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UK: Amnesty International makes submission to House of Lords opposing indefinite detention

Amnesty International has taken the extremely rare decision of lodging written submissions with the House of Lords, the UK's highest court, ahead of a case the organization describes as of paramount importance to human rights in the UK.

Next week, from Monday 4 October 2004, an Amnesty International delegate will also be observing the proceedings before the Appellate Committee of the House of Lords (the House of Lords) in the case of *A and others v the Secretary of State for the Home Department*.

The case concerns the powers of the Home Secretary to certify -- and subsequently indefinitely detain without charge or trial -- non-deportable foreign nationals as "suspected international terrorists" and a "national security risk".

Given the extreme importance of this case, Amnesty International sought and was granted leave to make written submissions to the Law Lords. The organization rarely seeks leave to intervene in legal proceedings, particularly before national courts. It does so only when the case raises issues of central importance to the protection of human rights, and when the organization considers that the particular expertise of Amnesty International might assist the Court. The organization believes that this is such a case.

In its written submissions, Amnesty International has invited the nine Law Lords hearing this appeal to find that indefinite detention under Part 4 of the Anti-terrorism, Crime and Security Act 2001 (ATCSA) is *criminal* for all intents and purposes. That it, as such, violates the most fundamental fair trial rights guaranteed in international standards, including treaty provisions by which the UK is bound. In addition, the organization has invited the Law Lords to find that the admissibility of, and reliance on, evidence obtained as a result of torture or other ill-treatment (of a third party) in ATCSA proceedings is in violation of the UK's obligations under international law.

Since internment in these circumstances is inconsistent with the right to liberty guaranteed under international human rights treaty provisions by which the UK is bound, the UK government has derogated from (i.e. temporarily suspended) its obligations under these provisions.

The UK remains the only country that has derogated from the (European) Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) in the aftermath of 11 September 2001. In particular, the UK has derogated from Article 5(1) of the ECHR and Article 9 of the International

Covenant on Civil and Political Rights.

Amnesty International has closely monitored the operation of the measures related to administrative detention under Part 4 of the ATCSA since it was implemented. As part of this monitoring process, a delegate of Amnesty International attended a number of the open hearings, relating to the Appellants' detention, before the Special Immigration Appeals Commission and, before the Court of Appeal, as well as the open sessions of the proceedings concerning the challenge against the derogation brought in July 2002.

The organization believes that the emergency provisions of the ATCSA are inconsistent with international human rights law and standards, including treaty provisions by which the UK is bound. Amnesty International has continued to be concerned about serious human rights violations that have taken place in the UK as a consequence of the implementation of the ATCSA since its enactment on 14 December 2001.

Background

Amnesty International has retained Edward Fitzgerald QC, Philippa Kaufmann and Ruth Brander, barristers at Doughty Street Chambers, who authored the organization's written submissions. Amnesty International is also represented by Richard Stein, solicitor, Leigh, Day & Co. solicitors.

The organization's written submissions will be available on Amnesty International's website on Monday 4 October. In the meantime, anyone can access the material that the organization has already published regarding its concern about the ATCSA.

In the aftermath of the 11 September 2001 attacks in the United States of America, the UK government asserted that the threat posed to the UK by the *al-Qa'ida* network amounted to "a public emergency", making it necessary for the authorities to enact new "anti-terrorist" laws. As a result the ATCSA was passed by the UK Parliament and enacted on 14 December 2001. Part 4 of the ATCSA allows the indefinite detention without charge or trial of foreign nationals, who cannot be deported or removed from the UK, principally on the basis of secret evidence. In addition, evidence extracted under torture of a third party can be adduced and relied upon in proceedings under the ATCSA.

The law effectively allows non-UK nationals to be treated as if they have been "charged" with a criminal offence, "convicted" without a trial, and "sentenced" to an open-ended term of imprisonment. The result is a shadow criminal justice system for non-UK nationals which fails to meet international standards for a fair trial. In addition, in light of the fact that these powers can only be applied to non-UK nationals, Amnesty International considers that Part 4 of the ATCSA violates the prohibition of discrimination enshrined in international law.

As of today, 11 foreign nationals are being detained under the ATCSA as "suspected international terrorists". They are held in high-security facilities under severely restricted regimes.

Amnesty International opposes detention under Part 4 of the ATCSA. It is detention ordered by the executive, without charge or trial, for an unspecified and potentially unlimited period of time, principally on the basis of secret evidence which the people concerned have never heard or seen, and which they were, therefore, unable to effectively challenge. Amnesty International has repeatedly expressed concern that Part 4 of the ATCSA has created a shadow criminal justice system devoid of a number of crucial components and safeguards present in both the ordinary criminal justice system and national procedures for the determination of refugee status. The human rights violations that have taken place in the course of the ATCSA's enforcement over nearly three years have deepened Amnesty International's concern in this respect. The organization continues to call on the UK government to release all persons detained under the ATCSA unless they are charged with a recognizably criminal offence and tried by an independent and impartial court in proceedings which meet international standards of fairness.

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