

Annex: Recommendations

1. Enhancing the status of international human rights in domestic law

The UK and Welsh governments, where relevant, should:

- Incorporate all provisions of the ICCPR not currently covered by the Human Rights Act 1998 into domestic law.
- Ensure that any proposed changes to the human rights legal framework do not lead to any reduction in the respect, protection and fulfilment of human rights.
- Ensure that the loss of EU funding does not undermine the UK's equality and human rights infrastructure, including the already scarce funding available to specialist services, such as those that support women survivors of violence and domestic abuse.
- In any future consideration of the territorial application of the Human Rights Act 1998, ensure their obligations in international law under the ICCPR extend to the operations of British forces overseas, and to foreign nationals when they are under de facto UK jurisdiction.
- Reinststate all original, and commence any outstanding, provisions of the Equality Act 2010, including provisions on dual discrimination and requiring political parties to report on candidates' diversity.

The UK Government should:

- Ratify the Optional Protocol to the ICCPR to provide the right to individual petition.
- Keep the reservations to ICCPR under regular review, publishing comprehensive explanations of their necessity.

2. Accountability for human rights violations and complicity by British military abroad

Allegations of abuse by British military abroad and complicity in mistreatment of detainees held by other governments

The UK Government should:

- Refrain from legislating to introduce a statutory presumption against the prosecution of current or former military personnel, in cases involving allegations of torture or ill-treatment.
- Reconsider its decision not to set up full, independent judge-led inquiries into allegations of torture committed by British military personnel in Iraq between 2003 and 2009, and into allegations of British involvement, including by means of complicity, in the mistreatment of detainees held by other governments. Any inquiries should be able to secure relevant evidence to hold alleged perpetrators to account, and they should examine systemic issues so that lessons learned can inform future practice.

Consolidated guidance

The UK Government should:

- Publish the Investigatory Powers Commissioner's Office's draft proposed principles to improve the consolidated guidance.
- Amend the revised guidance to ensure that British intelligence and security personnel cease any engagement with detainees in the custody of foreign intelligence services, in any case where there is a risk of torture or ill-treatment.

3. Counter-terrorism measures

Port and border control powers

The UK Government should introduce a threshold for reasonable suspicion for arresting individuals at airports and ports, and any new powers introduced in this area.

14-day pre-charge detention

The UK Government should reduce the limit on pre-charge detention for terrorist suspects to four days, in line with the criminal law in England and Wales.

Use of closed material procedures

The UK Government should use the forthcoming review of the Justice and Security Act 2013 to consider whether closed material procedures are operating appropriately and, if retained, consider ways to strengthen transparency around their use to ensure they are used sparingly and only when strictly necessary.

The Prevent duty

The UK Government should ensure a full, independent evaluation of the impact of the Prevent strategy, including on equality, good relations and human rights, and ensure that people responsible for Prevent in public bodies are trained in their equality and human rights obligations.

Deprivation of citizenship on terrorism grounds

The UK Government should strengthen existing safeguards against statelessness by re-introducing the suspensive effect of lodging an appeal against a deprivation of citizenship order.

Use of diplomatic assurances when extending mutual legal assistance

The UK Government should:

- Ensure there is no deviation from the UK practice of seeking diplomatic assurances that the death penalty will not be used when extending mutual legal assistance.

- Revise the relevant provisions in Overseas Security and Justice Assistance guidance.

4. Equality and non-discrimination

Hate crime and identity-based violence

The UK and Welsh governments, where relevant, should:

- Improve the reporting of hate crime in England and Wales, including by strengthening the initial handling and recording of hate crime reports, improving the quality of support to victims and improving the effectiveness of hate crime training for police forces.
- Ensure its forthcoming review of hate crime law in England and Wales results in reforms that provide equal and adequate protection to different protected groups, and that improve the ability of criminal justice agencies to understand and enforce the law effectively in response to hate crime.

The Welsh Government should conduct and publish an analysis of the impact of the national Hate Crime Report and Support Centre, and its framework for action on hate crime, and use those findings to develop and publish a long-term strategy for reducing hate crime in Wales.

