

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 2008¹ and the UK state report from 2012.² 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 framework³: legal and 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;

¹ 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

² 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

³ 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 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>

- 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

1. Judicial Diversity (Articles 2, 3, 25 and 26)⁴

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 2010.⁵ Some of these recommendations were implemented through the Crime and Courts Act 2013⁶, 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;⁷
- 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.⁸

⁴ 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

⁵ Recommendations of the Independent Panel on Judicial Diversity are available at: <http://www.judiciary.gov.uk/publications/advisory-panel-recommendations/>

⁶ Crime and Courts Act 2013, available at: <http://www.legislation.gov.uk/ukpga/2013/22/contents/enacted>

⁷ Courts and Tribunals Judiciary, Diversity and General Statistics Overview 2013, available at: <http://www.judiciary.gov.uk/subject/judicial-diversity/>

⁸ 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

In line with Article 2.1 and the HRC's General Comment No. 25,⁹ 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.¹⁰ 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.¹¹

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.¹² The House of Lords Select Committee on the Constitution¹³ 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;
- 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;¹⁴ 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

⁹ 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

¹⁰ 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

¹¹ Lady Hale, Kutton Menon Memorial Lecture, Equality in the Judiciary, 2013, available at: <http://www.supremecourt.uk/docs/speech-130221.pdf>

¹² 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

¹³ 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>

¹⁴ 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

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?

2. Access to Civil Justice (Article 14)¹⁵

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, Sentencing and Punishment of Offenders (LASPO) Act 2012¹⁶ weaken these protections in England and Wales.¹⁷ 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.¹⁸

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

¹⁵ 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

¹⁶ 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.

¹⁷ 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>

¹⁸ 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

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;¹⁹ 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;²⁰
 - in 2013/14 the number of civil legal aid providers reduced by almost a quarter compared to the previous year;²¹
 - four law centres have closed in the past 12 months;²² and Shelter, the national housing charity, has closed nine of its advice centres.²³

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 2009/10.²⁴ 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.²⁵ 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.²⁶

b. Residence Test for Civil Legal Aid

¹⁹ 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

²⁰ 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>

²¹ 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

²² 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>

²³ 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>

²⁴ 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>

²⁵ 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>

²⁶ <http://www.natcen.ac.uk/taking-part/studies-in-field/civil-legal-aid-helpline/civil-legal-aid-helpline/>

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.²⁷

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.²⁸ In July 2014, the High 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.²⁹ 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.³⁰ The relevant provisions³¹ include:

²⁷ 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/>

²⁸ 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>

²⁹ 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>

³⁰ 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>

³¹ Criminal Justice and Courts Bill 2014, Clauses 64-70, available at: <http://services.parliament.uk/bills/2013-14/criminaljusticeandcourts.html>

- 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;³² 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.³³

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).³⁴ The EHRC is concerned that this could have a negative impact on the ability of individuals and organisations to hold the state to account.

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.**

³² 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.

³³ 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.

³⁴ The Civil Legal Aid (Remuneration) (Amendment) No.3) Regulations 2014, available at: <http://www.legislation.gov.uk/ukxi/2014/607/contents/made>

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?

3. Counter Terrorism Provisions (Articles 9 and 14)³⁵

a. Right to legal advice when detained

The EHRC remains concerned that persons arrested under section 41 of the Terrorism Act 2000³⁶ do not have the same right to access legal advice as those arrested for non-terrorism related cases.³⁷ 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 the same access to legal advice as those arrested for non-terrorism related cases, for example through the duty solicitor scheme.³⁸

b. Pre-charge detention

The Protection of Freedoms Act 2012³⁹ 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,⁴⁰ 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).⁴¹

³⁵ 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

³⁶ Terrorism Act 2000, available at: <http://www.legislation.gov.uk/ukpga/2000/11/contents>

³⁷ 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

³⁸ 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>

³⁹ Protection of Freedoms Act 2012, part 4, section 57, available at: <http://www.legislation.gov.uk/ukpga/2012/9/contents/enacted>

⁴⁰ 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

⁴¹ 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>

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.⁴² The EHRC considers an extension to 28 days, even in an emergency, would risk breaching Article 5 of the ECHR.⁴³ Again, we agree with the HRC and the UN Human Rights Council's (UNHRC) recommendations⁴⁴ 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.⁴⁵

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

The Terrorism Prevention and Investigation Measures (TPIMs) Act 2011⁴⁶ replaced control orders. TPIMs are restrictions imposed on individuals the Home Secretary 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,⁴⁷ 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.

⁴² Terrorism Act 2000, schedule 8, paragraph 38, as amended by the Protection of Freedoms Act 2012

⁴³ 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>

⁴⁴ 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>

⁴⁵ 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>

⁴⁶ The Terrorism Prevention and Investigation Measures (TPIMs) Act 2011, available at: <http://www.legislation.gov.uk/ukpga/2011/23/contents>

⁴⁷ 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

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,⁴⁸ 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.⁴⁹ 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, which would allow suspects to be prosecuted under the normal criminal justice system, and either be convicted or acquitted.⁵⁰

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.⁵¹ 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.⁵² 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

⁴⁸ 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>

⁴⁹ 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>

⁵⁰ 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>

⁵¹ 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

⁵² 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.

ordinary criminal or civil proceedings.⁵³ 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.⁵⁴

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.⁵⁵

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 trial⁵⁶ 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.⁵⁷ 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.”⁵⁸

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;**

⁵³ 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

⁵⁴ 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.

