



# EQUAL RIGHTS TRUST

## Equal Rights Trust

Alternative Report submitted to the Committee on Economic, Social and Cultural Rights at its 58<sup>th</sup> session in relation to the sixth periodic report submitted by:

### **The United Kingdom of Great Britain and Northern Ireland**

May 2016

#### **Statement of Interest**

1. The Equal Rights Trust (the Trust) submits this alternative report to the Committee on Economic, Social and Cultural Rights (the Committee) commenting on the sixth 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 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. In addition, in 2015, the Trust conducted a series of workshops and consultation meetings with representatives of Roma<sup>1</sup> communities, civil society and community based organisations and statutory agencies in different regions of the United Kingdom to identify patterns of discrimination affecting migrant Roma persons and identify policy measures necessary to address these problems. This report includes both the Trust's assessment of some of the shortcomings with the United Kingdom's legal and policy framework and evidence of discrimination which limits the enjoyment of Covenant rights by members of the Roma community in the country.
4. This submission focuses on the extent to which the United Kingdom has met its

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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. By contrast, our references to "Roma" refer to members of the migrant Roma community – those who originate in other European countries and whose families have immigrated to the United Kingdom at some point in the past.

obligations to respect, protect and fulfil the right to non-discrimination. Thus, the submission is primarily concerned with the United Kingdom's performance under Article 2(2) of the International Covenant on Economic, Social and Cultural Rights (the Covenant) under which States Parties undertake:

*[T]o guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.*

5. In assessing the United Kingdom's compliance with its obligations under Article 2(2), the submission relies on the interpretation of this Article which has been provided by the Committee in its *General Comment No. 20: Non-discrimination in economic, social and cultural rights (art.2, para. 2, of the International Covenant on Economic, Social and Cultural Rights)*.<sup>2</sup> Thus, the submission reflects the importance which the Committee has placed on the need for effective protection from discrimination for the realisation of all other Covenant rights:

*Discrimination undermines the fulfilment of economic, social and cultural rights for a significant proportion of the world's population. Economic growth has not, in itself, led to sustainable development, and individuals and groups of individuals continue to face socio-economic inequality, often because of entrenched historical and contemporary forms of discrimination.*

*Non-discrimination and equality are fundamental components of international human rights law and essential to the exercise and enjoyment of economic, social and cultural rights.*<sup>3</sup>

6. This submission also relies upon the Declaration of Principles on Equality,<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>
7. The report first examines the principal means by which the rights to equality and non-discrimination are enforced in the United Kingdom: the Equality Act 2010 (the Act). It reviews two provisions within the 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. It also considers an amendment made to the Act in 2015 which weakens

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<sup>2</sup> Committee on Economic, Social and Cultural Rights, *General Comment No. 20: Non-discrimination in economic, social and cultural rights (art. 2, para. 2, of the International Covenant on Economic, Social and Cultural Rights)*, UN Doc. E/C.12/GC/20, 2009.

<sup>3</sup> *Ibid.*, Paras 1-2.

<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).

the ability of employment tribunals to provide effective remedy.

8. The report then examines the particular patterns of discrimination and disadvantage suffered by the Roma community in the United Kingdom. As noted above, throughout 2015, the Trust engaged in a project working with Roma organisations and statutory agencies to identify patterns of discrimination affecting Roma individuals and communities and develop proposals for policy responses to these problems. We undertook a series of consultation meetings and workshops in the areas of the United Kingdom with some of the largest concentrations of Roma in the UK: London, Greater Manchester, the Midlands and South Yorkshire. As such, we have gained particular insight into the discrimination which Roma individuals currently face in the UK.

### **The Equality Act 2010**

9. The principal means by which the right to non-discrimination, as set out in Article 2(2) of the Covenant, is enforced in the UK is through the Equality Act 2010. The Equality Act 2010 consolidated a number of pre-existing pieces of anti-discrimination legislation and, was largely brought into force in October 2010.
10. However, two sets 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 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>7</sup> To date, these provisions have still not been brought into force and, instead, the Equality Act 2010 has undergone continued, piecemeal amendment since October 2010, weakening the protections which it offers.

