

Law Centre (NI) submission to UN Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance.

1. Law Centre (NI) is a public interest law non-governmental organisation. The Law Centre works to promote social justice and provides specialist legal services to advice organisations and disadvantaged individuals through our advice line and our casework services. The Law Centre provides advice, casework, training, information and policy services in different areas of work: employment (including labour exploitation) health and social care and social security. We welcome this opportunity to provide a written submission to Ms Tendayi Achiume as part of her official country visit to the UK and in follow up to the Special Rapporteur's session at Stormont on 10 May 2018.
2. This submission highlights issues in which the Law Centre has direct expertise through its casework and policy functions.

Access to benefits for migrants

3. A number of benefit restrictions have been introduced by Department for Work & Pensions (in Great Britain) and Department for Communities (in Northern Ireland) that have the effect of excluding many migrants from benefits or limiting their entitlement.¹ For example, EEA migrants jobseekers may only receive Jobseekers Allowance for 91 days before being subject to the Genuine Prospect of Work test (92% of jobseekers fail this test). The result of these restrictions is an increase in migrant destitution that places pressures on the voluntary and community sector, which is struggling to provide adequate support to migrants who present as homeless or rough sleepers. The Executive Office's Crisis Fund has proved to be a lifeline for destitute migrants and has demonstrated that small sums at key moments of transition (for example, after losing work, reduced working hours or family breakdown) can provide a significant bridge to allow people to get back on their feet while averting a potentially costly crisis situation.² The Crisis Fund was initially piloted in August – March 2012. Since then, the

¹ Law Centre NI, 'Information briefing: Habitual Residence and Right to reside requirements' (2015) accessible here: <http://www.lawcentreni.org/Publications/Law-Centre-Information-Briefings/Habitual-residence-and-right-to-reside-requirements-January-2015-update.pdf>

² Jude McCann & Neil McKittrick, 'OFMDFM Emergency Fund – Pilot: August 2011 – March 2012' (2012) accessible here: <http://www.communityfoundationni.org/News/Emergency-Fund-report-launched>

Crisis Fund has opened on four other occasions, most recently over the winter of 2017/2018, when the total value of the fund was £100,000. The Crisis Fund is an excellent initiative. We understand it has now been incorporated into the Racial Equality Unit's budget baseline and has become an annual fixture. It would be helpful, however, if the Department could notify the relevant NGOs of the future dates so that they can plan their services accordingly.

- The UN Special Rapporteur may wish to:
 - Urge Department for Work & Pensions and the Department for Communities to give migrants equal access to benefits as British/Irish nationals.
 - Commend the Executive Office for its Crisis Fund initiative and encourage the Department to inform staff of future dates so that they can plan their services accordingly.
- 4. European victims of trafficking and domestic violence face particular difficulties in obtaining benefits. The nature of their circumstances – i.e. the exploitation or abuse they have experienced – may make it difficult for them to satisfy the Habitual Residence Test. The Law Centre notes that non-European victims of trafficking and domestic violence do not face these difficulties.³

- The UN Special Rapporteur may wish to:
 - Urge DWP/DfC to ensure that European victims of trafficking and domestic violence are exempted from the residence tests;

Asylum and refugee matters

5. Northern Ireland is the only part of the UK which does not have a Refugee Integration Strategy. While there are examples of good practice in relation to refugee matters in Northern Ireland, the lack of strategic direction means that there is no coordinated approach at present. We understand that the Executive

³ Non-European victims of trafficking are entitled to apply for Discretionary Leave to Remain which exempts them from the habitual residence test. Non-European victims of domestic violence may avail of the Domestic Violence Concession within the Immigration Rules; again, this provides an exemption from the habitual residence test. See Law Centre (NI), 'Policy Briefing paper: Access to benefits for victims of trafficking' (2017) <https://www.lawcentreni.org/Publications/Policy-Briefings/Access-to-benefits-for-victims-of-trafficking.pdf>

Office is developing a consultation document, however, this piece of work is now long overdue. It is important that the Strategy is clear that the integration of asylum seekers begins from Day One i.e. rather than the point at which refugee status is granted.

