

IHF FOCUS: access to information; right to a fair trial and effective remedies; anti-terrorism measures; torture, ill-treatment and police misconduct; prison conditions; respect of private and family life; racism, intolerance and xenophobia; migrants, asylum seekers and refugees; Northern Ireland.

Developments in the field of human rights were marked by the 7 July terrorist attacks on central London. Subsequently several controversial proposals were put forward by the government for new anti-terrorism legislation and steps were made to speed up deportations of suspected terrorists. Increased reports of arbitrary stop and searches and the fatal shooting of a wrongly suspected suicide bomber raised concern about the wide powers given to police post September 11. Further there were reports of increased expressions of islamophobia and racism in institutions and the public at large.

The Council of Europe human rights commissioner in his report on the UK published in June¹ found serious shortcomings in the criminal justice system, in particular overcrowding in prisons and the treatment of young offenders. He also highlighted deficiencies in the handling of asylum claims and raised concern about limitations placed on the right to a fair trial by anti-terrorist legislation.

While the entry into force of the Freedom of Information Act was welcomed, a serious backlog of complaints of denial of access resulted in the fact that no controversial cases had been ruled upon by year's end.

Freedom of Expression, Free Media and information

Access to Information

On 1 January, the Freedom of Information Act 2000 came into force giving the public for the first time the right of access to information held by over 100,000 public authorities. An information commissioner has the responsibility of informing public about the act and considering com-

plaints about alleged failure to comply. By July 2005, the information commissioner had recorded a wide diversity of information put into the public domain from costs and use of government official cars to location of speed cameras.² During passage of the bill, critics had argued that the 23 exemptions to access and the limited powers of the commissioner would, however, severely limit information disclosure.

The first test case brought by the *Guardian* newspaper requesting Lord Goldsmith's advice to the government on the legality of the Iraq war which was refused on grounds of national security and a referral to the information commissioner was repeatedly stalled. The advice was subsequently leaked to the media in March showing that a second UN Security Council resolution had been proposed as the safest legal course.

Civil rights organizations criticized the fact that some public bodies were routinely obstructing access to information and that a backlog of appeals in cases where the government had refused access lodged with the information commissioner was encouraging this. In December over 1,300 appeals lodged since January were pending and very few of those resolved touched upon the issue of exemptions.³ Concern was also raised that the process could be obstructed further with the introduction of proposed fees.

Protection of Journalists' Sources

There continued to be concern related to the protection of journalists' sources. In August, following a BBC interview with members of a radical Islamist group, in which it justified the 7 July bombings, police sought a court order under the Terror-

* By the IHF Secretariat and the Committee for the Administration of Justice (on Northern Ireland).

ism Act 2000 to gain access to all material related to the interview. The information was refused by the BBC on the grounds that the court order had been sought without informing them and due to the violation of the confidentiality of media sources. The case was pending at year's end.⁴

Right to a Fair Trial and Effective Remedies

Anti-Terrorism Measures

The introduction of new legislation in March and responses to the 7 July bombings in London intensified criticism of the approaches taken by the government with respect to the right to a fair trial. Following the House of Lords ruling in December 2004, which held that indefinite detention under the Anti-Terrorism, Crime and Security Act 2001 (ATSCA) without charge or trial was incompatible with both British and international law, a replacement twin-track approach for foreign nationals suspected of terrorism was provided for in the Prevention of Terrorism Act 2005. The act, which came into force in March, gives the government the power to either deport suspects provided "diplomatic assurances" are given by their home country that they will not be subjected to torture upon return. Where such assurances are not possible, the act provides for the enforcement of control orders (irrespective of nationality) severely restricting the suspect's movement and activities. Control orders can also include house arrest provided that derogation from the European Convention on Human Rights (ECHR) is sought. Civil rights organizations criticized the rapidity with which the bill was rushed through parliament with little public discussion and the fact that those provisions continued to amount to detention on the basis of secret evidence and without charge or trial.⁵

◆ Immediately following passage of the law, the home secretary applied control orders on the ten Iraqis who had been held

in indefinite detention including curfews, electronic tagging, restrictions on meeting and telephoning others and a ban on the use of the internet.