### ***Sections 1 to 3: Socio-economic inequalities***

11. In General Comment No. 20 the Committee stated that discrimination on the basis of “economic and social situation” is prohibited by the Covenant by virtue of the term “other status” in Article 2(2):

*A person’s social and economic situation when living in poverty or being homeless may result in pervasive discrimination, stigmatization and negative stereotyping which can lead to the refusal of, or unequal access to, the same quality of education and health care as others, as well as the denial of or unequal access to public places.<sup>8</sup>*

12. Section 1(1) of the Equality Act 2010 would introduce a new public sector duty regarding inequalities which result from socio-economic disadvantage (the socio-economic duty). It reads:

*An authority to which this section applies must, when making decisions of a strategic nature about how to exercise its functions, have due regard to the desirability of exercising them in a way that is designed to reduce the inequalities of outcome which result from socio-economic disadvantage.*

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<sup>7</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>8</sup> See above, note 2, Para 35.

13. The remainder of section 1 sets out the authorities to which the duty would apply.<sup>9</sup> Section 2 would allow the Secretary of State to amend the list of authorities in section 1. Section 3 would provide that a failure in respect of a performance of a duty under section 1 would not confer a cause of action at private law. This means that individuals would not be able to claim damages for breach of statutory duty for a breach of this duty. A person would, however, be able to bring judicial review proceedings against a public authority which is covered by the duty, if he or she believed that the public authority had not considered socio-economic disadvantage when taking decisions of a strategic nature.
14. In November 2010, the Home Secretary announced that the government would not be bringing sections 1 to 3 of the Equality Act into force, stating:

*Equality has become a dirty word because it has come to be associated with the worst aspects of pointless political correctness and social engineering. Just look at the socio-economic duty. In reality, it would have been just another bureaucratic box to be ticked. It would have meant more time filling in forms and less time focusing on policies that will make a real difference to people's life chances.<sup>10</sup>*

15. The Trust strongly supports the socio-economic duty as a progressive measure recognising the importance of providing protection from discrimination on the basis of economic and social status and the link between identity-based discrimination and socio-economic disadvantage. Principle 14 of the Declaration of Principles on Equality highlights the link between these two forms of inequality, stating that: “[a]s poverty may be both a cause and a consequence of discrimination, measures to alleviate poverty should be coordinated with measures to combat discrimination, in the pursuit of full and effective equality”.
16. This link between discrimination and one form of socio-economic disadvantage – income poverty – has also been noted by the UN Independent Expert on the question of extreme poverty and human rights who, in her report of August 2008 to the General Assembly, stated:

*Patterns of discrimination keep people in poverty which in turn serves to perpetuate discriminatory attitudes and practices against them. In other words, discrimination causes poverty but poverty also causes discrimination. As a result, promoting equality and non-discrimination is central to tackling extreme poverty and promoting inclusion. Measures to eliminate poverty and efforts to eliminate all forms of discrimination must be understood as mutually reinforcing and complementary.<sup>11</sup>*

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<sup>9</sup> These authorities are specified in subsection 1(3) as (a) a Minister of the Crown; (b) a government department other than the Security Service, the Secret Intelligence Service or the Government Communications Head-quarters; (c) a county council or district council in England; (d) the Greater London Authority; (e) a London borough council; (f) the Common Council of the City of London in its capacity as a local authority; (g) the Council of the Isles of Scilly; and (k) police and crime commissioners established in England.

<sup>10</sup> Home Office, “Socio-economic duty to be scrapped”, 17 November 2010, available at: <https://www.gov.uk/government/news/socio-economic-duty-to-be-scrapped--2>.

<sup>11</sup> *Report of the UN Independent Expert on the question of extreme poverty and human rights*, UNGA 63<sup>rd</sup> Session, 2008, UN Doc. A/63/274, 13 August 2008, Paras 29–30.

