



**Universal Periodic Review**

**Mid-term Report (October 2014)**

**Stakeholder Submission**

**Submission by** René Cassin, UK

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## **Introduction**

In this submission René Cassin seeks to assist the UN in assessing the UK's human rights performance through the Universal Periodic Review (UPR).

In section 1 we call upon the UK Government to commit to preserving the *Human Rights Act* and to build upon it in any efforts to develop the existing framework for human rights protection in the UK.

In section 2 we analyse a number of other human rights issues of particular concern to our organisation which we call upon UK Government to prioritise. These include issues relating to: modern slavery, Romany Gypsies and Irish Travellers (herein referred to as Gypsies and Travellers); asylum seekers and migrants; abuses in paediatric medical care; and intersex legal discrimination.

## **About René Cassin**

René Cassin is a human rights charitable organisation that promotes and protects universal human rights drawing upon Jewish experience and values. We campaign and educate on issues such as discrimination against Gypsies and Travellers, modern slavery and human trafficking, asylum seekers, genocide in South Sudan and the Human Rights Act.

The organisation is named in honour of Monsieur René Cassin, a French Jew and Nobel Laureate who was one of the principal co-drafters of the Universal Declaration of Human Rights.

In our submission we emphasise concerns of specific importance to our organisation in light of our unique mission.

## **Section1. The UK domestic human rights framework and the incorporation of international human rights standards into domestic law**

### ***UN Treaties***

1. Although the UK has ratified most of the international human rights treaties, there continues to be some notable omissions. The UK has not ratified the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (110.114), or the International Convention for the Protection of All Persons from Enforced Disappearance (110.20), and the UK Government has not yet supported the UPR recommendations to do so. We continue to recommend that the UK

signs up to these treaties, as an indication of the importance that the UK places on upholding universal human rights standards. We also maintain that the UK should commit to ratifying the optional protocols to the International Covenant on Economic Social and Cultural Rights and the International Covenant on Civil and Political Rights (110.26).

2. We acknowledge that the UK Government wishes to ensure that obligations under these treaties and optional protocols are reflected in domestic law before their ratification. With this in mind, the Government should prioritise ensuring the compliance of domestic law with the international treaties in a timely manner. In achieving this, the Government should commit to steps towards implementing the required legislative changes, and report against these objectives (110.20, 110.21, 110.22, 110.23, 110.24, 110.26).
3. In addition, some of the declarations and reservations which the UK has entered on various UN Treaties remain problematic. It is alarming that problematic declarations and reservations to human rights treaties remain, despite the UK Government's manifested support of the recommendation to lift reservations to the international human rights treaties (110.4). Currently, as informed by the Government in its 2014 mid-term report, the UK is seeking to remove obsolete reservations (or clarify their inapplicability) regarding the ICESCR but no step has been taken so far.
4. For instance, the UK's declaration to the Optional Protocol to the Convention in the Rights of the Child on the involvement of children in armed conflict is tantamount to a reservation (110.6). We note that this declaration has not been reviewed or removed following the recommendation of the previous UPR, and the UPR recommendation to do so does not have the support of the UK Government. We do not believe that there is ever an appropriate time for children under the age of 18 to be deployed for armed hostilities. In addition, the UK's declaration does not specify any minimum age below which no soldier would be deployed, which compounds our concern regarding this issue. The fact that such reservations remain is even more worrying taking into account the figure of 2,460 of under-18 recruited in 2012/2013, released by the UK Government.

#### ***UK domestic human rights framework***

5. We note that the concerns relating to changes to the Human Rights Act 1998 (HRA) that we pointed out in previous submissions were not specifically addressed by the UPR

recommendations, despite the issuance of a general recommendation to ensure that human rights principles are integrated into domestic laws (110.32).

