



Universal Periodic Review Stakeholder Submission

Submission by René Cassin, UK

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Introduction

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

In Section 1 we call upon the UN to seek a commitment from the UK Government that the *Human Rights Act* will be preserved and built upon in any efforts to develop the existing framework for human rights protection in the UK.

In Section 2 we analyse a number of other human rights issues of particular concern to our organisation which we call upon the UN Human Rights Council to explore when assessing the UK's human rights performance.

About René Cassin

René Cassin is a human rights charitable organisation that uses historical Jewish experience and positive Jewish values to campaign and educate on universal human rights issues such as discrimination, slavery, detention and genocide.

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

René Cassin is a partner on a variety of UK and European coalitions and we are a joint signatory on the British Institute for Human Rights' (BIHR) Submission to the UPR. It is intended that our submission build upon the points already highlighted in the BIHR Submission and emphasise concerns of specific importance to our organisation in light of our unique mission.

Section 1: the UK domestic human rights framework and the incorporation of international human rights standards into domestic law

UN Treaties

1. Although the UK has ratified most of the international human rights treaties, there are some notable omissions that we wish to highlight. 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 that the UK signs up to these treaties, as an indication of the importance that the UK places on upholding universal human rights standards. The UK should also ratify the optional protocols to the International Covenant on Economic Social and Cultural Rights and the International Covenant on Civil and Political Rights.

2. In addition, some of the declarations and reservations which the UK has entered on various UN Treaties remain problematic and we recommend that they be reviewed with a view to being withdrawn. For instance, the UK's declaration to the Optional Protocol to the Convention in the Rights of the Child on the involvement of children in armed conflict is tantamount to a reservation. We note that this declaration has not been reviewed or removed following the recommendation of the previous UPR¹.

UK domestic human rights framework

3. The Human Rights Act 1998 (HRA) incorporated into UK law most of the rights set out in the European Convention of Human Rights (ECHR). The rights contained in the Convention are to a large extent equivalent to most of the rights set out in the International Covenant on Civil and Political Rights.
4. There are efforts underway to undermine the HRA as evidenced by ongoing negative and misleading media coverage in the UK concerning the HRA; and the establishment of a Commission on a Bill of Rights Consultation, whose mandate makes no reference to the HRA. We recommend that the UPR:
 - Makes reference to these developments;
 - Urges that any consultation as to whether or not a so-called Bill of Rights should be adopted in the UK acknowledge that the HRA is a bill of rights, although not referred to as such in public discourse;
 - Pronounces that to create a new UK Bill of Rights that is specific to the UK would be a regressive step if the rights in the HRA or the mechanisms for enforcing those rights were watered down; and
 - Calls upon the UK Government to guarantee that any attempt to introduce a Bill of Rights will maintain and build upon the existing HRA, rather than seeking its amendment or repeal.
5. The HRA provides that human rights are universal and apply to everyone equally. The HRA has rightfully provided protections for minorities in circumstances where they had few other legal protections under UK law. The evidence shows that the HRA has had a positive impact on people's lives, leading to many significant improvements in the way

¹ See detailed submission from Child Soldiers International

individuals are treated throughout society. These improvements range from changes in the way that public bodies make policy or deliver services through to opportunities for individuals to challenge poor treatment in domestic courts.

6. 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.²
7. In light of our organisation's mission and support base, we are uniquely placed to draw to the UPR's attention the fact that the HRA brings to life provisions of the Universal Declaration of Human Rights and the ECHR, which originated in the aftermath of World War II and the Holocaust, and which are Europe's response to a grave violation of human rights.
8. If a new UK Bill of rights is adopted, it should build on the HRA with respect to substantive protections and enforcement mechanisms and provide for additional rights as opposed to subtracting from those already instilled by the HRA.³ Professor Francesca Klug of the London School of Economics suggests certain indicators to test whether any new UK Bill of Rights builds on the HRA. If these indicators are not incorporated into any new UK Bill of Rights, then the new Bill would constitute a regression as opposed to a progression towards the protection and enforcement of human rights within the UK.
9. We urge the Human Rights Council to strongly oppose any efforts by the UK to dilute the protections contained within the HRA or the enforcement mechanisms associated with them. Protecting the HRA will help ensure that all individuals in the UK enjoy an equal level, quality, and accessibility of protection and enforcement of human rights.

