
amnesty international

United Kingdom
Briefing to the Human Rights
Committee



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United Kingdom

Briefing to the UN Human Rights Committee

Introduction

Amnesty International submits the following briefing to the UN Human Rights Committee in advance of its consideration of the UK's sixth periodic report on the implementation of its obligations under the International Covenant on Civil and Political Rights (ICCPR). The briefing summarizes some of the organization's main concerns relevant to a number of provisions of the ICCPR.

In particular, the organization remains concerned that the UK is continuing its efforts to return individuals to states where they will face a real risk of grave human rights violations, including torture or other ill-treatment, on the strength of so-called 'diplomatic assurances', which are unenforceable in any court.

The UK authorities continue to seek to deal with a number of individuals suspected of involvement in terrorism-related activity outside the ordinary criminal justice system, including by imposing so-called 'control orders', in some cases amounting to deprivation of liberty, following unfair procedures.

The UK government is attempting, in new counter-terrorism legislation currently (as of June 2008) before Parliament, to introduce a power for a government minister to further extend the length of time for which individuals suspected of involvement in terrorism-related offences can be held by the police without charge.

There are continued failures of accountability for past violations, including for police killings and alleged collusion by state agents in killings, and for the legacy of the past in Northern Ireland.

The UK government continues to seek to limit the extraterritorial application of human rights protection, in particular in relation to the acts of its armed forces in Iraq.

Women who are subject to immigration control who have experienced violence in the UK, including domestic violence and trafficking, are unable to access the housing support needed to enable them to leave those situations of violence.

Amnesty International is also concerned by the continued failure by the UK government to identify victims of trafficking, which contributes to the criminalization and detention of victims of trafficking, rather than the protection of their human rights.

Constitutional and legal framework in which the Covenant is implemented (Article 2)

Amnesty International notes the willingness of the UK (at paragraph 59(b) of the periodic report) to accept in principle that its obligations under the ICCPR can have effect outside the geographical territory of the UK. Amnesty International further notes, however, that the UK seeks to limit this application by analogy with the relatively narrow understanding of the extraterritorial application of the European Convention on Human Rights (ECHR) applied by the UK's highest court, the Appellate Committee of the House of Lords (the Law Lords), in the case of *Al Skeini*¹.

In their ruling on the six conjoined cases referred to under the name *Al Skeini*, the Law Lords held that Baha Mousa (see below, 'The case of Baha Mousa'), who died whilst detained by UK forces in a UK-run detention facility in Iraq, should be considered to have come within the UK's jurisdiction for the purposes of the ECHR from the moment that he arrived in the detention facility.

The effect of this decision was to confirm that the family of Baha Mousa was entitled to pursue, before a court in the UK, its claim that the UK authorities had failed to carry out the full, independent and thorough investigation into the circumstances of the treatment and eventual death of Baha Mousa which was required to give effect to his right to life, and to freedom from torture and inhuman or degrading treatment, under Articles 2 and 3 ECHR respectively.

Although the decision of the Law Lords in *Al Skeini* ensured some remedy for individuals who had suffered violations through the conduct of UK forces overseas, and the relatives of such individuals, it limited the effectiveness of that remedy in a number of ways.

Firstly, the Law Lords held that the alleged violations of the right to life of the relatives of the other five claimants in *Al Skeini*, all of whom were shot and fatally wounded in the course of patrol operations by UK servicemen, fell outside the jurisdictional scope of the ECHR, and therefore did not give rise to any obligation on the part of the UK under the ECHR, nor, therefore, under the domestic Human Rights Act 1998 (HRA), which incorporates, in part, the ECHR into domestic UK law.

Secondly, the Law Lords found that Baha Mousa had come within the jurisdiction of the UK only from the time that he arrived at the temporary detention facility at the UK army base in Basra, and not from the moment of his arrest, at the hotel where he worked. Baha Mousa had reportedly been tortured or otherwise ill-treated at the time of his arrest, as well as subsequently in the detention facility.

¹ *Al-Skeini and other v Secretary of State for Defence*, [\[2007\] UKHL 26](#)

In its approach to another case considered by the Law Lords later in 2007, that of Hilal Abdul-Razzaq Ali Al-Jedda², the UK government appeared to attempt to restrict the scope of even the limited concessions it had made in relation to Baha Mousa. The case of *Al-Jedda* concerned one of the so-called ‘security internees’ detained without charge or trial by the UK contingent of the Multi-National Forces (MNF) in Iraq. Specifically, it focussed on the question of whether the prolonged internment of Hilal Al-Jedda was compatible with the right to liberty as protected by Article 5 ECHR.

Despite having conceded in *Al Skeini* that an individual held by UK forces at a UK-run facility should be considered to come within the UK’s jurisdiction for ECHR purposes, the UK sought to argue in *Al-Jedda* that Hilal Al-Jedda was not entitled to rely on the ECHR or the HRA. It did so by arguing firstly that the detention of Hilal Al-Jedda should be attributed, as a matter of law, to the UN, rather than to the UK, since UK forces were, at the time of his initial arrest in October 2004 and thereafter, acting as part of the MNF, which derives a mandate from UN Security Council resolutions adopted under Chapter VII of the UN Charter; and secondly that, even if his detention was attributable to the UK, the Security Council resolution which appears to authorize the use of internment by the MNF (Resolution 1546) overrides the UK’s obligations under Article 5 ECHR, notwithstanding that the UK has not derogated from Art. 5.

In December 2007 the Law Lords ruled³ that Hilal Al-Jedda was within the UK’s jurisdiction, since his detention was legally attributable to the UK, not (as the UK had argued) to the UN. However they held that UN Security Council Resolution 1546 effectively allowed the UK to intern people in Iraq, notwithstanding that to do so would otherwise have been incompatible with the UK’s obligations under the ECHR.

Amnesty International is concerned that the effect of these limitations on the applicability of the UK’s human rights obligations to the conduct of its armed forces overseas could be to deny an effective remedy, as guaranteed by Article 2 ICCPR (and interpreted by the Committee in General Comment No. 31), to individuals whose rights have been violated by the conduct of UK service personnel⁴. In this regard, Amnesty International recalls the Human Rights Committee General Comment No 31, which explicitly states that “a State party must respect and ensure the rights laid down in the Covenant to anyone within the power or effective control of that State Party, even if not situated within the territory of the State Party” and goes on to specify that “this principle also applies to those within the power or effective control

² See *UK: Law Lords hear key case on detention without charge or trial by UK forces in Iraq*, AI Index: [EUR 45/017/2007](#)

³ *R (on the application of Al-Jedda) v Secretary of State for Defence* [2007] UKHL 58

⁴ For more details see, for instance, *UK: Amnesty International’s reaction to Law Lords’ judgment in the Al-Skeini & Others case*, AI Index: [EUR 45/008/2007](#)

of the forces of a State Party acting outside its territory, regardless of the circumstances in which such power or effective control was obtained, such as forces constituting a national contingent of a State Party assigned to an international peace-keeping or peace-enforcement operation.”

Amnesty International also notes that the Committee against Torture⁵ expressed concern at the narrow view taken by the UK of the extraterritorial application of the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.⁶

Amnesty International considers that the UK must make clear that, at the very least, any individual arrested or detained by UK service personnel outside the UK should be considered to be within the jurisdiction of the UK from the moment of arrest, wherever that arrest or detention takes place, and should therefore be afforded all the protection of human rights envisaged both by the Human Rights Act 1998 and by the UK's international obligations, including its obligations under the ICCPR.

Article 3 in conjunction with Articles 2, 6, 7 and 26: Violence against women, including violence against migrant women

Violence against women violates a range of women's fundamental human rights, including those protected by the ICCPR. Gender-based violence abuses women's rights to life and freedom from torture and other ill-treatment, and impacts on their ability to enjoy their full range of human rights, including the right to health. Governments have an obligation to act with due diligence to respect, protect and fulfil the human rights that are set out in the international human rights treaties to which they are a party, including in the ICCPR.

Amnesty International recognizes that over the past decade, the UK has undertaken numerous significant initiatives to address violence against women, for example through: introducing legislation such as the Sexual Offences Act 2003 and the Domestic Violence Crime and Victims Act 2004; the development of Sexual Assault Referral Centres; the provision of funding for a national domestic violence helpline; signing the Council of Europe Convention on Action against Trafficking in

⁵ See [Conclusions and recommendations: United Kingdom of Great Britain and Northern Ireland, 10/12/2004, CAT/C/CR/33/3](#), para. 4(b).

⁶ The UK has contended, including in appearances before the CAT, that the acts of UK service personnel overseas “comply with the prohibitions set out in the Convention”, but that the UK is not required to ensure compliance with the “broader obligations under the Convention, such as those in Articles 2 and 16 to prevent torture or other acts of cruel, inhumane or degrading treatment or punishment”, even in overseas territory over which its forces are exercising *de facto* sovereignty. ([UK – Opening Address to the Committee Against Torture](#), 17-18 November 2004, para. 92)

Human Beings; and, more recently, providing emergency funding of £1 million following a campaign by NGOs and charities highlighting the critical funding problems facing rape crisis centres.

Yet despite such initiatives, violence against women is still widespread. Little attention is given to prevention or education and awareness-raising, projects tend to be short-term and under-funded and there are worryingly scarce specialist services to provide protection and support for women.

According to the End Violence Against Women Campaign, a coalition of non-governmental organizations including Amnesty International, each year across the UK three million women experience violence, and there are many more living with the legacies of abuse experienced in the past⁷.

Home Office figures for the year 2006/07 indicate that on average, two women a week are killed by their partners or former partners, illustrating the continuing risks of gender-based violence to women's lives⁸. Approximately 80,000 suffer rape and attempted rape every year⁹.

In a survey carried out by Amnesty International in the UK in November 2005, one-third of those surveyed believed that women who flirt are partly at fault if someone rapes them, and more than a quarter thought women invite rape to some extent if they wear seductive clothing¹⁰.

In 2002 – the most recent figures available – conviction rates in the UK for rape fell to a historic low, far lower than equivalent rates for other crimes. Only 5.7 per cent of reported rape cases ended in a conviction for the perpetrator¹¹.

Amnesty International is concerned that the UK is failing in its duty to act with due diligence to respect, protect and fulfil the human rights of women at risk of or suffering gender-based violence within its jurisdiction, including by:

- The failure of the UK Government to develop and implement an integrated strategy to eliminate all forms of violence against women, as outlined in the 1995 UN Beijing Platform for Action.

⁷ See *Map of Gaps: The Postcode Lottery of Violence Against Women Support Services*, End Violence Against Women Campaign and the Equality and Human Rights Commission, November 2007, pp. 9-10; report available at http://www.endviolenceagainstwomen.org.uk/data/files/map_of_gaps.pdf.

⁸ See *Domestic Violence: Facts & Figures*, <http://www.homeoffice.gov.uk/crime-victims/reducing-crime/domestic-violence/>. The source given is the findings of the British Crime Survey, *Crime in England and Wales 2006/2007*, available at <http://www.homeoffice.gov.uk/rds/crimeew0607.html>.

⁹ Walby and Allen, *Domestic Violence, Sexual Assault and Stalking: Findings from the British Crime Survey*, 2004

¹⁰ See <http://www.amnesty.org.uk/content.asp?CategoryID=11051>.

¹¹ Kelly, Lovett and Regan, *A gap or a chasm? Attrition in reported rape cases*, 2005; available at <http://www.homeoffice.gov.uk/rds/pdfs05/hors293.pdf>.

