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Расизм, расовая дискриминация, ксенофобия и связанные с ними формы нетерпимости, последующие меры и осуществление Дурбанской декларации и Программы действий

Поездка в Соединенное Королевство Великобритании и Северной Ирландии

Доклад Специального докладчика по вопросу о современных формах расизма, расовой дискриминации, ксенофобии и связанной с ними нетерпимости* **

Резюме

По приглашению правительства 30 апреля – 11 мая 2018 года Специальный докладчик по вопросу о современных формах расизма, расовой дискриминации, ксенофобии и связанной с ними нетерпимости посетила Соединенное Королевство Великобритании и Северной Ирландии.

В настоящем докладе Специальный докладчик оценивает усилия властей в деле ликвидации расизма, расовой дискриминации, ксенофобии и связанной с ними нетерпимости. Она отмечает, что Соединенное Королевство показало определенное лидерство в ключевых областях для достижения расового равенства, особенно в том, что касается «анализа расовых различий» и законодательства, которое запрещает расовую дискриминацию и нетерпимость. Тем не менее Специальный докладчик подчеркивает, что еще предстоит проделать серьезную работу по преодолению структурных форм расовой дискриминации и неравенства. Хотя она признает, что между различными нациями, которые составляют Соединенное Королевство, существуют различия, она подчеркивает, что по всей стране лица, принадлежащие к расовым и этническим меньшинствам, имеют более низкие результаты во многих областях жизни. Некоторые из ключевых областей, рассматриваемых в докладе, включают расовое воздействие законов и политики на меры жесткой экономии, уголовное правосудие, борьбу с терроризмом и иммиграцию, а также воздействие «брекзита» на расовое равенство в стране.

* Резюме доклада распространяется на всех официальных языках. Сам доклад, содержащийся в приложении к резюме, распространяется только на том языке, на котором он был представлен, и на французском языке.

** В связи с обстоятельствами, не зависящими от составителя, была достигнута договоренность об издании настоящего доклада после обычной даты опубликования.

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Annex

Report of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance on her visit to the United Kingdom of Great Britain and Northern Ireland

I. Introduction

1. At the invitation of the Government, the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance visited the United Kingdom of Great Britain and Northern Ireland from 30 April to 11 May 2018 to assess the authorities' efforts in eliminating racism, racial discrimination, xenophobia and related intolerance. The Special Rapporteur expresses her appreciation to the Government of the United Kingdom for its invitation and cooperation in coordinating the visit.

2. During her visit, the Special Rapporteur travelled to London, Bristol, Birmingham, Cardiff, Edinburgh, Glasgow and Belfast, where she met with representatives of the Government of the United Kingdom, as well as parliamentarians and authorities from the devolved nations of Northern Ireland, Scotland and Wales. She also visited two detention facilities: Harmondsworth Immigration Removal Centre and Her Majesty's Young Offenders Institution Feltham. The Special Rapporteur is not able to report on her visit to Harmondsworth as the conditions of the visit did not allow for a free and independent inspection. Likewise, the Special Rapporteur did not benefit from direct engagement with the British police or the English and Welsh judiciary despite having requested the Government in advance of her visit to meet with representatives of those bodies.

3. The Special Rapporteur met with representatives of national human rights institutions and equality bodies, civil society actors, academics, representatives of racial, ethnic and religious minority communities and individuals who had experienced racism, discrimination, xenophobia and related intolerance, including women, youth and children. She extends her deep gratitude to all those who made the time to meet with her and to provide the rich input that informs her analysis.

4. At the outset of the present report, the Special Rapporteur wishes to highlight that one of the challenges in assessing racial equality in the United Kingdom is the need to harmonize the methods used to collect data, in particular data disaggregated by ethnicity. According to the Government, 87 per cent of people are White and 13 per cent belong to a Black, Asian, mixed or other ethnic group.[1] However, racial and ethnic terminology varies even among State institutions, and different terms are sometimes used interchangeably, in potentially confusing ways. For the purposes of the present report, the Special Rapporteur uses the all-encompassing term "racial and ethnic minorities". However, when referring to documentation provided by external sources, she uses the terminology of the source material so as to avoid misrepresenting their findings. Although the term "Roma" is often used as an all-encompassing term at both the regional and international levels, the Special Rapporteur was informed that "Gypsies, Roma and Travellers" is the preferred terminology used by these communities in the United Kingdom context to reflect the distinct groups represented in the country.

[1] www.ethnicity-facts-figures.service.gov.uk.

II. Law and policy governing racial equality

A. Legal framework

5. The United Kingdom of Great Britain and Northern Ireland is a State party to the International Convention on the Elimination of All Forms of Racial Discrimination and to other international and regional human rights treaties that enshrine the principles of equality and non-discrimination.[2] By ratifying these instruments, the United Kingdom has accepted legally binding obligations to respect and ensure racial equality and to uphold the right of all persons to be free from racial discrimination.

6. The United Kingdom has not fully incorporated the International Convention on the Elimination of All Forms of Racial Discrimination into domestic law (CERD/C/GBR/CO/21-23, para. 7) but it has adopted two overarching laws central to the implementation of its human rights, equality and non-discrimination obligations. The Human Rights Act 1998[3] incorporates the Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights) into national law, such that this treaty's provisions are justiciable in United Kingdom courts. Article 14 of the Act prohibits any form of discrimination in the enjoyment of rights and freedoms set out in it, including on grounds of "sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status".[4] The Equality Act 2010[5] is a broad anti-discrimination law that prohibits various forms of discrimination, harassment and victimization in the workplace and in wider society. Pursuant to its article 9, race is one of the nine protected characteristics; race is defined as including colour, nationality, citizenship,[6] and ethnic or national origin.

7. In conformity with the definition of racial discrimination in article 1 (1) of the International Convention on the Elimination of All Forms of Racial Discrimination, the Equality Act not only prohibits intentional or purposeful discrimination but also de facto or unintentional discrimination.[7] As such, the United Kingdom has made a commitment to racial equality that goes beyond a concern only with explicit prejudice or racial animus. Instead, its legal commitment extends to include prohibition of policies and practices that result in differential or disparate effects on the basis of race, ethnicity, national origin, gender and other protected categories even in the absence of explicit prejudice. United Kingdom law directly governing racial equality thus provides a firm basis for tackling structural and institutional forms of racism.

8. Section 149 of the Equality Act stipulates a "public sector equality duty"[8] that requires public bodies to have due regard for the need to eliminate discrimination, advance equality of opportunity and foster good relations between different people when carrying out their activities. Notably, this public sector equality duty is qualified in its application to immigration law and policy and their enforcement, which is a significant shortcoming.[9]

9. The Special Rapporteur notes with concern that the Equality Act does not apply to Northern Ireland, where a comprehensive anti-discrimination law has yet to be adopted. Instead, Northern Ireland prohibits racial discrimination under the Race Relations (Northern

[2] https://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/Treaty.aspx?CountryID=185. See, e.g., the International Covenant on Civil and Political Rights, arts. 2 (1) and 26; the International Covenant on Economic, Social and Cultural Rights, art. 2 (2); and the Convention on the Elimination of All Forms of Discrimination against Women, art. 1.

[3] The Act applies throughout the United Kingdom of Great Britain and Northern Ireland.

[4] www.equalityhumanrights.com/en/human-rights-act/article-14-protection-discrimination.

[5] The Act applies in England, Wales and Scotland. See www.gov.uk/guidance/equality-act-2010-guidance and www.equalityhumanrights.com/en/equality-act.

[6] The Government of the United Kingdom has clarified that nationality is understood to include citizenship (CERD/C/GBR/21-23, para. 3).

[7] See article 19 (prohibiting indirect discrimination).

[8] www.equalityhumanrights.com/en/advice-and-guidance/public-sector-equality-duty.

[9] www.legislation.gov.uk/ukpga/2010/15/notes/division/3/16/35.

Ireland) Order 1997 (as amended).[10] The Order prohibits certain forms of discrimination, victimization and harassment on racial grounds, defined as including colour, race, nationality, ethnic or national origin, and belonging to the Irish Traveller community. It prohibits racial discrimination in the areas of employment; education; the provision of goods, facilities or services; and the disposal or management of premises.[11] Although the Order provides important protection against racial discrimination, the Equality Commission for Northern Ireland has identified significant shortcomings and gaps in the legal framework governing racial equality in Northern Ireland, which requires urgent reform to bring it in line with legislation in force in the rest of the United Kingdom and international human rights standards.[12] The Commission has highlighted, inter alia, the lack of protection from intersecting and multiple forms of discrimination, as well as the lower levels of protection against racial discrimination on grounds of colour and nationality.[13] During the visit of the Special Rapporteur, the Northern Irish authorities noted that a review of the nation's racial equality framework was initiated in 2018, in accordance with commitments made in the Race Equality Strategy 2015–2025.[14] The Special Rapporteur welcomes this step and highlights that a comprehensive and timely review is crucial for ensuring compliance by the United Kingdom with its international human rights obligations.

