



# UNITED KINGDOM: WEAKENING PROTECTIONS

AMNESTY INTERNATIONAL SUBMISSION FOR THE UN UNIVERSAL PERIODIC REVIEW – 27<sup>TH</sup> SESSION OF THE UPR WORKING GROUP, MAY 2017

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## INTRODUCTION

This submission was prepared for the Universal Periodic Review (UPR) of the United Kingdom of Great Britain and Northern Ireland (UK) taking place in May 2017. In it, Amnesty International evaluates the implementation of recommendations accepted by the UK in its previous UPR,

assesses the national human rights framework in the UK and the situation of human rights on the ground, and makes a number of recommendations to the UK authorities to strengthen human rights protection and address human rights challenges at the national level.

Amnesty International notes with regret that the UK has expressed an intention to replace its domestic Human Rights Act with what appears likely to be a less protective Bill of Rights, and that it has been highly critical of the European Court of Human Rights (ECtHR) in this regard. There have also been reports at the close of 2016 suggesting the government intends to withdraw altogether from the European Convention on Human Rights should it win the next election. Further, the UK continues to take a narrow view of its extraterritorial human rights obligations and has restricted access to justice through significant cuts to its civil legal aid provision.

With regard to the human rights situation on the ground, Amnesty International is concerned about human rights violations in the context of counter-terrorism, failures of accountability, treatment of migrants and the operations of UK business.

# FOLLOW-UP TO THE PREVIOUS REVIEW

Amnesty International welcomes the UK government's acceptance of more than two-thirds of the recommendations made by other states during its previous review in May 2012. The organization does not consider, however, that all the accepted recommendations have been adequately fulfilled, and several of the human rights concerns raised during the previous review remain relevant. Some of the main short-comings include the following, expanded on below.

First, the UK accepted that it should continue to ensure that human rights principles are integrated in domestic laws;<sup>1</sup> however, the government has been seeking to water down the effectiveness of the European Convention on Human Rights (ECHR) by a planned replacement of the domesticating Human Rights Act with an apparently less protective British Bill of Rights. It has also yet to implement a key judgement by the ECtHR, concerning prisoner voting, in contradiction to its acceptance that it should comply with the rulings of the ECtHR on cases concerning the United Kingdom.<sup>2</sup>

Second, although the UK accepted that it would continue to ensure that its terrorism prevention legislation and measures comply with international human rights standards,<sup>3</sup> it has been revealed through disclosures by Edward Snowden that it undertakes widespread surveillance of communications on an indiscriminate basis and has now written that practice into domestic legislation through a new Act of Parliament.<sup>4</sup> Amnesty International does not consider mass

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<sup>1</sup> Human Rights Council, *Report of the Working Group on the Universal Periodic Review – United Kingdom of Great Britain and Northern Ireland*, A/HRC/21/9, 6 July 2012, recommendation 110.32 (Qatar).

<sup>2</sup> A/HRC/21/9, recommendation 110.48 (Mexico).

<sup>3</sup> A/HRC/21/9, recommendation 110.119 (Japan).

<sup>4</sup> Investigatory Powers Bill, accessible here: <http://services.parliament.uk/bills/2015-16/investigatorypowers.html>

surveillance of the kind this Act allows for to be compatible with the rights to privacy and freedom of expression.

Third, despite accepting that it should begin an independent investigation into all cases of arbitrary detention it may have been implicated in in connection with the programme of secret detention led by the United States,<sup>5</sup> the UK has handed the investigation to a parliamentary committee which does not satisfy human rights standards for independence.

Amnesty International regrets the UK's failure fully to implement these recommendations and others it accepted, and urges the UK to take action on these, as well as on certain areas where recommendations previously made were rejected or only accepted in part.

# THE NATIONAL HUMAN RIGHTS FRAMEWORK

## DOMESTIC LEGAL FRAMEWORK

Amnesty International is concerned at the government's apparent renewed commitment to replace the Human Rights Act 1998 (HRA) with a British Bill of Rights.<sup>6</sup> The HRA incorporates into domestic law rights set out in the ECHR, giving them practical effect. While the Prime Minister appeared in late 2016 to have retracted her earlier support for withdrawing from the ECHR,<sup>7</sup> such a move was not conclusively ruled out beyond the current Parliament, and press

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<sup>5</sup> A/HRC/21/9, recommendation 110.84 (Nicaragua).

<sup>6</sup> See, *inter alia*, *Protecting Human Rights in the UK: the Conservatives' proposals for changing Britain's human rights laws*, 2014, [https://www.conservatives.com/~media/files/downloadable%20Files/human\\_rights.pdf](https://www.conservatives.com/~media/files/downloadable%20Files/human_rights.pdf); *The Conservative Party Manifesto*, 2015, <https://www.conservatives.com/manifesto>; The Sunday Times, *Human rights law to be axed*, 8 November 2015, <http://www.thesundaytimes.co.uk/sto/news/Politics/article1630327.ece?shareToken=37cd2e008469df6ed640d25f0f7f086a>; House of Lords European Union Committee, *The UK, the EU and a British Bill of Rights*, 2016, <http://www.publications.parliament.uk/pa/ld201516/ldselect/ldeucom/139/139.pdf>; and The Independent, *Theresa May speech laying out plans to scrap the Human Rights Act re-surfaces on the internet*, 14 July 2016, <http://www.independent.co.uk/news/uk/politics/theresa-may-speech-that-laid-out-plans-for-the-future-deleted-from-the-internet-a7137496.html>.

