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NICEM

**Submission to the UN Committee on the
Elimination of All Forms of Racial Discrimination**

on

the 21st-23rd Periodic Reports of the UK

March 2016

1. INTRODUCTION

- 1.1 The Northern Ireland Council for Ethnic Minorities (NICEM) is an independent non-governmental organisation. As an umbrella organisation¹ we represent the views and interests of black and minority ethnic (BME) communities.² Our mission is to work to bring about social change through partnership and alliance building, and to achieve equality of outcome and full participation in society. Our vision is of a society in which equality and diversity are respected, valued and embraced, that is free from all forms of racism, sectarianism, discrimination and social exclusion, and where human rights are guaranteed.
- 1.2 NICEM welcomes the publication of the United Kingdom's (UK's) State Report for the 21st-23rd periodic report cycle, particularly the UK's acknowledgement of the importance of the Human Rights Act 1998 in protecting racial equality in Northern Ireland (NI).³ The Government's plans to repeal the Human Rights Act are a matter of extreme concern, with significant implications for the protection of racial equality in the UK.
- 1.3 First and foremost, NICEM emphasises that there has been very little change from the NI Executive and the devolved administration in NI since its previous report, so its previous recommendations and the 2011 concluding observations of the Committee still apply. The only notable change has been the publication of a Racial Equality Strategy 2015-2025, discussed further below. However, there is no commitment from the Government on its implementation and its delivery has not been included in the Programme for Government for the next mandate of the Assembly. Nor has any timetable, action plan or set of indicators been laid out to deliver the Strategy.
- 1.4 The NI Executive must move quickly to ensure that this Strategy is implemented, as it makes a range of commitments to tackle discrimination, including legislative reform.

¹ Currently we have 27 affiliated BME groups as full members. This composition is representative of the majority of BME communities in Northern Ireland. Many of these organisations operate on an entirely voluntary basis.

² In this document "Black and Minority Ethnic Communities" or "Minority Ethnic Groups" or "Ethnic Minority" has an inclusive meaning to unite all minority communities. It is a political term that refers to settled ethnic minorities (including Travellers, Roma and Gypsy), settled religious minorities, migrants (EU and non-EU), asylum seekers and refugees and people of other immigration status united together against racism.

³ Committee on the Elimination of All Forms of Racial Discrimination, 'Consideration of Reports Submitted by States Parties under Section 9 of the Convention – Twenty-first to Twenty-Third Periodic Reports of States Parties Due in 2014: United Kingdom of Great Britain and Northern Ireland' (2015) CERD/C/GBR/21-23, para.13

- 1.5 Additional actions are required to tackle the rise in racist hate crime in NI, as well as employment inequalities for BME people living here. These inequalities are accentuated by the primacy given to immigration law, with immigration functions still being excluded from the remit of anti-discrimination law in NI, contrary to CERD's 2011 concluding observations.^{4 5}
- 1.6 These inequalities are becoming increasingly untenable as NI's BME population rises; current 2011 Census data illustrates that the non-White BME proportion of the population has more than doubled since 2001 (from 0.75% to 1.8%).⁶ This proportion rises to 4.5% when taking into account those not born in the UK or Ireland.⁷

2. LEGISLATIVE AND POLICY FRAMEWORK FOR THE PROTECTION AND PROMOTION OF RACIAL EQUALITY

The Legislative Framework

- 2.1 NI's legislative framework for tackling racial discrimination, under the Race Relations Order 1997, is deficient in a number of ways, leaving it 16 years behind the rest of the UK.
- 2.2 These deficiencies include inadequate protection against discrimination on the basis of colour and nationality, non-application of discrimination provisions to some public functions and a lack of protection for agency workers amongst others. A full complement of shortcomings is identified in the Equality Commission's recommendations for law reform.⁸
- 2.3 This is in violation of the UK's obligations under Article 2(a) and 2(d) of ICERD, to ensure that non-discrimination law binds public authorities and to ensure legislation prevents racial discrimination by any persons or group.

⁴ Race Relations (Northern Ireland) Order 1997, Article 20C

⁵ Committee on the Elimination of All Forms of Racial Discrimination, 'Consideration of Reports Submitted by States Parties under Section 9 of the Convention – Concluding Observations of the Committee on the Elimination of Racial Discrimination: United Kingdom of Great Britain and Northern Ireland' (2011) CERD/C/GBR/CO/18-20, para.16

⁶ Northern Ireland Statistics and Research Agency, 'Census 2011: Ethnic Group – Full Detail: QS201NI' (2011); Northern Ireland Statistics and Research Agency, 'Census 2001: Table KS06: Ethnic Group' (2001)

⁷ Northern Ireland Council for Ethnic Minorities, 'The Annual Human Rights and Racial Equality Benchmarking Report 2013/14' (2014), p.5

⁸ Equality Commission for Northern Ireland, 'Strengthening Protection Against Racial Discrimination – Recommendations for Law Reform: Full Report' (2014)

2.4 However, despite the fact that the NI Assembly unanimously passed a motion to review NI's racial discrimination legislation in 2009 and NI's Racial Equality Strategy 2015-2025 repeated this commitment, review of racial discrimination legislation has not been included in the Programme for Government for the next term of the NI Government.⁹

2.5 This is despite the Racial Equality Strategy's commitment that new legislation would be in place by 2017-18.¹⁰

Suggested Questions:

2.6 If the Race Relations Order 1997 is not to be properly amended by 2018, will the UK Government extend the Equality Act 2010 to apply to NI?

