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## The Equal Rights Trust

Parallel report submitted to the 55<sup>th</sup> session of the Committee on the Elimination of  
Discrimination Against Women in relation to the seventh periodic report submitted  
by:

## The United Kingdom

*June 2013*

### Statement of Interest

1. The Equal Rights Trust (ERT) submits this parallel report to the United Nations Committee on the Elimination of Discrimination Against Women (the Committee) commenting on the seventh periodic report by the United Kingdom.
2. ERT is an independent international organisation whose purpose is to combat discrimination and promote equality as a fundamental human right and a basic principle of social justice. Established as an advocacy organisation, resource centre and think tank, it focuses on the complex relationship between different types of discrimination and inequality, developing strategies for translating the principles of equality into practice.
3. This submission focuses on the extent to which the United Kingdom has met its obligations to respect, protect and fulfil the right to non-discrimination in respect to women. In particular, the submission is concerned with the United Kingdom's performance under Articles 2(a) and (b) of the Convention. ERT is aware that the Committee has received a number of submissions from non-governmental organisations based in the United Kingdom providing extensive evidence on the experiences of women. As such, ERT has chosen to focus in this submission on analysis of the main legislation in place to provide protection from discrimination in the United Kingdom, and the extent to which this legislation could be improved or better implemented in order to ensure compliance with the state's obligations under the Convention and international human rights law more broadly.

4. In assessing the United Kingdom's adherence to its obligations under Articles 2(a) and (b), the submission relies on the interpretation of these provisions which has been provided by the Committee in its General Recommendation No. 28.<sup>1</sup>
5. This submission also relies upon the Declaration of Principles on Equality (the Declaration),<sup>2</sup> a document of international best practice on equality. The Declaration was drafted and adopted in 2008 by 128 prominent human rights and equality advocates and experts, and has been described as "the current international understanding of Principles on Equality".<sup>3</sup> It has also been endorsed by the Parliamentary Assembly of the Council of Europe.<sup>4</sup>
6. The submission examines the principal means by which the right to non-discrimination is enforced in the United Kingdom: the Equality Act 2010. The Equality Act 2010 consolidated a number of pre-existing pieces of anti-discrimination legislation including the principal legislation governing non-discrimination on grounds of sex: the Equal Pay Act 1970 and the Sex Discrimination Act 1975. This submission reviews three provisions within the Equality Act which have not been brought into force by the United Kingdom government, which ERT believes are vital in order for the United Kingdom fully to meet its obligations to effectively protect and fulfil the right to non-discrimination for women in its jurisdiction.

## **Article 2: The Equality Act 2010 and Provisions Yet to be Implemented**

7. Under Article 2(a) of the Convention, States parties undertake to "condemn discrimination against women in all its forms, agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women" and to "embody the principle of the equality of men and women in their national constitutions or other appropriate legislation if not yet incorporated therein and to ensure, through law and other appropriate means, the practical realization of this principle". Under Article 2(b), States parties undertake to "adopt appropriate legislative and other measures, including sanctions where appropriate, prohibiting all discrimination against women".
8. The Committee, in its General Recommendation 28 on the Core Obligations of States parties under Article 2 of the Convention on the Elimination of All Forms of Discrimination Against

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<sup>1</sup> Committee on the Elimination of Discrimination Against Women, *General Recommendation No. 28 on the core obligations of States parties under article 2*, CEDAW/C/GC/28, 2010.

<sup>2</sup> *Declaration of Principles on Equality*, The Equal Rights Trust, London, 2008.

<sup>3</sup> *Naz Foundation v. Government of NCT of Delhi and Others* WP(C) No.7455/2001, Para. 93.

<sup>4</sup> Parliamentary Assembly of the Council of Europe, *Resolution and Recommendation: The Declaration of Principles on Equality and activities of the Council of Europe*, REC 1986 (2011), 25 November 2011, available at: [http://assembly.coe.int/ASP/Doc/ATListingDetails\\_E.asp?ATID=11380](http://assembly.coe.int/ASP/Doc/ATListingDetails_E.asp?ATID=11380).

