



# EQUAL RIGHTS TRUST

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## Equal Rights Trust

Alternative report submitted to the 114<sup>th</sup> session of the  
Human Rights Committee in relation to the  
seventh periodic report submitted by:

## The United Kingdom

June 2015

### Statement of Interest

1. The Equal Rights Trust (the Trust) submits this alternative report to the United Nations Human Rights Committee (the Committee) commenting on the seventh periodic report of the United Kingdom.
2. The Equal Rights Trust is an independent international organisation combating discrimination and advancing equality worldwide. The Trust promotes a unified human rights framework on equality, focusing on the complex relationships between different types of disadvantage and developing strategies for translating the principles of equality into practice.
3. The Equal Rights Trust has been involved in promoting the protection of the rights to equality and non-discrimination in the United Kingdom since 2007. In particular, the Trust has consistently advocated for the strengthening of legislation in order to improve protection of the rights to equality and non-discrimination. This has included proposing amendments to the Equality Act 2010 and challenging amendments to this Act and to other laws which would weaken protections already enshrined in law. The Trust is also working with Roma<sup>1</sup> organisations and statutory agencies in the United Kingdom to combat discrimination and promote equality for migrant GRT individuals and communities.

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<sup>1</sup> The UK is home to distinct Gypsy, Traveller and Roma (including immigrant Roma from Eastern Europe), communities each of which has its different culture and identity. Official documents in the UK usually refer to these communities as GRT (Gypsies, Roma and Travellers) (See for example: Department for Education, *Improving the outcomes for Gypsy, Roma and Traveller pupils: final report*, Research Report DFE-RR043, 2010, "Throughout the report, Gypsy, Roma and Traveller is used as an umbrella term embracing all Gypsy and Traveller groups as well as Roma from Eastern and Central Europe. Within this, Roma is a generic term used to describe many different groups of Romani people including, for example, Gypsies, Tsiganes, Sinti Kalé, and Romanichal". In this submission, we will use this acronym when all three groups are referred to.

## Introduction

4. This alternative report focuses on the extent to which the United Kingdom has met its obligations to respect, protect and fulfil the right to non-discrimination. Thus, the submission is primarily concerned with the United Kingdom's performance under two Articles of the International Covenant on Civil and Political Rights (the Covenant): first, Article 2(1) of the Covenant which requires that states parties respect and ensure the enjoyment of the rights provided in the Covenant without distinction; and second, Article 26 of the Covenant which, as the Committee has stated, provides an "autonomous right" to non-discrimination.<sup>2</sup>
5. The report focuses on the particular forms of discrimination and disadvantage experienced by the Gypsy, Roma and Traveller (GRT) communities, who are among the most marginalised groups in the United Kingdom. It presents findings drawn from initial research and consultation undertaken by the Trust in the framework of a project working with Roma organisations and statutory agencies in the United Kingdom to combat discrimination and promote equality for Roma and other GRT individuals and communities.
6. The second part of the report examines the principal means by which the rights to equality and non-discrimination are enforced in the United Kingdom: the Equality Act 2010. The Equality Act 2010 consolidated a number of pre-existing pieces of anti-discrimination legislation. This alternative report reviews a number of provisions within the Equality Act which have not been brought into force by the United Kingdom government, which the Equal Rights Trust believes are vital in order for the United Kingdom fully to meet its obligations to protect and fulfil the right to non-discrimination.
7. In assessing the United Kingdom's adherence to its obligations under Articles 2(1) and 26, this alternative report relies, in part, on the interpretation of these provisions which has been provided by the Committee in its General Comment No. 18.<sup>3</sup> This alternative report also relies upon the Declaration of Principles on Equality (the Declaration),<sup>4</sup> a document of international best practice on equality. The Declaration was drafted and adopted in 2008 by 128 prominent human rights and equality advocates and experts, and has been described as "the current international understanding of Principles on Equality".<sup>5</sup> It has also been endorsed by the Parliamentary Assembly of the Council of Europe.<sup>6</sup>

## Gypsies, Roma and Travellers

8. While many individuals and groups in the United Kingdom are vulnerable to discrimination, among the most disadvantaged groups in the country are the Gypsy, Roma and Traveller (GRT) communities. As noted in the Committee's List of Issues, social stigma and discrimination against GRT individuals and communities results in numerous

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<sup>2</sup> Human Rights Committee, *General Comment No. 18: Non-discrimination*, 1989, Para 12.

<sup>3</sup> *Ibid.*

<sup>4</sup> *Declaration of Principles on Equality*, The Equal Rights Trust, London, 2008.

<sup>5</sup> *Naz Foundation v Government of NCT of Delhi and Others* WP(C) No.7455/2001, Para 93.

<sup>6</sup> Parliamentary Assembly of the Council of Europe, *Resolution and Recommendation: The Declaration of Principles on Equality and activities of the Council of Europe*, REC 1986 (2011), 25 November 2011, available at: [http://assembly.coe.int/ASP/Doc/ATListingDetails\\_E.asp?ATID=11380](http://assembly.coe.int/ASP/Doc/ATListingDetails_E.asp?ATID=11380).

difficulties and obstacles in a variety of areas of life.<sup>7</sup> In the context of the Trust's work on migrant Roma in the United Kingdom, we have undertaken consultation and research on discrimination and disadvantage experienced by this group, as well as similar problems experienced by the broader GRT communities, the results of which are summarised here.

