
amnesty international

United Kingdom
Briefing to the Committee on
Economic, Social and Cultural
Rights



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United Kingdom

Briefing to the UN Committee on Economic, Social and Cultural Rights

1. Introduction

Amnesty International submits the following briefing to the UN Committee on Economic, Social and Cultural Rights in advance of its consideration of the UK's fifth periodic report on the implementation of its obligations under the International Covenant on Economic, Social and Cultural Rights (the Covenant) at its 42nd session, between 4-22 May 2009.

The briefing is not an exhaustive review of the government's implementation of the Covenant, but highlights specific concerns in the following areas:

- the lack of incorporation of the Covenant in domestic law, and the failure to provide effective remedies for all violations;
- the failure of the UK Export Credits Guarantee Department to assess and monitor the human rights impact of the corporate activities which it facilitates;
- the failure to ensure that women who have experienced violence in the UK, including domestic violence and trafficking, and are subject to immigration control, are able to access the housing support needed to enable them to leave those situations of violence;
- the continued failure by the UK government to identify victims of trafficking, which contributes to the criminalization and detention of trafficked persons, rather than the respect and the protection of their human rights.

2. Constitutional and legal framework in which the Covenant is implemented (Article 2)

2.1 A Bill of Rights for the UK

On 23 March 2009 the UK government published a consultation paper, *Rights and Responsibilities: developing our constitutional framework*, on the possibility of a 'Bill of Rights and Responsibilities' for the UK. The paper made it clear that the government does not intend that such a 'Bill of Rights and Responsibilities' should guarantee economic, social and cultural rights as individually enforceable legal rights:

Some argue that economic, social and cultural rights should be guaranteed as 'human rights', carrying the same status in domestic law as the civil and political rights in the European Convention [on Human Rights]. While many specific welfare entitlements are legally enforceable, the Government believes that such policy matters should generally be developed by democratically accountable elected representatives, rather than by the courts. Decision-making in economic, social and cultural matters usually involves politically sensitive resource allocation and if the courts were to make these decisions, this would be likely to impinge on the principles of democratic accountability as well as the separation of powers between the judiciary, the legislature and the executive which underpins our constitutional arrangements. **In drawing up a Bill of Rights and Responsibilities, the Government would not seek to create new and individually enforceable legal rights in addition to the array of legal protections already available** [AI's emphasis].¹

The government has instead suggested a "discussion on whether there could be advantages in articulating constitutional principles which can be drawn from existing welfare provisions".² In its report to the Committee, the State party has stated that it "is not convinced that it can incorporate the rights contained in the Covenant in a meaningful way within the British legal system".³ It has also noted that there is no legal obligation to transpose the Covenant into domestic law, provided that steps are taken progressively to realise the Covenant rights.⁴

Amnesty International notes that, while the Committee has indeed highlighted the discretion afforded to State parties to choose the precise method by which Covenant rights are given effect to in national law, the Committee has nonetheless stressed that "appropriate means of redress, or remedies must, be available to any aggrieved individual or group, and appropriate means of ensuring government accountability must be put into place".⁵ Similarly, the Committee has emphasized that victims of violations "should have access to effective judicial or other appropriate remedies at both national and international levels. All victims of such violations are entitled to

adequate reparation, which may take the form of restitution, compensation, satisfaction or guarantees of non-repetition".⁶ It has also stated that:

"A State party seeking to justify its failure to provide any domestic legal remedies for violations of economic, social and cultural rights would need to show either that such remedies are not 'appropriate means' within the terms of article 2, paragraph 1, of the International Covenant on Economic, Social and Cultural Rights or that, in view of other means used, they are unnecessary. It will be difficult to show this and the Committee considers that, in many cases, the other means used could be rendered ineffective if they are not reinforced or complemented by judicial remedies".⁷

Amnesty International is concerned that the UK has not to date taken fully adequate measures to ensure that victims of violations of all Covenant rights are able to access appropriate means of redress. The UK risks missing a further opportunity to address these failures in the context of the proposed 'Bill of Rights and Responsibilities' for the UK. Individuals or groups within the UK currently lack the ability to challenge legislation on the grounds that it limits or interferes with their economic, social and cultural rights. As the Joint Committee on Human Rights of the UK Parliament (JCHR) has pointed out, the judicial review process in the UK "does not [...] provide constitutional level protection of universally-applicable human rights standards of the type provided by the Human Rights Act in relation to civil and political rights. This may leave vulnerable marginalised groups or individuals, who fall outside of the scope of the legislation, since they cannot challenge the limitations of the legislation in protecting their economic, social or cultural rights".⁸

The UK's objections to the incorporation of the Covenant in its domestic law seem to imply that economic, social and cultural rights are inherently non-justiciable. The Committee has unequivocally rejected this view in the past. Objections to the vagueness or lack of definition of certain Covenant rights can be overcome by precise legislative drafting. Similarly, concerns about undue judicial interference in priority setting by governments and policy choices have been dealt with by courts in various countries applying appropriate standards of review. Moreover, these concerns also arise whenever courts review compliance with civil and political rights.

2.2 Northern Ireland Bill of Rights

Work to agree and adopt a Bill of Rights in Northern Ireland continues. In December 2008 the Northern Ireland Human Rights Commission (NIHRC) presented its recommendations to the UK government as to the form the Bill of Rights should take. The UK government is expected to undertake further public consultation before responding to the recommendations. To date no timetable has been set for that response.

In its advice the NIHRC recommended that the Bill of Rights should include enforceable economic and social rights. Amnesty International considers that legislation from the UK Government to bring this advice into full effect would fulfil the recommendation contained in the Committee's 2002 Concluding Observation, that economic, social and cultural rights should be included in a Northern Ireland Bill of Rights.⁹

The advice given to the government by the NIHRC reflects the contribution to the consultation process of the Human Rights Consortium, an independent, non-governmental coalition of 130 civic society organisations in Northern Ireland, including Amnesty International. The work of this Consortium has demonstrated that there is strong cross-community, civic and public support for protection for economic, social and cultural rights through a justiciable Bill of Rights.

