



Company Registration No: NI. 36868  
Inland Revenue Charity No: XR 11970

**Submission to the United Nations  
Committee on Economic, Social and  
Cultural Rights on the UK's compliance  
with the International Covenant on  
Economic, Social and Cultural Rights**

**August 2015**

## **Introduction**

- 1.1 The Northern Ireland Council for Ethnic Minorities (NICEM) is an independent non-governmental organisation. As an umbrella organisation<sup>1</sup> we represent the views and interests of black and minority ethnic (BME) communities.<sup>2</sup> 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 (UK) Government's 6<sup>th</sup> periodic report and the submission of supplementary information as required by the Committee. We acknowledge that some progress has been gained, however we also have serious concerns with regard to the UK's obligations under ICESCR. Of particular concern are the areas of ethnic monitoring data collection, non-discrimination legislation, employment equality and access to public services.

## **Mainstreaming Rights in Northern Ireland**

- 2.1 Article 2 of ICESCR requires the progressive realisation of Covenant rights in the UK. However, this process is impeded by the failure to gather data on ethnicity so that oversight mechanisms may function and rights realisation may be benchmarked.
- 2.2 For example, one of the main mechanisms for mainstreaming human rights in Northern Ireland (NI) falls under Section 75 of the Northern Ireland Act 1998, which requires public authorities to have 'due regard' to the need to promote equality of opportunity amongst minority groups, including BME individuals.
- 2.3 As part of abiding by this duty, public authorities must produce 'Equality Impact Assessments' (EQIAs), which gauge the potential adverse impact of initiatives on protected groups.
- 2.4 However, public authorities have used the lack of available data on ethnicity as a justification for failing to assess the impact of initiatives on BME groups. An extreme illustration of this practice is encapsulated by the Department for Social Development's failure to consider the impact on BME groups of welfare reform proposals on the basis of insufficient data.<sup>3</sup>

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<sup>1</sup> 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.

<sup>2</sup> 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.

<sup>3</sup> Department for Social Development, 'Welfare Reform Bill (Northern Ireland) 2011: Completed Equality Impact Assessment' (2012) Available at: <[www.dsdni.gov.uk/welfare-reform-bill-completed-eqia-april-2012.doc](http://www.dsdni.gov.uk/welfare-reform-bill-completed-eqia-april-2012.doc)> [Accessed 10/02/15] p.24

- 2.5 Furthermore, Article 2(2) of ICESCR requires all rights to be guaranteed irrespective of race, colour, language and national origin, making the availability of data on ethnicity vital to monitoring the progressive realisation of all ICESCR rights in NI.
- 2.6 Indeed, the Committee on Economic, Social and Cultural Rights (CESCR), in its previous concluding observations, specifically requested data in the UK's next State Report on the impact of welfare reform according to the prohibited grounds of discrimination.
- 2.7 However, the UK has proven unable to provide this data due to the absence of Northern Irish data to present. In answering CESCR's request, the UK's State Report firstly refers to the UK's 32<sup>nd</sup> report under the European Social Charter, which does not provide any of the analysis requested.<sup>4</sup>
- 2.8 The State Report then refers to the EQIAs conducted as part of the welfare reform process in Great Britain, but makes no reference to the process in NI. Even if the EQIA conducted on welfare reform proposals in NI were referenced, it does not analyse the impact of proposals on BME groups due to a lack of available data, as noted above.<sup>5</sup>
- 2.9 Evidently, the failure to conduct ethnic monitoring has inhibited both internal and external mechanisms for overseeing the progressive realisation of economic, social and cultural rights in NI.
- 2.10 It should be noted that requiring Government Departments and their next step agencies to collect data monitoring ethnicity was a key part of proposals for a Racial Equality Strategy, intended to run from 2014 to 2024.<sup>6</sup> However, as of the present, this Strategy has failed to emerge amidst repeated delays in its production.
- 2.11 Even in the absence of a Racial Equality Strategy, however, ethnic monitoring data could still be collected. Guidelines already exist for the collection of this data and are already in use by the Department of Health, Social Services and Public Safety.<sup>7 8</sup> Consequently, the main obstacle to the collection of this data is Departments' decision not to do so.

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<sup>4</sup> Economic and Social Council, 'Consideration of Reports Submitted by States Parties Under Articles 16 and 17 of the International Covenant on Economic, Social and Cultural Rights – Sixth Periodic Reports of States Parties Due in 2014: United Kingdom of Great Britain and Northern Ireland' (2014) E/C.12/GBR/6 para.95

<sup>5</sup> *ibid* para.96

<sup>6</sup> Office of the First Minister and Deputy First Minister, 'A Sense of Belonging: Delivering Social Change Through a Racial Equality Strategy for Northern Ireland 2014-2024' (2014) Available at: <<http://www.ofmdfmi.gov.uk/racial-equality-strategy-2014-2024-consultation.pdf>> [Accessed 13/08/15] pp.31-35

<sup>7</sup> Office of the First Minister and Deputy First Minister, 'Guidance for Monitoring Racial Equality' (2011) Available at: <[http://www.ofmdfmi.gov.uk/guidance\\_for\\_monitoring\\_racial\\_equality\\_v2.pdf](http://www.ofmdfmi.gov.uk/guidance_for_monitoring_racial_equality_v2.pdf)> [Accessed 13/08/15]

<sup>8</sup> *op cit* n 6 pp.33-34

**In concluding this part, we would like to ask the Committee to raise the following question to the UK Government:**

**Will the UK Government take immediate steps to require the Northern Ireland Executive Government and its Departments and next step agencies to collect ethnic monitoring data, so that the progressive realisation of economic, social and cultural rights may be assessed?**

