**Submission to the United Nations Human Rights Committee Pre-Sessional Working Group on the United Kingdom’s Implementation of the International Covenant on Civil and Political Rights**

**RIGHTS WATCH (UK): OVERVIEW**

Rights Watch (UK) (“RWUK”) is an NGO focused on ensuring that the measures taken by governments in pursuit of national security are compliant with human rights and international law. In particular, RWUK promotes independent and effective oversight, regulation and transparency of government activity in counter terrorism efforts, in addition to accountability and redress for any individuals who suffer human rights abuses as a result of government’s conduct in the course of counter terrorism operations. RWUK has over twenty-five years of experience of working in the field of national security: initially in Northern Ireland and, since 9/11, in Great Britain and abroad.

**SCOPE AND METHODOLOGY**

RWUK conducts independent research in the field of counter-extremism and national security, including fieldwork, policy and advocacy work. It engages with government parties to consult on policy, legislative proposals and government practice in its sphere of expertise. RWUK has reviewed previous UK state reports to the HRC and attendant Concluding Observations in the preparation of this submission.

This submission will focus on four issues: transitional justice in Northern Ireland, the UK government’s treatment of British IS-affiliates in Syria, the UK government’s conduct in relation to its countering violent extremism policy, *Prevent*, and conduct of the UK’s wider security and national security projects overseas.

**A. BRITISH IS-AFFILIATES IN SYRIA**

***Factual Background***

Approximately 90 British nationals, about 60 of whom are children, are currently held in detention by Kurdish authorities in IS-affiliate camps, such as al-Hol camp and Roj camp, in northeastern Syria. It understood that the majority of children in the camps are below the age of 12 and half are younger than five years old. Kurdish authorities control not only the camps but also the border with Iraq and the route out of northeast Syria.[[1]](#footnote-2) The populations of these camps (al-Hol and Roj) are female-foreign nationals who travelled or were brought to Syria and are categorised as IS-affiliates (and were often IS brides), and were detained in these camps following the fall of Baghouz in early 2019. The camp populations are exclusively women and their young children.[[2]](#footnote-3) The women and children are detained in these camps without reference to and without assessment of their individual circumstances, or the reason for an individual’s presence in Syria (coming to Syria as a volunteer, coming as a result of coercion, being groomed, or brought to the country as a minor, etc.). They are held until their country of national origin agrees to their return. Those who are detained are unable to leave or end their detention unless their country of origin consents to their release.

Prior to 10 October 2019, there was a reported 250 preventable child deaths in these camps (from existing injuries that have not received adequate attention, tuberculosis outbreaks, acute diarrhoea and dysentery).[[3]](#footnote-4) This figure includes at least one British child.

In the camps, Britons are living in circumstances of humanitarian disaster without access to basic services, such as adequate food, medical care, and clean water. The camps in question are grossly overpopulated; al-Hol, designed with an initial capacity of 10,000, houses over 69,000 individuals**.** Physical shelter is limited, and outside temperature fluctuates from extreme heat to extreme cold. The camps have been subjected to extreme weather such as flooding, and as the winter forges on, individuals are subjected to even further concerns, including tent fires—both accidental, as a result of heating devices, and purposeful. At least one child (non-British) has died this winter as a result of a tent fire. Deaths from preventable diseases such as pneumonia, dysentery, cholera and the long-term consequences of starvation are common; much of the camps’ water is contaminated with e-coli.[[4]](#footnote-5) Medical care is extremely limited; it is common for women to give birth without medical attention, and attendant mortality levels are high. The Red Cross has described conditions as ‘apocalyptic,’[[5]](#footnote-6) and the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism stated that the conditions in the camps rise to the level of a violation of the prohibition on cruel, inhuman and degrading treatment.[[6]](#footnote-7)

The UK government has refused to repatriate these women and children from the camps. The UK government’s longstanding position had been that they would not facilitate repatriation of any British nationals detained in the camps in northeast Syria, including women and children, given the security risk that this would pose for government officials. The British government advised that British citizens in Syria who wish to seek the British government’s assistance need to find their way to the nearest consulate or embassy in Iraq or Turkey (given that the UK does not have any consular or diplomatic presence in Syria) and that they should call the British Foreign Office if they require help.

For obvious reasons, this was and remains a practical impossibility for those children and women detained in the camps who are detained and with limited or inconsistent access to telecommunications. This position ignores the fact that it is impossible for women and children to leave the detention facility without prior authorisation from their governments of nationality, including appropriate administrative confirmation that they can cross the relevant borders and be returned to their states of origin. It also fails to take account of the fact that a number of other states have repatriated hundreds of women and children of their nationality from the camps with the assistance of state and non-state actors.[[7]](#footnote-8)

In October 2019, the British government confirmed that it was considering repatriating some of the unaccompanied British minors. UK Foreign Secretary Dominic Raab stated, “In relation to minors, unaccompanied minors or orphans, I can tell you that, assuming they would represent no security threat…we would be willing to see them return home if that can be done in a safe way given the situation on the ground.”[[8]](#footnote-9) Unaccompanied children represent a fraction of the UK children being detained, given that most are with their mothers. We are only aware of one instance that the British government has done so and it was, subsequent to a November 2019 High Court decision ordering the repatriation of a small number of British children.[[9]](#footnote-10)

There remain logistical pathways to repatriation, andthe British government can take reasonable steps within its power to bring an end to the detention of the women and children and facilitate repatriation. These steps can include the issuing of travel documents, facilitating assistance to a border, and logistical partnership to transit individuals and families home. In addition, there are still humanitarian agencies, including Save the Children and UNICEF, operating in the camps and traveling in nearby areas. In such circumstances, the failure of the British government to bring an end to the detention of the women and children constitutes violations of their human rights obligations in respect of the detention.

