

## Shadow Report

Submission to the UN Committee on the  
Elimination of Racial Discrimination with  
regard to the UK Government's 21<sup>st</sup> to 23<sup>rd</sup>  
Periodic Reports

June 2016

Drafted by THE RUNNYMEDE TRUST

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We would also like to recognise the support of the Equality and Human Rights Commission who made this work possible in England, Scotland and Wales. The Joseph Rowntree Charitable Trust has provided further support to enable us to extend the work to Northern Ireland and to follow up the recommendations of the report and the concluding observations of the Committee.

## Introduction

This report provides a civil society perspective in response to the UK Government's 21<sup>st</sup> to 23<sup>rd</sup> periodic reports to the United Nations Committee on the Elimination of Racial Discrimination (CERD) and on the situation of racism in the UK. It has been drafted by the Runnymede Trust, following consultation meetings in 6 UK cities with a total of around 70 Non Governmental Organisations (NGOs) working to promote race equality and human rights. Runnymede also issued a call for evidence to provide further expertise and opinion.

We welcome the opportunity to make this submission to the Committee in advance of its examination of the UK's compliance with the International Convention on the Elimination of all forms of Racial Discrimination (ICERD) in August 2016. With this report, we seek to work constructively with CERD and the UK Government in order to move closer to turning the rights provided for in the Convention into a reality for the UK's Black and minority ethnic (BME) communities.

This report highlights in particular those areas where NGOs consider the UK Government to be in breach of the various articles of ICERD. We welcome the publication of the UK Government's 21<sup>st</sup> to 23<sup>rd</sup> periodic reports in March 2015. However we would like to point out that since their publication, a general election was held in May 2015, which led to a change in Government from a coalition of the Conservative and the Liberal Democrat parties to a majority Conservative Government. As a result, the Government periodic reports do not include new policies and legislation initiated by the present Government. Some of these are particularly relevant to the UK's compliance with ICERD and are discussed in our report.

In addition, since the beginning of drafting of the present report, the Prime Minister David Cameron has announced specific action to target racial inequalities and underrepresentation experienced by Black and minority ethnic (BME) communities, in particular in employment and universities as well as the police and the armed forces. He further announced the establishment of a review looking at racial bias and BME representation in the criminal justice system, to be headed by David Lammy MP. We welcome these announcements and wait to see how they might lead to concrete actions and outcomes.

These latest developments highlight the continuing evolution of policy relevant to race equality in the UK taking place during the drafting of this report; nevertheless every effort has been made to be as accurate and up to date as possible as at 1 June 2016.

## Devolution

Scotland, Wales and Northern Ireland are three separate countries in the UK with devolved administrations. The Scottish, Welsh and Northern Ireland Governments have different histories in relation to BME presence and experiences. Whilst Northern Ireland has separate equality legislation, the Equality Act 2010 applies in England, Scotland and Wales. However the Equality Act provides for certain powers to be exercised for Scotland and Wales by Scottish Ministers or Welsh Ministers respectively.

There are policy areas within the exclusive remit of the Northern Irish, Scottish and Welsh Governments which may be enhanced to better protect BME groups and further eliminate racial discrimination within these different regions. We would therefore encourage that the recommendations made by CERD to the UK state include devolved administrations where applicable to ensure that the rights of all BME people are promoted UK wide.

Consultations with NGOs in Scotland, Wales and Northern Ireland have brought to light the fact that the Government, in its report to CERD, omits to mention certain policies, for example health or mental health in Scotland. We recommend that all areas of devolved policy for all administrations be included in the UK state report as failure to do so will hide the gaps in legislation and has the potential to undermine the quality of information offered to the Committee.

In other instances, we note that the UK state report at times takes credit, as the UK Government, for policies that are developed in Northern Ireland, Scotland and Wales, in particular when these policies are progressive and contribute to the advancement of equalities for BME and migrant populations. By way of example, whilst Scotland, Wales and Northern Ireland have given specific and targeted attention to Roma inclusion, through the development of a Roma Integration Strategy (as part of the European Union Framework for Roma Integration Strategies), this has not been the case for England.

**Recommendation:**

**The UK Government should include in its report to the Committee, information on all areas of devolved policy across the UK. It should also ensure that best practice from devolved government is built on in all devolved administrations and at the UK-level too. Additionally, where recommendations may be applicable to devolved administrations, this should be made explicit by the Committee.**

## Report Structure

The report first gathers our key recommendations for actions the Government should take to promote race equality and eliminate racial discrimination in accordance with the Convention. It then details our principal concerns under each article of ICERD.

We would like to extend our thanks to all the participants in the consultation meetings, and to those who contributed to this report through responding to Runnymede's call for evidence.

A list of NGOs who have signed up to this report is included in the Appendix. This report should be viewed as a collective response from Britain's NGOs, drafted by the Runnymede Trust, but with input and support for a wide range of individuals and organisations.

## List of Abbreviations

BME – Black and Minority Ethnic  
CCGs – Clinical Commissioning Groups  
CEO – Chief Executive Officer  
CERD – Committee on the Elimination of Racial Discrimination  
CPS – Crown Prosecution Service  
CRE – Commission for Racial Equality  
CRER – Coalition for Racial Equality and Rights  
DLA – Discrimination Law Association  
DWP – Department for Work and Pensions  
EBacc – English Baccalaureate  
EEA – European Economic Area  
EHRC – Equality and Human Rights Commission  
EIA – Equality Impact Assessment  
EMAG – Ethnic Minority Achievement Grant  
EMBES – Ethnic Minority British Election Survey  
EU – European Union  
FFT – Friends, Families and Travellers  
FTSE 100 – Index composed of the largest 100 companies on the London Stock Exchange  
HE – Higher Education  
HMIC – Her Majesty’s Inspectorate of Constabulary  
HMIP – Her Majesty’s Inspectorate of Prisons  
HRA – Human Rights Act  
ICERD – International Convention on the Elimination of all forms of Racial Discrimination  
ITMB – Irish Traveller Movement in Britain  
LeedsGATE – Leeds Gypsy and Traveller Exchange  
MP – Member of Parliament  
MSP – Member of the Scottish Parliament  
NGO – Non Governmental Organisation  
NUT – National Union of Teachers  
Ofcom – Office of Communications  
Ofsted – Office for Standards in Education  
ONS – Office of National Statistics  
PSED – Public Sector Equality Duty  
SHS – Scottish Health Survey  
UNCRC – UN Convention on the Rights of the Child

## List of Recommendations

### Devolution

- The UK Government should include in its report to the Committee, information on all areas of devolved policy across the UK. It should also ensure that best practice from devolved government is built on in all devolved administrations and at the UK-level too. Additionally, where recommendations may be applicable to devolved administrations, this should be made explicit by the Committee.

### Article 1

#### Government approach to tackling racial inequalities

- The Government should go beyond its current colour-blind approach and consider the impact of such an approach on ethnic inequalities. UK law has required attention to *indirect* discrimination since the 1976 Race Relations Act while as a signatory of CERD the government is required to ensure its law and policy is non-discriminatory not only in purpose, but also in effect.
- The Government urgently needs to establish and implement a strategy for the elimination of racial discrimination and the advancement of race equality across all policy areas. This should involve consultation with race equality NGOs and clear aims and targets to measure progress over time.
- The Scottish Government must ensure the Race Equality Framework for Scotland 2016-2030 receives the resources and cross-sector integration required to make it fully implementable over its 15 years lifetime.
- The Scottish Government should ensure targets and monitoring procedures are built into the Race Equality Framework, and prioritise community cohesion between people from different ethnic groups, including established minority ethnic communities and newer migrants and refugees.
- The Northern Ireland Executive should ensure that urgent steps are taken to implement the Race Equality Strategy including the production of timetabled action plans and the allocation of sufficient, ring-fenced resources.

### Article 2

#### The Public Sector Equality Duty

- The Government should demonstrate its commitment to equality by securing compliance with the PSED across all departments especially in their development of policies and allocation of resources.
- There should be a clear obligation on public authorities when contracting with private and voluntary sector organisations for the carrying out of public functions to ensure that the requirement of the PSED that would apply to the contractor are incorporated into all relevant stages of their procurement process.
- The Government should now engage with the EHRC to approve comprehensive PSED



Codes of Practice – for England and Wales and for Scotland – and without further delay take all steps necessary to give these Codes statutory force with immediate effect.

- The UK Government and devolved administrations should undertake a review of the Regulations in due course to identify and implement potential improvements.
- The Scottish Government should hold public authorities to account in relation to the Scottish Specific Equality Duties, and ensure adherence to the duties. Monitoring practices should be robust across the nation.

#### Weak enforcement

- To comply with its statutory equality duty, the Government should consider the likely impact of proposed policy decisions for its impact on race equality. Where an adverse impact is discerned, the proposal should be reconsidered, including mitigation measures.

#### Northern Ireland

- The Northern Ireland Executive should act without delay to amend the Race Relations Order so that existing deficiencies in protection are addressed; in the alternative the UK Government should extend the Equality Act 2010 to Northern Ireland.

#### Descent-based/Caste discrimination

- The Government should perform its duty required by Parliament and the rule of law and amend the Act to add caste as an aspect of race.

#### Rural Racism

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

#### Gypsy, Roma and Traveller Communities

- The Government should develop a National Roma Integration Strategy, with targets that address the specific situation of Roma communities in the areas of education, employment, health and housing, matched with appropriate funding.

#### Incorporating the Convention into UK law

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

## Article 4

### Online hate speech

- The UK Government should investigate the possibility of introducing a stand-alone offence related to online hate crime.
- The UK Government and devolved administrations should develop a dedicated strategy to combat the specific form of hate speech and incitement to racial and religious hatred online.
- The UK Government should work more proactively with social media companies such as Facebook and Twitter to develop adequate tools for controlling and limiting the incidence of incitement to racial hatred on social media.

## Article 5

### Hate crime

- In cases of racially/religiously aggravated offences the Crown Prosecution Service should give careful consideration to evidence of aggravation before the basic offence only is accepted as a plea bargain.
- The UK and Scottish Governments and the Northern Ireland Executive should encourage the police to work alongside communities to address hate crime.
- The Northern Ireland Executive should put in place an Integration Strategy that will address the particular sectarian and racist issues that pertain in that jurisdiction.
- The Scottish Government should reconsider its approach to recording and reporting data on the victims and perpetrators of racially or religiously aggravated hate crimes. Consideration should also be given to the ease and transparency of the reporting procedure to ensure victims feel comfortable and confident in reporting.

### Criminal Justice

- The Government should address the findings and implement the recommendations of the Young review to improve outcomes of black and Muslim men in the criminal justice system.
- The Government should ensure full and effective implementation of the recommendations of the HMIC review of stop and search powers carried out in 2013.
- The Government should require police officers to record stops conducted under S163 RTA and to collate and publicly share data regarding the use of S163 and submit this to the HMIC and EHRC for review and report on this annually in accordance with S95 1991 Criminal Justice Act.
- Officers should be trained on the appropriate use of S163.
- The Government should introduce reasonable suspicion as a condition for the use of the powers under Schedule 7 of the Terrorism Act 2000.
- The Government should issue clear and proportionate rules to define how biodata or information taken from electronic items are taken and retained under Schedule 7.
- The Government should introduce a statutory bar to prevent people detained under Schedule 7 having their statements used against them in any criminal proceedings.

- The Government should encourage all police forces to record and publish data to enable public monitoring and scrutiny of the use of Section 43 of the Terrorism Act 2000.
- The UK government must implement policies to show how it will not only recruit more Black and minority ethnic police officers, but also retain and progress those staff. The minimum goal should be to reach the local BME population for every police force in the UK.
- The Scottish Government should consider commissioning an independent review of institutional racism in Police Scotland. Furthermore, the Scottish Government should report on the complaints of racial discrimination made to the Police Investigations and Review Commissioner, as well as the outcome of these reports.
- The UK must take urgent action to reverse the growing disproportionality of BME children in the youth secure estate including by reviewing the law around joint enterprise.

### Voter registration and turnout

- The Government must publish data on how voter registration changes have impacted on registration rates by ethnicity.
- The Government should target those groups that are least likely to be registered to vote and provide adequate information and engagement within communities to secure a reduction in the gap between the voter registration rates of ethnic minorities (including Gypsies and Travellers) and those of white people.

### Political representation

- The Government should encourage political parties to take positive action as permitted by law to increase the numbers of political representatives from minority ethnic communities.
- The Government should encourage political parties to set targets for placing BME candidates in winnable seats in the UK Parliament (Westminster), as well as in the Scottish Parliament and the National Assembly for Wales.
- The Government should encourage political parties to take similar measures to respond to BME representation among councillors and other elected officials.

### Family migration discrimination

- The Government should review the financial (minimum income) requirements for partner, spouse or child visa in the Immigration Rules, in order to comply with its legal obligations in respect of children.

### Counter-terrorism

- The Government, at an early date, should establish an independent review of the operation, impact and outcomes of the Prevent duty, with particular reference to possible conflict with equality and human rights legislation and a commitment to give full consideration to the findings of such review in decisions regarding the

continuation and/or modification of this duty.

- The Government should gather and publish data on who is being affected by the Prevent duty broken down by ethnicity, religion, gender and age.
- The Government should provide a clear, specific definition of “extremism” that is understood by teachers and other school staff and should ensure that the Prevent duty is not disproportionately targeting particular groups of pupils, and that schools are given the resources to work collaboratively with others to develop proportionate and sensitive ways to respond to the different risks faced by pupils.
- The Government should review the impact of its existing counter-terrorism and counter-extremism legislation to ensure that it is implemented in a manner that does not discriminate in purpose or effect on grounds of race, colour, nationality or religion or perpetuate or increase prejudice towards or alienation of particular racial or religious groups.
- The Government should fully assess the likely impact on race or religious equality of the proposed Counter-Extremism and Safeguarding Bill as well as any future proposed counter-terrorism laws and policies and discontinue or modify what is proposed where an adverse impact is identified.

## Employment

- The Government should encourage employers in the public, private and third sector should collect, analyse and report ethnic monitoring data and take action where equality is absent. The Government should also better collect and publish ethnic diversity of the workforce at all levels of the labour market.
- One model for this mandatory reporting requirement are the ‘employment equity plans’ with clear timetables and action plans for all employers with more than 50 employees, as recommended in the 2000 *Cambridge Review* and based on similar legislation in Canada (1995) and South Africa (1998).
- The Government should take proactive measures in the recruitment and support of BME staff, at a national and local level and led by the public sector. It should consider targets, especially in the senior civil service.
- The Government should provide stringent data monitoring of ethnic inequalities in apprenticeships, auditing of decision-making process for applications by employers and develop a race equality framework with which employers need to comply.
- The Department for Work and Pensions (DWP) should recognise Gypsy Roma and Irish Travellers as an ethnic minority group so that their employment levels can be monitored and inequality acted upon.
- The Government should ensure that victims of racial discrimination in the work place have access to justice by removing prohibitive employment tribunal fees and reinstating financial support for legal advice and assistance.
- The Scottish Government should consider all evidence from the Scottish Parliament’s Equal Opportunities Committee to implement a national strategy to address the barriers facing many minority ethnic people in accessing equal employment.
- The Northern Ireland Executive should take steps to promote the positive contribution made to the economy by migrant workers and others.

## Education

- The Government should ensure all schools are complying with their statutory obligations regarding inclusion and equality. This includes admissions.
- Universities should make race equality an institutional commitment. They should comply with the PSED, conduct audits on their race equality within their staff and student body, from which universities can develop a race equality framework that is implemented by all staff at all levels.
- The Government should review why BME graduates get worse degree qualifications and worse employment outcomes, especially as they have been disproportionately affected by cuts to maintenance grants and other financial changes.
- The Government should amend the eligibility criteria to ensure that all young people have equal access to student finance to allow progression to higher education regardless of immigration status. At the very least, all children who have lived in the UK for at least seven years should be eligible to access student finance regardless of whether or not they meet the three year 'continuous ordinarily lawful residence' criteria.
- The UK Government must also raise awareness of the current criteria amongst children and young people, parents and carers and speed up Home Office applications for changes in immigration status.
- The Government should reinstate the Education Stakeholder group for Gypsy, Roma and Traveller children which was not reformed when the current Government came into power.
- The Government should review how early years childcare providers and local authorities inform people of their eligibility for childcare schemes and ensure that this includes reaching out to and engaging with BME families, to enable a higher take-up rate.
- The Government should ensure the cultural accommodation of childcare provision. One means of doing so is for the Government to develop policies to improve the recruitment and support for ethnic minority childminders and carers.
- The Government should provide greater support for schools and teachers in adopting anti-racist bullying measures, enabling staff and students to discuss experiences of racism and race.
- Permanent or temporary exclusion should only be used as a last resort. The Government should increase the powers of parents and appeal panel boards to hold schools to account for exclusions.
- Children should have a statutory right to appeal against exclusion decisions
- The Government should examine the data around school exclusions for Gypsy, Roma and Irish Traveller and Black Caribbean pupils and reasons for their disproportionately high exclusion rates in relation to their peers, specifically addressing the potential for conscious and unconscious bias and seeking to reduce these long-standing inequalities.
- The UK Government and devolved administrations should ensure that there is a national policy on racist incident reporting to ensure consistent policies on prevention, action, monitoring, assessment, evaluation, staff training and enforcement to effectively challenge institutional racism and support minority ethnic children in schools.

## Health

- The Government should ensure implementation of the 'equality duty in health' by NHS England and Clinical Commissioning Groups (CCGs).
- The UK Government should be much more explicit about its proposals to tackle the health inequalities experienced by the travelling communities.
- The UK Government should recognise and respond to the negative outcomes that can result from commissioning processes that may exclude 'chronically excluded' groups and agencies working on their behalf.
- The Government should set clear targets in tackling race inequalities in service provision and public health in order to put the health outcomes of minority ethnic communities on a par with the general population.
- The Government should commission a yearly report on race inequalities in health and social care.
- The Government should develop a clear strategy for more effective consultation with minority ethnic communities to ensure that these groups are involved in the development of and evaluation of health and social care services.
- The Government should ensure that all general practitioners (GPs, local doctors not based in hospitals) are given the necessary training to work more effectively with people from different minority ethnic groups.
- The Government should ensure that cuts in spending do not disproportionately impact on minority ethnic communities and the community health organisations which are currently offering culturally appropriate health services for those marginalized from mainstream service provision.
- The Government should encourage improved health outcomes by investing in raising awareness among minority ethnic communities about health conditions and services.
- The UK Government and the devolved administrations should provide more consistent and detailed data in order to identify the care needs of BME groups. There should be a more targeted approach to delivering services in a way which takes cultural sensitivities into account without projecting prejudice, most notably in mental health services.

## Housing

- The Government should ensure that homes are of high quality and that housing regeneration initiatives adequately consider the needs of BME groups. This will mean that 'affordability' needs to correspond to actual incomes and not market rent.
- The Government should ensure that local authority housing benefit services are working in partnership with the social rented sector, private landlords and letting agents, advice providers, local community groups and NGOs, to mitigate the effects of the housing benefit cuts on people from minority ethnic communities.
- The Government should take action to combat the disproportionate number of BME families affected by overcrowding, and by the benefit cap.
- The Government should take action to combat the disproportionate levels of homelessness amongst BME groups.
- The Government should publish accurate national statistics showing whether there is a net increase of Gypsy and Traveller pitches year on year, and the extent of that

increase.

- The Government should retain the requirement for local authorities to carry out specific Gypsy and Traveller Accommodation Needs Assessments, at the very least until such time as the identified shortfall of pitches in that local authority area has been fully met.
- The Scottish Government must address the specific needs of ethnic minorities alongside their more general commitments to improve the quality, quantity and accessibility of housing in Scotland. Long term plans must be detailed in the Scottish Government's Race Equality Framework to ensure that discrimination does not continue.

### Impact of Budget on BME communities

- The Government need to carry out a formal audit, or a full equality impact assessment on the current budget, including its effect on BME people.
- The Treasury, in compliance with the PSED, needs to carry out a full equality impact assessment of current and proposed budget provisions, in order to ensure that future budgets are written with the aim of not adversely affecting BME people.