2.3 Accountability for the human rights impact of activities of UK-based companies outside UK territory

Amnesty International consider that states' obligations under the Covenant extend to an obligation to hold privately-owned companies based in the state territory to account for the impact that their activities have on human rights outside the state territory. In particular, the obligation to protect requires adequate oversight and regulation of the acts of individuals and companies over which the state exercises control. Amnesty International therefore welcomes the information provided by the UK in its fifth periodic report on its activities with businesses and international organisations to promote Corporate Social Responsibility (CSR).

In particular, the UK refers to its support for five initiatives - the UN Global Compact, the Voluntary Principles on Security and Human Rights, the OECD Guidelines for Multinational Enterprises, the Extractive Industries Transparency Initiative and the Kimberley Process Certification Scheme.¹⁰

Amnesty International however believes that the UK has failed to grapple with the differences between a human rights framework and a CSR framework. A CSR framework is determined by commitments that companies agree to enter into voluntarily. In contrast, a human rights approach is underpinned by mandatory standards to ensure that human rights are respected, protected and promoted, that abuses are remedied, that violations are identified through investigation, and that reparations are paid to victims.

The test of all voluntary initiatives and codes of conduct should be whether they have the effect of protecting human rights on the ground. The pertinent questions to ask are whether a code imposes clear rules that prevent business and their financial backers from contributing to human rights abuses; whether there are credible mechanisms for testing if these rules are being adhered to; and whether there are

appropriate levels of transparency and disclosure to satisfy third parties that this is the case. The UN Global Compact, OECD Guidelines and Voluntary Principles fail on these grounds.

The UK argues that its CSR strategy is intended “*to encourage responsible business practice that goes beyond compliance with international legal requirements and regulations*”.¹¹ However, this view ignores the reality that there are very few international laws and regulations in the field of human rights that are directly applicable to companies. CSR initiatives should not become a substitute for compliance mechanisms as this would undermine the principle that internationally recognized human rights should be protected by way of appropriate systems of binding enforcement, which is clearly established in international law. Amnesty International believes that the UK’s overarching emphasis on CSR, as a means of ensuring that companies operate to acceptable standards, undermines its duty to protect.

UK Export Credits Guarantee Department is weak on human rights

The activities of the UK Export Credits Guarantee Department (ECGD) provides a prime example of where UK has failed to embody its international obligations. ECGD is a governmental body accountable to the Department for Business, Enterprise and Regulatory Reform (DBERR). While it does not operate projects itself, it has facilitated corporate activities that have resulted in human rights abuses abroad through the provision of financial guarantees.¹²

In May 2003, Amnesty International published a report entitled “*Human Rights on the line: the Baku-Tbilisi-Ceyhan pipeline project (BTC project)*” detailing some of the human rights implications of this major pipeline project passing through Azerbaijan, Georgia and Turkey to connect the Caspian Sea to the Mediterranean.¹³ The report focused on the human rights impacts in Turkey. Amnesty International’s main concerns included the fact that the legal framework of protocols and agreements circumscribing the project systematically undermines mechanisms for protecting human rights. The Host Government Agreement signed between the Turkish government and the Consortium led by BP placed on Turkey the responsibility to protect the rights of the members of the consortium from any changes in the national and international legislation for the life of the pipeline, which is estimated in at least 40 years, and established the payment of compensation for delays in the construction. Amnesty International was particularly concerned that this agreement may hinder Turkey’s ability to comply with its human rights obligations to respect, protect, fulfil and promote human rights and its willingness to commit to any future new international standards; and that it may affect disproportionately those living or working near the pipeline. This project was supported by the ECGD. BP undertook a

Social and Environmental Impact Assessment, which ignored human rights and this was considered sufficient by the ECGD.

Currently the ECGD's consideration of human rights is not sufficient to ensure against such breaches. At the very least, Amnesty International considers that the ECGD should require all its corporate clients to undertake a comprehensive human rights impact assessment, for the purpose of determining whether or not the proposed activity might interfere with human rights. This requires not just improved screening procedures but also the embodiment of human rights considerations into the mission and governance of ECGD. This would require an amendment to the Act of Parliament that created ECGD.¹⁴

UK Equality and Human Rights Commission lacks powers to address extra-territorial impacts and to propose new laws

Amnesty International is concerned about the weaknesses of existing UK institutional mechanisms for addressing the gaps in accountability of UK companies for their extra-territorial impacts on human rights. The UK Equality and Human Rights Commission (EHRC), the Health and Safety Executive, and the Environment Agency are severely restricted in their ability to look at the adverse impacts of UK companies overseas and have rarely done so.¹⁵ If the UK is to address the extra-territorial impacts of its companies on human rights, even in very selective circumstances, then this would almost certainly require the enactment of new UK criminal and civil liability laws. The fact that UK's national human rights institute is not empowered to make such recommendations is indicative of a significant policy and institutional deficit.

A promising initiative that Amnesty International is aware of to fill this gap is the proposal put forward by the Corporate Responsibility (CORE) Coalition (of which Amnesty International is a member) on the basis of a detailed review of possible avenues for reforming existing systems.¹⁶ It proposes that the Government should create a specialized *Commission for Business, Human Rights and the Environment*, able to operate as a hub in broader networks of actors working in the UK and abroad. The Commission would have coordinating, capacity-building and informational roles, while also operating as a dispute resolution body with a mandate to receive, investigate and settle complaints against UK parent companies relating to abuse in other countries. Part of its remit would be to make policy recommendations to the UK government to reinforce the capacity of the criminal and civil liability systems to hold accountable UK companies operating extra-territorially.

Clearly, such a Commission would not provide all the solutions but, would serve as one player within a much broader institutional universe oriented towards goals of strengthening human rights compliance among business enterprises operating globally. Amnesty International considers that such a UK body would contribute valuable

capabilities and functions to the existing array, and that it could also help monitor the plethora of governmental and private voluntary initiatives which, taken as a whole, appear to lack coherence and effectiveness with regard to human rights.

