



JUSTICE

**Submission to the Joint
Committee on Human Rights**

UN Committee on the Elimination of all forms
of Racial Discrimination

Concluding Observations on the United Kingdom's
17th Report.

A JUSTICE RESPONSE

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JUSTICE is an independent, all party, law reform and human rights organisation, which aims to improve British justice through law reform and policy work, publications and training. It is also the British section of the International Commission of Jurists. JUSTICE has been working in the discrimination field for the last five years, it seeks to secure improvements in discrimination law and practice in the United Kingdom.

JUSTICE took a significant role in preparing the joint non-governmental submission to the UN CERD committee in response to the UK Government's Report. We attended the hearing of the committee and made an oral presentation to the committee members. We welcome the response of the UN CERD committee and the care with which it responded to our concerns.

JUSTICE welcomes the Joint Committee on Human Rights inquiry into the steps taken by government in response to the concluding observations of the UN Committee, and the ways in which the UK's obligations under CERD could be more effectively met.

In this submission we have listed each of the CERD Committee's comments, under their original numbering, and then put our response. Due to the shortness of time we have not been able to respond to each comment and have not been able to provide as full a response as we would have liked, so if there is any further information that the Committee would find it useful for us to provide we would be happy to do so.

11. The Committee takes note of the State Party's position regarding the non-inclusion of the full substance of the Convention within the State Party's domestic legal order and that there is no obligation for States Parties to make the Convention itself part of their domestic legal order. It is concerned that the State Party's courts will not give legal effect to the provisions of the Convention unless the Convention is expressly incorporated into its domestic law or the State Party adopts necessary provisions in its legislation.

The Committee recommends that the State Party review its legislation in order to give full effect to the provisions of the Convention in its domestic legal order.

The UN Convention on the Elimination of all forms of Racial Discrimination (CERD) has still not been incorporated into UK domestic law nor does a right of individual petition arise from any breach of their terms by the UK. None of the UK courts will give recognition to their obligations under CERD unless they are expressly incorporated into UK law. The Race Relations Act 1976 and the Race Relations (Amendment) Act 2000 do not provide a comprehensive code against race discrimination.

We are particularly disappointed that the Government continues to refuse to make a declaration under ICERD Article 14, in order to allow individual petitions to be made under the Convention. These rights of individual petition would provide an important enforcement mechanism.

The Government has recently reviewed their implementation of International Human Rights Instruments; this did not result in the full substance of the Convention being incorporated into UK law.

12. The Committee also reiterates its concern over the fact that the State Party continues to uphold its restrictive interpretation of the provisions of article 4 of the Convention. It recalls that such interpretation is in conflict with the State Party's obligations under article 4(b) of the Convention and draws the State party's attention to the Committee's General Recommendation XV according to which the provisions of article 4 are of a mandatory character.

In the light of the State Party's recognition that the right to freedom of expression and opinion are not absolute rights and in the light of statements by some public officials and media reports which may adversely influence racial harmony, the Committee recommends that the State Party reconsider its interpretation of article 4.

Policies regarding dissemination of racist ideas play an important role in the prevention of racism. Now that the UK is bound by the ECHR under the terms of the HRA the provisions of Article 10 will regulate the rights in relation to freedom of expression. The case of *Jersild v Danmark*¹ shows that Article 4 ICERD rights do have to be balanced against Article 10 ECHR rights. However, the right to freedom of expression though exceedingly important is not an absolute right. Both the words of the Convention and the jurisprudence of the Court show that restrictions are permissible.

It is right that domestic law requires a balance, but compliance with CERD requires at least that there are adequate mechanisms to ensure that such a balance is struck. We believe that this is not happening. The Government recognises the negative impact of racism in our society and has backed this up with anti-discrimination legislation and considerable resources. It is therefore disappointing that these gains are constantly undermined by the negative impact created by the asylum and immigration debate with its focus on keeping asylum seekers and potential immigrants out, or at least wholly separate from the rest of the population of the UK. The considerable hostility against asylum seekers is exacerbated by the constant message from Government that their presence is a 'problem' requiring control. They do not receive protection as a class under the RRA.

The Department for Constitutional Affairs did undertake a substantial review of the UK's position under various human rights treaties, they considered article 4 of the ICERD and concluded in July 2004 that 'any additional legislation is unnecessary...'

¹ (1994) 19 EHRR 1.

13. The Committee is concerned about the increasing racial prejudice against ethnic minorities, asylum seekers and immigrants reflected in the media and the reported lack of effectiveness of the Press Complaints Commission to deal with this issue.

The Committee recommends that the State Party consider further how the Press Complaints Commission could be made more effective and could be further empowered to consider complaints received from the Commission for Racial Equality as well as other groups or organizations working in the field of race relations.

The Committee further recommends that the State party include in its next report more detailed information on the number of complaints received for racial offences as well as the outcome of such cases brought before the courts.

14. The Committee remains concerned by reports of attacks on asylum seekers. In this regard, the Committee notes with concern that antagonism towards asylum seekers has helped to sustain support for extremist political opinions.

The Committee recommends that the State Party adopt further measures and intensify its efforts to counter racial tensions generated through asylum issues, inter alia by developing public education programmes and promoting positive images of ethnic minorities, asylum seekers and immigrants, as well as measures making the asylum procedures more equitable, efficient and unbiased.

As we have noted above policies regarding dissemination of racist ideas play an important role in the prevention of racism. Currently, the Code of Practice on discrimination for the media, enforced by the Press Complaints Commission, only requires the avoidance of prejudicial, pejorative or unnecessary reference to a person's colour, race or religion so it does not counter racist assumptions or stereotypes. Additionally, the Press Complaints Commission can only consider a complaint if it is made by an individual who is specifically named in a press report, the complaint cannot be considered if it comes from another person or is on behalf of a group.

Article 19, the Global Campaign for Free Expression, has undertaken a research project into the presentation of asylum seekers and refugees in the UK. As part of this project between October and December 2002 they monitored six national newspapers and broadcast news bulletins. Their conclusions indicate that the press encourages racist opinions towards asylum seekers by including statistics without sources; using discriminatory names, labels, and emotive pictures. For example, an article that is headlined to indicate that it is about asylum seekers then refers to the same people as 'illegal immigrants' and 'economic migrants'.² They found that all the pictures used were of men, often with parts of their face covered (because they did not wish to be photographed sometime for fear of repercussions on their family at

² Article 19, 'What's the Story? Sangette: A Case Study of Media Coverage of Asylum and Refugee Issues,' www.article19.org.

home), this presentation made them appear like criminals. There were no pictures of women and children although there were many women and children asylum seekers.

A further study of London commissioned by the Greater London Authority reviewed press coverage between August and September 2003 in national, local and community newspapers and reached similar conclusions³. They found that there was clear evidence that negative, unbalanced or inaccurate reporting in newspapers was likely to promote fear and tension between people of different backgrounds in London. They recommended that *'statutory authorities and others need to find, in co-operation with the press, clearer and more factual ways of presenting information to the public'*.

JUSTICE considers that further action needs to be taken to counter the effects of inaccurate or unbalanced press reporting. We would like to see the Press Complaints Commission able to consider complaints received on behalf of a group of people, as well as complaints made directly by the Commission for Racial Equality.

