

Civil and Political Rights in the UK:

Equality and Human Rights Commission
Submission to the United Nations Human Rights Committee on the United Kingdom's Implementation of the International Covenant on Civil and Political Rights

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A. Scope of the Report

A.1 The Equality and Human Rights Commission (EHRC) is one of the United Kingdom's (UK's) three 'A status' accredited National Human Rights Institutions (NHRIs). The EHRC's jurisdiction covers England and Wales and Scottish matters that are reserved to the UK Parliament. The Scottish Human Rights Commission (SHRC) has jurisdiction with respect to matters that are devolved to the Scottish Parliament, and will cover those matters in a separate submission. The EHRC's remit also does not extend to Northern Ireland, which is therefore outside the scope of this report. The Northern Ireland Human Rights Commission (NIHRC) has made a separate submission.

A.2 The UK was one of the world's first countries to ratify the International Covenant on Civil and Political Rights in 1976 and it has an even longer history of seeking to uphold people's civil and political rights. However, the UK Government has not ratified the Optional Protocol on ICCPR and remains to be convinced of 'the added practical value to people in the United Kingdom of rights of individual petition to the United Nations'.¹ It also maintains a number of reservations and derogations from the terms of the ICCPR.²

A.3 In July 2014, the EHRC submitted its shadow report to the United Nations Human Rights Committee (HRC) Pre-Sessional Working Group on the UK's Implementation of the International Covenant on Civil and Political Rights (ICCPR).³ We considered we could most usefully contribute to the HRC's pre-sessional working

¹ Seventh periodic reports of States parties for the United Kingdom of Great Britain and Northern Ireland, 29 December 2012, para 192, available at: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2fGBR%2f7&Lang=en

² Seventh periodic reports of States parties for the United Kingdom of Great Britain and Northern Ireland, 29 December 2012, p33-45, available at: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2fGBR%2f7&Lang=en

³ EHRC. July 2014. Submission to the United Nations Human Rights Committee Pre-Sessional Working Group on the United Kingdom's Implementation of the International Covenant on Civil and Political Rights: www.equalityhumanrights.com/sites/default/files/uploads/documents/humanrights/EHRC%20Submission%20to%20UN%20Human%20Rights%20Committee%20Pre-Sessional%20Working%20Group%20on%20UK%20Implementation%20of%20the%20International%20Covenant%20on%20Civil%20and%20Political%20Rights.pdf

group by using our shadow report to focus on two of the domains within our measurement framework:⁴ Legal Security and Physical Security. In November 2014, the HRC published its list of issues for the UK examination.⁵

A.4 We note that the majority of the priorities in the EHRC's submission were identified by the HRC in its list of issues to the State. For this reason, we have retained the focus of our 2014 submission, and provided information on developments which have occurred since July 2014. In addition, we have incorporated two new topics the HRC included in its list of issues to the State:

- caste discrimination: we provide an update on caste discrimination legislation and recent case law, and
- gender pay gap: we provide analysis on the UK's progress in tackling this issue under the measurement framework domain of Productive and Valued Activities.

A.5 There have been a number of significant developments in the UK since our previous submission, not least a General Election that saw a new government elected into office. The new government has set out its intention to implement its manifesto in full.⁶ There are a number of proposals that build on the progress we have identified to date, including:

- the enactment of the Modern Slavery Act 2015 (MSA) and the introduction of the Human Trafficking and Exploitation (Scotland) Bill in December 2014⁷
- the agreement of all 43 police forces to sign up to the voluntary 'Best use of Stop and Search Scheme'
- the continued decrease in the number of women, children and young people in criminal and youth justice settings in England and Wales, and prioritising the protection and support of women and girls from violence such as by working with local authorities, the National Health Service and Police and Crime

⁴ The EHRC's Measurement Framework (MF) provides us with a structure to assess equality and human rights across a range of areas relevant to 21st century life. The MF, which covers England, Scotland and Wales, consists of a number of domains, indicators and measures. The measures are based on statistical information that allow the relative position of each protected group to be compared, and for progress over time to be monitored: www.equalityhumanrights.com/about-us/our-work/key-projects/our-measurement-framework/briefing-papers-and-data

⁵ HRC. November 2014. List of issues in relation to the seventh periodic report of the United Kingdom of Great Britain and Northern Ireland: www.equalityhumanrights.com/sites/default/files/uploads/documents/humanrights/List%20of%20issues%20Nov%2014.pdf

⁶ The Telegraph. 12 May 2015: www.telegraph.co.uk/news/politics/david-cameron/11598798/David-Cameron-Cabinet-reshuffle-continues-live.html

⁷ Ibid. P.31 and 58.

Commissioners to ensure a secure future for specialist FGM and forced marriage units, refuges and rape crisis centres.⁸

A.6 There are other commitments that have the potential to prompt regression in areas where the EHRC considers the UK's compliance with its international obligations needs to be improved, such as:

- proposals to build more prison places, rather than investing resources in reducing the size of the prison population, as it has done in relation to offenders who are women and young people
- proposals to increase the surveillance powers of police and security services.⁹

⁸ Conservative Manifesto. 2015. P.59. <https://s3-eu-west-1.amazonaws.com/manifesto2015/ConservativeManifesto2015.pdf>

⁹ Ibid. pp61-63.

B. Introduction

B.1 The Human Rights Act 1998 (HRA) gives effect to the majority of rights enshrined in the European Convention on Human Rights (ECHR) in UK domestic law. The scope of the ICCPR is similar to that of the ECHR in many respects. The HRC has therefore previously acknowledged that claims in relation to ICCPR rights that are covered by the ECHR, and that arose after the HRA came into force in October 2000, are enforceable in UK Courts.¹⁰ The UK Government has not yet ratified the Optional Protocol on ICCPR, so that people in Britain do not have a right to bring complaints before the HRC. The analysis in our submission therefore focuses on the UK's compliance with the ECHR and other instruments enforceable in domestic courts; and highlights in our conclusions where potential non-compliance also relates to the UK's obligations under ICCPR and other relevant UN treaties.

B.2 The new government's intention to replace the Human Rights Act with a British Bill of Rights is likely to present a number of challenges.¹¹ The EHRC's clear position is that the Human Rights Act has provided essential protection to everyone in Britain, enabling fundamental rights to be enforced in our domestic courts. We recognise that there is debate and a level of public concern about the interpretation of human rights law. This emerges with particular force around issues such as the role of Article 8 of the ECHR (the right to respect for private and family life) in the deportation of foreign citizens convicted of crimes in this country. The EHRC's position, set out in a letter to the UK Parliament's Joint Committee on Human Rights, is that 'any changes to our current human rights framework must not reduce the protections contained in the Human Rights Act, nor weaken the mechanisms for securing redress for breaches of human rights'.

¹⁰ Human Rights Committee, Concluding Observations for the United Kingdom of Great Britain and Northern Ireland 2001 (para 7) and 2008 (para 7): http://tbinternet.ohchr.org/_layouts/treatybodyexternal/TBSearch.aspx?Lang=en&TreatyID=8&DocTypeID=5

¹¹ Ibid. p73

C. Legal Security

1. Judicial diversity (Articles 2, 3, 25 and 26), List of Issues paragraphs 6 and 9

C.1.1 The EHRC believes there is a strong case for judicial diversity, based on equality of opportunity and the need for the judiciary to reflect the public it serves. Our 2014 submission to the HRC, noted that the UK rates very poorly on judicial diversity when compared with the rest of the world.¹² We recommended the more rapid implementation of the recommendations of the Advisory Panel on Judicial Diversity.¹³ The Judicial Diversity Taskforce was established to implement these recommendations and produce annual progress reports. The Taskforce's 2013 report noted that that only 18 of the Panel's 53 recommendations had been fully implemented.¹⁴ The Taskforce has not yet published its progress reports for 2014 or 2015, so evidence of further progress is not readily available.

C.1.2 The latest data for 2014 show:

- Women hold 24.5 per cent of all judicial posts in England and Wales and they are better represented at the lower echelons of the judiciary.¹⁵ In July 2014, just 28 women were represented amongst the 161 posts in the senior judiciary (Supreme Court, Court of Appeal and the High Court).¹⁶

¹² Equality and Human Rights Commission. July 2014. Submission to the United Nations Human Rights Committee Pre-Sessional Working Group on the United Kingdom's Implementation of the International Covenant on Civil and Political Rights. P.2: www.equalityhumanrights.com/sites/default/files/uploads/documents/humanrights/EHRC%20Submission%20to%20UN%20Human%20Rights%20Committee%20Pre-Sessional%20Working%20Group%20on%20UK%20Implementation%20of%20the%20International%20Covenant%20on%20Civil%20and%20Political%20Rights.pdf

¹³ Advisory Panel on Judicial Diversity, March 2010: www.judiciary.gov.uk/publications/advisory-panel-recommendations/

¹⁴ Judicial Taskforce, Third Annual Report, 2013: www.gov.uk/government/uploads/system/uploads/attachment_data/file/244013/judicial-diversity-taskforce-annual-report-2013.pdf

¹⁵ Courts and Tribunals Judiciary. July 2014. Courts Diversity Statistics: www.judiciary.gov.uk/publications/judicial-diversity-statistics-2014/

¹⁶ Bindman, G and Monaghan, K. November 2014. Judicial Diversity: Accelerating Change: https://jac.judiciary.gov.uk/sites/default/files/sync/news/accelerating_change_finalrev.pdf

- Just 5.8 per cent of the English and Welsh judiciary is from an ethnic minority background.¹⁷ This is a 1 per cent increase on the previous year.¹⁸ No ethnic minorities have ever been identified as a member of the Supreme Court, Court of Appeal, or Head of any Division.
- 42.3 per cent of the courts-based judiciary are older than 60.¹⁹ Data are not collected on disability, sexual orientation, religion or belief or socio-economic background.

C.1.3 The Judicial Appointments Commission (JAC) was set up in 2006 to recommend candidates for judicial appointments independently of the executive. It has statutory responsibilities to select candidates on merit and encourage diversity in the range of candidates available for judicial selection. From July 2014, the JAC has implemented an equal merit provision policy, which allows the selection of a candidate from under-represented groups in a tie-break situation.²⁰ No appointments round has since been completed so the JAC has yet to evaluate the policy's impact.²¹

C.1.4 In November 2014, Sir Geoffrey Bindman QC and Karon Monaghan QC published evidence that challenged the assumption that a more diverse, younger generation of lawyers in England and Wales would give rise to a more diverse judiciary.²²

C.1.5 The report identifies some key barriers to ensuring judges better reflect the diversity of our society, including:

- the lack of flexibility in relation to part-time appointments
- the obligation to go on circuit, requiring High Court judges who are generally based in London, to sit in regional courts outside of London, usually for many weeks at a time
- the obstacles to returning to practice for those who leave the judiciary, and

¹⁷ Courts and Tribunals Judiciary. July 2014. Courts Diversity Statistics: www.judiciary.gov.uk/publications/judicial-diversity-statistics-2014/

¹⁸ Courts and Tribunals Judiciary. July 2013. Courts Diversity Statistics: www.judiciary.gov.uk/publications/diversity-statistics-and-general-overview-2013/

¹⁹ Courts and Tribunals Judiciary. July 2014. Courts Diversity Statistics: www.judiciary.gov.uk/publications/judicial-diversity-statistics-2014/

²⁰ Judicial Appointments Commission, Equal Merit Provision Policy, July 2014: https://jac.judiciary.gov.uk/sites/default/files/sync/basic_page/emp_policy_0.pdf

²¹ JAC. 2015. Response to judicial diversity report. <https://jac.judiciary.gov.uk/news/jac-publishes-response-judicial-diversity-report>

²² Bindman, G and Monaghan, K. November 2014. Judicial Diversity: Accelerating Change: https://jac.judiciary.gov.uk/sites/default/files/sync/news/accelerating_change_finalrev.pdf

- stereotypes that judges are older, white, Oxbridge and privately educated men which discourage candidates from considering applying.²³

C.1.6 The report makes a number of recommendations to widen the selection and eligibility pool for judicial appointments and to improve data collection, many of which the JAC supported in its formal response,²⁴ and are consistent with the EHRC's analysis, for example, that all posts (not just those for the High Court and above) should be available for part-time work and/or job share unless the Lord Chancellor can justify the need for a full-time appointment. However, neither the JAC nor the EHRC support a recommendation to introduce quotas. The JAC noted that this proposal would require a change to the statutory duty to select solely on merit.²⁵ The EHRC considers that quotas could be a breach of equality legislation on the objective appointment of candidates; we continue to support the House of Lords Select Committee on the Constitution's recommendation that non-mandatory targets should be considered if there is no significant increase in the numbers of women and ethnic minorities in judicial appointments by 2017.²⁶

C.1.7 In July 2015, the JAC will run its first selection exercise to appoint up to 14 people as Deputy High Court Judges using provisions of section 9(4) of the Senior Courts Act 1981.²⁷ As the statutory provisions require no previous judicial experience, the JAC selection exercise will provide a route to the High Court for those for whom the traditional route has been a disincentive. Deputy High Court Judges have the same responsibilities as high court judges but are paid fees rather than salaries. They would be expected to apply subsequently to become full-time High Court Judges.

C.1.8 To prepare candidates to apply for this selection exercise, in April 2015, the JAC launched its first affirmative action drive to offer support and mentoring for those from 'non-traditional' backgrounds, including women, ethnic minority backgrounds and state educated candidates.²⁸ The EHRC welcomes both these initiatives and is interested in the extent to which these schemes will lead to a more representative judiciary.

²³ *Ibid.*

²⁴ JAC. 2015. Response to judicial diversity report. <https://jac.judiciary.gov.uk/news/jac-publishes-response-judicial-diversity-report>

²⁵ *Ibid.*

²⁶ House of Lords, Select Committee on the Constitution, 25th Report of Session 2010-12, Judicial Appointments, HL Paper 272:

www.publications.parliament.uk/pa/ld201012/ldselect/ldconst/272/272.pdf

²⁷ Courts and Tribunals Judiciary. April 2015: www.judiciary.gov.uk/about-the-judiciary/judges-career-paths/diversity-support-initiative/

²⁸ *Ibid.*

Conclusion:

C.1.9 The UK Government has taken a number of positive steps in relation to improving the diversity of the judiciary in England and Wales, such as establishing a Judicial Diversity Taskforce. However, progress in increasing the representation of women, ethnic minorities and people from poor socio-economic backgrounds remains slow and is out of step with progress across the globe. For progress to accelerate and the UK Government to improve compliance with Article 2 of ICCPR in relation to the judiciary, it must rapidly implement the recommendations of Advisory Panel on Judicial Diversity and the House of Lords Committee on the Constitution. If there is no significant increase in the numbers of women and ethnic minorities in judicial appointments by 2017, the UK Government should consider the introduction of non-mandatory targets.

Question A: Could the UK Government confirm when the Judicial Diversity Taskforce's 2014 Annual Report will be published and, in lieu of publication, outline the steps the UK Government has taken, and human and financial resources it has committed to considering and implementing the latest recommendations on improving judicial diversity in England and Wales?²⁹

Question B: Could the UK Government provide an update on steps it has taken to implement the recommendations of the CEDAW and CERD Committees to introduce targeted measures to increase representation of women and ethnic minorities in the judiciary in England and Wales; and could the UK Government provide an analysis of the implications of setting non-mandatory targets if significantly improved outcomes are not achieved by 2017?³⁰

²⁹ This includes: recommendations: Accelerating Change. House of Lords, Select Committee on the Constitution, 25th Report of Session 2010-12, Judicial Appointments, HL Paper 272: www.publications.parliament.uk/pa/ld201012/ldselect/ldconst/272/272.pdf
Recommendations of the Independent Panel on Judicial Diversity: at: www.judiciary.gov.uk/publications/advisory-panel-recommendations/
Bindman, G and Monaghan, K. November 2014. Judicial Diversity: https://jac.judiciary.gov.uk/sites/default/files/sync/news/accelerating_change_finalrev.pdf

³⁰ The recommended date proposed by House of Lords, Select Committee on the Constitution, 25th Report of Session 2010-12, Judicial Appointments, HL Paper 272: www.publications.parliament.uk/pa/ld201012/ldselect/ldconst/272/272.pdf

2. Access to civil justice (Article 14), List of Issues paragraph 24³¹

a. The impact of reforms introduced by the Legal Aid, Sentencing and Punishment of Offenders (LASPO) Act 2012

C.2.1 In our 2014 submission to the HRC,³² the EHRC highlighted the human rights implications of the exceptional funding scheme, introduced by the Legal Aid, Sentencing and Punishment of Offenders (LASPO) Act 2012, applicable to England and Wales. The scheme was designed to allow funding where a failure to provide legal aid would be, or would result in, a breach of the individual's human rights under the European Convention on Human Rights (ECHR) or rights under European Union law. However, the EHRC's analysis suggests the scheme is still not functioning as intended, both because of its demanding application process and the strict interpretation of its eligibility criteria.

C.2.2 There have been several recent developments, including:

- In six linked judicial review claims, the Court of Appeal of England and Wales upheld the High Court's decision that the Lord Chancellor's Guidance on exceptional funding for immigration cases is unlawful. The Guidance was wrong to suggest that Article 8 ECHR (the right to respect for private and family life) could never lead to a requirement to grant legal aid for immigration cases. Although these cases are excluded from the scope of Article 6 ECHR (the right to a fair trial), it is difficult to see how Article 8 would offer less protection in practice. Whether legal aid is required will depend on the particular facts and circumstances of each case.³³
- In another judicial review, the High Court in England and Wales held that the Lord Chancellor's Guidance on exceptional funding for inquests permitted unlawful decision-making by the Legal Aid Agency.³⁴ The Guidance wrongly stated that an

³¹ HRC. November 2014. List of issues in relation to the seventh periodic report of the United Kingdom of Great Britain and Northern Ireland:
www.equalityhumanrights.com/sites/default/files/uploads/documents/humanrights/List%20of%20issues%20Nov%202014.pdf

³² EHRC. July 2014. Submission to the United Nations Human Rights Committee Pre-Sessional Working Group on the United Kingdom's Implementation of the International Covenant on Civil and Political Rights. P.4:
www.equalityhumanrights.com/sites/default/files/uploads/documents/humanrights/EHRC%20Submission%20to%20UN%20Human%20Rights%20Committee%20Pre-Sessional%20Working%20Group%20on%20UK%20Implementation%20of%20the%20International%20Covenant%20on%20Civil%20and%20Political%20Rights.pdf

³³ R (Gudanaviciene & Ors) v the Director of Legal Aid Casework & the Lord Chancellor (British Red Cross Society intervening) [2014] EWCA Civ 1622

³⁴ Ministry of Justice, Lord Chancellor's Guidance on exceptional funding (inquests), June 2014:
www.gov.uk/government/uploads/system/uploads/attachment_data/file/332857/legal-aid-chancellors-guide-exceptional-funding-inquests.pdf

investigation to comply with the investigative duty under Article 2 ECHR (the right to life) is only required where there is evidence to suggest that the State arguably breached one of its substantive duties under Article 2. The Guidance also failed to recognise that there were categories of cases in which an 'Article 2' investigation was automatically required, irrespective of whether there is evidence of an arguable breach.³⁵

C.2.3 Evidence suggests that budget reductions continue to have an impact on the provision of legal advice by non-governmental organisations. Nine law centres have closed since the implementation of the LASPO Act in April 2013. The closure of South Manchester Law Centre in September 2014 means the city of Manchester (with a population of half a million people) has no Law Centres, compared with four years ago when there were three Law Centres in the city.³⁶ Of 338 Citizens Advice Bureaux, only 21 now offer specialist civil legal aid advice, compared to 200 five years ago.³⁷

C.2.4 A Ministry of Justice (MoJ) evaluation of the accessibility and effectiveness of the mandatory telephone advice gateway during its first year of operation was published in December 2014.³⁸ The research identified:

- significantly lower usage of the gateway service than anticipated, including for advice on discrimination matters³⁹
- a perception that the service was not well publicised
- evidence of the service not accurately identifying people who should be diverted to face to face advice because of communication difficulties, mental health or mental capacity issues, or the complexity of their case, and
- some evidence of the service refusing requests for adjustments to facilitate contact (such as support for hearing impairments).

C.2.5 Overall, these findings suggest an adverse impact on disabled people and on those with limited English language skills. An independent review of the telephone

³⁵ R (Letts) v Lord Chancellor [2015] EWHC 402 (Admin), Equality and Human Rights Commission intervening

³⁶ Low Commission. March 2015. Getting it right in social welfare law:

www.lowcommission.org.uk/dyn/1425469623929/Low-Commission-Report-Text-Proof-207050-.pdf

³⁷ www.lawcentres.org.uk/policy/news/news/financial-pressures-force-south-manchester-law-centre-to-close

³⁸ www.gov.uk/government/publications/civil-legal-advice-mandatory-gateway-research-findings. The mandatory gateway has been introduced, initially, for advice on debt, discrimination and special educational needs

³⁹ This finding should be considered alongside the recorded drop in Employment Tribunal claims following the introduction of fees in July 2013. Compared to 2012/13, the number of claims dropped by 45 per cent in 2013/14. Race discrimination claims fell by 59 per cent and sex discrimination claims by 81 per cent. A victim of workplace discrimination must now pay a total of £950 to bring a claim to a hearing.

advice gateway also found that the users found the service confusing and bureaucratic.⁴⁰

C.2.6 In November 2014, the National Audit Office (NAO) report on implementing reforms to civil legal aid concluded that the reforms may create additional costs, for the MoJ and wider government, but these costs were not considered in advance of implementation.⁴¹ The NAO notes the MoJ did not fully understand why people go to court to resolve their disputes, or whether all those eligible for legal aid are now able to access it. The NAO also concludes:

- Compared to estimates, there were 17 per cent fewer civil legal aid cases (i.e. legal help and civil representation) started in 2013-14.
- Fewer people are using mediation for family law proceedings as an alternative to the courts, because of the reduction in mediation referrals by solicitors, following the removal of legal aid for private law family cases.⁴²
- The reforms have led to an increase in the number of litigants in person in the family law courts,⁴³ and probably in the civil law courts as well.

C.2.7 The NAO report was followed by a House of Commons Select Committee on Public Accounts (PAC) report on the implementation of the legal aid reforms.⁴⁴ The PAC made similar findings to those of the NAO, concluding that the MoJ would have been better able to deliver its policy objectives had it developed a robust evidence base. The PAC also found that the quality of face-to-face legal aid was unacceptably low.

b. Residence test for civil legal aid

C.2.8 The UK Government has appealed against the High Court ruling (in a judicial review brought by a non-governmental organisation (NGO)) that the residence test for civil legal aid is 'ultra vires' the LASPO Act, and is discriminatory. The case is listed for hearing in the Court of Appeal in June 2015. Meanwhile, implementation of the residence test has been delayed.

⁴⁰ Public Law Project, Keys to the gateway: an independent review of the mandatory civil legal advice gateway, March 2015.

⁴¹ National Audit Office, Implementing reforms to civil legal aid, HC 784 Session 2014-15 November 2014: www.nao.org.uk/report/implementing-reforms-to-civil-legal-aid/

⁴² The NAO records a decrease of 56 per cent in family mediation assessments in 2013-14

⁴³ The NAO identified a 30 per cent increase in the number of cases starting in the family courts in 2013-14 in which neither party had legal representation

⁴⁴ Public Accounts Committee, Thirty-Sixth Report, session 2014/2015: Implementing reforms to civil legal aid: www.publications.parliament.uk/pa/cm201415/cmselect/cmpublicacc/808/80802.htm

c. Judicial review reforms

C.2.9 The Criminal Justice and Courts Act⁴⁵ was given Royal Assent in February 2015 and is applicable in England and Wales. Part 4 of the Act introduces significant reforms to judicial review, including:

- On request by the defendant, the High Court must consider whether the outcome of a judicial review would not have been substantially different had the decision been taken lawfully and, if this is the case, the court must refuse permission to bring the claim.⁴⁶ However, the court retains discretion to hear the claim for reasons of 'exceptional public interest'.
- Similarly, the High Court must refuse to grant the applicant a remedy if it appears highly likely that the outcome would not have been substantially different had the decision been taken lawfully – subject to an 'exceptional public interest' discretion. The Act therefore creates a risk of unlawful administrative action being unchallenged or leaving the applicant without a remedy.
- Unless there are exceptional circumstances, the court must order an intervener in judicial review to pay a party's costs that were incurred as a result of the intervener's involvement if, for example, the intervention has not been of significant assistance to the court or has been largely irrelevant to the key issues, or if the intervener has behaved unreasonably. As a consequence, interveners, such as NGOs, may be deterred from applying to intervene in a case because of the risk of having a costs order made against them.⁴⁷
- The court may only make a costs capping order for public interest proceedings once leave to apply for judicial review has been granted; and, in considering an application, the court must take into account factors listed in the Act. This provision is likely to deter applications for judicial review made in the public interest, as the applicant faces the risk of paying the defendant's costs if permission is refused. As noted in our previous submission,⁴⁸ the UK Government has already removed legal aid for judicial review applications, unless the court grants permission for the case to proceed.

⁴⁵ Criminal Justice and Courts Act 2015: www.legislation.gov.uk/ukpga/2015/2/contents/enacted

⁴⁶ Similar provisions apply to the Upper Tribunal

⁴⁷ This may constrain the EHRC's use of its statutory power to apply to intervene to assist the court in cases involving equality and human rights issues – see footnote 2 above, for example

⁴⁸ EHRC. July 2014. Submission to the United Nations Human Rights Committee Pre-Sessional Working Group on the United Kingdom's Implementation of the International Covenant on Civil and Political Rights. P. 6 : www.equalityhumanrights.com/sites/default/files/uploads/documents/humanrights/EHRC%20Submission%20to%20UN%20Human%20Rights%20Committee%20Pre-Sessional%20Working%20Group%20on%20UK%20Implementation%20of%20the%20International%20Covenant%20on%20Civil%20and%20Political%20Rights.pdf

C.2.10 Since 2014, legal aid has only been available for judicial review applications if the court grants permission for the application to go ahead (subject to a discretion to grant funding where the case settles before reaching the permission stage). The regulations⁴⁹ introducing this change have been the subject of a successful judicial review challenge, in which the court held that the Lord Chancellor did not have the power to introduce such restrictions.⁵⁰

Conclusion:

C.2.11 Changes introduced to civil legal aid by the LASPO Act 2012 and reforms to Judicial Review introduced by the Criminal Justice and Courts Act 2015 have significantly weakened the protections for the right to equality before courts and tribunals for all persons in England and Wales. The UK Government needs to take a number of steps to improve compliance with Article 14 of ICCPR, including:

- **urgently acting on the evidence of weaknesses in the exceptional funding scheme for legal aid and the telephone advice gateway**
- **responding to the recommendations of the Low Commission on the future of advice and legal support for social welfare in England and Wales; and**
- **withdrawing the residence test, the restrictions for legal aid for judicial review, and the proposals to limit the court's discretion in these cases.**

Question A: Could the UK Government provide data about the impact (including cumulative impacts) of the LASPO Act and associated reforms, including on:

- **The impact on access to justice for people with particular impairments arising from the introduction of a mandatory telephone advice gateway?**
- **The combined impact of the mandatory telephone advice gateway and the introduction of fees for the Employment Tribunal on access to justice for victims of workplace discrimination?**
- **The increase in litigants in person in the civil and family courts and the consequences for access to justice arising from this?**
- **The impact on the legal and advice sector of the reforms, also taking into account the effect of local and national austerity measures on funding for this sector?**

⁴⁹ The Civil Legal Aid (Remuneration) (Amendment) No.3) Regulations 2014: www.legislation.gov.uk/ukxi/2014/607/contents/made

⁵⁰ R (Ben Hoare Bell and others) v Lord Chancellor [2015] EWHC 523 (Admin)

Could the UK Government also provide information about the steps it has taken to mitigate these impacts?

Question B: What steps is the UK Government taking to modify the exceptional funding scheme in the light of its low uptake, the low success rates of applications and recent successful court challenges to guidance on the scheme?

Question C: Can the UK Government describe how it will ensure the residence test for civil legal aid, if introduced, will not lead to individuals being denied access to justice for a case relating to rights that are reflected in the ICCPR?

Question D: What steps is the UK government taking to monitor the impact of recent and forthcoming reforms to judicial review on individuals' and organisations' ability to hold the UK to account for breaches of rights reflected in the ICCPR?

3. Counter-terrorism provisions (Articles 9 and 14), List of Issues paragraphs 11, 20, 23⁵¹

a. The need to review anti-terrorism legislation (List of Issues paragraph 11)

C.3.1 On 12 February 2015, the UK Government introduced further counter-terrorism legislation: the Counter-Terrorism and Security Act 2015, applicable to the UK. The Act:

- extends the circumstances in which passports can be seized
- introduces temporary exclusion orders preventing British citizens returning to the UK
- extends the actions that can be taken under a Terrorism Prevention and Investigation Measure (TPIM), and
- creates a duty on certain bodies to have due regard to the need to prevent people being drawn into terrorism.

C.3.2 The EHRC set out our analysis of the human rights implications of these provisions during the passage of the Bill through the UK Parliament.⁵²

⁵¹ HRC. November 2014. List of issues in relation to the seventh periodic report of the United Kingdom of Great Britain and Northern Ireland: www.equalityhumanrights.com/sites/default/files/uploads/documents/humanrights/List%20of%20issues%20Nov%202014.pdf

C.3.3 In relation to temporary exclusion orders, the EHRC considers that:

- requiring individuals subject to temporary exclusion orders to attend an interview with a police officer in circumstances where legal representation is unlikely to be available is likely to breach the privilege against self-incrimination under Article 6 (right to a fair trial) of the ECHR, and that
- the proposed exclusion orders are incompatible with Article 12(4) ICCPR (no one shall be arbitrarily deprived of the right to enter his own country).⁵³

C.3.4 We also consider there is insufficient provision for independent oversight or scrutiny of the exercise of several of the powers, even though the powers appear, potentially, to interfere with fundamental rights. Appropriate oversight mechanisms should be introduced to ensure the use of these powers is proportionate and necessary. This applies in relation to passport seizure, temporary exclusion orders, the additional data retention measures (section 21) and the measures regarding the duty on public authorities to have due regard to the need to prevent people being drawn into terrorism (sections 26-35).

b. Pre-charge detention (List of Issues paragraph 20)

C.3.5 As the EHRC outlined in our 2014 submission to the HRC,⁵⁴ the Protection of Freedoms Act 2012, applicable in England and Wales, retains the 14-day limit for terrorism suspects to be detained before being charged, with judicial authorisation.⁵⁵ The EHRC shares the HRC's views about pre-charge detention in terrorism cases,⁵⁶ and considers the maximum should be four days, consistent with the criminal law in England and Wales.

⁵² The full briefing is at www.equalityhumanrights.com/legal-and-policy/our-legal-work/parliamentary-briefings/counter-terrorism-bill-house-lords-second-reading-january-2015

⁵³ No one shall be arbitrarily deprived of the right to enter his own country:
www.ohchr.org/EN/ProfessionalInterest/Pages/CCPR.aspx

⁵⁴ EHRC. July 2014: Submission to the United Nations Human Rights Committee Pre-Sessional Working Group on the United Kingdom's Implementation of the International Covenant on Civil and Political Rights.P.8:
www.equalityhumanrights.com/sites/default/files/uploads/documents/humanrights/EHRC%20Submission%20to%20UN%20Human%20Rights%20Committee%20Pre-Sessional%20Working%20Group%20on%20UK%20Implementation%20of%20the%20International%20Covenant%20on%20Civil%20and%20Political%20Rights.pdf

⁵⁵ Protection of Freedoms Act 2012, part 4, section 57:
www.legislation.gov.uk/ukpga/2012/9/contents/enacted

⁵⁶ Concluding Observations of the Human Rights Committee for the United Kingdom of Great Britain and Northern Ireland, 30 July 2008, paragraph 15:
http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2fGBR%2fCO%2f6&Lang=en

c. Closed material proceedings and secret evidence (List of Issues paragraph 23)

C.3.6 The EHRC continues to think there are human rights problems with the use of closed material proceedings (CMPs) in the UK, which mean that one party, for example, an individual bringing a claim against a government agency, is not permitted to take part in all, or part of, the proceedings. There is a range of different contexts where CMPs, via the Special Advocates System, have been legislated for in the UK, including terrorist asset freezing proceedings, employment tribunals and planning inquiries.⁵⁷ There are also a number of situations where special advocates have been appointed on a non-statutory basis, for example the Security Vetting Appeals Panel.

C.3.7 The Justice and Security Act 2013 extends the use of closed proceedings to any civil case in which the Justice Secretary certifies that it involves sensitive material that it would not be in the public interest to disclose because of national security.⁵⁸

Conclusion:

C.3.8 The UK Government has introduced a package of anti-terrorism legislation, which creates very wide-reaching powers that may be incompatible with its obligations to protect the rights to liberty and equality before the courts while protecting national security. The UK Government needs to conduct a broad review of its anti-terrorism legislation to ensure that all these powers are necessary and do not unduly interfere with its obligations under Articles 9 and 14 of ICCPR, including consideration of:

- **amending Schedule 8 to the Terrorism Act 2000 so that terrorism suspects have the same right to access legal advice as those arrested for non-terrorism related cases**
- **reducing the limit on pre-charge detention for terrorist suspects to four days, in line with the criminal law in England and Wales**
- **considering the continued necessity of TPIMs, and**

⁵⁷ Ministry of Justice, Memorandum to the Joint Committee on Human Rights on its Inquiry on the Justice and Security Bill, 2011: www.parliament.uk/documents/joint-committees/human-rights/Memo_to_JCHR_on_Justice_and_Security_Green_Paper.pdf

⁵⁸ Ministry of Justice, Justice and Security Green Paper, para 2.7: www.gov.uk/government/uploads/system/uploads/attachment_data/file/228860/8194.pdf The Justice Secretary's decision would be reviewable by the trial judge on "judicial review principles" but any challenge to this decision would itself necessarily involve closed proceedings. See our full comments in our 2014 submission to the HRC: EHRC. July 2014: Submission to the United Nations Human Rights Committee Pre-Sessional Working Group on the United Kingdom's Implementation of the International Covenant on Civil and Political Rights.

- **restricting the use of closed material proceedings to the smallest possible number of courts and tribunals, as a last resort where there is no alternative means of achieving justice**
- **repealing the provisions in the Justice and Security Act to extend the use of closed material proceedings into civil litigation, and**
- **where material is to remain closed, ensuring the excluded party is given sufficient information to enable them to give effective instructions to their Special Advocate.**

Question A: When will the UK Government conduct a review of its terrorism powers to ensure it complies with its international obligations to protect a range of human rights, while protecting national security?

4. Stop and search (Articles 9, 17 and 26), List of Issues paragraphs 8, 11 and 23

a. Schedule 7 of the Terrorism Act 2000

C.4.1 In our 2014 submission to the HRC, we noted that while use of Schedule 7 of the Terrorism Act 2000⁵⁹ power has continued its decline in recent years, a large number of individuals are subject to it each year,⁶⁰ and that a disproportionate number are from particular ethnic minorities⁶¹ despite the Code of Practice⁶² on the use of Schedule 7 explicitly ruling out a reliance on ethnicity as the sole means to determine who to stop under this power. While we acknowledge the differing views as to whether this disproportionality demonstrates unlawful discrimination,⁶³ we believe the HRC's 2008 concerns remain valid.⁶⁴

⁵⁹ Schedule 7 of the Terrorism Act 2000 provides police officers across the UK with the power to stop, search and examine individuals at airports and ports, to determine whether they appear to be concerned in commissioning, preparing or instigating a terrorist act.

⁶⁰ For example, between April 2009 and March 2012, there were 230,236 examinations pursuant to Schedule 7. Home Office, Review of the Operation of Schedule 7: A Public Consultation, Annex A: Data on the use of Schedule 7:

www.gov.uk/government/uploads/system/uploads/attachment_data/file/157896/consultation-document.pdf

⁶¹ EHRC, Briefing Paper 8: An Experimental Analysis of Examinations and Detentions under Schedule 7 of the Terrorism Act 2000, 2013:www.equalityhumanrights.com/publication/briefing-paper-8-experimental-analysis-examinations-and-detentions-under-schedule-7-terrorism-act

⁶² Home Office, Draft Code of Practice Schedule 7, paragraph 18:

www.gov.uk/government/uploads/system/uploads/attachment_data/file/304300/DraftCodeOfPracticeSch7.pdf

⁶³ For example see: Independent Reviewer of Terrorism Legislation, Annual Report, July 2014, p.130: <https://terrorismlegislationreviewer.independent.gov.uk/wp-content/uploads/2014/07/Independent-Review-of-Terrorism-Report-2014-print2.pdf> and

C.4.2 We continue to maintain that there is a need to include a statutory requirement to centrally record and monitor data about the race and nationality characteristics of those who are stopped under Schedule 7. We believe such a duty would help ensure the power is not used in a discriminatory or disproportionate way⁶⁵ and would address the perception of prejudice, which the Independent Review of Terrorism Legislation notes 'can be quite as damaging to community relations as the reality'.⁶⁶ We maintain that these powers continue to lack fundamental procedural protections, such as the requirement of 'reasonable suspicion', which would be consistent with the rights to privacy, and liberty and security under the ECHR.

b. Fair and effective use of stop and search

C.4.3 in the EHRC's July 2014 submission to the HRC, we highlighted a number of issues relating to how stop and search powers are used under schedule 1 of the Police and Criminal Evidence Act (PACE) and section 60 of the Criminal Justice and Public Order Act (CJPOA), their impact on ethnic minority communities and their effectiveness at detecting and tackling crime.⁶⁷ We believe these powers are an important means of tackling crime, but only if they are used legitimately and proportionately. If they are not, there is a risk they may contribute to tensions between communities and the police.⁶⁸

EHRC. 2012. Response to Consultation on the Review of the Operation of Schedule 7: www.equalityhumanrights.com/sites/default/files/documents/Consultation_responses/ehrc_-_review_of_the_operation_of_schedule_7_consultation_response_6_dec_2012.pdf

⁶⁴ Concluding Observations of the Human Rights Committee for the United Kingdom of Great Britain and Northern Ireland, 30 July 2008, para 29:

http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2fGBR%2fCO%2f6&Lang=en

⁶⁵ EHRC, Anti-Social Behaviour, Crime and Policing Bill, Schedule 8, Lords Committee Stage Briefing, 2013: www.equalityhumanrights.com/legal-and-policy/our-legal-work/parliamentary-briefings/anti-social-behaviour-crime-and-policing-bill-schedule-8-lords-committee-stage-briefing

⁶⁶ Independent Reviewer of Terrorism Legislation, Annual Report, July 2014, p.130: <https://terrorismlegislationreviewer.independent.gov.uk/wp-content/uploads/2014/07/Independent-Review-of-Terrorism-Report-2014-print2.pdf>

⁶⁷ EHRC. July 2014. Submission to the United Nations Human Rights Committee Pre-Sessional Working Group on the United Kingdom's Implementation of the International Covenant on Civil and Political Rights: P.12

www.equalityhumanrights.com/sites/default/files/uploads/documents/humanrights/EHRC%20Submission%20to%20UN%20Human%20Rights%20Committee%20Pre-Sessional%20Working%20Group%20on%20UK%20Implementation%20of%20the%20International%20Covenant%20on%20Civil%20and%20Political%20Rights.pdf

⁶⁸ See, for example, Riots Communities and Victims Panel, After the Riots: The final report of the Riots Communities and Victims Panel, 2012: <http://webarchive.nationalarchives.gov.uk/20121003195935/http://riotspanel.independent.gov.uk/>

C.4.4 The UK Government has recently published stop and search data for 2013-14.⁶⁹ While there has been a welcome noticeable reduction in the overall use of stop and search powers, the EHRC continues to be concerned about their disproportionate use in relation to ethnic minorities.

C.4.5 In addition to powers under PACE and CJPOA, police have powers to stop a motor vehicle under the Road Traffic Act.⁷⁰ At the request of the Home Secretary, HMIC looked at how these powers were used for the first time.⁷¹ In the absence of police forces data on whether this power was used fairly and effectively, HMIC conducted a quantitative survey and found that while ethnic minority drivers were far more likely to be stopped and searched than white drivers, white drivers were disproportionately more likely to be arrested, given a fixed penalty notice, issued with a summons or be informed of an intended prosecution. This suggests ethnic minority drivers are more likely than white drivers to be stopped in situations where the stop does not result in any prosecution which raises the question what were the grounds for stopping these drivers.⁷²

C.4.6 In 2013, HMIC made 10 recommendations to police forces in England and Wales to help them improve their use of stop and search powers.⁷³ 18 months later, HMIC assessed that there had been insufficient progress on nine of the 10 recommendations.⁷⁴ This included recommendations on:

- establishing a clear specification of what constitutes effective and fair exercise of stop and search powers
- improving officers' understanding of the impact that stop and search encounters can have on community confidence and trust in the police
- introducing a nationally agreed form for the consistent recording of stop and search encounters
- providing a route for people who are dissatisfied with the way they are treated during stop and search encounters to report this to the force and make a formal complaint quickly and easily

⁶⁹ Home Office. April 2015. Police powers and procedures England and Wales year ending 31 March 2014: data tables: www.gov.uk/government/statistics/police-powers-and-procedures-england-and-wales-year-ending-31-march-2014-data-tables

⁷⁰ s.163, Road Traffic Act 1988

⁷¹ HMIC. 2015. Stop and search powers 2: are the police using them effectively and fairly? www.justiceinspectorates.gov.uk/hmic/publication/stop-and-search-powers-2-are-the-police-using-them-effectively-and-fairly/

⁷² *Ibid.* Page 57.

⁷³ HMIC. 2013. Stop and Search Powers: Are the police using them effectively and fairly? www.justiceinspectorates.gov.uk/hmic/publication/stop-and-search-powers-20130709/

⁷⁴ HMIC. 2015. Stop and search powers 2: are the police using them effectively and fairly? www.justiceinspectorates.gov.uk/hmic/publication/stop-and-search-powers-2-are-the-police-using-them-effectively-and-fairly/

- monitoring the way officers stop and search people so supervisors can be satisfied their officers are acting in accordance with the law.

C.4.7 HMIC also reported that they were 'surprised to find that less than half of forces complied with requirements under the code of practice to make arrangements for stop and search records to be scrutinised by the public' and that 'When considered alongside the high proportion of stop and search records without sufficient grounds recorded to show they were lawful searches (27%), the absence of public scrutiny becomes even more of a serious threat to the fragile construct of police legitimacy' there was an absence of official record keeping on the use of strip searching, meaning that it was not in a position to say that the police were using these powers in a lawful, necessary and appropriate manner.⁷⁵ The EHRC considers the data should include the age of people who are subjected to a strip search and the percentage of these strip searches where the power is used in the presence of an appropriate adult.⁷⁶

C.4.8 HMIC's report made 11 recommendations, including that:

- the College of Policing should publish a working definition of what constitutes an effective and fair stop and search encounter
- each police force should publish plans on how it will progress the recommendations in HMIC's 2013 report
- there must be an agreed set of minimum recording standards for the police use of the Road Traffic Act 1988 power to stop motor vehicles and these should be implemented
- officers must record all searches which involve the removal of more than an outer coat, jacket or gloves. This record must specify: the clothing that was removed; the age of the person searched; whether the removal of clothing revealed intimate parts of the person's body; the location of the search including whether or not it was conducted in public view; and the sex of the officers present.

C.4.9 In our 2014 submission to the HRC, we welcomed a range of initiatives from the Home Office to increase the transparency of the use of stop and search powers, through a 'Best Use of Stop and Search' scheme. We are pleased that all police forces have signed up to this voluntary scheme. The EHRC considers that the "Best Use of Stop and Search' Scheme should be evaluated in 2016 and, if the new voluntary measures are shown to work, they should be enshrined in law.

⁷⁵ *Ibid.*

⁷⁶ www.crae.org.uk/.../FINAL-Strip-Searching-at-Police-Station-Briefing.pdf

C.4.10 The Home Secretary has made clear that the UK Government expects police forces to use the powers fairly and in accordance with the provisions of the Equality Act.⁷⁷ The UK Government has provided additional funding to the EHRC to enable it to work with the newly created national college of policing to produce new guidance for police forces on the proper use of stop and search powers. This guidance will link to national standards of authorised professional (police) practice. Providing this training is shown to work, it will be critical that all forces use it to train all their frontline staff and their supervisors.⁷⁸

Conclusion:

C.4.11 Evidence suggests that stop and search powers may not be being exercised fairly and in a non-discriminatory manner in England and Wales. If that's the case, then the UK Government may not be fulfilling its obligations in relation to the rights to privacy, liberty and security, the prohibition on discrimination under Articles 9, 17 and 26 of ICCPR.

Question A: How will the UK Government collect, analyse and publish data on the use of Schedule 7 to reassure themselves and the public that they are meeting the Equality Act 2010 requirements, as set out in the code of practice on the Terrorism Act 2000?

Question B: What steps, including legislative amendments, will the UK Government take to safeguard against future potential abuse of the Section 60 power to stop and search by individual forces?

Question C: What steps is the UK Government taking to ensure that HMIC's recommendations from its HMIC 2013 and 2015 stop and search reports are followed up?

