



Rt Hon Liz Truss MP  
Lord Chancellor &  
Secretary of State for Justice  
Ministry of Justice  
102 Petty France  
London, SW1H 9AJ

Our ref:184Truss  
1 December 2016

Dear Secretary of State,

## **Concluding Observations of the UN Committee on Economic, Social and Cultural Rights**

The UN Committee on Economic, Social and Cultural Rights (UN CESCR) recently examined the UK's implementation of the International Covenant on Economic, Social and Cultural Rights (ICESCR) and has issued its Concluding Observations.<sup>1</sup> These Concluding Observations represent the authoritative interpretation of the action required by the UK Government to implement its obligations, under international law, in relation to socio-economic rights. The Equality and Human Rights Commission submitted written evidence to UN CESCR and made oral representations.<sup>2</sup> We were pleased to see many of our recommendations reflected by UN CESCR.

We welcomed the constructive engagement we enjoyed with your officials throughout the reporting process, and through the cross-government treaty monitoring working group, which the EHRC chairs. Through this mechanism and other engagement with MoJ, we look

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<sup>1</sup> UN CESCR, Concluding observations on the sixth periodic report of the United Kingdom of Great Britain and Northern Ireland, E/C.12/GBR/CO/6, 14/07/16, available at:

[http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=E%2fC.12%2fGBR%2fCO%2f6&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=E%2fC.12%2fGBR%2fCO%2f6&Lang=en) (hereafter, 'UN CESCR, Concluding observations')

<sup>2</sup> EHRC, Socio-economic rights in the UK: Updated submission to the UN Committee on Economic, Social and Cultural Rights – April 2016, available at:

<https://www.equalityhumanrights.com/en/file/18741/download?token=E1vlJk4F>

EHRC, Socio-Economic Rights in the UK: Submission to the United Nations Committee on Economic, Social and Cultural Rights - August 2015, available at:

<https://www.equalityhumanrights.com/en/file/4426/download?token=xf6AoKRE>

forward to working together to drive progress on the UK Government's fulfilment of its human rights obligations in the areas set out below.

As you know, the Commission has a statutory mandate to encourage compliance with human rights standards. In accordance with this mandate, we are writing to request information about your plans for implementation of the Concluding Observations. The Ministry of Justice (MoJ) has a key role in implementing the UN CESCR recommendations and influencing other Government departments to drive improvements in socio-economic rights.<sup>3</sup> I enclose the Commission's analysis of the recommendations we suggest it would be appropriate for the MoJ to prioritise. I should be very grateful if you would let me know your thoughts in this respect. The Commission will write separately to the Scottish and Welsh Governments in relation to our priorities in devolved areas.

The Universal Periodic Review in May 2017 provides a valuable opportunity for the UK Government, led by MoJ, to carry out a joined-up and comprehensive assessment of the actions the UK needs to undertake to fulfil its human rights obligations. An important first step for the MoJ would be to work with other departments to set out the concrete actions the UK Government plans to take to implement outstanding Concluding Observations from a range of international treaty bodies. This would be in line with the Commission's recommendation for the UK Government to adopt a National Action Plan for Human Rights. The Commission would welcome the opportunity to work with the UK Government to shape this plan and advise on its effective delivery, and to discuss how the cross-government treaty monitoring working group (currently convened by the Commission) could contribute to this work.

In relation to measures which reduce protections for socio-economic rights, I would like to highlight the formal communication the UK Government recently received from the UN Special Rapporteurs on poverty, housing, disability and food, in which they set out key human

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<sup>3</sup> See for example recent concluding observations from the UN Committee on the Rights of the Child, July 2016, from the UN Human Rights Committee, August 2015; and from the UN Committee on the Elimination of Racial Discrimination, August 2016.

rights concerns with reforms to the social security system in the UK.<sup>4</sup> Echoing the findings of UN CESCR, these UN experts found that the UK Government had failed to justify that the regressive measures taken were temporary, necessary and proportionate, non-discriminatory and that they did not cause people to fall below a level of basic income security which enables effective access to essential goods and services.

We believe that, going forward, the UK's impact assessments and monitoring must address these questions in order to demonstrate effectively that reductions in human rights protections are in compliance with the UK's obligations under international law. These principles should, for example, form a central part of MoJ's analysis of the impact of reforms to the legal aid system on economic, social and cultural rights.

The Commission is developing a series of activities to support implementation of the recommendations made by UN CESCR. This includes providing written evidence to the Committee on Work and Pensions on the UK Government's Life Chances Strategy, advising the MoJ on the post-implementation review of legal aid reforms, and working with parliamentarians and trade unions to facilitate the use of the concluding observations as a tool for driving improvements in human rights protection in the UK.

We also look forward to working with you and your officials to implement the Concluding Observations, and would welcome the opportunity to meet to discuss how best to make progress in this regard.