<sup>7</sup> See The Guardian, *UK must leave European convention on human rights, says Theresa May*, 25 April 2016, <http://www.theguardian.com/politics/2016/apr/25/uk-must-leave-european-convention-on-human-rights-theresa-may-eu-referendum>; and BBC, *Theresa May: UK should quit European Convention on Human Rights* (speech), 25 April 2016, <http://www.bbc.co.uk/news/uk-politics-eu-referendum-36128318>. Theresa May's speech included a statement that "the case for remaining a signatory of the European Convention on Human Rights – which means Britain is subject to the jurisdiction of the European Court of Human Rights – is not clear... The ECHR can bind the hands of Parliament, adds nothing to our prosperity, makes us less secure by preventing the deportation of dangerous foreign nationals – and does nothing to change the attitudes of governments like Russia's when it comes to human rights. So regardless of the EU referendum, my view is this. If we want to reform human rights laws in this country, it isn't the EU we should leave but the ECHR and the jurisdiction of its Court", available at: <http://www.conservativehome.com/parliament/2016/04/theresa-mays-speech-on-brexit-full-text.html>.

reports at the close of 2016 suggest it may now be the express intention of the government to withdraw if it wins the next election.<sup>8</sup>

Even if the new Bill of Rights continues to incorporate the ECHR and there is no such withdrawal, Amnesty International's analysis of proposals seen to date suggests that they are regressive and likely to weaken the domestic framework, thereby damaging the protection and promotion of human rights in the UK. Any withdrawal, or watering down of the framework for incorporation of the ECHR would clearly be contrary to the recommendation accepted by the UK during the 2012 review to ensure the integration of human rights principles in domestic law.<sup>9</sup> The UK confirmed this commitment in its 2012 and July 2014 Update that (i) the UK had a very strong existing framework; (ii) the 2011-12 Bill of Rights Commission had been instructed to consider how to build on ECHR obligations and indeed concluded (iii) the time was not right for changes largely because of the way the UK human rights framework was tied into devolution settlements. Nothing material has changed in respect of the difficulties of devolution arrangements for human rights change since that Update – indeed both the Scottish and Welsh governments have explicitly confirmed their intent to oppose repeal of the Human Rights Act.<sup>10</sup> There is therefore a significant risk that should the Human Rights Act be replaced with a less protective Bill of Rights in England, this would leave a patchwork of rights protection across the UK, with those in England left less protected than in the devolved nations.

Further, the government's rhetoric around national supremacy<sup>11</sup> continues to give rise to concerns as to its future compliance with Article 46 of the ECHR (its commitment to "abide by" the final judgment of the ECtHR in any case to which it is a party) even within the Convention, as does its continued failure to comply with the apparently "*particularly sensitive and difficult*"<sup>12</sup> area of the ECtHR judgment regarding prisoner voting rights.<sup>13</sup>

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<sup>8</sup> Rights Info, *Theresa May Will NOT Try To Take UK Out Of European Convention on Human Rights*, 30 June 2016, <http://rightsinfo.org/breaking-theresa-may-will-not-try-leave-european-convention-human-rights/>. The Telegraph, *Theresa May to fight 2020 election on plans to take Britain out of European Convention on Human Rights after Brexit is completed*, 28 December 2016 <http://www.telegraph.co.uk/news/2016/12/28/theresa-may-fight-2020-election-plans-take-britain-european/>

<sup>9</sup> A/HRC/21/9, recommendation 110.32 (Qatar).

<sup>10</sup> See Herald Scotland, *PM David Cameron warned scrapping Human Rights Act will cause constitutional crisis with Scottish parliament*, 19 May 2016, [http://www.heraldscotland.com/news/14501674.Scrapping\\_Human\\_Rights\\_Act\\_will\\_cause\\_constitutional\\_crisis\\_with\\_Scottish\\_Parliament\\_Cameron\\_warned/](http://www.heraldscotland.com/news/14501674.Scrapping_Human_Rights_Act_will_cause_constitutional_crisis_with_Scottish_Parliament_Cameron_warned/); and Wales Online, *Welsh government will do 'everything it can' to block repeal of the Human Rights Act*, 18 May 2015, <http://www.walesonline.co.uk/news/wales-news/welsh-government-everything-can-block-9279496>.

<sup>11</sup> See, for example, the response of Justice Minister Elizabeth Truss to a question regarding which Convention rights the government wished to dispense with, that "*one of the important points is that we want the ultimate arbiter of those rights to be the Supreme Court of the United Kingdom*", Hansard, 6 September 2016, Col.186, <https://hansard.parliament.uk/commons/2016-09-06/debates/16090629000010/HumanRightsAct>.

<sup>12</sup> As explained in September 2012, responding to recommendation 110.48 (Mexico), referred to again in the UK's mid-term Report 2014, A/HRC/21/9.

