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Extract from the IHF report

Human Rights in the OSCE Region: Europe, Central Asia and North America, Report 2005 (Events of 2004)

United Kingdom¹

IHF FOCUS: freedom of expression, free media and information; right to a fair trial and effective remedies; torture, ill-treatment and police misconduct; conditions in prisons; respect of private and family life; racism, intolerance and xenophobia; migration, asylum seekers and refugees; Northern Ireland.

Measures taken under the UK's Anti-Terrorism Act continued to cause concern, in particular the wide-scale arbitrary stop and search by police and indefinite detention of foreign nationals without trial. While a landmark ruling by the House of Lords in December found that the provision of internment was in violation of British and international law, 11 detainees suspected of terrorism continued to be held at year's end.

In addition, there were reports of increased expressions of islamophobia with racism among public officials and in the public at large, exacerbated by biased media reporting. Further concerns included a record number of suicides in prisons, abuse of detained children and controversial asylum policies.

2004 saw the final stages before entry into law of the Freedom of Information Act. There was continued concern, however, that controversial material would not be disclosed and fears that protection of journalists' sources remained at risk.

In Northern Ireland, the gradual operationalization of a number of major policing and criminal justice reforms that had been agreed as part of the political negotiations leading up to, and pursuant to, the Good Friday Agreement continued. While delays were noted, human rights protection in 2004 by and large moved in a positive direction.

Freedom of Expression, Free Media and Information

Civil rights organizations continued to mount criticism regarding the provisions of the new Freedom of Information Act 2000 due to enter into force on 1 January 2005. The act provides the public for the first time a general right of access to information held by 100,000 public authorities in the course of carrying out their public functions, and obliges public bodies to adopt a scheme for the publication of such information. An independent information commissioner is charged with enforcing the new act. While a major step forward, however, critics argued against the 23 exemptions to information disclosure, which include information on national security and defense and the ultimate veto power of ministers to overrule decisions of the information commissioner if the requested information is found to "prejudice the public interest." Furthermore there was evidence that governmental bodies intended to introduce a practice of blacking out

¹ By the IHF Secretariat and the Committee on the Administration of Justice (CAJ, on Northern Ireland).

names in controversial documents and that a large majority of public bodies did not (despite the four-year implementation period) have the resources to fully implement the act. On 31 December the *Guardian* filed a request for the advice on the legality of the Iraq war given by Attorney General Lord Goldsmith, forming the first test case for the new act.²

There was continued concern over the issue of protection of journalistic sources:

- In February threats of contempt of court charges were dropped against journalists Alex Thomson and Lena Ferguson by the judge in the Bloody Sunday enquiry. In May 2002, both journalists had refused a request by the court to reveal the names of the soldiers they had interviewed for a series of Channel 4 News reports (in exchange for anonymity) in 1997 in connection with the Bloody Sunday shootings. The reports had challenged the verdict of the original enquiry and had played an important role in instigating a new enquiry in 1998. In January, both journalists stood by their original intent to protect their sources risking the possibility of up to two years imprisonment. In June, contempt of court proceedings launched in 2000 against a third journalist, *Daily Telegraph* reporter Toby Harnden, were dropped as the identity of the soldier who had been interviewed by Harnden was revealed by other means. The inquiry took over the defense costs of £110,000 (EUR 161,585).³ In a *Guardian* report, Thomson argued that while the decisions represented a victory for journalists, prosecution would have led to a written precedent and launched a proper and urgently needed debate on protection of journalists' sources.⁴

Concern was also expressed that the entry into force of the Regulation of Investigatory Powers Act 2000 would place the protection of sources in further jeopardy. The act allows police and security services to ask companies for communications data if necessary for national security, prevention or detection of crime or for the economic well being of the country. The data could include details of the source of telephone conversations or emails with journalists.⁵

- On 7 October, a US subpoena was issued ordering the London office of a US web hosting company to hand over web servers and media archives used by Indymedia, an international independent media network. The network, which comprises collectively run "media outlets for the relation of radical, accurate and passionate tellings of the truth" runs with no editorial control and encourages the free posting of messages on its site. On 13 October, the web servers were returned but no explanation was offered for their initial removal. The International Press Institute (IPI) in an open letter to the home secretary condemned the action as setting a dangerous precedent for the freedom of Internet media by distinguishing between traditional media and those on the Internet. Concern was expressed that Indymedia was denied the opportunity to defend itself and protect its sources due to the rapidity of the seizure and the crucial fact that no reason was given for the seizure nor the identity of those who instigated the request revealed.⁶
- In February, charges against former Government Communications Headquarters (GCHQ) employee Katharine Gun were dropped due to the prosecution's apparent lack of evidence. Gun had been dismissed from her job and charged under the Official Secrets Act accused of leaking an email to the *Observer* newspaper from an US secret surveillance operation asking British counterparts to tap telephones of UN Security Council members before the invasion of Iraq. Critics argued that the

² Freedom of Information Act 2000, <http://www.legislation.hmsso.gov.uk/acts/acts2000/20000036.htm>.
Guardian "At Last, Whitehall Declares Opening Time," 30 December 2004,
http://www.guardian.co.uk/uk_news/story/0,,1380684,00.html.

³ *Guardian*, "Contempt Charges Dropped Against Bloody Sunday Journalist," 10 June 2004,
<http://media.guardian.co.uk/presspublishing/story/0,,1235586,00.html>.

⁴ Alex Thomson, "A Victory for Whistleblowers," *Guardian*, 23 February 2004,
www.guardian.co.uk/bloodysunday/article/0,2763,1153698,00.html.

⁵ *Guardian*, "Resources to Save a Source," 2 August 2004,
<http://media.guardian.co.uk/mediaguardian/story/0,,1273919,00.html>.

