



**Joint NGO submission to the UN Universal Periodic Review (United Kingdom), Second Cycle, 13<sup>th</sup> Session 2012** (Word count: 5,611)

**Joint submission** from the **British Institute of Human Rights (BIHR)** with

Active Independence	Down's Syndrome	Migrant and Refugee
AdEd Knowledge Company	Association	Communities Forum
Age UK	End Violence Against	National Coalition of Anti-
ASSIST Sheffield	Women	Deportation Campaigns
Against Violence and Abuse	English PEN	Praxis Community Projects
(AVA)	Friends, Families and	Radar
Association of Visitors to	Travellers	René Cassin
Immigration Detainees	Gatwick Detainees Welfare	Rights of Women
(AVID)	Group	RISE
Barbed Wire Britain and	Haslar Visitors Group	Royal National Institute of
Campaign to Close	Irish Traveller Movement in	Blind People (RNIB)
Campsfield	Britain	Sahir House
British Refugee Council	Jesuit Refugee Service UK	Scope
Citizens Advice	Just Fair	South Yorkshire Migration
Child Poverty Action Group	Just Lincolnshire Equality	and Asylum Action Group
City of Sanctuary	and Human Rights Council	UK Lesbian and Gay
Coalition against the	JUST West Yorkshire	Immigration Group
Bullington Immigration	Kurdish Human Rights	Women's Resource Centre
Removal Centre	Project	Yarl's Wood Befrienders
Detention Action	Law Centres Federation	
Dover Detainee Visitor	Mencap	
Group	Mind	

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**About BIHR:** The British Institute of Human Rights (BIHR) is a national independent human rights charity that is committed to bringing rights to life in the UK. Founded over 40 years ago, we have pioneered work to animate and promote human rights. We work with civil society organisations and the public sector, equipping them to translate human rights principles and laws into living and practical tools for change. For further information about BIHR visit [www.bihr.org.uk](http://www.bihr.org.uk)

## **Introduction**

1. In this submission the 44 undersigned NGOs seek to assist the UN in assessing the United Kingdom's human rights performance through the Universal Periodic Review. In Section 1 we set out our concerns about the way in which recent political and institutional developments risk undermining the framework for human rights protection in the UK. We call upon the United Nations to seek a commitment from the UK Government that the UK's Human Rights Act will be preserved and built upon in any efforts to develop this framework. In Section 2 we analyse a number of other issues which we believe need to be explored in any attempt to assess the UK's human rights performance.
2. We outline the concern we all share regarding the narrative on human rights in the UK. This narrative is negative, misleading and undermines our fundamental rights and freedoms. This narrative is the backdrop against which the UK's record on human rights needs to be assessed.

## **Methodology**

3. The British Institute of human Rights (BIHR), received funding from the Equality and Human Rights Commission (EHRC), one of the UK's National Human Rights Institutions, to undertake awareness-raising on the UPR with civil society. BIHR facilitated two events in England (Leeds and London) and one in Wales (Cardiff), involving about 70 representatives of national and local NGOs.
4. BIHR spoke at various additional NGO forums about the UPR, and the UPR process was raised during BIHR's human rights tour 2011, in which BIHR is visiting 16 cities in the UK in 16 weeks to promote the 16 rights of the Human Rights Act.
5. The views expressed in this submission are those of BIHR and the other co-signatories.

## **SECTION 1**

### **Normative and institutional frameworks**

6. Although the UK has ratified most international human rights treaties, there are some notable omissions that need to be addressed when attempting to assess the UK's human rights record and performance. Firstly, the UK has not ratified the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, or the International Convention for the Protection of All Persons from Enforced Disappearance. We recommend the UK signs up to these treaties, to signal the importance the UK places on upholding universal human rights standards. Secondly, the UK has not ratified the optional protocols to, for example, the International Covenant on Economic Social and Cultural Rights or the International Covenant on Civil and Political Rights, which allow individual petitions. We believe this right is an important safeguard which plays an important role in building engagement between the UN system and civil society. We recommend that the UK moves swiftly to ratify these two protocols. Thirdly, some of the UK's declarations and reservations remain problematic and should be reviewed with a view to their withdrawal. The UK's

declaration to the Optional Protocol to the Convention on the Rights of the Child (CRC) on the involvement of children in armed conflict (OPAC) is described by the UK as an “interpretive statement”, rather than a reservation. As the declaration limits the legal effect of article 2 of OPAC it is tantamount to acting as a reservation, and it has not been reviewed or removed following the recommendation of the previous UPR<sup>1</sup>.