- The failure of the UK to ensure that women subject to immigration control can also access critical emergency accommodation and refuge, as well as specialist support such as counselling and legal advice.
- The current crisis in funding for women's voluntary sector organizations, many of which provide essential specialist frontline support to women victims of gender-based violence, such as rape crisis centres and refuges.

Lack of an integrated strategy to address all forms of violence against women

Amnesty International is concerned that the UK has still not acted on its commitments under the 1995 UN Beijing Platform for Action to take integrated measures to prevent and eliminate violence against women¹². The UK was reminded of this in 1999 when the UN Committee on the Elimination of all forms of Discrimination Against Women considered the UK's periodic report under the Convention on the Elimination of all Forms of Discrimination Against Women. Among other issues, the Committee noted the legislation and measures that are in place to address violence against women, but commented that "the Committee is concerned at the absence of a national strategy on the prevention and elimination of violence against women", recommending that a "unified and multifaceted national strategy to eliminate violence against women be implemented to include legal, educational, financial and social components, in particular support for victims"¹³.

Amnesty International considers that the UK should fulfil its commitments to develop and implement an integrated and strategic approach to eliminate all forms of violence against women, in consultation with the women's sector and specialist organizations working to end violence against women.

The impact of the 'no recourse to public funds' requirement on women subject to immigration control

The failure to implement an over-arching strategic approach has led to gaps in policies that have resulted in a chronic lack of protection and support for women who are subject to immigration control. The critical importance of safe refuge for women victims of violence is widely acknowledged, yet some women who are subject to immigration control who have experienced violence in the UK, including domestic violence and trafficking, are unable to access the housing support needed to enable

¹² For detailed recommendations relating to an integrated strategy on violence against women, see *What a Waste: The Case for an Integrated Violence Against Women Strategy*, Women's National Commission, February 2004; available at <http://tinyurl.com/52cu9z..>

¹³ A/54/38/Rev1. para. 311.

them to leave those situations of violence, as a result of the 'no recourse to public funds' rule.

The 'no recourse to public funds' rule (section 115 of the Immigration and Asylum Act 1999) provides that certain categories of immigrants who have leave to enter and remain in the UK for a limited period only have no right (subject to a few strictly limited exceptions) to access income-related benefits or housing and homelessness support. Women affected by the 'no recourse to public funds' requirement include both irregular and regular immigrants. The rule affects those entering the UK on certain categories of visa, including those issued to spouses and partners, students, and workers. It also includes those who are in the UK illegally, such as trafficked women and those who have overstayed their visas.

Research carried out by Amnesty International and a UK-based NGO, Southall Black Sisters¹⁴, has shown that the human rights of women in these situations continue to be abused. The effect of the rule is that these women cannot access emergency accommodation, including refuges, because they are not able to claim housing benefit or income support to cover the costs. They are therefore unable to flee from the violence they face. Others end up living on the street. Although some refuges are providing spaces for these women from their own funds, generally refuges, already struggling financially, find that they have no option but to turn women with no recourse to public funds away, knowing that these women risk facing further violence and abuse. Although exact figures are not available, a survey conducted by Imkaan, a specialist domestic violence organization supporting Asian women and children, found that, between April 2005 and April 2007, 537 women and children were unable to access emergency housing and support¹⁵; another recent survey of specialist refuges catering to South Asian women in the UK found that, in the year leading up to April 2007, 182 referrals of women with no recourse to public funds had been made, of which only 16 women were able to be accommodated¹⁶.

Amnesty International considers that the UK should exempt women fleeing violence in the UK from the 'no recourse to public funds' requirement, so enabling them to access the public funds necessary to secure a place of safety in refuge accommodation, and access to other specialist support services.

¹⁴ 'No Recourse' No Safety: *The Government's failure to protect women from violence*, March 2008: available to download at http://www.amnesty.org.uk/uploads/documents/doc_18308.pdf.

¹⁵ See the Memorandum submitted by Imkaan to the parliamentary Home Affairs Select Committee in October 2007, available at <http://www.publications.parliament.uk/pa/cm200708/cmselect/cmhaff/263/263we23.htm>.

¹⁶ See the recent report by a UK-based charity, Saheli, *Forgotten Women: Domestic Violence, Poverty and South Asian Women with No Recourse to Public Funds*, Sundari Anitha, Priya Chopra, Waheeda Farouk, Qamar Haq and Saliya Khan, March 2008, available at <http://www.oxfam.org.uk/resources/ukpoverty/downloads/forgottenwomen.pdf>.

The crisis in funding for specialist services in relation to violence against women

In the UK, there is a strong history of voluntary women's organizations providing front-line support and refuge for women escaping violence. Much of the knowledge and expertise on tackling violence against women in the UK lies with the voluntary sector¹⁷. In recent years this sector has come under increasing funding pressures, resulting in a funding crisis which leaves women's organizations facing closure, with the critical services and support they provide at risk of being lost.

Much of the funding for these services is government-provided. In 2007 it was reported that up to half of rape crisis centres in the UK faced possible closure due to the imminent withdrawal of one stream of government funding¹⁸. The immediate threat was averted when the government announced emergency one-off funding of £1 million for rape crisis centres¹⁹. However, Amnesty International is concerned that the lack of sustained investment in, and support for, specialist services is indicative of its failure to act with due diligence in ensuring women victims of violence can access protection and support.

In 1984 there were 68 women-only rape crisis centres or helplines in operation in the UK. In 2006/07 there were only 32, with some of those also facing closure. Although the UK government acknowledges the critical role that specialist services play in providing protection and support for women victims of gender-based violence, the paucity of publicly-funded services available to women victims of violence in the UK is striking.

According to a report published by the UK's Equalities and Human Rights Commission, together with the End Violence Against Women Campaign, a third of local authorities across the UK have no specialized support service relating to violence

¹⁷ As is recognized in the government's *Cross Government Action Plan on Sexual Violence and Abuse*, published in April 2007: see, for instance, paras. 5.9 – 5.10, pp. 17-18: "Voluntary/community groups are a crucial source of long-term counselling and support for victims of recent and historical sexual violence and childhood sexual abuse. [...] These groups have first hand experience of victim needs and [...] are crucial to the delivery of support to victims of sexual violence and childhood sexual abuse. [...] The expertise and knowledge of the sector should be drawn upon in the development of local strategies and action plans." Document available at <http://www.homeoffice.gov.uk/documents/Sexual-violence-action-plan>.

¹⁸ See, for instance, 'Half Rape Crisis centres face closure threat', *The Guardian*, 3 July 2007: <http://www.guardian.co.uk/society/2007/jul/03/crime.penal>.

¹⁹ See, for instance, the government's response to a petition calling for adequate funding for rape crisis centres: "The Government are providing £75,000 funding for the national organisation Rape Crisis - England and Wales and over £1m for local Rape Crisis Centres for 2007/08", 7 January 2008, <http://www.pm.gov.uk/output/Page14159.asp>.

against women²⁰. Most women in the UK have no access to a Rape Crisis Centre, and fewer than one-quarter of local authorities have any sexual violence service at all.

Amnesty International considers that the UK Government should invest in appropriate and adequate long-term funding for specialist women's violence against women services including rape crisis centres and refuge organizations.

Articles 6, 7 and 9 in conjunction with Article 2: The right to a remedy in cases of deaths, torture and other ill-treatment or arbitrary detention allegedly involving agents of the state

Amnesty International is concerned that failures by the UK to conduct prompt independent and effective investigations into allegations of serious human rights violations, including allegations of violations of Articles 6, 7 and 9, are preventing individuals from securing an effective remedy for those violations, as protected by Article 2.

Failure to investigate allegations of involvement in renditions (paras. 51-53 of the periodic report)

The UK continues to refuse to initiate a thorough and independent investigation into allegations of involvement in the US-led programme of secret detentions and renditions²¹.

In July 2007 a report of the investigation by the Intelligence and Security Committee (ISC) into allegations of UK complicity in renditions was made public, in a partially redacted form. Although made up of parliamentarians, the ISC reports directly to the Prime Minister, not to Parliament. It is the Prime Minister who decides whether to place before Parliament any ISC report, other than the ISC's annual report, and the Prime Minister who decides the extent to which the report's content should undergo redaction prior to publication. Amnesty International considers that the ISC's investigation into renditions was not sufficient to discharge the UK's obligations under

²⁰ *Map of Gaps*, November 2007, op.cit..

²¹ See also Amnesty International's 2006 report *Partners in crime: Europe's role in US renditions*, AI Index: [EUR 01/008/2006](#).

international human rights law, including because the ISC is inadequately independent from the executive²².

Given the shortcomings of the ISC, Amnesty International considers that the UK has failed to provide an effective remedy for victims of alleged human rights violations in which the UK intelligence and security services may be implicated.

On 21 February 2008 the Foreign Secretary David Miliband announced in a statement to Parliament that the UK had been informed by the USA that, contrary to repeated assurances from the USA on which the UK has relied in the past, the USA had indeed used the UK overseas territory of Diego Garcia on at least two occasions for the purposes of transferring detainees in its programme of rendition and secret detention.

The two confirmed instances when US flights carrying detainees landed in Diego Garcia were in 2002. The UK has not to date released the names of the individuals involved, nor confirmed any details of their cases, other than that “neither of the men was a British national or a British resident”, and that “one is currently in Guantanamo Bay. The other has been released.”²³ According to a statement by the Director of the US Central Intelligence Agency, the individual who was released “was returned to his home country”²⁴.

The response of the UK government to this confirmation that UK territory had indeed been used for the purposes of rendition flights has been to seek “specific assurance” from the USA that none of the flights about which the UK authorities have “been alerted to concerns regarding rendition through the UK or our overseas territories” was being “used for rendition purposes” at the time it passed through UK territory or airspace²⁵.

Amnesty International considers that seeking further assurances in this matter is a wholly inadequate response, and reiterates its call for a fully independent

²² For Amnesty International’s concerns about the investigation conducted by the Intelligence and Security Committee, see, for instance, *Europe and Central Asia: Summary of Amnesty International’s Concerns in the Region July – December 2006: UK*, AI Index: [EUR 01/001/2007](#). Amnesty International has also raised these concerns repeatedly in correspondence with successive Foreign Secretaries, most recently in February 2008.

²³ Foreign Secretary’s statement to Parliament: House of Commons Hansard Vol. 472, Column 457: available at <http://www.publications.parliament.uk/pa/cm200708/cmhansrd/cm080221/debtext/80221-0008.htm#08022198000007>.

²⁴ *Director’s Statement on the Past Use of Diego Garcia*, 21 February 2008; available at <https://www.cia.gov/news-information/press-releases-statements/past-use-of-diego-garcia.html>.

²⁵ See Foreign Secretary’s statement of 21 February 2008, op.cit.

investigation into the UK's alleged involvement in the US-led programme of renditions and secret detention²⁶.

In his statement to Parliament the Foreign Secretary repeated the UK government's position that the UK expects states to "seek permission to render detainees via UK territory and airspace, including overseas territories", and that it will "grant that permission only if [the UK authorities] are satisfied that rendition would accord with UK law and our international obligations". The UK continues, therefore, to contemplate circumstances in which it could lawfully agree to a request to facilitate a rendition operation. The UK appears to regard the possibility that a person subject to rendition might face a real risk of torture or other ill-treatment in the place to which they are transferred as being the only problematic aspect of renditions: the UK's periodic report to the Committee states, at paragraph 52, that the UK "will not approve a policy of facilitating the transfer of individuals through the [UK] to places where there are substantial grounds to believe they would face a real risk of torture". As such it appears that the UK fails to acknowledge that the forcible transfer and detention of an individual outside any legal process, which is necessarily involved in a rendition operation, is itself capable of amounting to a violation of human rights, including a violation of Article 9 ICCPR, prohibiting arbitrary arrest and detention²⁷.

