> Department of Justice, *Human Trafficking and Slavery: Strengthening Northern Ireland's Response*, 2014. <http://www.dojni.gov.uk/index/public-consultations/current-consultations/human-trafficking-and-slavery-strengthening-northern-irelands-response.pdf>

<sup>96</sup> In response to a call for evidence, available at: <http://www.niassembly.gov.uk/Documents/Justice/human-trafficking-bill/written-submissions/Department-of-Justice.pdf>

<sup>97</sup> OSCE, *Compensation for Trafficked and Exploited Persons in the OSCE Region*, 2008, p.63.

<sup>98</sup> This should promote compliance with Article 29(4) of the Council of Europe Convention on Action against Trafficking in Human Beings and Article 19 of EU Directive 2011/36/EU.



powers of the Rapporteur required under EU Directive 2011/36/EU.

- The National Referral Mechanism should be strengthened to ensure decisions affecting trafficking victims are made entirely independently of asylum and immigration decisions and specialist support or victims is provided on a statutory footing in line with the proposed Scottish Survivors Service.
- The NI Executive should comply with the recommendation from the UN Rapporteur on Human Trafficking on the seizure of assets from criminal gangs involved in trafficking and ring-fencing of criminal proceeds for victim support

## **8. Employment**

The Committee calls upon the State party:

- (a) Continue to take concrete targeted measures to improve the representation of women in Parliament and the judiciary, particularly black and ethnic minority women and women with disabilities; and
- (b) Ensure the participation of women in the post-conflict process in Northern Ireland, in line with Security Council Resolution 1325 (2000).

(para 43, CEDAW Concluding Observations on UK, 2013)

‘Article 25 of the Covenant recognizes and protects the right of every citizen to take part in the conduct of public affairs, the right to vote and to be elected and the right to have access to public service. Whatever form of constitution or government is in force, the Covenant requires States to adopt such legislative and other measures as may be necessary to ensure that citizens have an effective opportunity to enjoy the rights it protects. Article 25 lies at the core of democratic government based on the consent of the people and in conformity with the principles of the Covenant’ (Para 1)

No distinctions are permitted between citizens in the enjoyment of these rights on the grounds of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. (para 3)

The conduct of public affairs... is a broad concept which... covers all aspects of public administration, and the formulation and implementation of policy at international, national, regional and local levels. (para 5)

Freedom of expression, assembly and association are essential conditions for the effective exercise of the right to vote and must be fully protected. Positive measures should be taken to overcome specific difficulties, such as illiteracy, language barriers, poverty, or impediments to freedom of movement which prevent persons entitled to vote from exercising their rights effectively. Information and materials about voting should be available in minority languages. (para 12)

Subparagraph (c) of article 25 deals with the right and the opportunity of citizens to have access on general terms of equality to public service positions. To ensure access on general terms of equality, the criteria and processes for appointment, promotion, suspension and dismissal must be objective and reasonable. Affirmative measures may be taken in appropriate cases to ensure that there is equal access to public service for all citizens. Basing access to public service on equal opportunity and general principles of merit, and providing secured tenure, ensures that persons holding public service positions are free from political interference or pressures. It is of particular importance to ensure that persons do not suffer discrimination in the exercise of their rights under article 25, subparagraph (c), on any of the grounds set out in article 2, paragraph 1. (para 23)

The right to freedom of association, including the right to form and join organizations and associations concerned with political and public affairs, is an essential adjunct to the rights protected by article 25. Political parties and membership in parties play a significant role in the conduct of public affairs and the election process. (para 26)

UN Human Rights Committee (CCPR) General Comment No. 25: Article 25 (Participation in Public Affairs and the Right to Vote), The Right to Participate in Public Affairs, Voting Rights and the Right of Equal Access to Public Service

The Committee recommends that the State party should:

- (a) Intensify its efforts to promote the use of flexible working arrangements and introduce shared parental leave to encourage men to participate equally in child care responsibilities;
- (b) Continue to take proactive and concrete measures to eliminate occupational segregation and to narrow the gender pay gap;

(Para 47, CEDAW Concluding Observations on UK, 2013)

Recalling its previous recommendation, the Committee urges the State party to provide affordable childcare and to mitigate the impact of the proposed reforms of the welfare system on the costs of childcare for low income families and the increased burden for care on women.

(para 49, CEDAW Concluding Observations, 2013)

The Committee urges the State party to:

- (b) Take targeted measures to facilitate the access of black and ethnic minority women to the labour market in order to alleviate their concentration in low-paid jobs.

(para 59, CEDAW Concluding Observations on UK, 2013)

The Committee recommends that the State party intensify its efforts to narrow the employment gap for ethnic minorities. The Committee therefore recommends that the State party prepare a detailed delivery plan of how it will further narrow the ethnic minority employment gap in all areas and at all levels of employment.

(para 25, ICERD Concluding Observations on UK, 2011)

The Committee recommends that the State party introduce a more flexible scheme for paternity and parental leave, taking into consideration the report “Working Better” by the Equality and Human Rights Commission.

(para 19, ICESCR Concluding Observations on UK, 2009)

The Committee recommends that the State party take immediate and appropriate measures to reduce unemployment among ethnic minorities and provide them with better employment opportunities

(para 21, ICESCR Concluding Observations on UK, 2009)

The Committee is concerned about the unsafe working conditions and low wages of some groups of migrant workers whose employers are registered outside the State party, in particular those employed in the fishing industry who enter the State party on transit visas. The Committee encourages the State party to ensure that the conditions of work of all migrant workers comply with the provisions of article 7 of the Covenant and calls upon the State party to take all necessary measures to investigate the activities of companies employing migrant workers and ensure that employers contravening the law in this regard are prosecuted and sanctioned.

(para 22, ICESCR Concluding Observations on UK, 2009)

Take into consideration that in some cases denial of citizenship for long-term or permanent residents could result in creating disadvantage for them in access to employment and social benefits, in violation of the Convention’s anti-discrimination principles (para 15)

Take measures to eliminate discrimination against non-citizens in relation to working conditions and work requirements, including employment rules and practices with discriminatory purposes or effects (para 33)

Take effective measures to prevent and redress the serious problems commonly faced by non-citizen workers, in particular by non-citizen domestic workers, including debt bondage, passport retention, illegal confinement, rape and physical assault (para 34)

Recognize that, while States parties may refuse to offer jobs to non-citizens without a work permit, all individuals are entitled to the enjoyment of labour and employment rights, including the freedom of assembly and association, once an employment relationship has been initiated until it is terminated (para 35)

(CERD General Recommendation No.30: Discrimination Against Non Citizens 2004)

Persons belonging to minority ethnic communities continue to be under-represented in public services, including the police and the judiciary, despite measures taken to improve their participation since the second Opinion. There is a lack of permanent consultative structures for persons belonging to minority ethnic communities to participate effectively in policy-making on issues of relevance to them.

Establish consultative mechanisms to develop communication between the authorities and representatives of national minorities on a regular basis, with a view to developing their effective and regular engagement in policy-making; continue promoting increased participation of persons belonging to minority ethnic communities in public services, particularly in the police and the judiciary.

(Third opinion on the UK, of the Advisory Committee on the Framework Convention for the Protection of National Minorities, June 2011)

The Committee recommends that the State party vigorously pursue its efforts to close the existing employment gap in the personnel administration of the criminal justice system and other sectors between ethnic minorities and the wider population. Bearing in mind the Committee's general recommendations No. 31 (2005) on the prevention of racial discrimination in the administration and functioning of the criminal justice system and No. 32 (2009) on special measures, the State party should also consider adopting such special measures to ensure that employment in the criminal justice administration reflects the diversity in the State party's society.

(para 22, ICERD Concluding Observations on the UK, 2011)

Article 5 of the United Nations Convention on the Elimination of Racial Discrimination (CERD) imposes a duty on the UK to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law including in the exercise of (i) the rights to work, to free choice of employment, to just and favourable conditions of work, to protection against unemployment, to equal pay for equal work, to just and favourable remuneration. In addition, The EU Charter of Fundamental Rights is legally binding on EU Member States, including the United Kingdom, when implementing EU law<sup>99</sup>. Indeed, it is highly relevant for EU migrant workers because they are exercising their EU Treaty right to free movement and therefore the Charter comes into effect. The right to work is protected under Article 15 of the Charter, and strengthened by the general non-discrimination clause in Article 21. In addition, the Racial Equality Directive 2000/43 prohibits discrimination on the grounds of racial or ethnic origin in the context of employment, including direct and indirect discrimination in addition to harassment.

Migrant workers contribute heavily to the economy and local labour market often addressing skills gaps and staff shortages across certain sectors (e.g. UKBA Shortage Occupation List)<sup>100</sup>. The net impact of post-2004 migrant workers in NI in 2008 is estimated at 39,920 jobs and £1.2bn Gross Value Added (GVA) at 2003 prices.<sup>101</sup> However, recent research raises concerns

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<sup>99</sup> Lisbon Treaty (in force from 2009)

<sup>100</sup> UKBA Shortage Occupation List:

<https://www.gov.uk/uk-visa-sponsorship-employers>

<sup>101</sup> The Economic, Labour Market and Skills Impacts of Migrant Workers in Northern Ireland, DEL, December 2009 at p.4.

[http://www.delni.gov.uk/the\\_economic\\_labour\\_market\\_and\\_skills\\_impact\\_of\\_migrant\\_workers\\_in\\_northern\\_ireland.pdf](http://www.delni.gov.uk/the_economic_labour_market_and_skills_impact_of_migrant_workers_in_northern_ireland.pdf)

over forced labour, poor working conditions and workplace discrimination experienced by migrant workers in low skilled work, particularly within the food processing industry in Northern Ireland. Indeed, there is evidence of employers targeting migrant workers for low skilled, under-paid and undesirable jobs, particularly in sectors such as 'social care, agriculture, food processing and construction' where workers often experience exploitative and discriminatory working conditions<sup>102</sup>.

Our forthcoming research on the Impact of the Recession on Ethnic Minorities in the North West (May 2014) highlights the precarious and vulnerable position of low skilled migrant workers, with more than half of respondents living on a weekly household income below the Northern Ireland average of £367 per week, with the most common job sectors being Food Services (25.1%) and Manufacturing and Production (14.9%) In addition, 40% indicated that accessing housing, benefits, health and education services was there most significant challenge and over 25% of participants not being aware of Working Tax Credit.

Respondents highlighted the challenges created by zero-hours contracts in terms of having short notice of upcoming work shifts in arranging childcare and how this impacted family income. 38 per cent also indicated that the recession had worsened racist attitudes and comments.

NICEM are concerned at the lack of compliance with basic human rights and racial equality standards outlined above, particularly given the often exploitative and discriminatory working conditions the food processing sector. Indeed, there is evidence of employers targeting migrant workers for low skilled, under-paid and undesirable jobs, particularly in sectors such as 'social care, agriculture, food processing and construction'<sup>103</sup>. Companies operating in these industries often demand seasonal workers at short-notice who can be swiftly 'hired and fired'.

Research undertaken recently by the Irish Congress of Trade Unions (ICTU) into the vulnerability of migrant workers in Northern Ireland reinforces that 'the doctrine on the illegality of contract bars any unauthorised worker from enforcing any employment or discrimination rights since the 'illegal' status of the worker negates any real or implied contract with the employer' and that the 'distinction between 'workers'<sup>104</sup>. Indeed, whilst there are many 'disincentives for taking on seasonal work in agriculture and food processing' for UK born workers, migrant workers may fill these short-term and insecure posts due to their vulnerable bargaining position and limited access to alternative forms of employment. Moreover, many migrants struggle to access suitable employment which matches their diverse skill-sets or recognises their qualifications<sup>105</sup>.

Recent research conducted by the Equality and Human Rights Commission (EHRC) on the meat and poultry processing sector in England and Wales, highlighted the severe and wide-ranging

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<sup>102</sup> Anderson, B. and Ruhs, M. (eds.), Who needs migrant workers? Introduction to the analysis of staff shortages, immigration and public policy, Working draft 11 May 2009, Center on Migration, Policy and Society (COMPAS), University of Oxford, (Oxford University Press, 2010) p36  
<http://www.jrf.org.uk/sites/files/jrf/poverty-ethnicity-northern-ireland-full.pdf> p4

<sup>103</sup> Anderson, B. and Ruhs, M. (eds.), Who needs migrant workers? Introduction to the analysis of staff shortages, immigration and public policy, Working draft 11 May 2009, Center on Migration, Policy and Society (COMPAS), University of Oxford, (Oxford University Press, 2010) p36  
<http://www.jrf.org.uk/sites/files/jrf/poverty-ethnicity-northern-ireland-full.pdf> p4

<sup>104</sup> [http://www.ictuni.org/download/pdf/migrant\\_workers\\_2.pdf](http://www.ictuni.org/download/pdf/migrant_workers_2.pdf) p24

<sup>105</sup> Manful Phung & Hirsch, 'Poverty, Ethnicity and Caring' (JRF Programme Paper 2011) p14

forms of discrimination experienced by migrant workers, ranging from incidents of physical violence and verbal abuse to the denial of basic employment protections. Persistent challenges for migrant workers also included unequal pay, chronic job insecurity and excessive agency fees<sup>106</sup>. The EHRC research also uncovered routine violations of right to health with migrant workers being forced to circumvent health and safety regulations, being denied access to toilets and insufficient breaks, forced to endure working patterns in breach of the European Working Time Directive, and alarming incidents of repeated miscarriages faced by pregnant women denied who have been denied reasonable adjustments by employers<sup>107</sup>. Moreover, recent research commissioned by ICTU into migrants and the workplace documents similarly exploitative working conditions in Northern Ireland, including breaches of minimal health and safety measures to excessive working hours and denial of rest-breaks<sup>108</sup>.

Furthermore, NICEM produced research in 2009 on the impact of the recession on the local Polish community which has highlighted the precarious and vulnerable position of low skilled migrant workers, who reported arbitrary deductions in pay and working hours, poor working conditions, and difficulties in accessing benefits<sup>109</sup>. The prevalence of workplace discrimination and harassment documented in the EHRC report also corresponds with our findings on the vulnerabilities of Filipino agency workers locally, with 42% of respondents having experienced racial harassment in the workplace<sup>110</sup>. Many of these incidents were severe in nature, with one of the respondents from the catering sector being repeatedly locked in a freezer<sup>111</sup>. NICEM's research on the disparate impact of the recession on the Polish community also forecasts an 'increase of xenophobia and discrimination as a result of the economic downturn'<sup>112</sup>. The issue of racial harassment is also worsened by the protections contained in the Equality Act 2010 not extending to Northern Ireland. Elsewhere in Great Britain, Section 40 requires employers within Great Britain to take 'reasonable steps' to prevent third parties (i.e. employees) from racially harassing staff.

NICEM continue to work with the Department of Employment and Learning (DEL) and contributed to the development of the Migrant Worker Strategy and the work of the Migrant Workers' Thematic Sub-Group, and the formulation of the draft Agency Worker Regulations. However, the OFMdFM/DEL Migrant Worker Sub-Group to the Racial Equality Panel has not met since 2010 and the Migrant Worker Strategy is yet to be updated since 2009. However, the measures taken to address the exploitation of migrant workers are omitted from DEL's Audit of Inequalities and Action Plan in addition to the Department's Equality Scheme. Indeed, beyond

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<sup>106</sup> Inquiry into Recruitment and Employment in the Meat and Poultry Processing Sector: Report of the Findings and Recommendations (EHRC 2010)

<sup>107</sup> Inquiry into Recruitment and Employment in the Meat and Poultry Processing Sector: Report of the Findings and Recommendations (EHRC 2010) p10-15

<http://www.equalityhumanrights.com/news/2010/march/inquiry-uncovers-mistreatment-and-exploitation-of-migrant-and-agency-workers/>

<sup>108</sup> Martynowicz, "It's Not How They Should Treat People" - *Migrants and the Workplace in Northern Ireland* (ICTU March 2014) p23-34

<sup>109</sup> McVeigh & McAfree, "Za Chlebem": The Impact of the Economic Downturn on the Polish Community in Northern Ireland' (Polish Association, NICEM 2009) p15

<sup>110</sup> Bayanihan! The Filipino Community in Northern Ireland (January 2012 NICEM) p4  
[nicem.org.uk/wp-content/uploads/2014/.../Bayanihan\\_January\\_2012.pdf](http://nicem.org.uk/wp-content/uploads/2014/.../Bayanihan_January_2012.pdf)

<sup>111</sup> [nicem.org.uk/wp-content/uploads/2014/.../Bayanihan\\_January\\_2012.pdf](http://nicem.org.uk/wp-content/uploads/2014/.../Bayanihan_January_2012.pdf), p22

<sup>112</sup> McVeigh & McAfree, "Za Chlebem": The Impact of the Economic Downturn on the Polish Community in Northern Ireland' (Polish Association, NICEM 2009) p15



consideration of the further education needs of the Traveller community, BME issues have been entirely overlooked.

### **Gender Discrimination**

At particular risk are low skilled workers with children or dependents who are often denied access to flexible working patterns. This can result in severe disruptions of caring responsibilities and can place migrant women, in particular, at acute disadvantage<sup>113</sup>. Indeed, it may not be economically viable to 'pay for formal care arrangements of sufficient quality' which can at times 'preclude any form of employment'. This is compounded by 'inadequate information about the options available' or limitations in 'quality and flexibility' in the 'local supply of caring arrangements'<sup>114</sup>. Furthermore, the denial of sufficient breaks and flexible working has resulted in routine breaches of the European Working Time Directive.

Gender discrimination reported within the meat processing sector ranged from sexual harassment to discrimination against pregnant women with incidents of repeated miscarriages faced by pregnant women who are forced to work excessive hours, undertake heavy lifting, stand for extended periods without rest or denied reasonable accommodation in meat processing factories<sup>115</sup>. An area of thematic concern is the occupational segregation of women in the local Filipino workforce (85 per cent are female) who are predominately employed in low skilled health sector positions (74 per cent)<sup>116</sup>. Specific issues raised by Filipino women were job insecurity and prohibitively expensive agency fees, to denial of access to social security and housing etc (i.e. for work permit holders without recourse to public funds) which compound the risk of poverty and socio-economic disadvantage<sup>117</sup>. Women and children may be acutely vulnerable in the context of family breakdown or domestic and intimate partner violence, as women are often reliant on the immigration status of male partners for access to welfare support.

### **Inadequacy of Childcare Provision for BME Parents**

NICEM have recently undertaken research in partnership with Barnardo's Northern Ireland entitled *Believe in Childcare?: An Investigation into the Childcare Needs of Ethnic Minority Communities in Northern Ireland* (2014) which focuses attention on formal and informal care arrangements, working patterns and barriers to access and uptake of certain types of child-care for BME parents with children aged 0-12 in the Southern Health and Social Care Trust (SHSCT). It also seeks to assess the level of satisfaction with their chosen child-care provision and their awareness of child-care services and benefits available to children of this age. The research consulted extensively with over 300 families responding to questionnaires available in 11

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<sup>113</sup> Manful Phung & Hirsch, 'Poverty, Ethnicity and Caring' (JRF Programme Paper 2011) p14

<sup>114</sup> Geddes, A. 2008. "Staff shortages and immigration in food processing. A report prepared for the Migration Advisory Committee." London: MAC. p5-6

<sup>115</sup> Inquiry into Recruitment and Employment in the Meat and Poultry Processing Sector: Report of the Findings and Recommendations (EHRC 2010) p10-15

<http://www.equalityhumanrights.com/news/2010/march/inquiry-uncovers-mistreatment-and-exploitation-of-migrant-and-agency-workers/>

Inquiry into recruitment and employment in the meat and poultry processing sector Treatment of pregnant workers: our findings (EHRC 2010) p2

<sup>116</sup> Bayanihan! The Filipino Community in Northern Ireland (January 2012 NICEM) p17

<sup>117</sup> Bayanihan! The Filipino Community in Northern Ireland (January 2012 NICEM) p17



languages, 34 parents attending 5 focus group events, and 9 children (aged 5-9) participating in 2 focus groups conducted in primary schools.

