



**Submission to the UN  
Special Rapporteur on  
contemporary forms of  
racism, racial discrimination,  
xenophobia and related  
intolerance**

**on**

**Country visit to the United Kingdom  
Of Great Britain and Northern Ireland**

**March 2018**

## INTRODUCTION

The Northern Ireland Council for Racial Equality (NICRE) was set up in March 2017 as result of the sudden closing down of the Northern Ireland Council for Ethnic Minorities (NICEM) in November under voluntary receivership due to severe cash flow. After consultation with previous members of NICEM in February, NICRE was formally established with an interim Executive Committee to prepare for the first Annual General Meeting which have been scheduled in June 2018 and the adoption of our three-year Strategic Plan.

WE welcome the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, Ms. Tendayi Achiume, Country visit to the United Kingdom of Great Britain and Northern Ireland. It is timely for her visit as the country is now in the exit of the membership of the European Union<sup>1</sup>. This decision will definitely affect our jobs, economy, public services and above all racism, racial discrimination and racist attacks will be wide spread through new immigration control on migration as well as asylum seekers and refugee status.

From Northern Ireland perspective, the implications will be that all the rights enshrined under the Belfast Agreement, commonly known as the Good Friday Agreement, will be extinct as the Agreement linked with the North-South Ministerial Council discussing the EU policy on the Island of Ireland and the Chapter of Rights, Safeguards and Equality of Opportunity under the Agreement<sup>2</sup>. The draft Agreement on exit of the EU membership highlights the importance of the Agreement<sup>3</sup> We still wait and see the negotiation on the final text of this Protocol which affects our future livelihood whom are coming to settle in Northern Ireland. Due to the collapse of the Northern Ireland Executive since January 2017 despite over a year of the Party Talk to restore the Executive, the people in Northern Ireland without a voice during the negotiation of the UK Exit Agreement despite the majority voted for remain<sup>4</sup>.

In Northern Ireland the Government policy is a typical “Two communities only” approach in the post-Agreement which was reinforced by the proposed Bill of Rights for Northern Ireland. “These additional rights to reflect **the principles of mutual**

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<sup>1</sup> The controversial result of 51.89% voted leave and 48.11 voted remain on the Referendum on the exit of the European Union membership in June 2016 divided our society continuously in the media, including social media, daily conversation at home and in work place.

<sup>2</sup> Chapter 6, p.20, Belfast Agreement, 1998

<sup>3</sup> The preamble of the Protocol – Ireland/Northern Ireland reflects the importance:

“AFFIRMING that the Good Friday or Belfast Agreement of 10 April 1998 between the Government of the United Kingdom, the Government of Ireland and the other participants in the multi-party negotiations (the "1998 Agreement"), which is annexed to the British-Irish Agreement of the same date (the "British-Irish Agreement"), including its subsequent implementation agreements and arrangements, should be protected in all its parts;

RECOGNISING that cooperation between Northern Ireland and Ireland is a central part of the 1998 Agreement and is essential for achieving reconciliation and the normalisation of relationships on the island of Ireland, and recalling the roles, functions and safeguards of the Northern Ireland Executive, the Northern Ireland Assembly, and the North-South Ministerial Council (including cross-community provisions), as set out in the 1998 Agreement;” TF50 (2018) 35 – Commission to EU27, 189 March 2018

<sup>4</sup> England and Wales which voted for Brexit. Both Scotland (62%) and Northern Ireland (55.8%) voted for Remain.

**respect for the identity and ethos of both communities and parity of esteem,** and - taken together with the ECHR - to constitute a Bill of Rights for Northern Ireland.”<sup>5</sup> Therefore, ethnic minorities could only enjoy the residual rights of the majority communities in Northern Ireland. We are living in a society of institutional racism<sup>6</sup> in majority areas of law, policy and practice in Northern Ireland. Ethnic minorities are common target of racism, racial discrimination and racist attacks on one hand, socially excluded and disadvantaged as legal protection is so weak with the main law that based on the UK Race Relations Act 1976 which is severely outdated for decades in compare with the rest of the UK under the Single Equality Act 2010. **The fundamental question is why ethnic minorities in Northern Ireland receive such unequal treatment in post-conflict society? Is human rights protection for all or for some?**

**In this submission, we focus on five main areas of Devolution, Ethnic Monitoring, Legal Protection, Racist Violence and Immigration Control. We used our previous submissions and oral statements in 2011 & 2016 CERD hearing as well as their Conclusion Observations of the 18<sup>th</sup> – 20<sup>th</sup> and 21<sup>st</sup> -23<sup>rd</sup> periodic reports of United Kingdom of Great Britain and Northern Ireland.**

## **DEVOLUTION IN UNITED KINGDOM**

Devolution in the UK created a national Parliament in Scotland, a national Assembly in Wales and a national Assembly in Northern Ireland. This process transferred, and continues to transfer, varying levels of power from the UK Parliament to the UK's 4 nations. These complex transfers of power disguise the United Kingdom as a whole in terms of law, policy and practice under the ICERD obligation for full implementation to all the devolved governments.

