

**HONG KONG BAR ASSOCIATION**  
**SUBMISSIONS TO THE HOME AFFAIRS PANEL**  
**OF THE LEGISLATIVE COUNCIL**  
**ON THE ESTABLISHMENT OF A HUMAN RIGHTS COMMISSION**  
**IN HONG KONG**

Introduction

1. The Hong Kong Special Administrative Region Government (“HKSAR Government”), in its first periodic report, submitted in late 1999, expressed its agreement with the colonial government that preceded it and said that there was no “obvious advantage in introducing a new institution such as a Human Rights Commission”. In reaching that conclusion, the HKSAR Government justified its position on the basis that:

*21. ... human rights in Hong Kong are founded on the rule of law, an independent judiciary, a justiciable bill of rights to provide remedies against infringement of human rights, and a sound and comprehensive legal aid system that assures the citizen of access to the courts. These foundations have been strengthened by the constitutional entrenchment of the Covenant and the ICESCR under Article 39 of the Basic Law. Additionally, comprehensive safeguards are provided by the Ombudsman’s Office, the Equal Opportunities Commission, the Privacy Commissioner’s Office and the legislature. The HKSAR Government continues to operate in the full view of a free and active press and local and international non-governmental organisations.*

*22. This system has served Hong Kong well and has provided a sound framework for the protection and development of human rights in the territory. The Government does not see any obvious advantage in introducing a new*

*institution such as a Human Rights Commission.*<sup>1</sup>

2. In its Concluding Observations dated 15<sup>th</sup> November 1999, the UN Human Rights Committee (“UNHRC”) expressed its regret at the HKSAR Government’s refusal to create an independent Human Rights Commission:

*“The Committee remains concerned that there is no independent body established by law to investigate and monitor human rights violations in HKSAR and the implementation of Covenant rights.”*

[para 9]

3. A second periodic report is due to be submitted by the HKSAR Government and the Home Affairs Bureau has invited submissions from various NGOs in assisting it to prepare its recommendations. An opportunity has therefore arisen for the issue of the establishment of an independent Human Rights Commission to be readdressed.

4. To date, calls have been made by several non-governmental organisations (NGO) who are concerned with the human rights situation in Hong Kong for the establishment of a Human Rights Commission in the Special Administrative Region (“SAR”). For example:

- (a) The Hong Kong Human Rights Commission seeks an explanation of why no Human Rights Commission has been established, despite the recommendations of the Committee in 1995; and

- (b) The Human Rights Monitor calls on the Government “*to commit to the establishment of [a Human Rights Commission] based on the Principles relating to the status and functioning of national institutions for protection and promotion of human rights (the Paris Principles). It is particularly important to allay the public fear if legislation under Article 23 is enacted, although such an institution is important in its own right.*”

5. The Hong Kong Bar Association (“The Bar”) while fully in support of the call for an independent Human Rights Commission, would like to put forward its own

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<sup>1</sup> HKSAR 1<sup>st</sup> Periodic Report

submissions as to why, in our view, there is a compelling case for the establishment of such a body at this time.

6. This paper looks at the reasons why a Human Rights Commission should be established in Hong Kong, including a brief look at experiences from abroad, especially the UK (which is considering the same issue), the Northern Ireland and other Asian countries that have established an independent Human Rights Commission.

### Government's Flawed Argument

7. In effect, the Government's refusal to establish an independent Human Rights Commission is not based upon any inability or undesirability to do so. Rather, it takes the view that since there exist already adequate measures to protect the rights of its citizens then there is no need for an independent Human Rights Commission. As a matter of fact, the Government's transparent attempt to undermine the decision of the Court of Final Appeal's decision against the Government on the Right of Abode issue by causing the Standing Committee of the National People's Congress to interpret articles 22(4) and 24(2)(3) of the Basic Law on 26<sup>th</sup> June 1999 demonstrated the unscrupulous behaviour of the Government when faced with a judicial decision against it and has seriously affected the rule of law in Hong Kong. Even if the factual contentions in paragraphs 21 and 22 of the HKSAR Government's first period report are true, as a matter of principle, the reasoning set out there must be flawed.
8. The Preamble to the ICCPR states:

*Considering that, in accordance with the principles proclaimed in the Charter of the United Nations, recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,*

*Recognizing that these rights derive from the inherent dignity of the human person,*

*Recognizing that, in accordance with the Universal Declaration of*

*Human Rights, the ideal of free human beings enjoying freedom from fear and want can only be achieved if conditions are created whereby everyone may enjoy his economic, social and cultural rights, as well as his civil and political rights.*

*Considering the obligation of States under the Charter of the United Nations to promote universal respect for, and observance of, human rights and freedoms.*

*Realizing that the individual, having duties to other individuals and to the community to which he belongs, is under a responsibility to strive for the promotion and observance of the rights recognized in the present Covenant...*  
*[emphasis added]*

9. Further, Article 1 of the ICCPR states:
  1. *All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.*
  2. *All peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic co-operation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence.*
  3. *The States Parties to the present Covenant, including those having responsibility for the administration of Non-Self-Governing and Trust Territories, shall promote the realization of the right of self-determination, and shall respect that right, in conformity with the provisions of the Charter of the United Nations.**[emphasis added]*
  
10. It is clear that under the ICCPR as applied to Hong Kong , the HKSAR Government has inherited a dual obligation. Firstly, it cannot interfere with its citizens rights under the ICCPR (“Convention rights”). Equally, the HKSAR Government must take active steps to ensure that its citizens’ Convention rights remain protected, at all times. Yet this can only come about if its citizens are aware of those rights.

11. Unless its citizens are aware of their Convention rights, any remedies or rights of redress, no matter how comprehensive, are at best available only to the educated, rich and powerful and, at worst, useless and no more than theoretical or illusory.
12. This undesirable situation can be avoided with the establishment of an independent Human Rights Commission that is mandated with the task of promoting the culture for the respect human rights.
13. Brice Dickson, Chief Commissioner of the Northern Ireland Human Rights Commission and Professor of Law at the University of Ulster, wrote in the latest issue of *Public Law*, the leading academic journal on human rights and public law issues in the common law jurisdictions of the experience of the Northern Ireland Human Rights Commission<sup>2</sup>. Professor Dickson has, by using the experience of Northern Ireland, identified how a Human Rights Commission can, on *both* the international level and local level, plays a significant role in the promotion and implementation of human rights. The Bar considers that the establishing of a Human Rights Commission in Hong Kong would enable the body to promote human rights on these two levels.

*Human rights on international level*

14. One of the essential functions of a Human Rights Commission is to seek to ensure that governments around the world would fully adhere to the international obligations they have signed up in human rights treaties. As Professor Dickson has commented, since the 1940s there have been two big developments in international law and human rights treaties. The first is the breadth and depth of the international treaties on human rights have both increased enormously as has the extent of their transference into national law. The other major development is that *individuals* and not just states are now recognised as subjects of international human right laws<sup>3</sup>.
15. On an international level, Professor Dickson has identified 4 areas where a national human rights commission can fulfil its functions<sup>4</sup>. The Bar fully concurs with those

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<sup>2</sup> Brice Dickson, 'The Contribution of Human Rights Commissions to the Protection of Human Rights' *Public Law*, summer 2003, p. 272.

<sup>3</sup> *Ibid.*, at p. 275

<sup>4</sup> *Ibid.*, at pp.276-277

views and considers that a Human Rights Commission in Hong Kong can fulfil those responsibilities. These 4 areas are:-

- (i) *a human rights commission can assist with the preparation of international treaties.*

As when and more countries in the region (including the People's Republic of China) become signatories to the ever growing numbers of new international treaties, the experience of an established Human Rights Commission in the assisting of drafting and preparation of human right treaties that will apply to Hong Kong will only enhance Hong Kong's status as a World Class international city.

- (ii) *A human rights commission can urge its own state to ratify the treaty and to incorporate it into domestic law*

In the context of Hong Kong, a Human Rights Commission will help to remind and to encourage the administration to ratify treaties or protocols of which they might have been signatories but have neglected or ignored. The Human Rights Commission, as a permanent statutory body, can also urge the government to incorporate different international treaties or protocols into domestic legislations.

- (iii) *By submitting independent reports to international treaty monitoring bodies*

A truly independent and credible Human Rights Commission also can give assistance to international treaty monitoring bodies by submitting reports which critique the state periodical reports examined by those bodies. It can also attend the hearings of the monitoring body and provide any additional and useful information to supplement to what the state officials report to the monitoring body. It is expected that a Human Rights Commission in Hong Kong will effectively able to discharge such functions.

- (iv) *Interacting with other international bodies on human rights*

Another useful function of a Human Rights Commission on an international level as identified by Professor Dickson is that it can interact

with a host of other international bodies working on human rights<sup>5</sup>. It can attend and address international human right bodies like the UN Commission on Human Rights.

*Human rights on local level*

16. There are 4 principal areas which a national Human Rights Commission can discharge its function on a local level:-
- (i) A Human Rights Commission can influence legislators and administrators in a manner which it is hard for the NGOs to emulate.
  - (ii) It can operate at the judicial stage on a uniquely versatile way: in that it can bring and fund representative cases on important human rights issues. It can also act as intervener in appropriate cases.
  - (iii) A Human Rights Commission can investigate into allegations of human rights abuses independently, this will act as a particular useful safeguard in the light of the imminent passing of legislations under to Article 23 of the Basic Law.
  - (iv) A credible and truly independent Human Rights Commission will also seek to appeal to a broad spectrum of society, making human rights a concept which is attractive to all, rather than to a narrow elite or to those who have vested interests<sup>6</sup>.

Hong Kong a World Class City

17. The HKSAR Government has been at pains to promote Hong Kong as a world class city to investors and multi-national corporations wishing to set up business in Asia. It has been able to achieve that by being in a position to point to a well established and independent legal system that serves not only the interests of businesses, but of people.
18. The rights of the individual is one that has become increasingly important not only to local people but also for businesses and overseas investors. This is apparent from the very keen interest that businesses in and outside of Hong Kong have taken in the

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<sup>5</sup> *Ibid.*, at p. 277.

<sup>6</sup> *Ibid.*, at p. 278.

recent Article 23 debate.

19. Establishing an independent Human Rights Commission demonstrates that this Government can and is willing to take the lead to promote the fundamental protection of a person's human rights.

#### Human Rights Commission in other Countries

20. In other countries, independent Human Rights Commissions have been created. Moreover, in many cases, the establishment of such independent commissions formed part of an overall strategy to promote the awareness of human rights.
21. In fact, of the 149 State Parties and 8 Signatories to the ICCPR<sup>7</sup>, 9 countries from the Asia Pacific region have already established an independent Human Rights Commission. At least, 3 other countries who are not signatories to the ICCPR also have their own Human Rights Commissions:-

<b>Country</b>	<b>Date Established</b>
Australia	1986
*Fiji	1997
India	1993
*Indonesia	1993
*Malaysia <sup>8</sup>	1999
Mongolia	7 <sup>th</sup> December 2000
Nepal	5 <sup>th</sup> June 2000
New Zealand	1 <sup>st</sup> September 1997
Philippines	1987
Republic of Korea	24 <sup>th</sup> May 2001
Sri Lanka	September 1997

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<sup>7</sup> See Appendix 1, for current list

<sup>8</sup>\*denotes countries which are not signatories to the ICCPR

Thailand	1999
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22. Moreover, other countries are seriously considering the establishment of an independent Human Rights Commission. In fact, the UK government had established a Joint Committee to consider the need for such an institution. After a two year study, the report of this Joint Committee (the “UK Report”) has now been published.<sup>9</sup> Notably, after carrying out extensive investigations, the report concludes that the case for establishing such an independent commission is “compelling”.
23. The UK Report provides a strong reason for the establishment of a Human Rights Commission, and many of the points could and should equally apply in Hong Kong. In particular, the UK Report addresses the necessity for an independent commission to establish and promote a greater awareness amongst the general public, of their rights under the Convention. More particularly, the UK Report lays down a model Human Rights Commission, which could be applicable to Hong Kong given that the legal culture of Hong Kong has largely been framed the English common law and enactments modelled on U.K. laws..
24. The importance of this UK Report is significant. It represents a two year extensive study into the need for an independent commission. It also tackles many of the arguments previously put forward by the British Government, that were adopted by the HKSAR Government.

### Conclusion

25. In conclusion, for reasons set out above and, in particular, following the growing trend of establishing Human Rights Commissions in developing countries (many of whom are less developed than Hong Kong and who suffer more internal conflicts), the establishing of a Human Rights Commission in Hong Kong is something which the HKSAR Government should give top priority to.

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<sup>9</sup>Appendix 2

Dated this the 9<sup>th</sup> day of May 2003

OFFICE OF THE UNITED NATIONS HIGH COMMISSIONER  
FOR HUMAN RIGHTS

STATUS OF RATIFICATIONS OF THE PRINCIPAL  
INTERNATIONAL HUMAN RIGHTS TREATIES

As of 09 December 2002

The international human rights treaties of the United Nations that establish committees of experts (often referred to as "treaty bodies") to monitor their implementation are the following:

- (1) the International Covenant on Economic, Social and Cultural Rights (CESCR), which is monitored by the Committee on Economic, Social and Cultural Rights;
- (2) the International Covenant on Civil and Political Rights (CCPR), which is monitored by the Human Rights Committee;
- (3) the Optional Protocol to the International Covenant on Civil and Political Rights (CCPR-OP1), which is administered by the Human Rights Committee; and
- (4) the Second Optional Protocol to the International Covenant on Civil and Political Rights, aimed at the abolition of the death penalty (CCPR-OP2-DP).
- (5) the International Convention on the Elimination of All Forms of Racial Discrimination (CERD), which is monitored by the Committee on the Elimination of Racial Discrimination;
- (6) the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), which is monitored by the Committee on the Elimination of Discrimination against Women;
- (7) the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW-OP);
- (8) the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), which is monitored by the Committee against Torture;
- (9) the Convention on the Rights of the Child (CRC), which is monitored by the Committee on the Rights of the Child;
- (10) the Optional Protocol to the Convention on the Rights of the Child (CRC-OP-AC) on the involvement of children in armed conflict;
- (11) the Optional Protocol to the Convention on the Rights of the Child (CRC-OP-SC) on the sale of children, child prostitution and child pornography.
- (12) the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (MWC), which was adopted by the General Assembly in 1990 and will enter into force when 20 States have accepted it;

The following chart of States shows which are a party (indicated by the date of adherence: ratification, accession or succession) or signatory (indicated by an "s" and the date of signature) to the United Nations human rights treaties listed above. Self-governing territories that have ratified any of the treaties are also included in the chart. As at 09 December 2002, all 189 Member States of the United Nations and 4 non-Member States were a party to one or more of these treaties.

09 December 2002

	CESCR	CCPR	CCPROP1	CCPROP2	CERD	CEDAW	CEDAWOP	CAT	CRC	CRCOPAC	CRCOPSC	MWC
Afghanistan	24 Jan 83 <sup>a</sup>	24 Jan 83 <sup>a</sup>			06 Jul 83 <sup>a</sup>	<i>s:14 Aug 80</i>		01 Apr 87	28 Mar 94		20 Sep 02 <sup>a</sup>	
Albania	04 Oct 91 <sup>a</sup>	04 Oct 91 <sup>a</sup>			11 May 94 <sup>a</sup>	11 May 94		11 May 94 <sup>a</sup>	27 Feb 92			
Algeria	12 Sep 89	12 Sep 89	12 Sep 89 <sup>a</sup>		14 Feb 72 <sup>*</sup>	22 May 96 <sup>a</sup>		12 Sep 89 <sup>*</sup>	16 Apr 93			
Andorra		<i>s:05 Aug 02</i>	<i>s:05 Aug 02</i>		<i>s:05 Aug 02</i>	15 Jan 97 <sup>a</sup>	15 Oct 02	<i>s:05 Aug 02</i>	02 Jan 96	30 Apr 01	30 Apr 01	
Angola	10 Jan 92 <sup>a</sup>	10 Jan 92 <sup>a</sup>	10 Jan 92 <sup>a</sup>			17 Sep 86 <sup>a</sup>			06 Dec 90			
Antigua and Barbuda					25 Oct 88 <sup>d</sup>	01 Aug 89 <sup>a</sup>		19 Jul 93 <sup>a</sup>	06 Oct 93		30 Apr 02	
Argentina	08 Aug 86	08 Aug 86	08 Aug 86 <sup>a</sup>		02 Oct 68	15 Jul 85	<i>s:28 Feb 00</i>	24 Sep 86 <sup>*</sup>	05 Dec 90	10 Sep 02		
Armenia	13 Sep 93 <sup>a</sup>	23 Jun 93 <sup>a</sup>	23 Jun 93		23 Jun 93 <sup>a</sup>	13 Sep 93 <sup>a</sup>		13 Sep 93	23 Jun 93 <sup>a</sup>			
Australia	10 Dec 75	13 Aug 80	25 Sep 91 <sup>a</sup>	02 Oct 90 <sup>a</sup>	30 Sep 75 <sup>*</sup>	28 Jul 83		08 Aug 89 <sup>*</sup>	17 Dec 90	<i>s:21 Oct 02</i>	<i>s:18 Dec 01</i>	
Austria	10 Sep 78	10 Sep 78	10 Dec 87	02 Mar 93	09 May 72 <sup>*</sup>	31 Mar 82	07 Sep 00	29 Jul 87 <sup>*</sup>	06 Aug 92	01 Feb 02	<i>s:06 Sep 00</i>	
Azerbaijan	13 Aug 92 <sup>a</sup>	13 Aug 92 <sup>a</sup>	27 Nov 01 <sup>a</sup>	22 Jan 99 <sup>a</sup>	16 Aug 96 <sup>a</sup>	10 Jul 95 <sup>a</sup>	01 Jun 01	16 Aug 96 <sup>a</sup>	13 Aug 92 <sup>a</sup>	03 Jul 02	03 Jul 02	11 Jan 99 <sup>a</sup>
Bahamas					05 Aug 75 <sup>d</sup>	06 Oct 93 <sup>a</sup>			20 Feb 91			
Bahrain					27 Mar 90 <sup>a</sup>	18 Jun 02 <sup>a</sup>		06 Mar 98 <sup>a</sup>	13 Feb 92 <sup>a</sup>			
Bangladesh	05 Oct 98 <sup>a</sup>	07 Sep 00 <sup>a</sup>			11 Jun 79 <sup>a</sup>	06 Nov 84 <sup>a</sup>	07 Sep 00	05 Oct 98 <sup>a</sup>	03 Aug 90	07 Sep 00	07 Sep 00	<i>s:07 Oct 98</i>
Barbados	05 Jan 73 <sup>a</sup>	05 Jan 73 <sup>a</sup>	05 Jan 73 <sup>a</sup>		08 Nov 72 <sup>a</sup>	16 Oct 80			09 Oct 90			
Belarus	12 Nov 73	12 Nov 73	30 Sep 92 <sup>a</sup>		08 Apr 69	04 Feb 81		13 Mar 87	02 Oct 90		24 Jan 02 <sup>a</sup>	
Belgium	21 Apr 83	21 Apr 83	17 May 94 <sup>a</sup>	08 Dec 98	07 Aug 75 <sup>*</sup>	10 Jul 85	<i>s:10 Dec 99</i>	25 Jun 99 <sup>*</sup>	16 Dec 91	06 May 02	<i>s:06 Sep 00</i>	
Belize	<i>s:06 Sep 00</i>	10 Jun 96 <sup>a</sup>			14 Nov 01	16 May 90		17 Mar 86 <sup>a</sup>	02 May 90	<i>s:06 Sep 00</i>	<i>s:06 Sep 00</i>	14 Nov 01 <sup>a</sup>
Benin	12 Mar 92 <sup>a</sup>	12 Mar 92 <sup>a</sup>	12 Mar 92 <sup>a</sup>		30 Nov 01	12 Mar 92	<i>s:25 May 00</i>	12 Mar 92 <sup>a</sup>	03 Aug 90	<i>s:22 Feb 01</i>	<i>s:22 Feb 01</i>	
Bhutan					<i>s:26 Mar 73</i>	31 Aug 81			01 Aug 90			
Bolivia	12 Aug 82 <sup>a</sup>	12 Aug 82 <sup>a</sup>	12 Aug 82 <sup>a</sup>		22 Sep 70	08 Jun 90	27 Sep 00	12 Apr 99	26 Jun 90		<i>s:10 Nov 01</i>	12 Oct 00 <sup>a</sup>
Bosnia and Herzegovina	03 Mar 92 <sup>d</sup>	01 Sep 93 <sup>d</sup>	01 Mar 95	16 Mar 01	16 Jul 93 <sup>d</sup>	01 Sep 93 <sup>d</sup>	04 Sep 02	01 Sep 93 <sup>a</sup>	01 Sep 93 <sup>d</sup>	<i>s:07 Sep 00</i>	04 Sep 02	13 Dec 96 <sup>a</sup>
Botswana		08 Sep 00			20 Feb 74 <sup>a</sup>	13 Aug 96 <sup>a</sup>		08 Sep 00	14 Mar 95 <sup>a</sup>			
Brazil	24 Jan 92 <sup>a</sup>	24 Jan 92 <sup>a</sup>			27 Mar 68 <sup>*</sup>	01 Feb 84	28 Jun 02	28 Sep 89	25 Sep 90	<i>s:06 Sep 00</i>	<i>s:06 Sep 00</i>	
Brunei Darussalam									27 Dec 95 <sup>a</sup>			

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09 December 2002

	CESCR	CCPR	CCPROP1	CCPROP2	CERD	CEDAW	CEDAWOP	CAT	CRC	CRCOPAC	CRCOPSC	MWC
Bulgaria	21 Sep 70	21 Sep 70	26 Mar 92 <sup>a</sup>	10 Aug 99	08 Aug 66 <sup>*</sup>	08 Feb 82	<i>s:06 Jun 00</i>	16 Dec 86 <sup>*</sup>	03 Jun 91	12 Feb 02	12 Feb 02	
Burkina Faso	04 Jan 99 <sup>a</sup>	04 Jan 99 <sup>a</sup>	04 Jan 99 <sup>a</sup>		18 Jul 74 <sup>a</sup>	14 Oct 87 <sup>a</sup>	<i>s:16 Nov 01</i>	04 Jan 99 <sup>a</sup>	31 Aug 90	<i>s:16 Nov 01</i>	<i>s:16 Nov 01</i>	<i>s:16 Nov 01</i>
Burundi	09 May 90 <sup>a</sup>	09 May 90 <sup>a</sup>			27 Oct 77	08 Jan 92	<i>s:13 Nov 01</i>	18 Feb 93 <sup>a</sup>	19 Oct 90	<i>s:13 Nov 01</i>		
Cambodia	26 May 92 <sup>a</sup>	26 May 92 <sup>a</sup>			28 Nov 83	15 Oct 92 <sup>a</sup>	<i>s:11 Nov 01</i>	15 Oct 92 <sup>a</sup>	15 Oct 92 <sup>a</sup>	<i>s:27 Jun 00</i>	30 May 02	

Cameroon	27 Jun 84	<sup>a</sup>	27 Jun 84	<sup>a</sup>	27 Jun 84	<sup>a</sup>	24 Jun 71	23 Aug 94	19 Dec 86	<sup>a</sup>	11 Jan 93	<i>s:05 Oct 01</i>	<i>s:05 Oct 01</i>										
Canada	19 May 76	<sup>a</sup>	19 May 76	<sup>a</sup>	19 May 76	<sup>a</sup>	14 Oct 70	10 Dec 81	18 Oct 02	<sup>a</sup>	24 Jun 87	<sup>*</sup>	13 Dec 91	07 Jul 00	<i>s:10 Nov 01</i>								
Cape Verde	06 Aug 93	<sup>a</sup>	06 Aug 93	<sup>a</sup>	19 May 00	<sup>a</sup>	19 May 00	<sup>a</sup>	03 Oct 79	<sup>a</sup>	05 Dec 80	<sup>a</sup>	04 Jun 92	<sup>a</sup>	04 Jun 92	<sup>a</sup>	10 May 02	<sup>a</sup>	10 May 02	<sup>a</sup>	16 Sep 97	<sup>a</sup>	
Central African Republic	08 May 81	<sup>a</sup>	08 May 81	<sup>a</sup>	08 May 81	<sup>a</sup>	16 Mar 71	21 Jun 91	<sup>a</sup>				23 Apr 92										
Chad	09 Jun 95	<sup>a</sup>	09 Jun 95	<sup>a</sup>	09 Jun 95	<sup>a</sup>	17 Aug 77	<sup>a</sup>	09 Jun 95	<sup>a</sup>	09 Jun 95	<sup>a</sup>	02 Oct 90	<i>s:03 May 02</i>	<i>s:03 May 02</i>								
Chile	10 Feb 72		10 Feb 72		28 May 92	<sup>a</sup>	20 Oct 71	<sup>*</sup>	08 Dec 89	<i>s:10 Dec 99</i>	30 Sep 88	13 Aug 90	<i>s:15 Nov 01</i>	<i>s:28 Jun 00</i>	<i>s:24 Sep 93</i>								
China	27 Mar 01	<i>s:05 Oct 98</i>					29 Dec 81	<sup>a</sup>	04 Nov 80		04 Oct 88	03 Mar 92	<i>s:15 Mar 01</i>	<i>s:06 Sep 00</i>									
Colombia	29 Oct 69		29 Oct 69		29 Oct 69		05 Aug 97	<sup>a</sup>	02 Sep 81		19 Jan 82	<i>s:10 Dec 99</i>	08 Dec 87	28 Jan 91	<i>s:06 Sep 00</i>	<i>s:06 Sep 00</i>						24 May 95	
Comoros									<i>s:22 Sep 00</i>		31 Oct 94	<sup>a</sup>	<i>s:22 Sep 00</i>	23 Jun 93								<i>s:22 Sep 00</i>	
Congo	05 Oct 83	<sup>a</sup>	05 Oct 83	<sup>a</sup>	05 Oct 83	<sup>a</sup>	11 Jul 88	<sup>a</sup>	26 Jul 82				14 Oct 93	<sup>a</sup>									
Cook Islands													06 Jun 97	<sup>a</sup>									
Costa Rica	29 Nov 68		29 Nov 68		29 Nov 68		05 Jun 98		16 Jan 67	<sup>*</sup>	04 Apr 86	20 Sep 01	11 Nov 93	<sup>*</sup>	21 Aug 90	<i>s:07 Sep 00</i>						10 Apr 02	
Croatia	08 Oct 91	<sup>d</sup>	12 Oct 92	<sup>d</sup>	12 Oct 95	<sup>a</sup>	12 Oct 95	<sup>a</sup>	12 Oct 92	<sup>d</sup>	09 Sep 92	<sup>d</sup>	07 Mar 01	12 Oct 92	<sup>d</sup>	12 Oct 92	<sup>d</sup>						13 May 02
Cuba									15 Feb 72		17 Jul 80	<i>s:17 Mar 00</i>	17 May 95	21 Aug 91	<i>s:13 Nov 00</i>							25 Sep 01	
Cyprus	02 Apr 69		02 Apr 69		15 Apr 92		10 Sep 99	<sup>a</sup>	21 Apr 67	<sup>*</sup>	23 Jul 85	<sup>a</sup>	26 Apr 02	18 Jul 91	<sup>*</sup>	07 Feb 91						<i>s:08 Feb 01</i>	
Czech Republic	01 Jan 93	<sup>d</sup>	22 Feb 93	<sup>d</sup>	22 Feb 93	<sup>d</sup>	22 Feb 93	<sup>d</sup>	22 Feb 93	<sup>d</sup>	22 Feb 93	<sup>d</sup>	27 Feb 01	01 Jan 93	<sup>d</sup>	22 Feb 93	<sup>d</sup>					30 Nov 01	
Côte d'Ivoire	26 Mar 92	<sup>a</sup>	26 Mar 92	<sup>a</sup>	05 Mar 97	<sup>a</sup>	04 Jan 73	<sup>a</sup>	18 Dec 95		18 Dec 95	<sup>a</sup>	04 Feb 91										
Democratic People's Republic of Korea	14 Sep 81	<sup>a</sup>	14 Sep 81	<sup>a</sup>					27 Feb 01	<sup>a</sup>			21 Sep 90										
Democratic Republic of the Congo	01 Nov 76	<sup>a</sup>	01 Nov 76	<sup>a</sup>	01 Nov 76	<sup>a</sup>	21 Apr 76	<sup>a</sup>	17 Oct 86		18 Mar 96	28 Sep 90	12 Nov 01	12 Nov 01	<sup>a</sup>								
Denmark	06 Jan 72		06 Jan 72		06 Jan 72		24 Feb 94		09 Dec 71	<sup>*</sup>	21 Apr 83	31 May 00	27 May 87	<sup>*</sup>	19 Jul 91	28 Aug 02	<i>s:07 Sep 00</i>						
Djibouti	05 Nov 02	<sup>a</sup>	05 Nov 02	<sup>a</sup>	05 Nov 02	<sup>a</sup>	05 Nov 02	<sup>a</sup>			02 Dec 98	<sup>a</sup>	05 Nov 02	<sup>a</sup>	06 Dec 90								
Dominica	17 Jun 93	<sup>a</sup>	17 Jun 93	<sup>a</sup>					15 Sep 80				13 Mar 91	20 Sep 02	<sup>a</sup>	20 Sep 02	<sup>a</sup>						

	<b>CESCR</b>	<b>CCPR</b>	<b>CCPRO1</b>	<b>CCPROP2</b>	<b>CERD</b>	<b>CEDAW</b>	<b>CEDAWOP</b>	<b>CAT</b>	<b>CRC</b>	<b>CRCOPAC</b>	<b>CRCOPSC</b>	<b>MWC</b>											
Dominican Republic	04 Jan 78	<sup>a</sup>	04 Jan 78	<sup>a</sup>	04 Jan 78	<sup>a</sup>	25 May 83	<sup>a</sup>	02 Sep 82	10 Aug 01	<i>s:04 Feb 85</i>	11 Jun 91	<i>s:09 May 02</i>										
Ecuador	06 Mar 69		06 Mar 69		06 Mar 69		23 Feb 93	<sup>a</sup>	22 Sep 66	<sup>a</sup>	<sup>*</sup>	09 Nov 81	05 Feb 02	30 Mar 88	<sup>*</sup>	23 Mar 90	<i>s:06 Sep 00</i>	<i>s:06 Sep 00</i>			05 Feb 02	<sup>a</sup>	
Egypt	14 Jan 82		14 Jan 82				01 May 67		18 Sep 81		25 Jun 86	<sup>a</sup>	06 Jul 90							12 Jul 02	<sup>a</sup>	19 Feb 93	<sup>a</sup>
El Salvador	30 Nov 79		30 Nov 79		06 Jun 95		30 Nov 79	<sup>a</sup>	19 Aug 81	<i>s:04 Apr 01</i>	17 Jun 96	<sup>a</sup>	10 Jul 90	18 Apr 02								<i>s:13 Sep 02</i>	
Equatorial Guinea	25 Sep 87	<sup>a</sup>	25 Sep 87	<sup>a</sup>	25 Sep 87	<sup>a</sup>	08 Oct 02	<sup>a</sup>	23 Oct 84	<sup>a</sup>	08 Oct 02	<sup>a</sup>	15 Jun 92	<sup>a</sup>									
Eritrea	17 Apr 01	<sup>a</sup>	23 Jan 02	<sup>a</sup>			01 Aug 01	<sup>a</sup>	05 Sep 95	<sup>a</sup>			03 Aug 94										
Estonia	21 Oct 91	<sup>a</sup>	21 Oct 91	<sup>a</sup>	21 Oct 91	<sup>a</sup>	21 Oct 91	<sup>a</sup>	21 Oct 91	<sup>a</sup>	21 Oct 91	<sup>a</sup>	21 Oct 91	<sup>a</sup>									
Ethiopia	11 Jun 93	<sup>a</sup>	11 Jun 93	<sup>a</sup>			23 Jun 76	<sup>a</sup>	10 Sep 81		13 Mar 94	<sup>a</sup>	14 May 91	<sup>a</sup>									
Fiji							11 Jan 73	<sup>d</sup>	28 Aug 95				13 Aug 93										
Finland	19 Aug 75		19 Aug 75		19 Aug 75		04 Apr 91		14 Jul 70	<sup>*</sup>	04 Sep 86	29 Dec 00	30 Aug 89	<sup>*</sup>	21 Jun 91	11 Apr 02	<i>s:07 Sep 00</i>						
France	04 Nov 80	<sup>a</sup>	04 Nov 80	<sup>a</sup>	17 Feb 84	<sup>a</sup>	28 Jul 71	<sup>a</sup>	14 Dec 83		09 Jun 00	18 Feb 86	<sup>*</sup>	08 Aug 90	<i>s:06 Sep 00</i>	<i>s:06 Sep 00</i>							

Gabon	21 Jan 83	<sup>a</sup>	21 Jan 83	<sup>a</sup>				29 Feb 80	21 Jan 83		08 Sep 00	09 Feb 94	<i>s:08 Sep 00</i>	<i>s:08 Sep 00</i>						
Gambia	29 Dec 78	<sup>a</sup>	22 Mar 79	<sup>a</sup>	09 Jun 88	<sup>a</sup>		29 Dec 78	<sup>a</sup>	16 Apr 93			<i>s:23 Oct 85</i>	08 Aug 90	<i>s:21 Dec 00</i>	<i>s:21 Dec 00</i>				
Georgia	03 May 94	<sup>a</sup>	03 May 94	<sup>a</sup>	03 May 94	<sup>a</sup>	22 Mar 99	<sup>a</sup>	02 Jun 99	<sup>a</sup>	26 Oct 94	<sup>a</sup>	02 Jun 94	<sup>a</sup>						
Germany	17 Dec 73		17 Dec 73		25 Aug 93	<sup>a</sup>	18 Aug 92		16 May 69	<sup>a</sup>	10 Jul 85		15 Jan 02	01 Oct 90	<sup>*</sup>	06 Mar 92	<i>s:06 Sep 00</i>	<i>s:06 Sep 00</i>		
Ghana	08 Sep 00		08 Sep 00		08 Sep 00				08 Sep 66		02 Jan 86		<i>s:24 Feb 00</i>	08 Sep 00		05 Feb 90		08 Sep 00		
Greece	16 May 85	<sup>a</sup>	05 May 97	<sup>a</sup>	05 May 97	<sup>a</sup>	05 May 97	<sup>a</sup>	18 Jun 70		07 Jun 83		24 Jan 02	06 Oct 88	<sup>*</sup>	11 May 93	<i>s:07 Sep 00</i>	<i>s:07 Sep 00</i>		
Grenada	06 Sep 91	<sup>a</sup>	06 Sep 91	<sup>a</sup>				<i>s:17 Dec 81</i>		31 Aug 90				05 Nov 90						
Guatemala	19 May 88	<sup>a</sup>	06 May 92	<sup>a</sup>	28 Nov 00	<sup>a</sup>			18 Jan 83		12 Aug 82		<i>s:07 Sep 00</i>	05 Jan 90	<sup>a</sup>	06 Jun 90	10 May 02	10 May 02	<i>s:07 Sep 00</i>	
Guinea	24 Jan 78		24 Jan 78		17 Jun 93				14 Mar 77		09 Aug 82			10 Oct 89		13 Jul 90	<sup>a</sup>		08 Sep 00	<sup>a</sup>
Guinea-Bissau	02 Jul 92	<sup>a</sup>	<i>s:12 Sep 00</i>		<i>s:12 Sep 00</i>				<i>s:12 Sep 00</i>		23 Aug 85		<i>s:12 Sep 00</i>	<i>s:12 Sep 00</i>		21 Aug 90	<i>s:08 Sep 00</i>	<i>s:08 Sep 00</i>	<i>s:12 Sep 00</i>	
Guyana	15 Feb 77		15 Feb 77		10 May 93	<sup>a</sup>			15 Feb 77		17 Jul 80			19 May 88		14 Jan 91				
Haiti			06 Feb 91	<sup>a</sup>					19 Dec 72		20 Jul 81					09 Jun 95	<i>s:15 Aug 02</i>	<i>s:15 Aug 02</i>		
Holy See									01 May 69					26 Jun 02	<sup>a</sup>	20 Apr 90	24 Oct 01	24 Oct 01		
Honduras	17 Feb 81		25 Aug 97		<i>s:19 Dec 66</i>				10 Oct 02	<sup>a</sup>	03 Mar 83			05 Dec 96	<sup>a</sup>	10 Aug 90	14 Aug 02	<sup>a</sup>	09 May 02	<sup>a</sup>
Hungary	17 Jan 74		17 Jan 74		07 Sep 88	<sup>a</sup>	24 Feb 94	<sup>a</sup>	01 May 67	<sup>*</sup>	22 Dec 80		22 Dec 00	<sup>a</sup>	15 Apr 87	<sup>*</sup>	08 Oct 91			
Iceland	22 Nov 79		22 Aug 79		22 Aug 79	<sup>a</sup>	02 Apr 91	<sup>a</sup>	13 Mar 67	<sup>*</sup>	18 Jun 85		07 Mar 01	23 Oct 96	<sup>*</sup>	28 Oct 92	02 Oct 01	09 Jul 01		