The findings indicate that participants were predominately from Eastern Europe which mirrors the ethnic composition of the southern trust region. The majority of respondents earn below the Northern Ireland average of £367 per week, and experience occupational segregation in low skilled, undesirable and atypical work, particularly in the manufacturing industry and food and meat processing sector. The limited career development and training opportunities and failure by employers to provide English language classes cements socio-economic disadvantage. Over one third of working parents found their typical working pattern disrupted their child-care responsibilities, with the most frequently used forms of child-care being informal arrangements with friends, grandparents and other family members. Indeed, 40 per cent expressed their dissatisfaction with the cost of childcare, with 30 per cent stating their dissatisfaction with flexibility of child-care providers in accommodating atypical shift work. Moreover, awareness levels among BME parents on rights, benefits and eligibility for financial help was very limited, with over 60 per cent reporting difficulties in accessing information on childcare provision.

### **Rights Awareness and Denial of Access to Justice in Discrimination Cases**

The Equality Commission recently stated that 75 per cent of all enquiries into harassment at the workplace over the past 5 years in Northern Ireland related to racial harassment<sup>118</sup>. Indeed, research undertaken by NICEM on Filipino Agency workers indicated that 42 per cent of respondents had been subject to racial harassment at work<sup>119</sup>. These figures highlights the importance of access to justice in racial harassment and discrimination cases before the NI Courts. However, recent statistics indicate that those who are unrepresented in discrimination cases at tribunals in Northern Ireland are more likely to lose their case than those who do have representation. Civil legal aid is not available for any discrimination in employment case in the UK. Ethnic Minorities are less likely to have connections or influence in order to access lawyers willing to do pro-bono work. Lack of such assistance contributes to a low success rate for discrimination cases, as such many employers do not feel pressurised to follow law and procedure<sup>120</sup>.

Moreover, the majority of migrant workers neither know their statutory rights nor join trade unions. This is compounded by the limited proficiency in English possessed by many migrant workers. For these reasons, there are additional barriers and difficulties encountered by migrant workers seeking to exercise and enforce their employment rights. In our experience, when migrant workers complain to their employer or its agent, the latter will not follow the statutory grievance procedure by not informing the complainants of their rights, or work colleagues are unwilling to be witnesses for the complaining migrant workers. As a result migrant workers have no protection due to their vulnerability and they might be sacked for different reasons, without redress.

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<sup>118</sup> [http://www.equalityni.org/ECNI/media/ECNI/Consultation%20Responses/2013/Racial\\_Equality\\_Policy-Priorities\\_and\\_Recommendations.pdf?ext=.pdf](http://www.equalityni.org/ECNI/media/ECNI/Consultation%20Responses/2013/Racial_Equality_Policy-Priorities_and_Recommendations.pdf?ext=.pdf)

<sup>119</sup> Northern Ireland Council for Ethnic Minorities (2012): *Bayanihan: the Filipino community in Northern Ireland*. [http://www.nicem.org.uk/uploads/publications/Bayanihan!\\_January\\_2012.pdf](http://www.nicem.org.uk/uploads/publications/Bayanihan!_January_2012.pdf)

<sup>120</sup> CAB, 'Towards a business case for legal aid' (July 2010), p 29 or Law Centre, 'Redressing Users' Disadvantage: Proposals for Tribunal Reform

### **Access to English Language Classes**

Recent research also highlights that vulnerability is aggravated by a 'lack of English language skills, limited access to social networks and a lack of local knowledge'<sup>121</sup>. These barriers and lack of awareness, often result in migrants being open to tolerating 'very poor working conditions and exploitation because the situation at home is worse'<sup>122</sup>. Moreover, research commissioned by DELNI in 2009 indicates that 82 per cent of migrant workers in the hotel and catering industries in Northern Ireland experienced difficulties in communicating with employers<sup>123</sup>. Indeed, opportunities for career progression are hampered by a scarcity of training and development opportunities or entry points for alternative forms of employment.

Despite the success of a pilot scheme to provide free accredited English language classes for asylum seekers and refugees and the continuation of the scheme by DEL, challenges remain in place which impede access. The current publically funded ESOL and essential skills provision for refugees and asylum seekers should be augmented with a contribution towards childcare costs and transport expenses. DEL should also provide additional funding for accredited training and entry into further education. Often voluntary sector organisations provide free English classes, however such organisations are not recognized as certificated learning centres (as required for the for certain visa applications).

### **Forced Labour**

A critical area of concern is forced labour and trafficking for the purposes of labour exploitation. Indeed, recent research undertaken by the Joseph Rowntree Foundation on the vulnerability of migrant workers to forced labour within Northern Ireland identified the 'greatest concentrations of problems in the fishing and mushroom-growing industries respectively, involving EU accession state female workers and male Filipino migrants'<sup>124</sup>. The study highlighted issues of restricted movement and confinement, rural isolation, debt bondage, unlawful withholding of wages, retention of passports to inhibit escape and recurrent threats of denunciation to the authorities on the basis of irregular immigration status<sup>125</sup>. In addition, the International Transport Workers Federation (ITF) and BBC have also reported incidents of forced labour abuses where migrant fisherman have faced 'extreme maltreatment', including limited access to adequate food and sanitation facilities, physical violence and intimidation, excessive working hours, abandonment to foreign ports and denial of repatriation by boat owners<sup>126</sup>.

Unfortunately, these practices are often 'difficult to detect... hidden by their perpetrators and

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<sup>121</sup> Les Allamby & Others, 'Forced Labour in Northern Ireland: Exploiting Vulnerability (2011) Joseph Rowntree Foundation p1

<sup>122</sup> Les Allamby & Others, 'Forced Labour in Northern Ireland: Exploiting Vulnerability (2011) Joseph Rowntree Foundation, p1

<sup>123</sup> Oxford Economics (2009) Economic, Labour Market and Skills Impacts of Migrant Workers in Northern Ireland, Belfast: DEL

<sup>124</sup> Alistair Geddes & Others, *JRF Programme Paper: Forced Labour in the UK* (University of Bristol: June 2013) p10

<sup>125</sup> Allamby & Others, *Forced Labour in Northern Ireland: Exploiting Vulnerability* (JRF 2011) p5

<sup>126</sup> ITF (2008) *Migrant Workers in the Scottish and Irish Fishing Industry* p2, BBC News (2008) *Filipino Fisherman Suffer Abuse*

workers may be reluctant or frightened to come forward'<sup>127</sup>. Therefore, due to under-reporting, it is difficult to obtain accurate and complete picture of the nature and extent of forced labour across Northern Ireland. For the purposes of consistency, 'forced labour' is defined under Article 2 of the International Labour Organization (ILO) Convention No. 29 (1930):

Article 2 defines 'forced labour' as 'all work or service that is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily'.

The ILO have also released a series of 12 authoritative indicators of forced labour<sup>128</sup> to raise awareness and improve visibility of key issues, which include the abuse of vulnerability; deception, restriction of movement; isolation, physical and sexual violence; intimidation and threats; retention of identity documents; withholding of wages; debt bondage; abusive working and living conditions and excessive overtime. These key indicators are clearly triggered by evidence emerging on the conduct of employers of migrant workers across Northern Ireland, and the UK more broadly. Forced labour is also prohibited under a number of international human rights instruments. Indeed, Article 4 (1) of the European Convention on Human Rights (brought into domestic force under Human Rights Act 1998) states that 'no one shall be held in slavery or servitude' or (2) 'be required to perform forced or compulsory labour'. In addition, Article 3 of the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children states:

Article 3 of the UN Protocol on human trafficking links three elements: certain activities (including recruitment, transportation, transfer, harbouring or receipt of a person); via particular means (including force, deception, coercion, fraud, threats, abuse of power or position of vulnerability, and the giving of payments or benefits to a person in control of the victim); for the purpose of exploitation (including exploitation of the prostitution of others, sexual exploitation, forced labour, slavery or similar, or removal of organs).

Alternatively, forced labour practices are also criminalised under a number of pieces of legislation. Indeed, The Immigration and Asylum (Treatment of Claimants etc.) Act 2004 introduces criminal sanctions for the trafficking of people for exploitation, including by way of forced labour. In addition, Section 71 of the Coroners and Justice Act 2009 criminalises slavery, servitude and forced or compulsory labour. In its Circular 2010/07, the Ministry of Justice sought to confine the scope of 'forced labour' for the purposes of criminal prosecution, insisting that a 'element of coercion or deception between the defendant and the victim must be established' and the 'defendant must also know that the arrangement was oppressive and not truly voluntary, or had been wilfully blind to the fact'.

However, despite the inherent vulnerability of victims of trafficking to forced labour, there is a diminished level of protection afforded to non-EEA nationals under European and international law. The UK has opted out of a number of Council Directives which protect migrant workers. For example, Directive 2009/52 introduces employer sanctions (e.g. mechanism to recoup unpaid

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<sup>127</sup> Alistair Geddes & Others, *JRF Programme Paper: Forced Labour in the UK* (University of Bristol: June 2013)

<sup>128</sup> ILO Indicators of Forced Labour (Special Action Programme to Combat Forced Labour 2013)

[http://www.ilo.org/sapfl/Informationresources/Factsheetsandbrochures/WCMS\\_203832/lang--en/index.htm](http://www.ilo.org/sapfl/Informationresources/Factsheetsandbrochures/WCMS_203832/lang--en/index.htm)

wages, improved enforceability of employment contracts) and the Directive 2004/81 would allow for residence permits to be granted to victims of trafficking'<sup>129</sup>. Furthermore, the UK is yet to ratify the UN International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (1990) or the ILO Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143).

### **Irregular Immigration Status and Access to Employment**

Evidence also suggests that workers with irregular immigration status may be placed at particular disadvantage, because their uncertain status often 'militates against... [them] having a family' and increases their perceived 'mobility and tolerance of unpredictability'<sup>130</sup>. Indeed, immigration rules applied to migrant workers on work permits (Tier 2 of points based system) are highly restrictive and impede the reunification of families, particularly for those experiencing financial hardship. This category of workers must demonstrate savings in excess of £600 in addition to £600 for a spouse and each child for a continuous period of 3 months (i.e. a family of three will need to demonstrate available funds of £2700)<sup>131</sup>.

Furthermore, if these workers seek to change employer or if they lose their job, they automatically lose their right to remain in the UK, subject to a decision by the UK Border Agency. There is a further issue of under-reporting of discrimination and racial harassment, with victims feeling reluctant to report incidents of abuse to their managers, out of fear it may jeopardise any claim for indefinite leave to remain which requires written authorisation from employers.

Moreover, unscrupulous employers may take advantage of the 'very limited rights' of these workers, particularly if there is a perception that foreign workers possess a stronger 'work ethic' and tolerance for poor working conditions<sup>132</sup>. Indeed, there is a tendency for migrant workers to undertake 'work for which they are overqualified, either because they have a 'temporary mindset' or because of the wage differential with their country of origin'<sup>133</sup>. Indeed, the issue of underemployment persists with the failure to recognise qualifications and professional accreditation serving as a further barrier to career progression for many migrant workers<sup>134</sup>.

**A client presented to the Belfast Migrant Centre as homeless. The client was an asylum seeker who sought to be reunified with his family. However, the landlord refused the request to accommodate his family on the basis the house was only suitable for a single tenant. On this basis, the tenant terminated his lease and presented himself as homeless to the NIHE, who refused to provide support because he had rendered himself voluntarily homeless.**

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<sup>129</sup> Dwyer & Others, Forced labour and UK immigration policy: status matters? (2011) p9

<sup>130</sup> Anderson & Ruhs, 'A Need for Migrant Labour? The Micro-Level Determinants of Staff Shortages and Implications for a Skills Based Immigration Policy' (COMPAS, MAC 2008) p23

<sup>131</sup> PBS (Dependant) Policy Guidance

<https://www.gov.uk/government/publications/application-for-uk-visa-for-pbs-dependant-form-vaf10>

<sup>132</sup> Anderson & Ruhs, 'A Need for Migrant Labour? The Micro-Level Determinants of Staff Shortages and Implications for a Skills Based Immigration Policy' (COMPAS, MAC 2008) p25

<sup>133</sup> Anderson & Ruhs, 'A Need for Migrant Labour? The Micro-Level Determinants of Staff Shortages and Implications for a Skills Based Immigration Policy' (COMPAS, MAC 2008) p17

<sup>134</sup> Manful Phung & Hirsch, 'Poverty, Ethnicity and Caring' (JRF Programme Paper 2011) p14

The Racial Equality Directive 2000/43 'prohibits discrimination in social protection, including social security and healthcare; social advantages; education; access to and supply of goods and services which are available to the public, including housing as well as employment and vocational training'<sup>135</sup>. However, Tier 2 migrant workers have no recourse to public funds such as social security or housing benefit, leaving them at risk of destitution.

### **The vulnerability of Agency Workers**

*5e(i) The rights to work, to free choice of employment, to just and favourable conditions of work, to protection against unemployment, to equal pay for equal work, to just and favourable remuneration*

Although the national minimum wage applies to all people who are working in the UK, it does not apply to agency workers who have employment contracts which were created by agencies outside of the jurisdiction of the UK. As a result these migrant workers are not paid the minimum wage and their conditions of employment are far below the UK standard, as set by equality and employment laws, as well as health and safety legislation. Indeed, agency workers in NI are particularly vulnerable to discrimination and exploitation due to the temporary nature of their employment.

As agency workers lack an employment contract, as stipulated under the Working Time Regulations (NI) Order 1998, they do not qualify as an "employee" under the Employment Rights (NI) Order 1996. Under the Employment Rights (Northern Ireland) Order 1996 this gives rights to 'employees'. 'Employee' has a common legal meaning, so the self-employed do not benefit from minimum, mandatory rights. These include the right to a written statement of one's contract (Art. 3), to request flexible working time (Art. 70E), etc. Take the example of job security. After one month employees have the right to one week's notice before dismissal. After one year employees have a right to be dismissed fairly. After two years employees have the right to two week's notice and redundancy pay. The notice period (always substitutable with a payment reflecting wages, in lieu of notice) and the right to redundancy increase according to the number of years in employment.

The current employment law landscape 'creates a new class of agency and temporary workers who cannot claim for unfair dismissal and are therefore subjected to insecure employment, low pay and unsociable hours'<sup>136</sup>. While agency workers are guaranteed "basic working and employment conditions" under the Agency Workers Regulations (NI) 2011, these are subject to the worker attaining a qualifying period of 12 continuous weeks' work for the same employer. Additional restrictions also apply within the 2011 Regulations for other rights, such as that of access to employment and that against unfair dismissal.

Coughlin LJ in the Court of Appeal suggested a need for legislative change to address the lack of accountability of employment agencies, the deprivation of rights to vulnerable agency workers with intermediate legal status, and the need to expand the protective scope of Fair Employment

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<sup>135</sup> Equality Law in Practice: Report on the Implementation of the Race and General Framework Directives (Equinet, June 2013) p9

<sup>136</sup> McVeigh, Migrant Workers and their Families in Northern Ireland: A Trade Union Response (ICTU) [http://www.ictuni.org/download/pdf/migrant\\_workers\\_2.pdf](http://www.ictuni.org/download/pdf/migrant_workers_2.pdf) p24

Tribunals<sup>137</sup>:

“For the reasons set out above this appeal must be dismissed but the case does seem to illustrate how an agency arrangement may deprive potential employees of important protections against discrimination. Northern Ireland enjoys a well deserved reputation for the early development and quality of its anti-discrimination laws and this is an area might well benefit from the attention of the section of the OFMDFM concerned with legislative reform.”

In most cases these are low paid jobs hidden from the public domain, frequently in agriculture or the fishing industry, they often involve menial tasks such as mushroom picking and high risk activity such as cockle picking. Anecdotal evidence<sup>138</sup> has revealed that many workers may have their passports retained by agencies and their freedom of movement restricted under threat of violence, there are also incidents of agencies withholding pay. Management of bank accounts on workers’ behalf and tying accommodation to employment also serve as means of controlling agency workers. Such working conditions often amount to a modern form of slavery. There are many Filipino seafarers who are working for Northern Ireland’s fishing industry in such poor conditions. NICEM, the Irish Congress of Trade Union, UNISON and the International Transport Federation have been jointly campaigning against the slave-like working conditions imposed by employment agencies in the Philippines. These agencies often abuse the transit visa system.

The Concluding Observations of the Economic, Social and Cultural Rights Committee in May 2009 following the UK’s 4<sup>th</sup> and 5<sup>th</sup> Periodical Report highlighted that “The Committee is concerned about the unsafe working conditions and low wages of some groups of migrant workers whose employers are registered outside the State party, in particular those employed in the fishing industry who enter the State party on transit visas. The Committee encourages the State party to ensure that the conditions of work of all migrant workers comply with the provisions of article 7 of the Covenant and calls upon the State party to take all necessary measures to investigate the activities of companies employing migrant workers and to ensure that employers contravening the law in this regard are prosecuted and sanctioned.” (para. 22, E/c.12/gbr/co/5, May 22, 2009).

Whilst we are pleased to acknowledge that following this recommendation the British government introduced a special work permit for seafarers in an effort to curtail the abuse of the transit visa system, this new regime is ineffective. Many employers in the fishing industry bypass the work permit regime by claiming that migrants are working outside the 12 miles zone of the UK and/or EU water and therefore do not reside in the UK. There is no inspection to prove if this is the case. More worryingly there is no inspection whatsoever to assess the legal health and safety requirements of these vessels. Living in such conditions offshore can seriously endanger the lives of migrants.

In light of the findings of NICEM’s research work into the experiences of the Filipino community in Northern Ireland, in February 2013 a complaint was made to the European Commission. It stated that the Northern Irish anti-discrimination legislation infringes relevant EU law by excluding (1) agency workers and (2) certain seafarers from its scope. A response was received

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<sup>137</sup> *Bohill v PSNI* [2011] NICA 2 (13 January 2011)

<sup>138</sup> *Forced Labour in Northern Ireland*, Neil Jarman, Institute for Conflict Research, University of Ulster

in August 2013 in which the Commission stated their opinion that the Racial Equality Directive was properly implemented in Northern Ireland and the complaints were not upheld. However, NICEM continue to pursue the matter by looking to the binding obligations imposed by the EU Charter of Fundamental Rights which is binding on the UK when implementing EU law. As a result of our lobbying efforts and the research report on discrimination and abuse experienced by Filipino Agency Workers, we organized a joint seminar with the UK Race European Network (UKREN) on “Agency Worker Protection”. Furthermore, DELNI have responded to our concerns by commissioning research on Agency Workers in Northern Ireland. Furthermore, while the NI Government did amend the RRO via the Race Relations Order 1997 (Amendment) Order (NI) 2012 to extend employment discrimination protections to some seafarers, non-EEA citizens and those recruited outside Northern Ireland remain unprotected. This situation is a continuing source of concern for NICEM.

### **Deregulation of Labour Markets and Retreat in Employment Protections in GB**

There has been a significant retreat in the level of protection afforded under employment law in Great Britain due to wide-ranging deregulation which threatens to carry retrogressive implications on the rights of ethnic minority workers. These include the repeal of the Equality Act 2010 to abolish third party harassment claims and remove the questionnaire procedure which is routinely utilised in indirect discrimination cases, the abbreviation of the qualifying period for unfair dismissal, proposed reforms to judicial review (e.g. reduced time-limits), the growing volume of workers relying on insecure contracts (e.g. zero hour contracts, employee stakeholder contracts) and the imposition of employment tribunal and appeals tribunal fees on claimants in England, Scotland and Wales in June 2014.

Tribunal fees currently range from £160 to £250 simply to lodge a claim, with further fees of £230 to £950 being incurred if the case is to be heard. A full appeal can cost £1,200. It is inevitable that worthy claimants will be deterred by these fees and the various difficulties faced by ethnic minority individuals in acquiring lucrative employment make it likely that this group will feature highly amongst any deterred claimants. UNISON has brought a case of judicial review against these fees, claiming that they have seen a substantial drop in the number of claimants before employment tribunals. Whilst these fees are yet to be applied in NI, they establish a disconcerting precedent and constitute a denial of access to justice.

