

Written evidence from Shoaib M Khan (AET0028)

I am a human rights lawyer.

This evidence will focus on the media's coverage of human rights and the effect it has on the public's perceptions about human rights and their relevance to them.

Summary

- British media plays a major role in creating and perpetuating myths about human rights, and it is difficult to see how this can be entirely accidental. This extends beyond news reporting and includes targeting judges, human rights lawyers and other individuals supportive of human rights.

- Politicians too repeat these myths often and cite inaccurate media reports, thereby lending them credence.

- Certain newspapers regularly mislead readers about human rights, and paint a disparaging picture of those who rely on them, thereby discouraging the public from considering human rights as something of relevance to them. This deters people from seeking human rights protection when needed.

- It should be recommended that newspapers provide basic legal and human rights training to those writers who cover these subjects, or there should at least be someone available to them who is able to check such articles before publication. This would help to minimise some very basic mistakes that are often made.

- When the media causes incitement and creates hostility among communities, this cannot be justified as freedom of expression. There should be greater accountability for such media outlets and responsibility must be taken when inaccurate articles are published.

UK Media coverage of human rights

1. The media plays a significant role in determining how the public perceives any issue, and human rights is no different. Unfortunately, British media, particularly certain outlets, have played a major role in creating myths about human rights and perpetuating those myths by repeating them. They frequently mislead the public on human rights and publish factually and legally inaccurate articles. Whether intentional or reckless, such inaccurate articles deepen the negative public perception

of human rights. Such criticism is not limited to criticising the European Convention on Human Rights, the Human Rights Act or particular judgments, but extends to personal attacks on human rights lawyers, judges and politicians supportive of human rights. We have seen headlines quite recently, such as those describing judges as “Enemies of the People”¹, which should be universally accepted as intolerable in a society that values democracy and the rule of law. Such articles are not a manifestation of the right to freedom of expression, but are unjustified ideological attacks on our laws, judiciary and human rights.

2. The extent to which human rights and those relying on, or working with, human rights are disparaged in the media goes well beyond legitimate freedom of expression. Attempts to incite readers and cause hostility among communities cannot be justified as the exercise of freedom of expression.
3. Articles that attack the judiciary in this way are objectionable for many reasons, and unnecessarily incite the public. They create hatred towards judges, the legal system and the concept of human rights. While it may be difficult to counter such views when expressed in an opinion piece, there must be greater accountability for news reports, purportedly based on fact, that are incorrect and/or misleading.
4. The media creates negative perceptions about human rights in several ways – blaming human rights for cases not related to human rights², failing to credit human rights when cases are in fact based on human rights, and portraying human rights as a foreign import imposed upon us by others. For instance, the Telegraph claimed that an opinion of the European Court of Justice’s (ECJ) Advocate-General relating to the deportation of a foreign national offender was based on human rights. Following a complaint by me, a correction was published admitting that the opinion “*was made under the EU Treaty on the Functioning of the European Union, not human rights laws*”³. It is hard to see how this could have been anything but obvious to someone who had read the Advocate-General’s opinion, and therefore how the inaccuracy could have been a mistake. This was just one of many such articles, creating a false association between human rights and criminals or terrorists.

¹ <http://www.dailymail.co.uk/news/article-3903436/Enemies-people-Fury-touch-judges-defied-17-4m-Brexit-voters-trigger-constitutional-crisis.html>

² <http://www.dailymail.co.uk/home/article-3213610/Clarifications-corrections.html>

³ <http://www.telegraph.co.uk/news/uknews/crime/12142702/Moroccan-criminal-fighting-deportation-is-Abu-Hamzas-daughter-in-law-a-Tory-MP-reveals.html>

5. The media has created a perception of “Us vs. Them”, i.e. the concept that no law-abiding individual would need to rely on human rights and anyone resorting to human rights must necessarily be in the wrong. This is not only incorrect and unfair on individuals seeking human rights protection, but discourages others from exploring human rights options when in need. Human rights are presented by such media as something that benefits only criminals, immigrants, prisoners and terrorists. This not only creates division in communities and animosity towards these groups, but discourages others from seeing human rights as something relevant or useful to them.

