

# Our human rights strategy and programme of action

2009–2012



Equality and  
Human Rights  
Commission

# Contents

**01** Foreword

**03** Introduction and summary

**08 Chapter 1**

Human rights – our story so far

**15 Chapter 2**

Human rights – past, present  
and future

**22 Chapter 3**

Our vision, priorities and  
programme of action

# Foreword

**As chair of the Equality and Human Rights Commission (the Commission) I am extremely proud to now have the status of chair of Britain's first UN-accredited National Human Rights Institution.**

This important development marks a fresh chapter in Britain's rich human rights story. The principles which continue to provide the essential character of the relationship between individuals and the state in modern, open, democratic societies – fairness, respect, equality, dignity and autonomy – have been developed and enriched in Britain over the centuries.

Almost 800 years ago, the Magna Carta defined civil and political rights, including *habeas corpus*, which still protects our freedom today. In the wake of the atrocities of the Second World War, British lawyers played a central role in drafting the European Convention on Human Rights (ECHR). The ECHR was finally brought into British law by the Human Rights Act of 1998, meaning British citizens would no longer need to petition Strasbourg to protect their rights but could do so in British courts, so

'bringing human rights home'. Most recently, this year the British Government ratified the first international human rights treaty of the 21st Century – the UN Convention on the Rights of Persons with Disabilities – re-affirming disabled people's human rights and committing to make those rights a reality.

This strategy and programme is our response to the recommendations of the Commission's Human Rights Inquiry which we published in April 2009 and sets out the role we intend to play in writing the next chapter of Britain's human rights story.

We do so in the face of a number of tough challenges: a lack of leadership in recent years to transform human rights into everyday realities; the security climate post 9/11 which has threatened even our most ancient liberties; widespread misrepresentation of the purpose and impact of our human rights law; the likely pressures on public expenditure over the coming decade; and the complacency which leads people to assume human rights abuses are what happen in faraway places, not in 21st Century Britain.

But there are major opportunities too. Our Human Rights Inquiry gave much reason for optimism. It showed how human rights can fortify individuals to challenge bureaucracies, shifting the balance of power between individuals and public authorities; how they can empower people to participate more fully and effectively in decisions that affect their lives; and how they help public officials to design policies that are more respectful of the most vulnerable people in their care. And, most of all, it is encouraging to discover such overwhelming support for human rights in Britain. Over 80 per cent of the public recognise the importance of human rights in creating a fair and equal society with decent public services.

Our challenge is to harness these opportunities and to address the challenges faced in order to create a new, positive approach to human rights in Britain today. Doing so demands that the value of human rights are fully recognised in what Eleanor Roosevelt famously referred to as ‘those small places, close to home’, making a clear difference to the quality and dignity of everyday lives. It requires that our approach to human rights is concerned not only with freedom from abuse but equally about the pursuit of expanding people’s freedom to flourish. And while our principal objective must remain that of ensuring that the state discharges its duties to protect, promote and respect human rights, we recognise

that creating a culture of respect for human rights demands that these enduring principles also instruct the relationships between each and every one of us, as values we share with one another, as well as rights we claim for ourselves.

This is a noble task. And it is one that we will not fulfil working alone. We invite all political parties, stakeholders and the wider public to work together with us to develop and implement this strategy and in doing so realise the historic promise offered by a revived culture of human rights in Britain.



**Trevor Phillips**  
Chair,  
Equality and Human  
Rights Commission

# Introduction and summary

## **The purpose of our human rights strategy**

This strategy sets out how we plan to use our powers to discharge our human rights duties in the period 2009–2012. In doing so it also sets out how we will respond to the recommendations of our Human Rights Inquiry which was published in April 2009. We welcome feedback on the strategy and look forward to discussing with interested parties the most effective way to implement its aims, objectives and proposed actions.

## **Who we are**

The Equality and Human Rights Commission is a National Human Rights Institution (NHRI), with ‘A status’ accreditation from the United Nations (UN). As an independent statutory body with regulatory powers, established under the Equality Act 2006, our general duty is to encourage and support the development of a society in which:

- people’s ability to achieve their potential is not limited by prejudice or discrimination
- there is respect for and protection of each individual’s human rights

- there is respect for the dignity and worth of each individual
- each individual has an equal opportunity to participate in society, and
- there is mutual respect between groups based on understanding and valuing of diversity and on shared respect for equality and human rights.

## **Our responsibilities to protect and promote human rights**

With respect to human rights, the Commission’s duties are to:

- promote understanding of the importance of human rights
- encourage good practice in relation to human rights
- promote awareness, understanding and protection of human rights
- encourage public authorities to comply with section 6 of the Human Rights Act 1998 (c. 42) (compliance with Convention rights)
- monitor the effectiveness of laws relating to equality and human rights and monitor and report progress towards identified desired outcomes.

### **Britain's first National Human Rights Institution**

In January 2009, the Commission became the first statutory body in Britain to be awarded with UN accreditation as an 'A status' NHRI.

In order to achieve accreditation, NHRIs must be compliant with the Paris Principles (the principal source of normative standards for NHRIs). The Commission was rigorously assessed according to a variety of well-established criteria including composition and guarantees of independence and pluralism; having a mandate and resources to effectively protect and promote human rights; and our work in the following areas:

- encouraging ratification of international human rights instruments
- engagement with the international human rights system
- co-operation with other NHRIs.

It was a great honour to achieve international recognition for our human rights role and to join the family of 68 A accredited NHRIs around the world. Accreditation gives us a formal role in the UN system including with respect to UN Treaty Monitoring and the UN Human Rights Council.

### **Scotland**

In Scotland, the Commission shares its human rights responsibilities with the Scottish Human Rights Commission which is responsible for human rights issues falling within the remit of the Scottish Parliament. The Commission can deal with these issues with the consent of the Scottish Human Rights Commission. The two Commissions have a memorandum of understanding to ensure that we work together in the best way possible.

