Human Rights Watch Briefing Paper

Commentary on the United Kingdom Home Office White Paper:
Secure Borders, Safe Haven: Integration with Diversity in Modern Europe
March 2002

Human Rights Watch welcomes the opportunity to comment on the United Kingdom's February 2002 white paper, *Secure Borders, Safe Haven: Integration with Diversity in Modern Europe*. We recognize the many challenges presented by the pressures of increased migration and the government's commitment to honor international protection obligations. We believe that efficient immigration management and potential national security concerns can be reconciled with the protection of fundamental human rights guarantees for migrants and asylum seekers.

The following comments do not reflect a comprehensive review of the white paper, but focus on selected concerns regarding the rights of migrants and refugees that have arisen in the course of our research and advocacy in Western Europe. We focus exclusively on a number of proposals in the white paper that appear to be in conflict with the U.K.'s international obligations and detrimental to human rights protections—and may require reconsideration during the consultation period. We are particularly concerned with the proposals relating to the detention of migrants and asylum seekers, trafficking, and border controls. Human Rights Watch's analysis and recommendations for each of these areas are detailed below.

I. Detention

The white paper contains proposals for a range of procedures to provide assistance and accommodation for asylum seekers upon arrival in the U.K. We cautiously welcome the general idea that asylum seekers could receive information about the asylum process, access to legal counsel, and temporary accommodation in one-stop "induction centres," and on-going support in "accommodation centres" (Sections 4.20 and 4.28). However, the white paper proposes the retention of a system of routine detention for asylum seekers whose claims are subject to "fast track" consideration, and the expansion of the scope of immigration detention in "removal centres" for rejected asylum seekers and undocumented migrants. This proposal raises concerns that resort to detention will continue to be inappropriate in some cases and without adequate procedural safeguards in others.

a. Administrative Detention

In December 2001, the United Nations Human Rights Committee, which monitors states parties' compliance with the International Covenant on Civil and Political Rights (ICCPR), issued its concluding observations on the report of the United Kingdom.[1] The committee expressed concern that "asylum seekers have been detained in various facilities on grounds other than those legitimate under the Covenant, including reasons of administrative convenience."[2] Moreover, the committee noted that some rejected asylum seekers are held in detention "for an extended period when deportation might be impossible for legal or other considerations."[3] Prolonged detention of asylum seekers and migrants who cannot be removed from the U.K. could amount to arbitrary detention; the prohibition against arbitrary detention is enshrined in the

[1] U.N. Human Rights Committee, "Concluding Observations of the Human Rights Committee: United Kingdom of Great Britain and Northern Ireland," CCPR/CO/73/UK, December 6, 2001.
[2] Ibid., para. 16.
[3] Ibid.

European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) and the ICCPR, as well as customary international law.[4]

Human Rights Watch is concerned that the white paper fails to propose new policies to remedy the problems identified by the Human Rights Committee. Rather, it contemplates the continued practice of detaining asylum seekers at the Oakington Reception Centre and other facilities during "fast track" processing and appeals of asylum claims. The white paper justifies the use of statutory detention powers at Oakington as necessary and appropriate to achieve the objective of "speedy decision making" of some claims (para. 4.70)—in effect, mere administrative convenience. In addition, the white paper approves continuation of the policy of detaining "failed" asylum seekers in "removal centres" (para.4.74), but may include in this category those who have further appeals on their claims outstanding, either in the court of appeal or through judicial review, and therefore do not qualify as "failed" or rejected asylum seekers. Of particular concern are rejected asylum seekers in detention who cannot—for various reasons—be returned to their countries of origin or to a so-called "safe third country" and may therefore face prolonged or indefinite detention.