6. We welcome the position taken by the Commission on a Bill of Rights in its final report of December 2012<sup>1</sup> stating that the time was not right to proceed with a Bill of Rights or with changes to the current legislative framework for human rights. We also welcome the fact that the UK Government supports this analysis as stated in his 2014 mid-term report. We further noticed that the UK Government relied upon the HRA in a number of responses recommendations in his 2014 mid-term report (110.9, 110.14, 110.20, 110.42, 110.49, 110.107 and 110.119).
7. Despite these positive facts, we reiterate our concerns relating to changes to the Human Rights Act 1998 as recently, in July 2014, two of the Government's biggest defenders of Human Rights Act – former Attorney General Dominic Grieve<sup>2</sup> and veteran Cabinet minister Kenneth Clarke<sup>3</sup> – were sacked in the Prime Minister's reshuffle as the Conservative politicians are finalising plans to curtail the role of the European Court of Human Rights in the UK. There are efforts underway to undermine the HRA as evidenced by ongoing negative and misleading media coverage in the UK concerning the HRA.
8. We remind that the HRA is fundamental to domestic protection of human rights in the UK. The UK Government should acknowledge that the UK already has a 'Bill of Rights' in the HRA, and any changes to it should only add to, not take away from, the existing human rights framework. The HRA incorporated into UK law most of the rights set out in the European Convention of Human Rights (ECHR). The rights contained in the Convention are to a large extent equivalent to most of the rights set out in the International Covenant on Civil and Political Rights.
9. For these reasons, we continue to recommend that:
  - any consultation as to whether or not a so-called Bill of Rights should be adopted in the UK acknowledge that the HRA is a bill of rights, although it is not referred to as such in public discourse;

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<sup>1</sup> *The Commission on a Bill of Rights' Report – A UK Bill of Rights? - The choice Before Us* - Volume 1&2, 18 December 2012. Available at: <http://www.justice.gov.uk/about/cbr>

<sup>2</sup> The Guardian, [Dominic Grieve warns against UK withdrawal from human rights courts](#), 15 July 2014.

<sup>3</sup> The Guardian, [Ken Clarke resigns from cabinet with parting warning to Cameron over EU](#), 14 July 2014.

- to create a new UK Bill of Rights that is specific to the UK would be a regressive step if the rights in the HRA or the mechanisms for enforcing those rights were watered down; and
  - the UK Government should guarantee that any attempt to introduce a Bill of Rights will maintain and build upon the existing HRA, rather than seeking its amendment or repeal.
10. The HRA provides that human rights are universal and apply to everyone equally. The HRA has rightfully provided protections for minorities in circumstances where they had few other legal protections under UK law. The evidence shows that the HRA has had a positive impact on people's lives, leading to many significant improvements in the way individuals are treated throughout society. These improvements range from changes in the way that public bodies make policy or deliver services, through to opportunities for individuals to challenge poor treatment in domestic courts.
  11. One particular concern is the failure to recognise the importance of the Section 6 Public Duty contained in the HRA. The value of the Section 6 Public Duty was recognised by UK representatives in the previous universal periodic review<sup>4</sup>.
  12. In light of our organisation's mission and support base, we are uniquely placed to draw to attention the fact that the HRA brings to life provisions of the Universal Declaration of Human Rights and the ECHR, which originated in the aftermath of World War II and the Holocaust, and which are Europe's response to a grave violation of human rights.
  13. If a new UK Bill of rights is adopted, it should build on the HRA with respect to substantive protections and enforcement mechanisms and provide for additional rights as opposed to subtracting from those already instilled by the HRA<sup>5</sup>. Professor Francesca

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<sup>4</sup> Report of the Working Group on the Universal Periodic Review United Kingdom of Great Britain and Northern Ireland, A/HRC/8/25, Human Rights Council, Eighth session, Agenda item 6.

<sup>5</sup> As Professor Francesca Klug of the London School of Economics (LSE) describes, there are certain indicators that test whether a new UK Bill of Rights supplements the existing HRA. These indicators include the following:

- (a) "Any additional rights should cover new ground, or transparently supplement ECHR rights, not rephrase current rights in the HRA. They should demonstrably enhance rights protection.
- (b) There should be no additional qualifications or limitations attached to specific rights or a new general limitations clause applying to all rights to tie them to 'responsibilities.'
- (c) There should be no new limitations on the scope of the rights in the HRA, which should continue to apply to everyone within the jurisdiction of the UK government.