Question D: The EHRC and the College of Policing are working to produce a new programme of police training for stop and search. Providing the pilots prove to be successful, what steps will the UK Government take to ensure that this training (or training of an equivalent standard) is used by each force, and what if any measures might be employed to ascertain how many officers have received the training?

Question E: Could the UK Government please clarify:

⁷⁷ PACE Code C. 2012:

www.gov.uk/government/uploads/system/uploads/attachment_data/file/117589/pace-code-c-2012.pdf

⁷⁸ EHRC. March 2015. Commission to support Police with new Stop and Search training:

www.equalityhumanrights.com/commission-support-police-new-stop-and-search-training

- **How will individual officers be scrutinised on their ability to use their stop and search powers effectively, legally and fairly?**
- **What is the role of police and crime commissioners (PCCs) in scrutinising how their forces are using stop and search, and what steps can be taken in the event that a PCC is not engaging with the issue or equality and human rights more generally?**
- **If stop and search is to feature as one of a range of measures used annually to assess how each force is performing (part of the PEEL Assessment),⁷⁹ how will this work in practice?**

5. Trafficking and forced labour (Articles 2, 8, 9, 14, 24 and 26), List of Issues paragraph 26

C.5.1 The EHRC welcomes steps to tackle trafficking and slavery in the UK through the enactment of the Modern Slavery Act 2015 (MSA) and the introduction of the Human Trafficking and Exploitation (Scotland) Bill in December 2014.

a. The National Referral Mechanism

C.5.2 The EHRC raised a number of issues about the operation of the National Referral Mechanism (NRM) in our July 2014 submission to the HRC.⁸⁰ The UK Government published its review of the NRM in November 2014.⁸¹ The review's recommendations largely reflect the issues raised by the EHRC. The UK Government has, in principle, accepted all of the review's recommendations, though it intends to initiate pilot schemes to test whether they are robust in practice.

C.5.3 The MSA makes provision for regulations to address the identification and support of victims of slavery or trafficking. The regulations will set out which organisations will identify victims and the criteria and procedure they will use. However, the detail of the regulations will likely be determined by the pilot schemes

⁷⁹ The PEEL Assessment is the approach that Her Majesty's Inspectorate of Constabulary will use to assess the performance of each of the 43 geographic police forces in England and Wales.

www.justiceinspectorates.gov.uk/hmic/our-work/peel-assessments/

⁸⁰ EHRC. July 2014. Submission to the United Nations Human Rights Committee Pre-Sessional Working Group on the United Kingdom's Implementation of the International Covenant on Civil and Political Rights P.17:

www.equalityhumanrights.com/sites/default/files/uploads/documents/humanrights/EHRC%20Submission%20to%20UN%20Human%20Rights%20Committee%20Pre-Sessional%20Working%20Group%20on%20UK%20Implementation%20of%20the%20International%20Covenant%20on%20Civil%20and%20Political%20Rights.pdf

⁸¹ <http://webarchive.nationalarchives.gov.uk/20141202113128/https://nrm.homeoffice.gov.uk/documents/2014/11/nrm-final-report.pdf>

mentioned above. The EHRC maintains that the regulations should give effect to the recommendations of the NRM review, in particular:

- to implement a comprehensive awareness strategy to increase the identification of victims with a clear checklist of trafficking indicators
- to overhaul the NRM referral process so that referrals are made on a 'credible suspicion', phasing out the 'reasonable grounds' decision and introducing key accredited specialist roles. These specialists should hold the in-depth knowledge on identification, decision-making, data capture and interaction with potential victims required to make referrals
- to ensure that support to victims is based on an assessment of individual needs. This should also take account of support needed after the 45 days period of rest and recovery to assist the victim to reintegrate or to return if they are non-EEA nationals
- to trial giving regional multi-disciplinary panels sole responsibility for deciding whether someone is a victim of trafficking
- to introduce a trafficking care standard and an end-to-end service for trafficking victims. This should include arrangements for systematically tracking the progress and outcomes for each victim
- to provide legal advice from the point at which it is established that trafficking or slavery indicators are met
- to introduce a single management process for trafficking cases, with the Home Office taking accountability for this system
- to develop an effective case management system to collect and share intelligence to combat trafficking.

C.5.4 In addition, the NRM review made recommendations specifically in respect of children, which the EHRC considers the regulations should address, namely:

- work should be done with Local Safeguarding Children Boards Chairs and local authorities to build their awareness of the importance of the identification and support of child victims, including the role of clear indicators
- social workers and children's legal representatives should carefully consider the appropriateness of applying for permanent immigration status as opposed to returning children to family members or state authorities in their home country.

C.5.5 The EHRC considers there are a number of issues not included in the MSA or sufficiently addressed in the review of the NRM, including:

- the provision of a formal appeals process, in line with the view of the Council of Europe Convention on Action against Trafficking in Human Beings (GRETA)⁸²
- a clear statutory duty to record and report trafficked children who go missing from care
- explicit citation in the regulations of all relevant authorities that are likely to come into contact with potential victims of trafficking and slavery, including: health authorities, schools, prisons, probation services and competent authorities as well as to voluntary organisations performing a public function
- clarification in the regulations that only a credible suspicion is required to trigger this duty, as noted in the review, and is consistent with the State's positive obligations to investigate under Article 4 of the ECHR.⁸³

b. Criminal offences

C.5.6 The EHRC's analysis suggests the MSA may have missed opportunities to prosecute all those involved in human trafficking.⁸⁴ The MSA provides that the consent of victims (adult or child) will not preclude a finding that they have been held in slavery or servitude or required to perform forced or compulsory labour. It also makes it explicit that the consent of victims to their movement (out, in or within any country) is irrelevant. However it does not make it explicit, in accordance with Articles 2(4) and 2(5) of the EU Directive on preventing and combating trafficking in human beings and protecting its victims,⁸⁵ that the consent of an adult to their exploitation is irrelevant where coercive means have been used.

C.5.7 The MSA provides that those who exploit others in securing services from them by way of slavery, servitude, forced or compulsory labour are committing an offence, irrespective of whether they trafficked them. However trafficking offences remain linked to the movement of victims, and changes have not been made to capture those who may facilitate or arrange exploitation where there is no movement of the victim.

C.5.8 The MSA also does not make it clear that a trafficker's exploitation of a child is a crime, regardless of whether the child objected or not, or whether force, coercion

⁸² Group of Experts on Action against Trafficking in Human Beings (GRETA), 2012. *Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by the United Kingdom*

⁸³ Article 4 ECHR, Freedom from Slavery and Enforced Labour. *CN v UK* Application no. 4239/08: [http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-114518#{\"itemid\":\[\"001-114518\"\]}](http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-114518#{\)

⁸⁴ www.equalityhumanrights.com/legal-and-policy/our-legal-work/parliamentary-briefings

⁸⁵ European Union Directive on preventing and combating trafficking in human beings and protecting its victims: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2011:101:0001:0011:EN:PDF>

etc. was used. The determining question for children is whether or not they were exploited, and not whether there was any means of compulsion involved.

C.5.9 The EHRC is also disappointed that the MSA does not make it an offence to use coercion, fraud, abuse of power or vulnerability or payment to secure the compliance of a victim. This includes using debt bondage, a common means to exploit a victim, would not be a trafficking offence.

c. Forced labour and abuse of migrant workers

C.5.10 The EHRC has assisted appellate cases related to forced labour and the abuse of migrant workers:

- *Hounga v Allen*⁸⁶ which established that a migrant domestic worker was protected from discrimination under the Equality Act 2010 despite her own illegal status, the illegality was not inextricably linked so as to preclude protection from discrimination, and
- *Taiwo v Olaigbe* (yet to be heard) addressing whether immigration status is indissociably linked to nationality so as to afford exploited migrant workers protection from discrimination.

C.5.11 In our previous submission to the HRC in 2014, we noted the UK Government's changes to the overseas domestic workers' (ODW) visa had significantly increased the potential for ODWs to be exploited as it tied them to a single employer;⁸⁷ a potential breach of Article 4 of the ECHR (prohibition on slavery and forced labour) and the positive duty to take steps to prevent trafficking.

C.5.12 Since then, the MSA has introduced provisions allowing for an extension of an overseas domestic worker's visa for a minimum of 6 months where there is a conclusive decision by the UK's NRM that they are a victim of trafficking. These provisions also now extend to workers who the NRM concludes have been enslaved and exploited. In such cases, the worker will be able to change employer for that 6-month period and will not be subject to immigration enforcement action.

C.5.13 The EHRC welcomes these provisions. However, we await the outcome of the UK Government review⁸⁸ of the impact of the changes to the ODW visas to assess what additional measures may be required. Instilling confidence in exploited overseas domestic workers to come forward is key to ensuring these new provisions

⁸⁶ *Hounga v Allen* [2012] EWCA Civ 609 www.bailii.org/ew/cases/EWCA/Civ/2012/609.html

⁸⁷ www.antislavery.org/includes/documents/cm_docs/2014/k/1_kalayaan_briefing_on_amendment_94.pdf

⁸⁸ [//www.publications.parliament.uk/pa/cm201415/cmhansrd/cm150209/debtext/150209-0001.htm#1502093000556](http://www.publications.parliament.uk/pa/cm201415/cmhansrd/cm150209/debtext/150209-0001.htm#1502093000556)

work effectively, therefore the EHRC considers that it is fundamental that the recommendations of the NRM review are implemented and steps are taken to provide legal aid to potential victims at the point of identification.

C.5.14 The EHRC notes that the leave to remain in the UK which may be granted under the OSW visa provisions is not limited to 6 months. When determining how long leave to remain is granted for, the EHRC recommends consideration be given to the ability of victims to pursue compensation. Evidence to GRETA indicated that victims of trafficking rarely pursue compensation and recognised that victims leaving the UK was one of the contributory factors to this.⁸⁹

d. Anti-slavery Commissioner

C.5.15 The EHRC notes that there have been changes in the MSA to:

- increase the independence of the Anti-Slavery Commissioner
- specify which bodies are under a duty to cooperate with the Anti-Slavery Commissioner, and
- include the provision of assistance and support to victims to the range of matters to the Anti-Slavery Commissioner's remit.

C.5.16 These changes strengthen public accountability and transparency of the Anti-Slavery Commissioner's role and the provision of assistance and support to victims of slavery, but the EHRC's recommendations to strengthen the powers and resources available to the Anti-Slavery Commissioner were not implemented.⁹⁰ In addition the EHRC considers the range of public authorities under a duty to cooperate with the Anti-Slavery Commissioner should be extended to include: schools, prisons, probation services and competent authorities, all of which are likely to come into contact with potential victims of trafficking or slavery, along with voluntary organisations performing a public function.

⁸⁹ www.gov.uk/government/uploads/system/uploads/attachment_data/file/269012/employment-related-consultation.pdf and the response https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/117954/employment-t5-overseas-responses.pdf

⁹⁰ EHRC. July 2014. Submission to the United Nations Human Rights Committee Pre-Sessional Working Group on the United Kingdom's Implementation of the International Covenant on Civil and Political Rights: www.equalityhumanrights.com/sites/default/files/uploads/documents/humanrights/EHRC%20Submission%20to%20UN%20Human%20Rights%20Committee%20Pre-Sessional%20Working%20Group%20on%20UK%20Implementation%20of%20the%20International%20Covenant%20on%20Civil%20and%20Political%20Rights.pdf

Conclusion:

C.5.17 The Modern Slavery Act 2015 is a timely and necessary legislative measure to enforce the prohibition on trafficking and slavery in England and Wales. However, gaps in legislation and implementation remain, in relation to the protection of children and adults who have been victims of trafficking and exploitation, for example as evidenced in the UK Government's review of the NRM. In order to improve compliance with Articles 2, 8, 9, 14, 24 and 26 of ICCPR, the UK Government should commit to:

- **reviewing the Modern Slavery Act within this Parliament to see whether it is functioning as intended and, if evidence suggests these remaining gaps impact on compliance with international human rights obligations, bringing forward amendments to the legislation**
- **expediting implementation of the pilot schemes to address the recommendations of the review of the NRM, including the provision of legal advice from the point at which potential victims of trafficking are identified**
- **ensuring the Regulations detailing the provisions for the identification and support of victims of trafficking address the need for the following:**
 - **a formal appeal process in the NRM**
 - **a clear statutory duty to record and report trafficked children who go missing from care applicable to all relevant public authorities, including: health authorities, schools, prisons, probation services, competent authorities and voluntary organisations performing a public function, and**
 - **clarity that only a credible suspicion is required to trigger the provision of support and assistance and require public authorities to report suspected victims of trafficking or slavery.**

Question A: Would the UK Government outline the scope of Regulations detailing the provision for the identification and support of victims of trafficking in England and Wales?

Question B: Would the UK Government outline the scope and timetable for implementation of the pilot schemes to test improvements to the NRM?

Question C: Will the UK Government commit to reviewing the Modern Slavery Act within this Parliament to see whether it is functioning as intended?

Question D: Can the UK Government reassure the Committee that it will act on the recommendations that ensue from the Overseas Domestic Workers review within a set timeframe?

6. Privacy and security (Articles 2, 5 (1) and 17), List of Issues paragraph 28

a. UK Government surveillance and access to private communications

C.6.1 The EHRC outlined the legal framework for the right to privacy in the UK in our 2014 submission to the HRC, and our analysis that this framework has struggled to keep pace with the demands of government and changes in the technology of information gathering and data sharing; and has become increasingly fragmented and incoherent.⁹¹

C.6.2 In October 2014, the EHRC made a submission to the Independent Reviewer of Terrorism Legislation's Investigatory Powers Review.⁹² We advised that the Regulation of Investigatory Powers Act 2000 (RIPA) needed significant reform for the following reasons:

- i. The structure of the protections in the RIPA is no longer fit for purpose: it establishes a series of tiers of protection based on distinctions between content data/communications data; and internal/external communications which no longer adequately reflect privacy concerns or the intrusiveness of the powers in question.
- ii. In relation to targeted interception warrants, there are issues around the breadth of the definition of 'national security' and the role of the Investigatory Powers Tribunal (IPT) in ensuring effective oversight.
- iii. In respect of interception of external communications to and from the British Isles, the section 8(4) interception regime is apparently capable of capturing a

⁹¹ EHRC. July 2014: Submission to the United Nations Human Rights Committee Pre-Sessional Working Group on the United Kingdom's Implementation of the International Covenant on Civil and Political Rights:
www.equalityhumanrights.com/sites/default/files/uploads/documents/humanrights/EHRC%20Submission%20to%20UN%20Human%20Rights%20Committee%20Pre-Sessional%20Working%20Group%20on%20UK%20Implementation%20of%20the%20International%20Covenant%20on%20Civil%20and%20Political%20Rights.pdf

⁹²EHRC. 2014. Response to the Privacy and Security Inquiry call for evidence:
www.equalityhumanrights.com/legal-and-policy/our-legal-work/consultation-responses/investigatory-powers-review-call-evidence

vast amount of people's everyday internet use, email and telephone activity. There are strong arguments that the regime fails to meet the minimum standards required for compliance with Article 8 of the ECHR (right to respect for privacy).

- iv. The regime for obtaining communications data under Chapter II of RIPA (Communications Data) contains fewer, probably insufficient, safeguards than Chapter I (Interception of Communication). This is despite the fact that communications data can be as revealing and intrusive into personal privacy as content data. Clear and precise rules need to be established in order to regulate the receipt and use of communications data held by private companies in order to comply with Articles 8 and 10 (freedom of expression).⁹³
- v. The current oversight arrangements have not demonstrated that they are effective in achieving accountability in relation to interception of communications and the EHRC is of the view that a new regime of independent authorisation should be devised.⁹⁴

C.6.3 In 2014, the IPT considered complaints brought by Liberty and others against the intelligence and security services regarding the lawfulness of the UK Government's Prism programme.⁹⁵ In December 2014 the IPT made:

- A declaration that the regime governing the soliciting, receiving, storing and transmitting by UK authorities of private communications of individuals located in the UK which have been obtained by US authorities pursuant to Prism and/or Upstream does not contravene Articles 8 or 10 ECHR.
- A declaration that the regime in respect of interception under ss8(4), 15 and 16 of the Regulation of Investigatory Powers Act 2000 does not contravene Articles 8 or 10 ECHR and does not give rise to unlawful discrimination contrary to Article 14 (prohibition on discrimination), read together with Articles 8 and/or 10 of the ECHR.⁹⁶

C.6.4 However, in February 2015, the IPT declared that prior to the disclosures made during the proceedings, the regime governing the soliciting, receiving, storing

⁹³ EHRC. October 2014. Response of the Equality and Human Rights Commission to the Consultation. Investigatory Powers Review – Call for Evidence.

⁹⁴ EHRC. 2014. Response to the Privacy and Security Inquiry call for evidence: www.equalityhumanrights.com/legal-and-policy/our-legal-work/consultation-responses/investigatory-powers-review-call-evidence

⁹⁵ PT/13/77/H: www.ipt-uk.com/docs/IPT_13_168-173_H.pdf

⁹⁶ *Ibid*

and transmitting by UK authorities of private communications of individuals located in the UK, which have been obtained by US authorities pursuant to Prism and/or (on the Claimants' case) Upstream, contravened Articles 8 or 10 ECHR, but that the regime was now compliant.⁹⁷

C.6.5 Those cases, and others brought by other applicants, will be considered by the European Court of Human Rights in due course.

Conclusion:

C.6.6 The nature of the legal framework governing privacy and surveillance in the UK means the protections for the rights to privacy and freedom of expression are fragmented and may not be in pace with the demands of protecting national security and changes in the technology of gathering and sharing data. In order to demonstrate and ensure compliance with Articles 2, 5(1) and 17 of ICCPR, the UK Government needs to conduct a forward-looking 'root and branch' review of the privacy and surveillance legal framework, and establish principles to govern authorisations, including necessity, proportionality, legitimacy and fairness. The review should specifically consider:

- the introduction of a requirement for judicial authorisation for interception warrants under Part 1 of RIPA to ensure effective, independent scrutiny
- whether requests to access traffic and service use data (but not subscriber data) under Part 2 of RIPA could meaningfully be subjected to judicial scrutiny
- introducing a number of reforms to improve the cohesion, efficiency, transparency and accountability of the RIPA oversight system (including the Surveillance Commissioners, IPT and ISC) while preserving national security, and
- the need for the UK Parliament to clarify the definition of 'communication' in Section 20 of RIPA as a matter of urgency and ensure the levels of authorisations required are proportionate to the protection needed.

Question A: Given the fragmented nature of the legal framework governing privacy and surveillance, will the UK Government consider undertaking a forward-looking 'root and branch' review?

⁹⁷ [2015] UKIPTrib 13_77-H: www.ipt-uk.com/docs/Liberty_Ors_Judgment_6Feb15.pdf; and <http://www.ipt-uk.com/docs/Liberty-Order6Feb15.pdf>

Question B: How does the UK Government propose to address (and to what timetable), the following:

- **loose definitions of 'communication' in Section 20 of RIPA**
- **the appropriate levels of authorisation to safeguard human rights in the use of RIPA surveillance powers**
- **the complexity of the oversight mechanisms, and**
- **the need for greater judicial oversight.**

Question C: How can the UK Government reassure itself, and the public, that surveillance powers under RIPA are not being used in a discriminatory way?

7. Voting rights (Article 25), List of Issues paragraph 30

a. Prisoner voting rights

C.7.1 Prisoners serving a custodial sentence in the UK do not have the right to vote; while those who are on remand are able to vote according to the Representation of the People Act 2000.⁹⁸

C.7.2 In our submission to the HRC in July 2014,⁹⁹ the EHRC noted that European Court of Human Rights (ECtHR) had confirmed that a general and automatic disenfranchisement of all serving prisoners was incompatible with Article 3 of Protocol No 1 of the ECHR (right to free elections). However, the ECtHR accepted the UK Government's argument that member states should have a wide discretion in how they regulate a ban on prisoners voting.¹⁰⁰ Since then, there have been two ECtHR's judgments relating to the large number of outstanding claims by prisoners on this issue.¹⁰¹ The ECtHR ruled that there was a continuing violation of Article 3 to Protocol No 1 to the ECHR, but did not award the applicants any compensation or legal expenses.¹⁰²

⁹⁸ Representation of the People Act 2000: www.legislation.gov.uk/ukpga/2000/2/contents

⁹⁹ EHRC. July 2014. Equality and Human Rights Commission Submission to the United Nations Human Rights Committee Pre-Sessional Working Group on the United Kingdom's Implementation of the International Covenant on Civil and Political Rights. P.28: www.equalityhumanrights.com/sites/default/files/uploads/documents/humanrights/EHRC%20Submission%20to%20UN%20Human%20Rights%20Committee%20Pre-Sessional%20Working%20Group%20on%20UK%20Implementation%20of%20the%20International%20Covenant%20on%20Civil%20and%20Political%20Rights.pdf

¹⁰⁰ Scoppola v Italy (No. 3): <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-111044>

¹⁰¹ Firth and Others v. United Kingdom, Application nos. 47784/09, August 2014 ; McHugh and others v. UK Application no. 51987/08 and 1,014 others, February 2015.

¹⁰² Ibid.

C.7.3 In December 2013, the Joint Committee on Human Rights recommended that the UK Government introduce legislation to allow all prisoners serving sentences of 12 months or less to vote in all UK Parliamentary, local and European elections.¹⁰³ The UK Government did not introduce prisoner voting prior to the May 2015 UK General Election, which was consistent with its previous commitments.¹⁰⁴

Conclusion:

C.7.4 The UK Government is yet to implement the UN Human Rights Committee's 2008 recommendation¹⁰⁵ or the Joint Committee on Human Rights recommendation to introduce legislation to allow all prisoners serving sentences of 12 months or less to vote in all UK Parliamentary, local and European elections, in line with the European Court on Human Rights Judgments on the right to fair elections. The UK Government needs to take these steps in order to comply with Article 10, paragraph 3, when read in conjunction with Article 25 of ICCPR.

Question A: What plans does the UK Government have to bring forward legislation to implement the judgments in the Hirst, Greens, Firth and McHugh cases (and in doing so the recommendation of the Joint Committee on the Voting Eligibility (Prisoners) Draft Bill), and ensure compliance with the requirements of Protocol No 1 of the ECHR?

8. Caste discrimination (Articles 2, 20, 26 and 27), List of Issues paragraph 6

C.8.1 The EHRC supports the enactment of Section 9(5) of the Equality Act 2010 (as amended by the Enterprise and Regulatory Reform Act 2013) which provides that a

¹⁰³ Joint Committee on the Voting Eligibility (Prisoners) Draft Bill, 2013:

www.publications.parliament.uk/pa/jt201314/jtselect/jtdraftvoting/103/10302.htm

¹⁰⁴ MoJ. December 2015. Responding to human rights judgments. Report to the Joint Committee on Human Rights on the Government response to human rights judgments 2013–14:

www.gov.uk/government/uploads/system/uploads/attachment_data/file/389272/responding-to-human-rights-judgments-2013-2014.pdf

¹⁰⁵ Concluding Observations of the Human Rights Committee for the United Kingdom of Great Britain and Northern Ireland, 30 July 2008, para 28:

http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2fGBR%2fCO%2f6&Lang=en

Minister must, by order, amend the statutory definition of race to include caste and may provide for exceptions in the Act to apply or not to apply to caste.¹⁰⁶

C.8.2 In July 2013, the UK Government's Government Equalities Office announced that before s9(5) of the Equality Act 2010 was implemented, there would be a full public consultation in order to ensure the legislation was fit for purpose.¹⁰⁷ It was last reported that a draft order will be introduced by the summer of 2015.¹⁰⁸

C.8.3 In the interim, the EHRC notes that the definition of race in section 9(1) of the Equality Act 2010 is non-exhaustive and includes 'colour; nationality; ethnic or national origin' and the ongoing discussion of whether caste could be included as an aspect of descent, or ethnic origin. Case law suggests that 'ethnic origin' for the purposes of section 9(1) of the Equality Act 2010 should be interpreted widely, for example in *Mandla v Dowell Lee*,¹⁰⁹ the House of Lords held that the term 'ethnic' is wider than 'racial' or 'biological.'

C.8.4 In a recent judgment in the Employment Tribunal, the President held that:

- a party could bring a claim for caste discrimination on the law as it currently stands because there may be factual circumstances involving caste, which are capable of falling within the scope of section 9(1), despite it not being separately mentioned in the Equality Act 2010
- the fact the UK Government had decided to legislate to clarify that caste is an aspect of the protected characteristic of race, but had not yet done so, was not determinative. The effect of section 9(5) of the Equality Act 2010 is not to limit the scope to which the statutory definition of race extends. On this basis, section 9(5) of the Equality Act 2010 contains a power to supplement or clarify section 9(1) of the Equality Act 2010, not to restrict it. The decisions in the two leading cases of *JFS*¹¹⁰ and *Mandla v Dowell Lee* remain fully applicable. The effect of this case law is to give a wide and flexible scope to the meaning of 'ethnic origins'. The President was convinced of the close link between descent and caste and that caste is clearly to be included within the meaning of 'ethnic origins,' at least where it is linked to concepts of ethnicity.

¹⁰⁶ <http://www.equalityhumanrights.com/legal-and-policy/key-legislatures/equality-act-2010/commission-policy-statement-on-caste-discrimination>

¹⁰⁷ <https://www.gov.uk/government/news/caste-discrimination-consultation-programme-timetable-announced>

¹⁰⁸ See the summary of the legislative process to date at

<http://www.lawandreligionuk.com/2014/04/12/caste-discrimination-the-governments-progress/>

¹⁰⁹ [1983] ICR 385

¹¹⁰ *R (on the application of E) (Respondent) v Governing Body of JFS and the Admissions Appeal Panel of JFS (Appellants) and others R (on the application of E) (Respondent) v Governing Body of JFS and the Admissions Appeal Panel of JFS and others (United Synagogue) (Appellants)* [2009] UKSC 15

C.8.5 However, the President was careful to say that his finding was fact-specific and he specifically declined the invitation to find that all caste-based claims would come within the definition of 'ethnic origins.' This means that not all complainants of caste discrimination may find a remedy under existing law.

Conclusion:

C.8.6 The Equality Act 2010 provides one of the most comprehensive legislation frameworks in the world aimed at implementing the prohibition on discrimination. In order to provide clarity on how the UK provides protection from caste discrimination in relation to Article 2 of ICCPR, the specific provision in section 9(5) Equality Act 2010 needs to be enacted.

Question: Has the UK Government concluded the consultation on caste discrimination announced in July 2013? If so, could the UK Government publish its findings and outcomes, and confirm when a draft order to enact Section 9(5) of the Equality Act 2010 will be laid before Parliament?

D. Physical Security

9. Prohibition of torture and cruel, inhuman or degrading treatment (Articles 6 and 7), List of Issues paragraphs 16 and 27

a. Investigations into alleged UK complicity in torture

D.9.1 As the EHRC advised the HRC in our July 2014 submission,¹¹¹ the UK Government decided to conclude the Detainee Inquiry in January 2012,¹¹² before it had formally launched, due to the commencement of criminal investigations into the rendition of individuals to Libya.¹¹³ A report of the preparatory work undertaken by Sir Peter Gibson's Inquiry was subsequently published, which highlights eight issues where further detailed investigation is required.¹¹⁴

D.9.2 Despite committing itself to another independent, judge-led inquiry once the criminal investigations had concluded, the UK Government subsequently referred the matter to the Intelligence and Security Committee of Parliament (ISC) to:

- inquire into the eight issues raised by the Detainee Inquiry
- take further evidence, and
- report to the UK Government and Parliament on the outcome of its inquiry.¹¹⁵

¹¹¹ EHRC. July 2014. Equality and Human Rights Commission Submission to the United Nations Human Rights Committee Pre-Sessional Working Group on the United Kingdom's Implementation of the International Covenant on Civil and Political Rights. P.29: www.equalityhumanrights.com/sites/default/files/uploads/documents/humanrights/EHRC%20Submission%20to%20UN%20Human%20Rights%20Committee%20Pre-Sessional%20Working%20Group%20on%20UK%20Implementation%20of%20the%20International%20Covenant%20on%20Civil%20and%20Political%20Rights.pdf

¹¹² Statement made by the Justice Secretary to the House of Commons, Hansard HC, col 752, 18 January 2012: www.publications.parliament.uk/pa/cm201212/cmhansrd/cm120118/debtext/120118-0001.htm

¹¹³ Joint Statement by the Director of Public Prosecutions and the Metropolitan Police Service, 12 January 2012: <http://content.met.police.uk/News/Joint-statement-by-MPS-and-DPP/1400005902978/1257246741786>

¹¹⁴ Report of the Detainee Inquiry, 19 December 2013: www.detaineeinquiry.org.uk/wp-content/uploads/2013/12/35100_Trafalgar-Text-accessible.pdf

¹¹⁵ Statement to the House of Commons by the Minister without Portfolio, 13 December 2013: www.publications.parliament.uk/pa/cm201314/cmhansrd/cm131219/debtext/131219-0002.htm

D.9.3 Thus, while the UK Government has accepted the credibility of a number of allegations of complicity of British military personnel, security and secret intelligence services in the ill-treatment of detainees overseas, its investigations into these allegations have not, to date, satisfied the investigative duty under Articles 2 (right to life) and 3 (freedom from torture) of the ECHR, nor its obligations under the Convention Against Torture.

D.9.4 In October 2014, the EHRC responded to the ISC's call for evidence for its inquiry into the role of the UK Government and Security and Intelligence Agencies in relation to detainee treatment and rendition, restating our position that the originally promised independent, judge-led inquiry is required to reaffirm the UK's reputation for strict adherence to international human rights standards.¹¹⁶ In December 2014 the ISC announced that the inquiry will not be concluded until the committee is reconvened in the next Parliament.¹¹⁷

b. Investigations into the mistreatment of detainees in Iraq

D.9.5 The EHRC's July 2014 submission¹¹⁸ to the HRC noted that the UK Government accepts that some of the allegations of British military personnel involvement in the torture and ill-treatment of civilians and detainees in Iraq are credible and that it had established the Iraq Historic Allegations Team (IHAT) in 2010.

D.9.6 The IHAT is currently investigating at least 169 different allegations, from a total of around 1,000 allegations.¹¹⁹ Regrettably, the progress in investigating all of these allegations has been very slow. The IHAT updated the information on its

¹¹⁶ EHRC. October 2014. Further Inquiry into the role of the UK Government and Security and Intelligence Agencies in relation to detainee treatment and rendition – Call for Evidence: Inquiry into the role of the UK Government and Security and Intelligence Agencies in relation to detainee treatment and rendition.

¹¹⁷ https://b1cba9b3-a-5e6631fd-s-sites.googlegroups.com/a/independent.gov.uk/isc/files/20141217_ISC_Press_Release_Senate_Report.pdf?attachauth=ANoY7cr1GRCuyEeHBoclztcwQ-kwWJofP0TD9epNond6KkWZl24t_GN9WloUnT8mwPJflzN84PmNg1CmrPTS6lQbVII88Z1NPE_DruKgsnLc8C16N-_S_H0I49L88AMk_kPKa4lFHFdUyfIn7MsjnhzpgOTiyRJGKEDffWgmtLGiJC5OSVf-g3HvV1FS2Xe1rSoRTffgBtHXmAtZl4XS4tP2Uc7icQNNDDbAChYcAnDxycyjutTOlhKFfRI2UlpEtMpXDFWmnReU&attredirects=0

¹¹⁸ EHRC. July 2014. Submission to the United Nations Human Rights Committee Pre-Sessional Working Group on the United Kingdom's Implementation of the International Covenant on Civil and Political Rights. P.31: www.equalityhumanrights.com/sites/default/files/uploads/documents/humanrights/EHRC%20Submission%20to%20UN%20Human%20Rights%20Committee%20Pre-Sessional%20Working%20Group%20on%20UK%20Implementation%20of%20the%20International%20Covenant%20on%20Civil%20and%20Political%20Rights.pdf

¹¹⁹ More information about the Iraq Historic Allegations Team is available here: <https://www.gov.uk/government/groups/iraq-historic-allegations-team-ihat>

website about its investigations in January 2015. However, to date, it has still only completed investigations into nine cases, and has ordered only one fine against a British soldier.¹²⁰

D.9.7 The EHRC does not consider this to be consistent with the prompt investigative duty under Articles 2 and 3 of the ECHR, (as confirmed by the European Court of Human Rights in its *Al Skeini* judgment).¹²¹

D.9.8 In May 2013, the High Court ruled a different approach was required for cases that engage the investigative duty under Article 2 of the ECHR because the investigatory process, as it was then constituted, was insufficient to discharge fully that obligation.¹²² Accordingly, it ordered that, in relation to a number of cases, an inquisitorial process modelled on coronial inquests should be established at the conclusion of police investigations. However, the Court considered the procedure adopted by the IHAT, is 'a more than proportionate performance' of the State's duties under Article 3 ECHR, subject to making the inquiry accessible to the family and the public, and considering the issues of timeliness and delay. To date, 11 quasi-inquests have been ordered, and guidelines have been issued by the Lord Chief Justice as to how those proceedings should be conducted.¹²³ Preparatory work on the first of these began towards the end of 2013. A retired High Court judge was appointed in January 2014 as Inspector to supervise the first two cases. There has been no news of progress since then.

D.9.9 The Al-Sweady Public Inquiry was established to investigate allegations that British soldiers unlawfully killed and ill-treated Iraqi nationals detained at Camp Abu Naji and, subsequently, the divisional temporary detention facility at Shaibah Logistics Base, after the so-called Battle of Danny Boy. The Inquiry has now concluded. The Chairman published his Report which was laid before Parliament in December 2014.¹²⁴ The Inquiry found that a number of prisoners were abused and that British soldiers were guilty of mistreating detainees, including depriving them of food and sleep and blindfolding them, in breach of international law, including the

¹²⁰ Ministry of Defence, Iraq Historic Investigations Team, Table of Work Completed, January 2015: www.gov.uk/government/uploads/system/uploads/attachment_data/file/393634/20150106-IHAT_work_completed_table.pdf

¹²¹ *Al Skeini v. United Kingdom*: <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-105606>
EHRC intervention in *R(Ali Zaki Mousa and others v. Secretary of State for Defence [2010] EWHC 3304 (Admin)*: baillii.org/ew/cases/EWHC/Admin/2010/3304.html

¹²² *R(Ali Zaki Mousa and others v. Secretary of State for Defence No. 2 [2013] EWHC 1412 (admin)*: www.judiciary.gov.uk/judgments/azm-others-v-sos-defence/

¹²³ *R. (Ali Zaki Mousa) and others v Secretary of State for Defence No. 2 [2013] EWHC 1412 (Admin)*: www.judiciary.gov.uk/judgments/azm-others-v-sos-defence/

¹²⁴ The summary report: <http://webarchive.nationalarchives.gov.uk/20150115114702/http://www.alsweadyinquiry.org/linkedfiles/alsweadyinquiry/inquiryreportexecutivesummary.pdf>

Geneva Convention and Ministry of Defence rules. However, the Inquiry found that allegations of murder were 'wholly without foundation and entirely the product of deliberate lies, reckless speculation and ingrained hostility'.¹²⁵

c. Use of Diplomatic Assurances

D.9.10 In November 2013, the Home Secretary asked the Independent Reviewer of Terrorism Legislation to review the policy of deportation with assurances (DWA). In its response to that review, the EHRC stressed the need to address the underlying merits of the policy of DWA. We also stressed the need to review the compatibility with the UK's international obligations of the policy, in general, and the minimum requirements that all specific assurances should meet.¹²⁶ The Independent Reviewer's report has still not been published.

Conclusion:

D.9.11 While the UK Government has accepted the credibility of a number of allegations of complicity of British military personnel, security and secret intelligence services in the ill-treatment of detainees overseas, its investigations into these allegations have not, to date, satisfied the investigative duty under in relation to the rights to life and freedom from torture. The UK Government needs to take a number of steps to demonstrate compliance with Articles 6 and 7 of ICCPR, including:

- that a full, independent, judge-led inquiry should be carried out in place of the ISC's investigation into the issues raised in the Detainee Inquiry Report
- further reform of the way the UK approaches its investigative duty under Articles 2 and 3 of the ECHR to avoid further unacceptable delays in the resolution of individual cases, and to ensure systemic issues are identified and lessons learnt, and
- a review of the merits of the policy of deportation with assurances (DWA); where DWA is unavoidable, ensuring effective verification and post-return monitoring is a key element of any memorandum of understanding, preferably where both parties have ratified the Optional Protocol on the Convention Against Torture; and laying each future agreement before the UK Parliament, allowing Members sufficient time to raise concerns.

¹²⁵ The Al-Sweady Public Inquiry. December 2014: www.gov.uk/government/uploads/system/uploads/attachment_data/file/388307/43358_16c_Part_5_Chapter_3.pdf

¹²⁶ House of Commons Foreign Affairs Committee Third Report of Session 2012-13, the FCO's human rights work in 2011, HC 116: <http://www.publications.parliament.uk/pa/cm201213/cmselect/cmfaff/116/116.pdf>

Question A: When is the Independent Reviewer of Terrorism Legislation's review of the UK Government's policy of deportation with assurances going to report? What assurances can the UK Government provide that it will seriously consider and implement the Reviewer's recommendations within a reasonable timeframe?

10. Treatment of detainees (Articles 9, 10, 12 and 24), List of Issues paragraphs 22 and 27

a. Immigration detention, List of Issues paragraphs 22 and 27

D.10.1 The EHRC is not convinced that detention is being used sparingly and for the shortest period possible,¹²⁷ in line with Article 9 of the ICCPR and Article 5 of the ECHR. In the last five years, the number of people entering immigration removal centres (IRCs) increased by 59.3 per cent from 15,922 people in 2009 to 25,363 people 2014.¹²⁸ In 2014, 37 per cent of detainees had been held between 29 days to over two years.¹²⁹ We agree with the views of many people in the sector that there needs to be a presumption towards community-based resolutions rather than detention, and that the UK Government should learn from international best practice where alternatives to detention have been found to be an effective and more holistic solution.¹³⁰

i. The Detained Fast Track system

D.10.2 In our 2014 submission to the HRC, the EHRC reported that in July 2014 the High Court found significant flaws in the Detained Fast Track (DFT) system, in line with the findings of the UN High Commissioner for Refugees, and the Committee Against Torture.¹³¹ The DFT is designed to detain asylum seekers in order to

¹²⁷ UK Visas and Immigration. 2013. Enforcement Instructions and Guidance: www.gov.uk/government/uploads/system/uploads/attachment_data/file/400022/Chapter55_external_v19.pdf

¹²⁸ Home Office. Immigration Statistics October to December 2014, Table dt_01: www.gov.uk/government/publications/immigration-statistics-october-to-december-2014/immigration-statistics-october-to-december-2014

¹²⁹ Home Office. Immigration Statistics. October-December 2014: www.gov.uk/government/publications/immigration-statistics-october-to-december-2014/immigration-statistics-october-to-december-2014#detention-1

¹³⁰ See for example, A Joint Inquiry by the All Party Parliamentary Group on Refugees & the All Party Parliamentary Group on Migration. 2015. The report of the inquiry into the Use of Immigration Detention in the United Kingdom. <https://detentioninquiry.files.wordpress.com/2015/03/immigration-detention-inquiry-report.pdf>

¹³¹ EHRC. July 2014. Submission to the United Nations Human Rights Committee Pre-Sessional Working Group on the United Kingdom's Implementation of the International Covenant on Civil and Political Rights. Page 35.

process their applications quickly. However, the High Court's judgment identified failings in the safeguards supposed to prevent unsuitable claims and vulnerable applicants from entering DFT and being released from it, specifically in the Screening and Rule 35 processes.

D.10.3 An individual who claims they are a torture survivor or have suffered other forms of serious ill-treatment, including human trafficking, can be released from DFT, or not put into it, if the Helen Bamber Foundation (HBF) or Freedom From Torture Foundation has assessed there is prima facie evidence of torture or cruel, inhuman and degrading treatment or punishment. They give advice on suitability of retaining the claim within the DFT and whether the release of the individual is necessary for further clinical investigations. Under the Asylum Policy Instructions related to these organisations, release is automatic where a pre-assessment appointment is provided pre-decision.¹³²

D.10.4 The Foundations consider a range of written evidence and apply their expertise in order to determine whether an individual should be released, including the individual's screening interview record, asylum interview record, and Rule 35 report¹³³ if available.

D.10.5 The purpose of Rule 35 is to ensure that particularly vulnerable detainees are brought to the attention of those with direct responsibility for authorising, maintaining and reviewing detention.¹³⁴ Detention Centre Rule 35 requires that medical practitioners, 'report to the manager on the case of any detained person whose health is likely to be injuriously affected by continued detention or any conditions of detention' and those 'for whom there are concerns that they may have been a victim of torture'.¹³⁵

D.10.6 However, HBF has identified continued systematic failures with the operation of this safeguard: 'We have not seen any material improvement in the effective operation of the Rule 35 processes. Many cases still have no Rule 35 report at all, and in a number of cases referred to HBF where there is a Rule 35 report, this has not secured release.'

¹³² Detention Action v Secretary of State for the Home Department [2014] EWHC 2245 (Admin) (09 July 2014), available at: www.bailii.org/ew/cases/EWHC/Admin/2014/2245.html; and Helen Bamber Foundation and Freedom from Torture letter to the Director of Asylum and Head of Asylum Detained Casework, Home Office. 28 November 2014. Court Bundle.

¹³³ Helen Bamber Foundation and Freedom from Torture letter to the Director of Asylum and Head of Asylum Detained Casework, Home Office. 28 November 2014. Court Bundle

¹³⁴ <http://www.bailii.org/ew/cases/EWHC/Admin/2013/1236.html>

¹³⁵ Home Office. Detention Services Order 17/2012:

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/300366/17.2012_v2.0_-_Application_of_Detention_Centre_Rule_35_ext.pdf

D.10.7 It is Home Office policy to remove an individual from the DFT who is accepted by the Foundations for a pre-assessment appointment.¹³⁶ However, HBF has faced serious capacity issues due to significant increases in the number of individuals being detained in the DFT in recent years and requests for assessment to determine suitability for continued detention in the DFT.¹³⁷ The numbers increased further after the High Court judgment when lawyers were given additional time to take instruction from their clients before interview and refusal.¹³⁸

D.10.8 HBF therefore proposed to the Home Office that it could continue to assess claims to ensure the appropriate release of individuals, but could no longer offer pre-assessment appointments because of the pressure on their service of the DFT referrals.¹³⁹ The Home Office did not accept this proposal to vary the concession on the basis that this approach does not conform to current policy, nor did it offer any alternative solution. This resulted in individuals not being released from detention, despite evidence indicating that they are unsuitable for DFT from HBF. The only difference at this stage being a pre-assessment date was not offered.¹⁴⁰ On 23 March 2015, the High Court granted interim relief, which enables people identified as possible torture survivors or other victims of serious ill-treatment by HBF or Freedom from Torture to be released without a pre-assessment appointment.¹⁴¹

D.10.9 The EHRC concurs with the views of the All Party Parliamentary Groups (APPG) inquiry report on immigration detention: 'We are concerned that within the Detained Fast Track the focus is on detention rather than on making quick high quality decisions. Additionally, the failures of the Screening and Rule 35 processes, and the inherent stressful environment of being detained, are not conducive to allowing asylum seekers the support they are entitled to and are counter-productive to high-quality decision making.'¹⁴²

D.10.10 Separately, in December 2014, the Court of Appeal ruled that it is unlawful to detain asylum seekers in the DFT system whilst their appeals are being processed

¹³⁶ Home Office. January 2014. Asylum Policy Instruction
Medico-Legal Reports from the Helen Bamber Foundation and the Medical Foundation Medico-Legal Report Service

www.gov.uk/government/uploads/system/uploads/attachment_data/file/275522/medico-legal.pdf

¹³⁷ Helen Bamber Foundation and Freedom from Torture letter to the Director of Asylum and Head of Asylum Detained Casework, Home Office. 28 November 2014. Court Bundle

¹³⁸ *Ibid.*

¹³⁹ Letter from Helen Bamber Foundation to the Director of Duncan Lewis Solicitors, 23 February 2015 (Legal Bundle).

¹⁴⁰ *Ibid.*

¹⁴¹ Interim Relief Order, 26 March 2015. High Court.

¹⁴² A Joint Inquiry by the All party Parliamentary Group on Refugees & the All Party Parliamentary Group on Migration. 2015. The report of the inquiry into the Use of Immigration Detention in the United Kingdom. P.39. <https://detentioninquiry.files.wordpress.com/2015/03/immigration-detention-inquiry-report.pdf>

and when they pose no risk of absconding.¹⁴³ The Court ruled that the policy on detaining asylum seekers pending their appeal was not sufficiently clear and transparent. There was also insufficient evidence to justify the interference with someone's right to liberty.¹⁴⁴

ii. Lengthy immigration detention

D.10.11 The EHRC maintains that the use of long-term immigration detention, particularly for individuals without any realistic prospect of removal, may be incompatible with Article 9 of the ICCPR and Article 5 (right to liberty and security) of the ECHR.¹⁴⁵

D.10.12 Contrary to the UNHCR Detention Guidelines,¹⁴⁶ the UK has set no time limit to immigration detention and it has opted out of the EU Returns Directive, which sets a maximum time limit of 18 months.¹⁴⁷ The UK is the only EU country not to have signed up to this Directive, with the exception of Ireland, which has set its own time limit of 21 days.¹⁴⁸ During the year ending September 2014, 144 people had been in immigration detention between one and two years and 30 people for two years or longer.¹⁴⁹ The Home Office does not collect data on the length of time immigration detainees are held in prison. Deprivation of liberty for extended periods can have a significant impact on the mental and physical health of those detained in the immigration system, many of whom live with the uncertainty of not knowing if they are about to be deported or released.¹⁵⁰ We agree with the recommendations from the APPGs' inquiry report on immigration detention that the maximum time limit

¹⁴³ R (Detention Action) v UK [2014] EWCA Civ 1634.

