

IN THE PLANNING INSPECTORATE

IN THE MATTER OF LONDON BOROUGH OF HARINGEY (WARDS CORNER REGENERATION PROJECT)

COMPULSORY PURCHASE ORDER 2016

NPCU / CPO / &5420 / 77066

EXPERT STATEMENT BY LUCY CLARIDGE AND ALEXANDRA XANTHAKI

PREPARED UPON REQUEST OF THE SEVEN SISTERS MARKET TRADERS

Introduction

1. This Statement is made by Lucy Claridge, Legal Director of Minority Rights Group International (MRG) and Alexandra Xanthaki, Professor of Law at Brunel University London.
2. Lucy Claridge was admitted as a solicitor of England and Wales in 2000 and for the past 15 years has led key regional and international legal cases seeking to improve access to justice for minority and indigenous communities worldwide. Her work has a particular focus on land rights, participation and wider anti-discrimination issues and employs a combination of strategic litigation, advocacy and capacity building. Before joining MRG, Ms Claridge was Legal Director at Kurdish Human Rights Project, where she managed a caseload before the European Court of Human Rights concerning human rights violations committed against the Kurdish population of Turkey, Iraq, Armenia and Azerbaijan. She has also spent several years in private practice and has worked at Liberty and as Deputy Director of the London-based British Irish Rights Watch. Lucy is a graduate of University College, Oxford (Law, BA/MA) and King's College, London (International Peace and Security, MA).
3. MRG is an international non-governmental organisation working to secure the rights of ethnic, religious and linguistic minorities and indigenous peoples worldwide, and to promote cooperation and understanding between communities. MRG works with over 150 organisations in nearly 50 countries. MRG has consultative status with the United Nations Economic and Social Council, observer status with the African Commission on Human and Peoples' Rights and is a civil society registered with the Organisation of American States.
4. Prof Alexandra Xanthaki is a leading scholar on minority rights and cultural rights in international law. Her work has been repeatedly cited in United Nations documents and she has advised several governments on specific human rights issues, including Finland and the United Kingdom. She holds a Chair at Brunel University London and is an Associate Research Fellow at the Institute of Advanced Legal Studies in London. She has given keynote speeches around the

world, including recently in the Arctic Centre, Rovaniemi, the KL Bar, Malaysia, and the University of London. She has worked closely with several United Nations bodies, the International Labour Organisation and enjoys close links with international non-governmental organisations. She is currently writing a monograph on Cultural Rights in International Law for Cambridge University Press. She is a member of Athens Law Bar.

5. Brunel University London is a public research-intensive university located in Uxbridge, London. Founded in 1966, it has over 12,900 students and 2,500 staff. Brunel Law School has 34 staff, offers a qualifying law degree and is well-known for its placements of students with law practitioners. The Law School focuses on research, teaching and public engagement on human rights law, and especially the rights of vulnerable people, including ethnic and religious minorities, refugees, LGBTQ persons and persons with disabilities.
6. The Seven Sisters Market Traders have requested that Ms. Claridge and Prof. Alexandra Xanthaki assist them by providing this Expert Statement.
7. In preparing this Statement, we have:
 - a. Reviewed the Statement of Case and Statement of Reasons prepared by the London Borough of Haringey Council;
 - b. Reviewed the Statement of Reasons (and Annexes) on behalf of Seven Sisters Market Traders;
 - c. Visited the Seven Sisters Market on 9 February 2017;
 - d. Considered the relevant materials in international human rights law on minority rights including the *International Covenant on Economic, Social and Cultural Rights*, the *United Nations Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities*, the *International Convention on the Elimination of all forms of Racial Discrimination* and the *Framework Convention for the Protection of National Minorities* (see footnotes for further detail).
8. This Statement addresses four main issues:
 - A. Minority rights under international law
 - B. Application of the definition of a minority to the Seven Sisters Market Traders
 - C. The duty of the UK to protect minority rights
 - D. Minority rights protection
 - E. Impact of the Council's decision on the rights of the Seven Sisters Market Traders

A. Minority rights under international law

9. This section will explain the principles of equality and non-discrimination in international human rights law, which frames the rights of members of minorities under international law, before turning to the detail of international law on members of minorities, which requires States to provide specific and additional protection to members to minorities.

10. It is well established in international human rights law that all people are entitled to the enjoyment of fundamental human rights without discrimination. The Charter of the United Nations promotes and encourages 'respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion'.¹ Article 1 of the Universal Declaration on Human Rights states 'all people are born free and equal in dignity and rights'.²
11. The protection of minorities is rooted in principles of equality and non-discrimination but also seeks to advance the rights of persons belonging to minorities to participate in decision-making, to enjoy their own culture, to progress and practice their own religion, and to use their own language.³
12. The United Nations Committee on the Elimination of Racial Discrimination, for example, has regularly considered the situation of minorities in light of *the International Convention on the Elimination of all forms of Racial Discrimination* (ICERD), of which the United Kingdom is a party.⁴ ICERD defines discrimination as 'any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life'.⁵
13. Article 2(1) of the *International Covenant on Civil and Political Rights* (ICCPR) requires State Parties, of which the United Kingdom is one,⁶ to 'respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognised in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status'.⁷ This provides all individuals within the territory or under the jurisdiction of a State Party, whether or not those persons belong to a minority, with an entitlement to enjoy the rights under the ICCPR.
14. With respect to minorities, Article 27 of the ICCPR requires 'in those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language'.⁸

¹ *Charter of the United Nations* Article 1(3).

