



# International Convention on the Elimination of All Forms of Racial Discrimination

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## Committee on the Elimination of Racial Discrimination

Seventy-ninth session

8 August-2 September 2011

### Consideration of reports submitted by States parties under article 9 of the Convention

#### Concluding observations of the Committee on the Elimination of Racial Discrimination

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

1. The Committee considered the eighteenth to twentieth periodic reports of the United Kingdom and Northern Ireland, submitted in one document (CERD/C/IRL/18-20), at its 2112th and 2113th meetings (CERD/C/SR.2112 and CERD/C/SR.2113), held on 23 and 24 August 2011. At its 2115th meeting (CERD/C/SR.2115), held on 1 September 2011, it adopted the following concluding observations.

#### A. Introduction

2. The Committee welcomes the detailed, though somewhat delayed, report submitted by the State party, and expresses appreciation for the frank and constructive oral responses provided by the delegation during the consideration of the report.

3. The Committee commends the inclusion by the State party, in its periodic report, of new and updated information on the implementation of the Convention in overseas territories under its administration.

4. The Committee also notes with appreciation the input to its proceedings by the Equality and Human Rights Commission (EHRC), the Human Rights Commissions of Scotland, Wales and Northern Ireland and various non-governmental organizations (NGOs) that were consulted in the preparation of the report.

#### B. Positive aspects

5. The Committee welcomes the notable efforts made by the State party to tackle racial discrimination and inequality and acknowledges that it has made important progress in this regard.

6. The Committee welcomes the enactment of the Equality Act 2010 as a landmark improvement in anti-discrimination legislation;
7. The Committee notes with appreciation the establishment of the Equality and Human Rights Commission under the Equality Act 2006; and
8. The Committee also notes with appreciation the adoption of the Racial and Religious Hatred Act 2006 and the launch of the Cross-Government Hate Crime Action Plan (HCAP) on 14 September 2009.

### **C. Concerns and recommendations**

9. While the underlying causes of the riots and acts of vandalism that took place in the State party in August 2011 are yet to be fully ascertained, the Committee notes that there are racial undertones to the situation which should not be ignored. The Committee regrets that some of the State party's policy responses to the riots may disproportionately impact groups from poor and minority ethnic backgrounds, in particular reported plans to remove the welfare benefits of those convicted but not jailed for riot-related offences, and to evict families of those involved in the riots from social housing. Such measures have the potential to worsen race relations and inequalities in the State party (arts. 2, 4 and 6).

**The Committee recommends that the State party thoroughly investigate the underlying causes of the riots and acts of vandalism, and that it provide the Committee with information on the outcome of its investigations as soon as possible. The Committee urges the State party to ensure that in the process of investigation and prosecution of the riot-related cases, the rule of law is strictly adhered to and applied with due process in an even-handed way. The State party should ensure that any policy responses are forward-looking and promote ethnic equality and cohesion in the State party.**

10. The Committee notes that the State party maintains its position that there is no obligation for States parties to make the Convention as such part of their domestic legal order and that the law and practice of the State party fully respect and implement all the provisions of the Convention. The Committee reiterates its continuing concern that the State party's courts may not give full legal effect to the provisions of the Convention unless it is expressly incorporated into its domestic law or the State party adopts necessary provisions in its legislation (arts. 2 and 6).

**The Committee requests the State party to reconsider its position so that the Convention can more readily be invoked in the domestic courts of the State party.**

11. The Committee is concerned at reports of an increase in virulent attacks on, and negative portrayal of, ethnic minorities, immigrants, asylum seekers and refugees by the media in the State party. The Committee accordingly regrets that the State party continues to maintain its restrictive interpretation of the provisions of article 4 of the Convention which the Committee has determined as being of a mandatory character in its general recommendation No. 15 (1993) on article 4 of the Convention, which, inter alia, deals with organized violence based on ethnic origin (arts. 2, 4 and 6).