### **Measures to Eliminate Racial Discrimination**

- 3.1 NI has weaker legislative protection against discrimination on the basis of race than does the rest of the UK. In NI, protection is afforded under the Race Relations (Northern Ireland) Order 1997 ('RRO'), whilst Great Britain is subject to the Equality Act 2010.
- 3.2 Whereas - under Schedule 19 Part 1 - the non-discrimination provisions of the Equality Act 2010 apply to public authorities responsible for planning in Great Britain, the RRO does not apply to planning authorities in NI. This leaves members of the Travelling community vulnerable to the denial of sites on which to live by local councils.
- 3.3 Additionally, the *Re Amin* (1983) judgement of the House of Lords continues to apply in NI. Consequently, many public authorities are excluded from the remit of the legislation's Article 21 provision on goods, facilities and services, as they are not interpreted as offering 'services' for the purpose of the Order. This includes key actors such as police officers, prison officers, immigration officials and court staff. It is notable that this gap has been addressed in the rest of the UK since the Race Relations (Amendment) Act in 2000.
- 3.4 Furthermore, when the RRO was amended in 2003 to bring legislation in line with the Racial Equality Directive 2000, differential protection was established between discrimination on the bases of 'colour' and 'nationality' and that on the bases of 'race', 'ethnicity' or 'national origin', with the former categories receiving less protection due to their not being mentioned in the Directive. This affects provisions on shifts of the burden of proof and definitions of direct and indirect discrimination, harassment and victimisation.
- 3.5 A disparity exists between this limited amendment of the RRO and the more fulsome amendment of the Fair Employment and Treatment Order 1998 to comply with the Framework Directive on Employment in 2006. Following amendment, equal protection was provided under the categories of 'political opinion' and 'religious belief' as under other categories, despite the former categories not appearing within the Framework Directive. Arguably, the less restrictive approach taken in this instance illustrates the existence of a hierarchy of rights in NI, where sectional equality is afforded more value than racial equality.

3.6 Finally, the RRO has yet to be amended to include provision on ‘instruction to discriminate’, as required by the Racial Equality Directive. This is despite infringement proceedings being taken by the European Commission against the UK in 2007.

3.7 Ultimately, the legislative framework for tackling racial discrimination in NI offers less protection than in the rest of the UK, is internally inconsistent, is at odds with EU law and is indicative of the existence of a hierarchy of rights in NI. Indeed, the need to update this law was a key recommendation in the concluding observations of the Committee on the Elimination of All Forms of Racial Discrimination (CoERD) on the UK in 2011. The continuing existence of anti-discrimination law in this form presents a serious obstacle to the progressive realisation of ICESCR rights without discrimination, as required under Article 2(2).

**In concluding this part, we would like to ask the Committee to raise the following questions to the UK Government:**

**1. Will the UK Government ensure the immediate reform of NI’s laws on racial discrimination as a matter of urgency, bringing it in line with both UK and EU law?**

### **Employment Inequalities**

#### **BME Women**

4.1 Employment inequalities faced by BME women in NI seriously impede the enjoyment of Article 7 rights without discrimination, as required by ICESCR. BME women in NI face particular difficulties in obtaining and retaining a job due to experiencing both racial/religious discrimination - for example, experiencing workplace discrimination due to wearing a headscarf - and sexist discrimination - for example, losing employment as a consequence of becoming pregnant.<sup>9</sup>

4.2 BME women also face barriers to employment due to the inadequate availability of flexible childcare in NI. Many BME women work irregular hours and both the expense and unavailability of appropriate childcare provision constitutes a further obstacle to employment for these women.<sup>10</sup>

4.3 The effects of these barriers are reflected in employment statistics; recent research concerning BME women in NI indicated that nearly half of respondents were unemployed, with 88.9% of black African women not being in employment.<sup>11</sup>

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<sup>9</sup> Isal, S., 'The Experiences of Ethnic Minority Women in Northern Ireland' (2013) Available at: <<http://nicem.org.uk/wp-content/uploads/2014/03/EoEMWiNI-11.pdf>> [Accessed 27/03/15] p.19

<sup>10</sup> Webb, M.A., Kernaghan, D. and Caffrey, M., 'Believe in Childcare? The Childcare Needs of Ethnic Minority Communities in Northern Ireland' (2014) Available at:

<[www.barnardos.org.uk/15920\\_pp\\_briefing\\_no17.pdf](http://www.barnardos.org.uk/15920_pp_briefing_no17.pdf)> [Accessed 25/03/15] pp.6 and 30

<sup>11</sup> op cit n 9 pp.18-19

4.4 Indeed, CESCR raised the issue of employment in its 2009 Concluding Observations, urging the UK Government to take measures to reduce unemployment, with particular regard to 'the most disadvantaged and marginalised individuals and groups'.<sup>12</sup> CESCR also specifically recommended action to tackle unemployment amongst BME communities throughout the UK.<sup>13</sup> Despite this, the UK Government's Sixth State Report does not indicate any actions taken to tackle the employment barriers faced by regards BME communities, including BME women, in NI.<sup>14</sup>

4.5 Furthermore, it is notable that CESCR's 2009 Concluding Observations also raised the fact that the UK Government maintains a number of highly questionable reservations to ICESCR, including one on equal remuneration between men and women.<sup>15</sup>

**In concluding this part, we would like to ask the Committee to raise the following questions to the UK Government:**

**1. What measures will the devolved administration take in order to address the employment inequalities faced by BME women in NI?**

**2. Will the UK Government withdraw its reservation to Article 7 of ICESCR as regards equal pay for equal work between men and women?**

### Agency Workers

5.1 Agency workers working in NI have their Article 7 rights impinged upon in a number of ways. It is emphasised under Article 7(a)(i) that workers should be given fair wages and equal remuneration. However, under Regulation 7 of the Agency Workers Regulations (Northern Ireland) 2011, read in conjunction with Regulation 5, agency workers are not entitled to 'basic working and employment conditions' until they complete 12 continuous weeks of employment with a single hirer.