² *Universal Declaration of Human Rights*, GA Res 217A (III), UN GAOR, 3rd session, 183rd plenary meeting, UN Doc. A/810 (10 December 1948).

³ United Nations Office of the High Commissioner for Human Rights, 'Guidance Note of the Secretary-General on Racial Discrimination and Protection of Minorities' (Guidance Note, United Nations, 2014) para 6.

⁴ The United Kingdom ratified ICERD in 1969.

⁵ *International Convention on the Elimination of all forms of Racial Discrimination*, opened for signature 21 December 1965, 660 UNTS 195 (entered into force 4 January 1969) Article 1(1).

⁶ The United Kingdom ratified the ICCPR in 1976.

⁷ *International Covenant on Economic, Social and Cultural Rights*, opened for signature 16 December 1966, 993 UNTS 3 (entered into force 3 January 1976) Article 2(1).

⁸ *Ibid* Article 27.

15. General Comment No.23, prepared by the United Nations Human Rights Committee, explains that Article 27 ‘establishes and recognises a right which is conferred on individuals belonging to minority groups and which is distinct from, and additional to, all the other rights which, as individuals in common with everyone else, they are already entitled to enjoy’ under the ICCPR.⁹

Definition of a minority

16. The United Nations *Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities*, adopted by the United Nations General Assembly by consensus in 1992, refers to minorities that are based on national or ethnic, cultural, religious and linguistic identity.¹⁰

17. There is no single definition of a minority under international law. The ICCPR did not provide a definition to assist in determining which groups constitute minorities and therefore would benefit from protection under its provisions. The Office of the High Commissioner for Human Rights explains that a single widely acceptable definition is difficult to arrive at due to the variety of situations in which minorities live.¹¹

18. Greater guidance is provided in the definition offered by United Nations Special Rapporteur Francesco Capotorti in 1977. In the context of Article 27 of the ICCPR, Capotorti defined minorities as ‘a group numerically inferior to the rest of the population of a State, and in a non-dominant position, whose members – being nationals of the State – possess ethnic, religious or linguistic characteristics differing from those of the rest of the population and show, if only implicitly, a sense of solidarity, directed towards preserving their culture, traditions, religions and language.’¹²

19. Rather than focusing on definitional issues, the Venice Commission has recommended a shift in focus to the protection of minorities.¹³ This would concentrate efforts on addressing and redressing the particular forms of abuses and human rights violations that minorities suffer and are at risk of suffering from, which had been overshadowed at times by unresolved discussions on an agreed definition.

20. Therefore, today, the existence of a minority is a question of fact that requires consideration of both objective and subjective factors.

⁹ United Nations Human Rights Committee, *General Comment No.23 (Article 27)*, UN Doc. CCPR/C/21/Rev.1/Add.5 (26 April 1994) para 1.

¹⁰ *United Nations Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities*, GA Res 47/135, UN GAOR, 47th session, 92nd plen mtg, UN Doc. A/RES/47/135 (3 February 1993) Annex para 1.

¹¹ United Nations Office of the High Commissioner for Human Rights, ‘Minority Rights: International Standards and Guidance for Implementation’ (Guide, HR/PUB/10/3, OHCHR, 2010) 2.

¹² United Nations Office of the High Commissioner for Human Rights, ‘Minority Rights: International Standards and Guidance for Implementation’ (above n 10) 2.

¹³ European Commission for Democracy Through Law (Venice Commission), ‘Compilation of Venice Commission Opinions and Reports on the Protection of National Minorities’ (Report, CDL(2011)018, Council of Europe, 2011) 8; United Nations Office of the High Commissioner for Human Rights, ‘Promoting and Protecting Minority Rights: A Guide for Advocates’ (Guide, United Nations, 2012) 6.

21. The key subjective element in the identification of a minority, and a fundamental principle of the modern understanding of the term minority, is the existence of individuals who self-identify as belonging to a minority. Membership of a particular minority is a matter of individual choice and no disadvantage may result from an individual's decision to affiliate or not to affiliate himself or herself with a given minority. The *Framework Convention for the Protection of National Minorities* (FCNM), ratified by the United Kingdom in 1998, makes clear that 'every person belonging to a national minority shall have the right freely to choose or to be treated or not to be treated as such and no disadvantage shall result from this choice or from the exercise of the rights which are connected to that choice.'¹⁴
22. The requirement of self-identification is enshrined in Article 27 of the ICCPR, which confers rights on persons belonging to minorities which 'exist' in a State Party. Thus the protection afforded by Article 27 of ICCPR does not depend on recognition by the State of the minority.¹⁵ Rather, it is the individual and thus the groups themselves who self-identify as minorities, irrespective of whether they are described as 'nationalities, 'communities', 'ethnic groups', 'peoples' or 'nations' by a State.
23. Thematic Commentary No.4 of the FCNM advises that objective criteria do not constitute elements of a definition.¹⁶ Rather, the relevant objective criteria are determined in light of the individual's subjective choice. Relevant objective factors may include the existence of a shared ethnicity, language or religion; a non-dominant position in the state in which they live; experiences of discrimination or marginalisation on the grounds of ethnicity, language or religion; or a determination to preserve or develop a distinct ethnic, linguistic or religious identity.
24. The elements of Capotorti's definition, thus, largely hold in the modern understanding of the term minority under international law. The exception to this is the limiting criterion of citizenship or nationality included in Capotorti's definition. This requirement is no longer accepted as a defining characteristic of a minority.
25. In General Comment No.23, the United Nations Human Rights Committee makes clear that a State Party to the ICCPR may not restrict the rights under Article 27 to its citizens alone.¹⁷ This is because Article 27 is to be read in conjunction with Article 2(1) of the ICCPR (see paragraph 14 above) and any limitation to Article 2(1) must be expressly provided for in the Covenant.¹⁸