**The Committee notes the State party's own recognition that the rights to freedom of expression and opinion are not absolute rights, and recommends that the State party withdraw its interpretative declaration on article 4 in the light of the continuing virulent statements in the media that may adversely affect racial harmony and increase racial discrimination in the State party. The Committee recommends that the State party closely monitor the media with a view to combating prejudices and negative stereotypes, the unchecked expression of which may result in racial**

**discrimination or incitement to racial hatred. The State party should adopt all necessary measures to combat racist media coverage and ensure that such cases are thoroughly investigated and, where appropriate sanctions are imposed.**

12. The Committee is deeply concerned at the State party's position that the Convention does not apply to the British Indian Ocean Territory (BIOT). The Committee further regrets that the BIOT (Immigration) Order 2004 not only bans Chagossians (Ilois) from entering Diego Garcia but also bans them from entering the outlying islands located over 100 miles away, on the grounds of national security (arts. 2 and 5(d)(i)).

**The Committee reminds the State party that it has an obligation to ensure that the Convention is applicable in all territories under its control. In this regard, the Committee urges the State party to include information on the implementation of the Convention in the British Indian Ocean Territory in its next periodic report.**

**The Committee recommends that all discriminatory restrictions on Chagossians (Ilois) from entering Diego Garcia or other Islands on the BIOT be withdrawn.**

13. While noting with appreciation the coming into force of the Equality Act 2010, the Committee is deeply concerned that the austerity measures adopted in response to the current economic downturn, and the so-called "Red Tape" challenge, including scrutiny of measures envisaged under the Equality Act to prune those deemed "bureaucratic or burdensome", threaten to dilute or reverse the State party's achievements in the fight against racial discrimination and inequality. In this context, the Committee recalls its general recommendation No. 33 (2009) on Follow-Up to the Durban Review Conference, and reiterates that responses to financial and economic crises should not lead to a situation which would potentially give rise to racial discrimination against foreigners, immigrants and persons belonging to ethnic minorities (arts. 2 and 5).

**The Committee recommends that the State party should implement all of the provisions of the Equality Act and ensure that there is no regression from the current levels of protection. Notwithstanding the economic downturn, the State party should ensure that any austerity measures do not exacerbate the problem of racial discrimination and inequality. Impact assessments are necessary before adopting such measures to ensure that they are not differentially targeted or discriminatory to those vulnerable to racial discrimination.**

14. The Committee notes the Localism Bill currently before Parliament. The Committee is concerned about the enhanced decision-making powers devolved to the local level, including with regard to allocation of resources for special measures in the field of education and some planning measures relevant to minority ethnic groups, and their potential negative impact on groups vulnerable to racial discrimination (arts. 2 and 5).

**The Committee recommends that the State party ensure that procedures for enhanced local decision-making contribute to addressing racial discrimination, and that groups vulnerable to racial discrimination are involved in their design, implementation and monitoring. The Committee also recommends that every effort be made to ensure consistency in measures to support implementation of the Convention throughout the State party, including by its various local authorities.**

15. The Committee expresses particular concern at the proposed budget cuts to EHRC, which may have negative effects on the execution of the Commission's mandate. The Committee is further concerned at reports that the proposed Public Bodies bill would empower the responsible Minister to modify the core functions and/or powers of EHRC. The Committee also takes note of reports of the current lack of independence of the Police Ombudsman for Northern Ireland (art. 2).

**The Committee recommends that any spending cuts and proposed legislative amendments to the mandate of EHRC should ensure that EHRC operates independently and effectively in line with the Paris Principles (annexed to General Assembly resolution 48/134). Furthermore, the State party should ensure that the Office of the Police Ombudsman in Northern Ireland is able to undertake effective, efficient and transparent investigations in cases of racial discrimination.**

16. The Committee expresses deep concern that the provisions of section 19D of the earlier Race Relations Act of 2000, which permit public officials to discriminate on grounds of nationality, ethnic and national origin, provided that it is authorized by a Minister, have been replicated in the Equality Act 2010. The Committee is further concerned at reports that a Ministerial authorization came into force on 10 February 2011 which would allow the UK Border Agency (UKBA) to discriminate among nationalities in granting visas and when carrying out checks at airports and ports and points of entry of the State party (arts. 1 and 2).

**The Committee recommends that the State party remove the exceptions based on ethnic and national origin to the exercise of immigration functions as well as the discretionary powers granted to the UK Border Agency (UKBA) to discriminate at border posts among those entering the territory of the State party.**

17. The Committee was informed by the State party that its Equality Strategy is moving away from treating inequality as principally concerning race and towards focusing on transparent frameworks to create opportunities for all. While welcoming an integrated approach to equality, the Committee notes that the Strategy pays little attention to some important factors including race. In particular, the absence of a race equality strategy in the State Party is a matter for concern (art. 2).

