

Geneva/Colchester, February 2010.

To the UN Committee on the Elimination of Racial Discrimination
Mr. Patrick Thornberry
Coordinator of the CERD Working Group on Early Warning and Urgent Action

1. The **Centre on Housing Rights and Evictions** and the **Human Rights Clinic of the University of Essex**, on behalf of the **Dale Farm Housing Association** hereby require the Committee on the Elimination of Racial Discrimination (the Committee) to act under the early warning and urgent action procedure to address serious violations and threats of violations of Article 5(e)(iii) of the International Convention on Elimination of Racial Discrimination (ICERD) as well as other rights guaranteed therein in respect of the threatened eviction of the Romani and Irish Traveller community of Dale Farm, in the County of Essex, United Kingdom (UK).
2. We reiterate the widely accepted position of the international community that forced eviction is a gross violation of human rights and is linked to other serious human rights violations as well as to disproportionate suffering which it brings upon those evicted including women, children, youth, older persons, ethnic minorities and other vulnerable individuals and groups.
3. Dale Farm is the largest Romani and Irish Traveller community in the UK, comprising of approximately 1000 residents. The settlement extends onto land owned by the community, which does not have planning permission. Part of this land was previously a licensed scrapyards, from 1978-2001, located within the Green Belt land. Basildon District Council (the Council) and the Secretary of State for Communities and Local Government have refused to grant planning permission for this portion of the settlement, on the basis of harm that may be caused to the Green Belt. The Council argues that it has refused to rezone the area as the negative impact upon the Green Belt by reason of the development outweighs the case for permitting the Dale Farm community to continue, although it has existed in this place for more than eight years.
4. Basildon District Council has served a number of enforcement notices ordering the removal of the chalets, mobile-homes and caravans from the land they occupy. These enforcement notices concern some 90 families, comprising of approximately 300 persons, including many children, elderly and infirm. As the enforcement notices have not been complied with, Basildon District Council decided to pursue direct action to evict the community in 2005.
5. The decision by Basildon District Council to take direct action has been challenged by the residents. On 05 May 2008, the High Court of Justice quashed the respective order by Basildon District Council. However, the judgment was overturned and the decision to evict, conditional upon fulfilment of certain undertakings by the Council, was upheld by the Court of Appeal on 22 January 2009. An application for permission to appeal to the House of Lords was refused on 14 May 2009.

6. On 10 December 2009, Basildon District Council selected the private bailiff company Constant and Co. (Bedford) Ltd to undertake planning enforcement action. This company is the UK's most notorious anti-Gypsy security firm, responsible for the brutal Twin Oaks eviction in Hertfordshire in 2004, when chalets and private property was needlessly burned. It also acted as the agent for Chelmsford Borough Council, not far from Basildon, at the Meadowlands eviction in severe weather the same year, during which caravans were burned and racist abuse was used against the residents. These actions drew criticism from the High Court, which condemned the employment of Constant and Co. as inappropriate and called for a review of the employment of such companies in this field of work. The Dale Farm Housing Association has since submitted a dossier of complaints against Constant to the Ministry of Justice illustrating many breaches of health and safety regulations.

7. The Dale Farm community is thus now facing an imminent eviction which is likely to be carried out in a brutal and inhumane manner; a view supported by the Wickford Primary Care Trust, whose doctors have warned of the inevitable trauma and injury such an operation will entail, especially to the children and the elderly.

8. The above situation calls for immediate attention under the early warning and urgent action procedure. As demonstrated in detail below, the case reveals:

- (a) Presence of a significant and persistent pattern of racial discrimination, as evidenced in social and economic indicators;
- (b) De facto exclusion of members of a group from political, economic, social and cultural life; and
- (c) Lack of an adequate legislative framework and protection mechanisms.

9. The Dale Farm case requires immediate action to (a) prevent the eviction and (b) limit serious violation of the right to housing/accommodation, possible harm to physical and psychological integrity, dignity and security of the community as well as damage to property that would occur in the course of the eviction and (c) to prevent further violations of other rights of the community (such as their right to education and right to health, as well as housing/accommodation).

10. Finally, if implemented, the forced eviction and destruction of homes have and will result in irreparable harm to the Dale Farm community. Such irreparable harm includes, *inter alia*, the loss of housing and other personal belongings, the dangers associated with lack of shelter due to resulting homelessness, and the loss of social networks.

11. The Committee is thus requested to:

A. Urge the Government to halt the threatened eviction until an adequate solution is achieved, with meaningful participation of the Dale Farm community, to guarantee protection of the Dale Farm community's housing rights, including the provision of suitable and adequate alternative accommodation;

B. Urge the Government to take all possible measures to reach a peaceful and viable solution in agreement with the Dale Farm community with the aim of fulfilling the Government's obligations under Article 5(e)(iii) in conjunction with Articles 1 and 2 of the Convention;

C. Urge the Government to engage at all times in meaningful consultation and meetings with the affected residents of Dale Farm and their representatives to ensure their participation in accordance

with the Government's obligations under international human rights law;

D. Urge the Government to request Basildon Council to revise its decision to deny planning permission to the Community; and

E. Should the Government disregard (2), (3) and (4) and proceed with the eviction, the Committee is requested to urge the Government to:

(i) Carry out the evictions in accordance with international human rights law and the principles of reasonableness and proportionality, as well as full compliance with EU and domestic health and safety regulations.

(ii) Designate alternative sites that are adequate and suitable for the relocation of the evictees taking into consideration that under international human rights law, minorities, low-income and/or vulnerable individuals or groups who are the target of eviction have a strong claim to be re-settled in alternative permanent accommodation compatible with their culture and traditions and with the requirements of adequate housing, bearing in mind that Basildon Council is already under a legal obligation from the Secretary of State for Communities and Local Government to provide land for a minimum of 62 mobile-home pitches by 2011.