Women (General Recommendation 28), has elaborated on the nature of states' obligations arising under Article 2, stating that:

*Article 2 is crucial to the full implementation of the Convention since it identifies the nature of the general legal obligations of States parties. The obligations enshrined in article 2 are inextricably linked with all other substantive provisions of the Convention, as States parties have the obligation to ensure that all the rights enshrined in the Convention are fully respected at the national level.*<sup>5</sup>

9. The Committee has confirmed that the obligation on States parties under Article 2 has three elements. States are required to *respect* the right to non-discrimination by refraining from “making laws, policies, regulations, programmes, administrative procedures and institutional structures that directly or indirectly result in the denial of the equal enjoyment by women of their civil, political, economic, social and cultural rights”;<sup>6</sup> to *protect* the right by “protect[ing] women from discrimination by private actors and tak[ing] steps directly aimed at eliminating customary and all other practices that prejudice and perpetuate the notion of inferiority or superiority of either of the sexes”;<sup>7</sup> and to *fulfil* the right by adopting a “wide variety of steps to ensure that women and men enjoy equal rights *de jure* and *de facto*, including, where appropriate, the adoption of temporary special measures”.<sup>8</sup>
10. Protection from discrimination in the United Kingdom is provided by two pieces of legislation: the Human Rights Act 1998 and the Equality Act 2010.<sup>9</sup> The Human Rights Act 1998 incorporates the European Convention of Human Rights into domestic law, including Article 14 of the Convention which requires the rights within the Convention to be:

*(...) secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.*

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<sup>5</sup> See above, note 1, Para. 6.

<sup>6</sup> Ibid., Para. 9.

<sup>7</sup> Ibid., Para. 9.

<sup>8</sup> Ibid., Para. 9.

<sup>9</sup> Section 217 of the Equality Act 2010 provides that the Act extends only to England, Wales and Scotland, with only a small number of provisions applicable to Northern Ireland. The prohibition of discrimination in Northern Ireland remains governed by various pieces of primary and secondary legislation specific to Northern Ireland. ERT has not undertaken an assessment of Northern Ireland legislation and references in this submission to “the United Kingdom” in respect of the Equality Act 2010 should be read as referring to England, Wales and Scotland.

11. The Human Rights Act 1998 therefore prohibits discrimination on grounds which include sex, though its scope is limited to the rights contained within the Convention. The Equality Act 2010, the scope of which is significantly broader and not dependent on existing rights, is the primary means by which the right to non-discrimination is enforceable in the United Kingdom.
12. The Equality Act 2010 received royal assent and became law in April 2010 under the last Labour government. A new Conservative-Liberal Democrat coalition government came to power in May 2010. The coalition has implemented the vast majority of the Equality Act's provisions. Since 2010, however, the government has announced that it will not bring into force three provisions of the Act which ERT believes are crucial to ensuring the effectiveness of the United Kingdom's legislation to protect and fulfil the right of non-discrimination for women. These provisions are: a new public sector duty regarding socio-economic inequalities (sections 1 to 3); provisions recognising multiple discrimination (section 14); and provisions on publicising information on gender pay gaps (section 78).

### ***Sections 1 – 3: Public Sector Duty Regarding Socio-Economic Inequalities***

13. Recommendation: The socio-economic duty in sections 1 to 3 of the Equality Act 2010 should be implemented as soon as possible.
14. Section 1(1) of the Equality Act 2010 would introduce a new public sector duty regarding inequalities which result from socio-economic inequalities disadvantage (the socio-economic duty). It reads:

*An authority to which this section applies must, when making decisions of a strategic nature about how to exercise its functions, have due regard to the desirability of exercising them in a way that is designed to reduce the inequalities of outcome which result from socio-economic disadvantage.*

15. The remainder of section 1 sets out the authorities to which the duty would apply.<sup>10</sup> Section 2 would allow the Secretary of State to amend the list of authorities in section 1. Section 3