- The UN Special Rapporteur may wish to:
 - Recommend that the Executive Office expedites this piece of work and that it issues a consultation without further delay; and
 - Encourage the Executive Office to adopt the position that integration begins from 'day one'.

- 6. Asylum seekers are not permitted to work in the UK despite repeated warnings from the Committee that this is an ongoing violation of their economic and social rights.⁴ The prohibition on work, coupled with the restrictive asylum support system (known as "NASS") leaves adult asylum seekers at risk of prolonged destitution and homelessness. In addition, increasingly asylum seekers are being prevented from studying.⁵
 - The UN Special Rapporteur may wish to:
 - should urge the UK to give asylum seekers access to employment and to increase their daily allowance (asylum support known as NASS). Further, the UK should lift restrictions that prevent asylum seekers from studying.

- 7. In its Concluding Observations issued 2016, the Committee on the Elimination of Racial Discrimination commended the UK on the Syrian Refugee Resettlement Programme.⁶ The Law Centre is pleased to be involved in the VPR programme in Northern Ireland⁷ and welcomes the NI Executive's continued commitment to this scheme. Syrian refugees arriving through this programme receive an excellent standard of care. This is welcome, however, we are concerned that a 'Two Tier'

⁴ Committee on Economic, Social and Cultural Rights Concluding Observations on the UK EC.12/GBR/CO/6

⁵ The BAIL 201 form, which is being issued to all asylum seekers, may include a No Study condition on immigration bail.

⁶ Committee on the Elimination of Racial Discrimination CERD/C/GBR/CO/21-23

⁷ The Law Centre is a member of the Syrian Refugee Consortium which provides a range of services to Syrians arriving into Northern Ireland through the Syrian Vulnerable Persons Resettlement scheme.

system has developed whereby non Syrian VPR refugees receive a lesser standard of care.

- The UN Special Rapporteur may wish to:
 - Commend Northern Ireland for its participation in the VPR scheme; and
 - Recommend that all persons seeking protection in Northern Ireland receive a similar high quality package of support.

Redress for victims of exploitation

5. European nationals are three times more likely to be recognised as victims of trafficking than non-European nationals. The Law Centre considers that the disparity in recognition rate can be attributed to the fact that the UK Human Trafficking Centre makes decisions for European nationals, whereas the Home Office – which is the agency also responsible for immigration enforcement - makes decisions for non-European nationals. In Great Britain, a number of initiatives are being introduced that should assist address this disparity e.g. the introduction of independent panels of experts to review all negative decisions.⁸ However, the lack of government in Northern Ireland thwarts any such developments in this jurisdiction.
6. Domestic and international law requires the UK government and NI Assembly to assist and support victims of trafficking to obtain financial compensation for their exploitation.⁹ However, the Law Centre has identified that there is no straightforward process whereby victims automatically receive compensation. Our view is that the current framework of redress for labour exploitation is not victim centred; this not surprising given that it predates contemporary understanding of trafficking and exploitation.
 - The UN Special Rapporteur may wish to:
 - Commend the Department for Justice for NI's trafficking legislation, namely that victims in this jurisdiction have a statutory entitlement to support;

⁸ <https://www.gov.uk/government/news/modern-slavery-victims-to-receive-longer-period-of-support>

⁹ The Council of Europe Convention on Action Against Trafficking in Human Beings, Council of Europe Treaty Series - No. 197, 2005 and Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims

- Urge Department for Justice to ensure that victims in Northern Ireland are able to avail of the GB measures designed to address the disparity in the recognition rate for non-European and European victims of trafficking.
- Urge the Department for Economy and Department for Justice to ensure that all victims of exploitation have access to redress and financial compensation.¹⁰