17. One important indicator of socio-economic disadvantage in the United Kingdom is the level of income poverty. Levels of both absolute and relative poverty remain high. Absolute poverty is generally measured as individuals with household income below 60% of 2010–11 median income in real terms. The Institute of Fiscal Studies has reported that, in the latest year for which data are available (2013–14), the number of individuals living below this poverty line was 13.6 million (21.6% of the UK population) after deducting housing costs.<sup>12</sup> For relative poverty, measured as individuals with household income below 60% of contemporary media income, the number of individuals is slightly lower: 13.2 million (21.0% of the UK population) after deducting housing costs.<sup>13</sup>
18. In this context, the Trust was disappointed that the previous government chose not to implement the socio-economic duty, and by the Secretary of State's reference to the provisions as "just another bureaucratic box to be ticked". The failure to implement this important and progressive provision represents a failure on the part of the United Kingdom to take all possible measures to ensure that the right to non-discrimination is effectively protected and fulfilled, in particular in the field of social and economic rights.
19. **The Equal Rights Trust urges the Committee to recommend that the United Kingdom reconsider its approach towards the socio-economic duty in section 1 of the Equality Act 2010 and to implement it as soon as possible.**

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

20. 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, or intersectional, discrimination.
21. In its Plan for Growth published in March 2011, however, the previous government announced that it would not be implementing section 14 in order to "minimise regulatory burdens"<sup>14</sup> and to save "business £3 million per year".<sup>15</sup> In May 2012, the Home Office announced, following a review of the Equality Act 2010, that it intended only to "delay commencement" of the provision.<sup>16</sup> However, in its submissions to the Parliamentary Select Committee on the Equality Act 2010 and Disability the Government stated that "there is insufficient evidence that [section 14] was needed" and articulated "concerns that it represented an unnecessary burden to business".<sup>17</sup> The Government has continued

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<sup>12</sup> Institute for Fiscal Studies, *Living Standards, Poverty and Inequality in the UK: 2015*, 2015, p. 46.

<sup>13</sup> *Ibid.*, p. 5 and p. 43.

<sup>14</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>15</sup> *Ibid.*, p. 53.

<sup>16</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>.

<sup>17</sup> House of Lords, Select Committee on the Equality Act 2010 and Disability, *The Equality Act 2010: the impact on disabled people*, Report of Session 2015-16, Para 436.

to ignore the Select Committee's recommendation that section 14 "be brought into force forthwith."<sup>18</sup>

22. There is an international expert consensus on the importance of providing protection against multiple discrimination.<sup>19</sup> 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". Dimitrina Petrova has elaborated on the importance of Principle 12 in the legal commentary on the Principles

*This Principle addresses the need for any legal provisions promoting equality to take into account evolving social phenomena that are manifested as discriminatory acts or practices. The law should recognise that individuals have multiple identities and cannot always be classified according to or defined by a single characteristic. Multiple discrimination is the term used to describe: a) discrimination on more than one ground in a cumulative (additive) sense, e.g. where a woman is discriminated against on grounds of her gender and, separately, also on grounds of her race (disability, age, etc), and in this case the discriminator otherwise discriminates both against women and against racial minorities; b) discrimination on more than one ground in a syncretic sense, based on a combination of grounds, where it is only the combined characteristics of, for example, gender and race that trigger discrimination, while each of them alone does not.<sup>20</sup>*

It is this latter instance of discrimination that section 14 would address and which is not otherwise covered by the Act.

23. The existence of multiple discrimination in the United Kingdom is well-documented. For example, research carried out by the Equality and Human Rights Commission showed that women of Indian origin were paid, on average, 18% less than men of the same ethnic background.<sup>21</sup> 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*

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<sup>18</sup> *Ibid.* Para 439.

<sup>19</sup> See, for example, Committee on the Elimination of Discrimination Against Women, *General Recommendation No. 28 on the core obligations of States parties under article 2*, CEDAW/C/GC/28, 2010, Para 18; above, note 2, Paras 17 and 27.

<sup>20</sup> Petrova, D. "Declaration of Principles on Equality: A Contribution to International Human rights, Commentary" in *Declaration of Principles on Equality*, the Equal Rights Trust, London, 2008, pp. 38 – 39.

<sup>21</sup> Equality and Human Rights Commission, *Research Report 9: Pay Gaps across Equalities Areas*, 2008, p. ix, available at: [http://www.equalityhumanrights.com/uploaded\\_files/pay\\_gaps\\_accross\\_equalities\\_areas.pdf](http://www.equalityhumanrights.com/uploaded_files/pay_gaps_accross_equalities_areas.pdf).

