

**Mandates of the Special Rapporteur on minority issues; the Special Rapporteur in the field of cultural rights; and the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context**

Ref.: OL GBR 2/2022  
(Please use this reference in your reply)

10 February 2022

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on minority issues; Special Rapporteur in the field of cultural rights; and Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context, pursuant to Human Rights Council resolutions 43/8, 46/9, and 43/14.

In this connection, we would like to bring to the attention of your Excellency's Government our concerns about the **Police, Crime, Sentencing and Courts Bill and its compatibility with the State's international human rights law obligations, including the prohibition of discrimination and the rights of minorities.**

According to the information received, in November 2019 the Home Office launched a consultation on "Strengthening police powers to tackle unauthorized encampments", which proposed to introduce new legislation to change trespass from a civil to a criminal offence and/or strengthen police powers under the Criminal Justice and Public Order Act 1994 (CJPOA). The Government response to the consultation was published on 8 March 2021, outlining plans to introduce a new criminal offence of trespass with the intent to reside, and to extend existing powers in the Criminal Justice and Public Order Act, to be introduced by way of the Police, Crime, Sentencing and Courts Bill (PCSCB). The Bill was published on 9 March 2021.<sup>1</sup>

Part 4 of the PCSCB sets out the details of the new offence, to be inserted into Part 5 of the CJPOA. The offence will apply when

- A person aged 18 or over resides or intends to reside on land without consent of the occupier of the land;
- They have, or intend to have, at least one vehicle with them on the land;
- They have caused or are likely to cause significant damage, disruption or distress;
- They, without reasonable excuse
  - o fail to leave the land and remove their property following a request to do so by an occupier of the land, their representative or a constable; or
  - o enter (or, having left, re-enter) the land with an intention of residing there without the consent of the occupier of the land, and with an intention to have at least one vehicle with them, within 12 months of a request to leave and remove their property from an

<sup>1</sup> <https://bills.parliament.uk/publications/44739/documents/1259>

occupier of the land, their representative or a constable.

The Bill would enable the police to confiscate property, including vehicles which constitute homes, on reasonable suspicion of trespass. It also provides for imprisonment for up to three months. Some members of the House of Lords have spoken out against the Bill, and its criminalization of trespass.<sup>2</sup>

The proposals were put forward despite the existence of a range of other eviction powers for encampments, and despite the range of alternative solutions, such as the provision of more sites and stopping places for Gypsy, Roma and Traveller minorities. Allegedly, a majority opposition to the introduction of more punitive powers in the consultation responses was disregarded, and there was an absence of any substantive mitigating measures to these harmful proposals.

It has been reported that the measures outlined in the Bill could in particular further compound the inequalities experienced by Gypsy, Roma and Traveller minorities, needlessly pushing people into the criminal justice system. The Bill does not appear to remedy the reality that many Gypsy, Roma and Traveller minorities do not have places to live in their traditional way, following the closure of traditional Travellers sites. Instead, it introduces measures which would trap many in a cycle of eviction and criminalization. There is concern that the Bill would disproportionately affect these communities, who have been widely recognized as being among the most marginalized and disadvantaged groups.

While we do not wish to prejudge the accuracy of the above-mentioned concerns, we are worried that the Bill, as described above, would have a discriminatory effect, and fail to acknowledge the positive obligation on the State to ensure equal protection of the law to Gypsies, Roma and Travellers. We are further concerned that the Bill would deny Gypsy, Roma and Traveller minorities their right to enjoy their traditional way of life which, as the European Court of Human Rights has already deemed in *Chapman v. UK*, is linked with the enjoyment of a home, as well as with private and family life. It is also an element of their culture, which minorities must not be denied the right to enjoy with other members of their community.

We note that the International Covenant on Civil and Political Rights (ICCPR), ratified by your Excellency's Government in 1976, in its article 26 provides that all persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

Additionally, ICCPR in Article 27 provides that in those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practice their own religion, or to use their own language.

This provision should also be read in conjunction with article 15 of the International Covenant on Economic, Social and Cultural Rights (ICESCR), ratified

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<sup>2</sup> <https://www.politicshome.com/thehouse/article/the-police-bill-will-trap-people-in-a-cycle-of-eviction-and-criminalisation-it-must-be-changed>

by your Excellency's Government in 1976, which recognizes the right of everyone to take part in cultural life. The Committee on Economic, Social and Cultural Rights, in its 2009 General Comment 21 on the right to take part in cultural life (E/C.12/GC/21) stressed that the Covenant also includes the right of persons belonging to minorities to conserve, promote and develop their own culture. This right entails the obligation of States parties to recognize, respect and protect minority cultures as an essential component of the identity of the States themselves. States must refrain from interfering with the exercise of and the access to cultural practices, goods and services and ensure that their legislation does not impair the enjoyment of these rights through direct or indirect discrimination (E/C.12/GC/21, paragraphs 32, 44, 48, 49).

We also call to the attention of your Excellency's Government the United Nations Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities of 1992, which refers to the obligation of States to protect the existence and the identity of minorities within their territories and to adopt measures to that end (article 1), as well as to adopt the required measures to ensure that persons belonging to minorities can exercise their human rights without discrimination (article 4).