### **Our powers**

The Commission has extensive legal powers, which can be used to protect and defend human rights through a range of tools. They include:

- to advise central government about the effectiveness of any of the equality and human rights enactments and to recommend amendment, repeal, consolidation etc. of any of the equality and human rights enactments (Equality Act, s.11 (2))
- to co-operate with persons interested in human rights within the UK or elsewhere, including the voluntary and community sector (Equality Act, s.18)
- conducting an inquiry into any matter related to equality and diversity, human rights or good relations between protected groups and report on its findings (Equality Act, s.16)

- for the purposes of an inquiry, investigation or assessment, to require any person to provide information, produce documents or give oral evidence (Equality Act, Schedule 2, para. 9–14)
- to bring own-name proceedings, including judicial review proceedings, and/or to intervene in proceedings relevant to its equality or human rights functions (Equality Act, s.30)
- to institute legal proceedings, including judicial review proceedings, relevant to a matter within the Commission’s functions (Equality Act, s.30). In pursuance of any of its duties under sections 8–10 to make grants (including grants for legal projects) to other organisations (s.17).

### **A fresh vision for human rights in contemporary Britain**

Too often, human rights have been narrowly misrepresented as engaged only with matters of individual liberty. The Commission’s mandate – to promote equality, human rights and good relations – offers us the opportunity to talk about rights in entirely different terms, in line with the Universal Declaration of Human Rights and the values and standards that we are charged with promoting as a human rights institution.

Respect for human rights is essential to the functioning of an open democracy and human rights underpin all of our equality and good relations work. Human rights principles provide a basis from which to build and maintain a safer, more prosperous, cohesive society, with care and consideration for the dignity and wellbeing of everyone at its heart.

It is the state which must retain ultimate responsibility for respecting, protecting and promoting human rights. However, the Commission believes that future success rests on inculcating a common sense of ownership and responsibility for human rights across the public and private sectors, the media, civil society and its institutions.

The Commission’s vision for human rights is of a Britain in which:

- there is a dignified life for everyone
- people’s freedom and opportunities to achieve their life goals are progressively expanded and are unhindered by prejudice, discrimination or arbitrary restraint
- human rights are recognised as values we share with one another, as well as rights we claim for ourselves, helping to build a more cohesive, civilised and fair society.

### **What we aim to achieve – five key outcomes**

By 2012 the Commission wishes to have achieved the following key outcomes:

- no regression in law from the levels of human rights protection and mechanisms for enforcement under the Human Rights Act and other ratified human rights treaties
- widespread awareness and accurate understanding of human rights at all levels of society, including how they can be used by individuals and applied by public, private and voluntary organisations
- human rights mainstreamed into the work of at least five of the most significant regulators, inspectorates and complaints handling bodies
- to have developed a credible and widely utilised measurement framework for human rights and to have reported against this framework in our Triennial Review – the Commission’s three-yearly report to parliament about the state of equalities and human rights in Britain
- to have clearly influenced the concluding observations of the Treaty Monitoring Bodies for the UN Conventions on the Elimination of All Forms of Racial Discrimination, against Torture and Other Cruel,

Inhuman or Degrading Treatment and on the Rights of Persons with Disabilities concerning Britain’s performance on respecting, protecting and promoting human rights.

### **What we will do**

The Commission will place promoting human rights at the forefront of its work and will mainstream consideration of human rights throughout all of its activities. The Commission will also use its statutory powers and resources to:

- **Promote awareness, understanding and respect for human rights domestically and internationally** – we will work to ensure widespread awareness and accurate understanding of human rights among those with rights or responsibilities, their advisers and advocates, and across the political spectrum and the media.
- **Translate human rights principles into the everyday practice and behaviours of public, private and voluntary institutions** – we will work to ensure public, private and voluntary institutions have access to practical, sector-specific advice on how to translate human rights law and principles into everyday policy, practices and behaviours.

- **Measure compliance with existing domestic human rights law and progress towards implementation of non-justiciable human rights, including social, economic and cultural rights** – we will establish credible and influential methodologies by which to measure the performance of government, public, private and voluntary sector organisations in protecting and promoting human rights.
- **Hold accountable government, public bodies and other institutions for their performance on protecting and promoting human rights** – we will build a stronger framework of ‘top down’ and ‘bottom up’ accountability for government, public authorities and others concerning their performance on human rights.
- **Intervene to protect and promote human rights, using our legal powers** – acting as custodians of human rights, we will ensure that human rights are protected and promoted, including through challenging breaches and influencing the development of law.
- **Advising government on the effectiveness of existing or proposed human rights law, and on the compatibility of wider policy or legislative proposals with human rights** – we will work to ensure there is no regression from the levels of human rights protection and mechanisms for enforcement under the Human Rights Act and to ensure the compatibility of future policy and legislative proposals with human rights law and principles.

Our objectives and programme under each of the above headings are detailed in Chapter 4.

To achieve these goals, the Commission will continue to develop its own capabilities as a National Human Rights Institution.

# Chapter 1

## Human rights – our story so far

### Introduction

The Commission opened for business on 1 October 2007. This chapter highlights some of the key human rights focused achievements of the Commission on which this strategy builds.

### Our Human Rights Inquiry

The Commission's Human Rights Inquiry was launched on 21 April 2008 and was chaired by Dame Nuala O'Loan<sup>1</sup> with the support of Commissioners Dr Francesca Klug, Sir Bert Massie and Dr Neil Wooding.

Trevor Phillips, chair of the Commission described the rationale for the Human Rights Inquiry as follows:

'We wanted to get past the hubbub of media rhetoric, in which the supporters and opponents of human rights shout loudly from the margins, to uncover the facts about what the people of Britain really think about human rights and how

the Human Rights Act has made a genuine difference in the day-to-day lives of many.'<sup>2</sup>

The remit of the inquiry was to identify:

- how public services used the human rights approach to plan and deliver services and whether this has improved outcomes for both service users and staff
- the barriers public authorities have encountered in adopting a human rights approach
- how best to progress the human rights agenda forward and what role the Commission should play in the process.

In total 2,855 people provided evidence to the inquiry between April and December 2008. The evidence came from many sources: the voluntary and community sectors, central and local government, politicians, public sector bodies including the NHS, advice agencies, the media, and regulators, ombudsmen and inspectorates.

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<sup>1</sup> Formerly Police Ombudsman in Northern Ireland, with responsibility for investigations of alleged police wrongdoing. She is currently Ireland's Special Envoy for Conflict Resolution to Timor Leste, and for UN Security Council Resolution 15, Women, Peace and Security. She is also conducting a review for the UK Border Agency of allegations made by people being detained or deported.

