



The British Institute of Human Rights (BIHR) is an independent charity that raises awareness and understanding about the importance of human rights.

BIHR Brief is produced four times a year, as part of our public education programme. To receive the newsletter regularly join us as a Friend of BIHR. Details of how to join are at the end of this newsletter. Alternatively, visit our website, www.bihhr.org

Contents

- 2 BIHR news
- 3 Using human rights to deliver better services
- 4 Human rights news
- 6 Human rights comes down under
- 8 Is it really one law for all?
- 11 Giving meaning to rights
- 14 Events calendar
- 16 In the spotlight

The British Institute of Human Rights

School of Law,
King's College London,
26–29 Drury Lane,
London WC2B 5RL

Tel: 020 7848 1818
Fax: 020 7848 1814
Email: admin@bihr.org
Web www.bihr.org

Registered charity number 1101575.
Registered company number 4978121.
Registered office as above.

Editorial

On 10 December we celebrated Human Rights Day – the anniversary of the adoption of the 1948 UN Universal Declaration of Human Rights. Almost sixty years later, the current political climate in the UK risks undermining the principles in this groundbreaking charter by conflating human rights only with issues of national security or terrorism. Now more than ever it is important to explain the relevance of human rights in everyday life and especially for those who receive or deliver public services. As Eleanor Roosevelt, a founding visionary behind the UDHR, recognised, human rights begin in 'small places close to home' and 'unless these rights have meaning there, they have little meaning anywhere'.

The contributions in this newsletter make this case loud and clear. Each and every individual or institution writing in *BIHR Brief* points to the practical benefit of using a human rights framework and the principles underlying the law. As the Welsh Local Government Association writes, 'it is difficult to think of any Convention rights that don't impact on local government or that local government doesn't have a role in'. Beyond this, the articles in this edition show how human rights can inject a fresh way of thinking or looking at everyday problems faced by individuals and organisations in the UK.

In partnership with BIHR, Southwark Council are putting a human rights approach wholeheartedly into practice, with a comprehensive programme of training and awareness-raising activities. Education staff are using human rights to address issues such as bullying whilst housing officers use their new knowledge to resolve dilemmas around anti-social behaviour. It does not stop there, with the council aiming to embed the human rights ethos developed during training through a champions scheme and new desktop resources to help front line workers deliver better public services to vulnerable individuals.

BIHR's experience demonstrates that the voluntary and community sector also have a crucial role to play in making human rights relevant to ordinary people. Values into Action, the UK-wide campaign working with people who have learning difficulties, share their experiences as their three-year human rights project draws to a close. Articles in this *BIHR Brief* give more details of their research and highlight the routine denial of human rights to people with learning difficulties, most devastatingly in relation to parents' right to respect for privacy and family life when children are routinely removed from them and placed in care.

Human rights standards are rightly used to challenge poor treatment of individuals whose human rights are at particular risk, perhaps because of their mental health, a particular disability or their age. But Professor Anthony Grayling, in the first Lunchtime Lecture of the 2005-06 series, encouraged us to go further than the engagement of specific rights in individual cases. He called for a 'larger debate' about the minimum requirements for humans 'to have the opportunity to grow and to become something flourishing, with achievement and enjoyment as central aspects of their lives'.

To realise Eleanor Roosevelt's vision behind the UDHR, BIHR will continue to advocate and defend the use of human rights standards as practical tools which make a tangible difference to people's everyday lives in the 'small places close to home'.

Katie Ghose
Director

BIHR news

Geoffrey Bindman appointed Chair of BIHR

One of the most prominent human rights lawyers in the country, Geoffrey Bindman, has been elected as the Chair of BIHR. Speaking of his election Geoffrey said:

'BIHR has a crucial role in promoting the human rights culture that is such a key accompaniment to the Human Rights Act. I am looking forward to sharing in the efforts of BIHR to influence human rights policy and practice.'

We are thrilled to welcome our new Chair, and grateful for the expertise and enthusiasm Geoffrey will bring to the role.

Friends' Reception 2005

BIHR's Friends' Reception took place on 3 November, in the stunning River Room of the Lord Chancellor's Residence at the House of Lords.

It was the first official engagement of both BIHR's new Director, Katie Ghose, and our new Chair, Geoffrey Bindman. They were introduced by our President, Lord Justice Stephen Sedley, and gave brief addresses highlighting the importance of support for human rights in the current sensitive climate.

We are very grateful to the Lord Chancellor for once again donating his residence as the venue for the reception, which was an opportunity for Friends and colleagues of BIHR to meet and socialise with other supporters and advocates of human rights. Thank you to everyone who attended.

All Friends of BIHR are invited to the event – for details of how to become a Friend, please see the back page of this newsletter.

Jon Snow criticises media's approach to human rights

'Can the media ever learn to love human rights?' was asked by Jon Snow at his BIHR Lunchtime Lecture on 10 November.

The picture painted by Jon was a bleak one, as he argued that a lack of understanding and

interest in human rights from the media has resulted in a misinformed public. He also criticised their disregard for human rights, particularly the right to privacy of those in the public eye.

His frank and highly entertaining lecture was also the most popular in our twenty-year history, with over 200 people squeezing into the lecture hall. We were sorry to have to turn away many others, and would like to apologise to those who were disappointed. We recommend arriving at least fifteen minutes before a lecture starts to reduce the risk of being turned away due to overcrowding.

Asylum and ASBOs – two more key Lunchtime Lecture topics for BIHR

The third lecture in the 2005–2006 BIHR Lunchtime Lecture series will be delivered on 8 December by Maeve Sherlock, Chief Executive of the Refugee Council. Her lecture, 'Closing the door: the UK's erosion of the right to asylum', will be a timely contribution to the current debate surrounding UK asylum policy.

BIHR Advisory Board member and Director of Liberty Shami Chakrabarti will give the first lecture in 2006 on 10 January, discussing 'Asbomania – the descent from natural and social justice into mob rule'. We are looking forward to having such a high-profile speaker address the serious human rights implications that anti-social behaviour orders can have if not handled carefully.

We are very grateful to Irwin Mitchell solicitors, 1 Crown Office Row barristers' chambers and *The Independent* for generously sponsoring the Lunchtime Lectures.

For more information, please see www.bihhr.org.

