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1. Human Rights and Home Office Preparedness

1.1 The Committee’s call for evidence asks for submissions that consider whether “the Home Office and its associated bodies...have learned lessons and improved the policy and operational response as the pandemic evolves”. Rather than focus on one or more of the specific arenas mentioned in the call for evidence, this submission makes the overall point—applicable across all of the Home Office’s work—that human rights protection is a matter of Home Office preparedness and a matter of effectively evolving the response to the pandemic.

1.2 Under international human rights law, states must keep under review the rights-related impacts of their actions and adjust, as necessary, where either violations are identified or it is recognised that rights protection is not being maximised. The Committee’s inquiry is a vital part of this process of review, refinement, and improvement. As a result, attending to questions of rights protection is critical to maximising the effectiveness of such inquiries and, in this way, contributing to the better protection and fulfilment of rights in Home Office matters relating to the pandemic. Furthermore, rights-protection and maximisation now will set the groundwork for better rights protection after the pandemic, for the effective ‘row back’ of rights-limiting powers introduced to respond to the pandemic, and for the increased legitimacy of the approach to the pandemic and thus for further improved compliance with the measures introduced.

1.3 COVID-19 and human rights are interconnected. While the disease itself does not discriminate, it is now well established that its effects are unevenly distributed across society, and that the distribution patterns of the disease and the effects of the pandemic reflect pre-existing inequalities.¹ These include inequalities based on age, race, ethnicity, socio-economic status, and dis/ability.² During the pandemic, as at other times, these inequalities be reflected in interactions with the Home Office and its associated agencies and bodies including police forces and border security. Rights-based policing and other activities can serve to mitigate these tensions, as can policy-making that is centered on the maximisation of rights including through minimising exposure to the disease in places of detention, refuge, and other accommodation. It is thus critical that in responding to the pandemic, in reviewing and improving responses, and in ensuring preparedness for future pandemic or similar events, the Home Office would centre rights alongside operational concerns in its design, execution, review, and revision of its policies and practices.

2. Four key roles of human rights

¹ See Public Health England, *Disparities in the risk and outcomes of COVID-19* (August 2020).

² Equality and Human Rights Commission, *How Coronavirus has Affected Equality and Human Rights* (2020).

2.1 In respect of the immediate reaction to the Coronavirus, human rights play four important roles.

1. Human rights impose some positive obligations on the state. That is, they require the state to take certain actions in order to secure the practical and effective protection of rights. In the context of the pandemic these include, *inter alia*, an obligation to protect life by taking steps to address clear health threats³ including in places of detention or accommodation (e.g. prisons, detention centres for asylum seekers, places of refuge); the absolute obligation of non-discrimination; and the obligation of due diligence in respect of potential negative consequences on rights enjoyment (e.g. exacerbations of domestic violence during lockdown⁴).
2. Human rights constitute limitations on the actions that the state may take in response to the virus. Some rights cannot be limited at all; they are absolute rights. Other rights may be limited, but only where such limitations are necessary and proportionate. Human rights compliance requires rigorous engagement with questions of necessity and proportionality in respect of responses to the pandemic. It also requires regular revisiting of these questions in order to assess whether, against changing epidemiological and other evidence, measures remain necessary and proportionate, and whether the measures in place constitute the minimum intrusion with rights possible while pursuing a legitimate objective (i.e. the protection of public health).
3. Human rights constitute ‘design principles’ for longer-term responses to the pandemic. A human rights approach requires us to identify and understand the long-term rights-related impacts of the pandemic, and to design responses to those impacts that operate to enhance, and do not unlawfully limit, the enjoyment of rights.
4. Human rights play an accountability role in respect of pandemic responses, ensuring that where rights have been violated in the response to the pandemic one has access to justice and to an effective remedy,⁵ and requiring the state to take steps to ensure non-repetition of such violations in this or any future analogous situations.⁶

3. Human Rights as Key to Parliamentary Review

3.1 Parliament plays a critical role in the constitutional structure of the United Kingdom and, in particular, in ensuring accountability and legitimacy in respect of government action. Where circumstances have required especially swift action with appreciable implications for rights protection, parliamentary review is of particular importance.⁷ It is therefore critical that

³ UN Human Rights Committee, General Comment No. 36: Right to Life UN Doc. CCPR/C/GC/36, esp. para 26; *Stoyanovi v Bulgaria* App. 42980/04, Judgment, 9 November 2010, [61].

⁴ CEDAW Committee, General Comment No. 19: Violence against Women UN Doc. A/47/38, para 9; UN General Assembly Declaration on the Elimination of Violence against Women, GA Res. 48/104, Article 4; *Opuz v Turkey* [2009] ECHR 870, [131].

⁵ Article 2, International Covenant on Civil and Political Rights; Article 13, European Convention on Human Rights.

⁶ The right to a remedy is understood in international human rights law as involving a guarantee of non-repetition and, where necessary, changes in relevant laws and practices. UN Human Rights Committee, General Comment No. 31: The Nature of the General Legal Obligations Imposed on States Parties to the Covenant. UN Doc. CCPR/C/21/Rev.1/Add.13

⁷ See further Written evidence of Fiona de Londras, Alan Greene and Natasa Mavronicola to the Joint

human rights are integrated into parliamentary review wherever appropriate, including in considering the Home Office's preparedness for and responses to the pandemic, playing close attention to how human rights protection was designed into the response and its review and revision.

3.2 We urge the Committee to take account of the findings of the Joint Committee on Human Rights in *The Government's Response to COVID-19: Human Rights Obligations*, although we note that this report did not engage with the full range of implications for socio-economic rights.⁸ We stress that questions of rights-related impacts are not limited to the Joint Committee on Human Rights or other dedicated human rights fora. Rather, they are relevant to the work of all of government and, thus, to all parliamentary entities engaged in ensuring accountability for, effectiveness of, and legitimacy of Home Office action, including its responses to the COVID-19 pandemic.

About Us

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The **COVID-19 Review Observatory** is a UKRI-funded (AHRC) research initiative located at Birmingham Law School, University of Birmingham. It tracks, assesses, and engages with parliamentary reviews of responses to the COVID-19 pandemic with a view to ensuring effective consideration of rights protection, and to enhancing accountability and legitimacy by supporting parliamentary review. A key part of its work is participating in such reviews by, for example, submitting to committee inquiries.

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⁸ Joint Committee on Human Rights, *The Government's Response to COVID-19: Human Rights Implications*, 7th Report of Session 2019-21. HC 265. The report engages extensively with civil and political rights, the right to health (Chapter 4), and the right to education (Chapter 7), but less so with socio-economic well-being, poverty, and the right to an adequate standard of living.