Introduction

This paper, prepared by JUSTICE on behalf of the NGO Human Rights Forum, is in response to the review of the UK’s international human rights commitments currently being undertaken by the Government. The purpose of this paper is to examine the scope and extent of the Government’s reservations to the UK’s international human rights treaty obligations. It recommends that, as part of that review, in the majority they should be withdrawn. We have three particular concerns about the existing reservations. These are:

- the impact these reservations have on domestic human rights protection, in that their general nature can have the effect of undermining the purpose of human rights;
- the reservations may be invalid and therefore redundant;
- the general nature of the reservations will have the impact of undermining the Foreign and Commonwealth Office’s work in promoting human rights in other jurisdictions. The existence of the UK’s reservations allows the Government’s foreign policy to be vulnerable to charges of hypocrisy.

The text of the UK’s reservations are in Appendix 1 attached to this paper, and where referred to in the body of this paper are cross-referenced in a footnote.¹

International Legal Principles governing Reservations

Following the World Conference on Human Rights in 1993, the Vienna Declaration and Programme for Action called for:

“all States [to be] encouraged to avoid, as far as possible, the resort to reservations. …The World Conference on Human Rights encourages States to consider limiting the extent of any reservations they lodge to international human rights instruments, formulate any reservations as

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¹ It is also important to note, although not covered in this submission, that a number of the UK’s reservations affect (and/or are specifically designed for) dependent territories and that these reservations should also be reviewed.
precisely and narrowly as possible, ensure that none is incompatible with the object and purpose of the relevant treaty and regularly review any reservations with a view to withdrawing them.”

In assessing the validity of the UK’s reservations, as part of the review, helpful criteria can be followed.2 These are as follows:

- a reservation must be compatible with the objects and purposes of a treaty. An example of this is where the House of Parliament’s Joint Committee on Human Rights concluded that one of the UK reservations to the Convention on the Rights of the Child undermined the purpose of the treaty. They found that the reservation,

> ‘read literally would allow the Government to disapply the CRC rights so far as they relate to people who are subject to immigration control. In our view, that would be incompatible with the object and purposes of the CRC, and so would not constitute a valid reservation’. 3

- Fundamental, non-derogable rights should not be the subject of reservations. As the Human Rights Committee observed, "while there is no automatic correlation between reservations to non-derogable provisions, and reservations which offend against the object and purpose of the Covenant, a State has a heavy onus to justify such a reservation. And some non-derogable rights, which in any event cannot be reserved because of their status as peremptory norms, are also of this character - the prohibition of torture and arbitrary deprivation of life are examples". 4 The UK’s reservations concerning discrimination arguably fall within this category.5

- reservations must be specific (preferably restricted to a particular right) and not blanket. Many of the UK reservations such as in the ICCPR or under the

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2 For more details see Human Rights Committee General Comment 24. Although not binding this comment is authoritative and persuasive. Also see Concurring Opinion of Judge A.A.Cançado Trindade in Hilaire, Constantine & Benjamin v Trinidad & Tobago, Inter-American Court of Human Rights judgment 21 June 2002 which confirms that an international body has the competence to determine its own competence/jurisdiction and that human rights are not subject to state consent.

3 Seventeenth Report, The Nationality, Immigration and Asylum Bill.” para.17

4 Human Rights Committee General Comment 24, para.10

5 Article 4, ICCPR categorises discrimination solely on the ground of race, colour, sex, language, religion or social origin as being non-derogable.
CRC have been criticised for their ‘broad nature …which raises concern as to their compatibility with the object and purpose of the Convention’.6

The UK’s reservations which do not satisfy these criteria are likely to found invalid as a matter of international law. Logically therefore, if the reservation is invalid, it is preferable to withdraw it. The consequences of an invalid reservation are arguably that the state, remains bound to the treaty but without the benefit of the reservation.7

Below, the validity of the UK’s reservations are considered.

**The European Convention on Human Rights (“ECHR”)**

The European Court of Human Rights has addressed the validity and effect of reservations under the Convention in three cases.8 It has upheld the need for:

- specificity;
- compliance with the Convention’s objects and purposes; and,
- procedural compliance with Article 64.9

Otherwise, as the Court has concluded the reservation is severed from the treaty and the state remains a party.10

The UK has made one reservation to the First Protocol to the ECHR concerning education.11 However, in *Campbell & Cosans v UK*, the Court found this UK reservation did not prevent the UK from being in violation of Article 2 of the First Protocol as “Under Article 64 of the