**The Committee recommends that the State party develop and adopt a detailed action plan, with targets and monitoring procedures, in consultation with minority and ethnic groups, for tackling race inequality as an integral part of the Equality Strategy, or separately provide an action plan for an effective race equality strategy.**

18. The Committee regrets the increased use of “stops and searches” by the police which disproportionately affect members of minority ethnic groups, particularly persons of Asian and African descent. The Committee further regrets reports that the State party has discontinued the issuance of reports for stops unless they lead to a search, and has adopted a policy to issue only receipts for stops and searches instead of a full record. The Committee is concerned that these measures may not only encourage racial and ethnic stereotyping by police officers but may also encourage impunity and fail to promote accountability in the police service for possible abuses (arts. 2 and 5).

**In light of general recommendation No. 31 (2005) on the prevention of racial discrimination in the administration and functioning of the criminal justice system, the Committee urges the State party to review the impact of “stop and search” powers on ethnic minority groups under various pieces of legislation in the State party. It recommends that the State party ensure that all stops are properly recorded, whether or not leading to searches, and that a copy of the record is provided to the person concerned for all such incidents in order to safeguard the rights of those subject to these laws and to check possible abuse. The Committee requests the State party to provide in its next periodic report detailed statistical data disaggregated by ethnicity and community origin on the use of stop and search powers and their effectiveness in crime prevention.**

19. The Committee regrets that the Equality Act 2010 does not apply to Northern Ireland. The Committee further regrets that Northern Ireland does not have a Bill of Rights

notwithstanding the provisions of the Belfast (Good Friday) Agreement of 1998 and recommendations from the Northern Ireland Human Rights Commission. The Committee expresses concern at the State party's response that Northern Ireland is responsible for developing its own equality legislation framework (art. 2).

**The Committee wishes to remind the State party that the obligation to implement the provisions of the Convention in all parts of its territory is borne by the State party. This makes the State party the duty bearer at the international level in respect of the implementation of the Convention in all parts of its territory notwithstanding the specific governance arrangements that it may have adopted. In this regard, the Committee recommends that the State party should take immediate steps to ensure that a single equality law and a Bill of Rights are adopted in Northern Ireland or that the Equality Act 2010 is extended to Northern Ireland.**

20. While noting the State party's legislative efforts to combat sectarianism, in Northern Ireland, the Committee is concerned that this situation, given the inter-sectionality between sectarianism and racism, is kept entirely outside the framework of protections against discrimination provided by the Convention and the Durban Programme of Action. The State party recognizes that sectarianism and racism in Northern Ireland are related, and that one cannot be tackled without the other (arts. 2 and 4).

**The State party is invited to examine whether the legislative and policy framework for dealing with the situation in Northern Ireland could not benefit by being underpinned by the standards, duties and actions prescribed by the Convention and the Durban Declaration and Programme of Action on inter-sectionality between ethnic origin, religion and other forms of discrimination. The State party should inform the Committee in its next report of the results of its examination of the advisability of adopting such a holistic approach towards the fight against sectarianism and racism, while also reporting directly on measures to address racial discrimination experienced by vulnerable ethnic minority groups in Northern Ireland.**

21. The Committee notes the State party's rejection of its contention that control orders used under counter-terrorism and security legislation have had a negative impact on certain groups such as Muslims and have contributed to an increase in Islamophobia. Nevertheless, the Committee welcomes the State party's efforts to review the use of control orders under counter-terrorism and security legislation, and its intention to replace them with a less intrusive and more focused system of terrorism prevention and investigation by the end of the year (arts. 2, 4 and 5(d)(i)).

**The Committee recommends that the State party ensure that the new system of terrorism prevention and investigation includes safeguards against abuse and the deliberate targeting of certain ethnic and religious groups. In this regard, the Committee invites the State party to provide information on the use of the new system of terrorism prevention and investigation, as well as statistical data disaggregated by religious belief and ethnic origin concerning the individuals subjected to this new system.**

22. While welcoming the improvements in the recruitment of Black and minority ethnic groups to serve in police forces and the criminal justice system, the Committee is concerned at the persistent gap between the low representation of these groups in the police service as compared to the wider population (article 5(e)(i)).

