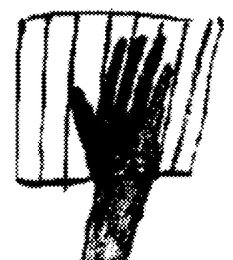


Human rights denied: 40 years of the Moroccan Community in Gibraltar

A report by the International Centre for Trade Union Rights



Commissioned by
the Gibraltar District of Unite the union

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ICTUR

ICTUR was established in 1987 to promote and defend the rights of workers and trade unions. ICTUR carries out its activities in the spirit of the United Nations Charter, the Universal Declaration of Human Rights, International Labour Organisation Conventions and Recommendations and other appropriate international treaties. Based in London, ICTUR has since developed a global network of expertise on international labour rights, and is now widely regarded as an internationally recognised centre of excellence on international labour standards and human rights. In 1993 ICTUR was granted accredited status with both the UN and the ILO.

More than fifty national trade unions are affiliated to ICTUR, its global membership also including human rights organisations, research institutes and lawyers' associations.

The ICTUR president is Sharan Burrow, President of the Australian Council of Trade Unions, and also President of the International Trade Union Confederation (ITUC).

Vice Presidents are Professor Keith Ewing, British lawyer; Dr Fathi El-Fadl, Sudan Trade Union Alliance; John Hendy QC, British lawyer; Jeffrey Sack QC, Canadian lawyer; Jitendra Sharma, Senior Advocate, Supreme Court of India; and Hassan Sunmonu, General Secretary, Organisation for African Trade Union Unity.

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**Report of an Inquiry Conducted by
the International Centre for Trade Union Rights
on behalf of the Gibraltar District Office of
Unite the Union**

**Daniel Blackburn
K D Ewing
Jonathan Jeffries**

12 October 2009

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Chapter One

Introduction

1.1 Gibraltar is a self-governing British overseas territory. It is a tiny peninsula (an area of 6.5 square kilometres, including recently ‘reclaimed’ land) at the southern tip of Spain. It overlooks the seaway dividing Europe and Africa. Throughout its history Gibraltar has been of major strategic military importance. The British Ministry of Defence used to employ more than 20 percent of the labour force. During the height of the cold war period funding from the United Kingdom Ministry of Defence represented 60 percent of Gibraltar’s GDP.

1.2 For many decades Gibraltar was largely dependent upon the services of a large number of migrant workers in order to support industries associated with the military dockyards. Prior to 1969 the majority of these migrant workers were Spanish citizens, who crossed into Gibraltar on a daily basis from Southern Spain. In 1969 the Spanish authorities closed the border leaving a strategic military facility facing a severe crisis with shortages of several thousand workers who could not be replaced locally.

1.3 In response to the crisis, the Gibraltarian state and the British government turned to the Kingdom of Morocco, just a few miles across the Straits. Thousands of Moroccan workers were recruited and encouraged to travel to Gibraltar and to take up employment with the Public Services Agency which managed construction, property and service operations around the naval dockyard. Within nine months of the 1969 border closure the Moroccan migrant workforce consisted of at least three thousand workers.

1.4 For almost 40 years – and in some cases longer than this – Moroccan migrant workers have played an essential role in supporting the economy of Gibraltar by maintaining the dockyards. During the height of the cold war, funding from the United Kingdom Ministry of Defence represented 60 percent of Gibraltar’s GDP. Now that the strategic importance of the Rock no longer requires a significant military presence, a reduced number of Moroccan workers are now engaged in a wide range of other activities, typically of a civilian nature.

1.5 Over the decades the Moroccans have experienced problems with separation from their families, difficulties with travel on the local ferry, political disenfranchisement, barriers of access to housing, problems accessing non-emergency medical care, discrimination in the labour market (in particular during the ‘Gibraltarians First’ era prior to 1996), and difficulties and delays in accessing naturalisation processes under which many of them would like to become full citizens of Gibraltar. The Moroccans complain that they are barred from the subsidised public housing used by Gibraltarians and can live only in expensive private sector rental accommodation (if they can afford it, which many cannot) or in badly-maintained, dirty, infested, unsafe and overcrowded ‘hostels’ that a member of our delegation branded ‘the Disgrace on the Rock’.

1.6 Examining the historical perspective is not only useful to understand how the current situation developed but is necessary in order to understand how even those discriminatory provisions that have been abolished in the past continue to haunt the present day population and continue to perpetuate inequalities between, for example, the college-age children of Moroccan migrant workers and Gibraltarians. In particular it is important to understand the legacy of the pre-1985 classification of Gibraltar as a ‘fortress’ which saw pregnant Moroccan migrant workers deported before giving birth. The deportations were carried out irrespective of the fact that these women were lawfully resident in Gibraltar at the time and that they were working tax-payers. The now grown-up children of women who were deported under this law more than 20 years ago are still encountering the effects of discrimination and complain that they cannot access college funding that would be available to them had they been born in Gibraltar.

1.7 Whatever the reasons for the treatment of Moroccan workers in Gibraltar it is clear that a weak economy can’t be the excuse: the economy has diversified in recent years, branching out into financial services in particular. In fact, modern Gibraltar is booming, as an article published in *The Guardian* in March 2009 made clear. Among the issues identified by *Guardian* journalist Giles Tremlett during his recent visit to Gibraltar were the following:

- Gibraltar is actively trying to attract ‘high net-worth individuals’ to take up residency;
- Sleek new high-rise apartment blocks for ‘rich foreigners’ line the harbour;
- The economy is booming - chief minister Peter Caruana claimed: ‘If we were a sovereign state we would be 13th in the world in GDP per capita’.

1.8 These may be times of plenty in Gibraltar, but even in 2009 the Moroccan community finds itself without a seat at the table. The appalling ghettoised private housing and the cramped and unhygienic Buena Vista hostel stand as a searing indictment to the failure of successive Governments to provide acceptable standards of housing and care for a loyal workforce that has contributed much to advance the national interests of both Britain and Gibraltar. In spite of their immense contribution to the economic, social and cultural life of Gibraltar over a period of almost 40 years it is the unfortunate reality that the vast majority of Moroccans face shocking discrimination and violations of fundamental human rights.

Chapter Two

The Role of ICTUR

2.1 ICTUR is an international body with a secretariat in London. It was established in 1987 and has since developed a global network of expertise on international labour rights. The organisation enjoys the affiliation of more than fifty national trade unions. ICTUR's global membership also includes human rights organisations, research institutes and lawyers' associations.

2.2 ICTUR works to promote and defend the rights of workers and carries out its activities in the spirit of the United Nations Charter, the Universal Declaration of Human Rights, International Labour Organisation Conventions and Recommendations and other appropriate international treaties. ICTUR is an internationally recognised centre of excellence on international labour standards and human rights. In 1993 ICTUR was granted accredited status with both the United Nations and the International Labour Organisation (ILO).

Previous ICTUR Inquiry

2.3 In 1995 ICTUR carried out an investigation into the situation in Gibraltar, having been approached by a Moroccan trade union, which expressed concerns about the human rights situation in respect of Moroccans living and working in Gibraltar. This investigation resulted in the publication 'Moroccan workers in Gibraltar' (1995), which criticised a series of failures to respect international standards.

2.4 Despite the serious problems which we document in the pages that follow, there have been some genuine reforms that have improved conditions in some areas. In particular we feel that it is important to recognise the following developments:

- In the mid 1980s the legislation which required the deportation of pregnant migrant workers was repealed;
- In the late 1990s the 'Gibraltarians First' policy was repealed, leading to substantial improvements in terms of employment security for Moroccan workers;
- In the early 2000s work and residency permits were substantially extended from one-year only to five-years (for an individual in work) and to six-months (for an unemployed individual);
- In the early 2000s Moroccan workers facing periods of temporary unemployment were granted access to unemployment benefit payments for thirteen weeks;
- We were also told during our visit that the Gibraltar government had recently cancelled some of the fees levied on the Gibraltar-Morocco ferry

operators, although this had not reduced complaints about the nature of the service;

- We were also told that the budget for the Immigration Department had recently been increased.

Overall, we were told by the Moroccan Workers Association that the new government had, since 1996, been more sympathetic to their concerns and had stopped some deportations. However, it is clear that fundamental problems remain.

Current ICTUR Inquiry

2.5 In late 2008 the Gibraltar District Office of Unite contacted ICTUR to express concern at the continuing allegations of discrimination and arbitrary treatment of Moroccan migrant workers. Following a series of meetings between ICTUR staff and officials from the Gibraltar District Office of Unite, it was agreed that ICTUR would carry out a research and fact-finding mission.

- **Visit to Gibraltar**

2.6 In February 2009 a delegation from ICTUR travelled to Gibraltar. The District Office of Unite provided every facility to support ICTUR's visit and organised an itinerary of meetings with the Moroccan Workers' Association, the Moroccan Community Association, Unite officials and representatives of the GGCA trade union, as well as arranging a series of invaluable meetings with political leaders, notably:

- Joe Holliday, Deputy Chief Minister (Minister for Enterprise, Development, Technology and Transport);
- Joe Bossano (Leader of the Opposition); and
- Keith Azzopardi (Leader of the PDP).

Unite also organised a public meeting to which members of the Moroccan community were invited to express their views. The participation in this meeting of some 500 members of the Moroccan community demonstrated the immense level of dissatisfaction felt by the community about the current situation.

2.7 The local press showed considerable interest in the issue, with the Gibraltar Chronicle covering both the visit of the ICTUR delegation and the public meeting called by Unite and the migrant workers' associations in articles appearing on 14th and 21st February and again on 16th March, the last reporting the contents of an ICTUR letter published in the Guardian newspaper.¹ Prompted by the ICTUR letter, the *Guardian* conducted its own investigation, which largely coincided with our concerns.² According to the local media, there is now an 'international spotlight on the plight of Gibraltar's 'second class' citizens'.³

¹ D Blackburn, K Ewing and J Jeffries, 'Gibraltar's Treatment of Migrant Workers', *Guardian*, 12 March 2009.

² See G Tremlett, 'Rock and a Hard Place', *Guardian*, 28 March 2009.

³ *Vox Online*, 9 April 2009.

2.8 Following the extensive press coverage that our investigations generated on ICTUR's return from Gibraltar, we were contacted by a Polish journalist who expressed an interest in producing a documentary film about the situation. On 7 July ICTUR Director Daniel Blackburn travelled to Gibraltar to assist with the production of a short documentary. That film has now been syndicated to public television companies throughout Europe.

- **Meetings in London and Geneva**

2.9 On 9 June ICTUR joined Unite representatives from Gibraltar at the Unite Transport House offices in London for a presentation and discussion with British trade unionists, lawyers and NGOs of the situation for Moroccan migrant workers. ICTUR Vice President Professor Keith Ewing chaired the meeting at which Unite's Charles Sisarello outlined the serious problems faced by the Moroccans, which included: family reunification; housing; voting rights; access to public services and welfare; and naturalisation procedures.

2.10 On 13 June 2009, ICTUR hosted its annual conference in Geneva, Switzerland. Senior trade union representatives, lawyers, and human rights organisations attended the meeting, including representatives of trade unions from Australia, Colombia, Egypt, France, Japan, Spain, Venezuela, Guatemala, France, Sudan, Russia, Switzerland and the global union IUF. Charles Sisarello, District Officer of Unite, presented the situation of the Moroccan community in Gibraltar.

2.11 The conference concluded that the issues facing the Moroccan community in Gibraltar had resonance for migrant workers around the world. There was agreement among those present that ICTUR should investigate the prospects for bringing cases before the ILO and the UN system in order to publicly denounce the situation and to bring into operation the specific enforcement machinery of these agencies for the protection of migrant workers.

- **Parliamentary Intervention and Legal Advice**

2.12 ICTUR had a meeting with the Chair of the All-Party Gibraltar Group in the British Parliament, and presented submissions to the inquiry underway into the human rights obligations of British overseas territories by the House of Commons Foreign Affairs Committee.⁴ ICTUR called on the British government to take urgent steps to bring about an improvement in the human rights conditions of the Moroccans, arguing in particular that a moral debt was owed, dating back to the role that the Moroccans had played in providing vital assistance to an important British military facility in the 1960s and 70s, in addition to noting the apparent discrepancies between the UK's human rights commitments under international law and the situation in Gibraltar.

2.13 On our return from Gibraltar, ICTUR's team took the view that a strong case can be made out for numerous violations of the international legal instruments that are summarised in this report. Of these a number are justiciable in local and international courts as violations of the European Convention on Human Rights and its associated

⁴ HC 557 (2008-09)

protocols. We also took the view that here appeared to be further violations of other relevant laws, including not only international treaties but also the local laws of Gibraltar. We were also concerned by allegations of procedural irregularities, for example, in the processing of applications for naturalisation, and by further allegations that unpublished or arbitrary criteria were being applied to such applications.