Moreover, there remains architecture for monitoring and post-return management of the women currently being held. This architecture includes a number of administrative mechanisms, including pre-trial detention and restriction of movement, and mechanisms for investigation, prosecution, and surveillance. According to the UK’s own 2018 CONTEST counter-terrorism strategy annual reporting, hundreds of men, women and children (over 360) have returned from Syria and Iraq since the beginning of the conflict.[[10]](#footnote-11) A significant proportion of those who returned “are assessed as to no longer being of national security concern.” Furthermore, there are actually significant security risks that attach to leaving the women and children in the camps: long-term detention in the camps fails to take account of the risk of radicalisation or further radicalisation of those in the camps by exposure to more radicalised detainees.[[11]](#footnote-12) The ability to manage such threats exists and ought to be appropriately utilised.

**Article 2**

In its General Comment 36, in respect of jurisdiction, the Human Rights Committee (“HRC”) notes that every State:

[…] has an obligation to respect and to ensure the rights under article 6 of all persons who are within its territory and all persons subject to its jurisdiction, that is, all persons over whose *enjoyment of the right to life it exercises power or effective control*. This includes persons located outside any territory effectively controlled by the State, whose right to life is nonetheless impacted by its military or other activities in a direct and reasonably foreseeable manner.[[12]](#footnote-13)

Accordingly, the Human Rights Committee accepts that the capacity of a State to affect a person’s right is an important factor in establishing how and when someone is said to be subject to or within the jurisdiction of a State, outside its territory, for the purposes of the ICCPR. Thus, the ICCPR does not only apply in cases involving spatial control and physical control over persons, but also where state activity either in its own territory or outside its territory has direct and reasonably foreseeable impact on the ability of individuals to enjoy their right to life.[[13]](#footnote-14) The HRC has applied the same jurisdictional reasoning set out in General Comment 36 in a number of situations, including in reviews of the use of lethal force by drones in foreign territory[[14]](#footnote-15) and in reviews of foreign surveillance programs.[[15]](#footnote-16)

As this analysis indicates, jurisdiction in the Syrian context arises from the UK exercising control outside of its borders in a manner that affects the rights of British nationals that are detained. As has been noted relevant court decisions in European cases concerning repatriation, the Kurdish authorities will not release the European women and children without the express consent of the state of nationality, including the British government, . In other words, the ability of the UK government to choose to allow or disallow the release of its citizens amounts to a situation where a person’s enjoyment of their rights is affected by the State’s power or control.

As stated in the factual section above, the UK government can take reasonable steps within its power to bring an end to the detention of British women and children, and to facilitate repatriation. These can include the issuing of travel documents, facilitating assistance to a border, and logistical partnerships to transit individuals home. The power and control that the UK Government has in relation to the continued detention and inhuman treatment means that it it is in the position of detaining authority and must end its violation of the prohibition on arbitrary and unlawful detention, and the corollary breaches that the conditions of detention constitute. This is captured in various human rights obligations, including ICCPR articles 7 and 9, as will be discussed in further detail below.

With respect to the applicability of IHRL in the context of NE Syria, it is a settled position that IHRL does not cease to apply in armed conflict, save for the case of derogation.[[16]](#footnote-17) Instead, in cases of concomitant applicability, it is a question of interpretation how the obligations of IHL or IHRL interact and complement one another. Thus, to the extent that there is an international armed conflict (“IAC”) and/or non-international armed conflict (“NIAC”) in northeast Syria, international human rights law (“IHRL”) continues to apply concurrently with international humanitarian law (“IHL”). However, this appears to be a redundant question in this context as there is no legal basis for the Kurdish authorities, as a non-state actor, to detain under IHL.[[17]](#footnote-18)

**Article 3**

As is highlighted by the case of Shamima Begum,[[18]](#footnote-19) the UK government has consistently failed to take account of the circumstances where alleged involvement of women in terrorism, and in Shamima’s instance, a child, are possibly linked to intimidation or vulnerability in the context of abuse and coercion. Begum is a former east London school girl who fled the UK to join the IS back in February 2015, at the age of 15. General Comment No 28 states that “The State party must not only adopt measures of protection, but also positive measures in all areas so as to achieve the effective and equal empowerment of women.”[[19]](#footnote-20) In failing to take account of how its policy response to its nationals in Syria impact women in a specific manner,[[20]](#footnote-21) the UK is acting in a discriminatory manner in contravention of Article 3.

**Article 6**

As described in the factual section above, prior to 10 October 2019, there were a reported 250 preventable child deaths in these camps (from existing injuries that have not received adequate attention, tuberculosis outbreaks, acute diarrhoea and dysentery).[[21]](#footnote-22)The continued refusal of the UK government to agree to the release and to facilitate the repatriate of these British women and children constitutes a breach of the state’s obligations under Article 6 as is underscored by General Comment No 36:

 States parties must take appropriate measures to protect individuals against deprivation of life by other States, international organizations and foreign corporations operating within their territory or in other areas subject to their jurisdiction.[[22]](#footnote-23)

Accordingly, the UK Government is under an obligation under Article 6 to take steps to end of the detention of these British women and children by the Kurdish Authorities given the extremely poor humanitarian conditions and extremely limited access to medical facilities in the camps that have led to a number of deaths.

**Article 9**

Article 9(1) specifies that no one shall be subject to arbitrary detention, and further that no one shall be deprived of his liberty except on such grounds and in accordance with such procedure as established by law. As made clear by the HRC, the two prohibitions are distinct, but their requirements may overlap.[[23]](#footnote-24) While ‘the notion of ‘arbitrariness’ is not to be equated with ‘against the law’, nonetheless detention that lacks any legal basis is clearly arbitrary.[[24]](#footnote-25)

Arbitrariness must be interpreted broadly, to include elements of inappropriateness, injustice, lack of predictability and due process of law, as well as elements of reasonableness, necessity and proportionality.”[[25]](#footnote-26) Aside from judicially imposed sentenced for a fixed period of time, the decision to keep a person in any form of detention is arbitrary if is not subject to periodic re-evaluation of the justification for continuing detention.[[26]](#footnote-27)

Article 9 does not provide a list of permissible reasons for depriving a person of liberty. Rather, the HRC makes clear that regimes involving the deprivation of liberty must be established by law and must be accompanied by procedures designed to prevent arbitrary detention. The HRC makes clear that any regime of security detention in advance of criminal charge presents severe risks of arbitrary deprivation of liberty.[[27]](#footnote-28)

Leaving aside the question of whether detention by the Kurdish authorities can ever be capable of establishing by law a regime for detention, the continued absence of any articulated legal basis for the detention in the factual circumstances above must render it unlawful. Moreover, in line with the HRC’s General Comment, the detention, lacking in any legal basis, is accordingly also arbitrary.