<sup>13</sup> European Court of Human Rights, *Hirst (n° 2) v. the United Kingdom*, Application no. 74025/01, judgment of 6 October 2005, followed by the pilot judgment in *Greens and M.T. v. the United Kingdom* Application nos. 60041/08 & 60054/08 judgment of 23 November 2010. It is notable that similar arguments have since been made by the Russian government as to its supremacy and European Court of Human Rights judgments, raising the same issue. Amnesty International considers that this issue only became particularly sensitive as a result of the government's rhetoric around it, including the then Prime Minister David Cameron's comment in the House of Commons that "*it makes me physically ill even to contemplate having to give the vote to anyone who is in prison*", 3 November 2010, Hansard Col.921, <http://www.publications.parliament.uk/pa/cm201011/cmhansrd/cm101103/debtext/101103-0001.htm>. The ongoing failure to comply is all the more concerning given the wholly achievable recommendation for

No progress has been in the adoption of a Bill of Rights in Northern Ireland, a requirement stipulated by The Belfast Agreement of 1998.<sup>14</sup> Any withdrawal from the ECHR would also necessarily significantly affect this Agreement, since the UK committed in that peace agreement to “*complete incorporation into Northern Ireland law of the European Convention on Human Rights*”.

## EXTRATERRITORIAL APPLICABILITY OF HUMAN RIGHTS PROTECTION

The UK continues to take a narrow view of the extraterritorial application of international and regional human rights treaties, thereby undermining human rights protection and obstructing efforts by victims to obtain remedies and reparation for human rights violations.<sup>15</sup>

For example, the government continues to seek to limit the extent to which the ECHR applies to the actions of its armed forces abroad. That includes by intervening in the ECtHR case of *Jaloud v Netherlands*,<sup>16</sup> heard in February 2014. That case concerned the fatal shooting by Dutch forces of an individual in a moving car at a military checkpoint in Iraq, and considered whether the Dutch government had violated its obligation properly to investigate the death with a view to bringing the person responsible to justice under Article 2 of the ECHR. The UK government unsuccessfully sought to argue that the individual should not be seen as within the jurisdiction of the Dutch government. The UK argued that the notion of “jurisdiction” should not be allowed to “evolve” in the same way as the law in respect of the substantive rights and freedoms guaranteed by the ECHR. It also expressed the view that the case would deter states from sending troops on future UN missions.<sup>17</sup>

## LEGAL AID REFORMS

In 2013 the UK restricted access to civil legal aid through the passage of the Legal Aid, Sentencing and Punishment of Offenders Act (LASPO) 2012. Prior to LASPO, legal aid was available to help people access justice with respect to almost all aspects of civil law, with narrowly prescribed exceptions. This situation has now been reversed, with civil legal aid now available only for a narrow number of prescribed topics and types of legal work, subject to the possibility of applying for exceptional case funding in certain other cases. The government claimed in its mid-term report that the intention of these reforms was to make legal aid “*more effective including by targeting the highest priority cases*”.<sup>18</sup> Research conducted by Amnesty International in 2015-16

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compliance from the Parliamentary *Joint Committee on the Draft Voting Eligibility (Prisoners) Bill (reporting on 16 December 2013)* that “*all prisoners serving sentences of 12 months or less should be entitled to vote in all UK parliamentary, local and European elections; and moreover that prisoners should be entitled to apply, up to 6 months before their scheduled release date, to be registered to vote in the constituency into which they are due to be released.*” Note that the Joint Committee was also clear in its report to the UK government that “*It is not possible to reconcile the principle of the rule of law with remaining within the Convention while declining to implement the judgment of the Court*” [p.5].

<sup>14</sup> The Belfast Agreement, 1998, page 21, [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/136652/agreement.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/136652/agreement.pdf).

<sup>15</sup> During its previous review the UK rejected recommendations on this issue. See A/HRC/21/9/Add.1 110.33 (Islamic Republic of Iran) and 110.3 (Nicaragua) and one was partially accepted: 110.118 (Egypt).

<sup>16</sup> European Court of Human Rights, Application No. 47708/08, judgment 20 November 2014 [at 121-126].

<sup>17</sup> The UK did not accept a recommendation in its previous review concerning jurisdiction over those detained by its armed forces and resulting human rights obligations, and continues to take a very narrow view of all relevant treaties in this respect, as outlined in its mid-term report. A/HRC/21/9/Add.1, recommendation 110.33 (Islamic Republic of Iran).

<sup>18</sup> Mid-Term report at [9], p.7.

indicates that the reforms have instead had a seriously negative effect on access to justice, have disproportionately impacted vulnerable and disadvantaged groups and that the exceptional case funding scheme (designed to provide a safety net for cases where refusal would violate human rights) is not capable of remedying the human rights impact of the reforms.<sup>19</sup>

# THE HUMAN RIGHTS SITUATION ON THE GROUND

## COUNTER-TERRORISM AND POLICING MEASURES

Since its previous review the UK has passed and announced a number of counter-terrorism measures which are of concern to Amnesty International.<sup>20</sup>

A new Counter-Extremism and Safeguarding Bill was announced on 18 May 2016 which includes a proposal to introduce a number of civil orders to restrict “extremist” activity. However, that proposal does not as yet provide a clear definition of the concept of “extremism”, giving rise to concern that if introduced these new powers could lead to violations of the human rights to freedom of assembly, association, expression and privacy.