2.14 In order to ensure that the legal potential should be investigated to its fullest potential ICTUR commissioned a formal Legal Advice from one of the UK's leading discrimination barristers, Karon Monaghan, QC, who also has rights of audience in Gibraltar. Ms. Monaghan's Advice not only confirmed the views of ICTUR's in-house legal team, consisting of law professor Keith Ewing, barrister Daniel Blackburn, and abogado Miguel Puerto, but also brought to our attention further aspects of discrimination law that appear to have been violated by various of the practices which the Moroccan community faces in Gibraltar. Ms. Monaghan's Advice is discussed throughout this report.

Conclusion

2.15 We wish to take this opportunity to acknowledge the assistance and support, as well as the unfailing courtesy which we have encountered from all we met in the course of this inquiry. The only notable difficulty we encountered from time related to access to information. The inaccessibility of information permeated each area we investigated. As well as key guidance on housing and social security being classed as 'not public documents', we encountered suggestions of similar practices taking place within immigration, where it was alleged: i) that informal and unpublished criteria have been applied to naturalisation applications; ii) that the application process, decision-making procedures and timescales for responding to applications are opaque; and iii) that the 'custom' of only permitting family visits for Moroccans for a short period in the summer is not founded in law and therefore constitutes an application of informal criteria to the decision-making process.

2.16 When the District Office of Unite wrote to the Government with specific requests for further details of particular aspects of law and practice that in our view appeared to be discriminatory or unclear the Government responded by stating simply that:

'I acknowledge receipt of your letter of 7th May. You ask three questions, none of which are related to the interests of persons who are presently in employment. The position of the Government is that Unite is an interlocutor only in respect of the interests of workers in Gibraltar'

(Letter from Chief Secretary of Gibraltar to Unite District Office, 2 June 2009)

This experience reflects one of the key issues underlying many of the complaints to which we now turn, that is to say the great difficulty people experience in accessing information about the criteria, processes and procedures that govern the provision of public services and benefits in Gibraltar.

Chapter Three

Naturalisation, Political Rights and Public Services

3.1 It is important to emphasise, that the discrimination against Moroccan workers that we encountered is not a problem in the private sector, in employment, in the street, or in social interactions; rather it is a problem stemming directly from the public authorities. The problems we identified may be conveniently grouped together under five headings:

- (i) **Naturalisation:** allegations about slow, arbitrary, and discriminatory processing of applications for citizenship;
- (ii) **Political Rights:** denial of the right to vote to people who have been living, working, and paying taxes in Gibraltar for up to 40 years;
- (iii) **Public services:** ineligibility for certain welfare benefits, and discrimination in relation to health care;
- (iv) **Housing:** discriminatory provision of public housing and poor quality of rented accommodation; and
- (v) **Family re-unification:** profound difficulties with visas and travel arrangements leading to prolonged separation of families.

In this chapter we concentrate on the first three of these matters, and deal with the other two in chapter four.

Naturalisation

3.2 Moroccan migrant workers resident in Gibraltar for long periods of time (including some resident for 40 years or more) have often struggled to obtain naturalisation. The people we spoke to complained of slow, arbitrary and discriminatory application processes for citizenship. Most of those we spoke to were aware of the allegation about arbitrary, unpublished and unofficial policies that are applied to applications. English language skills have recently introduced a new obstacle, as English may be the Moroccans' third or fourth language, and is not the language commonly used in their workplaces where even Gibraltarians often use Spanish or Llanito.

3.3 In an interview with the Moroccan Workers' Association, we were told that there are 'no clear rules in Gibraltar', but that 'there is an unwritten policy, a whim'. They believe that in addition to the 'whim' of the authorities the rules require 'roughly 20 years' residency in Gibraltar, good knowledge of English, currently in employment, and have good conduct'. The Association confirmed that the Moroccans living in Gibraltar overwhelmingly want to become naturalised. Of the thousands who have lived and worked in Gibraltar over the past four decades, the Association was aware of 'perhaps 100-150 people' who have successfully obtained naturalisation. The application process, they told us, is 'slow and mysterious'.

3.4 In a separate interview with the Moroccan Community Association, we were told that many of the Moroccans living in Gibraltar have been resident for 30-40 years.

Older, retired workers are leaving and no new workers are arriving. They were of the opinion that in some cases naturalisation could be a fast process, particularly for men without children. The process might be achieved for these applicants within two years of making an application. But these cases were the exception. The Association complained that children of Moroccan migrant workers are not entitled to a passport until they are 10 years old. They did not know, however, whether passports were provided to the children of naturalised Moroccans or Gibraltarians at an earlier age.

3.5 We should note that since returning to London, our attention has been drawn to Gibraltar media reports which appear to have been stimulated by our visit. Some of the coverage suggests that there has been a significant spike in the number of Moroccans who have been naturalised in recent years.

- From 1999 to 2005, the annual figures were said to be 2 (1999), 4 (2000), 3 (2001), 1 (2002), 7 (2003), 8 (2004), and 2 (2005);
- In 2006, however, the figures rose to 26, and remained stable at 21 and 28 in 2007 and 2008 respectively. The figures then available for early 2009 were only 2.

3.6 Although the increase is to be welcome, it does not answer the questions about the process, but simply invites more such questions. Nor does it overcome the sense of grievance felt by some who still feel that there is undue delay, as in the case of one of the people we spoke to. He applied for naturalisation in 2002 and has heard nothing since, not even an acknowledgement of his application, believing that the reason for his poor treatment is that he has young children in Morocco. These children would be entitled to join their father in Gibraltar were his application to be granted.

Political Rights

3.7 Long-term residents have paid taxes and contributed to society over extraordinary periods of time: in some cases their entire working lives. As non-EU nationals throughout this period they have been denied the right to vote in Gibraltar. Many migrant workers have attempted to register but have had their applications turned down on the basis of nationality. Both the MWA and the MCA presented ICTUR with copies of written claims for registration on the electoral roll which had been presented by workers and tax-payers who had been resident in Gibraltar for periods of 31 years; 35 years; 36 years; and 40 years respectively. The Electoral Office Registration Officer replied in each case: 'I intend to disallow your application...on the following grounds...you are a Moroccan national'.

3.8 We regard this position to be especially unfortunate in light of:

- The decision of the European Court of Human Rights in *Matthews v United Kingdom* (1998) 28 EHRR 361, where a complaint was lodged that a Gibraltar resident had been denied any opportunity to express her opinion in the choice of members of the European Parliament, despite the fact that legislation that emanated from the European Community formed part of the legislation in

Gibraltar and the applicant was directly affected by it. This was held by the Court to breach Article 3 of the First Protocol to the European Convention on Human Rights.⁵ Gibraltarians may now vote in European Parliament elections.

- The decision of the European Court of Justice in *Case C-145/04, Kingdom of Spain v United Kingdom*, where it was held that Community law does ‘not exclude, therefore, a person who is not a citizen of the Union, such as a [Qualified Commonwealth Citizen] resident in Gibraltar, from being entitled to the right to vote and stand for election’ (para 70). Later in the same decision the ECJ made clear that:

‘in the current state of Community law, the definition of the persons entitled to vote and to stand as a candidate in elections to the European Parliament falls within the competence of each Member State in compliance with Community law, and that Articles 189 EC, 190 EC, 17 EC and 19 EC do not preclude the Member States from granting that right to vote and to stand as a candidate to certain persons who have close links to them, other than their own nationals or citizens of the Union resident in their territory’ (para 78).

3.9 The satisfactory resolution of the naturalisation complaints would go a long way towards addressing the problem relating to political rights, in the sense that once naturalised a migrant worker would be entitled to be registered to vote. We see no reason, however, why a migrant worker with a sufficiently close connection to Gibraltar should not be entitled to register to vote without the need for naturalisation. To this end we fully endorse the principle which we heard in Gibraltar from several sources that there should be ‘no taxation without representation’, a principle which in our view is as compelling in the 21st century as it was in the 18th. We also note that the compelling arguments that won Gibraltarians the franchise in European elections are just as compelling when applied to Moroccan workers resident in Gibraltar.

3.10 It is true that the practice of many countries is to restrict the franchise only to citizens. In the United Kingdom, however, the right to vote in parliamentary elections is extended to British and Irish nationals and to Commonwealth citizens, with an even wider franchise for local government and European elections.⁶ There are thus always exceptions, and in our view the position of migrant workers in Gibraltar is quite exceptional. It is exceptional not only because of the length of time many of the workers in question have spent there, but also because of the unequivocal commitment they have made to the community and its economy. So far as we understand, there would be no obstacle in either the ECHR or in EU law to the granting of such rights to workers who qualified on the basis of a prescribed period of residency, regardless of whether or not they are naturalised.

⁵ Article 3 provides that ‘The High Contracting Parties undertake to hold free elections at reasonable intervals by secret ballot, under conditions which will ensure the free expression of the opinion of the people in the choice of the legislature’.

⁶ See A W Bradley and K D Ewing, *Constitutional and Administrative Law* (14th ed, 2007), ch 9.

3.11 To this end, we would draw attention to the *ILO's Multilateral Framework on Labour Migration*. This is a set of non-binding principles and guidelines for a rights-based approach to labour migration adopted by the Governing Body of the ILO in 2006. The instrument 'invites governments of States Members of the ILO, employers and workers' organisations, as well as relevant international organizations, to promote and respect its contents'. So far as immediately relevant, the Framework encourages States to allow 'migrant workers to participate in political activities after a period of legal residence in the country, in accordance with national conditions'.⁷ Any such extension of the franchise would of course – as a matter of principle - apply to all migrant workers (not only Moroccans) in Gibraltar who satisfied the prescribed residency requirements, though it is likely that the Moroccan workers would form the bulk of any such extended franchise.

BOX 1

***Matthews v United Kingdom*
(1998) 28 EHRR 361**

'in the present case the applicant, as a resident of Gibraltar, was completely denied any opportunity to express her opinion in the choice of the members of the European Parliament. The position is not analogous to that of persons who are unable to take part in elections because they live outside the jurisdiction, as such individuals have weakened the link between themselves and the jurisdiction. In the present case, as the Court has found, the legislation which emanates from the European Community forms part of the legislation in Gibraltar, and the applicant is directly affected by it' (para 64).

3.12 Our discussions with senior political leaders from each of the three main political parties suggested that common ground existed at least around the proposal that Moroccans should be able to access the right to vote through naturalisation, though this issue in itself remained controversial. Not all of the political leaders agreed with the suggestion that voting rights could be granted to long term residents without naturalisation, but two of the three leaders did support such a measure. Those who supported the extension of voting rights to long term residents in principle tended to favour a residency requirement in the region of ten years.

⁷ An example of what the ILO considers 'good practice' in this area is provided by South Africa, which according to the ILO 'granted migrant workers voting rights in local elections', after consultation with the National Union of Mine Workers.

BOX 2

The Mock Elections

With electoral turnout at historically low levels, there was at least one British constituency (the South West and Gibraltar) where more than half of those eligible to vote did so at the Euro elections on 4 June. But paradoxically this was an ‘election’ by those who are disenfranchised, namely 800 or so Moroccan migrant workers living in Gibraltar, excluded from the ‘official’ ballot because they are ‘Moroccan nationals’.

Roughly 70 percent of the eligible Moroccan nationals still resident in Gibraltar participated in the ‘mock election’ on 4 June, organised by the Gibraltar office of Unite the Union, which is to be warmly congratulated for an inspired form of political protest, designed to bring this denial of civil rights to the attention of a wider audience. On a day when the registered electors stayed at home, by their strong support for the union initiative, the Moroccan workers provided the story of the day.

Participants were given the opportunity to ‘vote’ for the same parties as the registered electors in the constituency though predictably the ballot box – which had been delivered by a procession of workers just after the ‘poll’ - was excluded from the count by the police. The disenfranchised were left to stand and watch, as the official ballot boxes were brought by taxis at the close of the official poll from the official polling stations, transferred to the supervision of the returning officer.

Nevertheless, ballot papers for the ‘mock election’ were verified and counted on the next day under the supervision of the Mayor of Gibraltar. Although Labour emerged as the largest party (and no one voted for the BNP), the result was irrelevant: the participants were voting for change, in a dignified and imaginative act of political protest, with exclusion from the franchise being only one of many grievances nursed by the migrant worker community.

A member of the ICTUR visited Gibraltar to observe the conduct of the ‘mock election’, and a full report is to be found in *International Union Rights*, Volume 16.3 (2009).