Klug of the London School of Economics suggests certain indicators to test whether any new UK Bill of Rights builds on the HRA. If these indicators are not incorporated into any new UK Bill of Rights, then the new Bill would constitute a regression as opposed to a progression towards the protection and enforcement of human rights within the UK.

14. We strongly oppose any efforts by the UK to dilute the protections contained within the HRA or the enforcement mechanisms associated with them. Protecting the HRA will help ensure that all individuals in the UK enjoy an equal level, quality, and accessibility of protection and enforcement of human rights.

## **Section 2. Further human rights issues relating to modern slavery, discrimination, migration, freedoms and security**

### ***Human trafficking and modern slavery***

1. We welcome that the UK Government has accepted most of the UPR recommendations in relation to trafficking, in full or in part (110.72, 110.73, 110.74, 110.75). We also welcome the introduction in June 2014 of a Modern Slavery Bill in England and we call for the adoption in Northern Ireland of the Human Trafficking and Exploitation (Further Provisions and Support for Victims) Bill as well as the adoption of a new Bill to strengthen the Scottish legal framework to tackle human trafficking which are now being examined by the respective governments, as informed by the UK's Government in his 2014 mid-term report.
2. These initiatives are much needed as the latest data on human trafficking showed a 47% increase on 2012 referrals totals<sup>6</sup>. In 2012 the UK National Referral Mechanism (NRM) received 1,186 referrals of potential victims of trafficking<sup>7</sup>. In 2013, the NRM received 1,746 referrals of potential victims of trafficking<sup>8</sup>. Between March and January 2014

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(d) Any changes to s12 on the balance between freedom of expression and privacy should be compatible with the provisions of ECHR Articles 8/10."

<sup>6</sup> National Crime Agency, *NMR Statistics 2013*, p.2. Available at: <http://www.nationalcrimeagency.gov.uk/publications/139-national-referral-mechanism-statistics-2013/file>

<sup>7</sup> NRM Provisional Statistics for 2012, p.2. Available at: <http://webarchive.nationalarchives.gov.uk/20130703102353/http://www.soca.gov.uk/about-soca/about-the-ukhtc/national-referral-mechanism/statistics>

<sup>8</sup> National Crime Agency, *NMR Statistics 2013*, p.2.

alone, the NMR received 566 referrals<sup>9</sup>. We welcome the fact that, as informed in the 2014 mid-term report, the Government is currently reviewing the NRM to ensure that it is working as effectively as possible and provides access to the support victims need.

3. We ask again the UK Government to prioritise efforts to combat all types of trafficking in persons (110.72, 110.73, 110.74, 110.75) and to provide aftercare for the victims (110.76), who are some of the most vulnerable in our society and therefore should be treated as victims rather than criminals.
4. We also urge the UK Government to reconsider their position on having a “point person” who can oversee, organise and make critical assessments of the UK’s anti-trafficking response in accordance with best practices as recommended by the UN Special Rapporteur on Trafficking and as implemented in other Northern European Countries. The UK Government has announced that the Inter-Departmental Ministerial Group on Human Trafficking will be the UK’s equivalent national rapporteur mechanism to comply with the EU Directive on trafficking in human beings. However, we note that this Group has poor attendance, meetings only occur twice a year and it has frequent reshuffles of membership.

### ***Discrimination against Gypsies and Travellers***

1. The discrimination against Gypsies and Travellers causes them to face inequality and hardship that compromise their human rights.
2. There remains much indirect discrimination embedded in UK planning law. We therefore urge the UK Government to prioritise recommendations 110.32, 110.43 and 110.49, which state that the UK Government should continue to ensure that human rights principles are integrated into new domestic laws, to intensify the promotion of multiculturalism at all levels and also review national legislation to ensure that there is equality and non-discrimination. The UK Government should ensure:
  - adequate provision of culturally appropriate sites is granted to Travellers and Gypsies;

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<sup>9</sup> National Crime Agency, NMR Statistics January-March 2014, p.4. Available at: [http://www.ecpat.org.uk/sites/default/files/national\\_referral\\_mechanism\\_stats\\_jan\\_to\\_mar\\_14\\_v1\\_0\\_internet.pdf](http://www.ecpat.org.uk/sites/default/files/national_referral_mechanism_stats_jan_to_mar_14_v1_0_internet.pdf)

