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## **Memorandum on the human rights of asylum seekers and immigrants in the United Kingdom**

### **1. The protection of the human rights of refugees through resettlement to the United Kingdom**

1. The Commissioner welcomes and appreciates the United Kingdom (UK) government's commitment to providing international aid to Syria and neighbouring states that have been adversely affected by the five-year-long Syrian armed conflict and witnessed the flight of over 4.5 million refugees (as of January 2016). As of early 2016 the UK had pledged £1.12 bn of aid in the region, making it the second biggest bilateral donor in the world. On 4 February Prime Minister Cameron announced that an extra £1.2bn would be spent between 2016 and 2020. The same day the UK hosted and played a leading role in the "Supporting Syria and the region 2016" international conference in London. This notably led to a pledge of over \$11bn aid to the Syria region for 2016-20, placing emphasis on the protection of civilians, supporting political transition in Syria and facilitating Syrian refugees' access to jobs and quality education.<sup>1</sup>
2. On 21 January, during his meeting in London with the Minister of State for Immigration, James Brokenshire, the Commissioner welcomed the UK government's decision to focus on and facilitate the resettlement of refugees, even if this is limited, in principle, to those located in countries of the Middle East. The Commissioner believes that resettlement is one of the best policy options that may be used by all European states in order to put an end to migrants' inhuman exploitation by smugglers and to the dangerous, deadly crossings of the Mediterranean, which in 2015 alone cost the lives of more than 3 700 migrants.<sup>2</sup>
3. The Commissioner has noted with satisfaction the change of the UK government's policy concerning Syrian refugee resettlement, as from 29 January 2014, when the Home Secretary, Theresa May, announced the creation of the "Syrian Vulnerable Person Resettlement Programme" (VPR). This programme aimed to prioritise resettlement from the Syria region of victims of sexual violence, the elderly, victims of torture, and persons with disabilities. There was no quota attached to it, although the government indicated that several hundred refugees were expected to arrive under VPR. 216 refugees arrived in the UK through the VPR by the end of June 2015.<sup>3</sup>
4. Following calls made notably by UK-based human rights organisations, on 7 September 2015 Prime Minister Cameron announced the expansion of the VPR.<sup>4</sup> As a consequence, a maximum of 20 000 Syrian refugees would be resettled to the UK "over the rest of this Parliament" (by 2020) from Turkey, Jordan and Lebanon. To facilitate this process the government created a Syrian refugees ministerial committee to co-ordinate efforts to resettle, house and support Syrian refugees resettled in the UK. The committee is chaired by Richard Harrington, Parliamentary Under Secretary of State. Under the expanded VPR, the UK would continue to use the established UNHCR process for identifying and resettling refugees and upon arrival in the UK they would be granted a five year humanitarian

<sup>1</sup> Information on this international conference and the co-hosts declaration is available on [www.supportingsyria2016.com](http://www.supportingsyria2016.com).

<sup>2</sup> International Organization for Migration, [Missing Migrants Project](#) - Mediterranean.

<sup>3</sup> M. Gower, H. Cromarty, [Syrian refugees and the UK](#), House of Commons Library, Briefing Paper, 25 January 2016, pp. 6-7.

<sup>4</sup> Prime Minister's [oral statement to Parliament](#), Syria: Refugees and Counter-Terrorism, 7 September 2015.

protection visa. Importantly, there was also an expansion of the VPR criteria in order to cover also vulnerable children, including orphans, where the advice of the UNHCR is that their needs should be met by resettlement in the UK.

5. In December 2015 the government reported that it met its commitment to resettle 1 000 Syrian refugees, around half of them children, in the UK by the end of that year. Scotland has welcomed and hosted 400 of the resettled refugees. Local councils (local authorities) played, and continue to play, a crucial role in this context. They worked with the Home Office and UNHCR from an early stage to ensure individual needs are assessed to ensure offers of care and support match requirements including accommodation and school places.<sup>5</sup> The Commissioner has noted with interest that these refugees, under the humanitarian protection status they receive, have access to public funds and to the labour market. At the same time they are entitled to apply for family reunification for immediate family members, while at the end of five years they would be eligible for permanent settlement.<sup>6</sup>
6. The Commissioner commends the UK government's commitment to using the international aid budget in order to cover the costs of resettled refugees' first year in the UK. Approximately £590 million will be allocated by 2019-20. These funds aim to provide aid also to local authorities whose association last November called on the government to review the relevant costs after 18 months.
7. The Commissioner welcomes the announcement in parliament on 28 January 2016 by Minister Brokenshire of a new initiative for the resettlement of unaccompanied refugee children.<sup>7</sup> The announcement followed a campaign by Save the Children, backed by the House of Commons' International Development Committee, which urged the UK government to resettle 3 000 unaccompanied children, in addition to the VPR programme. Under this initiative, the UK government asked UNHCR to assess the numbers and needs of unaccompanied children in conflict regions and advise on whether and how the best interests of these children would be served by resettlement to the UK.
8. The Commissioner praises the UK government for deciding to examine also cases of unaccompanied migrant children in transit in Europe, given their special vulnerability to exploitation by people traffickers. To this end, the Home Secretary has asked the Anti-Slavery Commissioner, Kevin Hyland, to visit the migrant "hotspots" in Italy and Greece to assess and advise what more can be done for the protection of unaccompanied children. Importantly, a new fund of £10 million, to be created by the Department for International Development, will aim to identify children in need, to provide safe places for at risk children to stay, help to trace families and welfare and legal counseling services.
9. The Commissioner notes the UK government's decision not to participate in the EU emergency relocation scheme which was adopted by the European Council last September, even though the UK has replied to calls and provided experts to the European Asylum Support Office (EASO) and border guards to the European border management agency (Frontex).<sup>8</sup> The aim of the abovementioned intra-EU solidarity scheme is to relocate to EU member states 160 000 persons in clear need of international protection, thus reducing the migratory pressure on the most affected member states, Greece and Italy. Regrettably, as of 4 February 2016, less than 500 asylum seekers had been relocated.
10. In this context, it is noted that the number of asylum applications received by the UK in 2015 was comparatively small, if compared to that of other large European countries. In fact, in the second quarter of 2015 the UK was 17<sup>th</sup> out of 28 EU member states in terms of the number of asylum applications per capita it received. Also, over the same period it had 115 asylum applicants for every million residents, while this number was nine times higher in Germany, 13 times higher in Sweden and 18 times higher in Austria. The EU average was 3.7 times higher than in the UK.<sup>9</sup>