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<sup>10</sup> These authorities are specified in subsection 1(3) as (a) a Minister of the Crown; (b) a government department other than the Security Service, the Secret Intelligence Service or the Government Communications Head-quarters; (c) a county council or district council in England; (d) the Greater London Authority; (e) a London borough council; (f) the Common Council of the City of London in its capacity as a local authority; (g) the Council of the Isles of Scilly; (h) Strategic Health Authorities; (i) Primary Care Trusts; (j) regional development agencies established by the Regional Development Agencies Act 1998; and (k) police authorities established in England. The Committee should note, however, that since the Equality Act 2010 received royal assent, the bodies listed in paragraphs (h), (i) and (j) have been abolished, while police authorities established in England (the subject of paragraph (k)) have been replaced with police and crime commissioners. Subsection 1(4) provides that the duty also applies to any authority that (a) is a partner

would provide that a failure in respect of a performance of a duty under section 1 would not confer a cause of action at private law. This means that individuals would not be able to claim damages for breach of statutory duty for a breach of this duty. A person would, however, be able to bring judicial review proceedings against a public authority which is covered by the duty, if he or she believed that the public authority had not considered socio-economic disadvantage when taking decisions of a strategic nature.

16. In November 2010, the Home Secretary announced that the government would not be bringing sections 1 to 3 into force, stating:

*Equality has become a dirty word because it has come to be associated with the worst aspects of pointless political correctness and social engineering. Just look at the socio-economic duty. In reality, it would have been just another bureaucratic box to be ticked. It would have meant more time filling in forms and less time focusing on policies that will make a real difference to people's life chances.<sup>11</sup>*

17. ERT strongly supported the socio-economic duty as a progressive measure recognising the link between identity-based discrimination and socio-economic disadvantage and the need to coordinate efforts to address these two forms of inequality. Principle 14 of the Declaration of Principles on Equality highlights the link between these two forms of inequality, stating that: “[a]s poverty may be both a cause and a consequence of discrimination, measures to alleviate poverty should be coordinated with measures to combat discrimination, in the pursuit of full and effective equality”.

18. This link between discrimination and one form of socio-economic disadvantage – income poverty – has also been noted by the UN Independent Expert on the question of extreme poverty and human rights who, in her report of August 2008 to the General Assembly, stated:

*Patterns of discrimination keep people in poverty which in turn serves to perpetuate discriminatory attitudes and practices against them. In other words, discrimination causes poverty but poverty also causes discrimination. As a result, promoting equality and non-discrimination is central to tackling extreme poverty and promoting inclusion. Measures to eliminate poverty and efforts to eliminate all forms of discrimination must be understood as mutually reinforcing and complementary.<sup>12</sup>*

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authority in relation to a responsible local authority, and (b) does not fall within subsection (3), but only in relation to its participation in the preparation or modification of a sustainable community strategy.

<sup>11</sup> Home Office, “Socio-economic duty to be scrapped”, 17 November 2010, available at: <https://www.gov.uk/government/news/socio-economic-duty-to-be-scrapped--2>.

<sup>12</sup> Report of the UN Independent Expert on the question of extreme poverty and human rights, UNGA 63<sup>rd</sup> Session, 2008, Paras 29–30.

19. The link has also been noted by other UN Treaty Bodies. In its General Comment No. 20, for example, the Committee on the Economic, Social and Cultural Rights stated that Article 2(2) of the International Covenant on Economic, Social and Cultural Rights prohibited discrimination on grounds of economic and social situation. The Committee elaborated:

*Individuals and groups of individuals must not be arbitrarily treated on account of belonging to a certain economic or social group or strata within society. A person's social and economic situation when living in poverty or being homeless may result in pervasive discrimination, stigmatization and negative stereotyping which can lead to the refusal of, or unequal access to, the same quality of education and health care as others, as well as the denial of or unequal access to public places.*<sup>13</sup>

