



House of Lords
House of Commons
Joint Committee on
Human Rights

The Work of the Committee in 2007 and the State of Human Rights in the UK

Sixth Report of Session 2007–08

Report, together with formal minutes

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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, draft remedial orders and remedial orders.

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

Current Membership

HOUSE OF LORDS

Lord Dubs
Lord Fraser of Carmyllie
Lord Lester of Herne Hill
Lord Morris of Handsworth OJ
The Earl of Onslow
Baroness Stern

HOUSE OF COMMONS

John Austin MP (Labour, *Erith & Thamesmead*)
Mr Douglas Carswell MP (Conservative, *Harwich*)
Mr Andrew Dismore MP (Labour, *Hendon*) (Chairman)
Dr Evan Harris MP (Liberal Democrat, *Oxford West & Abingdon*)
Virendra Sharma MP (Labour, *Ealing, Southall*)
Mr Richard Shepherd MP (Conservative, *Aldridge-Brownhills*)

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, 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.

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.

Current Staff

The current staff of the Committee are: Mark Egan (Commons Clerk), Bill Sinton (Lords Clerk), Murray Hunt (Legal Adviser), Angela Patrick and Joanne Sawyer (Committee Specialists), Jackie Recardo (Committee Assistant), Karen Barrett (Committee Secretary) and Jacqueline Baker (Senior Office Clerk).

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Summary

This is the first time the Joint Committee on Human Rights has produced an annual report on its work (paragraphs 1-2). The Human Rights Act was passed ten years ago with the support of the main political parties. Today it is under threat and misrepresented. The Committee is disappointed by the Government's planned reduction of its myth-busting efforts. It calls on Ministers not to blame the Human Rights Act for decisions they do not like (paragraphs 3-4).

The Human Rights Act enabled rights the United Kingdom had signed up to in the European Convention on Human Rights in 1950 to be enforced in the UK courts. It should act as a lever to improve public services. In the Committee's judgement, the Government has not done nearly enough to improve delivery and should do better. The Committee scrutinises Government activity across the board (paragraphs 5-11).

The Committee's Members are drawn equally from the Commons and the Lords. It looks at human rights in the UK (but not individual cases), including legislative scrutiny; thematic inquiries; Government responses to court judgments and declarations of incompatibility; UK compliance with international human rights instruments; implementation of the Human Rights Act; and the UK's human rights institutions (paragraphs 12-19).

New working practices enabled the Committee to focus legislative scrutiny on the most significant human rights issues. It welcomed human rights enhancing measures but also saw recurring concerns (paragraphs 20-23). The Committee's new working practices have worked well and were further refined in 2007 (paragraphs 70-73).

Explanatory Notes on Government bills have improved but are still variable. The Committee would prefer to receive a human rights memorandum with every bill. It plans to draw up guidance for departments on what it expects. It will also seek to draw on the views of international monitoring bodies and NGOs (paragraphs 24-32).

Most of the Committee's scrutiny reports were published in good time to inform debate in Parliament. Scope for improving timeliness is limited, sometimes by delays in departmental replies to the Committee's letters (paragraphs 33-35).

The Committee no longer scrutinises all Private Members' Bills. It wishes to receive full explanatory material on human rights issues with Government amendments to bills. It will scrutinise private bills but report on them only rarely. It will continue to scrutinise some statutory instruments and try to suggest amendments to Government bills. It will also invite representations from civil society (paragraphs 36-44).

The Committee undertook more pre- and post-legislative scrutiny. Its thematic inquiries focused on areas where human rights concerns had not been adequately taken into account. It pays close attention to the work of the Human Rights Division in the Ministry of Justice and of other departments significantly affecting human rights. It takes a close interest in the Equality and Human Rights Commission and the Northern Ireland Human Rights Commission. It is concerned by the division of responsibility for equalities in Government (paragraphs 45-62).

The Committee's work on implementation of the Human Rights Act has focused on the

meaning of the term 'public authority' in the Act and on allegations about British troops in Iraq, which it intends to pursue during 2008. It will continue to scrutinise Government responses to court judgments and declarations of incompatibility and pursue its systemic recommendations to the Ministry of Justice (paragraphs 63-66).

The Committee's Reports are frequently cited in Parliament (paragraphs 67-69). The Committee undertook a full programme of informal meetings and visits. It is actively following up its thematic reports, including by means of a first mini-conference (paragraphs 74-79). The Committee has generally good relations with Government departments. Publication in draft of the Government's legislative programme helped the Committee plan its work. It was disappointed by the refusal of the Director General of the Security Services to give oral evidence (paragraphs 80-89).

The Committee's Chair introduced a Private Members' Bill on the definition of public authority under the Human Rights Act. He raised human rights issues with the Prime Minister in the Commons Liaison Committee. The Committee's work is sometimes affected by the *sub judice* rule. Members will seek to table and debate amendments to give effect to Committee recommendations on bills (paragraphs 90-96).

The quality of the Committee's work has been recognised by the Parliamentary Assembly of the Council of Europe (paragraphs 65, 102). The Report sets out the Committee's priorities for 2008 (paragraphs 103-107) and key human rights concerns in the UK (annex).

1 Introduction and overview

Introduction

1. This is the first annual report by the Joint Committee on Human Rights, in which we set out our activities during 2007, particularly in terms of the framework of ‘core tasks’ overseen by the Commons Liaison Committee;¹ comment on our working practices; and indicate areas of concern with the UK’s human rights record which we intend to keep under scrutiny during the remainder of the current Parliament.

2. We have not previously published an annual report because our work has been of a different nature to that of departmental select committees and the core tasks are of variable relevance to us (not least because we are a joint committee and the core tasks relate to Commons committees). Our predecessors published a report on their work during the 2001 Parliament,² however, and our Chair, Andrew Dismore MP, wrote to the Liaison Committee in January 2007 to set out our work during the 2005-06 session.³ Our decision to publish an annual report reflects the changes to our working practices since the publication of our report on this matter in August 2006 as well as our desire to raise the profile and understanding of our work in both Houses of Parliament and beyond.⁴

Human rights in the UK

3. The Human Rights Act reached the statute book ten years ago, with the support of all the main political parties. Today it is under threat. It is frequently and inaccurately derided in the tabloid press as a charter for terrorists, criminals and illegal immigrants. The Leader of the Opposition has even called on a number of occasions for the Act to be repealed. Calls from a high level for the Human Rights Act to be repealed or substantially modified first gained momentum in the wake of the infamous Anthony Rice case, in which the Government followed the media in asserting that the Human Rights Act had been responsible for the tragic death of Naomi Bryant because it had required her killer to be released. We inquired carefully into the matter to ascertain if this was true and established that there was no evidence that Naomi Bryant had been killed as a result of officials misinterpreting the Human Rights Act.⁵ Despite our clear finding, however, both the Government and the media have continued to repeat the unfounded assertion that the Human Rights Act caused the death of an innocent woman. Similarly, before that, the Human Rights Act had not been responsible for the provision of a takeaway meal to a prisoner making a rooftop protest or the provision of pornography to a serial killer in prison (an application which, in any case, failed): unfortunately the catalogue of mythology continues to grow.

1 For more on the core tasks see Liaison Committee, First Report, Session 2006-07, *Annual Report for 2005-06*, HC 406, (hereafter *Liaison Committee Report*) pp6-7.

2 Nineteenth Report, Session 2004-05, *The Work of the Committee in the 2001-05 Parliament*, HC 552, HL Paper 112.

3 *Liaison Committee Report*, Appendix 3.

4 Twenty-third Report, Session 2005-06, *The Committee’s Future Working Practices*, HC 1575, HL Paper 239 (hereafter *Working Practices Report*).

5 Thirty-second Report, Session 2005-06, *The Human Rights Act: the DCA and Home Office Reviews*, HC 1716, HL Paper 278, paras 28-39.

4. The former Department of Constitutional Affairs initiated a campaign – *Common Values, Common Sense* – both to tackle these far-fetched stories about the Human Rights Act and put the case for the important rights it enshrines. The campaign was a personal commitment of the then Secretary of State. It has been quietly abandoned by his successor.⁶

We are disappointed that the Government should have decided to scale down its efforts at ‘myth-busting’ in relation to the Human Rights Act, especially when Government Ministers are themselves often responsible for creating misconceptions about the Act. All politicians have a duty to act responsibly in relation to the protection of human rights and should not use the Human Rights Act as a convenient scapegoat for unpopular decisions, when they are usually nothing to do with human rights or the Human Rights Act. It is essential that Ministers refrain in future from misleading the public by continuing the practice of blaming the Human Rights Act for judicial or other decisions with which they disagree or which embarrass them.

5. The Human Rights Act created no new rights. In fact, it enabled rights the UK had signed up to in the European Convention on Human Rights (ECHR) in 1950 (which UK lawyers had played a major part in drafting and which in large part they based on the common law) to be enforced in the UK courts. None of the rights in the Convention – such as the right to life or the right to a fair trial – are, in themselves, remotely controversial. Their application in specific cases may involve striking a difficult balance between competing rights, or accepting the implications of absolute rights, such as the right to life or the right not to be tortured. The universality of human rights – their application to everyone in the UK, including criminals and foreign nationals – can also prove challenging for some.

6. The universality of human rights can, and should, be a major force for good, especially in the way public services are delivered – including to many vulnerable groups in our society. Human rights are the basic set of rights that we all enjoy by virtue of being human. The Human Rights Act obliges public authorities, including Government departments, to act in accordance with that basic set of rights. They must act proactively to enhance the human rights of the people with whom they deal. The Human Rights Act could and should act as a lever to improve the way in which services are delivered to the public, underpinning good practice with an enforceable legal obligation.

7. We are exploring the extent to which this is happening in practice in our thematic inquiry work. In our inquiries into the human rights of older people in healthcare and the treatment of adults with learning disabilities, we have seen how the Human Rights Act can deliver a sea change in the way the state relates to the public, the consumer of its services. Dignity, respect, fair dealing and many other important aspects of this relationship are all basic concepts the Human Rights Act and associated instruments, international and domestic, require of the Government in the way it deals with people. So far, whilst we have heard at first hand the personal commitment of several Ministers to deliver services in line with a human rights approach, we have been far from convinced that the Government as a whole has taken its positive obligations under the ECHR seriously. The Act is too often regarded as another legal obligation that demands ‘tick box’ compliance, rather than an instrument for challenging existing practices and attitudes at the delivery frontline.

8. In our judgment, the Government has done nowhere near enough over the past decade to use the Human Rights Act as a tool to improve the delivery of public services. This failure has contributed to the poor public image of the Act and ‘human rights’ in general. We challenge the Government to improve this situation. A good start would be for the Government to implement fully the recommendations we made in our report into older people in healthcare.

9. We often scrutinise the balance struck in legislative proposals between competing rights. In counter-terrorism policy, for example, it may come as a surprise to some to learn that the Government has an obligation under the Human Rights Act to meet the threat to life and property from international terrorism, including a duty to prosecute those it suspects of terrorism. The Government must act to protect the right to life of ordinary people in the UK: but the seriousness of the threat does not obviate the need to recognise the rights of terrorism suspects. Our inquiry into the treatment of asylum seekers included those who were not successful in claiming a right to remain in the UK. Although such people are, often rightly, subject to deportation, the Government must still respect their basic right, as human beings, not to be subject to inhuman treatment under Article 3 ECHR.

10. Human rights apply to everyone, from the elderly in the healthcare system, adults with learning disabilities and the victims of trafficking, to groups which attract less public support. Prisoners and asylum seekers also have rights which, though sometimes limited, must be respected. We repeat, human rights are universal. They help protect us all from abuses of state power as well as violent crime, such as terrorism; they provide a powerful vehicle to improve public services; and they ensure that the most vulnerable people in society are not overlooked. Police suspects, prisoners and migrants are highly vulnerable and their human rights – the rights to a fair trial, or not to be subjected to inhuman treatment, for example – assume a greater importance as a result. A democratic society must respect the human rights of all, if it is to be worthy of the description.

11. Universality is at the core of our work: we inquire into and scrutinise Government activity across the board, as it affects groups which attract popular sympathy and those which do not.

Our remit and the core tasks

12. The Joint Committee on Human Rights is comprised of twelve Members, drawn equally from the House of Commons and the House of Lords. Our remit is broad: “to consider matters relating to human rights in the UK”, although we are unable to deal with individual cases. We are also required to report to the House in relation to remedial orders (as well as proposals for remedial orders and draft remedial orders), which are statutory instruments made under the Human Rights Act in order to deal with legislative provisions which the courts have ruled to be incompatible with the European Convention on Human Rights. Remedial orders have been brought forward infrequently and there were none for us to consider in 2007.

13. As a joint committee, with a remit which cuts across the responsibilities of almost all Government departments, we do not have a specific department to hold to account in terms of service delivery or expenditure. As a consequence, not all of the core tasks first

elaborated by the Commons Liaison Committee in 2002 are relevant to our work. The relevance of specific core tasks to our work is set out in Table 1.

Table 1: JCHR and the core tasks

Task 1: To examine policy proposals from the UK Government and the European Commission in Green Papers, White Papers, draft Guidance etc, and to inquire further where the Committee considers it appropriate.	Relevant
Task 2: To identify and examine areas of emerging policy, or where existing policy is deficient, and make proposals.	Relevant
Task 3: To conduct scrutiny of any published draft bill within the Committee's responsibilities.	Relevant as part of legislative scrutiny
Task 4: To examine specific output from the department expressed in documents or other decisions.	Relevant
Task 5: To examine the expenditure plans and out-turn of the department, its agencies and principal NDPBs.	Not relevant
Task 6: To examine the department's Public Service Agreements, the associated targets and the statistical measurements employed, and report if appropriate.	Not relevant
Task 7: To monitor the work of the department's Executive Agencies, NDPBs, regulators and other associated public bodies.	Relevant only in relation to Human Rights Division of the Ministry of Justice and the newly-formed Equality and Human Rights Commission
Task 8: To scrutinise major appointments made by the department.	Relevant only in relation to the newly-formed Equality and Human Rights Commission
Task 9: To examine the implementation of legislation and major policy initiatives.	Relevant
Task 10: To produce reports which are suitable for debate in the House, including Westminster Hall, or debating committees.	Relevant

Overview of our work

14. Our work can broadly be divided into three distinct categories:

- *Legislative scrutiny*: the scrutiny of Government Bills, in particular, as well as other bills, draft bills, statutory instruments, consultation documents and other legislative proposals;
- *Thematic inquiries*: inquiries into issues relating to human rights in the UK, similar to the inquiries undertaken by departmental select committees except in that we frequently consider issues which cut across departmental boundaries;
- *Scrutiny of Government responses to adverse judgments by the European Court of Human Rights and declarations of incompatibility by the UK courts*: we monitor, and

periodically report on, the action arising from all relevant court cases, including those which lead to remedial orders, as mentioned above.

These strands of work are closely inter-related. For example, our scrutiny of the Government's counter-terrorism proposals has involved both thematic investigation and the scrutiny of specific legislative provisions. We have also raised adverse Strasbourg judgments in the context of our legislative scrutiny work. Nevertheless, the distinction between these types of work is useful in understanding the way in which we undertake our scrutiny of the Government.

