



**Submission to the UN Committee  
on the Elimination of all forms  
of Racial Discrimination**

**on**

**UK 18<sup>th</sup> and 19<sup>th</sup> Periodic Report**

**July 2011**

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## EXECUTIVE SUMMARY OF RECOMMENDATIONS

### i) Enforcing Human Rights [2.1]

There is currently no mechanism by which Human Rights are mainstreamed into Northern Ireland's institutions. This is in contrast to Westminster, which has set up a Joint Committee on Human Rights to scrutinize legislation and policy.

***The devolved administrations should introduce a mechanism comparable to the Joint Committee on Human Rights.***

***The UK Government should make a declaration under ICERD Article 14 and introduce a right of individual petition.***

### ii) A Bill of Rights for Northern Ireland [2.2]

Thirteen years on from the Good Friday Agreement, Northern Ireland still does not have a Bill of Rights. A 2009 Northern Ireland Office consultation, which ignored the advice of the NI Human Rights Commission, endorsed only the rights to vote, be elected, and to identify as British, Irish or both, which already exist under domestic law. This is not the comprehensive, Human Rights based Bill of Rights that the majority of people in Northern Ireland want and need.

***The UK Government should put forward a new consultation document on the Bill of Rights for Northern Ireland based on the advice from the Northern Ireland Human Rights Commission as outlined by the Good Friday Agreement.***

### iii) The Equality Principle [2.3]

Section 75 of the Northern Ireland Act 1998 imposes a legal duty on all public authorities to promote equality, despite this the enforcement mechanism to ensure such duties are fulfilled is ineffective and rarely used.

***The UK Government should amend Section 75 of the Northern Ireland Act 1998 to include strong enforcement mechanisms, strong compulsory equality monitoring and auditing and assessments of equality impacts.***

iv) Multiple Discrimination [2.4]

Currently Northern Ireland's anti-discrimination provisions and policies do not account for those who may be discriminated against on multiple grounds. Ethnic Minority women suffer discrimination in access to employment and education, and are under-represented in all aspects of public and political life.

***The devolved NI Government should develop an integrated policy approach incorporating monitoring mechanisms and positive action measures in order to tackle multiple forms of discrimination, particularly gender and race based discrimination.***

v) Human Trafficking and Gender based violence [2.6 ]

Since 2009 adult and child victims of trafficking for domestic labour, prostitution and forced labour have been found in Northern Ireland, despite this there remains a lack of coordination between agencies to establish an effective victim centred approach.

***The devolved NI Government should introduce prosecution guidelines for trafficking and dedicate resources to establish a Human Rights-based victim centred approach.***

***The devolved NI Government should adopt a strategy to tackle violence against black and minority ethnic women (including victims of trafficking) in Northern Ireland.***

***The Government should also establish a crisis fund to assist vulnerable migrants with no recourse to public funds.***

**ARTICLE 1**

vi) The Rights of non-citizens [3.1]

There currently exists a hierarchy of entitlement of rights for migrants in Northern Ireland; many vulnerable migrants particularly from countries outside the EU cannot access basic Human Rights and entitlements.

***The devolved NI Government should remove discriminatory practices towards migrants, most significantly vulnerable A2 nationals and non-EU nationals in relation to accessing services such as health, education and social welfare.***

vii) Incitement to Racial Hatred [3.2]

The economic downturn has had a significant impact on race relations in Northern Ireland. Misplaced resentment towards migrants in the wake of growing unemployment has contributed towards growing hostility along racial lines. Xenophobic language from politicians further serves to exacerbate such hostilities.

***The devolved NI Government should put measures in place to tackle social deprivation in areas with a high frequency of racist attacks.  
In addition, stronger provisions should be put in place to govern the conduct of elected representatives whose conduct may amount to incitement to racial hatred.***

viii) Immigration & Detention [3.3]

As Immigration policy remains with Westminster the focus and implementation of such policy is at odds with the responsibilities of the devolved regions to provide vital services, such as health and education. It is also of concern that new detention facilities for immigration detainees in NI are set to mirror the inhumane conditions of other UK detention centres. There is a lack of statistical data regarding those held on remand for immigration offences so obtaining a true picture of the extent of this problem is not possible.

***The UK Government should review the current immigration detention policy and arrangements for detainees in Northern Ireland as a matter of urgency.***

ix) Travellers & Roma [3.4]

There remains persistent social disadvantage and social exclusion of Irish Travellers and the growing Roma and Gypsy populations. Traveller infants today are 3.6 times more likely to die than infants in the general population. Suicide rates of both young men and women are also higher than their contemporaries in the general population. The lack of appropriate accommodation and access to health care and education coupled with high unemployment and prejudice from Government agencies contribute to these worrying statistics.

***The devolved NI Government should provide greater actions and adequate resources to address the social disadvantage, social exclusion and consequently low life expectancy of Irish Travellers, Roma and Gypsies in Northern Ireland.  
Dedicated measures should be adopted to increase the capacity of these vulnerable communities.***

## ARTICLE 2

### x) Racial Equality legislation (find paragraph number)

The Race Relations (NI) Order 1997 affords less protection against discrimination and harassment on the grounds of nationality or colour than race, ethnicity or national origin. Providers of goods, facilities and services that are solely the provision of Government with no private equivalent from equality legislation are also exempt. In addition the devolved Government in Northern Ireland effectively halted the progress of a Single Equality Bill for Northern Ireland in 2006, thus legislative protection from racial discrimination in Northern Ireland remains at a lower standard than Great Britain following the enactment of the Equality Act 2010 on 1 April 2010.

***The devolved NI Government should set up a legislative timetable to rectify the current deficiencies of the Race Relations (NI) Order 1997 so as to bring the legislation in NI in line with that of the rest of the UK.  
The process of developing a Single Equality Bill for Northern Ireland should be restarted.***

### xi) Racial Equality Strategy[4.1]

The NI Racial Equality Strategy 2005-2010 was frozen from 2007 as the NI Government subsumed race relations in to a wider good relations agenda. The production of a new revised Racial Equality Strategy was agreed in late 2010. However its publication continues to be delayed thus severely limiting the realisation of rights of the Black and Minority Ethnic communities in all areas of economic, social, political and cultural life in Northern Ireland.

***The devolved NI Government should guarantee that the process of developing a new Racial Equality Strategy with a dedicated budget will be completed by March 2012.***

## ARTICLE 4

### xii) Rise in right-wing nationalism [5.1]

The economic downturn has fostered a more favorable environment for right wing nationalism in Northern Ireland, with the BNP making small but notable inroads and acknowledged links between some paramilitary groups and racist hate crime.

***The devolved NI Government should put measures in place to monitor and prevent the rise in xenophobic right wing nationalism in Northern Ireland.***

xiii) Media Propaganda [5.2 ~ 5.3]

There have been a number of negative portrayals and misrepresentations of ethnic minorities in Northern Irish media. Added to this, the UK Government has taken the unfortunate stance that the Press Complaints Commission is none of their concern.

***The UK Government should consider a new independent regulatory regime to tackle prejudice in the media instead of the current self-regulatory regime. Measures should be put in place to tackle cyber hate crime, particularly racist sites targeting NI/UK based people/groups and that are registered outside of the UK.***

**ARTICLE 5**

xiv) Hate Crime [6.1]

Racial incidents and hate crime have increased on average 10-15% over the last 10 year period in Northern Ireland whilst prosecution rates have remained worryingly low. Underreporting means that the true figures of such crimes are likely to be much higher.

***The devolved administration should put measures in place to improve prosecution rates for racist hate crime and restore the confidence of ethnic minority people to report hate crime to the police.***

xv) Religious Education [6.2]

Northern Ireland traditionally has a high level of religious participation. Every state funded school must include provision for religious education according to the Northern Ireland Core Syllabus for Religious Education. This syllabus is drawn up by the four largest Christian denomination churches in Northern Ireland.

***The devolved NI Government should introduce a religious education curriculum developed by a group more representative of the beliefs of Northern Ireland than is presently the case.***

***The devolved NI Government should also produce standardised guidelines on appropriate practice for schools with regard to the notification of the right to opt out of religious education.***



xvi) Exploitation of migrant workers [6.3 ~ 6.5]

Migrant workers are 3 times more likely to be unemployed than the general population. Unsafe working conditions, employment contracts tied to accommodation, barriers in accessing health and welfare and insecure immigration status all contribute to migrants occupying a position more vulnerable and pertinent to destitution than the general population. Current proposals for implementing the Agency workers Directive in NI do not cover all agency workers and the proposed liability and enforcement provisions in the draft regulations are inadequate.

***The devolved NI Government should put in place measures to alleviate poverty and prevent exploitation of migrant communities in Northern Ireland. A crisis fund for migrants who find themselves destitute through no fault of their own should be established.***

***The devolved NI Government should put in place measures to prevent the exploitation of agency workers and ensure that employers are jointly liable with agencies outside the UK for breaches of the rights of migrant agency workers. The devolved NI Government should introduce measures to improve the accessibility of the justice system so that vulnerable migrant workers can pursue their protected rights.***

xvii) Access to Health Care [6.7]

Many non-nationals experience difficulty in accessing the health care due to a combination of language barriers, hostility from individual members of staff, and ambiguity in relation to entitlements to access of publically funded primary care services.

***The devolved NI Government should introduce measures to ensure that ethnic minorities who are entitled to health care services receive them in line with international Human Rights legislation.***

xviii) Education [6.8 ~ 6.11]

We are concerned at the unequal educational experience that many BME Children receive in NI. In 2008/09, ethnic minority students were 3 times more likely than other students to leave school with no GCSE qualifications. Children and young people of ethnic and religious minority backgrounds routinely experience racial and religious bullying in the school system. Recent research found that 42% of minority ethnic 16-year-old students had been a victim of racist bullying or harassment in their school.

***The devolved NI Government should introduce measures to tackle racial and religious bullying and improve the educational attainment of ethnic minority pupils in the school system.***

***The devolved NI Government should make specific measures to support and promote the language and cultural identity of ethnic minorities in Northern Ireland.***

## **1. INTRODUCTION**

- 1.1 NICEM is an independent non-Governmental organisation monitoring racism and racial inequality in Northern Ireland. As an umbrella organisation we represent the interests of black and minority ethnic groups in Northern Ireland. Currently we have 29 affiliated black and minority ethnic groups as our full members; this composition is representative of the majority of black and ethnic minority communities in Northern Ireland.<sup>1</sup> Our vision is of a society where differences are recognised, respected and valued, a society free from all forms of racism and discrimination, where Human Rights are guaranteed. NICEM works in partnership to bring about social change, by achieving equality of outcome and full participation in society.
- 1.2 NICEM welcomes the publication of the Eighteenth and Nineteenth Periodic Report of the United Kingdom of Great Britain and Northern Ireland. We regret that the Northern Ireland devolved Government did not supply all information under Article 5 of ICERD, particularly in relation to matters concerning the criminal justice system with regard to racist and religious hate crime.
- 1.3 We acknowledge that some progress has been made, however we also have serious concerns with regard to the United Kingdom's obligations under the ICERD in relation to economic, social and cultural rights in Northern Ireland, particularly in respect of vulnerable black and minority ethnic (BME) communities. These groups include the Irish Traveller community, the small gypsy and Roma community, migrant workers (EU and non-EU), asylum seekers and refugees, as well as those undocumented persons who are living in Northern Ireland. Racism, racial discrimination and social exclusion are experienced daily by BME people in Northern Ireland. This forms the basis of this joint submission by 26 ethnic minority groups in Northern Ireland (see page 50 for complete list), it also forms part of the UK NGO Alternative Report. It is also endorsed by the Committee on the Administration of Justice and the Law Centre NI.
- 1.4 The years since the last UK report to CERD have overseen Northern Ireland's further transition as a post-conflict country in the wake of 1998's Good Friday Agreement. Since 2003, Northern Ireland has experienced significant demographic change following the accession of the A8 countries to the EU in 2004, and the A2 countries in 2007. There are currently an estimated 95,000 ethnic minorities in Northern Ireland<sup>2</sup>

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

### **2.1 Mainstreaming Human Rights and Equality**

- 2.1.1 In the post-conflict society of Northern Ireland, Human Rights should be mainstreamed into all institutions. Unfortunately there is evidence to suggest that the NI Assembly and the devolved administration pay scant attention to relevant and applicable Human Rights standards in the

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

<sup>2</sup> Statistics compiled by NICEM June 2011

development of policy generally. The NI legislative Assembly does not have a mechanism comparable to the Joint Committee of Human Rights in the Westminster Parliament. Such a body would provide a mechanism to scrutinise legislation and policy, based on international Human Rights standards. The Northern Irish Assembly has no such mechanism to scrutinise the devolved administration on their obligations under applicable international Human Rights instruments.

2.1.2 This lack of Human Rights protection is further compounded by the fact that the UK Government continues to refuse to make a declaration under ICERD Article 14. Such individual rights of petition would provide an important enforcement mechanism.

#### **Suggested Questions:**

- **Will the Devolved Administrations introduce a mechanism comparable to that established by the Westminster Parliament in the form of the Joint Committee on Human Rights to all the Devolved Administrations in the United Kingdom?**
- **Will the UK Government incorporate ICERD fully into domestic law and make a declaration under Article 14 to allow individuals the right to petition the Committee?**

## **2.2 A Bill of Rights for Northern Ireland**

2.2.1 NICEM supports a strong and inclusive Bill of Rights for Northern Ireland; this Bill is essential for enshrining Human Rights as the cornerstone of peace building in Northern Ireland. A high profile Bill of Rights with rigorous enforcement mechanisms would give a voice to those most marginalised in Northern Ireland's post-conflict society. The creation of a Bill of Rights would serve as a key step in acknowledging the conflict, whilst moving beyond the traditional 'two communities' approach. It would provide the Human Rights protection for all which is essential in building a more inclusive and increasingly diverse society.

2.2.2 NICEM has been campaigning for a meaningful and all-encompassing Bill of Rights for Northern Ireland for more than 10 years along with other civil society organisations. NICEM endorses the advice presented by the Northern Ireland Human Rights Commission to the Secretary of State on 10 December 2008.<sup>3</sup> NICEM regards it as the best option that we can have at this moment in time, though we acknowledge that there are some areas that are in need of improvement.

2.2.3 Unfortunately, during their term the New Labour Government tried to abandon the Bill of Rights for Northern Ireland by extending the debate on the UK Bill of Rights and Responsibilities into the consultation document. The current UK coalition Government have set up a commission to investigate the case for a British Bill of Rights. The Northern Ireland process should not be subsumed within the UK process – the proposed Bill is a Northern Ireland specific

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<sup>3</sup> Northern Ireland Human Rights Commission's advice on a Bill of Rights for NI to the Secretary of State on 10 December 2008

[http://www.nihrc.org/dms/data/NIHRC/attachments/dd/files/51/A\\_Bill\\_of\\_Rights\\_for\\_Northern\\_Ireland\\_%28December\\_2008%29.pdf](http://www.nihrc.org/dms/data/NIHRC/attachments/dd/files/51/A_Bill_of_Rights_for_Northern_Ireland_%28December_2008%29.pdf)

Bill as guaranteed under the Belfast Agreement 1998. The Agreement is an international treaty for which a majority of the people on the island of Ireland voted.

2.2.4 In December 2009, we issued a position paper following the publication of a consultation document from the Northern Ireland Office, entitled “A Bill of Rights for Northern Ireland: Next Steps”. In this paper we highlighted the following key issues:

- The Northern Ireland Office (NIO)’s consultation is an insult to civil society and all those involved in the Bill of Rights process over the last 10 years because it only endorses two actual enforceable rights, the right to vote and be elected and the right to identify as British, Irish or both;
- In the spirit of the Belfast Agreement (1998), the Bill of Rights for Northern Ireland cannot be lost within a Bill of Rights and Responsibilities for the UK;
- The NIO have failed in their consultation obligations as the consultation did not adhere to accepted guidelines regarding such processes;
- The NIO consultation will damage the Human Rights of the most vulnerable people in Northern Ireland rather than enhance them;
- NICEM believes that the Northern Ireland Office should revoke this document and issue one that adequately reflects the advice presented to it by the Northern Ireland Human Rights Commission on 10 December 2008.

2.2.5 The majority of civil society and Human Rights organisations who responded to the NIO consultation are broadly in support of the Northern Ireland Human Rights Commission’s advice. The coalition Government has been stalling on decisions on the Bill of Rights for Northern Ireland. This is despite pressure from the likes of the British Irish Parliamentary Assembly, who called on the UK Government to fulfill its obligation to implement a Bill of Rights for Northern Ireland in December 2010.

