

THE UPR PROJECT AT BCU



Statement

UPR Pre-session 41 on the United Kingdom of Great Britain and Northern Ireland

Joint-Submission of the BCU Centre for Human Rights and 4 King's Bench Walk, Inner Temple

**Palais des Nations, Building E, Room XXI
1211 Geneva 10, Switzerland**

Monday 29th August 2022

Presented by: The UPR Project at BCU

1. Presentation of the Organisations

This statement is presented to Pre-session 41 of the 4th UPR Cycle of the United Kingdom of Great Britain and Northern Ireland. It is provided on behalf of the **UPR Project at BCU** which is based within the Centre for Human Rights at Birmingham City University, and **4 King's Bench Walk**, a leading barrister's chambers located within the Inner Temple in London.

2. Human Rights Issues to be Addressed

Post-submission developments concern the **Bill of Rights Bill** currently before the UK Parliament, and the issues raised in our report regard: (a) the rights of migrants, asylum seekers, and refugees, (b) detention and imprisonment circumstances, and (c) the presence of racism.

Key recommendations are provided within this statement and for the full list of recommendations and contextual observations, please see the Joint-Stakeholder Report in the UK's country page on the website of the UPR Project at BCU - <https://www.bcu.ac.uk/law/research/centre-for-human-rights/consultancy/upr-project-at-bcu/upr-project-at-bcu-uk> [Also included is the Project's second Joint-Stakeholder Report for the UK's UPR with the Elisabeth Haub School of Law, Pace University, New York. This report focuses upon women's rights].

3. Statement

A. Post-Submission Developments

On 22 June 2022 the Government introduced Bill 117 entitled, **A Bill to Reform the Law Relating to Human Rights** (Bill of Rights Bill), and it is clear that this **Bill** would provide further isolation of the UK from regional review of its human rights record. It affirms an incremental approach to reducing the scope of, and legal mechanisms for, protecting human rights. Following **Brexit** on 31 December 2020 for the revocation of the domestic application of EU Law, and especially for our purposes, the **Charter of Fundamental Rights of the European Union**, this new legislation would provide another curtailing of regional protection this time of the Council of Europe and the legal safeguards of the **European Convention on Human Rights**. For illustration, Section 1(3) of the **Bill** currently states:

‘It is affirmed that judgments, decisions and interim measures of the European Court of Human Rights-

- (a) are not part of domestic law, and
- (b) do not affect the right of Parliament to legislate.’

On 10 August 2022 in a speech to Policy Exchange, the Rt Hon Suella Braverman QC MP, the Attorney General, stated that the application of the **Human Rights Act** has ‘alarming constitutional and practical consequences,’ and consequently legislation to ‘limit or exclude the impact of the **Strasbourg Court**’ is required as a ‘national priority.’ We believe that the source of the ‘alarm’ is misplaced. It is to be found not within the application of the **Human Rights Act**, but in the potential damaging consequences following its repeal.

The EU **Treaty of Lisbon** of 2009 recognised the importance of the symbiosis of human rights protection through both the **European Union** and the **Council of Europe**, but the United Kingdom has detached itself from the former and it now seeks to effectively do so from the latter. This is a concerning development that will further prevent legal recourse for victims to question the actions of Government. If further regression of the observance of human rights occurs the opportunities to challenge this have been curtailed.

We believe the Government’s isolationist approach concerning the European regions is similarly reflected in its viewpoints on the human rights issues that are discussed in this statement for the UK’s UPR.

B. The Rights of Migrants, Asylum Seekers, and Refugees

The UK received **227** recommendations in the UPR 3rd Cycle in 2017. It ‘supported’ **96 (42%)** and ‘noted’ **131 (58%)**. Concerning the rights of migrants, asylum seekers, and refugees, it received **27 (12%)** recommendations from which it supported **6** and noted **21**. So **16% (21 of 131)** of the noted recommendations focused upon the human rights implications of the UK’s policies for controlling its borders.

A significant example is the Government’s entering into a **Migration and Economic Development Partnership with Rwanda (MEDP)**. The potential implementation of **MEDP** had been appealed to the European Court of Human Rights in *N.S.K. v. the United Kingdom* (application no. 28774/22) 14.06. 2022, and the court handed down urgent interim measures (under Rule 39) to prevent the applicant’s removal in order for judicial determination of the merits. During this time the **Nationality and Borders Act 2022** had been adopted, but the **UNHCR** considers that both **MEDP** and the **Act** to be potentially inconsistent with international law and ‘global solidarity and responsibility-sharing.’