### Article 6

#### Access to Justice

- The UK Government should reinstate education, employment law and immigration into the scope for legal aid. At the very least, the UK government should urgently carry out its review of the impact of legal aid, which it committed to carry out within three-five years of the legislation coming into force. The review should include a specific review of the impact of the changes on BME groups.
- The Government should repeal Employment Tribunal fees which affect all employment-related claims for discrimination, harassment and victimisation.
- The UK Government and devolved administrations should outline the mechanisms it will put in place to ensure that individuals have fair and effective access to justice for discrimination after funding cutbacks for discrimination casework.
- The Government should reinstate the questionnaire procedure under s.138 of the Equality Act 2010.
- The Government should commit to renewing the strength of the EHRC in order to meet the scale of growing challenges to equality and human rights discussed throughout this report.
- The Government should give consideration to the remit of the Equality and Human Rights Commission in Scotland and the Scottish Human Rights Commission to consider the powers of each, particularly in relation to devolved areas and the support of individuals in claims or legal proceedings.

### Article 14

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

individuals the right to petition the Committee.

## 1 – Article 1

### Government approach to tackling racial inequalities

In Paragraph 17 of its concluding observations, the Committee states:

**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.**

Despite recommendations from CERD and UK based NGOs in their previous (2011) shadow report, the Government has not developed a race equality strategy, stating instead its preference for broad integration strategies. We are concerned that the Government's submission to the Committee reflects an approach that fails to conform to domestic and international legislation (notably ICERD), and shows little evidence of actually responding to racial inequalities.

The Government, in its report to the Committee states that its "approach to tackling the challenges posed by racial inequality and discrimination in England is [...] not based on singling out individual ethnic groups, but instead on promoting socio-economic Integration with support from our Equality and Social Mobility Strategies." We argue that this approach fails to recognise how policy can unintentionally increase racial inequalities through indirect discrimination. The question is not whether government deliberately makes BME people worse off, but rather whether the effects of policies, directly or indirectly, increase racial inequality in reality.

Our shadow report comprises many examples of how the Government's approach of choosing not to target the known distinct experiences of specific racial groups in fighting inequalities itself can have a discriminatory effect. As a result we believe that the Government is often in breach of its obligations under article 1 of ICERD, which defines racial discrimination as "any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the **purpose or effect** of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life" (emphasis added).

This approach by the Government was exemplified through the publication in 2012 of *Creating the Conditions for Integration*, a document presented as equivalent to a race equality strategy. However this strategy was criticised by 19 race equality organisations, stating that the document did "little to address the persistent inequalities that exist across the nation." There was also a notable lack of consultation with BME organisations when the government put its integration strategy together.



Although the Government has recently suggested a notable shift in directly addressing race in various reviews on employment, criminal justice and other areas, this does not yet constitute a strategy. We welcome this shift in orientation, and look forward to any clear objective and targets once these various reviews are completed.

The Scottish Government published its Race Equality Statement for 2008-2011 in December 2008. This has been refreshed in March 2016 with the Race Equality Framework for Scotland 2016-2030. The framework has been developed in collaboration with race equality organisations and has incorporated engagement and feedback from BME individuals, community representatives, stakeholders, and practitioners. The framework addresses issues surrounding community cohesion, community safety and justice, participation and representation in public life, education, employment, income, health, housing, and family life. The five-year gap between the statement and the framework is troublesome, as it is indicative of a time in which the Scottish Government and its stakeholders did not have a strategic plan in place to address race inequality.

In many respects Wales shows a strong commitment to promoting equality. However, race equality is often overlooked in decision and policy making within the Welsh Government and local authorities, especially where difficult budget decisions need to be made.

The Northern Ireland Executive has published its Race Equality Strategy 2015-2025 with the aim of co-ordinating policy across all Departments to tackle racial inequalities, eradicate racism and hate crime and promote good relations and social cohesion. However, the Strategy has yet to become operational. Departmental Race Equality Champions, responsible for overseeing implementation have still to be appointed and no action plans have been prepared. Implementation of the Strategy, which must be supported by adequate, ring-fenced resources, is a matter of urgency as numerous forms of racial discrimination have flourished in its absence.

**Recommendation:**

**The Government should go beyond its current colour-blind approach and consider the impact of such approach on ethnic inequalities.**

**UK law has required attention to *indirect* discrimination since the 1976 Race Relations Act while as a signatory of CERD the government is required to ensure its law and policy is non-discriminatory not only in purpose, but also in effect.**

**The Government urgently needs to establish and implement a strategy for the elimination of racial discrimination and the advancement of race equality across all policy areas. This should involve consultation with race equality NGOs and clear aims and targets to measure progress over time.**

**The Scottish Government must ensure the Race Equality Framework for Scotland 2016-2030 receives the resources and cross-sector integration required to make it fully implementable over its 15 years lifetime.**

**The Scottish Government should ensure targets and monitoring procedures are built into the Race Equality Framework, and prioritise community cohesion between people from different ethnic groups, including established minority ethnic communities and newer migrants and refugees.**

**The Northern Ireland Executive should ensure that urgent steps are taken to implement the Race Equality Strategy including the production of timetabled action plans and the allocation of sufficient, ring-fenced resources.**

## 2 – Article 2

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

**The Committee recommends that the State party should implement all of the provisions of the Equality Act and ensure that there is no regression from the current levels of protection. Notwithstanding the economic downturn, the State party should ensure that any austerity measures do not exacerbate the problem of racial discrimination and inequality. Impact assessments are necessary before adopting such measures to ensure that they are not differentially targeted or discriminatory to those vulnerable to racial discrimination.**

### 2.1 Legislation (Equality Act 2010 and implementation)

As an anti-discrimination measure, the Equality Act 2010 provides a strong framework, at least on paper, for addressing discrimination and promoting equality. It harmonises the concept of discrimination, harassment and victimisation and protects the characteristics of age, disability, gender reassignment, marriage and civil partnership, race, religion or belief, sex and sexual orientation. “Race” is defined in the Act as including colour, nationality and ethnic or national origins. It requires public bodies to combat discrimination and advance equality. It permits positive action. It forbids treatment with a discriminatory effect even if it is done without hostile intent, thereby echoing the Convention’s definition of discrimination.

Regretfully, the Equality Act today is weaker and more difficult to enforce than Parliament intended. Some provisions have never been brought into force and others have been repealed by the Government in place between 2010 and 2015.

For instance, for the first time Parliament approved, as part of the Equality Act 2010, the prohibition of discrimination because of the combination of two protected characteristics, such as race and sex for instance (particularly relevant to the treatment of Black women) or religion and sex (particularly relevant to the treatment of Muslim women involving harassment and indirect discrimination, including imposition of dress codes). However, this provision was never brought into force, with the Government declaring it too costly to implement and unnecessary.

Another example of a provision approved by Parliament which the Coalition Government refused to bring into force is section 1 of the Equality Act 2010, which would have imposed a socio-economic duty on all major public authorities. Under this duty a public authority would be required to assess whether they were addressing socio-economic inequalities in making strategic decisions. Because of the relationship between socio-economic status and race in the UK, this could have been an effective measure for responding to racial inequalities.

#### 2.1.1 The Public Sector Equality Duty

The Public Sector Equality Duty (PSED) in the Equality Act requires public bodies to have due

regard to the need to eliminate discrimination, advance equality of opportunity, and foster good relations between different people when carrying out all of their activities. It applies to race and religion or belief as well as six other protected characteristics. One notable partial exception to the PSED is immigration, which means that the Home Office, when taking immigration-related decisions, is not required to have due regard to the need to advance equality of opportunity but must still have due regard to the need to eliminate discrimination and to the need to foster good relations between different racial groups.

The PSED has real potential to be effective in tackling institutional racism, however soon after coming into force, it was targeted as unduly burdensome under the Government's Red Tape Challenge. As a consequence the specific duties regulations for all national public authorities in England are very limited, suggesting a lower Government priority for compliance. Interestingly, Ministers in Wales and in Scotland have adopted far more rigorous specific duties regulations for their public authorities.

The UK Government has also introduced other measures making it more difficult to comply with the PSED, such as the Department for Communities and Local Government Best Value Statutory Guidance, removing the obligation on local authorities to monitor service users by ethnicity, gender, religion, etc.

According to the Discrimination Law Association (DLA), the PSED can lead to positive outcomes both with and without litigation.

- The contribution of the PSED is significant because people can use it to stop a discriminatory policy without individuals having to bring claims after the event; it makes public authorities think about what the impact will be on people of different ethnicities in advance and in some instances, change their minds about a policy or service.
- The duty gives the public an opportunity to raise concerns about equality with public bodies. It gives public bodies an opportunity to reflect on how their policies and decisions impact on people of different ethnicities.
- It puts the onus on society to organise itself differently to eliminate barriers for ethnic minorities.
- The impact is much greater than the case law would suggest as many people succeed without ever needing to issue proceedings, since the vast majority of equality duty cases are settled through negotiating with public bodies.
- The duty *“to advance equality of opportunity between people who share a protected characteristic and those who do not”* is particularly useful. This duty should ensure that decision makers focus on – and seek to eliminate – the many barriers that BME people face that others don't. It also empowers BME groups to voice concerns about equality, as it addresses the needs of specific groups and doesn't only focus on solutions for a particular individual.

From their experience, DLA members suggest that there is a difference between central and local government attitudes to the PSED. Local authorities often take this duty more seriously – or are more frightened of litigation, or are dealing with the duty more sensitively on a local scale. Central government has consistently shown itself to be far less willing to review or

reconsider a policy proposal they have already put forward, regardless of the policy's effects. Further, the courts have generally been more reluctant to uphold a PSED challenge to central government policy.

Organisations that are not "public authorities" are subject to the PSED when they are exercising public functions (s.149(2)), but to date few if any private or voluntary sector organisations have been challenged for their failure to comply with the duty. With increasing privatisation of public functions, the importance of the PSED will shrink even further if contractors carrying out public functions do so without due regard to the elements of the duty.

One of the possible reasons for the PSED not being as effective as it could or should be is the absence of a statutory code of practice on the PSED. The Equality and Human Rights Commission (EHRC), produced draft PSED statutory codes (for England and Wales and for Scotland) on which they consulted widely but then met refusal by the Government to approve the codes and lay them before Parliament (the action required to give the codes statutory force). A comprehensive code of practice could assist public authorities and BME communities to have a fuller understanding of what compliance entails. This could achieve the real aims of the Equality Act without the stress and expense of litigation. Courts must take EHRC statutory codes into account – wherever they are relevant, and there are equality duty cases under the previous equality legislation in which the Commission for Racial Equality (CRE) statutory Code of Practice was referred to by the High Court. In 2014, the EHRC issued technical guidance explaining the requirements on the PSED, which is very useful, but both qualitatively different and lacking the influence and force of a statutory code.

In Scotland, the Equality Act provides for Scottish specific Equality Duties. The specific equality duties for Scotland came into force in May 2012, and require public authorities to report on mainstreaming the equality duty, publish equality outcomes and report progress, assess and review policies and practices, gather and use employee information, and publish equal pay statements. In practice, these duties are not sufficiently well enforced and while public authorities may publish information, it is often not sufficiently detailed. Furthermore, action is not taken to use the information to combat inequality. Application of the equality duty is sporadic across public authorities, and current means of enforcement of the duties remain ineffective.

#### **Recommendations:**

**The Government should demonstrate its commitment to equality by securing compliance with the PSED across all departments especially in their development of policies and allocation of resources.**

**There should be a clear obligation on public authorities when contracting with private and voluntary sector organisations for the carrying out of public functions to ensure that the requirement of the PSED that would apply to the contractor are incorporated into all relevant stages of their procurement process.**

**The Government should now engage with the EHRC to approve comprehensive PSED Codes of Practice – for England and Wales and for Scotland – and without further delay take all steps necessary to give these Codes statutory force with immediate effect.**

**The UK Government and devolved administrations should undertake a review of the Regulations in due course to identify and implement potential improvements.**

**The Scottish Government should hold public authorities to account in relation to the Scottish Specific Equality Duties, and ensure adherence to the duties. Monitoring practices should be robust across the nation.**

### **2.1.2 Weak enforcement**

NGOs working on race equality overwhelmingly agree that there are inadequate resources to make equality legislation a reality. The weak enforcement of the legislation is discussed in this report under Article 6, where we point to the introduction of employment tribunal fees, the reduction in legal aid and the drastic reduction of EHRC's budget, making it difficult to play its role of holding the Government to account on its equality obligations. All these factors contribute to a lack of progress towards equality in practice, despite strong equality legislation.

In addition, in 2012 the Government explicitly rejected any requirement for government departments and other public authorities to carry out equality impact assessments (EIAs). An EIA is an analysis of a policy or practice, which assesses whether it has or is likely to have a disparate impact on persons with particular protected characteristics. Its use had been widespread, especially amongst local authorities; an EIA is an important tool to assist a public authority to comply with the PSED as well as to provide evidence of compliance with the PSED. The Prime Minister justified this decision by stating "We have smart people in Whitehall who consider equalities issues while they're making the policy. We don't need all this extra tick-box stuff [...]. So I can tell you today, we are calling time on equality impact assessments. You no longer have to them if these issues have been properly considered." The Prime Minister's assertion that clever policymakers would never directly or indirectly increase racial inequalities is unfortunately not supported by the evidence. In this report we document increased racial inequalities, some of which are the result of the failure to acknowledge how policies and practices can intentionally or unintentionally adversely impact BME people.

#### **Recommendation:**

**To comply with its statutory equality duty, the Government should consider the likely impact of a proposed policy decisions for its impact on race equality. Where an adverse impact is discerned, the proposal should be reconsidered.**

### 2.1.3 Northern Ireland

Northern Ireland's legislation for tackling racial discrimination is the Race Relations Order 1997 which mirrored the Race Relations Act 1976 and is deficient in a number of ways, leaving it sixteen years behind the rest of the UK. These deficiencies, which are outlined in the Equality Commission for Northern Ireland's recommendations on reform of the law, include inadequate protection against discrimination on the basis of colour and nationality, non-application of discrimination provisions to some public functions and a lack of protection for agency workers.

Such shortcomings violate the UK's obligations under Articles 2(a) and 2(d) of ICERD but, despite the Northern Ireland Race Equality Strategy's commitment to have new legislation in place by 2017-2018, no review of the legislation has been included in the Programme for Government for the next term of the Northern Ireland Government.

#### **Recommendation**

**The Northern Ireland Executive should act without delay to amend the Race Relations Order so that existing deficiencies in protection are addressed; in the alternative the UK Government should extend the Equality Act 2010 to Northern Ireland.**

## 2.2 Descent-based/Caste discrimination

In Paragraph 30 of its concluding observations, the Committee stated:

**Recalling its previous concluding observations (CERD/C/63/CO/11 para. 25) and its general recommendation No. 29 (2002) on descent, the Committee recommends that the Minister responsible in the State party invoke section 9(5)(a) of the Equality Act 2010 to provide for "caste to be an aspect of race" in order to provide remedies to victims of this form of discrimination. The Committee further requests the State party to inform the Committee of developments on this matter in its next periodic report.**

The Equality Act 2010 and Northern Ireland equality legislation do not adequately protect victims of caste discrimination. While Black, Asian and Jewish members of ethnic minorities are protected from indirect and direct discrimination based on their race, caste does not form part of the definition of 'race' or 'racial grounds' in the Act. The Anti-Caste Discrimination Alliance campaigned to include caste as a protected characteristic in the Act. In response Parliament included section 9(5) which empowers a Minister to amend the Act to add caste 'as an aspect of race'. The Coalition Government failed to implement section 9(5), arguing that the problem should be solved through education rather than law. After three years of government inaction, Parliament passed an amendment placing Ministers under a legal duty to implement the change. That duty is not being performed. On 29 July

2013, the Government announced that it would consult in early 2014 on how best to prohibit caste discrimination. They published a timetable setting out the consultation process starting in February or March 2014 and concluding with the introduction of a final draft order in Parliament during summer 2015. However, this promised timetable was not put into effect. A feasibility study was completed in 2014 but never published. The Equality and Human Rights Commission concluded that urgent action was needed, but the Government continues to refuse and the law remains uncertain.

The Government cites the *Tirkey v Chandhok* employment tribunal judgment handed down on 17 September 2015 as the reason for their inaction. In *Tirkey*, the employment tribunal ruled that a Hindu couple of Indian origin had to pay £183,773 to a low-caste Christian former domestic worker who had been underpaid and maltreated over a period of five years. The tribunal found instances of alleged discrimination which raised ‘caste considerations’ that could fall within the scope of ‘ethnic or national origins’ in Section 9(1)(c) of the Act. However, the case was decided on the ground of indirect discrimination and caste was not taken any further.

The Government claims that the case changed the law on caste discrimination and suggests there is an existing legal remedy for claims of caste-associated discrimination under the ‘ethnic origins’ protected characteristic. Therefore the Government believes that “[a]ny continuing requirement for a consultation of this sort needs to be re-considered accordingly.” The Government’s assertion that the law now provides for a legal remedy for caste discrimination is misleading and incorrect. Employment tribunal cases do not create authoritative precedents – they only decide the case on the merits for the individual claimant. There is no guarantee that another individual suffering caste discrimination will achieve the same outcome in a future case. Moreover, *Tirkey* was not determined on grounds of race discrimination (with the ‘ethnic origins’ component incorporating caste), but on the grounds of indirect religious discrimination. It cannot be said to have created a precedent by which caste discrimination is protected in UK law.

**Recommendation:**

**The Government should perform its duty required by Parliament and the rule of law and amend the Act to add caste as an aspect of race.**

## 2.3 Rural Racism

While the population of minority ethnic communities in rural and remote areas is small relative to their incidence in the UK at large, there is now a settled ethnic minority population in every local authority area, including the most isolated and remote communities. The growth of migrant workers from East and Central Europe in rural areas (more than a million in the UK overall) has been greater than previous migration populations, and these in turn have supplemented the nomadic Gypsy and Traveller (Romany) populations which have long characterized many rural areas. All in all, minorities may be in excess of 5% of the population of local rural communities; demographic trends suggest that rural minority populations are growing twice as fast as in the UK overall.



The organizational capacity of race equality NGOs in rural areas is small and fragmented. These populations are – according to police statistics – subject to heightened levels of racism and discrimination, and they continue to be overlooked and marginalized in most policy and service development. The dispersed nature of rural minorities means they often lack the cultural and social support available to their more densely populated urban counterparts. There are neither effective networks nor, typically, agencies specifically designed to respond to their needs. Studies show that up to half of all rural minority ethnic respondents have experienced racist abuse or attacks. The pattern of racial disadvantage is thus often quite different from that of urban minorities.

Britain's minorities share the experience of racism and discrimination at both an institutional and individual level, but rural minorities experience an additional failure by policy and service agencies to take their issues seriously. These agencies, including local government, Government's local offices and health and police departments frequently hide behind the notion of 'numbers', arguing that these are too few to take their needs effectively into account.

The problems facing rural minorities are therefore fourfold:

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

**Recommendation:**

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

## **2.4 Gypsy, Roma and Traveller Communities**

In paragraph 27 of its concluding observations, the Committee stated:

**Recalling its general recommendation No. 27 (2000) on discrimination against Roma, the Committee recommends that the State party should strengthen its efforts to improve the situation of Gypsies and Travellers. The State party should ensure that concrete measures are taken to improve the livelihoods of these communities by focusing on improving their access to education, health care and services, and employment and providing adequate accommodation, including transient sites, in the State party. The Committee further recommends that the State party ensure that representatives of these communities are adequately consulted before any measures that impact on their situation, such as those proposed under the Localism agenda, are implemented.**

While there has been some acknowledgement by wider society that Gypsies, Travellers and Roma are amongst the most excluded and discriminated against groups in the UK society today, the UK Government has taken no substantive steps to address those inequalities. In many ways the situation of the travelling communities has worsened rather than improved since the last periodic examination.