(iii) Fulfil its duties in respect of the protection of all vulnerable, disabled, poor, and disadvantaged persons affected by the eviction of Dale Farm, who may be rendered homeless through the imminent enforcement, and to enable other authorities, such as Essex County Council, to carry out their duties and obligations.

I. BACKGROUND

12. Dale Farm is the largest Romani and Irish Traveller community in the UK. It is situated near Basildon in the county of Essex, comprising approximately 1000 residents, including many children, elderly and infirm. Dale Farm was started in the 1970s when the local Council, Basildon District Council, gave planning permission to some 40 families. With evictions taking place at other sites within its proximity new residents arrived in increasing numbers. Accordingly, Dale Farm was extended but could not obtain the requisite planning permission, albeit this land within the Green Belt had been used as a licensed scrapyards up to 2001 where thousands of wrecked vehicle parts and scrap metals were stored.

13. The land is located in the vicinity of a dual carriageway and residents hold ownership titles to the land they occupy. They are not being offered alternative sites to use, despite a requirement on the Basildon Council to provide such sites by 2011. The Council has offered some residents apartments. However, these have proved a) mostly inadequate in size; or b) incompatible with Traveller culture and traditions and necessitating the unacceptable splitting up of extended families, which presently provide much self-help and social support in a largely hostile majority environment; or both.

14. The planning history of the area has shown that the site had been used both with and without planning permission since early 1990's for a variety of industrial uses. Occupation by Romanies and Travellers lacking planning permission has taken place since the closure of the scrapyards in 2001.

15. Basildon District Council and the Secretary of State for Communities and Local Government

have refused planning permission, on the basis of the harm caused to the Green Belt. The Secretary of State considered that the personal needs and circumstances of the occupiers did not outweigh the identified harm. Temporary planning permission was granted by the Deputy Prime Minister John Prescott at one stage, but expired in May 2005. Since then, Basildon District Council has served a number of enforcement notices ordering removal of the chalets, mobile-homes and caravans from the land they occupy.

16. These enforcement notices concern some 90 families, comprising of approximately 300 persons. As the enforcement notices have not been complied with, in 2005 Basildon District Council decided to take action in accordance with its enforcement powers under section 178 of the Town and Country Planning Act 1990. Section 178 empowers the local planning authority to enter the land and take any steps required by an enforcement notice that have not been taken within the period given for compliance. To this end, the Council has set aside some three million pounds for an eviction and demolition operation. The Council has refused to regularise the situation of the Romani and Irish Travellers on Dale Farm.

17. The decision by Basildon District Council to take direct action was challenged by the Dale Farm residents. On 05 May 2008, the High Court of Justice quashed the respective order by Basildon District Council.

18. It was submitted by the residents, *inter alia*, that there is indirect discrimination within the meaning of Section 1(1)(b) of the Race Relations Act of 1976 to the extent that a requirement or condition applied equally to all has the discriminatory effect that the proportion of persons of one racial group who can comply with it is considerably smaller than the proportion of persons not of that special group who can comply with it. In other words, the Act has a racially discriminatory effect in contravention of Article 1(1) of ICERD. In other words, In the High Court judgement, Justice Collins did find the decision to take action to be discrimination and the Court of Appeal did not overturn that conclusion or make a separate finding on the point: “The prohibition on development in the Green Belt affects all. But the submission is that the imposition of a requirement of need to justify any authorisation to site a caravan in Basildon means that others than Gypsies can more easily avoid seeking to establish residence in the Green Belt. It is clearly easier for someone prepared to live in bricks and mortar to find accommodation in Basildon and so those who need to site a caravan are at a disadvantage. This does not of itself justify sitting in the Green Belt, but it does mean that the legitimate sites for them are fewer. I am persuaded in the circumstances that there is indirect discrimination” [2008] EWHC 987 (item 48).

19. It was held that further consideration should have been given to whether any sites can be found in the district and whether the families should be allowed to remain for the time being. The possible effects of the homelessness duty had not been sufficiently dealt with in advance. The site’s clearance had been prioritised, without consideration of whether there were any individual families whose circumstances were such that, as a result of serious ill-health or the needs of their children for example, in their cases eviction would be disproportionate [2008] EWHC 987 (item 66).

20. The judgment of 05 May 2008 was overturned by the Court of Appeal and the executive’s decision upheld on 22 January 2009. An application for permission to appeal to the House of Lords was refused on 14 May 2009. The Court of Appeal held that Basildon District Council had not failed to consider cases individually. However, The Court of Appeal’s judgment expressly envisaged a *further* stage in the decision-making process following-on from the decision to take direct action to secure

compliance with enforcement notices pursuant to s178. The Court held that “a decision to rely on section 178 required a consideration of the individual circumstances of each claimant but the decision was not unlawful because, at that stage, at what moment, and in what manner, each individual claimant would be evicted had not been set out” (Judgement, item 79).

21. The High Court of Justice's holding that the decision to take direct action was indirect discrimination within the meaning of the British 1996 Race Relations Act was not overturned. Nor did the Court of Appeal make a separate finding on the point. The Section 1(1)(b) of the Race Relations Act 1976 reads:

“A person discriminates against another in any circumstances relevant for the purposes of any provision of this Act if

b) he applies to that other a requirement or condition which he applies or would apply equally to persons not of the same racial group as that other but

(i) which is such that the proportion of persons of the same racial group as that other who can comply with it is considerably smaller than the proportion of persons not of that racial group who can comply with it; and

(ii) which he cannot show to be justifiable irrespective of the colour, race, nationality or ethnic or national origins of the person to whom it is applied; and

(iii) which is to the detriment of that other because he cannot comply with it.”