10. In England and Wales, criminal law provisions address "racially or religiously aggravated offences";[15] prohibit acts and the possession of material "intended or likely to stir up racial hatred";[16]; and enhanced sentencing "for racial or religious aggravation".[17] Similar provisions exist in Scotland and Northern Ireland. Nonetheless, civil society in England and Wales has expressed concerns with this legal framework, most notably with the difference in legal standards applicable to racially and religiously motivated hate crimes. In contrast to racially motivated hate crimes, intent is required in cases of religiously motivated hate crimes.[18] In practice, the different standards mean that certain groups enjoy lower levels of protection and that accountability for hate crimes against religious groups is much harder to secure. This is an acute problem for Muslims, who are the frequent targets of hate crimes in the United Kingdom. Where individuals are targeted for "looking" or "behaving" Muslim, and where perpetrators conflate religion with race, as is often the case in the United Kingdom, this difference in legal standard introduces evidentiary barriers that diminishes victims' capacities to claim their rights and to take full advantage of available legal protections. The Special Rapporteur urges the United Kingdom to address the relevant discrepancies in its hate crime legislation review, initiated in early 2019.[19]

11. Although the United Kingdom has passed legislation to provide for the incorporation of European Union law into domestic legislation, the withdrawal bill stipulates that the Charter of Fundamental Rights of the European Union will not be "part of domestic law on

[10] www.legislation.gov.uk/nisi/1997/869/contents. Other relevant legislation in Northern Ireland includes the Northern Ireland Act 1998, section 75 of which requires public authorities to promote equality of opportunity between different racial groups, and the Criminal Justice (No. 2) (Northern Ireland) Order 2004, which includes provisions on racially motivated hate crime.

[11] www.equalityni.org/ECNI/media/ECNI/Publications/Individuals/RaceDiscrim ShortGuide2010.pdf.

[12] See www.equalityni.org/ECNI/media/ECNI/Publications/Delivering%20Equality/RaceLawReform-FullReport.pdf, www.equalityni.org/ECNI/media/ECNI/Consultation%20Responses/2014/Gaps-in-Equality-Law-in-GB-and-NI-March-2014.pdf and www.equalityni.org/Delivering-Equality/Addressing-inequality/Law-reform/Related-work.

[13] See, e.g., www.equalityni.org/ECNI/media/ECNI/Publications/Delivering%20Equality/Proposals _for_legislative_reform060209.pdf?ext=.pdf, pp. 5–6.

[14] www.executiveoffice-ni.gov.uk/sites/default/files/publications/ofmdfm/racial-equality-strategy-2015-2025.pdf, chap. 5.

[15] Crime and Disorder Act 1998 (as amended), arts. 28–33 (www.legislation.gov.uk/ukpga/1998/37/contents).

[16] Public Order Act 1986 (as amended by the Racial and Religious Hatred Act 2006), arts. 17–29 (www.legislation.gov.uk/ukpga/1986/64/contents).

[17] Criminal Justice Act 2003, art. 145 (www.legislation.gov.uk/ukpga/2003/44/contents).

[18] Public Order Act, art. 29B-F.

[19] www.lawcom.gov.uk/project/hate-crime/.

or after exit day".[20] The Special Rapporteur stresses that the exit of the United Kingdom from the European Union must not result in lower levels of human rights protection and that the Government should not roll back on human rights standards derived from European Union legislation.

B. Policy and institutional framework

12. During her visit, the Special Rapporteur learned about various policy documents that are relevant for the promotion of human rights, equality, non-discrimination and tolerance, including the Integrated Communities Action Plan, the Hate Crime Action Plan 2016–2020, the Hate Crime Strategy 2017–2020 of the Crown Prosecution Service, the Race Equality Framework for Scotland 2016–2030, the Race Equality Action Plan 2017–2021 for Scotland, the New Scots Refugee Integration Strategy 2018–2022, the Race Equality Strategy 2015–2025 for Northern Ireland, and the Strategic Equality Plan 2016–2020 and associated Equality Objectives for Wales.

13. While these policies are important developments, the United Kingdom still has not adopted a country-wide strategy or action plan that addresses racial discrimination and inequality in a comprehensive fashion, as recommended by the Committee on the Elimination of Racial Discrimination (CERD/C/GBR/CO/18-20, para. 17, and CERD/C/GBR/CO/21-2, paras. 14 (b), 23 and 25 (a)). Instead, the current approach appears to be one of fragmented strategies whereby departments and devolved nations work in silos. The Equality and Human Rights Commission has highlighted the shortcomings of such an approach, emphasizing that sustainable solutions can only be found through a coordinated cross-sectoral strategy that recognizes the interrelationship of racial discrimination in various areas of life. For example, the Commission notes that progress in reducing the employment gap for ethnic minorities requires concrete measures to address the educational attainment gap.[21]

14. Furthermore, civil society has highlighted the need for concrete targets, measurable outcomes, adequate resources, clear timelines and accountability structures to ensure the effective implementation and evaluation of anti-discrimination policies. With regard to Northern Irish Race Equality Strategy, for example, interlocutors raised concerns about the absence of an accompanying action plan that would allow for a meaningful assessment and evaluation of measures taken.

15. During consultations, civil society has also expressed grave concern about the decision taken by the Government in 2012 to make equality impact assessments discretionary.[22] For example, reports show that neither the emergency 2010 budget nor the 2017 budget contained any provisions for equality impact assessments, although both budgets contained austerity measures that have been shown disproportionately to affect Black and minority ethnic communities, women especially.[23] The Special Rapporteur shares civil society's and racial and ethnic minority communities' concerns relating to equality impact assessments. The non-mandatory nature of these assessments in the United Kingdom undermines pursuit of racial equality in too many sectors of British life. The intent of legislators, policymakers and those tasked with implementation cannot on its own be relied upon to ensure that formal commitments to racial equality are upheld. As mentioned above, well-meaning laws and policies can have racially discriminatory effects. The foreseeable disparate impact of policies and their implementation on minority groups requires independent analysis and review even prior to their adoption.

[20] See https://publications.parliament.uk/pa/bills/lbill/2017-2019/0079/18079.pdf, art. 5 (4), and www.equalityhumanrights.com/en/what-are-human-rights/how-are-your-rights-protected/what-charter-fundamental-rights-european-union-0.

[21] www.equalityhumanrights.com/en/publication-download/healing-divided-britain-need-comprehensive-race-equality-strategy, pp.11–13.

[22] www.bbc.co.uk/news/uk-politics-20400747.

[23] www.intersecting-inequalities.com/copy-of-report, p. 7.

Race Disparity Audit

16. The Race Disparity Audit[24] commissioned by Prime Minister Theresa May in August 2016 aims to publish data on disparities in treatment and outcomes in public services for all races and ethnicities for England and for the devolved nations for sectors that remain reserved to Westminster.[25] This is a remarkable step towards transforming formal commitments to racial equality into reality as it makes visible the entrenched inequalities and structural forms of discrimination and exclusion that continue to be experienced by certain racial and ethnic groups. Official data, notwithstanding its shortcomings, is crucial for understanding how race and ethnicity in England and Wales fundamentally affect life, death, health, education and employment, among other aspects. The Special Rapporteur commends the Government for carrying out the Race Disparity Audit, which responds to the continuing call by numerous human rights bodies to gather ethnically disaggregated data as an important step towards effectively addressing racial discrimination and racism.

17. The Race Disparity Audit, which should be understood as a work in progress, has a number of significant shortcomings. Civil society has highlighted the absence of a unified comprehensive government strategy for eliminating the disparities identified through the Audit. A strategy of this nature is urgently needed, and its development must benefit from the active and meaningful participation of racial and ethnic minority communities. Others have also highlighted that such a strategy should formalize the role of the Race Disparity Unit, which is part of the Cabinet Office, and the inter-ministerial group on race disparity in order to enhance enforcement, coordination and oversight of departmental plans designed to eliminate the disparities identified. The Special Rapporteur urges the formal inclusion of civil society and representatives of racial and ethnic minority communities in these processes, including in decision-making.

18. With respect to the scope of the initial Audit, some interlocutors have noted the failure of the Audit to capture racial disparities rooted in laws and policies relating to immigration, counter-extremism and counter-terrorism. In light of the impact of these laws and policies on racial equality, the Government's failure to include these frameworks within the ambit of the Audit fundamentally undermines the stated commitment to racial equality.