¹⁴ *Framework Convention for the Protection of National Minorities*, opened for signature 1 February 1995, ETS No.157 (entered into force 1 February 1998) Article 3.

¹⁵ United Nations Human Rights Committee, *General Comment No.23 (Article 27)* (above n 9) para 5.2.

¹⁶ Council of Europe, 'Thematic Comment No.4: The scope of application of the Framework Convention for the Protection of National Minorities' (Thematic Commentary, Council of Europe, 27 May 2016) para 10.

¹⁷ United Nations Human Rights Committee, *General Comment No.23 (Article 27)* (above n 9) para 5.1.

¹⁸ See, for example, Article 25 which begins, 'Every citizen...' *International Covenant on Economic, Social and Cultural Rights*, (above n 7) Article 25.

B. Application of the definition of a minority to the Seven Sisters Market Traders

26. Over 50 percent of respondents to the business survey results conducted at the Seven Sisters Market and included in the CPO Equality Impact Assessment identified as belonging to a Latin American or Hispanic background.¹⁹ Of those employed by businesses in the Seven Sisters Market, the largest group represented in the survey results (55.6 percent) identify as people with Latin American or Hispanic backgrounds.²⁰
27. The Spanish language is the primary language spoken in the Seven Sisters Market community and in the London Latin American community more generally. The majority of second generation Latin Americans in London are fluent in Spanish, according to research undertaken at Queen Mary University, and either speak Spanish at all times or with family and within their community.²¹ The learning of, and speaking in, Spanish is encouraged by parents of second generation Latin Americans including through enrolment of children in Saturday Spanish language classes.²²
28. The London Latin American community has a distinct culture which is celebrated through participation in cultural events and activities. Commercial centres, such as the Seven Sisters Market, function as informal cultural centres for London's Latin American families.²³ The cafes and stalls in the market are a meeting point for the London Latin American community and the Latin American traders and the community members that visit the market participate in traditional community activities including the playing of Latin American music. The Seven Sisters Market Traders consider themselves to not only source their livelihoods from the market but to collectively provide a sense of belonging to the London Latin American community.²⁴ The distinct nature of Latin American cultural practices has been acknowledged in the informal name – 'El Pueblito Paisa' or the 'Latin Market' – commonly used for the Seven Sisters Market.
29. The Seven Sisters Market is the UK's second largest concentration of Latin American businesses catering to the London Latin American community. The use of Latin American services and shopping at Latin American stalls and shops is another important way in which London's Latin American community engage in their culture on a daily basis. One respondent, Consuela, in research undertaken by Queen Mary University, reflected that Latin American commercial places were 'important for the community to maintain their products, their customs'.²⁵
30. The distinct culture of London's Latin American community has previously been recognised by the London Borough of Haringey Council (the 'Council'). The Planning Equality Impact

¹⁹ London Borough of Haringey, *Wards Corner Regeneration Project: Compulsory Purchase Order 2016 - Statement of Reasons* (September 2015) Appendix E, paras 4.7.1 to 4.7.3.

²⁰ Ibid.

²¹ C. McIlwaine et al, 'No Longer Invisible: The Latin American community in London' (Report, Queen Mary University, Latin American Women's Right Service and Trust for London, 2011) 117.

²² Ibid.

²³ Ibid.

²⁴ Latin Corner UK, 'Petition Statement in Opposition with 1576 Signatories' available at Statement of Case on Behalf of Seven Sisters Market Traders (May 2017) Annex C.

²⁵ C. McIlwaine et al, 'No Longer Invisible: The Latin American community in London' (above n 21) 109.