### **Constitutional and legislative frameworks**

7. The UK is a constitutional monarchy with an unwritten constitution, to the extent that there is no single law which sets out the UK’s constitutional arrangements. The UK also operates a dualist system of law. As a result, the human rights obligations accepted by the UK through ratification of international or regional human rights treaties do not create domestically enforceable rights that can be upheld by the UK’s courts unless they are also protected by a principle of the common law or a specific Act of Parliament.
8. A dramatic change came about when the Human Rights Act 1998 (HRA) entered into force in the UK in 2000. The HRA made directly enforceable in the UK most of the rights set out in the European Convention of Human Rights (the Convention rights), which the UK had ratified over 50 years earlier. The Convention rights are to a large extent equivalent to most (but certainly not all) of the rights set out in the International Covenant on Civil and Political Rights.
9. The rights set out within the International Covenant on Economic, Social and Cultural Rights are not in the main directly enforceable in the UK, and we would recommend that steps are taken to remedy this.
10. Understanding the nature and role of the HRA is fundamental to any attempt to assess the UK’s human rights performance. Under the terms of the Act, all public authorities in the UK are required to observe the Convention rights in all that they do and in all decisions that they make (the Section 6 Public Duty). The Act also requires the courts, in so far as it is possible to do so, to interpret primary and subordinate legislation so as to give effect to the Convention rights. This provision applies to all laws, whenever enacted, but does not go so far as to give the courts a “strike down power”. The Act does allow the higher courts to issue a declaration of incompatibility whereupon it remains for Parliament to decide whether or not to amend or repeal the offending legislation. The effect of this provision is to preserve the tradition of Parliamentary Sovereignty, whilst at the same time enabling judicial scrutiny of all legislation.
11. Notwithstanding the absence of a full “strike down” power, the HRA is of great constitutional significance to the UK, is recognised as being in the nature of a “higher law”, and is in fact a Bill of Rights by any other name. The HRA is an important part of our constitutional arrangements, protecting people from arbitrary actions of the government, safeguarding an independent judiciary which can hold government to account, and ensuring Parliament is able to pass laws which protect our basic rights and freedoms. This duty imposes both

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<sup>1</sup> See detailed submission from Child Soldiers International

positive and negative duties on public bodies, to refrain from infringing our rights and to take positive steps to realise our rights<sup>2</sup>.

12. We believe that the strong and effective protections contained in the HRA are now at substantial risk of being diluted. The Coalition government formed after the last election between the Conservative Party (which pledged in its election manifesto to repeal the HRA) and the Liberal Democrat Party (defenders of the Act) sets out within its Coalition Agreement the aim to establish a Commission “to investigate the creation of a UK Bill of Rights that incorporates and builds on all our obligations under the European Convention on Human Rights, ensures that these rights continue to be enshrined in UK law, and protects and extend our liberties. It will examine the operation and implementation of these obligations, and consider ways to promote a better understanding of the true scope of these obligations and liberties...”<sup>3</sup>.
13. The Commission on a UK Bill of Rights is carrying out its work during a period when the HRA is under sustained attack by some sections of the UK media which repeatedly misrepresent and misreport judicial decisions made under the Act, especially when these concern marginalised or unpopular groups. Unfortunately, many individuals occupying positions of political leadership in the UK, including the Home Secretary and the Prime Minister himself, have chosen to repeat, often in colourful language, these myths and misconceptions rather than fulfilling their obligations to promote and respect human rights. The Home Secretary recently gave a major speech in which she claimed that a decision to deport someone from the UK had been overturned by the HRA because the individual concerned had a pet cat<sup>4</sup>. Although the Judicial Office<sup>5</sup> issued a strong rebuttal of this claim, she has maintained it and, indeed, appears to have enjoyed the support of the Prime Minister. Similarly, when the European Court of Human Rights recently ruled that the blanket ban on prisoners voting in the UK needed to be reviewed to become compliant with the European Convention on Human Rights, the Prime Minister’s response was to say that it made him “physically ill”<sup>6</sup>. When the UK Supreme Court made a declaration of incompatibility in relation to the sex offenders register (because offenders had no possibility to apply to be removed from the

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<sup>2</sup> Using this duty the HRA has benefitted countless individuals and helped the public sector deliver services which are fair, responsible and meet all people’s basic needs, especially the most vulnerable members of our society. BIHR’s report ‘The Human Rights Act: Changing Lives’ documents 31 examples of how this direct usage of the principles and values of the Human Rights Act has secured human rights for individuals without going to a court of law. <http://www.bihar.org.uk/documents/policy/changing-lives-second-edition> The Human Rights Futures project at the London School of Economics (LSE) has produced a briefing outlining landmark rulings under the Human Rights Act, May 2011, <http://www2.lse.ac.uk/humanRights/articlesAndTranscripts/2011/KlugLandmarks.pdf>

<sup>3</sup> The Commission is also charged with providing interim advice to the Government on reforming the European Court of Human Rights, ahead of the UK’s Chairing of the Council of Europe. The Commission has already provided its advice which can be found here: <http://www.justice.gov.uk/about/cbr/index.htm>

<sup>4</sup> Theresa May, the Home Secretary gave a speech to the Conservative Party conference on 4 October 2011, in which she made this claim.

