

# UNITED KINGDOM

## @Death in Police Custody of Joy Gardner

August 1995

AI INDEX: EUR 45/05/95

DISTR: SC/CO/GR

### CONCERNS

Amnesty International is concerned about a number of issues surrounding the attempted forcible deportation of Joy Gardner that resulted in her violent death. The Government of the United Kingdom is responsible for ensuring that deportations are carried out -- in accordance with international standards -- in a manner that respects the human rights of the individual being deported. The death in police custody of Joy Gardner highlights the need for an independent inquiry into the role and accountability of all agencies involved in the deportation process.

Amnesty International believes that only an independent inquiry can examine the role and accountability of all agencies, from the public and private sectors, involved in the Joy Gardner case and all deportations. The lack of independence in the complaints procedures and the methods of authorization and usage of restraint equipment should also be studied carefully. The government should hold all agencies to the same high international standards applicable to both state and contracted agencies. Amnesty International reiterates its call on the government to create a statutory authority to regulate the Immigration Service and private security firms, as neither are currently accountable to an independent body.

Unless legislation and regulations are enacted to provide safeguards that ensure that a deportee's inherent dignity is respected, there is no guarantee that forcible deportations will not be carried out in a cruel, inhuman or degrading manner that could threaten their safety and possibly lead to another death in custody.

### EVENTS LEADING TO THE DEATH OF JOY GARDNER

On 28 July 1993 a 40-year-old Jamaican woman was arrested by police and immigration authorities for removal from the United Kingdom. Having been bound and gagged by the police, Joy Gardner collapsed, fell into a coma and was pronounced dead four days later.

Joy Gardner came to the United Kingdom in 1987 on a standard tourist visa that allowed her to remain for six months but remained in England for the next six years.<sup>1</sup> In 1990 she met and married Joseph Gardner, a British citizen. Within five weeks, they separated and Joseph Gardner withdrew his support for his wife's application to the Immigration Service for permanent residency. Over the course of the next three years, Joy Gardner endeavoured to legalize her residency and engaged the services of solicitors who petitioned the Home Office on her behalf. They were unable to persuade the authorities that there were "compelling and compassionate" reasons not to send Joy Gardner back to Jamaica. Between October 1990 and July 1993, a number of unsuccessful attempts were made by the Immigration Service to deport Joy Gardner.

When an immigration official, three Metropolitan Police officers from the Alien Deportation Group (ADG)<sup>2</sup> and two local police officers arrived unexpectedly at Joy Gardner's home at 7:40 am on 28 July 1993 to deport her and her five-year-old son that same day to Jamaica, she was still awaiting a Home Office reply to her solicitor's application for a deportation order to be rescinded; she thought that her application to remain in the United Kingdom was still under consideration and was totally unprepared. Her solicitors only received notification later that day that their client's plea had been rejected by the Home Office. Later that same day, Joy Gardner's solicitors received two letters, dated 26 and 27 July 1993, from the Immigration Service; the first stating that arrangements to deport Joy Gardner would be made "shortly", the second saying such preparations would be made "now". The Immigration Minister admitted these letters were intentionally sent at a late date so Joy Gardner would not be forewarned about the planned deportation, thus prohibiting her solicitors from advising her.<sup>3</sup>

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<sup>1</sup>Under British immigration law, people who overstay the terms of their visitors' visa are considered to be guilty of a criminal offence.

<sup>2</sup>The Alien Deportation Group, disbanded in August 1993, was a specialist unit of the Metropolitan Police (London police force) that was called in by the Immigration Service to assist in forcible deportations, usually when difficulty, resistance and/or violence was expected. Officials maintain there were reasonable grounds to believe Joy Gardner would physically resist deportation, claiming she had a history of violence because there were two restraining orders issued against her by her husband.

<sup>3</sup>The then-Immigration Minister, Charles Wardle, stated, in a 13 August 1993 letter to Labour MP Barbara Roche, that "in accordance with our normal practice, the response to the solicitors was sent to coincide with the removal, to ensure Mrs. Gardner was not alerted in advance".