<sup>2</sup> From the Foreword to the Commission's Human Rights Inquiry, April 2009.

The findings of the Human Rights Inquiry form the background to our strategy. The inquiry identified a number of opportunities and challenges, which are reflected on in the next chapter. The Human Rights Inquiry also identified a number of action points for the Commission. These have been incorporated into the Commission’s work programme, as set out in this strategy.

The recommendations of the Human Rights Inquiry are included in the appendix.

### **Our role in the international human rights system**

As Britain’s first accredited National Human Rights Institution, the Commission is committed to working with the full range of European and international institutions which enhance our domestic human rights protections.

### **United Nations Human Rights Treaties**

The UK has ratified seven of the eight UN human rights conventions (see 3.3 for details). The UK government has to submit regular national reports to the relevant treaty body<sup>3</sup> for each convention on measures they have taken to comply with treaty obligations.

The Commission helps promote UK treaty compliance by:

- drafting shadow reports to develop the knowledge of treaty bodies about human rights in the UK
- pre-briefing treaty body committee members before the state’s examination
- being present and contributing to discussion (in cases where NHRIs are granted speaking rights) during the state’s examination at the UN
- promoting the UK’s adherence to the concluding observations issued by the treaty body.<sup>4</sup>

### **United Nations Human Rights Council**

Our accreditation allows us to have speaking rights at the Human Rights Council (HRC) and the right to submit written reports, which are then archived under the ‘UN symbol for international access’. NHRIs are also encouraged to work with UN Special Rapporteurs and mandate holders such as the Special Rapporteurs on Violence Against Women and Business and Human Rights.

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<sup>3</sup> A ‘treaty body’ is a committee of independent experts, appointed to monitor the implementation across the world of the human rights provisions contained in the various human rights treaties.

<sup>4</sup> Concluding observations are essentially recommendations for further action needed by the government (for example, calling for more funding for rape crisis centres as part of the UK’s obligations under Convention for the Elimination of Discrimination Against Women, or for better protection for asylum seeking children under the Convention on the Rights of the Child).

### **Council of Europe (CoE)**

The Commission works closely with the Council of Europe’s human rights mechanisms that have direct relevance to our work, particularly the European Court of Human Rights in Strasbourg (ECtHR).<sup>5</sup> We submitted our first intervention in a case before the ECtHR in 2009, concerning the rights of parents with learning disabilities to have their interests properly represented in the UK courts in care proceedings. Since then we have been granted leave to intervene in eight other cases before the ECtHR involving issues about housing, immigration, family law, employment issues, and the right to a fair trial. The Commission is also starting to play a key role in ensuring that human rights judgments are properly and expeditiously implemented and we are also playing a part in discussions at the CoE about reform of the Court – an urgent process if the right of individual petition is to endure in the future.

### **European Union**

Human rights principles are embedded in the founding Treaty of the European Union (TEU). Article 6 of the TEU makes specific reference to human rights and obliges the EU to respect the rights guaranteed by the ECHR. These rights have been further enforced by the adoption of a Charter of Fundamental Rights.

The Commission works with EU partners such as the European Union Agency for Fundamental Rights (FRA) to share knowledge and best practice on human rights.

### **Co-operation with other NHRIs**

The Commission is an active member of the International Co-ordinating Committee for NHRIs (known as the ICC) which aims to promote the work of NHRIs within the UN system and at regional and local level. We have taken part in ICC side events at the UN and we are contributing to the ICC’s issue specific working groups. We have welcomed colleagues from partner NHRIs around the world to London to exchange best practice, and have close and productive working relationships with the Northern Ireland and Scotland Human Rights Commissions.

### **Promoting awareness, understanding and respect for human rights domestically and internationally**

We have:

- disseminated the findings of our Human Rights Inquiry to over 28,000 individuals working in the public sector
- published and disseminated a guide ‘Ours to own: Understanding human rights’ to explain in an accessible way what human rights mean in everyday life and why they are important

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<sup>5</sup> In addition to our work monitoring UK compliance with CoE conventions such as the European Convention Against Racism and Intolerance (ECRI); the Framework Convention on National Minorities; and the Convention on Human Trafficking.

- launched a website 'hereforeveryone.com' presenting human rights in an easy, accessible and people orientated manner
- marked the 60th anniversary of the Universal Declaration of Human Rights with a series of events, including a reception with Prime Minister Gordon Brown, a series of lectures and events in partnership with the British Library as part of its 'Taking Liberties' programme and in Wales the publication of 'Human Writes' – short stories by several authors concerning the importance of human rights to people's everyday lives in Wales
- made our first ever written and oral submissions to the UN Human Rights Council in 2009, and organised a side event at the September session of the Council highlighting the findings of our Human Rights Inquiry
- spoke about the importance of tackling all forms of racial and religious discrimination at the follow up conference to the UN World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance in April 2009
- held a conference for disabled people's organisations on the UN Convention on the Rights of People with Disabilities (CRPD)

- funded Media Trust to develop 'Reporting Human Rights' – a best practice guide to help journalists respond to reporting on the complex issue of equality and human rights.
- dealt with over 2,300 calls to our helplines on human rights issues since October 2007, with the number of calls steadily increasing.

**Translating human rights principles into the everyday practice and behaviours of public, private and voluntary institutions**

We have:

- with Public Service Management Wales delivered two human rights summits involving 300 representatives from the private, public and voluntary sectors to explore and share the benefits of adopting a human rights approach to plan and deliver services
- published an influential report proposing a fresh approach to care and support based on equality and human rights called 'From safety net to springboard' and pursued its recommendations via the Government's Care and Support Green Paper
- supported the development, publication and roll out by Action on Advocacy of a training toolkit for independent advocates working in the health and social care sectors.

### **Measuring compliance with the law and progress towards the full implementation of the human rights framework**

We have:

- worked with the Government Equality Office to develop an ‘Equality Measurement Framework’ based on human rights principles. This framework is being developed further to include additional human rights measures
- conducted a Human Rights Inquiry
- commissioned a critical review of human rights in Britain since the Human Rights Act 1998 which looked at evidence from evaluations of the implementation of the Human Rights Act in public services
- commissioned an evaluation of the impact of selected cases under the Human Rights Act on public services provision
- commissioned a case study review of the impact of a human rights culture on public sector organisations
- commissioned a study into the role and experience of inspectorates, regulators and complaints-handling bodies in promoting human rights standards in public services
- commissioned a survey of public perceptions of human rights by Ipsos MORI Social Research Institute.