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	<b>CESCR</b>	<b>CCPR</b>	<b>CCPROPI</b>	<b>CCPROP2</b>	<b>CERD</b>	<b>CEDAW</b>	<b>CEDAWOP</b>	<b>CAT</b>	<b>CRC</b>	<b>CRCOPAC</b>	<b>CRCOPSC</b>	<b>MWC</b>					
India	10 Apr 79	<sup>a</sup>	10 Apr 79	<sup>a</sup>	03 Dec 68	09 Jul 93		<i>s:14 Oct 97</i>	11 Dec 92	<sup>a</sup>							
Indonesia					25 Jun 99	<sup>a</sup>	13 Sep 84	<i>s:28 Feb 00</i>	28 Oct 98	05 Sep 90	<i>s:24 Sep 01</i>	<i>s:24 Sep 01</i>					
Iran (Islamic Republic of)	24 Jun 75		24 Jun 75		29 Aug 68				13 Jul 94								
Iraq	25 Jan 71		25 Jan 71		14 Jan 70		13 Aug 86	<sup>a</sup>	15 Jun 94	<sup>a</sup>							
Ireland	08 Dec 89		08 Dec 89		08 Dec 89	18 Jun 93	<sup>a</sup>	29 Dec 00	<sup>*</sup>	23 Dec 85	<sup>a</sup>	08 Sep 00	11 Apr 02	<sup>*</sup>	28 Sep 92	<i>s:07 Sep 00</i>	<i>s:07 Sep 00</i>
Israel	03 Oct 91		03 Oct 91		03 Jan 79		03 Oct 91		03 Oct 91	03 Oct 91		<i>s:14 Nov 01</i>					
Italy	15 Sep 78		15 Sep 78		15 Sep 78	14 Feb 95		05 Jan 76	<sup>*</sup>	10 Jun 85	22 Sep 00		12 Jan 89	<sup>*</sup>	05 Sep 91	10 May 02	10 May 02
Jamaica	03 Oct 75		03 Oct 75				04 Jun 71		19 Oct 84						14 May 91	10 May 02	<i>s:08 Sep 00</i>
Japan	21 Jun 79		21 Jun 79		15 Dec 95	<sup>a</sup>	25 Jun 85		29 Jun 99	<sup>a</sup>	22 Apr 94		<i>s:10 May 02</i>		<i>s:10 May 02</i>		
Jordan	28 May 75		28 May 75		30 May 74	<sup>a</sup>	01 Jul 92		13 Nov 91		24 May 91		<i>s:06 Sep 00</i>		<i>s:06 Sep 00</i>		
Kazakhstan					26 Aug 98	<sup>a</sup>	26 Aug 98	<sup>a</sup>	24 Aug 01	26 Aug 98	<sup>a</sup>	12 Aug 94	<i>s:06 Sep 00</i>		24 Aug 01		
Kenya	01 May 72	<sup>a</sup>	01 May 72	<sup>a</sup>	13 Sep 01	<sup>a</sup>	09 Mar 84	<sup>a</sup>	21 Feb 97	<sup>a</sup>	31 Jul 90		28 Jan 02		<i>s:08 Sep 00</i>		
Kiribati									11 Dec 95	<sup>a</sup>							
Kuwait	21 May 96	<sup>a</sup>	21 May 96	<sup>a</sup>	15 Oct 68	<sup>a</sup>	02 Sep 94	<sup>a</sup>	08 Mar 96	<sup>a</sup>	21 Oct 91						
Kyrgyzstan	07 Oct 94	<sup>a</sup>	07 Oct 94	<sup>a</sup>	07 Oct 95	<sup>a</sup>	05 Sep 97	<sup>a</sup>	10 Feb 97	<sup>a</sup>	22 Jul 02	<sup>a</sup>	05 Sep 97	<sup>a</sup>	07 Oct 94	<sup>a</sup>	
Lao People's Democratic Republic	<i>s:07 Dec 00</i>		<i>s:07 Dec 00</i>				22 Feb 74	<sup>a</sup>	14 Aug 81				08 May 91	<sup>a</sup>			
Latvia	14 Apr 92	<sup>a</sup>	14 Apr 92	<sup>a</sup>	22 Jun 94	<sup>a</sup>	14 Apr 92	<sup>a</sup>	15 Apr 92	<sup>a</sup>	14 Apr 92	<sup>a</sup>	15 Apr 92	<sup>a</sup>	<i>s:01 Feb 02</i>	<i>s:01 Feb 02</i>	

Lebanon	03 Nov 72	<sup>a</sup>	03 Nov 72	<sup>a</sup>			12 Nov 71	<sup>a</sup>	21 Apr 97	<sup>a</sup>	05 Oct 00	<sup>a</sup>	14 May 91	<i>s:10 Oct 01</i>				
Lesotho	09 Sep 92	<sup>a</sup>	09 Sep 92	<sup>a</sup>	07 Sep 00	<sup>a</sup>	04 Nov 71	<sup>a</sup>	22 Aug 95	<sup>a</sup>	<i>s:06 Sep 00</i>	13 Nov 01	<sup>a</sup>	10 Mar 92	<i>s:06 Sep 00</i>	<i>s:06 Sep 00</i>		
Liberia	<i>s:18 Apr 67</i>		<i>s:18 Apr 67</i>				05 Nov 76	<sup>a</sup>	17 Jul 84				04 Jun 93					
Libyan Arab Jamahiriya	15 May 70	<sup>a</sup>	15 May 70	<sup>a</sup>	16 May 89	<sup>a</sup>	03 Jul 68	<sup>a</sup>	16 May 89	<sup>a</sup>		16 May 89	<sup>a</sup>	16 Apr 93	<sup>a</sup>			
Liechtenstein	10 Dec 98	<sup>a</sup>	10 Dec 98	<sup>a</sup>	10 Dec 98	<sup>a</sup>	10 Dec 98	<sup>a</sup>	01 Mar 00	<sup>a</sup>	22 Dec 95	<sup>a</sup>	24 Oct 01	02 Nov 90	<sup>a</sup>	22 Dec 95	<i>s:08 Sep 00</i>	<i>s:08 Sep 00</i>
Lithuania	20 Nov 91	<sup>a</sup>	20 Nov 91	<sup>a</sup>	20 Nov 91	<sup>a</sup>	28 Mar 02		10 Dec 98		18 Jan 94	<sup>a</sup>	<i>s:08 Sep 00</i>	01 Feb 96	31 Jan 92	<sup>a</sup>	<i>s:13 Feb 02</i>	
Luxembourg	18 Aug 83		18 Aug 83		18 Aug 83	<sup>a</sup>	12 Feb 92		01 May 78	<sup>*</sup>	02 Feb 89	<i>s:10 Dec 99</i>	29 Sep 87	<sup>*</sup>	07 Mar 94	<i>s:08 Sep 00</i>	<i>s:08 Sep 00</i>	
Madagascar	22 Sep 71		21 Jun 71		21 Jun 71				07 Feb 69		17 Mar 89	<i>s:07 Sep 00</i>	<i>s:01 Oct 01</i>	19 Mar 91		<i>s:07 Sep 00</i>	<i>s:07 Sep 00</i>	
Malawi	22 Dec 93	<sup>a</sup>	22 Dec 93	<sup>a</sup>	11 Jun 96		11 Jun 96	<sup>a</sup>	12 Mar 87	<sup>a</sup>	<i>s:07 Sep 00</i>	11 Jun 96	<sup>a</sup>	03 Jan 91	<sup>a</sup>	<i>s:07 Sep 00</i>	<i>s:07 Sep 00</i>	

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	<b>CESCR</b>	<b>CCPR</b>	<b>CCPROP1</b>	<b>CCPROP2</b>	<b>CERD</b>	<b>CEDAW</b>	<b>CEDAWOP</b>	<b>CAT</b>	<b>CRC</b>	<b>CRCOPAC</b>	<b>CRCOPSC</b>	<b>MWC</b>						
Malaysia						05 Jul 95			17 Feb 95	<sup>a</sup>								
Maldives					24 Apr 84	<sup>a</sup>	01 Jul 93	<sup>a</sup>	11 Feb 91	<i>s:10 May 02</i>	10 May 02							
Mali	16 Jul 74	<sup>a</sup>	16 Jul 74	<sup>a</sup>	24 Oct 01	<sup>a</sup>	16 Jul 74	<sup>a</sup>	10 Sep 85	05 Dec 00	<sup>a</sup>	26 Feb 99	<sup>a</sup>	21 Sep 90	16 May 02	16 May 02	<sup>a</sup>	
Malta	13 Sep 90		13 Sep 90	<sup>a</sup>	13 Sep 90	<sup>a</sup>	29 Dec 94	<sup>a</sup>	27 May 71	<sup>*</sup>	08 Mar 91	<sup>a</sup>	13 Sep 90	<sup>a</sup>	30 Sep 90	10 May 02	<i>s:07 Sep 00</i>	
Marshall Islands									05 Oct 93									
Mauritania					13 Dec 88		10 May 01	<sup>a</sup>	16 May 91									
Mauritius	12 Dec 73	<sup>a</sup>	12 Dec 73	<sup>a</sup>	12 Dec 73	<sup>a</sup>	30 May 72	<sup>a</sup>	09 Jul 84	<sup>a</sup>	<i>s:11 Nov 01</i>	09 Dec 92	<sup>a</sup>	26 Jul 90	<sup>a</sup>	<i>s:11 Nov 01</i>	<i>s:11 Nov 01</i>	
Mexico	23 Mar 81	<sup>a</sup>	23 Mar 81	<sup>a</sup>	15 Mar 02		20 Feb 75		23 Mar 81	15 Mar 02		23 Jan 86	<sup>*</sup>	21 Sep 90	15 Mar 02	15 Mar 02	08 Mar 99	
Micronesia (Federated States of)									05 May 93	<sup>a</sup>								
Monaco	28 Aug 97		28 Aug 97		28 Mar 00	<sup>a</sup>	27 Sep 95	<sup>a</sup>	06 Dec 91	<sup>a</sup>	21 Jun 93	<sup>a</sup>	14 Nov 01	<i>s:26 Jun 00</i>				
Mongolia	18 Nov 74		18 Nov 74		16 Apr 91	<sup>a</sup>	06 Aug 69		20 Jul 81	28 Mar 02	24 Jan 02	<sup>a</sup>	06 Jul 90	<i>s:12 Nov 01</i>	<i>s:12 Nov 01</i>			
Morocco	03 May 79		03 May 79				18 Dec 70		22 Jun 93	<sup>a</sup>	21 Jun 93	21 Jun 93	22 May 02	02 Oct 01		21 Jun 93		
Mozambique		21 Jul 93	<sup>a</sup>		21 Jul 93	<sup>a</sup>	18 Apr 83	<sup>a</sup>	16 Apr 97	<sup>a</sup>	14 Sep 99	<sup>a</sup>	26 Apr 94					
Myanmar									22 Jul 97	<sup>a</sup>	15 Jul 91	<sup>a</sup>						
Namibia	28 Nov 94	<sup>a</sup>	28 Nov 94	<sup>a</sup>	28 Nov 94	<sup>a</sup>	28 Nov 94	<sup>a</sup>	11 Nov 82	<sup>a</sup>	23 Nov 92	<sup>a</sup>	26 May 00	28 Nov 94	<sup>a</sup>	01 Oct 90	16 Apr 02	16 Apr 02
Nauru		<i>s:12 Nov 01</i>		<i>s:12 Nov 01</i>		<i>s:12 Nov 01</i>		<i>s:12 Nov 01</i>		<i>s:12 Nov 01</i>	27 Jul 94	<sup>a</sup>	<i>s:08 Sep 00</i>	<i>s:08 Sep 00</i>				
Nepal	14 May 91	<sup>a</sup>	14 May 91	<sup>a</sup>	14 May 91	<sup>a</sup>	04 Mar 98	<sup>a</sup>	30 Jan 71	<sup>a</sup>	22 Apr 91	<i>s:18 Dec 01</i>	14 May 91	<sup>a</sup>	14 Sep 90	<i>s:08 Sep 00</i>	<i>s:08 Sep 00</i>	
Netherlands	11 Dec 78		11 Dec 78		11 Dec 78		26 Mar 91		10 Dec 71	<sup>*</sup>	23 Jul 91	22 May 02	21 Dec 88	<sup>*</sup>	06 Feb 95	<i>s:07 Sep 00</i>	<i>s:07 Sep 00</i>	
New Zealand	28 Dec 78		28 Dec 78		26 May 89	<sup>a</sup>	22 Feb 90		22 Nov 72		10 Jan 85	08 Sep 00	10 Dec 89	<sup>*</sup>	06 Apr 93	12 Nov 01	<i>s:07 Sep 00</i>	
Nicaragua	12 Mar 80	<sup>a</sup>	12 Mar 80	<sup>a</sup>	12 Mar 80	<sup>a</sup>	15 Feb 78	<sup>a</sup>	27 Oct 81		<i>s:15 Apr 85</i>	05 Oct 90						
Niger	07 Mar 86	<sup>a</sup>	07 Mar 86	<sup>a</sup>	07 Mar 86	<sup>a</sup>	27 Apr 67		08 Oct 99	<sup>a</sup>	05 Oct 98	<sup>a</sup>	30 Sep 90					
Nigeria	29 Jul 93	<sup>a</sup>	29 Jul 93	<sup>a</sup>			16 Oct 67	<sup>a</sup>	13 Jun 85	<i>s:08 Sep 00</i>	28 Jun 01	19 Apr 91	<i>s:08 Sep 00</i>	<i>s:08 Sep 00</i>				
Niue									20 Dec 95	<sup>a</sup>								
Norway	13 Sep 72		13 Sep 72		13 Sep 72		05 Sep 91		06 Aug 70	<sup>*</sup>	21 May 81	05 Mar 02	09 Jul 86	<sup>*</sup>	08 Jan 91	<i>s:13 Jun 00</i>	02 Oct 01	
Oman													09 Dec 96	<sup>a</sup>				

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	CESCR	CCPR	CCPROP1	CCPROP2	CERD	CEDAW	CEDAWOP	CAT	CRC	CRCOPAC	CRCOPSC	MWC
Palau									04 Aug 95 <sup>a</sup>			
Panama	08 Mar 77 <sup>a</sup>	08 Mar 77	08 Mar 77	21 Jan 93 <sup>a</sup>	16 Aug 67	29 Oct 81	10 May 01	24 Aug 87	12 Dec 90	08 Aug 01	09 Feb 01	
Papua New Guinea					27 Jan 82 <sup>a</sup>	12 Jan 95 <sup>a</sup>			02 Mar 93			
Paraguay	10 Jun 92 <sup>a</sup>	10 Jun 92	10 Jan 95 <sup>a</sup>		<i>s:13 Sep 00</i>	06 Apr 87 <sup>a</sup>	14 May 01	12 Mar 90 <sup>a</sup>	25 Sep 90	27 Sep 02	<i>s:13 Sep 00</i>	<i>s:13 Sep 00</i>
Peru	28 Apr 78	28 Apr 78	03 Oct 80 <sup>a</sup>		29 Sep 71 <sup>a</sup>	13 Sep 82	09 Apr 01	07 Jul 88 <sup>a</sup>	05 Sep 90	09 May 02	09 May 02	
Philippines	07 Jun 74	23 Oct 86	22 Aug 89 <sup>a</sup>		15 Sep 67	05 Aug 81	<i>s:21 Mar 00</i>	18 Jun 86 <sup>a</sup>	21 Aug 90	<i>s:08 Sep 00</i>	<i>s:08 Sep 00</i>	05 Jul 95
Poland	18 Mar 77	18 Mar 77	07 Nov 91 <sup>a</sup>		05 Dec 68 <sup>a</sup>	30 Jul 80		26 Jul 89 <sup>a</sup>	07 Jun 91	<i>s:13 Feb 02</i>	<i>s:13 Feb 02</i>	
Portugal	31 Jul 78	15 Jun 78	03 May 83	17 Oct 90	24 Aug 82 <sup>a</sup>	30 Jul 80	26 Apr 02	09 Feb 89 <sup>a</sup>	21 Sep 90	<i>s:06 Sep 00</i>	<i>s:06 Sep 00</i>	
Qatar					22 Jul 76 <sup>a</sup>			11 Jan 00 <sup>a</sup>	04 Apr 95	25 Jul 02 <sup>a</sup>	14 Dec 01 <sup>a</sup>	
Republic of Korea	10 Apr 90 <sup>a</sup>	10 Apr 90 <sup>a</sup>	10 Apr 90 <sup>a</sup>		05 Dec 78 <sup>a</sup>	27 Dec 84		09 Jan 95 <sup>a</sup>	20 Nov 91	<i>s:06 Sep 00</i>	<i>s:06 Sep 00</i>	
Republic of Moldova	26 Jan 93 <sup>a</sup>	26 Jan 93 <sup>a</sup>			26 Jan 93 <sup>a</sup>	01 Jul 94 <sup>a</sup>		28 Nov 95	26 Jan 93 <sup>a</sup>	<i>s:08 Feb 02</i>	<i>s:08 Feb 02</i>	
Romania	09 Dec 74	09 Dec 74	20 Jul 93 <sup>a</sup>	27 Feb 91	15 Sep 70 <sup>a</sup>	07 Jan 82	<i>s:06 Sep 00</i>	18 Dec 90 <sup>a</sup>	28 Sep 90	11 Nov 01	18 Oct 01	
Russian Federation	16 Oct 73	16 Oct 73	01 Oct 91 <sup>a</sup>		04 Feb 69 <sup>a</sup>	23 Jan 81	<i>s:08 May 01</i>	03 Mar 87 <sup>a</sup>	17 Aug 90	<i>s:15 Feb 01</i>		
Rwanda	16 Apr 75 <sup>a</sup>	16 Apr 75 <sup>a</sup>			16 Apr 75 <sup>a</sup>	02 Mar 81		24 Jan 91		23 Apr 02 <sup>a</sup>	15 Mar 02 <sup>a</sup>	
Saint Kitts and Nevis						25 Apr 85 <sup>a</sup>		24 Jul 90				
Saint Lucia					14 Feb 90 <sup>d</sup>	08 Oct 82 <sup>a</sup>		16 Jun 93				
Saint Vincent and the Grenadines	09 Nov 81 <sup>a</sup>	09 Nov 81 <sup>a</sup>	09 Nov 81 <sup>a</sup>		09 Nov 81 <sup>a</sup>	05 Aug 81 <sup>a</sup>		01 Aug 01 <sup>a</sup>	26 Oct 93			
Samoa						25 Sep 92 <sup>a</sup>		29 Nov 94				
San Marino	18 Oct 85 <sup>a</sup>	18 Oct 85 <sup>a</sup>	18 Oct 85 <sup>a</sup>		12 Mar 02			<i>s:18 Sep 02</i>	25 Nov 91 <sup>a</sup>	<i>s:05 Jun 00</i>	<i>s:05 Jun 00</i>	
Sao Tome and Principe	<i>s:31 Oct 95</i>	<i>s:31 Oct 95</i>	<i>s:06 Sep 00</i>		<i>s:06 Sep 00</i>	<i>s:31 Oct 95</i>	<i>s:06 Sep 00</i>	<i>s:06 Sep 00</i>	14 May 91 <sup>a</sup>			<i>s:06 Sep 00</i>
Saudi Arabia					23 Sep 97 <sup>a</sup>	08 Sep 00		23 Sep 97 <sup>a</sup>	26 Jan 96 <sup>a</sup>			
Senegal	13 Feb 78	13 Feb 78	13 Feb 78		19 Apr 72 <sup>a</sup>	05 Feb 85	26 May 00	21 Aug 86 <sup>a</sup>	01 Aug 90	<i>s:08 Sep 00</i>	<i>s:08 Sep 00</i>	09 Jun 99 <sup>a</sup>
Seychelles	05 May 92 <sup>a</sup>	05 May 92 <sup>a</sup>	05 May 92 <sup>a</sup>	15 Dec 94 <sup>a</sup>	07 Mar 78 <sup>a</sup>	06 May 92 <sup>a</sup>		05 May 92 <sup>a</sup>	07 Sep 90 <sup>a</sup>	<i>s:23 Jan 01</i>	<i>s:23 Jan 01</i>	15 Dec 94 <sup>a</sup>
Sierra Leone	23 Aug 96 <sup>a</sup>	23 Aug 96 <sup>a</sup>	23 Aug 96 <sup>a</sup>		02 Aug 67	11 Nov 88	<i>s:08 Sep 00</i>	25 Apr 01	18 Jun 90	16 May 02	17 Sep 01	<i>s:15 Sep 00</i>
Singapore							05 Oct 95 <sup>a</sup>		05 Oct 95 <sup>a</sup>	<i>s:07 Sep 00</i>		
Slovakia	28 May 93 <sup>d</sup>	28 May 93 <sup>d</sup>	28 May 93	22 Jun 99	28 May 93 <sup>d</sup>	28 May 93 <sup>d</sup>	17 Nov 00	28 May 93 <sup>d</sup>	28 May 93 <sup>d</sup>		<i>s:30 Nov 01</i>	

	CESCR	CCPR	CCPROPI	CCPROP2	CERD	CEDAW	CEDAWOP	CAT	CRC	CRCOPAC	CRCOPSC	MWC
Slovenia	06 Jul 92 <sup>d</sup>	06 Jul 92 <sup>d</sup>	16 Jul 93 <sup>a</sup>	10 Mar 94	06 Jul 92 <sup>d</sup>	06 Jul 92 <sup>d</sup>	<i>s:10 Dec 99</i>	16 Jul 93 <sup>a</sup>	06 Jul 92 <sup>d</sup>	<i>s:08 Sep 00</i>	<i>s:08 Sep 00</i>	
Solomon Islands	17 Mar 82 <sup>d</sup>				17 Mar 82 <sup>d</sup>	06 May 02 <sup>a</sup>	06 May 02		10 Apr 95 <sup>a</sup>			
Somalia	24 Jan 90 <sup>a</sup>	24 Jan 90 <sup>a</sup>	24 Jan 90 <sup>a</sup>		26 Aug 75			24 Jan 90 <sup>a</sup>	<i>s:09 May 0</i>			
South Africa	<i>s:03 Oct 94</i>	10 Dec 98	28 Aug 02 <sup>a</sup>	28 Aug 02 <sup>a</sup>	10 Dec 98 <sup>*</sup>	15 Dec 95		10 Dec 98 <sup>*</sup>	16 Jun 95	<i>s:08 Feb 02</i>		
Spain	27 Apr 77	27 Apr 77	25 Jan 85 <sup>a</sup>	11 Apr 91	13 Sep 68 <sup>a</sup>	05 Jan 84	06 Jul 01	21 Oct 87 <sup>*</sup>	06 Dec 90	08 Mar 02	18 Dec 01	
Sri Lanka	11 Jun 80 <sup>a</sup>	11 Jun 80 <sup>a</sup>	03 Oct 97 <sup>a</sup>		18 Feb 82 <sup>a</sup>	05 Oct 81	15 Oct 02 <sup>a</sup>	03 Jan 94 <sup>a</sup>	12 Jul 91	08 Sep 00		11 Mar 96 <sup>a</sup>
Sudan	18 Mar 86 <sup>a</sup>	18 Mar 76 <sup>a</sup>			21 Mar 77 <sup>a</sup>			<i>s:04 Jan 86</i>	03 Aug 90			
Suriname	28 Dec 76 <sup>a</sup>	28 Dec 76 <sup>a</sup>	28 Dec 76 <sup>a</sup>		15 Mar 84 <sup>d</sup>	02 Mar 93 <sup>a</sup>			02 Mar 93	<i>s:10 May 02</i>	<i>s:10 May 02</i>	
Swaziland					07 Apr 69 <sup>a</sup>				08 Sep 95			
Sweden	06 Dec 71	06 Dec 71	06 Dec 71	11 May 90	06 Dec 71 <sup>*</sup>	02 Jul 80	<i>s:10 Dec 99</i>	08 Jan 86 <sup>*</sup>	29 Jun 90	<i>s:08 Jun 00</i>	<i>s:08 Jun 00</i>	
Switzerland	18 Jun 92 <sup>a</sup>	18 Jun 92 <sup>a</sup>		16 Jun 94 <sup>a</sup>	29 Nov 94 <sup>a</sup>	27 Mar 97		02 Dec 86 <sup>*</sup>	24 Feb 97	26 Jun 02	<i>s:07 Sep 00</i>	
Syrian Arab Republic	21 Apr 69 <sup>a</sup>	21 Apr 69 <sup>a</sup>			21 Apr 69 <sup>a</sup>				15 Jul 93			
Tajikistan	04 Jan 99 <sup>a</sup>	04 Jan 99 <sup>a</sup>	04 Jan 99 <sup>a</sup>		11 Jan 95 <sup>a</sup>	26 Oct 93 <sup>a</sup>	<i>s:07 Sep 00</i>	11 Jan 95 <sup>a</sup>	26 Oct 93 <sup>a</sup>	05 Aug 02 <sup>a</sup>	05 Aug 02 <sup>a</sup>	08 Jan 02
Thailand	05 Sep 99 <sup>a</sup>	29 Oct 96 <sup>a</sup>				09 Aug 85 <sup>a</sup>	14 Jun 00		27 Mar 92 <sup>a</sup>			
The Former Yugoslav Republic of Macedonia	18 Jan 94 <sup>d</sup>	18 Jan 94 <sup>d</sup>	12 Dec 94 <sup>a</sup>	26 Jan 95	18 Jan 94 <sup>d</sup>	18 Jan 94 <sup>d</sup>	<i>s:03 Apr 00</i>	12 Dec 94 <sup>d</sup>	02 Dec 93 <sup>d</sup>	<i>s:17 Jul 01</i>	<i>s:17 Jul 01</i>	
Togo	24 May 84 <sup>a</sup>	24 May 84 <sup>a</sup>	30 Mar 88 <sup>a</sup>		01 Sep 72 <sup>a</sup>	26 Sep 83 <sup>a</sup>		18 Nov 87 <sup>*</sup>	01 Aug 90		<i>s:15 Nov 01</i>	<i>s:15 Nov 01</i>
Tonga					16 Feb 72 <sup>a</sup>				06 Nov 95 <sup>a</sup>			
Trinidad and Tobago	08 Dec 78 <sup>a</sup>	21 Dec 78 <sup>a</sup>			04 Oct 73	12 Jan 90			06 Dec 91			
Tunisia	18 Mar 69	18 Mar 69			13 Jan 67	20 Sep 85		23 Sep 88 <sup>*</sup>	31 Jan 92	<i>s:22 Apr 02</i>	13 Sep 02	
Turkey	<i>s:15 Aug 00</i>	<i>s:15 Aug 00</i>			16 Sep 02	20 Dec 85 <sup>a</sup>	29 Oct 02	02 Aug 88 <sup>*</sup>	04 Apr 95	<i>s:08 Sep 00</i>	19 Aug 02	<i>s:13 Jan 99</i>
Turkmenistan	01 May 97 <sup>a</sup>	01 May 97 <sup>a</sup>	01 May 97 <sup>a</sup>	11 Jan 00 <sup>a</sup>	29 Sep 94 <sup>a</sup>	01 May 97 <sup>a</sup>		25 Jun 99 <sup>a</sup>	20 Sep 93 <sup>a</sup>			
Tuvalu						06 Oct 99 <sup>a</sup>			22 Sep 95 <sup>a</sup>			
Uganda	21 Jan 87 <sup>a</sup>	21 Jun 95 <sup>a</sup>	14 Nov 95		21 Nov 80 <sup>a</sup>	23 Jul 85		03 Nov 86 <sup>a</sup>	17 Aug 90	06 May 02 <sup>a</sup>	30 Nov 01 <sup>a</sup>	14 Nov 95 <sup>a</sup>
Ukraine	12 Nov 73	12 Nov 73	25 Jul 91 <sup>a</sup>		07 Mar 69 <sup>*</sup>	12 Mar 81	<i>s:07 Sep 00</i>	24 Feb 87	28 Aug 91	<i>s:07 Sep 00</i>	<i>s:07 Sep 00</i>	
United Arab Emirates					20 Jun 74 <sup>a</sup>				03 Jan 97 <sup>a</sup>			

	CESCR	CCPR	CCPROPI	CCPROP2	CERD	CEDAW	CEDAWOP	CAT	CRC	CRCOPAC	CRCOPSC	MWC
United Kingdom of Great Britain and Northern Ireland	20 May 76	20 May 76		10 Dec 99	07 Mar 69	07 Apr 86		08 Dec 88 <sup>*</sup>	16 Dec 91	<i>s:07 Sep 00</i>	<i>s:07 Sep 00</i>	
United Republic of Tanzania	11 Jun 76 <sup>a</sup>	11 Jun 76 <sup>a</sup>			27 Oct 72 <sup>a</sup>	20 Aug 85			11 Jun 91			
United States of America	<i>s:05 Oct 77</i>	08 Jun 92			21 Oct 94	<i>s:17 Jul 80</i>		21 Oct 94 <sup>*</sup>	<i>s:16 Feb 9</i>	<i>s:05 Jul 00</i>	<i>s:05 Jul 00</i>	
Uruguay	01 Apr 70	01 Apr 70	01 Apr 70	21 Jan 93	30 Aug 68 <sup>*</sup>	09 Oct 81	26 Jul 01	24 Oct 86 <sup>*</sup>	20 Nov 90	<i>s:07 Sep 00</i>	<i>s:07 Sep 00</i>	15 Feb 01 <sup>a</sup>

Uzbekistan	28 Sep 95	<sup>a</sup>	28 Sep 95	<sup>a</sup>	28 Sep 95	<sup>a</sup>	28 Sep 95	<sup>a</sup>	19 Jul 95	<sup>a</sup>	28 Sep 95	<sup>a</sup>	29 Jun 94	<sup>a</sup>
Vanuatu									08 Sep 95				07 Jul 93	
Venezuela	10 May 78		10 May 78		10 May 78		22 Feb 93		10 Oct 67		02 May 83		13 May 02	
Viet Nam	24 Sep 82	<sup>a</sup>	24 Sep 82	<sup>a</sup>					09 Jun 82	<sup>a</sup>	17 Feb 82		28 Feb 90	
Yemen	09 Feb 87	<sup>a</sup>	09 Feb 87	<sup>a</sup>					18 Oct 72	<sup>a</sup>	30 May 84	<sup>a</sup>	05 Nov 91	<sup>a</sup>
Yugoslavia	12 Mar 01	<sup>d</sup>	12 Mar 01	<sup>d</sup>	06 Sep 01		06 Sep 01	<sup>a</sup>	12 Mar 01	<sup>d</sup>	26 Feb 82		12 Mar 01	<sup>d</sup>
Zambia	10 Apr 84	<sup>a</sup>	10 Apr 84	<sup>a</sup>	10 Apr 84	<sup>a</sup>			04 Feb 72		21 Jun 85		07 Oct 98	<sup>a</sup>
Zimbabwe	13 May 91	<sup>a</sup>	13 May 91	<sup>a</sup>					13 May 91	<sup>a</sup>	14 May 91	<sup>a</sup>	11 Sep 90	

	CESCR		OCFR		CCPR-OP1		CCPR-OP2-DP		CERD		CEDAW		CEDAW-OP		CAT		CRC		CRC-OP-AC		CRC-OP-SC		MWC
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<b>REMAINING SIGNATORIES</b>	<b>7</b>		<b>8</b>		<b>5</b>		<b>7</b>		<b>8</b>		<b>3</b>		<b>35</b>		<b>12</b>		<b>2</b>		<b>72</b>		<b>72</b>		<b>12</b>
<b>TOTAL STATE PARTIES</b>	<b>146</b>		<b>149</b>		<b>104</b>		<b>49</b>		<b>165</b>		<b>170</b>		<b>47</b>		<b>132</b>		<b>191</b>		<b>42</b>		<b>42</b>		<b>19</b>

Notes:

The dates listed refer to the date of ratification, unless followed by:

an "a" which signifies accession,

"d", which signifies succession, or

"s", which signifies signature only.

(&) Among non-State parties.

\* indicates that the state party has recognized the competence to receive and process individual communications of the Committee on the Elimination of Racial Discrimination under article 14 of the CERD (total 39 state parties) or of the Committee against Torture under article 22 of CAT (total 52 state parties).

House of Lords  
House of Commons

Joint Committee on  
Human Rights

**THE CASE FOR A  
HUMAN RIGHTS  
COMMISSION**

Sixth Report of Session 2002–03

*Volume I*

# LIST OF REPORTS FROM THE COMMITTEE IN THE PRESENT PARLIAMENT

## SESSION 2002–03

**First Report:** Scrutiny of Bills: Progress Report (HL Paper 24 and HC 191)  
Published 20 December 2002

**Second Report:** Criminal Justice Bill (HL Paper 40 and HC 374)  
Published 31 January 2003

**Third Report:** Scrutiny of Bills: Further Progress Report (HL Paper 41 and HC 375)  
Published 31 January 2003

**Fourth Report:** Scrutiny of Bills: Further Progress Report (HL Paper 50 and HC 397)  
Published 10 February 2003

**Fifth Report:** Continuance in Force of sections 21 to 23 of the Anti-terrorism, Crime and Security Act 2001 (HL Paper 59 and HC 462) Published 26 February 2003

# LIST OF REPORTS FROM THE COMMITTEE IN THE PRESENT PARLIAMENT

## SESSION 2001–02

**First Report:** Homelessness Bill (HL Paper 30 and HC 314) Published 7 November 2001

**Second Report:** Anti-terrorism, Crime and Security Bill (HL Paper 37 and HC 372)  
Published 16 November 2001

**Third Report:** Proceeds of Crime Bill (HL Paper 43 and HC 405) Published 30 November 2001

**Fourth Report:** Sex Discrimination (Election Candidates) Bill (HL Paper 44 and HC 406)  
Published 30 November 2001

**Fifth Report:** Anti-terrorism, Crime and Security Bill: Further Report (HL Paper 51 and HC 420)  
Published 5 December 2001

**Sixth Report:** The Mental Health Act 1983 (Remedial) Order 2001 (HL Paper 57 and HC 472)  
Published 19 December 2001

**Seventh Report:** Making of Remedial Orders (HL Paper 58 and HC 473)  
Published 19 December 2001

**Eighth Report:** Tobacco Advertising and Promotion Bill (HL Paper 59 and HC 474)  
Published 19 December 2001

**Ninth Report:** Scrutiny of Bills: Progress Report (HL Paper 60 and HC 475)  
Published 19 December 2001

**Tenth Report:** Animal Health Bill (HL Paper 67 and HC 542) Published 28 January 2002

**Eleventh Report:** Proceeds of Crime Bill: Further Report (HL Paper 75 and HC 596)  
Published 11 February 2002

**Twelfth Report:** Employment Bill (HL Paper 85 and HC 645) Published 4 March 2002

**Thirteenth Report:** Police Reform Bill (HL Paper 86 and HC 646) Published 4 March 2002

**Fourteenth Report:** Scrutiny of Bill: Private Members' Bills and Private Bills (HL Paper 93 and HC 674) Published 8 March 2002

**Fifteenth Report:** Police Reform Bill: Further Report (HL Paper 98 and HC 706)  
Published 25 March 2002

**Sixteenth Report:** Scrutiny of Bills: Further Progress Report (HL Paper 113 and HC 805)  
Published 7 May 2002

**Seventeenth Report:** Nationality, Immigration and Asylum Bill (HL Paper 132 and HC 961)  
Published 21 June 2002

**Eighteenth Report:** Scrutiny of Bills: Further Progress Report (HL Paper 133 and HC 962)  
Published 21 June 2002

**Nineteenth Report:** Draft Communications Bill (HL Paper 149 and HC 1102)  
Published 19 July 2002

**Twentieth Report:** Draft Extradition Bill (HL Paper 158 and HC 1140) Published 26 July 2002

**Twenty-first Report:** Scrutiny of Bills: Further Progress Report (HL 159 and HC 1141)  
Published 26 July 2002

**Twenty-second Report:** The Case for a Human Rights Commission: Interim Report (HL 160 and HC 1142)  
Published 26 July 2002

**Twenty-third Report:** Nationality, Immigration and Asylum Bill: Further Report (HL 176 and HC 1255)  
Published 23 October 2002

**Twenty-fourth Report:** Adoption and Children Bill: As amended by the House of Lords on Report (HL 177 and HC 979) Published 30 October 2002

**Twenty-fifth Report:** Draft Mental Health Bill (HL 181 and HC 1294) Published 30 October 2002

**Twenty-sixth Report:** Scrutiny of Bills: Final Progress Report (HL 182 and HC 1295) Published 16 December 2002

House of Lords  
House of Commons

Joint Committee on  
Human Rights

**THE CASE FOR A  
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Sixth Report of Session 2002–03

*Volume I:  
Report and Proceedings of the Committee*

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HC 489-I

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## JOINT COMMITTEE ON HUMAN RIGHTS

The Joint Committee on Human Rights is appointed by the House of Lords and the House of Commons to consider matters relating to human rights in the United Kingdom (but excluding consideration of individual cases); proposals for remedial orders made under Section 10 of and laid under Schedule 2 to the Human Rights Act 1998; and in respect of draft remedial orders and remedial orders, whether the special attention of the House should be drawn to them on any of the grounds specified in Standing Order No. 73 (Lords)/151 (Commons) (Statutory Instruments (Joint Committee)).

The Joint Committee has a maximum of six Members appointed by each House, of whom the quorum for any formal proceedings is three from each House.

### Current Membership

HOUSE OF LORDS	HOUSE OF COMMONS
Lord Bowness	Vera Baird MP (Labour, <i>Redcar</i> )
Lord Lester of Herne Hill	Mr David Chidgey MP (Liberal Democrat, <i>Eastleigh</i> )
Lord Parekh	Jean Corston MP (Labour, <i>Bristol East</i> ) ( <i>Chairman</i> )
Baroness Perry of Southwark	Mr Kevin McNamara MP (Labour, <i>Kingston upon Hull</i> )
Baroness Prashar	Mr Richard Shepherd MP
Baroness Whitaker	(Conservative, <i>Aldridge-Brownhills</i> )
	Mr Shaun Woodward MP (Labour, <i>St Helens South</i> )

### Powers

The Committee has the power to require the submission of written evidence and documents, to examine witnesses, to meet at any time (except when Parliament is prorogued or dissolved), to adjourn from place to place within the United Kingdom, to adjourn to institutions of the Council of Europe outside the United Kingdom no more than four times in any calendar year, to appoint specialist advisers, and to make Reports to both Houses.

The Lords Committee has power to agree with the Commons in the appointment of a Chairman. The procedures of the Joint Committee follow those of House of Lords Select Committees where they differ from House of Commons Committees.