**We urge the Committee as the matters of urgency to ask the 4 nations of the UK government in the future report to provide information on all areas of devolved policy and good practice within their jurisdiction in order to compile with the Reporting mechanism of ICERD.**

### **Conclusion Observation in 2016:**

“8. The Committee recommends that the State party ensure that the principles and the provisions of the Convention are directly and fully applicable under domestic law in England, Northern Ireland, Scotland and Wales, as well as overseas territories and Crown dependneices.....”

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<sup>5</sup> Chapter 6, para. 4, p.20-21, Belfast Agreement, 1998

<sup>6</sup> The Stephen Lawrence Inquiry Report defined it as “The collective failure of an organisation to provide an appropriate and professional service to people because of their colour, culture, or ethnic origin. It can be seen or detected in processes, attitudes and behaviour which amount to discrimination through unwitting prejudice, ignorance, thoughtlessness and racist stereotyping which disadvantage minority ethnic people.”, at para. 6.34, p.49, 1999.

## **ETHNIC MONITORING**

Regrettably our Northern Ireland Executive Government failed to supply all basic data and information under Article 2 to 7 of ICERD except what measures they have been introduced in this report. Without basic information and data set, we cannot benchmark the progress of ICERD in Northern Ireland and indeed across the whole United Kingdom or do we know whether these measures have any impacts? **How on earth ethnic minorities could enjoy the progressive realisation of rights if no benchmark data collected.....**

**.....NICEM would like to use this opportunity to demand for a robust monitoring data collection and the disaggregation of existing administrative data under this Framework into Section 75 groups, in order to track the outcomes of each of the Section 75 groups (9 grounds of discrimination). This approach will advance equality of opportunity and good relations on one hand and promote social inclusion and social cohesion on the other, through an evidence-based tracking system.**

**We urge the Committee to take immediate action to ensure that the 4 nations of the UK government are in full compliance of ICERD by introducing compulsory ethnic monitoring and disaggregated the collected data through Article 1 special measures across the 4 nations of United Kingdom.**

### **Conclusion Observation in 2016:**

“14. Given the importance of collecting accurate and updated disaggregated data to develop effective policies to combat racial discrimination and to monitor the impact of measures taken, the Committee recommends that the State party ensure that the governments of Northern Ireland, Scotland, Wales, the British Overseas Territories and the Crown dependencies systematically collect and publish disaggregated data on the enjoyment of rights by members of ethnic minorities in all fields of life, and to include such information in the next periodic report. The Committee also recommends that the State party:

1. Carefully review the impact of existing policies and programmes aimed at promoting integration so as to ensure that they do not constitute indirect discrimination;
2. Consider adopting a detailed action plan with concrete targets, monitoring mechanisms and sufficient resources, including temporary special measures, to secure the adequate advancement of certain ethnic groups to ensure that persons belonging to such groups are able to enjoy their rights on an equal footing, taking into account the Committee’s general recommendations No. 32 (2009) on the meaning and scope of special measures in the International Convention on the Elimination of All Forms of Racial Discrimination.”

**ACTION: We would like the Special Rapporteur asking the following questions when meeting with the Northern Ireland Government:**

- 1. Under the current Racial Equality Strategy for Northern Ireland 2015-2025 which is required to develop the Action Plan that similar to Para. 14(2) of the Conclusion Observation by each department and their next step agencies, how many departments and their next step agencies have the Action Plan? If not, why not?**
- 2. The former Office of the First Minister and deputy First Minister, now the Executive Office, had published the Guidance for Monitoring Racial Equality in July 2011. Since then, there is only the Department of Health implementing ethnic monitoring under the Guidance, why no other department and their next step agencies implementing ethnic monitoring? If not, why not?**
- 3. Without monitoring data, how the Northern Ireland Government**

## **LEGAL PROTECTION**

In 1993 one of our successful story in lobbying UN Committee on Racial Discrimination was to introduce domestic law to eradicate racial discrimination in Northern Ireland under Article 1 of ICERD in 1997. In the last two Conclusion Observation we still wait for our government to reform the current law as result of the Race Relations (Amendment) Act 2000 in England, Wales and Scotland and the transposition of the Racial Equality Directive in 2004 in which “colour and nationality” are not protected. At the same time, our Executive Government amended the Race Relations (NI) Order in 2012 as result of the European Commission infringement proceedings against the UK Government failed to protect the European Economic Area (EEA) nationals who were paid below the minimum wage as seafarers due to their nationality.