*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 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>22</sup>*

24. The Trust is therefore disappointed that section 14 of the Equality Act 2010 has not been implemented and that the law does not therefore recognise and prohibit multiple discrimination.
25. The Equal Rights Trust urges the Committee to recommend to the United Kingdom to reconsider its approach towards multiple discrimination in section 14 of the Equality Act 2010 and to implement the provision as soon as possible.

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

26. Section 124 of the Equality Act 2010 sets out the remedies that an employment tribunal may order 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). Originally, subsection 124(2) provided for three remedies that an employment tribunal may provide. These are:

*(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.*

27. 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.*

28. 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.

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<sup>22</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>.

29. In 2015, however, the government introduced legislation amending section 124. Section 2(1)(a) of the Deregulation Act 2015 inserted the words “on the complainant” after the words “adverse effect” in section 124(3), and deleted paragraphs (a) and (b).<sup>23</sup> The consequence is that employment tribunals are no longer able to make recommendations that the respondent take steps in relation to persons other than the complainant.
30. 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)*
31. Both the Committee and the Committee on the Elimination of Discrimination against Women have stated that the protections from discrimination contained within their respective treaties require effective remedies which include guarantees of non-repetition, including remedies which go beyond the victim to address the underlying cause of the discrimination.<sup>24</sup>
32. The effect of this amendment 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 obligation to provide effective remedies under the Covenant.
33. **The Equal Rights Trust urges the Committee to recommend to the United Kingdom that section 2 of the Deregulation Act 2015 be repealed and section 124 of the Equality Act 2010 provide for “wider recommendations” to be made by employment tribunals.**

### **Discriminatory Denial or Restriction of Covenant Rights for Roma**

34. Whilst many individuals and groups in the United Kingdom are vulnerable to discrimination, one of the most disadvantaged groups is the Gypsy, Roma, and Traveller (GRT) community. GRT Communities face social stigma and discrimination in a variety of areas of life. In the case of migrant Roma – those who originate from European countries –

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<sup>23</sup> Amended section 124(3) reads “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.”

<sup>24</sup> See above, note 2, Para 40; and above, note 19, Para 32.



this has been exacerbated by a sharp rise in anti-migrant xenophobia in reaction to the lifting of restrictions for Bulgarian and Romanian workers in January 2014.

35. There are an estimated 197,705 migrant Roma living in the United Kingdom.<sup>25</sup> However, the exact number is difficult to ascertain, due to a lack of accurate data held by the government and the fact that many Roma avoid declaring their ethnicity, using their nationality instead, because of fears of discrimination and racism. The absence of reliable data related to migrant Roma and the confusion in the public mind of Roma and Romanians feed into the amalgam of anti-Gypsyism and anti-migrant racism. Thus, the Roma are living in an increasingly hostile environment, experiencing exclusion from many areas of life.<sup>26</sup>
36. As noted above, during 2015, we undertook a series of consultation meetings and workshops in the areas of the United Kingdom with some of the largest concentrations of Roma in the UK: London, Greater Manchester, the Midlands and South Yorkshire. These consultations revealed the existence of significant barriers which prevent members of this community from accessing health, housing and other services on an equal basis with others. Our wider research in the context of this project also identified other evidence of discrimination against migrant Roma, which has a negative impact on their enjoyment of Covenant rights.

### ***Racism and Hate Crimes***

37. According to the UK Equality and Human Rights Commission, racism towards the GRT community is “common, frequently overt and seen as justified”<sup>27</sup> and there are many reports of racist abuse and harassment towards GRT individuals.<sup>28</sup> A 2014 report indicated that the most common hate speech in the United Kingdom on Twitter was directed towards Gypsies and Travellers.<sup>29</sup> 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>30</sup>

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<sup>25</sup> Brown, Scullion and Martin, “Migrant Roma in the United Kingdom”, 2013, available at: [http://www.salford.ac.uk/\\_data/assets/pdf\\_file/0004/363118/Migrant Roma in the UK final report October 2013.pdf](http://www.salford.ac.uk/_data/assets/pdf_file/0004/363118/Migrant_Roma_in_the_UK_final_report_October_2013.pdf)

<sup>26</sup> The AIRE Centre, “Roma Rights”, 2015, available at: <http://www.airecentre.org/pages/roma-rights.html>.

