

UNITED KINGDOM

Amnesty International's submission of 14 October to the UK Parliament's Joint Committee on Human Rights in connection with the Committee's inquiry into the subject of "counter-terrorism policy and human rights".

UK: Human rights under sustained attack in the 'war on terror'

"Compromising human rights cannot serve the struggle against terrorism."

UN Secretary-General Kofi Annan, March 2005

Since the "war on terror" was declared by the US government in 2001, the UK authorities have mounted a sustained attack on human rights, the independence of the judiciary and the rule of law.

Their immediate response to 11 September 2001 was to introduce anti-terrorism legislation, even though the UK already had some of the most draconian anti-terrorism laws in the world. Two new Acts were passed, each containing sweeping provisions that contravene human rights law and whose enactment has given rise to serious human rights violations.¹ Then, after the London bombings in July 2005, additional ill-conceived and dangerous measures were proposed. Amnesty International considers that these measures are inconsistent with the UK's obligations under domestic and international human rights law and that, if enacted, they would lead to serious human rights violations.²

¹ See, *inter alia*, *United Kingdom: Briefing on the Terrorism Bill*, AI Index: EUR 45/43/00, published in April 2000; *United Kingdom - Summary of concerns raised with the Human Rights Committee*, AI Index: EUR 45/024/2001, published in November 2001; "Amnesty International's Memorandum to the UK Government on Part 4 of the Anti-terrorism, Crime and Security Act 2001", AI Index: EUR 45/017/2002; and *United Kingdom - Rights Denied: the UK's Response to 11 September 2001*, AI Index: EUR 45/016/2002, both published in September 2002; *United Kingdom - Justice perverted under the Anti-terrorism, Crime and Security Act 2001*; published in 11 December 2003, AI Index: EUR 45/029/2003; and *UK: Reaction to the UK Prime Minister's statement of 5 August 2005 concerning a "comprehensive framework for action in dealing with the terrorist threat in Britain"*, AI Index: EUR 45/031/2005, published on 11 August 2005.

² See *United Kingdom - Amnesty International's briefing on the draft Terrorism Bill 2005*, AI Index: EUR 45/038/2005, published in October 2005. Amnesty International has already sent this briefing to the members of the Joint Committee on Human Rights.

Some of the persons purportedly suspected of involvement in terrorism detained in the UK under anti-terrorism laws introduced post 9/11 have been thrown into a Kafkaesque world. A number of foreign nationals, whom the UK authorities recognized could not be forcibly removed from the country owing to its international obligations, were interned for years in harsh conditions on the basis of secret intelligence the details of which are withheld from them and which, therefore, they have been unable to refute.

When, in December 2004, the Law Lords ruled their detention unlawful because it was unjustifiably discriminatory, the government found new ways of restricting their liberty – first by imposing so-called “control orders”, introduced in hastily passed legislation, and then by imprisoning the majority of them under immigration powers pending deportation on national security grounds. At no point have any of these persons been found guilty in a court of law in the UK of an offence in connection with the purported allegations of involvement in terrorism. Indeed, the UK authorities have stated before the courts that in respect of those who were interned there is insufficient evidence to support a criminal charge. Nonetheless, the UK authorities maintain their claim that these persons are a “threat to national security”. Many of them, and their families, have suffered serious deterioration of their mental and physical health. The cumulative effects of the UK authorities’ actions against these people amount to persecution.

Some of the other people who are also currently detained awaiting deportation on national security grounds have actually been acquitted at a trial in the UK of the terrorism-related offences for which they stood accused.

The government’s dismissive attitude towards human rights in the “war on terror” has been witnessed in other areas too. The authorities have begun attempts which, if successful, would flout the absolute ban on torture or other ill-treatment by circumventing it. The authorities have taken steps to deport people to countries where they are at risk of torture or other ill-treatment by claiming that they would be absolved from their obligations not to do so under domestic and international law by relying on the successful conclusion of memoranda of understanding with the governments of countries to which the UK intends to forcibly return these people.