⁵⁵ 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>

⁵⁶ 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

⁵⁷ 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/>

⁵⁸ Lord Brown, Hansard, 26 March 2013, available at: <http://www.publications.parliament.uk/pa/ld201213/ldhansrd/index/130326.html>

- 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?

4. Stop and Search (Articles 9, 17 and 26)⁵⁹

a. Schedule 1 of the Police and Criminal Evidence Act (PACE)⁶⁰ 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)⁶⁰, 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.⁶¹

Section 60 of the Criminal Justice and Public Order Act (CJPOA)⁶² 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.⁶³

⁵⁹ 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

⁶⁰ Police and Criminal Evidence Act (PACE), 1984, available at: <http://www.legislation.gov.uk/ukpga/1984/60/contents>

⁶¹ 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

⁶² Criminal Justice and Public Order Act (CJPOA) 1994, available at: <http://www.legislation.gov.uk/ukpga/1994/33/contents>

⁶³ 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>

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.⁶⁴

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 under this power were on ethnic minorities⁶⁵ 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.⁶⁶ The EHRC welcomes that the use of Section 60 of CJPOA has dropped by 88.6% from 2011/12 to 2012/13.⁶⁷ 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.⁶⁸

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.⁶⁹

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.⁷⁰ 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

⁶⁴ 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/>

⁶⁵ 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>

⁶⁶ 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>

⁶⁷ 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>

⁶⁸ 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>

⁶⁹ 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>

⁷⁰ 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>

likely to think that the powers were not used in a way that effectively balances public protection with individual freedoms.⁷¹

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 contribute to inconsistent and weak systems to account for the use of this power.⁷² In addition, Home Office statistics show only 9% of stops result in an arrest.⁷³

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.⁷⁴ 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.⁷⁵ 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.⁷⁶

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

⁷¹ 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

⁷² 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

⁷³ 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>

⁷⁴ 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>

⁷⁵ 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>

⁷⁶ 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/>

an offence (not necessarily an arrest), and the extent of the intelligence that leads to stops.⁷⁷ 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
- 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.⁷⁸

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.⁷⁹

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;⁸⁰

⁷⁷ 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>

⁷⁸ 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

⁷⁹ 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

⁸⁰ 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

- 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.

While use of this power has continued its welcome decline in recent years, a large number of individuals are subject to it each year.⁸¹ The EHRC's analysis shows that a disproportionate number of those individuals are from particular ethnic minorities⁸² despite the Code of Practice⁸³ 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,⁸⁴ we believe the HRC's 2008 concerns remain valid.⁸⁵

The EHRC was therefore disappointed that recent amendments to the legislation⁸⁶ 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 way⁸⁷ and would address the perception of prejudice, which the Independent Review of Terrorism Legislation notes "can be quite as damaging to

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

⁸¹ 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

⁸² 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>

⁸³ 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

⁸⁴ 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

⁸⁵ 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

⁸⁶ 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>

⁸⁷ 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>

community relations as the reality.”⁸⁸ 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.

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?

5. Trafficking and forced labour (Articles 2, 8, 9, 14, 24 and 26)⁸⁹

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 2012.⁹⁰

⁸⁸ 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>

⁸⁹ 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

⁹⁰ 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>

The UK Government's Modern Slavery Bill (MSB) is therefore timely and necessary.⁹¹ Its purpose is to consolidate, simplify and strengthen existing slavery and human trafficking offences⁹² 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 affected by the Bill are fully protected;⁹³ and to fully reflect the 2014 concluding observations of the UN Committee on the Rights of the Child (CRC),⁹⁴ to ensure the protection of child victims of trafficking.⁹⁵

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.⁹⁶ 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 1984⁹⁷) 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.⁹⁸
- 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.⁹⁹

⁹¹ Home Office, Modern Slavery Bill Collection, June 2014, available at:

<https://www.gov.uk/government/collections/modern-slavery-bill>

⁹² s59A Sexual Offences Act 2003, s4 Asylum and Immigration (Treatment of Claimants, etc) Act 2004 and s71 Coroners and Justice Act 2009

⁹³ 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>

⁹⁴ 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>

⁹⁵ 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

⁹⁶ 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>

⁹⁷ Taking or sending a child outside the UK without appropriate consent

⁹⁸ 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>

⁹⁹ Article 2(4)

- 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,¹⁰⁰ such as:
 - ethnicity, national origin, or religion;¹⁰¹ or
 - socio-legal and socio-economic factors, for example, research has demonstrated the vulnerability of migrants to forced labour.¹⁰²
- explicitly clarifying that a child cannot consent to their own exploitation.¹⁰³ 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;¹⁰⁴ and
- expanding the definition of exploitation in Clause 3 of the MSB to include:
 - debt bondage (a common means of controlling a trafficking victim¹⁰⁵),
 - abduction, abuse of power, fraud, or coercion; or
 - where payments are received to achieve the consent of a person having control over another person.¹⁰⁶

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.¹⁰⁷ 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

¹⁰⁰ 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>

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>

¹⁰¹ 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>

¹⁰² 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>

¹⁰³ 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

¹⁰⁴ 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>

¹⁰⁵ 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

¹⁰⁶ Article 2(1) of Directive 2011/36/EU – the Anti-Trafficking Directive

¹⁰⁷ 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

Article 4 of the ECHR, the Anti-Trafficking Directive and the CRC's Concluding Observations.¹⁰⁸

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.¹⁰⁹ It is also necessary, in light of the body of evidence¹¹⁰ that, despite Crown Prosecution Service (CPS) guidance,¹¹¹ 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.¹¹² 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 Scotland¹¹³ 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

¹⁰⁸ Concluding observations of UNCRC on Optional Protocol on the sale of children, child prostitution and child pornography paras 38 -41 available at:

<http://www.equalityhumanrights.com/sites/default/files/uploads/UN%20Convention%20on%20rights%20of%20the%20child.pdf>

¹⁰⁹ 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>

¹¹⁰ 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>

¹¹¹ 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

¹¹² 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>

¹¹³ 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.¹¹⁴

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 Review¹¹⁵ 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?

