

## **ADDENDUM TO:**

# AMNESTY INTERNATIONAL MARCH 2022 SUBMISSION TO THE 41<sup>ST</sup> SESSION OF THE UPR WORKING GROUP, NOVEMBER 2022

## **OCTOBER 2022**

## SUMMARY

This October 2022 addendum provides updated information and recommendations in response to relevant human rights developments since Amnesty International's UK UPR Submission of March 2022.<sup>1</sup>

## DEVELOPMENTS SINCE MARCH 2022

### The UK Human Rights Act and European Convention on Human Rights

The Human Rights Act 1998 incorporates into domestic law rights set out in the European Convention on Human Rights (ECHR) giving them practical effect. Without it, under the UK's dualist system, human rights recognised under international law, such as those in the ECHR are not directly enforceable in domestic law. At the time of Amnesty International's submission in March, the UK Government was proposing to replace the Human Rights Act 1998 ('HRA') with a less protective Bill of Rights.

On conclusion of a public consultation, the Bill was then published and had its First Reading in the House of Commons. The Bill was gravely concerning to Amnesty International and widely criticised for many of its proposals. These included numerous clauses that would have led to conflict and non-compliance with the European Court of Human Rights; the creation of serious obstacles to accessing courts and remedies for human rights violations; measures that were in breach of the UK's obligations under the Belfast Agreement (or Good Friday Agreement) 1998; and created tensions with the UK's devolved forms of government.

Following a subsequent change of leadership in the governing Conservative Party, the new Prime Minister Liz Truss and Justice Minister Brandon Lewis announced in September that the Bill would not receive its planned Second Reading in the Commons. Instead, the government was reportedly "reviewing the most effective means to deliver objectives through our legislative agenda".<sup>2</sup> Subsequent briefing and Ministerial comment strongly suggest that the Bill will no longer be pursued. In its place, a new Immigration Bill has been mooted, although not yet published, which Ministers have said will prevent anyone arriving irregularly in the UK from claiming asylum and give British courts the supremacy over the European Court of Human Rights on issues of immigration. The Prime Minister's statement in early October that the bill will "make sure no European judge can overrule us" has been understood as a reference to the European Court's power to indicate 'interim measures' to state parties; an issue that became highly contentious earlier in the year when an interim measure was indicated in relation to the implementation of the government's policy of removing asylum seekers to Rwanda.<sup>3</sup>

### Northern Ireland

In May 2022, the UK Government published the Northern Ireland Troubles (Legacy and Reconciliation) Bill which is a gravely concerning *de facto* amnesty for serious human rights violations, such as murder and torture, committed during the NI Troubles. The Bill shields suspected perpetrators at the expense of victims' rights. It fails to comply with the UK's human rights obligations, is a significant interference in the justice system, undermines the rule of law and will set a dangerous precedent internationally, including by signalling to other states that they too can ignore their human rights obligations and legislate for impunity. The Bill also breaches the Belfast/Good Friday Agreement including by denying remedies for rights violations and removing access to the courts. Amnesty International's concerns are shared by UN Special Rapporteurs, CoE Commissioner on Human Rights, Dunja Mijatovic, US State Department and US Congress.<sup>4</sup> Amnesty International recommends that the NI Troubles (Legacy and Reconciliation) Bill to be dropped entirely and to revert to the Stormont House Agreement which, with some adjustments, would discharge the UK's human rights obligations and vindicate the rights of victims.

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1 Amnesty International (31/03/2022) *United Kingdom: Dismantling the Human Rights Framework*, Amnesty International Submission to the 41<sup>st</sup> UPR Working Group <https://www.amnesty.org/en/documents/eur45/5421/2022/en/>

2 Dominic Casciani, BBC (07/09/2022) *Bill of Rights: Liz Truss shelves plans to reform human rights law* <https://www.bbc.co.uk/news/uk-politics-62818286>

3 Mary-Kate Findon, The Independent (05/10/2022) *Liz Truss promises legislation to 'make sure no European judge can overrule us'*

<https://www.independent.co.uk/tv/news/liz-truss-tory-conference-immigration-b2196003.html>