UK agents, particularly intelligence officials, have been implicated in interrogations of suspects who have been allegedly tortured abroad by US personnel, and in the unlawful transfer, a.k.a. “renditions” of people to the custody of US forces at Bagram Airbase, Afghanistan and Guantánamo Bay, Cuba where torture or other ill-treatment have been alleged to have been used routinely. Following submissions from the UK government, the Court of Appeal of England and Wales ruled in August 2004 that “evidence” extracted through torture or ill-treatment was admissible in court proceedings in the UK provided that UK agents were neither directly involved or connived in the torture. This gave torturers abroad the UK’s stamp of approval. An appeal of this judgment is pending.

For more than 40 years, Amnesty International has monitored steps taken by governments to protect the “security of the state” all over the world, including in the UK. Amnesty International’s research shows that counter-terrorism policies and measures have led

to laws and practices that stifle dissent and opposition, and allow state agents to commit human rights abuses such as unlawful killings, torture, arbitrary detention and unfair trial with impunity. Those affected frequently include members of the wider population not involved in illegal activity.

Evidence of this in the UK has been increasingly apparent, with peaceful protesters who have been subjected to police action under legislative provisions originally introduced to purportedly counter terrorism. There is also concern that the frequent linking by the authorities of the “terrorist threat” with “foreigners” and “Muslim extremists” is encouraging xenophobia, racism and faith-hate crimes.

It is unclear how any of the measures announced by the UK government since 7 July would have stopped the London bombers, who were all British. Many have pointed out that it was not gaps in the criminal justice system that failed to prevent the bombings. It was lack of intelligence that the attack was being planned.

There is a very real danger that a range of the proposed additional measures will further alienate the very communities the government needs on its side. If this happens, there is even less likelihood of good intelligence emerging and even less chance that the civilian population in the UK will not suffer further violent attacks.

Creating a shadow criminal justice system

On 11 September 2001 the ink was barely dry on the Terrorism Act 2000, a law that introduced a dangerously vague and broad definition of terrorism, and brought into permanent statutory form numerous provisions identical or similar to offences grounded in that definition which had been enshrined in so-called “temporary” emergency legislation in the UK over the previous three decades at least.³

The Anti-terrorism, Crime and Security Act 2001 (ATCSA), rushed through the UK Parliament in barely a month, introduced indefinite internment of foreign nationals -- who could not be forcibly removed from the UK -- on the basis of secret intelligence which may include information obtained through torture abroad. These provisions, under Part 4 of the Act, were discriminatory, draconian and unlawful – and a disturbing echo of the internment laws of the early 1970s that proved so counter-productive in the context of the conflict in Northern Ireland.

Part 4 of the ATCSA was ruled unlawful by the Law Lords in late 2004. The government responded with yet more legislation, the Prevention of Terrorism Act 2005 (PTA), which broke the spirit, if not the letter, of the Law Lords’ ruling. It gives a government minister, not the judiciary, unprecedented powers to issue “control orders” to restrict the liberty, movement and activities of people purportedly suspected of involvement in terrorism, again on the basis of secret “evidence”. The restrictions violate a wide range of human rights, including the rights to freedom of thought, conscience and religion, freedom of expression,

³ These provisions were enshrined in the Emergency Provisions Act, which was first introduced in 1973 and the Prevention of Terrorism Act, which was first introduced in 1974.

freedom of assembly and association, freedom of movement, the right to a fair trial and the right to liberty. They have also had a detrimental impact on the human rights of the families of those subject to those orders.

Amnesty International calls for the repeal of the PTA. The imposition of such orders is tantamount to a government minister “charging”, “trying” and “sentencing” a person without any regard to fair trial guarantees that are standard in criminal cases.

After the London bombings in July 2005, which happened just a few months after the PTA had been enacted, the government said that new anti-terrorism measures were needed once again. On 5 August the Prime Minister announced a 12-point plan, every element of which signalled further assaults on human rights, particularly for those identified as Muslims, foreign nationals, and asylum-seeker.

In October, a new Terrorism Bill was published. This contains further sweeping and vague provisions that undermine the rights to freedom of expression and association, the right to liberty, the prohibition of arbitrary detention, the rights to the presumption of innocence and fair trial.