<sup>27</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>28</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>29</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>30</sup> College of Policing, *Hate Crime Operational Guidance*, 2014, p. 31.

38. Members of the GRT community also experience racism and related discriminatory treatment from public authorities, including the police.<sup>31</sup> It has been said that the police have “particularly embedded racist cultures and practices”.<sup>32</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>33</sup>
39. Hate speech, hate crime and overt racism and discrimination by state agents contribute to an environment in which members of the GRT community find it difficult to access work and public services which are essential to the equal enjoyment of Covenant rights. Migrant Roma are particularly vulnerable to racism and associated problems, due to the stigmatisation associated with their dual status as both Roma and migrant.
40. The Equal Rights Trust urges the Committee to recommend to the United Kingdom that further steps be taken to address the frequent racism faced by Roma, Gypsies and Travellers. We urge the Committee to recommend that the United Kingdom take urgent measures to investigate and address discrimination against Roma, Gypsies and Travellers in the police force.

***Article 11(1) with Article 2(2): Discriminatory Limitation of the Right to Adequate Housing***

41. Under Article 11(1) of the Covenant, the United Kingdom has committed to recognise and take steps to realise “the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions”. As the Committee has noted in its General Comment 4, “the human right to adequate housing (...) thus derived from the right to an adequate standard of living, is of central importance for the enjoyment of all economic, social and cultural rights”.<sup>34</sup> As with all other Covenant rights, the United Kingdom has undertaken, by virtue of Article 2(2), “to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind”. Yet our review of research conducted by others, and the findings of our consultations, revealed that the GRT community face challenges in accessing housing and accommodation on an equal basis with others.
42. For Gypsies and Travellers, who are generally nomadic, the **lack of appropriate trailer sites** has a “significant detrimental impact” on their lives.<sup>35</sup> A *National Policy Framework and Planning Policy for Traveller Sites*, adopted in 2012 includes collaboration between local authorities, stakeholders, community groups and support organisations in order to encourage fair and inclusive planning strategies among its key principles. However, many community members consider that such collaboration is not taking place.<sup>36</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>37</sup> Moreover, the United Kingdom government has taken

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<sup>31</sup> See above, note 27, p. 118 and p. 153.

<sup>32</sup> *Ibid.*, p. 214.

<sup>33</sup> See above, note 30, p. 31.

<sup>34</sup> UN Committee on Economic, Social and Cultural Rights (CESCR), *General Comment No. 4: The Right to Adequate Housing (Art. 11 (1) of the Covenant)*, 13 December 1991, UN Doc. E/1992/23, Para 1.

<sup>35</sup> See above, note 28, p. 25.

<sup>36</sup> *Ibid.*

<sup>37</sup> *Ibid.*

actions which have further hindered the situation. 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, leading to significant delays in the hearing of those 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>38</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.

43. For Roma, who are generally not nomadic, research by others<sup>39</sup> corroborates the findings of consultations which we undertook with communities in different areas of the United Kingdom. These consultations indicate that low quality housing, discrimination by public and private landlords and the high cost of housing have been identified as key factors. Further, as a result of racist abuse and harassment, there have been examples of Roma families being evicted and, in some cases, becoming homeless as a result.<sup>40</sup>
44. Our consultation meetings revealed that Roma face considerable discrimination in accessing **public housing services**. In all of our meetings, participants provided testimony indicating the existence of discrimination in the field of housing against members of the Roma community. In all of the areas in which consultations took place, Roma individuals and representatives of organisations working with the Roma community gave examples of problems faced by Roma individuals in accessing housing which would amount to direct and indirect discrimination and harassment. We also found evidence that the government is not taking sufficient action to meet its obligations to enhance equality of opportunity in access to housing, as required by the Public Sector Equality Duty (section 149 of the Equality Act 2010).
45. One problem cited by consultees was of delays and disruptions in the application process for public housing, which some believed were the result of direct discrimination by housing officers. Participants also gave examples of harassment by housing officers, with the use of derogatory language about non-British claimants in general, and the Roma in particular, in their presence, with the effect of creating a degrading and hostile environment. In its General Comment 4, the Committee has affirmed that “enjoyment of [the right to adequate housing] must, in accordance with article 2 (2) of the Covenant, not be subject to any form of discrimination”<sup>41</sup> while the Committee noted in its General Comment 20 that direct discrimination and harassment affecting the enjoyment of Covenant rights must be effectively prohibited.<sup>42</sup>
46. One significant problem cited at our meetings in London was that when Roma individuals or families had applied for housing they were often offered accommodation in locations a