³ Media in the UK: Image, Community Impact, Assessing the impact of media and political images of refugees and asylum seekers on community relations in London, ICAR, 2004.

15. While noting the rapid implementation in domestic law of the European Race Directive, the Committee is concerned that, unlike the Race Relations Act, the amending regulation does not cover discrimination on grounds of colour or nationality. The Committee is therefore concerned that the emerging situation may lead to inconsistencies in discrimination laws, differential levels of protection according to the categorization of discrimination (i.e. race, ethnic origin, color, nationality etc.), and create difficulties for the general public as well as law enforcement agencies.

The Committee recommends that the State Party extend the amending regulations to cover discrimination on the grounds of colour and nationality. In this context, the Committee also recommends that the State Party consider introducing a single comprehensive law consolidating primary and secondary legislations, to provide for the same protection from all forms of racial discrimination, as enshrined in article 1 of the Convention.

Although this anomaly has been the subject of widespread criticism no action has been proposed to remedy this. So there are currently two different standards operating in relation to race discrimination: where the Race Relations Act 1976 protects against discrimination on the grounds of '*colour, race, nationality or ethnic or national origins*', the 2003 Amendment Regulations cover only '*race or ethnic or national origins*'. Different definitions and burdens of proof apply to those groups covered by the new Regulations compared with those only covered by the Race Relations Act 1976. Not only does this affect individual cases, it also adds to the complexity of the law and related guidance (such as the CRE's proposed 'Code of Practice on Racial Equality in Employment') with implications for the ability of organisations and individuals to understand and comply with the law. When the amendment was introduced by Regulation, it was argued that there was insufficient parliamentary time to introduce new legislation that would have provided consistency. In 'Equality and Diversity: The way ahead' (October 2002) the Government acknowledged that implementing the EU Race Directive by regulation meant that its provisions could not be applied to colour and nationality, but gave an assurance that its intention was to '*rectify any inconsistencies that occur in the amended Race Relations Act as a result when an opportunity arises.*'

JUSTICE has proposed that the forthcoming CEHR Bill presents the right opportunity to remove this inconsistency in the law, which is confusing for employers and the general public and creates difficulties for legal practitioners.

16. The Committee is concerned about the application of Section 19 D of the Race Relations Amendment Act of 2000(RRAA), which makes it lawful for immigration officers to ‘discriminate’ on the basis of nationality or ethnic origin provided that it is authorized by a Minister. This would be incompatible with the very principle of non-discrimination.

The Committee recommends that the State Party consider re-formulating or repealing Section 19 D of the RRAA in order to ensure full compliance with the Convention.

Several Ministerial authorisations have been made under section 19D of the Race Relations (Amendment) Act 2000. They permit discrimination in

- the examination of passengers and the setting of removal directions on the grounds of nationality;
- prioritising asylum casework on the basis of nationality or ethnic or national origin;
- singling out persons of listed nationalities for language analysis testing; and
- setting a reserved quota for accession countries nationals in relation to a new sector-based employment scheme.

More recent ones are targeted particularly at people of Somali origin and other listed nationals who are deemed to have some form of immigration status in another EU Member State and claim asylum in the UK.

We will comment briefly on the general authorisation allowing prioritisation in the examination of passengers and on the two more narrowly defined authorisations against specific nationals.

Examination of passengers

Discrimination in the examination of passengers of a listed nationality is allowed where this is justified by statistical evidence or specified intelligence showing a pattern of abuse, refusals or negative decisions above a particular threshold. The conditions for inclusion of a nationality on the list have been repeatedly amended, lastly in February 2004. Under this authorisation, nationalities will be prioritised if adverse decisions and immigration breaches reach more than 50 in total and 5 of every 1,000 admitted persons of a particular nationality. The inclusion on the list of relevant nationalities is approved each month by the Minister. In January 2003, the list comprised less than 60 nationalities. The nationalities on the list are not publicised.

The Independent Race Monitor in her Annual Report 2003/4 raised concerns about the operation of the general authorisation, which allows discrimination by nationality in the examination of arriving passengers. She found some indication that Immigration officers are checking nationals from listed countries more closely and are more likely to doubt the reasons given for entry. Accordingly, we share her views that the use of information on adverse decisions and abuse becomes self-reinforcing and welcome her undertaking to examine further whether increasingly restrictive standards are being applied to passengers from suspect nationalities.

Measures targeting specific nationalities

We are particularly concerned about two authorisations added in February 2004. One allows documents of passengers of Somali origin to be more closely examined. The second allows officials to give additional examination to nationals of Somalia, Turkey,

Iran, Iraq and Sudan, the five nationalities most subject to third country action, who have claimed asylum in the UK having previously registered in another EU member state.

People of Somali origin have become the target of particular checks at ports to establish a better evidence base about routes and methods of entry to the UK. The authorisation made in February 2004 enables immigration officers to examine more rigorously passengers who arrive in the UK using travel documents which show their place of birth to have been in Somalia. These arrangements target Somalis with permission to live elsewhere in the EU and may be critical of equality of treatment in Community free movement law as they appear to allow to discriminate between EU/EEA nationals on the basis of ethnic origin.

The second authorisation, also made in February 2004, covers the top five nationalities most subject to third country action (Iraq, Turkey, Iran, Somalia and Sudan). Immigration officers can compare fingerprints of asylum seekers of these five nationalities against other EU countries fingerprint databases of asylum seekers, failed asylum seekers and those granted some form of leave to remain. This change also allows immigration officials to compare details of asylum seekers from the five prioritised nationalities with the details of individuals originally from those countries but now holding a form of immigration status elsewhere who have been granted a visa to travel to the UK. The Home Office alleges that significant numbers of asylum applicants from these five nationalities are entering the country on legitimate EU or other Western countries' documents and subsequently claim asylum.

The Independent Race Monitor has not yet examined the operation of these authorisations. However, she has raised concerns about the high rate at which appeals against initial asylum decisions in respect of certain nationals are upheld, which raises questions about the quality of Home Office decision-making and as to whether restrictive standards are not being applied to some nationalities in particular. In respect of nationals being targeted under the February 2004 authorisation, data for 2003, for instance, show that while 64 per cent of initial decisions against Somalis were refused, 38 per cent of appeals were allowed.⁴ The rate is high also in respect of the other nationalities targeted, except for Iraqis.⁵

⁴ Home Office Statistical Bulletin, Asylum Statistics – United Kingdom 2003, 24 August 2004.

⁵ The refusal rate for Sudan is 82 per cent, while 38 per cent of appeals are allowed; figures for Iran are 93 per cent refused, 30 per cent allowed; Turkey 87 per cent refused, 29 per cent allowed.

17. The Committee is deeply concerned about provisions of the Anti-Terrorism Crime and Security Act which provide for the indefinite detention without charge or trial, pending deportation, of non-UK nationals who are suspected of terrorism-related activities.

While acknowledging the State Party's national security concerns, the Committee recommends that the State Party seek to balance those concerns with the protection of human rights and its international legal obligations. In this regard, it draws the State Party's attention to the Committee's statement of 8 March 2002 in which it underlines the obligation of States to 'ensure that measures taken in the struggle against terrorism do not discriminate in purpose or effect on grounds of race, color, descent, or national or ethnic origin'.