6. Some of the inaccurate articles may be the result of carelessness or poor research, but it is hard to believe that many such mistakes are not intentional. One such example is the conflation of the European Union and the European Court of Human Rights⁴. One does not need to be a legal expert to know these are separate entities. The media has capitalised on the increasing suspicion about the EU to create a negative feeling about the European Court of Human Rights (ECtHR), despite there being no direct link between the two. ECtHR judgments are presented as “European diktats” or something imposed upon us by “Europe”⁵. Conversely, judgments of the European Court of Justice, the EU’s court, are often described in terms that cause confusion as to its separation from the ECtHR⁶. It seems incredible that any journalist writing about such matters would be unaware that these are two different courts, but even harder to believe that such errors are not spotted in the editorial process. Indeed, even when these points are raised with the newspaper and corrections published, the error will be repeated almost immediately. In at least one case, a newspaper made the same mistake (conflating the ECtHR and the EU court) at the same time as publishing a correction about this relating to a previous article. This therefore seems to be clearly part of these newspapers’ agenda.

7. It is common for human rights to be blamed for, and linked to, any concerns that the public has at any time. In the past few years, with the public’s increasing strong views on immigration, including immigration

⁴ See correction in footnote at <https://www.express.co.uk/comment/expresscomment/878264/How-can-we-pay-Somali-criminal-almost-80-000>

⁵ <https://www.express.co.uk/news/uk/592579/roger-alan-giese-alleged-paedophile-eu-human-rights-broughton-hampshire-california>

⁶ <https://www.ipso.co.uk/rulings-and-resolution-statements/ruling/?id=06278-15>

from within the EU, newspapers increasingly cite human rights as a cause of increased migration. For instance, the Telegraph published a correction about an article that suggested that ECHR Article 8 was “solely responsible for the increasing settlement in the UK of family members of people settled here”. Following a complaint by me, the article was extensively amended and a lengthy correction published⁷.

8. It is unsurprising that the public feels distrust, or even contempt, towards judges, when they are regularly described by the media as “out-of-touch” with reality and modern life. I complained about a Daily Mail article and a correction was published saying “An article on May 27 said that burglar Wayne Bishop had been released early from prison so that he could look after his five children on the grounds that their rights were more important than the rights of his victims...”⁸. Any member of the public reading the original article would obviously have thought that these were the judge’s words and that the judge had ruled that the burglar’s rights were more important than the victim’s. It is not hard to imagine how this would make the general public feel towards our judges. Then the Daily Mail published an article headlined “Top judge praises Human Rights Act for keeping terrorists free on the streets! President of the Supreme Court says laws gave court the power to defy Parliament”⁹ about a speech by Lord Neuberger¹⁰. The article misreported what Lord Neuberger had said and claimed he had said that the HRA had given judges “the power to defy Parliament”. This was obviously not the case, and a complaint was made by me¹¹, which resulted in a correction being published¹².
9. Such articles not only strengthen anti-human rights feelings but also create hostility towards the judiciary and British justice. Such articles are clearly dangerous and more must be done to increase accountability for those that write and publish them. Reading such material on a daily basis, it is no surprise that the public feels that they are better off without human rights, without such a legal system and without such judges.

⁷ <http://www.telegraph.co.uk/news/uknews/immigration/11216586/We-cant-control-our-borders-until-we-control-those-judges.html>

⁸ <http://www.dailymail.co.uk/home/article-3138346/Clarifications-corrections.html>

⁹ <http://www.dailymail.co.uk/news/article-3264269/Top-judge-praises-Human-Rights-Act-keeping-terrorists-streets-President-Supreme-Court-says-laws-gave-courts-power-defy-Parliament.html>

¹⁰ <https://www.supremecourt.uk/docs/speech-151006.pdf>

¹¹ <https://www.ipso.co.uk/rulings-and-resolution-statements/ruling/?id=10083-15>

¹² <http://www.dailymail.co.uk/home/article-3376905/Clarifications-corrections.html>

10. Such articles are particularly concerning as our judges feel unable to defend themselves against such coverage and cannot object to what is attributed to them even when it is incorrect. It is therefore left to members of the public to identify such errors and raise them with the newspaper.

11. Such media's desire to create hostility towards human rights leads them to complicate even straightforward human rights news. At least five major errors were identified in an Express article reporting the relatively straightforward news that the Human Rights Act (HRA) would not be repealed during this Parliament. Again, the ECHR, the HRA and the EU were conflated¹³, and a correction was published after I complained¹⁴. Similarly, two other articles in The Express were so inaccurate that they were removed entirely once complaints were made about them¹⁵. These articles included sentences like "the ECHR has proved itself to be a boon for criminals" and "People trying to avoid deportation are particularly adept at exploiting it". These articles were removed from The Express website after I complained about them, but it is likely that copies will still exist online and can still be read and cited.