**The Committee recommends that the State party vigorously pursue its efforts to close the existing employment gap in the personnel administration of the criminal justice system and other sectors between ethnic minorities and the wider population. Bearing in mind the Committee's general recommendations No. 31 (2005) on the prevention of racial discrimination in the administration and functioning of the criminal justice**

**system and No. 32 (2009) on special measures, the State party should also consider adopting such special measures to ensure that employment in the criminal justice administration reflects the diversity in the State party's society.**

23. While welcoming the adoption of the national approach to racist bullying that was published in November 2010 and the introduction of *respectme*, a Scottish anti-bullying service that is partly funded by the Government, the Committee expresses concern at the increased reports of racist bullying and name-calling in the State party's schools (arts. 2 and 5(e)(v)).

**The Committee encourages the State party to take all necessary steps to eliminate all racist bullying and name-calling in the State party's schools. The Committee urges the State party to introduce awareness-raising campaigns in the State party's schools with a view to changing the mindset of pupils, and to promote tolerance and respect for diversity in the education sector.**

24. In the education sector, the Committee notes that the rate of school exclusion of Black pupils is decreasing, but is still disproportionately high. The Committee also notes the relative lack of success in addressing under-achievement in schools, particularly for those groups which have been identified as most affected, notably Gypsy and Traveller children and Afro-Caribbeans (articles 2 and 5(e)(v)).

**The Committee recommends that the State party adopt an intensified approach towards preventing exclusion of Black pupils and set out in detail its plans for addressing under-achievement for those groups which have been identified as most affected, notably Gypsy and Traveller children and Afro-Caribbeans.**

25. The Committee notes that the employment gap for ethnic minorities of all age groups has decreased from 17.4% to 10.9% but that the gap is greatest for 16- to 24-year-olds. The Committee acknowledges this improvement in employment rates for ethnic minorities (art. 5(e)(i)).

**The Committee recommends that the State party intensify its efforts to narrow the employment gap for ethnic minorities. The Committee therefore recommends that the State party prepare a detailed delivery plan of how it will further narrow the ethnic minority employment gap in all areas and at all levels of employment.**

26. The Committee is concerned at the increase in the marriage visa age for purposes of family reunification from 18 to 21 years in November 2008, arguably in order to protect young people from entering into forced marriages. The Committee is concerned that this may lead to a situation where persons belonging to ethnic and minority backgrounds are discriminated against in the enjoyment of their right to family life, marriage and choice of spouse (arts. 2 and 5(d)(iv)).

**The Committee recommends that the State party remove this increase in the marriage visa age for purposes of family reunification as it violates the rights of persons who satisfy the legal minimum age of marriage as it principally affects ethnic minorities and other persons.**

27. While noting that some efforts have been made by the State party to improve the well-being of Gypsies and Traveller communities, the Committee remains concerned that such efforts have not substantially improved their situation. The Committee thus regrets that these communities continue to register poor outcomes in the fields of health, education, housing and employment. The Committee further regrets reports of increased negative stereotypes and stigmatization of these communities within the wider society (arts. 2 and 5(d)(i), (e)(i)(iii)(iv) and (v)).

**Recalling its general recommendation No. 27 (2000) on discrimination against Roma, the Committee recommends that the State party should strengthen its efforts to improve the situation of Gypsies and Travellers. The State party should ensure that concrete measures are taken to improve the livelihoods of these communities by focusing on improving their access to education, health care and services, and employment and providing adequate accommodation, including transient sites, in the State party. The Committee further recommends that the State party ensure that representatives of these communities are adequately consulted before any measures that impact on their situation, such as those proposed under the Localism agenda, are implemented.**

28. The Committee deeply regrets the State party's insistence on proceeding immediately with the eviction of the Gypsy and Traveller community at Dale Farm in Essex before identifying and providing alternative culturally appropriate housing for members of these communities. The Committee further regrets the State party's failure to assist the communities in finding suitable alternative accommodation (art. 5(e)(iii)).

**The Committee urges the State party to halt the intended eviction, which will disproportionately affect the lives of families and particularly women and children and create hardship. The Committee strongly recommends that the State party should provide alternative culturally appropriate accommodation to these communities before any evictions are carried out. The State party should ensure that any evictions are conducted in accordance with the law and in a manner that respects the human dignity of all individuals in this community, in conformity with international and regional human rights norms.**

29. The Committee is concerned at reports of adverse effects of operations by transnational corporations registered in the State party but conducted outside the territory of the State party that affect the rights of indigenous peoples to land, health, environment and an adequate standard of living. The Committee further regrets the introduction of a legislative bill in the State party which, if passed, will restrict the rights of foreign claimants seeking redress in the State party's courts against such transnational corporations (arts. 2, 5 and 6).