¹⁴⁴ *Ibid.*

¹⁴⁵ Equality and Human Rights Commission, Human Rights Review, 2011, available at: www.equalityhumanrights.com/about-us/our-work/human-rights/human-rights-review-2012/key-areas-improvement/immigration-procedures-and-detention

¹⁴⁶ UNHCR. (2012). Detention Guidelines: Guidelines on the Applicable Criteria and Standards relating to the Detention of Asylum-Seekers and Alternatives to Detention: www.unhcr.org/505b10ee9.html

¹⁴⁷ European Returns Directive 2008. <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2008:348:0098:0107:EN:PDF>

¹⁴⁸ A Joint Inquiry by the All party Parliamentary Group on Refugees & the All Party Parliamentary Group on Migration. 2015. The report of the inquiry into the Use of Immigration Detention in the United Kingdom. <https://detentioninquiry.files.wordpress.com/2015/03/immigration-detention-inquiry-report.pdf>

¹⁴⁹ Government Statistics. November 2014. Immigration statistics, July to September 2014. www.gov.uk/government/publications/immigration-statistics-july-to-september-2014/immigration-statistics-july-to-september-2014

¹⁵⁰ EHRC. 2012. Human Rights Review, Article 5: www.equalityhumanrights.com/sites/default/files/documents/humanrights/hrr_article_5.pdf

should be set at 28 days in statute; and that there needs to be a robust system to review the decision to detain an individual early in the period of detention.¹⁵¹

iii. Immigration detention of people with serious medical conditions or mental illness

D.10.13 The EHRC welcomes the increased number of releases of particularly vulnerable individuals from IRCs but notes there are still failings that prevent the most vulnerable from being properly assessed and released.¹⁵² The APPG inquiry report into immigration detention identified serious problems for detainees in accessing timely and quality mental health care. It concluded that it is not possible to treat mental health conditions in IRCs and that those with mental health conditions should only be detained under exceptional circumstances.¹⁵³

D.10.14 The EHRC notes the Home Office's review of mental health issues in IRCs and welcomes that it has accepted (or partially accepted) all the recommendations made to it to improve the care and wellbeing of those detained.¹⁵⁴ The Home Secretary has also announced a broader independent review of policies and procedures affecting the welfare of those held in IRCs.¹⁵⁵ However, we are disappointed that the terms of reference for this review only consider the welfare of those held in detained settings and do not examine the Screening or Rule 35 processes which determine whether detention is appropriate for each individual. Considering that the High Court Ruling underlined that the DFT screening process was ineffective at identifying people who should not be detained,¹⁵⁶ we consider it essential that any review into the welfare of vulnerable detainees must examine the screening process that puts vulnerable people into detention in the first place. An examination of the concept of 'independent evidence of torture' should also be conducted as part of a review of the Rule 35 process as a whole.

¹⁵¹ A Joint Inquiry by the All Party Parliamentary Group on Refugees & the All Party Parliamentary Group on Migration. 2015. The report of the inquiry into the Use of Immigration Detention in the United Kingdom. <https://detentioninquiry.files.wordpress.com/2015/03/immigration-detention-inquiry-report.pdf>

¹⁵² HMIP. October 2014. Annual Report.2013-14.

¹⁵³ A Joint Inquiry by the All Party Parliamentary Group on Refugees & the All Party Parliamentary Group on Migration. 2015. The report of the inquiry into the Use of Immigration Detention in the United Kingdom. <https://detentioninquiry.files.wordpress.com/2015/03/immigration-detention-inquiry-report.pdf>

¹⁵⁴ Home Office. February 2015. Home Office Response to: Tavistock Institute's Review of Mental Health Issues in Immigration Removal Centres: www.gov.uk/government/uploads/system/uploads/attachment_data/file/402205/tavistock_response.pdf

¹⁵⁵ Home Office press release. 9 February 2015: www.gov.uk/government/news/home-secretary-announces-independent-review-of-welfare-in-detention

¹⁵⁶ Detention Action v Secretary of State for the Home Department [2014] EWHC 2245 (Admin) (09 July 2014), available at: www.bailii.org/ew/cases/EWHC/Admin/2014/2245.html;

iv. Unnatural deaths in immigration detention

D.10.15 In our July 2014 submission to the HRC, we reported on the death of Jimmy Mubenga, who had been unlawfully killed whilst being forcibly removed on an aeroplane to Angola, under the escort of three Detention and Custody Officers (DCO) employed by private contractor G4 Security (G4S).

D.10.16 In December 2014, the three DCOs who restrained Mr Mubenga were cleared of manslaughter.¹⁵⁷

D.10.17 We note the UK Government's assurances that all staff have been trained in the new system of restraint for managing people safely during immigration removals and that there is a monitoring system in place which gathers information from techniques, point of journey the incident took place, duration of restraint as well as injuries.¹⁵⁸

v. Immigration detention of women

D.10.18 327 women were detained in immigration removal centres in the last quarter of 2014.¹⁵⁹

D.10.19 The recent APPG inquiry report into immigration detention highlighted a number of issues particular to detaining women.¹⁶⁰ Evidence provided to the inquiry indicates that the vast majority of women in immigration detention centres have been victims of gender-related persecution in their home countries. However, survivors of sexual violence are not explicitly included in the categories of people who are not suitable for detention as set out in the Home Office's Enforcement Instructions and Guidance.¹⁶¹ This is contrary to guidelines from the UNHCR¹⁶² and Istanbul Convention.¹⁶³

¹⁵⁷ www.theguardian.com/uk-news/2014/dec/16/g4s-guards-found-not-guilty-manslaughter-jimmy-mubenga

¹⁵⁸ Human Rights Committee. 2015. Replies of United Kingdom, British Overseas Territories and Crown Dependencies to the list of issues. 29 June–24 July 2015: www.gov.uk/government/uploads/system/uploads/attachment_data/file/406251/immigration-q4-2014snr.pdf

¹⁵⁹ Home Office Immigration Statistics. Table dt_13_q: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/406251/immigration-q4-2014snr.pdf

¹⁶⁰ Page 64. <https://detentioninquiry.files.wordpress.com/2015/03/immigration-detention-inquiry-report.pdf>

¹⁶¹ Enforcement Instructions and Guidance. 55.10: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/400022/Chapter55_external_v19.pdf

¹⁶² UNHCR (2012) Detention Guidelines: Guidelines on the Applicable Criteria and Standards relating to the Detention of Asylum-Seekers and Alternatives to Detention, p.33 - www.unhcr.org/505b10ee9.htm

¹⁶³ Article 60, Istanbul Convention of the Council of Europe on preventing and combating violence against women and domestic violence

D.10.20 Yarl's Wood, an IRC for women, has faced a series of allegations of sexual abuse by staff against detainees. Following an investigation by the Home Office's professional standards unit, two staff were dismissed for sexual relations with a detainee.¹⁶⁴ In June 2014, the management of Yarl's Wood told Women for Refugee Women that 31 allegations of sexual contact had been investigated and 10 staff had been dismissed.¹⁶⁵

D.10.21 The Prisons Inspectorate interviewed 50 women confidentially but found no evidence of systemic sexual abuse or victimisation.¹⁶⁶ Both the Inspectorate and the APPG inquiry report into immigration detention found unacceptable insensitive behaviour by male staff, for example, entering the rooms of women without knocking while the women are undressed.¹⁶⁷ For many women who had suffered abuse or trauma, this was very distressing.¹⁶⁸ Yarl's Wood has begun to respond to the Prisons Inspectorate's recommendation to increase the number of female staff working in the IRC.¹⁶⁹

D.10.22 In March 2015, Channel 4 News broadcasted an undercover documentary on Yarl's Wood identifying staff racism, the high numbers of self-harm and a lack of decency and care for detained women.¹⁷⁰ It also highlighted the circumstances around the miscarriage of pregnant women. Home Office policy states that pregnant women must not be detained apart from in two exceptional circumstances.¹⁷¹ However, the Prisons Inspectorate has reported that pregnant women are being

¹⁶⁴ HMIP. 2014. Annual Report. http://www.justiceinspectorates.gov.uk/hmiprisons/wp-content/uploads/sites/4/2014/10/HMIP-AR_2013-141.pdf

¹⁶⁵ Evidence to the Inquiry into the Use of Immigration Detention in the United Kingdom. P.65.: <https://detentioninquiry.files.wordpress.com/2015/03/immigration-detention-inquiry-report.pdf>

¹⁶⁶ HMIP. 2014. Annual Report. www.justiceinspectorates.gov.uk/hmiprisons/wp-content/uploads/sites/4/2014/10/HMIP-AR_2013-141.pdf

¹⁶⁷ Ibid and A Joint Inquiry by the All Party Parliamentary Group on Refugees & the All Party Parliamentary Group on Migration. 2015. The report of the inquiry into the Use of Immigration Detention in the United Kingdom. <https://detentioninquiry.files.wordpress.com/2015/03/immigration-detention-inquiry-report.pdf>

¹⁶⁸ HMIP. 2014. Annual Report. www.justiceinspectorates.gov.uk/hmiprisons/wp-content/uploads/sites/4/2014/10/HMIP-AR_2013-141.pdf

¹⁶⁹ Human Rights Committee. 2015. Replies of United Kingdom, British Overseas Territories and Crown Dependencies to the list of issues. 29 June–24 July 2015: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/406251/immigration-q4-2014snr.pdf

¹⁷⁰ <http://www.channel4.com/news/yarls-wood-immigration-removal-detention-centre-investigation>

¹⁷¹ Home Office policy states that women should not normally be detained other than in two limited circumstances: 1. Where removal is imminent and medical advice does not suggest confinement before the due removal date; or, 2. For pregnant women of less than 24 weeks gestation, as part of a fast-track asylum process. Home Office. 2013. Detention services order 02/2013. Pregnant women in detention. www.gov.uk/government/uploads/system/uploads/attachment_data/file/257750/pregnant-detention.pdf

detained outside of these circumstances.¹⁷² The Home Office do not collect data on the number of pregnant women in detention.¹⁷³

D.10.23 Since the documentary, Secro has suspended one member of staff¹⁷⁴ and has appointed a barrister to conduct an independent review of Yarl's Wood.¹⁷⁵

vi. Immigration detention of children

D.10.24 In our July 2014 submission to the Human Rights Council, we noted that the UK Government had changed its policy on immigration detention for children and their families who were being removed from the UK.¹⁷⁶

D.10.25 Families who do not voluntarily leave the UK may be held for up to a week in secure 'pre-departure accommodation', called Cedars, as a 'last resort'.¹⁷⁷ Over the past three full years since Cedars opened, there has been a decrease in the number of children and families held there: 121 children in 2012, reducing to 32 in 2014.¹⁷⁸ The children's charity, Barnardo's, provides the welfare and support services and the facility has been regarded as a significant improvement to holding children at Yarl's Wood IRC.¹⁷⁹ In March 2015, Barnardo's made seven recommendations for an incoming government in order to improve the pre-departure process, including that physical intervention should not be used with children or pregnant women except to prevent harm to self or others; and children should never

¹⁷² A Joint Inquiry by the All Party Parliamentary Group on Refugees & the All Party Parliamentary Group on Migration. 2015. The report of the inquiry into the Use of Immigration Detention in the United Kingdom. P.67. <https://detentioninquiry.files.wordpress.com/2015/03/immigration-detention-inquiry-report.pdf>

¹⁷³ Medical Justice. 2015. Expecting Change: The case for ending the detention of pregnant women. <http://www.medicaljustice.org.uk/images/stories/reports/expectingchange.pdf>

¹⁷⁴ <http://www.channel4.com/news/yarls-wood-immigration-removal-detention-centre-investigation>

¹⁷⁵ Serco media release 2 March 2015:

[www.serco.com/Images/013_Yarl's%20Wood%20Serco%20appoints%20Kate%20Lampard%20to%20carry%20out%20Independent%20Review\)_tcm3-46380.pdf](http://www.serco.com/Images/013_Yarl's%20Wood%20Serco%20appoints%20Kate%20Lampard%20to%20carry%20out%20Independent%20Review)_tcm3-46380.pdf)

¹⁷⁶ EGRC. Submission to the United Nations Human Rights Committee Pre-Sessional Working Group on the United Kingdom's Implementation of the International Covenant on Civil and Political Rights. P.38

www.equalityhumanrights.com/sites/default/files/uploads/documents/humanrights/EHRC%20Submission%20to%20UN%20Human%20Rights%20Committee%20Pre-Sessional%20Working%20Group%20on%20UK%20Implementation%20of%20the%20International%20Covenant%20on%20Civil%20and%20Political%20Rights.pdf

¹⁷⁷ House of Commons Library. 2014. Standard Note. Ending Child Immigration Detention: www.parliament.uk/business/publications/research/briefing-papers/SN05591/ending-child-immigration-detention

¹⁷⁸ Home Office statistics, Feb 2015. Table dt_09: www.gov.uk/government/publications/immigration-statistics-october-to-december-2014/immigration-statistics-october-to-december-2014#detention-1

¹⁷⁹ HMCIP, *Report on an unannounced inspection of Cedars Pre-Departure Accommodation 30 April - 25 May 2012* and HMCIP, *Report on an unannounced inspection of Cedars pre-departure accommodation and overseas family escort 6 – 27 January 2014*,

be separated from their parents for the purposes of immigration control, but only if there is a safeguarding or welfare concern.¹⁸⁰

D.10.26 The UK Government did not commit to ending detention of children in short-term holding facilities (STHF) at UK points of entry. In 2010, the Home Office stated that such short detention would only affect a 'few dozen families each year, usually for less than 24 hours'.¹⁸¹ However, management information figures provided in answer to a Freedom of Information request showed that 610 children were held in at English ports between April and July 2013.¹⁸²

D.10.27 According to published official figures, 570 children were held in immigration detention from the start of 2012 to the end of 2014. 318 (55.8 per cent) were held at Tinsley House IRC or a STHF.¹⁸³ The remainder were held at Cedars. While most of these children for were held for three days or less in Tinsley House IRC or another STHF, 73 children (23 per cent) were held anywhere from four days to over three months.¹⁸⁴

D.10.28 Some unaccompanied children are also detained with adults because their age is disputed either by the UKV Visas and Immigration officials or by social services. This means that they are inappropriately detained without the increased safety provisions that a children's setting affords. In 2013, the Refugee Council said that it secured the release of 36 young people from immigration detention who had been wrongly assessed as adults. It believes there are many more children who are being incorrectly detained as adults.¹⁸⁵ It is calling for greater safeguards to prevent children being wrongly identified as adults, including the presumption that asylum applicants are children until they are independently assessed by an adult.¹⁸⁶

Conclusion:

D.10.29 The UK needs to make improvements to ensure it complies with Articles 7, 9 and 12 (and 24) of ICCPR. The UK Government detains many people for immigration purposes and too many are held for long periods of

¹⁸⁰ Barnardo's. March 2015. *Recommendations for a new government*.
www.barnardos.org.uk/cedars_report_2015.pdf

¹⁸¹ UKBA. 2010. *Review into ending the detention of children for immigration purposes*,
www.gov.uk/government/publications/review-to-end-the-immigration-detention-of-children-consultation-conclusion

¹⁸² House of Commons Library. 2014. Standard Note. Ending Child Immigration Detention:
www.parliament.uk/business/publications/research/briefing-papers/SN05591/ending-child-immigration-detention

¹⁸³ Home Office statistics, Feb 2015. Table dt_09: www.gov.uk/government/publications/immigration-statistics-october-to-december-2014/immigration-statistics-october-to-december-2014#detention-1

¹⁸⁴ *Ibid*

¹⁸⁵ Refugee Council. January 2014. 'Unlawful child detention must end', 10 January 2014

¹⁸⁶ *Ibid*.

time. The UK's DFT system for asylum seekers still does not provide adequate safeguards to guarantee quality decision-making and to screen out applicants whose detention will be detrimental to their wellbeing. People with mental health conditions have problems accessing timely and quality mental health care. Staff need to improve how they care for women detainees, and follow policy to ensure that pregnant women are only detained in exceptional circumstances. The Cedars pre-departure accommodation, with the welfare support from Barnardo's, and a statutory time limit for child detention, is a significant improvement to detaining children in Yarl's Wood. However, there is still a large number of children who are detained in other immigration settings, and for long periods of time.

Question A: What steps is the UK Government taking to remedy the unlawfulness in the DFT screening, Rule 35 processes and appeals process and will this include a full review of the DFT screening policy so that particularly vulnerable individuals do not enter detention?

Question B: How will the UK Government commit to ensuring that people are automatically released from immigration detention when they are identified as being particularly vulnerable?

Question C: Will the UK commit to setting a maximum limit of 28 days to the length of time an individual can be held in immigration detention, to avoid the human and financial costs connected with long-term detention?

Question D: Will the UK Government commit to responding to the recommendations in the APPG inquiry report on immigration detention,¹⁸⁷ including those on seeking alternative solutions to detention, which are likely to help address many of the issues which have been identified?

11. Prisons, List of Issues paragraph 22

a. Self-harm, deaths in custody and safety

D.11.1 In our submission to the HRC in 2014, we highlighted the human rights implications of the number of incidents of self-harm and self-inflicted deaths in

¹⁸⁷ See for example, A Joint Inquiry by the All Party Parliamentary Group on Refugees & the All Party Parliamentary Group on Migration. 2015. The report of the inquiry into the Use of Immigration Detention in the United Kingdom. <https://detentioninquiry.files.wordpress.com/2015/03/immigration-detention-inquiry-report.pdf>

prisons.¹⁸⁸ Latest data show there were 84 self-inflicted deaths in 2014; 9 more than in 2013.¹⁸⁹ The rate of self-inflicted deaths is now at 1 per 1,000 prisoners. This is the second year there has been an increase in the number of self-inflicted prison deaths.

D.11.2 Self-harm incidents have also increased. In the 12 months to September 2014 there were:

- 24,748 reported incidents of self-harm; up 6 per cent on the same period in 2013
- 7,465 prisoners reported to have self-harmed; up 7 per cent on the same period in 2013
- 222 incidents per 1,000 male prisoners; up 4 per cent compared with the previous 12 months, and
- 277 incidents per 1,000 female prisoners; up 2 per cent on the previous 12 months.

b. Self-inflicted deaths in custody

D.11.3 In February 2015, the EHRC published its inquiry report into non-natural deaths in detention of adults with mental health conditions, which considered the human rights implications under Article 2 of the ECHR.¹⁹⁰ The inquiry found that the prison service does not record the numbers of prisoners with mental health conditions. The most recent national data relates to 1997 where 92 per cent of male prisoners were reported to have one of the following five conditions: psychosis, neurosis, personality disorder, alcohol misuse and drug dependence. Seventy per cent experienced at least two of these conditions.¹⁹¹

D.11.4 The inquiry's findings include:

- People may enter the criminal justice system as a result of their mental health condition not being adequately treated beforehand.

¹⁸⁸ EHRC. July 2014. Submission to the United Nations Human Rights Committee Pre-Sessional Working Group on the United Kingdom's Implementation of the International Covenant on Civil and Political

Rights. Subn<http://www.equalityhumanrights.com/sites/default/files/uploads/documents/humanrights/EHRC%20Submission%20to%20UN%20Human%20Rights%20Committee%20Pre-Sessional%20Working%20Group%20on%20UK%20Implementation%20of%20the%20International%20Covenant%20on%20Civil%20and%20Political%20Rights.pdf>

¹⁸⁹ MoJ. 29 January 2015. Statistics Bulletin. Safety in Custody Statistics England and Wales. Deaths in prison custody to December 2014. Assaults and Self-harm to September 2014: www.gov.uk/government/uploads/system/uploads/attachment_data/file/399071/safety-in-custody-to-sept-2014.pdf

¹⁹⁰ EHRC. February 2015. Preventing Deaths in Detention of Adults with Mental Health Conditions. An Inquiry by the Equality and Human Rights Commission: www.equalityhumanrights.com/publication/preventing-deaths-detention-adults-mental-health-conditions

¹⁹¹ Singleton N. et al (1998) *Psychiatric Morbidity Among Prisoners, 1997*. London: ONS.

- Inadequate risk assessments, poor communication and information sharing contribute to some non-natural deaths.
- Even when a risk has been identified, the mechanism to oversee a prisoner's care (the Assessment Care in Custody and Treatment (ACCT)) is frequently not correctly implemented or monitored.
- There is a lack of family involvement in helping to inform the provision of treatment and support for a vulnerable prisoner.
- While there is some provision of treatment and support for adults, there is evidence of inappropriate mental health treatment and inconsistent treatment across the establishments.
- While training for staff on mental health awareness is available, it is not compulsory suggesting staff with competing work pressures may not participate in it.
- Prisoners with mental health conditions, and those on ACCT, are being segregated without sufficient consideration as to the appropriateness of this setting.
- While there have been efforts to learn lessons, there is some repetition of the same or similar recommendations following investigations into non-natural deaths of adults with mental health conditions. This suggests that recommendations are often only partially implemented and are not sustained long-term.

D.11.5 We have made a series of recommendations, including that institutions should adopt the EHRC Human Rights framework.¹⁹² This sets out practical steps to protect lives and to support effective investigations and learning from them.

D.11.6 In September 2014, the UK Government committed to 'a national system of liaison and diversion services being built which would mean the mental health condition of an offender could be identified during the court process and a decision taken at that stage on where to detain him'.¹⁹³ The Minister has committed to 'every prisoner who needs it to have access to the best possible treatment. I want mental health to be the priority for our system'.¹⁹⁴

D.11.7 We believe the MoJ needs to review the increase in deaths in prisons in conjunction with the inspectorates and ombudsman to ensure the changes can be made to decrease the numbers of prisoners dying. There should also be immediate implementation of the commitments made by the Secretary of State to improve

¹⁹²

www.equalityhumanrights.com/sites/default/files/uploads/Pdfs/ADI/formatted/Recommendations.pdf

¹⁹³ See www.theguardian.com/society/2014/sep/16/chris-grayling-mental-health-prisons

¹⁹⁴ *Ibid*

mental health services in prisons, after a consultation process to ensure the most effective initiatives are implemented.¹⁹⁵

c. Safety and purposeful activity

D.11.8 In our submission to the HRC in July 2014, we highlighted the significant challenges facing the prison service with significant budget and staff cuts, an increasing population and the impact this might have on prisoners' safety, purposeful activity and rehabilitation.¹⁹⁶ We also stated that the UK Government's plan to build more prison places was not a viable, long-term solution.¹⁹⁷

D.11.9 Since then, the Chief Inspector of Prisons has discussed prisoners, 'being held in deplorable conditions who are suicidal, they don't have anything to do and they don't have anyone to talk to'.¹⁹⁸

D.11.10 The Justice Committee published its report on Prisons and concluded that the confluence of estate modernisation and re-configuration, efficiency savings, staff shortages and changes in policy have made a significant contribution to the deterioration in safety.¹⁹⁹ It criticised the UK Government for its reluctance to acknowledge the serious nature of these challenges and the role of its own policy decisions in creating them.²⁰⁰

D.11.11 The Justice Committee also found there to be insufficient places to meet the increasing demand of an already overcrowded prison population, and suggested exploring opportunities to reduce numbers which does not interfere in the courts' autonomy in sentencing.²⁰¹ It concluded that if steps taken by the UK Government lead towards a larger prison population, then commensurate resources must be found so that people do not leave prison less able to play a more productive role in society than when they arrived.²⁰²

¹⁹⁵ *Ibid.*

¹⁹⁶ EHRC. July 2014: Submission to the United Nations Human Rights Committee Pre-Sessional Working Group on the United Kingdom's Implementation of the International Covenant on Civil and Political Rights: <http://www.equalityhumanrights.com/about-us/our-work/human-rights/international-framework/international-covenant-civil-and-political-rights>

¹⁹⁷ *Ibid.*

¹⁹⁸ Chief Inspector of Prisons interview. July 2014: www.bbc.co.uk/news/uk-28233294. See also. HMIP. October 2014. Annual Report: https://www.justiceinspectorates.gov.uk/hmiprisoners/wp-content/uploads/sites/4/2014/10/HMIP-AR_2013-141.pdf

¹⁹⁹ House of Commons Justice Committee. 18 March 2015. Prisons: planning and policies. HC 309. www.publications.parliament.uk/pa/cm201415/cmselect/cmjust/309/309.pdf

²⁰⁰ *Ibid.*

²⁰¹ *Ibid.*

²⁰² *Ibid.*

d. Women prisoners

D.11.12 On 6 March 2015, the female prison population stood at 3,866, a 1.6 per cent decrease on the previous year.²⁰³

D.11.13 We welcome the piloting of liaison and diversion services for people with mental health problems in the criminal justice system, with women-specific provision as an integral element.²⁰⁴ We maintain that there needs to be sufficient investment in community initiatives tailored to address the offending and rehabilitation of women, as well as to reduce the female prison population further.²⁰⁵ This includes:

- greater leadership to ensure that gender-specific responses to offending are understood and implemented
- a coherent funding strategy to reduce the uncertainty of these organisations working with women offenders and those at risk of offending
- increased women-specific community orders across England and Wales to provide sentencers with a viable alternative to custodial sentences
- improved information sharing about local services to increase the take-up of services which are available.²⁰⁶

D.11.14 The Chief Inspector of Prisons reported in October 2014 that there have been improved safety outcomes in women's prisons following the introduction of improved support procedures, including better substance misuse services and better mental health care.²⁰⁷ However, he also noted that some of the most vulnerable women are also the most challenging and their care is less developed than it would be in a men's prison.²⁰⁸

e. Disabled and older prisoners

D.11.15 As well as not collecting data on the number of prisoners with mental health conditions, the prison service does not collect data on the number of people with disabilities. The EHRC notes the Chief Inspector of Prison's findings that prisoners

²⁰³ MoJ.March 2015. Population and Capacity Briefing for Friday 06/03/2015: www.gov.uk/government/collections/prisons-and-probation-statistics

²⁰⁴ Prison Reform Trust and Soroptimist International. 2014. Transforming Lives: Reducing women's imprisonment: www.prisonreformtrust.org.uk/Portals/0/Documents/Transforming%20Lives.pdf

²⁰⁵ *Ibid.*

²⁰⁶ Prison Reform Trust and Soroptimist International. 2014. Transforming Lives: Reducing women's imprisonment: www.prisonreformtrust.org.uk/Portals/0/Documents/Transforming%20Lives.pdf

²⁰⁷ HMIP. October 2014. Annual Report:www.justiceinspectorates.gov.uk/hmiprisons/wp-content/uploads/sites/4/2014/10/HMIP-AR_2013-141.pdf

²⁰⁸ *Ibid*

with disabilities have problems accessing different parts of prison facilities.²⁰⁹

Disability will increasingly affect the rapidly aging prisoner population, and the EHRC continues to support HMCIP's repeated recommendation for an Older Prisoners Strategy to meet these specific needs.²¹⁰

Conclusion:

D.11.16 While the UK Government has made recent progress and committed to 'Transforming Rehabilitation' in England and Wales, considerable challenges in protecting the human rights of those detained by the prison service remain, particularly the right to life of offenders with mental health conditions who are at risk self-harm and self-inflicted deaths. In order to comply with Article 6 of ICCPR, the UK Government should adopt the EHRC's Human Rights Framework and implement the other recommendations of its inquiry into non-natural deaths in detention of adults with mental health conditions. In addition, a number of interventions are required to meet the complex needs of particular sections of the prisoner population, including women, older prisoners and people with disabilities; and to rehabilitate prisoners, generally, and divert them away from offending and from custody. These include:

- **further investment in community-based services to reduce offending and reoffending, such as those to tackle substance abuse**
- **improved data collection to understand the prevalence of disability within the prisoner population to help identify targeted services that meet different and complex needs**
- **the development of an older prisoners strategy**
- **implementation of the outstanding recommendations from the Corston Report, in line with the Bangkok rules and the 2013 Concluding Observations of the Committee on the Elimination of Discrimination Against Women and the Committee Against Torture, and**
- **monitoring of implementation of the extent to which the Sentencing Council's mitigation factors have been applied for sole or primary carers.**

Question A: When will the UK Government publish its review into the increase in the number of self-inflicted deaths and will it consider the potential link

²⁰⁹ HM Chief Inspector of Prisons. 2014. *Annual Report 2012-13*.

[/www.justice.gov.uk/downloads/publications/corporate-reports/hmi-prisons/hm-inspectorate-prisons-annual-report-2012-13.pdf](http://www.justice.gov.uk/downloads/publications/corporate-reports/hmi-prisons/hm-inspectorate-prisons-annual-report-2012-13.pdf)

²¹⁰ HM Chief Inspector of Prisons. 2014. *Annual Report 2012-13*.

[/www.justice.gov.uk/downloads/publications/corporate-reports/hmi-prisons/hm-inspectorate-prisons-annual-report-2012-13.pdf](http://www.justice.gov.uk/downloads/publications/corporate-reports/hmi-prisons/hm-inspectorate-prisons-annual-report-2012-13.pdf)

between the increase in the male prison population and the increase in cases of self-harm and self-inflicted deaths?

Question B: When will the UK Government respond to the recommendations from the Justice Committee, including the steps it is taking to:

- **reduce the number of people being incarcerated in prisons in England and Wales?**
- **reduce the number of hours a prisoner is locked in their cells in favour of improved purposeful activity and rehabilitation?**

Question C: What steps is the UK Government taking to respond to the findings and recommendations in the EHRC's Deaths in Detention Report? This should include ensuring that new institutions (such as Secure Training Centres and the North Wales prison in Wrexham) incorporate policies which explicitly address human rights obligations and incorporate EHRC's Human Rights Framework.

Question D: When will the UK Government carry out the commitments made by the Justice secretary to:

- **improve mental health services in prisons?**
- **identify offenders with mental health conditions, and will this include the collection and publication of the numbers of prisoners with mental health conditions and the types of mental health conditions that they have?**

Question E: Can the UK Government describe how it will evidence the impact of initiatives that specifically address the offending and rehabilitation of women?

12. Youth justice, List of issues paragraph 25

a. The age of criminal responsibility

D.12.1 In England and Wales, the age of criminal responsibility is set at 10 years old. Since the EHRC's submission to the HRC in July 2014,²¹¹ the UK Government has not taken steps to increase the age of criminal responsibility. This is not in line with

²¹¹ EHRC. July 2014: Submission to the United Nations Human Rights Committee Pre-Sessional Working Group on the United Kingdom's Implementation of the International Covenant on Civil and Political Rights. P.47: www.equalityhumanrights.com/about-us/our-work/human-rights/international-framework/international-covenant-civil-and-political-rights

recommendations from the Committee on the Rights of the Child,²¹² the Committee Against Torture²¹³ and the Council of Europe Commissioner for Human Rights.²¹⁴

D.12.2 In March 2015, in response to the HRC's questions to the UK on this matter, the UK confirmed that it has no plans to increase the minimum age of criminal responsibility.²¹⁵ We note that the Scottish Government is giving consideration to raise the age of criminal responsibility.²¹⁶

D.12.3 In our 2014 submission to the HRC, we stressed the importance of children being treated in the juvenile justice system, with sufficient consideration given to the child's age, maturity and communication skills as the best way to help meet Article 6 (right to a fair trial) under the ECHR. We support the recommendation of Lord Carlile that there should be a presumption, in law, that all children should be dealt with in youth courts.²¹⁷ We also support the piloting of a 'problem solving approach' in youth courts which better meets the aim of youth proceedings to prevent offending and have due regard to the welfare of the child.²¹⁸

b. Detention as a last resort

D.12.4 Article 37 of the UNCRC and Rule 13 Beijing Rules all call for the use of detention of children only as a last resort and for the shortest appropriate period of time. The EHRC commends the UK Government for the continued reduction in the number of children sentenced to custody. In January 2015, there were 981 under 18s in secure settings in England and Wales, a 17 per cent decrease on the previous year.²¹⁹

²¹² CRC Committee, *General Comment No. 10: children's rights in juvenile justice*, 2007, Para 32, available at: <http://www2.ohchr.org/english/bodies/crc/docs/CRC.C.GC.10.pdf> and UNCRC, October 2008. Committee on the rights of the Child, Concluding Observations, CRC/C/GBR/CO/420. Para 78. Available at: <http://www2.ohchr.org/english/bodies/crc/docs/AdvanceVersions/CRC.C.GBR.CO.4.pdf>

²¹³ Concluding observations on the fifth periodic report of the United Kingdom of Great Britain and Northern Ireland, adopted by the Committee at its fiftieth session (6-31 May 2013) para 27. Available at:

http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CAT%2fC%2fGBR%2fCO%2f5&Lang=en

²¹⁴ Memorandum by Thomas Hammarberg, Commissioner for Human Rights of the Council of Europe, following his visits to the United Kingdom (5-8 February and 31 March-2 April 2008), Rights of the child with focus on juvenile justice, CommDH (2008) 27, Strasbourg, 17 October 2008.

²¹⁵ Human Rights Committee. 114th session. 25 March 2015. Replies of United Kingdom, British Overseas Territories and Crown Dependencies to the list of issues. Paragraph 205.

²¹⁶ See Report, 2014: Stage 1 Report on the Criminal Justice (Scotland) Bill: <http://www.scottish.parliament.uk/parliamentarybusiness/CurrentCommittees/72893.aspx>

²¹⁷ www.ncb.org.uk/media/1148432/independent_parliamentarians__inquiry_into_the_operation_and_effectiveness_of_the_youth_court.pdf

²¹⁸ Ibid.

²¹⁹ Ministry of Justice, Youth Custody Data, January 2015, available at: <https://www.gov.uk/government/statistics/youth-custody-data>

D.12.5 We believe more can be done to ensure that detention is used as a last resort. For example, 62 per cent of all children and young people who are remanded into custody do not go on to receive custodial sentences.²²⁰ This suggests that for the majority of young people, detention was not necessary.

D.12.6 The Chief Inspector of Prisons has noted that the fall in the number of children in young offenders institutions means that 'the population in custody is a much more concentrated mix of boys with both great vulnerability and challenging, sometimes very violent, behaviour who are a danger to themselves, other boys and staff'.²²¹ In his latest annual report he finds that establishments struggled to control violence and bullying and that there is fighting and assaults in all establishments almost every day.²²² Official statistics support this viewpoint, with the rate of restraints, assaults and self-harm incidents all increasing over the past two years.²²³

D.12.7 The Criminal Justice and Courts Act 2015 provides for the introduction of secure training colleges as a form of youth detention. The EHRC has highlighted evidence that large establishments for most under 18s may be less beneficial to troubled and challenging children than smaller units close to a child's family and agencies to support resettlement. The Chief Inspector of Prisons has questioned whether they will be able to provide young offenders with a better education than those delivered in Young Offenders Institutions where provision has significantly improved.²²⁴ The Justice Committee has also questioned the necessity of dedicating significant funding to these colleges when the youth population is shrinking so rapidly, and they maintain that small units are safer and more humane for young people.²²⁵

c. Use of restraint in secure training colleges

D.12.8 The Criminal Justice and Courts Act provides for the potential use of reasonable force on young offenders in secure training colleges, where necessary to ensure good order and discipline on the part of persons detained. The EHRC advised the UK Government and Parliament that this provision may not be compatible with Articles 3 (freedom from torture, inhuman or degrading treatment or

²²⁰ 25 per cent of those are acquitted and over one third (37 per cent receive other court convictions. www.gov.uk/government/uploads/system/uploads/attachment_data/file/399379/youth-justice-annual-stats-13-14.pdf

²²¹ HMIP. October 2014. Annual Report 2013-14.

²²² Ibid.

²²³ www.gov.uk/government/uploads/system/uploads/attachment_data/file/399379/youth-justice-annual-stats-13-14.pdf

²²⁴ HMIP. October 2014. Annual Report 2013-14.

²²⁵ House of Commons Justice Committee. 18 March 2015. Prisons: planning and policies. HC 309. www.publications.parliament.uk/pa/cm201415/cmselect/cmjust/309/309.pdf

punishment) and 8 (right to respect for privacy and family life) of the ECHR; it has already been the subject of a decision by the Court of Appeal; and that both the UNCRC and UNCAT have recommended that restraint against children should be a last resort and exclusively to prevent harm to the child or others.²²⁶ While the UK Government accepted the principle of our concerns, it did not agree to amend the Bill before it was enacted, as it did not regard that the authorisation of the use of force would constitute a breach of Articles 3 and 8.²²⁷ This issue is all the more pertinent considering the increase in the rate of restraint in youth settings.²²⁸

Conclusion:

D.12.9 The age of criminal responsibility in England and Wales is considered 'not acceptable' by the Committee on the Rights of the Child. In order to bring England in line with the rest of Europe, the UK Government needs to implement the 2013 recommendations of the Committee Against Torture, the Beijing Rules, and the Riyadh Guidelines.

D.12.10 The number of children sentenced to custody in England and Wales continues to decrease, though children who have committed non-violent offence are still being detained. To increase compliance with Article 10 of ICCPR, the UK Government should:

- **implement the recommendations of Lord Carlile, and**
- **place a greater emphasis on restorative, community-based alternatives to youth justice, and raise the custody threshold to explicitly prevent children who have not committed a violent offence from being held in secure settings, and**
- **reconsider the effectiveness of secure training colleges for rehabilitation, compared with smaller units close to a child's family and agencies to support resettlement.**

D.12.11 Finally, provision for the use of restraint in secure training colleges may not be consistent with those young people's rights to freedom from cruel, inhuman or degrading treatment or punishment. In order to improve

²²⁶ Equality and Human Rights Commission, Briefing in relation to the use of physical restraint in secure colleges, October 2014: www.equalityhumanrights.com/legal-and-policy/our-legal-work/parliamentary-briefings/criminal-justice-and-courts-bill-2014-use-physical-restraint-secure-colleges

²²⁷ JCHR, Second Report of Session 2014–15, Legislative Scrutiny: (1) Serious Crime Bill, (2) Criminal Justice and Courts Bill (second Report) and (3) Armed Forces (Service Complaints and Financial Assistance) Bill, HL Paper 62/HC 779

²²⁸ www.gov.uk/government/uploads/system/uploads/attachment_data/file/399379/youth-justice-annual-stats-13-14.pdf

compliance with Article 7 of ICCPR, the UK Government needs to amend the Criminal Justice and Courts Act 2015.

Question A: Will the UK Government reconsider raising the age of criminal responsibility to bring it line with recommendations from UN bodies and with many countries around the world?

Question B: Will the UK Government respond to the findings and recommendations in the Lord Carlile Youth Courts report, in particular:

- **that children must always be heard in a youth court and not in an adult court, and**
- **that youth courts should pilot a problem solving approach which aims to address the underlying issues around the child's offending and have due regard to their welfare.**

Question C: Given the large number of children who do not receive a custodial sentence after being remanded in custody, will the UK Government review whether there may be ways to reduce the incarcerated youth population?

Question D: Will the UK Government review whether the proposals for secure training colleges are still appropriate for the smaller, challenging and more vulnerable detained population in line with the Chief Inspector of Prisons Recommendations, and review the provision in the Act which allows for the use of restraint for good order and discipline?

13. Hate crime (Articles 2, 3, 20 26 and 27), List of Issues paragraph 5

a. Hate crime incidents and reporting

D.13.1 In our July 2014 submission to the HRC, the EHRC set out the 2012-13 reporting figures for hate crime in England and Wales.²²⁹ In October 2014, the Home Office published the figures for 2013-14, which found the police recorded 44,480 hate crimes; an increase of five per cent on the previous year, of which:

- 37,484 (84%) were race hate crimes
- 4,622 (10%) were sexual orientation hate crimes

²²⁹ EHRC, July 2014: Submission to the United Nations Human Rights Committee Pre-Sessional Working Group on the United Kingdom's Implementation of the International Covenant on Civil and Political Rights p.50; www.equalityhumanrights.com/about-us/our-work/human-rights/international-framework/international-covenant-civil-and-political-rights

- 2,273 (5%) were religion hate crimes
- 1,985 (4%) were disability hate crimes, and
- 555 (1%) were transgender hate crimes.

D.13.2 There were increases in all five of the monitored hate crime strands (race, religion, sexual orientation, disability and transgender identity) between 2012-13 and 2013-14.²³⁰

D.13.3 The EHRC recognises that improving the reporting and recording of hate crimes is a priority for the UK Government, but notes the significant disparity in hate crimes reported by the national statistics²³¹ (approximately 278,000 hate crimes take place in England and Wales each year) and that by the police, in particular in relation to individuals who are more isolated within UK society, including:

- migrants and asylum seekers
- Gypsy, Irish traveller, and Roma communities
- transgender people, and
- disabled people.

D.13.4 In December 2014, the EHRC launched a 16-month-long project to tackle significant under-reporting of hate crime against Lesbian, Gay, Bisexual and Transgender (LGBT) people in Great Britain. This work has been funded by additional resources from the UK Government.²³² The EHRC's project will seek to develop alternative channels for reporting incidents for people who do not wish to go to the official authorities. Particular attention will be paid to rural communities where reporting is especially low.

D.13.5 The project aims to deliver:

- improved understanding among LGBT people of their rights and how to engage them and report incidents
- improved knowledge and understanding of LGBT hate crimes within criminal justice agencies, leading to greater and more consistent recording, and

²³⁰ Home Office, October 2014, Hate Crimes England and Wales, 2013/14: www.report-it.org.uk/files/home_office_hate_crime_data_201314.pdf

²³¹ Home Office, Ministry of Justice, Office for National Statistics, December 2013, An overview of Hate Crime in England and Wales: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/266358/hate-crime-2013.pdf

²³² EHRC, December 2014, Commission launches new project to help tackle LGB and T hate crime. www.equalityhumanrights.com/commission-launches-new-project-help-tackle-lgb-and-t-hate-crime

- a reduction in the number of LGBT hate crime incidents occurring, due to improved preventative action and greater public awareness of homophobic and transphobic hate crime.

b. Anti-Muslim hatred

D.13.6 The combined Crime Survey for England and Wales 2011-12 and 2012-13 estimated that there were around 70,000 incidents of religiously motivated hate crime per year.²³³ The aftermath of the murder of Lee Rigby led to a spike in the number of reports of anti-Muslim hatred.²³⁴ The EHRC acknowledges the steps outlined in the UK Government's hate crime action plan to tackle anti-Muslim hatred, including the launch of the first third party reporting service to record incidents and support victims of anti-Muslim hatred.²³⁵

c. Anti-Semitism

D.13.7 A 2015 report of the All Party Parliamentary Inquiry into Anti-Semitism notes that the Community Security Trust points to a distinct global pattern in which 'overseas events (primarily, but not exclusively, involving Israel) trigger sudden escalations in local anti-Semitic incident levels'.²³⁶ The inquiry report makes a number of conclusions and recommendations on the state of anti-Semitism in the UK. One recommendation proposed that the EHRC publish guidance to help local authorities, political parties and candidates understand how equality and human rights law affects election campaigning. We published our Election Guidance on 17 May 2015.²³⁷

²³³ Home Office, Ministry of Justice, Office for National Statistics, December 2013, An overview of Hate Crime in England and Wales available at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/266358/hate-crime-2013.pdf

²³⁴ HM Government, Challenge it, report it, stop it. Delivering the Government's hate crime action plan, 2014, available at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/307624/HateCrimeActionPlanProgressReport.pdf

²³⁵ HM Government, Challenge it, report it, stop it. Delivering the Government's hate crime action plan, 2014, available at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/307624/HateCrimeActionPlanProgressReport.pdf

²³⁶ All Party Parliamentary Group Against Anti-Semitism, February 2015, Report of the All Party Parliamentary Inquiry into Anti-Semitism. Available at: www.antisemitism.org.uk/wp-content/themes/PCAA/images/4189_PCAA_Antisemitism%20Report_spreads_v9%20REPRO-DPS_FOR%20WEB_v3.pdf

²³⁷ www.equalityhumanrights.com/publication/equality-and-human-rights-law-during-election-period-guidance-local-authorities-candidates-and

d. Aggravated offences

D.13.8 In relation to aggravated offences, the information in the EHRC's July 2014 submission²³⁸ remains the latest position. 'Challenge it, Report it, Stop it' 2014 states that the UK Government will shortly consider the findings from the Law Commission's consultation on the case for extending the existing stirring up hatred and aggravated offences.²³⁹

e. Freedom of expression and hate speech

D.13.9 Our July 2014 submission also noted that the UK's interpretative declaration of Article 4 of the Convention on the Elimination of Racial Discrimination (CERD) sets out the law in England and Wales in relation to the restrictions on the right to freedom of expression in relation to incitement to violence against others, or the promotion of hatred based on the colour of someone's skin or their sexual orientation or their religion. We continue to share the concerns raised by CERD²⁴⁰ and the European Commission against Racism and Intolerance (ECRI)²⁴¹ and more recently by the UN High Commissioner for Human Rights²⁴² about the negative media portrayal of some isolated groups, such as refugees and migrants. Following the tragic events in Paris, the EHRC published guidance in February 2015 on Freedom of Expression under Article 10 of the ECHR.²⁴³

Conclusion:

D.13.10 While the EHRC acknowledges the UK Government is actively taking steps to address hate crime, we believe further work could be done to improve reporting and operational responses, including:

²³⁸ EHRC. July 2014. Submission to the United Nations Human Rights Committee Pre-Sessional Working Group on the United Kingdom's Implementation of the International Covenant on Civil and Political Rights. P.54: www.equalityhumanrights.com/about-us/our-work/human-rights/international-framework/international-covenant-civil-and-political-rights

²³⁹ Home Office. 2014. Challenge it, Change it, Stop it: [/www.gov.uk/government/uploads/system/uploads/attachment_data/file/307624/HateCrimeActionPlanProgressReport.pdf](http://www.gov.uk/government/uploads/system/uploads/attachment_data/file/307624/HateCrimeActionPlanProgressReport.pdf)

²⁴⁰ Committee on the Elimination of Racial Discrimination, Concluding observations of the Committee on the Elimination of Racial Discrimination for the United Kingdom and Northern Ireland, 2011, para 11, available at: www2.ohchr.org/english/bodies/cerd/docs/CERD.C.GBR.CO.18-20.pdf

²⁴¹ European Commission on Racism and Intolerance, Report on the United Kingdom, 2010, p46, available at: www.coe.int/t/dghl/monitoring/ecri/country-by-country/united_kingdom/GBR-CbC-IV-2010-004-ENG.pdf

²⁴² UN Human Rights Chief urges U.K. to tackle tabloid hate speech, after migrants called "cockroaches" April 2015: <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=15885&LangID=E>

²⁴³ EHRC, February 2015, <http://www.equalityhumanrights.com/publication/freedom-expression-legal-framework>

- **implementation of the Law Commission's recommendation for a full-scale review of the operation and effectiveness of enhanced and aggravated sentencing provisions, and**
- **implementation of the recommendations from CERD and ECRI and the UN High Commissioner for Human Rights to tackle the negative portrayal of particular groups by the media.**

Question A: What steps is the UK Government taking to support improved reporting of hate crime to authorities?