Amnesty International considers that the UK must make clear that it will never agree to any request to facilitate the unlawful transfer of an individual outside any legal process.

The cases of Bisher Al-Rawi and Jamil El-Banna

Amnesty International remains concerned about the role played by the UK in the arrest, detention and subsequent rendition from Gambia to Afghanistan, and then to Guantánamo Bay, of Jamil El-Banna and Bisher Al-Rawi. Both men are UK residents. Bisher Al-Rawi is an Iraqi national, Jamil El-Banna a Jordanian national. There is evidence to suggest that the initial arrest of the two men was prompted, at least in part, by information supplied by UK security services to their US counterparts. Although the UK intelligence agencies placed certain caveats on the information they provided to their US counterparts, to the effect that the information should not be used as a basis for "overt, covert or executive action", it is clear these caveats were not respected in practice; if the UK knew or should have known that the information

²⁶ For a full discussion of Amnesty International's concerns about the UK's failure to investigate allegations of its involvement in renditions, see the relevant sections of the recently-published Amnesty International report *State of Denial: Europe's role in rendition and secret detention*, AI Index: [EUR 01/003/2008](#).

²⁷ As the Human Rights Committee has itself noted in its Concluding Observations on the second and third period reports of the USA, UN Doc. CCPR/C/USA/CO/3/Rev.1, 18 December 2006, para. 12.

they provided would lead directly to violations of the human rights of the men, it would be responsible for its contribution to the violations.

Shortly after the two men were detained in Gambia in November 2002, the US authorities informed the UK security services of their intention to transfer them, along with two UK nationals detained at the same time as them, to the US detention facility at Bagram airbase in Afghanistan. The UK authorities made consular representations on behalf of the two UK nationals, and both men were released without charge in December 2002 and returned to the UK. However, the UK government told the US authorities, in a telegram sent on 6 December 2002²⁸, that it would not extend consular protection to non-UK nationals.

Amnesty International considers that the failure of the UK authorities to make timely representations on behalf of Jamil El-Banna and Bisher Al-Rawi when it was told of the intention to transfer them unlawfully to a place of secret detention, or to respond to Bisher Al-Rawi's later request for corroboration of his relationship with UK intelligence in the context of his 'Combatant Status Review Tribunal', may have contributed to the protracted detention of the two men in Guantánamo Bay.

In April 2006 the then UK Foreign Secretary asked the US authorities to release Bisher Al-Rawi and allow him to return to the UK. A year later he was freed and reunited with his family in the UK after more than four years in Guantánamo. He was not charged with any offence on his return.

Jamil El-Banna was returned to the UK on 19 December 2007, a few months after the UK government had finally made representations on his behalf to the US authorities. He was detained on arrival and then released on bail, pending a hearing of a request for his extradition to Spain. The extradition proceedings were dropped in March 2008, when the court in Spain acknowledged that the disastrous effect of years of unlawful custody and alleged ill-treatment on the physical and mental health of Jamil El-Banna meant that he would be unfit to stand trial.

Amnesty International considers that the cases of Jamil El-Banna and Bisher Al-Rawi should be among those considered by the independent investigation into the UK's alleged involvement in the US-led programme of renditions and secret detention for which Amnesty International is calling.

Amnesty International further calls on the UK to make full and effective reparation to both Bisher Al-Rawi and Jamil El-Banna for the human rights violations they have suffered.

²⁸ The full text of this telegram is available at http://www.extraordinaryrendition.org/component/option,com_docman/task,doc_download/gid,20/Itemid,27/

Northern Ireland: inquiries into allegations of collusion (para. 64 of the periodic report; para. 7 of the list of issues)

Amnesty International is concerned at the UK's continued failure to instigate effective and independent investigations into a number of deaths in Northern Ireland in relation to which credible allegations have been made of collusion between the security forces and armed groups. In June 2007, the Committee of Ministers of the Council of Europe adopted a second interim resolution regarding a number of these cases where the European Court of Human Rights has ruled that the initial investigations carried out by the UK were insufficiently independent and thorough to give effect to the right to life, as protected by Article 2 ECHR. The resolution notes "that [...] progress has been limited and that in none of the cases an effective investigation has been completed"²⁹.

Amnesty International is further concerned by the inadequacies of the legislation enacted to provide the framework for inquiries into such allegations, the Inquiries Act 2005. Amnesty International considers that this legislation is incapable of guaranteeing a genuinely independent inquiry into any case involving allegations of grave violations of human rights, such as that of the killing of Patrick Finucane, below (see also 'The case of Baha Mousa', below). An inquiry established under the Inquiries Act would allow the government minister who established the inquiry significant and wide-ranging powers to impose restrictions on the inquiry if he thinks it is necessary "in the public interest" to do so. These include the power to set the terms of reference for the inquiry, and to change them during the inquiry; to appoint the chair of the inquiry and, in consultation with the chair, to appoint all the members of the inquiry panel; to bring the inquiry to an end at any point; to impose restrictions on public access to the inquiry hearings, and public disclosure of the evidence considered in the inquiry; and to withhold any material from the final published report of the inquiry³⁰.

The case of Patrick Finucane

Amnesty International is gravely concerned by the continued failure of the UK government to honour its repeated public commitments to instigate a genuinely

²⁹ *Action of the Security Forces in Northern Ireland (Case of McKerr against the United Kingdom and five similar cases)*, Interim Resolution CM/ResDH(2007)73, available at <http://tinyurl.com/2wttes>.

³⁰ For further background to Amnesty International's concerns in relation to the Inquiries Act 2005 see s.4 of the organization's 2006 report *Human Rights: A broken promise*, AI Index: [EUR 45/004/2006](http://www.amnesty.org/eur450042006).

independent and effective inquiry into the death of Belfast solicitor Patrick Finucane, more than 19 years after he was killed³¹.

In 2003 the European Court of Human Rights ruled³² that “the proceedings following the death of Patrick Finucane failed to provide a prompt and effective investigation into the allegations of collusion by security personnel. There has consequently been a failure to comply with the procedural obligation imposed by Article 2 of the [ECHR] and there has been, in this respect, a violation of that provision”. In its first interim resolution on this case and others concerning violations of the right to life in Northern Ireland, the Committee of Ministers of the Council of Europe stressed the UK’s “continuing obligation to conduct such investigations” – that is, genuinely effective and independent investigations – “inasmuch as procedural violations of Article 2 were found in these cases”³³.

In a memorandum produced by the Council of Europe’s Department for the Execution of Judgments of the European Court of Human Rights in February 2008, it became clear that the UK’s position in relation to the judgment of the Court in the case of Patrick Finucane was now that “the third enquiry conducted by Lord Stevens of Kirkwhelpington [commonly referred to as ‘Stevens III’] is intended to form the basis of the individual measures relating to this case”, and that “the conclusions of the Stevens III Investigation complete the individual measures required in this case”³⁴.

What this represents is a claim by the UK government that the failures identified by the European Court in the original investigation into the killing of Patrick Finucane – failures which amounted to a violation of Article 2 ECHR, protecting the right to life – had already been addressed by the police investigation referred to as ‘Stevens III’, and that there was therefore, as far as the UK’s obligation to comply with judgments of the Court goes, no longer any need for the long-promised independent judicial inquiry into the case.

Amnesty International considers that the conduct of the Stevens III investigation was such that it cannot plausibly be asserted that it has discharged the UK’s obligations under Article 2 ECHR, nor the obligation to provide an effective remedy for alleged violations of Article 6 ICCPR. In particular, the findings of the investigation have not been made public, beyond a brief summary of ‘Overview and Recommendations’ published in April 2003, and have not even been disclosed to the Finucane family or their lawyers. Amnesty International considers that the Stevens III

³¹ For further background to Amnesty International’s concerns in relation to this case, see, inter alia, *The killing of Patrick Finucane - official collusion and cover-up*, AI Index: [EUR 45/026/2000](#).

³² *Finucane v UK* (Application Number 29178/95), 1 July 2003.

³³ *Action of the Security Forces in Northern Ireland (Case of McKerr against the United Kingdom and five similar cases)*, Interim Resolution ResDH(2005)20, available at <http://tinyurl.com/64htf5>.

³⁴ *Memorandum prepared by the Department for the Execution of Judgments of the European Court of Human Rights (DG-HL)*, [CM/Inf/DH\(2008\)2](#), 22 February 2008.

investigation cannot be said to have ensured a sufficient element of public scrutiny of the investigation or its results to secure genuine accountability, nor to have involved the family of Patrick Finucane sufficiently.

Amnesty International considers that the UK remains obliged to hold a genuinely independent and effective public inquiry into the circumstances of the killing of Patrick Finucane, not only to give effect to the ruling of the European Court of Human Rights in this case, but also to honour the agreement reached in 2001 at Weston Park between the governments of the UK and the Republic of Ireland on the implementation of the Good Friday Agreement, and indeed to honour repeated promises to hold such an inquiry that have been made to the family of Patrick Finucane and to the public at large, both in Northern Ireland and beyond. Amnesty International is therefore further concerned at reports of recent correspondence between the legal representatives of the Finucane family and the UK authorities, which appear to cast doubt on the claim made at paragraph 64 of the periodic report that “arrangements are being taken forward for the establishment of an inquiry into the death of Patrick Finucane on the basis of the new Inquiries Act 2005”. A senior civil servant at the Northern Ireland Office reportedly wrote to the lawyers for the Finucane family in April 2008 to say that a decision had been taken in the autumn of 2006 that “in the light of the Finucane family’s continuing opposition [to an inquiry held under the Inquiries Act 2005], it was no longer justifiable to continue to devote public money to preparations for an Inquiry which the family would refuse to accept”³⁵.

Amnesty International continues to recommend the UK government to repeal the Inquiries Act 2005 at the earliest opportunity, and to put in its place a framework for genuinely independent and impartial inquiries into matters of public concern, including into alleged violations of the right to life.

Torture and ill-treatment by UK forces in Iraq: the case of Baha Mousa

On 27 March 2008 the Secretary of State for Defence conceded that “a substantive breach of Articles 2, right to life, and 3, prohibition of torture, of the European Convention on Human Rights” had taken place in the case of Baha Mousa, and that

³⁵ See, for instance, the report in the *Belfast Telegraph* of 26 April 2008, ‘Finucanes not told of probe delay due [to] “admin issue”’, available at <http://www.belfasttelegraph.co.uk/news/local-national/article3640077.ece>.

substantive breaches of Article 3 had taken place in relation to a number of other individuals detained at around the same time as him³⁶.

Baha Mousa, a 26-year-old Iraqi national and father of two, died in September 2003, after being tortured over a period of 36 hours while detained by UK troops in Basra, Iraq. A post-mortem examination revealed 93 separate injuries on his body. A number of Iraqis detained alongside him were also subjected to torture and other ill-treatment³⁷.

In March 2007, a court martial of seven UK military personnel in relation to the case of Baha Mousa ended. One of the defendants had pleaded guilty to a charge of inhumane treatment of detainees, a war crime, and was sentenced to 12 months' imprisonment. He was acquitted of the other charges against him. The six other defendants were acquitted of all charges³⁸. To date, no one has been found responsible for the death of Baha Mousa.

The court martial proceedings confirmed that Baha Mousa had sustained multiple injuries as a result of being ill-treated by UK soldiers both at the time of his arrest at a hotel and during his subsequent detention at the British military base in Basra where he died following his torture in custody.

