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Informations communiquées par la Commission britannique de l'égalité et des droits de l'homme*

Note du secrétariat

Le secrétariat du Conseil des droits de l'homme fait tenir ci-jointe la communication présentée par la Commission britannique de l'égalité et des droits de l'homme** qui est reproduite conformément à l'article 7 b) du règlement figurant dans l'annexe de la résolution 5/1 du Conseil des droits de l'homme, qui dispose que la participation des institutions nationales des droits de l'homme s'exerce selon les modalités et les pratiques convenues par la Commission des droits de l'homme, y compris la résolution 2005/74 du 20 avril 2005.

* Institution nationale des droits de l'homme à laquelle le Comité international de coordination des institutions nationales pour la promotion et la protection des droits de l'homme a accordé le statut d'accréditation «A».

** La communication est reproduite en annexe telle qu'elle a été reçue, dans la langue originale seulement.

Annexe

UK Government UPR Mid-term Report: Report from the Equality and Human Rights Commission

The Equality and Human Rights Commission is Great Britain's National Human Rights Institution (NHRI), with 'A status' accreditation since 2009. As an independent statutory body with regulatory powers, established under the Equality Act 2006, our general duty is to encourage and support the development of human rights in Great Britain.

This paper comments on the Universal Periodic Review (UPR) mid-term review statement by the UK on the progress made in implementing the recommendations accepted from the UK's examination in 2008. We have sought to comment on issues relating to our mandate where we feel we have an independent contribution to make.

We strongly support the Government's initiative to voluntarily report back to the Human Rights Council on its progress in implementing the UPR recommendations at the midpoint in the review cycle. We hope that this initiative will strengthen human rights protection in the UK and help strengthen the UPR mechanism itself.

Following the structure of the UK's report, our comments are as follows:

Recommendation 1: that the UK elaborates a national programme to combat the problem of overcrowding in prisons.

1. As of 5 February 2010, the prison population of England and Wales was 83,655, consisting of 4,171 women and 79,484 men. The EHRC note that the number of women prisoners has in recent years started to level off and is in fact beginning to decrease. However, the EHRC remains concerned about the issue of overcrowding and how this impacts on equality and human rights. Fundamentally, the EHRC believes that the problem of overcrowding cannot be tackled only through the building of more prisons. In fact in an interview with *The Times* on 12 July 2007, Jack Straw, the Secretary of State for Justice, commented that: **"we cannot just build our way out of overcrowding"**. The EHRC is concerned that in the UPR Mid-Term review the Government's primary response to prison overcrowding is building new prisons.
2. The former Commissioner of EHRC, Joel Edwards, raised the need for other solutions at a speech in December 2008 noting:

"We also need to recognise the context in which we are working. There are grave intractable pressures bearing down on the entire Criminal Justice system which can impede equality and the protection of human rights. And the state of prisons across the country and the incessant levels of overcrowding, bringing our imprisoned rate to one of the highest in Western Europe continues to be of concern for all of us. Prisoners move on average four times over the course of their sentence. These pressures affect everyone concerned: prison management, probation officers, offenders and their families and, indeed, society at large."
3. In particular, the EHRC is concerned about how the prison service is able to meet the needs of a diverse prison population across all mandates when it is stretched through overcrowding. The EHRC is persuaded that building more prisons especially when this is accompanied by budget cuts across the public sector is not an effective solution for the problem of overcrowding. Evidence indicates that community solutions offer a more positive model to address re-offending for many

offenders and that prison may be better suited to the more serious offenders. The EHRC encourages the Government to develop and implement more effective strategies that would address offending behaviour thereby preventing many individuals from entering the criminal justice system from the outset.