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<sup>5</sup> Local Government Association, [media release](#), 16 December 2015.

<sup>6</sup> M. Gower, H. Cromarty, cited above, p. 11.

<sup>7</sup> [HCWS497](#).

<sup>8</sup> European Commission, [State of Play: Measures to Address the Refugee Crisis](#), 29 January 2016.

<sup>9</sup> Migration Observatory, University of Oxford, [commentary](#), "Too many? Too few? Too difficult? How should the UK think about how many refugees to take?", 24 November 2015.

11. The UK government's lack of readiness to show more solidarity with other European countries is also at odds with the very small share of asylum seekers in net migration in the UK, which since 2005 has ranged between 3% and 10%. It appears that UK government policies in this context are determined by a flawed assumption that migration flows are strongly linked with asylum seekers rather than with labour migrants, who make up the vast majority of new arrivals in the UK.<sup>10</sup>

## **2. The plight of 67 refugees and asylum seekers in the UK Sovereign Base Areas (SBAs) in Cyprus since 1998**

12. During his meeting with Minister Brokenshire in London on 21 January, the Commissioner brought to the former's attention the dire situation of the 67 refugees and asylum seekers, who in October 1998 left Lebanon by boat, landed at the SBA of Akrotiri, on the south coast of Cyprus, and since then remain in the second SBA of Dhekelia. 29 of them are refugees, recognised as such by the SBA Administration (SBAA), most of them Kurds from Iraq and Syria, as well as from Sudan and Ethiopia. The remaining 38 are Kurds from Iraq, Syria and Iran, whose asylum applications have been rejected by the SBAA.
13. The two above-mentioned SBAs are one of the 14 British Overseas Territories. Under Article 1 of the 1960 Treaty concerning the Establishment of the Republic of Cyprus,<sup>11</sup> the SBAs remain under the sovereignty of the UK. The 1960 Notes concerning "the Future of the Sovereign Base Areas", which were exchanged between the UK and Cyprus and attached to the 1960 Treaty, have made very clear that the UK government has retained its "sovereignty or effective control" over the SBAs.
14. Given the absence of SBAA refugee legislation in 1998 the SBAA processed the asylum applications with the support of the UK Home Office. At the end, 33 persons were granted refugee status through this procedure while the other 34 applications were rejected. The subsequent decisions were issued by the SBAA. The SBAA requested several states to accept the recognised refugees under resettlement programmes, without any success.
15. In February 2003 the UK and Cyprus governments signed a Memorandum of Understanding (MoU)<sup>12</sup> whose preamble expressly states that the UK through the SBAs "has the responsibility for illegal migrants and asylum seekers that enter the island of Cyprus" by the SBAs. Under section 6 of the MoU the SBAA is bound to ensure safe departure of those "illegal migrants" who arrive directly in the SBA and who do not seek asylum or whose applications are rejected. Under section 7 of the MoU the administrative bodies of Cyprus are authorised to examine, under the relevant SBA legislation and on behalf of the SBAA, asylum applications of persons arriving directly in the SBAs. Under section 10 of the MoU, persons provided with international protection will be treated so far as the Cypriot authorities are concerned as if they have been granted international protection by the Republic of Cyprus while they continue to remain on the island, and the UK will indemnify the Republic for the net costs incurred under section 13 of the MoU.
16. Importantly, section 12 of the MoU provides that the UK, through the SBAA, "will endeavour to resettle persons recognised as refugees or granted any other form of international protection in countries willing to accept those persons, not later than one year after the decision granting the relevant status has been taken". It is noted that in 2006 Cyprus and the SBAA informally agreed to apply the MoU provisions retrospectively, thus covering the 1998 arrivals, but this agreement was never formalised. Pursuant to this agreement though, the Republic of Cyprus issued recognised refugees with residence permits as "SBA refugees" to enable their access to rights.