<sup>5</sup> The Judicial Office “reports to the Lord Chief Justice ... and supports the judiciary in upholding the rule of law and in delivering justice impartially, speedily and efficiently”: <http://www.judiciary.gov.uk/training-support/jo-index/jo-index>

<sup>6</sup> Prime Ministers Questions (PMQs), 3 November 2010, <http://www.youtube.com/watch?v=DjzmvvozHuw>

register), the Prime Minister said the government would only do the “minimum necessary”<sup>7</sup> to comply with the ruling, and described the ruling as “offensive”<sup>8</sup>. These are but three examples of the angry and ill-informed rhetoric which we believe is having a corrosive effect on the establishment of a culture of human rights in the UK.

14. We are increasingly worried that these developments in the UK will, if not checked, threaten the coherence and credibility of the post World War II human rights settlement, and the important recognition that human rights are internationally recognised and legally binding norms. When the Prime Minister says that he wants to “ ... show that we can have a commitment to proper rights, but they should be written down here in this country”<sup>9</sup> he appears to be suggesting that a UK Bill of Rights might diverge from those international norms. Since securing greater adherence to these international norms is one of the purposes of the Universal Periodic Review, we believe it would be useful to seek clarity as to the government’s intentions in this regard.
15. There is a strongly held view amongst many within the human rights and equalities movements that these developments will undermine rather than further protect human rights. The Prime Minister suggested that a major purpose of any new Bill of Rights would be to take powers away from the Courts and return them to Parliament: “A commission will be established to look at a British Bill of Rights, because it is about time we ensured that decisions are made in this Parliament rather than in the Courts.”<sup>10</sup> Were a Bill of Rights to be introduced for such a purpose, it would make a mockery of the term “Bill of Rights” by seeking to reduce the accountability of government to the courts.
16. We are concerned that the Commission’s terms of reference make no reference to the HRA, focusing instead on the ECHR. The HRA and the ECHR are two different legal instruments and a commitment to the ECHR is not the same as a commitment to the HRA. 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. As part of the interactive dialogue in response to questions from Ghana and Peru about mainstreaming a human rights culture, the United Kingdom “informed the meeting of significant improvements in how public services are delivered.”<sup>11</sup> BIHR is the leading organisation in the UK equipping public and voluntary organisations with the skills to use human rights. It is our view that the HRA offers essential protection to people in vulnerable situations when in the hands of public bodies, and provides a lens through which public services can be run in a personalised and appropriate manner for individuals. When human rights principles are embraced, BIHR’s evidence suggests that it leads to better and fairer decisions which respect the essential dignity of service users. Recent comments from the Prime Minister claiming that, “the interpretation

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<sup>7</sup> <http://www.guardian.co.uk/society/2011/feb/16/david-cameron-condemns-court-sex-offenders>

<sup>8</sup> [http://www.channel4.com/news/court-decision-on-sex-offenders-is-offensive-says-cameron`](http://www.channel4.com/news/court-decision-on-sex-offenders-is-offensive-says-cameron)

<sup>9</sup> PMQs, House of Commons, 1 December 2010.

<sup>10</sup> PMQs, House of Commons, 16 February 2011

<sup>11</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.

of human rights legislation has exerted a chilling effect on public sector organisations”<sup>12</sup> are in our view dangerous and inaccurate.

17. We also wish to draw the Human Rights Council’s attention to the Government’s recent public consultation concerning changing immigration rules by ‘rebalancing’ article 8 (the right to private and family life) of the HRA. The tenor of the consultation misrepresented this right, which as a qualified right is balanced against wider public interest. This is a concerning development. When the UK Government seeks to limit rights, this should be undertaken with due care and caution, and conducted in such a way so as to raise public awareness of human rights rather than fuelling myths and misconceptions.
18. Many civil society organisations are deeply sceptical about the prospects, in the current political climate, for a new Bill of Rights to improve the protection of human rights in the UK. In any event, it is surely nonsense to suggest that human rights protection might be improved by repealing the Human Rights Act. Far better to build on this important starting point and to ensure that any attempt to introduce further legal protection builds on the existing framework. It is vital, therefore, that the UK Government is called upon to guarantee, during the Universal Periodic Review, that any attempt to introduce a Bill of Rights will maintain and build upon the existing HRA, rather than seeking its amendment or repeal. Refusal to give such a guarantee should be recognised as an indication that there is indeed a significant risk of the human rights framework in the UK being eroded.

