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PROTECTING CIVIL LIBERTIES
PROMOTING HUMAN RIGHTS

**Liberty's submission to the Prime
Minister's Holocaust Commission**

May 2014

About Liberty

Liberty (The National Council for Civil Liberties) is one of the UK's leading civil liberties and human rights organisations. Liberty works to promote human rights and protect civil liberties through a combination of test case litigation, lobbying, campaigning and research.

Liberty Policy

Liberty provides policy responses to Government consultations on all issues which have implications for human rights and civil liberties. We also submit evidence to Select Committees, Inquiries and other policy fora, and undertake independent, funded research.

Liberty's policy papers are available at
<http://www.liberty-human-rights.org.uk/policy/>

Contact

Isabella Sankey
Director of Policy
Direct Line 020 7378 5254
Email: bellas@liberty-human-rights.org.uk

Rachel Robinson
Policy Officer
Direct Line: 020 7378 3659
Email: rachelr@liberty-human-rights.org.uk

Sara Ogilvie
Policy Officer
Direct Line 020 7378 3654
Email: sarao@liberty-human-rights.org.uk

“Free men and women denounce these vile crimes and when this world struggle ends with the enthronement of human rights, racial persecution will be ended”

Winston Churchill

Introduction

1. Liberty is very pleased to submit invited evidence to the Prime Minister’s Holocaust Commission. As the terms of reference recognise, the unique and powerful living testimony of Holocaust survivors will not be available to future generations and their lived experience of the terrors of Nazi Germany may therefore feel increasingly remote. We commend the Prime Minister both for his foresight in recognising this challenge and his decision to address it in a considered and politically neutral manner by establishing the Holocaust Commission.

2. The Commission asks *“what further measures should be taken to ensure Britain has a permanent and fitting memorial to the Holocaust, along with sufficient educational and research resources for future generations.”* In this short response Liberty submits that the enduring legacy of the Holocaust – to fight against tyranny and oppression and protect the vulnerable – inspired the European Convention on Human Rights (ECHR) and is enshrined in British law by the *Human Rights Act 1998* (HRA). In recognition of the heavy sacrifices of our forebears and to protect future generations from similar inhumanities, we believe it is essential that Britain remains a party to the Convention and retains the constitutional, legal guarantees contained in the HRA. We also recommend that teaching about the Convention should be formally included in the national curriculum and that the Department for Education should provide support to teachers and resources to schools to help educate younger and future generations about the history and operation of the Convention. We further recommend that more should be done to celebrate and recognise Britain’s leading role in the drafting the Convention.

ECHR as a permanent and fitting memorial to the holocaust

3. In the effort to recover from the devastation wreaked by the Second World War, nations across the world agreed on the importance of articulating a shared understanding of human rights. European nations, fresh from witnessing the dark consequences of fascistic ideology, set about drafting the ECHR building on the work

of the Universal Declaration of Human Rights by creating a system to offer practical and enforceable protection against rights violations to those living in member states. Over sixty years later, the Convention still acts as a permanent testimony to the horrors of the Holocaust. Each specific right protected in the Convention clearly responds to an injustice committed in pre-war Germany or during the Second World War, acting as an essential reminder of both that period in history and the consequences of incremental, and later widespread, rights violations.

4. Discrimination against minority groups typified the Nazi regime in Germany. Discrimination began with propaganda and unlawful tactics, but ultimately legislation was also used as a tool of persecution. The Nuremberg Laws of 1935 and subsequent legislation openly discriminated against Jewish people, causing great anguish for Jews living in Germany. The laws prohibited those classed as Jews from marrying or having relationships with those classed as Germans, limited the circumstances in which Jews could employ non-Jews, and declared Jewish people stateless - denying them citizenship rights such as the right to vote and to hold public office. Jewish people were also banned from gathering together in public places such as parks. When Nazi Germany began to occupy other European countries, persecution of Jewish people living there followed. Other groups or classes of people were subject to discrimination and persecution in Nazi Germany. Organisations linked to or representing homosexuality were banned, with gay bars, cafes and other meeting places raided. People suffering from physical or mental disabilities were also considered as 'unfit' to be part of the German community and were required to undergo sterilisation.