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<sup>10</sup> Idem.

<sup>11</sup> Text available on the [SBAA website](#) – background reading.

<sup>12</sup> [Memorandum of Understanding](#) « concerning the implementation of the Protocol on the Sovereign Base Areas of Akrotiri and Dhekelia in Cyprus in so far as it concerns Illegal migrants and Asylum seekers ».

17. It is to be noted that the failed asylum seekers have no residence permits or identification documents. Welfare benefits have been discontinued by the SBAA for spouses who arrived after 1998, and reduced for children not in full time education. Primary medical care is provided by an SBA medical centre but they have no access to the Republic's health care system due to lack of legal residence in the Republic. As for their children, they may attend Cypriot schools, following the SBAA's intervention.
18. As for the SBAA-recognised refugees, in July 2014 their welfare benefits were also reduced by the SBAA in the same manner as for the failed asylum seekers. The SBAA also reiterated its decision to end payment of such benefits. This decision had been already notified to the refugees in 2010, along with notices of eviction from their SBA homes in Dhekelia which were also found to contain asbestos. Subsequent judicial review proceedings ended in 2011 with a judgment of the SBAs' Senior Judges Court which found in favour of the SBAA but has not at the time been implemented. In addition, the refugees' access to healthcare in the Republic is impeded by the fact that their status as welfare beneficiaries in the SBA does not make them automatically eligible for free healthcare in state hospitals, despite this being provided to all welfare beneficiaries in the Republic. In addition, their access to the labour market in the Republic has been hindered by the lack of clarity as to their status and employment rights as "SBA refugees".
19. Despite the 67 refugees and asylum seekers' residence on SBA territory for approximately 18 years, neither Cyprus nor the UK has granted citizenship or long-term residency status to these persons on the basis of their lengthy residence.
20. The Commissioner is seriously concerned about the long-standing plight and precarious situation of this group of forcibly displaced persons. He has been informed that according to a UNHCR-commissioned psychological assessment that was carried out in 2013, all SBA refugees, including children, suffer from serious psychological problems, including severe depression. The SBAA has been informed of these reports and was requested by UNHCR to re-consider these persons' resettlement to the UK on humanitarian grounds, to no avail.
21. During his visit to Cyprus in December 2015 the Commissioner discussed the cases of the 67 refugees and asylum seekers with the Cypriot authorities, who noted that these persons remain under the jurisdiction of the UK that bears, thus, the responsibility of providing a durable solution to their situation.
22. In the course of their meeting in London last January the Commissioner urged Minister Brokenshire to examine favourably the cases of the 67 forcibly displaced persons so that they are resettled to the UK, under whose responsibility and effective control they are, both legally and factually. The minister took note of this request.
23. The Commissioner understands the reservations and caution that has been shown so far by the UK authorities that do not wish to give any signal to migrants and smugglers that the SBAs on Cyprus may become a route through which people will be able to reach the UK. However, such concerns should be put to rest by the fact that the provisions of the MoU have addressed and resolved such issues in a definitive manner for arrivals post-2003.
24. Given the extremely precarious legal and social situation of these persons on the SBAs since 1998 and the severe psychological effects that this has had on them and their families, the Commissioner firmly believes that resettlement of only these 67 persons and their families to the UK would be in full conformity with the UK's tradition of humanitarianism. In addition, resettlement would be in accordance with the UK's obligation under the European Convention on Human Rights (also applicable to the SBAs), notably Articles 3 (concerning freedom from inhuman and degrading treatment) and 8 (right to respect for one's private and family life), to end the protracted mental and psychological suffering and precarious living conditions of these persons.