Question B: How does the UK Government plan to respond to the Law Commission's recommendation for a comprehensive review of hate crime legislation?

Question C: When will the UK Government take forward recommendations from the all-party parliamentary inquiry into anti-Semitism?

14. Violence against women and girls (VAWG) (Articles 2, 3, 7, and 26), List of Issues paragraph 10

D.14.1 The EHRC has stressed that violence against women and girls (VAWG) is one of the most pervasive human rights issues in Britain.²⁴⁴

D.14.2 The latest data from the Crime Survey of England and Wales show that in 2013-14:²⁴⁵

- 8.5% of women experienced some form of domestic abuse in the last year, equivalent to an estimated 1.4 million female victims.²⁴⁶
- 6.8% of women experienced partner abuse in the last year, equivalent to an estimated 1.1 million female victims and 500,000 male victims.
- Overall, 28.3% of women had experienced any domestic abuse since the age of 16, equivalent to an estimated 4.6 million female victims.

²⁴⁴ For further information on our submission see EHRC. 2014. Submission to the United Nations Committee Pre-Sessional Working Group on the United Kingdom's Implementation of the International Covenant on Civil and Political Rights. P. 55-57: www.equalityhumanrights.com/about-us/our-work/human-rights/international-framework/international-covenant-civil-and-political-rights

²⁴⁵ ONS. 2015. Chapter 4: Violent Crime and Sexual Offences - Intimate Personal Violence and Serious Sexual Assault: www.ons.gov.uk/ons/dcp171776_394500.pdf

²⁴⁶ This includes partner / ex-partner abuse (non-sexual), family abuse (non-sexual) and sexual assault or stalking carried out by a current or former partner or other family member).

- 2.2% of women experienced some form of sexual assault (including attempts) in the last year.

D.14.3 The EHRC highlighted the ongoing need for the UK Government to take the required steps to ratify the Istanbul Convention (Convention on preventing and combating violence against women and domestic violence)²⁴⁷ and to take the necessary measures to ensure victims of VAWG have access to required support services.

a. Ratification of the Istanbul Convention

D.14.4 In our July 2014 submission to the HRC,²⁴⁸ the EHRC considered that ratification and compliance with the Istanbul Convention would enable the UK to satisfy the Committee on the Elimination of Discrimination against Women's outstanding recommendations²⁴⁹ and its General Recommendation 19.²⁵⁰ We also set out a detailed analysis of what the UK Government needs to do to comply with the Istanbul Convention.²⁵¹ Our analysis concluded that most obligations are, or will soon be, implemented through British legislation,²⁵² but that further actions are required to avoid potential legislative non-compliance.²⁵³ Recent proposed legislative developments may address some of our recommendations:

- On 18 December 2014, the Home Secretary announced that she will include a new offence of domestic abuse as an amendment to the Serious Crime Bill which

²⁴⁷ The Istanbul Convention, available at: <http://www.coe.int/t/dghl/standardsetting/convention-violence/convention/Convention%20210%20English.pdf>

²⁴⁸ EHRC. July 2014. Submission to the United Nations Committee Pre-Sessional Working Group on the United Kingdom's Implementation of the International Covenant on Civil and Political Rights www.equalityhumanrights.com/sites/default/files/uploads/documents/humanrights/EHRC%20Submission%20to%20UN%20Human%20Rights%20Committee%20Pre-Sessional%20Working%20Group%20on%20UK%20Implementation%20of%20the%20International%20Covenant%20on%20Civil%20and%20Political%20Rights.pdf P.54.

²⁴⁹ Committee on the Elimination of Discrimination against Women, Concluding observations on the seventh periodic report of the United Kingdom of Great Britain and Northern Ireland, 30 July 2013, available at: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CEDAW%2fC%2fGBR%2fCO%2f7&Lang=en

²⁵⁰ This recommendation relates to VAWG: www.un.org/womenwatch/daw/cedaw/recommendations/recomm.htm#recom19

²⁵¹ See the EHRC's PSWG Submission pp 55-56. For a more detailed assessment of the EHRC's analysis on what the UK Government needs to achieve to meet the Istanbul Convention, please see our submission to the Joint Committee of Human Rights Inquiry on Violence Against Women and Girls (March 2014):

<http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/human-rights-committee/violence-against-women-and-girls/written/7840.html>

²⁵² For example, a prohibition on simulated rape pornography (Article 12) is now addressed through the Criminal Justice and Courts Act 2015 and the criminalisation of forced marriage (Article 37) is addressed through the Anti-Social Behaviour, Crime and Policing Act 2014.

²⁵³ EHRC's PSWG Submission p 55.

will 'explicitly criminalise patterns of coercive and controlling behaviour where they are perpetrated against an intimate partner or family member'.²⁵⁴

- In Wales, the Gender-based Violence, Domestic Abuse and Sexual Violence (Wales) Bill was passed on 10 March 2015²⁵⁵ and the Welsh Government has consulted on its National Training Framework on gender-based violence, domestic abuse and sexual violence.²⁵⁶

D.14.5 In February 2015 the UK Parliament's Joint Committee on Human Rights (JCHR) published a report on its inquiry into Violence against Women and Girls (VAWG Inquiry).²⁵⁷ The JCHR called 'on the Government to prioritise ratification of the Istanbul Convention by putting the final legislative changes required (regarding jurisdiction) before' Parliament.²⁵⁸ The UK Government gave evidence to the JCHR that 'a specific statutory provision would be required to enable relevant parts of the criminal law to be applied to conduct abroad' and therefore enable ratification of the Istanbul Convention.²⁵⁹ In March 2015, the UK Government published its VAWG progress report, outlining action that it has taken to address this issue.²⁶⁰

b. State support required to address VAWG

D.14.6 The EHRC reiterates its view that the UK Government needs to provide sufficient financial and legal support and refuge to victims of VAWG, as required under Article 20 of the Istanbul Convention.²⁶¹

²⁵⁴ Home Office, *Strengthening the Law on Domestic Abuse Consultation – Summary of Responses* (December 2014), p 11, available at: <https://www.gov.uk/government/consultations/strengthening-the-law-on-domestic-abuse>. In its Inquiry, the JCHR recommended an additional awareness-raising campaign and review of training for the criminal justice professions: <http://www.parliament.uk/business/committees/committees-a-z/joint-select/human-rights-committee/news/violence-against-women-and-girls-report/> (para 140).

²⁵⁵ Welsh Government press release. 10 March 2015: <http://gov.wales/newsroom/people-and-communities/2015/assembly-passes-violence-against-women-domestic-abuse-sexual-violence-bill/?lang=en>

²⁵⁶ Welsh Government, *Consultation: National Framework on gender-based violence, domestic abuse and sexual abuse*, available at: <http://gov.wales/consultations/people-and-communities/national-training-framework-on-gender-based-violence/?status=open&lang=en>

²⁵⁷ Joint Committee on Human Rights, *Violence against women and girls: Sixth Report of Session 2014-15* (February 2015), available at: <http://www.parliament.uk/business/committees/committees-a-z/joint-select/human-rights-committee/news/violence-against-women-and-girls-report/>

²⁵⁸ Ibid, p 4.

²⁵⁹ Ibid, pp 61-62. Also see EHRC submission to the Joint Committee of Human Rights Inquiry on Violence Against Women and Girls (March 2014), para 6(c): <http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/human-rights-committee/violence-against-women-and-girls/written/7840.html>

²⁶⁰ HM Government. March 2015. A Call to End Violence against Women and Girls Progress Report 2010 – 15: www.gov.uk/government/uploads/system/uploads/attachment_data/file/409510/VAWG_Progress_Report_2010-2015.pdf

²⁶¹ EHRC's PSWG submission

D.14.7 The EHRC welcomes the UK Government announcement in November 2014 of £10 million funding to support women's refuges in 100 areas across England and that it has written to England's 326 councils to remind them of their 'legal duty to house women and children who have been forced to flee their homes for fear of violence and abuse'.²⁶² However the EHRC draws the HRC's attention to the findings of the JCHR's VAWG Inquiry, which highlighted funding for specialist support services as a key issue, including an evidence gap in the number of refuge spaces per head in local authority areas.²⁶³ Such data are essential to determine whether the required services are being provided. This is important given the JCHR received evidence from the Women's Aid Annual Survey 2014 of domestic violence services across England, which found that nearly a third of referrals to refuges in 2013-14 were turned away because of lack of space.²⁶⁴

D.14.8 In April 2013, the Legal Aid, Sentencing and Punishment of Offenders (LASPO) Act 2012 narrowed the scope of civil legal aid in England and Wales. Excluded areas include private law family cases except where there is evidence of domestic violence; housing and debt cases where the home is not at risk; and most welfare benefits cases.²⁶⁵

D.14.9 In terms of UK Government's legal support to victims of VAWG, evidence from civil society organisations suggests that domestic violence victims may not be able to provide adequate proof of their experiences to qualify for legal aid for a family law case.²⁶⁶ A civil society organisation, Rights of Women, challenged the lawfulness of the regulations requiring this evidence, but in January 2015 the High Court found

²⁶² We also welcome £40million of ring-fenced stable funding from 2011-2015 for specialist local domestic and sexual violence support services and national helplines. Department for Communities and Local Government, Home Office, Government Equalities Office, *Government action to help eliminate violence against women and girls* (Media Release, 25 November 2014), available at: <https://www.gov.uk/government/news/government-action-to-help-eliminate-violence-against-women-and-girls>

²⁶³ See Joint Committee on Human Rights, *Violence against women and girls: Sixth Report of Session 2014-15* (February 2015), section 4, available at: <http://www.parliament.uk/business/committees/committees-a-z/joint-select/human-rights-committee/news/violence-against-women-and-girls-report/>

²⁶⁴ Women's Aid Annual Survey 2014, available at: <http://www.womensaid.org.uk/page.asp?section=00010001001400130005§ionTitle=Women's+Ai+d+Annual+Survey>

²⁶⁵ Legal Aid, Sentencing and Punishment of Offenders Act 2012: www.legislation.gov.uk/ukpga/2012/10/contents/enacted

²⁶⁶ See Welsh Women's Aid, Rights of Women, Women's Aid, *Evidencing domestic violence: reviewing the amended regulations* (2014), available at: <http://rightsofwomen.org.uk/wp-content/uploads/2014/12/Evidencing-domestic-violence-IV.pdf>.

the regulations to be lawful.²⁶⁷ Rights of Women have indicated they are seeking to appeal this decision.²⁶⁸

Conclusion:

D.14.10 Violence against women and girls (VAWG) remains one of the most pervasive human rights issues in England and Wales. In order to improve compliance with Articles 2, 3, 7 and 26 of ICCPR the UK Government must:

- **continue to work towards ratification and implementation of the Istanbul Convention, including ensuring that victims of VAWG have access to sufficient financial and legal support; and**
- **implement the 2013 recommendations of the Committee on the Elimination of Discrimination Against Women, and the Committee's General Recommendation 19 on VAWG.**

Question A: When will the UK Government take the required action to ratify the Istanbul Convention?

Question B: Could the UK Government describe how it monitors local public agencies in England and Wales' delivery of VAWG strategies and services to ensure compliance with the UK's international human rights obligations?

Question C: Could the UK Government provide information about the financial and human resources local public agencies in England and Wales dedicate to VAWG strategies and services, as well as the total UK public expenditure on implementing the UK's international human rights obligations in relation to VAWG? Could these resources be disaggregated to show expenditure on the following provision:

- **assistance to victims of VAWG in accessing legal representation and advice**
- **refuge to victims of VAWG, including how many refuge spaces each council area has**
- **health services to victims of VAWG, including victims of FGM.**

Question D: Will the UK Government review the requirements for evidence of domestic violence for access to legal aid?

²⁶⁷ *R (oao Rights of Women) v Lord Chancellor* [2015] EWHC 35 (Admin)

²⁶⁸ <http://www.familylawweek.co.uk/site.aspx?i=ed143266>

E. Productive and Valued Activities

15. The pay gap (Articles 2, 3 and 26), List of Issues paragraph 9

E.15.1 The EHRC notes the progress the UK Government has made to address the pay gap between men and women, however we consider these efforts need to be revitalised.²⁶⁹ The EHRC also considers that the pay gaps for other individuals who share protected characteristics such as by race and disability require more attention.²⁷⁰

E.15.2 The full-time gender pay gap stood at 9.4 per cent in 2014; a slight decrease from 2013.²⁷¹ The pay gap for full and part time workers together is also decreasing at 19.1 per cent.²⁷² There is little to no gender pay gap between men and women in age groups below 40, however it widens sharply for those who are older than this.²⁷³

E.15.3 Data suggest the main cause of the gender pay gap is the impact of motherhood on women's employment outcomes. This may arise as a result of the following factors:

- the limited availability and high cost of suitable childcare²⁷⁴

²⁶⁹ See the EHRC's Mid-Term Universal Periodic Review Report (August 2014), p 36: http://www.equalityhumanrights.com/sites/default/files/publication_pdf/UPR%20Mid-Term%20Report%20EHRCfinal210814_Web.pdf

²⁷⁰ The protected groups under the Equality Act 2010: race, age, disability, sex, gender reassignment, religion or belief and sexual orientation, marriage and civil partnership and pregnancy and maternity.

²⁷¹ Office for National Statistics. *Annual Survey of Hours and Earnings, 2014 Provisional Results*. November 2014:

http://www.ons.gov.uk/ons/dcp171778_385428.pdf. This figure is based on median hourly earnings excluding overtime.

²⁷² Office for National Statistics. *Annual Survey of Hours and Earnings, 2014 Provisional Results*.p 10, November 2014:

http://www.ons.gov.uk/ons/dcp171778_385428.pdf

²⁷³ With the exception of the 16-17 age group: Office for National Statistics. *Annual Survey of Hours and Earnings, 2014 Provisional Results*. November 2014, Figure 9:

http://www.ons.gov.uk/ons/dcp171778_385428.pdf

²⁷⁴ EHRC. *Work and Care: A Study of Modern Parents*, Research Report 15, Pp14-15:

www.equalityhumanrights.com/sites/default/files/documents/research/15._work_and_care_modern_parents_15_report.pdf

- the lower pay of many of the part-time jobs, which many mothers take during this period of their lives²⁷⁵
- the unfair treatment and discrimination, which can still occur when women announce their pregnancy, take maternity leave or return to employment²⁷⁶
- direct and indirect discrimination in pay policies and practices,²⁷⁷ and
- the continued lack of flexible working practices in more senior positions, which often inhibits many mothers from progressing in their careers.²⁷⁸

E.15.4 The Equality Act 2010 (Equal Pay Audit Regulations) took effect in October 2014.²⁷⁹ The EHRC welcomes the changes that will require employment tribunals to order a respondent to carry out an equal pay audit in cases where there has been an equal pay breach.²⁸⁰ However the EHRC notes that other recent changes, such as the introduction of fees for equal pay claims and the repeal of s138 of the Equality Act 2010, may have adverse effects on people challenging discriminatory pay (also see Access to Civil Justice).²⁸¹

E.15.5 The EHRC has supported the UK Government's 'Think, Act, Report' initiative to encourage companies to improve gender equality on a voluntary basis.²⁸² However, only 270 employers²⁸³ are involved in this initiative, compared to 6,700 companies with over 250 employees in the UK.²⁸⁴ Of those 270 employers, only five

²⁷⁵ The Resolution Foundation. 2012. *The Price of Motherhood: Women and Part-Time Work*. www.resolutionfoundation.org/publications/price-motherhood-women-and-part-time-work/

²⁷⁶ Joint work between Government and the EHRC is now underway on this issue: www.gov.uk/government/news/1m-million-to-help-tackle-pregnancy-discrimination-in-the-workplace

²⁷⁷ H Metcalf, *Pay gaps across the equality strands: a review*, Equality and Human Rights Commission (2009), p 26: http://www.equalityhumanrights.com/sites/default/files/documents/research/14_pay_gaps_across_equalities_review.pdf

²⁷⁸ The Resolution Foundation. 2012. *The Price of Motherhood: Women and Part-Time Work*. P. 7: www.resolutionfoundation.org/publications/price-motherhood-women-and-part-time-work/

²⁷⁹ <http://www.legislation.gov.uk/ukxi/2014/2559/contents/made>

²⁸⁰ S139A, Equality Act 2010; The Equality Act 2010 (Equal Pay Audit) Regulations 2014. Employment tribunals must order the audit subject to exceptions in regulations 3 and 4.

²⁸¹ In order to inform the Commission's future action and reporting the Commission has commissioned a literature review and stakeholder roundtables to fill an evidence gap on the potential and actual equality and human rights impacts of the recent changes that may have affected access to civil law justice.

²⁸² DCMS. May 2014. *Think, Act, Report*. www.gov.uk/government/policies/creating-a-fairer-and-more-equal-society/supporting-pages/think-act-report

²⁸³ Jo Swinson, (Parliamentary Under-Secretary of State for Business, Innovation and Skills), House of Commons, Parliamentary Questions House of Commons, 26 February 2015: <http://www.publications.parliament.uk/pa/cm201415/cmhansrd/cm150226/debtext/150226-0001.htm#15022646000031>

²⁸⁴ Department for Business Innovation and Skills, *Business Population Estimates for the UK and Regions 2014* (26 November 2014): https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/377934/bpe_2014_statistical_release.pdf

have signed up to publish their gender pay gaps.²⁸⁵ Since this suggests that a voluntary approach, on its own, will not deliver the transparency needed to achieve a change in companies' behaviour, we welcome the UK Government's decision to make gender pay gap reporting mandatory for companies employing 250 people or more.²⁸⁶ The new clause will place a duty on the Secretary of State to make the necessary regulations within 12 months of the enactment of the Small Business, Enterprise and Employment Bill.²⁸⁷ The EHRC looks forward to hearing more about how this regulation will be monitored and enforced.

E.15.6 In Wales, there is already a requirement for public authorities to publish an equality objective to address any gender pay gap, or else publish the reasons why it has not done so.²⁸⁸ Welsh local authorities have found that they have made good progress in reducing the gender pay gap but recognised there was more work to be done. They felt that significant progress could be best achieved if external factors, such as those relating to childcare were addressed.²⁸⁹

E.15.7 The EHRC considers it would also be helpful for the UK Government to promote good practice by employers and to ensure that successful initiatives taken by the devolved governments are better shared.²⁹⁰

E.15.8 Unlike gender, there are no regular analyses on the pay gaps faced by those with other protected characteristics. This reduces public awareness of these pay gaps and makes it difficult to monitor any changes over time. Existing data sources, while increasingly dated, can be used to provide an assessment of pay gaps for individuals with some protected characteristics, but no reliable evidence exists for lesbian, gay, bisexual or transgender people.

E.15.9 The EHRC has conducted research that demonstrates discrimination and unfair treatment is still a factor in relation to pay gaps by age, ethnicity, religious

²⁸⁵ House of Commons Hansard Debates for 16th Dec 2014
<http://www.publications.parliament.uk/pa/cm201415/cmhansrd/cm141216/debtext/141216-0002.htm#14121647000005>

²⁸⁶ EHRC. 11 March 2015: <http://www.equalityhumanrights.com/commission-welcomes-moves-make-gender-pay-gap-reporting-law>

²⁸⁷ *Ibid.*

²⁸⁸ Equality Act 2010 (Statutory Duties) (Wales) Regulations 2011.

²⁸⁹ Welsh Government. 2014, Welsh Ministers Report on Equality.

<http://gov.wales/docs/dsjlg/publications/equality/141218-ministers-report-equality-2014-en-v1.pdf>

²⁹⁰ The Welsh Government produces an Annual Equality Report that provides details of pay differences by gender, ethnicity and disability while the Scottish Government funds the 'Close the Gap' campaign.

belief and disability.²⁹¹ However, like gender, the main causes of these other equal pay gaps are a range of economic and social factors and a variety of approaches will be necessary to tackle them effectively.²⁹²

Conclusion:

E.15.10 There has been significant progress in England and Wales towards closing the gender pay gap between men and women in age groups below 40. While this suggests significant progress in tackling direct discrimination on the basis of gender, challenges remain in relation to the unequal employment outcomes that many mothers experience. While we welcome the recent initiative from the UK Government for large employers to publish information regarding the gender pay gap in their business, in order to improve compliance with Articles 2,3, 26 of ICCPR, it must also consider broader issues, such as improving access to affordable childcare, and progress initiatives to monitor and address the pay gaps in relation to individuals with other protected characteristics, such as ethnic minorities, age, religion or belief, and disabled people.

Question A: Could the UK Government explain how it will monitor and enforce the new regulation on business to publish information on their gender pay gap?

Question B: When will the UK Government review the impact of the recent introduction of fees for Employment Tribunals to ensure that these are not associated with adverse equality impacts in terms of access to redress; and review the impact of the repeal of s138 of the Equality Act 2010?

Question C: Will the UK Government review existing government statistics with a view to producing regular estimates of the pay gaps for full-time and part-time work, as well as the associated employment rates, for all the main protected characteristics to reflect the demographic diversity of modern day Britain?

²⁹¹ For example, see *Barriers to Employment and Fair Treatment at Work: A Quantitative Analysis of Disabled Peoples Experiences*:

www.equalityhumanrights.com/uploaded_files/barriers_and_unfair_treatment_final.pdf

²⁹² These issues are discussed in Platt, L. *Understanding Inequalities: Stratification and Difference*, 2011, chapters four, five and eight respectively: eu.wiley.com/WileyCDA/WileyTitle/productCd-0745641768.html

Appendix A: Summary of Recommendations and Questions

Recommendations

1. Judicial Diversity (Articles 2, 3, 25 and 26), List of Issues paragraph 6 and 9.

The UK Government has taken a number of positive steps in relation to improving the diversity of the judiciary in England and Wales, such as establishing a Judicial Diversity Taskforce. However, progress in increasing the representation of women, ethnic minorities and people from poor socio-economic backgrounds remains slow and is out of step with progress across the globe. For progress to accelerate and the UK Government to improve compliance with Article 2 of ICCPR in relation to the judiciary, it must rapidly implement the recommendations of Advisory Panel on Judicial Diversity and the House of Lords Committee on the Constitution. If there is no significant increase in the numbers of women and ethnic minorities in judicial appointments by 2017, the UK Government should consider the introduction of non-mandatory targets.

2. Access to Civil Justice (Article 14), List of Issues paragraph 24²⁹³

Changes introduced to civil legal aid by the LASPO Act 2012 and reforms to Judicial Review introduced by the Criminal Justice and Courts Act 2015 have significantly weakened the protections for the right to equality before courts and tribunals for all persons in England and Wales. The UK Government needs to take a number of steps to improve compliance with Article 14 of ICCPR, including:

- Urgently acting on the evidence of weaknesses in the exceptional funding scheme for legal aid and the telephone advice gateway;
- Responding to the recommendations of the Low Commission on the future of advice and legal support for social welfare in England and Wales; and
- Withdrawing the residence test, the restrictions for legal aid for judicial review, and the proposals to limit the court's discretion in these cases.

3. Counter Terrorism Provisions (Articles 9, 14), List of Issues paragraph 11, 20, 23²⁹⁴

²⁹³ HRC. November 2014. List of issues in relation to the seventh periodic report of the United Kingdom of Great Britain and Northern Ireland:
www.equalityhumanrights.com/sites/default/files/uploads/documents/humanrights/List%20of%20issues%20Nov%2014.pdf

²⁹⁴ HRC. November 2014. List of issues in relation to the seventh periodic report of the United Kingdom of Great Britain and Northern Ireland:
www.equalityhumanrights.com/sites/default/files/uploads/documents/humanrights/List%20of%20issues%20Nov%2014.pdf

The UK Government has introduced a package of anti-terrorism legislation, which creates very wide-reaching powers that may be incompatible with its obligations to protect the rights to liberty and equality before the courts while protecting national security. The UK Government needs to conduct a broad review of its anti-terrorism legislation to ensure that all these powers are necessary and do not unduly interfere with its obligations under Articles 9 and 14 of ICCPR, including consideration of:

- amending Schedule 8 to the Terrorism Act 2000 so that terrorism suspects have the same right to access legal advice as those arrested for non-terrorism related cases;
- reducing the limit on pre-charge detention for terrorist suspects to four days, in line with the criminal law in England and Wales;
- considering the continued necessity of TPIMs; and
- restricting the use of closed material proceedings to the smallest possible number of courts and tribunals, as a last resort where there is no alternative means of achieving justice;
- repealing the provisions in the Justice and Security Act to extend the use of closed material proceedings into civil litigation; and
- where material is to remain closed, ensuring the excluded party is given sufficient information to enable them to give effective instructions to their Special Advocate.

4. Stop and Search (Articles 9, 17 and 26), List of Issues, paragraphs 8, 11 and 23

Evidence suggests that stop and search powers may not be being exercised fairly and in a non-discriminatory manner in England and Wales. If that's the case, then the UK Government may not be fulfilling its obligations in relation to the rights to privacy, liberty and security, the prohibition on discrimination under Articles 9, 17 and 26 of ICCPR.

5. Trafficking and forced labour (Articles 2, 8, 9, 14, 24 and 26), List of Issues paragraph 26

The Modern Slavery Act 2015 is a timely and necessary legislative measure to enforce the prohibition on trafficking and slavery in England and Wales. However, gaps in legislation and implementation remain, in relation to the protection of children and adults who have been victims of trafficking and exploitation, for example as evidenced in the UK Government's review of the National Referral Mechanism. In order to improve compliance with Articles 2, 8, 9, 14, 24 and 26 of ICCPR, the UK Government should commit to:

- reviewing the Modern Slavery Act within this Parliament to see whether it is functioning as intended and, if evidence suggests these remaining gaps impact on compliance with international human rights obligations, bringing forward amendments to the legislation;
- expediting implementation of the pilot schemes to address the recommendations of the review of the National Referral Mechanism, including the provision of legal advice from the point at which potential victims of trafficking are identified;

- ensuring the Regulations detailing the provisions for the identification and support of victims of trafficking address the need for the following:
 - a formal appeal process in the NRM;
 - a clear statutory duty to record and report trafficked children who go missing from care applicable to all relevant public authorities, including: health authorities, schools, prisons, probation services, competent authorities and voluntary organisations performing a public function; and
 - clarity that only a credible suspicion is required to trigger the provision of support and assistance and require public authorities to report suspected victims of trafficking or slavery.

6. Privacy and Security (Articles 2, 5 (1) and 17), List of Issues paragraph 28

The nature of the legal framework governing privacy and surveillance in the UK means the protections for the rights to privacy and freedom of expression are fragmented and may not be in pace with the demands of protecting national security and changes in the technology of gathering and sharing data. In order to demonstrate and ensure compliance with Articles 2, 5(1) and 17 of ICCPR, the UK Government needs to conduct a forward-looking “root and branch” review of the privacy and surveillance legal framework, and establish principles to govern authorisations, including necessity, proportionality, legitimacy and fairness. The review should specifically consider:

- the introduction of a requirement for judicial authorisation for interception warrants under Part 1 of RIPA to ensure effective, independent scrutiny;
- whether requests to access traffic and service use data (but not subscriber data) under Part 2 of RIPA could meaningfully be subjected to judicial scrutiny;
- introducing a number of reforms to improve the cohesion, efficiency, transparency and accountability of the RIPA oversight system (including the Surveillance Commissioners, IPT and ISC) while preserving national security; and
- the need for the UK Parliament to clarify the definition of “communication” in Section 20 of RIPA as a matter of urgency and ensure the levels of authorisations required are proportionate to the protection needed.

7. Voting Rights (Article 25), List of Issues paragraph 30

The UK Government is yet to implement the UN Human Rights Committee's 2008 recommendation²⁹⁵ or the Joint Committee on Human Rights recommendation to introduce legislation to allow all prisoners serving sentences of 12 months or less to vote in all UK Parliamentary, local and European elections, in line with the European Court on Human Rights Judgments on the right to fair elections. The UK Government needs to take these steps in order to comply with article 10, paragraph 3, when read in conjunction with article 25 of ICCPR.

²⁹⁵ Concluding Observations of the Human Rights Committee for the United Kingdom of Great Britain and Northern Ireland, 30 July 2008, para 28:
http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2fGBR%2fCO%2f6&Lang=en

8. Caste Discrimination, Articles 2, 20, 26 and 27, List of Issues paragraph 6

The Equality Act 2010 provides one of the most comprehensive legislation frameworks in the world aimed at implementing the prohibition on discrimination. In order to provide clarity on how the UK provides protection from caste discrimination in relation to Article 2 of ICCPR, the specific provision in section 9(5) Equality Act 2010 needs to be enacted.

9. Prohibition of torture and cruel, inhuman or degrading treatment (Articles 6 and 7), List of Issues paragraphs 16 and 27.

While the UK Government has accepted the credibility of a number of allegations of complicity of British military personnel, security and secret intelligence services in the ill-treatment of detainees overseas, its investigations into these allegations have not, to date, satisfied the investigative duty under in relation to the rights to life and freedom from torture. The UK Government needs to take a number of steps to demonstrate compliance with Articles 6 and 7 of ICCPR, including:

- a full, independent, judge-led inquiry should be carried out in place of the ISC's investigation into the issues raised in the Detainee Inquiry Report;
- further reform of the way the UK approaches its investigative duty under Articles 2 and 3 of the ECHR to avoid further unacceptable delays in the resolution of individual cases, and to ensure systemic issues are identified and lessons learnt; and
- a review of the merits of the policy of deportation with assurances (DWA); where DWA is unavoidable, ensuring effective verification and post-return monitoring is a key element of any memorandum of understanding, preferably where both parties have ratified the Optional Protocol on the Convention Against Torture; and laying each future agreement before the UK Parliament, allowing Members sufficient time to raise concerns.

10. Treatment of Detainees (Articles 9, 10, 12 and 24), List of Issues paragraphs 22 and 27

a. Immigration Detention, List of Issues paragraphs 22 and 27

The UK needs to make improvements to ensure it complies with Articles 7, 9 and 12 (and 24) of ICCPR. The UK Government detains many people for immigration purposes and too many are held for long periods of time. The UK's detained fast track (DFT) system for asylum seekers still does not provide adequate safeguards to guarantee quality decision-making and to screen out applicants whose detention will be detrimental to their wellbeing. People with mental health conditions have problems accessing timely and quality mental health care. Staff need to improve how they care for women detainees, and follow policy to ensure that pregnant women are only detained in exceptional circumstances. The Cedars pre-departure accommodation, with the welfare support from Barnardo's, and a statutory time limit for child detention, is a significant improvement to detaining children in Yarl's Wood. However, there is still a large number of children who are detained in other immigration settings, and for long periods of time.

b. Prisons. List of Issues paragraphs 22

While the UK Government has made recent progress and committed to “Transforming Rehabilitation” in England and Wales, considerable challenges in protecting the human rights of those detained by the prison service, particularly the right to life of offenders with mental health conditions who are at risk self-harm and self-inflicted deaths. In order to comply with Article 6 of ICCPR, the UK Government should adopt the Equality and Human Rights Commission’s human rights framework and implement the other recommendations of its inquiry into non-natural deaths in detention of adults with mental health conditions. In addition, a number of interventions are required to meet the complex needs of particular sections of the prisoner population, including women, older prisoners and people with disabilities; and to rehabilitate prisoners, generally, and divert them away from offending and from custody. These include:

- further investment in community based services to reduce offending and reoffending, such as those to tackle substance abuse;
- improved data collection to understand the prevalence of disability within the prisoner population to help identify targeted services that meet different and complex needs;
- the development of an older prisoners strategy;
- implementation of the outstanding recommendations from the Corston Report, in line with the Bangkok rules and the 2013 Concluding Observations of the Committee on the Elimination of Discrimination Against Women and the Committee Against Torture; and
- monitoring of implementation of the extent to which the Sentencing Council’s mitigation factors have been applied for sole or primary carers.

c. Youth Justice, List of issues paragraph 25.

The age of criminal responsibility in England and Wales is considered “not acceptable” by the Committee on the Rights of the Children. In order to bring England in line with the rest of Europe, the UK Government needs to implement the 2013 recommendations of the Committee Against Torture, the Beijing Rules, and the Riyadh Guidelines.

The number of children sentenced to custody in England and Wales continues to decrease, though children who have committed non-violent offence are still being detained. To increase compliance with Article 10 of ICCPR, the UK Government should:

- implement the recommendations of Lord Calile; and
- place a greater emphasis on restorative, community-based alternatives to youth justice, and raise the custody threshold to explicitly prevent children who have not committed a violent offence from being held in secure settings; and
- reconsider the effectiveness of Secure Training Colleges for rehabilitation, compared with smaller units close to a child’s family and agencies to support resettlement.

Finally, provision for the use of restraint in Secure Training Colleges may not be consistent with those young people's rights to freedom from cruel, inhuman or degrading treatment or punishment. In order to improve compliance with Article 7 of ICCPR, the UK Government needs to amend the Criminal Justice and Courts Act 2015.

11. Hate Crime (Articles 2, 3, 20 26 and 27), List of Issues paragraph 5

While the EHRC acknowledges the UK Government is actively taking steps to address hate crime, we believe further work could be done to improve reporting and operational responses, including:

- implementation of the Law Commission's recommendation for a full scale review of the operation and effectiveness of enhanced and aggravated sentencing provisions; and
- implementation of the recommendations from CERD and ECRI and the UN High Commissioner for Human Rights to tackle the negative portrayal of particular groups by the media.

12. Violence Against Women and Girls (VAWG) (Articles 2, 3, 7, and 26), List of Issues paragraph 10

Violence against women and girls (VAWG) remains one of the most pervasive human rights issues in England and Wales. In order to improve compliance with Articles 2, 3, 7 and 26 of ICCPR the UK Government must:

- continue to work towards ratification and implementation of the Istanbul Convention, including ensuring that victims of VAWG have access to sufficient financial and legal support; and
- implement the 2013 recommendations of the Committee on the Elimination of Discrimination Against Women, and the Committee's General Recommendation 19 on VAWG.

13. The Pay Gap, (Articles 2,3, 26) List of Issues paragraph 9

There has been significant progress in England and Wales towards closing the gender pay gap between men and women in age groups below 40. While this suggests significant progress in tackling direct discrimination on the basis of gender, challenges remain in relation to the unequal employment outcomes that many mothers experience. While we welcome the recent initiative from the UK Government for large employers to publish information regarding the gender pay gap in their business, in order to improve compliance with Articles 2,3, 26 of ICCPR, it must also consider broader issues, such as improving access to affordable childcare, and progress initiatives to monitor and address the pay gaps in relation to individuals with other protected characteristics, such as ethnic minorities, age, religion or belief, and disabled people.

Questions

Judicial Diversity (Articles 2, 3, 25 and 26), List of Issues paragraph 6 and 9.

- 1) Could the UK Government confirm when the Judicial Diversity Taskforce's 2014 Annual Report will be published and, in lieu of publication, outline the steps the UK Government has taken, and human and financial resources it has committed

to considering and implementing the latest recommendations on improving judicial diversity in England and Wales?²⁹⁶

- 2) Could the UK Government provide an update on steps it has taken to implement the recommendations of the CEDAW and CERD Committees to introduce targeted measures to increase representation of women and ethnic minorities in the judiciary in England and Wales; and could the UK Government provide an analysis of the implications of setting non-mandatory targets if significantly improved outcomes are not achieved by 2017?²⁹⁷

Access to Civil Justice (Article 14), List of Issues paragraph 24²⁹⁸

- 3) Could the UK Government provide data about the impact (including cumulative impacts) of the LASPO Act and associated reforms, including on:
 - a) The impact on access to justice for people with particular impairments arising from the introduction of a mandatory telephone advice gateway?
 - b) The combined impact of the mandatory telephone advice gateway and the introduction of fees for the Employment Tribunal on access to justice for victims of workplace discrimination?
 - c) The increase in litigants in person in the civil and family courts and the consequences for access to justice arising from this?
 - d) The impact on the legal and advice sector of the reforms, also taking into account the effect of local and national austerity measures on funding for this sector?
 - e) Could the UK Government also provide information about the steps it has taken to mitigate these impacts?
- 4) What steps is the UK Government taking to modify the exceptional funding scheme in the light of its low uptake, the low success rates of applications and recent successful court challenges to guidance on the scheme?
- 5) Can the UK Government describe how it will ensure the residence test for civil legal aid, if introduced, will not lead to individuals being denied access to justice for a case relating to rights that are reflected in the ICCPR?
- 6) What steps is the UK government taking to monitor the impact of recent and forthcoming reforms to judicial review on individuals' and organisations' ability to hold the UK to account for breaches of rights reflected in the ICCPR?

²⁹⁶ This includes: recommendations: Accelerating Change. House of Lords, Select Committee on the Constitution, 25th Report of Session 2010-12, Judicial Appointments, HL Paper 272: www.publications.parliament.uk/pa/ld201012/ldselect/ldconst/272/272.pdf

Recommendations of the Independent Panel on Judicial Diversity: at: www.judiciary.gov.uk/publications/advisory-panel-recommendations/
Bindman, G and Monaghan, K. November 2014. Judicial Diversity: https://jac.judiciary.gov.uk/sites/default/files/sync/news/accelerating_change_finalrev.pdf

²⁹⁷ The recommended date proposed by House of Lords, Select Committee on the Constitution, 25th Report of Session 2010-12, Judicial Appointments, HL Paper 272: www.publications.parliament.uk/pa/ld201012/ldselect/ldconst/272/272.pdf

²⁹⁸ HRC. November 2014. List of issues in relation to the seventh periodic report of the United Kingdom of Great Britain and Northern Ireland: www.equalityhumanrights.com/sites/default/files/uploads/documents/humanrights/List%20of%20issues%20Nov%2014.pdf

Counter Terrorism Provisions (Articles 9, 14), List of Issues paragraph 11, 20, 23²⁹⁹

- 7) When will the UK Government conduct a review of its terrorism powers to ensure it complies with its international obligations to protect a range of human rights, while protecting national security?

Stop and Search (Articles 9, 17 and 26), List of Issues, paragraphs 8, 11 and 23

- 8) How will the UK Government collect, analyse and publish data on the use of Schedule 7 to reassure themselves and the public that they are meeting the Equality Act 2010 requirements, as set out in the code of practice on the Terrorism Act 2000?
- 9) What steps, including legislative amendments, will the UK Government take to safeguard against future potential abuse of the Section 60 power to stop and search by individual forces?
- 10) What steps is the UK Government taking to ensure that HMIC's recommendations from its HMIC 2013 and 2015 stop and search reports are followed up?
- 11) The EHRC and the College of Policing are working to produce a new programme of police training for stop and search. Providing the pilots prove to be successful, what steps will the UK Government take to ensure that this training (or training of an equivalent standard) is used by each force, and what if any measures might be employed to ascertain how many officers have received the training?
- 12) Could the UK Government please clarify:
 - a) How will individual officers be scrutinised on their ability to use their stop and search powers effectively, legally and fairly?
 - b) What is the role of police and crime commissioners (PCCs) in scrutinising how their forces are using stop and search, and what steps can be taken in the event that a PCC is not engaging with the issue or equality and human rights more generally?
 - c) If stop and search is to feature as one of a range of measures used annually to assess how each force is performing (part of the PEEL Assessment),³⁰⁰ how will this work in practice?

Trafficking and forced labour (Articles 2, 8, 9, 14, 24 and 26), List of Issues paragraph 26

²⁹⁹ HRC. November 2014. List of issues in relation to the seventh periodic report of the United Kingdom of Great Britain and Northern Ireland:
www.equalityhumanrights.com/sites/default/files/uploads/documents/humanrights/List%20of%20issues%20Nov%2014.pdf

³⁰⁰ The PEEL Assessment is the approach that Her Majesty's Inspectorate of Constabulary will use to assess the performance of each of the 43 geographic police forces in England and Wales.
www.justiceinspectors.gov.uk/hmic/our-work/peel-assessments/

- 13) Would the UK Government outline the scope of Regulations detailing the provision for the identification and support of victims of trafficking in England and Wales?
- 14) Would the UK Government outline the scope and timetable for implementation of the pilot schemes to test improvements to the National Referral Mechanism?
- 15) Will the UK Government commit to reviewing the Modern Slavery Act within this Parliament to see whether it is functioning as intended?
- 16) Can the UK Government reassure the Committee that it will act on the recommendations that ensure from the Overseas Domestic Workers review within a set timeframe?

Privacy and Security (Articles 2, 5 (1) and 17), List of Issues paragraph 28

- 17) Given the fragmented nature of the legal framework governing privacy and surveillance, will the UK Government consider undertaking a forward-looking "root and branch" review?
- 18) How does the UK Government propose to address (and to what timetable), the following:
 - a) loose definitions of 'communication' in Section 20 of RIPA;
 - b) the appropriate levels of authorisation to safeguard human rights in the use of RIPA surveillance powers;
 - c) the complexity of the oversight mechanisms; and
 - d) the need for greater judicial oversight.
- 19) How can the UK Government reassure itself, and the public, that surveillance powers under RIPA are not being used in a discriminatory way?

Voting Rights (Article 25), List of Issues paragraph 30

- 20) What plans does the UK Government have to bring forward legislation to implement the judgments in the Hirst, Greens, Firth and McHugh cases, (and in doing so the recommendation of the Joint Committee on the Voting Eligibility (Prisoners) Draft Bill), and ensure compliance with the requirements of Protocol No 1 of the ECHR?

Caste Discrimination, Articles 2, 20, 26 and 27, List of Issues paragraph 6

- 21) Has the UK Government concluded the consultation on caste discrimination announced in July 2013? If so, could the UK Government publish its findings and outcomes, and confirm when a draft order to enact Section 9(5) of the Equality Act 2010 will be laid before Parliament?

Prohibition of torture and cruel, inhuman or degrading treatment (Articles 6 and 7), List of Issues paragraphs 16 and 27.

- 22) When is the Independent Reviewer of Terrorism Legislation's review of the UK Government's policy of deportation with assurances going to report? What assurances can the UK Government provide that it will seriously consider and implement the Reviewer's recommendations within a reasonable timeframe?