### ***Discrimination in Law***

9. In its General Comment 18, the Committee has stated that “when legislation is adopted by a State party, it must comply with the requirement of article 26 that its content should not be discriminatory”.<sup>8</sup> The Committee further noted that discrimination as protected in the Covenant, incorporates any “distinction, exclusion, restriction or preference”, based on a protected characteristic which has the “purpose or effect” of limiting the enjoyment of rights and freedoms.<sup>9</sup> In *Althammer v Austria*, the Committee expanded on this, recognising that:

*[A] violation of article 26 can also result from the discriminatory effect of a rule or measure that is neutral at face value or without intent to discriminate (...) if the detrimental effects of a rule or decision exclusively or disproportionately affect persons having a particular race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.*<sup>10</sup>

10. Our research and consultations with GRT representatives have identified a number of laws which have the effect of limiting the rights and freedoms of GRT individuals, and which may therefore constitute indirect discrimination within the definition provided in *Althammer*.
11. For example, participants at an Equal Rights Trust focus group highlighted the Scrap Metal Dealers Act 2013, which requires scrap metal dealers to have a licence in order to deal in scrap metal and imposes various requirements upon scrap metal dealers, with the purpose of tackling the trade in stolen metal. The Act requires that a dealer have a licence for each local authority in whose territory they trade. A relatively high proportion of Roma individuals deal in scrap metal as a form of income, often working in a number of local authority areas. As such, the more stringent requirements imposed by the 2013 Act, when compared with earlier legislation may have a disproportionate impact on Roma individuals.
12. Focus group participants also highlighted the potentially discriminatory effects of the rules governing eligibility for free school meals. Section 512ZB(4)(aa) of the Education Act 1996 sets out that eligibility for free school meals is determined by secondary legislation. Taken together, various pieces of secondary legislation governing welfare benefits establish a list of benefits, one of which is that parents must be claiming in order for their children to be eligible for free school meals:<sup>11</sup> income support; income-based Jobseekers Allowance; income-related Employment and Support Allowance; support under Part VI of the

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<sup>7</sup> Human Rights Committee, *List of issues in relation to the seventh periodic report of the United Kingdom of Great Britain and Northern Ireland*, UN Doc. CCPR/C/GBR/Q/7, 20 November 2014, Para 6.

<sup>8</sup> *Ibid.*, Para 7.

<sup>9</sup> Human Rights Committee, *Althammer v Austria*, Communication No. 998/2001, 8 August 2003.

<sup>10</sup> See above, note 2, Para 12.

<sup>11</sup> United Kingdom Government, *Apply for Free School Meals*, available at: <https://www.gov.uk/apply-free-school-meals>.

Immigration and Asylum Act 1999; the guaranteed element of State Pension Credit; Child Tax Credit<sup>12</sup>; Working Tax Credit run-on<sup>13</sup>; and Universal Credit. Roma children, despite their socio-economic disadvantage, are less likely to be eligible for free schools meals than other children for reasons specifically relating to the employment choices and migration status of their parents. Parents in this community tend to be in temporary, part-time and/or informal employment and therefore do not qualify for the benefits which are an eligibility condition for free school meals.

13. Roma have also reported to the Trust their concern about the potentially discriminatory impact of rules governing the allocation of the “pupil premium”, which is a sum of additional funding (approximately £1,000) allocated to schools by central government for each school pupil who is eligible for free school meals. As Roma children are generally not eligible for free school meals, the schools which they attend are not allocated pupil premium funding for having these students. This is particularly pertinent given the concentration of Roma communities in some areas, and the resulting high proportion of Roma students in some schools.
14. Based on these findings, the Trust is concerned that the United Kingdom government has not given full consideration to the potentially discriminatory impact of its legislation, and of the impact of these provisions on GRT persons.
15. **The Equal Rights Trust urges the Committee to recommend that the United Kingdom audit its legislation to ensure that legal provisions do not indirectly discriminate against GRT persons.**

### *Discrimination in Practice*

16. The Committee has stressed that Article 26 of the Covenant requires that states “guarantee to all persons equal and effective protection against discrimination” and that it “prohibits discrimination in law or in fact in any field regulated and protected by public authorities”.<sup>14</sup> Thus, states are required both to ensure that the law provides protection from discrimination in all areas of life regulated by law, and that these protections are effective in eliminating discrimination in practice.
17. The United Kingdom has a generally robust legal framework to protect the right to non-discrimination. The Equality Act 2010 prohibits direct discrimination, indirect discrimination and harassment on a list of grounds which includes race, colour, nationality and ethnic or national origins in the areas of employment, education, services (including public services), premises and associations.<sup>15</sup> However, our research and consultations with GRT representatives indicate that these groups continue to face discrimination and disadvantage in a variety of areas of life, despite the protections afforded by the Equality Act, thus calling into question the effectiveness of these protections.

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<sup>12</sup> Parents receiving this benefit together with Working Tax Credit and with an annual gross income of more than £16,190 are excluded.