4 Council of Europe Commissioner for Human Rights (16/08/2022) *Rule 9 Submission* <https://rm.coe.int/submission-by-the-council-of-europe-commissioner-for-human-rights-unde/1680a7b336>

On 19 May 2022 the NI Secretary of State took further legislative steps to ensure abortion services are commissioned for women and girls in Northern Ireland. The Secretary of State laid regulations in the UK Parliament that removed the need for the Department of Health to seek Executive Committee approval to commission and fund abortion services in Northern Ireland. If the Health Minister continues to fail to act, the regulations also gave the Secretary of State the same power to put abortion services in place. Whilst a very welcome development, as of October 2022 commissioned abortion services are still not established and existing provision remains fragile. We therefore call on the Secretary of State to establish commissioned services without delay.

### **The Police, Crime, Sentencing and Courts Act and the Public Order Bill**

Since March, the controversial Police Crime and Sentencing Bill, has been passed with amendments and enacted as the Police, Crime, Sentencing and Courts Act (the PCSC Act).

Hundreds of civil society organisations and legal academics, as well as Parliamentarians from across the political divide, former Chief Constables, UN Special Rapporteurs, and the Council of Europe Commissioner for Human Rights had expressed concern about the Bill, particularly about measures seriously threatening human rights relating to peaceful protest.<sup>5</sup> The UK Government nevertheless then tabled additional amendments which would have criminalised protest even further, expanded stop and search powers, and created orders which could be used to prevent certain individuals from protesting at all. The House of Lords successfully rejected these amendments before the bill was passed, however serious concerns remain.

Amnesty International is therefore calling for the repeal of several of the PCSC Act's sections, namely Part 3: Public Order, Part 4: Unauthorised encampments (which criminalises the way of life for many Gypsy, Roma and Traveller communities) and Part 10: Serious Violence Reduction Orders. Amnesty International is also calling for Part 2 Chapter 1: Functions relating to serious violence, to be amended in order to safeguard data protection and remove the Police as leaders of the Serious Violence Duty, which along with Serious Violence Reduction Orders risk entrenching racial discrimination in policing.

The UK Government has subsequently re-introduced the PCSC Act's rejected provisions, as part of a new Public Order Bill. These provisions would introduce repressive policies such as protest banning orders, widespread powers to stop and search people even without suspicion, and criminalisation of peaceful acts; and if implemented, the UK would be in breach of international human rights law. The provisions are vague, undefined and open to subjective interpretation and likely to be unlawful from the outset. The Bill fails the three-part test of legality, necessity and proportionality and therefore Amnesty International and many others are calling on Parliamentarians to oppose the Public Order Bill in its entirety.<sup>6</sup>

### **Nationality and Borders Act 2022**

The Nationality and Borders Act 2022 came into effect 28 June. It contains measures which will harm refugees by depriving them of their human rights under the 1951 UN Refugee Convention, of which the UK was one of the original drafters and one of the very first countries to adopt.<sup>7</sup> For example, some refugees - including many who claim asylum

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5 Amnesty International (27/04/2022) *UK: Dark day for civil liberties as 'deeply-authoritarian' Policing Bill passed by Lords* <https://www.amnesty.org.uk/press-releases/uk-dark-day-civil-liberties-deeply-authoritarian-policing-bill-passed-lords>; JCHR (22/06/2021) *Government plans to change law to restrict demonstrations breach human right to protest* <https://committees.parliament.uk/committee/93/human-rights-joint-committee/news/156037/government-plans-to-change-law-to-restrict-demonstrations-breach-human-right-to-protest-says-jchr>; Vikram Dodd, Jamie Grierson (28/03/2021) *Protest laws move UK towards paramilitary policing* <https://www.theguardian.com/uk-news/2021/mar/28/protest-laws-move-uk-towards-paramilitary-policing-says-former-chief>; Clement Nyaletsossi Voule, Irene Khan (25/05/2021) *Communication from the UN Special Rapporteurs on the right to peaceful assembly and association and on freedom of opinion and expression* <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gld=26447>; Dunja Mijatović (01/07/2021) *Communication from the Council of Europe Commissioner for Human Rights* <https://rm.coe.int/letter-to-rt-hon-sir-lindsay-hoyle-mp-speaker-of-the-house-of-commons-/1680a305a3>. See the PCSC Act here: <https://www.legislation.gov.uk/ukpga/2022/32/contents>