¹¹⁴ credible suspicion being the trigger CN v UK Application no. 4239/08

¹¹⁵ Report of the Modern Slavery Bill Evidence Review, 2014, available at: <http://www.frankfield.com/upload/docs/Modern%20Slavery%20Bill%20Evidence%20Review.pdf>

6. Privacy and Security (Articles 2, 5 (1) and 17)¹¹⁶

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,¹¹⁷ 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,¹¹⁸ 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.¹¹⁹

Aspects of the right to privacy are addressed in the Data Protection Act 1998¹²⁰ the Regulation of Investigatory Powers Act 2000 (RIPA),¹²¹ the Security Service Act 1989¹²², the Intelligence Services Act 1994¹²³, and the common law. These laws are broadly framed and their legal interpretation by the Investigatory Powers Tribunal (IPT)¹²⁴ 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.¹²⁵

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,

¹¹⁶ 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

¹¹⁷ Set out in Article 8(2).

¹¹⁸ 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

¹¹⁹ 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

¹²⁰ Data Protection Act 1998, available at: <http://www.legislation.gov.uk/ukpga/1998/29/contents>

¹²¹ Regulation of Investigatory Powers Act 2000, available at:

<http://www.legislation.gov.uk/ukpga/2000/23/contents>

¹²² Security Service Act 1989, available at: <http://www.legislation.gov.uk/ukpga/1989/5/contents>

¹²³ Intelligence Service Act 1994, available at: <http://www.legislation.gov.uk/ukpga/1994/13/contents>

¹²⁴ More information available at: <http://www.ipt-uk.com/>

¹²⁵ 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.¹²⁶ 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;¹²⁷
- 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”¹²⁸;
- the establishment of an Independent Privacy and Civil Liberties Oversight Board¹²⁹;
- 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 2014¹³⁰. 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;¹³¹
- 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, without the requirement for judicial oversight.”¹³² By 2011, there had been almost 3

¹²⁶ Equality and Human Rights Commission, Protecting Information Privacy, 2011, p.3, available at: <http://www.equalityhumanrights.com/sites/default/files/documents/research/rr69.pdf>

¹²⁷ 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>

¹²⁸ Terms of Reference of the review are available at: <https://terrorismlegislationreviewer.independent.gov.uk/review-of-communications-data-and-interception-powers/>

¹²⁹ 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

¹³⁰ Data Retention and Investigatory Powers Act 2014, available at: <http://www.legislation.gov.uk/ukpga/2014/27/contents/enacted/data.htm>

¹³¹ European Court of Justice, Press Release, 8 April 2014, available at: <http://curia.europa.eu/jcms/upload/docs/application/pdf/2014-04/cp140054en.pdf>

¹³² Equality and Human Rights Commission, Protecting Information Privacy, 2011, available at: <http://www.equalityhumanrights.com/sites/default/files/documents/research/rr69.pdf>

million decisions made by public bodies under RIPA, yet less than 0.5% had been subject to judicial approval.¹³³

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;¹³⁴ 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.¹³⁵ 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,¹³⁶ the IPT and the UK Parliament's Intelligence and Security Committee (ISC).¹³⁷ While we welcome the new powers granted to the ISC under Part 1 of the Justice and Security Act 2013¹³⁸ 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 other reforms are required to improve cohesion, efficiency, transparency and accountability, while preserving national security, including:

¹³³ 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>

¹³⁴ 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>

¹³⁵ 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)

¹³⁶ Seven separate Commissioners (Interception of Communications, Intelligence Services, Surveillance, Information, Biometrics, and Surveillance Cameras) oversee the implementation of RIPA.

¹³⁷ 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)

¹³⁸ Justice and Security Act 2013, available at: <http://www.legislation.gov.uk/ukpga/2013/18/contents/enacted>

- 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;¹³⁹
- 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;¹⁴⁰
 - 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 5¹⁴¹, 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.

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

¹³⁹ 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>

¹⁴⁰ 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>;

¹⁴¹ 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#{)

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.¹⁴²

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.¹⁴³ In addition, the witness says that while he can "neither confirm or deny" the existence of the much reported and debated Tempora interception programme,¹⁴⁴ 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".¹⁴⁵

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."¹⁴⁶ 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"¹⁴⁷ 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.

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

¹⁴² 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)

¹⁴³ 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>

¹⁴⁴ 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>

¹⁴⁵ 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>

¹⁴⁶ 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>

¹⁴⁷ 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#{)

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.¹⁴⁸ 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?