2.2.6 NICEM echoes the Concluding Observations of the Committee on Economic, Social and Cultural Rights on the UK’s 14<sup>th</sup>, 15<sup>th</sup> and 16<sup>th</sup> Periodic Reports that it is essential to enact a Bill of Rights for Northern Ireland, which would include economic, social and cultural rights, without delay.<sup>4</sup>

#### **Suggested Question:**

- **Will the UK Government put forward a new consultation document on the Bill of Rights for Northern Ireland based on the advice from the Northern Ireland Human Rights Commission as outlined by the Good Friday Agreement? If not, why not?**

## **2.3 Equality Principle**

2.3.1 The key undertaking of States Parties to the International Covenant for the Economic, Social and Cultural Rights is to maximise available resources for the full realisation of rights. The best way to deal with such allocation is to use the equality principle. In Northern Ireland, we have a measure to mainstream equality into Government policy and practice – Section 75 of the

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<sup>4</sup> para. 10, Conclusion Observations of the Committee on Economic, Social and Cultural Rights on UK 14<sup>th</sup>, 15<sup>th</sup> and 16<sup>th</sup> Periodic Reports, E/C.12/GBR/CO/5 22, May 2009.

Northern Ireland Act 1998 – which imposes a legal duty on all public authorities. This principle requires public authorities to have due regard to promote equality of opportunity and good relations. It is a good model for the implementation of Article 1(3) and Article 2 (2) of ICERD. Unfortunately *the Section 75 duty is weak as it obliges public authorities to ‘pay due regard’ to the need to promote equality of opportunity, as opposed to ‘eliminate unlawful discrimination’ as required in the GB legislation;* in addition public authorities do not fully use the equality impact assessment as required by the legislation to scrutinise their policies .

- 2.3.2 The enforcement mechanism to ensure Section 75 duties are fulfilled is ineffective and rarely used, in contrast to the equivalent GB public sector equality duties which have a stronger enforcement mechanism. In NI, relevant authorities are not obliged to collect equality monitoring data on racial minorities, people with a disability, people of a minority sexual orientation, carers, those with dependants and other vulnerable groups, except where there is adverse impact but in practice this is rarely used. Consequently, the Government does not take account of the negative implications of certain policies on these groups, particularly with regard to linguistic, cultural, religious or other barriers. The equality impact assessment is rarely used, particularly in respect of race-related issues. This severely limits the realisation of the rights of vulnerable groups, including BME groups, in Northern Ireland.

**Suggested Question:**

- **Will the UK Government amend Section 75 to include strong enforcement mechanisms, strong compulsory equality monitoring and assessments of equality impacts?**

## **2.4 Multiple Discrimination and Gender Equality in Northern Ireland**

- 2.4.1 Ethnic minority women face multiple discrimination in access to a range of services and entitlements including employment, training and education, by virtue of being both a woman and an ethnic minority in Northern Ireland. This is reflected in the low level of economic activity amongst ethnic minority women (the 2001 census established that 15.95% of women are economically inactive).
- 2.4.2 In Northern Ireland the Office of the First Minister and Deputy First Minister has developed separate strategies for the protection of various vulnerable groups, notably the Racial Equality Strategy 2005-2010 and the Gender Equality Strategy 2006-2016. These strategies lack correlation with each other and vulnerable groups are often not adequately covered by such isolated policies.
- 2.4.3 The concluding observation of the UN Committee on the Elimination of the Discrimination Against Women (CEDAW), following the most recent UK examination in 2008, asserts that the UK should intensify its efforts to eliminate discrimination against ethnic minority women who are underrepresented in all areas of the labour market and political and public life. Such women also continue to suffer discrimination in access to education and health care. The Committee also called upon the UK Government to keep under review and monitor carefully the impact of its laws and policies on female migrants, refugees and asylum seekers. The action plans attached to the Gender Equality Strategy are inadequate in all of these areas and they do not

refer to the Racial Equality Strategy 2005-2010.

**Suggested questions:**

- **Will the UK Government develop a policy incorporating positive action measures in order to tackle multiple forms of discrimination, particularly gender and race based discrimination?**
- **Will the UK Government develop a dedicated integrated framework to incorporate all strategies that tackle social exclusion in order to create a joined up approach, particularly in terms of gender equality?**
- **Will the UK Government develop a mechanism to monitor the specific impact of law and policy on people of multiple identities?**

**2.5 Gender-based violence and no recourse to public funds**

- 2.5.1 In Northern Ireland, the 2006 Gender Equality Strategy specifically identifies the elimination of ‘gender based violence’ as an objective. However the accompanying cross-departmental action plans make little reference to multiple discrimination issues, and they lack accompanying dedicated resource allocation or mechanisms for monitoring progress. CEDAW in its UK Concluding Observations highlighted the inadequacy of Section 75<sup>1</sup> in ensuring results-oriented equality for women in Northern Ireland. Combined with the failure to deliver a Single Equality Bill and the lack of implementation of a robust *Cohesion, Sharing and Integration Strategy* for Northern Ireland (see 3.5 below for details), this is indicative of total failure on behalf of the Government to formulate any policy that addresses the complex issue of multiple discrimination.
- 2.5.2 Women of insecure immigration status fleeing violent domestic situations cannot access the help they so desperately need, as they have no recourse to public funds.<sup>5</sup> In addition to this, a new regulation was introduced on 6<sup>th</sup> April 2011 which states that anyone applying for settlement in the UK must be free of criminal convictions (however minor); this includes women fleeing domestic violence. Many migrant women are financially reliant on their husbands, as much of the work available for migrants in Northern Ireland is agriculturally based. Such women face geographical isolation as well as language barriers and financial dependency. A pilot project, run by Eaves and funded by the Home Office called the Sojourner Project, was recently set up to assist women with no recourse to public funds who entered the UK on a spousal or partner visa, and are eligible to apply for Indefinite Leave to Remain (ILR) under the Domestic Violence Rule. Whilst we welcome this initiative and are pleased to see an extension of this pilot until March 2012, we are concerned that its strict eligibility requirements mean that few women actually meet the criteria, and thus many women in genuine need are unable to avail of assistance. Significantly, Women’s AID NI have informed us that the pilot project has only benefited two women in Northern Ireland. If a crisis fund was made available to assist such vulnerable migrants then more women could access the help they vitally need.
- 2.5.3 The BME women’s sector in Northern Ireland remains highly under-developed. Resources should

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<sup>5</sup> See case study in evidence appendix

be dedicated to building the capacity of such groups, so that women will be empowered to tackle issues of violence in their own communities. Communities should be assisted to develop tailored advocacy programmes to tackle domestic violence. NICEM believes that comprehensive research should be undertaken, led by an independent taskforce, to examine the specific nature of violence against minority women and the relationship of such violence with mental health, suicide and self-harm; access to education; and the impact of cuts in public spending and legal aid on BME women and girls.

2.5.4 BME women and girls need specialist services incorporating language, culture, religion and immigration needs at a local level. Victims of gender-based violence should be provided with genuine access to benefits and public housing to enable them to leave abusive relationships. Whilst the PSNI produce comprehensive statistics on domestic violence, such data should be disaggregated further. The current Tackling Violence At Home strategy for Northern Ireland fails to address the complexity of violence against BME women. We propose that a more comprehensive, Human Rights-based, BME-specific violence against women strategy should be developed to tackle issues of violence against women. This strategy should incorporate interlinking issues around trafficking and harm that may result from traditional practice and it should adopt a multi-agency approach.

- **Will the devolved NI Government plan to introduce a targeted strategy to tackle violence against black and minority ethnic women in Northern Ireland?**
- **Will the devolved NI Government introduce a crisis fund to assist vulnerable female migrants with no recourse to public fund?**

## 2.6 Human Trafficking

2.6.1 Northern Ireland was originally excluded from the cross-UK anti-trafficking initiative Pentameter I, but it was included in the Pentameter II initiative launched in 2007. Although trafficking was only officially acknowledged as a crime in NI in 2007, anecdotal evidence collected by voluntary organisations would suggest that it has been a hidden problem for much longer. The comparative lack of visibility of trafficking activities in Northern Ireland can be attributed to the underground nature of the sex industry, the covert nature of trafficking itself, and Northern Ireland's status as a country emerging out of conflict. Recent statistics from the PSNI show that there is increased demand for sexual services in Northern Ireland and consequently there is an increase in demand for young trafficked females.<sup>6</sup> Since 2009, adult and child victims of trafficking for domestic labour, prostitution and forced labour have been discovered NI-wide. Such crimes are complicated by Northern Ireland's unique geographical and political circumstances, notably the open border which Northern Ireland shares with the Republic of Ireland. NI acts as both a transit and destination country for victims of trafficking.

2.6.2 Whilst we welcome the UK's ratification of the Council of Europe Convention against trafficking in December 2008, more needs to be done to ensure its adequate implementation. For suspected victims of trafficking, there is a lack of rehabilitation and respite care and immigration advice. Lack of dedicated resources and a lack of a joined up approach between

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<sup>6</sup> BBC article, "PSNI not doing enough for victims of trafficking" 5<sup>th</sup> July 2011 <http://www.bbc.co.uk/news/uk-northern-ireland-14023871>

agencies means that often victims are passed from one agency to the next without receiving the care and assistance they need. Trafficking victims are rarely granted refugee status, despite there often being a high risk of re-trafficking.

- 2.6.3 In contrast to GB currently there are no prosecution guidelines for Trafficking in NI, there are also very few legal professionals with the necessary specialism in the area. There have also been no prosecutions for trafficking in NI, in spite of recognition by the PSNI that trafficking is a significant problem. There should be dedicated resources to ensure that the Public Prosecution Service and all levels of the Police Service receive specialized training on human trafficking in order to develop better recognition of such scenarios.
- 2.6.4 Effective cross-jurisdictional measures between NI and the ROI should be established to combat trafficking. Whilst the Operation Gull initiative has been set up as a cross-order operation concerning irregular migrants run by Police services from both sides of the border and the UKBA, statistics are not available as to the number of people detained and/or removed from Northern Ireland without access to independent legal advice to determine whether they have been detained lawfully, whether they may be a victim of trafficking or a potential refugee. Whilst we welcome high profile awareness-raising media initiatives such as the Blue Blindfold campaign we are concerned that resources may be more effectively spent on targeted initiatives aimed at community groups on the ground and frontline staff who may unknowingly encounter victims of trafficking.

#### **Suggested questions:**

- **How successful was Pentameter II in terms of impacts and outcomes?**
- **How many victims of trafficking in NI have been rescued and how many have been granted leave to remain, how many have been voluntarily returned to their country of origin?**
- **How successful have initiatives such as Operation Gull and the Blue Blindfold campaign been in identifying cross-border issues of trafficking?**

#### **ICERD Article by Article**

### **3. ARTICLE 1**

#### **3.1 General Recommendations 30: The Rights of non-citizens**

- 3.1.1 In this submission the term ‘migrants’ refers to people who are working in the UK, whether they are EU<sup>7</sup>, EEA<sup>8</sup> or non-EU nationals<sup>9</sup>. They should enjoy the same rights as UK nationals, as

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<sup>7</sup> European Union. There are 17 full members: Spain, Portugal, France, Ireland, The UK, Belgium, The Netherlands, Luxembourg, Austria, Germany, Italy, Greece, Sweden, Finland and Denmark as well as the accession states Cyprus and Malta. These countries are all full members of The Free Movement of Workers Agreement.

<sup>8</sup> Iceland, Norway and Liechtenstein plus all 17 full members of the EU are full members of the European Economic Area and The Free Movement of Workers agreement. The A8 and A2 countries are not yet full members of The Free Movement of Workers Agreement.

<sup>9</sup> Foreign nationals are coming from outside the EU and/or EEA areas.



should their family members. Unfortunately there exists a hierarchy of rights between EU, EEA and non-EU migrants.

- 3.1.2 Under the UK immigration law, migrants from A2<sup>10</sup> countries (Bulgaria and Romania) must get a full work permit and work before they can obtain the same entitlement as UK nationals to social protections such as social security benefits, housing benefits and homelessness assistance. In practice it is very difficult for an A2 national to obtain a work permit - it is a complicated process by which both the worker and employer, separately and one after the other, have to apply for permission from UKBA before the employee can begin work. This causes huge delays in the employee starting employment. The accession period for the A2 countries ends on 31<sup>st</sup> December 2011, after which point the UK can extend restrictions if they so wish.
- 3.1.3 Non-EU nationals have no entitlement to public funds. They are not eligible to access benefit rights until they obtain permanent resident status. There are limited circumstances in which they are entitled to Job Seekers Allowance if they have made national insurance contributions, however people rarely take advantage of this as the process of application is complex. Spouses of non-EU nationals are entitled to some benefits, however this requires proof of residency which must be obtained from the Home Office, a process which takes around 6 months. The complexity of this process highlights the deficiency in communication between the devolved benefits system in Northern Ireland and the non-devolved Home Office. A further issue is that British nationals / settled persons who wish to have their non-EU spouse/civil partner with them in the UK have to meet accommodation and maintenance requirements to show they can support their spouse without recourse to public funds. This means that those on benefits are not able to bring their spouse to the UK, and that those whose spouses are here on the two year 'probation period' prior to applying for permanent residency, cannot access public funds for any length of time, or their spouse's application for settlement will be refused.
- 3.1.4 In addition to limited entitlement to benefits, migrant family members must pay more than double what UK nationals have to pay for student fees in third level education. The above discriminatory law and practice is in breach of Article 1(2) & (3); 2(1)(a), (c) and (d); as well as Article 5(e)(iv); and the General Recommendation 30 of ICERD regarding the immigration exception; Article 6 of ICESCR, Article 26 of ICCPR and other international standards.

#### **Suggested Questions:**

- **Will the UK end restrictions on A2 nationals accessing benefits in December 2011 in line with the end of the Accession period?**
- **Will the UK Government remove discriminatory practices against migrants in relation to the benefit system?**
- **Will the UK Government end discriminatory practices against migrants with regard to the third level education system?**
- **Will the UK Government expedite the process of obtaining proof of residency from the Home Office, especially for those in the devolved regions of the UK?**
- **Will the UK Government remove restrictions that prevent British nationals/settled persons on**

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<sup>10</sup> The A2 countries are Romania and Bulgaria the most recent accession states to the EU in 2007.

## benefits from bringing their non-EU spouse/civil partner to the UK?

### 3.2 Xenophobia and racist tension

- 3.2.1 The economic downturn has had a significant impact on race relations in Northern Ireland. Misplaced resentment towards migrants in the wake of growing unemployment has contributed towards growing hostility aimed at migrants.
- 3.2.2 Xenophobic attitudes from politicians serve to stir racist tension on the ground. In 2009 the Finance Minister, Mr. Sammy Wilson MLA, made comments on the BBC television's politics show that migrant workers should come second to local people in the battle for jobs in a shrinking market and that citizens of the UK should enjoy its privileges before those from other countries.<sup>11</sup> Such remarks instill a sense of hostility towards migrant workers; shortly after these remarks were made, racist graffiti appeared in a working class loyalist area of South Belfast that stated "British Jobs for British workers". A complaint to the NI Assembly's Standards Committee relating to the Minister's comments was unsuccessful. NICEM believes that it is necessary to adopt a new and more positive attitude to migrant workers in terms of their contribution to society. Population projections show that migrants are essential to the development of the economy in Northern Ireland and those in position of power should value migration as a result.<sup>12</sup>
- 3.2.3 When trouble broke out following a World Cup qualifier football match between Poland and Northern Ireland in 2009, around 70 families from A8 countries, mostly Polish, were forced to leave their homes. Later that year, racially motivated incidents led to the forced evictions of Roma families in South Belfast. Such incidents attracted high profile media attention, however they echoed a pattern that wasn't always brought to the attention of the media. In 2003 similar incidents occurred in an area of South Belfast involving the Chinese community. The common factor in all of these incidents, whether they receive prominent media attention or not, is that they originate in areas of significant socio-economic disadvantage. Without tackling the underlying root causes of this racism, such violence is fated to continue.<sup>13</sup>
- 3.2.4 The now defunct Independent Monitoring Commission (whose job it was to monitor paramilitary activity in NI) in its 22<sup>nd</sup> Report in November 2009, confirmed "UVF (Ulster Volunteer Force) members were involved in a small number of sectarian attacks, including

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<sup>11</sup> *Committee on Standards and Privileges Report on Complaint Against Sammy Wilson MP MLA by Jennifer McCann MLA on behalf of All Party Group on Ethnic Minority Communities*, available at [http://www.niassembly.gov.uk/standards/2007mandate/reports/Report\\_45\\_09\\_10R.htm](http://www.niassembly.gov.uk/standards/2007mandate/reports/Report_45_09_10R.htm) (last accessed 27/5/2011)

<sup>12</sup> See NISRA population projections and related research, available at <http://www.nisra.gov.uk/publications/default.asp10.htm> (last accessed 27/5/2011)

<sup>13</sup> Police Service Northern Ireland Annual Statistical Report: Hate Incident and Crime

South Belfast Racial Incidents		Racial Crime
2006/2007	126 (NI:1047)	87 (NI:87)
2007-2008	149 (NI: 976)	101 (NI:757)
2008-2009	169 (NI: 990)	131 (NI:771)
2009-2010	174 (NI:1038)	113 (NI: 712)
2010-2011	156 (NI: 842)	89 (NI: 531)

attacks against foreign communities in Belfast, and in rioting at the end of August 2009".<sup>14</sup> NICEM has been working with prominent community activists to challenge such racist attitudes. However without resources and policy dedicated to tackling poverty in disadvantaged areas, such problems will prevail.