- the duty on local councils to provide sites for Travellers and Gypsies is reinserted; and,
  - compliance with legal obligations, including its international commitments with respect to housing and non-discrimination.
3. Romany Gypsies and Irish Travellers are legally recognized as ethnic groups, and protected from discrimination by the Race Relations Act (1976, amended 2000) and the Human Rights Act (1998). Furthermore, recommendations which enjoy the support of the UK's Government were issued in 2012 to take effective measures to eliminate discrimination and guarantee the rights of the Roma people (110.53), take all appropriate measures to combat prejudices and negative stereotypes which may result in racial discrimination or incitement to racial hatred (110.51) and to continue to monitor hate crimes and work with the community to increase understanding of the impact of such offences (110.60). Despite this framework, we note that in terms of health, education and employment, they remain one of the most deprived groups in Britain<sup>10</sup>. We urge the Government to prioritise addressing these areas of inequity for Romany Gypsies and Irish Travellers in strengthening policies that combat discrimination (110.42, 110.50, 110.53, 110.66, 110.101, 110.103, 110.106).
  4. Despite the issuance of the recommendation, supported by the UK Government, that the UK should share best practices of tackling the situation of the Roma and the Traveller people through the EU framework of National Roma Strategies up to 2020 (110.117) and that the EU framework of National Roma Strategies recommended that the EU Member States, including the UK, develop national Roma Integration Strategies, the UK Government and other EU Member States have instead agreed to a set of Conclusions on Roma Integration (Conclusions). These Conclusions in the areas of Employment, Social Policy, Health and Consumer Affairs provide too wide latitude to Member States and relegate the issue of Roma inclusion to merely part of broader social inclusion policies, when in fact the issue is of such urgency that it ought to be examined comprehensively in its own right.
  5. Also, the UK's Ministerial Working Group on tackling inequalities experienced by Gypsies and Travellers (MWG), established in 2010, has yet to produce any outcomes beyond the 28 high level 'commitments' it released in April 2012. No detail has been provided on the status or implementation of these commitments, nor update of any

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<sup>10</sup> <http://www.equalityhumanrights.com/key-projects/good-relations/gypsies-and-travellers-simple-solutions-for-living-together/>

advancement made in reducing inequalities for Gypsy and Traveller communities. We urge the Government to prioritise its commitments and report on their progress, outlining what consultation has taken place and identifying action-points for implementation for each measure. This would aid in demonstrating what specific action has been taken to eliminate discrimination and guarantee the rights of Gypsy, Traveller and Roma people (110.53).

6. We recommend that the UK Government prioritise addressing the issue of Gypsy and Traveller inequalities through developing detailed policies, informed by broad consultation, and ensuring there are systems in place to address these issues.

#### ***Detention of asylum seekers and migrants***

1. We were surprised to read in the 2014 Mid-term report of the UK's Government that the UK position on the detention of migrants and asylum seekers remains as set out in September 2012, only making further reference to the statistics of detention without giving any figures. Indeed, on the 7<sup>th</sup> of July 2014, the All-Party Parliamentary Group on Refugees and the All-Party Parliamentary Group on Migration have launched a joint inquiry into the use of detention in the immigration system.<sup>11</sup> The inquiry will examine the use of detention in the UK immigration and asylum systems, with a particular focus on the conditions within detention centres, the impact on individual detainees and their families, the wider financial and social consequences, and the future role of detention within the immigration system. The inquiry, is led by a cross-party committee of MPs and peers, and chaired by Sarah Teather MP.
2. Also, to contrast with the affirmation made by the UK's Government in September 2012 about the fact that "*detention is used sparingly and for the shortest time necessary*" (110.11), we consulted the statistics on detention: during the year ending March 2014, 29,801 people left detention. Of these, 18,115 (61%) had been in detention for less than 29 days, 5,703 (19%) for between 29 days and two months and 4,127 (14%) for between

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<sup>11</sup> Official website on the Parliamentary Inquiry on Detention: <http://detentioninquiry.com/>