22. It is submitted that the established indirect discrimination on grounds of race falls within the meaning of “racial discrimination” in ICERD, according to which it shall mean any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose *or effect* of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life (Article 1, ICERD).

23. On 11 December 2009, Basildon District Council selected the private bailiff company Constant and Co. (Bedford) Ltd to undertake planning enforcement action. The Council formally awarded the contract on 21 December 2009. In its advertisement for the contract the Council had stated that the winning bidder must “demonstrate a commitment to upholding the principles of equality and diversity legislation and be sensitive and responsive to the needs of people”. However the Council also indicated its preference for Constant & Co, in spite of the fact that the firm carried out a number of evictions in 2004 at a place called Twin Oaks, which were conducted in a way that resulted in the needless destruction of huge quantities of private belongings.

24. Indeed, the High Court of Justice held in its judgment that the conduct of Constant & Co in these evictions had been unacceptable. Justice Collins who, referring to the Twin Oaks eviction when the Dale Farm case was being heard by the High Court, stated that having seen a video of Constant and Co. at work considered “[...]their conduct unacceptable and the evictions were carried out in a fashion which inevitably would have led to harm to those affected. I have no doubt that the Council must reconsider the use of the firm in question and ensure that any eviction (if these claims fail) is carried out in as humane a fashion as possible. The police presence at Twin Oaks failed to curb the excesses of the bailiffs” [2008] EWHC 987 (item 15). This point was not overturned by the Court of Appeal, nor did the Court of Appeal make a separate finding on the point.

25. Further to a request submitted to the Secretary of State under the Freedom of Information Act to provide copies of its obligatory Risk Assessment reports for the Hovefields and Dale Farm evictions, Basildon District Council has admitted that no surveys or risk assessments have been carried out.

II. INTERNATIONAL STANDARDS CONCERNING HOUSING RIGHTS AND NON-DISCRIMINATION

Applicability *ratione personae* of ICERD

26. According to Article 1 (1) of the Convention, the term “racial discrimination” shall mean any distinction, exclusion, restriction or preference based on race, colour, descent, or national or *ethnic* origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life. ICERD is applicable in the present case as the Dale Farm community forms part of two distinct ethnic groups. It consists of Romani Gypsy and Irish Travellers. This fact was undisputed during the UK judicial proceedings in relation to Dale Farm.

Right to housing

27. Article 5 (e) (iii) of ICERD requires States parties to undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the rights of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, in the enjoyment of the right to housing.

28. The work of the Committee on Economic, Social and Cultural Rights (CESCR) provides persuasive authority on the specific content of the right to adequate housing. As the CESCR stated in its General Comment No. 4 on the right to adequate housing, the right “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”.¹ Furthermore, General Comment No. 4 requires that States confer upon all persons “a degree of security of tenure which guarantees legal protection against forced eviction, harassment and other threats.”²

29. As it was found by the Committee on the Elimination of Racial Discrimination “in complex contemporary societies the practical realization of, in particular, many economic, social and cultural rights, including those related to housing, will initially depend on and indeed require a series of administrative and policy-making steps by the State party's competent relevant authorities.”³

30. In regard to people pursuing nomadic lifestyles (like Romani Gypsy and Irish Travellers), states have to make available the conditions necessary for these people to pursue nomadic lifestyles. States should promote and protect the right to adequate housing for all, as well as ensure equal access to

¹ Committee on Economic, Social and Cultural Rights, General Comment 4, The right to adequate housing para. 7, (Sixth session, 1991), U.N. Doc. E/1992/23, annex III at 114 (1991), reprinted in Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, U.N. Doc. HRI/GEN/1/Rev.6 at 18 (2003).

² *Id.* at para. 8(a).

³ *L. R. et al. v. Slovakia* (31/2003), CERD, A/60/18 (7 March 2005) at para. 10.6.

adequate housing for Roma through appropriate, proactive policies. The Committee on Economic, Social and Cultural Rights identified certain aspects of the right to adequate housing. They include the following:

(a) *Legal security of tenure*: All persons should possess a degree of security of tenure which guarantees legal protection against forced eviction, harassment and other threats. States should consequently take immediate measures aimed at conferring legal security of tenure upon those persons and households currently lacking such protection, in genuine consultation with affected persons and groups

(b) *Location*: Adequate housing must be in a location which allows access to employment options, health-care services, schools, child-care centres and other social facilities. This is true both in large cities and in rural areas where the temporal and financial costs of getting to and from the place of work can place excessive demands upon the budgets of poor households. Similarly, housing should not be built on polluted sites nor in the immediate vicinity of pollution sources that could threaten the right to health of the inhabitants.

(c) *Cultural adequacy*: The way housing is constructed, the building materials used and the policies supporting these must appropriately enable the expression of cultural identity and diversity of housing. Activities geared towards development or modernization in the housing sphere should ensure that the cultural dimensions of housing are not sacrificed, and that, *inter alia*, modern technological facilities, as appropriate are also ensured.⁴

31. Romani Gypsies and Irish Travellers are entitled to be accorded alternative housing/accommodation in case of eviction. Indeed, General Comment No. 7 of the Committee on Economic, Social and Cultural Rights requires that evictions “not result in rendering individuals homeless or vulnerable to the violation of other human rights” and “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.”⁵

32. The provision of such alternative accommodation will have to take into consideration the cultural adequacy component. This refers to the way housing/accommodation is constructed or provided. Thus, when relocation is unavoidable, the physical, environmental, and socio-economic conditions of the new location cannot render evictees worse off than before the resettlement.