Racial inequality in policing and disproportionate detention

The UK and Welsh governments, where relevant, should:

- Hold police forces to account for their use of all stop and search powers, to make sure they are used in a lawful, non-discriminatory manner and only on the basis of reasonable suspicion.
- Ensure the Metropolitan Police Service comprehensively reforms the Gangs Matrix, to ensure that racial disproportionality in the Matrix is addressed and that its use complies with data protection laws, and carries out regular reviews of its approach and content.
- Develop and implement a comprehensive, coordinated, long-term strategy to address the disadvantages that Gypsy, Roma and Traveller communities face in the criminal justice system and across other areas of life.

- Prioritise implementation of the recommendations set out in the Lammy Review, to increase the confidence of ethnic minorities in the criminal justice system in England and Wales.
- Collect, analyse and publish disaggregated data on the experience of people sharing protected characteristics in all mental health settings, with a particular emphasis on people from ethnic minority groups, to understand who is being detained and treated and in what circumstances, and take action to tackle inequalities.

5. The right to an effective remedy and fair trial

Legal aid reforms

The UK and Welsh governments, where relevant, should:

- Identify where the Legal Aid, Sentencing and Punishment of Offenders Act 2012 has had a disproportionately negative impact on people sharing certain protected characteristics and take mitigating action, including bringing areas of law back in scope where necessary, including by reinstating legal aid for initial advice in, at least, family and housing cases.
- Ensure that financial eligibility thresholds for legal aid exclude only those who can genuinely afford to pay for their own legal representation and that contributions are affordable.
- When reviewing Exceptional Case Funding, ensure that it works effectively to protect people's rights under the Human Rights Act 1998 and EU law, including by issuing specific guidance on the factors to be taken into account by decision makers when considering ECF applications for discrimination cases.
- Extend 'qualified one way cost shifting' protection to discrimination claims brought under section 114 of the Equality Act 2010 and breaches of the Human Rights Act 1998.
- Amend the Lord Chancellor's guidance for civil legal aid to improve the availability of funding for representation in discrimination cases.

Court reform and modernisation

The UK Government should:

- Collect, analyse and publish disaggregated data about the protected characteristics of court users in the criminal and civil justice systems.
- Establish a clear evidence base and conduct a comprehensive assessment of the impact of the ongoing court reform programme (including court closures, virtual hearings and online court processes), including the potential impact on those with protected characteristics, and the equality and human rights issues that need to be addressed before any new measures are introduced or existing pilots are extended.
- Improve the treatment of disabled people in the criminal justice system, including by implementing any recommendations resulting from our inquiry into access to justice for defendants with mental health conditions, cognitive impairments and neuro-diverse conditions.

Fast-track rules in immigration detention

The UK Government should ensure all immigration detainees have effective access to fair and accessible procedures to challenge the decision to detain or deport.

Procedures for identifying and determining statelessness

The UK Government should:

- Adapt Home Office policies and procedures for administrative detention, by obliging immigration officers to refer a person who may be stateless, or at risk of statelessness, to the statelessness determination procedure, at the point of the decision to detain and at regular intervals during the detention period.
- Improve the speed and quality of the statelessness determination procedure by increasing the number of staff involved in processing applications and improving the training they receive, and by providing applicants with free legal aid and an effective right to appeal decisions in the event of refusal.

6. Right to life, freedom from torture and ill-treatment, and conditions in detention

Prisons, the youth custodial estate and policing

The UK and Welsh governments, where relevant, should:

- Address overcrowding in adult prisons, including by investing in appropriate alternatives to imprisonment and widening access to liaison and diversion services.
- Improve the provision and availability of healthcare in the adult and youth custodial estate, including pregnancy and maternity care and mental health services – recognising the different issues women, including trans women, children and people belonging to ethnic minority groups, experience in detention – to prevent suicide and self-harm and to facilitate resettlement.
- Ensure effective oversight and monitoring of safeguards surrounding the use of PAVA spray, including monitoring the efficacy of the new guidance and training for prison officers.
- Introduce a statutory obligation on prisons and youth custodial institutions to respond to recommendations from investigations into deaths in custody by publishing an action plan.
- Ensure that children are detained only as a measure of last resort and for the shortest possible time. Children should not be held in prison-like settings, but in safe and appropriate environments, in close proximity to their families, and should be supported by a sufficient number of highly skilled and specialist staff who are able to meet their needs.