In his report on the UK, Council of Europe human rights commissioner argued against the limited judicial control and significantly reduced procedural guarantees, which effectively substitute the ordinary criminal justice system with a parallel system run by the executive.⁶

On 7 July, three co-coordinated suicide bomb attacks in underground stations and one on a public bus, killed 52 people and injured hundreds. A second similar attack failed two weeks later. Subsequent evidence found that the attacks had been carried out by four British born men of foreign descent. In response the prime minister published consultation papers on new proposals for anti-terrorism measures and launched a review of the UK's anti-terrorist responses in comparison with those in other European countries. Further the government produced a list of new grounds "of unacceptable behavior" for the deportation of foreign nationals. The NGO "Liberty" argued that "justifying or glorifying terrorism" included as a ground without clear definitions could pose a threat to freedom of expression and could implicate in terrorism a wide range of people simply voicing dissent.⁷

The government also announced its policy to speed up deportations by concluding "memoranda of understanding" with specific countries containing the necessary assurances that those deported would not be subjected to torture or ill treatment in violation of article 3 of the ECHR upon return. Such memoranda were concluded both with Jordan and Libya and the government signaled that it was seeking agreements with a further ten countries. The moves sparked a wave of criticism from civil rights organizations, pointing up the ineffectiveness of such assur-

ances as a safeguard and the dangers they pose to the absolute nature of the *non-refoulement* obligation. The UN special rapporteur on torture expressed fears that the UK's moves to request "diplomatic assurances" "for the purpose of expelling persons in spite of a risk of torture reflects a tendency in Europe to circumvent the international obligation not to deport anybody if there is a serious risk that he might be subjected to torture [...] Diplomatic assurances are not an appropriate tool to eradicate this risk."⁸ A statement by a coalition of human rights organizations in May, including the IHF, also detailed the concerns.⁹ While several foreign nationals were detained, no deportations had taken place under the agreements by year's end.

In a landmark ruling in December, the House of Lords held that evidence obtained in third countries by torture could not be used in ATCSA proceedings. This overturned an appeals court decision in August 2004 which had ruled that such evidence could be used if the UK neither "procured nor connived" at it. Civil rights organizations had argued that this was tantamount to commending the use of torture, thereby violating international human rights law. The ten defendants were waiting for a review of their cases by the Special Immigration Appeals Commission at year's end. Amnesty International (AI) published testimonies of four of the men detailing the mental and physical health impact of their four years of indefinite detention.¹⁰

In October a Foreign Office review comparing UK anti-terrorism legislation and policies with those in several European countries found that the UK had the toughest measures in detaining suspects without charge and was the only country to plan deportations of suspects to countries where they may be at risk of torture. Despite this, the new counter-terrorism bill introduced the same month included proposals to extend the period that terrorist

suspects could be detained without charge from 14 to 90 days and the introduction of a new criminal offence for statements that glorify the commissioning or preparation of acts of terrorism either directly or indirectly designed to encourage further terrorist acts. Further proposals included measures to extend the home secretary's powers to ban not only groups directly involved in terrorism but also those whose activities "glorify, exalt or celebrate terrorism" and the introduction of a criminal offense for disseminating terrorist publications. AI condemned the bill as dangerous and ill-conceived representing a "deliberate attrition of human rights."¹¹

While passage in the House of Commons in November reduced the period of detention to 28 days, there remained concern that the case for extension had still not been justified and could lead to arbitrary detention.¹² "Liberty" also expressed concern that extending the grounds for proscription could criminalize membership or support of non-violent political parties. Discussions were ongoing at year's end.

Torture, Ill-Treatment and Police Misconduct

Deaths as Result of Police Action

The extent and use of police powers introduced following September 11 continued to be criticized.

On 22 July police shot dead Brazilian national Jean Charles de Menezes later found to be innocent in an underground station in London, raising the question of police surveillance and the shoot-to-kill policies of terrorist suspects.

Under the shoot-to-kill policy code-named "Operation Kratos," special armed squads were reported to be authorized to use lethal force (shots in the head) when dealing with suspected suicide bombers. Immediately after the incident Metropolitan Police (MET) officials reported that the shooting was directly linked to the ongoing

anti-terrorist operation, and that clothing and behavior had added to their suspicions that the man was a suicide bomber. Media also reported that Menezes had run away from police officers and had been wearing a padded jacket. Leaked details from the Independent Police Complaints Commission (IPCC) inquiry into the shooting however appeared to deny the initial claims and led to allegations of a cover-up. The family demanded an immediate and full public inquiry into all circumstances of the death and filed an official complaint that false police statements made after the event were left uncorrected to mislead the public in an attempt to cover up the mistake. Reports that CCTV footage was missing, the fact that the family was not immediately informed of the death and the publication in September of a letter revealing that MET chief had ordered that the IPCC be denied access to the underground station immediately after the shooting were also criticized. In November the home secretary approved a separate investigation into the police's handling of the affair. Both IPCC reports were pending at year's end. Despite a wave of criticism voiced by a number of civil rights organizations and Muslim leaders and calls for a review and public discussion of the policy, in August the MET stated that tactics to shoot-to-kill to protect would remain in place.¹³