- 3.2.5 The failure of the state to instigate constructive sustained programmes of regeneration in such deprived areas will mean that racial harassment and racist attacks will persist. The continuation of such activity highlights that the UK Government is in breach of General Recommendations No. 30, Article 1(1) and Article 5(b).

#### **Suggested Questions:**

- **What measures have the devolved NI Government put in place to prevent organised racist harassment and attacks?**
- **What provisions are in place in NI to govern the conduct of elected representatives whose conduct may amount to incitement to racial hatred?**
- **What measures have been put in place in NI to tackle social deprivation in areas with a high frequency of racist attacks?**

### **3.3 Immigration and Asylum Policy and deprivation of liberty**

**3.3.1 In Northern Ireland, immigration is a reserved matter, therefore the UK Border Agency of the Home Office is responsible for it.<sup>15</sup> However vital service provision, for example in the area of health and education, is the responsibility of the devolved administration; provision of such services to people of insecure immigration status is the responsibility of the devolved regions. Often the legislation concerning such provisions differs between the regions, for example healthcare legislation is different in NI. This results in many migrants with insecure status being refused treatment (as explained below). It is therefore important to deal with interlinking issues concerning immigration in our Northern Ireland-specific report, as well as the UK wide report.**

3.3.2 There is a lack of regional data concerning immigration. For example the UKBA does not publish statistics relating to asylum applications lodged in NI. Whilst there are comprehensive statistics collated in Northern Ireland in relation to poverty, the statistics on immigration are lacking. Consequently impoverished immigrant groups are largely invisible in terms of assessing, monitoring and addressing poverty.

3.3.3 According to UK Immigration policy, asylum seekers, ex-foreign national prisoners and others whose applications have been fully considered and refused by the UK Border Agency and who

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<sup>14</sup> *Twenty-Second Report of the Independent Monitoring Commission* (p.20), available at [http://www.nio.gov.uk/twenty second report of the independent monitoring commission .pdf](http://www.nio.gov.uk/twenty%20second%20report%20of%20the%20independent%20monitoring%20commission.pdf) (last accessed 27/5/2011)

<sup>15</sup> Such Westminster-centric policy is not reflective of the regional realities In July 2011 an NI MLA called for changes in the immigration law to enable Filipino fishermen to continue their vital work in the NI fishing industries, the policies which govern such workers are decided upon in Westminster and are thus unreflective of the NI situation. See BBC article "Jim Shannon calls for Filipino fishermen to stay in NI" 19<sup>th</sup> July 2011, <http://www.bbc.co.uk/news/uk-northern-ireland-14191543>

refuse to leave the UK voluntarily, may be detained in purpose-built Immigration Removal Centres. In their concluding observations of 30 July 2008, the Human Rights Committee (HRC) expressed concern about the state practice of detention of large numbers of asylum seekers. The Committee recommends that there should be a review of UK detention policy. In particular the HRC calls upon the Government to take “immediate and effective measures” to abolish prison detention, consider alternatives to detention and, where it is necessary, to detain asylum seekers awaiting deportation; these individuals should be detained in centres which are specifically built for that purpose. Despite this, an immigrant holding centre was opened in Larne in July 2011. We are informed that this facility will accommodate a maximum of 21 illegal immigrants for a period of up to seven days. The question of which body will oversee of the facility, whether it be the prison service, the PSNI and/or the UKBA inspectorate, has yet to be resolved. In addition, the impact the facility will have on race relations in the local community has not been assessed.

- 3.3.4 Whilst we support the HRC’s recommendation for the Government to provide appropriate detention facilities in Northern Ireland, we do not believe adequate consideration and consultation was given to ensure the Northern Ireland facilities are appropriate. Without such adequate consideration, these facilities are fated to provide the same inhumane conditions as those in Great Britain. Due to overcrowding and lack of proper facilities, detainees are regularly subjected to inhuman and degrading treatment, which is in breach of Article 7 of the ICCPR and Article 3 of the ECHR. There have been media reports of racial abuse and violence, as well as reports that some detainees have resorted to hunger strike and their health is suffering as a result.<sup>16</sup>
- 3.3.5 Whilst we welcomed the announcement by the UKBA In December 2010 that detention of children will end in May 2011, the Government appears to have taken a U-turn by stating that families will now be kept in secure accommodation prior to removal; it is unclear how this differs from detention. Often vulnerable unaccompanied minors whose ages are disputed are put in hostel or B&B accommodation until their ages can be verified, such arrangements are unsuitable and potentially dangerous for the young people concerned.
- 3.3.6 Chapter 55 of the UKBA 2007 (Enforcement Instructions and Guidance (EIG)) recommends that foreign nationals who have previously been convicted of serious crimes should be detained. However, in practice it is noted that individuals are often detained and subsequently deported who have not, in fact, committed serious crimes. We are concerned at the perceived criminalisation of immigration detainees. In December 2010 Mike Golden from the UKBA made a comment at the All Party Group on Ethnic Minority Communities of the Northern Ireland Assembly, that “immigration detainees are criminals as they have committed a crime by deception and this is a breach of the law”. Immigration detainees have broken administrative law and not criminal law, and therefore Government officials should not be refer to them as criminals. Often asylum seekers have only been able to obtain entry to Northern Ireland by using false documents, such vulnerable individuals are routinely prosecuted and placed in detention for fraud offences without access to immigration advice.
- 3.3.7 The Common Travel Area (CTA) is generally understood as a passport-free zone comprising of

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<sup>16</sup> The Guardian, 22 February 2010, “Why I’m on Hunger Strike at Yarl’s Wood”, <http://www.womenagainstrape.net/campaign/end-detention-rape-survivors?page=2>

the UK, the Crown dependencies and the Republic of Ireland. In actual fact, however, the rules governing movement within the Common Travel Area are complex and certain categories of persons, including visa nationals, *are* required to have valid permission for CTA travel. Also a visa national arriving in Northern Ireland from the Republic of Ireland will not automatically have their visa endorsed.<sup>17</sup> As a means to address this, we would support the introduction of a mutual visa. One way by which the UK could help address this difficulty and ‘encourage trans frontier co-operation’ (as per Art 18(2) of the Council of Europe Convention on the Protection of National Minorities), is through the development of a ‘mutual visa’, as *per* commitments made in 2008 in a document produced by the UKBA entitled “Strengthening the Common Travel Area”.

- 3.3.8 Operation Gull is a joint operation between Garda Síochána, PSNI and the UK Borders and Immigration Agency. It aims to identify and prevent people who seek to unlawfully enter the Republic of Ireland. Both the Law Centre NI and the NI Human Rights Commission have expressed concerns over the legal basis and practice of ‘Operation Gull’, which can result in persons being detained and removed from the UK. The current policy relies on unpublished policies. Furthermore, the speed and secrecy with which individuals are detained means that they may be unable to access independent legal advice that would otherwise help them determine whether they have been detained lawfully. It is also of note that Operation Gull tends to take place during long weekends and bank holidays, which compounds difficulties accessing legal advice.
- 3.3.9 As of April 2011 a new requirement introduced by the UKBA provides that skilled Migrants with a job offer in the UK who would be classed as being within Tier 2 (General) or Tier 2 (Intra company transfer) of the UKBA’s point based immigration system or who have held work permits, will need to be paid a new income requirement. The majority of Tier 2 migrant workers do not earn the amount specified by the requirements. This will mean that employees, many whom have been working in Northern Ireland for several years who are underpaid will be prevented from applying for settlement. The trade Union UNISON surveyed its members working in the Private Care Sector in Northern Ireland. Results up to July 2011 show an **average pay of £6.17 per hour for Care Assistants and £6.59 for Senior Care Assistants**. This falls short of the £7.02 or £7.80 an hour required by the new Home Office income requirements and thus such migrant workers cannot obtain settlement due to the poor practice of their employers.<sup>18</sup>

#### **Suggested Questions:**

- **Will the UK Government consider a review of the current detention policy and an audit of such arrangements for Northern Ireland for non-UK nationals as a matter of urgency?**
- **Will the UK Government review the UKBA guidance on CTA travel so that it is clear, accessible and transparent?**
- **Will the UK Government publish its policies relating to Operation Gull as a matter of urgency?**

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<sup>17</sup> See case study in evidence appendix

<sup>18</sup> See case study in evidence appendix

- **Will the UK Government publish statistics on immigration?**

- **Will the UK Government review on a regional basis the impact of the new income requirements and their effect on migrant workers?**

### **3.4 General Recommendations 27: Discrimination against Roma**

#### **3.4.1 Collective Government failure to address the needs of the most vulnerable ethnic communities in Northern Ireland: Irish Traveller, Roma and Gypsy**

3.4.1.1 In spite of a range of international instruments and national legislation targeting non-discrimination and the rights of nomadic peoples, unequal treatment and high levels of prejudice prevail against Travellers and Roma in Northern Ireland, and significant social progress remains beyond the grasp of these vulnerable groups. In its most recent report on housing provision for Travellers, the Equality Commission found that 92% of Travellers leave school without qualifications, only 11% of Travellers are in paid employment, infant mortality rate is 10 times the national average, and life expectancy in general is considerably lower than the national average.<sup>19</sup>

3.4.1.2 Statistical data on the Roma population is more scant, due in part to their relative newcomer status in Northern Ireland and insufficient monitoring. However, following the events of summer 2009, in which over 100 Roma families in the South Belfast area were forced to flee their homes in the face of local intimidation (see also 3.1.7 above)<sup>20</sup>, the spotlight is now on this vulnerable minority, and on the authorities as they continue to respond to the situation.

#### **3.4.2 Life Expectancy and health**

3.4.2.1 Travellers experience the most significant disadvantage in terms of health of any ethnic group. **The All-Ireland Traveller Health study<sup>21</sup> has shown that infant mortality rates have substantially worsened in the last 20 years.** Traveller infants today are **3.6** times more likely to die than infants in the general population. In 1987 Traveller infants were **2.4** times more likely to die than in the general population.

3.4.2.2 The same study has shown that Traveller male life expectancy now is 61.7 years, which is identical to what it was in 1987. This life expectancy in Traveller males is at a similar level to that of the general population in 1945 - 1947 when it was 60.5 years. Traveller female life expectancy has increased from 65.3 years in 1987 to 70.1 years. This is of a similar level to the general population in 1960 – 1962 when it was 71.9 years. For men in particular the mortality pattern is bleak – the Study found that such low mortality rates were explained by a variety of factors:

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<sup>19</sup> Outlining minimum standards of Traveller accommodation, Equality Commission of Northern Ireland, March 2009, <http://www.equalityni.org/archive/pdf/travguideSDSHWeb100409.pdf>

<sup>20</sup> Details of the intimidation can be obtained from NICEM Policy Magazine “Minority Rights Now”, Issue 1, December 2009 by accessing the following link: [http://www.nicem.org.uk/publications\\_view/item/minority-rights-now-winter-2009](http://www.nicem.org.uk/publications_view/item/minority-rights-now-winter-2009) (last accessed 27/5/2011)

<sup>21</sup> All Ireland Traveller Health Study, September 2010, School of Public Health, Physiotherapy and Population Science, University College Dublin, [http://www.dohc.ie/publications/aiths2010/ExecutiveSummary/AITHS2010\\_SUMMARY\\_LR\\_All.pdf?direct=1](http://www.dohc.ie/publications/aiths2010/ExecutiveSummary/AITHS2010_SUMMARY_LR_All.pdf?direct=1)

- Lack of awareness amongst Travellers of preventative health services such as immunization and screening programmes.
- Registration with a GP and a dentist remains difficult due to failure by the authorities to recognize and accommodate nomadic culture, unfamiliarity with the system and attitudes of frontline staff.
- Access to health information is difficult due to low levels of literacy.
- There is persistent insensitivity to the cultural needs of Travellers, as well as a lack of specialist services.
- Lack of consistent contact with health providers results in a lack of medical record maintenance, so the development of potential disease is difficult to assess.
- There are also high levels of hereditary disease.
- Due to inadequate accommodation, families experience poor sanitation and access to water and electricity.
- There is an increased risk of early childhood mortality due to the increased likelihood of accidents caused by living on unsafe halting sites.
- **Suicide rates of both young men and women are higher than their contemporaries in the general population.** Mental health problems remain significant for Travellers - contributing factors include **social isolation, stress, uncertainty of tenure, inadequate living conditions, overcrowding in confined places, unemployment and domestic violence.**

There are 4 priority health care needs that the All-Ireland Traveller Health study has identified:

1. Improvement in mother and child services
2. Men's health issues need to be addressed specifically
3. There is a concerted need to address cause-specific issues for respiratory and cardiovascular disease
4. Priority should be given to a new model of primary care delivery for Travellers

#### **Suggested Questions;**

- **How does the devolved NI Government plan to address the priority health care needs of Travellers as identified by the All-Ireland Traveller Health Study?**
- **How does the devolved NI Government plan to improve life expectancy for Traveller children and adults and what resources will the Government dedicate to doing this?**

### **3.4.3 Discrimination towards Irish Travellers in the criminal justice system**

- 3.4.3.1 We are concerned at the persistent stereotyping of members of the Irish Traveller community as criminals. There exists a relationship of mutual suspicion and distrust between the Police Service Northern Ireland (PSNI) and Travellers. A recent draft research report by the Institute of Conflict Research entitled "Travellers, Police and Criminal Justice System: Over-Policed but Under-Protected" highlights a disproportionately high incidence of the PSNI stopping and searching the Traveller community under the Police and Criminal Evidence Act in comparison with the local population. Over the four-year period 2006-2010, Travellers had a 1 in 36 risk of being subject to police stop & search, compared to a 1 in 96 chance for a member of the general

population.<sup>22</sup> The over-representation of the practice of stop & search against the Travelling community is in breach of Article 5(a) of ICERD. Statistics from NISRA and the PSNI also show that Travellers are more likely to be a victim of crime than a member of the general population, and that they are more likely to be a victim of racial harassment or crime than any other ethnic group.

#### Suggested Questions:

- **What measures have been put in place to tackle discriminatory practice by criminal justice agencies against the Travelling community?**
- **What measures have been taken to improve the relationship between the PSNI and members of the Traveller community?**

### 3.4.4 Economic situation of Irish Travellers

3.4.4.1 Access to the job market in Northern Ireland for Irish Travellers remains a serious concern. According to the last census in 2001, only 35% of Travellers aged 16-74 are economically active (compared to 62% of all economically active people in that age group)<sup>23</sup>. A number of factors have contributed to the main obstacles facing Irish Travellers, including the disappearance of traditional types of work, the disadvantage placed on Travellers from a young age in acquiring skills to make them more employable, and discrimination in the hiring process by prejudiced employers.<sup>24</sup>

#### Suggested question:

- **What measures have been taken by the devolved NI Government to tackle the high unemployment rate among Irish Travellers?**

### 3.4.5 Living conditions of Travellers

3.4.5.1 **There is fierce opposition to the Irish Travelling community's way of life. Approximately 40% of people in Northern Ireland do not believe that the Irish Traveller nomadic way of life is valid or should be supported by Government.**<sup>25</sup> Lack of appropriate accommodation is a significant problem facing Travellers in Northern Ireland today. Poor accommodation has a devastating knock-on effect on all other aspects of life, including health, education and employment.

3.4.5.2 Standards at emergency halting sites fall far short of basic living standards. A chronic lack of plumbing, and therefore lack of running water or any washing facilities, is common. Frequently

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<sup>22</sup> Institute for Conflict Research, "Travellers, Police and Criminal Justice System: over policed but under protected", working draft publication 2010, p.14-15.

<sup>23</sup> NISRA (2001) 2001 Census of Population

<sup>24</sup> See case study in evidence appendix

<sup>25</sup> Outlining minimum standards of Traveller accommodation, Equality Commission of Northern Ireland, March 2009, page 15, available at: <http://www.equalityni.org/archive/pdf/travguideSDSHWeb100409.pdf> (last accessed 27/5/2011)



there is no electricity provided and inadequate or non-existent refuse management and collection. There is often inadequate space for recreation or for parking cars or keeping horses.<sup>26</sup>

**3.4.5.3 Under the Housing (Northern Ireland) Order 2003, responsibility for the development of halting sites for Travellers lies with the Northern Ireland Housing Executive (NIHE). The NIHE is charged with implementing commitments relating to housing that arose out of the Promotion of Social Inclusion Working Group Report on Travellers. The Northern Ireland Housing Executive recently carried out research on the housing/accommodation needs of Irish Travellers. It found that 37% of all respondents to its survey were dissatisfied/ very dissatisfied with their accommodation, mainly due to overcrowding. We suspect the true figure is much higher.**

3.4.5.4 When the Race Relations Order (NI) 1997 was introduced (32 years after the first race discrimination legislation was introduced in GB, see 3.4.1), it mirrored the equivalent Race Relations Act 1976 in Great Britain, except for the planning law provision which did not extend to Northern Ireland. This exception regarding planning law has had a serious impact on the lives of the Irish Traveller Community: many individuals, as well as local councils, object to the building of Traveller sites in Northern Ireland. This fact, coupled with the existence of the Unauthorised Encampments (Northern Ireland) Order 2005, paints a bleak picture of institutionalized discrimination towards the Irish Traveller community. The 2005 Order empowers police to direct a person to leave land and to remove any vehicle or other property from that land. Non-compliance is an offence and police can seize the belongings of the persons in question. While the Order does not specifically name the Travelling community, it effectively targets them as a consequence of their nomadic lifestyle. A combination of the desire of many Travellers to pursue their traditional practice of nomadism, and the failure of the authorities to provide adequate serviced halting sites to accommodate this practice, means that this legislation effectively criminalizes Travellers for practicing their own culture. Such legislation equates to discrimination, and also calls into question the Government's obligations under section 75 of the Northern Ireland Act to promote equality and good relations.