<sup>13</sup> A benefit paid for four weeks following the cessation of Working Tax Credit.

<sup>14</sup> See above, note 2, Para 12.

<sup>15</sup> Equality Act 2010, Parts 1-7

18. The evidence presented below includes discrimination and disadvantages in areas which are not themselves subject of the rights protected in the Covenant, such as education and employment. Nevertheless, the Trust notes the Committee's conclusion that Article 26 "is not limited to those rights which are provided for in the Covenant"<sup>16</sup> and considers that all of these patterns of discrimination constitute violations of the United Kingdom's obligations, arising under Article 26 of the Covenant, to ensure that the law provides effective protection from discrimination.

#### *Racism and Hate Crimes*

19. Racism towards the GRT community is "common, frequently overt and seen as justified"<sup>17</sup> and there are many reports of racist abuse and harassment towards individuals.<sup>18</sup> A 2014 report indicated that the most common hate speech in the United Kingdom on Twitter was directed towards Gypsies and Travellers.<sup>19</sup> A 2014 report by Anglia Ruskin University based on interviews and focus groups involving more than 120 GRT individuals presents compelling first-hand evidence of racism, discrimination, violence and various expressions of hate against members of the community.<sup>20</sup>
20. Even so, it is generally accepted that hate crime against GRT individuals is under-reported with the College of Policing attributing this to "a historically poor level of positive, cooperative engagement with the police" and "inadequate or insensitive police responses when such a crime is reported".<sup>21</sup>

#### *Treatment by Police*

21. Racism is not only experienced from members of the public; members of the GRT community are subjected to racism by people in positions of authority, including the police.<sup>22</sup> It has been found that the police have "particularly embedded racist cultures and practices".<sup>23</sup> As noted above, the College of Policing has accepted there has been "a historically poor level of positive, cooperative engagement with the police".<sup>24</sup> In addition,

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<sup>16</sup> See above, note 2, Para 12.

<sup>17</sup> Equality and Human Rights Commission, *Research Report 12: Inequalities experienced by Gypsy and Traveller communities: A review*, 2009, p. v, available at: [http://www.equalityhumanrights.com/sites/default/files/documents/research/12inequalities\\_experienced\\_by\\_gypsy\\_and\\_traveller\\_communities\\_a\\_review.pdf](http://www.equalityhumanrights.com/sites/default/files/documents/research/12inequalities_experienced_by_gypsy_and_traveller_communities_a_review.pdf).

<sup>18</sup> Laine, Dr. P, Spencer, S. and Jones, A. *Gypsy, Traveller and Roma: Experts by Experience: Reviewing UK Progress on the European Union Framework for National Roma Integration Strategies*, 2014, pp. 19-20, available at: [http://ww2.anglia.ac.uk/ruskin/en/home/news/roma\\_report.Maincontent.0007.file.tmp/Experts%20by%20Experience.pdf](http://ww2.anglia.ac.uk/ruskin/en/home/news/roma_report.Maincontent.0007.file.tmp/Experts%20by%20Experience.pdf).

<sup>19</sup> Shubber, K., "Who is the number one target of hate speech on Twitter?", *Wired*, 18 June 2014, available at: <http://www.wired.co.uk/news/archive/2014-06/18/hatebrain-stats-uk>.

<sup>20</sup> See above, note 18, pp. 19-24.

<sup>21</sup> College of Policing, *Hate Crime Operational Guidance*, 2014, p. 31.

<sup>22</sup> See above, note 17, pp. 118, 153.

<sup>23</sup> *Ibid.*, p. 214.

<sup>24</sup> See above, note 21, p. 31.

members of the GRT community have reported harassment by the police. For example, one respondent to the aforementioned Anglia Ruskin University study stated that:

*I've had Police coming into camps late at night putting their sirens on then driving back out again. The Police don't believe anything you say, they always think the bad of you. I've seen newspapers being racist and blaming everything on Gypsy/Travellers even though it wasn't them. It would be good if the media stopped harassing us at camps and sites and the Police were not allowed to move us on during the night or in the early hours.<sup>25</sup>*

### *Housing and Accommodation*

22. GRT persons face a number of challenges in housing and accommodation, although the specific reasons vary. For Roma, who are generally not nomadic, low quality housing, discrimination and the high cost of housing have been identified as key issues.<sup>26</sup> Further, as a result of racist abuse and harassment, some Roma families are forced out of their houses and, in some cases, become homeless as a result.<sup>27</sup>
23. For Gypsies and Travellers, the lack of appropriate trailer sites has a “significant detrimental impact” on their lives.<sup>28</sup> A National Policy Framework and Planning Policy for Traveller Sites, adopted in 2012, includes as one of its key principles collaboration between local authorities, stakeholders, community groups and support organisations in order to encourage fair and inclusive planning strategies. However, many community members consider that this collaboration is not occurring in practice.<sup>29</sup> A study in the South East and East of England indicated that only four out of 115 authorities surveyed had implemented the policy.<sup>30</sup>
24. Moreover, despite the United Kingdom’s assertion that it is “very concerned by inequalities experienced by Gypsies and Travellers”,<sup>31</sup> the government has, in fact, taken actions which have further deteriorated their position. Between September 2013 and September 2014, the Secretary of State for Communities and Local Government employed a policy whereby he would personally determine appeals by Romany Gypsies and Irish Travellers to develop sites on certain areas of protected land. This led to significant delays in the hearing of those