Human Rights Watch is concerned that the detention regime proposed in the white paper will continue to result in the detention of asylum seekers solely for reasons of administrative convenience. This would violate the U.K.'s obligations under the ICCPR as described in the authoritative conclusions of the U.N. Human Rights Committee noted above. Moreover, continuing the U.K.'s policy of detaining asylum seekers solely for administrative reasons as proposed in the white paper violates the 1951 Convention Relating to the Status of Refugees (Refugee Convention).[5] It is also contrary to the United Nations High Commissioner for Refugees' Detention Guidelines[6] and conclusions reached by the United Nations Working Group against Arbitrary Detention upon a 1997 visit to the U.K. The Working Group recommended that the U.K. "should ensure that detention of asylum seekers is resorted to only for reasons

[4] Article 5 of the ECHR guarantees the right to liberty and security of person. Article 9 of the ICCPR provides key procedural guarantees to ensure that no person is detained arbitrarily. It is important to note that the prohibition against arbitrary detention has risen to the level of customary law, meaning it is such a fundamental and widely accepted principle that even states that have not ratified regional or international human rights instruments are obliged to observe the prohibition. The U.N. Human Rights Committee has determined that article 9 applies to immigration control measures. See United Nations Human Rights Instruments, *Compilation of General Comments and General Recommendations adopted by Human Rights Treaty Bodies*, HRI/GEN/1/Rev.4, February 7, 2000, General Comment No. 8, p. 88, para. 1.

[5] Article 31(1) of the Refugee Convention states that governments "shall not impose penalties, on account of their illegal entry or presence, on refugees who, coming directly from a territory where their life or freedom was threatened . . . enter or are present in their territory without authorization, provided they present themselves without delay to the authorities and show good cause for their illegal entry or presence." The convention goes on to state that "[c]ontracting States shall not apply to the movements of such refugees restrictions other than those which are necessary…" (Article 31(2)).

[6] United Nations High Commissioner for Refugees, Revised Guidelines on Applicable Criteria and Standards Relating to the Detention of Asylum Seekers, Geneva, February 1999. The guidelines state that asylum seekers, in general, should not be detained. They do enumerate instances where an asylum seeker may be detained, including for the purpose of determining the elements on which the claim for refugee status or asylum is based. However, The guidelines state that this exception cannot be used to justify detention for the entire status determination procedure, or for an unlimited period of time.

recognized as legitimate under international standards and only when other measures will not suffice."[7]

A challenge to administrative detention at Oakington is set to be heard in the House of Lords in early May 2002.[8] Human Rights Watch urges the Law Lords to take into consideration all of the U.K.'s international legal obligations when reviewing the case. We also urge the U.K. government to conform to international standards regarding the detention of asylum seekers solely for administrative purposes in all future legislation.

b. Bail for Immigration Detainees

Human Rights Watch is concerned by the white paper proposal to repeal most of Section III of the Immigration and Asylum Act 1999 (para. 4.83), which provides for a system of automatic bail hearings at specified points in a person's immigration detention. The bail safeguards in the 1999 act were never implemented.[9] While the government has now proposed the simple retention of previously existing bail arrangements, these arrangements—the ability to apply to an adjudicator or chief immigration officer for bail—have been criticized by lawyers and nongovernmental organizations as seriously defective, leaving many detainees subject to detention for arbitrary reasons and for long periods without the actual possibility for independent review of grounds for release. Among other problems, existing arrangements do not provide for *automatic* bail hearings, making the possibility of bail available only to those asylum seekers and immigration detainees with the ability to pursue it by their own initiative. The ability to pursue bail independently is severely hampered by the very nature of detention, not to mention language and cultural barriers. Mounting such an effort is extremely difficult for asylum seekers and immigration detainees without significant financial means or family support in the U.K. Furthermore, under the current bail system, the burden of proof rests disproportionately on the detainee, who must demonstrate that he or she will not abscond. By contrast, the 1999 Act required that the immigration service justify on-going detention. Coupled with ordinary appeal avenues, the automatic nature of the proposed review in the 1999 Act ensured that all detainees