Part 4 of the Anti-Terrorism Crime and Security Act 2001

JUSTICE supports the concerns expressed by the Committee in respect of Part 4 of the Anti-Terrorism Crime and Security Act 2001.⁶ In July 2002, the Special Immigration Appeals Commission ('SIAC') found that:⁷

There are many British nationals already identified – mostly in detention abroad – who fall within the definition of 'suspected international terrorists', and it was clear from the submissions made to us that in the opinion of the [Secretary of State] there are others at liberty in the United Kingdom who could be similarly defined.

On this basis, it found that Part 4 was in breach of Article 14 ECHR as it was discriminatory on the grounds of national origin. Although the Court of Appeal later overturned this ruling, it did not interfere with SIAC's finding of fact – that the same threat of terrorism was presented by certain UK nationals as by foreign nationals alleged to be terrorists under Part 4. If this analysis is correct, and the government has concluded that it is not necessary to subject UK nationals to the same regime of indefinite detention, then it is difficult to avoid the conclusion that it was not strictly necessary to detain the foreign suspects in the first place.

We note that, since the Committee made its recommendations, the necessity of the indefinite detention of foreign nationals under Part 4 has also been strongly questioned by the Privy Counsellors Review Committee appointed to review the Act,⁸ and by the UN Committee Against Torture.⁹ At the time of writing, the matter is currently under appeal to the House of Lords and a judgment is expected shortly.

⁶ For a full account of JUSTICE's criticisms of the government's counter-terrorism measures, see JUSTICE, *Counter-terrorism powers: reconciling liberty and security in an open society – response to consultation* (August, 2004).

⁷ *A, X, Y and others v Secretary of State for the Home Department* (unreported, 30 July 2002).

⁸ Privy Counsellors Review Committee, *Anti-Terrorism Crime and Security Act 2001 Review: Report* (HC100: 18 December 2004).

⁹ See paras 4(e) and 5(h), UNCAT, *Conclusions and recommendations of the Committee re United Kingdom*, 33rd Session, CAT/C/CR/33/3, 25 November 2004.

18. While the Committee welcomes the initiatives taken for further reforms within the police force, including enhanced representation of ethnic minorities, it recalls its previous concerns about the disproportionately high incidence of deaths in custody of members of ethnic or racial minority groups.

The Committee invites the State Party to submit in its next periodic report detailed information on the new police complaints system; the new Police Complaints Commission (IPCC) which will be fully operational from April 2004; the number of complaints involving racial discrimination referred to the IPCC, including deaths in custody; and the outcome of these complaints as well as the disciplinary measures taken in each case. It also encourages the State Party to adopt measures conducive to integrating the different ethnic and racial representation within the police force.

Recruitment and Retention of Police

JUSTICE considers that it is clearly important to have a police force that at least reflects the racial make up of the areas being policed. It is rightly recognised that to be a credible and respected force the make up of the police force as a whole needs to reflect all the minorities within the population as a whole. Efforts have been made to recruit more ethnic minority officers and recruitment targets have been set which aim to achieve a 7% representation of ethnic minority officers nationally by 2009¹⁰. Between 2001 and 2002 there was a 14 % rise in the recruitment of ethnic minority officers, however, the proportion of ethnic minority officers was still only 2.6% in March 2002 and they remain concentrated in the lower grades.¹¹

To this end the Government has initiated a series of action plans the latest being 'A Strategy for improving performance in race and diversity 2004-2009: the Police Race and Diversity Learning and Development Programme'. Additionally, a new recruitment process to eliminate the recruitment of racist officers has also been introduced. These processes are already in place in 13 forces and are being phased in across the remainder of the service. Candidates' attitudes towards race and diversity are tested at least seven times across all exercises in the new assessment centre, including at interview.

The Commission for Race Equality decided to launch a formal investigation into the Police Force on December 16th 2003 following an undercover television programme which exposed overt racism amongst police trainees and within the training college. The initial phase of the investigation looked at the race equality schemes adopted by a sample of 15 police forces and 5 police authorities. They found that only one of the 15 police forces and none of the police authorities had race equality schemes adequate to comply with their obligations under the RRAA. JUSTICE believes that it is vital that all police forces and police authorities should urgently take steps to put in place effective and appropriate race equality schemes.

Whilst it is important to recruit sufficient ethnic minority police officers it is also vital to retain and promote them, in this area the Government seems to be particularly failing. In 2000/2001 (the latest figures available from the HMIC with a reliable split by ethnicity) the resignation rate was 2% for ethnic minority officers compared to 1.1%

¹⁰ Dismantling Barriers, Home Office, www.homeoffice.gov.uk

¹¹ Ibid

for all other officers¹². There are an alarming number of Black police officers making complaints of discrimination, worryingly including high profile officers active in the Black Police Officers Association¹³. See, for example, the case of Supt Ali Dizaei. The Metropolitan Police Force accused him of corruption and spent four years pursuing him during which they took two failed criminal prosecutions against him. His case has been investigated by the Independent Police Complaints Commission who concluded that '*disproportionate resources*' were put into covert surveillance of him and '*there were grievous errors of judgement of judgement in the handling of his case*'. The Morris Inquiry is currently looking into into professional standards and employment matters in the Metropolitan Police Service. It is due to report on December 14th 2004. Many of its recommendations may be relevant to other Police Forces throughout England and Wales.

JUSTICE considers that if the police are to be able to retain ethnic minority police it is important to respond quickly and effectively when grievances are raised about discriminatory treatment. When a grievance procedure takes too long, or the recommendations about remedial action take too long to be implemented the chance of losing the services of the officer must be increased.

Deaths in Custody

All deaths in custody are a cause for concern; however, it is the deaths in police custody that show some disproportionality, rather than deaths in prison custody¹⁴. Furthermore, of the deaths in police custody a high proportion of the cases involving the excessive use of force or serious neglect involve Black or Afro-Caribbean people. This is the area where attention needs to be focussed.

Both anti-racist and human rights organisations are concerned about the failure of the state to prosecute deaths in custody and the failure to do so successfully. The victims' family members often feel excluded from the process of prosecution and investigation. Often, the circumstances reveal an attempt to avoid blame and disclosure, rather than a search for the truth, resulting in a reduction of public confidence in the system and anger and fear towards the criminal justice system. This defensive approach also prevents the agencies involved from learning the lessons in order to prevent further deaths.

Moreover, the shortcomings in the current system of investigating and providing remedy for deaths in custody violates Article 2 of the European Convention on Human Rights, which provides the right to life and creates an affirmative duty on the state to secure life, especially when in custody. The state has failed in its duty if it does not investigate the death properly and then put in place remedial action.

The Independent Police Complaints Commission is now operational and it includes an element of independent investigation. It is not clear how the new system will work. A recent study conducted by Liberty notes that the new system, like the present much criticised inquest system, may not provide disclosure to the family members regarding the investigation. Moreover, since the findings and recommendations of the Coroner's Court are not published, recommendations for follow up and changes are difficult to monitor.