33. The building materials used and the policies supporting these must be appropriate to enable the expression of cultural identity and diversity of housing. Activities geared towards development or modernization in the housing sphere should ensure that the cultural dimensions of housing are not sacrificed (General Comment. No. 4, para.8.g). It is therefore even more crucial that Gypsies and

⁴ Committee on Economic, Social and Cultural Rights, General Comment 4, The right to adequate housing para. 8, (Sixth session, 1991), U.N. Doc. E/1992/23, annex III at 114 (1991), reprinted in Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, U.N. Doc. HRI/GEN/1/Rev.6 at 18 (2003).

⁵ Committee on Economic, Social and Cultural Rights, General Comment 7, Forced evictions, and the right to adequate housing, para. 17, (Sixteenth session, 1997), U.N. Doc. E/1998/22, annex IV at 113 (1997), reprinted in Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, U.N. Doc. HRI/GEN/1/Rev.6 at 45 (2003).

Travellers are given the chance to partake in the planning of the alternative relocation project to ensure a reflection of their collective identity.

34. The Homelessness Code of Guidance (July 2006) noted that “some Gypsies and Travellers may have a cultural aversion to the prospect of ‘bricks and mortar’ accommodation. In such cases, the authorities should seek to provide an alternative solution and give consideration to the needs and lifestyle of Gypsies and Travellers when considering their application [of homelessness]...” (para.16.38).

Discrimination and the Right to Housing

35. Article 2 (1) of the Convention places states under the obligation not to engage in acts or practices of racial discrimination and to ensure that all public authorities and public institutions, national and local, shall act in conformity with this obligation. It also obliges states to take effective measures to review governmental, national and local policies, and to amend, rescind or nullify any laws and regulations which have the effect of creating or perpetuating racial discrimination wherever it exists. Furthermore, according to Article 2 (2) “States Parties shall, when the circumstances so warrant, take, in the social, economic, cultural and other fields, special and concrete measures to ensure the adequate development and protection of certain racial groups or individuals belonging to them, for the purpose of guaranteeing them the full and equal enjoyment of human rights and fundamental freedoms”.

36. The Committee held that “the definition of racial discrimination in Article 1 expressly extends beyond measures which are explicitly discriminatory, to encompass measures which are not discriminatory at face value but are discriminatory in fact and effect, that is, if they amount to indirect discrimination.”

37. Non-discrimination and equality are critical components of the right to adequate housing. The UN Special Rapporteur on Adequate Housing has also emphasized that discrimination and segregation in housing can result from poverty and economic marginalization. According to UN Habitat, housing discrimination can take various forms, including, discriminatory laws, policies or measures; denial of security of tenure; limited participation in decision-making and lack of protection against discriminatory practices carried out by private actors. As will be demonstrated in the following sections, such discrimination is taking place in relation to Dale Farm community.

38. CERD specifically address the issue of Romani communities and housing in its General Recommendation No. 27. In that General Recommendation, CERD recommended States parties “to act firmly against any discriminatory practices affecting Roma, mainly by local authorities and private owners, with regard to taking up residence and access to housing” and “to act firmly against local measures denying residence to and unlawful expulsion of Roma.” It also recommended that States parties “take the necessary measures, as appropriate, for offering Roma nomadic groups or Travellers camping places for their caravans, with all necessary facilities.”

III. CRITERIA FOR EARLY WARNING MECHANISM AND URGENT PROCEDURE

39. The following criteria, as established in paragraph 12 of the Guidelines provided by the Committee for early warning and urgent action procedure are met in the instant case:

- (a) Presence of a significant and persistent pattern of racial discrimination, as evidenced in social and economic indicators;
- (b) De facto exclusion of members of a group from political, economic, social and cultural life;
- (c) Lack of an adequate legislative framework and protection mechanisms.

3.1 Pattern of racial discrimination

40. It is submitted that the current predicament of Dale Farm residents facing eviction results from a much wider problem of racial discrimination and intolerance. Racial discrimination towards Gypsies and Travellers is pervasive throughout UK society, and has the effect that local authorities implement planning permission policies unsympathetically towards Gypsy and Traveller applicants. The Dale Farm residents and other Gypsies and Travellers in the UK subjected to eviction as a result of this pattern of racial discrimination, face grave and irreparable harm of their enjoyment of their social and economic rights as a result.

(i) Social Misconceptions and Discrimination

41. There are widespread misconceptions in the UK about the Romani Gypsy and Irish Traveller groups to which Dale Farm residents belong. A commonly held stereotype in the UK is of a sub-proletariat people who have taken to the travelling life in order to avoid work, taxes and other social responsibilities. A distinct stereotype has also evolved of the 'real Gypsy', being racially pure and noble in spirit. This stereotype is even referred to in parliamentary debates. The myth of the 'real Gypsy' has legitimated intolerance and discrimination of those who do not conform to such stereotypical notions of Gypsyhood held by dominant society. Irish Travellers are subject to the misconception that they originated as the 'dispossessed of the Great Famine in Ireland' and are seen as 'failed settled people' rather than as a distinct ethnic group, even though they identify themselves as distinct from other Travellers and Gypsies.

42. UK legislation recognises Romani Gypsies and Irish Travellers as racial groups under the Race Relations Act 1976. However, in order to benefit from planning policies identifying their needs as a distinct racial group, an applicant must not just prove that s/he is an ethnic Gypsy or Traveller, but also show s/he has 'Gypsy status', that is, that s/he is a person with specific life habits. This issue has placed a burden on Dale Farm residents and the other Gypsy and Traveller applicants to have to 'prove' their status, and this has resulted in much litigation over whether applicants are entitled to 'Gypsy status'. Over the years, the courts have continued to emphasise the centrality of economy over ethnicity. The association in the sedentary mind between Gypsies and this type of economic nomadism has now become so strong that such travel is considered the essential element of Gypsy status in the law. The implications of institutionalising the legal definition of 'Gypsy' in this way remain unresolved.

