

# **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.\*

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\* 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 election<sup>1</sup>. 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 Bill<sup>2</sup>, 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 responsibilities<sup>3</sup>.
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 Parliament<sup>4</sup>. 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 Act<sup>5</sup> 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

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

<sup>2</sup> See below, Civil law provisions against racial discrimination.

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

<sup>4</sup> 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.

<sup>5</sup> Section 55

published in 2008<sup>6</sup>. 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

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<sup>6</sup> 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*<sup>7</sup>
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 group<sup>8</sup>. 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

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<sup>7</sup> 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.

<sup>8</sup> 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."<sup>9</sup> 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.<sup>10</sup> 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 year<sup>11</sup>. 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 crime<sup>12</sup>. 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

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<sup>9</sup> 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)

<sup>10</sup> 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.

<sup>11</sup> 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.

<sup>12</sup> 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 crime<sup>13</sup>. It has also taken initiatives to share good practice and lessons learnt<sup>14</sup>. 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 CPS<sup>15</sup>. 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.

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

<sup>14</sup> 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.

<sup>15</sup> 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 years<sup>16</sup>, 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. 7<sup>17</sup> 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.

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<sup>16</sup> See above, §§ 23 and 26.

<sup>17</sup> 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.<sup>18</sup> 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"<sup>19</sup>. 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 General<sup>20</sup>. 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.<sup>21</sup>
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.

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<sup>18</sup> 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

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

<sup>20</sup> 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.

<sup>21</sup> 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 2008<sup>22</sup>.

### **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 years<sup>23</sup>. 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.<sup>24</sup> 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.

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

<sup>23</sup> 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.

<sup>24</sup> 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 Commons<sup>25</sup>. The Bill, which will apply to Great Britain (England, Scotland and Wales), is

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<sup>25</sup> 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 workforce<sup>26</sup>.

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

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<sup>26</sup> 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 discrimination<sup>27</sup>, 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

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

complied with this duty<sup>28</sup>, 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 1998<sup>29</sup>. 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.

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<sup>28</sup> 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.

<sup>29</sup> 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 another<sup>30</sup>. 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 Commission<sup>31</sup> 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

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<sup>30</sup> 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..

<sup>31</sup> 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 discrimination<sup>32</sup>.

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\*-

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<sup>32</sup> Commons Hansard, 20 May 2009: Column 1396W.

C grades<sup>33</sup>. The situation of Gypsy and Traveller children in the field of education is dealt with in more detail elsewhere in this report<sup>34</sup>.

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 workforce<sup>35</sup>.
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 excluded<sup>36</sup>. 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.<sup>37</sup>
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 2006<sup>38</sup>. 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.<sup>39</sup>

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<sup>33</sup> 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.

<sup>34</sup> See below, *Vulnerable Groups – Gypsies and Travellers*.

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

<sup>36</sup> 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.

<sup>37</sup> Third Progress Report, vol. 1, pp25-26.

<sup>38</sup> Department for Education and Skills, *Bullying around racism, religion and culture*

<sup>39</sup> 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 attire<sup>40</sup>. 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 field<sup>41</sup>, 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 Bill<sup>42</sup>, 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

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<sup>40</sup> 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).

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

<sup>42</sup> 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 teachers<sup>43</sup>. 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

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<sup>43</sup> 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 years<sup>44</sup>.

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 2007<sup>45</sup>. 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.

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

<sup>45</sup> 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 functions<sup>46</sup>. 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 firm<sup>47</sup>. 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.<sup>48</sup>
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 workforce<sup>49</sup>. Further issues with respect to access to employment tribunals are dealt with elsewhere in this report<sup>50</sup>.
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.

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<sup>46</sup> Equality Bill, clause 143.

<sup>47</sup> Equality Bill, clause 149.

<sup>48</sup> 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

<sup>49</sup> Equality Bill, clause 118.

<sup>50</sup> 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 improved<sup>51</sup>.
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.<sup>52</sup> The health situation of Gypsies and Travellers is dealt with in more detail elsewhere in this report<sup>53</sup>.
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 equality<sup>54</sup>.

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<sup>51</sup> Third Progress Report, vol. 1, pp82-88.

<sup>52</sup> Third Progress Report, vol. 1, pp78-82.

<sup>53</sup> See below, Vulnerable Groups – Gypsies and Travellers

<sup>54</sup> 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.<sup>55</sup>

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.<sup>56</sup>

## 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 1991<sup>57</sup>, 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 issues<sup>58</sup>. The Ministry of Justice has also taken over the task of publishing annual statistics on race and the criminal justice system.<sup>59</sup> ECRI welcomes these efforts to improve the collection of data on race issues in the criminal justice system.

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<sup>55</sup> Third Progress Report, vol. 1, pp59-60

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

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

<sup>58</sup> 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.