15. Further, cross-cutting, aspects to our work concern consideration of the international human rights instruments to which the UK is a signatory, including the extent to which the UK meets its international obligations under those instruments, and scrutinising new human rights treaties prior to their ratification; the implementation of the Human Rights Act; and the work of the UK's human rights institutions, in particular the Equality and Human Rights Commission (EHRC), which was launched in October 2007.

16. Table 2 shows the main issues we have considered across all the different strands of our work in 2007, illustrating the considerable breadth of our activity.

Table 2: JCHR activity in 2007, by theme

Subject	Activity	Outcome
Adults with learning disabilities	Thematic inquiry	Report in preparation
Allegations of torture and inhuman treatment in Iraq	Follow up of previous inquiry	Oral evidence, June
British Bill of Rights	Thematic inquiry	Oral evidence in progress
Child maintenance	Legislative scrutiny	Report, December
Concessionary bus travel: provision of appeal arrangements	Legislative scrutiny	Report, February
Corporate manslaughter and corporate homicide	Legislative scrutiny	Report, January
Counter-terrorism policy	Legislative scrutiny and thematic inquiry	Reports, January, March, July and December; and report in preparation
Court judgments finding breaches of human rights: Government response	Ongoing scrutiny	Report, June
Data protection and human rights	Legislative scrutiny	Oral evidence in progress
Deaths in custody	Legislative scrutiny and follow up of previous inquiry	Reports, January and March; and correspondence published online
Estate agents	Legislative scrutiny	Reports, January and March

Subject	Activity	Outcome
Fraud trials	Legislative scrutiny	Report, January
Human rights policy	Ongoing scrutiny	Oral evidence, May and November
Human trafficking	Follow up of previous inquiry	Westminster Hall debate, May; Report, October
Immigration policy and rules	Legislative scrutiny	Reports, May and August
Justice and security: Northern Ireland	Legislative scrutiny	Report, February
Legal services	Legislative scrutiny	Report, February
Local councillors: code of conduct	Legislative scrutiny	Reports, March and May
Meaning of public authority under the Human Rights Act	Thematic inquiry (and follow up of previous inquiry)	Report, March
Mental health	Legislative scrutiny	Reports, February and May
Offender management	Legislative scrutiny	Report, February
Older people in healthcare	Thematic inquiry	Report, August
Secure training centres, use of restraint	Legislative scrutiny	Oral evidence, October; report in preparation
Serious crime	Legislative scrutiny	Report, April
Sexual orientation	Legislative scrutiny	Reports, February and March
Treatment of asylum seekers	Thematic inquiry	Report, March, and debate in Westminster Hall, December
Tribunals	Legislative scrutiny	Reports, January, February and March
Welfare reform	Legislative scrutiny	Reports, January and March

17. Table 3 shows the core tasks relevant to each inquiry or activity undertaken during the year.

Table 3: JCHR activity in 2007, by core task

Inquiry/ activity	Task 1: examination of policy proposals	Task 2: emerging policy	Task 3: draft bills	Task 4: specific output	Tasks 7/8: work of public bodies/major appointments	Task 9: implementation of legislation	Task 10: debates
Adults with learning disabilities		X				X	
Allegations of torture and inhuman treatment in Iraq						X	
British Bill of Rights		X					
Court judgments finding breaches of human rights				X			
Counter-terrorism policy	X		X	X		X	X
Data protection and human rights				X		X	
Human rights policy					X		
Human trafficking		X					
Legislative scrutiny	X		X	X			X
Meaning of public authority						X	X
Older people in healthcare		X				X	
Secure training centres, use of restraint				X			
Treatment of asylum seekers		X				X	X

18. The remainder of this report deals in more detail with our work in 2007, drawing out some themes from our legislative scrutiny and illustrating some of the more controversial and innovative aspects of our other work. We also assess the impact of the changes to our working practices since summer 2006 and indicate some of the issues we intend to scrutinise further during the remainder of the current Parliament.

19. More detailed information about the members and staff of the Committee and our work in 2007 can be found in the sessional return for the 2006-07 session.⁷

2 Legislative scrutiny

Introduction

20. In our August 2006 Report on our future working practices, we adopted a new system for our legislative scrutiny work. The main changes from our previous practice were:

- The introduction of a sifting system for all Government bills and private bills, delegating the sifting function to our Legal Adviser;
- The adoption of a higher threshold of human rights significance, applying the published criteria;⁸
- Reporting much earlier in the course of a bill's passage, if possible before the bill has left the first House and in any event in time for Second Reading in the second House;
- Reporting only on the significant issues raised by a bill, rather than all human rights issues raised by that bill;
- Considering Private Members' Bills only if they both raise issues of major human rights significance and appear likely to become law;
- A decision to express conclusions on the compatibility of bills with the UK's human rights obligations in our own voice rather than by attempting to second-guess the view which the courts might take.

21. The main purposes of these changes was to focus our legislative scrutiny work on the most significant human rights issues, leaving more Committee time for the other strands of our work set out in our working practices Report, and to report earlier during the passage of a Bill so as to maximise the usefulness of our scrutiny work to parliamentarians.

Recurring themes

22. During our legislative scrutiny work in 2007 we have often commented positively that a particular measure is to be welcomed as a human rights enhancing measure.⁹ **However, looking back over our reports it is also possible to identify a number of recurring human rights compatibility issues which have arisen in relation to a number of bills:**

- **The adequacy of the safeguards contained on the face of bills conferring powers to disclose, share or match personal information;**¹⁰
- **Lack of clarity about whether private bodies are “public authorities” for the purposes of the Human Rights Act where bills confer powers and functions on them;**¹¹

8 *Working Practices Report*, paras 27-29.

9 E.g. certain aspects of the Welfare Reform Bill, Pensions Bill, Justice and Security (Northern Ireland) Bill, Sexual Orientation Regulations.

10 E.g. UK Borders Bill, Serious Crime Bill, Offender Management Bill, Welfare Reform Bill, Child Maintenance and Other Payments Bill.

- **The adequacy of judicial and procedural safeguards to protect liberty;**¹²
- **The danger of discrimination in the operation of certain provisions;**¹³
- **The right of access to a fair hearing before a court;**¹⁴
- **The adequacy of safeguards against powers to search the person or property;**¹⁵
- **The adequacy of procedural safeguards on preventative orders;**¹⁶
- **The adequacy of the powers and independence of human rights institutions;**¹⁷
- **The adequacy of protection for children and young persons.**¹⁸

23. We hope in our future work to take a more proactive role in relation to the recurring themes identified by our legislative scrutiny work, seeking to propose constructive ways of avoiding such compatibility concerns arising in the first place, rather than repeating well rehearsed disagreements with Government departments. We have recently begun such work with our inquiry into data protection and human rights.

Quality of Explanatory Notes

24. We have taken up the recommendation of our predecessors and pressed the Government to provide us with a “Human Rights Memorandum” accompanying every Government bill, containing the Government’s detailed reasoning behind its view that the bill is compatible with the UK’s human rights obligations. This would not impose an onerous requirement, because it could be based on the memorandum already prepared for the Cabinet’s Legislation Committee analysing a bill’s compatibility with human rights, with the legally privileged parts removed. The Government, however, has refused this, preferring to try to improve the quality of the section in the Explanatory Notes dealing with ECHR compatibility.¹⁹

25. The Government’s renewed efforts on the Explanatory Notes to bills has led to an overall improvement in the quality of the Explanatory Notes and has produced much more detailed explanations in the case of some bills. For example, the Notes accompanying the Criminal Justice and Immigration Bill, currently before Parliament, include 36 pages of detailed assessment of ECHR compatibility. The Pensions Bill was also accompanied by a detailed letter analysing the human rights issues raised by the Bill, and subsequent Government amendments to the Bill were also accompanied by detailed

11 E.g. Tribunals, Courts and Enforcement Bill, Offender Management Bill, Sexual Orientation Regulations.

12 E.g. Mental Health Bill, UK Borders Bill, Justice and Security (Northern Ireland) Bill, Prevention of Terrorism Act 2005 (Continuation in force) Order (control orders), counter-terrorism proposals on pre-charge detention.

13 UK Borders Bill, Tribunals Courts and Enforcement Bill, Prevention of Terrorism Act 2005 (Continuation in Force) Order (control orders), Sexual Orientation Regulations.

14 E.g. Tribunals Courts and Enforcement Bill, Justice and Security (Northern Ireland) Bill, Consumers Estate Agents and Redress Bill, Legal Services Bill.

15 E.g. Tribunals Courts and Enforcement Bill, Legal Services Bill, Offender Management Bill.

16 E.g. Prevention of Terrorism Act 2005 (Continuation in Force) Order (control orders), Serious Crime Bill.

17 E.g. Justice and Security (Northern Ireland) Bill.

18 Mental Health Bill, UK Borders Bill, Offender Management Bill.

19 Oral and written evidence, 21 May 2007, *Human Rights Policy*, HC 1556-i, HL Paper 174, Q109.

human rights analyses, for which we were grateful. **The more detailed the analysis provided alongside the bill, the fewer questions we are likely to need to ask the relevant department about possible human rights concerns.**

26. However, the record remains extremely variable. At the other extreme, the Notes accompanying the Legal Services Bill, the Offender Management Bill, the Welfare Reform Bill and the Local Government and Public Involvement in Health Bill all attracted adverse comment for failure to provide the sort of analysis and information which we expect. We have continued to report fairly frequently that Explanatory Notes contain assertions of compatibility rather than reasoned explanations. In between these two extremes sits a range of bills in relation to which the Explanatory Notes contained some of the reasoning supporting the Government's compatibility statement but could usefully have been much more detailed and pre-empted questions asked in correspondence which turned out to be unnecessary because the Government was able to offer a satisfactory explanation. The problem does not appear to lie with particular departments, as bills emanating from the same department can vary widely in the quality of the accompanying human rights analysis.

27. Looking back on the bills scrutinised during 2007, we are firmly of the view that addressing our longstanding concern by trying to improve the quality of Explanatory Notes accompanying bills is not yielding sufficiently full explanations in enough cases. The experience of other jurisdictions demonstrates that this difficulty need not arise. In the state of Victoria in Australia, under the recently adopted Victorian Charter of Rights and Responsibilities 2006, for example, every bill is required to be accompanied by a statement of compatibility setting out the reasons for the Government's view that the Bill is compatible with the Charter rights, and very full and detailed statements are provided.

28. Our legislative scrutiny work could be conducted very much more efficiently if the quality of the explanatory material accompanying Government bills was improved. In our view further progress in streamlining the Committee's scrutiny work depends to a large extent on progress being made on this issue. **We therefore remain of the view that a dedicated human rights memorandum should accompany every Government bill.**

29. In the meantime, we feel that something needs to be done to move beyond the present impasse. The House of Lords Delegated Powers and Regulatory Reform Committee publishes its own Guidance for Departments on the role and requirements of that Committee. The Guidance sets out the Committee's method of working and aims to advise Departments about the timing and content of the delegated powers memoranda which the Government provides with all bills. **We have decided in principle to follow the example of the House of Lords Delegated Powers and Regulatory Reform Committee and, when our other work permits, to draw up our own *Guidance for Departments*, setting out what we expect from Departments in the explanatory material dealing with the human rights issues raised by a bill.**

30. We envisage that such Guidance would set out, for example, the analytical framework within which we expect human rights issues to be considered, the sorts of questions which we expect the explanatory material to address, and the sorts of information or evidence which we expect to be provided alongside a bill. The Guidance would also be an opportunity to distil into one place points repeatedly made in previous legislative scrutiny

reports. The Human Rights Division within the Ministry of Justice will be consulted on a draft to ensure that our expectations will not be regarded as unrealistic.

Significance threshold

31. In our working practices Report, we deliberately raised the threshold of significance which a human rights issue raised by a bill must cross in order to merit our attention. The aim was to bring greater focus to our legislative scrutiny work by prioritising the most significant human rights issues raised by bills. Applying the new higher threshold of significance, we reported substantively on 13 Government bills in 2007 and cleared 17 from scrutiny.

32. Reviewing our experience of operating our new working practices over the past year, we have decided that there is scope to revisit the significance criteria in our working practices Report to provide clearer guidance as to what counts as a significant human rights issue, and to enable us to be more discriminating about the issues on which we report on bills. **We propose that in future our decisions about what issues to prioritise in our legislative scrutiny work will be more closely informed by the latest reports of international monitoring bodies and human rights NGOs as well as significant court judgments.**²⁰

Timeliness of scrutiny reports

33. During 2006-07, we have succeeded in consistently reporting at a much earlier stage in a bill's passage than before it changed its working practices. In all but 2 of the 13 Government bills reported on we reported within 8 to 10 sitting weeks of the Bill's publication, and in all but 3 of the bills we reported before the bill left the first House. This means that in the vast majority of Bills on which we reported, our report was available before report stage in the first House.

34. There is room for improvement: ideally, scrutiny reports would always be available before report stage in the first House. Sometimes, however, factors such as the speed with which a bill proceeds, or delays in the Government's response to our questions,²¹ or the sheer complexity of the issues requiring scrutiny, or the weight of other work, mean that the target of reporting before report stage in the first House simply cannot be met. **In the second half of 2007 we have been concerned at the number of times Government departments have claimed not to have received our letters, or to have mislaid them, where they have actually already acknowledged receipt.**²²

35. Although exceptionally it may be possible to report earlier (e.g. if there is an unusually long period between introduction of a Bill and its Second Reading), report stage in the first House is realistically the earliest stage by which we can publish a considered scrutiny report, bearing in mind the need for careful detailed scrutiny of the Bill before questions are asked of the Government, the need to provide the Government with at least two weeks

²⁰ See annex.

²¹ For example, it took the Home Office nearly six weeks to respond to our letter about the Criminal Justice and Immigration Bill, making it impossible to report on that Bill before report stage in the first House.

²² Our letter to the Government Equalities Office about the Discrimination Law Review was mislaid by the GEO and there were significant delays with correspondence with the Ministry of Justice on secure training centres and, earlier in the year, with the Home Office on the *Baiai* judgment.

to respond, and the need to scrutinise that response and both draft and consider a scrutiny report. In the meantime the publication of our Chair's letter to the Minister on our website at least informs parliamentarians of the human rights issues which in our view require further scrutiny.

The scope of legislative scrutiny

36. In our working practices Report we decided to reduce the coverage of our legislative scrutiny work by no longer scrutinising all Private Members' Bills, whilst maintaining comprehensive scrutiny of Government and private bills. We have decided to make three further changes to the scope of our legislative scrutiny work.

Government amendments to Bills

37. There is no requirement that the Government make statements of compatibility under section 19 of the Human Rights Act in relation to its amendments to its own Bills. Occasionally, however, the Government voluntarily provides us with an analysis of the human rights compatibility of a Government amendment (e.g. in relation to the Pensions Bill last session).

38. We wish to ensure in future that our scrutiny of Government bills extends to significant Government amendments, at least in relation to bills which we have decided to scrutinise further. To facilitate this, we will require full explanatory material on human rights issues to accompany Government amendments to bills.