BIHR encourages parliamentarians to support Equality Bill

BIHR distributed a parliamentary briefing for the Second Reading of the Equality Bill in the House of Commons, which welcomed the Government's plans to establish the new Commission for Equality and Human Rights (CEHR). BIHR believes that if the CEHR uses its powers and duties to the full, this independent new body will do much to protect and promote vulnerable people's human rights in the UK.

Our briefing urged the Government to take action to address the human rights 'protection gap' created by the narrow definition of 'public authority' in the Human Rights Act 1998, which leaves many bodies providing services to vulnerable individuals outside the scope of the legislation. We were pleased to see many MPs pick up on this issue in the debates and await the Government's response. Copies of the briefing can be found on www.bihhr.org.

Human rights and disability conference

We are delighted to announce a line-up of excellent speakers for a human rights and disability conference to be held on 27 March 2006, jointly organised by BIHR, the Social Care Institute for Excellence (SCIE), the Disability Rights Commission (DRC), Doughty Street Chambers and Leigh Day & Co. Confirmed speakers so far include Mr Justice Munby, Professor Gerard Quinn, Professor Francesca Klug and Murray Hunt (Legal Adviser to the parliamentary Joint Committee on Human Rights).

The conference will examine how best to implement and enforce human rights principles in health and social welfare services for disabled, older and vulnerable people. Further information will be added to BIHR's website when it becomes available in late December.

Using human rights to deliver better services

The Human Rights Act celebrated its fifth birthday on 2 October of this year. However, as the media coverage demonstrates, the event met with a mixed response. While many acknowledged the symbolic importance of the Act as the herald of a new human rights culture in the UK, others criticised its limited impact to date on public services. Does this mean that public authorities are failing to implement their obligations under the Act or that they do not understand its crucial role in improving public services?

Flying under the radar, a number of authorities are taking proactive steps towards building a culture of respect for human rights at the local level. It is time for these efforts to be recognised.

Human rights training at Southwark

Southwark Council is one of a small number of local authorities working hard to improve performance using a human rights framework. Southwark has made a corporate commitment to promoting human rights throughout its operations. This has resulted in a comprehensive programme of training and awareness-raising activities. In partnership with BIHR, Southwark has rolled out specially tailored human rights training for Councillors and key departments serving vulnerable people including social services, housing and education.

Improved services

One year after training began, it is already clear that services are improving across the Council. Decision-makers in the education department are now using a human rights framework to address issues including bullying and discipline, while housing officers are using a human rights approach to resolve complex dilemmas around information sharing and responses to anti-social behaviour.

Social workers are also using human rights arguments to ensure better outcomes for service users. For example, one social worker recognised after training that the right to respect for private life, and in particular the right to respect for psychological integrity, had important implications for an asylum seeker who had difficulties staying on a bus for more than 10 minutes because of post-traumatic stress. The extra costs he incurred and the time required for him to cross London by

bus to access support networks and treatment were adding to his anxiety and compromising his recovery. The social worker invoked the man's right to respect for private life and successfully secured him a travel pass.

Human rights in the workplace

As well as teaching frontline decision-makers and managers to use a human rights framework to arrive at better decisions, training is also an important opportunity to communicate the Council's commitment to fostering a culture of respect for human rights. Staff attending training sometimes say that, while they would like to promote human rights, they fear that they may not receive full management support if they attempt to carry this forward in their work.

Southwark encourages people to articulate their concerns and has responded with a range of initiatives aimed at cementing the human rights ethos developed during training. These proposals include a human rights champions scheme designed to recognise and reward staff who do most to drive forward human rights in their department and a range of desktop resources including checklists for good decision-making. In the housing, social services and education departments, human rights audits of policies and procedures have been undertaken or are being carried out now with external scrutiny.

A culture of respect for human rights

These initiatives at Southwark signal a growing momentum within this pocket of inner city London towards precisely the human rights culture that the government hoped would be created by the Human Rights Act 1998.

It is important to showcase examples of good practice as a way of encouraging other local authorities to deepen their commitment to the implementation of the Act. Two key developments, namely an increasing emphasis on human rights in the context of Comprehensive Performance Assessment and the imminent arrival of the Commission for Equality and Human Rights, mean the time is right for them to seize the initiative and decide what contribution they will make to the embedding of a rights-based culture in the UK.

Southwark has made a corporate commitment to promoting human rights throughout its operations

Human rights news

UK Government to intervene in Dutch case to challenge human rights ruling on deportation

Lawyers acting for the UK Government may use a Dutch case to challenge the principles laid down by the European Court of Human Rights in the *Chahal* case, which block the removal of suspects to any country where they might face abuse or torture.

Britain has been permitted to intervene as an interested party in a case at Strasbourg lodged against the Netherlands by an Algerian. Mohammed Ramzy was accused, but acquitted, of being involved in a cell encouraging young Muslims to go on suicide missions. His asylum claim failed but he is challenging a decision to deport him, on the basis that he would face political persecution in Algeria. The European court could deliver a ruling by the end of next year.

At present the Government cannot send people to countries where they might face inhuman or degrading treatment or torture, due to Article 3 of the European Convention on Human Rights which guarantees protection from such abuses. However, as part of their anti-terrorism proposals the Government is seeking powers to deport foreign terrorist suspects to countries with poor human rights records by asking courts to balance the right of the individual not to be tortured against the interests of the state in national security.

JUSTICE has criticised the use of deportation as a counter-terrorism measure. The human rights NGO has stressed 'it is questionable whether removing or exporting persons who are suspected of involvement in terrorism to other countries where they will be beyond the reach of UK law enforcement authorities is a rational measure'.

Guidelines to end abuse of vulnerable adults

'Zero tolerance' guidelines have been launched in a bid to end the neglect and abuse of vulnerable adults. The Association of Directors of Social Services (ADSS), along with a range of other partner organisations, has compiled a comprehensive set of national standards for good practice in relation to adult protection.

The guidelines – entitled 'Safeguarding Adults' – follow the March 2000 Department of Health guidance 'No Secrets', which set out a framework for the development of adult protection work. They are the first national framework of standards for good practice developed by the ADSS and other groups involved in the protection of vulnerable adults. Importantly, the guidelines are underpinned by a commitment to human rights principles and include a specific standard targeted towards 'Upholding Human Rights'.

The guidelines also include details of the structure of new local Safeguarding Adults Committees, made up of senior members of organisations, who should oversee services so that all citizens can be free from 'violence, harassment, humiliation and degradation'. The guidelines stress that multi-agency agreements should be made and resources made available so that the work of safeguarding adults can be implemented, with appropriate staff training and each organisation having a 'champion' for this work.