The UK also maintains counter-terrorism legislation and policy that fail to comply with the highest human rights standards, including its Deportation with Assurances policy and its regime of administrative control measures (Terrorist Prevention and Investigation Measures). Amnesty International considers that diplomatic assurances given by governments that torture, cannot reliably, effectively and sufficiently eliminate risks of torture and ill-treatment of the individual upon return. Consequently, their use is inconsistent with the UK government’s human rights obligations.<sup>21</sup> Terrorist Prevention and Investigation Measures can amount to deprivation of liberty or constitute restrictions on the rights to privacy, expression, association and movement. The procedure for challenging the imposition of these measures is inadequate as it allows the government to rely on secret material which is not disclosed to the individual concerned or their lawyer of choice.<sup>22</sup> Since its last review, the scale of the UK’s surveillance activity has been made public by Edward Snowden’s disclosures.<sup>23</sup> The new Investigatory Powers Bill, passed through Parliament in 2016, threatens to increase rather than regulate such activity. Amnesty International - itself found to be a victim of unlawful surveillance activity by the UK government

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<sup>19</sup> The Research Report, *Cuts that Hurt*, was published at the end of 2016, and can be made available to anyone wishing for further detail on its methodology and conclusions.

<sup>20</sup> Contrary to recommendations accepted during its previous review. See A/HRC/21/9, recommendations 110.119 (Japan), 110.120 (Norway), 110.121 (Netherlands) and 110.125 (Norway) and A/HRC/21/9/Add.1, paragraph 13.

<sup>21</sup> See Amnesty International, *Dangerous Deals: Europe’s reliance on ‘diplomatic assurances’ against torture* (Index: EUR 01/012/2010).

<sup>22</sup> See Amnesty International United Kingdom, *The Terrorism Prevention and Investigation Measures Bill 2011: Control Orders Redux* (Index: EUR 45/007/2011).

<sup>23</sup> For further information see Amnesty International and Privacy International, *Two years after Snowden: Protecting human rights in an age of mass surveillance* (Index: ACT 30/1795/2015).



under a bulk warrant<sup>24</sup> - considers that the government's existing "bulk" surveillance regime,<sup>25</sup> and the bulk powers in the new Bill,<sup>26</sup> amount to a disproportionate interference with several human rights.<sup>27</sup> Amnesty International is concerned that bulk interception and bulk hacking, among other widespread powers, fundamentally disturb the proper relationship between the individual and the state.

## FAILURES OF ACCOUNTABILITY AND OPENNESS

Despite committing to undertake an independent inquiry into allegations of UK involvement in human rights violations, including torture and other ill-treatment of detainees held overseas, the government has handed the inquiry to the Parliamentary Intelligence and Security Committee (ISC).<sup>28</sup> Amnesty International does not consider the ISC capable of carrying out the inquiry to the standards required under the UK's human rights obligations.<sup>29</sup>

Although changes were made to the ISC in the Justice and Security Act 2013, its membership and activities remain under the control of the Prime Minister, who holds a veto over who sits on the Committee and the information it is allowed to see and publish. "Sensitive" information may be withheld on national security grounds: this includes information provided by a foreign intelligence agency that objects to onward disclosure. As such, the ISC is not sufficiently independent and effective to satisfy the UK's obligations fully to investigate allegations of its involvement in torture and other ill-treatment. Moreover, given that the ISC had a relevant oversight remit for the security services at the time of the allegations, the question of its own effectiveness is one of those requiring investigation, including how it came to report in 2007 that

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<sup>24</sup> In an Open judgment dated 22 June 2015 and amended on 1 July 2015, Amnesty International was informed that it had been the victim of unlawful surveillance activity in violation of article 8 ECHR. The deficient processes of the Investigatory Powers Tribunal considering the case meant that no further information was disclosed as to when Amnesty International's private communications were intercepted, why and for how long, and whether this was ongoing. The only information provided by the Tribunal was that Amnesty International's communications had been intercepted and accessed under a 'general' rather than targeted warrant and in their view this has been lawful, although the retention of the communications for longer than domestic guidelines permitted had been unlawful. Amnesty International was not able to make submissions on how this had affected the organization. Nor was it given a satisfactory answer as to why in the first (draft) copy of the judgment, the organization had been told that it had not been a victim, with a different organization identified as the subject of the unlawful activity, [http://www.ipt-uk.com/docs/Final\\_Liberty\\_Ors\\_Open\\_Determination\\_Amended.pdf](http://www.ipt-uk.com/docs/Final_Liberty_Ors_Open_Determination_Amended.pdf).

<sup>25</sup> Surveillance carried out on a large scale - without specific named targets - on a broad warrant (the extent and implication of this is under dispute).

<sup>26</sup> Investigatory Powers Bill 2016. See the report of the Joint Committee scrutinizing the draft bill at <http://www.parliament.uk/draft-investigatory-powers> and its latest form and progress through Parliament at <http://services.parliament.uk/bills/2015-16/investigatorypowers.html>.

<sup>27</sup> See the report of the Special Rapporteur on the right to privacy, Joseph A. Cannataci, 8 March 2016, A/HRC/31/64, available at <http://www.ohchr.org/Documents/Issues/Privacy/A-HRC-31-64.doc>. The rights such surveillance violates include, but are not restricted to, the rights to privacy and freedom of expression under the ICCPR and ECHR.