⁶ IPI Letter to British Home Secretary David Blunkett, 20 October 2004, www.ifex.org.

decision to drop charges was political due to the fact that a full trial would have generated unwelcome publicity for the government and GCHQ. Gun's lawyers had requested secret government documents, including Lord Goldsmith's advice on the legality of the Iraq invasion.⁷

Right to a Fair Trial and Effective Remedies

Anti-Terrorism Measures

Grave concerns continued to be voiced throughout the year regarding provisions of the Anti-Terrorism, Crime and Security Act 2001 (ATCSA).⁸ The ATCSA, which was enacted in December 2001 following the September 11 attacks, most controversially gives the secretary of state the power to indefinitely detain without charge or trial foreign nationals he has "reasonable belief" to be "suspected international terrorists." Under section 4 detainees can appeal to the Special Immigration Appeals Commission (SIAC) but classified evidence is neither made public nor disclosed to appellants or their lawyers. In addition, evidence extracted under torture of a third party can be adduced and relied upon in ATCSA proceedings. The creation of what critics termed a "shadow criminal justice system" entailed a declaration of state of emergency and derogation by the UK from article 5.1 of the European Convention on Human Rights and Fundamental Freedoms (ECHR) which prohibits prolonged detention without charge or trial. By October 2004, 17 persons had been certified suspected international terrorists and 11 were being held in indefinite detention. In addition, suspect G was on bail but effectively under house arrest. In September, suspect D was released, however, he was neither informed of the case against him nor given the reasons as to why he was freed.⁹

Harsh criticism of the practice of indefinite detention was also voiced both by the Council of Europe's Commissioner on Human Rights during a visit to the UK in November, arguing against the UK's derogation from article 5 of the ECHR,¹⁰ and by the UN Committee Against Torture (CAT) in its periodic review of the UK's commitments under the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

In February, the government launched a six-month consultation period to review the legislation, which will lose force in 2006. A report in August by a cross-party human rights committee of the British parliament criticized indefinite detention as in the "utmost degree odious" and warned of the disproportionate impact of the use of the powers on the Muslim community and against the use of evidence obtained by torture.¹¹ In the same month, however, the appeals court ruled that evidence obtained in third countries by torture could be used in ATCSA proceedings if the UK neither "procured nor connived" it. This led to wide scale criticism from both national and international civil rights organizations who argued that this was tantamount to commending the use of torture.

In October, nine of the detainees held in detention since 2001 took their case to the House of Lords, challenging the legality of the ATCSA, arguing that it violated their human rights. A court of appeal ruling in their case in October 2002 had determined that indefinite detention was compatible with UK and international law due to the current state of emergency, thereby overturning an earlier SIAC ruling that the powers were discriminatory and in breach of the country's obligations under human rights law.¹² In its written comments to the hearing, Amnesty International (AI) pointed to the discriminatory nature of the law,

⁷ *BBC News*, "GCHQ Translator Cleared Over Leak," 26 February 2004, <http://news.bbc.co.uk/go/pr/fr/-/1/hi/uk/3485072.stm>.

⁸ Anti-Terrorism, Crime and Security Act 2001, <http://www.hms.o.gov.uk/acts/acts2001/20010024.htm>.

⁹ Human Rights Watch, *Briefing Paper, Neither Just of Effective, Indefinite Detention Without Trial in the United Kingdom under Part 4 of the Anti Terrorism, Crime and Security Act 2001*, 24 June 2004.

¹⁰ *Guardian*, "Detention of Terror Suspects Criticized", 12 November 2004, http://www.guardian.co.uk/uk_news/story/0,1349359,00.html.

¹¹ *BBC News* "Terror Detention Law 'Must Go,'" 14 August 2004, http://news.bbc.co.uk/1/hi/uk_politics/3534274.stm;

Joint Human Rights Committee, *Review of Counter-Terrorism Powers*, August 2004, <http://www.privacyinternational.org/issues/terrorism/library/ukjrcreviewcounterterr2004.pdf>.

¹² *Case of A and others v. the Secretary State for the Home Department*.

which did not allow for similar treatment for British nationals and argued that part 4 violated the most fundamental fair trial rights guaranteed by international standards. Reliance on evidence obtained by torture in ATCSA proceedings also violated the UK's obligations under international law.¹³

In a breakthrough verdict on 16 December, the Law Lords ruled that indefinite detention discriminated on the grounds of nationality and was therefore incompatible with human rights law: "the measures unjustifiably discriminate against foreign nationals on the grounds of their nationality or immigration status and are not 'strictly required' since they provide for the detention of some but not all those who present the same risk." Withdrawal of the UK's derogation from the ECHR was requested. All those accused, however, remained in detention as of year's end and no immediate response had been given by the government.

On 26 January 2005, the secretary of state announced the government's intention to replace indefinite detention with a twin track approach. Suspects would either be deported with "diplomatic assurances" from their home country that they would not be subject to torture upon return or for those who could not be deported, control orders for "containing and disrupting" them would be introduced. AI argued that such measures, which included house arrest, still amounted to detention on the basis of secret evidence and without charge or trial.¹⁴

Torture, Ill-Treatment and Police Misconduct

There were reports of ill-treatment and torture by police and armed forces both within the UK and in territories abroad where they were operating. In particular, there were a large number of allegations of abuse and ill-treatment of Iraqis by UK forces with 150 cases being investigated at year's end.