### **Combating Misconceptions - Migrant Contribution to Local Economy and Labour Market**

Evidence suggests migrant workers possess varied skill-sets which substitute or complement the existing work-force<sup>139</sup>. They possess ‘diverse skills and abilities’ and ‘fill essential labour market gaps’, often demonstrating ‘entrepreneurship... and innovative flair with start-up businesses’. They also ‘expand consumer demand for goods and services’ which encourages investment, drives demand for labour and ultimately, increases wages and rates of employment<sup>140</sup>. Indeed, successive waves of immigration have helped to improve the affordability of ‘catering, child and domestic care, tailoring or seamstressing, cleaning, gardening, construction, butchering, and

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<sup>139</sup> Borjas, G. J., R.B. Freeman, and L.F. Katz. “How Much Do Immigration and Trade Affect Labor Market Outcomes?” *Brookings Papers on Economic Activity* 1 (1997): 1-90

<sup>140</sup> Dr Martin Ruhs & Dr Carlos Vargas-Silva, *The Labour Market Effects of Immigration* (Migration Observatory, University of Oxford 2012) p3



waste removal’.

In addition, migrant workers have made a vast contribution to the ‘social fabric’ of Europe by promoting multi-lingualism, culture and the arts, music, food, fashion and sport<sup>141</sup>. They have also been proactive in fostering a ‘socially cohesive and intercultural society’ which values diversity and encourages tolerance and inclusion. This complements the aims of the OFMDFM Together: Building A United Community Strategy, which seeks to guide the implementation of the Programme for Government 2011-2015 and reflects the NI Executive’s commitment to ‘improving community relations and building a united and shared society’. More specifically, the strategy seeks to target racial inequalities, secure equality of opportunity, eradicate racism and hate crime, promote good race relations and update and deliver on the Racial Equality Strategy with particular sensitivity to ‘unprecedented inward migration we have seen in recent years and the challenges and opportunities that this presents’<sup>142</sup>.

Furthermore, migrant women in particular are serving as agents of change by challenging prejudice and cultural stereotypes. However, despite the diffuse economic benefits, and the far reaching and distinctive contribution of migrant workers to the social, cultural, economic and political makeup of Europe, xenophobia, racist sentiment and anti-immigration rhetoric persist. Indeed, research conducted by the European Network Against Racism highlights the ‘uncalculated losses incurred by failing to recognise and value these innumerable talents’<sup>143</sup>. This is despite findings from the Migrant Observatory at Oxford University which confirm that ‘overall, migrants have no [adverse] impact on UK-born employment’<sup>144</sup>.

#### **Recommendations:**

- **The UK Government should transpose Directives 2009/52 and 2004/81 and ratify both the UN International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (1990) and the ILO Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143).**
- **Reform of race legislation should incorporate enhanced protections for agency workers and curtail exploitation of seafarers not protected under the transit visa system.**
- **Civil Legal Aid should be made available in industrial tribunals in cases of racial harassment or discrimination in employment**
- **The remit of the Home Office Gangmasters Licensing Authority should be extended to cover all labour providers (i.e. catering, administration, retail, fisheries, food processing etc)**

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<sup>141</sup> Pfohman & Lynch, *Hidden Talents, Waster Talents? The Real Cost of Neglecting the Positive Contribution of Migrants and Ethnic Minorities* (European Network Against Racism 2013) p6

<sup>142</sup> <http://www.ofmdfmni.gov.uk/together-building-a-united-community-strategy.pdf> p18

<sup>143</sup> Pfohman & Lynch, *Hidden Talents, Waster Talents? The Real Cost of Neglecting the Positive Contribution of Migrants and Ethnic Minorities* (European Network Against Racism 2013) p1

<sup>144</sup> Dr Martin Ruhs & Dr Carlos Vargas-Silva, *The Labour Market Effects of Immigration* (Migration Observatory, University of Oxford 2012) p5

- The UKBA should reduce the fees applicable to Tier 2 work permit holders and their families to reduce the excessive financial toll on vulnerable migrants at risk of poverty
- The atypical working patterns and chronic job insecurity experienced by many low skilled migrant workers often interferes with childcare responsibilities. Targeted recommendations issued in our 'Believe in Childcare' research should be implemented as a priority. Childcare should be available on a subsidised and statutory basis and the Bright Start Strategic Framework should be updated to address the specific needs of BME carers.

## **9. Housing and Social Security**

The Committee urges the State party to adopt preventive measures against potential exploitation of the Universal Credit system by an abusive male spouse.

(para 63, CEDAW Concluding Observations on UK, 2013)

The Committee urges the State party to expedite efforts to undertake reforms with a view to protect the property rights of women upon break-down of marriage or of de facto unions in line with general recommendation no. 29 on the economic consequences of marriage, family relations and their dissolution, and article 16 of the Convention.

(para 65, CEDAW Concluding Observations on UK, 2013)

The Committee calls upon the State party, in line with its general comment no. 4 (1991) on the right to adequate housing, to intensify its efforts to ensure that everyone has access to housing and to review its policies and develop effective strategies, including a gender impact assessment, aimed at increasing the levels of affordable housing, including social housing.

(para 29, ICESCR Concluding Observations 2009)

The Committee recommends that the State party ensure the provision of sufficient, adequate and secure stopping sites for Roma/Gypsies and Irish Travellers. It also recommends that the State party, in the organization of mega-events, ensure the protection of the most disadvantaged and marginalized individuals and groups, which may be disproportionately affected by such events, in line with the Committee's general comment no. 7 (1997) on the right to adequate housing: forced evictions. It also encourages the State party to review the provisions of the Unauthorised Encampments (Northern Ireland) Order 2005 and to provide for suitable accommodation arrangements for Roma/Gypsies and Irish Travellers.

(para 30, ICESCR Concluding Observations on UK, 2009)

The Committee urges the State party to halt the intended eviction, which will disproportionately affect the lives of families and particularly women and children and create hardship. The Committee strongly recommends that the State party should provide alternative culturally appropriate accommodation to these communities before any evictions

are carried out. The State party should ensure that any evictions are conducted in accordance with the law and in a manner that respects the human dignity of all individuals in this community, in conformity with international and regional human rights norms.

(para 28, ICERD Concluding Observations on UK, 2011)

The Committee recommends that the human rights framework, including the Equality Impact Assessment, be effectively implemented in Northern Ireland, particularly in the context of urban regeneration programmes by ensuring the participation of the affected populations and the development of adequate policies and targeted measures to promote substantive equality, provide for improved health care, as well as an increase in skills training and employment opportunities for young people and adequate housing programmes for the poor and, in particular, Catholic families.

(para 31, ICESCR Concluding Observations 2009)

(a) Assess and evaluate the impact of the welfare reform in relation to the right to adequate housing of the most vulnerable individuals and groups, in light of existing data and evidence; consider whether particular measures are having a disproportionate impact on specific groups

(g) Increase regulation and enhance information and accountability in relation to the private rented sector; adopt regulatory tenancy protections, including minimum length of contracts, restraints on rent increases and strict limits on eviction; encourage the use of standardized human rights-compliant rental contracts; enhance mechanisms of registration of landlords and letting agents, and establish clear accountability mechanisms to eliminate discrimination in the private rented sector;

(h) Strengthen efforts to address stigma and discrimination for the Gypsy and Traveller communities in relation to the wider spectrum of rights, starting with the recognition that cultural adequacy in housing is a pillar for inclusion, and that legislation and policy are not enough to overcome local obstacles;

(j) Promote and protect the right to adequate housing without discrimination on any grounds; in particular, refrain from establishing mechanisms that can result in indirect discrimination against migrants or Roma in access to adequate housing.

(Section VII (a)-(j), Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context on her mission to the United Kingdom of Great Britain and Northern Ireland, March 2014)

The situation of Gypsies and Travellers, particularly in the field of access to accommodation, is of particular concern. There is a persistent shortage of sites and some reluctance from local authorities in many places to provide or refurbish sites. Gypsies and Travellers also frequently face difficulties when requesting planning permission, resulting in frequent evictions and illegal encampment. This situation also generates tensions between Gypsies and Travellers and the majority population, sometimes fuelled by politicians and the media.

(Third opinion on the UK, of the Advisory Committee on the Framework Convention for the Protection of National Minorities, June 2011)

## **Access to Social Security**

It is vital to dispel myths surrounding 'benefit tourism' which seek to stigmatise EU migrants and promote xenophobia. The 'floodgates' hypothesis surrounding the accession of A2 migrants to the UK to claim benefits should be assuaged by figures on A8 immigrants whose arrival to the UK triggered similar concerns in the run down to EU enlargement in 2004.<sup>145</sup> Figures from the UCL Institute for Fiscal Studies reveals that A8 migrants were '59 per cent less likely than natives to receive state benefits or tax credits' and '29 per cent less likely to live in social housing'<sup>146</sup>. Moreover, A8 nationals constitute 0.08 per cent of all Job Seekers Allowance recipients whilst EU nationals more broadly represent only 2.6 per cent of overall uptake<sup>147</sup>. Indeed, on a local basis, there have been diminished budgetary allocation for refused asylum seekers and other categories without recourse to public funds (e.g. cuts to legal aid, failure to reintroduce OFMdfM Emergency Fund).

In broad terms, entitlement to Income-based Jobseeker's Allowance, Income-related Employment and Support Allowance, Income Support, Housing Benefit, Pension Credit (and Universal Credit scheduled to be made available in 2014) require that a person must be habitually resident and have a right to reside in the Common Travel Area (the UK, Ireland, the Channel Islands or the Isle of Man)<sup>148</sup>. Whilst there is no consolidated legislative definition of the 'habitual residence' test under EU law, there is a substantial body of instructive case law.

The DWP have recently sought to exploit this uncertainty by heightening the threshold for European migrants to qualify for 'worker' status in order to restrict access to social security which takes effect from January 1<sup>st</sup> 2014<sup>149</sup>. These reforms to the habitual residence test restrict entitlement to EEA migrants who satisfy either the minimum weekly earnings threshold of £150 for three months (Tier 1) or for non-EEA nationals demonstrate proof of 'genuine and effective' employment (Tier 2). This reinforces concerns over welfare reforms arbitrarily reducing the rate of pay or imposing additional requirements on non-UK nationals. The European Commission have recently initiated infringement proceedings against the UK over the discriminatory impact of additional criteria imposed on the existing Habitual Residence Test which only applies to non-UK nationals<sup>150</sup>. The case has been referred to the CJEU over concerns that its 'right to reside' test is contrary to Regulations EC /987/2009 and EC/883/2004.

At present, EEA nationals have a right to reside in a range of circumstances, including a blanket entitlement to three month right of residence provided they have sufficient resources not become 'unreasonable burden on the social assistance system'<sup>151</sup>.

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<sup>145</sup> <http://www.migrantsrights.org.uk/blog/2013/02/a2-migrants-and-uk-benefits-system-government-tilting-windmills>

<sup>146</sup> Dustmann & Others, 'Assessing the Fiscal Costs and Benefits of A8 Migration to the UK' (2010) IFS 31(1) p1

<sup>147</sup> [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/196677/nat\\_nino\\_regs.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/196677/nat_nino_regs.pdf)

<sup>148</sup> <http://www.lawcentreni.org/Publications/Migrant%20Workers/Migrants-and-Benefits-2014.pdf> p32

<sup>149</sup> Patrick Wintour, 'EU migrants face new barrier to accessing UK state benefits' *Guardian* (19 February 2014) <http://www.theguardian.com/uk-news/2014/feb/19/eu-migrants-welfare-benefits-earnings>

<sup>150</sup> Robert Mednick, 'Europe takes UK to court over benefits' *Telegraph* (22 March 2014)

<http://www.telegraph.co.uk/news/uknews/immigration/10716824/Europe-takes-UK-to-court-over-benefits.html>

<sup>151</sup> Patricia Carty, *Migrants and Benefits: An Advisors Guide* (Law Centre NI, Feb 2014)

<http://www.lawcentreni.org/Publications/Migrant%20Workers/Migrants-and-Benefits-2014.pdf> p42

The following list documents the key exemptions to the Habitual Residence Test (HRT):

- an EEA national who is a worker or retains worker status
- an EEA national who is self-employed or retains self-employed status;
- an EEA national who is a student provided additional criteria are met;
- a family member of a person in either of the above two groups;
- an EEA national or family member of an EEA national with a permanent right of residence
- as a retired or permanently incapacitated worker or self-employed person;
- a Croatian national working lawfully under worker authorization provisions;
- a refugee;
- a person with exceptional leave to enter or remain in UK granted outside the Immigration Rules;
- a person with humanitarian protection granted under the Immigration Rules;
- a person deported, expelled or legally removed from another country to the UK who is not a person subject to immigration control;<sup>152</sup>

EU law and European social security rules (i.e. principally the EC Regulation 883/2004) aim to ensure that EEA nationals and their family members can exercise their EU Treaty rights and have their entitlement to benefits exported when moving between EEA States. If a person falls within the 'personal scope' of EC Regulation 883/2004 (e.g. EEA nationals, refugees, stateless persons etc) they are entitled to social security benefits (e.g. maternity, sickness, unemployment, survivors etc), special non-contributory benefits and social and medical assistance which are available on either an indefinite or a time-bound basis. In practice within the UK, qualified parties are entitled to claim cash benefits for sickness, unemployment, death of a partner, retirement etc on the basis of a minimal threshold of contribution to the National Insurance Scheme (NIS). They may also be entitled to Child Benefit and Child Tax Credit Schemes (i.e. which are not contingent on habitual residency), non-contributory benefits (e.g. disability, carers) and free access to medical, dental and optical treatment<sup>153</sup>. They are also entitled to equal treatment and protected against unlawful direct and indirect discrimination. Moreover, the Racial Equality Directive 2000/43 'prohibits discrimination in social protection, including social security and healthcare; social advantages; education; access to and supply of goods and services which are available to the public, including housing as well as employment and vocational training'<sup>154</sup>.

It is crucial to note that the restrictions on access to the labour market imposed on A2 accession states have been lifted on 1 January 2014, and Bulgarian and Romanian nationals have full EU rights. However, whilst the expiration of the work authorisation scheme will lift obtrusive restrictions on A2 nationals, these reforms have been overshadowed by an intensification of anti-immigration rhetoric and xenophobic sentiment in mainstream media and political discourse. In addition, labour market restrictions continue to be imposed on Croatian nationals

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<sup>152</sup>Patricia Carty, *Migrants and Benefits: An Advisors Guide* (Law Centre NI, Feb 2014)

<http://www.lawcentreni.org/Publications/Migrant%20Workers/Migrants-and-Benefits-2014.pdf> p32

<sup>153</sup>[http://ec.europa.eu/employment\\_social/empl\\_portal/SSRinEU/Your%20social%20security%20rights%20in%20UK\\_en.pdf](http://ec.europa.eu/employment_social/empl_portal/SSRinEU/Your%20social%20security%20rights%20in%20UK_en.pdf) p5

<sup>154</sup> Equality Law in Practice: Report on the Implementation of the Race and General Framework Directives (Equinet, June 2013) p9

who are subject to the Worker Authorisation Scheme which will remain in place provisionally until June 2018 with concerns over further postponement to 2020. In practice it is very difficult for Croatian nationals to obtain a work permit - it is a complicated process by which both the worker and employer, separately and one after the other, have to apply for permission from UKBA before the employee can begin work. This causes huge delays in the employee starting employment.

However, Tier 2 migrant workers (i.e. Non-EEA Nationals) have no recourse to public funds such as social security or housing benefit, which leaves them at risk of destitution. They are not eligible to access benefit rights until they obtain permanent resident status. There are limited circumstances in which they are entitled to Job Seekers Allowance if they have made national insurance contributions, however people rarely take advantage of this as the process of application is complex. Spouses of non-EU nationals are entitled to some benefits, however this requires proof of residency which must be obtained from the Home Office, a process which takes around 6 months. The complexity of this process highlights the deficiency in communication between the devolved benefits system in Northern Ireland and the non-devolved Home Office. A further issue is that British nationals / settled persons who wish to have their non-EU spouse/civil partner with them in the UK have to meet accommodation and maintenance requirements to show they can support their spouse without recourse to public funds. This means that those on benefits are not able to bring their spouse to the UK, and that those whose spouses are here on the two year 'probation period' prior to applying for permanent residency, cannot access public funds for any length of time, or their spouse's application for settlement will be refused.

In addition to limited entitlement to benefits, migrant family members must pay more than double what UK nationals have to pay for student fees in third level education. The above discriminatory law and practice is in breach of Article 1(2) & (3); 2(1)(a), (c) and (d); as well as Article 5(e)(iv); and the General Recommendation 30 of ICERD regarding the immigration exception; Article 6 of ICESCR, Article 26 of ICCPR and other international standards.

### **Welfare Reform**

The equality impact of the Welfare Reform Bill 2012 has been inadequately assessed and the Bill itself may produce many difficulties for ethnic minority individuals in NI. The EqIA for the Bill fail to address four of the statutory equality groups under Section 75 of the Northern Ireland Act 1998, including ethnic minorities. This failure occurred despite the DSD previously acknowledging, in its 2006 action plan under the Racial Equality Strategy, that ethnic minorities may face particular difficulties in obtaining social provisions.

Provisions contained within the Welfare Reform Bill are likely to carry differential adverse impacts on EU migrants or would potentially discriminate against EU migrants by paying EU migrants lower rates of pay or putting extra restrictions or requirements. Concerns over projected impact of welfare reforms on BME communities have been confirmed by evidence emerging in Great Britain. Clauses 8-10 (calculation of benefits), clause 22 (work requirement), clauses 61-63, and clause 69 (access to housing benefit) and clause 76-94 (multiple discrimination issues surrounding introduction of PIP on migrants with a disability) of the Welfare Reform Bill should be redrafted to avoid discrimination against ethnic minorities. In

particular, the Ad Hoc Committee on Equality and Human Rights should seek to mitigate the differential adverse impacts of welfare reform on EEA migrants which has been documented in Great Britain, including lower rates of pay or the imposition of extra restrictions or requirements<sup>155</sup>

The EqIA also failed to address the complications arising around multiple identities; for example, some ethnic minority women may be adversely affected by the Bill's intention to pay joint claims to the main earner, as this reinforces the subordinate position that women experience in some cultures. Considering the shortcomings of this EqIA, it is unsurprising that various provisions of the Welfare Reform Bill is likely to significantly worsen the position of ethnic minorities in NI. It is critical to note the disparate impact of the proposed Universal Credit (UC) system from the Department of Work and Pensions (DWP) which is likely to introduce a range of specific barriers for ethnic minorities and unduly heighten the risk of destitution. Indeed, the system requires applicants to possess a bank account, IT skills, access to affordable internet and technical proficiency in English. However, at present many migrants experience difficulties in opening a bank account due to anti-terrorism legislation and bureaucratic obstacles such as demonstrating proof of address, coupled with challenges in accessing affordable internet or linguistic and technical difficulties operating the UC online portal. Furthermore, the Immigration Bill intends to impose immigration monitoring duties on banks and building societies which may introduce further complications on migrants accessing social security entitlements.

When giving oral evidence to the Committee, NICEM highlighted the difficulty in commenting on specific provisions since the nature of social security law is such that the Welfare Reform (Northern Ireland) Bill 2012, as an enabling piece of legislation, is quite vague. NICEM also highlighted the inherently discriminatory approach in the draft legislation, which would, if passed, provide for the differential treatment of EEA nationals, which was transmitted across media outlets including BBC's website. In addition, NICEM referred to barriers to access entitlements with specific reference to case studies from the Belfast Migrant Centre. At the hearing NICEM supported the setting up of a special committee to examine the Bill's conformity with equality and human rights requirements and the following month such a Committee was set up and NICEM was requested to give evidence. In this hearing, NICEM focused on the incomplete and insufficient Equality Impact Assessment, which had been carried out by the Department for Social Development and presented the Committee with expert evidence from the AIRE (Advice on Individual Rights in Europe) centre's on the EU law implications and the approach that has been followed in England and Wales. NICEM's concerns were reflected in the Committee's final report but that report was voted against by the NI Assembly due to the fact that the report found there were no significant equality and human rights impacts, which many MLAs disagreed with. The Bill has now gone back to Committee Stage and NICEM will continue to engage in the debate when the opportunity arises.