### 3. Specific human rights issues arising from restrictive UK immigration policies

#### *The development of policies and public discourse that criminalise and stigmatise migrants*

25. As of January 2014 the UK had the second largest non-national population (five million) in the EU, following Germany (seven million). However, the non-national population percentage in the UK was only 7.8%.<sup>13</sup> For many years now there has been a dominant political debate in the UK characterised by alarmism, laying primary emphasis on an urgent need to “take net migration back to the levels of the 1990s – tens of thousands a year, not hundreds of thousands”. Reducing immigration was expressly one of the major political goals of the Conservative party’s manifesto of 2010. It was repeated and further elaborated in the same governing party’s manifesto of 2015. The relevant “plan of action” put forward by the latter manifesto centred around the following priorities: to “regain control of EU migration by reforming welfare rules”; to “continue to cut immigration from outside the EU”; to “strengthen the enforcement of immigration rules”; to “tackle people trafficking and exploitation”; and to “ease pressure on public services and [the] local community”.
26. The above goals have been accompanied by public rhetoric and language of criminalisation that views migrants, particularly irregular ones, as a threat to UK society. One of the most characteristic examples is the May 2012 interview of the Home Secretary, Theresa May, who, after stressing the need to reduce migration inflows in the UK, stated that the government’s aim “is to create here in Britain a really hostile environment for illegal migration”.<sup>14</sup> In July and August 2013 the Home Office implemented “Operation Vaken” in six London boroughs. It targeted irregular migrants and aimed to enhance their voluntary removal (estimated at £1 000) which costs much less than an enforced one (estimated at £15 000). The operation consisted of a number of communications techniques, such as mobile billboards showing the risk of arrest of irregular migrants, post cards in shop windows, adverts in newspapers, leaflets and posters advertising immigration surgeries (counselling services) in faith or charity premises. The mobile billboards that were carried around London by vans were particularly aggressive and blunt featuring the slogan “106 arrests last week in your area - Go home or face arrest”. This intensive communication campaign led a number of individuals to provide the authorities with intelligence on irregular migrants. However the results appeared meagre, given that as of October 2013 there were 60 voluntary migrant departures while a further 65 cases were being processed for departure.<sup>15</sup>
27. Prime Minister Cameron, in at least two major speeches on immigration, has scaled up the alarmist rhetoric targeting migrants stressing, inter alia, that in recent years the UK witnessed the “largest wave of migration in [its] history” while there have been “450 000 British 18 to 24 years olds on Job Seekers’ Allowance”. He has also added that between 1997 and 2009, net migration to the UK totalled more than 2.2 million people, that is, “more than twice the population of Birmingham”.<sup>16</sup> Regrettably throughout his public speeches the prime minister has used the term “illegal migrants” which carries stigmatising connotations, as the adjective “illegal” is usually linked to criminality.
28. The Commissioner wishes to underline that the choice of language, especially that used by political leaders, is very important to the image of migrants which the authorities project to their population and the world, and which is usually widely reproduced by the media. The use of the term “illegal migrants” renders all migrants suspicious in the eyes of the general public. For this reason, most international organisations, including the Council of Europe, use primarily the more neutral term “irregular migrants”.<sup>17</sup> This can contribute to mitigating the dangerously polarising and alarmist discourse that views migrants as a threat to a society and its public order. It is thus unsurprising that immigration in 2015 was reportedly considered by the public in the UK as “the most important issue facing the country”, ahead of other major social issues such as health, crime, the economy or education.<sup>18</sup>

<sup>13</sup> Eurostat, [Migration and migrant population statistics](#), May 2015.

<sup>14</sup> Theresa May’s interview in [The Telegraph](#), 25 May 2012.

<sup>15</sup> Home Office, Operation Vaken, [Evaluation Report](#) – October 2013.

<sup>16</sup> Prime Minister’s [immigration speech](#) of 25 March 2013; see also his [speech](#) on immigration of 21 May 2015.

<sup>17</sup> See the Commissioner’s [Issue Paper](#), Criminalisation of Migration in Europe: Human Rights Implications, 2010, esp. section III.

<sup>18</sup> [Poll](#) by YouGov.co.uk.

29. Another worrying trend in public discourse is frequent invocation of the allegedly negative effects that migrants have upon majority members of the host society, including their access to employment, education and health services. Such rhetoric carries with it two major problems: first, it is contradicted by experts' evidence; and secondly, it avoids mentioning concrete positive effects that migrants have on UK society, like in many other European states.
30. For example, in her widely read speech to the Conservative party conference of October 2015, the Home Secretary pointed out, inter alia, that "while there are benefits of selective and controlled immigration, at best the net economic and fiscal effect of high immigration is close to zero".<sup>19</sup> However, experts indicate that evidence shows that from 2001 onwards migrants in the UK contributed more to the public exchequer than they took out. In other words, they have had a positive fiscal effect. Also what is usually left out of such public statements is that migrants may compete with similarly skilled workers but they also create demand for jobs by spending their income. In addition, experts appear to agree on the fact that immigration does not harm wages or employment, while immigrants are not less healthy than the British-born and do not use the national health system more intensively.<sup>20</sup> Thus, a much more careful, evidence-based and nuanced public narrative needs to be adopted and promoted by the UK authorities.