In March the Council of Europe's Committee for the Prevention of Torture or Inhuman or Degrading Treatment or Punishment visited the UK to investigate the treatment of those detained under the ATCSA. The report had not been released by end of 2004. In November, CAT reviewed the UK's 4th periodic report on its efforts to give effect to the provisions of the UN Convention against Torture. It raised concern, in particular, about limited acceptance of the applicability of the convention to the actions of forces abroad and the consequences on health of those indefinitely detained.¹⁵ Submissions to CAT included a report from consultant psychiatrists, which recorded the progressive deterioration in the health of eight of the detainees. The report stated that all were clinically depressed and there existed a high level of "suicidal ideation and attempts at self harm."¹⁶ AI argued that conditions under the severely restrictive regimes amounted to inhuman cruel and degrading treatment under article 3 of the ECHR.¹⁷

Torture of asylum seekers upon removal and the reliance on "diplomatic assurances" for the safe receipt of asylum seekers were also highlighted by CAT. In November, the government signaled that terrorist suspects could be returned home once it received "diplomatic assurances" that they would not be subject to torture if returned. Human Rights Watch argued that experience has shown this to be an insufficient safeguard.¹⁸ A report by the Medical Foundation for the Care of Victims of Torture also detailed medically documented

¹³ Amnesty International, *UK: Text of Amnesty International's Submission to the House of Lords Opposing Indefinite Detention*, 4 October 2004, www.amnesty.org.

¹⁴ Amnesty International, "UK: Home Secretary Proposals Fail to Provide Justice", 26 January 2005, www.amnesty.org.uk/news/press/15900.sthtml.

¹⁵ *BBC News*, "UK Urged to Review Terrorism Law," 27 November 2004, http://news.bbc.co.uk/2/hi/uk_news/4047207.stm.

¹⁶ *The Psychiatric Problems of Detainees under the 2001 Anti-Terrorism, Crime and Security Act*, October 2004, <http://www.liberty-human-rights.org.uk/issues/internment-psychiatric-report.PDF>.

¹⁷ Amnesty International, "UK: Briefing for CAT," October 2004, web.amnesty.org/library.

¹⁸ Human Rights Watch, "UK: Promises on Torture Don't Work," 6 October 2004, http://hrw.org/english/docs/2004/10/06/uk9459_txt.htm.

cases of inhuman treatment, with “excessive and gratuitous force” by custody officials in attempts to remove failed asylum seekers from the country.¹⁹

Stop and search powers under the Terrorism Act 2000 continued to be widely and arbitrarily used by the police, with the total number of searches up by 150% between 2002 and 2003 (8,550 to 21,577). Official Home Office figures for 2002/2003 released in July showed that ethnic minority communities were disproportionately affected, with a 285% increase of stop and searches of Asian people and those of black people up by 229% while searches of white people rose by 118%.²⁰ In total, 869,164 searches were recorded for England and Wales, an increase of 22%, with a 38% increase for blacks, 36% for Asians, and 17% for whites. The actual number of arrests following searches remained, however, at 13%, consistent with the preceding year. A Statewatch analysis of the figures also revealed that the number of those arrested under the Terrorism Act was a mere 1.7% with the large majority being arrested under terrorism-related powers for crimes other than terrorist acts.²¹

There continued to be arbitrary searches with an increasing number of complaints from people who had never been in trouble with the law before and had been stopped apparently for the sole reason that they were Muslims.²² A report by the Metropolitan Police Authority in March also revealed racial bias in the practice of stop and search, which had created “deeper racial tensions” and antagonism against the police.²³ In response, the government set up a Stop and Search Action Team to work with five police forces to identify the reasons for the racial imbalance and develop guidance on stop and search practices. However, a Home Office consultation paper on modernizing policing proposed widening police officers powers to arrest suspects for any offence not just those that attract prison sentences during searches, thereby raising further fear of arbitrary and racially discriminatory use.²⁴

In addition, reports of unlawful police conduct, racism and the use of unnecessary force during searches were reported. Figures from the Police Complaints Authority (PCA) showed that four out of ten complaints about stop and search operations were lodged by black people with 44% of complaints received alleging police assault and 25% racism. Of 100 cases analyzed by the PCA, however, 31 officers were referred to the Crown Prosecution Service and in only one case were indecent assault charges brought but later dropped.²⁵

- In September the Crown Prosecution Service announced that there was insufficient evidence to bring charges against police officers involved in the alleged abuse of a Muslim man during an anti-terrorist search in December 2003. 29-year-old Babar Ahmad alleged that he had been beaten repeatedly and mocked for being a Muslim. A report by the doctor who examined him after arrest had confirmed bruises on his whole body and blood in his ears and urine.

The number of deaths during or following police contact published by the Home Office in October revealed a slight decrease since 2002/2003 from 104 to 100 deaths and a reduction of 22 to 10 deaths of people from ethnic minority communities. Concern was expressed by the PCA’s successor the Independent Police Complaints Commission (IPCC), however, that half of those dying were mentally ill, with police cells being

¹⁹ Medical Foundation for the Care of Victims of Torture, *Report: Harm on Removal: Excessive Force against Failed Asylum Seekers*, October 2004, <http://www.torturecare.org.uk/publications/excforce.pdf>.

²⁰ Police and Criminal Evidence Act 1984, sections 44(1) and 44(2) of the Terrorism Act 2000 and section 60 of the Criminal Justice and Public Order Act 1994.

²¹ Home Office Figures, Statistics on Race and Criminal Justice System 2003, July 2004, www.homeoffice.gov.uk; Statewatch “UK: Ethnic Injustice More Black and Asians are Being Stopped and Searched than ever before,” August 2004, <http://www.statewatch.org/news/2004/aug/stop-and-search.pdf>.

²² *Guardian*, “Muslims: We are the New Victims of Stop and Search,” 29 March 2004, www.guardian.co.uk.

²³ Metropolitan Police Authority, *Report of the MPA Scrutiny on MPS Stop and Search Practice*, May 2004, <http://www.mpa.gov.uk/default.htm>.

²⁴ *Guardian*, “Blunkett to Extend Long Arm of the Law”, 12 August 2004, <http://politics.guardian.co.uk/homeaffairs/story/0,,1281643,00.html>; Home Office, *Modernising Police Power to Meet Community Needs*, www.homeoffice.gov.uk.