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6 The Concluding Observations of the Committee on the Rights of the Child on the UK Report, 1995
7 General Comment 24 supports this interpretation. We note that the UK Government argued that an invalid reservation would invalidate a state’s ratification in its response to General comment 24 and the state would no longer be a party to the treaty. However such a view is clearly irresponsible and goes against the UK’s stated acceptance that a reservation must be in accordance with the objects and purposes of the treaty.
8 Belilos v Switzerland, 10 EHRR 466; Loizidou v Turkey, 20 ECHR 1995; Eisenstecken v Austria, 34 ECHR 35
9 Article 64 states 1. Any State may, when signing this Convention or when depositing its instrument of ratification, make a reservation in respect of any particular provision of the Convention to the extent that any law then in force in its territory is not in conformity with the provision. Reservations of a general character shall not be permitted under this article. 2. Any reservation made under this article shall contain a brief statement of the law concerned.
10 Ibid
11 Appendix 1 para 1
Convention, a reservation in respect of any provision is permitted only to the extent that any law in force in a State's territory at the time when the reservation is made is not in conformity with the provision”. Following this principle, it is possible to argue that any laws made subsequent to the reservation are not subject to it. If this is correct, the current Education Acts, which have been made subsequent to the reservation, would therefore not be constrained by it, save to the extent (if at all) that they re-enact provisions which were in force when the reservation was deposited. Therefore it could be argued that the reservation is redundant. As a matter of policy it could be further argued that taking the Court’s judgments to their logical conclusions, the maintenance of the reservation would also “run counter to the aim” of “further realisation of human rights” as it will be irrelevant to current or future legislation.

The Inconsistency of the UK’s Reservations between the Council of Europe and the United Nations

Many of the UK’s reservations under the UN human rights treaties also appear to be inconsistent with the UK’s obligations under the ECHR. For example, the ICCPR reservation concerning the armed forces or the CEDAW reservations concerning pension schemes and benefits have no equivalent reservations to the ECHR. Furthermore, jurisprudence under the ECHR has considered, for example, the UK’s obligation to apply fair trial rights to members of the armed forces and prisoners. Likewise, the CEDAW reservation on pensions and benefits is inconsistent with the jurisprudence under ECHR, Art 14 and Protocol I.

Discrimination

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12 Campbell & Cosans v UK, 4 EHRR 292
13 Loizidou v Turkey, 20 EHRR (1995) at para. 72
14 Appendix para 2(a)
15 Appendix paras 7, 8, 9
17 Rew Wessels-Bergervoet v The Netherlands 2002 – difference in treatment between men and women’s entitlement to pensions could not be justified objectively and reasonably. Reservation at Appendix 1, paras 7,8,9
Many of the UK reservations, we believe, discriminate against particular sections of society and thus are anathema to the very universality of human rights. In particular we urge that the government re-consider its armed forces and prisoners’ reservation to the ICCPR, the reservations in CEDAW concerning sexual discrimination (peerage titles etc and service in the armed forces, pensions rights) and the reservation concerning employment rights under ICESCR. Discriminatory reservations undermine the core values of equality and non-discrimination which uphold the very objects and purposes of human rights treaties. All major UN and regional human rights treaties contain non-discrimination obligations.

Immigration Policy Reservations

The main theme running through the majority of the UK’s reservations to international human rights treaties is based on the UK’s wish to protect itself from unwanted immigration. However, the protection of this immigration policy via reservations to human rights treaties, we believe, amounts to discrimination under international human rights law. We contend that the existence of reservations to human rights treaties are not necessary as human rights do not confer a right to immigration per se, they confer rights to have applications assessed fairly and to be treated properly in accordance with human rights principles.

ECHR jurisprudence supports this view in that the Court has denied that the right to family life under Article 8 means a person can choose where to live. Also, as in the CRC, human rights treaties do not confer immigration rights to children. The CRC only requires that applications for immigration for the purposes of family reunification are dealt with in a positive, humane and expeditious manner and does not confer a right to enter another country to children.