In 2013, the Bill has continued its passage through the Assembly despite serious questions arising about whether legislators have fulfilled their Section 75 equality duties. NICEM re-emphasises its concern about the potential impact of the Bill and asserts that its provisions should not be implemented until proper consideration is given to their effects on statutory

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<sup>155</sup> Clauses 8-10 (calculation of benefits), clause 22 (work requirement), clauses 61-63, and clause 69 (access to housing benefit) and clause 76-94 (multiple discrimination issues surrounding introduction of PIP on migrants with a disability) of the Welfare Reform Bill should be redrafted to avoid discrimination against ethnic minorities.



equality groups.

### **BME Housing Inequalities**

BME communities continue to experience a multitude of housing inequalities which often contravene the right to an adequate standard of living. Indeed, the UN Special Rapporteur on the Right to Adequate Housing recently undertook a mission to the UK and has highlighted concerns over 'security of tenure, affordability, accessibility, location and cultural adequacy'<sup>156</sup>.

The visit also highlighted the unique vulnerability of Traveller, Roma and Gypsy communities to housing inequalities. Another area of immense concern is the housing situation of irregular migrants which is often 'insecure and precarious'<sup>157</sup>. Indeed, non-EEA migrants especially continue to experience heightened risk of destitution and homelessness on the basis of irregular immigration status (e.g. refused asylum seekers) or EU nationals who are not able to satisfy the habitual residency criteria due to denial of access to public funds. The risk of homelessness is worsened by the OFMDFM Crisis Fund not having been operational since November 2012 and not being reinstated in the Executive Budget 2014/15 contrary to a series of recent commitments and press statements<sup>158</sup>. In addition, recent developments surrounding the Immigration Bill are a grave cause of concern as is its likelihood to intensify racial profiling and associated discrimination through imposition of immigration monitoring duties on social landlords. There is also an alarming incidence of migrant families being displaced by racist hate crime and paramilitary intimidation, forced to undergo the upheaval and disruption of uprooting and moving to a safer location to protect themselves from the threat of violence and harm.

Another concern is the inaccessibility of private rental sector due to prohibitive financial expense. Ethnic minorities are also more likely to experience overcrowding, particularly in South Asian communities where the uptake of statutory residential care is negligible and multi-generational households tend to rely on informal care arrangements to support the dependency needs of children and older people. It is crucial to note the disparate impact of welfare reform and austerity measures which include further restrictions on the habitual residence test which discriminate against non-UK nationals and the inaccessibility of the proposed Universal Credit system to certain ethnic minorities (i.e. those who may struggle to set up a bank account, obtain access to affordable internet or operate an online portal which demands IT skills and technical English language proficiency). Furthermore, the current uncertainty over the future of the NIHE means that provision for ethnic minorities may worsen as the role of the Housing Executive is changed. The Minister for Social Development announced in 2013 that the NIHE is to be dismantled as part of wide-ranging reforms to the allocation of social housing in Northern Ireland. Preliminary discussions indicate the NIHE is likely to be replaced by number of Housing Associations.

### **Provision of Housing by Employers**

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<sup>156</sup>(para 7, UN Special Rapporteur on the right to adequate housing report 2014)

<sup>157</sup> Fundamental Rights Agency, *Fundamental Rights of Migrants in an Irregular Situation in the EU: Comparative Report* (FRA Luxembourg 2011)

[http://fra.europa.eu/sites/default/files/fra\\_uploads/1827-FRA\\_2011\\_Migrants\\_in\\_an\\_irregular\\_situation\\_EN.pdf](http://fra.europa.eu/sites/default/files/fra_uploads/1827-FRA_2011_Migrants_in_an_irregular_situation_EN.pdf)

<sup>158</sup> Peter Coulter 'NI crisis fund for migrants, refugees and asylum seekers to be set up' *BBC News* (14 february 2014)

<http://www.bbc.co.uk/news/uk-northern-ireland-26175391>

There is evidence of widespread discrimination and exploitation in the provision of housing as part of employment arrangements. This situation applies mostly to migrant workers employed in factories, processing or seasonal work. In scenarios such as this, employers automatically deduct rent from wages of employees, often charging high rates and providing substandard accommodation. Problems include overcrowding, putting families in accommodation suitable only for a single adult, families having to share a single room, accommodation with other unrelated or unknown people and threats of deductions from salary if employees complain about living conditions. The lack of any right to emergency re-housing or housing benefits for some migrants compounds this vulnerability, and the absence of any safety net puts workers and their families at real risk of homelessness and impoverishment if they leave or lose their job.

### **Racial Harassment and Discrimination in Private Rental Sector**

The majority of migrant workers rely on private rental sector accommodation and have been vulnerable to discrimination harassment from landlords. For example, 97% of Filipino respondents to a recent NI housing survey rent privately. In addition, research undertaken by the Institute for Conflict Research raised the issue of migrants living in accommodation provided by their employer would be vulnerable to the upheaval of relocating at short-notice, should they leave or lose their job<sup>159</sup>. The economic downturn has had a significant impact on the housing market in Northern Ireland and as a result a number of landlords have become bankrupt and have required tenants to move out. NICEM has received requests for assistance from many migrants who have lost their jobs and are either finding it difficult to pay the rent or have been forced to leave their houses. Often the only accommodation available is of a low standard, and the increasing cost of heating such accommodation and routine damp problems have had an adverse impact on the health of many migrants.

Findings from the BME and Migrant Worker Mapping Project highlight that migrants workers continue to experience difficulties in accessing private rented accommodation due to issues over affordability, and are increasingly turning to the social rented sector. In terms of migrant worker tenant households, the main districts include Dungannon (190), Portadown (165), and Lurgan/Brownlow (126). The main nationalities represented include Polish (33%), Lithuanian (20%), Portuguese (15%), and Latvian (8%). The highest concentration of allocations of social housing to BME applicants were in Belfast (67), Dungannon (9), Bangor (8) and Newtownards (8) and BME applicants on the NIHE waiting list in Belfast (482), Dungannon (482) and Bangor (69)<sup>160</sup>. The highest concentration of applications in terms of nationality were Polish (31 per cent), Lithuanian (17 per cent), Portuguese (17 percent) and Latvian (10 per cent)<sup>161</sup>.

### **Impact of the Immigration Act**

#### **Immigration Act 2014**

- **Enacted despite vociferous opposition from civil society**
- **Expedites the removal process**

<sup>159</sup> Jarman, Bell & Lefebvre, 'Migrant Workers in Northern Ireland' (OFMDFM - ICR report 2004) p6

<sup>160</sup>

[http://www.nihe.gov.uk/black\\_and\\_minority\\_ethnic\\_and\\_migrant\\_worker\\_mapping\\_update\\_february\\_2014.pdf](http://www.nihe.gov.uk/black_and_minority_ethnic_and_migrant_worker_mapping_update_february_2014.pdf)

<sup>161</sup>

[http://www.nihe.gov.uk/black\\_and\\_minority\\_ethnic\\_and\\_migrant\\_worker\\_mapping\\_update\\_february\\_2014.pdf](http://www.nihe.gov.uk/black_and_minority_ethnic_and_migrant_worker_mapping_update_february_2014.pdf)

- **Severely limits right to appeal a Home Office decision to exclusively asylum and human rights grounds. This will carry drastic implications for victims of domestic violence. Women who have made an application under the domestic violence rule or have strong family connections here will no longer be eligible to appeal a refusal of leave.**
- **Introduces pilot scheme to check immigration status in the provision of housing which is likely to increase racial profiling and discrimination, and imposes onerous demands of legal expertise on social landlords.**
- **Imposes restrictions on access to health care and the ability to obtain driving licences and bank account**
- **Changes to the OISC scheme.**

The proposed Immigration Act further restricts access to housing for certain categories of migrants, would almost certainly compound the vulnerability already experienced by migrants, further restricting their possibility of accessing a social landlord, and force them into the private rental market where they face a heightened risk of substandard housing, poor living conditions and high incidence of racial harassment and discrimination<sup>162</sup>. Indeed, one of the most problematic aspect of the Bill in regards to housing is the provision to require private landlords to verify immigration status or face a fine of up to £3000 under a proposed pilot scheme. It is highly likely that to address this additional risk and administrative cost, the cost of private renting will go up. The process of verifying immigration status is often highly complex and requires specialist immigration advice and legal expertise. The imposition of immigration monitoring duties is also likely to intensify racial harassment from landlords and discrimination in access to housing. Evidence is emerging of landlords taking pre-emptive measures to evict BME tenants in response to this legislation<sup>163</sup>.

The private rental market in Northern Ireland is already very costly, particularly for those migrants who would enter under the Tier system into low-paid employment. This also creates the very real possibility of institutionalizing racism and discrimination. As MAX points out, 'many landlords will simply not rent to anyone who seems foreign or doesn't have a British passport for fear of getting it wrong and paying up to £3000'<sup>164</sup>. This again highlights the problem of training and regulation of those in society who will now be asked to act as de facto immigration officials – private landlords and frontline health staff. Any problems in determining someone's access will inevitably fall upon the migrant, rather than the landlord or the staff. This again further increases the vulnerability of this population. It is therefore essential that the proposed Code of Practice be rigorously applied.

### **Homelessness and Destitution – No Recourse to Public Funds**

BME communities face greater risks of homelessness and destitution than the local population.

<sup>162</sup> [http://www.jcwi.org.uk/sites/default/files/Briefing%20Imm%20Bill%202nd%20Read\\_0.pdf](http://www.jcwi.org.uk/sites/default/files/Briefing%20Imm%20Bill%202nd%20Read_0.pdf)

<sup>163</sup> Movement Against Xenophobia (MAX) Parliamentary Briefing for the Report Stage/Third Reading of the Immigration Bill 2013/14

<sup>164</sup> Movement Against Xenophobia (MAX) Parliamentary Briefing for the Report Stage/Third Reading of the Immigration Bill 2013/14

The differential level of protection afforded to parents without recourse to public funds (e.g. refused asylum seekers, EU nationals who fail to satisfy the habitual residence test), and their children, increases the likelihood of Social Services intervening and children being separated from their parents. Indeed, the lack of access to the OFMDFM Crisis Fund renders refused asylum seekers especially vulnerable as they are forced to rely exclusively on charitable donations and the goodwill and flexibility of hostels.

BME communities face a disproportionate risk of homelessness and destitution, particularly for those without recourse to public funds; EU migrants who are not able to satisfy the strictures of the habitual residence test and refused asylum seekers (non-EEA nationals) who have exhausted their appeal rights and face deportation. Moreover, the over reliance of ethnic minorities on the private rented sector heightens the risk of homelessness and rough sleeping in particular, with many migrants lacking access to family or support networks to assist in providing shelter and housing support. Indeed, there remains no overarching rough sleeping strategy for Northern Ireland to address the unique vulnerability and complex needs of migrants struggling with substance misuse, alcohol dependency or mental health needs.

**Even migrants who rely on public bodies for housing do not always find their accommodation to be livable; in the case of *Birmingham City Council v Ali and others* [2009] UKHL 36, the House of Lords allowed the appeal of a Somali refugee who had to occupy a two-bedroom flat with his wife and six children for 28 months before being offered a suitable house.**

NICEM understand that in circumstances where victims of ‘unintentional homelessness’ are in ‘priority need’, the NIHE will ensure that temporary accommodation is made available. The most recent figures from the NIHE BME and Migrant Worker Mapping Project estimates that 705 homeless applications were made by migrant worker households between July 2012 and July 2013. The most vulnerable ethnic groups were identified to be Polish (30 per cent), Lithuanian (145 per cent), Portuguese (12 per cent)<sup>165</sup>. However, it is disturbing to note that 360 migrant worker families were unsuccessful in obtaining Full Duty Applicant (FDA) status and protective measures were not instituted.

Despite this, the current Homelessness Strategy of the NIHE inadequately addresses the difficulties experienced by migrants, particularly in the area of social housing.<sup>166</sup> The action plan attached to the DSD Audit of Inequalities is restricted primarily to conducting comprehensive Traveller Needs Assessment. More broadly, insufficient resources have been allocated by the DSD and NIHE in meeting BME specific housing needs. The NIHE Audit of Inequalities includes as a key action measure the exploration of the support needs of Refugees including the provision of advice<sup>167</sup>. The NIHE, BHSC and Extern have adopted a partnership model to deliver advice and support services to victims of homelessness, including specifically refugees through the Multidisciplinary Homeless Support Team (MDHST). In addition, NICEM assisted in convening the

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[http://www.nihe.gov.uk/black\\_and\\_minority\\_ethnic\\_and\\_migrant\\_worker\\_mapping\\_update\\_february\\_2014.pdf](http://www.nihe.gov.uk/black_and_minority_ethnic_and_migrant_worker_mapping_update_february_2014.pdf)

<sup>166</sup> Northern Ireland Housing Executive, *Homelessness Strategy for Northern Ireland 2012-2017*, 2012.

[http://www.nihe.gov.uk/homelessness\\_strategy\\_for\\_northern\\_ireland\\_2012-2017.pdf](http://www.nihe.gov.uk/homelessness_strategy_for_northern_ireland_2012-2017.pdf)

<sup>167</sup> [http://www.nihe.gov.uk/appendix\\_2\\_-\\_next\\_generation\\_of\\_equality\\_schemes\\_audit\\_of\\_inequalities.pdf](http://www.nihe.gov.uk/appendix_2_-_next_generation_of_equality_schemes_audit_of_inequalities.pdf)

PSI Homelessness Partnership Sub-Group on BME Housing Inequalities.

NICEM re-emphasises its position, provided in consultation to the Strategy, that the NIHE should clarify what groups it considers to be “most vulnerable” and broaden its narrow reference to ethnic minorities to consider the particular housing difficulties of differing groups, such as EEA and non-EEA migrants. Relatedly, the UN Special Rapporteur on Adequate Housing has noted, during a mission to the UK, that she has received testimonies supporting the existence of discrimination in access to housing against EU citizens, migrants, asylum seekers and refugees.<sup>168</sup>

Furthermore, the DSD have adopted an exclusionary rule for recipients of ASBOs introduced under the Housing (Anti-Social Behaviour) Bill. This legislation intends to resolve legal uncertainty over the application of Article 7A(5) of the Housing (NI) Order 1988. Its enactment will entail the NIHE are unambiguously authorised to render a person ineligible for homelessness assistance ‘at any stage’ (e.g. prior to the allocation of social housing) rather than merely ‘in circumstances at the time the person’s application is considered’. NICEM are concerned that this blanket approach is crude, excessively punitive, and likely to carry differential adverse impacts on protected categories under Section 75, which is explored in detail below.

### **Shortcomings of NIHE BME Housing Forum**

NICEM are concerned that whilst the NIHE have outlined its commitment to ‘proactively engage’ with ‘hard to reach groups’ including members of the BME community, there has been minimal evidence of progress through the BME Forum. NICEM are also concerned that the composition of the forum was not inclusive of grass-roots BME tenants and predominately comprised of established BME organisations. Limited attention was invested in coordinating meetings to accommodate atypical migrant working patterns or provide for travel expenses and child-care needs (e.g. organisation of evening/weekend meetings outside of traditional 8am-6pm working pattern).

Furthermore, the BME forum is no longer operational and has been informally disbanded without consultation with member groups. Indeed, the cessation of BME Housing Forum meetings (i.e. approximately 12 months ago) clearly breaches an existing commitment outlined in the NIHE Audit of Inequalities, to meet regularly (i.e. 3-4 times a year) and to formulate an annual action plan. There are wide-ranging adverse implications of the Forum no longer operating. Indeed, the absence of a nominee from the BME Housing Forum on the Quality Assurance Group could result in a failure to prioritise and mainstream BME housing needs into the quarterly decision making of the NIHE Executive Board. In addition, there is no record of pass progress and the appendix overlooks the achievements of the BME Forum (i.e. no reference to the Shared Race Relations Charter) whilst focusing exclusively on the other respective community led Forums (i.e. rural/disability/youth).

### **Housing Inequalities Experienced by Roma families**

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<sup>168</sup> Raquel Rolnik, *Mission to the United Kingdom of Great Britain and Northern Ireland 29 August to 11 September 2013*, 2013. <http://www.thedetail.tv/system/uploads/files/336/original/SR%20housing-%20UK-%20press%20statement-%20FINAL-10092013%20%282%29.pdf?1378889692>

The issue of culturally-appropriate housing is also relevant to members of the Roma community living in Northern Ireland. In many cases, several Roma families live together in the one house, as Roma cultural practice places a high value on relationships across the extended family network. Such living arrangements fall under Houses of Multiple Occupancy (HMO) Regulations. The rate of investigations into housing containing Roma inhabitants is disproportionately high. This may be as a result of landlords reporting Roma at higher frequency than they would report other groups or individuals. The result of reporting Roma families to the NIHE, and subsequent investigation, frequently leads to eviction of families. There is anecdotal evidence that in some instances, landlords may in fact be taking advantage of the HMO process to enforce evictions of Roma families from their premises more expediently than would be possible via the normal eviction process. Lack of translation and interpretation services for Roma contributes to the exclusion and isolation of Roma from the rest of society. This combination of circumstances has often led to Roma being disentitled from living in a manner culturally appropriate to them.

### **Housing (Anti-Social Behaviour) Bill**

NICEM are concerned that the proposed DSD Housing (Anti-Social Behaviour) Bill is replete with discriminatory provisions which contravene internationally recognised human rights standards, including the right to private and family life, the right to an adequate standard of living, the right to a fair trial and the right to non-discrimination. In particular, Short Secure Tenancies (SSTs) may be used to expedite repossession proceedings and deprive vulnerable tenants of the right to a fair trial and the corollary right to present a defence. Indeed, under mandatory possession, previously secure tenants may have no other recourse but to institute costly and protracted judicial review proceedings to challenge evictions. The legislation is also likely to increase the rate of homelessness and destitution in Northern Ireland. NICEM are also particularly concerned the legislation will carry disproportionate adverse impacts on vulnerable categories, including ethnic minorities specifically Roma, Traveller and Gypsy communities, people with disabilities, children and young people, those experiencing mental health issues and individuals with complex needs who struggle with substance misuse or alcoholism.

A key concern over the regulation of anti-social behaviour is the failure of criminal justice agencies within Northern Ireland to collect disaggregated data on recipients of ASBOs. The existing data is broken down only by gender and age which does not provide an accurate or complete evidence base on which informed legislative and policy decisions can be made.

Nonetheless, evidence continues to emerge on direct and indirect discrimination against Roma, Traveller and Gypsy communities. Indeed, in Great Britain, findings reveal that the police disproportionately impose ASBOs on Traveller communities and indirectly discriminate against their cultural practices and way of life. Travellers are often reluctant to rely on 'culturally inadequate social housing'<sup>169</sup> which is often located in deprived estates where they face paramilitary intimidation and sectarian tensions<sup>170</sup>. In addition, entire Traveller families have been victims of ASBOs for occupying unauthorised short-term encampments due to a lack of viable alternative accommodation<sup>171</sup>. This is despite their already vulnerable position where they face substandard living conditions and lack access to basic amenities such as adequate sanitation, refuse disposal and electricity in emergency halting sites. In such cases, Traveller families who receive ASBOs will lack any entitlement to social housing or homelessness

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<sup>169</sup> <http://www.ohchr.org/EN/Issues/Housing/Pages/CountryVisits.aspx>

<sup>170</sup> <http://www.ohchr.org/EN/Issues/Housing/Pages/CountryVisits.aspx>

<sup>171</sup> <http://nationalgypsytravellerfederation.org/download/files/features/gypsytravellerguidance.pdf>

assistance, and breaching the terms of the ASBO and returning to the site, could result in a criminal conviction and the imposition of a custodial sentence<sup>172</sup>.

