



**THE UNITED KINGDOM'S COMPLIANCE WITH THE
INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS**

**Alternative Report to the Fourth Periodic Report of the United Kingdom of
Great Britain and Northern Ireland**

Submitted by **REPRIEVE**

a non-governmental organization in special consultative status with the United Nations Economic and Social Council since 2018, for the:

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ABOUT REPRIEVE

Reprieve is a charitable organization registered in the United Kingdom (No. 1114900) in special consultative status with the United Nations Economic and Social Council (“ECOSOC”) that provides free legal and investigative support to those who have been subjected to state-sponsored human rights abuses. Our clients belong to some of the most vulnerable populations in the world. In particular, we protect the rights of those facing the death penalty and deliver justice to victims of arbitrary detention, torture, and extrajudicial execution.

INTRODUCTION

Reprieve writes in advance of the 140th session of the UN Human Rights Committee (the “Committee”) and its review of the United Kingdom of Great Britain and Northern Ireland (UK). This submission addresses the UK government’s failure to comply with its obligations under the International Covenant on Civil and Political Rights (ICCPR), focusing on its:

- A. Violations of the rights of detainees in North East Syria, contrary to Articles 2(3), 6, 7, 8, 9, 12(4) and 24 of the ICCPR;
- B. Discriminatory and arbitrary citizenship deprivation regime, contrary to Articles 15 and 26 of the ICCPR;
- C. Failure to investigate and act on allegations of complicity in the torture and ill-treatment of civilians and detainees overseas, contrary to Articles 2 and 7 of the ICCPR;
- D. Failure to provide adequate consular assistance to its citizens detained overseas facing the death penalty, torture and mistreatment, contrary to Articles 6, 7 and 14 of the ICCPR.

Building on issues addressed in the List of Issues and during the last review of the UK, Reprieve submits this report along with recommendations for the Committee to consider at its 140th Session.

A. THE UK’S VIOLATIONS OF THE RIGHTS OF DETAINEES IN NORTH EAST SYRIA

I. THE SITUATION OF DETAINEES IN NORTH EAST SYRIA

Context

Over 70,000 men, women and children are detained in North East Syria (“NES”) based on their presumed association with the Islamic State (“ISIS”).¹ They are held by the Autonomous Administration of North and East Syria (“AANES”) (the Kurdish non-State group in de-facto control of NES) and the Syrian Democratic Forces (“SDF”) (the AANES’ military arm).² Approximately 14,000 of the detainees are non-Syrian and non-Iraqi

¹ UN Special Rapporteur on the Promotion and Protection of Human Rights and Fundamental Freedoms while Countering Terrorism, ‘Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism’ (10 October 2023) UN Doc A/78/520, para. 50, available at:

<https://www.ohchr.org/en/documents/thematic-reports/a78520-report-special-rapporteur-promotion-and-protection-human-rights>

² European Union Agency for Asylum, ‘Country of Origin Information: Syria – Security Situation (October 2023) 28, available at: https://coi.euaa.europa.eu/administration/easo/PLib/2023_10_EUAA_COI_Report_Syria_Security_situation.pdf

nationals (“Third Country Nationals”).³ The detaining authorities have made clear that Third Country Nationals will not be released absent a request from the detainees’ country of nationality and have repeatedly called on countries to repatriate their nationals.⁴

Sites of detention in NES

Detainees are held in a variety of different detention facilities. First, around 60,000 women and children are held in two open-air camps: Al Hol and Roj.⁵ While they are called “*camps*”, Al Hol and Roj are in fact detention facilities.⁶ Freedom of movement throughout the camps is limited, and there is an extensive security presence guarding the internal and external borders of the camps.⁷ Women and children cannot leave or move around the camps freely.

In addition, approximately 10,000 men are detained in 12 “*known*” detention facilities in NES,⁸ many of which are “*makeshift*”, consisting of converted schools, hospitals, or warehouses,⁹ and it is not clear that all facilities holding men and boys are publicly known.¹⁰ Among these detainees are approximately 1,000 individuals who were apprehended as boys and have since become adults.¹¹ Several hundred boys are also reportedly held in these

³ UN Special Rapporteur on the Promotion and Protection of Human Rights and Fundamental Freedoms while Countering Terrorism, ‘Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism’ (10 October 2023) UN Doc A/78/520, para. 50, available at:

<https://www.ohchr.org/en/documents/thematic-reports/a78520-report-special-rapporteur-promotion-and-protection-human-rights>.

⁴ See for example: Human Rights Watch, ‘Syria: Reparations Lag for Foreigners with Alleged ISIS Ties’ (15 December 2022) *Human Rights Watch*, available at: <https://reliefweb.int/report/syrian-arab-republic/syria-repatriations-lag-foreigners-alleged-isis-ties-enar>; Fionnuala Ní Aoláin and Anne Charbord, ‘Repatriating Alleged ISIS-Linked Men from Northeast Syria: The Start of Judicial Responses to the Political Stalemate’ (16 February 2023) *Just Security*, available at:

<https://www.justsecurity.org/85049/repatriating-alleged-isis-linked-men-from-northeast-syria-the-start-of-judicial-responses-to-the-political-stalemate/>;

All Party Parliamentary Group on Trafficked Britons in Syria, ‘Report of the Inquiry by the All-Party Parliamentary Group on Trafficked Britons in Syria’ (March 2022) 26, available at:

<https://appgtraffickedbritons.org/wp-content/uploads/2022/03/Report-of-the-Inquiry-by-the-APPG-on-Trafficked-Britons-in-Syria.pdf>

⁵ UN Special Rapporteur on the Promotion and Protection of Human Rights and Fundamental Freedoms while Countering Terrorism, ‘Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism’ (10 October 2023) UN Doc A/78/520, para. 50, available at:

<https://www.ohchr.org/en/documents/thematic-reports/a78520-report-special-rapporteur-promotion-and-protection-human-rights>.

⁶ United Nations Human Rights Special Procedures, ‘Technical Visit to the Northeast of the Syrian Arab Republic. End of Mission Statement’ (21 July 2023) paras. 7, 12, available at:

<https://www.ohchr.org/sites/default/files/documents/issues/terrorism/sr/statements/EoM-Visit-to-Syria-20230721.pdf>.

⁷ UN General Assembly, ‘Report of the Independent Commission of Inquiry in the Syrian Arab Republic to the regular session of the Human Rights Council’ (17 August 2022) UN DOC A/HRC/51/45, para. 92.

⁸ UN General Assembly, ‘Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism’ (10 October 2023) UN DOC A/78/520, para. 50, available at:

<https://www.ohchr.org/en/documents/thematic-reports/a78520-report-special-rapporteur-promotion-and-protection-human-rights>.

⁹ International Crisis Group, ‘Containing a Resilient ISIS in Central and North-eastern Syria’ (18 July 2022) 26, available at:

<https://www.crisisgroup.org/middle-east-north-africa/east-mediterranean-mena/syria/containing-resilient-isis-central-and-north>.

¹⁰ The International Crisis Group, for instance, has reported that there are “*around 27 detention facilities holding ISIS inmates*.” See:

International Crisis Group, ‘Containing a Resilient ISIS in Central and North-eastern Syria’ (18 July 2022) 2, fn. 130, available at:

<https://www.crisisgroup.org/middle-east-north-africa/east-mediterranean-mena/syria/containing-resilient-isis-central-and-north>.

¹¹ UN General Assembly, ‘Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism’ (10 October 2023) UN DOC A/78/520, para. 50, available at:

<https://www.ohchr.org/en/documents/thematic-reports/a78520-report-special-rapporteur-promotion-and-protection-human-rights>.

facilities,¹² including 700 boys in Al Sina’a prison (also known as Panorama).¹³ Boys who are detained in these facilities have been held in the same cells as adult men.¹⁴ A small number of women are also reported to be in these facilities.¹⁵

Finally, a third type of detention facility, referred to by the AANES as “*juvenile rehabilitation centres*”, houses at least 180 Third Country National teenage boys.¹⁶ The United Nations (“UN”) Special Rapporteur on the Promotion and Protection of Human Rights and Fundamental Freedoms while Countering Terrorism (“UNSR on Human Rights and Counter Terrorism”) has highlighted the lack of rehabilitation provided to boys here, stressing that these facilities are in fact detention facilities.¹⁷

British detainees

While there is no publicly available information about the numbers of British detainees, Reprieve’s investigations suggest that there are only about 70 Britons detained in NES, including approximately 10-15 men, 20 women and 40 children. Over half of the British detainees are children, with the vast majority of the children under 10 years old. They have lived half their lives in these detention facilities, having been held there for nearly five years.

II. THE UK’S POLICY

The AANES has expressed its readiness “*to provide unconditional assistance and cooperation with the UK to hand over its citizens*” if it receives an official request from the

¹² See, e.g., UN General Assembly, ‘Report of the Independent International Commission of Inquiry on the Syrian Arab Republic’ (8 February 2022) UN DOC A/HRC/49/77, para. 95 (noting in footnote 71 that “*Not all locations are known to the Commission, but this reportedly includes Al-Sina’a prison, holding the largest number of children, as well as Alaya prison, Derik (Al-Malikiya) women’s prison*”); UN General Assembly, ‘Report of the Independent International Commission of Inquiry on the Syrian Arab Republic’ (13 August 2021) UN DOC A/HRC/48/70, para. 108.

¹³ UN General Assembly, ‘Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism’ (10 October 2023) UN DOC A/78/520, para. 59, available at:

<https://www.ohchr.org/en/documents/thematic-reports/a78520-report-special-rapporteur-promotion-and-protection-human-rights>.

¹⁴ UN General Assembly, ‘Position of the United Nations Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism on the human rights of adolescents/juveniles being detained in North-East Syria’ (May 2021) 3, fn. 7, available at:

https://www.ohchr.org/sites/default/files/Documents/Issues/Terrorism/SR/UNSRCT_Position_human-rights-of-boys-adolescents-2021_final.pdf.

¹⁵ The UNSR on Counter Terrorism and Human Rights has reported that small number of young children are held with their mothers in prisons. See: Fionnuala Ní Aoláin, ‘Position of the United Nations Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism on the human rights of adolescents/juveniles being detained in North-East Syria’ (May 2021) 3, available at:

https://www.ohchr.org/sites/default/files/Documents/Issues/Terrorism/SR/UNSRCT_Position_human-rights-of-boys-adolescents-2021_final.pdf.

¹⁶ Boys are held in the Hourri Centre, a new facility called Orkesh, and Alaya prison. Human Rights Watch, ‘Syria: Repatriations Lag for Foreigners with Alleged ISIS Ties’ (15 December 2022) 4, available at:

<https://www.hrw.org/news/2022/12/15/syria-repatriations-lag-foreigners-alleged-isis-ties>.

¹⁷ UN General Assembly, ‘Position of the United Nations Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism on the human rights of adolescents/juveniles being detained in North-East Syria’ (May 2021) 3, fn. 7, available at:

https://www.ohchr.org/sites/default/files/Documents/Issues/Terrorism/SR/UNSRCT_Position_human-rights-of-boys-adolescents-2021_final.pdf.

UK Government.¹⁸ Conducting repatriations is within the UK's practical capacity, having done so multiple times,¹⁹ as have 39 other states.²⁰

The UK Government claims to consider requests for repatriation on “*a case by case basis*”.²¹ It states that it is open to repatriating “*unaccompanied*” or “*orphaned*” children, but overwhelmingly refuses to repatriate full family units.²² The UK has, in six different repatriation operations, repatriated a handful of women and children, most of whom had been orphaned or separated from their caregivers in Syria.²³

The UK has pursued a policy of stripping British adults in NES of their British citizenship. As far as Reprieve is aware, at least 24 people currently detained in NES have been deprived of their British citizenship. The real number “*is likely to be higher due to the Government's failure to provide transparent public reporting about this practice and because [...] it has failed to tell some UK nationals that they have been deprived of citizenship*”.²⁴ This policy appears to be carried out on a blanket basis relying on theoretical entitlement to alternative citizenship, without regard to whether the individual is a victim of trafficking or whether the individual or their children would be left stateless in practice by the deprivation.

