

## JUST West Yorkshire's Submission to the UN Human Rights

### Universal Periodic Review

JUST West Yorkshire is a racial justice, civil liberties and human rights organisation that has been working in West Yorkshire, England since 2003. Human rights are important to us because they provide a legal framework that ensures that **everyone** has a right to live their life in dignity. Critically the Human Rights Act has proven to be a powerful tool that organisations have been able to use to hold public services and the UK government to account, especially at a time when the austerity budget and the diminution of civil liberties are eroding our fundamental rights as humans and citizens.

We are concerned that the government's intention to replace the Human Rights Act with a Bill of Rights will reduce the protections enshrined in UK legislation its citizens. These measures are part of a larger pattern in which legislation, which accords citizens rights such as the Equality Act are being undermined.

In the face of continued evidence of human rights abuse by the UK government (see below) it is critical that the Act is retained in its present form, as a universal benchmark of our performance against other signatories. Given the propensity of governments to accrue power to themselves it is our view that the HRA offers the best protection for individuals as it is free from executive interference and the vagaries of political ideology.

We are extremely concerned that the call to replace the Human Rights Act with a Bill of Rights will undermine the legal protection of human rights in the UK, and it will set a dangerous precedent internationally by legitimising attempts by despotic regime to opt-out of this 'universal' framework. Professor Francesca Klug OBE stated in The Guardian: ***"We would be the first democracy in the world to introduce a bill of rights on the back of scrapping one already on the statute book. The UK would sit alongside Belarus as virtually the only country in Europe not to have incorporated the ECHR into domestic law."***

We believe that the Coalition government's suggestion that a new British Bill of Rights would not necessarily replace the existing Human Rights Act but would recalibrate the rights and responsibilities for the UK begs the question why the HRA should be tampered with at all. If the idea is to enhance individual rights then our view is that this should constitute a framework that is an **adjunct** to the HRA. The Human Rights Act enshrines the notion of individual rights as indivisible and absolute. The UK Bill of Rights however co-locates the individual rights with the notion of individual responsibility, and in so doing gives politicians the power to define responsibilities in a way that legitimises the diminution of individual rights.

The denigration of the Act by some sections of the media and the PM and the Home Secretary as a charter for 'bogus immigrants, terrorists and extremists' carries with a real danger that the Bill of Rights – will create a hierarchy of rights in which some humans i.e. UK citizens are accorded superior rights over non-citizens. This would mean less protection for the vulnerable against injustice.

The **xenophobic** intent of the proposed Bill of Rights is clear from Cameron's pledge to replace the HRA with "a clear articulation of **citizen's rights** that **British people** can use in **British courts.**" JUST is concerned that Cameron's reference to 'British People' claiming "citizens rights" in "British courts" appears to extend rights only to some *people* unlike the universal scope of the HRA. Cast in a rhetoric that has clear echoes of the language used by the British tabloid accusing 'foreigners' of using 'foreign rights' in 'our' domestic courts, JUST is concerned that the Bill of Rights proposal has been framed to appease the gallery of tabloid opinion, whom political parties of all hues depend on to deliver electoral victory.

We are also concerned that the proposal for a Bill of Rights is **politically motivated** in response to growing pressure from within the Tory party and its rank and file for the party to distance itself from Europe. We consider the warning from the president of the European Court to be apposite in this context i.e. he believes that the Conservative proposal for a Bill of Rights would create a complicated legal situation and threaten the protection currently offered by European human rights law if UK judges had exclusive oversight over its implementation.

There is also clear evidence that the Bill of Rights will be used as **an immigration and state security instrument** rather than as a framework enshrining rights per se. This is evident in article that Cameron wrote in the Sunday Times.

*"It is time to replace the Human Rights Act with a British bill of rights that will enable ministers to act within the law to protect our society. If M15 tells the government that a foreign national is...a danger to national security, then the home secretary should be free to balance the rights of the suspect with the rights of society...and proceed with the deportation if necessary."*

We believe that there are **clear safeguards within current immigration, criminal justice and anti-terror legislation** to safeguard national security.

We are also extremely concerned that the safeguards enshrined under the present HRA upholding the rights of every individual to freedom from torture, inhumane and degrading treatment, will be compromised under the proposals for a domestic Bill of Rights, as it will provide **no get out clause from the absolute prohibition on torture.**

We are concerned that the 9 people comprising the Bill of Rights Commission of mostly Queen's Counsel are not all human rights experts. We are concerned that a number of the members on the Commission have made clear that they want to reduce the essential protections this legislation currently provides. We believe this represents a conflict of interest and should be subjected to a review.