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<sup>25</sup> Laine, Dr. P, Spencer, S. and Jones, A. *Gypsy, Traveller and Roma: Experts by Experience: Reviewing UK Progress on the European Union Framework for National Roma Integration Strategies*, 2014, p. 21, available at: [http://ww2.anglia.ac.uk/ruskin/en/home/news/roma\\_report.Maincontent.0007.file.tmp/Experts%20by%20Experience.pdf](http://ww2.anglia.ac.uk/ruskin/en/home/news/roma_report.Maincontent.0007.file.tmp/Experts%20by%20Experience.pdf).

<sup>26</sup> See above, note 17, p. 25.

<sup>27</sup> *Ibid.*, p. 167.

<sup>28</sup> *Ibid.*, p. 25.

<sup>29</sup> *Ibid.*

<sup>30</sup> *Ibid.*

<sup>31</sup> Human Rights Committee, *List of issues in relation to the seventh periodic report of United Kingdom, British Overseas Territories and Crown Dependencies: Addendum: Replies of United Kingdom, British Overseas Territories and Crown Dependencies to the list of issues*, 25 March 2015, Para 40.

appeals. There was no similar policy, and consequently no delay, in relation to habitations other than Traveller sites within the Green Belt. In January 2015, the High Court of Justice of England and Wales held that the conduct of the Secretary of State was “patently discriminatory”, contrary to section 19 of the Equality Act 2010.<sup>32</sup> The High Court held that the Secretary of State had failed to heed the warnings of his department about the possible disadvantage caused to Romany Gypsies and Irish Travellers by this practice and fell far short of demonstrating that he had considered whether his response was proportionate to his concerns over Traveller sites. In fact, there was no evidence that the Secretary of State had any regard to the need to eliminate discrimination and advance equality, as he was required to do by the Public Sector Equality Duty established in section 149 of the Equality Act 2010.

### *Employment*

25. The 2011 census showed that “Gypsy or Irish Traveller” was the ethnic group in England and Wales with the lowest proportion of respondents who were economically active – only 47%, compared to an average of 63% for England and Wales as a whole.<sup>33</sup> Although concrete evidence is difficult to come by, there is a great deal of anecdotal evidence from across the United Kingdom that individuals known to be Roma, Gypsy or Traveller encounter discrimination when applying for paid work, with numerous examples of individuals not being called for interviews or of jobs being mysteriously “filled”.<sup>34</sup>

### *Education*

26. As demonstrated by Brian Foster, a consultant working with the GRT communities, a Trustee of the Irish Traveller Movement in Great Britain and chairperson of the Advisory Council for the Education of Romany and Other Travellers, and Peter Norton, a Trustee of the Roma Support Group, “in the field of education, GRT communities suffer manifestly unequal outcomes”.<sup>35</sup> There are a variety of factors contributing to this:
- (a) There are difficulties in registering as self-employed (the prevailing form of employment for many GRT individuals) and the complexities in obtaining benefit entitlement mean many individuals experience financial challenges. Without access to benefits in order to supplement self-employment income, costs of school uniforms, sports equipment and footwear may be prohibitively expensive.<sup>36</sup>
  - (b) Relations between schools and GRT parents in secondary education are worse than with other parents. GRT pupils, particularly boys, have the highest school exclusion rates of all ethnic groups.<sup>37</sup>

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<sup>32</sup> *Moore and Coates v Secretary of State for Communities and Local Government* [2015] EWHC 44 (Admin).

<sup>33</sup> Office for National Statistics, “What does the 2011 Census tell us about the Characteristics of Gypsy or Irish Travellers in England and Wales?”, 2014, p. 9, available at: [http://www.ons.gov.uk/ons/dcp171776\\_349352.pdf](http://www.ons.gov.uk/ons/dcp171776_349352.pdf).

<sup>34</sup> *Ibid.*, pp. 40-41.

<sup>35</sup> Foster, B. and Norton, P., “Educational Equality for Gypsy, Roma and Traveller Children and Young People in the UK”, *The Equal Rights Review*, Volume 8 (2012), p. 85.

<sup>36</sup> *Ibid.*, p. 96.

<sup>37</sup> *Ibid.*, p. 93.

