



The Odysseus Trust
Report on Activities from
January 2007 to January 2008

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Introduction

The Odysseus Trust ('the Trust') is a non-profit company limited by guarantee, which seeks to promote good governance and the effective protection of human rights. This report covers the Trust's main activities from January 2007 to January 2008.

The Trust is directed by Lord Lester of Herne Hill QC. The Parliamentary Legal Officers from January 2007 until September 2007 were Kate Beattie and Bonita Meyersfeld and from September 2007 until December 2007 were Bonita Meyersfeld and Tara Lyle. The Trust continues to benefit greatly from the services of the Office Manager, Evie Jamieson and the support provided by the Research Officer, Caroline Baker.

Our major legislative project during the last twelve months was the Forced Marriage (Civil Protection) Bill, which Lord Lester introduced as a Private Member's Bill in 2006. The Bill became law on 26 July 2007 and is due to come into force this autumn.

The Trust worked closely with Lord Lester in his capacity as unpaid independent adviser to the Government on constitutional reform. The Trust also responded to several consultations and undertook a number of equality and human rights projects, strengthening its links with NGOs, lobby groups and members of both Houses of Parliament. Our website (www.odysseustrust.org) continues to attract much interest from the public, who are able to access our Bills, recent debates, consultation responses and lectures given by Lord Lester.

Major Projects

The Forced Marriage (Civil Protection) Act

On 15 January 2007 Lord Lester hosted a public meeting with the Southall Black Sisters in the House of Lords to advise Peers, MPs and the public on the nature and importance of the Forced Marriage (Civil Protection) Bill. The Bill had its Second Reading on 26th January 2007 in the House of Lords where it received strong cross-party support.

Following Second Reading of the Bill, the Trust held a public consultation about various proposals to amend the Bill. The consultation process demonstrated overwhelming support for the Bill among a wide range of groups and individuals, including women's groups, women's refuges, social workers, family law practitioners, religious groups, the Bar Council, the Association of Chief Police Officers, the former Equal Opportunities Commission and the former

Commission for Racial Equality. Lord Lester and the Trust also held discussions with those seeking to protect victims of forced marriages and with the victims themselves from across the UK.

In March 2007 the Prime Minister expressed the Government's full support for the aims of the Bill and we worked closely with Baroness Ashton and civil servants to improve it. In May, the Bill passed through Grand Committee, where it was substantially improved and amended to make it new Part 4A of the Family Law Act 1996 rather than a stand-alone Bill. The amendments also gave statutory backing for guidance to public authorities on forced marriage, so that victims and those at risk can get effective help and advice early to prevent forced marriages taking place.

The Official Opposition made time available for the Bill in the Commons and it was approved without amendment. It became law on 26 July 2007 and a process of implementation, including training of the judiciary and public authorities, is now underway. The Act is likely to come into force later this year.

The Forced Marriage (Civil Protection) Act 2007 is innovative in many ways: it makes it unlawful to force or coerce someone to marry against their will, focusing on prevention rather than cure, through a civil remedy; it defines forced marriage for the first time and recognizes that "force" includes coercion by threats, other psychological methods and deception; it provides protection by means of civil remedies in the family courts and, if a victim is unable to apply to court for protection, a third party may apply on their behalf; and, it places the guidance on a statutory footing and requires public authorities to have regard to it.

Lord Lester continues to press for effective guidance, support for NGOs working in this area and proper funding of the Forced Marriage Unit.

Ministry of Justice

In July 2007, Lord Lester was appointed as unpaid, independent adviser to the Government on constitutional reform. The Trust worked with Lord Lester in advising the Ministry of Justice on constitutional reform issues between July 2007 and November 2008.

Freedom of Information - MacLean Bill

Towards the end of 2006, David McLean MP introduced a Private Member's Bill to amend the Freedom of Information Act 2000 (the FOI Act). The Bill sought to amend the existing freedom of information regime by (i) removing both the

House of Commons and the House of Lords from the FOI Act and (ii) preventing the disclosure of all communications between Members of Parliament and the public.

It was clear that the Bill was intended to neutralise a decision of the Information Tribunal which held that the detail of MPs' expenditures should be released to the public upon request. The Bill would have removed all information relating to MPs, including their expenses which would be a large blow to Parliamentary transparency.

Despite the fact that the Bill stood in stark contrast to the Tribunal decision, MPs passed the Bill in the House of Commons.