Assessment, completed when the Council first granted planning permission at the site, concluded: 'the loss of the existing shops and market poses a potential threat to the cultural connections of the Latin American community employed at and visiting the market, given the evidence that the market provided a hub for social as well as commercial interaction for this group'.²⁶ The Court of Appeal, in quashing the initial planning permit, found that the Council had failed to give due regard to the need to promote equality of opportunity and good relations between persons of different racial groups.²⁷

31. The Latin American community in London is in a non-dominant position. Demographically, the most up-to-date data is provided by the research conducted at Queen Mary University in 2016. The research estimates 145,000 Latin Americans lived in London in 2013.²⁸ The Latin American community accounted for 1.7 percent of London's population, which totalled 8.42 million people, in 2013.
32. Queen Mary University research concluded, furthermore, that families in London's Latin American community have substantially lower household incomes than the UK average.²⁹ Almost half of Latin Americans living in London work in low-paid elementary, service, caring and processing jobs despite, often, holding much wider professional skills and experience.³⁰ Furthermore, the research found Latin Americans to be more deprived than the London average³¹ and calculated 11 percent of Latin American workers were paid beneath the minimum wage, ten times more than the total United Kingdom population.³²
33. The proposed development is likely to economically marginalise the Latin American Traders, with 75 percent of those surveyed of the view that the re-provisioned market would be unlikely or highly unlikely to support existing businesses to continue operating.³³ Fifty percent of those surveyed were of the view that the proposed new rent levels would be unlikely or highly unlikely to support the existing businesses to continue operating.³⁴
34. More broadly, the research on London's Latin American community by Queen Mary University found the majority of respondents, including those of the second generation in the Latin American community, perceive discrimination to be a major barrier to improving their quality of life.³⁵

²⁶ See Statement of Case on Behalf of Seven Sisters Market Traders (May 2017) Annex C para 78.

²⁷ Ibid para 12.

²⁸ C. McIlwaine and D. Bunge, 'Towards Visibility: The Latin American community in London' (Report, Queen Mary University, Latin American Women's Right Service and Trust for London, 2016) 8.

²⁹ Ibid 62.

³⁰ C. McIlwaine and D. Bunge, 'Towards Visibility: The Latin American community in London' (above n 28) 19 and 25.

³¹ Ibid 29.

³² Ibid 62.

³³ See Statement of Case on Behalf of Seven Sisters Market Traders (above n 26) para 46.

³⁴ Ibid.

³⁵ C. McIlwaine et al, 'No Longer Invisible: The Latin American community in London' (above n 21) 116.

35. Advocacy by the Seven Sisters Market Traders, through the Council processes and in community campaigning more generally, is illustrative of the London Latin American community's determination to preserve its distinct ethnic identity. This advocacy has emphasised the importance of the Seven Sisters Market as a cultural hub for the London Latin American community.³⁶ The market provides a village and an informal cultural meeting place. In doing so it provides community members with a sense of belonging.
36. The decision³⁷ by the Council to include the market in the list of 'Assets of Community Value' (which is permitted under the *Localism Act 2011* where the actual current use of a building or other land that is not an ancillary use furthers the social wellbeing or social interests of the local community) suggests that the Council has also been of the view that the Seven Sisters Market furthers the social wellbeing or social interests of the local community.
37. In light of the information on the Latin American community in London provided in this section, it is clear that the Seven Sisters Market Traders meet the international understanding of a minority as set in paragraphs 16 to 25, and therefore are entitled to the protections afforded to minorities under Article 27 ICCPR and other sources of international law.

C. The duty of the UK to protect minority rights

38. The UK has signed and ratified several international treaties that oblige States and their public bodies to protect the rights of minorities. The main relevant legally binding instruments are the: ICCPR, in particular Article 27; ICERD; and FCNM.
39. Such treaties are not directly applicable domestically but States and public bodies are under the obligation to give effect to their provisions. In its latest report on the UK in 2015, the United Nations Human Rights Committee confirmed this, reminding the UK that it 'has formally undertaken to implement the Covenant' and urging the UK to take measures that give greater effect to the ICCPR'.³⁸
40. Public bodies, including local councils, must not contradict the international obligations of the UK. The state and its emanations must take specific measures to ensure that its international legal obligations are implemented, to investigate any violations of such obligations, and to remedy violations of human rights.
41. These obligations include minority rights protection as recognised in Article 27 of the ICCPR, the FCNM and the ICERD. No reservation to these provisions has been made by the UK. Therefore, the UK is legally bound to respect the content of these provisions.

³⁶ Latin Corner UK, *Stop the relocation of Pueblito Paisa & Wards Corner* (2017) <<http://www.latincorner.org.uk/>>.

³⁷ See Statement of Case on Behalf of Seven Sisters Market Traders (above n 26) para 13.

³⁸ United Nations Human Rights Committee, *Concluding observations on the seventh periodic report of the United Kingdom of Great Britain and Northern Ireland*, UN Doc CCPR/C/GBR/CO/7 (17 August 2015) para 5(a)

