

ECRI REPORT ON THE UNITED KINGDOM

(fourth monitoring cycle)

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FOREWORD

The European Commission against Racism and Intolerance (ECRI) was established by the Council of Europe. It is an independent human rights monitoring body specialised in questions relating to racism and intolerance. It is composed of independent and impartial members, who are appointed on the basis of their moral authority and recognised expertise in dealing with racism, xenophobia, antisemitism and intolerance.

In the framework of its statutory activities, ECRI conducts country-by-country monitoring work, which analyses the situation in each of the member States regarding racism and intolerance and drew up suggestions and proposals for dealing with the problems identified.

ECRI's country-by-country monitoring deals with all member States of the Council of Europe on an equal footing. The work is taking place in 5 year cycles, covering 9/10 countries per year. The reports of the first round were completed at the end of 1998, those of the second round at the end of 2002, and those of the third round at the end of the year 2007. Work on the fourth round reports started in January 2008.

The working methods for the preparation of the reports involve documentary analyses, a contact visit in the country concerned, and then a confidential dialogue with the national authorities.

ECRI's reports are not the result of inquiries or testimonial evidences. They are analyses based on a great deal of information gathered from a wide variety of sources. Documentary studies are based on an important number of national and international written sources. The in situ visit allows for meeting directly the concerned circles (governmental and non-governmental) with a view to gathering detailed information. The process of confidential dialogue with the national authorities allows the latter to provide, if they consider it necessary, comments on the draft report, with a view to correcting any possible factual errors which the report might contain. At the end of the dialogue, the national authorities may request, if they so wish, that their viewpoints be appended to the final report of ECRI.

The fourth round country-by-country reports focus on implementation and evaluation. They examine the extent to which ECRI's main recommendations from previous reports have been followed and include an evaluation of policies adopted and measures taken. These reports also contain an analysis of new developments in the country in question.

Priority implementation is requested for a number of specific recommendations chosen from those made in the new report of the fourth round. No later than two years following the publication of this report, ECRI will implement a process of interim follow-up concerning these specific recommendations.

The following report was drawn up by ECRI under its own and full responsibility. Except where expressly indicated otherwise, it covers the situation up to 3 July 2009 and any development subsequent to this date is not covered in the following analysis nor taken into account in the conclusions and proposals made by ECRI.

SUMMARY

Since the publication of ECRI's third report on the United Kingdom on 14 June 2005, progress has been made in a number of fields covered by that report.

New criminal law provisions prohibiting incitement to religious hatred have been enacted, and the common law offences of blasphemy and blasphemous libel have been abolished. In Scotland, initiatives are under way to improve the manner in which courts explain the impact of racist or religious motivations on sentences imposed. Considerable efforts have also been made in the United Kingdom to ensure that racially motivated offences are comprehensively and consistently reported and recorded. A uniform definition of racist incidents is applied throughout the criminal justice system; this definition is deliberately broad, in order to capture all incidents with a racist element, whether or not they constitute a crime. An annual report is now published covering all racist and religious crimes prosecuted in the year, and a number of initiatives have been taken to reduce unsuccessful prosecutions and share good practice.

An Equality Bill has been introduced in Parliament, to harmonise discrimination law and strengthen the law to support progress on equality; it aims to raise standards so that the protection provided in future for less well protected characteristics such as religion and belief is essentially the same as that provided on grounds such as race. The Bill provides expressly for positive action, and will extend the public sector equality duty to grounds of religion and belief. The link between this duty and equality outcomes may, however, still need to be strengthened. In other legislative developments, a duty has been imposed on the Secretary of State under the Borders, Citizenship and Immigration Act 2009 to ensure that immigration, asylum and nationality functions are discharged having regard to the need to safeguard and promote the welfare of children who are in the United Kingdom.

Some encouraging signs have been noted in terms of reducing inequalities experienced by minority ethnic groups. There has been continued improvement in educational attainment among Black and minority ethnic pupils, and disproportionate exclusions of Black children from schools have decreased. Specific initiatives have also been taken to improve the situation of Gypsy, Roma and Traveller children in the field of education. The employment gap between the total population and minority ethnic groups has narrowed, levels of dissatisfaction with housing have reduced amongst minority groups and a range of measures are being taken to help meet the needs of Black and minority ethnic communities, including Gypsies and Travellers, in the field of health. In the criminal justice system, efforts have been made to build up a picture of the situation of Black minority ethnic groups, and to improve it. New diversity guidelines for the media and a new Editors' Code of Practice should also help to provide a useful framework for the media in carrying out their work.

The "Improving Opportunity, Strengthening Society" strategy was launched in January 2005, with two main aims: to increase racial equality and to build community cohesion. The strategy includes specific goals to reduce inequalities, monitor the progress of minority ethnic communities with respect to various key public services such as education, health, housing and the criminal justice system, and reduce perceptions of discrimination in public services. The authorities also responded to the Report of the All-Party Parliamentary Inquiry into Antisemitism with an array of concrete steps to address the issues it raised.

The United Kingdom authorities have continued their extensive ethnic monitoring in various policy areas, as a means to assess the situation of minority ethnic groups and design specific and targeted policy responses to address problems identified.

ECRI welcomes these positive developments in the United Kingdom. However, despite the progress achieved, some issues continue to give rise to concern.

The United Kingdom authorities have taken no steps towards signing or ratifying Protocol No. 12 to the European Convention on Human Rights or a number of other instruments relevant to the fight against racism and intolerance. Parts of the Borders, Citizenship and Immigration Act 2009 are also of concern, in particular as regards citizenship. Care needs to be taken to ensure that the implementation of concepts such as “earned”, “probationary” and “active citizenship” and longer qualifying periods for naturalisation do not hinder the integration process.

Racist violence in the United Kingdom is also a cause for concern, with an increase in racist incidents reported and racist offences recorded since ECRI’s third report; more efforts are needed to prevent such violence from occurring. Numbers of antisemitic incidents also remain high, and parallel increasing antisemitic discourse in the mainstream media. Muslims, migrants, asylum-seekers and Gypsies and Travellers are regularly presented in a negative light in the media, especially the tabloid press. Political debate in the United Kingdom continues to include some elements of racist and xenophobic discourse. The election in June 2009 of two British National Party members to the European Parliament is a cause of deep concern.

Concerns have been raised that the budget of the Equality and Human Rights Commission, which covers three new equality strands and has new responsibilities in the field of human rights, may not suffice to maintain previous levels of protection against racism.

While progress has been made towards eliminating discrimination, many inequalities remain. Black children are still around twice as likely as others to be permanently excluded from school, and outcomes in the field of de facto ethnic and religious segregation in schools also do not seem to have improved significantly. Not enough has been done to eliminate prejudices and discrimination occurring in the workplace, for example against Muslims; Black and minority ethnic groups are also under-represented across the public sector. In parallel, discrimination law has become more complex, meaning victims need legal assistance in this field. Some ethnic minorities continue to face specific health problems, and their health in general is vulnerable to conditions of social and economic disadvantage. Ethnic minorities continue to be over-represented in the prison population, and their proportion continues to rise.

Gypsies and Travellers are still among the most disadvantaged minority ethnic groups in the United Kingdom and the most likely to face discrimination in all fields of daily life, and they face some of the most severe levels of hostility and prejudice. Much more still needs to be done to redress the situation. Adequate site provision, which is frequently at the crux of escalating community tensions, remains an especially pressing issue.

Refugees and asylum-seekers also remain vulnerable in the United Kingdom to destitution, wrong decisions and wrongful detention, and the tone of public discourse remains frequently hostile towards them. At the same time, measures put forward by the authorities as part of proposals to consolidate immigration legislation foreshadow generally more restrictive policies in this field, and hostility towards migrant workers appears to be increasing.

Anti-terror provisions also continue to cause concern. Stops and searches under anti-terror legislation disproportionately affect members of Black and minority ethnic communities. Research has shown that Muslims feel stigmatised and alienated by these measures, and young Muslims who have been regularly stopped and searched feel increasingly marginalised. Black men are also around four times more likely than White men to be included in the national DNA database. Overall, Black and minority ethnic people are more likely to be imprisoned than White people, and more likely than White people to die in prison.

The focus on collecting data broken down by ethnic groups, not religious convictions, makes it more difficult to determine the extent to which religion is a factor in discrimination.

In this report, ECRI requests that the United Kingdom authorities take further action in a number of areas; in this context, it makes a series of recommendations, including the following.

ECRI makes a number of recommendations in the field of international, constitutional, criminal and civil law, in order to strengthen the legal framework against racism and discrimination and to ensure that the implementation of the legislation in place is as effective as possible. It recommends that the authorities take steps to ensure there is a closer link between race equality duties and outcomes, and that adequate resources are available for the effective monitoring and enforcement of such duties.

ECRI recommends that due resources be given to the Equality and Human Rights Commission to allow it to fulfil its terms of reference without prejudice to its work on race equality and racial discrimination.

ECRI makes a series of recommendations aimed at strengthening the fight against discrimination in daily life, in the fields of education, employment, housing, health and the administration of justice.

ECRI reiterates its recommendation that the United Kingdom authorities consider how to best ensure that legal aid is available in discrimination cases before Employment Tribunals.*

ECRI recommends that the United Kingdom authorities intensify their efforts to prevent racist violence and combat its underlying causes, and recommends that the authorities take measures to tackle the exploitation of racism in politics and in the media. It encourages the authorities to strengthen their efforts to counter antisemitism and recommends that they strengthen their dialogue with representatives of Muslims in the United Kingdom.

ECRI makes a series of recommendations aimed at redressing the inequalities faced by Gypsies and Travellers and at combating the discrimination and prejudice they experience in daily life.

ECRI strongly encourages the United Kingdom authorities in their efforts to address the disadvantages faced by Gypsies and Travellers in access to adequate accommodation. It strongly recommends that the authorities take all necessary measures to ensure that the assessment of accommodation needs at local level is completed thoroughly and as quickly as possible.*

ECRI makes a number of recommendations aimed at combating the discrimination and hostility experienced by refugees, asylum-seekers and migrants; at ensuring that the fight against terrorism does not lead itself to direct or indirect discrimination; and at combating racial discrimination or disproportionality in police activities.

ECRI encourages the United Kingdom authorities to continue their efforts to address the under-representation of ethnic minorities in the police, and to monitor progress in recruitment, retention and career advancement.*

* The recommendations in this paragraph will be subject to a process of interim follow-up by ECRI no later than two years after the publication of this report.

ECRI encourages the United Kingdom authorities in their efforts to ensure that the race equality strategies implemented in the United Kingdom are adapted to current and future circumstances, and to collect relevant data in different policy areas. It also recommends that such data include data broken down by religion.

FINDINGS AND RECOMMENDATIONS

I. Existence and Implementation of Legal Provisions

International legal instruments

1. In its third report on the United Kingdom, ECRI recommended that the United Kingdom sign and ratify Protocol No. 12 to the European Convention on Human Rights, which sets forth a general prohibition of discrimination.
2. No steps have been taken by the United Kingdom authorities towards signing or ratifying Protocol No. 12. The authorities have indicated that they consider that existing domestic law in this field is comprehensive, elaborate and detailed, and that it suffices for the United Kingdom's needs; although the authorities consider that the provisions of domestic law are very close to the aims sought to be achieved under Protocol No. 12, they are concerned that the effect of the latter is as yet uncertain. They therefore do not intend to accede to Protocol No. 12 at present but will evaluate their position as the relevant case-law unfolds with respect to other member states. ECRI notes that little effort would appear to be required to ensure the compliance of United Kingdom law with the provisions of Protocol No. 12. It stresses that Protocol No. 12 is one of the most important international instruments for combating racial and other forms of discrimination, and that its ratification would make it possible to combat this phenomenon more effectively at national level.
3. ECRI urges the United Kingdom to sign and ratify Protocol No. 12 to the European Convention on Human Rights.
4. In its third report, ECRI also recommended that the United Kingdom ratify as soon as possible the European Convention on Nationality and the European Social Charter (Revised) and that it ratify the Convention on the Participation of Foreigners in Public Life at Local Level and apply the provisions contained in Chapters A, B and C of that instrument. It further recommended that the United Kingdom sign and ratify the Additional Protocol to the Convention on Cybercrime, concerning the criminalisation of acts of a racist and xenophobic nature committed through computer systems, and the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families. ECRI also recommended that the United Kingdom accept Article 14 of the International Convention on the Elimination of All Forms of Racial Discrimination and ratify the Optional Protocol to the International Covenant on Civil and Political Rights.
5. The United Kingdom signed the European Social Charter (Revised) on 7 November 1997 and the Convention on the Participation of Foreigners in Public Life at Local Level on 5 February 1992 but has not ratified either instrument. With respect to the European Social Charter (Revised), the authorities have indicated that possible ratification of this instrument is kept under permanent review; however, the United Kingdom's view is that, while social and economic rights may be justiciable, they are nevertheless best guaranteed by parliament. ECRI stresses, however, that the nature of the rights at issue is already adequately reflected in the supervision mechanisms put in place at international level. The United Kingdom authorities have indicated that domestic law already complies with the undertakings set forth in Chapters A and B of the Convention on the Participation of Foreigners in Public Life at Local Level; the United Kingdom remains committed to ratifying this instrument, and

hopes to begin the process before the next Conference of European Ministers responsible for local and regional government, in November 2009.

6. The United Kingdom has not signed or ratified the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, the European Convention on Nationality or the Additional Protocol to the Convention on Cybercrime, concerning the criminalisation of acts of a racist and xenophobic nature committed through computer systems. The authorities have indicated that they hope to start the process of ratifying the Convention on Cybercrime soon – a prerequisite to ratifying its Additional Protocol. However, due to problems of compatibility between the criminal thresholds specified in domestic law and in the Additional Protocol, the United Kingdom authorities do not consider it possible to ratify the Additional Protocol. They observe, however, that criminal laws on incitement apply to material published on line.
7. The United Kingdom has not signed or ratified the Optional Protocol to the International Covenant on Civil and Political Rights. Nor has it recognised the competence of the Committee on the Elimination of Racial Discrimination under Article 14 of the International Convention on the Elimination of All Forms of Racial Discrimination. The government is, however, examining each United Nations treaty body on a case-by-case basis and has, for example, announced its decision to accede to the Optional Protocol to the Convention on the Rights of Persons with Disabilities.
8. ECRI stresses that all of the above-mentioned instruments may make important contributions to the fight against racism and racial discrimination, and emphasises the importance of ensuring that all victims of such phenomena benefit fully from the protection provided under international law.
9. ECRI encourages the United Kingdom to complete the process of ratifying the Convention on the Participation of Foreigners in Public Life at Local Level as soon as possible, and again recommends that it apply the provisions contained in Chapters A, B and C of that instrument.
10. ECRI again recommends that the United Kingdom ratify as soon as possible the European Convention on Nationality and the European Social Charter (Revised), as well as the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families. It recommends that the United Kingdom take all necessary measures to sign and ratify the Additional Protocol to the Convention on Cybercrime, concerning the criminalisation of acts of a racist and xenophobic nature committed through computer systems.
11. ECRI reiterates its recommendation that the United Kingdom accept Article 14 of the International Convention on the Elimination of All Forms of Racial Discrimination and ratify the Optional Protocol to the International Covenant on Civil and Political Rights.

Constitutional provisions and other basic provisions

12. In its third report, ECRI recommended that the United Kingdom authorities consider ways of placing the right to be free from discrimination at a higher level in the domestic legal order, and encouraged the authorities in their efforts to establish a support mechanism aimed at raising the general public's awareness of their rights under the Human Rights Act and at providing advice and assistance to individuals. It recommended that such assistance include assistance in pursuing individual complaints of human rights violations.
13. ECRI notes that on 23 March 2009, the Ministry of Justice launched a green paper to start a national debate about the future of rights and responsibilities,

although it noted that it did not intend to bring forward legislation on this matter before the next general election¹. The paper examines whether individuals' rights and responsibilities should be collected in a single instrument, such as a Bill of Rights and Responsibilities. The green paper also refers to the existing statutory provisions on equality and the proposed Equality Bill², and to the recognition by the courts of equality of treatment as a principle of administrative law; it notes that a Bill of Rights could articulate and emphasise the safeguards provided under the law, so as to reflect society's commitment to equality and offer individuals a sense of the protection available to them, but also notes that such a Bill should leave room to ensure that Parliament could continue to legislate for justifiable exceptions, for example with respect to rules on immigration and citizenship, or exceptions to discrimination law permitted or required by EU law. According to the paper, the government "welcomes views on how a statement of equality in the Bill of Rights and Responsibilities might be framed, in order to secure equality's place at the highest levels of political principle".

14. ECRI welcomes the government's intention, should it proceed with the adoption of such a Bill, to ensure that the principles of equality and non-discrimination are included in it. ECRI notes the very strong emphasis placed in the green paper on the accompaniment of rights with responsibilities. While recognising that some rights may also imply the existence of certain duties, ECRI welcomes the Government's recognition that fundamental rights cannot be legally contingent on the exercise of responsibilities³.
15. ECRI encourages the United Kingdom authorities to take all necessary steps to ensure that any Bill of Rights adopted serves to maintain or strengthen the level of human rights protection in the United Kingdom, in particular as concerns equality and protection against racism and racial discrimination.

Citizenship legislation

16. In its third report, ECRI recommended that the United Kingdom authorities keep the implementation of the citizenship requirements under close review in order to address any possible patterns of excessively restrictive application or of direct or indirect racial discrimination. It is not clear from the information available to ECRI to what extent this has been done.
17. On 14 January 2009, the government introduced the Borders, Citizenship and Immigration Bill in Parliament, which was subsequently subject to intense scrutiny both by civil society and in Parliament⁴. It completed the legislative process as the Borders, Citizenship and Immigration Act 2009 on 21 July 2009. ECRI welcomes the inclusion of a section in the Act⁵ which imposes a duty on the Secretary of State to make arrangements to ensure that immigration, asylum, nationality and customs functions are discharged having regard to the need to safeguard and promote the welfare of children who are in the United Kingdom. However, other parts of the Act are of concern to ECRI, in particular as regards Part II, on Citizenship. This part aims to put into practice the concept of citizenship set out by the government in a green paper

¹ Rights and Responsibilities: developing our constitutional framework (Cm 7577), March 2009

² See below, Civil law provisions against racial discrimination.

³ Rights and Responsibilities: developing our constitutional framework (Cm 7577), March 2009, § 2.22

⁴ Aspects of this Act related to migrants and refugees and not related to naturalisation are examined elsewhere in this report. See below, Vulnerable/Target Groups – Refugees and asylum-seekers, Migrants.

⁵ Section 55

published in 2008⁶. Three paths to citizenship are set out, open to non-citizens legally resident in the United Kingdom for reasons of work, family or protection (i.e. refugees or persons granted humanitarian protection). Citizenship must be “earned”, meaning that migrants will have to pass through a series of three stages to reach citizenship (temporary residence, probationary citizenship and citizenship), and will have to demonstrate that they have “earned” the right to progress between stages. The ordinary period of residency in the United Kingdom (qualifying period) required under the Act before a person can be naturalised will increase significantly, up from 6 to 8 years (and from 3 to 5 years for the spouse or civil partner of a British citizen); as in the past, applicants for citizenship must not have been in breach of the immigration laws at any time during the qualifying period in the United Kingdom. Under the new “activity condition”, migrants who choose to play an active role in the community (by for example undertaking voluntary charitable work or becoming involved in mentoring or befriending) may see the relevant qualifying period reduced by 2 years, but even so, for some, the time taken to acquire citizenship will be increased. The government has pointed out that it has the power to exempt individuals from the activity condition; however, the regulations making provision for this have yet to be adopted. During the new “probationary citizenship” period, persons in the work and family categories will have to continue to be self-sufficient, as during their period of temporary residence, and will continue to be ineligible for a number of different benefits currently available to non-citizens having obtained “indefinite leave to remain”. ECRI notes that the new rules reflect the view that, to acquire British nationality, an applicant should be able to demonstrate a firm commitment to the new home country as well as a knowledge of and involvement in the society of which he or she seeks to be a part.

18. ECRI notes that the concept of “earned citizenship” espoused by the Act has been strongly criticised by many civil society actors. They have argued that the new provisions will not simplify the existing legislation but will introduce greater complexity. Concerns have been raised about the concept of “probationary citizenship”, which is considered misleading as it does not bestow the entitlements of citizenship on a probationary basis but is in effect simply an additional form of temporary residence. The concept of “active citizenship”, in accordance with which applicants for citizenship who engage in voluntary work in the community may benefit from a two-year reduction in the time necessary for naturalisation, has been the subject of heavy criticism. Civil society actors have stressed that this concept is demeaning to non-citizens, who may be perceived as somehow unworthy if they do not make a greater commitment to British society than British citizens; that it may lead to discrimination between non-nationals and nationals (who have nothing to lose if they do not undertake “active citizenship”), as well as to discrimination against those who are unable to engage in “active citizenship” due to work or family commitments or ill health; and that in essence, it will not serve as an incentive for greater engagement in society but as a penalty for not doing something that was previously neither required nor expected. Moreover, it has been pointed out that civil society itself has not requested such a model and may not have the capacity rapidly to absorb many thousands of volunteers. NGOs furthermore remain sceptical as to how the government’s power to exempt individuals from the activity condition will be applied in practice. It has also been suggested that the new provisions on acquisition of citizenship, which are less favourable to refugees than the provisions currently in force, may be incompatible with the United Kingdom’s obligations under Article 34 of

⁶ Home Office, Border and Immigration Agency, The path to citizenship: next steps in reforming the immigration system, February 2008.

the 1951 Geneva Convention. The slower scheme will also reduce or delay migrants' access to social rights, such as further or higher education at UK rates, regardless of whether migrants are themselves contributing to the public purse; some have argued that these measures appear designed more to send a message to the British public that the authorities are "tough on immigration" than to achieve any genuinely useful purpose in practice.

19. ECRI notes the objectives underlying the new rules. It also notes, however, that the measures will have the effect of making the process of acquiring nationality – which is a central element of integrating immigrants – slower and more difficult for many. ECRI is concerned that the principal message sent out by the new rules – particularly by the application in practice of the concepts of earned and active citizenship – should be one of inclusion rather than exclusion. Integration is a two-way process which implies mutual recognition between the majority population and minority groups, many of whose members in the United Kingdom may be non-citizens. In so far as naturalisation is a part of the process of integration it should serve to promote and not hinder that process. ECRI therefore expresses the hope that the United Kingdom Government will keep the new rules' impact on the integration process very carefully under review and ensure that they are implemented in a way that is seen to be flexible, fair and humane.
20. ECRI urges the United Kingdom authorities to ensure that the effect of the new rules with respect to the acquisition of citizenship is to assist and not to hinder non-citizens in their part of the process of integration.

Criminal law provisions against racism applicable in England and Wales

- *Racially and religiously aggravated offences*⁷
21. The Crime and Disorder Act 1998 defines certain specific racially or religiously aggravated offences which are prohibited in England and Wales, namely racially or religiously aggravated assaults, criminal damage, public order offences and harassment etc. Such offences are considered to be racially or religiously aggravated if, at the time of committing the offence, or immediately before or after doing so, the offender demonstrates hostility towards the victim based on his or her membership or presumed membership of a racial or religious group, or if the offence is wholly or partly motivated by hostility towards members of a racial or religious group based on their membership of that group⁸. In addition, section 145 of the Criminal Justice Act 2003 applies in cases where a court is considering the seriousness of an offence other than the above offences. In these cases, if the offence was racially or religiously aggravated, the court must treat that fact as an aggravating factor, and must state in court that the offence was so aggravated.
 22. In its third report, ECRI encouraged the United Kingdom authorities in their efforts to improve the methods by which racist incidents are reported and recorded and to monitor the implementation of the provisions against racially and religiously aggravated offences. ECRI recommended that the United Kingdom authorities continue to raise the awareness of the courts of the need to ensure that all racially or religiously aggravated offences are duly punished

⁷ ECRI recalls that, as expressed in its General Policy Recommendation No. 7 on national legislation to combat racism and racial discrimination religion is a characteristic that should also be protected under such legislation. Distinctions made in this report between racially and religiously aggravated offences, and other analogous distinctions, reflect the situation in the United Kingdom and do not reflect any change in ECRI's approach on this point.

⁸ Crime and Disorder Act 1998, sections 28-32, as amended by section 39 of the Anti-Terrorism, Crime and Security Act 2001.

and that the sentences handed down adequately reflect the gravity of the offences.

23. Since ECRI's third report, the definitions used by the police and the Crown Prosecution Service (CPS) for the reporting and prosecution of racist offences have been modified. According to the definitions now in use, a race hate crime is "any criminal offence which is perceived, by the victim or any other person, to be motivated by a hostility or prejudice based on a person's race or perceived race". A racist incident is "any non-crime incident which is perceived by the victim or any other person, to be motivated by a hostility or prejudice based on a person's race or perceived race."⁹ All crimes and incidents reported to the police will be registered (in the form of an incident report), whether the report is received from victims, witnesses, or third parties.¹⁰ The aim is to allow the police to build up a picture of possible crimes in their area, and to ensure that reporting is carried out consistently across police forces. Around 60 000 racist or religiously motivated incidents are reported each year¹¹. A broad definition of racist incidents is used, in order to capture all incidents with a racist element, irrespective of whether they constitute a crime. However, each incident will only subsequently be recorded as a crime if the circumstances as reported amount to a crime defined by law and if there is no credible evidence to the contrary. Not every reported racist incident will therefore translate into a recorded crime¹². Where a crime is recorded, the main barrier to subsequent prosecutions is reported to be the lack of an identified suspect; other barriers include unwillingness of the victim to support a prosecution, insufficient evidence to support a conviction, or public interest reasons.
24. The CPS has produced an annual report since April 2005, covering all racist and religious crimes prosecuted in the yearly period from April to March, with details of charges dropped, outcomes of the charges prosecuted and sentences imposed. Since 2007-08, this information has been included in a Hate Crime Report covering racist and religious hate crime, homophobic and transphobic hate crime and disability hate crime. 13 008 defendants were prosecuted for crimes involving racial or religious aggravation in 2007-2008, nearly 1 300 more than the previous year. At the same time, the proportion of unsuccessful prosecutions in cases involving racial or religious aggravation dropped to 20.1% in 2007-2008.
25. The CPS has also taken specific initiatives to reduce unsuccessful hate crimes prosecutions, including quarterly performance reporting obligations and ratings of areas, themed reviews to give a detailed analysis of specific types of hate crimes (recently, homophobic crime) and data analysis published in the annual

⁹ Definitions published by the Home Office on its Crime Reduction > Definitions of Hate Incidents and Hate Crimes web page: <http://www.crimereduction.homeoffice.gov.uk/hatecrime/hatecrime002.htm> (visited 16 October 2009; last updated Friday, 18 September 2009)

¹⁰ The information in this paragraph is drawn essentially from the Home Office Counting Rules for Recorded Crime and on the Crown Prosecution Service Response to the All-Party Parliamentary Inquiry into Antisemitism.