The number of deaths during or following police contact revealed a rise from 82 in 2003/2004 to 106 in 2004/2005. The IPCC stated that the rise was due to the changes in the reporting of such deaths with an obligation now placed on police to report deaths arising from police contact (Police Act 2002). The IPCC, however, expressed concern that police cells were still being used as dumping grounds for those detained under the Mental Health Act with no mechanism to divert them to appropriate health services and with police lacking the necessary skills.¹⁴

Moreover, there was concern about the number of restraint-related deaths of black men in police custody, indicating continued institutional racism within the police force.¹⁵

◆ On 6 August 32-year-old black man Paul Coker died in a police cell after having been restrained by officers and arrested for causing a breach of peace.

Misconduct in the Army

Despite intensified calls for a full-scale public inquiry into the deaths by gun shot wounds of four recruits at the Deepcut Army training barracks between 1995 and 2002, a review by a deputy high court judge launched in January was limited to assessing already established evidence.¹⁶ In addition, a second police review released in October found that while the original police report lacked focus, there was still no evidence to justify criminal charges despite proof of bullying. In a positive move, a parliamentary inquiry in March prompted by the cases stated that the army had failed to tackle bullying and needed to improve care for young recruits, including by the creation of an independent complaints body.¹⁷ Moreover, it called for the recruitment age to be raised from 16 to 18 - currently the lowest armed forces deployment age in Europe and a point criticized by a number of international bodies.

Stop and Search

The numbers of stop and search operations carried out by police under section 44 of the Terrorism Act 2000 continued to rise during 2005, reaching a peak in the two months following the 7 July bombings. Home Office figures for 2004/2005 recorded 35,800 searches, 6% more than 2003/2004, with 455 arrests.¹⁸ Between July and September, the MET made more than 10,000 stop and searches, 27% of people stopped in the street were Asians (12% of London's population) and 50%

white (63% of population). This constituted a fivefold increase of street stops of white people and a twelve-fold increase for Afro-Caribbean and Asian people on the same period in 2004.¹⁹

Critics accused the police of ethnic profiling of suspects merely due to their appearance, thereby alienating the very community from which they needed support.²⁰ Further, none of the 10,000 searches resulted in arrest or charge of terrorism, raising the question of whether intelligence was being properly used and the unrestricted nature of the power, which does not require police to have “reasonable suspicion” that a criminal offence is being committed. Critics further highlighted that stop and search powers continued to be arbitrarily used (in particular against legitimate protesters) and that the majority of subsequent arrests were for crimes other than terrorist acts, including petty crimes and motoring offences.

◆ At the beginning of the year a group of train-spotters were detained and searched when police accused them of behaving like a reconnaissance unit for a terrorist cell, and in September, 82-year-old veteran party activist Walter Wolfgang was stopped under section 44 when re-entering the Labour Party conference after he had been sent out criticizing the government’s foreign policy.

In his annual review of the Terrorism Act, Lord Carlisle stated that section 44 use could be cut by at least 50% without significant risk to the public or detriment to policing.²¹

Extension of Police Powers

The extension of police powers and potential for abuse through provisions of the Serious Organised Crime and Police Act, enacted on 11 April, also raised major concerns. “Justice” argued that its provisions would not only severely restrict freedom of assembly and liberty but also pro-

vide for the establishment of a law enforcement agency controlled directly by the home secretary with no independent oversight.²²

Section 125 of the act prohibits people from “pursuing a course of conduct which involves harassment of two or more persons,” potentially banning peaceful protesters from handing out leaflets in front of companies. The act also widens police power in making any offence arrestable, allowing police to compel potential witnesses to answer questions with the threat of imprisonment. The right to freedom of assembly is also curtailed by making both trespassing on a “designated site” on grounds of national security and organizing an unsanctioned demonstration within the square kilometer around parliament a criminal offence. Police are given the power to place any restriction they “believe appropriate” onto such a demonstration.

◆ In October, peaceful protesters Milan Rai and Maya Evans were arrested near Downing Street as they read out the names of 97 UK soldiers killed in Iraq. Evans was convicted under the act of participating in an unauthorized demonstration in December. “Liberty,” representing Rai against charges of organizing an unauthorized demonstration, in January 2006 argued that the provision “stifles our traditional rights to free expression and assembly.”²³

Conditions in Prisons

At the end of year there was a record number of 78 suicides in places of detention. Concern was voiced that self-inflicted deaths and self-harm would continue to rise if overcrowding was not tackled.²⁴ Violence, racism and inadequate treatment of juvenile delinquents were among other concerns.