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Joy Gardner allegedly refused the authorities initial entry into her home and became very disruptive after one ADG officer blocked the door with his foot, cut through the chain-lock with pliers and entered her flat. Joy Gardner's five-year-old son witnessed part of the ensuing struggle before one of the local police officers took him to his bedroom to prepare him for his departure. Joy Gardner became agitated, removed her T-shirt and began to shout that she would rather kill herself than go back to Jamaica. A police officer then unplugged the telephone to prevent her from contacting her solicitor.

A struggle ensued in which one local police officer was bitten on the left arm by Joy Gardner. The other local police officer quick-cuffed her right arm before they all went down to the floor in response to one ADG officer's order to "deck" Joy Gardner. One of the ADG officers later testified that Joy Gardner was in a "fury" and it took all her strength just to hold Joy Gardner's arm. Joy Gardner was on the floor--with the two local police officers holding her legs and one ADG officer lying across her midriff while another was positioned near her head--when this same ADG officer placed a body-belt around her waist, secured her wrists to the attached handcuffs and bound her thighs and ankles with two leather belts. He then took out two-inch-wide elastic adhesive bandage and wound it around Joy Gardner's head several times to stop her from moving her head, biting or shouting. A second roll of tape was produced and wrapped around Joy Gardner's head in the opposite direction<sup>4</sup>. The ADG officer who gagged Joy Gardner later testified that he "put [the gag] between her teeth and wrapped it two or three times round her chin"<sup>5</sup>. There were two strips in her mouth--but it did not have any effect." He claims that she was "biting the tape and still shouting or screaming" and shaking her head.

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<sup>4</sup>The ADG officer who was lying across Joy Gardner's midriff testified that she played no part in restraining Joy Gardner's legs or wrapping the adhesive tape around her head: "I had my arms across her middle, trying to hold her down. The next thing I was aware [the other ADG officer] was utilising the Elastoplast mouth restraint". When this same ADG officer asked her for more tape, she handed him another reel: "I simply responded to the request" for tape. The ADG officer who applied the mouth-gag said that the first reel of tape did not stop Joy Gardner from screaming and that she managed to pull her hands ( still handcuffed to the body-belt) up to her mouth and remove the tape. This is difficult to comprehend given the testimony of the other ADG officer who said she was lying across Joy Gardner's midriff.

<sup>5</sup>Dr. Harris, from the Forensic Science Service at Huntingdon Laboratories, is the scientist who examined the 13 feet/3.96 meters of adhesive tape used to gag Joy Gardner. He testified in court at the trial of the ADG officers that **there were no teeth marks found on the tape**. The ADG officer who gagged Joy Gardner admitted during his trial that he may have been mistaken when saying, in his original statement, that Joy Gardner had managed to move her hands up to her mouth and remove the first roll of tape. When asked if he applied more tape because she was still making a noise, he said no and he was still in shock when he made that first witness statement claiming otherwise. He said that he did not realize he would have to testify in court, some two years later.

**Equipment used to restrain Joy Gardner, photographed after her death and produced in evidence. From top to bottom: leather body belt with handcuffs attached; two leather leg straps; two rolls of adhesive tape (totalling 13 feet/3.96 meters) used as a mouth-gag.**

**A total of 13 feet/3.96 meters of tape was used in at least seven complete turns around the head. Joy Gardner was lying on the floor -- bound with the body-belt, handcuffs, two leather straps around her thighs and ankles and gagged with adhesive tape -- while one ADG officer remained at her side. Within minutes, this ADG officer noticed there was a problem, called in his ADG colleague and tried to find her pulse. Attempts to revive her were unsuccessful; at 8:04 am the officers called an ambulance, stating that Joy Gardner had collapsed and stopped breathing. At 8:15 am the ambulance team arrived and found that Joy Gardner had "no heartbeat and no sign of any activity from the heart". The paramedics continued working to revive Joy Gardner and her heart resumed beating at 8:40 am. When she arrived at the hospital at 8:43 am Joy Gardner was immediately connected to life-support machines. Her mother was told by attending physicians that her daughter's brain had swollen and there would be little chance of survival.**