12 Retention of Police Officers : a study of resignations and transfers in ten forces, C Cooper & S Ingram, Home Office RDS Occasional Paper no 86, May 2004.

13 For example, the cases of Viridi, Desai and Logan.

14 In 2003 12.5% of the deaths in police custody in England and Wales were of black people compared to 9.9% in the population generally. In 2003 8% of the deaths in prison custody in England and Wales were of Black people, while 25% of the prison population were Black (this figure does not include Black foreign nationals).

There is a separate cause for concern in the disparity in the number of Black prisoners as compared to White prisoners and the allegations of racism within the prison service. The CRE published an extremely critical report on the prison service in December 2003 following its investigation into HMP Brixton, Feltham Young Offenders Institute and HMP Parc. Publishing the report, CRE Chair Trevor Phillips commented:

One in four prisoners is from an ethnic minority, compared with one in eleven amongst the whole population in England and Wales. And worryingly, this disproportion is growing. Between 1999 and 2002, the total prison population grew by just over 12%, but the number of black prisoners rose by over 50%. This is therefore an issue that we cannot afford to ignore.

What's most shocking about this report is that, despite numerous wake-up calls, Prison Service managers persistently failed to tackle racism in their institutions and that very often they also failed to implement their own policies on racial discrimination, abuse and harassment.

JUSTICE welcomes the judgment of the House of Lords which affirmed the need for an independent judicial inquiry into the death in custody of Zahid Mubarek. The inquiry was set up by the Home Secretary, on 29 April 2004, following a ruling by the House of Lords, in October 2003, that the state was under a duty to publicly investigate, with effective participation by Zahid Mubarek's family, the death of Zahid Mubarek in custody at Feltham Young Offenders Institute. This overturned a decision by the Court of Appeal, in March 2002, that no public inquiry was necessary because a sufficient investigation had already been carried out. JUSTICE considers that a judicial inquiry is always necessary in such circumstances.

19. The Committee is concerned that a disproportionately high number of 'stops and searches' are carried out by the police against members of ethnic or racial minorities.

The Committee encourages the State Party to implement effectively its decision to ensure that all 'stops and searches' are recorded and to give a copy of the record form to the person concerned. The Committee invites the State Party to address this issue in more detail in its next periodic report.

Although stop and search policies are drafted so as to be race neutral, in their application they disproportionately affect Blacks and Asians. They are seen as important powers because they enable the police to investigate a suspected crime without having to embark on the full procedures entailed in an arrest. However, the discretion that this involves can be misused, and easily gives rise to fears of misuse. Hence, the disproportionality in 'stops and searches' continues to give rise to concern. Figures published in July 2004 showed that despite efforts to address racism in this area people from black and ethnic minority communities are more likely to be stopped and searched, are under represented in the Police Force and are more likely to be victims of crime.

Home Office research for 2002/03 found:

- Black people are six times more likely to be searched by police than white people. There are almost twice as many searches of Asian people than white people.
- Stops and searches under Police and Criminal Evidence Act 1984 of black people went up by 38 per cent, Asians by 36 per cent, 'other' ethnic backgrounds by 47 per cent and white by 17 per cent.
- Stops and searches under s.44 of Terrorism Act 2000 for Asians have risen by 302 per cent from 744 to 2,989.
- All black and minority ethnic groups continue to be under-represented in the police service.
- More people from ethnic minority and black communities than white believe the criminal justice system is effective in bringing people to justice and reducing crime¹⁵.

The disproportion in the stop and search figures does give rise to resentment within the black and ethnic minority communities who are already the communities likely to be most at risk of being victims of crime¹⁶. Such resentment will not help the development of good community relations. The Government has formed a Stop and Search Action team to ensure that the use of this power '*is used as effectively as possible in the prevention and detection of crime*'. Seven Police Services are currently running pilot projects giving a written record to anyone that they stop. The pilot projects are being run in the Metropolitan Police Force, Sussex, Nottinghamshire, West Yorkshire, West Midlands, North Wales and Merseyside. The

¹⁵ Statistics on Race and the Criminal Justice System - 2003, Home Office, 2004.

¹⁶ Ethnicity, victimisation and worry about crime : findings from the 2001/02 and 2002/03 British Crime Surveys, Research Development and Statistics Directorate, June 2004.

recording of stops will come into effect in April 2005 and guidance has been published on this. This will implement recommendation 61 of the Stephen Lawrence report and will ensure greater transparency in the use of these powers. It is worrying that the Metropolitan Police Federation, which represents officers, has criticised this scheme because it *'uses up valuable officer time'*.

The Independent Police Complaints Commissioner has observed:

Many police officers now use it properly to help catch criminals but the poorly-supervised and speculative use of stop and search can quickly become intrusive and oppressive. If this then alienates whole communities from the police, law enforcement is less, not more, effective. Both sides lose out. The communities feel unsafe and discriminated against and the police lack co-operation and intelligence from the public¹⁷.

It is clear that the operation of this policy should be closely linked to intelligence received. Figures for 2001/2 show that very few of these stops actually resulted in arrests. According to the Home Office, 87 % of the people stopped were found not in violation of any law¹⁸. The use of stop and search powers need to be exercised more carefully, the recording of stops and searches when it comes into full effect in April 2005 needs to be monitored, where officers are found to have made excessive use of this power and their actions have not led to the apprehension of any crime then they should be subject to re-training.

¹⁷ IPCC Press Release, June 5th 2004.

¹⁸ See Stop and Search Statistics 2001/2, Home Office

20. The Committee notes that the State Party recognizes the intersectionality of race and religious discrimination, as illustrated by the prohibitions of discrimination of an ethnic nature against such communities as Jews and Sikhs and recommends that religious discrimination against other immigrant religious minorities be likewise prohibited.

The differential protection afforded to Jews and Sikhs compared to those of other faiths under the Race Relations Act 1976 has been widely criticised, JUSTICE considers that it is likely to be contrary to the Article 14 taken with Article 9 of the European Convention on Human Rights, and should be rectified at the earliest opportunity. This means that not only do we need to have this legislation, but also the legislation itself needs to provide protection that is equal to that already available to Jews and Sikhs. The UN CERD committee was particularly concerned about the omission of protection from discrimination in the fields of access to goods, facilities and services for religious minorities.

The Government have recently announced that they '*will put an end to religious discrimination in the provision of goods, facilities, services and premises*'. JUSTICE has welcomed this proposal. However, in order to achieve consistency in this area of law we believe that it is important that:

- **the same definition of religion or belief that is used in the Employment Equality (Religion or Belief) Regulations 2003 in the employment context is adopted,**
- **the same concepts, namely, direct and indirect discrimination, harassment and victimisation are used, and that**
- **any new legislation has a clause parallel to section 19B-C of the Race Relations Act 1976.**

JUSTICE considers that the provisions in relation to goods, facilities, services and premises should adopt exactly the same criteria for manifestation as apply to discrimination in the employment field, namely, direct and indirect discrimination, victimisation **and** harassment. The reasons for this are:

- These criteria already apply to Jews and Sikhs – what justification could be shown for applying a lesser level of protection to Muslims or Buddhists?
- These definitions are widely understood by the general public and well understood and defined by the Courts and tribunals,
- To adopt slightly different criteria in respect of one aspect of discrimination law makes it harder to explain and less easy for the general public to understand.