*Human rights issues concerning migrant detention in the UK*

31. At the end of September 2015 there 3 531 migrant detainees, including two children, in the UK, 5% higher than the number recorded at the end of September 2014. The Commissioner has noted with satisfaction that the number of migrant children in detention as of September 2015 fell by 86% compared to 2009. However, he is worried by the fact that during the year ending September 2015 a small percentage (8%), but nonetheless significant, number of migrants, 221, had been in detention for between one and two years and another 32 for two years or longer.<sup>21</sup>
32. Lengthy detention of migrants in the UK has been of grave concern to the Commissioner, especially given that such practices have been a major facet of the phenomenon of criminalisation of migration all over Europe. The Commissioner is particularly worried about the fact that the duration of immigration detention in the UK has no limits under existing legislation, while there is no automatic right of migrant detainees to have their detention reviewed by a court.
33. A number of national institutions in the UK have expressed their grave concern at the lack of time limits of migrant detention. For example, in March 2015 the cross-party Parliamentary Inquiry into Immigration Detention in the UK stressed that the UK is an exception in this area, both in the EU and beyond. It added that that the indefinite detention of migrants creates a stressful and anxious environment with significant mental health costs for detainees. In addition the inquiry found that not only is there no correlation between long-term detention and an increase in the likelihood of detained migrants' removal.<sup>22</sup> Key recommendations of this inquiry include the introduction of a time limit of 28 days on the length of time anyone can be held in immigration detention and the need for the government to learn from international best practice and introduce a much wider range of alternatives to detention than are currently used.
34. The nefarious effects of detention on vulnerable migrants, such as victims of sexual violence, persons with mental health issues and pregnant women, were also highlighted by the report of Stephen Shaw CBE, which was commissioned by the Home Secretary and published last January.<sup>23</sup> The findings of this report confirm the gravity of the situation of migrant detainees in the UK and the urgent need for the government to take action for a radical overhaul. The report, inter alia, stressed the need for

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<sup>19</sup> [Speech](#) of 6 October 2015.

<sup>20</sup> C. Dustmann, I. Preston, "Why Theresa May is wrong about immigration", and I. Preston, "Fast Check: is there zero economic benefit from high immigration?", 8 October 2015, University College London, Centre for Research and Analysis of Migration (CReAM), available at [CReAM blog](#).

<sup>21</sup> Home Office, [National Statistics – Detention](#), 26 November 2015.

<sup>22</sup> [Report of the Inquiry into Immigration Detention in the UK](#), A Joint Inquiry by the All Party Parliamentary Group on Refugees and the All Party Parliamentary Group on Migration, 2015, p. 24.

<sup>23</sup> [Review into the Welfare in Detention of Vulnerable Persons](#) – A report to the Home Office by Stephen Shaw, January 2016.

immigration detention to move out of the shadow cast by the Prison Service as well as the seriously dysfunction of Rule 35 of the Detention Centre Rules 2001 which aims to protect from ill-treatment vulnerable detainees.

35. Appendix 4 of the same report contains an assessment of five judgments rendered by UK courts, between 2011 and 2014, which have found that vulnerable immigration detainees have been subjected to inhuman or degrading treatment, contrary to the Human Rights Act in conjunction with Article 3 of the European Convention on Human Rights. It is underlined that although the findings were made on the facts of individual cases, the nature and pattern of these findings indicate the existence of underlying, systemic problems in the UK migration detention framework. It is also noteworthy that the Shaw report indicates that the primary available alternative to detention is bail with conditions while electronic monitoring and other alternatives are not usually enacted, as they should be, except following a court order.
36. During their meeting last January the Commissioner called on Minister Brokenshire to look seriously into the question of migrant detention in order to limit its use and ultimately replace it with alternatives to detention. The Commissioner noted with satisfaction that the minister was ready to examine thoroughly the Shaw report and its recommendations. He has also noted with interest the minister's intention to move towards a policy change that would replace the existing detention review process with a clear removal plan for all migrant detainees so that a minimum possible time is spent by them in detention before they leave the country.<sup>24</sup>
37. The Commissioner welcomes also the UK's participation in the UNHCR's Global Strategy - Beyond Detention 2014-2019, which aims to support governments to end the detention of asylum-seekers and refugees. The Strategy's main goals are: (1) to end the detention of children; (2) to ensure that alternatives to detention are available in law and implemented in practice; and (3) to improve conditions of detention, where detention is necessary and unavoidable, to meet international standards. The UK has developed a relevant national action plan<sup>25</sup> focusing notably on addressing the current lack of a time limit for migrant detention and on promoting alternatives to detention.

*Migrants' right to adequate housing and the 'Right to Rent' scheme*

38. The hostile environment towards migrants in the UK has been aggravated by the adoption or consideration of draconian laws and policies that are characterised by a clear thrust to further criminalise migration. This is for example the case of the 'Right to Rent' scheme that was introduced by the Immigration Act 2014 and which made it compulsory for private landlords to check the immigration status of tenants in order to assess whether they have the 'right to rent' in the country. In case of failure to carry out the checks a landlord or agent may be fined by a civil penalty of up to £3 000. The above scheme was rolled out first in some parts of the UK in 2014 and to the rest of the country in February 2016.
39. Under the above Act all persons in the UK who are subject to immigration control and require permission to enter or reside but do not possess it are excluded from a residential tenancy agreement. In practice, this covers everybody who is non-British, non-EEA and non-Swiss. Research published in 2015 by the Joint Council for the Welfare of Immigrants (JCWI)<sup>26</sup> showed clearly the seriously discriminatory impact that such legislation has upon migrants and their human right to adequate housing. The JCWI evaluation demonstrated that 42% of surveyed landlords said that the 'Right to Rent' requirements made them less likely to consider someone without a British passport. 27% of them were reluctant to engage with those with foreign accents or names. In addition, checks were not being undertaken uniformly but were directed at those persons who appeared 'foreign'.