The UK Government report states, inter alia, at Paragraph 111: *'The Government notes the Committee's particular recommendation that the Government should strengthen efforts to improve the situation of Gypsies and Travellers, including access to education, healthcare, employment and accommodation'*. The report goes on to say, at Paragraphs 113 and 114: *'113. In November 2010, the Secretary of State for Communities and Local Government set up an ad hoc ministerial working group on reducing Gypsy and Traveller inequalities. In March 2012 the Group published a report containing 28 commitments from across Government in areas such as education, health, employment, housing and criminal justice... 114. The Government is reviewing progress on these commitments and will publish a further progress report in due course.'*

It was uncovered, through questions posed under the Freedom of Information Act and subsequent appeal to the Information Commissioner, that the so-called 'Ministerial Working Group' existed in name only: it had met just once and had no plans to meet again. We are thus unclear as to the mechanism under which the "further progress report" reference in para. 114 will be produced, but assume that it will be a document written by civil servants with little or no input from Ministers, nor as a result of any meaningful engagement with civil society.

There is a 'Gypsy and Traveller Liaison Group' made up of Gypsy/Traveller organisations, including Friends, Families and Travellers, which meets with civil servants from the DCLG three to four times per annum but there is no evidence that these meetings have any impact on the policy decisions of the UK Government. Indeed the Government announced significant policy changes relating to planning in August 2015, shortly after such a Liaison Group meeting, without having discussed or pre-warned the Group about this policy change.

The different inequalities experienced by Gypsy, Roma and Traveller communities are detailed under the relevant sections of this report. We do not believe that the UK Government's Integration Strategy is delivering race equality for Gypsies, Travellers and Roma. However we feel that these inequalities could begin to be addressed through the development of a UK Roma Integration Strategy, as required by the European Union Framework for Roma Integration. Unfortunately, and contrary to the requirement of the European Commission, the UK Government has declined to produce a Roma Integration Strategy and consequently is pursuing no coherent joined-up approach towards addressing the extreme inequalities experienced by Gypsies, Travellers and Roma. Gypsy, Traveller and Roma groups have called for evidence of progress of this agenda.

**Recommendation:**

**The Government should develop a National Roma Integration Strategy, with targets that address the specific situation of Roma communities in the areas of education, employment, health and housing, matched with appropriate**

**funding.**

## **2.5 Proposed repeal of the Human Rights Act 1998**

The Human Rights Act (HRA) makes justiciable the rights within the European Convention on Human Rights and is central to progressing racial equality by requiring the UK to respect a number of civil and political rights without discrimination. The UK Government has signalled its intention to replace the HRA with a British Bill of Rights which could lead to the eradication of a vital instrument for protecting equality between those of different racial groups, nationalities and ethnicities. The repeal of the HRA would mean that individuals who felt that their rights under the ECHR would have no choice but to approach the European Court of Human Rights directly which would place a significant financial burden in the way of those seeking justice and a remedy for human rights violations.

## **2.6 Incorporating the Convention into UK law**

In paragraph 10 of its concluding observations, the Committee stated:

**The Committee requests the State party to reconsider its position so that the Convention can more readily be invoked in the domestic courts of the State party.**

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

### **Recommendations:**

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

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

## 3 – Article 4

In paragraph 11 of its concluding observations, the Committee states:

**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.**

### 3.1 Media and incitement to racial hatred

Unfortunately the media portrayal of BME groups, migrants and refugees has not improved since the last periodic examination and remains a very serious concern. In fact, the situation seems to have worsened in some cases. A survey conducted by The Runnymede Trust found that four out of five people thought the way the media portrays BME people promotes racism. This concern was not just expressed by BME respondents but by over two thirds of white respondents as well, thus countering the often rehearsed argument that negative media portrayal merely reflects public opinion.

Some communities, such as Muslims, migrants, refugees and asylum-seekers, have been the target of particularly negative and hostile media coverage last year in the wake of the terrorist attacks in France in January and November 2015 and the European “refugee crisis”. Two striking examples of such coverage include:

- On 17 April 2015, *The Sun* published a widely criticized article the day after the capsizing of a boat in the Mediterranean, where 400 migrants were feared dead. The piece was entitled “Rescue boats? I’d use gunships to stop migrants”, and likened people fleeing war-torn regions to “cockroaches” and described them as “feral humans”. The author of the piece wrote: “I don’t care if migrants die.” The dehumanising language and tone of the article shocked many readers (a petition calling for the columnist to be fired from the newspaper reached more than 300,000 signatories) including the UN High Commissioner for Human Rights, Zeid Ra’ad Al Hussein. Al Hussein stated “The Nazi media described people their masters wanted to eliminate as rats and cockroaches. This type of language is clearly inflammatory and unacceptable, especially in a national newspaper.” The author of the column was reported to the Metropolitan Police by the Society of Black Lawyers, and the case was passed on to Crown Prosecution Service, but she did not face any charges.
- On 23 November 2015, ten days after the terrorist attacks in Paris, *The Sun* splashed the following headline over its front page: “1 in 5 Brit Muslims’ sympathy for jihadis”. Soon after, academics, broadsheet journalists and even an employee who had helped conduct the survey (on behalf of a research agency) pointed to the misleading and unscientific nature of the questions asked in the survey and the dubious

interpretation that *The Sun* chose to make of it. The script of the survey was “reductive and often patronising” according to one of the pollsters and did not even mention the word ‘jihadi’. One question asked whether respondents had “sympathy with young Muslims who leave the UK to join fighters in Syria”, with the choices being ‘a lot’, ‘some’ or ‘no’ sympathy with people leaving for Syria. As another article pointed out, “the problem with the Sun’s interpretation of this poll is that people travelling to Syria are not necessarily going to fight on the side of jihadis. There have been high-profile examples of British people going to fight on the side of, for instance, the Kurds, who are fighting against Isis.” In addition, the wording of this question is (perhaps deliberately) ambiguous in a way social scientists who design surveys seek to avoid. ““Sympathy” is a very broad term and does not necessarily imply full-blooded support. People who say they have sympathy with something might be saying they understand why someone has come to do something, even if they think it is wrong. They may even simply be saying that they feel bad for a person in that situation.” Finally, there was no comparator group for Muslims in this survey. The British Election Study studied attitudes to extremism in the general population and found that all ethnic groups expressed similar levels of support for violence, including the white group. Even though the story was widely debunked and the newspaper was criticised for using such inflammatory headlines, the *Sun* did not apologize or issue a correction. Regardless, the damage had been done, providing yet again another example of stereotyping a particular group of people (in this case Muslims).

The two examples above are not only detrimental and inflammatory towards BME and migrant communities, but they also create a climate where minorities are vilified and where perpetrators of racist violence feel legitimized in expressing their hatred. As the *Sun* headline appeared in the press, TELL MAMA (an independent NGO that records anti-Muslim hate crime) recorded a 300% increase in anti-Muslim incidents in the week following the Paris attacks, with many incidents involving violence against Muslim women and girls. Although this increase in hate crime targeting Muslims at that particular moment can be attributed to a variety of factors, including the aftermath of the Paris attacks, press coverage in the UK should do much more to reduce racial hatred, and be more wary of publishing articles that might incite it.

These two examples concern refugees and Muslims but other ethnic minorities, including Gypsies and Travellers, are also targeted by offensive media coverage. The Irish Traveller Movement in Britain (ITMB) highlighted examples of such coverage, including the use of “offensive and provocative terminology” when referring to Gypsies and Travellers, notably in the advertising for the Channel 4 series *Big Fat Gypsy Weddings*. These programmes have real effects on young people, who are known to face bullying and harassment based on the stereotypes portrayed in such series.

Inflammatory speech is unfortunately not only confined to the press. Politicians have also made statements that vilify even further an already vulnerable group. Examples include the Prime Minister referring to a “swarm of people coming across the Mediterranean” to seek a better life in Britain or when the Foreign Secretary, Philip Hammond referred to the migrants in Calais “marauding the area.” As Rabbi Laura Janner-Klausner stated “this morphs them

into pirates, pillaging lands as they go.” NGOs have noted the failure of politicians to ensure that they do not exacerbate an already hostile climate for BME groups and to recognise the direct link between ‘hostile policies’ on migrants and the effect this has on all BME people in Britain, whether in terms of ‘Go Home’ vans or policies that will incentivize landlords to discriminate against ethnic minorities.

### 3.2. Ethnic diversity in journalism

The negative media portrayal of BME people is less surprising given the lack of diversity in the UK’s journalism industry. Research published in 2013 found that 94% of journalists in the UK are white (compared with 86% of the general population and 91% of the general workforce) and there is still a lack of an alternative BME perspective to counter the negative and stereotypical narrative prevalent in the press.

### 3.3. Online hate speech

Incidents of hate speech perpetrated online, mainly through social media, have increasingly become an area of concern for BME people. The Government report mentions online antisemitism as an area for governmental action. It is good to see recognition of antisemitism, although online hate crime affects other communities as well. For instance, TELL MAMA recorded 548 anti-Muslim incidents in 2014, of which two thirds took place online. ITMB also highlights the offensive nature of comment threads after online news or opinion articles. It analysed one thread after a sympathetic opinion piece on Dale Farm was published in the *Observer*, concluding that “out of 500 comments posted 150 were found to be racist.”

Protection against racism extends to the online domain and incitement to racial and religious hatred is illegal, regardless of the medium through which it is expressed (whether online or offline). This means that online hate crime can be prosecuted under existing hate crime legislation (mainly the Public Order Act 1986.) However, organisations supporting victims of hate crimes have highlighted that current legislation is inadequate to prosecute perpetrators of online hate because the legislation was adopted before social media such as Facebook and Twitter were founded. These can provide platforms for hate speech and incitement to hatred, and have been used extensively by far right groups to propagate their racist propaganda. More work is therefore needed in collaboration with such social media companies to reduce online hate.

Given the rise in the volume of hate speech online, including on social media, and the Government’s stated objective of reducing hate crime, it is imperative that more thought and resources be dedicated to dealing with this issue effectively.

### 3.4. Hate speech in Scotland

Current events have sparked a rise in racial and religious hatred, harassment and attacks in Scotland as well. Addressing online hate speech in particular has proven challenging. Far right groups such as the Scottish Defence League have been active in spreading hate speech

through social media, organising demonstrations against immigration and refugees and attempting to incite hatred. While some planned marches have been banned by councils, protests and hate speech continue.

**Recommendations:**

**The Government should investigate the possibility of introducing a stand-alone offence related to online hate crime.**

**The UK Government and devolved administrations should develop a dedicated strategy to combat the specific form of hate speech and incitement to racial and religious hatred online.**

**The Government should work more proactively with social media companies such as Facebook and Twitter to develop adequate tools for controlling and limiting the incidence of incitement to racial hatred on social media.**

## 4 – Article 5

### 4.1. Hate crime

We are pleased to see that the Government recognises that fighting race and religious hate crime is an important issue that needs to be adequately supported.

Recent figures show that race hate crimes recorded by the police have increased by 15% in England and Wales compared to 2013/2014 (42,930 cases in 2014/2015). Over the same period, religious hate crime increased by 43% (3,254 cases in 2014/2015). Out of all the hate crime strands recorded by the police, an overwhelming majority (82%) are race hate crimes. Meanwhile, the Crime Survey for England and Wales (a face-to-face victimisation survey in which adult residents in households are asked about their experiences of crime in the 12 months preceding the interview) reported a decline in racially motivated incidents of 42% between 2008/09 and 2014/15. This decline does not mirror the upward trends in racist incidents and racially and religiously aggravated offences recorded by the police, which could indicate that the increase is due to better recording practices and identification of racist crimes by the police.

The Crown Prosecution Service (CPS) reports an increase in the number of racially and religiously aggravated crimes being prosecuted. However, there continues to be the perception amongst NGOs that the aggravation (racial or religious) is often dropped as a result of plea bargaining between the prosecution and the defence. CPS chose to examine this issue further and looked at a sample of finalised cases for further analysis. It found that nearly 10% of the examined cases involved dropped or significantly amended charges that could not be explained nor recorded. It also found that the decision was not appropriately communicated to the victim in accordance with CPS policy in a significant minority of cases.

Analysis of race-related deaths in the 20 years since the murder of Stephen Lawrence in 1993 found at least 106 deaths with a known or suspected racial element in the UK. Many victims were asylum-seekers who have been killed shortly after being dispersed in areas where “they don’t want to go and where they are not wanted”, highlighting how racist violence connects with wider political factors, in this case asylum policy. “In a quarter of the cases (or twenty-three people), the victim had only recently moved to the UK. Of these, ten people (43 per cent of this sub-total) were seeking asylum or had recently been granted leave to remain. Others had recently arrived for employment reasons, were international students, or were visiting friends or family.” The report shows that racial motivation factored into the sentencing of the perpetrators in only a quarter of the cases, thus mirroring the ongoing perception that the racism element of the case is being “filtered out” by the various criminal justice agencies.

#### 4.1.1. Islamophobia

The Government has rightly decided to focus on tackling anti-Muslim hatred specifically, as this has been a growing phenomenon since the last CERD review. As highlighted in section 4.1, race and religious hate incidents are reported to be decreasing, but those against



Muslims in England and Wales appear to have significantly increased (based on figures collected by TELL MAMA in 2013/2014). Following the terrorist attacks in Paris on 13 November 2015, TELL MAMA recorded a 300% increase in the number of Islamophobic incidents and in London, 76 Islamophobic incidents were reported to the police in the week following the attacks (more than triple the number reported the previous week). This was also seen in Scotland, with dozens of reports of racist harassment and attacks, with a Scottish Government minister one of those targeted. A majority of Muslim students reported being bullied in school for their race and religion. Reports also indicate that non-Muslim minority groups are also experiencing Islamophobia. The Scottish Government met with community representatives and condemned the hatred, although these communities continue to face harassment and violence.

We welcome the Government's recognition of the rise in anti-Muslim violence as a particular challenge, and its allocation of resources to increase reporting of such violence. However, we are concerned that these efforts are undermined by the daily stereotyping of Muslim communities in the media, compounded by counter-terrorism and "integration" policies that risk further stereotyping them. These policies are discussed in separate sections of the report but it is important to stress that that they create a climate that indirectly fuels Islamophobic violence.

#### **4.1.2. Racist violence and hate crime in Scotland**

In 2013-2014, there were 4,807 racist incidents recorded by the police in Scotland, and 5,520 crimes recorded. The most common crimes recorded as a result were racially aggravated conduct (48%) and breach of the peace (28%). The majority of incidents occurred on the street, in a dwelling, or in a shop. Where the ethnicity was known, those with a Pakistani ethnic background were the most likely to be the victim or complainer of a racist incident recorded by the police per rate of the population, with 224 per 10,000 of the population, followed by African, Caribbean, or Other Black background with 190 and Indian background 104 per 10,000 of the population. The average across Scotland is 11 per 10,000 of the population; 90.4% of perpetrators were white British, with 95.3% from any white background. Where the result was known, 94.7% of incidents resulted in at least one crime being recorded, and 81.3% of perpetrators were referred to the Procurator Fiscal. This appears to be an increase, but comparison is cautioned due to issues with data collection.

However, data within this report is presented with "victim" and "complainer" within the same category. The data as currently collected doesn't clarify which ethnic groups are most often the victims of racist incidents, as the ethnicity recorded could either be the ethnicity of the victim or the bystander. Of the hate crimes reported to the Procurator Fiscal, racist hate crime is the most common with 3,785 charges in 2014-2015, and 569 religiously-motivated hate crimes reported. There has been a decrease of 9% in charges related to racially aggravated crimes, and a decrease in charges of racially aggravated harassment and behaviour coupled with an increase in charges related to other offences with racial aggravation. In Scotland, the Lord Advocate has told the police that an incident must be investigated as a hate crime if it is perceived by the victim or another person to be aggravated by prejudice.

Police Scotland launched a campaign in 2015 to encourage reporting of hate crime and promote use of third party reporting centres. However, only 1.2% of racist incidents were reported in 2013-2014 through a third party reporting centre, with direct reporting from the victim/complainer or police the most popular methods.

Racist hate crime is under-reported in Scotland, with victims choosing not to report due to a lack of trust in the police and justice system, confusion surrounding the process, and feeling desensitised to harassment. Minority ethnic individuals wanted to see simpler reporting methods, clarity and transparency in the process, and to be kept aware of the progress of their case. There has also been concern raised about online hate speech and hate crime, and methods of reporting and recording these. The Scottish Government has convened an independent hate crime advisory group, with membership from academics and practitioners.

Jews have expressed concern with rising Antisemitism, with organisations reporting that there were as many Antisemitic incidents in one month of 2014 as in the whole of 2013. This rise followed conflict in Gaza in summer 2014, and has led to anxiety and alienation, with individuals considering leaving the country. Antisemitic attacks doubled in 2014 and rose ten-fold in Glasgow, making Jews the most likely religious group to be targeted in this city.

#### **4.1.3 Sectarianism, racist violence and hate crime in Northern Ireland**

To a large extent Northern Ireland remains a divided society along sectarian lines and consultees commented on the difficulties they face trying to integrate. Many do not know where or how they can fit in, where it is safe to live or send their children to schools and are afraid to speak out in case these may lead to abuse or reprisals. In the main, Government has focused on addressing the sectarian nature of behaviours with money channelled toward this rather than to addressing racist attacks or racial prejudice. There is an urgent need for a bespoke Integration Strategy for Northern Ireland.

There has been a significant rise in racially motivated hate incidents in recent years, with racist crime in 2014-2015 reaching the highest level ever recorded. Disturbingly, there is a paramilitary component to racist hate crime in Northern Ireland with both the Police Service for Northern Ireland and the Northern Ireland Affairs Committee acknowledging significant loyalist paramilitary involvement in racist violence.

The incidence in hate crime has coincided with a significant shift in public opinion on the acceptance of BME people in Northern Ireland. Between 2010 and 2014, the percentage of people who would accept an Eastern European person as part of their family dropped from 76% to 47%. For Muslim people, this dropped from 52% to 34%. This is partly attributed to inflammatory political rhetoric around ethnic minorities. For example, the Northern Ireland First Minister made what were described as disparaging remarks about Muslims and showed support for protesters who wanted the eviction of a BME man from public housing because he was not 'local'. Northern Ireland consultees expressed concern about the upsurge in attacks, abuse and hate crime and the fact that attitudes toward newcomers and migrant workers are changing with people becoming less welcoming and more hostile. They felt that more needs to be done to strengthen and enforce the law against hate crime to help instill

confidence within communities that the police will take their views seriously and deal with them in a professional and supportive way.

**Recommendations:**

**In cases of racially/religiously aggravated offences, the Crown Prosecution Service should give careful consideration to evidence of aggravation before the basic offence only is accepted as a plea bargain.**

**The UK and Scottish Governments and the Northern Ireland Executive should encourage the police to work alongside communities to address hate crime.**

**The Northern Ireland Executive should put in place an Integration Strategy that will address the particular sectarian and racist issues that pertain in that jurisdiction**

**The Scottish Government should reconsider its approach to recording and reporting data on the victims and perpetrators of racially or religiously aggravated hate crimes. Consideration should also be given to the ease and transparency of the reporting procedure to ensure victims feel comfortable and confident in reporting.**

## **4.2. Criminal justice**

People from BME communities are over-represented in almost all areas of the criminal justice system except judges, police and others engaged in enforcement or containment (see below). They are disproportionately targeted by the police, over-represented in the prison system and more likely to be given longer sentences than their white counterparts. The Prime Minister recently recognised this challenge and has appointed David Lammy, the MP for Tottenham in North London where the 2011 riots began, to lead a government review of racism in the criminal justice system. We welcome this development and look forward to its findings and recommendations. We also recommend that the government address the findings and implement the recommendations of the Young review, chaired by Baroness Lola Young, on improving outcomes for black and/or Muslim men in the criminal justice system.

**Recommendation:**

**The Government should address the findings and implement the recommendations of the Young review to improve outcomes of black and Muslim men in the criminal justice system.**

### 4.2.1. Stop and search

In Paragraph 18 of its concluding observations, the Committee stated:

**“the Committee urges the State party to review the impact of “stop and search” powers on ethnic minority groups under various pieces of legislation in the State party. It recommends that the State party ensure that all stops are properly recorded, whether or not leading to searches, and that a copy of the record is provided to the person concerned for all such incidents in order to safeguard the rights of those subject to these laws and to check possible abuse. The Committee requests the State party to provide in its next periodic report detailed statistical data disaggregated by ethnicity and community origin on the use of stop and search powers and their effectiveness in crime prevention.”**

Historically, stop and search has been one of the most contentious areas of interaction between black people and the police. The use of those powers has been cited as a key concern for police legitimacy and public trust in most major public inquiries into policing since the 1970s.