The Judge Advocate in the court martial stated that numerous individuals, "some identified but the majority not", had been responsible for inflicting unlawful violence on Baha Mousa and other detainees. However, as the Judge Advocate remarked, many of those responsible were "not charged with any offence simply because there is no evidence against them as a result of a more or less obvious closing of ranks"³⁹.

On 16 May 2008 the Secretary of State for Defence announced that the UK government had finally agreed to a public inquiry into the death of Baha Mousa. The family of Baha Mousa, their legal representatives in the UK, and NGOs, including Amnesty International, have been campaigning for such an inquiry for a number of

³⁶ See Compensation Claims (Iraq): Written Ministerial Statement by the Rt Hon Des Browne MP, Secretary of State for Defence. House of Commons Hansard Vol. 474, Column 14WS. Available at <http://www.publications.parliament.uk/pa/cm200708/cmhansrd/cm080327/wmstext/80327m0001.htm#08032765000014>.

³⁷ For further background to Amnesty International's concerns in this case, see, for instance, *UK: Court Martial acquittals: many questions remain unanswered and further action required to ensure justice*, AI Index: [EUR 45/005/2007](http://www.amnesty.org/urllink/08032765000014).

³⁸ The charges against the other defendants included inhumane treatment; assault occasioning actual bodily harm; and, in respect of some of the officers in the regiment, negligent performance of duty. The defendant who pleaded guilty to inhumane treatment was also charged with manslaughter, and with perverting the course of justice. He was acquitted on both counts. The charge sheet is available in full at <http://tinyurl.com/53runk>.

³⁹ Judge Advocate's [ruling](#) on defence submissions of no case to answer, para. 25.

years, and welcomed this long-overdue recognition by the UK authorities of the need for a full public inquiry into the case. Amnesty International considers that it should not have taken so long for the UK authorities to acknowledge that an inquiry was needed, given the shocking facts of this case and the obvious inadequacies of the initial investigations.

Amnesty International has called for the inquiry to be given a broad enough remit to allow it to fully investigate how, when, where, why and by whom the advice was given that it was lawful for members of the UK armed forces to 'condition' detainees by the use of techniques such as hooding, sleep deprivation and placing in stress positions. These techniques have long been outlawed in the UK, but had become, in the words of the judge presiding over the court martial arising from the case in 2007, "standard operating procedure" among the troops responsible for detaining Baha Mousa. For this reason, and in the light of evidence pointing towards what the judge hearing the court martial described as "a serious failing in the chain of command all the way up to Brigade and beyond"⁴⁰, Amnesty International considers that the public inquiry should go further, and be given a remit to examine any credible allegations of the use of such techniques on other individuals held in UK custody in Iraq.

The terms of reference of the inquiry in this case are yet to be announced, but it has been confirmed that the intention is to hold it under the Inquiries Act 2005⁴¹. Amnesty International considers that any inquiry held under this legislation into an allegation of serious human rights violations will not be independent enough from the government that appoints it for the inquiry to meet the standards required by international human rights law (see also 'The case of Patrick Finucane', above).

Amnesty International considers that the UK government must institute a genuinely independent, impartial and thorough inquiry into allegations of torture and ill-treatment by UK forces in Iraq, including into the torture and death of Baha Mousa, and the torture of those held alongside him.

The case of Jean Charles de Menezes (para. 343 of the periodic report)

In February 2008 it was confirmed that the coroner's inquest into the death of Jean Charles de Menezes would go ahead. The inquest, which had been adjourned pending

⁴⁰ Judge Advocate's Sentencing Remarks, 30 April 2007.

⁴¹ See Written Ministerial Statement by the Rt Hon Des Browne MP, Secretary of State for Defence. House of Commons Hansard Vol. 475, Column 60WS, 14 May 2008: "I have decided that the right thing to do is to establish a public inquiry under the Inquiries Act 2005". Statement available in full at <http://tinyurl.com/3kvuh7>.

the completion of the criminal prosecution of the Office of the Commissioner of the Metropolitan Police, is scheduled to open in September 2008⁴².

On 1 November 2007, a jury found the Office of the Commissioner of the Metropolitan Police guilty of an offence under health and safety legislation, in relation to the operation that led to the death of Jean Charles de Menezes on 22 July 2005. Amnesty International considers that the criminal prosecution did not fully address serious concerns raised by the death of Jean Charles de Menezes. The health and safety prosecution did not provide a narrative of the series of events that led to Jean Charles de Menezes' death, nor did it focus on individual liability for his death. Amnesty International hopes that the circumstances of the killing will be further clarified by the coroner's inquest scheduled to open in September 2008. However, such an inquest will not be able – indeed, is expressly forbidden by law – to make any findings relating to individual criminal liability for the death of Jean Charles de Menezes⁴³.

Amnesty International and others remain concerned at the fact, later confirmed by the Metropolitan Police, that, in the immediate aftermath of the shooting, the police had sought to block the Independent Police Complaints Commission (IPCC) – the body with overall responsibility for the police complaints system in England and Wales, with a statutory duty to conduct investigations into incidents of deaths and serious injuries arising from incidents involving the police – from conducting from the outset the investigation into the killing of Jean Charles de Menezes. The grounds given for this were that an IPCC investigation might obstruct the Metropolitan Police's ongoing anti-terrorist investigation. The fact that the Metropolitan Police retained control over the investigation at the crucial initial stage runs counter to the need for such an investigation to be carried out independently of those responsible for the shooting.

In November 2007, the IPCC published its long-awaited report⁴⁴ into the circumstances leading to the shooting dead of Jean Charles de Menezes. This report, known as 'Stockwell 1', was finalized in January 2006; however its publication had been delayed to allow for the completion of the criminal prosecution of the Office of the Commissioner of the Metropolitan Police. The IPCC report highlighted failures in procedures and communications that took place on 22 July 2005. It also made 16 recommendations for change, including relating to post-incident procedures. The IPCC was critical of the “difference in the treatment of police and civilian witnesses to this incident”, which it described as “not acceptable or justifiable”. Members of the

⁴² For further background to Amnesty International's concerns in this case, see, for instance, *UK: The killing of Jean Charles de Menezes*, AI Index: [EUR 45/032/2005](#).

⁴³ See *UK: The death of Jean Charles de Menezes: coroner's inquest must go ahead to ensure full and public scrutiny*, AI Index: [EUR 45/021/2007](#).

⁴⁴ Available online at <http://tinyurl.com/2nvuw3>.

public who witnessed the shooting were asked to give witness statements immediately afterwards, whereas police officers involved in the incident were, in the IPCC's words, "allowed to return to their own base, refresh themselves and confer" before giving their statements.

Amnesty International considers the UK authorities should ensure that the coroner's inquest is given as wide a scope as is necessary for it to examine all of the circumstances surrounding the death of Jean Charles de Menezes.

Proposed changes to coroners' inquests: Counter-Terrorism Bill 2008

Amnesty International draws the attention of the Committee to proposals contained in the Counter-Terrorism Bill 2008, which were approved by the House of Commons – the lower, elected house of the UK Parliament – in June 2008, which would make significant changes to the system of coroner's inquests in the UK. The legislation still requires approval from the upper house of Parliament, the House of Lords, before being made law.

At present the coroner's inquest is an important mechanism for the investigation of alleged violations of the right to life in the UK, including deaths in police custody or in prison. If enacted, the proposals in the Counter-Terrorism Bill would give a government minister a broad power to issue a certificate requiring a coroner's inquest to be held without a jury, if the minister considers that the inquest will involve the "consideration of material that should not be made public (a) in the interests of national security, (b) in the interests of the relationship between the United Kingdom and another country, or (c) otherwise in the public interest". This certificate would override the current statutory requirement⁴⁵, which currently requires that inquests into deaths in prison, among others, must be held with a jury.

As well as requiring the coroner to hold the inquest to which such a certificate applies without a jury, it would also require the family of the deceased, and any legal representatives that the family might have, and the public at large, including journalists, to be excluded from those parts of the inquest that "relate" to the material which led the Secretary of State to issue the certificate. This is implicit, although not expressly stated, in the wording of the Bill, and was confirmed in a letter to Amnesty International from Home Office Minister Tony McNulty dated 28 April 2008: "in the very few cases which the Secretary of State certifies will involve consideration of material that could not be disclosed publicly without damaging the public interest, it will be necessary for the part of the inquest to which the evidence relates to be held in private and in the absence of the interested parties and their legal representatives".

⁴⁵ Contained in section 8 of the Coroners Act 1988 (for England and Wales); section 18 of the Coroners Act (Northern Ireland) 1959, as amended, for Northern Ireland. Scotland operates an entirely separate system of coroners' inquests.

The Bill would also give a government minister the power to order that an inquest in respect of which a certificate has been issued should be heard by a specially appointed coroner – that is, a coroner other than the one within whose jurisdiction the body of the deceased would ordinarily fall.

Amnesty International is concerned that these provisions, if enacted, could impair access to an effective remedy in cases of violations of the right to life, and could lead to inquests which fall short of the requirement for a full, independent, impartial and thorough investigation into deaths caused by agents of the state. An inquest held under a certificate could fail to protect the right of the family of the deceased to learn the truth as to how their relative lost her or his life; fail to ensure adequate public scrutiny; and fail to be adequately independent. Amnesty International is particularly concerned by the very broad grounds on which a certificate could be issued, which would appear to allow a government minister considerable discretion to order that material to be considered by the inquest should be withheld from the public, and from the family of the deceased. The exercise of such discretion on the part of a member of the executive undermines the independence of the investigation conducted by the inquest. Amnesty International does not consider that the rights of the family of the deceased will be adequately protected, as is contended by the government of the UK, by the ability of counsel to the inquest – that is, a lawyer appointed to advise the inquest, rather than to represent the family – to see the evidence which is not disclosed, and to ask questions of witnesses who give evidence in private.

Amnesty International, therefore, considers that these provisions in the Bill should be withdrawn, or repealed if enacted, and that any future changes to the operation of coroners' inquests should be made in a way that is fully compatible with the requirement that any investigation into an alleged violation of the right to life should be fully independent, should ensure that the rights of the family of the deceased are fully protected, and should ensure adequate public scrutiny of the circumstances of the death.

Article 7 in conjunction with Articles 2 and 14: Prohibition of torture and cruel, inhuman or degrading treatment

Attempts to undermine the absolute prohibition on torture (paras. 58-59 of the periodic report): the case of Saadi v Italy

In July 2007 the government of the UK, along with others, intervened in the case of *Saadi v Italy* at the European Court of Human Rights, in support of the Italian

government's arguments justifying its attempt to deport Nassim Saadi to Tunisia, his country of origin, despite the real risk of torture or other ill-treatment and other human rights violations that he would face there. The UK submitted its written intervention from another case, *Ramzy v Netherlands*, referred to in paragraphs 58 and 59 of the periodic report. In oral argument representatives of the UK urged the European Court of Human Rights to change its case law (established in the case of *Chahal v UK*)⁴⁶ so as to allow states to balance the risk of torture or ill-treatment that an individual might face in the country to which the state is seeking to deport him against the threat allegedly posed by that individual to the national security of the state seeking to deport him. The UK expressly sought to extend this qualification of the absolute prohibition of torture to the provisions of Article 7 ICCPR (see paragraph 58 of the periodic report).