**Joy Gardner remained in hospital for four days and her condition continued to deteriorate. "Brain stem death" was determined before she was finally pronounced dead on 1 August 1993. The Home Office initially claimed the cause of death was kidney failure, but then later asserted that she had died as a result of head injuries received during the struggle to restrain her. The majority of autopsy**

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reports, however, have closely linked the mouth-gag to her cause of death. An autopsy ordered by Joy Gardner's mother found that she had died as a result of oxygen starvation; other post-mortem examinations also confirmed that she had suffered from fatal brain damage due to asphyxiation as a result of the obstruction of her mouth by a gag.<sup>6</sup>

The Commissioner of the Metropolitan Police called a press conference on 3 August 1993 to express his "sadness and profound regret" over the death of Joy Gardner and announce the suspension of the three ADG officers who were present during the failed attempt to deport her. The other officers of the unit were assigned to different tasks and all further Metropolitan Police involvement in deportation cases was halted pending further investigation.

### ***POLICE INVESTIGATIONS AND SUBSEQUENT TRIAL***

The Commissioner of Metropolitan Police stated on 3 August 1993 that the Home Office and the Metropolitan Police would review removal procedures in deportation cases and the Joy Gardner case in particular would be investigated by the Assistant Chief Constable of the Essex Police under the supervision of the Police Complaints Authority (PCA) pursuant to Section 88 of the Police and Criminal Evidence Act 1984.<sup>7</sup> This investigation, however, was not empowered to examine the specific role of the immigration officers involved because the PCA is only authorized to oversee investigations into complaints against police officers. During the week following Joy Gardner's death, the Metropolitan Police Commissioner called for any related investigation to include some independent and

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<sup>6</sup>Dr. Iain West, a consultant forensic pathologist who conducted one of several post-mortem examinations, rejected any suggestion that Joy Gardner had died as a result of a head injury, as claimed by the Home Office forensic pathologist: "Head injury was not a major factor leading to her death." Another leading neuropathologist concurred with the majority of forensic experts, stating that Joy Gardner "died as a result of compression of her brain stem by swelling of the upper part of her brain as a consequence of deprivation of oxygen" and that he did not believe she had died as a result of head injuries.

Dr Iain West, along with other forensic experts, also testified about the dangers of any mouth restraint, stating that there are inherent dangers in any form of mouth restraint: "The use of a gag is dangerous...and may often result in...serious harm because [the] airway may be obstructed in a number of ways. Sometimes the effect is to completely close off the air passage."

<sup>7</sup>Terms of reference for the investigation were agreed as follows: "To enquire into the incident at 8 Topsfield Close, Hornsey, London N8, on 28 July 1993 involving Mrs. Angelica Gardner who died on 1 August 1993, and all the circumstances leading up to and surrounding it in so far as they affect the Metropolitan Police".

impartial component to be incorporated but was turned down by the Home Office because it considers the PCA to be impartial, efficient and thorough.<sup>8</sup>

While the Home Office inquiry reviewed deportation procedures and examined the precise roles played by police and immigration officials in all deportation cases, the Essex Police investigation for the PCA focused on the specific methods of restraint used by the police on Joy Gardner. This investigation reportedly did not inquire into the specific role of the Immigration Officer involved in the case.

The PCA/Essex Police investigation was completed on 16 February 1994 and handed over to the Crown Prosecution Service for review. The 230-page report was accompanied by 1,500 pages of evidence, including medical, pathological and neuropathological evidence, Metropolitan Police instructions, immigration documents, tape-recorded interviews with the officers concerned, reports in relation to a number of deportations in which the Metropolitan Police have assisted, and a range of other material.

The full report of the results of the PCA/Essex Police inquiry will not be released to the public or members of Joy Gardner's family. The lay-person who supervised the PCA investigation, having discovered matters of a "grave and exceptional nature", said he would be "considering making a special report" to the Home Secretary under Section 97 of the Police and Criminal Evidence Act 1984, which empowers the PCA to make such a report if "by reasons of gravity" issues arising from an investigation demand such an action. The report would then, by law, be made public<sup>9</sup>.