12. Unfortunately, it is also the case that the effect of such coverage is made worse by politicians and others. Rather than correcting the media and dispelling myths created by them, politicians often repeat and perpetuate those myths. For instance, Chris Grayling, as Lord Chancellor, wrote a Daily Mail article about human rights that was inaccurate and misleading in several respects¹⁶. The Mail was forced to amend the article and publish a correction, but this process took several weeks and the irreversible damage caused by the inaccurate article had been done by then¹⁷. Politicians also often feed into the anti-human rights narrative by criticising foreign judges and describing them as incompetent or unqualified¹⁸. This further deepens public feeling that judgments of these courts are substandard and not fit to be complied with. For instance, a Member of Parliament wrote an article in The Sun¹⁹

¹³ <https://www.express.co.uk/news/uk/771924/EU-Human-Rights-Act-Brexit-Artic-Britain-Theresa-May-Liz-Truss-politics-Brexit-Article-50>

¹⁴ See footnote at <https://www.express.co.uk/news/uk/771924/EU-Human-Rights-Act-Brexit-Artic-Britain-Theresa-May-Liz-Truss-politics-Brexit-Article-50>

¹⁵ <https://www.express.co.uk/news/uk/555332/Britain-has-wasted-2-1billion-European-Court-Human-Rights-cases> and <https://www.express.co.uk/comment/expresscomment/555278/Express-Comment-on-human-rights-Winston-Churchill-and-beer-duty>

¹⁶ http://www.huffingtonpost.co.uk/2014/11/12/chris-grayling-errors-daily-mail_n_6144182.html

¹⁷ <http://www.dailymail.co.uk/home/article-2882972/Clarifications-corrections.html>

¹⁸ <http://www.dailymail.co.uk/news/article-2778786/We-seize-power-Euro-judges-return-phrase-Human-Rights-really-symbol-fight-against-oppression-brutality.html>

about the EU Charter of Fundamental Rights. It was claimed that an ECJ judgment applying the Charter “obliged insurance companies to charge female drivers more for car insurance”. This described the *Test-Achats* case²⁰, which prohibited discrimination on the basis of gender and held that men and women should be charged the same for car insurance when their circumstances are the same. To say that the Court obliged insurers to charge women more is clearly misleading. Comments such as this create distrust about the court and cause the public to believe that human rights lead to perverse judgments.

13. A Daily Mail article criticised the Equalities and Human Rights Commission (EHRC) for saying that “*UK courts do not have to follow the judgments of the Strasbourg court. Our courts only need to take account of such judgments*”. Not only did the Mail claim this was incorrect, but quoted a “senior government source” as saying “*For a start, it is plain wrong to claim that our courts are not bound by decisions made by the ECHR in Strasbourg. They are*”. This “government source” therefore strengthened the inaccurate Daily Mail view and in fact publicly accused the EHRC of being wrong about human rights law. A complaint was made to Ipso but was rejected on the basis that this was a matter of “*significant legal debate*” that the committee could not determine²¹. It is concerning that the “government source” lent credence to the Daily Mail’s view and helped create a misleading impression among readers of the ECtHR’s position in our legal system.

14. It should be recommended that newspapers simplify their complaints procedures and show greater willingness to correct inaccuracies when notified of them. The Independent Press Standards Organisation, the regulator for most tabloids, must also improve its decision-making. It must not only be independent of the newspapers it regulates, but must be seen and trusted to be so. Improvements can be made to the Editor’s Code, but Ipso should also make proper use of the powers it currently has. For instance, a tiny correction on page 2²² about an inaccurate article that covered the entire front page a few days earlier²³ does nothing to dispel the incorrect impression created in

¹⁹ <https://www.thesun.co.uk/news/4946570/opinion-uk-human-rights-should-not-be-the-eu-charter/>

²⁰ <http://curia.europa.eu/juris/celex.jsf?celex=62009CJ0236&lang1=en&type=TXT&ancre>

²¹ <https://www.ipso.co.uk/rulings-and-resolution-statements/ruling/?id=04056-15>

²² <http://www.dailymail.co.uk/home/article-5196619/Clarifications-corrections.html>

²³ Daily Mail front page on 15 December 2017, headline “ANOTHER HUMAN RIGHTS FIASCO!”

readers' minds by that inaccurate article. The Daily Mail refused to publish this correction on the front page, even though my complaint that led to the correction cited Ipso's rules about 'due prominence'. It is not unreasonable to say that if an inaccurate article about human rights can be published on the front page, then the related correction should appear there too. Enforcement of such rules would encourage newspapers to take the accuracy of their content more seriously. There must be greater media accountability relating to accuracy and stricter rules about their responsibility when inaccuracies are published.

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