19. In addition, civil society representatives have raised concerns over the completeness, quality, consistency and comparability of the data collected by government departments. Gypsy, Roma and Traveller communities, in particular, have expressed concern about the disparate definitions of ethnic groupings used by various departments, as well as about historical and systematic omissions in data collection that risk underrepresenting the extent of their marginalization. The absence of data on these particular communities can be observed in all nations and is symptomatic of the state of invisibility, marginalization and exclusion that have long been endured by Gypsies, Roma and Travellers.

III. Racial equality: lived experiences

20. The structural socioeconomic exclusion of racial and ethnic minority communities in the United Kingdom is striking. In August 2016, the Equality and Human Rights Commission published the largest-ever review into race inequality in England, Wales and Scotland.[26] In the report, the Commission outlined alarming findings on how race and ethnicity shape outcomes in every area of people's lives, including education, employment, housing, pay and living standards, health, criminal justice and participation. The Government's Race Disparity Audit confirms these findings and what these communities, their advocates and others fighting for racial equality have long identified. Notwithstanding the existence of a legal

[24] The database containing data gathered through the Audit is currently in beta mode and is available on the "ethnicity facts and figures" web page at www.ethnicity-facts-figures.service.gov.uk.

[25] Currently, the Race Disparity Audit covers England and Wales almost exclusively. Data pertaining to the devolved nations are included in areas that are not devolved (www.ethnicity-facts-figures.service.gov.uk/background).

[26] www.equalityhumanrights.com/sites/default/files/healing_a_divided_britain_-_the_need_for_a_comprehensive_race_equality_strategy_final.pdf.

framework devoted to combating racial discrimination, the harsh reality is that race, ethnicity, religion, gender, disability status and related categories all continue to determine the life chances and well-being of people in Britain in ways that are unacceptable and, in many cases, unlawful.

21. According to the findings of the Race Disparity Audit, across the United Kingdom Black and Asian minority households and those in the "Other ethnic group" are twice as likely to be in persistent poverty as White households.[27] Asian and Black children (1 in 4) are much more likely to be in persistent poverty than White British children (1 in 10).[28] In 2017, the unemployment rate for Blacks in England, Scotland and Wales was more than twice as high as the national average of 4 per cent. Pakistanis and Bangladeshis experienced a 10 per cent unemployment rate, whereas the figure for Whites was just under 4 per cent.[29]

22. In 2011–2013, children from Pakistani or Bangladeshi households (28.6 per cent) and Black households (24.2 per cent) were more likely to live in substandard accommodation than those in White households (18.6 per cent).[30] The Race Disparity Audit found that, in England in 2015–2017 Black African and Black Caribbean households were the ethnic groups most likely to rent social housing (47 per cent and 45 per cent respectively).[31] The Equal Opportunities Committee of the Scottish Parliament found, in a 2013 assessment, that Gypsies and Travellers lived in "horrendous conditions".[32] For example, the Committee observed that families paying rent to their local council were "expected to bathe young children in freezing cold amenity blocks with extortionate heating costs".[33] The Committee also observed unacceptable conditions in some settlements, including "a putrid overflowing septic tank", and wrote "that elderly and disabled people might have to go outside to a toilet block in the middle of a cold, winter's night".[34] The Special Rapporteur's own consultations with Gypsy, Roma and Traveller communities revealed that access to adequate housing solutions that respect ancestral nomadic traditions remain a major challenge across the United Kingdom, especially in Wales.

23. With respect to education, the situation is analogously grim. Race and ethnicity continue to have a significant impact on educational outcomes. The circumstances confronting Gypsies, Roma and Travellers are especially dire. In 2016–2017, Gypsy/Roma children, as well as children Travellers of Irish Heritage, had the highest rates of both temporary ("fixed period") and permanent exclusions in England.[35] In secondary schools, over half of Traveller of Irish Heritage and 45 per cent of Gypsy/Roma pupils had fixed period exclusions. In special schools, such exclusions affected 51.24 per cent of Travellers of Irish Heritage and 31.94 per cent of Black Caribbean pupils.[36]

24. The Race Disparity Audit found that, in England, "pupils from Gypsy or Roma backgrounds and those from a Traveller or Irish Heritage background had the lowest attainment of all ethnic groups throughout their school years".[37] Consultations with Gypsy, Roma and Traveller communities in England and Scotland have revealed a number of

[27] See www.ethnicity-facts-figures.service.gov.uk/static/race-disparity-audit-summary-findings.pdf, paras. 2.9 and 5.12–5.13, and www.ethnicity-facts-figures.service.gov.uk/work-pay-and-benefits/pay-and-income/low-income/latest.

[28] www.ethnicity-facts-figures.service.gov.uk/work-pay-and-benefits/pay-and-income/low-income/latest.

[29] www.ethnicity-facts-figures.service.gov.uk/work-pay-and-benefits/unemployment-and-economic-inactivity/unemployment/latest.

[30] www.equalityhumanrights.com/en/publication-download/healing-divided-britain-need-comprehensive-race-equality-strategy, p. 27.

[31] www.ethnicity-facts-figures.service.gov.uk/housing/social-housing/renting-from-a-local-authority-or-housing-association-social-housing/latest.

[32] www.parliament.scot/S4_EqualOpportunitiesCommittee/Reports/eor-13-01w.pdf, para. 6.

[33] Ibid.

[34] Ibid.

[35] www.ethnicity-facts-figures.service.gov.uk/education-skills-and-training/absence-and-exclusions/pupil-exclusions/latest.

[36] Ibid.

[37] assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/686071/Revised_RDA_report_March_2018.pdf, para. 4.3.

disturbing trends central to understanding the findings of the Audit. The communities have noted that there are very few teachers of Gypsy, Roma and Traveller background in schools across the United Kingdom. They have also noted the predominance of stereotypes inside and outside the classroom that undermine Gypsy, Roma and Traveller children. These include the racist belief that Gypsy, Roma and Traveller children are incapable of educational advancement and thus not worthy of the same investment into educational resources that benefit other children. A bright, 15-year-old advocate for Gypsy, Roma and Traveller children who aspires to be an oncologist has testified that, despite her strong academic performance, she encounters pervasive bullying based on her ethnicity. She has also explained how her school curriculum contains virtually no representation of her culture, which further compounds her sense of alienation. Others have corroborated this testimony and provided examples of practices and attitudes towards Gypsy, Roma and Traveller children that together achieve the informal but effective exclusion of these children from schools across the country.

25. Representatives of other racial and ethnic minority communities have similarly expressed concern about formal and informal school exclusions. In England, Afro-Caribbean children are nearly three times more likely to be permanently excluded than White British pupils.[38] In some instances, schools have refused to implement appeal decisions calling for the readmission of wrongly excluded racial and ethnic minority children. In light of these circumstances, the government review into school exclusion[39] is a welcome initiative, but one that must promptly deliver concrete action to effect necessary change.

26. Parents of racial and ethnic minority children have highlighted racially motivated bullying in schools, and the accompanying failure of teachers to openly condemn such acts as unacceptable. They have also decried the underrepresentation of teachers from racial and ethnic minority communities[40] and the insufficient inclusion in school curricula of the histories of these communities and their fundamental contributions to the prosperity of the United Kingdom over multiple generations. These experiences have also been documented in studies such as the survey conducted in Scotland to document minority ethnic pupils' experiences of school, which found that name-calling, harassment and bullying made direct and indirect racism a part of the daily experience of minority ethnic pupils in schools.[41]

27. With regard to higher education, representatives of students belonging to racial and ethnic minority groups expressed concern and frustration about the lower admission rates of racial and ethnic minority students despite equivalent A-level results. They also highlighted the lack of minority representation among university faculties. They further noted that this lack of representation, as well as the paucity of curricular options reflecting their histories and lived experiences as members of communities that have been a part of the United Kingdom since the colonial era, has negatively affected their academic integration and success.

28. Racial disparities are also prevalent in the health-care context. The Special Rapporteur has received reports that the failure of health-care professionals to accommodate linguistic, cultural and religious diversity has created structural barriers to racial and ethnic minority communities' access to health. A 2015 review found evidence of inequalities in outcome for babies, showing that in England babies who are Black or Black British Asian or Asian British have a more than 50 per cent higher risk of perinatal mortality.[42] Austerity measures and cuts in social benefits for the most precarious segment of society, usually minority ethnic women, have further affected health outcomes.

[38] www.ethnicity-facts-figures.service.gov.uk/education-skills-and-training/absence-and-exclusions/pupil-exclusions/latest.