The Trust worked with several NGOs and newspapers to oppose the Bill in the Lords. On the 11th June the Trust and Lord Lester, together with Liberty and the Campaign for Freedom of Information, held an all-party meeting to brief Peers about the Bill's threat to freedom of information.

With no sponsor willing to take the Bill up in the Lords, the Bill expired two days after the all-party briefing.

Committee Work

Joint Committee on Human Rights (JCHR)

Lord Lester, as one of the original members of the JCHR, remains an active member. The JCHR consists of members of both the House of Commons and the House of Lords and is charged with considering matters relating to human rights in the UK, including Government conduct and statutory scrutiny (but excluding consideration of individual cases). It publishes influential reports which contain the JCHR's views on whether Bills and other legislative measures are compatible with the UK's obligations under the European Convention on Human Rights and other relevant human rights treaties. The JCHR also undertakes thematic inquiries, considering evidence from a range of experts on various human rights issues.

In the 2007-08 session, the JCHR undertook inquiries into counter-terrorism and human rights policy, challenging the Government's proposals regarding pre-charge detention, post-charge questioning and the use of special advocates for persons subject to control orders. The JCHR's other thematic inquiries included the human rights of adults with learning disabilities; the rights of elder people in healthcare; the use of restraint tactics in secure training centres; human rights

and data protection; human trafficking; and, a Bill of Rights. The JCHR also monitors the enforcement by the Government of Strasbourg judgments where legislative reform is required. Lord Lester recused himself from the inquiry on a Bill of Rights because he is advising the Government on the proposed new Bill of Rights.

House of Lords Select Committee on the European Union: Law and Institutions (Sub-Committee E)

Lord Lester remains an active member of Sub-Committee E which, this year held inquiries into EU procedural rights; the criminal law competence of the EU; the European Supervision Order in pre-trial proceedings and the impact of the Lisbon Treaty on the Area of Freedom, Security and Justice.

Equality - General

The Trust has continued to work over the past year on a variety of issues relating to equality. A high priority for the Trust and Lord Lester is to secure effective anti-discrimination legislation. Our work is underpinned by Lord Lester's Equality Bill, which passed successfully through the House of Lords in 2003. Although the Bill was welcomed in the House of Commons and signed by 246 MPs, the Government did not support it. However, it did compel the Government to commit to a revision of UK anti-discrimination law. In 2007 the Government published its Discrimination Law Review (effectively the Government's Green Paper on a single equality bill). The Discrimination Law Review was widely considered to be unsatisfactory and inadequate. The Trust worked with Lord Lester on advising Ministers and senior officials on a range of equality issues, including the tribunal system, equal pay, the role of the Equality and Human Rights Commission and the steps needed to ensure a comprehensive, coherent and workable discrimination law framework. The Trust also worked on several equality measures. In January 2007 the Northern Ireland (Sexual Orientation) Regulations – provision of goods, facilities and services – was debated at its Second Reading in the House of Lords, and eventually passed into law. Similar provisions were enacted for the UK and Wales on 21 March 2007 in terms of the Equality Act (Sexual orientation) Regulations 2007. Lord Lester participated in both debates.

The Trust has observer status on the Equality and Diversity Forum (EDF), a collaboration of equality organisations across the discrimination strands. The staff of the Trust regularly attends meetings of the EDF and contributes to its work as well as having regular contact with Trade Unions, the EHRC and other organisations involved in equality and discrimination law.

Consultations

The Trust submitted responses to seven consultations.

Equality

On 24 April 2007 the Communities and Local Government Committee launched an inquiry into the Government's role in reducing inequality. The Trust responded to the consultation, noting that if the Government is to achieve effective equality legislation there must be (i) no levelling down of existing protection; (ii) effective individual remedies and scope for enforcement; and, (iii) less emphasis on procedures, and more emphasis on outcomes.

Freedom of Information - Fees

The Trust responded to three consultations regarding freedom of information. The first two, initiated by the Constitutional Affairs Committee and the Department for Constitutional Affairs respectively, dealt with the Government's proposal to use the Draft Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2007 to increase fees for requests for information and expand the powers of officials to refuse requests.

The Trust responded to both consultations by raising four main objections: (i) the regulations would preserve, rather than remove, the over-broad discretion of a public authority to refuse information requests solely on the ground of burdensomeness; (ii) prohibitive fees would be imposed irrespective of the public interest in the information; (iii) broad discretionary powers would be delegated with wide scope for abuse and inadequate safeguards; (iv) by imposing hefty fees, legitimate as well as vexatious claims would be affected.

The conclusion of the consultations, which featured many extracts from the Trust's response, led the Government to abandon the proposed regulations.