¹⁸ All-Party Parliamentary Group on Trafficked Britons in Syria, ‘Report of the Inquiry by the All-Party Parliamentary Group on Trafficked Britons in Syria’ (February 2022) 3-4, available at:

<https://appgtraffickedbritons.org/wp-content/uploads/2022/03/Report-of-the-Inquiry-by-the-APPG-on-Trafficked-Britons-in-Syria.pdf>

¹⁹ All-Party Parliamentary Group on Trafficked Britons in Syria, ‘Report of the Inquiry by the All-Party Parliamentary Group on Trafficked Britons in Syria’ (February 2022) 22, available at:

<https://appgtraffickedbritons.org/wp-content/uploads/2022/03/Report-of-the-Inquiry-by-the-APPG-on-Trafficked-Britons-in-Syria.pdf>

²⁰ Human Rights Watch, ‘World Report 2024: Events of 2023’ (January 2024, p 600, available at:

https://www.hrw.org/sites/default/files/media_2024/01/World%20Report%202024%20LOWRES%20WEBSPREADS_0.pdf

²¹ Dan Sabbagh, ‘First British woman and her child repatriated to UK from Syrian camp’, *The Guardian*, 13 October 2022, available at:

<https://www.theguardian.com/politics/2022/oct/13/british-woman-and-her-child-repatriated-from-syrian-detention-camp-in-uk-first>

²² Reprieve, ‘Trafficked to ISIS: British families detained in Syria after being trafficked to Islamic State’ (2021) 41, available at:

<https://reprieve.org/uk/2021/04/30/trafficked-to-syria/>; All-Party Parliamentary Group on Trafficked Britons in Syria, ‘Report of the Inquiry by the All-Party Parliamentary Group on Trafficked Britons in Syria’ (February 2022) 22, available at:

<https://appgtraffickedbritons.org/wp-content/uploads/2022/03/Report-of-the-Inquiry-by-the-APPG-on-Trafficked-Britons-in-Syria.pdf>

²³ The UK has repatriated: 3 children on 21 November 2019 (see: Save the Children, ‘Response to Reports From Kurdish Self-Administration That British Orphans in Syria Have Been “Handed Over to a Delegation Representing the British Foreign Ministry”’ (21 November 2019) available at:

<https://www.savethechildren.org.uk/news/media-centre/press-releases/save-the-children-statement-syria-repatriation>; 1 child in September

2020 (see: Time Hume, ‘UK Government Repatriates British Child from Syrian Refugee Camp (16 September 2020) *Vice News*, available at:

<https://www.vice.com/en/article/3azmxb/uk-government-repatriates-british-child-from-syrian-refugee-camp>); 3 children on 19 October

2021 (see: Andrei Popoviciu, ‘Syria: UK Repatriates three children from Islamic State Camps’ (19 October 2021), *Middle East Eye*, available at:

<https://www.middleeasteye.net/news/uk-syria-children-repatriation-islamic-state-camps>); 2 children on 6 April 2022 (see: Wladimir van

Wilgenburg, ‘UK Repatriates 2 British Orphans from Northeast Syria’ (6 April 2022) *Kurdistan 24*, available at:

https://www.kurdistan24.net/en/story/27878-UK-repatriates-2-British-orphans-from-northeast-Syria?_cf_chl_tk=vz_DSfla1smSj1XxvcJLZBalN5gavDtBqRo6nfzoSG0-1676560308-0-gaNvcGzNCqU; 1 adult with 1 child on October 2022 (see: Dan Sabbagh, ‘First British Woman

and her child are Repatriated to UK from Syrian Camp’, 13 October 2022, *The Guardian*, available at:

<https://www.theguardian.com/politics/2022/oct/13/british-woman-and-her-child-repatriated-from-syrian-detention-camp-in-uk-first>); and

one woman and five children in December 2023 (see: Fiona Hamilton, ‘Return of Isis Bride and Children leaves 25 Families Still in Syria’

(13 December 2023) *The Times*, available at: <https://www.thetimes.co.uk/article/isis-bride-children-back-uk-syria-bw5mm8hbi>).

²⁴ All-Party Parliamentary Group on Trafficked Britons in Syria, ‘Report of the Inquiry by the All-Party Parliamentary Group on Trafficked Britons in Syria’ (February 2022) 23, available at:

<https://appgtraffickedbritons.org/wp-content/uploads/2022/03/Report-of-the-Inquiry-by-the-APPG-on-Trafficked-Britons-in-Syria.pdf>

The UK Government has also provided “*direct funding and assistance for the expansion of prison facilities currently holding British nationals*”,²⁵ having reportedly invested 20 million USD to expand Al-Sina’s prison.²⁶

III. VIOLATIONS OF THE RIGHTS OF BRITISH DETAINEES

The UK Government’s policy towards British detainees in NES constitutes:

1. A violation of their right to life and the prohibition against cruel, inhuman or degrading treatment or punishment, contrary to **Articles 6 and 7** of the ICCPR;
2. A violation of the prohibition against arbitrary detention, including enforced disappearances, contrary to **Article 9** of the ICCPR;
3. A violation of the rights of children under **Article 24** of the ICCPR;
4. A failure to protect the rights of victims of trafficking, contrary to **Article 8** of the ICCPR;
5. A violation of their right to return to their home country, contrary to **12(4)** of the ICCPR; and
6. A violation of their right to an effective remedy, contrary to **Article 2(3)** of the ICCPR.

1. Violation of the right to life and of the prohibition against cruel, inhuman or degrading treatment or punishment: Articles 6 and 7

Articles 6 and 7 of the ICCPR respectively guarantee the right to life and prohibit cruel, inhuman or degrading treatment or punishment. The conditions of detention of British families in NES amount to a violation of these rights.

The grave conditions in the detention camps are well documented. They are marked by a “*dire humanitarian situation*”, characterised by a lack of access to sufficient food, water and

²⁵ All-Party Parliamentary Group on Trafficked Britons in Syria, ‘Report of the Inquiry by the All-Party Parliamentary Group on Trafficked Britons in Syria’ (February 2022) 33, available at: <https://appgtraffickedbritons.org/wp-content/uploads/2022/03/Report-of-the-Inquiry-by-the-APPG-on-Trafficked-Britons-in-Syria.pdf>.

²⁶ Mandates of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism and others, ‘Letter to the UK Government regarding the detention of men and boys in northeast Syria’ (February 2022) UN REF AL GBR 1/2022, 2, available at: <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=27029>; UN Special Procedures, Mandates of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism et al., ‘Communication AL GBR 1/2022’ (1 February 2022) 2, available at: <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=27029>. See also: UN Special Rapporteur on the protection and promotion of human rights while countering terrorism, ‘Submission by the UN Special Rapporteur on the protection and promotion of human rights while countering terrorism to the UK’s Foreign Affairs Committee on the UK’s international counter-terrorism policy’ (June 2023) para. 18 and related footnotes, available at: <https://committees.parliament.uk/writtenevidence/121939/pdf/>.

medical care.²⁷ Reports have described the conditions in the camps as “*life threatening*”.²⁸ The Independent International Commission of Inquiry on the Syrian Arab Republic (the “Commission of Inquiry”) has recognised the possible threat to the right to life posed by the conditions, in addition to a violation of the right to health.²⁹

The UN Committee on the Rights of the Child (“CRC”) has previously found that children’s prolonged detention in the life-threatening conditions in the camps amounts to cruel, inhuman and degrading treatment or punishment.³⁰ Equally, the UN Committee Against Torture (“CAT”) found that conditions in which women and children are detained, “*including in particular the lack of health care, food, water and sanitation facilities, amount to inhuman and degrading treatment*”.³¹ British courts have reached the same conclusion, finding that the conditions in Camp Roj would violate the prohibition on torture and inhuman or degrading treatment under the European Convention on Human Rights.³²

The conditions in which boys and men, including British nationals,³³ are arbitrarily detained in prisons in NES breach the same rights. The UNSR on Human Rights and Counter Terrorism has considered that the conditions in prisons meet the threshold for torture, and inhuman and degrading treatment.³⁴

The limited reporting available indicates that conditions in these prisons are catastrophic. Detainees are held incommunicado in overcrowded facilities.³⁵ Detainees appear to be starving; the UNSR on Human Rights and Counter Terrorism observed detained adult men

²⁷ Rights & Security International, ‘Abandoned to Torture: Dehumanising rights violations against children and women in northeast Syria’ (2021) 6, available at: https://www.rightsandsecurity.org/assets/downloads/Abandoned_to_Torture_-_Final_Report.pdf.

²⁸ All-Party Parliamentary Group on Trafficked Britons in Syria, ‘Report of the Inquiry by the All-Party Parliamentary Group on Trafficked Britons in Syria’ (February 2022) 44, available at:

<https://appgtraffickedbritons.org/wp-content/uploads/2022/03/Report-of-the-Inquiry-by-the-APPG-on-Trafficked-Britons-in-Syria.pdf>. See also: Save the Children, ‘When am I going to start to live?’ (2021) 12

https://resourcecentre.savethechildren.net/pdf/when_am_i_going_to_start_to_live_final_0.pdf; Rights & Security International, ‘Abandoned to Torture: Dehumanising rights violations against children and women in northeast Syria’ (2021) 18, 19

https://www.rightsandsecurity.org/assets/downloads/Abandoned_to_Torture_-_Final_Report.pdf.

²⁹ UN General Assembly, ‘Report of the Independent International Commission of Inquiry on the Syrian Arab Republic’ (13 August 2021) UN DOC A/HRC/48/70.

³⁰ UN Committee on the Rights of the Child decision in relation to France, 8 February 2022, UN Doc CRC/C/89/D/77/2019; CRC/C/89/D/79/2019; CRC/C/89/D/109/2019.

³¹ UN Committee Against Torture, ‘Decision Adopted by the Committee under Article 22 of the Convention, Concerning communication No. 922/2019’ (2 March 2023) UN DOC CAT/C/75/D922/2019.

³² *Begum v Secretary of State for the Home Department* (Appeal No SC/163/2019, 7 February 2020) [2020] HRLR 7, para [130]. This finding of the Special Immigration Appeals Commission was not overturned by the UK Supreme Court on appeal: *R (on the application of Begum) v Special Immigration Appeals Commission* [2021] UKSC 7.

³³ United Nations Special Rapporteur on counter-terrorism and human rights and others, ‘Letter to the UK Government regarding the detention of men and boys in northeast Syria’ (1 February 2022) AL GBR 1/20223,

<https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=27029>.

³⁴ Fionnuala Ní Aoláin, ‘Position of the United Nations Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism on the human rights of adolescents/juveniles being detained in North-East Syria’ (May 2021) 3, available at:

https://www.ohchr.org/sites/default/files/Documents/Issues/Terrorism/SR/UNSRCT_Position_human-rights-of-boys-adolescents-2021_final.pdf.

³⁵ UN General Assembly, ‘Report of the Independent International Commission of Inquiry on the Syrian Arab Republic’ (13 August 2021) UN DOC A/HRC/48/70, para. 108.

“*evidencing physical signs of emaciation*”.³⁶ She also found that there is an “*absolute lack of the necessities for survival (food and essential medical treatment) for the detainee population*”.³⁷

In addition, there is a highly contagious and widespread tuberculosis outbreak in Al Sina’s prison which houses men and boys, involving at least 50 per cent, and perhaps as much as 75 per cent, of the detainee population.³⁸ The authorities have admitted they do not have the capacity to treat the outbreak, and are not isolating sick detainees.³⁹ Untreated tuberculosis causes fatality in 50 per cent of cases, therefore “[i]n a context of indefinite detention without trial the failure to treat may thus constitute a death sentence in its own right”.⁴⁰ “Scores” of teenage boys have reportedly died due to tuberculosis in Al Sina’s prison since January 2022.⁴¹

The UK’s policy of refusing to repatriate British detainees from NES, despite its knowledge of the conditions in which they are held, has prolonged these violations, thus making the UK responsible for the continued exposure to conditions violating Articles 6 and 7 of the ICCPR.

2. Violation of the Prohibition against Arbitrary Detention and Enforced Disappearances: Article 9

Article 9(1) of the ICCPR provides that “*no one shall be subject to arbitrary arrest or detention*”. The indefinite detention of all British nationals in NES, without charge or trial, is arbitrary and constitutes a breach of their Article 9 rights in which the UK is complicit.

No Third Country National detained in NES has access to legal recourse to challenge their detention. As far as Reprieve is aware, Third Country Nationals detained in NES have not been charged with a crime by the detaining authorities.

³⁶ UN General Assembly, ‘Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism’ (10 October 2023) UN DOC A/78/520, para. 59, available at: <https://www.ohchr.org/en/documents/thematic-reports/a78520-report-special-rapporteur-promotion-and-protection-human-rights>.

³⁷ UN General Assembly, ‘Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism’ (10 October 2023) UN DOC A/78/520, para. 59, available at: <https://www.ohchr.org/en/documents/thematic-reports/a78520-report-special-rapporteur-promotion-and-protection-human-rights>.

³⁸ UN General Assembly, ‘Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism’ (10 October 2023) UN DOC A/78/520, para. 59, available at: <https://www.ohchr.org/en/documents/thematic-reports/a78520-report-special-rapporteur-promotion-and-protection-human-rights>;

UK Joint Committee on Human Rights, Daesh Inquiry, Oral evidence, 22 November 2023, Professor Fionnuala Ní Aoláin, Regents Professor at University of Minnesota Law School, Professor of Law at Queen’s University Belfast, and Former UN Special Rapporteur on Counterterrorism and Human Rights, p. 21, available at: <https://committees.parliament.uk/oralevidence/13881/pdf/>.

³⁹ United Nations Human Rights Special Procedures, ‘Technical Visit to the Northeast of the Syrian Arab Republic. End of Mission Statement’ (21 July 2023) para. 18, available at: <https://www.ohchr.org/sites/default/files/documents/issues/terrorism/sr/statements/EoM-Visit-to-Syria-20230721.pdf>.