[7] Working Group on Arbitrary Detention, "Report of the visit of the Working Group to the United Kingdom on the Issue of Immigrants and Asylum Seekers," E/CN.4/1999/63/Add.3, para. 26. In late 1999, the Working Group also issued a set of general guidelines on the detention of asylum seekers and immigrants to be used to determine whether or not a detention is arbitrary. See United Nations Commission on Human Rights, *Report of the Working Group on Arbitrary Detention*, E/CN.4/2000/4, December 28, 1999, Annex II, Deliberation No. 5 (Situation Regarding Immigrants and Asylum Seekers) at: http://www.unhchr.ch/Huridocda/Huridoca.nsf/0811fcbd0b9f6bd58025667300306dea/39bc3afe4eb9c8b480256890003e77c2?OpenDocument#annexII, (accessed March 12, 2002).

[8] *Saadi, et. al. v. Secretary of State for Home Department*, [2001] ECWA 1512; C2001/2021, October 19, 2001. Four Iraqi Kurds challenged their ten-day detention at Oakington claiming that it violated both the Human Rights Act 1998 and the European Convention on Human Rights (ECHR). The lower court held that the detentions violated article 5 (liberty and security of person) of the ECHR. The court of appeal reversed and held that the detentions were lawful, primarily because they were of very limited duration (seven to ten days). The asylum seekers were permitted leave to appeal the case to the House of Lords, before which the appeal will be heard in early May.

[9] Significantly, these safeguards included recognition of a general right of asylum seekers to be released on bail, with the burden on the immigration service to demonstrate the necessity of detention on a case-by-case basis. Automatic bail hearings were to be held shortly after initial detention followed by a hearing one month afterward if detention continued.

would have the opportunity to effectively challenge their detention, a right enshrined in the article 5 of the ECHR and article 9 of the ICCPR.[10]

The U.K. government states that the 1999 bail safeguards "are now inconsistent with the need to ensure that we streamline the removals process in particular and asylum and immigration processes more generally. The significant and continuing expansion of the detention estate since the proposals were first put forward would make the asylum system unworkable in practice" (para. 4.83). While Human Rights Watch recognizes the many challenges of managing the asylum system, resolving administrative problems that appear "unworkable" cannot be at the expense of the basic rights of refugees and migrants. Many nongovernmental, human rights, and refugee organizations have argued in the past that the U.K. has failed to ensure that immigration detention was subject to adequate independent scrutiny and review, and thus the U.K. was in violation of article 5 of the ECHR. In fact, it was widely acknowledged when the bail safeguards were included in the 1999 immigration act, that their implementation would answer, at least in part, criticisms about the immigration detention regime's failure to comply with ECHR standards.

In 1999, the government viewed automatic bail safeguards as a necessary component of ensuring that detainees had the procedural protections they were entitled to under domestic and regional law. The repeal of the safeguards appears to be a retreat from that principle. The government's pursuit of greater administrative efficiency in detaining asylum seekers and migrants, and removing persons possibly unlawfully present in the country, must be constrained by its obligation to ensure that all immigration detainees fully and effectively enjoy their right to challenge the lawfulness of detention.

c. Jailed Asylum Seekers

Human Rights Watch welcomes the white paper proposal to pursue a strategy to eliminate the detention of asylum seekers in U.K. prisons (para. 4.78). The government's commitment to this proposal is called into question, however, by the recent jailing of forty-six asylum seekers following a disastrous fire at the Yarl's Wood Detention Centre on February 14, 2002. On March 6, 2002, the United Nations High Commissioner for Refugees (UNHCR) stated that the jailed asylum seekers "should not be held as a punishment for what happened at Yarl's Wood."[11] UNHCR had not received assurances that the asylum seekers had actually been charged with any offence, leading a spokesperson to comment that, in the absence of charges, "they shouldn't be [in jail]."[12] The government has claimed that the detentions were a "sensible precaution," but it has failed to specify whether the detentions are subject to any sort of judicial review.