Suicides, Overcrowding and Safety

In early 2006, three prisoners in different prisons were found dead, reported

to have committed suicide within a 24-hour period. In October, the prison population reached an all-time high of 77,800, or 373 short of total capacity. The Howard League for Penal Reform released a briefing paper on overcrowding and suicide in prisons, which specifically showed that suicide rates were higher within overpopulated prisons.²⁵ It reported that 77 of 142 prisons were overcrowded: 35 of these were seriously overcrowded (with 25% more prisoners than they are designed to hold) and 90 out of 159 suicides since 2004 had been committed in these. The organization voiced concern that overcrowding put immense pressure on the service, with prison staff unable to provide welfare assessment nor the rehabilitative work necessary to avoid prisoners re-offending. Prisoners were also found to be at their most vulnerable during the first night and month in detention (with 40% of suicides occurring in the first month). While a new government care plan for at-risk prisoners had been introduced in 41 prisons, the report recommended that first night in custody and induction programs be available to all and of appropriate duration to be beneficial.

In his report on the UK, the Council of Europe human rights commissioner found overcrowding to be the "single greatest difficulty" in the prison system, with conditions in some of the more crowded prisons consequently falling short of international standards. He recommended that the government address the problem of overcrowding through new detention facilities and "greater investment in alternative sentences and non-custodial pre-trial supervision," and make improvements to psychiatric support to reduce the high level of suicide.²⁶ Calls for an urgent review of mental health services for offenders were also echoed by the Prison Reform Trust, which found that up to 75% of male prisoners suffered from two or more mental

disorders with their stay in prison exacerbating the illness due to the lack of appropriate treatment.²⁷

Inspections by the chief inspector of prisons, Anne Owers to a number of places of detention throughout the year revealed that little progress had been made in ensuring the safety and welfare of inmates. HMP Pentonville was found to be 30% overcrowded with stained cells infested with cockroaches and poor primary healthcare delivery.²⁸

Racism

A chief inspector study into race relations in prisons released in December found evidence of both subtle and overt racism with a low level of understanding or respect of cultural differences. Out of 5,500 prisoners interviewed, 52% of Asians felt unsafe compared with 32% of white and 18% black, with Asians facing more racist abuse from other inmates and blacks less respect by staff.²⁹

◆ Reports to a public inquiry into the death of 19 year-old Asian Zahid Mubarek on 21 March 2000 at the hands of his allegedly racist and psychopathic white cell-mate found examples of wide-scale continued failings on race within the prison system with claims of bullying and abuse and a general lack of implementation of prison policy on racism. Despite some recent improvements in the YOI (a young offenders institution) where Mubarek died, ethnic minority inmates were still concerned over their safety and mental and general healthcare services were found by the chief inspector of prisons to need considerable improvement.³⁰

Young Adults and Young Offenders

The treatment of and resources available for young adult prisoners and minors continued to be of concern. The Howard League for Penal Reform released research arguing that lack of care whilst serving their

terms and immediately afterwards led to young adult men re-offending almost as soon as they are released, with 70% being reconvicted within two years of release.³¹

There were 2,617 under 18-year-olds held in custody in YOIs at the end of December.³² The Council of Europe human rights commissioner also raised concern about the treatment and high numbers of young offenders giving the UK one of the highest juvenile detention rates in Western Europe. He recommended that detention ought to be last resort and applied for the shortest period of time and called on the government to invest in alternatives to custody.

In its annual review of the UK's progress in addressing recommendations made by the UN Committee on the Rights of the Child, the Children's Rights Alliance for England found serious shortcomings in the juvenile detention system, including lack of education and physical recreation and the use of government sanctioned deliberate violence against children.³³ During 2005, there were two suicides in YOIs and several incidents of self-harm.

Respect of Private and Family Life

Identity Cards

A bill envisaging the creation of a national identity register containing information on each citizen and accessible to a number of public bodies as well as the introduction of identity cards (first published in April 2004), continued to be the focus of sharp criticism by a number of civil rights organizations.

The government argued that the system was necessary to prevent and detect crime, tackle illegal workers and immigration abuse, and prevent identity theft and fraud. The bill envisages the creation of a national identity scheme commissioner to review the operation of the scheme. "Liberty" stressed the infringement on the individual's privacy and the detrimental ef-

fect such a "surveillance" scheme could have on race relations. It also questioned the broad information sharing powers, with a risk of information being leaked to unauthorized parties and the lack of auditing process to ensure accuracy of information. Money, it was argued, could be better spent on direct operational intelligence and policing to have a direct impact on crime levels.³⁴

The information commissioner also argued against certain aspects of the proposed scheme, "the primary aim of Government [...] should be to establish a scheme which allows people to reliably identify themselves rather than one which enhances its ability to identify and record what its citizens are doing"³⁵ He found the extent of personal information retained on the register and the requirement on the individual to notify any changes excessive and disproportionate and the creation of a data trail, which would record whenever a card is checked against the register an unwarranted intrusion.