(c) There are high levels of bullying and racism. Almost 90% of children from a Roma, Gypsy or Traveller background have suffered racial abuse at school and nearly two thirds have been bullied or suffered physical attacks.<sup>38</sup>

27. **The Equal Rights Trust urges the Committee to recommend that the United Kingdom take further steps to address the high levels of discrimination and disadvantage faced by Roma, Gypsies and Travellers, through ensuring the full and effective enforcement of the Equality Act 2010 and legislation providing protection from hate crimes. This should include, at a minimum, consideration of the effectiveness of its legislation in addressing: (i) hate crimes and ill-treatment by police affecting GRT communities; and (ii) discrimination against GRT persons and communities in housing and accommodation, employment and education.**

### *Positive Action Measures*

28. In addition to ensuring that laws do not discriminate, and that there is a legal regime in place providing effective protection from discrimination, the Committee has recognised that Article 26 gives rise to positive action obligations. It has stated:

*[T]he principle of equality sometimes requires States parties to take affirmative action in order to diminish or eliminate conditions which cause or help to perpetuate discrimination prohibited by the Covenant. For example, in a State where the general conditions of a certain part of the population prevent or impair their enjoyment of human rights, the State should take specific action to correct those conditions. Such action may involve granting for a time to the part of the population concerned certain preferential treatment in specific matters as compared with the rest of the population.<sup>39</sup>*

29. The United Kingdom government has repeatedly recognised the disadvantage experienced by Roma, Gypsies and Travellers. In 2012, for example, a ministerial working group on tackling inequalities experienced by Gypsies and Travellers stated that

*Across Government we are very concerned that Gypsies and Travellers are being held back by some of the worst outcomes of any group across a range of social indicators.<sup>40</sup>*

30. However, a range of stakeholders and commentators have criticised the government for the lack of a comprehensive and effective programme of positive action measures targeted at addressing the disadvantages affecting Roma, Gypsies and Travellers. In particular, the state has been criticised for the weakness of the National Roma Integration Strategy (NRIS). As a member state of the European Union, in 2011, the United Kingdom was required to develop an NRIS. The government has been criticised by civil society organisations for

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<sup>38</sup> Ureche, H. and Franks, M., *This is Who We Are: A study of the views and identities of Roma, Gypsy and Traveller young people in England*, The Children's Society, 2007.

<sup>39</sup> See above, note 2,, Para 10.

<sup>40</sup> Department for Communities and Local Government, *Progress report by the ministerial working group on tackling inequalities experienced by Gypsies and Travellers*, April 2012, p. 3, available at: [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/6287/2124046.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/6287/2124046.pdf).

failing to meet the deadline set by the European Commission for submission of its NRIS,<sup>41</sup> and for submitting a package of different documents which it considered met the requirements of the Commission's framework, rather than developing a dedicated NRIS.<sup>42</sup>

31. Moreover, both the European Commission and other stakeholders have expressed concern about the weakness of the measures set out in the documents provided by the government in place of its NRIS. In its initial assessment in 2012, the European Commission identified gaps in all of the areas under assessment. In respect of measures taken to improve integration in education, employment, housing and healthcare, the Commission identified the absence of budget allocation as a key obstacle to effective implementation; in addition, it expressed concerns about the absence of clear indicators and monitoring mechanisms in many areas.<sup>43</sup> As one commentator has noted:

*[The Commission] tends to focus on the positives, rather than the negatives and highlights examples of best practice. However, a careful reading shows the UK's response to the Framework is lacking in key areas: in healthcare, for example, the UK fails to satisfy any of the four basic measures required by the Framework; whilst in relation to employment, the UK is assessed as endorsing the general goal of the Framework, but only satisfying one out of the seven specific measures the Framework requires.<sup>44</sup>*

32. The Trust shares these concerns and is of the view that the weakness of the government's NRIS response is indicative of an inadequate framework of positive action measures, despite the government's acknowledgement of the particular disadvantages faced by Roma, Gypsies and Travellers.
33. **The Equal Rights Trust urges the Committee to recommend that the United Kingdom adopt a comprehensive package of positive action measures designed to address the particular disadvantages faced by GRT persons, in order to diminish or eliminate conditions which cause or help to perpetuate discrimination.**

## The Equality Act 2010

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<sup>41</sup> Fekete, L., "Abandoning Gypsy, Traveller and Roma Communities ... The UK Way", *Institute of Race Relations*, available at: <http://www.irr.org.uk/news/abandoning-gypsy-traveller-and-roma-communities-the-uk-way/>.

<sup>42</sup> Carrington, A., "What's wrong with the UK Government's response to the EU call for states to adopt a framework on national Roma integration strategies?" *Garden Court Chambers Blog*, available at: <https://gclaw.wordpress.com/2014/02/06/whats-wrong-with-the-uk-governments-response-to-the-eu-call-for-states-to-adopt-a-framework-on-national-roma-integration-strategies/>.

<sup>43</sup> European Commission, Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: National Roma Integration Strategies: A First Step in the Implementation of the EU Framework, COM/2012/0226, 2012, available at: <http://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX:52012DC0226> and European Commission, *National Strategy for Roma Integration – Assessment of United Kingdom's National Strategy*, 2012, available at: [http://ec.europa.eu/justice/discrimination/files/country\\_factsheets\\_2012/united-kingdom\\_en.pdf](http://ec.europa.eu/justice/discrimination/files/country_factsheets_2012/united-kingdom_en.pdf).

<sup>44</sup> See above, note 38.