The Employment Directive does not cover goods, facilities and services nonetheless we recommend that in implementing these changes the latest standards and definitions are used both for 'indirect discrimination' and for 'harassment'. To adopt a lesser standard in respect of these because the EU has not yet legislated will increase the complexity of the law and suggest that religious groups other than Jews and Sikhs are worthy of less protection. We believe that it is important to bear in mind that the more small distinctions are made between different classes of people the longer it takes to explain the legal position to civil society. Employers already have to apply the provisions of the Employment Equality (Religion or Belief) Regulations 2003 in respect of their employees, to extend the same provisions to those to whom they provide goods and services must be easier than having to learn and apply a different set of standards. It is unrealistic to expect them to meet different standards

when they are providing goods and services to the public. Moreover, there is every reason to believe that the European Commission will in time recommend parallel legislation on grounds of religion or belief just as it has done in relation to sex. Achieving this level of protection now will therefore ensure that the UK is well prepared for the next step.

In particular, we would suggest that the definition of indirect discrimination should adopt the newer concepts of 'provision, criteria and practice' because this is the most widely used definition that will take account of those practices that are less absolute and do not amount to a 'requirement or condition'¹⁹. Experience has shown that institutional racism tends to arise from unwritten procedures and practices which are often insufficiently absolute or fixed to be caught by the definition of a 'requirement or condition'. This is likely also to be the case in relation to discrimination on grounds of religion or belief.

JUSTICE considers that the civil wrong of 'harassment' is a vital weapon to help protect religious and belief groups from unwarranted behaviour on the grounds of their religion or belief. In the past the law on harassment has been treated as a type of direct discrimination described as a 'particularly degrading and unacceptable form of treatment'²⁰. The recognition of 'harassment' as a separate wrong has only come since the implementation of the recent Race and Employment Directives. It should cover times when a housing officer persistently makes anti-Muslim remarks when a Muslim tenant comes into the office to request that repairs be done to her property or a school meals supervisor makes offensive remarks to a Catholic pupil who refuses to eat meat on a Friday or makes derisory remarks about those who will not eat pork. These are not examples where the criminal law has any role to play, they are not sufficiently serious, but they are examples where the civil law should be able to offer remedies where there is repeated discriminatory behaviour or a sufficiently serious single incident.

Public Duties

JUSTICE considers that the new duties should be extended to cover the same ground as section 19B-C of the RRA so that it would be unlawful for a public authority in carrying out any functions of the authority to do any act which constitutes discrimination on grounds of religion or belief. It is particularly important that provisions to counter discrimination on grounds of religion and belief should extend to these areas as public services, such as policing, are seen by minority religious groups as an area where discrimination can occur.

Exceptions

JUSTICE considers that in principle there should be a general service requirement (similar to the genuine occupational requirement for employment) which imposes a stringent test of when a religion or belief requirement can be justified. A statutory Code of Practice, building on the current Code of Guidance for employment prepared by ACAS, produced by the CEHR, could give examples of the occasions when it is permissible to discriminate and thus provide greater certainty. Any additional specific exceptions should be kept to a minimum and be very closely scrutinised to ensure that they are unavoidable and justifiable.

¹⁹ For examples of cases that deal with the limitations of the concept of 'requirement or condition' see *Perera v Civil Service Commission (no2)* [1983] IRLR 166 and *Meer v Tower Hamlets LBC* [1988] IRLR 399.

²⁰ See *Porcelli v Strathclyde RC* [1986] IRLR 177.

The Northern Ireland discussion paper *A Single Equality Bill for Northern Ireland: Discussion Paper on options for a Bill to harmonise, update and extend, where appropriate, anti-discrimination and equality legislation*, considers the advantages of clarity and certainty achieved by a listing approach which does not take account of future needs and cannot adapt to changing circumstances compared to the flexibility of a general service requirement. In this we are conscious that anything not listed will not be covered which may lead to the omission of situations that it may be desirable to cover and which would have been covered by a more general service requirement, as Courts and tribunals tend to interpret lists strictly without any leeway for changing or unforeseen circumstances.

20 (Cont) The Committee is concerned about reported cases of 'Islamophobia' following the September 11th attacks. Furthermore, while the Committee takes note that the State Party's criminal legislation includes offences where religious motives are an aggravating factor, it regrets that incitement to racially motivated religious hatred is not outlawed.

The Committee recommends that the State Party give early consideration to the extension of the crime of incitement to racial hatred to cover offences motivated by religious hatred against immigrant communities.

Incidents of 'Islamophobia' continue to give rise to concern throughout the UK. For example, it was recently reported that it has cost the Manchester Islamic High School for Girls £24,000 to erect cameras, barbed wire, metal fences and gates to provide some protection from repeated attacks on its premises. This school needed this because it is one of the few Islamic schools in Britain and as such the target of repeated attacks. Currently, there is no law against stirring up religious hatred to such an extent that others are provoked to violence. There is a law that will stop racists doing so.

In July 2004 the Home Secretary announced that he intended to extend the crime of incitement to racial hatred to incitement to religious hatred. These provisions are included in the proposed Serious Organised Crime and Police Bill.

JUSTICE welcomes this development and recommends that the CEHR should be given express statutory standing to give expert evidence on what is likely to stir up racial or religious hatred in any particular context or area. They will then be open to cross-examination on this.

The CEHR could advise on:

- the effect that in its experience religious language will have either generally or in the context of a specific locality;
- It will often be in the position of having the first or early knowledge of the state of religious/race relations in a specific locality. Accordingly it may be able to advise what is the susceptibility of a particular community or section of the community to be stirred up by such language;
- It will usually play a similar role at a national level and therefore where the communication is made in a national context it will be able to advise accordingly;
- It might in a specific case give advice as to whether words were insulting.

JUSTICE considers that there are a number of relevant considerations that should be taken into account in deciding whether to prosecute. They are:

- Tone and content, persuasiveness and cogency,
- Social and political context
- Likely recipients of the communication – their number, susceptibility and predisposition to be stirred up, and
- Method of communication.

These should be considered and reviewed by the Crown Prosecution Service, the Attorney General, and the Department for Public Prosecutions, the prosecuting Counsel and the Judge. We believe that these considerations could be included either in the legislation or in guidance for those operating in this area.

Possible provisions in relation to Attorney-General

In deciding whether to authorise a prosecution the Attorney - General shall balance the rights in Articles 9 and 10 of the European Convention on Human Rights and in particular shall consider whether the act or acts of the proposed Defendant could and would, reasonably foreseeably have given rise to incitement to religious hatred such as to cause a breach of the peace or some other crime by the proposed Defendant or some other person. In reaching his decision the Attorney - General shall consider:-

- the way in which any speech or other means of expression is conveyed,
- the content of such expression,
- the occasion on which it occurred,
- such other matters as he considers relevant to the balance between the rights contained in the Articles identified above, and
- the opinion of the CEHR.