The Policy Framework

3.1 The NI Government has recently published a Racial Equality Strategy 2015-2025, which aims to coordinate Government policy across all Departments in order to 'tackle racial inequalities', 'eradicate racism and hate crime', and 'promote good race relations and social cohesion'.¹¹

3.2 To achieve this, the Strategy will establish a high level Racial Equality Subgroup to monitor and review implementation the delivery of an implementation plan; however, Departments themselves will not be obliged to make action plans.¹²

3.3 It is concerning that the Strategy has yet to become operational, despite its publication in December 2015. There has been no move to appoint Departmental Racial Equality Champions, who are to be responsible for overseeing Departmental implementation of the Strategy, nor have any Departments prepared action plans.

3.4 It is important to recall that the previous Racial Equality Strategy was frozen shortly after release, producing only a single year of activity and leaving no operational strategy for a period of eight years, from 2007 to 2015.

⁹ Official Report, 'Northern Ireland Assembly: 26 May 2009' (2009), pp.154-155

¹⁰ Office of the First Minister and Deputy First Minister, 'Racial Equality Strategy 2015-2025' (2015), para.5.11

¹¹ *ibid* para.1.1

¹² *ibid* para.8.7-8.8

- 3.5 Implementation of this strategy is a matter of urgency, as numerous forms of discrimination have flourished in its absence. In terms of discriminatory offences, race hate crime incidents have increased by 34% since 2007, when there was last a functional strategy.¹³
- 3.6 Workplace discrimination is also an issue. Industrial tribunal cases highlight practices such as selectively rehiring staff to exclude ethnic minority staff members and BME workers facing pressure from co-workers not to speak their native language in the workplace.^{14 15}
- 3.7 Discrimination in the education system has also proliferated in the absence of a racial equality strategy. Research evidences a range of behaviours in post-primary schools – including racist bullying, failure to meet language needs, the delivery of a limited religious education syllabus and a failure to meet dietary needs – that contribute to an atmosphere of exclusivity.¹⁶
- 3.8 These inequalities have accompanied a drop in educational performance since a racial equality strategy last operated. In the year 2007/08, a higher proportion of BME pupils obtained three or more A-levels than did ‘White’ pupils. However, by 2013/14, this trend had reversed, with ‘White’ pupils outperforming BME pupils in this category.¹⁷ Furthermore, the proportion of BME pupils who left school with no formal qualifications raised from 4.5% to 5.8% in this same period.¹⁸
- 3.9 These poor educational outcomes have impacted on BME pupils’ employment prospects, with the proportion of BME school leavers entering unemployment raising by 42% over the period 2007/08 to 2013/14 and the gap between ‘White’ and BME schools leavers widening by 33% between these years.¹⁹

¹³ Based on figures from 2007/08 to 2014/15 – Police Service of Northern Ireland, ‘Trends in Hate Motivated Incidents and Crimes Recorded by the Police in Northern Ireland 2004/05 to 2014/15’ (2015), p.9; Police Service of Northern Ireland, ‘Incidents and Crimes with a Hate Motivation Recorded by the Police in Northern Ireland: Quarterly Update to 31 December 2015’ (2016) p.4

¹⁴ *Mirela Niculae v Wellington’s Coffee Shop and Restaurant Ltd and Donna O’Kane* [2014] 1786/13, para.19

¹⁵ *Barbara Klosinska v Countrywide Care Homes Ltd., Bronagh Donaghy, Lisa Mullen, Coleen Toner, Erin Abernethy and Deborah Hawthorne* [2013], para.60

¹⁶ Rooney, E. and Fitzpatrick, B., ‘Promoting Racial Equality in Northern Ireland’s Post-Primary Schools’ (2011), pp. 19-35; Equality Commission for Northern Ireland, ‘Key Inequalities in Education: Draft Statement’ (2015), pp.12-13

¹⁷ Department of Education, ‘Statistical Press Release – Qualifications and Destinations of Northern Ireland School Leavers 2007/08’ (2009), p.13; Department of Education, ‘Statistical Bulletin 5/2015 – Qualifications and Destinations of Northern Ireland School Leavers 2013/14’ (2015), p.17

¹⁸ *ibid*

¹⁹ *ibid*, pp.20 and 26 respectively

3.10 These inequalities, amongst others discussed further below, illustrate the need for the Racial Equality Strategy to be implemented without delay, as the Strategy commits to develop the Government's hate crime approach, identify ways to tackle racist bullying and review fair employment legislation.²⁰

Suggested Question:

3.11 What deadline has the Northern Ireland Executive set for the production of action plans under the Racial Equality Strategy and what indicators will be used to assess these?

3.12 What are the key racial equality issues within each Department and do they have sufficient resources to make a timetabled implementation of actions to tackle these?

3.13 Will the NI Executive ensure there is a sufficient and affordable ring-fenced budget for implementing actions under the Strategy?

3.14 When will the Race Champion of each Department be appointed? Will these champions and policy officials have competence training and understanding of racial equality?

Proposed Repeal of the Human Rights Act 1998

4.1 The Human Rights Act 1998 ('HRA') makes justiciable the rights within the European Convention on Human Rights 1950 ('ECHR'). This legislation is central to progressing racial equality in line with the vision of ICERD, requiring the UK to respect a number of civil and political rights without discrimination.

4.2 Rights realisation in the UK is progressed firstly through the case law of the European Court of Human Rights (ECtHR), which must be taken into account by UK national courts when deciding on relevant cases, as under Section 2(1)(a) of the HRA.