#### **Public awareness**

19. Despite the paucity of government efforts to inform and educate the UK public about human rights in general and the Human Rights Act in particular, the evidence suggests that human rights are popular and respected within the wider population. For example, the polling company ComRes conducted an opinion survey on behalf of Liberty, a leading UK human rights organisation, on 4 October 2011. This survey found that 93% of people support the need for laws that protect rights and freedoms in Britain and support for the individual rights was also extremely high, eg 95% believe the right to respect for privacy and family life was either vital or important.<sup>13</sup> The same survey found that 91% of people do not remember receiving any information about the HRA from the Government.
20. The failure of successive UK governments to fulfill their obligations to promote widespread understanding of human rights is highly damaging to the furtherance of human rights in the UK and should be urgently addressed in this review. We believe that this lack of human rights leadership in the domestic arena is at odds with the government’s obligations to promote, through educational programmes and other initiatives, a proper understanding of human rights amongst the public at large. The UK considers itself to be at the forefront of

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<sup>12</sup> David Cameron speech following the riots, Witney, 15 August 2011, full transcript: <http://www.newstatesman.com/politics/2011/08/society-fight-work-rights>

<sup>13</sup> Full details of the survey can be found at <http://www.comres.co.uk/poll/541/liberty-human-rights-poll-october-2011.htm>

human rights standards internationally, and makes regular statements concerning the protection of human rights and the rule of law abroad. We want the UK government to be in a strong position to do this, but its credibility and reputation is at stake.

## SECTION 2

21. In this section, which is not intended to be exhaustive, we highlight some emerging issues which warrant examination under the UPR.

### Health and social care

22. There have been numerous reports, of which we can only reference a few examples here, providing evidence of failures in our health and social care system to adequately protect the rights of older and disabled people in particular. The Care Quality Commission<sup>14</sup>, undertook an unannounced inspection of 100 hospitals in England in 2011 to examine whether older people are “treated with respect and getting enough food and drink to meet their needs.”<sup>15</sup> It found that 20 out of 100 were non-compliant with the required standards and an additional 35 met the standards but were not fully-compliant and needed to improve. Not being compliant included concerns such as patients not being helped to eat and food being left out of reach, patients’ privacy not being respected and staff speaking to patients in a dismissive or disrespectful way.
23. These same issues, regarding inadequate provision of food and drink and lack of attention provided to older people in health services, emerged in the investigations of the Parliamentary and Health Service Ombudsman<sup>16</sup>. 18% of the overall complaints (nearly 9000 in total) the ombudsman received in the year leading up to this report concerned the care of older people.<sup>17</sup>
24. There is significant evidence that people with learning disabilities are being wholly inadequately treated within our health and social care provision. In 2009, the Health Service Ombudsman and the Local Government Ombudsman published the result of their joint investigation into six cases which had been identified by Mencap<sup>18</sup>, in its Death by Indifference report<sup>19</sup>. This report found that people with learning disabilities were dying unnecessarily due to institutional discrimination and neglect in the NHS. For example one man, Martin Ryan, aged 43, with severe learning difficulties and no speech, was left without

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<sup>14</sup> The independent regulator of health and social care services in England

<sup>15</sup> Care Quality Commission, Dignity and nutrition inspection programme, October 2011, <http://www.cqc.org.uk/public/reports-surveys-and-reviews/themes-inspections/dignity-and-nutrition-older-people>

<sup>16</sup> This body investigates complaints about government departments in the UK and the National Health Service (NHS) in England, and reports to Parliament. The Parliamentary and Health Service Ombudsman published a Report of the Health Service Ombudsman on ten investigations into NHS care of older people, 2011, <http://www.ombudsman.org.uk/care-and-compassion/introduction>

<sup>17</sup> *ibid*

<sup>18</sup> A UK charity, which is the leading voice of learning disability

<sup>19</sup> Mencap, Death by indifference, March 2007, <http://www.mencap.org.uk/sites/default/files/documents/2008-03/DBIreport.pdf>

food for 26 days. The ombudsmen found that “...in four of the six cases that the public bodies concerned had failed to live up to human rights principles, especially those of dignity and equality.”<sup>20</sup>

25. In May 2011, the BBC broadcast an investigation by its Panorama programme of systematic abuse of people with learning disability and autism in a privately-run residential care establishment called Winterbourne View<sup>21</sup>. It shocked the nation and demonstrated not only horrific abuse in this home including staff routinely kicking, taunting, pinning down, and slapping residents, but the failure of responsible agencies to prevent this from happening, for allowing it to continue for so long, and for it taking an undercover media investigation for it to be exposed.
26. The UK accepted the recommendation from the last review to ‘provide more care and attention to the rights of the elderly’ (Canada). What the evidence about health and social care illustrates is the urgent need for the Government to address the rights of older people and disabled people in health and social care services, and improve the culture of care.

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

27. Government proposals to further restrict Legal Aid are currently being considered by the UK Parliament. There is widespread concern that these regressive proposals will put legal advice and representation beyond the reach of many people in the UK and place their rights at risk. The Legal Aid, Sentencing and Punishment of Offenders Bill sets out measures which would cut the legal aid system in England and Wales to save £350million from the £2.1billion legal aid budget. Over the past 10 years, funding for civil legal aid has decreased by 24% in real terms. The proposals seek to decrease funding for legal aid for housing, education, welfare, and employment. The proposals will see legal aid removed for disabled people seeking welfare advice, families struggling with debt, and in family and immigration cases, meaning people may be prevented from being unified with their family, losing access to their children or unable to seek remedies to protect themselves from domestic violence.