⁴⁰ United Nations Human Rights Special Procedures, ‘Technical Visit to the Northeast of the Syrian Arab Republic. End of Mission Statement’ (21 July 2023) para. 18, available at: <https://www.ohchr.org/sites/default/files/documents/issues/terrorism/sr/statements/EoM-Visit-to-Syria-20230721.pdf>.

⁴¹ UN General Assembly, ‘Report of the Independent International Commission of Inquiry on the Syrian Arab Republic’ (7 February 2023) UN DOC A/HRC/52/69, para. 114.

The UNSR on Human Rights and Counter Terrorism has found that “*sites and procedures of detention in [NES] [are] imposed without due process of law, legal basis or legal avenues of challenge for all the men, women and children detained*”.⁴² Instead, these adults and children appear to be held, without any legal oversight, solely by reason of their “*presumed but unproven links to ISIS on the basis of having formerly lived in ISIS-controlled territory*”.⁴³

The detention of children is particularly shocking, given that it appears to be based solely on family relationships. Moreover, once boys reach 18 years of age, they are reportedly moved to adult prisons without any legal charges⁴⁴ or consideration of the fact that these boys may have been child victims of trafficking for recruitment and use in hostilities. Their transfer to incommunicado detention based solely on age and gender underscores the arbitrary nature of detentions in NES.

As a result, the detention of all Third Country Nationals, in camps, prisons or so-called rehabilitation centres in NES, is arbitrary.⁴⁵

In addition, the incommunicado detention of men and boys in prisons constitutes a particularly grievous form of arbitrary detention and violation of their Article 9 rights.⁴⁶

There is a total lack of information about who is detained and where.⁴⁷ Humanitarian and human rights actors have little to no access to these facilities. The Commission of Inquiry has reported that “*[h]umanitarian actors have been denied access to hundreds of boys, including foreigners, detained in this context, despite indications they are in dire need of medical and other assistance.*”⁴⁸ Lawyers have been denied permission to meet their clients by the AANES.⁴⁹ Reprieve has requested access to the prison facilities on multiple trips to NES and has never been granted access.

⁴² UN Special Rapporteur on the Promotion and Protection of Human Rights and Fundamental Freedoms while Countering Terrorism, ‘Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism’ (10 October 2023) UN Doc A/78/520, para. 52, available at:

<https://www.ohchr.org/en/documents/thematic-reports/a78520-report-special-rapporteur-promotion-and-protection-human-rights>.

⁴³ All-Party Parliamentary Group on Trafficked Britons in Syria, ‘Report of the Inquiry by the All-Party Parliamentary Group on Trafficked Britons in Syria’ (February 2022) 13, available at:

<https://appgtraffickedbritons.org/wp-content/uploads/2022/03/Report-of-the-Inquiry-by-the-APPG-on-Trafficked-Britons-in-Syria.pdf>.

⁴⁴ UN Human Rights Special Procedures, ‘Position of the United Nations Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism on the human rights of adolescents/juveniles being detained in North-East Syria’ (May 2021) 8, available at:

https://www.ohchr.org/sites/default/files/Documents/Issues/Terrorism/SR/UNSRCT_Position_human-rights-of-boys-adolescents-2021_final.pdf.

⁴⁵ See, e.g., UN General Assembly, ‘Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism’ (10 October 2023) UN DOC A/78/520, para. 51, UN General Assembly, ‘Report of the Independent International Commission of Inquiry on the Syrian Arab Republic’ (17 August 2022) UN DOC A/HRC/51/45, para. 103.

⁴⁶ UN Human Rights Committee, ‘General Comment No. 35. Article 9’ (16 December 2014) UN DOC CCPR/C/GC/35.

⁴⁷ United Nations Human Rights Special Procedures, ‘Technical Visit to the Northeast of the Syrian Arab Republic. End of Mission Statement’ (21 July 2023) paras 18 and 19, available at:

<https://www.ohchr.org/sites/default/files/documents/issues/terrorism/sr/statements/EoM-Visit-to-Syria-20230721.pdf>.

⁴⁸ UN General Assembly, ‘Report of the Independent International Commission of Inquiry on the Syrian Arab Republic’ (7 February 2023) UN DOC A/HRC/52/69, para. 114.

⁴⁹ UN General Assembly, ‘Report of the Independent International Commission of Inquiry on the Syrian Arab Republic’ (14 August 2023) UN DOC A/HRC/54/48/, para. 90.

Family members have no means of contacting their loved ones to confirm their whereabouts or well-being.⁵⁰ The Commission of Inquiry has reported that the facilitation of letter exchanges by the International Committee of the Red Cross ceased after the attack on Al Sina’a prison in January 2022.⁵¹ Further, families who believe their loved ones may be held by the AANES “*reported that the self-administration refused to confirm or deny the detention of their missing family members.*”⁵² In Reprieve’s experience, where families have sought assistance from the UK Government to confirm the location of detention of their male relatives, and to receive information about their wellbeing, the British Government has refused to take any action.

In light of these conditions, the Commission of Inquiry has concluded that authorities in NES “*may have perpetrated acts tantamount to enforced disappearances.*”⁵³ The UNSR on Human Rights and Counter Terrorism has described the situation as one of “*systematic enforced disappearance under international law.*”⁵⁴

Given the UK’s demonstrated ability to end the arbitrary detention of British families in NES and their unwillingness to seek information on disappeared British men, the UK is responsible for prolonging the Article 9 violations British detainees are subjected to.

3. Violation of the rights of children: Article 24

Article 24 of the ICCPR recognises every child’s right to measures of protection as are required by his status as a minor. By failing to repatriate British children from NES with their families, the UK is not only complicit in the continued violation of their rights in NES, but also deprives those children of access to effective and enforceable rights protection which they would otherwise enjoy were they were able to return to the UK.

NES has been found to constitute “*the largest site of detention of children for counter-terrorism purposes worldwide.*”⁵⁵ The mass detention of children based on the

⁵⁰ UN General Assembly, ‘Report of the Independent International Commission of Inquiry on the Syrian Arab Republic’ (17 August 2022) UN DOC A/HRC/51/45, paras. 93 & 94.

⁵¹ UN General Assembly, ‘Report of the Independent International Commission of Inquiry on the Syrian Arab Republic’ (17 August 2022) UN DOC A/HRC/51/45, para. 90.

⁵² UN General Assembly, ‘Report of the Independent International Commission of Inquiry on the Syrian Arab Republic’ (17 August 2022) UN DOC A/HRC/51/45, para. 94.

⁵³ UN General Assembly, ‘Report of the Independent International Commission of Inquiry on the Syrian Arab Republic’ (17 August 2022) UN DOC A/HRC/51/45, para. 101. UN General Assembly, ‘Report of the Independent International Commission of Inquiry on the Syrian Arab Republic’ (14 August 2023) UN DOC A/HRC/54/48/, para. 97.

⁵⁴ UN General Assembly, ‘Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism’ (10 October 2023) UN DOC A/78/520, para. 60.

⁵⁵ UN General Assembly, ‘Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism’ (10 October 2023) UN DOC A/78/520, para. 52.

presumed culpability of their family members is a form of collective punishment,⁵⁶ and an “[e]gregious [example] of arbitrary detention”,⁵⁷ as noted above. As has been emphasised by several UN Special Procedures, “[n]o child is responsible for the circumstances of his birth and cannot be punished [...] by virtue of the status or acts of his parents”.⁵⁸

Instead of taking measures to prevent the multitude of rights violations suffered by British children in NES, the UK’s policy inflicts further harm on children. It appears that the UK Government has a policy of encouraging the separation of British children in NES from their mothers or primary caregivers,⁵⁹ despite its own statement that this would be “*wrong in principle*”.⁶⁰ In the vast majority of cases of which Reprieve is aware, the UK has offered to repatriate British children only if their mothers consent to being separated from them and being left behind in NES. The UK Government has sent letters to British families in NES to this effect.⁶¹ In doing so, the UK presented family separation as the only alternative to permanently abandoning British children and their mothers in NES.

The UK’s policy is not motivated by regard for the best interests of the child, which it clearly cannot assess while children are held in indefinite detention in life-threatening conditions, but by the UK’s unwillingness to repatriate British adults from NES.⁶² By offering repatriations which require or encourage arbitrary separation of children from their mothers or primary caregivers, the UK is violating the prohibition against arbitrary interference with British children’s families as enshrined in Article 17 of the ICCPR.

⁵⁶ UN Office of Counter-Terrorism, ‘Children affected by the foreign-fighter phenomenon: Ensuring a child rights-based approach’, para 52, available at https://www.un.org/counterterrorism/sites/www.un.org.counterterrorism/files/0918_ftf_handbook_web_reduced.pdf.

⁵⁷ UN Human Rights Committee, *General comment No. 35: Article 9 (Liberty and security of person)* (16 December 2014) UN Doc CCPR/C/GC/35, para 16.

⁵⁸ Fionnuala Ni Aoláin, ‘Position of the United Nations Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism on the human rights of adolescents/juveniles being detained in North-East Syria’ (May 2021) 5, available at:

https://www.ohchr.org/sites/default/files/Documents/Issues/Terrorism/SR/UNSRCT_Position_human-rights-of-boys-adolescents-2021_final.pdf;

United Nations Special Rapporteur on counter-terrorism and human rights and others, ‘Letter to the UK Government regarding the detention of men and boys in northeast Syria AL GBR 1/2022’ (1 February 2022) 4, available at:

<https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=27029>.

⁵⁹ All Party Parliamentary Group on Trafficked Britons in Syria, ‘Report of the Inquiry by the All-Party Parliamentary Group on Trafficked Britons in Syria’ (March 2022) 36, available at:

<https://appgetraffickedbritons.org/wp-content/uploads/2022/03/Report-of-the-Inquiry-by-the-APPG-on-Trafficked-Britons-in-Syria.pdf>.

⁶⁰ Minister of State, Foreign and Commonwealth Office, Dr Andrew Murrison, 22 October 2019, British children: Syria, Hansard Volume 666, Col 185

<https://hansard.parliament.uk/Commons/2019-10-22/debates/93C562B5-4ADA-4050-A266-4EAE5FDED31D/BritishChildrenSyria>.

⁶¹ Reprieve, ‘Trafficked to ISIS: British families detained in Syria after being trafficked to Islamic State’ (2021) 42, available at:

<https://reprieve.org/uk/2021/04/30/trafficked-to-syria/>; All Party Parliamentary Group on Trafficked Britons in Syria, ‘Report of the Inquiry by the All-Party Parliamentary Group on Trafficked Britons in Syria’ (March 2022) 36, available at:

<https://appgetraffickedbritons.org/wp-content/uploads/2022/03/Report-of-the-Inquiry-by-the-APPG-on-Trafficked-Britons-in-Syria.pdf>.

⁶² All Party Parliamentary Group on Trafficked Britons in Syria, ‘Report of the Inquiry by the All-Party Parliamentary Group on Trafficked Britons in Syria’ (March 2022) 36, available at:

<https://appgetraffickedbritons.org/wp-content/uploads/2022/03/Report-of-the-Inquiry-by-the-APPG-on-Trafficked-Britons-in-Syria.pdf>;

Save the Children UK, ‘All-Party Parliamentary Group on Trafficked Britons in Syria Inquiry: Submission of Written Evidence by Save the Children UK’ (1 November 2021), para 2.8, available at:

https://appgetraffickedbritons.org/wp-content/uploads/2022/02/2021_11_01_SPS-Save-The-Children-Submission.pdf.

Moreover, the AANES' has an established practice of forcibly separating boys from their mothers in Al Hol and Roj detention camps once they reach about 13 years old and moving them to other detention facilities, a practice the UK is aware of.⁶³ It has been reported that that practice is now "*routine and systematic*".⁶⁴ The forcible separation of boys is done simply on the basis of age and gender, rather than any allegation of wrongdoing.⁶⁵ There is "*little to no*" transparency about where the boys are taken.⁶⁶ However, multiple sources report that some boys have been placed in the prisons where adult men are detained.⁶⁷ Otherwise, boys may be placed in the "*rehabilitation*" centres, and then be transferred to prisons once they reach 18 years old. After their separation, the boys have very little to no contact with family members.⁶⁸ The UNSR on Human Rights and Counter Terrorism has found that this practice constitutes, "*at a minimum*", a disappearance under international law, and "*such systematic acts may further engage core international crimes*".⁶⁹ Once detained, these boys face violence, including sexual violence, disappearance, and death.

The UK's awareness of this practice, and that British boys are currently at acute risk of such treatment, combined with its refusal to repatriate British families, is a serious failure to respect the boys' right to protection under Article 24. This, and the UK's failure to repatriate British children from all places of detention in NES as described above, contributes to the ongoing violations of the children's Article 3, 6, 7, 9, 10, 14, 17 and 26 rights.

4. Failure to protect the rights of victims of trafficking: Article 8

⁶³ UN Special Procedures, 'Communication AL GBR 1/2022' (1 February 2022) available at:

<https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=27029>.