3.4.5.5 There appears to be a profound lack of leadership and coordination between different Departments and Agencies in progressing the accommodation situation for Travellers. This has culminated in Travellers being deprived of equal treatment in the provision of social housing. The most commonly cited reasons for failure to provide sufficient suitable permanent sites for Travellers are the difficulties in finding suitable land plots and lack of financial resources. The NIHE has conceded that much need to be done to meet the accommodation needs of Travellers, and has cited difficulties in finding suitable land on which to develop sites and the obstacles thrown up by district councils in the process.

3.4.5.6 Whilst some initiatives such as housing projects are welcome, housing cannot be seen as the sole solution to addressing the inadequacies of accommodation. 30% of Irish Travellers in Ireland continue to practice a nomadic way of life. Thus, in order to achieve true equality in the provision of housing, it is the responsibility of public authorities to continue to develop the

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<sup>26</sup> *Ibid*, page 21.

as yet insufficient network of permanent and transit sites, to ensure that the culture of nomadism is supported and preserved. Many such sites in their current state are not conducive to traditional Traveller livelihood, as they have insufficient space for the keeping of horses and running businesses. This forces Travellers to use surrounding areas for those purposes.

3.4.5.7 In 2009 the UN Economic, Social and Cultural Rights Committee raised concerns regarding the present circumstances of Travellers and urged the provision of 'sufficient, adequate and secure sites'. The Committee also commented on the discriminatory effect of the Unauthorised Encampment (Northern Ireland) Order 2005 and urged its review.<sup>27</sup> In 2007 the Council of Europe Committee of Ministers, commenting on the compliance with UK's obligations under the Framework Convention for the Protection of National Minorities (FCNM), also raised concerns as to the accommodation situation of Irish Travellers, adopting a resolution in relation to the UK's compliance with the FCNM:

*"...the availability of authorised sites has contributed to the fact that a number of Gypsies and Travellers continue to live on unauthorised sites and may face eviction orders."*<sup>28</sup>

#### **Suggested Question**

- **What measures have the UK Government taken to address the social disadvantage and social exclusion of Irish Travellers, Roma and Gypsy in Northern Ireland, in particular positive action measures inline with Article 1(4) of ICERD?**

#### **3.4.6 Participation and Government engagement of Travellers**

3.4.6.1 The Racial Equality Forum (the Government appointed body to monitor the implementation of the Race Strategy) established a subgroup on Travellers in 2004. This group has not been convened since 2007, and the membership of the panel included no voluntary Traveller representation. Whilst we welcome such a mechanism and believe that it is important in establishing Government priorities for Travellers, it must establish a timetable of future meetings and include representation from Travellers in order to be effective.

3.4.6.2 Racist attitudes from Politicians towards Travellers serve to thwart efforts to enhance their engagement with Government. In January 2008 David Simpson, Member of Parliament for the DUP stated that members of the Travelling community refused to "abide by normal standards of behaviour". He went on to express that "members of the Travelling community seem to think that existing equality legislation protects their right to participate in law-breaking or anti social behaviour."<sup>29</sup> Such attitudes from high profile officials serve to stir tension and hostility on the ground, and discourage Travellers from engaging in dialogue with the Government.

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<sup>27</sup> (para.30) 2009 Concluding observations in the examination of the UK of the 42<sup>nd</sup> session of the UN Economic, Social and Cultural Rights Committee, see <http://www2.ohchr.org/english/bodies/cescr/cescrs42.htm>

<sup>28</sup> Comments of the Government of the United Kingdom on the opinion of the advisory committee on the implementation of the Framework Convention for the protection of National Minorities in the UK (received on 26 October 2007). P.14, GVT/COM/II(2007)003, Council of Europe

<sup>29</sup> View article at: <http://dup2win.com/articles.asp?ArticleNewsID=291> (last accessed 27/5/2011)

## Suggested Questions

- **Will the devolved NI Government reconvene the Traveller sub-group of the Racial Equality Panel and will they establish an accompanying timetable for their activities?**
- **What mechanisms will the devolved NI Government invoke to ensure that Travellers can participate in discussions and Governmental mechanisms which concern their welfare?**
- **What sanctions will the devolved NI Government impose on Politicians and Government officials who make racist remarks regarding the Traveller community?**

### 3.4.7 Roma families

3.4.7.1 The issue of culturally-appropriate housing is also relevant to members of the Roma community living in Northern Ireland. In many cases, several Roma families live together in the one house, as Roma cultural practice places a high value on relationships across the extended family network. Such living arrangements fall under Houses of Multiple Occupancy (HMO) Regulations. Such houses are privately rented (as migrants from A2 States are not eligible for social housing) and they are rarely equipped for dealing with large numbers of families.

3.4.7.2 The rate of investigations into housing containing Roma inhabitants is disproportionately high. This may be as a result of landlords reporting Roma at higher frequency than they would report other groups or individuals. The result of reporting Roma families to the NIHE, and subsequent investigation, frequently leads to eviction of families. There is anecdotal evidence that in some instances, landlords may in fact be taking advantage of the HMO process to enforce evictions of Roma families from their premises more expediently than would be possible via the normal eviction process. Lack of translation and interpretation services for Roma contributes to the exclusion and isolation of Roma from the rest of society. This combination of circumstances has often led to Roma being disintegrated from living in a manner culturally appropriate to them.

#### Suggested Questions:

- **How does the devolved NI Government plan to address discrimination towards Roma in the provision of housing?**
- **How does the devolved NI Government plan to address the problem of access to culturally appropriate living conditions for Roma communities?**

### 3.5 2011 Census

3.5.1 NICEM is concerned that the 2011 Northern Ireland census categories do not adequately capture the current ethnic demographic of Northern Ireland. The categories used in the 2011 census are the same as the categories used in 2001. Things have changed dramatically since the last census in 2001 – with the accession of many Eastern European countries to the EU, Northern Ireland has experienced an influx of migrant workers. Polish nationals are currently the largest ethnic group in Northern Ireland. NICEM estimates that there are currently over 30,000 Polish people and another 10,000 people from the rest of the A8 and A2 countries in Northern Ireland. Despite this, under the “white” category there is no sub-category of Polish in

the census. The Scottish Government has introduced the Polish sub-category in their census but the Northern Ireland Government has not.

- 3.5.2 Self-identification as a particular racial group is a human right and the omission of the key ethnic groupings in Northern Ireland, namely Polish, black Portuguese and Filipino in the census ethnic questionnaire violates the Committee General Recommendations No. 8, as well as Article 1(1) and 1(4) of ICERD. It also violates other international instruments on Human Rights, such as Article 3(1) of the Framework Convention for the Protection of National Minorities of the Council of Europe.

#### **Suggested Question:**

- **Why did the UK Government, as well as the devolved NI Government not include Polish, black Portuguese and Filipino minority criteria in the 2011 Census?**

## **4. ARTICLE 2**

### **4.1 Legal framework to eliminate racial discrimination**

- 4.1.1 The direct rule administration introduced legislative measures to outlaw racial discrimination under the Race Relations (NI) Order 1997. **This law was introduced in Northern Ireland 32 years after the first law was introduced in Great Britain.** It was only instigated as the result of persistent lobbying from ethnic minority community groups and other civil society actors both at the regional level and the international level in the early 1990s. As such Northern Ireland is behind the rest of the UK in the development of an anti-discrimination culture.
- 4.1.2 In 2000 the Government in Great Britain introduced the Race Relations (Amendment) Act 2000 in response to the Stephen Lawrence Inquiry Report.<sup>30</sup> One of the key elements of the Amendment Act was to put the entire criminal justice system under the race legislation. Since the equivalent Amendment Act was not introduced in Northern Ireland, we are bound by the *Amin* judgement. This judgement invokes a principle that states that for goods, facilities and services that are solely the provision of Government with no private equivalent, equality legislation shall not apply. **In practice this allows immigration officers, police officers, prison officers, probation officers, tax officers, planning officers and court staff to discriminate against ethnic minorities without any legal redress. The *Amin* principle also applies to all existing equality legislation in Northern Ireland.**
- 4.1.3 In 2003 the UK Government introduced the Race Relations Act 1976 (Amendment) Regulations 2003 as part of its obligations under the Council of Europe Racial Equality Directive 2000 (Council Directive 2000/43/EC).<sup>31</sup> The direct rule administration introduced the equivalent Race Relations Order (Amendment) Regulations 2003 to NI, but the manner in which they were

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<sup>30</sup> A Judicial Inquiry into the death of Stephen Lawrence, a black young man was stabbed to death by a group of white people whilst waiting for a bus in London in 1993, the inquiry found that the Metropolitan Police force was "institutionally racist".

<sup>31</sup> The 2003 Regulations also provided for discrimination and harassment cases in relation to some public functions but not key areas such as policing and the criminal justice system more generally even though the Steven Lawrence enquiry directly addressed these issues.

transposed led to less protection from discrimination and harassment on the grounds of colour and nationality, than on the grounds of race, ethnic or national origin. These disparities have been addressed in GB with the enactment of the Equality Act 2010. In NI however, they remain in statute. NICEM believes this approach to transposition is discriminatory; when the fair employment regulations were amended they went beyond the remit of the relevant Council of Europe Directive by covering discrimination on the grounds of ‘political opinion’ **and** ‘religious belief’ rather than religion **or** belief as covered by the Directive. We believe such an inconsistent approach illustrates a hierarchy of rights in Northern Ireland, which is inherently discriminatory on racial grounds.

- 4.1.4 On 26 May 2009 a Motion Debate was held by members of the Northern Ireland Assembly on “Race Relations”, based on a proposal from NICEM with the support of the All Party Assembly Group on Ethnic Minority Communities.<sup>32</sup> All party representatives unanimously supported the following Motion: “That this Assembly calls on the First Minister and deputy First Minister to review the current Race Relations (Northern Ireland) Order 1997, in view of the fact that the current law does not offer the same levels of protection as in other parts of the United Kingdom and the Republic of Ireland, and also given the deficiencies in the Race Relations Order (Amendment) Regulations (Northern Ireland) 2003.”
- 4.1.5 In 2007 the European Commission started infringement proceedings against states which failed to implement the Racial Equality directive. The UK Government failed to implement correctly the definition of “indirect discrimination” and “instruction to discriminate”. In 2010 limited amendments were made in the form of the Race Relations Order (Amendment) Regulations (NI) 2009. Whilst such amendments did go some way to amending the definition of “indirect discrimination”, they did not address the issue of ‘instructions to discriminate’ or other reforms as recommended at the aforementioned Assembly debate.
- 4.1.6 Due to the devolved Government in Northern Ireland effectively halting the progress of the Single Equality Bill for Northern Ireland (there has been no movement since 2006), legislative protection from racial discrimination in Northern Ireland remains at a lower standard than Great Britain following the enactment of the Equality Act 2010 on 1 April 2010. The Single Equality Bill for Northern Ireland was at the top of the agenda of the first Executive of the devolved administration, and was under the first Programme for Government 2000-2003. The Initial Consultation paper on the Single Equality Bill for Northern Ireland was published by the OFMDFM in June 2001 and a panel of legal experts was set up in June 2003. A Green Paper with options was produced for consultation in June 2004 and the OFMDFM published their document entitled “Single Equality Bill: Response to Consultation” in March 2005. Since then the Single Equality Bill has completely disappeared from the Government’s agenda. As all major consultation processes are complete, we are awaiting the proposed finalised bill for consultation but nothing has been produced. It appears to be outside the priorities of the current Executive in Northern Ireland – there is nothing mentioned about the Single Equality Bill in the Programme for Government 2008-2011.

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<sup>32</sup> “The Formal Review of the Race Relations (NI) Order 1997”, NICEM, March 2009.

4.1.7 The above evidence highlights that ethnic minorities in Northern Ireland have less legal protection in terms of racial discrimination than GB. Therefore, the UK Government is in breach of Article 2(1)(a), (b), (c) and (d) of ICERD

#### **Suggested Questions:**

- **Will the NI Executive as the devolved administration in Northern Ireland set up a legislative timetable to rectify the current deficiencies of the current Race Relations (NI) Order 1997 so as to bring the legislation in Northern Ireland in line with that of the rest of the United Kingdom?**<sup>33</sup>
- **Will the NI Executive as the devolved administration set a deadline to advance the legislative proposal on the Single Equality Bill for Northern Ireland in order to harmonise and improve the current equality legislation?**

## **4.2 Racial Equality Strategy 2005-2010**

4.2.1 In Northern Ireland the direct rule administration introduced the **Racial Equality Strategy 2005-2010** as the key Government policy to tackle racism in Northern Ireland. The Strategy was developed in partnership with the Black and Minority Ethnic Community. In our view the Strategy is a robust document but its implementation was weak – Government departments lacked commitment and dedicated resources to implement the Action Plans.

4.2.2 The Racial Equality Strategy was effectively frozen in 2007 due to lack of cross-party political support on the framework policy document “A Shared Future”. This document and the Racial Equality Strategy were designed as parallel policy documents. The “Shared Future” framework document brought both community relations (the relationship between Catholic and Protestant communities) and race relations (the relationship between the two majorities and ethnic minorities in Northern Ireland) into one platform. Therefore if the “Shared Future” document failed then the Racial Equality Strategy also failed. In June 2007 the Assembly held a Motion Debate on “Shared Future Framework”, which overturned the original cross-party endorsement of the document.<sup>34</sup> Despite the fact that support remained for the Racial Equality Strategy its implementation could not be taken forward.

4.2.3 In a subsequent Motion Debate on the “Racial Equality Strategy” in 2007 the deputy First Minister stated that progress on the strategy would be reviewed and a new three-year action plan for 2008-09 will be brought forward to coincide with Government spending. No such action plan was published. Three years later, the “**Cohesion, Sharing and Integration Programme (CSI Programme)**” was put out for consultation in August 2010.

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<sup>33</sup> The power to make equality legislation is transferred to the devolved administration in Northern Ireland but the British Government is the sovereign state that signed and ratified ICERD.

<sup>34</sup> Instead the Assembly passed the amendment Motion “*That this Assembly notes the strategic direction of and underpinning principles contained in the documents ‘A Shared Future’ (March 2005) and ‘A Shared Future: Triennial Action Plan’ (April 2006), and recognises that the Executive and the Assembly will wish to consider carefully the progress to date and bring forward detailed plans, consistent with the pledge of office, to promote the interests of the whole community towards the goal of a shared future and a prosperous, peaceful and settled society.*” “Motion Debate: Shared Future Framework”, NI Assembly, Minutes of Proceedings, Monday, 4 June 2007 (No. 8/07), Hansard. <http://www.niassembly.gov.uk/record/reports2007/070604.htm>

- 4.2.4 Along with other civil society organisations (there were more than 290 consultation responses) we have expressed concern with regard to the proposed CSI Programme.<sup>35</sup> The document which was presented for consultation made no reference to the Human Rights law to which the UK is party and, whilst there was a welcome recognition of the need for a crisis fund for migrants who find themselves destitute through no fault of their own, the document lacked methodology as to how this was to be delivered and resourced. An analysis of the document to decide how to move forward is yet to be published. We will not expect any decisions to be made until significantly later in 2011, due to the local Assembly Elections in May 2011. The lack of progressive overarching policy has served to erode accountability within Government in tackling cross cutting trends in the perpetration of hate crime and racial discrimination.
- 4.2.5 There has been, and continues to be, unanimous cross party-political support for the implementation of a new Racial Equality Strategy (as the previous one expired in 2010)<sup>36</sup>. The Racial Equality Panel (the Government appointed body to monitor the implementation of the Race Strategy with participation from BME communities, including NICEM) agreed to review the current strategy, and develop a new one based on the aims of the previous strategy, whilst taking into account the latest political, economic and social context. On 18 February 2011 the First Minister and Deputy First Minister, replying to an Assembly question<sup>37</sup>, stated that: “Work has commenced to develop a new Strategy to replace ‘A Racial Equality Strategy for Northern Ireland 2005-2010’ with a view to a draft going to the Executive in April or May 2012 for final approval.”<sup>38</sup> This delay in the publication of the document will mean that the strategy will not be allocated resources in the Governments budgetary plans.
- 4.2.6 **The freezing of the Racial Equality Strategy 2005-2010 and its accompanying departmental Action Plans has severely limited the realisation of rights of the Black and Minority Ethnic communities in all areas of economic, social, political and cultural life in Northern Ireland under Article 2(2) and 5 (e) of ICERD.** We want the new strategy to be delivered promptly so that an adequate budget can be set for its implementation.