Private bills

39. Our working practices Report envisaged maintaining comprehensive scrutiny of all private bills at staff level, and the possibility of us formally reporting on a private bill. In practice, only one private bill²³ in 2007 raised an issue considered by us to cross the significance threshold,²⁴ and, following liaison at staff level with the relevant Bill Committee, this issue was raised in a letter to the promoters. It was not thought necessary for the Committee to go further than this in scrutinising the bill.

40. Subject to further discussion with Counsel and the Private Bill Offices in both Houses, we propose that in future private bills will be dealt with in the following way. All promoters' statements of compatibility which are required to be submitted with a private bill will continue to be scrutinised at staff level. Any deficiencies in the promoters' compatibility statement will continue to be the subject of a letter from the Chair to the promoters. Thereafter, however, the matter will be dealt with at staff level by liaising with the relevant parliamentary lawyer assisting with scrutiny of the bill by the Bill Committee. He or she could take up any points raised in the correspondence with the promoter if they consider it appropriate, and could also alert our staff to any points raised by petitioners which appear to them to be human rights points. In this way, private bills would continue to be scrutinised for human rights compatibility but we envisage that we will rarely, if ever, formally report on them.

23 Transport for London (Supplementary Tolls) Bill.

24 7 private bills were cleared from scrutiny.

Statutory Instruments

41. We reported on three statutory instruments during 2007: the Sexual Orientation Regulations, the Order renewing control orders and the changes to the Immigration Rules concerning Highly Skilled Migrants. **In principle we would like to scrutinise more statutory instruments raising significant human rights issues in future.** This will obviously only be possible on an *ad hoc* basis (there are too many statutory instruments every year for them to be considered systematically), and will probably require an informal alerting system with the Joint Committee on Statutory Instruments at staff level so that statutory instruments which may possibly raise significant human rights issues are brought to our attention.

Committee amendments to Government Bills

42. During 2007 we have sought to suggest amendments to bills designed to give effect to specific recommendations, dealing with human rights compatibility problems or omissions from bills, and some of our Members have tabled and spoken to such amendments. Committee amendments have proved a useful way of pressing for a Government response to a recommendation about human rights compatibility in a scrutiny report. **In future we will suggest amendments to give effect to our recommendations where possible, with a view to Members of our Committee tabling and speaking to them in debate in both Houses.**

Civil society input into legislative scrutiny work

43. Civil society input into our legislative scrutiny is welcome, but not as extensive as we would like. During 2007, in an effort to encourage more input from civil society, we posted on our website a list of the significant human rights issues which we had decided to pursue in relation to each bill as soon as we had made that decision, and also posted a copy of the Chair's letter to the Minister indicating the questions which the Committee was asking of the Government. The website invited representations in relation to those or any other issues from any person or organisation.

44. There has been little, if any, indication that this practice of alerting through the website has elicited any representations which would not otherwise have been sent to us. To encourage more input into our legislative scrutiny work from civil society, we think we probably need to take more proactive steps. **We propose, on an experimental basis, to identify the main stakeholder organisations in relation to the relevant bill and send e-mail alerts to those organisations notifying them of the human rights issues which we have decided to scrutinise and inviting representations.** This would be in addition to the information posted on our website.

3 Thematic inquiries and other work

Core task 1: examination of policy proposals

45. As discussed in the preceding chapter, a central element of our work is the examination of policy proposals in Government bills to assess their compatibility with the Human Rights Act and the UK's international human rights obligations.

46. We have also begun to engage in more pre- and post-legislative scrutiny during 2007, which has included consideration of specific policy proposals. For example, we published a report in August which was critical of changes to the Home Office's Highly Skilled Migrants scheme and of the inadequate arrangements for parliamentary oversight of immigration rules.²⁵ **We are not satisfied with the Government's reply and intend to return to this issue, and to the interaction between immigration issues and human rights more generally, in the near future.**

47. We have been particularly concerned during 2007 with the Government's counter-terrorism policy and have published four reports dealing with different aspects of what is a complex and fast-changing issue. As part of our ongoing inquiry into counter-terrorism policy and human rights we took oral evidence from Tony McNulty MP, the Minister for Security, Counter-terrorism, Crime and Policing, on 20 September, during the summer recess, and received an assurance that we would have the opportunity to scrutinise draft clauses of the forthcoming Counter-Terrorism Bill.²⁶ We subsequently received draft clauses on some of the matters likely to be included in the Bill, followed by the full draft Bill, which has assisted us in our work by enabling us to raise human rights issues with the Government at a much earlier stage in the formulation of policy and will also make it easier for us to report to Parliament shortly after the Bill is introduced.

48. **Pre-charge detention was the main theme of our July report in this inquiry and we were disappointed that the Government's apparent willingness to consult widely on whether, and, if so, what, further changes were needed did not extend as far as even warning us that an announcement was imminent.** A further report on counter-terrorism was already in preparation when the 42 days proposal was announced on 6 December. Nevertheless, we were able to agree a detailed analysis of the proposed new policy on 10 December and our report was published on 14 December. **We concluded that the Government had failed to make the case for further extending the maximum permissible period of pre-charge detention and that a combination of alternative measures, including post-charge questioning with appropriate safeguards, would be both a more proportionate and effective way forward. We intend to carry on with our work in this area in 2008 and look forward to scrutinising the Counter-Terrorism Bill when it is published.**

25 Twentieth Report, Session 2006-07, *Highly Skilled Migrants: Changes to the Immigration Rules*, HC 993 and HL Paper 173 and the Government reply, published as Cm 7268, Nov 2007.

26 Second Report, Session 2007-08, *Counter-Terrorism Policy and Human Rights: 42 days*, HC 156, HL Paper 23, Q48.

Core task 2: emerging policy

49. Our thematic inquiries have generally dealt with areas where human rights concerns have not been adequately taken into account in the development of policy.

50. In March, we published a substantial report into the treatment of asylum seekers which raised grave concerns about human rights abuses caused by Government policy, particularly in relation to those asylum seekers whose applications had been refused. As well as examining the development of policy in this area – for example, on the provision of healthcare – we also examined the impact of the existing, complex statutory regime. **We concluded that the Government was following a policy of deliberate destitution towards failed asylum seekers aimed at encouraging them to leave the UK and deterring others from coming, which was leading to the widespread abuse of the human rights of an extremely vulnerable group.**

51. Later in the year we looked at the human rights of older people in healthcare, encompassing both treatment in hospital and in care homes. We used this inquiry to follow up work we had previously undertaken on the meaning of the term ‘public authority’ in the Human Rights Act, following judicial decisions to narrow the scope of the Act by excluding private sector care homes accommodating publicly funded residents. This was an important opportunity for us to assess the application of the Act in an area which directly affects the everyday lives of millions of vulnerable people. We visited hospitals and care homes in Barnet and also visited Sweden and Denmark to draw comparisons with practice there. **Although we found examples of good practice, where the principles enshrined by the Human Rights Act had been used as the foundation for the provision of healthcare, our general conclusion was that the protection and promotion of human rights were too often tangential to the planning and delivery of services.**

52. During the autumn we undertook an inquiry into the human rights of adults with learning disabilities, which was also intended to focus on how the Human Rights Act had been used to improve the services and support provided to a vulnerable group. We also asked witnesses for their views on the UN Convention on the Rights of Disabled People, which the UK signed in December 2006 but has not yet ratified. The inquiry commenced with an informal meeting with the British Institute for Learning Disabilities in which we sought advice on how best to hear the views of people with learning disabilities themselves. We published an easy read version of our call for evidence and extended our deadline for the receipt of written submissions in response to requests from groups representing adults with learning disabilities. We received a large number of written submissions from people with learning disabilities, carers and self-advocacy groups and we plan to publish as many of them as is practicable. We took oral evidence from people with learning disabilities and also visited a resource centre in Lewisham and a resource centre and supported accommodation in Worcestershire. After having taking advice from a number of relevant organisations, we intend to publish an easy read summary of our report.

53. We have commenced an inquiry into a British Bill of Rights, in view of the Government’s intention to publish a Green Paper on this issue.²⁷ We visited South Africa in November to discuss the operation of the South African constitution (a wide ranging document which includes a variety of social and economic rights) with Ministers, other

27 *The Governance of Britain*, Cm 7170, July 2007.

parliamentarians, academics, human rights activists, judges and others. We intend to publish our report in Spring 2008.

54. Our pre-legislative scrutiny work has often involved scrutiny of emerging policy proposals. We are following the Government's review of the Police and Criminal Evidence Act codes of practice, for example, proposals which could have significant human rights implications. We have also followed up our scrutiny of the Mental Health Bill by examining the Mental Capacity Act 2005 Code of Practice and are scrutinising the Government's views on implementing a Council of Europe recommendation in this area.

Core task 3: draft bills

55. We have sought to scrutinise bills published in draft by the Government as part of our pre-legislative scrutiny work. We did not publish any reports on draft bills during 2007 but corresponded with the Government on the draft Coroners Bill (including to ask the Leader of the House of Commons why the Bill had been dropped from the Queen's Speech) and the Committee staff provided assistance to the staff supporting the Joint Committee on the Human Tissue and Embryos (Draft) Bill. Our correspondence with the Government about the White Paper on child maintenance was reflected in the report we published on the Child Maintenance and Other Payments Bill in January 2008.

Core task 4: specific output from the department

56. We pay close attention to the work of the Human Rights Division in the Ministry of Justice and the Minister in that department with responsibility for human rights policy. We took oral evidence from Baroness Ashton of Upholland, the then human rights Minister, and Lord Falconer of Thoroton, then Secretary of State for Constitutional Affairs, in May, and from the current human rights Minister, Michael Wills MP, in November.

57. We took advantage of our meeting with Mr Wills to ask him about data sharing and data protection, another of his ministerial responsibilities, following the loss of child benefit data by HM Revenue and Customs. Our questioning of the Minister, particularly in relation to his involvement with the Government's response to the loss of the data, generated considerable media coverage. Data protection issues have frequently been raised in the context of our legislative scrutiny work and, to follow up this theme, we heard oral evidence from the Information Commissioner in January 2008.

58. Another occasion on which we responded quickly to scrutinise an issue which appeared to us to have significant human rights implications was the publication of the Secure Training Centres (Amendment) Rules in June. The amended rules were the Government's response to a recommendation by the coroner in the inquest into the death of Adam Rickwood at Hassockfield secure training centre to clarify the circumstances in which physical restraint could be used on children in secure training centres. We decided to scrutinise the rules in the light of criticisms that the statutory instrument extended the circumstances in which physical restraint could be used. We heard oral evidence on this issue from the relevant Minister (David Hanson MP) and the Chief Executive of the Youth Justice Board (Ellie Roy) in October. After further scrutiny of written submissions by the Government and others we will shortly be publishing a report on the use of restraint in secure training centres.

Core tasks 7 and 8: scrutiny of relevant public bodies and major appointments

59. Our predecessors in the last Parliament led the campaign for the establishment of the Equality and Human Rights Commission and we have taken a close interest in its launch, in October, and its early days. We met informally with the Chairman of Commissioners, Sir Trevor Phillips, and Chief Executive, Nicola Brewer, in June, and invited representatives from the organisation to our awayday in November.²⁸ We see our role as complementary to that of the Commission and look forward to forming an effective working relationship once the new organisation is fully up and running. We will be seeking to take oral evidence from the Commission during 2008 on its early work and emerging priorities.

60. Responsibility for equalities is divided between a number of Government offices and departments. A Secretary of State for Equalities (Harriet Harman MP) heads the Government Equalities Office (GEO), which is located within the Department for Work and Pensions. The EHRC is overseen by the GEO, but the EHRC's funding is overseen by the Department for Communities and Local Government, which was previously the lead department in this area, and which continues to maintain responsibility for race and social cohesion.

61. **One consequence of this messy situation is that it is unclear where parliamentary oversight for equalities properly rests.** In his letter to the Commons Liaison Committee about the Committee's work in 2005-06, our Chair commented on the prospect of our governing standing orders being amended to include a reference to "equalities" alongside "human rights". The intention was to make clear that we could consider the full range of the Commission's activities and the extent to which the Commission is successful in integrating human rights principles across its work, while retaining formal accountability for the Commission with the Communities and Local Government Committee (as was then appropriate). **Since that letter was written we have heard nothing more about this proposal: we will be seeking the Liaison Committee's assistance in clarifying this matter during 2008.**

62. We have continued to maintain contacts with the Northern Ireland Human Rights Commission (see, for example, table 5) and are grateful recipients of the briefing material and written submissions they often send us. In our report on the Justice and Security (Northern Ireland) Bill we scrutinised the Commission's powers.²⁹

Core task 9: implementation of legislation and major policy initiatives

63. Much of our thematic work has been concerned with the implementation of the Human Rights Act in specific areas (for example, older people in healthcare) or the impact of particular legislative provisions which have raised human rights concerns (for example in relation to asylum seekers). Our report into the meaning of the term 'public authority' in the Human Rights Act was also concerned with the implementation of that Act and the

28 See paragraph 72.

29 Fifth Report, Session 2006-07, *Legislative Scrutiny: Third Progress Report*, HC 303, HL Paper 46.

effect of judicial decisions to narrow the scope of the Act when compared to Parliament's original intention.

64. In June we took oral evidence from the then Attorney General, Lord Goldsmith, on a number of subjects, including allegations of torture and inhuman treatment by British troops in Iraq. This issue came to light following the death of an Iraqi civilian, Baha Mousa, in British custody in 2003 and the subsequent courts martial of military personnel. We have called for written evidence on this matter, in order to follow up assurances we were given during our inquiry into the UN Convention against Torture that the use of various 'conditioning' techniques by the army was prohibited as well as to investigate the implications of the *Al-Skeini* judgment, in which the Law Lords decided that the Human Rights Act applied to people detained by the British military overseas. In October, we postponed a planned oral evidence session with army witnesses on this issue after being told by the Ministry of Defence that a review into these matters by Brigadier Robert Aitken was nearing completion and was likely to be published within weeks. A review by the Royal Military Police and the Army Prosecuting Authority into whether further charges could be brought in relation to the death of Baha Mousa was also due to be completed in the autumn. We have not subsequently received any further information about these reviews. **During 2008, we intend to scrutinise the apparent use of illegal conditioning techniques by British troops in Iraq and the implications of the applicability of the Human Rights Act to people detained by the military overseas. We expect the Secretary of State for Defence to assist us fully in this process.**

65. Our work in scrutinising the Government response to adverse judgments by the European Court of Human Rights as well as declarations of incompatibility under the Human Rights Act by domestic courts relates to core task 9. We aim to scrutinise all the relevant cases by asking the relevant department how they intend to act and then reporting on the adequacy of the Government's response. We published a report in June dealing with around 20 issues. We continue to scrutinise both outstanding and new cases, as and when they emerge. Our work in this area has been held up as a model for other parliaments to emulate by the President of the Parliamentary Assembly of the Council of Europe.³⁰

66. Our report also dealt with systemic issues, relating, for example, to the co-ordination of action dealing with adverse European Court of Human Rights judgments within Whitehall and the provision of information to Parliament. In our view, these are crucial to improving the Government's disappointing record on dealing with such judgments in a timely fashion. Although we received a response to our report dealing with specific cases in August we are still awaiting the Government's views on our systemic recommendations. **We call on the Ministry of Justice to respond urgently to the systemic recommendations in our Report into Monitoring the Government's Response to Court Judgments Finding Breaches of Human Rights. The Report was published in June and the department's response to these recommendations is now five months late.**

30 *Implementation of judgments of the European Court of Human Rights – Issues currently under consideration*, Parliamentary Assembly of the Council of Europe Committee on Legal Affairs and Human Rights, AS/Jur (2007) 49 rev, 26 Nov 07, paras 9, 17 and Annex 1.