¹¹ According to figures published by the Ministry of Justice in April 2009, the numbers of racist incidents recorded by all police forces in England and Wales in recent years were 2003/04: 54 157; 2004/05: 57 863; 2005/06: 60 651; 2006/07: 61 262; 2007/08: 57 055. See Statistics on Race and the Criminal Justice System 2007/8, Table 3.1.

¹² According to figures published by the Home Office and the Ministry of Justice, the numbers of racist offences recorded by police forces in England and Wales in recent years were: 2002/03: 31 034 offences (revised figure cited in 2004 report); 2003/04: 34 996 (revised figure cited in 2005 report); 2004/05: 37 028 (revised figure cited in 2006 report); 2005/06: 41 457 (revised figure cited in 2006/07 report); 2006/07: 42 554 (revised figure cited in 2007/08 report); 2007/08: 38 327. See Statistics on Race and the Criminal Justice System, reports published by the Home Office for 2004 and 2005 and by the Ministry of Justice for 2006, 2006/07 and 2007/08, Table 3.2 in each report.

Hate Crimes Report. It has published a booklet on its prosecution policy with regard to racist and religious crime, aimed at victims, witnesses, their families and the general public, as well as specific guidance on prosecuting cases of racist and religious crime¹³. It has also taken initiatives to share good practice and lessons learnt¹⁴. In the past few years it has also established hate crime scrutiny panels to examine the manner in which recent hate crime cases have been handled as they go through the criminal justice system. The aim is to bring together members of the community with professionals involved in the criminal justice system to review hate crimes files jointly, raise awareness of how and why decisions are made, identify problem areas in the management of such cases and ultimately, encourage more victims to come forward and to remain with the process until the conclusion of the prosecution, and increase successful prosecutions. This initiative appears to have been well received by civil society actors.

26. There has been a significant but unexplained increase in relevant cases recorded between 2005-2006 (8 868 completed prosecutions) and 2007-2008 (13 008), according to the figures published by the CPS¹⁵. The increase may be due to the fact that, whereas the figures used in earlier reports were based on the manual recording of racist or religious crimes in the Racist Incident Monitoring Scheme, those used as from 2007-2008 are extracted from the CPS's electronic case management system, which is considered more reliable, or it may be due to an increase in racially motivated crimes, or both.
27. The authorities have expressed the view that judges are sufficiently versed in the law governing racially and religiously aggravated offences and that training in this field is not required. However, given the sensitive nature of hate crimes and their impact not just on victims but on the broader community, further efforts could be made to raise judges' awareness as to the impact on the community as a whole of their statements in court when sentencing offenders. Progress also needs to be made to improve police gathering of evidence – which is one of the key stumbling blocks in the process of transforming reports of racist incidents into criminal convictions. This is especially important given the high evidential standards that must be met in order to prove racial or religious aggravation as defined under section 28 of the Crime and Disorder Act 1998. With this in mind, guidance for police officers has now been produced on how to interview suspects in such cases.
28. ECRI welcomes the considerable efforts made by the United Kingdom authorities to ensure that racially motivated offences are comprehensively and consistently reported and recorded. It notes in particular in this respect the steps taken to ensure that a uniform definition of racist incidents is applied consistently throughout the criminal justice system, and to enable cases to be tracked through the system. It also welcomes the steps taken to ensure that lessons are learned from past cases and to share good practice, as well as efforts made to work with the community to continue to improve outcomes in such cases.

¹³ Crown Prosecution Service, Racist and Religious Crime – CPS Prosecution Policy, and Crown Prosecution Service, Guidance on prosecuting cases of racist and religious crime

¹⁴ Crown Prosecution Service, Equality and Diversity Unit, Handling Sensitive Race Hate Crime: An Overview of good practice and lessons learnt in the CPS Merseyside handling of the racist murder of Anthony Walker, May 2006.

¹⁵ Crown Prosecution Service Management Information Branch, Hate Crime Report 2007–2008, December 2008, p19.

29. ECRI encourages the United Kingdom authorities in their efforts to monitor hate crimes and to ensure that these are reported and comprehensively and consistently recorded, as well as to work with the community to increase mutual understanding of the impact of such offences and the manner in which they are handled through the criminal justice system. It recommends that the authorities continue their efforts to raise judges' awareness as to the impact on the community as a whole of their statements in court when sentencing offenders for racist offences.
30. ECRI recommends that the authorities carry out research into the reasons for increase in racist incidents and offences recorded in recent years¹⁶, in order to be better placed to fight the causes of such phenomena and prevent them.
31. ECRI encourages the authorities to pursue and strengthen their efforts to improve the police gathering of evidence of racist motivations.

- *Incitement to racial or religious hatred*

32. In its third report, ECRI recommended that the United Kingdom authorities keep the effectiveness of existing legislation against racist expression under review, and drew the attention of the authorities to its General Policy Recommendation No. 7¹⁷ in this respect, and in particular to its recommendation that the acts criminalised under domestic law include "the public expression, with a racist aim, of an ideology which claims the superiority of, or which depreciates or denigrates, a grouping of persons on the grounds of their race, colour, language, religion, nationality, or national or ethnic origin". ECRI also reiterated its recommendation that consideration be given to replacing the requirement to have the consent of the Attorney General for prosecution of incitement offences under Part III of the Public Order Act 1986 with the requirement to have the consent of the Director of Public Prosecutions – which is the usual procedure in sensitive cases. No changes have been reported in either of these respects since ECRI's third report.
33. ECRI reiterates its recommendation that the United Kingdom authorities keep the effectiveness of existing legislation against racist expression under review. It again draws their attention to its General Policy Recommendation No. 7 in this respect, and in particular to its recommendation that the acts criminalised under domestic law include "the public expression, with a racist aim, of an ideology which claims the superiority of, or which depreciates or denigrates, a grouping of persons on the grounds of their race, colour, language, religion, nationality, or national or ethnic origin".
34. ECRI again recommends that consideration be given to replacing the requirement to have the consent of the Attorney General for prosecution of incitement offences under Part III of the Public Order Act 1986 with the requirement to have the consent of the Director of Public Prosecutions.
35. In its third report, ECRI recommended that the United Kingdom authorities swiftly enact legislation prohibiting incitement to hatred against religious groups.

¹⁶ See above, §§ 23 and 26.

¹⁷ CRI (2003) 8: ECRI General Policy Recommendation N°7: National legislation to combat racism and racial discrimination.

36. In 2006, the United Kingdom Parliament enacted the Racial and Religious Hatred Act 2006, which came into force on 1 October 2007. The authorities have emphasised that this Act will not restrict people's freedom to practice their religion or to proselytise, which is recognised as an integral activity for many faith communities.¹⁸ The Act, which extends to England and Wales only, creates offences involving stirring up hatred against persons on religious grounds. The meaning given to religious hatred is "hatred against a group of persons defined by reference to religious belief or lack of religious belief"¹⁹. In contrast with the equivalent provisions covering racial hatred, which cover both acts intended and acts that are likely to stir up racial hatred, the provisions governing religious hatred cover only acts intended to stir up such hatred; similarly, whereas the provisions with respect to racial hatred prohibit not only threatening but also abusive and insulting words or behaviour, those governing religious hatred are limited to threatening words or behaviour. A freedom of expression defence specific to the new religious hatred offences is also provided for, meaning that the provisions governing offences based on religious hatred cannot be used to prohibit or restrict discussion, criticism or expressions of antipathy, dislike, ridicule, insult or abuse of particular religions or belief systems, or the beliefs or practices of their adherents.
37. The Crown Prosecution Service has indicated that in the light of these elements, it will be more difficult to prosecute for inciting religious hatred than racial hatred (for which the standard is already considered high). As is the case for incitement to racial hatred, and because they are considered to have public policy implications, prosecutions for incitement to religious hatred require the consent of the Attorney General²⁰. They are to be dealt with under the same arrangements as offences of inciting racial hatred, meaning that a team of specialist lawyers at the CPS headquarters reviews the police file in all such cases and decides whether there is sufficient evidence to bring the case to trial.²¹
38. ECRI notes that the Bill initially introduced by the Government – which included more wide-ranging protections against incitement to religious hatred – was narrowly defeated in Parliament. Some civil society actors have expressed disappointment that the new provisions governing religious hatred, as enacted, do not go as far to protect against incitement on the grounds of religion as the existing provisions against incitement to racial hatred. Muslim groups in particular have expressed the view that the provisions prohibiting incitement to religious hatred leave loopholes that can too easily be exploited by extreme right-wing groups. ECRI notes that the new provisions are an important step forward in protecting individuals in England and Wales from acts directed against them on the grounds of their religious convictions, but draws the authorities' attention to its General Policy Recommendation No. 7 on national legislation to combat racism and racial discrimination, which treats public incitement to hatred against a person or group of persons on the grounds of their religion on the same footing as incitement on the grounds of "race", colour, language, nationality, or national or ethnic origin.

¹⁸ ACFC/SR/II(2007)003 rev, Second report submitted by the United Kingdom pursuant to Article 25, paragraph 1 of the Framework Convention for the Protection of National Minorities, 22 February 2007, page 55, § 249

¹⁹ See the Schedule to the Racial and Religious Hatred Act 2006, inserting a new s29A in the Public Order Act 1986.

²⁰ The Attorney General is one of the Chief Law Officers of the Crown, who represents the Queen and the Government in court, and has supervisory powers over prosecutions, which are the responsibility of the Director of Public Prosecutions and the Crown Prosecution Service.

²¹ See Racist and Religious Crime – CPS Prosecution Policy, available at <http://www.cps.gov.uk/publications/prosecution/rrpbcrcbook.html>

39. ECRI recommends that the authorities keep under review the existing legislation against incitement to religious hatred in England and Wales to ensure that the existence of higher thresholds for prosecution does not deprive individuals of necessary protection against incitement on religious grounds. It draws the authorities' attention in this respect to its General Policy Recommendation No. 7 on national legislation to combat racism and racial discrimination.
40. In its third report, ECRI reiterated its recommendation that the authorities reform the blasphemy law, to ensure that it did not discriminate between religions. ECRI welcomes the fact that the offences of blasphemy and blasphemous libel under the common law of England and Wales have now been abolished, by virtue of section 79 of the Criminal Justice and Immigration Act 2008²².

Criminal law provisions against racism applicable in Scotland

41. In its third report, ECRI recommended that legislation prohibiting incitement to hatred against religious groups be enacted in Scotland. The position on incitement has, however, not changed since a Cross-Party Working Group on Religious Hatred decided in 2002 not to recommend the introduction of legislative provisions prohibiting incitement to hatred on religious grounds.
42. In Scotland, the number of racist incidents reported to the police has hovered at around 5 000 each year over the last few years²³. As regards sentencing in cases involving racial or religious aggravation, legislation on racial aggravation has been in place since 1998 (section 96(5) of the Crime and Disorder Act 1998, which applies only to Scotland) and on religious aggravation since 2003 (section 74 of the Criminal Justice (Scotland) Act 2003). In both cases the court, on convicting a person, is required to take racial or religious aggravation into account in determining the appropriate sentence. According to figures provided to ECRI by the authorities, overall, 1077 persons were subject to prosecution in Scotland for offences with a religious and/or racial aggravation in 2006-2007; of those, the charges were proved in 866 cases. However, the authorities have indicated that the information available on whether the aggravation was taken into account in the final conviction and sentence is less clear.²⁴ The Criminal Justice and Licensing (Scotland) Bill, introduced in the Scottish Parliament on 5 March 2009, aims to improve the manner in which courts explain the impact of the racist or religious motivation on sentences imposed, by requiring them to state on conviction that the offence was racially aggravated or aggravated by religious prejudice; record the conviction in a way that shows the offence was so aggravated; take the aggravation into account in sentencing; and explain the impact of the aggravation on the sentence imposed. At the time of drafting this report, the Bill was still in the parliamentary process.
43. Some reports suggest that the extent and accuracy with which racist incidents are recorded in Scotland may vary from one police unit to another. Fear and distrust felt by minority ethnic communities towards the police may act as a barrier to their willingness to report such incidents.

²² Select Committee on Religious Offences in England and Wales, First Report, Appendix 5: Religious Offences in Other Jurisdictions, 10 April 2003.

²³ 4 519 racist incidents reported in 2004-2005, 5 111 in 2005-2006, 5 321 in 2006-2007, 5 243 in 2007-2008, as indicated in the Statistical Bulletin (Crime and Justice Series), Racist Incidents Recorded by the Police in Scotland, 2004/05 to 2007/08, published on 31 March 2009.

²⁴ Explanatory notes to the Criminal Justice and Licensing (Scotland) Bill (SP Bill 24) as introduced in the Scottish Parliament on 5 March 2009, § 798.

44. ECRI recommends that the authorities keep under review the effectiveness of existing law in Scotland in preventing and punishing incitement to hatred on religious grounds, and again consider amending the law if necessary.
45. ECRI encourages the authorities to pursue their efforts to ensure not only that racist and religious motivations are taken into account by the Scottish courts in sentencing offenders, but also that this is made clearly known to the offender and the public at the time of sentencing.
46. ECRI recommends that the authorities continue and intensify their efforts to improve the reporting and recording of racist offences in Scotland.

Criminal law provisions against racism applicable in Northern Ireland

47. In its third report, ECRI recommended that extensive training be provided to all those working in the criminal justice system in Northern Ireland on the provisions against racially or religiously aggravated behaviour introduced by the Criminal Justice (No. 2) (Northern Ireland) Order 2004. However, ECRI has not received information regarding the provision of such training.
48. Incitement to religious hatred has been prohibited in Northern Ireland since 1987, under Part III of the Public Order (Northern Ireland) Order 1987, which outlaws certain acts intended or likely to arouse fear of or stir up hatred against a group of persons defined by reference to religious belief, colour, race, nationality (including citizenship) or ethnic or national origins.
49. In Northern Ireland, reports have also indicated continuing resistance among the police to recording racist incidents or acknowledging their seriousness. The Police Service of Northern Ireland has since launched an awareness-raising campaign to improve the reporting of all forms of hate crimes (racist, religious, sectarian, disability related, homophobic, transphobic), with the slogans, "Nobody deserves this. And nobody deserves to get away with it." and, "To stop it, report it."
50. ECRI again recommends that extensive training be provided to all those working in the criminal justice system in Northern Ireland on the criminal law provisions against racially or religiously aggravated behaviour.
51. ECRI recommends that the authorities continue and intensify their efforts to improve the reporting and recording of racist offences in Northern Ireland.

Civil law provisions against racial discrimination

52. In its third report, ECRI recommended that the United Kingdom authorities swiftly undertake a review of the anti-discrimination provisions in force in order to prepare consolidated legislation providing equal protection to individuals against discrimination on grounds such as race, colour, language, religion, nationality and national or ethnic origin. It further recommended that the authorities extend legal protection against religious discrimination to all areas in respect of which legal protection against racial discrimination is currently provided.
53. Following a lengthy development process that began in 2005, on 24 April 2009, the government introduced an Equality Bill in the House of Commons²⁵. The Bill, which will apply to Great Britain (England, Scotland and Wales), is

²⁵ DCLG, A Framework for Fairness: Proposals for a Single Equality Bill for Great Britain, June 2007; Framework for a Fairer Future – The Equality Bill (Cm 7431), June 2008; The Equality Bill – Government Response to the Consultation (Cm 7454), July 2008; New Opportunities White Paper (Cm 7533), January 2009.

designed to bring together, in a single piece of legislation, all the main existing equality legislation and related provisions, including amongst others the Race Relations Act 1976 and Part II of the Equality Act 2006, governing discrimination on grounds of religion or belief. It is intended both to harmonise discrimination law – setting out a single approach, wherever appropriate, for all protected characteristics, namely age, disability, gender reassignment, marriage and civil partnership, “race” (meaning a person’s colour, nationality (including citizenship) or ethnic or national origin), religion or belief (meaning any religion or belief having a clear structure and belief system, or the lack of such a religion or belief, but not political beliefs or beliefs in scientific theories), sex and sexual orientation – and to strengthen the law to support progress on equality. The Bill prohibits direct and indirect discrimination, harassment and victimisation. To strengthen the law, it is intended, inter alia, to extend the circumstances in which a person is protected against discrimination, harassment or victimisation because of a relevant characteristic; to create a duty on public authorities when carrying out their functions to have due regard to the need to eliminate conduct prohibited under the Bill, advance equality of opportunity, and foster good relations; to allow employers, service providers or other organisations to take positive action, on a voluntary basis; and to enable employment tribunals to make recommendations to a respondent employer who has lost a discrimination claim to remedy matters not only for the claimant concerned (who may have left the workplace) but also the wider workforce²⁶.

54. A number of civil society actors expressed concern prior to the publication of the Bill that the extension of harmonised protection to a wider range of grounds would be accompanied by a dilution in the level of protection previously provided on the grounds of race, gender and disability, and that the Bill would be rushed through Parliament, preventing them from examining and commenting on its precise ramifications in detail before its enactment. Parliament has, however, since agreed to resume examining the Bill in the next session. As regards fears of a dilution in the standard of protection provided under existing legislation, in particular on the grounds of race, ECRI welcomes the fact that the authorities’ stated aim is to raise standards so that the protection provided in future for presently less well protected characteristics (such as religion and belief) is essentially the same as that provided on grounds such as race. ECRI hopes that sufficient dialogue will be possible with civil society, following the publication of the Bill, to allay any fears that prove to be unfounded and resolve any remaining substantive concerns in this respect.
55. ECRI notes with interest that the proposed definition of direct discrimination (clause 13 of the Bill) does not require the victim actually to have one of the characteristics protected under the Bill; the definition is intended to be broad enough to cover not only cases where the victim has a protected characteristic but also cases where the victim is, for example, wrongly thought to have such a characteristic, as well as cases where less favourable treatment is due simply to the victim’s association with someone who has a protected characteristic. ECRI notes with interest that, as recommended in its General Policy Recommendation No. 7, segregation on grounds of race is expressly prohibited as a form of direct discrimination (clause 13(5)), and that race and religious or belief-related discrimination are both defined (clause 23) so as to include both direct and indirect discrimination. In addition, victimisation is no longer technically treated as a form of discrimination, meaning that it will no longer be necessary to compare the treatment of an alleged victim of less

²⁶ Explanatory Notes to the Equality Bill, § 10.

favourable treatment inflicted because they have made or supported a claim under the Bill with the treatment of a person who has not done so (clause 25).

56. ECRI notes with concern, however, that while harassment on grounds of a person's religion or belief or of their sexual orientation is prohibited in a number of cases, such as in the field of employment, harassment on these grounds is not prohibited in all cases. Protection from harassment on these grounds is in fact expressly excluded in a number of specific fields, such as the provision of goods and services, the exercise of public functions or the disposal or management of premises; nor is harassment on these grounds prohibited with respect to certain persons, such as pupils or prospective pupils of schools or members or potential members, of associations. ECRI emphasises that, no matter what the field or who the victim, harassing a person on the above grounds has just as devastating an impact on the victim as harassing a person on the basis of the other characteristics protected under the Equality Bill. It draws the authorities' attention in this respect to its General Policy Recommendation No. 7 on national legislation to combat racism and racial discrimination, in which religion is included as a protected characteristic in the fight against racism and racial discrimination. ECRI also notes that language is not a protected characteristic under the Bill, and draws the authorities' attention to the fact that in its General Policy Recommendation No. 7, language is also included as a protected characteristic.
57. ECRI encourages the authorities in their efforts to prepare consolidated legislation providing equal protection to individuals against discrimination on grounds such as race, colour, religion, nationality and national or ethnic origin. It strongly recommends that the authorities extend the protection against harassment set forth in the Equality Bill to harassment on the basis of religion, and draws the authorities' attention in this respect to its General Policy Recommendation No. 7 on national legislation to combat racism and racial discrimination, in which religion is included as a protected characteristic in the fight against racism and racial discrimination.
58. ECRI recommends that the authorities consider including language as a characteristic protected under the Equality Bill, and draws the authorities' attention in this respect to its General Policy Recommendation No. 7.
59. In its third report, ECRI encouraged the United Kingdom authorities in their efforts to promote race equality and fight against racial discrimination through the public sector race equality duty, and recommended that the authorities ensure that adequate resources were available for the effective monitoring and enforcement of these duties. It recommended that all necessary measures be taken to ensure a closer link between race equality duties and outcomes, and that the authorities consider extending the duty to other grounds, notably religion.
60. As regards the statutory duty on public authorities to promote race equality and fight against racial discrimination²⁷, this has continued to be implemented in particular through the specific duty to adopt race equality schemes or policies. Public authorities are required in the context of such schemes to assess and consult on the likely impact proposed policies will have on race equality; monitor policies for any adverse impact on race equality; publish the results of any consultation, monitoring or assessment; guarantee that the public have access to the information and services they provide; train their staff in the general duty and in the specific duties; and carry out a three-yearly review of the scheme. While public authorities appear in general to have

²⁷ See articles 2(2) and 2(3) of the Race Relations Act 1976 (Statutory Duties) Order 2001.

complied with this duty²⁸, ECRI refers to the concerns relayed in its third report that these duties may have tended to focus excessively on arrangements and processes aimed at advancing race equality rather than on actual race equality outcomes. ECRI notes that under the Equality Bill, it is proposed to introduce a general public sector equality duty, extending the existing, similar equality duties in relation to race, disability and gender to cover gender reassignment in full, age, religion or belief and sexual orientation. The Bill will allow ministers to impose specific duties on public authorities to allow the latter better to perform their equality duties. The government has indicated that it will be consulting, during the passage of the Bill, on the approach to be adopted in setting out specific duties.

61. ECRI welcomes the Equality Bill's extension of the public sector equality duty to the grounds of religion or belief. It also welcomes the express provision in the Bill for the possibility of positive action, in appropriate cases. It hopes that the planned consultation on specific equality duties will provide an opportunity to address concerns about strengthening the link between equality duties and equality outcomes in practice.
62. ECRI recommends that the United Kingdom authorities take steps to ensure a closer link between race equality duties and outcomes, and draws their attention to the opportunity provided by the planned consultation on specific public sector equality duties to explore these issues.
63. ECRI recommends that the authorities ensure that adequate resources are available for the effective monitoring and enforcement of any new duties introduced in the relevant legislation, as well as for the monitoring of impact on race equality outcomes in practice.
64. In its third report, ECRI recommended that the authorities keep the effectiveness of the section 75 public sector equality duty applicable in Northern Ireland closely under review, and that they ensure that the duty to promote equality of opportunities and good relations between racial groups and persons of different religious beliefs did not receive less attention than other facets of the duty.
65. In November 2008, the Equality Commission for Northern Ireland published its final report on an extensive review of the effectiveness of section 75 of the Northern Ireland Act 1998²⁹. It concluded that the introduction of section 75 had led to more informed and evidence-based policy-making, reflecting individuals' needs in terms of equality of opportunity and good relations. However, it found that the effectiveness of the duty should be measured primarily in terms of its beneficial impacts on the lives of individuals, and its recommendations aimed at moving away from an approach based on process and towards a focus on outcomes. The Commission noted that compliance with section 75 should be understood not as end in itself, but rather as a means to secure positive equality outcomes. It considered that more work would be required to identify the outcomes to be achieved and accompanying targeted actions, and referred to a range of actions that the Commission itself would undertake to improve its own impact in keeping section 75 effective.

²⁸ The former Commission for Racial Equality indicated that it had initiated (non-)compliance proceedings with over 150 public authorities across the various sectors including local and central government, health, education and criminal justice, but that in the majority of cases, this had resulted in positive outcomes – those authorities having compliant schemes and policies.

²⁹ Equality Commission for Northern Ireland, Section 75: Keeping in Effective – Final Report, Belfast, November 2008.

66. ECRI notes that the section 75 equality duty applies to the grounds of religious belief, political opinion, racial group, age, marital status, sexual orientation, gender, disability and having or not having dependents. Research carried out in 2006 found that the Commission did not give disproportionate attention to one category over another³⁰. However, participants in the review reported a sense amongst the public that some groups have benefited more from the equality duty than others, a sense due possibly to both the legacy of previous legislation and the fact that some groups with better resourced representative organisations were able to attract more publicity to their cause.
67. ECRI recommends that the authorities continue to include in their reviews of the effectiveness of the section 75 equality duty an examination of the attention given to the various equality strands, in order to ensure that due attention is given to the facets of the duty related to the fight against racism and racial discrimination.

Anti-discrimination bodies and other institutions

68. In its third report, ECRI recommended that the United Kingdom authorities ensure that the establishment of a single equality body did not result in less attention, powers and resources being given to race equality issues than in the past.
69. Until 2007, there were three equality commissions operating in Great Britain: the Commission for Racial Equality, the Disability Rights Commission and the Equal Opportunities Commission. As from 1 October 2007, the new Equality and Human Rights Commission³¹ took over the role and functions of these three commissions, as well as new responsibilities for sexual orientation, age, religion and belief and human rights. It is composed of between ten and fifteen Commissioners, and is presently chaired by the former Chair of the Commission for Racial Equality. The Commission is under a general duty to work towards a number of outcomes for society, based on respect for the equality, dignity and worth of each person, mutual respect between groups, and a society in which prejudice or discrimination do not limit people's ability to achieve their potential. The Commission is also placed under specific duties to promote equality, diversity and equality of opportunity; promote awareness and understanding of rights under the equality enactments and enforce these enactments; and work towards the elimination of unlawful discrimination and harassment. It may issue codes of practice in respect of specific areas of anti-discrimination legislation; conduct inquiries and investigations, and compel the production of evidence in such cases; monitor crimes affecting certain groups; assess parties' compliance with equality legislation and require them to comply with it; take legal action to prevent an unlawful act; make arrangements for the provision of conciliation services; provide legal assistance to victims; intervene in or in some cases institute legal proceedings relevant to its functions and rely on a breach of rights under the European Convention on Human Rights, even if it is not itself a victim of the alleged breach. It is funded by the government but reports to Parliament.
70. Some Black and minority ethnic organisations have expressed concern that the dissolution of the Commission for Racial Equality and the creation of a single equality body responsible for all equality strands may mean that less attention is paid to race equality issues. They have noted that the annual

³⁰ B. Dickson and C. Harvey, An assessment of the role of the Equality Commission in the effective of section 75 of the Northern Ireland Act 1998, 2006, cited in Equality Commission for Northern Ireland, Section 75: Keeping in Effective – Final Report, Belfast, November 2008..

³¹ Established in accordance with the Equality Act 2006.

budget of 70 million GBP available to the Equality and Human Rights Commission is (only) equivalent to those of the three previously existing Commissions, although the new body covers three additional equality strands and has important new responsibilities in the field of human rights. As a result, civil society actors have expressed concern that levels of protection may diminish, and in particular, that support in individual cases may be limited to strategic cases only.