This action is arising from our successful lobbying to the Economic, Social and Cultural Committee in 2009 and the CERD in 2011 as result of the Filipino seafarers who were exploited through an agency contract which paid far below the minimum wages and poor working conditions that not compatible to the EU Working Time Directive. Now the law has change but only apply to the EEA nationals without extend to all nationality, in particular the Filipino and seafarers from outside EEA countries. This questions the equality principle that enshrined in the international human rights standards of equal before the law and equal protection within the law.

The above illustration clearly to demonstrate that the Executive Government is in breach of Article 1 of ICERD on the definition of Racial Discrimination by excluding “colour and nationality” on one hand, to make distinction by nationality to exclude the full legal protection for nationals outside the EEA countries.

**We urge the CERD to take immediate action to ensure that the Executive Government in Northern Ireland to reform the current law in accordance with the timetable 2016/17 that sets out in the Racial Equality Strategy 2015-2025 with commitment and resources (human and money) for full implementation. This legislative timetable as well as the Racial Equality Strategy should also form part of the outcomes under the Programme for Government Framework. We also urge the CERD to ensure that the UK government is in full compliance of**

**ICERD requirement by making the Northern Ireland Executive accountable to the international obligation, in particular Article 1 obligation.**

### **Conclusion Observation in 2016:**

“8. The Committee recommends that the State party ensure that the principles and the provisions of the Convention are directly and fully applicable under domestic law in England, Northern Ireland, Scotland and Wales, as well as the overseas territories and Crown dependencies. In particular, the State party should:

- 3. Ensure that the authorities of Northern Ireland act without further delay to adopt comprehensive legislation prohibiting racial discrimination in accordance with the provisions of the Convention.**

**ACTION: We would like the Special Rapporteur asking the following questions when meeting with the Northern Ireland Government:**

- (1) Why the progress to have an effective legal protection under the provisions of the ICERD so slow since the Conclusion Observation in 2011 and recent in 2016 request to “act without delay...”?**
- (2) In viewing the continue in breach of the ICERD to provide effective legal protection, what are the commitments of the Northern Ireland Executive and when will be the achievable deadline?**

## **RACIST VIOLENCE, HATE CRIME & HATE SPEECH**

This April marks the 20<sup>th</sup> anniversary of the Belfast Agreement which aims to the cessation of the communal violence in Northern Ireland<sup>7</sup>. Has “peace” made us the Race Hate Capital of the World? The Guardian in January 2004 described Northern Ireland which is 99% white, is fast becoming the “Race-Hate Capital of Europe”<sup>8</sup>.

Although there is no sudden upsurge of racist attacks before and after the EU Referendum in June 2016 up to the parade season at the end of August, it did have a few nasty incidents. The recorded hate incidents and crime over the last 3 year’s figures are follow: 2014/15 (1,356 incidents & 920 crimes), 2015/16 (1,221 incidents & 853 crimes), 2016/17 (1,054 incidents & 660 crimes). Although the number is pretty small in comparison with the rest of the UK. When population is considered Northern Ireland is higher than the equivalent rate in England and Wales in terms of reported hate crime (5.94 in Northern Ireland; 5.47 in England and Wales)<sup>9</sup>.

Most of the hate incidents and crimes are in Belfast (average 44%), the next is Armagh City, Banbridge and Craigavon (9-12% average), Mid & East Antrim (6-10% average)

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<sup>7</sup> <http://www.thedetail.tv/articles/racism-the-good-friday-agreement-and-northern-ireland-s-new-minority>

<sup>8</sup> <https://www.theguardian.com/uk/2004/jan/10/northernireland.race>

<sup>9</sup> Hate Crime – an inspection of the Criminal Justice System’s response to hate crime in Northern Ireland, Criminal Justice Inspection Northern Ireland, December 2017, p. 6

and Antrim & Newtownabbey (4-6% average). The peaks of racist attacks are in 2006/07 (1,047 incidents, 861 crimes), 2009/10 (1,038 incidents, 711 crimes) and 2014/15 (1,356 incidents, 920 crimes).