[10] The U.N. Human Rights Committee has stated that article 9(4), which enshrines the right to control by a court of the legality of detention, applies to all deprivations of liberty, including immigration control. See General Comment No. 8, Sixteenth Session, 1982 in United Nations Human Rights Instruments, *Compilation of General Comments and General Recommendations adopted by Human Rights Treaty Bodies*, HRI/GEN/1/Rev.4, February 7, 2000, p. 88.

[11] "United Nations Condemns British Move to Jail Asylum Seekers without Charge," Associated Press, March 6, 2002.

[12] Ibid.

Human Rights Watch urges the government to remain steadfast in the elimination of jail or prison accommodation for asylum seekers and immigration detainees not currently charged with a criminal offence.

II. Trafficking

The government claims that it will be introducing detailed legislation to combat the trafficking of persons "for both labor and sexual exploitation" both internationally and within the U.K. as soon as possible, but that such measures will "go wider than is possible in immigration legislation" (para. 5.22). Thus, for purposes of the forthcoming immigration legislation, the white paper proposes a new offence covering the trafficking of people from abroad to the U.K. "for the purposes of sexual exploitation" (para. 5.22), leaving out those trafficked for other forms of forced labor. Human Rights Watch is concerned that the "stop gap" nature of the anti-trafficking provisions proposed for the immigration bill, coupled with the proposed incomplete definition of trafficking, fails to comply with the commitments the U.K. has undertaken at both regional and international level to combat trafficking and to protect victims of this grave human rights abuse.

a. Definitions

The U.K. rightly claims to have played a pivotal role in negotiating new international and regional standards to combat trafficking, including the U.N. Convention against Transnational Organized Crime's Protocol to Prevent, Suppress, and Punish Trafficking in Persons, Especially Women and Children (Trafficking Protocol)[13] and a European Union proposal for a Council Framework Decision on Trafficking in Human Beings (Framework Decision).[14] However, both documents criminalize all forms of trafficking of persons, not just trafficking into the sex industry. The U.K.'s own domestic proposal to create one new offense of "trafficking people from abroad to [the U.K.] for the purposes of sexual exploitation" (para. 5.22) does not conform with the requirements of either the Trafficking Protocol or the Framework Decision.[15]

Article 3 of the U.N. Trafficking Protocol defines trafficking as:

> (a)…the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. *Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs* [emphasis added].[16]

[13] A/55/383, adopted by the General Assembly on November 2, 2000 (Trafficking Protocol).
[14] Proposal for a Council Framework Decision on Combating Trafficking in Human Beings (Framework Decision), DROPIEN 97; MIGR 90; 14216/01, December 3, 2001.
[15] The U.K. signed the Trafficking Protocol on December 14, 2000, but has not yet ratified it. The Framework Decision is in process of final revision at the E.U. level and should be adopted in 2002.
[16] Trafficking Protocol, article 3.

It is important to note that the footnote to this text states, "The *travaux preparatoires* should indicate that the Protocol addresses the exploitation of the prostitution of others and other forms of sexual exploitation *only in the context of trafficking in persons* [emphasis added]."[17]

The European Union proposal criminalizes trafficking "for the purpose of exploitation of that person's labour or services, including at least forced or compulsory labour or services, slavery or practises similar to slavery or servitude, or for the purpose of the exploitation of the prostitution of others or other forms of sexual exploitation, including pornography."[18]

Human Rights Watch is concerned that contrary to these regional and international commitments, the U.K.'s proposal for anti-trafficking provisions in its impending immigration legislation will criminalize only trafficking of persons for "sexual exploitation." The government's proposal to include a truncated definition of the crime in its immigration law excludes many trafficking victims—those trafficked for "forced labour, services, slavery or practices similar to slavery, servitude or the removal of organs"—leaving them without express remedy. If, as the U.K. government claims, this white paper is intended as a comprehensive overhaul of the asylum and immigration systems, it will fail to address trafficking abuses aimed at a range of asylum seekers and migrants[19] if it addresses only trafficking for the purpose of "sexual exploitation." Such a provision in the immigration law will be sorely out of step with current international thinking and evolving human rights standards in the area of combating trafficking.