The judicial route to remedies is closed to most plaintiffs

Gaining access to UK judicial mechanisms presents an insurmountable hurdle for the vast majority of foreign plaintiffs whose human rights have been abused by the activities of UK companies abroad. There are many barriers that they face – financial, jurisdictional, procedural.¹⁷ One of the most significant obstacles is the lack of representation available to them. There are few public interest law firms in the UK prepared to take on such cases.¹⁸

Even when UK courts are prepared to hear such cases, the scope of parent company liability for the acts of subsidiaries and contractors abroad is unclear under English Tort law. It is not known, for instance, to what extent a parent company owes a “duty of care” to those potentially affected by the activities of its subsidiaries. The existence of a “duty of care” is fundamental to a finding that a company has been negligent, but so far all the UK cases that raise this point have either been settled or dismissed.¹⁹ In principle, it would be possible to clarify by legislation the circumstances under which a parent company would, and would not be liable. A further difficulty for claimants is proving the kinds of management and supervisory failures necessary for a finding of negligence. A possible solution to this would be to reverse the burden of proof, so that parent companies with a controlling interest in a subsidiary would automatically be liable for negligence along with that subsidiary unless it can demonstrate that it took all reasonable steps to prevent the damage or injury occurring.²⁰

2.4 In conclusion

Amnesty International considers that the UK should:

- implement the Committee’s recommendation on incorporating the Covenant and giving full effect to it in the domestic legal order;
- ensure that effective remedies are available for all violations of economic, social and cultural rights and that the ‘Bill of Rights and Responsibilities’ provides for effective legal protection for all economic, social and cultural rights;
- ensure that social and economic rights be made enforceable in a Northern Ireland Bill of Rights;

- ensure that the UK Government's policy framework reflects recent and future developments within the UN system in the field of business and human rights, as for example the recommendations to the UN Human Rights Council by the Special Representative of the Secretary-General on human rights and transnational corporations and other business enterprises;
- require the UK Export Credits Guarantee Department (ECGD) to conduct due diligence reviews on the human rights impacts of all its activities, ensuring that those reviews are based on a sound understanding of country-specific human rights contexts;
- ensure that the ECGD requires all of its business clients to undertake a comprehensive human rights impact assessment, independently verified, as a condition for receiving financial support;
- establish a UK Commission on Business, Human Rights and the Environment, as part of the process of building UK institutional capacity to ensure that UK companies are held accountable for abuses of human rights resulting from their activities outside of the UK.

3. Non-discrimination in access to housing, health care and other services (Article 2(2); Article 11; Article 12)

Amnesty International considers that the UK is failing to ensure respect for the economic and social rights of asylum-seekers whose applications have been refused, but who cannot be removed from the UK.

3.1 Refused asylum seekers at risk becoming destitute through lack of access to accommodation and support

Government policy prohibits asylum-seekers from working unless, through no fault of the individual, no decision is made on their application for international protection within 12 months. Legislation requires that support and accommodation should be provided to asylum-seekers while their claims are considered.²¹ When an asylum claim has been refused and there is no outstanding appeal against that refusal, the refused asylum-seeker is expected to leave the country within 21 days. For single adults and childless couples, support and housing are cut off after the expiry of this 21-day period, although asylum-seeking families with children continue to receive financial support and accommodation until they leave the country.

There are very limited circumstances in which refused asylum-seekers can receive low-level support and accommodation after their claims have been refused and the 21-day period within which they are expected to leave the country has expired.²² This support – known as Section 4 ‘hard case’ support – makes vouchers and hostel accommodation available to those who meet one or more specific criteria. These include signing a commitment to agree to ‘voluntary’ return, having a serious medical reason preventing immediate departure from the UK, or there being, in the government’s assessment, no safe voluntary travel route back to their country. As at the end of December 2008 there were, according to government figures, 10,295 applicants, excluding dependants, in receipt of Section 4 support.²³

In 2005 the National Audit Office – a government agency – estimated that there were, as of May 2004, more than 280,000 refused asylum-seekers who had not been removed from the UK.²⁴ Although that number will have changed since 2004, there are still, by any reckoning, thousands of refused asylum-seekers in the UK. Many of these people cannot be returned to their country of origin, through no fault of their own, some of them because they would face a real risk of serious human rights abuses, such as torture and other ill-treatment, if they were to be returned. Many of these refused asylum-seekers are not eligible for Section 4 support, or are unwilling to claim it, including because they would be required to agree to a ‘voluntary’ return to their country of origin, and are therefore at risk of destitution in the UK. They are left to live a hand-to-mouth existence: they are not permitted to work, and are reliant on charity.

As a result, destitution among refused asylum-seekers is widespread, and is having a devastating impact on already vulnerable individuals. In recent years there has been a substantial amount of research on this issue, with reports written by organizations such as Amnesty International, Refugee Action, the Children’s Society, Barnado’s, the Joseph Rowntree Charitable Trust and the Independent Asylum Commission.²⁵

The results of this research suggest that the problem of destitution among refused asylum-seekers is growing. The Joseph Rowntree Charitable Trust reported that its research indicated a substantial increase in the incidence of destitution amongst asylum-seekers in Leeds, from 118 in 2006 to 331 in 2008.²⁶ The same piece of research indicated that those asylum-seekers who were left destitute increasingly came from unstable countries such as Zimbabwe, Iran, Eritrea, the Democratic Republic of Congo and Iraq.²⁷

Aside from the human cost to the individuals concerned, Amnesty International considers that the consequences of driving thousands of people into destitution, and off the radar of statutory services, can be profoundly damaging to society. The survival of these people might depend on their finding irregular employment; they will be vulnerable to exploitation, including human trafficking, and may be driven to crime.

3.2 Access to healthcare for refused asylum-seekers

With respect to policies regarding asylum-seekers and refugees and measures to protect their economic, social and cultural rights during the refugee determination process – an issue on which the Committee has requested additional information – Amnesty International has concerns relating to refused asylum-seekers' ability to access free secondary healthcare while still in the UK.²⁸

In 2004, as part of the National Health Service (NHS) Charges to Overseas Visitors (Amendment) Regulations, the Government introduced charges for all refused asylum-seekers to access hospital care, except for emergencies. In practice this meant that treatment in an Accident and Emergency department is free, but all other hospital and specialized medical care for refused asylum-seekers is chargeable.