We would also like to remind your Excellency's Government of its obligations under the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), to which the State has been a party since 1969. In particular, we would like to recall article 1 on the prohibition of racial discrimination; article 2 on the obligation of the States to eliminate any act or practice of racial discrimination against persons and/or groups of persons; and article 5 on the right of everyone, without any distinction, to equality before the law, as well as the right to housing. We also recall the Committee on the Elimination of Racial Discrimination (CERD)'s General Comment 27 on discrimination against Roma, in which the Committee recommended that States take the necessary measures, as appropriate, for offering Roma nomadic groups or Travellers camping places for their caravans, with all necessary facilities.

In this respect, we would also like to refer to the most recent concluding observations of the CERD, which noted the efforts made to improve the situation of Gypsies, Roma and Travellers, but reiterated its concern that their condition has not substantially improved. CERD further noted that these communities continue to face exclusion and discrimination in the fields of health, education, housing and employment, and are subject to negative stereotypes and stigmatization in the media. CERD recommended, inter alia, ensuring the provision of adequate and culturally appropriate accommodation and stopping sites as a matter of priority throughout the State party, and to ensure that representatives of Gypsy and Traveller minorities are adequately consulted before any measures that affect their situation are implemented.<sup>3</sup>

We also wish to recall that article 11(1) of the ICESCR recognizes the right of everyone to an adequate standard of living for himself and his family, including the right to adequate housing.

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<sup>3</sup> Concluding observations on the combined twenty-first to twenty-third periodic reports of the United Kingdom of Great Britain and Northern Ireland, CERD/C/GBR/CO/21-23 3 October 2016, para 24-25  
See also Committee on Economic, Social and Cultural Rights concluding observations on the sixth periodic report of the United Kingdom of Great Britain and Northern Ireland, E/C.12/GBR/CO/6 14 July 2016, para 50

In its General Comment No. 4 interpreting article 11(1), the Committee on Economic, Social and Cultural Rights stated that the right to housing should not be interpreted in a narrow or restrictive sense which equates it with, for example, the shelter provided by merely having a roof over one's head or views shelter exclusively as a commodity. Rather it should be seen as the right to live somewhere in security, peace and dignity. The Committee also stated that "instances of forced eviction are prima facie incompatible with the requirements of the Covenant and can only be justified in the most exceptional circumstances, and in accordance with the relevant principles of international law."

In its General Comment No. 7 on forced evictions, the Committee further noted that "Evictions should not result in individuals being rendered homeless or vulnerable to the violation of other human rights. Where those affected are unable to provide for themselves, the State party must take all appropriate measures, to the maximum of its available resources, to ensure that adequate alternative housing, resettlement or access to productive land, as the case may be, is available."

In his recent report (A/76/408) on discrimination in the context of housing presented to the General Assembly, the Special Rapporteur on the right to adequate housing recommended that States should "Adopt comprehensive anti-discrimination legislation covering all protected groups, including: [...] persons from racial, ethnic or religious groups and minorities; and persons living in a situation of homelessness or in informal settlements[...]. Reference is also made to Resolution A/C.3/76/L.12/Rev.1 adopted by the General Assembly during the same session, which among others urged States to "consider people experiencing homelessness in designing, implementing, creating and evaluating policies, programmes and strategies for full, equal, meaningful, effective, constructive and sustainable participation in society and access to affordable, stable, safe and adequate housing, as part of the human right to an adequate standard of living [...]". We also wish to draw the attention of your Excellency's Government to the ruling of the European Court of Human Rights in the case of [Lăcătuș v. Switzerland](#), which found that the imposition of a prison sentence for an activity that constitutes a means of survival infringed the applicant's human dignity and is disproportionate to the aim of protecting the rights of others.

In her mission report (A/HRC/25/54/Add.2) issued in 2013 upon visiting the United Kingdom of Great Britain and Northern Ireland, the former Special Rapporteur on the right to adequate housing said that "The lack of appropriate and culturally adequate residential and transit accommodation is often at the root of the stigma and discrimination faced by Gypsies and Travellers [...]" and recommended that the central Government and devolved administrations "Strengthen efforts to address stigma and discrimination for the Gypsy and Traveller communities in relation to the wider spectrum of rights, starting with the recognition that cultural adequacy in housing is a pillar for inclusion [...]"

Based on the above, we recommend review and reconsideration of the Police, Crime, Sentencing and Courts Bill to ensure its compliance with the State's international human rights obligations.

As it is our responsibility, under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention, we would be grateful for your observations on the following matters:

1. Please provide any additional information and/or comment(s) you may have on the above analysis.
2. Please advise what steps are being taken to ensure that the draft Bill will comply with the State's obligations under international law, as set out above.
3. Please provide information as to how your Excellency's Government ensures that representatives of Gypsy, Roma and Traveller minorities are adequately consulted before any measures that affect their situation are implemented, including this draft Bill.
4. Please provide information as to how your Excellency's Government ensures in the current proposed legislation the provision of adequate and culturally appropriate housing, which includes accommodation and stopping sites for Gypsy, Roma and Traveller minorities.

This communication, as a comment on pending or recently adopted legislation, regulations or policies, and any response received from your Excellency's Government will be made public via the communications reporting [website](#) after 48 hours. They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

Please accept, Excellency, the assurances of our highest consideration.

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