The Crown Prosecution Service reviewed the PCA report and, on 26 April 1994, brought manslaughter charges in connection with the death of Joy Gardner against the

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<sup>8</sup>In a 23 August 1993 letter to Amnesty International, the Immigration Service stated that the PCA is "independent of the Government" and said the Home Office was satisfied that the PCA/Essex Police investigation would be a "comprehensive independent assesment" of the Joy Gardner case. Sir Leonard Peach, the PCA Chairperson, stated in the 1993 Annual Report of the PCA that they are often unable to demonstrate the thoroughness and impartiality of their investigations as a result of the restrictions placed on them by the Police and Criminal Evidence Act that prevents them from revealing details of an investigation.

<sup>9</sup> Section 97 of the Police and Criminal Evidence Act 1984 states that "the Secretary of State shall lay before Parliament a copy of every report received by him under this section and shall cause every such report to be published". A PCA Spokesperson stated that since disciplinary proceedings are still pending in this case, they would only consider making such a report to the Home Secretary after an industrial tribunal has heard the neglect-of-duty charges against the Supervisor of the Alien Deportation Group.

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three arresting Alien Deportation Group (ADG) officers<sup>10</sup>. These three ADG officers stood trial between 15 May and 14 June 1995 and were all acquitted.<sup>11</sup>

At the trial the prosecution argued that manslaughter was alleged "as a result of an unlawful and dangerous act by these officers which caused the death of Joy Gardner". The prosecution relied on the testimony of four pathologists and neuropathologists to prove that Joy Gardner had died as a result of brain damage caused by asphyxiation. Officers from the ADG testified that they had used mouth-gags as a means of restraining deportees<sup>12</sup> and that body-belts, leather straps and adhesive tape were part of their regular restraint equipment. It became clear at the trial that mouth-gags were not used by police officers in any cases other than forcible deportations and that the ADG were a "law unto themselves".<sup>13</sup>

The trial raised questions about the monitoring of, and the authorization for, the use of restraints. In July 1993 there were no official guidelines regarding the use of any mouth-gags in deportation cases, suggesting that the gag was an unauthorized means of restraining Joy Gardner. The use of a mouth-gag is not referred to in the Police Self-Defence & Restraint Manual; its use was suspended by the Commissioner of the Metropolitan Police in August 1993 and was banned altogether by the Home Secretary in January 1994. The use of mouth-gags and other restraints did not have to be officially recorded by members of the deportation squad even though police officers in other

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<sup>10</sup>The Metropolitan Police Federation Chairperson, stated on 27 April 1994 that this prosecution "begs the question why these officers stand alone when somebody in authority authorized the use of the gagging equipment".

<sup>11</sup>One of the three police officers was cleared of manslaughter on 31 May 1995 by the jury who had been instructed by the presiding judge to return a not guilty verdict as a matter of law. The judge stated that the prosecution evidence did not demonstrate this police constable's role in the fatal gagging of Joy Gardner.

<sup>12</sup>Mouth-gags were used by the Alien Deportation Group (ADG) to restrain deportees before arriving at an airport despite 1983 instructions from Metropolitan Police solicitors that "it would be very difficult to justify gagging a deportee when not in flight on an aircraft". One of the ADG officers stated that she understood the restraint equipment used was authorized: "The procedures used had been established by regular practice. The force used was necessary to prevent further violence not only to my officers but to herself as well."

<sup>13</sup>John Bevan, for the Prosecution, at the trial of the three Metropolitan Police officers, 15 May 1995: "It appears that the officers of the Alien Deportation Group were to some extent a law unto themselves in that they alone of the Metropolitan Police force used gags and regularly used restraint belts in the course of deportations."

circumstances are required to make a note of the use of other restraints.<sup>14</sup> In 1983 Metropolitan Police were informed that gagging deportees could only be justified on board an airplane and with the permission of the aircraft commander. A former ADG officer who designed the body-belt used to restrain Joy Gardner, stated that he had never been told the mouth-gags were forbidden. He admitted that gags were used frequently<sup>15</sup> and that officers taught themselves how to use them.