This is demonstrative of wider concerns with regards to the protection of the rights of migrants, asylum seekers, and refugees, and so **we recommend that the Government:**

- **Ratify the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (CMW).**
- **Ensure that the Nationality and Borders Act 2022 is applied in compliance with the Convention (and Protocol) Relating to the Status of Refugees.**
- **Repeal the MEDP.**

C. Detention and Imprisonment

In the 3rd Cycle the Government received **17** recommendations (**7.5%** of all recommendations), of which **6** were supported and **11** noted.

This is a significant review focus consistent with the findings of the **Howard League for Penal Reform** and to a certain extent, **Her Majesty’s Inspectorate of Prisons, Inspection Reports (2022)**. The issues raised concerned *inter alia*: (a) poor incarceration conditions, (b) prison overcrowding, (c) the health and welfare of prisoners, and (d) significant suicide and self-harm rates of those in the prison estate. The Ministry of Justice’s statistics on **Safety in Custody 2022** recorded that in **2020** there were **318** deaths in prison with **67** being ‘self-inflicted’ and in **2021** these figures rose to **371** deaths with **86** being self-inflicted.

There are wide human rights concerns for the UK's prison estate and we focus upon: (a) guaranteeing the right of individual petition for human rights violations amounting to torture and inhuman and degrading treatment and punishment, and (b) protecting the rights of children in the criminal justice system.

The UK's domestic legal framework fails to adequately protect the rights of prisoners and so we recommend that the Government:

- **Make** a declaration under Article 22 of the **Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment**, to accept individual petitions.
- **Ratify** the **Third Optional Protocol to the Convention on the Rights of the Child** to ensure that children have access to effective remedies for human rights violations.
- **Amend** the **Children and Young Persons Act 1963** s. 16 to raise the minimum age of criminal responsibility from 10 to 14-years-old.
- **Abolish** life sentences for minors through amending the **Sentencing Act 2020**, ss. 258 and 259.

D. Racism

In the 3rd Cycle the UK received **30** recommendations (**13.2%** overall) on the themes of: (a) combatting racism, (b) promoting racial equality, and (c) tackling associated hate crimes. Of these **21** were supported and **9** were noted.

This is a significant reviewing state focus concerning the presence of racism in the UK. It is reflective of the domestic and international chorus of disagreement with the findings of the Government appointed **Commission on Race and Ethnic Disparities (CRED)**, who published its report on 31 March 2021, and found that:

‘geography, family influences, socio-economic background, culture and religion have more significant impact on life chances than the existence of racism’ (p. 8).

CRED is an exercise in inappropriate blame-shifting and it failed to adequately engage with the **UN Committee on the Elimination of Racial Discrimination's** Concluding Observations on the UK in 2016 that, ‘persons of African descent face institutional racism,’ (p. 6).

Since this time, in July 2021, **The Runnymede Trust**, the Secretariat of the **Race and Community All-Party Parliamentary Group (APPG)** has reviewed civil society responses that significantly call into question the adequacy of the UK's domestic legal framework for protecting against racism and racial violence. On 21 October 2021, the **UN Special Rapporteur on Contemporary Forms of Racism, Racial Discrimination, Xenophobia and**

Related Intolerance, affirmed that in the context of COVID-19, the UK had failed to safeguard racial equality in providing healthcare treatment.

The UN's **Working Group of Experts of African Descent**, 'categorically rejects and condemns the analysis and findings,' of the **CRED** report and various Members of Parliament, including **Marsha De Cordova** and **Feryal Clark**, cogently criticised the report in the House of Commons and called for the rejection of its conclusions.

There is a disconnect between the Government's understanding of the presence of racism in the UK, with the reality of what occurs in our country. **This disconnect** is also present in the Government's misunderstanding of the effectiveness of the domestic legal framework for adequately protecting against **racial violence**, and for ensuring equal access to: **(a) criminal justice system; (b) education; (c) employment; (d) housing, and; (e) healthcare.**

So we recommend that the Government:

- **Withdraw** the reservation on **ICERD** Article 4 and incorporate the individual complaints procedure into domestic law.
- **Reject** the **CRED** Report's findings and implement a new data collection in the UK and provide an independent peer review.
- **Support** the recommendations and initiate legal change as a demonstration of mutual support of the **UPR** and the **SDGs** on racial equality.

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