This includes patients on Section 4 support, pregnant women, children, cancer patients, diabetics and those needing treatment for HIV/AIDS. Treatment for most communicable diseases (except HIV/AIDS), and compulsory mental health care and family planning are the exceptions to this rule and can be provided free of charge, but given how difficult it has become for asylum-seekers to access healthcare it is questionable whether they will come forward for screening or treatment for TB or mental health problems.²⁹

This policy was successfully challenged in April 2008 (*A v West Middlesex NHS Trust* [2008] EWHC 855), but the ruling was overturned on appeal by the Government. The Court of Appeal handed down its judgement on 30 March 2009 (*R (YA) vs Secretary of State for Health*, 2009, EWCA Civ 225) and found that failed asylum-seekers cannot be considered ordinarily resident in the UK and are not exempt from charging, even if they have lived in the UK for a year.

However, the Court also found that current guidance is unlawful as it fails to provide sufficiently clear guidance on what treatment should be considered “urgent” and “immediately necessary”. In response to this the Department of Health issued new interim guidance on 2 April 2009 which makes clear that:

- Trusts have the discretion to provide treatment when there is no prospect of payment. They can also withhold treatment pending payment.
- Refused asylum-seekers already undergoing a course of treatment should not have that treatment interrupted nor be charged.
- Immediately necessary treatment, including maternity care, must never be withheld.

- Urgent treatment for conditions such as cancer, which would deteriorate significantly if untreated, should not be withheld or delayed if the person cannot pay and is unable to return to their country.
- Trusts should not pursue charges beyond what is reasonable and have the option to write off debts where it would be impossible or futile to pursue them.
- Non-urgent treatment, which can wait until the person returns home, should not be started until payment has been made. A patient's need may become urgent if their condition deteriorates or if they cannot return home within a medically acceptable time, in which case they should be treated.

This new guidance is welcome as it helps to clarify the situation in relation to how frontline staff should approach the provision of secondary healthcare to refused asylum-seekers. However, it does not address concerns which Amnesty International has in relation to this policy.

Even with the interim guidelines, healthcare professionals will still face difficult decisions in relation to when a patient is likely to return home and whether waiting until that time would lead to an "unacceptable deterioration" in the patient's condition.

Charging for healthcare, even when treatment is not delayed in order to secure payment, discourages people from seeking care and leaves others depressed and anxious by their inability to pay the bills. Confusion over entitlement was widespread after the original changes to the regulations in 2004. For instance, it has always been the case that maternity services should not be withheld if a woman is unable to pay in advance. However, this guidance has frequently not been followed in practice, as has been documented by both the Refugee Council and the Citizens Advice Bureau. One refused asylum-seeker who gave birth at home without medical assistance was later admitted to hospital with serious health problems relating to the birth. After she was discharged, she received bills for this treatment which frightened her so much she went into hiding. Neither she nor her child are likely to receive the care they need and this may have consequences for the public health of the wider community as the child will not be provided with routine inoculations.

In addition to this, there are still likely to be differences of opinion between clinical and non-clinical staff and there is no guidance about how these should be resolved. The Department of Health guidance issued in April 2009 was sent to Chief Executives with its subject as "Advice for Overseas Visitors Managers". However, it is essential that this information reaches doctors and other healthcare professionals directly and not just Overseas Visitors Managers. Further guidance, which the Department of Health is due to issue in late 2009, should make absolutely clear that clinicians should have the ultimate say on treatment and ensure that this information gets directly to frontline healthcare professionals so that it is properly implemented.

The interim guidance states that hospitals will not be reimbursed for treatment they have provided to refused asylum-seekers. This sets up a tension between treating people whose cases could be considered as immediately necessary or urgent and the hospital trust having to bear additional costs from using this discretion. This additional cost will not fall equally on all hospitals as asylum-seekers tend to be grouped in a number of major cities and boroughs. The Government should take steps to ensure that these hospitals do not have to bear an unreasonable extra cost from properly implementing the guidelines.

The Government could also make the process easier for healthcare professionals by specifically stating in the forthcoming guidance or through new regulations that refused asylum-seekers who are being supported by the Government under Section 4 should be exempt from charges. This is logical as the Government itself accepts these people are temporarily unable to return home and would otherwise be destitute, as these are the criteria for accessing Section 4 support.

In Scotland, refused asylum-seekers who have been and continue to be resident in Scotland receive free healthcare until arrangements for their return home can be made. In Wales, the Welsh Assembly has stated that they will not be charging refused asylum-seekers for access to secondary healthcare regardless of the outcome of the appeal.

4. Gender-based violence and lack of protection of the family, mothers and children (Article 10)

Over the past decade, the UK has undertaken numerous significant initiatives to address violence against women, for example through the development of Sexual Assault Referral Centres; the provision of funding for a national domestic violence helpline; the ratification of the Council of Europe Convention on Action against Trafficking in Human Beings and the introduction of legislation reforming the law on rape and sexual offences, including creating a criminal offence of trafficking for sexual exploitation (the Sexual Offences Act 2003) and extending protection against domestic violence to people in same-sex relationships and to couples who have never lived together (the Domestic Violence Crime and Victims Act 2004).

Despite such initiatives, however, violence against women is still widespread in the UK. Amnesty International is concerned that the UK is failing in its duty to act with due diligence to respect, protect and fulfil the human rights of women at risk of or suffering gender-based violence within its jurisdiction. The organization is further concerned about the failure of UK authorities to ensure that all women who are at risk

of or suffering gender-based violence, irrespective of their immigration status, can also access critical emergency accommodation and refuges, as well as specialist support such as counselling and legal advice.

4.1 Protection from and prosecutions for gender-based violence, including rape

According to the End Violence Against Women Campaign, a coalition of non-governmental organizations including Amnesty International, each year across the UK around three million women experience violence, and there are many more living with the legacies of abuse experienced in the past.³⁰

In January 2009 the End Violence Against Women Campaign and the Equality and Human Rights Commission published research which aimed at mapping gaps in the provision of services to victims of violence against women. It found that:

- more than one in four of the 408 local authorities in Britain (that is, the UK excluding Northern Ireland) have no specialized support services for victims of violence against women;
- nearly one in three local authorities in Britain has no specialized domestic violence service;
- less than two thirds of local authorities in Britain have a women's refuge;
- only one in 10 local authorities in Britain have a specialised support service for ethnic minority women who are victims of violence;
- 60 per cent of new services opened in 2007 were in the statutory sector, and were linked to the criminal justice system;
- levels of provision in the voluntary sector, which provides a wider range of services for all women, had remained static or in some cases diminished in 2007;
- almost a quarter (24.1 per cent) of rape crisis centres in England and Wales faced closure this financial year (2008/09) and almost two-fifths (39.3 per cent) fear closure in the next financial year (2009/10) because of a lack of funding;
- in Scotland, the funding which had been extended by the Scottish Government for a five-year period through a national Violence Against Women Fund has been put at risk by a decision to devolve responsibility for funding violence against women services to local authorities.³¹