⁶⁴ Médecins Sans Frontières, 'Between two fires: Danger and desperation in Syria's Al-Hol camp' (7 November 2022) 27, available at:

<https://www.msf.org/danger-and-desperation-syria%E2%80%99s-al-hol-camp-report-msf>.

⁶⁵ UN General Assembly, 'Report of the Independent International Commission of Inquiry on the Syrian Arab Republic' (17 August 2022)

UN DOC A/HRC/51/45, para. 102. Save the Children, 'When am I going to start to live?' (September 2021) 20, available at:

<https://resourcecentre.savethechildren.net/document/when-am-i-going-start-live-urgent-need-repatriate-foreign-children-trapped-al-hol-and-roj>;

UN Human Rights Special Procedures, 'Position of the United Nations Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism on the human rights of adolescents/juveniles being detained in North-East Syria' (May 2021) 6-9, available at:

https://www.ohchr.org/sites/default/files/Documents/Issues/Terrorism/SR/UNSRCT_Position_human-rights-of-boys-adolescents-2021_final.pdf.

⁶⁶ Médecins Sans Frontières, 'Between two fires: Danger and desperation in Syria's Al-Hol camp' (7 November 2022) 27, available at:

<https://www.msf.org/danger-and-desperation-syria%E2%80%99s-al-hol-camp-report-msf>.

⁶⁷ UN General Assembly, 'Report of the Independent International Commission of Inquiry on the Syrian Arab Republic' (17 August 2022)

UN DOC A/HRC/51/45, para. 98. Médecins Sans Frontières, 'Between two fires: Danger and desperation in Syria's Al-Hol camp' (7

November 2022) 27, available at: <https://www.msf.org/danger-and-desperation-syria%E2%80%99s-al-hol-camp-report-msf>; Human Rights

Watch, 'Syria: Repatriations Lag for Foreigners with Alleged ISIS Ties' (15 December 2022) 8, available at:

<https://www.hrw.org/news/2022/12/15/syria-repatriations-lag-foreigners-alleged-isis-ties>.

⁶⁸ Information held on file by Reprieve; United Nations Human Rights Special Procedures, 'Technical Visit to the Northeast of the Syrian Arab Republic. End of Mission Statement' (21 July 2023) paras 9-10, available at:

<https://www.ohchr.org/sites/default/files/documents/issues/terrorism/sr/statements/EoM-Visit-to-Syria-20230721.pdf>; Human Rights Watch,

'Syria: Repatriations Lag for Foreigners with Alleged ISIS Ties' (15 December 2022) 8, available at:

<https://www.hrw.org/news/2022/12/15/syria-repatriations-lag-foreigners-alleged-isis-ties>.

⁶⁹ United Nations Human Rights Special Procedures, 'Technical Visit to the Northeast of the Syrian Arab Republic. End of Mission Statement' (21 July 2023) para 9, available at:

<https://www.ohchr.org/sites/default/files/documents/issues/terrorism/sr/statements/EoM-Visit-to-Syria-20230721.pdf>

Article 8 of the ICCPR prohibits the slave trade in all its forms. The UN Human Rights Committee (“HRC”) has held that this includes a duty on State parties to investigate all cases of trafficking in persons, to identify all victims of trafficking, and to ensure that victims receive “*protection and assistance*”.⁷⁰ Despite evidence that British detainees in NES are victims of trafficking by ISIS, the UK has failed to investigate the trafficking of Britons out of the UK, failed to identify victims of this trafficking currently detained in NES, and failed to extend protection to these victims, all in violation of their Article 8 rights.

As has been found by the UN Special Rapporteur on trafficking in persons, especially women and children (“UNSR on Trafficking”) “*significant bodies of evidence are now available on the recruitment and use of children, including in particular girl children and young women, by ISIL and Da’esh, for purposes of forced labour, sexual exploitation, forced criminality and forced marriage.*”⁷¹ Boys were also trafficked by ISIS, including for recruitment and use in hostilities.⁷²

Reprieve’s investigations conducted in 2021 support this conclusion. At least 63% of adult British women known to Reprieve at that time had been subjected to sexual and other forms of exploitation and were either under the age of 18 when they travelled, were coerced into travelling, and/or were kept and moved within Syria against their will.⁷³ Reprieve has not been able to assess the status of British boys and men in the prisons, because of their incommunicado detention. British courts have also recognized that British nationals, in particular, young women and girls, were “*specifically targeted [by ISIS]*”,⁷⁴ and “*recruited, transferred and harboured*” for “*the purposes of sexual exploitation.*”⁷⁵ UK courts and Parliamentary groups have found that the UK Government failed to combat trafficking by ISIS.⁷⁶

Despite this credible evidence of trafficking, the UK has seemingly refused to take any steps to investigate the trafficking of British nationals out of the UK by ISIS or to identify victims

⁷⁰ UN Human Rights Committee, ‘UN Human Rights Committee: Concluding Observations on the second Periodic Review of Botswana’ (24 November 2021) UN DOC CCPR/C/BWA/CO/2, para 26 (b) and (c).

⁷¹ UN Special Rapporteur on Trafficking in Persons, especially women and children, ‘Submission to the UK Special Immigration Commission in Shamima Begum v. Secretary of State for the Home Department’ (30 June 2022) para. 26, available at: <https://www.ohchr.org/sites/default/files/documents/issues/trafficking/2022-11-23/20220630-uk-begum.pdf>.

⁷² UN General Assembly, ‘Report by the Special Rapporteur on trafficking in persons, especially women and children’ (3 August 2021) UN DOC A/76/263, paras. 27-31.

⁷³ Reprieve, ‘Trafficked to ISIS: British families detained in Syria after being trafficked to the Islamic State’ (April 2021), 19, available at: <https://reprieve.org/uk/2021/04/30/trafficked-to-syria/>.

⁷⁴ *London Borough Tower of Hamlets v B* [2015] EWHC 2491 (Fam) 21 August 2015.

⁷⁵ *Shamima Begum v Secretary of State for the Home Department*, Special Immigration Appeals Commission (SIAC), Appeal No: SC/163/2019, para 219.

⁷⁶ See, e.g., *London Borough of Tower Hamlets v B* [2015] EWHC 2491 (Fam) 5; All-Party Parliamentary Group on Trafficked Britons in Syria, ‘Report of the Inquiry by the All-Party Parliamentary Group on Trafficked Britons in Syria’ (February 2022) 5, available at: <https://appgetraffickedbritons.org/wp-content/uploads/2022/03/Report-of-the-Inquiry-by-the-APPG-on-Trafficked-Britons-in-Syria.pdf>

currently detained in NES. For instance, in letters seen by Reprieve, the UK Government has noted that one of the reasons for a refusal to repatriate is that the individuals travelled “*of [their] own volition to join a proscribed terrorist organisation*”,⁷⁷ apparently without any consideration that these individuals are potential victims of human trafficking and may not have travelled “*of [their] own volition*”.

The UK Government has also taken the position that it does not need to “*make determinations of whether persons presently situated outside the UK are victims of human trafficking*”.⁷⁸ Yet, the HRC has recognised that trafficking has international dimensions and that it therefore concerns the trafficking of persons into as well as out of the State party’s territory.⁷⁹ The UNSR on Trafficking has also found that the obligation to take operational measures to assist and protect victims of trafficking is “*strict*” and applies extraterritorially.⁸⁰

The UK has also evidently failed to offer protection to victims of ISIS trafficking currently detained in NES. The UK has not only refused to offer any form of consular assistance, including repatriations, to British detainees, it has also stripped the vast majority of detained adults of their British citizenship (see further below). In addition to constituting a failure of protection, these measures violate the non-punishment principle. Deprivation of citizenship in the NES context has been found to be “*distinctly punitive*” because it “*appears primarily to involve the prevention of return, or because of [individuals’] travel to a conflict zone in the first place.*”⁸¹ As the UNSR on Trafficking has found, “*[f]ailure to respect the principle of non-punishment leads to further serious human rights violations, including detention, family separation and unfair trial. It also increases risks of trafficking and re-trafficking. Deliberately exposing victims and potential victims, including children, to such risks is a failure of prevention and an egregious failure of protection*”.⁸²

⁷⁷ Letters on file at Reprieve.

⁷⁸ UK Mission Geneva, ‘Note Verbale No. 084’ (16 April 2021) 8, available at:

<https://spcommreports.ohchr.org/TMResultsBase/DownloadFile?gId=36143>.

⁷⁹ UN Human Rights Committee, ‘UN Human Rights Committee: Concluding Observations: Slovakia’ (22 August 2003) UN DOC CCPR/CO/78/SVK, para. 10.

⁸⁰ UN General Assembly, ‘Report of the Special Rapporteur on Trafficking in persons, especially women and children’ (3 August 2021) UN DOC A/76/263, para. 50, available at:

<https://www.ohchr.org/en/documents/thematic-reports/report-intersections-between-trafficking-and-terrorism>; see also UN General Assembly, ‘Report of the Special Rapporteur on Trafficking in persons, especially women and children: Implementation of the non-punishment principle’ (17 May 2021) UN DOC A/HRC/47/34, para. 44, available at:

<https://www.ohchr.org/en/documents/thematic-reports/ahrc4734-report-implementation-non-punishment-principle>; UN Special Rapporteur on Trafficking in Persons, especially women and children, ‘Submission to the UK Special Immigration Commission in Shamima Begum v. Secretary of State for the Home Department’ (30 June 2022) paras. 40-42, available at:

<https://www.ohchr.org/sites/default/files/documents/issues/trafficking/2022-11-23/20220630-uk-begum.pdf>.

⁸¹ UN Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, ‘Position paper on the human rights consequences of citizenship stripping in the context of counter-terrorism with a particular application to North-East Syria’ (February 2022) 9, available at:

<https://www.ohchr.org/sites/default/files/documents/issues/terrorism/sr/Final-Report-Deprivation-Citizenship.pdf>.

⁸² UN Special Rapporteur on trafficking in persons, especially women and children, ‘Submission by the UN Special Rapporteur on trafficking in persons, especially women and children, in the cases of H.F. and M.F. v. France (App. No. 24384/19) and J.D. and A.D. v.

The UK's failure to investigate trafficking, identify victims, and offer them protection breaches the Article 8 rights of many British detainees in NES.

5. Violation of their right to return to their home country: Article 12(4)

Article 12(4) of the ICCPR guarantees the right not to be arbitrarily denied the right to enter one's own country. The HRC has found that the scope of the right is broader than the concept of nationality and embraces nationals of a country who have been "*stripped of their nationality in violation of international law*".⁸³ The UK's regime of citizenship deprivation violates international law and therefore the Article 12(4) rights of British detainees in NES.

The right to nationality is a fundamental principle of international law.⁸⁴ The Universal Declaration of Human Right expressly prohibits the arbitrary deprivation of nationality⁸⁵ and the UNSR on Human Rights and Counter Terrorism has found that this prohibition has risen to the status of customary international law.⁸⁶ In order to avoid arbitrariness, a deprivation must conform with domestic and international law, serve a legitimate purpose consistent with international law, be proportionate to the interests the State seeks to protect, and offer sufficient procedural guarantees and safeguards.⁸⁷ Deprivations conducted by the UK government fail each of these requirements.

First, relevant domestic legislation which provides the basis for a deprivation is fatally broad and vague, thereby violating international law. The British Nationality Act permits the Secretary of State for the Home Department ("Home Secretary") to deprive a national if deemed "*conducive to the public good*".⁸⁸ As noted in Section B of this report, this language confers vague and subjective discretion on the Home Secretary to deprive persons of citizenship. Furthermore, there is a risk of arbitrariness in the exercise of this power, as there is no explicit requirement for the Home Secretary's decision to be made on "*objectively*

France (App. No. 44234/20) before the European Court of Human Rights' (29 September 2021) para. 33, available at: https://www.ohchr.org/sites/default/files/Documents/Issues/Trafficking/Amicus_SR_Trafficking_in_Persons.pdf.

⁸³ UN Human Rights Committee, 'CCPR General Comment No. 27: Article 12 (Freedom of Movement)' (2 November 1999) UN DOC CCPR/C/21/Rev.1/Add.9, para. 20, available at: <https://www.refworld.org/docid/45139c394.html>.

⁸⁴ UN General Assembly, Resolution 50/152: UN General Assembly, Office of the United Nations High Commissioner for Refugees (9 February 1996), UN DOC A/RES/50/152, para. 16, available at: <https://www.refworld.org/docid/3b00f31d24.html>

⁸⁵ See Article 15(2).

⁸⁶ UN Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, 'Position paper on the human rights consequences of citizenship stripping in the context of counter-terrorism with a particular application to North-East Syria' (February 2022) 6, available at:

<https://www.ohchr.org/sites/default/files/documents/issues/terrorism/sr/Final-Report-Deprivation-Citizenship.pdf>.