Treatment of Detainees (Articles 9, 10, 12 and 24), List of Issues paragraphs 22 and 27

a. Immigration Detention, List of Issues paragraphs 22 and 27

- 23) What steps is the UK Government taking to remedy the unlawfulness in the DFT screening, Rule 35 processes and appeals process and will this include a full review of the DFT screening policy so that particularly vulnerable individuals do not enter detention?
- 24) How will the UK Government commit to ensuring that people are automatically released from immigration detention when they are identified as being particularly vulnerable?
- 25) Will the UK commit to setting a maximum limit of 28 days to the length of time an individual can be held in immigration detention, to avoid the human and financial costs connected with long-term detention?
- 26) Will the UK Government commit to responding to the recommendations in the APPG inquiry report on immigration detention,³⁰¹ including those on seeking alternative solutions to detention, which are likely to help address many of the issues which have been identified.

b. Prisons, List of Issues paragraphs 22

- 27) When will the UK Government publish its review into the increase in the number of self-inflicted deaths and will it consider the potential link between the increase in the male prison population and the increase in cases of self-harm and self-inflicted deaths?
- 28) When will the UK Government respond to the recommendations from the Justice Committee, including, the steps it is taking to:
- a) reduce the number of people being incarcerated in prisons in England and Wales?
 - b) reduce the number of hours a prisoner is locked in their cells in favour of improved purposeful activity and rehabilitation?
- 29) What steps is the UK Government taking to respond to the findings and recommendations in the EHRC's Deaths in Detention Report? This should include ensuring that new institutions (such as Secure Training Centres and

³⁰¹ See for example, A Joint Inquiry by the All Party Parliamentary Group on Refugees & the All Party Parliamentary Group on Migration. 2015. The report of the inquiry into the Use of Immigration Detention in the United Kingdom. <https://detentioninquiry.files.wordpress.com/2015/03/immigration-detention-inquiry-report.pdf>

the North Wales prison in Wrexham) incorporate policies which explicitly address human rights obligations and incorporate the Commission's Human Rights Framework.

30) When will the UK Government carry out the commitments made by the Justice secretary to:

- a) improve mental health services in prisons?
- b) Identify offenders with mental health conditions, and will this include the collection and publication of the numbers of prisoners with mental health conditions and the types of mental health conditions that they have?

31) Can the UK Government describe how it will evidence the impact of initiatives that specifically address the offending and rehabilitation of women?

c. Youth Justice, List of issues paragraph 25.

32) Will the UK Government re-consider raising the age of criminal responsibility to bring it line with recommendations from UN bodies and with many countries around the world?

33) Will the UK Government respond to the findings and recommendations in the Lord Carlile Youth Courts report, in particular:

- a) that children must always be heard in a youth court and not in an adult court; and
- b) that youth courts should pilot a problem solving approach which aim to address the underlying issues around the child's offending and have due regard to their welfare.

34) Given the large number of children who do not receive a custodial sentence after being remanded in custody, will the UK Government review whether there may be ways to reduce the incarcerated youth population?

35) Will the UK Government review whether the proposals for secure training colleges are still appropriate for the smaller, challenging and more vulnerable detained population in line with the Chief Inspector of Prisons Recommendations, and review the provision in the Act which allows for the use of restraint for good order and discipline?

Hate Crime (Articles 2, 3, 20 26 and 27), List of Issues paragraph 5

36) What steps is the UK Government taking to support improved reporting of hate crime to authorities?

37) How does the UK Government plan to respond to the Law Commission's recommendation for a comprehensive review of hate crime legislation?

38) When will the UK Government take forward recommendations from the all-party parliamentary inquiry into anti-Semitism?

Violence Against Women and Girls (VAWG) (Articles 2, 3, 7, and 26), List of Issues paragraph 10

- 39) When will the UK Government take the required action to ratify the Istanbul Convention?
- 40) Could the UK Government describe how it monitors local public agencies in England and Wales' delivery of VAWG strategies and services to ensure compliance with the UK's international human rights obligations?
- 41) Could the UK Government provide information about the financial and human resources local public agencies in England and Wales dedicate to VAWG strategies and services, as well as the total UK public expenditure on implementing the UK's international human rights obligations in relation to VAWG? Could these resources be disaggregated to show expenditure on the following provision:
- a) assistance to victims of VAWG in accessing legal representation and advice;
 - b) refuge to victims of VAWG, including how many refuge spaces each council area has;
 - c) health services to victims of VAWG, including victims of FGM.
- 42) Will the UK Government review the requirements for evidence of domestic violence for access to legal aid?

The Pay Gap, (Articles 2,3, 26) List of Issues paragraph 9

- 43) Could the UK Government explain how it will monitor and enforce the new regulation on business to publish information on their gender pay gap?
- 44) When will the UK Government review the impact of the recent introduction of fees for Employment Tribunals to ensure that these are not associated with adverse equality impacts in terms of access to redress; and review the impact of the repeal of s138 of the Equality Act 2010?
- 45) Will the UK Government review existing government statistics with a view to producing regular estimates of the pay gaps for full-time and part-time work, as well as the associated employment rates, for all the main protected characteristics to reflect the demographic diversity of modern day Britain?

Appendix B: Equality and Human Rights Commission Submission to the United Nations Human Rights Committee Pre-Sessional Working Group on the United Kingdom's Implementation of the International Covenant on Civil and Political Rights.

A. Scope of the Report

The Equality and Human Rights Commission (EHRC) is one of the United Kingdom's (UK) three 'A status' accredited National Human Rights Institutions (NHRI). The EHRC's jurisdiction covers England and Wales and Scottish matters that are reserved to the UK Parliament. The Scottish Human Rights Commission (SHRC) has jurisdiction with respect to matters that are devolved to the Scottish Parliament, and will cover those matters in a separate submission. The EHRC's remit also does not extend to Northern Ireland, which is therefore outside the scope of this report. The Northern Ireland Human Rights Commission (NIHRC) has made a separate submission.

The EHRC has reviewed the Human Rights Committee's (HRC) Concluding Observations from 2008³⁰² and the UK state report from 2012.³⁰³ We consider that we can most usefully contribute to the HRC's pre-sessional working group on the UK by focusing on one of the domains within our measurement framework³⁰⁴: legal and

³⁰² Concluding Observations of the Human Rights Committee for the United Kingdom of Great Britain and Northern Ireland, 30 July 2008, available at: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2fGBR%2fCO%2f6&Lang=en

³⁰³ Seventh periodic reports of States parties for the United Kingdom of Great Britain and Northern Ireland, 29 December 2012, available at: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2fGBR%2f7&Lang=en

³⁰⁴ The EHRC's Measurement Framework (MF) provides us with a structure to assess equality and human rights across a range of areas relevant to 21st century life. The MF, which covers England, Scotland and Wales, consists of a number of domains, indicators and measures. The measures are based on statistical information that allow the relative position of each main equality group to be

physical security. This domain contains a range of indicators and measures that assess how:

- representative and accessible Britain's legal system is, and how it meets its obligations to protect the right to a fair trial and the right to liberty and security;
- Britain's legislative and regulatory framework protects the right to private life, and balances that right against other rights, such as security;
- the UK Government has responded to allegations of complicity in torture overseas, and meets its obligations to protect the right to freedom from torture or to cruel, inhuman or degrading treatment or punishment;
- individuals with different characteristics experience detention in Britain's immigration, criminal justice and youth justice systems; and
- violent crime and sexual assault are experienced by individuals with different characteristics in Britain.

B. Legal Security

11. Judicial Diversity (Articles 2, 3, 25 and 26)³⁰⁵

The EHRC believes there is a strong case for judicial diversity, based on equality of opportunity and the need for the judiciary to reflect the public it serves. We welcome that an Independent Panel on Judicial Diversity was established for England and Wales in 2009, which put forward 53 recommendations in 2010.³⁰⁶ Some of these recommendations were implemented through the Crime and Courts Act 2013³⁰⁷, including the introduction of:

- a statutory duty upon the Lord Chancellor and the Lord Chief Justice to encourage judicial diversity;
- an "equal merit" provision when there are candidates of equal merit, to allow candidates to be selected on the basis of improving diversity; and
- flexible and part-time working for judicial appointments to the High Court and above.

However, while the judicial diversity trend has been improving, progress has been slow, for example in 2012/13:

- 24.3% of the judges in England and Wales were women, and 4.8% were ethnic minorities;³⁰⁸

compared, and for progress over time to be monitored. Available at:

<http://www.equalityhumanrights.com/about-us/our-work/key-projects/our-measurement-framework/briefing-papers-and-data>

³⁰⁵ Covered by paragraphs 330-333 of the Seventh periodic reports of States parties for the United Kingdom of Great Britain and Northern Ireland, 29 December 2012, available at:

http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2fGBR%2f7&Lang=en

³⁰⁶ Recommendations of the Independent Panel on Judicial Diversity are available at:

<http://www.judiciary.gov.uk/publications/advisory-panel-recommendations/>

³⁰⁷ Crime and Courts Act 2013, available at:

<http://www.legislation.gov.uk/ukpga/2013/22/contents/enacted>

³⁰⁸ Courts and Tribunals Judiciary, Diversity and General Statistics Overview 2013, available at:

<http://www.judiciary.gov.uk/subject/judicial-diversity/>

- at the top, 11.4% of Court of Appeal judges were women and still no ethnic minorities, and none of the heads of division were female or ethnic minorities; and
- at the bottom, 32.4% of deputy district judges in magistrates' courts were women and 7.6% were known to be ethnic minorities.

The EHRC is concerned that England and Wales is out of step with the rest of the world. For example, on average, women represent 48% of the judiciary across the countries of the Council of Europe; and England and Wales sits fourth from the bottom, only above Azerbaijan, Scotland and Armenia.³⁰⁹

In line with Article 2.1 and the HRC's General Comment No. 25,³¹⁰ the EHRC is also concerned about the accessibility of senior positions in the judiciary to people from low socio-economic backgrounds. In 2009, approximately 75% of judges, 68% of top barristers and 55% of solicitors were privately educated (though these figures are steadily decreasing); with lawyers typically growing up in families with an income 64% above the national average.³¹¹ A good illustration is the current composition of the Supreme Court of England and Wales where, of its 12 judges, all but one went to a private school; all but one went to Oxford or Cambridge University; and all were previously successful barristers in private practice.³¹²

A Judicial Diversity Taskforce was established in 2010 to implement the remainder of the Panel on Judicial Diversity's recommendations, and report on progress. By 2013 only 18 of the 53 recommendations had been fully implemented.³¹³ The House of Lords Select Committee on the Constitution³¹⁴ has stressed that "sufficient steps have yet been taken" to increase judicial diversity and made a number of recommendations to accelerate change, including:

- selection panels should be gender and ethnically diverse, with all those involved in the appointments process being required to undertake diversity training;

³⁰⁹ European Commission for the Efficiency of Justice, European Judicial Systems, Edition 2012, fig 11.30. - available at: http://www.coe.int/t/dghl/cooperation/cepej/evaluation/2012/Rapport_en.pdf

³¹⁰ Human Rights Committee, General Comment No. 25 paragraph 3, available at: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2f21%2fRev.1%2fAdd.7&Lang=en

³¹¹ Panel on Fair Access to the Professions, Unleashing Aspiration, 2009, available at: <http://webarchive.nationalarchives.gov.uk/+http://www.cabinetoffice.gov.uk/media/227102/fair-access.pdf> The Panel on Fair Access to the Professions and the Judicial Appointments Panel were welcomed by the Committee on Economic, Social and Cultural Rights, as "institutions to address equality issues" – Concluding Observations for the United Kingdom and Northern Ireland, 2009, available at: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=E%2fC.12%2fGBR%2fCO%2f5&Lang=en

³¹² Lady Hale, Kuttan Menon Memorial Lecture, Equality in the Judiciary, 2013, available at: <http://www.supremecourt.uk/docs/speech-130221.pdf>

³¹³ Third Annual Report of the Judicial Taskforce, 2013, available at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/244013/judicial-diversity-taskforce-annual-report-2013.pdf

³¹⁴ House of Lords, Select Committee on the Constitution, 25th Report of Session 2010-12, Judicial Appointments, HL Paper 272, available at: <http://www.publications.parliament.uk/pa/ld201012/ldselect/ldconst/272/272.pdf>

- the consideration of non-mandatory targets for the Judicial Appointments Commission if there is no significant increase in the numbers of women and ethnic minorities in judicial appointments by 2017;³¹⁵ and
- appointments panels must include lay persons who can bring a different perspective to the assessment of candidates' abilities.

Conclusion: While some progress has been made in enhancing the policy and legal framework related to judicial diversity in England and Wales, this is incomplete and yet to translate into significantly improved outcomes for women, ethnic minorities and those from poor socio-economic backgrounds. The UK Government should therefore ensure the recommendations of the Advisory Panel on Judicial Diversity and the House of Lords Committee on the Constitution are implemented more rapidly in England and Wales.

Question A: Could the UK Government outline the steps it has taken and human and financial resources it has committed to ensuring the recommendations of the Advisory Panel on Judicial Diversity and the House of Lords Committee on the Constitution are implemented more rapidly in England and Wales?

Question B: Could the UK Government provide an update on steps it has taken to implement the recommendations of the CEDAW and CERD Committees to introduce targeted measures to increase representation of women and ethnic minorities in the judiciary in England and Wales; and could the UK Government provide an analysis of the implications of setting non-mandatory targets for the Judicial Appointments Commission to follow if significantly improved outcomes are not achieved by 2017?

12. Access to Civil Justice (Article 14)³¹⁶

a. Legal Aid, Sentencing and Punishment Offenders (LASPO) Act 2012

Providing a system of legal aid is a significant part of how Britain meets its obligations to ensure equality before the courts and tribunals for all persons. The EHRC is concerned that changes introduced to civil legal aid by the Legal Aid,

³¹⁵ Echoing recommendations of other UN treaty bodies, for example: Concluding Observations of the Committee on the Elimination of Race Discrimination (CERD) for the United Kingdom of Great Britain and Northern Ireland, 14 September 2011, paragraph 22, available at:

<http://www2.ohchr.org/english/bodies/cerd/docs/CERD.C.GBR.CO.18-20.pdf> ; and Concluding Observations of the Committee on the Elimination of Discrimination Against Women (CEDAW) for the United Kingdom of Great Britain and Northern Ireland, 30 July 2013, paragraph 43, available at: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CEDAW%2fC%2fGBR%2fCO%2f7&Lang=en

³¹⁶ Covered by paragraph 867 of the Seventh periodic reports of States parties for the United Kingdom of Great Britain and Northern Ireland, 29 December 2012, available at:

http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2fGBR%2f7&Lang=en

Sentencing and Punishment of Offenders (LASPO) Act 2012³¹⁷ weaken these protections in England and Wales.³¹⁸ Compared to the previous year, in 2013/14 around 420,000 fewer legal help cases were started and 45,500 fewer certificates were granted for representation in court.³¹⁹

The EHRC is also concerned that:

- an exceptional funding scheme – designed to allow funding where a failure to provide legal aid would be, or would result in, a breach of the individual's human rights under the European Convention on Human Rights (ECHR) or rights under European Union law - is not functioning as intended, both because of its demanding application process and the strict interpretation of its eligibility criteria;³²⁰ and
- the legal aid reforms, along with freezes in remuneration and increased administrative controls, are impacting on the availability of law firms conducting legal aid work, and specialist advisers. For example:
 - the Low Commission estimated that funding for advice from English local authorities could fall from £220million to £160million by 2015/16, and made a number of recommendations on the future of advice and legal support on social welfare in England and Wales;³²¹
 - in 2013/14 the number of civil legal aid providers reduced by almost a quarter compared to the previous year;³²²
 - four law centres have closed in the past 12 months;³²³ and Shelter, the national housing charity, has closed nine of its advice centres.³²⁴

³¹⁷ Legal Aid, Sentencing and Punishment of Offenders (LASPO) Act 2012, available at: <http://www.legislation.gov.uk/ukpga/2012/10/contents/enacted> Excluded areas of law include: private law family cases, (except where there is evidence of domestic violence); housing and debt cases where the home is not at risk; immigration cases, other than challenges to detention; employment cases; and most welfare benefits cases.

³¹⁸ Equality and Human Rights Commission, Human Rights Review, 2012, p.253, available at: <https://www.justice.gov.uk/downloads/publications/corporate-reports/lsc/lsc-annual-report-12-13.pdf>

³¹⁹ Ministry of Justice, Legal aid statistics in England and Wales; Legal Aid Agency, 2013-2014, June 2014, available at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/325921/legal-aid-statistics-2013-14.pdf

³²⁰ Joint Committee on Human Rights, The Implications on access to justice of the UK Government's proposals to reform legal aid, Seventh Report of Session 2013-2014, para 140, available at: <http://www.publications.parliament.uk/pa/jt201314/jtselect/jtrights/100/10002.htm> . In 2013/14, 1,520 applications were made for exceptional funding; 69 of these were granted, of which 53 were for inquest cases: Legal aid statistics 2013-2014, , June 2014, available at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/325921/legal-aid-statistics-2013-14.pdf

³²¹ Low Commission (2014) Tackling the advice deficit – A strategy for advice and legal support on social welfare law in England and Wales Para 1.15. Available at: <http://www.baringfoundation.org.uk/LowComReport.pdf>

³²² Ministry of Justice, Legal aid statistics in England and Wales; Legal Aid Agency, 2013-2014, June 2014, available at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/325921/legal-aid-statistics-2013-14.pdf

³²³ Written evidence of the Law Centres Network to the Justice Committee inquiry into the impact of changes to civil legal aid under the Legal Aid, Sentencing and Punishment of Offenders Act 2012, available at: <http://www.parliament.uk/business/committees/committees-a-z/commons-select/justice-committee/inquiries//parliament-2010/laspo/?type=Written#pnlPublicationFilter>

The EHRC is particularly concerned about the potentially disproportionate impact of these changes on people with disabilities who represented 58% of the recipients of legally aided advice for welfare benefits in 2009/10.³²⁵ We have also raised concerns about the accessibility of a mandatory telephone advice gateway that has been introduced for cases involving discrimination, debt and special educational needs.³²⁶ The UK Government has given assurances that reasonable adjustments will be made for people with disabilities and those with urgent cases. A limited evaluation of user experiences of the telephone gateway is currently in progress.³²⁷

b. Residence Test for Civil Legal Aid

The UK Government had planned to introduce a residence test for civil legal aid, designed to limit funding to people who are lawfully resident in the UK and who, at some point, have been continuously resident for at least 12 months. Although this is a test of residence rather than being based on nationality, the EHRC believes it is arguable that it would unjustifiably discriminate against certain non-UK nationals, which could be a violation of Article 6(1), read with Article 14 of the ECHR.³²⁸

Following a public consultation, the UK Government announced some exceptions to the residence test, including for victims of child trafficking, forced marriage, and asylum seekers. Nevertheless, there remain concerns that certain vulnerable children would still be unable to prove that they satisfy the test, for example:

- victims of trafficking whose status is disputed;
- children who are undocumented, or who otherwise cannot prove that they have been lawfully resident in the UK for more than one year;
- certain child abduction cases, for example where the child is wrongfully brought to, or retained in, the UK, and their parent does not satisfy the residence test.

In this context, concerns have been raised that the UK Government has not given full consideration to its international human rights obligations.³²⁹ In July 2014, the High

³²⁴ Third Sector Online (2013) Shelter to close nine housing advice centres because of cuts to legal aid. Available at: <http://www.thirdsector.co.uk/Finance/article/1174095/Shelter-close-nine-housing-advice-centres-cuts-legal-aid/?HAYILC=RELATED>

³²⁵ Legal Services Commission, Memorandum Submitted to the Public Bill Committee LA 46, 2011, available at: <http://www.publications.parliament.uk/pa/cm201011/cmpublic/legalaid/memo/la46.htm>

³²⁶ Equality and Human Rights Commission, Human Rights Review, 2012, p.255, available at: <https://www.justice.gov.uk/downloads/publications/corporate-reports/lsc/lsc-annual-report-12-13.pdf>

³²⁷ <http://www.natcen.ac.uk/taking-part/studies-in-field/civil-legal-aid-helpline/civil-legal-aid-helpline/>

³²⁸ The EHRC's response to the Joint Committee on Human Rights Inquiry into the implications for access to justice of the government's proposed judicial review reforms covers its analysis of the residence test, and is available here: <http://www.equalityhumanrights.com/legal-and-policy/consultation-responses/inquiry-into-the-implications-for-access-to-justice-of-the-government-s-proposed-judicial-review-reforms/>

³²⁹ The UK Parliament's Joint Committee on Human Rights has suggested the UK Government may not have given consideration to its obligations under Article 2 of the UNCRC – Joint Committee on Human Rights (2013). The implications for access to justice of the Government's proposed legal aid reforms. Available at: <http://www.justice.org.uk/data/files/resources/349/JUSTICE-JCHR-Submission-FINAL-27-September-2013.pdf>

Court ruled that the residence test is 'ultra vires' the LASPO Act, as well as being in breach of Article 14 read with Article 6 ECHR, and thus discriminatory.³³⁰ The UK Government has taken the decision to withdraw the draft Order introducing the residence test that was before Parliament, pending consideration of next steps on how to proceed. The UK Government will be appealing the judgement.

c. Judicial Review Reforms

The UK Government has presented a Bill to Parliament that would limit access to judicial review in England and Wales.³³¹ The relevant provisions³³² include:

- requiring the court to reject judicial review applications challenging procedural defects, where it is 'highly likely' that the outcome would be the same; this creates a risk of unlawful administrative action without a remedy;
- limiting protective costs orders to cases where permission has already been granted, a move likely to discourage public interest challenges;³³³ and
- a presumption that third party interveners bear the additional costs arising to the parties from an intervention being made; this reverses the current presumption on costs.³³⁴

In the EHRC's analysis, the court should retain full discretion on all these aspects of procedure, recognising that judicial review is concerned with challenges to public wrongs, rather than the private law rights of individuals.

The UK Government has also removed legal aid for judicial review applications, unless the court grants permission for the application to go ahead (although there is discretion to grant funding where the case settles before reaching the permission stage).³³⁵ The EHRC is concerned that this could have a negative impact on the ability of individuals and organisations to hold the state to account.

³³⁰ R(Public Law Project) v Secretary of State for Justice [2014] EWHC 2365 (Admin), available at: <http://www.judiciary.gov.uk/wp-content/uploads/2014/07/plp-v-ssj-and-other.pdf>

³³¹ Judicial Review enables judges to review the lawfulness of the decisions or actions of public bodies in England and Wales, providing an important check on their exercise of power. Judicial Review – proposals for further reform. Ministry of Justice (2014) Proposals for further reform: the Government response. Available at: <http://webcache.googleusercontent.com/search?q=cache:ldXpkbem3j4J:https://consult.justice.gov.uk/digital-communications/judicial-review/results/judicial-review---proposals-for-further-reform-government-response.pdf+&cd=1&hl=en&ct=clnk&gl=uk>

³³² Criminal Justice and Courts Bill 2014, Clauses 64-70, available at:

<http://services.parliament.uk/bills/2013-14/criminaljusticeandcourts.html>

³³³ This system has been evolved by the courts as a device for capping the claimant's exposure to the risk of paying the defendant's costs should the claim fail. The court takes into account the public interest in the case, whether the claimant has a personal interest in the outcome, and the financial means of the claimant.

³³⁴ The role of the intervener is to assist the court with evidence, submissions of law, expertise or a perspective which has not already been provided by the parties (and so would not otherwise be available to the Court). An intervener does not become a party to the proceedings and can only intervene with the permission of the court.

³³⁵ The Civil Legal Aid (Remuneration) (Amendment) No.3 Regulations 2014, available at: <http://www.legislation.gov.uk/ukxi/2014/607/contents/made>

Conclusion: The UK Government needs to take a number of steps to ensure it continues to meet its obligations to protect the right to ensure equality before the courts and tribunals for all persons and the right to liberty and security.

These include:

- **urgently commissioning a comprehensive, independent review of the operation of the exceptional funding scheme and telephone advice gateway;**
- **responding to the recommendations of the Low Commission on the future of advice and legal support for social welfare in England and Wales; and**
- **withdrawing the residence test, the restrictions for legal aid for judicial review and the proposals to limit the court's discretion in these cases.**

Question A: Could the UK Government provide data about the impact of the LASPO Act within its first year of operation on the legal and advice sector, together with the impact of austerity measures on this sector, including:

- **the reduction in the number of civil legal aid providers;**
- **reductions in funding for advice from English and Welsh local authorities; and the number of closures of law centres and specialist advice centres, such as those providing advice to children and young people.**

Could the UK Government also provide information about the steps it has taken to mitigate these impacts?

Question B: Can the UK Government describe how it will ensure the residence test, once introduced, will not lead to individuals being excluded from access to civil legal aid for a case relating to rights that are reflected in the ICCPR?

13. Counter Terrorism Provisions (Articles 9 and 14)³³⁶

a. Right to legal advice when detained

The EHRC remains concerned that persons arrested under section 41 of the Terrorism Act 2000³³⁷ do not have the same right to access legal advice as those arrested for non-terrorism related cases.³³⁸ While terrorism suspects have the right to consult a solicitor privately and as soon as reasonably practicable, access may be delayed where there is reason to believe its immediate provision will lead to interference with the gathering of information about the commission, preparation, or instigation of acts of terrorism. Any such delay must be authorised by a senior police officer and may not be delayed beyond 48 hours. The EHRC has recommended that Schedule 8 to the Terrorism Act 2000 be amended so that terrorism suspects have

³³⁶ Covered by paragraphs 652-675 of the Seventh periodic reports of States parties for the United Kingdom of Great Britain and Northern Ireland, 29 December 2012, available at: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2fGBR%2f7&Lang=en

³³⁷ Terrorism Act 2000, available at: <http://www.legislation.gov.uk/ukpga/2000/11/contents>

³³⁸ Concluding Observations of the Human Rights Committee for the United Kingdom of Great Britain and Northern Ireland, 30 July 2008, paragraph 19, available at: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2fGBR%2fCO%2f6&Lang=en

the same access to legal advice as those arrested for non-terrorism related cases, for example through the duty solicitor scheme.³³⁹

b. Pre-charge detention

The Protection of Freedoms Act 2012³⁴⁰ retains the 14-day limit for terrorism suspects to be detained before being charged, with judicial authorisation. The EHRC shares the HRC's concerns about pre-charge detention in terrorism cases,³⁴¹ and considers the maximum should be four days, consistent with the criminal law in England and Wales. This would still be longer than pre-charge detention in terrorism cases in other countries, such as the United States (two days), Canada (one day), and Germany (one day).³⁴²

The Home Secretary also retains a limited power to extend pre-charge detention to 28 days in an emergency, when the UK Parliament has been dissolved, or at the start of a new Parliament, before the Queen's Speech.³⁴³ The EHRC considers an extension to 28 days, even in an emergency, would risk breaching Article 5 of the ECHR.³⁴⁴ Again, we agree with the HRC and the UN Human Rights Council's (UNHRC) recommendations³⁴⁵ for strict time limits for pre-charge detention, strengthened guarantees and that, on arrest, terrorist suspects should be promptly informed of any charge against them, and tried within a reasonable time, or released.

The independent reviewer of terrorism legislation has also recommended that bail be available to those detained under the Terrorism Acts.³⁴⁶

c. Terrorism Prevention and Investigation Measures and Prosecution of Terrorist Suspects

The Terrorism Prevention and Investigation Measures (TPIMs) Act 2011³⁴⁷ replaced control orders. TPIMs are restrictions imposed on individuals the Home Secretary

³³⁹ Equality and Human Rights Commission, Briefing on Schedule 8 on Anti Social Behaviour and Crime Bill, 2013, available at: <http://www.equalityhumanrights.com/legal-and-policy/our-legal-work/parliamentary-briefings/anti-social-behaviour-crime-and-policing-bill-schedule-8-lords-committee-stage-briefing>

³⁴⁰ Protection of Freedoms Act 2012, part 4, section 57, available at: <http://www.legislation.gov.uk/ukpga/2012/9/contents/enacted>

³⁴¹ Concluding Observations of the Human Rights Committee for the United Kingdom of Great Britain and Northern Ireland, 30 July 2008, paragraph 15, available at: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2fGBR%2fCO%2f6&Lang=en

³⁴² Liberty, Terrorism pre-charge detention comparative law study, 2010, available at: <http://www.liberty-human-rights.org.uk/policy/reports/comparative-law-study-2010-pre-charge-detention.pdf>

³⁴³ Terrorism Act 2000, schedule 8, paragraph 38, as amended by the Protection of Freedoms Act 2012

³⁴⁴ See also JUSTICE, Protection of Freedoms Bill, Briefing for the House of Lords Grand Committee Stage, 2011, available at: <http://www.justice.org.uk/data/files/resources/137/JUSTICE-Brief-Lords-Grand-Committee-December-2011.pdf>

³⁴⁵ UN Human Rights Council, Universal Periodic Review, 2012, for example recommendations 119, 123, and 127, available at: <http://www.ohchr.org/EN/HRBodies/UPR/Pages/gbssession1.aspx>

³⁴⁶ David Anderson QC, Report on the Operation of the Terrorism Act 2000 and Part 1 of the Terrorism Act 2006, 2012, available at: <https://www.gov.uk/government/publications/report-on-the-operation-in-2010-of-the-terrorism-act-2000-and-of-part-1-of-the-terrorism-act-2006>

³⁴⁷ The Terrorism Prevention and Investigation Measures (TPIMs) Act 2011, available at: <http://www.legislation.gov.uk/ukpga/2011/23/contents>

believes to have engaged in terrorism-related activity, but that it is unfeasible to prosecute nor to deport, for example due to a lack of evidence, or even where the individual has already been acquitted by a jury.

TPIMs allow significant restrictions on individuals' liberty based on the "reasonable belief" of the threat they are considered to pose. While this standard of proof is higher than that required for control orders ("suspicion"), it is still well below that required in civil ("the balance of probabilities") or criminal matters ("beyond reasonable doubt").

The EHRC has welcomed that TPIMs provide for a more proportionate regime than control orders,³⁴⁸ and that they have been used with some restraint. While we note that none have been in force since March 2014, we remain concerned that TPIMs lack the necessary safeguards to protect human rights and violate one of the key principle of civil liberties to prohibit punishment for what people *might* do, rather than what they *have* done.

TPIMs include intrusive, restrictive measures that can be imposed for a maximum of two years, including:

- electronic tagging;
- requirements to stay overnight at specified addresses;
- daily reports to a police station;
- prohibitions on entering specific places or areas, contacting particular individuals, or travelling overseas;
- work restrictions; and
- limits on access to property, financial services and the internet.

While it was recommended that any replacement of control orders should aim to facilitate the prosecution and conviction of terrorist suspects,³⁴⁹ the independent reviewer of terrorism legislation and the UK Parliament's Joint Committee on Human Rights (JCHR) have found TPIMs to be an ineffective investigation measure.³⁵⁰ The EHRC has suggested the UK Government consider alternatives to meet this aim, such as the use of surveillance, or allowing intercept evidence to be used in court,

³⁴⁸ Equality and Human Rights Commission, Parliamentary Briefing on the Terrorism and Investigation Measures Bill 2011, 2011, available at: http://www.google.co.uk/url?sa=t&rct=j&q=&esrc=s&source=web&cd=2&ved=0CCUQFjAB&url=http%3A%2F%2Fwww.equalityhumanrights.com%2Flegal-and-policy%2Four-legal-work%2Fparliamentary-briefings%2Fterrorism-prevention-and-investigation-measures-bill&ei=5tGhU-m6CcTT7AbzuoCwAw&usq=AFQjCNHsWY8fKNiSRG1JiLznNHBnq_MuQ&bvm=bv.69137298.d.ZWU

³⁴⁹ Lord MacDonald QC, Review of Counter-terrorism and Security Powers, 2011, available at: <https://www.gov.uk/government/publications/review-of-counter-terrorism-and-security-powers>

³⁵⁰ David Anderson QC, Annual Report of the Independent Reviewer of Terrorism Legislation, 2013, available at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/298487/Un_Act_Independent_Review_print_ready.pdf; and Joint Committee on Human Rights (JCHR), Post-Legislative Scrutiny of the Terrorism Prevention and Investigative Measures Act 2011, 2014, available at: <http://www.publications.parliament.uk/pa/jt201314/jtselect/jtrights/113/113.pdf>

which would allow suspects to be prosecuted under the normal criminal justice system, and either be convicted or acquitted.³⁵¹

d. Closed material proceedings and secret evidence

Closed material proceedings (CMPs) mean that one party, for example an individual bringing a claim against a government agency, is not permitted to take part in all, or part of, the proceedings. There is a range of different contexts where CMPs, via the Special Advocates System, have been legislated for in the UK, including terrorist asset freezing proceedings, employment tribunals and planning inquiries.³⁵² There are also a number of situations where special advocates have been appointed on a non-statutory basis, for example the Security Vetting Appeals Panel.

The Justice and Security Act 2013 extends the use of closed proceedings to any civil case in which the Justice Secretary certifies that it involves sensitive material that it would not be in the public interest to disclose because of national security.³⁵³ Much of the closed evidence used in cases that concern national security is heavily reliant on information from secret intelligence sources. Such evidence may contain second or third hand testimony or other material that would not normally be admissible in ordinary criminal or civil proceedings.³⁵⁴ A number of senior judges have noted that closed material is likely to be less reliable than evidence produced in open court, because it has not been tested by thorough cross-examination.³⁵⁵

While the Special Advocate System has been amended to enable an individual to be given the “gist” of the allegations against them to enable them to instruct a Special Advocate, the inherent lack of detail means this is an inadequate means of ensuring equality of arms. The Special Advocates continue to have a number of practical concerns with the operation of closed material procedures and consider them inherently unfair.³⁵⁶

³⁵¹ Equality and Human Rights Commission, Submission to the Review of Counter Terrorism and Security Powers, 2010, available at: <http://www.equalityhumanrights.com/legal-and-policy/our-legal-work/consultation-responses/ehrc-submission-review-of-counter-terrorism-and-security-powers>

³⁵² Ministry of Justice, Memorandum to the Joint Committee on Human Rights on its Inquiry on the Justice and Security Bill, 2011, available at: http://www.parliament.uk/documents/joint-committees/human-rights/Memo_to_JCHR_on_Justice_and_Security_Green_Paper.pdf

³⁵³ Ministry of Justice, Justice and Security Green Paper, para 2.7, available at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/228860/8194.pdf The Justice Secretary's decision would be reviewable by the trial judge on “judicial review principles” but any challenge to this decision would itself necessarily involve closed proceedings.

³⁵⁴ Special Advocates, Response to Justice and Security Green Paper Consultation, 2012, para 14(4) available at: http://consultation.cabinetoffice.gov.uk/justiceandsecurity/wp-content/uploads/2012/09_Special%20Advocates.pdf

³⁵⁵ Lord Kerr has warned that “Evidence which has been insulated from challenge may positively mislead,” (*Al-Rawi v Ministry of Defence*, [2011] UKSC 34, 93.). The late Lord Bingham described the task of Special Advocates as “taking blind shots at a hidden target” (*Roberts v Parole Board* [2005] UKHL 45) because even though they are able to cross-examine witnesses in closed hearings; they are prohibited from discussing their questions with the person they are representing after service of the closed material.

³⁵⁶ Special Advocates' memorandum on the Justice and Security Bill submitted to the Joint Committee on Human Rights, available at: <https://adam1cor.files.wordpress.com/2012/06/js-bill-sa-response-final-final.pdf>

The EHRC and others have raised concerns about whether the use of closed material procedures in civil claims is consistent with the right to a fair trial³⁵⁷ and when the UK Government has provided sufficient evidence to demonstrate the fairness concern on which it relies to justify such procedures is a real and practical problem.³⁵⁸ Lord Brown, a former Law Lord and former Intelligence Services Commissioner, has warned that this provision of the Justice and Security Act 2013 “involves so radical a departure from the cardinal principle of open justice in civil proceedings, so sensitive an aspect of the court’s processes, that everything that can possibly help minimise the number of occasions when the power is used should be recognised.”³⁵⁹

Conclusion: The EHRC recommends the UK Government conducts a broad review of its terrorism powers and takes a number of steps to ensure it complies with its international obligations to protect a range of human rights, while protecting national security, including:

- **amending Schedule 8 to the Terrorism Act 2000 so that terrorism suspects have the same right to access legal advice as those arrested for non-terrorism related cases;**
- **reducing the limit on pre-charge detention for terrorist suspects to four days, in line with the criminal law in England and Wales;**
- **considering the continued necessity of TPIMs; and**
- **restricting the use of closed material proceedings to the smallest possible number of courts and tribunals, as a last resort where there is no alternative means of achieving justice; and the Justice and Security Act provisions extending their use into civil litigation should be repealed. Where material is to remain closed, the excluded party must be given sufficient information about it to enable them to give effective instructions to their Special Advocate.**

Question A: Given that no TPIMs have been in place since March 2014, does the UK Government agree that a review of their effectiveness should be brought forward, and its outcomes used to inform a broad review of terrorism powers in the next Parliament?

³⁵⁷ Equality and Human Rights Commission, Briefing on the Justice and Security Bill, 2012, available at: <http://www.equalityhumanrights.com/legal-and-policy/our-legal-work/parliamentary-briefings/justice-security-bill-with-advice> . See also Dinah Rose QC, Memorandum submitted to the Joint Committee on Human Rights, 2012, available at: <http://www.parliament.uk/business/committees/committees-a-z/joint-select/human-rights-committee/inquiries/parliament-2010/justice-and-security-green-paper/> ; and Special Advocates, Response to Justice and Security Green Paper Consultation, 2012, available at: http://consultation.cabinetoffice.gov.uk/justiceandsecurity/wp-content/uploads/2012/09_Special%20Advocates.pdf

³⁵⁸ Joint Committee on Human Rights, Report on the Justice and Security Bill, 2012, available at: <http://www.parliament.uk/business/committees/committees-a-z/joint-select/human-rights-committee/news/justice-and-security-green-paper-report/>

³⁵⁹ Lord Brown, Hansard, 26 March 2013, available at: <http://www.publications.parliament.uk/pa/ld201213/ldhansrd/index/130326.html>

14. Stop and Search (Articles 9, 17 and 26)³⁶⁰

a. Schedule 1 of the Police and Criminal Evidence Act (PACE) and Section 60 of the Criminal Justice and Public Order Act (CJPOA).

i. Summary of the Powers

Under Schedule 1 of the Police and Criminal Evidence Act (PACE)³⁶¹, police officers in England and Wales can stop and search a person when they have “reasonable suspicion” that this individual is in possession of stolen or prohibited articles.³⁶²

Section 60 of the Criminal Justice and Public Order Act (CJPOA)³⁶³ enables a senior officer in England and Wales to authorise police searches in a defined area for up to 24 hours, if there is:

- “reasonable belief” that violence will occur;
- a person in the area carrying a dangerous object or an offensive weapon; or
- a person in the area carrying such a weapon following an incident.

Once authorised, powers under section 60 require a lower standard of proof than the “reasonable suspicion” required for PACE, and consequently concerns have been raised that it could lead to further disproportionate use.³⁶⁴

ii. Disproportionality

While there has been a reduction in the overall use of stop and search powers, the EHRC continues to be concerned about their disproportionality in relation to ethnic minorities. We believe these powers are an important means of tackling crime, but only if they are used legitimately and proportionately. If they are not, there is a risk they may contribute to tensions between communities and the police.³⁶⁵

Overall, the use of Schedule 1 of PACE has decreased from 1,222,378 in 2010-11, to 1,137,551 in 2012/13. However, where ethnicity data is available, 30% of all stops

³⁶⁰ The state only covers the use of stop and search powers in relation to its counter-terrorism strategy, and not in relation to tackling crime, in its Seventh periodic reports of States parties for the United Kingdom of Great Britain and Northern Ireland, 29 December 2012, para 316-325, available at: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2fGBR%2f7&Lang=en

³⁶¹ Police and Criminal Evidence Act (PACE), 1984, available at: <http://www.legislation.gov.uk/ukpga/1984/60/contents>

³⁶² For further operational detail, see Equality and Human Rights Commission, Stop and Think: A Critical Review of the use of Stop and Search powers in England and Wales, available at: http://www.equalityhumanrights.com/sites/default/files/documents/raceinbritain/ehrc_stop_and_search_report.pdf

³⁶³ Criminal Justice and Public Order Act (CJPOA) 1994, available at: <http://www.legislation.gov.uk/ukpga/1994/33/contents>

³⁶⁴ Equality and Human Rights Commission, Briefing Paper 7: Disproportionality in Stops and Searches and supporting data, 2011-12, available at: <http://www.equalityhumanrights.com/publications/our-research/briefing-papers#BP7>

³⁶⁵ See, for example, Riots Communities and Victims Panel, After the Riots: The final report of the Riots Communities and Victims Panel, 2012, available at: <http://webarchive.nationalarchives.gov.uk/20121003195935/http://riotspanel.independent.gov.uk/>

under this power were on ethnic minorities³⁶⁶ and its use remains disproportionate, for example in 2011/12, black people were 11.7 times more likely to be stopped than white people in Dorset, and 7.8 times more likely in Gloucestershire.³⁶⁷ The EHRC welcomes that the use of Section 60 of CJPOA has dropped by 88.6% from 2011/12 to 2012/13.³⁶⁸ However, while ethnicity data is not currently available, data from 2011/12 shows continued disproportionality in relation ethnic minorities, for example in the West Midlands, black people were 29 times more likely to be stopped than white people, and 16.9 times more likely in Nottingham.³⁶⁹

The EHRC considers it essential that ethnicity data about this use of this power is gathered and published by police forces; and police forces with particularly high race disproportionality implement programmes of monitoring, training and scrutiny to ensure they use the power fairly and on the basis of intelligence.³⁷⁰

iii. Reasonable Suspicion

The EHRC is concerned about the implications of a lack of a “reasonable suspicion” requirement in the use of powers under Section 60 of CJPOA for the rights to privacy, liberty and security, and the prohibition of discrimination.³⁷¹ These concerns were shared by 20% of the people who responded to the Home Office’s consultation on the use of stop and search powers; with ethnic minorities and young people more likely to think that the powers were not used in a way that effectively balances public protection with individual freedoms.³⁷²

The EHRC’s evidence from a large number of police forces suggests that insufficient justification and poor recording of reasons for individual stops and searches

³⁶⁶ Home Office Statistics, Police Powers and Procedures England and Wales, 2014, available at: <https://www.gov.uk/government/publications/police-powers-and-procedures-england-and-wales-2012-to-2013/police-powers-and-procedures-england-and-wales-2012-to-2013>

³⁶⁷ Equality and Human Rights Commission, Briefing Paper 7: Disproportionality in Stops and Searches and supporting data, 2011-12, available at: <http://www.equalityhumanrights.com/publications/our-research/briefing-papers#BP7>

³⁶⁸ Home Office Statistics, Police Powers and Procedures England and Wales, 2014, available at: <https://www.gov.uk/government/publications/police-powers-and-procedures-england-and-wales-2012-to-2013/police-powers-and-procedures-england-and-wales-2012-to-2013>

³⁶⁹ Equality and Human Rights Commission, Briefing Paper 7: Disproportionality in Stops and Searches and supporting data, 2011-12, available at: <http://www.equalityhumanrights.com/publications/our-research/briefing-papers#BP7>

³⁷⁰ Equality and Human Rights Commission, Response to the Home Office consultation on police powers of stop and search, available at: <http://www.equalityhumanrights.com/legal-and-policy/our-legal-work/consultation-responses>

³⁷¹ Equality and Human Rights Commission, Response to the Home Office consultation on police powers of stop and search, available at: <http://www.equalityhumanrights.com/legal-and-policy/our-legal-work/consultation-responses>

³⁷² Home Office, Police Powers of Stop and Search Summary of Consultation Responses and Conclusions, available at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/307545/StopSearchConsultationResponse.pdf

contribute to inconsistent and weak systems to account for the use of this power.³⁷³ In addition, Home Office statistics show only 9% of stops result in an arrest.³⁷⁴

The EHRC maintains that the use of Section 60 can only be compatible with articles 5, 8, 14 of the ECHR if any interference with those rights is lawful.³⁷⁵ We consider there is a need for clearer definition of effectiveness; and the annual collection and publication of comparative data to demonstrate performance of individual forces and increase public trust.

iv. Effectiveness

The EHRC considers that if the use of powers under Schedule 1 of PACE and Schedule 60 of CJPOA are authorised, undertaken following the receipt, analysis and communication of robust intelligence, and a clear link can be made between that intelligence and the resulting stop and search, then the powers are more likely to target the criminal and anti-social behaviour they were introduced to prevent and address.³⁷⁶ However, Her Majesty's Inspectorate of Constabulary (HMIC) in England and Wales has reported that in 27% (2338) of stop and search records it examined:

- did not contain sufficient reasonable grounds to search people;
- there was evidence of low levels of supervision, poor or inconsistent recording; and
- there were indications that the reasons for the search were not always provided to the individual concerned, nor were they always treated fairly.³⁷⁷

The EHRC therefore considers better evidence of the effectiveness of these powers is needed, including the extent to which stop and searches result in the detection of an offence (not necessarily an arrest), and the extent of the intelligence that leads to stops.³⁷⁸ We support the Home Office's decision to:

- revise the PACE Code of Practice to make it clear what constitutes "reasonable grounds for suspicion;"
- ask HMIC to include use of stop and search, as well as similar police powers, in its new annual general inspections, with a view to eliminating any unfair or improper use; and

³⁷³ Equality and Human Rights Commission, Race disproportionality in stops and searches under Section 60 of the Criminal Justice and Public Order Act 1994, 2012, available at:

http://www.equalityhumanrights.com/sites/default/files/documents/research/bp_5_final.pdf

³⁷⁴ Home Office, Police Powers and Procedures in England and Wales 2011/12, 2013, available at: <https://www.gov.uk/government/publications/police-powers-and-procedures-in-england-and-wales-201112>

³⁷⁵ Equality and Human Rights Commission, Response to the Home Office consultation on police powers of stop and search, available at: <http://www.equalityhumanrights.com/legal-and-policy/our-legal-work/consultation-responses>

³⁷⁶ Equality and Human Rights Commission, Response to the Home Office consultation on police powers of stop and search, available at: <http://www.equalityhumanrights.com/legal-and-policy/our-legal-work/consultation-responses>

³⁷⁷ Her Majesty's Inspectorate of Constabulary, Stop and Search Powers: Are the police using them effectively and fairly? 2013, available at: <http://www.hmic.gov.uk/publication/stop-and-search-powers-20130709/>

³⁷⁸ Equality and Human Rights Commission, Response to the Home Office consultation on police powers of stop and search, available at: <http://www.equalityhumanrights.com/legal-and-policy/our-legal-work/consultation-responses>

- commission the National College of Policing to review the national training of stop and search for all officers and introduce an assessment of officers' fitness to use stop and search powers. If they fail this assessment, they will not be allowed to use these powers.³⁷⁹

The EHRC also welcomes a range of initiatives from the Home Office to increase the transparency of the use of stop and search powers, through a "Best Use of Stop and Search" voluntary scheme that includes:

- recording the outcome of searches in more detail to show the link – or lack of a link – between the object of the search and its outcome (such as penalty notices and cautions), allowing an assessment of how well forces interpret the "reasonable grounds for suspicion;"
- sharing best practice amongst police forces;
- allowing members of the public to apply to accompany officers on patrol to help improve the community's understanding of the police; and
- the introduction of a stop and search complaints "community trigger" so forces must explain to the public how powers are used if they receive a large volume of complaints.³⁸⁰

However, the EHRC is disappointed these initiatives are not compulsory, as we consider all police forces and the public would benefit from them.

b. Schedule 7 of the Terrorism Act 2000

Schedule 7 of the Terrorism Act 2000 provides police officers across the UK with the power to stop, search and examine individuals at airports and ports, to determine whether they appear to be concerned in commissioning, preparing or instigating a terrorist act. The powers enable the police to:

- compel the individual to answer highly intrusive and personal questions, backed by a threat of criminal punishment and up to 51 weeks imprisonment;³⁸¹
- take finger prints and non-intimate samples (i.e. DNA mouth swab), even if they are not subsequently arrested; and
- prevent the individual from consulting with a solicitor immediately once they are stopped.