Public Services and Welfare Benefits

3.13 A third complaint related to allegations that members of the Moroccan community and their families are denied access to some public services in Gibraltar. These relate specifically to education, health care, and social security.

- **Health Care and Education**

3.14 The Moroccan Community Association emphasised the barriers faced by migrant workers and their families in accessing health care as a key concern. It was claimed that when their families are with them during the visiting period, the families do not have full access to health services, despite the fact that the migrant worker is a lawfully resident long-term worker and taxpayer. We also heard claims reproduced in the *Guardian* that:

‘Moroccans also have reduced health cover. While Gibraltarians fly to Britain for serious illnesses that cannot be treated in Gibraltar, members of the Moroccan community have no such rights. Their taxes, they complain, pay for services reserved for others’.⁸

We understand that members of the Moroccan community in some cases may have access to Spain for medical attention. We were told by the Moroccan Community Association, however, that a hospital card allowed migrants access to Cadiz hospital in Spain in only ‘very serious’ cases, and in less serious cases there would be a ‘10 day wait for permission’ to enter Spain for medical attention.

3.15 It is unclear to us whether it would be necessary to visit the United Kingdom to collect a Spanish visa for this purpose, though we note the statement made by the Gibraltar government that EU law requires Moroccans to be in possession of a Visa to enter the Schengen territory (even to nip over to Algeciras to catch a ferry). Spain will only issue such visas in London, and now requires the physical presence of the applicant, thus making it impractical and costly.⁹ We note with concern that the proposal for the introduction of transit visas, announced by the Tripartite Ministerial Forum on 21 July 2009, is addressed directly only to the problems Moroccans have faced in accessing Spanish ferry ports and does not specifically refer to the issue of hospital visits or access for medical attention.

3.16 In addition to questions relating to health care, we also heard complaints about access to education. Among several case studies provided to our delegation were details of a man whose two school-age children are undocumented though resident in Gibraltar, living with their father (and apparently also with their mother, though her status is not clear from the information we were given). The children, we are told, are unable to access schools because of their undocumented status. The father has been corresponding with the authorities, and admitting that his children do not have Gibraltar ID cards, calling for them to be allowed to access schooling. He has offered to pay fees. This issue was raised by the *Guardian* investigation where it is reported that

For a long time Said Ben Addel Hanin, a caterer, brought his wife and his wife to stay every other month. Over a year ago he kept them in Gibraltar. ‘I work weekends, so I can’t go to Morocco more than a few times a year. My

⁸ See G Tremlett, ‘Rock and a Hard Place’, *Guardian*, 28 March 2009.

⁹ *Gibraltar Chronicle*, 30 March 2009.

wife does not want to be alone with the children. All we ask is for them to be with their parents. The government, however, wants them to leave. It has failed to school his eldest son, seven year old Oualid, even though he is of compulsory school age.¹⁰

- **Social Security and Welfare Benefits**

3.17 The Moroccan Community Association complained that despite contributing to society and paying taxes and social insurance, in some cases over a period of decades, Moroccan workers have limited rights to unemployment benefit, claiming that ‘once the basic 13 weeks expires we do not get supplementary benefits or any other type of income or support’. Unequal access to welfare benefits was also identified as an issue by the *Guardian*:

‘Sometimes I look around and say to myself, 'I built this and I built that, too', says Harrak. Construction is slowing down, however. ‘My employer might start laying people off’, he worries. If sacked, he will get 13 weeks of unemployment benefit. Despite 30 years paying the same taxes as Gibraltarians, he will not get the welfare payments they receive after that’.

We understand that certain of the so-called ‘supplementary’ welfare benefits are provided through Community Care, a private social security charitable company.

3.18 According to information we have been given, Community Care Ltd pays out a Household Cost Allowance (£816 per quarter for married couples except where the spouse is under the age of 60 and is in employment, in which case the single rate of £544 per quarter applies). There is also a Community Officer's wage (£424 per month between the ages of 60 and 65 for those who are not in gainful employment elsewhere) in return for social or community oriented work. In order to qualify for payment applicants must be resident in Gibraltar and be in receipt of an old age pension or an elder person allowance (between 60-65). The charity depends on funds from the Ministry of Social Security.

3.19 Over the summer, it was reported to us that Unite the Union in Gibraltar had arranged for a large group of Moroccans aged between 60 and 65 to apply for Community Care benefits. The applicants were only able to obtain application forms on the premises of Community Care and had to fill them out and hand them over immediately. The union informed us that the applications were all refused orally and that no written reasons were provided. Other ‘supplementary’ or ‘discretionary’ benefits are known to exist, but it is very difficult to find concrete information about them. The British Government’s Fifth Periodic Report to the UN ICESCR Committee acknowledges that there are ‘discretionary’ social assistance measures in Gibraltar that are ‘not supported by specific legislation’.

¹⁰ G Tremlett, ‘Rock and a Hard Place’, *Guardian*, 28 March 2009.

BOX 3

Supplementary Allowances

57. The following allowances are not supported by specific legislation but operate under administrative arrangements.

Social Assistance

58. Social Assistance is an allowance designed to provide financial assistance on a basis of need. Awards are discretionary on the basis of a case-by-case consideration of individual need. The basic weekly rates are as follows:

	Under 60	Over 60
Single Person	£40.50	£53.20
Married Couple	£69.80	£78.30

Source: International Covenant on Economic, Social and Cultural Rights, *Fifth Periodic Report from the United Kingdom, the Crown Dependencies, the British Overseas Territories*, Prepared by Ministry of Justice, July 2007.

See: <http://www.justice.gov.uk/publications/docs/ICESCR-whole-report.pdf>, p 496

Conclusion

3.20 It is clear to us that discrimination against Moroccan workers in Gibraltar is deep rooted. Before moving to consider other forms of discrimination that we encountered, we wish to record that the problems encountered by Moroccan workers are compounded by an extraordinary lack of transparency and secrecy about matters that ought to be easily accessible. When the ICTUR Director visited Gibraltar in July he attempted to obtain more information about the so-called ‘supplementary benefits’ and ‘discretionary benefits’ about which the Moroccan community had complained. It was only with considerable effort that he obtained a copy of the Ministry of Family, Youth, and Community Affairs, Department of Social Security Guide to Social Insurance (dated 2007).

3.21 Initial attempts to obtain this document were rebuffed. It is listed on the relevant Government website, for example, but cannot be accessed. When two local lawyers enquired about the document on behalf of ICTUR they were told that it ‘is not a public document’ and could not be consulted. Even a request from the legal

adviser for Unite the Union to obtain a copy was rejected. We finally obtained a copy via a local politician. No mention is made either of 'supplementary benefits' or 'discretionary benefits', nor is there any guidance about the role of Community Care, or of the benefits provided by that organisation. We consulted widely and found numerous individuals who confirmed that 'supplementary benefits' and 'discretionary benefits' did exist and could be applied for, although we found no evidence of any formal application process, nor of the criteria to be applied to the assessment of such cases.

Chapter Four

Housing and Family Reunification

4.1 The issues encountered in chapter three raise questions of acute concern and could be addressed in part by the speeding up of the naturalisation process. That, however, is not a sufficient solution to the problems that we have encountered. Nor would it necessarily address the problems of housing and family re-unification that we encounter in this chapter. If anything, the problems identified in this chapter are even more acute and compelling than those identified in chapter three.

Housing and Accommodation

4.2 Moroccan workers complain of discriminatory access to public housing. The Moroccan Community Association in a document passed to our delegation complained that ‘we are unable to include ourselves on the Government housing list’. We have been told that the Government of Gibraltar Housing Allocation Scheme restricts eligibility for government housing to Gibraltarians, British nationals, and Commonwealth citizens. We understand that the Scheme has been amended in recent years so as to introduce further eligibility for EU citizens. We have also been told that the eligibility rules serve to bar the Moroccan migrant worker community from access to or even from applying for access to the government housing. The Moroccan workers are thus denied access to affordable public housing, which is subsidised and occupied by Gibraltarians, and must as a result find accommodation in the private sector or in the government run Buena Vista hostel.

- **Private Rented Accommodation**

4.3 In December 2004, Sussex University Migration Briefing commented on the high proportion of Moroccans in private rented accommodation and reported that ‘almost all [Moroccans] live in the oldest part of town, west of Main Street, the area of lowest quality housing’. During our visit to Gibraltar, we were told by the Moroccan Community Association that there was a shortage of private rental accommodation at affordable prices. There appear also to be serious questions about the quality of the private sector accommodation, as the following passage from the *Guardian* report makes clear:

‘From the two shabby tenement rooms he shares with four others, Ahmed Taheri can see the luxury harbourside developments where wealthy foreigners, the ‘high net worth individuals’ who buy residency in Gibraltar, live.

Caruana boasts that if Gibraltar were a sovereign state it would have the world's 13th highest GDP per capita. You wouldn't know from Kavanagh Court, where Taheri and his room-mates share an outside bathroom with other Moroccans living in rooms off a staircase and two ramshackle courtyards. Now a security company is

threatening to evict them because tenants in other rooms are behind on rent’.

4.4 Unfortunately, this report was followed by an eviction of Mr Taheri and six other Moroccan nationals. We understand that a court order was obtained prior to the eviction. A statement by Mr Charles Sisarello, District Officer of Unite was reproduced in the *Gibraltar Chronicle* as follows:

At 3.30pm Security Guards from Detective and Security International, and police officers evicted seven Moroccan nationals from their ‘flat’ at Kavanagh’s Court in Prince Edward’s Road. Only one Moroccan was in the flat at the time since the others were working.

‘A sick 70-year old man was taken out in pyjamas and slippers, and had to remain outside in the cold weather. The others when they arrived home found their door padlocked, and were not given an opportunity to collect their belongings. Another of the Moroccans who suffers from diabetes was not allowed to go inside the flat to get his insulin’.

4.5 Mr Sisarello said they had to take this man to hospital for treatment as not having his injections could have had fatal consequences.

‘We called the police and explained the problem. They said we should contact the Social Services who informed us, that the policy of the government, ‘was that they would not provide alternative accommodation unless children are involved,’ neither would they pay any expenses in relation to accommodation’.

Mr Sisarello said the evicted persons found themselves out in the street in the middle of the night without any money or any of their belongings. A collection of money by friends was organised so that they could stay the night at the Emile Hostel.

‘This state of affairs has happened not in a Third World or a poor country, but in Gibraltar in the 21st Century. Had it not been for the TGWU intervention, these human beings would have had to sleep in the street’, added Mr Sisarello.¹¹

4.6 When ICTUR’s Director visited Gibraltar for a second time in early July, he was taken to see several examples of the private sector pre-war accommodation. In each case the accommodation seemed to comprise a single room. ICTUR’s Director observed loose and rotten floorboards, poor ventilation and access to daylight, and bundles of electrical cable hanging from ceilings in private and communal areas. Several of the ‘apartments’ had no door and were simply curtained off from public

¹¹ *Gibraltar Chronicle*, 6 April 2009.

areas. A women of retirement age living in one such room (below ground level) described how this was the only housing available to her. A light well a few feet from the front of her room allowed a tiny stream of natural light into the cramped and dismal public area. She had worked for many years in Gibraltar and paid taxes to support the local economy. It was not clear to us what pensions or benefits she expected to receive in Gibraltar. She continued to support herself by working in a restaurant. Her husband was dead, she told us, and she missed her family in Morocco. She explained that she would like nothing more than to return to Morocco, but she believed that she could not do so for financial reasons.

- **The Buena Vista Hostel**

4.7 Turning to the aptly named Buena Vista hostel, there were 50 people living in cramped conditions when we visited. The hostel was dirty, paint was peeling from the walls, there were dozens of cockroaches and cobwebs. The tiny cubicles that represented the private space for each of the men were crammed together and represented a fire hazard: bare, untreated wooden walls and sheets of fabric hung as rough 'doors'. In the public areas we observed fire extinguishers, but several of them were difficult to reach behind tables. Several residents complained of poor access to medical facilities for older residents and pointed out the obvious health risks, particularly for older residents, facing people living in such close, crowded and dirty conditions. Apart from the physical conditions, some of the residents we met observed that the rents paid, at £10 per week for two square metres of floor space, were considerably more expensive per square foot than government housing.

4.8 In 2007 human rights campaigner Peter Tatchell visited the Buena Vista hostel. He reported that 'It is decaying, cramped, dirty, infested, badly maintained and with poor amenities'. Mr Tatchell continued:

'The rooms are tiny and cramped; half the showers and toilets are broken and unusable; sections of tiling have fallen off the walls in the bathrooms; the bare rough concrete floors in the toilets and showers are unhygienic; damp and mould affect many of the walls and ceilings; half the rings on the kitchen cookers do not work; only one sink per 13 residents; no heating in winter; laundry facilities are non-existent; much of the premises are infested with cockroaches; the hostel is poorly facilitated'.