²⁰ op cit n 10, p.5

- 4.3 Cases have found violations in the UK on issues such as discriminatory restrictions of the freedom of religion²¹ and key decisions on areas such as differential treatment within the prison system, discrimination by police authorities and differential access to social security, amongst others, must be taken into account by UK national courts.^{22 23 24}
- 4.4 Rights realisation is progressed secondly through Section 3(1) of the HRA, which requires legislation to be read, insofar as possible, to comply with Convention rights. If legislation cannot be read to be compatible, then it may be declared incompatible by a court under Section 4 of the HRA.
- 4.5 While a declaration of incompatibility does not require the Government to alter legislation, it does carry significant political weight and declarations are usually followed by the amendment of non-compliant instruments.²⁵
- 4.6 Evidently, repealing the HRA would eradicate a vital instrument for progressing and protecting equality between those of different racial groups, nationalities and ethnicities in the enjoyment of civil and political rights, thus impeding the UK's satisfaction of its obligations under Articles 2(1) and 5(d) of ICERD.
- 4.7 It is also notable that Section 8 of the HRA empowers appropriate courts to take remedial action upon finding a contravention of the ECHR, such as the award of damages or an order to rectify the actions of a public authority.
- 4.8 Without this provision, individuals who felt that their rights under the ECHR had been violated would have no choice but to approach the ECtHR directly. Cases before the ECtHR usually take several years to progress, UK legal does not extend to cases taken before the ECtHR and the ECtHR's own system of legal aid makes limited provision.^{26 27 28}
- 4.9 Therefore, were the HRA to be repealed, individuals would have to adopt a significant financial burden in order to have a chance at obtaining a decision on a human rights violation, with no guarantee of a remedy.

²¹ *O'Donoghue and Others v The United Kingdom* [2010] 34848/07, para.110

²² *Rangelov v Germany* [2012] 5123/07, para.105

²³ *Stoica v Romania* [2008] 42722/02, para.132

²⁴ *Gaygusuz v Austria* [1996] 17371/90, para.52

²⁵ For example, *A v Home Secretary* [2004] UK HL 56, [2005] 2 AC 68, para.240, found Section 23 of the Anti-Terrorism, Crime and Security Act 2001 to be incompatible with the right to liberty, leading to its repeal under Section 16 of the Prevention of Terrorism Act 2005

²⁶ Leach, P., *Taking a Case to the European Court of Human Rights* (OUP, 2011) p.21

²⁷ Legal Aid Agency, 'Guidance on Authorities and Legal Aid for Cases in Courts Outside England and Wales' (2014), p.24

²⁸ See: <https://www.hg.org/article.asp?id=4832>

4.10 Consequently, a repeal of the HRA would also have implications for the UK's satisfaction of its obligations under Article 6 of ICERD, as a national source of remedy for human rights violations would be removed, leaving individuals with no access to a realistic alternative.

Suggested questions:

4.11 What assessment has the UK Government conducted of the impact of a repeal of the HRA on the realisation of its international human rights obligations?

4.12 How does the UK Government intend to maintain the same level of access to remedies for discriminatory rights violations in the absence of the HRA?

4.13 Will the Committee confirm that any retreat from the Human Rights Act would be in breach of international human rights standards?

3. IMMIGRATION LAW AND POLICY

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

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

Provisions of the Immigration Act 2014 and the Immigration Bill 2015-16

5.3 The provisions of the Immigration Act 2014 and the proposed provisions of the Immigration Bill 2015-16 are a central aspect of the UK's discriminatory immigration framework.

5.4 Section 22 of the Immigration Act 2014 places a duty on landlords not to rent accommodation to tenants who are disqualified as a result of their immigration status. To satisfy this obligation, landlords must check the status of individuals they suspect of having an insecure immigration status.

- 5.5 In practice, this has meant that landlords discriminate against people on the basis of their nationality, appearance and accent. A report analysing the pilot of this scheme determined that 42% of landlords were less likely to offer someone a tenancy if they did not have a British passport and 27% were reluctant to engage those with 'foreign names or accents'.²⁹
- 5.6 This report also highlighted the fact that immigration checks were not being carried out uniformly, but rather landlords profiled people who 'appear[ed] "foreign"' in order to request proof of their status. This indirect discrimination was apparent in 22% of participating landlords.³⁰
- 5.7 Even more disturbingly, the report concluded that over 40% of landlords tested engaged in direct discrimination, by refusing to let their properties to non-British persons.³¹ This refusal was motivated both by a fear of breaching the Section 22 duty and a preference for the now comparatively uncomplicated tenancies of British nationals.³²
- 5.8 These restrictions on landlords will be intensified under proposals contained within Clause 37 of the Immigration Bill 2015-16, which would make it a criminal offence, punishable by up to five years' imprisonment, for a landlord or an agent to knowingly, or with reasonable belief, allow a person with insecure immigration status to occupy their premises.
- 5.9 Naturally, the prospect of a custodial sentence will only exacerbate the fear that landlords have in leasing to ethnic minority tenants, thus further encouraging the practices of racial profiling and direct discrimination in granting tenancies.
- 5.10 Section 40 of the Immigration Act 2014 prohibits banks from opening current accounts to persons disqualified by means of their immigration status. Under the terms of the proposed Immigration Bill 2015-16, these measures will become much more extreme.
- 5.11 Clause 43 of the Bill would require banks to monitor all of their existing current accounts to ensure that they are not held by a person with insecure immigration status.

²⁹ Joint Council for the Welfare of Immigrants, "No Passport Equals No Home": An Independent Evaluation of the "Right to Rent" Scheme' (2015), p.37

³⁰ *ibid*

³¹ *ibid*

³² *ibid* p.40

- 5.12 Upon finding that an account is held by an individual with an insecure immigration status, Schedule 6 would require the bank to close the account. This would be a unilateral action, with no due process or court order required, thus creating a high chance that erroneous decision-making will render some people destitute.³³
- 5.13 Furthermore, the Home Office would be empowered under Schedule 6 of the Bill to apply for a court order to freeze other assets of individuals identified by this system.³⁴ This amounts to a deliberate attempt to make individuals destitute, resulting in potential infringement of their rights under Article 5(e) of ICERD
- 5.14 The Immigration Bill 2015-16 also makes provision on employment. Clause 33 of the Bill seeks to enhance the offence of ‘employing an illegal worker’, which would see employers imprisoned for up to five years where they employ an individual who is not entitled to work.
- 5.15 In the same manner as the landlord duty discussed above, there is potential for this provision to make employers wary of engaging ethnic minority workers or workers who must provide additional documentation in order to prove their eligibility to work.
- 5.16 Ultimately, the above provisions and proposed provisions clearly infringe the UK’s commitments under Articles 2(1)(a), 2(1)(d) and Article 5(e)(i). Furthermore, as these proposals result in direct discrimination and racial profiling, they are not proportionate for the purposes of Article 1(2).

