

Great Britain

Equality and Human Rights Commission

International accreditation status and SCA recommendations

The SCA reaccredited the Equality and Human Rights Commission (EHRC) with A status in November 2015. The SCA recommended amendments in the NHRI legislation to ensure an independent and objective dismissal process for Commissioners, as well as ensuring the NHRI receives sufficient funding and operates independently from the State. Finally, the SCA recommended the establishment of an explicit process providing for the circulation, discussion and consideration by the legislature of the NHRI's reports.

Impact of 2020 rule of law reporting

Enabling space

As outlined in the Equality Act 2006, the EHRC is empowered to engage with public authorities, as well as UK and devolved governments as part of its statutory responsibilities. This includes advising and making recommendations to central and devolved governments as to the drafting, amending or repeal of relevant laws, carrying out inquiries, reviews and investigations into suspected violations of human rights and equality laws, monitoring the governments' progress against international obligations and establishing an evidence base for subsequent state action. The EHRC's formal relationship with the UK Government is through its sponsoring ministry, the UK Government Equalities Office. The Minister for Women and Equalities oversees this relationship from the government side.

Developments relevant for the independent and effective fulfilment of the NHRIs' mandate

The EHRC has identified several recent **regressive developments** in the UK equality and human rights legal framework (1). The exclusion of the EU Charter of Fundamental Rights from domestic law as a result of Brexit represents in the EHRC's view a significant reduction in human rights protection. The Coronavirus Act, an emergency legislation which was subjected to limited scrutiny, includes provisions that weaken human rights protection, and the EHRC believes that the equality and human rights impact of measures was not closely scrutinised. Lately, the UK Government rejected several EHRC recommendations to strengthen equality and human rights legislation, including introducing the socio-economic duty in England and incorporating international treaty

rights into domestic law. In early 2021, the Scottish Government announced that depending on the outcome of the 2021 Scottish Election it intended to incorporate four UN treaties into Scots Law, as part of a new Human Rights Bill (2). In May 2021, EHRC updated its Human Rights Tracker to include updated assessments of government action and progress, as well as summaries of the actions that the UK and Welsh Governments have taken since 2016 in relation to 12 additional human rights topics.

References

- (1) <https://humanrightstracker.com/en/progress-assessment/equality-and-human-rights-legal-framework-uk-government-assessment/>
- (2) <https://www.gov.scot/news/new-human-rights-bill/>

Checks and balances

The UK Government has made a policy change to allow prisoners on temporary licence to vote, following the ECtHR ruling that the UK's **blanket ban on prisoner voting** was disproportionate and indiscriminate, in violation of the right to free elections. The EHRC is however concerned (1) about whether this policy change meets the UK's obligations under the ICCPR. The Welsh National Assembly's Equality, Local Government and Community Committee has recommended the introduction of legislation that gives Welsh prisoners serving custodial sentences of less than four years the right to vote in devolved Welsh elections. The Welsh Government has accepted this recommendation.

Through its 'Human rights Tracker' (2), the EHRC provided an assessment of the UK governments' recent progress on certain issues, including on **political and civic participation, including political representation**. The EHRC identified no real progress, as women, ethnic minorities and disabled people remain under-represented in politics and diversity data is inadequate, although the number of women MPs in the UK Parliament has continued to rise. Candidates sharing certain protected characteristics are disproportionately subject to abuse and intimidation, and long-term funding is needed to ensure disabled peoples' equal participation. While there has been progress in increasing the proportion of women and ethnic minority public appointees, disabled people have not seen comparative progress. The annual Queen's Speech included the proposed Electoral Integrity Bill, which establishes the legal requirement for photographic voter ID for participation in elections by 2023. However, research commissioned by the Cabinet Office suggests that 2.1

million people may be unable to vote as a result of the measures (4). Different groups may be affected disproportionately, as people with disabilities and people aged over 85 are less likely to possess ID with a recognisable photo. Ethnic minority people are already significantly less likely to vote in UK general elections and less likely to be registered to vote than White people (5). The measures could reduce these numbers further, with ethnic minority people less likely to hold a full driving licence (a primary form of photographic identification in Britain) (6). The Gypsy, Roma and Traveller community may be particularly affected as they already face challenges to presenting or registering for identity documents, particularly when they have no fixed address (7). Pilot voter ID schemes in 2018 and 2019 were carried out in different locations across England, with only limited demographic analysis. This demonstrates the importance of more robust research to ensure that the lack of data cannot be interpreted as evidence of no adverse impacts from the policy. EHRC will be monitoring progress on this legislation.