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<sup>12</sup> Equality Commission for Northern Ireland, 'Section 75 of the Northern Ireland Act 1998: A Guide for Public Authorities' (2010) Available at: <<http://www.equalityni.org/ECNI/media/ECNI/Publications/Employers%20and%20Service%20Providers/S75GuideforPublicAuthoritiesApril2010.pdf>> [Accessed 10/02/15] para.20

<sup>13</sup> *ibid* para.21

<sup>14</sup> Committee on Economic, Social and Cultural Rights, 'Consideration of reports submitted by States parties under articles 16 and 17 of the International Covenant on Economic, Social and Cultural Rights - Sixth Periodic Reports of States Parties Due in 2014: United Kingdom of Great Britain and Northern Ireland' (2014) Available at: <<http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G14/172/74/PDF/G1417274.pdf?OpenElement>> [Accessed 11/03/15] paras.31 and 33-35

<sup>15</sup> 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) Available at: <<http://www.refworld.org/publisher,CESCR,CONCOBSERVATIONS,GBR,4af181b10,0.html>> [Accessed 11/03/15] para.40

- 5.2 'Basic working and employment conditions' is taken to refer to 'terms and conditions on pay, the duration of working time, night work, rest period, rest breaks and annual leave'.<sup>16</sup> As the 12-week requirement applies equally to each of these conditions of employment, it is evident that agency workers cannot enjoy their rights under Article 7(a), (b) and (d) of ICESCR until this requirement is met.
- 5.3 Even in cases where an agency worker does manage to obtain these rights, there are still a number of rights enjoyed by the general population to which agency workers are not entitled. These include the right to claim statutory redundancy pay, the right to claim unfair dismissal, the right to claim maternity/paternity/adoption/parental leave and the right to have a written statement of the terms and conditions of employment.<sup>17</sup> Naturally, this has implications for agency workers' rights under Article 7 of ICESCR, when read in conjunction with the non-discrimination provision under Article 2(2).
- 5.4 Furthermore, there remain ways in which the basic rights to which agency workers are entitled under the Agency Worker Regulations may be circumvented entirely. For example, if an agency worker is understood to be self-employed, then the Agency Worker Regulations do not apply.<sup>18</sup>
- 5.5 The outcome of these gaps in the legislation is obvious; an inquiry into the meat and poultry processing sector by the Equality and Human Rights Commission found that a third of interviewed agency workers did not understand their contract, terms and conditions due to the provision of relevant documentation in English only. Furthermore, many agency workers were found to face differential treatment based on their nationality and even segregation by nationality.<sup>19</sup>

**In concluding this part, we would like to ask the Committee to raise the following questions to the UK Government:**

**1. Will the UK Government amend the Agency Worker Regulations to afford fulsome employment rights to individuals working within Northern Ireland, equivalent to those of the general population?**

**2. Will the UK Government expand the Agency Worker Regulations to apply to individuals working for agencies, but who are registered as self-employed?**

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<sup>16</sup> Explanatory Memorandum to the Agency Workers Regulations (Northern Ireland) 2011 SR 2011 No.350, p.6

<sup>17</sup> See:

[http://www.adviceguide.org.uk/england/work\\_e/work\\_rights\\_at\\_work\\_e/work\\_agency\\_workers\\_e/agency\\_workers\\_\\_\\_what\\_you\\_need\\_to\\_know.htm](http://www.adviceguide.org.uk/england/work_e/work_rights_at_work_e/work_agency_workers_e/agency_workers___what_you_need_to_know.htm)

<sup>18</sup> Recruitment and Employment Federation, 'An Introduction to the Agency Worker Regulations (AWR)' (2011) Available at:

<[http://www.harveynash.com/awr/documents/factsheet\\_1\\_an\\_introduction\\_to\\_the\\_agency\\_worker\\_regulations.pdf](http://www.harveynash.com/awr/documents/factsheet_1_an_introduction_to_the_agency_worker_regulations.pdf)> [Accessed 24/03/15] p.3

<sup>19</sup> Equality and Human Rights Commission, 'Inquiry into Recruitment and Employment in the Meat and Poultry Processing Sector – Additional Problems for Migrant Workers: Our Findings' (2012) Available at:

<[http://www.equalityhumanrights.com/sites/default/files/documents/Inquiries/additional\\_problems\\_for\\_migrant\\_workers\\_findings.pdf](http://www.equalityhumanrights.com/sites/default/files/documents/Inquiries/additional_problems_for_migrant_workers_findings.pdf)> [Accessed 13/08/15] p.2

## Seafarers

- 6.1 Seafarers particularly face difficulties in obtaining just and favourable conditions of work. The Race Relations Order 1997 (Amendment) Order (Northern Ireland) 2012, Article 5 amends Article 11 of the Race Relations Order 1997, stating the conditions whereupon seafarers may rely upon non-discrimination prohibitions contained within Part II of the Race Relations Order.
- 6.2 The requirements for seafarers to fall within the remit of the Order are extremely restrictive. If an individual is not a British citizen, an EEA citizen, or a citizen of one of the list of 'designated states' within the legislation, then there is no prohibition upon discriminatory treatment of this individual, as per Articles 11(3)(c) and 11(4)(b) of the amended Order.
- 6.3 Furthermore, it is directly stated within the amended legislation itself, under Article 11(a) and (b) that citizens of states other than those recognised by the legislation may be explicitly discriminated against in terms of remuneration on the basis of their nationality. This is in direct violation of Article 7(a)(i) of ICESCR, particularly when read in conjunction with the Article 2(2) non-discrimination provision, which expressly prohibits discrimination on the basis of national origin.

**In concluding this part, we would like to ask the Committee to raise the following question to the UK Government:**

**1. Will the UK Government ensure that the devolved administration in Northern Ireland adapts its legislation to allow protection against discrimination for all workers within its jurisdiction?**

## Forced Labour and Exploitation

- 7.1 The practice of trafficking for the purposes of forced labour is anathema to the rights envisioned within Article 7 of ICESCR. Forced labour is outlawed across the UK under Section 71 of the Coroners and Justice Act 2009, meaning that the recognition of this offence has been relatively recent.
- 7.2 In NI, this has resulted in a general lack of awareness regarding the existence and prevalence of forced labour. The actual extent of forced labour in NI is relatively unknown<sup>20</sup> and this issue is under-researched in the NI context. However, official statistics illustrate a 233% increase in forced labour detections in NI between 2013 and 2014. However, it is notable that, due to the nature of trafficking offences, it is likely that official detections significantly underrepresent the true scale of the problem.<sup>21</sup>

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<sup>20</sup> Allamby, L. et al, 'Forced Labour in Northern Ireland: Exploiting Vulnerability' (2011) Available at: <[www.jrf.org.uk/sites/files/jrf/forced-labour-Northern-Ireland-full.pdf](http://www.jrf.org.uk/sites/files/jrf/forced-labour-Northern-Ireland-full.pdf)> [Accessed 26/03/15] p.15