### Publications

The Reports and evidence of the Joint Committee are published by The Stationery Office by Order of the two Houses. All publications of the Committee (including press notices) are on the internet at [www.parliament.uk/commons/selcom/hrhome.htm](http://www.parliament.uk/commons/selcom/hrhome.htm). A list of Reports of the Committee in the present Parliament is at the back of this volume.

### Contacts

All correspondence should be addressed to The Clerk of the Joint Committee on Human Rights, Committee Office House of Commons London SW1A 0AA. The telephone number for

general inquiries is: 020 7219 2797; the Committee's e-mail address is jchr@parliament.uk.

## Footnotes

In the footnotes of this Report, references to oral evidence are indicated by 'Q' followed by the question number. All the oral evidence was printed with the Committee's Twenty-second Report of Session 2001-02. References to written evidence are indicated by the page number as in 'Ev 12'. References run continuously from the evidence printed with the Committee's Twenty-second Report of Session 2001-02.

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## THE STRUCTURE OF A COMMISSION

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An Equality Commission with a Human Rights Remit

Separate Equality and Human Rights Commissions

A Human Rights and Equality Commission

One Commission or Two?

Devolution Issues

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Devolution Solutions

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## THE CASE FOR A HUMAN RIGHTS COMMISSION

### SUMMARY

In its White Paper, *Bringing Rights Home*, the Government, in anticipation of a parliamentary committee on human rights being established, suggested that that committee might examine whether, following the passing of the Human Rights Act 1998, there appeared to be a need for an independent human rights commission. This report is the response of the Joint Committee on Human Rights to that proposal. In it we conclude that the case for establishing a commission is compelling.

### A Culture of Human Rights

It was hoped that the Human Rights Act would help to nurture a "culture of understanding of rights and responsibilities" in the UK. Human rights lay down fundamental standards that may be breached, if at all, only under stringent and clearly specified conditions. It is governments which are bound by the international human rights instruments, and the Human Rights Act places obligations on public authorities, not on individuals. But the obligations of public authorities go beyond non-interference with rights—they are also required to take active steps to protect people's rights against interference by others, and to enhance people's capacity to take advantage of their rights. The idea of such positive obligations is rooted in Article 1 of the European Convention on Human Rights, which requires every state to secure to everyone within their jurisdiction the rights and freedoms defined in the Convention.

A culture of human rights, therefore, would be one which gave full recognition to this positive concept of rights. It should have two dimensions—institutional and ethical. In such a culture, so far as the institutional dimension is concerned, respect for human rights should shape the goals, structures, and practices of our public bodies. The key to the effective protection of rights lies in creating a culture in public life in which these fundamental principles are seen as central to the design and delivery of policy, legislation and public services. In their decision making and their service delivery central government, local authorities, schools, hospitals, police forces and other organs and agencies of the state should ensure full respect for the rights of all those involved.

In such a culture, so far as the ethical dimension is concerned, individual men and women should understand that they enjoy certain rights as a matter of right, as an affirmation of their equal dignity and worth, and not as a contingent gift of the state. But this understanding should go with a sense of personal responsibility and of social obligation: an acknowledgement that the rights of one person are limited by

those of others and need to be exercised with a due regard for the latter, and an acceptance that rights entail obligations on the part of others and require that these obligations should be discharged. For the most part human rights are not absolute: they require a fair balance to be struck and maintained between the individual and his or her fellow human beings and the wider public interest. A culture of human rights is not one which is concerned only with rights, to the neglect of duties and responsibilities, but rather one that balances rights and responsibilities by fostering a basic respect for human rights and dignity, and creating a climate in which such respect becomes an integral part of our dealings with the public authorities of the state and with each other.

Such a culture of respect for human rights could help create a more humane society, a more responsive government and better public services. It could help to deepen and widen democracy. It is a goal worth striving for.

### The Case for a Human Rights Commission

In this report we consider the signs which indicate whether that culture of respect for human rights has begun to flourish in the UK since the passing of the Human Rights Act, and the evidence of whether a human rights commission could help it do so.

In the case of a measure such as the Human Rights Act, which is both new and intended to be far-reaching, the legal process does not have a reality unless people know what it is and know how to use it. Spreading knowledge and awareness of the law is an essential part of building a culture. But if it is left only to the courts, the original vision that the Human Rights Act should bring about a cultural change will not be realised. Litigation is an essential last resort in protecting the rights of the individual or groups, but it is not the most effective means of developing a culture of human rights.

Government cannot be the sole advocate of a culture of rights and responsibilities. Rights essentially mediate the relationship between the citizens and the state. A Government cannot be an impartial champion of human rights. In the course of our inquiry we found very broad support for an organisation which stands aside from government, and engages with civil society in a debate about the practical expression of the values embodied in human rights.

Parliament must defend human rights and must stand at the centre of a culture of respect for human rights, but it cannot itself do the work of educating, informing, encouraging and promoting that is needed to establish this culture more widely.

The Paris Principles, as agreed by the General Assembly of the United Nations, exhort all states to establish independent bodies which will raise public awareness of human rights, promote good practice, monitor policy developments and their impact, provide independent advice to Parliament and Government, and help those who feel that their rights have been breached or are threatened with violation. Many countries have already established independent national human rights institutions.

It is insufficient, however, to assert the case for an independent human rights commission in principle alone. It is necessary also to assess whether a commission could have the potential to make a real difference to people's lives.

We have not found evidence of the rapid development of awareness of a culture of respect for human rights and its implications throughout society, and what awareness there is often appears partial or ill-informed. We fear that the highwater mark has been passed, and that awareness of human rights is ebbing, both within public

authorities and within the public at large.

We took evidence from a wide range of bodies concerned in the monitoring and regulation of public authorities, and examined more directly the extent to which the growth of a culture of human rights showed itself in the practices and policies of local authorities and NHS bodies.

It is clear to us that, by and large, public authorities, and those who inspect, advise and audit them, do not give a high priority to placing respect for human rights at the heart of their policies and practices. Insufficient energy is being given to communicating a vision to public authorities to help them understand how a culture of respect for human rights might look or how it could be delivered.

There is a need for the active promotion of the understanding that Convention rights impose positive duties on public authorities. In our public services the climate of legal compliance and risk avoidance too often inhibits the development of a human rights culture. Too often human rights are looked upon as something from which the state needs to defend itself, rather than to promote as its core ethical values. There is a failure to recognise the part that they could play in promoting social justice and social inclusion and in the drive to improve public services.

The enthusiasm to make the Human Rights Act come alive as a measure which places positive duties on public authorities, and which should promote a culture of respect for human rights in every aspect of public life, needs to be rekindled. A human rights commission probing, questioning and encouraging public bodies could have a real impact in driving forward the development of that culture by guiding, advising and assisting those involved in the work of public authorities. Such a body could assist the public services by consolidating advice on compliance with rights and complement the courts by preventing breaches of rights occurring through the spread of best practice and greater awareness. Governments should be able to look on a commission as a critical friend which can help them achieve some of their more fundamental goals, including improved delivery of better public services.

Working through regulatory and representative bodies for different sectors of public activity, a commission should be able to give human rights a focus, resources and a degree of institutional stability not found recently in central government. Human rights need a home. This could provide a base from which there would be a realistic chance of devising and disseminating a more credible culture of respect for human rights.

There is evidence of an unmet need for citizens to be assisted in understanding what their rights are, how these rights must be balanced with those of others, and how to assert their rights without necessarily having recourse to litigation.

We have found widespread evidence of a lack of respect for the rights of those who use public services, especially the rights of those who are most vulnerable and in need of protection. Human rights should provide a framework within which people who need to can negotiate with public authorities for better conditions and treatment, both in individual cases and in wider contexts. But the message about what human rights can do for individuals and groups in their relations with the state is at present being only faintly heard. Much of the cause for this state of affairs can be ascribed to the absence of an independent voice able energetically to promote and help to protect human rights in the UK. There is very widespread support for the establishment of a human rights commission which would be able to promote the principles that underlie the idea of a culture of human rights in a way that everyone can understand.

Sufficient unmet needs have been identified to establish that there is essential work for a commission to do. The development of a culture of respect for human rights is in danger of stalling, and there is an urgent need for the momentum to be revived and the project driven forward. Since the Government is committed to developing a culture of respect for human rights it has a duty of leadership. If it wills the end, it must also will the means. The resources devoted to this task are insufficient to achieve the goal that the Government desires. Precious time has already been wasted. The decision to establish an independent body for the promotion and protection of human rights must be taken now.

## **Powers and Functions**

The commission we propose should not be seen as another inspectorate, advisory body, regulatory authority or enforcement agency. Nor should it be a body with an adversarial or litigious approach to its mission.

Its principal purpose should be to foster a culture of respect for human rights through raising awareness of the need to promote human rights in public authorities in the delivery of services, and through making individuals conscious of their rights and guiding them in asserting those rights.

In connection with this function it should be able to conduct and commission research and provide financial or other assistance for educational activities in connection with promoting understanding and awareness of human rights. It would need to offer guidance to, and promote best practice in, public authorities in relation to human rights.

The Commission should have the function of improving knowledge and understanding of human rights issues amongst those who help individuals in asserting their rights. It should be able to do this through close collaboration with non-governmental organisations and those who provide advice services in the voluntary sector and professionally. It should not itself be driven by the task of handling individual complaints.

The Commission should have the power to conduct inquiries into questions of public policy engaging human rights, on its own initiative. It should have the necessary powers to make this role effective.

Alternative dispute resolution procedures might provide a remedy for violations or potential violations of rights in appropriate circumstances. The commission could facilitate the use of such procedures. It could also mediate and conciliate on its own account in situations of broader conflict which engage human rights issues.

The commission should be involved in the reporting processes under the various international human rights instruments. It should also help to raise awareness of the obligations under these instruments more generally.

The commission could play a valuable role in assisting the courts in determining human rights questions. In order to do this we conclude that it will be essential for the commission to have power to act as a friend of the court or as a third party intervener. It may need other powers in relation to litigation, such as supporting strategic cases and seeking judicial review, to underpin its primary promotional function.

## **Structure**

EQUALITY AND HUMAN RIGHTS

The Government's decision to establish a new equality commission makes it necessary to resolve now the question of how arrangements for the promotion of equality and diversity can work together with arrangements for the promotion and protection of human rights. This report constitutes our formal input into the Government's consultation on the structure of a single equality body for Great Britain.

The right to equality of treatment and the enjoyment of other rights without discrimination is a fundamental human right. There is a considerable degree of congruence between the work required for the promotion of equality and that required for the promotion and protection of human rights. There are also divergences. Unjustifiable discrimination needs to be tackled by detailed measures, which may not always be appropriate to the promotion and protection of wider human rights.

However constituted, the new single equality body will be insufficient if there are not more effective arrangements for the promotion and protection of human rights more generally. There are a number of options for the institutional structures relating to equality and for human rights. The proposed new single equality body will almost certainly require a human rights dimension if it is to do its work effectively. But this will not meet all the needs we have identified for arrangements for the promotion and protection of human rights.

There are arguments for and against a separate human rights commission standing alongside a separate single equality body. The practical advantages and disadvantages of the alternatives of a single integrated human rights and equality commission and two separate bodies for equality and human rights require careful consideration. There are strong arguments for moving, over the proposed timescale for the establishment of a single equality body, to the establishment of an integrated human rights and equality commission. This is our preferred option.

## DEVOLUTION

There is already a Human Rights Commission in Northern Ireland, and a decision has been taken to establish a Scottish Human Rights Commission. There are also special circumstances in Wales which need to be recognised.

Institutional arrangements for the promotion and protection of human rights need to be locally-sensitive and recognise the special circumstances of the different jurisdictions of the UK. But UK-wide arrangements which can address the complex inter-relationships between reserved and devolved responsibilities are also necessary, and possible. This applies equally to arrangements for the promotion of equality and diversity.

As an interim measure, a UK Human Rights Advisory Council should be established, on a non-statutory basis. Its principal function should be to provide a "light-touch" co-ordination of arrangements for the promotion and protection of human rights (including equality) throughout the UK and, in its first phase, helping prepare the way for the institutional changes which are in view.

## Accountability and Independence

The commission must be guaranteed its independence, and sufficient resources. The main factor which will influence the quality of those who seek to become commissioners is the perception that the commission is a fully independent body with the potential to exercise real influence, and which is to be resourced adequately to do the job it has been set.

A requirement to consult Parliament on the appointment of commissioners would act as a guarantee of independence and democratic accountability. Parliament should be directly involved in setting the budget of the commission. The commission should work closely with the Joint Committee on Human Rights.

## **Conclusion**

Human rights are widely misunderstood. They tend to be seen only in terms of offering protection from the worst excesses of anti-democratic and despotic regimes, or as the concern only of those who are fundamentally at odds with majority views in society.

Properly and more widely understood, and made a reality in the practice and policies of public authorities, human rights have the potential to be agents of positive change. There is, however, a danger that this potential will be dissipated in imprecise aspirations and pious hopes, or that human rights will be perceived as marginal to the day-to-day concerns of the UK's citizens.

More work needs to be done to promote human rights as a set of fundamental ethical standards—for the way the state treats its citizens and for all our social relations. We need to build a culture of respect for human rights.

Building such a culture is an ambitious vision, and there are many barriers to achieving it. The greatest of these is ignorance. In such a culture people would be better informed about what their rights were and what they could mean in practice. The most vulnerable would be better protected from violations of their human rights. Government and public authorities would promote and protect human rights standards and treat all people with dignity, fairness and respect. Human rights standards would be generally accepted as those by which we should all strive to treat each other; and people would recognise and value both their own rights and those of others.

We need a human rights commission. That commission must have a clear mission, and it must be given the powers and functions to fulfil that mission. It must have sufficient resources to do the job it has been given, and its budget must be set in an open and transparent way. It must be independent from Government, and be seen to be so. It must belong to the people and be accountable to them through Parliament.

## **Consultation**

In due course we will invite further evidence on some of the matters raised in this report.

# **SIXTH REPORT**

**The Joint Committee on Human Rights has agreed to the following Report:**

## **THE CASE FOR A HUMAN RIGHTS COMMISSION**

### **INTRODUCTION**

The Human Rights Act: An Engine of Transformation?

1. The Human Rights Act 1998 was heralded as a measure that would help to inaugurate a gradual transformation of civil society, not simply make a technical adjustment to the

statute book. It was hoped that it would not only create domestic legal remedies for breaches of the European Convention on Human Rights by its incorporation into UK law, but that it would also help to change the relationship between the state and its citizens more widely—to bring about more fundamental change and create "a culture of human rights". What might this mean?

2. The claim of human rights to universality springs from a recognition of the common humanity and equal dignity of all human beings, as proclaimed in the UN Universal Declaration of Human Rights. These rights are anchored in the UN Covenants, the various specialised international human rights conventions and the European Convention on Human Rights.[1] They are not the property of any one political party, political philosophy, or religious creed.[2] But human rights cannot form the sole basis or define the whole extent of a political culture based on democracy and the rule of law. They do, however, form an integral part of moral and political life and lay down fundamental standards that may be violated, if at all, only under stringent and clearly specified conditions. By a culture of human rights we mean, therefore, not one that is concerned with rights to the neglect of duties and responsibilities, but rather one that fosters basic respect for human rights and creates a climate in which such respect becomes an integral part of our way of life and a reference point for our dealings with public authorities and each other.

3. A culture of human rights has two dimensions—institutional and ethical. So far as the former is concerned, it requires that human rights should shape the goals, structures, and practices of our public bodies. In their decision making and their service delivery, schools, hospitals, workplaces and other organs and agencies of the state should ensure full respect for the rights of those involved. As the Home Office put it to us—

The Act is intended, over time, to help bring about the development of a culture of rights and responsibilities across the UK. This involves looking beyond questions of technical compliance. The Convention rights need to be seen as a set of broad, basic values which are accessible to and can be shared by all throughout the UK—and which are fully integrated into the democratic policy making process.[3]

4. Under the various international human rights instruments, it is the state that has positive duties to secure the effective protection of human rights. After the Human Rights Act had become law, the Government's Human Rights Task Force announced—

The Human Rights Act is one of the most significant pieces of constitutional legislation enacted in the United Kingdom ... [it] places new responsibilities on all of us who work in public authorities ... We all have a vital role to play in building a human rights culture in the UK.[4]

5. The legislature, the executive and judiciary share responsibility for the protection and promotion of human rights. What is essential is that the principles enshrined in human rights are translated into practice. Achieving that requires public authorities to understand their obligations not only to avoid violating the rights of those in their care, or whom they serve, but also to have regard to their wider and more positive duty to "secure to everyone ... the rights and freedoms"[5] which the Human Rights Act and the other instruments define.

6. But making a culture of human rights a reality also requires that individuals are able to understand what their rights are, and are able to seek advice, assistance, redress and protection if they believe that their rights have been violated or are threatened with violation. It also requires that they understand their responsibilities for upholding those rights in their dealings with others.

7. So far as the moral or personal dimension is concerned, a culture of human rights could be characterised as having three components. First, a sense of entitlement. Citizens enjoy certain rights as an affirmation of their equal dignity and worth, and not as a contingent gift of the state. Second, a sense of personal responsibility. The rights of one person can easily impinge on the rights of another and each must therefore exercise his or her rights with care. Third, a sense of social obligation. The rights of one person can require positive obligations on the part of another and, in addition, a fair balance will frequently have to be struck between individual rights and the needs of a democratic society and the wider public interest.

8. That is what is meant by a culture of human rights—or, as we would prefer to term it, a culture of respect for human rights. In the absence of a written constitution, the Human Rights Act, and the various international human rights instruments to which the UK has acceded, may be seen to serve in place of a comprehensive constitutional concept of the positive rights and duties of those who live in this country.

**9. A culture of respect for human rights would exist when there was a widely-shared sense of entitlement to these rights, of personal responsibility and of respect for the rights of others, and when this influenced all our institutional policies and practices. This would help create a more humane society, a more responsive government and better public services, and could help to deepen and widen democracy by increasing the sense amongst individual men and women that they have a stake in the way in which they are governed. For these and other reasons we believe a culture of respect for human rights is a goal worth striving for.**

10. During the period of the Human Rights Act's gestation there was concern amongst many of its champions that the dissemination of such a culture would not follow the passing of legislation, because the Bill provided for no body to be appointed charged with the duty to promote the Act and to drive forward the "new culture".<sup>[6]</sup> The Government had indicated, in introducing the Bill, that it was not yet persuaded of the need for such a body. In the White Paper, *Rights Brought Home*, it noted that—

*Bringing Rights Home* canvassed views on the establishment of a Human Rights Commission ... The Government's priority is implementation of its Manifesto commitment to give further effect to the Convention rights in domestic law ... Establishment of a new Human Rights Commission is not central to that objective ... The Government's conclusion is that, before a Human Rights Commission could be established ... more consideration needs to be given to how it would work ... and there needs to be a greater degree of consensus on an appropriate model among existing human rights bodies. However, the Government has not closed its mind to the idea of a new Human Rights Commission at some stage in the future in the light of practical experience of the working of the new legislation.<sup>[7]</sup>

11. The White Paper went on to say—

If Parliament establishes a Committee on Human Rights, one of its main tasks might be to conduct an inquiry into whether a Human Rights Commission is needed and how it should operate. The Government would want to give full weight to the Committee's report in considering whether to create a statutory Human Rights Commission in future.<sup>[8]</sup>

The Joint Committee on Human Rights met for the first time on 31 January 2001. One of its early decisions was to conduct an inquiry into the case for establishing a human rights commission.<sup>[9]</sup> When we first met in this Parliament we resolved to continue the inquiry.<sup>[10]</sup> **This report is our response to that challenge to look at whether a human rights commission is needed.** In it we will be considering, as a central question, the

evidence as to whether that process of cultural change which it was hoped might be inspired by the Human Rights Act has begun, and whether a human rights commission could contribute substantially towards achieving this goal. We trust the Government will give full weight to our findings.

## Acknowledgements

12. We have obtained a substantial quantity of written and oral evidence,<sup>[11]</sup> and have visited: Belfast, to look at the work of the Human Rights Commission and the Equality Commission already established there under the Northern Ireland Act 1998; Edinburgh, to discuss the proposals of the Scottish Executive to establish a Scottish Human Rights Commission and a commissioner for children and young people in Scotland; Cardiff, to discuss attitudes towards a human rights commission for England and Wales, and the role of the new Children's Commissioner for Wales; New Delhi, to look at the work of the Indian National Human Rights Commission and the Rajasthan State Human Rights Commission; Sydney and Canberra, to look at the work of the Australian Human Rights and Equal Opportunities Commission and the New South Wales Equal Opportunities Commission; and Wellington and Auckland, to look at the work of the New Zealand Human Rights Commission and the New Zealand Commissioner for children.<sup>[12]</sup> We have also benefited from research undertaken specifically on human rights commissions by or on behalf of: the British Institute of Human Rights (funded by the Comic Relief charitable trust); the Commission for Racial Equality; the Commonwealth Institute for Human Rights; the Constitution Unit; the Disability Rights Commission; the Equal Opportunities Commission; the Nuffield Foundation; the Institute for Public Policy Research; and JUSTICE. We have also been able to take into account a wide range of domestic and international research undertaken on the nature and structure of national human rights institutions. We are grateful to all those who have helped us in these different ways, including our Specialist Advisers.<sup>[13]</sup>

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1 And, most recently, the European Charter of Fundamental Rights, currently being considered for inclusion in a constitution defining and limiting the powers of the European Union. [Back](#)

2 In the late 1940s the main British protagonists of what became the European Convention on Human Rights were Conservatives such as Winston Churchill, Harold Macmillan, and David Maxwell-Fyfe, and Liberals, such as Lord Layton. It was the Attlee Government that ratified the Convention in 1951, the Churchill Government that ratified its First Protocol in 1953, the Wilson Government that accepted the right of petition in 1966, and the Liberal peer, Lord Wade who campaigned repeatedly for a Human Rights Act, with the support of Conservative jurists, such as Sir Edward Gardner, Lord Broxbourne and Lord Rippon, and Cross-benchers, including Lord Scarman. And it was the Labour Government that introduced the Human Rights Bill in 1998 with Liberal Democrat support. [Back](#)

3 Minutes of Evidence taken before the Committee on 14 March 2001, HL Paper 66-i/HC 332-i, p 1, para 6 [Back](#)

4 *A New Era of Rights and Responsibilities: Core Guidance for Public Authorities*, Human Rights Task Force, paras 1 to 4 [Back](#)

5 Article 1 of the ECHR [Back](#)

6 In this it contrasted with earlier legislative attempts to effect similar transformations, such as the Race Relations and the Sex Discrimination Acts, which established independent commissions to promote their underlying values and to help

enforce their provisions. [Back](#)

7 *Rights Brought Home: The Human Rights Bill*, Cm 3782, October 1997, paras 3.8 to 3.11 [Back](#)

8 *Rights Brought Home: The Human Rights Bill*, Cm 3782, October 1997, paras 3.8 to 3.11 [Back](#)

9 It issued a call for evidence in April 2001, seeking responses by July. Shortly after the call for evidence was made, Parliament was dissolved for the general election. See Twenty-second Report, Session 2001-02, *The Case for a Human Rights Commission: Interim Report*, HL Paper 160/HC 1142. [Back](#)

10 We began by holding a seminar with a number of experts and practitioners to clarify the scope and nature of the questions we were seeking to answer in our inquiry. The seminar was held on 28 February 2002 at Westminster; those attending are listed in our Twenty-second Report of Session 2001-02, *op cit*, p 5, footnote 4. [Back](#)

11 Much of the written evidence was received in response to our predecessors' call for evidence in April 2001 and was published in our interim report in September 2002, Twenty-second Report of Session 2001-02, *op cit*. [Back](#)

12 We will be reporting separately on the case for a children's commissioner for England in our forthcoming report on the United Nations Convention on the Rights of the Child. [Back](#)

13 Ms Frances Butler, Mr Jeremy Croft and Ms Jodie Reed. We were also assisted informally in our researches by Ms Jane Gordon and Dr Rachel Murray. [Back](#)

## A CULTURE OF RESPECT FOR HUMAN RIGHTS

13. The question whether there is a rationale for establishing a human rights commission requires an assessment of two elements. The first is an examination of the extent to which the Human Rights Act is observed and informs the practices of all public authorities. The second will be an examination of the practical benefits of seeking to create a culture of respect for human rights, and the role a commission might play in that task.

### The Rights Themselves

14. Section 6 of the Human Rights Act 1998 makes it unlawful "for a public authority to act in a way which is incompatible with a Convention right".<sup>[14]</sup> These Convention Rights are:

- the right to life (Article 2);
- the right to be free of torture and inhuman or degrading treatment or punishment (Article 3);
- the right to be free of slavery, servitude, and forced or compulsory labour (Article 4);

- the right not to be arbitrarily deprived of liberty (Article 5);
- the right to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law (Article 6);
- the right not to be punished for an action which did not constitute an offence at the time of its commission (Article 7);
- the right to respect for private and family life, the home and correspondence (Article 8);
- the right to freedom of thought, conscience and religion (Article 9);
- the right to freedom of expression, including imparting or receiving information (Article 10);
- the right to freedom of peaceful assembly and association, including the right to form and join a trade union (Article 11);
- the right to marry and found a family (Article 12);
- the right to enjoy the other rights without discrimination (Article 14);
- the right to peaceful enjoyment of possessions (Protocol 1, Art. 1);
- the right to education, in relation to which the State is to respect the right of parents to ensure that children receive education in conformity with their religious and philosophical convictions (Protocol 1, Art. 2);
- the right to free elections by secret ballot at reasonable intervals (Protocol 1, Art. 3);
- the right not to be sentenced to death except in time of war (Protocol 6, Articles 1 and 2).[ 15]

15. The European Convention was drafted to transform the abstract human rights ideals set out, after the Second World War, in the United Nations Universal Declaration of Human Rights, into a concrete legal framework for the member states of the Council of Europe. Like the Universal Declaration the European Convention included economic and social rights (for example in the UN Declaration in Articles 22 to 26 and in the European Convention in Protocol 1, Articles 1 and 2) as well as civil and political rights.

16. The UN Declaration had been intended both to exert a moral and political influence upon states and also to herald more detailed human rights provision, drafted by the UN. That is now embodied in the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Political Rights (1976). Together with the UN Declaration, the Covenants form what is generally referred to as the International Bill of Rights. Additionally, several specialised conventions have been drafted by the UN and ratified by a large number of states, including the UK. Those include the Genocide Convention(1951), the Convention on the Elimination of All forms of Racial Discrimination (1969) the Convention on the Elimination of Forms of Discrimination against Women, the Convention against Torture and the UN Declaration of the Rights of the Child.

17. From the day of their ratification by the UK, all of these Covenants and

Conventions, since they bind us in international law, have been persuasive authority in the UK courts in cases of ambiguity as to how UK law should be interpreted, on an issue to which they are relevant. Hence for many years, from these sources, human rights have been exerting a strong influence on the development of our jurisprudence. In addition, of course, the European Convention established an international complaints procedure and the European Court of Human Rights, in Strasbourg, to which UK citizens have had direct access since 1966. Both the European Convention Rights themselves and the Strasbourg jurisprudence about them were also of persuasive authority in UK law and undoubtedly, influenced our national laws very considerably before the rights were incorporated, through the 1998 Human Rights Act. Now, the UK courts will continue to use the UN Conventions and Covenants as persuasive authority—as indeed does the Strasbourg Court—so that they will continue to form part of the UK's human rights matrix. But, there is now the additional duty, under the Human Rights Act, for the courts to implement the European Convention Rights, since they are now a part of our law, as we set out above.

18. Thus Section 7 of the Act provides for redress for victims of breaches of the duty to comply with Convention rights. Anyone who believes that their rights have been violated or threatened may therefore seek redress or protection through the courts.

19. We need hardly say that the protection of human rights cannot be the exclusive responsibility of the courts. There are limits to what can be achieved by the judicial process. It cannot give a remedy for every wrong. In particular, in the case of a measure such as the Human Rights Act, which is both new and intended to be far-reaching, the legal process does not have a reality unless people know what it is and know how to use it. As some of our witnesses commented—

We were concerned that the Human Rights Act would place too high a burden of proof to take cases successfully. Disabled people and carers have the hurdle of knowing their rights, getting a solicitor and a good one [who] understands the interaction of community care law and the Human Rights Act, being legally aidable and having all the time and energy to pursue a legal case. These are very significant and very real barriers.[16]

The Act provides only one course of action to remedy violations of certain civil and political rights: litigation. Thus to trigger this remedy requires a victim who has the knowledge, determination, time and money to initiate and persist with legal action.[17]

.. litigation is an inadequate and expensive way of bringing about change; it relates only to specific instances, generally limiting its impact to the facts of the particular case, and is both unpredictable and very slow.[18]

The protections that the Human Rights Act offers to individuals must be understood as intrinsically intimidating to enact—to successfully "fight for your rights" against the decisions and actions of public authorities is a daunting task for the most eloquent, affluent and assertive member of society to undertake. How much more so for those who will often have the most pressing cases to make—the young, the elderly, and indeed all those who are vulnerable; marginalised; impoverished; seeking asylum; living chaotic or transient lifestyles; or poorly educated (in relation to their rights and more broadly)?[19]

20. The Chairs of the existing anti-discrimination commissions stressed—

... that one of the things we have learnt from 25 years' experience in the Equal Opportunities Commission is the necessity to have both enforcement and promotion, because one without the other limits you.

If you can promote what a law means and you inform people of what rights and obligations that law imposes then, firstly, you reduce the likelihood of people breaking it but secondly, if they do, it means you can at least talk common language ... Law alone without bringing people on board will also fail.

The law has an important role to play but promotional work equally balanced out has a fundamental role to play. If we are to deliver sustainable change then promotional work is profoundly important.[20]

**We agree.** And in this report we consider the broader issues relating to human rights which go beyond the forms of legal redress for victims set out in the Human Rights Act.

## Universal Rights

21. The Government's stated aspiration when elected in 1997 was that the Human Rights Act would nurture a culture of understanding of rights and responsibilities.[21] This culture would incorporate the wider human rights values and obligations set out in the UN measures referred to above. It does not depend solely, therefore, on the incorporation of the ECHR, even if it is seen essentially to flow from it. In the Universal Declaration of Human Rights, the peoples of the United Nations reaffirmed their faith in fundamental human rights, in the dignity and worth of the human person and the equal rights of men and women and determined to promote social progress and better standards of life in greater freedom.

22. While some universal rights are more obviously justiciable than others, it would be a mistake to try completely to divide civil and political rights, as justiciable and enforceable in courts of law, from economic, social and cultural rights, seen as non-justiciable and a matter for the legislative and executive branches of government, along with voluntary action. These kinds of rights frequently overlap.

23. For example, in protecting the right to equal treatment without unfair discrimination, the courts enforce a civil right, but in so doing they also indirectly protect social and economic rights.

24. However, it is true that different enforcement mechanisms can be suitable for different rights in different situations. The Human Rights Act recognises this. It safeguards parliamentary supremacy, because it empowers judges only to declare that legislation is incompatible with Convention rights and not to over-rule it. Our democratically elected Parliament continues to be the only body which can legislate, and consequently lobbying and voluntary action remain an essential means of ensuring that human rights are incorporated into the legislative process. However the Act, in particular by making the courts into a public authority which must themselves act compatibly with the Convention rights, makes effective judicial remedies available to the victims of breaches.

25. The extent to which rights should be justiciable ultimately depends on a balancing of democratic legitimacy and the need for an ultimate safety mechanism for protecting basic rights. But that understanding makes it clear that it is essential, both for the pursuit of rights in court and to ensure the proper informing, by lobbying and other traditional methods, of the democratic process, that people are made aware of their human rights and that those rights should guide the processes of all the public authorities.

## Positive Obligations

26. The idea of positive obligations is rooted in the text of the European Convention on Human Rights. Article 1 binds the Parties to the Convention, in international law, to "secure to everyone within their jurisdiction" the Convention rights. This means that the obligation of states goes beyond mere non-interference with the rights. In some circumstances, they are obliged to take active steps to protect people's rights against interference by others, or to enhance people's capacity to take advantage of the rights. As the European Court of Human Rights has regularly said, the Convention rights are to be made real and effective, not theoretical or illusory. The obligations which flow from the Convention rights have to take account of these requirements flowing from Article 1.

27. For example, the right not to be intentionally deprived of life (Article 2) imposes positive obligations which include a duty on the state to protect people against threats in some circumstances, a duty to carry out a timely and effective investigation of suspicious deaths, and a duty to take reasonable steps to ensure that those responsible can be made legally accountable. The right to be free of torture and inhuman or degrading treatment or punishment (Article 3) imposes equivalent obligations, and the examples could be multiplied. Although Article 1 is not among the Convention rights, which have been made part of UK law by the Human Rights Act, its influence has so permeated the interpretation of the substantive Convention rights that our national courts have rightly treated positive obligations as being imposed on those public authorities, which exercise relevant functions on behalf of the state.

28. Apart from the positive obligations which arise from Convention rights generally by virtue of Article 1, some of the substantive rights are formulated in such a way as to give rise to specific positive obligations. For example, Article 8.1 includes a right to respect for private and family life, home and correspondence. The notion of "respect" goes beyond non-interference. It has wide-ranging implications for the duties of those public authorities whose functions impinge on the protected interests. For example, in certain circumstances it imposes duties to provide information to people about their family backgrounds, to take action to protect people's homes against environmental pollution, to take steps to re-unite families whenever possible after children have been taken into the care of a local authority, or to provide proper safeguards for personal information held by public authorities. These examples could again be multiplied.

### An Ethical Framework

29. The key to the effective protection of rights lies in creating a culture in public life in which these fundamental principles are seen as key to the design and delivery of policy, legislation and public services. They are essentially an ethical framework within which to work—and they provide a basis for the development of a shared ethos. Shortly after the Act had been passed, the then Home Secretary expressed his belief that—

The Act points to an ethical bottom line for public authorities ... This ... should help build greater public confidence in our public authorities ... Consider the nature of modern British society. It is a society enriched by different cultures and different faiths. It needs a formal shared understanding of what is fundamentally right and fundamentally wrong if it is to work together in unity and confidence ... The Human Rights Act provides that formal shared understanding.<sup>[22]</sup>

More recently, the current Home Secretary has reiterated this vision—

We want British citizenship positively to embrace the diversity of background, culture and faiths ... The Human Rights Act can be viewed as a key source of values that

British citizens should share. The laws, rules and practices which govern our democracy uphold our commitment to the equal worth and dignity of all our citizens.[23]

30. The then Cabinet Secretary essayed a definition of this ethical framework or culture when he reported that the Government's Human Rights Task Force had reflected that—

... initial thinking about the Human Rights Act has tended to concentrate on legal questions about compliance ... Though it is clearly right that all public authorities should not act incompatibly with the Convention rights, the Act was intended to do more than merely avoid direct violations of human rights. As the senior judiciary have commented ... this is a constitutional measure, legislating for basic values which can be shared by all people throughout the United Kingdom. It offers a framework for policy-making, for the resolution of problems across all branches of government and for improving the quality of public services. From this point of view it is not right to present the Human Rights Act as a matter for legal specialists. The culture of rights and responsibilities needs to be mainstreamed.[24]

"Mainstreaming"

31. The Head of the Civil Service has suggested that so far as it applies to Whitehall and the wider world of public authorities, this idea of mainstreaming of human rights involves—

- developed awareness at all levels of the Convention rights *and the associated balances and limitations*, as an integral part of public administration and policy-making;
- frequent practical expression of the positive difference the Convention can and does make, by voluntary good practice as well as by court decision;
- clear and public demonstration of commitment to the Convention values and principles at the highest levels of government and public authorities;
- public recognition of the Convention values and principles in delivering quality public services.[25]

"Horizontalty"

32. The primary focus of Convention rights is, therefore, on "public authorities". Only they are expressly said to act unlawfully if they violate those rights. This is described in legal discourse as the "vertical effect" of the Act: it operates principally to protect individuals and groups against the abuse of power or dereliction of duty by the state in the sphere of human rights. It does not directly regulate "horizontal" relationships between private individuals. However, it is increasingly accepted that the Act will have some measure of "horizontal" effect on the relationships between private citizens, mostly arising from the duty of courts and tribunals themselves to act in compliance with Convention rights. This duty ought to prohibit them from issuing a judgment, even between individuals who are not public bodies, if the consequence was that one of the parties would suffer a clear breach of a human right, which was not justified. It seems clear that it would be inconsistent with their duty to act compatibly to do so, though that understanding still requires some clarification. And the Government clearly hopes that there will be reciprocity between citizens and perhaps also in the "vertical" relations between the citizen and the state. One Minister offered us a vision of what this culture might mean in the world outside Whitehall—

... culture by its very nature is nebulous and somewhat hard to pin down ... and the wider we go inevitably the more nebulous it becomes. Beyond that we do go ... into a society which is faced with all kinds of frictions and tensions that were not there 50 years ago. In many ways we live in a much healthier and better society than we did. There are also frictions, fragmentation, the atomisation of society ... this creates problems which we have to address. We have to address these across a whole range of policies, social and economic, as well as more civil and political issues. If we are to rebuild our communities it is not just a question of injecting money into areas which particularly need them—crucially important as that is—but we have to find ways we can bind ourselves together again. At the heart of the Human Rights Act ... there is a sense of mutual obligation and reciprocity. That in itself must be the core of any successful community, of any society that is living harmoniously together ... [26]

### Promoting a Culture of Respect for Human Rights

33. The government is to be commended for having enabled courts and tribunals to receive training in their responsibility for giving direct effect to the rights protected by the European Convention on Human Rights. Some £5.5 million was spent on that important exercise which enabled the judiciary to interpret and apply the Convention rights in accordance with their purpose and international human rights law, weaving the Convention rights into the fabric of our laws (written and unwritten).