¹⁴⁸ Equality and Human Rights Commission, Protecting Information Privacy, 2011, p.3, available at: <http://www.equalityhumanrights.com/sites/default/files/documents/research/rr69.pdf>

7. Prisoner Voting Rights (Article 25)¹⁴⁹

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 2000.¹⁵⁰

The Grand Chamber of the European Court of Human Rights' judgment in the Scoppola case¹⁵¹ confirmed the outcome of Hirst (No 2)¹⁵² 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 Bill¹⁵³, 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 Greens¹⁵⁴ judgments would prevent further legal claims before the ECtHR.¹⁵⁵ 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.¹⁵⁶

The Lord Chancellor and Justice Secretary wrote to the Committee on 25 February 2014, confirming the issue is under "active consideration."¹⁵⁷ The UK Government has not yet included it in its legislative programme for 2014-15.¹⁵⁸

Conclusion: The UK Government is yet to implement the HRC's 2008 recommendation,¹⁵⁹ and may still not meet the requirements of Article 3 of

¹⁴⁹ 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

¹⁵⁰ Representation of the People Act 2000, available at:

<http://www.legislation.gov.uk/ukpga/2000/2/contents>

¹⁵¹ Scoppola v Italy (No. 3) available at: <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-111044>

¹⁵² 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#{\)

¹⁵³ 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>

¹⁵⁴ 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>

¹⁵⁵ 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>

¹⁵⁶ Joint Committee on the Voting Eligibility (Prisoners) Draft Bill, 2013, available at:

<http://www.publications.parliament.uk/pa/jt201314/jtselect/jtdraftvoting/103/10302.htm>

¹⁵⁷ 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)

¹⁵⁸ Queen's Speech 2014, available at: <https://www.gov.uk/government/topical-events/queens-speech-2014>

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)¹⁶⁰

a. Investigations into alleged UK complicity in torture

A number of UN¹⁶¹ and UK bodies¹⁶² including the EHRC¹⁶³ 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 statement¹⁶⁴ to the UK Parliament to “try and draw a line under the serious allegations that had been made about the role the UK has played in the treatment of detainees held by other countries.”¹⁶⁵ He announced

¹⁵⁹ 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

¹⁶⁰ 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

¹⁶¹ 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

¹⁶² 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>

¹⁶³ 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

¹⁶⁴ 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>

¹⁶⁵ Seventh periodic reports of States parties for the United Kingdom of Great Britain and Northern Ireland, 29 December 2012, para 555, available at:

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.”¹⁶⁶

The EHRC raised concerns with the UK Government about the terms of reference of the inquiry.¹⁶⁷ We also urged Sir Peter Gibson and the UK Government to ensure the investigation was compliant with its international human rights obligations.¹⁶⁸

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.¹⁶⁹

The UK Government decided to conclude the inquiry in January 2012,¹⁷⁰ before it had formally launched, due to the commencement of criminal investigations into the rendition of individuals to Libya.¹⁷¹ A report of the preparatory work undertaken by the Detainee Inquiry was subsequently published, which highlights eight issues where further detailed investigation is required.¹⁷²

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.¹⁷³

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

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

¹⁶⁶ 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>

¹⁶⁷ 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>

¹⁶⁸ 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>

¹⁶⁹ 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>

¹⁷⁰ 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>

¹⁷¹ 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>

¹⁷² 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

¹⁷³ 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>

originally promised independent, judge-led inquiry is required to reaffirm the UK's reputation for strict adherence to international human rights standards.¹⁷⁴

b. Extraordinary Renditions

In advance of, and subsequent to, the HRC's 2008 recommendation for the State Party to investigate such allegations,¹⁷⁵ 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.¹⁷⁶ 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.¹⁷⁷

c. Investigations into the mistreatment of detainees in Iraq

As well as the HRC¹⁷⁸ a number of other bodies, including CAT,¹⁷⁹ 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.¹⁸⁰ 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."¹⁸¹ Specifically, detainees were:

- starved, sleep-deprived; and subject to sensory deprivation;
- threatened with execution;

¹⁷⁴ 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>

¹⁷⁵ 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

¹⁷⁶ 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>

¹⁷⁷ 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>

¹⁷⁸ 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

¹⁷⁹ 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>

¹⁸⁰ More information about the Iraq Historic Allegations Team is available here:

<https://www.gov.uk/government/groups/iraq-historic-allegations-team-ihat>

¹⁸¹ 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/>

- 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 Inquiry¹⁸² (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.”¹⁸³

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.¹⁸⁴

The Al-Sweady Public Inquiry¹⁸⁵ 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.¹⁸⁶ 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 judgment¹⁸⁷) and the UK Government’s obligations under Article 12 of the UN Convention Against Torture.¹⁸⁸ The Al Skeini judgment also confirmed that this duty applies to alleged incidents that

¹⁸² Report of the Baha Mousa Inquiry, 2011, available at:

<http://webarchive.nationalarchives.gov.uk/+http://www.bahamousainquiry.org/report/index.htm>

¹⁸³ 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

¹⁸⁴ Transcript of the sentencing of Corporal Donald Payne, 2007, available at:

<http://www.publications.parliament.uk/pa/ld200607/ldlwa/070327wa1.pdf>

¹⁸⁵ More information about the Al-Sweady Public Inquiry is available here:

<http://www.alsweadyinquiry.org/>

¹⁸⁶ 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

¹⁸⁷ Al Skeini v. United Kingdom, available at:

<http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-105606>

¹⁸⁸ 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>

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.¹⁸⁹ To date, eleven quasi-inquests have been ordered,¹⁹⁰ and guidelines have been set out by the Lord Chief Justice as to how those proceedings should be conducted.¹⁹¹

d. Use of Diplomatic Assurances

Despite repeated concerns from the HRC,¹⁹² CAT,¹⁹³ and the Special Rapporteurs on Torture and Counter Terrorism and Human Rights¹⁹⁴ 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.¹⁹⁵

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 14 sitting days have elapsed, during which time Members may signify any objection.¹⁹⁶

Conclusion:

¹⁸⁹ 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/>

¹⁹⁰ 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>

¹⁹¹ 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/>

¹⁹² 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

¹⁹³ 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>

¹⁹⁴ 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>

¹⁹⁵ 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#{)

¹⁹⁶ 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/cmaff/116/116.pdf>

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 Detention¹⁹⁷

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 guarantee fairness of procedure and quality decision making.¹⁹⁸ The EHRC has also raised concerns that the length of time in detention, without any realistic prospect of

¹⁹⁷ 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

¹⁹⁸ 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

removal, for those who have committed no crime risks breaching the right to liberty and security under Article 5 of the ECHR.¹⁹⁹

The UNCHR and CAT have criticised the UK for not having sufficient safeguards in place to prevent vulnerable individuals entering the DFT.²⁰⁰ 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.²⁰¹ 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.²⁰²

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.²⁰³ 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
- 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

¹⁹⁹ 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>

²⁰⁰ 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

²⁰¹ 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

²⁰² 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/>

²⁰³ 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>

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 8.²⁰⁴

There no longer appears to be a “presumption in favour of release” for people suffering from serious medical conditions or mental illnesses.²⁰⁵ 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.”²⁰⁶ 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 treatment²⁰⁷ and a breach of the PSED.²⁰⁸

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.²⁰⁹ 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.²¹⁰

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.²¹¹ 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

²⁰⁴ 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>

²⁰⁵ Such a presumption was included in the 2008 Enforcement Instructions and Guidance.

²⁰⁶ 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

²⁰⁷ 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>

²⁰⁸ R(HA (Nigeria)) v SSHD [2012] available at: <http://www.bailii.org/ew/cases/EWHC/Admin/2012/979.html>

²⁰⁹ 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>

²¹⁰ 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

²¹¹ Prison and Probation Ombudsman, Speech 14 May 2014, available at: http://www.ppo.gov.uk/docs/AVID_Annual_General_Meeting.pdf

significant number of witnesses reported Mr Mubenga shouting that he could not breathe and say “they’re killing me” or similar;²¹²

- 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;²¹³ 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.²¹⁴

The three DCOs have been charged with manslaughter and will face a criminal trial later in 2014.²¹⁵

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.²¹⁶

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 safely.²¹⁷ 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.”²¹⁸

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.”²¹⁹ 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:

²¹² 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

²¹³ 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>

²¹⁴ 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

²¹⁵ Crown Prosecution Service Statement, 2014, available at:

http://www.cps.gov.uk/news/latest_news/death_of_jimmy_mubenga/

²¹⁶ 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

²¹⁷ 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

²¹⁸ 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>

²¹⁹ 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>

- made loud animal noises, and swore loudly in front of deportees;²²⁰ and
- fell asleep, despite being in charge of someone identified as at risk of self-harm.²²¹

The HMCIP's report included 22 recommendations to the Home Office and Tascor, which covered concerns about safety, respect and preparations for reintegration.²²² 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.²²³

In June 2014, the UK Government finally responded²²⁴ 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."²²⁵ The new restraint system will be implemented from July 2014 and has been assessed by the Independent Advisory Panel for Non Compliance Management.²²⁶

iv. Immigration Detention of Children

In June 2010, the UK Government announced it would end the detention of children for immigration purposes.²²⁷ It published its review on the subject as it closed the family unit at Yarl's Wood IRC.²²⁸ 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

²²⁰ 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>

²²¹ 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>

²²² 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>

²²³ 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>

²²⁴ 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>

²²⁵ 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>

²²⁶ 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>

²²⁷ Deputy Prime Minister's Speech, 17 June 2010, available at: <https://www.gov.uk/government/speeches/deputy-pms-speech-on-children-and-families>

²²⁸ 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

London and South East ports, one third of whom were unaccompanied.²²⁹ 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”²³⁰; 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.²³¹ 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.²³²

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;**
- **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. Prisons²³³

i. Prison Overcrowding and Social Reintegration

Britain has the second highest prison rate in Western Europe, after Spain.²³⁴ On 25 April 2014, the prison population stood at 85,300 in England and Wales.²³⁵ Between

²²⁹ Home Office response to a Freedom of Information request by the Children’s Society, available at: <http://www.childrenssociety.org.uk/news-views/press-release/almost-700-children-detained-four-months>

²³⁰ Office of the Children’s Commissioner, England, Landing in Dover, 2012, p.7 available at: http://www.childrenscommissioner.gov.uk/content/publications/content_556

²³¹ 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>

²³² Barnardo’s, Cedar’s Two Years On, April 2014, available at: http://www.barnardos.org.uk/16120_cedars_report.pdf

²³³ 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

1993 and 2012 the prison population increased by 98%.²³⁶ 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%.²³⁷

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).²³⁸ The National Audit Office has estimated that removing levels of overcrowding would cost over £900million.²³⁹ 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 13-14.²⁴⁰ This represents a total cost reduction of 24%.²⁴¹

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.²⁴² For example, previous progress on safety and respect has stalled, and purposeful activity has "plummeted."²⁴³ 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.²⁴⁴

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".²⁴⁵ Instead of seeking to reduce the prison population, the

²³⁴ 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>.

²³⁵ MoJ. 2014. Population Bulletin Weekly. 25 April 2014: <https://www.gov.uk/government/publications/prison-population-figures-2014>.