More broadly, the legislation is likely to intensify socio-economic disadvantage, deprivation and poverty across Northern Ireland. These projected implications run contrary to recent advice issued by the UN Special Rapporteur on the Right to an Adequate Standard of Living on the United Kingdom in March 2014 to 'refrain from establishing mechanisms that can result in indirect discrimination against migrants or Roma [and other vulnerable categories] in access to adequate housing'<sup>173</sup>. Furthermore, recent figures from the Public Prosecution Service demonstrate the high incidence of prosecutions for begging related offences in Northern Ireland, with 63 summary prosecutions taking place between January 2012 and December 2013. The Housing (ASB) Bill is highly likely to increase the risk of destitution with the blanket denial of homelessness assistance and access to social housing for recipients of Anti-Social Behaviour Orders (ASBOs) or prior offenders. This may also result in forced criminality where victims of homelessness have no other recourse but to beg to support their subsistence needs. It may also result in the imposition of excessively punitive custodial sentences and court imposed fines on vulnerable groups. Indeed, protective measures should be instituted to safeguard victims of homelessness from the threat of criminalisation, court-imposed fines, and incarceration.

Therefore, NICEM strenuously refute the findings of the DSD equality screening exercise which trivializes these impacts and mistakenly asserts that adverse impacts across all Section 75 categories, including disability and age are 'minor' to 'none', with 'no differential impact in relation to Race/Ethnicity'<sup>174</sup>.

### **Recommendations**

- **The Ad Hoc Committee on Equality and Human Rights should seek to mitigate the differential adverse impacts of welfare reform on EEA migrants which has been documented in Great Britain, including lower rates of pay or the imposition of extra restrictions or requirements<sup>175</sup>.**
- **The newly imposed restrictions under the Habitual Residency test should be removed in order to comply with Regulations EC /987/2009 and EC/883/2004.**
- **Measures should be taken to investigate further the potentially high percentage of negative decisions overturned on appeal regarding access to social security by BME individuals.**
- **The Department for Social Development (DSD) and Northern Ireland Housing Executive (NIHE) should rapidly implement recommendations issued by the UN Special Rapporteur**

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<sup>172</sup> [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/7837/143582.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/7837/143582.pdf) p21

<sup>173</sup> <http://www.ohchr.org/EN/Issues/Housing/Pages/CountryVisits.aspx>

<sup>174</sup> DSD Section 75 Screening Policy Form – Housing (ASB) Bill 2014  
<http://www.dsdni.gov.uk/equality-screening-form-for-antisocial-behaviour.pdf>

<sup>175</sup> Clauses 8-10 (calculation of benefits), clause 22 (work requirement), clauses 61-63, and clause 69 (access to housing benefit) and clause 76-94 (multiple discrimination issues surrounding introduction of PIP on migrants with a disability) of the Welfare Reform Bill should be redrafted to avoid discrimination against ethnic minorities.



on the Right to Adequate Housing in 2014.

- The OFMdFM Crisis Fund should be reinstated as a matter of urgency to assist individuals with insecure immigration status and no recourse to public funds, to mitigate the risk of homelessness and destitution.
- The NIHE should consider revising the criteria for Full Duty Applicant (FDA) status (i.e. eligibility for homelessness assistance) in line with the Scottish model which does not require individuals to satisfy 'unintentional homelessness' and 'priority need' criteria.
- In line with recommendations from the UN Rapporteur on the Right to Adequate Housing, the Vagrancy Act 1935 should be repealed to decriminalise begging in order to protect vulnerable categories including Roma community members, children, and those with complex needs and mental health issues<sup>176</sup>.
- The Housing (Anti-Social Behaviour) Bill 2014 should also be drastically amended to ensure recipients of Anti-Social Behaviour Orders are not automatically denied access to social housing and homelessness assistance, and ensure that landlords are not entitled to expedite repossession proceedings without granting a tenant Article 6 rights under the ECHR.
- The DSD and NIHE should work to ensure that immigration monitoring duties are not imposed on social landlords, and the pilot proposed within the Immigration Act should not be extended to Northern Ireland.
- The NIHE BME Housing Forum should be reconvened and should adopt an annual action plan

## **10. Health**

In line with general comment no. 14 (2000) on the right to the highest attainable standard of health, the Committee recommends that the State party intensify its efforts to overcome the health inequalities and unequal access to health care, in particular for the most disadvantaged and marginalized individuals and groups. It also urges the State party in this regard to fulfil its commitment to reduce health inequalities by 10 per cent by 2010, measured by infant mortality and life expectancy at birth as benchmarks which the State party has set for itself. It also recommends that the State party gather appropriate disaggregated data on an annual basis of the reporting cycle in this respect with a view to assessing the progress made and providing such information to the Committee in its next periodic report.

(para 32, ICESCR Concluding Observations on UK, 2009)

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<sup>176</sup> A recent Freedom of Information (FoI) request revealed that 64 prosecutions for begging offences occurred in 2012/13.

Recalling its previous recommendation, the Committee reiterates that, in line with general recommendation No. 24 on women and health and the Beijing Declaration and Platform for Action, the State party should expedite the amendment of the anti-abortion law in Northern Ireland with a view to decriminalise abortion. The State party should also ensure that legal abortion not only covers cases of threats to the life of a pregnant woman but also other circumstances such as threats to her health and in cases of rape, incest and serious malformation of the foetus.

(para 51, CEDAW Concluding Observations on UK 2013)

The Committee calls upon the State party to amend the abortion law of Northern Ireland to bring it in line with the 1967 Abortion Act with a view to preventing clandestine and unsafe abortions in cases of rape, incest or foetal abnormality.

(para 25, ICESCR Concluding Observations on UK)

The Committee urges the State party to:

- (a) Strengthen the implementation of programmes and policies aimed at providing effective access for women to health-care, particularly to women with disabilities, older women, asylum-seeking and Traveller women;
- (b) Pay special attention to the health needs of women with disabilities, ensuring their access to prenatal care and all reproductive health services; and
- (c) Provide equal access to reproductive treatment for all women in Northern Ireland without discrimination.

(para 53, CEDAW Concluding Observations on UK, 2013)

BME communities experience a multitude of health inequalities. Indeed, if a person is not considered an ordinary resident, they are categorised as a visitor and will be liable for charged for access to primary and secondary healthcare. This may involve the denial of access to health services for pregnant women with insecure immigration status or the failure to seek essential treatment due to fears of immigration enforcement. There are also a range of structural, socio-cultural and linguistic barriers which impede uptake of services. For example, due to social stigma and religious norms, BME communities may be reluctant to seek access to mental health services or dementia services. Indeed, this is often compounded by a lack of awareness of available interpreting and translation services. There is also a higher prevalence of certain health complaints in minority ethnic communities including sickle cell disorder, depression, stress, suicide, schizophrenia, diabetes and obesity, heart disease, hepatitis B, HIV, and tuberculosis<sup>177</sup>.

BME women are more likely to experience domestic and sexual violence, and may lack awareness and access to specialised support services. They may also develop mental health issues as a result or have complex needs arising from substance misuse, alcohol dependency, self-harm, depression etc. There is also a heightened vulnerability to Sexually Transmitted

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<sup>177</sup> HSC Audit of Inequalities (HSC 2010)

<http://www.niamb.co.uk/docs/documents/HSCT%20Audit.pdf>

Infections (STIs) in certain ethnic minority populations, including the higher risk of HIV affecting the African-Caribbean community, to victims of human trafficking for the purposes of sexual exploitation who face generalized risks.

Furthermore, it is crucial to recognise that the right to health is protected under a number of international human rights treaties, including Article 5(e)(iv) of the UN Convention on the Elimination of Racial Discrimination, Article 24 of the UN Convention on the Rights of the Child and Article 12 of the Covenant on Economic, Social and Cultural Rights (ICESCR). The right to social and medical assistance is also enshrined in Article 13 of the European Social Charter 1961. Moreover, the ICESCR Committee have expanded on the right to non-discrimination protected under Article 2(2) and 3 through a General Comment which explicitly states the 'Covenant rights apply to everyone including non-nationals, such as refugees, asylum-seekers, stateless persons, migrant workers and victims of international trafficking, regardless of legal status and documentation.

### **Language Barriers and Limited Awareness of Interpreting and Translation Services**

The DHSSPS Audit of Inequalities highlights the limited awareness of interpreting and translation services which create diffuse barriers to accessing healthcare services. These include difficulties in registering with a GP, inaccessibility of maternity services, uncertainty and confusion during medical examinations, missed appointments due to notification letters not being translated, concerns over misdiagnosis and difficulties in consenting to treatment, lack of instructions for medication in appropriate language and the scarcity of translated materials. Language barriers and accessibility issues have also resulted in limited BME uptake of mental health services, statutory residential care, respite provision, specialised disability services and a range of preventative care services and specialised treatments (e.g. menopause treatment, breast cancer, smear tests, family planning, diet, childcare and immunisations etc).

These language barriers are often compounded by difficulties with the insufficient cultural sensitivity of front-line staff and documented racism and hostilities from some HSC staff. Indeed, BME communities may express a reluctance to complain and struggle to challenge the role of Receptionists within GP surgeries who often serve as gatekeepers for access to key services such as interpreters. This is worsened by routine delays and maladministration and limited awareness of some health professionals on migrant eligibility to register with GP. A research report commissioned by NICEM also identified insufficient anti-racism training of staff and an "unintentional and often unconscious but persistent bias" towards ethnic minorities<sup>178</sup>.

Another issue of concern is the under-reporting of health complaints by BME individuals. At times the condition will deteriorate and result in crisis point hospital admissions when the condition has progressed. Indeed, the Law Centre NI recently advocated the importance of early diagnosis and early intervention to generate positive 'social and economic outcomes and significant long-term savings'<sup>179</sup>. This is of particular importance in terms of limiting the transmission of infectious diseases such as HIV.

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<sup>178</sup> Delivering on Equality, Valuing Diversity; A Report examining the impact of ethnicity on health needs and relevant statutory service provision in Northern Ireland", NICEM, 2004

<sup>179</sup> <http://www.lawcentreni.org/Publications/Policy-Briefings/Policy-Briefing-Migrants-and-health-care-Law-Centre-NI-2013.pdf> p7

While the health service has implemented interpreting services, research conducted by NICEM has found that some individuals have had difficulty in accessing interpreters. Additionally, many individuals prove unaware that they are entitled to these services. However, the DHSSPS has asserted that it has comprehensive services in place, with highly trained staff. In 2013, there have been no new initiatives aiming to address interpreting issues. However, the DHSSPS did recognise the lack of awareness regarding interpreting services in its 2011 draft equality scheme, although this was not reflected in the final formulation of its 2012 Equality Scheme. The DHSSPS should build on its awareness of this issue and ensure that the availability of interpreting services is made known to those that need them.

### **Inadequate Sensitisation to Religious and Cultural Needs of Ethnic Minorities**

Alternatively, there are also obstacles to religious observance for religious minorities and the failure to provide services which meet the unique cultural and religious needs of faith based communities<sup>180</sup>. These include the lack of appropriate food in hospital environments (e.g. Halal, Kosher foods etc), the failure to provide inter-faith chapels to facilitate prayer, insensitivity to standards of modesty associated with hospital garments, limited availability and timing of circumcision procedures resulting in reliance on unlicensed GPs, to difficulties for Muslims in access and preparation of the body of the deceased. In addition, Jehovah's Witnesses' often experience stigmatisation for their refusal, on religious grounds, to accept blood-based treatments. Many ethnic minority individuals have difficulty securing culturally appropriate health services, such as female doctors for Muslim women or test results where there is a language barrier to surmount.

It is essential that further research be undertaken on the uptake of primary and secondary healthcare by ethnic minorities. NICEM has continued its work with several health trusts to develop a pilot project for monitoring ethnic minority usage of frontline health services. Such a scheme could provide valuable information on the usability experience of these services for ethnic minority individuals. Additionally, NICEM has informed CEDAW that it recommends that the DHSSPS should formulate an action plan on addressing the barriers that ethnic minority women experience when accessing healthcare. The ECNI has also noted the continuing obstacle to health care services presented by language barriers in its recommendations for racial equality policy.<sup>181</sup> However, the ECNI noted several other problems that ethnic minority individuals face in accessing health care services, including a lack of awareness regarding available services, the institutional racism of health care staff and obstacles presented by immigration restrictions. Indeed, even migrants working within the care system face discriminatory treatment; in the case of *Klosinska v Countrywide Care Homes Ltd*<sup>182</sup> an Industrial Tribunal found in favour of a claimant who asserted that she was subjected to hostile and racist treatment by co-workers, one of whom refused to work with the claimant and stated in the her presence that she "hate[d] immigrants".

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<sup>180</sup> DHSSPS, *Equality Action Plan: Audit of Inequalities* (DHSSPS 2011)

[http://www.dhsspsni.gov.uk/dhssps\\_draft\\_equality\\_action\\_plan.pdf](http://www.dhsspsni.gov.uk/dhssps_draft_equality_action_plan.pdf)

HSC *Audit of Inequalities* (HSC 2010)

<http://www.niamb.co.uk/docs/documents/HSCT%20Audit.pdf>

<sup>181</sup> ECNI, *Racial Equality Policy – Priorities and Recommendations*, 2013.

<sup>182</sup> *Klosinska v Countrywide Care Homes Ltd* (2013) NIIT 628\_13IT

## **Minimal Uptake of Mental Health Services by BME Communities**

The DHSSPS recognise that 'people from BME communities also find it difficult to access and engage with mental health services for several reasons' including structural barriers and cultural factors'. Many are impeded from accessing services due to prevailing stigma, taboo and culture of shame attached to mental health. Furthermore, the vulnerability of BME communities to mental health issues is intensified by a range of factors. Recent research on the mental health and wellbeing of Polish migrants highlights that underemployment, limited recognition of existing qualifications, communication difficulties arising from language barriers, literacy issues and cultural differences, lack of access to support networks, the upheaval of transition, unfamiliar surroundings and social isolation can manifest itself in chronic stress, insomnia, anxiety, depression, diminished self-esteem, agoraphobia, alcohol and substance misuse and a high suicide rate<sup>183</sup>.

Crucially, the findings indicated that there are also differences in perception and articulation of mental health issues. Polish migrants are more likely to use indirect description of symptoms and articulate the physical manifestation of psychological difficulties. At times GPs are not adequately sensitised to these cultural norms and may not accurately diagnose the patient. Polish migrants may also have expectations of building a close personal relationship with their local GP or receive immediate access to specialist advice including psychiatric assessments without the need for a referral. They may also anticipate their original prescription whilst in Poland to be automatically renewed or expect a comprehensive health check up rather than a brief and impersonal consultation which forms the standard practice in Northern Ireland. The failure of GPs to meet these needs and expectations may leave patients feeling alienated. Indeed, there is evidence that Polish migrants routinely seek medication online or return home for treatment due to these difficulties.

More generally, in times of economic downturn migrant workers face compounded vulnerability accentuated by unemployment and mental health problems. In light of the economic downturn leading to more migrants losing their jobs, charities have reported an increase in destitute migrants experiences drug and alcohol addiction issues. There have been several preventable tragic incidents due to such issues. In December 2009 a 30 year old Polish man, known to suffer from alcoholism died of exposure to the bitterly cold conditions during the Christmas period.<sup>184</sup> His case echoes the tragic situation of a destitute 27 year old Ukrainian woman who had both her legs amputated following horrific injuries gained as a result from sleeping rough in Coleraine in 2005. The NI Department of Health should tailor their Misuse of Drugs and Alcohol Scheme in order to reflect the needs of such Migrants. Preventative measures and support mechanisms could avert such tragedy.

In addition, there is evidence of higher rates of suicide and cluster suicides in certain migrant

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<sup>183</sup> Bell & Others, *"We asked for workers, but human beings came"* *Mental Health and Well-being of Polish Migrants in Northern Ireland* (KESS Jan 2014)

[http://www.niassembly.gov.uk/Documents/RaISe/knowledge\\_exchange/briefing\\_papers/series3/kouvonen090114.pdf](http://www.niassembly.gov.uk/Documents/RaISe/knowledge_exchange/briefing_papers/series3/kouvonen090114.pdf)

<sup>184</sup> NICEM Press release, 30<sup>th</sup> December 2011,

[http://www.nicem.org.uk/press\\_index/article/press-release-on-crisis-fund-and-human-rights](http://www.nicem.org.uk/press_index/article/press-release-on-crisis-fund-and-human-rights)

populations, including Eastern European communities and women of Asian descent. There are also high levels of mental health struggles experienced by members of the Traveller community. However, despite evidence of these barriers and inequalities experienced by BME groups, the 2012 Equality Scheme of the DHSSPS does not mention the specific needs of many ethnic minority individuals as regards mental health services, despite the fact that this area involves many particularities.<sup>185</sup> Language barriers present many unique problems for some ethnic minority individuals; for example, some may find that the difficulty of communicating mental health issues is compounded by having to communicate through an interpreter. Additionally, female patients with limited English could be accompanied by their husband, which may produce problems if they are victims of domestic abuse. Furthermore, difficulties in engaging fully with an English-speaking society may make many ethnic minority individuals more prone to developing a mental illness due to feelings of isolation. NICEM issued a recommendation in its submission to CEDAW in 2013 stating that NI should consider UK best practice in developing bespoke mental health services to meet the specific needs of ethnic minority communities.

### **Traveller Health**

Travellers experience the most significant disadvantage in terms of health of any ethnic group. The All-Ireland Traveller Health study<sup>186</sup> has shown that infant mortality rates have substantially worsened in the last 20 years. Traveller infants today are 3.6 times more likely to die than infants in the general population. In 1987 Traveller infants were 2.4 times more likely to die than in the general population. Members of the Traveller community have extremely poor health outcomes compared to the rest of the population. Female members of the Traveller community have a life expectancy that is 11.5 years lower than that of the general population, only 1 per cent of the Traveller population are over 65 and male members of the community have a suicide rate 7 times higher than that of the general population. Additionally, Traveller infants are 3.6 times more likely to die in their infancy in comparison to the general infant population.<sup>187</sup> Furthermore, it is NICEM's experience that Roma individuals are more likely to have missed out on receiving immunisation against various diseases. Findings from the Joseph Rowntree Foundation on the health outcomes of Traveller and Gypsy communities indicates that 'poverty, poor living conditions on many sites and problems accessing primary health care can lead to the early onset of health conditions associated with older people'.<sup>188</sup>

Findings from the All Ireland Traveller Health Survey (2010) include limited awareness of preventative health measures such as immunisation and screening, lack of familiarity with the GP

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<sup>185</sup> DHSSPS, *Equality Scheme for the Department of Health, Social Services and Public Safety*, 2012  
[http://www.dhsspsni.gov.uk/equality\\_scheme\\_march\\_2012.pdf](http://www.dhsspsni.gov.uk/equality_scheme_march_2012.pdf)

<sup>186</sup> All Ireland Traveller Health Study, September 2010, School of Public Health, Physiotherapy and Population Science, University College Dublin,  
[http://www.dohc.ie/publications/aiths2010/ExecutiveSummary/AITHS2010\\_SUMMARY\\_LR\\_All.pdf?direct=1](http://www.dohc.ie/publications/aiths2010/ExecutiveSummary/AITHS2010_SUMMARY_LR_All.pdf?direct=1)

<sup>187</sup> Our Geels and UCD Dublin, *All Ireland Traveller Health Study*, 2010, pp.87 and 94. Available at:  
[http://www.dohc.ie/publications/aiths2010/ExecutiveSummary/AITHS2010\\_SUMMARY\\_LR\\_All.pdf?direct=1](http://www.dohc.ie/publications/aiths2010/ExecutiveSummary/AITHS2010_SUMMARY_LR_All.pdf?direct=1)

<sup>188</sup> Blood I, *Older people with high support needs: How can we empower them to enjoy a better life: Reviewing the Evidence* (JRF Oct 2010)  
<http://www.jrf.org.uk/sites/files/jrf/supporting-older-people-summary.pdf> p4



registration process and lack of regular contact with healthcare providers, limited literacy impeding access to health information, high levels of hereditary disease, persistent insensitivity to the cultural needs of travellers and the lack of specialised services, the inadequacy of accommodation, particularly in terms of poor sanitation and limited access to clean water supply and electricity in transit sites, heightened risk of early childhood mortality due to the incidence of accidents on unsafe halting sites, severely diminished life expectancy, higher suicide rates among men and women and mental health issues aggravated by social isolation, stress, uncertainty of tenure, inadequate living conditions, overcrowding in confined places, unemployment and domestic violence. The report recommended that targeted measures be undertaken to improve mother and child services, men's health issues and address cause-specific issues for respiratory and cardiovascular disease. A priority should also be given to a new model of primary care delivery for Travellers<sup>189</sup>.