A message of zero tolerance of abuse and neglect should be actively promoted, and clear procedures should be in place covering incidents of violence towards any person, and for reporting all suspected crimes taking place within services. The number of vulnerable adult victims of abuse has been estimated at over 500,000 per year. Abuse includes bullying, physical violence and financial abuse such as benefit theft.

For further information visit www.adss.org.uk.

Older people missing out on mental health services

On 10 October, World Mental Health Day, the mental health charity Mind published a report into older people's experiences of mental health services.

Access all ages highlights a number of key concerns including:

- cut-off of services available for over 65s
- lack of treatment choice
- age discrimination by GPs, including lack of drugs information
- lack of any specific suicide prevention policy despite a very high suicide rate: one third of suicides are committed by over 55s
- high prescription of electro-convulsive therapy: it doubles for this age group

As the National Service Framework for Mental Health only deals with adults up to the age of 65, campaigners argue that the NSF for Older People must now cover mental health. However, Mind has found that there is 'a complete lack of mental health promotion activity for this group'.

Mind has launched a campaign to coincide with its report. 'Access all ages' demands that the Government, primary care trusts, local health boards and GPs act together to ensure that older people have the same level and quality of support and treatment available to others.

Richard Brook, Chief Executive of Mind, said: 'Too many health professionals do not yet receive the training to identify and deal with the growing mental health problems older people face. For them, just like anyone else, treatment choice should be a right, not a gamble.'

For further information visit www.mind.org.uk

Government may ignore warnings that mental health law reforms are unworkable

According to press reports, the Government intends to push forward with controversial mental health law reforms, despite an official advisory group's warning that the measures are unworkable without extra resources.

The advisory group was set up by the Government to recommend a model for a new system able to process an anticipated 40,000 mental health tribunal hearings a year – double the present number.

The advisory group's report to ministers has not been made public, but a copy was seen by *The Guardian* who reported that the group concluded the system would only work with 'a massive injection of additional resources', and there is a risk that it may 'only work after a long delay and at disproportionate expense'.

In spite of this, senior civil servants have indicated that the mental health bill will be introduced during the current parliamentary session that ends on 20 December. As reported previously in *BIHR Brief*, the bill includes measures to allow compulsory treatment orders (CTOs) for mental health patients in the community, and detention of people with dangerous personality disorders.

CTOs will be overseen by tribunals, but to cut costs the health department is considering one-person tribunals or decisions being made without a hearing. Andrew McCulloch, chief executive of the Mental Health Foundation charity, warned, 'You are talking then about banging somebody up in a mental hospital on the basis of some guy looking through the paperwork. It would be a grotesque step backwards'.

Government policy threatening vulnerable refugee children

Barnardo's, supported by the Refugee Children's Consortium, has published research providing evidence that serious damage is being done to vulnerable children by a new asylum and immigration policy.

The study involved 33 local authorities including 18 that have been part of the Government's pilot implementation of section 9 of the Asylum and Immigration (Treatment of Claimants) Act 2004.

Section 9 of the Act removes or significantly restricts the welfare entitlement of families who have reached the end of the asylum process and who have 'failed to take reasonable steps' to leave the UK. The Government believes that this will encourage families with children to leave the UK once their asylum claim has been decided.

In reality, many families do not understand their position, and not one of the 116 families involved in the pilot has returned to their country of origin. At least 35 have disappeared, leaving them at risk of exploitation and abuse.

All local authorities interviewed believe that section 9 is incompatible with existing child welfare legislation. Barnardo's has recommended that the Government reviews its asylum policy as a whole, specifically considering the extent to which it is compatible with existing child welfare and human rights legislation and the UK's international commitments, such as the UN Convention on the Rights of the Child.

For more information visit: www.barnardos.org.uk.

House of Lords hands down key judgements

The Mental Health Alliance, whose work BIHR supports, has said it is 'hugely disappointed' by a judgement given by the House of Lords, which allows a secure hospital to ignore statutory guidance and set its own policy on the seclusion of patients.

Colonel Munjaz brought the case against Ashworth Special Hospital, Merseyside, after being placed in seclusion four times. He argued that the hospital's procedure was unlawful as it permitted less frequent medical review of the practice than is specified in the Mental Health Act 1983 Code of Practice. However, the law lords ruled that the code constituted only guidance, not instruction.

Lord Steyn, one of the dissenting peers, said: 'If Ashworth Hospital is permitted in its discretion to reject the code... regarding seclusion, it will be open to other hospitals to do so too.'

In a more positive ruling, the House of Lords has decided that the Home Secretary's refusal of accommodation and subsistence payments to asylum seekers who fail to claim asylum immediately upon arrival in the country is inhuman and degrading, and therefore a breach of Article 3 of the European Convention on Human Rights.

The Home Secretary had argued that Section 55 of the Nationality, Immigration and Asylum Act 2002 permitted denial of such support, as it obliges people to seek asylum at the first reasonably practical opportunity on entering the UK, or lose any benefits. But refugee organisations note that the majority of people claiming asylum do so after being in the country for a few days, and with separate rules banning them from working many are left without support and sleeping rough.

A test case was brought by three asylum seekers including Wayoka Limbuela from Angola, who claimed asylum the day after arriving in the UK, and was refused support for applying too late. Although lawyers for the Home Office argued that it should be able to wait and see if someone crossed a 'threshold of suffering' before being obliged to provide benefits, the law lords disagreed. There will now be pressure on ministers to amend the Act.

The judgements can be read at: http://www.parliament.uk/judicial_work/judicial_work.cfm

Human rights comes down under

Dr Rowena Daw, Human Rights Legal Adviser at the Human Rights Office, Canberra City, Australia, looks at Australia's fledgling Human Rights Act

On 1 July 2004 the legal protection of human rights in Australia finally started to become a reality with the passing of the Australian Capital Territory (ACT) Human Rights Act (HRA). It is not before time since Australia is the only Commonwealth country to lack a Bill of Rights or Human Rights Act. There are limited rights in its Constitution: the right to freedom of religion and right to compensation for the compulsory acquisition of property. In isolated cases the Australian High Court has taken to breathing some human rights jurisprudence into the common law through the concept of 'implied rights', but on other occasions has been steadfast in refusing to do so. It may seem curious in a land that prides itself on egalitarianism and 'a fair go'. But suspicion of the patrician values of judges, conservatism of the legal profession together with a national complacency about our society combine to make human rights seem dangerously ideological and a thing we can do without.