With particular reference to the CRC, the reservation in relation to immigration policy may be contrary to the treaty’s objects and purposes. [NB can we annex the opinion?] The UK reservations to the CRC could be interpreted to exclude all CRC rights from any measure of

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18 Appendix para 2(a)
19 Appendix paras 5,7,8,9
20 Appendix paras 10 and 11
21 Apendix para 2 (b) (ICCPR), para 3 (CRC), para 6 (CEDAW), para 14 (CERD)
22 Abdulaziz, Cabales and Balkandali v UK
23 For further details we recommend the Legal Opinion of Nicholas Blake QC, Matrix Chambers and Sandhya Drew, “In the Matter of the United Kingdom Reservation to the UN Convention on the Rights of the Child” (30th Nov. 2001), commissioned by Save the Children UK.
immigration control concerning children. For example, the reservation implies that the ‘best interests principle’ may be excluded “wholesale from areas of executive discretion concerned with immigration, asylum and nationality”. We are also concerned that the rights of the child would be subject to “the primacy of executive discretion in the implementation of a system of immigration control under the Immigration Acts 1971 to 1999 and the British Nationality Act 1981.” This undermines the protection of children’s rights in a situation where they are most likely more vulnerable and require protection. Furthermore, we refer to the importance of the CRC giving rights to all children, including those seeking asylum and in particular Article 2 (anti-discrimination) of CRC applies to all children within the UK jurisdiction.

Likewise, reservation (d) to CEDAW is not designed to automatically confer a right of domicile in the UK to non-UK nationals. Article 15(4) CEDAW declares that women shall be treated the same as men in relation to domicile and movement, not that they have a right to domicile. The two ICCPR reservations reserving the UK government’s right to apply such immigration legislation and to enact such nationality legislation as it may deem necessary are subject to the same criticisms.

The immigration reservation is of particular relevance given the Home Secretary’s power under Section 19D of the Race Relations (Amendment) Act, 2000 (“RRAA”) whereby an exception to discrimination for immigration decisions can be authorised on the grounds of nationality and ethnic or national origin. Whist it is accepted that, as a matter of international law, it can be lawful to implement immigration policy that discriminates on the basis of nationality, those principles do not extend to discrimination on the basis of ethnicity or national origin. Hence, the UK’s reservation to CERD concerning the Commonwealth Immigrants Act, 1962 (now repealed) and the ICCPR reservations are subject to criticism.

24 Reservations (c) and (e) see appendix
25 Opinion of Nicholas Blake QC, Matrix Chambers and Sandhya Drew, “In the Matter of the United Kingdom Reservation to the UN Convention on the Rights of the Child” (30th Nov. 2001), para. 4iii
26 Ibid at para.5
27 Appendix 2 highlights comments on the reservation as it affects the CRC
28 Appendix 1, para. 6
29 Appendix 1, paras. 2b and 2c
30 The Home Secretary has made two authorisations under this power and came into force in April 2001. The second authorisation gives permission to discriminate against people of Chinese ethnic origin with a Malaysian or Japanese passport, Kurds, Roma, Albanians, Tamils, Pontic Greeks, Somalis and Afghans.
31 CERD - Appendix 1, para.16, supra note 24
In conclusion we are concerned that the ‘immigration’ reservations may give the UK the right to contravene human rights principles, which exist to protect and ensure the proper treatment of all persons without discrimination. We strongly argue that human rights do not set out the rules concerning applications for immigration and nationality and they should be withdrawn.

**Statements of Interpretation**

We view the first sentence in the reservation to CERD interpreting the UK’s understanding of Art 4 CERD, as clarifying the UK’s understanding of Articles 4 and 5, as more of a statement of interpretation than a reservation. This is because the UK is not withholding assent to a provision. The UK appears to be restricting its positive obligation to implement any legislation on the basis of principles and rights set down in Article 5 and only to the extent required by Article 4. The UK is not actually denying any of the rights in Article 4 or 5 or reserving its position to these. Alternatively the statement of interpretation is seeking a balance between potentially conflicting human rights, such as freedom of expression and assembly. For example, in the UK in Article 4(b) it is not a criminal offence to be a member of an organisation such as the National Front but it is a criminal offence to incite to racial hatred. We would view the position taken by the UK in the reservation on these points to be reasonable. We accept that this reservation may be more problematic depending on the interest groups represented.

**Conclusion**

The members of the NGO Forum request that the government review its reservations to the UK’s international human rights principles for the following reasons:

- they are outdated;
- they are incompatible with international law principles;
- they are incompatible with the European Convention on Human Rights;
- they conflict with existing UK obligations under human rights law; and
- they are unnecessary to achieve the policy goals desired.

Finally, we are concerned that the UK is failing to set an example to other jurisdiction by its adherence to these reservations.

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32 Appendix, para. 14
APPENDIX 1
TEXT OF UK RESERVATIONS

Please note footnotes have been added to aid the understanding of the reservations and do not form part of the text.

ECHR, First Protocol

1. The UK Reservation made at the time of signature, on 20 March 1952 states:
   a. “At the time of signing the present (First) Protocol, I declare that, in view of certain provisions of the Education Acts in the United Kingdom, the principle affirmed in the second sentence of Article 2 is accepted by the United Kingdom only so far as it is compatible with the provision of efficient instruction and training, and the avoidance of unreasonable public expenditure”.