### **Violence against women**

28. The government has adopted a national strategy and plan to address violence against women, seeking to locate the issue within the international human rights framework, though with insufficient regard to the domestic framework provided by the HRA<sup>22</sup>. However, the UK has not set up a strategic oversight body such as a commission on violence, as recommended during the 2008 UPR. The Women’s National Commission<sup>23</sup>, cited in the UK’s midterm progress update was closed by the Government on 31 December 2010. The

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<sup>20</sup>Parliamentary and Health service Ombudsman, *Six Lives: The provision of public services to people with learning disabilities*, March 2009, <http://www.ombudsman.org.uk/improving-public-service/reports-and-consultations/reports/health/six-lives-the-provision-of-public-services-to-people-with-learning-disabilities/3>

<sup>21</sup> BBC Panorama’s *Undercover Care: The Abuse Exposed*, BBC One, Tuesday, 31 May 2011

<sup>22</sup> The UK has not yet signed up to the Council of Europe’s Convention on preventing and combating violence against women and domestic violence.

<sup>23</sup> The official, independent, advisory body giving the views of women to the UK Government, including on violence against women



UK has also not yet signed the European Convention on Preventing and Combating Violence Against Women and Domestic Violence.

29. There is serious concern that the likelihood of sufficient funding being available to properly implement the plan is remote. At the same time funding for the women's sector, and especially those organisations providing frontline support to women survivors of violence is precarious, with a series of ad hoc and insufficient arrangements raising doubts about the sustainability of the sector.
30. Convictions rates for rape remain extremely low by comparison to other crimes of violence. In this context there is alarm at Government proposals relating to anonymity in rape trials, which at one point suggested the government was considering removing the victims' presumption of anonymity. Equally there is much concern about a small but growing number of cases in which women have been prosecuted when they have withdrawn allegations or the case has collapsed. One particular issue that needs urgent attention is the rule of 'no recourse to public funds'. These prevent certain immigrant women seeking support from the state – leaving women to choose between destitution or remaining in an abusive, violent and potentially lethal relationship.

#### **Disability hate crime and the failure to protect right to life**

31. The Independent Police Complaints Commission, (IPCC) highlighted a worrying trend in the "failure to protect" presenting "... a disturbing pattern of avoidable mistakes being repeated and the public not receiving the protection to which they are rightly entitled"<sup>24</sup>. An emerging issue concerns understanding hate crime targeted at disabled people. We wish to draw attention to the case of Fiona Pilkington and her daughter. An inquest into their deaths ended in September 2009. The inquest heard that Ms Pilkington and her neighbours had made 33 calls over a seven-year period asking police for help after suffering repeated and continuing abuse and torment from a gang of youths outside her home. In October 2007, Ms Pilkington drove to a lay-by near Earl Shilton, Leicestershire and set the car alight with her and her disabled daughter inside the vehicle. The IPCC investigation into the death of Ms Pilkington reported in May 2011. One of the investigation's key findings was the failure of the police to consider the treatment of this family as hate crime, and "... in not identifying Fiona Pilkington and her children as a vulnerable family."<sup>25</sup>
32. There were similar findings by the IPCC following the death of David Askew, a 64 year old man with learning difficulties, after ten years of harassment by youths.<sup>26</sup>
33. The UK has a strong legislative framework for protecting different groups against hate crime, such as on grounds of race, religion and sexual orientation, though it remains an issue of

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<sup>24</sup> Nick Hardwick, Foreword, Independent Police Complaints Commission, Annual Report and Statement of Accounts 2009/10, p8

<sup>25</sup> IPCC publishes Fiona Pilkington investigation report  
[http://www.ipcc.gov.uk/news/Pages/pr\\_240511\\_pilkington.aspx](http://www.ipcc.gov.uk/news/Pages/pr_240511_pilkington.aspx)

<sup>26</sup> IPCC publishes findings from investigation into GMP contact with David Askew  
[http://www.ipcc.gov.uk/news/Pages/pr\\_210311\\_gmpaskew.aspx](http://www.ipcc.gov.uk/news/Pages/pr_210311_gmpaskew.aspx)

grave concern in all these areas<sup>27</sup>. The UK is amending the Legal Aid Sentencing and Punishment of Offenders Bill to introduce a minimum sentence of 30 years for disability and transgender hate crime murder (currently the standard for other strands). We recommend that the Government establishes a better system for collating data on hate crime, to ensure this issue is addressed in all parts of the country, and that it is given due priority within all police forces.

### **Dale farm**

34. The events at Dale Farm in which up to 86 Irish Traveller families were evicted with no culturally suitable alternative being offered is “contrary to international human rights standards on housing and evictions”<sup>28</sup>. The Committee on the Elimination of Racial Discrimination condemned the eviction as disproportionate and expressed serious concerns that it may worsen the already high levels of discrimination and hostility towards Travellers and Gypsies.<sup>29</sup> Of grave concern was the Government’s unwillingness to accept the offer reportedly made by the OHCHR’s Europe representative, Jan Jarab to help broker a peaceful solution.<sup>30</sup> We urge the Human Rights Council to consider recommendations for the UK to ensure adequate provision of culturally appropriate sites are granted to Travellers and Gypsies, to reinsert the duty on local councils to provide sites for Travellers and Gypsies and for the UK government to ensure it complies with its international obligations.