A synergy that appears to exist in Northern Ireland between loyalism and racism. Disturbingly, there is a paramilitary component to racist hate crime in Northern Ireland, with both the Police Service of Northern Ireland and the UK Parliament Northern Ireland Affairs Committee acknowledging 'significant loyalist paramilitary involvement in racist violence'.<sup>10</sup> The now defunct Independent Monitoring Commission (IMC) acknowledged in numerous reports<sup>11</sup> that the UDA and UVF were 'targeting ethnic minorities'.<sup>12</sup>(see also "Racist war of the loyalist street gangs"<sup>13</sup>) Between Jan – Dec 2017 there were 1,041 incidents and 640 crimes which show a downward trend from the peak in 2014/15 that is the time when the Belfast City Council approved the hoisting of the Union Jack to a limited number of days per year which sparked off the riots of the Flag Protest.

These patterns of the peak conclude that when Northern Ireland had political stalemate, such as the suspension of the Assembly, Flag protest or the unionist Ministers expressed their inappropriate racist remark on economic downturn, Islamophobic remarks on Islam, joking on Muslim community and local services for local people, loyalist paramilitary starts to terrorise BAME community in Northern Ireland.

From our work we know that the recorded racial incidents and crime statistics from the PSNI are only the tip of the iceberg.<sup>14</sup> The first Hate Crime Report by the Criminal Justice Inspectorate, published in January 2007 confirmed these concerns<sup>15</sup>. There are many incidents and crimes that go unreported. There are a variety of reasons why minority ethnic people do not go to the police in these circumstances. These include lack of confidence in police officers,<sup>16</sup> poor experiences in the past with the police on reporting racial incidents and crimes, and the perception that the police could not help or that the matters would not be treated seriously; also, fear of revenge and alienation from community groupings due to negative perceptions of the police by minority ethnic communities, in particular Irish Travellers.<sup>17</sup>

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<sup>10</sup> Committee for Justice, 'Report on the Committee's Inquiry in the Criminal Justice Services Available to Witnesses and Victims of Crime in Northern Ireland' (2012), para.683

<sup>11</sup> Tenth report (March 2006), Thirteen Report (January 2007), Fifteen Report (April 2007), Seventeen Report (November 2007), Twenty-Second Report (November 2009), Twenty-Third Report (May 2010), Twenty-Fifth Report (November 2010)

<sup>12</sup> The IMC Report which monitors threat assessment and normalisation, as well as on paramilitary activities analysis), can be downloaded in the following link: <http://www.independentmonitoringcommission.org/index.cfm>

<sup>13</sup> <https://www.theguardian.com/uk/2004/jan/10/northernireland.race>

<sup>14</sup> Robbie McVeigh, "The Next Stephen Lawrence?: the experiences of victims in criminal justice system in Northern Ireland", NICE, May 2006; see also para. 22, Northern Ireland Affairs Committee "The Challenge of Diversity: Hate Crime in Northern Ireland" Ninth Report, 2004-5 session, HC-548 I, April 2005.

<sup>15</sup> <http://www.cjini.org/getattachment/0272e50a-2218-482a-87e0-66a243a27900/Hate-Crime-Report-January-2007.aspx>

<sup>16</sup> Recommendation 9 of the Northern Ireland Affairs Committee, *ibid.* p.52

<sup>17</sup> para. 3.9, *ibid.*, p.17

In the concluding part of NICEM's "The Next Stephen Lawrence" Research Report, Dr. Robbie McVeigh stated the following when analysing testimonies of victims of hate crime provided through NICEM's own client work:

"The most striking thing about all of this primary data is the shocking incidence of racist violence across Northern Ireland. The data confirms that many minority ethnic people have experienced profound and repeated racist violence. While the statistics and media reporting has indicated that racist violence is 'growing', the NICEM statements make this visceral – it involves people being terrorised, people being spat on, people being burnt out of their homes and people being assaulted. The ongoing racist violence towards and harassment of minority ethnic children is particularly horrifying. In consequence many minority ethnic people are living in fear and some people are in fear of their lives. Many are being forced out of particular communities and some are being forced out of Northern Ireland completely"<sup>18</sup>

## Hate Speech

Pastor McConnell involved denounced Islam as Satanic and Muslims as untrustworthy in early 2015. The then First Minister, Peter Robinson, supported the freedom of expression of Pastor McConnell. In an interview with the Belfast Telegraph, he said that "I wouldn't trust Muslims devoted to Sharia Law, but I would trust them to go down to the shops for me"<sup>19</sup>

Despite these comments, hate speech laws were not applied by the prosecution and he was acquitted of any offence under lesser laws on offensive communications.<sup>20</sup>