Positive and Negative Obligations

42. As stated above in paragraph 15, General Comment No.23 of the UN Human Rights Committee explains that the rights established and recognised under Article 27 of the ICCPR are 'conferred on individuals belonging to minority groups and which is distinct from, and additional to, all the other rights which, as individuals in common with everyone else, they are already entitled to enjoy'.³⁹
43. Hence, Article 27 includes a negative obligation, namely a State must not put in place obstacles to the exercise of minority rights. Article 27 also includes a positive obligation, namely an obligation to protect the right to culture of the London Latin American community.
44. The positive obligation to protect members of minorities is in accordance with the *UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities*,⁴⁰ widely seen an interpretative tool of Article 27 of the ICCPR. Article 1 of the Declaration reads: 'States shall protect the existence and the national or ethnic, cultural, religious and linguistic identity of minorities within their respective territories and shall encourage conditions for the promotion of that identity.'⁴¹ Article 2 explicitly proclaims that 'States shall adopt appropriate legislative and other measures to achieve those ends.'⁴²
45. The United Nations Committee on the Elimination of All forms of Racial Discrimination has clarified that these measures deriving from the positive obligation of States to fulfil the content of the rights are 'specific rights pertaining to certain categories of person or community, such as, for example the rights of persons belonging to minorities to enjoy their own culture, profess and practise their own religion and use their own language...and rights of women to non-identical treatment with men, such as the provision of maternity leave, on account of biological differences from men'.⁴³ Such rights are permanent rights, recognised as such in human rights instruments.
46. In addition to these specific permanent measures that members of the London Latin American community are entitled to, the Council may need to take special measures, namely temporary measures 'taken for the sole purpose of securing adequate advancement of certain racial or ethnic groups or individuals requiring such protection as may be necessary in order to ensure such groups or individuals equal enjoyment or exercise of human rights and fundamental freedoms shall not be deemed racial discrimination.'⁴⁴ The United Nations Committee on the

³⁹ United Nations Human Rights Committee, *General Comment No.23 (Article 27)* (above n 9) para 1.

⁴⁰ *United Nations Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities* (above n 11) articles 1 and 2.

⁴¹ *Ibid*, Article 1.

⁴² *Ibid*, Article 2.

⁴³ United Nations Committee on the Elimination of Discrimination Against Women, *General Recommendation No.25 (on article 4, paragraph 1, of the Convention on the Elimination of All Forms of Discrimination against Women, on temporary special measures)* (2004) para 16.

⁴⁴ *International Convention on the Elimination of all forms of Racial Discrimination* (above n 5), article 1(4).

Elimination of Racial Discrimination has clarified that such measures are not in the discretion of a State, such as the UK, but they are an obligation on the State.⁴⁵

D. Minority rights protection

The content of the minority right to enjoy culture, to profess and practice religion, and to use one's own language

47. Article 27 of the ICCPR places the right of members of minorities to enjoy their own culture, to profess and practise their own religion, or to use their own language at the centre of the minority protection. Article 5(e)(vi) of the ICERD specifically recognises the right to equal enjoyment and participation in cultural activities. Article 31 of the *Convention on the Rights of the Child*⁴⁶ recognises the right of children to participate fully in cultural rights and the arts, both national ones and those of the minority.⁴⁷
48. The United Nations Human Rights Committee has observed that 'culture manifests itself in many forms'⁴⁸ and the United Nations Committee on the Elimination of Racial Discrimination has given a broad scope to the concept of culture; as such it includes 'distinct culture, history, language and way of life as an enrichment of the State's cultural identity'.⁴⁹
49. The FCNM also requires the protection of minority cultural rights: 'The Parties undertake to promote the conditions necessary for persons belonging to national minorities to maintain and develop their culture, and to preserve the essential elements of their identity, namely their religion, language, traditions and cultural heritage'.⁵⁰
50. In both *Chapman v United Kingdom*⁵¹ and *Ciubotaru v Moldova*,⁵² the European Court of Human Rights linked the right to identity and culture with the right of respect to private life. In particular, in *Chapman v United Kingdom*, the Court noted 'an emerging international consensus...recognising the special needs of minorities and an obligation to protect their security, identity and lifestyle...not only for the purpose of safeguarding the interests of the minorities themselves but to preserve a cultural diversity of value to the whole community'.⁵³
51. The Council's compulsory purchase order will adversely affect the right of the Latin American community to practice their culture and learn their language. The proposed temporary

⁴⁵ A Xanthaki, 'Multiculturalism and International Law, Discussing Universal Standards' (2010) 32 1 *Human Rights Quarterly* 21.

⁴⁶ *Convention on the Rights of the Child*, opened for signature 20 November 1989, 1577 UNTS 3 (entered into force 2 September 1990).

⁴⁷ *Ibid* Article 30.

⁴⁸ United Nations Human Rights Committee, *General Comment No.23 (Article 27)* (above n 9) para 7.

⁴⁹ Committee on the Elimination of Racial Discrimination, *General Recommendation No.23: Indigenous Peoples*, UN doc. A/52/18 annex V (1997) para 4(a).

⁵⁰ *Framework Convention for the Protection of National Minorities* (above n 14) Article 5.

⁵¹ *Chapman v The United Kingdom* (European Court of Human Rights, Application No 27238/95, 18 January 2001) para. 93.

⁵² *Ciubotaru v Moldova* (European Court of Human Rights, Application no. 27138/04, 27 April 2010).

⁵³ *Chapman v The United Kingdom* (above n 51) para 93.

relocation of the market and then the relocation to the permanent new market, which many of the Seven Sisters Market traders have assessed as not economically viable for them due to rent prices (that are anticipated to increase by 300 percent)⁵⁴, create obstacles in the enjoyment of these rights by the members of the London Latin American community given that the Seven Sisters Market has functioned, to date, as an informal cultural centre.