### **Control Orders**

35. On 26 January 2011 the Home Secretary announced the Government’s proposals for the future of control orders. The control order scheme introduced by the last Government is a significant breach of the right to a fair trial and the presumption of innocence, is unsafe and unfair. The new system of Terrorism Prevention and Investigation Measures will still include electronic tagging and an overnight residence requirement. Although they will make access to the internet easier for ‘controlees’, they will still place restrictions on who controlees can meet, and where they can go (including foreign travel bans). And although they will be limited to two years, it appears likely that they may be renewable, making any such restriction illusory. Under the proposals, the control orders will still be initiated by the Home Secretary and the regime will continue to run outside of the criminal justice system of investigation, arrest, charge and conviction. Overall, these new proposals aim to continue the process of punishment without trial which was the hallmark of the previous regime, and fly in the face of the UK’s international obligations to ensure a fair trial.

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<sup>27</sup> See NGOs Against Racism report to CERD, July 2011  
[http://www2.ohchr.org/english/bodies/cerd/docs/ngos/NGOsAgainstRacism\\_UK79.pdf](http://www2.ohchr.org/english/bodies/cerd/docs/ngos/NGOsAgainstRacism_UK79.pdf) and Stonewall’s report on homophobic hate crime

[http://www.stonewall.org.uk/documents/homophobic\\_hate\\_crime\\_\\_final\\_report.pdf](http://www.stonewall.org.uk/documents/homophobic_hate_crime__final_report.pdf)

<sup>28</sup> Amnesty International, <http://action.amnesty.org.uk/ea->

[action/action?ea.client.id=1194&ea.campaign.id=11724&gclid=COH6mKr7rqwCFYEZ4QodrCB0GQ](http://www2.ohchr.org/english/bodies/cerd/docs/statements/DaleFarm_Statement.pdf)

<sup>29</sup> [http://www2.ohchr.org/english/bodies/cerd/docs/statements/DaleFarm\\_Statement.pdf](http://www2.ohchr.org/english/bodies/cerd/docs/statements/DaleFarm_Statement.pdf)

<sup>30</sup> <http://www.guardian.co.uk/uk/2011/sep/19/dale-farm-evictions-un-negotiation>

## Protest

36. We continue to be very concerned that the right to protest protected under Article 21 (Right of peaceful assembly) of the ICCPR is undermined by a range of measures. Laws which are intended to be used to combat anti-social behaviour, terrorism and serious crime are routinely used against legitimate protesters or disproportionately. Broad anti-terrorism powers of stop and search have been used to harass and stifle peaceful protest. Protest around Parliament has been severely restricted by laws limiting and overly regulating the right to assemble within 1km of the Houses of Parliament. We are also very concerned that intrusive police photography of peaceful protesters is becoming commonplace, using powers under the Terrorism Act which were intended only to be used against those who intend to use photographs for the purpose of terrorism. The practice of “kettling”, a police tactic whereby a large number of protesters are detained within a police cordon, often for several hours, is we believe often a disproportionate response and one which risks trapping the innocent and the vulnerable alongside the guilty and the hostile. This practice may also breach the right to liberty and is currently before the European Court of Human Rights in Strasbourg<sup>31</sup>.

## Education

37. The Ministry of Justice in partnership with the BIHR ran a Human Rights in Schools project from 2006-2009 and as part of this produced a teaching resource for schools, aimed at children aged 11-14<sup>32</sup>. This was referred to by the UK in the last review<sup>33</sup>. Funding for this work has now been discontinued and the Ministry of Justice is no longer directly involved in human rights education in schools. This project also produced guidance for secondary schools on developing a “whole school” approach to human rights, but this guidance has not yet been published, though we are hopeful it will be soon.

38. Stonewall<sup>34</sup>, commissioned YouGov<sup>35</sup> to poll teachers about homophobic bullying in schools in 2008 and found that nine in ten secondary school teachers and four in ten primary school teachers had witnessed homophobic bullying<sup>36</sup>.

## Child poverty

39. The UK’s commitment to half child poverty by 2010 is unlikely to be met (official figures will be published in 2012). According to the latest available figures, child poverty fell from 3.4

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<sup>31</sup> <http://www.liberty-human-rights.org.uk/media/press/2011/liberty-client-takes-kettling-challenge-to-court-of-huma.php>

<sup>32</sup> Right Here, Right Now: Teaching Citizenship through Human Rights, Ministry of Justice and British Institute of Human Rights involving Amnesty International and the Department for Children, Schools and Families, Crown copyright 2009

<sup>33</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>34</sup> The leading gay, bisexual and lesbian equality charity

<sup>35</sup> An independent policy company

<sup>36</sup> Stonewall, Teachers Report, Teachers' perspective on homophobic bullying in Britain's primary and secondary schools (2009)