The then First Minister also showed public support for protestors who attempted to evict an ethnic minority man from public housing because he was not 'local', claiming that the protest was not racially motivated.<sup>21</sup> Such rhetoric, freely taking place amidst historically high rates of hate crime, evidences poor political leadership and a failure to tackle hate speech, such as to suggest an infringement of Article 4(c) of ICERD. Therefore, it is vital that the UK Government withdraw its interpretative declaration on Article 4 of ICERD, as recommended by CERD's 2011 concluding observations.<sup>22</sup>

Recently the Northern Ireland Policing Board "Thematic Review of Policing Race Hate Crime" report<sup>23</sup> and The Criminal Justice Inspection Northern Ireland report on "Hate Crime – an inspection of the criminal justice system's response to hate crime in Northern Ireland"<sup>24</sup> point out to the same conclusion that Northern Ireland does not have an hate crime law and we are not compatible with the current law in England and Wales. Why ethnic minorities in Northern Ireland have far less legal protection in compare the rest of the country?

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<sup>18</sup> para. 4.11, *ibid.*, p.53.

<sup>19</sup> <https://www.belfasttelegraph.co.uk/news/northern-ireland/peter-robinson-i-wouldnt-trust-muslims-devoted-to-sharia-law-but-i-would-trust-them-to-go-down-to-the-shops-for-me-30313447.html>

<sup>20</sup> *DPP v James McConnell* [2016] NIMag 1, paras.1 and 2

<sup>21</sup> BBC News, 'Robinson: East Belfast Housing Protest "Not Racist"' 18<sup>th</sup> June 2014

<sup>22</sup> *op cit* n 5 para.11

<sup>23</sup> <https://www.nipolicingboard.org.uk/sites/nipb/files/media-files/race-hate-crime-thematic-review.PDF>, p.46

<sup>24</sup> <http://www.cjini.org/TheInspections/Inspection-Reports/2017/October-December/Hate-Crime>, p.7

And finally, hate crime is not the sole responsibility of the criminal justice system. In the first Inspection Report on hate crime, it stated that “Hate crime reflects upon the attitudes and prejudice that exists within our society. It is important that every citizen and every organisation across all sections of society accept their shared responsibility to tackle this difficult issue.”<sup>25</sup> It is also in the context of the post-conflict society in which aims at the cessation of all communal violence.

### **Conclusion Observation in 2016:**

“16. The Committee recommends that the State party, including the governments of Northern Ireland, Scotland, Wales, the British Overseas Territories and the Crown dependencies:

(a) Investigate all reported acts of racist hate crimes, prosecute and punish the perpetrators with sanctions commensurate with the gravity of the offence, and provide effective remedies to victims;

(b) Systematically collect disaggregated data on hate crimes, ensure that measures to combat racist hate crimes are developed with the meaningful participation of affected groups, and undertake a thorough impact assessment of the measures adopted to ensure their continued effectiveness;

(c) Adopt concrete measures, in consultation with affected groups, to increase the reporting of racist hate crimes by ensuring that the reporting mechanism is transparent and accessible, and that victims have trust in the police and the justice system;

(d) Taking into account the Committee’s general recommendation No. 35 (2013) on combating racist hate speech, adopt comprehensive measures to combat racist hate speech and xenophobic political discourse, including on the Internet, particularly with regard to the application of appropriate sanctions, and ensure that public officials not only refrain from such speech but also formally reject hate speech and condemn the hateful ideas expressed so as to promote a culture of tolerance and respect;

(e) Take effective measures to combat racist media coverage, taking into account the Committee’s general recommendation No. 35 (2013) on combating racist hate speech, and ensure that such cases are thoroughly investigated and, where appropriate, sanctions are imposed.

**ACTION: We would like the Special Rapporteur asking the following questions when meeting with the Northern Ireland Government:**

- 1. What progress has been made in each of the recommendations in the CERD 2016 Conclusion Observations?**
- 2. What strategy and policy of the Northern Ireland Government to tackle racist violence by the loyalist paramilitary?**

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<sup>25</sup> Hate Crime in Northern Ireland – A thematic inspection of the management of hate crime by the criminal justice system in Northern Ireland, Criminal Justice Inspection Northern Ireland, January 2007, p. 4 at 1.8

**3. Will the Northern Ireland Government review the current hate crime law in order to consolidate the existing law into a single Hate Crime law as the Law Reform Commission in London in 2014?**

**IMMIGRATION LAW AND POLICY**

Article 20C of the Race Relations (NI) Order 1997 exempts immigration functions from the law on racial discrimination. Maintaining this exception has allowed immigration law to develop in a discriminatory manner, in violation of Articles 2 and 5 of ICERD, on non-discrimination and the rights to work.