Core task 10: debates in the House

67. Occasions on which our reports were listed on the House of Commons order paper as relevant to a debate are set out in table 4 below.

Table 4: House of Commons debates to which JCHR Reports and other material was 'tagged' to indicate relevance

Date	Debate	JCHR Report etc "tagged"
25 January	Approval motion for Draft Marriage Act 1949 (Remedial Order) 2006	16 th Report, 2005-06
25 January	Fraud (Trials Without a Jury) Bill, Consideration	2 nd Report, 2006-07
19 February	Adjournment debate on Human Rights: values, rights and responsibilities	32 nd Report, 2005-06
28 February	Offender Management Bill, Consideration	3 rd Report, 2006-07
5 March	Tribunals, Courts and Enforcement Bill, Second Reading	2 nd and 5 th Reports, 2006-07
19 March	Consumers, Estate Agents and Redress Bill, Second Reading	2 nd Report, 2006-07
16 April	Mental Health Bill, Second Reading	4 th Report, 2006-07
10 May	Justice and Security (Northern Ireland) Bill, Lords Amendments	5 th Report, 2006-07
14 May	Concessionary Bus Travel Bill, Second Reading	3 rd Report, 2006-07
16 May	Corporate Manslaughter and Corporate Homicide Bill, Lords Amendments	2 nd Report, 2006-07
22 May	Local Government and Public Involvement in Health Bill, Consideration	11 th and 13 th Reports, 2006-07
24 May	Westminster Hall debate on JCHR Human Trafficking Report	26 th Report, 2005-06
4 June	Legal Services Bill, Second Reading	3 rd Report, 2006-07
15 June	Human Rights Act 1998 (Meaning of Public Authority) Bill, Second Reading	9 th Report, 2006-07
18 June	Mental Health Bill, Consideration	4 th and 15 th Reports, 2006-07

Date	Debate	JCHR Report etc "tagged"
22 October	Serious Crime Bill, Consideration	12 th Report, 2006-07
3 December	Child Maintenance and Other Payments Bill, Consideration	Correspondence
13 December	Westminster Hall debate on JCHR Treatment of Asylum Seekers Report	10 th Report, 2006-07

68. As the table shows, our reports on human trafficking and the treatment of asylum seekers were debated in Westminster Hall during the year.

69. Our reports were also cited frequently in debates in the House of Lords.³¹

31 See paragraph 96.

4 Working practices

Implementation of the 2006 changes

70. During 2007 we have sought to implement changes to our working practices in line with the conclusions of our report on this matter of August 2006. The main changes relating to legislative scrutiny were set out in paragraph 20 above. The other principal aspects of our working practices set out in that report were as follows:

- more work on pre- and post-legislative scrutiny and on thematic inquiries;
- integration of our scrutiny of the Government response to adverse judgments by the European Court of Human rights with work on declarations of incompatibility by domestic courts;
- an intention of holding regular oral evidence sessions with the human rights Minister and with the EHRC, and of taking into account the work of the EHRC in determining the mix of inquiry work;
- a commitment to report to Parliament on all human rights treaties before they are ratified, if they raise significant issues;
- continued scrutiny of the implementation in the UK of international human rights treaties, based on a limited amount of oral evidence.

71. The most obvious outcome of these changes is that we now undertake more thematic inquiries than did our predecessors in the previous Parliament and we focus our legislative scrutiny work on Government bills and on the most significant human rights issues within those bills.

72. In November we held an awayday to review our working practices and to consider ideas for future inquiries. The awayday was held under the Chatham House rule and was attended by a range of relevant non-governmental organisations. The human rights Minister, Michael Wills MP, participated in one of the sessions.

73. In general, our revised working practices were considered by participants to have been successful in raising the Committee's profile and ensuring its voice is heard across a broader range of human rights issues, rather than simply in relation to matters currently contained in the Government's legislative programme. We agreed further refinements to our working practices in the light of our experiences in 2007. Those relating to legislative scrutiny, including increasing the significance threshold, which determines whether or not we choose to correspond with Government about, and, ultimately, report on, a bill; scrutiny of significant Government amendments, where time allows; the publication of amendments to bills to implement our recommendations; and a revised system for dealing with private bills, are dealt with in chapter 2. In addition, we agreed to follow up our thematic inquiries on a more systematic basis from now on, including by organising 'mini-conferences' on specific themes (see paragraph 79).

Informal meetings and visits

74. Tables 5 and 6 set out the informal meetings we held during the year and the visits we undertook.

Table 5: JCHR informal meetings, 2007

Meeting	Purpose
Lord Carlile of Berriew, 18 January	Counter-terrorism policy
Council of Europe Advisory Committee on the Framework Convention for the Protection of National Minorities, 22 March	Scrutiny of international human rights instruments
British Institute of Learning Disabilities, 11 June	Adults with Learning Disabilities inquiry
Commission for Equality and Human Rights, 27 June	Scrutiny of EHRC
Vernon Coaker MP, 18 July	Human trafficking follow up
Various witnesses in adults with learning disabilities inquiry, 23 July	Adults with Learning Disabilities inquiry
DAC Peter Clarke, 23 October	Counter-terrorism policy
Justice Kate O'Regan, 23 October	British Bill of Rights inquiry
Lambeth People First, 29 October	Adults with Learning Disabilities inquiry
Committee awayday, 5 November	Review of working practices and possible future work
Northern Ireland Human Rights Commission, 13 November	Scrutiny of NIHRC
Professor Bill Lewinski, 17 December	Deaths in Custody follow up

Table 6: JCHR visits, 2007

Visit	Purpose
Yarl's Wood immigration removal centre, 24 January	Treatment of Asylum Seekers inquiry
Copenhagen and Malmo, 13-16 March	Older People in Healthcare inquiry
St Paul's Slave Britain exhibition, 27 March	Human trafficking inquiry
Paddington Green high security police station, 16 May	Counter-terrorism policy inquiry
Barnet Primary Care Trust, 22 May	Older People in Healthcare inquiry
Lewisham, 17 October	Adults with Learning Disabilities inquiry
Worcestershire, 24 October	Adults with Learning Disabilities inquiry
South Africa, 19-23 November	British Bill of Rights inquiry

75. Informal meetings with interested parties, at Westminster or on visits within the UK or abroad, are an essential part of our work. Such meetings serve a number of purposes. Some, such as our meeting with Vernon Coaker MP, provide useful opportunities to press the Government to implement our recommendations and to hear informally about the development of Government policy. Others, particularly meetings on visits, enable us to hear from a broader range of views than is usually possible in oral evidence and offer perspectives which can be difficult or impossible to appreciate from formal written and oral evidence. Our visits to hospitals and care homes in Barnet and to meet adults with learning disabilities in Lewisham and Worcestershire were particularly helpful in this regard.

76. We are grateful for the assistance we receive in undertaking visits, both in the UK and abroad, from the people and organisations we meet. We particularly appreciate the work undertaken by the parliamentary branch of the Foreign and Commonwealth Office (FCO) and the FCO staff in the overseas posts we visited, whose help with our administrative arrangements and in putting together our work programme, as well as support and advice on the ground, is indispensable.

77. Our Chair was requested to meet the Privy Counsellor Review Committee regarding the admissibility of material acquired by interception in terrorism investigations, chaired by Sir John Chilcott. The Committee has called for such material to be admissible, with appropriate safeguards, in order to facilitate more prosecutions of terrorism suspects. We await the Chilcott report with interest.

Following up previous work

78. We are committed to following up our thematic inquiries so that our recommendations do not end up languishing on dusty shelves, forgotten by Government. We have already alluded to the work undertaken to follow up our report into human trafficking – including an informal meeting with the Minister and the publication of an update report, as well as a debate in Westminster Hall. We are also actively following up a previous inquiry into deaths in custody, for example, in correspondence with Government, which we are making available on the Internet, and recently initiated a debate in Westminster Hall on the treatment of asylum seekers.

79. We have decided to experiment with a novel initiative for following up past reports by organising a mini-conference in Portcullis House, jointly with the British Institute of Human Rights, on the meaning of ‘public authority’ under the Human Rights Act and the implications of the *YL* judgment on 23 January 2008.³² Two Ministers – Michael Wills MP and Ivan Lewis MP, the Minister responsible for care services – have agreed to address the conference and we have invited a range of relevant non-governmental organisations as well as specialist press. The intention is to raise the profile of the issue, discuss the Government’s proposals directly with Ministers and NGOs, and help the Committee decide how to take this matter forward in Parliament. We will assess the success of the conference before deciding whether to organise further events on other issues.

32 *YL v Birmingham City Council and others* [2007] UKHL 27.

Relations with government

80. We deal with most Government departments, some – such as the Ministry of Justice, the Department of Health and the Home Office – on a frequent basis. In general, we have established good relations with departments. We are appreciative of the depth and quality of the letters we usually receive from Government when we raise human rights issues in bills with departments. Some of the memoranda we have received for our thematic inquiries have been less thorough, although departments have proved helpful in providing further information when requested.³³

81. In common with all Committees, we have often been disappointed with Government replies to our reports which have not accepted our recommendations. The reply to the treatment of asylum seekers' report was particularly uninspiring. We had pointed to a number of areas where Government policy was not being put into practice on the ground, where human rights abuses had been the result. The Home Office reply ducked this issue entirely. We are dealing with problems of this sort in our strategy for following up reports.

82. We do not require the Government to reply to our legislative scrutiny reports, given the timescale in which bills progress through Parliament, but we appreciate those replies we are sent. Our conclusions on the Mental Health Bill were the subject of a Government response. We commented on this response in our second report on the bill and received a second reply. Although the Government did not accept some of our main conclusions, we were grateful to receive timely, well-reasoned responses which have at least helped to explain the issues at stake in what is a highly complex area of law.

83. The Government is obliged to reply to our other reports and timeliness has been an issue on three occasions during 2007. We have already commented on the delay to the reply to our recommendations about the Government machinery for responding to adverse European Court of Human Rights judgments and declarations of incompatibility.³⁴ **Our January counter-terrorism report, which focused on the definition of terrorism, has not received a reply from the Home Office: the reply is now some ten months late. In addition, we have so far been unsuccessful in persuading the Ministry of Justice to reply to our report on the Meaning of Public Authority under the Human Rights Act: that reply is now eight months late. We call on the Government to reply to these reports as a matter of urgency.**

84. A positive development for the Committee in 2007 was the publication in draft of the Government legislative programme, which helped us to plan our likely legislative scrutiny work programme.

MI5

85. Twice during 2007 we requested oral evidence from the Director General of MI5, in connection with our counter-terrorism policy and human rights inquiry. A central concern to us is the proportionality of the Government's response to the threat faced by the UK and we wished to explore with the Director General his assessment of the threat level. We were

33 For the quality of Explanatory Notes and related matters see paragraphs 24-30.

34 Paragraph 66.

particularly keen to explore this issue following the speech made by the current Director General to the Society of Editors in Manchester on 5 November, where his argument that the level of threat was increasing could be interpreted as being at variance with oral evidence we had heard on the same point from the Minister, Tony McNulty MP, only a few weeks before.³⁵

86. Unfortunately, our approaches have met with a refusal to provide oral evidence because, in the view of MI5, the service's parliamentary accountability rests with the Intelligence and Security Committee. This body is appointed by the Prime Minister under the Intelligence and Security Act 1994, reports to the Prime Minister, and is staffed by Government employees. By the time its reports finally reach Parliament they have been heavily censored, both in terms of the evidence provided to the committee and the parts of the report which are actually published.

87. We have been offered an informal private meeting with MI5 but we have not accepted this offer because, in our view, it does not provide Parliament with the information necessary to make an informed judgment about the threat level and the proportionality of the Government's response.

88. We also requested a written memorandum from MI5 on this issue but our request was not even addressed in the latest letter we received, dated 18 December.³⁶

89. We feel strongly that if the Director General of MI5 is able to make a public speech to journalists about the level of threat posed by terrorism, he should be prepared to appear formally before a parliamentary committee to answer questions about the comments he has made. Clearly, there will be some paths down which the Director General would be unwilling to tread and some matters which ought not to be exposed to public scrutiny at this stage, but this should not preclude any effective parliamentary scrutiny from taking place.

Informing Parliament

90. We set out above the parliamentary debates for which our reports were relevant,³⁷ including the debates on our own reports which we initiated as part of our follow up activity.

91. In addition, our Chair, Andrew Dismore MP, introduced a Private Members' Bill – the Human Rights Act 1998 (Meaning of Public Authority) Bill – which sought to implement a solution we had recommended to the problem discussed above about the narrowing of the definition of public authority under the Act by a series of judicial decisions. The Bill was talked out at second reading by the Government on 15 June. **In her speech on the Bill, Vera Baird MP, then Parliamentary Under-Secretary of State at the Ministry of Justice, assured the House that action would be taken to deal with the problem, in the light of the YL judgment, by the end of the year. Unfortunately, her commitment that action**

35 And see Second Report, Session 2007-08, *Counter-Terrorism Policy and Human Rights: 42 days*, HC 156, HL Paper 23, paragraphs 24-33.

36 This letter will be published with our next Report on counter-terrorism policy.

37 Paragraph 67 and Table 4.

would be taken has not been fulfilled, something we will be pursuing in our mini-conference on this issue shortly.

92. Our Chair has again introduced a Bill to deal with the meaning of public authority issue in the 2007-08 parliamentary session.³⁸

93. Our Chair has used his opportunities to question the Prime Minister in oral evidence before the Commons Liaison Committee to raise issues of relevance to the Committee, in particular, in February, the meaning of public authority and, in December, the British Bill of Rights.³⁹

94. We have sought to co-operate with other Committees where our work has overlapped. In February, we formally communicated papers we had received from the Metropolitan Police about the charging of terrorism suspects in the Heathrow bomb plot with the Home Affairs Committee. Our staff often assist other Committees in relation to human rights queries when their workload permits.

95. **The *sub judice* rule, by which parliamentarians are bound not to raise issues currently before the courts in civil or criminal cases, except in certain limited circumstances, has sometimes affected the work of the Committee during the year.** The *YL* case, for example, has been mentioned on several occasions in this report and has been of central importance to the determination of the scope of the Human Rights Act.⁴⁰ The Committee was able to publish a report on the general issue while the case was before the courts but was not able to refer to the case, except in outline, or to the specific matters it raised until after the Law Lords had reached their judgment. We also had to tread carefully in discussing allegations of torture and inhuman treatment in Iraq and the operation of control orders. The *sub judice* rule can be relaxed for specific matters of national importance, on application to the Speaker and the Lord Speaker.⁴¹ We will make such applications where we consider it necessary in order for the Committee to undertake its role in scrutinising human rights in the UK effectively.