One proposal is to introduce a crime that involves the “glorification of terrorism”. Such terms are broad, vague and subjective. They have no legal clarity and can therefore be used arbitrarily to restrict human rights, including freedom of expression.

The Bill also proposes extending from 14 days to three months the period that people purportedly suspected of involvement in terrorism can be held without charge in police custody – more than 20 times the period allowed for holding people on suspicion of murder – thereby, in effect, reintroducing internment. Two former Law Lords have condemned this proposal. Lord Steyn called it “exorbitant and unnecessary” and pointed out that it would be unlawful under the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR).⁴ Lord Lloyd described the proposal as “intolerable”.⁵

In another move, the UK authorities are reportedly consulting on the introduction of a power to close down places of worship where “extremists” operate, if religious leaders or the trustees fail to curb “extremism”. Amnesty International considers that if the authorities reasonably suspect people of an offence they should charge them with a recognizably criminal offence and try them in fair proceedings. In addition, the proposed power would be a disproportionate action which would affect whole communities and may amount to collective punishment, religious persecution and discrimination – all of which are unlawful. It is also unclear how such power would be effective given that the so-called “extremists” could simply find another venue in which to congregate.

Ominously, since 7 July senior government officials, including the Prime Minister, have made statements that amount to an attack on the independence of the judiciary. The government has intimated that if the courts do not heed its expressed policies to forcibly

⁴ “Former law lord attacks PM’s record on human rights”, *The Independent*, 11 October 2005

⁵ Panorama, *BBC*, 9 October 2005

remove people from the UK, including to countries where they may risk torture, it will amend the Human Rights Act 1998 – which enshrined in domestic law most of the human rights guaranteed under the ECHR -- to ensure that it gets its way.

Any criminal justice system that adheres to international human rights law will only allow people to be punished if they have been promptly charged with a recognizably criminal offence and tried and convicted in fair and transparent proceedings. Many of the new measures introduced or proposed by the UK authorities since September 2001 involve punishment, whether it be deprivation of liberty, or deportation of people against whom there is insufficient evidence to support a criminal charge. Such course of action brings the law and those charged with its enforcement into disrepute; it is neither fair, nor just, nor lawful – and soon results in the loss of public confidence.

Creeping acceptance of torture

The government's apparent disregard for human rights law when framing anti-terrorism legislation has been reflected in its various attempts to undermine the ban on torture or other ill-treatment – a universally accepted prohibition which guarantees a fundamental human right.

A principle inherent to the absolute prohibition of torture or other ill-treatment is that no one should ever be sent to a country where they would be at risk of torture or ill-treatment – the principle known as *non-refoulement*. Yet the government has repeatedly tried to find ways to circumvent this principle in order to deport people it deems are a risk to national security but against whom it maintains not to have sufficient evidence to support criminal charges.

In August 2005 the UK concluded a Memorandum of Understanding (MoU) with Jordan which forms the basis on which the UK authorities are taking steps to forcibly return people to that country. The UK authorities are currently trying to negotiate further “diplomatic assurances” with other countries in the Middle East and North Africa.

Such “diplomatic assurances” are not worth the paper they are written on. By definition, such assurances are only needed from countries where torture is practised. Why should anyone trust the word of officials whose governments have already committed themselves -- by ratifying international treaties -- to prohibiting torture. And yet, these countries routinely resort to torture and deny doing so.

The UK has also been implicated in the US practice known as “rendition” – the illegal and often secret transfer of alleged terrorist suspects from one country to another without due process, including to countries where torture is rife. There is mounting evidence that countries known to practise torture have been specifically selected to receive certain suspects for interrogation in an attempt to distance the USA from the abuse. This is outsourcing torture.

Torture is wrong and illegal wherever it happens and whoever does it. Any government that exports suspects to be tortured does not escape responsibility for that torture.

The ban on sending anyone to a country where they may be tortured is as absolute as the ban on torture itself.

The UK authorities' creeping acceptance of torture abroad took a disturbing twist in August 2004 when the Court of Appeal of England and Wales ruled that "evidence" obtained through torture abroad would not only be admissible in proceedings in the UK, but could be relied upon. The only caveat was that UK officials should not have connived or taken part in the torture.