Moreover, separating the grounds within art 9(1) in line with the General Comment, the total absence of procedural safeguards or ability to challenge or review detention provided within the camps to those detained qualify the detention as arbitrary. What is apparent from reports of detention is that no legal grounds or legal basis is communicated to detainees, no framework for review exists (judicial, administrative or otherwise), and due to the absence of legal basis for detention, there is no conceptual ability to challenge ongoing review as non-compliant with legal grounds. That analysis does not change even where relevant IHL is taken into account.[[28]](#footnote-29) The ultimate control over the detention by the British authorities, evidenced by the overarching direction of the United Kingdom of the continued detention of its nationals, renders the United Kingdom responsible for the continued arbitrary and unlawful detention.

**Article 7/Article 10**

The humanitarian situation of those detained in the camps is dire and their safety remains precarious. In fact, several actors have noted thus far that the conditions actually rise to the level of a violation of the prohibition on cruel, inhuman and degrading treatment (“CIDT”). UN Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Fionnuala Ní Aoláin, states, “Those conditions [in overcrowded detention camps in Northeastern Syria], which were described to me in interviews with women returnees, are insufferable, and appear to meet the standards of inhuman and degrading conditions under international law.”[[29]](#footnote-30) The French administrative independent authority, the *Défenseur des droits*, came to the same conclusion in its Decision No. 2019-129,[[30]](#footnote-31) characterizing the conditions in the camps as ones that violate the analogous provision under the European Convention of Human Rights. The dire humanitarian conditions in the camps, as described in the factual section, undoubtedly represent a violation of Article 7.

Moreover, the UK’s refusal to agree to the release of its nationals from the camps represents control of and involvement in the continued detention of its nationals in conditions that fail to respect their humanity and the inherent dignity of the human person. This violation is in clear breach ICCPR Article 10.

**Article 12**

In its last report, the Committee noted its concern about the use of citizenship deprivation powers by the UK government, and the possibility that individuals would be rendered stateless as a result.[[31]](#footnote-32) Between 2016 and 2017 the number of British citizens deprived of their citizenship under section 40 of the British Nationality Act 1981 (“the 1981 Act”) on grounds of ‘conduciveness to the public good’ has increased by 600%.[[32]](#footnote-33) More recent statistics have yet to be published by the government.

Under Section 40 of the 1981 Act, any British citizen may be deprived of his or her citizenship if the Home Secretary is satisfied that it would be conducive to the public good to deprive the person of his or her British nationality, and that s/he would not become stateless as a result of the deprivation. In 2014 a new provision was introduced to allow the Home Secretary to deprive an individual of citizenship even if they would be rendered stateless as a result, if the Home Secretary has ‘reasonable grounds’ to believe that the individual would be capable of acquiring another citizenship.[[33]](#footnote-34) This was in reaction to the government losing a number of legal cases where the government had stripped individuals of citizenship and functionally made them stateless. There are substantial issues with this provision:

* It is entirely reliant on the minutiae of the other country’s laws, which often vary significantly from the law of the UK. For example, Bangladeshi law confers citizenship on individuals born to a Bangladeshi citizen, but that citizenship lapses when the individual reaches the age of 21 unless they make efforts to activate and retain it. The UK government has stripped a number of individuals of British citizenship on the basis that there exists the latent possibility of activating Bangladeshi citizenship, despite the real difficulty multiple applicants have had in doing so in practice.
* It is reliant on the practice of the other country, which is not static. Most citizenship acquisition processes are not automatic. In particular, in each case the Home Secretary is presuming that the other state will accept as a citizen an individual who has been deprived of citizenship as a result of allegations of terrorist or terrorism-adjacent activities. For example, Bangladeshi authorities have repeatedly stated that there is ‘no question’ of the British national Shamima Begum (who was deprived of her British citizenship on the basis that she could acquire to Bangladeshi citizenship) being granted Bangladeshi citizenship after being stripped of British citizenship in February 2019.[[34]](#footnote-35)
* It ignores the extreme, and often insurmountable difficulties individuals would face in activating or acquiring another nationality, occasioned by the individual’s practical reality of, for example, living in a camp where access to communication equipment, legal counsel etc. is low to non-existent. Even in the instance that the second state would entertain an application, it is unclear that individuals would, in reality, have the ability to acquire another nationality.

The capriciousness of the government’s action here is exacerbated by the fact that, for the individuals targeted by deprivation orders, effective challenge to the order is rendered very difficult by their lack of ability to communicate confidentially, or at all, with legal representatives in the UK. Moreover, individuals may not become aware that they are the subject of deprivation proceedings as it is possible for the Secretary of State to meet their obligation to ‘notify’ such a person by serving notice on an individual’s previous address in the UK, including in cases where the Secretary knows the individual to have left the country (and often in cases where the reason for the deprivation of their citizenship is linked to their leaving of the UK, e.g. to go to Syria).[[35]](#footnote-36)

Individuals who do become aware of the proceedings can appeal the deprivation of their citizenship, but face further difficulties in doing so. Appeals by individuals who have been deprived of their citizenship are heard by the Special Immigration Appeals Commission (“the SIAC”). A substantial portion of the evidence presented to the judge in the SIAC is done in ‘closed proceedings’, which means that the appellant and their legal counsel are not permitted to see the evidence or know about it. Instead, a ‘Special Advocate’ is appointed to the appellant who represents them in the closed proceedings. A Special Advocate is a lawyer who has been vetted by the UK government for the purpose of appearing in the SIAC in relevant proceedings. Special Advocates are prohibited from communicating with the appellant or their legal counsel. As such, individuals targeted by citizenship deprivation proceedings lack an effective way to engage in the only process whereby they can protect their citizenship. There is no further remedy available to such an individual afterwards.