<sup>21</sup> National Crime Agency, 'National Referral Mechanism Statistics - End of Year Summary 2014' (2015) Available at: <<http://www.nationalcrimeagency.gov.uk/publications/national-referral->



- 7.3 Indeed, there is evidence to suggest that individuals across NI are subjected to forced labour on a daily basis. The practice is particularly prevalent in the mushroom farming and fishing industries<sup>22</sup>, which is indicative of a widespread problem; the agri-food industry comprises 20% of NI's private sector.<sup>23</sup>
- 7.4 Labour exploitation in NI involves a variety of practices contrary to individuals' Article 7 rights, including debt-bondage, excessive hours of work, provision of extremely low remuneration, mishandling of wages, unjust dismissal and the confiscation of passports.<sup>24</sup>
- 7.5 Apart from limited research and awareness, perhaps the most significant deficiency in the UK's approach to tackling forced labour in NI is the inadequacy of its regulatory system. Firstly, the system for regulating labour in NI is extremely fractured; several agencies are responsible for overseeing different types of labour, including the Gangmasters Licensing Authority, the Employment Agency Standards Inspectorate, the Health and Safety Executive Northern Ireland and others.<sup>25</sup>
- 7.6 This fracturing of the regulation of labour activities has resulted in no single agency having the responsibility to investigate instances of forced labour; rather, the multiple agencies involved in overseeing labour practices are relied upon to uncover forced labour indirectly whilst conducting their duties in areas such as tax fraud, immigration, or trafficking.<sup>26</sup>
- 7.7 Such fragmentation generates confusion over what agency has a mandate to investigate particular offences and creates a system that is heavily reliant on adequate information-sharing. Indeed, the fact that some bodies are based in the UK and others in NI, that some bodies have investigatory powers and others do not, and that some bodies do not have the legal authority to share relevant information makes this an extremely impractical and ineffective system in practice.<sup>27</sup>
- 7.8 Secondly, the fragmentation of the responsibility for tackling forced labour means that there is no single body with expertise in identifying and investigating these offences; research has illustrated a lack of training and awareness amongst some agencies that may encounter forced labour.<sup>28</sup>

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mechanism-statistics/502-national-referral-mechanism-statistics-end-of-year-summary-2014/file>  
[Accessed 26/03/15] p.25

<sup>22</sup> Allamby, L. et al, 'Forced Labour in Northern Ireland: Exploiting Vulnerability' (2011) Available at: <[www.jrf.org.uk/sites/files/jrf/forced-labour-Northern-Ireland-full.pdf](http://www.jrf.org.uk/sites/files/jrf/forced-labour-Northern-Ireland-full.pdf)> [Accessed 26/03/15] p.4

<sup>23</sup> Department of Agriculture and Rural Development, 'Strategic Plan 2012-2020' (2012) Available at: <<http://www.dardni.gov.uk/dard-strategic-plan-2020-english-version.pdf>> [Accessed 26/05/15] p.4

<sup>24</sup> op cit n 22 pp.18-20

<sup>25</sup> This response is similar across the UK, see: Balch, A., 'Regulation and Enforcement to Tackle Forced Labour in the UK: A Systematic Response?' (2012) Available at:

<<http://www.jrf.org.uk/sites/files/jrf/forced-labour-regulation-full.pdf>> [Accessed 27/03/15] p.20

<sup>26</sup> Jarman, N., 'Forced Labour in Northern Ireland: An Update' (2014) Available at:

<<http://www.jrf.org.uk/sites/files/jrf/Forced-Labour-Northern-Ireland-FULL.pdf>> [Accessed 27/03/15] p.19

<sup>27</sup> ibid pp.19-20

<sup>28</sup> ibid p.19

7.9 Thirdly, even those bodies that are entitled to investigate forced labour and have an adequate knowledge-base for doing so are under-resourced. For example, the Gangmasters Licensing Authority, which is viewed as an example of good practice in the UK<sup>29</sup>, has only two officers based in NI.<sup>30</sup>

7.10 Overall, this results in NI being heavily reliant on policing authorities to encounter victims of labour, in what is a reactive rather than a proactive system of victim detection. Indeed, 80% of referrals to the National Referral Mechanism – the system that processes victims of trafficking in the UK, including victims of trafficking for forced labour – were made by the PSNI.<sup>31</sup> Evidently, the deficiencies in this approach have serious implications for the capacity of the State to extricate individuals from environments where their Article 7 rights are being contravened.

**In concluding this part, we would like to ask the Committee to raise the following questions to the UK Government:**

**1. Will the UK Government ensure that adequate research into the prevalence and presentation of forced labour in Northern Ireland is conducted?**

**2. Will the UK Government reform its current system for tackling forced labour, in order to ensure that all employment monitoring bodies are able to identify victims of forced labour and work together to do so?**

### Third Country Nationals

8.1 Particular integration needs arise for third country nationals, who face barriers to obtaining appropriate employment in NI. The continued existence of these barriers obstructs the progressive realisation of these individuals' rights under Articles 6 and 7 of the Covenant.

8.2 Research covering Belfast, Mid-Ulster and Down, and the North West of NI has highlighted a number of key employment barriers facing third country nationals. These include a lack of recognition for qualifications and work experience gained abroad, inadequate access to English language provision and discrimination in the workplace.<sup>32</sup>

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<sup>29</sup> Anti-Slavery, 'Anti-Slavery International: Modern Slavery Bill, House of Lords 2nd Reading Briefing, Tuesday 17th November 2014' (2014) Available at: <[http://www.antislavery.org/includes/documents/cm\\_docs/2014/m/ms\\_bill\\_2nd\\_reading\\_hol.pdf](http://www.antislavery.org/includes/documents/cm_docs/2014/m/ms_bill_2nd_reading_hol.pdf)> [Accessed 27/03/15] p.5

<sup>30</sup> Committee for Agriculture and Rural Development, Gangmasters Licensing (Exclusion) Regulations (Northern Ireland) 2014: DARD/Gangmasters Licensing Authority (NIA, 11 March 2014) p.4