NICRE also notes Article 1(2) of ICERD and General Comment No. 30 of CERD, which states that differential treatment based on immigration status must pursue a legitimate aim and be proportionate.

**Provisions of the Immigration Act 2014 and 2016**

The provisions of the Immigration Act 2014 and 2016 are a central aspect of the UK's discriminatory immigration framework. Section 22 of the Immigration Act 2014 places a duty on landlords not to rent accommodation to tenants who are disqualified as a result of their immigration status. To satisfy this obligation, landlords must check the status of individuals they suspect of having an insecure immigration status.

In practice, this has meant that landlords discriminate against people on the basis of their nationality, appearance and accent. A report analysing the pilot of this scheme determined that 42% of landlords were less likely to offer someone a tenancy if they did not have a British passport and 27% were reluctant to engage those with 'foreign names or accents'.<sup>26</sup>

This report also highlighted the fact that immigration checks were not being carried out uniformly, but rather landlords profiled people who 'appear[ed] "foreign"' in order to request proof of their status. This indirect discrimination was apparent in 22% of participating landlords.<sup>27</sup>

Even more disturbingly, the report concluded that over 40% of landlords tested engaged in direct discrimination, by refusing to let their properties to non-British persons.<sup>28</sup> This refusal was motivated both by a fear of breaching the Section 22 duty and a preference for the now comparatively uncomplicated tenancies of British nationals.<sup>29</sup>

These restrictions on landlords is intensified under Section 33A of the 2016 Act, which would make it a criminal offence, punishable by up to five years' imprisonment, for a landlord or an agent to knowingly, or with reasonable belief, allow a person with insecure immigration status to occupy their premises.

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<sup>26</sup> Joint Council for the Welfare of Immigrants, "'No Passport Equals No Home": An Independent Evaluation of the "Right to Rent" Scheme' (2015), p.37

<sup>27</sup> *ibid*

<sup>28</sup> *ibid*

<sup>29</sup> *ibid* p.40

Naturally, the prospect of a custodial sentence only exacerbates the fear that landlords have in leasing to ethnic minority tenants, thus further encouraging the practices of racial profiling and direct discrimination in granting tenancies.

Section 40 of the Immigration Act 2014 prohibits banks from opening current accounts to persons disqualified by means of their immigration status. Under the Immigration Act 2016, these measures become much more extreme. Section 45 requires banks to monitor all of their existing current accounts to ensure that they are not held by a person with insecure immigration status.

Upon finding that an account is held by an individual with an insecure immigration status, Schedule 7 requires the bank to close the account. This would be a unilateral action, with no due process or court order required, thus creating a high chance that erroneous decision-making will render some people destitute.<sup>30</sup> Furthermore, the Home Office empowered under Schedule 7 of the Bill to apply for a court order to freeze other assets of individuals identified by this system.<sup>31</sup> This amounts to a deliberate attempt to make individuals destitute, resulting in potential infringement of their rights under Article 5(e) of ICERD.

The Immigration Act 2016 also makes provision on employment. Section 33 seeks to enhance the offence of 'employing an illegal worker', which would see employers imprisoned for up to five years where they employ an individual who is not entitled to work. In the same manner as the landlord duty discussed above, there is potential for this provision to make employers wary of engaging ethnic minority workers or workers who must provide additional documentation in order to prove their eligibility to work.

Ultimately, the above provisions and proposed provisions clearly infringe the UK's commitments under Articles 2(1)(a), 2(1)(d) and Article 5(e)(i). Furthermore, as these proposals result in direct discrimination and racial profiling, they are not proportionate for the purposes of Article 1(2).

As Brexit is now inevitable, MPs, civil society and churches, etc. are waiting for the forthcoming new Immigration Bill in the name of Brexit to further control our immigrants, asylum seekers and refugees in the UK. This will create overt discrimination against those vulnerable on the one hand, widespread of racist violence, harassment and hate speech, in particular in social media, are inevitable which violate the fundamental human rights as an integrity as a human being.

**ACTION: We would like the Special Rapporteur asking the following questions when meeting with the UK Government:**

- 1. Will the UK Government repeal those provisions that violate Articles 1(2), 2(1)(a), 2(1)(d) and 5(e)(i) of ICERD?**

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<sup>30</sup> Liberty, 'Liberty's Briefing on the Immigration Bill for Second Reading in the House of Commons' (2015), para.22

<sup>31</sup> Home Office, 'Home Office Policy Equality Statement: Immigration Bill 2015 – Access to Services' (2015), p.2

## Support for Refused and Appealing Asylum Seekers

Asylum seekers in the UK do not generally have the right to work. Consequently, they are largely dependent upon state support for survival, provided under Section 95 of the Immigration and Asylum Act 1999.