<sup>28</sup> On 12 January 2012, the Director of Public Prosecutions and the Metropolitan Police Service announced it would be launching a criminal investigation into the rendition and torture and ill-treatment of Sami al Saadi and Abdul Hakim Belhaj in 2004. Following a four-year investigation by Scotland Yard, which gathered nearly 30,000 pages of evidence, the Crown Prosecution Service decided not to prosecute on 9 June 2016. <https://www.amnesty.org.uk/press-releases/uk-decision-not-prosecute-libyan-rendition-cases-under-scores-need-independent-inquiry>; see also The Guardian, *Ex-MI6 officer will not face charges over Libyan renditions*, 9 June 2016, <https://www.theguardian.com/world/2016/jun/09/mi6-officers-not-charges-rendition-of-libyan-families-abdel-hakim-belhaj>.

<sup>29</sup> Amnesty International has consistently communicated its concerns as to the limitations of the ISC in human rights terms to the government.

there was no evidence of complicity of UK agencies in any extraordinary rendition operations.<sup>30</sup> Consequently, together with nine other NGOs, Amnesty International has declined to participate in the ISC's inquiry.<sup>31</sup>

Further, the expansion of “closed material procedures” to ordinary civil courts through the Justice and Security Act 2013 is contrary to the UK's commitment during its previous review to ensure secret evidence is limited only to cases of immediate threat to public security.<sup>32</sup> These procedures essentially allow the relevant court or tribunal to consider secret material presented by UK authorities in closed hearings from which the claimant/appellant is excluded. Such material is withheld from the other party, their lawyer of choice, and the public, none of whom has access to the closed hearing. Instead, a Special Advocate is appointed to represent the interests of the excluded party in the closed part of the hearing. The number of applications for such procedures doubled from 2014 to 2015.<sup>33</sup> Amnesty International is concerned that “closed material procedures” have become the norm for sensitive security matters. When such changes are viewed alongside legal aid cuts, proposed changes to the Human Rights Act and changes to the judicial review and immigration appeals processes (outlined below), a trend limiting access to justice for human rights violations in the UK appears to be emerging.

Amnesty International is further concerned that there has not yet been any concrete movement to create a human rights compliant mechanism for investigating and remedying past human rights violations and abuses that occurred during decades of political violence in Northern Ireland.

## PROTECTION OF MIGRANTS

The UK has taken steps explicitly designed to, in the words of the former Home Secretary, “*create a really hostile environment for illegal migrants*”,<sup>34</sup> through policy and legislation. That can particularly be seen in the Immigration Act 2014 and Immigration Act 2016, both of which have had a negative impact on the rights of migrants. This legislation requires private and non-immigration public bodies such as landlords to carry out immigration control or related functions, including denying access to housing and healthcare and/or the passing of personal data to immigration authorities on grounds of suspected immigration status.

Indefinite immigration detention continues to be widely used with no guarantee of proper regular judicial oversight, including for particularly vulnerable groups.<sup>35</sup> The UK has also extended powers

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<sup>30</sup> ‘*Rendition*’, Report of the ISC July 2007, p.64, available at <http://isc.independent.gov.uk/committee-reports/special-reports>

<sup>31</sup> Letter of 25 March 2014 signed by Matthew Evans, Director, The AIRE Centre, John Dalhuisen, Director, Europe and Central Asia Programme, Amnesty International, Muhammad Rabbani, Managing Director, Cage, Susan Munroe, Chief Executive, Freedom from Torture, Andrea Coomber, Director, JUSTICE Shami Chakrabarti, Director, Liberty Carla Ferstman, Redress Clare Algar, Executive Director, Reprieve Hanne Stevens, Director (Interim), Rights Watch (UK) <https://www.hrw.org/news/2014/04/08/joint-ngo-letter-uk-foreign-secretary-calling-judicial-inquiry-uk-complicity>

<sup>32</sup> A/HRC/21/9, recommendation 110.83 (Austria); A/HRC/21/9/Add.1, paragraph 13.

<sup>33</sup> *Report on use of closed material procedure (from 25 June 2014 to 24 June 2015)*, October 2015 <https://www.gov.uk/government/publications/use-of-closed-material-procedure-report-25-june-2014-to-24-june-2015>.

<sup>34</sup> See The Guardian, *Immigration bill: Theresa May defends plans to create 'hostile environment'*, 10 October 2013, <http://www.theguardian.com/politics/2013/oct/10/immigration-bill-theresa-may-hostile-environment>.

<sup>35</sup> At the 2012 review, the UK accepted only in part various recommendations relating to its continued use of immigration detention – A/HRC/21/9, recommendations 110.111 (Chile), 110.112 (Honduras), 110.114 (Mexico). The All-Party Parliamentary Group on Refugees and on migration recommended in 2015 (i) a statutory time limit and (ii) a substantial reduction in the use of immigration detention with (iii) periodic,

to deny those who wish to pursue appeals against immigration decisions the opportunity to do so until after removal from the UK,<sup>36</sup> undermining the effectiveness of the appeals safeguard and the protection of their rights. Changes to the Immigration Rules made in July 2012 - including the introduction of a minimum income requirement of £18,600 per annum for British citizens and settled individuals to sponsor their non-EEA national partner's entry to the UK<sup>37</sup> - have led to prolonged separation of families, including separation of children from their parents.<sup>38</sup> Families with limited rights to remain in the UK who seek to escape violent partners are not given the same access to public funds and route to permanent residence as those whose partners are British or settled.<sup>39</sup>