### **Maternal Health**

The HSCT Audit of Inequalities highlights that maternal and infant mortality are higher among BME groups. BME women were more likely to access services late (e.g. not have a scan by 20 weeks, attend antenatal classes, have a post natal check up and were more likely to experience complications)<sup>190</sup>. In 2010, the DHSSPS commissioned a comprehensive review of maternity services to consider current service provision in terms of quality and safety of services at each stage of pregnancy against national and international standards. This was identified as a key measure to better assess the maternal health needs of BME women<sup>191</sup>. However, the Strategy for Maternity Care in Northern Ireland 2011-2018 neglects the specific needs of BME women and does not provide coverage of the drastic inequalities they experience or identify mitigating measures, other than stating amongst other factors, that 'pregnancy outcomes are poorer' for BME groups<sup>192</sup>. Indeed, the unique difficulties experienced by asylum seeking women, Traveller women and Black African women are overlooked altogether.

It is important to note that the ICESCR Committee have emphasized that the right to health must be 'effective' and extends to "measures to improve child and maternal health, sexual and reproductive health services, including access to family planning, pre, and post-natal care... [and] emergency obstetric services' which are not currently provided for under the draft regulations. Furthermore, Article 12 of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) has been elucidated under the Committee's General Recommendation No 24, which seeks to protect women from discrimination in access to healthcare which is gender specific and includes prenatal and antenatal care.

### **BME Older People and Carers**

The HSCT Audit of Inequalities fails to recognise the breadth of health related inequalities facing

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<sup>189</sup> [http://www.dohc.ie/publications/traveller\\_health\\_study.html](http://www.dohc.ie/publications/traveller_health_study.html)

<sup>190</sup> HSC Audit of Inequalities (HSC 2010)

<http://www.niamb.co.uk/docs/documents/HSCT%20Audit.pdf>

<sup>191</sup> DHSSPS, *Equality Action Plan: Audit of Inequalities* (DHSSPS 2011)

[http://www.dhsspsni.gov.uk/dhssps\\_draft\\_equality\\_action\\_plan.pdf](http://www.dhsspsni.gov.uk/dhssps_draft_equality_action_plan.pdf)

<sup>192</sup> DHSSPS, *A Strategy for Maternity Care in Northern Ireland 2012 - 2018* (DHSSPS 2012)

<http://www.dhsspsni.gov.uk/maternitystrategy.pdf>



BME older people. BME older people continue to experience a diffuse range of specific difficulties including higher prevalence of health complaints in certain ethnic groups. There is a higher rate of respiratory difficulties, coronary heart disease and certain forms of dementia experienced by ethnic minorities. Indeed, there is also a severely diminished life expectancy in the Irish Traveller community, with only 1 per cent living beyond 65. Recent research undertaken by the Joseph Rowntree Foundation indicates that 'people over 65 from 'Asian' and 'Black' ethnic categories are disproportionately affected by poor quality health and high rates of limiting long-term illness'.<sup>193</sup> In addition 'older refugees, asylum seekers and long-term homeless people tend to experience a similar 'premature ageing', caused by stress, trauma, poverty and barriers to services'.<sup>194</sup> Findings from the advice services at the Belfast Migrant Centre indicate that younger BME people (former Eastern Bloc) are presenting with health complaints and mobility issues traditionally associated with older people (e.g. higher incidence of certain forms of cancer and cardiovascular disease). In addition, the Runnymede Trust also found that 'BME people are more likely to self-report low levels of health'.<sup>195</sup>

BME older people are often differentially affected by language barriers, limited access to social and support networks and limited awareness of interpreting and translation services. In addition, rural isolation has a particular impact on the independence and quality of life experienced by ethnic minorities who may struggle to access culturally appropriate services and amenities such as restaurants, hairdressers, travel agents etc.

Research indicates that BME older people are more susceptible to certain forms of dementia, including vascular and early onset dementia. However, there are a range of structural and cultural barriers which impede uptake of essential healthcare services by BME older people, specifically access to specialised care and support for Alzheimers and dementia. Many are reluctant to access services due to prevailing stigma, taboo and a culture of shame attached to mental health issues and cognitive impairment. Research with Black Caribbean and Irish Travellers indicates that dementia may be misunderstood as a form of 'mental illness rather than the result of physiological changes in the brain'<sup>196</sup>. Indeed, the research also noted that Eastern Europeans may place a value on stoicism and 'keeping face' due to prevailing cultural norms<sup>197</sup>. There may be religious beliefs which intensify stigma, particularly within Hinduism, Buddhism, Sikhism and Baha'ism, where views on reincarnation may equate dementia with a form of punishment or judgment for sins in a past life. At times GPs are not adequately sensitised to these cultural norms and may not accurately diagnose the patient.

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<sup>193</sup> Blood I, *Older people with high support needs: How can we empower them to enjoy a better life: Reviewing the Evidence* (JRF Oct 2010)

<http://www.jrf.org.uk/sites/files/jrf/supporting-older-people-summary.pdf>

<sup>194</sup> Blood I, *Older people with high support needs: How can we empower them to enjoy a better life: Reviewing the Evidence* (JRF Oct 2010)

<http://www.jrf.org.uk/sites/files/jrf/supporting-older-people-summary.pdf> p4

<sup>195</sup> Khan, *A Sense of Place: Retirement Decisions Among Older BME People* (Runnymede Trust, 2012)

<http://www.runnymedetrust.org/uploads/publications/pdfs/ASenseOfPlace-2012.pdf>

<sup>196</sup> Moriarty & Others, *Black and Minority Ethnic People with Dementia and their Access to Support and Services* (SCIE March 2011)

<http://www.scie.org.uk/publications/briefings/files/briefing35.pdf> p6

<sup>197</sup> Moriarty & Others, *Black and Minority Ethnic People with Dementia and their Access to Support and Services* (SCIE March 2011)

<http://www.scie.org.uk/publications/briefings/files/briefing35.pdf>

Whilst the HSCT Section 75 Action Plan does identify the increased vulnerability of BME older people to certain forms of dementia, the proposed action measure was the formulation of a regional strategy on the improvement of dementia services. However, the resultant strategy entirely overlooks the needs of BME older people. The higher prevalence of dementia in certain ethnic minority communities is compounded by the negative impact of social norms, stigma and religious beliefs on uptake of support services. Indeed, due to limited awareness levels of the causes and treatment options available for dementia, the illness is often misunderstood or regarded as a form of karmic punishment, leaving the individual isolated and reluctant to seek access to support services. The Active Ageing Strategy 2014-2020 highlights that discussions with Atlantic Philanthropies and Departments, proposals are currently being developed which will complement the recommendations in the Northern Ireland Dementia Services Strategy 2011<sup>198</sup>. It is essential that any updated recommendations include proposals for targeted measures to improve uptake and awareness levels of dementia services amongst BME older people.

NICEM have also identified issues around the unmet housing and care needs of BME older people. Factors including cultural barriers, mistrust of statutory residential care providers and the prohibitive financial expense of private residential care, ensure that BME older people rely on extended family support structures to meet their care needs. Indeed, the EqIA for the HSCB Transforming Your Care consultation on the provision of statutory residential care indicated that there are no ethnic minorities currently in state-run care homes in Northern Ireland<sup>199</sup>.

There is a higher prevalence of inter-generational households in ethnic minority communities, particularly in Roma, Traveller and Gypsy communities and in Eastern European families, where grandparents often assume informal childcare responsibilities for grandchildren due to prohibitive costs and inaccessibility of formal childcare. The grandparents may then in turn be cared for by the broader family. Indeed, recent research undertaken by the Runnymede Foundation noted that within South Asian communities (i.e. Indians, Pakistanis and Bangladeshis) in particular, grandparents often assume the role of informal care providers in multi-generational households<sup>200</sup>. However, due to kingship obligations, BME carers are often reluctant to seek help and feel duty bound to assist with care responsibilities. Indeed, BME carers often lack awareness of respite services available and support groups for carers.

### **Restrictions in Access to Health Services for Persons Not Ordinarily Resident**

Access to primary health care is, as a consequence of numerous complex policies and regulations, dependent upon whether or not individuals are identified as being 'ordinarily resident' in NI<sup>201</sup>. The DHSSPS have recognised the limited awareness of migrant workers of their entitlement to primary and secondary healthcare services in the HSC Audit of Inequalities and made a commitment to introducing comprehensive guidance in its Section 75 Action Plan

<sup>198</sup> OFMDFM, *Active Ageing Strategy 2014-2020* (OFMDFM 2014)

<http://www.ofmdfmi.gov.uk/active-ageing-strategy-2014-2020-consultation.pdf>

<sup>199</sup> [http://www.hscboard.hscni.net/consult/Previous%20Consultations/2013-14%20Consultation-Statutory\\_Residential\\_Care\\_Homes/index.html#P-1\\_0](http://www.hscboard.hscni.net/consult/Previous%20Consultations/2013-14%20Consultation-Statutory_Residential_Care_Homes/index.html#P-1_0)

<sup>200</sup> Khan, *A Sense of Place: Retirement Decisions Among Older BME People* (Runnymede Trust, 2012)

<http://www.runnymedetrust.org/uploads/publications/pdfs/ASenseOfPlace-2012.pdf>

<sup>201</sup> <http://www.lawcentreni.org/Publications/Policy-Briefings/Policy-Briefing-Migrants-and-health-care-Law-Centre-NI-2013.pdf>

(January 2011). However, 40 months have elapsed and no further guidance has been issued.

In 2013, the DHSSPS initiated a consultation on amending the Provision of Health Services to Persons Not Ordinarily Resident Regulations to address some of these concerns.<sup>202</sup> Unfortunately, some proposed changes would result in individuals determined to be “visitors” paying for access to health services in NI in situations where they would not have to do so in the rest of the UK. If a person is not considered an ordinary resident, they are categorised as a visitor and will be liable for charged for access to primary and secondary healthcare. This represents both a counterproductive addition to an already problematic area and an inconsistency with wider UK provisions. NICEM asserts that the DHSSPS should extinguish the link between nationality and access to primary health care to ensure that individuals can access health services regardless of their “status”. Relatedly, the ECNI published its priorities and recommendations on Racial Equality Policy, re-emphasising the level of uncertainty regarding who is legally entitled to free health care. Indeed, the ECNI has recommended the implementation of a system for monitoring the health of ethnic minorities, particularly in light of statistics illustrating that some ethnic minority groups suffer far worse health outcomes than average.

NICEM, the Belfast Migrant Centre and the Northern Ireland Community of Refugees and Asylum Seekers issued a joint statement to the Committee for Health, Social Services and Public Safety outlining their concerns regarding the draft update to the 2005 Regulations. It recognised that those with insecure immigration status, including refused asylum seekers and irregular migrants, are only eligible for emergency treatment which is deemed to be ‘urgent’ and ‘immediately necessary’. This restriction is likely to result in severe distress and unnecessary harm to patient health. It may also result in breaches of the right to freedom from inhuman or degrading treatment under Article 3 of the European Convention on Human Rights. This right is deemed as absolute and cannot be derogated from. Indeed, the judgment in *D v United Kingdom* (1997) 24 EHRR 423 ruled that an HIV patient could not be returned to a state of origin where medical treatment was inadequate. NICEM therefore urge the Health Committee to apply the principle of non-discrimination to safeguard vulnerable asylum seekers, particularly women and older people, against the risk of serious harm resulting from the arbitrary denial of access to free healthcare. NICEM are also concerned about the failure to adequately consider the ‘best interests’ of the child in the provision of healthcare, with Barnardos NI having recently documented a number of cases where children of refused asylum seekers have been de-registered from their GP<sup>203</sup>.

### **Uncertain Implications of the Immigration Act**

In Northern Ireland, healthcare is devolved to the Northern Ireland Executive under the auspices of the Department of Health and Social Services and Public Safety of Northern Ireland (DHSSPS).

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<sup>202</sup> DHSSPS, *Proposed Consolidation and Updating of the Provision of Health Services to Persons Not Ordinarily Resident Regulations (Northern Ireland) 2005, Including Amendments to Specific Provisions and Extension to Primary Care Services*, 2013. Available at: [http://www.dhsspsni.gov.uk/ordinarily\\_resident\\_consultation.pdf](http://www.dhsspsni.gov.uk/ordinarily_resident_consultation.pdf)

<sup>203</sup> Law Centre NI, *Policy Briefing: Accessing Healthcare for Migrants in Northern Ireland: Problems and Solutions* (LCNI June 2013) <http://www.lawcentreni.org/Publications/Policy-Briefings/Policy-Briefing-Migrants-and-health-care-Law-Centre-NI-2013.pdf> p10

Health reforms in 2009 established several health authorities with various responsibilities under the DHSSPS. Northern Ireland is different to the rest of the UK in that it provides for an integrated system of health and social care. In addition, Northern Ireland shares a land border with another EU Member State, the Republic of Ireland<sup>204</sup>. This border means that access to GPs has tightly controlled.

Northern Ireland hosts only 1% of the non-EEA migrant totals of the entire UK. It thus follows that the financial impact of non-EEA migrants on the health service in Northern Ireland would be minimal. In addition, the Northern Ireland Strategic Migration Partnership (NISMP) submitted evidence to the Public Bill Committee suggesting the majority of non-British or Irish nationals accessing the health service are EU nationals (based on the languages requested through the interpreting service). As these migrants would be outside the scope of the Immigration Bill, it is highly unlikely that restricting access for certain categories of non-EEA migrants would generate cost savings for the health service in Northern Ireland.

Furthermore, Northern Ireland has a well-documented strain on its hospitals, admitting more people to hospitals than any other region of the UK (DHSSPS, 2013). This, coupled with the higher cost of administering secondary care to primary care, has serious cost implications for Northern Ireland. This is also value in targeting certain groups and certain illnesses; there is a higher occurrence of certain illnesses among migrant populations that are better treated at primary care level. Without access to free primary care, there is a risk that otherwise manageable conditions could deteriorate, requiring more serious hospital care at a much higher cost to the NHS than regular primary care treatment. There are also specific issues around lower uptake of maternity services, higher prevalence of post-natal depression, and a higher occurrence of domestic violence among BME groups (Belfast Health and Development Unit, 2011) –these issues all have the potential to suffer without access to primary health and social care services or where there is additional confusion over access to those services<sup>205</sup>.

While there are certainly instances in which individuals request that family members act as interpreters due to the sensitivity of health issues, it can also be the case that professional interpreters are not made available to those who request it. In NICEM's report on health provision in Northern Ireland, it was found that half of those who required the assistance of an interpreter failed to receive it. In particular, the use of interpreters raises significant issues in the context of mental health issues. Many people find it difficult to talk to health professionals through an interpreter. Such arrangements also have severe consequences for women with limited English who are victims of domestic violence, such women may be accompanied to the doctor by their husband or a member of their husband's family, and subsequently may be unable to disclose to the GP that they are suffering domestic violence.

## **Recommendations**

- **The DHSSPS, HSCB and HSCTs should update their Audits of Inequality and Action Plans to**

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<sup>204</sup> Written evidence to the Public Bill Committee from the Northern Ireland Strategic Migration Partnership (NISMP) IB 13 on Immigration Reform

<http://www.publications.parliament.uk/pa/cm201314/cmpublic/immigration/memo/ib63.htm>

<sup>205</sup> Written evidence to the Public Bill Committee from the Northern Ireland Strategic Migration Partnership (NISMP 2013)

focus attention on health inequalities and specific needs of BME communities including:

- BME mental health
  - BME maternal health
  - BME older people - health needs and respite provision
  - Traveller and Roma community health needs
- 
- The Provision of Health Services to Persons Not Ordinarily Resident Regulations (Northern Ireland) 2005 should be revised to ensure those with insecure immigration status are able to access primary and secondary health services, including but not limited to maternity services, mental health services and dementia services
  - The DHSSPS should formulate an action plan on addressing the barriers that ethnic minority women experience when accessing healthcare.
  - The Northern Ireland Assembly should seek to limit the scope of application of the Immigration Act in relation to transferred matters;
    - DHSSPS should ensure access to primary and secondary healthcare is not curtailed on the basis of insecure immigration status.

## **11. Education**

The Committee encourages the State party to take all necessary steps to eliminate all racist bullying and name-calling in the State party's schools. The Committee urges the State party to introduce awareness-raising campaigns in the State party's schools with a view to changing the mindset of pupils, and to promote tolerance and respect for diversity in the education sector. (para 23 ICERD 2011)

The Committee recommends that the State party adopt an intensified approach towards preventing exclusion of Black pupils and set out in detail its plans for addressing under-achievement for those groups which have been identified as most affected, notably Gypsy and Traveller children and Afro-Caribbeans.

(para 24, ICERD Concluding Observations on UK, 2011)

The Committee recommends that the State party should:

- (a) Consider introducing mandatory age appropriate education on sexual and reproductive rights in school curricula, including issues on gender relations and responsible sexual behaviour, particularly targeting adolescent girls; and
- (b) Enhance measures to prevent, punish and eradicate all forms of violence against women and girls, including bullying and expressions of racist sentiments, in educational institutions;
- (c) Intensify career guidance activities to encourage girls to pursue non-traditional paths and improve the gender awareness of teaching personnel at all levels of the education system;
- (d) Take coordinated measures to encourage girls' increased participation in STEM and apprenticeships; and
- (e) Take appropriate measures to collect data on women in positions at all levels of academic

institutions and improve the representation of women at the higher echelons.

(para 45, CEDAW Concluding Observations on UK, 2013)

The Committee recommends that the State party adopt all appropriate measures to reduce the achievement gap in terms of school performance between British pupils and pupils belonging to ethnic, religious or national minorities in the field of education, inter alia, by ensuring the adequate provision of English-language courses for those students who lack adequate language proficiency and avoiding the overrepresentation of minority students in classes for children with learning difficulties. The Committee further recommends that the State party undertake further studies on the correlation between school failure and social environment, with a view to elaborating effective strategies aimed at reducing the disproportionate dropout rates affecting minority pupils.