2. International Covenant for Civil and Political Rights (“ICCPR”) 1966
   a. “The Government of the UK reserve the right to apply to members of and persons serving with the armed forces of the Crown and to persons lawfully detained in penal establishments of whatever character such laws and procedures as they may from time to time deem to be necessary for the preservation of service and custodial discipline and their acceptance of the provisions of the Covenant is subject to such restrictions as may for these purposes from time to time be authorised by law.”
   b. “The Government of the UK reserve the right to continue to apply such immigration legislation governing entry into, stay in and departure from the UK as they may deem necessary from time to time and, accordingly, their acceptance of Article 12 (4) and of the other provisions of the Covenant is subject to the provisions of any such legislation as regards persons not at the time having the right under the law of the UK to enter and remain in the UK. The UK also reserves a similar right in regard to each of its dependent territories.”
   c. “The Government of the UK reserve the right to enact such nationality legislation as they may deem necessary from time to time to reserve the acquisition and possession

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33 ECHR Protocol I, Article 2 “No person shall be denied the right to education. In the exercise of any functions which it assumes in relation to education and to teaching, the State shall respect the right of parents to ensure such education and teaching in conformity with their own religious and philosophical convictions”.
of citizenship under such legislation to those having sufficient connection with the UK or any of its dependent territories and accordingly their acceptance of Article 24(3)\(^\text{35}\) and of the other provisions of the Covenant is subject to the provisions of any such legislation."

**Convention on the Rights of the Child ("CRC")**

3. The UK’s reservations to the CRC read as follows:

   a. "(c) The United Kingdom reserves the right to apply such legislation, in so far as it relates to the entry into, stay in and departure from the UK of those who do not have the right under the law of the UK to enter and remain in the UK, and to the acquisition and possession of citizenship, as it may deem necessary from time to time"

   b. "(e) Where at any time there is a lack of suitable accommodation or adequate facilities for a particular individual in any institution in which young offenders are detained, or where the mixing of adults and children is deemed to be mutually beneficial, the UK reserves the right not to apply Article 37(c) in so far as those provisions require children who are detained to be accommodated separately from adults."

**Convention on Elimination of all forms of Discrimination Against Women ("CEDAW")**

Two reservations are as follows:

4. "(a) The UK understands the main purpose of the Convention, in the light of the definition contained in Article 1, to be the reduction, in accordance with its terms, of discrimination against women, and does not therefore regard the Convention as imposing any requirement to repeal or modify any existing laws, regulations, customs or practices which provide for women to be treated more favourably than men, whether temporarily or in the longer term; the UK's undertakings under Article 4, para.1, and other provisions of the Convention are to be construed accordingly."

5. (c) relates to UK reserving the right that none of its obligations extend to the "succession to, or possession and enjoyment of, the Throne, the peerage, titles of honour, social precedence or armorial bearings, or as extending to the affairs of religious denominations or orders or to the admission into or service in the Armed Forces of the Crown"

\(^{34}\) Article 12(4) ICCPR 1966 reads “No-one shall be arbitrarily deprived of the right to enter his own country”.  

\(^{35}\) Article 24(3) ICCPR 1966 reads, “Every child has the right to acquire a nationality”.  

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6. "(d) The United Kingdom reserves the right to continue to apply such immigration legislation governing entry into, stay in, and departure from, the UK as it may deem necessary from time to time, and, accordingly, its acceptance of Article 15(4)\textsuperscript{36} and of the other provisions of the Convention is subject to the provisions of any such legislation as regards persons not at the time having the right under the law of the UK to enter and remain in the UK."

Further UK reservations to CEDAW concern unequal pension and social security rights and are as follows:

7. "The UK reserves the right to apply all UK legislation and the rules of pension schemes affecting retirement pensions, survivor’s benefits, and other benefits in relation to death or retirement (including retirement on grounds of redundancy), whether or not derived from a social security scheme. This reservation will apply equally to any future legislation which may modify or replace such legislation, or the rules of pension schemes, on the understanding that the terms of such legislation will be compatible with the UK's obligations under the Convention."

8. "The United Kingdom reserves the right to apply the following provisions of United Kingdom legislation concerning the benefits specified:

b) increases of benefits for adult dependants under sections 44 to 47, 49 and 66 of the Social Security Act 1975 and under sections 44 to 47, 49 and 66 of the Social Security (Northern Ireland) Act 1975;"

9. The United Kingdom reserves the right to apply any non-discriminatory requirement for a qualifying period of employment or insurance for the application of the provisions contained in Article 11 (2).