Amnesty International considered the line of argument pursued by the UK in these cases to be profoundly dangerous⁴⁷. If the European Court had accepted this position, the UK would, by weakening the universally accepted absolute ban on torture and other ill-treatment, have undermined one of the basic values on which the system of human rights protection is built. On 28 February 2008 – subsequent, that is, to the submission of the UK's periodic report – the European Court of Human Rights comprehensively rejected the submissions made by the UK in the case of *Saadi v Italy*. The Court described the UK's arguments as “misconceived”, and reaffirmed that “the concepts of risk and dangerousness do not lend themselves to balancing ... [t]he prospect that he may pose a serious threat to the community if not returned does not reduce in any way the degree of risk of ill treatment that the person may be subject to on return.”⁴⁸

Amnesty International considers that the UK should abandon any further attempts to undermine the absolute nature of the prohibition on torture or other ill-treatment.

Deportations with assurances (paras. 55-57 of the periodic report)

Amnesty International is concerned that the UK is continuing its efforts to return individuals to states where they will face a real risk of grave human rights violations, including torture or other ill-treatment, on the strength of so-called ‘diplomatic

⁴⁶ Case Number 70/1995/576/662, 25 October 1996.

⁴⁷ See Amnesty International statement in response to the decision in *Saadi v Italy*, [European Court reaffirms ban on torture](#); and the statement issued by Amnesty International and other NGOs before the case was heard, *European Court of Human Rights: Ban on torture is absolute and universal*, AI Index: [IOR 30/016/2007](#).

⁴⁸ *Saadi v Italy* (Application No: 37201/06), 28 February 2008, para. 139.

assurances', which are unenforceable in any court. The UK is also working with other European states to build political support for the use of such assurances⁴⁹.

Since August 2005 the UK authorities have sought to deport a number of people whom they assert pose a threat to the UK's "national security", instead of bringing them to justice by charging them with a recognizably criminal offence and prosecuting them in fair trials in the UK. These attempts have continued despite the fact that there are substantial grounds for believing that the men concerned would face a real risk of human rights violations, including torture or other ill-treatment, if returned to their country of origin.

The UK has maintained that the risk the men would face has been sufficiently reduced by "diplomatic assurances" that the UK has obtained as to their treatment on return, contained within the framework of general Memorandums of Understanding (MoUs) in the case of deportation to Jordan, Libya or Lebanon, and given on a case-by-case basis in the case of deportation to Algeria.

To date, to Amnesty International's knowledge, no individual has been forcibly returned from the UK to Libya, Jordan or Lebanon on the strength of diplomatic assurances contained within the MoUs concluded with those countries. However a number of individuals – at least eight – have been returned to Algeria on the basis of case-by-case assurances, after the men had withdrawn or waived their appeals against deportation.

Amnesty International has repeatedly expressed concerns that appeal proceedings against orders for deportation on "national security" grounds, which take place before the Special Immigration Appeals Commission (SIAC), are profoundly unfair, and are incompatible with Article 14 ICCPR, *inter alia*⁵⁰. They deny individuals the right to a fair hearing, including because they are heavily reliant on closed hearings in which information (undisclosed to the appellant and their lawyer of choice), including intelligence material, is considered in the absence of the individuals concerned and their lawyers of choice, and because the standard of proof applied is particularly low. Proceedings before the SIAC have taken place in closed hearings even when the SIAC is considering the risk an individual would face on

⁴⁹ See for instance the 'Joint Declaration by the Ministers of Interior of G6 States' – that is, France, Germany, Italy, Poland, Spain and the UK – adopted at Sopot, Poland, on 18 October 2007: "The G6 Governments will initiate and support continued exploration of the expulsion of terrorists and terrorist suspects, seeking assurances through diplomatic understandings". Full text available at <http://www.homeoffice.gov.uk/documents/g6-joint-declaration-07.pdf?view=Binary>.

⁵⁰ See, for instance, Amnesty International's report *UK: Deportations to Algeria at all costs*, AI Index: [EUR 45/001/2007](#); and a public statement issued in response to a SIAC decision on deportations to Algeria, *UK: Secret judicial proceedings again expose individuals to risk of torture or ill-treatment on return to Algeria*, AI Index: [EUR 45/019/2007](#).

return, rather than when it is considering the assertion that the individual poses a threat to the “national security” of the UK.

To date the SIAC has dismissed an appeal against deportation on “national security” grounds to Jordan – a decision which was subsequently overturned in the Court of Appeal; upheld an appeal against deportation to Libya – a decision which was upheld in the Court of Appeal; and dismissed a number of appeals against deportations to Algeria – decisions which have been upheld in the Court of Appeal.

Deportations to Jordan

In April 2008 the Court of Appeal of England and Wales gave its judgment in two key cases concerning the UK government’s policy of ‘deportation with assurances’: that of a Jordanian national, Abu Qatada⁵¹, and those of two Libyan nationals, referred to for the purposes of legal proceedings in the UK as ‘DD’ and ‘AS’⁵² (see below, ‘Deportations to Libya’). In both cases, although on different grounds, the Court of Appeal ruled that the UK could not lawfully proceed with the deportations⁵³.

In its decision in the case of Abu Qatada, the Court of Appeal recognized that the trial which he would face on his return to Jordan – a trial which would very probably allow evidence which had been obtained by torture to be used against him – would amount to a flagrant violation of the right to a fair trial, as protected by Article 6 ECHR (and, *mutatis mutandis*, article 14 of the ICCPR.) The SIAC had recognized that there was “a high probability” that evidence in respect of which there was “a very real risk” that it had been obtained by torture would be used against him, but had concluded that the trial would nonetheless not be so flagrantly unfair as to amount to a bar to his deportation. The Court of Appeal disagreed with this assessment. The government has indicated its intention to appeal against this decision; any such appeal would be heard by the Law Lords.

The Court of Appeal also ruled in Abu Qatada’s case that the SIAC was entitled to find that assurances can sometimes be relied on to protect people against a real risk of very serious human rights violations – including the risk of being tortured, and the risk of being subjected to a flagrantly unfair trial. The Court of Appeal found that it was “a matter for SIAC’s judgement whether assurances can be relied on in any given case”.

Amnesty International is concerned that the unfair procedures which the SIAC follows, which include the use of material undisclosed to the person facing deportation, or to their lawyers, and the holding of closed hearings of the court, makes

⁵¹ *Othman v Secretary of State for the Home Department* [2008] EWCA Civ 290.

⁵² *AS & DD v Secretary of State for the Home Department* [2008] EWCA Civ 289

⁵³ See Amnesty International’s statement in response to the decisions, *UK: Time to abandon the policy of ‘deportation with assurances’*, AI Index: [EUR 45/004/2008](#)

it extremely hard to mount an effective challenge in the SIAC to the assertion by the Secretary of State that an individual can safely be deported, on the strength of diplomatic assurances, to a country where they would otherwise be at real risk of grave human rights violations. If the Court of Appeal is unwilling to question the SIAC's findings on the reliability of these assurances, there is real doubt over whether there is any genuine route open to challenge their use.

Deportations to Libya

In the cases of the two Libyans, DD and AS, the Court of Appeal in April 2008 upheld the decision of the SIAC that the assurances which had been obtained by the UK from Libya, in the form of a 'Memorandum of Understanding', were not sufficient to protect DD and AS from a real risk of torture or other ill-treatment if they were to be returned to Libya.

The government's response to this decision has been to concede that there is, at the moment, no realistic prospect of 'successful' deportations with assurances to Libya: "In the light of the recent ruling by the Court of Appeal in the case of two Libyan nationals, AS and DD, we have decided to discontinue deportation action in those cases, and in the cases of 10 other Libyan nationals"⁵⁴. DD and AS have instead been (or will be) served with control orders (see below, 'Control orders'), which will be similar in effect to their existing bail conditions. It is believed that the 10 other Libyan nationals referred to have also been, or will also be, served with control orders.

Deportations to Algeria

In January 2007, Reda Dendani and another Algerian man, referred to for the purposes of legal proceedings in the UK only as "H", were deported from the UK to Algeria on national security grounds. Before deportation, both men had signed documents waiving their right to continue to appeal against deportation. They reportedly did so on the understanding that they would benefit from amnesty measures once back in Algeria. They were reportedly given verbal assurances from the Algerian authorities that they were not wanted in Algeria and that they would be likely to spend at worst a few days in detention, as is customary in deportation cases. However, both men were, in fact, arrested and detained following their return to Algeria. In November 2007 "H" was tried on a charge of "involvement in terrorism activity", and sentenced, on conviction, to three years' imprisonment; Reda Dendani was tried on a charge of "association with a terrorist group abroad", and sentenced to

⁵⁴ Written Answer to Parliamentary Question by Rt Hon Jacqui Smith MP, Secretary of State for the Home Department, 29 April 2008. House of Commons Hansard Vol. 475, Column 334W: available at <http://www.publications.parliament.uk/pa/cm200708/cmhansrd/cm080429/text/80429w0017.htm#080429105000036>.

eight years' imprisonment. In a letter to Amnesty International dated 11 February 2008, an official in the Foreign and Commonwealth Office confirmed that "British Embassy officials did not attend the court proceedings of Mr Dendani or (H)", but stated that UK officials "remain in contact with both men's lawyers", and that the UK "was kept fully briefed about their trials and convictions". The letter states that "[n]either man's lawyer has alleged irregularities in the court proceedings"⁵⁵.

In July 2007 the Court of Appeal of England and Wales gave judgment in the appeals of three Algerian men against their deportation to Algeria on national security grounds⁵⁶. The cases were those of a man referred to in legal proceedings in the UK as 'BB', another referred to as 'U' and a third, Mustapha Taleb, who is no longer subject to an anonymity order, but was previously referred to as 'Y'.⁵⁷

The judgment of the Court of Appeal was in two parts: an open judgment, and a closed, i.e. secret, judgment not disclosed to the appellants, their lawyers of choice or the public.

The SIAC had concluded, in separate judgments in 2006 and early 2007, that none of the men would be exposed to a real risk of torture or other ill-treatment or other grave human rights violations if returned to Algeria, and that they could therefore lawfully be returned. These findings – and in particular, the SIAC's conclusions about the effectiveness of diplomatic assurances obtained by the UK authorities from their Algerian counterparts in sufficiently reducing the risk of torture or other ill-treatment the men would face if deported – were left unchallenged in the open judgment of the Court of Appeal.

The Court of Appeal ruled nonetheless that the SIAC should reconsider each of the three cases. In two of the three, 'BB' and 'U', the Court of Appeal reached this conclusion on grounds that were contained in the closed judgment. In the third case, that of Mustapha Taleb, the Court of Appeal found, in an open judgment, that the SIAC had been wrong in concluding that he would benefit from a particular interpretation of Algerian law without having heard any evidence in support of that conclusion. Indeed, the UK authorities were later told⁵⁸, after the SIAC's decision, that the interpretation of Algerian law which the SIAC had accepted was not one that had been or was likely to be adopted in Algeria.

⁵⁵ Letter to Amnesty International from Robert Chatterton Dickson, Deputy Director, Counter Terrorism Policy, Foreign and Commonwealth Office.

⁵⁶ *MT & others v Secretary of State for the Home Department* [2007] EWCA Civ 808.

⁵⁷ See statement issued by Amnesty International in response to this decision, *UK – Amnesty International's reaction to the judgment by the Court of Appeal in key cases in the global fight against torture*, AI Index: [EUR 45/013/2007](#).

⁵⁸ See the discussion of a meeting between Foreign & Commonwealth Officials and Algerian officials on 14 November 2006 at paras. 59 – 64 of the Court of Appeal judgment in *MT & others* [2007] EWCA Civ 808.

The Court of Appeal upheld, however, the SIAC's finding that it was appropriate to exclude those challenging their deportation and their lawyers of choice from the court, even when the court was considering the question of whether there were substantial grounds for believing that the individuals concerned would face a real risk of torture or other ill-treatment upon return.