The evidence at the trial highlighted the need for an independent inquiry into the role and accountability of all agencies involved in the deportation process. The function and behaviour of all participants in the Joy Gardner case and deportation process has yet to be fully and impartially investigated. Although a Detective Sergeant from the ADG will face neglect-of-duty charges in connection with his supervision of the three police officers who attempted to arrest Joy Gardner<sup>16</sup>, there are still missing links in the chain of responsibility that have not been examined. Namely, the responsibility of the Immigration Service and the Immigration Officer present on 28 July 1993. Amnesty International is also concerned that the use of mouth-gags was allowed to continue unabated after the Metropolitan Police had been instructed in 1983 that this restraint method could not be justified outside an aircraft.

The solicitors acting on behalf of the family of Joy Gardner have civil action pending and are planning to issue writs against the Metropolitan Police Commissioner and the Home Secretary. They are seeking compensation for the mother and seven-year-old son of Joy Gardner. The inquest into Joy Gardner's death may possibly be reconvened by a coroner in the near future.

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<sup>14</sup>When asked whether -- like other police officers -- the restraint equipment used by ADG officers to effect an arrest was specifically documented, an Inspector from the ADG testified on 17 May 1995 that "that rule did not apply to our group".

<sup>15</sup>On 16 May 1995, this former ADG officer testified that an ADG officer "might use a gag twice in a fortnight and then not for another six months". When asked whether ADG officers had ever been told that such restraints were forbidden, he replied: "Most definitely not." According to the Home Office, mouth-gags had been used six times in the 18 months prior to Joy Gardner's death yet medical risks were not considered when employing the mouth-gag as a restraint during forcible deportations.

<sup>16</sup>The three Metropolitan Police officers from the ADG who were acquitted of the manslaughter of Joy Gardner will not face disciplinary charges. Legal counsel advised the Police Complaints Authority (PCA) "that a disciplinary charge of authority would in substance be the same as the criminal charge of which the officers have been acquitted" and the PCA stated in its 1994-1995 Annual Report that "an officer cannot be tried on both criminal and discipline charges for the same offence".



## GOVERNMENT RESPONSE TO JOY GARDNER'S DEATH

### REVIEW OF REMOVAL PROCEDURES

In January 1994 the Home Secretary announced the results of an internal review of removal procedures in immigration cases involving the police (the Joint Review of Procedures in Immigration Removal Cases, or, the Joint Review). New guidelines on the proper use of physical restraints were outlined and several recommendations on how to conduct joint police and Immigration Service<sup>17</sup> operations were issued. A Home Office Circular that was issued to police forces on 11 July 1995 drew attention to the recommendations contained in the Joint Review and outlined in detail the deportation procedures developed by the Home Office in the wake of Joy Gardner's death.

Requests by the Immigration Service for the assistance of the police are now to be made by means of a specially designed form that will provide the police with all relevant details of the individual's immigration record. Removals will no longer take place on the day an individual is to be arrested for deportation unless there are "exceptional circumstances", which were not identified by the Home Office Circular, and then only when authorized by a senior Immigration Officer. Once someone has been arrested for deportation from the United Kingdom, they will be detained for a few days in police custody until arrangements have been made to collect personal belongings and, where possible, money. The Home Office Circular also notes that the detention of immigrants for removal is a particularly "sensitive and controversial" area and claims that people will only be detained if there are "good grounds for believing that they will not comply voluntarily" with their removal arrangements.

The use of mouth-gags in deportations had been suspended in August 1993 after Joy Gardner's death and was banned entirely as a result of the Joint Review<sup>18</sup>. Police officers have now been instructed that the use of the body-belt with handcuffs and restraining belts for the arms and legs should only be used when handcuffs are not sufficient and there are "reasonable grounds to believe that the detainee will use violence" to either hurt his- or herself

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<sup>17</sup>For more details of the Joint Review, please see Amnesty International, *Cruel, Inhuman or Degrading Treatment during Forcible Deportation*, July 1994.