4.9 The ICTUR team observed a similar catalogue of deprivation in its March 2009 visit to Buena Vista. Any changes or improvements since Mr Tatchell's visit in October 2007 were not obviously apparent to us. Nor it seems to Giles Tremlett when he wrote in the Guardian on 28 March 2009 that:

'At the government-owned Buena Vista workers' hostel in a former barracks overlooking the Strait of Gibraltar, music blares from a radio station broadcasting from Morocco, just eight miles away.

Many here pay no rent, but conditions are grim. Up to 16 men share cockroach-infested kitchens and communal bathrooms. Each immigrant gets a curtained-off, ceiling-less cubicle measuring just 8ft by 6ft. There is room only for a bed, a cupboard and about one foot of space between them.

Omar Sidda, aged 64, and his friend El Amine Bukkali, aged 73, each live in one tiny cubicle. ‘There is no room for anything here,’ says Sidda. ‘I worked for 35 years. Why does no one help us? Everyone has rights, except for us’.

4.10 Only one of the three political leaders with whom we met during our visit had been to see at first hand the conditions of the Buena Vista hostel. All conceded that they were at least aware that the housing was of a very poor standard. The leaders had different opinions about possible solutions. All three leaders indicated that practical constraints are imposed by the limited space available for housing in Gibraltar, and it was suggested that Gibraltarians had to be prioritised in the event of housing shortages.

Family Re-unification

4.11 Moroccan representatives from the two migrant workers’ associations told us that Moroccan workers faced great difficulties in seeing their families on a regular basis. There are two major problems. The first relates to the difficulty in having families visit workers on the Rock. Visiting rights for families to come to Gibraltar are tightly controlled and, we were told, extend to just one annual visit of one month’s duration during the summer. These visits are open to immediate family (wife and children), but are not available for children over the age of 18. When a woman visits her husband under these arrangements, her passport will be confiscated and held for the duration of her visit by the Gibraltar immigration authorities. This is a practice that in all of its aspects causes very great offence and deep anxiety, and no one was able to explain to us why it is carried out. We understand that the passports are confiscated by a private security company which provides immigration security services (Security and Immigration Ltd.). The passports are held until the families depart again for Morocco.

- **The Ferry Service**

4.12 The second problem relates to the ability of workers to return home to visit their families, which can now be only on a Friday night by means of a ferry which travels from Gibraltar to Tangier. Both the Moroccan Workers’ Association and the Moroccan Community Association complained that the ferry service that had previously operated on a semi-regular basis had now been reduced to this irregular and unpredictable weekly crossing, which made it difficult for its members to visit their families in Morocco. Moroccans at a public meeting told us that the ferry was ‘too expensive’ and ‘unpredictable – they cancel it whenever they want’. They told us that they have to ‘wait for hours on the floor of the jetty in the baking sun with no

proper facilities'. It is, they told us, 'degrading' and they called for a waiting room to be provided.

4.13 Some confirmation of these reports is provided by an albeit anonymous posting on the *Guardian* website, following the publication of Giles Tremlett's report on 28 March 2009. There it is written that:

'Last summer I witnessed the sharp contrast between the embarkation of many wealthy visitors to the Rock as they returned to their cruise ship laden with perfume and electronic goods, while Moroccan workers were herded onto a rusty old ferry, laden with food and basic goods for their families across the sea. That was a powerful, visual confirmation of how things stand here, and how Moroccan workers - or, I should say, Gibraltarians of Moroccan origins - are treated. But it is worse than that. While tourists languish in luxury, Gibraltar's hardest and poorest workers might sit around for hours, many with very young children, waiting for this unreliable ferry service. At night, the terminal is closed, leaving a large number of people, with very young children, to wait around in the dark, sometimes in very inclement weather, with no toilet or refreshment facilities, while the ferry turns up - or not, as is often the case. And all so that they can visit families that are not allowed to join them on the Rock'.¹²

4.14 It is important to emphasise that apart from general considerations about the frequency of the ferry and the alleged indifference to the dignity to the people directly affected by these arrangements, we also heard individual cases of real hardship which the situation causes. These include the cases of the men who work at the weekends, and so may be cut off from their families for long periods, unable to leave Gibraltar; and the workers who may have to return to Morocco for urgent family reasons (such as a bereavement), though in this latter case our attention has been drawn to the reported comments of the President of the Moroccan Workers' Association expressing 'his gratitude to the Spanish authorities for their help in allowing Moroccans through when emergency situations arise'.¹³ It is not clear to us why sensible arrangements could not be made in all cases to enable Moroccan workers to move freely between Gibraltar and Morocco, at their own convenience, as is the practice for other people.¹⁴

¹² <http://www.guardian.co.uk/money/2009/mar/28/work-discrimination-gibraltar-morocco>.

¹³ *Gibraltar Chronicle*, 30 March 2009.

¹⁴ Although it is not directly applicable, we commend the principles in the European Social Charter 1961, whereby the Contracting Parties undertake 'to adopt appropriate measures within their own jurisdiction to facilitate the departure, journey and reception of such workers and their families' (article 19(3)).

- **Political Responses**

4.15 In meetings with political leaders, ICTUR addressed the question of extending rights of the Moroccan community in Gibraltar, and raised specifically the question of the ferry. The leaders acknowledged that the ferry service was ‘unreliable’ and ‘unsatisfactory’. Representatives of the Government indicated that steps had been taken in meetings with the ferry company with a view to improve the service, while accepting the difficulties faced by the ferry operators. It was believed by several of those we spoke to that the best way forward would be for the Spanish authorities to make some sort of access available for Moroccans to allow them to make use of the Spanish ferry services. We agree.

4.16 Since our return to the UK, and in the wake of considerable media attention, we have been informed of a new commitment to facilitate access to Spanish ferry ports by the Moroccan community. A tripartite ministerial ‘forum of dialogue’ held in Gibraltar on 21 July brought together Chief Minister Peter Caruana, Spanish Foreign Minister Miguel Angel Moratinos, and British Foreign Secretary David Miliband. The Forum communiqué sets out a commitment ‘to facilitate, by legally feasible practical solutions, the granting of Visas to the Moroccan community members resident in Gibraltar for transit through Spain towards their country’. ICTUR understands that Chief Minister Peter Caruana has confirmed that it is his intention for the transit visa arrangements to be in place by July 2010 at the latest.

4.17 As well as recognising the visa-related problems the communiqué sets out as one of its key aims an intention to bring about a negotiated solution to the problem imposed by EU visa rules that have proven such an arbitrary and unfair restriction on the right of the Moroccans to visit their loved ones just a few miles away. The communiqué confirms that the three Governments are motivated in this matter by ‘humanitarian motives’ and a commitment to ‘good neighbourliness’. We welcome this development and express the firm hope that this will be the first step in alleviating the plight of Moroccan nationals. It is, however, disappointing that this initiative could not be implemented with immediate effect.

Conclusion

4.18 Some of the older Moroccans to whom we spoke expressed the view that they would prefer to return to Morocco rather than remain in Gibraltar, but they were of the opinion that to do so would deprive them of certain social security benefits so they remain in Gibraltar. It should be noted that this was not the view of the majority of Moroccans with whom we spoke, most of whom expressed a clear view that Gibraltar was their home, that they had made their lives there, and that the prospect of returning to a country they had left 40 years previously was unthinkable. It is thus all the more important that housing questions are addressed urgently, and that steps are taken immediately to deal with the transit problems which ought not to be beyond the capacity of government to deal with quickly.

4.19 So far as the ferry service is concerned, we make certain recommendations to improve the ferry facilities in chapter 8. In our view, however, the problem of the ferry could best be addressed by permitting those who wish to visit Morocco to do so

from the Spanish ports, and we believe that that this would offer the best solution to the current problems. We also believe that steps should be taken immediately to facilitate access to the Spanish ferry service. The longer it takes to introduce sensible transit arrangements via Spain, the more urgent the need to take measures to address the lamentable state of affairs about which we have been told. These measures relate not only to the facilities at the terminal but to other complaints about the reliability of the service as well.

Chapter Five

Moroccan Workers, Gibraltar Law and EC Law

5.1 Given the systemic nature of the discrimination experienced by Moroccan workers, the most convenient route for addressing it is through proceedings in judicial review. We are advised that:

- There are good prospects of succeeding in legal action under sections 1 and 7 of the Gibraltar Constitution
- There are good prospects of succeeding in legal action under domestic (Gibraltarian) law implementing the Race Directive 2000/43/EC, namely the Equal Opportunities Ordinance 2006 (when read with Convention on the Elimination of Racial Discrimination and the Race Directive 2000/43/EC)
- There may be violations of the terms of the EU-Morocco Agreement, which in material respects is directly effective, as well as the Race Directive 2000/43/EC (when read with Convention on the Elimination of Racial Discrimination).

We are further advised that proceedings may most conveniently be instituted by way of judicial review in respect of any particular decisions taken adversely affecting specific Moroccan workers disadvantaged in consequence.

Legal Issues Under Gibraltar Law

5.2 There are two legal instruments of the domestic law of Gibraltar which are relevant to the situation relating to Moroccan workers, as described above, these being respectively the Gibraltar Constitution (despite some serious limitations which we pass by), and the Equal Opportunities Ordinance.

- **Gibraltar Constitution**

5.3 Chapter 1 of the Constitution of Gibraltar (Annex 1 to the Gibraltar Constitution Order 2006) ('The Constitution') sets out in law the fundamental human rights framework. Section 18(8) of the Constitution establishes a direct link with the jurisprudence of the European Court of Human Rights by requiring that, when faced with any question arising in connection either with the rights or limitations enunciated by Chapter 1 of the Constitution, a Court *must take into account* relevant decisions of the European Court of Human Rights.

Section 1

'It is hereby recognized and declared that in Gibraltar there have existed and shall continue to exist without discrimination by reason of any ground referred to in section 14(3), but subject to respect for the rights and freedoms of others and for the public interest, each and all

of the following human rights and fundamental freedoms, namely -

(a) the right of the individual to life, liberty, security of the person the enjoyment of property and the protection of the law;

(b) freedom of conscience, of expression, of assembly, of association and freedom to establish schools; and

(c) the right of the individual to protection for his personal privacy, for the privacy of his home and other property and from deprivation of property without adequate compensation,

and the provisions of this Chapter shall have effect for the purpose of affording protection to the said rights and freedoms subject to such limitations of that protection as are contained in those provisions, being limitations designed to ensure that the enjoyment of the said rights and freedoms by any individual does not prejudice the rights and freedoms of others or the public interest’.

Section 7

‘(1) Every person has the right to respect for his private and family life, home and his correspondence’.

5.4 Section 7 closely replicates Article 8, ECHR. The observations made in chapter 6 below in respect of that Article apply equally to the equivalent provisions within the Gibraltar Constitution. Section 7 is violated by the treatment afforded to members of the Moroccan community in respect of those aspects of private and family life and home as are set out in chapter 6 of this report.

- **Equal Opportunities Ordinance 2006**

5.5 The Equal Opportunities Ordinance 2006 was enacted so as to transpose (amongst other measures) the EC Race Directive into Gibraltar law. Section 3 of the Ordinance purports to exclude from its scope certain types of treatment or of differential treatment based on nationality or in respect of the legal status of non-EU nationals. This broad exemption tracks a similar provision established by the EC Race Directive (see Article 3(2)). But the criteria established under the Race Directive cannot be read in isolation from the overall instrument, any specifically cannot be read in isolation from the Recitals to the Directive, which refer to the Convention on the Elimination of Racial Discrimination (CERD). Since the Ordinance serves to transpose the Race Directive into Gibraltar law, we are advised that it too ‘must be read in accordance with the Recitals to the Race Directive’ (on which point see *Litster v Forth Dry Dock and Engineering Co Ltd* [1990] 1 AC 546; *Marleasing SA v LA Comercial Internacional de Alimentacion* [1990] ECR I-4135).

5.6 Turning to the substance of the Ordinance: section 9 adopts a definition of discrimination that follows the Race Directive; section 39 bars schools and educational establishments from subjecting children discriminatory entrance criteria; section 42 provides that it is unlawful for a public authority to carry out its functions in a manner so as to subject a person to racial discrimination; section 43 establishes that it will be unlawful for one person to subject another to discrimination in the provision of goods, facilities and services; and section 44 states that it is unlawful for a person to subject another to racial discrimination in respect of the disposal of housing

5.7 Section 64 stands as a barrier to certain legal actions, establishing that no civil or criminal proceedings shall lie against a person in respect of an act on the grounds solely that the act in question is unlawful under the terms of the Ordinance, unless the same is provided for in accordance with the Ordinance. However, we are advised, with specific reference to section 64(2) that ‘this does not prevent the making of an application for judicial review’. We are advised that: ‘...there are good prospects of succeeding in proceedings under the Ordinance in respect of the discrimination experienced by Moroccan workers and their children at least in relation to housing (and the absence of any entitlement to social housing); education (and the exclusion of children of Moroccan workers from access to schools because of their unregulated status); and by the discrimination in social security provision. There will also be actionable discrimination under section 42 (‘public functions’) by reason of the failure to afford non-arbitrary access to citizenship and entry visas for family members if this is (directly or indirectly) discriminatory as against Moroccans, as compared to other non-citizens’.