20. One important indicator of socio-economic disadvantage in the United Kingdom is the level of income poverty. While few in the United Kingdom suffer from absolute poverty, relative poverty remains prevalent. The most widely-watched measure of relative poverty in the UK is the proportion of individuals with household incomes below 60% of the contemporary median. The Institute of Fiscal Studies has reported that, in the latest year for which data is available (2010–11), the number of individuals living below this poverty line was 9.8 million (16.1% of the UK population) before housing costs, rising to 13.0 million (21.3% of the UK population) when housing costs are included.<sup>14</sup> The Office for National Statistics (ONS) reported that in 2010 17.1% of the United Kingdom population were at risk of poverty or social exclusion.<sup>15</sup>
21. Significantly, the ONS also identified that women are more likely to be at risk of poverty than men, with the risk rating being 17.8% for women compared with 16.4% for men.<sup>16</sup> As these statistics indicate, several million women in the United Kingdom are either in relative poverty or at risk of poverty or social exclusion. It is also clear that there is a substantive inequality between women and men, as women are at greater risk of poverty than men. The Committee, in its General Recommendation No. 28, has stressed that:

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<sup>13</sup> Committee on Economic, Social and Cultural Rights, *General Comment No. 20: Non-discrimination in economic, social and cultural rights*, UN Doc. E/C.12/GC/20, 2009, Para 35.

<sup>14</sup> Institute for Fiscal Studies, *Living standards, poverty and inequality in the UK: 2012*, 2012, p. 4, available at: <http://www.ifs.org.uk/comms/comm124.pdf>.

<sup>15</sup> Office for National Statistics, *Comparison of UK and EU at-risk-of poverty rates 2005 – 2010*, June 2012, p. 10, available at: [http://www.ons.gov.uk/ons/dcp171776\\_266844.pdf](http://www.ons.gov.uk/ons/dcp171776_266844.pdf).

<sup>16</sup> *Ibid.*

*States parties are under an obligation to (...) ensure the development and advancement of women in order that they improve their position and implement their right of de jure and de facto or substantive equality with men*".<sup>17</sup>

22. Therefore, it is clear that the United Kingdom has a specific obligation under the Convention to tackle socio-economic disadvantage to the extent that this disproportionately impacts on women.
23. Elsewhere in General Recommendation No. 28, the Committee has stated that States parties have a particular obligation, when adopting and pursuing a policy to eliminate discrimination, to "identify women (...) as the rights-bearers, with particular emphasis on the groups of women who are most marginalized and who may suffer from various forms of intersectional discrimination".<sup>18</sup> Thus, in addition to its obligation to address the disproportionate impact of socio-economic disadvantage on women, the United Kingdom has an obligation to identify women – including socio-economically disadvantaged women – who are particularly marginalized, and to ensure that its policies address this.
24. ERT notes that the Committee has asked the United Kingdom a number of questions in its list of issues relating to the public sector equality duty in section 149 of the Equality Act 2010.<sup>19</sup> ERT would highlight to the Committee the difference between the public sector equality and the socio-economic duty. The public sector equality duty requires public authorities, when exercising their functions, to have "due regard to the need to":
  - (a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited under the Act;
  - (b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;
  - (c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.
25. The public sector equality duty is limited in that it only applies in relation to the characteristics protected under the Act. Socio-economic status is not among these protected characteristics. The socio-economic duty, whilst similar in that it applies to public authorities

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<sup>17</sup> See above, note 1, Para 16.

<sup>18</sup> See above, note 1, Para 26.