#### Suggested Questions:

- **Will the devolved NI Government guarantee that the process of developing a new Racial Equality Strategy will be completed by March 2012?**
- **Will the devolved NI Government set a dedicated budget to accompany the Strategy to ensure its full implementation?**
- **How will the devolved NI Government ensure that the new strategy and accompanying Action Plans will have a long-term impact on ethnic minority communities?**
- **How will the strategy be monitored and evaluated and how will ethnic minorities be involved in this process?**

<sup>35</sup> See *NICEM Submission to OFMDFM on the Programme for Cohesion, Sharing and Integration*, October 2010, available at: [http://www.nicem.org.uk/uploads/publications/NICEM\\_CSI\\_submission\\_final-3.pdf](http://www.nicem.org.uk/uploads/publications/NICEM_CSI_submission_final-3.pdf) (last accessed 27/5/2011)

<sup>36</sup> Hansard, Tuesday 3 July 2007 (No.17/07), <http://www.niassembly.gov.uk/record/reports2007/070703.htm>

<sup>37</sup> OFMDFM’s response to PQ AQW 4289/11 by Dawn Purvis MLA on 18 February 2011

<sup>38</sup> *Ibid.*

## 5. ARTICLE 4

### 5.1 Rise in support for the British National Party (BNP) and the Far Right in Northern Ireland

- 5.1.1 In 2011 the British National Party (BNP) registered with the Northern Ireland Electoral Commission for the first time; they put forward 3 candidates running for both local council and the Assembly in the May elections, none of these candidates were elected but their campaigning did achieve a small but notable level of support amongst the electorate. . Their campaign literature bore the slogan “because we’ll stop immigration”. In the 2007 Assembly Election the BNP tried to register as a political party in Northern Ireland under the name “The White Nationalist Party”. This name was deemed to be racist by the Electoral Commission and their application was rejected.
- 5.1.2 The BNP is a far right political party that rejects integration, equality and basic human and civil rights for people it describes as “non-indigenous” or “civic British”. NICEM believes that support for the BNP poses a serious threat to race relations in Northern Ireland. The economic downturn has undoubtedly fostered a more favourable environment for right-wing nationalism. Rising unemployment and increasingly low educational attainment amongst Protestant working class males has enabled racist and xenophobic sentiment to take root in such areas.<sup>39</sup>
- 5.1.3 Over the last number of years the right-wing British National Party (BNP) has gained an increased amount of political support and respectability in GB. Whilst a different political climate exists in NI, such notoriety has enabled the BNP to make inroads with sympathizers in Northern Ireland. In the last 2 years the BNP has set up call centres in two locations in Belfast. Last year the BNP stirred up racial hatred by publishing leaflets opposed to the construction of an immigration holding centre in Larne, such publications made false claims that served to demonize immigration detainees. Though support for the BNP in Northern Ireland remains low, education and awareness raising initiatives are needed to ensure that their campaigning efforts are not successful.

#### Suggested Questions:

- **What measures have the devolved NI Government put in place to monitor and prevent right wing nationalism in Northern Ireland?**
- **Will the revised Racial Equality Strategy for NI include specific actions on tackling right wing nationalism and extremism?**

### 5.2 Media propaganda

- 5.2.1 In recent years, the media has played an important role in shaping public opinion with regard to immigration and ethnic minorities. Misrepresentation can foster a damaging culture that may lead to more potent and dangerous forms of harassment and racial abuse. Mainstream papers

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<sup>39</sup> Report on Educational disadvantage and the Protestant working class, issued by Dawn Purvis MLA, March 2011 <http://www.dawnpurvis.com/wp-content/uploads/2011/03/A-Call-to-Action-FINAL-March2011.pdf>



in Northern Ireland, such as the Belfast Telegraph, have often published articles that encourage a negative view of minorities.

- 5.2.2 On the 1<sup>st</sup> July 2008 a comment piece by Kevin Myers appeared in the Belfast Telegraph. It was entitled “Why feed African kids to grow into armed, sex-mad layabouts?” In the article Myers refers to Ethiopia as a “wretched country” and the entire population of the African continent as “sexually hyperactive indigents” who have given “almost nothing to anyone, apart from AIDS”. Myers goes on to question the morality of saving an Ethiopian child from starvation suggesting that it may be preferable for children to die in infancy from malaria.
- 5.2.3 NICEM believed that the sentiment expressed and the language used by Myers breached incitement to racial hatred legislation, namely the Public Order (Northern Ireland) Order 1987. As such NICEM made a complaint to the Chief Constable. A month later we received a brief response stating that the contents of the article did not constitute an offence under existing legislation. It did not elaborate on why exactly the article did not meet such requirements. NICEM also made a complaint to the Press Complaints Commission stating that the article was in breach of the discrimination and accuracy provisions within the Commission’s code. This complaint was not upheld. Notably this was a syndicated article, which had also been printed in the Irish Independent in the Republic of Ireland in July 2008. A complaint was submitted to the Press Council of Ireland; in contrast to the UK PCC, it was concluded that the article did breach their Code of Practice in that it was likely to cause grave offence.
- 5.2.4 By stating that the PCC is none of their concern, we believe that the UK Government is violating their obligations under ICERD. The UK must examine how the PCC can be made more effective, both regionally and nationally. NICEM believes that an audit of past cases along race lines should be conducted in order to highlight areas for improvement. The PCC guidance on discrimination should also be reassessed with a view to strengthening it. Its work and findings in this area should be widely publicised. In our experience the majority of ethnic minorities are not aware that they have a right to complain if they feel an article has been racist. The Government should provide support for monitoring mechanisms to examine the links between public opinion and negative press coverage. NICEM supports the recommendations in the Concluding Observations of the ICERD Committee on the UK’s 16<sup>th</sup> and 17<sup>th</sup> Periodic Reports in 2003 that the current complaint regime under the Press Complaint Commission is ineffective and further supports the Committee’s idea to empower other bodies, such as the Commission for Racial Equality (now the Equality and Human Rights Commission) and other groups and organisations working in race relations field (para. 13, p.3, ICERD/C/63/CO/11, 18 August 2003).

#### **Suggested Questions:**

- **What measures have the UK Government taken to review the Press Complaints Commission since the ICERD Concluding Observations of 2003?**
- **Will the UK Government consider a new independent regulatory regime instead of the current self-regulatory regime?**

#### **5.3 The use of the internet as a vehicle for racist propaganda**

- 5.3.1 The Convention on Cyber Crime 2004 provides a framework for states to criminalise the

dissemination of racist and xenophobic material through computer systems on a domestic level. However, with numerous social networking websites available and the accessibility of the Internet, it is very easy to post racist comments online and it may take a long time for such views to be noticed and subsequently dealt with.

5.3.2 The most prominent hate site in Northern Ireland is “Redwatch online” ([www.redwatchonline.org](http://www.redwatchonline.org)). They target ethnic minority leaders, trade unionists, community activists, socialists, gay and lesbian leaders, etc. They ask their supporters to supply personal information of those in the “wanted list”. The Executive Director of NICEM’s personal details (picture, background information, home address and telephone number) have been on their website since 2004. This has led to several threatening late night phone calls. Complaints had been made to PSNI, however their website was registered in the US and no action can be taken under both jurisdictions.

5.3.3 In November 2009 a Facebook group encouraging abuse towards Roma women selling roses in Belfast was discovered. Following a complaint to the PSNI, the page was closed down. Since this incident several other pages, which serve to incite racial abuse, have been discovered. More effective monitoring mechanisms in line with international standards are needed to enable racist sites and pages to be shut down before they gain significant numbers of supporters.

#### **Suggested Question:**

- **What measures have the UK Government put in place to tackle cyber hate crime, particularly those dangerous sites which are registered in the US?**

## **6. ARTICLE 5**

### **6.1 Racial Hate Crime**

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

6.1.1 *“Hate crime is often a process rather than an event, and it can escalate in frequency and seriousness. It can have devastating effects on the quality of life of its victims. There can be the added trauma of knowing that the perpetrator’s motivation is an impersonal group hatred, relating to some feature that the victim shares with others. This factor is greatest where the hatred is directed against a visible feature such as skin colour, physical disability or relating to core personal values such as religion or being lesbian, gay, bisexual or transgender. A crime that might normally have a minor impact becomes, with the hate element, an intimate and hurtful attack that can undermine the victim’s quality of life and self esteem.”<sup>40</sup>*

6.1.2 We welcome that the Police Service Northern Ireland (PSNI) currently provides detailed statistical information relevant to race. We also welcome that the definition of a ‘racist incident’ has changed (this is to conform with the Macpherson report recommendations following the

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<sup>40</sup> para. 2.20, “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”, Jan. 2007.

death of Stephen Lawrence)<sup>41</sup>. Greater emphasis is given to the perception of the victim as to whether or not a crime or incident was racially motivated. We also welcome that for the purposes of the definition of Racial Group, Irish Travellers are specifically named in accordance with the NI Race Relations Order (1997).<sup>42</sup>

6.1.3 The PSNI statistics allow us to disaggregate racist crimes from other hate crimes. (See, for Table 3.1: Incidents, Crimes and Detections with a Hate Motivation Summary 2009/10 and 2010/11)<sup>43</sup>

<b>Racist Incidents, Crimes and Detections with a Hate Motivation Summary 2009/10 and 2010/11)</b>								
Total number of incidents		Total number of crimes		Total number of crimes detected		Detection rate (%)		
2009/10	2010/11	2009/10	2010/11	2009/10	2010/11	2009/10	2010/11	change in % pts
1,038	842	712	531	115	71	16.2	13.4	-2.8

6.1.4 Racial incidents and racial hate crime have increased on average 10-15% over the last 10 year period in Northern Ireland. Sir Hugh Orde, the former Chief Constable, stated in an interview in the New Statesman in November 2005, that the major emerging threat in his work is racist attacks against migrants.

6.1.5 From our work we know that the recorded racial incidents and crime statistics from the PSNI are only the tip of the iceberg.<sup>44</sup> The first Hate Crime Report by the Criminal Justice Inspectorate, published in January 2007 confirmed these concerns. There are many incidents and crimes that go unreported. There are a variety of reasons why BME people do not go to the police in these circumstances. These include lack of confidence in police officers,<sup>45</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 BME communities, in particular Irish Travellers.<sup>46</sup> While PSNI statistics for 2010/11 show a drop in reported racially motivated crimes and incidents from the previous year, we are concerned that this, along with the drop in detection rates, reflects a further fall in confidence in the criminal justice system as opposed to an improvement in race relations. Detection rates for racist crimes fell by 2.8 percentage points between 2009/10 and 2010/11, a more significant

<sup>41</sup>The Stephen Lawrence Inquiry, February 1999 <http://www.archive.official-documents.co.uk/document/cm42/4262/4262.htm>

<sup>42</sup> "The next Stephen Lawrence?" Report on Racist Violence and Criminal Justice in Northern Ireland, NICEM, May 2006 (report can be download at [www.nicem.org.uk](http://www.nicem.org.uk));

<sup>43</sup> PSNI annual Hate Crime Statistics can be download from the following link: [www.psni.police.uk](http://www.psni.police.uk) See also footnote 10 above with details statistics from 2004 onward.

<sup>44</sup> Robbie McVeigh, "The Next Stephen Lawrence?: the experiences of victims in criminal justice system in Northern Ireland", NICEM, 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>45</sup> Recommendation 9 of the Northern Ireland Affairs Committee, *ibid.* p.52

<sup>46</sup> para. 3.9, *ibid.*, p.17

drop in case clearances than those for other types of hate crime such as disability (-1.7%) or homophobia (-1.2%). Given the nature of racial hate crime, the steady rise of incidences over the past decade, and anecdotal evidence gathered through our work with BME communities, it is evident that racial hate crime remains highly prevalent in Northern Ireland.

- 6.1.6 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 have 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>47</sup>

- 6.1.7 The 2004 Hate Crime Inquiry of the Northern Ireland Affairs Committee made the following remarks in its concluding statement:

*"128. Our inquiry has shown that hate crime is a growing problem in Northern Ireland. We are convinced that the growth in these appalling crimes can be arrested if the Government, the PSNI, and other criminal justice agencies increase their efforts to eradicate it. However, if a real impact on this problem is to be made the pace of policy and strategy development on the part of the Government, and enforcement on the part of the PSNI, will need to speed up. Policies need to be 'smart': transparent, timely, and capable of having an immediate impact 'on the ground'. Strategy is not a substitute for rigorous practical action. Enforcement needs to be carried out with rigour."*<sup>48</sup>

- 6.1.8 This conclusion was made in 2004. Whilst progress has been made in terms of strategy and policy,<sup>49</sup> there remains a lack of rigorous practical action. This is evidenced by consistently poor clearance rates of racial hate crime.<sup>50</sup> There is a lack of monitoring data in the court system and relatively few hate crime cases are brought to the criminal court for trial. Consequently ethnic minority victims of hate crime have little confidence in the criminal justice system.<sup>51</sup>

- 6.1.9 We are also concerned at a synergy that appears to exist in Northern Ireland between Loyalism and racism. The now defunct Independent Monitoring Commission (IMC) acknowledged in

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<sup>47</sup> para. 4.11, *ibid.*, p.53.

<sup>48</sup> para. 128, Northern Ireland Affairs Committee, *ibid.*, p.50

<sup>49</sup> Recommendations: Partnership; Strategy, Policy and Procedural Development and PSNI Specific Recommendations, p.xi-x, Criminal Justice Inspection Northern Ireland, *ibid.*

<sup>50</sup> Executive Summary, first paragraph, p.viii, "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", Jan. 2007.

<sup>51</sup> Recommendations: Management Information, *ibid.*, p.x.

numerous reports<sup>52</sup> that the UDA and UVF were ‘targeting ethnic minorities’.<sup>53</sup> The PSNI and the Northern Ireland Affairs Committee have also acknowledged significant Loyalist paramilitary involvement in racist violence. Such links need to be tackled much more proactively by all agencies concerned.

6.1.10 Whilst we welcome efforts from the PSNI and the Policing Board to address racist crime in a more efficient manner, there are few measures adopted to make the reporting procedure for victims of hate crime easier. Paragraph 143 of the most recent UK ICERD report makes reference to the Hate Incident Minority Liaison Officers (HMLOs), who it states are based within each unit. Despite recommendations from the Policing Board commending the work of the HMLOs, this post is now defunct due to a restructuring process. HMLOs were to take the lead in supporting and advising victims of hate incidents and liaising with significant partners in addition to supporting other police officers involved in investigating such incidents. Whilst the PSNI insist that such work will not be lost, we are concerned that without dedicated officers working on these issues that it inevitably will be.

#### **Suggested Questions:**

- **What measures have the devolved NI Government put in place to restore the confidence of ethnic minority people who report hate crime to the police?**
- **How many of the recommendations suggested by the NI Criminal Justice Inspectorate in its first Hate Crime Report have been implemented since 2007?**
- **How many cases of Hate Crime, in the last 5-year period in NI, have been prosecuted in the open court? How many of them resulted in convictions?**
- **What measures have the devolved NI Government put in place to tackle links between Loyalist paramilitary activity and racist attacks on BME community members?**

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

### ***5 d (vii) The right to freedom of thought, conscience and religion***

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

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<sup>52</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>53</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>

6.2.2 Research recently conducted by Queen’s University Belfast found that many teachers, parents and pupils are unaware of the right to opt out of religious education.<sup>54</sup> Many parents are reluctant to allow their children to opt out of religious education for fear that their children will feel excluded or stand out. Those who do opt out are rarely provided with suitable alternative activities and consequentially feel marginalised. The Religious Education curriculum presents a narrow view of what constitutes religious education. Frequently teachers are unaware of their responsibilities in relation to pupils of minority belief, including the importance of using inclusive language and creating an ethos of inclusion.

### **Suggested Questions**

- **Will the devolved NI Government produce standardised guidelines on appropriate practice for schools with regard to the notification of the right to opt out of religious education?**
- **Will the devolved NI Government introduce a religious education curriculum developed by a group more representative of the beliefs of Northern Ireland than is presently the case?**
- **Will the devolved NI Government change current domestic legislation to enable a child of sufficient maturity the right to opt of religious education?**

### **6.3 Employment Rights of Migrants, Poverty and access to benefits**

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

6.3.1 People from minority ethnic communities continue to face greater difficulties than the majority population in their access to employment in Northern Ireland. Whilst we welcome the end of the Workers Registration Scheme for A8 nationals in June 2011, we are concerned that the devolved Government has not dedicated adequate resources in order to handle the increase in applications for social security benefits that this will bring.