²³⁶ 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>

²³⁷ 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>

²³⁸ 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>

²³⁹ National Audit Office, Managing the Prison Estate, 2013, p.26, available at: <http://www.nao.org.uk/report/managing-the-prison-estate/>

²⁴⁰ NOMS. Business Plan 2014-15: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/302776/NOMS_Business_Plan_201415.pdf

²⁴¹ NOMS. Business Plan 2014-15: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/302776/NOMS_Business_Plan_201415.pdf

²⁴² 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>

²⁴³ 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>

²⁴⁴ 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>

²⁴⁵ 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>

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.²⁴⁶ 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.²⁴⁷ 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 CAT²⁴⁸ 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 Rules²⁴⁹.

The EHRC also believes the UK Government's "Transforming Rehabilitation" programme requires further investment than that committed to date in:

- 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.²⁵⁰ 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 2010.²⁵¹ 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%.²⁵²

The number of self-inflicted deaths in 2013 was at its highest since 2007: 74 people took their own lives, 14 more than in 2012.²⁵³ Between 1 April 2007 and 31

²⁴⁶ 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

²⁴⁷ 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>

²⁴⁸ 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

²⁴⁹ UN Standard Minimum Rules for Non-Custodial Measures. Available at: <http://www.ohchr.org/Documents/ProfessionalInterest/tokyorules.pdf>

²⁵⁰ Ministry of Justice, Safer Custody Statistics, 2014, available at: <https://www.gov.uk/government/collections/safety-in-custody-statistics>

²⁵¹ Ministry of Justice, Safer Custody Statistics, 2014, available at: <https://www.gov.uk/government/collections/safety-in-custody-statistics>

²⁵² Ministry of Justice, Safer Custody Statistics, 2014, available at: <https://www.gov.uk/government/collections/safety-in-custody-statistics>

²⁵³ Ministry of Justice, Safer Custody Statistics, 2014, available at: <https://www.gov.uk/government/collections/safety-in-custody-statistics>

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.²⁵⁴

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;²⁵⁵
- 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;²⁵⁶
- the Prisons and Probation Ombudsman (PPO) and the National Offenders Management Service (NOMS) have identified the need to improve ACCT training and guidance to help staff ensure the ACCT procedure is used effectively to tackle targeted risks in a proactive and joined up way;²⁵⁷ 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.²⁵⁸ 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.²⁵⁹

²⁵⁴ 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>

²⁵⁵ 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>

²⁵⁶ 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>

²⁵⁷ 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

²⁵⁸ 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

²⁵⁹ 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>

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 2015.²⁶⁰

iii. Prisoners with disabilities

Estimates of the proportion of disabled people in the prisoner population vary from 5-34%.²⁶¹ 20-30% of offenders have learning disabilities or difficulties that interfere with their ability to cope with the criminal justice system.²⁶² 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.²⁶³

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 because prison staff refuse to push their wheelchairs,²⁶⁴ 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).²⁶⁵

iv. Women Prisoners

The female prisoner population has decreased slightly from 4,172 in May 2011 to 3,883 in May 2014.²⁶⁶ 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.²⁶⁷ In 2012-13 81% of sentenced women prisoners had not committed a violent offence.²⁶⁸ 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.²⁶⁹ At 31 March 2014, there was an 11 per cent increase in the number of women sentenced for this offence in the past year.²⁷⁰

²⁶⁰ 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>

²⁶¹ 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>

²⁶² 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>

²⁶³ ²⁶³ 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>

²⁶⁴ 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>

²⁶⁵ 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

²⁶⁶ 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>

²⁶⁷ 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/>

²⁶⁸ Ministry of Justice, Offender Management Statistics, 2013, available at:

<https://www.gov.uk/government/publications/offender-management-statistics-quarterly-july-september-2013>

²⁶⁹ Prison Reform Trust. June 2014. Prison Reform Trust submission Theft offences guideline consultation:

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;²⁷¹
- 53% were abused as a child;
- 31% have spent time in local authority care;²⁷² and
- 46% have attempted suicide at some point in their life.²⁷³

The EHRC welcomes the UK Government's proactive approach to their examinations by CAT and CEDAW and prompt response to their Concluding Observations²⁷⁴ 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 Committee²⁷⁵;
- Ministerial leadership for responsibility for women offenders; and
- Increasing understanding of and service provision to address the particular needs of women offenders.²⁷⁶

<http://www.prisonreformtrust.org.uk/Portals/0/Documents/Prison%20Reform%20Trust%20submission%20-%20Theft%20Offences%20Guideline%20consultation.pdf>

²⁷⁰ 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>

²⁷¹ 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>

²⁷² 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

²⁷³ 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>

²⁷⁴ 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

²⁷⁵ 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

²⁷⁶ 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

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.²⁷⁷

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;²⁷⁸
- 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 sentences²⁷⁹) to avoid the risks of:
 - sentencers viewing short periods of time in custody as a gateway to accessing services in the community; or
 - 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;²⁸⁰
- 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;²⁸¹
- 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.²⁸²

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.²⁸³ It is estimated that 17,240 children were separated from their mother in 2010 by imprisonment.²⁸⁴

²⁷⁷ 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>

²⁷⁸ Hansard. 26 Jun 2014 : Column GC133 House of Lords Debate: <http://www.publications.parliament.uk/pa/ld201415/ldhansrd/text/140626-gc0001.htm#14062685000449>

²⁷⁹ MoJ. Transforming Rehabilitation. 2013. A Strategy for Reform. <https://consult.justice.gov.uk/digital-communications/transforming-rehabilitation/results/transforming-rehabilitation-response.pdf>

²⁸⁰ Hansard. 26 Jun 2014 : Column GC133 House of Lords Debate: <http://www.publications.parliament.uk/pa/ld201415/ldhansrd/text/140626-gc0001.htm#14062685000449>