34. However, this focus on judicial training has not been matched by an equivalent effort to promote a wider culture of human rights in government, among the many diverse public authorities, and among the citizenry. As one of our witnesses said—

As at now there is no organisation that is taking the lead in educating people about the existence of the Human Rights Act. If the people are not aware of their rights under the convention, let alone the processes for exercising their rights, how can the people seek [a remedy for] their violated rights: The Act will remain another piece of wonderful legislation on the statute books. Only the educated, rich and powerful will have real access to justice under the convention. In fact and often, it is the uneducated, poor and the vulnerable ones whose fundamental human rights are violated.[27]

35. The initial publicity campaign to herald the implementation of the Act was short lived. Since then, we should also recognise the efforts to invoke human rights in the context of citizenship education (introduced in September 2002) and the work of the Human Rights Unit of the Lord Chancellor's Department. But there are problems for any Government department attempting to promote a "human rights culture" to the public. In other countries, in other parts of the UK and in related subject areas (racial equality, equal opportunities and disability), independent commissions do exist or are about to be created which fulfil the promotional and educational role. Mainstreaming the culture of rights and responsibilities in the whole domain of civil society is a task which most of those who support the effort to establish such a culture believe would be more likely to prosper under the direction and inspiration of those who are not tied by the political concerns and conflicting, often short-term, demands of government. And as the human rights commissioners we met in Australia reminded us, an independent commission could act as a beacon and rallying point in times when commitment to fundamental human rights values was weak or under attack—whether from within or without government. That is essentially the starting point for investigating the case for a human rights commission, which we now go on to examine in some detail.

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14 Unlike in some other statutory contexts, "public authority" is not defined in

detail in the Act-section 6(3) defines it as any court or tribunal, or any body or person "certain of whose functions are functions of a public nature". This flexible definition has already resulted in some controversial decisions in the courts. [Back](#)

15 The Act provides that these rights have effect subject to: Article 16 of the ECHR (the rights of aliens to freedom of expression, freedom of peaceful assembly and association, and freedom from discrimination may be restricted by the State, as long as other rights are respected); Article 17 (nothing in the ECHR permits any State, group or person to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms under the ECHR or at their limitation to a greater extent than is provided for in the ECHR itself); and Article 18 (restrictions to rights and freedoms which are permitted under the ECHR must not be applied for any purpose other than those for which they have been prescribed); as well as any designated derogation and any designated reservation. [Back](#)

16 Emily Holzhausen, Carers UK, 24 January 2003 [Back](#)

17 Amnesty International, Twenty-second Report, Session 2001-02, *op cit*, Ev 128 [Back](#)

18 Help the Aged, Ev 315 [Back](#)

19 Children's Society, Twenty-second Report, Session 2001-02, *op cit*, Ev 205 [Back](#)

20 Twenty-second Report, Session 2001-02, *op cit*, Q 368 [Back](#)

21 For example, the Labour Party's 1996 policy paper, *Bringing Rights Home*, concluded: "We aim to change the relationship between the state and the citizen ... By increasing the stake which citizens have in society through a stronger constitutional framework of civil and political rights, we also encourage them to better fulfil their responsibilities ... The new Act will improve awareness of human rights issues throughout our society ... As the experience of the new legislation develops it will nurture a culture of understanding of rights and responsibilities at all levels in our society ... ". [Back](#)

22 *Building on a Human Rights Culture*, Home Secretary Jack Straw address to Civil Service College, 9 December 1999 [Back](#)

23 In the White Paper, *Secure Borders, Safe Haven, Integration with Diversity in Modern Britain*, (2002) Cm 5387, paras 2.2-2.3 [Back](#)

24 See Minutes of evidence taken before the Committee on 21 March 2002, HL Paper 103-i/HC 719-i, Ev 5 [Back](#)

25 *ibid* [Back](#)

26 Michael Wills, at the time Minister with responsibility for human rights in the Lord Chancellor's Department; *ibid*, Q 13 [Back](#)

27 Mr Sam Budu, Twenty-second Report, Session 2001-02, *op cit*, Ev 230 [Back](#)

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## THE CASE FOR A HUMAN RIGHTS COMMISSION

36. In April 2002, we took evidence from the Lord Chancellor. He assured us that the Government's mind still remained open on the question of the establishment of a human rights commission, but he noted that it was not—

... sufficient simply to assert a need [for a human rights commission]—you have to make a good argument; you have to promote a case.[28]

We agree.

## The Case in Principle

### Advocates of a Commission

37. During the passage through Parliament of the Human Rights Bill in Session 1997-98, a number of proposals were moved to incorporate provisions for an independent human rights commission to be established.[29] Baroness Amos, a former chief executive of the Equal Opportunities Commission (and not at the time a Minister), argued that—

We need a body which will raise public awareness, promote good practice, scrutinise legislation, monitor policy developments and their impact, provide independent advice to Parliament and advise those who feel that their rights have been infringed. I am particularly keen to see the promotion of an inclusive human rights culture which builds on the diversity of British society. That would be a key role for any human rights body to play.[30]

Baroness Williams of Crosby believed that—

The great advantage of a Human Rights Commission or Commissioner is that it would make human rights open to the public, it would encourage the public to own human rights in a way that would not be exclusive either to Parliament or to the legal profession but should be the beginning of a real and profound change in the democratic ethos and sense of freedom in this country ... I (also) believe the training and education of public bodies is just as important as the establishment of case law? I fear that, for failure to train them in what the Bill means, we shall see a great deal of litigation that is unnecessary, expensive, slow, tedious and repetitive.[31]

Lord Woolf, then Master of the Rolls, had expressed the belief outside Parliament that—

The most important benefit of a Commission is that it will assist in creating a culture in which human rights are routinely observed without the need for continuous intervention by the courts. Human rights will only be a reality when this is the situation.[32]

38. The Human Rights Act received the Royal Assent on 9 November 1998. The concerns expressed during the passage of the Act continue to be expressed after it was brought into force on 2 October 2000—

.. at the moment, whilst in certain middle class environments there may be a debate about human rights, on the ground where it really matters people do not talk about their "human rights"; they do not understand them; there is no concept of them, and that culture will only come about if there is dedicated activity which delivers that ? Unless we get that, frankly all we have are nice fine words and nice fine statutes.[33]

A Human Rights Commission could make an unique contribution to advancing a human rights

culture in the United Kingdom by initiating or contributing to programmes of education and training ... Otherwise there is a danger that the media will become the key focus for providing such information; information that above all else requires a level of objectivity that is not conducive to selling newspapers or raising viewing figures.[34]

We've all got the poster about the [Human Rights] Act on the wall but there's no one telling us what it means for the people whom we represent.[35]

?Without a body that has the powers and the resources to raise awareness about human rights in the first place, and that is able to back that up with the power to take action in support of individuals and groups who are suffering human rights violations, we do not believe human rights will really come alive as a meaningful factor in most people's relationships with public authorities.[36]

Without a Human Rights Commission, it is likely that the UK's conception of human rights will be an impoverished one. The Human Rights Act will be viewed narrowly, as a legalistic document to be developed primarily through litigation. In the absence of a Human Rights Commission, the great opportunity presented by the Human Rights Act may be missed.[37]

What would a Human Rights Commission look like?

39. The UN has agreed a set of advisory principles for the establishment of independent national human rights bodies (the "Paris Principles") which suggest that a national human rights institution should have the following functions—

- to publish and/or submit to the Government, Parliament and any other competent body proposals and reports on any matters concerning the promotion and protection of human rights;
- to consider judicial, legislative or administrative provisions and make such recommendations to ensure that these conform to the fundamental principles of human rights;
- to recommend measures to improve conformity with human rights;
- to report on the national situation with regard to human rights in general, and on more specific matters including any violation of human rights which it decides to take up and to propose initiatives for putting an end to such situations;
- to promote and ensure the harmonisation of national legislation, regulations and administrative practices with the provisions of international human rights instruments;
- to encourage ratification of international human rights instruments and to ensure their implementation;
- to contribute to the reports which States are required to submit to international human rights bodies pursuant to their treaty obligations;
- to co-operate with other national and international bodies on the promotion and protection of human rights;
- to promote education and research relating to human rights;
- to publicise human rights and efforts to combat all forms of discrimination, in

particular racial discrimination, by increasing public awareness; especially through information and education and by making use of all press organs.[38]

40. The positive benefits that a commission might bring were captured in a compelling way by Mary Robinson, the former UN High Commissioner for Human Rights, who told us—

When it comes to the integrity of human rights at the national level, [the things] I would place more emphasis on [are]: is it really accessible; is there an embedding of culture of human rights; does it matter in inner-city and rural areas; is there a sense that there is a body that can be looked to and gets around and reaches out in the way we do not expect, and should not expect, courts to do? Courts are there to apply individual justice and are accessible in that sense. I am talking about the more proactive engagement as a deepening of democracy...[39]

41. She further made clear that she considered the Paris Principles to be the minimum requirements for a human rights commission—the floor, rather than the ceiling, of any design.[40] The Lord Chancellor told us that he "had no quarrel" with the Paris Principles. They do not have any binding force in international law, and we take the functions they outline as a starting point in considering whether there is a case to be made for establishing a human rights commission. In this report we will be looking at the particular circumstances of the UK, assessing the level of need for an independent human rights commission, and looking at what functions and powers it may require to meet those needs. But it is instructive to look at the international context and the lessons we may learn from abroad.

#### Lessons from Abroad

42. In doing so, we have concentrated principally on a selection of independent human rights commissions of the Commonwealth. We have done so because their constitutional arrangements, legal systems and political cultures offer the most useful comparisons with the UK. Other members of the Council of Europe, which share our commitment to the European Convention on Human Rights and access to the jurisprudence of the European Court of Human Rights, provide, for many constitutional and legal reasons, less easily transferable parallels.

43. The FCO's annual human rights reports recounts the many efforts the UK is taking to promote a culture of human rights internationally, including supporting the establishment of independent national human rights bodies elsewhere in the world.[41] Its Human Rights Project Fund supports the establishment and work of human rights commissions in several countries outside the UK.[42] The DfID's 2000-01 annual report, *Realising human rights for poor people*, also recognises the need to assist and develop human rights commissions, stating—

DfID will, when appropriate help these institutions to secure sustainable access to sufficient human and material resources and to maintain their independent and public role.[43]

44. It appears perhaps a little inconsistent that the Government is enthusiastic about supporting independent national human rights institutions abroad but hesitant about establishing one at home. There are good reasons for the Government to be consistent, especially as, as one NGO commented—

... the more international the role that the United Kingdom adopts, the more she submits herself to scrutiny by the international community. Without a functioning body to serve as an internal watchdog, the United Kingdom will stand to be openly criticised and possibly, embarrassed in the much larger global forum.[44]

In May 2002 we took evidence from Mary Robinson, then UN High Commissioner for Human Rights, and asked her why a country like the UK might benefit from an independent human rights commission. She responded—

... I have become convinced that we can do a great deal more even in countries that have a strong system of justice and are serious about protecting human rights. I think we can in fact deepen the whole approach ... the establishment of independent, autonomous national institutions, the outreach of human rights, can be a very good way of reinforcing the protection of human rights; bringing home to people in a very different way that human rights do matter ... they support and they supplement basic institutions of democracy, because they are working with governments; they report to parliament; they are working with civil society; they are keeping the focus on human rights in that linking and linking the international human rights system with national protections ... they build bridges between government and civil society ... I think their role is very substantially educational. They educate by doing ... It is a strength to any country—even one that already has a mature system of support for human rights.[45]

45. The Chairman of the Australian Human Rights and Equal Opportunities Commission, Professor Alice Tay, told us she had concluded that for many purposes, the common law tradition is too complicated, unreliable and expensive, and that legal decisions did not adequately express modern social needs. She believed that human rights jurisprudence needed an institution to translate it into concepts relevant to the daily lives of citizens, and that an independent human rights institution could provide that focus, because it would connect with the public by virtue of its independence from government and its status as a "straight dealer".

46. The Canadian Human Rights Commission has interpreted its mandate to advance equal opportunity broadly. The Human Rights laws (federal and in each province), the Equal Employment Act and the Charter of Rights and Freedoms all have a part to play in creating a culture of human rights in Canada. Surveys have consistently shown that the Charter enjoys a high level of support across the country.[46]

47. The Australian Commissioners also noted that although their government did not necessarily support everything the Commission said, it did express pride on the international stage about having such an institution. It knew that its international reputation was enhanced by having an established human rights commission.

48. In India, we heard much the same message. The National Human Rights Commission was active in bringing questions of violations of rights set by international standards onto the political agenda. It was able to generate a focal point for the discussion of issues like human trafficking. It also was seen as providing an alternative for people who do not understand the legal process. Commissioners were very eloquent about the need to build a political culture in India that recognised human rights.

49. In New Zealand, we found a society which talked the language of rights as part of its mainstream political discourse much more readily. We were constantly told that New Zealand politics was a society in which the idea of equal dignity flourished, and which held the concept of justice for all very dear. But it was also recognised that these values were coming under pressure. Here too, we found very broad support for an organisation which stood aside from government, and engaged society in a debate about the practical expression of those values.

## The Case in Practice: Unmet Needs

### Spreading the Message in Public Authorities

50. We have also sought to examine the state of opinion in the UK. In September 2002 we published the oral and written evidence we had so far received in the course of our inquiry, in the form of an interim report.<sup>[47]</sup> Amongst those who responded there was overwhelming support in favour of the establishment of a human rights commission in the UK. Other submissions regretted that a commission had not been established when the Human Rights Act 1998 came into force in October 2000, or even earlier.

51. The Commission for Racial Equality observed that—

The Human Rights Act provides for a set of positive rights for individuals and has important constitutional implications; yet, there is no single body with overall responsibility for fostering a human rights culture or providing human rights education ? Thus, whilst human rights belong to everyone, knowledge is currently exclusive.<sup>[48]</sup>

Other public and voluntary sector bodies identified the same limitation—the lack of a driving force behind the Human Rights Act. The NGO JUSTICE commented—

This cultural change, and the process of embedding human rights guarantees within the UK constitutional and governmental structure, begins rather than ends with the coming into force of the Human Rights Act. The change the Act brings about, both directly, through the rights it incorporates, and indirectly, through the impact of rights as they filter through society, and the possibilities the Act opens up for the acceptance of other international human rights standards, requires continuing management. This is a large, long-term, permanent project, and one which only a Human Rights Commission can effectively and fully realise.<sup>[49]</sup>

Asked whether he had a sense that public authorities outside Whitehall had voluntarily taken on a positive duty to consider their service delivery from a human rights perspective, or were operating reactively, the Lord Chancellor commented—

Perhaps that is the case that you need to examine for a commission ... Really there is a limit to what the centre can do to encourage such a culture.<sup>[50]</sup>

52. In 2002 we invited a substantial number of public sector inspectorates, regulators and ombudsmen to tell us how the Act influenced their work. Their responses were published in our interim report. On the whole, they did not convince us that they saw it as part of their duty to foster a culture of human rights, or to incorporate human rights considerations in their approach to assessing the quality and equity of public authorities' service. We recognise that the extent to which these bodies can engage in human rights promotion and advice work is limited: many of the inspectorate bodies do not have advice functions and a number of the bodies surveyed have investigatory or adjudicatory functions but not more general promotional or advisory duties.<sup>[51]</sup> For example, HM Inspectorate of Constabulary, though they regarded the establishment of a human rights culture within the police force as part of their concern, did not see the provision of advice as within their remit.<sup>[52]</sup>

53. For some of these bodies, human rights formed part of the background to their work, but was not express in the standards which they applied.<sup>[53]</sup> For most of these organisations their human rights involvement was more reactive than actively promotional—a characteristic, it seems to us, of many public authorities and their regulators.<sup>[54]</sup> Some were conscious that resource and time constraints, as well as lack

of specialist expertise, could limit their human rights role.[55]

54. In the inspectorates concerned with the state in its coercive, rather than enabling, roles, there was greater awareness of human rights issues. The supervisory organisations in the policing, prisons and mental health sectors all saw human rights as important grounding principles to the legislative framework or standards of good practice within which they inspected or adjudicated. The Police Complaints Authority regarded themselves as "intimately involved in human rights" and HM Inspectorate of Constabulary regarded themselves as concerned with the establishment of a "human rights culture".

55. The Office of the Police Ombudsman for Northern Ireland was also active in offering advice and assistance on human rights matters to the police service, in training, and consultation. HM Inspectorate of Probation indicated that its 2003 inspection programme would give attention to the National Probation Service's compliance with human rights and action taken to develop a culture of rights amongst staff. The Chief Inspector noted that the extent of the Inspectorate's human rights work would be limited by time and resource constraints, and HM Inspectorate of Prisons for England and Wales also stated that it would—

... be greatly assisted by independent advice and support in translating [human rights] principles and obligations into our own operational context.[56]

The Mental Health Act Commission viewed Convention rights and mental health legislation as "inextricably bound", and considered that the promotion of a human rights culture in the mental health field, and the provision of advice on human rights issues, was a core element of its work.

56. The evidence of these inspectorates would appear to underline the divide between the culture of the protection of rights (which is reasonably well-developed in public authorities) and the culture of the promotion of rights (which is largely undeveloped). JUSTICE identified serious limitations—

.. the Home Office Human Rights Unit and NGOs, in particular those involved on the Home Office Task Force, were [at the time of implementation of the Human Rights Act] faced with a very large number of requests for advice, legal assistance, training and information materials. Although every effort was made to respond to this need, they lacked the considerable resources required to do so comprehensively. The result has been a general public that is largely either confused or unaware about human rights, a public sector that is not fully educated in its responsibilities, and a voluntary sector that has been left without sufficient support or assistance.[57]

57. A survey by District Audit published in 2002 found that the majority of local authorities and NHS Trusts had not reviewed their policies and procedures for compliance with the Human Rights Act, and 42% of health bodies had not taken action to raise staff awareness.[58] Few had mainstreamed human rights considerations into decision making, were monitoring compliance on an ongoing basis, or had acted to ensure that contractors providing services for them were taking reasonable steps to comply. Although some local authorities had embedded human rights within their Best Value process and within existing training and procedures, many complained of a lack of guidance and "staff felt that they were operating in a vacuum".

58. When we sought evidence from other inspectorates relating to local government service provision, we also found the attention given to human rights was inconsistent. The Social Services Inspectorate had prompted local authorities, prior to the coming into force of the Human Rights Act, to audit their social services policy and practice

for human rights compliance and develop action plans for compliance with the Act, and had continued to monitor for this and encourage action to be taken. OFSTED, however, did not see human rights compliance as forming part of its inspection criteria, did not consider it part of its remit to promote human rights culture in the education sector, and had no plans to introduce human rights considerations into its work. Its equivalent body in Wales, ESTYN, though it did not currently make express reference to human rights in its work, had established a working group to consider the impact of new legislation including the Human Rights Act, and hoped to make reference to human rights in its revised guidance.

59. We commissioned research to look at the evidence of the development of a culture of human rights in public authorities, specifically local and health authorities.<sup>[59]</sup> We found that although the Human Rights Act is firmly established with health, local government and housing lawyers as a compliance issue, few public authorities have actually had to deal with meaningful challenges under the Act and the Convention. There is a clear understanding of the need to comply with the Act but little sense of the need for a human rights culture or culture of respect for human rights in their work.

60. Our research identified marked contrasts in the handling of human rights and racial equality matters in public authorities. Racial equality is being mainstreamed in public authorities; human rights matters are pigeonholed for the lawyers. Public authorities have more experience of dealing with race equality issues and have a clearer grasp of why such matters need to be addressed and how they should be tackled in policies, decisions and service delivery. A major driving force for rekindling this awareness is the new public sector 'duty to promote' racial equality contained in the Race Relations (Amendment) Act 2000 and the steps taken by the Commission for Racial Equality (CRE) to give this practical effect through the implementation of race equality schemes in public authorities.

61. By comparison, human rights have not take root in the wider public sector, other than as a compliance issue for the lawyers, because public authorities are not being encouraged or enabled to act in this area. There is no direct instruction in the implications of the Act nor any external pressure applied from supervising departments, regulators (save District Audit) or the courtroom to cause them to do this. **There is no vision, no administrative framework and scant guidance reaching public authorities to tell them how a culture of respect for human rights might look or how it can be delivered.**

62. Despite efforts by the Lord Chancellor's Department to disseminate a human rights message, virtually no examples of public authorities adopting a human rights culture or culture of respect for human rights in their work (other than in terms of legal compliance) were identified in our research. **It is clear that, by and large, public authorities do not consider mainstreaming respect for human rights in their policies and practices a priority. We conclude that the Government's enthusiasm to make the Human Rights Act come alive as a measure which places positive duties on public authorities, and which should promote a culture of respect for human rights in every aspect of public life, needs to be forcefully promoted.**

#### Hearing the Message: Clients of Public Authorities

63. The limitations on the effectiveness of the Lord Chancellor's Department's very small Human Rights Unit in promoting that culture has been substantially reinforced by other recent research conducted in connection with our inquiry. The British Institute of Human Rights, funded by the Comic Relief charitable trust, commissioned research in 2002 on the impact of the Human Rights Act on the voluntary sector in the first two years of its implementation. The report was published in December 2002.<sup>[60]</sup> The project

was designed in part to provide this Committee with evidence.[61] The report identified a substantial need for greater effort and focus in the promotion of a culture of human rights throughout the public sector. Its main conclusion was—

... that the Government should establish an independent body capable of effectively promoting and protecting human rights ...

and that it—

... should seize the opportunity presented by the Single Equality Body Project to do this by creating an Equalities and Human Rights Commission.[62]

64. The report from the British Institute of Human Rights speaks for itself in the evidence it recounts of just how far some public authorities are from operating in a "culture of respect for human rights". We take just a selection of examples from its chapter on older people—

... a man in his 80s, in a nursing home, who needs assistance to get dressed, and uses a catheter. That man was made to sit with absolutely no clothes on in a double room with 5 members of staff, a mixture of male and female staff, for over 25 minutes whilst they took turns to do the bits that they needed to do, with the door wide open leading into the corridor ... he was just left sitting with absolutely no clothes on whatsoever in the middle of this congregation taking place around him, with people walking past the door. In the end the man messed himself, was then rolled over onto his side, whilst they proceeded to put a towel underneath him, and then wash him, on the bed, still with no attempt made to protect his dignity.

... two care workers were dealing with an elderly man who'd had a very serious brain trauma, but was still able to understand and communicate. These two individuals were talking over the head of this man about the possibility of providing him with physiotherapy, and one was saying to the other, "you wouldn't want to give him physio, look at the state he's in, he would lash out, it just wouldn't be worth it, why bother wasting time on him" ... he was being treated like a lump of meat. His feelings and his dignity were just being totally ignored.

... somebody needed to be discharged from hospital; she needed assistance 4 times a day, 7 days a week, and that included assistance out of bed, onto the commode, etc. She was mentally very alert, and the fact that she needed assistance didn't mean that she wasn't aware of her circumstances. The local authority decided that it couldn't afford to send somebody in 4 times a day, 7 days a week, they could only send somebody in 3 times. So the coercive argument put to her was, "if you want to come home and not into a residential home, then you have to come home with a package that means that we put you into an incontinence pad and you don't get your third visit, and you then sit there, wet in an incontinence pad, until somebody comes in the evening, and then changes the pad". And she's not incontinent. She has been asked to cooperate with something that was really, really undignified, or to go into a residential home.

The caller's 58 year old sister cares for her 74 year old husband and works full time. She cannot manage the "physical" care needed, though her husband receives some home care. He wants to go into residential care. The social worker came to reassess him but told him before doing the assessment that "the council has no money left for anything". Her suggestion was that the caller's sister and husband should contact Relate.

The caller's mother has been asked to leave her residential care home because she complained about a member of staff who would not attend to her in the night. She wanted to go to the toilet so she rang the buzzer but the staff member didn't come for about

half an hour, by which time it was too late. The care worker left her in her wet night clothes, took the buzzer from her and threw it across the room.

The caller's mother is 89 and confined to bed. She has been assessed as needing residential care and is currently in respite care having developed bed sores after spending three weeks in bed prior to her admission. Her Social Services Department has refused to fund her care due to lack of resources. She has been told to leave the home tomorrow with a minimal care package of one hour each morning and evening - for the rest of the time she will remain in her bed. It is intended that incontinence pads will be provided for her to use when she wants to go to the toilet, although she is not incontinent.

The caller is a care worker in a residential care home. A resident was prescribed morphine as part of her palliative care. The home did not supply the medication and the resident died in pain, crying. No resident has their medical needs noted and many residents are not receiving the correct medication.

The caller's mother is resident in a care home. The caller noticed a few weeks ago that her mother's legs were very swollen and asked if the GP could be contacted in order to examine her. The manager said that the home's policy was that a GP would only be sent for if 5 residents required medical attention.

The caller is worried about her parents who are 85 and 79. They live in a Housing Association flat and have been told that it will be demolished. The consultation process has been very limited, with no information available about tenants' rights to challenge the plans. The caller's parents have been advised that they will not necessarily be re-housed in the same area. They were told that if they refused to move they will be taken to court and evicted by the police.

An agency worker told us about going into a home at breakfast time. She was instructed to get the residents up and onto their commode. She was then told to feed them breakfast. When she started to get the residents off their commodes first she was stopped. The routine of the home was that residents ate their breakfast while sitting on the commode and the ordinary men and women who worked there had come to accept this as normal. [63]

65. The report finds widespread evidence of violations of rights and overwhelming support for the establishment of a human rights commission—or for a similar sort of body that could promote and protect human rights. Those interviewed believe this would meet the need that currently exists for good quality advice, guidance and training on the Act itself. But, as importantly the evidence suggests, a commission would be able to promote the principles that underlie the legislation in a way that everyone can understand. The interviewee who gave the report its title is quoted as saying—

I think one thing is that people—the whole community—[isn't] aware of human rights as anything that's good for them ... It needs some publicity, it needs somebody to take it forward: it needs the dissemination of knowledge so that people realise what it's good for—and it's good for them. I think it's really important for them to know that they can use human rights. You know, it's something for everyone; it's for the good of the people. [64]

66. The report's summary notes—

Awareness of the Act has not in general spread outside the legal field. The absence of a human rights culture - or of even the first green shoots which might grow into a human rights culture—leaves a void. The Act is considered to be the domain of lawyers

and legal policy staff: very few organisations used it systematically in their parliamentary lobbying or in their work with civil servants for example. Without more attention paid to the promotion of the Human Rights Act and the principles which lie behind it in a way that makes it accessible to lay people the vicious circle of unresponsive public services which lead to legal challenges cannot be broken. [65]

The report also finds that, while there are examples of good practice, the lack of any "ongoing concerted promotional strategy" for the Act means that staff who provide public services—in particular front line staff—fail to understand how the duty of public authorities to act in compliance with Convention rights translates into their responsibilities towards those with whom they work. It concludes—

A Commission could have a key role, working in partnership with regulatory, training, and industry bodies, to demonstrate that the Act is not simply about legal challenges; rather, it gives all staff in the public sector a responsibility to promote and uphold human rights. [66]

67. The evidence collected in the BIHR inquiry also suggests that in general there is little or no understanding of the Act as a useful framework for public service providers where the rights of one individual may need to be balanced against the rights of others, perhaps leading to restrictions on rights which can be justified using the Act's concept of proportionality. Such a framework, the report concludes, could help public service workers to make difficult decisions about allocation of resources, or the protection of vulnerable people in their care, with more confidence. This leads to the conclusion that it is unfortunate that—

There is no single authoritative source of advice and information that could help to shape the development of a human rights culture in the absence of a Human Rights Commission. Important principles captured in case law are not, at present, applied across a wider area of work. This prevents the development of good practice. A Commission ... would also be able to give a lead—a visible lead—which is badly needed. [67]

68. The research that underpins *Something for Everyone* is based on individual experiences at the point where the state and its citizens, particularly those who are vulnerable for one reason or another, come into regular contact. It is here that we should be hoping to find evidence of the first green shoots of an emerging "culture of human rights". The report does not provide a statistical analysis of the prevalence of the problems it identifies. But where it looks for a developing culture it finds there is little evidence of its growth. How might one measure the growth of a culture of respect for human rights? The Minister responsible at the time told us in March 2002—

It is all very well to talk about this but how do we measure it? I cannot give you a precise answer and it would be wrong of me even to pretend to. What I can say is that we will know it when we see it and we will know if we are failing. [68]

**On the basis of the evidence we have seen, we already know we are failing. The process of putting a culture of human rights at the heart of the work of public authorities needs to be reinvigorated if a consistent human rights message is to have a chance of reaching public authorities. These agents of the state cannot be expected to embrace a human rights culture that they do not know about.**

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28 Twenty-second Report, Session 2001-02, *op cit*, Q 14 [Back](#)

29 See for example HL Deb., 27 November 1997, c 1151; 5 February 1998, c 820 [Back](#)

- 30 HL Deb., 24 November 1997, c 838 [Back](#)
- 31 HL Deb., 24 November 1997, cc 845 and 844 [Back](#)
- 32 Foreword to Spencer, S, and Bynoe, I, (1998) *A Human Rights Commission, the Options for Britain and Northern Ireland*, IPPR [Back](#)
- 33 Twenty-second Report, Session 2001-02, *op cit*, Q 385 [Back](#)
- 34 Charter 88, *ibid*, Ev 123 [Back](#)
- 35 Head of policy at a leading advice agency, quoted in BIHR Newsletter, Summer 2002, Frances Butler [Back](#)
- 36 Children's Society, Twenty-second Report, Session 2001-02, *op cit*, Ev 205 [Back](#)
- 37 JUSTICE, Twenty-second Report, Session 2001-02, *op cit*, Ev 116 [Back](#)
- 38 Commission on Human Rights resolution 1992/54 of 3 March 1992, annex: General Assembly resolution 48/134 of 20 December 1993, annex. The Principles are not binding in international law. The full text is set out in Annex A to this Report. [Back](#)
- 39 Twenty-second Report, Session 2001-02, *op cit*, Q 73 [Back](#)
- 40 *ibid*, Q 74 [Back](#)
- 41 See eg *Human Rights Annual Report for 2002*, Cm 5601, p 73 [Back](#)
- 42 Projects supported since the Fund opened in April 1998 include: £166,000 to strengthen the capacity of the Nigerian Human Rights Commission to deliver on the promotion and protection of human rights; £38,000 for training of the National Human Rights Commission of India and 9 State Human Rights Commissions; £40,400 for computers for the Indonesian National Human Rights Commission; £363,636 to fund six UK delegates to attend the Ethiopian Parliament's Human Rights Conference which has the objective of identifying the best system of Human Rights Commission and Ombudsman for Ethiopia. [Back](#)
- 43 *Realising Human Rights for Poor People*, Strategies for achieving the International Development Targets, October 2000, page 27, para 5.16 [Back](#)
- 44 The Aire Centre, Twenty-second Report, Session 2001-02, *op cit*, Ev 142 [Back](#)
- 45 Twenty-second Report, Session 2001-02, *op cit*, Q 72 [Back](#)
- 46 The National Post (of Toronto) reported on 4 February 2002, page A1: "Overall, the poll [undertaken by a company called Environics] suggests that Canadians are proud of the Charter of Rights and Freedoms and see it as a unique and increasingly important symbol of national identity ? The poll found that the Charter got high ratings across the country, but especially in Quebec and Atlantic Canada. Canadians in all social, economic and linguistic groups said the Charter plays a significant role in protection of individual rights ? Of those surveyed, 82% said the Charter has become an important symbol of Canadian identity ? ". [Back](#)
- 47 Twenty-second Report, Session 2001-02, *The Case for a Human Rights Commission: Interim Report*, HL Paper 160/HC 1142 [Back](#)

- 48 *ibid.*, Ev 92 [Back](#)
- 49 JUSTICE, Twenty-second Report, Session 2001-02, *op cit*, Ev 116 [Back](#)
- 50 Twenty-second Report, Session 2001-02, *op cit*, Q 41 [Back](#)
- 51 Local Government Commission for England, Police Complaints Authority, Twenty-second Report, Session 2001-02, *op cit*, Ev 234-236 and Ev 236-237 [Back](#)
- 52 See also the evidence of HM Inspectorate of Prisons (England and Wales), Twenty-second Report, Session 2001-02, *op cit*, Ev 244-5 [Back](#)
- 53 e.g. HM Inspectorate of Prisons (England and Wales), Twenty-second Report, Session 2001-02, *ibid* [Back](#)
- 54 For example, the Local Government Commissioner for Wales saw its mandate to scrutinise for "maladministration" as limiting its capacity to assess expressly against human rights standards, though it was acknowledged that human rights breaches would generally amount to maladministration. The Commission for Local Administration in England indicated that where a complainant appeared to have a good legal case for breach of their human rights, the Commission would normally choose not to investigate, where "it would be reasonable to expect the complainant to use the legal remedy.", Twenty-second Report, Session 2001-02, *op cit*, Ev 234. [Back](#)
- 55 HM Inspectorate of Probation, Twenty-second Report, Session 2001-02, *op cit*, Ev 237-8 [Back](#)
- 56 Twenty-second Report, Session 2001-02, *op cit*, Ev 245 [Back](#)
- 57 *ibid.*, Ev 116 [Back](#)
- 58 District Audit, *The Human Rights Act. A Bulletin for Public Bodies*, May 2002 [Back](#)
- 59 See Ev 250-284 [Back](#)
- 60 *Something for Everyone: The Impact of the Human Rights Act and the Need for a Human Rights Commission*, British Institute of Human Rights, 10 December 2002 [Back](#)
- 61 *ibid.*, p 4 [Back](#)
- 62 *ibid.*, p 7 [Back](#)
- 63 *Something for Everyone*, pp 47-49 [Back](#)
- 64 *ibid.*, p 78 [Back](#)
- 65 *ibid.*, Executive Summary, p 2 [Back](#)
- 66 *ibid.*, p 10 [Back](#)
- 67 *ibid.*, Executive Summary, p 3 [Back](#)
- 68 Minutes of Evidence taken before the Committee on 21 March 2002, HL Paper 103-i/HC 719-i, Q 13 [Back](#)

## The Case for and against a Commission

69. The BIHR reported overwhelming support for a commission in the voluntary sector.[69] In the written submissions in response to our predecessors' call for evidence, only two bodies[70] argued against the establishment of a commission, and even then in fairly muted terms, with the suggestion that the question should be deferred until the Human Rights Act had had more time to "bed down". But no-one has come forward to us with the thesis that the establishment of a commission would positively hinder the development of a culture of human rights, nor that such a culture would be undesirable. We have done our best to tap every interested source for information. On our international visits we heard from those who were sceptical about the effectiveness of their national human rights institutions, but none of them advocated abolition. There are a number of arguments against establishing a commission which do, however, need to be addressed, even if we can only do so hypothetically.

Would a Commission be Unconstitutional?

70. There are those who might oppose a human rights commission because they oppose either the very notion of human rights or (a more widely expressed position) the idea of making those rights justiciable. There are well-rehearsed arguments, which went through a crescendo in the run up to the passing of the Human Rights Act and have continued to be heard since, against the concept of justiciable rights as represented by the Human Rights Act and the European Convention on Human Rights. These have tended to circle around the appropriate functions of the courts and the elected legislature in our constitutional arrangements, or the appropriate relationship between national and supranational levels of law, or the perceived clash between the protection of individual rights and the advancement of group rights. Clearly those who oppose the concept of human rights will never be persuaded of the case for a commission. But the case for a human rights commission does not, in our view, depend on the justiciable nature of the ECHR or its incorporation into domestic law. Those who advocate respect for human rights but disagree with making those rights justiciable could properly support the idea of an independent body to assist, through education and other measures, the process of improving respect for human rights without recourse to litigation.

71. There are those who might argue that a commission would usurp the proper functions of some or all of the three parts of the constitution—the executive, Parliament and the courts, particularly the latter two. Such objections would carry weight if it were proposed to give the commission extensive regulatory, adjudicative or coercive powers, which were to be exercised without a process of accountability. This is not what we propose, and we explore both the powers and the accountability of a commission in some detail below.

72. There are those who might oppose the creation of *any* new public body as a matter of principle, on the grounds that any further extension of the state would be undesirable. Insofar as such principled objections were based on a philosophical resistance to the growth of government, we believe they would be misguided. In our view, a human rights commission should be regarded as part of the mechanism for protecting the rights of the individual against the misuse of the powers of the state—it would have failed were it to be seen as an instrument of the Government.

Would a Commission duplicate the Work of the JCHR?

73. In the written evidence received in response to our predecessors' call for evidence, the majority of respondents agreed that a human rights commission and this

Committee should collaborate closely with each other whilst maintaining varying remits and independent structures. The Bar Council and Law Society summed up the views of most respondents when they said—

... [t]he human rights commission should have a much more outward-facing role in the context of protecting and promoting human rights ? an essential part of this role would be to submit evidence to the JCHR on relevant issues, including those relating to the scrutiny of particular areas of governmental activity or of individual legislative proposals.[71]

74. It was suggested at Second Reading of the Human Rights Bill in the Lords that the functions of this Committee might include "public education and consultation" and "promotion of a human rights culture".[72] These roles have been carried out so far by the Home Office, the Human Rights Task Force and presently NGOs and the Human Rights Unit of the Lord Chancellor's Department. Public education and the promotion of any particular culture are not roles to which select committees are well suited by their composition, powers or resources; and it would arguably be inappropriate for a committee to try to take them on if it would potentially cloud the independence of judgement that is fundamental to its scrutiny role. Our experience over some two years of operation have confirmed us in this view: this Committee is neither constituted to take on such roles or sufficiently resourced to do so. **The existence of the Joint Committee on Human Rights is no substitute for the establishment of a human rights commission.** However, we believe there is scope for a fruitful relationship between the JCHR and any human rights commission, and we return to this subject later.

Would a Commission be a burden?

75. There are those who might argue that there is nothing a commission would add to the present institutional structures, and that it would be either ineffective or simply create a burden on public authorities for no real purpose. We have discussed above our reading of the evidence of an unmet need for a more vigorous promotion and protection of human rights. **We conclude that there is a need that is not adequately met.**

76. We also believe there are good reasons why any government should support the establishment of a commission, as having the potential to make a positive contribution to its wider policy goals—goals which for the most part are not controversial between the parties (though the means of achieving them may be so).