Suggested questions:

- 5.17 Will the UK Government repeal Sections 22 and 40 of the Immigration Act 2014 and Clauses 37, 40 and 43 of the Immigration Bill 2015-16, which violate Articles 1(2), 2(1)(a), 2(1)(d) and 5(e)(i) of ICERD?**

Support for Refused and Appealing Asylum Seekers

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

³³ Liberty, ‘Liberty’s Briefing on the Immigration Bill for Second Reading in the House of Commons’ (2015), para.22

³⁴ Home Office, ‘Home Office Policy Equality Statement: Immigration Bill 2015 – Access to Services’ (2015), p.2

- 6.2 However, if an individual is refused asylum, then this support is withdrawn. Instead, a refused asylum seeker must apply for support under Section 4 of the Immigration and Asylum Act 1999, or else become destitute. This includes asylum seekers who are appealing an asylum decision via judicial review, as per Regulation 2 of the Asylum Support (Amendment No.3) Regulations 2015.
- 6.3 Section 4 provision is, however, inadequate at preventing destitution for a number of reasons. Firstly, Section 55(2)(a) of the Nationality, Immigration and Asylum Act 2002 prevents people from claiming any form of support where they have not lodged their claim for asylum 'as soon as reasonably practicable' after arriving in the UK.
- 6.4 Secondly, a refused asylum seeker must meet one of the criteria under Regulation 3(2) of the Immigration and Asylum (Provision of Accommodation to Failed Asylum Seekers) Regulations 2005 in order to be eligible for Section 4 support.
- 6.5 This means that they must be unable to leave the UK due to physical impediment, have no viable route of return to their country of origin, have made an application for judicial review, or would have their rights under the European Convention on Human Rights breached by denial of support.
- 6.6 Thirdly, even where an individual is eligible for Section 4 support, they may opt not to apply for it for a number of reasons. Section 4 support is provided subject to the individual adhering to a number of restrictions, such as performing full-time community work and living at a prescribed address that cannot be vacated for more than 14 nights over a 6 month period.³⁵
- 6.7 Additionally, individuals applying for Section 4 support must submit to leaving the UK as soon as possible. For those who fear persecution upon return to their country of origin this is not an option, with many avoiding a Section 4 claim because of its relationship with deportation.^{36 37}

³⁵ Immigration and Asylum (Provision of Accommodation to Failed Asylum Seekers) Regulations 2005, Regulations 4 and 6(2)(c)

³⁶ Amnesty International, 'Down and Out in London: The Road to Destitution for Rejected Asylum Seekers' (2006), p.10

³⁷ British Red Cross, 'Not Gone, But Forgotten: The Urgent Need for a More Humane Asylum System' (2010), p.8

- 6.8 Fourthly, many valid Section 4 claims are erroneously refused by the Home Office at first instance, as evidenced by the high rate of successful appeals against Section 4 decisions – 82% in 2011 and 80% in 2013.^{38 39} Those who are refused at first instance may find themselves destitute for prolonged periods while they appeal the decision.
- 6.9 NI based research demonstrates the impact on refused asylum seekers of the shortcomings in Section 4 provision, with stoppages in support rendering individuals destitute even while they appeal negative decisions.⁴⁰
- 6.10 Those who do receive Section 4 support endure hardship in other ways. The cashless system operated by the Home Office can impede access to food, clothing and travel.⁴¹ The resultant stress of these restrictions can lead to severe mental health issues, similar to those of destitute asylum seekers.⁴²
- 6.11 While it is clear that the maintenance of this system in its current form is already an infringement of the UK's commitments under Article 5(e)(i), (e)(ii) and (f) of ICERD, it must be noted that the current Government intends to further limit the support system in the near future.
- 6.12 Schedule 10, Part 1 of the Immigration Bill 2015-16 makes provision for this further restriction, with a system envisaged that would provide support only where the individual faces a 'genuine obstacle' to leaving the UK or where they have lodged further submissions, such as a judicial review, on their asylum claim.
- 6.13 Consequently, support will not be available for individuals who are 'taking all reasonable steps' to leave the UK, as is currently the case. Additionally, support for those lodging further submissions on their claim will be dependent on these submissions having been lodged for a period of five working days.⁴³

³⁸ Asylum Support Appeals Project, 'No Credibility: UKBA Decision Making and Section 4 Support' (2011), p.3

³⁹ Asylum Support Appeals Project, 'UKBA Decision Making Audit: One Year On, Still "No Credibility"' (2013), p.3

⁴⁰ Northern Ireland Community of Refugees and Asylum Seekers, 'The Effects of Destitution on Refugees in Northern Ireland' (2016), pp.21 and 24

⁴¹ Mulvey, Gareth, "'Even Among Asylum Seekers We Are the Lowest": Life on Section 4 Support in Glasgow' (2009), pp.22-24

⁴² *ibid* pp.24-25

⁴³ Hansard, 'Immigration Bill – Thirteenth Sitting, Tuesday 10th November 2015' (2015), Col. 440

6.14 Thus, individuals who wish to make further submissions on their claim could be without any financial support and therefore destitute for up to a week before receiving Section 4 support. This may impede appeals, thus infringing the UK's commitment under Article 5(a) of ICERD.