Immigration detention

8. Despite the Committee on the Elimination of Racial Discrimination's previous recommendations, the UK has still not introduced a statutory time limit on the duration of immigration detention. In Northern Ireland, immigration detainees can be held at Larne House Short-term Holding Facility for a maximum period of 7 days before being transferred to detention in Great Britain. As immigration is an excepted matter, the bodies that usually oversee / monitor / investigate places of detention in Northern Ireland (such as the Northern Ireland Prison Ombudsman and the Criminal Justice Inspectorate) have no involvement with Larne House. The Law Centre and the NI Human Rights Commission have voiced concerns about lack of oversight of detention to the Council of Europe's Group of Experts on Trafficking and the UN Convention against Torture;¹¹ these concerns remain outstanding.

- The UN Special Rapporteur may wish to:
 - Urge the UK government to introduce legislation that limits the duration of immigration detention;
 - Recommend that the Department of Justice considers introducing oversight mechanism(s) for detention in Northern Ireland.

¹⁰ Law Centre has made a number of recommendations to improve access to labour justice for victims of exploitation. See Law Centre NI, 'Policy Briefing: legal remedies for victim of labor exploitation' (February 2017) <https://www.lawcentreni.org/Publications/Policy-Briefings/Legal-remedies-for-victims-of-labour-exploitation-Law-Centre-NI-Feb-17.pdf>

¹¹ <https://www.lawcentreni.org/Publications/Policy-Responses/GRETA-UK-evaluation-June-2015.pdf> and http://www.nihrc.org/uploads/publications/NIHRC_Submission_UN_CAT_6th_Periodic_Report.pdf

Immigration data and advice

9. The Home Office does not routinely publish immigration or asylum figures that are disaggregated by region (Scotland and Northern Ireland make up one region).¹² The lack of data means that we do not have an overall picture of immigration or immigration enforcement in Northern Ireland. This makes it difficult for the voluntary and community sector to reach those who need their services and also makes it extremely difficult to counter inaccurate information and myths e.g. about the number of people claiming asylum in Northern Ireland.

➤ The UN Special Rapporteur may wish to:

- Urge the Home Office to provide disaggregated immigration data for Northern Ireland.

10. Access to free, specialist immigration advice is a significant problem for migrants living in Northern Ireland. Prior to 2015, the Law Centre was funded by Department of Justice to provide free legal advice and representation. With the demise of this service in April 2015, there is currently only one immigration solicitor in the voluntary and community sector in Northern Ireland. Capacity will increase when Law Centre appoints a part-time immigration solicitor.¹³ This means that the majority of migrants are obliged to contact private practice solicitors; this creates some barriers for migrants (including concerns about fees). In addition to problems around access to advice, unfortunately, concerns have also been raised about the *quality* of immigration legal services.¹⁴ The Institute for Conflict Research 'Brexit and eYou' project has highlighted fears about Brexit's potential impact on European migrants' economic and social rights and calls for improved access to immigration advice.

¹² Northern Ireland Assembly Research and Information Service, 'Asylum seekers and refugees in NI' (6 June 2014, NIAR 348-14)

¹³ In July 2018, LCNI received funding from the Executive Office for a part-time immigration solicitor for one year.

¹⁴ Mary Kerr, 'Improving legal support for asylum seekers in Northern Ireland', May 2016, NISMP and NICRAS, 'Best practice in the provision of immigration legal advice services' (2018)

- The UN Special Rapporteur may wish to:
- Recommend that Department for Justice/Department for Communities establish a publically funded service that provides accessible, specialist immigration advice and information for people in Northern Ireland and the border counties.¹⁵
 - Finally, commend the Department of Justice for retaining legal aid for immigration matters in Northern Ireland (in contrast to the position in GB).

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¹⁵ Law Centre supports this recommendation proposed by Institute for Conflict Research, 'Briefing Paper: Brexit and eYOU: information' (2018)