Health and social care services

The UK Government should:

- Clarify and strengthen the role of the Healthcare Safety Investigation Branch in conducting investigations compatible with the requirements of Article 3 of the European Convention on Human Rights and Article 7 ICCPR into patient safety incidents in all healthcare settings.
- Ensure effective oversight and monitoring of the measures in place to prevent failures of care in health and social care services, including the duty of candour across NHS trusts in England and the Freedom to Speak Up Guardians.
- Introduce a requirement for NHS trusts to ensure the data they collect on the number of deaths caused by failures of care in England is disaggregated by protected characteristic, analysed and published.

The Welsh Government should:

- Establish an independent body to investigate patient safety incidents in all healthcare settings in Wales.
- Set up a Welsh equivalent to the Freedom to Speak Up Guardians, ensuring that any such measure is subject to effective oversight and monitoring.

The UK and Welsh governments should:

- Monitor the impact of any reductions in the availability of adult social care on the dignity and wellbeing of older and disabled people, including their right to live independently.
- Monitor the extent of unmet needs, and develop plans to progressively close gaps in meeting needs.

Use of force

The UK and Welsh governments, where relevant, should:

- Promote consistent legal and policy approaches to the use of restraint, based on human rights principles, with cross-sector learning, in line with our human rights framework for restraint. This should include a ban on any technique that deliberately inflicts pain on children.
- Harmonise approaches to recording incidents of restraint, to allow for improved monitoring, evaluation and learning, and more comprehensive and comparable data, and ensure that information on the protected characteristics of people who are restrained is collected and monitored locally and nationally, analysed and published. This will help build a robust evidence base to underpin efforts to tackle restraint, particularly its disproportionate use on groups of people who share certain protected characteristics.

Corporal punishment

The UK Government should prohibit all forms of physical punishment of children, including through the abolition of the 'reasonable punishment' defence.

The Welsh Government should ensure the effective implementation of the Children (Abolition of Defence of Reasonable Punishment) (Wales) Bill, following the Bill's enactment.

The Grenfell Tower disaster

The UK Government should take steps to fulfil its positive duty to protect life, including by:

- Removing combustible cladding from hundreds of other buildings and improving fire safety measures, including by implementing training for firefighters on combatting cladding fires and providing residents with sufficient fire safety advice.
- Providing additional protective measures to meet the needs of people in the most vulnerable situations, in relation to evacuation policies and housing allocation.
- Improving participation of survivors, bereaved families and others affected by the disaster in the inquiry.

7. Violence against women and girls (VAWG)

Overarching framework to tackle VAWG

The UK and Welsh governments, where relevant, should:

- Fully implement and resource their strategies to tackle VAWG, ensuring effective mechanisms for coordinated cross-government action and accountability for delivery.
- Ensure sustainable and sufficient ring-fenced funding for support services that address all forms of VAWG, including specialist provision for Black and ethnic minority women, disabled people, LGBT people and individuals with complex needs, as well as single-sex services, and ensure such services are available and accessible to all survivors, regardless of immigration status.
- Ensure VAWG strategies comprehensively address the needs of all survivors, including the needs of people who share different protected characteristics and those with insecure immigration status.
- Put in place the changes to law, policy and practice needed to enable ratification of the Convention on Preventing and Combating Violence Against Women and Domestic Violence.

The Welsh Government should ensure the full implementation of the Violence against Women, Domestic Abuse and Sexual Violence (Wales) Act 2015.

Justice system responses to VAWG

The UK and Welsh governments, where relevant, should:

- Improve the reporting and recording of all forms of violence against women and girls – ensuring that the data collected is disaggregated by protected characteristic, analysed and published – and increase prosecution and conviction rates, ensuring a victim-centred approach.
- Ensure specialist support organisations, independent experts and survivors' groups are closely consulted when reviewing and identifying steps to improve the criminal justice response to rape and serious sexual offences in England and Wales, including when reviewing the reasons for victims' withdrawal of complaints.
- Ensure the Draft Domestic Abuse Bill reflects our recommendations and the Draft Domestic Abuse Bill Committee report of 2019, including by: introducing a duty on central Government to adequately fund support services and ensure they are available and accessible to all, regardless of immigration status; strengthening safeguards for survivors in family and civil law proceedings in all cases where domestic abuse is raised; and recognising that domestic abuse has a disproportionate impact on women.
- Prohibit police, as well as providers of healthcare and other support services, from sharing information about an individual's immigration status for the purpose of immigration control.