34. As noted above, the principal means by which the right to non-discrimination is enforced in the United Kingdom is through the Equality Act 2010. The Equality Act 2010 consolidated a number of pre-existing pieces of anti-discrimination legislation and, as noted in paragraph 303 of the United Kingdom's state party report to the Committee, was largely brought into force in October 2010.<sup>45</sup>
35. However, a number of provisions of the Act have yet to be brought into force and thus the full potential offered by the Act to eliminate discrimination and advance equality is not being utilised. In 2013, the Committee on the Elimination of Discrimination against Women (CEDAW) expressed "[concern] that some provisions of the Equality Act have not entered into force" and recommended that the United Kingdom bring them into force.<sup>46</sup> To date, these provisions have still not been brought into force. Instead, since October 2010, the Equality Act has undergone continued, piecemeal amendment, weakening the protections which it offers.
36. There are four sets of provisions which are of principal concern to the Equal Rights Trust. One set of provisions which have not been brought into force are not of direct relevance to the Covenant and therefore to the Committee.<sup>47</sup> Our concerns about the non-implementation or amendment of the other three provisions are set out below.

#### **Section 14: Dual Discrimination**

37. Section 14 of the Equality Act 2010 would prohibit discrimination where it is based on a combination of two grounds. Thus, the provision would provide protection from "dual discrimination", a limited form of multiple discrimination. In its "Plan for Growth" published in March 2011, however, the previous government of the United Kingdom announced that it would not be implementing section 14, in order to "minimise regulatory burdens"<sup>48</sup> and to save "business £3 million per year".<sup>49</sup> In May 2012, following a review of the Equality Act 2010, the Home Office announced that it intended only to "delay commencement" of the provision.<sup>50</sup> The position of the new government – elected in May 2015 – is not known.

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<sup>45</sup> Human Rights Committee, *Seventh periodic reports of States parties due in July 2012: United Kingdom*, UN Doc. CCPR/C/GBR/7, 29 April 2013, Para 303.

<sup>46</sup> Committee on the Elimination of Discrimination against Women, *Concluding Observations: United Kingdom*, UN Doc. CEDAW/C/GBR/CO/7, 30 July 2013, Paras 16 and 17.

<sup>47</sup> Sections 1 to 3 of the Equality Act 2010 would establish a duty on public bodies to have due regard to the desirability of exercising their functions "in a way that is designed to reduce the inequalities of outcome which result from socio-economic disadvantage".

<sup>48</sup> Her Majesty's Treasury and the Department for Business, Innovation and Skills, *The Plan for Growth*, March 2011, p. 23, available at: [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/184602/2011budget\\_growth.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/184602/2011budget_growth.pdf).

<sup>49</sup> *Ibid.*, p. 53.

<sup>50</sup> Home Office Ministerial Statement, "Equalities/Equality and Human Rights Commission", 15 May 2012, available at: <http://www.publications.parliament.uk/pa/cm201213/cmhansrd/cm120515/wmstext/120515m0001.htm#12051577000007>.

38. There is an international expert consensus on the importance of providing protection against multiple discrimination. The definition of discrimination in Principle 5 of the Declaration of Principles on Equality contains a list of grounds upon which discrimination must be prohibited and also includes the phrase “or a combination of any of these grounds”. In addition, Principle 12 requires states to ensure that laws and policies provide effective protection against multiple discrimination and that “[p]articular positive action measures, as defined in Principle 3, may be required to overcome past disadvantage related to the combination of two or more prohibited grounds”.
39. While the Covenant does not explicitly reference multiple discrimination, developments in the last decade indicate that ensuring that “the law shall prohibit any discrimination” including on grounds of “other status”<sup>51</sup> should be interpreted to include prohibition of multiple discrimination. The Convention on the Rights of Persons with Disabilities explicitly recognises the need to protect women and girls with disabilities from multiple discrimination,<sup>52</sup> while both the Committee on the Elimination of Racial Discrimination and the CEDAW have both highlighted the need to protect particular groups from intersectional discrimination.<sup>53</sup> In 2009, the CESCR recognised that “cumulative discrimination has a unique and specific impact on individuals and merits particular consideration and remedying”.<sup>54</sup> In 2010, CEDAW noted that states must “legally recognize and prohibit such intersecting forms of discrimination and their compounded negative impact on the women concerned”.<sup>55</sup>
40. The existence of multiple discrimination in the United Kingdom is well-documented. For example, an inquiry in 2012-13 by the All Party Parliamentary Group on Race and Community found that:

*[T]he unemployment rates of Black, Pakistani and Bangladeshi heritage women have remained consistently higher than those of white women since the early 1980s. Indeed, despite the more frequent attention given to the unemployment rates of ethnic minority men, the overall unemployment rate of ethnic minority women is actually higher, 14.3% compared to 13.2%. When looking at the groups which are the focus of this inquiry – Black, Pakistani and Bangladeshi women – these women are far more likely to be unemployed than both white men and white*

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<sup>51</sup> International Covenant on Civil and Political Rights, G.A. Res. 2200A (XXI), 1966, Article 26.

<sup>52</sup> Convention on the Rights of Persons with Disabilities, G.A. Res. A/RES/61/106, 2006, Article 6.