Amnesty International condemned the ruling and said that the Court of Appeal had shamefully abdicated its duty to uphold human rights and the rule of law. The Council of Europe's Commissioner for Human Rights noted in June 2005, "To use evidence obtained under torture is to condone an entirely indefensible practice."⁶ An appeal against the ruling was pending before the Law Lords at the time of writing.

Treatment of alleged terrorist suspects in the UK

Once any government begins to "sacrifice" human rights in the name of security, it is not long before individuals pay the price.

Under anti-terrorism legislation introduced since September 2001, people have been interned for years in harsh conditions never knowing if they would ever be charged, tried or released. As a result, they have suffered damage to their physical and psychological health.

Amnesty International considered that their conditions of detention amounted to cruel, inhuman and degrading treatment. This conclusion was echoed by the UN Committee against Torture and the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment.

In July 2005, after police shot dead Jean Charles de Menezes, a Brazilian man on his way to work in London, it emerged that a "shoot to kill" policy had been authorized for police confronting anyone they believed was about to detonate a bomb. There were crucial delays in initiating an independent inquiry into the killing, and allegations have emerged of an early attempt at a cover-up by the police.

There is no provision in international law for "shoot to kill" policies. All law enforcement agencies should be guided at all times by the principles of necessity and proportionality when using force. Every effort must be made to apprehend rather than kill – lethal force must never be used as an alternative to apprehension. Amnesty International has called for a prompt, thorough, independent, impartial and effective investigation into the killing of Jean Charles de Menezes and for anyone suspected of unlawful conduct to be brought to justice in fair proceedings.

⁶ *Report by Mr Alvaro Gil-Robles, Commissioner for Human Rights, on his visit to the United Kingdom, 4-12 November 2004, CommDH(2005)6, 8 June 2005, p. 12.*

Undermining human rights abroad

The UK government has also tried to circumvent its obligations under international and domestic human rights law in relation to the actions of its officials and troops abroad.

Its record in relation to the human rights scandal of the US detention centre at Guantánamo Bay, Cuba, has been shameful. For two years government ministers claimed no knowledge of the appalling abuses being suffered there. Only after intense pressure was exerted by human rights organizations and relatives of Guantánamo detainees did the government finally act to seek the release of the UK nationals. However, it has continued to fail to make adequate representations on behalf of UK residents who are still languishing there in orange jumpsuits. It has also failed miserably in its duty to mount a serious protest against the litany of human rights abuses being suffered by the hundreds of men who remain in Guantánamo without any hope of justice.

Moreover, UK intelligence officers took advantage of the legal limbo and the coercive detention conditions at Guantánamo Bay -- and reportedly at other locations, including Bagram Airbase in Afghanistan, to conduct interrogations. Such interrogations took place without any of the normal safeguards, such as having a lawyer present, thereby circumventing both domestic and international human rights law. UK officials have also taken part in, witnessed or effectively condoned the interrogation under duress of UK detainees in the custody of the USA and other countries.

As described above, information obtained by such illegal methods has been ruled admissible in the UK and, it is feared, may have formed part of the secret "evidence" used by the government to justify the incarceration of people suspected of involvement in terrorism.

In November 2004, the UN Committee against Torture recommended that the UK government "should ensure that the conduct of its officials, including those attending interrogations at any overseas facility, is strictly in conformity with the requirements of the Convention [against Torture] and that any breaches of the Convention that it becomes aware of should be investigated promptly and impartially, and if necessary the State party should file criminal proceedings in an appropriate jurisdiction".

An approach that undermines human rights law and standards has also been apparent in relation to UK troops in Iraq. In response to well-substantiated allegations that during the period of occupation, UK troops had committed serious human rights violations in Iraq, including unlawful killing and torture or other ill-treatment, the UK authorities asserted that human rights law did not bind its armed forces in Iraq.

Amnesty International considers that the UK is bound by its international obligations insofar its armed forces and other agents exercise effective control over place or people. These obligations include, among others, relevant provisions of ECHR, the International Covenant on Civil and Political Rights and the Convention against Torture.

These obligations are therefore directly applicable to the conduct of UK troops in Iraq. In light of this, the UK is obliged to ensure the initiation of prompt, competent, thorough, independent, impartial and effective investigations into alleged human rights abuses by UK forces.