References

- (1) <https://www.equalityhumanrights.com/en/publication-download/civil-and-political-rights-great-britain-submission-un>
- (2) <https://humanrightstracker.com/en/overarching-progress/>
- (3) <https://www.ethnicity-facts-figures.service.gov.uk/culture-and-community/transport/driving-licences/latest#by-ethnicity-over-time>
- (4) https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/984918/Photographic_ID_research_headline_findings_report.pdf
- (5) <https://www.equalityhumanrights.com/sites/default/files/is-britain-fairer-accessible.pdf>
- (6) <https://www.ethnicity-facts-figures.service.gov.uk/culture-and-community/transport/driving-licences/latest>
- (7) <https://www.electoralcommission.org.uk/who-we-are-and-what-we-do/our-views-and-research/our-research/voter-identification-pilots/may-2019-voter-identification-pilot-schemes/6-background-our-evaluation/accessibility-and-equality-feedback-local-and-national-organisations>

Functioning of the justice system

The EHRC expressed concerns (1) that changes to the civil legal aid regime in England and Wales have **restricted access to justice**, including for people seeking redress for human rights breaches, with a disproportionately negative impact on people sharing certain protected characteristics. The UK Government's proposals to reform and modernise courts and tribunals in England and Wales may provide opportunities to improve access to justice. However, there has been a lack of comprehensive evidence and impact assessments to underpin decision-making and ensure that the reforms do not disproportionately disadvantage groups with protected characteristics, or undermine access to justice. The UK's procedure for identifying and determining statelessness suffers from a number of problems, including long delays and the use of administrative detention without a defined time limit. Individuals applying to be recognised as stateless have neither a right to free legal assistance nor a right to appeal decisions at an immigration tribunal.

The EHRC underlined the persisting inadequacy of the **justice system responses to violence against women and girls** (2). The number of police referrals, charges, prosecutions and convictions for rape has declined sharply. The UK has still not ratified the Istanbul Convention and needs to put in place changes to law, policy and practice to enable ratification.

Many CSOs alerted on the **need for a more inclusive justice system**, in light of difficulties faced by a large numbers of persons with cognitive impairments, mental health conditions and neuro-diverse conditions pass through the system. The EHRC launched an inquiry (2) to understand the experiences of disabled defendants and accused people in the criminal justice system. The inquiry focused on the pre-trial phase, where important decisions are made about adjustments, and made recommendations to UK Governments. It found that the justice system is not designed around the needs and abilities of disabled people, and reforms in England and Wales risk further reducing participation. In response to the inquiry, the Ministry of Justice committed to an 'overarching evaluation of the impact of the court reform programme...including how it has impacted vulnerable people' (4).

Through its 'Human rights Tracker' (5), the EHRC provided an assessment of the UK governments' recent progress on certain issues, including on:

- **Access to justice/ fair trial** – limited progress: there have been recent changes to improve access to legal aid, including the removal of the mandatory telephone gateway to access civil legal advice. But significant concerns remain about the impact of the Legal Aid, Sentencing and Punishment of Offenders Act (LASPO) 2012 on access to justice in England and Wales. Ongoing court modernisation may negatively affect participation for certain

groups with protected characteristics. The coronavirus pandemic has placed significant strain on the court system and legal advice sector. Court closures and the rapid growth in online hearings have added to the challenges around case backlogs, accessible justice and the availability of legal advice. There are concerns that court closures under the reform programme particularly disadvantage disabled people, women with the protected characteristic of pregnancy and maternity, and carers.

- **Criminal justice** – limited progress: According to the latest available data, England and Wales has the highest imprisonment rate in Western Europe. However, there have been some positive policy developments, such as the Female Offender Strategy, reforms to probation and the availability of liaison and diversion services. However, overcrowding, poor conditions, use of force, solitary confinement, violence and self-harm in prisons are still commonplace. Imprisonment rates are high and ethnic minority people are over-represented. Concerns have been expressed regarding the inadequacy of mental health services and protections for prisoners (including pregnant women), as well as failures to identify and meet the needs of particular groups such as women, ethnic minority people and trans people. While provisions were set out in law to temporarily release prisoners to reduce prison populations due to the COVID-19 pandemic, by July 2020, only 266 prisoners (and no children) were temporarily released.
- **Youth justice** – no progress: the number of children in custody has continued to decrease in recent years, though the reduction in numbers has slowed since 2016. However, the overall decrease in the custodial population was largely driven by a reduction in the number of White children in custody, with Black children representing 28% of the custodial population by 2020, an increase of 7% since 2016. For those in the youth justice system the use of force, solitary confinement, violence and self-harm are commonplace. The minimum age of criminal responsibility remains inconsistent with international standards. Children from ethnic minorities are over-represented in custody, the use of pain-inducing restraint continues, and the use of remand has increased. The impact of COVID-19 has further hindered progress, with diminished family contact, limited educational opportunities, less independent scrutiny and increased concerns regarding the mental health of young people in custody. Despite legislation to release people from custody during the pandemic, by March 2021, no children had been released under the scheme. The framework for opening up prisons made almost no reference to the specific needs of young people.