JUST believes that the UK government is involved in on-going human rights abuses by the UK on the basis of the following evidence:

1. In 2005 the Independent newspaper published an article '**Britain in the dock for human rights failures after more than 100 'guilty' judgments filed**'. The article described Britain as having one of the worst human rights records in Europe. The allegations concerned violations of the rights of mental health patients to the failure to protect children from unlawful corporal punishment in

the home. The article reported that of the 47 signatories to the European Convention on Human Rights, Britain had 107 guilty judgments - the sixth highest number - issued by the European Court of Human Rights in Strasbourg.

2. The European Convention on Human Rights in its third article, outlaws "torture and inhuman or degrading treatment or punishment." Yet, in the pursuit of the "War on Terror", the UK government has repeatedly violated and breached these principles. Suspected terrorists have been placed under indefinite house arrest in the form of "control orders", without trial and without charge, sometimes for years at a time.
3. A report by Amnesty International in 2010 criticised over use of control orders against terror and it condemned the UK government for taking part in so-called diplomatic assurance deals whereby it extradited people to countries such as Algeria or Jordan where they were likely to face torture.
4. On **6<sup>th</sup> October 2011** the Guardian reported that Sami al-Saadi (a Libyan dissident) had issued legal action against the British government for the years of torture he suffered as result of British involvement in his rendition to one of Gaddafi's jails. A number of Whitehall officials told the Guardian the renditions were the result of "ministerially authorised government policy". The case currently relies upon a number of documents that Human Rights Watch, the New York-based NGO, found last month in the abandoned office of Gaddafi's former intelligence chief, Moussa Koussa. Among them is a fax the CIA sent to Koussa in March 2004, which shows that the agency was eager to join in the Saadi rendition operation after learning that MI6 and Gaddafi's government were about to embark upon it. Saadi's wife and children were released after two months of being subjected to what he describes as "psychological torture". Saadi was held for six years and says he was repeatedly beaten, subjected to electric shocks and threatened with death. According to his claim against the British government, he was interrogated about Libyans living in the UK, shown photographs of a number of them, and on one occasion questioned by two British intelligence officers while one of his Libyan interrogators was present.
5. Saadi is not the only Libyan dissident to have found himself in one of Gaddafi's jails as a result of MI6's actions. On **5<sup>th</sup> September 2011**, the Daily Mail Online reported that, secret files and letters found in Libya appeared to show that British Intelligence services provided information which led to the 'rendition' of a Libyan dissident, Abdel Hakim Belhadj. The letter in question appears to take credit for Britain's role: "I congratulate you on the safe arrival of Abu 'Abd Allah Sadiq," it said. "This was the least we could do for you and Libya to demonstrate the remarkable relationship we have built over recent years. Belhadj claims he was horrifically tortured and that he wasn't allowed to bath for three years and was hung from a wall and kept me in an isolation cell

In addition to the above concerns there are 5 other key areas of concerns JUST wishes members of the periodic review to take into consideration:

1. **Failure to Protect the Legal Aid system**

Government cuts in Legal Aid will remove help for the most poor and vulnerable people thereby denying fundamental access to justice and a fair trial. This will impact on Article 6 – Right to a Fair Trial.

According to the Government's Equality Impact Assessment, legal aid cuts "have the potential to impact a greater proportion of women, Black, Asian and Minority Ethnic people, and ill or disabled people". For example, of the 135,000 people per year who will no longer get legal aid to help with welfare benefits issues, 58% will be ill or disabled, compared with the 19% of the population as a whole. This is justified, the Government says, as "a proportionate means of meeting our legitimate policy objectives" – namely, saving money as part of its deficit reduction programme. It is our view that the rights enshrined in human rights are sacrosanct and the government's intention to sacrifice human rights to achieve its economic policy aims sets a dangerous precedent.

## **2. Detention of Mental Health patients in Police custody.**

Recent guidance from the Department of Health (DH, 2008) made changes to the use of Section 136 when Section 44 of the new Mental Health Act 2007 came into effect on 30 April 2008. The new legislation allows a person to be taken from one place of safety to one or more different places of safety during the 72-hour maximum period. They may be taken between places of safety by a police officer, an approved social worker (until approved social workers are replaced in this role by approved mental health professionals) or someone authorised by either of them. The guidance also states that police stations should only be used as 'places of safety' in 'exceptional circumstances'. An estimated **11,000** people are detained in police stations as places of safety each year. Use of police custody as a place of safety should only be used as a **last resort**. Up to 15% of incidents with which the police deal with are thought to have some kind of mental health dimension.

A large percentage of people suffering from mental health issues are detained in police cells for considerable periods of time and some cases have documented up to 20 hours in detention before appropriate help is provided. **This breaches Article 8.**

Many police forces say they have no alternative to using police stations as places of safety due to the absence of appropriate facilities within health settings. Ideally, a 'place of safety' should be a hospital rather than a police station yet only **6,400** people are detained in this way in hospitals annually. The Department of Health has expressed concerns that holding a person with a severe mental illness in a police cell for an assessment is entirely inappropriate and could put the patient at risk.