4. The EHRC is also concerned that individuals are finding it harder to leave prison. Access to offender behaviour courses, often a pre-requisite before consideration for release, is not universal and is restricted by the number of individuals on long waiting lists or the unavailability of courses at some prisons. Access, at best, appears to be ad hoc with prisoners vying for limited places as the prison population increases. Unless access to such courses is improved a dedicated building process will not solve the current problem with overcrowding.
5. The EHRC has considerable concern that prisoners with low IQs, mental health issues, or disabilities are not receiving the support they need in the prison environment. A large proportion of the prison population suffer with mental health problems and the EHRC believe that prison may not be an appropriate place for such individuals, particularly where appropriate treatment is limited to meet their specific needs. Rather than increasing capacity so that more individuals with such problems can enter the prison system, they should be diverted into community based projects for rehabilitation and offender management.
6. It is acknowledged that the public perception of the prison service and what the public expect from the system will affect the services provided. Jack Straw, in The Times interview mentioned above, stressed the need for a “national conversation” on the use of prison. The public at large have a general expectation that those who offend will be punished. However, it is widely acknowledged that prison is not the only effective means of dealing with offenders, particularly those whose offending is less serious. The EHRC would encourage the adoption of strategies that will be both more economical and more appropriate for offenders who do not require imprisonment, with a view to educate public opinion on the most effective ways to seek redress and rehabilitation of offenders.

Recommendation 2: that the UK considers the removal of its reservations to the Convention on the Rights of the Child and the Optional Protocol on the involvement of children in armed conflict.

CRC Reservations

1. The EHRC welcomes the Government’s decision to formally remove its final reservations to the CRC in respect of Article 22 (refugee children) and Article 37(c) (children in custody with adults). However, the EHRC has not to date evaluated the impact and consequence of the withdrawals because those subject areas are, or have traditionally not been, areas within the direct remit of the EHRC. It is relevant to note that the withdrawals only took effect in November 2009 and as such any impact may not yet be measurable.
2. With regard to the treatment of asylum seeking children, however, the EHRC welcomes the creation of a new duty on the UK Borders Agency to safeguard and promote the welfare of children when discharging immigration, asylum, nationality or custom related functions. Section 55 of the Borders, Citizenship and Immigration Act 2009 extends the duty that was placed on all other public organisations by section 11 of the Children Act 2004. Once again, however, the EHRC is limited in its capacity to comment on the impact of the provision given its very recent implementation. It is hoped, and anticipated, that the provision will promote and protect the human rights of children by ensuring they receive satisfactory treatment from the moment of their reception into the UK. Furthermore, the provision is

expected to improve the interaction of public agencies that work with children to ensure that their ongoing care and support is of an adequate standard. This is particularly important in respect of children who are considered to be at risk of exploitation or who may have been trafficked into the country.

3. While the EHRC continues to be concerned by the number of children in custody, since it is debatable whether this is an appropriate way of dealing with child offenders, it welcomes the positive development that children are generally housed in separate facilities to adult offenders. However, there is some concern that this may not always be the case for female children, who may be detained with adult females.
4. The EHRC hopes the withdrawal of the reservation to Article 37© will result in the UK Government going further to protect children being housed in forms of detention, beyond the criminal justice system. This of particular importance in the context of children who are detained for reasons of their immigration or asylum status. The Government has received consistent criticism over the detention of asylum seeking children and their families. The EHRC invites the Government to further invest in providing community based arrangements for children and families which put the welfare of the children first and ensure that they are not detained with adults, or alternatively work to improve detention conditions. In The EHRC is increasingly concerned about the conditions of detention centres and the treatment of children and families in the immigration and asylum system and is considering looking into this issue.

Optional Protocol

5. The Government maintains that the declaration it made upon signature of the Optional Protocol is an interpretive statement rather than a reservation. While the EHRC would prefer that children are no longer recruited by the armed forces, it welcomes the Government's commitment to ensure those aged 16-18 do not take a direct part in hostilities.
6. While this is not an area in its direct remit, the EHRC encourages the Government to further invest in the support children entering the UK who have been child soldiers or been affected by armed conflict. Further investigation is required into the current level of support available to such individuals, but it is suspected that treatment, support and assistance is limited.

Recommendation 4: that the UK introduces strict time limits on pre-charge detention and those suspected of terrorism, and provide information about so-called 'secret flights'.