6.3.2 The economic downturn has had a significant effect on migrant workers and it will continue to do so as the recession deepens and the effect of the Government budget cuts becomes more apparent. In 2009 NICEM conducted comprehensive research on the impact of the economic downturn on the migrant community. We published the Report “Za Chlebem: The Impact of Economic Downturn on the Polish Community in Northern Ireland” in October 2009.<sup>55</sup>

6.3.3 Our research found there is a higher concentration of unemployment amongst migrant workers than the general population. Approximately 20% of our respondents are unemployed; this is almost 3 times higher than the Northern Ireland unemployment rate of 6.7% for the period of April to June 2009. Such trends also can be seen for other A8 and A2 countries.

6.3.4 Despite this level of unemployment, we found that the take-up of Job Seekers Allowance is low (5% of respondents). Communication barriers, bureaucracy and difficulties with the former

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<sup>54</sup> A. Mawhinney et Al “Opting out of Religious Education: The Views of Young People from Minority Belief Backgrounds”, Queen’s University Belfast, October 2010

<sup>55</sup> Available at: [http://www.nicem.org.uk/uploads/publications/Za\\_Chlebem\\_Report.pdf](http://www.nicem.org.uk/uploads/publications/Za_Chlebem_Report.pdf) (last accessed 27/5/2011)

Workers Registration Scheme are all obstacles to accessing benefits. Half of the respondents stated they are afraid they will lose their jobs as a result of the economic downturn, others have commented on insecurities connected with fewer working hours, temporary contracts and general financial concerns as the cost of living rises; such stress undoubtedly impacts upon mental health and family life. In addition, opportunities to attend programmes to improve skills are highly limited for many migrants.<sup>56</sup>

6.3.5 Our study also found that almost half of respondents have dependents living in Northern Ireland and half are married. Most of the married families have obtained tax credit available to those in the lowest income bracket. Around 10% of the respondents have more than one job. These facts highlight the conditions of poverty that this vulnerable group already experience in the face of a deepening economic downturn.

6.3.6 There are a variety of circumstances in which migrant workers typically lose employment and cannot access social security and other types of support, these include:

- Losing employment before the requirement to be employed and registered for twelve months without interruption of more than thirty days is fulfilled under the Home Office's Workers Registration Scheme. Whilst this is no longer the case for A8 nationals, A2 migrants are still vulnerable. Temporary and seasonal workers are particularly vulnerable to falling into this group;
- Failure to satisfy the immigration registration requirements. This can vary from technical breaches, for example, failure to register a change of employment within thirty days of starting a new job, through to more fundamental breaches, such as not registering in the first place;
- Changes in personal circumstances: for example, a family breakdown, domestic violence or other circumstances. Women are often reliant on the immigration status of male partners for access to support. A breakdown in a relationship has severe consequences for women and children often during a period when welfare support is most needed.

6.3.7 Another contributory factor to the growing poverty of migrants is that many migrant workers are paid below the national minimum wage. The NICEM report "BME Floating Support Pilot Project 2007 Mapping Exercise" shows that 10% of migrants living in the north-east region of Northern Ireland are paid less than the minimum wage. Recent Government-sponsored research suggests 14% of migrant workers could be receiving less than the national minimum wage.<sup>57</sup>

6.3.8 There is evidence of widespread discrimination and exploitation in the provision of housing as part of employment arrangements. This situation applies mostly to migrant workers employed in factories, processing or seasonal work. In scenarios such as this, employers automatically deduct rent from wages of employees, often charging high rates and providing substandard accommodation.<sup>58</sup> Problems include overcrowding, putting families in accommodation suitable only for a single adult, families having to share a single room, accommodation with other unrelated or unknown people and threats of deductions from salary if employees complain

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<sup>56</sup> See relevant case study in evidence appendix

<sup>57</sup> "BME Floating Support Pilot Project 2007 Mapping Exercise" NICEM, 2007

<sup>58</sup> See case study in evidence appendix

about living conditions. The lack of any right to emergency re-housing or housing benefits for some migrants compounds this vulnerability, and the absence of any safety net puts workers and their families at real risk of homelessness and impoverishment if they leave or lose their job.

- 6.3.9 The economic downturn has had a significant impact on the housing market in Northern Ireland and as a result a number of landlords have become bankrupt and have required tenants to move out. NICEM has received requests for assistance from many migrants who have lost their jobs and are either finding it difficult to pay the rent or have been forced to leave their houses. Ethnic Minorities frequently experience discrimination from landlords when trying to access private housing. Often the only accommodation available is of a low standard, and the increasing cost of heating such accommodation and routine damp problems have had an adverse impact on the health of many migrants.<sup>59</sup>
- 6.3.10 The prevalence of forced labour in Northern Ireland is also a matter of extreme concern.<sup>60</sup> The vulnerability of migrant workers, whether due to weak English language skills, lack of local knowledge or rights, or limited access to social networks, has in many cases led to their exploitation by unscrupulous employers. This is particularly the case in the mushroom and fishing industries, in situations of domestic servitude, and in the employment of workers from the Roma community. In such instances workers are forced to remain in an exploitative work environment on account of their immigration status, which either prevents them from reporting their employer due to their own lack of documentation, or limits them to work only in industries where exploitation is rampant. It is also often the case that migrant workers endure such exploitative work conditions as there are no employment prospects in their home countries.
- 6.3.11 Exploitation is most commonly manifested in lack of overtime, holiday pay, sick pay or maternity pay, pay below minimum wage, long unsociable hours, combined with inadequate or even dangerous working conditions and ill-treatment and threats by employers. Those who do escape their situation often find that they have few options due to lack of support. Although there are community groups and Trade Unions that can help those who have been exploited, there are few that deal primarily with forced labour. This is also the case with the Police Service of Northern Ireland, which has not devoted adequate resources and manpower to deal with forced labour in Northern Ireland.

#### **Suggested Questions:**

- **What measures have the devolved NI Government adopted to alleviate the hardship of poverty among migrant communities in Northern Ireland under Article 5(e)(iv) of ICERD?**
- **How will the devolved NI Government assist migrants who are ineligible to the benefit system?**
- **What measures have the devolved NI Government taken to tackle the exploitation of migrant workers, especially with regard to access to just remuneration for work?**

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<sup>59</sup> See case studies and further evidence in evidence appendix

<sup>60</sup> See 'Forced Labour in Northern Ireland', Institute of Conflict Research/ Joseph Rowntree Foundation 2011.



- **What measures will the devolved NI Government take to ensure all migrants have access to an adequate standard of housing?**
- **Will the devolved NI Government establish a crisis fund to assist migrants who find themselves destitute through no fault of their own?**

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

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

- 6.4.1 Although the national minimum wage applies to all people who are working in the UK, it does not apply to agency workers who have employment contracts which were created by agencies outside of the jurisdiction of the UK. As a result these migrant workers are not paid the minimum wage and their conditions of employment are far below the UK standard, as set by equality and employment laws, as well as health and safety legislation.
- 6.4.2 In most cases these are low paid jobs hidden from the public domain, frequently in agriculture or the fishing industry, they often involve menial tasks such as mushroom picking and high risk activity such as cockle picking. Anecdotal evidence<sup>61</sup> has revealed that many workers may have their passports retained by agencies and their freedom of movement restricted under threat of violence. There are also incidents of agencies withholding pay. Management of bank accounts on workers' behalf and tying accommodation to employment also serve as means of controlling agency workers. Such working conditions often amount to a modern form of slavery. There are many Filipino seafarers who are working for Northern Ireland's fishing industry in such poor conditions. NICEM, the Irish Congress of Trade Union, UNISON and the International Transport Federation have been jointly campaigning against the slave-like working conditions imposed by employment agencies in the Philippines. These agencies often abuse the transit visa system.<sup>62</sup>
- 6.4.3 The Concluding Observations of the Economic, Social and Cultural Rights Committee in May 2009 following the UK's 4<sup>th</sup> and 5<sup>th</sup> Periodical Report highlighted that "The Committee is concerned about the unsafe working conditions and low wages of some groups of migrant workers whose employers are registered outside the UK jurisdiction, in particular those employed in the fishing industry who enter the State party on transit visas. The Committee encourages the State party to ensure that the conditions of work of all migrant workers comply with the provisions of article 7 of the Covenant and calls upon the State party to take all necessary measures to investigate the activities of companies employing migrant workers and to ensure that employers contravening the law in this regard are prosecuted and sanctioned." (para. 22, E/c.12/gbr/co/5, May 22, 2009).
- 6.4.4 Whilst we are pleased to acknowledge that following this recommendation the British Government introduced a special work permit for seafarers in an effort to curtail the abuse of

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<sup>61</sup> Forced Labour in Northern Ireland, June 2011, Neil Jarman et al, Institute for Conflict Research, University of Ulster, <http://www.jrf.org.uk/publications/forced-labour-northern-ireland-exploiting-vulnerability> (last accessed 21/7/2011)

<sup>62</sup> See case study and further evidence in evidence appendix

the transit visa system, this new regime is ineffective. Many employers in the fishing industry bypass the work permit regime by claiming that migrants are working outside the 12 miles zone of the UK and/or EU water and therefore do not reside in the UK. There is no inspection to prove if this is the case. More worryingly there is no inspection whatsoever to assess the legal health and safety requirements of these vessels. Living in such conditions offshore can seriously endanger the lives of migrants.

- 6.4.5 We are also encouraged that the Agency Workers Directive (EU Directive 2008/104/EC) is currently being considered in the NI Assembly, with a transposition deadline of 5 December 2011. As employment is a devolved matter in Northern Ireland, it is for the Assembly to transpose the Directive and legislatively enshrine equal treatment and protection of agency workers in Northern Irish law. We strongly recommend that the Assembly implements robust legislation that results in substantive equality for agency workers on a par with other workers in Northern Ireland, and that effective ‘anti-avoidance’ measures are put in place to ensure that agencies are not able to sidestep their obligations merely by ending a contract of employment just before the time that rights under the Directive kick in.
- 6.4.6 However, we have concerns that the current definition of “agency workers” within the draft Agency Workers Regulations may allow hirers and agencies to side-step their obligations, by constructing contractual and non-contractual relationships that don’t come within the definition of “agency workers”, hence leaving many workers open to abuse and exploitation and rendering the Directive ineffective. It is also a matter of concern that recent case law suggests that Northern Ireland’s current equality law does not protect many agency workers, which is a requirement of not only the Agency workers Directive but other EU equality Directives. Furthermore, the liability and enforcement provisions in the current draft Regulations are ineffective, and incompatible with fundamental principles of EU law.
- 6.4.7 In the meantime, the existing legislation to protect the rights of migrant workers must be enforced more effectively and extended to reflect all instances of agency work. This includes extending the remit of the Gangmasters Licensing Authority to include all forms of labour providers, and introducing monitoring requirements to ensure that the rights of workers are being enforced.

#### **Suggested Questions:**

- **How many cases have been prosecuted in the UK (with a breakdown of information for Northern Ireland and Scotland) regarding employers who exploit and endanger the lives of migrant workers working in the fishing industry?**
- **Why there is no inspection of the fishing vessels off the UK coast?**
- **What measures will the devolved NI Government take to prevent the exploitation of agency workers?**
- **How does the devolved NI Government intend to monitor legal compliance of employers of migrants?**
- **Will the UK Government remove the immigration restrictions and apply the same employment, equality, health and safety law, etc. to all agency workers immediately?**

- Will the UK and NI Governments ensure that employers are jointly liable with agencies outside the UK for breaches of the rights of migrant agency workers?
- Will the devolved NI Government address the inadequacies in the current draft Agency workers Regulations to make them more robust in protecting and enforcing the rights of all Agency workers?

## 6.5 The right to equal treatment before the tribunals and all other organs administering justice

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

- 6.5.1 Statistics show that those who are unrepresented in discrimination cases at tribunals in Northern Ireland are more likely to lose their case than those who do have representation. Civil legal aid is not available for any discrimination in employment case in the UK. Ethnic Minorities are less likely to have connections or influence in order to access lawyers willing to do pro-bono work. Lack of such assistance contributes to a low success rate for discrimination cases. As such many employers do not feel pressurised to follow law and procedure. According to the Office of the Industrial Tribunal and the Office of the Fair Employment Tribunal in 2009 to 2010 none of the cases in either of the tribunals were successful where claimants had no legal representation or assistance, therefore suggesting that such representation is essential in guaranteeing access to justice. Legal representation can help streamline cases, thus saving judicial time and resources.<sup>63</sup>
- 6.5.2 Most migrant workers neither know their statutory rights nor join trade unions. Moreover, many migrant workers speak very little English. Their protected rights are more difficult to realise. In our experience, when migrant workers complain to their employer or their agent, the latter will not follow the statutory grievance procedure by not informing the complainants of their rights, or work colleagues are unwilling to be witnesses for the complaining migrant workers. As a result migrant workers have no protection due to their vulnerability and they might be sacked for different reasons, without redress.

#### **Suggested Questions:**

- What measures have the UK Government introduced to improve the accessibility of migrant workers to the means to pursue their protected rights?
- What will the devolved NI Government do to ensure greater access to legal representation for vulnerable Black and Minority Ethnic people in the tribunal system in Northern Ireland?

## 6.6 Recognition of qualifications of Migrant workers

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

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<sup>63</sup> For example: CAB, 'Towards a business case for legal aid' (July 2010), p 29 or Law Centre, 'Redressing Users' Disadvantage: Proposals for Tribunal Reform

6.6.1 In Northern Ireland many highly skilled workers are working in unskilled jobs or semi skilled jobs for wages and conditions unfavourable to the local population.<sup>64</sup> Whilst we welcome the pilot work done through the United Kingdom National Academic Recognition Information Centre (UK NARIC) by the Department for Employment and Learning in its Dungannon and EURES (EUROpean Employment Services) offices to provide qualifications equivalences to migrants more locally, it is currently limited to a small geographical area and it is targeted at employers rather than individuals.

**Suggested Question:**

- **How successful was the 3 month pilot (launched in December 2010) by the NI Department for Employment's Employment Service in its Dungannon and EURES offices to provide qualification equivalences to migrants more locally in Northern Ireland, are there plans to make it more permanent and expand it beyond this limited location?**

**6.7 Standard of service and care of minority ethnic people**

***5(iv) The right to public health, medical care, social security and social services***

6.7.1 There is much evidence to suggest that non-nationals experience difficulty in accessing the health care which they are entitled to. Problems commonly arise as a consequence of either a language barrier or from resistance and hostility from individual members of staff. In order to register with GP a complex form is required to be filled out in English and little assistance is given in doing this. Lack of provision of interpreters remains a cause for concern. A research report commissioned by NICEM points to insufficient anti-racism training of staff and an "unintentional and often unconscious but persistent bias" towards ethnic minorities<sup>65</sup>.

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

6.7.3 In times of economic downturn migrant workers face compounded vulnerability accentuated by unemployment and mental health problems. In light of the economic downturn leading to more migrants losing their jobs, charities have reported an increase in destitute migrants experiencing drug and alcohol addiction issues. There have been several preventable tragic incidents due to such issues. In December 2009 a 30-year-old Polish man, known to suffer from

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<sup>64</sup> See case study under relevant section in evidence appendix

<sup>65</sup> Delivering on Equality, Valuing Diversity; A Report examining the impact of ethnicity on health needs and relevant statutory service provision in Northern Ireland", NICEM, 2004

alcoholism died of exposure to the bitterly cold conditions during the Christmas period.<sup>66</sup> His case echoes the tragic situation of a destitute 27 year old Ukrainian woman who had both her legs amputated following horrific injuries gained as a result from sleeping rough in Coleraine in 2005. The NI Department of Health should tailor their Misuse of Drugs and Alcohol Scheme in order to reflect the needs of such Migrants. Preventative measures and support mechanisms could avert such tragedy.

- 6.7.4 There appears to be a notable ambiguity in relation to entitlements to access of publically funded primary care services<sup>67</sup>. There are many migrants whose applications for registration have been turned down at GP surgeries by front-desk staff. Staff do not always appear to be fully aware of legislation/guidance when processing applications for GP registration.<sup>68</sup> GPs and GP receptionists frequently act as self-appointed gatekeepers for registration to services, at the moment many vulnerable migrants rely on emergency services for all health provision as they cannot access GP surgeries.
- 6.7.5 Difficulties also arise in securing appointments with female doctors for Muslim women and also in obtaining test results, this is often due to a combination of language barriers and the health service's confidentiality policy. There is a need for specialist tailored services to meet the needs of ethnic minorities in the health service. NICEM is currently working with several health trusts to develop a pilot to monitor ethnic minority usage of front line health services. Such monitoring work is vital for the development of appropriate services, similar initiatives with dedicated resources should be carried out throughout the health system.