² 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.

³ As Professor Francesca Klug of the London School of Economics (LSE) describes, there are certain indicators that test whether a new UK Bill of Rights supplements the existing HRA. These indicators include the following:

- (a) "Any additional rights should cover new ground, or transparently supplement ECHR rights, not rephrase current rights in the HRA. They should demonstrably enhance rights protection.
- (b) There should be no additional qualifications or limitations attached to specific rights or a new general limitations clause applying to all rights to tie them to 'responsibilities.'
- (c) There should be no new limitations on the scope of the rights in the HRA, which should continue to apply to everyone within the jurisdiction of the UK government.
- (d) Any changes to s12 on the balance between freedom of expression and privacy should be compatible with the provisions of ECHR Articles 8/10."

Section 2: other human rights issues that should be raised in the UPR

Dale farm and indirect discrimination embedded in UK planning law

10. The events at Dale Farm in which up to 86 Irish traveller families have been evicted with no culturally suitable alternative being offered is “contrary to international human rights standards on housing and evictions”⁴. The Committee on the Elimination of Racial Discrimination condemned the eviction as disproportionate. The eviction may worsen already well-documented discrimination and hostility towards UK’s Travellers and Gypsies.⁵ Of grave concern was the Government’s unwillingness to accept the offer by the OHCHR’s Europe representative, Jan Jarab, to help broker a peaceful solution.⁶ We urge the Human Rights Council to recommend that:

- Adequate provision of culturally appropriate sites is granted to Travellers and Gypsies;
- The duty on local councils to provide sites for Travellers and Gypsies is reinserted; and
- The UK complies with its international obligations including those with respect to housing and non-discrimination.

11. The European Commission’s Communication on a European Union (EU) Framework for National Roma Strategies up to 2020 recommended that the EU Member States, including the UK, develop national Roma Integration Strategies. Although the UK Government and other EU Member States have instead agreed to a set of Conclusions on Roma Integration (Conclusions) in the areas of Employment, Social Policy, Health and Consumer Affairs, these Conclusions provide too wide a latitude to Member States and relegate the issue of Roma inclusion to merely part of broader social inclusion policies, when in fact the issue is of such urgency that it ought to be examined comprehensively in its own right. Furthermore, the UK Government has stated that its establishment of a Ministerial Working Group, which has yet to publish a progress report or to consult stakeholders in a substantive way, amounts to sufficient discharge of its commitments

⁴ Amnesty International, <http://action.amnesty.org.uk/ea-action/action?ea.client.id=1194&ea.campaign.id=11724&gclid=COH6mKr7rqwCFYEZ4QodrCB0GQ>

⁵ http://www2.ohchr.org/english/bodies/cerd/docs/statements/DaleFarm_Statement.pdf

⁶ <http://www.guardian.co.uk/uk/2011/sep/19/dale-farm-evictions-un-negotiation>

under the Conclusions. We recommend that the UPR encourage the UK Government to address the issue of Roma integration and to develop detailed policies in this area.

Asylum seekers and migrants

Detention

12. The detention of asylum seekers remains a pressing concern, including the inappropriate detention of victims of torture and trafficking. Over the last 3 months, the High Court has on two separate occasions found that the prolonged detention of mentally disordered people amounted to breaches of Article 3 of the ECHR.
13. The practice of long-term detention of migrants risks breaching Articles 3 and 8 of the ECHR. The UK is one of the few countries in Europe which uses immigration detention without time limit, having derogated from the EU Returns Directive that sets a maximum time limit of 18 months.
14. The use of detention for the purpose of administrative convenience - particularly by way of the Detained Fast Track (DFT) system - in processing asylum claims may breach Article 26 of the 1951 Refugee Convention and Article 5 of the European Convention on Human Rights. We recommend that the DFT be abolished in order to ensure full compliance with the Refugee Convention and the ECHR. We also urge that asylum seekers on the DFT be provided with a legal representative on their second day in detention at the latest, and that sufficient time be allocated to asylum seekers and their representatives.
15. Although migrants in detention may apply to the First Tier Tribunal of the Immigration and Asylum Chamber for bail, the quality of scrutiny of bail has been criticised by several NGOs, including those that comprise part of the Detention Forum of which René Cassin is a member.
16. We urge that the UPR recommend that the UK protect migrants from arbitrary and indefinite detention by imposing a maximum time limit for detention in all cases. We join our campaign coalition partners such as Detention Action in recommending that the UK follow best practice in the EU and implement a time limit of one month.
17. We also recommend that where deportation is imminent, this factor should have priority in decisions by the UK Border Agency (UKBA) and the First Tier Tribunal. However, where deportation is not imminent, community-based alternatives to detention should always be adopted.