71. ECRI notes with interest that since its creation, the Commission has worked to send the message that equality is not a simply minority interest but that a fairer society benefits everyone. It has also underlined that there are advantages for victims in being able to turn to a single body for assistance, as individuals are not defined by a single characteristic and may not know on what grounds they have suffered discrimination, or may have suffered discrimination on multiple grounds. ECRI notes with interest that the Commission is presently conducting several formal inquiries into matters having a bearing on race equality issues. As regards individual cases, however, between October 2007 and March 2009 the Commission dealt with 203 completed cases on behalf of individuals, of which the vast majority concerned disability-related discrimination; only 14 concerned racial discrimination³².
72. ECRI recommends that the United Kingdom authorities ensure that sufficient financial and human resources are available to the Equality and Human Rights Commission to allow it to fulfil its terms of reference without prejudice to its work on race equality and racial discrimination.
73. ECRI recommends that the views of civil society on the weight given by the Commission to the race equality strand of its work be carefully attended to, so as to ensure that all actors can have full confidence in the Commission.

II. Discrimination in Various Fields

Education

74. In its third report, ECRI recommended that the United Kingdom authorities closely monitor compliance of all school authorities with the duty to promote racial equality and eliminate racial discrimination and that they use all opportunities offered by the duty to advance the position of ethnic minorities in education. It referred in particular to the participation and achievement of pupils from minority groups in schools, disproportionate exclusions of ethnic minority pupils from schools and specialised teaching of English as an additional language.
75. The Department for Children, Schools and Families (DCSF), formerly the Department for Education and Skills (DfES), publishes data annually on the achievement of pupils by ethnic group and by gender. Data is published at both national and local education authority level and directly informs national and local education strategies. Data published for 2008 showed evidence of continuing improvement in educational attainment among Black and minority ethnic pupils. Chinese and Indian pupils continued to perform above the national average. For most groups that remained below the national average, the attainment gap was narrowing, in some cases considerably. For Travellers of Irish Heritage and Gypsy/Roma pupils, however, the picture remained bleak: only 17% and 16% respectively of these pupils gained 5 GCSEs at A*-

³² Commons Hansard, 20 May 2009: Column 1396W.

C grades³³. The situation of Gypsy and Traveller children in the field of education is dealt with in more detail elsewhere in this report³⁴.

76. The authorities have indicated that the Aiming High strategy has enabled a series of targeted programmes to be carried out, and have pointed to factors such as quality of leadership and of teaching and the engagement of parents and the community as having a key role in raising attainment levels, even in deprived areas. They have also emphasised that although attainment levels at primary school Key Stage 2 are measured only with respect to English, maths and science, the way in which other subjects, in particular history and geography, are taught and made relevant to all students in a classroom can have a significant role to play in improving children's attainment levels overall.
77. The authorities have also recognised that access to early education can help to reduce achievement gaps, and that they are working to increase the take-up of early learning and childcare among minority ethnic groups, which is currently lower than the national average. It is planned to invest over 4 billion GBP between 2008 and 2011 to mainstream early childhood services and ensure that all parents have access to these services. Areas with high numbers of disadvantaged children have been targeted first at each stage of this programme. At the same time, the Early Years workforce is being trained to ensure that all centres have a properly qualified workforce³⁵.
78. As regards disproportionate exclusions of Black children from schools, the authorities have reported that the disparity has decreased in recent years. However, according to the most recent figures available to ECRI, overall, Black children remain approximately twice as likely as White children to be permanently excluded from school, and Black Caribbean children in particular are three times as likely to be excluded³⁶. Following a priority review commissioned in 2006, new guidance and practice materials have been drawn up and were due to be delivered to National Strategies Regional Advisers in February 2009. Advisers may draw on these materials to work with local authorities and senior school management where data suggests that there are disproportionate exclusions of pupils from the relevant minority groups. The impact of the materials and of the approach is to be monitored through annually published data and feedback from the National Strategies.³⁷
79. Schools are under a statutory duty to prevent all forms of bullying, including racist bullying. Revised guidance on this issue has been drawn up since ECRI's third report, and specific on-line guidance on tackling racist bullying was published in 2006³⁸. This guidance advises schools to record all incidents of racist bullying and report this information to their Local Authority via the school governing body. The Department for Children, Schools and Families has recently announced plans to consult on whether such reporting should become a statutory requirement.³⁹

³³ Department for Communities and Local Government, *Improving Opportunity, Strengthening Society: A third progress report on the Government's strategy for race equality and community cohesion*, February 2009 (hereinafter: "Third Progress Report"), vol. 1, p19.

³⁴ See below, *Vulnerable Groups – Gypsies and Travellers*.

³⁵ Third Progress Report, pp.20-25; for more on engagement with parents, see also pp30-35.

³⁶ ACFC/SR/II(2007)003 rev, Second report submitted by the United Kingdom pursuant to Article 25, paragraph 1 of the Framework Convention for the Protection of National Minorities, 22 February 2007, page 73, § 323.

³⁷ Third Progress Report, vol. 1, pp25-26.

³⁸ Department for Education and Skills, *Bullying around racism, religion and culture*

³⁹ Third Progress Report, vol. 1, p26.

80. The authorities have indicated that around 13% (15.2% primary, 11.1% secondary) of the school population in the United Kingdom has English as an additional language (EAL). Policy is not to remove bilingual learners from classrooms but to provide appropriate additional support where required. ECRI notes that there is presently, however, a lack of skilled teachers in the EAL field in schools, in part because the replacement of retiring, skilled staff has proved difficult. The authorities are examining how to address this through initial teacher training and continuing training for teaching and non-teaching staff, and how to ensure that becoming skilled in the EAL field is made attractive to teachers. In Northern Ireland, a rapid rise in the number of migrant workers arriving and staying there with their families has led to a parallel rise in demand for qualified EAL teachers.
81. Since ECRI's third report, litigation has occurred, some highly publicised, around the issue of school uniforms and religious attire⁴⁰. ECRI notes that this matter is not regulated by law; the authorities have issued non-statutory guidance on the approach that schools should follow in this field⁴¹, but its detailed application is left to schools. Litigation in this field has produced varied results, not only because of the different facts involved in the various cases, but also because they have not always turned on the same legislation: Sikhs and Jews have been considered by the courts to be "racial groups" within the meaning of the Race Relations Act 1976, whereas members of religions considered to be "multi-ethnic" cannot rely on the anti-discrimination provisions or the public sector equality duties set out in this Act. Cases involving Muslims and Christians have therefore so far turned largely on the provisions of the Human Rights Act. ECRI notes that Part II of the Equality Act 2006 extended protection against discrimination on grounds of religion or belief to education. ECRI observes that while the specific circumstances involved in a case will by definition always have a strong impact on the outcome, the religion or belief provisions introduced by the Equality Act 2006, as well as the extension of the statutory duty to promote equality to cover religion or belief, as proposed under the Equality Bill⁴², may contribute to ensuring more predictable outcomes overall for both students and schools in this sensitive field. It also notes that in at least one case, the respondent school was not sufficiently aware of the non-statutory guidance in this field.
82. As mentioned in ECRI's third report, the Race Relations (Amendment) Act 2000 placed a general duty to promote race equality on all public bodies, including schools and Local Education Authorities, and specific duties on schools to ensure that the general duty is met. However, while schools in England have generally made progress in monitoring the impact of their policies, reports have indicated that the impact of the policies themselves has varied from school to school, and that many schools have been less successful in identifying clear goals or targets for improvement.
83. ECRI encourages the United Kingdom authorities to pursue their efforts to reduce achievement gaps between minority ethnic pupils and the majority population, to reduce disproportionality in exclusion rates and prevent racist or religious bullying in schools. It draws their attention to its General Policy Recommendation No. 10 on combating racism and racial discrimination in and

⁴⁰ See notably *Begum, R (on the application of) v Head Teacher and Governors of Denbigh High School*, [2007] 1 AC 100, [2006] UKHL 15; *X, R (on the application of) v Head Teacher and Governors of Y School* [2007] EWHC 298 (Admin); *Playfoot, R (on the application of) v Governing Body of Millais School* [2007] ELR 484, [2007] EWHC 1698 (Admin); *Watkins-Singh, R (on the application of) v Aberdare Girls' High School & Anor* [2008] EWHC 1865 (Admin).

⁴¹ DCSF guidance to schools on school uniform and related policies, issued in 2007.

⁴² See above, Civil law provisions against racial discrimination.

- through school education, which proposes a range of measures that can be taken in this area.
84. ECRI strongly encourages the authorities to take swift steps to ensure that sufficient, and sufficiently qualified, teachers of English as an additional language are available throughout the United Kingdom to address the needs of pupils whose mother tongue is not English.
85. ECRI recommends that the authorities take steps to raise schools' awareness of the existing non-statutory guidance to schools on school uniform and related policies, and that they keep under review the existing guidance in order to ensure that equality issues are adequately taken into account.
86. In its third report, ECRI recommended that the authorities continue and intensify the drive to recruit ethnic minority teachers and retain them in the teaching profession once they are recruited.
87. The Training and Development Agency for Schools has put in place specific schemes to assist initial teacher training providers in improving the recruitment and retention of teachers belonging to minority ethnic groups. It has in the past also commissioned research to examine the reasons why minority ethnic trainees withdraw from initial teacher training courses. Overt or unwitting racism or racial discrimination were not cited by any minority ethnic trainees as the sole reason for their withdrawal, but in some cases, perceptions of racism strengthened trainees' resolve to withdraw. The findings have been disseminated to initial teacher training providers. With respect to serving teachers, a report published in 2006 on London schools found that the proportion of Black teachers was significantly lower than the proportion of Black pupils in London schools, and that racism had a major impact on the everyday experiences of Black teachers⁴³. The authorities have indicated that the teaching work force is not yet very representative.
88. ECRI again recommends that the authorities intensify the drive to recruit minority ethnic teachers and retain them in the teaching profession once they are recruited. It recommends that further research be conducted to examine the impact, strengths and weaknesses of the measures taken to date and to identify the most effective means of recruiting and retaining minority ethnic teachers. It again draws their attention to its General Policy Recommendation No. 10 on combating racism and racial discrimination in and through school education, which proposes a range of measures that can be taken in this area.
89. In its third report, ECRI recommended that the United Kingdom authorities take measures to counter de facto ethnic and religious segregation in schools in the United Kingdom.
90. The authorities have indicated that most schools apply transparent and objective criteria to their decisions on intake, such as the distance between the prospective pupil's home and the school; whether a sibling of the prospective pupil already attends the school; and any specific needs of the pupil. Since ECRI's third report, new measures have been introduced to increase parental choice as to children's schools. Some research has suggested, however, that the operation of these measures in practice does little to enhance the educational prospects of Black and minority ethnic children. ECRI notes that

⁴³ Mayor of London, Black teachers in London, September 2006.

overall, outcomes in this field do not seem to have improved significantly in the last few years⁴⁴.

91. ECRI again recommends that the United Kingdom authorities take measures to counter de facto ethnic and religious segregation in schools in the United Kingdom, and encourages them to explore in more depth in this context how best to combine present policies to increase parental choice as to schools and to improve education outcomes for Black and minority ethnic children.

Employment

92. In its third report, ECRI encouraged the United Kingdom authorities in their efforts to improve the employment situation of ethnic minorities, to implement the Ethnic Minority Employment Strategy fully and to pay particular attention to eliminating racial discrimination and racial harassment in the workplace. It recommended that steps be taken to promote racial equality through public procurement, and that consideration be given to extending the duty to promote racial equality to parts of the private employment sector and to extending the remedies available before Employment Tribunals in racial discrimination cases.
93. There has long been a gap in the employment rate between the total population and minority ethnic groups in the United Kingdom. This gap has, however, steadily narrowed over the last decade, from 18.9% in 1996 to 13.8% in 2007⁴⁵. Current strategies to help increase employment rates include delegating greater responsibility to local authorities to help seek solutions adapted to local circumstances, in particular through the City Strategy, and strategies to reach out to non-working partners in Black and minority ethnic households.
94. The Ethnic Minority Employment Task Force was set up following the recognition that ethnic minority employment issues could not be solved by the Department for Work and Pensions alone but required a cross-governmental approach. It includes eight government ministers and seven other members representing other stakeholders such as industry, trade unions and civil society. While its practical impact so far is difficult to measure, the authorities consider that the fact of its creation has helped to change mentalities. It has run pilot projects in procurement and to provide courses in English for speakers of other languages with a work-based focus.
95. Express provisions are laid down by law with respect to the prohibition of discrimination, harassment and victimisation in the workplace. These deal essentially with the prohibition of such acts by an employer against an employee, or between partners or members of a limited liability partnership. An employer may also be held liable for repeated harassment of an employee by a third party who is not another employee, if the employer knew of the harassment and did not take reasonable steps to prevent it from occurring again. It does not appear, however, that an employer could be held similarly liable for repeated harassment of an employee by a colleague. ECRI is not aware of any specific steps that the authorities have taken to ensure that these provisions are effectively implemented in practice, and thus to guarantee a workplace free of racism.

⁴⁴ Runnymede Trust, *School Choice and Ethnic Segregation – Educational Decision-Making among Black and Minority Ethnic Parents*, London, 2007.

⁴⁵ Third Progress Report, vol. 2, Chapter 3: The labour market.

96. There does not appear to be any intention at present to extend the duty to promote racial equality to any parts of the private employment sector; the authorities point to the fact that more than 80% of private employers employ five or fewer people, and that this duty would impose a disproportionate burden on them. However, the authorities have indicated that under the proposed Equality Bill, the public equality duty would bind not just public authorities but also bodies exercising public functions, in the context of the exercise of those functions⁴⁶. It is also proposed to provide expressly that a Minister may impose specific equality duties on certain public authorities in relation to their public procurement functions, for example when buying goods and services from a private firm⁴⁷. For its part, the former Commission for Racial Equality undertook certain initiatives to promote race equality in the private sector, for example issuing a revised code of practice in employment, valid from April 2006, which advocated ethnic monitoring, and a guide for small business, "Race Equality and the Smaller Business", published in March 2004. The authorities have indicated their intention to continue to work with businesses and other partners to identify and promote good practice.⁴⁸
97. Civil society actors emphasise that while the work carried out to narrow the gap in employment rates between the majority population and Black and minority ethnic groups is welcome, not enough has yet been done to eliminate prejudices and discrimination occurring in the workplace, which they describe as rife. One reason why the gap has not narrowed faster may be a "revolving door" effect, in which members of minority groups who have joined the workforce may quickly leave it if they feel they are subjected to discrimination in the workplace. In this context, ECRI welcomes the proposal made, under the Equality Bill, to extend the remedies available before employment tribunals to allow tribunals to make recommendations to a respondent employer who has lost a discrimination claim to remedy matters, not only for the claimant concerned (who may have left the workplace), but also the wider workforce⁴⁹. Further issues with respect to access to employment tribunals are dealt with elsewhere in this report⁵⁰.
98. ECRI encourages the United Kingdom authorities in their efforts to improve the employment situation of ethnic minorities, including through the implementation of the Ethnic Minority Employment Strategy and through the promotion of racial equality through public procurement.
99. ECRI recommends that the authorities step up their efforts to eliminate racial discrimination and racial harassment in the workplace, including where one colleague harasses another. It recommends that consideration be given to taking further steps to extend the duty to promote racial equality to parts of the private employment sector.
100. In its third report, ECRI recommended that the United Kingdom authorities continue and intensify their work to achieve fully representative workforces across the public sector and at all levels. It recommended that they regularly monitor the progress made in this area. ECRI notes that it is difficult to build up an overall picture of the representativity of workforces across the public sector, since each Department is responsible for gathering its own figures.

⁴⁶ Equality Bill, clause 143.

⁴⁷ Equality Bill, clause 149.

⁴⁸ ACFC/SR/II(2007)003 rev, Second report submitted by the United Kingdom pursuant to Article 25, paragraph 1 of the Framework Convention for the Protection of National Minorities, 22 February 2007, page 15-16 §§ 53

⁴⁹ Equality Bill, clause 118.

⁵⁰ See below, Administration of justice – Legal aid.

ECRI has not received information as to the situation in all Departments or as to the overall situation. However, in those cases for which it has received information, Black and minority ethnic groups remain under-represented.

101. ECRI reiterates its recommendation that the United Kingdom authorities continue and intensify their work to achieve fully representative workforces across the public sector and at all levels, and that they regularly monitor the progress made in this area.

Health

102. In its third report, ECRI recommended that the United Kingdom authorities continue and intensify work to address inequalities experienced by different ethnic groups in the health sector, including as concerns access to health services. It recommended that they devote particular attention to tackling the disproportionate representation of certain ethnic minority groups among the users of mental health services and to addressing the issue of racism and the need for more cultural awareness and sensitivity in these institutions.
103. There remain considerable variations in health status between groups. Bad health tends to be linked to factors such as bad housing, unemployment or poverty and, to the extent that members of minority groups are affected by these factors, their health is clearly more vulnerable. There are also certain conditions that disproportionately affect specific minority groups. For example, as regards mental health, some Black and minority ethnic groups are significantly more likely to experience some forms of mental illness than others. This situation does not appear to have improved in recent years, although research is being done into the factors causing it, and understanding has improved⁵¹.
104. ECRI notes with interest that a range of measures are being taken to help meet the needs of Black and minority ethnic communities. The Department of Health's underlying approach is to include race equality issues in all aspects of its work. Relevant measures include future reform of the National Health Service (NHS) to ensure it respects fairness; redressing lower satisfaction rates of members of Black and minority ethnic communities with primary health care services; targeted work on diseases or disorders that affect some Black and minority ethnic groups disproportionately; and work to reduce inequalities in access to screening.⁵² The health situation of Gypsies and Travellers is dealt with in more detail elsewhere in this report⁵³.
105. At the general level, ECRI notes that "Race for Health" is a programme aiming to improve delivery of race equality in health services (access, experience and outcomes), commissioning, and recruitment and retention of a diverse workforce; steps are also being taken to ensure better ethnic monitoring. In response to the Commission for Racial Equality's critical analysis of the Department of Health's performance in meeting its statutory duties on race equality, the Department has developed a stronger focus on compliance. It is now embarking on issuing a Single Equality Scheme covering all equality strands, including racial equality⁵⁴.

⁵¹ Third Progress Report, vol. 1, pp82-88.

⁵² Third Progress Report, vol. 1, pp78-82.

⁵³ See below, Vulnerable Groups – Gypsies and Travellers

⁵⁴ Third Progress Report, vol. 1, pp90-92.

106. ECRI strongly encourages the United Kingdom authorities to pursue their efforts to eliminate inequalities in health status and access to health services experienced by members of Black and minority ethnic groups. It reiterates its recommendation that the authorities devote particular attention to tackling the disproportionate representation of certain ethnic minority groups among the users of mental health services and to addressing the issue of racism and the need for more cultural awareness and sensitivity in health institutions.

Housing

107. ECRI welcomes the United Kingdom Government's target of making 95% of all social housing decent by 2010 and the progress it has made so far. It also notes that rates of dissatisfaction with housing among the minority ethnic population have declined since 1996-7. ECRI also notes, however, that minority ethnic households still have higher levels of dissatisfaction than white households and that Black and Bangladeshi households in 2006-7 had the lowest levels of owner occupation.⁵⁵

108. ECRI encourages the United Kingdom authorities to continue to address these problems by increasing the supply of good affordable housing, by offering greater choice in renting social housing and by combating homelessness.

109. The specific situation of Gypsies and Travellers with respect to access to caravan sites and pitches is dealt with in detail elsewhere in this report.⁵⁶

Administration of justice

110. In its third report, ECRI encouraged the United Kingdom authorities in their efforts to monitor ethnic minorities' experience of the criminal justice system, and recommended that any review be instrumental to the collection of data that are accurate, informative and accessible. It also recommended that the authorities consider extending the monitoring of the criminal justice system to include data broken down by religion.

111. In April 2005, the United Kingdom authorities completed a review of the Race and Criminal Justice Statistics published under section 95 of the Criminal Justice Act 1991⁵⁷, to facilitate the performance by criminal justice system agencies of their duty of avoiding discrimination against any person on grounds of race. The Office for Criminal Justice Reform (OCJR) is now leading a programme of work to improve the statistics published on race and the criminal justice system. A key element is the development of a minimum dataset to help identify disproportionality (between the experiences of different minority groups) in the criminal justice system, begin to understand its causes and manage the performance of the criminal justice system in relation to race issues⁵⁸. The Ministry of Justice has also taken over the task of publishing annual statistics on race and the criminal justice system.⁵⁹ ECRI welcomes these efforts to improve the collection of data on race issues in the criminal justice system.

⁵⁵ Third Progress Report, vol. 1, pp59-60

⁵⁶ See below, Vulnerable/Target Groups – Gypsies and Travellers.

⁵⁷ Criminal Justice System, Root and Branch Review of Race and the CJS Statistics: Final Report, April 2005.

⁵⁸ See Statistics on Race and the Criminal Justice System 2007/8: A Ministry of Justice publication under Section 95 of the Criminal Justice Act 1991, April 2009, p9.

⁵⁹ For further information on the content of the statistics collected, see below, Racist violence.

112. The recommendations made in the above-mentioned review did not include extending the monitoring of the criminal justice system to include data broken down by religion; the OCJR has indicated that religiously aggravated offences have been included with racially aggravated offences in recorded crime figures since 2001, and that the CPS has also collected statistics on religiously aggravated offences since 2001, but it does not appear from the information available to ECRI that breakdowns of such data religion by religion are produced.
113. ECRI encourages the authorities to pursue their efforts to improve the collection of data on ethnic minorities' experience of the criminal justice system. It again recommends that the authorities consider extending the monitoring of the criminal justice system to include data broken down by religion.
114. In its third report, ECRI encouraged the United Kingdom authorities in their efforts to research and improve the manner in which the criminal justice system deals with ethnic minorities. In particular, it recommended that the authorities monitor the situation as concerns racism and racial discrimination in prisons.
115. According to recent reports, ethnic minorities continue to be over-represented in the prison population, and their proportion has risen steadily over the last 13 years. Black and ethnic minority groups now make up 27% of the prison population, although they make up less than 9% of the total population of Britain aged over 10 years. On average, Black and minority ethnic groups also spend longer in prison than their White British counterparts⁶⁰. Research has shown that Black and minority ethnic groups also experience different outcomes in the youth justice system that are not always attributable to differences in the characteristics of cases. Evidence has suggested that while the criminal justice system has a role to play in tackling disproportionality, a much wider, cross-government approach is needed to achieve real change.⁶¹
116. In the Prison Service, a five-year race equality joint action plan agreed on with the Commission for Racial Equality in 2003 was reported on in December 2008. The report found that despite considerable investment in procedural changes, the experience of Black and minority ethnic prisoners and staff had not been transformed. In particular, Black prisoners were for example consistently more likely than White British prisoners to have force used against them. The perceptions of Black and minority ethnic prisoners were more negative than those of their White counterparts with regard to almost all aspects of prison life. Prisoners also still sometimes lacked a detailed understanding of how the complaints system works⁶². The Equality and Human Rights Commission has made clear that it expects continued progress on race and other diversity issues in prisons, and a new Single Equality Scheme is now being drawn up.⁶³

⁶⁰ See Statistics on Race and the Criminal Justice System 2007/8: A Ministry of Justice publication under Section 95 of the Criminal Justice Act 1991, April 2009, Chapter 9: Prisons. The figures cited are those given in the commentary on the main findings, which are rounded up or down to the nearest integer. Figures on the general population are drawn from the 2001 census, cited at page x.

⁶¹ Third Progress Report, vol. 1, pp112-113.

⁶² Ministry of Justice, National Offender Management Service, Race Review 2008: Implementing Race Equality in Prisons – Five Years On, London, December 2008. See also Statistics on Race and the Criminal Justice System 2007/8: A Ministry of Justice publication under Section 95 of the Criminal Justice Act 1991, April 2009, Chapter 10: Complaints against the Police, Prison & Probation Services.

⁶³ Third Progress Report, vol. 1, pp114-115

117. As regards recruitment of Black and minority ethnic staff in the criminal justice system, all criminal justice agencies (the Police Service, HM Courts Service, the Prison Service, the Crown Prosecution Service and the National Probation Service) are required in accordance with Public Service Agreement (PSA) 24 to measure, analyse and account for disproportionate rates of staff recruitment, retention and progression. In prisons, recruitment and retention of Black and minority ethnic staff has improved and representation increased from 3.5% in 2000 to 6.2% in 2008, and the difference between leaving rates of Black and minority ethnic and White staff is also reported to be narrowing. However, these levels remain disproportionately low compared with the general population, and in the prison population, the gap between proportions of Black and minority ethnic prisoners (at 27%) and staff (at 6%) is striking.
118. The government reported in 2009 with respect to other agencies that the CPS produces an annual study on Equalities in Employment, reporting on staff recruitment and retention broken down by demographic groups. As regards magistrates, the relevant Advisory Committees are encouraged to target recruitment at under-represented groups in their respective areas, and all bids for funding for recruitment are examined to ensure that they include measures to promote diversity. The proportion of magistrates belonging to Black and minority ethnic groups has increased slightly, from 6.7% in 2005-6 to 7.28% in 2007-8. Recruitment and career progression in the Ministry of Justice is also monitored, and a positive action training scheme is in place there⁶⁴.
119. ECRI welcomes the wide-ranging efforts made to build up a picture of the situation of Black and minority ethnic groups throughout the criminal justice system, and to identify and take appropriate actions to improve the situation, as well as to increase the representativeness of the various workforces involved. It underlines, however, that while some improvements have been noted, further efforts are still needed to improve both minority groups' experiences of the criminal justice system and their representation in the relevant workforces.
120. ECRI recommends that the authorities pursue their efforts to monitor more accurately the situation of Black and minority ethnic groups in the criminal justice system and that they intensify their efforts to improve minority groups' experiences of the criminal justice system in practice.
121. ECRI recommends that the authorities step up their efforts to improve the recruitment and retention of Black and minority ethnic staff in the criminal justice system, and underlines that this may itself play some part in improving minority groups' experiences of the criminal justice system.

- *Legal aid*

122. In its third report, ECRI recommended that the United Kingdom authorities consider how to best ensure that legal aid is available in discrimination cases before Employment Tribunals.
123. The situation concerning the availability of legal aid in discrimination cases before Employment Tribunals has not changed since ECRI's third report. The authorities have stated that legal representation in employment tribunal proceedings is outside the scope of the Community Legal Service (CLS) scheme, but is available in the Employment Appeals Tribunal, subject to standard tests of means and merits. Civil society actors stress, however, that although employment tribunals were created to provide an easy way for

⁶⁴ Third Progress Report, vol. 1, pp107-110.

employees to challenge decisions of their employers, discrimination law has become an increasingly complex field, and the tribunal process increasingly legalised. Most employees would neither be nor feel competent to adduce the necessary evidence to shift the burden of proof to their employer, and even trade unions increasingly turn to solicitors or barristers to act for them. Inevitably, as precedent develops and the legislative framework becomes more sophisticated, legal advice becomes necessary. Civil society actors stress that it is not possible to turn back the clock in this respect, and that employees without legal representation will be unlikely to be in a situation of equality of arms vis-à-vis their employer. ECRI stresses the importance of ensuring that the right to be free of racial (including religious) discrimination in the workplace is a living, practical and effective right, and that in cases where discrimination does occur, the victim is able to obtain redress.