### **Suggested Questions**

- **What measures will the NI Department of Health take to ensure that drug and alcohol misuse services are provided for vulnerable migrants?**
- **What measures will the devolved NI Government take to ensure that all those who are entitled to health care services will receive them in line with international Human Rights legislation?**

## **6.8 Low Educational attainment and bullying of Ethnic Minority Children**

### ***5e(v) The right to education and training***

- 6.8.1 Ethnic Minority children face a number of barriers when it comes to accessing education and training in Northern Ireland. Disparities in educational attainment highlight the unequal educational experience that many BME children receive. In 2008/09 ethnic minority students were 3 times more likely than other students to leave school with no GCSE qualifications<sup>69</sup>.

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<sup>66</sup> See NICEM Press release, 30<sup>th</sup> December 2011, [http://www.nicem.org.uk/press\\_index/article/press-release-on-crisis-fund-and-human-rights](http://www.nicem.org.uk/press_index/article/press-release-on-crisis-fund-and-human-rights)

<sup>67</sup> "Access denied- or paying when you shouldn't" NIHRC 2011

<sup>68</sup> The Belfast Migrant Centre ([www.belfastmigrantcentre.org](http://www.belfastmigrantcentre.org)) has noted an increase in A2 migrant clients who have been unable to access GP services since August 2010.

<sup>69</sup> Good Relations Indicators 2010 update, under priority 7.5c data set, can download at: <http://www.ofmdfmi.gov.uk/gr-pubs>

There are several contributing factors to the underachievement of ethnic minorities pupils - most prominently bullying.

- 6.8.2 Children and young people of ethnic and religious minorities background routinely experience racial and religious bullying in the school system. Recent research found that 42% of minority ethnic 16-year-old students had been “a victim of racist bullying or harassment in their school”.<sup>70</sup> The current legislative framework means that schools are not legally responsible for pupil on pupil harassment on the grounds of race. Consequently school authorities frequently deny any racial or religious elements when they receive complaints. Many children are victimised as the result of their complaint and the institutionalized racial discrimination is not dealt with.<sup>71</sup>
- 6.8.3 In Northern Ireland 13.7% of newcomer pupils<sup>72</sup> attend grammar school compared to 42.5% of non-newcomer students.<sup>73</sup> Pupils who attend grammar school are more likely to achieve higher levels of academic attainment,<sup>74</sup> to attend University and get a better paying job than those who do not. The use of school entrance tests that have a strong English-language component, along with questions with a strong local history component are clearly a factor in limiting access to such education.<sup>75</sup>
- 6.8.4 In recognition of their additional needs, schools receive additional public funding for newcomer pupils. However this money is not earmarked for any particular purpose so there is no guarantee that it will actually be spent on newcomer pupils. Furthermore there is no monitoring of actual spend on newcomer pupils by Education and Library Boards. Such policies also do not address the needs of second-generation ethnic minorities who may speak perfect English but whose parents may not. The inclusion and diversity service of the Department of Education does make interpreters available but schools do not always use them. Such pupils often suffer from racially motivated bullying, if parents cannot communicate with teachers such matters become more difficult.
- 6.8.5 The Department of Education’s current categorization of a student’s ethnicity is based on skin colour ('white' and 'other') with the exception of Travellers who are included as 'other'.<sup>76</sup> More robust monitoring data is required in order to better target the needs of ethnic minority children.

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<sup>70</sup> NCBNI and ARK YLT (2010) *Attitudes to Difference* page 55.

<sup>71</sup> The RRO does not account for 3<sup>rd</sup> party harassment in NI, this is covered by the new single equality legislation in GB

<sup>72</sup> Defined as a pupil “who does not have the satisfactory language skills to participate fully in the school curriculum and does not have a language in common with the teacher” in DENI 2009 *Supporting Newcomer Pupils* page iii)

<sup>73</sup> Source, personal communication with DENI by Eoin Rooney of NICEM

<sup>74</sup> The proportion of school leavers with no GCSE’s or formal qualifications in 2008/09 was 0.8% in grammar schools and 8.4% in non-grammars. DENI (2010) *Qualifications and Destinations of Northern Ireland School Leavers 2008/09* table 1.

<sup>75</sup> See case study in evidence appendix

<sup>76</sup> School Leavers Statistical Resources [http://www.deni.gov.uk/index/32-statisticsandresearch\\_pg/32\\_statistical\\_publicationsindexofstatisticalpublications\\_pg/32\\_statistical\\_publications\\_pressreleases\\_pg/32\\_national\\_statistics\\_school\\_leavers\\_pg.htm](http://www.deni.gov.uk/index/32-statisticsandresearch_pg/32_statistical_publicationsindexofstatisticalpublications_pg/32_statistical_publications_pressreleases_pg/32_national_statistics_school_leavers_pg.htm) (link last accessed 31/5/2011)

6.8.6 The Joint Council for Qualifications (JCQ) sets the rules for GCSE and GCE examinations across the UK.<sup>77</sup> It specifies that a reader (a person who reads the questions to candidates) can be provided to those whose English is significantly below average *unless* it is caused by English not being their first language. The rationale for this discrimination is not explained, teachers that NICEM have interviewed have stated that readers would make a big difference to the performance of pupils for whom English is not their first language.<sup>78</sup> In addition newcomer pupils who are permitted to use bilingual dictionaries may be allowed a maximum of 25% extra time (depending on need) in recognition of the language barrier. However this only applies to candidates who have been resident in the UK for less than 2 years. This arbitrary time limit does not reflect the fact that each pupil has different individual needs depending on language skills and other factors. Indeed research shows that on average, pupils who do not have English as a first language take five to seven years to engage academically with English on an equal basis.<sup>79</sup>

#### **Suggested Questions:**

- **What measures have been introduced to tackle racial and religious bullying in the school system in NI?**
- **What measures have been introduced to support ethnic minority young people with low educational attainment in NI?**
- **How will the devolved NI Government monitor the progress of newcomer pupils in acquiring English and ensure that resources allocated for newcomers are used effectively?**
- **Will the devolved NI Government amend the definition of harassment under the Race Relations Order (NI) to cover “third party harassment” so that schools can be held liable for pupil on pupil bullying?**
- **Will the devolved NI Government remove the restriction on readers for candidates whose below average English reading skills are due to English not being their first language?**
- **Will the devolved NI Government abolish the arbitrary time extension for examinations and provide newcomer pupils with extra time and assistance on the basis of individual need alone?**
- **Will the Department of Education in Northern Ireland adopt a more rigorous categorisation of ethnicity that is relevant to the specific circumstances of Northern Ireland?**

#### **6.9 Access to English classes**

##### ***5e(v) The right to education and training***

6.9.1 In Northern Ireland there is a substantial fee to access English classes for speakers of other

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<sup>77</sup> JCQ (2010) Access Arrangements, Reasonable Adjustments and Special Considerations.

<sup>78</sup> See NICEM’s report “Promoting Racial Equality in Northern Ireland’s post Primary Schools” June 2011, <http://nicem.org.uk/elibrary/publication/promoting-racial-equality-in-northern-irelands-post-primary-schools> (last accessed 21/7/2011)

<sup>79</sup> This is known as Cognitive Academic Language Proficiency (CALP). See J Cummins (2008) *BICS and CALP: Empirical and Theoretical Status of the Distinction*.

languages (ESOL)<sup>80</sup>, such fees do not apply in the rest of the UK. The Government does not provide assistance for asylum seekers who receive very limited benefits to access these classes. A proposal for free accredited English language classes for asylum seekers and refugees<sup>81</sup> has received widespread support from the OFMDFM Immigration Sub-Group, which consists of Government departments and statutory and voluntary organisations. The proposal outlines the considerable benefits associated with the ability to communicate in English and points to a fairly modest cost of implementing the proposed policy. Unfortunately, however, the Department for Employment and Learning has not yet issued a decision on the matter. Often voluntary sector organisations provide free English classes, however such organisations are not recognized as certificated learning centres (as required for certain visa applications).

### **Suggested Question;**

- **Does the devolved NI Government intend to address the disparity between GB and NI and introduce accessible English classes for migrants and vulnerable asylum seekers?**

## **6.10 Access to English tests for non-EU spouses requiring visas**

### ***5e(v) The right to education and training***

- 6.10.1 In November 2010 it became compulsory for all third country migrants who want to enter or extend their stay in the UK as a spouse, civil partner, unmarried partner or fiancé of a British citizen or a person settled in the UK to prove that they have passed an English test with a UKBA-approved provider (unless they are exempt as being a national of a UKBA list of English speaking countries or have undertaken a Bachelors degree in English). In Northern Ireland there is only one institution - International House - that offers English tests approved by the UKBA without requiring the applicant to first take a course. Other institutions will only allow an applicant to sit an English test after attending a course at their institution.
- 6.10.2 Spouses are required to sit an English test at Level A1 of the Common European Framework of Reference. The UKBA on 6th April 2011 published a revised list of approved English language test providers. International House only offers one approved English test at Level A1 - the TOEIC test.<sup>82</sup> However, they only offer the listening and reading component of the test, whilst the UKBA require the applicant to have sat both the listening and speaking elements of the test.
- 6.10.3 Consequently, there is nowhere in Northern Ireland where the spouse of a British citizen/settled person can sit a UKBA approved English test at Level A1 in order to extend their stay in the UK. This places applicants from Northern Ireland at a significant disadvantage to those in other parts of the UK where there is a greater number of English language testing centres.

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<sup>80</sup> See <http://www.lawcentreni.org/policy/policy-briefings/694> (last accessed 27/5/2011); one semester (15 hours per week) is around £245, taking into account the concessionary rate

<sup>81</sup> <http://www.lawcentreni.org/policy/policy-briefings.html>

<sup>82</sup> Test of English for International Communication (TOEIC)



**Suggested Question;**

- **Will the UK Government take into account the lack of approved English language test providers in Northern Ireland when assessing applications for extension of leave from spouses resident in Northern Ireland?**

**6.11 The enjoyment of language and cultural rights by ethnic minorities in Northern Ireland**

***(vi) The right to equal participation in cultural activities***

6.11.1 Little effort has been made to allocate resources to ethnic minority groups to sustain their language and culture. Most of the ethnic minority community groups use their own resources to set up language classes for their children to learn their mother language. The current Northern Ireland Government policy on language support programmes are only for the two majority communities and exclude ethnic minority languages. As a result, there are significant resources dedicated to the Irish language and Ulster Scot language whilst ethnic minority languages are not available. This is a discriminatory practice in breach of Article 1, 2 and 5(e)(vi) of ICERD.

**Suggested Question:**

- **Will the UK Government make specific measures to support and to promote the language and cultural identity of ethnic minorities in Northern Ireland?**

## **ETHNIC MINORITY GROUPS IN NORTHERN IRELAND THAT ENDORSED THIS SUBMISSION**

- African Community Support Organisation of Northern Ireland
- AI NISA Association NI (Muslim women's community group)
- Alliance of Filipino Communities in Northern Ireland
- An Munia Tober (Irish Travellers' community group)
- Bangladeshi Welfare Association (Northern Ireland community group)
- Belfast Islamic Centre
- Belfast Migrant Centre
- Chinese Welfare Association Northern Ireland
- Indian Community Centre (Northern Ireland community group)
- Mandarin Speakers Association (Northern Ireland community group)
- Northern Ireland Community for Refugees and Asylum Seekers
- Northern Ireland Council for Ethnic Minorities
- Northern Ireland Multicultural Association
- Northern Ireland Muslim Family Association
- Northern Ireland Pakistani Cultural association
- Northern Ireland Sikh Association
- Omagh Ethnic Community Support Group
- Pakistani Community Association (Northern Ireland community group)
- Polish Association of Northern Ireland
- Portuguese Association of Northern Ireland
- Sikh Women and Children's Association (Northern Ireland community group)
- Strabane Ethnic Communities Association
- Banardo's Tuar Ceatha (Irish Travellers and Ethnic Minorities children support group)
- UNISON Northern Ireland Race Group
- Windsor Women's centre (Northern Ireland women's support centre with a permanent multicultural group)
- Women of the World

## **OTHER ORGANISATIONS THAT ENDORSE THIS SUBMISSION**

- Committee on the Administration of Justice
- Law Centre NI

## Glossary

**A2 nationals:** Nationals from Romania and Bulgaria that joined the EU in 2007.

**A8 nationals:** Nationals from the states that joined the EU in 2004 (Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, Slovakia and Slovenia).

**Agency workers Directive:** EU Directive 2008/104/EC on Conditions for Temporary (Agency) Workers

**ARK YLT:** Access Research Knowledge (joint resource between Northern Ireland Universities) Young Life and Times Survey

**Belfast Agreement 1998:** Northern Ireland Peace Agreement comprised of 2 interrelated documents; a multi-party agreement by most of Northern Ireland's political parties, and an international agreement between the British and Irish Governments

**Blue Blindfold campaign:** campaign launched in 2007 to raise awareness on the nature and extend of Human Trafficking.

**BME:** Black and Minority Ethnic

**BNP:** British National Party

**CEDAW:** Committee on the Elimination of the Discrimination Against Women

**CSI:** The Cohesion, Sharing and Integration Programme for Government initiated by the NI OFMDFM

**CTA:** Common Travel Area

**DENI:** Department of Education Northern Ireland

**DUP:** Democratic Unionist Party

**ECHR:** European Convention on Human Rights

**ESOL:** English for Speakers of Other Languages

**EU:** European Union

**EEA:** European Economic Area

**EURES:** EUROpean Employment Services

**FCNM:** Framework Convention for the Protection of National Minorities

**Garda Síochána:** Police forces in the Republic of Ireland

**GB:** Great Britain

**GCE:** General Certificate of Education

**GCSE:** General Certificate of Secondary Education

**GES:** NI Gender Equality Strategy 2006-2016 initiated by the NI OFMDFM

**Good Friday Agreement 1998:** another term for the Belfast Agreement 1998(see above)

**GP:** General Practitioner

**HMLO:** Hate Incident Minority Liaison Officer

**HMO:** House of Multiple Occupancy

**HRC:** Human Rights Committee

**ICCPR:** International Covenant on Civil and Political Rights

**ICERD:** International Convention on the Elimination of all forms of Racial Discrimination

**ICESCR:** International Convention on Economic, Social and Cultural Rights

**ILR:** Indefinite Leave to Remain

**IMC:** Independent Monitoring Commission

**JCQ:** Joint Council for Qualifications in NI

**MLA:** Member of the Legislative Assembly

**NI:** Northern Ireland

**NCBNI:** National Children's Bureau Northern Ireland

**NICEM:** Northern Ireland Council for Ethnic Minorities

**NIHE:** Northern Ireland Housing Executive

**NIO:** Northern Ireland Office

**NISRA:** Northern Ireland Statistics and Research Agency

**Northern Ireland Act 1998:** Act of the Parliament of the United Kingdom which established a devolved legislature for Northern Ireland, the Northern Ireland Assembly, after decades of direct rule from Westminster

**OFMDFM:** Office of the First Minister Deputy First Minister

**Operation Gull:** Joint operation between Garda Síochána, PSNI and the UK Border Agency running since 2005 targeting migrants entering Northern Ireland with a view to enter the Republic of Ireland illegally.

**PCC:** Press Complaints Commission

**Pentameter I and Pentameter II:** Operations designed to tackle Human Trafficking on a national scale.

**PSNI:** Police Service of Northern Ireland

**RES:** NI Racial Equality Strategy 2005-2010 initiated by the NI OFMDFM

**Racial Equality Panel:** Body that monitors the implementation of the Racial Equality Strategy in NI

**RRO:** Race Relations (NI) Order 1997

**RRA:** Race relations Act 1976

**ROI:** Republic of Ireland

**Section 75 of the Northern Ireland Act 1998:** Statutory obligations on public authorities to have due regard to promote equality of opportunity for disadvantaged groups and individuals.

**TOEIC:** Test of English for International Communication

**UDA:** Ulster Defence Army

**UK NARIC:** United Kingdom National Academic Recognition Information Centre

**UK:** United Kingdom of Great Britain and Northern Ireland

**UKBA:** United Kingdom Border Agency

**UN:** United Nations

**US:** United States of America

**UVF:** Ulster Volunteer Force

**WRS:** Workers Registration Scheme

## EVIDENCE APPENDIX

### 2.5 Gender based violence and no recourse to public funds

#### Footnote: 5

##### A) Pregnant woman unable to access public funds after split from partner

Source: NICEM case files

Date: December 2009

A Romanian lady moved to Northern Ireland to live with her boyfriend and took up a post as an accountant. After working at the firm for two weeks the company fired the lady when they realized she was pregnant. At that time she split up with her boyfriend and she found herself in a delicate situation, whereby she was not entitled to claim any benefits due to her limited EU rights.