(para 36, ICESCR Concluding Observations on UK, 2009)

To support the inclusion in the school system of all children of Roma origin and to act to reduce drop-out rates, in particular among Roma girls, and, for these purposes, to cooperate actively with Roma parents, associations and local communities. (para 17)

To prevent and avoid as much as possible the segregation of Roma students, while keeping open the possibility for bilingual or mother-tongue tuition; to this end, to endeavour to raise the quality of education in all schools and the level of achievement in schools by the minority community, to recruit school personnel from among members of Roma communities and to promote intercultural education. (para 18)

To consider adopting measures in favour of Roma children, in cooperation with their parents, in the field of education. (para 19)

To act with determination to eliminate any discrimination or racial harassment of Roma students. (para 20)

To take the necessary measures to ensure a process of basic education for Roma children of travelling communities, including by admitting them temporarily to local schools, by temporary classes in their places of encampment, or by using new technologies for distance education. (para 21)

To ensure that their programmes, projects and campaigns in the field of education take into account the disadvantaged situation of Roma girls and women. (para 22)

To take urgent and sustained measures in training teachers, educators and assistants from among Roma students. (para 23)

To act to improve dialogue and communication between the teaching personnel and Roma children, Roma communities and parents, using more often assistants chosen from among the Roma. (para 24)



**To ensure adequate forms and schemes of education for members of Roma communities beyond school age, in order to improve adult literacy among them. (para 25)**

**To include in textbooks, at all appropriate levels, chapters about the history and culture of Roma, and encourage and support the publication and distribution of books and other print materials as well as the broadcasting of television and radio programmes, as appropriate, about their history and culture, including in languages spoken by them. (para 26)**

**(Para 17 – 26, CERD General XXVII on Discrimination Against Roma, 2000)**

**In the field of education, more resolute measures should be taken to tackle the difficulties facing Gypsies, Travellers and Roma in the education system, including low rates of enrolment, high drop out rates, the lack of training for teachers working with pupils from these minorities and the general lack of preparation of schools to integrate Gypsy, Traveller and Roma pupils.**

**Third opinion on the UK, of the Advisory Committee on the Framework Convention for the Protection of National Minorities, June 2011**

The right to education is enshrined in a number of international human rights instruments. In particular, Articles 28 and 29 of the United Nations Convention on the Rights of the Child (CRC) states that the right to education is to be achieved “on the basis of equal opportunity”. When coupled with the overarching principles of non-discrimination (Article 2 CRC), it is clear that the State is obliged to realise all children’s right to education. In addition, it is recognised that this right is to be achieved “progressively”. The concept of progressive realisation is a well-established principle in human rights law and it means that a child’s full enjoyment of the right to education may be achieved over time. In NICEM’s view, this is a clear mandate for State parties to take a human rights-based approach to budgeting. If human rights (particularly children’s rights as set out in the CRC) are to be mainstreamed this would mean that crucial principles such as the best interests of the child, the voice of the child and non-discrimination would play a role in budget allocations to ensure that all children’s right to education may be effectively realised.

### **Racist Bullying and Educational Underattainment**

NICEM are deeply concerned at the prevalence and persistence of racist bullying in schools and the disproportionately low attendance rates, high levels of illiteracy and educational underattainment experienced by Traveller and Roma children. The Equality Commission Northern Ireland (ECNI) have identified wide ranging educational inequalities experienced by Traveller children in its report, *Every Child An Equal Child*, with 92 per cent of Travellers leaving school without qualifications compared with 4 per cent for school-leavers overall. Indeed, this carries a drastic impact on the participation of Travellers in the labour market and public and political life. According to the most recent census figures in 2011, only 31 per cent of Travellers aged 16-74 are economically active. The figure is diminished further for Traveller women and stands at 21 per cent.

Our research report on ‘Promoting Racial Equality in Northern Ireland’s Post-Primary Schools’ (2011) documents the diffuse adverse impacts of racist bullying on BME children,



particularly Traveller and Roma children, which include poor academic performance, limited school attendance, psychological damage, anxiety, depression, low self-esteem, and difficulties in forming relationships<sup>206</sup>. It is clear that racist bullying has a significant role in discouraging attendance and exacerbating poor educational outcomes and a sense of exclusion experienced by BME children. Figures indicate that 75% of BME pupils experienced derogatory name-calling, with 25% being subjected to exclusion from social activities and verbal threats. Further research found that 42% of minority ethnic 16 year old students had been 'a victim of racist bullying or harassment in their school'.<sup>207</sup>

NICEM has also noted, in its shadow report to the UN Committee on the Elimination of Discrimination Against Women (June 2013), that bullying and xenophobia towards Traveller girls at school continues to impact their educational attainment. Indeed, figures reveal minority students were 3 times more likely than other students to leave school with no GCSE qualifications<sup>208</sup>. Indeed, the Equality Commission noted recently that whilst there is 'little formal research on the experience of Roma pupils, anecdotal evidence suggests exceptionally high levels of educational disadvantage exacerbated by a low level of English language proficiency, social exclusion and poverty'<sup>209</sup>.

The issue of racist bullying in schools is worsened by a failure to designate schools as public authorities for the purposes of Section 75 of the Northern Ireland Act 1998. The implication is that they are not subject to equality duties outlined under Section 75. This limits the accountability of schools, and heightens the risk of discrimination and harassment faced by vulnerable Traveller pupils. Schools are not legally responsible for pupil on pupil harassment on the grounds of race. Consequently school authorities frequently deny any racial or religious elements when they receive complaints. Furthermore, many children are victimised as the result of their complaint and the institutionalized racial discrimination is not dealt with.<sup>210</sup> NICEM thoroughly support the recommendation of the Equality Commission that a mandatory duty be imposed on schools to gather disaggregated data on incidents of racist bullying in order to strengthen the effectiveness of responses and intervention<sup>211</sup>.

Whilst the Education and Libraries (NI) Order 2003 requires grant-aided schools to introduce anti-bullying component to their discipline policy, the lack of centralised guidance from the Department of Education (DENI) has resulted in minimal awareness levels of the complexity of issues surrounding racist bullying across school management and has forced schools to develop

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<sup>206</sup> Rooney & Fitzpatrick, *Racial Equality in Northern Ireland's Post-Primary Schools* (NICEM 2011), p26

[http://nicem.org.uk/wp-content/uploads/2014/03/Education\\_report\\_-\\_Final\\_PDF.pdf](http://nicem.org.uk/wp-content/uploads/2014/03/Education_report_-_Final_PDF.pdf)

<sup>207</sup> NCBNI and ARK YLT, *Attitudes to Difference* (NCBNI 2010) page 55

<sup>208</sup> Good Relations Indicators 2010 update, under priority 7.5c data set

<http://www.ofmdfmi.gov.uk/gr-pubs>

<sup>209</sup> ECNI, *Racial Equality Policy Priorities and Recommendations* (ECNI, August 2013)

[http://www.equalityni.org/ECNI/media/ECNI/Consultation%20Responses/2013/Racial\\_Equality\\_Policy-Priorities\\_and\\_Recommendations.pdf?ext=.pdf](http://www.equalityni.org/ECNI/media/ECNI/Consultation%20Responses/2013/Racial_Equality_Policy-Priorities_and_Recommendations.pdf?ext=.pdf)

<sup>210</sup> The RRO does not account for 3<sup>rd</sup> party harassment in NI, this is covered by the new single equality legislation in GB

<sup>211</sup> Equality Commission NI, *Strengthening Protection Against Racial Discrimination in Northern Ireland: Recommendations for Change* (ECNI January 2014) p11

<http://www.equalityni.org/ECNI/media/ECNI/Publications/Delivering%20Equality/Raceequalityproposalsforlawrefo rm14-01-14.pdf>

disparate and inconsistent anti-bullying policies. This results in uneven protections against bullying for BME pupils. It also diminishes the capacity and resources of schools to develop an effective and targeted response to combat racist bullying. Indeed, NICEM have encountered multiple ethnic minority families that have had to remove their children from schools as their only option in the face of schools' inaction over particular issues.

The research commissioned by DENI entitled *The Nature and Extent of Pupil Bullying in Schools in the North of Ireland* (2011) focuses negligible attention on racist bullying and concentrates on other forms of prejudice such as disablism and homophobia<sup>212</sup>. Therefore, it is essential that the Department of Education (DENI) review the effectiveness of its current anti-bullying policy in addressing racial equality and develop central guidance in line with that provided in England and Wales<sup>213</sup>. Both NICEM and the Belfast Migrant Centre are active participants in the Northern Ireland Anti-Bullying Forum which is operated by DENI. It assists in providing strategic input on regional anti-bullying issues, coordinates anti-bullying week and is comprised of cross-sectoral representatives from the Education and Library Boards and civil society actors. NICEM recommend that the NI Anti-Bullying Forum reconvene the Task Group on Bullying due to Race, Faith and Culture.

### **Failure to Impose Equality Duties on Schools**

The Department of Education is designated as a public authority and must have due regard to promote equality of opportunity for vulnerable groups protected under section 75, which includes BME students. However, schools themselves are not designated under the legislation, which means they are not subject to equality duties. This limits the accountability of schools, and heightens the risk of discrimination and harassment faced by vulnerable BME pupils. NICEM recognises the central role of equality of opportunity in the education system and would strongly recommend the designation of schools under section 75. This remedy would provide a highly effective tool for promoting equality of outcome for all pupils. It would also encourage a proactive approach to reducing the level of under-attainment of BME pupils, and promote greater accountability and transparency in school communities.

### **Minimal Uptake of FSME by BME Pupils**

Free School Meals *Entitlement* (FSME) does provide some form of proxy for socio-economic disadvantage but it critically overlooks the specific needs of BME communities. The failure to develop more responsive guidelines for reallocating funds in order to target social need, is likely to carry disproportionate adverse impacts on BME communities and religious minorities.

Article 14 (1) and (2) of the UN Convention on the Rights of the Child protects freedom of thought, conscience and religion for children, and ensures parents are able to 'provide direction to the child in the exercise of his or her right in a manner consistent with the evolving capacities of the child'. The realization of these rights may include observing ritual fasts or adhering to strict dietary requirements. Therefore, relying exclusively on the FSME indicator may carry

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<sup>212</sup> Watters, *The Nature and Extent of Pupil Bullying in Schools in the North Ireland* (Department of Education, 2011) [http://www.deni.gov.uk/no\\_56\\_report\\_final\\_2011.pdf](http://www.deni.gov.uk/no_56_report_final_2011.pdf)

<sup>213</sup> Department for Education and Skills, *Bullying Around Racism, Religion and Culture*, 2006 <http://www.insted.co.uk/racist-bullying-april11.pdf>

exclusionary implications for observers of Judaism, Islam, Hinduism, Bahaism, Rastafarianism and Sikhism, who may require, for example, Kosher foods or Halal meat.

Furthermore, the *Nutritional Standards for Lunches* designed to mitigate this issue does not provide adequate guidance on what measures schools can undertake to cater to these needs<sup>214</sup>. Research reveals a persistent failure to cater to the needs of BME students through the provision of inappropriate food, the failure to disclose ingredients and minimal efforts to resolve uncertainty and hesitation faced by families, by communicating information and resources in the appropriate language.

These simple and targeted measures would alleviate cultural barriers which impede the uptake of FSM by BME children<sup>215</sup>. NICEM would seek to reinforce paragraph 27 of the *Healthy Food for Healthy Outcomes - Food in Schools Policy* (September 2013) which aims to ensure 'schools take into account religious and cultural requirements, allergies and special dietary requirements when devising their whole-school approach and that the views of pupils and parents affected are taken into consideration'.

The Race Relations (Northern Ireland) Order 1997 promotes non-discrimination which applies to schools, and prohibits indirect discrimination, where people of different ethnic origin 'at particular disadvantage' unless it is a 'proportionate means of achieving a legitimate aim'. It is clear that given the high levels of socio-economic disadvantage facing BME communities<sup>216</sup>, adopting FSME as a sole indicator may indirectly discriminate against certain categories of children. Indeed, if targeted measures are not taken to address cultural sensitivities and meet the specific needs of religious minorities, it may exclude BME children from uptake on the scheme. NICEM would strongly encourage the adoption of alternative indicators which are more holistic and adequately sensitised to address the specific needs of BME communities. This would better ensure the aim of targeting social need.

Indeed, the FSME indicator has been subject to intensive scrutiny and criticism from educational experts and anti-poverty campaigners. The Sutton Trust, an organisation dedicated to combating educational under-attainment for children from underprivileged backgrounds have criticized the FSME as a 'crude measurement'<sup>217</sup>. Indeed, John Dickie, the Head of the Child Poverty Action Group (CPAG) in Scotland have challenged reliance on FSME for generating inaccurate data and discrepancies.

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<sup>214</sup> DENI, *Every School a Good School: Health Food for Healthy Outcomes* (DENI/DHSSPS September 2013)

<http://www.deni.gov.uk/food-in-schools-policy.htm>

DENI, *Nutritional Standards for School Lunches: A Guide for Implementation* (DENI 2007)

[http://www.deni.gov.uk/de1\\_09\\_125640\\_nutritional\\_standards\\_for\\_school\\_lunches\\_a\\_guide\\_for\\_implementation\\_3\\_-2.pdf](http://www.deni.gov.uk/de1_09_125640_nutritional_standards_for_school_lunches_a_guide_for_implementation_3_-2.pdf)

<sup>215</sup> Rooney & Fitzpatrick, *Promoting Racial Equality in Northern Ireland's Post-Primary Schools* (NICEM, June 2011) p34

<sup>216</sup> Professor Ron McQuaid & Others, *Economic Inequalities in an Economic Downturn: Research Summary from Employment Research Institute and Edinburgh Napier University* (ECNI 2010) p6, Sarah Isal, *Experiences of Black and Minority Ethnic Women in Northern Ireland* (NICEM 2013) p20

<sup>217</sup> Stanford, P, 'Too much on their plates? The trouble with free school meals' *The Independent* (16 May 2011) <http://www.independent.co.uk/news/education/education-news/too-much-on-their-plates-the-trouble-with-free-school-meals-2284595.html?service=Print>

In terms of identifying viable alternative indicators, the Northern Ireland Statistics and Research Agency (NISRA) were responsible for adopting the NI Multiple Deprivation Measure (NIMDM 2010) which draws on a more holistic range of indicators of deprivation<sup>218</sup>. The seven 'domains of deprivation' encompass Income, Employment, Health deprivation and Disability, Education Skills and Training, Barriers to Housing and Services, Crime and the Living Environment). The statistics are produced on a ward-by-ward basis, providing a detailed snapshot of the most and least deprived electoral wards in Northern Ireland. These measurements, in conjunction with benefit entitlements may provide a rich data set on which to determine the alternative distribution of funds, to better target social need.

### **Limited Representation of BME Parents on Board of Governors**

The failure to gather disaggregated data on the background/ethnicity of Board Members or include relevant criteria in application forms, makes it difficult to monitor the representation of BME parents on the Board of Governors. However, it is clear the low level of participation of BME parents may carry implications for the equitable distribution of funds. It is essential that there are sufficient governance and accountability mechanisms in place to ensure the Board does not execute its functions in a discriminatory manner. Indeed, NICEM strongly recommend that schools (i.e. not designated as public authority under Section 75) are subjected to independent oversight mechanisms (e.g. dedicated Ombudsman) as a minimal level of protection, to ensure the administration of the budget does not adversely impact BME pupils. Furthermore, a crucial recommendation is for Boards to undertake targeted consultation with BME parents, perhaps hosting focus groups or ensuring informational materials are made available in other languages, to ensure their needs and those of their children, are reflected in decision making and budget allocation processes.

### **Newcomer Children**

NICEM are also concerned at the vulnerability of newcomer children and recognise that demographic changes within Northern Ireland have contributed to the visibility of these issues, and reinforce the urgency of the Department of Education instituting measures to address their unique needs. Indeed, there has been a significant increase in the number of newcomer pupils in Northern Ireland from 1,366 in 2001/02 to 9,656 in 2012/13<sup>219</sup>. In Northern Ireland 13.7% of newcomer pupils<sup>220</sup> attend grammar school compared to 42.5% of non-newcomer students.<sup>221</sup> Pupils who attend grammar school are more likely to achieve higher levels of academic attainment,<sup>222</sup> to attend University and get a better paying job than those who do not. The use of school entrance tests that have a strong English-language component, along with

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<sup>218</sup> [http://www.nisra.gov.uk/deprivation/nimdm\\_2010.htm](http://www.nisra.gov.uk/deprivation/nimdm_2010.htm)

<sup>219</sup> Kathryn Torney, 'Dramatic Increase in Newcomer Pupils Attending NI's Schools' *The Detail* (03 February 2014) <http://www.thedetail.tv/issues/304/newcomer-pupils/dramatic-increase-in-newcomer-pupils-attending-nis-schools>

<sup>220</sup> Defined as a pupil "who does not have the satisfactory language skills to participate fully in the school curriculum and does not have a language in common with the teacher" in DENI 2009 *Supporting Newcomer Pupils* page iii).

<sup>221</sup> Rooney & Fitzpatrick, *Promoting Racial Equality in Northern Ireland's Post-Primary Schools* (NICEM, June 2011)

<sup>222</sup> The proportion of school leavers with no GCSE's or formal qualifications in 2008/09 was 0.8% in grammar schools and 8.4% in non-grammars. DENI (2010) *Qualifications and Destinations of Northern Ireland School Leavers 2008/09* table 1.

questions with a strong local history component are clearly a factor in limiting access to such education. Recent figures indicate that the number of newcomer children without English as their first language has increased seven-fold in Northern Ireland from 0.5% in 2001/02 to in excess of 3% in 2012/13 with the highest concentration of newcomer children enrolled in primary level education<sup>223</sup>. Indeed, there is a particularly high percentage of newcomer children enrolled in certain schools, such as Presentation Primary in Craigavon (69 per cent) and Botanic Primary School in Belfast (46 per cent).

In terms of existing support structures and recognition of the additional needs of newcomer children, DENI provide funding to regional support services to all grant-aided schools and special schools under the 'Every School a Good School (overarching strategy for raising standards and tackling underachievement)– Supporting Newcomer Pupils' Strategy and Newcomer Guidelines for Schools were issued in August 2010 which including a compilation of good practices<sup>224</sup>. This includes funding for the regional Inclusion and Diversity Service (IDS) which seeks to meet the needs of newcomer children and parents whose first language is not English, across the Education and Library Boards, in order to strengthen 'support and specialised advice... to all grant-aided and special schools'<sup>225</sup>. The regional support service aims to identify, monitor and address the pastoral, curricular, linguistic and intercultural needs of newcomer children. Services include a regional network of diversity coordinators; the provision of quality translation and interpreting services; provision of multi-lingual information to parents; provision of information, training and resources for schools including a toolkit for diversity; and the provision of an aid for assessment; and training in the use of the Common European Framework of Reference (CEFR). (assists with assessment of newcomer children)<sup>226</sup>.

Indeed, there are clear deficiencies in the Aggregated School Budget for each Traveller, Roma and Newcomer pupil. Budget allocation relies on out-of-date census data from the previous year. This does not take into consideration the arrival of for example, asylum seeking children, who arrive after the census has been conducted, later in the academic year. Indeed, the money is not earmarked for any particular purpose so there is no guarantee that it will actually be spent on newcomer pupils. Furthermore there is no monitoring of actual spend on newcomer pupils by Education and Library Boards. It is recommended a mechanism is put in place to monitor and address the needs of newcomer pupils in the administration of the budget. Moreover, it is also strongly recommended that funds are ring-fenced and uptake is monitored for newcomer children. Indeed, a good practice measure would be to establish a dedicated contingency fund to better address the specific needs of newcomer children.

However, such policies also do not address the needs of second generation ethnic minorities who may speak perfect English but their parents do not. The inclusion and diversity service of the Department of Education does make interpreters available but schools do not always use

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<sup>223</sup> Kathryn Torney, 'Dramatic Increase in Newcomer Pupils Attending NI's Schools' *The Detail* (03 February 2014) <http://www.thedetail.tv/issues/304/newcomer-pupils/dramatic-increase-in-newcomer-pupils-attending-nis-schools>

<sup>224</sup> DENI, *Every School a Good School: Supporting Newcomer Pupils* (DENI 2009) [http://www.deni.gov.uk/newcomer\\_policy\\_english.pdf](http://www.deni.gov.uk/newcomer_policy_english.pdf)

<sup>225</sup> DENI, *Every School a Good School: Newcomer Guidelines for Schools* (DENI 2010) [http://www.deni.gov.uk/nwg\\_guidelines\\_english.pdf](http://www.deni.gov.uk/nwg_guidelines_english.pdf)

<sup>226</sup> [http://www.deni.gov.uk/index/support-and-development-2/additional-educational-support/newcomers/ids\\_inclusion\\_and\\_diversity\\_service.htm](http://www.deni.gov.uk/index/support-and-development-2/additional-educational-support/newcomers/ids_inclusion_and_diversity_service.htm)

them. Such pupils often suffer from racially motivated bullying, if parents cannot communicate with teachers such matters become more difficult. Research published by the Equality Commission in 2012 highlighted issues around dependency on specialised language support and difficulties newcomer children experience integrating with local peers and participating fully. Difficulties persist in measuring the progress of newcomer children with the limited adoption of the Common European Framework Reference (CEFR) by schools<sup>227</sup>. It is essential that targeted measures are taken to not only address the curricular and linguistic needs of newcomer children, but to ensure psychological support and pastoral care needs are met. This should be more effective in mitigating the diffuse intercultural cultural barriers they face which impede full and equal participation in education and integration with peers. Targeted programmes should be developed by the Department of Education to target newcomer children, adequate financial resources should be dedicated towards bilingual classroom assistants and strategies should be pioneered to effectively engage BME parents.