<sup>19</sup> Committee on the Elimination of Discrimination against Women, *List of issues and questions with regard to the consideration of periodic reports: United Kingdom of Great Britain and Northern Ireland*, 2 November 2012, Para 1.

when exercising their functions, specifically requires these bodies to “have due regard to the desirability of exercising them in a way that is designed to reduce the inequalities of outcome which result from socio-economic disadvantage”. The socio-economic duty therefore explicitly recognises the link between socio-economic status and inequalities and would be a more powerful tool in addressing such inequalities than the public sector equality duty alone. Professor Sandra Fredman has highlighted the weaknesses of a public sector equality duty which operates without any consideration of socio-economic disadvantage, and called for a more proactive legislative provision:

*[T]he due regard standard [in the public sector equality duty] is simultaneously too deferent and too narrowly cast to further equality standards effectively. Its deference has meant that on occasion it has legitimized the continued exclusion of disfavored minorities, such as Gypsies and Travellers. Moreover, since the duty is to have due regard to the interests of identity groups, rather than socio-economic disadvantage per se, the result is to skew priorities in favor of identity groups. This has meant that in times of budget cuts, the "due regard" standard has led to a fruitless competition between disadvantaged groups over diminishing funding, without increasing the availability of funding overall.<sup>20</sup>*

26. In this context, ERT was disappointed that the coalition government chose not to implement this important and progressive provision, and the Secretary of State’s reference to the provisions as “just another bureaucratic box to be ticked”. The failure to implement the socio-economic duty represents a failure on the part of the United Kingdom to take all possible measures to ensure that the right to non-discrimination is effectively protected and fulfilled.
27. ERT urges the Committee to recommend to the United Kingdom to reconsider its approach towards the socio-economic duty in section 1 of the Equality Act 2010 and to implement it as soon as possible. ERT would also urge the committee to call on the United Kingdom to recognise socio-economically disadvantaged women as a particularly vulnerable group of women who require specific consideration.

### ***Multiple Discrimination***

28. Recommendation: The provisions recognising and prohibiting multiple discrimination in section 14 of the Equality Act 2010 should be implemented as soon as possible.
29. Section 14 of the Equality Act 2010 would prohibit discrimination where it is based on a combination of two grounds. Thus, the provision would provide protection from “dual discrimination”, a limited form of multiple, or intersectional, discrimination.

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<sup>20</sup> Fredman, S., “Breaking the Mold: Equality as Proactive Duty”, (2012) 60 Am. J. Comp. L. 265, pp. 267 - 268.

30. In its Plan for Growth published in March 2011, however, the government announced that it would not be implementing section 14 in order to “minimise regulatory burdens”<sup>21</sup> and to save “business £3 million per year”.<sup>22</sup> In May 2012 the Home Office announced, following a review of the Equality Act 2010, that it intended only to “delay commencement” of the provision.<sup>23</sup> The government’s current position is unclear.
31. The Committee, in its General Recommendation No. 28, has stressed the importance of States Parties providing effective protection from multiple discrimination, as a key element of the obligation to protect women from all forms of discrimination. The Committee has stated:

*Intersectionality is a basic concept for understanding the scope of the general obligations of States parties contained in article 2. The discrimination of women based on sex and gender is inextricably linked with other factors that affect women, such as race, ethnicity, religion or belief, health, status, age, class, caste and sexual orientation and gender identity. Discrimination on the basis of sex or gender may affect women belonging to such groups to a different degree or in different ways to men. States parties must legally recognize such intersecting forms of discrimination and their compounded negative impact on the women concerned and prohibit them. They also need to adopt and pursue policies and programmes designed to eliminate such occurrences, including, where appropriate, temporary special measures in accordance with article 4, paragraph 1, of the Convention and general recommendation No. 25.<sup>24</sup> (Emphasis added.)*

32. The Committee’s statement in General Recommendation No. 28 reflects an international expert consensus on the importance of providing protection against multiple discrimination. The definition of discrimination in Principle 5 of the Declaration of Principles on Equality contains a list of grounds upon which discrimination must be prohibited and also includes the phrase “(...) or a combination of any of these grounds (...)”. In addition, Principle 12 requires states to ensure that laws and policies provide effective protection against multiple

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<sup>21</sup> Her Majesty’s Treasury and the Department for Business, Innovation and Skills, *The Plan for Growth*, March 2011, p. 23, available at: [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/184602/2011budget\\_growth.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/184602/2011budget_growth.pdf).

