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NO HOME FROM HOME AN INVESTIGATION REPORT BY THE NORTHERN IRELAND HUMAN RIGHTS COMMISSION

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The Northern Ireland Human Rights Commission recently published a report *No Home from Home*, which investigates the availability of services for homeless non-UK nationals in Northern Ireland. The report documents the experiences of individuals who have come to Northern Ireland including those from the European Union's A8 accession States (for example, Czech Republic and Poland), the A2 accession States (Romania and Bulgaria), and from outside the EU.

Just over three months ago, on 16 June, more than 100 Roma men, women and children were forced to leave their homes following racial intimidation in Belfast. The terrible images of what happened will remain with us for years to come. However, what was not widely reported was that in many instances the law prevents access to homelessness assistance. It should be a basic principle that victims of intimidation receive appropriate support including, if necessary, homeless assistance. Yet UK immigration law often excludes many non-UK nationals from this type of help. As a result, where individuals are intimidated from their homes, access to homelessness assistance may depend not on need but on immigration status.

The UK is party to many human rights treaties including the United Nations International Covenant on Economic, Social and Cultural Rights. Article 11 of the Covenant provides that everyone is entitled to an adequate standard of living. This right should be realised progressively, over time, to the maximum of the State's available resources. However, there are core minimum obligations that government must meet immediately. Therefore, the Covenant requires that governments should not prevent access to basic

shelter and essential foodstuffs. The UN Committee on Economic, Social and Cultural Rights states that:

[...] a State party in which any significant number of individuals is deprived of essential foodstuffs, of essential primary health care, of basic shelter and housing [...] is, prima facie, failing to discharge its obligations under the Covenant¹

Hence, it may come as a surprise that in a developed State such as the UK, immigration laws can exclude individuals from the basic means of shelter and subsistence.

The European Convention of Human Rights (ECHR), the majority of which is incorporated into domestic law by the Human Rights Act 1998, does not explicitly provide for a right to adequate housing or the right to food. Nevertheless, this may be interpreted into the meaning of other provisions within the Convention. Thus, for instance, the right to private and family life (Article 8 ECHR) or the right to be free from inhuman and degrading treatment (Article 3 ECHR) may be engaged by a State policy that deliberately excludes those with no other means of support from emergency accommodation and subsistence.

In 2005, the House of Lords found in the *Limbuela* case that, in certain circumstances, failure to provide support for destitute asylum seekers can infringe the right to be free from inhuman and degrading treatment under Article 3 of the Convention.² The case concerned three asylum seekers who had been denied support under Section 55 of the Nationality, Immigration and Asylum Act 2002. Section 55 permits the Secretary of State to refuse support if it is determined that a claim for asylum has not been made as soon as reasonably practicable after arrival in the UK. On hearing the application, Lord Bingham stated the following:

As in all Article 3 cases, the treatment to be proscribed must achieve a minimum standard of severity, and I would accept that in a context such as this, not involving the deliberate infliction of pain or suffering, the threshold is a high one. A general public duty to house the homeless or provide for the destitute cannot be spelled out of Article 3. But I have no doubt that the threshold may be crossed if a late applicant with

¹ Committee on Economic, Social and Cultural Rights (1990) General Comment No. 3 *The Nature of State parties' obligations*, at paragraph 10.

² *R v Secretary of State for the Home Department (Appellant) ex parte Adam; R v Secretary of State for the Home Department (Appellant) ex parte Limbuela; R v Secretary of State for the Home Department (Appellant) ex parte Tesema* (Conjoined Appeals) [2005] UKHL 66.

*no alternative means of support is by the deliberate action of the state, denied shelter, food, or the most basic necessities of life.*³

The *Limbuella* case relates specifically to the refusal of support for asylum seekers. However, it would appear that there may be other circumstances where, despite legislation barring access to public funds, the State could be required to intervene to avoid breaches of Article 3.

The Commission's report, *No Home from Home*, focuses on three areas of Northern Ireland - Belfast, Cookstown and Dungannon - to highlight the consequences of excluding individuals from homelessness assistance and welfare benefits. It reviews case files of three government agencies as well as interviews provided by their staff: that is, the Northern Ireland Housing Executive, the Health and Social Care Trusts, and the Social Security Agency. The investigation was also informed by those working in the voluntary sector, which is often called upon to help when support from the state is prevented. In addition, with assistance from a number of voluntary organisations, homeless individuals were able to share their experiences as part of the investigation. It is in this way that *No Home from Home* documents how those in grave need including, for example, those who have experienced domestic violence, racial intimidation, and exploitation are barred from accessing welfare benefits and homelessness support.

In addition to an assessment of the relevant legislation, the investigation considers the practices of the three agencies to establish how they respond to homeless non-UK nationals. These agencies were identified as having a key role in fulfilling the State's duties to those who are homeless and potentially destitute. While the investigation finds largely good practice among agencies' staff, it is clear that improvements can be made in order to support staff and to ensure better safeguards for homeless non-UK nationals.

For instance, individuals who are ineligible for homelessness assistance or welfare benefits may be entitled to some form of help from the Health and Social Care Trust (the Trust). This is because the Trust might have duties to families with children under the Children (Northern Ireland) Order 1995 or to 'persons in need' under Article 15 of the Health and Personal Social Services (Northern Ireland) Order 1972. The question of whether or not an individual is entitled to assistance under this legislation can be a complex matter and is at times limited by immigration law. However, for those with no alternative means of support, an

³ At paragraph 7.

assessment under social care legislation ought to be made. The investigation finds that the meaning of this legislation and how it might be used to help homeless non-UK nationals is not always understood. Among other matters, *No Home from Home* therefore recommends the development of guidance, training and inter-agency protocols so that when a homeless individual is 'ineligible' for homelessness assistance all potential avenues for support are explored.

Ultimately, because immigration law is an 'excepted' matter and not within the legislative remit of the Northern Ireland Assembly, the Commission's main recommendation is addressed to the government at Westminster. The Commission calls upon the government to amend immigration laws so that, regardless of nationality or immigration status, no-one is allowed to fall into destitution. In order to realise this recommendation, we ask that everyone has access to appropriate emergency accommodation.

The recommendations in *No Home from Home* are intended to reflect what the Government agreed to on ratifying international human rights treaties. Nevertheless, even those who support the recommendations may be concerned about potential costs. The Commission believes that the benefits of living up to human rights commitments should not be assessed solely in monetary terms. Be that as it may, in some instances, the policy of excluding non-UK nationals from homeless support may end up costing more in the long term. The investigation encountered individuals who would have required only short-term help instead needing long-term health care and social support. The need for longer-term support was due to physical and mental ill-health; a consequence it would appear of sleeping on the streets after being denied homeless assistance.

The experiences of the Roma community reveal that much more needs to be done to address racism and hate crime in Northern Ireland. It also highlights on a devastating scale what the Commission's investigation finds: that regardless of circumstance, those who are not nationals of the UK are often excluded from accessing the most basic levels of welfare benefits and homelessness assistance.

Roisin Devlin is co-author (with Sorchá McKenna) of '*No Home from Home: homelessness for people with no or limited recourse to public funds.*' Sorchá McKenna and Roisin Devlin are Investigations Workers at the Northern Ireland Human Rights Commission. The report is available on the Commission's website www.nihrc.org.