²⁸¹ House of Commons Justice Committee. 2013. Women offenders: after the Corston Report. <http://www.publications.parliament.uk/pa/cm201314/cmselect/cmjust/92/92.pdf>

²⁸² Hansard. 26 Jun 2014 : Column GC133 House of Lords Debate: <http://www.publications.parliament.uk/pa/ld201415/ldhansrd/text/140626-gc0001.htm#14062685000449>

²⁸³ 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>

²⁸⁴ Howard League for Penal Reform, Voice of a Child, London, 2011, available at: <http://www.howardleague.org/publications-families/>

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.²⁸⁵

We also welcome the changes by the Sentencing Council to include primary caring responsibilities as a mitigating factor in sentencing guidelines.²⁸⁶

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 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?

²⁸⁵ 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>

²⁸⁶ Sentencing Council, Sentencing Guidelines, available at: <http://sentencingcouncil.judiciary.gov.uk/sentencing-guidelines.htm>

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 System²⁸⁷

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 and Brazil it is 18 years.²⁸⁸ The CRC has stated that setting the age of criminal responsibility below 12 is 'not acceptable';²⁸⁹ and urged the UK to raise the age limit accordingly.²⁹⁰ CAT also made this recommendation²⁹¹, and called on the UK Government to ensure full implementation of the Beijing Rules²⁹² and Riyadh Guidelines.²⁹³ 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'.²⁹⁴

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.²⁹⁵ Other jurisdictions, such as Scotland, adopt a welfare-based approach

²⁸⁷ The UK Government does not cover this topic in a substantive way in its Seventh periodic report.

²⁸⁸ 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>

²⁸⁹ 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>

²⁹⁰ 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>

²⁹¹ 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

²⁹² The United Nations Standard Minimum Rules for the Administration of Juvenile Justice, (General Assembly resolution 40/33, annex).

²⁹³ The United Nations Guidelines for the Prevention of Juvenile Delinquency, (General Assembly resolution 45/112, annex).

²⁹⁴ 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.

²⁹⁵ Sentencing Guidelines Council. 2009. Overarching Principles – Sentencing Youths: http://sentencingcouncil.judiciary.gov.uk/docs/web_overarching_principles_sentencing_youths.pdf

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.

UNCRC requires the UK to ensure the best interests of the child is the primary consideration of the courts;²⁹⁶ 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.²⁹⁷ 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.²⁹⁸ 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.²⁹⁹

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 years³⁰⁰ but notes that in February 2014, there were still 1,183 under 18s in secure settings in England and Wales.³⁰¹

Children in custody often have difficult and complex backgrounds, including histories of physical and sexual abuse, time in care, disrupted education and living

EHRC. Human Rights Review. Article 5. <http://www.equalityhumanrights.com/human-rights/our-human-rights-work/human-rights-review/the-review/>

²⁹⁶ UN Convention on the Rights of the Child, Article 13, entered into force September 1990.

²⁹⁷ 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>

²⁹⁸ 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>

²⁹⁹ 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>

³⁰⁰ 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>

³⁰¹ 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>

arrangements and substance abuse. Many experience mental and physical health problems and have learning difficulties and disabilities.³⁰²

71% of children who have been in custody go on to re-offend.³⁰³ 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.³⁰⁴ However, we are concerned the proposal to use large, secure training colleges (STCs) for most under 18s may undermine some of the intended benefits.³⁰⁵ 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.³⁰⁶ 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.³⁰⁷

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.³⁰⁸ 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.³⁰⁹ The EHRC has set out its own concerns on the use of restraint on children in this way³¹⁰ and fully supports calls for the Bill to be amended accordingly.³¹¹

³⁰² 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

³⁰³ 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

³⁰⁴ 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

³⁰⁵ 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.

³⁰⁶ 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

³⁰⁷ 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

³⁰⁸ 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

³⁰⁹ 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 UNCRRC 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>

³¹⁰ Equality and Human Rights Commission. 2012. Human Rights Review. Article 3.

http://www.equalityhumanrights.com/sites/default/files/documents/humanrights/hrr_article_3.pdf

³¹¹ 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>.

UNCRC requires imprisonment of a child to be as a last resort and for the shortest appropriate period of time;³¹² 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.³¹³ 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.³¹⁴ 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.³¹⁵ The combination of these measures should also meet the UK Government's aim of making further efficiency savings.³¹⁶ 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)³¹⁷

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.³¹⁸ The UK and Welsh Governments both have action plans in place to help tackle hate crime in England and Wales.³¹⁹ 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.³²⁰ 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;³²¹ and

³¹² UN Convention on the Rights of the Child. Article 37(b).

³¹³ UN Convention on the Rights of the Child. Article 3.

³¹⁴ MoJ.2013. Youth Justice Statistics, Supplementary Tables, chapter 7, <https://www.gov.uk/government/publications/youth-justice-statistics>

³¹⁵ 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

³¹⁶ MoJ.2014. *Transforming Youth Custody: Government Response to the Consultation*.

