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United Kingdom: As Law Lords hear key cases on control orders, Amnesty International calls on the UK government to abandon them

On 5 July 2007, as the Law Lords begin hearing a case concerning the UK "counter-terrorism" control order regime, Amnesty International calls on the UK authorities to commit themselves to prosecuting rather than persecuting anybody suspected of involvement in terrorism.

Today, a panel of five Law Lords begins hearing appeals relating to control orders imposed on several people whom the UK authorities suspect of involvement in terrorism-related activities on the basis of secret information, including intelligence material.

Under the control order regime created by the Prevention of Terrorism Act 2005 (PTA), the UK authorities may impose restrictions ranging from "house arrest", to tagging, curfews, controlling access to telephones and the internet, and limits on whom the individual can meet or communicate with. Control orders are limited to a year's duration. However, they can be renewed at the end of each twelve-month period so that, effectively, they can be imposed indefinitely. Any breach of the restrictions imposed under a control order without reasonable excuse is a criminal offence, punishable by up to five years in prison.

The four cases under review are *MB v the Secretary of State for the Home Department*; *JJ and Others v the Secretary of State for the Home Department*; *E and S v the Secretary of State for the Home Department*; and *AF v the Secretary of State for the Home Department*. They all concern and arise from the implementation of the control order regime under the PTA.

Amnesty International consider that the imposition of control orders is tantamount to charging, trying and sentencing a person without the fair trial guarantees required in criminal cases. The organization considers that the control order regime is intrinsically inimical to the rule of law, the independence of the judiciary and human rights protection in the UK. In particular, this regime runs counter to the principle of equality before the law; the right to be free from discrimination; and the right to a fair trial -- including the presumption of innocence, equality of arms, access to counsel and the right to a defence -- even more so when the conditions imposed on an individual are tantamount to deprivation of liberty.

Amnesty International calls on the UK authorities to put people on trial rather than persecuting them for years on end on the basis of information that has been withheld from them and their lawyers of choice. UK law has numerous and wide-ranging provisions criminalizing terrorism-related activities. If there is sufficient evidence that a person has been involved in "terrorism-related activity", they should be charged with a recognizably criminal offence and tried in proceedings that fully accord with international fair trial standards.

Amnesty International concurs with the rulings of the lower courts in the case of *JJ and Others v the Secretary of State for the Home Department* that a daily 18-hour home curfew amounts to a deprivation of liberty contrary to Article 5 of the European Convention on Human Rights (ECHR). The organization also considers that the control order regime is incompatible with the right to a fair trial under Article 6 of the ECHR.

In light of these long-standing concerns about this regime, Amnesty International continues to call on the UK authorities to repeal the PTA and commit themselves to resorting to the ordinary criminal justice system.

Background

The control order regime in the PTA was introduced hastily through Parliament in March 2005 in the wake

of the Law Lords' ruling in December 2004 that indefinite detention of non-UK nationals without charge or trial was incompatible with the right to liberty and the prohibition of discrimination (*A and others v. Secretary of State for the Home Department* [2004] UKHL 56). The PTA gives a government minister unprecedented powers to issue control orders to restrict the liberty, movement and activities of people -- UK and non-UK nationals alike -- purportedly suspected of involvement in terrorism on the basis of secret intelligence. Consequently, the control order regime allows for violations of a wide range of human rights.

Since then, the UK authorities have continued to impose "control orders" on individuals purportedly involved in "terrorism-related activity", rather than charging and trying them. Amnesty International observed the open sessions of some of the judicial proceedings reviewing the lawfulness of control orders. The organization concluded that these proceedings were profoundly unfair, denying individuals the right to a fair hearing. This was primarily so because the PTA allows for closed proceedings in which secret information -- including intelligence material withheld from the appellants and their lawyers of choice -- is introduced; in addition, the standard of proof adopted is particularly low, given both the seriousness of the allegations and the substantial detriment resulting from the imposition of a control order.

Furthermore, the conditions imposed under some control orders have amounted to detention without charge or trial. This was confirmed by a judgment of the High Court of England and Wales in June 2006 in the case of *JJ and Others v the Secretary of State for the Home Department* concerning six foreign nationals who had been subjected to control orders. The High Court concluded that the obligations imposed on the six men, including a daily curfew confining each man to a small flat for 18 hours, amounted to deprivation of liberty contrary to Article 5 (enshrining the right to liberty) of the ECHR; and that, in the circumstances, the Home Secretary had made these orders unlawfully. In August 2006 the Court of Appeal confirmed this ruling. However, on the same day, the Court of Appeal concluded, in the case of *MB v the Secretary of State for the Home Department*, that the review procedure under the PTA was compatible with the right to a fair trial under Article 6 of the ECHR.

The case of *E and S v the Secretary of State for the Home Department* also raises the issue of the UK authorities' duty to prosecute and the failure on the part of the UK authorities to keep the prospect of prosecution under review. It also concerns the impact on E's wife, known as S, of the control order imposed on E.