[http://www.stonewall.org.uk/at\\_school/education\\_for\\_all/quick\\_links/education\\_resources/4003.asp](http://www.stonewall.org.uk/at_school/education_for_all/quick_links/education_resources/4003.asp)

million (26% of all children) in 1998/99 to 2.6 million (20%) in 2009/10 before housing costs<sup>37</sup>. Child poverty has fallen by 900,000 since 1999 – a significant achievement – but much greater focus is required if the UK is to meet its legally binding target, enshrined in the Child Poverty Act (2010), to eliminate child poverty by 2020<sup>38</sup>. Alarmingly, this figure is expected to rise following the budgetary cuts<sup>39</sup>. The IFS<sup>40</sup> projects child poverty will rise by 800,000 by 2020. IFS research found that the budgetary cuts announced in the Government's emergency budget in 2010 would affect poorest families with children most<sup>41</sup>. We recognize the fall in child poverty is the largest and most sustained since records began in 1961, but remain disappointed that the UK Government has failed to half child poverty by 2010 despite its acceptance of such a recommendation in the UPR process in 2008. We urge the UK to allocate adequate resources to protect children from hardship resulting from its policies and to meet its commitment to eliminate child poverty by 2020.

## Equality

40. The Equality Act 2010 has positively raised the level of protection from discrimination for many groups. The Act introduced a new Single Public Sector Equality Duty on public bodies covering age, disability, gender reassignment, pregnancy and maternity, race, religion and belief, sex, sexual orientation. However, there is concern that the public sector duty may, in practice, be weaker than the previous law because it does not explicitly include procedural requirements such as equality impact assessments.
41. Some sections of the Equality Act have not yet come into force, including the prohibition on age discrimination in services and public functions, which has particularly significant human rights implications for older people using health and social care services. Following the change of government in 2010 the following sections of the Equality Act will not be implemented: dual discrimination, the inclusion of a duty on public bodies to address socio-economic inequalities and mandatory gender pay gap information. We do not believe the voluntary measures being proposed to address the gender pay gap are sufficient.
42. An equality act for Northern Ireland has been planned for several years, but progress to date is limited.
43. The HRA provides a right to non-discrimination (article 14) but only in relation to the enjoyment of the other rights. We strongly recommend the UK adopts a free standing right to equality.
44. Despite having cross-party support when passed in Parliament the Equality Act was subject to a UK government web-based public consultation ("the Red Tape Challenge") on whether

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<sup>37</sup> Department for Work and Pensions (May 2011) Households below average income: an analysis of the income distribution 1994/5-2009/10, London.

<sup>38</sup> *ibid*

<sup>39</sup> Forecasts by the OECD and independent research centres, for instance, the Institute for Fiscal Studies (IFS) predict that child poverty rates will rise following the budgetary cuts.

<sup>40</sup> Institute for Fiscal Studies, an independent research centre

<sup>41</sup> <http://www.endchildpoverty.org.uk/news/news/new-ifs-research-shows-families-and-poorest-hardest-hit-by-coalition-cuts/23/184>

it, or any of its provisions, should be scrapped or retained<sup>42</sup>. Some of the provisions of the Equality Act have been part of UK law for over 40 years. Since launching the Red Tape Challenge the Government has stated it is not intending to repeal the Equality Act, but information is not yet available on any changes which may be made to it. We are very concerned that laws and regulations designed to prevent discrimination and promote fairness are being depicted by the UK government as burdensome on business. In a submission to the UN's CERD committee a group of NGOs highlighted that of the over 6000 responses, 96% did not want the Act to be scrapped<sup>43</sup>.

## Disabled people

45. There are widespread concerns that the UK's measures to reduce the deficit are having a disproportionate impact on disabled people<sup>44</sup>. It is estimated that disabled people will lose £9 billion in benefits in the course of this Parliament (2010-2015)<sup>45</sup>. This report also highlights that "disability poverty is underestimated by not including the much higher everyday costs,"<sup>46</sup> that disabled people face, just to achieve the same standard of living as a non-disabled person<sup>47</sup>. Disability organisations are concerned that proposed changes to disability support will reduce disabled people's independence and will hit disabled people disproportionately hard.<sup>48</sup> There are concerns that proposals to remove the mobility component of this allowance from disabled people living in residential homes will confine people to their homes. Overall, the cuts will be highly damaging to disabled people and people with mental health problems, making access to the system extremely difficult and exacerbating existing mental health conditions for many.