96. Members tabled and spoke to amendments in both Houses which aimed to give effect to the Committee's recommendations, in particular on the Mental Health, UK Borders and Corporate Manslaughter and Corporate Homicide Bills. As indicated above, we intend to develop our work in this area in 2008, by publishing amendments which seek to give effect to our recommendations as part of our legislative scrutiny reports.⁴²

Outreach

97. Our main tool for communicating with the public is the Committee's website (www.parliament.uk/jchr). As with other select committees, our reports and oral evidence can be found online. We also publish our correspondence with Government on bills, other documents, and in relation to adverse European Court of Human Rights judgments and

38 Human Rights Act 1998 (Meaning of Public Function) Bill.

39 Oral Evidence given by the Prime Minister to the Liaison Committee, 6 February 2007, Session 2006-07, HC 300-i, Qq48-49 and 13 December 2007, Session 2007-08, HC 192-i, Qq39-43.

40 See paragraphs 79 and 91.

41 Procedure Committee, Session 2004-05, *The Sub Judice Rule of the House of Commons*, HC 125.

42 Paragraph 42.

declarations of incompatibility. We have used the website to seek submissions from interested parties on specific bills, publishing a list of bills and issues we are scrutinising at an early stage. We are currently reorganising our web pages to make them clearer and more accessible.

98. We have worked with our select committee media adviser to promote our reports and gained a significant amount of media coverage during the year, especially for our August reports into older people in healthcare and the rules relating to highly skilled migrants and our counter-terrorism reports.

99. During the year, members of the Committee spoke at a number of conferences and meetings in connection with the Committee's work. For example, Baroness Stern addressed a conference in Glasgow about our report on the treatment of asylum seekers. Committee staff attended as observers at the Equality and Diversity Forum and our Chair, Andrew Dismore MP, spoke at a meeting of the Forum, in December.

100. We have sought to extend our contacts with non-governmental organisations concerned with human rights issues, for example by inviting them to the Committee's awayday and to the mini-conference on the *YL* judgment we are planning in January 2008.⁴³ We were grateful for the information and assistance we received from NGOs and others and would welcome further contact with groups wishing to raise UK human rights issues.

International dimension

101. Lord Lester of Herne Hill represented the Committee at a meeting of chairpersons of parliamentary human rights committees in the EU in Berlin in June. The Committee has subsequently agreed to join an informal network of such committees.

102. As mentioned above, our work on adverse European Court of Human Rights judgments has attracted praise from the Parliamentary Assembly of the Council of Europe.⁴⁴ We have also sought to promote our work on human trafficking within the EU and we published our update report on this issue on the EU's anti-human trafficking day (18 October).

43 Organisations represented at the Committee's awayday included: the Parliamentary and Health Service Ombudsman, Equality and Human Rights Commission, JUSTICE, Age Concern England, Liberty, British Institute of Human Rights, Mind, Joint Council for the Welfare of Immigrants, Independent Asylum Commission, Amnesty International UK, Children's Rights Alliance for England and Carers UK.

44 Paragraph 65.

5 Future work

103. Throughout this report we have indicated issues on which we intend to focus in 2008, often as a result of following up work we have previously undertaken. We expect that our main priorities in the year ahead will be:

- continuing to focus our legislative scrutiny work on the most important human rights compatibility issues. The bills of most concern to us are likely to be the Criminal Justice and Immigration, Health and Social Care, and forthcoming Counter-Terrorism Bills;
- developing our pre- and post-legislative scrutiny work, where it can be timely and effective;
- drawing up guidance for departments about the human rights analysis we expect to accompany bills;
- publishing our report on adults with learning disabilities and continuing with other thematic inquiry work;
- continuing to follow up previous thematic reports, including by means of debates in Westminster Hall, informal meetings, further oral evidence, follow up reports and mini-conferences, if our first mini-conference proves successful;
- publishing a further report on the Government's response to adverse European Court of Human Rights judgments and declarations of incompatibility;
- continuing to take oral evidence from the human rights Minister on a regular basis, and commencing regular oral evidence sessions with the Equality and Human Rights Commission.

104. We will also seek to scrutinise the Government's reports to the monitoring bodies which oversee compliance with UN human rights instruments and the observations made by the monitoring bodies on those reports. The table below shows the bodies which will be monitoring UK human rights compliance over the coming year. Of particular significance will be the Universal Periodic Review, a new process by which a country's human rights compliance across the board can be assessed.

Table 7: Monitoring of the UK by international human rights bodies in 2008

Monitoring body	International treaty	Pending review
Human Rights Council	Universal Periodic Review ⁴⁵	UK to be considered by the Council on 7-18/4/08
Committee on Economic, Social and Cultural Rights	International Covenant on Economic, Social and Cultural Rights (CESCR)	Fifth periodic report from the UK to be considered by the Committee in 19-23/05/2008
Committee on Elimination of Discrimination against Women	Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)	Fifth and Sixth periodic reports from the UK to be considered by the Committee on June-July 2008
Human Rights Committee	International Covenant on Civil and Political Rights (ICCPR)	Sixth periodic report from the UK to be considered by the Committee on 7-25 July 2008
Committee on the Rights of the Child	Convention on the Rights of the Child (CRC) Optional Protocol to the CRC on the Involvement of Children in Armed Conflict (CRC-OP-AC)	Third and Fourth periodic reports from the UK to be considered by the Committee in September–October 2008 Initial report from the UK to be considered by the Committee in September–October 2008
European Committee on Social Charter	European Social Charter	Conclusions to be issued by the Committee on December 2008

105. We have begun to prepare for our scrutiny of the Government's contributions to these reviews, and the observations of the monitoring bodies, by assessing the UK's international human rights obligations and the themes which can be drawn from the observations of monitoring bodies and from the submissions made to them by UK NGOs. We have annexed our preliminary assessment to this report, in order to raise awareness of the UK's human rights obligations and the areas in which the UK may currently be falling short.

106. In summary, broad areas of concern revealed by our initial analysis are as follows:

- Discrimination – in particular against minority ethnic communities, Gypsies and travellers, asylum seekers, migrant workers, Muslims and people with disabilities;
- Children – including the UK's reservation to the UN Convention on the Rights of the Child in relation to immigration and nationality matters;
- Women – including domestic violence;
- Human trafficking;

⁴⁵ Through this mechanism the UN Human Rights Council will review on a periodic basis the fulfilment of the human rights obligations by all countries. The UK is in the first tranche of countries to be considered by this new process.

- The situation in prisons;
- Freedom of expression – in particular, access to public information;
- Counter-terrorism measures.

107. This analysis, and further work in the light of the material prepared for the various assessment exercises in 2008, will help our scrutiny of the extent to which the UK is meeting its international human rights obligations. It will also help provide a framework for much of our future scrutiny work.

Conclusions and recommendations

1. We are disappointed that the Government should have decided to scale down its efforts at ‘myth-busting’ in relation to the Human Rights Act, especially when Government Ministers are themselves often responsible for creating misconceptions about the Act. All politicians have a duty to act responsibly in relation to the protection of human rights and should not use the Human Rights Act as a convenient scapegoat for unpopular decisions, when they are usually nothing to do with human rights or the Human Rights Act. It is essential that Ministers refrain in future from misleading the public by continuing the practice of blaming the Human Rights Act for judicial or other decisions with which they disagree or which embarrass them (Paragraph 4)
2. In our judgment, the Government has done nowhere near enough over the past decade to use the Human Rights Act as a tool to improve the delivery of public services. This failure has contributed to the poor public image of the Act and ‘human rights’ in general. We challenge the Government to improve this situation. A good start would be for the Government to implement fully the recommendations we made in our report into older people in healthcare (Paragraph 8)
3. Human rights apply to everyone, from the elderly in the healthcare system, adults with learning disabilities and the victims of trafficking, to groups which attract less public support. Prisoners and asylum seekers also have rights which, though sometimes limited, must be respected. We repeat, human rights are universal. They help protect us all from abuses of state power as well as violent crime, such as terrorism; they provide a powerful vehicle to improve public services; and they ensure that the most vulnerable people in society are not overlooked. Police suspects, prisoners and migrants are highly vulnerable and their human rights – the rights to a fair trial, or not to be subjected to inhuman treatment, for example – assume a greater importance as a result. A democratic society must respect the human rights of all, if it is to be worthy of the description. (Paragraph 10)
4. Looking back over our reports it is possible to identify a number of recurring human rights compatibility issues which have arisen in relation to a number of bills:
 - The adequacy of the safeguards contained on the face of bills conferring powers to disclose, share or match personal information;
 - Lack of clarity about whether private bodies are “public authorities” for the purposes of the Human Rights Act where bills confer powers and functions on them;
 - The adequacy of judicial and procedural safeguards to protect liberty;
 - The danger of discrimination in the operation of certain provisions;
 - The right of access to a fair hearing before a court;
 - The adequacy of safeguards against powers to search the person or property;

- The adequacy of procedural safeguards on preventative orders;
 - The adequacy of the powers and independence of human rights institutions;
 - The adequacy of protection for children and young persons. (Paragraph 22)
5. The Government's renewed efforts on the Explanatory Notes to bills has led to an overall improvement in the quality of the Explanatory Notes and has produced much more detailed explanations in the case of some bills. The more detailed the analysis provided alongside the bill, the fewer questions we are likely to need to ask the relevant department about possible human rights concerns. (Paragraph 25) However, the record remains extremely variable. The Notes accompanying the Legal Services Bill, the Offender Management Bill, the Welfare Reform Bill and the Local Government and Public Involvement in Health Bill all attracted adverse comment for failure to provide the sort of analysis and information which we expect. We have continued to report fairly frequently that Explanatory Notes contain assertions of compatibility rather than reasoned explanations. (Paragraph 26) We therefore remain of the view that a dedicated human rights memorandum should accompany every Government bill. (Paragraph 28)
 6. We have decided in principle to follow the example of the House of Lords Delegated Powers and Regulatory Reform Committee and, when our other work permits, to draw up our own Guidance for Departments, setting out what we expect from Departments in the explanatory material dealing with the human rights issues raised by a bill. (Paragraph 29)
 7. We propose that in future our decisions about what issues to prioritise in our legislative scrutiny work will be more closely informed by the latest reports of international monitoring bodies and human rights NGOs as well as significant court judgments. (Paragraph 32)
 8. In the second half of 2007 we have been concerned at the number of times Government departments have claimed not to have received our letters, or to have mislaid them, where they have actually already acknowledged receipt (Paragraph 34)
 9. We wish to ensure in future that our scrutiny of Government bills extends to significant Government amendments, at least in relation to bills which we have decided to scrutinise further. To facilitate this, we will require full explanatory material on human rights issues to accompany Government amendments to bills. (Paragraph 38)
 10. In principle we would like to scrutinise more statutory instruments raising significant human rights issues in future. (Paragraph 41)
 11. In future we will suggest amendments to give effect to our recommendations where possible, with a view to Members of our Committee tabling and speaking to them in debate in both Houses. (Paragraph 42)
 12. We propose, on an experimental basis, to identify the main stakeholder organisations in relation to the relevant bill and send e-mail alerts to those

organisations notifying them of the human rights issues which we have decided to scrutinise and inviting representations. (Paragraph 44)

13. We are not satisfied with the Government's reply to our Report on highly skilled migrants and changes to the Immigration Rules and intend to return to this issue, and to the interaction between immigration issues and human rights more generally, in the near future. (Paragraph 46)
14. Pre-charge detention was the main theme of our July report in our counter-terrorism inquiry and we were disappointed that the Government's apparent willingness to consult widely on whether, and, if so, what, further changes were needed did not extend as far as even warning us that an announcement was imminent. We concluded that the Government had failed to make the case for further extending the maximum permissible period of pre-charge detention and that a combination of alternative measures, including post-charge questioning with appropriate safeguards, would be both a more proportionate and effective way forward. We intend to carry on with our work in this area in 2008 and look forward to scrutinising the Counter-Terrorism Bill when it is published. (Paragraph 48)
15. In our inquiry into the treatment of asylum seekers we concluded that the Government was following a policy of deliberate destitution towards failed asylum seekers aimed at encouraging them to leave the UK and deterring others from coming, which was leading to the widespread abuse of the human rights of an extremely vulnerable group. (Paragraph 50)
16. Although we found examples of good practice, where the principles enshrined by the Human Rights Act had been used as the foundation for the provision of healthcare, our general conclusion in our inquiry into older people in healthcare was that the protection and promotion of human rights were too often tangential to the planning and delivery of services. (Paragraph 51)
17. One consequence of this messy situation [accountability for equalities policy within Government] is that it is unclear where parliamentary oversight for equalities properly rests. We will be seeking the Liaison Committee's assistance in clarifying this matter during 2008. (Paragraph 61)
18. During 2008, we intend to scrutinise the apparent use of illegal conditioning techniques by British troops in Iraq and the implications of the applicability of the Human Rights Act to people detained by the military overseas. We expect the Secretary of State for Defence to assist us fully in this process. (Paragraph 64)
19. We call on the Ministry of Justice to respond urgently to the systemic recommendations in our Report into Monitoring the Government's Response to Court Judgments Finding Breaches of Human Rights. The Report was published in June and the department's response to these recommendations is now five months late. (Paragraph 66)
20. In common with all Committees, we have often been disappointed with Government replies to our reports which have not accepted our recommendations. The reply to the treatment of asylum seekers' report was particularly uninspiring. We had pointed

to a number of areas where Government policy was not being put into practice on the ground, where human rights abuses had been the result. The Home Office reply ducked this issue entirely. We are dealing with problems of this sort in our strategy for following up reports. (Paragraph 81)

21. Our January counter-terrorism report, which focused on the definition of terrorism, has not received a reply from the Home Office: the reply is now some ten months late. In addition, we have so far been unsuccessful in persuading the Ministry of Justice to reply to our report on the Meaning of Public Authority under the Human Rights Act: that reply is now eight months late. We call on the Government to reply to these reports as a matter of urgency. (Paragraph 83)
22. We feel strongly that if the Director General of MI5 is able to make a public speech to journalists about the level of threat posed by terrorism, he should be prepared to appear formally before a parliamentary committee to answer questions about the comments he has made. Clearly, there will be some paths down which the Director General would be unwilling to tread and some matters which ought not to be exposed to public scrutiny at this stage, but this should not preclude any effective parliamentary scrutiny from taking place. (Paragraph 89)
23. In her speech on the Bill, Vera Baird MP, then Parliamentary Under-Secretary of State at the Ministry of Justice, assured the House that action would be taken to deal with the problem, in the light of the YL judgment, by the end of the year. Unfortunately, her commitment that action would be taken has not been fulfilled, something we will be pursuing in our mini-conference on this issue shortly. (Paragraph 91)
24. The *sub judice* rule, by which parliamentarians are bound not to raise issues currently before the courts in civil or criminal cases, except in certain limited circumstances, has sometimes affected the work of the Committee during the year. (Paragraph 95)

Annex: The State of Human Rights in the UK: Key Human Rights Concerns

Introduction

1. The purpose of this annex is to consider some of the key human rights concerns in the UK as raised by international and regional human rights bodies and others. It identifies the main “gaps” in the human rights record of the UK from the perspective of international organisations and considers where the UK is falling short of its international human rights commitments.