Moreover, article 4 of the Trafficking Protocol requires the U.K. to "adopt such legislative and other measures as may be necessary to establish as criminal offences the conduct set forth in article 3 of [the] protocol, when committed intentionally," including trafficking into other forms of forced labor. So-called stop-gap measures such as those proposed in the white paper fail to meet this requirement.

Human Rights Watch recommends that a definition of trafficking that conforms with the definition in the Trafficking Protocol be adopted, that trafficking for all forms of forced labor be criminalized, and that adequate protections for all trafficked persons be enshrined in law.

III. Border Controls

Chapter Six of the white paper focuses exclusively on law enforcement efforts to target the problem of illegal migration "at source" (para. 6.1). Thus, many of the so-called border controls described in the paper operate in jurisdictions outside the U.K. in a manner designed to prevent asylum seekers and migrants from ever reaching U.K. territory. In the alternative, some of the border control measures involve refusal of entry into U.K. territory at a border and

[17] Ibid.
[18] Framework Decision, article 1.
[19] While it is noteworthy that the U.K. is eager to hold some traffickers accountable, the white paper fails to consider how restrictive asylum and immigration policies themselves can contribute to a rise in trafficking and smuggling. Many West European countries' historic "zero immigration" policies provided few legal routes for migration, leaving many asylum seekers and migrants to seek alternative illegal means for gaining entry to make an asylum claim or to live and work—in a variety of labor sectors in addition to the sex industry. See John Morrison and Beth Crosland, "The Trafficking and Smuggling of Refugees: The End Game in European Asylum Policy?" UNHCR Working Papers: New Issues in Refugee Protection, ISSN 1020-7473, April 2001.

immediate initiation of removal. All of these measures, however, implicate in some way the rights of the asylum seekers and migrants attempting to gain access to the U.K. Absent from the white paper is any mention of the substantive and procedural rights that the U.K. is obliged to comply with in the process of immigration control. Although they are presented in the white paper as if they are proposals, many of the border controls enumerated are currently in use and have thus given us ample time to gain information about their impact on the rights of asylum seekers and migrants.

a. Anti-Discrimination

The on-going use of visa regimes and pre-clearance procedures (para. 6.8) raises concerns about the possibility of discrimination in immigration management. The U.K.'s use of pre-clearance procedures in the Czech Republic in 2001 led to allegations by the Czech government and human rights organizations that the U.K. was discriminating against Czechs, Czech Roma in particular, in its bid to manage migration flows. The U.K. temporarily suspended the pre-clearance scheme in August 2001 amid the controversy, but renewed the program shortly thereafter.

Human Rights Watch is seriously concerned that the policies outlined in the white paper will perpetuate and expand aspects of U.K. immigration control that leave the government susceptible to charges of discriminatory treatment.

To partially address this concern, we urge the government to amend the Race Relations Act, which prohibits public authorities from discriminating on grounds of nationality or ethnic or national origins, so that it applies to immigration officials.[20] Moreover, the final version of the impending immigration legislation should include a general nondiscrimination provision in conformity with the U.K.'s international obligations and the European Union Race Equality Directive.[21]

b. Obstacles to the Right to Seek Asylum

The U.K.'s ongoing use of visa schemes; pre-clearance procedures; airline liaison officers abroad to determine the validity of travel documents; and various technologies to determine the presence of migrants in trucks, trains, and other vehicles are all designed to apprehend persons without valid documents and prevent them from entering the U.K. Moreover, the introduction of an "Authority to Carry" scheme (para. 6.12) would result in untrained private carriers essentially making immigration decisions, despite such decisions being the sole province

[20] Race Relations (Amendment) Act 2000. Persons with "relevant authorisation" are exempt from this prohibition. Immigration officers have been categorized as persons with relevant authorisation and are permitted to discriminate against certain groups based on the general exception to the prohibition against discrimination for certain acts in immigration and nationality cases (Section 19(D)).