<sup>53</sup> See, for example: Committee on the Elimination of Racial Discrimination, *General Recommendation No. 25: Gender related dimensions of racial discrimination*, UN Doc. A/55/18, annex V; Committee on the Elimination of Discrimination against Women, *General Recommendation No. 15: Avoidance of discrimination against women in national strategies for the prevention and control of acquired immunodeficiency syndrome (AIDS)*, HRI/GEN/1/Rev.9 (Vol.II); Committee on the Elimination of Discrimination against Women, *General Recommendation No. 18: Disabled women*, HRI/GEN/1/Rev.9 (Vol.II); and Committee on the Elimination of Discrimination against Women, *General Recommendation No. 26 on women migrant workers*, CEDAW/C/2009/WP.1/R.

<sup>54</sup> Committee on Economic, Social and Cultural Rights, *General Comment No. 20: Non-discrimination in economic, social and cultural rights*, UN Doc. E/C.12/GC/20, 2 July 2009, Para 17.

<sup>55</sup> Committee on the Elimination of Discrimination against Women, *General Recommendation No. 28 on the Core Obligations of States Parties under Article 2 of the Convention on the Elimination of All Forms of Discrimination against Women*, UN Doc. CEDAW/C/2010/47/GC.2, 19 October 2010, Para 18.

women. Pakistani and Bangladeshi women are particularly affected, with 20.5% being unemployed compared to 6.8% of white women, with 17.7% of Black women also being unemployed.<sup>56</sup>

41. Given the international consensus on the need to provide protection from multiple discrimination, and the evidence of multiple discrimination affecting certain groups in the United Kingdom, the Trust is concerned that section 14 of the Equality Act 2010 has not been implemented and that the law does not therefore recognise and prohibit multiple discrimination.
42. **The Equal Rights Trust urges the Committee to recommend that the United Kingdom reconsider its approach towards multiple discrimination in section 14 of the Equality Act 2010 and to implement the provision as soon as possible.**

### ***Section 78: Gender Pay Gap***

43. Despite the enactment of the Equal Pay Act 1970, which prohibited discrimination on grounds of gender in pay and remuneration, there remains a gender pay gap in the United Kingdom. This was estimated in 2014 by the Office of National Statistics to be approximately 9.4%, based on median hourly earnings excluding overtime.<sup>57</sup> For some professions, such as skilled trade occupations, the gap is close to 25%.<sup>58</sup>
44. Section 78 of the Equality Act 2010 would allow the government to introduce secondary legislation which would:

*[R]equire employers to publish information relating to the pay of employees for the purpose of showing whether, by reference to factors of such description as is prescribed, there are differences in the pay of male and female employees.*

45. This secondary legislation would not apply to an employer who has fewer than 250 employees, nor to certain specified public authorities.
46. The government elected in 2010 chose not to implement section 78 of the Equality Act 2010. Instead, the government introduced new legislation. A new section 139A of the Equality Act 2010 was introduced by the Enterprise and Regulatory Reform Act 2013 which would allow the government to introduce secondary legislation which:

*[R]equire[s] an employment tribunal to order the respondent to carry out an equal pay audit in any case where the tribunal finds that there has been an equal pay breach.*

47. The secondary legislation (the Equality Act 2010 (Equal Pay Audits) Regulations 2014) came into force on 1 October 2014. Thus, rather than establishing an obligation to undertake equal pay audits on all businesses with 250 employees or more, the new

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<sup>56</sup> All Party Parliamentary Group on Race and Community, *First Report of Session 2012–2013: Ethnic Minority Female Unemployment: Black, Pakistani and Bangladeshi Heritage Women*, 2013, p. 4, available at: [#](http://www.nbpa.co.uk/wp-content/uploads/2012/12/APPGFemaleunemploymentReport-2012.pdf)

<sup>57</sup> Office for National Statistics, *Annual Survey of Hours and Earnings, 2014 Provisional Results*, 19 November 2014, p. 10.

<sup>58</sup> *Ibid.*, p. 17.

legislation establishes a regime in which such an obligation will arise only where an equal pay violation has first been identified.

48. The Trust believes that the persistence of the gender pay gap, despite legislation prohibiting discrimination in pay and remuneration in force for over 40 years, necessitates strong and progressive measures so that the United Kingdom can fulfil its obligations under Article 26 to guarantee equal and effective protection against discrimination. The Trust believes that the mandatory equal pay audits provided for in section 78 of the Equality Act 2010 would provide for a quick and effective means by which employers who were discriminating against women in pay and remuneration could be identified. Indeed, given the difficulty in some organisations in establishing the pay of different individuals, it is likely that the pre-emptive nature of the mandatory audits would have exposed such practices in circumstances where this information would otherwise have been unavailable. Moreover, mandatory audits would have provided a powerful incentive for employers to tackle pay discrimination in their organisations proactively; and would have allowed women to take into account the gender pay gap of a particular organisation when considering their employment options.
49. The approach favoured by the government – by which pay audits will only take place after an employer had lost an equal pay case at an employment tribunal – is notably weaker in that it only addresses discrimination once an employee has taken a case to an employment tribunal. The incentive for employers to tackle pay discrimination proactively is therefore much diminished. Further, women who wish to know the gender pay gap of a particular organisation prior to seeking employment there will not be able to find out unless that organisation has previously lost an equal pay claim.
50. The Trust is therefore disappointed that the government has decided not to implement section 78 of the Equality Act 2010 and has instead opted for a much less effective regime via the new section 139A of the Equality Act 2010.
51. **The Equal Rights Trust urges the Committee to recommend to the United Kingdom reconsider its approach towards the gender pay gap and equal pay audits and to implement section 78 of the Equality Act 2010 as soon as possible.**