5. The Nazis discriminated against these groups not only by banning their religion or condemning their sexual orientation, but by rendering life unbearable and dignity impossible. They denied individuals control over their physical autonomy, prevented them from forming families, invaded the boundaries of personal lives, and blocked groups, organisations and communities from meeting together. The Convention reminds us of these invidious and damaging attacks with its protection for the right to marry (article 12), the right to private and family life (article 8), and the right to freedom of assembly (article 11) as well as offering protection for freedom of religion (article 9). But the pain and injustice caused by discrimination is also explicitly confronted in article 14 of the Convention. The article sets out that the rights in the Convention must be protected without regard to the individual's sex, race,

colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

6. Those who objected to the Nazi regime were brutally silenced. The response of the Nazi Government in 1933 to the burning of the Reichstag showed the numerous ways in which human rights can be abused in order to crush political opposition. In the immediate aftermath of the fire, the President issued a Decree to suspend the constitutional protection of important rights and civil liberties. With habeas corpus and other basic safeguards denied, the Nazi government was lawfully able to arrest and imprison political opponents. It is estimated that in the days after the Decree was issued, 10,000 opponents were detained. The state intercepted and read mail and listened to telephone conversations without a warrant, helping it to gather information about political opponents who wanted to challenge the new order. Newspapers and political publications were also banned. The protection in the Convention for the right to liberty (article 5), freedom of expression (article 10), freedom of association (article 11) and privacy (article 8) remind us that the Nazi Government was able to discriminate against and ultimately murder millions of innocent individuals first by silencing dissent, underlining the importance of protecting these rights in any democracy.

7. The violence and discrimination that characterised life in Nazi Germany culminated in the exploitation, torture and murder of millions of innocent individuals in concentration or extermination camps. Over six million Jews were killed by the Nazis during the Second World War, including 1.5 million children. Over 200,000 disabled people were murdered as part of a systemic killing programme which took place in German institutions. A further 200,000 Roma and countless homosexuals, political opponents and other vulnerable groups were killed, often following torture or slave labour in a concentration camp.

8. The necessity of articulating the right to life was summarised by René Cassin, drafter of the Universal Declaration of Human Rights, who stated:

“...we are thinking of the right to live and protection of human life. That is not quite as elementary as we see it. In 1933, when Germany began to violate these very principles, all the countries of the world wondered as to whether they had the right of intervention in order to save humanity and to maintain those principles, and they did not intervene. Later we suffered the loss of millions of

human beings. Therefore, I think it is fundamental that we state that human beings have the right of existence.”¹

9. The right to life is now enshrined in article 2 of the ECHR, acting as a constant warning to modern Europe of the need to be vigilant against tyranny. The protections in the Convention against torture, inhuman or degrading treatment (article 3) and against slave labour (article 4) also reflect the horrific conditions and punishment meted out by the Nazis in concentration camps across Europe.

10. The Convention is an articulation of the lessons learned by the governments, parliaments and the people of Europe from the horrors of the 1930s and 1940s. It protects and upholds the rights that must be protected in order for democracy to flourish. The shared understanding between European nations that the Convention represents is also an important tool in ensuring that the Holocaust is not forgotten or denied, especially in an ever turbulent world. As such, the Convention is already an important memorial to the Holocaust and should form a central plank of plans for future commemoration.

Permanent, constitutional rights as a bulwark to minority persecution

***“It may be true that the law cannot make a man love me; religion and education will have to do that. But if it keeps him from lynching me, and I think that's pretty important also. It may be true that legislation cannot change the heart, but it can restrain the heartless”.*²**

Martin Luther King

11. One of the greatest lessons of the Holocaust is the critical importance of fixed and permanent constitutional guarantees of fundamental human rights to safeguard minority interests. As intended by its drafters, in the years since the Convention was drafted it has been a bulwark against discrimination and religious intolerance across the Council of Europe. Perhaps most famously in the UK, in the wake of the 9/11 terror atrocity the House of Lords construed the Convention to declare legislation allowing the indefinite internment of foreign nationals without charge or trial to be

¹ Preparatory work to the drafting of the Universal Declaration of Human Rights, <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/NG9/000/26/PDF/NG900026.pdf?OpenElement> .

² Transcript of speech by Reverend Dr. Martin Luther King, Jr. Dartmouth College, May 23, 1962. Full transcript available at: <http://www.dartmouth.edu/~towardsfreedom/transcript.html>.

discriminatory and incompatible with human rights.³ The Convention has also been successfully invoked in the UK to require a public inquiry following the murder of a minority ethnic prisoner by a racist cellmate which directly led to changes in Prison service policy and procedures.⁴ Similarly, the Court of Human Rights has interpreted the Convention to find incompatible UK legislation allowing discriminatory police stop and search⁵ and racially disproportionate DNA retention of innocent people.⁶ Elsewhere in Europe, the Court of Human Rights has held that laws prohibiting both Jewish and Roma citizens from standing for election were discriminatory⁷ and has extended protection from discrimination to those dismissed from work on account of being HIV positive.⁸ Perhaps most notably the Convention has been at the forefront of the progressive realisation of equal treatment under the law for homosexuals over the past five decades. The Convention directly led to the decriminalisation of consenting homosexual acts between adults in Northern Ireland⁹, was used to uphold the right of gay people not to be dismissed from the armed forces on account of their sexuality¹⁰ and allowed the extension survivor benefits to same-sex partners.¹¹