A report by Privacy International also demonstrated that identity cards would lead to the exclusion of certain sectors of society. Due to technical difficulties in recording and verifying biometric data of people who are disabled, black or suffering from mental illnesses, access to services that require the cards would be restricted.³⁶ In January 2006, the Law Lords forced amendments to the proposed bill, envisaging more secure provisions of control on who can access data on the central register. Moreover, they called for the scheme to become voluntary with the requirement that primary legislation be passed before it became mandatory.

Anti-Social Behavior Orders

In September, the government set up a Respect Taskforce to elaborate an action plan on cutting crime and anti-social behavior as part of its announced five-year

strategy. Powers given to police, local authorities and social housing landlords to apply for anti-social behavior orders (ASBOs) were introduced in 1999 but critics argued that they were being used disproportionately and excessively, often with limited grounds. Anti-social behavior was defined as "behavior likely to cause harassment, alarm or distress."

ASBOs could contain any conditions deemed necessary to prevent repeat behavior. A breach results in a criminal offence punishable by up to five years imprisonment. In the first three months of the year, there was an 85-percent increase over the same period in 2004.³⁷

Concern was also expressed over the fact that large numbers of people were being sent to prison for breach of ASBOs initially issued for offences that did not carry a prison sentence. The Council of Europe human rights commissioner raised the issue that hearsay could be used as evidence for something that could be later criminalized if breached. Concerns were also voiced that children, in particular, were being increasingly targeted and those with medically recognized behavioral problems unjustly affected by the orders.³⁸

Racism, Intolerance and Xenophobia

There were reports of a sharp rise in racist and faith-based attacks against individuals, homes and places of worship following the 7 July bombings, coupled with criticism that government policies and speeches were failing to allay fears that the war on terror was anti-Muslim and would exacerbate racial tensions.³⁹

Police figures in London recorded a six-fold increase in crimes motivated by religious hatred mainly against Muslims after the bombings, with 269 religious hate crimes in the three weeks after the attacks, compared with 40 during the same period in 2004.⁴⁰

◆ On 10 July, three days after the bombings, 48-year-old Pakistani Kamal Butt was

murdered by a gang of youths in Nottingham allegedly taunting him with the word "talebani."⁴¹

AI argued that statements made by government officials persistently linked Muslims, asylum seekers and foreigners with the threat of terrorism, pointing to a statement made by Home Office Minister Blears in March that anti-terrorism legislation would inevitably be "disproportionately experienced" by the Muslim community since that is the nature of the terrorist threat.⁴² This, AI argued, not only negatively affected the public perception of Muslims but also damaged confidence of Muslims in the fairness of the authorities.

The government's new anti-terrorism proposals, and in particular the introduction of a new criminal offence for speech, which amounts to directly or indirectly "encouraging" terrorism in the terrorism bill published in October, were harshly criticized as impacting directly and disproportionately on the freedom of expression of Muslims and causing further damage to race relations. The director of Oldham Race Equality Partnership argued that not only was the Muslim community not consulted in the process but that this went against the spirit of the Race Relations Act, which requires new policies to be assessed for their impact on race relations⁴³ and the March 2005 recommendation of the Home Affairs Committee on Terrorism and Community Relations that the "Home Office review links between its work on community cohesion and anti-terrorism." While an amendment was made to introduce a requirement of intent, the extent of this remained limited. The letter argued that the provisions would inevitably impact and target on Muslim academics and activists arguing for armed resistance to the Iraq occupation and would in turn lead to a further division of those communities supporting them from mainstream society. In addition, clause 2 of the bill makes disse-

mination of a “terrorist publication” a criminal offence without adequately delimiting the definition of such a publication or providing the need for intention to encourage terrorism or proof that terrorism ensued.