<sup>31</sup> National Crime Agency, 'National Referral Mechanism Statistics – End of Year Summary 2014' (2015) Available at: <<http://www.nationalcrimeagency.gov.uk/publications/national-referral-mechanism-statistics/502-national-referral-mechanism-statistics-end-of-year-summary-2014/file>> [Accessed 13/08/15] p.26

<sup>32</sup> op cit n 32 pp.39-41

- 8.3 Third country nationals also face educational barriers, which may obstruct the progressive realisation of Article 13 of the Covenant, read in conjunction with Article 2(2) on non-discrimination. The barriers identified, including racist bullying and inadequate English language provision<sup>33</sup>, make education a less available resource to some children of third country nationals than for the general population in NI.
- 8.4 Access to healthcare is also impeded for third country nationals, with discriminatory treatment by front-line staff being highlighted and the language barrier again presenting as a significant obstacle.<sup>34</sup> Impediments to accessing healthcare have the potential to impact the progressive realisation of Article 12 of the Covenant, particularly when read in conjunction with Article 2(2).
- 8.5 The progressive realisation of Article 11 of the Covenant is also impeded for third country nationals living in NI, including when this provision is read alongside Article 2(2). Research has illustrated that third country nationals may face discrimination in accessing housing and may find technical requirements for obtaining accommodation - such as providing references, deposits or guarantors - difficult to meet.<sup>35</sup>

**In concluding this part, NICEM makes the following recommendations to the Committee regarding the improvement of conditions for third country nationals in Northern Ireland:**

- **Research should be undertaken to assess these barriers and ways to tackle them. Additionally, research on the economic, labour market and skills impacts of migrant workers in NI should be updated.**
- **Work should be undertaken with employers to improve technical work-related English language skills and ESOL provision should be recognised as an essential skill. Ring-fenced funding should be made available to meet the language needs of BME children and adults.**
- **Employers should be encouraged to recognise the work and voluntary experience that third country nationals have gained abroad.**
- **The NI Curriculum should include education that promotes cultural competence and respect for difference, consistent with human rights norms.**

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<sup>33</sup> *ibid* p.42

<sup>34</sup> *ibid* p.43

<sup>35</sup> *ibid*

## **Education**

### **Educational Attainment**

- 9.1 CESCR's 2009 Concluding Observations highlighted the disparity in school performance and dropout rates between BME pupils - particularly Roma and Irish Travellers pupils - and other pupils.<sup>36</sup> Unfortunately, this disparity persists, with 8% of BME pupils leaving school in the year 2012/2013 with no formal qualifications whatsoever, as compared to 1.3% of the 'white' population.<sup>37</sup>
- 9.2 This disparity in outcome exposes a failure of the education system, the resolution of which is a matter of increasing urgency; the number of BME pupils in schools has risen year on year since records began in 2001, with a 26% increase in BME pupil population between the years 2010/11 and 2014/15.<sup>38</sup>
- 9.3 A number of factors may contribute to the relatively poor educational outcomes for BME pupils in NI. Firstly, difficulties arising due to poor English language skills are inadequately addressed under the current system. 'Newcomer' pupils - that is, pupils determined not to have sufficient language skills to fully participate in the school curriculum and who do not share a language with the teacher - are becoming more prevalent throughout NI, with 10,698 newcomer pupils registered in 2014, as compared to only 3,911 pupils being registered as such in 2006/7.<sup>39</sup>
- 9.4 Despite this steady and continuous increase in additional language needs, many pupils still face difficulty in obtaining the assistance that they require. This is particularly the case for older pupils entering the school system in NI for the first time, as there is a dearth of age-appropriate material to assist in the development of their language skills.
- 9.5 Ultimately, this may produce a great deal of frustration for a pupil who may have been performing well at school in their country of origin, but become limited to extremely simplistic tasks in an effort to improve their language skills. This frustration can in turn lead to pupils misbehaving, becoming disruptive and being punished.<sup>40</sup>
- 9.6 Regarding the issue of language, it is noted that CESCR has itself asserted that the UK Government should ensure that the achievement gap for BME pupils is reduced by ensuring the adequate provision of English language courses for students lacking adequate language proficiency.<sup>41</sup>

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<sup>36</sup> op cit n 15 para.36

<sup>37</sup> Northern Ireland Statistics and Research Agency, 'Qualifications and Destinations of Northern Ireland School Leavers 2012/13' (2014) Available at:

<[http://www.deni.gov.uk/qualifications\\_and\\_destinations\\_1213.pdf](http://www.deni.gov.uk/qualifications_and_destinations_1213.pdf)> [Accessed 12/03/15] p.16

<sup>38</sup> See Appendix 1

<sup>39</sup> D. Kernaghan, 'Feels Like Home: Exploring the Experiences of Newcomer Pupils in Primary Schools in Northern Ireland' (2015) Available at: <[www.barnardos.org.uk/9788\\_education\\_report\\_d9.pdf](http://www.barnardos.org.uk/9788_education_report_d9.pdf)> [Accessed 16/04/15] p.4

<sup>40</sup> ibid pp. 49-51

<sup>41</sup> op cit n 15 para.36

- 9.7 Secondly, the ubiquity of racist bullying may also be a contributing factor to the low educational outcomes and high dropout rates for BME pupils in NI. 68% of BME pupil respondents to research into bullying in schools indicated that they had witnessed racist bullying, with 42% stating that they themselves had been victims.<sup>42</sup>
- 9.8 Indeed, some groups are particularly affected, with girls from the Travelling community facing a significant amount of prejudice and bullying at school - both from staff and other pupils - which in turn impacts heavily on their educational outcomes.<sup>43</sup>
- 9.9 Despite the prevalence of this problem, the education system in NI has exhibited little coherence or cohesion in tackling racist bullying. It remains the case that there is no national policy on tackling racist bullying, equivalent to those provided throughout the rest of the UK, and schools' responses to bullying vary greatly as a consequence.
- 9.10 Indeed, some schools have produced responses that appear to punish the victim more so than the bully, such as requiring the bullied child to arrive at school early and leave late in order to avoid those pupils that are bullying them.<sup>44</sup> Naturally, this can only worsen the pupil's relationship with the school and further impact their work.
- 9.11 Furthermore, schools are not determined to be public authorities for the purpose of the equality duty contained within Section 75 of the Northern Ireland Act 1998. Consequently, schools are not deemed to be legally responsible for preventing racial harassment between pupils. Thus, schools have no impetus to address institutionalised racism within their sphere and frequently deny the racial aspect to complaints they receive about pupil behaviour.
- 9.12 All of these factors are exacerbated by the fact that there is currently no central data-collection on incidents of racist bullying, which obscures the true extent of this problem and provides justification for schools to fail to act against it.