- two and four months. Of the 1,856 (6%) remaining, 175 had been in detention for between one and two years and 39 have been detained for two years or longer<sup>12</sup>.
3. The detention of asylum seekers remains a pressing issue, including the inappropriate detention of victims of torture and trafficking. In May 2013, the UN Committee Against Torture (CAT) expressed its concern about “[i]nstances where children, torture survivors, victims of trafficking and persons with serious mental disability were detained while their asylum cases were being decided<sup>13</sup>”.
  4. Also, the UK is one of the few countries in Europe which uses immigration detention without time limit, despite the EU Returns Directive that sets maximum limit of 18 months. The CAT also expressed its concern regarding the “absence of limit on the duration of detention in Immigration Removal Centre” and urged the UK to “introduce a limit for immigration detention and take all necessary steps to prevent cases of de facto indefinite detention”<sup>14</sup>. Over the past three years, the High Court found on six separate occasions that the prolonged detention of mentally disordered people amounted to breaches of Article 3 of the ECHR<sup>15</sup>. In order to combat potential breaches and prevent further findings against them, whilst allowing for compliance with the EU Returns Directive, we urge the UK Government to reconsider their stance on introducing a fixed time limit for detainees (110.111, 110.112, 110.113, and 110.114).
  5. As to the recommendation that the UK should avoid any use of detention of asylum seekers when deciding their refugees status (110.15) and which does not enjoy the support of the UK’s Government, the UK’s position stated in September 2012 claiming that the Detained Fast Track (DFT) “applies to a minority of applicants (...) [and] enables the applications to be conducted fairly, promptly and with certainty to the benefit of

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<sup>12</sup> Home Office, *Immigration statistics, January to March 2014*, 12.2 Key facts on detention and 12.3 Length of detention. Available at: <https://www.gov.uk/government/publications/immigration-statistics-january-to-march-2014/immigration-statistics-january-to-march-2014#detention-1>

<sup>13</sup> Committee Against Torture, *Concluding observations on the fifth periodic report of the United Kingdom, adopted by the Committee at its fiftieth session (6-31 May 2013)*, par. 30, CAT/C/GBR/CO/5. Available at: [http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CAT/C/GBR/CO/5&Lang=En](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CAT/C/GBR/CO/5&Lang=En)

<sup>14</sup> *Ibid*

<sup>15</sup> Action Detention, *Written evidence to the Parliamentary inquiry into the use of immigration detention in the UK*, hosted by the APPG on Refugees and the APPG on Migration, par. 9. Available at: <https://detentioninquiry.files.wordpress.com/2014/07/detention-action-detention-inquiry-evidence-07141.pdf>

*applicants*". We recall that since its introduction in 2000, the DFT has grown vastly in scope and in size. Many more asylum-seekers are now detained, for longer periods and in worse conditions, thus defeating the actual purpose of the system which was to fasten the process for deciding asylum claims. Also, in May 2013, the CAT expressed its concern regarding "[c]ases of torture survivors and people with mental health conditions entering the Detained Fast Track (DFT) system due to a lack of clear guidance and inadequate screening processes" and issued recommendation to urge the UK to take "necessary measures to ensure that vulnerable people and torture survivors are not routed into the Detained Fast Track System"<sup>16</sup>. Furthermore, on the 9th July 2014, the High Court ruled in a challenge brought by Detention Action that "the DFT as operated carries an unacceptably high risk of unfairness", thus crossing the threshold of unlawfulness<sup>17</sup>.

6. We ask the UK Government to reconsider the use of detention for the purpose of administrative convenience - particularly by way of DFT system. Processing asylum claims in this way may constitute a breach of Article 26 of the 1951 Refugee Convention and Article 5 of the European Convention on Human Rights and should be avoided. We recommend that the DFT be abolished in order to ensure full compliance with the Refugee Convention and the ECHR. At the very least, we would urge that asylum seekers on the DFT be provided with a legal representative on their second day in detention at the latest, and that sufficient time be allocated to asylum seekers and their representatives.
7. Although migrants in detention may apply to the First Tier Tribunal of the Immigration and Asylum Chamber for bail, the quality of scrutiny of bail has been criticised widely. We applaud recent efforts to record all bail hearings, but urge the government to make all recordings and all reasoning public and searchable, so that bail decisions may be scrutinised to ensure the quality in decision making.
8. We recommend that the UK follow best practice in the EU and implement a time limit of 28 days for migrants in detention, the best recent practice in Europe also advised by the Joint Committee on Human Rights<sup>18</sup>.
9. We also recommend that where deportation is imminent, this factor should have priority in decisions by the UK Border Agency (UKBA) and the First Tier Tribunal.