JUSTICE also recommends that there should be regular parliamentary scrutiny through the publication of annual report by the Attorney General giving a racial and religious breakdown of the figures relating to all the cases that have been referred to him and their subsequent progress.

21. While reiterating its satisfaction in connection with the enactment of the Human Rights Act of 1998, the Committee notes that no central body has been established to implement the Act. The Committee considers that the absence of such a body may undermine the effectiveness of the Act.

The Committee invites reference to the earlier commitment of the State Party to consider establishing a Human Rights Commission in order to enforce the Act and the possibility to empower such a Commission with comprehensive competence to review complaints of human rights violations, and recommends early decision in this regard.

JUSTICE welcomes the proposed new Commission for Equality and Human Rights to be set up by the Equalities Bill that will have competence to deal with both equality and human rights issues.

22. The Committee expresses concern about the discrimination faced by Roma/Gypsies/Travellers, which is reflected, inter alia, in their higher child mortality rate, exclusion from schools, shorter life expectancy than the population average, poor housing conditions, lack of available camping sites, high unemployment rate, and limited access to health services.

The Committee draws the attention of the State Party to its General Recommendation XXVII on discrimination against Roma and recommends that the State Party develop further appropriate modalities of communication and dialogue between Roma/Gypsy/Traveller communities and central authorities. It also recommends that the State Party adopt national strategies and programmes with a view to improving the situation of the Roma/Gypsies/Travellers against discrimination by State bodies, persons or organization.

The basis for this criticism lies in a persistent pattern of unparalleled racism, prejudice, discrimination and disadvantage suffered by the Gypsy and Traveller community in the UK, going back a long time. It is as if there has been an institutionalised national disdain for Gypsies and Travellers. Thus, despite requests, there was a refusal to even count them as a separate ethnic group in the census in 2001. Consequently there is no accurate estimation of their numbers. However what is known about the level of their disadvantage provides the real cause for concern:

- Gypsies and Travellers experience worse health than any other sector of the population; their life expectancy is thought to be 10 years lower for men and 12 years lower for women compared to the rest of the population.²¹
- Gypsy and Traveller infant mortality rates are three times the national average.²²
- 80 per cent of children from the Gypsy and Traveller community leave school functionally illiterate. They have great difficulty getting school places, they are disproportionately absent from school and disproportionately likely to be excluded from school.²³
- Only 20 per cent of Traveller children attend school in key stage 3, and less in key stage 4.²⁴

The Commission for Racial Equality estimates that there are between 2-300,000 Gypsies and Travellers in England. Most of the Gypsy and Traveller community in Great Britain are 'Romany Gypsies' who are recognised as a racial group covered by the RRA.²⁵ 'Irish Travellers' are also recognised as a racial group under the Race Relations Act.²⁶ JUSTICE considers that measures to implement the new Race Relations (Amendment) Act 2000 duties on public authorities require active consideration of Gypsies and Travellers, however, most central and local government processes do not measure or monitor their needs. They are thus marginalised from mainstream service provision.

²¹ See Lord Bishop of Chester, Hansard, House of Lords, 5 June 2003.

²² See Lord Hanningfield, Hansard, House of Lords, 5 June 2003.

²³ See Baroness Sharp, Hansard, House of Lords, 5 June 2003.

²⁴ *Moving Forward: a consultation paper on the provision of accommodation for Travellers and Gypsies*, IPPR, 2003, p6.

²⁵ *Commission for Racial Equality v Dutton* [1989] QB 783.

²⁶ *O'Leary v Allied Domecq* (Case no CL 950275-79 unreported). The Race Relations (Northern Ireland) Order 1997 SI no 869 article 5 makes specific provision for the inclusion of Irish Travellers.

Better housing is the essential starting point for countering deprivation and social exclusion. The lack of adequate permanent stopping places must be addressed since it is key to the ability to register for education, health or other social services. In 2003 18% of the Gypsy and Traveller population were technically homeless compared to 0.6% of the settled population²⁷. Many have felt forced into moving into permanent accommodation, which they do not regard as a satisfactory solution.

It is to the Government's credit that some research has been carried out into the existing provision and needs of this community. This research has shown that, in England, of the existent pitches in use about 6,000 are local authority pitches, and 4,800 are private pitches²⁸. Worryingly 26% of these sites are situated next to motorways, 13% next to runways, 8% next to commercial and industrial sites, 12% next to rubbish tips and 4% next to sewage farms²⁹. Additionally, there are about 2,000 unauthorised pitches in England³⁰. It is not surprising that they suffer such poor health. The CRE have estimated that an extra 3,000 to 4,500 extra pitches on public sites will be needed in the next three years³¹.

Historically, the Caravan Sites Act 1968 provided that local authorities had to make provision for adequate public sites in their area. This did improve the provision of sites although many local authorities failed to make provision because of local resistance, the perceived inadequacy of the grant from central government and the weakness of the enforcement mechanisms. In 1994 this Act was repealed and replaced by the Criminal Justice and Public Order Act 1994 which lifted this legal obligation on local authorities and withdrew central government funding to provide sites. As a result, some local authorities privatised or closed many of the legal stopping places, forcing families back into a cycle of trespass and eviction. The Act was supposed to encourage Gypsies and Travellers to buy their own sites and obtain planning permission for them. This has not happened and is not the right way forward. A system that relies on self-provision of private sites in unplanned locations cannot be an appropriate way to meet the needs of the community. In any event there is clear evidence of discrimination operating within the planning system. Research in 1999 showed that whereas planning applications normally have an 80% success rate, only 10% of Gypsy and Traveller applications are initially successful³². This has led many to set up sites without seeking planning permission, thus creating further community tension and bad feeling.

The Institute for Public Policy Research, in a recent report, has suggested that:-

- networks of sites should be set up across local authorities, co-ordinated by the regional development agency;
- regional housing strategies should consider the need for sites, with funding provided through regional housing boards; and
- part of a local authorities funding for social housing should be made conditional on them providing the necessary sites for Gypsies and Travellers³³.

27 Moving Forward : a consultation paper on the provision of accommodation for travellers and Gypsies, IPPR, 2003, p6, quoting figures from the Office of the Deputy Prime Minister Gypsy Court in January 2003.

28 Memorandum by the Office of the Deputy Prime Minister to the Select Committee of the ODPM inquiry into Gypsy and Traveller Sites, May 2004, paras 4.7 and 4.12.

29 P Niner, The Provision and Condition of Local Authority Gypsy/Traveller Sites in England, 2002, ODPM.

30 Memorandum by the Office of the Deputy Prime Minister to the Select Committee of the ODPM inquiry into Gypsy and Traveller Sites, May 2004.

31 Gypsies and Travellers: A Strategy for the CRE,2004-2007.

32 T Williams, Private Gypsy Site Provision, 1999, ACERT

33 Moving Forward : the provision of accommodation for Travellers and Gypsies, H Crawley, IPPR, 2004.

The impact of the Human Rights Act 1998

The development of a human rights culture has exposed existing legislation relating to the rights of Gypsies and Travellers in the UK to greater scrutiny. These cases have highlighted some of the particular problems encountered by Gypsies and Travellers.