5.8 We are also advised that ‘there may also be actionable discrimination under section 42 in respect of the failure to permit Moroccan workers access to the electoral register (so as to enable them to vote) because they lack Gibraltarian citizenship (which is indirectly discriminatory because of the arbitrary nature of the citizenship processes which deprive Moroccan workers (as opposed to non – Moroccan non-Gibraltar nations) from the opportunity of acquiring citizenship)’. Furthermore, we have been told that

‘ [The Ordinance] must be read in a limited way, permitting certain forms of discrimination connected genuinely and appropriately to citizenship (which might include entry into a State; rights to remain in a country; voting rights in the case of temporary residents) but not the forms of discrimination ... which indicate institutional and systemic discrimination in the enjoyment of fundamental rights as against Moroccans in particular. For these reasons ... the prospects of succeeding in proceedings under the Ordinance are good notwithstanding the limitation within it addressing citizenship’.

Legal Issues under EC Law

5.9 There are two legal instruments of European Community law which are directly relevant to the situation relating to Moroccan workers, as described above, these being respectively EC Regulation No 2211/78 dealing with the cooperation agreement between the EEC (as it then was) and Morocco, and the Race Directive (addressing specifically the problem of race discrimination).

- **EC Regulation No. 2211/78 ‘cooperation agreement between the European Economic Community and the Kingdom of Morocco’**

5.10 Regulation No 2211/78 provides as follows:

Article 40

‘The treatment recorded by each Member State to workers of Moroccan nationality employed in its territory shall be free from any discrimination based on nationality, as regards working conditions or remuneration, in relation to its own nationals’.

Article 41

‘1. Subject to the provisions of the following paragraphs, workers of Moroccan nationality and any members of their families living with them shall enjoy, in the field of social security, treatment free from any discrimination based on nationality in relation to nationals of the Member States in which they are employed.

2. All periods of insurance, employment or residence completed by such workers in the various Member States shall be added together for the purpose of pensions and annuities in respect of old age, invalidity and death and also for that of medical care for the workers and for members of their families resident in the Community.

3. The workers in question shall receive family allowances for members of their families who are resident in the Community.

4. The workers in question shall be able to transfer freely to Morocco, at the rates applied by virtue of the law of the debtor Member State or States, any pensions or annuities in respect of old age, death, industrial accident or occupational disease, or of invalidity resulting from industrial accident or occupational disease.

5. Morocco shall accord to workers who are nationals of a Member State and employed in its territory, and to the members of their families, treatment similar to that specified in paragraphs 1, 3 and 4’.

Gibraltar forms part of a Member State for these purposes (*Matthews v United Kingdom*, above).

5.11 We are advised that Article 40 of the EEC – Morocco Agreement is directly effective (it being sufficiently clear and precise and unconditional – *El-Yassini v Secretary of State for the Home Department, Case C – 416/96* [1999] I-01209). The ECJ ruling clarifies the status and legal effect of the Agreement: it can be relied upon in the courts of Member States (including, for these purposes Gibraltar) and provides real legal rights to individuals as against the State. The key case establishing this fact - *El-Yassini v Secretary of State for the Home Department* - concerns an attempt by the United Kingdom to expel a Moroccan migrant worker, having previously authorised the worker in question to enter the country for the purposes of taking up employment. Article 40, it was held, was a directly effective right, clear and precise in its objective, and enforceable by an individual against the State. The ECJ's ruling emphasised that a Member State's capacity to act was tempered by the clear and direct terms of the Agreement and an obligation to respect the rights provided under it, which it was confirmed are not 'illusory'.

5.12 A Member State would, of course, retain in principle the power to refuse to extend the residency of a Moroccan national to whom it had previously granted initial residency rights and an employment permit. Given the precarious nature of their status in Gibraltar, however, the Moroccan community there might find that the enforceable rights under Regulation (EEC) No. 2211/78 would offer some protection against potentially capricious State actions. Much will depend on the circumstances and detailed arrangements. But according to legal advice presented to ICTUR 'a violation of the directly effective Article 40, Regulation (EEC) No. 2211/78 in respect of certain of them is likely to be found'. Additionally, the discrimination experienced by the Moroccan community in the provision of welfare benefits will, we are advised 'almost certainly be unlawful under Article 41'. For the same reasons as were applicable to Article 40 in the *El-Yassini* case, Article 41 will almost certainly be directly enforceable in the Gibraltar courts. Furthermore, if there is discrimination in the provision of health care to Moroccan workers and their families, this may also violate article 41, though the government will no doubt claim for these purposes that the family members who visit are visitors not residents.

- **EC Council Directive 2000/43, 'The Race Directive'**

5.13 Article 13 of the EC Treaty, inserted by the Treaty of Amsterdam, now provides that:

'Without prejudice to the other provisions of this Treaty and within the limits of the powers conferred by it upon the Community, the Council, acting unanimously on a proposal from the Commission and after consulting the European Parliament, may take appropriate action to combat discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation'.

Under Article 13, three new Directives, including among these the Race Directive (Council Directive 2000/43/EC, of 29 June 2000 ‘implementing the principle of equal treatment between persons irrespective of racial or ethnic origin’), establish a new framework of principles of equality and non discrimination in Europe. The Race Directive, which is of particular relevance to the present situation, requires that Member States must outlaw race discrimination in various guises, including where it occurs in respect of the provision of education, goods and services, housing and in relation to ‘social protections’ and ‘social advantage’.

○ *Meaning of Discrimination*

5.14 We reproduce below extracts from the Legal Advice provided to ICTUR by Karon Monaghan QC, a leading expert in the field of discrimination, who was able to share with us her technical analysis of the meaning and extent of the concept of discrimination under the Directive. We are advised, that:

‘The Race Directive provides that the ‘principle of equal treatment shall mean that there shall be no direct or indirect discrimination based on racial or ethnic origin’ within the scope protected by the terms of the Directive, namely employment and related areas, social protection and advantages and access to goods and services including housing (Articles 2 and 3). The Race Directive excludes nationality discrimination (Article 3(2)), so not interfering with immigration policy, and does not address ‘national origins’, though the latter would appear to be embraced by the concepts of ‘race’ and ‘ethnicity’. This exclusion (and its proper scope) is addressed further below.

The Race Directive defines direct discrimination as occurring ‘where one person is treated less favourably than another is, has been or would be treated in a comparable situation on grounds of racial or ethnic origin’ (Article 2(2)(a), Race Directive). A victim is not required for such discrimination to violate the Directive’s prohibition on direct discrimination and accordingly an employer (in Belgium) indicating that he would not employ ‘Moroccans’ when advertising for workers had committed an act of actionable direct discrimination, whether or not any Moroccan workers complained: *Centrum voor gelijkheid van kansen en voor racismebestrijding v Firma Feryn NV* [2008] IRLR 732.

As to indirect discrimination, the Directive provides that: ‘Indirect discrimination shall be taken to occur where an apparently neutral provision, criterion or practice would put persons of a racial or ethnic origin at a particular disadvantage compared with other persons, unless that provision, criterion or practice is objectively justified by a legitimate aim and the means of achieving that aim are

appropriate and necessary’ (Article 2). This allows for a liberal meaning of indirect discrimination. In particular it does not require proof of the existence of a rule or condition constituting an absolute bar. Further, and importantly the new definition contains a liberal test of ‘disparate impact’. It does not require proof of statistical disadvantage. There is no requirement to show actual group disadvantage (would put persons under a particular disadvantage)’.

○ ***Nationality Discrimination***

5.15 Specifically excluded from the Race Directive, by Article 3(2), is the issue of discrimination on grounds of nationality. This exclusion serves a legitimate aim of non-interference with national immigration policies. But it does not, we are advised, serve to bar the Directive from application in situations in which non-citizenship is an excuse for racial discrimination. The individual provisions of the Directive must be read in accordance with the Recitals to the Directive, which, we are advised ‘refer to a number of International instruments, in particular, the Convention on the Elimination of Racial Discrimination (CERD)’.

5.16 The Committee on the Elimination of Racial Discrimination has made explicit that the terms of CERD apply to non-citizens (General Recommendation No.30: Discrimination Against Non Citizens: 01/10/2004). The Committee has recommended in respect of the limitation in Article 1(2), CERD (concerning non-citizens) that it ‘must be construed so as to avoid undermining the basic prohibition of discrimination; hence, it should not be interpreted to detract in any way from the rights and freedoms recognized and enunciated in particular in the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights;’ (para 2).

5.17 The Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights protect many, relevant fundamental rights, including equality before and equal protection of the law; the rights to social security; the right to education; the right to an adequate standard of living. Further: ‘Under the Convention, differential treatment based on citizenship or immigration status will constitute discrimination if the criteria for such differentiation, judged in the light of the objectives and purposes of the Convention, are not applied pursuant to a legitimate aim, and are not proportional to the achievement of this aim’ (General Recommendation No.30, supra, para 4).

5.18 States Parties are therefore required to: ‘Ensure that legislative guarantees against racial discrimination apply to non-citizens regardless of their immigration status, and that the implementation of legislation does not have a discriminatory effect on non-citizens’ (ibid. para 7). Further States Parties are required to:

‘Ensure that particular groups of non-citizens are not discriminated against with regard to access to citizenship

or naturalization, and to pay due attention to possible barriers to naturalization that may exist for long-term or permanent residents;

Recognize that deprivation of citizenship on the basis of race, colour, descent, or national or ethnic origin is a breach of States parties' obligations to ensure non-discriminatory enjoyment of the right to nationality;

Take into consideration that in some cases denial of citizenship for long-term or permanent residents could result in creating disadvantage for them in access to employment and social benefits, in violation of the Convention's anti-discrimination principles' (paras 13-15).

Non-citizenship thus cannot be an excuse so as to legitimise racial discrimination. This is especially so where arbitrary, unpublished or inaccessible rules apply to the processes of naturalisation, and where long-term or permanent residents are concerned.

- ***Obligations of the Government***

5.19 On addressing the specific question of the obligations of the Gibraltar Government in respect of the Directive, we again sought advice from Ms Monaghan. We are advised that:

'...the scope of the Directive is wide and extends to 'social protection' and 'advantages'. Such terms as are not defined in the Directive. In the context of Regulation 1612/68/EEC on the free movement of workers within the Community the concept of 'social advantages' (Regulation 7(2)) has been given a wide meaning. The expression has been held to cover, for example, social grant payments to cover funeral costs, discount rail cards, guaranteed minimum incomes, interest free loans following childbirth and some forms of student grant: *O'Flynn v Adjudication Officer* [1996] ECR I – 2617; *Fiorini v SNCF, Case 32/75* [1975] ECR 1085; *Reina v Landeskreditbank Baden-Wurtemberg, Case 65/81* [1982] ECR 33; *Scrivner Centre Public d'Aide Sociale de Chastre, Case 122/84* [1985] ECR 1027, respectively. The same meaning, almost inevitably (given their shared provenance) will be afforded the same expression in the Race Directive. This means welfare benefits (in addition to housing and education, expressly addressed) and student grants will be covered.

The Race Directive requires Member States to ensure that procedures are in place for the enforcement of the obligations under the Directives and that such procedures

are available to all persons who consider themselves wronged by the failure to apply the principle of equal treatment (Articles 7(1)). It also requires Member States to abolish all laws contrary to the principle of equal treatment and render void any rules or provisions in collective agreements, rules of undertakings etc., contrary to the principle of equal treatment and to introduce rules on sanctions applicable to infringements of any national provisions adopted pursuant to the Directives and to take all measures necessary to ensure that they are applied (Article 14). The substantive provisions of the Race Directive are directly effective and as such can be directly relied upon by individuals subject to wrongs contrary to the rights afforded by the Race Directive, in proceedings against the State’.

Conclusion

5.20 As indicated in chapters 3 and 4 many Moroccan workers in Gibraltar have a number of grievances based on what appears to be discriminatory treatment by the public authorities in various ways. It is clear to us – reinforced by the independent legal advice which we have obtained – that many of these grievances could be addressed by litigation in the Gibraltar courts, having regard to the fact that the final court of appeal from Gibraltar is the Privy Council sitting in London, bound to implement Gibraltar law not only in accordance with the requirements of EC law, but also the requirements of the European Convention on Human Rights, to which we now turn.