Freedom of Information - 30-year rule

On the 25th of October 2007, the Prime Minister appointed an independent team, under the chair of Paul Dacre, to review the 30-year time limit after which most public records are transferred to the National Archives and opened for public inspection. Lord Lester was invited to respond in his individual capacity and was assisted by the Trust. Our response to the consultation recommended that there should be a general period of non-disclosure of either 10 or 15 years. This would cover two or three terms of a Government and would be sufficient time to allow information relating to live policy to remain undisclosed, until the policy

was implemented. We also recommended specific exceptions where it would be in the public interest or to protect the wellbeing of individuals.

It is anticipated that the review team will report to the Prime Minister in the summer of 2008.

Forced Marriage (Civil Protection) Bill – Relevant Third Party

On 12 December 2007 the Ministry of Justice published a consultation paper regarding the role of the relevant third party in terms of section 63C of the Forced Marriage (Civil Protection) Act. This provision allows so-called relevant third parties to apply for a protection order on behalf of a victim of forced marriage when the victim is unable to bring an application herself. The fact that an application may be made by a relevant third party is one of the innovative features of the Forced Marriage (Civil Protection) Act. This eases the burden on victims and potential victims in seeking protection from the courts.

The Trust's response to the consultation included: (i) evidence regarding the circumstances when it is appropriate for a third party to bring an application; (ii) what type of organisations should act as relevant third parties; (iii) the type of funding and resources that relevant third parties, including the Forced Marriage Unit, should receive; (iv) what safeguards should be in place to ensure that a relevant third party acts in the best interests of the victim; and (v) how the court administration can be improved to meet the needs of those who use the Act.

Prisoners' Voting Rights

In March 2007 the Trust responded to a consultation by the Department for Constitutional Affairs on the voting rights of prisoners detained within the United Kingdom in light of the decision of the European Court of Human Rights in *Hirst v UK*¹. Our response expressed concern that, despite the judgment, it was still the view of the Government that prisoners should lose the right to vote and recommended that the UK abolish all restrictions on the right to vote for prisoners.

Civil Justice Costs

In April 2007, the Ministry of Justice published a consultation paper on civil court fees. The Trust responded to the consultation, focusing on the underlying policy considerations of charging civil courts fees and, in particular, the effect of significant court fees has on an individual's right of access to justice.

¹ (2006) 42 EHRR 41

In addition, Lord Lester asked a number of Questions for Written Answer on the impact of court fees on access to justice and took up a motion, initially tabled by the late Lord Ackner, on why civil justice costs must be recovered in their entirety from those who become suitors before the court. On 2 May 2007, with research provided by the Trust, the motion was debated in the House of Lords.

Other Projects

International Human Rights Obligations

The Trust has continued to press the Government to accept the right of individual petition under the International Covenant on Civil and Political Rights (ICCPR), the Convention Against Torture and the International Convention on the Elimination of All Forms of Racial Discrimination. In particular, we have repeatedly raised the fact that the UK is one of only four Council of Europe Member States (the other three being Moldova, Monaco and Switzerland), and alone in the democratic Commonwealth in not having accepted the right of individual petition under the ICCPR. Lord Lester initiated a House of Lords debate on human rights on 22 March 2007 which raised this issue and we have since pursued a series of Parliamentary Questions.

Corruption and the BAe Decision

Following the decision by the head of the Serious Fraud Office to abandon the investigation into BAe / Al-Yamamah, a debate was held in the House of Lords, in which Lord Lester participated. Lord Lester criticised the involvement of the Attorney-General and the Prime Minister in bringing the investigation to an untimely end. Lord Lester noted that the manner in which the criminal investigation of alleged corruption was halted by the Attorney General revealed how fragile and inadequate our present constitutional arrangements are for protecting the rule of law.

The Corruption Bill

Around the same time as the BAe / Al-Yamamah debate, Lord Lester and the Trust supported Lord Chidgey's Corruption Bill, a Private Member's Bill, which sought to introduce reasonable legal certainty and put on a statutory footing the UK's international obligations to combat corruption at home and abroad.

The Bill successfully made its way through the House of Lords but was not taken up in the House of Commons.

Employment Bill

The Employment Bill was introduced in the House of Lords on 6 December 2007. One of its objectives is to implement the decision of the European Court of Human Rights in the case of *Associated Society of Locomotive Engineers & Firemen (ASLEF) v. the United Kingdom* (27 Feb 2007), which held that trade unions should be free to choose its members, subject to the rights of the individual not be left in a position where he has no protection against a capricious employer. Under current law, a trade union may not exclude or expel a person for membership of a political party. Clause 18 of the Bill would change this by amending the Trade Union and Labour Relations (Consolidation) Act 1992 to enable a trade union to exclude someone from membership on this basis.