### **Holding accountable government, public bodies and other institutions for their performance on protecting and promoting human rights**

We have:

- submitted influential parallel reports, oral briefings and attended sessions on the four international human rights treaties under which the UK government was examined in 2008–09 – the International Covenant on Civil and Political Rights (ICCPR), the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), the Convention on the Rights of the Child (CRC) and the International Convention on Economic, Social and Cultural Rights (ICESCR)
- submitted our first statement to the UN Human Rights Council, highlighting how we use the international human rights framework to advance gender equality in Britain.
- worked to promote ratification of the CRPD and its Optional Protocol, without reservations, including written evidence to the Joint Committee on Human Rights and direct engagement with ministers
- held a Westminster parliamentary seminar to mark ratification of the CRPD on 8 June 2009 where the minister for disabled people and the main political party spokespeople on

disability set out their commitments to implement the Convention

- presented written and oral evidence to the Joint Committee on Human Rights' inquiry on business and human rights and participated in the Ministry of Justice's steering group on the private sector and human rights.

### **Intervening to protect and promote human rights, using our legal powers**

The Commission made submissions concerning the following cases:

- ***Secretary of State for Defence v R and HM Assistant Deputy Coroner for Oxfordshire and Equality and Human Rights Commission*** – The Ministry of Defence now has to provide proper protection to soldiers serving overseas as a result of this ruling. The Court of Appeal confirmed that armed forces serving overseas are protected by the ECHR and the Human Rights Act.
- ***Van Colle v Chief Constable of Sussex Police*** – The House of Lords decided that Article 2 of the ECHR imposes a positive obligation on public authorities, including the police force, to take steps to protect a person's life. The Court found there will be a breach of that obligation if authorities knew of a risk to someone's life and failed to take steps to avoid that risk.

- ***R(JL) v Secretary of State for Home Department*** – As a result of this case, independent and effective investigations must now be carried out following a near death in custody. Such investigations should result in preventative action being taken in future.
- ***R(RJM) v Department of Work and Pensions*** – Homeless people are now covered by Article 14 of the ECHR as homelessness is now a protected status under the Convention. Any discrimination in the enjoyment of rights under the Human Rights Act on the ground of homelessness must be justified.
- ***N & G v Secretary of State for Health and Nottinghamshire Healthcare Trust*** – People with mental health conditions are now protected from discrimination by the ECHR as a result of this Court of Appeal ruling. The Commission intervened in the case to argue that people detained under the Mental Health Act should be afforded the same protection as others under Article 14 of the Convention. The ruling will help to ensure that disabled people have the same human rights as others.

- ***Weaver v London Quadrant Housing Trust*** – Many social housing tenants are now protected by the Human Rights Act after this landmark ruling. The Court found that some registered social landlords will now be treated as public authorities and subject to the Human Rights Act. This means they are required to have regard for a tenant’s human rights when deciding whether to make an eviction order.
- publicly opposed the provisions allowing a temporary extension of pre-charge detention limits to 42 days in the counter-terrorism bill, on the grounds that they could be contrary to human rights law and breach the Race Relations Act.

**Advising government on the effectiveness of existing or proposed human rights law, and on the compatibility of wider policy or legislative proposals with human rights**

We have:

- campaigned to protect the human rights of people living in privately run residential care homes, helping to secure recognition in the Health and Social Care Act 2008 that organisations providing ‘accommodation, together with nursing or personal care, in a care home’ are to be considered as public authorities with obligations under the Human Rights Act

# Chapter 2

## Human rights – past, present and future

‘What is it that all these wage-earners, skilled artisans, soldiers and tillers of the soil require, deserve, and may be led to demand? Is it not a fair chance to make a home, to reap the fruits of their toil, to cherish their wives, to bring up their children in a decent manner and to dwell in peace and safety, without fear or bullying or monstrous burdens or exploitations, however this may be imposed upon them? That is their heart’s desire. That is what we mean to win for them.’

**Winston Churchill**

### **Introduction**

In this chapter we look at our human rights inheritance in Britain and at the existing and future challenges our strategy will have to address to be effective.

### **Britain’s leading role in defining and defending human rights**

Britain has a rich history of defending freedom: from the Magna Carta signed nearly 800 years ago limiting the absolute power of the monarch and upholding

individual liberty and justice; the first bill of rights in 1689 prohibiting torture; Britain’s role in drafting the ECHR after the Second World War; and the Human Rights Act of 1998, domesticating much of the ECHR and allowing people to bring human rights cases in UK courts. Human rights continue to be at the heart of British identity and tradition. This enduring culture explains why, in Britain today, 80 per cent of us say we support human rights values.<sup>6</sup>

### **The UN Declaration of Human Rights and the European Convention on Human Rights (ECHR)**

Though human rights have evolved over many centuries, they achieved strong international support following the Second World War and the Holocaust. To protect future generations from a repeat of these horrors, the UN adopted the Universal Declaration of Human Rights in 1948.

For the first time, the Universal Declaration set out the fundamental rights

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<sup>6</sup> Ipsos MORI, 2009.

and freedoms shared by all human beings. These rights and freedoms – based on core principles like dignity, equality and respect – inspired a range of international and regional human rights treaties.

They formed the basis for the ECHR in 1950. The ECHR, which British lawyers played a central role in drafting, protects the human rights of people in countries that belong to the Council of Europe, including the UK.

Until relatively recently, people in the UK had to complain to the European Court of Human Rights in Strasbourg if they felt their rights under the Convention had been breached. The Human Rights Act 1998 made these human rights part of our domestic law and now courts here in the UK can hear human rights cases.