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<sup>16</sup> Committee Against Torture, *Concluding observations ... see footnote n°5, par. 30(a) and (b)*

<sup>17</sup> *Detention Action vs Secretary of State for the Home Department* [2014] EWHC 2245 (Admin), 197.

<sup>18</sup> Joint Committee on Human Rights, [The treatment of asylum seekers](#), 22 March 2007, p.83, par.246.

However, where deportation is not imminent, community-based alternatives to detention should always be adopted.

10. In addition, the expected changes to Legal Aid, discussed below (28-33), will severely restrict asylum seekers' access to the justice system. We recommend that the Government not implement the proposed residence test for asylum seekers and continue the current funding arrangements for judicial review of migration cases.

### ***Proposals to further restrict Legal Aid***

11. We note that the following issues relating to changes to Legal Aid were not addressed by the UPR recommendations or the UK Government's response. However, we believe that the proposed changes continue to have far reaching consequences for the accessibility and credibility of our justice system and should therefore be considered in the UPR. The Government should prioritise circumventing the impact that any further cuts to Legal Aid will have on human rights and vulnerable members of our society, notably asylum seekers.
12. The Legal Aid, Sentencing and Punishment of Offenders Act 2012 set out measures which cut the legal aid system in England and Wales to save £350million from the £2.1billion legal aid budget. This is part of a continuing trend to roll back funding for legal aid. The proposals decreased funding for legal aid for housing, education, welfare, jobs, mental health and community care. The proposals meant that legal aid was removed for partners of disabled people seeking welfare advice, families struggling with debt, and in family and immigration cases. In these instances, the real impact of legal aid removal may be that people will be: prevented from being unified with their family; unable to obtain basic access to their children; or unable to seek remedies to protect themselves from domestic violence.
13. The most recent Government proposal, released in September 2013, outlines further cuts from Legal Aid of £220 million per annum from 2018/19. Although the Government has backed away from some of its initial further changes, it has not discarded the residence test for asylum seekers not in detention and there are other aspects of the proposal, including judicial review reforms, which are of concern.
14. 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. Over the same period, 1,520 applications were made for exceptional funding; 69 of these were

- granted, of which 53 were for inquest cases<sup>19</sup>. This last figure shows that the exceptional funding scheme, designed to mitigate the impact of the exclusions from legal aid for cases involving human rights, is not functioning as intended both because of its demanding application process and the strict interpretation of its eligibility criteria.
15. The legal aid reforms mean that many law firms are ceasing to do legal aid work. In the year since April 2013, nine law centres have closed.<sup>20</sup> Funding for legal advice centres and law centres has been significantly reduced or terminated. The Low Commission estimates that funding for advice from English local authorities could fall from £220million to £160million by 2015/16.<sup>21</sup>
  16. Particularly, we do not agree with the proposed approach for limiting legal aid to those with a strong connection with the UK. The proposed residence test would exclude already-marginalised populations from access to the legal system, raising serious questions about equality of justice and human rights. Further, implementing arbitrary residency requirements allows an unequal provision of justice by letting the law treat some individuals differently, in direct contravention with multiple articles in the Human Rights Act of 1998 and the European Convention on Human Rights, including the right to a fair trial and ensuring that all people have access to the courts. In July 2014, the High Court has ruled that the residence test is *ultra vires* the Legal Aid, Sentencing and Punishment of Offenders Act 2012 as well as being in breach of Article 14 read with Article 6 ECHR, and thus discriminatory<sup>22</sup>.
  17. We await further details from the UK Government regarding their revised policy on funding for permission work in judicial review. However, we do not agree that providers should only be paid for work carried out on an application for judicial review if permission is granted by the Court, or subject to an arbitrary discretionary payment. A pay-for-play system for funding counsel's fees for judicial review that limits access to the