***Section 124: Power of Employment Tribunals to make “Wider Recommendations”***

52. Section 124 of the Equality Act 2010 (the 2010 Act) sets out the remedies that an employment tribunal may provide if it finds that there has been a contravention of Part 5 of the 2010 Act (which governs work, including employment, occupational pension schemes and equality of terms).
53. Originally, subsection 124(2) provided for three remedies that an employment tribunal could provide. These were:
  - (a) *a declaration as to the rights of the complainant and the respondent in relation to the matters to which the proceedings relate;*
  - (b) *an order that the respondent pay compensation to the complainant; and*
  - (c) *an appropriate recommendation.*
54. Subsection 124(3) defined an “appropriate recommendation” as

*[A] recommendation that within a specified period the respondent takes specified steps for the purpose of obviating or reducing the adverse effect of any matter to which the proceedings relate—*

*(a) on the complainant;*

*(b) on any other person.*

55. Section 124(7) provides that where the respondent fails to comply with a recommendation relating to the complainant, without reasonable excuse, the tribunal may either increase the amount of compensation that must be paid to the complainant, or, if no such compensation order was originally made, to make one. Failure to comply with a recommendation relating to other persons (known as a “wider recommendation”) does not, however, carry any sanction.
56. In 2015, however, the government introduced legislation amending section 124. Section 2 of the Deregulation Act 2015 – when brought into force – will insert the words “on the complainant” after the words “adverse effect” in section 124(3), and delete paragraphs (a) and (b).<sup>59</sup> The consequence will be that employment tribunals will no longer be able to make recommendations that the respondent take steps in relation to persons other than the complainant.
57. There is now well-established international human rights law and best practice on the remedies and sanctions that states should ensure are available to those whose rights to equality and non-discrimination have been violated. It is not sufficient merely for an individual victim of discrimination to be compensated: states are also under an obligation to eliminate discriminatory practices and ensure non-repetition of the discrimination. Principle 22 of the Declaration of Principles on Equality states:

*Sanctions for breach of the right to equality must be effective, proportionate and dissuasive. Sanctions must provide for appropriate remedies for those whose right to equality has been breached including reparations for material and non-material damages; **sanctions may also require the elimination of discriminatory practices and the implementation of structural, institutional, organisational, or policy change that is necessary for the realisation of the right to equality.** (Emphasis added)*

58. This principle draws inspiration from the Covenant: Articles 2(3)(a) and (c) of the Covenant require states to ensure that those whose rights are violated should “have an effective remedy” and that the competent authorities shall enforce such remedies when granted. This obligation arises in respect of the obligation to ensure that the law prohibits discrimination under Article 26 of the Covenant, as it does to all other Articles. In its General Comment No. 31, the Committee has stated that:

*16. Article 2, paragraph 3, requires that States Parties make reparation to individuals whose Covenant rights have been violated. (...) The Committee notes that, where appropriate, reparation can involve restitution, rehabilitation and measures of satisfaction, such as public*

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<sup>59</sup> Amended section 124(3) will read “An appropriate recommendation is a recommendation that within a specified period the respondent takes specified steps for the purpose of obviating or reducing the adverse effect on the complainant of any matter to which the proceedings relate”.

*apologies, public memorials, **guarantees of non-repetition and changes in relevant laws and practices**, as well as bringing to justice the perpetrators of human rights violations.*

*17. In general, the purposes of the Covenant would be defeated without an obligation integral to article 2 to take measures to prevent a recurrence of a violation of the Covenant. **Accordingly, it has been a frequent practice of the Committee in cases under the Optional Protocol to include in its Views the need for measures, beyond a victim-specific remedy, to be taken to avoid recurrence of the type of violation in question.** Such measures may require changes in the State Party's laws or practices. (Emphasis added)*

59. Both the CESC and CEDAW have also stated that the protections from discrimination contained within their respective treaties require effective remedies which include guarantees of non-repetition i.e. remedies which go beyond the victim to address the underlying cause of the discrimination.<sup>60</sup>
60. The effect of section 2 of the Deregulation Act 2015 is to limit employment tribunals' freedom, such that they would only be able to provide remedies which are victim-specific and not remedies which would address the structural, institutional, organisational, or policy change that is necessary to avoid others in, or affected by, the organisation from suffering from similar discrimination in the future. Not only does this weaken the ability of employment tribunals to tackle discrimination in the workplace more widely, but it leaves the United Kingdom in clear violation of its obligations under Covenant which the Committee has explicitly stated requires the availability of "measures, beyond a victim-specific remedy, to be taken to avoid recurrence of the type of violation in question".
61. **The Equal Rights Trust urges the Committee to recommend to the United Kingdom that section 2 of the Deregulation Act 2015 not be brought into force and that section 124 of the Equality Act 2010 continue to allow for "wider recommendations" to be made by employment tribunals.**

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<sup>60</sup> See above, note 50, Para 40; and above, note 51, Para 32.