The UK government’s action in this area has functionally created two tiers of citizenship. Individuals who trace their ancestry to another state, or who have links sufficient to allow the Secretary of State to claim ‘reasonable grounds’ for suspecting their ability to acquire a different nationality can be deprived of their citizenship. The protections of citizenship are ensured for individuals with uninterrupted ‘British’ social origin in a way that they are not for individuals whose familial origins arise in another state. This represents an embedded, procedural breach of Article 2.

As noted above, the UK Government accepts that the ICCPR (like the ECHR) applies extraterritorially in certain exceptional circumstances. However, the UK Government continues to deny that its human rights obligations apply to the decision to deprive persons of their nationality where that individual is located overseas (although the UK Goverment does apply, as a matter of policy, the right to life and the prohibition of torture and CIDT to deprivation decisions irrespective of whether the territorial requirement is met).[[36]](#footnote-37)

In the context of the HRC’s analysis of the extraterritorial jurisdiction of the ICCPR, the UK government’s decision to deprive individuals of their citizenship can legitimately be seen as an extraterritorial exercise of governmental power which affects the enjoyment of an individual’s rights. The decision to deprive an individual of their nationality is, in some senses, the decision that has the ability to *most* impact an individual’s rights, particularly when viewed from the perspective of the inculcation of the deprivation decision from comprehensive review that the UK government maintains. Through depriving a British citizen of their nationality in this context especially, the UK government is relegating these individuals to prolonged unlawful detention in inhuman conditions in Syria, as a result of potential statelessness, or to be transferred to a country of their second nationality. Either option frequently leaves an individual more vulnerable to abuses, including mistreatment and even unlawful killing— especially when transferee countries might have records of violating rights of persons suspected of links with IS. Accordingly, the British practice of deprivation of its citizens extraterritorially ought to be considered as a governmental act subject to the extraterritorial jurisdiction of the ICCPR, and analysed in that context.

**Article 24**

As related above, approximately 60 British children are currently detained in camps in northeastern Syria.[[37]](#footnote-38) All children with real or perceived associations with IS are victims of the conflict. Aid groups have also documented sexual abuse of children in the camps.[[38]](#footnote-39) Over 300 children have died in an annex to al-Hol camp, where the majority of European nationals are held. UNICEF has repeatedly called for states to repatriate children born to their nationals.[[39]](#footnote-40)

The ambiguity of these British children’s legal status, many of whom lack any form of civil documentation, and are not formally displaced persons, prisoners or detainees of the conflict, denies them any practical method of realizing their rights now, or in the future. This is exacerbated by the fact that such camps have been dispersed in the past and may be in the future; the breakup of families through death or dispersal is a distinct possibility.

The UK’s continued refusal to repatriate British children from these camps is unlawful, and claims that it would be logistically too difficult to do so are rebutted by the fact that in November 2019, the UK government took the welcome step of repatriating a number of British orphans in Syria to the UK on the basis of a court order.[[40]](#footnote-41)

In conjunction with Articles 17 and 23, repatriation must be carried out in a way that respects the family unit. Children must not be forcibly separated from their parents, particularly in situations of extreme trauma, where the only constant for these children is their mothers. Several European countries, have only brought back orphans,[[41]](#footnote-42) and others, including Belgium,[[42]](#footnote-43) and now, the UK, have brought back children without their parents.

**Recommendations:**

* The State Party should immediately repatriate the British women and children in the camps run by the Kurdish Authorities in NE Syria.
* The State Party should urgently review the practice of citizenship deprivation;
* The State Party should recognise that decisions to deprive persons of their citizenship trigger the State’s extraterritorial human rights obligations under the ICCPR. Accordingly, the UK Government should not deprive a person of their citizenship when to do so would place them at a real risk of being subjected to mistreatment or other relevant rights violations.
* The State Party should ensure that the Government’s decisions to deprive persons of their citizenship are subject to appropriate oversight before the decision is made.
* The State Party should cease its used of closed proceedings in appeals against citizenship deprivation;
* The State Party should cease the practice of depriving individuals of citizenship in cases where it de facto leads to their statelessness;
* The State Party should oversee the issuance of civil documentation to British children in Syria and commit to a programme of repatriation of British children detained in Syria, regardless of their family status, and repatriate children in conjunction with their families.

**B. NORTHERN IRELAND**

**Article 6**

The UK government recently concluded a consultation into a proposed presumption against prosecution in respect of crimes committed by British military veterans.[[43]](#footnote-44) The consultation considered overseas deployments and does not currently extend to Northern Ireland, where prosecutions of British soldiers in relation to the deaths of civilians continue. However, government ministers have stated that they believe that the proposals should also extend to Northern Ireland[[44]](#footnote-45), and multiple legislative proposals have been aired to shield soldiers from prosecutions, and to discontinue on-going prosecutions.