²⁵ *BBC News*, “Police Stop-and-Searches 'Flawed'”, 24 March 2004, <http://news.bbc.co.uk/go/pr/fr/-/1/hi/uk/3562613.stm>.

used as dumping grounds and police officers lacking the training or skills to deal with the mentally ill.²⁶ Cases of custody deaths also rarely resulted in disciplinary procedures or criminal charges against police officers even after an “unlawful killing” finding at inquest.²⁷

- A high court ruling found that the unanimous verdict of the inquest jury was flawed in the case of the death of Roger Sylvester, who was black, in police custody in 1998. Sylvester had died after being handcuffed and restrained for 20 minutes by officers under the Mental Health Act. The suspended police officers were reinstated after the jury found his death to have been caused by cardiac arrest and cannabis intoxication.

In March, Surrey Police published their fifth and final report following the deaths by gun shot wounds of four recruits at Deepcut Army training barracks between 1995 and 2002. The police force acknowledged the shortcomings of the original army investigations, which had found that the recruits had taken their own lives and conducted a reinvestigation in 2003. The report, which uncovered repeated examples of bullying at the barracks, found that circumstances suggested that the deaths could have been avoided but that there was no evidence to justify criminal charges.²⁸ Over 100 claims of rape, racism and beatings were uncovered by the investigation. Despite repeated pleas from the victims’ parents, a public inquiry was replaced by an independent review of claims of abuse. In October, a former training instructor at the army barracks was jailed for four and half years for a series of sex attacks on young male soldiers.

Following a yearlong trial of controversial taser guns by five police forces, in September the Home Secretary authorized their use across England and Wales. The IPCC argued that the guns, which temporarily stun the suspect with a five second 50,000 volt charge were a safer way of dealing with people using firearms and would reduce the numbers of those shot dead by police. However, AI has recorded more than 70 deaths linked to the use of taser guns in North America and warned the government of their potentially fatal effect on people with weak hearts and drug problems.²⁹

Conditions in Prisons

Cases of Death

Despite the government’s three-year strategy commenced in 2001 to reduce the number of self-inflicted deaths in prisons, Home Office figures published in December showed that prison suicides had returned to record levels, with 95 deaths in 2004. In August alone, 14 inmates took their own lives while non-lethal self-harm amongst inmates also rose dramatically. The parliamentary Joint Committee on Human Rights in its December report stated that deaths had risen to shocking levels and revealed the number of suicide attempts as twice that of those dying in custody. It found that someone in custody was either “killed, killed themselves or died in other questionable circumstances every other day.” One of the main reasons given was that prisons were all too often used to hold people with multiple health and drug problems, while lacking adequate mental care or professionally trained staff. Overcrowding was also linked with the high number of deaths. On 19 November there were 75,145 persons in prisons across England and Wales, an increase of 700 over the past year; 82 of 139 prisons were recorded as overcrowded.³⁰

²⁶ *BBC News*, “Police Custody ‘No Place for Ill’,” 20 January 2005, <http://news.bbc.co.uk/go/pr/fr/-/1/hi/uk/4190165.stm>.

²⁷ Home Office, *Statistics on Deaths During or Following Police Contact 2003/04*, <http://www.homeoffice.gov.uk>; *The PCA Analysis of Ethnic Minority Deaths in Police Custody*, 2 July 2004, <http://www.publications.parliament.uk/pa/jt200304/jtselect/jtrights/12/12we09.htm>.

²⁸ Surrey Police, *The Deepcut Investigation: Final Report*, March 2004, http://www.surreypolice.org.uk/deepcut_final.pdf.

²⁹ Amnesty International, “UK: Tasers Trialled by UK Police Revealed as Potentially Lethal and Prone to Abuse,” 30 November 2004, www.amnesty.org.uk/news/press/15772.shtml.

³⁰ HM Prison Service Population Figures 2004, <http://www.hmprisonservice.gov.uk/resourcecentre/publicationsdocuments/index.asp?cat=85>; Joint Committee on

Suicides amongst female prisoners continued to outnumber proportionally those of men, with women constituting 5 % of the prison population and 14% of its suicides: 13 deaths were recorded in 2004. An inspection of Styal Prison, the second largest women's prison, by the Chief Inspector of Prisons, Anne Owers, found that a lack of support during drug withdrawal and care of mental health problems were putting female inmates at serious risk. While some improvements were noted since the 2002 inspection, there was concern about the use of special cells for disruptive prisoners even with a history of self-harm and the lack of recreational activities, with many inmates spending up to 19 hours a day in their cells. The ombudsman also criticized the lack of suitable accommodation for vulnerable prisoners and inadequate staffing levels.³¹

Four asylum seekers took their lives in prison-like detention centers in 2004, raising criticism of inadequate conditions and the psychological impact of detention leading to a "suicide culture."³²

- On 19 July, Sergey Baranuyck, a 31-year-old Ukrainian asylum seeker hanged himself at Harmondsworth fast track immigration removal center. Rumors that attempts had been made to forcibly deport him sparked off a series of riots and fires with 17 men consequently charged with criminal offenses. Four days later, Tung Wang, a 23-year-old Vietnamese man was found hanged after being transferred to Dungavel removal center in Scotland after the disturbance. Concern was expressed that conditions in detention centers had not improved since chief inspector of prison reports in 2003 revealed low staffing levels, lack of health and safety assessments of risks to detainees and ineffective management of self-harm and suicide cases.³³

An unannounced follow up visit by the chief inspector of prisons to Lindholme Removal Centre in February revealed that few of the deficiencies found in 2002 had been addressed. The center, the only one to be managed as part of a prison, was still locked into Prison Service culture in relation to officers' attitudes, and communal areas were seriously dilapidated and filthy.³⁴ In addition, other prisons were still being used to house a large number of asylum seekers.³⁵

- Following an unprecedented decision by the House of Lords, a public inquiry was launched in October into the death of Zahid Mubarek at Feltham Young Offender's Institute on 21 March 2000. Mubarek was murdered by his cellmate a day before he was due to leave after serving a three-month prison term for theft. A report published by Hounslow Racial Equality Council in December based on findings from inmate focus groups confirmed a number of the allegations, claiming widespread racism within the institution.³⁶
- An investigation into the murder of Asian prisoner Shahid Aziz by his white cellmate on 2 April at Leeds prison also raised the issue of abuse and racism by prison staff. Following the compilation of a

Human Rights, *Third Report*, December 2004,

<http://www.publications.parliament.uk/pa/jt200405/jtselect/jtrights/15/1502.htm>.