Suggested question:

6.15 Will the UK Government make support available to refused asylum seekers for all periods prior to appeal and/or exit from the State, in line with their obligations under Articles 5(a), (e)(i), (e)(ii) and (f) of ICERD?

6.16 What actions will the Northern Ireland Executive take, considering the small number of asylum applications per year in Northern Ireland, to mitigate any future loss of support for refused asylum seekers and thus prevent destitution?

No Recourse to Public Funds

7.1 Section 115 of the Immigration and Asylum Act 1999 states that a person will be unable to access public funds if they are subject to 'immigration control', which includes non-European Economic Area (EEA) citizens who have leave to remain on the proviso that they have no recourse to public funds (NRPF).⁴⁴

7.2 While the Home Office does not publish statistics on how many people have NRPF, research based in England and Wales suggests that they number in the thousands across the UK.⁴⁵

7.3 One of the key issues arising for persons with NRPF in NI concerns the increased vulnerability of BME women who are victims of domestic violence, as being unable to access public funds means that victims cannot access women's refuges due to their being publicly funded.⁴⁶

⁴⁴ Immigration and Asylum Act 1999, Section 115(9)(b)

⁴⁵ No Recourse to Public Funds Network, 'Social Services Support to People With No Recourse to Public Funds: A National Picture' (2011), p.9

⁴⁶ McWilliams, M. and Yarnell, P., 'The Protection and Rights of Black and Minority Ethnic Women Experiencing Domestic Violence in Northern Ireland' (2013), p.20

7.4 This includes women within BME families and, as is increasingly common, non-national women who have entered relationships with local men. The latter group are particularly vulnerable, as they will have entered the country on a spousal visa and thus their immigration status depends on maintaining a relationship with their partner. For victims of domestic violence, this may make them more reluctant to leave their abuser.⁴⁷

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

7.6 2012 to 2014 statistics demonstrate that 61.3% of those who applied for indefinite leave to remain under the Domestic Violence Rule failed.⁴⁸ The difficulty in obtaining leave is worsened by the fact that applicants must pay a significant fee in order to apply for leave to remain under this rule, amounting to £1,500 for a single applicant, with a further £1,500 per dependent.⁴⁹

7.7 While this fee may be waived, it is only in the case where the applicant is entirely dependent upon a third party for financial support.⁵⁰ Domestic violence victims who receive any kind of finances must endure their abusive relationship until they can gather enough money to make an application.⁵¹

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

7.9 In this regard, it is notable that the Racial Equality Strategy commits the NI government to take action to tackle multiple discrimination, such as discrimination faced by women who have NRPF, and to ensure that immigration policy takes account of NI's 'needs and concerns'.⁵²

⁴⁷ *ibid*

⁴⁸ House of Commons, 'Written, Answers and Statements – Daily Report Thursday, 5 March 2015' (2015), p.56

⁴⁹ UK Visas & Immigration, 'Application for Indefinite Leave to Remain in the UK as a Victim of Domestic Violence and a Biometric Immigration Document' (2015), p.2

⁵⁰ *ibid*

⁵¹ *op cit* n 46 p.22

⁵² *op cit* n 10 paras.3.25 and 9.10

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

Suggested question:

7.11 In light of its commitments under the Racial Equality Strategy, what actions will the Northern Ireland Executive take to prevent destitution amongst victims of domestic and sexual violence with NRPF?

7.12 Will the UK Government except those suffering domestic abuse and non-EEA citizens in danger of destitution from having NRPF?

Asylum Seekers and the Right to Work

8.1 Asylum seekers in the UK are denied the right to work until they have been in the UK for a year, whereupon they may be granted permission to work only where they adopt an occupation that is on the UK's list of shortage occupations.⁵³

8.2 The UN Committee on Economic, Social and Cultural Rights has called on the UK to remove its restrictions on asylum seekers' right to work.⁵⁴

8.3 Additionally, EU Directive 2013/33/EU, which the UK has opted out of, seeks to reduce the time that asylum seekers are excluded from the labour market to 9 months after lodging their application.⁵⁵

8.4 The failure to allow asylum seekers the right to work in the UK makes them vulnerable to destitution, which in turn puts individuals at risk of labour and sexual exploitation.⁵⁶ Maintaining this restriction is clearly contrary to the UK's commitment under Article 5(e)(i) of ICERD.

⁵³ Immigration Rules, Part 11B, Paragraph 360

⁵⁴ Committee on Economic, Social and Cultural Rights, 'Concluding Observations of the Committee on Economic, Social and Cultural Rights: United Kingdom of Great Britain and Northern Ireland, the Crown Dependencies and the Overseas Dependent Territories' (2009), para.27

⁵⁵ EU Directive 2003/9/EC, Article 11.2

⁵⁶ Crawley, H., Hemmings, J. and Price, N., 'Coping With Destitution: Survival and Livelihood Strategies of Refused Asylum Seekers Living in the UK' (2011), pp.40, 41 and 47-48

Suggested question:

8.5 Will the UK Government opt into EU Directive 2013/33/EU, to bring itself into closer alignment with its obligations under Article 5 of ICESCR?