International Covenant on Economic, Social and Cultural Rights ("ICESCR")

Upon signature the UK made the following reservation:

10. "the Government of the United Kingdom declare that they must reserve the right to postpone the application of sub-paragraph (a) (i) of article 7 of the Covenant\textsuperscript{37} in so far as it concerns the provision of equal pay to men and women for equal work, since, while they fully accept this principle and are pledged to work towards its complete application..."

\textsuperscript{36}CEDAW, Article 15(4): “States Parties shall accord to men and women the same rights with regard to the law relating to the movement of persons and the freedom to chose their residence and domicile”.

\textsuperscript{37}ICESCR 1966, Article 7 (a)(i), “Remuneration which provides all workers as a minimum with: (i) Fair wages and equal remuneration for work of equal value without distinction of any kind, in particular women being guaranteed conditions of work not inferior to those enjoyed by men, with equal pay for equal work;”
at the earliest possible time, the problems of implementation are such that complete application cannot be guaranteed at present”.

Upon ratification of IESCR the UK made the following reservations:

11. "Firstly, the Government of the United Kingdom maintain their declaration in respect of article 1 made at the time of signature of the Covenant.

“The Government of the United Kingdom reserve the right to interpret article 6 as not precluding the imposition of restrictions, based on place of birth or residence qualifications, on the taking of employment in any particular region or territory for the purpose of safeguarding the employment opportunities of workers in that region or territory”.

International Convention on the Elimination of all forms of Racial Discrimination 1966 (“CERD”)

Upon signature: Subject to the following reservation and interpretative statements:

12. "Secondly, the United Kingdom wishes to state its understanding of certain articles in the Convention. It interprets article 4 as requiring a party to the Convention to adopt further legislative measures in the fields covered by sub-paragraphs (a), (b) and (c) of that article only in so far as it may consider with due regard to the principles embodied in the Universal Declaration of Human Rights and the rights expressly set forth in article 5 of the Convention (in particular the right to freedom of opinion and expression and the right to freedom of peaceful assembly and association) that some legislative addition to or variation of existing law and practice in those fields is necessary for the attainment of the end specified in the earlier part of article 4. Further, the United Kingdom interprets the requirement in article 6 concerning ‘reparation or satisfaction’ as being fulfilled if one or other of these forms of redress is made available and interprets ‘satisfaction’ as including any form of redress effective to bring the discriminatory conduct to an end. In addition it interprets article 20 and the other related provisions of Part III of the Convention as meaning that if a reservation is not accepted the State making the reservation does not become a Party to the Convention.”

13. "First, the reservation and interpretative statements made by the United Kingdom at the time of signature of the Convention are maintained.

14. "Secondly, the United Kingdom does not regard the Commonwealth Immigrants Acts, 1962 and 1968, or their application, as involving any racial discrimination within the meaning of paragraph 1 of article 1, or any other provision of the Convention, and fully reserves its right to continue to apply those Acts.

38 Article 6, IESCR concerns the right to work
APPENDIX 2
SUPPORTING CITATIONS ON CONVENTION OF RIGHTS OF THE CHILD

The UK reservations to the CRC have already been the subject of much debate and we would refer the government to the conclusions drawn by (1) The Joint Committee on Human Rights that:

(1) "One of the reservations, read literally, would allow the Government to disapply the CRC rights so far as they relate to people who are subject to immigration control. In our view, that would be incompatible with the object and purposes of the CRC, and so would not constitute a valid reservation." 39

(2) the Committee on the Rights of the Child in its Concluding Observations on the UK Report, 1995:

"The committee is concerned about the broad nature of the reservations made to the Convention by the State party which raise concern as to their compatibility with the object and purpose of the Convention. In particular, the reservation relating to the application of the Nationality and Immigration Act does not appear to be compatible with the principles and provisions of the Convention, including those of its articles 2, 3, 9 and 10" (para.7). (Note the Report of the Committee 2002, is due out shortly and is likely to repeat this assessment)

(3) the Vienna Declaration and Programme for Action:
"The World Conference on Human Rights urges States to withdraw reservations to the Convention on the Rights of the Child contrary to the object and purpose of the Convention or otherwise contrary to international treaty law."40 (para. 46)

39 Seventeenth Report, The Nationality, Immigration and Asylum Bill." para.17
40 WORLD CONFERENCE ON HUMAN RIGHTS, Vienna, 14-25 June 1993 (www.unhchr.ch/huridocda/huridoca.nsf)