124. ECRI reiterates its recommendation that the United Kingdom authorities consider how to best ensure that legal aid is available in discrimination cases before Employment Tribunals.

III. Racist Violence

125. Comprehensive statistics on race and the criminal justice system in England and Wales, including with respect to victims of racist incidents and offences, are published each year by the Ministry of Justice⁶⁵. According to the British Crime Survey, the number of racially motivated incidents (including non-violent incidents) was estimated at around 207 000 in 2007/08 – a significantly higher figure than in previous years⁶⁶. However, at the same time the number of racist incidents reported to the police dropped 6.9% (to 57 055) in 2007/08; this drop however followed a steady increase in the number of racist incidents reported to the police each year over the previous five years, from 49 344 in 2002/03 to 61 262 in 2006/07⁶⁷. The police recorded 38 327 racially or religiously aggravated offences in 2007/08, around 10% less than the previous year; again, this drop followed a steady increase in the number of racist offences recorded by the police each year over the previous five years, from 31 034 in 2002/03 to 42 554 in 2006/07⁶⁸. While it was not clear why this decrease in reports to the police occurred between 2006/07 and 2007/08, it was noted that the overall breakdown of offences remained similar to previous years. 4 746 racially or religiously aggravated offences recorded in 2007/08 involved “less serious wounding”, and 3 983 offences involved criminal damage⁶⁹. In the three-year period from 2005/6 to 2007/08, 21 homicides with a known racial motivation were reported by the police to the Home Office, but this figure did not necessarily include all cases considered as being racially motivated⁷⁰. In Scotland, more than 6 000 racist crimes have been recorded in each of the past three years; around 1%-1.5% of these were classified as crimes of violence (such as murder, attempted murder or serious assault) or indecency⁷¹.

⁶⁵ Ministry of Justice, *Statistics on Race and the Criminal Justice System 2007/8: A Ministry of Justice publication under Section 95 of the Criminal Justice Act 1991*.

⁶⁶ Ministry of Justice, *Statistics on Race and the Criminal Justice System 2007/8*, p13.

⁶⁷ Ministry of Justice, *Statistics on Race and the Criminal Justice System 2007/8*, p12 and Table 3.1.

⁶⁸ Ministry of Justice, *Statistics on Race and the Criminal Justice System 2007/8*, Table 3.2, and revised figures cited in Table 3.2 of each of the relevant previous yearly reports published by the Home Office (until 2005) or the Ministry of Justice (from 2006 onwards).

⁶⁹ See above, Criminal law provisions against racism applicable in England and Wales.

⁷⁰ Ministry of Justice, *Statistics on Race and the Criminal Justice System 2007/8*, p16.

⁷¹ *Statistical Bulletin Crime and Justice Series: Racist Incidents Recorded by the Police in Scotland, 2004/05 to 2007/08*.

126. In Northern Ireland, 990 incidents and 771 crimes with a racist motivation were recorded in 2008/09; 46 incidents and 35 crimes with a faith/religion motivation were recorded in the same period, and 1595 incidents and 1017 crimes with a sectarian motivation were recorded. While the figures for crimes with a faith/religion motivation showed a decrease on the previous year, crimes with racist motivations increased. Amongst the crimes recorded, around 40% of crimes with a racist or sectarian motivation were violent crimes, as were 17.1% of crimes with a faith/religion motivation⁷².
127. As regards victims of racist violence, NGOs have reported that Black people are 4.5 times and Asian people 1.7 times more likely to be victims of murder and manslaughter than White people⁷³, although some research has shown that the link may be indirect, as differences in the risk of being a victim of racist offences may be more directly attributable to factors other than ethnicity (such as being young or male, or living in an area with high levels of perceived anti-social behaviour)⁷⁴. Migrant workers have also increasingly been targeted in violent attacks in various parts of the United Kingdom, including in Northern Ireland, where a spate of attacks directed against migrants in Belfast in May and June 2009 reportedly prompted more than 100 migrants to move house, and some of them even to leave the country, despite receiving public support from the local community.
128. Racist violence in the United Kingdom is a cause for concern for ECRI. While it commends the authorities for the collection and publication of wide-ranging data in this field, and for the steps taken to improve the manner in which all racist offences are handled when they reported⁷⁵, ECRI stresses that more efforts need to be made to prevent such violence from occurring at all. It emphasises in this connection that racist violence is one of the worst manifestations of racism, which affects not only those who are themselves victims of attacks but also the broader community to which they belong. ECRI is concerned that to date, efforts to address the causes of racist violence and prevent it from occurring do not appear to have kept pace with efforts to deal with cases when they occur.
129. ECRI recommends that the United Kingdom authorities intensify their efforts to prevent racist violence and combat its underlying causes, and draws the authorities' attention to the links between racist discourse and racist violence explored elsewhere in this report⁷⁶. It strongly encourages the authorities in their efforts to monitor racist offences and to prosecute and punish persons having committed acts of racist violence.

IV. Racism in Public Discourse

Exploitation of racism in politics

130. In its third report, ECRI recommended that the United Kingdom authorities take measures to tackle the exploitation of racism in politics, and emphasised in this context that the law should provide for the possibility of dissolution of organisations which promote racism.

⁷² PSNI Annual Statistical Report: Report No. 3, Hate Incidents and Crimes, 1st April 2008 – 31st March 2009, pp4-5.

⁷³ The 1990 Trust, Shadow Report to the Advisory Committee on the Framework Convention for the Protection of National Minorities, The 1990 Trust, May 2007, page 16

⁷⁴ Ministry of Justice, Statistics on Race and the Criminal Justice System 2007/8, p11.

⁷⁵ See above, Criminal law provisions against racism applicable in England and Wales.

⁷⁶ See below, Racism in Public Discourse.

131. ECRI notes that there is currently a vigorous debate in the United Kingdom on the future direction of immigration and citizenship policy. This is reflected in the proposed legislation on these issues. This debate is taking place against a background of concern about the possible social and economic effects of perceived significant population in-flows. ECRI views with deep concern a tendency, on the fringes of the political debate, for views to be expressed that are at best demeaning of migrants and at worst xenophobic or racist. It is also concerned that statements by some mainstream politicians may have stigmatised certain groups, such as refugees, asylum-seekers or migrant workers. ECRI emphasises the need for xenophobic and racist views to be strongly challenged by mainstream political parties at the highest level and encourages the United Kingdom authorities to counter these views by ensuring that its policies fully reflect the principles of tolerance and inclusiveness, and by taking the greatest care to ensure that any public statements on issues of policy in this area do not appear to give credence to such views.
132. Although the electoral success of parties who have resorted to openly racist and xenophobic propaganda has remained relatively low in general elections, the pattern of voting is such that, between general elections (for example in local and European elections), votes tend to deflect significantly away from the main political parties. The British National Party (BNP), which has presented increasingly anti-Muslim and anti-immigrant views and whose leader has previously been convicted for the distribution of material likely to incite racial hatred, has built significant local support in certain areas. Against a background of considerable political volatility in the United Kingdom at the time of the June 2009 European elections, the BNP's share of the vote in elections with a limited turnout increased marginally, but enough to secure the election of two MEPs. ECRI is deeply concerned that this combination of factors has resulted in providing the BNP with a platform that could make overtly racist discourse more common in British society.
133. ECRI recommends that the United Kingdom authorities take particular care, when developing and explaining policies, to ensure that the message sent to society as a whole is not one likely to foment or foster intolerance. It underlines that political leaders on all sides should take a public stance against the expression of racist and xenophobic attitudes, including when these expressions come from within their own ranks.
134. ECRI urges the United Kingdom authorities to take measures to tackle the exploitation of racism in politics. In this respect, it draws the attention of the authorities to its General Policy Recommendation No. 7, which sets out measures that can be taken to this end. ECRI emphasises once again that according to this General Policy Recommendation, "the law should provide for the possibility of dissolution of organisations which promote racism".

Media

135. In its third report, ECRI encouraged the authorities to impress on the media, without encroaching on their editorial independence, the need both to ensure that reporting does not contribute to creating an atmosphere of hostility and rejection towards various minority ethnic groups, and to play a proactive role in countering such an atmosphere. ECRI recommended that the authorities engage in a debate with the media and members of other relevant civil society groups on how this could best be achieved.
136. The Media Trust and the Society of Editors published guidelines in 2005, in the form of a booklet entitled Reporting Diversity: How journalists can

contribute to community cohesion, which is available free on the website of the Department for Communities and Local Government. In 2007, the Press Complaints Commission ratified a new Editors' Code of Practice for newspaper and magazine publishing in the United Kingdom. This provides that the press "must avoid prejudicial or pejorative reference to an individual's race, colour, religion, gender, sexual orientation or to any physical or mental illness or disability", and that "details of an individual's race, colour, religion, sexual orientation, physical or mental illness or disability must be avoided unless genuinely relevant to the story"⁷⁷. Individuals may lodge complaints with the Press Complaints Commission regarding breaches of this Code, although it cannot accept third-party complaints, and it is not clear to what extent complaints may concern breaches with respect to a group.

137. ECRI welcomes these steps, which should help to provide a useful framework for the media in carrying out their work. However, it notes with concern that Muslims, migrants, asylum-seekers and Gypsies/Travellers are regularly presented in a negative light in the mainstream media, and in particular in the tabloid press, where they are frequently portrayed, for example, as being by definition associated with terrorism, sponging off British society, making bogus claims for protection or being troublemakers. ECRI is concerned not only at the racist and xenophobic messages themselves that are thus propagated by the media, but also by the fact that civil society actors have in some cases observed direct links between minority groups targeted by the media and minority groups targeted in violent attacks.

138. ECRI strongly encourages the authorities to continue and intensify their efforts to impress on the media, without encroaching on their editorial independence, the need to ensure that reporting does not contribute to creating an atmosphere of hostility and rejection towards various minority ethnic groups, and to play a proactive role in countering such an atmosphere. ECRI again recommends that the authorities engage in a debate with the media and members of other relevant civil society groups on how this could best be achieved. It recommends that further efforts be made to ensure that successful initiatives developed at local level in this field are reproduced on a broader scale at national level.

V. Antisemitism

139. In its third report, ECRI recommended that the United Kingdom authorities continue and intensify their efforts to counter all manifestations of antisemitism, and referred in particular to the implementation of criminal law provisions against incitement to racial hatred.

140. In 2006, the All-Party Parliamentary Group against Antisemitism published the report of a detailed inquiry into antisemitism in the United Kingdom⁷⁸. The inquiry found not only that violence, desecration of property and intimidation directed against Jews were on the rise, but also that antisemitic discourse (in the form of anti-Jewish themes and remarks) seemed to be gaining acceptability in some quarters, including on some university campuses. The inquiry also concluded that although the far right remained a problem, it was no longer the sole source of antisemitism in Britain. Furthermore, increases in antisemitic violence tended to be linked in time with outbreaks of violence in the Israeli-Palestinian conflict – yet the majority of victims in such cases were

⁷⁷ Editors' Code of Practice for newspaper and magazine publishing in the United Kingdom, clause 12, Discrimination.

⁷⁸ All-Party Parliamentary Group against Antisemitism, Report of the All-Party Parliamentary Inquiry into Antisemitism, London, September 2006

neither Israeli nor clearly supporting Israel when they were attacked. The group made a number of recommendations to relevant institutions, the media and other bodies in order to tackle these issues, and cautioned strongly against becoming complacent with regard to physical or verbal racist, antisemitic or similarly intolerant abuse.

141. In its response to the inquiry⁷⁹, the government expressed its concern at this situation and stressed its commitment to tackling all forms of hate crime and racial intolerance, including antisemitism, wherever they exist, through the effective implementation of strong legislation and of policies and strategies to increase racial equality and build community cohesion. It detailed the steps it was already taking in a number of fields to combat antisemitism and the further steps it intended to take, for example in order to improve the reporting of antisemitic and other hate crimes⁸⁰. The government's response was hailed by the Jewish community as "the single most important action against UK antisemitism for many years"⁸¹. A government progress report was published a year later⁸², setting out an array of concrete steps taken in this field in the previous year, or forthcoming, and the firm commitment to fighting antisemitism on which they were based. For its part, the Crown Prosecution Service carried out an in-depth investigation into the reporting and prosecution of antisemitic crimes and published a detailed response concerning these matters, including proposals for future actions to increase the effectiveness of its work⁸³. As regards the police, steps have been taken to co-ordinate efforts between the police and the Jewish community so as to improve the reporting of antisemitic incidents, and in 2008 a guide to the Holocaust was published for police personnel.
142. ECRI welcomes the authorities' strong commitment to dealing with issues of antisemitism in the United Kingdom, and notes with interest the prosecution of two offenders in the United Kingdom in 2008 for racist and antisemitic material published on the internet. ECRI is concerned, however, that according to data collected by the Community Security Trust, while the number of antisemitic incidents (including extreme violence, assault, damage and desecration, threats, abusive behaviour and mass-produced antisemitic literature) recorded in the United Kingdom has dropped since 2006, the total number of incidents recorded in 2008 was still the third highest ever. Furthermore, there was a sharp increase in antisemitic incidents in early 2009, triggered by events in Gaza⁸⁴: 260 antisemitic incidents occurred in the first four weeks of 2009 alone. These incidents parallel comment in the mainstream media which is increasingly critical of the policies of the State of Israel to an extent which at times threatens to blur the lines between criticism and antisemitism. At the same time, there appears to be an increasing presence of antisemitic discourse on the comments pages of newspaper and radio websites⁸⁵.

⁷⁹ Report of the All-Party Parliamentary Inquiry into Antisemitism: Government Response, London, March 2007

⁸⁰ See above, Criminal law provisions against racism applicable in England and Wales.

⁸¹ CST, Antisemitic Discourse in Britain in 2007, p6.

⁸² Report of the All-Party Parliamentary Inquiry into Antisemitism: Government Response, One year on Progress Report, London, May 2008

⁸³ The Crown Prosecution Service Response to the All-Party Parliamentary Inquiry into Antisemitism, London, May 2008

⁸⁴ Community Security Trust, Antisemitic Incidents Report 2008

⁸⁵ Community Security Trust, Antisemitic Discourse in Britain in 2007

143. ECRI strongly encourages the authorities of the United Kingdom to continue and strengthen their efforts to counter all manifestations of antisemitism. It refers in this context to the recommendations formulated above on the implementation of existing criminal law provisions, and notably those against incitement to racial hatred. More generally, ECRI draws the attention of the authorities of the United Kingdom to its General Policy Recommendation No. 9 on the fight against antisemitism, which proposes a range of measures the authorities can take to combat antisemitism.

VI. Vulnerable/Target Groups

Muslim communities

144. In its third report, ECRI recommended that the authorities maintain a regular and even closer process of consultation with representatives of the Muslim communities of the United Kingdom on the causes of Islamophobia and its manifestations, and that they elaborate an overall strategy against Islamophobia.
145. Muslim representatives indicate that the concept of Islamophobia is still not widely understood, and that phenomena of hatred or fear of Muslims tend to be conflated with simple criticism of their religion. Monitoring of crimes motivated by Islamophobia is also still reportedly quite weak, and further efforts may be needed to ensure that Muslims know where and how to report such crimes. At the same time, the categories according to which hate crimes are recorded, which are collected on the basis of geographical origin, do not clearly reflect the religious convictions of victims or offenders, making the extent of crimes motivated by Islamophobia difficult to discern. While police forces have taken steps to build confidence between Muslims and the police, including efforts to encourage Muslims to take up a career in the police force, these efforts have to some extent been undermined by other factors such as the disproportionate impact of anti-terror measures on Muslims⁸⁶.
146. Public discourse about Muslims is frequently negative, whether in the mainstream (especially tabloid) press, on the internet, or in the discourse of political parties. The swift intervention of the authorities after the 2005 bombings in the London transport system was found to have deflected blame from the Muslim community as a whole and helped to prevent a media backlash at the time.⁸⁷ However, Muslim representatives underline that Muslims find their presence in the media increasingly structured by other people's narratives, with the content of stories and the choice as to which stories to cover tending to reinforce cleavages by suggesting that Muslims want to create distinct communities within British society rather than play a full part in it; Muslims who seek equal protection under the law, in line with the human rights of all individuals, are also reportedly more likely to be presented in a negative light. One report, which analysed a sample of newspaper articles in British tabloids and broadsheets between 2000 and 2008, found that since 2000, two thirds of newspaper articles about Muslims in Britain had portrayed British Muslims as either a threat or a problem; these articles increasingly

⁸⁶ See below, Anti-terror legislation

⁸⁷ EUMC, The Impact of 7 July 2005 London Bomb Attacks on Muslim Communities in the EU, November 2005

used negative and stereotypical imagery.⁸⁸ Civil society actors moreover emphasise that debates on community cohesion increasingly shift the responsibility for cohesion to Muslims, focusing attention on prevention of terrorism and at the same time suggesting that this question primarily concerns Muslim communities.

147. ECRI notes that in parallel to these negative phenomena, Muslims face discrimination in access to the labour market, although here, as in other fields, the focus on data collection broken down by ethnic group⁸⁹ and not by religious convictions makes it more difficult to determine the precise extent to which religion is a factor in such discrimination. Some Muslim representatives point out that the lack, or reduced prospects, of employment may make young Muslims easy prey for extremist groups; they stress that effective prevention strategies must focus on providing genuine alternative aspirations and projects.
148. ECRI again recommends that the United Kingdom authorities pursue and strengthen their dialogue with representatives of Muslims in the United Kingdom on the causes of Islamophobia and on the ways in which this manifests itself in institutions and in society in general. It emphasises the need for an overall strategy against Islamophobia which cuts across different areas of life. ECRI again draws the attention of the authorities of the United Kingdom to its General Policy Recommendation No. 5 on combating intolerance and discrimination against Muslims, which proposes a range of measures they can take in this field.
149. ECRI recommends that the United Kingdom authorities consider ways of collecting data with respect to discrimination on the grounds of religious beliefs, with a view inter alia to building a clearer picture of the situation of Muslims in British society and to taking targeted steps to combat patterns of discrimination against them.

Gypsies and Travellers

150. In its third report, ECRI made a series of recommendations concerning the situation of Gypsies and Travellers in the United Kingdom, with respect to the monitoring of their situation, their access to housing, education and employment, combating prejudice and promoting good relations, the participation of Gypsies and Travellers in decision-making processes concerning them, and combating exclusion.
151. The situation of Gypsies and Travellers remains a cause of concern for ECRI. It notes that although few data are currently available for Gypsies and Travellers⁹⁰, the available evidence tends to show that Gypsies and Travellers are still among the most disadvantaged minority ethnic groups in the United Kingdom and the most likely to face discrimination, and that they experience

⁸⁸ Kerry Moore, Paul Mason and Justin Lewis, *Images of Islam in the UK: The Representation of British Muslims in the National Print News Media 2000-2008*, Cardiff School of Journalism, Media and Cultural Studies, 7 July 2008

⁸⁹ In the 2001 census, the following five main categories, broken down into "16+1 self-defined ethnic groups", were used in data collection in England and Wales (with minor variations applying in Scotland and Northern Ireland): Asian or Asian British – Indian, Pakistani, Bangladeshi, Any other Asian background; Black or Black British – Caribbean, African, Any other Black background; Mixed – White and Black Caribbean, White and Black African, White and Asian, Any other Mixed background; Chinese or other ethnic group – Chinese, Any other ethnic group; White – British, Irish, Any other White background; Not Stated. See <http://www.statistics.gov.uk/census2001/profiles/commentaries/ethnicity.asp>. These groups have also since been used in other contexts, for example in Home Office data collection.

⁹⁰ Third progress report, vol. 2, p 183.

some of the most severe levels of hostility and prejudice⁹¹. While a number of initiatives to redress these inequalities have been taken both by the authorities and by civil society actors in a variety of fields, much more still needs to be done in order to redress the situation and allow Gypsies and Travellers to participate on an equal footing in society in the United Kingdom.

152. In the field of housing, a detailed study on equality, good race relations and site provision for Gypsies and Travellers was carried out by the Commission for Racial Equality and published in 2006⁹². Data collected by the Office of the Deputy Prime Minister and published in that report showed that in January 2004, there were 5 901 caravans on authorised public sites in England and 4 890 on permitted private sites; however, there were 1 977 caravans on land owned by Gypsies and Travellers but developed without planning permission, and 1 594 caravans stationed without authorisation on land not owned by Gypsies and Travellers. The authorities have recognised the lack of sites and imposed a duty on local authorities to conduct needs assessments in their areas. An independent task group was also set up to examine site provision and enforcement for Gypsies and Travellers and reported its findings in 2007. It emphasised the urgency of moving forward with site provision and noted that until there were sufficient places for Gypsies and Travellers to live, there would continue to be conflicts between the right of Gypsies and Travellers to adequate housing and their obligation to respect the law and the interests of the settled community. It made a series of recommendations, directed for the most part at central or local government, with respect to policy, enforcement, site provision, tackling social exclusion and monitoring progress⁹³. In recent years, the Department for Communities and Local Government has also published draft guidance on the management of Gypsy and Traveller sites, guidance on Gypsy and Traveller Accommodation Needs Assessments and a Good Practice Guide on Designing Gypsy and Traveller Sites⁹⁴.
153. Representatives of Gypsies and Travellers have emphasised that adequate site provision remains an especially pressing issue for their communities. They have pointed to the reluctance of many local councils to provide additional sites – frequently related to high levels of resistance amongst local communities and parish councils to such developments –, despite a clearly identified present need for around 4500 additional pitches across Britain, and the need to plan for a higher number to take account of likely population growth. Moreover, representatives of Gypsies and Travellers point out that while necessary, the refurbishment of existing sub-standard, polluted or overcrowded sites – an approach preferred by some local authorities, to the exclusion of creating additional pitches – may lead to a reduction in the number of pitches on a site as each pitch is increased in size, thus aggravating the problem of lack of pitches and doing little to defuse community tensions in this field; for this reason, they emphasise the need to ensure that statistics on site provision are broken down by local authority. An excessive emphasis on enforcement (i.e. eviction), involving often protracted and

⁹¹ See, for example, Sarah Cemlyn, Margaret Greenfields, Sally Burnett, Zoe Matthews and Chris Whitwell, *Inequalities experienced by Gypsy and Traveller communities: A review*, Equality and Human Rights Commission Research Report 12, 2009

⁹² Commission for Racial Equality, *Common Ground: Equality, good race relations and site provision for Gypsies and Irish Travellers*, 2006.

⁹³ *The Road Ahead: Final Report of the Independent Task Group on Site Provision and Enforcement for Gypsies and Travellers*, December 2007; the Government Response was published in April 2008.

⁹⁴ *Draft Guidance on the Management of Gypsy and Traveller Sites: A consultation paper*, May 2007; *Gypsy and Traveller Accommodation Needs Assessments: Guidance*, October 2007; *Designing Gypsy and Traveller Sites: Good Practice Guide*, May 2008.

expensive litigation, instead of seeking forward-looking solutions in consultation with all members of the local community, has also been shown to damage race relations⁹⁵. ECRI observes that this issue is frequently at the crux of escalating tensions within communities, as the lack of pitches forces Gypsies and Travellers into unauthorised encampments or developments. ECRI stresses the urgency of addressing this problem, and of ensuring not only that enough pitches exist but also that they are properly run.

154. ECRI strongly encourages the United Kingdom authorities in their efforts to address the disadvantages faced by Gypsies and Travellers in access to adequate accommodation. It strongly recommends that the authorities take all necessary measures to ensure that the assessment of accommodation needs at local level is completed thoroughly and as quickly as possible.
155. ECRI recommends that the United Kingdom authorities step up their efforts to ensure that a sufficient number of pitches are in place to accommodate the needs of Gypsies and Travellers.
156. ECRI recommends that the United Kingdom authorities encourage local authorities to treat enforcement measures – legitimate though they are – as a last resort, and to privilege wherever possible an approach aimed at bridging gaps between communities and at finding mutually acceptable solutions, rather than approaches that will inevitably place groups in opposition to each other.
157. As mentioned earlier in this report, the situation of Gypsy, Roma and Traveller children with respect to education is particularly worrying, as only around one in six of them presently succeed in gaining 5 GCSEs at A*-C grades, compared with the national average that is four times higher⁹⁶. The number of children who drop out of education before reaching secondary school, or very early on in secondary school, also remains of concern. The Office for Standards in Education, Children's Services and Skills (Ofsted) has reported that there could be as many as 12 000 Gypsy, Roma and Traveller children not in secondary school⁹⁷. When they are in school, they are reported to be frequently subjected to bullying or harassment, which has a negative impact on their achievements and has also contributed to this group being afraid to identify itself in the context of ethnic monitoring – a fact which in turn makes it difficult for schools to apply for the extra support and funding that would be available to help them. Representatives of Gypsies, Roma and Travellers have also emphasised the need to educate teachers better to understand Gypsy, Roma and Traveller culture, in order to help create a more welcoming atmosphere in the classroom and more general within the school environment.
158. ECRI notes with interest that since its third report, the United Kingdom authorities have put in place a new E-learning and Mobility Project, using laptops and data cards with learning materials. The initiative aims to improve achievement and help pupils remain in contact with their schools when they travel. In February 2009, it was reported that the outcomes of ELAMP were encouraging. Evidence had shown that the use of e-learning helped to increase motivation, improve achievement and allow pupils to re-integrate more easily when they return to school. Moreover, the impact of the project on educational opportunities for its participants was appreciated by parents,

⁹⁵ On this point, see for example Commission for Racial Equality, *Common Ground: Equality, good race relations and site provision for Gypsies and Irish Travellers*, 2006, *passim*.

⁹⁶ See above, *Discrimination in Various Fields – Education*.

⁹⁷ Third progress report, vol. 1, p19, p27.

teachers and schools, who were keen to see it continue⁹⁸. In parallel, the Department for Children, Schools and Families has produced a document called *The Inclusion of Gypsy, Roma and Traveller Children and Young People*, to raise awareness of the specific issues faced by these children in the field of education and to persuade schools and local authorities to fight prejudice and ensure that the children benefit from the extra support and funding available. In June 2008, schools across the country also had the opportunity to take part in a Gypsy, Roma and Traveller History Month, aimed at raising awareness and exploring the history, culture and languages of these communities. A second Gypsy, Roma and Traveller History Month took place in June 2009.