In *Clarke v Secretary of State for Environment Transport and the Regions and Tunbridge Wells BC*³⁴ the Council had refused planning permission to site a Romany Gypsy caravan in a special landscape area. A planning inspector had dismissed the Gypsies appeal and this was challenged in the High Court. A particular ground of appeal was that the Planning Inspector appeared to have taken into account that the Appellants had previously refused an offer of permanent conventional housing. Such a consideration would not normally be raised or taken into account in any planning enquiry. Mr Justice Burton said:

The question here must be whether the availability, and/or the refused offer, of unsuitable accommodation should have been held against this Appellant...in my judgment...it can amount to a breach of Articles 8 and 14 to weigh in the balance and hold against a Gypsy applying for planning permission, or indeed resisting eviction from Council or private land, that he or she has refused conventional housing accommodation as being contrary to his or her culture. ... in my judgment, bricks and mortar, if offered, are unsuitable, just as would be the offer of a rat infested barn. It would be contrary to Articles 8 and 14 to expect such a person to accept conventional housing and to hold it against him or her that he has not accepted it, or is not prepared to accept it, even as a last resort factor. ..this does not mean that in such a case planning permission must or will be granted.

This case was appealed to the Court of Appeal but the appeal was dismissed. However, the issues about what constitutes a remedy for 'homelessness' for a Gypsy or Traveller remains a live issue. The Homelessness Act 1996 provides that Gypsies without an authorised place to stop are 'homeless' for the purposes of the Act, however, the Act does not make provision about what form of housing the local authority has a duty to offer.

This has been followed by *First Secretary of State and ors v Chichester District Council*³⁵. Unusually, this case concerns a situation where the planning inspector, having considered the Applicants Article 8 rights, granted planning permission for the use of land as a private Gypsy site. The Council successfully appealed against this decision, the First Secretary of State joined the Applicants in their appeal to the Court of Appeal. The Court ruled, by a majority, that Article 8 was clearly engaged in respect of the caravans that were their homes, that the inspector was entitled to balance the limited environmental harm caused by the site against the personal circumstances of the applicants and the fact that the local authority had failed to meet its policy objective of providing an adequate number of Gypsy sites.

In *R (Price) v Carmarthenshire CC*³⁶ Mrs Price, an Irish Traveller, had made a homelessness application; the local authority offered her a house. She rejected the

34 [2001] EWHC Admin 800, 9th Oct 2001

35 [2004] EWCA Civ 1248.

36 [2003] EWHC 42 Admin, 24th Jan 2003.

offer. The local authority then took action to evict her from the unlawful encampment that she was occupying. The High Court quashed the eviction action saying:

In order to meet the requirement to accord respect [for article 8 rights] something more than 'taking account' of an applicant's Gypsy culture is required...[R]espect includes the positive obligation to act so as to facilitate the Gypsy way of life, without being under a duty to guarantee it to an Applicant in any particular case.

Unfortunately this case has been followed by the case of *Codona v Mid-Bedfordshire DC*³⁷ when the Court of Appeal, whilst approving the case of *Price*, ruled that a local authority offer of accommodation in bed and breakfast premises for a limited period would be appropriate for a Gypsy despite her accepted 'aversion to conventional housing'. It is to be hoped that the House of Lords will clarify the situation.

Security of tenure is another issue that concerns Gypsies and Travellers. The Mobile Homes Act 1983 provided that a person who occupies a caravan or mobile home as their only or main residence can only be evicted by court order when it can be shown that the occupier is in breach of their licence agreement, has failed to remedy this breach within a specified time and it is reasonable for the agreement to be terminated. This protection relates to both occupants of privately owned sites as well as those occupying local authority sites. However, section 5(1) of this Act specifically excludes land run by the local authority as a caravan site for Gypsies from this protection. This was considered by the ECtHR in May in *Connors v UK*³⁸ they concluded:

The serious interference with the applicant's rights under Article 8 requires, in the Court's opinion, particularly weighty reasons of public interest by way of justification and the margin of appreciation to be afforded to the national authorities must be regarded as correspondingly narrowed...However, even allowing for the margin of appreciation ... the Court is not persuaded that the necessity for a statutory scheme which permitted the summary eviction of the applicant and his family has been sufficiently demonstrated by the Government. The power to evict without the burden of giving reasons liable to be examined as to their merits by an independent tribunal has not been convincingly shown to respond to any specific goal or to provide any specific benefit to members of the [G]ypsy community...It would rather appear that the situation in England as it has developed, for which the authorities must take some responsibility, places considerable obstacles in the way of gypsies pursuing an actively nomadic lifestyle while at the same time excluding from procedural protection those who decide to take up a more settled lifestyle...the Court finds that the eviction of the applicant and his family from the local authority site was not attended by the requisite procedural safeguards, namely the requirement to establish proper justification for the serious interference with his rights and consequently cannot be regarded as justified by a 'pressing social need' or proportionate to the legitimate aim being pursued.³⁹

The Government have not yet decided what steps they will take to remedy this situation referring it instead to the consideration of the Office of the Deputy Prime Minister's Inquiry into Gypsy and Traveller sites⁴⁰.

37 [2004] EWCA Civ 925, 15 July 2004.

38 AppIn no 66746/01 May 24th 2004.

39 Paras 86, 94-95.

40 Hansard, June 17th 2004.

JUSTICE believes that what is needed is a strong new duty on local authorities to make provision for Gypsy and Traveller sites, with sufficient security of tenure, throughout the UK, in full consultation with the Gypsy and Traveller community.

23. The Committee reiterates its concern that besides the Roma/Gypsy/Traveller populations, certain other minority groups or individuals belonging to them experience discrimination in the areas of employment, education, housing and health.

The Committee urges the State party to continue taking affirmative measures in accordance with article 2, paragraph 2, of the Convention to ensure equal opportunities for full enjoyment of their economic, social and cultural rights. Moreover, the Committee encourages the State Party to submit in its next periodic report more detailed information on achievements under the State Party's programmes aimed at narrowing the employment gap and improving housing conditions among different ethnic groups.

Education

There has been continuing evidence that Black, Bangladeshi and Pakistani pupils achieve less well than other pupils at all stages of their education⁴¹, and there is also evidence that Black Caribbean pupils are four times more likely to be excluded from school compared to White pupils⁴². By contrast, Indian and Chinese/other Asian pupils do better than their White counterparts⁴³. Bangladeshi, Black and Pakistani pupils in particular achieve less well than others - many of these children enter the school system with equal ability to White children, but underachieve progressively as they go through the school system⁴⁴.

Employment

Ethnic minority unemployment is more than double that of comparable White groups and ethnic minorities are more adversely affected than the White population when unemployment increases as a result of economic downturns⁴⁵.

However, the picture is more complex when different ethnic groups are considered. In 2001 5% of White men were unemployed compared with 13% of Black African or 9% Black Caribbean men, 7% of Indian, 16% of Pakistanis and 20% of Bangladeshi men⁴⁶. These differentials are likely to be partly due to the younger age structure of the Black population⁴⁷ (for men from ethnic minority groups unemployment is much higher amongst the under 25 age group), partly because of the over-representation of Black workers in areas of high unemployment⁴⁸ and partly because of continuing discrimination in the job market. The Policy and Innovation Unit of the Cabinet Office has concluded,

'Given the evidence that has been presented it is undeniable that racial harassment and racial discrimination persist in the UK labour market'⁴⁹.