In its report to the committee, the Government acknowledges the disproportionate impact that use of stop and search has on BME people and mentions a package of reform measures to ensure that stop and search powers “are used fairly, effectively and with the confidence of local communities.” We welcome this development and note that it has had some impact on stop and search figures. The latest statistics on stop and search show there has been a 40% decrease in the overall numbers of searches compared to the previous year. Rates at which BME people were searched compared to whites also decreased compared to the previous year. However, BME people are still searched two times – and Black people 4.2 times – the rates of white people.

The reduction observed in these figures can partly be attributed to the collective advocacy efforts of a coalition of activists, which led to the Government admitting the need for reform of stop and search policies and practices in 2013. As part of these reforms, the Home Secretary Theresa May commissioned an inspection of the way in which police forces across England and Wales use stop and search. The inspection was carried out by Her Majesty’s Inspectorate of Constabulary (HMIC), which independently assesses police forces and policing in the public interest. It concluded that although there was an over-reliance on stop and search powers by police forces, very few could demonstrate that the use of these powers was “based on an understanding of what works best to cut crime.” In addition, police forces had reduced the amount of data collected about stop and search to reduce bureaucracy, which had led to poor understanding of the use of the powers on crime levels and community confidence.

Out of the 8783 stops and searches examined, just above a quarter (27%) did not include sufficient grounds to justify the lawful use of stop and search. According to HMIC, this is due to a lack of understanding of what constitutes reasonable grounds as well as poor supervision and insufficient training of police officers.

The report issued a series of recommendations and made a commitment to review progress on implementation of these recommendations 18 months later. These recommendations

included:

- Better guidance on what constitutes effective and fair exercise of stop and search powers, by chief constables and College of Policing.
- Better monitoring of the way in which officers stop and search people.
- Better supervision of officers carrying out stop and search encounters to ensure in particular that they comply with the code of practice and equality legislation.
- Training designed for officers carrying out stop and search.
- Requirement on supervisors and officers to take this training.
- Better intelligence gathering from stop and search encounters to contribute to broader crime fighting efforts.
- Better scrutiny by the public of stop and search and the way it is used locally.
- Opportunities for people who are dissatisfied with the way they have been treated during stop and search encounters to have their views considered by the police force and for them to make an official complaint quickly and easily.
- A nationally agreed form for recording stop and search encounters.
- Better use of technology to record relevant information about stop and search encounters.

The follow-up review published in 2015 found that out of the ten recommendations, only one (Recommendation 10 on the use of technology to record information about stop and search encounters) had been fully implemented and called on chief constables to develop plans that set out how each force will complete the actions required to implement the recommendations from the initial inspection.

#### ***a) Traffic Stops (under section 163 of the Road Traffic Act 1988)***

In 2015 HMIC also reviewed for the first time police powers under section 163 of the Road Traffic Act 1988, which makes it a criminal offence for a vehicle driver to fail to stop when required to do so by a uniformed police officer. The Act does not specify grounds for a s.163 stop, but the courts have held that the police officer must be acting in the execution of their duty. HMIC sought to determine whether these stop powers were being used effectively and fairly. It found that a higher proportion of BME drivers than white drivers reported a vehicle stop, and were treated differently to their white counterparts in these encounters. They were more likely not to be provided with a reason for the stop, more likely to have their vehicle searched, and potentially more likely to be subject of a person search.

Stops of BME drivers were, however, *less likely* to result in a prosecution than stops of white drivers, suggesting that BME drivers are more likely to be stopped without reasonable grounds. In addition, the HMIC report deplores the lack of policies to guide officers on how to use the s.163 power effectively and fairly and raises concerns that there is no requirement to record these stops. Specifically, it states that “the absence of reliable data about the use of the Road Traffic Act and Police Reform Act powers has meant that forces cannot demonstrate to us that they are using these powers effectively and fairly.”

#### **Recommendation:**

**The Government should ensure full and effective implementation of the recommendations of the HMIC review of stop and search powers carried out in 2013.**

**The Government should require police officers to record stops conducted under S163 RTA and to collate and publicly share data regarding the use of S163 and submit this to the HMIC and EHRC for review and report on this annually in accordance with S95 1991 Criminal Justice Act.**

**Officers should be trained on the appropriate use of S163.**

### *b) Ethnic profiling and counter-terrorism*

**Schedule 7** to the Terrorism Act 2000 is the most wide ranging stop and search power in the UK. Detentions at ports are at an historic high although they have been falling recently due to greater public scrutiny. In the year ending September 2015 the number of detentions following examinations under Schedule 7 to the Terrorism Act 2000 according to Home Office data was 1,800, which almost tripled from the 680 in the previous year. This increase is in part due to the introduction of the Anti-social Behaviour, Crime and Policing Act 2014, which ensures a mandatory detention takes place where an examination lasts for more than an hour.

As with previous years, the single largest group of people detained under schedule 7 are those from Asian backgrounds and the 2014/15 financial year saw a sharp rise across all ethnicities, again in part due to the changes in legislation. David Anderson QC, the government appointed independent reviewer of counter-terrorism legislation, has repeatedly warned the government to make changes to the use of schedule 7 only to be ignored. In particular he has raised the need to introduce a statutory bar to prevent information obtained from people questioned at ports – something he considers to be a form of ‘duress’ – not being used as evidence in court, and that some degree of suspicion is introduced to make sure the more draconian aspects of the power are not abused, including downloading and retaining information from people’s mobile phones, tablet PCs, laptops or other electronic devices.

#### **Recommendations:**

**The Government should introduce reasonable suspicion as a condition for the use of the powers under Schedule 7 of the Terrorism Act 2000.**

**The Government should issue clear and proportionate rules to define how biodata or information taken from electronic items are taken and retained under Schedule 7.**

**The Government should introduce a statutory bar to prevent people detained under Schedule 7 having their statements used against them in any criminal proceedings.**

**Section 43** of Terrorism Act 2000 is a power which requires reasonable suspicion to believe that a person is involved in terrorism in order to then search them for any item which may confirm that initial suspicion or not. In the year ending September 2015 the Metropolitan Police Service stopped and searched 473 persons under section 43, compared to 360 total searches the previous year, representing a 31% annual increase. Increases were seen for almost all ethnic groups, but the self-defined group of 'Asian or Asian British' saw the largest rise: 53% compared to 2013/2014. Unfortunately, other police forces do not publish their data on section 43 which means that it is impossible to know whether this is a trend in other areas across England and Wales or unique to the capital. David Anderson has repeatedly called upon police forces to publish this data but so far all other police forces have ignored his recommendation.

**Recommendation:**

**The Government should encourage all police forces to record and publish data to enable public monitoring and scrutiny of the use of Section 43 of the Terrorism Act 2000.**

***c) Stop and search in Scotland***

The controversial practice of non-statutory stop and search of adult and children has been banned by the Scottish Government, to be replaced with a new statutory code of practice.

**4.2.2. Arrests and sentencing**

In 2014, Black people were nearly three times more likely to be arrested than white people and those from the 'mixed' ethnic group were approximately twice as likely to be arrested as white people. Rates of sentencing for Black offenders were three times higher and two times higher for 'mixed' ethnic group offenders, relative to the white offenders.

An analysis of over one million court records, carried out by the *Guardian* newspaper in 2011, highlighted disparities in sentencing between white and Black offenders for certain categories of crimes. It found that black offenders were 44% more likely than white offenders to be given a prison sentence for driving offences, 38% more likely for public order offences or possession of a weapon and 27% per cent more likely for possession of drugs. Asian people were 19% more likely than white people to be given a prison sentence for shoplifting and 41% more likely for drugs offences. We welcome the recent announcement by Prime Minister David Cameron that he will be examining these disparities in the government review led by David Lammy MP.

**4.2.3. Deaths in custody**

BME people remain over-represented in the incidences of deaths in police custody. INQUEST, the charity monitoring deaths in custody, reported that in 2014/2015, there were 59 deaths

in police custody or otherwise following contact with the police in England and Wales, of which 9 were from BME background.

A recent examination of the deaths of 509 BME people who died between 1999 and 2014 in suspicious circumstances in which police, prison or immigration detention officers have been implicated, concluded that a large proportion of these deaths involved undue force and culpable lack of care. To date, no one has been convicted for their part in these deaths, despite inquest juries having delivered verdicts of unlawful killing in at least 12 cases. The report also suggests that “the introduction of the market through the privatisation of asylum and immigration functions has resulted in poor service, a lack of sanction and a system (characterised by re-allocating contracts) in which it is hard to call wrong-doers to account.”

Eleven individuals have died in police custody since Police Scotland was formed in 2013. In the high-profile case of Sheku Bayoh, a Scottish man originally from Sierra Leone who was restrained and died in police custody, one of the principal police officers involved has a history of violence and racism. There were significant delays from the officers involved in providing essential information to the Police Investigations and Review Commissioner, which created difficulty in determining the cause of death. Campaigners have called for a thorough independent investigation into Sheku Bayoh’s death.

#### 4.2.4. Prisons and Youth Secure Estate

BME people are over-represented in the prison system. In 2014, Black people made up 10% of the prison population, despite making up only 3% of the overall population. Expressed differently, in 2014, out of 10,000 Black people, 55 were in prison and out of 10,000 Mixed heritage people, 44 were in prison, compared to 14 white people out of 10,000, highlighting that a greater proportion of Black and Mixed people are in prisons compared to white people.<sup>1</sup> Gypsies and Travellers are thought to represent at least 5% of the prison population but are less than 0.5% of the wider population, an over-representation that is at least ten-fold.<sup>2</sup>

BME and Muslim prisoners report poorer experiences in prison compared to the prison population as a whole.<sup>3</sup> For instance, Her Majesty’s Inspectorate of Prisons (HMIP) reports that: “black and minority ethnic prisoners were often more negative about safety, being treated with respect, relationships with staff and their daily experience of prison life. They repeatedly raised a lack of cultural awareness among staff.”<sup>4</sup>

The over-representation of BME people is particularly stark in relation to children aged 17 years old and under in the youth secure estate (including Secure Children’s Homes, Secure Training Centres, Young Offender Institutions). Figures from the Ministry of Justice<sup>5</sup> for April 2016 show that of the 906 children in the secure estate, there were 405 BME children (45%

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<sup>1</sup> MOJ (2015) *Statistics on Race and the Criminal Justice System 2014*, p. 68.

<sup>2</sup> HM Inspectorates of Prisons (February 2014) [People in prison: Gypsies, Romany and Travellers](#). p.5

<sup>3</sup> EHRC (2015) [Is Britain Fairer? The State of Equality and Human Rights 2015](#). Lonon: Equality & Human Rights Commission, p.78.

<sup>4</sup> HMIP (2014) [Annual Report 2013-2014](#). p.35

<sup>5</sup> MOJ (2016) *Youth Custody Data* <https://www.gov.uk/government/statistics/youth-custody-data>



of the youth custody population). While the overall numbers of young people held by the state have reduced, the numbers of BME young prisoners has not fallen very much, which has led to a large increase in the proportion of young BME people being held in the youth justice system. This is growing or worsening problem: BME children were 30.1% of the youth custody population in December 2010 but by December 2015 this figure had increased to 41%.

Commentators have speculated that the application of Joint Enterprise laws may hold some answers for the dramatic disproportionality in youth custody. Joint Enterprise makes a person liable to conviction for being present when a serious crime is committed or even for being with a person committing a crime and not attempting to stop it. The Centre for Crime and Justice Studies report<sup>6</sup> on joint enterprise, gangs and racism found that 78.9% of BAME people had 'gangs' discourse invoked at prosecution, compared with just 38.5% of white people facing the same charge. According to the study, prosecutors are able to invoke racial stereotypes in relation to BME defendants (who are often children or young people) by using threatening 'gangs' language in order to steer a jury towards a conviction.

In Scotland, the most recent prison statistics show that the proportion of people from minority ethnic groups in prison is higher than in the overall population. In 2011-2012, minority ethnic individuals constituted 3.9% of the prison population, against 3.2% of the general population. The most recent survey of prisoners revealed that 31% of minority ethnic prisoners experience racial discrimination from other prisoners, and 22% are bullied, with 68% of these due to their race and 62% due to their nationality.

**Recommendation:**

**The UK must take urgent action to reverse the growing disproportionality of BME children in the youth secure estate including by reviewing the law around joint enterprise.**

#### **4.2.5. BME representation in the police force and in the administration of the Criminal Justice System**

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

**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. [...] 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.**

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<sup>6</sup> Williams and Clarke (2016) *Dangerous Associations: joint enterprise, gangs and racism* London: Centre for Crime and Justice Studies <https://www.crimeandjustice.org.uk/publications/dangerous-associations-joint-enterprise-gangs-and-racism>

The Ministry of Justice reports little change in the ethnic makeup of criminal justice organisations in the last 5 years.

The lack of BME police officers still represents a significant problem with recent research showing that none of the 43 police forces across England and Wales adequately represents the ethnic composition of its local population. The Metropolitan Police, UK's largest police force, only 11.7% of police officers are BME, with latest census figures showing that BME people make up 40.2% of London's population, and an even greater share of the population aged 18-55 (the age of most public-facing officers). Four police forces do not employ a single black police officer, with their overall BME staff population as follows:

- Durham has a BME staff population of 1.7% BME which is 20 officers;
- North Yorkshire has a BME staff population of 1.1% which is 15 officers;
- Dyfed Powys has a BME staff population of 0.7% which is 8 officers;
- Cheshire has a BME staff population of 0.6% which is 12 officers.

While the call by the Home Secretary and the Prime Minister to make police forces more representative of the communities they serve is welcome, it is unclear what policies the Government intends to put in place in order to remedy this under-representation. Other criminal justice practitioners are also less likely to be BME, with only 6% of judges and 9% of magistrates being BME.

There is also significant concern about the under-representation of minority ethnic people in Police Scotland, with 1% of police officers from a minority ethnic background, compared to a population which is 4% minority ethnic. Further issues regarding the recruitment, promotion, and retention of minority ethnic police officers has also been raised.

Minority ethnic communities are also concerned about the organisational culture of Police Scotland, and the presence of institutional racism. Groups have called for an external, independent review of institutional racism within Police Scotland, with minority ethnic community involvement. However, this perception stands in stark contrast to a statement made by the head of resource management for Police Scotland during a parliamentary inquiry who said, "We do not believe there is any significant institutional racism within Police Scotland – in fact, I would be astounded if there was any at all." One way to bridge the differential perception is for the Scottish government to report on complaints of racial discrimination made to the Police Investigations and Review Commissioner.

### **Recommendations**

**The UK government must implement policies to show how it will not only recruit more Black and minority ethnic police officers, but also retain and progress those staff. The minimum goal should be to reach the local BME population for every police force in the UK.**

**The Scottish Government should consider commissioning an independent review of institutional racism in Police Scotland.**

**Furthermore, the Scottish Government should report on the complaints of racial discrimination made to the Police Investigations and Review Commissioner, as well as the outcome of these reports.**

### **4.3. Political rights**

#### **4.3.1. Voter registration and turnout**

The 2010 Ethnic Minority British Election Survey (EMBES) is the most comprehensive study ever undertaken in Britain of the concerns, orientations, voting patterns and integration of ethnic minorities in the political process. The survey found:

- Ethnic minorities are somewhat less likely than White British to register to vote, but among those who are registered turnout rates are very similar to white British ones.
- They are also highly supportive of British democracy. BME people share the British norm of a duty to vote, and the great majority identify with Britain. Concerns about the commitment of minorities to British norms and values are misplaced.
- Nor do Muslims show in general any lack of commitment to Britain or any enthusiasm for extremist politics.
- However, there is worrying evidence that second-generation citizens of Black Caribbean heritage do not feel that the British political system has treated them fairly. Black Caribbean people, not Muslims, are the group who feel most alienated.
- Finally, a majority of BME people believe that there is still prejudice in the UK society, including nearly three-quarters of Black Caribbean people. Indeed, over a third (36%) of ethnic minorities report a personal experience of discrimination.

In 2014, the House of Commons Political and Constitutional Reform Committee reports that some BME groups are less likely to be registered to vote compared to the rest of the population. While completeness of the electoral register for White people is 85.9%, it is 83.7% for Asian people, 76.0% for Black people and 62.9% for people of Mixed ethnicity. EMBES found that, among those who were registered, ethnic minority turnout rates at the general election were only slightly lower than those of the White British. The key barrier to participation is therefore registration, not turnout.

In this context changes to voter registration are particularly concerning, and will likely increase inequalities in voting between white and ethnic minority electors. The Electoral Commission and Runnymede Trust have previously raised concerns that the government is introducing changes that it knows will reduce registration rates for ethnic minorities in particular. Under current changes while as many as 90% of couple pensioners in rural areas will remain on the existing register, the number for young black men who rent in urban areas will be only 10%.

#### **Recommendation:**

**The Government must publish data on how voter registration changes have impacted on registration rates by ethnicity.**

**The Government should target those groups that are least likely to be registered to vote and provide adequate information and engagement within communities to secure a reduction in the gap between the voter registration rates of ethnic minorities (including Gypsies and Travellers) and those of white people.**

#### **4.3.2. Political representation**

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

The May 2015 General Election saw a record number of BME MPs elected in Parliament. There are now 41 elected BME MPs, a rise on the 27 in 2010 and BME MPs now make up 6% of all MPs in Parliament (up from 4.2% in 2010 – a 56% increase). Labour increased its BME MPs from 16 in 2010 to 23 in 2015, and Conservatives have 17 BME MPs, an increase of six from 2010. This result is a welcome development, although 6% is still substantially less than the proportion of BME people (14%) among the general population.

Continued efforts by political parties are therefore needed to make Parliament truly representative of the country's diversity. There is little evidence that any political party has considered taking advantage of the specific positive actions which they are able to take under the Equality Act 2010. Making use of such provision would very likely boost BME political representation. Whether such provision is taken up, political parties should commit to placing larger numbers of BME candidates in winnable seats.

#### ***Political representation in Scotland***

In the 2015 General Election in Scotland, only one non-white minority ethnic MP was elected, accounting for 1.7% of Scottish MPs. In total, ten minority ethnic candidates stood for election, or 3.3% of the total. In the 2011 Scottish Parliamentary Election, 16 minority ethnic candidates stood, accounting for 3.9%, although only one party matched this figure (the percentage of minority ethnic individuals in Scotland). Only two BME Members of the Scottish Parliament (MSPs) were elected, or 1.6% of the total number of MSPs, as the candidates standing were often not placed in so-called winnable seats, or were placed low on regional lists. In the 2012 Scottish Local Elections, only 1.4% of elected councillors were from a minority ethnic background, and only seven of the 32 local councils have at least one minority ethnic councillor. The number of female minority ethnic councillors increased from zero in the last election to four, or 0.3% of all councillors. There has never been a female minority ethnic MSP.

None of the Scottish political parties monitors the ethnicity of their membership. There is a concerning lack of diversity in the candidate pool for the upcoming 2016 Scottish Election, with several parties not standing any minority ethnic candidates. The Women 50:50 campaign has called for equal representation for women in elected bodies, but the same enthusiasm has not been generated for ethnic representation.

### *Political representation in Northern Ireland*

One of the results of living in a 'divided' community is that those from Black and minority ethnic backgrounds find it difficult to locate a space for themselves within the political milieu; identifying with a particular political party can label you as being on 'one side or the other'. This polarised nature of Northern Ireland society acts as a disincentive to many BME voters or potential candidates for office who feel there is little point in becoming involved. Perhaps because of the often sectarian focus of the political parties few, if any, show an interest in addressing the particular issues and concerns faced by BME communities.