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<sup>24</sup> See Minister Brokenshire's statement to the House of Lords – Immigration Detention: Response to Stephen Shaw's report, 14 January 2016, [HLWS462](#).

<sup>25</sup> See UNHCR London, [National Action Plan - UK](#), October 2015.

<sup>26</sup> JCWI, « ['No passport equals no home': An independent evaluation of the 'Right to Rent' scheme](#) », 3 September 2015.

40. The Commissioner is gravely concerned by this situation and the fact that even though the Home Office itself had also identified real risks of indirect ethnic discrimination,<sup>27</sup> it proceeded to the drafting of provisions in the Immigration Bill 2015-2016 (clauses 13-16, as of January 2016) which provide for criminal sanctions for landlords and letting agents with maximum custodial sentences of five years. The situation is compounded by another provision of the above Bill under which landlords receiving a Secretary of State notice informing them that a tenant is disqualified from renting may terminate the tenancy by giving 28 day's notice, this being in fact a summary eviction without judicial oversight.
41. Under international human rights law the right to adequate housing applies to everyone. Ensuring the right to adequate housing is essential to the inherent dignity of every human person irrespective of their legal or immigration status.<sup>28</sup> In addition, the Commissioner notes that all the above legislative provisions raise serious issues of compatibility notably with the European Convention on Human Rights, especially its provision prohibiting degrading treatment (Article 3) that may well occur in cases where migrants cannot access housing and are obliged to live in substandard conditions. It is also very much feared that such measures will result in a further social stigmatisation and marginalisation of migrants and in the rise of racism and intolerance. In this regard, the Commissioner has noted with concern the results of a 2015 Eurobarometer report on discrimination in the EU, which found that the proportion of surveyed persons who considered themselves part of any group at risk of discrimination was highest in the UK (22%, with a high proportion saying they are part of an ethnic or religious minority).<sup>29</sup>

*Restrictions on migrants' entry for family reunification*

42. Since 2010 the UK government has adopted a number of measures aiming to reduce the family visa route, having estimated that this accounted for nearly 20% of non-EU migration in 2009. As a result, the government ordered the UK Border Agency to clamp down on sham marriages and took measures purported to ensure integration of new migrant family arrivals in the UK.<sup>30</sup> In this context, in November 2010 a new language requirement was imposed on migrants wishing to enter or remain in the UK as a partner of a British citizen or a UK-settled person. In practice the partner had to demonstrate a basic ability to speak and understand English. In October 2013 a new requirement made it necessary for all applicants for settlement to show knowledge of language and life in the UK by passing a special test and by demonstrating that they are qualified in English speaking and comprehension at intermediate (B1) level or above.<sup>31</sup>
43. In this vein, a drastic, immigration control measure was the entry into effect in July 2012 of immigration rules, according to which UK citizens and long-term residents wishing to bring a non-EEA partner or spouse to live with them in the UK must meet a minimum income requirement of £18 600 per year before tax. For applicants wishing to bring also dependent children the above threshold rose by £3 800 for one child and £2 400 for each additional child. These thresholds were based on an analysis carried out by the Migration Advisory Committee, an independent public body that advises the government on migration issues.
44. The fixed yearly income threshold of £18 600 is indeed very restrictive given that the annual earnings of a full-time worker are estimated to be a minimum of £10 452 for those working 30 hours or £13 936 for those working 40 hours per week. Experts indicate that in fact close to 40% of UK citizens working as employees in 2015 earned less than the above income threshold. Those who are less likely to meet the threshold are in particular young or female. At the same time it is excessively inflexible due to the fact that the immigration rules do not allow non-UK partners to count their income towards the threshold if they work abroad, although data indicates that at least half of non-EEA family migrants work in the UK after their entry. In other words, the rules fail to take into account the future trajectory of

<sup>27</sup> Home Office, [Evaluation of the Right to Rent scheme](#), October 2015, section 6.1.

<sup>28</sup> See, inter alia, UN Committee on Economic, Social and Cultural Rights, [General comment No. 4](#): The right to adequate housing, 1991, paras 6, 7 and 9.

<sup>29</sup> European Commission, [Special Eurobarometer 437](#) "Discrimination in the EU in 2015", September 2015, p. 12.

<sup>30</sup> [Speech](#) by Home Secretary, Theresa May, 5 November 2010.