43. Fierce public opposition to the establishment of Gypsy and Traveller sites has led to confrontational situations that have worsened local race relations. Objections to planning applications are usually based on racial prejudice and xenophobia rather than only on valid, material grounds.

44. Indeed, the existence of social discrimination against Gypsies and Travellers in the UK is acknowledged by the Committee on the Rights of the Child. In its concluding observations on the UK

it expressed concern that “in practice certain groups of children, such as: Roma and Irish Travellers’ children [...] continue to experience discrimination and social stigmatization.”⁶

(ii) Socio-Economic Discrimination

45. As a result of widespread racial discrimination, Roma groups have not been able to access the labour market and they lack social-economic independence and participation within mainstream society. Due to this labour market exclusion, it is reported that 99 per cent of Roma migrants residing in the United Kingdom are dependent on state welfare aid and most live in sub-standard housing. Indeed, The Committee on the Elimination of Racial Discrimination has already expressed its concern in relation to socio-economic discrimination faced by Gypsies and Travellers in the UK:

The Committee expresses concern about the discrimination faced by Roma/ Gypsies/ Travellers that is reflected, inter alia, in their higher child mortality rate, exclusion from schools, shorter life expectancy, poor housing conditions, lack of available camping sites, high unemployment rate and limited access to health services.⁷

18. The Committee notes with concern that there is a lack of information about settled Roma, who constitute 70 per cent of the total Roma population. It also expresses concern regarding admission and access to schools by Roma Travellers.⁸

19. The Committee notes with concern the continued high level of unemployment among ethnic minority groups. The Committee expresses concern that there is racist harassment and bullying in schools and that ethnic minorities continue to be disproportionately excluded from schools. It recommends that the State party intensify its efforts to ensure full enjoyment by all of the rights provided in article 5 of the Convention, without discrimination, giving particular attention to the rights to employment, education, housing and health.⁹

(iii) Escalation of racial intolerance by local authorities

46. Where - as a result of this pattern of racial discrimination in relation to housing - Gypsies and Travellers such as the Dale Farm residents have had to resort to unauthorised development, local authorities usually resort to evictions, using private bailiff and security companies, without taking into consideration impacts on site residents or race relations. Such is the case of Dale Farm, where Constant & Co., a bailiff company with a reputation for violent eviction, has been hired.

47. Local Authorities, such as Basildon District Council are in a position to authorise such discriminatory and violent enforcement of evictions from unauthorised sites on the basis of their wide range of powers: to serve enforcement notices and/or seek injunction orders together with penal notices, which can ultimately lead to: (i) violent and traumatic forced evictions; (ii) destruction of assets and the burning down of property or caravans, chalets and huts; and (iii) imprisonment orders that

⁶ Committee on the Rights of the Child, Concluding Observations: United Kingdom, UN Doc. CRC/C/GBR/CO/4 (20 October 2008) at para. 24.

⁷ Committee on the Elimination of Racial Discrimination, Concluding Observations: United Kingdom, UN Doc. CERD/C/63/CO/11 (10 December 2003) at para. 23.

⁸ Committee on the Elimination of Racial Discrimination, Concludign Observations: United Kingdom< UN Doc. CERD/C/304/Add.102 (1 May 2001) at para. 18.

⁹ *Id.* at para. 19.

render Gypsies and Travellers even more socially excluded.

48. These forced evictions, which are taking place systematically in the UK, affect Romani Gypsies and Irish Travellers disproportionately. Evictions have a very traumatic effect upon the already vulnerable population and a very high financial cost to the tax payers. These actions taken by local authorities are aggravating the problem instead of providing solutions that would meet the clear and urgent need for sufficient sites on which Gypsies and Travellers can live.

3.2 De facto exclusion

49. According to the UK Commission for Racial Equality, local councillors do not usually regard Gypsies and Irish Travellers as members of the local community, and do not reach out to them as they do to their other constituents; this further reduces opportunities for civic participation. Excluding Gypsies from participating in planning decision-making means that they are not consulted about policies and practices that may have a disproportionate impact on their lives.

50. This lack of consultation also has the effect that Gypsies, Travellers and Roma find no place to camp. Against this backdrop of inadequate provision or identification of appropriate sites by local authorities, Gypsies, Travellers and Roma who go to their local planning department are unlikely to receive advice as to where they might find suitable land. This results in a common situation whereby Gypsies and Travelers buy land wherever they can, including on Green Belt land, such as the case of Dale Farm, and the local planning authority then refuses planning permission and pursues enforcement action.

51. Gypsies, Travellers and Roma lack capacity of organization especially because of their situation of impoverishment and lack of education. There is evidence of economic exclusion through various mechanisms, such as disproportionate rent fees for pitches on local authority sites, the high costs associated with appealing against the refusal of planning permission, the increase on land prices when Gypsies and Travellers are open about their identity and plans for setting up a Gypsy site, the destruction of caravans and other personal assets during enforcement actions and the high prices charged for accessing basic services.

52. In the case of a lot of Irish Travellers, and especially in Dale Farm, numerous middle-aged and elderly residents are illiterate. This leads to problems in finding adequate employment, and means that most of the residents are reliant on social benefits. This is an extremely important factor in their economic exclusion from the rest of the society. Because of these problems of social and economic exclusion, most Irish Travellers are now choosing more and more to stay in one place for longer periods of time so that they can access adequate schooling for their children. The education of the children at Dale Farm is currently in jeopardy due to the impending eviction of Dale Farm residents. To this end, Basildon District Council and other local authorities in the UK are contributing to the exclusion of the Gypsy and Traveller children from social and cultural life, and economic empowerment in the future.