[39] www.gov.uk/government/consultations/school-exclusions-review-call-for-evidence.

[40] Figures for England are available at https://www.ethnicity-facts-figures.service.gov.uk/workforce-and-business/workforce-diversity/school-teacher-workforce/latest.

[41] www2.gov.scot/resource/doc/920/0033758.pdf, sect. 7.10.2.

[42] www.england.nhs.uk/wp-content/uploads/2016/02/national-maternity-review-report.pdf, p. 57.

29. Gypsies and Travellers experience poorer physical and mental health outcomes than the rest of the British population.[43] Compared with the overall population, Gypsies, Roma and Travellers are more likely to suffer from bad health, including lower life expectancy, high infant mortality rates, high maternal mortality rates, low child immunization levels and a higher prevalence of anxiety and depression, as well as chronic diseases.[44]

30. According to information received during consultations, some immigrant women, including refugees, are too afraid to give birth in hospitals for fear of being targeted by immigration enforcement agencies and feel they have no other choice but to give birth at home. This is the case even for women with legal status or entitlement to legal status, because many fear that "hostile environment" immigration policies will nonetheless result in harm to themselves or their loved ones. In this context, organizations defending the rights of migrants have denounced the 2017 memorandum of understanding[45] between the Home Office, the Health and Social Care Information Centre (now known as "NHS Digital") and the Department of Health, which provided for the exchange of information between these institutions on the immigration status of patients. The memorandum deterred patients from racial and ethnic minority backgrounds from seeking needed medical care for fear of being reported to the immigration services. Others, including the Health and Social Care Select Committee[46] and health-care practitioners, have echoed these concerns. In a positive development, the memorandum of understanding was withdrawn on 8 November 2018.[47] The Special Rapporteur strongly recommends against any future attempts to involve health-care service providers in the enforcement of immigration law.

A. Racial impact of austerity measures

31. Since 2010, the United Kingdom has adopted sweeping austerity measures that have dramatically cut public sector funding and services and public benefits, including changes to tax policy that have consequences on access to welfare for racial and ethnic minority communities. Reliable reports have shown that the austerity measures have been disproportionately detrimental to members of racial and ethnic minority communities, who are also the hardest hit by unemployment. For example, the Equality and Human Rights Commission estimates that by the 2021/22 tax year, the racially disparate impact of austerity measures adopted by the Government between 2010 and 2017 will result in a 5-per-cent loss in income for Black households, which is double the loss for White households.[48] Similarly, cash losses as a result of tax, welfare and wage reforms will be the largest for Black households (about £1,600 on average) and the smallest for White households (about £950 on average).[49] Testimonies from racial and ethnic minority community representatives and civil society actors during consultations corroborated these statistics.

32. Unsurprisingly, austerity has had especially pronounced intersectional consequences. As a background matter, women in the United Kingdom earn and own less, and bear a greater responsibility for unpaid work, than men.[50] Reliable reports show that racial and ethnic minority women are the worst affected by austerity and that additional variations in terms of degree of vulnerability exist along ethnic lines. Even holding qualifications constant, racial

[43] www.equalityhumanrights.com/sites/default/files/healing_a_divided_britain_-_the_need_for_a_comprehensive_race_equality_strategy_final.pdf, pp. 31–32.

[44] www.equalityhumanrights.com/sites/default/files/is-britain-fairer-findings-factsheet-roma.pdf.

[45] https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/774071/MoU_between_HSCIC__Home_Office_and_DH.pdf.

[46] www.parliament.uk/business/committees/committees-a-z/commons-select/health-committee/inquiries/parliament-2017/mou-data-sharing-nhs-digital-home-office-inquiry-17-19/.

[47] www.gov.uk/government/publications/information-requests-from-the-home-office-to-nhs-digital.

[48] www.equalityhumanrights.com/sites/default/files/impact-of-tax-and-welfare-reforms-2010-2017-interim-report_0.pdf, pp. 3 and 13.

[49] Ibid., p. 12.

[50] See www.equalityhumanrights.com/sites/default/files/how-fair-is-britain.pdf.

and ethnic minority women are the worst affected by benefit cuts and tax policy changes and are less likely than White women to find employment.[51]

33. Austerity measures have also severely undercut small and medium-sized charities,[52] organizations that play a vital role in promoting and protecting racial equality. In almost all of the Special Rapporteur's consultations, civil society and community representatives most commonly cited the devastating impact of austerity and funding cuts as undermining their capacity to advocate for racial equality and fight discrimination. Cuts have had an important impact on the work of the Equality Commission for Northern Ireland, which has seen a stark reduction in its staff.

34. Austerity measures in the United Kingdom are reinforcing racial subordination. One measure that would mitigate this dynamic would be to subject all proposed fiscal policies to properly designed and implemented equality impact assessments aimed at revealing the projected disparate effects on racial and ethnic minority communities of the policies. The findings of such assessments should be available to the public and must result in meaningful changes to policy proposals. They must ensure that the proposals do not predictably, even if inadvertently, exacerbate racial and ethnic disparities.

B. Racial impact of criminal justice law and policy

35. Many of the communities and organizations with whom the Special Rapporteur consulted highlighted the devastating racial impact of criminal justice law and policy in the United Kingdom. *The Lammy Review*, an independent study commissioned by the Government, captures the national picture in this regard, providing an overview of how at every stage of the criminal justice process – from stops-and-searches to sentencing – racial and ethnic minority communities are targeted disproportionately. It also highlights the complex picture of differential disparity within racial and ethnic minority communities. For example, Blacks make up 3 per cent of the United Kingdom population but in 2015/16 accounted for 12 per cent of the adult prison population and more than 20 per cent of children in custody.[53] Other racial and ethnic minority groups were also overrepresented but to a lesser degree. *The Lammy Review* highlights the overrepresentation of Gypsy, Roma and Traveller children in secure training centres, and a striking increase in Muslim prisoners across different ethnicities from about 8,900 to 13,200 over the past decade.[54] Muslims, who are about 5 per cent of the United Kingdom population, now make up about 15 per cent of the prison population. This dramatic rise is not associated with terrorism offences.[55]

36. Data on Gypsies, Roma and Travellers in the criminal justice system are sorely lacking, making it difficult to ascertain the extent to which the system has a disparate impact on those communities. This lack of data requires urgent rectification, not least because estimates point to serious overrepresentation of those communities in the prison system. The Lammy Review underscored the high number of Gypsy/Traveller suicides in prison,[56] reinforcing the need for better data and action to protect Gypsies, Roma and Travellers, as well as members of other groups, from direct and indirect discrimination and exclusion.

37. With respect to youth, between 2006 and 2016 the proportion of prisoners who belonged to racial and ethnic minorities rose from 25 per cent to 41 per cent.[57] Racial and

[51] www.intersecting-inequalities.com/copy-of-report.

[52] www.lloydsbankfoundation.org.uk/assets/uploads/LBF_Smallest%20Charities%20Hardest%20Hit_Executive_Summary_final.pdf.

[53] https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/643001/lammy-review-final-report.pdf, p. 3.

[54] Ibid., p. 3.

[55] Ibid., p. 12.

[56] Ibid., p. 47.

[57] Ibid., p. 4.

ethnic minorities are generally three times more likely to be stopped and searched than Whites, and Blacks are over six times more likely to be stopped and searched than Whites.[58]

38. The Lammy Review highlights that, particularly with respect to the differential treatment of racial and ethnic minorities in the criminal justice system, "there is currently no evidence-based explanation for these disparities".[59] The findings mentioned above should not be assumed by any means to reflect proven disparate levels of criminality among racial and ethnic minorities. For example, Whites are more likely to have drugs found on their person during stops and searches, but Blacks are eight times more likely to be subject to such stops.[60] There can be no question that a pervasive and officially tolerated culture of racial profiling is at work in certain police forces, and that racial and ethnic minority children and youth are among the most vulnerable. In some parts of the United Kingdom, such as Glasgow, Gypsy, Roma and Traveller children and youth are on the front lines of racial and ethnic profiling. In consultations, racial and ethnic minority communities reported a prevalence of racial and gender stereotypes, as a result of which racial and ethnic minority children – especially boys – are presumptively treated as full-grown adults with an inherently dangerous and violent nature.