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<sup>42</sup> 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) Available at: <[http://www.ofmdfmi.gov.uk/attd\\_web\\_final.pdf](http://www.ofmdfmi.gov.uk/attd_web_final.pdf)> [Accessed 16/04/15] p.55

<sup>43</sup> Northern Ireland Council for Ethnic Minorities, 'Submission to United Nations Committee on the Elimination of All Forms of Discrimination Against Women in Response to the UK's Seventh Periodic Report' (2013) Available at: <[http://nicem.org.uk/wp-content/uploads/2014/01/NICEM\\_CEDAW-submission\\_June13\\_Final.pdf](http://nicem.org.uk/wp-content/uploads/2014/01/NICEM_CEDAW-submission_June13_Final.pdf)> [Accessed 16/04/15] p.10; Scullion, G. and Rogers, S., 'Traveller Voices for Change: Mapping the Views of Irish Travellers on Integration and Their Sense of Belonging in Northern Ireland' (2014) Available at: <<http://nicem.org.uk/wp-content/uploads/2015/01/Traveller-Voices-for-Change-NICEM-2014.pdf>> [Accessed 16/04/15] p.22

<sup>44</sup> Rooney, E. and Fitzpatrick, B., 'Promoting Racial Equality in Northern Ireland's Post-Primary Schools' (2011) Available at: <[http://nicem.org.uk/wp-content/uploads/2014/03/Education\\_report\\_-\\_Final\\_PDF.pdf](http://nicem.org.uk/wp-content/uploads/2014/03/Education_report_-_Final_PDF.pdf)> [Accessed 16/04/15] p.29

**In concluding this part, we would like to ask the Committee to raise the following questions to the UK Government:**

- 1. What steps will the devolved administration take to ensure that the currently inadequate level of support for school pupils with language needs is improved?**
- 2. How and when will the devolved administration ensure the implementation of a comprehensive and robust national anti-bullying policy and tackles racist bullying?**
- 3. Will the UK Government amend Section 75(3) of the Northern Ireland Act 1998 to expand the application of the equality duty to schools?**
- 4. When and how will the devolved administration implement a duty on schools to collect disaggregated data on incidents of racist bullying?**

### **Access to Health Services**

#### **Healthcare**

- 10.1 BME women may also face particular difficulties in accessing necessary healthcare due to a confluence of racial and sex-based factors. This is evident in cases where women who do not meet the ordinary residence test become pregnant and are subsequently denied important pregnancy care. Individuals may not meet the ordinary residence test for the purposes of providing free healthcare in numerous circumstances, including where they have insecure immigration status or where they have no recourse to public funds.
- 10.2 Access to healthcare for individuals who are not determined to be ordinarily 2 resident is regulated in NI through the Provision of Health Services to Persons Not Ordinarily Resident Regulations (Northern Ireland) 2015. Regulation 21(2)(a) allows for medical care to be provided to pregnant women or women undergoing childbirth, but only in extremely restrictive circumstances.
- 10.3 Under Regulation 21(1)(a)-(d), a woman or girl may only receive maternity care where she has been in receipt of social security for ten continuous years in the UK, where she is resident in an EEA State, where she is a national of a contracting party to the European Convention on Social and Medical Assistance 1954(c), or where she is an authorised child or companion.
- 10.4 Evidently, it is extremely difficult for visitors from non-European States to receive maternity treatment without charge. This is despite the fact that a lack of access to appropriate obstetric services has long since been identified by the World Health Organisation as a key contributing factor to both infant and maternal mortality arising from childbirth.<sup>45</sup> Consequently, the denial of access to healthcare for visiting BME women who are pregnant may result in seriously, even terminally, poor health outcomes.

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<sup>45</sup> WHO, UNFPA, UNICEF and World Bank, 'Reduction of Maternal Mortality' (1999) Available at: <[http://whqlibdoc.who.int/publications/1999/9241561955\\_eng.pdf?ua=1](http://whqlibdoc.who.int/publications/1999/9241561955_eng.pdf?ua=1)> [Accessed 30/03/15] p.15

**In concluding this part, we would like to ask the Committee to raise the following question to the UK Government:**

**1. Will the UK Government ensure that obstetric healthcare is available for all women within the UK?**

Undocumented Migrants

11.1 Unpaid access to healthcare in NI is regulated by the 'ordinary residence' test.<sup>46</sup> The definition of 'ordinary residence' is drawn from the case of *R v Barnet LBC ex parte Shah*<sup>47</sup>, wherein it was determined that an individual must:

'[have] habitually and normally resided in the United Kingdom from choice and for a settled purpose throughout the prescribed period, apart from temporary or occasional absences'.

11.2 While there is no fixed period of time whereby an individual must be resident within the UK to satisfy this test and a person may be determined to be ordinarily resident from the day of their arrival in the UK, an individual that has resided in the UK for less than three years is less likely to be identified as ordinarily resident than an individual who has resided for this period or longer.<sup>48</sup>

11.3 Although this test may proscribe a number of migrants from treatment, undocumented migrants are inherently excluded from meeting the definition of 'ordinarily resident' as outlined in the Shah case, with it being stated that '[one] cannot rely on [one's] unlawful residence as constituting ordinary residence'.

11.4 Consequently, the ordinary residence test presents an insurmountable obstacle for undocumented migrants attempting to access healthcare; while some individuals that fail to meet the test may fall under an excepted group as per Section 42 of the Health and Personal Social Services (Northern Ireland) Order 1972 and Regulations 4 to 23 of the Provision of Health Services to Persons Not Ordinarily Resident Regulations (Northern Ireland) 2015, undocumented migrants do not qualify under the exceptions stipulated under the relevant regulations.