The Human Rights and Equal Opportunity Commission

Previous attempts by the Federal Labour Party, in more innovative days, to pass a Bill of Rights collapsed due to lack of support in parliament. Australia may not be alone among wealthy countries in being at the sharp end of criticism from the UN Human Rights Committee, in our case for the treatment of aborigines, prisoners and the mandatory detention of asylum seekers. Within Australia however, that fact passes largely unheeded or, by most people, unknown.

A beacon of light in this vast and fragmented land has been the Human Rights and Equal Opportunity Commission (HREOC), a federal body with powers to monitor and report on Australia's international human rights obligations and to receive individual complaints with respect to them. HREOC has been responsible for high quality reports on human rights, unearthing shameful practices and systemic neglect in such areas as mental health, immigration detention, mandatory sentencing, and aboriginal deaths in custody. The report into the detention of children in immigration led directly to the federal government abandoning the practice. Most remarkable was the 1995 report on the history

of forced removal of aboriginal children from their parents earlier in the twentieth century. This led to a national 'Say sorry' campaign throughout the country.

Legal protection of human rights

The ACT HRA opens a chapter of legal protection of human rights within Australia. It is a cautious start. The Act applies only to the Australian Capital Territory and to Territory laws, that is to fewer than 400,000 of the 20 million people in Australia. Many important areas – much of criminal law, family law and immigration law – are outside its scope. (In the case of criminal law however there is considerable overlap. This was graphically demonstrated in recent weeks as the federal parliament moved to introduce even more draconian anti-terrorism laws than have been passed in Britain, but needed the State's support to complement them with state laws.)

The Act is a hybrid, borrowing from both UK and New Zealand legislation. It is the child of the ACT Chief Minister, John Stanhope, a passionate advocate of human rights, its midwives the members of the Consultative Committee chaired by Professor Hilary Charlesworth, who drew up a draft Bill. It was an elegant, sophisticated and forward looking Act containing economic, social and educational rights as well as political and civil rights. While there was general community support for the Bill opposition came from some church leaders; alarm at the budgetary costs from the public servants and Liberal Party politicians however ensured that it was greatly weakened in its passage through parliament. A right of individual action for breach of human rights was lost, and economic, social and environmental rights were discarded. However, parliament agreed to review the Act on these issues within 12 months.

The Act requires all Bills to be scrutinised for compatibility with human rights and for the Minister to make a statement of compatibility to the House to that effect. All ACT legislation is to be interpreted in the light of the HRA 'where possible', otherwise the Supreme Court 'may' make a declaration of incompatibility. This does

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not affect the validity of the Act but leads to a report to parliament. The Act also establishes the office of a Human Rights Commissioner with powers to review laws (including the common law), to provide education, to advise the Attorney General generally and to intervene in court proceedings.

The wording of rights in the HRA is taken from the International Covenant on Civil and Political Rights rather than the European Convention on Human Rights (as in the UK's human rights legislation). Inadvertently, this has some unfortunate consequences (as has been shown under the New Zealand Bill of Rights). For instance, the right to a fair trial gives less protection for people who are detained but not charged with a criminal offence. In the forthcoming Territory Terrorism Bill therefore preventive detention measures will be compliant with the HRA even without provision for 'a speedy right of access to a court'. Nor can mental health patients make use of this provision when put under involuntary treatment orders. The right to private and family life is a right 'to be free of arbitrary interference' rather than 'a right to respect for' – which is likely to weaken the case for a positive duty on the state to protect the rights of vulnerable groups. On the other hand the Act benefits from having a right to freedom of movement, a right to consent to medical treatment, a right for a child to be protected 'because of being a child', a right of humane treatment when deprived of liberty, children's rights in the criminal process, and a freestanding right of equality before the law and non discrimination.

Twelve months on

Twelve months after its passing the Act has not shaken the foundations of the ACT society nor depleted the public coffers, as was feared. Some interesting case law is emerging and the government itself remains enthusiastic to promote human rights, although government departments are generally struggling to understand its relevance to their work. The public service is taking its role of vetting new laws for compliance seriously, some judges are even bemoaning the lack of human rights arguments being raised by lawyers, and NGOs are training community groups on the Act. Several Bills have

been amended in order to comply. The most extensive changes were made to a Bill providing for emergency compulsory electroconvulsive therapy (ECT) for non-consenting patients. As a result of criticisms from the Human Rights Office (HRO) it was restricted to life-saving situations, to people over 16 and safeguards of second opinion doctors and a Tribunal notification were built in.

During the past year the HRO conducted an audit of the local juvenile detention facility in the ACT. Recommendations on such issues as strip searching, behaviour management, seclusion and restraint, disciplinary rules, procedures for visits, and record management were made. As a result the Standing Orders are all being changed to comply with the HRA. The new prison to be built next year has a Human Rights Working Group examining all proposed procedures, and the design of the facility itself, for compliance with the Act.

A glimmer of light

Of greater significance in the long term however may be the impact of the Act outside the ACT. It is, ironically, fortuitous that the Act is in place as the federal government embarks on strengthening its anti-terrorism legislation. Armed with advice from the Human Rights Office and some academic lawyers on the breaches of human rights in the Bill, the Chief Minister stoutly refused to back the legislation unless it was made human rights compatible. Before long the human rights experts, community activists, academics and the legal fraternity were putting their heads above the parapet with their own contributions on human rights. It has taken terrorism rather than the myriad of more mundane issues to galvanise society in favour of human rights. Meanwhile in the state of Victoria a public consultation into whether Victoria should enact a Bill of Rights has just completed its work. Optimists are confident that, any unforeseen political catastrophe aside, Victoria will before long follow the ACT to introduce a Bill of Rights for that state. At the same time a national campaign for a Bill of Rights has been launched. Human rights workers believe there is a glimmer of light on the horizon, even if on a national level it will be a long time before dawn.

Is it really one law for all?

The Human Rights Act and its impact on people with learning difficulties

Linsay McCulloch, Deputy Chief Executive, Values Into Action.

Background

In the years since the introduction of the Human Rights Act, there have been high expectations of its potential impact on people's lives. This has been especially true of people with learning difficulties, who have traditionally been denied many of the rights the rest of us take for granted. In fact, since 1971, Values Into Action (VIA) has been working with people with learning difficulties to fight for their rights in many basic areas: the right to live where and with whom they choose; the right to be part of the wider community; the right to self-determination.