Detention of Terrorist Suspects

7. The EHRC continues to have considerable concerns regarding the Government's statements in relation to detention powers, and in particular their commitment to bringing forth the proposals in the Counter Terrorism (Temporary Provisions) Bill.
8. The Government had previously proposed, in the Counter Terrorism Bill of 2008, the introduction of a reserve power to extend pre-charge detention of terrorist suspects from the current 28 days to 42 days. The Government claimed these reserve powers of longer detention would only be used in circumstances where there was an urgent need to deal with a "grave and exceptional terrorist threat".
9. The Commission sought legal advice from leading counsel which stated that 42 day pre-charge detention would likely breach a number of fundamental rights protected by the European Convention on Human Rights, in particular those protected by Articles 3, 5, 6 and 14. Similarly in its Ninth report of 2007-2008 the Joint

Committee on Human Rights concluded that the proposed pre-charge detention framework in the Counter-Terrorism Bill “is not compatible with the right to liberty in Article 5 ECHR, and that framework will inevitably lead to breaches of the rights in Article 5 in individual cases.”

10. Following extensive discussion in Parliament, the House of Lords rejected the Government’s proposals and the Counter Terrorism Bill passed without the 42 day provision. Despite this, the Government has stated it will reintroduce the provisions as part of the Counter Terrorism (Temporary Provisions) Bill at some stage in the future, “if and when the need arises”.
11. The EHRC accepts that circumstances may arise in the future which may necessitate the extension of pre-charge detention of terrorist suspects beyond the current maximum of 28 days. However, the EHRC considers that any such measures will need to be shown to be necessary, justified, and in accordance with human rights and equality laws. The EHRC is concerned that the proposals contained in the Counter Terrorism (Temporary Provisions) Bill, to the extent that they replicate the previous provisions in the Counter Terrorism Bill 2008, are likely to breach the fundamental rights protected by the ECHR. Furthermore, the EHRC is concerned that if these provisions are introduced in response to an immediate crisis or situation at some point in the future, they will be rushed through without proper consideration or debate by Parliament.

Recommendation 8: that the UK continues to review all counter-terrorism legislation and ensure that it complies with the highest human rights standards.

19. The EHRC welcomes the Government’s efforts to ensure broad consultation and impact assessment of the Counter Terrorism Act 2008. In relation to the 28 days pre-charge detention, the EHRC shares the concerns of the UK Parliament’s Joint Committee on Human Rights (JCHR)¹. In the Counter-Terrorism Policy and Human Rights (Fifteenth Report): Annual Renewal of 28 Days 2009, the JHRC called for extremely careful scrutiny of the justification for renewal, in light of the fact that the power to detain a terrorism suspect for more than 14 days before charge had not been used since June 2007. Whilst the JHRC accepts the Government’s argument that the fact that the power has not been used in the past 24 months does not mean that it may not be needed in the near future, it also pointed out that a recent Report of Eminent Jurist Panel on Terrorism, Counter Terrorism and Human Rights warned of the corrosive effects of open ended departures from ordinary procedures and of the danger of special measures introduced to deal with temporary crisis becoming permanent. The JHRC also expressed disappointment with regards to the Government failure to address its previous recommendations for a careful evaluation of the cases of those that have been detained for more than 14 days. The EHRC invites the Government to address the JHRC concerns as a matter of urgency.

Recommendation 9: that the UK sets up a strategic oversight body, such as a Commission on Violence against Women, to ensure greater coherence and more effective protection for women.

