

The Human Rights Act 1998 (HRA), which gives further effect to the European Convention on Human Rights (ECHR) in United Kingdom (UK) law, remained in force and formed the focus for much of the debate concerning human rights issues in government, parliament, media and the courts during 2006. However, public knowledge and awareness of human rights issues remained poor.

Throughout the year a number of acts of parliament came into force, which did much to improve the protection and promotion of human rights. Most importantly, the Equality Act 2006 extended anti-discrimination law and established the Commission for Equality and Human Rights (CEHR). Other legislative initiatives included: the Armed Forces Act 2006, which addressed many of the problems with independence and impartiality in service law by instituting a single harmonized system dealing with army, navy and air force; the Health Act 2006, which made provision for enclosed and substantially enclosed public places and workplaces to be smoke-free, thereby protecting the life and health of non-smokers; the Children and Adoption Act 2006, which added to the powers of the courts when dealing with cases involving contact with children; and the Education and Inspections Act 2006, which imposed a new duty on local education authorities to promote the fulfillment by children of their educational potential.

The Identity Cards Act 2006, which provided the legal framework required to establish a national identity register and to issue ID cards to those on the register, caused concern on human rights grounds. Aspects of this law are potentially incompatible with privacy and non-discrimination guarantees. Also potentially falling foul of human rights law is the Immigration, Asylum and Nationality Act 2006, which restricts full appeal rights to those seeking

entry clearance as a dependant or family visitor; and creates a new criminal offence of knowingly employing an adult who has not been given leave to remain.

Debate on the Human Rights Act

On a number of occasions in 2006, the HRA, and members of the judiciary adjudicating in human rights cases, came under harsh public criticism from senior government ministers. As the Parliamentary Joint Committee on Human Rights later observed, senior ministers were making unfounded accusations about the HRA and using it as scapegoat for their own administrative failings.¹ In June, the opposition Conservative Party called for the abolition of the HRA and its replacement with a British Bill of Rights. This further fuelled calls in parts of government and the media for the HRA's repeal or amendment.

In response, the Department for Constitutional Affairs conducted a review of the HRA, the results of which were published in July.² The report was generally positive, noting that the impact of the HRA on UK law had been beneficial and had led to a positive dialogue between UK judges and those at the European Court of Human Rights. The government's continuing commitment to the ECHR and HRA was confirmed, although it was noted that the government was conducting a review of how police, probation, parole and prison services balance public protection and individual rights and "if necessary, will legislate to ensure that public protection is given priority."

As noted by NGOs, it was not clear how this could be achieved compatibly with the UK's obligations under the ECHR. The report also contained a commitment to ensure that the public are better informed about the benefits which the HRA has given ordinary people, and to debunk many of the myths which have grown up around the convention rights. In October, the de-

partment released two guides to the HRA for the use of public authorities and reissued an updated version of its plain-English guide to the HRA. It was hoped that the CEHR (see below), when it comes into operation, will play a much needed role in human rights education and promotion.

Freedom of religion and religious tolerance

During 2006 the right of the UK's Muslim women to manifest their religious beliefs through their dress was a prominent issue in the media and the courts.

In March, the House of Lords, the UK's highest court, gave its judgment in a case concerning Begum, a 14-year-old Muslim girl who wished to attend her school wearing the *jilbab* (a long dress), which she believed better conformed to her religious beliefs than the *shalwar kameez* (tunic and loose pyjama-like trousers) approved for use by the school. She was refused attendance at the school unless she agreed

to wear the latter. The House of Lords concluded that there was no interference with her right to manifest her belief in practice or observance under article 9 of the ECHR (freedom of religion) as given further effect by the HRA. Her family had chosen for her a school outside their own area, while there were three schools closer to them at which the wearing of the *jilbab* was permitted. Even assuming there was an interference with her Art. 9 rights, the Lords concluded that this was justified and proportionate under article 9(2).³

In October, Jack Straw, a member of parliament and former government minister, sparked a national debate when he publicly encouraged Muslim women to stop wearing veils covering their faces (see photo). Muslim organizations, including the Muslim Council for Britain and the Islamic Human Rights Commission, criticized his remarks as distasteful. Later that month, Aishah Azmi, a British Muslim classroom assistant, lost her discrimination



Young Muslim women reading an article on the veil issue after Jack Straw, a member of parliament and former government minister, sparked a national debate when he publicly encouraged Muslim women to stop wearing veils covering their faces. ©AP/Thompson

case in an employment tribunal after refusing to remove her veil in a West Yorkshire primary school when male colleagues were present.

The Racial and Religious Hatred Act 2006 adopted by parliament created a new offence of stirring up hatred against persons on religious grounds. To fall within the scope of this offence, words, behavior, written material recordings or programs must be threatening and intended to stir up religious hatred. Religious hatred is defined as hatred against a group of persons defined by reference to religious belief or lack of religious belief. During the parliamentary debates on the bill, a number of concerns were raised in relation to its compatibility with the right to freedom of expression. The act contains no specific reference to advocacy of religious hatred that constitutes incitement to hostility, violence or discrimination.