3.3 Lack of an adequate legislative framework and protection mechanisms

53. This case is brought to the attention of the Committee on the Elimination of Racial Discrimination as a paradigm example of the broad inadequacies of the UK's legislative framework in terms of the protection of Gypsies and Travellers and, in particular, the inadequacies of the application of its law in practice.

54. As it will be shown, it appears that the UK has not given due priority to those social groups living in unfavourable conditions by giving them particular consideration. Previous recommendations by CERD to adopt national strategies and programmes with a view to improving the situation of the Roma/Gypsies/Travellers against discrimination by State bodies, persons or organizations do not seem to have had any impact in the instant case. Basildon District Council's indirectly discriminatory practice has remained unchecked. It is therefore submitted that the UK government has failed to follow the recommendations set out in CERD General Comment 27 whereby State parties shall act "firmly against any discriminatory practices affecting Roma, mainly by local authorities and private owners, with regard to taking up residence and access to housing; to act firmly against local measures denying residence to and unlawful expulsion of Roma [...]".

(i) Discriminatory legislation in providing caravan sites

55. Several UN monitoring bodies have advised the UK government to provide safe and adequate sites for Travellers. Aside from the Committee on the Rights of the Child, the Committee on Economic, Social and Cultural Rights in 2009 recommended that the UK ensure the protection of the most disadvantaged and marginalized individuals and groups in line with the Committee's General Comment No. 7 (1997) on forced evictions. This General Comment, which the UK is by international law obliged to consider, recommends that State Parties shall take the necessary measures, as appropriate, for offering Roma nomadic groups or Travellers camping places for their caravans, with all necessary facilities. States Parties should furthermore encourage local authorities to meet their obligations with regard to Roma – in the same way as for any persons with the same legal status – in the area of housing.

56. As a result of the Criminal Justice and Public Order Act (CJPOA) of 1994 there is no longer an enforceable legal duty on local authorities to provide caravan sites for Gypsies' and Travellers' caravans. Whilst the powers provided under the Caravan Sites and Control of Development Act (CSCDA) of 1960 to provide temporary or permanent sites have remained in place, since 1994 they are rarely, if ever, used. Instead it is and has been government policy since 1994 that Gypsy and Traveller sites are to be provided through private endeavour by such communities themselves.

57. A new Circular adopted in 2006 (Circular 1/06) gives local authorities more positive planning advice than its predecessor. However, it does not provide an enforceable legal duty to provide suitable accommodation for Gypsy and Travellers, it only requires accommodation needs to be assessed and suitable locations to be identified. The Housing Act of 2004 requires local authorities to provide sites for Gypsies and Travellers where a need has been established. However, few local authorities have a policy on providing permanent or transit sites. In the instant case, after extensive research into the needs of travellers and gypsies in the UK, on 20 July 2009 the Department for Communities and Local Government required the Council to provide sufficient land for 62 (sixty two) additional pitches. A great deal of public money and effort could be avoided in the fulfilment of this duty by simply granting planning permission for the 52 (fifty two) unauthorised pitches already in existence at Dale Farm. By adopting such a remedy, the Council would meet the necessary provision at no cost to the tax payer, and with less difficulty than might be encountered in finding other locations in or outside the district.

58. At present most local authority is failing to identify locations for permanent residential sites in accordance with their particular, locally determined criteria. The criteria are often unspecific and unclear, and sometimes contradictory. Local authorities also face and impose several barriers to developing location-based policies in practice. There is a lack of adequate consultation, participation and

involvement of Gypsies and Travellers in the design of planning policies. As a result, many local plans do not contain any policies for the provision of sites within a local authority administrative area.

59. As a result of the above and the introduction of the CJPOA 1994, Gypsies and Travellers have been facing major difficulties in trying to obtain planning permission to develop their sites. In the instant case, it was established by the courts that there is indirect discrimination in the granting of planning permission.

60. There is a conflict between the use of local authorities' enforcement powers and the provisions of the Race Relations Acts, where the former is given precedence over the latter and other human rights legislation. Good practice in promoting race equality is rare, with many local authorities failing to link their planning policy and practice to measures designated to meet their duties under the Race Relations Act. With regard to Dale Farm, no race equality clause can be found in the former contracts of the assigned bailiffs, who will be responsible for the eviction of Dale Farm.

61. The fact that the minority of Romani and Irish Travellers reside on illegal sites and in acutely inadequate housing conditions should not be sufficient grounds for planning authorities to claim the reasonableness of forcibly evicting such groups as to beautify the city and the countryside. Indeed, such a situation is the result of the UK being unable or unwilling to meet its obligation under the International Covenant on Economic, Social and Cultural Rights to fulfil the right to adequate housing and to do so without discrimination. In the instant case of Dale Farm, it is questionable that the Council accepted a scrapyards on the territory for 30 years and, now that the economic activity has ceased, weighs the balance of proportionality in favour of the transformation of the land into a Green Belt over the residents' right to housing.

62. The Council's main argument has hinged on the statement that the placing of caravans and mobile homes on the site is "inappropriate development", which is "by definition harmful to the Green Belt and should not be approved except in "very special circumstances.. When analysing such "very special circumstances" the Council concluded that they did not exist, despite admitting that the residents of Dale Farm may have Gypsy status. Should the Council recognise the relevance the land has for the preservation and reproduction of Gypsy's and Traveller's genuine culture and traditions, as well as to avoid disruption to the families and children's education, there will be a strong exceptional circumstance which can outweigh the general interest of preserving the planning decisions that refused permission for them to live in the area. Although the Council has taken into account some of the residents' personal circumstances – such as individual health issues and attendance of school – in the balancing exercise it has failed to give full attention to their special needs and rights as a minority ethnic group, such as the importance to live in a community and in the company of their extended families.