12. The Convention has also been invoked to safeguard religious freedom. The High Court has relied on article 9 of the Convention to uphold the right of a Sikh schoolgirl to wear her kara in school¹² and recently the Court of Human Rights also relying on article 9 upheld the right of a Christian British Airways worker who sought to wear a cross around her neck at work¹³. In a case currently pending before the Court of Human Rights, article 9 is being used to challenge France's recent ban on wearing the niqab in public.

13. The vital role of law in protecting minority interests has been the lesson of persecuted minorities across the globe: from the struggle against segregation in 1960s America to the overthrow of apartheid at South Africa at the close of the last century. As President Obama explained in his eulogy to Nelson Mandela: "*action*

³ A and others v Secretary of State for the Home Department [2004] UKHL 56.

⁴ R (Amin) v Secretary of State for the Home Department [2003] UKHL 51.

⁵ Gillan & Quinton v UK (2010) (Application no. 4158/05).

⁶ S and Marper v UK (2008) (Applications nos. 30562/04 and 30566/04).

⁷ Sejdic and Finci v Bosnia and Herzegovina (2009) (Application nos 27996/06 and 34836/06)

⁸ I.B. v Greece (2013) (Application no 552/10).

⁹ Dudgeon v UK (1981) (Application no 7525/76) .

¹⁰ Lustig-Prean and Beckett v UK (2000) (Application nos 31417/96 and 32377/96).

¹¹ Ahmad Raja Ghaidan v Antonio Mendoza [2004] UKHL 30.

¹² R (on the application of Sarika Angel Watkins-Singh) v Aberdare Girls' High School [2008] EWHC 1865 (Admin)

¹³ Eweida and others v UK (2013) (Applications nos. 48420/10, 59842/10, 51671/10 and 36516/10)

and ideas are not enough; no matter how right, they must be chiselled into laws and institutions. [Mandela] was practical, testing his beliefs against the hard surface of circumstance and history...the Constitution that emerged was worthy of this multiracial democracy; true to his vision of laws that protect minority as well as majority rights, and the precious freedoms of every South African.”¹⁴

14. Against these words, we urge the Commission to recommend that the Conservative party reflect on its pledge to repeal the HRA and consider withdrawal from the Convention system. To be truly effective, Bills of Rights must be seen as a statement of basic law and values for all democrats and generations to unite around, not a political punch bag, intended to be modified with each passing government. As Professor Francesca Klug has identified, barring the UK, *“no country anywhere has proposed de-incorporating a human rights treaty from its law so that it can introduce a Bill of Rights. The truly original, and most disturbing, aspect of Cameron’s Bill of Rights pledge is that rather than manifestly building on the HRA, it is predicated on its repeal.”*¹⁵ Repealing or re-drafting the texts would erode one of the most important legacies of the Holocaust, undermining the constitutional status of human rights law and risking precious protections for minority interests.

Education and cultural acceptance of human rights values

“Where, after all, do universal human rights begin? In small places, close to home - so close and so small that they cannot be seen on any maps of the world. Yet they are the world of the individual person; the neighborhood he lives in; the school or college he attends...unless these rights have meaning there, they have little meaning anywhere. Without concerted citizen action to uphold them close to home, we shall look in vain for progress in the larger world.”

Eleanor Roosevelt

15. While essential, the law alone is insufficient to ensure the freedom and equal treatment of future generations. Not only must immutable laws provide steadfast protection, but these norms must become part of the conscience of the community.

¹⁴ Remembering Nelson Mandela, President Barack Obama, Johannesburg, South Africa, 10 December 2013, as prepared for delivery at: <http://www.whitehouse.gov/the-press-office/2013/12/10/remarks-president-obama-memorial-service-former-south-african-president>

¹⁵ *Common Sense: Reflections on the Human Rights Act*, Professor Francesca Klug, 2010, page 13.