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<sup>46</sup> Law Centre NI, 'Accessing Healthcare for Migrants in Northern Ireland: Problems and Solutions' (2013) Available at: <<http://www.lawcentreni.org/Publications/Policy-Briefings/Policy-Briefing-Migrants-and-health-care-Law-Centre-NI-2013.pdf>> [Accessed 31/03/15] p.2

<sup>47</sup> [1982] UKHL 14; [1983] 1 All ER 226

<sup>48</sup> HM Revenue & Customs, 'CBTM10020 - Residence and Immigration: Residence - Present, Ordinarily Resident and "Right to Reside" Available at: <<http://www.hmrc.gov.uk/manuals/cbtmanual/cbtm10020.htm#2>> [Accessed 31/03/15]

11.5 Ultimately, this may result in extremely poor health outcomes for undocumented migrants living in the UK, as they will likely be unable to afford the costs of treatment. It is well established that the denial of relatively inexpensive preventative treatment, such as asthma inhalers or treatment for diabetics, may result in individuals entering a critical condition.<sup>49</sup> Evidently, such treatment is far from that ensuring the 'highest attainable standard of...health' for individuals living in the UK.

**In concluding this part, we would like to ask the Committee to raise the following question to the UK Government:**

**1. Will the UK Government extend access to healthcare to undocumented migrants living in the UK?**

### Travelling Community

12.1 In the context of health standards, it is notable that members of the Travelling community in NI experience particularly poor health outcomes. According to the Census 2011, the rate of Irish Travellers reporting "bad" or "very bad" health far exceeded that of the majority population; 14.7% of Irish Travellers reported these outcomes, as compared to 5.7% of the majority white population. Indeed, this amounts to the worst health outcome of any ethnic group recorded in the Census by a significant margin.<sup>50</sup>

12.2 These comparatively poor health outcomes are reflected in mortality data; members of the Travelling community die on average 15 years earlier than members of the general population, and the child mortality rate for the Travelling community in NI has been found to be 10 times that of the population as a whole.<sup>51</sup>

12.3 There are many contributing factors to these poor health outcomes for Travellers and BME groups living in NI generally, including difficulty accessing primary and secondary healthcare, a lack of awareness regarding the healthcare system, and low levels of GP registration.<sup>52</sup>

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<sup>49</sup> Law Centre NI, 'Accessing Healthcare for Migrants in Northern Ireland: Problems and Solutions' (2013) Available at: <<http://www.lawcentreni.org/Publications/Policy-Briefings/Policy-Briefing-Migrants-and-health-care-Law-Centre-NI-2013.pdf>> [Accessed 31/03/15] p.5

<sup>50</sup> Northern Ireland Statistics and Research Agency, 'Table DC2301NI: General Health by Ethnic Group by Age by Sex' (2011) Available at: <[http://www.ninis2.nisra.gov.uk/Download/Census%202011\\_Excel/2011/DC2301NI.xls](http://www.ninis2.nisra.gov.uk/Download/Census%202011_Excel/2011/DC2301NI.xls)> [Accessed 08/04/15]

<sup>51</sup> All Ireland Traveller Health Study Team, 'All Ireland Traveller Health Study: Summary of Findings' (2010) Available at: <[https://www.ucd.ie/t4cms/AITHS\\_SUMMARY.pdf](https://www.ucd.ie/t4cms/AITHS_SUMMARY.pdf)> [Accessed 09/04/15] p.26

<sup>52</sup> Equality Commission for Northern Ireland, 'Racial Equality - Policy Priorities and Recommendation (Summary Version)' (2014) Available at: <[http://www.equalityni.org/ECNI/media/ECNI/Publications/Delivering%20Equality/RacialEquality\\_PolicySummary2014.pdf](http://www.equalityni.org/ECNI/media/ECNI/Publications/Delivering%20Equality/RacialEquality_PolicySummary2014.pdf)> [Accessed 09/04/15] para.7.1



**In concluding this part, we would like to ask the Committee to raise the following question to the UK Government:**

**1. What actions will the devolved administration take to tackle the significant inequality of health outcomes experienced by the Travelling community in NI?**

Mental Health

13.1 The duty on the State to ensure the highest attainable standard of mental health amongst its population is of particular relevance to BME communities living in NI, as many BME groups experience disparate mental health outcomes. For example, research has indicated that Polish migrants living in NI experience high levels of depression, addiction and suicide, with factors such as social isolation, lingual difficulties and the cultural differences between the UK and Poland contributing to the development and exacerbation of these mental health difficulties.<sup>53</sup>

13.2 These same concerns also affect BME communities more generally in NI, with additional factors such as poor housing, not being registered with a GP, living in poverty and experiencing Post Traumatic Stress Disorder - in the case of asylum seekers - particularly impacting on many BME individuals' mental health.<sup>54</sup>

13.3 Mental health concerns have also been raised in research into the experiences of BME women living in NI, with women raising issues of depression and suicidal feelings despite the fact that mental health issues were not specifically queried in the questionnaire.<sup>55</sup> This suggests that the full extent of mental health issues amongst BME communities in NI is yet to be uncovered, with more research into this area needing to be a key priority for the devolved administration.

13.4 Considering this prevalence of mental health concerns amongst the BME population, it is concerning that there exists a number of barriers to many BME individuals accessing mental health services. Cultural differences in the perception of mental illness may form one such barrier, with research highlighting the need for 'cultural intelligence' to be developed amongst relevant staff. However, it remains the case that there is a lack of culturally sensitive, bilingual professionals in NI, thus impeding access to the specialist services required.<sup>56</sup>

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<sup>53</sup> Kouvonen, A., Bell, J. and Donnelly, M., "'We Asked for Workers, But Human Beings Came'" Mental Health and Well-Being of Polish Migrants in Northern Ireland' (2014) Available at: <[http://www.niassembly.gov.uk/globalassets/Documents/RaISe/knowledge\\_exchange/briefing\\_papers/series3/kouvonen090114.pdf](http://www.niassembly.gov.uk/globalassets/Documents/RaISe/knowledge_exchange/briefing_papers/series3/kouvonen090114.pdf)> [Accessed 08/04/15] pp.3-6