Yours sincerely,



**David Isaac**

Chair

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<sup>4</sup> Special Rapporteurs' Joint communication to the UK Government on the Welfare Reform and Work Act, Ref: AL GBR 1/2016, 08/04/2016, available at:

<https://www.equalityhumanrights.com/en/file/20686/download?token=kysE2dse>

Copy to:

- Rt Hon Harriet Harman, Chair of the Joint Committee on Human Rights
- Caroline Dinenage, Minister for Women and Equalities
- Tim Loughton MP, Chair of All-Party Parliamentary Group for Children
- Rt Hon Frank Field MP, Chair of Work and Pensions Committee
- Rt Hon. Damian Green MP, Secretary of State for Work and Pensions

## **Priorities for the Ministry of Justice to drive implementation of recent Concluding Observations of the UN for the UK**

### **Enhancing the status of international human rights in domestic law**

The UK has ratified seven of the nine ‘core’ UN human rights conventions. However, these are not incorporated into domestic law.<sup>5</sup> As a first step towards giving an enhanced status to ICESCR in domestic law, the Commission considers the UK Government should act on UN CESCR’s recommendation to bring into force Section 1 of the Equality Act 2010<sup>6</sup> which sets out a duty on certain public authorities to have due regard to the desirability of reducing socio-economic disadvantage when taking strategic decisions about how to exercise their functions.

The Commission has recently briefed on the impact of statutory duties introduced by the Scottish and Welsh Governments which enhance the status of the Convention on the Rights of the Child (CRC) in national law.<sup>7</sup> We have recommended that such a duty should be introduced to apply to devolved and non-devolved matters across the whole of Great Britain. The Children and Social Work Bill provides an immediate opportunity for enhancing the status of the CRC in this way.

The Commission considers the Human Rights Act to be well-crafted and that it has led to greater quality and accountability of public service delivery. We agree with UN CESCR that any new human rights legislation should be “aimed at enhancing the status of human rights, including economic, social and cultural rights in the domestic legal order”.<sup>8</sup> This is particularly the case given the UK’s exit from the European Union and the potential reductions in protections for human rights that may result.

In this context, the UK Government should publish options for further enhancing the status of international human rights in domestic law. These options should include a consideration of mechanisms in

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<sup>5</sup> The two Conventions not yet ratified by the UK are the Convention on the Rights of Migrant Workers and their Families, and the Convention on Enforced Disappearances (CED). No apparent progress has been made on ratifying the CED despite the UK Government having accepted UPR recommendations on this in 2012. See Annex 1, UPR Recommendations to the UK. September 2012. Available at:

<http://www.ohchr.org/EN/HRBodies/UPR/Pages/GBSession13.aspx> [accessed: 24 August 2016]

<sup>6</sup> UN CESCR, Concluding observations, para 23

<sup>8</sup> UN CESCR, Concluding observations, para 10

Scotland which put ICESCR on a statutory footing,<sup>9</sup> access to domestic remedy for breaches of ICESCR, a mechanism for scrutiny of policy, legislation and budgetary measures and mechanisms to hold decision-makers to account for breaches of ICESCR.

### **Financial decision-making / social security reform**

The Commission's analysis shows that the UK Government's recent social security reforms since 2010 have had a disproportionate impact on disabled people, women and children. In addition, UN Special Rapporteurs have highlighted that measures taken through the Welfare Reform and Work Act 2016 (WRWA) seemed to have a "disproportionate and indirectly discriminate impact on a wide range of groups, including women, children, persons with disabilities, and certain households such as large families, single parents and those living in high rent areas."<sup>10</sup> We agree with UN CESCR and these UN experts that the UK Government must demonstrate that any measures which reduce protections for socio-economic rights are "temporary, necessary, proportionate, and not discriminatory, and must not disproportionately affect the rights of disadvantaged and marginalized individuals and groups".<sup>11</sup>

In line with UN CESCR's recommendations, the Commission considers that the UK Government should "restore the link between the rates of state benefits and the cost of living and guarantee that all social benefits provide a level of benefits sufficient to ensure an adequate standard of living.<sup>12</sup> It should also "review its policies and programmes introduced since 2010 and conduct a comprehensive assessment of the cumulative impact of these measures on the enjoyment of economic, social and cultural rights by disadvantaged and marginalized individuals and groups, in particular women, children and persons with disabilities".<sup>13</sup>

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<sup>9</sup> Sections 1(6), 44(11)(b), 56(14)(b) of the Land Reform (Scotland) Act 2016 and Section 98 of the Land Reform (Scotland) Act 2003, as amended by the Community Empowerment (Scotland ) Act 2015

<sup>10</sup> Mandates of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context; the Special Rapporteur on the rights of persons with disabilities; the Special Rapporteur on extreme poverty and human rights; and the Special Rapporteur on the right to food, Joint communication to the UK Government on the Welfare Reform and Work Act, Ref: AL GBR 1/2016, 08/04/2016, available at:

<sup>11</sup> UN CESCR, Concluding observations, para 19

<sup>12</sup> UN CESCR, Concluding observations, para 41

<sup>13</sup> UN CESCR, Concluding observations, para 19. See also, UN Committee on the Rights of the Child (UN CRC), Concluding observations on the fifth periodic report of the United Kingdom of Great Britain and

This kind of analysis is distinct from the distributional analysis HM Treasury conducts on the basis of household or income group.