The deployment of British troops to Northern Ireland from 1969 to 2007 represents the longest continuous deployment in British military history, and during that time it is conservatively estimated that members of the Armed Forces were responsible for 301 deaths, over half of whom were civilians.[[45]](#footnote-46) Four soldiers have previously been convicted of shooting civilians in Northern Ireland while on duty, and other prosecutions are on-going.[[46]](#footnote-47)

Any amnesty would amount to an embedded, procedural breach of Article 6. It would have the effect of indemnifying military personnel for crimes committed while on duty. Further, it would have the effect of blocking victim’s access to justice, preventing victims from accessing the truth and blocking access to any or adequate reparations. General Comment No 36 on Article 6 emphasises that the right to life includes a positive obligation on the state party to investigate and prosecute uses of excessive force with lethal consequences. In particular:

 Immunities and amnesties provided to perpetrators of intentional killings and to their superiors, and comparable measures leading to de facto or de jure impunity, are, as a rule, incompatible with the duty to respect and ensure the right to life, and to provide victims with an effective remedy[[47]](#footnote-48)

For identical reasons, international courts have found that equivalent measures represent a breach to the right to life of victims of crimes committed by military personnel.[[48]](#footnote-49)

**Article 7**

An amnesty on prosecutions for military veterans would risk creating immunity for torture in breach of the UK’s obligations under this Article. The United Nations Committee Against Torture has confirmed that the imposition of a limitation period for the offence of torture is inconsistent with a State Party’s obligations under the CAT. Such an amnesty would be incompatible with the UK’s obligations under this Article.

**Recommendations**

* The State Party should reject any and all proposals to introduce an amnesty for the commission of crimes by members of the Armed Forces in respect of crimes committed in Northern Ireland;
* The State Party should commit to the full investigation and prosecution of members of the Armed Forces in relation to offences committed in Northern Ireland.
* The State Party should introduce legislation to give effect to the Stormont House Agreement in a human rights compliant manner. The SHA is an overarching transitional justice mechanisms in Northern Ireland and includes an independent body to take forward investigations into outstanding Troubles-related deaths (the Historical Investigations Unit).

**C. INVOLVEMENT BY ARMED FORCES / UK PERSONNEL IN WAR CRIMES, TORTURE, CRUEL, INHUMAN OR DEGRADING TREATMENT OVERSEAS**

**Article 6**

The Government recently concluded a public consultation into proposals to introduce an amnesty of prosecutions of military veterans in respect of alleged crimes committed while those veterans were on active military duty overseas.[[49]](#footnote-50) The proposals include the following:

* Creating in law a presumption that current or former personnel will not face prosecution for offences committed in the course of duty abroad more than 10 years ago;
* Creating a new partial defence to murder;
* Restricting the ability of the Courts to extend the time limit for bringing civil claims for personal injury and/or death.

This is in spite of the fact that multiple international legal instruments consider that amnesties in respect of intentional killings are incompatible with the duty to respect and ensure the right to life, and to provide victims with an effective remedy. Recent third-party investigations into allegations that the UK has committed war crimes in Iraq and Afghanistan have established credible evidence of war crimes, and of systemic, deliberate failures by the Government to investigate these claims.[[50]](#footnote-51) In some cases, eyewitness evidence exculpating a service member has been fabricated to justify closing investigations.[[51]](#footnote-52) The proposal to introduce an amnesty would mean that there could be no prospect of these allegations receiving an investigation, and for culpable parties to be brought to justice; effectively sanctioning impunity in the Armed Forces.

**Article 7**

*Inquiry into UK complicity in torture, CIDT and rendition*

In 2010 then-Prime Minister David Cameron announced the Gibson Inquiry, which was to investigate UK complicity in torture, CIDT and rendition of individuals as part of the ‘war on terror’. The Inquiry was boycotted by multiple civil society groups on the basis that it lacked independence and adequate investigatory powers, and was abandoned by the Government in 2012.[[52]](#footnote-53) In 2014 the Government announced a new inquiry by the Intelligence and Security Committee of the UK Parliament (“ISC”). Upon publishing their reports in 2018[[53]](#footnote-54), the ISC caveated their findings as being ‘provisional’ only on the basis that the Government had blocked them from interviewing key witnesses; and the 4 individuals the ISC were entitled to interview were restricted on the matters on which they could give evidence. These restrictions prevented them from “*producing a credible report*”.[[54]](#footnote-55) The reports nevertheless document hundreds of cases where UK officials shared or received information with foreign partners despite being aware that those partners were committing or likely to commit torture or CIDT.

Following the publication of this report, the UK government promised to announce whether they would hold a full inquiry into the UK’s involvement in torture and CIDT within 60 days. Nearly a year later, it was announced that no such inquiry would take place.[[55]](#footnote-56)

The refusal by the Government to hold an independent inquiry with adequate investigatory powers makes it impossible to judge the extent to which the UK is in compliance with its responsibilities under this Article. General Comment No 20 details that part of a State Party’s obligations under this Article is to ensure that individuals who engage in, encourage or tolerate breaches of Article 7 are held responsible.[[56]](#footnote-57) Further, the General Comment establishes that State Parties are required to detail how their legal systems guarantee the termination of breaches of Article 7 and safeguards appropriate redress for victims. An independent inquiry is necessary to assess the extent to which the UK government is not currently engaging in prohibited practices and has provided avenues to redress for individuals subject to those practices.

*Principles on the involvement of UK personnel in the questioning of detainees*

In July 2019 the UK government published updated principles on the involvement of UK personnel in the questioning of detainees overseas (“the Principles”), which came into effect on 1 January 2020.[[57]](#footnote-58) The purpose of these Principles was to provide clarity to individuals involved in relevant procedures, namely the UK’s intelligence and security agencies, members of the UK’s Armed Forces, employees of the Ministry of Defence, the Office and Staff of SO15, the Metropolitan Police Service and Officers of the National Crime Agency.

There is no absolute prohibition on unlawful killing, torture, CIDT and extraordinary rendition in the Principles, despite calls from civil society groups for such to be included during the formulation of the Principles. Ministers continue to have the authority to permit actions where there is a real risk of such outcomes.[[58]](#footnote-59)

The Principles only apply where personnel know or believe that torture will result from receiving/passing intelligence, or in the interviewing of detainees, or believe that there is a **real risk** that this will be the case. The Principles do not define what constitutes a ‘real risk’ of torture. This is particularly troubling given that the Principles stipulate that personnel who operate in compliance with the Principles have ‘*good reason to be confident that they will not risk personal liability in the future’*. The ambiguity of this policy may amount to a broad discretion to personnel to engage in activity that amounts to a breach of the UK’s international law obligations not to engage in torture or CIDT. This exposes detainees to the risk of torture and CIDT, puts personnel at risk of complicity in torture and CIDT and may operate in the future to indemnify personnel against prosecution on the basis that they complied, in their view, with applicable guidance.