³¹ *BBC News*, "Prison 'Failed Vulnerable Inmate'," 24 January 2005, <http://news.bbc.co.uk/go/pr/fr/-/1/hi/england/manchester/4203701.stm>.

³² *BBC News*, "Race Body Slams Suicide Inquiry," 31 August 2004, <http://news.bbc.co.uk/1/hi/scotland/3616056.stm>;

IRR News, "Indefinite Detention Creates a 'Suicide Culture'," 7 September 2004,

www.irr.org.uk/2004/september/ha000006.html.

³³ Her Majesty's Inspectorate of Prisons for England and Wales, *Report of an Investigation into the Disturbance at Harmondsworth Immigration Removal Centre*, 16 November 2004,

http://www.workingintheuk.gov.uk/ind/en/home/0/reports/report_of_an_investigation.Maincontent.0006.file.tmp/Report%20of%20an%20investigation%20into%20the%20Disturbance%20at%20Harmondsworth%20Immigration%20Removal%20Centre.pdf.

³⁴ Her Majesty's Inspectorate of Prisons for England and Wales, *Report of an Unannounced Inspection of Lindholme Removal Centre*, 2-4 February 2004, <http://www.homeoffice.gov.uk/docs3/irclindholme04.pdf>.

³⁵ *Guardian*, "Asylum Seekers Still Held in Jail", 1 September 2004,

www.guardian.co.uk/uk_news/story/0,3604,1294610,00.htm.

³⁶ Hounslow Racial Equality Council,

http://www.hounslow.gov.uk/home/your_council/key_council_documents/racial_equality.htm.

dossier of 90 allegations of verbal and physical abuse at the prison by Hickman and Rose Solicitors, a prison service inquiry was launched. The report published in January 2005, however, found that in only eight cases were allegations borne out and there was no evidence of “direct racist abuse.”³⁷

Minors

Concern continued to be raised about the detention of children, with reports of forcible stripping, long periods of isolation and physical restraint.³⁸

- In April, 15-year-old Gareth Myatt died after being restrained at Rainsbrook secure training center, and in August, 14-year-old Adam Rickwood killed himself while on remand at a privately run secure training center in Durham County. The chairman of the UN Committee on the Rights of the Child called on the government to take urgent action to remedy the plight of children in custody and questioned why Britain tolerated the jailing of juveniles arguing that this should be a measure of last resort only.³⁹

There were 2,674 under 18-year-olds in the Prison Service in November, an increase of 174 from 2003. A report issued by the Children’s Alliance for England found that 3,337 children had been sent to Young Offenders Institutions (YOI) in 2003 (thought too vulnerable for custody) and restraint was used 11,593 times on 12-14-year-olds in secure training centers over the past four years despite the fact that these only hold 190 children at any one time. An independent investigation set up by the Howard League for Penal Reform in September aimed to look at treatment of children in custody in secure homes and YOI. Changes to the rules on the use of children’s laws in prisons introduced in September were criticized by the NGO for failure to effectively protect children. These included use of pain compliant physical restraint designed to control adults, the routine stripping of sexually abused children, and minimal provisions for education.⁴⁰

Respect of Private and Family Life

A bill on the introduction of identity cards went to its second reading in parliament in December, raising questions of transgressions of privacy and the relationship between the state and the individual in a democratic society.⁴¹ The proposals were justified as a measure to fight against illegal immigration, benefit fraud and organized crime.⁴²

The bill, which envisages the creation of a National Identity Register containing information on each person accessible to a number of public bodies and the introduction of an identity card scheme, has been heavily criticized by civil rights organizations. In its briefing paper to the House of Commons, the NGO Liberty questioned the presumption of accuracy of the database, with no auditing process or opportunity for redress should an error occur. It stated that the introduction of identity cards was an assault on the right to privacy, fundamentally shifting the nature of the attitude of the state towards individual privacy. In addition, it would adversely impact on ethnic minorities and other vulnerable groups, already disproportionately affected by *inter alia* stop and search procedures. Concerns were also expressed over the inevitable increase in types of

³⁷ *BBC News*, “Prison’s Staff Cleared of Racism,” 17 January 2005, http://news.bbc.co.uk/go/pr/fr/-/1/hi/england/west_yorkshire/4181881.stm.

³⁸ *Guardian*, “Britain Violates Rights of Child says UN,” 29 November 2004, http://www.guardian.co.uk/uk_news/story/0,1370689,00.html.

³⁹ *Ibid.*

⁴⁰ *BBC News*, “No Jail Protection for Children,” 10 August, <http://news.bbc.co.uk/go/pr/fr/-/1/hi/uk/3548838.stm>, referring to Prison Service Order No. 4950.

⁴¹ Identity Cards Bill, <http://www.publications.parliament.uk/pa/cm200405/cmbills/049/2005049.htm>.