Anti-terrorism measures⁴

The existing panoply of anti-terrorist laws was expanded with the coming into force of the Terrorism Act 2006. This law introduced a new definition of terrorism and established new offences relating to the encouragement of terrorism, the dissemination of terrorist publications and the preparation of terrorist acts, as well as further terrorist training offences. It also extended the powers available to the secretary of state to allow for the proscription of groups considered to glorify terrorism and extended police and investigatory powers. For example, the act permits the extension of detention of terrorist suspects, with judicial approval, for up to 28 days.

The act gave rise to a number of human rights concerns. In particular many of the sections are unclear and individuals will find it difficult to know whether they have committed an offence or not. It will also be difficult for those charged under the act to have any adequate defense as

these are not provided for by it. Concerns were also expressed that detention for 28 days without charge was disproportionate and incompatible with the right to liberty as protected in domestic law by article 5 of the ECHR.

With respect to the Prevention of Terrorism Act 2005, which gave the government the power to impose control orders in the case of terrorist suspects who cannot be deported because of a risk of torture, the Court of Appeal heard an important case.

◆ In the so-called JJ case, the court concluded that the physical constrictions imposed on JJ through the use of a control order amounted to a deprivation of liberty and were incompatible with article 5 of the ECHR.⁵ The secretary of state agreed to implement the ruling in this individual case, but publicly criticized the court by saying that he was concerned about the impact of the judgment on public safety. The secretary appealed the decision to the House of Lords.

The UK's relationship with the United States (US) in relation to terrorist suspects was also the subject of judicial scrutiny in the case of Al Rawi and others.

◆ The claimants in this case, who were previously resident in the UK and had been granted indefinite leave to remain, were held without charge by the US authorities at the detention facility at Guantánamo Bay. The secretary of state declined to make a formal request to the US authorities for their release. Dismissing the claim, the Court of Appeal held that a person who is not a British national is not entitled to the protection of a state to state claim made by the secretary of state. At the end of the year, the claimants remained in detention at Guantánamo Bay with little prospect for a prompt release.

The issue of extradition of terrorist suspects to the US was also dealt with in court.

◆ In the cases of Ahmad and Aswat, the Divisional Court concluded that two suspected terrorists could be extradited to the United States despite their contentions that they were at risk of being detained indefinitely or subjected to an unfair military commission trial in the US. The court noted that the US had provided diplomatic assurances that the two men would be prosecuted before a federal court in full accordance with human rights and stated that there was a fundamental assumption that the requesting state was acting in good faith when giving such assurances.

The judgments in the Al Rawi and others case and the Ahmad and Aswat cases were subject to much criticism by British human rights NGOs and it appeared likely that both would be heard on appeal in 2007.

Non-discrimination

The Equality Act 2006 established the CEHR and made unlawful discrimination on the ground of religion or belief in the provision of goods, facilities and services, education, the use and disposal of premises and the exercise of public functions. It also made it possible for discrimination on

the ground of sexual orientation in these areas to be prohibited and created a duty on public authorities to promote equality of opportunity between women and men and to prohibit sex discrimination and harassment in the exercise of public functions.

The new CEHR will take on the work of the existing equality commissions (race, sex and disability); assume responsibility for promoting equality and combating unlawful discrimination on the ground of sexual orientation, religion or belief, and age; and have responsibility for the promotion of human rights. While NGOs welcomed the establishment of the CEHR as providing much needed institutional protection for human rights, they expressed some concern that the commission's human rights portfolio was too focused on the ECHR as opposed to other human rights instruments. They also found it unfortunate that the legislation did not include a public sector duty to promote human rights. At the time of writing, the chair, deputy chair, commissioners and chief executive officer of the CEHR had been appointed and the commission was due to assume its full responsibilities on 1 October 2007.

SOURCES FOR FURTHER INFORMATION:

Organizations:

- ◆ Liberty, at www.liberty-human-rights.org.uk
- ◆ Refugee Council, at www.refugeecouncil.org.uk
- ◆ Amnesty International UK, at www.amnesty.org.uk
- ◆ Islamic Human Rights Commission, at www.ihr.org/
- ◆ Muslim Council of Britain, at www.mcb.org.uk/

Publications and documents:

From NGOs:

- ◆ British Institute of Human Rights, at *Defending Human Rights* (London: BIHR, 2006), at www.bihr.org/pdfs/media_brief.pdf
- ◆ S. R. Ameli and A. Merali *Hijab, Meaning, Identity, Otherization and Politics: British Muslim Women*, 2006 (not available online).