Chapter Six

Moroccan Workers and the European Convention on Human Rights

6.1 In this chapter we consider issues arising under the European Convention on Human Rights, with which the people of Gibraltar will be very familiar, providing as it does the basis of their right to vote in European Parliament elections. There are a number of provisions of the Convention that are engaged by the problems encountered by Moroccan workers in Gibraltar, and we are advised that there are good prospects of succeeding in legal action under Articles 8 and 14, ECHR and under Articles 2 and 3, Protocol No 1 in respect of the treatment experienced by particular Moroccan workers, including that relating to immigration status, political rights, access to public services, housing, and family visits

Right to Respect for Private and Family Life

6.2 So far as the substantive provisions of the Convention are concerned, we pass articles 3 (inhuman and degrading treatment) and 6 (right to a fair trial) for the present, and begin with Article 8. This provides that:

‘(1) Everyone has the right to respect for his private and family life, his home and his correspondence.

(2) There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others’.

Article 8 has very wide scope, but interferences with it may be justified having regard to the terms of Article 8(2). This is discussed below.

- **Housing and Family Life**

6.3 Article 8(1) specifically incorporates ‘the home’ as one of the aspects of the right protected. We are advised that: ‘The Council of Europe bodies have recognised that in some circumstances there might be a positive obligation to provide housing assistance to an individual who is particularly vulnerable (*Mirzari v Italy*, 4 May 1999)’. We are further advised that: ‘There are cases, therefore, in the field of environmental law, where the European Court of Human Rights has recognised a positive obligation to protect individuals from the effects of serious environmental pollution by private bodies (*Powell & Rayner v United Kingdom* (1990) 12 EHRR 355; *Lopez-Ostra v Spain* (1994) 20 EHRR 277)’. This being the case, we believe that there is a strong case to support the view that the State has a positive obligation both to provide housing assistance to the most vulnerable, and to protect individuals

from situations in which poor housing may impact upon the health, personal integrity and dignity of the occupants. In our view, the hostels in which many members of the Moroccan community live is of such a low standard that the health, personal integrity and dignity of the occupants of this accommodation is very seriously compromised and the State obligations in respect of accommodation under Article 8 are therefore activated.

6.4 Article 8 does not require that a State should in general make provision for the admittance of a non-national spouse (and this will of course be true in respect of the non-national spouse of a non-national resident, as is the situation for some members of the Moroccan community) (*Abdulaziz, Cabales & Balkandali v United Kingdom* (1985) 7 EHRR 471, para 68). This is so, particularly where it cannot be shown that there are substantial obstacles to the establishment of family life elsewhere (*Abdulaziz, et al*, para 68). We are advised, however, that given the specific difficulties of travel in either direction (both for family members to gain access to Gibraltar and for the Moroccan community in Gibraltar to travel to Morocco) the peculiar difficulties of this specific situation are likely to constitute a violation of Article 8 : ‘Article 8 is likely to be violated by the failure to permit family members to visit Moroccan workers resident in Gibraltar in particular cases and most particularly where it is difficult or impossible in practice for them to visit family members in Morocco’.

6.5 Article 8 is not an absolute right. In respect of the above rights there is provision for interferences to ‘justified’ under the terms of Article 8(2). The criteria applicable to claims of justification are, however, substantial. We are advised that: ‘For justification to be made out, however, any interference must in accordance with the law (very importantly given the arbitrary nature of some of the interferences described in my instructions) and necessary in a democratic society in support of one of the enumerated aims (national security, public safety etc). The burden of proving justification rests on the State (*DH v The Czech Republic* (Application No. 57325/00) (2007), para 177)’. We are advised that in general terms that ‘The interferences with the rights guaranteed by Article 8 [as] described ... will not be capable of justification given the requirements of Article 8(2)’.

- **Naturalisation and Immigration**

6.6 Our investigations and interviews with diverse groups, including local political leaders as well as members of the Moroccan community, trade unionists, and local lawyers, repeatedly raised the spectre of arbitrary powers being exercised and of informal criteria being applied to the handling of applications for naturalisation. We are advised that such practices would violate Article 8(1) and that such interferences with Convention rights would not be capable of justification: ‘A failure to regularise a person’s immigration status may violate Article 8(1) if not justified (*S v Home Secretary* [2006] EWCA Civ 1157). An arbitrary, unfettered power, particularly one that is not reflected in an instrument or measure that has the quality of law, is unlikely to be justified (*ibid*). Thus:

‘the expression ‘prescribed by law’ [in the ECHR] and ‘in accordance with the law’ in Article 8(2) are to be

understood as bearing the same meaning. What is that meaning?

The claimants relied on a number of authorities ... to submit that the object of this requirement is to give protection against arbitrary interference by public authorities; that 'law' includes written and unwritten domestic law, but must be more than mere administrative practice; that the law must be accessible, foreseeable and compatible with the rule of law, giving an adequate indication of the circumstances in which a power may be exercised and thereby enabling members of the public to regulate their conduct and foresee the consequences of their actions; that the scope of any discretion conferred on the executive, which may not be unfettered, must be defined with such precision, appropriate to the subject matter, as to make clear the conditions in which a power may be exercised; and there must be legal safeguards against that abuse ...

The lawfulness requirement in the Convention addresses supremely important features of the rule of law. The exercise of power by public officials, as it affects members of the public, must be governed by clear and publicly accessible rules of law. The public must not be vulnerable to interference by public officials acting on any personal whim, caprice, malice, predilection or purpose other than that for which the power was conferred. That is what, in this context, is meant by arbitrariness which is the antithesis of legality. This is the test which any interference with or derogation from the convention right must meet if a violation is to be avoided'.

(R (Gillan) v Metropolitan Police Commissioner [2006] UKHL 12)

6.7 Legal advice provided to ICTUR further concluded that such interferences cannot be said to be proportionate having regard to the very severe impact on workers and their families (including children). Even if a legitimate aim could be identified for any of the interferences described, it is especially difficult to see how they could be described as necessary in a democratic society given their severe impact on a minority and vulnerable population.

The First Protocol

- **The Right to Education**

6.8 In addition to article 8, we are advised that two provisions of the first protocol to the Convention are also engaged. The first is article 2 which deals with **the right to education** and provides as follows:

Right to education

‘No person shall be denied the right to education. In the exercise of any functions which it assumes in relation to education and to teaching, the State shall respect the right of parents to ensure such education and teaching in conformity with their own religious and philosophical convictions’.

6.9 Article 2 is not an unlimited right, and does not require States parties to make provision for any particular type or level of education. Article 2 does, however, guarantee an equal right of access to existing educational facilities. As the ECtHR has observed, the rights under Article 2 embrace the following rights:

- a right to access to existing educational institutions;
- a right to an ‘effective’ education; and
- a right to official recognition of studies successfully completed

(*Belgian Linguistic Case (No.2)* (1968) 1 EHRR 252, 280, para 4).

6.10 A number of cases have addressed circumstances where children have been refused admission to State schools, including where children of a migrant worker were refused admission to State schools on grounds related to their father’s migrant card: *Timishev v Russia* (2005) 44 EHRR 776. One of the more worrying issues that was raised during our investigation, and in respect of which copies of relevant correspondence were supplied to us, was the allegation that children resident in Gibraltar without regular status had been denied access to public schools. In respect of this allegation, we are advised that: ‘A requirement that a child be the child of a Gibraltar national, is unlikely to be justified in circumstances where the parent is a Moroccan worker, unable to obtain naturalisation or citizenship because of the arbitrary nature of the rules in place, and in circumstances where the child is in fact resident in Gibraltar. For this reason, the exclusion of the children of Moroccan workers from schools in Gibraltar is likely to violate Article 2, First Protocol, ECHR’.

- **Political Rights**

6.11 In addition to the right to education, the second provision of the first protocol which is relevant for present purposes is article 3 which deals with **the right to free elections** and provides as follows:

First Protocol: Article 3 – Right to free elections

‘The high Contracting Parties undertake to hold free elections at reasonable intervals by secret ballot, under conditions which will ensure the free expression of the opinion of the people in the choice of the legislature’.

6.12 First Protocol Article 3 establishes in law fundamental concepts and ideas central to the modern liberal democratic notion of the State. It goes to the heart of the objectives promoted by the European Convention for the Protection of Human Rights and Fundamental Freedoms. The Grand Chamber of the European Court of Human Rights has set out the general principles applicable under Article 3, First Protocol in *Zdanoka v Latvia* (2007) 45 EHRR 17. Based on a leading human rights text, legal advice provided to ICTUR summarised these in the following terms:¹⁵.

- ‘Article 3 is akin to Article 10 and 11 (free expression and free association). All these provisions are linked by the need to guarantee respect for pluralism of opinion in a democratic society through the exercise of civic and political freedoms. However, because an interference with Article 3, when alleged, is phrased in collective and general terms the standards to be applied for compliance are less stringent than those applied under the other Convention rights.
- Contracting States are free to rely on any aim which is compatible with the principle of the rule of law and the general objectives of the Convention in justifying any interference or limitation of the rights under Article 3.
- The Court does not apply the traditional test of ‘necessity’ or ‘pressing social need’ when examining compliance with Article 3 of the First Protocol. The Court has focussed mainly on two criteria: whether there has been arbitrariness or a lack of proportionality, and whether the restriction has interfered with the free expression of the opinion of the people. Contracting States have a wide margin of appreciation’.

6.13 In the case of the Moroccan community ‘the very essence of [their] right to vote’ as guaranteed by Article 3, First Protocol (*Mathieu*, supra, para 65) has been denied. These workers spend much of their lives, indeed in some cases the whole of their adult lives, in Gibraltar contributing by work and taxation to the economy, without their status being adequately regularised which has the effect of denying them the right to vote. We are advised that: ‘The absence of the right to engage in the ordinary political process has no doubt been injurious to the enjoyment of their fundamental rights more generally, and given the very severe impact, at least in respect of certain groups of them (particularly permanent or long term workers) ... there are good grounds for arguing that a violation of Article 3 would be substantiated’. Although it is true that the rights under Article 3 are not absolute and States are permitted to make the right to vote subject to conditions and they have a

¹⁵ R Clayton and H Tomlinson, *The Law of Human Rights* (2nd ed, 2009), para 26 et seq.

wide margin of appreciation in so doing, we are advised that: ‘...any conditions must not impair the very essence of the rights or deprive them of their effectiveness. Further, such conditions must be imposed in pursuit of a legitimate aim and the means employed must be proportionate (see *Mathieu-Mohin & Clerfayt v Belgium* (1987) 10 EHRR 1, para 52; and *Gitonas v Greece* (1997) 26 EHRR 691, para 39)’.

Protection from Discrimination

6.14 In addition to the foregoing, another key provision of the ECHR for present purposes is article 14. This provides as follows:

Article 14 – Prohibition of discrimination

‘The enjoyment of the rights and freedoms set forth in this Convention shall 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’.

The concept of discrimination set out by Article 14 is very wide. Where discrimination might be proven ‘de facto’, through the collection of statistics, for example, this demonstrates that much of the disadvantage experienced by the Moroccan community and experienced by them alone by reason of their national origins is discriminatory for the purposes of Article 14. We are advised in this situation that ‘their nationality and their immigration status would fall within the scope of Article 14 and violate it absent justification’. Article 14 does not in itself contain free-standing protection against discrimination. Rather, all other rights guaranteed under the Convention must be read as though Article 14 ‘formed an integral part of each of the articles laying down rights and freedoms’ (*Belgian Linguistic Case (No 2)* (1968) 1 EHRR 252, 283 para 9).

- **Meaning of Discrimination**

6.15 As to the meaning of discrimination, as indicated above we are advised that case law under Article 14 has required a complainant to prove a difference of treatment. Thus:

‘...the case law ‘establishes that discrimination means treating differently, without an objective and reasonable justification, persons in relevantly similar situations’ (*Willis v United Kingdom* (2002) 35 EHRR 21, para 48). Not every difference in treatment will amount to a violation of Article 14. Instead, it must be established that the other persons in an analogous or relevantly similar situation enjoy more favourable treatment, and that there is no objective or reasonable justification for the distinction (see eg *Fredin v Sweden* (1991) 13 EHRR 784; *Stubbings v United Kingdom* (1996) 23 EHRR 213 para 72; *Camp & Bourimi v The Netherlands* (2002) 34 EHRR

59). In this way ‘direct’ discrimination is covered by Article 14. Thus the discrimination described above, falling within the substantive Convention Articles (3, 8, ECHR and Article 2 and 3 First Protocol) which is based entirely on the fact that the workers who are the subject of this Advice are Moroccan and/or their families (in the case of visits) and/or their children (in the case of education) are Moroccan will violate article 14 absent justification’.