### **The right for those of minority belief to opt out of religious**

Northern Ireland traditionally has a high level of religious participation. Every state funded school must include provision for religious education according to the Northern Ireland Core Syllabus for Religious Education and must hold a daily act of collective worship. This syllabus is drawn up by the four largest Christian denomination churches in Northern Ireland. Whilst domestic law does permit parents to opt their children out of religious education and collective worship, there is no right for students of any age to take the decision to opt out.

Research recently conducted by Queen's University Belfast<sup>228</sup> found that many teachers, parents and pupils are unaware of the right to opt out of religious education. Many parents are reluctant to allow their children to opt out of religious education for fear that their children will feel excluded or stand out. Those who do opt out are rarely provided with suitable alternative activities and consequentially feel marginalised. The Religious Education curriculum presents a narrow view of what constitutes religious education. Frequently teachers are unaware of their responsibilities in relation to pupils of minority belief, including the importance of using inclusive language and creating an ethos of inclusion. School authorities should undertake additional measures to mainstream inter-faith religious education into the curriculum, raise awareness of the right for BME pupils to opt out of religious education and attendance at collective worship and ensure alternative educational provision is adequate.<sup>229</sup>

### **Recommendations:**

- **DENI should implement the recommendations issued by the Equality Commission NI on**

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<sup>227</sup> Council of Europe, *Common European Framework of Reference for Languages: Learning, Teaching, Assessment* (CEFR) [http://www.coe.int/t/dg4/linguistic/source/framework\\_en.pdf](http://www.coe.int/t/dg4/linguistic/source/framework_en.pdf)

<sup>228</sup> A. Mawhinney, *Opting out of Religious Education: The Views of Young People from Minority Belief Backgrounds* (Queen's University Belfast, October 2010) <http://www.law.qub.ac.uk/schools/SchoolofLaw/Research/researchfilestore/Filetoupload,218867,en.pdf>

<sup>229</sup> A. Mawhinney, *Opting out of Religious Education: The Views of Young People from Minority Belief Backgrounds* (Queen's University Belfast, October 2010) <http://www.law.qub.ac.uk/schools/SchoolofLaw/Research/researchfilestore/Filetoupload,218867,en.pdf>

combating inequalities in education for BME pupils<sup>230</sup>

- Schools should be designated as public authorities for the purposes of Section 75 to strengthen protection of BME pupils from racial discrimination and harassment.
- DENI should impose a mandatory monitoring duty on schools to collect disaggregated data on incidents of racist bullying in order to strengthen the effectiveness of responses and intervention<sup>231</sup>.
- The implementation of the DENI Traveller Child in Education Action Framework and Traveller Education Support Service (TESS) Delivery Plan should be monitored through annual progress reports.
- Additional measures should be implemented by the Department of Education to address the prevalence and persistence of racist bullying in schools and the disproportionately low attendance rates, high levels of illiteracy and educational underattainment experienced by Traveller and Roma children.
- The Department of Education should seek to ring-fence funds for newcomer children and establish a contingency fund for new arrivals not captured the Aggregated Budget<sup>232</sup>.
- The performance of the regional Inclusion and Diversity Service (IDS) should be evaluated due to ongoing shortcomings in meeting targets<sup>233</sup>
- Education and Library Boards should ensure that disaggregated data is collected on the composition of Boards of Governors, and affirmative action measures should be considered to promote the representation and inclusion of BME parents

## 12. Specific Vulnerable Groups

### Discrimination Against Roma, Traveller and Gypsy Communities

The Traveller community are defined by their 'shared history, cultures and traditions, including,

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<sup>230</sup> Equality Commission NI, *Racial Equality Policy - Priorities and Recommendations* (ECNI August 2013)  
<http://www.equalityni.org/ECNI/media/ECNI/Publications/Delivering%20Equality/Keyinequalitiesineducation2008.pdf>

Equality Commission NI, *Every Child and Equal Child: An Equality Commission Statement on Key Inequalities in Education and a Strategy for Intervention* (ECNI 2008)  
<http://www.equalityni.org/ECNI/media/ECNI/Publications/Delivering%20Equality/Keyinequalitiesineducation2008.pdf>

<sup>231</sup> Successful pilot by NI Anti Bullying Forum in 2008

<sup>232</sup> New arrivals not captured in the Census from the previous academic year are not captured in the Aggregated School Budget for each Traveller, Roma and Newcomer Pupil

<sup>233</sup> E.g. minimal use of the Common European Framework of Reference (CEFR) by schools in monitoring progress on meeting the needs of newcomer children



historically, a nomadic way of life on the island of Ireland'<sup>234</sup>.

In spite of a range of international instruments and national legislation targeting non-discrimination and the rights of nomadic peoples, unequal treatment and high levels of prejudice prevail against Travellers and Roma in Northern Ireland, and significant social progress remains beyond the grasp of these vulnerable groups. The Equality Commission Northern Ireland (ECNI) found that 92% of Travellers leave school without qualifications, only 11% of Travellers are in paid employment, infant mortality rate is 10 times the national average, and life expectancy in general is considerably lower than the national average.<sup>235</sup> Indeed, members of the Traveller community continue to experience disproportionately low educational outcomes. Low attendance rates and high levels of racist bullying exacerbate these poor outcomes.

### **Discrimination towards Irish Travellers in the criminal justice system**

There is fierce opposition to the Irish Travelling community's way of life. Approximately 40% of people in Northern Ireland do not believe that the Irish Traveller nomadic way of life is valid or should be supported by government.<sup>236</sup> Indeed, NICEM are concerned at the persistent stereotyping of members of the Irish Traveller community as criminals and the 'heavy handed, aggressive and disrespectful approach to Travellers by the police'<sup>237</sup>. There exists a relationship of mutual suspicion and distrust between the Police Service Northern Ireland (PSNI) and Travellers. A recent research report published by the Institute of Conflict Research entitled "Travellers, Police and Criminal Justice System: Over-Policed but Under-Protected" highlighted the excessive and disproportionate operational response to Traveller crime (i.e. deployment of helicopters, multiple TSG units, use of riot gear) and provided evidence of racial profiling in the differential use of stop and search powers under the Police and Criminal Evidence Act. Indeed, over a four year period (2006-2010), Travellers were nearly three times as likely to be subject to police stop and search than members of the majority population. The over-representation of the practice of stop & search against the Travelling community is in breach of Article 5(a) of ICERD. Statistics from NISRA and the PSNI also show that Travellers are more likely to be a victim of crime than a member of the general population, and that they are more likely to be a victim of racial harassment or crime than any other ethnic group. The report also highlighted the PSNI culture of opportunism in conducting arbitrary searches of entire Traveller sites or checking vehicle registration and licensing on unrelated visits. Findings also revealed a routine failure to intervene internal family disputes escalated to the police or respond to pressing queries and complaints.

### **Socio-Economic Disadvantage Experienced by Irish Travellers**

Access to the job market in Northern Ireland for Irish Travellers remains a serious concern. The definition of 'economic activity' adopted in the Census is derived from International Labour

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<sup>234</sup> Race Relations (NI) Order 1997

<sup>235</sup> Equality Commission, *Outlining Minimum Standards of Traveller Accommodation* (ECNI March 2009) <http://www.equalityni.org/archive/pdf/travguideSDSHWeb100409.pdf>

<sup>236</sup> Equality Commission, *Outlining Minimum Standards of Traveller Accommodation* (ECNI March 2009) <http://www.equalityni.org/archive/pdf/travguideSDSHWeb100409.pdf>

<sup>237</sup> Jarman, *Over Policed and Under Protected: Travellers, the Police and the Criminal Justice System in Northern Ireland* (ICR 2011) p1

Organisation (ILO) standards and captures those in employment or actively seeking access to the labour market. According to the most recent census figures in 2011, only 31 per cent of Travellers aged 16-74 are economically active. The figure is diminished further for Traveller women and stands at 21 per cent. These figures have worsened since the previous census in 2001. A number of factors have contributed to the main obstacles facing Irish Travellers, including the disappearance of traditional types of work, the disadvantage placed on Travellers from a young age in terms of educational attainment and the acquisition of skills necessary to make them more employable, and discrimination in the hiring process by prejudiced employers.

### **Poor Living Standards**

Traveller accommodation consists of social housing, group housing, service sites, transit sites and emergency halting sites. The lack of appropriate accommodation is a significant problem facing Travellers in Northern Ireland today. Poor accommodation has a devastating knock-on effect on all other aspects of life, including health, education and employment. Standards at emergency halting sites in particular fall far short of basic living standards. A chronic lack of plumbing, and therefore lack of running water or any washing facilities, is common. Frequently there is no electricity provided and inadequate or non-existent refuse management and collection. There is often inadequate space for recreation or for parking cars or keeping horses. Whilst Strasbourg jurisprudence does not provide a general right to adequate housing under Article 8 on the right to private and family life<sup>238</sup>, the European Court of Human Rights have established minimum living standards when interpreting Article 3 ECHR. Indeed, the Court found that inaction by state authorities to address substandard living conditions subjected Roma residents to humiliation and debasement contrary to Article 3 ECHR<sup>239</sup>.

Under the Housing (Northern Ireland) Order 2003, responsibility for the development of halting sites for Travellers lies with the Northern Ireland Housing Executive (NIHE). The NIHE is charged with implementing commitments relating to housing that arose out of the Promotion of Social Inclusion Working Group Report on Travellers. The Northern Ireland Housing Executive carried out research on the housing/accommodation needs of Irish Travellers in 2008 and are set to publish the findings of a follow up study in 2014. Current findings indicate that 37% of all respondents to its survey were dissatisfied/ very dissatisfied with their accommodation, mainly due to overcrowding. We suspect the true figure is much higher.

The NIHE Traveller Accommodation Programme contains proposals for 70 homes over a period of 3 years (2012-2015) in various locations including Belfast, Craigavon, Coalisland, Newry and Londonderry. The Caravans Act (Northern Ireland) 2011 provides a range of additional statutory protections to Travellers living in certain caravan sites. Currently the accommodation programme is reviewed on a yearly basis<sup>240</sup>.

When the Race Relations Order (NI) 1997 was introduced (32 years after the first race discrimination legislation was introduced in GB, see 3.4.1), it mirrored the equivalent Race

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<sup>238</sup> *X v Germany* (1956) 1 YB 202

<sup>239</sup> *Moldovan & Others v Romania* [2005] ECHR 458

<sup>240</sup> NI Housing Executive, *NIHE Next General of Equality Schemes: Audit of Inequality* (NIHE February 2012) [http://www.nihe.gov.uk/appendix\\_2\\_-\\_next\\_generation\\_of\\_equality\\_schemes\\_audit\\_of\\_inequalities.pdf](http://www.nihe.gov.uk/appendix_2_-_next_generation_of_equality_schemes_audit_of_inequalities.pdf)

Relations Act 1976 in Great Britain, except for the planning law provision which did not extend to Northern Ireland. This exception regarding planning law has had a serious impact on the lives of the Irish Traveller Community: many individuals, as well as local councils, object to the building of Traveller sites in Northern Ireland. This fact, coupled with the existence of the Unauthorised Encampments (Northern Ireland) Order 2005, paints a bleak picture of institutionalized discrimination towards the Irish Traveller community. The 2005 Order empowers police to direct a person to leave land and to remove any vehicle or other property from that land. Non-compliance is an offence and police can seize the belongings of the persons in question. While the Order does not specifically name the Travelling community, it effectively targets them as a consequence of their nomadic lifestyle. A combination of the desire of many Travellers to pursue their traditional practice of nomadism, and the failure of the authorities to provide adequate serviced halting sites to accommodate this practice, means that this legislation effectively criminalizes Travellers for practicing their own culture. Such legislation equates to discrimination, and also calls into question the government's obligations under section 75 of the Northern Ireland Act to promote equality and good relations.

There appears to be a profound lack of leadership and coordination between different Departments and Agencies in progressing the accommodation situation for Travellers. This has culminated in Travellers being deprived of equal treatment in the provision of social housing. The most commonly cited reasons for failure to provide sufficient suitable permanent sites for Travellers are the difficulties in finding suitable land plots and lack of financial resources. The NIHE has conceded that much needs to be done to meet the accommodation needs of Travellers, and has cited difficulties in finding suitable land on which to develop sites and the obstacles thrown up by district councils in the process.

Whilst some initiatives such as housing projects are welcome, housing cannot be seen as the sole solution to addressing the inadequacies of accommodation. 30% of Irish Travellers in Ireland continue to practice a nomadic way of life. Thus, in order to achieve true equality in the provision of housing, it is the responsibility of public authorities to continue to develop the as yet insufficient network of permanent and transit sites, to ensure that the culture of nomadism is supported and preserved. Many such sites in their current state are not conducive to traditional Traveller livelihood, as they have insufficient space for the keeping of horses and running businesses. This forces Travellers to use surrounding areas for those purposes.

In 2009 the UN Economic, Social and Cultural Rights Committee raised concerns regarding the present circumstances of Travellers and urged the provision of 'sufficient, adequate and secure sites'. The Committee also commented on the discriminatory effect of the Unauthorised Encampment (Northern Ireland) Order 2005 and urged its review.<sup>241</sup> In 2007 the Council of Europe Committee of Ministers, commenting on the compliance with UK's obligations under the Framework Convention for the Protection of National Minorities (FCNM), also raised concerns as to the accommodation situation of Irish Travellers, adopting a resolution in relation to the UK's compliance with the FCNM:

*"...the availability of authorised sites has contributed to the fact that a number of Gypsies and*

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<sup>241</sup> UN Concluding observations in the examination of the UK of the 42<sup>nd</sup> session of the UN Economic, Social and Cultural Rights Committee (2009) para 30  
<http://www2.ohchr.org/english/bodies/cescr/cescrs42.htm>

*Travellers continue to live on unauthorised sites and may face eviction orders."*<sup>242</sup>

The following figures represent a summary of key findings from the NIHE Traveller Accommodation – Needs Assessment 2008. The majority of Traveller community members with Household Reference Person (HRP) status were female (60 per cent)<sup>243</sup> with a large proportion of HRPs economically inactive (85 per cent), with only 11% in employment. Almost two-fifths (39 per cent) of HRPs were separated and the predominant household type was lone parent (33 per cent) compared with 6 per cent for the overall population. Only 30 per cent said they would prefer social housing and only 19% would prefer group accommodation<sup>244</sup>. The findings reflect the youth demographic of 21 per cent of household members were aged 5 and under and 28 per cent were aged between 6 and 15. This stands in sharp contrast with Northern Ireland's overall population in which only 22% are aged under 16.

### **Participation and Government engagement of Travellers**

NICEM are concerned at the barriers which impede Traveller participation in public and political life. The Racial Equality Panel (the government appointed body to monitor the implementation of the Race Strategy) established a subgroup on Travellers in 2004. This group has not been convened since 2007, and the membership of the panel included no voluntary Traveller representation. Whilst we welcome such a mechanism and believe that it is important in establishing government priorities for Travellers, it must establish a timetable of future meetings and include representation from Travellers in order to be effective.

There is a failure to meet the existing commitment within the DENI Audit of inequalities and Action Plan that 'OFMDFM will reinstate the Thematic Group on Travellers' Issues within the Racial Equality Forum. The group will include representatives from health, education, employment, housing, the Traveller Support movement and any other relevant organisations. This will facilitate a partnership approach and sharing of good practice in tackling barriers to Traveller equality and inclusion.<sup>245</sup>

### **Recommendations:**

- **The Thematic Sub-Group on Traveller Issues under the OFMDFM Racial Equality Panel should be reconvened and include Traveller representatives. Additional measures should be taken to improve Traveller participation in public and political life and improve rates of employment and economic activity, particularly for Traveller women.**

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<sup>242</sup> Comments of the Government of the United Kingdom on the opinion of the advisory committee on the implementation of the Framework Convention for the protection of National Minorities in the UK (received on 26 October 2007). P.14, GVT/COM/II(2007)003, Council of Europe

<sup>243</sup> The Household Reference Person (HRP) is the member of the household who owns or pays the rent or mortgage on the property. Where two people have equal claim (e.g. husband and wife jointly owns the property) the HRP is the person with the highest annual income. This definition is for analysis purposes and does not imply any authoritative relationship within the households.

<sup>244</sup> NIHE, *NIHE Traveller's Accommodation Needs Assessment in Northern Ireland* (NIHE 2008)

[http://www.nihe.gov.uk/travellers\\_accommodation\\_needs\\_assessment\\_2008.pdf](http://www.nihe.gov.uk/travellers_accommodation_needs_assessment_2008.pdf)

<sup>245</sup> DENI, *Every School a Good School: Draft Traveller in Education Action Framework* (DENI 2012)

[http://www.deni.gov.uk/english\\_action\\_framework.pdf](http://www.deni.gov.uk/english_action_framework.pdf) p20

- The NIHE should comply with the Housing (Northern Ireland) Order 2003 and ensure that the socio-economic conditions and basic living standards on halting sites are drastically improved to guarantee access to electricity, clean water and adequate sanitation and washing facilities in line with the right to an adequate standard of living
- The NIHE should publish the findings of the 2014 Comprehensive Traveller Needs Assessment .

### Asylum Seekers and Refugees

Recalling its previous recommendation, the Committee recommends that the State party should:

- (a) Extend the concession to the “no recourse to public funds” policy to all women who are subjected to gender based violence and exploitation; and
- (b) Provide access to justice and healthcare to all women with insecure immigration status, including asylum seekers, until their return to their countries of origin.

(para 57, CEDAW Concluding Observations on UK 2013)

The Committee recommends that the State party remove the exceptions based on ethnic and national origin to the exercise of immigration functions as well as the discretionary powers granted to the UK Border Agency (UKBA) to discriminate at border posts among those entering the territory of the State party.

(para 16, CERD Concluding Observations on UK, 2011)

The Committee urges the State party to:

- (a) Continue to provide training to officers who are in charge of immigration and asylum applications on gender-sensitive approaches in the treatment of victims of violence;

(para 59, CEDAW Concluding Observations, 2013)

The Committee encourages the State party to ensure that asylum-seekers are not restricted in their access to the labour market while their claims for asylum are being processed. It also recommends that the State party review section 4 of the Immigration and Asylum Act 1999 on support and provision regulating essential services to rejected asylum-seekers, and undocumented migrants, including the availability of HIV/AIDS treatment, when necessary.

(para 27, ICESCR Concluding Observations, 2009)

The Committee encourages the State party to consider ratifying the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.

(para 46, ICESCR Concluding Observations, 2009)

Bearing in mind the indivisibility of all human rights, the Committee encourages the State

party to consider ratifying those international human rights treaties which it has not yet ratified, in particular treaties the provisions of which have a direct bearing on the subject of racial discrimination, such as the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (1990).

(para 32, ICERD Concluding Observations on UK, 2011)

- The current publically funded ESOL and essential skills provision for refugees and asylum seekers should be augmented with a contribution towards childcare costs and transport expenses. DEL should also provide additional funding for accredited training and entry into further education.
- MLAs should be authorised to correspond with UKBA/Home Office on asylum and immigration matters arising from their constituencies, not just MPs.
- The NI Executive, Departments and relevant public authorities (i.e. Central Procurement Directorate, Procurement Board) should ensure the legal and policy framework governing public procurement improves accountability and safeguards compliance with UN Guiding Principles on Business and Human Rights and international human rights standards<sup>246</sup>.

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<sup>246</sup> Northern Ireland Human Rights Commission, *Public Procurement and Human Rights in Northern Ireland* (NIHRC, November 2013)

<http://www.nihrc.org/documents/NIHRC%20Public%20Procurement%20and%20Human%20Rights.pdf>







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