In November 2007 the SIAC gave its decision on its re-consideration of the three cases which had been returned to it by the Court of Appeal⁵⁹. In all three cases the SIAC re-affirmed its earlier decision that the men could safely and lawfully be returned to Algeria. The SIAC had again heard part of the cases in closed sessions.

In the case of Mustapha Taleb the SIAC conceded, having re-considered his case in the light of the decision of the Court of Appeal, that there was "no doubt that he will be interrogated by the DRS [*Département du renseignement et de la sécurité* – Algeria's intelligence agency], and little doubt that he will be detained for the maximum period of 12 days garde à vue [that is, without charge, and without access to a lawyer] detention".

Nonetheless, the SIAC concluded, "for reasons which are more fully discussed in the closed judgment" – reasons, that is, which were largely unknown to Mustapha Taleb or his lawyers – that there were no grounds for finding that Mustapha Taleb would face a real risk of torture or other ill-treatment if returned. This conclusion was made public at around the same time as the Human Rights Committee expressed its "concern over the length of police custody" in Algeria, and took note "with concern of the information regarding cases of torture and cruel, inhuman or degrading treatment in [Algeria], for which the Intelligence and Security Department [that is, the DRS] reportedly has responsibility"⁶⁰.

Amnesty International is concerned that the practice of issuing closed, i.e. secret, judgments in proceedings challenging orders for deportation on national security grounds, which has now been followed by both the SIAC and the Court of Appeal, is incompatible with Article 14(1) ICCPR, which requires that "any judgement rendered [...] in a suit at law shall be made public except where the interest of juvenile persons otherwise requires or the proceedings concern matrimonial disputes or the guardianship of children".

Amnesty International considers that procedures in the SIAC whereby individuals can challenge orders for their deportation on national security grounds must be amended to ensure that they are compatible with international standards of fairness, including Article 14 ICCPR. SIAC procedures must ensure that every individual subject to an order for deportation on national security grounds is able to know the material used

⁵⁹ *Y, BB and U v Secretary of State for the Home Department* [2007] UKSIAC 32/2005

⁶⁰ Algeria: Concluding Observations of the Human Rights Committee, UN Doc CCPR/C/DZA/CO/3, 12 December 2007, paras. 18 and 15.

against them in sufficient detail that they can mount a genuinely effective challenge to the order for their deportation, including a challenge to the assertion that they will be safe from grave human rights violations, including torture or other ill-treatment, in the country to which they are to be returned.

Amnesty International considers that the UK must abandon its policy of deportation with assurances, and instead re-commit itself to upholding the absolute prohibition on torture, and to charging anyone reasonably suspected of involvement in terrorism-related activity with a recognizably criminal offence in proceedings which meet international standards of fairness.

Article 8: Prohibition of slavery, servitude and forced or compulsory labour

Trafficking in human beings (para. 380 of the periodic report)

Amnesty International considers that trafficking is a violation of human rights and an offence to human dignity and integrity. In the trafficking process, trafficked persons are typically subjected to compound abuses of their human rights. Many are abducted, held against their will in poor conditions, beaten, sexually abused and subjected to other forms of torture. Frequently their rights to physical and mental integrity; liberty and security of the person; freedom from slavery, slavery-like practices, torture and other inhuman or degrading treatment; family life; freedom of movement; privacy; the highest attainable standard of health; and safe and secure housing are violated. States must put in place measures addressing trafficking which place the protection and respect of these rights at their core, and protect the right of trafficked persons to effective redress, including reparation, for the human rights abuses to which they have been subjected.

Research conducted by the UK Home Office suggests that at any one time during 2003 – the most recent data available – there were in the region of 4,000 victims of trafficking for forced prostitution in the UK⁶¹. In a report from 2004, UNICEF estimated that there were at least 5,000 child sex workers in the UK, many of whom will have been trafficked⁶².

⁶¹ Written Answer to Parliamentary Question by Vernon Coaker MP, 5 December 2006. House of Commons Hansard Vol. 454, Column 286W: available at <http://www.publications.parliament.uk/pa/cm200607/cmhansrd/cm061205/text/61205w0017.htm#06120610004724>

⁶² See *Position statement on commercial sexual exploitation*, UNICEF UK, 2004, available at http://www.unicef.org.uk/unicefuk/policies/policy_detail.asp?policy=8.

Amnesty International is not aware of more recent data, nor of any statistics compiled by the UK government on the incidence of trafficking for forced prostitution or exploitation in other sectors – such as domestic work, farming, manufacturing, construction or hospitality – throughout the UK. In this regard, Amnesty International notes that the Human Rights Committee has recently expressed concerns about the absence of disaggregated statistical data on the number of women and children trafficked and recommended the collection of such data⁶³.

Amnesty International welcomes the steps the UK government has taken to address the issue of trafficking, including the UK's signature of the Council of Europe Convention on Action against Trafficking in Human Beings (ECAT) in March 2007, and recognizes the efforts of the UK government to prepare for ratification of ECAT by the end of 2008. However Amnesty International has concerns about the continuing failure of the UK government to take effective measures to ensure the identification of victims of trafficking, and about the criminalization and detention of victims who have been incorrectly identified as illegal entrants and illegal workers, rather than victims of serious human rights abuses.

Identification. Correct identification and referral of victims to appropriate support services lies at the heart of any system to protect trafficked persons⁶⁴. Failure to be identified as a victim of trafficking is likely to lead to a denial of basic support and, in the case of those with irregular immigration status, could also lead to immigration detention, criminalization and removal back to the country of origin without any risk assessment as to the risk of harm or re-trafficking on return.

Research by Amnesty International and others has found a continuing failure by a wide range of authorities including immigration, police and social services to identify trafficked persons, despite considerable efforts made by the UK government to train these authorities. These include failures by the police to identify migrant domestic workers as having been trafficked⁶⁵; a systematic failure on the part of immigration officers to recognize asylum applicants as victims of trafficking, either because of poor knowledge of trafficking routes and coercive methods used by traffickers, or because of poor country of origin information; and failures by the police to identify victims of trafficking even when supported by NGOs with expertise on identification. These failures may be rooted in a culture of disbelief centred on the immigration status of the victim, meaning that officials are less likely to believe that

⁶³ *Concluding observations on periodic report of Austria*, CCPR/C/AUT/CO/4, 30 October 2007

⁶⁴ Under ECAT identification by competent authorities acts as the passport to a range of rights intended to help a trafficked person escape from the influence of traffickers and begin a process of recovery through access to healthcare, support and accommodation and access to legal advice.

⁶⁵ See for instance the *Briefing on Migrant Domestic Workers and Trafficking* produced by Kalayaan, the leading UK-based NGO working for migrant domestic workers, in April 2007; available at <http://tinyurl.com/62n7v7>.

persons with illegal or irregular immigration status are credible. In the absence of comprehensive statistical information on trafficking to the UK, the best indicator of identification practice are statistics for referrals to the government-funded POPPY Project, which provides accommodation and support for women who have been trafficked. Between March 2003 and September 2007 the POPPY Project received 743 referrals. Of these 231 were from the police (31 per cent of total referrals), 63 from immigration officials (9 per cent), 43 from Social Services (6 per cent) and only 21 from health services (3 per cent). The majority of referrals, therefore, were not from public authorities: 170 were from NGOs, 99 from solicitors, 42 from individuals and 32 were self-referrals⁶⁶. These figures suggest that immigration officials, in particular, are less likely to make positive identifications of trafficked persons than NGOs and front-line practitioners.

In consultations with NGOs and others, the UK government has proposed to establish a single body, led either by the police or by immigration authorities, to act as the Competent Authority for ECAT purposes for the UK. Amnesty International is concerned that any single agency may not have the necessary expertise and skills to identify victims. The proposed model conflicts with best practice in countries such as Italy, Belgium and the Netherlands where NGOs are able to identify trafficked victims. In Belgium identification is NGO-led, with three accredited NGOs responsible for all identifications⁶⁷. In Italy the function is shared by the police and accredited anti-trafficking NGOs⁶⁸. In the Netherlands, all cases of possible victims of trafficking are referred for registration and further management to an NGO⁶⁹. The police have an obligation to report every such case to the STV. As a result of this arrangement, several hundreds of cases are dealt with by the STV per year (in 2006, 579 cases were registered by STV)⁷⁰. The role of NGOs in collaborating with states in the identification of victims of trafficking has been recognized by ECAT⁷¹.

Use of immigration or prison detention. Amnesty International is concerned at the incarceration of trafficked victims in immigration detention or prisons. Detention is likely to be detrimental to the physical and mental health of trafficked victims,

⁶⁶ Information provided by the POPPY Project.

⁶⁷ Information provided by Belgian NGO Pag-Asa, <http://www.pag-asa.be>.

⁶⁸ Information provided by Italian NGO On the Road, <http://www.ontheroadonlus.it/>.

⁶⁹ STV (Stichting tegen Vrouwenhandel); recently re-named COMENSHA (COördinatiecentrum MENSenHAndel), <http://www.mensenhandel.nl/>.

⁷⁰ See *STV Nieuws*, August 2007, p.4; available online at <http://tinyurl.com/6by8rn>.

⁷¹ See ECAT Article 10, which provides *inter alia* that state parties “shall provide its competent authorities with persons who are trained and qualified in preventing and combating trafficking in human beings, in identifying and helping victims, including children, and shall ensure that the different authorities collaborate with each other as well as with relevant support organisations, so that victims can be identified in a procedure duly taking into account the special situation of women and child victims”; and that state parties “shall adopt such legislative or other measures as may be necessary to identify victims as appropriate in collaboration with other Parties and relevant support organisations.”

especially those suffering from post traumatic stress disorder as a result of being trafficked⁷². A recent report⁷³ on the treatment of trafficked women in detention found that whilst all the women displayed varying degrees of mental distress including depression, suicidal ideation and insomnia, only 15 per cent received medical treatment, and such treatment was inadequate, as it merely consisted of painkillers or sleeping pills. Other problems victims may face in detention include perceived or real intimidation by traffickers or informers for traffickers who they believe are detained along with them. Victims subjected to detention by the UK authorities will find it even more difficult to recover from their experience, to fully disclose their situation or to find the trust necessary to identify others who can help them. The motivation for co-operation on prosecutions is also lost through lack of identification and the detention environment.

Criminalization. Due to their uncertain immigration status many trafficked persons may have broken the law either at the time of entry into the UK, by working illegally, through being in possession of false documentation or no documentation, or through forced participation in criminal activity. Such victims will be liable to prosecution and detention. The threat of criminalization increases the coercive power of traffickers who are known⁷⁴ to deter victims from contacting the authorities by telling them that they will be treated as criminals and risk facing imprisonment if they go to the police to seek help.

In December 2007 the Crown Prosecution Service (CPS) issued revised guidance⁷⁵ for prosecutors on how and when charges against trafficked persons may be discontinued if a prosecution is not deemed to be in the public interest. The guidance applies to adults charged with a range of passport and identity documentation offences, and offences relating to the criminal exploitation of children.

⁷² A study conducted by researchers at the London School of Hygiene & Tropical Medicine on the physical and psychological health of trafficked women found that they suffered numerous physical and mental health problems which required both urgent and longer-term care. Psychological reactions were severe and prevalent, and compared to or surpassed symptoms recorded for torture victims. (*Stolen smiles: a summary report on the physical and psychological health consequences of women and adolescents trafficked in Europe.* (2006) LSHTM/IOM/EU Daphne Programme. Available at <http://www.lshtm.ac.uk/hpu/docs/StolenSmiles.pdf>).