Welfare Reform

- 9.1 BME people living in NI also face limited access to social security on the basis of their immigration status, contrary to ICERD Articles 2(a) and 5(e)(iv). Recent reforms to the social security system in NI under the Welfare Reform (NI) Order 2015 have contributed significantly to inequalities in this area.
- 9.2 Schedule 1 paragraph 7 of the Welfare Reform (NI) Order 2015 permits the creation of regulations to require EU citizens to undergo full work-related requirements to access social security, even in circumstances where they would usually be exempted from these requirements.
- 9.3 Thus, an EU citizen who has limited capability to work, has regular and substantial responsibilities for a severely disabled person or is the sole responsible carer for a child under the age of one could be forced to undergo interviews, work preparation and work searches, as well as being required to be available for paid work were the opportunity to arise in order to receive welfare.
- 9.4 Such requirements would severely impede the ability of vulnerable EU citizens to access social security when they are in critical need and clearly constitute discriminatory treatment on the basis of national origins, contrary to Article 2 and Article 5(e)(iv) of ICESCR.
- 9.5 Additionally, the planned rollout of universal credit through online applications and the confusion caused by broad welfare changes are likely to impact heavily on people with language needs, particularly in light of bilingual support services being cut.^{57 58}

⁵⁷ Ad Hoc Committee, 'Report on Whether the Provisions of the Welfare Reform Bill are in Compliance with the Requirements for Equality and Observance of Human Rights' (2013), paras.475 and 476

⁵⁸ Migrant Centre NI, 'The Welfare System and Black and Minority Ethnic Communities in Northern Ireland (2014) pp.18-19

Suggested questions:

9.6 Will the NI Executive make a commitment not to introduce regulations to apply full work-related requirements to EEA citizens as a prerequisite to obtaining jobseeker's allowance?

9.7 Will the UK Government repeal those aspects of welfare reform legislation that discriminate against ethnic minorities?

4. HATE CRIME

10.1 NI has seen a significant rise in racially motivated hate incidents in recent years, with racist crime in 2014/15 reaching its highest ever level recorded.⁵⁹ Indeed, there has been a year on year increase in the number of racist hate incidents between 2011-2015, with a minor 0.4% drop in 2015-16.^{60 61}

10.2 Disturbingly, there is a paramilitary component to racist hate crime in NI, with both the PSNI and the Northern Ireland Affairs Committee acknowledging 'significant loyalist paramilitary involvement in racist violence'.⁶²

10.3 The increase in hate crime has coincided with a significant shift in public opinion on the acceptance of BME people in NI. Between 2010-2014, the percentage of people who would accept an Eastern European person as part of their family dropped from 76% to 47%.⁶³ For Muslim people, this dropped from 52% to 34%.⁶⁴

10.4 This is partially attributable to inflammatory political rhetoric around ethnic minorities. In May 2014, NI's then First Minister made disparaging remarks about Muslims and openly supported the case of a pastor who was being prosecuted for hate speech against Muslim people.⁶⁵

⁵⁹ Police Service of Northern Ireland, 'Trends in Hate Motivated Incidents and Crimes Recorded by the Police in Northern Ireland 2004/05 to 2014/15' (2015), p.9

⁶⁰ *ibid*

⁶¹ Police Service of Northern Ireland, 'Incidents and Crimes with a Hate Motivation Recorded by the Police in Northern Ireland: Quarterly Update to 31 December 2015' (2016), p.5

⁶² Committee for Justice, 'Report on the Committee's Inquiry in the Criminal Justice Services Available to Witnesses and Victims of Crime in Northern Ireland' (2012), para.683

⁶³ Northern Ireland Life and Times, 'Minority Ethnic People: EEREL' (2010); Northern Ireland Life and Times, 'Minority Ethnic People: EEREL' (2014)

⁶⁴ Northern Ireland Life and Times, 'Minority Ethnic People: MUSREL2' (2010); Northern Ireland Life and Times, 'Minority Ethnic People: MUSREL2' (2014)

⁶⁵ Belfast Telegraph, 'Peter Robinson: "I wouldn't trust Muslims devoted to Sharia Law, but I would trust them to go down to the shops for me"' 29th of May 2014

10.5 The pastor involved denounced Islam as Satanic and Muslims as untrustworthy. Despite these comments, hate speech laws were not applied by the prosecution and he was acquitted of any offence under lesser laws on offensive communications.⁶⁶

10.6 The First Minister also showed public support for protestors who attempted to evict an ethnic minority man from public housing because he was not 'local', claiming that the protest was not racially motivated.⁶⁷

10.7 Such rhetoric, freely taking place amidst historically high rates of hate crime, evidences poor political leadership and a failure to tackle hate speech, such as to suggest an infringement of Article 4(c) of ICERD.

10.8 Therefore, it is vital that the UK Government withdraw its interpretative declaration on Article 4 of ICERD, as recommended by CERD's 2010 concluding observations.⁶⁸

Suggested questions:

10.9 Will the UK Government remove its interpretative declaration on Article 4 of ICERD?

10.11 What action plan has the Office of the First Minister and Deputy First Minister to prevent racist attacks in NI?

5. EMPLOYMENT AND INTEGRATION

Recognition of Qualifications

11.1 The BME population in NI is better qualified than average, with research on BME women showing that 56.4% had a university degree and research on BME persons living in the North West of NI showing that 40% of respondents had a degree.^{69 70}

11.2 Despite this, underemployment is a significant issue. Research covering Belfast, Mid-Ulster and Down, and the North West of Northern Ireland highlighted that between 50-63% of BME people feel that they are underemployed.⁷¹

⁶⁶ *DPP v James McConnell* [2016] NIMag 1, paras.1 and 2

⁶⁷ BBC News, 'Robinson: East Belfast Housing Protest "Not Racist"' 18th June 2014

⁶⁸ op cit n 5 para.11

⁶⁹ Isal, S., 'The Experiences of Ethnic Minority Women in Northern Ireland' (2013), p.18

⁷⁰ McAfee, C., 'The Impact of the Economic Downturn on the Black and Minority Ethnic People in the North West of Northern Ireland' (2014), p.2

⁷¹ Rogers, S. and Scullion, G., 'Voices for Change: Mapping the Views of Black and Minority Ethnic People on Integration and their Sense of Belonging in Northern Ireland' (2014), pp.22, 29 and 33

- 11.3 A contributing factor to this underemployment is the lack of recognition of overseas qualifications, which is a significant and long-standing problem in NI and has been identified as a priority issue across the region.^{72 73}
- 11.4 This is compounded by the fact that employers tend to hold a negative perception of qualifications gained overseas, as the recognition system for qualifications tends to rate them lower than ones gained locally.⁷⁴
- 11.5 Ensuring that overseas qualifications are recognised is vital to providing people migrating into the UK with equal access to employment and thus to realising the UK's commitments under Articles 2(2) and 5(e)(i) of ICERD.