The UK is also in breach of international and domestic human rights law through the role it is playing in the internment without charge or trial of at least 10,000 people in Iraq. UK officials sit, along with US and Iraqi officials, on the Joint Detention Review Board, which reviews the cases of all those interned by members of the Multinational Force in Iraq (in most cases, by US troops). UK troops are themselves holding around 10 "security internees" in Iraq without charge or trial, including at least one person who holds both UK and Iraqi citizenship.

Stirring up racism

The UK government has done little in practice to allay fears among the country's three million Muslims, as well as human rights activists and many others, that the "war on terror" is anti-Muslim and anti-foreigner, and that racial tensions will be exacerbated as a result.

The ATCSA was blatantly discriminatory against foreigners and was eventually ruled to be unlawful on this basis. Government policies and speeches have persistently linked Muslims, asylum-seekers and foreigners with "the terrorism threat". The Minister for Counter Terrorism, Hazel Blears, even warned that Muslims must face up to the reality that the police would target them in "stop and search" operations because of the threat from an extreme form of Islam.

The impact of such speeches and policies is felt on the streets by people from Muslim and other ethnic minority communities. Between September 2001 and July 2004 there reportedly was a 302 per cent increase in the number of people of Asian origin being stopped and searched by police.⁷ Since 2001, and particularly since 7 July 2005, a significant rise in the number of racist and faith-based attacks against individuals, homes and places of worship has been reported.

In his June 2005 report on the UK, the Commissioner for Human Rights of the Council of Europe said his discussions with representatives of the Muslim community revealed concerns over the growing Islamophobia. "Recent legislative changes relating to the prevention of terrorism had, they claimed, not only resulted in the discriminatory treatment of individual Muslims but also contributed to raising anti-Islamic sentiments."

Human rights and security

The Council of Europe's Commissioner also stated that the UK had shown a tendency to "consider human rights as excessively restricting the effective administration of justice and the protection of the public interest." He added that "it is perhaps worth emphasizing that human rights are not a pick and mix assortment of luxury entitlements" and that "their violation affects not just the individual concerned, but society as a whole; we exclude one

⁷ Report by Islamic Human Rights Commission.

person from their enjoyment at the risk of excluding all of us.”⁸ His words have been recently echoed by others in the Council of Europe, including those of its Secretary General and the President of its Parliamentary Assembly.

The global impact of the UK's approach to human rights and the “war on terror” is immense. The UK is a key member of many influential organizations -- the UN Security Council (as one of five permanent members), the EU (currently as President), the G8, the Council of Europe and the Organization for Security and Co-operation in Europe. It has been the main ally of the USA in the wars in Afghanistan and Iraq, and has stood by its partner notwithstanding widespread evidence of gross human rights abuses, including allegations of war crimes, by US forces. It has also joined forces with the USA in framing the debate about human rights and international security.

An example of its influence has been its role in promoting the criminalization of “incitement to terrorism” throughout the world, including through tabling the recently adopted Security Council resolution on “incitement to commit a terrorist act or acts” and its support for the recently adopted Council of Europe Convention on the Prevention of Terrorism. A pattern has emerged whereby the UK announces tough counter-terrorism measures that run counter to human rights standards, which other countries then say they need. The UK in turn uses such statements to support its initial proposals.

However, security and human rights are not alternatives; they go hand in hand. Respect for human rights is the route to security, not an obstacle to it. The route to security is through respect for human rights, not violations. As the UN Secretary-General has stressed: “While we certainly need vigilance to prevent acts of terrorism... it will be self-defeating if we sacrifice other key priorities -- such as human rights -- in the process”.

Amnesty International's message is simple. The UK government must respond to attacks on human rights by defending, respecting and protecting human rights. Any other course of action is wrong, unlawful and counter-productive. Amnesty International adds its voice to others who have underscored that bad laws make everyone less safe.

⁸ *Report by Mr Alvaro Gil-Robles, Commissioner for Human Rights, on his visit to the United Kingdom, 4-12 November 2004, CommDH(2005)6, 8 June 2005, p.6.*