16. Unfortunately it is not possible to be complacent about society's acceptance of universal human rights. In the European Parliament elections earlier this month, France's fascist National Front party won the popular vote taking almost a quarter of all votes cast. Far-right parties also did very well in Austria, Denmark, Sweden and Hungary, where the anti-Semitic Jobbik party finished second. In another stark warning, Amnesty International released an international poll earlier this month which suggested that 29% of people in the UK believe that torture is sometimes necessary to protect the public and 44% didn't want to rule out its necessity altogether.¹⁶ The poll revealed that the belief that torture can sometimes be justified is more prevalent in the UK than in Argentina, Russia or Brazil. Tellingly the UK population was also the most confident of all nationalities that they did not face a risk of torture by the authorities; 83% feeling they were not at risk. A new rise in fascism and a growing acceptance of torture show that as the passage of time makes the Holocaust seem more distant, the risk is its lessons are forgotten. In order to prevent this, Liberty believes the lessons of the Holocaust must be retold and re-accepted by each new generation.

17. For some time Liberty has been concerned that there has been a gap in students' human rights learning in the UK, meaning children leave school with no understanding of these concepts, or a misunderstanding gleaned from a hostile media that has a self-acknowledged interest in seeking the repeal of human rights protections.¹⁷ The 2007 English national curriculum on "Citizenship" expressly provided that teaching must address "*issues relating to social justice, human rights, community cohesion and global interdependence*" and encourage "*students to challenge injustice, inequalities and discrimination*". However, in 2013 the Department for Education consulted on a revised national curriculum for England which would have removed reference to human rights altogether.¹⁸ Liberty responded to the consultation urging the Department to re-draft the guidance and we are relieved that it saw fit to do so. Key Stage 3 of the Citizenship curriculum now contains reference to "*the precious liberties enjoyed by the citizens of the United Kingdom*" and Key Stage 4 refers to "*human rights and international law*". However

¹⁶ *Amnesty poll finds 29% say torture can be justified*, BBC News, 13 May 2014 available at: <http://www.bbc.co.uk/news/uk-27387040>.

¹⁷ See for example, a speech made in 2008 to the Society of Editors by Daily Mail Editor, Paul Dacre, available at <http://www.pressgazette.co.uk/node/42394>.

¹⁸ See Reform of the National Curriculum in England, Department for Education, 2013 available at: <https://www.education.gov.uk/consultations/index.cfm?action=conResults&consultationId=1881&external=no&menu=3>.

we remain concerned that while reference to “*human rights*” is still included as part of the curriculum, there is no specific mention of the post WW2 human rights framework which plays such a significant role in protecting individuals in the UK every day. We also believe that the particular reference to “*liberties enjoyed by the citizens*” is confusing and potentially misleading given that individual liberties are now given concrete protection in law and apply to everyone in our jurisdiction regardless of citizenship. Similarly, while the History subject area of the English national curriculum includes reference to the Holocaust, it precludes specific mention of the ECHR. It includes as teaching examples other historical human rights milestones such as the Magna Carta, the French revolutionary wars, and women’s suffrage yet oddly fails to mention the ECHR and its domestic embodiment. It also sidesteps an historical legacy which the curriculum requires to be taught - “*how the British people shaped this nation and how Britain influenced the world*” and Britain’s relations with Europe, the Commonwealth and other countries.

18. The Scottish and Welsh national curriculums similarly make no mention of the ECHR. The Personal and Social Education Framework in Wales references the UN Convention on the Rights of the Child and Scotland’s ‘Curriculum for Excellence’ mentions “*human rights*” only in passing.

19. While Citizenship teaching has been a compulsory part of the national curriculum in England since 2002, the way it is taught and the content of the classes reportedly vary considerably. Further there is concern that human rights is a neglected part of Citizenship teaching, as it falls outside many teacher’s expertise and teachers feel unsupported in tackling the issues it raises. As Higher Education teacher Paul Davies has written “*teaching human rights education can make you feel professionally very lonely.*”¹⁹ Negative media portrayals and lack of teacher training are likely to make the subject seem daunting.

20. Liberty has significant experience in speaking and engaging with young people about democracy and the values that underpin it. We regularly speak to classes and schools about the post-war human rights framework, explaining the history of the Convention and encouraging children to understand and debate human rights issues and values. In an effort to plug the present gap in human rights educational resources, Liberty has produced a school education pack on human

¹⁹ “Teaching human rights can be lonely with little student and staff support” Paul Davies, *The Guardian*, available at: <http://www.theguardian.com/teacher-network/teacher-blog/2013/oct/14/teaching-human-rights-equality-citizenship>.

rights (which includes a historical timeline of human rights in Britain, an explanation of what human rights are and information on the articulated Convention rights) that may be of interest to the Commission. So far the education pack has been very well received and has to date been downloaded 1,439 times.²⁰ Our related school children's writing competition in 2011, *Write Human Rights*,²¹ was similarly received with enthusiasm by pupils, schools and teachers.²² As one teacher stated, "*the children I worked with really enjoyed the opportunity and wrote some pretty powerful stuff. Children always get it right don't they!*". Another stated, "*Thank you very much for providing young people with this opportunity to think about their human rights. I am a creative writing teacher... It is humbling to listen to what our children have to say about the way they experience the world.*"