⁷³ *Prisoners With No Crime: Detention of trafficked women in the UK*, Sarah Stephen-Smith, May 2008, available at http://www.eaves4women.co.uk/POPPY_Project/Documents/Recent_Reports/Detained.pdf. The report is produced by the POPPY Project, the only UK-government funded project that provides support and accommodation to victims of trafficking. The report provides information on 55 women who were detained between March 2003 and October 2007 in the UK under immigration legislation or by custodial powers between 2001 and 2007.

⁷⁴ Source: Amnesty International interviews with POPPY Project and Kalayaan.

⁷⁵ *Prosecution of defendants charged with immigration offences who might be trafficked victims*, Crown Prosecution Service, December 2007. Available at http://www.cps.gov.uk/legal/section12/chapter_j.html#19a.

Prosecutors are advised to consider whether or not an individual suspected of having committed such an offence is a credible trafficking victim, on the basis of information or evidence from the investigating immigration or police officer.

Whilst Amnesty International welcomes the introduction of the guidance from the CPS, Amnesty International is aware of cases in which the CPS has had ample opportunity to consider discontinuing prosecution of a victim of trafficking on public interest grounds but refused to do so or were advised not to do so by immigration or police officials, despite representations by expert NGOs and professionals.

Amnesty International considers that the functions of identification should not be concentrated in a single body but follow a multi-agency, multi-disciplinary model, where law enforcement and immigration officials share the function of identification with other relevant agencies, professionals and NGOs with expertise across all forms of trafficking in order to reduce the risk of missed identifications.

Amnesty International believes that the UK should prohibit the detention, charge or prosecution of a trafficked person for the illegality of their entry into or residence in a country or their involvement in unlawful activities that are a consequence of their situation as trafficked persons.

Articles 9 and 14: Right to liberty and to a fair trial

Control orders (paras. 36-50 & 481 of the periodic report; para. 14 of the list of issues)

According to Home Office figures, there were, as of 10 June 2008, 15 control orders currently in force, three in respect of UK nationals and 12 of non-UK nationals⁷⁶. It is not clear whether these figures include the control orders which the government has indicated it intends to make against a number of Libyan nationals in the light of the recent decision of the Court of Appeal on deportations to Libya (see above). It would appear, from a comparison with earlier figures, that it does not.

The system of 'control orders' created by the Prevention of Terrorism Act 2005 (PTA) has been used by the government as an alternative to prosecution, to impose severe restrictions on a number of individuals who have not been charged with any criminal offence. The judicial procedures by which the imposition of a control order can be challenged are gravely unfair, in particular because the court will consider secret material (i.e. material not disclosed to the person on whom the order is served -

⁷⁶ Control Order Powers (11 March 2008 - 10 June 2008): Written Ministerial Statement by the Rt Hon Tony McNulty MP, Home Office Minister. House of Commons Hansard Vol. 477, Column 25WS. Available at <http://tinyurl.com/6lzd8a>.

the 'controlee' – or their lawyer of choice), advanced in closed sessions (in the absence of the controlee and their lawyer of choice), to support the allegation that the controlee is or has been involved in terrorism-related activity, and constitutes a risk to the public. Neither the controlee nor his lawyer of choice is allowed to see that material. The controlees are therefore denied the opportunity to mount an effective challenge to the allegations against them.

Amnesty International considers that the system of court-appointed 'Special Advocates', who are supposed to be able to challenge the use of this secret material, is not sufficient to mitigate this unfairness⁷⁷. Special Advocates are not the lawyers of choice of the individual concerned, and without specific permission from the court – which is in practice rarely sought or granted – they are not allowed to consult with the individual concerned once they have seen the secret material. They are therefore unable to take instructions as to how best to challenge the material. (Special Advocates play a very similar – and equally worrying – role in proceedings before the SIAC for challenging orders for deportation on national security grounds: see 'Deportations with assurances', above).

Like the Anti-Social Behaviour Orders noted in para. 19 of the Committee's List of Issues, a control order, although categorized as a civil order (as has now been confirmed by the Law Lords – see below), can give rise to criminal liability if breached. In January 2007 an individual was convicted of a breach of control order obligations, the first conviction for an offence under the PTA, and was sentenced to five months' imprisonment⁷⁸.

On 31 October 2007 the highest court in the UK, the Law Lords, gave their decisions on four important test cases concerning the system of control orders⁷⁹. The Law Lords held (by a three-two majority) that an 18-hour daily curfew (that is, confinement to a specified place of residence) did amount to a deprivation of liberty (as opposed to a restriction of the right to freedom of movement), contrary to Article 5 ECHR, but (unanimously) that a 12-hour curfew did not. One of the Law Lords, Lord Brown, suggested that a 16-hour curfew may be acceptable, as a restriction on freedom of movement rather than a deprivation of liberty.

The Law Lords also considered Article 6 ECHR, concerning the right to a fair hearing. By a majority of four to one, they decided that the High Court should be

⁷⁷ For details of Amnesty International's concerns around the system of Special Advocates see *Human Rights: A Broken Promise*, AI Index: [EUR 45/004/2006](#).

⁷⁸ See Control Order Powers (11th December 2006 – 10th March 2007): Written Ministerial Statement by the Rt Hon John Reid MP, Secretary of State for the Home Department, House of Commons Hansard Vol. 458, Column 54WS. Available at <http://tinyurl.com/573x3g>.

⁷⁹ *Secretary of State for the Home Department v JJ & others* [2007] UKHL 45; *Secretary of State for the Home Department v MB & AF* [2007] UKHL 46; *Secretary of State for the Home Department v E and another* [2007] UKHL 47.

asked to re-consider whether two individuals – known as MB and AF – were denied the right to a fair hearing by the procedure used to impose control orders upon them. Both MB and AF were subjected to control orders on the basis of, in the words of Lord Bingham, one of the Law Lords hearing the appeal, “a bare, unsubstantiated assertion which [they] could do no more than deny”. The substance of the allegations against the men was presented in closed sessions of the court, from which the men and their lawyers of choice were excluded.

Finally, the Law Lords unanimously decided that the imposition of a control order did not amount to a determination of a criminal charge, and therefore did not attract the specific fair trial guarantees required in criminal cases by international human rights law.

Amnesty International was concerned that these decisions, particularly when considered as a whole, would allow the UK authorities to continue imposing only slightly less severe restrictions on the liberty of individuals who have been charged with no criminal offence, and who have, in some cases, had no opportunity to mount an effective challenge to the allegations against them⁸⁰. In a number of cases these fears appear to have been realized, when the Home Secretary sought, immediately following the decision of the Law Lords, to increase the curfew imposed on a number of individuals (including ‘AF’⁸¹, whose case had been among those considered by the Law Lords) to 16 hours a day, the limit which had been suggested by one of the Law Lords as the maximum that could be compatible with the right to liberty.

Since October 2007 a number of High Court decisions have tried to put into effect the Law Lords’ decision on the right to a fair hearing in control order proceedings⁸². The position remains unclear, and is likely to be subject to further clarification by the Court of Appeal⁸³, but it appears that individuals continue to face

⁸⁰ See the public statement issued by Amnesty International ahead of the House of Lords hearing in these cases, *UK: As Law Lords hear key cases on control orders, Amnesty International calls on the UK government to abandon them*, AI Index: [EUR 45/011/2007](#); for analysis of the decision, see the section on the UK in the forthcoming Amnesty International document *Europe and Central Asia: Summary of Amnesty International's Concerns in the Region: July-December 2007*, AI Index: EUR 01/001/2008.

⁸¹ See *Secretary of State for the Home Department v AF* [2008] EWHC 453 (Admin), 10 March 2008, at para. 3.

⁸² See, inter alia, the judgments in *Secretary of State for the Home Department v AE* [2008] EWHC 132 (Admin); *Secretary of State for the Home Department v AF* [2008] EWHC 689 (Admin); and *Secretary of State for the Home Department v AN* [2008] EWHC 372 (Admin).

⁸³ See Control Order Powers (11 March 2008 - 10 June 2008): Written Ministerial Statement by the Rt Hon Tony McNulty MP, Home Office Minister. House of Commons Hansard Vol. 477, Column 25WS: “The Secretary of State has lodged three appeals with the Court of Appeal in this reporting period. [...] Three appeals have been lodged by, or on behalf of, controlled persons with the Court of Appeal”. Full text of statement available at <http://tinyurl.com/6lzd8a>

significant restrictions on their liberty (including 16-hour house curfews), on the basis of allegations the grounds for which are substantially undisclosed to the person concerned or to their lawyers of choice. The courts continue to rely on the efficacy of the 'Special Advocate' procedure to ensure the fairness of such proceedings. It is likely that some of these cases will proceed to the Court of Appeal for further clarification of the meaning of the Law Lords' decision.

Amnesty International considers that the imposition of control orders is tantamount to charging, trying and sentencing a person without the fair trial guarantees required in criminal cases. Amnesty International considers that the control order regime created by the PTA 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 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. It allows a government minister, subject to limited judicial scrutiny, to impose severe restrictions on the liberty of an individual who is suspected of involvement in terrorism-related activity but has not been charged with any criminal offence. The proceedings whereby a control order can be challenged in the courts are deeply unfair, including because of their heavy reliance on secret material considered in closed sessions of the court, and not disclosed to the individual concerned or to their lawyers of choice.

Amnesty International continues to call for the repeal of the control order regime created by the Prevention of Terrorism Act 2005, and for the government to commit itself instead to charging people who are reasonably suspected of involvement in terrorism-related activity with a recognizably criminal offence and bringing them to a prompt and fair trial.

Pre-charge detention (para. 405 of the periodic report, para. 13 of the list of issues)

Amnesty International draws the attention of the Committee to proposals contained in the Counter-Terrorism Bill 2008, which was before Parliament at the time of writing (see also above, 'Proposed changes to coroners' inquests'). These proposals would, if enacted, give a government minister – in practice, the Home Secretary – a power to further extend, up to 42 days, the maximum period for which people suspected of involvement in terrorism-related offences can be detained without charge or trial⁸⁴. The proposals, together with some amendments introduced by the government in the course of the parliamentary debate, were approved by the House of Commons – the

⁸⁴ It should be noted that this proposal takes the place of earlier suggestions, noted at para. 13 in the List of Issues, that the maximum period of pre-charge detention should be extended to 56 days.

lower, elected house of Parliament – in June 2008. Their consideration by the upper house – the House of Lords – is scheduled to take place in July 2008.

If the Bill as passed by the House of Commons were to be enacted, the Home Secretary would be able to bring this so-called ‘reserve power’ into effect by order, without prior parliamentary approval, provided that he or she had received a joint report from the Director of Public Prosecutions (DPP) and the chief constable of the relevant police force stating, and giving reasons for, their belief that there were reasonable grounds for believing that detention beyond 28 days will be necessary for one or more of the following reasons: “to obtain, whether by questioning or otherwise, evidence that relates to the commission by the detained person or persons of a serious terrorist offence⁸⁵; to preserve such evidence; or pending the result of an examination or analysis of any such evidence”.⁸⁶ The joint report must also state that the prosecution service and the police are satisfied that the investigation in connection with the individuals concerned are detained “is being conducted diligently and expeditiously”.