As highlighted in the 2017 Lammy Review and the UK Government's own statistics, ethnic minorities are disproportionately targeted for arrest, with black people over 3 times as likely to be arrested as White people. This trend is similar to the judiciary, with conviction rates in magistrates' courts higher for certain ethnic minorities, particularly ethnic minority women, with ethnic minorities more likely to receive prison sentences, in particular for drug offences. As highlighted by EHRC's submission to the Commission on Race and Ethnic Disparities, many of the recommendations of the Lammy Review have not been implemented, with inadequate progress made against ensuring the police service, judiciary, prison and probation service is representative of the community they serve and an imperfect evidence base upon which all analysis and responses to the disproportionate numbers of ethnic minorities entering the criminal justice system can be based (6).

References

- (1) <https://www.equalityhumanrights.com/en/publication-download/civil-and-political-rights-great-britain-submission-un>
- (2) <https://www.equalityhumanrights.com/en/publication-download/civil-and-political-rights-great-britain-submission-un>
- (3) <https://www.equalityhumanrights.com/en/publication-download/civil-and-political-rights-great-britain-submission-un>
- (4) https://www.equalityhumanrights.com/sites/default/files/83264_lc_response_to_ehrc_inclusive_justice.pdf
- (5) <https://humanrightstracker.com/en/overarching-progress/>
- (6) <https://www.equalityhumanrights.com/sites/default/files/consultation-response-commission-on-race-and-ethnic-disparities-call-for-evidence-30-november-2020.docx>

Media pluralism and freedom of expression

The EHRC expressed concerns (1) over UK **counter-terrorism law and policy** and their potential to violate the UK's obligations under ICCPR, for instance regarding the Prevent duty. This duty obliges certain public bodies to report concerns about people who may be at risk of being drawn

into terrorism, which the EHRC underlines as discriminatory and risks undermining freedom of speech, among others.

The Commission also drew attention (2) on the risks posed by **new digital technologies**, data use and data sharing to the rights to privacy and **freedom of expression**, particularly given the scale and pace of technological change. For instance, the UK Government's proposals to improve online safety risk infringing individuals' freedom of expression.

Through its 'Human rights Tracker' (3), the EHRC provided an assessment of the UK governments' recent progress on certain issues, including on **hate crime and hate speech**. They identified limited progress, as the number of hate crimes has decreased over the last decade and there have been improvements in police recording practices, although hate crime remains under-reported. There are increasing disparities between the number of recorded hate crimes and cases sent for prosecution, and many victims report dissatisfaction with police handling of cases. The legal framework remains complex and affords differential protection to different groups – though a consultation has been launched to explore this. There has been some progress on actions to prevent hate crime and improve support for victims, but many reforms remain unimplemented.

In May 2021, the ECtHR (3) delivered its judgement on a case brought against the UK by a number of civil society organisations in relation to the country's surveillance powers following the 2013 Edward Snowden revelations. As well as a number of violations of Article 8 of the ECHR (the Right to Privacy) in terms of the state's methods for bulk interception of online communications data, the judges also found the bulk interception regime breached the right to freedom of expression (Article 10) and contained insufficient protections for confidential journalistic material. The EHRC contributed evidence to ENNHRI's intervention.

References

- (1) https://www.equalityhumanrights.com/sites/default/files/executive_summary_civil_and_political_rights_in_great_britain.pdf
- (2) <https://www.equalityhumanrights.com/en/publication-download/civil-and-political-rights-great-britain-submission-un>
- (3) <https://hudoc.echr.coe.int/eng#%7B%22documentcollectionid%22:%5B%22GRANDCHAMBER%22,%22CHAMBER%22%5D,%22itemid%22:%5B%22001-210077%22%5D%7D>

Impact of measures taken in response to COVID-19 on the national rule of law environment

Most significant impacts of measures taken in response to the COVID-19 outbreak on the rule of law and human rights protection

The EHRC developed a report on 'How coronavirus has affected equality and human rights' (1), exposing the impact of coronavirus across key areas of life, especially on already disadvantaged people. The main findings are the following:

- The **economic impact** of the pandemic entrenched existing inequalities and widened others. The immediate impact on the labour market has been one of greater **underemployment** rather than unemployment, although unemployment is expected to rise as government support schemes are reduced or end. The loss of earnings from underemployment is contributing to a drop in living standards.
- **Poverty** is expected to rise despite unprecedented government support to protect jobs and incomes. The groups most likely to be affected by the expected rise in poverty include **young people, ethnic minorities, and disabled people**, who are already closest to the poverty line. The withdrawal of government support schemes is likely to trigger further increases in hardship.
- **Young people** have experienced significant interruption to their education, which threatens previous gains in attainment levels. Differences in support for **remote learning** during the pandemic threaten to **widen inequalities** for those who already perform less well than their peers, particularly boys, Black pupils, some Gypsy, Roma and Traveller pupils, pupils who need support in education, and those who are socio-economically disadvantaged.
- **Older people, ethnic minorities** and some **disabled people**, particularly those in care homes, have been disproportionately impacted by the pandemic. The increased demand for **social care** has threatened the financial resilience of the sector, potentially impacting its users and workers. This has led to an increased reliance on unpaid carers, who are more likely to be women.
- There has been a rise in reported **domestic abuse** and we have concerns about the ability of survivors to access justice.
- COVID-19 control measures in the **criminal justice** system potentially undermine the effective participation of some disabled defendants / accused and victims.

The report, in particular, identified concerning developments in three areas:

Racial inequality

The EHRC alerted on the disproportionate impact of coronavirus on different ethnic minorities, being both more likely to die from the virus and more likely to experience financial hardship as a result of the pandemic. Certain ethnic minority groups are at greater risk of unemployment and/or are already closest to the poverty line and are more likely to be affected by the rise in poverty.

EHRC is currently conducting an inquiry into racial inequality in health and social care workplaces, examining particularly the experiences of front-line, ethnic minority workers in lower-paid roles, during the COVID-19 pandemic.

Social care

The coronavirus pandemic has devastated the care sector. Not only has it disproportionately affected older people, some ethnic minority groups and disabled people living in care homes, but morale among care sector staff is low as workers face an increased risk from the virus, lack of recognition and staff shortages. The financial repercussions from the pandemic are likely to exacerbate inequalities in the sector for some time to come. In the UK at least 40% of COVID-19 deaths to date have been amongst care home residents. However, the impact stretches beyond mortality, as lockdown measures have left care home residents isolated from their family and friends, with significant effects on their mental health.

Young people and children

The EHRC highlighted the heavy and long-term consequences of the crisis on young people. Having experienced a significant interruption to their education, being at high risk of job losses and with reduced career options stalling their prospects, young people are in danger of becoming a “lost generation” as a result of the pandemic.

Given the economic consequences of the pandemic, there is an additional risk that increasing levels of poverty for certain groups may further affect educational attainment and long-term prospects. Without action, this could result in potentially severe and long-lasting damage for young people.

In the EHRC latest report (2) to the UN Committee on the Rights of the Child (UN CRC), the Commission expressed significant concerns about how the pandemic is exacerbating existing inequalities, and having a devastating impact on children’s rights, well-being and futures. Key concerns include more children being pushed into poverty, widening educational inequalities and

worsening mental health. More families now risk being pushed into poverty as a result of the pandemic, and the groups who already faced poverty are likely to see their income reduced further. Families with children are among those who have been hit the hardest.

School closures and inequalities in home-learning environments also risk exacerbating growing attainment gaps for certain groups, including disabled pupils, some ethnic minorities, and those who are socio-economically disadvantaged. EHRC submission contains an extensive set of recommendations for the UK and Welsh governments to enhance and protect children's rights.

References

- (1) <https://www.equalityhumanrights.com/en/publication-download/how-coronavirus-has-affected-equality-and-human-rights>
- (2) <https://www.equalityhumanrights.com/en/publication-download/civil-and-political-rights-great-britain-submission-un>

Most important challenges due to COVID-19 for the NHRI's functioning

Like a large number of organisations in the UK, the EHRC has been required to reconfigure its working arrangements to ensure staff members and Commissioners can work safely from home. This has required significant undertaking to ensure all digital communication, file sharing and project planning tools were fit for purpose, easily accessible and ensured high levels of digital security and privacy. As the COVID-19 pandemic modified not only how the EHRC worked, but also the topics of the organisation's work this also shifted EHRC's priorities. However, due to the EHRC's mandate and flexibility the focus on the work remained within the organisation's overall commitments to upholding equality and human rights laws and protections.