Government recommendations to close places of worship used to “foment extremism” and to outlaw radical Islamist organizations were also viewed as potentially counterproductive, leading extremists underground and sending the wrong message to religious communities.⁴⁴

The draft Racial and Religious Hatred law was discussed by the House of Lords in October and immediately came under fire. The bill provides for the criminalization of incitement of religious hatred, extending similar protection to Muslims and Christians already provided to Jews as an ethnic group under the Race Relations Act. Critics continued to argue that the provisions were too broad and would unnecessarily stifle freedom of speech and divide communities.⁴⁵

The annual racist incidents report recorded a rise in defendant cases received for prosecution by 22% to 5,788.⁴⁶ However, witness problems and insufficient evidence continued to present obstacles and critics argued that there was still a failure amongst police and courts to push the element of racial motivation, thereby handing down lighter sentences.⁴⁷

In August, the Institute of Race Relations recorded 47 murders with a known or suspected racial element since 1999.

◆ On 30 July, black 17-year-old student Anthony Walker was murdered by an axe wound in Liverpool following racist abuse by a gang of youths. In a positive move, on 1 December two youths involved in the murder were handed down sentences aggravated by elements of race hate.

In December, the Health Inspectorate published its first ethnic census of patients in mental hospitals following allegations of institutional racism in 2004 by a high court judge. The figures showed that black peo-

ple were three times more likely to be admitted to mental hospitals, twice as likely to be sent there by police or courts and 50% more likely to be placed in seclusion. Critics argued that this displayed inequalities in health care with black people being pushed into mental hospitals as a first resort.⁴⁸

Migration, Asylum Seekers and Refugees

In February, the government unveiled its five-year asylum and immigration strategy that envisaged maximizing returns to “safe countries,” increasing target rates for removal, enhanced border controls and the granting of temporary leave. In a briefing paper, the Refugee Council underscored that the latter measure of granting permanent stay only on the ground that conditions in the applicant country have not improved in the past five years, would effectively mean that refugees were left in a limbo, uncertain whether they can remain permanently in the UK, consequently undermining integration.⁴⁹

Home Office asylum statistics for the third quarter of the year raised concern that the quality of decision-making remained inadequate: removals increased by 12% but did not reach the government’s target of removing more than those who enter the country without gaining an initial positive decision and there was a recorded 18% rise in successful appeals at the Asylum and Immigration Tribunal (AIT).⁵⁰ Moreover practices in the deportation of failed asylum seekers and their removal to unsafe countries were heavily criticized, with the government accused of merely focusing its efforts at reaching removal targets.⁵¹

◆ In August, the Home Office’s detention of failed Iraqi asylum seekers for its first program of removals was met with protests and severe warnings from a high court judge.⁵² On 20 November, however, 15 Iraqi Kurds were forcibly removed. They were removed at midnight with orders not

given in time for the deportees to be able to seek legal advice.⁵³

In a move welcomed by civil rights organizations, in October the AIT found that while the initial claim for asylum was unfounded, there was evidence that failed asylum seekers returning to Zimbabwe faced persecution and that as a result of having claimed asylum in the UK the applicant had a well-founded fear of persecution if he was returned. The AIT criticized the Home Office's lack of research into conditions in Zimbabwe and of limited evidence of the actual reception process in the country during a fact-finding mission earlier in the year.⁵⁴ This followed on from a High Court decision to stay four test cases brought by the Refugee Legal Center representing failed Zimbabwean asylum seekers and further deportations while the AIT reviewed the new country evidence. Mass protests and hunger strikes had followed the government's decision to remove the blanket ban to return asylum seekers to Zimbabwe in November 2004.

Following enactment of the Asylum Act 2004, the government introduced pilot schemes in Greater Manchester, London and Leeds to implement section 9 of the act before introducing it nationwide. This section entails the denial of welfare benefits to families 14 days after the rejection of a claim. Furthermore, if a child's welfare is compromised, councils are given the power to take care of the children and, if necessary, separate them from their families. Following introduction of the scheme, 116 families were identified for withdrawal of benefits with 17 having lost benefits by the end of August. A report by Barnardo's and the Refugee Children's Consortium argued that the provisions led to families going underground and violated the Children's Act, which provides that, where possible, children are to be kept with their parents.⁵⁵ In August, several councils refused to evict families and called for an urgent review of the policy.

The practice of detaining children alongside their parents who faced deportation was criticized by the Children's Commissioner for England and the chief inspector of prisons on Yarl's Wood Removal Center. They found that inadequate child protection procedures and lack of education, coupled with the prison-like environment, put children at serious risk. The chief inspector called for detention of children to be exceptional and an immediate welfare and needs assessment of each child to be undertaken.⁵⁶

In June, AI released a report on detention of asylum seekers, which argued that the practice of detaining asylum seekers for fear that they might abscond was arbitrary rather than "when necessary and appropriate."⁵⁷ Estimated figures given showed that 25,000 asylum seekers were held in detention centers in 2004, with some being held for long periods of time with little chance of removal, including vulnerable persons. In addition, more fast-track applicants were being detained for the entirety of their application, a concern echoed by the Council of Europe human rights commissioner.