Now finally, the last of the old long stay institutions are closing, and people are starting to live in community settings. Some people (though still not enough) live in their homes with the right support to enable them to do this. On the surface at least, life has changed for the better for many people with learning difficulties. The rights that we are all entitled to are now clearly stated. But how far are the rights of people with learning difficulties, as laid out in the Human Rights Act, being recognised and accorded? In other words, is the Human Rights Act just an excellent document? Or will it be able to bring about the change in culture required to improve values and practice at the sharp end of services?

This is the question behind a new research report, *One Law for All?*, supervised and published by VIA, and written by Patricia Finnegan & Stephen Clarke.

Aims and content

The research had three aims:

- Assess the possible impact of the Human Rights Act on people with learning difficulties
- Raise awareness of the Human Rights Act
- Audit the written policies of a number of service providers, and offer suggestions for good practice.

The authors interviewed people with learning difficulties and their supporters about the issues that affected them. They also worked with organisations providing services to people with

learning difficulties, including an NHS trust, a residential trust, a charity, a further education college and a day service provider. This part of the work involved reviewing written policies and interviewing staff on their opinions and attitudes.

The report looks at:

- Whether the law can in fact bring about social change
- Barriers to justice
- Life in the community
- Health care
- Personal relationships

Selected findings

Barriers to Justice

The research found that people with learning difficulties can have difficulty in accessing the legal process itself (because of poverty, lack of advocacy etc) and in accessing justice (because of the adversarial nature of the justice system). This may affect people's Article 6 rights to a fair trial.

This lack of access is significant, because people with learning difficulties are likely to live in high crime areas (Hatton C & Emerson E (1996) – *Residential Services for People with Learning Disabilities: A research Review*. Hester Adrian Research Centre) and may be at more risk than the general population of crimes like theft, physical and sexual assault (Kebbell M, Hatton C & Johnson S (2000) – *Witnesses with learning disabilities in court*. University of Birmingham, among others).

Too often, crimes of this nature, when they are carried out against people with learning difficulties, are dealt with 'in-house' and in effect de-criminalised (Perry J (Dec 2002) – *The crimes being kept under wraps*. Care Plan). Staff in services will try to sort out situations, and people will not be supported to take their stories to the police. Parents of people with learning difficulties who were interviewed confirmed that they might not involve the police on every occasion. This can lead to a further loss of rights and freedom for people with learning difficulties. A research respondent said:

People with learning difficulties... have traditionally been denied many of the rights the rest of us take for granted

Is the Human Rights Act just an excellent document?

'My daughter is bullied by young kids. I told her either to stay in or come home by 9–9.30pm for safety.'

Life in the community

This section looks at Article 8 (right to private and family life). Much of the research here points out that people with learning difficulties, wherever they live, often struggle to get enough social interaction and have a presence in the community. For some people, living in residential settings, there were severe restrictions on their rights and choices. In the structured staff interviews:

- Only 40% of staff agreed with the statement that 'service users have enough opportunities to make new friends'
- 70% of staff agreed or strongly agreed with the statement that 'service users do not have the opportunity to go out when they want'.

Some comments made by staff in the research:

'Yeah, I would say there are people who don't get out for the entire week. People that challenge or may cause a scene, [staff] aren't going to take them out... It is normally the favourites that get to go out, and people that aren't going to pose a problem in public.'

'Social activities are not seen as a priority and are easily cancelled by staff.'

Lack of privacy is often an issue, with people's letters routinely being opened by staff and sometimes not even passed on to the person to whom they are addressed. During the research, many people with learning difficulties also said they had little or no control over their money, with parents or home managers formally (or informally) handling money and making decisions on how it's spent. One manager said in the course of the research:

'Their money is put in cash boxes in the office in a lockable money cupboard. No, residents don't have a key. Why should they?'

Personal relationships

This issue also comes under Article 8 – right to respect for private and family life. The courts have specifically decided that a person's private life does include sex and sexuality, and sexuality and the right to express it has often been denied to many people with learning difficulties. This section looks at how, though staff personally may feel that people have the right to sexual relationships, the prevailing ethos in organisations

is to 'play it safe' – to avoid trouble by ensuring that people lack the privacy and the opportunity to meet people and explore their sexuality.

One respondent said:

'I think people meeting up in private would be actively discouraged. [The organisation] would make it very difficult for a sexual relationship to happen in practice. I think somebody might get moved to a different part of the building so they wouldn't cross paths and get led in "temptation".'

On the right to get married (an explicit and absolute right granted by Article 12):

'I don't think they [the services] would take a request to get married by a service user seriously, that would be my first thought: that people would never take it seriously.'

Conclusions

This research shows that, on the face of it, the Human Rights Act isn't yet making a difference to those at the sharp end of social and residential services, despite the greater obligations placed on service providers. The written policies of many of the providers that were looked at were generally adequate, and on paper, they incorporated the provisions of the Human Rights Act. However, the policies often didn't square with either the personal stories from people themselves, or the description of front line practice given by staff.

So more needs to be done to implement the Human Rights Act. The Department for Constitutional Affairs has also come to this conclusion in its Human Rights Insight project, looking at human rights awareness and the experiences of consumers of public services. They are also looking for ways to build a human rights culture.

So things may well change in the future. At the moment though, for people with learning difficulties who want recognition for their equal humanity and equal entitlement to rights, the fight continues.

Further information

One Law for All? (2005). Patricia Finnegan & Stephen Clarke. Published by VIA. *One Law for All?* was produced as part of the Learning Disability Research Initiative using Department of Health funding. It is available from Values Into Action, priced £20 plus p&p. Email publications@viauk.org or fax 020 7729 7797.

For some people, living in residential settings, there were severe restrictions on their rights and choices

More needs to be done to implement the Human Rights Act



Helen Wildbore, Research Assistant at the Centre for the Study of Human Rights, LSE, attended VIA's annual conference on 7 October.

On 7 October the aptly named Values Into Action (VIA) held their annual conference in London. This important event brought together people with learning difficulties, their supporters and carers, advocacy groups, social and health care professionals and voluntary and human rights organisations to discuss the human rights of people with learning difficulties. The conference was a call to action. It demanded 'It's Time to Act!' and called for people with learning difficulties to have control of their lives.