<sup>31</sup> J. Salt, J. Dobson, «Cutting net migration to the tens of thousands : What exactly does that mean ?», University College London, Migration Research Unit, [Discussion Paper](#), November 2013, pp. 22-23.



the family, including other sources of support that may be available. Exact numbers of people prevented from achieving family reunification due to the income threshold are not known, although in 2012 the UK government estimate ranged from 13 600 to 17 800 migrants per year.<sup>32</sup>

45. The Commissioner is very concerned about the consequences of this immigration policy and law upon the right to respect for one's family life enshrined in Article 8 of the European Convention on Human Rights, as well as upon the proclaimed goals of the UK government to promote social cohesion and migrant integration. According to the Migrant Integration Policy Index (MIPEX), a well-regarded comparative study, from 2011 to 2014 immigration rule changes have significantly restricted family reunification, while the UK's integration policies dropped 6 points. Separated families are faced with the longest delays and highest income, language and fee levels. In 2014 the UK was at the very bottom of family reunion ranking by MIPEX focusing on 32 European countries, plus Australia, Canada, Japan, New Zealand, South Korea and the USA.<sup>33</sup>
46. Of particular concern to the Commissioner is the fact that the 2012 income threshold rules have adversely affected approximately 15 000 children who have been obliged to live separated from one parent. A 2015 report commissioned by the Children's Commissioner for England (CCE) indicates that the vast majority of these children are UK citizens who have often suffered, as a result of the above policy and law, behavioural and emotional difficulties, as well as stress and anxiety. The CCE report noted the following among the most common emotional and behavioural problems reported by parents during the survey: children become angry and disobedient; younger children often throw more tantrums; older children become more aggressive; some children show signs of depression; children under-eat and exhibit social isolation and withdrawal.<sup>34</sup> The total costs for a single applicant to move from application to settlement, which are likely to exceed £6 000, should also be highlighted.
47. The CCE report makes clear that the UK government's measures are disproportionate compared to the major aims they try to achieve, that is, immigration reduction and preventing migrant partners from burdening the state budget. In addition, the harm suffered by children in this context is incompatible with the UK's obligations under the UN Convention on the Rights of the Child, whose Article 3 has enshrined the principle of the child's best interest as a "primary consideration" in all contracting state parties' actions concerning children. This principle has been embedded in UK legislation through section 55 of the Borders Act and the Human Rights Act 1998, which has incorporated Article 8 of the European Convention on Human Rights (right to respect for private and family life). The Commissioner supports the call on the UK government to adopt the remedial measures recommended by the CCE report which include: to collect and publish data on the implementation and impact of the above restrictive immigration regulations; to change the income threshold requirements; and to expressly include the principle of the child's best interest in the UK Immigration Rules.

## **Conclusions and recommendations**

### *General – refugee resettlement efforts*

48. The Commissioner underlines that the treatment afforded by states to immigrants, asylum seekers and refugees constitutes a litmus test for states' effective observance of and respect for fundamental human rights principles. He is also fully cognizant of the migration flow pressure experienced by the UK. This complex, international and social phenomenon must be dealt with in a manner that is not only efficient but also effectively respects European human rights principles and standards.
49. The Commissioner welcomes the UK's initiatives and generous response to international appeals to provide aid to Syrian refugees and to countries neighbouring Syria. Also praiseworthy is the UK

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<sup>32</sup> M. Sumption, C. Vargas-Silva, « The Minimum Income Requirement for non-EEA Family Members in the UK », Migration Observatory, University of Oxford, [report](#) of 27 January 2016.

<sup>33</sup> MIPEX [data on the UK](#), 2014, and MIPEX [data on family reunion](#), 2014.

<sup>34</sup> Children's Commissioner for England, « Family Friendly? The impact on children of the family migration rules: A review of the financial requirements », [report](#) of August 2015.

government's decision to resettle by 2020 20 000 refugees from the region, as well as unaccompanied minor migrants in need of protection while in transit in Europe.

50. However, the authorities are urged to increase the number of refugees that may be resettled in the UK, given the fact that the UK is a large and prosperous European state with thus far relatively low numbers of asylum applications. It is also necessary for the UK, as also for other European countries, to step up the integration of Syrian refugees into its society. Given the protracted nature of the Syrian conflict, many of these refugees are likely to remain and become citizens. Integration policies should be overarching, covering human rights sensitisation and awareness-raising amongst the host communities and refugees, education, employment, housing, healthcare and other social services.

#### *The 67 refugees and asylum seekers in the UK Sovereign Base Areas (SBAs) in Cyprus*

51. The Commissioner expresses his serious concern about the long-standing plight and precarious situation of the 67 refugees and asylum seekers who remain with their families in the UK SBAs in Cyprus since 1998. The UK government retains its sovereignty and effective control over the SBAs, thus being responsible for this group of persons who entered Cyprus through the SBA of Akrotiri. The Commissioner urges the authorities to live up to the UK's tradition of humanitarianism and to meet its legal obligations, thus ending the protracted mental and psychological suffering of the persons concerned by resettling them, even belatedly, to the UK. There is no reason to believe that resettling this small group of persons to the UK after all these years would create a pull factor.