6 Amnesty International et al (13/10/2022) *Joint Briefing on the Public Order Bill for Report Stage in the House of Commons* <https://www.amnesty.org.uk/resources/joint-briefing-public-order-bill-report-stage-house-commons>. See the Public Order Bill here: <https://bills.parliament.uk/bills/3153>

7 Amnesty International (27/06/2022) *UK: Priti Patel's Borders Act is 'unlawfully rewriting' what it means to be a refugee* <https://www.amnesty.org.uk/press-releases/uk-priti-patels-borders-act-unlawfully-rewriting-what-it-means-be-refugee>. See the Nationality and Borders Act 2022 here: <https://www.legislation.gov.uk/ukpga/2022/36/contents/enacted>

based on the persecution they face resulting from their sexual identity or orientation - will be unfairly required to meet extra tests to have their status recognised. This may exclude many people from the asylum to which they are entitled - and require - to safeguard them from persecution. Also, refugees who arrive or enter the UK without prior permission will be penalised - including by criminal prosecution, imprisonment and exclusion from their full rights to asylum in the UK. Further the new legislation is highly likely to cause the UK to wrongly refuse asylum to thousands of people despite them having presented a grave risk that if sent back to their home countries they will face torture and other forms of persecution. Finally, as stated in Amnesty International's March submission, the Act makes refugees and other people seeking asylum more vulnerable to human trafficking and exploitation, through measures to restrict protection and support for victims of modern slavery and to penalise failure to meet procedural requirements imposed on anyone seeking to establish they are a victim.<sup>8</sup>

Amnesty International is calling on the UK Government to abandon the Nationality and Borders Act's asylum provisions, as well as the modern slavery provisions, which restrict access to support and protection for victims of modern slavery in the UK.

### **The Istanbul Convention**

On 21 July 2022, the UK ratified the Council of Europe Convention on preventing and combating violence against women and domestic violence (known as the Istanbul Convention), which will enter into force in the UK on 1 November 2022.<sup>9</sup> Regrettably however the UK has reserved the right not to be bound by the provisions in Article 59 relating to residence status.<sup>10</sup> meaning that migrant victims in the UK will not be provided the same support and protection as other victims. Such reservations must be reviewed within 5 years but can be withdrawn sooner.<sup>11</sup>

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<sup>8</sup> Amnesty International, Migrant Voice (09/2021) *Joint submission to the Public Bill Committee Nationality and Borders Bill* <https://bills.parliament.uk/publications/42865/documents/708>, paragraphs 11-15; and 41-43

<sup>9</sup> Council of Europe (21/07/2022) *The United Kingdom ratifies the Istanbul Convention* <https://www.coe.int/en/web/istanbul-convention/-/the-united-kingdom-ratifies-the-istanbul-convention>

<sup>10</sup> United Kingdom (21/07/2022) *Reservations and Declarations for Treaty No.210 - Council of Europe Convention on preventing and combating violence against women and domestic violence (CETS No. 210)* <https://www.coe.int/en/web/conventions/full-list?module=declarations-by-treaty&numSte=210&codeNature=2&codePays=UK>

<sup>11</sup> Articles 78-79 of the Istanbul Convention

# UPDATED RECOMMENDATIONS

## Amnesty International urges the Government of the United Kingdom to:

### Human Rights Framework

- Retain the Human Rights Act 1998 and remain party to the European Convention on Human Rights (ECHR) [Updated]
- Abide fully with ECHR obligations including implementation of rulings and interim measures by the European Court of Human Rights. [Updated]
- Provide adequate funding to all UK National Human Rights Institutions, ensure that they retain adequate powers to bring and support human rights litigation, and are not subject to financial or other control which might affect their independence and ability to promote and enhance human rights. [Updated]