- ◆ Liberty *Identity Cards Bill Briefing*, 2006, at www.liberty-human-rights.org.uk/pdfs/policy06/id-cards-bill-2nd-reading-commons-0605.pdf
- ◆ Liberty *Equality Bill Briefing*, 2006, at www.liberty-human-rights.org.uk/pdfs/policy06/equality-bill-2nd-reading-commons.PDF
- ◆ Liberty *Racial and Religious Hatred Bill Briefing*, 2006, at www.liberty-human-rights.org.uk/pdfs/policy06/religious-hatred-2nd-reading-commons.PDF
- ◆ Amnesty International on the UK, at <http://web.amnesty.org/library/eng-gbr/index>

Legislation:

- ◆ Equality Act 2006, at www.opsi.gov.uk/acts/acts2006/ukpga_20060003_en.pdf
- ◆ Identity Cards Act 2006, at www.opsi.gov.uk/acts/acts2006/ukpga_20060015_en.pdf
- ◆ Immigration, Asylum and Nationality Act 2006, at www.opsi.gov.uk/ACTS/acts2006/ukpga_20060013_en.pdf
- ◆ Racial and Religious Hatred Act 2006, at www.opsi.gov.uk/acts/acts2006/ukpga_20060001_en.pdf
- ◆ Terrorism Act 2006, at www.opsi.gov.uk/acts/acts2006/ukpga_20060011_en.pdf

Court decisions:

- ◆ *R. (Begum) v Headteacher and Governors of Denbigh High School* [2006] UKHL 15, at www.bailii.org/uk/cases/UKHL/2006/15.html
- ◆ *Ahmad and Aswat v The Government of the United States of America* [2006] EWHC 2927 (Admin), at www.bailii.org/ew/cases/EWHC/Admin/2006/2927.html
- ◆ *R. (Al Rawi) v Secretary of State for the Foreign and Commonwealth Office* [2006] EWCA Civ 1279, at www.bailii.org/ew/cases/EWCA/Civ/2006/1279.html
- ◆ *Secretary of State for the Home Department v JJ* [2006] EWCA Civ 1141, www.bailii.org/ew/cases/EWCA/Civ/2006/1141.html

Government reports:

- ◆ Department for Constitutional Affairs, *Review of the Implementation of the Human Rights Act* (London: TSO, 2006), at www.dca.gov.uk/peoples-rights/human-rights/pdf/full_review.pdf
- ◆ Department for Constitutional Affairs, *A Guide to the Human Rights Act 1998* (London: TSO, 2006), at www.dca.gov.uk/peoples-rights/human-rights/pdf/act-studyguide.pdf
- ◆ Department for Constitutional Affairs, *Making Sense of People's Rights – A Short Introduction* (London: TSO, 2006), at www.dca.gov.uk/peoples-rights/human-rights/pdf/hr-handbook-introduction.pdf
- ◆ Department for Constitutional Affairs, *Human Rights: Human Lives - A Handbook for Public Authorities* (London: TSO, 2006), at www.dca.gov.uk/peoples-rights/human-rights/pdf/hr-handbook-introduction.pdf
- ◆ See also Commission for Equality and Human Rights, at www.cehr.org.uk

Parliament reports:

- ◆ Joint Committee on Human Rights, *The Human Rights Act: The DCA and Home Office Reviews* HL 278 HC 1716 (London: TSO, 2006), at www.publications.parliament.uk/pa/jt200506/jtselect/jtrights/278/278.pdf
- ◆ Joint Committee on Human Rights, *Legislative Scrutiny: First Progress Report* HL 48 HC

560 (London: TSO, 2006), at www.publications.parliament.uk/pa/jt200506/jtselect/jtrights/48/48.pdf

- ◆ Joint Committee on Human Rights, *Legislative Scrutiny: Fifth Progress Report* HL 115 HC 899 (London: TSO, 2006), at www.publications.parliament.uk/pa/jt200506/jtselect/jtrights/115/115.pdf
 - ◆ Joint Committee on Human Rights, *Legislative Scrutiny: Equality Bill* HL 89 HC 766 (London: TSO, 2006), at www.publications.parliament.uk/pa/jt200506/jtselect/jtrights/89/89.pdf
 - ◆ Joint Committee on Human Rights, *Counter Terrorism and Human Rights: Terrorism Bill and Related Matters* HL 75-1 HC 561- (London: TSO, 2006), at www.publications.parliament.uk/pa/jt200506/jtselect/jtrights/75/75i.pdf
 - ◆ Joint Committee on Human Rights, *Equality Bill* HL 98 HC 497 (London: TSO, 2006), at www.publications.parliament.uk/pa/jt200405/jtselect/jtrights/98/98.pdf
 - ◆ Joint Committee on Human Rights, *Identity Cards Bill* HL 35 HC 283 (London: TSO, 2006), at www.publications.parliament.uk/pa/jt200405/jtselect/jtrights/35/35.pdf
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Endnotes

- ¹ Joint Committee on Human Rights, *The Human Rights Act: The DCA and Home Office Reviews*.
- ² Department for Constitutional Affairs, *Review of the Implementation of the Human Rights Act*.
- ³ *R. (Begum) v. Headteacher and Governors of Denbigh High School* [2006] UKHL 15.
- ⁴ See also the chapter on counter-terrorism in part two of this report.
- ⁵ *Secretary of State for the Home Department v JJ* [2006] EWCA Civ 1141.