**Article 10**

As a corollary of Article 7, the UK government’s failures to hold an independent inquiry into UK complicity in torture, CIDT and rendition of individuals as part of the ‘war on terror’, and to enforce suitable guidelines for UK personnel in its Principles on the involvement of UK personnel in the questioning of detainees overseas represents a failure to ensure that individuals deprived of their liberty by, or with the support of the UK government, are treated with humanity and respect for the inherent dignity of the human person.

**Recommendations:**

* The State Party should abandon plans to introduce an amnesty, or ‘presumption against prosecution’ in relation to the commission of crimes by members of the Armed Forces;
* The State Party should ensure that all credible allegations that the Ministry of Defence or members of the Armed Forces committed, aided, or suppressed evidence of war crimes or other human rights abuses receive a full investigation by an independent body, and where appropriate are prosecuted, without any interference by any member of government;
* The State Party must hold an independent inquiry into the use of torture and CIDT by UK personnel;
* The ‘Principles’ and other guidance on the use of torture and CIDT must make it clear that where there is a real risk that intelligence has been obtained by torture or CIDT, it is absolutely prohibited under international and domestic law to continue to rely on, solicit or use such intelligence;
* The State Party must establish due diligence and risk assessment procedures for determining whether there exists a ‘real risk’ that sharing intelligence will contribute to or facilitate torture or CIDT.

**D. BRITISH COUNTERING VIOLENT EXTREMISM POLICY: *PREVENT***

**Articles 17, 18, 19, 26**

Following consistent and widespread criticism of the UK counter-terrorism Prevent strategy, including Rights Watch (UK)’s landmark report[[59]](#footnote-60) (which evidences how the strategy violates the right to privacy;[[60]](#footnote-61) the right to freedom of thought, conscience, and religion;[[61]](#footnote-62) the right to freedom of expression, which includes the freedom to hold, receive, and impart information and ideas without interference;[[62]](#footnote-63) and the right to enjoy other rights free from discrimination on grounds such as religion, or political or other opinion[[63]](#footnote-64)); the UK Parliament, in section 20(8) of the Counter-terrorism and Board Security Act 2019 required the government to establish an ‘independent review’ of Prevent. Rights Watch (UK) set out a proposed terms of reference[[64]](#footnote-65) for the Review that set out the manner in which the Reviewer should be appointed (Public Appointments Process) as well as the principles that must underpin the review and its scope. In August 2019, the government appointed Lord Carlile of Berriew as the Independent Reviewer of Prevent behind closed doors and set out the terms of reference for his Review. Lord Carlile lacked independence for this role. As an example of his lack of independence, as recently as May 2019, he publicly declared his support for the strategy[[65]](#footnote-66) and stated that a Review is completely unnecessary and based on fictitious evidence.[[66]](#footnote-67)

Their terms of reference limited the substantive scope of the review to questions of the efficacy of the Prevent Strategy, and made no express provision for consideration of the human rights impact of the strategy upon affected communities or individuals. In December 2019, following successful legal challenge by RWUK to Lord Carlile’s appointment and to the adequacy of the terms of reference, the government terminated the appointment of Lord Carlile as independent reviewer.[[67]](#footnote-68) The government has yet to confirm how it will proceed but has not committed to including the human rights impact of Prevent in any future review nor has it agreed to a transparent process of appointment of the Reviewer.

**Article 2**

There remain particular concerns that the Prevent Duty is leading to disproportionate impact on Muslims. This is evidenced by government data. Since 2015, the Home Office has published annual data on Prevent referrals. This show that 95% of referrals do not require counter-radicalisation intervention. The data is disaggregated by type of ideology, with the categories of ‘Islamist’ and ‘Far Right’ Extremism. Data for 2017-18 showed that while a roughly equal the number of cases of ‘Islamist’ (179) and ‘Far Right’ (174) extremism were assessed as requiring referral to the deradicalisation programme ‘Channel’, the number of initial referrals relating to Islamist extremism (3,197) was three times higher than referrals relating to Far Right Extremism (1,312). [[68]](#footnote-69) In other words, for Islamist extremism there were 18 initial referrals to Prevent for every case requiring a de-radicalisation Channel intervention, while there were only 7 initial referrals for far right extremism for every Channel case. This suggests a significant and unexplained over referral for Islamist extremism in 2017-18. The Prevent data for 2018-19 indicates a fall in the number of referrals relating to Islamist extremism, from 3197 in 2017-18 to 1404 in 2018-9, a fall of 1793.[[69]](#footnote-70) However, since 2017, referrals have also been placed into a new category of ‘mixed and unstable’ ideology, this accounted for 1,975 initial referrals in 2017-18 and 2,169 in 2018-19. As the published Prevent data is not disaggregated by ethnicity or religion of the individuals, it is not possible to assess racial or religious discrimination in these referrals.

**Recommendation:**

* The Government must establish a genuinely independent and effective review of Prevent that takes account of the human rights impact of the strategy
* The appointment of the Independent Reviewer must be transparent and done in accordance with the Public Appointments Process
* The State Party should collect and publish data on the racial/ethnic and religious identities of individuals subject to Prevent referrals.