However, if an individual is refused asylum, then this support is withdrawn. Instead, a refused asylum seeker must apply for support under Section 4 of the Immigration and Asylum Act 1999, or else become destitute. This includes asylum seekers who are appealing an asylum decision via judicial review, as per Regulation 2 of the Asylum Support (Amendment No.3) Regulations 2015.

Section 4 provision is, however, inadequate at preventing destitution for a number of reasons. Firstly, Section 55(2)(a) of the Nationality, Immigration and Asylum Act 2002 prevents people from claiming any form of support where they have not lodged their claim for asylum 'as soon as reasonably practicable' after arriving in the UK. Secondly, a refused asylum seeker must meet one of the criteria under Regulation 3(2) of the Immigration and Asylum (Provision of Accommodation to Failed Asylum Seekers) Regulations 2005 in order to be eligible for Section 4 support.

This means that they must be unable to leave the UK due to physical impediment, have no viable route of return to their country of origin, have made an application for judicial review, or would have their rights under the European Convention on Human Rights breached by denial of support.

Thirdly, even where an individual is eligible for Section 4 support, they may opt not to apply for it for a number of reasons. Section 4 support is provided subject to the individual adhering to a number of restrictions, such as performing full-time community work and living at a prescribed address that cannot be vacated for more than 14 nights over a 6 month period.<sup>32</sup>

Additionally, individuals applying for Section 4 support must submit to leaving the UK as soon as possible. For those who fear persecution upon return to their country of origin this is not an option, with many avoiding a Section 4 claim because of its relationship with deportation.<sup>33 34</sup>

Fourthly, many valid Section 4 claims are erroneously refused by the Home Office at first instance, as evidenced by the high rate of successful appeals against Section 4 decisions – 82% in 2011 and 80% in 2013.<sup>35 36</sup> Those who are refused at first

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<sup>32</sup> Immigration and Asylum (Provision of Accommodation to Failed Asylum Seekers) Regulations 2005, Regulations 4 and 6(2)(c)

<sup>33</sup> Amnesty International, 'Down and Out in London: The Road to Destitution for Rejected Asylum Seekers' (2006), p.10

<sup>34</sup> British Red Cross, 'Not Gone, But Forgotten: The Urgent Need for a More Humane Asylum System' (2010), p.8

<sup>35</sup> Asylum Support Appeals Project, 'No Credibility: UKBA Decision Making and Section 4 Support' (2011), p.3

<sup>36</sup> Asylum Support Appeals Project, 'UKBA Decision Making Audit: One Year On, Still "No Credibility"' (2013), p.3

instance may find themselves destitute for prolonged periods while they appeal the decision.

Northern Ireland based research demonstrates the impact on refused asylum seekers of the shortcomings in Section 4 provision, with stoppages in support rendering individuals destitute even while they appeal negative decisions.<sup>37</sup> Those who do receive Section 4 support endure hardship in other ways. The cashless system operated by the Home Office can impede access to food, clothing and travel.<sup>38</sup> The resultant stress of these restrictions can lead to severe mental health issues, similar to those of destitute asylum seekers.<sup>39</sup>

While it is clear that the maintenance of this system in its current form is already an infringement of the UK's commitments under Article 5(e)(i), (e)(ii) and (f) of ICERD, it must be noted that the current Government intends to further limit the support system in the near future.

Schedule 12, Part 1 of the Immigration Act 2016 makes provision for this further restriction, with a system envisaged that would provide support only where the individual faces a 'genuine obstacle' to leaving the UK or where they have lodged further submissions, such as a judicial review, on their asylum claim.

Consequently, support will not be available for individuals who are 'taking all reasonable steps' to leave the UK, as is currently the case. Additionally, support for those lodging further submissions on their claim will be dependent on these submissions having been lodged for a period of five working days.<sup>40</sup> Thus, individuals who wish to make further submissions on their claim could be without any financial support and therefore destitute for up to a week before receiving Section 4 support. This may impede appeals, thus infringing the UK's commitment under Article 5(a) of ICERD.