<sup>54</sup> Health and Social Care in Northern Ireland, 'Ethnic Minorities Mental Health Toolkit: A Guide for Practitioners' (2014) Available at: <[http://www.belfasttrust.hscni.net/pdf/BME\\_Cultural\\_Awareness\\_Document\\_sml.pdf](http://www.belfasttrust.hscni.net/pdf/BME_Cultural_Awareness_Document_sml.pdf)> [Accessed 08/04/15] p.8

<sup>55</sup> Isal, S., 'The Experiences of Ethnic Minority Women in Northern Ireland' (2013) Available at: <<http://nicem.org.uk/wp-content/uploads/2014/03/EoEMWiNI-11.pdf>> [Accessed 27/03/15] p.30

<sup>56</sup> Wallace, A., McAreavey, R. and Atkin, K., 'Poverty and Ethnicity in Northern Ireland: An Evidence Review' (2013) Available at: <<http://www.jrf.org.uk/sites/files/jrf/poverty-ethnicity-northern-ireland-full.pdf>> [Accessed 10/03/15] p.47

13.5 This barrier is inherently linked with the language barrier with, the DHSSPSNI highlighting both lingual and cultural insensitivities as a common problem facing BME people utilising mental health services.<sup>57</sup> The provision of interpretation is particularly essential in the context of mental health services due to the nuanced nature of the client's needs; it has been acknowledged by the DHSSPSNI that mental health professionals may be unable to obtain sufficient information to make an accurate diagnosis where English is not the client's first language.<sup>58</sup> Indeed, both cultural and lingual barriers have contributed to a higher level of misdiagnosis of BME clients by mental health service providers.<sup>59</sup>

13.6 However, as indicated above, there is a lack of awareness amongst many BME individuals in NI regarding their entitlement to healthcare interpreting services and recent research has highlighted the need to improve awareness of interpreting entitlements in the specific context of mental health services.<sup>60</sup>

**In concluding this part, we would like to ask the Committee to raise the following questions to the UK Government:**

**1. Will the UK Government ensure that adequate research is conducted into the prevalence of and contributing factors towards mental health issues amongst BME populations in NI?**

**2. How will the devolved administration ensure that the particular mental health needs of the BME population in NI are met and barriers - including awareness, language barriers and cultural barriers - to obtaining assistance are removed?**

#### BME Older People

14.1 Current healthcare arrangements for BME older people also fall short of ensuring the highest attainable standard of physical and mental health for this population. BME older people have a number of particular needs that are not met by arrangements currently in place in NI.

14.2 For example, BME older people who have English as a second language and are suffering from dementia are likely to suffer the preemptive loss of the ability to communicate in their second language.<sup>61</sup> Consequently, maintaining an adequate standard of health becomes problematic for these individuals, as specialist services must be made available in order to ensure communication between staff and patient is maintained.

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<sup>57</sup> Department of Health, Social Services and Public Safety, 'Service Framework for Mental Health and Wellbeing' (2011) Available at: <[http://www.dhsspsni.gov.uk/mhsf\\_final\\_pdf.pdf](http://www.dhsspsni.gov.uk/mhsf_final_pdf.pdf)> [Accessed 10/04/15] p.216

<sup>58</sup> *ibid*

<sup>59</sup> Belfast Health and Social Care Trust, 'Annual Report 2012/2013' (2013) Available at: <[http://www.belfasttrust.hscni.net/pdf/annual\\_report.pdf#search=%22trust%20report%22](http://www.belfasttrust.hscni.net/pdf/annual_report.pdf#search=%22trust%20report%22)> [Accessed 10/04/15] p.28

<sup>60</sup> *op cit* n 32 p.44

<sup>61</sup> Moriarty, J., Sharif, N. and Robinson, J., 'Black and Minority Ethnic People with Dementia and their Access to Support and Services' (2011) Available at: <<http://www.scie.org.uk/publications/briefings/files/briefing35.pdf>> [Accessed 10/04/15] p.9

- 14.3 Furthermore, bilingual dementia sufferers may present with unique complexities, such as inappropriate language-mixing, which provide additional sources of confusion as regards communication.<sup>62</sup> It is notable that dementia itself is disproportionately prevalent amongst some BME groups, reinforcing the particular concern that these issues present for these communities.<sup>63</sup> Communication difficulties naturally impact upon the health outcomes of these individuals unless additional steps are taken to maintain contact and determine patients' needs.
- 14.4 BME older people also face particular difficulties due to the lack of provision for culturally sensitive services in NI. This can include omissions regarding food, religious and cultural practices, and language barriers.<sup>64</sup> These omissions can contribute to the isolation of groups that may already feel trepidation about seeking support outside of their immediate family or community.<sup>65</sup> As isolation may further impede the attainment of an adequate standard of both physical and mental health, it is important that this issue is tackled in NI.
- 14.5 Older people from a BME background also face discriminatory practices within relevant institutions. This may be explicit, or more indirect, such as through the assumption by staff that the patient's family will care for them due to their ethnic background.<sup>66</sup>

**In concluding this part, we would like to ask the Committee to raise the following questions to the UK Government:**

- 1. Will the devolved administration ensure that there are sufficient bilingual care staff to ensure that communication with patients is not lost prematurely?**
- 2. How will the devolved administration tackle discriminatory practices in institutions dealing with older people's health needs?**

For further enquiry about this submission, please contact the following:

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<sup>62</sup> Beckett, T., 'Language and Dementia in Bilingual Settings: Evidence from Two Case Studies' (2004) Available at: <[www.praesa.org.za/files/2012/07/Paper22.pdf](http://www.praesa.org.za/files/2012/07/Paper22.pdf)> [Accessed 10/04/15] p.61

<sup>63</sup> Waite, J. et al, *Dementia Care: A Practical Manual* (2008, OUP, Oxford) p.346

<sup>64</sup> Age UK, 'Later Matters: Tackling Race Inequalities for BME Older People' (2010) Available at: <[http://www.ageconcernyorkshireandhumber.org.uk/uploads/files/FINALmapping%20and%20good%20practice%20guide%20\(2\).pdf](http://www.ageconcernyorkshireandhumber.org.uk/uploads/files/FINALmapping%20and%20good%20practice%20guide%20(2).pdf)> [Accessed 10/04/15] pp.8, 20 and 22

<sup>65</sup> *ibid* p.4

<sup>66</sup> *ibid* p.9