2. This annex draws on assessments of the UK’s human rights record by the following UN treaty-monitoring bodies:

- The Human Rights Committee (HRC) set up to monitor implementation of the International Covenant on Civil and Political Rights (ICCPR);
- The Committee on the Economic, Social and Cultural Rights monitoring the implementation of the International Covenant on Economic, Social and Cultural Rights (ICESCR);
- The Committee on the Rights of the Child monitoring implementation of the Convention on the Rights of the Child (CRC) and of the Additional Protocols thereto;
- The Committee on the Elimination of All Forms of Discrimination against Women overseeing implementation of the Convention on the Elimination of Discrimination Against Women (CEDAW);
- The Committee against Torture responsible for overseeing the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT); and
- The Committee on Racial Discrimination set up to monitor implementation of the International Convention on the Elimination of All Forms of Racial Discrimination.

3. In addition, it presents the key human rights concerns raised by the Council of Europe human right bodies, such as the Council of Europe Commissioner for Human Rights, the Committee for the Prevention of Torture and the Advisory Committee on the Framework Convention for the Protection of National Minorities. The opinions and recommendations of national human rights institutions, in particular the Northern Ireland Human Rights Commission and Women’s National Commission as well as international and national NGOs are also considered. Where the Joint Committee on Human Rights has expressed concerns about an issue, these comments are also noted.

Key human rights concerns in the UK

4. The following concerns are drawn from an analysis of reports on the UK by international and regional human rights monitoring bodies, and leading NGOs. They identify the following broad themes:

- Discrimination
- Children
- Women
- Trafficking
- Prisons
- Freedom of expression
- Counter-terrorism measures

Discrimination

5. Concerns have been raised by international human rights bodies about continuing discrimination against minority ethnic communities, Gypsies and travellers, asylum-seekers, migrant workers, Muslims and persons with disabilities in the UK. The most recent report (October 2007) issued on this matter by the Advisory Committee on the Framework Convention for the Protection of National Minorities (with which some members of the Committee met earlier this year) speaks about inequalities that affect those groups in the field of employment, education, housing, health and access to justice.⁴⁶ Analogous concerns are expressed by NGOs, which particularly emphasise the marginalisation of those groups and their vulnerability in areas such as employment, housing, health and criminal justice.⁴⁷

Discrimination in the criminal justice field

6. The Council of Europe Commissioner for Human Rights has raised concerns over the discretionary powers applied discriminately by police and other institutions within the criminal justice field. He referred to cases where members of ethnic minorities are were disproportionately stopped and searched by police, and also more frequently prosecuted than warned, remanded in custody and given custodial as opposed to community sentences in comparison to the national average.⁴⁸ In this regard, the Commissioner has recommended that the UK Government should focus on the elimination of 'potential discrimination' in the criminal justice field.⁴⁹

46 Advisory Committee on the Framework Convention for the Protection of National Minorities, *Second Opinion on the United Kingdom, Adopted on 6 June 2007*. ACFC/OP/II(2007)003, 27 October 2007.

47 European Network Against Racism (ENAR), *Shadow Report 2006: Racism in the United Kingdom*, October 2007.

48 Office of the Commissioner for Human Rights, Report by Mr. Alvaro Gil-Robles, Commissioner for Human Rights on his Visit to the United Kingdom, 4th – 12th November 2004. CommDH(2005)6, 8 June 2005, para 137.

49 *Ibid.*, Recommendation 29.

7. Similar concerns have been raised by the Advisory Committee on the Framework Convention for the Protection of National Minorities. The Committee has particularly urged the Government to review the stop and search procedure under the Terrorism Act 2000 and other related legislation so as to make sure that these powers, when exercised, have no discriminatory effect on certain minority ethnic communities.⁵⁰ The UN Committee on the Elimination of Racial Discrimination has similarly voiced its concerns over the “disproportionately high number of ‘stops and searches’ carried out by the police against members of ethnic or racial minorities.”⁵¹

8. Amnesty International has suggested that these policies are discriminatory as a matter of either practice or law and that they:

will further alienate members of the public that feel particularly targeted by them. If this happens, there is an increased risk that those on whose cooperation the authorities rely will be less willing to provide information to the police.⁵²

9. Concerns over discrimination were also raised by the Joint Committee on Human Rights in its 2004 Report:

We also note that there is mounting evidence that the powers under the Terrorism Act are being used disproportionately against members of the Muslim community in the UK. According to the Metropolitan Police Service data, the stop and search rates for Asian people in London increased by 41% between 2001 and 2002, while for white people it increased by only 8% over the same period. We are concerned that the strikingly disproportionate impact of the Terrorism Act powers on the Muslim community indicates unlawful use of racial profiling in the exercise of these powers, contrary to basic norms prohibiting discrimination on grounds of race or religion.⁵³

Discrimination in the areas of housing, education, health and employment

10. Ethnic minorities and persons with disabilities are frequently referred to in the human rights reports as the main subjects of de facto discrimination in areas such as education, health, housing and employment. The Advisory Committee on the Framework Convention for the Protection of National Minorities has noted in its recent report that persons belonging to certain ethnic minority groups:

- “continue to be significantly under-represented in higher education,”
- “are still almost twice as likely to be unemployed as the national average,”
- “are much more likely to experience sub-standard housing conditions, including overcrowding and homelessness,” and

50 Advisory Committee on the Framework Convention for the Protection of National Minorities, *Second Opinion on the United Kingdom, Adopted on 6 June 2007*. ACFC/OP/III(2007)003, 27 October 2007, paras 133-143.

51 Committee on the Elimination of Racial Discrimination, *Concluding Observations: United Kingdom of Great Britain and Northern Ireland*, CERD/C/63/CO/11, 10 December 2003, para 19.

52 Amnesty International, *United Kingdom: Human Rights, a Broken Promise*, EUR 45/004/2006, 23 February 2006, p.22.

53 Eighteenth Report, Session 2003-04, *Review of Counter-Terrorism Powers*, HC 713, HL Paper 158, para 46.

— “suffer disproportionately from certain health conditions”.⁵⁴

11. The UN Committee on Economic, Social and Cultural Rights has recommended that the UK Government should:

take more effective steps to combat *de facto* discrimination, in particular against ethnic minorities and people with disabilities, especially in relation to employment, housing and education. The Committee strongly recommends that the State party enact comprehensive legislation on equality and non-discrimination in United Kingdom law, in conformity with articles 2.2 and 3 of the Covenant.⁵⁵

Housing

12. Emphasis in this context has been made on Gypsies and travellers as the ones experiencing the highest level of discrimination. As the Advisory Committee on the Framework Convention for the Protection of National Minorities has stated “insufficient and inadequate site provision has contributed to a situation where numerous Gypsies and travellers are currently living on unauthorised land or developing their land without planning permission.”⁵⁶ The Northern Ireland Human Rights Commission has noted that relative progress which had been achieved in the area of housing was recently undermined by the Unauthorised Encampments (Northern Ireland) Order, enacted in 2006.⁵⁷ This authorises police to order a person to leave land and remove any vehicle or other property with him or her and creates an offence of non-compliance entailing a fine or a maximum of three months’ imprisonment or both. As the Commission has characterised:

In short, Government has introduced measures whereby members of a national minority can become liable to criminal prosecution for following their traditional lifestyle as best they can in the context of grossly inadequate provision of halting sites and other authorised accommodation; they are liable to be evicted from their homes, have them destroyed and then be imprisoned or fined.⁵⁸

13. In 2005 the Council of Europe Commissioner for Human Rights recommended that the UK Government reintroduce the obligation on local authorities to provide caravan sites for Roma/Gypsies and travellers and to provide financial assistance for their construction to local authorities.⁵⁹

14. It should be noted in this respect that we have consistently called on the Government to implement the judgment of the European Court for Human Rights (ECtHR) in the *Connors v. UK* case.⁶⁰ In *Connors*, the ECtHR found that summary eviction of a family

54 Advisory Committee on the Framework Convention for the Protection of National Minorities, *Second Opinion on the United Kingdom*, Adopted on 6 June 2007, ACFC/OP/II(2007)003, 27 October 2007, paras 75-79.

55 Committee on Economic, Social and Cultural Rights, *Concluding Observations: United Kingdom of Great Britain and Northern Ireland*, E/C.12/1/Add.79, 5 June 2002, para 31.

56 Advisory Committee on the Framework Convention for the Protection of National Minorities, *Second Opinion on the United Kingdom*, Adopted on 6 June 2007, ACFC/OP/II(2007)003, 27 October 2007, para 98.

57 Northern Ireland Human Rights Commission, *Submission by the Northern Ireland Human Rights Commission to the Advisory Committee on the Framework Convention for the Protection of National Minorities*, May 2007, paras 5-6.

58 *Ibid.*, para 7.

59 Office of the Commissioner for Human Rights, *Report by Mr. Alvaro Gil-Robles, Commissioner for Human Rights on his Visit to the United Kingdom, 4th – 12th November 2004*, CommDH(2005)6, 8 June 2005, Recommendations 32.

60 Sixteenth Report of Session 2006-07, *Monitoring the Government’s Response to Court Judgments Finding Breaches of Human Rights*, HC 728, HL Paper 128, pp 36-37.

from a local authority Gypsy caravan site, without reasoned justification or sufficient procedural safeguards, breached the right to respect for private life and home under Article 8 ECHR.

Education

15. Another area of particular concern has been education. In 2002 the UN Committee on the Rights of the Child noted that:

The Committee is concerned at still high rate of temporary and permanent exclusion from school affecting mainly children from specific groups (ethnic minorities, including black children, Irish and Roma travellers, children with disabilities, asylum seekers, etc.), and the sharp differences in educational outcomes for children according to their socio-economic background and to other factors such as gender, disability, ethnic origin or care status.

16. In 2007, the concerns were essentially the same. As the Advisory Committee on the Framework Convention for the Protection of National Minorities recently noted:

Exclusion rates continue to disproportionately affect Black pupils, and persons belonging to certain minority ethnic communities continue to be significantly under-represented in higher education.⁶¹

17. The Advisory Committee has been particularly concerned over the statistical data suggesting that the attendance level of Gypsy and traveller children in schools and higher education institutions continues to be the lowest among all minority ethnic groups.⁶² This, as has been noted, is due to a number of factors, including the difficulties Gypsy and travellers experience in securing accommodation and employment. The Advisory Committee has recommended that the UK authorities ensure the allocation of necessary financial resources to schools to implement the requirements of the Race Relations (Amendment) Act 2000 and to support the educational needs of Gypsies and travellers.⁶³

Health

18. As asserted by international human rights bodies and NGOs, inequality persists in the health area, particularly in relation to access to health services. This has a negative impact on the general health conditions of minority groups in the UK. As noted by the UN Committee on the Rights of the Child:

The Committee remains concerned at persisting inequalities in health and access to health services, including mental health services, across the State party linked to socio-economic status and ethnicity (e.g. the high rate of infant mortality among the Irish and Roma travellers).⁶⁴

61 Office of the Commissioner for Human Rights, *Report by Mr. Alvaro Gil-Robles, Commissioner for Human Rights on his Visit to the United Kingdom, 4th – 12th November 2004*, CommDH(2005)6, 8 June 2005, para 22.

62 *Ibid.*, para 204.

63 *Ibid.*, paras 199, 206.

64 Committee on the Rights of the Child, *Concluding Observations: United Kingdom of Great Britain and Northern Ireland*, CRC/C/15/Add.188, 9 October 2002, para 41.

19. Particularly alarming seems to be the situation with Irish and Roma travellers. As the Equality Commission for Northern Ireland has noted:

The mortality rate of Traveller children up to the age of 10 has been found to be 10 times that for the population as a whole. Overall the life expectancy of Travellers is around 20% lower than the general population. Only 10% of the Traveller population are over 40 years of age and only 1% is aged over 65.⁶⁵

Employment

20. Despite some positive trends including, amongst others, the prohibition of discrimination in the Race Relations Act 2000 and Race Relations (Northern Ireland) Order 1997 (as amended), inequality still persists in the area of employment. The Advisory Committee has highlighted two main obstacles in this regard:

- (i) current race equality duties do not cover the private sector, which is responsible for the employment of more than 75% of the work force, and
- (ii) there are still important areas of public life where persons from minority ethnic groups are under-represented.⁶⁶

21. With respect to the latter, the Advisory Committee has focused on the judiciary and most of the public sector bodies in Scotland and Wales as having very low proportions of minority staff. Therefore, it has called on the UK public authorities to:

Continue taking measures to implement their specific duties concerning recruitment, retention and progression under the Race Relations (Amendment) Act 2000, and attention should be given to the need for reforms to the appointment process of the judiciary.⁶⁷

Children

Reservations to the CRC – Articles 22 and 37(c)

22. The UK has entered a reservation in relation to Article 22 of the UN Convention on the Rights of the Child relating to children subject to immigration control and the acquisition and possession of citizenship. Furthermore, in relation to Article 37(c), the UK has reserved the right to accommodate children in adult detention facilities. The Committee on the Rights of the Child (CRC Committee) has repeatedly recommended that the UK should withdraw both of the reservations. In particular, in its last concluding observations the CRC Committee noted that:

In line with its previous recommendation (CRC/C/15/Add.34, paras. 22 and 29), and in the light of the Vienna Declaration and Programme of Action, [the committee] recommends that the State party take all necessary measures to end the detention of

65 Equality Commission for Northern Ireland, *Shadow Report to the Council of Europe under the Framework Convention for the Protection of National Minorities*, May 2007, para 26.

66 Office of the Commissioner for Human Rights, *Report by Mr. Alvaro Gil-Robles, Commissioner for Human Rights on his Visit to the United Kingdom, 4th – 12th November 2004*, CommDH(2005)6, 8 June 2005, paras 240-241.

67 *Ibid.*, para 245.

children in the same facilities as adults and to withdraw its reservation to article 37(c). The Committee also recommends that the State party reconsider its reservation to article 22 with a view to withdrawing it given the State party's observation that this reservation is formally unnecessary because the State party's law is in accordance with article 22 of the Convention.⁶⁸

23. We, and our predecessors, have supported the CRC Committee's position on this matter.⁶⁹ Particularly, in relation to the reservation to Article 22, the JCHR has expressed its concern on the compatibility of the reservation with the object and purpose of the Convention:

In our view, the maintenance of this reservation, which withdraws the protection of the Convention from a particularly vulnerable group of children, undermines the otherwise strong record of the Government in the advancement of children's rights, and calls into question the UK's commitment to a Convention central to international human rights protection. We reiterate our previous recommendation that the Government should withdraw this reservation.⁷⁰

24. As regards the reserved right to accommodate children in adult prison facilities, the JCHR considers that resource or security considerations provide insufficient justification for the maintenance of this reservation.⁷¹

Children in Armed Conflict

25. By ratifying the Protocol in 2003, the UK committed itself to take all feasible measures to ensure that members of its armed forces under the age of 18 do not take a direct part in hostilities. The UK, however, made an interpretive declaration upon ratification that enables the Government to deviate from this undertaking in a wide range of circumstances. In particular, the declaration provides as follows:

The United Kingdom understands that article 1 of the Optional Protocol would not exclude the deployment of members of its armed forces under the age of 18 to take a direct part in hostilities where:

- (a) there is a genuine military need to deploy their unit or ship to an area in which hostilities are taking place; and
- (b) by reason of the nature or urgency of the situation:
 - i. it is not practicable to withdraw such persons before deployment; or
 - ii. to do so would undermine the operational effectiveness of their ship or unit, and thereby put at risk the successful completion of the military mission and/or the safety of the personnel.