52. This negative impact has been accepted by the Council itself in the 2012 Planning Equality Impact Assessment that concluded: 'the loss of the existing shops and market poses a potential threat to the cultural connections of the London Latin American community employed at and visiting the market, given the evidence that the market provided a hub for social as well as commercial interaction for this group'.⁵⁵ Furthermore, in quashing the initial planning permit, the Court of Appeal found that the Council had failed to give due regard to the need to promote equality of opportunity and good relations between persons of different racial groups.⁵⁶
53. The obstacles to the right of the London Latin American minority to their culture arising from the compulsory purchase order are not shared with the rest of the population. As such, the re-development of the market has an unequal detrimental effect on the right of the London Latin American minority members to their culture. This constitutes indirect discrimination in the enjoyment of their cultural rights, in contravention of ICERD.
54. Both the 2012 and the 2015 Equality Impact Assessments failed to recognise the extent to which the re-development will affect the cultural rights of the London Latin American community. The Assessments did not identify the unlawful discrimination against the London Latin American community in participating to their cultural activities that would arise from the re-provisioned market.
55. The additional measures that the Council has required of the developer do not meet the requirements of the Council in international human rights law to take specific, permanent measures to protect members of minorities (see paragraphs 42 to 46 above) as they are not adequate in mitigating the detrimental effects of the re-provisioned market to the right to culture of the Latin American community. In General Recommendation No 32, the United Nations Committee on the Elimination of Racial Discrimination has explained that *permanent* specific measures and rights are often necessary to adequately protect the rights of minorities;⁵⁷ and temporary positive measures may be taken *in addition to* the specific permanent measures.⁵⁸
56. The additional measures included in the Planning Permission, which require payments to retailers to facilitate their relocation to the temporary area and the appointment of a market

⁵⁴ See Statement of Case on Behalf of Seven Sisters Market Traders (above n 26) para 46.

⁵⁵ Ibid para 78.

⁵⁶ Ibid para 12.

⁵⁷ United Nations Committee on the Elimination of all Forms of Racial Discrimination, *General Recommendation No. 32: The meaning and scope of special measures in the International Convention on the Elimination of All Forms of Racial Discrimination*, UN Doc. CERD/C/GC/32 (24 September 2009) para 15.

⁵⁸ Ibid para 16.

facilitator, are insufficient to protect the London Latin American community against the violation of their right to culture. The measures do not ensure the suitability of the temporary accommodation for cultural activities. The Council has not, for example, required the developer to provide guarantees for the continuation of the cultural activities of the London Latin American community; for example, guarantees that Latin American traders will be grouped together in the temporary relocation, that the temporary market will provide a hub for cultural activities or that there will be space for the children to play and engage in their cultural activities.

57. The reduction in market rents by 30 percent for eighteen months does not sufficiently reverse the obstacles to the enjoyment of the right to culture of the London Latin American community arising from the re-provisioned market. This temporary measure merely delays the closure of Latin American market stalls due to rent costs. Permanent specific measures have to be taken to adequately protect the cultural rights of this minority; and if these are not adequate, then temporary positive measures may be taken in addition to the specific permanent ones.
58. Nor will the appointment of a market facilitator by the developer ensure the protection of the London Latin American community's right to culture. Information on the facilitator's functions is very generic but such functions include the provision of assistance to traders in finding suitable alternative employment if the trader decides not to relocate to the re-provisioned market. Therefore, the role provides no guarantees that the Latin American traders will be able to continue operating at the re-provisioned market; nor does it guarantee a result that would protect the rights of the London Latin American community.
59. The promise that community engagement and diversity monitoring will identify if the Latin American traders cease to operate or are dispersed and develop further appropriate mitigation as necessary⁵⁹ is an ineffective measure to protect the rights of the Latin American community. Measures are needed to prevent the violation of the rights of the London Latin American community, not to identify that violations and damages have already occurred.
60. Therefore, the measures promised by the Council and required of the developer (by the Council) do not adequately address the discrimination that the members of the London Latin American community will suffer in their right to exercise their cultural activities. They also do not prevent or adequately address the unlawful restriction of the London Latin American community's, including the children's, right to their culture.

The right to effective participation and consultation

61. Where there are plans to compulsorily acquire land, appropriate procedural protections and due processes must be provided to protect potentially affected communities. This includes an opportunity for affected individuals or communities to participate in genuine consultations; adequate and reasonable notice for all affected persons; and information on the proposed

⁵⁹ London Borough of Haringey, *Wards Corner Regeneration Project: Compulsory Purchase Order 2016 - Statement of Reasons* (above n 19) Appendix E para 4.10.4.

compulsory acquisition, and, where applicable, and the alternative purpose for which the land is to be used, to be made available in reasonable time to all those affected.⁶⁰