12. The EHRC welcomes the recent cross-Government strategy to end violence against women, as well as the earlier strategy produced by the Scottish Government. The EHRC looks forward to the publication of the Welsh Assembly Government’s

¹ Counter-Terrorism Policy and Human Rights (Fifteenth Report): Annual Renewal of 28 Days 2009 – Human Rights Joint Committee <http://www.publications.parliament.uk/pa/jt200809/jtselect/jtrights/119/11905.htm>

integrated violence against women strategy and would hope that it places gender equality at its heart and forms a strong basis for future action in Wales. The EHRC does not have a specific, dedicated oversight function in relation to violence against women. We consider that stronger governance and oversight arrangements for the new strategy should be introduced, and we hope to see proposals emerge from government on this point. However we expect to work with other interested organisations to review progress in implementing the Governments' strategies. In particular we will be concerned to ensure that victimised women have access to support in line with the Government's human rights obligations: last year we found that one in four local authorities had no specialised support services. We have called on the Government to ensure that sufficient funding is available for these services in all parts of the country.

Recommendation 10: that the UK considers going beyond current legislation to protect children from violence and ban corporal punishment also in the private sector and in its Overseas territories.

13. In September 2009 the EHRC agreed with the recommendation by the UN Committee on the Rights of Child that the defence of reasonable punishment should be repealed. The EHRC recognises that the underlying philosophy of the CRC is that parents and guardians have an integral part in the protection of children's rights. If the law is repealed, the EHRC believes children will be afforded greater protection from abuse and/or harm and the current inequality which exists between children and adults in this area will be removed.
14. Although the Government has not sought to ban the smacking of children entirely, the EHRC welcomes its efforts to actively discourage the hitting of children and/or using physical punishment of any kind. The Department for Children Schools and Families has advocated the education of parents so that they can discipline their children without recourse to physical punishment. Therefore, while "loving and caring" parents will not be criminalised for physically disciplining their children, the Government hopes to promote forms of discipline that are more conducive to protecting the dignity and best interests of children.

Recommendation 11: requested further information from the UK with regard to efforts to reduce poverty among children by half by 2010.

15. The EHRC welcomes the Child Poverty Bill which will enshrine in law the Government's commitment to eradicating child poverty at a national and local level by 2020. The EHRC sees the Bill as a human rights enhancing measure, as it provides a mechanism for the progressive realisation of children's economic, social and cultural rights.
16. We welcome the Government's compromise to consult with children in order to develop their strategies. Integrating human rights into poverty reduction strategies does not so much change 'what' is to be done as to 'how' and 'why' activities are undertaken so that the process itself becomes part of the solution.
17. The Child Poverty Commission's Terms of Reference should state that at least one member be appointed that is experiencing, or has experienced socio-economic disadvantage; or set out the opportunities that people experiencing socio-economic disadvantage will have to participate in the work of the Commission, and how this involvement and engagement will be facilitated.
18. However, the EHRC is concerned with the Government's overarching approach to the implementation and application of the rights under the CRC and the ICESCR. The EHRC believes that current Government action is not sufficient to realise a number of the rights contained in those Conventions, particularly in respect of individuals who are most disadvantaged in society.

19. The Child Poverty Bill provides a number of targets that the Government must achieve and requires that the Government produce a strategy detailing how it intends to meet these targets (as well as ensuring that, as far as possible, children do not experience socio-economic disadvantage). However, we are concerned that the relative income target will have been achieved when up to 10% of children remain in this low income bracket. The EHRC is keen to ensure that those with a protected characteristic are not at greater risk of remaining in poverty.
20. The EHRC is concerned that the definition of 'qualifying household' is not an adequate means of measuring levels of poverty in some of the most deprived families. This is because they may not be picked up by the Survey, used to measure progress against targets, as they are not counted as members of a qualifying household. As a result some of the most vulnerable groups of children will not be included in the targets. The EHRC has particular concerns in respect of looked-after children, asylum-seeking children, Gypsies and Travellers and those in the criminal justice system.
21. We would like to see specific measures contained in the Government's strategy to meet the needs of these vulnerable groups, to ensure that they face no great risk of poverty than the rest of the population, both during childhood, and the transition to adulthood.

Recommendation 13: that the UK provides more care and attention to the rights of the elderly.