68 Committee on the Rights of the Child, *Concluding Observations: United Kingdom of Great Britain and Northern Ireland*, CRC/C/15/Add.188, 9 October 2002, para 7.

69 Seventeenth Report, Session 2004-05, *Review of International Human Rights Instruments*, HC 264, HL Paper 99, pp 19-21.

70 *Ibid.*, p 20.

71 *Ibid.*, p 21.

26. The JCHR has expressed its concern that this declaration is formulated too broadly and essentially undermines the UK's commitment not to deploy those under the age of 18 in conflict zones.⁷²

Discrimination

27. Discrimination is still an issue, particularly in relation to children with disabilities, Irish and Roma travellers' children, asylum seeker and refugee children, children belonging to minority groups, children in care and detained children as well as children aged between 16 and 18 years old. The CRC Committee has urged the UK Government to:

- (a) Monitor the situation of children, in particular those belonging to the above mentioned vulnerable groups, who are exposed to discrimination;
- (b) Monitor the comparative enjoyment by children of their rights in England, Scotland, Northern Ireland and Wales;
- (c) Develop, on the basis of the results of this monitoring, comprehensive strategies containing specific and well-targeted actions aimed at eliminating all forms of discrimination.

28. Particular concerns are expressed in relation to persisting inequalities in the health sphere and access to health services that are linked to socio-economic status and ethnicity. The high rates of infant mortality among the Irish and Roma travellers are believed to be the direct result of these inequalities.⁷³ Analogously, in relation to the right to education, the high rate of temporary and permanent exclusion from schools affects mainly children from ethnic minorities, including black children, Irish and Roma travellers, children with disabilities, and asylum-seeking children. The CRC Committee as well as the Advisory Committee on the Framework Convention for the Protection of National Minorities have noted sharp differences in educational outcomes for children coming from these vulnerable groups.⁷⁴

Juvenile justice system

29. There are a number of issues that deserve particular attention in this context. The age of criminal responsibility is still low, being 8 years in Scotland and 10 years in the rest of the UK; deprivation of liberty is more frequently used as a measure of first rather than the last resort and for a prolonged period of time;⁷⁵ concerns are raised as to the restraints and measures of control applied in prisons and the frequent use of physical restraint in residential institutions and in custody; the appropriateness of children's placement in solitary confinement in prisons has also been questioned. The CRC Committee on the Rights of the Child has noted that it is:

72 Ibid., p 17.

73 Committee on the Rights of the Child, *Concluding Observations: United Kingdom of Great Britain and Northern Ireland*, CRC/C/15/Add.188, 9 October 2002, para 41.

74 Ibid., para 47; Advisory Committee on the Framework Convention for the Protection of National Minorities, *Second Opinion on the United Kingdom*, adopted on 6 June 2007, ACF/OP/II(2007)003, 27 October 2007, para 22.

75 Committee on the Rights of the Child, *Concluding Observations: United Kingdom of Great Britain and Northern Ireland*. CRC/C/15/Add.188, 9 October 2002, para 59.

also extremely concerned at the conditions that children experience in detention and that children do not receive adequate protection or help in young offenders' institutions, noting the very poor staff-child ration, high levels of violence, bullying, self-harm and suicide, the inadequate rehabilitation opportunities, the solitary confinement in inappropriate conditions for a long time as a disciplinary measure or for protection, and the fact that girls and some boys in prisons are still not separated from adults.⁷⁶

30. In its last concluding observations on the UK, the CRC Committee recommended that the UK Government should, amongst other things; (i) raise considerably the minimum age of criminal responsibility; (ii) ensure that detention of children is used as a measure of last resort and that alternative measures to the deprivation of liberty are encouraged; and (iii) review as a matter of urgency the conditions of detention and ensure that all children deprived of their liberty have equal statutory rights to education, health and child protection.⁷⁷ Furthermore, the Committee has urged the UK Government to bring restraint and solitary confinement practices in line with the Convention on the Rights of the Child, in particular Articles 25 and 37.⁷⁸

31. Analogous concerns were raised by the Council of Europe Commissioner for Human Rights:

The conclusion would appear to be that there are too many young offenders in custody doing too little in overcrowded and stressful conditions.⁷⁹

32. He has urged the UK authorities to tackle the practice of applying prison sentences to children as a measure of first resort, to meet better the educational and psychological needs of the detained children, and to concentrate on the introduction of essential rehabilitation programmes.⁸⁰ However, in his report he noted that “the Scottish juvenile justice system differs considerably from the one in place in the rest of the United Kingdom.” He expressed the hope that “the originality of its welfare-based approach is rewarded with success” and concluded that “in its essentials it deserves to be preserved”.⁸¹ The Commissioner has also urged the Government to reconsider the legal age of criminal responsibility in order to bring it more in line with European standards.⁸²

Anti-social behaviour orders

33. Anti-social behaviour orders were first introduced by the Crime and Disorder Act 1998. The Orders prohibit certain behaviours and restrict an individual's freedom of movement and association. They can be applied to children as young as 10 and the only criteria that the magistrate must use in deciding to impose an Order is that the individual has behaved in a manner “that caused or was likely to cause harassment, alarm and

76 Ibid., para 59.

77 Ibid., para 62.

78 Ibid., para 34.

79 Office of the Commissioner for Human Rights, *Report by Mr. Alvaro Gil-Robles, Commissioner for Human Rights on his Visit to the United Kingdom, 4th – 12th November 2004*, CommDH(2005)6, 8 June 2005, para 97.

80 Ibid., paras 85-97.

81 Ibid., para 98.

82 Office of the Commissioner for Human Rights, *Report by Mr. Alvaro Gil-Robles, Commissioner for Human Rights on his Visit to the United Kingdom, 4th – 12th November 2004*, CommDH(2005)6, 8 June 2005, para 107.

distress”.⁸³ Breaching the conditions of an Order is a criminal offence, punishable by up to five years in prison.

34. In its 2002 Concluding Observations, the CRC Committee recommended that the UK authorities should “review the new orders introduced by the Crime and Disorder Act 1998 and make them compatible with the principles and provisions of the Convention”.⁸⁴ More specific was the Council of Europe Commissioner for Human Rights. In his 2005 Report on his visit to the United Kingdom he noted that:

The ease of obtaining such orders, the broad range of prohibited behaviour, the publicity surrounding their imposition and the serious consequences of breach all give rise to concerns.⁸⁵

35. He further emphasized the negative impact that the Orders have on children, asserting that “the excessive use of ASBOs is more likely to exacerbate anti-social behaviour and crime amongst youths than effectively prevent it”.⁸⁶ The Commissioner recommended that the UK authorities should:

- i. ensure that ASBO guidelines adequately delimit the nature of the behaviour targeted;
- ii. exclude the possibility of authorizing ASBOs on the basis of hearsay evidence alone;
- iii. restrict the ability to apply to the courts for ASBOs to the authorities currently invested with this right;
- iv. raise to 16 the age at which children in breach of terms of ASBOs may be sentenced to custody;
- v. reformulate ASBO guidelines so that they neither encourage nor permit the excessive publicity of the making of orders against juveniles. In order to guarantee the right of children to privacy, the reproduction and public dissemination of posters reproducing the pictures of children submitted to ASBOs should be prohibited.⁸⁷

36. Concerns raised by the international human rights bodies have been widely shared by NGOs working in this field.⁸⁸

Violence against Children

37. The issue of violence against children within families, in schools, institutions and in the care system is still prevalent in the reports of the international human rights bodies.

83 Crime and Disorder Act 1998, Section 1(1)(a).

84 Committee on the Rights of the Child, *Concluding Observations: United Kingdom of Great Britain and Northern Ireland*, CRC/C/15/Add.188, 9 October 2002, para 62.

85 Office of the Commissioner for Human Rights, *Report by Mr. Alvaro Gil-Robles, Commissioner for Human Rights on his Visit to the United Kingdom, 4th – 12th November 2004*, CommDH(2005)6, 8 June 2005, para 109.

86 *Ibid.*, para 118.

87 *Ibid.*, Recommendations 19-23.

88 For example, Liberty’s briefing on the Anti-Social Behaviour Bill for Second Reading in the House of Lords. July 2003, Part 5.

Particular attention is paid to corporal punishment, not yet criminalized in all contexts, as well as sexual violence, growing levels of child neglect and increasing death figures resulting therefrom. The International Committee on Economic, Social and Cultural Rights has called on the Government to ban physical punishment of children in families.⁸⁹ The CRC Committee has similarly urged the UK Government:

- (a) With urgency to adopt legislation throughout the State party to remove the “reasonable chastisement” defence and prohibit all corporal punishment in the family and in any other contexts not covered by existing legislation;
- (b) To promote positive, participatory and non-violent forms of discipline and respect for children’s equal right to human dignity and physical integrity, involving children and parents and all those who work with and for them, and carry out public education programmes on the negative consequences of corporal punishment.⁹⁰

38. Furthermore it was recommended that the UK authorities develop a strategy for the reduction of child death as a result of violence and introduce a system of child death inquiries.⁹¹

Economic exploitation

39. The national minimum wage that applies to young workers above the minimum age of employment (16-21) is lower than the main rate that applies to workers aged 22 and over. This practice puts young workers at risk of being economically exploited. The CRC Committee has recommended that the UK Government should reconsider this position in the light of the principle of non-discrimination.⁹² A similar point of view was expressed by the Committee on Economic, Social and Cultural Rights. In particular, in its 2002 concluding observations on the UK, this Committee noted:

The Committee considers that the minimum wage scheme is discriminatory on the basis of age, as it affords a smaller proportion of the minimum wage to persons between 18 and 22 years of age.⁹³

Women

40. The Government ratified the Optional Protocol to the Women’s Convention (which allows for individuals to apply to the Committee on the Convention for the Elimination of Discrimination against Women (CEDAW) to have their cases considered) on an experimental basis in March 2005. Since the right to individual petition was opened up, two cases have been brought against the UK, both of which have been rejected as

89 Committee on Economic, Social and Cultural Rights, *Concluding Observations: United Kingdom of Great Britain and Northern Ireland*, E/C.12/1/Add.79, 5 June 2002, para 36.

90 Committee on the Rights of the Child, *Concluding Observations: United Kingdom of Great Britain and Northern Ireland*, CRC/C/15/Add.188, 9 October 2002, para 38.

91 *Ibid.*, para 40.

92 *Ibid.*, para 56.

93 Committee on Economic, Social and Cultural Rights, *Concluding Observations: United Kingdom of Great Britain and Northern Ireland*, E/C.12/1/Add.79, 5 June 2002, para 15.

inadmissible. The Government is currently reviewing the outcome of that experiment and intends to report to Parliament in due course.⁹⁴

Discrimination

41. A number of positive measures have been taken by the UK authorities recently, aimed at eliminating gender-based discrimination. The international human rights bodies and NGOs, however, still raise concerns about persisting inequalities in areas such as employment and equal pay. As has been noted by the CEDAW Committee, a significant pay gap exists between women and men, particularly among academic staff. On average, women receive lower salaries and they fail to advance in their careers as rapidly as do men.⁹⁵ The CEDAW Committee has further focused on the disadvantaged situation of women from ethnic minority communities who experience “higher levels of unemployment, lower levels of education and training, lower wages and salaries and fewer benefits than white women.”⁹⁶ The Committee has recommended to UK authorities that:

steps be taken to ensure the elimination of direct and indirect discrimination against ethnic minority women, including through positive action in recruitment, awareness campaigns and targeted training, education, employment and health-care strategies.⁹⁷

42. The Women’s National Commission has distinguished pregnant and older women, along with women from minority communities, as being subjected to the highest degree of discrimination amongst women.⁹⁸ The Commission has further noted that discrimination can result in violence against certain categories of women – its most egregious forms being domestic violence, forced marriage and female genital mutilation. The Women’s National Commission deems violence against women to be “both cause and a consequence of women’s inequality”.⁹⁹

Domestic violence

43. Domestic violence is one of the most prevalent human rights issues in the context of women’s human rights in the UK. In 2002, the UN Committee on Economic, Social and Cultural Rights expressed its deep concern over the increase in the instances of domestic violence in the UK.¹⁰⁰ The Committee recommended that the UK authorities increase their efforts to combat domestic violence and ensure sufficient refuge places for the victims of domestic violence.

44. The most recent human rights report on this matter drafted by the Women’s National Commission suggests that half of all adult women in the UK have experienced domestic

94 Oral Evidence, 26 Nov 2007, HC132-i, Q80.

95 Committee on the Elimination of Discrimination against Women, *Concluding Observations: United Kingdom of Great Britain and Northern Ireland*, A/54/38, paras.278-318, 25 June 1999, para 307.

96 *Ibid.*, para 305.

97 *Ibid.*, para 306.

98 Women’s National Commission, *Submission to the United Nation’s Committee on the Convention on the Elimination of All Forms of Discrimination against Women*, July 2007.

99 *Ibid.*, para 2.

100 Committee on Economic, Social and Cultural Rights, *Concluding Observations: United Kingdom of Great Britain and Northern Ireland*, E/C.12/1/Add.79, 5 June 2002, para 17.

violence.¹⁰¹ The Report further highlighted the particular vulnerability to domestic violence of minority groups such as Muslim and South Asian women and women from rural areas.

45. It should be noted that the CEDAW Committee has expressed concerns over low conviction rates for different forms of gender violence, particularly rape and sexual violence.¹⁰² Amnesty International has similarly noted very low conviction rates for the crime of rape.¹⁰³

List of Issues drafted by the CEDAW Committee

46. On September 2007, the CEDAW Committee drew up a list of issues and questions for the UK Government to prepare for discussion at the Committee's consideration of the UK's fifth and sixth periodic reports in June-July 2008.¹⁰⁴ This list is indicative of the issues that the CEDAW Committee believes to be central in the context of monitoring implementation of the CEDAW in the UK today. The CEDAW Committee has asked the UK Government to provide detailed information on a number of matters, including:

- i. To clarify the extent to which the UK's obligations under the Convention are taken into consideration within the framework of the ongoing Discrimination Law Review;
- ii. To describe the actions that will be taken to ensure that the creation of the new Equality and Human Rights Commission does not result in a weakening of efforts to eliminate discrimination against women;
- iii. To provide a preliminary assessment of how the Gender Equality Duty is working;
- iv. To describe measures that were undertaken in accordance with the Committee's recommendation to introduce a unified strategy and plan to set standards and goals for women's equality and gender mainstreaming and monitor its implementation across all regimes and bodies in the UK;
- v. To provide a detailed overview of the situation of women from racial, ethnic and religious minorities;
- vi. To describe the measures in place that target and involve men and boys in efforts to prevent and eliminate violence against women and the results achieved;
- vii. To clarify how the Sexual Offences Act of 2003 addresses standards of proof and evidence for sexual offences and legal capacity and consent;

101 Women's National Commission, *Submission to the United Nation's Committee on the Convention on the Elimination of All Forms of Discrimination against Women*, July 2007, para 69.