Since 2012, overseas domestic workers' visas have tied their immigration status to their employer, thereby increasing the vulnerability of such workers to abuse, including slavery and human trafficking. Mitigating measures in the Modern Slavery Act 2015 and Immigration Act 2016 have failed to address this.<sup>40</sup>

## WOMEN, GIRLS AND FAMILY LIFE

The law governing abortion in Northern Ireland is among the most restrictive in Europe, both in law and in practice. Amnesty International and most recently the Northern Ireland High Court have concluded that the abortion law is incompatible with human rights obligations. The UK government claims that responsibility for reform of the law lies with the Northern Irish Executive, and neither has changed the governing legislation. As such, there has been no progress since the last review.<sup>41</sup>

Same-sex couples in Northern Ireland are not entitled to marry, unlike in other parts of the UK, and thereby suffer continuing discrimination.

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automatic judicial oversight of a person's subsection to immigration detention, see <https://detentioninquiry.files.wordpress.com/2015/03/immigration-detention-inquiry-report.pdf>; see also the Shaw Review, which drew similar conclusions, [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/490782/52532\\_Shaw\\_Review\\_Accessible.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/490782/52532_Shaw_Review_Accessible.pdf).

<sup>36</sup> section 94B of the Nationality, Immigration and Asylum Act 2002 (as introduced by section 17 of the Immigration Act 2014 and to be amended by section 63 of the Immigration Act 2016).

<sup>37</sup> The Immigration Rules outline the requirements for British citizens and settled persons (those with indefinite leave to remain in the UK) who wish to 'sponsor' a partner from outside the European Economic Area (EEA) to live in the UK. As a result of a Statement of Changes laid before Parliament on 13 June 2012 which came into effect on 9 July 2012, sponsors are now required to earn at least £18,600 per annum to sponsor a partner.

<sup>38</sup> Most of the children affected are British citizens or residents, but where a non-British child is also to be sponsored, the income threshold rises to £22,400 pa with an additional £2,400 pa for each further child. This change came into force on 9th July 2012, as reported by the Children's Commissioner for England [at 7.3], <http://www.childrenscommissioner.gov.uk/sites/default/files/publications/CCO-Family-Friendly-Report-090915.pdf>.

<sup>39</sup> Also victims of domestic violence in the UK as partners or children of a European Economic Area national should be able to regularize their stay in the UK even if that national ceases exercising European free movement rights prior to final annulment of the relationship (*NA v SSHD* [2014] EWCA Civ 995).

<sup>40</sup> The Independent review of James Ewins recommended in November 2015 that the switching provision be reintroduced and was clear as to the negative human rights implications of the change and the inability of the Modern Slavery Act 2015 to remedy those [see 76-79 and 118 in particular] [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/486532/ODWV\\_Review\\_-\\_Final\\_Report\\_6\\_11\\_15\\_.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/486532/ODWV_Review_-_Final_Report_6_11_15_.pdf).

<sup>41</sup> Contrary to recommendation 110.77 (Finland) which the UK rejected in 2012, A/HRC/21/9.

## BUSINESS AND HUMAN RIGHTS

Despite the UK accepting a recommendation<sup>42</sup> to adopt necessary actions to prevent impunity and further violations of the right to privacy committed by private media companies, such as News Corporation, through hacking into telephone communications, e-mails, and voicemails, the Crown Prosecution Service announced in 2015 that it could not prosecute News International because of the difficulties of attributing liability to the company under the UK's existing corporate criminal liability regime.<sup>43</sup> Amnesty International is concerned that this case is indicative of wider gaps in the UK's ability to hold UK companies to account when they are implicated in serious human rights-related crimes, particularly abroad.

Similar corporate accountability issues have continued to prevent victims of human rights abuses involving UK companies operating abroad from obtaining effective remedy in the UK. In particular, UK companies implicated in serious abuses abroad were not held to account, even when those abuses may have resulted from or been linked to illegal acts within the UK.

Amnesty International has documented cases in which UK companies have been implicated in serious human rights abuses abroad resulting from or linked to illegal acts in the UK.<sup>44</sup> Amnesty's research has exposed significant gaps in the UK's ability to hold UK companies to account in these cases.<sup>45</sup> In March 2015, UK law enforcement agencies declined Amnesty International's request to investigate the role of UK-registered Trafigura Limited in the August 2006 dumping of toxic waste in Côte d'Ivoire – an event that triggered a health and environmental emergency in the country – despite acknowledging that a serious offence had been committed in the UK if the organization's allegations were true. Law enforcement agencies acknowledged to Amnesty International that they lacked the expertise and resources to undertake the investigation, especially against a powerful multinational company. Additionally, because there are very few laws in the UK that apply to the operations of UK companies abroad, Amnesty International had to rely on a relatively obscure law to find a legal basis for an investigation into the company.

The UN treaty bodies interpret international human rights law as requiring States to take measures to ensure that corporations domiciled, registered or headquartered in their territory or jurisdiction do not cause or contribute to human rights abuses abroad.<sup>46</sup> The UK government continues to dispute this, stating recently that “*there is no general requirement for States to*

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<sup>42</sup> Recommendation 110.98 (Ecuador) A/HRC/21/9.