#### **Recommendation:**

**The Government should encourage political parties to take positive action as permitted by law to increase the numbers of political representatives from minority ethnic communities.**

**The Government should encourage political parties to set targets for placing BME candidates in winnable seats in the UK Parliament (Westminster), as well as in the Scottish Parliament and the National Assembly for Wales.**

**The Government should encourage political parties to take similar measures to respond to BME representation among councillors and other elected officials.**

## **4.4. Civil rights**

### **4.4.1. Freedom of movement and residence**

The Government continues to pursue an immigration policy based on increasing restriction and control. Driven by the objective of reducing the number of migrants entering and settling in the UK, it has taken measures that in our view are clearly in breach of ICERD as well as other UN Conventions, such as the UN Convention on the Rights of the Child (UNCRC).

#### *Family migration discrimination*

In 2012, the UK Government introduced the Financial (minimum income) Requirement into the Immigration Rules affecting British citizens wishing to bring to the UK a spouse or children from outside the European Economic Area (EEA). Those who wish to sponsor a non-EEA spouse need to demonstrate a minimum annual income of £18,600. If a person wishes to bring one child in addition to the spouse, the minimum annual income requirement

increases to £22,400 and for every additional child, he/she must show evidence of an extra £2,400 of income.

These rules only apply to UK citizens, as other EU citizens are protected by EU law from such regulations. This means that in practice, EU citizens can bring non-EEA spouses and children to the UK with no conditions attached, thus creating a hierarchy of rules and procedures regulating family migration which apply differently depending on the person's nationality.

In addition to being discriminatory on the grounds of nationality, these rules affect certain categories of British citizens more than others, namely women, low-income families, young people and those living outside of London (where earnings tend to be lower). In addition, the minimum income requirement has been proven to affect BME people disproportionately with research showing that whilst 43% of white employees do not earn enough to sponsor a non-EEA spouse, this rises to 51% for BME employees. When taking into account the wish to bring children over, this brings the figure up to 53% for white employees and 59% for BME employees.

A report commissioned by the Children's Commissioner for England has highlighted the detrimental impact of these family rules on children. Up to 15,000 children are growing up in single families because of the minimum income requirement. The report found that 79% of the children surveyed were British citizens but were prevented from living with both their parents in their own country. These children are suffering great distress and anxiety from being separated from a parent, as well as a range of behavioural and emotional problems. The report concludes that "the current financial requirements go beyond what is needed to ensure that incoming migrant partners do not become a burden on the public purse and are able to participate in British society. The Government does not appear to have explored different ways of addressing their concerns, including those used in other states, which are less intrusive. In so doing, children are being harmed in ways that are incompatible with the UK's obligations under the UNCRC [United Nations Convention on the Rights of the Child]."

**Recommendation:**

**The Government should review the financial (minimum income) Requirements for partner, spouse or child visa in the Immigration Rules, in order to comply with its legal obligations in respect of children.**

#### **4.4.2. Counter-terrorism**

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

**The Committee recommends that the State party ensure that the new system of terrorism prevention and investigation includes safeguards against abuse and the deliberate targeting of certain ethnic and religious groups. In this regard, the Committee invites the State party to provide information on the use of the new system of terrorism prevention and investigation, as well as statistical data disaggregated by religious belief and ethnic origin concerning the individuals subjected to this new system.**

The Government's counter-terrorism strategy (CONTEST) is organised into four work streams: Pursue (to stop terrorist attacks); Prevent (to stop people from becoming terrorists or supporting violent extremism); Protect (to strengthen protection against terrorism attack) and Prepare (to mitigate the impact of an attack, in the event that it cannot be stopped).

NGOs are aware of UK Government's counter-terrorism efforts increasingly focused on the growth of "non-violent extremism" (in contrast to "violent extremism") particularly amongst Muslims.

### **Counter-Extremism**

The Government announced in October 2015 its latest Counter-Extremism Strategy, which defines "extremism" as:

***The vocal or active opposition to our fundamental values, including democracy, the rule of law, individual liberty and the mutual respect and tolerance of different faiths and beliefs. We also regard calls for the death of members of our armed forces as extremist.***

The strategy states<sup>7</sup>, "The greatest current challenge comes from the global rise of Islamist extremism. We see this in the violence of Al Qa'ida (AQ) and the Islamic State of Iraq and the Levant (ISIL)." The list of specific harms "justified or promoted by (Islamist) extremists" includes justifying violence, promoting hatred, rejecting the democratic system, harmful and illegal cultural practices. There is specific reference to evidence of "extremism in institutions" including schools, universities, charities and prisons.

The Government's approach to counter-extremism has been examined by two major Parliamentary Committees – the Home Affairs Select Committee in 2015-16 and the Joint Human Rights Committee in 2016 – with reports still awaited. In oral and written evidence academics, senior police officers, Muslim community leaders and relevant experts expressed major concerns regarding the current and prospective impact of Government proposals on freedom of expression, freedom of religion, freedom of association, rights against discrimination and privacy rights as well as on community cohesion. The breadth and lack of specificity of the definition of "extremism" was a major source of concern amongst those who gave evidence. Many questioned whether the measures within the strategy would achieve their aim or be counter-productive.

We highlight two elements within the Counter-Extremism Strategy which, in our view, raise serious issues of racial and/or religious discrimination and potential long-term harm to community relations.

#### **a) PREVENT**

NGOs are gravely concerned about the Prevent strategy, in which the Government has shifted its approach from fighting *violent* extremism to exposing and challenging a much broader concept of 'extremism'. Prevent incorporates the above wide definition of

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<sup>7</sup> "The Threat from Extremism", Counter-Extremism Strategy, HM Government, Chapter 1, para 5, page 9

“extremism”.<sup>8</sup>

The strategic shift away from violent extremism towards extremism has occurred despite the link between the two being unproven.<sup>9</sup> The lack of clarity over which behaviours, in which circumstances, could come within “extremism” enables prejudice, notably Islamophobia, to influence perceptions and can easily result in racial and/or religious profiling.

Prevent was made statutory by Part 5 of the Counter-Terrorism and Security Act 2015, which was rushed through Parliament with limited time for debate. From 1 July 2015 it is the duty of a long list of public bodies in the exercise of their functions to “have due regard to the need to prevent people from being drawn to terrorism.”<sup>10</sup>

This list includes local authorities, schools, colleges, universities, the health sector, prisons, probation and the police. Under the Prevent duty, it is now part of the job of many thousands of people working in the public sector (including teachers, nurses, librarians, social workers, youth workers, childcare providers etc.) to identify people of any age whom they suspect of extremist behaviour or of being vulnerable to radicalisation and refer them to the police, or, where there are safeguarding concerns, to Child Social Care. The police then assess whether “*there are reasonable grounds to believe that the individual is vulnerable to being drawn into terrorism*”<sup>11</sup> so they can be referred to the Government’s anti-radicalisation programme (CHANNEL). A framework for assessing whether an individual needs Channel support “to address their vulnerability” includes 22 factors, including feelings of grievance or injustice, feeling under threat, a need for identity, meaning and belonging, a desire for excitement and adventure, a desire for political or moral change, being at a transitional time of life, and relevant mental health issues.<sup>12</sup>

Over the period 2006 to 2014, fewer than 20% (777 out of 3934) of individuals referred to the police were accepted by Channel panels, suggesting that up to 80% of those under scrutiny and suspicion will have suffered the harm involved in Prevent without valid cause.<sup>13</sup>

In various settings, including schools, youth services, colleges and universities the Prevent duty can have wider impact: the emphasis on surveillance and suspicion can easily destroy the relationship of confidence and trust between the teacher/youth worker and young people which is essential for effective learning and safe development.

Statistical data, official documents, expert observations and reports of individual experiences

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<sup>8</sup> HM Government (2015) Revised *Prevent* Duty Guidance, 16 July 2015 para 7.

<sup>9</sup> [‘PREVENT will have a chilling effect on open debate, free speech and political dissent’](#) *The Independent*, 10 July 2015.

<sup>10</sup> Note: the same public bodies also must comply with the PSED (see section 2.1.1) including the duty to have due regard to the need to foster good relations, which includes tackling prejudice and promoting understanding. However, the Prevent duty can be enforced by the Home Secretary issuing a direction and ultimately obtaining a court order requiring compliance; there is no parallel mechanism for the enforcement of the PSED and far less Government pressure, giving greater urgency to compliance with the Prevent duty.

<sup>11</sup> Section 36(3)

<sup>12</sup> HM Government, *Channel: Vulnerability assessment framework*, October 2012

<sup>13</sup> Extracted from Muslim Council of Britain “*Concerns on Prevent*”, Annex 2, David Anderson QC Report on The Terrorism Acts in 2014, September 2015.



all support the concern of NGOs that Muslims are disproportionately targeted under the Prevent duty and are denied the protections against discrimination in the Equality Act 2010 and the Human Rights Act 1998.

Data for periods before the duty came into force, disclosed under freedom of information, show that from the outset Muslims have been a main target of Prevent: between 2007 and 2010 67% of referrals involved Muslims; between April 2012 and end of March 2014 56% of referrals were recorded as Muslim, with other religions accounting for 11% and 33% where religion is unknown<sup>14</sup> (which, if religion were known, could mean a total of up to 89% Muslims). Meanwhile the national census in 2011 showed Muslims comprising only 4.8% of the population.

The Government guidance, to which all public bodies must have regard, confirms the central focus of the Prevent duty on Muslims:

“Our *Prevent* work is intended to deal with all kinds of terrorist threats to the UK. The most significant of these threats is currently from terrorist organisations in Syria and Iraq, and Al Qa’ida associated groups.....

“Islamist extremist[s]’ ...ideology includes the uncompromising belief that people cannot be both Muslim and British, and that Muslims living here should not participate in our democracy. These extremists purport to identify grievances to which terrorist organisations then claim to have a solution.”<sup>15</sup>

To be expected to identify a person at risk of radicalisation – with potentially serious consequences for the person and their family – imposes a very heavy responsibility on frontline staff, for which many feel they lack suitable knowledge or skills.<sup>16</sup> With the definition of “extremism” encompassing a wide range of behaviours, and often with inadequate training, public sector staff may feel the safer option is to identify pupils, students, clients or others relying on racial or religious stereotypes. The detriment to individuals who are identified under Prevent, their families and wider community is likely therefore to continue to fall disproportionately on Muslims as some of the examples below illustrate.

A parallel concern is the emphasis on children and young people: between January 2012 and December 2015, 415 children aged ten and under and 1839 children under 15 had been referred to Channel.<sup>17</sup> There are concerns that the operation of Prevent may put the UK in breach of certain of its obligations under the UN Convention on the Rights of the Child.<sup>18</sup> Presumably the Muslim disproportionality applies to people of all ages; because of the potential longer term impact, we see the greater involvement of Muslim children as exacerbating the potential religion-based detriment.

Experts in race and education have commented, “the Prevent duty is particularly intrusive,

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<sup>14</sup> <http://www.npcc.police.uk/FreedomofInformation/NationalChannelReferralFigures.aspx>

<sup>15</sup> Revised *Prevent* Duty Guidance, op. cit., paras. 9 and 10.

<sup>16</sup> NUT (2015) [Prevent Strategy Press Release](#). 30 June.

<sup>17</sup> Kotecha, S. (2016) “More than 400 children under 10 referred for “deradicalisation””, *BBC*, 21 January 2016 <http://www.bbc.co.uk/news/uk-35360375>

<sup>18</sup> Webber, F., “Prevent and the Children’s Rights Convention”, Institute of Race Relations, January 2016

as it emphasises surveillance and control of pupils rather than engagement and discussion. By creating an atmosphere of suspicion, the duty is likely to be detrimental to the school and its pupils, and especially Muslim pupils.<sup>19</sup> The duty risks alienating Muslims and fueling suspicion that they are a 'suspect community'. For example, there is widespread concern that the duty will inevitably lead to increased racial profiling of Muslim communities.<sup>20</sup>

There are numerous examples of Muslim students being targeted and stigmatised including:

- A fourteen-year-old devout Muslim boy was referred to Channel without his parents' consent for not engaging in a music lesson for reasons related to his faith.<sup>21</sup>
- A Muslim schoolboy was questioned about ISIS, for using the term 'eco-terrorism' during a classroom discussion on the environment.<sup>22</sup>
- A fifteen-year-old Muslim student was questioned by police at home about his views on Syria and ISIS because he wore a 'Free Palestine' badge to school and handed out some leaflets promoting the boycotts, divestments and sanctions movement.<sup>23</sup>
- A young child in London was referred to social services for signs of radicalisation after he was specifically asked to write a piece on British foreign policy and he mentioned the history of the Caliphate.<sup>24</sup>
- A two year old child who has a diagnosed learning disability, sang an Islamic song and said "Allahu Akbar" spontaneously – he was subsequently referred to social services for "concerning behaviour".<sup>25</sup>
- Parents were brought into the school because their children were using inappropriate language, such as "Alhamdulillah", which is a religious term used, meaning "Praise be to God".
- A physics teacher reported that when nuclear fission was being explained, no concern was raised when pupils of no faith or a faith other than Islam queried how to build a bomb; but when a Muslim boy asked, there was a request for him to be referred.<sup>26</sup>

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<sup>19</sup> Alexander, C., Weekes-Bernard, D. & Arday, J. (2015) *The Runnymede School Report: Race, Education & Inequality in Contemporary Britain*. London: Runnymede Trust.

<http://www.runnymedetrust.org/uploads/The%20School%20Report.pdf>.

<sup>20</sup> Haleedi, H. (2015) ["You worry they could take your kids": Is the Prevent strategy demonising Muslim schoolchildren?](#) *The Guardian*, 23 September.

<sup>21</sup> Bolloten, B. (2015) [Education Not Surveillance](#), Institute of Race Relations, 22 October 2015

<sup>22</sup> Tonkin, S. (2015) ['Muslim schoolboy is questioned by teachers over links to Isis after he used term 'eco-terrorist' in classroom discussion about the environment'](#), *The Daily Mail*, 23 September.

<sup>23</sup> Hooper, S. (2015) 'Stifling freedom of expression in UK schools', *Al-Jazeera*, 23 July.

<sup>24</sup> Muslim Council of Britain in Annex 2 to David Anderson QC, *The Terrorism Acts in 2014*.

<sup>25</sup> Ibid.

<sup>26</sup> Ibid.

- Teachers and parents report that Muslim parents, aware of the operation of the Prevent duty, are training their children not to discuss at school aspects of their religion or culture or certain international conflicts.<sup>27</sup>
- Young Muslims say that there are no ‘safe spaces’ for them to express their views in relation to counter-terrorism issues, and they no longer feel that schools and youth workers will maintain their confidence because they are now expected to take on a counter-terrorism role.
- The Prevent duty guidance makes extremism a safeguarding issue comparable to child abuse or neglect. Children, mainly Muslim children, may be assessed to be vulnerable to radicalisation and liable to be removed from their families based on the perceived political views of their parents. Social workers often feel that their Prevent training is insufficient for them confidently to assess a child’s risk of extremism.

Under the Prevent duty a university must not only identify individuals vulnerable to radicalisation but also take steps to ensure that no event involving an external speaker is allowed to take place unless the university is “entirely convinced” that there are sufficient measures in place to mitigate fully the risk of any extremist views being expressed which could draw people into terrorism. Spokespersons for universities and university teaching staff see meeting this legal test as virtually impossible, but also see this aspect of the duty directly conflicting with universities’ legal duties to ensure freedom of speech and academic freedom.

David Anderson QC, the Independent Reviewer of Terrorism Laws, has called for an independent review of the Prevent duty in particular its operation in schools.<sup>28</sup> In his written evidence to the Home Affairs Committee he quoted examples of Muslim lack of confidence in Prevent: *“an ill-conceived and flawed policy’ used to ‘spy and denigrate the Muslim community and cause mistrust’ ‘[it] unfairly targets Muslims and school children.’ ”* He commented, “the Prevent programme is clearly suffering from a widespread problem of perception, particularly in relation to the statutory duty on schools and in relation to non-violent extremism. It is also possible ... that aspects of the programme are ineffective or being applied in an insensitive or discriminatory manner.”

In April 2016 the UN Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association, Maina Kiai, visited the UK. “He highlighted in particular the Government’s focus on countering ‘non-violent extremism’ without a narrow and explicit definition of that term. He specifically referred to the Prevent strategy ... ‘The lack of definitional clarity, combined with the encouragement of people to report suspicious activity, have created unease and uncertainty around what can legitimately be discussed in public,’ he said. ‘It appears that Prevent is having the opposite of its intended effect: by dividing, stigmatising

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<sup>27</sup> Ibid.

<sup>28</sup> Supplementary written evidence submitted by David Anderson QC (Independent Reviewer of Terrorism Legislation) to the Home Affairs Committee, 29 January 2016. <http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/home-affairs-committee/countering-extremism/written/27920.pdf>

and alienating segments of the population,' Kiai said."<sup>29</sup>

In a recent speech Andy Burnham MP, Shadow Home Secretary, called for a cross-party review of the Prevent strategy, but said his personal view was that the policy should be discarded. ...“It is creating a feeling in the Muslim community that it is being spied upon and unfairly targeted. It is building a climate of mutual suspicion and distrust. Far from tackling extremism, it risks creating the very conditions for it to flourish.”<sup>30</sup>

Not unrelated is the Prime Minister’s announcement in January 2016 that the Government would invest £20 million in ESOL (English as Second Language) classes for Muslim women specifically, in a bid to help them “become more resilient against the messages of Daesh”.<sup>31</sup> The Prime Minister’s conflation of language barriers in Muslim communities with extremism is not based on any known evidence and is more likely to worsen than improve race relations in Britain. Further, the Government’s stated aim to encourage migrants to speak English is directly contradicted by its drastic cuts to Esol provision over the last five years, disproportionately affecting women and BME learners.<sup>32</sup>

#### **Recommendations:**

**The Government, at an early date, should establish an independent review of the operation, impact and outcomes of the Prevent duty, with particular reference to possible conflict with equality and human rights legislation and a commitment to give full consideration to the findings of such review in decisions regarding the continuation and/or modification of this duty.**

**The Government should gather and publish data on who is being affected by the Prevent duty broken down by ethnicity, religion, gender and age.**

**The Government should provide a clear, specific definition of “extremism” that is understood by teachers and other school staff and should ensure that the Prevent duty is not disproportionately targeting particular groups of pupils, and that schools are given the resources to work collaboratively with others to develop proportionate and sensitive ways to respond to the different risks faced by pupils.**

#### ***b) The Counter -Extremism and Safeguarding Bill***

A highly controversial Extremism Bill announced in the May 2015 Queen’s Speech did not materialise. In her speech opening the 2016-17 session of Parliament in May 2016, the

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<sup>29</sup> <http://freeassembly.net/reports/united-kingdom-follow-up/>

<sup>30</sup> Guardian 9 June 2016

<sup>31</sup> BBC (2016) ‘Muslim women’s segregation in UK communities must end – Cameron’, 18 January. <http://www.bbc.co.uk/news/uk-35338413>

<sup>32</sup> Jon Ashworth (2016) ‘If Cameron wants female migrants to learn English, why did he cut ESOL funding?’, *The Spectator*, 18 January. <http://blogs.spectator.co.uk/2016/01/if-cameron-wants-female-migrants-to-learn-english-why-did-he-cut-esol-funding/>

Queen announced a Counter-Extremism and Safeguarding Bill: “Legislation will be introduced to prevent radicalisation, tackle extremism in all its forms, and promote community integration”.<sup>33</sup> The Cabinet Office briefing notes<sup>34</sup> explain that the purpose of this Bill is to provide stronger powers to disrupt extremists and protect the public, and summarise the main elements:

“The introduction of a new civil order regime to restrict extremist activity, following consultation.

Safeguarding children from extremist adults, by taking powers to intervene in intensive unregulated education settings which teach hate and drive communities apart and through stronger powers for the Disclosure and Barring Service.

We will also close loopholes so that Ofcom can continue to protect consumers who watch internet-streamed television content from outside the EU on Freeview.

We will consult on powers to enable government to intervene where councils fail to tackle extremism.”

Possibly in response to the hostile reception given to last year’s Extremism Bill, there is no explicit reference to orders which would ban “extremist” groups, stop individuals engaging in “extremist” behaviour or close premises used to support “extremism” which had been part of the previous Bill, and the Government now proposes to consult on what civil measures to restrict extremist activity the new Bill should contain. There remains, however, the clear intention to restrict behaviour and speech which is currently lawful using civil law and therefore without the protections afforded under criminal law. It is already clear that the Counter-Extremism and Safeguarding Bill will meet strong opposition within Parliament and from a wide range of human rights academics and lawyers, anti-racism and anti-Islamophobia organisations, Muslim rights organisations and community groups, trade unions, the police and others.