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<sup>38</sup> *Moore and Coates v Secretary of State for Communities and Local Government* [2015] EWHC 44 (Admin).

<sup>39</sup> See above, note 28, p. 25.

<sup>40</sup> See above, note 28, p. 167.

<sup>41</sup> See above, note 34, Para 6.

<sup>42</sup> See above, note 2, Para 7 and 10(a).

significant distance from the borough in question, without being told whether or not they had the right to refuse such accommodation. These individuals complained of being pressured by housing officers to accept the first offer of housing even where this was not suitable. Roma families tend to live in close proximity and the extended family is a very important aspect of their culture. However, our consultations found that these needs are not adequately considered by housing officers when they allocate housing. In its General Comment 4, the Committee has expressly noted that: “[a]dequate housing must be in a location which allows access to employment options, health-care services, schools, childcare centres and other social facilities.”<sup>43</sup>

47. More broadly, the Trust has found a distinct lack of cultural understanding between local housing authorities and the Roma community, which serves to act as a significant barrier to housing. Consultees in Stratford stated that housing officers had not sought to understand and address the specific and individual cultural needs of the Roma community, which in many cases has led to Roma families being offered unsuitable housing. For example, some Roma said that they had been given housing which was far too small to accommodate the whole family, leading to significant overcrowding and poor living conditions. As the Committee has noted, “[s]tates parties must give due priority to those social groups living in unfavourable conditions by giving them particular consideration”.<sup>44</sup> Our research indicates that the United Kingdom might be failing to meet this obligation in respect of persons of Roma origin.
48. A significant issue identified in both London and Rotherham was in relation to language and translation services. Although, in general, interpretation services are provided by social housing providers at a local level, our consultations found that insufficient regard has been given to the individual and specific needs of the Roma community. The Equal Rights Trust found that the lack of adequate language facilities in the housing sector has created a serious barrier in access to adequate social housing for Roma communities, particularly in relation to establishing legal homelessness and accessing social housing services. In London, Roma noted that when attempting to access local social housing services, they were forced to receive interpretations in their second language (usually Romanian) instead of in the Romani language, causing problems with comprehension on both sides. Further, throughout this consultative process, concerns were raised about the quality of interpretation services provided. The Trust is concerned that the paucity of translation services available to Roma communities in the United Kingdom may indicate a failure on the part of the state to ensure enjoyment of the right to adequate housing without discrimination, as guaranteed by the Covenant. In addition, we note that section 149(3)(a) of the Equality Act 2010 imposes an obligation on *inter alia* housing authorities to have due regard to the need to “remove or minimise disadvantages suffered by persons who share a relevant protected characteristic”, as in the case of the language disadvantages faced by Roma persons accessing housing.
49. During our consultations in London, many of the complaints made by participants concerned the operation of the “housing waiting list” system for prioritising needs and allocating public housing. One problem cited was the use of an online housing list system, which many were unable to use because of language, literacy or computer literacy problems. The operation of a system or practice such as this, which puts the Roma or another group that shares a protected characteristic at a particular disadvantage when compared with those who do not share this characteristic may constitute indirect

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<sup>43</sup> See above, note 34 Para 8(f).