<sup>43</sup> Crown Prosecution Service, *Statement from the Crown Prosecution Service: No further action to be taken in Operations Weeting or Golding*, [http://www.cps.gov.uk/news/latest\\_news/no\\_further\\_action\\_to\\_be\\_taken\\_in\\_operations\\_weeting\\_or\\_golding/](http://www.cps.gov.uk/news/latest_news/no_further_action_to_be_taken_in_operations_weeting_or_golding/)

<sup>44</sup> See for example, Amnesty International, *The Toxic Truth: About a Company Called Trafigura, a Ship Called the Probo Koala, and the Dumping of Toxic Waste in Côte d'Ivoire* (Index: AFR 31/002/2012), September 2012, <https://www.amnesty.org/en/documents/afr31/002/2012/en/>; Amnesty International, *Open for Business? Corporate Crime and Abuses at Myanmar Copper Mine* (Index: ASA 16/0003/2015), February 2015, <https://www.amnesty.org/en/documents/asa16/0003/2015/en/>.

<sup>45</sup> Amnesty International, *Too Toxic to Touch? The UK's Response to Amnesty International's call for a criminal investigation into Trafigura Ltd* (Index: EUR 45/2101/2015), July 2015, <https://www.amnesty.org/en/documents/eur45/2101/2015/en/>.

<sup>46</sup> See for example: Committee on Economic, Social and Cultural Rights (CESCR), *General Comment No. 14: The Right to the Highest Attainable Standard of Health (Art. 12)*, E/C.12/2000/4, 11 August 2000; CESCR, *General Comment No. 15 (2002): The right to water (arts. 11 and 12 of the International Covenant on Economic, Social and Cultural Rights)*, E/C.12/2002/11, 20 January 2003; Committee on the Elimination of Racial Discrimination, *Concluding observations on the combined seventh to ninth periodic reports of the United States of America*, CERD/C/USA/CO/7-9, 25 September 2014; Committee on the Rights of the Child, *General comment No. 16 (2013) on State obligations regarding the impact of the business sector on children's rights*, CRC/C/GC/16, 17 April 2013.

regulate the extraterritorial activities of business enterprises domiciled in their jurisdiction” (although it recognizes that there are “limited exceptions” to this for example under treaty regimes).<sup>47</sup> In its latest National Action Plan on Business and Human Rights the UK has therefore set a general “*expectation*” that companies respect human rights in their operations but has no plans to legally require them to do so.<sup>48</sup>

As a result of this long-standing position, there continued to be a lack of legislation requiring UK companies to respect human rights when operating abroad. The Committee on Economic, Social and Cultural Rights has recently expressed concern at the UK’s lack of regulatory framework to ensure that UK companies operating abroad respect economic, social and cultural rights, recommending that the UK adopt legislative and administrative measures to ensure the legal liability of UK companies for violations of such rights in their projects abroad.<sup>49</sup> The Committee on the Rights of the Child (CRC) has recently recommended that the UK establish and implement regulations to ensure that its business sector complies with the rights of the child, in line with the CRC’s general comment on the business sector.<sup>50</sup>

Appropriate criminal sanctions are key to ensuring accountability and effective remedy for victims of severe human rights abuses involving the global operations of business. The Office of the High Commissioner for Human Rights recently published a report calling on governments to make appropriate provisions for corporate criminal liability in such cases.<sup>51</sup> Amnesty is concerned that, unless the UK government takes action to improve its corporate criminal liability regime supported by strong policies to ensure its effective implementation, UK law enforcement agencies will continue to lack the laws, resources and expertise needed to hold UK companies to account when they are implicated in serious human rights-related crime abroad. This risks encouraging a culture of corporate impunity.

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<sup>47</sup> HM Government, *Good Business: Implementing the UN Guiding Principles on Business and Human Rights (Updated May 2016)*, para 11, [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/522805/Good\\_Business\\_Implementing\\_the\\_UN\\_Guiding\\_Principles\\_on\\_Business\\_and\\_Human\\_Rights\\_updated\\_May\\_2016.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/522805/Good_Business_Implementing_the_UN_Guiding_Principles_on_Business_and_Human_Rights_updated_May_2016.pdf).

<sup>48</sup> UK National Action Plan on Business and Human Rights at [47], page 14.

<sup>49</sup> Committee on Economic, Social and Cultural Rights, *Concluding observations on the sixth periodic report of the United Kingdom of Great Britain and Northern Ireland*, E/C.12/GBR/CO/6, 14 July 2016, paras 11 and 12, <http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=4slQ6QSmIBEDzFEovLCuW3XRinAE8KCBFogQHNz%2fVuCC%2bTxEKAI18bzE0UttfQhJkxxOSGuoMUxHGypYLiNFkwxnMR6GmqogLJF8BzscMe9zpGfTXBkZ4pEaigi44xqiL>.