We believe that this represents a serious breach of the human rights of a vulnerable group which the government has not addressed to date.

## **3. Holding public authorities accountable for unlawful surveillance and false arrests**

A number of concerns have arisen regarding the unlawful behaviour by the police service and local authorities in the purported exercise of their statutory functions which impact directly on Human Rights legislation. It has also been reported that police forces are using £13,000 spy drones to tackle anti-social behaviour which appears to be an extreme, disproportionate and intrusive method.

## **CASE A**

A 46 year old lady employed as Community Development Officer in a school for 18 years with an excellent work record was subjected to a prolonged period of surveillance over several weeks by her employer (a local authority) whilst she was on sick leave. When the surveillance form was scrutinised it transpired that it had been improperly authorised as the grounds to conduct the surveillance had not been met. The form had been merely rubber stamped without any consideration. The employee took legal action for breach of Article 8 – Right to Respect For Private and Family Life. Her lawyers advised her not to use Human Rights legislation as there wasn't much compensation for breaches involving Human Rights. She was advised to issue a claim for negligence. The employee succeeded in her claim and the matter was settled out of court. No action was taken against the local authority for breaching the Human Rights Act and wasting thousands of pounds on weeks of unlawful surveillance.

### **CASE B**

A middle aged was repeatedly harassed on 4 separate occasions by the police to provide a statement over a period of 9 months. As she refused to do so the police falsely arrested her to put undue pressure on her thereby breaching Article 5 and 8. No action was ever taken against the individual officers. A claim has been issued against the relevant police force.

Despite clear breaches by the police, there is little evidence that complaints to the Independent Police Complaints Commission are guided exclusively within the ambit of criminal law rather than the human rights framework. This represents an on-going omission by public bodies in the UK who view the human rights as a bolt-on rather than integral to the UK legislative framework.

#### **4. 965% increase in racially motivated crimes**

On 29.06.2009 it was reported that the number of racially or religiously-motivated crimes being reported to West Yorkshire Police had risen 12 times faster than in other parts of the country. Government figures show 2,493 crimes were reported in 2007/08 across the county, compared with 234 in 1999/2000 – a rise of **965 per cent**. Nationally there has been a 82 per cent increase in that period from 21,750 to 39,643.

A report by the Minority Rights Group International (MRG) says that Muslims in particular have been increasingly targeted by authorities in Europe and the US as part of counter-terrorism measures, and notes the rising trend in Islamophobia across Europe. Since the UK government has launched its 'war on terror,' UK's Muslim population are increasingly being demonised and criminalised by the UK legal framework. We believe this represents a breach of their human rights.

#### **5. Protecting BME police officers from discrimination in the workplace.**

The Stephen Lawrence Inquiry 10 Years On' published in February 2009 claimed that at the end of 2008, almost **half of the 43** forces in England and Wales **had not reached** the employment target for black and minority ethnic officers set by home secretary Jack Straw almost 10 years earlier.

The review is also critical of the police's ability to retain black and ethnic minority staff. "Research examining why officers left the service has indicated that **those from black and minority ethnic groups are more likely to have been dismissed or required to**

**resign compared with their white counterparts (8.5% and 1.7% respectively) or to have left following voluntary resignation (46.6% of leavers from black and minority ethnic backgrounds and 25.9% of all leavers from white backgrounds.)"**

The differential treatment of ethnic minority communities by public bodies breaches the Human Rights Act of UK's non-white citizens and the UK government should be subject to censure.

### **CONCLUSION**

In the UK, we have long professed our commitment to upholding the fundamental liberties of all people. In September 2011 a Liberty/ComRes poll showed mass support (93%) for a law that protects rights and freedoms in Britain. 96% of respondents believed the right to a fair trial is vital or important, 90% believed the right not to be tortured or degraded is vital or important and 95% believed that respect for privacy and family life is vital or important. Yet less than a tenth of respondents (9%) remember ever having received or seen information from the Government explaining the Human Rights Act.

Equally, the European Convention on Human Rights and Fundamental Freedoms is the most important instrument of international law to emanate from the Council of Europe. Both the Council and the Convention itself were developments in reaction to the past horrific experiences of the Second World War.

Britain is intrinsically interwoven into the fabric of Europe, historically, diplomatically and economically and risks undermining and damaging the contribution of many countries, and most cultures, to the human rights values universally recognised throughout the world today if it ignores and turns its back on the international human rights treaties which virtually every modern bill of rights is based on.

A large number of key civil liberties and human rights organisations have voiced their concerns collectively regarding the proposed UK Bill of Rights. We must consider that no country anywhere has proposed to withdraw the human rights treaty from its legal framework so that it can introduce a Bill of Rights. We consider the Bill of Rights to be a retrogressive step and call on all politicians across the political spectrum to uphold the current Human Rights Act.

Submitted by JUST West Yorkshire.