[21] The Council of the European Union Directive 2000/43/EC (Race Equality Directive) implements the principle of equal treatment among persons irrespective of racial or ethnic origin. The directive, now part of the "acquis communautaire"—the body of law governing membership in the European Union—requires all member states to conform their legislation to implement the directive's anti-discrimination principles within three years. The directive prohibits direct and indirect discrimination in both the public and private sectors based on race or ethnic origin and applies to access to employment; vocational training and working conditions; membership in trade unions; social advantages; social security and health care; education; and to the provision of goods and services available to the public, including housing. The directive specifically includes third country nationals within its scope, notwithstanding a government's right to differential treatment based strictly and solely on legal status.

of the U.K. immigration service. As a result of these measures, asylum seekers may be prevented from exercising their right to seek asylum. As an example, the pre-clearance procedures in the Czech Republic described above had a particularly negative impact on Czech Roma seeking refuge from racist violence and the government's failure to protect them from discrimination and abuse. By prohibiting these asylum seekers from travelling, the U.K. effectively prevented people from exercising their right to seek asylum.[22]

Many of the 110 countries on which the U.K. currently imposes a visa regime have poor human rights records and have consistently produced large numbers of refugees. Visa regimes—and the expansion of the airline liaison officers scheme, which now operates in some twenty locations outside the U.K.—may have the severe effect of preventing asylum seekers from fleeing persecution—an effect that could amount to *refoulement*, a serious breach of the U.K.'s obligations under international law.[23]

The white paper should state categorically that no border control mechanism will unduly prejudice the right of an asylum seeker to lodge an asylum claim nor will attempts by asylum seekers to enter the U.K. with invalid documentation or in an illegal manner unduly prejudice the consideration of an asylum seeker's claim for recognition. Any new immigration legislation should reaffirm the U.K.'s commitment not to implement any measures that might result in the return of any person to a country where his or her life or freedom would be threatened on account of race, religion, nationality, membership of a particular social group, or political opinion.[24]

c. Migrants Rights

The U.K. enjoys the sovereign right to permit or prohibit entry to persons seeking access to its territories. However, all migrants have basic rights that must be observed in the procedures

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[22] See footnote 4 above. The 1951 Refugee Convention prohibits states from penalizing refugees who enter or are present in their territory without lawful authorization. This provision recognizes that refugees will often be forced to seek unlawful means to depart their countries of origin wherein they suffer grave persecution.

[23] According to UNHCR, article 33(1) of the Refugee Convention—the prohibition against *refoulement*—must be broadly interpreted to encompass a range of situations in which a refugee might be expelled to the frontiers of territories where his life or freedom would be threatened. The intent of article 33 (1) is "to prohibit any act of removal or rejection that would place the person concerned at risk. The formal description of the act—expulsion, deportation, return, rejection, etc.—is not material." See Sir Elihu Lauterpacht and Daniel Bethlehem, "The Scope and Content of the Principle of *Non-Refoulement*," UNHCR Opinion, June 20, 2001, para. 68. In situations where states are not prepared to grant asylum to persons with a well-founded fear of persecution, they must adopt a course that does not amount to *refoulement*. Thus, "rejection at the frontier, *as with other forms of pre-admission refoulement*, would be incompatible with the terms of Article 33(1)…As there is nothing in Article 33(1) of the 1951 Convention to suggest that it must be construed subject to any territorial limitation, such conduct as has the effect of placing the person concerned at risk of persecution, would be prohibited (emphasis added)," Ibid., paras. 82 and 83. Further, UNHCR opines that "the relevant issue will be whether it is a place where the person concerned will be atrisk [which] has wider significance as it suggests that the principle of *non-refoulement* will apply also in circumstances in which the refugee or asylum seeker is within their country of origin but is nevertheless under the protection of another Contracting State," Ibid., para. 114. Citing the Asian-African Refugee Principles and Organization of African Unity Convention, UNHCR states that article 33(1) would prohibit measures "which would result in compelling [a person seeking asylum] to return to *or remain in* a territory where they would be at risk (emphasis added)," Ibid., para. 118.