VIA's three-year project to teach people with learning difficulties about their rights under the Human Rights Act is due to end shortly. The conference was a chance to celebrate what the project had achieved, but more importantly to raise awareness of the fact that many people with learning difficulties in the UK are still not treated with dignity and respect and continue to suffer human rights violations.

VIA's conferences are unique. The word conference does not do justice to them. They are fun and welcoming. They include stories, role plays and drama and the audience is encouraged to actively participate in debates, games and workshops. However, VIA's conferences are still highly informative and cover significant and sometimes sensitive topics extremely well. It is VIA's ability to cover such serious issues in an engaging way that makes their conferences so unique and so important.

This year's conference included keynote speeches by Francesca Klug, Professorial Research Fellow at the Centre for the Study of Human Rights, LSE, and Louise Christian, co-founder of Christian Khan solicitors. Both speeches aimed to inspire the attendees to stand up and claim their rights. Francesca spoke about equality as a key human rights principle and likened the fight for the rights of people with learning difficulties with the fight for rights by groups throughout history, including the black civil rights movement in the USA and the suffragettes. Louise encouraged people to speak out about abuse by stressing that human rights are not just about what is written in law books but are about what people claim for themselves.

The conference also included a very lively 'rights and risk game and debate'. The audience were presented with different scenarios, such as a fall in the bathroom by a resident of a home which results in her being accompanied every time she has a bath. The potential rights and risks raised in each scenario were debated and the audience were asked to vote for their preferred outcome by waving coloured cards. The game was a very entertaining way to end the conference but had a serious message. It encouraged us to think about everyday problems affecting the lives of people with learning difficulties in terms of their rights. However, it also called for us to consider the responsibilities of carers and where the balance should lie. This was a simple, yet very effective, way to engage the audience in the human rights approach to problem solving.

The conference raised several issues affecting the lives of people with learning difficulties, including lack of control over money, bullying and harassment and lack of privacy. For me, the most striking issue to arise was the lack of support for parents with learning difficulties to care for their children, with the result that they are often removed and placed in care, sometimes at birth. This was raised by several participants who had experienced the problem first hand. A workshop on families and rights run by parents with learning difficulties outlined the problems faced by parents, such as the lack of accessible guidance on parenting skills, dealing with social workers who are required by law to consider the 'best interests' of the child and the lack of appropriate sex education for people with learning difficulties. These problems require urgent address and VIA's conferences are crucial for raising awareness and debating solutions. They give people with learning difficulties a platform to air their opinions and demand action.

Giving meaning to rights:

the need for definition and interpretation in concepts of human rights

Professor A C Grayling argues that discussion of concepts of human rights depends on notions of what constitutes 'the good life' for human beings. This lecture was delivered on 11 October as part of the 20th series of BIHR Lunchtime Lectures.

I have been honoured and privileged to work with the legal team for Diane Pretty on the case that she brought, trying in the first instance to get an assurance from the Director of Public Prosecutions (DPP) not to prosecute her husband if he helped her to die. She was at that point unable to kill herself, and she wanted her husband to help her.

Mr Pretty agreed, but the 1961 Suicide Act provides that if anybody counsels or assists a suicide, he or she is criminally liable. So the Prettys asked for an advance assurance from the DPP, who refused to give it. In response they sought a judicial review of the DPP's refusal, and the case went all the way up, first to the House of Lords and then to the European Court of Human Rights.

The House of Lords' judgement in the case prompted in me the thought that discussion of concepts of human rights really needs much more work. There is a growing body of jurisprudence and a growing debate about what exactly we mean by the rights embodied in the different conventions we are familiar with, and in our own Human Rights Act. My view is that that debate should be taken much further, and we should all seek to participate in it with the aim of understanding just what conception of 'the good' lies behind the idea of rights. What do our human rights conventions imply as to a good human life? What kind of lives are we trying to protect and foster when we speak about 'human rights'?

The Right to Life

In the Diane Pretty case I wrote a comment for her barristers in which I argued that Article 2 (the Right to Life) in the European Convention was the key issue – along with the context provided by the other rights, principally to privacy (which implies latitude to make private choices), and to humane treatment (which Mrs Pretty was not receiving, because she was being obliged to live on against her wishes, unable to swallow, finding it difficult to breathe, and unable to communicate properly with her family).

In placing the focus on the right to life I sought to argue something that at first glance appears paradoxical, namely, that a right to life embodies a right to choose how and when to die. A right to life, in any imaginable human rights convention, cannot mean a right to bare existence. Suppose someone is placed in a very small cage, and thereafter kept alive on bread and water: such a person is alive, but is scarcely possessed of a life even minimally worth living. At the very least the right to life is the right to a certain quality of life, to life of a certain kind – in which actual satisfactions occur, and efforts are made to realise genuine possibilities of flourishing. The other articles in human rights conventions imply conditions that a certain quality of life requires. For example a right to privacy, a right to freedom of conscience, freedom of expression, freedom to get and give information, freedom to marry and have a family, all suggest a certain minimum conception of quality of life. And that is the right that is without doubt at issue in the Article 2 provision of a right to life.

Quality of life

So a 'right to life' has to be understood as a right to a certain minimum quality of life. Now: dying is one of the things that is an inevitable part of living, but if we have a right to a certain quality of life then we surely have a right to a certain quality in our acts of living. You might want to argue that other things, such as the kind of education we get, the treatment we receive at the hands of public authorities, or the kind of relationships that we can form and foster in the course of our friendships and working lives – in all them we have a right to a certain minimum quality. And embodied in this idea of a certain quality of life is the idea of a correlative kind of treatment that upholds and sustains that quality.

From this it follows that if a right to life embodies the idea of a minimum quality of life, then since dying is one of the acts of living, that right is fully engaged in the process of dying, and we should be

Discussion of concepts of human rights really needs much more work

What do our human rights conventions imply as to a good human life?

able to have the freedom to make certain choices about it, specifically, choices about how and when dying takes place.

Even if that freedom is only exercised by very few people, nevertheless, having the option for those who need or desire it is very important.

The House of Lords disagreed with that argument, and responded by saying that 'death is the opposite of life; and therefore a right to die cannot be implicit in a right to life'. They felt that the claim that Article 2 implies a right regarding the manner and timing of one's dying was in effect a perversion of the article's intention.