³⁷⁹ Home Office, Police Powers of Stop and Search Summary of Consultation Responses and Conclusions, available at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/307545/StopSearchConsultationResponse.pdf

³⁸⁰ Home Office, Police Powers of Stop and Search Summary of Consultation Responses and Conclusions, available at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/307545/StopSearchConsultationResponse.pdf

³⁸¹ This is an unusually extensive power, and we are aware of no similar powers. We have previously suggested that this power should only be used if the person stopped under Schedule 7 is arrested pursuant to Section 41 of the Terrorism Act 2000. Equality and Human Rights Commission, Response to Consultation on the Review of the Operation of Schedule 7, 2012, available at: http://www.equalityhumanrights.com/sites/default/files/documents/Consultation_responses/ehrc_-_review_of_the_operation_of_schedule_7_consultation_response_6_dec_2012.pdf

While use of this power has continued its welcome decline in recent years, a large number of individuals are subject to it each year.³⁸² The EHRC's analysis shows that a disproportionate number of those individuals are from particular ethnic minorities³⁸³ despite the Code of Practice³⁸⁴ on the use of Schedule 7 explicitly ruling out a reliance on ethnicity as the sole means to determine who to stop under this power. While we acknowledge the differing views as to whether this disproportionality demonstrates unlawful discrimination,³⁸⁵ we believe the HRC's 2008 concerns remain valid.³⁸⁶

The EHRC was therefore disappointed that recent amendments to the legislation³⁸⁷ did not include a statutory requirement to centrally record and monitor data about the equality characteristics of those who are stopped under Schedule 7. We believe such a duty would help ensure the power is not used in a discriminatory or disproportionate way³⁸⁸ and would address the perception of prejudice, which the Independent Review of Terrorism Legislation notes "can be quite as damaging to community relations as the reality."³⁸⁹ We also remain concerned that these powers continue to lack fundamental procedural protections, such as the requirement of "reasonable suspicion," which would be consistent with the rights to privacy, and liberty and security under the ECHR.

³⁸² For example, between April 2009 and March 2012, there were 230,236 examinations pursuant to Schedule 7. Home Office, Review of the Operation of Schedule 7: A Public Consultation, Annex A: Data on the use of Schedule 7, available at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/157896/consultation-document.pdf

³⁸³ Equality and Human Rights Commission, Briefing Paper 8: An Experimental Analysis of Examinations and Detentions under Schedule 7 of the Terrorism Act 2000, 2013, available at: <http://www.equalityhumanrights.com/publication/briefing-paper-8-experimental-analysis-examinations-and-detentions-under-schedule-7-terrorism-act>

³⁸⁴ Home Office, Draft Code of Practice Schedule 7, paragraph 18, available at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/304300/DraftCodeOfPracticeSch7.pdf

³⁸⁵ For example see: Independent Reviewer of Terrorism Legislation, Annual Report, July 2014, p.130. Available at: <https://terrorismlegislationreviewer.independent.gov.uk/wp-content/uploads/2014/07/Independent-Review-of-Terrorism-Report-2014-print2.pdf> and Equality and Human Rights Commission, Response to Consultation on the Review of the Operation of Schedule 7, 2012, available at: http://www.equalityhumanrights.com/sites/default/files/documents/Consultation_responses/ehrc_-_review_of_the_operation_of_schedule_7_consultation_response_6_dec_2012.pdf

³⁸⁶ Concluding Observations of the Human Rights Committee for the United Kingdom of Great Britain and Northern Ireland, 30 July 2008, para 29, available at: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2fGBR%2fCO%2f6&Lang=en

³⁸⁷ The UK Government amended Schedule 7 and introduced restrictions to the broad power to question and detain, and extend certain safeguards to those who are detained through Schedule 8 of the Anti-Social Behaviour, Crime and Policing Act 2014, available at: <http://www.legislation.gov.uk/ukpga/2014/12/contents/enacted>

³⁸⁸ Equality and Human Rights Commission, Anti-Social Behaviour, Crime and Policing Bill, Schedule 8, Lords Committee Stage Briefing, 2013, available at: <http://www.equalityhumanrights.com/legal-and-policy/our-legal-work/parliamentary-briefings/anti-social-behaviour-crime-and-policing-bill-schedule-8-lords-committee-stage-briefing>

³⁸⁹ Independent Reviewer of Terrorism Legislation, Annual Report, July 2014, p.130. Available at: <https://terrorismlegislationreviewer.independent.gov.uk/wp-content/uploads/2014/07/Independent-Review-of-Terrorism-Report-2014-print2.pdf>

Conclusion: The EHRC is concerned that unless stop and search powers are used appropriately and proportionately, and are exercised fairly and in a non-discriminatory manner they have the potential to violate rights to privacy, liberty and security and the prohibition on discrimination under the ECHR. We recommend:

- the UK Government actively encourages police forces in England and Wales to sign up to the new “Best Use of Stop and Search” scheme. If, after two years, there are forces in England and Wales who have not enrolled, (and subject to a review of its impact), consideration should be given to making the scheme mandatory;
- legislative amendments to require “reasonable suspicion” for the use of powers under Section 60 of CJPOA and Schedule 7 of the Terrorism Act, as well as any other amendments to ensure compliance with the ECHR; and
- improvements to data collection and monitoring to ensure lawful use of the powers under Schedule 7 of the Terrorism Act.

Question A: How will the UK Government ensure that those police forces in England and Wales who are most in need of improvement will sign up to the “Best Use of Stop and Search” scheme and make the necessary changes to prevent potentially discriminatory use of their powers?

Question B: How will the UK Government collect, analyse and publish data on the use of Schedule 7 to reassure themselves and the public that they are meeting the Equality Act 2010 requirements, as set out in the code of practice on the Terrorism Act 2000?

15. Trafficking and forced labour (Articles 2, 8, 9, 14, 24 and 26)³⁹⁰

a. Overview

Data from 2013 shows a 47% increase in the number referrals to the UK's National Referral Mechanism (NRM) of trafficking victims on 2012, with an 18% increase in the numbers of countries of origin. Victims under 17 years old accounted for 26% of these referrals (452) which was also a significant increase on 2012.³⁹¹

The UK Government's Modern Slavery Bill (MSB) is therefore timely and necessary.³⁹² Its purpose is to consolidate, simplify and strengthen existing slavery and human trafficking offences³⁹³ in England and Wales, and to improve support and protection for victims. The EHRC supports the aims of the MSB, but considers that its provisions need strengthening in some areas to ensure the human rights of all

³⁹⁰ Seventh periodic reports of States parties for the United Kingdom of Great Britain and Northern Ireland, 29 December 2012, para 604-621, available at: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2fGBR%2f7&Lang=en

³⁹¹ National Crime Agency, United Kingdom Human Trafficking National Referral Mechanism Statistics 2013, page 2, available at: <http://www.nationalcrimeagency.gov.uk/publications/139-national-referral-mechanism-statistics-2013/file>

³⁹² Home Office, Modern Slavery Bill Collection, June 2014, available at: <https://www.gov.uk/government/collections/modern-slavery-bill>

³⁹³ s59A Sexual Offences Act 2003, s4 Asylum and Immigration (Treatment of Claimants, etc) Act 2004 and s71 Coroners and Justice Act 2009

affected by the Bill are fully protected;³⁹⁴ and to fully reflect the 2014 concluding observations of the UN Committee on the Rights of the Child (CRC),³⁹⁵ to ensure the protection of child victims of trafficking.³⁹⁶

b. Omissions in criminal offences

The EHRC considers the MSB to be an opportunity to remove current gaps in legislation and ensure the UK has a comprehensive and consistent legislative framework, which complies with international standards.³⁹⁷ To achieve this, the EHRC considers the current range of criminal offences outlined in Part 1 of the MSB needs to be extended, including:

- extending clause 2 of the MSB to capture traffickers who are not directly involved in the movement of victims, but are involved in other aspects of the trafficking chain, for example those harbouring or receiving victims.
- including illegal adoption (under section 1(1) of the Child Abduction Act 1984³⁹⁸) as a trafficking offence in the MSB, in line with Article 2(1) of the European Anti-Trafficking Directive and the Concluding Observations of the CRC.³⁹⁹
- being explicit that a victim cannot consent to their exploitation where the perpetrator uses threat, force, coercion, abduction, fraud, deception, abuse of power etc., regardless of the particular exploitative action being employed, in line with the EU Anti-Trafficking Directive.⁴⁰⁰
- broadening the scope of Clause 1 of the MSB to include several critical potential vulnerabilities to trafficking as set out in the Anti-Trafficking Directive and the ECHR,⁴⁰¹ such as:

³⁹⁴ Equality and Human Rights Commission, Briefing on Modern Slavery Bill, Second Reading, July 2014, available at: <http://www.equalityhumanrights.com/legal-and-policy/our-legal-work/parliamentary-briefings/modern-slavery-bill>

³⁹⁵ Committee on the Rights of the Child, Concluding observations on the report submitted by the United Kingdom of Great Britain and Northern Ireland under article 12, paragraph 1, of the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, available at: <http://www.equalityhumanrights.com/sites/default/files/uploads/UN%20Convention%20on%20rights%20of%20the%20child.pdf>

³⁹⁶ For more information about the EHRC's concerns in relation to the trafficking of children, please see Equality and Human Rights Commission, submission to the Committee on the Rights of the Child on the Optional Protocol on the Sale of the Child, May 2014, available at: http://www.equalityhumanrights.com/sites/default/files/uploads/Pdfs/uncrc-op_submission_28-04-14.pdf

³⁹⁷ For example, Article 4 of the European Convention on Human Rights, and the European Directive on Trafficking in Human Beings, available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2011:101:0001:0011:EN:PDF>

³⁹⁸ Taking or sending a child outside the UK without appropriate consent

³⁹⁹ Committee on the Rights of the Child, Concluding observations for the United Kingdom of Great Britain and Northern Ireland on the Optional Protocol on the sale of children, child prostitution and child pornography para – 29, available at <http://www.equalityhumanrights.com/sites/default/files/uploads/UN%20Convention%20on%20rights%20of%20the%20child.pdf>

⁴⁰⁰ Article 2(4)

⁴⁰¹ Council of Europe Directive on the trafficking of human beings, paragraph 12 of the preamble: other factors relevant to assessing vulnerability include: gender, pregnancy, state of health and disability. Available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2011:101:0001:0011:EN:PDF>

- ethnicity, national origin, or religion;⁴⁰² or
- socio-legal and socio-economic factors, for example, research has demonstrated the vulnerability of migrants to forced labour.⁴⁰³
- explicitly clarifying that a child cannot consent to their own exploitation.⁴⁰⁴ The EHRC also considers that Clause 3(6) is ambiguous in its reference to "young" – and should be amended to clarify that the young people covered by this provision are those under 18;⁴⁰⁵ and
- expanding the definition of exploitation in Clause 3 of the MSB to include:
 - debt bondage (a common means of controlling a trafficking victim⁴⁰⁶),
 - abduction, abuse of power, fraud, or coercion; or
 - where payments are received to achieve the consent of a person having control over another person.⁴⁰⁷

c. Children

The Child Exploitation and Online Protection Centre (CEOP) estimates that 60% of suspected child victims of trafficking in local authority care go missing and two-thirds are never found. There is evidence that those who are found are with traffickers again.⁴⁰⁸ The EHRC therefore welcomes the MSB's provision for the appointment of advocates for unaccompanied trafficked children, subject to a pilot scheme to be commenced in summer 2014. However, we believe there is also a need for positive, effective measures to record and investigate the whereabouts of trafficked children who go missing from care, so as to accord with the UK's positive obligations under Article 4 of the ECHR, the Anti-Trafficking Directive and the CRC's Concluding Observations.⁴⁰⁹

Explanatory report to Council of Europe Convention against the Trafficking of Human Beings 2005 para 83 "The vulnerability may be of any kind, whether physical, psychological, emotional, family related, social or economic. The situation might, for example, involve insecurity or illegality of the victim's administrative status, economic dependence or fragile health...." Available at:

<http://conventions.coe.int/Treaty/EN/Reports/Html/197.htm>

⁴⁰² Concluding observations of UNCRC on Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography – paras 30 and 31, available at: <http://www.equalityhumanrights.com/sites/default/files/uploads/UN%20Convention%20on%20rights%20of%20the%20child.pdf>

⁴⁰³ Joseph Rowntree Foundation "Forced Labour and UK Immigration Policy: Status matters," 2011, available at: <http://www.jrf.org.uk/sites/files/jrf/forced-labour-immigration-status-full.pdf>

⁴⁰⁴ As required by Preamble 11 and article 2(5) – the Anti-Trafficking Directive and the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children

⁴⁰⁵ Concluding observations of UNCRC on Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography; para 29, available at: <http://www.equalityhumanrights.com/sites/default/files/uploads/UN%20Convention%20on%20rights%20of%20the%20child.pdf>

⁴⁰⁶ APPG for Runaway and Missing Children, and the APPG for Looked After Children, "Report into children who go missing from care" 2012, available at:

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/175563/Report_-_children_who_go_missing_from_care.pdf

⁴⁰⁷ Article 2(1) of Directive 2011/36/EU – the Anti-Trafficking Directive

⁴⁰⁸ CEOP (2010) Strategic threat Assessment Child Trafficking in UK paragraph 10.4. Available at: http://www.ceop.police.uk/Documents/ceopdocs/Child_Trafficking_Strategic_Threat_Assessment_2010_NPM_Final.pdf

⁴⁰⁹ Concluding observations of UNCRC on Optional Protocol on the sale of children, child prostitution and child pornography paras 38 -41 available at:

d. Non-prosecution of victims of trafficking

The MSB has improved since its original draft by prohibiting the prosecution of trafficking victims for offences committed by compulsion as a result of slavery or exploitation. This is welcome implementation of the CRC's concluding observations.⁴¹⁰ It is also necessary, in light of the body of evidence⁴¹¹ that, despite Crown Prosecution Service (CPS) guidance,⁴¹² individuals continue to be prosecuted for offences committed with victims of trafficking.

e. Data collection and the review of the National Referral Mechanism

The EHRC has raised concerns about the UK Government's lack of a comprehensive data collection system to enable improved identification and recording of suspected cases of trafficking, and their referral and follow-up at a local and national level.⁴¹³ We therefore welcome the recently announced review of the NRM, which is due to report in autumn 2014. The EHRC's Inquiry into Human Trafficking in Scotland⁴¹⁴ recommended that such a review should consider:

- the approaches and structures used for the identification of trafficked persons;
- the independence of the present arrangements;
- whether the present arrangements for identifying victims should be devolved to local decision makers;
- how to improve accountability;
- whether the current decision making processes present conflicts of interest;
- introducing a formal appeal process;
- enhancing anti-trafficking practices across partner agencies by allowing for the disaggregation, systematic analysis and sharing of NRM data;
- introducing a trafficking care standard and an end-to-end service for trafficking victims. This should include arrangements for systematically tracking the progress and outcomes for each victim; and

<http://www.equalityhumanrights.com/sites/default/files/uploads/UN%20Convention%20on%20rights%20of%20the%20child.pdf>

⁴¹⁰ Concluding observations of UNCRC on Optional on the sale of children, child prostitution and child pornography paras 38-39 available at:

<http://www.equalityhumanrights.com/sites/default/files/uploads/UN%20Convention%20on%20rights%20of%20the%20child.pdf>

⁴¹¹ Draft Modern Day Slavery Bill Joint Committee Report -

<http://www.publications.parliament.uk/pa/jt201314/jtselect/jt slavery/166/16602.htm>; Modern Slavery Evidence Review

<http://www.frankfield.com/upload/docs/Modern%20Slavery%20Bill%20Evidence%20Review.pdf>

⁴¹² CPS (2011) CPS Policy for Prosecuting Cases of Human Trafficking. Available at:

http://www.cps.gov.uk/publications/docs/policy_for_prosecuting_cases_of_human_trafficking.pdf

⁴¹³ Equality and Human Rights Commission and Northern Ireland Human Rights Commission, Joint Statement to the UN Human Rights Council on the Report of the UN Special Rapporteur on Trafficking, especially in Women and Children, June 2014, available at:

<http://www.equalityhumanrights.com/about-us/our-work/human-rights/international-framework/international-news-updates/joint-statement-human-rights-council-trafficking>

⁴¹⁴ Equality and Human Rights Commission (2011) 'Inquiry into Human Trafficking in Scotland, available at:

http://www.equalityhumanrights.com/uploaded_files/Scotland/Human_Trafficking_in_Scotland/_inquiry_into_human_trafficking_in_scotland-exec-sum_pdf_.pdf

- review systems for the collection of data arising from the identification of victims of trafficking and/or slavery to ensure the timely collection of data to allow enforcement action.⁴¹⁵

f. Anti-slavery Commissioner

The EHRC welcomes the MSB's provision for an Anti-slavery Commissioner. However, we are concerned that the Commissioner may not have sufficient resources to fulfil this role effectively, as envisaged in the EU Anti-Trafficking Directive. We therefore agree with the recommendations in the Modern Slavery Bill Evidence Review⁴¹⁶ to strengthen the powers of the Anti-Slavery Commissioner to enable him or her to:

- make recommendations to appropriate regulatory bodies;
- request data and information (including classified information) from relevant bodies;
- hold all agencies to account for non-compliance with laws and policies;
- launch inquiries, enter premises and investigate actions of any agency tasked with tackling modern slavery;
- conduct regular audits of shelters that provide services to victims of modern slavery; and
- launch or request independent research and inquiries to monitor and identify trends in modern slavery.

Conclusion: The EHRC welcomes the MSB and supports its aims. However, we believe further steps are required to:

- **address omissions in criminal offences in the MSB;**
- **implement the concluding observations of the CRC, particularly in relation to the appointment of guardians for separated children;**
- **improve data collection and analysis, following a robust review of the NRM; and**
- **strengthen powers and provide adequate resources for the Anti-Slavery Commissioner.**

Question A: Can the UK Government outline how it has considered and implemented the CRC's 2014 Concluding Observations through the MSB, and how it plans to respond to any outstanding recommendations?

Question B: How does the UK Government intend to engage the devolved administrations in the review of the NRM, and thereafter to ensure data is collected and shared to build a robust evidence base of the prevalence of trafficking across the UK?

⁴¹⁵ credible suspicion being the trigger CN v UK Application no. 4239/08

⁴¹⁶ Report of the Modern Slavery Bill Evidence Review, 2014, available at: <http://www.frankfield.com/upload/docs/Modern%20Slavery%20Bill%20Evidence%20Review.pdf>

16. Privacy and Security (Articles 2, 5 (1) and 17)⁴¹⁷

a. Summary of the Legal Framework

The right to respect for private and family life, home and correspondence is protected in UK law under Article 8 of the ECHR. It is a qualified right so that, in certain circumstances,⁴¹⁸ public authorities can interfere with the private and family life of an individual. Such interference must be proportionate, in accordance with law and necessary to protect national security, public safety or the economic wellbeing of the country; to prevent disorder or crime, protect health or morals, or to protect the rights and freedoms of others. While the EHRC fully acknowledges the need for states to qualify the right to privacy in order to protect the public, we note that concerns the HRC has raised in relation to mass surveillance of communications by the United States of America,⁴¹⁹ may also be relevant to the UK context; and that current UK privacy laws and regulation do not adequately comply with the state's international human rights obligations.⁴²⁰

Aspects of the right to privacy are addressed⁴²¹ in the Data Protection Act 1998⁴²¹ the Regulation of Investigatory Powers Act 2000 (RIPA),⁴²² the Security Service Act 1989⁴²³, the Intelligence Services Act 1994⁴²⁴, and the common law. These laws are broadly framed and their legal interpretation by the Investigatory Powers Tribunal (IPT)⁴²⁵ is generally not made public. The EHRC is concerned that UK privacy law has struggled to keep pace with the demands of government and changes in the technology of information gathering and data sharing; and become increasingly fragmented and incoherent.⁴²⁶

Given the fragmented nature of the legal framework, the EHRC has called for a wide-ranging review of the legislation, and recommended the establishment of a framework of principles to govern surveillance authorisations, including necessity,

⁴¹⁷ The State touches on two aspects of the right to privacy – phone tapping and the retention of biometric information in its Seventh periodic reports of States parties for the United Kingdom of Great Britain and Northern Ireland, 29 December 2012, para 966-995, available at: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2fGBR%2f7&Lang=en

⁴¹⁸ Set out in Article 8(2).

⁴¹⁹ Human Rights Committee, Concluding observations on the fourth periodic report of the United States of America, 2014, paragraph 22, available at: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2fUSA%2fCO%2f4&Lang=en

⁴²⁰ Equality and Human Rights Commission, Human Rights Review, Article 8, available at: http://www.equalityhumanrights.com/sites/default/files/documents/humanrights/hrr_article_8.pdf

⁴²¹ Data Protection Act 1998, available at: <http://www.legislation.gov.uk/ukpga/1998/29/contents>

⁴²² Regulation of Investigatory Powers Act 2000, available at: <http://www.legislation.gov.uk/ukpga/2000/23/contents>

⁴²³ Security Service Act 1989, available at: <http://www.legislation.gov.uk/ukpga/1989/5/contents>

⁴²⁴ Intelligence Service Act 1994, available at: <http://www.legislation.gov.uk/ukpga/1994/13/contents>

⁴²⁵ More information available at: <http://www.ipt-uk.com/>

⁴²⁶ Equality and Human Rights Commission, Submission to the Intelligence and Security Committee's inquiry into Privacy and Security, 2014, available at: <http://www.equalityhumanrights.com/legal-and-policy/our-legal-work/consultation-responses/response-privacy-and-security-inquiry-call-evidence>
See also: Equality and Human Rights Commission, Protecting Information Privacy, 2011, p.3, available at: <http://www.equalityhumanrights.com/sites/default/files/documents/research/rr69.pdf>

proportionality, legitimacy and fairness.⁴²⁷ We have stressed that new proposals and their implementation should be subjected to appropriate scrutiny, so we noted with caution the UK Government's announcement on 10 July 2014 of:

- emergency legislation to be introduced to ensure that UK law enforcement and intelligence agencies could maintain their ability to access the telecommunications data they need to investigate criminal activity and protect the public;⁴²⁸
- a review of the “Capabilities and powers required by law enforcement and Security and Intelligence Agencies and the regulatory framework within which those capabilities and powers should be exercised”⁴²⁹;
- the establishment of an Independent Privacy and Civil Liberties Oversight Board⁴³⁰;
- annual “transparency reports” on the use of surveillance powers; and
- restrictions on the number of public bodies able to request communications data.

The Data Retention and Investigatory Powers Act (DRIP) became law on 17 July 2014⁴³¹. The DRIP Act:

- responds to a judgment of the European Court of Justice that the Data Retention Directive was invalid by replacing the regulations that had transposed that Directive into UK law;⁴³²
- amends RIPA to ensure requests for interception and communications data to overseas companies that are providing communications services within the UK are subject to the legislation; and
- requires a warrant, signed by a Secretary of State, to enable content (rather than communications data) to be accessed.

b. Judicial Oversight

The EHRC's analysis suggests RIPA is “marred by ambiguity, leaving open the possibility of serious errors, inadvertent use of illegal surveillance techniques, and inappropriate use of surveillance powers.” Among the problems we have identified – and was not addressed through the Protection of Freedoms Act 2012 - is that access to communications data under RIPA relies heavily on “internal self-authorisation,

⁴²⁷ Equality and Human Rights Commission, Protecting Information Privacy, 2011, p.3, available at: <http://www.equalityhumanrights.com/sites/default/files/documents/research/rr69.pdf>

⁴²⁸ Cabinet Office, Prime Minister and Deputy Prime Minister Press Release, 10 July 2014, available at: <https://www.gov.uk/government/news/pm-and-deputy-pm-to-announce-emergency-security-legislation>

⁴²⁹ Terms of Reference of the review are available at: <https://terrorismlegislationreviewer.independent.gov.uk/review-of-communications-data-and-interception-powers/>

⁴³⁰ Terms of Reference of the Independent Privacy and Civil Liberties Oversight Board are available at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/330748/Independent_Privacy_and_Civil_Liberties_Board.pdf

⁴³¹ Data Retention and Investigatory Powers Act 2014, available at:

<http://www.legislation.gov.uk/ukpga/2014/27/contents/enacted/data.htm>

⁴³² European Court of Justice, Press Release, 8 April 2014, available at:

<http://curia.europa.eu/jcms/upload/docs/application/pdf/2014-04/cp140054en.pdf>

without the requirement for judicial oversight.”⁴³³ By 2011, there had been almost 3 million decisions made by public bodies under RIPA, yet less than 0.5% had been subject to judicial approval.⁴³⁴

We believe serious consideration should be given to introducing a requirement for judicial authorisation for interception warrants under Part 1 of RIPA to ensure effective, independent scrutiny of the merits of requests to intercept private communications, and provide evidence that any interference with the right to privacy of individuals is necessary and proportionate. This would be consistent with practice in other countries, such as Australia, Canada and Germany,⁴³⁵ and with the recognised need in the UK for a judicial warrant before a person's home can be searched by the police. There is no longer a meaningful distinction between the quantity and nature of personal information that can be discovered through a premises search and obtained via surveillance under RIPA.⁴³⁶ UK judges have experience of granting similar applications, for example in relation to approving authorisations for police to use intrusive surveillance under Part 2 of RIPA.

Further consideration should also be given to whether requests to access traffic and service use data (but not subscriber data) under Part 2 of RIPA could meaningfully be subjected to judicial scrutiny.

c. Oversight and Accountability

Concerns have been raised about the ex post facto oversight of the security services provided by the Surveillance Commissioners,⁴³⁷ the IPT and the UK Parliament's Intelligence and Security Committee (ISC).⁴³⁸ While we welcome the new powers granted to the ISC under Part 1 of the Justice and Security Act 2013⁴³⁹ and believe pre-judicial authorisation of targeted surveillance could help plug oversight gaps in this fragmented and under-resourced system, the EHRC considers a number of

⁴³³ Equality and Human Rights Commission, Protecting Information Privacy, 2011, available at: <http://www.equalityhumanrights.com/sites/default/files/documents/research/rr69.pdf>

⁴³⁴ JUSTICE, letter to the Intelligence and Security Committee, 2014, available at: <http://www.justice.org.uk/data/files/resources/366/JUSTICE-letter-to-Intelligence-Security-Committee-10-Feb-2014.pdf>

⁴³⁵ JUSTICE, Freedom from Suspicion: Surveillance Reform for a Digital Age, 2011, p.162, available at: <http://www.justice.org.uk/data/files/resources/305/JUSTICE-Freedom-from-Suspicion-Surveillance-Reform-for-a-Digital-Age.pdf>

⁴³⁶ Liberty, Evidence to the Intelligence and Security Committee's Inquiry into Privacy and Security, 2014, p.17, [http://www.liberty-human-rights.org.uk/sites/default/files/Liberty's%20evidence%20to%20the%20ISC%20inquiry%20into%20privacy%20and%20security%20\(Feb%202014\).pdf](http://www.liberty-human-rights.org.uk/sites/default/files/Liberty's%20evidence%20to%20the%20ISC%20inquiry%20into%20privacy%20and%20security%20(Feb%202014).pdf)

⁴³⁷ Seven separate Commissioners (Interception of Communications, Intelligence Services, Surveillance, Information, Biometrics, and Surveillance Cameras) oversee the implementation of RIPA.

⁴³⁸ See, for example, JUSTICE, Freedom from Suspicion: Surveillance Reform for a Digital Age, 2011, paras 247, 397, 398, 399 and 400, available at: <http://www.justice.org.uk/data/files/resources/305/JUSTICE-Freedom-from-Suspicion-Surveillance-Reform-for-a-Digital-Age.pdf>; and Liberty, Evidence to the Intelligence and Security Committee's Inquiry into Privacy and Security, 2014, p.18, [http://www.liberty-human-rights.org.uk/sites/default/files/Liberty's%20evidence%20to%20the%20ISC%20inquiry%20into%20privacy%20and%20security%20\(Feb%202014\).pdf](http://www.liberty-human-rights.org.uk/sites/default/files/Liberty's%20evidence%20to%20the%20ISC%20inquiry%20into%20privacy%20and%20security%20(Feb%202014).pdf)

⁴³⁹ Justice and Security Act 2013, available at: <http://www.legislation.gov.uk/ukpga/2013/18/contents/enacted>

other reforms are required to improve cohesion, efficiency, transparency and accountability, while preserving national security, including:

- appointments to the ISC should be made by both Houses of Parliament and should not be subject to nomination or effective pre-approval by the Prime Minister;⁴⁴⁰
- while the ISC should consult and consider seriously the Prime Minister's and others' views as to the sensitivity of information and consider appropriate redactions to its reports; the content of its reports should be a matter for the ISC to determine and should never be subject to effective Prime Ministerial veto or censorship;
- reducing the number of Commissioners and creating a new, public-facing oversight body, to provide high quality and independent review and audit of surveillance decisions made under RIPA (and any subsequent legislation). Such a body should have strong powers to address any unlawful or disproportionate authorisations; and
- the powers and function of the IPT should be reviewed, and consideration be given to a number of reforms, including:
 - the new oversight body should be required to refer cases for investigation to the IPT where it reasonably suspects a public authority has acted unlawfully;⁴⁴¹
 - the IPT's investigative capabilities could be increased to enable it to undertake proactive investigations that arise from reasonable suspicion of systemic failings resulting in the unlawful use of surveillance powers;
 - robust steps to increase the IPT's transparency, for example requiring it to publish its judgments, unless national security concerns require that secrecy be maintained.

d. Legal Certainty

Deficiencies in the framework for authorising the interception of communications under Part 1 of RIPA mean internet communications may be subject to two different interception regimes, depending on how they are routed: communications "internal" to the UK under section 5⁴⁴², and "external" communications – "sent or received outside the British Islands," – under section 8(4). Unlike those under section 5, intercept warrants under section 8(4):

- do not specify that they are targeting a particular individual or premises, meaning that it can encompass extremely broad categories of communications; and
- can last for 3 or 6 months, and be renewed indefinitely.

⁴⁴⁰ Equality and Human Rights Commission, Briefing on the Justice and Security Bill with advice, 2012, available at: <http://www.equalityhumanrights.com/legal-and-policy/our-legal-work/parliamentary-briefings/justice-security-bill-with-advice>

⁴⁴¹ JUSTICE has made a similar recommendation: Freedom from Suspicion: Surveillance Reform for a Digital Age, 2011, paras 397 available at: <http://www.justice.org.uk/data/files/resources/305/JUSTICE-Freedom-from-Suspicion-Surveillance-Reform-for-a-Digital-Age.pdf>;

⁴⁴² In *Kennedy v UK* (Application No 26839/05) the European Court of Human Rights noted that internal interception must specify the persons or premises targeted and that "indiscrimination capturing of vast amounts of communications is not permitted under the internal communications provisions of RIPA." Available at: [http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-98473#{"itemid":\["001-98473"\]}](http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-98473#{)

Due to changes in communications technology since 2000, Part 1 of RIPA no longer provides sufficient certainty to the public about when their internet based communications are liable to be subject to "internal" or "external" interception warrants. A claim before the IPT, (which was heard 14-18 July 2014 and we're awaiting judgment) is seeking to establish:

- whether the RIPA definition of "external communication" in section 20 of RIPA provides sufficient clarity concerning conditions and circumstances in which UK residents are liable to have their communications intercepted; and
- what, if any, legal frameworks govern the granting of, access to, or receipt of, intercept product and communications data to/from a foreign intelligence service in respect of communications originating from the UK.⁴⁴³

The Director General of the Office for Security and Counter-terrorism's witness statement to the IPT in that case suggests the UK Government considers that because searches on Google, Twitter, Facebook and YouTube are likely to involve communicating with a "web-based platform" abroad they are "external communications" and do not require a specific target. Emails sent or received from abroad could be intercepted in a similar way.⁴⁴⁴ In addition, the witness says that while he can "neither confirm or deny" the existence of the much reported and debated Tempora interception programme,⁴⁴⁵ he does accept the existence of Prism – an American interception programme – "because it has been expressly avowed by the executive branch of the US government".⁴⁴⁶

It has been suggested that "in theory, and perhaps in practice, the Secretary of State may order the interception of all material passing along a transatlantic cable. If that is the case, then RIPA provides almost no meaningful restraint on the exercise of executive discretion in respect of external communications."⁴⁴⁷ The EHRC considers that such an interpretation and application of Section 8(4) risks non-compliance with Article 8 of the ECHR because they are not "in accordance with law"⁴⁴⁸ and disproportionate. To address these risks, we suggest the UK Parliament clarify the definition of "external communication" in Section 20 of RIPA as a matter of urgency.

⁴⁴³ Liberty, Evidence to the Intelligence and Security Committee's Inquiry into Privacy and Security, 2014, p.9, [http://www.liberty-human-rights.org.uk/sites/default/files/Liberty's%20evidence%20to%20the%20ISC%20inquiry%20into%20privacy%20and%20security%20\(Feb%202014\).pdf](http://www.liberty-human-rights.org.uk/sites/default/files/Liberty's%20evidence%20to%20the%20ISC%20inquiry%20into%20privacy%20and%20security%20(Feb%202014).pdf)

⁴⁴⁴ Charles Farr, Witness Statement to Case No IPT/13/92/CH, 16 May 2014, paras 132-141, available at: <http://www.liberty-human-rights.org.uk/sites/default/files/Witness%20statement%20of%20Charles%20Farr%20on%20behalf%20of%20the%20Intelligence%20Services%2016th%20May%202014.pdf>

⁴⁴⁵ For Example, Westminster Hall Debate re Intelligence and Security Services, 31 October 2013, Hansard HC Column 342WH, available at:

<http://www.publications.parliament.uk/pa/cm201314/cmhansrd/cm131031/halltext/131031h0001.htm>

⁴⁴⁶ Charles Farr, Witness Statement to Case No IPT/13/92/CH, 16 May 2014, paras 35-48, available at: <http://www.liberty-human-rights.org.uk/sites/default/files/Witness%20statement%20of%20Charles%20Farr%20on%20behalf%20of%20the%20Intelligence%20Services%2016th%20May%202014.pdf>

⁴⁴⁷ Jemima Stratford QC and Tim Johnston, Legal Opinion provided to the All Party Parliamentary Group on Drones, 2014, available at: <http://www.tom-watson.co.uk/wp-content/uploads/2014/01/APPG-Final.pdf>

⁴⁴⁸ Malone v UK (Application No 8691/79) available at: [http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-57533#{"itemid":\["001-57533"\]}](http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-57533#{)

e. Non-discrimination

The EHRC is concerned that the existing scheme of internal and external warrants under Part 1 of RIPA, under which no targeting is required in respect of communications with persons outside the UK, could disproportionately impact on some ethnic minorities, including foreign nationals, who may be more likely to have family and social contacts outside of the UK. We consider that the UK Government should consider introducing a single system of targeted warrants for the interception of communications; and should prohibit untargeted monitoring and collection of private communications and related data except where it is a necessary and proportionate response to a reasonable suspicion based on evidence.

Conclusion: Given the fragmented nature of the legal framework governing privacy and surveillance, the EHRC considers that it should be subject to a forward-looking “root and branch” review, rather than piecemeal reform, and the establishment of a framework of principles to govern authorisations, including necessity, proportionality, legitimacy and fairness.⁴⁴⁹ In the context of interception of communications and access to communications data, we believe the following, specific, measures are necessary:

- **serious consideration should be given to introducing a requirement for judicial authorisation for interception warrants under Part 1 of RIPA to ensure effective, independent scrutiny;**
- **further consideration should also be given to whether requests to access traffic and service use data (but not subscriber data) under Part 2 of RIPA could meaningfully be subjected to judicial scrutiny;**
- **a number of reforms to improve the cohesion, efficiency, transparency and accountability of the RIPA oversight system (including the Surveillance Commissioners, IPT and ISC) while preserving national security; and**
- **the UK Parliament clarify the definition of “communication” in Section 20 of RIPA as a matter of urgency and ensure the levels of authorisations required are appropriate to the protection needed.**

Question A: How does the UK Government propose to address (and to what timetable), the following:

- **loose definitions of ‘communication’ in Section 20 of RIPA;**
- **the appropriate levels of authorisation to safeguard human rights in the use of RIPA surveillance powers;**
- **the complexity of the oversight mechanisms; and**
- **the need for greater judicial oversight.**

Question B: How can the UK Government reassure itself and the public that surveillance powers under RIPA are not being used in a discriminatory way?

⁴⁴⁹ Equality and Human Rights Commission, Protecting Information Privacy, 2011, p.3, available at: <http://www.equalityhumanrights.com/sites/default/files/documents/research/rr69.pdf>

17. Prisoner Voting Rights (Article 25)⁴⁵⁰

Currently, prisoners serving a custodial sentence in the UK do not have the right to vote; while those who are on remand are able to vote according to the Representation of the People Act 2000.⁴⁵¹

The Grand Chamber of the European Court of Human Rights' judgment in the Scoppola case⁴⁵² confirmed the outcome of Hirst (No 2)⁴⁵³ that a general and automatic disenfranchisement of all serving prisoners was incompatible with Article 3 of Protocol No 1 of the ECHR, but accepted the UK Government's argument that member states should have a wide discretion in how they regulate a ban on prisoners voting. The judgment meant the UK Government had to bring forward proposals to amend its legislation by the end of 2012.

On 22 November 2012 the UK Government published the Voting Eligibility (Prisoners) Draft Bill⁴⁵⁴, for pre-legislative scrutiny by a Joint Committee of both Houses. The EHRC advised the Committee that only implementation of the Hirst (No 2) and the Greens⁴⁵⁵ judgments would prevent further legal claims before the ECtHR.⁴⁵⁶ The Committee published its report on 18 December 2013 and recommended that the UK Government should introduce legislation to allow all prisoners serving sentences of 12 months or less to vote in all UK Parliamentary, local and European elections.⁴⁵⁷

The Lord Chancellor and Justice Secretary wrote to the Committee on 25 February 2014, confirming the issue is under "active consideration."⁴⁵⁸ The UK Government has not yet included it in its legislative programme for 2014-15.⁴⁵⁹

⁴⁵⁰ The state notes the need to consider the implications for the UK of the Scoppola v Italy (No 3) case in its Seventh periodic reports of States parties for the United Kingdom of Great Britain and Northern Ireland, 29 December 2012, para 212, available at:

http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2fGBR%2f7&Lang=en

⁴⁵¹ Representation of the People Act 2000, available at:

<http://www.legislation.gov.uk/ukpga/2000/2/contents>

⁴⁵² Scoppola v Italy (No. 3) available at: <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-111044>

⁴⁵³ Hirst v United Kingdom (No. 2), available at:

[http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-70442#{"itemid":"001-70442"}](http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-70442#{)

⁴⁵⁴ Voting Eligibility (Prisoners) Draft Bill, available at:

<http://www.justice.gov.uk/downloads/legislation/bills-acts/voting-eligibility-prisoners/voting-eligibility-prisoners-command-paper.pdf>

⁴⁵⁵ The EHRC intervened as a third party in Greens and M.T. v the United Kingdom [2011] ECHR 686, available at: <http://www.bailii.org/eu/cases/ECHR/2011/686.html>

⁴⁵⁶ EHRC Submission to the Joint Committee on the Voting Eligibility (Prisoners) Draft Bill, 23 June 2013, available at <http://www.equalityhumanrights.com/legal-and-policy/our-legal-work/parliamentary-briefings/submission-to-the-joint-committee-on-the-draft-voting-eligibility-prisoners-bill-june-2013>

⁴⁵⁷ Joint Committee on the Voting Eligibility (Prisoners) Draft Bill, 2013, available at:

<http://www.publications.parliament.uk/pa/jt201314/jtselect/jtdraftvoting/103/10302.htm>

⁴⁵⁸ Letter from Justice Secretary to Chair of the Joint Committee on the Voting Eligibility (Prisoners) Draft Bill, 2013, available at: [http://www.parliament.uk/documents/joint-committees/Draft%20Voting%20Eligibility%20\(Prisoners\)%20Bill/Grayling-letter-to-Chair.pdf](http://www.parliament.uk/documents/joint-committees/Draft%20Voting%20Eligibility%20(Prisoners)%20Bill/Grayling-letter-to-Chair.pdf)

⁴⁵⁹ Queen's Speech 2014, available at: <https://www.gov.uk/government/topical-events/queens-speech-2014>

Conclusion: The UK Government is yet to implement the HRC's 2008 recommendation,⁴⁶⁰ and may still not meet the requirements of Article 3 of Protocol No 1 of the ECHR, or article 10, paragraph 3, when read in conjunction with article 25 of ICCPR.

Question A: What plans does the UK Government have to bring forward legislation to implement the judgment in the Scoppola case, (and in doing so the recommendation of the Joint Committee on the Voting Eligibility (Prisoners) Draft Bill), and ensure compliance with the requirements of Protocol No 1 of the ECHR and ICCPR, particularly given there is a General Election in 2015?

C. Physical Security

1. Prohibition of torture and cruel, inhuman or degrading treatment (Article 7)⁴⁶¹

a. Investigations into alleged UK complicity in torture

A number of UN⁴⁶² and UK bodies⁴⁶³ including the EHRC⁴⁶⁴ have raised concerns about the alleged complicity of British security and secret intelligence services in the ill-treatment of prisoners and civilians in overseas counter-terrorism operations in the aftermath of the 9/11 attacks on the United States of America. These allegations concern those held in the Guantanamo Bay detention facility and in Afghanistan, Egypt, Pakistan, Libya and Uganda.