21. While this response from schools is encouraging, the current reliance on civil society to fill a gap in our education system is unsatisfactory. Liberty therefore suggests that the Commission recommend the formal inclusion of the Convention in the national curriculums. A narrow and purely historical teaching of the Holocaust that abruptly ends with Hitler's overthrow is more likely to render the Holocaust remote to present and future generations. By contrast, extending teaching to cover the positive lessons of the Holocaust and the living legacy of the Convention will help children to see the relevance of the Holocaust to modern life. National Governments should also commit to incorporating human rights education into teacher training programmes and providing resources to give teachers confidence in presenting human rights issues and leading discussion. Otherwise school education on the ECHR will continue to be dependent on the limited resources of not-for-profit organisations and only teachers with a personal interest are likely to pursue it.

Role that Britain played

22. One of the listed objectives of the Commission is to '*include a clear focus on the role that Britain played though, for example, the Kindertransport, the liberation of Bergen-Belsen and the experiences of survivors now in Britain*'. The Commission's

²⁰ See Liberty's Human Rights Resource Pack, available at <http://www.liberty-human-rights.org.uk/materials/schools-resource-pack.pdf>.

²¹ For further information see <http://www.liberty-human-rights.org.uk/campaigns/common-values/common-values-in-our-classrooms/write-human-rights/index.php>.

²² Nearly 130 primary and secondary schools from across the country registered to participate and finalists were selected by our judging panel consisting of authors Ali Smith, Georgia Byng and Antony Horowitz, Liberty's Director and, chairing the panel, Penguin publisher Simon Prosser.

focus on Britain's role is of course incredibly important. But while our part in the struggle against Nazi tyranny is already well documented, a historical fact little known and much less discussed is Britain's leadership in the creation of the Council of Europe and the drafting of the ECHR. In *Churchill's Legacy: The Conservative Case for the Human Rights Act*, Jesse Norman MP and Peter Osborne remember how Winston Churchill convened "a major international congress in May 1948 in The Hague...and in a rousing opening speech at the Hague conference he specifically advocated a Charter of Human Rights, 'guarded by freedom and sustained by law'. Churchill believed that British victory in the recent war was above all the victory of certain basic values – values that were the cornerstone not merely of Western civilisation, but of civilisation as such." British politicians and lawyers went on to spearhead the Convention's drafting, codifying rights and freedoms developed in English common law and adding new protections made necessary by the Holocaust's fresh scars.

23. Yet, whereas successive Foreign Secretaries are quick to brief the press that they have raised human rights with foreign counterparts at international meetings, it is much harder to find elected representatives responsible for domestic affairs speaking positively about the ECHR and Britain's leading role in drafting it. On the contrary, the Justice Secretary and Home Secretary regularly depict the Convention as a foreign import and have made clear that they may yet seek UK withdrawal from the Convention system. While it is only natural that laws designed to protect citizens from Government abuses will irritate politicians from time to time, instead of accepting this situation as a consequence of a liberal democratic system premised on the Rule of Law, modern politicians have all but abandoned the constitutional convention of executive restraint, instead making political play of their anger and frustration with human rights.

24. We therefore urge the Commission to highlight Britain's role in drafting and securing an enduring and powerful memorial to the Holocaust through the Convention. We further urge the Commission to suggest ways in which Britain's role in the creation of this foundational instrument could be better celebrated and emphasised by political and cultural leaders and by teachers and educators.

Conclusion

25. As the Commission considers what further measures are necessary to ensure a permanent and fitting memorial to the Holocaust we urge members to recommend

that the lessons of the Holocaust remain firmly entrenched in British law through adherence to the Convention and retention of the HRA.

26. We further ask that the Commission ensures that the Holocaust's legacy is included formally in British education through reference to the ECHR and HRA in the national curriculum. Different views about the content and impact of the ECHR and HRA should certainly be incorporated into students' learning but a pre-requisite must be factual teaching about how the Holocaust led directly to the ECHR and the evolution of hard-edged human rights protections now applied in the UK. It will only be by including the ECHR expressly in the curriculum that the Department for Education will be able to ensure this is done.

27. Lastly we urge the Commission to recommend ways in which Britain's leadership in framing, signing, ratifying and enforcing the Convention can be better recognised in public discourse and national consciousness.

Isabella Sankey
Sara Ogilvie