41 Aiming High : Raising the Achievement of Minority Ethnic Pupils, DfES, 2003.

42 Aiming High : Raising the Achievement of Minority Ethnic Pupils, DfES, 2003 and Statistics of Education : Permanent Exclusions from maintained Schools in England, DfES, 2002.

43 Aiming High : Raising the Achievement of Minority Ethnic Pupils, DfES, 2003 and Improving labour market achievements for Ethnic Minorities in British Society, Performance and Innovation Unit, Cabinet Office, July 2001,p5.

44 Cabinet Office, Ethnic Minorities and the Labour Market Project, (July 2001)

45 See Improving labour market achievements for ethnic minorities in British society, Performance and Innovation Unit, Cabinet Office, July 2001.

46 Census 2001.

47 See Improving labour market achievements for ethnic minorities in British society, Performance and Innovation Unit, Cabinet Office, July 2001, p4.

48 See Ethnic Minorities and the labour market : Final Report, Cabinet Office, 2003, p 10.

49 Ethnic Minorities and the Labour Market: Interim Analytical Report, Performance and Innovation Unit, 2002, p128.

In March 2003 the Cabinet Office Strategy Unit published its final report on *Ethnic Minorities and the Labour Market*⁵⁰. The report and its recommendations are now government policy. The report reviewed the effectiveness of contract compliance requirements in the US and as carried out by the Greater London Council (prior to the Local Government Act 1988). The report acknowledged the role that public procurement could play in improving employment opportunities for ethnic minorities and recommended that guidance should be produced for public authorities. As public authorities now have a duty under the RRA to eliminate discrimination and promote equality of opportunity, they should be expected to use their purchasing power to secure greater employment opportunities for ethnic minorities.

⁵⁰ Ethnic Minorities and the labour market : Final Report, Cabinet Office, 2003.

24. The Committee recalls its General Recommendation XXIX, in which the Committee condemns descent-based discrimination, such as discrimination on the basis of caste and analogous systems of inherited status, as a violation of the Convention, and recommends that a prohibition against such discrimination be included in domestic legislation.

The Committee would welcome information on this issue in the next periodic report.

25. The Committee regrets that no information on the implementation of the Convention in the British Indian Ocean Territory (BIOT) was provided in the State Party's report.

The Committee looks forward to receiving in its next periodic report information on the measures taken by the State Party to ensure the adequate development and protection of the Ilios for the purpose of guaranteeing their full and equal enjoyment of human rights and fundamental freedoms in accordance with article 2, paragraph 2, of the Convention.

CERD criticised the UK for not providing information on the Ilios or Chagos Islanders and they required the UK in its next report to the Committee to provide it. In 2000, when the UN CERD committee had considered the UK's previous report, CERD had called for information in relation to the position of the citizens of the last remaining colonies. However, in the 17th Report the UK did not mention the peoples of the British Indian Ocean Territories, known as the Ilios or Chagos Islanders, who were displaced by the UK to enable the US to set up a military base at Diego Garcia.

The situation of the Chagos Islanders is a matter of grave concern and the Joint Committee should ensure that the Government addresses its full obligations to these unfortunate people.

The circumstances of the displacement of these peoples from their homelands in the Chagos Archipelago is now better known as a result of the judgment of the High Court in *R. v. FCO ex parte Bancoult* and in the later Group Action of the Chagossians.

Following *Bancoult*, the Government set up research to see how these people could be returned to the Archipelago. Meanwhile the group action sought a remedy for the injuries suffered in the course of and as a result of the actions of the UK in displacing these people. In the course of the latter litigation, it became clear that there had been a gross breach of the United Nations Charter. The UN had been misled by the UK into thinking that these people had no rights under it. However this proved not to be justiciable in UK law. In this later case, Ouseley J. concluded that the claims were statute barred. The Chagossians sought to appeal this judgment but, although they were unsuccessful, the Court of Appeal stated that they had received '*shameful treatment...*' pointing out that the '*compensation, ... they have received has done little to repair the wrecking of their families and communities, to restore their self-respect or to make amends for the underhand official conduct now publicly revealed by the documentary record.*'

Despite the requirement in the 2003 CERD Committee Report that the UK should '*ensure the adequate development and protection of the Ilios [Chagossians] for the purpose of guaranteeing their full and equal enjoyment of human rights*', the Government has done the opposite. Without informing the Chagossians, an Order in Council was made in the summer of 2004 which has withdrawn all rights of the Chagossians to return to those islands. The new law totally bans all Chagossians from even stepping foot on their homeland. At the same time the Government granted a right to an international travel company to run a holiday excursion to the islands for those willing to pay a large amount of money. While the Government has made it impossible to permit those born or descended from those born on the islands to visit it has agreed to permit an international travel company Wexas International to visit the islands. It has been reported that the visit was organised by chairman Dr Ian

Wilson, a member of the 'Friends of Chagos', who was approached to run the tour by the island's Commissioner, a Foreign Office appointee⁵¹.

JUSTICE considers that this is a continuation of the shameful treatment referred to by the Court of Appeal.

The Order in Council permanently prohibiting their return took place immediately before the consideration by the Court of Appeal of a civil action for damages in relation to the situation of the Chagossians on being evicted from their islands. It takes away the advantage gained in 2000 by proving their removal was unlawful 30 years ago.

The Minister has said that he has based his decision upon the costs of resettling the islands, as put forward in a preliminary feasibility study which the UK Government commissioned in July 2002, yet this report was carried out without any input from the Islanders. Refugee organizations had been summoned to a meeting with the Minister, following promises of detailed consideration of the future of the islands. Since the Islanders had commissioned a review of the Feasibility Report, they were optimistic that the conclusions would have been considered by the Government.

JUSTICE urges the Joint Committee to ask the Government to review the position of the evicted Chagossians and reconsider the July 2004 Order in Council.

⁵¹ Keenan s. Forced out - Tourists invade 'stolen' islands: Times August 07, 2004; see <http://travel.timesonline.co.uk/article/0,,10295-1204218,00.html>

26. The Committee encourages the State party to continue to consult with organizations of civil society working in the area of combating racial discrimination and during the preparation of the next periodic report.

27. The Committee notes that the State Party is currently reviewing the possibility of making the optional declaration provided for in article 14 of the Convention, and invites the State Party to give a high priority to such a review and to favorably consider making this declaration.

JUSTICE remains disappointed that the Government continues to refuse to make a declaration under ICERD Article 14, in order to allow individual petitions to be made under the Convention. These rights of individual petition would provide an important enforcement mechanism.

28. The Committee recommends that the State party take into account the relevant parts of the Durban Declaration and Programme of Action, and that it include in its next periodic report updated information on the action plan that it is in the process of drafting in order to implement the Durban Declaration and Programme of Action at national level.

29. The Committee recommends that the State party's reports be made readily available to the public from the time they are submitted and that the observations of the Committee on these reports be similarly publicized.

**Gay Moon,
Head of the Equality Project,
JUSTICE.
November 30th 2004.**