39. Racial and ethnic minority offenders are overrepresented in both the adult (25 per cent) and youth (40 per cent) prison estates.[61] While there has been a reduction in the overall number of children entering the juvenile justice system for the first time, not all children have benefited equally from this reduction. Among first-time entrants from March 2006 to March 2016, the number of racial and ethnic minority children entering the youth justice system fell by 72 per cent, compared with an 86-per-cent drop for White children.[62] Overrepresentation is more acute among Black, Muslim and Gypsy, Roma and Traveller youth.[63] As of March 2017, racial and ethnic minority children accounted for 45 per cent (397) of imprisoned youth but for only 18 per cent of the overall national youth population.[64]

40. During consultations, racial and ethnic minority community representatives and civil society actors repeatedly highlighted the racialized and ruinous impact that gang-related surveillance databases across the country have had and continue to have on these communities.[65] A Manchester Metropolitan University study found significant racial disparities in the number of people prosecuted and imprisoned under the "joint enterprise" doctrine.[66] More than 75 per cent of Black, Asian and minority ethnic individuals imprisoned under that doctrine found that gang and neighbourhood narratives were used by the prosecutors during their trial, compared to only about 40 per cent of Whites.[67] The study also found that while 89 per cent of those on the Manchester Police gang list were Black or had a minority ethnic background, only 23 per cent of those convicted of serious youth violence were Black or minority ethnic people. In London, 80 per cent of those included in the Metropolitan Police's "gang matrix" were Black or belonged to an ethnic minority; by

[58] https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/562977/police-powers-procedures-hosb1516.pdf, p. 25.

[59] https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/643001/lammy-review-final-report.pdf, p. 5.

[60] http://www.stop-watch.org/uploads/documents/The_Colour_of_Injustice.pdf, p. iv, 12–15

[61] https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/643001/lammy-review-final-report.pdf, p. 3.

[62] https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/585897/youth-justice-statistics-2015-2016.pdf, p. 27.

[63] https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/643001/lammy-review-final-report.pdf, p. 12.

[64] https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/676072/youth_justice_statistics_2016-17.pdf, p. 26.

[65] See, e.g., www.amnesty.org.uk/files/2018-05/Inside%20the%20matrix.pdf?x_Q7G4ar5uHbWLAklmQ9NSuLFMzrwSyq.

[66] www.crimeandjustice.org.uk/sites/crimeandjustice.org.uk/files/Dangerous%20assocations%20Joint%20Enterprise%20gangs%20and%20racism.pdf.

[67] Ibid., p. 15.

contrast, only half of those convicted of serious youth violence were Black or minority ethnic people.[68]

41. During her visit to Her Majesty's Young Offenders Institution Feltham, the Special Rapporteur learned of new initiatives intended to promote the principles of equality and non-discrimination within the facility and among incarcerated youth.[69] Among these initiatives was a programme by Kinetic Youth, an organization that facilitates youth education, including on issues of discrimination.

42. From 1 April 2017, all police forces across England and Wales commenced recording a broad range of data on the use of force, including on the reason for using force, on any injuries caused, on the gender, ethnicity and age of the subject involved and on the location and outcome of the incident. Home Office statistics show that in 2017/18 Black people were over three times more likely to be arrested than White people in England and Wales and that in London 53 per cent of people arrested were either Asian, Black, of mixed ethnicity or from another minority ethnic group.[70] A 2011 report by the Independent Office for Police Conduct on deaths in custody showed that across England and Wales racial and ethnic minorities were significantly more likely to be restrained than White people.[71] The Institute of Race Relation reports that between 1991 and 2014 it examined 509 cases of deaths in custody of Black and minority ethnic individuals and that of those deaths 348 took place in prison, 137 in police custody and 24 in immigration detention. In 48 of the cases the use of force might have contributed to death.[72] Deaths of persons belonging to racial and ethnic minorities while in police custody or in prison reinforce these communities' experience of systemic and structural racism, over-policing and criminalization. Failure properly to investigate those deaths and to prosecute those responsible results in impunity and a lack of accountability for individuals and State agencies. It also denies the right to adequate remedies and reparation for the families of the victims.[73]

43. Submissions to the Special Rapporteur have underscored the disproportionate impact that generic austerity measures affecting prisons and the police have had on racial and ethnic minority communities. Community members, civil society organizations and civil servants with whom the Special Rapporteur met during her visit all said that the staffing shortages that have resulted from these cuts have played an important role in worsening policing and incarceration conditions, including in ways that harm racial and ethnic minorities, which are disproportionately represented in the criminal justice system.

44. Although racial and ethnic minorities are overrepresented in criminal justice enforcement, they are underrepresented within the institutions that adjudicate crime and punishment. The 2017 Judicial Diversity Statistics published by the Lord Chief Justice of England and Wales indicated that, as at 1 April 2017, 7 per cent of court judges were Black, Asian or of minority ethnic background. Of these, Asians and Asian British people accounted for 3 per cent and the remaining three groups – Black and Black British, mixed ethnicity and other ethnic group – accounted for approximately 1 per cent respectively.[74] Such a lack of racial and ethnic diversity contributes to the racially and ethnically disparate criminal justice outcomes documented in the present report.

[68] Ibid., p. 11.

[69] A 2017 government report exposed serious rights violations at Feltham. A 2018 follow-up report indicates important improvements, including stronger institutional responses to complaints of discrimination among detained youth (www.justiceinspectorates.gov.uk/hmiprisons/wp-content/uploads/sites/4/2018/05/Feltham-A-Web-2018.pdf, p. 31).

[70] www.ethnicity-facts-figures.service.gov.uk/crime-justice-and-the-law/policing/number-of-arrests/latest.

[71] https://webarchive.nationalarchives.gov.uk/20170914112706/http://www.ipcc.gov.uk/page/deaths-custody-study.

[72] www.irr.org.uk/news/dying-for-justice/, p. 4.

[73] https://spcommreports.ohchr.org/TMResultsBase/DownLoadPublicCommunicationFile?gId=23519.

[74] https://www.judiciary.uk/wp-content/uploads/2017/07/judicial-diversity-statistics-2017-1.pdf, p. 5

C. Racial impact of laws and policies on counter-terrorism and counter-extremism

45. The Special Rapporteur has received information indicating that sustained and pervasive discourses vilifying Islam and Muslims persist in the British media and even among the political leadership, and that Islamophobia has taken firm root in the United Kingdom. She notes that the prevalence of Islamophobia in the United Kingdom was also highlighted by a previous mandate holder in 1996 (E/CN.4/1996/72/Add.4, para. 24). Although the more recent counter-terrorism laws and policies discussed below have vastly exacerbated Islamophobic sentiment, these problems have historical precedents.

46. In recent years, a series of terrorist attacks by individuals purporting to act in the name Islam have served as triggers for national panic regarding security in the United Kingdom. This panic has been exacerbated by and provided rich fodder for outrageous and deeply offensive portrayals in the media, and even by some leading politicians, who have cast Muslims as inherently dangerous, inherently opposed to the country's prosperity and inherently foreign. This presumption of foreignness is widely peddled in public and political discourse, belying the deep, historical ties many British Muslims have to the United Kingdom. Consultations during the visit further highlighted the large role that mainstream political responses have played in amplifying and legitimating anti-Muslim panic, and even Islamophobia, through rhetoric and policies rooted in the national framework for countering non-violent extremism.

47. There is an extensive body of literature decrying the human rights impacts of the Government's Prevent Strategy,[75] which is aimed at containing the proliferation of violent extremism. The Strategy targets individuals and groups who advocate extremism, understood as the "vocal or active opposition to fundamental British values, including democracy, the rule of law, individual liberty and mutual respect and tolerance of different faiths and beliefs", on the theory that such individuals and groups are predisposed to terrorist ideology and violence. [76]

48. Leading concerns over the Prevent Strategy relate to the lack of clear, workable definitions of "extremism", "terrorism" and "British values", as well as the criteria used to refer individuals considered at risk of radicalization. Among other national and international stakeholders, the Committee on the Elimination of Racial Discrimination has expressed serious concern that the "prevent duty" creates an atmosphere of suspicion towards members of Muslim communities, that it leads to increased profiling of individuals on the basis of ethnicity and/or religion and that it adversely affects the rights to freedom of expression, education and freedom of religion (CERD/C/GBR/CO/21-23, paras. 18–19). The Special Rapporteur shares these concerns, which were reiterated during many of her consultations with civil society representatives. She is especially concerned that uncertainty and ambiguity in terminology have serious consequences for racial equality as they create a wide scope for discretionary interpretation. This wide discretion in a context of anti-immigrant and xenophobic anxiety sets the stage for the excessive, disproportionate and discriminatory implementation of the "prevent duty" by teachers, professors, nurses and doctors, whom the Government has made the front-line agents in the fight against extremism. Student organizations in particular have highlighted the racist and Islamophobic nature of the Prevent Strategy, noting that Muslim students are its disproportionate targets.[77] Muslim students reported government surveillance of their social and cultural communities on campuses across the United Kingdom, and discriminatory restrictions on their freedom of expression,

[75] See, e.g., www.nature.com/articles/s41599-017-0061-9, www.opensocietyfoundations.org/sites/default/files/eroding-trust-20161017_0.pdf, http://rwuk.org/wp-content/uploads/2016/07/preventing-education-final-to-print-3.compressed-1.pdf and www.runnymedetrust.org/uploads/Islamophobia%20Report%202018%20FINAL.pdf.