**ACTION: We would like the Special Rapporteur asking the following questions when meeting with **the UK Government** and Northern Ireland Government:**

- 1. Will the UK Government make support available to refused asylum seekers for all periods prior to appeal and/or exit from the State, in line with their obligations under Articles 5(a), (e)(i), (e)(ii) and (f) of ICERD?**
- 2. What actions will the Northern Ireland Government take, considering the small number of asylum applications per year in Northern Ireland, to mitigate any future loss of support for refused asylum seekers and thus prevent destitution?**

## **No Recourse to Public Funds**

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<sup>37</sup> Northern Ireland Community of Refugees and Asylum Seekers, 'The Effects of Destitution on Refugees in Northern Ireland' (2016), pp.21 and 24

<sup>38</sup> Mulvey, Gareth, "'Even Among Asylum Seekers We Are the Lowest": Life on Section 4 Support in Glasgow' (2009), pp.22-24

<sup>39</sup> *ibid* pp.24-25

<sup>40</sup> Hansard, 'Immigration Bill – Thirteenth Sitting, Tuesday 10<sup>th</sup> November 2015' (2015), Col. 440

Section 115 of the Immigration and Asylum Act 1999 states that a person will be unable to access public funds if they are subject to 'immigration control', which includes non-European Economic Area (EEA) citizens who have leave to remain on the proviso that they have no recourse to public funds (NRPF).<sup>41</sup>

While the Home Office does not publish statistics on how many people have NRPF, research based in England and Wales suggests that they number in the thousands across the UK.<sup>42</sup>

One of the key issues arising for persons with NRPF in NI concerns the increased vulnerability of BME women who are victims of domestic violence, as being unable to access public funds means that victims cannot access women's refuges due to their being publicly funded.<sup>43</sup>

This includes women within minority ethnic families and, as is increasingly common, non-national women who have entered relationships with local men. The latter group are particularly vulnerable, as they will have entered the country on a spousal visa and thus their immigration status depends on maintaining a relationship with their partner. For victims of domestic and sexual violence, this may make them more reluctant to leave their abuser.<sup>44</sup>

While there does exist a Domestic Violence Rule under UK immigration rules that allows victims of domestic violence who are dependent on a spousal visa to apply for indefinite leave to remain, this rule is extremely restrictive.

2012 to 2014 statistics demonstrate that 61.3% of those who applied for indefinite leave to remain under the Domestic Violence Rule failed.<sup>45</sup> The difficulty in obtaining leave is worsened by the fact that applicants must pay a significant fee in order to apply for leave to remain under this rule, amounting to £1,500 for a single applicant, with a further £1,500 per dependent.<sup>46</sup>

While this fee may be waived, it is only in the case where the applicant is entirely dependent upon a third party for financial support.<sup>47</sup> Domestic violence victims who receive any kind of finances must endure their abusive relationship until they can gather enough money to make an application.<sup>48</sup>

Clearly, maintaining a system that makes it more difficult for some BME women to escape domestic violence than their majority peers has implications for the UK's commitments under Articles 2(1)(c) and 5(b) of ICERD.

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<sup>41</sup> Immigration and Asylum Act 1999, Section 115(9)(b)

<sup>42</sup> No Recourse to Public Funds Network, 'Social Services Support to People With No Recourse to Public Funds: A National Picture' (2011), p.9

<sup>43</sup> McWilliams, M. and Yarnell, P., 'The Protection and Rights of Black and Minority Ethnic Women Experiencing Domestic Violence in Northern Ireland' (2013), p.20

<sup>44</sup> *ibid*

<sup>45</sup> House of Commons, 'Written, Answers and Statements – Daily Report Thursday, 5 March 2015' (2015), p.56

<sup>46</sup> UK Visas & Immigration, 'Application for Indefinite Leave to Remain in the UK as a Victim of Domestic Violence and a Biometric Immigration Document' (2015), p.2

<sup>47</sup> *ibid*

<sup>48</sup> *op cit* n 46 p.22

In this regard, it is notable that the Racial Equality Strategy 2015-2025 commits the Northern Ireland Government to take action to tackle multiple discrimination, such as discrimination faced by women who have NRPF, and to ensure that immigration policy takes account of NI's 'needs and concerns'.<sup>49</sup>

NRPF also affects non-EEA citizens who wish to access social security, as social security counts as a public fund. This means that non-EEA citizens cannot access social security, even though they pay taxes. Consequently, there is potential for families to risk destitution in situations where a family's main earner becomes unable to work.

**ACTION: We would like the Special Rapporteur asking the following questions when meeting with **the UK Government** and Northern Ireland Government:**

- 1. In light of its commitments under the Racial Equality Strategy, what actions will the Northern Ireland Executive take to prevent destitution amongst victims of domestic and sexual violence with NRPF?**
- 2. Will the UK Government except those suffering domestic abuse and non-EEA citizens in danger of destitution from having NRPF?**

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<sup>49</sup> op cit n 10 paras.3.25 and 9.10

**For any query with this submission, please contact the Secretary of the Northern Ireland Council for Racial Equality, Mr Patrick Yu:**

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