Suggested question:

11.6 Will the Northern Ireland Executive provide a free, fast-track system for recognising overseas qualifications?

English as a Second or Other Language (ESOL) Provision

- 12.1 NI's Languages for the Future Strategy recognises that languages are for life, highlighting both the social and economic benefits of language learning.⁷⁵ Learning English is central to living life in NI, with implications for integration, employment, social mobility and citizenship.
- 12.2 Regarding employment and social mobility, better understanding of English has been linked with increased opportunities and higher earnings.⁷⁶ Contrariwise, poor proficiency in English prevents people from advancing in the workplace and thus can contribute to underemployment.⁷⁷
- 12.3 Additionally, not knowing English can be a social obstacle and source of stress for people, as it limits their interactions and renders them reliant on others' assistance.⁷⁸
- 12.4 As regards citizenship, B1 English language competence is required to obtain indefinite leave to remain or British citizenship.

⁷² Wallace, A., McAreavey, R. and Atkin, K., 'Poverty and Ethnicity in Northern Ireland: An Evidence Review' (2013), p.25

⁷³ op cit n 71, pp.27, 33 and 37

⁷⁴ ibid, p.17

⁷⁵ Department of Education, 'Languages for the Future: Northern Ireland Languages Strategy' (2012), pp.11-12

⁷⁶ op cit n 71 p.35

⁷⁷ ibid p.10

⁷⁸ McVeigh, R. and McAfee, C., "'Za Chlebem": The Impact of the Economic Downturn on the Polish Community in Northern Ireland' (2009), pp.23-24

- 12.5 It is concerning, therefore, that despite the importance of English language for life in NI, the NI Government does not currently recognise ESOL as an essential skill. As a consequence, free access to ESOL classes is limited.
- 12.6 Furthermore, few vocational English language courses are available, focused on teaching English appropriate to different fields of employment.⁷⁹ This limits social mobility through employment advancement.
- 12.7 The pricing of ESOL courses is also problematic, with non-EEA students being required to pay around four times more in fees.⁸⁰ This amounts to fees of between £420-£560 for an entry-level course.⁸¹
- 12.8 This discriminatory fee-charging, which contravenes Articles 2(1)(a) and 5(e)(v) of ICERD, is a consequence of treating non-EEA students as 'international students', even where this is not their immigration status.
- 12.9 Non-EEA persons applying for ESOL courses are usually migrant workers, or their spouses or dependents and, therefore, pay taxes. While NICEM acknowledges that some fee should be levied, it is both exploitative and discriminatory to require non-EEA individuals to pay fees four times higher.
- 12.10 A more reasonable fee would be around £150, which is slightly higher than that for home students (£100-£130), but still reflective of the contribution made by non-EEA migrants.
- 12.11 Other factors that limit ESOL availability in NI include lack of childcare facilities on premises, under-availability of advanced level classes and poor availability of irregular hours classes.^{82 83 84}

⁷⁹ op cit n 71p.34

⁸⁰ Good, S., 'Overview of post-16 ESOL provision, accreditations, standards and delivery across Northern Ireland' (2015) p.50

⁸¹ Based on figures from Southern Regional College, South East Regional College and Belfast Metropolitan College

⁸² op cit n 71, pp.50 and 62

⁸³ ibid p.34

⁸⁴ ibid p.37

12.12 These factors are exacerbated by the current policy of delivering ESOL through six further education colleges, rather than through a combination of colleges and community organisations, as is the system in Scotland.^{85 86}

12.13 Diversifying ESOL provision in this way to include community groups, who are capable of running cheaper, more flexible and more targeted language classes could address the above issues.⁸⁷

Suggested question:

12.14 Will the NI Executive recognise ESOL as an essential skill; if not, why not?

12.15 Will the NI Executive diversify its delivery of ESOL to include community groups, in line with the practice of the devolved Scottish Government?

Workplace Discrimination

13.1 Workplace discrimination continues to affect BME people in NI, having a significant impact on their ability to obtain fair work that suits their skills. Research across NI showed that 49% of respondents in Belfast, 48% of respondents in the North West and 49% of respondents in Mid-Ulster and Down had experienced racial discrimination at work.⁸⁸

13.2 More targeted research has illustrated that 44.5% of surveyed Filipino healthcare workers experienced discrimination in the workplace, with nearly half of those being harassed by work colleagues and 44.4% being harassed by service users.⁸⁹

13.3 This research also illustrates how discriminatory treatment can limit the freedom BME workers exercise over their employment, with respondents reporting that refusals to work extreme hours may be punished by the withdrawal of hours by their employer.⁹⁰

⁸⁵ op cit n 80, p.46

⁸⁶ The Scottish Government, 'Welcoming Our Learners: Scotland's ESOL Strategy 2015-2020 – The English for Speakers of Other Languages (ESOL) Strategy for Adults in Scotland 2015' (2015), p.5

⁸⁷ op cit n 80 p.53

⁸⁸ op cit n 71 pp.22, 29 and 33

⁸⁹ Northern Ireland Council for Ethnic Minorities, 'Bayanihan! The Filipino Community in Northern Ireland' (2012), p.22