159. ECRI welcomes these initiatives and emphasises that, in view of the stark disadvantages faced by Gypsy, Roma and Traveller children in the field of education, long-term action will be needed to redress inequalities in this field. It notes also that the amalgamation of some Traveller Education Services with other education support services designed to meet the educational needs of Black and minority ethnic groups more generally has been perceived by some groups as at best premature, and has given rise to fears that the specific needs of Gypsy, Roma and Traveller children in the field of education may not be adequately addressed.
160. ECRI strongly encourages the authorities in their efforts to improve the access of Gypsy, Roma and Traveller children to education and to improve their experience of schooling on a daily basis. It emphasises the importance in this context of adopting specific and targeted measures to improve these children's access, attendance and achievement.
161. ECRI again recommends that particular attention be devoted to combating bullying directed against Gypsy, Roma and Traveller children, and draws attention to the importance both of training teachers in the history and culture of Gypsies, Roma and Travellers and of promoting a greater awareness of these amongst children and society in general.
162. ECRI notes with concern that unemployment also remains a problem for Gypsies and Travellers in the United Kingdom. Traditional forms of employment for these groups have gradually diminished, but this process has not been accompanied by targeted programmes to help Gypsies and Travellers re-skill. Members of these groups also report that they face discrimination in access to employment. ECRI stresses that the lack of access to employment – which can be a powerful vector for integration and can help to break the cycle of poverty – reinforces the marginalisation of Gypsies and Travellers and moreover leaves children without role models to help them build their aspirations in the field of education and training.
163. ECRI reiterates its recommendation that the authorities of the United Kingdom take steps to reduce the unemployment of Gypsies and Travellers, and recommends that all means to achieve this be considered and implemented wherever feasible, for example measures aimed at increasing Gypsies and Travellers' use of general initiatives or schemes designed for the unemployed; measures to ensure better access and take-up of training; and measures to tackle discrimination at point of recruitment and harassment in the workplace.
164. Gypsies and Travellers are also strongly disadvantaged in the field of health, with an estimated life expectancy of ten years less than that of the general population. These issues do not only concern the health status of Gypsies and

⁹⁸ Third progress report, vol. 1, pp27-28.

Travellers: they also experience difficulties in access to health services, with some doctors reluctant to register them in their surgeries, or unaware how best to approach or build a relationship of trust with Gypsy and Traveller patients.

165. ECRI notes with interest that the Department of Health has developed a number of initiatives to address these inequalities. Eighteen health trusts have been working on a variety of pilot projects, with the aim of disseminating successful initiatives throughout the country. These include, for example, the appointment of Gypsy and Traveller health ambassadors, and the development of hand-held medical records, to allow Gypsies and Travellers to carry their health file with them rather than be hampered in their access to health care when travelling by the fact that the file is located far away. The Department of Health has also designed a toolkit of dos and don'ts for doctors and other health staff to help them deal more sensitively with Gypsy and Traveller patients.
166. ECRI strongly encourages the authorities of the United Kingdom to pursue their efforts to research and address the situation of disadvantage of the Gypsy and Traveller population as concerns health issues, and recommends that the success of the various initiatives already taken be carefully analysed and evaluated, to allow the rapid dissemination of best practices throughout the country.
167. ECRI is deeply concerned at the high levels of hostility towards and prejudice against Gypsies and Travellers that still appear to prevail in many areas, especially against the background of an acute shortage of land for sites and sometimes fears about perceived differences in norms of social behaviour. ECRI notes with concern that two-thirds of local authorities indicate that they have had to deal with tensions between Gypsies and Travellers and other members of the public; 94% of these indicate unauthorised encampments as one of the main problems in this respect; 46% cite planning applications and enforcement; and 51% refer to general public hostility; and public resistance to providing additional sites has been identified as the most significant consequence of these tensions⁹⁹. At the same time, as mentioned above, many local authorities have failed to question whether their failure to provide sufficient or adequate sites has served to increase tensions, and instead have tended simply to blame Gypsies and Travellers for anti-social behaviour. Local councillors are reported to be frequently unfamiliar with the concept of race equality duties or uninterested in their application with respect to Gypsies and Travellers. Moreover, many lack an understanding of Gypsies and Travellers as a cultural group and are not merely unsympathetic to their cultural needs, but in some cases are themselves, through their statements, actions or policies, a factor in heightening tensions.
168. ECRI is also deeply concerned that hostile reporting in the media, and especially virulent anti-Gypsy reporting and editorials in the tabloid press, exacerbate these problems. Representatives of Gypsies and Travellers have indicated that the Press Complaints Commission has failed to take action in such cases.
169. ECRI recommends that the authorities intensify their efforts to promote good race relations at local level, having particular regard to the need to promote understanding and mutual trust between the majority population and Gypsies and Travellers.

⁹⁹ Commission for Racial Equality, *Common Ground: Equality, good race relations and site provision for Gypsies and Irish Travellers*, 2006, p7.

170. ECRI refers to its recommendations made earlier in this report with respect to political discourse and the media¹⁰⁰, and urges the United Kingdom authorities to pay special attention to issues related to Gypsies and Travellers in this context.

Refugees and asylum-seekers

171. In its third report, ECRI made a series of recommendations with respect to the policies, legislation and practice in place to deal with refugees and asylum-seekers. It made a series of recommendations with respect to the detention of asylum-seekers, and to ensure that the procedures in force for seeking asylum in the United Kingdom enable those in need of protection to have the merits of their individual cases thoroughly examined. It recommended that the authorities ensure that no asylum seeker is left destitute pending the examination of her or his claim and that any measures taken to provide asylum seekers with accommodation and support should not separate asylum seekers from the rest of society but should instead facilitate the early integration of those who will be allowed to stay. It also recommended that the authorities take the lead in placing public debate on asylum securely in the realm of human rights.
172. ECRI notes that since its third report, the UK Border Agency has introduced a new model for processing asylum claims. The aim of the model is to achieve faster conclusions to cases, recognise genuine refugees more quickly and repatriate applicants who have been refused asylum effectively. It also aims to achieve better quality decisions and thus reduce the number of appeals made. In January 2009, a report of the National Audit Office¹⁰¹ noted that there had been improvements in the management of asylum applications as a result of the introduction of this model but pointed to some outstanding issues. ECRI is concerned in particular that full screening interviews are not carried out at the point of application in more than one quarter of cases, increasing the risk that key information about the claim will be missed and that persons will be wrongly detained. It notes in this context that applicants dealt with via “fast-track” procedures have very little time to produce evidence in support of their claim, as decisions-makers have only three days in which to make a ruling in these cases, and that the failure rate of asylum applications treated via fast-track proceedings is accordingly very high. The use of a list of countries “likely to be suitable for the detained fast-track process” has also been criticised, particularly as – despite the inclusion of a proviso in the relevant instruction, that it should not be taken as implying any departure from the fundamental principle that all asylum claims are looked at on a case-by-case basis and decided on their individual merits – the existence of such a list may in itself detract in practice from the thorough examination of individual cases on their merits¹⁰². ECRI remains concerned about the quality of decisions: it notes that applicants have only one avenue of redress to correct a decision, which is an appeal to the Asylum and Immigration Tribunal, and that of the more than 70% of applicants who appeal to this body, between 20 and 25% of appeals are upheld. ECRI stresses that the high proportion of decisions overturned on appeal highlights the need to continue to improve the quality of decisions initially taken, for example through careful implementation of the

¹⁰⁰ See above, Racism in Public Discourse – Media.

¹⁰¹ National Audit Office, The Home Office: Management of Asylum Applications by the UK Border Agency, 23 January 2009

¹⁰² Suitability List (2007), Border and Immigration Agency: Asylum Process Instruction, Suitability for Detained Fast Track (DFT) and Oakington processes, 28 July 2007. Annex 2 contains a list of 54 countries “likely to be suitable for the DFT or Oakington process”.

recommendations made in this respect as part of the UNHCR Quality Initiative Project.

173. As regards detentions, ECRI notes with concern that there is no maximum limit on the length of detention of asylum-seekers. Moreover, despite a new duty imposed on the Secretary of State to make arrangements to ensure that asylum functions are discharged having regard to the need to safeguard and promote the welfare of children who are in the United Kingdom¹⁰³, there is at present no maximum limit on the length of detention of children who are detained with their families. Furthermore, asylum-seekers detained under fast-track procedures reportedly often do not have adequate access to legal assistance, and as a result, may in practice remain in detention without challenge. NGOs working in this field emphasise moreover that the detained fast-track procedure is used too frequently, and exceptions are not properly applied; the National Audit Office has also pointed out that if more information about the potential complexity and appropriateness of cases for detention were gathered by the UK Border Agency at the start of the process, fewer cases would need to be removed from the detained fast-track process¹⁰⁴. While the UK authorities emphasise that the detained fast-track process aims to deal quickly with cases suitable for this process and is part of a wider government strategy aimed at streamlining the asylum process, many NGOs express concern that in their view, the main aim of detaining asylum-seekers is to prevent them from establishing contacts with British society. ECRI stresses that the detention of asylum seekers should be used only as a last resort, when no other viable options are available.
174. ECRI remains deeply concerned about destitution affecting asylum-seekers, refused asylum-seekers and refugees in the United Kingdom, resulting from the refusal to allow most asylum-seekers to seek work¹⁰⁵ and difficulties in gaining access to asylum support or rapid access to work following recognition of refugee status. Research carried out by refugee agencies shows that destitution is widespread, especially among asylum-seekers whose claims have been refused, and that it commonly affects individuals for long periods, and in some cases affects children. Those affected include persons whose application for asylum has been rejected but who cannot leave the United Kingdom, for example because they are stateless or cannot obtain travel documents, or because it is unsafe for them to return. Similar issues were examined in detail by the Joint Committee on Human Rights, in a report published on 30 March 2007¹⁰⁶, in which it also made a number of recommendations to which ECRI hopes the authorities will give effect. ECRI notes the deeply worrying conclusion of the Joint Committee on Human Rights that there has been a deliberate policy of destitution of refused asylum-seekers, giving rise to breaches of international human rights standards¹⁰⁷. It furthermore notes with deep concern that, despite some measures taken to relax the rules in this field, access to health care remains a significant problem both for failed asylum-seekers, who have been liable for most non-emergency hospital charges since 2004, and for asylum-seekers whose claims are still being processed, who may for example be discouraged from seeking

¹⁰³ See above, Citizenship legislation

¹⁰⁴ National Audit Office, *The Home Office: Management of Asylum Applications by the UK Border Agency*, 23 January 2009, § 2.4.

¹⁰⁵ Only asylum-seekers who have been waiting 12 months for the decision on their claim may be permitted to work, where this delay cannot be attributed to them.

¹⁰⁶ Joint Committee on Human Rights, *The Treatment of Asylum Seekers*, Tenth Report of Session 2006-7. See in particular chapter 3: Access to Financial Support and Accommodation.

¹⁰⁷ *Ibid.*, § 120.

treatment to which they are entitled for fear of being charged, or wrongly denied treatment if they refuse to pay, or experience difficulties registering with a GP, for example due to problems proving their address¹⁰⁸. ECRI understands that the United Kingdom authorities intend to put the results of a review of healthcare for foreign nationals to public consultation in autumn 2009, and hopes that this will provide an opportunity to address the problems faced by asylum-seekers and failed asylum-seekers in this field.

175. ECRI observes that the tone of public discourse with respect to asylum-seekers remains frequently hostile. While the most virulent reporting seems to have abated to some extent as the number of asylum-seekers arriving in the United Kingdom has dropped, significant sections of the media, and notably the tabloid press, have continued to portray those seeking international protection in a relentlessly negative light, for example as criminals, abusers of the system or bogus asylum-seekers. Negative views have also been reflected in statements to the press by some politicians. ECRI is deeply concerned that such attitudes not only tend to poison public opinion against all asylum-seekers, however genuine their claim, but are also translated into laws and policies that increasingly treat asylum-seekers as though they were criminals. The UNHCR and other organisations working with refugees have repeatedly expressed concerns in this field, most recently with respect to clauses in the Draft (Partial) Immigration and Citizenship Bill that was published in July 2008, which provide that it is an offence for asylum-seekers knowingly to enter the United Kingdom without a valid travel document¹⁰⁹. ECRI shares these concerns and emphasises the need to respect the rights of individuals enshrined in the 1951 Refugee Convention.

176. ECRI recommends that the United Kingdom authorities intensify their efforts to improve the quality of decisions on asylum applications. It draws the authorities' attention to the need to ensure that screening procedures are applied in a manner that allows all the key facts to be laid out in each case, and that adequate time is allowed for asylum-seekers to substantiate their case.

177. ECRI urges the United Kingdom authorities not to treat undocumented asylum-seekers as criminals. It urges the authorities to ensure that the detention of asylum-seekers is used only as a last resort, and that individual decisions to detain are subject to thorough and effective judicial scrutiny. ECRI again recommends that the authorities ensure that the detention of children remains strictly limited to cases where it is absolutely necessary. It further recommends that any measures taken to provide asylum seekers with accommodation and support outside detention centres should not separate asylum seekers from the rest of society but rather facilitate the early integration of those who will be allowed to stay.

178. ECRI urges the authorities of the United Kingdom to ensure that no asylum seeker is left destitute during or after the examination of her or his claim, and emphasises in this respect that many asylum-seekers whose claims are rejected cannot return to their countries of origin, and, in the absence of the right to work, have no means to support themselves independently. It urges

¹⁰⁸ Ibid, Chapter 4, Provision of healthcare.

¹⁰⁹ See UNHCR, Draft (Partial) Immigration and Citizenship Bill: Submission to the Joint Committee on Human Rights, November 2008, available at http://unhcr.org.uk/info/briefings/responding_to_policy/documents/UNHCRJCHR.pdf and at Joint Committee on Human Rights, Legislative Scrutiny: Borders, Citizenship and Immigration Bill, Ninth Report of Session 2008-09, pp. Ev 151-156. For recent UK case-law on documentation of asylum-seekers, see for example *R v Asfaw* [2008] UKHL 31.

the authorities to take all necessary measures to ensure that asylum-seekers and failed asylum-seekers are not deprived of necessary health-care.

179. ECRI again strongly recommends that the authorities take the lead in placing public debate on asylum squarely in the realm of human rights. It recommends that the authorities encourage a more balanced public debate on asylum, ensuring that the need for international protection is understood and respected.

Migrants

180. In its third report, ECRI urged the United Kingdom authorities to ensure that civil servants, including those working in the immigration and nationality fields, do not discriminate against persons on grounds such as race, colour, language, religion, nationality and national and ethnic origin. ECRI recommended in particular that to this end, the authorities repeal Section 19D of the Race Relations (Amendment) Act. ECRI also recommended that the authorities keep the operation of section 8 of the Asylum and Immigration Act 1996 (governing restrictions on employment) closely under review and take any necessary action, such as repealing it, should evidence that it leads to racial discrimination come to light.
181. ECRI is not aware of any steps taken to repeal either of these provisions. Indeed, measures put forward by the authorities as part of proposals to consolidate immigration legislation¹¹⁰ foreshadow generally more restrictive policies and practices in this field. ECRI notes that, at the time of writing, these proposals were not before Parliament. It draws attention nonetheless to the concerns expressed by civil society on a number of aspects of the proposals, concerning in particular the fact that many infringements of immigration law would become criminal offences (for example, the failure to renew in due time a visa as a spouse), and could lead to imprisonment and the creation of a criminal record; the elimination of the present distinction between administrative removal and deportation; the new notion of “immigration bail”, which would undermine the presumption of liberty; and the excessive powers that would be granted to the Secretary of State, rather than the Asylum and Immigration Tribunal, with respect in particular to the granting of immigration bail and the addition of bail conditions. ECRI is concerned that these proposals may expose immigrants to disproportionate interferences with their rights, and that, by associating immigrants with criminals, they will send a message to society that will stigmatise all immigrants. It draws attention in this respect to the hostility towards migrant workers that has already been expressed in some parts of British society¹¹¹.
182. ECRI is also concerned at provisions included in the Borders, Citizenship and Immigration Act 2009 that transfer judicial review applications in this field from the High Court to the Upper Tribunal. It notes that challenges to deportation are frequently complex and that the issues at stake may concern life, liberty, or freedom from torture; fundamental rights protected under the European Convention on Human Rights may thus enter into play, and yet no mechanisms appear to be in place to ensure that such cases would continue to be heard by a High Court judge.
183. In its third report, ECRI recommended that the United Kingdom authorities ensure that the right of persons in the United Kingdom to marry is thoroughly

¹¹⁰ Draft (Partial) Immigration and Citizenship Bill, published for consultation on 14 July 2008 by the UK Border Agency

¹¹¹ See above, Racist violence.

respected without discrimination, including on the basis of the nationality of the spouses. ECRI notes that since then, the control of the right to marry by the Secretary of State under and pursuant to section 19 of the Asylum and Immigration (Treatment of Claimants, etc) Act 2004 has been the subject of a judgment by the House of Lords¹¹², which found that it allowed for a disproportionate interference in the right to marry guaranteed by Article 12 of the European Convention on Human Rights, and made a declaration of incompatibility under the Human Rights Act. No legislative initiatives have since been taken, however, to bring the text of the Act into line with this declaration.

184. ECRI urges the United Kingdom authorities to ensure that civil servants, including those working in the immigration and nationality fields, do not discriminate against persons on grounds such as race, colour, language, religion, nationality and national and ethnic origin. It again recommends that to this end, the authorities repeal Section 19D of the Race Relations (Amendment) Act. ECRI also recommends that the authorities keep the operation of section 8 of the Asylum and Immigration Act 1996 (governing restrictions on employment) closely under review and take any necessary action, such as repealing it, should evidence that it leads to racial discrimination come to light.
185. ECRI urges the United Kingdom authorities to ensure that immigrants are not exposed to disproportionate interferences with their rights, and that persons who have breached immigration law are not assimilated to criminals. It emphasises that it is essential that effective remedies be made available to persons who intend to challenge a deportation order. It also refers in this context to its recommendations made earlier in this report with respect to the importance of avoiding fomenting or fostering intolerance¹¹³.
186. ECRI again recommends that the United Kingdom authorities ensure that the right of persons in the United Kingdom to marry is thoroughly respected without discrimination, including on the basis of the nationality or religion of the spouses.

VII. Overall strategies to fight against racism and promote community cohesion

Great Britain

187. In its third report, ECRI encouraged the United Kingdom authorities in their efforts to implement a strategy aimed at promoting community cohesion and race equality. It recommended that the weight given to the race equality strand of this strategy reflect its importance and that the strategy reflect the results of work already carried out towards establishing a national action plan against racism. ECRI also encouraged the United Kingdom authorities to continue and intensify their efforts to support and promote inter-faith dialogue.
188. The Government of the United Kingdom launched its “Improving Opportunity, Strengthening Society” strategy in January 2005. Its two main aims, which are closely linked, are to increase racial equality and to build community cohesion by helping people from different backgrounds get along well together in their local area. The authorities have indicated that the strategy is designed to meet the government’s commitments to action agreed at the 2001 World Conference against Racism, including the development of a national action

¹¹² R (on The Application of Baiai and Others) v Secretary of State for The Home Department) [2008] UKHL 53

¹¹³ See above, Racism in public discourse – Exploitation of racism in politics.

plan against racism. It includes a transversal Public Service Agreement target to monitor and reduce racial inequalities between 2005 and 2008, including specific goals to reduce employment inequalities, monitor the progress of minority ethnic communities with respect to various key public services such as education, health, housing and the criminal justice system, and reduce perceptions of discrimination in public services.

189. ECRI welcomes the strong focus in the United Kingdom on promoting equality, including through imposing a statutory duty on public authorities to do so. It also welcomes the implementation of a strategy aimed specifically at promoting race equality. ECRI also notes with particular interest the publication of regular progress reports on the strategy, setting out data on different groups' situations or perceptions in the fields of education, employment, housing, health, the criminal justice system, community cohesion, culture and sport, and outlining the programmes that have been implemented to reduce inequalities in these fields and the outcomes achieved.
190. ECRI also notes with interest that in February 2009, the authorities published a discussion document¹¹⁴ designed to help them further develop their strategic approach to race equality in England, Scotland and Wales. The document seeks input from stakeholders and members of the public on what a government race equality strategy should look like for the future, how tackling race equality fits with a broader equality and fairness agenda, and how society can be strengthened to tackle race inequalities. More specific questions focus, for example, on the policy areas that should be covered, how to work with the private sector on ethnic minority employment issues, how to ensure that progress achieved in narrowing the employment gap is not reversed during a recession, how to overcome barriers to civic participation and representation, and how to ensure that the approach adopted meets the needs of Scotland, Wales and the different regions within England.
191. ECRI encourages the United Kingdom authorities in their efforts to ensure that the race equality strategy implemented in Great Britain is adapted to current and future circumstances. It encourages them to take all necessary steps to ensure that the strategy responds to the various needs of the different minority ethnic groups in Great Britain in terms of equality and inclusion in British society.

Northern Ireland

192. In its third report, ECRI recommended that the United Kingdom authorities intensify their efforts to combat racism and racial discrimination in Northern Ireland. It recommended that the Northern Ireland race equality strategy reflect the commitments undertaken at the World Conference against Racism and that it cover the situation of migrant workers. It also recommended focusing on concrete race equality outcomes in addition to structures and processes.
193. As noted above, the Equality Commission for Northern Ireland, in a review published in November 2008 of the effectiveness of the section 75 equality duty applicable in Northern Ireland, made a series of recommendations aimed at moving away from an approach based on process and towards a focus on outcomes. In October 2007, the Commission also published a statement of Key Inequalities in Northern Ireland, which examined the situation, inter alia, of members of the Black and minority ethnic community, including migrant workers, and of Travellers. This study pointed to a number of persisting

¹¹⁴ Department for Communities and Local Government, Tackling race inequalities: A discussion document. The 12-week consultation period was ended on 18 May 2009.

inequalities as well as emerging challenges, and emphasised the need for all actors to continue working actively to promote equality. At the same time, the devolved administration for Northern Ireland has begun refocusing its work in this field towards a greater emphasis on good relations, referring to a draft programme of Cohesion, Sharing and Integration designed to tackle issues affecting both established communities and new arrivals. ECRI stresses the importance of working both to redress inequalities in daily life and to promote good relations in society, and refers in the latter context to its concerns raised earlier in this report with respect to recent attacks on migrant workers in Belfast¹¹⁵.

194. ECRI recommends that the authorities pursue and intensify their efforts to combat racism and racial discrimination in Northern Ireland, including with respect to migrant workers. It encourages the authorities in their efforts to ensure concrete race equality outcomes in addition to improving structures and processes.

VIII. Anti-terrorism legislation and its implementation

195. In its third report, ECRI recommended that the United Kingdom authorities review the provisions contained in Part 4 of the Anti-Terrorism, Crime and Security Act 2001. ECRI also recommended that the authorities ensure that anti-terrorism legislation is implemented in a manner that does not produce racial discrimination.
196. On 19 February 2009, the Grand Chamber of the European Court of Human Rights unanimously found that there had been a violation of Article 5 § 4 of the European Convention on Human Rights with respect to four persons detained under the provisions of Part 4 of the Anti-Terrorism, Crime and Security Act 2001¹¹⁶. Since ECRI's third report, these provisions, dealing with suspected international terrorists, have been repealed in accordance with the Prevention of Terrorism Act 2005. The latter Act set up a system of control orders, which allow the government to impose conditions on people suspected of carrying out terrorist activities, such as curfews, restrictions on persons with whom they may associate or communicate, prohibitions or restrictions on their movements to, from or within the United Kingdom or a specified place within it. The relevant provisions, which were initially in force for one year, have been renewed each year since then. ECRI notes that these provisions and their operation in practice have been strongly criticised by many actors, including the Joint Committee on Human Rights. The latter has underlined its concerns that the regime and its operation will inevitably result in breaches of the rights to liberty and due process, and has stressed its growing concern about the length of time for which a number of individuals have been the subject of control orders. The United Kingdom authorities have emphasised that the relevant legislation is not discriminatory. ECRI recognises that it is the duty of states to fight against terrorism but stresses that the fight against terrorism should not become a pretext under which racism, racial discrimination and intolerance are allowed to flourish. It is deeply concerned that the above legislation may in practice have a higher impact on some groups than others, exposing Muslims in particular to a greater risk of breaches of their rights.
197. In its third report, ECRI recommended that the United Kingdom authorities assess the impact that their legislation and policies against terrorism may have on race and community relations in the United Kingdom, and ensure that Muslim and other communities particularly affected by the implementation of

¹¹⁵ See above, Racist violence.

¹¹⁶ A and others v. the United Kingdom, application no. 3455/05.

anti-terror legislation are thoroughly consulted and involved in relevant fora concerning its implementation.

198. ECRI notes that during debates on proposed new legislation, the Equality and Human Rights Commission carried out a broad consultation with Muslim and other groups, including the majority population, to find out their reactions to legislation and policies to combat terrorism. Their research showed that Muslims felt stigmatised and alienated, and that anti-terror legislation had a particularly negative impact on young Muslims, who were regularly stopped and searched and felt increasingly marginalised. Mothers expressed fears for their children, who they saw growing up feeling that they do not belong in British society, and lacking confidence in the police and the state.
199. ECRI notes with concern that stops and searches under anti-terror legislation – which allows individuals to be stopped and searched even in the absence of a reasonable suspicion of unlawfulness on their part – have disproportionately affected members of Black and minority ethnic communities¹¹⁷. At the same time, it appears that to date they have not led to a single conviction. The independent reviewer of the United Kingdom's anti-terror laws, Lord Carlile, found in his 2009 report that examples of poor or unnecessary use of the powers abound, and emphasised the considerable damage that could be caused to community relations if these powers were misused. He also found evidence of cases where clearly unmerited searches of individuals had been carried out apparently with the sole purpose of balancing racial statistics, and criticised the application of the relevant provisions – intended to provide special powers to prevent terrorist attacks – on a permanent basis to the whole Greater London area. ECRI recognises that states have a vital role to play in protecting citizens against terrorist attacks. However, it stresses the need to ensure that the fight against terror does not itself lead to direct or indirect racial discrimination, and emphasises the strong risk of damaging good relations in society where measures designed to combat terror are applied, or perceived to be applied, in a manner that unfairly targets or stigmatises specific minority groups.
200. ECRI strongly recommends that the United Kingdom authorities keep under review the legislation in force to combat terrorism. It again draws their attention to its General Policy Recommendation No. 8 on combating racism while fighting terrorism, which recommends that states review legislation and regulations adopted in connection with the fight against terrorism to ensure that these do not discriminate directly or indirectly against persons or groups of persons, notably on grounds of “race”, colour, language, religion, nationality or national or ethnic origin, and that they abrogate any such discriminatory legislation.
201. ECRI reiterates its recommendation that the authorities of the United Kingdom ensure that anti-terrorism legislation is implemented in a manner that does not discriminate against persons or groups of persons, notably on grounds of actual or supposed race, colour, language, religion, nationality or national or ethnic origin.
202. ECRI also reiterates its recommendation that the United Kingdom authorities assess the impact of their current legislation and policies against terrorism on race and community relations in the United Kingdom. It urges the United Kingdom authorities to ensure that Muslim and other communities particularly affected by the implementation of anti-terrorism legislation are thoroughly

¹¹⁷ See Statistics on Race and the Criminal Justice System 2007/8, Chapter 4

consulted and involved in debates concerning the implementation of anti-terrorism legislation.