<sup>18</sup>Although the Home Office has forbidden the use of the mouth-gag, the Joint Review states that "Further consideration should be given to whether acceptable means can be found to prevent biting, spitting and shouting by those determined to resist removal." Concerns have been expressed by immigrant-welfare and refugee organizations that this guideline leaves the door open for the return of mouth restraints.

or others. Arm and leg restraints are only to be used on board an aircraft or during the time immediately before boarding the aircraft. The police officer in charge of the escort is responsible for determining the appropriate restraint and is subject to the authority of the aircraft commander when in flight.

Restraint usage training was recommended for police officers who act as escorts to "cover issues surrounding the fitting and removal of belts, the avoidance of any risk of positional asphyxia, and the importance of being alert to any signs of distress". Police officers assisting in immigration escorts should be trained in all restraint methods before they are employed; first aid training should also be provided before officers participate in a removal. There should also be a prior medical examination when possible to ensure that the individual is fit to travel and to identify whether he or she would be at risk should additional restraints "prove necessary en route"; specific training in how to fit and remove the belt with handcuffs and how to avoid positional asphyxia is to be provided.

### **THE ROLE OF THE POLICE IN ENFORCING DEPORTATIONS**

When violent resistance is expected, a planning meeting will be attended by all relevant agencies: the Immigration Service officers, local police officers and any other escorts, provided by either the police or private security guards hired by the Home Office. Escorts will only be employed when resistance is expected or the deportee has medical problems. Within the London Metropolitan area, authorized Deportation Officers will provide escorts for immigration detainee when the person has a "serious criminal record" or is expected to behave violently or "pose a threat to public order". Otherwise the private sector will assist Immigration Officers with their escort duties.

The coordination of Metropolitan Police involvement in future deportations, including supervision of these Deportation Officers, will remain within the jurisdiction of the Specialist Operations Unit at New Scotland Yard.<sup>19</sup> Police officers will always carry out initial arrests for deportation, allowing the private security guards only to escort detainees from the police station to point of departure. According to a July 1995 Home Office Circular, unless the individual has a criminal record or medical problem or violence is expected, "the assumption should be that private sector escorts will be used". All escorts are to adhere to Section 3 of the Criminal Law Act 1967 which states that "A person may use such force as is reasonable in the circumstances in the prevention of crime or in effecting or assisting in the lawful arrest of offenders". The conduct of police escorts is

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<sup>19</sup>The Extradition Squad, a part of the Organised Crime Group within the Specialist Operations unit, was formed in 1985 to assist the Immigration Service with forcible deportations that require a police escort. This squad is comprised of less than a dozen detectives who are meant to be specially trained to meet the criteria set out in Home Office instructions.

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guided by individual Force Instructions and the restraint guidelines as set out in Home Office instructions. Private sector escorts, however, are responsible only to the Immigration Service which is not statutorily regulated.

### **THE ROLE OF PRIVATE SECURITY FIRMS**

Private security guards have historically been employed by the Immigration Service when a police escort was either unavailable or deemed unnecessary. Pursuant to the instructions provided by the Joint Review and subsequent July 1995 Home Office Circular, deportees will now only be escorted by a private security guard if the individual being deported requires some medical supervision or is expected to possibly resist removal without necessarily being violent. When a person is to be escorted by a private security guard, the local police will first arrest the individual for detention and the private escort will then accompany the detainee from the police station to the point of departure.

Amnesty International is concerned that although the private security firms hired by the Home Office are enforcing most deportations from the United Kingdom, they are not accountable to an independent statutory body nor do they appear to be obliged to adhere to the law enforcement regulations that apply to the police officers<sup>20</sup>. Given that private security firms are increasingly being used to carry out forcible deportations, and these firms are not statutorily regulated nor is the Immigration Service that hires these private security guards, Amnesty International is concerned about the accountability and the training of such personnel and the methods and authorization of restraints.<sup>21</sup>

The July 1995 Home Office Circular states that medical examinations should, where possible, take place before restraints other than handcuffs are used and that arms and leg restraints should only be used on board aircraft and in the period immediately prior to boarding the aircraft; and makes no mention of private sector's authority to use restraints, saying only that the "private sector will be expected to move the individual from the police station to the point of departure" after police have performed the initial arrest. Police escorts are guided by the Force Instructions and Association of Chief Police Officer guidelines in relation to the use of restraints yet private sector escorts "are responsible to the Immigrations Service" which is not statutorily regulated.