⁸⁷ UN Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, 'Position paper on the human rights consequences of citizenship stripping in the context of counter-terrorism with a particular application to North-East Syria' (February 2022) 10, available at:

<https://www.ohchr.org/sites/default/files/documents/issues/terrorism/sr/Final-Report-Deprivation-Citizenship.pdf>.

⁸⁸ British Nationality Act 1981 (as amended), §40(2).

reasonable grounds”.⁸⁹ The broad language of the British Nationality Act therefore does not enable citizens to “*reasonably foresee the consequences of actions which trigger a withdrawal of nationality*”⁹⁰ and therefore fails the principle of legality, violating Article 15 of the ICCPR, as will be discussed further in Section B.

International law also provides that a deprivation may not lead to statelessness except in very exceptional circumstances.⁹¹ The British Nationality Act provides that the Home Secretary must be “*satisfied*” that a person will not be rendered stateless by a deprivation.⁹² The UK considers a person stateless if they are “*not considered as a national by any state under the operation of its law*”.⁹³ However, the UK makes this determination based on its own assessment of the domestic law of the second state and does not consult with or seek confirmation from the state in question.⁹⁴ In practice therefore, the Home Secretary may be “*satisfied*” that a person has a second nationality, and would therefore not be made stateless by a deprivation, even if the second state disputes this. The result has been that British detainees have been made stateless.⁹⁵ As found by the UNSR on Human Rights and Counter Terrorism, there have been “*several instances where an individual detained in [NES] has been deprived of one nationality only to have the State of their second nationality disclaim their citizenship, rendering the individual stateless and stranded in the camps in a legal limbo from which there is virtually no positive resolution possible.*”⁹⁶ The UK has therefore violated the international legal prohibition on rendering an individual stateless.

⁸⁹ Joint Committee on Human Rights, ‘Third report’ (23 November 2005) para 162, available at: <https://publications.parliament.uk/pa/jt200506/jtselect/jtrights/75/7507.htm#n153>.

⁹⁰ UN Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, ‘Position paper on the human rights consequences of citizenship stripping in the context of counter-terrorism with a particular application to North-East Syria’ (February 2022) 10, available at: <https://www.ohchr.org/sites/default/files/documents/issues/terrorism/sr/Final-Report-Deprivation-Citizenship.pdf>; UNHCR Guidelines on Statelessness No. 5, para. 92, available at: <https://www.refworld.org/docid/5ec5640c4.html>.

⁹¹ See discussion in UN Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, ‘Position paper on the human rights consequences of citizenship stripping in the context of counter-terrorism with a particular application to North-East Syria’ (February 2022) 4, available at: <https://www.ohchr.org/sites/default/files/documents/issues/terrorism/sr/Final-Report-Deprivation-Citizenship.pdf>

⁹² British Nationality Act 1981 (as amended), §40(4).

⁹³ Immigration Rules HC 395 Part 14 Stateless persons, para. 104, available at: <https://www.gov.uk/guidance/immigration-rules/immigration-rules-part-14-stateless-persons>.

⁹⁴ See UN Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, ‘Position paper on the human rights consequences of citizenship stripping in the context of counter-terrorism with a particular application to North-East Syria’ (February 2022) 8, available at: <https://www.ohchr.org/sites/default/files/documents/issues/terrorism/sr/Final-Report-Deprivation-Citizenship.pdf>; Alison Harvey, ‘Burden of Proof in statelessness cases and the meaning of “by operation of its law” (31 January 2020) available at: <https://www.statelessness.eu/updates/blog/burden-proof-statelessness-cases-and-meaning-operation-its-law>.

⁹⁵ See for example: *Begum v Special Immigration Appeals Commission (SIAC) [2020] EWCA Civ 918*; Areeb Ullah, ‘Bangladesh will not allow Shaima Begum into the country amid UK appeal’ (16 June 2020) *Middle East Eye*, available at: <https://www.middleeasteye.net/news/shaima-begum-uk-bangladesh-ban-entry-british-citizenship-appeal>.

⁹⁶ UN Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, ‘Position paper on the human rights consequences of citizenship stripping in the context of counter-terrorism with a particular application to North-East Syria’ (February 2022) 8, available at: <https://www.ohchr.org/sites/default/files/documents/issues/terrorism/sr/Final-Report-Deprivation-Citizenship.pdf>.

Second, the UK's deprivation of its nationals in NES fails to serve a legitimate purpose under international law. It is widely recognised that States may not deprive their nationals of citizenship in order to prevent them from returning to the State's territory.⁹⁷ Nevertheless, in 2019, the then-Home Secretary declared he would do “*everything in [his] power to prevent*” the return of British nationals who had travelled to Syria and Iraq, including by depriving them of citizenship.⁹⁸ Although the UK claims that deprivations are intended to protect national security, the blanket approach as evidenced by the then-Home Secretary's statement suggests that, in many if not all cases, the UK's purpose in depriving individuals detained in NES was to prevent their return, rather than serving a legitimate purpose.

Third, citizenship deprivations are unnecessary and disproportionate. The UK has claimed that depriving individuals who went to Iraq or Syria of their citizenship is necessary to protect national security. However, British courts are capable of adjudicating such issues. As a former Director of Public Prosecutions has noted, “*hundreds and hundreds of terrorist prosecutions*” have passed successfully through British courts in recent years and the UK has “*some of the most elaborate, extensive counter-terrorism legislation in the fair trial world.*”⁹⁹ Repatriating individuals suspected of committing crimes would also meet the UK's obligations to prosecute the commission of core international crimes.¹⁰⁰

A proportionality assessment must also consider the impact of deprivation on other rights.¹⁰¹ In the context of detainees in NES, deprivations have had a devastating impact on children and family unity. Where a child is not stripped of citizenship themselves, the act of depriving their caregiver of citizenship constitutes a “*de facto deprivation of citizenship*” of the child.¹⁰² This is because “[*w*]hen citizenship is removed or revoked, the citizenship of the entire family

⁹⁷ UN High Commissioner for Refugees (UNHCR), Guidelines on Statelessness No. 5: Loss and Deprivation of Nationality under Articles 5-9 of the 1961 Convention on the Reduction of Statelessness, May 2020, HCR/GS/20/05, para. 120, available at: <https://www.refworld.org/docid/5ec5640c4.html>; International Law Commission, ‘Draft Articles on the Expulsion of Aliens (with commentaries)’ (2014) II(2) YBILC, p. 13 (Article 8), commentary, para. 1. See also UN Human Rights Committee, ‘CCPR General Comment No. 27: Article 12 (Freedom of Movement)’ (1999), para. 21.

⁹⁸ HC Deb 20 February 2019 c1485, available at: <https://hansard.parliament.uk/commons/2019-02-20/debates/4DEC2589-7212-48A0-8507-9D38C0DEC42A/DeprivationOfCitizenshipStatus>.

⁹⁹ All Party Parliamentary Group on Trafficked Britons in Syria, ‘Report of the Inquiry by the All-Party Parliamentary Group on Trafficked Britons in Syria’ (March 2022) 31, available at: <https://appgtraffickedbritons.org/wp-content/uploads/2022/03/Report-of-the-Inquiry-by-the-APPG-on-Trafficked-Britons-in-Syria.pdf>.

¹⁰⁰ UN Human Rights Special Procedures, Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, ‘The prosecution of individuals with alleged links to designated non-State armed groups for crimes committed in the Northeast of Syria as a key aspect of the rights of victims of terrorism’ (September 2023) 11, available at: <https://www.ohchr.org/sites/default/files/documents/issues/terrorism/sr/Position-Paper-on-prosecutions.pdf>.

¹⁰¹ UN Special Rapporteur on counter-terrorism and human rights, ‘The human rights consequence of citizenship stripping in the context of counter-terrorism with a particular application to North East Syria’ (February 2022) 10, available at: <https://www.ohchr.org/sites/default/files/2022-03/Deprivation-of-Citizenship.docx>.

¹⁰² UN Special Rapporteur on counter-terrorism and human rights, ‘The human rights consequence of citizenship stripping in the context of counter-terrorism with a particular application to North East Syria’ (February 2022) 17, available at: <https://www.ohchr.org/sites/default/files/2022-03/Deprivation-of-Citizenship.docx>.

can be affected, relegating the status of innocent family members to one of statelessness”.¹⁰³

Children cannot exercise their right to state protection from the UK and leave detention in NES without effectively agreeing to separate from their mothers and caregivers, potentially for the rest of their lives.

Moreover, depriving a child’s mother risks leaving that child with a different nationality to the rest of their family. Consider a British mother with two children, born to different non-British fathers either side of her citizenship deprivation. The effect of stripping the mother is to leave the elder child as the sole British citizen of his immediate family, while the younger child, potentially unable to derive citizenship via her mother’s alternative nationality, is left sharing citizenship only with her father. The result is that the family is left without the right to live together anywhere in the world.¹⁰⁴

The deprivation of British nationals who are victims of enforced disappearances in NES has also had particularly egregious effects. Where families have sought information from the UK Government about their disappeared relatives, the UK’s Foreign, Development and Commonwealth Office has taken the position that they have no obligation to act, even to merely make inquiries about the fate of the disappeared person, as they are no longer British. Their deprivation has therefore facilitated and prolonged their disappearance.¹⁰⁵

Given the severe impact on the enjoyment of other rights, and the UK’s ability to address any legitimate security concerns through domestic courts, the deprivation of British individuals in NES is both disproportionate and unnecessary.

Finally, the UK fails to provide sufficient procedural guarantees and safeguards when depriving someone of citizenship. Such safeguards include meaningful notice of the intent to deprive before the decision is made; understanding of the reasons for the decision; access to legal and/or administrative avenues to challenge the decision; access to all relevant information and documents relating to the decision; and that the deprivation must have a suspensive effect.¹⁰⁶ The UK’s deprivation regime fails to meet any of these requirements.

¹⁰³ Save the Children, ‘When am I going to start to live?’ (2021) para 4.3, available at: https://resourcecentre.savethechildren.net/pdf/when_am_i_going_to_start_to_live_final_0.pdf.

¹⁰⁴ Reprieve, ‘Trafficked to ISIS: British families detained in Syria after being trafficked to Islamic State’ (2021) 52 <https://reprieve.org/uk/2021/04/30/trafficked-to-syria/>.

¹⁰⁵ See for example: Mandate of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, ‘Communication UA GBR 20/2023’ (27 October 2023), available at: [DownloadPublicCommunicationFile \(ohchr.org\)](https://www.ohchr.org/sites/default/files/documents/issu/terrorism/sr/Final-Report-Deprivation-Citizenship.pdf).

¹⁰⁶ United Nations Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, ‘Position paper on the human rights consequences of citizenship stripping in the context of counter-terrorism with a particular application to North-East Syria’ (February 2022) 15-16, available at: <https://www.ohchr.org/sites/default/files/documents/issu/terrorism/sr/Final-Report-Deprivation-Citizenship.pdf>.

Before making a deprivation order, the Home Secretary must notify the person being deprived, to give the reasons for the order, and inform them of their right to appeal.¹⁰⁷

However, notice can be satisfied by sending documents to an individual's last known address and it can be withheld in certain circumstances.¹⁰⁸ Reprieve has found that many individuals currently detained in NES were not aware of their deprivation, having been abroad at the time the order was issued. In some cases, individuals were already arbitrarily detained in NES when they were deprived, a fact the UK Government was aware of. Moreover, the Home Secretary is not required to provide any evidence to substantiate the reasons for the order.

The effect of a deprivation order is immediate.¹⁰⁹ In deprivation cases relating to national security, appeals take place in the Special Immigration and Appeals Commission ("SIAC") and must be brought by the individual concerned.¹¹⁰ Without notice and without direct access to legal representation, British detainees in NES have no possibility of meaningfully participating in their appeal, with the result that British courts have accepted that such appeals "*will not be fair and effective.*"¹¹¹ Appeals have therefore been stayed until individuals concerned are "*in a position to play an effective part in it*".¹¹² Since British detainees will not be released from detention without the intervention of the UK, they may never be in such a position.

Further, the principles that both parties should be on equal footing and that a party has the right to know the case against them does not apply in SIAC. Instead, "Special Advocates" review secret material underpinning the deprivation decision which the deprived individual and their lawyer are not permitted to review.¹¹³ A Special Advocate has no responsibility towards the deprived individual and cannot obtain meaningful instructions which constrains "*the ability of the appellant, or his solicitor, to make informed decisions*".¹¹⁴

For the above reasons, the UK's deprivation of detainees in NES of their British citizenship is arbitrary and therefore violates Article 12(4) of the ICCPR.

6. Violation of the right to remedy: Article 2(3)

¹⁰⁷ British Nationality Act 1981 (as amended), § 40(5).

¹⁰⁸ Nationality and Borders Act 2022, § 10.

¹⁰⁹ Asylum and Immigration Act (Treatment of Claimants, etc.) 2004, Schedule 2.

¹¹⁰ See: *R (Islam) v Secretary of State for the Home Department* [2019] EWHC 2169 (Admin).