Home Office figures indicate that 72 women were killed by their partners or former partners in the year 2007/08, amounting to 35 per cent of all homicide offences with female victims.³²

In a survey carried out by Amnesty International in the UK in November 2005, one-third of those surveyed believed that women who flirt are partly at fault if someone rapes them, and more than a quarter thought women invite rape to some extent if they wear seductive clothing.³³

In 2002 – the most recent figures available – conviction rates in the UK for rape fell to a historic low, far lower than equivalent rates for other crimes. Only 5.7 per cent of reported rape cases ended in a conviction.³⁴

4.2 Lack of an integrated strategy to address all forms of violence against women

Amnesty International is concerned that the UK has still not acted on its commitments under the 1995 UN Beijing Platform for Action to take integrated measures to prevent and eliminate violence against women.³⁵ The UK was reminded of this in 1999, and again in 2008, when the UN Committee on the Elimination of Discrimination Against Women considered the UK's periodic reports under the Convention on the Elimination of all Forms of Discrimination Against Women. Among other issues, the Committee noted the legislation and measures that are in place to address violence against women, but commented that “the Committee is concerned at the absence of a national strategy on the prevention and elimination of violence against women”.³⁶ It recommended a “unified and multifaceted national strategy to eliminate violence against women be implemented to include legal, educational, financial and social components, in particular support for victims”.³⁷

Whilst Amnesty International has welcomed the recent consultation on violence against women, *Together We Can End Violence Against Women*, launched by the Home Office in March 2009, the organization remains concerned that the UK will continue to fail in its duty to act with due diligence to respect, protect and fulfil the human rights of women unless the consultation leads to the development and implementation of a fully comprehensive and adequately resourced integrated strategy to eliminate all forms of violence against women, at the earliest opportunity and in line with commitments made in the 1995 UN Beijing Platform for Action.³⁸

4.3 The impact of the ‘no recourse to public funds’ requirement on women subject to immigration control

The failure to implement an over-arching strategic approach to eliminating all forms of violence against women has led to gaps in policies that have resulted in a chronic lack of protection and support for women who are subject to immigration control. The critical importance of safe refuge for women victims of violence is widely acknowledged, including by the authorities in the UK.³⁹ Yet some women who are subject to immigration control and who have experienced violence in the UK,

including domestic violence and human trafficking, are unable to access the housing support needed to enable them to leave those situations of violence, as a result of the UK's 'no recourse to public funds' rule.

The 'no recourse to public funds' rule (section 115 of the Immigration and Asylum Act 1999) provides that certain categories of people with leave to enter and remain in the UK for a limited period only have no right (subject to a few strictly limited exceptions) to access income-related benefits or housing and homelessness support. It should be noted that this rule applies both to regular migrants who have some form of limited leave to remain – including those present in the UK on visas issued to spouses and partners, students, and workers – and to those who do not have, or no longer have, leave to remain in the UK, including those who have over-stayed their visas and those who have been trafficked into the country.

Research carried out by Amnesty International and a UK-based NGO, Southall Black Sisters, has shown that the human rights of women in these situations continue to be abused.⁴⁰ The effect of the rule is that many of these women cannot access emergency accommodation, including refuges, because they are not able to claim housing benefit or income support to cover the costs of such housing. Many are therefore unable to flee from the violence they face. Others end up living on the street. Although some refuges are providing spaces for these women from their own funds, generally refuges, already struggling financially, find that they have no option but to turn women with no recourse to public funds away, knowing that these women risk facing further violence and abuse.

Although exact figures are not available, a survey conducted by Imkaan, a specialist domestic violence organization in the UK supporting Asian women and children, found that between April 2005 and April 2007, only 9 per cent of 429 women with no recourse to public funds were housed after approaching a number of refuges in London. The remaining 91 per cent were referred on to other services.⁴¹ Another recent survey of specialist refuges catering to South Asian women in the UK found that in the year leading up to April 2007, 182 referrals of women with no recourse to public funds had been made, of which only 16 women were accommodated.⁴²

4.4 Trafficking in human being: Criminalization and detention of trafficked persons due to the failure to accurately identify such persons as victims of trafficking

Research conducted by the UK Home Office suggests that at any one time during 2003 – the most recent data available – there were in the region of 4,000 victims of trafficking for forced prostitution in the UK.⁴³ In a report from 2004, UNICEF estimated that there were at least 5,000 child sex workers in the UK, many of whom will have been trafficked.⁴⁴

Amnesty International is not aware of more recent data, nor of any statistics compiled by the UK government on the incidence of trafficking for forced prostitution or exploitation in other sectors – such as domestic work, farming, manufacturing, construction or hospitality – throughout the UK.

Amnesty International has welcomed steps the UK government has taken to address the issue of trafficking in human beings, including the ratification of the Council of Europe Convention on Action against Trafficking in Human Beings (Convention against Trafficking) in December 2008. However Amnesty International remains concerned firstly about the continuing failure of the UK government to take effective measures to ensure the accurate identification of trafficked persons, and secondly about the criminalization and detention of trafficked persons who have been incorrectly identified.

The failure to be accurately identified as a victim of trafficking in the UK is likely to lead to a trafficked person being denied basic support and, in the case of those with irregular immigration status, could also lead to immigration detention, prosecution and removal back to the country of origin without any assessment as to the risk of harm, including re-trafficking, upon return.⁴⁵

Research by Amnesty International and others has found a continuing failure by a wide range of authorities including immigration, police and social services to identify trafficked persons, despite considerable efforts made by the UK government to train these authorities. These include failures by the police to identify migrant domestic workers as having been trafficked; a systematic failure on the part of immigration officers to recognize asylum applicants as victims of trafficking, either because of poor knowledge of trafficking routes and coercive methods used by traffickers, or because of poor country of origin information; and failures by the police to identify victims of trafficking even when supported by NGOs with expertise on identification.⁴⁶ Amnesty International is concerned that these failures may be rooted in a culture of disbelief centred on the immigration status of the victim, meaning that officials are less likely to believe that persons with illegal or irregular immigration status are credible.