62. In addition, international human rights law requires recognition of the right of members of minorities to 'effective' participation. Article 15 of the FCNM states: 'The Parties shall create the conditions necessary for the effective participation of persons belonging to national minorities in cultural, social and economic life and in public affairs, in particular those affecting them'.⁶¹
63. In its most recent report to the UK, the Advisory Committee to the FCNM called 'on the authorities to ensure that support for cultural activities of all national and ethnic minorities is increased across the country'⁶² and suggested that 'political participation of minority representatives in relevant decision-making processes is crucial for their interests to be heard'.⁶³
64. The UN Declaration on Minorities also recognises that 'persons belonging to minorities have the right to participate effectively in decisions on the national and, where appropriate, regional level concerning the minority to which they belong or the regions in which they live, in a manner not incompatible with national legislation'.⁶⁴ The United Nations Human Rights Committee has also confirmed that the positive obligation on States under Article 27 of the ICCPR includes financial efforts with regards to effective minority participation in matters that affect them.⁶⁵
65. Effective participation is participation that is meaningful and not merely symbolic.⁶⁶ A commitment to effective participation recognises that minorities are often underrepresented and that the concerns of minorities may not be adequately addressed in decision-making.⁶⁷ Therefore, steps to facilitate formal participation are insufficient. States must also ensure that participation has 'a substantial influence on the decisions which are taken, so that there is, as far as possible, shared ownership of these decisions'.⁶⁸
66. A compulsory purchase order is *prima facie* at odds with a commitment to sharing the ownership of decision impacting a minority with affected minority. The language of section 266(1)(a) of the Town and Country Planning Act 2004 is relevant. It gives the power to a local authority 'to acquire compulsory acquire any land in the area...if *the authority thinks* that the

⁶⁰ United Nations Committee on Economic, Social and Cultural Rights, *General Comment No. 7: The right to adequate housing (Article 11.10: forced evictions)*, UN Doc. E/1998/22 (20 May 1997) para 15.

⁶¹ *Framework Convention for the Protection of National Minorities* (above n 14) article 15.

⁶² Council of Europe, Advisory Committee on the Framework Convention for the Protection of National Minorities, *Fourth Opinion on the United Kingdom adopted on 25 May 2016*, Strasbourg, ACFC/OP/IV(2016)005 (27 February 2017) para 53.

⁶³ *Ibid* para 133.

⁶⁴ *United Nations Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities* (above n 11) article 2(3).

⁶⁵ United Nations Human Rights Committee, *General Comment No.23 (Article 27)* (above n 9) paras. 6.2 and 7.

⁶⁶ United Nations Office of the High Commissioner for Human Rights, 'Minority Rights: International Standards and Guidance for Implementation' (above n 10) 12.

⁶⁷ *Ibid*.

⁶⁸ *Ibid*.

acquisition will facilitate the carrying out of development, re-development or improvement on or in relation to the land' (emphasis added).

67. In practice, consultation mechanisms provide affected communities with an opportunity to prepare submissions on a proposed compulsory purchase order. However, in the case of the Seven Sister's Market, the conditions needed to ensure meaningful involvement by the Latin American traders in the consultation process have not been provided for.
68. Most of the Spanish translations of the documents forming the Statement of Reasons (and appendices) were provided to the Latin American traders after the deadline for public submissions on the proposed compulsory land acquisition had lapsed. This is despite the Seven Sisters Market Traders expressing concern that the delay in the provision of translated documents would preclude the Latin American traders from participating in the consultations. Therefore, the rights of the Seven Sisters Market Traders under international human rights law were not protected and respected.
69. The Council has not provided additional positive and specific measures to facilitate the effective participation of the Latin American traders. In particular, before progressing with a compulsory acquisition order, the Council should have explored all feasible alternatives *in consultation with* the Seven Sisters Market Traders with the view to avoiding, or at least minimising, the need to compulsorily acquire the land.⁶⁹ The Seven Sisters Market Traders do not believe careful consideration has been given to alternatives to the compulsory acquisition order,⁷⁰ and thus, nor has there been sufficient consultation with the affected Seven Sisters Market Traders of alternatives to a compulsory land acquisition.
70. Nor has the engagement of the Seven Sisters Market Traders in the consultation process led to the legitimate interests of minorities being adequately addressed. The Council's Statement of Reason, for example, is silent on the possible discriminatory impact of the compulsory purchase order, thus suggesting no consideration by the Council of the indirect discrimination experienced by the Latin American traders arising from the development.

E. Impact of the Council's decision on the rights of the Seven Sisters Market Traders

71. The decision of the Council to re-provision the market and the compulsory acquisition order to facilitate the development constitutes indirect discrimination against the London Latin American community. The proposed development, while neutral on the face of it, will disproportionately impact the Seven Sisters Market Traders given 75 percent of those surveyed are of the view that the re-provisioned market would be unlikely or highly unlikely to support

⁶⁹ See, for example, *Report of the Special Rapporteur on the Right to Food – Mission to Nicaragua*, UN Doc. A/HRC/13/33/Add.5 (19 February 2010) para 83(a); *Consideration of reports submitted by States parties under articles 16 and 17 of the Covenant- Concluding observations of the Committee on Economic, Social and Cultural Rights – Israel*, UN Doc E/C.12/ISR/CO/3 (16 December 2011) para 26.

⁷⁰ See Statement of Case on Behalf of Seven Sisters Market Traders (above n 26) para 121.

existing businesses to continue operating and that people with Latin American or Hispanic background account for almost 56 percent of those employed in the Seven Sisters Market.