<sup>44</sup> *Ibid.*, Para 11.

discrimination. The Committee has noted that “[b]oth direct and indirect forms of differential treatment can amount to discrimination under article 2, paragraph 2”.<sup>45</sup>

50. In addition to these problems in access to social housing, during our consultations, we found that the Roma community throughout the UK face significant discrimination from **private landlords**. Such discrimination took various forms, but many consultees made claims that they had been stigmatised and treated with racist bias by their landlords. For example, some consultees claimed that when they made complaints to their landlords about the maintenance of their accommodation, they were mistreated and ignored. Overcrowding was also identified as a serious concern in both Derby and Oldham. In Oldham, a police officer attested to the fact that he had visited overcrowded homes – with as many as eight to twelve people in a two-bedroom house – without electricity and with insufficient food preparation areas. A Roma participant in the same workshop stated that landlords rent a single room in a house to a family of four. Based on our consultations, we believe that problems of overcrowding, poor quality accommodation and the absence of tenancy protections affect Roma persons disproportionately because of their ethnicity. While the Trust recognises the limits on the government’s ability to regulate the actions of private landlords, we are concerned by this apparent evidence of a failure to ensure the enjoyment of the right to adequate housing without discrimination, as required by the Covenant.
51. The Equal Rights Trust urges the Committee to recommend that the United Kingdom take all necessary steps to identify, address and eliminate discrimination in access to housing for Roma, and to take measures to ensure the equal enjoyment of the right to adequate housing.

***Article 12 with Article 2(2): Discriminatory Limitation of the Right to the Highest Attainable Standard of Health***

52. Under Article 12 of the Covenant, the United Kingdom recognises “the right of everyone to the enjoyment of the highest attainable standard of physical and mental health”; by virtue of Article 2(2), the state commits to ensuring the realisation of this right without discrimination on any ground, including race and ethnicity. Yet, as with housing, our consultations revealed that there are significant barriers which prevent Roma from accessing health services on an equal basis with others. In all four areas in which consultations took place, Roma individuals and representatives of organisations working with the Roma community gave examples of problems in accessing healthcare services which would amount to direct and indirect discrimination and harassment.
53. The significant majority of complaints we heard concerned General Practice (GP) surgeries, with participants stating their view that Roma individuals were not treated in the same way as other patients when attending their GP. Roma participants at our meetings claimed they had been unfairly refused medical assistance because they did not have the required documentation. For example, one participant in Oldham claimed that he was denied medical treatment because he only had a Romanian National Insurance number, even though he had lived in the UK for four years. Similarly, one participant in Rotherham stated that he was taken off the register of his local GP surgery because his identification documents were due to expire within six months. The application of requirements such as these on a selective basis targeted at Roma or other ethnic minorities would constitute direct discrimination.<sup>46</sup> The application of such requirements

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<sup>45</sup> See above, note 2, Para 10.

<sup>46</sup> See above, note 2, Para 10(a).

to all health service users but with a disproportionate impact on Roma would constitute indirect discrimination, if this could not be duly justified as a proportionate means of achieving a legitimate aim.<sup>47</sup>

54. In addition, many persons stated that they had been asked to provide excessive amounts of documentation in order to access GP assistance. Such documentation included, in addition to proof of address (such as a recent council tax bill or utility bill) and the name and address of previous GP. While it is not, in principle, problematic for healthcare providers to request documentation related to a person's medical history, the circumstances of Roma individuals and families mean that many were unable to provide one or more of these pieces of documentation. Again, where requirements to provide such documentation has the effect of denying or limiting access to health services to a group of persons who share a protected characteristic – such as ethnicity in the case of Roma individuals – this may constitute indirect discrimination where the requirements cannot be justified as a proportionate means of achieving a legitimate aim.<sup>48</sup>
55. A number of participants also gave examples of cases where health service staff had exhibited stigma and racism towards Roma patients. All healthcare providers have an obligation not to harass a person requiring or receiving a service<sup>49</sup> by engaging in unwanted conduct related to a protected characteristic which has the purpose or effect of creating an intimidating, hostile, degrading, humiliating or offensive environment.
56. Another significant issue identified in all four locations in which we consulted Roma communities was in relation to language and translation services. Although, in general, interpretation services are provided by healthcare providers at a local level, our consultations found that insufficient regard has been given to the individual and specific needs of the Roma community. The Equal Rights Trust found that the lack of adequate language facilities in the healthcare sector has created a serious barrier in access to healthcare for Roma communities, particularly in relation to general practice and primary care services.
57. In London, Roma persons noted that when seeing their local general practitioner, interpretation was only provided in their second language (usually Romanian) instead of in the Romani language, causing problems with comprehension on both sides. In some cases, no interpretation services are provided. In Oldham, one Roma person told the Trust that when she was pregnant and in severe pain, she tried to make an appointment for a general practitioner to visit her. She stated that when she asked for interpretation assistance during the appointment, she was told that no interpreter could be provided. Further, throughout our consultations, concerns were raised about the quality of interpretation services provided. Participants stated that interpreters did not know correct and accurate terminology in respect of different physical and mental health problems in the Romani language.
58. Another key issue identified in London was that different interpreters were being used for each medical appointment, causing further problems with comprehension and effective communication. Roma individuals stated that they were unable to choose to have the same interpreter even if they feel particularly comfortable or indeed uncomfortable with