¹¹¹ *Shamima Begum v. The Secretary of State for the Home Department*, Special Immigration Appeals Commission, 7 February 2022, para. 143.

¹¹² *Shamima Begum v. The Secretary of State for the Home Department*, Supreme Court, Judgement, 26 February 2021, para. 135.

¹¹³ Constitutional Affairs Committee, 'Seventh Report' (22 March 2005) paras 44, 50, available at:

<https://publications.parliament.uk/pa/cm200405/cmselect/cmconst/323/32302.htm>.

¹¹⁴ Constitutional Affairs Committee, 'Seventh Report' (22 March 2005) para 62, available at:

<https://publications.parliament.uk/pa/cm200405/cmselect/cmconst/323/32302.htm>.

Article 2(3) holds that States party to the ICCPR should ensure a right to a remedy when their ICCPR rights are violated, and have effective remedy determined by a competent authority. It goes without saying that British nationals detained in NES have no avenue to seek remedy for the violations of their ICCPR rights.

British families in NES are detained in a legal vacuum, a black hole.¹¹⁵ Unless they are repatriated, they will not only continue to be exposed to a multitude of rights violations as detailed in this submission, they will also be indefinitely deprived access to a remedy for these violations.

IV. RESPONSIBILITY OF THE UK

By refusing to repatriate and otherwise provide consular assistance to British families detained in NES for years, the UK is knowingly perpetuating multiple violations of its nationals' ICCPR rights. As UN experts have stressed, States “*have a positive obligation to take necessary and reasonable steps to intervene in favour of their nationals abroad, should there be reasonable grounds to believe that they face treatment in flagrant violation of international human rights law.*”¹¹⁶

The UK is well aware of the gross violations of international human rights occurring in NES, possibly amounting to crimes against humanity.¹¹⁷ Through its failure to act, the UK is breaching its positive obligation to protect its nationals from these violations. Indeed, both the CRC and the CAT have found that States have violated their nationals' rights by refusing to repatriate them from NES in the face of these violations.¹¹⁸

Further, the UNSR on Human Rights and Counter Terrorism has highlighted the “*role and presence of Global Coalition [Against Daesh] partners on the ground and in relation to the*

¹¹⁵ UN Human Rights Special Procedures, ‘Syria: UN Experts alarmed by Reports of Boys Taken from Camp Roj by the De Facto Authorities’ (16 February 2023) available at:

<https://www.ohchr.org/en/press-releases/2023/02/syria-un-experts-alarmed-reports-boys-taken-camp-roj-de-facto-authorities>.

¹¹⁶ UN Special Rapporteur on the promotion and protection of human rights while countering terrorism and UN Special Rapporteur on extrajudicial, summary or arbitrary executions, ‘Extra-territorial jurisdiction of States over children and their guardians in camps, prisons, or elsewhere in the northern Syrian Arab Republic’ (2020) para. 3, available at:

<https://www.ohchr.org/sites/default/files/Documents/Issues/Terrorism/UNSRsPublicJurisdictionAnalysis2020.pdf>.

¹¹⁷ UN Special Rapporteur on the Promotion and Protection of Human Rights and Fundamental Freedoms while Countering Terrorism, ‘Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism’ (10 October 2023) UN Doc A/78/520, para 55, available at:

<https://www.ohchr.org/en/documents/thematic-reports/a78520-report-special-rapporteur-promotion-and-protection-human-rights>;

¹¹⁸ UN Committee on the Rights of the Child decision in relation to France, 8 February 2022, UN Doc CRC/C/89/D/77/2019; CRC/C/89/D/79/2019; CRC/C/89/D/109/2019; UN Committee on the Rights of the Child decision in relation to Finland, 7 October 2022, UN Doc CRC/C/91/D/100/2019; UN Committee Against Torture, ‘Decision Adopted by the Committee under Article 22 of the Convention, Concerning communication No. 922/2019’ (2 March 2023) UN DOC CAT/C/75/D922/2019.

ongoing complex detention situation.”¹¹⁹ This presence appears to include access to the detainees,¹²⁰ including “*regular and sustained access for interrogation purposes*” by intelligence services.¹²¹ Multiple states have also provided financial and other capacity building support to the detention system in NES.¹²² This includes the UK, as noted above, which “*directly implicates*” it in the system of detention in NES.¹²³

The UK, along with other states, is therefore subcontracting the detention of its nationals to the AANES, and violating the “*obligation not to knowingly aid and assist in the commission of violations of international law or international human rights law, including by knowingly providing an essential facility or financing the activity in question.*”¹²⁴

RECOMMENDATIONS

In view of the UK Government’s responsibility and complicity in the rights violations suffered by British nationals in NES, **we invite the Committee to recommend that the UK should:**

- 1) Repatriate all British nationals detained in NES on an urgent basis, in line with the UK’s responsibility towards those nationals under the ICCPR.
- 2) Request information on the whereabouts and well-being of all British nationals detained in NES from the AANES, particularly male detainees who have been disappeared, and communicate this information to detainees’ family members.

¹¹⁹ UN Human Rights Special Procedures, Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, ‘Technical Visit to Northeast of the Syrian Arab Republic End of Mission Statement’ (21 July 2023) para. 17, available at: <https://www.ohchr.org/sites/default/files/documents/issues/terrorism/sr/statements/EoM-Visit-to-Syria-20230721.pdf>.

¹²⁰ UN Human Rights Special Procedures, Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, ‘Technical Visit to Northeast of the Syrian Arab Republic End of Mission Statement’ (21 July 2023) para. 17, available at: <https://www.ohchr.org/sites/default/files/documents/issues/terrorism/sr/statements/EoM-Visit-to-Syria-20230721.pdf>.

¹²¹ UN General Assembly, ‘Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism’ (10 October 2023) UN DOC A/78/520, para. 51.

¹²² See: UN Special Procedures Mandates of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism et al., ‘Communications AUS 1/2022; AUT 1/2022; FRA 1/2022; DEU 1/2022; SWE 1/2022; GBR 1/2022; USA 2/2022’ (1 February 2022).

¹²³ Mandates of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism and others, ‘Letter to the UK Government regarding the detention of men and boys in northeast Syria, AL GBR 1/2022’ (February 2022) 5, available at: <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=27029>.

¹²⁴ UN Special Rapporteur on the Promotion and Protection of Human Rights and Fundamental Freedoms while Countering Terrorism, ‘Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism’ (10 October 2023) UN Doc A/78/520, 15 fn. 96, available at: <https://www.ohchr.org/en/documents/thematic-reports/a78520-report-special-rapporteur-promotion-and-protection-human-rights>. UN Special Rapporteur on the protection and promotion of human rights while countering terrorism, ‘Submission by the United Nations Special Rapporteur on the protection and promotion of human rights while countering terrorism to the UK’s Foreign Affairs Committee on the UK’s international counter-terrorism policy’ (June 2023) para. 18 and related footnotes, available at: <https://committees.parliament.uk/writtenevidence/121939/pdf/>.

- 3) Stop depriving British nationals of their citizenship and reinstate the British citizenship of all those who have been deprived, in view of the arbitrariness of the deprivation regime and the far-reaching implications for children.
- 4) Stop funding detention centres in NES until independent human rights monitors have:
 - (i) full and unimpeded access to all places of detention; and
 - (ii) confirmed that children are no longer being detained in these facilities following arbitrary separation from their families.

B. THE UK'S DISCRIMINATORY AND ARBITRARY CITIZENSHIP DEPRIVATION LAWS

In addition to the violations set out in Section A (III.5) of this report, the UK Government's citizenship deprivation laws also violate its obligations under the ICCPR to ensure that all persons are equal before the law, and that the law will not be applied arbitrarily through its:

1. Failure to protect against discrimination on the grounds of race and national or social origin, contrary to **Article 26** of the ICCPR
2. Failure to uphold the principle of legal certainty, contrary to **Article 15** of the ICCPR

1. Failure to protect against discrimination on the grounds of race and national or social origin: Article 26

The UK's legislation on citizenship deprivation on national security grounds is inherently discriminatory, since it creates two groups of citizens – some who can be stripped of their citizenship, and others who cannot be stripped of their citizenship under any circumstances – based solely on national or social origin. In practice, these citizenship stripping powers have a disproportionate impact on people from non-white racial and ethnic backgrounds.

Although data on the numbers of deprivations under this section is not regularly published by the government, information in the public domain indicates that there have been at least 217 deprivations since 2010.¹²⁵ This is an increase of more than 4000% in the previous three decades. The UK has stripped more people of citizenship on national security grounds since 2010 than any other country except Bahrain and Nicaragua.¹²⁶

¹²⁵ House of Commons Library, 'Deprivation of British citizenship and withdrawal of passports', 19 May 2023, p.5, available at: <https://researchbriefings.files.parliament.uk/documents/SN06820/SN06820.pdf>

¹²⁶ Institute of Statelessness and Inclusion, 'Instrumentalising Citizenship in the Fight Against Terrorism', March 2022, p.29, available at: https://files.institutesi.org/Instrumentalising_Citizenship_Global_Trends_Report.pdf, and The New York Times, 'Nicaragua Strips

Section 40(4) of the British Nationality Act prohibits the Secretary of State from depriving a person of their citizenship where it will make them stateless. However, this prohibition does not apply if the individual's citizenship is a result of naturalization, the Secretary of State is satisfied that the person has conducted themselves "*in a manner which is seriously prejudicial to the vital interests*" of the UK, and the Secretary of State has reasonable grounds to believe that the person is able to acquire another nationality. Therefore, the legislation permits the Government to make UK citizens stateless in certain circumstances.

The effect of this law is to create several tiers of British citizenship of varying precarity. Those who are born with British citizenship, and who have no access to another nationality, can never be stripped of their citizenship in any circumstances. By contrast, people born with British citizenship who have dual nationality, may be stripped of their citizenship provided it does not leave them stateless. Finally, individuals who acquired their British citizenship through naturalization may be stripped of their citizenship in some circumstances even where it leaves them stateless.

The law explicitly discriminates on the basis of national origin, because the British citizenship of anyone with dual nationality is less secure than those with only English, Welsh, and Scottish heritage. British citizens from non-white ethnic minorities are more likely to be exposed to citizenship stripping than white Britons. Research by the New Statesman found that 41% of British citizens from a non-white ethnic background are likely to be eligible for citizenship deprivation, compared with only 5% of citizens the Government classifies as white.¹²⁷ 50% of Asian Britons, and 39% of black Britons, are likely eligible for citizenship deprivation.¹²⁸

In practice, citizenship stripping has disproportionately affected British Muslims. Research by the Institute for Race Relations found that "*the vast majority of those deprived of citizenship since 2003 have been British Muslims.*"¹²⁹

In a communication to the UK Government dated February 2022, the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance; the Special Rapporteur on the promotion and protection of human rights and fundamental

Citizenship From Hundreds Days After Prisoner Release' 17 February 2023, available at:

<https://www.nytimes.com/2023/02/17/world/americas/nicaragua-strips-citizenship-dissidents.html>.

¹²⁷ New Statesman, 'British citizenship of six million people could be jeopardised by Home Office plans', 1 December 2021, available at: <https://www.newstatesman.com/politics/2021/12/exclusive-british-citizenship-of-six-million-people-could-be-jeopardised-by-home-office-plans>.

¹²⁸ Ibid.

¹²⁹ Institute of Race Relations, 'Citizenship: from right to privilege', September 2022, p.9, available at: <https://irr.org.uk/wp-content/uploads/2022/09/Deprivation-of-citizenship-Final-LR.pdf>

freedoms while countering terrorism; the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment; the Special Rapporteur on trafficking in persons, especially women and children and the Working Group on discrimination against women and girls stated that “*it is our clear view that the widespread use of citizenship stripping, in the name of countering terrorism, is inconsistent with the spirit and intention of the International Covenant on Civil and Political Rights.*”¹³⁰ The experts raised concerns that “*the UK’s practice of depriving people of citizenship may have a disproportionate impact on people from non-white racial and ethnic backgrounds, and especially people from Muslim and migrant communities.*”¹³¹ The experts cited the New Statesman statistical analysis showing that individuals from a non-white ethnic background are more likely to be eligible for deprivation, as well as the “*persistent pattern of difference in treatment*” of British Muslims observed in the UK’s counter-terrorism policies.¹³²

2. Failure to uphold the principle of legal certainty: Article 15

As set out in Section A (III.5) of this report, Section 40(2) of the British Nationality Act 1981 gives the Secretary of State the power to deprive an individual of British nationality if he or she believes that deprivation will be “*conducive to the public good.*” UN experts have noted that the current legislation “*would appear to confer the Secretary of State a broad, vague and subjective discretion to determine whether, when and why to deprive a person of citizenship which is contrary to the principle of legal certainty, as provided for in Article 15 ICCPR.*”¹³³ The UK’s Joint Committee on Human Rights also found that there were “*insufficient guarantees against arbitrariness*” in the exercise of the power, including because there is no test of the objective reasonableness of the Secretary of State’s decision.¹³⁴ The Secretary of State need only be “*satisfied*” that deprivation is conducive to the public good.