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1. https://news.un.org/en/story/2019/10/1049561. [↑](#footnote-ref-2)
2. Older male children area detained in prison camps, or transferred to such camps when appropriate. [↑](#footnote-ref-3)
3. Human Rights Watch Report: https://www.hrw.org/news/2019/07/23/syria-dire-conditions-isis-suspects-families. [↑](#footnote-ref-4)
4. https://www.nytimes.com/2019/09/03/world/middleeast/isis-alhol-camp-syria.html [↑](#footnote-ref-5)
5. https://www.france24.com/en/20190704-conditions-syrias-al-hol-camp-apocalyptic-red-cross [↑](#footnote-ref-6)
6. https://www.justsecurity.org/64402/time-to-bring-women-and-children-home-from-iraq-and-syria/. [↑](#footnote-ref-7)
7. https://www.savethechildren.net/news/tiny-proportion-foreign-children-north-east-syria-camps-repatriated-2019. Note specifically Kazakhstan has repatriated over 150 chidlrenchildren; Kosovo over 70. [↑](#footnote-ref-8)
8. The Telegraph, “Britain to consider bringing back children of Islamic state fighters, Dominic Raab says” (15 October 2019), https://www.telegraph.co.uk/news/2019/10/15/britain-consider-bringing-back-children-islamic-state-fighters/. [↑](#footnote-ref-9)
9. *Re Orphans from Syria [2019] EWHC 3202 (Fam)*. [↑](#footnote-ref-10)
10. HM Government *Contest: The United Kingdom’s Strategy for Countering Terrorism* June 2018 (Cm 9608) at [167] and [172] specifically. See https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\_data/file/716907/140618\_CCS207\_CCS0218929798-1\_CONTEST\_3.0\_WEB.pdf. [↑](#footnote-ref-11)
11. See, for analysis of that threat: http://foreignpolicy.com/2019/10/26/in-syria-the-women-and-children-of-isis-have-been-forgotten/ [↑](#footnote-ref-12)
12. United Nations Human Rights Committee, *General Comment No 36*, UN Doc. CCPR/C/GC/36 (30 October 2018) (‘General Comment No 36’) (emphasis added), [63]. [↑](#footnote-ref-13)
13. This assertion is taken from the drafters of the General Comment themselves. *See* Christof Heyns, Yuval Shany and Ryan Goodman, ‘Human Rights, Deprivation of Life and National Security: Q&A with Christof Heyns and Yuval Shany on General Comment No 36,’ *Just Security* 94 February 2019) available at: https://www.justsecurity.org/62467/human-life-national-security-qa-christof-heyns-yuval-shany-general-comment-36/. [↑](#footnote-ref-14)
14. Human Rights Committee, Concluding Observations on the United States of America, UN Doc. CCPR/C/USA/CO/4 (23 April 2014). [↑](#footnote-ref-15)
15. Human Rights Committee, Concluding Observations on the United Kingdom, UN Doc. CCPR/C/GBR/CO/7 (17 August 2015). [↑](#footnote-ref-16)
16. *Legality of the Threat or Use of Nuclear* Weapons, ICJ Rep 1996 (I), p66, [25] (The protection of IHRL “does not cease in times of war, except by operation of Article 4 of the [ICCPR] whereby certain provisions may be derogated from in time of national emergency. Respect for the right to life is not, however, such a provision.”). *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, ICJ Rep 2004 p136, [102]-[111]. [↑](#footnote-ref-17)
17. Further, to the extent that non-state actors or non-state armed groups do have the authority to detain, detention in northeastern Syria is nonetheless done in contravention of the fundamental rights guaranteed under Additional Protocol I to the Geneva Conventions Article 75. [↑](#footnote-ref-18)
18. https://www.theguardian.com/uk-news/2019/oct/22/shamima-begum-begins-appeal-against-loss-of-uk-citizenship [↑](#footnote-ref-19)
19. UN Human Rights Committee (HRC) *General Comment No. 28 (2000) on article 3 of the International Covenant on Civil and Political Rights, on the equality of rights between men and women)*, 29 March 2000, [3]. [↑](#footnote-ref-20)
20. See Shadow Report of Rights Watch (UK) Submitted to the Committee on the Elimination of Discrimination Against Women for the Eighth Periodic Review of the United Kingdom, 2019. https://www.rwuk.org/advocacy-2/joint-civil-society-letter-on-uks-support-for-universal-periodic-review-recommendations-september-2017-2-3-2-2-2/ [↑](#footnote-ref-21)
21. Human Rights Watch Report: https://www.hrw.org/news/2019/07/23/syria-dire-conditions-isis-suspects-families. [↑](#footnote-ref-22)
22. UN Human Rights Committee (HRC) *General comment No. 36 (2018) on article 6 of the International Covenant on Civil and Political Rights, on the right to life*, 30 October 2018, [22]. [↑](#footnote-ref-23)
23. Human Rights Committee (HRC), *General comment no. 35, Article 9 (Liberty and security of person)*, 16 December 2014, [11]. [↑](#footnote-ref-24)
24. At [11]. [↑](#footnote-ref-25)
25. Human Rights Committee (HRC), *General comment no. 35, Article 9 (Liberty and security of person)*, 16 December 2014, [12]. [↑](#footnote-ref-26)
26. *Shafiq v Australia* 1324/2004, at [7.2]; General Comment No 35, [12]. [↑](#footnote-ref-27)
27. General Comment No 35 at [15], See concluding observations: Colombia (CCPR/C/COL/CO/6, 2010), para. 20, and Jordan (CCPR/C/JOR/CO/4, 2010), para. 11 [↑](#footnote-ref-28)
28. The legal regime for detention is not provided by IHL-NIAC in and of itself; and the procedural requirements which constitute minimum fundamental guarantees for those detained are nonetheless not complied with by the situations of detention set out herein. [↑](#footnote-ref-29)
29. https://www.justsecurity.org/64402/time-to-bring-women-and-children-home-from-iraq-and-syria/ [↑](#footnote-ref-30)
30. Défenseur des droits, *Décision du Défenseur des droits n. 2019-129* (22 May 2019). [↑](#footnote-ref-31)
31. Concluding observations on the seventh periodic report of the United Kingdom of Great Britain and Northern Ireland, 17 August 2015 [15] [↑](#footnote-ref-32)
32. <https://www.independent.co.uk/news/uk/home-news/shamima-begum-uk-citizenship-stripped-home-office-sajid-javid-a8788301.html> [↑](#footnote-ref-33)
33. Section 40 (4)(A)(c) British Nationality Act 1981 as amended by Immigration Act 2014 (c. 22), **ss. 66(1),**75(3). [↑](#footnote-ref-34)
34. <https://www.bbc.co.uk/news/uk-47312207>. [↑](#footnote-ref-35)
35. https://researchbriefings.parliament.uk/ResearchBriefing/Summary/SN06820. [↑](#footnote-ref-36)
36. Home Office, Immigration Bill: European Convention on Human Rights Supplementary Memorandum by the Home Office, [16]. See also [2018] UKSIAC 1\_SC-132\_2016 (18 April 2016), https://www.bailii.org/uk/cases/SIAC/2018/SC\_132\_2016.html. [↑](#footnote-ref-37)
37. https://www.savethechildren.org.uk/news/media-centre/press-releases/More-than-60-British-children-trapped-in-North-East-Syria. [↑](#footnote-ref-38)
38. https://www.crisisgroup.org/middle-east-north-africa/eastern-mediterranean/syria/208-women-and-children-first-repatriating-westerners-affiliated-isis. [↑](#footnote-ref-39)
39. https://www.unicef.org/press-releases/governments-should-repatriate-foreign-children-stranded-syria-its-too-late [↑](#footnote-ref-40)
40. https://www.bbc.co.uk/news/uk-50521918 [↑](#footnote-ref-41)
41. https://www.theguardian.com/world/2019/jun/10/syria-kurds-children-orphans-french-isis-islamic-state-fighters-handed-over-france. [↑](#footnote-ref-42)
42. https://www.7sur7.be/belgique/la-belgique-n-ira-pas-en-appel-du-jugement-sur-le-rapatriement-de-dix-enfants-en-syrie~a3d36bb0/ [↑](#footnote-ref-43)
43. https://hansard.parliament.uk/Commons/2019-05-21/debates/19052156000009/ArmedForcesPersonnelAndVeteransLegalProtections [↑](#footnote-ref-44)
44. https://www.bbc.co.uk/news/uk-northern-ireland-48285622 [↑](#footnote-ref-45)
45. https://researchbriefings.parliament.uk/ResearchBriefing/Summary/CBP-8352 [↑](#footnote-ref-46)
46. https://www.theguardian.com/uk-news/2019/apr/25/up-to-200-ex-soldiers-being-investigated-over-troubles-allegations [↑](#footnote-ref-47)
47. UN Human Rights Committee (HRC), *CCPR* General Comment No. 36 (2018) on article 6 of the International Covenant on Civil and Political Rights, on the right to life, 30 October 2018, [27] (https://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/1\_Global/CCPR\_C\_GC\_36\_8785\_E.pdf) [↑](#footnote-ref-48)
48. e.g. 6 Inter-Am. Court H.R., *Barrios Altos v. Peru*, Merits, Judgment of 14 March 2001, Series C, No. 75. [↑](#footnote-ref-49)
49. https://www.gov.uk/government/news/public-consultation-on-new-laws-launches-to-protect-armed-forces-from-historical-allegations [↑](#footnote-ref-50)
50. https://www.bbc.co.uk/news/uk-50419297 [↑](#footnote-ref-51)
51. https://www.thetimes.co.uk/article/british-army-major-faked-witness-testimony-to-cover-up-killing-of-iraqi-policeman-mczl8dpg5 [↑](#footnote-ref-52)
52. https://www.bbc.co.uk/news/world-16614514 [↑](#footnote-ref-53)
53. http://isc.independent.gov.uk/committee-reports [↑](#footnote-ref-54)
54. https://fas.org/irp/world/uk/isc-detainee.pdf, page 1. [↑](#footnote-ref-55)
55. https://www.theguardian.com/law/2019/jul/18/former-tory-minister-accuses-government-of-failing-to-ban-torture [↑](#footnote-ref-56)
56. UN Human Rights Committee (HRC), *CCPR General Comment No. 20: Article 7 (Prohibition of Torture, or Other Cruel, Inhuman or Degrading Treatment or Punishment)*, 10 March 1992, [13]. [↑](#footnote-ref-57)
57. ##  UK Cabinet Office *The Principles relating to the detention and interviewing of detainees overseas and the passing and receipt of intelligence relating to detainees*, July 2019