[76] www.gov.uk/government/uploads/system/uploads/attachment_data/file/445977/3799_Revised_Prevent_Duty_Guidance__England_Wales_V2-Interactive.pdf, para. 7. See also https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/97976/prevent-strategy-review.pdf.

[77] One survey found that one third of Muslim students felt negatively affected by the Strategy (www.nusconnect.org.uk/resources/the-experience-of-muslim-students-in-2017-18, p. 7).

assembly and association. They described their reluctance (and in some cases their fear) to take courses in which they might be expected to participate, for example human rights law discussions on international conflict or terrorism, because of the real risk they faced of incurring Prevent Strategy-related suspicion of instructors. Put differently, "prevent duties" create conditions such that a Muslim university student can be reasonably concerned that topics and conversations that are encouraged among other students are to be actively avoided because his or her religion (or perceived religion) on its own may give rise to actionable suspicion among educators. The Government must urgently confront the exclusionary, divisive and discriminatory environments its policies are generating.

49. The Special Rapporteur's understanding is that, to date, no government review of, or findings regarding, the impact of the Prevent Strategy on human rights and racial equality has been made public. This state of affairs is untenable given the widespread evidence that enforcement of the "prevent duty" disproportionately targets groups on the basis of religious and ethnic belonging, in violation of their human rights. It has also transformed public institutions such as hospitals, schools, universities and even the police – institutions through which the work of national integration should otherwise be achieved – into sites of exclusion, discrimination and national anxiety. Formal integration policies risk being no match for the "dis-integration" and political and social exclusion currently being achieved, at the behest of the Government, through the robust and pervasive Prevent Strategy and its accompanying "prevent duty".

50. Based on consultations held and findings gathered during her visit, the Special Rapporteur concurs with the assessment of the Committee on the Elimination of Racial Discrimination (CERD/C/GBR/CO/21-23, paras. 18–19) and the Special Rapporteur on the rights to freedom of peaceful assembly and of association, who concluded that the Prevent Strategy was inherently flawed (A/HRC/35/28/Add.1, para. 10). The Special Rapporteur received no information during her visit to show that the Government has taken meaningful steps to address the concerns raised by the Special Rapporteur on the rights to freedom of peaceful assembly and of association. The Government must comprehensively address all human rights concerns, including those relating to equality, discrimination and intolerance, in the context of the independent review of the Prevent Strategy announced in January 2019.[78]

51. The Special Rapporteur underscores that her concern and condemnation are not aimed at the right and duty that Governments the world over have to protect their populations from threats, including terrorism. The concerns she raises speak to the policy choice embodied in the Prevent Strategy, which, among other things, mandates civil servants, social workers, care givers, educators and others to make life-altering judgements on the basis of vague criteria in a climate of national anxieties that scapegoat entire religious, racial and ethnic groups by making them the presumptive enemy.

D. Racial impact of laws and policies on immigration

52. In 2012, the then-Home Secretary, Theresa May, spearheaded the adoption of a policy that explicitly sought to create "a really hostile environment" in the United Kingdom for irregular immigrants.[79] That hostile environment policy – referred to by the Government as the "compliant environment" policy since the Windrush scandal broke in April and May 2018 – has been characterized by a web of policies[80] grounded in the Immigration Acts 2014 and 2016,[81] many of which remain in place today. Originally, the policy aimed to restrict access to housing, employment, health care, banking and other such services to migrants in an

[78] https://homeofficemedia.blog.gov.uk/2019/01/22/government-announces-independent-review-of-prevent.

[79] www.theguardian.com/uk-news/2017/nov/28/hostile-environment-the-hardline-home-office-policy-tearing-families-apart.

[80] See, e.g., www.libertyhumanrights.org.uk/sites/default/files/HE%20web.pdf and https://researchbriefings.parliament.uk/ResearchBriefing/Summary/LLN-2018-0064#fullreport.

[81] See www.legislation.gov.uk/ukpga/2014/22/contents/enacted and www.gov.uk/government/collections/immigration-bill-2015-16.

irregular situation.[82] It included high-profile enforcement campaigns that controversially included vans printed with the slogan "Go home or face arrest", as well as legislation restricting access to basic services for a range of categories of foreign nationals and facilitating punitive treatment of those without regular immigration status. The hostile environment policy has had an impact not only on irregular immigrants, but also on racial and ethnic minority individuals with regular immigration status, many of whom are British citizens or are entitled to British citizenship.

53. In consultations with racial and ethnic minority communities and civil society representatives, it has become clear that the rotten core of the hostile environment policy resides to a great extent in the Immigration Acts 2014 and 2016, although the Immigration, Asylum and Nationality Act 2006 is also a part of this picture. These laws have created a framework that deputizes immigration enforcement to private citizens and civil servants in a range of areas. In a national context that is deeply polarized, including on issues of race and ethnicity, and that is characterized by the scapegoating and negative stereotyping of minorities on racial, ethnic and religious bases, it is no surprise that a policy that ostensibly seeks to target only irregular immigrants is destroying the lives and livelihoods of racial and ethnic minority communities more broadly, including many that have been instrumental to the prosperity of the United Kingdom for decades, and are rightful claimants of citizenship status.

54. A study by Warwick University on the Home Office's "Go home or face arrest" campaign found that many members of the wider public have difficulty understanding the distinctions between regular and irregular immigrants (for example, among refugees, asylum seekers, residents and workers, and between immigrants and ethnic minority British-born people). It also found that many people reported harassment related to their perceived or presumed immigration status when they held settled status or were British citizens.[83]

55. Through the "right to rent" requirement, the Government obliges landlords and agents in England to check the immigration status of all potential tenants and to deny tenancy to certain categories of immigrants, or risk civil and criminal penalties.[84] Research shows that Black and minority ethnic households are more likely than White households to be in private rented accommodation.[85] Black and minority ethnic communities are therefore more likely to be required to produce residency documentation than their White counterparts. A survey found that 51 per cent of landlords said the "right to rent" scheme would make them less likely to rent to foreign nationals, while 48 per cent stated that the fine made them less likely to rent to someone without a British passport.[86] The survey also found that United Kingdom citizens from racial and ethnic minority communities may be subject to increased racial profiling as a result of the policy, as landlords stated it made them less likely to rent to individuals with "foreign accents or names".[87] Of great concern is the fact that asylum seekers and victims of trafficking do not have a right to rent and must gain "permission to rent" from the Home Office, which can further deter landlords from renting to such individuals.[88] This facially race-neutral immigration enforcement provision is ultimately racially discriminatory in its effect.

56. The Government's underlying immigration enforcement strategy relies on private citizens and civil servants to do front-line immigration enforcement, effectively transforming places like hospitals, banks and private residences into border checkpoints. In the context of national economic and security anxiety, in which racial and ethnic minorities (including and especially those who are refugees and migrants) have been the popular scapegoats for a wide range of societal ills. The Government must urgently abandon this strategy. Under such

[82] https://researchbriefings.parliament.uk/ResearchBriefing/Summary/LLN-2018-0064#fullreport.

[83] https://mappingimmigrationcontroversy.files.wordpress.com/2014/03/end-of-project-findings-leaflet-final.pdf, p. 3.

[84] https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/573057/6_1193_HO_NH_Right-to-Rent-Guidance.pdf.

[85] www.intersecting-inequalities.com/copy-of-report, p. 11.

[86] www.jcwi.org.uk/Handlers/Download.ashx?IDMF=ffcde3b5-e590-4b8e-931c-5ecf280e1bc8, p. 31.

[87] Ibid., pp. 5 and 31.

[88] Ibid., p. 71.

conditions, racial and religious profiling in the exercise of immigration enforcement by private citizens and civil servants is a predictable and arguably incentivized outcome. To be clear, international law, including international human rights law, protects national sovereignty, including in the area of immigration enforcement. However, where the strategy for immigration enforcement is so overbroad, and foreseeably results in the exclusion, discrimination and subordination of groups and individuals on the basis of their race, ethnicity or related status, such a strategy violates international human rights law and undermines the Government's stated commitments to racial equality.