IX. Conduct of law enforcement officials

203. In its third report, ECRI strongly encouraged the United Kingdom authorities to take forward work on the implementation of all the recommendations of the Stephen Lawrence Inquiry Report in all police forces in the country and to keep progress under regular review. It recommended that the United Kingdom authorities urgently follow up on any findings and recommendations formulated at the end of the formal investigation conducted by the Commission for Racial Equality, and referred in particular in this respect to the impact of the disproportionate use of “stop and search” powers on ethnic minorities.
204. As documented earlier in this report, considerable work has been done across the criminal justice system to improve the recording of racist incidents and the monitoring by police forces of racially motivated crime¹¹⁸. With respect to the use of stop and search powers, the police collect statistics on the use of these powers with respect to ethnic minorities in each police force area. Overall in England and Wales, Black people were 7.6 times more likely (on a per capita basis) to have been subjected to stops and searches than White people in 2007/08 (an increase compared with the previous year). This is despite the fact that one study referred to by the authorities showed that young Black men were not more likely to be offenders than other members of the population.
205. The exact figures vary widely between different police force areas and the authorities have indicated that they are now examining disproportionality more thoroughly, seeking to identify areas where there is a considerable disparity between the rates of stops and searches of different minority ethnic groups, determine whether there are any reasonable explanations for these different rates, and act to redress the situation where necessary. The authorities have also indicated that these issues are best addressed at local level, as the impact of stops and searches may vary widely depending on the specific local context and on how well individual police forces communicate about why they are tackling issues in particular ways. ECRI again underlines in this respect the highly negative impact on society that may result where measures that are not discriminatory on their face are applied, or perceived to be applied, in a manner that unfairly targets or stigmatises specific minority groups.
206. ECRI notes that a pressing issue that has come to light in recent years is the disproportionate representation of Black and minority ethnic persons in the national DNA database. This database includes DNA samples of more than 857 000 citizens in England, Wales and Northern Ireland who have been arrested or charged but never convicted of a criminal offence. The Equality and Human Rights Commission has indicated that according to its calculations, the DNA profiles of more than 30% of all Black males living in Britain are stored in the database, compared with those of about 10% of White and 10% of Asian males; other estimates show that Black men are around four times more likely than White men to be in the database¹¹⁹. ECRI shares the concern expressed by the Equality and Human Rights Commission that the over-representation of Black men in the database could strengthen a tendency for racial profiling, and that samples or records could be misused in

¹¹⁸ See above, Criminal law provisions against racism and Discrimination in Various Fields – Administration of Justice.

¹¹⁹ Equality and Human Rights Commission, Police and racism: What has been achieved 10 years after the Stephen Lawrence Inquiry report ?

other ways that may run directly counter to the promotion of race equality. ECRI notes that the DNA database was the subject of a Grand Chamber judgment of the European Court of Human Rights in December 2008¹²⁰ and that its operation is now likely to be substantially reviewed; it strongly hopes that this review will serve to eliminate any risks of racial discrimination that the database may present.

207. ECRI strongly recommends that the United Kingdom authorities pursue their efforts to identify cases where the use of “stop and search” powers has a disproportionate impact on members of minority ethnic groups. It recommends that the authorities intensify their efforts to ensure that these powers are not applied in such a way as to give rise to direct or indirect discrimination and that they act swiftly to redress any such situations where they arise. ECRI draws the authorities’ attention to its General Policy Recommendation No. 11 on Combating racism and racial discrimination in policing, which recommends a range of actions that can be taken in this field and other relevant fields addressed below.

208. ECRI recommends that in reviewing the operation of the national DNA database, the United Kingdom authorities pay particular attention to the question of possible direct or indirect racial discrimination and act to ensure that any such discrimination is eliminated.

209. In its third report, ECRI encouraged the United Kingdom authorities in their efforts to carry out research on the disproportionately higher number of members of ethnic minorities who die in custody and recommended that they address this problem as a matter of urgency.

210. In 2007/08, 21 deaths of persons who had been arrested or detained by the police were recorded, amongst which 3 deaths involved minority ethnic persons. 85 self-inflicted deaths were recorded in prisons in the same year, of which 18 involved minority ethnic persons¹²¹. The authorities have noted that, compared with the overall composition of the prison population, these figures are not disproportionately high¹²². 100 other deaths from other causes were recorded in prisons in 2007/08, of which 9 were of persons belonging to Black and minority ethnic groups. The average age of Black and minority ethnic persons who died in prison was only 46, compared with 54 for White persons who died in prison, an issue that the authorities have indicated is of concern to them. ECRI shares this preoccupation, and reiterates in this context its concern that Black and minority ethnic people are significantly over-represented in prisons. It is not aware of any research yet carried out into deaths of Black and minority ethnic people in custody.

211. ECRI recommends that the United Kingdom authorities carry out research into the issue of deaths of members of ethnic minorities in custody and that they address this problem as a matter of urgency. In this context, it recommends that the authorities continue to monitor and analyse the patterns of deaths in custody in order to identify ways to reduce the incidence of such deaths, and that the authorities carry out detailed research into the reasons for the disproportionate numbers of Black and minority ethnic people in prison.

212. In its third report, ECRI recommended that the United Kingdom authorities continue and intensify work to ensure high quality training for police officers in combating racism and in policing a diverse society. It also recommended that

¹²⁰ S. and Marper v. United Kingdom, Applications nos. 30562/04 and 30566/04.

¹²¹ Statistics on Race and the Criminal Justice System 2007/8, Chapter 11.

¹²² See above, Discrimination in Various Fields – Administration of Justice.

the United Kingdom authorities continue and intensify work to address the under-representation of ethnic minorities in the police, and that they monitor progress in recruitment, retention and career advancement.

213. Recent statistics show that progress has been made with respect to recruiting minority ethnic police officers. The Home Office target for ethnic minorities to constitute at least 7% of the police force (including both civilian staff and sworn officers) was exceeded in 2007, with a total of 8%, although amongst officers the proportion had only reached 3.9% by April 2007. The proportion of successful police recruits belonging to minority ethnic groups also rose from 6.3% in 2003/04 to 10.7% of candidates in the first half of the 2007/08 reference period. Targets in terms of career advancement have also been met at most levels.
214. ECRI welcomes these positive developments but notes that some areas could still be improved, such as retention of new minority ethnic recruits, recruitment of minority ethnic police officers, promotion of minority ethnic officers to the highest ranks of the police forces and their recruitment to more specialised squads. It emphasises that greater diversity throughout the police force will help the police better to respond to the specific needs or concerns of minority ethnic groups, and to build the confidence of minority ethnic groups in the police.
215. ECRI encourages the United Kingdom authorities to continue their efforts to address the under-representation of ethnic minorities in the police, and to monitor progress in recruitment, retention and career advancement.
216. In its third report, ECRI encouraged the United Kingdom authorities in their efforts to establish an independent body with the objective of ensuring proper and fair investigations into alleged instances of police misconduct. It recommended, in particular, that the authorities provide the Independent Police Complaints Commission (IPCC) with sufficient human and financial resources to enable it to carry out its own investigative functions effectively.
217. The IPCC became operational on 1 April 2004. It is a non-departmental public body, funded by the Home Office, but by law independent of the police, interest groups and political parties, and whose decisions on cases are free from government involvement. Like the police, it has a statutory duty to promote race equality in accordance with provisions enacted in the Race Relations (Amendment) Act 2000, and it has indicated that it will pay particular attention to cases concerning complainants who consider that they have been discriminated against because of their race, faith, or other protected characteristics¹²³. ECRI welcomes this declaration.
218. ECRI encourages the United Kingdom authorities in their efforts to ensure that alleged instances of police misconduct are fairly and objectively investigated by an independent body and recommends that the authorities provide the IPCC with sufficient human and financial resources to enable it to carry out its own investigative functions effectively, with due regard to the need to combat racial discrimination and promote equality.

X. Monitoring Racism and Racial Discrimination

219. In its third report, ECRI encouraged the United Kingdom authorities in their efforts to collect data broken down by ethnic origin in different policy areas. It recommended that such data cover as wide a range of groups as possible and

¹²³ IPCC, Statutory Guidance: Making the new complaints system work better for police forces, in effect since 1 December 2005, section 2.5.

include data broken down by religion. It recommended that the authorities ensure the thorough consultation and involvement of all communities concerned.

220. ECRI again welcomes the extensive ethnic monitoring carried out by the United Kingdom authorities in various policy areas, and observes that such monitoring is widely supported by civil society as a means of assessing the situation of minority ethnic groups and designing specific and targeted policy responses to address problems identified. It notes that a need for the collection of data broken down by religion has also been expressed, for example with respect to the situation of different religious groups with respect to the criminal justice system, health and other major public policy areas. At present nationality or ethnic origin can serve as proxies but these are approximate at best, and do not bring clearly to light the possible impact of religious beliefs on equality outcomes in British society. As a result, targeted policy responses to address any inequalities experienced on this basis cannot be identified and implemented where needed.

221. ECRI again encourages the United Kingdom authorities in their efforts to collect data broken down by ethnic origin in different policy areas. It reiterates its recommendation that such data cover as wide a range of groups as possible and in particular include data broken down by religion. ECRI again recommends that in gathering such data, the authorities ensure the thorough consultation and involvement of all communities concerned.

INTERIM FOLLOW-UP RECOMMENDATIONS

The three specific recommendations for which ECRI requests priority implementation from the United Kingdom authorities are the following:

- ECRI reiterates its recommendation that the United Kingdom authorities consider how to best ensure that legal aid is available in discrimination cases before Employment Tribunals.
- ECRI strongly encourages the United Kingdom authorities in their efforts to address the disadvantages faced by Gypsies and Travellers in access to adequate accommodation. It strongly recommends that the authorities take all necessary measures to ensure that the assessment of accommodation needs at local level is completed thoroughly and as quickly as possible.
- ECRI encourages the United Kingdom authorities to continue their efforts to address the under-representation of ethnic minorities in the police, and to monitor progress in recruitment, retention and career advancement.

A process of interim follow-up for these three recommendations will be conducted by ECRI no later than two years following the publication of this report.

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APPENDIX: GOVERNMENT'S VIEWPOINT

The following appendix does not form part of ECRI's analysis and proposals concerning the situation in the United Kingdom

ECRI, in accordance with its country-by-country procedure, engaged into confidential dialogue with the authorities of the United Kingdom on a first draft of the report. A number of the authorities' comments were taken on board and integrated into the report's final version (which, in line with ECRI's standard practice, had to reflect, in principle, the situation as at 3 July 2009, date of the examination of the first draft).

The authorities also requested that the following viewpoint be reproduced as an appendix to the report.

UK GOVERNMENT COMMENT ON THE 4TH REPORT ON THE UNITED KINGDOM BY THE EUROPEAN COMMISSION AGAINST RACISM AND INTOLERANCE (ECRI)

The United Kingdom Government welcomes this opportunity to comment on ECRI's 4th report on the UK. We welcome much that is in ECRI's report and in particular its acknowledgements of the progress that has been made since their 3rd report in 2005. We were pleased that ECRI were able to meet a wide range of officials and stakeholders during their March 2009 contact visit to our country and that they also took the opportunity to visit Bradford to see how policies to tackle racism and racial discrimination and promote community cohesion are having an impact at the local level.

The UK Government and the devolved administrations in Scotland, Wales and Northern Ireland are firmly committed to the elimination of all forms of racism and related intolerance and to the development of policies which address racial discrimination, intolerance and violence. The Government's aim is cohesive communities in which every individual, regardless of faith or ethnic origin, is able to fulfil his or her potential through the enjoyment of equal rights, opportunities and responsibilities.

The UK Government believes that integration in the United Kingdom is not about assimilation into a single homogenous culture. The Government is committed to building a fundamentally inclusive and cohesive society by creating a sense of inclusion and shared British identity, defined by common opportunities and mutual expectations on all citizens to contribute to society and respect others. This approach does not just apply to minority communities. Without widespread social participation and valuing of all local cultures, we acknowledge that those from majority communities can also feel excluded or left behind by social change.

Substantial progress has been made in recent years. In **education**, where a few years ago pupils from many groups lagged behind in attainment, projects such as the Black Pupils Achievement Programme and the Aiming High Strategy have helped to raise attainment by under-achieving groups. This has led to significant increases in attainment for children from many of the ethnic groups who had the lowest attainment. The number of Black Caribbean pupils getting five good GCSEs has risen by over twenty percentage points since 2003, and the gap between pupils of Bangladeshi origin and the national average has been virtually eliminated.

In employment, the Ethnic Minority Employment Task Force has focussed action to raise ethnic minority employment rates. Projects such as Ethnic Minority Outreach helped thousands of people to become work ready and find jobs. We have championed the business case for equality, making it clear that it is not just equality for equality's sake. Since 1996, the gap between minority ethnic groups and the average has narrowed from 19 percentage points in 1996 to 13.8 points today.

In the **criminal justice system**, where some of the challenges were most acute, we have seen far-reaching changes. We have set targets for representation, recruitment and progression for minority ethnic police officers. We have changed how racist incidents are defined, and made the

recording of Stop and Search more transparent. We have changed the way that police officers are trained, to raise awareness of the issues and ensure they are properly serving minority communities. As a result, the number of police officers from minority ethnic backgrounds has more than doubled to 5,793, up from 2,447 over the last ten years; and we have also seen an increase in the number of people from ethnic minorities in other areas of the criminal justice system, including the prison service, judiciary, and legal profession.

The drive to improve the diversity covered the full range of the public sector – to make services responsive to the needs of everyone. For example, in 1999 only 1.6% of senior civil servants were from an ethnic minority. In 2008 it was 4.3%, still short of what it should be, but a significant improvement.

We have done all this in the context of our broader work to raise incomes, reduce poverty and tackle inequality: introducing the minimum wage and tax credits, supporting the youngest children through Sure Start, overseeing a massive expansion in the number of university places, and investing in housing and regeneration.

That has often had most impact on the most disadvantaged families, including those from ethnic minorities, with improvements on issues like child poverty, overcrowding and the number of families living in non-decent homes.

All this is delivering encouraging results. The latest data from the Citizenship Survey tell us that people from minority ethnic communities are becoming more confident that the criminal justice system will treat them fairly. And minority ethnic communities have greater confidence in their ability to succeed and to influence decisions.

Social attitudes and the make-up of our society have also changed. One in ten children is now born into a mixed-race family. Research indicates that young people are increasingly comfortable with and accepting of diversity, which is unsurprising, when this is what they are growing up with.

But it would be a mistake to see inequality only in terms of race and ethnic origin. Socio-economic status and poverty affect people's chances in life, regardless of race or ethnic background. These cannot easily be untangled. Members of ethnic minorities are twice as likely to be poor and it is often that poverty, rather than simply ethnic origin, which has a devastating impact on their chances.

Meanwhile, there is a growing Black and Asian middle class in the UK. Many more members of minority ethnic communities than before have a university degree, a good job and own their own home. And students of Chinese and Indian origin in particular do much better at school than the average. However, these groups are coming up against the old challenges in new settings. For example, higher achievement at school does not always translate into higher earnings. And recent research from the Department for Work and Pensions suggests that a CV from someone who is obviously from an ethnic minority is little over half as likely to result in an invitation to interview than one from a White applicant.

So we - and ECRI - must avoid a one-dimensional debate that assumes all minority ethnic people are disadvantaged. Such success stories can be excellent role models for others in their communities. And the rich variety of experience means that there is no 'average' group or person which we can cater for through a general approach. We must tackle inequalities based on need, supported by evidence. Without doing this, we risk overlooking groups and individuals with the poorest outcomes, including members of poor White communities, but also more recently established minority ethnic groups.

However, with regard to **citizenship, asylum and migration** issues, the UK Government disagrees with the thrust of ECRI's 4th report which does not give appropriate recognition to the purpose and the integrity of the strategies and systems in place in the UK. Nor does it reflect the practical realities of operating immigration controls for the benefit of the UK resident population and migrants.

There is no doubt about the UK's commitment towards asylum and human rights. We take protection seriously – and we deliver on it. Our protection, migration and citizenship systems are humane and fair but also firm on those who have been found by us and the independent courts to have no right to be here. That is perfectly within our obligations. There is no contradiction between effective immigration control and our longstanding commitment to providing protection to those who need it and preserving human rights.

Whilst protection is an important element of the UK Border Agency's work, it is just one element of a bigger picture. Asylum intake has dropped substantially since the peak in 2002 to around a quarter of the level then, and has remained steady for several years. Asylum seeking is no longer the dominant issue in the mass media and public perception. There is now a far greater focus on overall immigration levels and concerns about the impact on the UK's population size.

The bigger picture is that the UK Government has a duty to control immigration levels to the UK. If we did not do this, there would inevitably be an adverse impact on communities in the UK, which could endanger the safety of immigrants themselves, and lead to increased racial intolerance. In the prevailing economic circumstances it could also lead to destitution and associated problems for migrants themselves and greater unemployment in the resident population, including those who have become citizens. There would also be increasing burdens on local and national services causing economic strain, which in turn would fuel intolerance and the other problems highlighted above. The Government does not believe it is right to stop immigration altogether so we have introduced a flexible Points Based System to ensure non-EEA migrants have the skills we need.

We refute the suggestion that our new earned citizenship architecture will add complexity to the process and have a negative impact on integration. This is a fundamental misunderstanding of our proposals which do as much to create a clear process as they do to aid integration.

The UK Government is clear that naturalisation as a British citizen is a privilege and not a right and that there is no automatic right for those who are in the UK temporarily to attain permanent residence. The UK Government is reinforcing these principles by changing the way migrants attain British citizenship. From July 2011, we will introduce a clear, three stage process which enables migrants to demonstrate they have earned their British citizenship. It is important that those who want to settle in the UK obey the law, abide by our rules and contribute to the UK. Our earned citizenship structure encourages and rewards those who integrate into British society. Those individuals will be rewarded with exactly the same length journey to citizenship as exists now. We want to give migrants adequate time to integrate and demonstrate their commitment to the UK. That is why, for those that do not voluntarily choose to conduct active citizenship, the journey to citizenship will be slightly longer. This in itself will provide more time for temporary residents to interact with UK society before being eligible for citizenship. A willingness to integrate, learn English and demonstrate commitment to the UK brings benefits for wider society and individual migrants alike. We intend to do all we can to welcome new migrants and to enable them to lead full lives as part of UK society. That is why our earned citizenship framework will create structures that help migrants to integrate, interact with the community and commit to the UK.

The ECRI report does not appear to demonstrate a clear understanding of the practical realities of operating an immigration system or, if they are understood, to give particular weight to them. Fundamentally, it does not take adequate account of the ways in which people act when they are confronted with obstacles to achieving their aspiration for a better life, nor the fact that there are organised criminals who wish to exploit individuals for financial gain.

It is a fact that the majority of people who claim asylum do not demonstrate the criteria for protection following careful scrutiny of their application by trained officials, and the independent courts, if they choose to pursue that option. It is a fact that some people attempt to abuse the protection system by claiming a false nationality in a fraudulent attempt to better their chances of being allowed to stay. It is a fact that many people who have been found, through careful scrutiny of their applications, to have no basis of stay in the UK do not return voluntarily and do not comply with requirements to effect their return – and that this may begin at an early stage through the premeditated destruction of identity documents. It is a fact that some people whose appeals have been exhausted choose to remain in detention rather than return home despite the existence of voluntary schemes run by the International Organisation for Migration (IOM).

These actions by individuals hamper the operation of immigration control and divert resources which could otherwise be used to speed up the processing of applications across the board. They also illustrate why detention, within the lawful framework, is a regrettable necessity of an effective immigration system. We make no excuse for the proportionate steps we have taken to address these issues.

In recent years, the UK Government has rigorously examined our strategies, systems and processes and has made some of the biggest changes in generations. Case decisions are subject to challenge through the independent courts, including on human rights grounds. In several respects, including country of origin information, the UK is considered to be a world leader. We have been open about our operations and policies and have worked closely and collaboratively with stakeholders, including UNHCR, over a number of years.

For the above reasons, the UK Government does not accept as a balanced representation the negative landscape implied by ECRI's findings pertaining to citizenship, asylum and migration. Detailed responses to individual issues are provided below.

For ease of reference this Comment covers subjects in the same order as ECRI's report

I. EXISTENCE AND IMPLEMENTATION OF LEGAL PROVISIONS

International legal instruments

The UK notes the report's recommendation that it sign and ratify Protocol 12 to the European Convention on Human Rights. We currently have no plans to ratify Protocol 12, but we will study with great interest the judgments of the Court with regard to the Protocol now that it has come into force. We are sympathetic to any non-discrimination measure that is practical and consistent with UK law. However, we believe that any measure we sign up to should actually provide a workable solution that will deliver the desired result, and make a real difference to combating discrimination. We remain concerned that the drafting of the Protocol is very wide. Because of that, there remain unacceptable uncertainties regarding its impact if it were incorporated into UK law.

The UK has ratified the European Social Charter 1961. The Government continues to keep the question of ratification of the Revised Charter (and the collective complaints mechanism) under review, particularly in the light of the evolving interpretation and case-law of the European Social Rights Committee, the experts appointed to interpret and oversee compliance with it.

The UK notes the report's recommendation that it ratify the Optional Protocol to the International Covenant on Civil and Political Rights and make a declaration under Article 14 of the International Convention for the Elimination of all forms of Racial Discrimination, which provide for individual petition to the United Nations monitoring committees. We currently have no plans to ratify the protocol. The UK Government need to be convinced of the practical value to the people of the United Kingdom of the rights of individual petition to the United Nations under each of the covenants and conventions to which they apply. In 2004, the UK acceded to the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women. One of our reasons for doing so was to enable us to consider on a more empirical basis the merits of the right of individual petition. Professor Jim Murdoch of Glasgow University reviewed the

operation of the optional protocol, and we announced the conclusions of his review on 4 December 2008, which were that the optional protocol had not yet provided women in the UK with real benefits; non-governmental organisations in the UK had not used the optional protocol in advancing the cause of women, and that the quality of the UN Committee's adjudication on admissibility of complaints could appear inconsistent. Professor Murdoch's findings suggest that the first three years did not provide sufficient empirical evidence to decide either way on the value of other individual complaint mechanisms. We will need further evidence, over a longer period, to establish what the practical benefits are. On 8 June 2009, the Government announced that the UK intends to ratify the Optional Protocol to the Convention on the Rights of Persons with Disabilities shortly. The Government will keep under review the applications made under these two optional protocols, how they are handled by the relevant committees at the United Nations, and whether their outcome demonstrates significant additional benefits to people in the United Kingdom. This evidence will assist the Government in assessing the merits of other individual petition mechanisms.

The rights of migrant workers and members of their family are already protected in UK legislation, including under the Human Rights Act 1998. The Government's position is that incorporating the full terms of the International Convention into UK law would be contrary to and undermine the Government's immigration policy. For example, it would undermine the Government's points based system and earned citizenship policies. The UK would be prevented from ensuring that only those people with the skills we need will be able to work here and we would not be able to ensure that migrants earn the rights that come with becoming a British citizen or permanent resident in the UK. Migrants would be allowed fuller immediate access to the benefits and social assistance system from the date they arrive in the UK and they would have the same rights as British citizens and permanent residents without distinction of any kind, including immigration status and length of residence in the UK. The Government does not believe this would be fair or right. In addition, this would create additional unwelcome burdens on the UK and represent an unreasonable 'pull factor' for migrants, including illegal migrants, to move to the UK.

The Government therefore has no plans to ratify the International Convention. The current arrangements in the UK strike the right balance between the need for a firm, fair and effective immigration system and protection of the interests and rights of migrant workers and their family members.

The UK notes ECRI's recommendation that it ratify the Convention on the Participation of Foreigners in Public Life at Local Level. At the Council of Europe Conference of European ministers responsible for local and regional government in November 2009 the UK signed a related instrument, an additional protocol to the European Charter of Local Self Government recognising the rights of citizens to participate in local affairs. The UK now proposes to begin the process of ratification of both instruments in tandem.

Citizenship legislation (paragraphs 16- 20)

Earned citizenship creates a clear three stage system which enables migrants to demonstrate they have earned British citizenship while encouraging and rewarding those who integrate into British society with exactly the same length journey to citizenship as exists now.

The earned citizenship provisions contained in the Borders, Citizenship and Immigration Act 2009 are the realisation of a third stage of reforms which we are introducing to strengthen controls and to ensure that newcomers to the United Kingdom earn the right to stay. The current economic and demographic challenges facing Europe mean we need to strike the right balance between, on the one hand, controlling irregular migration whilst, on the other, welcoming new migrants and ensuring, through activities that promote their integration and engagement with wider UK society, that they are supported in achieving their full potential in the UK. We do not believe this can be achieved through a mechanistic process of naturalisation. We hope that by providing greater opportunities for different communities to interact, people will understand each other better and through a shared sense of community and identity reduce the levels of tension mentioned elsewhere in the report.

Our objective is to make our immigration system clearer, more streamlined and easier to understand thereby reducing the possibilities for abuse of the system, maximising the benefits of migration and putting shared values at the heart of the system. Under the new system, the journey to citizenship will enable migrants to demonstrate a more visible and a more substantial contribution to Britain as they pass through successive stages. Probationary citizenship will provide a clear second stage in a newcomer's journey during which time they will be encouraged to integrate further by contributing to their local communities for example. The UK has set up a "design group" including civil society actors that is advising on what voluntary and community activities might promote effective integration and on a "light touch" regime for monitoring them. This system will therefore support migrants' integration and it will encourage migrants to continue on their journey towards securing citizenship. We consider that this will help migrants appreciate that they are on a journey and set out what their rights are as well as their responsibilities. This is not about delaying citizenship but rather about providing a framework for the individual to show that they are properly integrated into UK society and have earned the right to it. Research in the UK shows that many migrants already engage in volunteering or other community activities and those who do so can still apply for British citizenship after 6 years. This is the same time frame as under the current system.

We think it is reasonable to expect migrants not only to respect the immigration laws but also to meet the requirements for their entry and stay in the UK. The introduction of Earned Citizenship will mean that migrants need to meet clearly laid out requirements in order to progress to probationary citizenship and British citizenship or permanent residence.

The UK Government is clear that migrants who demonstrate active citizenship should be entitled to a quicker path towards British citizenship or permanent residence, in recognition of their contribution. Active citizenship

is not mandatory; it is a mechanism to reward those individuals who have contributed to their community. The design group we have established includes representatives from local government and the third sector, in order to ensure active citizenship operates effectively for the migrant, the voluntary sector and the community.

Criminal law provisions against racism applicable in England and Wales

Racially and religiously aggravated offences (paragraph 30)

Racially or religiously aggravated violence offences recorded by the police in England and Wales¹²⁴ fell by 4% between 2005/06 and 2007/08 from 35,611 to 34,344. As ECRI note in the later section on racist violence, there was a 6.9% fall in racist incidents between 2006/07 and 2007/08 as well as a 10% decrease in racially or religiously aggravated offences in the same period. It is not clear why this change occurred. Estimates based on British Crime Survey (BCS) data do show a rise in the number of racially motivated incidents from 139,000 in 2005/06, to 184,000 in 2006/07 and to 207,000 in 2007/08. However, these are estimates rather than recorded crimes.