46. Local government is facing cuts of 26% to the grant it receives from central government. This is causing huge pressure on the budgets for essential services that disabled people rely on and which guarantee their human rights and dignity. Recent court cases have found that changing eligibility criteria is unlawful, when due regard is not paid to the needs of disabled people.<sup>49</sup>

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<sup>42</sup> The Red Tape Challenge, <http://www.redtapechallenge.cabinetoffice.gov.uk/themehome/equalities-act/>

<sup>43</sup> Joint submission by UK NGOs Against Racism to the UN Committee on the Elimination of Racial Discrimination (CERD) with regard to the UK Government's 18th and 19th Periodic Reports, p17. [http://www2.ohchr.org/english/bodies/cerd/docs/ngos/NGOsAgainstRacism\\_UK79.pdf](http://www2.ohchr.org/english/bodies/cerd/docs/ngos/NGOsAgainstRacism_UK79.pdf)

<sup>44</sup> For detailed information on the situation regarding disabled please refer to the UPR submission from Disability Rights Watch UK

<sup>45</sup> Report from think-tank Demos in 2010, funded by leading disability charity, Scope [http://www.scope.org.uk/sites/default/files/Counting\\_the\\_Cost.pdf](http://www.scope.org.uk/sites/default/files/Counting_the_Cost.pdf) Regression around equality act, and weakening of specific duties.

<sup>46</sup> *ibid*

<sup>47</sup> The Welfare Reform Bill going through Parliament will replace the Disability Living Allowance which was introduced in recognition of the additional costs faced by disabled people.

<sup>48</sup> <http://www.scope.org.uk/news/welfare-reform-bill-scope-comment>

<sup>49</sup> *R (JM and NT) v Isle of Wight Council* [2011] EWHC 2911 admin <http://www.bailii.org/ew/cases/EWHC/Admin/2011/2911.html>, *R (W) v Birmingham City Council* [2011] EWHC 1147 (Admin)

## Race

47. The UK was recently examined (August 2011) under CERD and NGOs Against Racism submitted a detailed report outlining its concerns, in which it recommended among other issues that “the Government urgently needs to establish and implement a strategy for the elimination of racial discrimination in consultation with race equality NGOs”, and that the impact of government policies including budgetary cuts on race equality is considered<sup>50</sup>. CERD has previously raised concerns about the “disproportionately high incidence of deaths in custody of members of ethnic or racial minority groups”. Information was not provided to CERD by the Government regarding the number of complaints involving racial discrimination referred to the Independent Police Complaints Commission, or their outcomes and disciplinary action.

## Asylum and immigration

48. ‘Still Human Still Here’, a coalition of more than 50 organisations campaigning to end the destitution of refused asylum seekers in the UK believes that the “level of support available to asylum seekers who are waiting decisions on their applications is now so low that many are unable to meet their essential living needs of adequate food, clothes and toiletries”<sup>51</sup>. The Committee on Economic, Social and Cultural Rights reviewed the UK in May 2009, expressing concerns about the “low level of support and difficult access to health care for rejected asylum seekers”<sup>52</sup>; giving asylum seekers access to the labour market; (asylum seekers are currently prohibited from working); and ensuring access to essential services, including the availability of HIV/AIDS treatment. These recommendations were endorsed by the UN Special Rapporteur on the human rights of migrants in 2010.
49. The UK was criticised for not meeting its own five-year deadline of resolving all the ‘legacy’ asylum cases.<sup>53</sup> The unacceptable delay some asylum seekers have faced is compounded by the concerns of destitution among refused asylum seekers.
50. The detention of asylum seekers and migrants remains a pressing concern, including the inappropriate detention of vulnerable adults, including victims of torture and trafficking.

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<sup>50</sup> For detailed information on race we recommend reference to the full report [http://www2.ohchr.org/english/bodies/cerd/docs/ngos/NGOsAgainstRacism\\_UK79.pdf](http://www2.ohchr.org/english/bodies/cerd/docs/ngos/NGOsAgainstRacism_UK79.pdf)

<sup>51</sup> Still Human Still Here submission to UPR, [www.stillhuman.org](http://www.stillhuman.org)

<sup>52</sup> Concluding observations of the Committee on Economic, Social and Cultural Rights, 12 June 2009, para 27, <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G09/429/21/PDF/G0942921.pdf?OpenElement>

<sup>53</sup> The Home Affairs Committee of the UK Parliament criticised the UK Border Agency for failing to meet its target of dealing with all ‘legacy’ cases within five years. The UK Border Agency has archived many cases saying they are unable to contact the applicant, but refugee support agencies report having clients who have been in regular contact and whose cases are still outstanding. It is estimated the number of legacy cases totalled about 450,000 when identified in 2006 in a backlog within the Home Office. Home Affairs Committee - Fifteenth Report, The work of the UK Border Agency (April July 2011) <http://www.publications.parliament.uk/pa/cm201012/cmselect/cmhaff/1497/149703.htm>

Yarl's Wood Befrienders for example, identified 32 detained women claiming to be victims of torture or trafficking in 2011<sup>54</sup>.

## **Conclusion**

51. We thank the Human Rights Council for providing this opportunity to submit information from UK civil society concerning progress towards human rights in the UK. We hope this submission provides useful context for the 13<sup>th</sup> session of the Human Rights Council Universal Periodic Review.

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<sup>54</sup> See Yarl's Wood Befrienders UPR submission. See also Detention Action UPR submission.