But this, with respect to their Lordships, missed the point, for we were not talking about death, but about dying, which is (to repeat) a living act. Death is indeed the opposite of life, but it would be silly to say to people that they have a 'right' to death, since death is anyway inevitable. The right envisaged was to a minimum quality of life in the process of dying.

But it did make me think that the point would not have been missed if there had been a larger debate about what is implied by the idea of a set of conventions governing what is minimally required for individual human beings to have the opportunity to grow and to become something flourishing, with achievement and enjoyment as central aspects of their lives.

The good life

On reading through such documents as our own Human Rights Act and the European Convention, and reflecting on the articles they contain, one observes that they imply or assume a certain picture. The picture goes as follows.

There is something that a human life must at least be like in order for the people living it to have the opportunity to seek goods that they recognise as such, and which they choose for themselves as worthy objects of pursuit. They need space (psychological, social, legal space) in which to try to flourish and achieve in accordance with those choices. If one asks anyone what makes people happy, or what constitutes a good life, the answer will almost certainly, and quite rightly, be very various. There can be as many human ambitions

as there are human beings, despite the fact that we allow our societies to limit the number of things that we regard as good.

Because there can be very different ways of coming up with legitimate answers to the question, 'what is the human good?' or 'what things are worth having and being?', it would be a mistake to try to dictate to people what the good for them might be, or what the good life should be like for them. Rather, what we want, each of us as individuals, is a chance to make the good life for ourselves. And of course we all, in our rational and sober moments, recognise that the pursuit of the good for ourselves individually must be consistent with the pursuit of good for others – which means that the requirement not to harm others has to apply. And this of course is just a rephrasing of the principle, enunciated by John Stuart Mill, that anything goes provided it does no harm to other people.

But it is only really with the emergence of a formally agreed set of treaties and legally framed covenants about rights that something like the ethical idea of making the good life possible has come along. But it has not come in an explicit way; it is very much an implication merely of those covenants.

A space of opportunities

When one discusses human rights documents, one should always ask: what picture is being offered by them of the life worth living for a human being? And it is very interesting indeed that when our legislators and formulators turn their attention to that question, they seem to form a twentieth century capitalist view of what the good life is: for example a right to have a job, a right to have an education, a right to have a house. And there is no harm in that – providing it is not the sum of what is implied. What I wish to suggest is that implicit even in the minimalist language of such documents is the idea that a space of opportunities is being opened up for people to say 'what I would like to do is spend quite a lot of time fishing or reading or doing pottery classes or talking to my friends; these are things that would satisfy me, I desire the time and opportunity to do them, I do not wish to be

If we have a right to a certain quality of life then we surely have a right to a certain quality in our acts of living

If one asks anyone what makes people happy, or what constitutes a good life, the answer will ... be very various

What picture, what ethic, lies behind talk about rights?

constrained in the exercise of the things that bring me satisfaction in life, and which make my life worth living'.

One only has such opportunities if one's opportunities are protected. And that is the seed that lies in these documents.

Human rights discourse

What we need to ask now is that vital question: what picture, what ethic, lies behind talk about rights? And once we do that, I think, we find ourselves not just equipped with a whole new interesting debate, not just with the means of saying to the judges in the High Court and the House of Lords what has to be meant by the engagement of these rights in particular cases. It also says something about how we react when our political masters try to derogate from these rights or to enter reservations to them so that alleged difficulties can be countered.

We must be even more active in the defence of human rights discourse itself, of talking about using and applying human rights, and of making a more vigorous effort to broaden the scope of application of human rights in our own jurisdiction and elsewhere. And as I say, doing it by alerting everybody to the need to say: What is the philosophical dimension of human rights? What is the discussion we should be having about the kind of life that having these rights protects and makes possible?

It is a great thing to have a Human Rights Act, a great thing that there is a European Convention, a great thing to have a UN Declaration, and a great thing that these instruments are cited both in our domestic and our international courts. But we need to go much further by challenging politicians, judges, lawyers and the community at large to ask: what do we mean by talk of human rights really, in their application to individual lives and the notion of the human good?

Anthony Grayling is Professor of Philosophy at Birkbeck College, University of London

BIHR Lunchtime Lectures 2005–2006

- free lectures
- 1–2pm
- question and answer sessions

10 January 2006

Shami Chakrabarti

Director, Liberty

Asbomania – the descent from natural and social justice into mob rule

9 February 2006

Baroness Vivien Stern

House of Lords and International Centre for Prison Studies

Crime and punishment in a market society: how just is the criminal justice system?

9 March 2006

Imran Khan

Solicitor

Human rights and Islamophobia

Held in the Lecture Theatre, Courtauld Institute of Art, Somerset House, Strand, London

Sponsored by Irwin Mitchell, One Crown Office Row and *The Independent*

See www.bihar.org for more information

Events calendar

BIHR events

BIHR is committed to increasing public awareness and understanding of human rights. We hold a number of events which are free and open to the public.

The 20th series of Lunchtime Lectures began in October.

Organisers: BIHR

Title: Asbomania: the descent from natural and social justice into mob rule

Speaker: Shami Chakrabarti, Director, Liberty

Date: 10 January

Time: 1.00pm

Location: Lecture Theatre, Courtauld Institute of Art, Somerset House, Strand, London

Fee: Free

Further information:

www.bihr.org

Organisers: BIHR

Title: Crime and punishment in a market society: how just is the criminal justice system?

Speaker: Baroness Vivien Stern, House of Lords and International Centre for Prison Studies

Date: 9 February

Time: 1.00pm

Location: Lecture Theatre, Courtauld Institute of Art, Somerset House, Strand, London

Fee: Free

Further information:

www.bihr.org

Space is limited at our lectures so please arrive early to avoid disappointment. For further information about any of our events please see our website or contact Jo Morgans, Events and Publicity Officer, jmorgans@bihr.org, 020 7848 1924.

If you are organising a human rights event and would like it to be included in the Events Calendar, please contact Jo Morgans, Events and Publicity Officer, jmorgans@bihr.org, 020 7848 1924.