Incitement to racial or religious hatred (paragraph 33)

The Government notes ECRI's comments concerning its General Recommendation No 7 but does not accept them. We regret that, in framing General Recommendation No 7, ECRI did not take sufficient account on the importance that is placed on freedom of expression and association in the legal traditions of some member states, such as the UK.

Criminal law provisions against racism applicable in Scotland

We note ECRI's recommendation that the authorities continue and intensify their efforts to improve the reporting and recording of racist offences in Scotland. We also note that ECRI is not specific in relation to what areas need to be improved, merely stating that "*some reports suggest that the extent and accuracy with which racist incidents are recorded in Scotland may vary from one police unit to another.*"

There is a common recording standard throughout Scotland which was developed between the Scottish Government and the eight police forces. There is nothing in ECRI's report to evidence the need for any change in this regard. A variety of initiatives exist at police force level to encourage victims to report incidents and it is right that these efforts sit with police forces who are best placed to tailor initiatives that fit local needs.

In more general terms, the Scottish Government Race Equality Statement (2008) sets out its strategic approach to race equality over 2008-2011. To aid the implementation of its aims, the Scottish Government has granted a total of £9 million to voluntary agencies aimed at tackling racist attitudes and improving the lives of minority ethnic and faith communities in Scotland.

More specifically, the Scottish Government works closely with the police service in Scotland and shares the view that equality and diversity is at the heart of policing.

By way of recent example, the Cabinet Secretary for Justice participated in the joint launch of the ACPOS Equality and Diversity Strategy. The event was attended by a number of key stakeholders across the Scottish diversity arena, including SEMPER (Supporting Ethnic Minority Police staff for Equality in Race). SEMPER is funded by Scottish Government and plays a significant role in taking forward an effective approach to race issues across Scotland.

Both SEMPER and the Scottish Government work closely with police forces and the Scottish Police College in ensuring appropriate diversity training to all new recruits which is augmented by further police force level training to all police officers in Scotland.

Civil law provisions against racial discrimination – Northern Ireland (paragraph 67)

We note ECRI's comment "that the authorities keep the effectiveness of the section 75 public sector equality duty applicable in Northern Ireland closely under review". However, this responsibility in fact lies with the Equality Commission. The Equality Commission acknowledges in its Section 75 guidance that duty 2 carries with it less weight than duty 1, but public authorities are required to take the specific matters into account and give these duties the required weight when carrying out their functions relating to Northern Ireland. Parliament's stated assessment is that there is a **need** to promote equality of opportunity (between the 9 categories specified in Section 75(1)) and a **desirability** to promote good relations between religious belief, political opinion or racial group (Section 75 (2)). There is interdependence between the two duties.

Following its Review of Effectiveness Report, the Equality Commission hopes to launch its revised Section 75 guidance later in 2009 which will place greater emphasis on designated public authorities to report on progress in terms of outcomes rather than processes as has been the focus to date.

II. DISCRIMINATION IN VARIOUS FIELDS

Despite the significant progress made over the last few years, the Government acknowledges that many citizens of minority ethnic origin do less well than the rest of the population. Sometimes, that can be explained by socio-economic status and poverty. But sometimes, the differences persist even when we adjust the data to take account of those socio-economic factors. People from ethnic minority groups are still consistently more likely to be unemployed and to experience 'ethnic penalties', in other words a worse outcome which cannot be explained by education levels, age or where a person lives.

Direct and indirect discrimination is a factor which explains some of the differences. But ECRI should note that there are other factors involved – whether lower expectations or a relative lack of 'social capital' – for example, lower understanding of how public services work. And of course

there can be cumulative impacts. If someone fails to achieve their potential at school, it will limit their opportunities throughout their life.

In January 2010, the Government therefore launched a new strategy to tackle racial inequalities. As ECRI note in their report, this followed an extensive consultation. This strategy builds on the progress and achievements of the past decade, but also recognises the changing context in which we are working to tackle inequalities experienced by minority ethnic groups. By minority ethnic groups we mean people from 'visible' ethnic minority groups, defined in the 2001 Census as not being in the White group: such as Black, South Asian and Chinese people; as well as Gypsies and Irish Travellers.

It is designed to ensure that promoting race equality is central to all policy making in all public agencies, and that all public services are playing their part in tackling inequalities. It also outlines the targeted action for those groups who still face specific challenges which are not effectively addressed by this general approach. We must address the specific obstacles and barriers which hold particular groups back – whether that is lower aspirations, higher exclusion rates, or racism or other forms of prejudice.

Our approach is both to promote greater equality for all and combine that with efforts to target the specific problems faced by particular communities. It cannot be "either/or": we have to do both.

Our strategy on race equality therefore has four elements:

- a strong legal framework, with effective enforcement;
- ensuring that work on race equality is an important feature of every public agency;
- more emphasis on transparency and accountability for outcomes on race equality; and
- targeted work to address specific areas of concern

Specifically we will:

- Continue to promote strong ministerial **leadership** in each department. Ministers with responsibility for equality will promote best practice across government and challenge government departments to take action to reduce disparities for minority groups, particularly in key public services like education, health and policing.
- Work with the Equality and Human Rights Commission and inspectorates, such as the Audit Commission to promote **better compliance** with the duties on public bodies to promote equality. For example, the Office for Standards in Education (Ofsted) has made equality part of its new school inspection framework in response to a recommendation from the independent REACH panel. We will also use the Equality Measurement Framework to monitor our progress in reducing race inequality and build equality into our reforms of civil service capabilities.
- We will be more **transparent**, better communicating the benefits of equality and the progress we have made.

- Where groups face particular issues, we will initiate **specific projects** to work with communities to identify solutions.
- We support the work of the voluntary (third) sector in addressing race inequality through the **Tackling Race Inequalities Fund**, which will support national regional bodies. We will also support these bodies to work with and influence public policy.

The Department for Communities and Local Government (CLG) will lead this strategy across Government

Employment (paragraphs 92-99)

The UK Government is committed to reducing the ethnic minority employment rate gap, which currently stands at 13.8%. The Minister of State for Employment and Welfare Reform chairs the Ministerial Ethnic Minority Employment Task Force, which brings Government departments, other public sector bodies and private sector representatives together to ensure we have an embedded cross-governmental ethnic minority employment strategy.

In line with our strategy that local areas are best at finding local solutions to employment issues, we are investing in area-based initiatives such as the £1.5 billion Working Neighbourhoods Fund and City Strategy Partnerships. We know that high concentrations of ethnic minority customers (around 52%) live in deprived areas, so by focussing provision on those areas we are by definition also driving investment into ethnic minority communities.

However we also recognise that many people from ethnic minority groups do not live in deprived areas, and so we are ensuring that mainstream programmes are flexible enough to meet the specific needs of ethnic minority customers, in particular through the introduction of the Flexible New Deal.

We have identified public sector procurement as a major lever for promoting race equality in employment and improving suppliers' race equality employment practices. We are working on procurement across Government on the Equalities Bill and we are contributing to the response to the Business Commission report *Race Equality in the Workplace*.

The Task Force commissioned procurement pilots and the evaluation of these was published on the website of the Department for Work and Pensions in September 2009. The key finding was that government departments were able to incorporate race quality requirements into contracts without causing suppliers major difficulties. The Department for Work and Pensions was able to move the furthest in implementing the pilots. The Task Force were presented with a number of recommendations in order to roll the findings out across government.

Key Departments across Government are now working together and agree that the work the Department for Work and Pensions is doing should be shared across government departments. Alongside this information, departments will be given up to date information on government activity in this area through the Equality Bill and will be asked to formulate their own

position as to whether they can go further in achieving equality outcomes through procurement.

DWP has recently undertaken “matched CV” testing research to assess the levels of discrimination in recruitment. The Task Force will consider the findings and decide what action Government should take to help eliminate discrimination.

In Scotland, the Scottish Executive set up the Ethnic Minority and the Labour Market (EMLM) Strategic Group in late 2005 to identify how the employment opportunities for ethnic minorities in Scotland can be improved. The Scottish Government Race Equality Statement (2008) incorporates priority findings of the EMLM. In Scotland, Glasgow has the highest ethnic minority population and the Scottish authorities have been working with Glasgow Works and providing it with funding for a dedicated post to take forward the implementation of a Black and minority ethnic sub-group action plan. The lessons learned from this work will inform policy changes, as necessary.

Through its One Scotland campaign, the Scottish authorities continue to send out a strategic, consistent message which will help to create a society where racism is not acceptable. The One Scotland campaign is delivered through a number of strands of work, including television advertising, Ministerial events and Rock Against Racism concerts. The principle aim of Rock Against Racism www.rockagainstracism.info is to deliver the One Scotland message to a young target audience. The message informs and educates young people about the damaging effects of racism in Scotland and encourages them to celebrate the country’s cultural diversity.

Administration of justice (paragraphs 110-121)

The Government is committed to tackling unjustified disproportionality in the criminal justice system. We have introduced a new public service agreement which requires local Criminal Justice agencies to: “better identify and explain race disproportionality at key points within the criminal justice system and will have strategies in place to address racial disparities which cannot be explained or objectively justified’.

We recognise that disproportionality can arise from a number of factors and that agencies need help to determine the causes of disproportionality, that can be justified and those which cannot. We have developed a diverse programme of work to improve the criminal justice system for people from Black and minority ethnic communities, as suspects, defendants, offenders, victims and staff to improve trust and confidence in the criminal justice system. This includes the development and implementation of the Minimum Data Sets and the development of a series of diagnostic tools to enable Local Criminal Justice Boards to deal with the issues and take ownership at the local level; to critically analyse local ethnicity data in order to identify unfair disproportionality; and to develop evidence-based responses to address the issues locally. These tools include:

- A diagnostic tool for LCJBs to identify and explain or reduce race disproportionality in the employment, retention and progression rates of criminal justice system staff at local level.

- The Stop and Search diagnostic tool which has been published and has already been used in a number of forces with dramatic results. For example, police in Stoke-on-Trent have reduced the levels of disproportionality from 4:1 to 2:1.
- A diagnostic tool on the prosecution and handling of hate crimes.
- A diagnostic tool on disproportionality in arrest rates is currently being piloted in Gwent and Merseyside LCJBs and
- Work is underway to design a diagnostic tool on disproportionality in bail decisions.

This work is producing real results. Perceptions of fair treatment by the criminal justice system and its agencies amongst Black and minority ethnic communities (as measured by the Citizenship Survey) continues to improve, with 28% of people from those communities perceiving worse treatment by the criminal justice system than White counterparts in the year to March 2008, compared to 33% in 2001.

Locally, 42 Local Criminal Justice Boards (LCJBs) co-ordinate activity and share responsibility for delivering criminal justice in their areas. We have introduced the Minimum Data Set (MDS) to ensure that consistent and comprehensive ethnicity data is available to LCJBs on all criminal justice agencies. This enables Local Criminal Justice Boards to performance manage their local criminal justice system, identify issues of concern and work with communities to develop local solutions. The Minimum Data Set has been designed to be easy to use and is configured to allow an assessment of disproportionality at various points of the criminal justice system.

LCJBs will be required to use local data to identify, examine and understand disproportionality at key stages of the criminal justice process including:

- Stop and Search
- Arrests
- Charging decisions
- Convictions/ acquittals
- Remands
- Sentences
- Supervision orders
- Prison population
- Prison experience

All LCJBs will have Minimum Data Sets by March 2011. We are currently ahead of schedule in the roll-out of the Minimum Data Set. It has been rolled out to 12 LCJBs, nine are in the process of being inducted and a further nine have signed up to the next tranche of implementation. These 12 LCJBs are now examining the data available to them and discussing with agencies how to best address the issues identified.

Following targeted work there has been a significant increase in the quality of data from Magistrates' Courts (from 13% producing acceptable data in first quarter 2007 to 64% in first quarter 2009).

It would not be appropriate to monitor many of these areas of work by religion. Research has shown that many faith groups strongly oppose being asked to declare their faith (even in a voluntary capacity) during a street encounter (Stop and Search etc) with a police officer.

We do collect figures on the faith of those in custody, but these need to be treated with considerable caution. For example, Muslim prisoners are not representative of the wider Muslim community. 42% of Muslim prisoners had an Asian background compared to 78% of Muslims in the wider society coming from an Asian background.

Legal aid (paragraphs 122-124)

The Government recognises that discrimination cases may be of considerable importance to the client and raise issues of wider public interest, which is why legal aid is generally available to bring discrimination cases in the civil courts in England and Wales. This is subject to the applicant qualifying financially and showing that they have reasonable grounds for taking, defending or being a party to proceedings, and that it is reasonable, in the particular circumstances of the case, for legal aid to be granted.

In funding litigation the Legal Services Commission must consider whether a case has a reasonable chance of success, whether the benefits of litigation would outweigh the cost to public funds, and whether the applicant would gain any significant personal benefit from proceeding, bearing in mind any liability to repay the costs if successful. These factors are similar to those that would influence a privately paying client of moderate means when considering whether to become involved in proceedings.

As ECRI has acknowledged, the Employment Appeal Tribunal is fully within the scope of legal aid.

However, legally aided representation is not generally available in employment tribunals, as their procedures are designed so that people can prepare and present their own cases, and it is not uncommon for litigants to be assisted by advisers who are not necessarily legally trained.

Funding for general legal advice (falling short of advocacy) is already available, to those who qualify financially, under the Legal Help scheme. This allows legal aid solicitors to advise clients on tribunal procedures and to assist them to prepare their cases, including preparation of case papers and obtaining counsel's opinion if appropriate.

In addition, the Lord Chancellor has the power, on receipt of a recommendation from the Legal Services Commission, to authorise "exceptional funding" for representation under the Access to Justice Act 1999 s.6(8)(b) in those few employment tribunal cases where

representation may be essential for a fair hearing, and where no other sources of help can be found.

The Government is committed to ensuring that as many people as possible get access to the justice they deserve for the available budget (which is one of the most generous in the world but, given other Government priorities and the current economic situation, is necessarily limited).

III. RACIST VIOLENCE

Racism and extremism can quickly fuel community tensions and damage cohesion. The Government therefore is committed to tackling all hate crime across the equality strands, including hate crime involving acts of racist violence, and has funded a number of projects which have a clear focus on prevention. The Government has also supported a number of grassroots community projects to understand the causes of hate crime and minimise and prevent its effect.

The policy of the Crown Prosecution Service (CPS) is to prosecute racist and religious crime fairly, firmly and robustly. The CPS records the decisions it makes whether or not to prosecute cases identified as racial or religious incidents and also the results of cases it prosecutes. In addition, religiously-aggravated offences are reported to the Director of Public Prosecution's Principal Legal Advisor personally so that he can express his own view about the prosecution decision.

The CPS has published an annual report on racially and religiously aggravated crime, giving both local and national statistics, since 1999. The CPS Racist and Religious Incident Monitoring Scheme (RIMS) annual report is a public document and can be obtained from the CPS's Communications Branch or on its website in the Research, Monitoring and Evaluation Reports section.

The report gives information on the number of cases sent to the CPS by the police, the CPS's decision on whether to prosecute, the charges prosecuted or discontinued, the outcome of charges prosecuted in the magistrates' courts, youth courts and Crown Court and the sentences imposed.

In 2006-07, the CPS established a Hate Crimes Monitoring Project to improve the electronic recording of hate crime and to enable the CPS publicly to report on hate crime data in a single annual report. From 2008 the CPS has published an Annual Hate Crime Report which contains performance data on racist and religious crime (along with performance data on other hate crimes). This Annual Hate Crime Report replaced the RIMS annual report and is available on the CPS website.

The CPS consulted internally and externally with a wide range of community partners in relation to this work. The Code of Practice for Victims of Crime has imposed new duties and obligations on the CPS. Monitoring racist and religious crime and monitoring the outcomes of crimes involving black and minority ethnic victims and witnesses will help the Service ensure that it is complying with its obligations and that it is providing a quality service for all victims of crime.

The CPS has established Hate Crime Scrutiny Panels made up from members of the public covering all its Areas, which scrutinise the Service's performance on how it handles hate crimes and disseminates lessons learned to prosecutors and CPS staff.

IV. RACISM IN PUBLIC DISCOURSE

The UK Government shares ECRI's concerns at the publication of racist or inflammatory material, and points out that the laws on incitement to racial hatred apply to all such media. The Government recognises that the print media, particularly at the local and regional level can help shape opinion in a positive or negative way. However it is not the Government's role to "impress" on the media any particular approach to these issues. That would not be consistent with a free press.

That said, the impact of myths rumours and misinformation on cohesion is well known, particularly surrounding the arrival of new migrants. These are often hard to challenge. The Department for Communities and Local Government has been working with a number of local authorities to find ways in which they can communicate positive factual messages in an impartial way. We have also been working with some local authorities on how best to deal with the negative perceptions of the town in the media. The aim of this work is to work with public sector agencies (principally the local authority and local strategic partnerships) to critically examine their engagement with local media and to consider ways in which supportive coverage can be fostered and community cohesion generally promoted.

The Department for Communities and Local Government is also currently working with the Society of Editors, the Attorney General's Office, the Ministry of Justice and representatives of the Jewish community to develop a guide for the media on the role and responsibility of moderators of on-line blogs.

The importance of producing a guide of this nature cannot be overstated in light of recent events where reputable newspapers allow the publication of blatantly antisemitic, Islamophobic or racist comments.

Additionally, the Government is keen to challenge and remove perceptions which can contribute to generating hostility towards migrants through locally driven, resourced, initiatives.

Concrete measures Government has taken in this area include:

- 1) allocating the Migration Impacts Fund (£35 million p.a.), a tax paid by migrants which is used to manage impacts on local services attributable to migration,
- 2) promotion of evidence that migrants do not place a significant burden on social housing, and actually tend to use private rented housing,
- 3) a programme of work with the Office for National Statistics to ensure public sector funding streams follow more closely population shifts caused by migration, and

4) funding for English for Speakers of Other Languages (£300 million p.a.), Exceptional Circumstances Grant to schools facing migration pressures (£6 million p.a.) and other measures to facilitate migrant integration and reduce the impact on local communities of rapid population change driven by migration.

V. ANTISEMITISM

We welcome ECRI's acknowledgement of the UK Government's strong commitment to tackling antisemitism. We believe the best way to do that is through effective implementation of strong legislation against racial and religious discrimination and racially and religiously motivated crime. The Government strongly condemns all antisemitic incidents and understands the fears and concerns of the Jewish community in Britain. British Jews, like all communities must be able to live their lives free from fear of verbal or physical attack. The Government will continue to meet and work with Jewish community representatives and continue to offer whatever support it can

The Department for Communities and Local Government is leading the Government's response to the All Party Inquiry into Antisemitism and coordinates the cross-government task force which tackles antisemitism. The taskforce is made up of officials from across government and representatives of the Parliamentary Committee against Antisemitism and the Jewish community.

The task force meets quarterly and is instrumental in ensuring that the commitments made by Government departments in the "one year on" response are followed through. The taskforce has been positively received by the Jewish community and the Chief Rabbi hosted a reception last year to thank members of the taskforce for the work they had done to tackle antisemitism.

The Department for Communities and Local Government has also provided funding to the European Institute for the Study of Contemporary Antisemitism to conduct research into antisemitic discourse. This research was launched by the Minister for Cohesion in July 2009. The report has been well received and officials are currently following up on the recommendations.

The Department for Communities and Local Government has also supported the work of the Parliamentary Committee against Antisemitism to take the model of an all party inquiry into antisemitism across Europe, the Americas and Ethiopia.

The Department for Communities and Local Government hosted the opening reception for the London conference for combating Antisemitism on 15th February 2009; the conference brought together parliamentarians and experts from across the world to discuss how to tackle antisemitism and resulted in the adoption of the London Declaration to tackle Antisemitism. The Prime Minister and a number of other ministers have signed the declaration.

The Department for Innovation, Universities and Skills has formed a sub-group to tackle antisemitism on university campuses and has tasked their Equality Challenge Unit to work with the Union of Jewish Students to investigate why Jewish students do not report antisemitic incidents to university authorities.

Government departments are continuing to work together to ensure that the security concerns of the Jewish community in relations to schools and Jewish communal buildings are taken in to account.

VI. VULNERABLE/TARGET GROUPS

Muslim communities (paragraph 144-149)

The UK Government is determined to tackle Islamophobia and stamp out extremism and racism wherever it occurs. We deplore all religious and racially motivated attacks. We will not tolerate racists and trouble-makers disrupting our local communities.

We are determined that events involving the Muslim community should not be exploited by anyone as an excuse to start blaming, persecuting, or preaching inflammatory messages about any particular group. British Muslims like all communities must be able to live their lives free from fear of verbal or physical attack. The Government has a shared responsibility to tackle Islamophobia and all other forms of racism and prejudice against members of lawful religious traditions not only with those communities directly affected, but with all members of society.

The Government is fully committed to engaging with faith and non-faith communities to help build a more inclusive, tolerant and cohesive society. Our relations with Muslim communities are extremely important and we will continue to strive to improve them.

Any crime should be reported to the police. The police are alive to the need to reassure communities that might be targeted and liaise directly with community leaders. The police and prosecuting authorities have robust policies - police forces continue to be alert to crimes being committed against members of all faith communities and take appropriate steps to safeguard people and property.

Additionally, in a July 2003 Policy Statement, the Crown Prosecution Service gave a commitment to prosecute racist and religious crime fairly, firmly and robustly. This sends a clear message to perpetrators that they will not get away with crimes of hatred towards members of racial or religious groups.

The Government is aware that research conducted by a number of our stakeholders has indicated that Islamophobia is on the rise. This may in part be due to the increase in reporting crimes against Muslims, a development that the Government welcomes and is keen to encourage in practical ways.

The police collate data on trends in hate crime and whilst data is not available to show any increase in attacks on religious establishments, the

Association of Chief Police Officers (ACPO) has noticed a trend where tension exists around the building of new mosques. ACPO has offered guidance to forces to raise awareness of this issue and to enable better community engagement to prevent objections escalating into tension.

The Government funds a number of projects to tackle Islamophobia including a campaign by the Muslim Safety Forum to improve awareness and reporting of hate crime, especially Islamophobic hate crime. In addition, we plan to fund some capacity building work among grassroots Muslim community groups to enable them to become third party reporting centres on hate crime.

In 2009 we funded the Muslim Cultural Heritage Centre to deliver a hate crime project aimed at bringing young people from different faith and cultural backgrounds from across London. The project adopted a creative and contemporary approach using music, poetry and performance to generate the awareness and understanding of young people about hate crime, the impact it has on its victims and to encourage them to explore interfaith identification.

The Government also believes, however, that Muslim communities need to work closely together, and with other faith and community groups, as well as local agencies and central government. By joining up, we can tackle Islamophobia, race hate crimes and extremism much more effectively than through any number of isolated initiatives and activities.

We have broadened and deepened our engagement with the UK's diverse Muslim communities, increasing the reach of our work into communities and building trust and genuine partnership. We have built the capacity of key partners to have a national impact through the Community Leadership Fund which is currently funding a total of £5.1 million to 55 projects over three years.

The Government has also established the National Muslim Women's Advisory Group and a Young Muslims Advisory Group. These groups give government a platform through which it can engage more directly with young Muslims and Muslim women from across all communities on issues affecting them in Britain. We are also making efforts to increase our engagement with communities previously under-represented in our work, such as the Somali community.

The Scottish Government continues to develop its very positive and constructive relationships with a broad range of Scottish Muslim community representatives. Work is under way to build on these relationships by looking more closely at the issues which Muslim communities in Scotland are facing, and the outcomes of this will allow it to develop new areas of activity to address the issues identified. In addition it is funding a range of school and community based projects and initiatives which challenge Islamophobic attitudes and promote a positive multicultural Scotland.

Gypsies and Travellers (paragraphs 150-170)

The Government welcomes ECRI's recognition of the effort being made to address the disadvantages faced by Gypsies and Travellers in accessing adequate accommodation. The independent Task Group on Site Provision and Enforcement for Gypsies and Travellers reviewed the position in 2006 and 2007. The Group concluded that the policy framework put in place by the Government was broadly right and that race relations legislation should provide protection for Gypsies and Travellers, as well as promoting good relations with their neighbours.

As part of its response to that report, the Government committed itself to producing an annual report on Gypsy and Traveller policy. In its first report published in July 2009, the Government set out the progress that has already been made on a number of issues relevant to Gypsies and Travellers including accommodation, health and education. Whilst acknowledging that more progress needs to be made at the local level with regard to site delivery, the Government considers that with effective leadership, particularly in local authorities, rapid progress can be made towards delivering Gypsy and Traveller accommodation through the planning framework set out in ODPM Circular 01/2006 (*Planning for Gypsy and Traveller Caravan Sites*).

All local authorities in England have now completed Gypsy and Traveller Accommodation Assessments. The information contained in those assessments is already feeding into the Regional Spatial Strategies across England, helping to provide a clear indication of the accommodation needs to be addressed in each local authority area. This year has already seen publication of updated pitch allocations in both the East of England (which has the highest number of Gypsies and Travellers in England), and in the East Midlands. Work on providing updates to the Regional Spatial Strategies in London, the North West, South West and South East is well under way.

The Government recognises that the full delivery against the policy framework is not something that can happen overnight. It is still too early to fully assess the impact of the framework on accommodation supply, but in the long term it will help local authorities to plan effectively for Gypsy and Traveller accommodation needs. It is clear that local authorities are moving forward with production of Core Strategies and that these are, as required by ODPM Circular 01/2006, setting out criteria to be used to assist authorities in assessing planning applications for Gypsy and Traveller sites. The Department for Communities and Local Government will continue to monitor implementation of the framework; it will keep under review what action could be taken, or support given, where progress is found to be too slow.

From 2008 to 2011, the Government has made £97 million available to local authorities and Registered Social Landlords through the Gypsy and Traveller Site Grant to assist them with the cost of providing new or refurbishing existing sites. From 2006 to 2008, the grant has provided funding for local authorities to build 455 new pitches and to bring a further 60 pitches back into use through refurbishment. From 2009-10, responsibility for management of this funding has been transferred from central government

to the Homes and Communities Agency, the key housing and regeneration and delivery vehicle in the UK. This will enable the provision of Gypsy and Traveller accommodation to become an integral part of the Agency's model for delivering housing and regeneration in partnership with local areas.

The Government's stated policy objective is that everyone should have the right to a decent place to live; there should be sufficient provision of well managed authorised Gypsy and Traveller accommodation where it is needed and fewer unauthorised sites. It is an underlying principle of the Government's framework that the provision of authorised sites in appropriate locations will help to reduce unauthorised developments and encampments.