### **The UK's ratification of international human rights treaties**

The UN human rights treaties are at the core of the international system for the promotion and protection of human rights. Every UN member state is a party to one or more of the eight major human rights treaties. It is a universal human rights system which applies to every child, woman or man in the world. The UK has ratified seven of the UN's international human rights treaties:

- International Convention on the Elimination of All Forms of Racial Discrimination 1965, UK: 1969

- International Covenant on Civil and Political Rights 1966, UK: 1976
- International Covenant on Economic, Social and Cultural Rights 1966, UK: 1976
- Convention on the Elimination of All Forms of Discrimination against Women 1979, UK: 1986
- Convention against Torture and Other Cruel, Inhuman or Degrading Treatment 1984, UK: 1988
- Convention on the Rights of the Child 1989, UK: 1991
- Convention on the Rights of Persons with Disabilities and its Optional Protocol 2008, UK: 2009.

Ratification of these treaties indicates the state's consent to be bound to a treaty and to enact the necessary legislation and other steps to give domestic effect to that treaty.

### **The Human Rights Act 1998**

The Human Rights Act 1998, which came into force on 2 October 2000, made the human rights in the ECHR part of our domestic law. It applies to all public bodies within the UK, including central government, local authorities, and bodies exercising public functions. It also includes the courts. It does not include parliament when it is acting in its legislative capacity, though all new pieces of legislation must be human rights-proofed before being passed into law.

## **Human rights and national security**

The Human Rights Act had been in force for less than a year when Al Qaeda terrorists murdered almost 3,000 people in the US on 11 September 2001. Faced with the risk of such events repeating themselves, as they have done so in Bali, Madrid, London and Mumbai, it is understandable that governments around the world would respond by prioritising and revising their approach to protecting the lives and security of their citizens. In the US, Britain and other countries around the world, the response involved security measures designed to make it easier to capture, detain and interrogate suspected terrorists. Some of the measures proposed in Britain – such as 90 day and later 42 day detention of terror suspects – were in direct conflict with fundamental human rights principles, not least the principle of *habeas corpus*, while other proposals implied relaxation of the right to live free from inhuman and degrading treatment including from torture. The newly created Human Rights Act was portrayed by some people in positions of power and influence as an obstacle in Britain's efforts to overcome this new breed of terrorism. Sadly, this perception appears more than anything to have coloured perceptions of the Human Rights Act. An Ipsos MORI poll in 2008 found that 42 per cent of the British public believed it benefits only 'terrorists and criminals'.

In his inauguration speech, President Barack Obama signalled a way forward from the post 11 September environment when he said 'we reject as false the choice between our safety and our ideals'. The new US administration gives cause for optimism. But the Commission faces a considerable task in healing the wounds inflicted on human rights in Britain over the last decade.

## **Myths and misrepresentation**

The Human Rights Act is arguably among the most misrepresented pieces of legislation in Britain today. A piece of law embodying ancient British laws, beliefs and traditions, and with the express aim of making all our lives better has instead come to be characterised as a threat to our way of life. Although misquoted and misunderstood, many continue to attack the legitimacy of the Human Rights Act 1998.

Over the course of the Commission's Human Rights Inquiry, many witnesses, from ministers to NGOs, expressed concerns about the one-sided, negative and sometimes inaccurate portrayal of human rights and the Human Rights Act. Some of the more common – and easily refuted – myths about human rights include:

- human rights place the rights of prisoners above those of the 'average person'

- individual human rights are eroding our communities
- human rights are something Europe has imposed on us.

Even the quickest glance at these myths shows that they are not founded. Human rights protect the rights of everyone, and balance the rights of individuals with the needs of the community. People in prison or terrorists do not have any ‘extra rights’ or the right to abuse and harm other people. Human rights provide a way of balancing the rights of all groups and communities to ensure that people are treated appropriately, and that the rights of one group do not supersede the rights of another group. Human rights are not foreign to Britain or imposed upon us. From the Magna Carta in 1215 through to the Human Rights Act 1998, human rights concepts have been a central part of British culture. And over 80 per cent of the public recognise the importance of these rights.

However, a recent poll commissioned by the Ministry of Justice found that 64 per cent of the British public developed their knowledge of human rights and the Human Rights Act via the media,<sup>7</sup> which is especially worrying when seen against the backdrop of the sometimes biased information provided.

In the last few years however, a new, more accurate and sympathetic narrative has begun to develop around human rights

particularly in the media. This is based on a fundamental sympathy among many audiences where human rights are seen to protect the rights of an individual against what are seen as often unresponsive government and broader public sector organisations. Examples include a broad media welcome for the European Court of Human Rights victory in the case of innocent individuals having their data kept on the DNA database; personal privacy and the rights to a family life; people living in care homes having their rights protected under the Human Rights Act and the case of Jason Smith, the soldier who died of hyperthermia while on service in Iraq. Such narratives show that with the correct engagement a more positive story around human rights is possible.

The Commission will seek to build the ‘case’ for human rights by using such instances as well as giving accurate, timely and considered responses where the Act is being ‘blamed’ for decisions and actions to which it is either unconnected or not responsible.

### **It couldn’t happen here...?**

It is often assumed that human rights abuses happen in faraway places with despotic leaders and totalitarian regimes. But abuses of human rights also occur in democracies such as the UK, often in what Eleanor Roosevelt referred to as ‘those small places, close to home’. Those abuses

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<sup>7</sup> Ministry of Justice, 2008. Human Rights Insight Project, page 7.

take place whenever people are not treated with the dignity and respect that everyone, irrespective of age, disability, gender, gender identity, race, religion or belief, or sexual orientation, deserves.

Consider these recent examples from everyday life:

- A couple, married for 65 years, were separated when the local authority refused to move them into the same care home – a decision they described as ‘heartbreaking’.<sup>8</sup>
- A disabled woman was knowingly left in unsuitable accommodation by her local authority for 20 months, confined to one room and unable to use the toilet.<sup>9</sup>
- After a man was the victim of a serious assault witnessed by several people, the Crown Prosecution Service decided not to prosecute the perpetrators. The reason given was that the victim had a mental health condition and was judged to be unable to give credible evidence.<sup>10</sup>
- A woman was arrested and convicted of a criminal offence for reading out the names of soldiers who died in Iraq outside 10 Downing Street.<sup>11</sup> A man was arrested and fined for reading out the names of Iraqi civilians who died during the conflict near the Cenotaph.<sup>12</sup>
- A 16 year-old was forced by her family to enter into a marriage she did not want to a man she had never met.<sup>13</sup>
- Curfews in some areas prevented law-abiding young people from going out at night.<sup>14</sup>

The Commission must work to build understanding of the relevance and potential significance of human rights in these everyday situations.