In the absence of comprehensive statistical information on trafficking to the UK, the best indicator of identification practice are statistics for referrals to the government-funded POPPY Project, which provides accommodation and support for women who have been trafficked. Between March 2003 and September 2007 the POPPY Project received 743 referrals. Of these 231 were from the police (31 per cent of total referrals), 63 from immigration officials (9 per cent), 43 from Social Services (6 per cent) and only 21 from health services (3 per cent). The majority of referrals, therefore, were not from public authorities: 170 were from NGOs, 99 from solicitors, 42 from individuals and 32 were self-referrals⁴⁷. These figures suggest that

immigration officials, in particular, are less likely to make positive identifications of trafficked persons than NGOs and front-line practitioners.

In order to meet its obligations on the identification and referral of victims of trafficking under Council of Europe Convention against Trafficking, the UK Government intends to establish a National Referral Mechanism (NRM) that will be responsible for the formal identification of all potential victims of trafficking in the UK. The NRM, which will come into force on 1 April 2009, will comprise of a central Competent Authority, within the police-led UK Human Trafficking Centre, and a number of smaller Competent Authorities within the UK Border Agency, an agency of the Home Office. NGOs including Amnesty International have raised repeated concern that this model risks continuing to fail to accurately identify trafficked persons, because the Competent Authorities do not have the necessary expertise and skills to identify all victims of trafficking.

In addition Amnesty International is concerned that many trafficked persons will be reluctant to disclose information to the Competent Authorities, which are largely comprised of police and immigration officials, for fear that they will be subject to prosecution on criminal charges or other punitive action. Amnesty International and other NGOs have repeatedly urged the UK authorities to ensure that expert NGOs and professionals are given a formal role in the identification process, as envisaged by Article 10 of the Council of Europe Convention against Trafficking.

Amnesty International is further concerned that trafficked persons in the UK who have not been identified as such are being deprived of their liberty in immigration detention or prisons, rather than being treated as the victims of grave human rights abuses. Detention is likely to be detrimental to the physical and mental health of trafficked victims, especially those suffering from post traumatic stress disorder as a result of being trafficked.⁴⁸

Due to their uncertain immigration status many trafficked persons may have broken the law either at the time of entry into the UK, by working illegally, through being in possession of false documentation or no documentation, or through forced participation in criminal activity. These trafficked persons are liable to prosecution and detention. The threat of criminalization increases the coercive power of traffickers who are known to deter victims from contacting the authorities by telling them that they will be treated as criminals and risk facing imprisonment if they go to the police to seek help.⁴⁹

In December 2007 the Crown Prosecution Service (CPS) issued revised guidance for prosecutors on how and when charges against trafficked persons may be discontinued if a prosecution is not deemed to be in the public interest.⁵⁰ However, Amnesty International has documented cases where the CPS has had ample opportunity to consider discontinuing prosecution of a victim of trafficking on public interest grounds

but has refused to do so or were advised not to do so by immigration or police officials, despite representations by expert NGOs and professionals.

In September 2008, the Court of Appeal of England and Wales found⁵¹ that prosecutors had failed to consider the CPS guidance on victims of trafficking, by refusing to discontinue a prosecution against a young Nigerian national on charges relating to false immigration documentation, despite there being ample evidence to indicate that the accused had been trafficked. Moreover there had been “no consideration of any kind given to any need to protect the appellant as a child or young person”, despite evidence that she may have been as young as 16 at the time of her arrest – evidence from which the prosecutors should, the Court of Appeal said, “have appreciated that she might have been a very young person”.⁵²

4.5 In conclusion

Amnesty International considers that:

- the UK should fulfil its commitments to develop and implement an integrated and strategic approach to eliminate all forms of violence against women, in consultation with the women’s sector and specialist organizations working to end violence against women;
- the UK should exempt women who are fleeing violence and subject to immigration control from the ‘no recourse to public funds’ requirement, so as to enable them to access the public funds necessary to secure a place of safety in refuge accommodation, and access to other specialist support services;
- the identification of trafficked persons should not be carried out by a single governmental body, but rather through the establishment of a multi-agency, multi-disciplinary model, where law enforcement and immigration officials share the function of identification with other relevant agencies, professionals and NGOs; and
- the UK should prohibit the detention, charging or prosecution of a trafficked person for the illegality of their entry into or residence in a country or their involvement in unlawful activities that are a consequence of their situation as trafficked persons.

¹ *Rights and Responsibilities: developing our constitutional framework*, Cm 7577, March 2009, paras. 3.52-3.53; available at <http://www.justice.gov.uk/publications/docs/rights-responsibilities.pdf>. (*Rights and Responsibilities*)

² *Rights and Responsibilities*, para 3.53.

³ *Fifth Periodic Report of the United Kingdom of Great Britain and Northern Ireland*, UN Doc. E/C.12/GBR/5, 31 January 2008, para 74, available at <http://www.justice.gov.uk/publications/docs/ICESCR-whole-report.pdf> (*Fifth Periodic Report of the United Kingdom*)

⁴ *Fifth Periodic Report of the UK*, para 73.

⁵ Committee on Economic, Social and Cultural Rights, General Comment No. 9, para 2. (General Comment No. 9)

⁶ Committee on Economic, Social and Cultural Rights, General Comment No. 12, para 32 and General Comment No. 14, para 59.

⁷ General Comment No. 9, para 3.

⁸ Joint Committee on Human Rights, *Twenty First Report*, 2004, para 19, available at <http://www.publications.parliament.uk/pa/it200304/jtselect/jtrights/183/18305.htm#a9>

⁹ UN Doc. E/C.12/1/Add.79, 5 June 2002, para. 29.