<sup>22</sup> *Ibid.*, p. 53.

<sup>23</sup> Home Office Ministerial Statement, “Equalities/Equality and Human Rights Commission”, 15 May 2012, available at: <http://www.publications.parliament.uk/pa/cm201213/cmhansrd/cm120515/wmstext/120515m0001.htm#12051577000007>.

<sup>24</sup> See above, note 1, Para 18.

discrimination and that “[p]articular positive action measures, as defined in Principle 3, may be required to overcome past disadvantage related to the combination of two or more prohibited grounds”. Dimitrina Petrova has elaborated on the importance of Principle 12 in the legal commentary on the Principles.

*This Principle addresses the need for any legal provisions promoting equality to take into account evolving social phenomena that are manifested as discriminatory acts or practices. The law should recognise that individuals have multiple identities and cannot always be classified according to or as defined by a single characteristic. Multiple discrimination is the term used to describe: a) discrimination on more than one ground in a cumulative (additive) sense, e.g. where a woman is discriminated against on grounds of her gender and, separately, also on grounds of her race (disability, age, etc), and in this case the discriminator otherwise discriminates both against women and against racial minorities; b) discrimination on more than one ground in a syncretic sense, based on a combination of grounds, where it is only the combined characteristics of, for example, gender and race that trigger discrimination, while each of them alone does not.<sup>25</sup>*

33. ERT notes the questions raised in the Committee’s list of issues on the status of particular groups of women vulnerable to multiple discrimination such as black, Asian and minority ethnic women in political and public life<sup>26</sup> and the impact of the changes in the welfare system and the pension reform on older women, women with disabilities and ethnic minorities.<sup>27</sup>
34. The existence of multiple discrimination in the United Kingdom is well-documented, as is the particular vulnerability of certain groups of women who suffer discrimination because of the intersection of different characteristics with their sex. Research carried out by the Equality and Human Rights Commission showed that women of Indian origin were paid, on average, 18% less than men of the same ethnic background.<sup>28</sup> An inquiry in 2012-13 by the All Party Parliamentary Group on Race and Community found that:

*[T]he unemployment rates of Black, Pakistani and Bangladeshi heritage women have remained consistently higher than those of white women since the early 1980s. Indeed, despite the more frequent attention given to*

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<sup>25</sup> See above, note 2, pp. 38 – 39.

<sup>26</sup> See above, note 19, Para 15.

<sup>27</sup> See above, note 19, Para 18.

<sup>28</sup> Equality and Human Rights Commission, *Research Report 9: Pay Gaps across Equalities Areas*, 2008, p. ix, available at: [http://www.equalityhumanrights.com/uploaded\\_files/pay\\_gaps\\_accross\\_equalities\\_areas.pdf](http://www.equalityhumanrights.com/uploaded_files/pay_gaps_accross_equalities_areas.pdf).

*the unemployment rates of ethnic minority men, the overall unemployment rate of ethnic minority women is actually higher, 14.3% compared to 13.2%. When looking at the groups which are the focus of this inquiry – Black, Pakistani and Bangladeshi women – these women are far more likely to be unemployed than both white men and white women. Pakistani and Bangladeshi women are particularly affected, with 20.5% being unemployed compared to 6.8% of white women, with 17.7% of Black women also being unemployed.<sup>29</sup>*

35. Similarly, the particular vulnerability of older women is widely recognised. ERT endorses the NGO Thematic Shadow Report submitted to the Committee by the Older Women’s Network, Europe and the National Alliance of Women’s Organisations, and its findings that older women are a particularly vulnerable group facing significant disadvantages when compared to older men.
36. ERT is therefore disappointed that section 14 of the Equality Act 2010 has not been implemented and that the law does not therefore recognise multiple discrimination and the compounded negative impact it has on women.
37. ERT urges the Committee to recommend to the United Kingdom to reconsider its approach towards multiple discrimination in section 14 of the Equality Act 2010 and to implement the provision as soon as possible.