**Recalling its general recommendation No. 23 (1997) on the rights of indigenous peoples, the Committee encourages the State party to take appropriate legislative and administrative measures to ensure that acts of transnational corporations registered in the State party comply with the provisions of the Convention. In this regard, the Committee recommends that the State party should ensure that no obstacles are introduced in the law that prevent the holding of such transnational corporations accountable in the State party's courts when such violations are committed outside the State party. The Committee reminds the State party to sensitize corporations registered in its territory to their social responsibilities in the places where they operate.**

30. While noting the assertion of the State party that there is no evidence in the State party of the existence of caste-based discrimination to any significant extent in the fields covered by the Convention, the Committee has received information from non-governmental organizations and from recent research studies commissioned by State party institutions that such discrimination and harassment in violation of the rights to work, to education and to the supply of goods and services does exist in the State party (art. 2).

**Recalling its previous concluding observations (CERD/C/63/CO/11 para. 25) and its general recommendation No. 29 (2002) on descent, the Committee recommends that the Minister responsible in the State party invoke section 9(5)(a) of the Equality Act 2010 to provide for "caste to be an aspect of race" in order to provide remedies to**

**victims of this form of discrimination. The Committee further requests the State party to inform the Committee of developments on this matter in its next periodic report.**

31. The Committee, recalling its previous concluding observations (CERD/C/63/CO/11 para. 28), regrets that the State party, after reviewing the possibility of making the optional declaration provided for under article 14 of the Convention, has decided not to make such a declaration (arts. 2 and 6).

**The Committee urges the State party to reconsider its position not to make a declaration under article 14, which will allow individuals who are victims of racial discrimination to access the Committee.**

32. Bearing in mind the indivisibility of all human rights, the Committee encourages the State party to consider ratifying those international human rights treaties which it has not yet ratified, in particular treaties the provisions of which have a direct bearing on the subject of racial discrimination, such as the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (1990).

33. The Committee notes the action taken by the State party on follow-up to the Durban Review Conference, including the National Action Plan against Racism and related initiatives. In light of its general recommendation No. 33 (2009) on follow-up to the Durban Review Conference, the Committee recommends that the State party continue to give effect to the Durban Declaration and Programme of Action, adopted in September 2001 at the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, taking into account the outcome document of the Durban Review Conference, held in Geneva in April 2009, when implementing the Convention in its domestic legal order. The Committee requests that the State party include in its next periodic report specific information on action plans and other measures taken to implement the Durban Declaration and Programme of Action at the national level.

34. The Committee recommends that the State party undertake and publicize adequately an appropriate programme of activities to commemorate 2011 as the International Year for People of African Descent, as proclaimed by the General Assembly in its resolution 64/169).

35. The Committee recommends that the State party continue consulting and expanding its dialogue with civil society organizations working in the area of human rights protection, in particular in combating racial discrimination, in connection with the preparation of the next periodic report.

36. The Committee recommends that the State party's reports be made readily available and accessible to the public at the time of their submission, and that the observations of the Committee with respect to these reports be similarly publicized in the official and other commonly used languages, as appropriate.

37. In accordance with article 9, paragraph 1, of the Convention and rule 65 of its amended rules of procedure, the Committee requests the State party to provide information, within one year of the adoption of the present concluding observations, on its follow-up to the recommendations contained in paragraphs 9, 18, 21 and 28 above.

38. The Committee also wishes to draw the attention of the State party to the particular importance of recommendations 11, 13, 16, 19 and 27 and requests the State party to provide detailed information in its next periodic report on concrete measures taken to implement these recommendations.

39. The Committee recommends that the State party submit its combined twenty-first to twenty-third periodic reports in a single document by 6 April 2014, taking into account the specific reporting guidelines adopted by the Committee at its seventy-first session

(CERD/C/2007/1) and addressing all the points raised in the present concluding observations. The Committee also urges the State party to observe the page limit of 40 pages for treaty-specific reports and 60-80 pages for the common core document (see the harmonized guidelines for reporting contained in document HRI/GEN.2/Rev.6, chap. 1, para. 19).

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