22. The use of age as a proxy for competence (especially in the workplace) or health is widespread in the UK. While the age provisions of the Equality Bill currently before Parliament are intended to outlaw such discrimination against older people concerns remain about the potential breadth of the exemptions that are to be permitted. Moreover, the UK still retains a default retirement age of 65. This is currently under review but the UK urgently needs to ban all forms of age discrimination in employment. Opening up the option of extending working life is important in terms of improved levels of health (work has been shown to have a protective affect on health), in preventing poverty in old age and in financing the social protection systems that will provide for older aged people needing care.
23. Pensioner poverty is most severe amongst women. Subsequently, in addition to adopting policies that will redress disadvantage in relation to age, it is also necessary to improve women's earning capacity throughout their lifetime by tackling the gender pay gap, reducing occupational segregation, and providing family support systems which enable women to retain their earning capacity irrespective of their caring responsibilities.

Recommendation 14: that the UK follows the Council of the European Union 'Asylum Qualification Directive' in future cases with regard to sexual orientation as a ground for asylum-seeking.

24. The EHRC is aware that the UK has transposed the qualification directive (2004/84/EC) into UK law. However, the EHRC is concerned with the precedent set by the UK Court of Appeal in the cases of HJ(Iran) and HT (Cameroon) v Secretary of State for the Home Department. This reflects the continued less favourable approach taken by the UK in relation to applicants for refugee status whose risk of persecution derives from their sexual orientation as opposed to their race, nationality, religion or political opinion. The EHRC is concerned that while the UK does not deny refugee status in relation to sexual orientation on the basis that the conduct giving rise to persecution should be denied, the UK does consider that it is permissible to require an individual to conceal his or her sexual orientation in order

to avoid persecution. This is not consistent with a free and open society where the rights of all individuals are equally respected.

Recommendation 18: that the UK addresses the high incarceration rate of children, and ensures that the privacy of children is protected; also, that it puts an end to the so-called “painful techniques” applied to children.

Reduction of the imprisonment of children

25. While the EHRC acknowledges that there has been a decline in the number of children in prison, it remains concerned that during September 2009 2,556 children (under 18s) were incarcerated. It is hoped that the introduction of the new community sentence order, the Youth Rehabilitation Order (YRO), which provides the courts with greater flexibility for tailoring interventions to address the needs of young people, will result in the steady decline of the number of children in prison. The EHRC contends that diverting children from the criminal justice system is the best means of dealing with young offenders.
26. Furthermore, the EHRC expresses its concern that up to 75% of those released from custody in 2007 reoffended within a year. The EHRC holds general concerns that detention is not the appropriate means of dealing with child offenders and statistics such as these help to support that contention.
27. While the actual number of children imprisoned is of significance, the EHRC is especially concerned with the conditions in which those children are detained. A staggering number of children suffer from behavioural and mental health problems, suffer from drug or alcohol dependency, have identified special educational needs, or have difficulties with literacy and numeracy. Where children are imprisoned their needs should be addressed holistically, and more concerted efforts are required to keep them out of the criminal justice system in the future.

Greater protection for the privacy of children

28. According to a Prisons Inspectorate and Youth Justice Board survey, only around half of young men (15-18) said they had access to a shower.
29. In September 2008, 46% of 15 year olds, 41% of 16 year olds and 41% of 17 year olds were held in prisons over 50 miles from their home address. This has implications for the private lives of children in that their ability to maintain family ties may be hindered – families may be unable to visit at all, or may visit children less often than would be desirable. The EHRC expresses its concern that, despite the general impact of imprisonment upon a child’s development, this is an additional factor that requires consideration. Measures should be taken to ensure that children can maintain or repair damaged relationships with family members so that they will be supported throughout their time in detention and on their subsequent release.

So-called “painful techniques”

30. Between 1 April and 31 January 2008 there were 1,683 restrictive physical interventions in secure children’s homes and 2,921 in young offender institutions.
31. The EHRC is concerned that the Government justifies its use of restraint techniques by stating “the law allows any reasonable use of force for that purpose” and that “no effective alternative method of safeguarding children is suggested”. These assertions does not indicate that the Government has actively sought techniques that respect the dignity and best interests of the child more effectively, and the EHRC encourages them to do so.