77. There will be occasions when the Government finds that its view on where the balance should be struck between the rights of individuals and the needs of the state is not accepted. It will find its decisions challenged in court by individuals. It may fear that an independent body charged with promoting human rights would increase the risk of further challenges if it brought about an increased awareness of individual rights and supported contentious cases. But we believe that a commission, if it was being effective, would not take a purely oppositionist stand to the state. There may be occasions when it could be helpful for the Government to be able to refer difficult issues to such a body for advice, when an immediate solution to conflicting rights is not apparent; or to ask it to conduct an inquiry where there is evidence of a systemic problem requiring investigation.

78. **We believe a commission could reduce avoidable litigation against public authorities rather than encourage it.** Potential Human Rights Act cases could be avoided if the public bodies in question mainstreamed human rights thinking into their policies and procedures—the goal of Government policy. To the extent that a commission's role would be promotion of good practice and hence prevention, Government could be a net beneficiary. Litigation is expensive, and public bodies and the central government that

funds them should avoid that waste of public money. **On simple grounds of economy, the Government should be prepared to look positively at the idea of a commission.**

79. In the context of wider social goals, we believe that a statutory body promoting human rights could help governments deliver on some of their key priorities, in some cases supplementing the work of other agencies which are struggling to deliver outcomes which are closely related to the human rights agenda. Promoting human rights and responsibilities as core values could contribute to the development of cohesion in an increasingly diverse society—again one of Government's declared goals, shared across the political spectrum. Promoting human rights within health and social care could, for example, help deliver the rise in care standards to which all parties are committed. **A Government should be able to look on a commission as a partner (although an independent and when necessary critical one) which can help it achieve some of its more fundamental goals, bringing it solutions, not just problems.**

80. **We also believe a commission could make a positive contribution to achieving its vision of a new relationship between the citizen and the state—a relationship that could be to the benefit of both parties.** Ministers have tended to stress that their vision is of creating a culture of rights *and responsibilities*. We do recognise that this phrase is trying to capture an important point about the reciprocal nature of the social contract. That should include the relations between people who receive services from the state and those engaged in the often very challenging task of providing those services. Leaving the implementation of a human rights culture exclusively to the courts will do little or nothing to advance progress towards this goal.

81. Avoiding waste and inefficiency are concerns to be taken into account in looking at the case for a commission. But we consider them primarily to be factors which have to be guarded against in the design of an independent commission, rather than decisive arguments of principle. We will return to them when we consider the accountability of a commission.

Do we need to wait and see?

82. The only identifiable group of doubters argue that we should "wait and see" what happens in the wake of the Human Rights Act coming into effect before making any decision about a commission. We acknowledge that there is a good argument to be made for this position. It is right to want to be sure that a commission is established to meet a need rather than to create one. However we believe there are three important factors which go against further delay.

A new paradigm?

83. The first argument against further delay is the decision of the Government, taken in May 2002, to move in the longer term towards a single equalities body, bringing together in some form the functions of the existing equality commissions for race, gender and disability, and taking on responsibility for the three new "strands" of equality relating to age, religious profession or belief and sexual orientation. When the Chairs of the three equality commissions appeared before us in July 2002, the then Chairman of the Commission for Racial Equality asked, rhetorically—

Is this an exercise that Government is embarking on to tidy up the anomalies which exist, or is it meant to be a more radical review of modern 21<sup>st</sup> century Britain where we are fundamentally looking at equalities in a more strategic way, and also looking at human rights and the new strands that are emerging?

and answered his own question by saying—

... we should be ... taking a more radical look at how we most effectively deliver the human rights agenda on the one hand and an equality agenda at the other end, and at how the two fuse together.[73]

In its response to the Government's consultation on the proposed single equality body, the Disability Rights Commission made a similar point—

The debate on a SEB also provides an opportunity to consider more deeply how to build on the effectiveness of the existing legislative framework and paradigm it reflects. The framework dates from the 1970s and, despite its achievements, has significant drawbacks. While enabling individuals to seek legal redress on a post-hoc basis, the legislation has proved in practice relatively weak in terms of preventing discrimination in advance at corporate or sectoral level, and of positive pursuit of rights as distinct from achieving equal treatment (the latter allows for example harmonising of treatment downwards as well as upwards). There is a strong case for an arrangement whereby a SEB could enforce and promote the effective operation of the Human Rights Act particularly on matters directly connected with one or more of the six strands.[74]

84. We would hope that the decision to establish a new equality body represents a fundamental change in the approach to the promotion of equality—a fundamental aspect of human rights. It has altered the landscape in which our inquiry is taking place. **The decision to reorganise the institutional arrangements for the promotion of equality has made it an urgent necessity to consider the institutional arrangements for the promotion and protection of human rights more generally. The Government's decision in principle to establish a new equality commission, which will have to consider human rights issues in the context of its own work, makes it necessary for the Government to now resolve the question of a human rights commission.** We consider the implications of the decision to create a new equality body for the case for a human rights commission in some detail below.

Willing the means?

85. We have considered the extent to which the spread of a culture of human rights is being effectively driven from the centre—from Whitehall. There is no doubt that great energy was applied within Government in the lead up to the Human Rights Act coming into effect.[75] However, when the Constitution Unit reviewed progress a year after the Act had come into effect, it already detected a loss of momentum. Its review concluded—

The tide within Government was ebbing fast against human rights at the end of 2001. It can only be guessed at how hard the LCD had to work simply to stand still and prevent erosion of the work already undertaken in the human rights field. However, preserving the status quo is unlikely to be recognised as much of an achievement by the demanding audiences outside Government ... If the momentum is to be recaptured, there is still a need for an active centre of knowledge which can act as champion and guardian to steer and monitor implementation of the HRA and ECHR.[76]

86. The Human Rights Unit, now located within the Lord Chancellor's Department, makes valiant efforts, we have no doubt, to sustain the momentum of the rolling-out of a human rights culture. But it comprises fewer than a dozen staff. What it can achieve is necessarily limited by resources. It is also limited by being within Government, working within the constraints of the Whitehall departmental culture and within the constitutional constraints of the civil service.

87. Leaving the task of promoting a culture of human rights to central government would

therefore be a mistake for a number of important reasons. First, a national human rights institution needs to be independent of government and seen to be so. Only then can it expect to establish itself as an impartial upholder of rights which are essentially designed to mediate the relationship between the state and those who live under its protection. It has, when necessary, to be able to criticise the Government. It needs to have a clear and distinct identity, and to be able not only to provide a home for the promotion and protection of human rights but also to offer consistent and focussed leadership. It also needs the opportunity, time and resources to build its own internal culture as well as to make an impact on the wider national culture. A civil service department cannot do any of this.

**88. Since the Government is serious about developing a culture of respect for human rights it has a duty of leadership. If it wills the end, it must also will the means. Precious time has already passed. The question is whether the means to achieve the ambition are in place. We do not believe they are. An independent commission could provide those means.**

Proving a need?

89. The third argument against further delay is that proving a need is necessarily going to involve a large degree of judgement. In March 2002 we took evidence on the work of the Lord Chancellor's Department's Human Rights Unit. We tried to discover how it measured its progress in spreading a culture of human rights. The Minister then responsible for the Unit, told us—

What we cannot measure, which I think is the most precious output of all, is a healthier, more harmonious society, where people are living more happily and more harmoniously together. We will know if that has been achieved. I will not be able to come to you in five years, if I am still here, and say, all this progress, which we will be able to measure in various ways, is due to the Human Rights Act and our activities in implementing it ... we may not be able to measure it precisely, but you will know it and in a sense this is a very valuable role, I would suggest, for this Committee. You are one of the measurers of this. You will know from your own experience how far this is taking place. [77]

**By those standards, we judge that there is still a long way to go in establishing the culture of respect for human rights, and the momentum from the Human Rights Act is ebbing. If it is not revived, the loss will detract from or adversely affect the conduct and performance of public services, and consequently the well-being of those who use them.**

Is the case for a commission made?

90. We said in our interim report that we wanted to know what difference a commission could make to the lives of citizens of the UK, especially those who do not presently enjoy their full human rights. The principal tasks for any commission are to raise levels of awareness of the wider implications of human rights within public authorities and amongst the public, and to increase awareness both of what remedies are available for breaches and how such breaches might be avoided in the first place.

91. As witnesses told us—

We believe that the policy, information and education functions of a Commission would be central to its role, and would in time to help to create a genuine culture of human rights in this country. Within such a culture, human rights would be respected as a matter of course and there would be far less need for the courts to intervene in

disputes between public bodies and the individual. This would represent a significant saving of public funds, arguably allowing the Commission to pay for itself in due course.[78]

Whilst the Human Rights Act 1998 obviously allows challenges to be made against behaviour which contravenes the Act, a Commission could have the valuable role of working to prevent such breaches in the first place.[79]

92. We have tried to establish whether people who are in settings where their human rights particularly need protection by public authorities are failing to receive the protection on a reliable basis, because of ignorance, incompetence, or a lack of resources on the part of public authorities. Though it is impossible to measure the full extent of the problem, we believe the evidence we have amassed, particularly that from the BIHR, suggests that in a very significant number of cases this is happening. We have also received evidence that people whose rights are breached are often currently unable to assert them, either because of ignorance or because of a shortage of available expertise, support or funds on their part. We conclude that by arranging advice, conciliation, mediation and possibly assistance (in limited cases) with bringing action in the courts, a human rights commission would be an effective and efficient way of providing such help.

93. We have found evidence that there is an unmet need for citizens to be assisted in understanding what their rights are, how these rights must be balanced with those of others, and how to assert their rights without necessarily having recourse to litigation. A commission could meet those needs.

94. We set out to discover whether there was evidence that people in the UK are aware of the Human Rights Act and its implications. Such evidence is difficult to come by in any quantitative way. But we do not find evidence of the rapid development of awareness of a culture of respect for human rights and its implications throughout society, and what awareness there is often appears partial or ill-informed. Indeed, we fear that the most recent highwater mark of this culture was between the passing of the Human Rights Act and its coming into effect— in the two years since the Act was brought into effect, the evidence we have gathered suggests the culture may actually have been in retreat. We conclude the resources devoted to this task within Government are insufficient to achieve the goal that the Government desires. We conclude that a commission would be both an effective and an efficient way of developing public awareness.

95. We also set out to discover whether the evidence of the impact of the Human Rights Act on public authorities suggested the growth of a human rights culture within them. The evidence of our research into local and health authorities, the research of the BIHR into the voluntary sector bodies who help those who are helped (or hindered) by these authorities, and the evidence of those who inspect or regulate these authorities, all point to a disappointing level of awareness of the implications of the Act for the positive obligations which these bodies should recognise it as being their duty to discharge. As one witness put it—

The promotional functions will, it is hoped, assist public authorities to develop best practice in a manner which is consistent across the country ... Respect for human rights is best fostered in this way, rather than by the piece-meal, costly and unreliable route of development of human rights through litigation. Indeed, the promotion of good human rights practice and an understanding of human rights principles is one of the best ways of avoiding costly and misconceived litigation.[80]

The culture of human rights has yet to be internalised within public authorities or

their inspectorates. More worryingly perhaps, the momentum to develop this culture appears to us to be slowing—in some areas to a standstill.

96. We conclude that a commission would give human rights a focus, resources and a degree of institutional stability not found recently in central government. This would provide a base from which there might be a realistic chance of devising and disseminating a more credible culture of respect for human rights in public authorities.

97. We do not detect, by and large, a positive hostility within public authorities towards a commission, but we equally detect no strong sense that they have need for one. But this view seems to stem from their belief that they have taken the necessary steps to comply with the Act and that the likelihood of successful challenge is correspondingly small. As a consequence, most public authorities appear oblivious to the notion of using human rights as a tool for good practice and high standards in serving the community. Above all, a human rights commission is needed to provide the vision—to take on the task of convincing busy and overworked public authorities that human rights are important, and that a culture of respect for human rights means something which is worth fighting for.

98. A commission could undertake much of the dissemination and monitoring of human rights with respect to public authorities which is not happening, and shows no likelihood of happening, under the existing arrangements within Government. We believe this work needs to be done. We conclude that in the absence of a human rights commission it will not be done well, or possibly it will not be done at all.

99. We are persuaded that sufficient unmet needs have been identified for there to be work for a commission to do. The development of a culture of respect for human rights in Great Britain is in danger of stalling, and there is an urgent need for the momentum to be revived and the project driven forward. A culture of respect for human rights cannot be developed through the courts alone and it cannot be developed solely by an agency within Government. We believe an independent commission would be the most effective way of achieving the shared aim of bringing about a culture of respect for human rights. Our advice is that such a commission should be established.

100. We now consider what powers and functions a commission would require to meet the needs we have identified.

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69 *Something for Everyone*, pp 77-79 [Back](#)

70 A firm of solicitors and the Association of Chief Police Officers [Back](#)

71 Twenty-second Report, Session 2001-02, *op cit*, Ev 150 [Back](#)

72 HL Deb., 3 November 1997, c. 1234 [Back](#)

73 Twenty-second Report, Session 2001-02, *op cit*, Q 357 [Back](#)

74 DRC Response to *Making it Happen*, February 2003, para 3.6 [Back](#)

75 Much of this was well, and independently, documented by the Constitution Unit in its 2000 report, *Whitehall and the Human Rights Act 1998*, Jeremy Croft, The Constitution Unit, 2000 [Back](#)

76 *Whitehall and the Human Rights Act 1998: The First Year*, Jeremy Croft, The Constitution Unit , March 2002 [Back](#)

77 Minutes of Evidence taken before the Committee on 21 March 2002, HL Paper 103-i/HC 719-i, Q 16 [Back](#)

78 Legal Action Group, Twenty-second Report, Session 2001-02, *op cit*, Ev 196 [Back](#)

79 National Association of Citizens Advice Bureaux, Twenty-second Report, Session 2001-02, *op cit*, Ev 196 [Back](#)

80 Bar Council and Law Society, Twenty-second Report, Session 2001-02, *op cit*, Ev 149 [Back](#)

## FUNCTIONS AND POWERS

### The Promotion and Protection of Human Rights

101. The BIHR report gathered some views from the voluntary sector on what a commission might need to do. We quote a few—

Raising a banner about what constitutes an abuse of human rights, generally, for the general public, and also for Local Authorities, and I suppose ... identifying test cases and running those. To be a sort of regulatory type body, to try and enforce and to promote human rights. (Sarah King, Maternity Alliance)

The Commission needs to be seen as impartial, objective and independent. It could play an important educative and advisory role ... There are pros and cons for the Commission itself taking individual cases. (Elaine Kay, Disability Law Service)

I would like there to be an intelligent and responsive body that is responsible for enforcement, and there is this relationship between enforcement and if you like, education and awareness raising and promotion. (Sandy Buchan, Refugee Action)

To be a source of information, to talk to people about what the Human Rights Act is, and what it does, as well as researching its implementation. It would need to be independent, it would need to have teeth, good funding, and a clear set of terms of reference. (Emily Holzhausen, Carers UK)

I don't think that you can have either promotion or enforcement, I think you need both. I think that a Human Rights commission would need to be able to advise members of the public, need to be able to advise organisations like ours, which might be supporting members of the public. It would need to be able to advise service providers, and so on ... (Tessa Harding, Help the Aged)

In terms of publications it would be very useful if there were to be guides to good practice ... They make systemic an individual case, and as much as anything that's about information provision. Otherwise a case changes a local situation, but it doesn't change for everyone. (Rowena Daw, MIND)

Education and training is one of the most valuable things that there can be ... I would like to see a Commission that actually did promote the concepts and culture of equality and rights ... although there is an issue about a Commission being able to take cases forward, I think there is also a huge issue for people being able to access advice, people being able to access information. (Gary Fitzgerald, Action on Elder Abuse)

... Promoting the understanding of it on a general level, on a specific level, within specific government departments, an understanding of how the Act works—but also taking cases, at least test cases. (Alisdair McKenzie, Asylum Aid)

Mediation could work, either in individual cases or where there is a general issue—for example the police treating young people as a problem and not seeing their human rights—you could see different perspectives through mediation. It could also produce materials for the citizenship agenda in schools, giving teachers the confidence to deliver this part of the curriculum. It needs to be inspiring and to allow children to participate. (Keith Harrison, Article 12).[\[81\]](#)

102. The evidence we have gathered suggests the existence of unmet needs which can be broadly broken down into two categories. In the first category there is seen to be a

need for the "protection" of human rights: that is the establishment of reactive arrangements which provide or enhance mechanisms to assist in obtaining redress or relief for those whose rights have been violated or are threatened—whether through the courts or otherwise.

103. The other kind of need which was identified, and the one which appears to enjoy the most urgent support from advocates of a commission, is for the "promotion" of human rights—that is the active nurturing of a culture in which violations of rights are not so much to be redressed but to be avoided, and in which deprivations are pre-empted or ameliorated. The goal is a situation where the institutions of the public sector and the individuals who work in them see it as their duty to act in a way which respects the rights of individuals and recognises their rights to equal consideration and dignity, and in which public authorities encourage and welcome a positive assertion of those rights by those whom they serve, protect or look after.

104. These two categories of need are not divisible into entirely distinct concepts (in fact they complement each other), but they provide one useful way of distinguishing the functions a commission will need to perform. **We start from the position that the powers given to any commission should flow directly from the functions it is required to perform. Its powers should be sufficient for it to do its work, but no more extensive than is necessary. As we have also made clear, we do not envisage creating a body which is principally adversarial and litigious in nature.**

105. The majority of those who responded to our predecessors' call for evidence supported the following functions and powers for a human rights commission—

- establishing educational programmes and conducting research in the field of human rights;
- holding inquiries into alleged human rights abuses;
- making submissions to international bodies on international human rights obligations of the UK, and scrutiny of UK reports under international instruments;
- the scrutiny of existing law and practice and of proposed legislation for compatibility;
- the legal enforcement of human rights by way of test cases, third party interventions and the submission of amicus briefs to the court in proceedings of public interest.

We examine these in turn.

### Promoting Rights

106. There is no dispute that a commission must have a duty to promote understanding of human rights—to have an educative role. This is seen by most of our witnesses as the core function and most urgent necessity, to restore momentum to the programme of spreading a culture of human rights. The majority of those who responded to our predecessors' call for evidence believed the commission should conduct public inquiries, promote and stimulate debate on human rights issues of public concern and act as a vital interface between the various groups that engage with human rights protection. All the human rights commissions we have visited have laid great emphasis on their educational and promotional role. This educative function can potentially be directed towards a number of different audiences, and it will in the end be for the commission to decide on its priorities.

## Education

107. Although there will be room for a general consciousness-raising function, aimed at the general public (on the lines of those we have sometimes seen coming from the equality commissions), we are not convinced that this should be the highest priority, given the expense and the relatively diffuse effect of such campaigns, the outcomes of which are notoriously difficult to measure.

108. The more immediate need, we believe, will be to work through existing mechanisms, with the aim of mainstreaming human rights into the ways of thinking of public authorities, and achieving a cascade effect. In particular, it will need to work with the already existing plethora of quality inspectorates in the public sector, in the fields of criminal justice, health, education, social services and local authorities. It will also need to work with the curriculum bodies in spreading its message to young people.

## Advice and Assistance

109. Any Commission will clearly have to receive and deal with individual complaints in some way, and we discuss this in more detail below, in particular whether there should be a litigation function and arrangements for conciliation and mediation opportunities. But first we need to consider how a commission, if it is not itself to have any adjudicative function, might help citizens who come to it with complaints that their rights are being violated or threatened.

110. On the advice side it may choose to provide this service through building networks with existing advice organisations, and possibly being empowered to fund these. In essence, the unmet need we are addressing here is the inadequate understanding of what people's rights are amongst those to whom people might turn for help (solicitors, advice bureaux, advocacy groups and so forth). We were told—

? members of the public ? contact us in the hope of obtaining legal advice ? anecdotal evidence from these telephone calls, letters and e-mails suggests that there is wide-scale misunderstanding about the nature of the rights and responsibilities incorporated through the HRA. This seems to be because the HRA is being viewed as a "cure-all" for intractable legal problems and also because "human rights" are sometimes thought to have subsumed or replaced the existing statutory framework of rights. In our view, there is also very little public understanding of the framework of responsibilities which the HRA has introduced. [82]

The AIRE Centre's experience from its advice line is that whilst public awareness of human rights in general has increased with the implementation of the Human Rights Act 1998, understanding has not. Indeed due to misleading media coverage as well as at times poor legal advice, it is [our] experience that the public in general has a very poor understanding of the implications of the Human Rights Act for them and also of applicability of specific provisions to their case. [83]

The BIHR report, *Something for Everyone*, established a clear deficit in the access to high quality advice for the average citizen—

Participants in the research indicated that there was a lack of client awareness of the Human Rights Act, even two years after it came into force. Those clients who are aware of the Act have quite unrealistic expectations of what it might achieve, or a misguided understanding of its contents which is perhaps understandable given that there has been very little promotional activity which has targeted the general public ... It is clear

... that there has not been a significant level of systemic change, using the Act as a framework for good practice. Instead, individuals are still relying on cases, with a cost to service providers in terms of time, money, and reputational risk.[84]

111. The Northern Ireland Human Rights Commission, the UK equality agencies, the Bar Council, the Law Society, and a number of prominent NGOs,[85] stressed the need for an independent commission to provide advice and assistance to individuals who claim to be victims of human rights violations. The Commission for Racial Equality noted that—

It is our experience that providing advice and assistance to victims of racial discrimination has been a valuable tool in combatting racial discrimination, promoting wider understanding of the legislation and securing changes in culture.[86]

However, Liberty believed that—

... the Commission would be swamped with calls for help ... We suggest that this service needs to be provided instead by the advice sector and lawyers in private practice? The Human Rights Commission would be better placed to encourage others to provide such services and to try to promote the best possible standards of advice given on human rights.[87]

Similarly, the Institute for Public Policy Research commented that—

... [w]e do not envisage the Human Rights Commission having the resources to provide legal advice to all those who may feel their rights have been infringed ... we feel it more appropriate that the Commission should see its role as promoting expertise throughout the advice sector, and to refer individuals to those equipped to provide the advice they need. Where it judges it to be in the public interest, the Commission should have the means to support an individual in taking proceedings, as the Commission for Racial Equality and Equal Opportunities Commission may do, and to be able to initiate proceedings in its own name.[88]

112. In particular this work should spread the message that a culture of respect for human rights would not automatically give priority to individual rights above all other considerations. Rather, the Act should be seen as providing a framework in which the rights of the individual, for instance to privacy, can be balanced against the rights of others or of society as a whole, for instance to protection from crime. This balancing of rights is a crucial concept in understanding what a human rights commission might have to offer in terms of helping to build a "culture of rights and responsibilities".

**113. We believe a commission would have an important and valuable role to play in improving the quality of understanding of human rights issues in the voluntary and professional advice sectors. It should be able to do this through funding education and research, and funding the development and provision of advice services provided in the voluntary sector rather than to undertake such advice functions directly itself.**

International obligations

114. The majority of those who responded to our predecessors' call for evidence suggested that a commission should be able to refer to the wider international obligations binding on the UK as well as Convention rights—an approach we have adopted in our own work.[89]

115. As we have noted above, Convention rights do not provide an exhaustive definition of the human rights provisions relevant to the UK. The UK is signatory to a large

number of international conventions, covenants and other treaties which, although not directly justiciable in the UK courts, or (at least at present<sup>[90]</sup>) subject to determination in individual cases by bodies like the European Court of Human Rights, impose certain obligations on the UK Government in international law.<sup>[91]</sup> Unlike the European Convention on Human Rights, these Covenants and Conventions have not been incorporated directly into UK law,<sup>[92]</sup> and therefore do not give rise to legal rights and obligations which can be directly enforced in the domestic courts. It is perhaps worth stressing that we are not proposing any adjudicative function for a commission in respect of these instruments, and alleged violations of the rights they protect. They provide internationally agreed yardsticks and benchmarks against which to judge the actions of the state.

116. As the UK has not as yet accepted rights of individual petition under any of the UN instruments, and since the rights in the UN treaties do not take any direct effect in UK national law, the examination of the UK's periodic reports to the different UN Committees appointed under the different treaties is the primary tool of implementation for these treaties as regards the UK. We consider that the existence of a wider spread of independent human rights institutions in the UK would contribute greatly to the process of monitoring the Government's performance against the obligations it has entered into by ratifying these treaties, and contributing to the promotion of awareness of the rights these instruments embody.

117. As a Committee, we have already begun a process of scrutinising the reports of the UK under these conventions and covenants and the observations of the UN committees on them, beginning with the UN Convention on the Rights of the Child. While this Committee should continue to be involved in the process, we believe the scrutiny, and perhaps more importantly the follow-up, which could be provided by an independent commission, seen both by government and pressure groups as an honest broker, would bring a more systematic, detailed and sustained quality to this work. Our experience suggests that there is ample opportunity for fruitful collaboration in the future between us and an independent commission in this monitoring process.

**118. Involvement in the reporting processes under the various international human rights instruments would be a valuable function of any human rights commission. We would hope that a commission would also raise awareness of the international instruments more generally, and use them in its work in developing a culture of respect for human rights.**

#### Public Inquiries

119. There is a particular gap in protection of rights where an institutional culture of non-compliance appears to exist in public sector organisations. We have asked ourselves whether the commission we propose should have the function of conducting public inquiries into questions of public policy engaging human rights, on its own initiative, and what powers might be necessary to make this role effective.

120. In India the National Human Rights Commission chooses inquiry subjects itself rather than at the behest of government, often in reaction to the nature and volume of the complaints they receive. It has conducted a range of inquiries into subjects both of a thematic nature, for example human trafficking, or relating to regional problems, for example inter-communal violence in Gujurat. Although when the Commission produces a report neither the Government nor the Parliament are obliged to act, the human rights community in India did believe they initiated public debate and engaged political attention. In relation to human trafficking, the Commission was also engaged in a substantial amount of follow-up educational work with the judiciary, police, NGOs and relevant Government departments. The recommendations of another public inquiry carried

out into police corruption had not yet been implemented, but the Chairman of the Commission told us, "We are making a dent".

121. In Australia, the Human Rights and Equal Opportunities Commission has carried out several influential, and indeed controversial, public inquiries. In particular, its report *Bringing them Home: The Stolen Children Report* (on Aborigine children removed from their families) did much to create a national debate, to the discomfort of some in the government. The Commission chooses inquiry subjects on its own initiative according to both the level of complaints on a particular subject and also tapping into concerns brought to them by NGOs and other pressure groups. The Attorney General also has the power to ask them to carry out an inquiry into a particular subject, which he has used in relation to such matters as harassment in the workplace and pregnancy in the workplace. The findings had not always been comfortable for the government, even on the topics it had chosen itself. The NGOs we heard from in Australia were very conscious that the powers the Commission had when carrying out its inquiries meant it could get much more done than they were able to achieve alone. Just a decision of the Commission to initiate an inquiry brought a subject much higher up the political agenda. We were told, for example, that its current inquiry into children in detention was already producing changes in practice.

122. In New Zealand the Government can ask the Human Rights Commission to carry out an inquiry into a certain subject, but they do not provide extra funds when they do. So far, the Government has only exercised this power in relation to its request to the Commission to prepare a National Plan of Action on human rights. Some members of the Justice and Electoral Committee (our approximate opposite numbers in the New Zealand Parliament) felt the Commission could use its public inquiry function more, and that it concentrated too much on individual complaints rather than broad issues of principle.

123. The South African Human Rights Commission has considerable powers to conduct inquiries and has carried out a number of these that have been controversial and attracted media attention. Its choice of inquiries has not always been welcomed (for example, with regard to its examination of race in relation to the media), but as in other countries, it is these high profile public campaigns where a commission will attract most attention and where it most likely to be judged and scrutinised closely.

124. In Northern Ireland, the Human Rights Commission has power both to publish research reports on issues of concern, and to conduct investigations, on its own initiative.[93] Formal investigations are conducted, in accordance with the Commission's own investigative criteria, where there are allegations of a pattern of abuse of human rights or where a serious human rights abuse is alleged to have occurred. To date, the Commission has completed one full investigation, into the rights of children in custody.[94] The Commission has found however that its lack of any investigatory powers, and in particular its inability to compel the production of evidence, has hampered the effectiveness of its investigations.[95]

125. The Scottish Executive proposes in its consultation paper that a Scottish Human Rights Commission should have the power to undertake inquiries into generic or sectoral human rights issues in relation to public policy, reinforced with powers of access to information based on those of the Scottish Public Services Ombudsman. It proposes that the Commission would be required to publish a report following each inquiry, and that it might consider imposing a duty to respond on the bodies notified by the Commission.[96] The consultation paper does not favour giving either the Scottish Parliament or Executive the power to require the Commission to conduct a particular inquiry.

126. The Irish Human Rights Commission has the power "to conduct enquiries into any

relevant matter, whether or its own volition or at the request of any person, with a power to refuse to do so if it considers that the matter could more appropriately be dealt with by means of legal proceedings, or that it is trivial or vexatious, or that any alleged violation of human rights is manifestly unfounded, or that the person making the request has an insufficient interest in the matter concerned"; and for the purpose of an inquiry, the Commission may require the giving of information and the production of documents relevant to the inquiry, and may, if necessary obtain a court order to secure compliance with the requirement.

127. The recent comments of the Council of Europe's Commissioner for Human Rights on the inquiry powers of the Northern Ireland Human Rights Commission are applicable more generally—

The Paris Principles recommend that a national institution should be able to 'hear any person and obtain any information and any documents necessary for assessing situations falling within its competence'. The United Nations Handbook on National Institutions lists in greater detail powers that are fundamental for conducting effective investigations, such as the free access to all documents, including public records, which, in the opinion of the investigative body, are necessary for a proper investigation of the complaint, and the power to compel the production of relevant information ... [the questions that need to be asked about these powers are does] the Commission enjoy, in addition to its advisory role, a mediatory role vis-?-vis the bodies it might wish to investigate, or an exclusively adversarial role, or ... some combination of the two? ... Whilst ... in the latter case, [it would] require significant investigative powers, great care would have to be taken to ensure that the rights of persons appearing before the Commission and the principle of the equality of arms are respected at all times ... An additional guarantee for those appearing before the Commission would be that any information obtained during such proceedings could not subsequently be used in court ... The rights of those appearing before the Commission to legal representation would need to be considered. Care would also need to be taken to clearly define the Commission's investigative powers vis-?-vis different actors, including both different types of public official (one might think, for instance, of Prosecutors, Ombudsmen, Parliamentarians and military personnel, all of whom may have, for different reasons, certain immunities or secrecy obligations) and private individuals, whether acting in a purely private capacity, or assuming typically public functions, and who might, again, have professional secrecy obligations, such as lawyers, doctors, priests, or journalists.[97]

128. **We are persuaded that the power to conduct public inquiries on its own initiative would be an essential element of a human rights commission's functions.** As international experience indicates, to be effective in this function, the commission would need powers to require the giving of information and documents, and possibly to demand the appearance of witnesses, though the power we would suggest would be limited to an application to the court for appropriate orders to be made. These powers would need to be balanced by the appropriate safeguards outlined by the European Commissioner for Human Rights in the passage quoted above.

129. We are open-minded on the question of whether it should be possible for the Government to mandate the commission to undertake an inquiry—though there could be no objection to its asking for a particular inquiry to be initiated. We hope to consult further on the precise scope of the powers necessary to make a commission's use of this function effective.

Scrutiny of Law and Practice

Legislative Scrutiny

130. In a state that aspires to democracy, human rights can only be fully realized if they are taken as seriously in the law-making processes of the executive and the legislature as they are in the adjudicative work of the courts and tribunals. Under section 19 of the Human Rights Act, every Government Bill is required, on publication, to be prefaced by a statement from the responsible Minister as to whether, in his or her opinion, the provisions of the Bill are compatible with Convention rights.

131. At the beginning of this Parliament, this Committee reaffirmed the decision of our predecessors to make scrutiny of proposed legislation for compliance with Convention rights, and other human rights standards, a priority. In the last Session we reported on all Bills presented to Parliament.<sup>[98]</sup> In addition we produced reports on a number of draft Bills.

132. On the whole, we consider that this work is best done within Parliament, and we hope that it is work which is done adequately, for the most part, by ourselves. **We do not think it necessary to duplicate the work of this Committee by imposing a duty on a commission to conduct parallel scrutiny of legislation.** However, we do believe that the value of this process can be enhanced by our ability to take into account as wide a range of opinion on proposed legislation as is possible. We consider that any commission should certainly have the freedom to make submissions on proposed legislation to us, and we hope that a relationship between this Committee and any commission would develop which would encourage it to do so. We detect a developing attention within Government given to the nuances of what is meant by a Minister deciding to make a section 19 statement on a Bill, and an increased awareness in Parliament of this process. If a human rights commission were to produce a similar effect in wider areas of the policy and practice of public authorities, its effect would be to reduce the challenges to Government in the courts, not to increase them.

133. On draft legislation, we would expect the commission to have the right to contribute to any consultation process on either draft Bills or other policy documents such as White and Green Papers, and that government departments would see it as their duty formally to invite submissions from the commission on these matters. This is again an area we see as offering opportunities for fruitful collaboration between this Committee and any commission.

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81 *Something for Everyone, op cit*, pp 80-82 [Back](#)

82 Legal Action Group, Twenty-second Report, Session 2001-02, *op cit*, Ev 195 [Back](#)

83 The Aire Centre, *ibid.*, Ev 142 [Back](#)

84 *Something for Everyone, op cit*, p 71 [Back](#)

85 Including JUSTICE, Charter 88, Stonewall and the CAJ [Back](#)

86 Commission for Racial Equality, Twenty-second Report, Session 2001-02, *op cit*, Ev 93 [Back](#)

87 Liberty, Twenty-second Report, Session 2001-02, *op cit*, Ev 110 [Back](#)

88 IPPR, Twenty-second Report, Session 2001-02, *op cit*, Ev 134 [Back](#)

89 The Scottish Executive has proposed a definition of human rights for its commission that goes beyond those contained in the Human Rights Act, to encompass all

international human rights treaties to which the UK is signatory. [Back](#)

90 A review of the UK's international human rights obligations is currently being undertaken by the Government under the co-ordination of the LCD. The terms of reference of the review are "to review the UK's position on international human rights instruments in the light of experience of the operation of the Human Rights Act, the availability of existing remedies within the UK, and law and practice in other EU Member States; and to report in Spring 2003." The review encompasses: UK reservations and derogations to UN and Council of Europe human rights instruments and whether they should be maintained; ratification of additional human rights instruments; ratification of additional protocols to the ECHR; and acceptance of the individual complaint procedures under the UN instruments (for example, under the Optional Protocol to the ICCPR). [Back](#)

91 The more significant of these instruments are: the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESC), the International Convention on the Elimination of all Forms of Discrimination against Women (CEDAW), the International Convention on the Elimination of all Forms of Racial Discrimination (CERD), the United Nations Convention on the Rights of the Child (UNCRC) and the Convention against Torture and other cruel, inhuman or degrading Treatment or Punishment (UNCAT) and its European equivalent. [Back](#)

92 With the partial exception of the UNCAT [Back](#)

93 Section 69(8) of the Northern Ireland Act provides that: "For the purpose of exercising its [statutory] functions ... the Commission may conduct such investigations as it considers necessary or expedient." [Back](#)

94 *In Our Care: Promoting the Rights of Children in Custody*, March 2002 [Back](#)

95 Oral evidence of the Northern Ireland Human Rights Commission, 28 November 2002, Q 17. The Commission has reported that it has encountered obstruction from a number of public bodies in the conduct of its investigations. It has recommended amendment of the Northern Ireland Act to afford it powers to compel the production of evidence, and to allow it to have access to places of detention: Report to the Secretary of State required by Section 69(2) of the Northern Ireland Act 1998, P.35-41. Recommendations regarding additional investigatory powers were later withdrawn in the Commission's Briefing Paper Concerning the UK Government's Consultation Paper on the Review of Powers of the NIHRC, July 2002. [Back](#)

96 *The Scottish Human Rights Commission*, The Scottish Executive, February 2003, chapter 5 [Back](#)

97 Opinion 2/2002 of The Commissioner For Human Rights, Mr. Alvaro Gil-Robles on certain aspects of the review of powers of the Northern Ireland Human Rights Commission, Strasbourg, 13 November 2002, Comm DH(2002)16, original version in English., paras 29-39. [Back](#)

98 First Report, Session 2001-02 *Homelessness Bill*, HL Paper 30/HC 314; Second Report, Session 2001-02, *Anti-Terrorism, Crime and Security Bill*, HL Paper 37HC 372; Third Report, Session 2001-02, *Proceeds of Crime Bill*, HL Paper 43/HC 405; Fourth Report, Session 2001-02, *Sex Discrimination (Election Candidates) Bill*, HL Paper 44/HC 406; Fifth Report, Session 2001-02, *Anti-Terrorism, Crime and Security Bill: Further Report*, HL Paper 51/HC 420; Eighth Report, Session 2001-02, *Tobacco Advertising and Promotion Bill*, HL Paper 59/HC 474; Ninth Report, Session 2001-02 *Scrutiny of Bills: Progress Report*, HL Paper 60/HC 475; Tenth Report, Session 2001-02, *Animal Health Bill*,

HL Paper 67/HC 542; Eleventh Report, Session 2001-02, *Proceeds of Crime Bill*, HL Paper 75/HC 596; Twelfth Report, Session 2001-02, *Employment Bill*, HL Paper 85/HC 645; Thirteenth Report, Session 2001-02, *Police Reform Bill*, HL Paper 85/HC 645; Fourteenth Report, Session 2001-02, *Scrutiny of Bills: Private Members' Bills and Private Bills*, HL Paper 93/HC 674; Fifteenth Report, Session 2001-02, *Police Reform Bill: Further Report*, HL Paper 98/HC 706; Sixteenth Report, Session 2001-02, *Scrutiny of Bills: Further Progress Report*, HL Paper 113/HC 805; Seventeenth Report, Session 2001-02, *Nationality, Immigration and Asylum Bill*, HL Paper 132/HC 961; Eighteenth Report, Session 2001-02, *Scrutiny of Bills: Further Progress Report*, HL Paper 133/HC 962; Twenty-first Report, Session 2001-02, *Scrutiny of Bills: Further Progress Report*, HL Paper 159/HC 1141; Twenty-third Report, Session 2001-02, *Nationality, Immigration and Asylum Bill: Further Report*, HL Paper 176/HC 1255; Twenty-fourth Report, Session 2001-02, *Adoption and Children Bill: As Amended by the House of Lords on Report*, HL Paper 177/HC 979; Twenty-sixth Report, Session 2001-02, *Scrutiny of Bills: Final Progress Report*, HL Paper 182/HC 1295. [Back](#)

## Scrutiny of Practice

134. We noted above that some positive work to involve human rights in the culture of public authorities is being done, most notably by District Audit. This will put human rights into the regulatory framework, confirming it as something to be taken seriously by local authorities and health bodies. However, the regulatory and inspectorate bodies in the public sector do not profess expertise in human rights. Their concerns, as we have found throughout, are focussed on bare compliance and warding off challenges in the courts. They cannot offer engaged and expert advice on human rights issues themselves. This points to the potential for a partner organisation, such as a human rights commission, to make a positive contribution to enabling such organisations, and through them the front line services, to develop a more rights-based approach to their work—to develop a new relationship between the state and its citizens.[99]

135. A commission should be able to give human rights a focus, resources and a degree of institutional stability not found recently in central government, which could provide a base from which it might have a realistic chance to devise and disseminate a more credible human rights culture for public authorities. **In overseeing the promotion of a culture of human rights, a commission would have to be able to work effectively through regulatory and representative bodies for different sectors of public activity.**

136. We have considered whether it would be appropriate to impose a positive obligation on public authorities to promote human rights. This duty might be equivalent to the duty already imposed on specified public bodies, when carrying out their functions, to have due regard to the need not only to eliminate unlawful racial discrimination but also to promote equality of opportunity and good relations between people of different racial groups.[100] However, there is less of a need for a new statutory duty than for the active promotion of the understanding that Convention rights already impose certain positive duties on public authorities.