¹⁰ *Fifth Periodic Report of the United Kingdom*, para. 70

¹¹ FCO, *Corporate Social Responsibility (CSR): An FCO strategy*, 2007-08, para 4, available at http://www.fco.gov.uk/resources/en/pdf/pdf16/fco_csr_strategy_papers

¹² Amnesty International publications featuring projects facilitated by ECGD where human rights abuses have been documented include:

Amnesty International, *India: The "Enron Project" in Maharashtra: protests suppressed in the name of development*; Index ASA 20/031/1997; <http://www.amnesty.org/en/library/info/ASA20/031/1997>

Amnesty International, *Urgent Action 228/96: Excessive use of force / Fear for safety (Lesotho)*, Index: AFR 33/02/96, <http://www.amnesty.org/fr/library/asset/AFR33/002/1996/en/dom-AFR330021996en.html>

Amnesty International, *UK and EU Arms Used in East Timor as Review of Arms Exports Code Begins in Secret*, Index: IOR 61/01/99, <http://www.amnesty.org/en/library/asset/IO61/001/1999/en/1c034d51-e01b-11dd-adf6-a1bae6c1ea26/ior610011999en.html>

Amnesty International, *Nigeria: Ten years on - Injustice and Violence Haunt the Oil Delta*, Index AFR 44/022/2005, <http://www.amnesty.org/en/library/asset/AFR44/022/2005/en/dom-AFR440222005en.html>

¹³ Amnesty International UK, *Human Rights on the Line- the Baku-Tbilisi-Ceylan pipeline project*; 2003, <http://www.amnestyusa.org/business/humanrightsontheline.pdf>

¹⁴ Export and Investment Guarantees Act, 1991, available at http://www.opsi.gov.uk/Acts/acts1991/ukpga_19910067_en_1

¹⁵ The Equality Act 2006 established and laid down the regulatory powers of the EHRC. EHRC does not have a mandate to investigate suspected breaches of human rights law in other countries. As stated in section 33 of the Equality Act, its powers of investigation only extend to suspected breaches of specific UK "equality and human rights enactments". While this does not necessarily prohibit EHRC from examining and reporting on foreign human rights abuses, this is not currently defined as part of its mission. No mention is made of anywhere in EHRC's Business Plan of extraterritorial issues, such as human rights impacts of UK business or policies overseas. ECHR also lacks the legal power to recommend new human rights laws. Under section 11 of the Equality Act, the EHRC is charged with "monitoring the effectiveness of the law". However, while it may recommend amendments, repeals, consolidation or replications of existing human rights enactments, the Equality Act says nothing about the EHRC proposing new laws.

The UK Environment Agency's extra-territorial role only applies to export of goods from the UK or shipments of goods that leave UK shores. The Agency has a role in preventing unauthorised exports and shipments from UK that may have damaging impacts in other countries and that contravene international protocols that UK is subject to. Any other complaints of incidents relating to the operations of UK companies abroad would not be dealt with by the UK Environment Agency.

The UK Health & Safety Executive is the enforcement agency for the UK Health and Safety at Work Act 1974, which is the primary piece of legislation covering occupational health & safety in the UK. There are 18 other Acts of

Parliament that also fall under the aegis of the UK Health and Executive. All these Acts are restricted to events occurring within UK's jurisdiction. They have no enforcement powers with regard to extra-territorial events. However, they have done some work to promote good practice on the part of UK employers operating abroad.

¹⁶ Corporate Responsibility (CORE) Coalition and LSE, *The reality of rights: Barriers to accessing remedies when business operates beyond borders*, 2009, p41-43. (*The reality of rights*)

¹⁷ See the five case studies of UK companies, in which the barriers to redress are analysed, in *The reality of rights*, p12-35.

¹⁸ Conversation with Martyn Day, founding partner of Leigh Day & Co.

¹⁹ Corporate Responsibility (CORE) Coalition, *Corporate Abuse in 2007: A discussion paper on what changes in the law need to happen*, Jennifer Zerk, 2007, p16, available at <http://jenniferzerkconsulting.com/publications/corporateabuse2007.pdf> (Corporate Abuse in 2007)

²⁰ Corporate Abuse in 2007 also *Extraterritorial Jurisdiction as a tool for improving the Human Rights Accountability of Transnational Corporations*, Olivier De Schutter, 2006, p35-45, available at http://www.policyinnovations.org/ideas/policy_library/data/01420

²¹ Immigration and Asylum Act 1999, Part VI

²² See Immigration and Asylum Act 1999, Section 4 and The Immigration and Asylum (Provision of Accommodation to Failed Asylum-Seekers) Regulations 2005 S.I. 2005 No. 930

²³ See Home Office, *CONTROL OF IMMIGRATION: QUARTERLY STATISTICAL SUMMARY, UNITED KINGDOM: OCTOBER – DECEMBER 2008*, available at <http://www.homeoffice.gov.uk/rds/pdfs09/immig408.pdf>

²⁴ National Audit Office, *Returning failed asylum applicants*, July 2005, p. 13; available at <http://www.nao.org.uk/idoc.ashx?docId=fe9750d7-9213-4116-9212-55cb0089f40c&version=-1>

²⁵ This research appears in the following publications:

Amnesty International UK, *Down and Out in London*, 2006, www.amnesty.org.uk/uploads/documents/doc_17382.pdf

Refugee Action, *The Destitution Trap*, 2006, www.refugee-action.org.uk/campaigns/documents/RA_DestReport_Final_LR.pdf

The Children's Society, *Living on the edge of despair*, 2008, www.childrenssociety.org.uk/resources/documents/Research/Living_on_the_edge_of_despair_destitution_amongst_asylum_seeking_and_refugee_children_6115_full.pdf

Barnardo's, *Like any other child?*, 2008, www.barnardos.org.uk/like_any_other_child_asylum_report08_full.pdf

The Joseph Rowntree Charitable Trust, *Destitution in Leeds*, 2007,, www.jrct.org.uk/documents.asp?section=00010006&lib=00030002

The Joseph Rowntree Charitable Trust, *More Destitution in Leeds*, June 2008, www.jrct.org.uk/documents.asp?section=00010006&lib=00030002

Independent Asylum Commission, *Interim Findings: 'Fit for Purpose yet?*, March 2008, available on <http://www.independentasylumcommission.org.uk/files/Fit%20for%20Purpose%20Yet.pdf>

²⁶ The Joseph Rowntree Charitable Trust, *More Destitution in Leeds*, June 2008, para. 2.1; report available at <http://www.jrct.org.uk/core/documents/download.asp?id=330> (*More Destitution in Leeds*)

²⁷ *More Destitution in Leeds*, para. 2.6.