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<sup>19</sup> Ministry of Justice. Legal aid statistics in England and Wales; Legal Aid Agency, 2013-2014. Available at: [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/358100/legal-aid-statistics-2013-14.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/358100/legal-aid-statistics-2013-14.pdf)

<sup>20</sup> 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: [www.parliament.uk/business/committees/committees-a-z/commons-select/justice-committee/inquiries//parliament-2010/laspo/?type=Written#pnlPublicationFilter](http://www.parliament.uk/business/committees/committees-a-z/commons-select/justice-committee/inquiries//parliament-2010/laspo/?type=Written#pnlPublicationFilter)

<sup>21</sup> 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: [www.baringfoundation.org.uk/LowComReport.pdf](http://www.baringfoundation.org.uk/LowComReport.pdf)

<sup>22</sup> R. (Public Law Project) v Secretary of State for Justice [2014] EWHC 2365 (Admin), available at: [http://www.mentalhealthlaw.co.uk/R\\_\(Public\\_Law\\_Project\)\\_v\\_SJ\\_\(2014\)\\_EWHC\\_2365\\_\(Admin\)\\_\(2014\)\\_MHLO\\_46](http://www.mentalhealthlaw.co.uk/R_(Public_Law_Project)_v_SJ_(2014)_EWHC_2365_(Admin)_(2014)_MHLO_46)

initiation of a judicial route is inherently at odds with the mission of a fair and just legal system.

18. While there is a justifiable state interest in preventing frivolous claims, much case law – especially regarding asylum seekers due to the fluctuations in international conditions – is always changing, and the value of test cases should not be understated. Removing this possibility will increase the power of public bodies and may allow undesirable practices to continue without a realistic option to challenge them.
19. On the 19<sup>th</sup> of September 2014, in judgement delivered by the High Court in the case *The Queen on the application of LCCSA and CLSA vs The Lord Chancellor*, Mr Justice Burnett said that the decision by the Ministry of Justice to refuse to allow those engaged in the consultation process to comment on the findings of two key reports into plans to introduce new dual criminal legal aid contracts was “*so unfair as to result in illegality*”<sup>23</sup>. The Minister of Justice is now considering the judgement to see whether it is obliged to rerun the consultation process and conduct a proper consultation before his criminal legal aid reform programme can proceed.

#### ***Intersex infant and adolescent discrimination***

20. We note that the following issue relating to abuses in paediatric medical care was not addressed by the UPR recommendations or the UK Government’s response. However, we reaffirm our concern and position on this issue and urge the Government to prioritise addressing this issue.
21. The Yogyakarta Principles state the human right of all people irrespective of their age to genital autonomy. On the 1<sup>st</sup> of February 2013, the report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment found that “[c]hildren who are born with atypical sex characteristics are often subject to irreversible sex assignment, involuntary sterilization, involuntary genital normalizing surgery, performed without their informed consent, or that of their parents, in an attempt to fix their sex leaving them with permanent, irreversible infertility and causing severe mental suffering”. It added that “members of sexual minorities are disproportionately subjected

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<sup>23</sup> *The Queen on the application of LCCSA and CLSA vs The Lord Chancellor*, 19 September 2014, par.50. Available at: <http://www.judiciary.gov.uk/wp-content/uploads/2014/09/the-queen-on-the-application-of-lccsa-clsa-v-the-lord-chancellor.pdf>

*to torture and other forms of ill-treatment because they fail to conform to socially constructed gender expectations".<sup>24</sup>*