<sup>59</sup> 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 counterparts<sup>60</sup>. 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.<sup>61</sup>
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 works<sup>62</sup>. 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.<sup>63</sup>

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<sup>60</sup> 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.

<sup>61</sup> Third Progress Report, vol. 1, pp112-113.

<sup>62</sup> 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.

<sup>63</sup> 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 there<sup>64</sup>.
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

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<sup>64</sup> 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 Justice<sup>65</sup>. 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 years<sup>66</sup>. 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 2006/07<sup>67</sup>. 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 2006/07<sup>68</sup>. 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 damage<sup>69</sup>. 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 motivated<sup>70</sup>. 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 indecency<sup>71</sup>.

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<sup>65</sup> 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*.

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

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

<sup>68</sup> 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).

<sup>69</sup> See above, Criminal law provisions against racism applicable in England and Wales.

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

<sup>71</sup> *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 motivation<sup>72</sup>.
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 people<sup>73</sup>, 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)<sup>74</sup>. 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 reported<sup>75</sup>, 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 report<sup>76</sup>. 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.

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

<sup>73</sup> 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

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

<sup>75</sup> See above, Criminal law provisions against racism applicable in England and Wales.

<sup>76</sup> 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"<sup>77</sup>. 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 Kingdom<sup>78</sup>. 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

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

<sup>78</sup> 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 inquiry<sup>79</sup>, 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 crimes<sup>80</sup>. The government's response was hailed by the Jewish community as "the single most important action against UK antisemitism for many years"<sup>81</sup>. A government progress report was published a year later<sup>82</sup>, 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 work<sup>83</sup>. 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 Gaza<sup>84</sup>: 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 websites<sup>85</sup>.

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

<sup>80</sup> See above, Criminal law provisions against racism applicable in England and Wales.

<sup>81</sup> CST, Antisemitic Discourse in Britain in 2007, p6.

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

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

<sup>84</sup> Community Security Trust, Antisemitic Incidents Report 2008

<sup>85</sup> 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 Muslims<sup>86</sup>.
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.<sup>87</sup> 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

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<sup>86</sup> See below, Anti-terror legislation

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

used negative and stereotypical imagery.<sup>88</sup> 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 group<sup>89</sup> 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 Travellers<sup>90</sup>, 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

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<sup>88</sup> 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

<sup>89</sup> 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.

<sup>90</sup> Third progress report, vol. 2, p 183.

some of the most severe levels of hostility and prejudice<sup>91</sup>. 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 2006<sup>92</sup>. 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 progress<sup>93</sup>. 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 Sites<sup>94</sup>.
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

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<sup>91</sup> 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

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

<sup>93</sup> *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.

<sup>94</sup> *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 relations<sup>95</sup>. 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 higher<sup>96</sup>. 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 school<sup>97</sup>. 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,

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<sup>95</sup> 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*.

<sup>96</sup> See above, *Discrimination in Various Fields – Education*.

<sup>97</sup> Third progress report, vol. 1, p19, p27.

teachers and schools, who were keen to see it continue<sup>98</sup>. 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

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<sup>98</sup> 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 tensions<sup>99</sup>. 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.

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<sup>99</sup> 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 media<sup>100</sup>, 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 Office<sup>101</sup> 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 merits<sup>102</sup>. 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

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<sup>100</sup> See above, Racism in Public Discourse – Media.

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

<sup>102</sup> 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 Kingdom<sup>103</sup>, 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 process<sup>104</sup>. 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 work<sup>105</sup> 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 2007<sup>106</sup>, 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 standards<sup>107</sup>. 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

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<sup>103</sup> See above, Citizenship legislation

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

<sup>105</sup> 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.

<sup>106</sup> 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.

<sup>107</sup> *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 address<sup>108</sup>. 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 document<sup>109</sup>. 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

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<sup>108</sup> Ibid, Chapter 4, Provision of healthcare.

<sup>109</sup> 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](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 legislation<sup>110</sup> 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 society<sup>111</sup>.
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

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

<sup>111</sup> 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 Lords<sup>112</sup>, 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 intolerance<sup>113</sup>.
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

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

<sup>113</sup> 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 document<sup>114</sup> 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

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<sup>114</sup> 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 Belfast<sup>115</sup>.

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 2001<sup>116</sup>. 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

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<sup>115</sup> See above, Racist violence.

<sup>116</sup> 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 communities<sup>117</sup>. 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

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<sup>117</sup> 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 crime<sup>118</sup>. 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 database<sup>119</sup>. 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

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

<sup>119</sup> 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 2008<sup>120</sup> 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 persons<sup>121</sup>. The authorities have noted that, compared with the overall composition of the prison population, these figures are not disproportionately high<sup>122</sup>. 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

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

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

<sup>122</sup> 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 characteristics<sup>123</sup>. 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

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<sup>123</sup> 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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