In 2010, the Prime Minister delivered a statement⁴⁶⁵ to the UK Parliament to “try and draw a line under the serious allegations that had been made about the role the UK

⁴⁶⁰ Concluding Observations of the Human Rights Committee for the United Kingdom of Great Britain and Northern Ireland, 30 July 2008, para 28, available at: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2fGBR%2fCO%2f6&Lang=en

⁴⁶¹ The State covers these points in its Seventh periodic reports of States parties for the United Kingdom of Great Britain and Northern Ireland, 29 December 2012, para 555-573, available at: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2fGBR%2f7&Lang=en

⁴⁶² For example, see: Concluding Observations of the Committee Against Torture for the United Kingdom of Great Britain and Northern Ireland, May 2013, paragraph 15, available at: <http://www.justice.gov.uk/downloads/human-rights/cat-concluding-observations-may-2013.pdf> and Joint study on global practices in relation to secret detention in the context of countering terrorism of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, the Special Rapporteur on torture on torture and other cruel, inhuman or degrading treatment or punishment, the Working Group on Arbitrary Detention and the Working Group on Enforced or Involuntary Disappearance, available at: http://www1.umn.edu/humanrts/wgad/2010report-secret_detention.pdf

⁴⁶³ Joint Committee on Human Rights, Allegations of UK Complicity in Torture, 2009, available at: <http://www.publications.parliament.uk/pa/jt200809/jtselect/jtrights/152/152.pdf>

⁴⁶⁴ Equality and Human Rights Commission, Submission to the UN Committee Against Torture: Response to the List of Issues on the UK's 5th Periodic Report, 2013, available at: http://www.equalityhumanrights.com/sites/default/files/documents/international/ehrc_report_to_cat_re_uk_5th_periodic_exam_april_2013.pdf

⁴⁶⁵ Statement given by the Prime Minister to the House of Commons on the treatment of terror suspects on 6 July 2010, available at: <https://www.gov.uk/government/speeches/statement-on-detainees>

has played in the treatment of detainees held by other countries.”⁴⁶⁶ He announced that Sir Peter Gibson would chair an independent inquiry to examine “whether Britain was implicated in the improper treatment of detainees, held by other countries, which may have occurred in the aftermath of 9/11.”⁴⁶⁷

The EHRC raised concerns with the UK Government about the terms of reference of the inquiry.⁴⁶⁸ We also urged Sir Peter Gibson and the UK Government to ensure the investigation was compliant with its international human rights obligations.⁴⁶⁹ Lawyers acting for former detainees and 10 non-governmental organisations indicated they would not participate in the inquiry, believing that the terms of reference and protocols would not establish the truth of the allegations, or prevent the abuses from happening again.⁴⁷⁰

The UK Government decided to conclude the inquiry in January 2012,⁴⁷¹ before it had formally launched, due to the commencement of criminal investigations into the rendition of individuals to Libya.⁴⁷² A report of the preparatory work undertaken by the Detainee Inquiry was subsequently published, which highlights eight issues where further detailed investigation is required.⁴⁷³

Despite committing itself to another independent, judge-led inquiry once the criminal investigations had concluded, the UK Government subsequently referred the matter to the ISC to:

- inquire into the eight issues raised by the Detainee Inquiry;
- take further evidence; and
- report to the UK Government and Parliament on the outcome of its inquiry.⁴⁷⁴

⁴⁶⁶ Seventh periodic reports of States parties for the United Kingdom of Great Britain and Northern Ireland, 29 December 2012, para 555, available at: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2fGBR%2f7&Lang=en

⁴⁶⁷ The Detainee Inquiry Terms of Reference, 2010 are available at: <http://www.detaineeinquiry.org.uk/wp-content/uploads/2011/06/20110706-The-Detainee-Inquiry-and-HM-Government-Terms-of-reference.pdf>

⁴⁶⁸ Equality and Human Rights Commission Chief Executive letter to Justice Secretary, 21 February 2012. Available at: <http://www.equalityhumanrights.com/about-us/our-work/human-rights/international-framework/un-convention-against-torture-and-other-cruel-inhuman-or-degrading-treatment-or-punishment>

⁴⁶⁹ Equality and Human Rights Commission Chair to Sir Peter Gibson, 13 September 2010 available at: <http://www.equalityhumanrights.com/about-us/our-work/human-rights/international-framework/un-convention-against-torture-and-other-cruel-inhuman-or-degrading-treatment-or-punishment>

⁴⁷⁰ Letter to Sir Peter Gibson from Liberty, Redress, Amnesty International, Cageprisoners, Address, the Aire centre, Freedom from Torture, Human Rights Watch, Justice, Reprieve and British Irish Watch, 14 September 2010, available at: <http://www.amnesty.org/en/library/info/EUR45/016/2010>

⁴⁷¹ Statement made by the Justice Secretary to the House of Commons, Hansard HC, col 752, 18 January 2012, available at: <http://www.publications.parliament.uk/pa/cm201212/cmhansrd/cm120118/debtext/120118-0001.htm>

⁴⁷² Joint Statement by the Director of Public Prosecutions and the Metropolitan Police Service, 12 January 2012, available at: <http://content.met.police.uk/News/Joint-statement-by-MPS-and-DPP/1400005902978/1257246741786>

⁴⁷³ Report of the Detainee Inquiry, 19 December 2013, available at: http://www.detaineeinquiry.org.uk/wp-content/uploads/2013/12/35100_Trafalgar-Text-accessible.pdf

⁴⁷⁴ Statement to the House of Commons by the Minister without Portfolio, 13 December 2013, available at: <http://www.publications.parliament.uk/pa/cm201314/cmhansrd/cm131219/debtext/131219-0002.htm>

The UK Government will then consider whether a public inquiry is still warranted. The EHRC and the Committee Against Torture (CAT) have recommended that the originally promised independent, judge-led inquiry is required to reaffirm the UK's reputation for strict adherence to international human rights standards.⁴⁷⁵

b. Extraordinary Renditions

In advance of, and subsequent to, the HRC's 2008 recommendation for the State Party to investigate such allegations,⁴⁷⁶ the UK Government has accepted that its airspace and territory had been used for the extraordinary rendition of individuals to other states, such as Afghanistan, where there would have been substantial grounds for believing the individual would be at risk of torture or ill treatment.⁴⁷⁷ The UK Government has also admitted that civil servants and relevant Senior Ministers were aware of some of these transfers and should have challenged their compliance with international human rights obligations then at the time.⁴⁷⁸

c. Investigations into the mistreatment of detainees in Iraq

As well as the HRC⁴⁷⁹ a number of other bodies, including CAT,⁴⁸⁰ have raised concerns about allegations of British military personnel involvement in the torture and ill-treatment of civilians and detainees in Iraq. The UK Government accepts that some of these allegations are credible and has established the Iraq Historic Allegations Team (IHAT) in 2010, which is currently investigating at least 169 different allegations, from a total of around 1,000 allegations.⁴⁸¹ These allegations have been described by a senior judge as those "of the most serious kind, involving murder, manslaughter, the wilful infliction of serious bodily injury, sexual indignities, cruel, inhuman and degrading treatment and large scale violation of international humanitarian law."⁴⁸² Specifically, detainees were:

⁴⁷⁵ Concluding Observations of the Committee Against Torture for the United Kingdom of Great Britain and Northern Ireland, May 2013, paragraph 15, available at:

<http://www.justice.gov.uk/downloads/human-rights/cat-concluding-observations-may-2013.pdf>

⁴⁷⁶ Concluding Observations of the Human Rights Committee for the United Kingdom of Great Britain and Northern Ireland, 30 July 2008, para 13, available at:

http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2fGBR%2fCO%2f6&Lang=en

⁴⁷⁷ Statement made by the Foreign Secretary, 21 February 2008, Hansard HC col 547, available at: <http://www.publications.parliament.uk/pa/cm200708/cmhansrd/cm080221/debtext/80221-0008.htm>; Response to a Parliamentary Question by the Defence Secretary, 6 July 2009, Hansard HC col 549W, available at:

<http://www.publications.parliament.uk/pa/cm200809/cmhansrd/cm090713/text/90713w0004.htm>

⁴⁷⁸ Statement made by Defence Secretary, 29 February 2009, Hansard HC col 394, available at:

<http://www.publications.parliament.uk/pa/cm200809/cmhansrd/cm090226/debtext/90226-0008.htm>

⁴⁷⁹ Concluding Observations of the Human Rights Committee for the United Kingdom of Great Britain and Northern Ireland, 30 July 2008, paragraph 14, available at:

http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2fGBR%2fCO%2f6&Lang=en

⁴⁸⁰ Concluding Observations of the Committee Against Torture for the United Kingdom of Great Britain and Northern Ireland, May 2013, paragraph 16, available at:

<http://www.justice.gov.uk/downloads/human-rights/cat-concluding-observations-may-2013.pdf>

⁴⁸¹ More information about the Iraq Historic Allegations Team is available here:

<https://www.gov.uk/government/groups/iraq-historic-allegations-team-ihat>

⁴⁸² The President of the Queen's Bench Division, Mr Justice Silber, R(Ali Zaki Mousa and others v. Secretary of State for Defence No. 2 [2013] EWHC 1412 (admin) available at:

<http://www.judiciary.gov.uk/judgments/azm-others-v-sos-defence/>

- starved, sleep-deprived; and subject to sensory deprivation;
- threatened with execution;
- beaten, forced to adopt “stress positions” (standing up with knees bent and arms outstretched) for up to 30 hours at a time, and subjected to electric shocks;
- subject to sexual humiliation by female soldiers; and
- held for days in cells as small as one square metre.

The Baha Mousa Inquiry⁴⁸³ (into the death of an Iraqi civilian while in British army custody in Basra in 2003), found that prisoners were:

- hooded with hessian sacks and handcuffed;
- forced to adopt “stress positions”;
- sleep-deprived;
- beaten and kicked as part of “conditioning” for subsequent “tactical questioning by military officers.”⁴⁸⁴

A post-mortem found that Baha Mousa suffered at least 93 injuries, including fractured ribs and a broken nose, which were, “in part” the cause of his death. In 2007, a court martial found Corporal Donald Payne guilty of inhumane treatment and sentenced him to one year in prison.⁴⁸⁵

The Al-Sweady Public Inquiry⁴⁸⁶ was established to investigate allegations that British soldiers unlawfully killed and ill-treated Iraqi nationals detained at Camp Abu Naji and, subsequently, the divisional temporary detention facility at Shaibah Logistics Base, after the so-called Battle of Danny Boy. Lawyers for the Iraqi core participants have agreed that there is insufficient evidence to submit that anyone was unlawfully killed. However, the allegations of mistreatment remain, and the Inquiry report is currently being written.

Regrettably, the progress in investigating all of these allegations has been very slow. The IHAT has only completed investigations into eight cases, and has ordered only one fine against a British soldier.⁴⁸⁷ The EHRC does not believe this is consistent with the prompt investigative duty under Articles 2 and 3 of the ECHR, (as confirmed by the European Court of Human Rights in its Al Skeini judgment⁴⁸⁸) and the UK

⁴⁸³ Report of the Baha Mousa Inquiry, 2011, available at:

<http://webarchive.nationalarchives.gov.uk/+http://www.bahamousainquiry.org/report/index.htm>

⁴⁸⁴ See, for example, the Witness Statements of Liam Douglas Frederick Felton, available at:

http://webarchive.nationalarchives.gov.uk/+http://www.bahamousainquiry.org/linkedfiles/baha_mousa/baha_mousa_inquiry_evidence/evidence_061009/bmi00830.pdf

and Lieutenant Colonel Gavin Davies available at:

http://webarchive.nationalarchives.gov.uk/+http://www.bahamousainquiry.org/linkedfiles/baha_mousa/baha_mousa_inquiry_evidence/evidence_100610/witnessstatementofgavindavies.pdf

⁴⁸⁵ Transcript of the sentencing of Corporal Donald Payne, 2007, available at:

<http://www.publications.parliament.uk/pa/ld200607/ldlwa/070327wa1.pdf>

⁴⁸⁶ More information about the Al-Sweady Public Inquiry is available here:

<http://www.alsweadyinquiry.org/>

⁴⁸⁷ Iraq Historic Allegations Team: Work completed, as at May 2014, available at:

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/311985/20140513-ihat-work-completed.pdf

⁴⁸⁸ Al Skeini v. United Kingdom, available at:

<http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-105606>

Government's obligations under Article 12 of the UN Convention Against Torture.⁴⁸⁹ The Al Skeini judgment also confirmed that this duty applies to alleged incidents that take place out-with British military bases abroad. In May 2013, the High Court ruled a different approach was required for cases that engage the investigative duty under Article 2 of the ECHR.⁴⁹⁰ To date, eleven quasi-inquests have been ordered,⁴⁹¹ and guidelines have been set out by the Lord Chief Justice as to how those proceedings should be conducted.⁴⁹²

d. Use of Diplomatic Assurances

Despite repeated concerns from the HRC,⁴⁹³ CAT,⁴⁹⁴ and the Special Rapporteurs on Torture and Counter Terrorism and Human Rights⁴⁹⁵ the UK Government continues to rely on memoranda of understanding and diplomatic assurances (in individual cases) to try to mitigate the risks of torture and other ill treatment that would otherwise prevent the transfer of people, in particular terrorist suspects, to other countries. For example, in 2012 the UK Government sought assurances from Jordan, through a memorandum of understanding, that the terrorist suspect Abu Qatada would not be tortured and that he would receive a fair trial.⁴⁹⁶

In November 2013, the Home Secretary asked the Independent Reviewer of Terrorism Legislation to review the policy of deportation with assurances (DWA). In its response to that review, the EHRC stressed the need to address the underlying merits of the policy of DWA. We also stressed the need to review the compatibility with the UK's international obligations of the policy, in general, and the minimum requirements that all specific assurances should meet. In particular, the EHRC considers that effective verification of assurances is essential if DWA are to offer adequate protection against ill-treatment, preferably in the context of both parties having ratified the Optional Protocol to the UN Convention Against Torture (OPCAT). Finally, the EHRC agrees with the House of Commons Foreign Affairs Committee that DWA arrangements are of such significant that the text of each future arrangement should be laid before Parliament and should not come into force before

⁴⁸⁹ Equality and Human Rights intervention in R(Ali Zaki Mousa and others v. Secretary of State for Defence [2010] EWHC 3304 (Admin) available at:

<http://www.bailii.org/ew/cases/EWHC/Admin/2010/3304.html>

⁴⁹⁰ R(Ali Zaki Mousa and others v. Secretary of State for Defence No. 2 [2013] EWHC 1412 (admin) available at: <http://www.judiciary.gov.uk/judgments/azm-others-v-sos-defence/>

⁴⁹¹ Defence Secretary, Ministerial Written Statement, Hansard HC, Column 29WS 27 March 2014, available at:

<http://www.publications.parliament.uk/pa/cm201314/cmhansrd/cm140327/wmstext/140327m0001.htm>

⁴⁹² R(Ali Zaki Mousa and others v. Secretary of State for Defence No. 2 [2013] EWHC 1412 (admin) available at: <http://www.judiciary.gov.uk/judgments/azm-others-v-sos-defence/>

⁴⁹³ Concluding Observations of the Human Rights Committee for the United Kingdom of Great Britain and Northern Ireland, 30 July 2008, paragraph 12, available at: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2fGBR%2fCO%2f6&Lang=en

⁴⁹⁴ Concluding Observations of the Committee Against Torture for the United Kingdom of Great Britain and Northern Ireland, May 2013, paragraph 18, available at:

<http://www.justice.gov.uk/downloads/human-rights/cat-concluding-observations-may-2013.pdf>

⁴⁹⁵ Juan E Mendez and Ben Emmerson QC, Press Statement, December 2013, available at:

<http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=14084&LangID=E>

⁴⁹⁶ Othman (Abu Qatada) v. United Kingdom (Application no. 8139/09) 17 January 2012, available at: [http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-108629#{"itemid":\["001-108629"\]}](http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-108629#{)

14 sitting days have elapsed, during which time Members may signify any objection.⁴⁹⁷

Conclusion:

While the UK Government has accepted the credibility of a number of allegations of complicity of British military personnel, security and secret intelligence services in the ill-treatment of detainees overseas, its investigations into these allegations have not, to date, satisfied the investigative duty under Articles 2 and 3 of the ECHR. In addition, the UK Government is not yet taking sufficient steps to ensure it complies with its Article 3 obligations to individuals it transfers to other countries. The EHRC therefore considers a number of steps are required to improve the UK Government compliance with its international obligations, including:

- **a full, independent, judge-led inquiry should be carried out in place of the ISC's investigation into the issues raised in the Detainee Inquiry Report;**
- **further reform of the way the UK approaches its investigative duty under Articles 2 and 3 of the ECHR to avoid further unacceptable delays in the resolution of individual cases, and to ensure systemic issues are identified and lessons learnt; and**
- **the merits of the policy of DWA should be reviewed; where DWA is unavoidable, ensuring effective verification and post-return monitoring is a key element of any memorandum of understanding, preferably where both parties have ratified OPCAT; and laying each future agreement before Parliament and allowing Members sufficient time to raise concerns.**

Question A: When is the Independent Reviewer of Terrorism Legislation's review of the UK Government's policy of deportation with assurances going to report? What assurances can the UK Government provide that it will seriously consider and implement the Reviewer's recommendations?

2. Treatment of Detainees (Articles 9, 10, 12 and 24)

a. Immigration Detention⁴⁹⁸

i. Vulnerable Asylum Seekers and the Detained Fast Track System

The UN High Commissioner of Refugees (UNHCR) and CAT have criticised the UK's use of detained fast track system (DFT) for asylum applicants for administrative convenience rather than last resort, and the lack of adequate safeguards to

⁴⁹⁷ House of Commons Foreign Affairs Committee Third Report of Session 2012-13, the FCO's human rights work in 2011, HC 116, available at:

<http://www.publications.parliament.uk/pa/cm201213/cmselect/cmfa/116/116.pdf>

⁴⁹⁸ The State covers these points in its Seventh periodic reports of States parties for the United Kingdom of Great Britain and Northern Ireland, 29 December 2012, para 714-721, available at:

http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2fGBR%2f7&Lang=en

guarantee fairness of procedure and quality decision making.⁴⁹⁹ The EHRC has also raised concerns that the length of time in detention, without any realistic prospect of removal, for those who have committed no crime risks breaching the right to liberty and security under Article 5 of the ECHR.⁵⁰⁰

The UNCHR and CAT have criticised the UK for not having sufficient safeguards in place to prevent vulnerable individuals entering the DFT.⁵⁰¹ Article 2 of the ECHR obliges authorities to take reasonable measures to avert risk of self-harm and suicide. However, torture survivors, for example, may continue to enter the DFT because the information needed to assess them is only available at the asylum interview, which takes place *after* the person is in detention. Torture survivors are also unlikely to realise they will need to produce “independent evidence of torture” at the screening interview to establish their protection claim, as they are unlikely to have received independent legal advice.⁵⁰² In addition, the Independent Chief Inspector of Borders and Immigration has observed these interviews taking place in an open plan environment, which potentially compromises confidentiality and may inhibit applicants mentioning they have been tortured, especially if they have feelings of shame about what they have experienced. Some may have been tortured by authority figures, which can make it difficult for immigration officers to elicit such information, even if trained to do so.⁵⁰³

On 9 July 2014 the High Court gave judgment in a case in which the EHRC intervened, which challenged the lawfulness of the DFT process.⁵⁰⁴ The High Court found significant flaws in the system as it currently operates, which mean the safeguards supposed to prevent unsuitable claims and vulnerable applicants from entering the DFT do not work. Improvements to the DFT being introduced by the UK Government in response to the judgment include:

- earlier availability of legal advice; and

⁴⁹⁹ UN High Commissioner of Refugees, Statement, 2012, available at:

http://www.unhcr.org.uk/fileadmin/user_upload/pdf/DFT_PressRelease.pdf

Concluding Observations of the Committee Against Torture for the United Kingdom of Great Britain and Northern Ireland, May 2013, paragraph 30, available at:

http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CAT%2fC%2fGBR%2fCO%2f5&Lang=en

⁵⁰⁰ Equality and Human Rights Commission, Human Rights Review, 2011, available at:

<http://www.equalityhumanrights.com/about-us/our-work/human-rights/human-rights-review-2012/key-areas-improvement/immigration-procedures-and-detention>

⁵⁰¹ UN High Commissioner of Refugees, Statement, 2012, available at:

http://www.unhcr.org.uk/fileadmin/user_upload/pdf/DFT_PressRelease.pdf

Concluding Observations of the Committee Against Torture for the United Kingdom of Great Britain and Northern Ireland, May 2013, paragraph 30, available at:

http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CAT%2fC%2fGBR%2fCO%2f5&Lang=en

⁵⁰² Enforcement Instructions and Guidance, Chapter 55, 2013, Section 10, available at:

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/307995/Chapter55.pdf

⁵⁰³ The Independent Chief Inspector of Borders and Immigration, A Thematic Inspection of the

Detained Fast Track, 2012, available at: <http://icinspector.independent.gov.uk/independent-chief-inspector-publishes-detained-fast-track-report/>

⁵⁰⁴ Detention Action v Secretary of State for the Home Department [2014] EWHC 2245 (Admin) (09 July 2014), available at: <http://www.bailii.org/ew/cases/EWHC/Admin/2014/2245.html>

- additional screening questions and a review of the "rule 35" procedure, which is intended to identify victims of torture and people with mental health problems.

The DFT system cannot be operated until these changes have been implemented. The impact of these reforms will need to be assessed in due course.

ii. Immigration Detention of People with Serious Medical Conditions or Mental Illness

The EHRC has raised concerns that detention can have a detrimental impact on a detainee's mental and physical health that may engage the obligation to safeguard vulnerable individuals under Articles 2 and 3 of the ECHR, as well as the right to psychological integrity as an aspect of the right to a private life under Article 8.⁵⁰⁵

There no longer appears to be a "presumption in favour of release" for people suffering from serious medical conditions or mental illnesses.⁵⁰⁶ The UK Government's current Enforcement Instructions and Guidance allows for the detention of such people unless their conditions "cannot be satisfactorily managed within detention."⁵⁰⁷ In exceptional cases it may also be necessary for detention at a removal centre or prison to continue while individuals are being or waiting to be assessed, or are awaiting transfer under the Mental Health Act. This guidance remains in place despite the courts holding that detention of a mentally ill person in an Immigration Removal Centre (IRC) amounts to inhuman and degrading treatment⁵⁰⁸ and a breach of the PSED.⁵⁰⁹

Her Majesty's Chief Inspector of Prisons (HMCIP) has also commented on the unsuitability of IRCs for vulnerable individuals as they lack access to mental health services, and health care staff lack expertise in the trauma associated with torture.⁵¹⁰ This inadequate approach means that IRCs may not meet their Article 2 obligation in preventing suicide and self-harm and CAT's concerns have not yet been acted upon.⁵¹¹

⁵⁰⁵ Equality and Human Rights Commission, Human Rights Review, 2011, available at: <http://www.equalityhumanrights.com/about-us/our-work/human-rights/human-rights-review-2012/key-areas-improvement/immigration-procedures-and-detention>

⁵⁰⁶ Such a presumption was included in the 2008 Enforcement Instructions and Guidance.

⁵⁰⁷ Enforcement Instructions and Guidance, Chapter 55, 2013, Section 10, available at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/307995/Chapter55.pdf

⁵⁰⁸ See, for example, R(S) v SSHD [2011] available at <http://www.bailii.org/ew/cases/EWHC/Admin/2011/2120.html> and R(B.A.) v SSHD [2011] available at: <http://www.bailii.org/ew/cases/EWHC/Admin/2011/2748.html>

⁵⁰⁹ R(HA (Nigeria)) v SSHD [2012] available at: <http://www.bailii.org/ew/cases/EWHC/Admin/2012/979.html>

⁵¹⁰ Her Majesty's Chief Inspector of Prisons, Annual Report 2010-11, p.68, available at: <http://www.justice.gov.uk/downloads/publications/corporate-reports/hmi-prisons/hmip-annual-report-2010-11.pdf>

⁵¹¹ Concluding Observations of the Committee Against Torture for the United Kingdom of Great Britain and Northern Ireland, May 2013, paragraph 30, available at: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CAT%2fC%2fGBR%2fCO%2f5&Lang=en

iii. Unnatural deaths in custody

In the past 10 years, the Prison and Probation Ombudsman (PPO) has completed 15 fatal incident investigations in IRCs. A further four cases are currently under investigation or are suspended because of police inquiries.⁵¹² Of the 15 deaths, seven were from natural causes and seven were self-inflicted.

The remaining individual was Jimmy Mubenga, who died in 2010 while being forcibly removed by aeroplane to Angola, under the escort of three Detention and Custody Officers (DCO) employed by private contractor G4 Security (G4S). The jury in the inquest into his death concluded Mr Mubenga had been unlawfully killed, on the basis of evidence showing that:

- Mr Mubenga was pushed or held down by one or more of the DCOs for between 30 and 40 minutes, causing his breathing to be impeded - a significant number of witnesses reported Mr Mubenga shouting that he could not breathe and say "they're killing me" or similar;⁵¹³
- the DCOs used unreasonable force and acted in an unlawful manner, whereby they would have known their actions would have caused Mr Mubenga harm - all three had received training prescribed by the "Use of Force" training manual;⁵¹⁴ and
- while the DCOs and cabin crew all had first aid training, they did not attempt to administer first aid to Mr Mubenga when he first became unresponsive, which would have increased his chances of survival.⁵¹⁵

The three DCOs have been charged with manslaughter and will face a criminal trial later in 2014.⁵¹⁶

The inquest also exposed a culture of racism amongst the concerned DCOs (who exchanged offensive text messages and posted racist material on the internet, before and after Mr Mubenga's death) and the wider organisation of G4S.⁵¹⁷

The Inquest made six recommendations to address concerns about racism and the unlawful use of force. These were largely directed to the Home Office which has ultimate responsibility for ensuring that any immigration removals are carried out

⁵¹² Prison and Probation Ombudsman, Speech 14 May 2014, available at:

http://www.ppo.gov.uk/docs/AVID_Annual_General_Meeting.pdf

⁵¹³ Assistant Deputy Coroner, Karon Monaghan QC, Inquest into the Death of Jimmy Kelenda Mubenga, 2013, p.5, available at:

http://inquest.gn.apc.org/pdf/narratives/Mubenga_R43_Final_copy.pdf

⁵¹⁴ This included 'Control and Restraint' (C&R), for various holds, locks and pain control techniques which could be applied to subdue a detainee pending the application of restraint. Ministry of Justice, Use of Force Training Manual, 2006, available at: <http://www.justice.gov.uk/downloads/information-access-rights/foi-disclosure-log/prison-probation/use-of-force-training-manual.pdf>

⁵¹⁵ Assistant Deputy Coroner, Karon Monaghan QC, Inquest into the Death of Jimmy Kelenda Mubenga, 2013, p.6, available at:

http://inquest.gn.apc.org/pdf/narratives/Mubenga_R43_Final_copy.pdf

⁵¹⁶ Crown Prosecution Service Statement, 2014, available at:

http://www.cps.gov.uk/news/latest_news/death_of_jimmy_mubenga/

⁵¹⁷ Assistant Deputy Coroner, Karon Monaghan QC, Inquest into the Death of Jimmy Kelenda Mubenga, 2013, p.16-19, available at:

http://inquest.gn.apc.org/pdf/narratives/Mubenga_R43_Final_copy.pdf

safely.⁵¹⁸ However, a report by HMCIP of inspections conducted in 2012/13 suggests lessons have not been learnt as “most operational staff had little awareness of recent important findings... none remembered any information or training on the issues raised.”⁵¹⁹

In HMCIP's view, “people deported from Britain were too often treated as “commodities to be delivered, rather than as vulnerable individuals deserving of attention.”⁵²⁰ In an inspection report concerning the deportation of 66 migrants to Pakistan, the HMCIP found that some security staff, from the Home Office's new contractor, Tascor:

- made loud animal noises, and swore loudly in front of deportees;⁵²¹ and
- fell asleep, despite being in charge of someone identified as at risk of self-harm.⁵²²

The HMCIP's report included 22 recommendations to the Home Office and Tascor, which covered concerns about safety, respect and preparations for reintegration.⁵²³ This reiterated concerns made in other reports of abuse by Tascor personnel, and that potentially lethal head-down restraints may still have been used, even though they are not authorised.⁵²⁴

In June 2014, the UK Government finally responded⁵²⁵ to recommendations made in 2010 to review the training provided on the use of force to ensure officers are trained to “consider constantly the legality, necessity and proportionality of that use of force.”⁵²⁶ The new restraint system will be implemented from July 2014 and has

⁵¹⁸ Assistant Deputy Coroner, Karon Monaghan QC, Inquest into the Death of Jimmy Kelenda Mubenga, 2013, p.14-29, available at:

http://inquest.gn.apc.org/pdf/narratives/Mubenga_R43_Final_copy.pdf

⁵¹⁹ Her Majesty's Chief Inspector of Prisons, Detainees under escort: Inspection of escort and removals to Pakistan, 2014, p6, available at: <http://www.justiceinspectorates.gov.uk/hmiprison/wp-content/uploads/sites/4/2014/05/2013-Pakistan-escort-web.pdf>

⁵²⁰ Her Majesty's Chief Inspector of Prisons, Detainees under escort: Inspection of escort and removals to Pakistan, 2014, p5, available at: <http://www.justiceinspectorates.gov.uk/hmiprison/wp-content/uploads/sites/4/2014/05/2013-Pakistan-escort-web.pdf>

⁵²¹ Her Majesty's Chief Inspector of Prisons, Detainees under escort: Inspection of escort and removals to Pakistan, 2014, p15, available at: <http://www.justiceinspectorates.gov.uk/hmiprison/wp-content/uploads/sites/4/2014/05/2013-Pakistan-escort-web.pdf>

⁵²² Her Majesty's Chief Inspector of Prisons, Detainees under escort: Inspection of escort and removals to Pakistan, 2014, p10, available at: <http://www.justiceinspectorates.gov.uk/hmiprison/wp-content/uploads/sites/4/2014/05/2013-Pakistan-escort-web.pdf>

⁵²³ Her Majesty's Chief Inspector of Prisons, Detainees under escort: Inspection of escort and removals to Pakistan, 2014, p18-20, available at: <http://www.justiceinspectorates.gov.uk/hmiprison/wp-content/uploads/sites/4/2014/05/2013-Pakistan-escort-web.pdf>

⁵²⁴ See, for example, the House of Commons Home Affairs Committee, Rules governing enforced removals from the UK, 2012, para 16, available at:

<http://www.publications.parliament.uk/pa/cm201012/cmselect/cmhaff/563/563.pdf>

⁵²⁵ Immigration and Security Minister, Written Statement to the House of Commons, 26 June 2014, available at: <https://www.gov.uk/government/speeches/new-system-of-restraint-for-managing-people-safely-during-immigration-removals>

⁵²⁶ Dame Nuala O'Loan, Report to the United Kingdom Border Agency on “Outsourcing Abuse” 2010, available at: <http://www.medicaljustice.org.uk/images/stories/reports/reportonoutsourcingabuse.pdf>

been assessed by the Independent Advisory Panel for Non Compliance Management.⁵²⁷

iv. Immigration Detention of Children

In June 2010, the UK Government announced it would end the detention of children for immigration purposes.⁵²⁸ It published its review on the subject as it closed the family unit at Yarl's Wood IRC.⁵²⁹ The new process provides for detention of children in two contexts:

- upon arrival in the UK, for example between May and the end of August 2011 (the year the new system was introduced) 697 children were held at Greater London and South East ports, one third of whom were unaccompanied.⁵³⁰ Evidence suggests these children are not being held for the "shortest appropriate period of time," but instead are "detained whilst significant interviews took place that will inevitably bear on their prospects of being granted permission to stay in the UK"⁵³¹; and
- referral, as a "last resort", to Cedars "pre departure accommodation" near Gatwick Airport, for up to 72 hours (approximately 80%) or up to one week with Ministerial approval. 58 families with 120 children stayed at Cedars in its first year, reducing to 50 families with 90 children in the second year.⁵³² Welfare and support services are provided by children's charity Barnardo's who have made five recommendations to improve this system, including that physical intervention should not be used with children or pregnant women except to prevent harm to self or others; and children should never be separated from their parents for the purposes of immigration control, but only if there is a safeguarding or welfare concern.⁵³³

Conclusion: The EHRC is concerned that many of the concerns raised by the CAT Committee in 2013 have not yet been acted upon, including:

- **evidence is not yet available to demonstrate that detention is not being used as a last resort by UK immigration agencies, or that the system is preventing the detention of torture survivors or victims of trafficking;**

⁵²⁷ Report of the Independent Panel for Non Compliance Management, 2014, available at: <https://www.gov.uk/government/publications/use-of-force-when-removing-people-from-the-uk-a-restraint-system>

⁵²⁸ Deputy Prime Minister's Speech, 17 June 2010, available at:

<https://www.gov.uk/government/speeches/deputy-pms-speech-on-children-and-families>

⁵²⁹ Home Office, Review into Ending the Detention of Children for Immigration Purposes, December 2010, available at:

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/275349/child-detention-conclusions.pdf

⁵³⁰ Home Office response to a Freedom of Information request by the Children's Society, available at: <http://www.childrensociety.org.uk/news-views/press-release/almost-700-children-detained-four-months>

⁵³¹ Office of the Children's Commissioner, England, Landing in Dover, 2012, p.7 available at:

http://www.childrenscommissioner.gov.uk/content/publications/content_556

⁵³² Home Office, Children Entering Detention for Immigration Purposes, 2014, available at:

<https://www.gov.uk/government/statistical-data-sets/children-entering-detention-under-immigration-act-powers>

⁵³³ Barnardo's, Cedar's Two Years On, April 2014, available at:

http://www.barnardos.org.uk/16120_cedars_report.pdf

- where detention of someone with a mental health condition is unavoidable, medical care provision is currently inadequate;
- despite the change in UK Government policy, the detention of children for immigration purposes continues and needs to cease; and
- the need to act upon the findings of the Jimmy Mubenga inquest.

Question A: What steps has the UK Government taken to actively consider and implement CAT's recommendations, set out in paragraph 30 of its 2013 Concluding Observations?

b. Prisons⁵³⁴

i. Prison Overcrowding and Social Reintegration

Britain has the second highest prison rate in Western Europe, after Spain.⁵³⁵ On 25 April 2014, the prison population stood at 85,300 in England and Wales.⁵³⁶ Between 1993 and 2012 the prison population increased by 98%.⁵³⁷ Each prison has a Certified Normal Accommodation (CNA), which is the uncrowded capacity of the establishment. In April, the population in England and Wales was operating above the CNA level at 112%.⁵³⁸

In parallel with the increase in the prison population, human and financial resources are falling. Between 31 March 2010 and 30 June 2013 the number of staff across the prison estate fell by 17.7% (7,980 staff).⁵³⁹ The National Audit Office has estimated that removing levels of overcrowding would cost over £900million.⁵⁴⁰ Meanwhile, the National Offender Manager Service (NOMS) needs to save £149m in 2014-15, on top of having saved nearly £750m in 2011-12 to 13-14.⁵⁴¹ This represents a total cost reduction of 24%.⁵⁴²

⁵³⁴ The State concentrates on the issue of deaths in custody in its Seventh periodic reports of States parties for the United Kingdom of Great Britain and Northern Ireland, 29 December 2012, para 519-536, available at: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2fGBR%2f7&Lang=en

⁵³⁵ Ranking is based on figures taken from similar, but not identical periods of time and is based on population estimates. Scotland also has an imprisonment rate of 153 prisoners. Available at: <http://www.idcr.org.uk/wp-content/uploads/2010/09/WPPL-9-22.pdf>.

⁵³⁶ MoJ. 2014. Population Bulletin Weekly. 25 April 2014: <https://www.gov.uk/government/publications/prison-population-figures-2014>.

⁵³⁷ Ministry of Justice, Story of the Prison Population: 1992-2012, 2013, available at: <https://www.gov.uk/government/publications/story-of-the-prison-population-1993-2012>

⁵³⁸ 74 of 118 prisons were overcrowded based on these standards MoJ. Population Bulletin Monthly April 2014: <https://www.gov.uk/government/publications/prison-population-figures-2014>

⁵³⁹ MoJ. 2013. NOMS Business Plan 2013-14, available at: <http://www.justice.gov.uk/downloads/publications/corporate-reports/noms/2013/noms-business-plan-2013-2014.pdf>

⁵⁴⁰ National Audit Office, Managing the Prison Estate, 2013, p.26, available at: <http://www.nao.org.uk/report/managing-the-prison-estate/>

⁵⁴¹ NOMS. Business Plan 2014-15: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/302776/NOMS_Business_Plan_201415.pdf

⁵⁴² NOMS. Business Plan 2014-15: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/302776/NOMS_Business_Plan_201415.pdf

HMCIP has raised concerns about the risks of these financial and organisational pressures and their, perhaps, inevitable impact on prisoners' experience and their effective rehabilitation.⁵⁴³ For example, previous progress on safety and respect has stalled, and purposeful activity has "plummeted."⁵⁴⁴ A prisoner may find himself unemployed and spending 22 hours a day sharing a cell built for one because there is no activity available to him, with very little to do in order to support him for release.⁵⁴⁵

HMCIP has emphasised that unless budgets increase or the population decreases, recent progress will be undermined, as will the UK Government's intended "rehabilitation revolution".⁵⁴⁶ Instead of seeking to reduce the prison population, the UK Government has announced plans to increase male capacity at a lower unit and overall cost through the construction of a 2,000 unit capacity prison, as well as the expansion of four existing prisons.⁵⁴⁷ One of these prisons will be built at HMP Thameside, itself a new prison which has been criticised for having one of the most restricted regimes ever seen by inspectors, with an inevitable impact on the purposeful activity of prisoners.⁵⁴⁸ The EHRC would seek assurances from the UK Government that any increase to the prison population would not compromise offender safety or rehabilitation.

The EHRC is not convinced building additional places is a viable long-term solution to the problem of prison overcrowding, and agree with CAT⁵⁴⁹ that the UK Government should instead set concrete targets to reduce the high level of imprisonment and overcrowding, in particular through the wider use of non-custodial measures as an alternative to imprisonment, in the light of the Tokyo Rules⁵⁵⁰.

The EHRC also believes the UK Government's "Transforming Rehabilitation" programme requires further investment than that committed to date in:

⁵⁴³ HM Chief Inspector of Prisons. 2014. *Annual Report 2012-13*:

<http://www.justice.gov.uk/downloads/publications/corporate-reports/hmi-prisons/hm-inspectorate-prisons-annual-report-2012-13.pdf>

⁵⁴⁴ HM Chief Inspector of Prisons. 2014. *Annual Report 2012-13*. Table 1, page.8, page 10:

<http://www.justice.gov.uk/downloads/publications/corporate-reports/hmi-prisons/hm-inspectorate-prisons-annual-report-2012-13.pdf>

⁵⁴⁵ HM Chief Inspector of Prisons. 2014. *Annual Report 2012-13*. Table 1, page.8, page 10:

<http://www.justice.gov.uk/downloads/publications/corporate-reports/hmi-prisons/hm-inspectorate-prisons-annual-report-2012-13.pdf>

⁵⁴⁶ HM Chief Inspector of Prisons Annual Report 2011-12. Page 8, available at:

<http://www.justice.gov.uk/downloads/publications/corporate-reports/hmi-prisons/hm-inspectorate-prisons-annual-report-2011-12.pdf>

⁵⁴⁷ MoJ. 10 January 2013. Written Ministerial Statement: *Prison Capacity Management*. Available at:

http://www.parliament.uk/documents/commons-vote-office/January_2013/10-1-13/3.Justice-PrisonCapacityMgt.pdf

⁵⁴⁸ HM Chief Inspector of Prisons. 2013. Report on an unannounced inspection of HMP Thameside 14–17 January 2013 available at: <http://www.justice.gov.uk/downloads/publications/inspectorate-reports/hmipris/prison-and-yoi-inspections/thameside/thameside-2013.pdf>

⁵⁴⁹ Committee Against Torture, Concluding observations on the fifth periodic report of the United Kingdom of Great Britain and Northern Ireland, adopted by the Committee at its fiftieth session (6-31 May 2013), para 31, available at:

http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CAT%2fC%2fGBR%2fCO%2f5&Lang=en

⁵⁵⁰ UN Standard Minimum Rules for Non-Custodial Measures. Available at:

<http://www.ohchr.org/Documents/ProfessionalInterest/tokyorules.pdf>

- community and health care solutions, such as supporting substance abusers to receive treatment; and
- working in crime prevention and post-release rehabilitation, including a “through the gate” package of effective support by a single provider who will help former prisoners to live and work actively in the community.

ii. Self-Harm and Deaths in Custody

During 2013 there were over 23,000 recorded incidents of self-harm in prisons in England and Wales.⁵⁵¹ Despite making up only 5% of the prison population, women constituted 26% of all self-harm incidents, though this is a significant reduction on 50% in 2010.⁵⁵² This reduction is driven by a decrease in the female population and the number of repetitive self-harmers. By contrast, between 2005 and 2013, the number of male self-harm incidents has increased by 47%.⁵⁵³

The number of self-inflicted deaths in 2013 was at its highest since 2007: 74 people took their own lives, 14 more than in 2012.⁵⁵⁴ Between 1 April 2007 and 31 December 2013, 84 people aged 18-24 took their own lives while in custody. The UK Government has launched an independent inquiry to make recommendations for reducing the risk of future deaths in custody focusing on that age group, but also identify learning to benefit all age groups.⁵⁵⁵

The EHRC believes there are four challenges to keeping people safe from suicide and self-harm while in prison in England and Wales:

- while healthcare provision has improved, there is still insufficient provision for prisoners with mental health conditions, and transfers to secure mental health hospitals take too long;⁵⁵⁶
- the procedure for highlighting individuals at risk of suicide or self-harm, the Assessment Care in Custody and Teamwork Plan (ACCT), is too complicated. Staff often misunderstand the ACCT's requirements and may therefore not be following correct procedures;⁵⁵⁷
- the Prisons and Probation Ombudsman (PPO) and the National Offenders Management Service (NOMS) have identified the need to improve ACCT

⁵⁵¹ Ministry of Justice, Safer Custody Statistics, 2014, available at:

<https://www.gov.uk/government/collections/safety-in-custody-statistics>

⁵⁵² Ministry of Justice, Safer Custody Statistics, 2014, available at:

<https://www.gov.uk/government/collections/safety-in-custody-statistics>

⁵⁵³ Ministry of Justice, Safer Custody Statistics, 2014, available at:

<https://www.gov.uk/government/collections/safety-in-custody-statistics>

⁵⁵⁴ Ministry of Justice, Safer Custody Statistics, 2014, available at:

<https://www.gov.uk/government/collections/safety-in-custody-statistics>

⁵⁵⁵ Ministry of Justice, Terms of Reference of Independent Review into Deaths in Custody, 2014, available at: <http://www.justice.gov.uk/about/deaths-in-custody-independent-review>

⁵⁵⁶ HM Chief Inspector of Prisons. 2014. *Annual Report 2012-13*.