Before bringing the reserve power into force, the Home Secretary is required to obtain legal advice from a lawyer (not a government lawyer), as to whether the Home Secretary can “properly be satisfied” that a “grave exceptional terrorist threat⁸⁷ has occurred or is occurring; that the reserve power is needed for the purpose of investigating the threat and bringing to justice those responsible; that the need for that power is urgent; and that the provision in the order is compatible with [ECHR] rights”⁸⁸. The Home Secretary is under no obligation to accept that legal advice; she or he is, however, required to make the advice public, subject to any redaction the Home Secretary considers necessary in the public interest. Once the power has been brought into force, the Home Secretary must make a statement to Parliament, stating that she or he is satisfied that a grave exceptional terrorist threat has occurred or is occurring, that the reserve power is needed, that the need is urgent and that the use

⁸⁵ A ‘serious terrorist offence’ is defined in the Bill as being any offence created by the Terrorism Acts 2000 and 2006, or other offence with a “terrorist connection”, for which the court could impose a sentence of life imprisonment on conviction (s.24 (4) of the Counter-Terrorism Bill).

⁸⁶ S.24(3) of the Counter-Terrorism Bill as approved by the House of Commons. The Bill in full is available at <http://www.publications.parliament.uk/pa/ld200708/ldbills/065/08065.i-v.html>

⁸⁷ Defined in the Bill as “event or situation involving terrorism which causes or threatens (a) serious loss of human life; (b) serious damage to human welfare in the United Kingdom; or (c) serious damage to the security of the United Kingdom”. An event or situation causes or threatens “serious damage to human welfare” if it causes or threatens “(a) human illness or injury; (b) homelessness; (c) damage to property; (d) disruption of a supply of money, food, water, energy or fuel; (e) disruption of a system of communication; (f) disruption of facilities for transport, or (g) disruption of services relating to health”. The “event or situation” may occur inside or outside the UK, and may consist in “planning or preparation for terrorism which if carried out would meet one or more of the conditions” listed. See s.22 of the Counter-Terrorism Bill.

⁸⁸ S.25 of the Counter-Terrorism Bill.

of the power is compatible with the ECHR. That statement must not include any details which could prejudice a future trial arising from the investigation leading to the power being invoked. Once the Home Secretary has made this statement, both Houses of Parliament must approve the order bringing the reserve power into force within seven days; if they do not do so, or if they vote against the order, then the power lapses automatically, and anyone detained under it must be released immediately. The Counter-Terrorism Bill specifically provides that anyone detained under the reserve power will not be deemed to have been unlawfully detained by virtue of the fact that Parliament disapproved the Home Secretary's decision to bring it into force. The reserve power lapses automatically after 30 days, even if approved by Parliament.

When the Home Secretary had made an order to bring into force the reserve power the DPP, or a Crown Prosecutor acting with his consent, would be able to apply to court for permission to detain beyond 28 days any person then held on suspicion of a terrorism-related offence.

Amnesty International considers that prolonged detention under the reserve power would violate the right to liberty and freedom from arbitrary detention, as protected by Article 9 ICCPR, and would fail to give effect to one of the crucial components of those rights – the right of the person detained to be promptly informed of any charges against her or him. Detention in police custody without charge or trial for up to six weeks could also undermine the presumption of innocence and the right to silence. Amnesty International opposes unreservedly any further extension of the already very long maximum period of detention (28 days) during which people can be held without charge under anti-terrorism legislation in the UK.

People who are arrested are entitled to be charged promptly and tried within a reasonable time in proceedings which fully comply with internationally recognized fair trial standards, or to be released. The fact that the power to detain people for up to six weeks would be, or is said to be intended to be, used only sparingly, in situations of “grave exceptional terrorist threat”⁸⁹, would do nothing to mitigate the fundamental unfairness suffered by an individual detained under these provisions. Nor does the fact that Parliament would be given the chance to approve or disapprove retrospectively the Home Secretary's decision to authorize such extensions. Moreover the information which would be placed before Parliament would be necessarily very limited, as the Bill recognizes, by the need to avoid prejudicing any future legal proceedings; as such the parliamentary scrutiny for which the Bill provides would appear to have no practical effect as a safeguard of individual rights.

⁸⁹ It should be noted that the bringing into force of the reserve power would not be dependent on, nor necessarily accompanied by, a derogation from the relevant provisions of the ECHR or the ICCPR. The threshold of “grave exceptional terrorist threat” should not be equated with the standard for derogation in Article 15 ECHR or Article 4 ICCPR.

Amnesty International notes that the proposed judicial authorization of extensions beyond 28 days would be, as at present, simply a review of the reasons given by the Crown Prosecution Service (CPS) of the need for such extensions. The judge hearing the application for extension need only be satisfied that the investigation is being conducted “diligently and expeditiously”, and that there are reasonable grounds for believing that further detention is necessary “to obtain relevant evidence whether by questioning [the detained person] or otherwise; to preserve relevant evidence; or pending the result of an examination or analysis of any relevant evidence or of anything the examination or analysis of which is to be or is being carried out with a view to obtaining relevant evidence.”⁹⁰

The CPS is therefore not required to convince a judge that there are any reasonable grounds to believe that the person whose extended detention is sought has, in fact, committed any offence. Moreover the CPS can apply to have the person who is detained, and his lawyer, excluded from the hearing of the application for an extension to his detention on a number of grounds, including that there are “reasonable grounds” for believing that disclosure of the information advanced to justify extending detention would interfere with “gathering of information about the commission, preparation or instigation of an act of terrorism”⁹¹.

Amnesty International considers that the judicial scrutiny of extended pre-charge detention under the current system, which would also apply to applications under the reserve power proposed in the Bill, is insufficient to protect the person detained from the risks of arbitrary detention.

Through its long-standing experience of monitoring the right to a fair trial worldwide, Amnesty International has found that prolonged periods of pre-charge detention provide a context for abusive practices which can result in detainees making involuntary statements, such as confessions. The organization considers that the likelihood of suspects making self-incriminatory statements or other types of admissions or confessions increases with the length of time people are held for interviewing – or otherwise – in police custody. Oppressive or otherwise coercive treatment in order to obtain confessions is unlawful under UK and international human rights law, and undermines the suspect’s right to fair trial. In addition, prolonged detention in police custody without charge could have the unintended effect of increasing the likelihood of statements obtained from the suspect being deemed inadmissible as involuntary at trial, precisely because of the coercive or

⁹⁰ See s.32, Schedule 8, Terrorism Act 2000; Schedule 2 of the Counter-Terrorism Bill 2008 provides that this would be the test applicable to applications to hold someone past 28 days under the reserve power.

⁹¹ See s.33(3) and 34(1), Schedule 8, Terrorism Act 2000; again, Schedule 2 of the Counter-Terrorism Bill 2008 provides that these powers would also be available in respect of applications to hold someone past 28 days under the reserve power.

otherwise oppressive nature inherent in the detention during which the statements would have been obtained.

Amnesty International considers that the government of the UK should withdraw, or, if already enacted, repeal the ‘reserve power’ to extend pre-charge detention up to 42 days, and should instead seek to bring the maximum permissible period of pre-charge detention in line with international human rights law and standards.

Adverse inferences from silence (paras. 113 – 117 and 526-527 of the periodic report)

Amnesty International draws the attention of the Committee to provisions contained in the Counter-Terrorism Bill 2008, which was before Parliament at the time of writing (see also above, ‘Proposed changes to coroners’ inquests’ and ‘Pre-charge detention’), which would extend the scope for drawing negative inferences from a suspect’s silence. The Bill would create a power for the police to continue to question an individual after he has been charged with a terrorism-related offence; and would extend the provisions of the Criminal Justice and Public Order Act 1994 (CJPOA), and the equivalent applicable legislation in Northern Ireland, which allowed the court to draw “such inferences [...] as appear proper” – in practice, almost always adverse inferences – from an individual’s failure to mention something which they “could reasonably have been expected to mention” during (pre-charge) questioning which was later relied on in their defence, to allow the same inferences to be drawn from silence during post-charge questioning.

Amendments introduced into the Counter-Terrorism Bill during parliamentary debate would require questioning post-charge to be authorized by a senior police officer, for the first 24 hours, and by a magistrate for every subsequent period of five days during which such questioning took place⁹². Before authorizing such questioning, the magistrate would have to be satisfied that it was “in the interests of justice”, and that the investigation was being conducted “diligently and expeditiously”.

Far from giving effect to the recommendation in the Concluding Observations of the Human Rights Committee in 2001, that the government should “reconsider, with a view to repealing it, this aspect of criminal procedure, in order to ensure compliance with the rights guaranteed under article 14 of the Covenant”⁹³, the government of the UK is seeking to extend these provisions to cover the continued questioning of a suspect after charge. Although these proposals would, at present, be confined to individuals charged with a terrorism-related offence, the government has

⁹² See s.34 of the Counter-Terrorism Bill as approved by the House of Commons.

⁹³ Concluding Observations of the Human Rights Committee: United Kingdom of Great Britain and Northern Ireland, UN Doc CCPR/CO/73/UK, 6 December 2001, para. 17.

indicated a willingness to consider extending them to cover questioning post-charge for other offences⁹⁴.

Amnesty International is concerned that, when looked at in the context of the overall legislative framework governing pre-trial detention for individuals suspected of involvement in terrorism, this proposal could lead to violations of the rights to silence and the privilege against self-incrimination. They also increase the risk of oppressive or coercive questioning. The post-charge questioning allowed for by the Counter-Terrorism Bill will relate to the offence with which the individual has been charged: it is therefore highly likely that it will touch on matters which the defendant will seek to raise in his defence, on which he will in effect be compelled to answer questions, at peril of having adverse inferences drawn against him if he fails to do so.

Amnesty International considers that the power to draw negative or adverse inference from silence is incompatible with Article 14 ICCPR. Amnesty International has raised many of these same concerns in relation to the change in the law brought about by the CJPOA and the equivalent legislation in Northern Ireland⁹⁵, and is therefore opposed to its further extension to cover post-charge questioning. The organization's concerns are exacerbated by the current lack of safeguards around the exercise of the proposed power to continue questioning after charge. Although the Bill requires a Code of Practice under the Police and Criminal Evidence Act 1984 (PACE) to be drawn up to regulate the practice of post-charge questioning⁹⁶, the Bill as it stands appears to set no definite limit to the duration of such questioning. Although the safeguard of requiring judicial authorization for every five-day period of questioning is a welcome one, nothing in the Bill limits the overall length of questioning, since the authorization can be repeatedly renewed. Individuals are often held for months on end following charge before they are brought to trial, particularly in complex investigations, as terrorism-related investigations often are: if questioning were allowed to continue unchecked throughout this period there is an obvious risk that it could become seriously oppressive.

Moreover it should be borne in mind that, whilst extended pre-charge detention and post-charge questioning are covered by separate provisions of the Bill, they will be experienced by the individual detained as a continuum: there is, therefore, a high risk that the continued questioning of a person who had already been detained

⁹⁴ See remarks attributed to the Home Secretary in *The Times*, 7 November 2007, 'Legal reform "damages presumption of innocence"', available at <http://tinyurl.com/3oolem>; and proposals in a Home Office Consultation Paper, *Modernising Police Powers: Review of the Police and Criminal Evidence Act (PACE) 1984*, March 2007, at para. 3.54, available at <http://tinyurl.com/4k42sz>.

⁹⁵ See *Northern Ireland: Submission by Amnesty International to the Criminal Justice Review*, AI Index: [EUR 45/023/1999](http://www.refugees.org.uk/eur450231999).

⁹⁶ See s.34(6) of the Counter-Terrorism Bill: "Codes of practice under section 66 of the Police and Criminal Evidence Act 1984 must make provision about the questioning of a person by a constable in accordance with this section".

and questioned over a period of up to four weeks (or six weeks, if the reserve power created by the Bill is brought into law and exercised) before they were even charged would be, or would quickly become, oppressive.

Amnesty International considers that the government of the UK should withdraw, or, where already enacted, repeal provisions allowing adverse inferences to be drawn by the court from any failure to answer a question during police questioning.