## Access to justice

The impact of the reductions in the scope of legal aid in England and Wales brought about through the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO) and the introduction of employment tribunal fees on access to justice has been raised in all of the recent treaty body reviews of the UK. This includes UN CESCR, which recommended that the UK Government “review the impact of the reforms to the legal aid system” and that it eliminate employment tribunal fees.<sup>14</sup>

The UK Government promised a review within 3-5 years of LASPO taking effect in April 2013. The Commission considers that a review of the impact of these changes should be expedited, in line with recommendations by the UN Committee on the Rights of the Child,<sup>15</sup> so that the UK Government is in a position to respond meaningfully to these concerns when they are raised during the Universal Periodic Review of the UK in May 2017.

As part of this review, and in line with the Public Sector Equality Duty, equality impact assessments should be updated on the basis of an independent assessment of the actual impact of LASPO on protected groups. The MoJ should also consider the impact of the changes on the realisation of socio-economic rights protected by ICESCR and other UN human rights treaties, including to social security, adequate standard of living and education. The review should consider the effectiveness of actions taken to mitigate previously anticipated adverse impacts, and should identify further mitigating actions to address any indirectly discriminatory effects identified by the review. If reductions in scope for legal aid are found to have had a disproportionate impact on particular groups, then MoJ should consider bringing areas of law back into scope.

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Northern Ireland, CRC/C/GBR/CO/5, 12/07/16, para 70, available at:

[http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fGBR%2fCO%2f5&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fGBR%2fCO%2f5&Lang=en) (Hereafter, UN CRC, Concluding Observations)

<sup>14</sup> UN CESCR, Concluding observations, para 21

<sup>15</sup> UN CRC, Concluding Observations, para 31

## Youth justice

The UN CRC, the UN Committee against Torture and the UN Human Rights Committee have all made recommendations for the UK Government to raise the minimum age of criminal responsibility to bring it into line with international standards. The Youth Justice figures 2014/15 show that the use of restraint has increased, as has the number of injuries caused as a result.<sup>16</sup> Policy guidelines on the use of restraint only as a last resort are not followed in practice. All forms of youth detention permit the use of segregation, including for purposes of order and discipline, and the National Preventive Mechanism has found that some children in Young Offenders Institutions are subjected to solitary confinement.

The Taylor review of the youth justice strategy and the implementation of recommendations made by the Medway Improvement Board provide opportunities to implement UN CRC recommendations on raising the age of criminal responsibility, abolishing the use of restraint for disciplinary purposes and ensuring that it is only used as a last resort, removing all children from solitary confinement and inspecting the use of segregation.<sup>17</sup> Where necessary, the scope of the Taylor review should be extended to address these issues.

## Accountability for human rights abuses committed by British military abroad

In 2015, the UN Human Rights Committee questioned the UK Government over delays in investigating allegations of human rights abuses committed by the British military abroad.<sup>18</sup> The Detainee Inquiry into alleged complicity in acts of torture and ill-treatment of detainees overseas was passed to the UK Parliament's Intelligence and Security Committee, whose last substantive statement on this was in February

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<sup>16</sup> Ministry of Justice and Youth Justice Board, Youth Justice Annual Statistics 2014 to 2015, January 2016, available at: <https://www.gov.uk/government/statistics/youth-justice-annual-statistics-2014-to-2015>

<sup>17</sup> UN CRC, Concluding Observations, para 39 and 78

<sup>18</sup> UN Human Rights Committee, 'Concluding observations on the seventh periodic report of the United Kingdom, July 2015', para 9. Available at: [http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2fGBR%2fCO%2f7&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2fGBR%2fCO%2f7&Lang=en) [accessed: 22 August 2016]

2015.<sup>19</sup> The Iraq Historical Allegations Team – which assesses allegations of abuse of Iraqi citizens by British service personnel – has addressed just 3.8% of its cases.<sup>20</sup>

The UK Government should expedite investigations of allegations of British complicity in torture and cruel, inhuman or degrading treatment in Iraq, and the complicity of British military personnel in the ill-treatment of detainees and civilians overseas.

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<sup>19</sup> Intelligence and Security Committee of Parliament. 2015. *News Archive*, 11 February 2015. [ONLINE] Available at: <http://isc.independent.gov.uk/news-archive/11february2015> [accessed: 3 February 2016]

<sup>20</sup> Ministry of Defence (2016), ‘The Iraq Historic Allegations Team quarterly update: January to March 2016’. Available at: <https://www.gov.uk/government/publications/iraq-historic-allegations-team-quarterly-updates>