⁹⁰ ibid p.21

- 13.4 Evidence also highlights the ability of discrimination to prevent BME workers from obtaining just and favourable working conditions, with BME workers being targeted to perform undesirable jobs and long hours, as well as being passed over for promotion.^{91 92}
- 13.5 Thus, there are clear shortcomings in the UK's satisfaction of its Article 2(1)(d) and Article 5(e)(i) obligations on the right to work and ending racial discrimination by any persons, group or organisation.
- 13.6 Of particular concern, in light of above figures concerning racial harassment by service users, is the fact that racial discrimination legislation across the UK does not protect against third party harassment in the workplace.
- 13.7 Further concerning is the fact that the Racial Equality Strategy 2015-2025 remains unimplemented in NI, despite its vitality to progressing employment equality, through commitments to review racial discrimination legislation, review fair employment legislation and introduce relevant data gathering.⁹³

Suggested questions:

13.8 Will the NI Executive amend legislation to make employers responsible for protecting their employees from third party harassment?

13.9 When will the NI Executive implement its employment commitments under the Racial Equality Strategy 2015-2025?

Employment Tribunal Deposits

- 14.1 The employment tribunal system in NI currently places claimants at a disadvantage; the use of lawyers is discouraged, with no legal aid being provided for representation at tribunals. Employers, however, frequently use solicitors to represent their cases, resulting in an inequality of arms.
- 14.2 It is concerning, therefore, that the NI Assembly has passed the Employment Bill 2016, which will further exacerbate the unequal position of claimants. Clause 4 of the Bill permits the expansion of regulations on levying deposit fees for persons appearing before industrial tribunals.

⁹¹ Northern Ireland Council for Ethnic Minorities, 'The Annual Human Rights and Racial Equality Benchmarking Report 2013/14' (2014), p.50

⁹² op cit n 71 p.22

⁹³ op cit n 10 p.5

14.3 While the regulations have not yet been altered, the Department for Employment and Learning's expressed intention is to require a £500 deposit for the consideration of each issue it considers unlikely to succeed.⁹⁴

14.4 This approach is especially concerning in the context of racial discrimination cases, as it is usual for people to bring such cases on multiple grounds due to the complexity of facts involved and the reality that victims may be unable to definitively know why they are being treated unfairly.^{95 96}

14.5 Multiple £500 deposits would amount to a substantial sum, considering the median wage in NI is £25,800 per annum.⁹⁷ Indeed, BME individuals in NI tend to have poorer economic outcomes than the general population, with a higher rate of unemployment, lower rates of pay and additional barriers to employment.^{98 99 100}

14.6 Considering the inherent complexity of racial discrimination claims and the economic outcomes of BME communities in NI, the levying of multiple deposits will produce a differential financial obstacle for BME people attempting to access justice, contrary to the UK's obligations under Article 2(1)(a), 2(1)(c) and 6 of ICERD.

Suggested question:

14.7 What assessment has the NI Executive conducted on the impact of these changes on BME claimants/racial discrimination cases and what evidence has it gathered or utilised to this end?

⁹⁴ Department of Employment of Learning, 'Developing Modern, Efficient and Effective Employment Tribunals' (2015), p.39

⁹⁵ As of 10/02/16, 50% of the 50 most recent industrial tribunal cases involving race discrimination were taken on three or more grounds and 82% were taken on at least two

⁹⁶ Aston, J., Hill, D. and Tackey N.D., 'The Experience of Claimants in Race Discrimination Employment Tribunal Cases' (2006), p.17

⁹⁷ Department of Enterprise, Trade and Investment, 'Statistical Press Release – Northern Ireland Annual Survey of Hours and Earnings' (2015)

⁹⁸ Irwin, J. et al, 'The Economic and Social Mobility of Ethnic Minority Communities in Northern Ireland' (2014), p.29

⁹⁹ op cit n 72

¹⁰⁰ op cit n 71 p.39

6. EDUCATION

Educational Outcomes and Racist Bullying

- 15.1 Educational outcomes for BME pupils in NI are declining; in a reversal of the trend in 2007/08, BME pupils are less likely than their 'White' peers to leave school with 2+ A-levels or 5+ GCSEs.¹⁰¹
- 15.2 Additionally, BME school leavers in 2011/12 were twice as likely as their 'White' peers to enter unemployment. Again, this shows a degradation of performance since 2007/08.¹⁰²
- 15.3 This decline in performance coincides with the prevalence of racist bullying in NI's schools, with research illustrating that around 42% of BME pupils in NI have experienced racist bullying.¹⁰³
- 15.4 Despite this prevalence, and contrary to the position in the rest of the UK, there is no central guidance on racist bullying for schools to follow. This has led to schools adopting disparate approaches to addressing racist bullying, with some schools taking actions that are ineffective or that punish the victim.¹⁰⁴

Suggested question:

- 15.5 What actions have the NI Government planned to tackle the BME educational inequalities highlighted in the Equality Commission's 2015 report?**
- 15.6 Will the NI Executive issue central guidance for schools on producing anti-racist bullying policies?**
- 15.7 How many instances of racial bullying have occurred in both primary and secondary schools over the last 3 financial years?**

¹⁰¹ Equality Commission for Northern Ireland, 'Key Inequalities in Education: Draft Statement' (2015), para.5.5

¹⁰² Burns, S., Leitch, R. and Hughes, J., 'Education Inequalities in Northern Ireland: Final Report to the Equality Commission for Northern Ireland' (2015), p.182; op cit n 101 para.5.6

¹⁰³ NCB Northern Ireland and ARK YLT, 'Attitudes to Difference: Young people's attitudes to, and experiences of contact with people from different minority ethnic and migrant communities in Northern Ireland' (2010) p.55

¹⁰⁴ Rooney, E. and Fitzpatrick, B., 'Promoting Racial Equality in Northern Ireland's Post-Primary Schools' (2011), p.29