### **Gender Pay Gaps**

38. Recommendation: Section 78 of Equality Act 2010 which provides for mandatory equal pay audits should be implemented as soon as possible.
39. Despite the enactment of the Equal Pay Act 1970, which prohibited discrimination on grounds of gender in pay and remuneration, there remains in the United Kingdom a gender pay gap, estimated in 2012 by the Fawcett Society to be approximately 18.6%.<sup>30</sup> In the private sector this figure rises to 24%.<sup>31</sup> This figure varies significantly by region and sector, rising to up to 33% in the City of London and 55% in the finance sector.<sup>32</sup>

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<sup>29</sup> All Party Parliamentary Group on Race and Community, *First Report of Session 2012–2013: Ethnic Minority Female Unemployment: Black, Pakistani and Bangladeshi Heritage Women*, 2013, p. 4, available at: <http://www.nbpa.co.uk/wp-content/uploads/2012/12/APPGfemaleunemploymentReport-2012.pdf>.

<sup>30</sup> The Fawcett Society, *Equal Pay*, 4 March 2013, available at: <http://www.fawcettsociety.org.uk/equal-pay/>.

<sup>31</sup> Ibid.

<sup>32</sup> Ibid.

40. Section 78 of the Equality Act 2010 would allow the government to introduce secondary legislation which would:

*(...) require employers to publish information relating to the pay of employees for the purpose of showing whether, by reference to factors of such description as is prescribed, there are differences in the pay of male and female employees.*

41. The secondary legislation would not apply to an employer who has fewer than 250 employees, nor to certain specified public authorities.

42. The government elected in 2010 chose not to implement section 78 of the Equality Act 2010. Instead, the coalition government introduced new legislation: a new section 139A in the Equality Act 2010 was introduced by the Enterprise and Regulatory Reform Act 2013 which would allow the government to introduce legislation which:

*[R]equire[s] an employment tribunal to order the respondent to carry out an equal pay audit in any case where the tribunal finds that there has been an equal pay breach.*

43. Article 11(1)(d) of the Convention provides that:

*States Parties shall take all appropriate measures to eliminate discrimination against women in the field of employment in order to ensure, on a basis of equality of men and women, the same rights, in particular (...) (d) The right to equal remuneration, including benefits, and to equal treatment in respect of work of equal value (...)*

44. ERT believes that the persistence of the gender pay gap, despite legislation prohibiting discrimination in pay and remuneration in force for over 40 years, necessitates strong and progressive measures so that the United Kingdom can fulfil its obligations under Article 11(1)(d). ERT believes that the mandatory equal pay audits provided for in section 78 of the Equality Act 2010 would provide for a quick and effective means by which employers who were discriminating against women in pay and remuneration could be identified. Indeed, it is likely, given the difficulty in some organisations in establishing the pay of different individuals, the pre-emptive nature of the mandatory audits would have exposed such practices in circumstances where this information would otherwise have been unavailable. Moreover, mandatory audits would provide a powerful incentive for employers proactively to tackle pay discrimination in their organisations; and would allow women to take into account the gender pay gap of a particular organisation when considering their employment options.

45. The approach favoured by the government by which pay audits will only take place after an employer had lost an equal pay case at an employment tribunal is notably weaker in that it

only addresses discrimination in pay and remuneration once an employee has taken a case to an employment tribunal. The incentive for employers immediately to take proactive steps to tackle pay discrimination is therefore much diminished. Further, women who wish to know the gender pay gap of a particular organisation prior to seeking employment there will not be able to find out unless that organisation has previously lost an equal pay claim.

46. ERT is therefore disappointed that the government has decided not implement section 78 of the Equality Act 2010 and has instead opted for a much weaker, and much less effective, regime via the new section 139A of the Equality Act.
47. ERT urges the Committee to recommend to the United Kingdom to reconsider its approach towards the gender pay gap and equal pay audits and to implement section 78 of the Equality Act 2010 as soon as possible.