(https://www.gov.uk/government/publications/uk-involvement-with-detainees-in-overseas-counter-terrorism-operations) [↑](#footnote-ref-58)
58. ibid, [16]. [↑](#footnote-ref-59)
59. Rights Watch (UK), *Preventing Education? Human Rights and UK Counter-Terrorism Policy in Schools* (July 2016), http://rwuk.org/wp-content/uploads/2016/07/preventing-education-final-to-print-3.compressed-1.pdf. [↑](#footnote-ref-60)
60. Article 17. [↑](#footnote-ref-61)
61. Article 18. [↑](#footnote-ref-62)
62. Article 19. [↑](#footnote-ref-63)
63. Articles 2, 26. [↑](#footnote-ref-64)
64. https://www.rwuk.org/advocacy-2/joint-civil-society-letter-on-uks-support-for-universal-periodic-review-recommendations-september-2017-2-3-2-2-3-2-3/. [↑](#footnote-ref-65)
65. https://policinginsight.com/opinion/lord-carlile-qc-cbe-it-would-be-a-tragedy-if-the-prevent-programme-was-removed/. [↑](#footnote-ref-66)
66. https://www.youtube.com/watch?v=Xp9epxiKVy0&t=9751s. [↑](#footnote-ref-67)
67. https://www.theguardian.com/uk-news/2019/dec/19/lord-carlile-prevent-review-legal-challenge. [↑](#footnote-ref-68)
68. Home Office (2018) *Individuals referred to and supported through the Prevent Programme, April 2017 to March 2018*, Statistical bulletin 31/18 [↑](#footnote-ref-69)
69. Home Office (2018) *Individuals referred to and supported through the Prevent programme, England and Wales, April 2018 to March 2019*, Statistical bulletin 32/19 [↑](#footnote-ref-70)