Simon Cole, national police lead for the Prevent duty, said that the Government plans may not be enforceable and risk making police officers judges of “what people can and cannot say”. “Unless you can define what extremism is very clearly then it’s going to be really challenging to enforce....We don’t want to be the thought police, we absolutely don’t want to be the thought police.”<sup>35</sup>

Similar concerns had been raised by Sir Peter Fahy, his Prevent predecessor, when he addressed the Joint Human Rights Committee on the earlier Bill, warning that police chiefs will come under pressure from MPs and others to use the new powers in inappropriate situations.<sup>36</sup>

Harriet Harman, MP, Chair of the Joint Human Rights Committee, in the debate on the

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<sup>33</sup> <https://www.gov.uk/government/speeches/queens-speech-2016>

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[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/524040/Queen\\_s\\_Speech\\_2016\\_background\\_notes\\_.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/524040/Queen_s_Speech_2016_background_notes_.pdf)

<sup>35</sup> “[Anti-radicalisation chief says ministers' plans risk creating 'thought police'](#)”, Guardian, 24 May 2016

<sup>36</sup> Joint Human Rights Committee, Oral evidence: Legislative Scrutiny: Counter-extremism Bill, 16 March 2016

Queen's Speech<sup>37</sup> raised the following concerns regarding the Counter-Extremism and Safeguarding Bill:

- If under the Bill there are to be banning orders, extremism disruption orders and closure orders, these must only be used to ban, disrupt or close something that will lead to violence and “not just something of which the Government disapprove.”
- If the Government are going to clamp down on Islamic religious conservatism in the cause of tackling violence, can that discrimination be justified, or will it merely give rise to justified grievance?
- If the law is to be used in the form of banning, closure, etc. orders there needs to be clarity and consensus around the definition of what constitutes extremism, which there is not.

NGOs see a glaring contradiction in the Government's approach to tackling extremism. On the one hand the Government emphasises the need to promote British values: “democracy, the rule of law, individual liberty and mutual respect and tolerance of different faiths and beliefs” which depend on the protection of freedom of speech, of association and of belief for all, while on the other hand the Government is intent on finding legislative means to restrict these essential freedoms, with restrictions most likely to affect members of particular racial and religious groups.

#### **Recommendations:**

**The Government should review the impact of its existing counter-terrorism and counter-extremism legislation to ensure that it is implemented in a manner that does not discriminate in purpose or effect on grounds of race, colour, nationality or religion or perpetuate or increase prejudice towards or alienation of particular racial or religious groups.**

**The Government should fully assess the likely impact on race or religious equality of the proposed Counter-Extremism and Safeguarding Bill as well as any future proposed counter-terrorism laws and policies and discontinue or modify what is proposed where an adverse impact is identified.**

## **4.5. Economic & social rights**

### **4.5.1. Employment**

In Paragraph 25 of its concluding observations, the Committee stated:

**The Committee recommends that the State party intensify its efforts to narrow the employment gap for ethnic minorities. The Committee therefore**

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<sup>37</sup> House of Commons, 24 May 2016

**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.**

In the last decade, racial inequalities in the labour market have persisted, despite increasing levels of academic attainment and higher rates of participation at university amongst BME young people. NGOs have ongoing concerns over unemployment, occupational segregation and low pay, discrimination in the recruitment and retention of BME staff the cumulative effects of which contribute to the disproportionate number of BME families living in poverty.

Since the 1960s research including the 'P.E.P report' and the *Street* report have demonstrated the reality of discrimination in the labour market, and the value of evidence in demonstrating it. But while the UK is a leader in Europe in collecting data, in recent years the government has viewed data collection as mere 'red tape'. In addition to greater collection on hiring across the public and private sectors, government should also collect data on progression and wages.

When the Equality Bill was first considered one proposed response to ongoing labour market inequalities was 'employment equity plans'. This was explained by Sir Bob Hepple QC and his co-authors in the 2000 *Cambridge Review* and based on similar legislation in Canada (1995) and South Africa (1998).

Employment equity plans are a practical response to long-term labour market inequalities, with a focus not only on gathering evidence, but on taking action. An advantage of employment equity plans is that they offer clear timetables and action plans for all employers, and these principles should guide any serious response to racial inequalities in the labour market.

### **a) Unemployment**

From 2010 to 2015 the overall unemployment rate has fallen to 5.6%. However, the unemployment rate for the BME population at 10.2% is more than double that of the white population at 4.9%.

There has been a 49% rise in long-term unemployment for BME young people, whilst the rate of unemployment for white young people has fallen by 2% in the same period.

Areas with the highest levels of employment inequality are predominantly urban areas of England and Wales such as central London, Birmingham, Manchester, Leeds, Sheffield, Cardiff and Bristol. There appears to be an association between areas of deprivation and employment disadvantage but not an association between areas with education disadvantage and employment disadvantage.

### **b) Employment gap**

BME individuals are overrepresented in minimum wage jobs and are more likely to earn less than the living wage, with half of the Bangladeshi and many Gypsy Roma workers earning

below it. These communities are amongst the most likely to live in persistent poverty as are Irish Traveller and Pakistani communities.

Analysis by the Office for National Statistics (ONS) found that Roma Gypsies and Irish Travellers were the ethnic groups with the lowest proportion of respondents who were economically active, 47% compared to a national average of 63% for England and Wales. This could be related to poor health and education outcomes, but many Gypsy Roma and Irish Travellers expressed concern that they are discriminated against in the formal labour market because of their ethnicity.

It is hard to capture accurate data relating to Gypsy Roma and Irish Traveller employment as they are not categorised as an ethnic minority group by the Department for Work and Pensions (DWP) and are therefore not included in national DWP ethnicity data sets. Ethnic diversity at the top of the labour market is also lacking with two out of every three FTSE 100 companies having an all-white executive leadership despite a talent pool with BME candidates qualified for the roles.

### *c) Discrimination in entry to employment*

The funding stream for English for Speakers of other Languages (ESOL) classes, targeted at job seekers who are identified as having poor English skills which prevent them finding from work, has been removed entirely by the Government. This will disproportionately affect BME individuals trying to enter into employment.

BME young people are also underrepresented on apprenticeship schemes. Between 2010 and 2015, 26% of applicants for apprenticeships were from BME young people but only 9.5% of apprenticeships were awarded to them, meaning BME young people were three times less likely to be successful than their white British peers. In response to this the current Government have pledged to secure 300,000 more apprenticeships place for BME young people between 2015 and 2020. However, with the total number of apprenticeships on offer also increasing, this target only makes BME young people 2.5 times *less likely* to secure an apprenticeship than their white British counterpart.

The Government has increased the financial penalties for employers who employ undocumented migrants. Under the Immigration Bill 2016, new criminal sanctions will apply to employers who fail to check the immigration status of undocumented migrant employees. These measures are likely to exacerbate existing racial discrimination as employers are increasingly adopting risk averse behaviour in recruitment, including accepting only EU nationals, familiar documents and moving quickly to dismiss if there is any doubt about an existing employee's right work. This risk-averse behaviour potentially impacts those with the right to work but who because of their appearance or their accent are seen to pose a risk, which inevitably affects BME individuals and those from outside the UK.

A few weeks before the General Elections of 2015, the Prime Minister made a commitment to the employment of BME people, which on the surface, seemed positive. He announced a target of 660,000 more BME people in employment by 2020. However, when looking at the numbers in closer detail, it appears that this commitment is actually merely a reflection of



the changing nature of the workforce. As highlighted by The Runnymede Trust, “the older people retiring over the next five years are much less diverse than the younger people joining the labour market over that same period. For example, in the 2011 Census, there were 704,000 BME people aged 20-24, or 20% of the total. Conversely, only 6% of the 3.2 million people aged 60-64 were BME. The commitment to 660,000 more BME people in employment is therefore simply a statement of demographic change in Britain, and appears to require no action from the government to achieve.” The expansion of name blind CV applications for certain government departments, led by a call from the Prime Minister, is a welcome change, though the impact of this policy is yet to be known.

#### *d) Employment in Scotland*

Despite the better (on average) educational attainment (at school), and their subsequent higher participation rate in higher or further education, non-white groups aged 25-49 have a significantly lower employment rate (55.2%) than their white counterparts (72%), and a higher unemployment rate (7.9% compared to 5.5%). Contrary to widespread perceptions, the self-employment rate for white and non-white groups aged 16/24 and 25/49 are not significantly different (1.6% and 1.3% for 16/24, and 8.9% vs 9.6% for 24/49 year olds).

The compounded disparity between white and non-white applicants who are shortlisted and then appointed leads to a situation where 7.1% of all white applicants for public sector posts go on to be appointed, but where only 4.4% of non-white applicants get appointed. This figure is at its starkest in large public sector organisations – where BME applicants only have a 1.1% chance of being subsequently appointed, compared to 8.1% for their white counterparts. Even within local authorities, white applicants are almost three times more likely to be successful in securing a post than non-white applicants – 6.1% compared to 2.1%.

In the summer of 2015 the Equal Opportunities Committee began its inquiry *Removing Barriers: race, ethnicity and employment*. Over a six month period the Committee received 63 written submissions from individuals, organisations, employers and leading practitioners and held a series of oral evidence sessions. Their report, published in January 2016, highlighted some of the key barriers that BME people face in the workplace and the steps that could be taken to reduce them:

“Despite forty years of legislation, training initiatives and equality policies, the world of work is not representative of Scotland’s communities and people. If Scotland is to harness its talent and avoid placing an ethnic penalty on its young people, diversity in the workplace should be valued and seen as a positive goal. Existing employment and recruitment practices must be improved otherwise we cannot confront any underlying racism and discrimination. People from ethnic minorities are all too often clustered into lower-grade jobs and denied access to the training opportunities that may help them progress into promoted posts. The Scottish Government should show leadership in tackling the deep-seated issues which our inquiry has uncovered, and commit to long-term concentrated action. Initiatives such as —unconscious bias training are not the solution and can serve to mask underlying negative attitudes towards people from an ethnic minority background. There are considerable gaps

in data collection which must be addressed with great urgency if the requirements of the Public Sector Equality Duty in relation to occupational segregation are to be met in 2017.”

### ***e) Employment in Northern Ireland***

In Northern Ireland underemployment of BME people is a significant issue despite this cohort of workers holding better than average qualifications than for the population as a whole. Contributing to this is the lack of recognition of overseas qualifications and the fact that employers tend to hold a negative perception of qualifications gained overseas. Consultees expressed frustration that the positive contribution migrant workers make to the Northern Ireland economy is rarely acknowledged or celebrated.

There is a feeling that prejudice and discrimination are getting in the way of enabling BME people to progress and workplace discrimination continues to have a significant impact on the ability of BME people to obtain work that suits their skills. Forty-eight percent of respondents to a survey reported having experienced racial discrimination at work. Such treatment can limit the freedom BME workers have over their working lives, for example with a refusal to work an extreme number of hours being punished by a withdrawal of hours by the employer. Workers also report being targeted to undertake undesirable tasks, passed over for promotion and suffering racial harassment at work. However, consultees spoke of their fear of speaking out against discrimination and unfair treatment and described intimidation as well as poor, sometimes unsafe, working conditions and a lack of employment rights as features of some workplaces. As funding for community based advocacy organisations diminishes many are left without a remedy or access to justice in order to improve their working lives.

#### **Recommendations:**

**The Government should encourage employers in the public, private and third sector to collect, analyse and report ethnic monitoring data and take action where equality is absent. The Government should also better collect and public ethnic diversity of the workforce at all levels of the labour market.**

**One model for this mandatory reporting requirement are the ‘employment equity plans’ with clear timetables and action plans for all employers with more than 50 employees, as recommended in the 2000 *Cambridge Review* and based on similar legislation in Canada (1995) and South Africa (1998).**

**The Government should take proactive measures in the recruitment and support of BME staff, at a national and a local level, led by the public sector. It should consider targets, especially in the senior civil service.**

**The Government should provide stringent data monitoring of ethnic inequalities in apprenticeships, auditing of decision-making process for applications by employers and develop a race equality framework that employers need to comply with.**

**The Department for Work and Pensions (DWP) should recognise Gypsy**

**Roma and Irish Travellers as an ethnic minority group so that their employment levels can be monitored and inequality acted upon.**

**The Government should ensure that victims of racial discrimination in the work place have access to justice by removing prohibitive costs and reinstating financial support.**

**The Scottish Government should consider all evidence from the Equal Opportunities Committee to implement a national strategy to address the barriers facing many minority ethnic people in accessing equal employment.**

**The Northern Ireland Executive should take steps to promote the positive contribution made to the economy by migrant workers and others.**

#### **4.5.2. Education**

As in other areas of social policy, the Government advocate a colour-blind approach to equality in schools, which can perpetuate existing racial inequalities. Race equality funding for schools is no longer ring-fenced, and has either been cut or withdrawn entirely. Programmes to support the recruitment and retention of BME teachers have been cancelled, despite the continued lack of diversity in the teaching workforce.

Government reforms have also undermined attempts to reduce racial discrimination in education. Schools are no longer assessed by Ofsted on their compliance with the community cohesion duty which was introduced in response to concerns about racial intolerance and required schools to educate pupils so that they understand, respect and value ethnic, cultural, religious and other forms of diversity. Schools are required to produce 'equality objectives' in compliance with the public sector equality duty, but they may choose only one such objective and are not required to consider race or ethnicity.

##### ***a) Academies and free schools***

The proliferation of academies and free schools can also undermine the processes that ensure transparency and accountability in relation to racial equality. Academies and free schools are approved and directly funded by central government, unlike other maintained schools, which are the responsibility of local authorities. Research suggests free schools are not operating fair and inclusive admission policies and are failing to comply with their statutory obligations to equality. This is particularly concerning where schools are more segregated than their catchment areas due to parental 'choice', choices that appear to leave many BME parents with worse options.

There is also little regulation of how well these schools comply with the PSED, introduced in the Equality Act 2010. An assessment of how free schools are complying with the PSED found that 69 out of 79 free schools were not compliant with specific PSED duties at all and had failed to make public any equality information or objectives. Nine free schools were partially compliant but still failed to make public any equality information. Meanwhile there

has been a general weakening of appeal rights in relation to exclusions with academies and free schools having greater freedom to circumvent local democratic accountability processes (on exclusions, see below).

### ***b) Educational achievement***

Educational attainment for BME pupils at Key Stage 4 (those aged 15 or 16 and in Year 11) in England has improved since the last CERD examination in 2011, particularly in London, as has the overall attainment for all pupils. However, the percentage of pupils achieving 5 or more A\*-C GCSE grades including English and mathematics continues to vary significantly between different ethnic groups.

In 2013/2014, Chinese pupils were the highest attaining ethnic group, with 74.4% achieving the 5 A\*-C standard. The lowest attaining ethnic groups were Gypsy or Roma students and Travellers of Irish Heritage, 8.2% and 14.0% respectively. 30.9% of Gypsy or Roma pupils made expected levels of progress in English and 15.1% in mathematics.

Attainment of pupils from a black background, at 53.1%, was below the national average (56.6%). The percentage making expected progress, 75.5% in English and 68.4% in mathematics, compared to the national averages of 71.6% and 65.5%. Mixed white and black African pupils and Black African pupils were the highest performing black group with 56.8%. These groups are also more likely to continue into further education than their white male peers. The lowest performing groups were Black Caribbean pupils followed by White and Black Caribbean and any other black background, 47% and 49% respectively.

Attainment of pupils from any Asian background was above the national average, 60.8%. Indian and of mixed White and Asian pupils were among the highest achieving ethnic groups, 72.9% and 67.2% respectively. Attainment of any Asian background, Bangladeshi and Pakistani was 62.2%, 61.3% and 51.4% respectively. Attainment of pupils for whom English is not a first language was 54.7% compared to 56.9% of pupils for whom English is a first language. For the English Baccalaureate (EBacc) it was the reverse; 25.7% of pupils whose first language is not English achieved EBacc compared to 23.9% of pupils whose first language is English.

Research has identified a complex range of reasons for the educational outcomes of different racial groups and suggested a framework of targeted support. Specific funding streams and policies that tackled racial inequality such as the Ethnic Minority Achievement Grant (EMAG) and the Traveller Education Service have been scrapped and new funding streams have focused on tackling the link between socio-economic disadvantage and educational attainment instead. Addressing ethnic inequalities in educational attainment does not appear to be a priority at a local or national level.

#### **Recommendations:**

**The Government should ensure all schools are complying with their statutory obligations regarding inclusion and equality. This includes admissions.**

**The Government should reinstate the Education Stakeholder group for Gypsy, Roma and Traveller children which was not reformed when the current Government came into power.**

### *c) Further and Higher Education*

The numbers of BME young people going into Higher Education (HE) is increasing year on year and they are more likely to go into HE than their white British peers. Despite this, some BME pupil groups remain significantly underrepresented at the UK's Russell Group Universities. For instance, black Caribbean pupils make up 1.5% of the total number of students attending university but only 0.5% of students attending Russell Group institutions. In comparison, white British pupils make up 80.4% of the total number of students attending university and 82.8% of students at Russell Group institutions. Young people of people of Pakistani and Bangladeshi origin are similarly underrepresented: 1.8% and 0.6% attend Russell group universities compared to their 2.4% and 0.8% respective share of the pupil population.

Young people from Indian, Chinese and 'mixed' backgrounds are well represented at Russell Group universities, 4.2%, 1.5% and 4.5% respectively compared to 3.4%, 0.9% and 4.2% of the pupil population. Research shows that even when young people from Black Caribbean, Pakistani or Bangladeshi origins achieve the same A-Level grades as their white British peers, they are still less likely to be offered a place at a Russell Group or other highly selective HE institution. Furthermore, all groups are less likely to get the highest degree qualification: while 19% of white British graduates get a 'first', only 6% of black British graduates do so.

The rising cost of higher education and the scrapping of maintenance grants may disproportionately affect BME students. BME students make up 23% of all university students and account for 33% of those with full maintenance grant and 46% of those in receipt of a childcare grant. In addition, it is estimated that the withdrawal of ESOL funding for jobseekers will affect around 47 colleges and over 16,000 learners.

Unlike in England, in Scotland BME young people are *less* likely to attend universities, despite generally outperforming the majority ethnic population, even in deprived areas. They are, however, more likely to attend further education, for example technical colleges.

A study found that white Scottish students accounted for 82.5% of the total university population, with white students comprising 93.0%, and BME students comprising 5.8% of the total. There is also considerable gender variation between ethnic groups. The majority of students were female in ten of the 14 ethnic categories. Chinese, white British, white other, and mixed ethnicities showed the highest female bias, whereas Caribbean, Indian, and Bangladeshi showed a strong male bias. Research published by CRER in 2013 found that in total, 5.6% of higher education students are from a minority ethnic background, which is lower than that of those in further education. The dropout rate was highest for the black and other ethnic groups, with Asian and mixed ethnic groups having the lowest dropout rates.

A 2015 ruling in the Supreme Court<sup>[1]</sup> forced the Government to create a new 'lawful

residence' eligibility category for student finance and fee status. However, despite this welcome change, there are still many young people who have grown up in the UK who do not qualify for student finance or home fee status – thus denying them access to higher education. Young people need to meet a three year continuous ordinary lawful residence criteria in the UK before they are eligible for student financial support and home fee status.

Lack of three years ordinary residence can be due to lack of awareness of their status, parental or carer error or Home Office delays.

The new regulations mean that children who have arrived in the UK aged 9 years or above will have a longer wait than their British educated peers until they are entitled to student finance. Under the new rules a person must have 'lived in the UK for a long time' which is defined by the Government as half their life time.

It is estimated that up to 120,000<sup>38</sup> children could be impacted by these regulations all of them from migrant backgrounds the majority from commonwealth or former commonwealth countries.