102 Committee on the Elimination of Discrimination against Women, *Concluding Observations: United Kingdom of Great Britain and Northern Ireland*, A/54/38, paras.278-318, 25 June 1999, para 312.

103 Amnesty International, *Report 2007: The State of the World's Human Rights*, p 273.

104 Committee on the Elimination of Discrimination against Women, *List of Issues and Questions with regard to Consideration of Periodic Report: United Kingdom of Great Britain and Northern Ireland*, CEDAW/C/UK/Q/6, 27 September 2007.

- viii. To provide information on measures that have been taken to protect immigrant women.

47. Furthermore, the CEDAW Committee requested detailed information on specific measures taken by the UK Government in relation to matters such as trafficking and exploitation for prostitution, participation of women in political and public life, employment and reconciliation of work and family life, health, education and women in vulnerable situations.¹⁰⁵

Trafficking

48. Despite positive changes to legislation, international human rights bodies raise particular concerns over the failure of the UK authorities to provide protection to the victims of trafficking, especially women and children.¹⁰⁶ The UN Special Rapporteur on the sale of children, child prostitution and child pornography has noted that most of the cases of trafficked children might not even be detected “because of serious shortcomings within social services, the police and immigration officials, and also because professionals working in these sectors lack awareness of the problem and lack the relevant training to deal with such cases.”¹⁰⁷ The Women’s National Commission has focused on further legislative amendments required to fill the existing gap and also on the problem of inadequate housing and support provided to the victims of trafficking.¹⁰⁸ We have published two Reports on this issue, in 2006 and 2007.¹⁰⁹

Prisons

49. Concerns remain over the situation in prisons in the UK. The UN Committee Against Torture (CAT) in its 2002 concluding observations noted unsatisfactory conditions in detention facilities emphasising “substantial numbers of deaths in custody, inter-prisoner violence, overcrowding and continued use of ‘slopping out’ sanitation facilities”.¹¹⁰ The Council of Europe Committee on the Prevention of Torture (CPT) has raised similar concerns following its 2003 visit to the UK. The CPT has particularly focused on the problem of overcrowding pointing out that “for as long as overcrowding persists, the risk of prisoners being held in inhuman and degrading conditions of detention will remain”.¹¹¹ In this context the CPT noted the negative impact that overcrowding has on health care and other basic services offered to prisoners including work being done with individual prisoners on rehabilitation and resettlement. These concerns are shared by Amnesty International. As noted in its 2007 Report on the UK:

¹⁰⁵ Ibid., pp 3-6.

¹⁰⁶ Report of the Special Rapporteur on the sale of children, child prostitution and child pornography, *Communications to and from Governments*, E/CN.4/2006/67/Add.1, 27 March 2006, para152.

¹⁰⁷ Ibid.

¹⁰⁸ Women’s National Commission, *Submission to the United Nation’s Committee on the Convention on the Elimination of All Forms of Discrimination against Women*, July 2007, para 14.

¹⁰⁹ Twenty-sixth Report, Session 2005-06, *Human Trafficking*, HC 1127-I, HL Paper 245 and Twenty-first Report, Session 2006-07, *Human Trafficking: Update*, HC 1056, HL Paper 179, p 5.

¹¹⁰ Committee against Torture, *Conclusions and Recommendations: United Kingdom of Great Britain and Northern Ireland*. CAT/C/CR/33/3, 10 December 2004, paras.4(g).

¹¹¹ European Committee for the prevention of Torture and Inhumane or Degrading Treatment or Punishment, *Report to the Government of the United Kingdom on the visit to the United Kingdom and the Isle of Man, from 12 to 23 May 2003*, CPT/Inf (2005) 1, para.16.

overcrowding continued to be linked to self-harm and self-inflicted deaths, greater risks to the safety of staff and inmates, and detention conditions amounting to cruel, inhuman and degrading treatment.¹¹²

50. The Council of Europe Commissioner for Human Rights addressed the issue of prisons in his 2005 Report on the UK. He characterized overcrowding as the “single greatest difficulty” that has an impact on all aspects of prison regimes:¹¹³

Access to purposeful activity, visits, showers and telephone calls and other facilities are all reduced. Average time spent in cells increases. The management of prisons under such conditions is difficult for staff, and the maintenance of security becomes harder as the stress levels of detainees rise. In short, the conditions of detention in some of the United Kingdom’s more crowded prisons cannot be considered to meet international standards.¹¹⁴

51. He further focused on two related problems: first the lack of appropriate psychological care for detainees identified as being at risk of self-harm and second the fact that some of the detainees, whose psychological instability is permanent and who repeatedly attempt suicide, have been nonetheless detained in ordinary prisons. In this regard, the Commissioner has recommended that the UK authorities should:

1. Address the problem of overcrowding in prisons through the construction of new detention facilities and greater investment in alternative sentences and non-custodial pre-trial supervision, and
2. Improve the psychiatric support services in the adult prison estate; increase the capacity of National Health Service secure accommodation facilities so as to enable the transfer of all detainees in need of full time psychiatric treatment.¹¹⁵

Freedom of expression

Access to public information

52. The right to access public information is a recognised part of the right to freedom of expression. Concerns have been raised that the Freedom of Information Act 2000 might undermine the proper exercise of this right. The UN Special Rapporteur on Freedom of Opinion and Expression criticised some of the exemptions provided in the Act as being overbroad or too vague.¹¹⁶ He further noted that “(i) there is a broad class of exemptions pertaining to security bodies, investigations, decision making and policy formation; (ii) the

112 Amnesty International, *Report 2007: The State of the World’s Human Rights*, p 272.

113 Office of the Commissioner for Human Rights, *Report by Mr. Alvaro Gil-Robles, Commissioner for Human Rights on his Visit to the United Kingdom, 4th – 12th November 2004*, CommDH(2005)6, 8 June 2005, paras 122-124.

114 *Ibid.*, para 124.

115 *Ibid.*, Recommendations 24-25.

116 Report of the UN Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression, *Visit to the United Kingdom of Great Britain and Northern Ireland*, UN Doc.E/CN.4/2000/63/Add.3, 11 February 2000, paras.65-66.

jurisdiction of the Commissioner is somewhat restricted; and (iii) the Bill contains a weak test for disclosure”.¹¹⁷ In this regard the Rapporteur has called on the Government:

to review the text of the bill with regard to two main aspects: the scope of class exceptions should be limited, and the Information Commissioner should have sufficient power to ensure effective access to information held by public authorities.¹¹⁸

53. Analogous concerns have been raised by NGOs who consider that the exemptions contained in the Act allow access to information to be refused on “arbitrary or inappropriate grounds”.¹¹⁹ As Article 19 has noted;

The Act contains a number of exemptions which cannot be reconciled with the test for restrictions on freedom of expression found in Article 19(3) of the ICCPR.¹²⁰

Anti-terrorism legislation

54. The Terrorism Act 2006 created an offence of “encouragement of terrorism”. The UN Special Rapporteur on the Promotion and Protection of Human Rights and Fundamental Freedoms while Countering Terrorism has questioned the vaguely defined elements of the offence and particularly some of the terms used, such as “indirectly encouraging” acts of terrorism and “glorification”, interpreted as including “any form of praise or celebration”.¹²¹

55. Concerns have also been raised by NGOs that the rather vague wording of the offence might impede the exercise of the right to freedom of expression.¹²² As noted by Amnesty International:

in relation to criminalizing the dissemination of statements that encourage terrorism, it must be shown that the person intended to incite an act of violence (terrorist offence) and that the statement caused a clear and present danger that such an offence would be committed. However, the provisions of the Bill do not squarely address the issue of intent.¹²³

56. Human Rights Watch has further noted that the lack of any requirement of a causal link between the offending speech and actual encouragement would undermine the nature and scope of the right to freedom of expression.¹²⁴

117 Ibid., para 65.

118 Ibid., para 113(d).

119 Article 19, *Submission to the 91st Session of the United Nations Human Rights Committee on Respect for Freedom of Expression in the United Kingdom of Great Britain and Northern Ireland*, October 2007, pp 2-3.

120 Ibid., p 2.

121 Report of the Special Rapporteur on the Promotion and Protection of Human Rights and Fundamental Freedoms while Countering Terrorism, *Communications with Governments*, A/HRC/4/26/Add.1, 15 March 2007, para 63.

122 Amnesty International, Europe and Central Asia: Summary of Amnesty International’s Concerns in the Region: January – June 2007. AI Index: EUR 01/010/2007, pp.1-2; Article 19, *Submission to the 91st Session of the United Nations Human Rights Committee on Respect for Freedom of Expression in the United Kingdom of Great Britain and Northern Ireland*, October 2007, pp 7-8.

123 Amnesty International, *United Kingdom: Human Rights, a Broken Promise*, EUR 45/004/2006, 23 February 2006, p 20.

124 Human Rights Watch, *Re: Pre-Sessional Review of the United Kingdom*, October 24 2004, p 4.

57. We expressed similar concerns in our January 2007 Report on the Council of Europe Convention on the Prevention of Terrorism.¹²⁵

Counter-terrorism measures

58. The international human rights bodies, as well as human rights NGOs, raise particular concerns over the compatibility of certain counter-terrorism measures adopted by the UK with its human rights obligations. They focus on a number of provisions of the Terrorism Act 2000, the Anti-Terrorism, Crime and Security Act 2001 (Part 4 of which has now been repealed), the Prevention of Terrorism Act 2005 and the Terrorism Act 2006. Particular concerns are expressed over the increasing reliance by the UK authorities on diplomatic assurances and memoranda of understanding in deportation cases.¹²⁶ This practice raises certain questions in the context of Article 3 ECHR and Article 7 ICCPR which envisage an absolute prohibition of torture. Other problematic matters in this context relate to the refusal of the UK Government to investigate fully possible usage of the UK territory and airspace in the US “extraordinary renditions” programme¹²⁷ and the practice of imposing control orders that raises concerns in relation to the right to personal liberty and security provided for in Article 5 ECHR and Article 9 ICCPR.¹²⁸ As this Report has made clear, we have taken a keen interest in these questions in recent years.

125 First Report, Session 2006-07, *Council of Europe Convention on the Prevention of Terrorism*, HC 247, HL Paper 26, pp 6-7.

126 Committee against Torture, *Conclusions and Recommendations: United Kingdom of Great Britain and Northern Ireland*. CAT/C/CR/33/3, 10 December 2004, paras.4(d); Amnesty International, *Europe and Central Asia: Summary of Amnesty International's Concerns in the Region: January – June 2007*, AI Index: EUR 01/010/2007, p.4; Redress, *International Covenant on Civil and Political Rights: Response to Sixth Periodic Report of the United Kingdom, the British Overseas Territories and the Crown Dependencies (November 2006)*, October 2007, paras 17-23.

127 Amnesty International, *Europe and Central Asia: Summary of Amnesty International's Concerns in the Region: January – June 2007*. AI Index: EUR 01/010/2007, pp 6-8; Redress, *International Covenant on Civil and Political Rights: Response to Sixth Periodic Report of the United Kingdom, the British Overseas Territories and the Crown Dependencies (November 2006)*. October 2007, para 3-11.

128 European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, *Report to the United Kingdom Government on the Visit to the United Kingdom, from 20 – 25 November 2005*, CPT/Inf (2006) 28, para 41; Amnesty International, *Europe and Central Asia: Summary of Amnesty International's Concerns in the Region: January – June 2007*, AI Index: EUR 01/010/2007, pp 2-4.

Formal Minutes

Monday 21 January 2008

Members present:

Mr Andrew Dismore MP, in the Chair

Lord Dubs	Mr Douglas Carswell MP
Lord Morris of Handsworth	Dr Evan Harris MP
The Earl of Onslow	Virendra Sharma MP
Baroness Stern	

Draft Report [The Work of the Committee in 2007 and the State of Human Rights in the UK], proposed by the Chairman, brought up and read.

Ordered, That the draft Report be read a second time, paragraph by paragraph.

Paragraphs 1 to 107 read and agreed to.

Annex read and agreed to.

Summary read and agreed to.

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

Ordered, That the Chairman make the Report to the House of Commons and that Baroness Stern make the Report to the House of Lords.

[Adjourned till Tuesday 22 January 2008 at 1.30pm.]

Reports from the Joint Committee on Human Rights in this Parliament

The following reports have been produced

Session 2007-08

First Report	Government Response to the Committee's Eighteenth Report of Session 2006-07: The Human Rights of Older People in Healthcare	HL Paper 5/HC 72
Second Report	Counter-Terrorism Policy and Human Rights: 42 days	HL Paper 23/HC 156
Third Report	Legislative Scrutiny: 1) Child Maintenance and Other Payments Bill; 2) Other Bills	HL Paper 28/ HC 198
Fourth Report	Government Response to the Committee's Twenty-First Report of Session 2006-07: Human Trafficking: Update	HL Paper 31/ HC 220
Fifth Report	Legislative Scrutiny: Criminal Justice and Immigration Bill	HL Paper 37/HC 269
Sixth Report	The Work of the Committee in 2007 and the State of Human Rights in the UK	HL Paper 38/HC 270

Session 2006-07

First Report	The Council of Europe Convention on the Prevention of Terrorism	HL Paper 26/HC 247
Second Report	Legislative Scrutiny: First Progress Report	HL Paper 34/HC 263
Third Report	Legislative Scrutiny: Second Progress Report	HL Paper 39/HC 287
Fourth Report	Legislative Scrutiny: Mental Health Bill	HL Paper 40/HC 288
Fifth Report	Legislative Scrutiny: Third Progress Report	HL Paper 46/HC 303
Sixth Report	Legislative Scrutiny: Sexual Orientation Regulations	HL Paper 58/HC 350
Seventh Report	Deaths in Custody: Further Developments	HL Paper 59/HC 364
Eighth Report	Counter-terrorism Policy and Human Rights: Draft Prevention of Terrorism Act 2005	HL Paper 60/HC 365
Ninth Report	The Meaning of Public Authority Under the Human Rights Act	HL Paper 77/HC 410
Tenth Report	The Treatment of Asylum Seekers: Volume I Report and Formal Minutes	HL Paper 81-I/HC 60-I
Tenth Report	The Treatment of Asylum Seekers: Volume II Oral and Written Evidence	HL Paper 81-II/HC 60-II
Eleventh Report	Legislative Scrutiny: Fourth Progress Report	HL Paper 83/HC 424
Twelfth Report	Legislative Scrutiny: Fifth Progress Report	HL Paper 91/HC 490
Thirteenth Report	Legislative Scrutiny: Sixth Progress Report	HL Paper 105/HC 538
Fourteenth Report	Government Response to the Committee's Eighth Report of this Session: Counter-Terrorism Policy and Human Rights: Draft Prevention of Terrorism Act 2005 (Continuance in force of sections 1 to 9 order 2007)	HL Paper 106/HC 539
Fifteenth Report	Legislative Scrutiny: Seventh Progress Report	HL Paper 112/HC 555

Sixteenth Report	Monitoring the Government's Response to Court Judgments Finding Breaches of Human Rights	HL Paper 128/HC 728
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