⁴² See, for example, *BBC News*, “Blunkett Launches ID Cards Bill,” 29 November 2004, http://news.bbc.co.uk/go/pr/fr/-/1/hi/uk_politics/4051091.stm.

information collected and the potential for the purposes of use of such information to spread.⁴³ The bill envisages heavy fines and criminal offences for failure to own cards should the scheme become compulsory.

Racism, Intolerance and Xenophobia

Islamophobia

There were reports that racism post September 11 continued to be aggravated, leading to disaffection and a feeling of alienation in particular among Britain's growing Muslim community. In June, the Commission on British Muslims and Islamophobia thinktank warned that persistent and untackled Islamophobia could lead to "time bombs" of backlash and bitterness and growing extremism. Tip-offs to the police to perform anti-terrorist raids were reportedly frequently results of grudges and ill feeling within the community and often lacked any substantial basis. The large number of arrests of Muslims with very few convictions also resulted in disillusionment and lack of trust in the authorities: by end 2004, 609 arrests had been made under anti-terrorism legislation, and only 15 were convicted of such crimes.⁴⁴ Moreover, there was excessive media reporting during or before arrests but not following release, thus creating an imbalance in the public's perceptions of the ethnicity of criminals. A study by the Institute for Race Relations found that the majority of convictions under anti-terrorism law were actually of white loyalists and racists.⁴⁵

A nationwide survey of British Muslims reported that 80% of respondents had experienced discrimination ranging from comments at work to abuse and violence in public places.⁴⁶ Muslims also continued to be disproportionately represented amongst low-income sectors and were disadvantaged in the UK labor market and in access to housing.⁴⁷

The annual racist incidents report for 2004 recorded a 13-percent increase in those accused of racially motivated crimes. Witness difficulties and insufficient evidence, however, continued to present obstacles to conviction. In addition, the report tabled 44 prosecutions of religiously aggravated crimes, half of whose victims were or were perceived to be Muslims.⁴⁸

On 7 July, the government unveiled its proposals for a new law on religious hatred, which would make incitement of religious hatred a crime. Current legislation provides Jews and Sikhs with protection as an ethnic group under the Race Relations Act and the ATCSA makes religious hatred an aggravating factor to be taken into account in violent crimes, but Christians and Muslims do not fall under the race relations protection. Critics viewed the legislation as unnecessary and as having the potential to dangerously curtail freedom of speech.⁴⁹

⁴³ Liberty, *Briefing for Second Reading*, December 2004, <http://www.liberty-human-rights.org.uk/privacy/id-cards-2nd-reading-commons.pdf>.

⁴⁴ Liberty, *The Impact of Anti Terrorism Powers on the British Population*, June 2004, www.liberty-human-rights.org.uk.

⁴⁵ Institute for Race Relations, "New Study Highlights Discrimination in Use of Anti-Terror Laws," 2 September 2004, www.irr.org.uk/2004/september/ak000004.html.

⁴⁶ Saied R. Ameli, Manzur Elahi, and Arzu Merali for the Islamic Human Rights Commission, *Social Discrimination: Across the Muslim Divide*, 16 December 2004, www.ihrc.org.uk.

⁴⁷ For more information, see IHF, *Report on Intolerance and Discrimination against Muslims in the EU - Developments since September 11*, 7 March 2005, http://www.ihf-hr.org/documents/doc_summary.php?sec_id=3&d_id=4029.

⁴⁸ BBC News, "Race Crime Accused Increase 13%," 18 January 2005, <http://news.bbc.co.uk/go/pr/fr/-/1/hi/uk/4181959.stm>.

⁴⁹ *Serious Organised Crime and Police Bill*, www.homeoffice.gov.uk; BBC News, "Religious Jokes 'Won't be Crime'," 7 December 2004, http://news.bbc.co.uk/go/pr/fr/-/1/hi/uk_politics/4075831.stm.

Migration, Asylum Seekers, and Refugees

An important ruling of the Court of Appeal in May led to the government greatly restricting the scope of application of section 55 of the Nationality, Immigration and Asylum Act 2002. Section 55, which refuses welfare support to asylum seekers who do not claim asylum “as soon as reasonably practicable” after entering the UK had been the source of hefty criticism by civil rights organizations since its introduction in January 2003. A report by the Refugee Council on the impact of the provision showed that of the 130 organizations working with asylum seekers, 74% had seen clients sleeping rough, lacking basic clothes and toiletries and experiencing hunger. This additionally placed an unsustainable burden on the voluntary sector and refugee community.⁵⁰ Official figures showed that 890 of 2,650 applicants who applied for section 55 support in the first three months of 2004 were turned down. The Court of Appeal in the case upheld previous high court rulings finding that failure to provide subsistence and accommodation to three destitute asylum seekers was unlawful and violated article 3 of the ECHR. In June, the government reduced the scope to cover long time residents who only applied to avoid being deported.

In September, the government announced measures to step up its policy of removals in order to reach the target of removing more failed cases than arrive every month by the end of 2005. Figures for the third quarter of the year showed that removals had fallen by 15% from the same period in 2003.⁵¹ There were reports of continuous random swoops on London streets and subway by police and immigration officers, resulting in the arrests of 717 failed asylum seekers in September. In addition, a blanket ban on returns to Zimbabwe was removed in November.⁵²

In April, Statutory Instrument 2004 No. 614 came into force, which denies free National Health Service (NHS) hospital treatment to those not lawfully resident in the UK. Medical associations and other rights campaigners argued that this was inhumane and would particularly impact on failed asylum seekers and unnecessarily create prejudice and institutional racism with NHS staff effectively being asked to weed out foreigners. Government proposals put forward in November also foresaw withdrawal of free primary health care.⁵³