### Counter Terrorism and Policing

- Repeal Part 3 (Public order) of the Police Crime Sentencing and Courts Act 2022 introducing restrictions on legitimate peaceful protest and withdraw the new Public Order Bill. The restrictions in both are not proportional or necessary, may lack lawful basis, and are incompatible with the UK's international human rights obligations. [Updated]
- Take meaningful action to eliminate racism in police use of force, including in the use of Taser. Strengthen guidance on Taser to ensure it remains a specialist piece of less lethal equipment and its use is restricted to imminent life threatening situations that cannot be contained through less extreme options.
- Amend the Counter-Terrorism and Border Security Act 2018 to repeal offences relating to entering or remaining in a designated area and expanding criminalization of expression; and remove the new Terrorism Act 2000 port and border controls allowing suspicion-less stops to determine if an individual may be engaged in hostile state activity.
- Scrap the Terrorism Prevention and Investigation Measures regime; or reverse regressive changes made, by reinstating the previous standard of proof, limits on the number of times an Order can be renewed and limits on the maximum hours of curfew that may be imposed.

### Racial Discrimination

- Abandon the approach of denying institutional racism.
- Reform the Serious Violence duty in the Police Crime Sentencing and Courts Act 2022 to safeguard data protection and remove the Police led approach. Abandon the introduction of Serious Violence Reduction Orders (SVROs). [Updated]
- Ensure that citizenship rights are accessible to all British people by removing prohibitive barriers to citizenship registration including fees and good character requirements.
- Restrict powers to strip citizenship including by ensuring that nobody is made stateless or left without citizenship of a country with which they have a close connection.

### Rights of Refugees

- Abandon the asylum provisions of the Nationality and Borders Act 2022. [Updated]
- Affirm the UK's commitment to the Refugee Convention and share responsibility with other nations for providing asylum, including by establishing safe and legal routes for people seeking asylum in the UK (particularly where they have family and other close connection to the UK).

### **Modern Slavery**

- Abandon the modern slavery provisions of the Nationality and Borders Act 2022 which restrict access to support and protection for victims of modern slavery in the UK. [Updated]

### **Business and Human Rights**

- Transform the Modern Slavery Act 2015 'Transparency in Supply Chains' reporting requirement into a mandatory human rights due diligence requirement to ensure that businesses tackle modern slavery more effectively.
- Overhaul the strategic export licensing system to ensure UK military equipment and related goods, technology and services are not transferred where there is clear risk they might be used to commit or facilitate serious violations of international human rights law. Bring the provision of training formally within the export licensing system.

### **Failure of Accountability and Openness**

- Hold a fully independent and human rights compliant judge-led investigation into allegations of UK involvement in abuse of detainees held overseas.
- Abandon the Northern Ireland Troubles (Legacy and Reconciliation) Bill which would institute a de facto Amnesty for Northern Ireland conflict related violations and revert to the Stormont House Agreement which, with further adjustments, provides a way forward capable of discharging the UK's human rights obligations. [Updated]

### **Rights of Women and Girls**

- Ensure *all* survivors of domestic abuse can equally access support, welfare systems and legal tools that provide protection from abuse, without discrimination on any grounds, including immigration status.
- Promptly withdraw the reservation to Article 59 of the Istanbul Convention, to enable equal support and protection for migrant women victims. [Updated]

### **Trans and Non-Binary People**

- Immediately reform the Gender Recognition Act in all parts of the UK, based on international human rights standards.

### **Reproductive Health and Rights**

- Urgently commission and establish abortion services in Northern Ireland in line with the Northern Ireland (Executive Formation etc) Act 2019, Abortion (Northern Ireland) Regulations 2020 and subsequent regulations of the Secretary of State for Northern Ireland. [Updated]

### **Right to Adequate Housing**

- Amend the Housing (Homeless Persons) Act 1996 Part 7 to abolish the criteria of 'priority need' and 'intentionality' for determining entitlement to housing; and ensure that everyone who is homeless and unable to provide for themselves is provided with housing, while prioritising those most at risk of abuse, exploitation, and other human rights violations.