#### **Recommendations:**

**Universities should make race equality an institutional commitment. They should comply with the PSED, conduct audits on their race equality within their staff and student body, from which universities can develop a race equality framework that is implemented by all staff at all levels.**

**The Government should review why BME graduates get worse degree qualifications and worse employment outcomes, especially as they have been disproportionately been affected by cuts to maintenance grants and other financial changes.**

**The Government should amend the eligibility criteria to ensure that all young people have equal access to student finance to allow progression to higher education regardless of immigration status. At the very least, all children who have lived in the UK for at least seven years should be eligible to access student finance regardless of whether or not they meet the three year 'continuous ordinarily lawful residence' criteria.**

**The UK Government must also raise awareness of the current criteria amongst children and young people, parents and carers and speed up Home Office applications for changes in immigration status.**

#### ***d) Early years education***

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<sup>38</sup> <https://www.compas.ox.ac.uk/project/undocumented-migrant-children-in-the-uk/>

Government policy has emphasised the relationship between ‘quality’ early years childcare and equalities in employment and health outcomes in adulthood. Widening access to children from BME households and low income families has been identified as a target for early years policy but progress has been very slow.

In line with the Government’s focus on tackling the link between socio-economic disadvantage and low educational attainment, one measure has been a new funding stream for two year-old childcare provision for low income families. This is not directed at BME households specifically but the Government suggests this disproportionately benefits BME children as they are overrepresented in low-income households. However, overall take up of this funding was 58% amongst those eligible, and actual take up amongst BME families is lower still and significantly less than expected. Research has indicated that many BME families are unaware of the childcare schemes and their eligibility, especially among Pakistani and Somali families, possibly explaining their lower take up of this funding. Pakistani and Somali parents also indicate a preference for informal caring arrangements due to concerns about the lack of BME staff and the cultural appropriateness of formal childcare settings. There is currently no Government policy or initiative BME parents’ take up of formal childcare or in addressing the lack of diversity amongst staff in childcare settings.

#### **Recommendations:**

**The Government should review how early years childcare providers and local authorities inform people of their eligibility for childcare schemes and ensure that this includes reaching out to and engaging with BME families, to enable a higher take-up rate.**

**The Government should ensure the cultural accommodation of childcare provision. One means of doing so is for the Government to develop policies to improve the recruitment and support for ethnic minority childminders and carers.**

#### ***e) Exclusions***

In paragraph 24 of its concluding observations, the Committee stated:

**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.**

Government statistics confirm that the number of permanent exclusions increased in 2013/2014 from the previous year, as has the length of fixed period exclusions. Boys of Irish Traveller Heritage have the highest rates of permanent and fixed-term exclusions: 9 times that of white British boys. Gypsy/Roma boys, Black Caribbean and mixed white/Black Caribbean boys, are 4-5, 3.5 times and 2-3 times more likely to be excluded than white British boys. Girls in general are 4 times less likely to be permanently excluded than boys but black Caribbean girls have the same exclusions rate as white British boys, or 3 to 4

times more likely to be excluded than white British girls. Gypsy/Roma girls are 5 to 6 times more likely to be excluded than white British girls while data for Irish Traveller girls was not available due to low numbers.

The disparities in exclusion between some groups of BME pupils and their white peers appear to be a result of entrenched discrimination which is played out in the harsher disciplining of black, mixed race and Gypsy/Roma pupils compared to white and other BME pupils. Exclusion figures for black students in the UK are far higher than those of other countries in Europe and North America.

BME students are also more likely to be excluded when they are a small minority in a school than when they are larger numbers in a school (further complicating school 'choice' for BME parents). Being out of school or formal education has a detrimental impact on educational outcomes of the young person and their life chances in adulthood. Exclusion means that young people are missing valuable time in school and many do not reengage with school following permanent exclusions. They may also have difficulty in finding another school as exclusion may be perceived as a sign the pupil is not desirable by prospective alternative schools.

Accountability measures and appeal processes for exclusions have been weakened as part of reforms introduced after the 2011 Education Act. For instance, if a panel finds a pupil has been unfairly excluded they cannot compel a school to reinstate the pupil. In academies, which are twice as likely to exclude pupils permanently compared to non-academy schools, parents have less recourse to challenge exclusions as statutory procedures do not apply in academies. Children do not have a statutory right to appeal against exclusion decisions.

#### **Recommendations:**

**The Government should provide greater support for schools and teachers in adopting anti-racist bullying measures, enabling staff and students to discuss experiences of racism and race.**

**Permanent or temporary exclusion should only be used as a last resort. The Government should increase the powers of parents and appeal panel boards to hold schools to account for exclusions.**

**Children should have a statutory right to appeal against exclusion decisions.**

**The Government should increase the powers of parents and appeal panel boards to hold schools to account for exclusions.**

**The Government should examine the data around school exclusions for Gypsy, Roma and Irish Traveller and Black Caribbean pupils and reasons for their disproportionately high exclusion rates in relation to their peers, specifically addressing the potential for conscious and unconscious bias.**



## *f) Bullying*

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

**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.**

Forty-three per cent of young people report being victims of bullying, with 98 per cent of those being bullied by a fellow student. BME children and young people continue to experience significant levels of racial harassment and bullying in schools. In 2013, Childline reported that 1,400 children had contacted them in the previous 12 months seeking support due to racist bullying and that this figure was up 69% on the previous year.

Nearly 9 out of 10 children and young people from a Gypsy, Roma or Traveller background report experiencing racist abuse and around two thirds have also been bullied or physically attacked. This is the most common reason cited for school absence amongst this pupil group.

There were a reported 1,274 racist incidents in Scottish schools in 2011 and 2012 – 730 in primary schools and 544 in secondary schools. CRER surveyed local authority education departments for policies relating to racist incident reporting. While some local authorities had excellent policies there was large variation across local authorities in terms of prevention, action, monitoring, assessment, evaluation, staff training, and enforcement.

Similarly mixed results in terms of local authority policy were found in EHRC Scotland's 2015 research into prejudice based bullying in schools. The qualitative element of the research also found significant concerns about racism in schools, including concern on the part of the researchers that in some cases racist views had been expressed during the focus groups examining prejudice based bullying. Just over half of teachers surveyed for this study reported being aware of bullying within their school based on race or ethnicity. More positively, this study also found over 80% of pupils surveyed said they would be willing to report bullying on the grounds of race or ethnicity.

As part of the PSED, schools should be challenging racist bullying and promoting an anti-racist education but schools do not appear to be fully complying with the PSED or being held accountable to it. Ofsted have reported that schools find tackling racist bullying a particular challenge, and it appears that that schools with low numbers of BME pupils are less prepared for tackling incidents of racist bullying.

### **Recommendations:**

**The UK Government and devolved administrations should ensure that there is a national policy on racist incident reporting to ensure consistent policies on prevention, action, monitoring, assessment, evaluation, staff training and enforcement to effectively challenge**

## **institutional racism and support minority ethnic children in schools.**

### ***g) Education in Northern Ireland***

Recent research indicates that educational outcomes for BME pupils in Northern Ireland are declining. In a reversal of the trend in 2007-2008 BME pupils are less likely than their non-BME peers to leave school with 2+ A levels or 5+ GCSEs. This decline in performance coincides with the prevalence of racist bullying in Northern Ireland schools, with research illustrating that around 42% of BME pupils have experienced racist bullying. Despite this and unlike the rest of the UK, there is no central guidance on addressing racist bullying in schools which has led to disparate and inconsistent approaches being adopted some of which are ineffective or punish the victim.

Northern Ireland's *Languages for the Future Strategy* highlights the social and economic benefits of language skills which are linked to employment opportunities, higher earnings and social mobility and integration. It is concerning, therefore, that free access to English as a Second Language classes is limited and that, where fees are charged, the pricing structure requires non-EEA students to pay fees close to four times higher than EEA students.

### **4.5.3. Health**

The experiences of health in BME communities provides another example of the potentially discriminatory impact of applying a mainstream approach that does not take into account the different needs of BME groups.

While the Government's submission mentions the duty to have due regard to reducing inequalities in access to healthcare and health outcomes in carrying out its functions, introduced in the 2012 Health and Social Care Act, it does not provide any examples of how this duty is applied by NHS England or Clinical Commissioning Groups (CCGs), nor does it demonstrate the extent to which health inequalities are declining as a result. Yet BME communities continue to experience poorer health outcomes and access to health care in comparison with the general population in the UK, and some minority ethnic communities experience disproportionately high rates of some health conditions. In addition, the introduction of certain policies, such as the charging of non-EEA migrants for NHS services is likely to increase inequalities, rather than reduce them.

Differences in the health of BME groups are most prominent in the following areas: mental health, cancer, heart disease and related illnesses such as stroke, Human Immunodeficiency Virus (HIV), Tuberculosis (TB) and diabetes. Additionally, an increase in the number of older BME people in the UK is likely to lead to a greater need for provision of dementia services as well as the provision of culturally competent social care and palliative care.

### ***a) Racial discrimination and health***

Research has consistently shown that racial discrimination affects the health and life chances of an individual and leads to ethnic inequalities in health. A recent study carried out by researchers from the University of Manchester and University College London examined the mechanisms linking experiences of racial discrimination of family members to children's

health and development. This examined the possible impact of racial discrimination on a mother's mental health and then the possible impact on parenting practice. The study confirmed that racial discrimination experienced by a mother has an impact on the health of her children. It found that

around the time of the child's fifth birthday, almost a quarter (23%) of ethnic minority mothers reported having been racially insulted. Mothers who had been racially insulted had poorer mental health two years later, than mothers who did not report experiencing racially motivated insults. Both increased maternal psychological distress and increased harsh parenting practices were associated with increased socio-emotional difficulties for the child at age 11. A worsening of the mother's mental health had the most consistent indirect effect on a child's socioemotional difficulties six years later. Family experiences of unfair treatment all had a negative direct effect on a child's later socio-emotional development.

The detrimental impact of racial discrimination experienced by one member of the family on the whole family unit, including children, must be acknowledged.

### *b) Mental health*

BME people are more likely to be diagnosed with mental health problems, to be admitted in hospital (versus receiving treatment in the community) and to report poorer experience of psychiatric services and worse treatment outcomes. As highlighted by the EHRC, "people from Black/African/Caribbean/Black British ethnic groups had the highest rate of contact with specialist mental health services. People from these groups and those of Pakistani ethnicity were more likely to have been compulsorily detained under the Mental Health Act 1983 as part of inpatient stay in a mental health unit." Black people still disproportionately enter psychiatric services via the criminal justice system rather than primary care. But while there are still considerable disparities in mental health experienced by BME people, there is little progress in tackling these disparities, and their particular needs are rarely taken into account in planning and delivering mental health services.

Past government commitment to tackling racial inequalities in mental health have not been sustained and cuts to funding for the 500 Community Development Workers who had been employed by mental health trusts, combined with the impact of austerity on the voluntary sector has meant that there is far less support for mental health work focused on BME communities.

The latest Government proposals relating to mental health, as with other areas, are colour blind in their approach, and although they do recognise that BME people are over-represented in the mental health system, they still fail to suggest any specific measures or policies to address this issue.

In Scotland, the University of Edinburgh reported in 2013 that BME populations received varying levels of support for their mental health. Their findings reported that South Asian and Chinese people in particular were often much later in entering mental health support services than other ethnicities. In most minority groups in the study, those that went to hospital were significantly more likely to be treated under the Mental Health Act. Authors noted that difficulties in diagnosing and treating mental illness among minority groups at an

early stage goes some way to explaining their findings. In general, there was also a lack of awareness of available support services and a reluctance to seek medical help due to social stigma within minority groups.

### *c) Access to medical care for migrants*

From 1 April 2015, non-EEA migrants must pay a health surcharge as part of their visa application in order to access NHS services during their stay. It is now proposed to extend this charging to a further range of services (including A&E and all providers of NHS secondary care). There is widespread concern that this scheme is not only unworkable, detrimental to public health and control of communicable diseases, expensive and likely to cost more than it saves, but also that it is likely to incentivise unlawful discrimination, delay or exclude irregular migrants and their families from access to necessary medical care. Like the schemes for checking immigration status for jobs or housing, this scheme may further heighten the climate of suspicion towards all migrants and others who may be perceived as migrants.

### *d) Health concerns for Gypsies and Travellers*

There is general agreement that Gypsies and Travellers are among the most vulnerable to health inequity. A recent report jointly produced by Friends, Families and Travellers (FFT) and Leeds Gypsy and Traveller Exchange (LeedsGATE), highlights how producing guidance alone is insufficient; unless there is some way of holding Government, local authorities and Clinical Commissioning Groups to account, we cannot expect much progress in reducing health inequalities for Gypsies and Travellers in the UK. The report identified the need for targeted programmes at both the national and local level, to underpin and support the Inclusion Health agenda and to meet the health needs of Gypsies and Travellers.

Unequal health outcomes for Gypsies and Travellers occur in a context where the Health and Social Care Bill (2012 Act) places an 'equality duty' on the Secretary of State for Health. Similarly the influential Marmot review has explained that while investment across the health gradient is required, it should be targeted proportionally to reduce health inequity where it is most extreme.

But as the FFT and LeedsGATE work demonstrates, the UK healthcare system doesn't deal very well with extremes of health inequity, often reinforcing rather than redressing them and generating significant avoidable human, social and financial costs. A recent New Economic Foundation report further argues that 'market mechanisms and privatisation in healthcare systems have largely inconclusive or negative effects on quality and equity in healthcare.'

Apart from the work carried out by FFT, which may or may not continue due to funding uncertainties, the UK Government's report is fairly silent on what is being done to address the extreme health inequalities experienced by Gypsies and Travellers, at least so far as England is concerned. There is a brief mention of the Travelling to Better Health Guidance published by the Welsh Government and of the work being carried out in Northern Ireland.

The UK Government must be much more explicit about its proposals to tackle the health

inequalities experienced by the travelling communities. In particular, we urge the UK Government to recognise and respond to the negative outcomes that can result from commissioning processes that may exclude 'chronically excluded' groups and agencies working on their behalf. The aspiration for 'stronger partnerships with charitable and voluntary sector organisations' set out in the NHS Five Year Forward Review recognises that the voluntary sector is often 'better able to reach underserved groups' and are a source of advice for commissioners on particular needs. Yet in the current climate small voluntary sector organisations, who are well connected with local communities, struggle to survive, competing with each other for scarce funding and against the large generic providers to whom commissioners turn when awarding all-purpose contracts.

### **Recommendation**

**The UK Government should much more explicit about its proposals to tackle the health inequalities experienced by the travelling communities.**

**The UK Government should recognise and respond to the negative outcomes that can result from commissioning processes that may exclude 'chronically excluded' groups and agencies working on their behalf.**

### ***e) Health in Scotland***

In 2012, the Scottish Government published "The Scottish Health Survey: Topic Report on Equality Groups" which examined annual Scottish Health Survey (SHS) data between 2008 and 2011. Those who reported their ethnic group as Pakistani were least likely to rate their health as good or very good (66%) although due to small sample sizes this was not significantly different from the national average of 76%. However, although it is not statistically significant, this does corroborate with other research which found that Pakistanis in Britain are less likely to report good health. Chinese respondents were the most likely to rate their health as good or very good (91%) and this was significantly different from the national average.

In relation to higher risk behaviours such as smoking, drinking and drug taking the Scottish Household Survey found that there was a low uptake of these activities amongst BME groups compared to the UK white population. It was also found that respondents from Pakistani and Asian other ethnic groups were significantly less likely to smoke than the national average (prevalence of 13% and 9% respectively). African, Caribbean or Black respondents (19%) have also been identified as significantly less likely than to be drinking above daily limits than the national average.

There is limited data available on the ethnicity of those using drug support services. However, in 2012 CRER found limited support for minority ethnic groups who were trying to overcome a drug addiction. The Glasgow South Community Addictions Team (CAT) was the only addiction service in Scotland that provides BME specific addiction services, available only to communities in Glasgow and with 79 registered service users. The BME service users and their families reported high levels of satisfaction with the service, although many felt

that more could be done to improve the interpretation service to assist with overcoming language barriers.

**Recommendations:**

**The Government should ensure implementation of the 'equality duty in health' by NHS England and Clinical Commissioning Groups (CCGs).**

**The Government should set clear targets in tackling race inequalities in service provision and public health in order to put the health outcomes of minority ethnic communities on a par with the general population.**

**The Government should commission a yearly report on race inequalities in health and social care.**

**The Government should develop a clear strategy for more effective consultation with minority ethnic communities to ensure that these groups are involved in the development of and evaluation of health and social care services.**

**The Government should ensure that all general practitioners (GPs, local doctors not based in hospitals) are given the necessary training to work more effectively with people from different minority ethnic groups.**

**The Government should ensure that cuts in spending do not disproportionately impact on minority ethnic communities and the community health organisations which are currently offering culturally appropriate health services for those marginalized from mainstream service provision.**

**The Government should encourage improved health outcomes by investing in raising awareness among minority ethnic communities about health conditions and services.**

**The UK Government and the devolved administrations should provide more consistent and detailed data in order to identify the care needs of BME groups. There should be a more targeted approach to delivering services in a way which takes cultural sensitivities into account without projecting prejudice, most notably in mental health services.**

***f) Health in Northern Ireland***

Access to healthcare was generally seen as acceptable by Northern Ireland consultees but there is concern about the inadequate provision of mental health and counselling services and the urgent need for appropriate, accessible interpreting services was also highlighted. Concern was expressed about the vulnerability of BME women who are victims of domestic violence and who need a safe haven and counselling but have no access to public funds.

#### 4.5.4 Housing

##### *a) Discrimination resulting from the right to rent scheme*

The provisions contained in sections 20 to 34 of the Immigration Act 2014 prohibit a private landlord from renting residential property to anyone whose immigration status does not permit them to reside in the UK. To avoid a civil penalty of up to £3,000, a landlord must check specified original documents for any adults who will live in his/her property (irrespective of whether they are on the tenancy agreement or not) to be satisfied that they have the right to live in the UK. The 'right to rent' scheme was initially 'piloted' in the West Midlands between December 2014 and January 2016, and from 1 February 2016 applies across the UK.

Government guidance on immigration checks for landlords lists 26 different documents that a landlord can check and highlights the complexity of procedures for checking immigration status, especially those untrained in immigration matters. NGOs have repeatedly highlighted how these added immigration control burdens on landlords would impact people from BME and migrant communities disproportionately. These concerns have been confirmed by a review of the pilot Right to Rent scheme carried out by the Joint Council for the Welfare of Immigrants (JCWI). It found that 42% of landlords surveyed said the Right to Rent scheme made them less likely to consider renting their property to someone who does not have a British passport and 27% said they were reluctant to engage with someone with a foreign accent or names. Half of the respondents who had been refused tenancy felt that discrimination was a factor in the landlord's decision.

There has been no evidence that the Right to Rent scheme has led to creating "a hostile environment for illegal migrants in Britain", one of the Government's stated objectives for the last few years. However, there is evidence of direct discrimination by landlords against those legally here but with complicated or unclear immigration status. These checks are leading to increased racial profiling and those who appear foreign or have foreign accents are finding it increasingly difficult to access tenancies. Despite assurances that the scheme would be evaluated before a nationwide roll-out, the Government has so far failed to carry out such a review, and has failed to demonstrate the effectiveness of this pilot. It has instead not only extended the scheme across the UK but in the 2016 Immigration Bill further proposes criminal sanctions for landlords who allow people without a right to rent to occupy their properties, as well as measures to enable speedy eviction of such occupiers. This is notable not only in incentivizing discriminatory behaviour among landlords, but for criminalizing landlords for behaviour that would be not criminalized among immigration and border officials.

##### *b) BME overrepresentation in poor housing and homelessness*

Some black and minority ethnic (BME) groups disproportionately face homelessness, poor housing conditions and overcrowded accommodation. Higher levels of unemployment, low incomes and discrimination all make finding accommodation more difficult. Harassment from landlords, neighbours and other local people in some areas are also problems for

significant numbers of black people.

In 2014, Runnymede examined overcrowding in three London boroughs (Redbridge, Croydon and Kingston). It found that in Redbridge, 13% of BME people lived in overcrowded accommodation compared to 4% of the white population. In Croydon and Kingston 14% of BME people lived in overcrowded accommodation (compared to 4% and 5% of the white population respectively).