Two asylum-seekers took their lives in 2005 in detention facilities, with cases of non-lethal self-harm on the rise.

A paper by the Bail for Immigration Detainees called for detention powers to be limited by accessible and meaningful safeguards and an improvement of the investigative process of such deaths.⁵⁸

Moreover, there were reports of shortcomings in both reception centers and holding facilities. A BBC documentary broadcast in March filmed undercover evidence of physical and racial abuse of detainees by the staff at Oakington reception center. The report of the inquiry into allegations of racism and mistreatment undertaken by prisons and probation ombudsman stated that the BBC documentary had revealed a "sub-culture of abusive comment, casual racism and contempt for de-

cent values” and issued over 50 recommendations.⁵⁹

In August, the chief inspector of prisons report into immigration short term holding facilities found that three of the four facilities inspected lacked suicide and self-harm procedures, training and complaints procedures were non-existent, and record-keeping irregular. Furthermore detainees were reported to be sleeping in inhumane conditions without adequate bedding or heating.⁶⁰

On 3 November, the House of Lords upheld a court of appeals ruling that denial of benefits and the right to work to asylum seekers was a violation of article 3 of the ECHR. Under section 55 of the Nationality, Immigration and Asylum Act 2002, authorities can refuse all welfare support to asylum seekers who do not claim asylum “as soon as reasonably practicable” after entering the UK. Civil rights organizations had harshly criticized the policy, reporting of homeless, destitute and hungry clients.⁶¹

As a follow-up to the five-year strategy, the government proposed a “new asylum model,” which would increase controls on failed asylum seekers facing removal, including electronic tagging and obligations to report. In addition, the measures, which do not require legislation, include the introduction of a system of referral of cases to specialist case managers. While the casework approach was welcomed, Refugee Council warned that this would only work if staff were sufficient in numbers and adequately trained.

Northern Ireland⁶²

Criminal Justice

Changes to the criminal justice system continued, albeit more slowly than human rights groups would have urged. In August 2005, the government announced that it intended to remove from the statute books the anti-terrorist legislation particular to Northern Ireland. Despite ceasefires from all

the major armed groups for many years, a number of caveats were made when announcing the move from emergency laws. Firstly, the legislation will not fall until at least 2007; moreover, it will only be allowed to fall if government determines that there is an “enabling environment” (i.e., an absence of active terrorist threat); and most importantly, many of the provisions specific to Northern Ireland will no longer be needed, simply because they now have been re-introduced as part of the UK-wide response to terrorism. It is still the case therefore, that Northern Ireland has so-called Diplock Courts (non-jury courts) and an extensive array of stop-and-search powers over and above what exists in other jurisdictions covered by the UK-wide Terrorism Act.

More positively, the newly formed Judicial Appointments Commission was established in June, tasked with recommending appointments to the judiciary and ensuring that judges overall reflect the composition of society. The police and criminal justice agencies had long been criticized for being unrepresentative of the 40%+ of the population that is Catholic and largely nationalist.

The justice oversight commissioner continued issuing reports on the implementation of the series of criminal justice reforms introduced in the wake of the Good Friday/Belfast Agreement. While some findings were positive, others highlighted important delays in implementation, particularly in those areas that required the most radical change, e.g., greater transparency, and human rights and equality proofing. Discussions in 2005 focused on how this level of public scrutiny and transparency could be maintained on a longer term basis, with proposals that the Criminal Justice Inspection, which has already produced reports into the treatment of women and juvenile prisoners, the work of the police ombudsman, and target setting and performance measurement across all criminal justice agencies could take on the task.

The biggest (behind the scenes) debate focused on the extent to which, if at all, criminal justice and policing could be devolved to local decision makers seen as crucial to further political advances.

Policing

Policing remained centre-stage in political developments in Northern Ireland with several high-profile events in the course of the year.

The killing of Robert McCartney in a bar brawl in January, allegedly by members of the IRA acting unofficially, highlighted policing problems. The lack of witnesses coming forward with information questioned whether there continued to be a distrust of the normal policing establishment, or whether witnesses were being subjected to intimidation. The political scandals surrounding the raid on Sinn Fein offices at the parliament building in Stormont continued throughout 2005, adding fuel to mistrust on all sides. The discovery that the British government had been running an informer at very senior level in Sinn Fein, begged only more questions about the significance of the so-called Stormontgate affair, and led to charges (from all sides) of policing being co-opted to serve competing politically partisan agendas.