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<sup>8</sup> <http://www.telegraph.co.uk/finance/personalfinance/2932005/Local-councils-ignore-rights-by-splitting-couples.html> Respect for the right to private and family life would prioritise keeping couples and families together.

<sup>9</sup> In the case of *‘Bernard’ vs LB Enfield* the council had a positive obligation to secure her dignity and integrity; its failure to act without undue delay was a breach of Article 8 and the court awarded £10,000 damages.

<sup>10</sup> *R (B) v Director of Public Prosecutions* (Equality and Human Rights Commission intervening) [2009] EWHC 106 (Admin); [2009] WLR (D) 25.

<sup>11</sup> ‘Acts of defiance against war turned ordinary people into criminals’, *The Independent*, 8 December 2005, <http://www.independent.co.uk/news/uk/crime/acts-of-defiance-against-war-turned-ordinary-people-into-criminals-755233.html>

<sup>12</sup> ‘Peace campaigner fined for Whitehall protest’, Matthew Tempest, *The Guardian*, 12 April 2006, <http://www.guardian.co.uk/politics/2006/apr/12/iraq.iraq>

<sup>13</sup> ‘3000 women a year forced into marriage in UK, study finds’, Jo Revill and Anushka Asthana, *The Guardian*, 8 March 2008.

<sup>14</sup> See legal case defended successfully by Liberty available at <http://www.liberty-human-rights.org.uk/issues/young-peoples-rights/curfews/index.shtml>

### **Improving services, improving lives**

Human rights are not only useful when injustices occur. They have a dual purpose – to protect us from harm but also to empower us to fully realise our lives.

Our Human Rights Inquiry heard how human rights had helped organisations to improve the public services they provide, and individuals to effect change:

- A nurse using a human rights approach to challenge management decisions about how patients ought to be treated.
- Schools introducing a human rights approach to education witnessing an improvement in behaviour and a notable decrease in bullying and school exclusions.
- A disability coalition using human rights arguments to negotiate a disabled man's return to college, with adequate provision made for his needs.
- A same-sex partner using human rights to get 'nearest relative' status and therefore avoid being evicted from her home by her landlord upon the death of her partner.

The Commission will find ways to collect such examples and to inspire others concerning the potential of human rights to transform services, their own lives and the lives of others.

### **A new bill of rights?**

In the UK there have been renewed calls for a new constitutional settlement supported by all the mainstream political parties and, as part of this, a proposal for a new bill of rights. The current Labour Government has published a Green Paper on a bill of rights and responsibilities, and the Conservative Party has pledged to scrap the Human Rights Act and replace it with a 'British bill of rights' if it is elected to Government in 2010.

On the one hand, this opens up a potential opportunity to reposition the debate about human rights in Britain, especially as the public look for better ways to build on the provisions of the Human Rights Act to keep institutional power in check following recent scandals which have discredited parliament and some public services. On the other, we will need to be vigilant in order to ensure rights won through centuries of struggle are not sacrificed in the pursuit of short-term political gain. The Commission's response to any future proposals will be built on the following principles:

1. Any bill of rights should not weaken the levels of human rights protection and mechanisms for enforcement, including guidance, under the Human Rights Act and other ratified human rights treaties.

2. The Government and any future government should ensure that the process of developing a bill of rights involves and includes all sectors of society, that the process and result creates a feeling of ownership in society as a whole, that the consultation is conducted by an independent body and that the process is adequately resourced.
3. In a bill of rights process, the government should actively promote understanding of the Human Rights Act and the ECHR, including the rights it protects as well as countering any misconceptions.
4. The Commission will provide leadership in the bill of rights process by actively safeguarding the minimum standards provided by the Human Rights Act, ensuring compliance with obligations under international treaties and promoting better understanding of existing human rights.
5. The Commission will use the results and recommendations from its Human Rights Inquiry to inform its response to the bill of rights and further develop the current human rights framework.

### **The need for strong leadership**

What is clear is that an institutional vacuum in leadership on human rights has allowed often very negative characterisation to overwhelm the many positive benefits that having a domestic human rights law has brought and can continue to bring.

The Commission's task is to forge a new consensus on the value and purpose of human rights in Britain. We will need to work hard to correct inaccuracies and re-balance the debate. Human rights must make sense to people in their everyday lives, and providers of public services need to be clear about the practical implications of making rights a reality.

We will work hard to ensure human rights are widely valued, but in doing so we will not shirk our responsibility to promote and protect the human rights of marginalised or unpopular groups.

# Chapter 3

## Our vision, priorities and programme of action

### Introduction

This chapter sets out the Commission's vision, aims and objectives for human rights and what we are going to do to achieve them over the next three years.

### Our vision

The Commission's vision for human rights is of a Britain in which:

- there is a dignified life for everyone
- people's freedom and opportunities to achieve their life goals are progressively expanded and are unhindered by prejudice, discrimination or arbitrary restraint
- human rights are recognised as values we share with one another, as well as rights we claim for ourselves, helping to build a more cohesive, civilised and fair society.

### What we aim to achieve – five key outcomes

By 2012 the Commission wishes to have achieved the following key outcomes:

- no regression in law from the levels of human rights protection and mechanisms for enforcement under the Human Rights Act and other ratified human rights treaties
- widespread awareness and accurate understanding of human rights at all levels of society, including how they can be used by individuals and applied by public, private and voluntary organisations
- human rights mainstreamed into the work of at least five of the most significant regulators, inspectorates and complaints handling bodies
- to have developed a credible and widely utilised measurement framework for human rights and to have reported against this framework in our Triennial Review

- to have clearly influenced the concluding observations of the Treaty Monitoring Bodies for the UN Conventions on the Elimination of All Forms of Racial Discrimination, against Torture and Other Cruel, Inhuman or Degrading Treatment and on the Rights of Persons with Disabilities concerning Britain's performance on respecting, protecting and promoting human rights.

### **Our programme**

Our programme of work for 2009–2012 is outlined below.

#### **(a) Promoting awareness, understanding and respect for human rights domestically and internationally**

##### **Our objective**

To ensure widespread awareness and accurate understanding of human rights among those with rights or responsibilities, their advisers and advocates, and across the political spectrum and the media.