Abuses in paediatric medical care

18. The Yogyakarta Principles state the human right of all people irrespective of their age to genital autonomy. Unnecessary genital surgeries based on social norms rather than medical needs are criminalised as Female Genital Mutilation (FGM) when conducted on infants classified as female. No such protections are granted to intersex infants in the UK. We are concerned about the continued involvement of UK psychologists and medical professionals on interdisciplinary teams that conduct normalising surgeries on intersex infants' genitals. These surgeries can cause permanent loss of sexual and bladder function, in addition to psychological trauma. The recent IV World Congress on Hypospadias and Disorders of Sex Development (ISHID 2011), which was held at The Royal College of Surgeons and The UCH Education Centre in London and endorsed by professional societies in the field of paediatric endocrinology, involved "live surgery" on an intersex infant and featured presenters who promoted the harmful drug Dexamethasone as a method of preventing intersex babies. Dexamethasone has not been approved for this use by regulatory bodies and has been shown to cause cognitive impairment in pregnant mothers and foetuses⁷. Several puppet 'activist' organisations managed by health professionals that support intersex genital mutilation in the form of medically unnecessary normalising surgeries have also emerged in the UK.

19. Despite these irreversible surgeries to intersex infant genitals, transgender adolescents seeking access to gender-affirming hormones or reversible hormone blockers are routinely denied these options. Many of these young people have been subjected to 'conversion therapy', also known as 'reparative therapy'. 'Conversion therapy' violates the basic human right of all young people to free expression and play. The World Professional Association for Trans Health's (WPATH, formerly HBGDA) current Standard of Care (SOC7) states that 'reparative' or conversion therapy to change young people's genders is harmful and unethical⁸. The Royal College of Psychiatrists (RCP) has been critiqued by transgender activists for allowing members to engage in these practices within the NHS. A recent RCP conference featured speakers who advocate conversion therapy⁹.

⁷ <http://www.fetaldex.org/home.html>

⁸ See <http://www.wpath.org/documents/Standards%20of%20Care%20V7%20-%202011%20WPATH.pdf>; and http://www.tsroadmap.com/notes/index.php/site/comments/wpath_reparative_therapy_on_transgender_youth_is_no_longer_considered_ethic/

⁹ <https://transactivist.wordpress.com/tag/reparative-therapy/>

Intersex legal discrimination

20. UK law does not currently allow intersex adults to change their sex designation, despite legal recognition of changes in designation for transgender adults. Intersex NGOs and activists report not having been fully included by transgender NGOs and activists in consultation processes on the Gender Recognition Act (GRA). Many intersex adults report having been denied a change of gender on government-issued identity documents under the GRA¹⁰. Official policies and procedures should be investigated to ensure that they explicitly respect the legal right of intersex adults to obtain Gender Recognition Certificates (GRCs). Officials who administer the GRCs need to be educated about human rights and their universal application, including to those people who are intersex; and to conduct proactive outreach to rectify the situations of intersex adults who have been unfairly denied GRCs.

Proposals to further restrict Legal Aid

21. Government proposals to further restrict Legal Aid are currently being considered by the UK Parliament. There is concern that these regressive proposals will make the provision of legal advice and representation inaccessible to many people in the UK, thereby placing their ability to enforce their rights at serious 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. This is part of a trend to roll back funding for legal aid. The proposals seek to decrease funding for legal aid for housing, education, welfare, jobs, mental health and community care. The proposals will see legal aid removed for partners of disabled people seeking welfare advice, families struggling with debt, and in family and immigration cases. In these instances, the real impact of legal aid removal may be that people will be: prevented from being unified with their family; unable to obtain basic access to their children; or unable to seek remedies to protect themselves from domestic violence.

¹⁰ <http://www.susans.org/forums/index.php?topic=60042.0>