8. Deprivation of liberty

Immigration detention

The UK Government should:

- Introduce a 28-day time limit on immigration detention, in line with the recommendations of the UN High Commissioner for Refugees,¹ and ensure that detention is used only as an administrative measure of last resort.

¹ United Nations High Commissioner for Refugees (2015), 'Immigration Bill 2015: Parliamentary Briefing for House of Commons' [accessed: 8 March 2019].

- Introduce independent processes, both when a decision to detain is made and during detention, for the identification of individuals who may face a particular risk of harm in detention, and review detention policies and rules to ensure they are detained only in exceptional circumstances.
- Remove reference to ‘powerlessness’ from the definition of torture in the statutory guidance used to determine whether an individual will be at particular risk of harm in detention. The screening process should extend beyond torture to include all those who, as a result of a mental health condition or traumatic experiences, are particularly at risk of mental deterioration in detention.
- Ensure that independent advocacy services are automatically available and accessible to individuals who lack capacity, or have a mental health condition or language barriers, and need help to understand, make representations in relation to, or challenge decisions to detain, segregate or deport.
- Ensure effective oversight, monitoring and complaints policies and procedures in the immigration detention estate to ensure that any ill-treatment is immediately identified, and ensure the effectiveness of investigations into allegations of ill-treatment.
- Implement the recent judgment of the UK High Court regarding the investigation into abuse at Brooke House IRC (MA, BB v Secretary of State for the Home Department), including by ensuring the investigating body has the power to compel the attendance of witnesses and can hold public hearings.
- Renew and fulfil its commitment to ending the immigration detention of all children.

Mental health and capacity

The UK and Welsh governments, where relevant, should:

- Ensure there are sufficiently and sustainably funded appropriate, high-quality mental health services in the community, to support the needs of all adults and children, including those with learning disabilities and / or autistic spectrum disorder, to reduce the need to resort to involuntary admission and treatment.
- Strengthen the criteria for detaining people under the Mental Health Act to ensure that the least restrictive intervention is used, and improve the ability of people detained to obtain a timely and meaningful review of the decision to detain or prolong detention. In the case of people whose liberty is restricted under the Mental Capacity Act, ensure that they are supported and enabled to appeal to the Court of Protection and have access to an independent advocate.

The Welsh Government should collect, analyse and publish disaggregated data on the number of people with learning difficulties in both NHS-run and independent mental health hospitals and units in Wales, and those placed out of area in English hospitals, including data on the length of hospital admissions.

9. Human trafficking and modern slavery

The UK Government should:

- Set out a detailed plan and timeframe for implementing the recommendations of the Independent Review of the Modern Slavery Act, alongside the proposed changes to the National Referral Mechanism and other relevant remaining concerns, such as in relation to victim support entitlements.
- Accept and implement the recommendation of the Independent Review of the Modern Slavery Act regarding the need to make it clear that children cannot consent to their exploitation.
- Ensure that effective remedies are available and accessible, in law and in practice, for all victims of trafficking and exploitation, whatever their legal status, and review and amend the eligibility criteria under the Criminal Injuries Compensation Scheme to ensure that compensation is available and accessible for victims.

The Welsh Government should conduct and publish an evaluation of the Wales Anti-Slavery Leadership Group, to establish the impact it has had on survivors.