137. The positive obligations cannot be construed to include a duty to produce a strategy for promoting human rights within their organisations and in the work they do. There might, we believe, be some value in a human rights commission encouraging public authorities to produce such a strategy, but it would be unlikely to be useful, certainly at this stage, to impose a statutory duty on them to do so.

### Redress

138. The issue of redress for violations of rights, perhaps surprisingly, drew less comment from the bodies which submitted written evidence to us in 2001. But the notion of access to justice encompasses more than the promotion of litigation, and is an essential element of the educational as well as the enforcement work of any commission. Advice and assistance must be considered when looking at the fundamental tasks of a commission. Essentially, consideration of the case for meeting unmet needs in this area centres around four potential functions for a commission: providing advice to the public about what their rights are and how they can secure redress for violations or prevent potential violations; assisting in finding alternative methods of dispute resolution (which could be a key part of spreading the culture of human rights); perhaps providing financial assistance to enable individuals to take cases in their own name; and intervening in, or (more controversially) taking cases in, the commission's own name.

### Adjudication of Complaints

139. Although international comparisons have to be treated with some caution in

relation to this function, they do suggest that there are problems where individual complaints are regarded as the core work of a commission. The commissions in Australia[101] and New Zealand[102] have been largely seen as complaint-driven—in the view of many observers, to their disadvantage, and in both cases steps are now being taken to refocus them away from this function.[103] In India, the National Human Rights Commission receives thousands of complaints, and is in some danger of being overwhelmed by its caseload. Complaint investigation and resolution is its principal occupation. In South Africa the Human Rights Commission has power to examine complaints, and it can also settle cases by mediation and conciliation. The Northern Ireland Human Rights Commission and JUSTICE both urged that a commission should *not* have judicial or quasi-judicial powers to consider complaints in individual cases.

140. What is clear is that any commission must weigh the advantages of complaints as a channel of communication with the public against the risk of its being swamped by them and becoming reactive rather than proactive. **We do not believe the commission we propose should have any adjudicative function in relation to complaints of violation of rights. In respect of Convention rights, these must remain a matter for the courts to determine. In respect of other rights not directly enforceable in law, it would in our view be inappropriate to hand a quasi-judicial function in this way to a body which is not a court, a legislative body or a branch of the Executive.**

#### Mediation and Conciliation

141. On the whole, we detect support for the commission to have some function in relation to the provision of alternative dispute resolution. We were told in evidence—

? in Mind's view there is a compelling need for similar support to that provided by the Disability Rights Commission (DRC) on disability discrimination issues ? human rights issues ? might well be addressed through a low level response rather than through court action. So for instance immediate problem solving, alerting the responsible authority of their legal responsibilities, providing information and guidance as to how to obtain redress or a change of practice would all benefit the individual. It would also educate and promote a human rights culture within public authorities such as the NHS, social services, the police and the prison service.[104]

Courts, notably in the *Cowl v. Plymouth* case, have made it clear that they expect disputes to be resolved, if possible without recourse to legal action. It will therefore become increasingly important that complaints procedures and similar dispute resolution mechanisms are able to consider human rights issues and to act in a manner which satisfies the requirements of Article 6(i). The need for training, advice and publicity about the implications of the Act therefore goes beyond the legal profession.[105]

A mediation service provided by a human rights commission is an opportunity to further the protection of human rights and to gain public support. For individuals to participate in making decisions about their own rights is genuinely to 'bring rights home.' The informality and privacy of the process combined with the greater options for resolution of the complaint could be empowering for complainants, allowing them to shake off their 'victim' status.[106]

142. Although there are those who are sceptical of the value of this function, we believe that the evidence of its use by the Disability Rights Commission is on the whole encouraging. Many people have extolled the value of a form of mediation or conciliation which is not offered by the adversarial nature of court proceedings. However, it may be that a mediation or conciliation service would be less successful or appropriate where, as is likely to be the case in the majority of cases under the Human

Rights Act, one party to the dispute is a public authority, though this view would not be supported by the recent evidence that government departments had saved £2.5 million in legal costs by using mediation to settle disputes rather than going to court.[107]

143. We will also wish to examine these and other issues further, and to examine how an alternative dispute resolution function would fit alongside the structure of a Human Rights Commission. It would be important to ensure that the Commission's involvement in dispute resolution would complement other elements of its work. A possible model is the conciliation service established by the Disability Rights Commission, which is run by an independent organisation on behalf of the Commission.[108]

144. Mediation and conciliation can be seen as a wider function than simply resolving individual violations or deprivations. In New Zealand, the Human Rights Commission has actively sought to conciliate in cases of racial tension and violence in local communities. The Indian Commission has also played a part in addressing inter-communal strife, and in monitoring and seeking to prevent a lack of even-handedness in public authorities' treatment of participants in and victims of such disturbances.

### Formal Investigations

145. The power to conduct general inquiries into human rights issues in relation to public policy or the practices of public authorities could be a valuable weapon in the armoury of a commission.[109] But this function should not be confused with more detailed enforcement powers such as those currently given to the anti-discrimination commissions in Great Britain to conduct formal investigations, to issue non-discrimination notices, and to apply for injunctions to stop persistent discrimination. While such powers make sense in the context of the detailed statutory provisions relating to unlawful discrimination, our view is that these type of powers are unlikely to be appropriate to the promotion and protection of human rights in more general terms.

### Legal Powers

146. In broad terms, the three British equality commissions have duties to work towards the elimination of discrimination, to promote equality of opportunity, and to keep the legislation under review. They have wide powers in relation to law enforcement, including providing legal advice and assistance, conducting formal investigations, issuing non-discrimination notices, bringing compliance proceedings in their own name, and applying for judicial review where a public authority has acted in an unlawfully discriminatory manner.

147. The British equality commissions see the ability to assist in bringing cases as complementary, though essential, to their promotional work. It is also the experience of a number of human rights commissions that assisting or intervening in the courts can be a valuable tool for a human rights commission, and that the involvement of a human rights commission can help to develop human rights jurisprudence.

148. Annex B contains three tables summarising the duties, functions and powers of various equality commissions and human rights commissions.[110]

149. To what extent should a Human Rights Commission of the kind we envisage have law-related powers, for example of the kind exercised by the British equality commissions or by the Human Rights Commissions in Northern Ireland and the Republic of Ireland? We have found this a difficult and important issue upon which we propose to consult further. The purpose of the following section of our Report is to summarise the issues as we have identified them in the course of our work.

150. We have already explained our reasons for considering that the Human Rights Commission should have the power to conduct investigations and inquiries into human rights issues. However, we do not envisage that the primary function of commission should be adversarial or concerned principally with the enforcement of human rights law. We have also explained that there is a need to avoid the commission becoming overwhelmed by a need to deal with a mass of individual complaints of breaches of human rights, as has happened in some other countries.

**151. We are convinced that the commission should have the power to apply to the court for permission to intervene as a friend of the court in order to give advice in proceedings initiated by other parties that involve or are concerned with human rights. As the independent public authority created as a guardian of human rights, it is appropriate for the commission to be able to assist the court in this way.**

152. The more difficult question is whether the commission should have the power (a) to provide assistance to parties to legal proceedings; or (b) to take cases in its own name.

153. On the direct provision of individual legal advice and assistance, we consider that such a power might be advisable but we have no concluded view. It would provide a useful tool for the commission in clarifying the law in strategic cases. As experience in Northern Ireland demonstrates, such a power would have to be used sparingly, and its use would have to be linked to the development and promulgation of a clear litigation strategy. It should probably be confined to cases for which other forms of legal aid and assistance were not available. At present, civil legal aid is available in cases taken under the Human Rights Act and, as was noted by the Lord Chancellor in his evidence to us, human rights cases are afforded some special consideration where, as will frequently be the case, they are found to raise a matter of public interest.

**154. Since we have no agreed view about the desirability of a power to provide direct legal advice and assistance in strategic cases, we wish to consult more widely on this issue.**

155. A power for the commission to take cases in its own name would most naturally arise by means of judicial review proceedings seeking a declaration that a given administrative decision or statutory rule was incompatible with human rights law.

156. Currently, everyone with a sufficient interest is entitled to apply for judicial review of the decisions or the conduct of a public authority. Such challenges may be brought where there is a human rights dimension.

157. In the case of statutory bodies, such as the equality commissions, this power is not expressly conferred by statute but is implied where such bodies can show a sufficient interest in the subject matter. Any litigant can rely, in any judicial review case, on the various international human rights treaties by which the United Kingdom is bound for a number of purposes. First, a litigant can use a right to argue that a decision, act, rule or policy is irrational, or breaches the litigant's legitimate expectation, and so contravenes one of the ordinary principles of judicial review. Secondly, a litigant can use a right to argue for a particular interpretation of legislation, on the presumption that Parliament does not intend to legislate inconsistently with the United Kingdom's international legal obligations. Thirdly, a litigant may use a right to argue that the court should subject the challenged decision, act, rule or policy to particularly intense or anxious review.

158. Until the enactment of the Human Rights Act, an applicant in judicial review

proceedings could rely upon the Convention rights, by which the UK was then bound by international law. Section 7 of the Act changed that. It provides that a person who claims that a public authority's actions are made unlawful by the Act, may bring proceedings, or rely on Convention rights in legal proceedings, but only if he is a victim of the unlawful act. This is a tighter test than merely that of having a sufficient interest in the proceedings.

159. The explanation for this, given during the passage of the Act by Mr Mike O'Brien MP, the Parliamentary Under-Secretary of State for the Home Department, was that "our aim is to grant access to victims. It is not to create opportunities to allow interest groups ? to venture into frolics of their own in the courts. The aim is to confer access to rights, not to license interest groups to clog up the courts with test cases".[\[111\]](#)

160. Whilst we understand those reasons for this statutory limitation upon judicial review, it has given rise to the somewhat odd situation that a human rights commission could judicially review a public authority if it had a sufficient interest but could not cite, in such a case, the Convention Rights incorporated in UK law by the Act unless it, simultaneously, qualified as a victim of the alleged unlawfulness. Thus the absence of an express statutory power to initiate judicial review for breaches of the Human Rights Act would mean that the commission could take judicial review proceedings for any alleged unlawfulness, in which it had a sufficient interest, except those caused by breaches of the Act which is at the pivot of its sphere of activity.

161. It is strongly arguable, too, that the commission as a public authority with responsibility for promoting human rights in the public interest and publicly accountable for its actions not only to the courts but also to Parliament is not in the category of concern to the government. Experience of judicial review proceedings brought by other public authorities, such as the equality commissions and the Northern Ireland Human Rights Commission, does not suggest that they venture into frolics of their own or clog up the courts with test cases. As the Council of Europe's Commissioner for Human Rights recently noted—

At present, the power of the [Northern Ireland Human Rights] Commission to bring proceedings involving law or practice relating to the protection of human rights is limited so that it cannot rely on the Convention rights when bringing proceedings in its own name. This limitation reproduces the victim requirement set out in the European Convention on Human Rights in respect of the European Court. The victim requirement was introduced to the European Convention in order to prevent abstract cases being brought before the European Court and to avoid the proliferation of cases brought by unrelated third parties ... The main difficulty would appear to arise ... in respect of powers that would enable the Commission to bring cases that would result in abstract rulings on the human rights compatibility of legislation. Whilst such a power would enable potential incompatibilities to be identified, as it were, preventively ... the resemblance of such proceedings to abstract constitutional challenges would significantly alter current judicial practise in the United Kingdom, and in a way that its current judicial structure is, perhaps, ill-equipped to deal with. It ought, however, to be possible to allow the Commission to challenge legislation on the ground of incompatibility with the Convention rights, if, though not a victim itself, it has brought proceedings in its own name in the place of an identifiable victim (whether potential or indirect) or class of victims. Such a provision would keep human rights rulings tied to the protection of a given individual's or set of individuals' rights, without unduly limiting the Commission's ability to raise compatibility issues.[\[112\]](#)

162. If, as we recommend, the commission is given the power to conduct inquiries into human rights issues, it is also arguable that it should, where necessary, be able to

seek declaratory relief in relation to important issues arising from its findings, where those findings are rejected on the basis of legal arguments about the interpretation and application of the Human Rights Act. Otherwise, the only way in which the commission would be able to resolve the issue in legal proceedings would be by finding an individual victim in whose name the matter could proceed, and seeking to intervene as an interested third party. That would be an artificial and cumbersome way of enabling important issues of legal policy and principle to be resolved.

163. These are powerful arguments. On the other hand, we are anxious not to recommend a litigious body. We do not want the Commission to spend either its time or its resources in unnecessary and avoidable litigation. Nor, as we have said repeatedly, do we believe that court proceedings can play a major role in our principal aim, and the commission's principal task—of generating a culture of respect for human rights. It would therefore be a power which we would expect to be exercised sparingly, whilst being aware that no future commission could be tied to any limitations whatsoever on its use.

164. In addition, we can see that if a public enquiry carried out by the Commission, demonstrated that a policy or procedure was, in its view, a breach of Convention Rights, it would be in a strong position to persuade the government of that view, without recourse to the Courts. If there were a clear injustice, the commission would be likely to carry public opinion with it and it might better fulfil its role of generating a human rights culture by initiating debate around the need for change, than by seeking to impose compliance, on the relevant public authority, through the courts. Compliance, simpliciter, with the letter of the Human Rights Act, is not, as we have said, what we perceive the commission's role to be.

165. These contrasting lines of argument have persuaded us that we should consult more widely on this issue, too, before reaching a concluded view.

#### Mandate of a Commission

166. In summary, we conclude that the following powers and functions are essential for the human rights commission we propose—

- to promote understanding and awareness of human rights (including not only the Convention rights but also rights embodied in international human rights instruments binding on the UK );
- to conduct and commission research and provide financial or other assistance for educational activities in connection with promoting understanding and awareness of human rights;
- to conduct inquiries into matters of public policy and practice relating to human rights (with the power to have access to information needed for an effective inquiry);
- to give guidance to, and promote best practice in, public authorities in relation to human rights;
- to offer guidance and advice to Ministers and to Parliament in connection with human rights;
- to be able to publish reports on any of the above matters;
- to assist in the provision of advice and assistance to members of the public on

ways to find help to protect or vindicate their rights;

- to be able to support and promote access to alternatives to litigation in disputes relating to the protection of human rights;
- to be able to apply to the courts for permission to appear as *amicus curiae* in proceedings that involve or are concerned with human rights; and
- to be able to intervene as a third party in legal proceedings relating to questions of principle involving human rights.

We intend to consider further whether the following powers and functions are desirable for a commission—

- to provide assistance to individuals to take cases relating to human rights questions;
- to be able to take cases in its own name;
- to be able to seek judicial review in its own name.

We do not believe that the commission we propose should have any power to adjudicate on individual complaints of violations of rights. We consider it is unnecessary for a commission to have the duty of scrutinising proposed legislation for compliance with human rights.

167. The precise details of how such powers and functions should be embodied in statute will clearly require further consultation and refinement, not least in relation to the exact architecture of any commission—particularly in the extent to which anti-discrimination functions are integrated with functions relating to the promotion and protection of human rights. In that context, we now turn to consider the institutional options for the commission we propose.

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99 There are, however, strict limits on the extent to which District Audit can share information relating to individual public authorities. This is something that would have to be addressed through a protocol or memorandum of understanding between District Audit and any future Human Rights Commission. [Back](#)

100 Race Relations Act 1976, s. 71(1), (2), as substituted by Race Relations (Amendment) Act 2000 [Back](#)

101 In Australia, since the decision of the court in *Brandy* in 1995, the Human Rights and Equal Opportunities Commission has not been able to provide enforceable legal judgements. Nonetheless, handling complaints had occupied a lot of time and resources. The Australian NGOs we met were divided about the merits of the complaints function of the Commission, though it was accepted that the complaints procedure was foremost in the public's mind when acknowledging the value of the Commission. The consensus appeared to be that the complaints mechanism did provide a useful way of identifying broad trends in the nature of individual complaints, and thereby to pick up on systemic problems. [Back](#)

102 In New Zealand, a government-sponsored review of the Human Rights Commission's role and functions had found that complaints had dominated the Commission to the disadvantage of its other responsibilities. It argued that more attention needed to be given to propagating a human rights culture through education and inquiries. Its focus

is now turning to providing information to other agencies or encouraging conciliation through a dispute resolution process. [Back](#)

103 The La Forest report on the Canadian Human Rights Commission drew broadly similar conclusions. [Back](#)

104 Mind, Ev 339-40 [Back](#)

105 Age Concern, Ev 305 [Back](#)

106 BIHR, Twenty-second Report, Session 2001-02, *op cit*, Ev 140 [Back](#)

107 Since March 2002, the Government has used mediation in 255 cases as compared to 49 in the previous year. [Back](#)

108 The Canadian experience is that mediation is much cheaper than going to court. Research there suggests that 600 complaints can be mediated for the cost of 100 court cases (John Hucker, CHRC). [Back](#)

109 The EOC is currently carrying out its first formal investigation for 9 years into claims of sexual harassment of employees by Royal Mail. The DRC is undertaking one into DNR notices and the CRE is also conducting one on racism in the prison service (which it is reported has cost £1m so far). [Back](#)

110 These not include the Human Rights Commission recently established by the Irish Human Rights Commission Act 2001. Its functions are wider than those of the Northern Ireland Human Rights Commission. They are: (a) to keep under review the adequacy and effectiveness of law and practice in the State relating to the protection of human rights; (b) if requested by a Minister, to examine any legislative proposal and report its views on any implication of such a proposal for human rights; (c) to consult with such national or international bodies or agencies having a knowledge or expertise in the field of human rights as it thinks fit; (d) either of its own volition or on being requested to do so by the Government, to make such recommendations to the Government as it deems appropriate in relation to the measures which the Commission considers should be taken to strengthen, protect and uphold human rights in the State; (e) to promote understanding and awareness of the importance of human rights in the State and, for those purposes, to undertake, sponsor or commission, or provide financial or other assistance for research and educational activities; (f) to conduct enquiries into any relevant matter, whether on its own volition or at the request of any person, with a power to refuse to do so if it considers that the matter could more appropriately be dealt with by means of legal proceedings, or that it is trivial or vexatious, or that any alleged violation of human rights is manifestly unfounded, or that the person making the request has an insufficient interest in the matter concerned; (g) to prepare and publish reports on research; to apply to the courts for liberty to appear as *amicus curiae* in proceedings that involve or are concerned with human rights; to participate in the joint committee of representatives referred to in the section of the Belfast Agreement of 10 April 1998 on "Rights, Safeguards and Equality of Opportunity"; (j) to provide assistance in legal proceedings; and (k) to institute proceedings in its own name. For the purpose of an enquiry, the Commission may require the giving of information and the production of documents relevant to the enquiry, and may, if necessary, obtain a court order to secure compliance with this requirement. The Commission is empowered to grant assistance for legal proceedings involving law or practice relating to human rights, unless such assistance is available by any other means. It is also empowered to institute legal proceedings in respect of any matter concerning the human rights of any person or class of persons. [Back](#)

## THE STRUCTURE OF A COMMISSION

### Human Rights and Equality

168. The first structural issue we consider is the impact of the decision to establish a new single equality body in Great Britain on proposals for institutional arrangements for the promotion and protection of human rights.

169. The right to equality of treatment without discrimination is a fundamental human right. Unjustifiable discrimination—indirect as well as direct—needs to be tackled by detailed measures. The Treaty of Amsterdam inserted a new Article 13 into the Treaty Establishing the European Community which allows the Council of the European Union to "take appropriate action to combat discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation". Two Directives were made under Article 13 in 2000, relating to race and employment.<sup>[113]</sup> The Government has decided to implement them by regulations made under the European Communities Act 1972.

170. In response to these new legislative requirements, the Government has decided in principle to establish a single equality commission in Great Britain in place of the three existing equality agencies. When the new single equality body is established, it (and the Northern Ireland Equality Commission) will have duties, functions and powers in relation to the new Directives, in addition to those of the present equality agencies relating to race, disability and gender. One important issue we have had to consider is whether any such commission should be given responsibility for human rights beyond the right to equality itself, and how the new single equality body should relate to the human rights commission we propose.

### The Single Equalities Body Project

171. In December 2001, the consultation paper *Towards Equality and Diversity: Implementing the Employment and Race Directives* was published.<sup>[114]</sup> In it the Government commented—

We think there are good arguments to move, in the longer term, towards a single Equality Commission. Such a commission could offer support to individuals and business covering discrimination on all aspects of equality.

We took evidence from the Minister responsible for the cross-cutting equality issues, Barbara Roche MP, on 20 May 2002.<sup>[115]</sup> Shortly before she appeared before us, the Minister had announced the Government's decision that it *would* move towards the establishment of a single equalities body, and that a project team had been established to work up further proposals. Its terms of reference included a requirement to—

... consider the relationship between possible new arrangements for promoting equality and those for promoting and protecting human rights more widely.<sup>[116]</sup>

172. In our interim report we noted that the case for a human rights commission and the question of arrangements for the promotion of equality being addressed by the Government were closely linked. In October 2002, the next consultation paper from the Single Equalities Project was published.<sup>[117]</sup> It noted the "complementary nature of equality and human rights" which was—

... reflected in the government's vision of a society based on fair and equal treatment for all and respect for the dignity and value of each person.<sup>[118]</sup>

It also noted the distinction that has historically been made between the focus of human rights on fundamental civil and political rights, designed to safeguard the individual in their relationship with the state, and the focus of equality legislation on social and economic protection, in particular protection from discrimination in employment and in the provision of education, goods and services. But it also recognised that—

... discrimination law is beginning to go beyond regulating relationships between individuals: for example the Race Relations Amendment Act 2000 placed obligations on public authorities to promote equality of opportunity for all races across the breadth of their activities ... Similarly, one of the Human Rights Act's aims is to drive cultural change, placing obligations on public authorities but also increasingly on individuals.[119]

The document did not propose any specific questions for those consulted to respond to. The Government has indicated that it will publish a further consultation paper on the way forward in the Spring of this year. It has also indicated that no actual institutional changes will be made before 2006.

### **173. This report constitutes our formal input into the Government's consultation on the structure of a single equality body for Great Britain.**

#### Promoting Equality and protecting Human Rights

174. The original call for evidence issued by our predecessors pre-dated the decision to move in the longer term towards a single equalities body. The majority of respondents at that stage supported the retention of the existing equality commissions as independent bodies, and argued that the relationship between a human rights commission and the equality commissions should be formally defined by way of a protocol or memorandum of understanding. Charter 88 proposed that the work of the existing equality commissions could ultimately be brought within the remit of the human rights commission, although as a discrete area of its jurisdiction. However, they all recognised that a human rights commission would have to work closely with the equality bodies—

We would wish to see cross-fertilisation in law, policy and promotional work.[120]

... the overriding consideration should be comprehensive coverage of human rights issues.[121]

The Equal Opportunities Commission, however, suggested that a re-examination of the equality commissions' remits and relationship with a human rights commission would be necessary in the future.[122]

175. The Government's decision to establish a new single equality body in Great Britain[123] has forced a reconsideration of these positions. The Equal Opportunities Commission, its Chair thought—

... would support institutional arrangements that ensured that human rights can be dealt with in the way we envisaged when we supported the creation of a human rights commission; that there is a body that can handle the promotion and some enforcement activity around the broader human rights agenda.[124]

The Chair of the Disability Rights Commission then held the view that—

When it comes to human rights and a human rights commission, we would prefer to see a

separate body working very closely with whatever body or bodies emerges from the current debate. Failing that, we do see some value in the approach of having an overriding human rights commission with equality strands within it.[125]

All agreed that human rights issues were increasingly relevant to their equality work—

The Human Rights Act is of tremendous importance to disabled people and to DRC's work. We see the Human Rights Act and equality as being linked. You cannot enjoy many civil rights unless you have human rights ... for many disabled people it really is a matter of life and death[126] ...

Our difficulty ... is that we are constrained by what we can do to promote a culture of human rights.[127]

... it has got us to examine carefully how to use the Human Rights Act to extend the types of cases and the arguments that we use, for example strengthening claims around hours of work; and combining the Sex Discrimination Act and the Human Rights Act article around the right to family life.[128]

176. We asked a number of interested parties what the implications for their work were of the proposal to create a single equality body, and the implications of that for the case to establish a human rights commission. We were told—

We know from our own experience that the public are much more persuaded to support the rights of lesbians and gay men if the claim for such rights is situated in the context of the more universal values of human rights and equality ... At present in this country there is no public body that can act as an advocate for human rights. In our view this seriously weakens the government's attempts to challenge discrimination against minorities. The principle of equality can only have real effect in our society if it can be demonstrated that it is the right of every citizen, not a series of special measures to protect certain groups.[129]

? the HRA is not just important because it provides a framework in which mental health professionals can make decisions which impinge upon an individual's rights and freedoms, by balancing the rights of the individuals involved. It also has a crucial role in ensuring that individuals who happen to have mental health problems are central to any decision making about their care and treatment and are treated with the same respect and dignity as other members of the care team.[130]

? we should be thinking pro-actively and positively in terms of the Human Rights Act and embedding the ethos into everyday practice and work. In other words, assessments for community care should be incorporating values which give a person respect and dignity in their choice of way of living, family life, privacy, etc.[131]

The evidence ? demonstrates that a Human Rights culture does not yet exist in those fields where older people's rights are most at risk. Some of the circumstances ? relate not to individual actions but to an abuse of human rights which is 'built in to the system' ... those responsible for operating the system—devising the policies, managing the services and training and managing staff—do not as yet appear to take the principles of the Human Rights Act fully into account.[132]

The unique need of Gypsies and Travellers are often over looked by public bodies ... Travellers have: the highest infant mortality rates, the lowest life expectancy, appalling accommodation provisions, the highest illiteracy rates, the most racist press coverage ...[133]

... even the most extensive application of equality measures will not impact on most situations where older people's human rights are at risk. [For example] lack of access to medical care and suitably qualified staff in residential and nursing homes can put the lives of older people at serious risk.[134]

The trafficking of women for the sex industry is clearly a violation of those women's human rights. There is not a lot [the EOC] could do about that ? There may be issues around the provision of services to people who are carers looking after vulnerable or older dependants ? it is clearly an Article 8 issue because it is around family life. There are issues ... around protection of vulnerable witnesses in court, particularly in cases of rape and sexual assault ... Those are human rights issues ... which, again, we might not be able to take on. Without a human rights component those things will fall into a gap.[135]

Clearly the Race Relations Act would cover deaths in custody ? if there was a race or an ethnicity characteristic attached to it ... but most certainly we would not be able to pick it up if that was not the case and therefore that would be the gap. In the same way as with bullying in a school environment, or exclusion is another example, if we were talking about exclusions within schools then clearly we would pick up the disproportionate nature of African-Caribbean boys being excluded but not the principle per se ...[136]

177. Few would argue then that the agenda of the new equalities body and that of any human rights body would overlap. In *Equality and Diversity: Making it happen*, the Government has set out a vision of a society founded on equality principles, "an inclusive society where everyone is treated with respect and where there is opportunity for all" and in which everyone can play their full part in social and economic life. It notes that now equality legislation is to cover age, sexual orientation and religion and belief, as well as race, gender and disability, the vision can be protection for all rather than for different minority groups—

We want to see a Britain where there is increasing empowerment of all groups, with economic empowerment a key goal; where attitudes and biases that hinder the progress of individuals and groups are tackled; where cultural, racial and social diversity is respected and celebrated; where communities live together in mutual respect and tolerance; and where discrimination against individuals is tackled robustly.[137]

178. This does not sound so very different from the hopes expressed for the Human Rights Act before and after it was passed. Although the proposed new legislation on age, sexual orientation and belief is directed at equality in employment and vocational training, the existing equality commissions have developed an equally strong focus on equality in the provision of services, particularly by public authorities.

179. The differences and similarities between the agenda of any proposed human rights commission and the proposed single equality body could be tabulated as follows.

<i>The work of a human rights commission would be:</i>	<i>The work of the proposed single equalities body will be:</i>
inclusive of the whole population, while recognising that particular groups are especially vulnerable to violations of their rights.	inclusive of the whole population, while focussed on the need to address the specific discrimination experienced by particular groups.
focussed on Convention rights, but also taking into account a wider range of rights including those embodied in other international human rights instruments., some of which will have a stronger association with equality than others.	focussed on rights under domestic discrimination legislation and European law, but also taking into account the discriminatory violation of the human rights of particular groups, and international human rights instruments relating to the elimination of discrimination.
focussed on the power of public authorities over, and their obligations towards, the individual, and on discrimination in access to civil and political rights, but also taking into account the rights of those employed by public authorities, and the protection of individuals or vulnerable groups in the enjoyment of their rights.	focussed on the duties of private and public employers towards individuals and groups and on the obligations of private and public service providers to individuals and groups, but also taking into account the opportunities for individuals and groups to exercise their civil and political rights without discrimination.
focussed on promoting cultural change and the mainstreaming of human rights principles into policy and service delivery to forestall infringements of individual rights , but also on protecting individuals' rights through raising awareness and giving guidance on seeking redress.	focussed on protecting individuals' rights and the enforcement of detailed legislative provisions, but also on promoting systemic change and the mainstreaming of equality principles into policy and service delivery to forestall discriminatory practices.
focussed on promoting the idea of positive obligations under the Human Rights Act.	focussed on enforcing the general statutory duty under the Race Relations (Amendment) Act.
focussed on government and other public authorities as service providers, but also as employers.	focussed on employers and service providers, but also on government and other public bodies as employers and as policy makers.

180. There is a considerable degree of congruence between the work required for the promotion of equality and that required for the promotion and protection of human rights. There are also divergences. As the then Chair of the Commission for Racial Equality commented—

The view we take is that there is a significant degree of overlap between equalities and human rights matters, but there are also some important and significant

differences, and we need to acknowledge both ... human rights is more than just about equality and concerns fair trials, privacy, freedom of expression and those sorts of matters. Human rights govern the relationship between the state and the individual whereas in terms of race that is not necessarily the case ... much of it is about individuals as individuals or against private sector organisations.[138]

If the promotion of equality is focussed on legal remedies for discrimination in employment and the advancement of the economic status of disadvantaged groups, the relevance of human rights may be marginal. If, however, there is an equal focus on access to public services, the relevance of human rights is much more apparent (for example the right to life, the right to education, the right of access to information, the right to privacy, the right to be free from degrading treatment).[139]

181. To the extent that human rights are seen as essentially confined to civil and political rights— focussing on such areas as the protection of freedom of speech, the right to liberty and to a fair trial, the right to peaceful assembly, the right to property, and so on—the overlap with the concerns of the equality agenda may seem slight. But, for example, conditions in residential institutions for the elderly, the young and mentally ill, bullying at school and at work, school exclusions, discrimination in the provision of healthcare, differential access to the right to marry and found a family and the conditions in which people in custody are held all also engage human rights questions as embodied in the core civil and political rights.

182. In short, it is possible to construct agenda that put the priorities of the equality bodies and those of a potential human rights commission at different ends of a spectrum which has group rights and economic rights at one end and individual rights and civil and political rights at the other. Or it is possible to construct agenda in which the priorities of each are intermeshed. Just as there are some aspects of equality that are particular to one group and have little resonance with other disadvantaged groups—for example equal pay for women or reasonable accommodation to the needs of people with disabilities—there are some aspects of human rights that have little resonance for some or all of the groups covered by equality legislation. However, while for example privacy issues may not be a particular concern for ethnic minority communities, it may be for disabled people and older people among them. And while the right to family life may not be a prime concern for most religious minorities, it could be for gays and lesbians, or for members of ethnic minorities trying to secure family union through the immigration system, or for older people in residential accommodation.

183. The most obvious gap in the protection offered under the proposed legislation implementing the European directives is that discrimination on grounds of age, sexual orientation and religion will only be prohibited in relation to training and employment, and will not cover (at least in the initial stage) discrimination in provision of goods and services. The most effective way to tackle the majority of these gaps would be through the introduction of a comprehensive single equality Act.[140] But the Human Rights Act could also help to close this gap, providing protection for example in relation to health care (right to life, degrading treatment) and in relation to education where discrimination is not the issue. It also provides protection from discrimination in the criminal justice system.

184. The Disability Rights Commission has been the most active of the three commissions in pursuing these "gap" issues. Two thirds of disabled people are not in employment. A report published in September 2000 sought to identify some of the key human rights issues for disabled people—

The Human Rights Act ... has particular significance for disabled people. As this

Report says, the fact that disabled people have the same human rights as other people is not something that society has historically been able to take for granted. The withdrawal or restriction of medical services, the abuse and degrading treatment of disabled people in institutional care, and prejudiced judgements about the parenting ability of disabled people are just some of the areas where the Human Rights Act may help disabled people live fully and freely, on equal terms with non-disabled people ... Article 2, which guarantees the right to life, will have a direct impact on the service disabled people can expect in the health system ... Article 3 protects disabled people against inhuman or degrading treatment ... Article 5 provides for the right to liberty. It is relevant to people with mental health problems who are compulsorily detained and to other disabled people in institutional or community care ... Article 6 provides rights of due process in criminal and civil cases ... For example, if someone who is deaf is a witness, or is arrested, it could ensure better police training in communication and more consistent access to interpreters ... Article 8 protects the right to private and family life and Article 12 the right to marry and found a family. These articles will have the most widespread implications for disabled people and will challenge current policies and practices of local authorities, which have the effect of making it virtually impossible for some disabled people to have and raise children. Rights to fertility treatment, the sterilisation of young women with learning disabilities, the rights of severely disabled people to live independently, and rights of adoption are among relevant issues. Article 8 should help protect disabled people from invasion of their privacy and from intrusive and insensitive treatment. It should assist claims to live at home rather than in residential care: for example many people with physical or multiple impairments are living in nursing homes when they could, with support, live independently ...[141]

185. The BIHR report, *Something for Everyone*, looked at the experiences of children, older people, disabled people and refugees. On disabled people, the report records some systemic problems of rights violations for disabled people—

There are long time delays in carrying out their assessments, drawing up appropriate care plans and agreeing service provision. The failure to provide appropriate and timely care and support could in some cases amount to a violation of the client's personal integrity—both physical and psychological integrity ... In relation to care homes, people have their time organised for them. The sort of things you want to do in your own home can't happen. Things like transport provision are usually for the convenience of the provider, not the user. We know of cases [in residential settings] where people have been left in their own excrement, where they are put to bed at five o'clock in the evening, where they are not allowed to watch TV in the evenings ... In relation to benefits appeal tribunals, I'd question whether people get a fair trial ... deaf people in prison, who rarely get parole, these prisoners tend to serve a longer sentence than hearing prisoners. When they come up for parole review, people say, "well, you haven't made any attempt to improve yourself while you've been in prison, you've done no courses, you've done no training". Well they haven't because there's no interpreter provided, and they're stuck in that vicious circle, and they end up staying in prison longer.[142]

The report's section on disabled people concluded—

... there is a gap which the Human Rights Act should fill, which may in part be caused by the inability of the Disability Rights Commission to take cases under the Human Rights Act ... The failure of equality legislation to tackle discrimination in the provision of statutory services means that there is little that the Disability Rights Commission can do to tackle entrenched attitudes within the criminal justice system.[143]

186. On older people, the BIHR report cited some quite extraordinary examples of treatment by public authorities which violated people's right to privacy, to be protected from degrading treatment, and even their right to life. It concluded—

Participants from this sector presented overwhelming evidence that older people are routinely treated with a lack of dignity and respect that would simply not be accepted in relation to other social groups. [144]

187. Both the new European Directives acknowledge in their preambles that the right to equality before the law, and protection against discrimination for all persons, is a fundamental human right. Additionally, all UK equality law has to be applied subject to the Human Rights Act. The courts must take into account the Strasbourg jurisprudence, and all legislation must be interpreted and given effect to in a way that is compatible with Convention rights so far as possible. For example the Employment Directive makes provisions in respect of "religion and belief" will have to be interpreted by the courts in the light of Article 9 jurisprudence. Like the courts, a single equality body, also subject to the Human Rights Act as a public authority, will have to balance different interests and to make a proportional judgement, for example between conflicting rights in the area of religion and belief and issues of gender and sexual orientation. These will involve judgements about freedom of belief, freedom of expression and the right to family life.