6.16 Further, we are also advised that:

‘...case law from the European Court of Human Rights now makes clear that ‘indirect discrimination’ is also addressed by Article 14 (the Belgian Linguistic case; *Thlimmenos v Greece* (2001) 31 EHRR 14). In *Jordan v United Kingdom* (2003) 37 EHRR 2, at para 154 the Court ruled that: ‘Where a general policy or measure has disproportionately prejudicial effects on a particular group, it is not excluded that this may be considered as discriminatory notwithstanding that it is not specifically aimed or directed at that group’. This is especially important in considering, for example, the arbitrary nature of immigration and residence status for non-Gibraltar nationals, most especially Moroccans, even if not (as seems doubtful) specifically directed at them. The fact that Article 14 applies to wide forms of indirect discrimination has now been put beyond doubt by the very important decision of the Grand Chamber in *DH v Czech Republic* (2008) 47 EHRR 3. In *DH* the Court went further than its previous holdings in ruling that disparate outcomes – including de facto segregation – may violate Article 14, absent proof that they are not connected to one of the protected characteristics, including race, national origins etc and absent justification. Article 14 then may address what is commonly described as ‘institutional’ (caused by policies and practices which disadvantage one group or another) and ‘structural’ (caused by de facto segregation and exclusion) discrimination and imposes a duty upon the State to take steps to avoid it. It is, then, of obvious relevance to the plight of Moroccan workers in Gibraltar. In *DH & Ors v the Czech Republic* (above) the European Court of Human Rights found a violation of Article 14 on the basis of facts demonstrating that more than half of Roma children in the Czech Republic attend special schools (those for children with a ‘social or mental handicap’).

- **Application of Article 14 to Moroccan workers**

6.17 We are advised that:

‘As to the State rules that have the effect of depriving Moroccan workers and their families of adequate housing; family life; regularised immigration status; social security/welfare benefits; access to education and voting rights, in the absence of justification, these will all violate Article 14, then, either because of their directly and explicitly discriminatory or because of the indirectly, effective, result of them. As to justification, as mentioned above, discrimination under Article 14 is lawful if ‘justified’. Justification will only be made out where the discrimination complained of pursues a legitimate aim and ‘there is [a].. reasonable relationship of proportionality between the means employed and the aim sought to be realised’ (the *Belgian Linguistic case*, para 34). Generally the identification of a legitimate aim is the easier part of the burden to discharge (in *Abdulaziz, Cabales and Balkandali* for example, on immigration law, the aim was to protect the labour market and protect public order).

As to establishing proportionality, the ground of discrimination relied upon will be highly relevant. In some cases the Court will apply strict standards, in others a wide margin of appreciation is accorded to States. The case law from the ECtHR has identified a number of ‘suspect’ classifications which require ‘very weighty reasons’ to justify a difference in treatment. These include [as is relevant for present purposes] race/ethnicity (*Timishev v. Russia* (2007) 44 EHRR 37, para 58: ‘no difference in treatment which is based exclusively or to a decisive extent on a person’s ethnic origin (which includes ‘common nationality) is capable of being objectively justified’) and nationality (*Gaygusuz v Austria* (1996) 23 EHRR 365, para 42). The margin of appreciation will be very narrow indeed in relation to the ‘suspect categories’. Subject to those observations then, a difference in treatment will violate Article 14 if there is no reasonable relationship of proportionality between the means employed and the aim sought to be realised.

6.18 Given the very severe impact on Moroccan workers and their families of the discriminatory treatment, we are advised that it is very unlikely indeed that justification could or would be made out in respect of the discrimination they experience. For completeness, we are also advised that Article 14 imposes positive duties on the State to take action to protect against acts of discrimination by private persons in certain circumstances (*Young James and Webster v United Kingdom*

(1981) 4 EHRR 38 para 57; *Sigurjonsson (Sigurdur A) v Iceland* (1993) 16 EHRR 462 para 37; *Danilenkov & Ors v Russia* (App No. 67336/01). To the extent that certain of the matters above are done by private persons (which appears to include the provision of welfare benefits), this is likely engage State responsibility and again the discrimination is very unlikely to be justified’.

Conclusion

6.19 We are thus advised that the treatment of Moroccan workers in Gibraltar raises a comprehensive range of issues under the ECHR. For the avoidance of doubt, we are also advised that there is no doubt about the ability of the Moroccan workers to rely on Convention rights and to seek to enforce them in the normal way. It is unquestionably the case that the ECHR applies to Gibraltar. Article 1 provides that ‘The High Contracting Parties shall secure to everyone within their jurisdiction the rights and freedoms defined in Section I of this Convention’. We are advised that this provision reflects an ‘essentially territorial notion of jurisdiction’ (*Bankovic v Belgium* (2001) 11 BHRC 435, endorsed and adopted by the House of Lords in *R (Al-Skeini) v Secretary of State for Defence* [2008] 1 AC 153, 27, 68, 81, 91, 106 108).

6.20 We are also advised that the ‘extra - territorial application of the ECHR and certain of its Protocols (in particular, Protocol No 1, but not No 4) is given legal formality in the case of Gibraltar by reason of the United Kingdom’s declarations dated 23 October 1953 and 25 February 1988, referred to above, extending the Convention and Protocol No 1 respectively to Gibraltar’. Moreover, ‘Where there is an arguable breach of any right secured by the ECHR, the victim is entitled to an effective remedy in accordance with Article 13, ECHR’, so that ‘Moroccan workers and their families presently resident in Gibraltar are therefore within the jurisdiction of the United Kingdom in respect of Article 1 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR). They have a right to an effective remedy against the UK for any alleged breaches of their fundamental rights’.

Chapter Seven

Other Human Rights Instruments

7.1 In this chapter we consider a number of other international human rights instruments that having a bearing on the matter we were asked to investigate. These instruments are not always capable of being applied directly by local courts and tend to be structured around quasi-judicial supervisory mechanisms, which include monitoring procedures, reporting systems, and panels or committees of legal experts who are empowered under the terms of the instrument to issue commentaries concerning the level of compliance by States Parties. These mechanisms range from mild censure by an international agency through to potentially quite serious public criticism that can spill over into various forms of diplomatic and political pressure.

BOX 4

Demir v Turkey (2009) 48 EHRR 54

In the *Demir* case, in respect of the Convention for the Protection of Human Rights and Fundamental Freedoms, 1950, the European Court of Human Rights ruled that:

‘85 The Court, in defining the meaning of terms and notions in the text of the Convention, can and must take into account elements of international law other than the Convention, the interpretation of such elements by competent organs, and the practice of European states reflecting their common values. The consensus emerging from specialised international instruments and from the practice of contracting states may constitute a relevant consideration for the Court when it interprets the provisions of the Convention in specific cases.

86 In this context, it is not necessary for the respondent State to have ratified the entire collection of instruments that are applicable in respect of the precise subject matter of the case concerned. It will be sufficient for the Court that the relevant international instruments denote a continuous evolution in the norms and principles applied in international law or in the domestic law of the majority of Member States of the Council of Europe and show, in a precise area, that there is common ground in modern societies’.

7.2 But these so-called ‘soft law’ measures to which we refer below (in contrast to the hard law considered in chapters five and six) have been developing a harder edge in recent years. Developments taking place at the fringes of international law for some time were finally confirmed as possessing a central place within the European human rights system when the European Court of Human Rights examined a recent complaint against Turkey, and placed considerable reliance on the terms and conditions set out as minimum standards by a series of treaties that Turkey had not

ratified but which the Court found constituted general principles of international law to which the Court should have regard. See Box 5.

United Nations' Instruments

7.3 Of particular relevance are the following:

- **International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, 1990**

7.4 This important international instrument has been signed (15 August 1991) and ratified (21 June 1993) by Morocco but has not yet been signed by the UK. Its provisions remain instructive:

Article 30

‘Each child of a migrant worker shall have the basic right of access to education on the basis of equality of treatment with nationals of the State concerned. Access to public pre-school educational institutions or schools shall not be refused or limited by reason of the irregular situation with respect to stay or employment of either parent or by reason of the irregularity of the child's stay in the State of employment’.

Article 43

‘1. Migrant workers shall enjoy equality of treatment with nationals of the State of employment in relation to:

- (a) Access to educational institutions and services subject to the admission requirements and other regulations of the institutions and services concerned;
- (d) Access to housing, including social housing schemes, and protection against exploitation in respect of rents;

2. States Parties shall promote conditions to ensure effective equality of treatment to enable migrant workers to enjoy the rights mentioned in paragraph 1 of the present article whenever the terms of their stay, as authorized by the State of employment, meet the appropriate requirements’.

Article 70

‘States Parties shall take measures not less favourable than those applied to nationals to ensure that working and living conditions of migrant workers and members of their families in a regular situation are in keeping with the standards of fitness, safety, health and principles of human dignity’.

Our inquiry has raised concerns in respect of compliance specifically in respect of access to schools by undocumented children and also in respect of the poor conditions of housing afforded to the Moroccan community and of the discriminatory provision of social housing. The UN Special Rapporteur on the Human Rights of Migrants has demonstrated a particular interest in issues affecting women and children. The mandate of the Special Rapporteur covers all countries, *irrespective* of whether a State has ratified the 1990 Migrant workers international convention. The Special Rapporteur does not require the exhaustion of domestic remedies to act.

- **International Covenant on the Elimination of All Forms of Racial Discrimination, 1966**

7.5 This high profile UN instrument on Race Discrimination has been signed (11 October 1966) and ratified (7 March 1969) by the UK and is in force in itself as a source of law in respect of Gibraltar.

Article 5(e)(iii).

‘In compliance with the fundamental obligations laid down in article 2 of this **Convention**, State Parties undertake to prohibit and eliminate racial discrimination in all of its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin to equality before the law, notably in the enjoyment of the following rights:...

(e) in particular...

(iii) the right to housing’.

Our inquiry has raised concerns in respect of compliance surrounding the issue of discriminatory access to state owned housing. The Committee has a well-established procedure for the informal communication of information during the production of its regular reports on the state of compliance with the Convention.

- **International Covenant on Economic, Social and Cultural Rights, 1966**

7.6 The ICESCR, one of the core instruments of the international human rights code was signed (16 Sep 1968) and ratified (20 May 1976) by the UK and is in force with respect to Gibraltar.

Article 2

‘2. The States Parties to the present Covenant undertake

to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status'.

Article 9

'The States Parties to the present Covenant recognize the right of everyone to social security, including social insurance'.

Our inquiry has raised concerns in respect of compliance surrounding allegations of the discriminatory provision of social welfare, which would violate the terms of Article 9 when read with Article 2(2).

Article 11(1)

'The State parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and for his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international co-operation based on free consent'.

Our inquiry has raised concerns in respect of compliance surrounding the poor quality of the housing available to the Moroccan community, the fact that after several decades members of the Moroccan community remain in conditions as poor as those observed at the Buena Vista hostel, and also in respect of allegations of discriminatory provision of housing entitlements.

Article 12

'1. The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.

2. The steps to be taken by the States Parties to the present Covenant to achieve the full realization of this right shall include those necessary for:

(d) The creation of conditions which would assure to all medical service and medical attention in the event of sickness'.

Our inquiry has raised concerns in respect of compliance with regard to access to medical care for families during visits and with access to non-emergency care in Spain or UK.

Council of Europe Instruments

7.7 There are three instruments of particular relevance within the legal regime of the Council of Europe. Of these, the Social Charter of 1961 provides the most substantial detail in terms of setting out precisely what standards of conduct are required in respect of the various heads of inquiry examined by our inquiry.

- **European Social Charter, 1961**

7.8 The United Kingdom signed the Social Charter on 18 October 1961, and ratified the instrument on 11 July 1962. Its provisions are taken into account by courts, and it is supported by an international reporting system and supervisory mechanism.

Article 16, the right of the family to social, legal and economic protection

‘With a view to ensuring the necessary conditions for the full development of the family, which is a fundamental unit of society, the Contracting Parties undertake to promote the economic, legal and social protection of family life by such means as social and family benefits, fiscal arrangements, provision of family housing, benefits for the newly married, and other appropriate means’.

Our inquiry has raised concerns in respect of compliance with regard to poor provision of family housing for members of the Moroccan community (ie - single room private flats, no council housing) and generally in respect of the diverse problems identified in this report that perpetuate the separation of families, including travel and visa arrangements.