<http://www.justice.gov.uk/downloads/publications/corporate-reports/hmi-prisons/hm-inspectorate-prisons-annual-report-2012-13.pdf>

⁵⁵⁷ Ministry of Justice, Safer Custody News, January/February 2010, page 6. available at:

<http://iapdeathsincustody.independent.gov.uk/wp-content/uploads/2011/07/NOMS-Safer-Custody-News-January-February-2010.pdf>

- training and guidance to help staff ensure the ACCT procedure is used effectively to tackle targeted risks in a proactive and joined up way;⁵⁵⁸ and
- we agree with CAT and Lord Bradley about the need for non-custodial alternatives for short-term prisoners who committed offences while suffering mental health problems.⁵⁵⁹ The EHRC therefore welcomes the UK Government's investment in establishing a liaison and diversion service, in police stations and courts, to ensure those best treated by the health service do not go to prison.⁵⁶⁰

In June 2014, the EHRC has launched an inquiry into non-natural deaths of people with mental health conditions in state detention, which will cover some of these concerns. The inquiry will report in spring 2015.⁵⁶¹

iii. Prisoners with disabilities

Estimates of the proportion of disabled people in the prisoner population vary from 5-34%.⁵⁶² 20-30% of offenders have learning disabilities or difficulties that interfere with their ability to cope with the criminal justice system.⁵⁶³ Disability will increasingly affect the rapidly aging prisoner population, and the EHRC supports HMCIP's recommendation for an Older Prisoners Strategy to meet these specific needs.⁵⁶⁴

The EHRC is concerned by reports that prisoners with disabilities continue to have problems accessing different parts of prison facilities, such as education, for example

⁵⁵⁸ Ministry of Justice, Safer Custody News, January/February 2010, page 6. available at: <http://iapdeathsincustody.independent.gov.uk/wp-content/uploads/2011/07/NOMS-Safer-Custody-News-January-February-2010.pdf> and Prisons and Probation Ombudsman, Self-inflicted deaths of prisoners on ACCT, April 2014, available at: http://www.ppo.gov.uk/docs/ACCT_thematic_final_web.pdf

⁵⁵⁹ Committee Against Torture, Concluding observations on the fifth periodic report of the United Kingdom of Great Britain and Northern Ireland, adopted by the Committee at its fiftieth session (6-31 May 2013), para 31, available at: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CAT%2fC%2fGBR%2fCO%2f5&Lang=en

Department of Health, The Bradley Report, Lord Bradley's report of people with mental health problems or learning disabilities in the criminal justice system, 2009, available at: http://www.centreformentalhealth.org.uk/pdfs/Bradley_report_2009.pdf

⁵⁶⁰ The UK Government committed to invest £50 million in this diversion service by 2014. In January 2014, it committed £25 million investment by 2017.: Hansard HC, 15 February 2011, c793: <http://www.publications.parliament.uk/pa/cm201011/cmhansrd/cm110215/debtext/110215-0001.htm> and <https://www.gov.uk/government/news/extra-funding-for-mental-health-nurses-to-be-based-at-police-stations-and-courts-across-the-country>

⁵⁶¹ Equality and Human Rights Commission, press release, 10 June 2014, available at: <http://www.equalityhumanrights.com/commission-launches-inquiry-non-natural-deaths-people-mental-health-conditions-state-detention>

⁵⁶² Ministry of Justice, Estimating the prevalence of disability amongst prisoners: results from the surveying prisoner crime survey, 2012, available at: <https://www.gov.uk/government/publications/estimating-the-prevalence-of-disability-amongst-prisoners>

⁵⁶³ J. Talbot for the Prison Reform Trust, No One Knows: Prisoner Voices, 2008, available at: <http://www.prisonreformtrust.org.uk/Portals/0/Documents/No%20One%20Knows%20report-2.pdf>

⁵⁶⁴ HM Chief Inspector of Prisons. 2014. *Annual Report 2012-13*. <http://www.justice.gov.uk/downloads/publications/corporate-reports/hmi-prisons/hm-inspectorate-prisons-annual-report-2012-13.pdf>

because prison staff refuse to push their wheelchairs,⁵⁶⁵ or the failure to make reasonable adjustments, required by the Equality Act 2010 and the UN Convention on the Rights of Persons with Disabilities (CRPD).⁵⁶⁶

iv. Women Prisoners

The female prisoner population has decreased slightly from 4,172 in May 2011 to 3,883 in May 2014.⁵⁶⁷ The EHRC shares the general consensus that the majority of women offenders pose little risk to public safety and that imprisonment is frequently an ineffective response.⁵⁶⁸ In 2012-13 81% of sentenced women prisoners had not committed a violent offence.⁵⁶⁹ Theft and handling offences accounted for the single largest group of women entering prison under sentence, at 40%; most of whom served less than 6 months.⁵⁷⁰ At 31 March 2014, there was an 11 per cent increase in the number of women sentenced for this offence in the past year.⁵⁷¹

Meanwhile, women in prison have complex needs and many are victims of crimes themselves:

- half are victims of domestic violence;
- one in three has experienced sexual abuse;⁵⁷²
- 53% were abused as a child;
- 31% have spent time in local authority care;⁵⁷³ and
- 46% have attempted suicide at some point in their life.⁵⁷⁴

⁵⁶⁵ HM Chief Inspector of Prisons, Annual Report 2011-12, 2012, page 45 available at: <http://www.justice.gov.uk/downloads/publications/corporate-reports/hmi-prisons/hm-inspectorate-prisons-annual-report-2011-12.pdf>

⁵⁶⁶ Prisons and Probation Ombudsman, Annual Report 2011-12, 2012, pages 23-24 available at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/236024/8429.pdf

⁵⁶⁷ Ministry of Justice, Prisons Population figures, 2011, available at: <https://www.gov.uk/government/publications/prison-population-2011>

Ministry of Justice, Prisons Population figures, 2014, available at: <https://www.gov.uk/government/publications/prison-population-figures-2014>

⁵⁶⁸ Justice Select Committee, Inquiry Report: Women Offenders: after the Corston Report, 2013, available at: <http://www.parliament.uk/business/committees/committees-a-z/commons-select/justice-committee/inquiries/parliament-2010/women-offenders/>

⁵⁶⁹ Ministry of Justice, Offender Management Statistics, 2013, available at: <https://www.gov.uk/government/publications/offender-management-statistics-quarterly-july-september-2013>

⁵⁷⁰ Prison Reform Trust. June 2014. Prison Reform Trust submission Theft offences guideline consultation: <http://www.prisonreformtrust.org.uk/Portals/0/Documents/Prison%20Reform%20Trust%20submission%20-%20Theft%20Offences%20Guideline%20consultation.pdf>

⁵⁷¹ Prison Reform Trust. June 2014. Prison Reform Trust submission Theft offences guideline consultation: <http://www.prisonreformtrust.org.uk/Portals/0/Documents/Prison%20Reform%20Trust%20submission%20-%20Theft%20Offences%20Guideline%20consultation.pdf>

⁵⁷² Home Office, Corston Report: A review of women with particular vulnerabilities within the criminal justice system, 2007, available at: <http://www.justice.gov.uk/publications/docs/corston-report-march-2007.pdf>

⁵⁷³ Ministry of Justice, Prisoners' Childhood and Family Backgrounds, 2012, available at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/278837/prisoners-childhood-family-backgrounds.pdf

⁵⁷⁴ Ministry of Justice, Gender differences in substance misuse and mental health problems amongst prisoners, 2013, available at: <https://www.gov.uk/government/publications/gender-differences-in-substance-misuse-and-mental-health-amongst-prisoners--2>

The EHRC welcomes the UK Government's proactive approach to their examinations by CAT and CEDAW and prompt response to their Concluding Observations⁵⁷⁵ in relation to women prisoners, including:

- a review of the female prison estate;
- publication of strategic objectives for female offenders;
- a commitment to accelerate progress in responding to women offenders – also in response to a recommendation from the UK Parliament's Justice Select Committee⁵⁷⁶;
- Ministerial leadership for responsibility for women offenders; and
- Increasing understanding of and service provision to address the particular needs of women offenders.⁵⁷⁷

We also acknowledge the UK Government has considered the specific needs of women in its rehabilitation strategy for prisoners in England and Wales, and its commitment to explore why women receive short custodial sentences.⁵⁷⁸

However, the EHRC believes there are a number of areas that need to be addressed to implement the CAT and CEDAW recommendations in full, including:

- avoiding the unnecessary disruption to the lives – and lives of the families – of the 70% of women who enter custody each year on remand but do not go on to be convicted or receive a custodial sentence,⁵⁷⁹
- ensuring that proposals to extend the statutory monitoring and supervision to offenders serving less than 12 months include specific provision for women (19.9% of women compared to 10.4% of men receive short custodial sentences⁵⁸⁰) to avoid the risks of:
 - sentencers viewing short periods of time in custody as a gateway to accessing services in the community; or

⁵⁷⁵ Committee Against Torture, Concluding observations on the fifth periodic report of the United Kingdom of Great Britain and Northern Ireland, adopted by the Committee at its fiftieth session (6-31 May 2013), para 32, available at:

http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CAT%2fC%2fGBR%2fCO%2f5&Lang=en

Concluding Observations of the Committee on the Elimination of Discrimination Against Women for the United Kingdom of Great Britain and Northern Ireland, 30 July 2013, paragraph 55, available at:

http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CEDAW%2fC%2fGBR%2fCO%2f7&Lang=en

⁵⁷⁶ Ministry of Justice, Government Response to Justice Committee's Report on Female Offenders, March 2013, available at:

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/252817/response-jsc-female-offenders.pdf

⁵⁷⁷ Justice Secretary, Written Ministerial Statement to Parliament, 13 January 2013, available at:

http://www.parliament.uk/documents/commons-vote-office/January_2013/10-1-13/3.Justice-PrisonCapacityMgt.pdf

⁵⁷⁸ Ministry of Justice, Transforming Rehabilitation, A Strategy for Reform, 2014, available at:

<https://consult.justice.gov.uk/digital-communications/transforming-rehabilitation/results/transforming-rehabilitation-response.pdf>

⁵⁷⁹ Hansard. 26 Jun 2014 : Column GC133 House of Lords Debate:

<http://www.publications.parliament.uk/pa/ld201415/ldhansrd/text/140626-gc0001.htm#14062685000449>

⁵⁸⁰ MoJ. Transforming Rehabilitation. 2013. A Strategy for Reform. <https://consult.justice.gov.uk/digital-communications/transforming-rehabilitation/results/transforming-rehabilitation-response.pdf>

- women returning to custody for breaching the terms of the supervisory order, for example because of missing a supervision meeting due to unmet childcare needs;⁵⁸¹
- ensuring sufficient focus on the needs of specific groups of female offenders, in particular, those with learning disabilities, ethnic minorities, (including foreign nationals), those with personality disorders, or otherwise representing a high risk of harm to the public;⁵⁸²
- providing sufficient investment in community initiatives tailored to address the offending and rehabilitation of women. Instead, it has been suggested that reconfiguring the female prison estate has taken priority.⁵⁸³

v. Detaining the sole or primary carer of a child

It is not clear the extent to which criminal justice agencies in England and Wales are ensuring the best interests of the child are taken into account when a child's primary or sole carer is detained – as required by the Bangkok Rules.⁵⁸⁴ It is estimated that 17,240 children were separated from their mother in 2010 by imprisonment.⁵⁸⁵

While UK Government policy aims to support children to visit their parents, the fact that there are just 12 women's prisons in England and none in Wales makes it difficult for this aim to be achieved. The EHRC supports Baroness Corston's recommendations that:

- alternatives to custody for women should be implemented; and
- women's prisons should be replaced with small, geographically dispersed, multi-functional custodial centres for the small proportion of women where custody is necessary.⁵⁸⁶

We also welcome the changes by the Sentencing Council to include primary caring responsibilities as a mitigating factor in sentencing guidelines.⁵⁸⁷

Conclusion: While the UK Government has made recent progress and committed to “Transforming Rehabilitation” the EHRC considers that further investment is required to deliver this ambitious programme, and targeted interventions are required to meet the complex needs of particular sections of

⁵⁸¹ Hansard. 26 Jun 2014 : Column GC133 House of Lords Debate:

<http://www.publications.parliament.uk/pa/ld201415/ldhansrd/text/140626-gc0001.htm#14062685000449>

⁵⁸² House of Commons Justice Committee. 2013. Women offenders: after the Corston Report.

<http://www.publications.parliament.uk/pa/cm201314/cmselect/cmjust/92/92.pdf>

⁵⁸³ Hansard. 26 Jun 2014 : Column GC133 House of Lords Debate:

<http://www.publications.parliament.uk/pa/ld201415/ldhansrd/text/140626-gc0001.htm#14062685000449>

⁵⁸⁴ A Joint Inspection by HMI Probation, HM Crown Prosecution Service Inspectorate and HMI Prisons, Equal but different? An inspection of the use of alternatives to custody for woman offenders, 2011, available at <http://www.justice.gov.uk/downloads/publications/inspectorate-reports/hmiprobation/joint-thematic/womens-thematic-alternatives-to-custody-2011.pdf>

⁵⁸⁵ Howard League for Penal Reform, Voice of a Child, London, 2011, available at:

<http://www.howardleague.org/publications-families/>

⁵⁸⁶ Home Office, Corston Report: A review of women with particular vulnerabilities within the criminal justice system, 2007, available at: <http://www.justice.gov.uk/publications/docs/corston-report-march-2007.pdf>

⁵⁸⁷ Sentencing Council, Sentencing Guidelines, available at:

<http://sentencingcouncil.judiciary.gov.uk/sentencing-guidelines.htm>

the prisoner population including women, people with disabilities and those with mental health issues that put them at risk of self-harm and suicide. Our recommendations include:

- **further investment in community based services to reduce offending and reoffending, such as those to tackle substance abuse;**
- **greater provision of mental health services in prisons and shortening timeframes to transfer prisoners to secure mental health hospitals;**
- **a review of the ACCT plan to ensure it user-friendly, and the provision of training to prison staff to help them tackle targeted risks in a proactive and joined up way;**
- **improved data collection to understand the prevalence of disability within the prisoner population to help identify targeted services that meet different and complex needs;**
- **ensuring compliance with the duty under the Equality Act 2010 to make reasonable adjustments for prisoners with disabilities;**
- **the development of an older prisoners strategy;**
- **implementation of the outstanding recommendations from the Corston Report, in line with the Bangkok rules and the 2013 UK Concluding Observations of the CEDAW and CAT Committees;**
- **monitoring of implementation of the extent to which the Sentencing Council's mitigating factors have been applied for sole or primary carers.**

Question A: What analysis has the UK Government done to understand the potential link between the increase in the male prison population and the increase in cases of self-harm and suicide?

Question B: Can the UK Government describe how it will evidence the impact of initiatives that specifically address the offending and rehabilitation of women?

Question C: How does the UK Government monitor implementation of sentencing guidelines in relation to primary caring responsibilities, and can it describe the impact they have had on the numbers of primary carers detained?

c. Youth Justice System⁵⁸⁸

i. The age of criminal responsibility

In England and Wales the age of criminal responsibility is set at 10 years old. This is the age at which a person can be charged, and be found guilty, of committing a criminal offence. Any child below the age of 10 is not considered to have the capacity to distinguish right from wrong and be held liable for a criminal act.

The age of criminal responsibility in England and Wales is lower than many countries: in Scotland it is 12 years, in China and Russia it is 14 years, and in France

⁵⁸⁸ The UK Government does not cover this topic in a substantive way in its Seventh periodic report.

and Brazil it is 18 years.⁵⁸⁹ The CRC has stated that setting the age of criminal responsibility below 12 is 'not acceptable';⁵⁹⁰ and urged the UK to raise the age limit accordingly.⁵⁹¹ CAT also made this recommendation⁵⁹², and called on the UK Government to ensure full implementation of the Beijing Rules⁵⁹³ and Riyadh Guidelines.⁵⁹⁴ Finally, the Council of Europe Commissioner for Human Rights recommended the UK increase the age 'to bring it in line with the rest of Europe, where the average age of criminal responsibility is 14 or 15'.⁵⁹⁵

Whilst the sentencing guidelines for England and Wales emphasise the need to consider children's welfare, and requires sentencers to keep in mind the high prevalence of mental health, learning difficulties, disabilities and communications problems in the youth justice system, a significant number of children still end up in custody.⁵⁹⁶ Other jurisdictions, such as Scotland, adopt a welfare-based approach that regards children in trouble with the law as children in need first and foremost. This approach seeks to address, outside of the courts, the causes of crime, which are likely to stem from neglect and abuse, rather than prioritising an adversarial system of proving guilt and innocence.

The EHRC believes the UK Government could learn from the Scottish approach to dealing with offences committed by children. The Scotland Children's Hearing System takes most of the responsibility from courts for dealing with children and young people under 16, (and in some cases under 18), who commit offences or who are in need of care and protection. This is based on the principle that children who commit offences and children who need care and protection are often the same children. This system seeks ways to support the child and move them away from re-offending. Where a decision is made to prosecute a child in a court, the hearing system can advise the court on how best to support the child in the process.

⁵⁸⁹ Prison Reform Trust. June 2011. Bromley Briefings Factfile. Page 34, available at: <http://www.prisonreformtrust.org.uk/Portals/0/Documents/Bromley%20Briefing%20December%202011.pdf>

⁵⁹⁰ CRC Committee, *General Comment No. 10: children's rights in juvenile justice*, 2007, Para 32, available at: <http://www2.ohchr.org/english/bodies/crc/docs/CRC.C.GC.10.pdf>

⁵⁹¹ UNCRG, October 2008. Committee on the rights of the Child, Concluding Observations, CRC/C/GBR/CO/420. Para 78. Available at: <http://www2.ohchr.org/english/bodies/crc/docs/AdvanceVersions/CRC.C.GBR.CO.4.pdf>

⁵⁹² Concluding observations on the fifth periodic report of the United Kingdom of Great Britain and Northern Ireland, adopted by the Committee at its fiftieth session (6-31 May 2013) para 27. Available at: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CAT%2fC%2fGBR%2fCO%2f5&Lang=en

⁵⁹³ The United Nations Standard Minimum Rules for the Administration of Juvenile Justice, (General Assembly resolution 40/33, annex).

⁵⁹⁴ The United Nations Guidelines for the Prevention of Juvenile Delinquency, (General Assembly resolution 45/112, annex).

⁵⁹⁵ Memorandum by Thomas Hammarberg, Commissioner for Human Rights of the Council of Europe, following his visits to the United Kingdom (5-8 February and 31 March-2 April 2008), Rights of the child with focus on juvenile justice, CommDH (2008) 27, Strasbourg, 17 October 2008.

⁵⁹⁶ Sentencing Guidelines Council. 2009. Overarching Principles – Sentencing Youths: http://sentencingcouncil.judiciary.gov.uk/docs/web_overarching_principles_sentencing_youths.pdf
EHRC. Human Rights Review. Article 5. <http://www.equalityhumanrights.com/human-rights/our-human-rights-work/human-rights-review/the-review/>

UNCRC requires the UK to ensure the best interests of the child is the primary consideration of the courts;⁵⁹⁷ and the CRC has recommended that children in conflict with the law should always be dealt with by the juvenile system and never tried as adults within ordinary courts.⁵⁹⁸ However, while most children are dealt with by a dedicated youth court with specially trained magistrates, those accused of serious offences can be tried in the Crown Courts. In 2012, 2,419 children were tried in this way.⁵⁹⁹ The EHRC is concerned that children tried in Crown Courts are at risk of breaching Article 6 of the ECHR as insufficient consideration is given to their age, maturity or communications skills.⁶⁰⁰

ii. Alternatives to detaining children in custody

The EHRC commends the UK Government for reducing the number of children sentenced to custody by 63.9% over the past ten years⁶⁰¹ but notes that in February 2014, there were still 1,183 under 18s in secure settings in England and Wales.⁶⁰²

Children in custody often have difficult and complex backgrounds, including histories of physical and sexual abuse, time in care, disrupted education and living arrangements and substance abuse. Many experience mental and physical health problems and have learning difficulties and disabilities.⁶⁰³

71% of children who have been in custody go on to re-offend.⁶⁰⁴ The EHRC therefore welcomes the emphasis on placing education at the heart of detention in the UK Government's new Bill to transform youth custody in England and Wales.⁶⁰⁵ However, we are concerned the proposal to use large, secure training colleges

⁵⁹⁷ UN Convention on the Rights of the Child, Article 13, entered into force September 1990.

⁵⁹⁸ UNCRC, October 2008. Committee on the rights of the Child, Concluding Observations, CRC/C/GBR/CO/420 – para 78. Available at:

<http://www2.ohchr.org/english/bodies/crc/docs/AdvanceVersions/CRC.C.GBR.CO.4.pdf>

⁵⁹⁹ MoJ. 2013. Criminal Statistics, Supplementary Tables, Volume 2, Crown Court. Available at:

<https://www.gov.uk/government/publications/criminal-justice-statistics-quarterly-update-to-december-2012>

⁶⁰⁰ EHRC. 2012. Human Rights Review 2012: How fair is Britain? An assessment of how well public authorities protect human rights. Pages 241-249. Available at:

<http://www.equalityhumanrights.com/about-us/our-work/human-rights/human-rights-review-2012/review>

⁶⁰¹ MoJ. February 2014. Criminal justice statistics quarterly - September 2013, sentencing table, Q5.7.

Available at: <https://www.gov.uk/government/publications/criminal-justice-statistics-quarterly-september-2013>

⁶⁰² YJB. Monthly Youth Custody Report, February 2014. Available at:

<https://www.gov.uk/government/publications/youth-custody-data>. Latest data show 128 under 18s were held in Scottish secure settings on 30 June 2011. Scottish Government. 2012. Prison statistics and population projections Scotland: 2011-12. Table A4. Available at:

<http://www.scotland.gov.uk/Publications/2011/03/01104348/7>

⁶⁰³ MoJ. 2013. Transforming Youth Custody. Consultation Paper CP4/2013. MoJ 2014. *Transforming Youth Custody. Government response to the consultation*. Cm 8792. Available at:

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/181588/transforming-youth-custody.pdf

⁶⁰⁴ MoJ 2014. *Transforming Youth Custody. Government response to the consultation*. Cm 8792.

Available at:

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/273402/transforming-youth-custody-consultation-response.pdf

⁶⁰⁵ Criminal Justice and Courts Bill 2013-14. Available at:

http://www.publications.parliament.uk/pa/bills/cbill/2013-2014/0192/cbill_2013-20140192_en_1.htm

(STCs) for most under 18s may undermine some of the intended benefits.⁶⁰⁶ Evidence suggests small secure units, close to a child's home, with well-trained, highly qualified staff, and high staff to child ratios that provide intensive support, are the safest and have the best outcomes for detained children.⁶⁰⁷ The EHRC considers Secure Children's Homes (SCHs) best match this model and, while mindful of the need to make efficiency savings, encourage the UK Government to fully implement its own commitment to provide sufficient places in SCHs for children and young people with the most complex needs, and for younger children.⁶⁰⁸

The Bill enables a secure college custody officer, "if authorised to do so by secure college rules", to use reasonable force where necessary to ensure good order and discipline on the part of persons detained.⁶⁰⁹ Concerns have been raised that this provision may not be compatible with Articles 3 and 8 of the ECHR; has already been the subject of a decision by the Court of Appeal; and recommendations of the CRC.⁶¹⁰ The EHRC has set out its own concerns on the use of restraint on children in this way⁶¹¹ and fully supports calls for the Bill to be amended accordingly.⁶¹²

UNCRC requires imprisonment of a child to be as a last resort and for the shortest appropriate period of time;⁶¹³ and this should form the basis of any government policy on youth justice reform, alongside placing the best interests of the child as a primary consideration.⁶¹⁴ Whilst the EHRC recognises there may be a need to keep some children in secure settings, many children currently in custody are held for non-violent offences, and short periods of time.⁶¹⁵ We therefore recommend a greater emphasis on restorative, community-based alternatives to custody, which have been shown to be more effective than custody in reducing reoffending.⁶¹⁶ The combination of these measures should also meet the UK Government's aim of making further

⁶⁰⁶ Construction of a 320-bed "path finder" secure college will commence in 2015. It will house girls and boys aged 12 to 17 years of age.

⁶⁰⁷ Centre for Medical Health, Khan L (2010) Reaching out, reaching in: Promoting mental health and emotional well-being in secure settings – p.43. Available at:

http://www.centreformentalhealth.org.uk/pdfs/Centre_for_MH_Promoting_mh_in_secure_settings.pdf

⁶⁰⁸ Ministry of Justice (2014) Transforming Youth Custody: Government Response to the Consultation. Para 34. Available at:

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/273402/transforming-youth-custody-consultation-response.pdf

⁶⁰⁹ Criminal Justice and Courts Bill 2013-14. Available at:

http://www.publications.parliament.uk/pa/bills/cbill/2013-2014/0192/cbill_2013-20140192_en_1.htm

⁶¹⁰ JCHR. May 2014. Legislative Scrutiny: (1) Criminal Justice and Courts Bill and (2) Deregulation Bill, available at: <http://www.publications.parliament.uk/pa/jt201314/jtselect/jtrights/189/189.pdf> The

UNCRC has stressed that any restraint against children should be used only as a last resort and exclusively to prevent harm to the child and others around the child. UN Committee on the Rights of the Child, 2008. *Concluding Observations*, para 39, available at:

<http://www2.ohchr.org/english/bodies/crc/docs/AdvanceVersions/CRC.C.GBR.CO.4.pdf>

⁶¹¹ Equality and Human Rights Commission. 2012. Human Rights Review. Article 3.

http://www.equalityhumanrights.com/sites/default/files/documents/humanrights/hrr_article_3.pdf

⁶¹² JCHR. May 2014. Legislative Scrutiny: (1) Criminal Justice and Courts Bill and (2) Deregulation Bill. Fourteenth Report of Session 2013-14.

<http://www.publications.parliament.uk/pa/jt201314/jtselect/jtrights/189/189.pdf>.

⁶¹³ UN Convention on the Rights of the Child. Article 37(b).

⁶¹⁴ UN Convention on the Rights of the Child. Article 3.

⁶¹⁵ MoJ.2013. Youth Justice Statistics, Supplementary Tables, chapter 7,

<https://www.gov.uk/government/publications/youth-justice-statistics>

⁶¹⁶ The Smith Institute, Sherman, L. and Strang. H. (2007) Restorative Justice: The Evidence.

Available at: <http://www.smith-institute.org.uk/file/RestorativeJusticeTheEvidenceFullreport.pdf> p.68

efficiency savings.⁶¹⁷ In addition, we recommend raising the custody threshold to explicitly prevent children who do not commit violent offences from being held in secure settings.

1. 3. Hate Crime (Articles 7, 9, and 26)⁶¹⁸

i. Data collection

Approximately 278,000 hate crimes take place in England and Wales each year; although just over 42,000 are officially recorded by the police.⁶¹⁹ The UK and Welsh Governments both have action plans in place to help tackle hate crime in England and Wales.⁶²⁰ They include examples of good practice in tackling hate crime online and against particular groups, such as Muslims and people with disabilities.

The UK is one of four EU member states regarded as operating good data collection, where a range of bias motivations, types of crimes and characteristics of incidents are recorded and published.⁶²¹ Despite these efforts, the EHRC has concerns about the reliability of the data collected. For example:

- those who do report incidents of harassment or hate crime may not always be asked about their equality characteristics, so identity-based prejudice may not always be identified as a motivating factor;⁶²² and
- many victims do not report hate crimes because they are unable or unwilling to seek redress against their perpetrators, so prevalence could be greatly underestimated.⁶²³

We share the UK Government's own concerns about under-reporting in relation to individuals who are more isolated within UK society, including:

- migrants and asylum seekers;
- gypsy, Irish traveller and Roma communities;
- transgender people; and
- persons with disabilities.⁶²⁴

⁶¹⁷ MoJ.2014. *Transforming Youth Custody: Government Response to the Consultation*.

⁶¹⁸ The State briefly touches on hate crime in the context of counter terrorism its Seventh periodic reports of States parties for the United Kingdom of Great Britain and Northern Ireland, 29 December 2012, para 1072-1074, available at:

http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2fGBR%2f7&Lang=en

⁶¹⁹ Home Office, Challenge it, report it, stop it. Delivering the Government's hate crime action plan, 2012, available at:

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/97849/action-plan.pdf

⁶²⁰ Welsh Government, Tackling Hate Crimes and Incidents: A Framework for Action, 2014, available at: <http://wales.gov.uk/topics/equality/rightsequality/hate-crime/?lang=en>

⁶²¹ EU Fundamental Rights Agency, Hate Crime in the European Union, 2012, available at:

http://fra.europa.eu/sites/default/files/fra-factsheet_hatecrime_en_final_0.pdf

⁶²² See, for example, Equality and Human Rights Commission, Hidden in Plain Sight, 2011, available at: <http://www.equalityhumanrights.com/sites/default/files/documents/disabilityfi/dhfimain.pdf> and Stonewall, The Gay British Crime Survey, 2013, available at:

http://www.stonewall.org.uk/what_we_do/research_and_policy/9286.asp

⁶²³ See, for example, Equality and Human Rights Commission, Hidden in Plain Sight, 2011, available at: <http://www.equalityhumanrights.com/sites/default/files/documents/disabilityfi/dhfimain.pdf> and Stonewall, The Gay British Crime Survey, 2013, available at:

http://www.stonewall.org.uk/what_we_do/research_and_policy/9286.asp

Even where hate crimes are reported, they are not always acted upon, for example half of those experiencing homophobic hate crime say their recorded incident was not acted upon.⁶²⁵

It has been suggested that the police in England and Wales have been under recording crime figures generally, which is a grave concern.⁶²⁶ The EHRC welcomes that the UK Government is taking steps to investigate this.⁶²⁷ We also welcome specific steps to tackle underreporting of hate crime, such as:

- the “True Vision” mobile phone application, which provides a mechanism for those victims not wanting to engage the police, to report to a third party;⁶²⁸ and
- a survey to map third party reporting centres in England and review how they are operating.⁶²⁹

ii. Aggravated Offences

The UK Government asked the Law Commission to consider whether to extend aggravated offences to include hostility towards people on the grounds of disability, sexual orientation or gender identity,⁶³⁰ and whether there was a case for extending the stirring up of hatred offences to include stirring up of hatred on the grounds of disability or gender identity.⁶³¹ The Law Commission found strong support for extending aggravated offences, particularly in order to provide equal treatment for all groups.⁶³² However, it also found that existing offences are unnecessarily complex and are not working well. Current enhanced sentencing powers are being under-used, in part because the hostility element of hate crime is often not investigated fully and the court is not given the evidence needed to enhance sentencing.⁶³³

⁶²⁴ Home Office, Challenge it, report it, stop it. Delivering the Government's hate crime action plan, 2012, available at:

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/97849/action-plan.pdf

⁶²⁵ Stonewall, The Gay British Crime Survey, 2013, available at:

http://www.stonewall.org.uk/what_we_do/research_and_policy/9286.asp

⁶²⁶ Home Affairs Select Committee, Evidence from Chief Inspector of Constabulary, 17 December 2013, available at: <http://www.publications.parliament.uk/pa/cm201314/cmselect/cmhaff/895-i/131217.htm>

⁶²⁷ Her Majesty's Inspectorate of Constabulary, Crime Recording; A Matter of Matter – Interim Report, 2014, available at: <http://www.hmic.gov.uk/publication/crime-recording-a-matter-of-fact-interim-report/>

⁶²⁸ More information available at: <http://www.report-it.org/home>

⁶²⁹ Home Office, Hate Crime – Third Party Reporting Survey, 2014, available at:

<https://www.homeofficesurveys.homeoffice.gov.uk/s/77093OCNOQ>

⁶³⁰ Aggravated offences (Crime and Disorder Act 1998) are specific offences, such as common assault, malicious wounding / GBH and criminal damage, which have higher available maximum sentences available than the basic offence version if the offence is motivated by racial or religious hostility. Enhanced sentencing (CJA) applies to the sentencing of anyone convicted of an offence that demonstrates hostility /motivation of hostility based on race, religion, sexual orientation, disability transgender identity.

⁶³¹ Under the Public Order Act 1986 it is a crime to engage in conduct that is intended to, or likely to, stir up hatred towards a group of people because of their race, religion or sexual orientation.

⁶³² Law Commission. 2014. Hate Crime: *Should the Current Offences be Extended? Summary for non-Specialists*: http://lawcommission.justice.gov.uk/docs/lc348_hate_crime_english_summary.pdf.

⁶³³ The Law Society Gazette. May 2014. <http://www.lawgazette.co.uk/law/commission-calls-for-review-of-hate-crime/5041392.article>

The Law Commission recommended the UK Government undertake a comprehensive review on:

- how the criminal justice system should best protect victims of hate crime;
- which characteristics should be protected by specific criminal offences;
- how such characteristics should be identified; and
- the role played by sentencing.

The Law Commission also recommended that the Sentencing Council provide clear guidance to judges on sentencing for any crime with an element of hostility, and that the Police National Computer (PNC) record where any offence was aggravated by hostility.⁶³⁴ At present, only aggravated crimes are recorded on the PNC, meaning that criminal justice agencies not have access to data about any other hate crime offences. Having access to this data would be of benefit to prison or probation staff, who could seek to address the hostility element of the person's offending.⁶³⁵

If the UK Government is not minded to undertake such a review, the Law Commission suggested a less satisfactory alternative would be to extend aggravated offences to disability, sexual orientation and transgender identity. It did not recommend extending the stirring up of offences to the grounds of disability or transgender identity on the basis that there was no real practical need to do so.⁶³⁶

The UK's interpretive declaration of Article 4 of CERD, for example, sets out the distinction in England and Wales between hate speech and incitement to hate crime. However, the EHRC does not underestimate the potential impact of hate speech on people's safety⁶³⁷, and therefore shares concerns raised by CERD⁶³⁸ and the European Commission against Racism and Intolerance (ECRI)⁶³⁹ about the negative media portrayal of some isolated groups, such as Muslims, Gypsy, Irish Traveller and Roma Communities, migrants and asylum seekers. We are also concerned that public regulators of the media have yet to take effective action to tackle this, and demonstrate compliance with their obligations under the PSED to promote good relations.

⁶³⁴ Currently, only aggravated crimes (race and religion) are recorded on this system whereas crimes which receive enhanced sentences (all protected groups) are not

⁶³⁵ The Police National Computer can also be searched by the agency conducting criminal records checks in order to see whether an offender is suitable for a particular job. Law Commission. 2014. *Hate Crime: Should the Current Offences be Extended? Summary for non-Specialists*: http://lawcommission.justice.gov.uk/docs/lc348_hate_crime_english_summary.pdf

⁶³⁶ The Law Commission notes that in examples cited to them, existing laws are already in place to tackle such offences. Extending the law would lead to be very few successful prosecutions. Law Commission. 2014. *Hate Crime: Should the Current Offences be Extended? Summary for non-Specialists*: http://lawcommission.justice.gov.uk/docs/lc348_hate_crime_english_summary.pdf.

⁶³⁷ For example, it was verbal disability-based abuse that led to Fiona Pilkington taking her own life and the life of her daughter, Francessca Hardwick in 2007.

⁶³⁸ Committee on the Elimination of Racial Discrimination, Concluding observations of the Committee on the Elimination of Racial Discrimination for the United Kingdom and Northern Ireland, 2011, para 11, available at: <http://www2.ohchr.org/english/bodies/cerd/docs/CERD.C.GBR.CO.18-20.pdf>

⁶³⁹ European Commission on Racism and Intolerance, Report on the United Kingdom, 2010, p46, available at: http://www.coe.int/t/dghl/monitoring/ecri/country-by-country/united_kingdom/GBR-CbC-IV-2010-004-ENG.pdf

iii. Motivations

The EHRC has recommended that police forces develop an in-depth understanding of the characteristics and motivations of perpetrators, design local prevention strategies accordingly and evidence their effectiveness.⁶⁴⁰ We believe data should be publicised on action undertaken to challenge harassment and the outcomes and consequences for perpetrators, which could act as a deterrent to perpetrators and help build the confidence of victims to report. The new Police and Crime Commissioners in England can play an important role here.⁶⁴¹

While there is no UK-wide strategy on this yet,⁶⁴² the Welsh Government commissioned research⁶⁴³ on understanding the motivations of perpetrators, setting out a robust knowledge base from which practitioners can develop their responses to tackling hate crime. The EHRC suggests that this work could be applied to England and Wales, where criminal justice agencies could share learning and implement better intervention and prevention strategies.

Conclusion: while the EHRC acknowledges the UK Government is actively taking steps to address hate crime, we believe further work could be done to prevent hate speech and hate crime, and to improve reporting and operational responses, including:

- **collection of data on the number of hate crimes reported and prosecuted per force and prosecution area should be published annually to increase transparency and, perhaps, identify underreporting trends;**
- **implementation of the Law Commission's recommendation for a full scale review of the operation and effectiveness of enhanced and aggravated sentencing provisions;**
- **criminal justice agencies should build on research into the motivations behind hate crime, and develop targeted prevention strategies; and**
- **implementation of the CERD and ECRI recommendations to tackle the negative portrayal of particular groups by the media.**

Question A: How does the UK Government plan to respond to the Law Commission's recommendation for a comprehensive review of hate crime legislation?

Question B: What steps has the UK Government taken to consider and implement the recommendations of CERD and ECRI to tackle the negative portrayal of particular groups by the media?

⁶⁴⁰ Equality and Human Rights Commission, 2011. Hidden in Plain Sight. Available at: <http://www.equalityhumanrights.com/legal-and-policy/inquiries-and-assessments/inquiry-into-disability-related-harassment/hidden-in-plain-sight-the-inquiry-final-report/>

⁶⁴¹ Equality and Human Rights Commission, Manifesto for Change, 2013, available at: <http://www.equalityhumanrights.com/legal-and-policy/inquiries-and-assessments/inquiry-into-disability-related-harassment/out-in-the-open-manifesto-for-change/>

⁶⁴² Though the UK Government has commissioned a study to examine offender motivations, working with local criminal justice boards, Home Office, Hate Crime Action Plan Progress Report, page 46, available at:

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/307624/HateCrimeActionPlanProgressReport.pdf

⁶⁴³ Available at: <http://www.senedd.assemblywales.org.>

2. Violence Against Women (Articles 3, 7, 9, and 26)⁶⁴⁴

The EHRC welcomes that the UK Government has adopted a violence against women and girls (VAWG) strategy for England and Wales and is actively working towards ratification of the Council of Europe Convention on preventing and combatting violence against women and domestic violence (the Istanbul Convention)⁶⁴⁵. The Welsh Government is also developing its own VAWG strategy, and intends to bring forward legislation to help tackle VAWG in Wales.⁶⁴⁶ However, we are concerned that VAWG remains one of the most pervasive human rights issues in 2012-13, for example:

- 1.2 million women experienced domestic abuse;⁶⁴⁷
- 4.9 million (30% of the female population) had experienced some form of domestic abuse since the age of 16;⁶⁴⁸
- 400,000 experienced sexual assault and of those, 70,000 were raped;⁶⁴⁹
- two women are killed by their partner or ex-partner each week;⁶⁵⁰
- 66,000 women are living with the consequences of female genital mutilation (FGM) with an estimated 20,000 under 15s at risk of it;⁶⁵¹ and
- In 2011-12 there were 2,730 fixed term exclusions and 70 permanent exclusions from English schools for sexual misconduct.⁶⁵²

We note that the latest version of the UK Government's VAWG Action Plan takes heed of CEDAW's 2013 Concluding Observations. We consider that ratification and compliance of the Istanbul Convention would enable the UK to satisfy CEDAW's

⁶⁴⁴ Seventh periodic reports of States parties for the United Kingdom of Great Britain and Northern Ireland, 29 December 2012, para 424-434, available at: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2fGBR%2f7&Lang=en

⁶⁴⁵ The Istanbul Convention, available at: <http://www.coe.int/t/dghl/standardsetting/conventionviolence/convention/Convention%20210%20English.pdf>

⁶⁴⁶ Welsh Assembly Government. 2010. The Right to Be Safe: <http://wales.gov.uk/topics/people-and-communities/safety/domestic-abuse/publications/right-to-be-safe-annual-report-12-13/?lang=en>. In November 2012 the Welsh Government consulted on legislation to end VAWG - <http://wales.gov.uk/consultations/people-and-communities/vawwhitepaper/?lang=en>

⁶⁴⁷ ONS. 2014. Crime Statistics, Focus on Violent Crime and Sexual Offences, 2012/13: <http://www.ons.gov.uk/ons/rel/crime-stats/crime-statistics/focus-on-violent-crime-and-sexual-offences-2012-13/index.html>

⁶⁴⁸ ONS. 2014. Crime Statistics, Focus on Violent Crime and Sexual Offences, 2012/13: <http://www.ons.gov.uk/ons/rel/crime-stats/crime-statistics/focus-on-violent-crime-and-sexual-offences-2012-13/index.html>

⁶⁴⁹ The 70,000 figure includes attempted rapes. Home Office. 2013. *End Violence Against Women and Girls*: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/229477/VAWG_Brief_v3.pdf

⁶⁵⁰ Home Office, *End Violence Against Women and Girls*, 2013, available at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/229477/VAWG_Brief_v3.pdf

⁶⁵¹ See also the EHRC's evidence to the Home Affairs Select Committee's inquiry into Female Genital Mutilation, March 2014, p227, available at: <http://www.parliament.uk/documents/commons-committees/home-affairs/FGM%20written%20evidence.pdf>

⁶⁵² Department of Education, Behaviour and Attendance statistics, 2013, available at: <https://www.gov.uk/government/collections/statistics-exclusions>

outstanding concerns and its General Recommendation 19.⁶⁵³ The EHRC has set out a detailed analysis of what the UK Government needs to do to comply with the Istanbul Convention.⁶⁵⁴ Our analysis concludes that most obligations are, or will soon be, implemented through British legislation.⁶⁵⁵ However further actions are required to avoid potential legislative non-compliance, including:

- more robust requirements in relation to the display of highly-sexualised images of women in 'lads magazines' in shops (Article 14);
- a criminal offence of intentionally seriously impairing a person's psychological integrity through coercion or threats (Article 33);
- the extension of extra-territorial criminal jurisdiction (Article 44);
- the extension of Multi Agency Public Protection Arrangements (MAPPA) categories 1 and 2 to cover offences committed abroad (Article 51); and
- an amendment to the Immigration Rules to reflect the relevance of non-domestic VAWG (Article 59).

Moreover, issues primarily to do with implementation mean the UK may fall short of full compliance with other Istanbul Convention obligations, including:

- The establishment of an adequately resourced full time coordinating body with a UK wide strategy and action plan (Article 10). While the EHRC welcomes the UK Government's VAWG strategy, we are concerned there are potential risks to effective implementation implied by the strategy's lack of a central budget and emphasis on local decision-making.⁶⁵⁶ In this context, the EHRC questions the UK Government's ability to demonstrate fulfilment of its obligation to secure the safety of women across Great Britain as a human right under CEDAW.⁶⁵⁷ An early focus of such a body could be a comprehensive and co-ordinated UK-wide FGM strategy, adequately resourced with clear leadership, objectives and accountability.⁶⁵⁸
- Improvements to data collection and analysis on all forms of VAWG alongside population surveys to determine the prevalence of such crimes (Article 11).
- The EHRC welcomes the Welsh Government's proposal to make education on 'healthy relationships' compulsory in Welsh schools,⁶⁵⁹ as we believe

⁶⁵³ This recommendation relates to VAWG:

<http://www.un.org/womenwatch/daw/cedaw/recommendations/recomm.htm#recom19>

⁶⁵⁴ For a more detailed assessment of the EHRC's analysis on what the UK Government needs to achieve to meet the Istanbul Convention, please see our submission to the Joint Committee of Human Rights, March 2014:

<http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/human-rights-committee/violence-against-women-and-girls/written/7840.html>

⁶⁵⁵ For example, a prohibition on simulated rape pornography (Article 12) will be addressed through the Criminal Justice and Courts Bill 2013-14 and the criminalisation of forced marriage (Article 37) will be addressed through the Anti-Social Behaviour, Crime and Policing Bill 2013-14

⁶⁵⁶ Home Office, A Call to End Violence against Women and Girls, Action Plan, March 2013, available at https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/181088/vawg-action-plan-2013.pdf

⁶⁵⁷ While the Welsh and Scottish Governments are developing their own VAWG strategies, strong arguments remain for a UK-wide, coordinating body to fulfil the Article 10 functions.

⁶⁵⁸ See the EHRC's full evidence to the Home Affairs Select Committee's inquiry into Female Genital Mutilation: <http://www.parliament.uk/documents/commons-committees/home-affairs/FGM%20written%20evidence.pdf> – page 227

⁶⁵⁹ <http://wales.gov.uk/docs/dsjlg/publications/commsafety/130823rtbsannreport1213en.pdf>

personal, social and health education should be part of the national curriculum for all schoolchildren in Britain to support prevention of VAWG (Article 14).

- Addressing systematic problems in the training of professionals who deal with VAWG cases (Article 15).⁶⁶⁰ This includes specific guidance and training for Crown Prosecution Service lawyers and advocates in England and Wales on the effective implementation on the law of consent in sexual offences committed in the context of domestic violence (Article 36).⁶⁶¹
- Allowing third party complaints about press representation of women (Article 17). This would enable interested parties to seek redress through the Press Complaints Commission where there is not an identifiable “victim” prepared to give evidence on her own behalf.
- Addressing shortcomings in the gender sensitivity of the asylum system for victims of VAWG (Article 60), for example, the lack of access to psychological care.⁶⁶²

The EHRC considers the UK Government also needs to provide sufficient financial and legal support and refuge to victims of VAWG as required under Article 20. These include:

- ensuring there are sufficient numbers of adequately funded women's shelters to meet demand across the UK and conducting a full review of the Universal Credit system to support the UK Government's view that its impact has not negatively affected victims of VAWG;⁶⁶³ and
- assessing the impact that changes introduced by the LASPO Act have had on victims of VAWG's access to legal advice and representation.⁶⁶⁴

Conclusion: The EHRC considers that the UK Government must continue to work towards ratification and implementation of the Istanbul Convention. This

⁶⁶⁰ See for example, HMIC, 2013 <http://www.hmic.gov.uk/publication/essex-polices-approach-to-managing-cases-of-domestic-abuse/>; Baroness Stern's Independent Review into how Rape Complaints are Handled by Public Authorities in England and Wales was published in March 2010 - http://webarchive.nationalarchives.gov.uk/20110608160754/http://www.equalities.gov.uk/PDF/Stern_Review_acc_FINAL.pdf

⁶⁶¹ Despite legislation and judicial interpretation consistent with Article 36, the implementation of the law on consent is not always satisfactory. Baroness Stern's Independent Review into how Rape Complaints are Handled by Public Authorities in England and Wales was published in March 2010: http://webarchive.nationalarchives.gov.uk/20110608160754/http://www.equalities.gov.uk/PDF/Stern_Review_acc_FINAL.pdf - p.115

⁶⁶² CEDAW Concluding Observations on Great Britain and Northern Ireland. 30 July 2013. Paragraph 56 and 59. http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CEDAW%2fC%2fGBR%2fCO%2f7&Lang=en

⁶⁶³ For example, Women's Aid Scotland reports it has to turn away one in three women. Scottish Women's Aid. 2012. Submission to the Scottish Parliament Equal Opportunities Committee: http://www.scottish.parliament.uk/S4_EqualOpportunitiesCommittee/Inquiries/Scottish_Womens_Aid_submission.pdf

HM Government. A Call to End Violence against Women and Girls. Action Plan. March 2013. Page 26: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/181088/vawg-action-plan-2013.pdf

⁶⁶⁴ The UK is required to report back to the CEDAW committee by July 2015 on this. CEDAW Concluding Observations on Great Britain and Northern Ireland. 30 July 2013. Paragraph 23 and 68. http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CEDAW%2fC%2fGBR%2fCO%2f7&Lang=en

work should also enable it to implement CEDAW's concluding observations in relation to VAWG, and General Recommendation 19.

Question A: Could the UK Government describe how it monitors local public agencies in England and Wales' delivery of VAWG strategies and services to ensure compliance with the UK's international human rights obligations?

Question B: Could the UK Government provide information about the financial and human resources local public agencies in England and Wales dedicate to VAWG strategies and services, as well as the total UK public expenditure on implementing the UK's international human rights obligations in relation to VAWG? Could these resources be disaggregated to show expenditure on the following provision:

- **assistance to victims of VAWG in accessing legal representation and advice;**
- **refuge to victims of VAWG;**
- **health services to victims of VAWG, including victims of FGM.**

Contacts

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ISBN: 978-1-84206-611-9