##### **We will:**

- develop content to support teachers in the delivery of the citizenship agenda to young people to ensure that young people understand the relevance of human rights and the underlying principles of fairness, justice and liberty
- establish the Commission as a source of accurate advice to the media,

politicians, public authorities, business and others on human rights developments, regularly updating human rights advice and information on the Commission's website

- develop the capacity and understanding of legal advice agencies and other legal professions concerning human rights issues including via our legal grants scheme and transfer of expertise programme
- sponsor a project to develop the knowledge and capacity of the voluntary and community sector to employ human rights in their work
- build business and public awareness of the key human rights issues in the private sector
- hold a high-level summit on the implementation of the work of the UN Special Representative on Business and Human Rights in the UK
- host an international conference in 2011 on the key human rights challenges of the 21st Century
- promote the availability of the Commission's helpline as a source of advice and information concerning human rights
- target marginalised and vulnerable groups and their advocates to improve their understanding of, or access to, information concerning their human rights.

## **(b) Translating human rights principles into the everyday practice and behaviours of public, private and voluntary institutions**

### **Our objective**

To ensure public, private and voluntary institutions have access to practical, sector-specific advice on how to translate human rights law and principles into everyday policy, practices and behaviours.

### **We will:**

- sponsor a series of *Guardian* newspaper roundtables to explore the findings of the Commission’s Human Rights Inquiry with public sector leaders in local government, health, criminal justice and education. A report of the roundtables will be included in the *Guardian Society* supplement
- identify and promote good practice in the public sector
- initiate and evaluate a series of pilot human rights initiatives to transform the approach of public sector organisations and disseminate successful findings
- work with training bodies to integrate understanding of human rights and a human rights approach within qualification training of relevant professionals such as nurses, social workers, doctors, teachers and police officers
- develop and promote a human rights measurement framework to enable public, private and voluntary services to understand and measure their own performance in terms of human rights
- work in partnership with the British Institute of Human Rights, Joseph Rowntree Foundation and Oxfam UK to develop a programme on a human rights-based approach to poverty
- develop a strategy on the private sector and human rights which takes forward recent work from the Ministry of Justice, the Joint Committee on Human Rights and the UN Special Representative on Business and Human Rights
- encourage and support a multi-stakeholder dialogue on business and human rights in the UK with business, civil society and government
- undertake research on the key human rights issues on which UK businesses have an impact.

## **(c) Measuring compliance with existing domestic human rights law and progress towards implementation of non-justiciable human rights, including social, economic and cultural rights**

### **Our objective**

To establish credible and influential methodologies by which to measure the performance of government, public,

private and voluntary sector organisations in protecting and promoting human rights.

**We will:**

- build on our Equality Measurement Framework (itself based on human rights principles) to develop a pioneering approach to human rights measurement
- make an initial assessment of Britain’s performance on protecting and promoting human rights in our first Triennial Review to be published in 2010, and develop our capacity to do so in readiness for the subsequent Triennial Reviews
- commission legal opinion, carry out research and consultation and consider using our inquiry powers to make an independent, credible assessment concerning Britain’s performance in relation to implementation of the UN Convention on the Rights of Persons with Disabilities.

**(d) Holding accountable government, public bodies and other institutions for their performance on protecting and promoting human rights**

**Our objective**

To build a stronger framework of ‘top down’ and ‘bottom up’ accountability for government, public authorities and others concerning their performance on human rights.

**We will:**

- participate fully in the treaty monitoring processes concerning Britain’s performance with respect to the UN Convention on the Rights of Persons with Disabilities, the Convention Against Torture and the Convention on the Elimination of Racial Discrimination
- develop joint working agreements with at least five inspectorates, regulators or complaints handling bodies to use and promote the human rights framework more effectively and to monitor progress made by service providers in mainstreaming human rights
- engage fully with the work of the Joint Parliamentary Committee on Human Rights
- fund a project to empower individuals with human rights tools so that they can challenge inadequate, discriminatory or inaccessible services at a local level, helping them to resolve everyday problems without recourse to litigation
- build awareness and understanding of the Optional Protocols in relation to the Convention on the Elimination of All Forms of Discrimination against Women and the Convention on the Rights of Persons with Disabilities
- engage in the forthcoming review of the UN Human Rights Council and continue to contribute to the Council through written and oral submissions

- review and report on the actions taken by government and others in response to the Human Rights Inquiry in April 2012.

### **(e) Intervening to protect and promote human rights, using our legal powers**

#### **Our objective**

Acting as custodians of human rights, to ensure that human rights are protected and promoted, including through challenging breaches and influencing the development of law.

#### **We will:**

Use our legal powers with respect to human rights to clarify the law, remedy existing infringements and prevent future breaches. To enable us to target our powers effectively we will gather intelligence and conduct research including on the following issues:

- the impact of the counter-terrorism legislation on ethnic minority groups in general, and the Muslim community in particular
- how the right to privacy in the current social and political context might be at risk or further strengthened
- human rights challenges in Scotland where research has identified human trafficking as a key human rights challenge

- issues in relation to breaches of human rights experienced by young people from various background (for example, those in detention centres, asylum seekers and the effects of blanket curfews)
- issues in relation to breaches of human rights experienced by people of all ages and groups in residential homes
- how current policing policies and practices might better protect the right to protest
- we will also use our powers in respect of equality, good relations and human rights to remove obstacles to the realisation of human rights among disadvantaged groups and promote respect for human rights.

### **(f) Advising government on the effectiveness of existing or proposed human rights law, and on the compatibility of wider policy or legislative proposals with human rights**

#### **Our objective**

To ensure there is no regression from the levels of human rights protection and mechanisms for enforcement under the Human Rights Act and to ensure the compatibility of future policy and legislative proposals with human rights law and principles.

**We will:**

- respond to the Government's bill of rights Green Paper
- develop and consult on proposals for a public sector human rights duty, similar in purpose to the public sector equality duty
- develop recommendations concerning the most effective methodology for the development of a bill of rights, based on international case studies
- develop proposals concerning information privacy
- contribute expertise and ideas to ongoing discussions at the Council of Europe about reform of the European Court of Human Rights – an urgent process if the right of individual petition is to endure in the future
- scrutinise relevant public policy proposals to ensure their compatibility with human rights law and principles and mainstream human rights across our policy portfolio.