While clause 18 seeks to give trade unions the right to choose their own members, it fails to give any safeguards to individuals who may be excluded or expelled unfairly: a far wider remedy than the judgement envisaged. During Second Reading, Grand Committee and several meetings with the Minister and officials, Lord Lester has argued for the inclusion of safeguards to ensure that individual employees are not treated unfairly by trade unions in exercising their right to freedom of association under Article 11 of the ECHR. Lord Lester has tabled amendments to clause 18.

Justice and Security (Northern Ireland) Bill

The Justice and Security (Northern Ireland) Bill had its Second Reading on 20 February 2007. The Trust worked with Lord Lester in opposing several provisions in the Bill, including (i) the non-reviewable power of the DPP to declare a non-jury trial; (ii) the powers of the Northern Ireland Human Rights Commission; and (iii) additional powers for the police and the Army.

The most controversial component of the Bill was clause 7, which gave the Director of Public Prosecutions the power to issue a certificate stating that a trial would be conducted without a jury, if a number of specified conditions were met. According to this clause, there would be no judicial review of the DPP's decision to issue a non-jury certificate except in instances of (i) bad faith (ii) dishonesty (ii) or other exceptional circumstances. The result of this would be to 'oust' the jurisdiction of the court to review the DPP's decision to issue a no-jury trial certificate. The breadth of this power gave rise to a risk that the power to certify could be used arbitrarily and in a way which could discriminate unfairly against friends or relatives of members or former members of proscribed or formerly proscribed organisations.

Although the stated aim of the Government was to put the decision of the High Court of Northern Ireland in the *Shuker* case on a statutory footing, clause 7 went far beyond this decision, which only excluded judicial review of such decisions on the ground of procedural unfairness and explicitly left open the possibility of judicial review on other grounds such as bad faith.

After several meetings with Ministers and the Attorney-General, it was agreed that it would be desirable to find language that would fully preserve judicial review of the DPP's decision while making it clear that it would be an exceptional remedy.

Lord Lester tabled two amendments, supported by other Peers and the JCHR, which sought to preserve judicial review powers of the courts. The Government eventually accepted Lord Lester's second amendment at Third Reading on 2 May 2007.

Extradition

Lord Lester and the Trust continued work on extradition. Lord Lester put down Parliamentary Questions on extraditing individuals to countries with records of torture. On 8 May 2008 Lord Lester participated in the debate in the House of Lords on the UK-US Extradition Treaty, urging the Government to push for full reciprocity between the two countries.

Human Rights Debate, House of Lords

Lord Lester initiated a debate in the House of Lords on human rights, which took place on 22 March 2007. Lord Lester raised the importance of: respecting human rights in a democratic society based on the rule of law; striking a fair balance between the rights of an individual and the interests of the community, especially in the context of fighting terrorism. Lord Lester emphasised the benefits of the Human Rights Act, both for the UK courts, which can use the Human Rights Act as a mechanism to expand and improve UK human rights law, and individuals within the UK who seek to rely on their Convention rights. Lord Lester also stressed the importance of accepting the Optional Protocol to the ICCPR.

Meaning of Public Authority

Prior to Lord Lester's appointment as independent adviser to the Government, the Trust worked closely with other organisations and the JCHR on the interpretation of section 6(3)(b) of the Human Rights Act. The majority of the Law Lords, in the case of *YL v Birmingham City Council*, held that a privately run care home is not subject to the Human Rights Act. Lord Lester participated in a

debate on the subject on 27 June 2007. Since his appointment as independent adviser, Lord Lester has worked within the Government on this issue.

Other House of Lords Debates

The Trust assisted Lord Lester in his participation in several debates in the House of Lords, including: a debate to call attention to the bicentenary of the abolition of the slave trade and to the United Kingdom's role in tackling its legacies on 10 May 2007; a short debate on the UK's signature of the UN Convention on the Rights of Persons with Disabilities on 3 May 2007; a debate to celebrate International Women's Day on 8 March 2007; Second Reading of the Palliative Care Bill on 23 February 2007; on 18 July 2007 Lord Lester initiated a debate in the House of Lords on the universality of monitoring of human rights by the United Nations Human Rights Council; and a debate on the Pensions Bill on 24 July 2007.