22. Unnecessary genital surgeries based on social norms rather than medical needs are criminalised by the 2003 Female Genital Mutilation Act when conducted on infants classified as female. No such protections are granted to intersex infants in the UK. We condemn this double standard, selective condemnation of social and cultural practice and express our concern about the continued involvement of UK psychologists and medical professionals on interdisciplinary teams that conduct normalising surgeries on intersex infants' genitals. These surgeries can cause permanent loss of sexual and bladder function, in addition to psychological trauma.
23. The IV World Congress on Hypospadias and Disorders of Sex Development (ISHID 2011), which was held at The Royal College of Surgeons and The UCH Education Centre in London and endorsed by professional societies in the field of paediatric endocrinology, involved "live surgery" on an intersex infant and featured presenters who promoted the harmful drug Dexamethasone as a method of preventing intersex babies. Dexamethasone has not been approved for this use by regulatory bodies and has been shown to cause cognitive impairment in pregnant mothers and foetuses.<sup>25</sup> Several puppet 'activist' organisations managed by health professionals that support intersex genital mutilation in the form of medically unnecessary normalising surgeries have also emerged in the UK.
24. Despite these irreversible surgeries to intersex infant genitals, transgender adolescents seeking access to gender-affirming hormones or reversible hormone blockers are routinely denied these options. Many of these young people have been subjected to 'conversion therapy', also known as 'reparative therapy' which is an attempt to use therapeutic approaches to change a person's sexual orientation. 'Conversion therapy' violates the basic human right of all young people to free expression and play. The World Professional Association for Trans Health's (WPATH, formerly HBGDA) current Standard of Care (SOC7) states that 'reparative' or conversion therapy to change young people's genders is harmful and unethical<sup>26</sup>. The Royal College of Psychiatrists (RCP) has

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<sup>24</sup> Human Rights Council, "*Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment*", A/HCR/22/53, 1 February 2013 ,par. 77 and 78. Available at: [http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session22/A.HRC.22.53\\_English.pdf?utm\\_source=AIC+mailing+list&utm\\_campaign=0940e5a7fc-&utm\\_medium=email](http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session22/A.HRC.22.53_English.pdf?utm_source=AIC+mailing+list&utm_campaign=0940e5a7fc-&utm_medium=email)

<sup>25</sup> <http://www.fetaldex.org/home.html>

<sup>26</sup> See <http://www.wpath.org/documents/Standards%20of%20Care%20V7%20-%202011%20WPATH.pdf>; and

been critiqued by transgender activists for allowing members to engage in these practices within the NHS. A 2011 RCP conference featured speakers who advocate conversion therapy.<sup>27</sup>

25. There was a parliamentary debate on this issue in November 2013<sup>28</sup> and there was also a parliamentary motion tabled in June 2013<sup>29</sup>. In April 2014, Norman Lamb, the Health Minister, was asked by 15 cross-party MPs to adopt tougher measures, including consideration of a ban on gay conversion therapy and calls for statutory regulation of psychotherapists, which could potentially enable disciplinary action against anyone involved in gay conversion therapy, as this harmful practice is still used by some UK GPs<sup>30</sup>. As a Counsellors and Psychotherapists (Regulation) Bill will be debated at its second reading in November 2014<sup>31</sup>, René Cassin asks the UK's Government to ban the conversion therapy.

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[http://www.tsroadmap.com/notes/index.php/site/comments/wpath\\_reparative\\_therapy\\_on\\_transgender\\_youth\\_is\\_no\\_longer\\_considered\\_ethic/](http://www.tsroadmap.com/notes/index.php/site/comments/wpath_reparative_therapy_on_transgender_youth_is_no_longer_considered_ethic/)

<sup>27</sup> <https://transactivist.wordpress.com/tag/reparative-therapy/>

<sup>28</sup> Gay-to-straight conversion therapy, debate 20 November 2013. Available at:

<http://www.theyworkforyou.com/whall/?id=2013-11-20b.385.0&s=conversion+therapy>

<sup>29</sup> Early day motion 219, gay-to-straight conversion therapy in the UK, 11 June 2013. Available at:

<http://www.parliament.uk/edm/2013-14/219>

<sup>30</sup> The Guardian, "Gay conversion therapy should have no place in NHS, says health minister", 6 April 2014.

Available at: <http://www.theguardian.com/society/2014/apr/06/gay-conversion-therapy-nhs-health-minister>

<sup>31</sup> Progress and text of the current Bill are available at: <http://services.parliament.uk/bills/2013-14/counsellorsandpsychotherapists.html>