²⁸ The Committee requested this information in UN Doc. E/C.12/GBR/Q/5/Add.1, Question 5. Amnesty International is a member the *Still Human Still Here* coalition, which also has made a submission to the CESCR on this issue. This can be accessed on the coalition website at <http://stillhumanstillhere.wordpress.com/>

²⁹ Research by Refugee Action found that some 40% of destitute asylum seekers had problems accessing a GP. Refugee Action, *The Destitution Trap*, October 2006, page 85

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- ³⁰ See *Map of Gaps 2: The Postcode Lottery of Violence Against Women Support Services*, End Violence Against Women Campaign and the Equality and Human Rights Commission, January 2009, p. 6; available at http://www.endviolenceagainstwomen.org.uk/data/files/map_of_gaps2.pdf
- ³¹ For all statistics quoted see *Map of Gaps 2: The Postcode Lottery of Violence Against Women Support Services*, End Violence Against Women Campaign and the Equality and Human Rights Commission, January 2009, available at http://www.endviolenceagainstwomen.org.uk/data/files/map_of_gaps2.pdf
- ³² See the findings of the British Crime Survey, Homicides, Firearm Offences and Intimate Violence 2007/08, (Supplementary Volume 2 to Crime in England and Wales 2007/08), available at <http://www.homeoffice.gov.uk/rds/pdfs09/hosb0209.pdf>
- ³³ See <http://www.amnesty.org.uk/content.asp?CategoryID=11051>, accessed April 2009
- ³⁴ Kelly, Lovett and Regan, *A gap or a chasm? Attrition in reported rape cases*, 2005; available at <http://www.homeoffice.gov.uk/rds/pdfs05/hors293.pdf>
- ³⁵ For detailed recommendations relating to an integrated strategy on violence against women, see *What a Waste: The Case for an Integrated Violence Against Women Strategy*, Women's National Commission, February 2004; available at <http://tinyurl.com/52cu9z>
- ³⁶ UN Doc. A/54/38/Rev1, para. 311
- ³⁷ UN Doc. A/63/38, para 263
- ³⁸ See consultation document at <http://www.homeoffice.gov.uk/documents/cons-2009-vaw/vaw-consultation.pdf>
- ³⁹ See, for instance, a Written Answer to Parliament by Iain Wright MP, Parliamentary Under Secretary of State in the Department for Communities and Local Government, on 2 March 2009: "We [...] continue to recognise the important role refuges can play in helping the victims of domestic abuse". House of Commons Hansard, Vol. 488, Col. 1232W; <http://www.publications.parliament.uk/pa/cm200809/cmhansrd/cm090302/text/90302w0005.htm#09030213000052>
- ⁴⁰ Amnesty UK, *No Recourse' No Safety: The Government's failure to protect women from violence*, March 2008; available at http://www.amnesty.org.uk/uploads/documents/doc_18308.pdf
- ⁴¹ Imkaan, *No Recourse – No Duty to Care? Experiences of BAMER [Black, Asian, Minority Ethnic and Refugee] Women and Children affected by Domestic Violence and Insecure Immigration Status in the UK*, 2008, available at http://www.imkaan.org.uk/dispatch/_depot/papers/No%20Recourse%20-%20No%20Duty%20to%20Care.pdf
- ⁴² Saheli, *Forgotten Women: Domestic Violence, Poverty and South Asian Women with No Recourse to Public Funds*, 2008, available at <http://www.oxfam.org.uk/resources/ukpoverty/downloads/forgottenwomen.pdf>
- ⁴³ Written Answer to Parliamentary Question by Vernon Coaker MP, 5 December 2006. House of Commons Hansard Vol. 454, Column 286W; available at <http://www.publications.parliament.uk/pa/cm200607/cmhansrd/cm061205/text/61205w0017.htm#06120610004724>
- ⁴⁴ Unicef UK, *Position statement on commercial sexual exploitation*, 2004, available at http://www.unicef.org.uk/unicefuk/policies/policy_detail.asp?policy=8
- ⁴⁵ Accurate identification and referral of trafficked persons to appropriate support services lies at the heart of any system to protect trafficked persons. Under the Convention Against Trafficking, identification by competent authorities acts as the passport to a range of rights intended to help a trafficked person escape from the influence of traffickers and begin a process of recovery through access to healthcare, support and accommodation and access to legal advice.
- ⁴⁶ See for instance the *Briefing on Migrant Domestic Workers and Trafficking* produced by Kalayaan, the leading UK-based NGO working for migrant domestic workers, 2007; available at <http://tinyurl.com/62n7v7>
- ⁴⁷ See Alice Sachrajda, *POPPY Project Outreach Service: A review of work to date: January – September 2007*, 2008; Appendix 1, available at http://www.eaves4women.co.uk/POPPY_Project/Documents/Recent_Reports/POPPY%20Project%20Outreach%20Service%20-%20a%20review%20of%20work%20January-September%202007.pdf

⁴⁸ A study conducted by researchers at the London School of Hygiene & Tropical Medicine on the physical and psychological health of trafficked women found that they suffered numerous physical and mental health problems which required both urgent and longer-term care. Psychological reactions were severe and prevalent, and compared to or surpassed symptoms recorded for torture victims. See LSHTM/IOM/EU Daphne Programme, *Stolen smiles: a summary report on the physical and psychological health consequences of women and adolescents trafficked in Europe*, 2006, available at <http://www.lshtm.ac.uk/hpu/docs/StolenSmiles.pdf>

⁴⁹ Source: Amnesty International interviews with POPPY Project and Kalayaan, NGOs working on trafficking.

⁵⁰ Crown Prosecution Service, *Prosecution of defendants charged with immigration offences who might be trafficked victims*, 2007. Available at http://www.cps.gov.uk/legal/section12/chapter_i.html#19a. The guidance applies to adults charged with a range of passport and identity documentation offences, and offences relating to the criminal exploitation of children. Prosecutors are advised to consider whether or not an individual suspected of having committed such an offence is a credible trafficking victim, on the basis of information or evidence from the investigating immigration or police officer.

⁵¹ *R v O* [2008] EWCA Crim 2835

⁵² *R v O* [2008] EWCA Crim 2835, para. 24.