On 4 July, the Asylum and Immigration Act 2004 received Royal Assent.⁵⁴ The act abolishes the two-tier asylum appeals system replacing it with a single tiered Asylum and Immigration Tribunal (AIT). While unlike the initial bill, an element of judicial scrutiny is retained, there was grave concern that procedural and practical barriers would undermine oversight. Both the Law Society and UNHCR argued that the five-day limit set for written applications to the High Court for review was far too short to be “practically effective.” Moreover, the Refugee Council stressed that the amendments would still not tackle the real problem of getting decisions right first time by improving the quality of initial decision making. Home Office figures for the third quarter of 2004 showed that 90% of initial applications were rejected, although one fifth succeeded on appeal.⁵⁵

The new act also gives wider powers to immigration officers to arrest without warrant for a number of offences and makes it a criminal offence with a prison sentence of up to two years for intentionally destroying identity documents before entry, thereby raising criticism that the act effectively criminalizes the victims. Eighty charges and twenty convictions were made within the first month of its introduction.⁵⁶

⁵⁰ Refugee Council, *Hungry and Homeless, the Impact of the Withdrawal of State Support on Asylum Seekers, Refugee Communities and the Voluntary Sector*, April 2004,

http://www.refugeecouncil.org.uk/downloads/rc_reports/hungry_homeless_apr04.pdf.

⁵¹ Home Office, Immigration, Research and Statistics, 16 November 2004,

<http://www.statistics.gov.uk/cci/nugget.asp?id=261>.

⁵² *Guardian*, “1,000 Illegal Migrants Arrested in Swoops,” 15 September 2004, www.guardian.co.uk.

⁵³ *Guardian*, “The NHS Must Not ‘Weed out’ Refugees,” 18 March 2004, www.guardian.co.uk.

⁵⁴ Asylum and Immigration Act (Treatment of Claimants etc.) 2004,

<http://www.legislation.hmso.gov.uk/acts/acts2004/20040019.htm>.

⁵⁵ *Guardian*, “Asylum claims rise but are down overall,” 16 November 2004, www.guardian.co.uk.

⁵⁶ Refugee Council, *Asylum and Immigration Act 2004: Main Changes and Issues of Concern*, September 2004, http://www.refugeecouncil.org.uk/downloads/briefings/ia_act04/ia_act04_brfg01.pdf.

The Chief Inspector of Prisons Anne Owers expressed concern over practices of detaining children in a series of reports on several detention centers. She found a substantial lack of child welfare facilities at both the Oakington immigration reception center and Lindholme removal center and argued for the reduction in the number of days children are detained to avoid compromising welfare and health. Of the 41 children at the Oakington center in June 2004, 15 had been held for one to four weeks and one had been held for 21 weeks in 2003. There was no independent social service assessment of children staying longer than a few days despite files showing them to be in distress, and there was little opportunity for education or sports.⁵⁷

The NGO Bail for Immigration Detainees noted that changes introduced by the new asylum act could also adversely impact on children: section 9 of the act states that families will lose welfare support 14 days after final rejection of their claim. If a child's welfare is compromised councils can take care of the children and, "if necessary," separate them from their families.

On 9 December the House of Lords found the Home Office pre-entry clearance operation, which placed British immigration officers at Prague airport to screen passengers traveling to Britain, as "inherent and systematic racism." The practice, which routinely treated Roma with more suspicion and subjected them to intensive and intrusive questions, was found to be in violation of the Geneva Convention and the 1976 Race Relations Act. A monitoring operation by the European Roma Rights Center had revealed that Roma were 400 times more likely to be rejected from boarding flights than an individual non-Roma and more than 80% of those stopped were taken to a secondary interview area.⁵⁸

*Northern Ireland*⁵⁹

Criminal Justice Reform

Criminal justice reform arising from the Criminal Justice Review created as a result of the peace talks was being overseen by the Justice Oversight Commissioner. 2004 saw the passage of the Justice (NI) Act, and two reports issued on progress to date. The Commissioner, Lord Clyde, expressed himself satisfied that the various detailed recommendations to changes in the prosecution service, the appointments process to the judiciary, and developments in the area of youth justice and restorative justice, were being put in place. Concerns were, however, expressed at the delays in a number of areas, and in particular about the fact that initially the government had proposed that many changes be deferred until responsibility for criminal justice and policing had been devolved to local politicians (currently criminal justice and policing powers are matters reserved for UK ministers, and even when there are local institutions such as the Assembly, there is no Northern Ireland input to these issues). This stance, if maintained, would have ensured inordinate and unnecessary delays in streamlining the criminal justice system, but this was amended in response to interventions by Lord Clyde and others.

The permanent inspection body for all new and existing criminal justice agencies, the Criminal Justice Inspectorate, was established and commenced work in 2004, and moves to put other important mechanisms for ensuring accountability across the criminal justice system in place continued.

One major explicit omission in the Criminal Justice Review was consideration of emergency legislation, and the extent to which its continued existence undermines the rule of law and human rights. Despite ceasefires by all the major armed groups, which had largely been in place for the most part of ten years, extra provisions were maintained to deal with the supposedly "exceptional" case of Northern Ireland. Part VII of

⁵⁷ Her Majesty's Inspectorate of Prisons for England and Wales (HMIP), *Immigration Removal Centre Inspection Reports*, <http://www.homeoffice.gov.uk/justice/prisons/inspprison/inspectionim.html>.

⁵⁸ *Guardian*, "Asylum Operation Racist, say Law Lords", 20 December 2004, <http://society.guardian.co.uk/asylumseekers/story/0,7991,1370873,00.html>.

⁵⁹ By the Committee on the Administration of Justice (CAJ, Belfast).

the Terrorism Act (peculiar to Northern Ireland) was renewed, with a few minor changes despite the findings of the UN CAT, which had in November urged the government to review its stance on emergency powers.