57. The hostile environment policy described above will remain in place for as long as the legal and policy frameworks rooted in the Immigration Acts 2014 and 2016 remain in place. Shifting from the rhetoric from "hostile environment" to "compliance environment" will have little effect if the underlying legislative framework remains intact. Efforts such as eliminating deportation targets can achieve only slight cosmetic changes to an immigration enforcement regime that has permeated almost all aspects of social life in the United Kingdom. It is important to underscore that a hostile environment ostensibly created for, and formally restricted to, irregular immigrants is, in effect, a hostile environment for all racial and ethnic communities and individuals in the United Kingdom. This is because public and private actors continue to deploy race and ethnicity as proxies for regular immigration status. Even where private individuals and civil servants may wish to distinguish among different immigration statuses, it is likely that many are confused among the various categories and thus err on the side of excluding all but those who can easily and immediately prove that they are British or those whose White ethnicity confers upon them presumed Britishness in certain contexts.

58. It should be noted that there are significant differences between England and the rest of the United Kingdom in terms of approaches and openness to immigration. Asylum and immigration are not devolved matters and remain reserved powers of Westminster. However, the devolved nations have responsibility for the implementation of integration policies and the delivery of basic services to asylum seekers and refugees. In her consultation with local authorities in Wales, Northern Ireland and Scotland, the Special Rapporteur generally encountered more human rights-based approaches to immigration among government authorities in the devolved nations. For example, on 22 March 2018 the Welsh parliament launched a consultation on a draft plan for refugees and asylum seekers[89] to seek views on proposals intended to develop and improve access to help, advice and services for people seeking sanctuary across Wales. The consultation also included proposals aimed at tackling inequality and poverty experienced by communities.

59. In Scotland too authorities and politicians have promoted a more welcoming and human rights-based approach to integration. The New Scots Refugee Integration Strategy 2018–2022 outlines a vision of a welcoming Scotland that supports the early integration of refugees and asylum seekers from the moment of their arrival. The Strategy adopts a rights-based approach and emphasizes the importance of ensuring the involvement of refugees and asylum seekers in shaping the Strategy and its implementation.[90] Although the Special Rapporteur was informed about certain difficulties in implementing the Strategy in practice, interlocutors appreciated that the Strategy is a departure from the rhetoric and policies of the hostile environment.

60. In general, civil society consultations confirmed documented concerns that asylum seekers and refugees experience extreme hardship in securing decent, dignified livelihoods, and have limited access to basic services across the United Kingdom.[91]

[89] https://beta.gov.wales/sites/default/files/consultations/2018-11/181116-nation-of-sanctuary-responses.pdf.

[90] https://www.gov.scot/publications/new-scots-refugee-integration-strategy-2018-2022/.

[91] See, e.g., www.equalityhumanrights.com/en/publication-download/race-rights-uk-submission-un-committee-elimination-racial-discrimination, sect.4.6, and www.refugeecouncil.org.uk/what_we_do/multilingual_advice_for_asylum_seekers/destitution_support.

61. In March 2018, the Government published a green paper on its Integrated Communities Strategy and, in February 2019, it published an accompanying action plan.[92] Although civil society actors seem generally to welcome these developments, they have also expressed concerns, including the view that the policy disproportionately emphasizes migrant communities' abilities and responsibilities in relation to integration without similarly elaborating the responsibilities of host communities or guaranteeing adequate State support for the processes and institutions necessary to achieve national inclusion.

E. "Brexit" and racial equality

62. The circumstances and effects of the decision by the United Kingdom to leave the European Union, or "Brexit", are broad and complex, many falling firmly beyond the purview of the Special Rapporteur's mandate. Furthermore, the Special Rapporteur expresses no opinion on the merits or demerits of the decision. The present section focuses narrowly on the seeming impact of Brexit on racial and religious equality and non-discrimination in the United Kingdom, identifying human rights concerns of great urgency. To be clear, Brexit has not newly introduced racism and xenophobia to the United Kingdom – both have a long legacy that extends as far back as the historical European projects of slavery and colonialism. That said, national debates and certain practices and policies before, during and after the Brexit referendum in 2016 have amplified racial discrimination, xenophobia and related intolerance in the United Kingdom. Public and private actors have played dangerous roles in fuelling intolerance. Among them, politicians and media outlets deserve special attention given the significant influence they command in society.

63. Consultations held with the Special Rapporteur have confirmed that in the United Kingdom explicit expressions of racial, ethnic and religious intolerance have become more acceptable, in ways that mark a notable shift. On the one hand, the Special Rapporteur acknowledges that extreme right-wing parties have not enjoyed political success in the United Kingdom as they have done in other parts of Europe. On the other hand, however, various stakeholders have raised the concern that extreme views – on both the right and the left of the political spectrum – have gained ground in mainstream political parties and in parliaments across the United Kingdom. Indeed, stakeholders have raised serious concerns about the failure of political leaders on the right and the left to consistently and unequivocally condemn anti-Semitism and Islamophobia in the media, in public spaces and even by members of the United Kingdom parliament.

64. Consultations also raised serious concerns about the role of print and online media platforms in spreading racist and xenophobic views and in stoking a climate of intolerance and prejudice, including by disseminating false or misleading information. Indeed, the Special Rapporteur herself was the subject of thinly veiled and even explicitly racist, intentionally misleading media coverage during her visit.[93] It is vital that the Government take decisive steps to curb the work that media platforms are doing to incubate and propagate racism, xenophobia and related intolerance (CERD/C/GBR/CO/21-23, para. 16). A promising and innovative civil society initiative to fight intolerance is the Stop Funding Hate campaign, which aims to persuade advertisers to refrain from cooperating with publications that spread hate and division.[94]

65. The Special Rapporteur recalls that, with respect to Brexit, the Committee on the Elimination of Racial Discrimination was deeply concerned that the referendum campaign was marked by divisive, anti-immigrant and xenophobic rhetoric, and that many politicians and prominent political figures not only failed to condemn such rhetoric, but also created and entrenched prejudices, thereby emboldening individuals to carry out acts of intimidation and hate towards ethnic or ethno-religious minority communities and people who are visibly

[92] www.gov.uk/government/news/james-brokenshire-unveils-next-steps-to-building-integrated-communities.

[93] To be clear, her visit also received fair, independent and rigorous coverage from the many United Kingdom media platforms that continue to conduct their operations professionally.

[94] https://stopfundinghate.info.

different (CERD/C/GBR/CO/21-23, para. 15). These observations and concerns were reiterated by various stakeholders in their consultations with the Special Rapporteur and backed by reports documenting the steady mainstreaming of racist, xenophobic, anti-refugee and anti-migrant discourses in official and unofficial "leave" campaigns.[95]

66. The Committee on the Elimination of Racial Discrimination has also expressed serious concern about the increase in racist hate crimes in the weeks prior to and following the Brexit referendum (CERD/C/GBR/CO/21-23, para. 15). Representatives of racial and ethnic minority communities have reiterated these concerns. They have reported an increase in attacks against minority groups, including on community centres and places of worship, immediately after the Brexit referendum and noted that even racial and ethnic minority Britons were attacked. They expressed concern that the increase in hate crimes was directly connected to the growing anti-immigrant backlash fostered by some political actors ahead of the referendum.

67. Statistics clearly show an increase in hate crimes in the aftermath of the Brexit referendum. For example, in the days following the referendum, the Government reported a spike in the number of hate crimes in England and Wales.[96] In 2016/17, police recorded 80,393 hate crime offences, of which 78 per cent were classified as race hate crimes and 7 per cent as religious hate crimes. This figure represents a 29 per cent increase compared with the previous year and the highest percentage increase since 2011.[97] According to an October 2018 report, during 2017/18 hate crimes increased by 17 per cent compared with the previous year, confirming an upward trend that partly reflects improved police recording but also the spikes of violence that followed events such as the 2017 terrorist attacks and the Brexit referendum.[98]

68. Civil society highlighted an increase in anti-Semitic hate speech and violence during and after the referendum. In 2017, anti-Semitic incidents reached a record level in the United Kingdom, with 1,382 such incidents recorded nationwide. This figure represents a 3 per cent increase compared to 2016, and was the highest annual total recorded since 1984.[99] Researchers underscored the gendered nature of vulnerability to anti-Semitic threats. Online, hate campaigns notably targeted women, including those in positions of leadership, whereas physical violence was more a concern for orthodox men, especially when en route to and from synagogue.

69. Jewish organizations with which the Special Rapporteur consulted commended the Government's efforts to address anti-Semitic hate speech and extreme-right wing parties glorifying Nazism. Community representatives noted that they have been able to build strong partnerships with various branches of Government on account of the trust these communities have been able to build with government actors over many generations. The Special Rapporteur commends the strong commitment the Government has shown to supporting Jewish communities and urges it to adopt a similar approach with other religious communities in the United Kingdom.