188. **This human rights dimension is an unavoidable element of the debate on the single equality body.** There is wide agreement that the equality commission should at least be able to address the human rights dimension of individual discrimination cases. The relationship between human rights and equality in the new institutional structures has to be resolved. It is clear, as we said in our interim report, that any attempt to determine the future of the structure in the UK for the promotion and protection of equality which does not also address how to promote and protect human rights would be "incomplete, incoherent and ineffective". **The question now is not *whether* there should be arrangements for the promotion and protection of human rights sitting alongside those for the promotion of equality, but *how* those arrangements should be designed.** What are the options?

#### Options for the Institutional Arrangements for Equality and Human Rights

189. The Government has announced that it has come to a settled view on the establishment of a single equality body. We take that as our starting point, without expressing any view on whether that was the correct decision. In that context, we have concentrated upon four main options for equality and human rights institutional architecture—

- an Equality Commission confined to tackling unjustifiable discrimination and promoting equality of opportunity and no human rights commission;
- an Equality Commission that also has regard to other human rights relevant to its work in tackling unjustifiable discrimination and promoting equality of opportunity, but no separate human rights commission;
- two separate Equality and a Human Rights Commissions, however configured in relation to the two models for an equality body outlined above; and
- a single Human Rights and Equality Commission.

We consider the advantages and disadvantages of each model in turn.

## An Equality Commission alone

190. The minimum outcome of the single equality body project would be single equality commission with minimal, largely inferential, human rights responsibilities, and no separate human rights commission. The Human Rights Act would be enforced solely through existing mechanisms such as the courts, and the culture of human rights would be promoted only through the efforts of the Government's Human Rights Unit, NGOs and this Committee. From the human rights perspective this model, without any additional arrangements for the promotion and protection of human rights, clearly offers no answer to the need for better promotion and protection of human rights. The commission would be confined to tackling unjustifiable discrimination and promoting equality of opportunity, without having regard to human rights beyond the scope of the highly specific provisions of equality legislation. It would be unable to deal with human rights infringements in situations which do not amount to discrimination, for example—

- domestic violence;
- forced marriages;
- children's right to be heard in decisions about their health care;
- decisions by doctors not to resuscitate without consent;
- permanent exclusions jeopardising the right to education;
- bullying of girls in schools by other girls in the same ethnic group;
- separation of children in care from siblings in care.[145]

No-one who has given evidence to us appears to support such a model. It does not provide an answer to the pressing needs we have identified above for a body to help create a culture of human rights.

## An Equality Commission with a Human Rights Remit

191. The next option in terms of coverage of the range of human rights including equality would be an equality commission with express functions in relation to human rights so far as they related to discrimination. Otherwise, the Human Rights Act would be enforced solely through existing mechanisms. This option would remedy some of the disadvantages that made the first option unviable. The equality legislation underpinning such a commission could specifically require it, for the purpose of discharging its functions, to have regard to the international obligations of the United Kingdom in the field of human rights, and perhaps give the commission powers in relation to enforcement of Convention rights in respect of discriminatory treatment.[146] However, this option would not meet the pressing need that we have identified for a commission able effectively to protect and promote the wide range of civil and political, and economic and social, rights, beyond the right to equality. It could answer the stated needs of the current commissions for powers to tackle human rights violations in relation to the groups with which they are concerned. It would not, of itself, answer the need for a human rights commission—substantial areas of human rights would still have no independent body other than the courts and Parliament to promote and protect them. It is likely that the impact on the delivery of public services would be minimal.

## Separate Equality and Human Rights Commissions

192. Either of the above models could in theory be combined with a separate human rights commission, with responsibility for those areas that would still lie outside the remit of the single equality body.

193. The main practical advantage we perceive in either of these arrangements is that it would free the two new bodies from the danger of being overwhelmed by the extent of their remits. The main practical disadvantage is really just the reverse of the same coin. We have noted above the very large degree of overlap in real life between the work of an anti-discrimination body and that of a human rights body. The degree of overlap between the missions of the two new bodies would mean there would have to be arrangements put in place in order to avoid inefficient duplication of effort or institutional rivalry, and to provide shared access to expertise and experience useful to both institutions. Such a model could also restrict or preclude shared use of services which could well be cost-effective, particularly in outreach and education, but also in legal advice and administrative support. Perhaps most importantly, there would not be a single gateway to help for citizens and other bodies (including employers and service providers) seeking advice and assistance with real life problems. We have no doubt that arrangements could be designed to overcome this divide, but it is not at all obvious to us that the practical advantages which might come from this institutional arrangement would outweigh the practical disadvantages it could produce.

194. Combining a separate human rights commission focussing on Convention rights and other human rights but not expressly focussing on freestanding equality issues, with an equality body focussing on the equality issues including the new grounds, but which had no human rights remit, would have the theoretical advantage of clarity of mission for each. This is closest to the Northern Ireland model. We are not at all persuaded by the experience of that body that the division works in the interests of human rights. Nor are we convinced it would meet the stated needs of the anti-discrimination commissions for functions in relation to the Human Rights Act. If we were starting from the position where there were still to be three or more separate anti-discrimination commissions, or even a pre-existing single equality body, this would have appeared to be the neatest and simplest answer. But that is not our starting point any longer. It does not appear necessarily to be the most efficient answer to designing a human rights commission at the same time as one is designing a new equality body—indeed it could be open to accusations of creating a wasteful duplication of resources.

195. The alternative dual institution model is one in which an equality body with express human rights functions has alongside it a human rights commission dealing with the residual human rights functions. The liaison arrangements described above would still, however, be required, and the potential for unnecessary duplication of resources is likely to be exacerbated. There might also be disparities (not necessarily indefensible) in the protection offered against breaches of the human rights of particular groups and that available more widely. But our main disquiet is that this arrangement would leave the human rights body divorced from many of the mainstream concerns of citizens. We do not believe this would be to the advantage of either the priorities of the equality agenda or of a human rights culture. The greatest risk, we fear, is that the human rights body would be in danger of being depicted (not only outside Government circles) as the champion largely of the criminal, subversive, alien or just plain eccentric, and standing in opposition to the state and the interests of the majority of its citizens. People such as these share the human rights that protect us all, but there is a view, given vivid expression by a tabloid newspaper, that the Human Rights Act is—

? a charter for terrorists, violent criminals, drug dealers, nonces, assorted troublemakers and chancers. [147]

That perception is wrong. Human rights are for everyone.

196. The resulting equality body might in theory benefit from such an arrangement, being able to tackle the human rights violations suffered by the most vulnerable groups in society while being able to divest itself of some of the more challenging and controversial problems in reconciling conflicts and balancing rights. But under this arrangement the new equality body would relinquish much of the benefit of being able to claim that the rights it was promoting were the concern of all rather than the expression of sectoral interests.

197. The resulting human rights body could, in our view, also be quite seriously disadvantaged. Our case for a human rights commission depends on the need we have identified for the promotion of a culture of respect for human rights in public authorities and in society more generally. A human rights commission would be hampered in this mission if it was cut off from involvement in many of the day-to-day concerns of citizens going about their lives—concerns about, for example, their equal treatment at work, the care of their elderly parents or disabled children, their equal right to observe their religious practices and express their beliefs at work or at school, their equal access to education, and so forth.

#### A Human Rights and Equality Commission

198. At the highest level of institutional integration would be a single human rights and equality commission, with comprehensive responsibilities for promoting and enforcing equality *and* human rights. This would overcome the disadvantages we identify above but, on the other hand, it would risk saddling a single commission with too wide a range of duties, functions and powers, and of blunting the cutting edge of a more specialised and focussed equality body.

199. Those who are sceptical of this integrated model fear it would lead to tension within the institution. It almost certainly would. But there will in any event be tensions between the six equality "strands" within a single equality body, with or without human rights responsibilities. Even without responsibility for human rights protection, the single equality body will find that the rights of the minorities it protects can conflict. Promoting the right of older people to hold on to their jobs, for example, could conflict with the need to redress the disproportionate unemployment, or lack of promotion, amongst ethnic minorities, or the need to break through the "glass ceilings" which block women in their career progression. The freedom which religious groups retain to discriminate against gay and lesbian employees may bring the principles of religious freedom into conflict with those of non-discrimination. In relation to one particular disadvantaged group, we were for example told—

There are many ? situations where the balance of one right against [an]other and the boundaries between them cause misunderstandings for individuals and difficulties for mental health professionals - for instance the right to confidentiality and the right to receive information; the rights of mental health service users and rights of carers, the limits to the right to control correspondence. In all these instances the expertise and guidance from a human rights commission would give much needed help with day-to-day problems. [148]

The new equality body, regardless of whether it has responsibility for human rights, will need to develop a culture in which these tensions can be resolved. On the positive side, with the human rights responsibilities conjoined with the equality functions, using a human rights framework could help provide a methodology to enable the differences to be reconciled.

200. It might reasonably be feared that an integrated body would simply have too much to do. Any new single equality body certainly faces a formidable challenge, though one which we should note that the Northern Ireland Equality Commission appears to have risen to (on a smaller scale) with some success. But we should also recognise that putting human rights in the mix will be a reconfiguration of, rather than a multiplication of, the challenge. The champions of each of the six equality "strands" express fears that their concerns will be the most controversial, least recognised or least popular. There are also concerns that the priorities of the human rights agenda could swamp or marginalise those of the equality agenda within an integrated institution. In our view, reinforced by our study of integrated commissions elsewhere in the Commonwealth, the risk lies the other way—it is more likely that human rights will receive less attention and resources. However, it is undeniable that a broad human rights remit would bring with it additional competing concerns to be reconciled with scarce resources. At the same time we should recognise that in practice, while some issues would clearly engage discrimination issues and others would clearly engage human rights questions, many would engage both—for example, an inquiry with an age focus with a human rights dimension or a human rights inquiry with a strong focus on race and religion and belief. The integrated commission may have the ability to adopt a more holistic approach than two separate bodies could, for example to a situation engaging discrimination on grounds of age, systemic failure in services to people with a disability, and deprivations of fundamental rights—

Another much neglected issue is that of the mental health of children and young people. Specialist services are inadequate and legislation to protect their rights not in place. Attempts to have this attended to in the Mental Health Bill are unlikely to succeed partly because of lack of expertise in government. Children's rights and mental health are ? linked directly to policies and practice on homelessness. A human rights commission would be well placed to take a holistic approach to this issue.[\[149\]](#)

#### One Commission or Two?

201. To some extent then, the choice of institutional arrangements is a practical one. Whether it would be better to have separate institutions for equality and human rights depends upon the nature and extent of the additional duties, functions and powers that would be given to a single human rights and equality commission over and above those of a single equality body and on an assessment of the likely impact of locating those in one body, since it is essential that the focus on the very demanding and specialised tasks required of an effective equality commission should remain. On this question, the arguments for one or two institutions are finely balanced, though ultimately they can only be hypothetical.

202. The main disadvantage of creating two separate commissions, one dealing with equality and the other with the rest of the human rights agenda, is that it would create an institutional divide weakening the interdependence and indissolubility of human rights.

203. A powerful argument for bringing all strands of the human rights agenda into a single body is that this would strengthen the ability to promote a culture that respects the dignity, worth and human rights of everyone. Provided that this were done in a way that did not blunt the cutting edge of the specialised compliance work in tackling unjustifiable discrimination by means of monitoring and law enforcement, we consider that, on balance a single body would be the more desirable of the two options. However, the option of creating two separate bodies that has been used both in Northern Ireland and in the Republic of Ireland, would be a viable alternative, provided that they were closely linked in their work.

204. The Government's consultation on a single equality body proposes essentially three options—a fully integrated commission, a "single gateway" in front of the existing bodies, or an "overarching" body. The promotion and protection of human rights could be integrated into any of these models in principle—although the latter two would require the establishment of structures to accommodate specific human rights personnel and expertise (as it would for the three new "strands").

205. Whichever model is chosen, we recognise that some thought will be needed to integrate it into the UK-wide context. We now consider these problems.

#### Devolution Issues

206. The original title given to this inquiry by our predecessors was *A Human Rights Commission for the UK?* Devolution, and its attendant institutional changes, presents a complicated challenge in designing the institutions for the protection and promotion of human rights within the UK. The Human Rights Act applies throughout the UK, and it is the UK Government that is bound by the European Convention on Human Rights and the other international human rights instruments. We consider some of the problems raised by the division of responsibilities, and some potential solutions, in this section.

113 2000/43/EC and 2000/78/EC. These must be implemented by 19<sup>th</sup> July 2003 and 2<sup>nd</sup> December 2006, respectively. [Back](#)

114 Cabinet Office, Department of Trade & Industry, Home Office and Department for Work and Pensions, December 2001. [Back](#)

115 Twenty-second Report, Session 2001-02, *op cit*, QQ 182 to 243 [Back](#)

116 See [www.womenandequalityunit.gov.uk/equality](http://www.womenandequalityunit.gov.uk/equality) [Back](#)

117 *Equality and Diversity: Making it happen*, Cabinet Office, Department of Trade & Industry, Home Office and Department for Work and Pensions, October 2002 [Back](#)

118 *ibid.*, para 9.3 [Back](#)

119 *ibid.*, paras 9.5 and 9.6 [Back](#)

120 Commission for Racial Equality, Twenty-second Report, Session 2001-02, *op cit*, Ev 95 [Back](#)

121 Equal Opportunities Commission, Twenty-second Report, Session 2001-02, *op cit*, Ev 104 [Back](#)

122 Protocol 12 establishes a free-standing right not to be discriminated against on a wide range of grounds and Article 13 provides the legal base for EU legislation to combat discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation. [Back](#)

123 In Northern Ireland, there is already an Equality Commission with responsibility for all areas of discrimination legislation. We visited the Commission in February 2002. [Back](#)

124 Twenty-second Report, Session 2001-02, *op cit*, Q 357 [Back](#)

125 Twenty-second Report, Session 2001-02, *op cit*, Q 358 [Back](#)

- 126 Twenty-second Report, Session 2001-02, *op cit*, Q 353, Chair of the Disability Rights Commission [Back](#)
- 127 Twenty-second Report, Session 2001-02, *op cit*, Q 353, Chair of the Commission for Racial Equality [Back](#)
- 128 Twenty-second Report, Session 2001-02, *op cit*, Q 353, Chair of the Equal Opportunities Commission [Back](#)
- 129 Stonewall, Twenty-second Report, Session 2001-02, *op cit*, Ev 218 [Back](#)
- 130 Camilla Parker, Ev 306 [Back](#)
- 131 Emily Holzhausen, Carers UK, 24 January 2003 [Back](#)
- 132 Help the Aged, Ev 316 [Back](#)
- 133 Friends, Families and Travellers Information Unit, Ev 300 [Back](#)
- 134 Help the Aged, Ev 311 [Back](#)
- 135 Equal Opportunities Commission, Twenty-second Report, Session 2001-02, *op cit*, Q 385 [Back](#)
- 136 Commission for Racial Equality, Twenty-second Report, Session 2001-02, *op cit*, Q 381 [Back](#)
- 137 *Equality and Diversity: Making it happen*, *op cit*, para 1.2 [Back](#)
- 138 Twenty-second Report, Session 2001-02, *op cit*, Q 364 [Back](#)
- 139 The focus of the anti-discrimination bodies on public authorities has been recently reinforced in relation to race where the Race Relations (Amendment) Act 2000 placed a positive duty on public bodies to promote race equality in their services as well as in employment. The Act inserts a new section 71(1) in the 1976 Race Relations Act as follows: "Every body or other person specified in Schedule 1A or of a description falling within that Schedule [public bodies] shall, in carrying out its functions, have due regard to the need-(a) to eliminate unlawful racial discrimination; and (b) to promote equality of opportunity and good relations between persons of different racial groups". The other commissions are seeking a broadening of the scope of the statutory duty. [Back](#)
- 140 A Private member's bill introduced by Lord Lester of Herne Hill, a member of this Committee, was given a Second Reading in the House of Lord on 28<sup>th</sup> February 2003. [Back](#)
- 141 *The Impact of the Human Rights Act on Disabled People*, Rowena Daw for the Disability Rights Commission and the Royal National Institute for Deaf People, September 2000, p i, pp 1 to 3 [Back](#)
- 142 *Something for Everyone*, *op cit*, p 37 [Back](#)
- 143 *ibid.*, p 44 [Back](#)
- 144 *ibid.*, p 56 [Back](#)

- 145 Sarah Spencer, Ev 289 [Back](#)
- 146 See clause 39 (2) (a) of the Equality Bill, HL Bill 19 of Session 2002-03 [Back](#)
- 147 Richard Littlejohn, *The Sun*, 18 October 2002 [Back](#)
- 148 Mind, Ev 341 [Back](#)
- 149 Mind, Ev 340-1 [Back](#)

111 HC Deb., 24 June 1998, c 1083 [Back](#)

112 Opinion 2/2002 of The Commissioner For Human Rights, Mr. Alvaro Gil-Robles on certain aspects of the review of powers of the Northern Ireland Human Rights Commission, Strasbourg, 13 November 2002, Comm DH(2002)16, original version in English, paras 46 to 49. [Back](#)

## Northern Ireland

207. The Northern Ireland Human Rights Commission, envisaged as part of the Belfast Agreement, was established by section 68 of the Northern Ireland Act 1998. It has been in operation since 1999 as an independent body accountable to the Secretary of State for Northern Ireland. The function of the Commission, under its founding legislation, and in accordance with its mission statement, is to further the protection of human rights in Northern Ireland. Also established under the 1998 Act and pursuant to the Agreement is the Equality Commission for Northern Ireland—a single equalities body, which has brought together formerly separate Northern Ireland anti-discrimination bodies, and will take on responsibility in due course for the three new "strands" of equality legislation.[150]

208. Thus, while the question of whether the promotion and protection of human rights is best carried out by a human rights commission at all, and how that body might relate to a single equality body or otherwise, is for the rest of the UK still an open question, **we do not intend in this report to look behind the Belfast Agreement and reopen the question of the establishment and structure of the institutional arrangements for the promotion and protection of human rights and equality in Northern Ireland.**

## Scotland

209. The proposals for a Scottish Human Rights Commission grew out of a paper presented by the Scottish Human Rights Forum to Scottish Ministers in March 2000. A debate in the Scottish Parliament[151] indicated cross-party support for a Scottish Commission, and the Deputy First Minister made a public commitment to consult on whether to establish a Human Rights Commission in June 2000. The consultation was launched in March 2001. Following the conclusion of the consultation process, the Deputy First Minister announced in December 2001 that a Human Rights Commission for Scotland was to be created. The Executive said—

Human rights law is little more than rhetoric if it is not underpinned by the institutions, powers and knowledge base necessary to transform rights into realities.

The Executive proposed that the Scottish Human Rights Commission would have the following key functions—

- promotion, education and awareness raising
- guidance to public authorities
- providing advice to the Scottish Parliament on legislation after introduction
- monitoring and reporting on law and practice
- investigation and reporting on human rights issues in relation to public policy.

A further consultation document was published in February 2003, setting out a number of options for the functions and powers of the proposed commission in more detail.[152]

210. The Scottish Human Rights Centre told us in their written evidence that the establishment of a Scottish commission " would not preclude the creation of a UK wide body if it were found to also be necessary".[153] However, it also expressed a preference for an England and Wales rather than a UK-wide body. When we visited

Edinburgh to discuss these proposals we heard some conflicting views on the possible overlap of remits of a Scottish human rights commission and any other UK human rights commission. The February 2003 consultation paper proposes that the Commission should be a "devolved body", in other words that it would not deal with matters reserved to the UK Government and Parliament.

**211. Unless the next elections to the Scottish Parliament produce an unpredictable political upheaval, there is going to be a Scottish human rights commission. That is the settled view of the Scottish Executive and the Scottish Parliament and we take that decision into account in the structures we propose for the rest of the UK.**

## Wales

212. In its written evidence the executive wing of the National Assembly for Wales argued that the structure of any human rights commission should reflect the post-devolution settlement, and pointed to the existing equality commissions (which have separate offices in Wales and Commissioners with special responsibility for Wales) as a useful model on which to build. It remained open-minded on the establishment of a human rights commission for Wales, but noted that there has been little debate on the subject within Wales, and that the Assembly itself had not debated or otherwise considered the issue. However, it was clear that any commission—

... would need to have a Welsh presence to command the confidence of the people of Wales if it were to succeed in promoting a human rights culture within Wales ...

and that one body—

... would help to emphasise the shared nature of Human Rights Act values, and would maximise the opportunities for joint working and for sharing information and good practice. [154]

It also noted that a single body with an office in Wales would be more cost effective.

**213. Although we heard arguments from some quarters for the establishment of a separate Welsh human rights commission, we detected on our visit to Cardiff no groundswell of support for this amongst elected representatives or pressure groups, and no concrete proposals for one have been put forward by any organised group or official body. There are special circumstances in Wales, as there are in the different regions of England. But, at least for the foreseeable future, there are not to be separate jurisdictions between Wales and England, and there are no current plans to establish a human rights commission in Wales. We will therefore consider arrangements for the protection and promotion of human rights jointly in England and Wales.**

## Devolution Solutions

214. The majority of respondents to our predecessors' call for evidence favoured a structure which reflected the devolved nature of government in the UK. The Bar Council and Law Society considered it anomalous to have a single body with jurisdiction extending to all parts of the UK. Amnesty International took a similar line, advocating two options, the establishment of separate territorial bodies or the establishment of a national body with separate territorial organs, but took no firm position on which option to adopt. Liberty advocated the establishment of separate commissions for Northern Ireland, Scotland, Wales and England on the basis of a duty to co-operate together on UK-wide and international matters. Stonewall argued for a similar arrangement. The majority of respondents refer to the UK Government's responsibility under international law for ensuring compliance with international human rights

standards throughout the UK and acknowledge the need to establish a degree of uniformity in protection of human rights in all parts of the UK. The Institute for Public Policy Research and the Equal Opportunities Commission supported the creation of a UK-wide body, steered by separate regional commissions, with the UK Commission having the authority to speak on human rights for the UK as a whole while providing some common services to the regional commissions. Both the Commission for Racial Equality and the Disability Rights Commission recognised the case for a separate Scottish commission. But like the Institute for Public Policy Research, they recognised that it would be—

... unsatisfactory to have 3 or 4 Commissions that are entirely independent of each other, with no voice with the authority to speak on human rights for the UK as a whole. A UK wide umbrella of some kind is needed, whether light touch co-ordination or, as we advocate, providing some common services. [155]

Other witnesses broadly endorsed this approach.

215. It would be possible to overstate the problems of working the protection and promotion of human rights and equalities into the devolution settlement. There are four basic criteria to be met by any institutional design brought forward—

- It must enable the special circumstances of the separate jurisdictions of the UK to be recognised.
- It must provide for co-ordination at UK-wide level.
- It must avoid overlap of responsibilities and duplication of effort.
- It must provide clear lines of democratic accountability.

As long as these criteria are satisfied, we see no reason to be over-anxious about having tidily symmetrical institutional arrangements in every part of the UK. Asymmetry is one of the inevitable consequences of devolution, and local arrangements will reflect different needs, priorities and judgements.

216. There will be a separate commission for both human rights and equality in Northern Ireland, at least for the time being. The decision of the Scottish Executive and Parliament to proceed down the line of a separate human rights commission for Scotland was taken before the decision to move to a single equalities body for Great Britain. The Government's consultation paper on the single equalities body project comments—

The government considers that any new structure should be established for the whole of Great Britain ... Equally, any new machinery must have ... well-resourced offices in Scotland and Wales, with remits clearly tailored to Scottish and Welsh needs ... Any new equality body will need to interact well with the devolved administrations and legislatures. In addition ... other proposals have been put forward ... One suggestion, for example, is that there could be a 'light touch' central body co-ordinating three executive arms in England, Scotland and Wales ... We would need to consider how the autonomy of the territorial bodies could be reconciled with the central body's overall accountability. In addition, we would need to ensure that points raised by the arms in Scotland and Wales about matters reserved to the UK Parliament ... could be fully taken into account. [156]

217. **The argument for establishing locally-sensitive but UK-wide arrangements (with respect to the complex inter-relationships between reserved and devolved responsibilities) applies equally to arrangements for the promotion and protection of**

human rights and to arrangements for the promotion of equality. This is a further argument for making decisions in principle about both at the same time. The most straightforward solution, in our view, would be for there to be largely autonomous, but loosely federated, bodies operating in Scotland and in England and Wales jointly. The option of an integrated human rights and equality commission would create the disadvantage of some overlap with the Scottish Human Rights Commission. On the other hand, it would have the advantage of creating a body which can deal with reserved matters in Scotland which the proposed Commission will be unable to tackle. There would clearly be a need for a memorandum of understanding between the two organisations if the Scottish commission is established along the lines set out in the Scottish Executive's most recent consultation paper.

218. There will, however, remain a requirement for a UK-wide organisation of some kind, and we now address this need.

#### UK-wide Arrangements

219. In the shorter term than the implementation of the single equality body project and the establishment of the commission we propose, **we recommend that the Government should establish, on a non-statutory basis,**

**a UK Human Rights Advisory Council.** It should have a small, independent secretariat. It should have the power, and funds, to commission independent advice and assistance.

#### Preparing for Change

220. The detailed task of designing a commission will take some time. The development of a strategy for the single equality body is also clearly something that cannot be left until that body takes over from the existing commissions—and whatever institutional arrangements are finally settled on it will be necessary, as we have stressed, to design the arrangements for the promotion of equality and diversity alongside those for the promotion and protection of human rights. The time needed for these processes means these are not to be regarded as quick fix solutions—it will require research, debate and consultation. The principal stakeholders must be fully involved. We believe **the principal function of the Advisory Council we propose should be to provide a "light-touch" co-ordination of arrangements for the promotion and protection of human rights (including equality) throughout the UK and, in its first phase, helping prepare the way for the institutional changes which are in view.** It could have a part to play in preparing, in time for implementation by 2006, the draft legislative proposals for a statutory independent human rights and equality commission for Great Britain (which might encompass separate arrangements for Scotland), and any unified equality legislation covering the six "strands" of anti-discrimination law and arrangements for the promotion and protection of human rights.

221. We now turn to consideration of the principles which should guide the design of the new commission in relation to its accountability.

#### Independence and Accountability

##### Independence

222. The great majority of those who responded to our predecessors' call for evidence laid great emphasis on the importance of the independence of any human rights commission. Throughout the world, this is a matter of general consensus. The Northern Ireland Human Rights Commission suggested that independence of the commission would be best preserved by removing from Government full control over the appointments process,

as well as the financing and internal management processes of the commission. The majority of respondents favoured the involvement of this Committee in the appointment process. Similarly, the Commission for Racial Equality and Disability Rights Commission believed that the commission should be accountable directly to Parliament through the JCHR.

223. There are a number of models available for how Parliament, and specifically this Committee, could be involved in the appointment of commissioners. One is the non-statutory arrangement adopted by the House of Commons Treasury Committee to hold "confirmation hearings" on the appointment of members of the Bank of England Monetary Policy Committee.[157] Although the Treasury Committee believes—

... that confirmation hearings, even on a non-statutory basis, act as a stimulus to the Chancellor to choose candidates who are competent and independent ... the hearings underline the fact that MPC members are accountable to Parliament and to the public ...[158]

few would consider this offers a high level of real accountability. A better model may be that provided by the arrangements under the National Audit Act 1983 for the appointment of the Comptroller & Auditor General, by which that officer is appointed on a motion which is required to be moved jointly in the House of Commons by the Prime Minister and the Chairman of the Committee of Public Accounts. However, the logic of such a system would be difficult to retain if it were felt that both Houses had jointly to approve appointments of commissioners. **On the whole we would tend to favour a form which requires a duty to consult Parliament on the appointment of commissioners as a guarantee of independence and democratic accountability, so long as this was a statutory duty.**

224. The responses to our predecessors' call for evidence received from academic institutions tended to emphasise the importance of making appointments representing different sectors of society whilst ensuring that Commissioners have the requisite level of expertise. The extent to which such an ambition can be achieved will always be problematic for any institution. **We would not favour any statutory obligation to require the commission's membership to be "representative of all sections of the community"—but we would expect this to be a consideration in making appointments, as it should be for all public bodies.** Nor are we inclined to favour a model which incorporates a majority of part-time commissioners.

## Resources

225. However, appointment arrangements are only a part of the story as regards the quality of the independence shown by commissioners. More important, as we heard time after time on our visits abroad, is the quality of the people appointed and the resources at their disposal. **We believe the main factor which will influence the quality of the people who seek to become commissioners is the perception that the commission is a body with the potential to exercise real influence, and which is to be resourced adequately to do the job it has been set.** As the Council of Europe's Commissioner for Human Rights recently commented (in relation to the Northern Ireland Human Rights Commission)—

Independence is an indispensable characteristic of an effective human rights institution. Financial autonomy and an adequate level of funding are among the means to guarantee such independence. According to the Paris Principles, human rights institutions should enjoy a level of funding that allows the institution "to be independent of the Government and not [to] be subject to financial control which might affect its independence". It is obvious that a human rights institution should have

its own budget which is sufficient for the fulfilment of its tasks. Apart from the regular financial scrutiny through review and the evaluation of financial reports, other bodies, such as the Government or individual ministries should not interfere in the use of the institution's resources.[159]

We do not propose here to try to calculate the cost of running a commission, as we have insufficient evidence to make any such estimate other than speculative. However, we can note that the cost of the three anti-discrimination commissions is running at around £40 million annually.[160] The additional costs of promoting and protecting human rights effectively will be highly dependent on the structure for any commission which is eventually settled on. We also note that the Northern Ireland Human Rights Commission has expressed concern that its independence was being eroded by the need to go cap-in-hand to the Northern Ireland Office for resources for any work beyond what was really a bare minimum of core tasks. **We recommend that, as a guarantee of independence and in accordance with the comments we make below on accountability, Parliament should be directly involved in the setting of any commission's budget.**

### Accountability

226. The model of accountability adopted for the existing anti-discrimination commissions is the standard one for non-departmental public bodies. Broadly, they are established under statute, appointed by a Secretary of State (with circumscribed powers to dismiss within the statutory terms of office, which may or may not be renewable), and funded via the voted expenditure of their "parent" department. They are usually required to make an annual report to their Minister and present accounts audited by the National Audit Office, which the Minister is in turn required to lay before Parliament.

227. It is not an entirely satisfactory model from the point of view of independence or accountability. In negotiating their budgets, such bodies have little leverage against their parent department—a very central concern of the Commonwealth commissions which we visited. Ministers will have very varied levels of interest in the work of a particular body, and may on occasions even be hostile. There is often little sustained engagement between a commission and its government sponsor.[161] The level of formal parliamentary accountability is generally low, reliant on the intermittent attention of select committees with very crowded agenda or of individual members using questions or adjournment debates either to probe or support their work. The level of informal engagement in Parliament is often also poor.

228. A more attractive model is the National Audit Office, with its direct engagement with Committee of Public Accounts, and its much more independent funding stream through the statutory Public Accounts Commission. Here we see the highest level of parliamentary engagement and accountability, a very clearly established independence from Government, a more openly negotiated funding stream, and a high reputation for its work.

229. Something of a halfway house between these two models is the Parliamentary Commissioner for Administration. Though funded from central government voted expenditure, his or her reporting line is more directly to a specified parliamentary committee (currently the Public Administration Committee of the House of Commons).

230. We note that the Scottish Executive has reached the view that the Scottish Human Rights Commission should be directly accountable to the Scottish Parliament with its funding overseen by the Scottish Parliament Corporate Body.[162] **Similarly, we do not consider that the standard model of NDPB accountability is a sufficiently outward and visible guarantee of independence from the Government to be appropriate to a national human rights commission (or indeed the proposed single equality body, whether or not**

integrated with a human rights commission). We intend to examine the other options more fully in the light of the Government's decisions following its consultation on a single equalities body.

## Allocation of Functions

231. In general, there are two basic models for the allocation of functions within a human rights commission—commissioners with designated areas of responsibility (race relations, gender issues, disability, human rights, etc.) or commissioners with designated functions (complaint handling, advice services, litigation, etc.). We saw both models at work in the course of our inquiry, and heard advocates and critics of both models. In general, it could be said that commissions tended to appear to evolve from the former to the latter model over time.

232. From a human rights perspective, in a fully integrated commission covering anti-discrimination matters and human rights protection and promotion, we are inclined to favour the latter model, emphasising as it does the fundamental point that human rights do not belong especially to any particular group, and that there is no hierarchy of rights. However, we recognise that it may be necessary, at least in the medium term, to find a compromise between these two models, and we believe detailed consideration of this issue is another question which has to be held over until we know what the outcome of the Government's consultation on the single equalities project is. We agree with the comment made in the consultation document that, as a principle, the organisation should have as much freedom as possible in determining its own internal structure.

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150 We visited both Commissions during the course of this inquiry. [Back](#)

151 On 2 March 2000 [Back](#)

152 *The Scottish Human Rights Commission*, The Scottish Executive, The Stationery Office, February 2003 [Back](#)

153 Twenty-second Report, Session 2001-02, *op cit*, Ev 186 [Back](#)

154 Twenty-second Report, Session 2001-02, *op cit*, Ev 190 [Back](#)

155 *ibid.*, Ev 135 [Back](#)

156 *Equality and Diversity: Making it happen*, *op cit*, paras 9.10 to 9.12 [Back](#)

157 First Report from the Treasury Committee, Session 1997-98, HC 282 [Back](#)

158 *ibid* [Back](#)

159 Opinion 2/2002 of The Commissioner For Human Rights, Mr. Alvaro Gil-Robles on certain aspects of the review of powers of the Northern Ireland Human Rights Commission, Strasbourg, 13 November 2002, Comm DH(2002)16, original version in English, para 15. [Back](#)

160 See annual report of the CRE for 2001 (£19m), the EOC statement of accounts for 2001-02 (£9m) and the DRC's updated strategic plan for 2002/03-2004/05 (£12m). [Back](#)

161 The Equal Opportunities Commission has had three sponsoring departments in the last two years as a result of changes in the machinery of government entirely unconnected with its mission. [Back](#)

162 *The Scottish Human Rights Commission, op cit*, pp 34-36 [Back](#)

## CONCLUSION

233. Human rights are widely misunderstood. They tend to be seen only in terms of offering protection from the worst excesses of anti-democratic and despotic regimes, or as the concern only of those who are fundamentally at odds with majority views in society.

234. Properly and more widely understood, and made a reality in the practice and policies of public authorities, human rights have the potential to be agents of positive change. There is, however, a danger that this potential will be dissipated in imprecise aspirations and pious hopes, or that human rights will be perceived as marginal to the day-to-day concerns of the UK's citizens and solely of interest to lawyers.

235. More work needs to be done to promote human rights as a set of fundamental ethical standards—for the way the state treats its citizens and for all our social relations. We need to build a culture of respect for human rights.

236. Building such a culture is an ambitious vision, and there are many barriers to achieving it. The greatest of these is ignorance. In such a culture people would be better informed about what their rights were and what they could mean in practice. The most vulnerable would be better protected from violations of their human rights. Government and public authorities would promote and protect human rights standards and treat all people with dignity, fairness and respect. Human rights standards would be generally accepted as those by which we should all strive to treat each other; and people would recognise and value both their own rights and those of others.

237. In our public services the climate of legal compliance and risk avoidance too often inhibits the development of a human rights culture. With few honourable exceptions, human rights are looked upon as something from which the state needs to defend itself, rather than to promote as its core ethical values. There is a failure to recognise the part that they could play in the promoting social justice and social inclusion and in the drive to improve public services.

238. If it is left to the courts, the original vision that the Human Rights Act should bring about a cultural change will not be realised. Litigation is an essential tool to protect the rights of the individual or groups, but it is not an effective means of developing a culture of human rights. Parliament must defend human rights and must stand at the centre of a culture of respect for human rights, but it cannot itself do the work of educating, informing, encouraging and promoting that is needed to establish this culture more widely.

239. To carry the human rights message to the public authorities of the UK will require a more direct injection of knowledge and sense of purpose than is presently trickling down from Whitehall. We believe that a human rights commission, probing, questioning and encouraging public bodies, could have a real impact in driving forward the development of a culture of respect for human rights. We believe that human rights need a credible and independent champion which stands outside the Government.

240. Disadvantaged and marginalised groups are among the people whom the Human Rights Act was supposed most directly to benefit. Human rights should provide a framework within which to negotiate with public authorities for better conditions and treatment in individual cases as well as in wider policy campaigns. But the message about what human rights can do for citizens in their relations with the state is only faintly heard. Much of the cause for this state of affairs, we believe, can be ascribed to the

absence of an independent voice to promote and help protect human rights in the UK.

241. We need a human rights commission. That commission must have a clear mission, and it must be given the powers and functions to fulfil that mission. It must have sufficient resources to do the job it has been given, and its budget must be set in an open and transparent way. It must be independent from Government, and seen to be so. It must belong to the people and be accountable to them through Parliament.