### 3.3.7 Immigration and Asylum Policy

#### Footnote: 17

##### Nigerian national resident in ROI refused residence card for NI despite entitlement

Source: Law centre NI

Date: 2011

X telephoned the Law Centre advice line. He is a Nigerian national who has been lawfully resident in Republic of Ireland since 2001. His spouse, an Irish national, is from Northern Ireland. One of his spouse's family members is ill, and she has returned to Northern Ireland to care for her relative. X is entitled to enter and remain in Northern Ireland by virtue of his spouse's treaty rights. X applied for a Resident Card to confirm his entitlement, however, for reasons which have not been substantiated, his application for a Residence Card was refused. X has been cautioned on a number of occasions by UK Immigration Officers that his presence in Northern Ireland is unlawful and has been threatened with detention and deportation. Fearful of these warning letters, X remains in the Republic of Ireland, effectively separated from his family in Northern Ireland.

### 3.3.9 Immigration and Asylum Policy

#### Footnote: 18

##### Underpaid non- EU worker unable to apply for settlement

Source: Trade Union UNISON

Date: 2011

Imelda, a Filipino migrant, has found working in the nursing home she is in very difficult. She feels that there is a lot of discrimination towards migrant worker staff who are left to pick up the shifts and work that others don't want to do. Yet she cannot leave because she is tied to her employer through her work permit. Recently, her whole world seems to have come crashing down because of new changes introduced by the Home Office. She only heard about it through a friend and she found out that she would now have to be paid £7.02 an hour to be able to apply for settlement. She thought everything would change once she would get her residency and she just could not wait. Now she will not be able to renew her stay as a care assistant either. She is in complete limbo and worries that her whole family will have to be uprooted and returned home because of that.

#### **Section 3.4.4.1; Discrimination against Travellers**

##### **Footnote: 24**

##### Unfair dismissal due to being from the Irish Traveller community

Source: Northern Ireland Industrial Tribunal (Case Refs: 71/04, 72/04, taken by ECNI)

Date: 18/10/2006

In the case of *McDonagh & Stokes v Event 22*, the Claimants were two Irish Travellers, employed by the Respondent through a recruitment agency. They were hired to work as crew in the Odyssey Arena, setting up for the 'Extreme Airjam' event on 21 August 2003 and dismantling the equipment 3 days later once the event had finished. The Claimants worked on the first day, during which time the manager of the event asked them if they were from Dublin. On replying in the negative, the manager did not talk to them again. They finished work and returned to the venue 3 days later to be told by the manager that there was no work for them. At the same time, the Claimants saw the Respondent allow access to another man to do the same work, who the Claimants described as being from the 'settled community'. The tribunal found that the Claimants had been unfairly dismissed, because they were Travellers, and awarded £10,000 each in damages. The figure was so high because the Claimants were also awarded aggravated damages. This arose out of the conduct of the Respondent, who for the duration of the proceedings the Respondent alleged that the Claimants had stolen from his jacket on the first day, a claim which he was never able to back up with any CCTV evidence or evidence of having reported the theft to anyone.

#### **6.3.4 Employment Rights of Migrants, Poverty and access to benefits**

##### **footnote: 56**

##### Lithuanian national refused a training allowance whilst attending a Jobskills programme

Source: Law centre NI casework bulletin 2007 No 2

Date: 2007

The Law Centre acted for a sixteen year old Lithuanian national who has been refused a training allowance while attending a Jobskills programme. The mother of this young student has worker status. Representations were made to the Department for Employment and Learning (DEL), pointing out that we believed the non- payment of this allowance to our client breached EC law.

The matter was referred by DEL to the Departmental Solicitors Office for an opinion. Following discussions between DEL and the Departmental Solicitors Office, it was agreed that training allowances can be paid to eligible trainees with non-employed status who satisfy certain criteria. In particular, a three year residence test must be completed before the training course begins. This residence test applies to a person who is 'settled' in the UK and ordinarily resident in the UK; or to a national of any EU country or the spouse or civil partner or child of such a person; or to an EEA migrant worker or spouse or civil partner or child of such a person. There would appear to be no residence test for persons recognised as refugees by the UK Government or to their spouse, civil partner or child, who have been granted Humanitarian Protection, or have EU Temporary Protection. The residence test will not apply to persons who have indefinite leave to enter or indefinite leave to remain. (Law Centre NI)

### **6.3.8 Employment Rights of Migrants, Poverty and access to benefits**

#### **Footnote: 58**

Employer refuses to pay sick pay and employee is left with no recourse to public funds

Source: NICEM case files

Date: 2007

A man was seriously injured while at work and was unable to continue working. His employer initially paid him sick pay, but refused to pay the remainder of his statutory sick pay after a few months. The man was then sent a letter by his employer telling him he was to be evicted from his tied accommodation. This was in spite of the fact that he was still paying rent. The man did not have a National Insurance number or Home Office registration and was not eligible for any benefits or social housing. NICEM advocated on his behalf, and as a result the employer agreed to continue his sick pay and allow him to live at the accommodation until he could find alternative accommodation.

### **Section 6.3.11; Exploitation and Discrimination in the job market**

#### **Footnote: 59**

A) Racial bias in job interview

Source: Northern Ireland Industrial Tribunal (case taken by ECNI)

Date: 13/11/2007

In the case of *Pherwani v Northern Ireland Council for Postgraduate Medical & Dental Education*, Mr Pherwani, an Indian Hindu, alleged direct and indirect discrimination when he failed to secure the post of Type I Specialist Registrar. He had been employed as Type II Registrar, and he had unsuccessfully applied for the promotion on three occasions. Each time, the interview panel comprised of white, Northern Irish men, and most panel members were on the selection committee on all occasions. The successful candidates were all white and from

Northern Ireland, and graduates of Queens University Belfast. Mr Pherwani claimed that the system for appointment was racially biased. The case was settled and the Respondent agreed to pay £10,000 in compensation and review its recruitment policies to ensure that they were in line with equality legislation.

B) Hotel replaces ethnic minority workers ahead of prominent event

Source: BBC News Online: [http://news.bbc.co.uk/1/hi/northern\\_ireland/7386118.stm](http://news.bbc.co.uk/1/hi/northern_ireland/7386118.stm)  
<http://new.breakingnews.ie/ireland/top-hotel-told-to-keep-foreign-staff-away-from-us-guests-360821.html>

Date: 6/5/2008

In the days that preceded an investment conference at the Culloden Hotel in Holywood, it was alleged that the organizers Invest NI requested that foreign staff were replaced with Northern Irish staff for the duration of the event. The conference, which was attended by British Prime Minister Gordon Brown and Irish Taoiseach Brian Cowen, was intended to showcase Northern Ireland as a good place to invest for American businesses. Invest NI denied that they had made any such demands, but the hotel did concede that there had been concerns raised over the quality of service in the hotel during the conference. The scandal was reported in both the Newsletter and the Irish News, and the story was confirmed by one of the workers in the hotel. The scandal drew widespread criticism from many NGOs including NICEM, politicians and media commentators.

C) Migrant workers paid less than local workers

Source: trade Union UNISON

Date: 2009

Three Polish nationals and one Lithuanian national were working in the construction sector alongside about ninety local workers. All of the employees did the same type of the job and had the same responsibilities. However the migrant workers were paid minimum wage without overtime, whereas all the other workers were paid £3 more per hour and double pay for overtime. The Polish and Lithuanian workers signed up with Trade Unions, and campaigned for equal pay. They did this firstly by refusing to work on Saturdays, then refusing to work overtime, and finally threatening to quit. It took them over two years to be recognized and treated as equals.

D) Exploitation of Filipino agricultural workers

Source: NI Industrial Tribunal (case taken by ECNI)

Date: 12 September 2007

The case of *Garcia, Ballesteros, De Canatelejo, Endozo, Cansicio & Tatlonghari v. Boconnell Mushrooms* concerned six Filipino women working as mushroom pickers. They didn't receive



full copies of the substantive terms of their employment from their employer, and were subjected to unreasonable working conditions. For example, they worked every day of their employment between August 2005 and mid-January 2006 without holiday, including Christmas Day. They were paid a very low wage, gauged per tray of mushrooms collected. After seeking advice from their embassy about their working conditions, their employer responded by prohibiting them from having visitors at their caravan. The employer also threatened them that if they tried to leave they would be reported to the police for infringement of their visa obligations. The Respondent agreed to pay the Claimants £500 each, but denied liability.

E) Polish workers paid less than local workers

Source: Law centre, Case Bulletin 2009 No1

Date: 2009

The Law Centre represented two Polish workers at the Industrial Tribunal in a case alleging race discrimination. Their case was that they were being paid a lower hourly rate than their Northern Irish colleagues. The case was strongly resisted by the employer. The tribunal held unanimously that the men had been discriminated against on grounds of nationality and made a total award in excess of £22,000 to the workers. In addition to loss of earnings, the award included compensation of £5,800 to each worker for injury to feelings. The tribunal highlighted that this was in recognition of the 'significant injury to feelings' and the fact that the treatment was not a one off incident but stretched over a period of more than two years. The tribunal also awarded an uplift of ten per cent on the overall award for the employer's complete failure to follow the statutory grievance procedures.

F) Racial discrimination and victimization of Zimbabwean employee

Source: Industrial Tribunal (case taken by ECNI)

Date: 27 February 2009

*Case of Madavo v Department for Agriculture and Rural Development*

A Zimbabwean vet claimed that he was victimized by the Department of Agriculture after he was disciplined for bringing racial discrimination proceedings against his employer. The man alleged that he was treated in a discriminatory fashion in 1999, and the case was settled in 2003. He then brought proceedings in 2006, claiming that he had been victimised on the basis of his original claim. In 2007, the Department of Agriculture instigated disciplinary proceedings against the man, alleging that he had harassed another employee. This employee was involved in the original racial discrimination case. The Department imposed a disciplinary transfer and a two-year disciplinary warning. The vet then claimed that he had been victimised again, on the grounds that he was being punished for his original racial discrimination case. The case was settled, with the Department denying liability but compensating the man £50,000 damages and admitting that it was incorrect to conclude that he was guilty of harassment.

G) Racial discrimination cultural developed by a company's human resources department

Source: NI Industrial tribunal Zubin v Brett Martin: see also BBC article [http://news.bbc.co.uk/1/hi/northern\\_ireland/8549932.stm](http://news.bbc.co.uk/1/hi/northern_ireland/8549932.stm)

Date: March 2010

A Croatian man, working in Brett Martin polycarbon sheeting company in Mallusk, was regularly subjected to racial harassment and abuse by his supervisor. Mr Nenad Zubin, who has lived in Northern Ireland for over 20 years, alleged racial discrimination and harassment and unfair dismissal after he was sacked for misconduct in 2007. During his employment, Mr Zubin was subjected to abuse about his nationality from his supervisor, and the company's management did nothing to stop this even though they were aware of it. The supervisor, Mr Matt McMurty, told Mr Zubin that "the Serbs were just right to rape your women and children", and made derogatory comments about him to other employees like "See that Croatian fella, he left his wife and 18 kids and came here on the back of a lorry". He sacked Mr Zubin for sleeping at work when he found him lying on the floor beside his machine, but Mr Zubin successfully claimed that he had been the victim of a vendetta at an Industrial Tribunal hearing. In the judgment, the tribunal stated that the actions of Mr McMurty and the company's human resources department had fostered a "culture of fear" among the workers there. Mr Zubin was awarded £53,596 compensation.

#### H) Migrant worker receives different treatment at work

Source: Trade Union UNISON

Date: 2011

Rosario is working in a Private Nursing Home. She covers for other staff when they go on their tea breaks and cigarette breaks. She never seems to get offered breaks to compensate for the facts that she works on when local people take off. She is often lifting residents by herself even though she knows that a hoist should be used. Her manager never gives her any support if she goes asking for help so she finds it easier just dealing with it herself in whatever way she can. The hardest part is the fact that she seems to be on for more evening and weekend shifts than any of her colleagues. She doesn't want to say anything because at least her colleagues are friendly to her. A friend of hers complained and they made her life miserable.

#### I) Racist attack/abuse of Polish worker

Source: Trade Union UNISON

Date: 2011

Izabela is from Poland and works in the Private Nursing Home in South Belfast. She grew increasingly concerned for the welfare of the residents she cares for. She was told to switch off the buzzers that the residents use to call staff. She refused saying that it was unfair and unsafe and she has been picked on ever since. The manager's son threatened her with a hammer when one day she came out at the back where he was having a smoke break with other local staff looking for help to lift a resident. She would like to whistle blow because she feels residents are not treated properly. Some are left in wet nappies all day or ignored when they call out.

However she knows that if she reports this they will know immediately who said something. She lives in an area of South Belfast where Polish residents have been burnt out of their houses before and she is just too scared to take that risk.

J) Racist discrimination towards Italian worker

Source: Trade Union UNISON

Date: 2011

Virgilio works in the Private sector and he feels that every time he makes the slightest mistake it is noted and commented upon. He has been shouted out in front of colleagues and residents in such a disrespectful manner, it has made him feel deeply depressed. He would love to be able to quit his job and look for something else but he is still on his work permit and would not be able to change.

**General information regarding racism towards Migrant workers from UNISON**

UNISON produced a report on Migrant workers, Racism and the Recession in 2009. Through this survey they found that

- 54% of respondent had been personally exposed to racism at work and 83% had encountered racism in their workplace
- 80% of respondents working in the private care sector had experienced racist bullying, discrimination and have felt humiliated at work
- Many reported that migrant workers were disproportionately scrutinised and disciplined – “they can notice your smallest mistake”
- When people challenged racist incidents, 51% were satisfied with their employer’s response in the NHS, against 40% in the private care sector

*“It’s hard to talk openly because I am not from this country. Even if you work at your best they’re still hard to work with. You end up being embarrassed in front of co-workers and even patients.”*  
(Filipino migrant worker)

*“I felt racially discriminated against by one of our doctors, verbally abusing me in front of other people.”* (Filipino migrant worker)

*“They can notice your smallest mistake, but not their biggest mistake.”* (Filipino migrant worker)

*“There are some relatives of our residents in the nursing home who’s asking first for a local nurse / carer before they will discuss their concern about their relative.”* (Filipino nurse)

**6.4 The vulnerability of Agency workers**

**Footnote:62**

A) Exploitation of Filipino fishermen

Source: NICEM / UNISON / ITF

Date: December 2008

See report: <http://www.ictuni.org/uploads/67b098da-831b-4ef7-ba01-f5111705d2bc/Migrant%20Fishers%20Report%20nov%20251108.pdf>

Date: April 2008 (date of initial escape) / October 2008 (date of report by NICEM to the ITF)

11 Filipino fishermen sought assistance from NGOs to be repatriated after suffering abuse at the hands of their employer in Kilkeel in April 2008. The fishermen entered Northern Ireland with transit visas. They lived in cramped communal living quarters, were paid well under the Minimum wage for their work (some claimed that they received only £20 per week for 5 days work), and were forced to work extremely long hours. Their employer also physically assaulted them on a number of occasions. The fishermen escaped from their living quarters together, and immediately sought assistance to be sent back to the Philippines.

B) Exploitation of Filipino fishermen

Source: BBC [http://news.bbc.co.uk/1/hi/northern\\_ireland/7773255.stm](http://news.bbc.co.uk/1/hi/northern_ireland/7773255.stm)

Date: 9 December 2008

After a BBC investigation in 2008, evidence had been found of physical and racial abuse of Filipino nationals who were working in Northern Ireland's fishing industry. It was reported that fishermen could be paid as little as £20 for five days work and some were getting paid £1.20 an hour. However, the Department of Employment and Learning claims that everyone working in UK waters is entitled to be paid minimum wage. Therefore, the treatment of Filipino fishermen in Northern Ireland is a directly violation of social and economic rights in accordance with international standards.

## **Section 6.6 Recognition of qualifications of Migrant workers**

### **Footnote: 64**

A) Highly Skilled Filipino worker unfairly demoted and subjected to unfair treatment

Source: Industrial Tribunal (case taken by ECNI)

Date: 29 January 2008

In the case of *Lizza Angad v. Craig and Ian Emerson T/A Hollygate Lodge Residential Home*, A Filipino midwife working in a residential home as a Senior Carer alleged discrimination in a number of areas of work. She was the only Filipino employee, and the only employee who was transferred to the post of Care Assistant, effectively a demotion, to a nursing home where she did not want to work. Having made it clear when she was initially hired that she did not want to work in a nursing home, she was refused a transfer. Shortly after this she was dismissed. She also alleged that she was not provided with the same training opportunities as the Northern Irish workers at the facility, and was allocated the most unsociable shifts. She further alleged that she had a bonus unlawfully deducted from her pay. The case was settled and the Respondent paid the bonus and agreed to pay a £7500 settlement.

## **6.8 Low educational attainment and bullying of ethnic minority children**

### **Footnote 75**

#### School entrance exam discriminatory towards newcomer pupils

Source: NICEM focus group with African Community Support Organisation of NI

Date: 2009

A young boy from Zimbabwe sat the entrance exam for a particular school and passed it. However, the school then made him sit another exam, which included difficult questions about British history. Having failed that exam he was refused admission. Yet, when a complaint was made by the boy's father claiming he had be discriminated against on the grounds of race, the school revoked their decision and granted the boy admission.

**For further information or inquiry of this submission, please contact:**

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