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<sup>47</sup> *Ibid.*, Para 10(b).

<sup>48</sup> *Ibid.*

<sup>49</sup> *Ibid.*, Para 7.

a certain person. Finally, consultation participants explained that some interpreters lacked understanding of Roma culture as well as the Romani language, with the effect that they were unable to properly communicate on behalf of Roma individuals.

59. The failure to provide adequate and effective translation services for Roma persons accessing health services may constitute failure on the part of the state to meet its obligation, arising under Article 2(2) in combination with Article 12, to ensure that the right to the highest attainable standard of healthcare is enjoyed without discrimination. In addition, such omissions may constitute a violation of domestic equality legislation. In particular, this would constitute a failure to have due regard to the need to “remove or minimise disadvantages suffered by persons who share a relevant protected characteristic”, or the need to “take steps to meet the needs of persons who share a relevant protected characteristic that are different from the needs of persons who do not share it”, as required by section 149(3)(a) and (b) of the Equality Act.
60. The Equal Rights Trust urges the Committee to recommend that the United Kingdom take all necessary steps to identify, address and eliminate discrimination in access to healthcare for Roma, and to take measures to ensure the equal enjoyment of the right to the highest attainable standard of healthcare.

***Article 13 with Article 2(2): Discriminatory Limitation of the Right to Education***

61. Under Article 13 of the Covenant, the United Kingdom recognises the right to education, and commits in particular to ensure that primary education is both free and compulsory, and that secondary education is “made generally available and accessible to all by every appropriate means”. Thus, this Article imposes necessary obligations to eliminate discrimination which prevents universal participation in primary education, or limits the general accessibility of secondary education. These obligations are complemented by the obligation to ensure non-discrimination in the enjoyment of the right to education, as required by Article 2(2). Yet our research identified inequalities of outcome for Roma in education which raise concerns about the extent to which the United Kingdom is meeting its obligations under Article 13 with Article 2.
62. Brian Foster, a consultant working with the Gypsy, Roma and Traveller 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 United Kingdom’s longest established charity working with the Roma community, the Roma Support Group, have said that “in the field of education, Gypsy, Roma and Traveller communities suffer manifestly unequal outcomes”.<sup>50</sup> Their research identified at least three factors contributing to this:
  - (a) There are difficulties in registering as self-employed (the preferred form of employment for many GRT individuals) and the complexities in obtaining benefit entitlement mean many GRT 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>51</sup>
  - (b) Relations between schools and GRT parents in secondary education are poorer than with other parents, in part because many GRT families do not consider secondary

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<sup>50</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>51</sup> *Ibid.*, p. 96.

education to be important for their children. Gypsy, Roma and Traveller pupil, particularly boys, have the highest exclusion rates of all ethnic groups.<sup>52</sup>

(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>53</sup>

63. The Equal Rights Trust urges the Committee to recommend that the United Kingdom take all necessary steps to identify, address and eliminate discrimination in access to education for members of GRT populations, and to take measures to ensure the equal enjoyment of the right to education.

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<sup>52</sup> *Ibid.*, p. 93.

<sup>53</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.