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## Annex A The Paris Principles relating to the Status of National Human Rights Institutions

### COMPETENCE AND RESPONSIBILITIES

1. A national institution shall be vested with competence to promote and protect human rights.
2. A national institution shall be given as broad a mandate as possible, which shall be clearly set forth in a constitutional or legislative text, specifying its composition and its sphere of competence.
3. A national institution shall, inter alia, have the following responsibilities:
  - (a) To submit to the Government, Parliament and any other competent body, on an advisory basis either at the request of the authorities concerned or through the exercise of its power to hear a matter without higher referral, opinions, recommendations, proposals and reports on any matters concerning the promotion and protection of human rights; the national institution may decide to publish them; these opinions, recommendations, proposals and reports, as well as any prerogative of the national institution, shall relate to the following areas:
    - (i) any legislative or administrative provisions, as well as provisions relating to judicial organization, intended to preserve and extend the protection of human rights; in that connection, the national institution shall examine the legislation and administrative provisions in force, as well as bills and proposals, and shall make such recommendations as it deems appropriate in order to ensure that these provisions conform to the fundamental principles of human rights; it shall, if necessary, recommend the adoption of new legislation, the amendment of legislation in force and the adoption or amendment of administrative measures;
    - (ii) any situation of violation of human rights which it decides to take up;
    - (iii) the preparation of reports on the national situation with regard to human rights in general, and on more specific matters;
    - (iv) drawing the attention of the Government to situations in any part of the country where human rights are violated and making proposals to it for initiatives to put an end to such situations and, where necessary, expressing an opinion on the positions and reactions of the Government;
  - (b) To promote and ensure the harmonization of national legislation, regulations and practices with the international human rights instruments to which the State is a party, and their effective implementation;
  - (c) To encourage ratification of the above-mentioned instruments or accession to those instruments, and to ensure their implementation;
  - (d) To contribute to the reports which States are required to submit to United Nations bodies and committees, and to regional institutions pursuant to their treaty obligations, and, where necessary, to express an opinion on the subject, with due respect for their independence;
  - (e) To cooperate with the United Nations and any other organization in the United Nations system, the regional institutions and the national institutions of other

countries that are competent in the areas of the promotion and protection of human rights;

(f) To assist in the formulation of programmes for the teaching of, and research into, human rights and to take part in their execution in schools, universities and professional circles;

(g) To publicize human rights and efforts to combat all forms of discrimination, in particular racial discrimination, by increasing public awareness; especially through information and education and by making use of all press organs.

#### COMPOSITION AND GUARANTEES OF INDEPENDENCE AND PLURALISM

1. The composition of the national institution and the appointment of its members, whether by means of an election or otherwise, shall be established in accordance with a procedure which affords all necessary guarantees to ensure the pluralist representation of the social forces (of civilian society) involved in the promotion and protection of human rights, particularly by powers which will enable effective cooperation to be established with, or through the presence of, representatives of:

(a) non-governmental organizations responsible for human rights and efforts to combat racial discrimination, trade unions, concerned social and professional organizations, for example, associations of lawyers, doctors, journalists and eminent scientists;

(b) trends in philosophical or religious thought;

(c) universities and qualified experts;

(d) Parliament;

(e) Government departments (if they are included, these representatives should participate in the deliberations only in an advisory capacity).

2. The national institution shall have an infrastructure which is suited to the smooth conduct of its activities, in particular adequate funding. The purpose of this funding should be to enable it to have its own staff and premises, in order to be independent of the Government and not be subject to financial control which might affect its independence.

3. In order to ensure a stable mandate for the members of the institution, without which there can be no real independence, their appointment shall be effected by an official act which shall establish the specific duration of the mandate. This mandate may be renewable, provided that the pluralism of the institution's membership is ensured.

#### METHODS OF OPERATION

Within the framework of its operation, the national institution shall:

(a) Freely consider any questions falling within its competence, whether they are submitted by the Government or taken up by it without referral to a higher authority, on the proposal of its members or of any petitioner;

(b) Hear any person and obtain information and any documents necessary for assessing situations falling within its competence;

- (c) Address public opinion directly or through any press organ, particularly in order to publicize its opinions and recommendations;
- (d) Meet on a regular basis and whenever necessary in the presence of all its members after they have been duly convened;
- (e) Establish working groups from among its members as necessary, and set up local or regional sections to assist it in discharging its functions;
- (f) Maintain consultation with the other bodies, whether jurisdictional or otherwise, responsible for the promotion and protection of human rights (in particular, ombudsmen, mediators and similar institutions);
- (g) In view of the fundamental role played by non-governmental organizations in expanding the work of national institutions, develop relations with nongovernmental organizations devoted to promoting and protecting human rights, to economic and social development, to combating racism, to protecting particularly vulnerable groups (especially children, migrant workers, refugees, physically and mentally disabled persons) or to specialized areas.

#### ADDITIONAL PRINCIPLES CONCERNING THE STATUS OF COMMISSIONS WITH QUASI-JURISDICTIONAL COMPETENCE

1. A national institution may be authorized to hear and consider complaints and petitions concerning individual situations. Cases may be brought before it by individuals, their representatives, third parties, non-governmental organizations, associations of trade unions or any other representative organizations. In such circumstances, and without prejudice to the principles stated above concerning the other powers of the commissions, the functions entrusted to them may be based on the following principles:

- (a) Seeking an amicable settlement through conciliation or, within the limits prescribed by law, through binding decisions or, where necessary, on the basis of confidentiality;
- (b) Informing the party who filed the petition of his (sic) rights, in particular the remedies available to him, and promoting his access to them;
- (c) Hearing any complaints or petitions or transmitting them to any other competent authority within the limits prescribed by the law;
- (d) Making recommendations to the competent authorities, especially by proposing amendments or reforms of the laws, regulations and administrative practices, especially if they have created the difficulties encountered by the persons filing the petitions in order to assert their rights. [\[163\]](#)

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163 Commission on Human Rights resolution 1992/54 of 3 March 1992, annex: General Assembly resolution 48/134 of 20 December 1993, annex. [Back](#)

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## LIST OF PRINCIPAL CONCLUSIONS AND RECOMMENDATIONS

### *A Culture of Respect for Human Rights*

A culture of respect for human rights would exist when there was a widely-shared sense of entitlement to these rights, of personal responsibility and of respect for the rights of others, and when this influenced all our institutional policies and practices. This would help create a more humane society, a more responsive government and better public services, and could help to deepen and widen democracy by increasing the sense amongst individual men and women that they have a stake in the way in which they are governed. For these and other reasons we believe a culture of respect for human rights is a goal worth striving for. (Paragraph 9)

There is no vision, no administrative framework and scant guidance reaching public authorities to tell them how a culture of respect for human rights might look or how it can be delivered. (Paragraph 61)

It is clear that, by and large, public authorities do not consider mainstreaming respect for human rights in their policies and practices a priority. We conclude that the Government's enthusiasm to make the Human Rights Act come alive as a measure which places positive duties on public authorities, and which should promote a culture of respect for human rights in every aspect of public life, needs to be forcefully promoted. (Paragraph 62)

The process of putting a culture of human rights at the heart of the work of public authorities needs to be reinvigorated if a consistent human rights message is to have a chance of reaching public authorities. These agents of the state cannot be expected to embrace a human rights culture that they do not know about. (Paragraph 68)

### *The Case for a Human Rights Commission*

The existence of the Joint Committee on Human Rights is no substitute for the establishment of a human rights commission. (Paragraph 74)

We believe a commission could reduce avoidable litigation against public authorities rather than encourage it. On simple grounds of economy, the Government should be prepared to look positively at the idea of a commission. (Paragraph 78)

A Government should be able to look on a commission as a partner (although an independent and when necessary critical one) which can help it achieve some of its more fundamental goals, bringing it solutions, not just problems. (Paragraph 79)

A commission could make a positive contribution to achieving its vision of a new relationship between the citizen and the state—a relationship that could be to the benefit of both parties. (Paragraph 80)

The decision to reorganise the institutional arrangements for the promotion of equality has made it an urgent necessity to consider the institutional arrangements for the promotion and protection of human rights more generally. The Government's decision in principle to establish a new equality commission, which will have to consider human rights issues in the context of its own work, makes it necessary for the Government to now resolve the question of a human rights commission. (Paragraph 84)

Since the Government is serious about developing a culture of respect for human rights it has a duty of leadership. If it wills the end, it must also will the means. Precious

time has already passed. The question is whether the means to achieve the ambition are in place. We do not believe they are. An independent commission could provide those means. (Paragraph 88)

There is still a long way to go in establishing the culture of respect for human rights, and the momentum from the Human Rights Act is ebbing. If it is not revived, the loss will detract from or adversely affect the conduct and performance of public services, and consequently the well-being of those who use them. (Paragraph 89)

There is an unmet need for citizens to be assisted in understanding what their rights are, how these rights must be balanced with those of others, and how to assert their rights without necessarily having recourse to litigation. A commission could meet those needs. (Paragraph 93)

We do not find evidence of the rapid development of awareness of a culture of respect for human rights and its implications throughout society, and what awareness there is often appears partial or ill-informed. Indeed, we fear that the most recent highwater mark of this culture was between the passing of the Human Rights Act and its coming into effect— in the two years since the Act was brought into effect, the evidence we have gathered suggests the culture may actually have been in retreat. We conclude the resources devoted to this task within Government are insufficient to achieve the goal that the Government desires. We conclude that a commission would be both an effective and an efficient way of developing public awareness. (Paragraph 94)

A commission would give human rights a focus, resources and a degree of institutional stability not found recently in central government. This would provide a base from which there might be a realistic chance of devising and disseminating a more credible culture of respect for human rights in public authorities. (Paragraph 96)

A commission could undertake much of the dissemination and monitoring of human rights with respect to public authorities which is not happening, and shows no likelihood of happening, under the existing arrangements within Government. We believe this work needs to be done. We conclude that in the absence of a human rights commission it will not be done well, or possibly it will not be done at all. (Paragraph 98)

We are persuaded that sufficient unmet needs have been identified for there to be work for a commission to do. The development of a culture of respect for human rights in Great Britain is in danger of stalling, and there is an urgent need for the momentum to be revived and the project driven forward. A culture of respect for human rights cannot be developed through the courts alone and it cannot be developed solely by an agency within Government. We believe an independent commission would be the most effective way of achieving the shared aim of bringing about a culture of respect for human rights. Our advice is that such a commission should be established. (Paragraph 99)

#### *Functions and Powers of the proposed Commission*

We start from the position that the powers given to any commission should flow directly from the functions it is required to perform. Its powers should be sufficient for it to do its work, but no more extensive than is necessary. As we have also made clear, we do not envisage creating a body which is principally adversarial and litigious in nature. (Paragraph 104)

A commission would have an important and valuable role to play in improving the quality of understanding of human rights issues in the voluntary and professional advice sectors. It should be able to do this through funding education and research, and funding the development and provision of advice services provided in the voluntary

sector rather than to undertake such advice functions directly itself. (Paragraph 113)

Involvement in the reporting processes under the various international human rights instruments would be a valuable function of any human rights commission. We would hope that a commission would also raise awareness of the international instruments more generally, and use them in its work in developing a culture of respect for human rights. (Paragraph 118)

The power to conduct public inquiries on its own initiative would be an essential element of a human rights commission's functions. (Paragraph 128)

We do not think it necessary to duplicate the work of this Committee by imposing a duty on a commission to conduct parallel scrutiny of legislation. (Paragraph 132)

In overseeing the promotion of a culture of human rights, a commission would have to be able to work effectively through regulatory and representative bodies for different sectors of public activity. (Paragraph 135)

The commission we propose should have any adjudicative function in relation to complaints of violation of rights. In respect of Convention rights, these must remain a matter for the courts to determine. In respect of other rights not directly enforceable in law, it would in our view be inappropriate to hand a quasi-judicial function in this way to a body which is not a court, a legislative body or a branch of the Executive. (Paragraph 140)

The commission should have the power to apply to the court for permission to intervene as a friend of the court in order to give advice in proceedings initiated by other parties that involve or are concerned with human rights. As the independent public authority created as a guardian of human rights, it is appropriate for the commission to be able to assist the court in this way. (Paragraph 151)

Since we have no agreed view about the desirability of a power to provide direct legal advice and assistance in strategic cases, we wish to consult more widely on this issue. (Paragraph 154)

The following powers and functions are essential for the human rights commission we propose—

- to promote understanding and awareness of human rights (including not only the Convention rights but also rights embodied in international human rights instruments binding on the UK );
- to conduct and commission research and provide financial or other assistance for educational activities in connection with promoting understanding and awareness of human rights;
- to conduct inquiries into matters of public policy and practice relating to human rights (with the power to have access to information needed for an effective inquiry);
- to give guidance to, and promote best practice in, public authorities in relation to human rights;
- to offer guidance and advice to Ministers and to Parliament in connection with human rights;
- to be able to publish reports on any of the above matters;
- to assist in the provision of advice and assistance to members of the public on ways to find help to protect or vindicate their rights;
- to be able to support and promote access to alternatives to litigation in disputes relating to the protection of human rights;

- to be able to apply to the courts for permission to appear as *amicus curiae* in proceedings that involve or are concerned with human rights; and
- to be able to intervene as a third party in legal proceedings relating to questions of principle involving human rights.

We intend to consider further whether the following powers and functions are desirable for a commission—

- to provide assistance to individuals to take cases relating to human rights questions;
- to be able to take cases in its own name;
- to be able to seek judicial review in its own name.

We do not believe that the commission we propose should have any power to adjudicate on individual complaints of violations of rights. We consider it is unnecessary for a commission to have the duty of scrutinising proposed legislation for compliance with human rights. (Paragraph 166)

### *Equality and Human Rights*

This report constitutes our formal input into the Government's consultation on the structure of a single equality body for Great Britain. (Paragraph 173)

The human rights dimension is an unavoidable element of the debate on the single equality body. The question now is not *whether* there should be arrangements for the promotion and protection of human rights sitting alongside those for the promotion of equality, but *how* those arrangements should be designed. (Paragraph 188)

A powerful argument for bringing all strands of the human rights agenda into a single body is that this would strengthen the ability to promote a culture that respects the dignity, worth and human rights of everyone. Provided that this were done in a way that did not blunt the cutting edge of the specialised compliance work in tackling unjustifiable discrimination by means of monitoring and law enforcement, we consider that, on balance a single body would be the more desirable of the two options. However, the option of creating two separate bodies that has been used both in Northern Ireland and in the Republic of Ireland, would be a viable alternative, provided that they were closely linked in their work. (Paragraph 203)

### *Devolution*

We do not intend to look behind the Belfast Agreement and reopen the question of the establishment and structure of the institutional arrangements for the promotion and protection of human rights and equality in Northern Ireland. (Paragraph 208)

Unless the next elections to the Scottish Parliament produce an unpredictable political upheaval, there is going to be a Scottish human rights commission. That is the settled view of the Scottish Executive and the Scottish Parliament and we take that decision into account in the structures we propose for the rest of the UK. (Paragraph 211)

There are special circumstances in Wales, as there are in the different regions of England. But, at least for the foreseeable future, there are not to be separate jurisdictions between Wales and England, and there are no current plans to establish a human rights commission in Wales. We will therefore consider arrangements for the protection and promotion of human rights jointly in England and Wales. (Paragraph 213)

The argument for establishing locally-sensitive but UK-wide arrangements (with respect to the complex inter-relationships between reserved and devolved responsibilities) applies equally to arrangements for the promotion and protection of human rights and to arrangements for the promotion of equality. This is a further argument for making decisions in principle about both at the same time. (Paragraph 217)

The Government should establish, on a non-statutory basis, a UK Human Rights Advisory Council. (Paragraph 219)

The principal function of the Advisory Council we propose should be to provide a "light-touch" co-ordination of arrangements for the promotion and protection of human rights (including equality) throughout the UK and, in its first phase, helping prepare the way for the institutional changes which are in view. (Paragraph 220)

#### *Independence and Accountability*

On the whole we would tend to favour a form which requires a duty to consult Parliament on the appointment of commissioners as a guarantee of independence and democratic accountability, so long as this was a statutory duty. (Paragraph 223)

We would not favour any statutory obligation to require the commission's membership to be "representative of all sections of the community"—but we would expect this to be a consideration in making appointments, as it should be for all public bodies. (Paragraph 224)

The main factor which will influence the quality of the people who seek to become commissioners is the perception that the commission is a body with the potential to exercise real influence, and which is to be resourced adequately to do the job it has been set. As a guarantee of independence, Parliament should be directly involved in the setting of any commission's budget. (Paragraph 225)

We do not consider that the standard model of NDPB accountability is a sufficiently outward and visible guarantee of independence from the Government to be appropriate to a national human rights commission (or indeed the proposed single equality body, whether or not integrated with a human rights commission). (Paragraph 230)

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# PROCEEDINGS OF THE COMMITTEE RELATING TO THE REPORT

MONDAY 3 MARCH 2003

Members present:

Jean Corston MP, in the Chair

Lord Bowness	Baroness Whitaker
Lord Lester of Herne Hill	Vera Baird
Professor the Lord Parekh	Mr David Chidgey
Baroness Perry of Southwark	Mr Richard Shepherd
Baroness Prashar	Mr Shaun Woodward

The Committee deliberated.

Draft Report [The Case for a Human Rights Commission], proposed by the Chairman, brought up and read.

Draft Report, proposed by Mr Richard Shepherd, brought up and read as follows:

## "Introduction

1. In its 1997 White Paper, *Bringing Rights Home*, the Government, in anticipation of a parliamentary committee on human rights being established, suggested that committee might examine whether, following the passing of the Human Rights Act 1998, there appeared to be a need for an independent human rights commission.
2. The terms of reference of the Joint Committee on Human Rights are to consider matters relating to human rights in the United Kingdom. In a narrow sense the fundamental rights to which Parliament has directed our attention are the "Convention rights" as defined by the Human Rights Act 1998 which largely incorporated the European Convention on Human Rights (ECHR) into UK law. The Act came into effect in England and Wales on 2nd October 2000. But those Convention rights do not provide an exhaustive definition of the international human rights provisions relevant to the UK.
3. The UK is a signatory to a large number of international conventions, covenants and other treaties which, although not directly justiciable in the UK courts, or (at least at present) subject to determination in individual cases by bodies such as the European Court of Human Rights, impose certain obligations on the UK Government in international law. By some definitions there are over 100 such international instruments relevant to human rights, if the optional additional protocols to various instruments are counted separately. All of these form part of what the Committee's majority report refers to as 'the culture of human rights'.
4. Among the more significant of these instruments are:
  - The International Covenant on Civil and Political Rights (ICCPR)
  - The International Covenant on Economic, Social and Cultural Rights (ICESCR)

- The International Convention on Elimination of all forms of Discrimination Against Women (CEDAW)
- The International Convention on the Elimination of all forms of Racial Discrimination (CERD)
- The United Nations Convention on the Rights of the Child (UNCRC)
- The Convention against Torture and other Cruel, inhuman or degrading Treatment (UNCAT)

### Making law without the consent of Parliament

5. All these obligations have been assumed by the UK by the exercise of the Royal Prerogative and have not received the democratic detailed scrutiny and legislative endorsement of the House of Commons. Although these instruments have not been incorporated directly into law and therefore do not give rise to legal rights and obligations which can be directly enforced in the courts of the UK, these instruments, like any other treaty, bind the UK (as a contracting state) in international law, subject to any lawful reservations entered by the state. The fact that no body, with the exception of the European Court of Human Rights in respect of the ECHR, can authoritatively adjudicate on the compatibility of the UK's actions with these instruments does not mean that the rules are not binding; incompatible action is contrary to international law, but in the absence of an effective judicial remedy the rules contained in these instruments are examples of what have been called 'rules of imperfect obligations', that is rules that are obligatory but breach of which does not attract the imposition of a formal sanction by a judicial body.

6. Despite not having been enacted in national law these instruments are capable of having an impact on the law in the UK. The effects are broadly similar to those which the European Convention on Human Rights had before it became part of the domestic law in the UK through the Human Rights Act of 1998 and the devolution legislation. So far as is relevant to the Convention on the Rights of the Child, Lord Bingham described them (in the pre-Human Rights Act 1998 period) as follows:

First, where a United Kingdom statute is capable of two interpretations the courts will presume that Parliament intended to legislate in conformity with the convention and not in conflict with it. Secondly, if common law is uncertain, unclear or incomplete, the courts have to make a choice; they will rule, wherever possible, in a manner which conforms with the convention and does not conflict with it. Thirdly, when the courts are called upon to construe a domestic statute enacted to fulfil a convention obligation, the courts will ordinarily assume that the statute was intended to be effective to that end. Fourthly, where the courts have a discretion to exercise they seek to act in a way which does not violate the convention. **Fifthly, when courts are called upon to decide what, in a given situation, public policy demands, it has been held to be legitimate that we shall have regard to our international obligations enshrined in the convention as a source of guidance on what British public policy requires.**<sup>1</sup>[165]

7. To continue with this example, the European Court of Human Rights has used the Convention on the Rights of the Child as a guide to the proper interpretation of rights and obligations under the European Convention of Human Rights as they apply to children, and national courts in the UK have followed that example, being required by Section 2 of the Human Rights Act 1998 to take account of judgments of the Court when interpreting Convention Rights. In doing this, courts in the UK have the authority of Parliament (through the Human Rights Act 1998); but there is no direct parliamentary authority for taking account of treaties in the ways outlined by Lord Bingham. Furthermore, Parliament has no real power to control the treaty obligations to which the UK subjects itself. As the House of Commons Procedure Committee noted in July

2000—

The power to make treaties is a prerogative power vested in the Crown and exercised on the advice of the Secretary of State for Foreign and Commonwealth Affairs in consultation with other Ministers; there is no constitutional requirement for treaties to be laid before or approved by Parliament. While many treaty obligations necessitate the introduction of primary or secondary legislation which must be passed by Parliament, treaties which require no such legislation (or which require only secondary legislation subject to negative resolution), may come into force without any parliamentary debate having taken place.

8. Thus, as is the case with almost all other international agreements to which this country is a signatory (to take as examples only two of the most significant, the United Nations Charter and the Washington Treaty establishing NATO), the UK's ratification of the Convention on the Rights of the Child has never been formally voted on by Parliament. (Though, as the Procedure Committee points out, our parliamentary procedures, such as they are, take silence to imply consent.)

9. To sum up the position in national law, the provisions of the Convention do not have the force of those of the ECHR which have become part of the law in the UK as mediated through the Human Rights Act 1998 and the devolution legislation (although many of the provisions of the HRA and the CRC overlap or duplicate each other), and an alleged violation of CRC rights does not *in itself* give rise to a cause of action in the courts. In their Concluding Observations, published on 4 October 2002, the UN Committee on the Rights of the Child observed—

While noting the entry into force of the Human Rights Act 1998 which incorporates the rights enshrined in the European Convention on Human Rights into domestic law, (that it was) concerned that the provisions and principles of the Convention on the Rights of the Child ? which are much broader than those contained in the European Convention ? have not yet been incorporated into domestic law.

And it encouraged the Government—

? to incorporate into domestic law the rights, principles and provisions of the Convention to ensure compliance of all legislation with the Convention (and) a more widespread application of the provisions and principles of the Convention in legal and administrative proceedings?

10. When the Joint Committee asked the Minister for Young People about the prospects of incorporation, he commented—

In terms of incorporation certainly we are not looking to incorporate the Convention or, indeed, individual elements of it. It is really framed, virtually all of it, in very aspirational language and not in the sort of language that seems easy to put into primary legislation although I think it is possible to point to areas where legislation we have enacted is helping to enact the spirit of the Convention, for example the statutory guidance on listening to young people in schools which is part of last year's Education Act?

Despite the democratic deficit in the process of ratification, the Government has assumed obligations under the Convention, which include the duty to implement its provisions to the maximum extent possible within the UK, to publicise those provisions and to make periodic reports on its implementation. In addition, it will undoubtedly have legal effects and be used by the courts like any other treaty in the ways outlined by Lord Bingham in the passage quoted above.

11. With treaties in the traditional sphere of international relations such as the Washington Treaty, the lack of the requirement for explicit Parliamentary consent may be acceptable since it conforms with the traditional division of functions between the executive and the legislature. But when the same procedure is used for international instruments which will alter the internal law of UK or at least affect how the laws are interpreted and applied, then this lack of Parliamentary consent is no longer acceptable.

### **The problem: not whether we have rights, but how they are interpreted**

12. There is an inbuilt danger that mechanisms and structures designed for the protection of human rights will come into conflict with democracy and accountability. Although there is widespread agreement that a number of fundamental rights should be respected when those rights are expressed in general terms, the real difficulties come with the detailed interpretation of the general principles. When "human rights" are applied to concrete situations, it is very often the case that one person's right is another person's burden, or that a "right" if interpreted in a certain way can impose a serious burden on society as a whole. The interpretation of the scope of human rights often involves political value judgements on which there is legitimate scope for disagreement across the political spectrum or within society.

13. The question therefore is not whether human rights should be protected, but rather how should they be protected in a way which is compatible with democratic accountability? This country has one of the longest traditions of respecting and upholding fundamental rights and liberties, and that tradition has been firmly based on the principle that it is the people's representatives in Parliament who have the primary role of protecting the liberties of the citizen. It can be argued that the way Parliament fulfils this task could be improved. But the problem with hiving off the protection of this 'culture of rights' to courts and to bodies such as the proposed Human Rights Commission is that it further weakens the role of Parliament and further detaches decision making in this area from accountability to the electorate.

14. One aspect of the proposal for the Human Rights Commission causes particular concern because it links in with the problem of the democratic deficit outlined above. It is proposed that the Commission in its work would take into account international treaties and agreements in addition to the ECHR itself, and also a wide range of non-treaty materials such as recommendations or resolutions by international committees and bodies. This represents a serious challenge to democratic accountability, and undermines the United Kingdom's long standing constitutional rule that international treaties and agreements are not a source of law in this country unless and until Parliament approves and gives force to them.<sup>2</sup>[166]

15. These international agreements, resolutions and recommendations are not arrived at by a democratic mechanism. Few if any of them have ever been debated or approved by Parliament. In practice, many of them will not even have been considered and approved by Ministers and the details will be known only to diplomats and experts. Certainly, most of them will be unknown to the wider electorate.

16. But under the Committee's proposal, this ill-defined body of materials would be invoked by the Commission to influence and control the behaviour of the government, public bodies and possibly Parliament itself in this country. The fact that "international obligations" have been assumed (without Parliament's concurrence or consent) will be used as an argument as to why Parliament should go along with them, regardless of the wishes of the electors. Ironically, the Committee's proposal to

establish the Human Rights Commission itself is founded on the so-called "Paris Principles" promulgated by the UN Commission for Human Rights a set of "principles" which have never been approved by Parliament.

17. The fact, that there are, by some definitions, over one hundred international instruments which impose obligations on the British government and are relevant to human rights is not an argument for empowering a Commission to give effect to them in the way the Committee's majority suggests. Rather, it is an argument for bringing democratic scrutiny to bear before any more such obligations are assumed; and, indeed, for Parliament reviewing the existing set of obligations to see whether or not they are indeed necessary or desirable.

## Conclusion

18. The elevation of social and economic concerns as adumbrated in international instruments and which have not been considered by democratic process, and of which most democratically elected representatives are currently unaware, could preempt the historic purpose of Parliament in ascribing priorities and the allocation of public finance. The people through their accountable representatives should determine these matters by commission rather than omission. The value of Non-Governmental Organisations advocating social and economic change is not disputed. Their advocacy is an essential part of informing and leading public opinion but the determination of how public policy develops should remain with the people and be expressed directly by Parliament.

19. The Prime Minister has recently recognised that both Statute and international treaties are not immutable. Outside and, more recently, inside Parliament he has said that Government is prepared to look fundamentally at our obligations under the European Convention on Human Rights.<sup>3</sup>[167]

20. The Human Rights Act 1998 came into effect in England and Wales in October 2000 and so there has been just over two years of experience of its operation. There is still uncertainty as to its implications for public policy and its effect on the democratic mandate. Our laws and the processes by which we arrive at them are the mirror of our culture and it is always available to a government to seek to enact the provisions of all or any of the international instruments, political, economic and social, that constitute what is called human rights.

21. The Convention Rights as set out in the Human Rights Act 1998 reflect most of the essentials of what our constitution has long understood as our political and civic liberty. These were not determined by the Convention but evolved through our legal and constitutional history. In a real sense they represent the finest emanation of our political culture and define our sense of liberty.

22. It should be understood that Plato's Guardians sitting as a Court in Strasbourg do not secure our liberties. The custodians of our freedom are the people themselves who through the institutions—both Houses of Parliament, our Common Law and our independent judiciary—have fostered, developed and safeguarded this culture of liberty. It is the spirit and the custom of the people which developed and advanced the civic and political principles incorporated in the European Convention long before it came into existence.

23. There needs to be a wider public understanding of how the web of treaties and instruments which have never been democratically considered is used by the European Court of Human Rights and consequently by our national courts and judges to develop a caselaw far beyond the declarations set out in the convention.

24. By bringing to bear social and economic considerations through such treaty obligations which have never been endorsed by our traditional democratic and accountable process the European Court of Human Rights has created a body of law that is not based on any the democratic mandate and which can frustrate and nullify that mandate. The Court's judgements form part of our law far beyond any reading of the Convention Rights. This framework circumvents what has been traditionally our constitutional process. In detaching accountability for law from the consent of the governed it undermines the central purpose of our legislative process."

Motion made, and Question proposed, That the Chairman's draft Report be read a second time, paragraph by paragraph.—(*The Chairman.*)

Amendment proposed, to leave out the words "Chairman's draft Report" and insert the words "draft Report prepared by Mr Richard Shepherd".—(*Mr Richard Shepherd.*)

Question put, That the Amendment be made.

The Committee divided:

Content, 1

Mr Richard Shepherd

Not Content, 9

Vera Baird

Lord Bowness

Mr David Chidgey

Jean Corston

Lord Lester of Herne Hill

Professor the Lord Parekh

Baroness Perry of Southwark

Baroness Whitaker

Mr Shaun Woodward

The Committee further deliberated.

Main Question put.

The Committee divided:

Content, 10

Vera Baird

Lord Bowness

Mr David Chidgey

Jean Corston

Lord Lester of Herne Hill

Professor the Lord Parekh

Baroness Perry of Southwark

Baroness Prashar

Baroness Whitaker

Mr Shaun Woodward

Not Content, 1

Mr Richard Shepherd

*Ordered*, That the Chairman's draft report be read a second time, paragraph by paragraph.

Paragraphs 1 to 241 read and agreed to.

Motion made, and Question put, That the Report be the Sixth Report of the Committee to each House.—(*The Chairman.*)

The Committee divided:

Content, 8

Lord Bowness

Mr David Chidgey

Jean Corston

Lord Lester of Herne Hill

Professor the Lord Parekh

Baroness Perry of Southwark

Baroness Prashar

Baroness Whitaker

Not Content, 1

Mr Richard Shepherd

*Resolved*, That the Report be the Sixth Report of the Committee to each House.

Annexes added.

Summary agreed to.

List of Principal Conclusions and Recommendations agreed to.

*Ordered*, That certain papers be appended to the Report.

*Ordered*, That the provisions of Standing Order No. 134 of the House of Commons be applied to the Report.

*Ordered*, That the Chairman do make the Report to the House of Commons and that Baroness Prashar do make the Report to the House of Lords.

[Adjourned till Monday 10 March 2003 at half past Four o'clock.]

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<sup>1</sup> <sup>165</sup> HL Debs., 3 July 1996, cc 1465-1467 [Back](#)

<sup>2</sup> <sup>166</sup> A principle laid down by the Courts in *The Parlement Belge* [1880] 5 PD 197 [Back](#)

<sup>3</sup> <sup>167</sup> Hansard 29 Jan 2003, col 875 [Back](#)

## LIST OF WITNESSES

The following Minutes of Evidence were printed with the Twenty-second Report from the Joint Committee on Human Rights, Session 2001-02, *The Case for a Human Rights Commission: Interim Report*, HL Paper 160/HC 1142.

*Monday 22 April 2002*

Rt Hon Lord Irvine of Lairg, QC, a Member of the House of Lords, Lord High Chancellor, Mr Mark de Pulford, Head of the Human Rights Division, and

Mr Richard Heaton, Member of the Legal Adviser's Group, Lord Chancellor's Department  
Ev 1

*Tuesday 7 May 2002*

Hon Mary Robinson, UN High Commissioner for Human Rights, and

Mr Kevin Boyle, Senior Adviser, OHCHR Ev 12

*Monday 13 May 2002*

Mr Michael Leadbetter, President, Association of Directors of Social Services and Director of Social Services, Essex County Council Ev 23

Mr Chris Waterman, General Secretary, Association of Chief Education Officers and Secretary, Society of Education Officers Ev 28

Mr Peter Newell, Chair, Children's Rights Alliance for England Ev 32

*Monday 20 May 2002*

Mrs Barbara Roche, a Member of the House of Commons, Minister of State, Cabinet Office Ev 38

*Monday 10 June 2002*

Fred Tyson Brown, Andy Butler, James Sweeney, CRAE's Right Here, Right Now Programme; Diana Savickaja, Joel Semakula, Gbemi Sodimu, CRAE's London Children's Commissioner Project Ev 52

Professor David Hall, President, Royal College of Paediatrics and Child Health Ev 59

*Monday 17 June 2002*

Professor Tim Brighouse, Chief Education Officer, Birmingham City Council Ev 64

Ms Ester Rantzen, Chairman of the Board of Trustees and Ms Carole Easton, Chief Executive, Childline Ev 69

*Monday 1 July 2002*

Mr Gurbux Singh, Chairman, Commission for Racial Equality; Mr Bert Massie, Chairman, Disability Rights Commission; Ms Julie Mellor, Chair, and Ms Jenny Watson, Deputy Chair, Equal Opportunities Commission Ev 75

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## LIST OF APPENDICES TO THE MINUTES OF EVIDENCE

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2. Memorandum from the Disability Rights Commission Ev 97
3. Memorandum from the Equal Opportunities Commission Ev 102
4. Memorandum from the Information Commissioner Ev 105
5. Memorandum by the English Public Sector Ombudsmen Ev 107
6. Memorandum from Liberty (The National Council for Civil Liberties) Ev 108
7. Memorandum from JUSTICE Ev 115
8. Memorandum from Charter 88 Ev 122
9. Memorandum from Amnesty International UK Section Ev 126
10. Memorandum from the Institute for Public Policy Research Ev 131
11. Memorandum from the British Institute of Human Rights Ev 137
12. Memorandum from the AIRE Centre (Advice on Individual Rights in Europe) Ev 141
13. Memorandum from the Association of Chief Police Officers Ev 143
14. Joint Memorandum from the Bar Council and the Law Society Ev 148
15. Memorandum from Professor Andrew Ashworth, Dr Sally Ball, Dr Anne Davies, Professor Sandra Fredman, Mr Jonathon Herring and Dr Liora Lazarus Ev 153
16. Memorandum from Professor Rebecca MM Wallace, Head of School and Kenneth Dale-Risk, Lecturer, School of Law, Napier University, Edinburgh Ev 158
17. Memorandum from David Bean QC, Murray Hunt, Raza Husain, Alison Macdonald QC, Jonathan Marks, Tim Owen QC, Rabinder Singh, Daniel Squires and Rhoori Thompson Ev 159

18. Memorandum from Francesca Klug, Academic Director of the Human Rights Act Research Unit, King's College, London Ev 163
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20. Memorandum from the Northern Ireland Human Rights Commission Ev 169
21. Memorandum from the Equality Commission for Northern Ireland Ev 172
22. Memorandum from the Committee on the Administration of Justice (Northern Ireland) Ev 174
23. Memorandum from British Irish Rights Watch Ev 178
24. Memorandum from the Social Democratic and Labour Party Ev 183
25. Memorandum from Ulster Human Rights Watch Ev 184
26. Memorandum from Scottish Human Rights Centre Ev 185
27. Extract from a memorandum from the Faculty of Advocates Ev 187
28. Memorandum from Scottish Association of Citizens Advice Bureaux Ev 189
29. Extract from a memorandum from Aidan O'Neill QC Ev 189
30. Memorandum from the Government of the National Assembly for Wales Ev 190
31. Memorandum from the Wales Public Law and Human Rights Association Ev 192
32. Memorandum from Welsh Women's Aid - Cymorth I Fenywod Ev 195
33. Memorandum from the Legal Action Group Ev 195
34. Memorandum from the National Association of Citizens Advice Bureaux Ev 196
35. Memorandum from the Law Centres Federation Ev 197
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37. Memorandum from Haringey Council Ev 200
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44. Memorandum from the Children's Rights Alliance for England Ev 214
45. Memorandum from Stonewall Ev 217
46. Memorandum from Rights of Women Ev 219
47. Memorandum from the Refugee Council Ev 221
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49. Memorandum from Immigration Law Practitioners' Association (ILPA) Ev 223
50. Memorandum from Norwich & Norfolk Racial Equality Council Ev 224
51. Memorandum from Harrow Council for Racial Equality Ev 228
52. Memorandum from Council of Ethnic Minority Voluntary Sector Organisation (CEMVO) Ev 228
53. Memorandum from Mr David Sparks Ev 229
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61. Memorandum from HM Inspectorate of Constabulary Ev 238
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64. Memorandum from HM Inspectorate of Prisons (Scotland) Ev 243
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66. Memorandum from HM Inspectorate of Prisons (England and Wales) Ev 244
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69. Memorandum from HM Inspectorate for Education and Training in  
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The following Appendices to the Minutes of Evidence (Nos. 70 to 81) are printed in  
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70. Report, *Human Rights and Public Authorities*,  
Jeremy Croft, January 2003 Ev 250

71. Executive Summary, *Something for Everyone*,  
British Institute of Human Rights, 10 December 2002 Ev 282

72. Memorandum from Sarah Spencer, IPPR Ev 284  
Equalities and Human Rights: Call for Evidence Ev 292

73. Memorandum from the Refugee Council Ev 293

74. Memorandum from the Prison Reform Trust Ev 296

75. Memorandum from Friends, Families and Travellers Ev 299

76. Memorandum from Age Concern England Ev 300

77. Memorandum from Camilla Parker, Legal and Policy Consultant Ev 305

78. Memorandum from the Chief Executive, The King's Fund Ev 309

79. Memorandum from Help the Aged Ev 309

80. Memorandum from Commonwealth Human Rights Initiative Ev 317

81. Memorandum from MIND (National Association for Mental Health) Ev 338

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