63. The significant adverse impact that the application of Green Belt policy and its enforcement has upon Gypsies and Travellers is well known, and it affects their access to utilities and public services and to affordable and adequate land, the preservation of their culture and traditions and the full exercise of their fundamental human rights. Although the actions which will result in such impact have been justified by the Council as lawful, there has been a significant lack of proportionality when the requirements of planning control (the restoration of the Green Belt function) was weighed against the significant adverse impact it will cause on the lives of the residents of Dale Farm.

(ii) Lack of Protection against Homelessness

64. The lack of public provision of permanent sites (where people can station their caravans permanently) associated with underlying racial discrimination, negative interpretation of planning policies and intolerance of cultural differences, have prevented Romani Gypsies and Irish Travellers from obtaining adequate places to live in the UK. As a result, a very high proportion of them are homeless. Residents at Dale Farm are being evicted without provision or recommendation of alternative sites by the authorities. The residents are therefore now forced to pursue homelessness applications, but suitable alternative accommodation has not been provided to address their particular needs. The evictions will thus result in homelessness and have serious adverse socio-economic effects in relation to health, welfare, and education needs. Again, the right to adequate housing, as informed by General Comment No. 7 of the Committee on Economic, Social and Cultural Rights, requires that “evictions should not result in rendering individuals 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.”¹⁰

(iii) Lack of Protection Mechanisms

65. By virtue of Art 2.1 ICERD, State Parties shall “take effective measures to review governmental, national and local policies, and to amend, rescind or nullify any laws and regulations which have the effect of creating or perpetuating racial discrimination wherever it exists.” Accordingly, it has to give effect to the Convention; legislation should expressly prohibit direct or indirect discrimination on the grounds of racial and ethnic origin in employment and access to and supply of goods and services which are available to the public including, *inter alia*, housing, land, property, education, employment, health, social services. Furthermore, states have to eliminate any adverse practice.

66. The approaches taken by local authorities and local government policies towards unauthorised encampments/developments in practice envisage neither the legalisation of such sites nor the provision of adequate resettlement. Local authorities such as Basildon District Council have a tendency to refuse retroactive planning permission application and take direct action to evict under the Town and Country Planning Act (TCPA) of 1990, and the judiciary in the UK adopts a submissive approach to the decisions made by local planning authorities. In the instant case, the Court of Appeal granted Basildon District Council a far too wide margin of appreciation and upheld their restrictive approach to refuse planning permission and evict as opposed to balancing the interests of the residents in accordance with the due diligence required.

67. As regards Dale Farm, no alternative settlement is provided, and the families that face eviction will, in the event of an eviction, be rendered homeless. In response to homelessness applications, Basildon District Council has only offered a limited number of council apartments and brick and mortar housing, which is culturally inadequate for the Romani and Irish Traveller residents of Dale Farm.

68. Before the duty to provide caravan sites was repealed by the CJPOA of 1994 it was possible to challenge a local authority’s decision to take eviction action against an unauthorised encampment, on the basis that it had failed to provide sufficient sites. However, this is no longer the case and authorities

¹⁰ Committee on Economic, Social and Cultural Rights, General Comment 7, Forced evictions, and the right to adequate housing, para. 17, (Sixteenth session, 1997), U.N. Doc. E/1998/22, annex IV at 113 (1997), reprinted in Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, U.N. Doc. HRI/GEN/1/Rev.6 at 45 (2003).

are armed with more draconian eviction powers. There is therefore a lack of an effective mechanism to challenge the local authorities' failure to provide sites in general and a lack of procedure to challenge eviction action.

(iv) Lack of consultation

69. The Committee on Economic, Social and Cultural Rights recommends that the State Parties' national housing strategies should reflect extensive genuine consultation with, and participation by, all of those affected, including the homeless, the inadequately housed and their representatives. CERD draws the attention of State Parties to its General Recommendation No. 27 on discrimination against Roma and recommends that State Parties develop further appropriate modalities of communication and dialogue between Roma/Gypsy/Traveller communities and central authorities.

70. The UN Declaration on Minorities also provides that "persons belonging to minorities have the right to participate effectively in public life" and "the right to participate effectively in decisions on the national and, where appropriate, regional level concerning the minority to which they belong or the regions in which they live." A similar provision can be found in the Council of Europe Framework Convention for the Protection of National Minorities (Art.15). In its resolution on the implementation of this instrument, the Convention's Advisory Committee invited the UK to "take the necessary steps to address the accommodation needs of Gypsies and Travellers, in consultation with the persons concerned; [and] provide Gypsies and Travellers with adequate access to support in securing the legal protection of their rights."

71. The decision by Basildon District Council to evict the residents of Dale Farm was taken without considering the negative impacts on site residents or race relations. Indeed, it is common practice that local authorities enforcing evictions from unauthorized sites in the UK hardly ever consult with the affected population on decisions to issue enforcement notes, to take direct actions or pursue an injunction or possession order. This is contrary to the UK's international obligations to take measures to ensure the Dale Farm residents are protected from human rights violations. Such measures should include genuine consultation with those affected and their advocates and representatives to ensure the provision of adequate alternative accommodation or compensation, assessment of their health, welfare, and education needs, and access to remedial procedures.

72. Basildon District Council, instead of consulting with Dale Farm residents - to identify their cultural needs, and the needs of the many elderly and children residents for example - has adopted a confrontational approach by pursuing the eviction. This approach is evidenced in the granting of a contract to a bailiff company that has a particularly problematic history of forced evictions. It seems from this approach that planning enforcement and control to retain public confidence in the system is more relevant to Basildon District Council and for local authorities generally in the UK than promoting or protecting site residents' human rights, such as the right not to be discriminated against, the right to housing, personal security and education.