January

Organisers: Human Rights Lawyers' Association

Title: International development and human rights

Date: 11 January

Time: 6.00pm

Location: Law Society, Chancery Lane, London

Fee: HRLA members free, non-members £10

Further information:

Smontgomery@barcouncil.org.uk

Organisers: Joint Council for the Welfare of Immigrants

Title: Preparing and presenting asylum appeals

Speaker: Patrick Lewis

Date: 17 January

Time: 10.00am–5.00pm

Location: London

Fee: Various

Further information: www.jcwi.org.uk

Organisers: Centre for the Study of Human Rights

Title: Why the human rights and environmental movements must be allies not adversaries

Speakers: Panel of speakers

Date: 19 January

Time: 6.30pm

Location: Old Theatre, Old Building, LSE

Fee: Free

Further information:

<http://www.lse.ac.uk/Depts/human-rights>, 020 7955 6428

Organisers: Joint Council for the Welfare of Immigrants

Title: Advanced human rights law for immigration and asylum practitioners

Speaker: Amanda Weston

Date: 30 January

Time: 10.00am–5.00pm

Location: London

Fee: Various

Further information: www.jcwi.org.uk

Organisers: Amnesty International

Title: Speaking Out: the Sigrid Rausing Series 'Balanced, or Biased? Reporting of Violence Against Women in the UK Media'

Speakers: Joan Bakewell, Samira Ahmed (Channel 4 News), Kate Allen (Director Amnesty International UK)

Date: 31 January

Location: Amnesty International UK, Human Rights Action Centre, London

Further information:

alison.willis@amnesty.org.uk

February

Organisers: Centre for the Study of Human Rights

Title: Trying Saddam and other dictators: the limits of justice

Speaker: Kirsten Sellars

Date: 2 February

Time: 1.15–2.30pm

Location: D502, Clement House, LSE

Fee: Free

Further information:

<http://www.lse.ac.uk/Depts/human-rights>, 020 7955 6428

Organisers: Human Rights Lawyers' Association

Title: Environment and human rights

Date: 2 February

Time: 6.30pm

Location: Law Society, Chancery Lane, London

Fee: HRLA members free, non-members £10

Further information:

Smontgomery@barcouncil.org.uk

Organisers: Joint Council for the Welfare of Immigrants

Title: Immigration and nationality on children

Speaker: Jenny Osborne

Date: 6 February

Time: 10.00am–1.00pm

Location: London

Fee: Various

Further information: www.jcwi.org.uk

Organisers: Centre for the Study of Human Rights

Title: Protecting human rights in an age of uncertainty

Speaker: Louise Arbour, UN High Commissioner for Human Rights
Date: 16 February
Time: 6.30pm
Location: Old Theatre, Old Building, LSE
Fee: Free
Further information:
<http://www.lse.ac.uk/Depts/human-rights>,
 020 7955 6428

March

Organisers: Centre for the Study of Human Rights
Title: Prosecuting Pinochet: the challenges and obstacles to the pursuit of justice in Chile
Speaker: Professor David Sugarman, University of Lancaster
Date: 2 March
Time: 1.15-2.30pm
Location: D502, Clement House, LSE
Fee: Free
Further information:
www.lse.ac.uk/humanrights, 020 7955 6428

Organisers: Human Rights Lawyers' Association
Title: HIV/AIDS and human rights
Date: 2 March
Time: 6.00pm
Location: Law Society, Chancery Lane, London
Fee: HRLA members free, non-members £10
Further information:
Smontgomery@barcouncil.org.uk

Organisers: Centre for the Study of Human Rights
Title: The human rights of persons with disabilities: extending freedom to all
Speakers: Anna Lawson, Dr Richard Light, Dr Nick O'Brien and Professor Helen Meenan
Date: 9 March
Time: 6.30pm
Location: Old Theatre, Old Building, LSE
Fee: Free
Further information:
www.lse.ac.uk/humanrights, 020 7955 6428

Organisers: Centre for the Study of Human Rights
Title: Cuba's home-grown Guantanamo
Speakers: Panel of speakers
Date: 15 March
Time: 1.15-2.30pm
Location: D602, Clement House, LSE
Fee: Free
Further information:
www.lse.ac.uk/humanrights, 020 7955 6428

Organisers: Centre for the Study of Human Rights
Title: Interdisciplinary Academic Conference on Human Rights: Crossing the Boundaries: the place of human rights in contemporary scholarship
Date: 24 March
Location: Clement House, LSE
Further information: Pre-registration required. For a conference programme and registration form, please see <http://www.lse.ac.uk/humanrights>

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In the spotlight

BIHR is a leading provider of human rights training to the voluntary and public sectors. Our training is firmly rooted in BIHR's human rights expertise and in our belief that human rights awareness-raising has the potential to improve public service provision.

We provide in-house training as well as awareness-raising workshops, conference sessions, discussion groups and presentations.

Each issue we use this section of the newsletter to highlight the work of an organisation that has received training from BIHR.

Name

Welsh Local Government Association

Location

Cardiff, Wales

Size

67 staff, plus a Council of 79 members, representing each of the 22 local authorities, and associate member authorities.

What do you do?

We represent the interests of local government and promote local democracy in Wales. We represent the 22 local authorities in Wales, and the four police authorities, three fire and rescue authorities and three

national park authorities are associate members.

The WLGA's primary purposes are to promote better local government and its reputation and to support authorities in the development of policies and priorities which will improve public services and democracy.

What are your aims/challenges/plans for the coming year?

The WLGA launched its Manifesto for local government in Wales at this year's annual conference. The Manifesto identifies the key issues that local councils will focus on until the 2008 elections and beyond, and contains plans for the continuing improvement of local communities. Our aim is that it will steer and shape a debate within our membership and with all our partners.

What human rights issues affect your organisation/service users?

It is difficult to think of any Convention rights that don't impact on local government or that local government doesn't have a role in. The Human Rights Act places a legal duty on public authorities not to operate in a way that is incompatible with a Convention right. Local authorities are often the largest employer in their area and also provide a range of services to meet the needs of diverse communities. They have a clear

leadership role in shaping and influencing change to create sustainable communities in which people want to live, work and play.

How has BIHR's Training and Promotion Programme helped you?

The training was provided for local authority equality officers and was specifically focused on making the links between the equality and human rights agendas. It raised awareness of the Human Rights Act and highlighted the benefits to developing a human rights approach to designing and delivering appropriate services that meet individual needs. With the new Commission for Equality and Human Rights in mind we anticipate a renewed focus on human rights in policy-making and delivery.

Contact details

WLGA
Local Government House
Drake Walk
Cardiff
CF10 4LG
www.wlga.gov.uk

Please note that the views expressed in this newsletter are those of the individual contributors and do not necessarily reflect those of BIHR.

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