<sup>50</sup> Committee on the Rights of the Child, *Concluding observations on the fifth periodic report of the United Kingdom of Great Britain and Northern Ireland*, CRC/C/GBR/CO/5, 12 July 2016, para 19, <http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2fPPRiCAqhKb7yhskHOj6VpDS%2f%2fJqg2Jxb9gncnUyUgbnuttBweOlyfyYPkbbwffitW2JurgBRuMMxZqnGgerUdpixii3uZ0bjQBOLNTNvQ9fUIEOvA5LtW0GL>. The CRC’s general comment notes that home States (such as the UK in this case) have an obligation to protect children’s rights in the context of businesses’ extraterritorial activities and operations “when a business enterprise has its centre of activity, is registered or domiciled or has its main place of business or substantial business activities in the State concerned”. [CRC General Comment 16 at [42], section V.C.]

<sup>51</sup> United Nations High Commissioner for Human Rights, *Improving accountability and access to remedy for victims of business-related human rights abuse*, A/HRC/32/19, 10 May 2016, para 1.2 <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G16/093/78/PDF/G1609378.pdf?OpenElement>.

# RECOMMENDATIONS FOR ACTION BY THE STATE UNDER REVIEW

## AMNESTY INTERNATIONAL CALLS ON THE GOVERNMENT OF UNITED KINGDOM TO:

### NATIONAL HUMAN RIGHTS PROTECTION MECHANISMS

- Confirm its commitment to remaining a state party to the European Convention on Human Rights and formally abandon its intention to replace the Human Rights Act 1998;
- Establish without delay a specific Bill of Rights for Northern Ireland which builds upon the rights enshrined in the Human Rights Act and takes account of the particular circumstances of Northern Ireland;
- Fully recognize the extraterritorial application of human rights obligations under international and regional law and standards;
- Urgently review the impact of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 on access to justice and protection of human rights, particularly on vulnerable and disadvantaged groups;
- Implement the “prisoner voting” decision of the European Court of Human Rights in respect of prisoner voting and re-state its commitment to abide by the Court’s rulings and respect the rule of law.

### COUNTER-TERRORISM AND POLICING:

- Ensure all current and future counter-terrorism measures are fully compatible with international human rights law and standards;
- Bring the legal framework for communications surveillance in line with international human rights law, including by ending all “bulk” surveillance practices;
- End the policy of relying on diplomatic assurances as a means of circumventing the UK’s obligation not to expose individuals to the risk of torture and other ill-treatment through any form of involuntary transfer to the territory or jurisdiction of another state.

### FAILURES OF ACCOUNTABILITY AND OPENNESS

- Immediately transfer the inquiry into allegations of UK involvement in abuse of detainees held overseas from the parliamentary Intelligence and Security Committee to an independent judicial body;
- Establish fully human rights-compliant mechanisms to investigate all allegations of past human rights abuses and violations arising from the political conflict in Northern Ireland;
- Repeal the parts of the Justice and Security Act 2013 which extend “closed material procedures” to civil courts and ensure that material pertaining to human rights violations is disclosed where relevant to proceedings.

### PROTECTION OF MIGRANTS

- Reverse changes made to the family immigration rules in July 2012, particularly by removing the minimum income requirement;
- Introduce a statutory, short time limit on immigration detention designed to constrain its use, and ensure such detention is only used exceptionally where there is no possible alternative, and not in the case of vulnerable individuals and groups;
- Introduce periodic, automatic judicial oversight of the continuation of a person's immigration detention and oblige the Home Office to demonstrate a continuing, exceptional need to detain with a realistic prospect of the purpose of an individual's detention being achieved within an appropriately short period of time;
- Reintroduce a general right to switch employers for those on overseas domestic worker visas;
- Extend domestic violence protections in the Immigration Rules and policy to those seeking to escape abusive partners with limited rights to remain in the UK;
- Repeal section 94B of the Nationality, Immigration and Asylum Act 2002 (as introduced by section 17 of the Immigration Act 2014 and to be amended by section 63 of the Immigration Act 2016) to ensure individuals are not removed from the UK before their immigration appeals are heard.

#### **WOMEN, GIRLS AND FAMILY LIFE**

- Ensure that the law governing access to abortion in Northern Ireland fully complies with international human rights law, by decriminalizing abortion and ensuring access to abortion in cases of severe and fatal foetal anomalies and where the pregnancy is a result of rape or incest;
- End discrimination against same-sex couples in Northern Ireland with regards to the right to marry and found a family, by bringing the relevant law in Northern Ireland into line with that in other parts of the United Kingdom.

#### **BUSINESS AND HUMAN RIGHTS**

- Consistent with the recommendations of the Committee on Economic, Social and Cultural Rights, the Committee on the Rights of the Child, and the Office of the High Commissioner for Human Rights, bring its corporate criminal liability regime in line with international human rights law, in particular so it is capable (both in law and in practice) of ensuring accountability and effective remedy for victims of serious human rights abuses involving the operations of UK companies abroad that result from or are linked to illegal acts in the UK;
- Amend sections 33 and 34 of the Environmental Protection Act 1990 to ensure that it applies where a business enterprise operating from the UK produces, treats or disposes of or arranges the production, treatment or disposal of hazardous substances or waste in another State (regardless of whether that waste was produced within or passes through UK territory).

**AMNESTY INTERNATIONAL  
IS A GLOBAL MOVEMENT  
FOR HUMAN RIGHTS.  
WHEN INJUSTICE HAPPENS  
TO ONE PERSON, IT  
MATTERS TO US ALL.**

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