IV. VIOLATION OF ARTICLE 5(e)(iii) OF CERD

73. As demonstrated in detail above the residents of the Dale Farm community are discriminated in the enjoyment of their right to housing contrary to Article 5 (e) (iii) of the CERD due to the following:

- (1) Existence of discriminatory legislation placing a burden on Dale Farm residents to have to 'prove' their 'Gypsy status' in order to benefit from planning policies;
- (2) Unjustified decision to evict due to lack of consideration given to negative impacts of such measure, the needs of the Dale Farm community and failure to engage in meaningful consultations with them;
- (3) Risk of eviction without provision of alternative sites, culturally adequate, which might result in homelessness;
- (4) Hiring of Constant & Co as Bailiff company to carry out the eviction, which may lead to discriminatory and traumatic enforcement of eviction, destruction of property and other violations;
- (5) Existence of discriminatory legislation in providing caravan sites, which has a direct impact on the situation of Dale Farm residents;
- (6) Indirect discrimination in granting planning permission.

V. THE RIGHT TO ADEQUATE HOUSING AND OTHER HUMAN RIGHTS

74. As noted by the Committee in the *Guidelines for the Early Warning and Urgent Action Procedure*, the significance of the indicators referred to above need to be assessed in the light of the gravity and scale of the situation. In order to stress the gravity and scale of the situation, beside the points made in the foregoing, the link between the right to equality before the law in the enjoyment of adequate housing and other human rights will be addressed.

75. Considering that human rights are interdependent, indivisible and interrelated, the right to housing cannot be viewed in isolation from other human rights contained in the two International Covenants and other applicable international instruments. The interrelatedness works in two ways. First, the enjoyment of other human rights is indispensable for the full realisation of the right to housing. Second, when the right to housing is not fully realised this will put the enjoyment of other rights at risk. The first relationship has already been illustrated above: the adverse socio-economic situation, the lack of participation and the persistent discrimination of Gypsies and Travellers have an adverse impact on their ability to enjoy their right to housing.

76. Access to housing is a precondition for the enjoyment of a wide range of other human rights, such as the rights to work, health, social security, vote, privacy and education. In this way, accommodation is a key to understanding the inequalities and barriers to service access experienced by Gypsies and Travellers. When the planned eviction is carried out, it will further impair the ability of the Gypsies and Travellers residents of Dale Farm to earn a living and without proof of residency, the residents may not be able to vote, enjoy social services or receive health care. The already disadvantageous position of the Gypsies and Traveller residents with regard to health and education will deteriorate when the eviction is carried out. A particular vulnerable group are the children. Their right to education will be seriously undermined when the evictions will be carried out. First of all, the trauma experienced following a forced eviction might negatively influence their capacity to attend classes. Besides that, if the eviction took place, an entire school, Crays Hill Primary School, where all the children but one are from Dale Farm, would close.

77. It should be added that the inhumane manner in which the eviction is most likely to be carried out, as proved by previous evictions carried out by the company Constant & Co, will also have detrimental effects on the individuals. As pointed out by Wickford Primary Care Trust, evictions can lead to increases in anxiety, depression, and suicide. When evictions are not carried out in accordance with the law, including health and safety regulations that require a Risk Assessment (previously neglected by Constant) and avoidance of the use of heavy machinery close to children, they can constitute inhuman or degrading treatment, and therefore a clear breach of the obligations the UK government has under international human rights law.

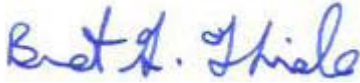
VI. REQUEST FOR PARTICULAR MEASURES

78. The petitioners urge the Committee to consider the imminent forced eviction of the Dale Farm Gypsy and Traveller community under the early warning and urgent action procedure on the basis of the information made available herein and adopt a decision including the expression of specific concerns, along with recommendations for action, addressed to the Government of the UK and to Basildon District Council:

- (1) To halt the pending eviction until an adequate solution is achieved to meet the housing rights, including suitable and cultural adequate accommodation, of the Dale Farm community;
- (2) To take all possible measures to reach a peaceful and viable solution in agreement with the Dale Farm community with an eye to fulfilling the Government's obligations under Article 5(e)(iii) in conjunction with Articles 1 and 2 of the Convention;
- (3) To engage at all times in meaningful consultation and meetings with the affected residents of Dale Farm and their representatives to ensure their participation in accordance with the Government's obligations under international human rights law;
- (4) To revise the decision of denying planning permission to the community;
- (5) To comply with the requirement placed on the Council by the Secretary of State for Communities and Local Government to allocate land sufficient for a minimum of 62 pitches. Compliance can be achieved by the granting of planning permission for the permanent residence of Gypsies and Travellers in Dale Farm;
- (6) Suspend the effects of the contract with the bailiff company Constant & Co. until a negotiable solution is reached with the community and carry out a risk impact assessment to identify the precautionary and compensatory measures to be taken into account in case the Council proceeds with the eviction;
- (7) Should the Government disregard (3) and (4) and proceed with the eviction, the Committee is required to urge the Government to:
 - (i) Carry out the eviction in accordance with international human rights law and the principles of reasonableness and proportionality, and EU and domestic health and safety regulations.
 - (ii) Designate alternative suitable sites for the relocation of the evictees, taking into consideration that

under international human rights law, minorities, low-income and/or vulnerable individuals or groups who are the target of eviction have a strong claim to be re-settled in alternative accommodation compatible with their culture and traditions and with the requirements of an adequate housing.

(iii) Fulfil its duties in respect to any and all vulnerable, disabled, poor, and disadvantaged persons affected by the eviction of Dale Farm, who may be rendered homeless through the imminent enforcement, and to enable other authorities, such as Essex County Council, to carry out their duties and obligations.



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