³¹⁷ 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

³¹⁸ 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

³¹⁹ 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>

³²⁰ 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

³²¹ See, for example, Equality and Human Rights Commission, Hidden in Plain Sight, 2011, available at: <http://www.equalityhumanrights.com/sites/default/files/documents/disabilityfi/dhmain.pdf> and Stonewall, The Gay British Crime Survey, 2013, available at: http://www.stonewall.org.uk/what_we_do/research_and_policy/9286.asp

- 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.³²²

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.³²³

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.³²⁴

It has been suggested that the police in England and Wales have been under recording crime figures generally, which is a grave concern.³²⁵ The EHRC welcomes that the UK Government is taking steps to investigate this.³²⁶ 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;³²⁷ and
- a survey to map third party reporting centres in England and review how they are operating.³²⁸

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;³²⁹ and whether there was a case for extending the stirring up of hatred offences to include stirring up of hatred on the grounds of

³²² See, for example, Equality and Human Rights Commission, *Hidden in Plain Sight*, 2011, available at: <http://www.equalityhumanrights.com/sites/default/files/documents/disability/dhfmmain.pdf> and Stonewall, *The Gay British Crime Survey*, 2013, available at:

http://www.stonewall.org.uk/what_we_do/research_and_policy/9286.asp

³²³ 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

³²⁴ Stonewall, *The Gay British Crime Survey*, 2013, available at:

http://www.stonewall.org.uk/what_we_do/research_and_policy/9286.asp

³²⁵ 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>

³²⁶ 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/>

³²⁷ More information available at: <http://www.report-it.org.uk/home>

³²⁸ Home Office, *Hate Crime – Third Party Reporting Survey*, 2014, available at:

<https://www.homeofficesurveys.homeoffice.gov.uk/s/77093OCNOQ>

³²⁹ 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.

disability or gender identity.³³⁰ The Law Commission found strong support for extending aggravated offences, particularly in order to provide equal treatment for all groups.³³¹ 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.³³²

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.³³³ At present, only aggravated crimes are recorded on the PNC, meaning that criminal justice agencies do 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.³³⁴

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.³³⁵

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 safety³³⁶, and therefore shares concerns raised by CERD³³⁷ and the

³³⁰ 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.

³³¹ 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.

³³² The Law Society Gazette. May 2014. <http://www.lawgazette.co.uk/law/commission-calls-for-review-of-hate-crime/5041392.article>

³³³ Currently, only aggravated crimes (race and religion) are recorded on this system whereas crimes which receive enhanced sentences (all protected groups) are not

³³⁴ 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

³³⁵ 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.

³³⁶ For example, it was verbal disability-based abuse that led to Fiona Pilkington taking her own life and the life of her daughter, Francecca Hardwick in 2007.

³³⁷ 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>

European Commission against Racism and Intolerance (ECRI)³³⁸ 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.

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.³³⁹ 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.³⁴⁰

While there is no UK-wide strategy on this yet,³⁴¹ the Welsh Government commissioned research³⁴² 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.**

³³⁸ 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

³³⁹ 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/>

³⁴⁰ 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/>

³⁴¹ 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

³⁴² Available at: <http://www.senedd.assemblywales.org.>

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?

2. Violence Against Women (Articles 3, 7, 9, and 26)³⁴³

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)³⁴⁴. The Welsh Government is also developing its own VAWG strategy, and intends to bring forward legislation to help tackle VAWG in Wales.³⁴⁵ 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;³⁴⁶
- 4.9 million (30% of the female population) had experienced some form of domestic abuse since the age of 16;³⁴⁷
- 400,000 experienced sexual assault and of those, 70,000 were raped;³⁴⁸
- two women are killed by their partner or ex-partner each week;³⁴⁹
- 66,000 women are living with the consequences of female genital mutilation (FGM) with an estimated 20,000 under 15s at risk of it;³⁵⁰ and
- In 2011-12 there were 2,730 fixed term exclusions and 70 permanent exclusions from English schools for sexual misconduct.³⁵¹

³⁴³ 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

³⁴⁴ The Istanbul Convention, available at: <http://www.coe.int/t/dghl/standardsetting/conventionviolence/convention/Convention%20210%20English.pdf>

³⁴⁵ 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>

³⁴⁶ 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>

³⁴⁷ 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>

³⁴⁸ 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

³⁴⁹ 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

³⁵⁰ 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>

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 outstanding concerns and its General Recommendation 19.³⁵² The EHRC has set out a detailed analysis of what the UK Government needs to do to comply with the Istanbul Convention.³⁵³ Our analysis concludes that most obligations are, or will soon be, implemented through British legislation.³⁵⁴ 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.³⁵⁵ 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.³⁵⁶ 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.³⁵⁷

³⁵¹ Department of Education, Behaviour and Attendance statistics, 2013, available at: <https://www.gov.uk/government/collections/statistics-exclusions>

³⁵² This recommendation relates to VAWG: <http://www.un.org/womenwatch/daw/cedaw/recommendations/recomm.htm#recom19>

³⁵³ 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>

³⁵⁴ 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

³⁵⁵ 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

³⁵⁶ 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.

³⁵⁷ 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

- 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,³⁵⁸ as we believe 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).³⁵⁹ 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).³⁶⁰
- 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.³⁶¹

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,³⁶² and
- assessing the impact that changes introduced by the LASPO Act have had on victims of VAWG's access to legal advice and representation.³⁶³

³⁵⁸ <http://wales.gov.uk/docs/dsijlg/publications/commsafety/130823rtbsannreport1213en.pdf>

³⁵⁹ 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_R_eview_acc_FINAL.pdf

³⁶⁰ 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_R_eview_acc_FINAL.pdf - p.115

³⁶¹ 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%2fG BR%2fCO%2f7&Lang=en

³⁶² 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

³⁶³ 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%2fG BR%2fCO%2f7&Lang=en

Conclusion: The EHRC considers that the UK Government must continue to work towards ratification and implementation of the Istanbul Convention. This 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.