**(g) Developing the Commission's capabilities as a National Human Rights Institution****Our objective**

The Commission wishes to become an internationally recognised centre of excellence with respect to its status as a National Human Rights Institution.

**We will:**

- equip all of our staff with the knowledge, skills and competencies to 'practice what we preach' on human rights
- link our human rights work more closely with our domestic equalities and good relations activity to ensure that human rights is mainstreamed at every level
- impact assess all of our policies and processes for human rights to ensure that we are acting in a way that reaps the benefits of a human rights-based approach
- use the Human Rights Measurement Framework to track trends over time and use this information to strategically plan our work and set future objectives
- publish a report on our actions on human rights one year on from our accreditation as a National Human Rights Institution.

# Appendix

## Human Rights Inquiry report – recommendations and actions

### Effectiveness of the Human Rights Act

#### Recommendations

1. Human rights need to be mainstreamed into the work of all those who provide relevant public services.
2. Human rights-specific language should be used, in addition to the language of values, such as respect, fairness, and dignity, to facilitate the development of a better understanding of human rights.
3. Where appropriate, government departments should include human rights more explicitly in the standards applicable to public services.

#### Commission actions

- i. Working with regulators and inspectors and with government departments, local authorities and other public bodies, the Commission will help provide guidance and support to implement a human rights approach institutionally.

- ii. The Commission will monitor and promote examples of good practice in the public sector. Where the evidence of successful outcomes is clear, the Commission will encourage the wider roll-out of successful initiatives.
- iii. The Commission will encourage and monitor progress on the inclusion of human rights in standards of service for public authorities.

### Leadership

#### Recommendations

4. Those in leadership roles in public authorities should recognise their responsibility to provide robust leadership on human rights issues.
5. Some central government departments and some other public bodies have successfully used human rights champions to lead the human rights agenda. Public sector organisations should appoint human rights champions where appropriate.

#### Commission actions

- iv. The Commission will encourage the Government and other political leaders to provide positive and consistent

leadership on human rights and the Human Rights Act.

- v. The Commission will assume a leadership role in raising public awareness of the importance of human rights and the Human Rights Act.

### **Improved service delivery**

#### **Recommendations**

- 6. Where appropriate, public authorities and voluntary and community sector groups should mainstream human rights into their decision making processes, strategies and business plans, as well as into their relevant policies and practices. Service providers should be able to demonstrate the effects of such mainstreaming to the inspectorates and regulators, where relevant.
- 7. The Human Rights Act can be a useful framework for managing competing tensions and the ethical obligations of, and between, professionals. This framework should form part of the training for such professionals in relation to their ethical obligations.
- 8. When developing training programmes, organisations should include role-specific training on human rights and the Human Rights Act, to clarify what the Act does and does not do, and how it applies in the circumstances for which the training is being delivered.

- 9. The Government should communicate widely the findings of its human rights initiatives, such as its Human Rights in Healthcare initiative, to facilitate learning and understanding.

- 10. When framing provisions for service delivery, organisations should work with user groups to ensure maximum accessibility and engagement between service providers and service users, as has been done successfully in a number of health trusts, with resulting benefits to service users and service providers.

- 11. Public authorities should develop mechanisms to ensure that new legal developments and their policy implications, which impact on their responsibilities, are made known to the relevant staff.

#### **Commission actions**

- vi. The Commission will produce updated guidance on human rights and legal developments related to the Human Rights Act, and encourage public services to produce tailored guidance.

### **It's not about litigation**

#### **Recommendations**

- 12. Government and other funding bodies should consider providing further funding to enable the voluntary and community sector and, where relevant, public authorities, to develop and deliver alternative dispute resolution mechanisms to facilitate the resolution of human rights cases.

### **Commission actions**

- vii. The Commission will assist public authorities, where appropriate, to adopt a human rights approach to their organisational risk management processes, and to programmes of training and professional development. The objective should be to provide the best possible service, rather than focusing solely on the protection of the organisation from litigation.

### **Media**

#### **Recommendations**

13. Where the media report human rights issues and cases, they should ensure that they report them accurately and fairly.
14. The inter-departmental Rapid Rebuttal Unit at the Ministry of Justice should continue and enhance its work.

#### **Commission actions**

- viii. Accurate and live-time analysis of issues and cases involving human rights needs to be available to the media. The Commission will provide to the media authoritative information and material on matters relating to the Human Rights Act, where appropriate, to facilitate the development and maintenance, by the media, of an accurate understanding of what the Act does and does not do.

- ix. The Commission will use every available opportunity to explain publicly the purpose, value and benefits of human rights and the Human Rights Act to our society.
- x. The Commission will enhance the human rights section of its website to provide accurate information on human rights and the Human Rights Act in response to widely publicised inaccuracies and misconceptions.

### **Duties on public authorities and those who inspect them**

#### **Recommendations**

15. The Government should consult as to whether or not a statutory duty should be imposed on all public authorities to take into account human rights before they implement new policies.
16. The Government should consult on legal changes which may be necessary to enable ombudsmen, inspectors and regulators to co-operate and to share information, with the necessary protections, when dealing with individual human rights issues.
17. In the absence of a specific legal duty, inspection and audit bodies should integrate human rights standards into their work.

### **Commission actions**

- xi. The Commission will assist public authorities to develop mechanisms to integrate positive obligations under the Human Rights Act with their work on public sector duties.
- xii. The Commission will work with regulatory bodies and inspectors to develop appropriate targeted human rights indicators to measure the extent to which public bodies are adopting a human rights approach.

### **Information and advice**

#### **Recommendations**

- 18. The provision of better information and advice will necessitate better training and more targeted resources for the appropriate bodies.
- 19. The Government should review its decision not to give the Commission the power to assist members of the public in strategic cases involving only human rights legislation.
- 20. The Commission should be empowered to provide conciliation/mediation services on human rights.

### **Commission actions**

- xiii. The Commission will continuously update the information and advice on human rights it provides through its helpline.
- xiv. In recognition of the importance of young people being informed about human rights and responsibilities, the Commission will actively encourage a wider application of the human rights framework in schools and more human rights education of young people.
- xv. The Commission will review and report on the actions taken, three years after the publication of this report.

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