70. Despite progress made, stakeholders highlighted that more concrete measures were needed to effectively combat racially and religiously motivated hate crime. Some of the key issues that were mentioned during consultations included the following: addressing under-reporting; improving accountability by closing the gap between reported cases and successful prosecutions; publishing data that allows for end-to-end tracking of hate crime cases; and providing support to victims of racist hate crime. In light of these issues, the Special

[95] See, e.g., www.theguardian.com/politics/2016/may/21/vote-leave-prejudice-turkey-eu-security-threat and www.theguardian.com/politics/2016/jun/16/nigel-farage-defends-ukip-breaking-point-poster-queue-of-migrants.

[96] https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/652136/hate-crime-1617-hosb1717.pdf, pp. 1, 4–7 and 15.

[97] Ibid.

[98] https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/748598/hate-crime-1718-hosb2018.pdf, p. 7.

[99] https://cst.org.uk/data/file/a/b/IR17.1517308734.pdf, pp. 4–5. See also https://cst.org.uk/data/file/8/8/Annual%20Review%202017%20web.1521476984.pdf and www.theguardian.com/society/2018/feb/01/antisemitic-incidents-in-uk-at-all-time-high.

Rapporteur wishes to refer the government authorities to the recommendations made by the Committee on the Elimination of Racial Discrimination (CERD/C/GBR/CO/21-23, para. 16).

71. Concerns about the adverse impact of immigration and border enforcement policies on racial equality were particularly prominent in Northern Ireland. Groups expressed concern that increased immigration checks following Brexit could lead to racial profiling by immigration officials in the border areas. They noted that even a policy that committed to no routine passport checks in the common travel area might result in routine checks of racial and ethnic minorities as a result of impermissible profiling. In addition, stakeholders expressed concern that increased immigration status checks may deter migrants from reporting crime against them and from accessing public services, such as health, housing and education, to which they are entitled.

IV. Conclusion and recommendations

72. **The Special Rapporteur notes with satisfaction that the Government of the United Kingdom has shown some leadership in key areas for the achievement of racial equality, especially within the legislative framework, which prohibits racial discrimination and intolerance. The Race Disparity Audit too represents an achievement that has the potential to move the United Kingdom forward in fulfilling its legal obligations to uphold substantive racial equality under international and domestic law.**

73. **Notwithstanding these achievements, the Government has much work to do in addressing structural forms of racial discrimination and inequality. Although the Special Rapporteur acknowledges that differences exist between the various nations that constitute the United Kingdom, she stresses that all over the country persons belonging to racial and ethnic minorities have poorer outcomes in many areas of life.**

74. **In light of the observations and findings described above, the Special Rapporteur calls on the United Kingdom authorities and other key stakeholders to adopt the following concrete measures aimed at eliminating and preventing racism, racial discrimination, xenophobia and related intolerance:**

(a) **Ensure that the principles and provisions of the International Convention on the Elimination of All Forms of Racial Discrimination are directly and fully applicable throughout the entire territory of the United Kingdom. To this end, the Government should:**

(i) **Incorporate the Convention into domestic law;**

(ii) **Accept the individual communications procedure under article 14 of the Convention;**

(iii) **Withdraw its interpretative declaration under article 4 of the Convention;**

(b) **Urgently bring into force sections 9 (5) (a) and 14 of the Equality Act 2010 on caste-based and dual discrimination;**

(c) **Make equality impact assessments mandatory;**

(d) **Apply the public sector equality duty in all necessary contexts, including in the context of immigration functions;**

(e) **Identify and address the shortcomings in hate crime legislation;**

(f) **Ensure the adoption of comprehensive legislation prohibiting racial discrimination in Northern Ireland;**

(g) **Adopt specific strategies and action plans aimed at eliminating racial discrimination and promoting racial equality in a holistic and coordinated manner across all nations and government sectors. Consider adopting concrete strategies for the elimination of racial discrimination against people of African descent and members of the Gypsy, Roma and Traveller communities, in line with the recommendations of the Committee on the Elimination of Racial Discrimination;**

(h) **Improve and harmonize data collection and ensure that all of the devolved nations participate in the Race Disparity Audit. Address gaps in data collection to ensure that adequate, disaggregated data is systematically collected and published on the enjoyment of human rights by all racial and ethnic minorities in all fields of life, in particular by the Gypsy, Roma and Traveller communities;**

(i) **Take effective steps to eliminate the disparities identified in the framework of the Race Disparity Audit, including by adopting a comprehensive United Kingdom-wide and cross-sectoral policy and strategy designed to eliminate these inequalities and, where necessary, by adopting temporary special measures. Ensure that such a policy and strategy is accompanied by concrete targets, resources, monitoring and accountability mechanisms. Also ensure that the design, implementation and evaluation of such a policy provides for the active and meaningful participation of racial and ethnic minorities;**

(j) **In order to eliminate the disparities identified in the Race Disparity Audit, take effective steps to, inter alia:**

(i) **Remove structural barriers to racial and ethnic minority communities' equal and non-discriminatory enjoyment of human rights, including the right to the enjoyment of the highest attainable standard of physical and mental health, the right to an adequate standard of living, including adequate housing, and the right to education;**

(ii) **Close attainment gaps and address both formal and informal school exclusion of racial and ethnic minority children and youth. Ensure that the planned government review into school exclusions gives racial and ethnic minority parents and children a central role in shaping strategies to eliminate exclusions;**

(iii) **Address the underrepresentation of racial and ethnic minorities in higher education and among educational personnel, and ensure that the historical and contemporary participation in British life of all ethnic and racial minorities are included in civic education curricula;**

(iv) **Improve the health outcomes of and ensure the accessibility and availability of quality health-care services to persons belonging to racial and ethnic minorities; and ensure the provision of adequate and culturally appropriate accommodation and access to basic services, in particular for members of the Gypsy, Roma and Traveller communities, asylum seekers and refugees;**

(v) **Combat persistent poverty, including by addressing unemployment and discriminatory practices with regard to recruitment, salaries, promotions and other conditions of employment;**

(k) **Ensure that austerity measures do not result in human rights violations, including the right to equality and non-discrimination. To this end, ensure that:**

(i) **Fiscal policies and other austerity measures are preceded by properly designed and implemented equality impact assessments;**

(ii) **Legal aid cuts do not have a disproportionate impact on or prevent effective access to justice by ethnic and racial minorities;**

(iii) **Funding cuts do not restrict the effective functioning of national human rights institutions, equality bodies and non-governmental organizations working in the field of human rights and racial equality;**

(l) **Ensure that implementation of the outcome of the Brexit referendum does not result in a regression from the current levels of human rights protection and that any changes in legislation or policy following Brexit are in full compliance with international human rights instruments, including the International Convention on the Elimination of All Forms of Racial Discrimination. Adopt safeguards to prevent and remedy any adverse effects of Brexit on racial equality in the country, in consultation**

with stakeholders. To this end, guarantee that equality and non-discrimination are central aims in decision-making processes, including by ensuring that legislative and policy choices are accompanied by duly conducted equality impact assessments and corrective measures where necessary;

(m) **Assess and eliminate the racially disparate impact of immigration laws and policies. Repeal those aspects of its immigration law and policy framework that deputize immigration enforcement to private citizens and civil servants responsible for delivering vital public and social services;**

(n) **Suspend the "prevent duty" and conduct a comprehensive review of counter-terrorism measures with a view to eliminating any discriminatory and disproportionate impact on racial, ethnic and religious minorities. On the basis of such a review, ensure that any future counter-terrorism and counter-extremism measures do not result in profiling or other forms of racial discrimination, whether in purpose or effect;**

(o) **Fully implement the recommendations made in *The Lammy Review* and ensure the substantive participation of racial and ethnic minority communities in their implementation;**

(p) **Fully implement the recommendations made by the Committee on the Elimination of Racial Discrimination in its 2016 concluding observations with regard to combating racist and xenophobic speech and violence;**

(q) **Take concrete steps to improve accountability for all acts of racial discrimination and xenophobia, ensuring that allegations of such acts are thoroughly investigated, prosecuted and punished, and provide effective remedies to victims of racial discrimination;**

(r) **Step up efforts to eliminate prejudice, negative stereotyping and stigmatization, in particular by politicians and in the media, and take effective measures aimed at promoting tolerance and understanding, in line with article 7 of the International Convention on the Elimination of All Forms of Racial Discrimination;**

(s) **Strengthen preventive educational, training and awareness-raising measures to ensure that all public officials, including those responsible for the administration of public services, refrain from racism, racial discrimination, xenophobia and related intolerance.**