[24] The U.K. is obliged to observe the prohibition against *refoulement* as a result of its ratification of the 1951 Refugee Convention, its obligations under article 3 of the European Convention on Human Rights, and the prohibition against *refoulement* as a matter of customary international law.

used for immigration management.[25] The white paper recognizes that those persons who are trafficked are victims of a grievous human rights violation. It also acknowledges that many persons seeking asylum in the U.K. are fleeing situations of grave persecution and deserve protection. Likewise, the U.K. government is required by its international and regional obligations to ensure that undocumented migrants enjoy the substantive and procedural rights to which they are entitled. The white paper's exclusive focus on combating illegal immigration—without any recognition of the U.K.'s obligations with respect to undocumented migrants—reflects the prevailing official attitude that undocumented migrants live a "rightless existence."[26]

Contrary to this perception, undocumented migrants enjoy, at a minimum, the protection of the U.K. government against:

- arbitrary deprivations of life;
- summary expulsion without basic procedural guarantees;
- violations of liberty and security of person, including arbitrary detention;
- torture, and other cruel, inhuman, or degrading treatment;
- *refoulement*;
- forced labor, slavery or servitude;
- violations of liberty and security of person;
- conditions of detention that violate international standards;
- discrimination in the administration of justice or in administrative procedures;
- arbitrary or unlawful interference with their privacy, family, home or correspondence;
- racist and xenophobic violence;
- prohibitions on freedom of expression, assembly, association, and religion;
- labour rights violations.

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[25] The U.N. Human Rights Committee's General Comment No. 15, "The Position of Aliens under the Covenant," states that once an alien is on the territory of a member state, he enjoys most of the rights guaranteed by the ICCPR without discrimination based on nationality or statelessness:

> 1.) Reports from States parties have often failed to take into account that each State party must ensure the rights in the Covenant to "all individuals within its territory and subject to its jurisdiction" (article 2, para.1) In general, the rights set forth in the Covenant apply to everyone, irrespective of reciprocity, and irrespective of his or her nationality or statelessness.
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> 2.) Thus, the general rule is that each one of the rights of the Covenant must be guaranteed without discrimination between citizens and aliens. Aliens receive the benefit of the general requirement of non-discrimination in respect of the rights guaranteed in the Covenant, as provided for in article 2 thereof. This guarantee applies to aliens and citizens alike. Exceptionally, some of the rights recognized in the Covenant are expressly applicable only to citizens (article 25), while article 13 applies only to aliens. However, the Committee's experience in examining reports shows that in a number of countries other rights that aliens should enjoy under the Covenant are denied to them or are subject to limitations that cannot always be justified under the Covenant.

See United Nations Human Rights Instruments, *Compilation of General Comments and General Recommendations adopted by Human Rights Treaty Bodies*, HRI/GEN/1/Rev.4, February 7, 2000, p. 127.

[26] See Jesuit Refugee Service (JRS), *Irregular Immigration in Europe: New Empirical Studies*, Brussels, February 27, 2001. Despite the international and regional human rights commitments of West European governments, the JRS studies conclude that undocumented migrants "lead a 'rightless existence' without the basic protection of criminal or civil law and with no legal avenues by which to assert an entitlement to just or humane treatment," Ibid., Conclusions, p. 1.

The white paper reflects a shift in thinking about the possible benefits of migrant labor and what value migrants can bring to the U.K. Likewise, the white paper should recognize that the U.K. has a range of basic responsibilities and obligations toward all migrants—regardless of their status.