10. Right to privacy and freedom of expression

Privacy rights

The UK Government should:

- Review and assess the changes brought about by the Investigatory Powers Act 2016 (IPA) for compliance with human rights law, bearing in mind concerns raised by the recent decision of the UK High Court,² as well as the ongoing litigation before the ECtHR.³
- Revise the legal regime and oversight mechanisms governing the interception of communications and communications data, to ensure that they are clear, transparent and efficient, including by implementing IPA Schedule 10 para 54 (which requires the repeal of Chapter 2 of Part 1 of the Regulation of Investigatory Powers Act 2000) without further delay.
- Scrutinise the impact of any new policing technologies on human rights through an independent equality and human rights impact assessment, including a detailed privacy impact assessment under the GDPR, and a thorough process of public and parliamentary consultation. The UK Government should ensure that decisions regarding the use of such technologies are informed by the impact assessment and consultation outcomes, and that appropriate mitigating action is taken, including the development of a rights-respecting legal and policy framework.
- In light of evidence regarding their inaccuracy and potentially discriminatory impacts, suspend the use of automated facial recognition and predictive programmes in policing, pending completion of the above independent impact assessments and consultation process, and the adoption of appropriate mitigating action.

Freedom of expression

The UK Government should:

- Amend the statutory guidance on the implementation of the Prevent duty in higher education institutions, in light of the UK court judgments in *Butt v Secretary of State for the Home Department*.

² *R (National Council for Civil Liberties) v Secretary of State for the Home Department and Secretary of State for Foreign and Commonwealth Affairs* [2018] EWHC 975 (Admin).

³ *Big Brother Watch v. UK*, nos. 58170/13, 62322/14, 24960/15.

- Ensure that its proposals to address ‘online harms’ clearly, narrowly and precisely define what constitutes ‘harms’ and ‘harmful content’; include explicit measures to protect freedom of expression; and ensure that any restrictions on freedom of expression are rigorously justified according to the framework set out in international human rights law, including Article 19 ICCPR.

11. Rights of the child

Asylum of children

The UK Government should:

- Improve the speed of processing asylum applications by unaccompanied children, ensuring that disaggregated data on processing times is collected and published.
- Amend the Home Office’s guidance on conducting age assessments to introduce a presumption that, where the age of a young person seeking asylum is uncertain, they must be treated as a child until their age has been assessed objectively by an independent expert.
- Ensure that arrangements are put in place to allow unaccompanied asylum-seeking children to join relatives in the UK under the same terms as the Dublin III Regulation, following the UK’s withdrawal from the EU, and review its immigration policy to enable child refugees to sponsor close relatives to join them in the UK.

Fees for children to register British citizenship

The UK Government should review the fee regime for children to register as British citizens, including removing the profit element of the fee and introducing a fee waiver, or reduction mechanism, for children who are unable to afford the fee to register.

Minimum age of criminal responsibility

The UK Government should:

- Develop a holistic, therapeutic, welfare-based system for dealing with the harmful behaviour of children; and raise the age of criminal responsibility to at least 14 years of age, in line with international human rights standards.

- Where children need to be detained within this system, because they are a risk to themselves or others, ensure that there are robust, due process protections in place.

12. Right to participate in public life

Prisoner voting

The UK Government should put its policy changes, following the Hirst judgment, on a statutory footing, and review those changes within five years to assess whether they can be expanded further, including to all prisoners serving sentences of 12 months or less, as recommended by the Joint Committee on the Voting Eligibility (Prisoners) Draft Bill.

The Welsh Government should act on the evidence and recommendations presented by the National Assembly's Equality, Local Government and Community Committee, including legislating to allow certain convicted prisoners the right to vote in local and National Assembly elections.

Diversity of representation

The UK and Welsh governments, where relevant, should:

- Implement the statutory requirement for political parties to publish their parliamentary candidate diversity data for general elections, as set out in section 106 of the Equality Act 2010 and, in the interim, encourage political parties to publish voluntary diversity data via an independent third party.
- Actively encourage under-represented groups to participate in democracy and politics through outreach initiatives; work with political parties to ensure funding for the additional disability-related costs of disabled candidates, and make these costs exempt from campaign costs; and continue to investigate ways of reducing barriers to participation.

The Welsh Government should implement the recommendations it has accepted from the 2018/19 inquiry into Diversity in Local Government, before the next round of local government elections.

Intimidation of parliamentary candidates

The UK Government should:

- Invest in further research into online abuse marked by misogyny, violence against women and girls, and institutional racism, as well as other bias-motivated hostility, including disability, religion or belief, age, sexual orientation and transgender status, and develop effective mechanisms and interventions for tackling it, with due regard to the right to freedom of expression.
- Improve support for victims and witnesses to report online and offline hostility and intimidation, and develop effective mechanisms for tackling these.