Policing Reform

Policing reform also continued in 2004, but at a somewhat faster pace than the changes to the criminal justice system. The oversight commissioner monitoring policing issued quarterly reports throughout the year monitoring issues such as the number of women and Catholics recruited; changes to Special Branch; levels of civilianisation; and the demilitarisation of police vehicles and stations. While the 175 recommendations laid down in the blueprint for policing change by the Patten Commission in September 1999 were being steadily addressed, there continued to be concerns about the extent of actual reform on the ground.

A judicial review taken by the parents of a child attending Holy Cross school, arguing that the police had failed to adequately protect the child from sectarian abuse and physical attack in the course of protests in 2001, was rejected by the courts in proceedings completed in 2004. The court concluded that it could not challenge “operational decisions” made by the chief constable.

CS spray - a weapon to be used by the police to subdue and restrain individuals allegedly involved in violence - was introduced for the first time in Northern Ireland in the summer. Human rights NGOs, however, expressed serious reservations about the extent to which the new bodies created to ensure police accountability were aware of independent scientific evidence which advised against its use.

There was also evidence suggesting that policing was carried out differentially as between nationalist and unionist communities, as between working class and middle class communities, and as between older people and youths. In addition, the failure to collect and issue statistics on who gets stopped and searched, and to collect and publish data on sectarian attacks continued to make it difficult to monitor the impartiality of decisions at the local level.

Past Abuses

During the year there was an increasing interest on the part of the government to address the legacy of past abuses. Public inquiries were launched into three particularly contentious cases: Billy Wright (a loyalist who was killed in prison by republicans), Robert Hamill (a young Catholic kicked to death by a Protestant mob), and Rosemary Nelson (a leading human rights solicitor killed by loyalist paramilitaries). A report issued by Canadian Judge Peter Cory, in 2003, had found that there were credible allegations of government collusion, by either action or inaction, in all three deaths, and determined that all cases required independent public scrutiny. Whilst the findings were accepted, the government delayed a formal response for several months and further delays were experienced in the actual establishment of the inquiries. Promises made to the three families involved regarding the extent that they would be able to speak with the chair (an English judge in all three cases), prior to the terms of reference or to the other panel members being finalised, were not complied with. As of end 2004, the families were still waiting to meet with the panel members before finally deciding whether or not they would cooperate.

Judge Cory also recommended a public inquiry into the murder of solicitor Pat Finucane in 1989. The UK government was unwilling to treat the case like the other three and argued that it was impossible to hold an inquiry into the murder under existing inquiry legislation. As a result, parliamentary debate on an overhaul of the process of public inquiries was speeded up and an Inquiries Bill submitted to parliament in December. The bill was criticized by human rights NGOs for ignoring Judge Cory’s recommendation that an independent public inquiry be held into the case, thereby fuelling even further suspicion of state involvement in the murder. In addition, the proposed legislation places extensive powers in the hands of a government minister (rather than parliament) who can establish all public inquiries, and has authority to appoint the chair and other panel members, set the terms of reference, decide to suspend the inquiry, issue a restriction notice greatly reducing the extent of public access, and publish the final report.

The four cases are, however, among the very few where the government has given considered thought to appropriate remedies for the victims' family. Other cases brought to the European Court of Human Rights (ECtHR) where violations of article 2 (the right to life) were found, have been less successful in ensuring domestic remedies. In March, the House of Lords ruled that cases, which preceded the passage of the Human Rights Act in 2000 (domestic legislation giving effect to the ECtHR), could not be considered retrospectively.⁶⁰ Consequently, none of the hundreds of murders carried out between the late 1960s and October 2000, where state agents were allegedly directly or indirectly involved, can be subject to the principles laid down by the ECtHR for "article 2 compliance."

The government indicated a willingness to address a large number of other "historic" cases and made moves to establish a Serious Crimes Review Team within the police, but, as of early 2005, it was as yet far from clear what the terms of reference of this review will be, what cases will be re-opened, and how the investigations are to be carried out.

The Bloody Sunday Tribunal continued throughout the year and, with a few exceptions made to hear late witnesses, retired in December to determine its findings.

Marching Season

A continuing cause of concern was the conflict of rights during the annual "marching season," when members of Protestant organisations parade, on occasion, through areas where Catholic nationalist residents object to the tradition. Casualties of past years, however, diminished considerably in 2004, in part due to changes in legislation and policing. An important development in 2004 was the successful outcome of a judicial review brought by a supporter of the marches challenging a Parades Commission determination, arguing that the legislation could not be interpreted to apply to parade followers. This finding placed the police again centre-stage in the highly contentious area of public order decision-making.

Racist Crime

There was also a reported increase in racist crime in 2004. Legislation was introduced to counter such hate crime in September 2004. Ongoing discussions on the creation of a single comprehensive piece of equality legislation (the Single Equality Bill), and a Bill of Rights for Northern Ireland, however raised public awareness of the increasing diversity in Northern Ireland, and the importance of protecting the rights of all.

Institutional Protection of Human Rights

Institutions created to promote human rights and equality faced a number of difficulties in the course of the year. The Northern Ireland Human Rights Commission experienced continuing problems as a result of a spate of resignations in earlier years. Partially in response to the problems highlighted by the resignations, and in response to lobbying by many different groups, the government announced that it would extend the statutory powers of the Commission and re-advertise the post of chief commissioner. The Equality Commission was criticised for its failure to proactively promote equality and to fulfil the potential of the Agreement for Equality of Opportunity for All. The Northern Ireland Commissioner for Children and Young People also received a set-back when, in an unsuccessful judicial review, the courts ruled that the commissioner could not rely on the UN Convention on the Rights of the Child in court.

Other institutions also created new or different problems. The Independent Monitoring Commission came under extensive criticism from civil rights groups when its early reports appeared to publicly name individuals and link them to paramilitary activity without evidence. Moreover, the suspension of political institutions throughout the year facilitated a step backwards in rights protection.

⁶⁰ 2004 UKHL 12 *McKerr REF*.