The same study found that in Redbridge, over a quarter of homeless people are Black (almost three times larger than the Black population in Redbridge as a whole). In Croydon, almost half (47%) of homeless people are Black. The Black homeless group is over two times larger than the Black population in Croydon (20%). In Kingston, Runnymede found that although Black groups only make up 3% of the population, they make up 9% of homeless households.

Analysis of the effect of the 2015 budget on BME communities highlighted that the changes in housing benefits will particularly affect BME young people.

This is because BME households are not only more likely to include young people, but they are also more likely to be overcrowded. Nearly half of all overcrowded households in Britain are among ethnic minorities but the government is now restricting access to housing benefit for people in their late teens and early twenties. Among BME young people affected by this change, many will be living in overcrowded households, sharing bedrooms with younger siblings, and so these changes are more likely to negatively affect housing quality among BME families and young people.

Analysis of the latest figures on homelessness reveals that homelessness among BME people is rising faster than in the general population. While homelessness has increased by 7% in the last three years among the general population, the number of homeless households defined as Black and Asian has risen by 21% and 33% respectively.

#### **Recommendations:**

**The Government should ensure that homes are of high quality and that housing regeneration initiatives adequately consider the needs of BME groups. This will mean the 'affordability' needs to correspond to actual incomes not market rent.**

**The Government should ensure that local authority housing benefit services are working in partnership with the social rented sector, private landlords and letting agents, advice providers, local community groups and NGOs, to mitigate the effects of the housing benefit cuts on people from minority ethnic communities.**

**The Government should take action to combat the disproportionate number of BME families affected by overcrowding, and by the benefit cap.**



**The Government should take action to combat the disproportionate levels of homelessness amongst BME groups.**

***c) Accommodation for Gypsies and Travellers***

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

**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.**

Friends Families and Travellers (FFT) has reason to believe that the figures published by the UK Government in respect of new Traveller sites achieved via the Traveller Pitch Fund are inaccurate and misleading.

The Government report to CERD states, inter alia, at Paragraph 147 – *‘It is forecast that the Traveller Pitch Fund will deliver around 1,000 new and refurbished pitches by March 2015 at a cost of £50 million. Local authorities are given incentives through the New Homes Bonus scheme to deliver new housing, including traveller sites.’*

The Homes and Communities Agency, which administered the Traveller Pitch Fund, has published figures setting out the new and refurbished pitches provided by the fund. However the figures are misleading because the numbers of ‘new’ pitches claimed fail to take into account the number of pitches lost as a result of the development. In other words the net increase in the number of the pitches is considerably lower than the official statistics would indicate. Friends Families and Travellers contacted five local authorities at random and discovered that of the 236 ‘new’ pitches ascribed to them in the official statistics, the net increase was only 44. If this pattern is replicated elsewhere then the rate of increase in new pitches is possibly not even meeting the demand arising from natural growth due to new household formation. This worrying conclusion is borne out by the UK Government’s biannual caravan count which indicates that in recent years there has been no significant increase in caravans on socially rented pitches.

For this reason NGOs, following Friends Families and Travellers (FFT), disagree profoundly with the Government’s assertions at para. 144 – *‘The Government believes that local authorities are best placed to assess the needs of their communities and so we have placed responsibility for traveller site provision back with them. Rather than imposing top-down targets which fuelled opposition to development, we are offering local authorities real incentives to develop additional traveller sites in their areas.’*

We see no evidence that these ‘real incentives’ are having any effect or making any substantive inroads towards meeting the national shortfall of Traveller pitches. We agree with FFT that targets, or a statutory duty as recently introduced in Wales, are needed to ensure that sites are actually delivered.

The need for additional sites to meet the current shortfall does not seem to be disputed, simply the means by which this can best come about. However there is some urgency in finding a solution to this deficit. Better Housing Briefing No. 26 (July 2015) shows Romany Gypsies and Irish Travellers to have the highest rate of housing deprivation of any minority ethnic group in the UK, being 7.5 times more likely to experience housing deprivation than other groups.

Because of the shortfall of sites huge sums – estimated at up to £20 million nationally – are spent on evictions. These costly evictions normally have the effect of simply moving people from one place they are not allowed to be to another place they are not allowed to be. One relatively small local authority, Brighton & Hove City Council, spent £229,285 on evictions of Gypsies and Travellers between April 2014 and March 2015.

The position of Gypsies and Travellers in respect of their accommodation needs has worsened in recent years in a number of respects:

- There is no substantive increase in socially rented sites to meet the shortfall and such increase as there is does not even keep pace with natural growth due to new household formation.
- In August 2015 the UK Government changed the planning definition of a Gypsy or Traveller to exclude all those who have stopped travelling permanently, e.g. due to old age or ill health.
- At the same time the UK Government removed the requirement on local authorities to plan to meet the need for Traveller sites in full in areas where there is a large scale unauthorised site. FFT believes this to be tantamount to the introduction of ethnic quotas.
- The Housing and Planning Bill 2015, currently progressing through parliament, includes the removal of the requirement on local authorities to carry out specific accommodation needs assessments for Gypsies and Travellers. This will make it even less likely that the accommodation needs of Gypsies and Travellers will be met through the planning process. Very few local authorities have allocated sufficient land in their local development plans to meet their identified need for sites and if the need is not properly identified then the situation will only continue to worsen.

The lack of suitable accommodation for Gypsies and Travellers impacts profoundly on their life outcomes in other areas, particularly education and health and we examine these in different sections of this document.

Roma families who moved to the UK from other EU Member States are increasingly being forcibly removed by the UK Border Force if they can no longer prove that they are in paid employment or are self-employed. Often they are immediately removed to other EU countries without recourse to legal assistance or any appeal procedure when trying to access benefits at a government agency or local authority, or have become homeless. This is despite evidence of continued discrimination against Roma throughout Europe, and especially in the case of housing.

## **Recommendations:**

**The Government should publish accurate national statistics showing whether there is a net increase of Gypsy and Traveller pitches year on year, and the extent of that increase.**

**The Government should retain the requirement for local authorities to carry out specific Gypsy and Traveller Accommodation Needs Assessments, at the very least until such time as the identified shortfall of pitches in that local authority area has been fully met.**

### ***d) Housing in Scotland***

According to 2011 Scottish Government data the non-white minority population in Scotland is more likely to live in a household with dependent children or as students. Non-white minority ethnic communities have disadvantaged housing circumstances compared to the white ethnic population. According to the 2014 Scottish Household Survey, non-white minority ethnic communities are over-represented in private renting, but under-represented in home ownership and social housing.

According to the Joseph Rowntree Foundation, non-white minority ethnic households live in socially rented housing at a rate of only two-thirds the rate of white households, and are much more likely to be in private rented housing, with a rate four-and-a-half times greater than that of white households (25% vs 5.6%). While students account for a portion of this difference, the issue of access to social housing is a significant concern. Private renting could be an indicator of potential deprivation and vulnerability, as housing problems are more likely in this tenure and many private tenancies are short-term and do not offer long-term security. Additionally, private rent is typically twice the level of social rent, and may not be fully covered by local housing allowances. Among Gypsy/Travellers in particular, there are higher rents and electricity charges on sites compared to costs in social housing, contributing to a significantly disadvantaged socio-economic status.

Third sector campaigners in Scotland have argued that greater transparency is needed surrounding the distribution and quality of social housing, and that policies should be developed and implemented to change the low proportion of minority ethnic households in social housing.

Many individuals in Scotland also live in communal establishments, such as medical or care establishments, education establishments, defence establishments, prison service establishments, and hostels and temporary shelters. The minority ethnic population had a greater rate of individuals in student accommodation and other communal housing (including sleeping rough), while being least represented in children's homes and defence establishments.

Recent data looks at homelessness in Scotland between minority ethnic individuals with UK or EU nationality and asylum-seekers or refugees separately. In 2013/2014, there were 24,000 assessed cases of homelessness for those with UK or EU nationality. The proportion of white homeless is about 93%, compared to 96% of the overall population. The proportion

of Asian homelessness is slightly less than the wider population, with 0.9% compared to 2% of Scotland as a whole. Of refugees or those seeking asylum, 11% described themselves as white, 14% as Asian, 21% as black, and 47% as other.

Fear of racial harassment among minority ethnic communities hinders the integration of these communities, and impacts on the quality of life experienced within the home and neighbourhood. Fear and experience of racial harassment have a great impact on the housing decisions among asylum-seekers and refugees and other BME communities. In some cases, harassment drives individuals and families to other (often poorer quality) accommodation. Racist incidents in social housing remain under-reported due to unfamiliarity with the local authority and housing association's policies and procedures for dealing with racial harassment.

**Recommendation:**

**The Scottish Government must address the specific needs of ethnic minorities alongside their more general commitments to improve the quality, quantity and accessibility of housing in Scotland. Long term plans must be detailed in the Scottish Government's Race Equality Framework to ensure that discrimination does not continue.**

*e) Housing in Northern Ireland*

Where you live in Northern Ireland can have a significant bearing on the extent to which you may be subjected to racist abuse and hate crime. Finding an adequate and safe place to live is an issue for many BME people. The needs of those who are homeless and destitute, particularly refugees and asylum seekers who are required to live in designated accommodation were highlighted by consultees as not being appropriately met.

Those who rely on the private rented sector can face discrimination and barriers such as requirements for references, guarantors and deposits. Those dependent on the provision of social housing may be housed in areas where there is an antipathy towards new arrivals. If they face racist abuse, unless they are able to prove that they are entitled to 'intimidation points' which facilitate relocation to safety, they may be declared as voluntarily homeless which means going to the bottom of the housing waiting lists which can lead to destitution and homelessness. There is also considerable anxiety about the potential impact of the UK Government's welfare reforms and 'austerity agenda' threatened to become policy in Northern Ireland.

**4.5.5. Impact of Budget on BME communities**

Another example of the Government's failure to acknowledge the potential discriminatory impact of its policies was highlighted in research on the impact of the 2015 Budget on BME people. It found that four million minority ethnic people could be made worse off due to a

range of budget measures that have a negative and disproportionate impact on BME people. Even taking into account the rising national minimum wage, BME people will be left with less money, and this will likely increase racial inequality. Changes to tax credits, part-time working changes and benefit caps on households with three or more children will all have a greater impact on BME families.

Analysis of the budget measures shows that:

- Black and minority ethnic (BME) people are over-represented in several categories which are negatively impacted by the 2015 summer budget.
- As a result more than 1.25 million BME households and more than 4 million BME people could be worse off.
- Inequality in the affected areas is likely to worsen for BME people, meaning the cumulative effect of the budget may become even more unfair with time.
- British Bangladeshi and Pakistani households are particularly affected, with up to half of Bangladeshi households out by £1,000 or more.
- Black African households will also be worse off, but even Indian and Chinese households are more likely to be affected because they have higher rates of low income households.

Black and minority ethnic households are more likely to be living in poverty already, so this is likely to make racial inequality even worse. While the Government may point to initiatives to address BME inequality, there is limited evidence they have been effective. The Treasury's public response to this research, that 'most working households would be better off' doesn't even address the question of whether ethnic inequalities will increase or decrease, and is a good example of Government's failure to take its equality obligations for all citizens seriously.

**Recommendation:**

**The Government need to carry out a formal audit, or a full equality impact assessment on the current budget, including its effect on BME people.**

**The Treasury, in compliance with the PSED, needs to carry out a full equality impact assessment of current and proposed budget provisions, in order to ensure that future budgets are written with the aim of not adversely affecting BME people.**

## 5 – Article 6

### 5.1. Access to Justice

#### 5.1.1. Cuts to legal aid and introduction of employment tribunal fees

As with other policies in other government departments, the Ministry of Justice accepts that cuts to legal aid and the introduction of fees for employment tribunal cases and increased county court fees disproportionately impact some persons with protected characteristics. Indeed, the cuts have severely limited access to justice for BME employees, people who experience discrimination and/or harassment at work, in housing, education, in accessing public or private sector services and in their treatment by the police, prisons and other state bodies.

BME people (alongside disabled people and women) are especially affected by the reduction of the scope of civil legal aid and reform of the procedure for to judicial reviews.

In particular, the introduction of employment tribunal fees has been disastrous for individuals' ability to access justice or enforce their employment equality rights and has led to a huge drop of claims (10,967 claims between January and March 2014, representing an 81% drop compared with the same period the previous year). For race discrimination, employment tribunal claims dropped by 58% between 2012/13 and 2014/15 in England and Wales, and by 66% for the same period in Scotland. If, as has been suggested, this was the result of keeping weak cases out of the system, there would be a higher change in the outcomes of tribunal hearings but this has not been the case. Outcomes have remained the same.

As stated by the DLA, "the difficulty in accessing the tribunal to enforce employment rights means that the practical value of these rights has been substantially reduced. This includes [...] the equality rights found primarily in the Equality Act 2010." The DLA reports that its members are often approached by individuals with strong potential claims, but once they are aware of the fee, they choose not to continue. The fees are also highly disproportionate to the rewards of a tribunal – one third of race discrimination awards are below £4,000. There are also indications that internal grievances and complaints of racial discrimination are not being handled sensitively nor fairly as employers feel they have greater impunity following the introduction of prohibitive fees.

There was also a 70% drop in workers pursuing claims for non-payment of the national minimum wage, which may disproportionately affect BME workers who are over-represented in low and below minimum wage employment.

In Scotland, the Scottish Government's decision to cut the legal aid budget by £10 million is likely to limit access to the justice system for those with a low income, which will disproportionately affect those from a minority ethnic background.

In Wales as well, the changes made to the legal aid system in April 2013 have been a barrier

to ethnic minority people exercising their full rights under the Convention. In Wales the changes have affected appeals for school exclusions which have impacted a vast number of ethnic minority pupils, especially Gypsy, Roma and Traveller children. Employment matters have also been affected, with access to justice for workplace discrimination cases denied.

In Northern Ireland the employment tribunal system places claimants of racial discrimination at a disadvantage with no legal aid available for representation at tribunal and the use of lawyers discouraged. The Northern Ireland Assembly has now passed the Employment Bill 2016 which will further exacerbate this unequal position as the Bill enables the Department for Employment and Learning to levy a monetary deposit for the consideration of each issue it considers unlikely to succeed. This is especially concerning given the complexity of employment situations which often require a claimant to bring cases on multiple grounds thus attracting potentially multiple deposits. The poorer economic position of BME communities in Northern Ireland will produce a differential adverse financial obstacle in the way of BME people seeking to access justice.

**Recommendations:**

**The UK Government should reinstate education, employment law and immigration within the scope of legal aid.**

**The Government should repeal Employment Tribunal fees which affect all employment-related claims for discrimination, harassment and victimisation.**

**The UK Government and devolved administrations should outline the mechanisms it will put in place to ensure that individuals have fair and effective access to justice for discrimination after funding cutbacks for discrimination casework.**

### **5.1.2. Repeal of statutory questionnaire procedure**

The questionnaire procedure under s.138 of the Equality Act 2010, which had been part of the 1976 Race Relations Act and was used by prospective discrimination claimants to gather evidence before commencing proceedings was repealed by Government, despite the fact that 83% of respondents to the Government consultation opposed the repeal. Evidence from EHRC legal casework suggested the use of the procedure led to a reduction in claims proceeding to the tribunal or court where replies to the questionnaire indicated that evidence of discrimination was weak. Removing the procedure may therefore place more onerous demands on businesses dealing with discrimination claims, somewhat in contrast to Government's view of 'red tape'.

Questionnaires were essential in establishing a prima facie case of discrimination, including in collecting statistical information in relation to possible indirect discrimination claims. Without statutory questionnaire procedure, it is more difficult for individual claimants to find the evidence to expose within legal proceedings what we know is a major social issue.

## **Recommendations:**

**The Government should reinstate the questionnaire procedure under s.138 of the Equality Act 2010.**

### **5.2. Role of EHRC**

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

**The Committee recommends that any spending cuts and proposed legislative amendments to the mandate of EHRC should ensure that EHRC operates independently and effectively in line with the Paris Principles (annexed to General Assembly resolution 48/134).**

Contrary to the Committee's recommendation, the UK Government, in the Enterprise and Regulatory Reform Act 2013 removed certain duties and powers of the EHRC, thereby reducing both the breadth and the depth of its statutory role. Specifically, the 2013 Act repeals the EHRC duty:

- To promote understanding of the importance of good relations and to encourage good practice in relation to relations (i) between members of different groups, and (ii) between members of groups and others,
- To work towards the elimination of prejudice against, hatred of and hostility towards members of groups, and to work towards enabling members of groups to participate in society.

The 2013 Act also repeals the EHRC power to make, co-operate with or assist in arrangements: (a) for the monitoring of kinds of crime affecting certain groups; (b) designed to prevent or reduce crime within or affecting certain groups.

Also repealed is the EHRC power to make arrangements for conciliation of discrimination claims. The EHRC duty to monitor equality and human rights progress is narrower in focus with a 5-year instead of 3-year reporting cycle.

Together with a reduced role was the equally concerning severe reduction of resources allocated to the EHRC. While planned departmental spending was cut by 10% between 2010 and 2015 and that of 'unprotected' departments on average by 20%, the EHRC budget was selected for a 50% cut, from £52m to £26m and staff from 450 to 180. The EHRC's published budget 2014/15 shows a figure of £17m, indicating a cut of two thirds. Given the scope of equality legislation is so broad and extensive, the funding cuts make it extremely difficult for such a body to play its role of holding the Government to account (across the range of 'protected' characteristics, including gender, disability, sexual orientation, age, religion or belief, gender identity as well as race.)

In Scotland, there continues to be confusion and concern about the separation of duties between the Scottish Human Rights Commission (SHRC) and the Equality and Human Rights Commission in Scotland. While human rights issues relating to devolved areas (e.g. criminal justice, health, housing, education) are within the remit of the SHRC, it does not have the power to support individuals in claims or legal proceedings. This limits the ability of minority



ethnic individuals in Scotland to exercise and advocate their human rights. There is also a marked lack of NGOs in Scotland dedicated solely to human rights in Scotland, with organisations such as Amnesty International limited in its remit and focused on wider issues.

### **Recommendation**

**The Government should commit to renewing the strength of the EHRC in order to meet the scale of growing challenges to equality and human rights discussed throughout this report.**

**The Government should give consideration to the remit of the Equality and Human Rights Commission in Scotland and the Scottish Human Rights Commission to consider the powers of each, in particular in relation to devolved areas and the support of individuals in claims or legal proceedings.**

## 6 – Article 14

### 6.1. Right to individual petition

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

**The Committee urges the State party to reconsider its position not to make a declaration under article 14, which will allow individuals who are victims of racial discrimination to access the Committee.**

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

#### **Recommendation:**

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

## Appendix – Signatories to this report

All in Youth Project  
Allsorts  
Apna Haq  
Barrow Cadbury Trust  
Black Training and Enterprise Group (BTEG)  
Brighton and Hove Community Works  
Catholic Association for Racial Justice (CARJ)  
Children’s Rights Alliance for England  
Coalition for Race Equality and Rights (CRER)  
Discrimination Law Association  
Gypsy Council  
Gypsy, Roma and Traveller Team of Garden Court  
Friends, Families, Travellers  
Ipswich and Suffolk Council for Racial Equality  
Islamic Relief Worldwide  
Just West Yorkshire  
Leeds Gypsy and Traveller Exchange  
London Gypsy and Traveller Unit  
Manchester BME Network  
Migrants’ Rights Network  
North East Regional Race, Crime and Justice Research Network  
Northern Ireland Council for Ethnic Minorities  
Olmec  
People in Harmony  
Race Equality First  
Race Equality Foundation  
Race Equality Matters (REM)  
Race on the Agenda (ROTA)  
Rene Cassin  
Runnymede Trust  
Scottish Independence Advocacy Alliance  
Tell Mama  
The Children and Young People's Commissioner, Scotland  
The Muslim Women's Resource Centre  
The National Federation of Gypsy Liaison Group  
The Traveller Movement  
Together Scotland  
Traveller Law Reform Project  
UK Race in Europe Network  
Women's Resource Centre  
Voice4Change England  
York and District CAB