#### *UK policies and public discourse that criminalise migration*

52. The Commissioner is worried by the dominant political discourse in the UK which is tainted by alarmism, laying emphasis since 2010 on a numerical target to reduce yearly net migration to a figure below 100 000. The Commissioner believes that such monolithic target figures, which have been put forward in the past by other European states as well, are not realistic and attainable, primarily because human out- and in- migration is an extremely complex social process that may be managed but not really controlled by setting numerical targets.
53. UK political leaders are urged to reflect on the language they use regarding foreign nationals and should avoid the term 'illegal (im)migrant'. People are not illegal. Their legal status may be irregular, but that does not render them beyond humanity. In this regard, political leaders are also urged to examine carefully and use research-based data in their public migration-related discourse. This needs to become more nuanced, especially given that political leaders' statements are often manipulated, or distorted, by media and extreme, racist political organisations. At the same time, national political discourse needs to be more objective and to highlight concrete positive effects that migrants have on UK society, as is the case in many other European states. The authorities' attention is drawn to the fact that a considerable part of the public in the UK in fact appears to be interested and demands careful and accurate explanation of immigration-related evidence.<sup>35</sup>

#### *Migrant detention*

54. The Commissioner is struck by the draconian legislative and other measures that have been adopted by the UK in recent years, or are envisaged, in order to criminalise and thus curb irregular migration. Evidence shows that restrictive immigration law and policies ignite, in effect, irregular migration.<sup>36</sup> Council of Europe member states should undertake further efforts in order to view and tackle migration as a social issue, not a criminal law issue. Criminalisation is a disproportionate measure which exceeds a state's legitimate interest in controlling its borders and corrodes established international law standards that run counter to these kinds of measures.

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<sup>35</sup> H. Rolfe et al., "Changing the debate: video animation on the impact of immigration on the UK", National Institute of Economic and Social Research, [report](#) of February 2016.

<sup>36</sup> H. de Haas, *Irregular Migration from West Africa to the Maghreb and the European Union: An Overview of Recent Trends*, [study](#) prepared for IOM, 2008, p. 32.

55. In this context, the Commissioner urges the UK authorities to radically overhaul the current regime concerning migrant detention and redress the long-standing shortcomings that have been highlighted in recent years by a number of international and domestic overseeing institutions and authoritative reports. To this end, the UK should introduce into law and practice, at least, a maximum time limit applicable to migrant detention, as well as a system of an automatic, regular judicial review. The Commissioner underlines that in principle no asylum seeker should be subject to detention. The same holds true for migrant children or other vulnerable persons, such as victims of sexual violence or pregnant women. The fact of having a dependent child must be ground for an adult not to be detained except in accordance with the lawful order of a criminal court. The UK authorities are urged to give effect to the recommendations contained in the Shaw report, notably those concerning the need to make effective and full use of the existing alternatives to migrant detention.

*Migrants' access to adequate housing – 'Right to Rent' scheme*

56. The UK authorities are called upon to review and put an end to the 'Right to Rent' scheme which leads, as evidence has also shown, in effect to indirect discrimination and deprives migrants from their human right to adequate housing, which, under international human rights law, is not conditioned on a migrant's legal status. It is also recalled that under Article 31 of the European Social Charter, by which the UK is bound, states should provide shelter to irregular migrants who are under their jurisdiction and unable to provide housing for themselves. Although the shelter does not imply the same level of privacy, family life or suitability as the "adequate housing" standard, it must fulfil the demands for safety, health and hygiene, including basic amenities, i.e. clean water, sufficient lighting and heating.<sup>37</sup>

57. The UK should abstain from further criminalising interaction with irregular migrants in order to prevent further stigmatisation and marginalisation of migrants. Immigration-related offences that do not remain administrative in nature result only in a further rise of an anti-immigration and xenophobic climate in the country, despite the authorities' declared intentions. The UK authorities are urged to review the above provisions immediately.

*Migrants' right to family reunification*

58. As regards migrants' right to family reunification, the Commissioner underlines that although states must be able to retain their right to regulate and control the entry of non-nationals, there has been a progressive development in international and European law as regards the right to family reunification across borders. Respect of the right to family life requires not only that states refrain from direct action which would split families, but also that measures be taken to reunite separated family members when they are unable to enjoy the right to family unity somewhere else.

59. The Commissioner recalls that the UN Convention on the Rights of the Child stipulates that children should not be separated from their parents against their will (Article 9), and that governments should deal with cases of family reunification across borders "in a positive, humane and expeditious manner" (Article 10). Facilitating family reunification helps to ensure the physical care, protection, emotional well-being and often also the economic self-sufficiency of migrant communities. This is in the interests of everyone, including the host state.

60. In view of the above, the UK authorities are urged to overhaul and enhance migrant family reunification rules whose excessively restrictive nature has in fact run counter to the government's proclaimed goal of promoting social cohesion and respecting equality. To this end, the UK should heed and give effect to the 2015 recommendations of the Children's Commissioner for England, which are supported by the Commissioner. In particular, the 2012 income threshold rules need to be reviewed in order to lower and make the threshold realistic and flexible, thus providing redress to the thousands of families, particularly children, who have been adversely and seriously affected by forced family splitting.

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<sup>37</sup> European Committee of Social Rights (ECSR), *Defence for Children International (DCI) v. the Netherlands*, [decision on the merits of 20 October 2009](#), para. 62, and ECSR, *European Federation of National Organisations working with the Homeless (FEANTSA) v. the Netherlands*, [decision on the merits of 2 July 2014](#), paras 105-129.