Concerns of this nature were heightened on receipt of the announcement in late 2005 that in future national security intelligence gathering would be the responsibility of MI5 rather than of the local police. Past experience highlighted very serious abuses of human rights arising when a "force within a force" was allowed to be created inside the police (Special Branch) and engage in counter-terrorist actions. The major policing reform set out in the Patten Commission report made a number of recommendations to counter these past problems but many feared that transferring responsibility for intelligence gathering away from the police would undermine the

changes intended to ensure greater policing accountability and transparency.

A number of other policing changes were underway. Hate crime monitoring (intended to address crimes motivated by hatred of a sectarian, racist, homophobic or disablist nature) were more effectively pursued than in earlier years. It was unclear however whether the rise in reporting such crime reflected a dramatic increase in such crime, or whether it rather mirrored improved police monitoring and societal response, encouraging people to come forward more often than they did in the past.

The civic oversight body for policing developed an important monitoring human rights framework that proved useful in ensuring that policing policies were thoroughly reviewed against international and domestic human rights standards. The key challenge, however, continued to be to monitor to what extent these policy changes were in fact reflected in policing on the ground. While public order policing no longer created the crisis of legitimacy that it had done in the past, 2005 again saw a number of incidents of serious disorder involving the exchange of live fire and of plastic bullets.

Past Abuses

The legacy of past human rights abuses remained centre-stage in any discussion of the human rights situation. The government, for example, tried unsuccessfully to introduce legislation that would address the unresolved dilemma of what is to be done with the so-called "on the runs." While the peace agreement in 1998 made explicit provision as to what was to be done with all those imprisoned as a result of conflict-related offences, there was an ambiguity about those people who had either left the jurisdiction before being imprisoned, or who had in fact escaped from jail. As part of the continuing political negotiations, the government determined in 2005 to bring

forward draft legislation that would address this "gap." However, the draft legislation was heavily criticised by a range of bodies – human rights organizations, and most political parties and government decided not to pursue the legislation.

The main concern raised by human rights groups was the "sleight of hand" that was being employed by the government to address all conflict related deaths, while yet presenting the legislation initially as a very limited response to a limited number of cases. The failure of the government to propose measures as to how to bring forward this debate about the past, and allow for a more holistic and comprehensive approach, in which everyone could feel fully involved, was of concern to many observers.

A concrete example of the problems could be seen in the handling of a number of emblematic cases.

◆ Public inquiries were established into the deaths of Robert Hamill, Rosemary Nelson and Billy Wright in 2004. In the interim, however, the government indicated that the latter of these cases would be converted to an inquiry under the Inquiries Act. This ran counter to the promises made in parliament at the time of the passage of the Inquiries Act, and intended to allay the concerns of the many critics of the new inquiries legislation. It also ran directly counter to the wishes of Billy Wright's family, who at year's end were seeking a judicial review of the decision.

There was no movement on the Pat Finucane Inquiry at all.⁶³ Leading judges indicated that they would not be willing to serve on the Inquiry under the Inquiries Act, and the family indicated quite definitively that they would not cooperate with any inquiry that does not meet the criteria established by Judge Cory.

Police established a Historic Enquiries Team, recognizing the need for an independent process to deal with conflict-related deaths and see if there are any eviden-

tial opportunities outstanding that could be pursued, even many years after the death. Concerns were expressed as to the extent to which any such investigation could comply with the procedural obligations imposed by article 2 of the ECHR, but this could at least give some closure and therefore satisfaction to some of the families involved.

An interim victims commissioner was established in 2005, but her very appointment, which was being judicially reviewed at year's end, was contentious since, amongst other things, it was not publicly advertised. Concern was raised about the incumbent's potential for working with and for all victims' groups. There were no developments in the Bloody Sunday Tribunal in 2005.

Institutional Protections

In addition to the specific institutions governing criminal justice and policing, a number of other institutions were created by the peace agreement to monitor and advise on human rights and equality protections. In particular, the Northern Ireland Human Rights Commission (NIHRC) was established to advise government on human rights as they relate to Northern Ireland.

When established, human rights groups argued that the commission did not comply with the UN Paris Principles governing national human rights institutions. After years of delay, a consultation paper seeking comments on the appropriate powers to be accorded to the commission was issued by the government in late 2005.

In conformity with recommendations from the UN Committee Against Torture, the government had agreed to designate the NIHRC as a visiting mechanism under the Optional Protocol to the UN Convention Against Torture. More than a year later, no progress in operationalizing this commitment could be recorded; instead, government was seeking advice as to whether this (and other powers) should or should not now be accorded to the commission.

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