As well as providing homes for Gypsies and Travellers, it will also help to reduce the community tensions that can frequently arise where unauthorised developments and encampments occur. Local multi-agency led pilot projects have also been introduced in a few areas to reduce tensions which may exist between Gypsies and Travellers and the neighbouring community. These form part of the Government's wider programme for tackling race hate crime and are intended to reduce community friction and make the neighbourhood a better place for everyone living there.

However, it is also important to ensure that the policy framework provides appropriate and proportionate protection to those who might be affected by unauthorised developments or encampments where these occur. The effective use of enforcement action against unauthorised sites is integral to achieving this.

Where eviction does become necessary, the Government has made clear that it expects this to be conducted in a responsible manner and that, in line with their statutory obligations, local authorities should ensure that appropriate services are provided for those who need them.

The Government has also introduced stronger enforcement powers against unauthorised encampments (under Section 62 of the Criminal Justice and Public Order Act 1994) that can be used where suitable Gypsy and Traveller accommodation is available locally. This should act as an additional incentive to local authorities, particularly those that experience frequent unauthorised encampments, to act quickly to ensure authorised Gypsy and Traveller accommodation is made available in the local area.

In Scotland, new guidance published by the Scottish Government for local authorities on housing need and demand assessment highlights the importance of considering the accommodation requirements of Gypsies and Travellers and refers local authorities to separate guidance published by the Department of Communities and Local Government, which is relevant to the Scottish context. Evidence about the accommodation requirements of Gypsies/Travellers will inform the preparation of the local authority's Local Housing Strategy.

The Scottish Government is committed to helping local authorities to meet the accommodation needs of Gypsies/Travellers in Scotland and has provided £5 million to local authorities over the last 5 years (2005/06 to

2009/10) to upgrade their existing sites or for the creation of new sites for Gypsies/Travellers. In 2010/11 the Gypsy/Traveller Site Grant will be rolled up into the local government settlement in line with the Scottish Government's concordat with the Convention of Scottish Local Authorities.

To support local authorities in the management of unauthorised encampments, the Scottish Government issued Guidelines in December 2004. These encourage local authorities, in conjunction with the police, to develop their own strategies for managing incidences of unauthorised camping. The guidelines discuss the importance of balancing the needs of the settled and Gypsy/Traveller communities. They also stress that local authorities and police should support Gypsies/Travellers to access local services. It highlights that decisions about removal should be informed, balanced and proportionate taking into account the nature of the location and the needs and behaviour of the Gypsies/Travellers. The guidelines also make clear that the provision of suitable accommodation for Gypsies/Travellers is an essential element in managing unauthorised encampments and that local authorities are now expected to consider the accommodation needs of Gypsies/Travellers as part of their Local Housing Strategy.

Jobcentre Plus (the Government agency supporting people of working age into work) recognises that Gypsies and Travellers can encounter disadvantages in the labour market. Advisers in Jobcentre Plus will engage with local Gypsy and Traveller representative groups as a means of accessing the communities within their areas. They will aim to forge strong links with the communities and are a first point of contact in assisting Gypsies and Travellers with any issues they may have. Advisers can help with accessing benefits, help in completing forms or reading letters, and can direct customers to other agencies that can help with legal issues, including evictions, etc.

Refugees and asylum-seekers (paragraphs 171-179)

The UK Government is fully committed to delivering on its international commitments, including those relating to protection and human rights.

The UK Government welcomes ECRI's acknowledgement of the National Audit Office (NAO) report in January 2009 which stated that management of the asylum system had improved. We recognised the areas for further improvement identified by NAO – we are not complacent and have already taken positive steps in several areas.

We sincerely believe that our policies and procedures are fully compliant with our obligations and we do not accept a number of ECRI's conclusions.

Asylum Decision Quality

We are proud of the overall quality of our asylum decisions and the UK Border Agency has worked hard to drive up quality throughout the decision-making process. We recognise the importance of getting the decision right the first time and operate a number of initiatives to focus on quality, including an independent Quality Audit Team and additional checks by team managers. The UK Border Agency's Quality Audit Team assesses a

significant proportion of asylum decisions each month, using criteria developed and agreed in conjunction with the United Nations High Commissioner for Refugees (UNHCR).

The UK Border Agency has worked jointly with the UNHCR Quality Initiative Team since 2004. Its aim is to assist the UKBA in the refugee determination process through the monitoring of procedures and the application of the refugee criteria. We have implemented a number of initiatives recommended in the reports submitted by UNHCR. Feedback from UNHCR about engaging with the UK in this way has been positive. Further information about the quality initiative project can be found at the following link

(<http://www.ukba.homeoffice.gov.uk/sitecontent/documents/aboutus/reports/unhcrreports/>).

The UK Border Agency acknowledges that some asylum applicants have not been routinely screened. The reasons for this are due to variances in how an applicant enters into the asylum process. However we are reviewing our screening processes and continue in our efforts to make the system more effective and robust.

The screening interview is not the platform for exploring the basis of the claim. A brief summary of why they are claiming asylum is noted for administrative purposes. The primary aim of the screening interview is to establish the applicant's identity, immigration history and route them into the asylum process. The applicant is given a copy of the screening interview and has the opportunity at the substantive interview to rebut any points with which they subsequently disagree. The substantive interview is the opportunity to give their full account of the reasons they are claiming asylum.

Asylum seekers have sufficient time to substantiate their case and in addition to an in-depth interview will always be given an opportunity to produce further evidence. Asylum seekers will have their case considered by a trained, specialist case worker and, if refused, will have the opportunity to appeal their case to the independent Asylum and Immigration Tribunal and possibly to the High Court and Court of Appeal. This provides a fair and transparent refugee status determination process.

The Asylum and Immigration Tribunal (AIT) will transfer into the unified tribunal system in early 2010. Asylum seekers will be able to challenge UK Border Agency decisions by appealing to the First-Tier Tribunal, with onward rights of appeal to the Upper Tribunal (which will include High Court Judges) and the Court of Appeal. We believe this is a robust and independent system which ensures that asylum seekers have sufficient means of redress. It also means that those who qualify for asylum have this confirmed quickly.

We do not accept that an allowed appeal automatically indicates that the initial decision was wrong. There are many reasons why a decision to refuse asylum may be overturned subsequently at appeal. This includes the passage of time between the decision and appeal, during which time individual circumstances may have changed; a change in conditions in the asylum seeker's country of origin since the date of the initial decision; and

the right of independent Immigration Judges to take a particular view on a point of law or credibility of an appellant.

The purpose of the Detained Fast Track (DFT) is to provide an expedited process for asylum claims which are considered straightforward and capable of speedy resolution. The timetable attached to Detained Fast Track cases is therefore inevitably tight. The DFT does not, however, operate arbitrarily. If prior to entry to the Detained Fast Track it is clear that the case is not amenable to a quick decision the case will not enter the fast track. If, once a case enters the Detained Fast Track, it then emerges that it cannot be decided promptly the case will be removed from the process and the applicant will be released from detention for their application to be dealt with in the normal way. While it is true that the numbers of cases granted asylum in Detained Fast Track is low, the overwhelming majority of the decisions to refuse are upheld on appeal.

Detention & Removal

Decisions to detain are not taken lightly and any decision to do so must be taken in line with policy and guidance that those tasked with such decisions are required to comply with.

Immigration detention has never been subject to judicial authorisation or direct oversight. This is fully in line with the European Convention on Human Rights (ECHR) Article 5 which does not require there to be such judicial involvement in immigration detention decisions. Introducing judicial authorisation or some other form of automatic direct oversight would inevitably create a significant burden for the courts and would simply add another layer to the immigration and asylum process that we are seeking to simplify.

We believe that our decision making process on the appropriateness of continued detention is robust and as such we do not consider that judicial oversight of every decision to authorise or maintain detention would be an appropriate use of resources. Indirect oversight does however exist: individuals are able to challenge the lawfulness of detention through the process of judicial review and habeas corpus and can also apply to Immigration Judges for release on bail. This satisfies the requirement in ECHR Article 5(4) that detained persons should be able to bring proceedings before a court to challenge the lawfulness of their detention. We are satisfied that the existing position provides an appropriate level of judicial oversight.

Although Immigration Act powers to detain are not time limited, domestic and ECHR case law provides that detention must last for no longer than is reasonably necessary for the purpose for which it is authorised and must not be of excessive duration. It is important to recognise that those with no legal basis of stay in the UK can voluntarily leave at any point and, where they refuse to do so, it is entirely right that we seek to enforce removal.

We always prefer that people leave the UK voluntarily rather than have their return enforced but if this option is refused then it will become necessary to enforce removal including the arrest and detention of those individuals or families who refuse to comply.

We recognise that the detention of children is an emotive issue but where families with children will not leave the UK voluntarily when we and the independent courts have found them not to have any legal right to stay here it is necessary to enforce that removal. Detention plays a vital role in that process.

The UK Border Agency always aims to keep the detention of families to the minimum period possible and families with children would not normally enter detention without removal directions in place. UKBA is committed to review family detention regularly taking into account the welfare of the family. There are comprehensive guidance notes for all officers dealing with cases involving the detention of children, and the authority of an Inspector or above is required prior to detention to ensure the detention of children remains strictly limited to cases where it is absolutely necessary.

In addition, the UK Border Agency has an Office of the Children's Champion which works to ensure that our practices with respect to children are in line with our duty to have regard to the need to safeguard and promote children's welfare.

The UKBA is actively testing alternatives to detention, to encourage families to leave voluntarily and avoid an enforced removal. We are currently running a new pilot project in Glasgow, working in partnership with Glasgow City Council, offering a select few families temporary housing and a package of support, building on what we learnt from our experiences with a similar scheme in Kent. We continue to explore alternatives and if we find one that works, we hope to make it the norm.

Every Detained Fast Track applicant has assured legal representation for the interview and decision stage, although the Legal Services Commission (LSC) require there be a merits test to determine representation at appeal. If a case has little merit, public money will not be spent on representation.

Detention is not automatically reviewed by the Courts. However there are regular reviews undertaken by the UK Border Agency as to the appropriateness of all detainees' detention, including those in the Detained Fast Track, and whenever there are changes in circumstances. All persons detained in the Detained Fast Track have the same right to apply for bail as other detainees.

Detention is integral to the Detained Fast Track process to facilitate the speedy resolution of claims deemed to be straightforward and capable of early resolution. The list of categories of vulnerable asylum seekers deemed not to be suitable for the detained fast track is robustly applied.

We do not accept ECRI's reported comment that NGOs consider the purpose of detaining people in the Detained Fast Track is to prevent individuals from establishing contacts in British society. Its purpose is to facilitate the speedy conclusion of asylum claims which are considered to be straightforward and capable of early resolution.

Support and permission to work

The UK Government does not have a policy of destitution. Our asylum support policy is properly balanced. No person who has sought protection need be destitute while they have a valid reason to be in the United Kingdom.

Asylum seekers who need support to avoid destitution are given it from the time they arrive in the UK until their claim is fully determined (appeal rights exhausted). Support takes the form of accommodation or subsistence or both. Support is given to single people or childless couples who do not apply for asylum as soon as reasonably practicable after their arrival in the UK if it is needed to avoid a breach of their human rights.

When an asylum seeker has been found not to need protection it is our policy to discontinue providing support. We do not consider that it is right to ask the UK taxpayer to continue to fund those who choose to remain here when they have no grounds to stay and it is open to them to return to a home country that has been found safe for them to live in.

The availability of support for failed asylum seekers is therefore necessarily restricted to narrow categories with appropriate safeguards built in for vulnerable people. This includes families with dependent children under the age of 18 years who continue receiving support until they leave the UK; for children and vulnerable adults qualifying for local authority care provision under the National Assistance Act 1948 and for people who are temporarily prevented from leaving the UK through no fault of their own who are provided with accommodation and subsistence support if they would otherwise be destitute

Giving asylum seekers, or failed asylum seekers, permission to work would also be likely to encourage asylum applications from those without a well founded fear of persecution, hence slowing down the processing of applications made by genuine refugees and undermining the integrity of the managed migration system. However, asylum seekers who have been waiting 12 months for a decision may be permitted to work where this delay cannot be attributed to them. Allowing asylum seekers to work in these circumstances is in accordance with the EC Directive on the reception of asylum seekers.

People who are accepted as refugees in the UK are permitted to take employment (see also comments on the Refugee, Integration and Employment Service under 'Integration').

Healthcare

Access to healthcare should not be a problem for asylum seekers awaiting a final decision. Asylum seekers awaiting a decision on their claim are eligible for both primary and secondary National Health Service (NHS) treatment free of charge. Those supported by the UK Border Agency are offered a health check in their initial accommodation and assisted in registering for primary care on dispersal.

Refused asylum seekers may be registered for free primary care at the General Practitioner's discretion and continue to have free access to hospital Accident and Emergency departments and some other services including TB treatment and other specified infectious diseases, family planning and HIV testing. A course of hospital treatment begun before appeal rights are exhausted can be continued free of charge until they leave the UK and it is for a clinician to determine what constitutes a course of treatment. Other immediately necessary or urgent treatment including all maternity care should never be denied even if chargeable.

The Department of Health in England and Home Office have just published a joint review of healthcare for foreign nationals in England including asylum seekers (and failed asylum seekers). There are no proposed changes with regard to the existing position on healthcare for asylum seekers whose claim (including appeal) remains under consideration and GPs will continue to have discretion to register any patient. However it is recognised that there is a case for extending the exemption from charges for hospital treatment to failed asylum seekers who are continuing to be supported by the UK Border Agency because they have children under the age of 18 years or are unable to return home for reasons beyond their own control. This proposal will be included in a public consultation in autumn 2009. Failed asylum seekers in Wales continue to be exempt from all charges for NHS treatment.

Integration

Accommodation is provided to asylum seekers who are eligible for support on a "no-choice" basis in areas of the country where there is a steady supply of housing. It is provided under a series of "target contracts" which the UK Border Agency has entered into with both public and private sector housing providers which means that non-detained asylum applicants are not in any way "separated" from the wider UK society.

We recognise and welcome the very great contribution that people who are found to be refugees continue to bring to the UK. The Government places a great emphasis on the importance of an integrated and cohesive society and it is important that those who qualify for refugee status are enabled to integrate and enjoy the rights and responsibilities of living in the UK. With this in mind, the Refugee, Integration and Employment Service (RIES) was rolled out across the UK in October 2008 to support individuals over the age of 18 years who have been granted refugee status or humanitarian protection. The service is designed to help with the transition from asylum seeker to refugee including with the registration for mainstream benefits and services to which individuals become fully entitled following recognition of refugee status.

Treatment of asylum seekers

The UK Government does not accept the claim that asylum seekers are being treated like criminals.

There is a fair process for assessing all asylum claims. The UK has worked with the UNHCR for several years on a Quality Initiative Project examining aspects of the asylum process. Feedback from UNHCR about engaging with

the UK in this way has been positive. Furthermore, the UK operates the Gateway Protection Programme for the resettlement of refugees referred by UNHCR and has introduced new arrangements to assist the integration of people recognised as refugees in the UK.

The Refugee Integration and Employment Service provides a standard level of transition support to all new refugees granted by our regional asylum teams – meeting our promise to complete the end-to-end asylum case ownership model and providing a practical route to integration and citizenship. As well as assisting with immediate integration issues such as support with housing and language, the Refugee Integration and Employment Service is focussed on ensuring that refugees are in a position to enter employment as quickly as possible following recognition of their status.

The UK Government has taken legitimate steps to counter abuse of the asylum process by those people who seek to remain in the UK when they have no valid right to do so, for example by frustrating the return process through the destruction or disposal of their travel documents. Our actions are in line with meeting our international commitments.

Migrants (paragraphs 180-186)

Unfortunately a number of migrants seek to enter or remain in the UK in breach of immigration law, and to this effect they commit criminal offences. It is already the case, under section 24(1)(b) of the Immigration Act 1971, that a person who fails to renew their visa in time commits the criminal offence of remaining beyond the time limited by their leave. In many cases the UK Border Agency does not pursue criminal proceedings but, where appropriate, takes administrative action to remove the person as an alternative option. We are proposing to simplify a number of different processes for removing persons from the UK, so that a single process of “expulsion” will apply to all persons, regardless of whether they are refused admission to the UK at ports of entry, enter illegally, overstay their permission to be in the UK, or are removed after committing criminal offences in the UK. However, there will be a flexible approach to prohibiting the return of someone who has been expelled from the UK, based on the reason for the expulsion, so that persons who have been convicted of serious criminal offences face a longer ban on returning compared to persons who overstay their visas.

In respect of ‘immigration bail’, we are proposing to consolidate several existing powers to release individuals, subject to reporting restrictions, into a single power. This will simplify the arrangements and will make them more easily understood by the people subject to them. The proposals do not change the presumption in favour of liberty. Furthermore, the proposals preserve the right of people who are refused bail to make an application for bail to the Asylum and Immigration Tribunal. All detention decisions taken by the Secretary of State can also be subject to the scrutiny of the High Court.

The senior judiciary have an obligation to ensure that cases are managed in the best interest of justice. They have made it clear that not all asylum and immigration cases currently heard in the higher courts require scrutiny by the most senior judges. A limited number of cases will therefore be heard in

the Upper Tribunal, where they will be heard by judges of the High Court, Court of Session or Court of Appeal or other judges specified by the relevant Chief Justice, where the Senior President of the Tribunals agrees.

Section 19 of the Asylum and Immigration (Treatment of Claimants, etc) Act 2004 applies to marriages which are to be solemnised on the authority of certificates issued by a superintendent registrar, where a party to the marriage is subject to immigration control. It requires those who do not hold an entry clearance expressly for the purpose of marrying in the UK to seek the permission of the Secretary of State prior to marrying in the UK unless the person falls within a class prescribed in regulations (i.e. persons present and settled in the UK). The Certificates of Approval for Marriage scheme is operated pursuant to Section 19 and is aimed at identifying those who seek to enter into a marriage of convenience for the purpose of circumventing immigration control. The House of Lords in the case of *Baiai and others v SSHD* ([2008]UKHL53) found Section 19 to be capable of operating consistently with the right to marry guaranteed by Article 12. However, their Lordships found that a fee fixed at a level which a needy applicant cannot afford may impair the essence of the right to marry. The UK Border Agency suspended the fee in April 2009.

The Certificate of Approval scheme in its current form, however, does not apply to those who marry according to the rites of the Anglican Church in England and Wales. In the High Court, Silber J (*Baiai v SSHD* [2006]EWHC823(Admin)) found this to be unjustifiable religious discrimination, in breach of Article 14. The UK Government is committed to remedying this incompatibility and announced on 12 November 2009 that it would be bringing forward a Remedial Order under the Human Rights Act 1998 to withdraw the Certificates of Approval scheme.

VII. OVERALL STRATEGIES TO FIGHT AGAINST RACISM AND PROMOTE COMMUNITY COHESION

The past decade has seen extraordinary progress towards greater racial equality in the UK. The Government has led a transformation in the way that public services work, spearheaded by the Race Relations (Amendment) Act in 2000. In turn, this has utterly changed the standards that Black and minority ethnic communities can expect from public services, whether in education, in health care, or in the criminal justice system. No-one working in public services in the UK today can turn a blind eye to racism or inequality. Every single public service and every single public body has to positively promote race equality and better race relations.

For example, each and every school now has a race equality programme, complemented by national programmes like the Black Pupils Attainment Strategy. This has helped thousands of students to achieve their potential. Because of this, the gap between Bangladeshi pupils and their peers at GCSE level has been virtually eliminated, while Black Caribbean pupils have also made enormous strides forward. The Government has invested hundreds of community organisations to build up their leadership capacity and support their local contribution. In July 2009, the Government committed nearly £9 million to help this invaluable work.

The Government has also promoted diversity across the public sector, with the result that there are more Black and Minority Ethnic people in senior leadership positions in the Civil Service than ever before. And we have concentrated our attention on the police and the criminal justice system, where we know that some of the challenges are most acute. The Government has made sure that the police take race and hate crimes as seriously as they should, as well as changing the way that the police are recruited and trained. Black and Minority Ethnic communities are now better represented in the police force and other criminal justice services and are increasingly confident that they will be treated fairly.

The Government has a total commitment to this work as part of its wider efforts to build a society free of bigotry and intolerance, prejudice and discrimination. The Government is determined that its new strategy for tackling race inequalities (as described in Section II above) should be sufficiently robust to accommodate changes to economic or indeed any other circumstances.

VIII. ANTI-TERRORISM LEGISLATION AND ITS IMPLEMENTATION

Counter-terrorism powers are aimed at terrorists, whatever their background. Stop and search under section 44 of the Terrorism Act 2000 is an important tool in the on-going fight against terrorism. As part of a structured anti-terrorist strategy, the powers help to deter terrorist activity by creating a hostile environment for would-be terrorists.

Terrorists may come from any ethnic background and to carry out stop and search based simply on a person's ethnicity would not only be discriminatory, it would be operationally naïve. Nonetheless, where there is information that terrorist activity is most likely to be carried out by a particular group, and members of that group are more likely to be from one or more particular ethnic backgrounds, it would be negligent not to take this into account as one of a number of factors to be considered (e.g. age, gender, demeanour, location, and anything being worn or carried). Terrorists can of course, change their modus operandi and police need to be able to adopt a flexible approach to using the powers.

The Police and Criminal Evidence Act (PACE) Code A: Stop and Search and the National Policing Improvement Agency guidance set out that it makes it unlawful for police officers to discriminate on the grounds of race, colour, ethnic origin, nationality or national origins when using their powers.

We are however aware that sections of the community — in particular Muslim communities — are concerned about the use of the powers. Countering the terrorist threat and ensuring good community relations are interdependent and we are continuing to work with the police to ensure that the use of section 44 powers strikes the right balance. Counter-terrorism powers are aimed at securing the safety of all UK society.

As part of the Government's CONTEST framework, the Home Office engages in regular community engagement at operational and strategic levels. All legislation including the recent Counter-Terrorism Act 2008 involved a full impact assessment and consultation period with local communities.

Revised national guidance for police on the use of section 44 powers was issued to all forces by the National Police Improvement Agency in November 2008. The guidance deals comprehensively with community engagement and assessment of the community impact of section 44 powers. It also explains the background and purpose of section 44 powers, the different circumstances in which they might be used and the approach to take depending on the information and intelligence available.

Lord Carlile of Berriew QC is the Independent Reviewer of Terrorism Legislation, producing an annual report on his findings on the operation of the Terrorism Act 2000 and Part 1 of the Terrorism Act 2006. This is an important objective and fully self-determining analysis of how the legislation has been used during the year. Lord Carlile was also appointed Reviewer of the control order provisions of the Prevention of Terrorism Act 2005. Due to Lord Carlile's report on "The Definition of Terrorism" in 2007 the definition was amended in the Counter-Terrorism Act 2008 to include acts of terrorism motivated by racial causes, providing legal clarity on the issue of racially motivated terrorism.

Lord Carlile liaises with local communities to ensure he gains the views of all sectors of society on terrorism issues. His objective views are reflected in his reports and while he has raised concerns over the use of stop and search he states that: *'I am not in favour of repealing section 44. In my judgement section 44 and 45 remain necessary and proportional to the continuing and serious risk of terrorism'*.

Partly due to the concerns of local communities and Lord Carlile, the Metropolitan Police have implemented a more proportionate, targeted and risk driven Section 44 approach across all London boroughs, only targeting specific key areas which may be at risk. This new approach has recently seen a drop in stop and search within the Metropolitan area by at least 40%. There has also been a Home Office review in improving the oversight into section 44 authorisations, in August 2009 the Home Office issued a national circular clarifying section 43, 44 and 58A and the Metropolitan Police have issued local guidance illustrating the situation for their officers.

Legislation is under regular review. Before the Counter-Terrorism Act 2008 was introduced, a full detailed impact assessment was produced and a four month consultation involving over a hundred organisations took place, this included local communities, government departments, the police, the security services and prosecution services. Two consultation documents were created, and there were a number of reviews of the proposals by the Home Affairs Select Committee, and Joint Committee on Human Rights. In addition, there is ongoing dialogue between local communities and the Home Office, the Independent Reviewer of Terrorist Legislation and the police to ensure all the counter-terrorism legislation is being appropriately administered. Legislation also has to undergo post-legislative scrutiny within 3 to 5 years of the Act gaining Royal Assent.

Control Orders

The protection of human rights is a key principle underpinning the UK Government's approach to counter-terrorism. We need to safeguard individual liberty whilst maintaining our nation's security, including protecting the public from the risk of harm posed by individuals engaged in terrorism-related activity. This is a challenge for any government, but the UK Government has sought to find that balance at all times, including by introducing control orders.

The Prevention of Terrorism Act 2005 provides for the imposition of control orders on individuals suspected of involvement in terrorism-related activity, whether UK nationals or non-UK nationals, and whether the activity is international or domestic. Control orders are the best available disruptive tool for addressing the threat posed by suspected terrorists whom we can neither prosecute nor deport.

Control orders only affect an extremely small and targeted group of individuals. At the time of the Home Secretary's last quarterly Written Ministerial Statement to Parliament on the exercise of his powers under the 2005 Act, covering the period from 11 June to 10 September 2009, there were only 15 control orders in force and only 44 individuals had ever been subject to a control order.

The UK Government understands the importance of ensuring that the counter-terrorism measures it puts in place are not discriminatory. Control orders do not discriminate against any particular nationality, race or religion. The Government does not impose control orders on discriminatory grounds – they are only directed against those involved in terrorism-related activity.

The Government has put in place extensive internal and external safeguards to ensure that there is rigorous scrutiny of the control orders regime as a whole – and that the rights of each controlled person are properly safeguarded. Each control order is subject to mandatory review by the High Court. The judge must agree that there is a reasonable suspicion that the individual is or has been involved in terrorism-related activity, and that a control order is necessary to protect members of the public from a risk of terrorism. Moreover, the High Court judge reviewing a control order specifically considers its compliance with the ECHR – in particular Article 5 (right to liberty), Article 6 (right to a fair trial) and Article 8 (right to respect for private and family life). If any of these tests are not met in a given case, the judge can quash the order. A judge would never uphold an order if it was improperly imposed on a discriminatory basis including as a result of an individual's nationality, race or religion. No control order has ever been quashed by the courts on the basis that it did so discriminate.

As a result of various House of Lords judgments on control orders, the control order regime is fully compliant with the European Convention of Human Rights.

IX. CONDUCT OF LAW ENFORCEMENT OFFICIALS

We recognise that Stop and Search is one of the areas where racial disproportionality persists, and has one of the most detrimental impacts on Black and minority ethnic people's trust and confidence in the criminal justice system. That is why we have developed the diagnostic tool on Stop and Search, the Practice Oriented Package, to help police forces identify where disproportionality exists and address those issues. The Practice Oriented Package is currently being updated and will be piloted in three police forces in 2010.

The Scottish Government continues to work closely with police forces on Black and minority ethnic recruitment and retention. Whilst there is still much work to do, it is encouraging to note that the number of police officers in Scotland from Black and minority ethnic communities has more than doubled since 2002-2003.