Current UK legislation on citizenship deprivation inherently discriminates between British citizens based on national origin, and given its disproportionate impact on some communities, indirectly discriminates based on race. This is contrary to the UK’s obligations to ensure all persons are equal before the law and to avoid discrimination in Article 26 of the ICCPR. The

¹³⁰ Communication to the UK Government by the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance; the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism; the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment; the Special Rapporteur on trafficking in persons, especially women and children and the Working Group on discrimination against women and girls, OL GBR 3/2022, February 2022, p.2. available at: <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=27073>.

¹³¹ Ibid, p.8.

¹³² Ibid, p.9.

¹³³ Ibid, p.4.

¹³⁴ ‘Joint Committee on Human Rights Third Report’, para 162, 28 November 2005, available at: <https://publications.parliament.uk/pa/jt/200506/jtselect/jtrights/75/7507.htm>.

discretion granted to the Secretary of State in decisions on deprivation also appears to breach the UK's obligations under Article 15 of ICCPR.

RECOMMENDATIONS

In view of the UK Government's discriminatory and arbitrary use of citizenship deprivations we invite the Committee to recommend that the UK should:

1. Introduce an immediate moratorium on the use of citizenship deprivation powers in section 40(2) of the British Nationality Act 1981.
2. Abolish citizenship deprivation powers for the "*public good*" on the basis that the power is inherently discriminatory and arbitrary, by repealing section 40(2) of the British Nationality Act 1981.
3. Review all cases where an individual has been deprived of their citizenship under powers in section 40(2) of the British Nationality Act 1981.

C. THE UK'S VIOLATIONS OF THE PROHIBITION AGAINST TORTURE AND THE RIGHTS OF VICTIMS OF TORTURE

The UK has violated its obligations under the ICCPR to investigate and act on allegations of complicity in the torture and ill-treatment of civilians and detainees overseas through its:

1. Failure to investigate systematic involvement in torture through intelligence-sharing, contrary to **Articles 2 and 7** of the ICCPR
2. Failure to establish a clear legal or policy prohibition on involvement in torture, contrary to **Article 7** of the ICCPR
3. Failure to institute a 'right to know' for victims of torture, contrary to **Articles 2 and 7** of the ICCPR

1. Failure to investigate systematic involvement in torture through intelligence-sharing: Articles 2 and 7

In July 2019, the UK confirmed it would renege on its promise made in 2010 of launching an independent, judge-led inquiry into its involvement in torture and rendition. The UK's

intelligence services have since identified at least 15 additional cases of UK complicity in torture which may require further investigation.¹³⁵

The UK's failure to launch an independent and effective investigation leaves it in breach of its obligations under Article 2 of the ICCPR as it prevents individuals from securing an effective remedy where the UK has been complicit in the breach of their Article 7 rights.

2. Failure to establish clear legal or policy prohibition on involvement in torture: Article 7

The UK's obligations under Article 7 of the ICCPR require that: *"no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment."* The Human Rights Committee has interpreted this obligation to include a duty on states not to *"expose individuals to the danger of torture or cruel, inhuman or degrading treatment or punishment."*¹³⁶ In its eighth periodic report submitted under Article 40 of the ICCPR, the UK stated: *"the government's policy is clear: it does not participate in, solicit, encourage or condone the use of torture or cruel, inhuman or degrading treatment for any purpose."*¹³⁷

However, in violation of this commitment and its duty under Article 7, UK policy continues to permit intelligence-sharing carrying a real risk of torture, with the result that people continue to be put at risk as a result of UK action.

In 2019, the UK published 'The Principles', the policy document which governs the passing of intelligence in detention contexts overseas.¹³⁸ The Principles do not contain an unequivocal prohibition on the intelligence-sharing where there is a real risk it will cause someone to be tortured. Instead, there is only a *"presumption"* not to proceed with the intelligence-sharing.¹³⁹

Under the extant policy, where there is a real risk of torture, the decision whether to share intelligence in light of that risk therefore rests with the Minister in their discretion to consider

¹³⁵ Guardian, Dan Sabbagh, 'Whitehall held secret review into 15 possible cases of torture or rendition', 9 June 2020, available at: <https://www.theguardian.com/world/2020/jun/09/whitehall-held-secret-review-15-possible-cases-torture-or-rendition>.

¹³⁶ UN Human Rights Committee, CCPR General Comment No. 20: Article 7 (Prohibition of Torture, or Other Cruel, Inhuman or Degrading Treatment or Punishment), 10 March 1992, para. 9, available at: <https://www.refworld.org/docid/453883fb0.html>.

¹³⁷ The United Kingdom of Great Britain and Northern Ireland, Eighth periodic report submitted by the United Kingdom of Great Britain and Northern Ireland under article 40 of the Covenant pursuant to the optional reporting procedure, CCPR/C/GBR/8, 11 November 2021, para. 95, available at:

https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CCPR%2FC%2FGBR%2F8&Lang=en

¹³⁸ 'The Principles relating to the detention and interviewing of detainees overseas and the passing and receipt of intelligence relating to detainees', July 2019, available at:

https://assets.publishing.service.gov.uk/media/5d2f7e3ae5274a14eb8e0494/20190718_The_Principles_relatng_to_the_detention_and_interviewing_of_detainees_overseas.pdf.

¹³⁹ 'The Principles relating to the detention and interviewing of detainees overseas and the passing and receipt of intelligence relating to detainees', July 2019, para. 3, available at:

https://assets.publishing.service.gov.uk/media/5d2f7e3ae5274a14eb8e0494/20190718_The_Principles_relatng_to_the_detention_and_interviewing_of_detainees_overseas.pdf.

*“the full complexities of the case.”*¹⁴⁰ The apparent discretion given to authorise actions which risk torture is a breach of Article 7; as noted by the Human Rights Committee, *“no justification or extenuating circumstances may be invoked to excuse a violation of article 7 for any reasons.”*¹⁴¹

The failure to institute an absolute prohibition in the Principles, reflecting the UK’s obligations under the ICCPR, came despite calls from Parliamentary bodies and NGOs to uphold the UK’s categorical opposition to torture. While the Principles were being drafted, the Intelligence and Security Committee (ISC) recommended that Ministers should be explicitly prohibited from authorising UK action where there is a real risk of unlawful killing, torture, CIDT, or extraordinary rendition.¹⁴² An absolute prohibition was also called for by the All-Party Parliamentary Group on Extraordinary Rendition and several NGOs, including Liberty, Privacy International, Freedom From Torture, and Reprieve.¹⁴³

The failure to institute an absolute prohibition in the Principles to match the UK’s legal obligations has meant the UK Government continues to take action in violation of the prohibition on torture, including by treating the Article 7 duty as non-absolute. In 2019, it was revealed that the Ministry of Defence (MOD) maintained a secret policy which suggested that ministers could approve action carrying a serious risk of torture if *“the potential benefits justify accepting the risk and legal consequences”*.¹⁴⁴ The Investigatory Powers Commissioner’s Office (IPCO) found in 2020 that despite having amended their internal guidance to remove this passage, the MOD continued to conduct the same prohibited *“balancing exercise”* between the rights of detainees not to face torture and the perceived need for intelligence.¹⁴⁵

In 2020, IPCO found that the Foreign, Commonwealth and Development Office (FCDO) was conducting *“compliance monitoring”* at a secret detention facility run by a UK partner where individuals were held *“as a result of UK operations”* and subjected to *“unacceptable*

¹⁴⁰ ‘The Principles relating to the detention and interviewing of detainees overseas and the passing and receipt of intelligence relating to detainees’, July 2019, para. 16, available at:

https://assets.publishing.service.gov.uk/media/5d2f7e3ae5274a14eb8e0494/20190718_The_Principles_relati...ing_of_detainees_overseas.pdf

¹⁴¹ UN Human Rights Committee, CCPR General Comment No. 20: Article 7 (Prohibition of Torture, or Other Cruel, Inhuman or Degrading Treatment or Punishment), 10 March 1992, para. 3, available at: <https://www.refworld.org/docid/453883fb0.html>.

¹⁴² Intelligence and Security Committee of Parliament, ‘International Partnerships’, p.29, available at: <https://isc.independent.gov.uk/wp-content/uploads/2023/12/ISC-International-Partnerships.pdf>.

¹⁴³ Investigatory Powers Commissioner’s Office, ‘Consultation: Consolidated Guidance’, available at: <https://www.ipco.org.uk/publications/consultations/consultations-documents/>.

¹⁴⁴ The Times, Lucy Fisher, ‘Torture: Britain breaks law Ministry of Defence secret policy’, 20 May 2019, available at: <https://www.thetimes.co.uk/article/torture-britain-breaks-law-in-ministry-of-defence-secret-policy-2rl5dn2kd>.

¹⁴⁵ Investigatory Powers Commissioner’s Office, ‘Annual Report of the Investigatory Powers Commissioner 2020’, 6 January 2022, paragraphs 13.28 and 13.29, available at: https://ipco-wpmedia-prod-s3.s3.eu-west-2.amazonaws.com/IPCO-Annual-Report-2020_Web-Accessible-version.pdf.

treatment".¹⁴⁶ When FCDO officials learned of mistreatment taking place at the facility, they failed to report it until over a year later and "*did not identify the practice as unacceptable when it ought to have done*".¹⁴⁷

Without a clear prohibition, UK complicity in mistreatment will continue. IPCO reported that between 2019 and 2021, agencies asked ministers to authorise intelligence-sharing with a real risk of torture, extraordinary rendition, unlawful killing or CIDT 46 times.¹⁴⁸ However, the Commissioner's reports do not include figures on how often these requests were authorised by ministers. The Government has repeatedly failed to disclose the number of times ministers granted these requests and if anyone was tortured as a result.

In December 2023, the ISC revealed that within a twelve month period in 2020-2021 then-Foreign Secretary Dominic Raab authorised action where there was a real risk of torture on one occasion, action that carried a real risk of CIDT on three occasions, and action with a real risk of other unacceptable treatment on 22 occasions.¹⁴⁹ The same report stated that of requests to authorise intelligence services submitted to ministers, "*typically, fewer than 5% of submissions are rejected*".¹⁵⁰ Applying this approval rate to the number of authorisations sought, as detailed by IPCO, this could mean that dozens of actions risking torture and CIDT have been signed off by the UK Government in the last three reporting years.

The ISC noted that this appears to contradict evidence given to the Committee by SIS in 2016 during the course of their inquiry into Detainee Mistreatment and Rendition, when the ISC was assured that "*SIS would never ask for authorisation in cases where there was a serious risk of torture*".¹⁵¹ In the same vein, it contradicts the then-Defence Secretary Penny Mordaunt's statement in 2019 that, in regards to sharing information that could lead to torture: "*we must not do it. Ministers should not do it or allow it to be done. That is a breach of the law and no official could advise a minister of that course of action*".¹⁵²

¹⁴⁶ Investigatory Powers Commissioner's Office, 'Annual Report of the Investigatory Powers Commissioner 2020', 6 January 2022, paragraphs 13.37 and 13.41, available at:

https://ipco-wpmedia-prod-s3.s3.eu-west-2.amazonaws.com/IPCO-Annual-Report2020_Web-Accessible-version.pdf

¹⁴⁷ Investigatory Powers Commissioner's Office, 'Annual Report of the Investigatory Powers Commissioner 2020', 6 January 2022, paragraphs 13.39 and 13.40, available at:

https://ipco-wpmedia-prod-s3.s3.eu-west-2.amazonaws.com/IPCO-Annual-Report2020_Web-Accessible-version.pdf

¹⁴⁸ Figures collated from Annual Reports for 2019, 2020, and 2021, Investigatory Powers Commissioner's Office, available at:

<https://www.ipco.org.uk/publications/annual-reports/>

¹⁴⁹ Intelligence and Security Committee of Parliament, 'International Partnerships', p. 37, available at:

<https://isc.independent.gov.uk/wp-content/uploads/2023/12/ISC-International-Partnerships.pdf>

¹⁵⁰ Intelligence and Security Committee of Parliament, 'International Partnerships', p. 36, available at:

<https://isc.independent.gov.uk/wp-content/uploads/2023/12/ISC-International-Partnerships.pdf>

¹⁵¹ Intelligence and Security Committee of Parliament, 'International Partnerships', p. 38, available at:

<https://isc.independent.gov.uk/wp-content/uploads/2023/12/ISC-International-Partnerships.pdf>

¹⁵² David Bond, 'MoD's 'contradictory' guidance on torture to be reviewed', The Financial Times, 20 May 2019, available at:

<https://www.ft.com/content/ac59edfa-7b19-11e9-81d2-f785092ab560>

The ISC’s findings make clear that in fact, the policy does permit ministers to authorise action with a real risk of torture or CIDT; indeed, ministers have authorised such action. This is unlawful. Authorising action which carries a real risk of torture also directly contradicts the UK Government’s policy as stated in its response to the Committee’s List of Issues in May 2020, where it stated that the UK *“does not participate in, solicit, encourage or condone the use of torture or cruel, inhuman or degrading treatment for any purpose.”*¹⁵³

By failing to include an absolute prohibition against intelligence action where there is a risk of torture or cruel, inhuman or degrading treatment, the UK is at risk of complicity in torture – a breach Article 7 of the ICCPR. A review of the Principles is due in 2024.¹⁵⁴ The Government should take this opportunity to correct this failing and include an absolute prohibition in the UK’s policy, to bring the UK’s torture policy into line with its obligations under Article 7.