Article 19, the right of migrant workers and their families to protection and assistance

‘With a view to ensuring the effective exercise of the right of migrant workers and their families to protection and assistance in the territory of any other Contracting Party, the Contracting Parties undertake:

2. to adopt appropriate measures within their own jurisdiction to facilitate the departure, journey and reception of such workers and their families, and to provide, within their own jurisdiction, appropriate services for health, medical attention and good hygienic conditions during the journey;

4. to secure for such workers lawfully within their territories, insofar as such matters are regulated by law or regulations or are subject to the control of administrative authorities, treatment not less favourable than that of their own nationals in respect of the following matters: remuneration and other employment and working

conditions; membership of trade unions and enjoyment of the benefits of collective bargaining; accommodation;

5. to secure for such workers lawfully within their territories treatment not less favourable than that of their own nationals with regard to employment taxes, dues or contributions payable in respect of employed persons;

6. to facilitate as far as possible the reunion of the family of a foreign worker permitted to establish himself in the territory’.

Our inquiry has raised concerns in respect of compliance surrounding: the ferry waiting area; complaints about medical charges and pensions for those wishing to return; provision of accommodation, the question of access to social and welfare benefits (for tax payers in particular), and also in respect of the issues affecting family reunion.

- **Convention on the Participation in Public Life of Foreigners, 1992**

7.9 The UK has signed but has not ratified the Convention. It is not, therefore, legally binding on Gibraltar. Its substance is, however, relevant to establishing European common standards for the purposes of comparative assessment.

Article 6

‘1. Each Party undertakes, subject to the provisions of Article 9, paragraph 1, to grant to every foreign resident the right to vote and to stand for election in local authority elections, provided that he fulfils the same legal requirements as apply to nationals and furthermore has been a lawful and habitual resident in the State concerned for the 5 years preceding the elections.

2. However, a Contracting State may declare, when depositing its instrument of ratification, acceptance, approval or accession, that it intends to confine the application of paragraph 1 to the right to vote only’.

Our inquiry has raised concerns in respect of compliance surrounding the right to vote.

- **Revised European Social Charter, 1996**

7.10 The United Kingdom has signed the Revised Social Charter, on 7 November 1997, but it has not ratified the instrument. The Revised Social Charter is not, therefore, legally binding on Gibraltar. Its substance is, however, relevant to establishing European common standards for the purposes of comparative assessment.

Article 23, the right of elderly persons to social protection

‘With a view to ensuring the effective exercise of the right of elderly persons to social protection, the Parties undertake to adopt or encourage, either directly or in co-operation with public or private organisations, appropriate measures designed in particular: to enable elderly persons to choose their life-style freely and to lead independent lives in their familiar surroundings for as long as they wish and are able, by means of:

(a) provision of housing suited to their needs and their state of health or of adequate support for adapting their housing’.

Our inquiry has raised concerns in respect of compliance surrounding the conditions in which elderly men are living at the Buena Vista hostel, and also with regard to the condition and quality of private housing that is available to older members of the Moroccan community.

Article 30, the right to protection against poverty and social exclusion

‘With a view to ensuring the effective exercise of the right to protection against poverty and social exclusion, the Parties undertake:

a. to take measures within the framework of an overall and co-ordinated approach to promote the effective access of persons who live or risk living in a situation of social exclusion or poverty, as well as their families, to, in particular, employment, housing, training, education, culture and social and medical assistance’.

Our inquiry has raised concerns in respect of compliance so far as provision is concerned, of: housing; access to education for undocumented children; and of non-essential medical assistance.

Article 31, the right to housing

‘With a view to ensuring the effective exercise of the right to housing, the Parties undertake measures designed:

1. to promote access to housing of an adequate standard
2. to make the price of housing accessible to those without adequate resources’.

Our inquiry has raised concerns in respect of compliance due to the hostel and private housing being of inadequate standard.

Part V, Article E – Non-discrimination

‘The enjoyment of the rights set forth in this Charter shall

be secured without discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national extraction or social origin, health, association with a national minority, birth or other status’.

In respect of the above concerns we note that Article E requires that all Charter rights be secured without discrimination on grounds either of race or national extraction.

Conclusion

7.11 The foregoing by no means covers all the relevant international legal instruments that are applicable to the position of Moroccan workers in Gibraltar. We have already referred in chapter 3 to another such instrument in the context of voting rights, namely the ILO Multilateral Framework on Labour Migration. Also relevant (but for different reasons) is ILO Convention 97 (the Migration for Employment Convention) which requires ‘no less favourable’ treatment on social security and taxes between migrant workers and nationals. The Convention has been ratified by the UK but the position in relation to Gibraltar was ‘Reserved’ in 1958. It provides:

Article 5

‘Each Member for which this Convention is in force undertakes to maintain, within its jurisdiction, appropriate medical services responsible for--

(b) ensuring that migrants for employment and members of their families enjoy adequate medical attention and good hygienic conditions at the time of departure, during the journey and on arrival in the territory of destination’.

Article 6

‘1. Each Member for which this Convention is in force undertakes to apply, without discrimination in respect of nationality, race, religion or sex, to immigrants lawfully within its territory, treatment no less favourable than that which it applies to its own nationals in respect of the following matters:

(iii) accommodation’;

Our inquiry has raised concerns in respect of compliance surrounding the lack of ferry terminal waiting facilities and with the alleged discriminatory provision of accommodation.

7.12 It is important to emphasise that not all of the foregoing instruments have been ratified by the United Kingdom, or that they apply directly to Gibraltar. In these cases, there would be no opportunity to raise the position of the Moroccan workers before any supervisory bodies established under the instrument in question. But it is also important to emphasise the point made by the European Court of Human Rights in the *Demir* case (see Box 5 above) that these instruments are very important in

interpreting Convention rights. In *Demir*, for example, the right to freedom of association in article 11 of the ECHR was read as including the right to bargain collectively in accordance with ILO and Council of Europe standards. As a result the foregoing instruments will be immensely valuable in any human rights litigation in the Gibraltar or Strasbourg courts, even though they have not been ratified by the United Kingdom and even though they do not directly apply to Gibraltar. They denote the current state of play in what the European Court of Human Rights has described as the ‘continuous evolution’ of human rights standards, on which ‘there is common ground in modern societies’ which these documents reflect.

Chapter 8

Conclusions and Recommendations

8.1 We believe that the evidence we have gathered during the course of this investigation demonstrates a number of serious breaches of substantive provisions of international human rights law, and of the local law of Gibraltar (specifically in respect of the Constitution of Gibraltar and the Equal Opportunities Ordinance), and of fundamental legal principles pertaining to decision-making and the exercise of discretion in the realm of public and administrative law.

8.2 Our discussions with local actors, including representatives of the three main political parties, encouraged us to believe that these problems were not insurmountable, and that a political resolution would be a distinct possibility, thus rendering further legal work unnecessary. The decision of the tripartite ministerial forum securing a negotiated solution to at least one of the major concerns of the Moroccan community provides yet further encouragement for this view. To this end we set out below our recommendations for action to the Governments of Gibraltar, Spain and the United Kingdom.

8.3 It is our view that a sustained programme of work will be required in order to bring about this process and as a necessary process for generating the will for change among the political parties in Gibraltar. To this end we believe that the District Office of Unite the Union, the Moroccan Associations, and Unite's head office in London should continue to promote awareness of the complaints in Gibraltar and throughout Europe, with particular regard to the United Kingdom and Spain.

8.4 Finally, we have examined the legal issues involved in some detail. We conclude that there are solid grounds for action under various legal processes should this be necessary as a means either of obtaining respect for the rights of individuals or as a tool for moving the political process forward in order to bring about political reform. To this end we have made brief recommendations below. We are grateful to Karon Monaghan QC for her advice.

8.5 Our recommendations are as follows:

To the British Government

- to recognise the contribution over many years made by the Moroccan community towards the maintenance of an important British military facility;
- to engage the Gibraltar Government in discussions with a view to ensuring that rapid progress is made to achieve full compliance with all human rights obligations in respect of the Moroccan community;
- to review the situation on an annual basis and to solicit contributions from all relevant parties, including Unite Gibraltar and the Moroccan associations, and to publish the findings of this review.

- to recognise that all relevant naturalisation criteria and application processes should be published, transparent and accessible, and communicate this view to the Gibraltar Government;
- to recognise the principle that long term residents are entitled to vote; and to liaise with the Gibraltar government with a view to implementing this principle, and if necessary amend British law;
- to liaise with the Gibraltar and Spanish Governments in order to ensure that the transit visas proposed by the Tripartite Ministerial Forum should be made available with immediate effect.

To the Gibraltar Government

- **On naturalisation**
 - to ensure that all relevant rules, criteria and procedural information are published, transparent, and accessible;
 - to review the existing rules and policies with a view to eliminating any irrelevant barriers to applicants (such as inappropriate language tests) ;
 - to put in place a timetable for dealing with applications speedily, transparently, and consistently.

- **On political rights and the right to vote**
 - to commit immediately to extending the franchise to all long-term residents of Gibraltar;
 - to consult all interested parties about the content and implementation of any changes to electoral law;
 - to legislate within 12 months from the date of this report to extend the franchise to long-term residents.

- **On social security and welfare benefits**
 - to publish a comprehensive guide to all discretionary and non-discretionary benefits, pensions and other forms of welfare support provided by the State, by Community Care, and any other public or private bodies;
 - to publish the criteria and application processes for all social security and welfare benefits (whether publicly or privately administered) and to ensure that the information is accessible to all who wish to consult it;
 - to eliminate all forms of discrimination in relation to welfare benefits so that Moroccans enjoy the same access to all benefits (both public and private) as do Gibraltarians, and on the same terms as other Gibraltarians.

- **On health care**
 - to ensure full access to public health services for the family members of the Moroccan community during their visits to Gibraltar;
 - to take positive steps with immediate effect to remove any health care charges incurred by the families of Moroccan workers not incurred by Gibraltarians;

- to liaise with the British and Spanish Governments to secure an agreement on transit rights into Spain for access to hospitals and healthcare facilities for the Moroccan community.
- **On education and language training**
 - to take positive steps to ensure that Moroccan children in Gibraltar are not prevented from attending school on the grounds of their citizenship or legal status;
 - to take positive steps to ensure that Moroccan parents should not be charged any school fees or other fees for education other than fees that would also be charged in respect of Gibraltar children;
 - to introduce publicly funded English language training for those who wish to have access to it, especially so long as English language proficiency remains a condition of eligibility for naturalisation.
- **On housing**
 - to amend the Housing Allocation Schedule to remove the discriminatory provisions that restrict public housing to Gibraltar, British, Commonwealth, and EU citizens;
 - to publish a revised Housing Allocation Schedule and to make full details of the allocation criteria and application process available by ensuring that these are published, transparent and accessible;
 - to renovate the Buena Vista hostel, and take concrete steps to ensure that the sub-standard private sector accommodation rented by members of the Moroccan community is brought up to decent standards.
- **On family re-unification**
 - to liaise with the British and Spanish Governments to ensure that the transit visas proposed by the Tripartite Ministerial Forum should be made available with immediate effect;
 - to permit Moroccan nationals working and resident in Gibraltar to have their families live with them on a permanent basis, by liberalising any visa restrictions;
 - to put an immediate end to the process of confiscating the passports of the families of Moroccans during their visits to Gibraltar, and introduce decent facilities at the ferry terminal.

To the Spanish Government

- to liaise with the British and Gibraltar Governments to ensure that the transit visas proposed by the Tripartite Ministerial Forum should be made available with immediate effect;
- to liaise with the British and Gibraltar Governments with a view to extending the concept of transit visas adopted by the Tripartite Ministerial Forum;
- to ensure that visas for non-urgent medical treatment can be issued within a rapid time-frame so as substantially to reduce the current '10 day wait' that we have been advised is the current time-frame.

‘In spite of their immense contribution to the economic, social and cultural life of Gibraltar over a period of almost 40 years it is the unfortunate reality that the vast majority of Moroccans face shocking discrimination and violations of fundamental human rights’

About ICTUR

The International Centre for Trade Union Rights (‘ICTUR’) is an organising and campaigning body with the fundamental purpose of defending and improving the rights of trade unions and trade unionists throughout the world. In 1993 ICTUR was recognised as an important international organisation and granted accredited status with both the United Nations and the International Labour Organisation.

ICTUR was established in 1987. It aims:

- To defend and extend the rights of trade unions and trade unionists throughout the world.
- To collect information and increase awareness of trade union rights and their violations.
- To carry out its activities in the spirit of the United Nations Charter, the Universal Declaration of Human Rights, the International Labour Organisation Conventions and appropriate international treaties.

A report of an ICTUR delegation to Gibraltar 2009

Cover photos: Unite the union, 2009

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