72. The re-provision of the market and the compulsory acquisition order also constitute an obstacle in the enjoyment of their minority rights. The loss of these businesses and employment will disproportionately impact the ongoing functioning of the Seven Sisters Market as a cultural and community hub, as recognised by the Council when it designated the market an Asset of Community value, for the London Latin American community. The measures that the Council has taken have not been adequate or specific enough to reverse such obstacles.
73. Of course, minority rights are not absolute. They can be restricted for specific reasons. Such restrictions to minority rights, however, have to be absolutely necessary and proportionate. The proportionality of measures interfering with the rights of minorities under Article 27 was scrutinised by the United Nations Human Rights Committee in the case of *Lovelace v Canada*,⁷¹ in which the Committee concluded that a State's action in this respect must have an objective and reasonable justification and be consistent with other ICCPR provisions.
74. The United Nations Human Rights Committee has indicated that where economic development projects may harm minority rights, the state must consult the minority in question and if the project poses a serious threat to minority rights, the development should be amended or even stopped.⁷² Guidance on whether a development poses a serious threat is provided for in *Länsman v Finland*, in which the UN Human Rights Committee noted that the impact of a restriction on minorities to enjoy their culture must be substantial, in that the restriction 'does effectively deny to the authors the right to enjoy their cultural rights in the region'.⁷³ In *Apirana Mahuika and others v New Zealand*, the United Nations Human Rights Committee linked the restriction of Article 27 of the ICCPR to the right to participation in the decision-making.
75. In balancing the rights of minorities with other rights or interests, including economic development, the State must give special weight to minority rights in view of the vulnerability of persons belonging to minorities, and the role of the State in the promotion and protection of minority identities.⁷⁴ The European Court of Human Rights in *Chapman v United Kingdom*⁷⁵ and the UN Human Rights Committee in General Comment No 23⁷⁶ confirm that minority rights carry more weight and must be protected more than rights of the rest of the population, because of the level of vulnerability that minorities carry.

⁷¹ United Nations Human Rights Committee, *Sandra Lovelace v Canada*, Communication No. 24/1977, UN Doc. CCPR/C/13/D/24/1979 (1979).

⁷² United Nations Human Rights Committee, *Lubicon Lake Band v Canada*, Communication No. 167/1984, UN Doc A/45/40 Supp. No.40 (26 March 1990); United Nations Human Rights Committee, *Länsman v Finland*, Communication No. 511/1992, UN Doc. CCPR/C/52/D/511/1992 (26 October 1994); United Nations Human Rights Committee, *Länsman v Finland*, Communication No. 1023/2001, UN Doc. CCPR/C/83/D/1023/2001 (17 March 2005)); United Nations Human Rights Committee, *Apirana Mahuika et al. v New Zealand*, Communication No. 547/1993, UN Doc. CCPR/C/70/D/547/1993 (7 October 2000).

⁷³ United Nations Human Rights Committee, *Länsman v Finland* (above n 71) paras. 9.5 and 9.6.

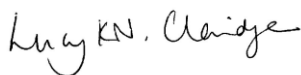
⁷⁴ United Nations Office of the High Commissioner for Human Rights, 'Minority Rights: International Standards and Guidance for Implementation' (above n 10) 8.

⁷⁵ *Chapman v The United Kingdom* (above n 51) para 9.

⁷⁶ United Nations Human Rights Committee, *General Comment No.23 (Article 27)* (above n 9) para 14.

76. Therefore, the restriction of the minority rights of the members of the London Latin American community as a result of the compulsory acquisition order cannot merely be justified in the name of the public good. In accordance with the state obligations deriving from minority protection in international law, greater weight and consideration must be given to the protection of the London Latin American community due to the community's minority status..
77. The Council's Statement of Case and then the Statement of Reason do not provide analysis of how the local authority has sought to balance the rights of the Seven Sisters Market Traders as members of a minority with the other objectives of the development.
78. The Planning Permission for the re-provisioned market requires the developer to adopt a number of measures to reduce the economic impact on the Seven Sisters Market Traders. However, the Seven Sisters Market Traders lack confidence in the adequacy of the proposed measures to ensure continuity of the community's cultural hub which is central to the ongoing promotion and protection of the London Latin American community identity. This concerned is supported by the analysis in paragraphs 55 to 60 above.
79. Thus, in our view the compulsory purchase order should not be confirmed. It will disproportionately impact the Latin America traders without the provision of measures that will adequately protect the rights of the London Latin American community. Since a conflict arose between other rights or interests in the re-provision of the market, the Council has not given additional weight to the rights of the Seven Sisters Market Traders as members of a minority, as required in international human rights law. This is inconsistent with the UK's obligations, and the obligations of all its public bodies, towards minorities; in particular the requirements to take measures to prevent the damage to their rights and to provide additional protections in order to protect their minority rights, especially the right to enjoy culture freely. Nor has the Council met its obligations to guarantee the right of minorities to effectively participate in the development decision affecting them. The rights and interests of the Seven Sisters Market traders under international law on minority rights have not been sufficiently considered by the Council, as explained in this statement.

Signed:



Lucy Claridge



Alexandra Xanthaki