3. Failure to institute a ‘right to know’ for victims of torture: Articles 2, 7

Where the UK does share intelligence under the Principles which leads to the use of torture, survivors of that torture have almost no chance of vindicating their right to redress against the UK authorities which caused their mistreatment. This is because there is no domestic legal obligation, at present, to inform survivors of any role played by the UK- and so the UK’s contribution to their mistreatment will be very likely to remain undiscovered.

This lack of a post-notification system is incompatible with the UK’s obligations under Article 7 ICCPR, as read with Article 2. Specifically, Article 2 paragraph 3(a) establishes a duty *“to ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity.”* The Human Rights Committee has noted on this point that: *“the right to lodge complaints against maltreatment prohibited by article 7 must be recognized in the domestic law.”*¹⁵⁵

The UK’s obligation to provide an effective remedy for rights violations cannot be fulfilled if victims of torture have no means of identifying UK involvement. The lack of a

¹⁵³ The United Kingdom’s Response to the United Nations Human Rights Committee’s List of Issues on the Covenant on Civil and Political Rights (ICCPR), May 2020, available at: <https://assets.publishing.service.gov.uk/media/60d309bfe90e07439ba751b4/uk-response-issues-un.pdf>.

¹⁵⁴ ‘The Principles relating to the detention and interviewing of detainees overseas and the passing and receipt of intelligence relating to detainees’, July 2019, para. 31, available at: https://assets.publishing.service.gov.uk/media/5d2f7e3ae5274a14eb8e0494/20190718_The_Principles_relating_to_the_detention_and_inter_viewing_of_detainees_overseas.pdf.

¹⁵⁵ UN Human Rights Committee, CCPR General Comment No. 20: Article 7 (Prohibition of Torture, or Other Cruel, Inhuman or Degrading Treatment or Punishment), 10 March 1992, para. 14, available at: <https://www.refworld.org/docid/453883fb0.html>.

post-notification system stands in the way of survivors seeking to gain effective redress for a breach of their right under Article 7.

A small number of torture survivors have been able to uncover the UK's role in their mistreatment by chance, illustrating the long odds survivors face in ever securing accountability.

Abdel Hakim Belhaj and his wife Fatima Boudchar learned of the UK's part in their torture when documents were discovered in an abandoned building in Tripoli, after Colonel Ghaddafi's government fell in 2011. The documents showed British officials congratulating Libya's intelligence chief on their rendition to Libya and claiming that the intelligence behind the operation was British.¹⁵⁶ After a lengthy legal challenge, in 2018, Theresa May apologised to Mr Belhaj and Ms Boudchar, accepting "*the UK Government's actions contributed to your detention, rendition, and suffering.*"¹⁵⁷

Similarly, Jagtar Singh Johal, a British human rights activist tortured in India, discovered the UK's potential complicity in his torture after Reprieve matched his case to an anonymous IPCO case study.¹⁵⁸ He is currently fighting in court to have the Government's role publicly acknowledged, in litigation launched in August 2022. Without investigators piecing together the details, Jagtar would likely never have discovered the UK's potential role in his torture, and therefore would not have been able to access the courts to secure redress.

In 2019, while drafting the Principles, the UK Government failed to take forward a recommendation by the UK's Investigatory Powers Commissioner that the Government amend the Investigatory Powers Act 2016 to institute a post-notification process. While stating that the current statutory framework did not permit IPCO to notify victims as part of its functions; the then-Commissioner stated the amendment to the statute would "*enable [survivors] to seek redress.*"¹⁵⁹

As highlighted above, there may be up to 46 cases of torture and CIDT caused by UK action in the last three reporting years (2019-2021).¹⁶⁰ If these potential victims were in fact

¹⁵⁶ Abdel Hakim Belhadj and Fatima Bouchar, 'The Rendition Project', accessed 9 January 2024, available at: https://www.therenditionproject.org.uk/prisoners/belhadj_bouchar.html.

¹⁵⁷ Hansard, 'Belhaj and Boudchar; Litigation Update', 10 May 2018, available at <https://hansard.parliament.uk/commons/2018-05-10/debates/B9AD50CD-9D54-41DA-A18B-1526E7658593/BelhajAndBoudcharLitigationUpdate>.

¹⁵⁸ Catherine Philp, 'Jagtar Singh Johal: Briton tortured after spy chiefs' tip-off', The Times, 22 August 2022, <https://www.thetimes.co.uk/article/jagtar-singh-johal-briton-tortured-after-spy-chiefs-tip-off-n2dzzg5rn>.

¹⁵⁹ Letter from Sir Adrian Fulford to Prime Minister, 12 June 2019, available at: <https://www.ipco.org.uk/docs/20190612%20Letter%20to%20PM%20.pdf>.

¹⁶⁰ Figures collated from Annual Reports for 2019, 2020, and 2021, Investigatory Powers Commissioner's Office, available at: <https://www.ipco.org.uk/publications/annual-reports/>.

subjected to torture, there is currently no domestic obligation on the UK authorities who caused their torture to give them an effective remedy. This state of play is incompatible with the UK's Article 7 and Article 2 obligations. A post-notification system for torture survivors is necessary to bring the UK in line with its obligations under the ICCPR.

RECOMMENDATIONS

In view of the UK Government's torture accountability failures, complicity in torture and responsibility for the rights violations suffered by victims of torture **we invite the Committee to recommend that the UK should:**

1. Conduct independent and effective investigations, fully empowered to examine involvement in torture and CIDT;
2. Introduce into domestic law clear legal prohibitions on intelligence action where there is a real risk of torture or CIDT;
3. Make clear that ministers cannot authorize action which may lead to torture or cruel, inhuman, or degrading treatment by including an absolute prohibition in the 'Principles';
4. Recognise in domestic law a 'victim's right to know', creating a legal process for individuals subject to intelligence action arising from torture or leading to its use can be notified of a state's involvement.

D. THE UK'S VIOLATIONS OF THE RIGHT TO ADEQUATE CONSULAR ASSISTANCE FOR CITIZENS DETAINED OVERSEAS

The UK has violated its obligations under the ICCPR to protect the right to life, fair trial and non-discrimination through its failure to provide adequate consular assistance for its citizens detained abroad including those facing torture and potentially the death penalty, contrary to **Articles 6, 7 and 14** of the ICCPR.

The Human Rights Committee's General Comment 36 on the Right to Life clarifies that Article 6 of the ICCPR imposes a duty on home states to protect the right to life of all persons

subject to its jurisdiction, including persons located outside its territory whose right to life is impacted in a direct and reasonably foreseeable manner by its activities.¹⁶¹

The provision of consular assistance is an essential fair trial right.¹⁶² In capital cases, effective consular assistance has been shown to empirically reduce the risk of application of the death penalty, and have a ‘direct and foreseeable’ impact on the right to life of persons facing the death penalty. In light of this standard, affirmed by the UNSR on extrajudicial, summary or arbitrary executions, the failure of home states to provide consular assistance to their nationals detained abroad and facing the death penalty amounts to a violation of their obligation to protect them from an arbitrary deprivation of life.¹⁶³

For abolitionist home states party to the ICCPR, including the UK, the failure to provide adequate consular assistance in cases where there is a risk of the death penalty also amounts to a breach of their obligation “*not to expose a person to the real risk of [...] application’ of the death penalty*”.¹⁶⁴ This obligation is even stronger in relation to states, including the UK, which have ratified the Optional Protocol No. 2 to the ICCPR, who must “[...] *take all necessary measures to abolish the death penalty within its jurisdiction*”.¹⁶⁵ Similarly, the failure to provide adequate consular assistance in cases where there is a risk of torture amounts to a violation of Article 7 of the ICCPR.

Investigations by Reprieve and other civil society organisations have found that the UK has systematically fallen short of its ICCPR obligations to provide adequate consular assistance for their citizens at risk of torture and the death penalty overseas.

For instance, Reprieve has found that the consular assistance provided by the British consulate in the UAE was notably deficient, as evidenced by the experiences of British nationals X, Y, and Z who were facing death-eligible charges and subjected to torture and mistreatment.¹⁶⁶ Despite reporting their torture to the consulate and requesting that their

¹⁶¹ UN Human Rights Committee, General comment No. 36 (2018) on article 6 of the International Covenant on Civil and Political Rights, on the right to life, para 63, available at:

https://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/1_Global/CCPR_C_GC_36_8785_E.pdf.

¹⁶² Report of the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions, ‘Application of the death penalty to foreign nationals and the provision of consular assistance by the home State’ (20 Aug 2019), available at:

<https://digitallibrary.un.org/search?fl=series&as=1&sf=title&so=a&rm=&m1=p&p1=Report%20of%20the%20Special%20Rapporteur%20n%20Extrajudicial%2C%20Summary%20or%20Arbitrary%20Executions&ln=en>.

¹⁶³ Ibid, para 48.

¹⁶⁴ Ibid, para 58.

¹⁶⁵ Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty, Article 1.2., available at: <https://www.ohchr.org/en/instruments-mechanisms/instruments/second-optional-protocol-international-covenant-civil-and>.

¹⁶⁶ Information on file with Reprieve.

injuries be documented, the consulate failed to adequately respond. During a consular visit, the detainees asked embassy staff to photograph their injuries, a request that was denied.

Reprieve subsequently urged the consulate to record the allegations and preserve medical evidence, emphasizing its importance for ensuring a fair trial and compliance with the Convention against Torture. However, the consulate's actions fell short, as they only took cursory notes and did not facilitate medical assessments or adequately document the injuries. The detainees expressed frustration with the consulate's lack of clear communication, especially since the embassy staff were the only independent witnesses to their condition.¹⁶⁷ The consulate's inability to effectively document and respond to these serious allegations of torture and mistreatment highlights significant lapses in consular support and raises concerns about the Foreign, Commonwealth and Development Office's commitment to safeguarding the rights and welfare of its citizens abroad.

On 2 December 2013, the Foreign Affairs Committee (“FAC”) launched an inquiry regarding the consular assistance provided by the Foreign, Commonwealth and Development Office (“FCDO”) to British nationals overseas. In its report published on 4 November 2014, FAC concluded that *“[w]e were gravely concerned by allegations that consular officers had failed properly to respond to British nationals who alleged torture in foreign prisons.”*¹⁶⁸

Reprieve continues to find systemic inadequacies of consular assistance provided by the FCDO to British nationals overseas facing risk of torture and the death penalty.¹⁶⁹ In 2019, the UK government published a review of complex consular cases conducted by Dame Judith MacGregor. Dame MacGregor recognised that concerns continued to be raised about the FCDO’s ability to handle complex consular cases. Among other recommendations, Dame MacGregor recommended that *“ministers are kept informed of all pending complex cases: with the expectation that cases where there is a significant risk of torture/mistreatment or a failure of due process when assessed against international human rights norms, will be raised urgently and at the most senior levels.”*³¹ To Reprieve’s knowledge, this recommendation and other recommendations set out in the MacGregor Review have not yet been implemented by the FCDO.

¹⁶⁷ Information on file with Reprieve.

¹⁶⁸ Foreign Affairs Committee, ‘Support for British nationals abroad: The Consular Service - Foreign Affairs Committee’, 23 November 2014, available at: <https://publications.parliament.uk/pa/cm201415/cmselect/cmfaaff/516/51609.htm>.

¹⁶⁹ Information on file with Reprieve.

RECOMMENDATIONS

In view of the UK Government's failure to provide adequate consular assistance to its citizens facing torture and the death penalty overseas **we invite the Committee to recommend that the UK should:**

1. Codify the right of all British citizens to consular support into UK legislation.
2. Recognize and implement the recommendations presented by the Human Rights Committee and the United Nations Special Rapporteur on extrajudicial, summary or arbitrary executions concerning the consular obligations of home states towards its citizens at risk of the death penalty abroad.
3. Replace the existing guidelines on consular support with clear principles based on international best practices, prioritizing the safeguarding of human rights for all British and dual nationals abroad, especially those at risk of the death penalty, torture and mistreatment.
4. Consistently demand routine consular access and private meetings for every British national, including dual nationals, detained abroad, especially those at risk of the death penalty, torture and mistreatment.
5. Ensure that ministers are consistently updated on all ongoing complex cases, particularly those involving a substantial risk of the death penalty, torture, mistreatment, or due process breaches and escalated urgently and the highest levels.
6. Pledge to file rigorous complaints concerning violations of the Vienna Convention on Consular Relations, with the detainee's approval, and contemplate initiating legal proceedings at the International Court of Justice and other appropriate venues if violations persist.