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<sup>20</sup>The Police Complaints Authority has expressed concern about the private security firms hired to provide support services to the police, stating in its 1994-1995 Annual Report that the private security industry is "largely unregulated and not subject to effective public accountability".

<sup>21</sup>An April 1995 government inspection report expressed concern about the "insufficient" level of training provided to Group 4 private security guards known as "detention orderlies" who are employed at Campsfield House, an Immigration Detention Centre. Group 4 security guards are also used as immigration escorts.

The lack of independence in the complaints procedures and the methods of authorization and usage of restraint equipment should also be studied carefully. The government should hold all agencies to the same high international standards applicable to both state and contracted agencies. Amnesty International reiterates its call on the government to create a statutory authority to regulate the Immigration Service and private security firms, as neither are currently accountable for their actions to an independent body.

On 7 June 1995, after an extensive investigation of the private security industry and recognizing that "any substantial transfer to the private sector of what have been traditional roles for the police should only take place if adequate safeguards exist at the same time for the protection of the public", the Home Affairs Select Committee recommended that private security firms should be strictly regulated and suggested a government agency be established that would vet and license guards and their companies. The licensing authority would be independent of the industry itself and completely self-financing. They also called for this licensing authority to lay down minimum standards of training. The Government of the United Kingdom has historically shied away from regulatory legislation, preferring to allow self-regulatory schemes monitor the industry.<sup>22</sup>

The government has stated that "each of these firms has been issued with minimum standards which require the prior authority of an officer of at least Immigration Inspector level for the use of approved handcuffs. The use of any further restraints requires the prior authority of a Deputy Director in the Immigration Service or above. In exceptional circumstances restraints may be used without prior authority if there is a need to respond immediately to an operational emergency but in these circumstances that fact must be reported to the appropriate level at the earliest possible opportunity."

The United Nations Human Rights Committee stated, in their comments following their July 1995 consideration of the United Kingdom's human rights record, that they were concerned about the assignment of police tasks to the private sector "which involve the use of force [and] the detention of persons" as it could weaken the "protection of rights" under the International Covenant on Civil and Political Rights.

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<sup>22</sup>There are currently two voluntary, self-regulatory schemes sanctioned by the government: the British Security Industry Association and the International Professional Security Association. The Inspectorate of the Security Industry, a private body established in 1991, attempts to ensure that its members adhere to British Standard 7499, the only non-compulsory code of practice aimed at security. They conduct annual examinations of their member companies to verify that no-statutory guidelines are met on staff vetting, training, equipment and finances.

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## INTERNATIONAL STANDARDS

It is the government's responsibility to ensure that deportations are enforced in a manner which respects the human rights of the deportee. Removals from the United Kingdom should always be carried out in accordance with international standards, some of which are as follows:

**Article 2 of the European Convention on Human Rights** states that the "deprivation of life shall not be regarded as inflicted in contravention of this article when it results from the use of **force which is no more than absolutely necessary**: a) in defence of any person from unlawful violence; b) **in order to effect a lawful arrest or to prevent the escape of a person lawfully detained**; c) in action lawfully taken for the purpose of quelling a riot or insurrection." Amnesty International fully accepts that the Metropolitan Police officers were attempting to "effect a lawful arrest" but are concerned that ill-treatment was used to restrain her in order to achieve that goal.

**Article 3 of the Code of Conduct for Law Enforcement Officials**, adopted by the United (UN) Nations General Assembly in 1979, states that law enforcement officials<sup>23</sup> "**may use force only when strictly necessary** and to the extent required for the performance of their duty [and] **no force beyond what is authorized in the circumstances** may be used". The Code states further that "**in no case should the use of force which is disproportional to the legitimate objective be achieved**". The commentary to this Article "emphasizes that the use of force by law enforcement officials should be exceptional". The body-belt was not authorized for use outside of an aircraft nor was the mouth-gag sanctioned for use in a private home. Amnesty International therefore fears that the amount of force used to restrain Joy Gardner was "disproportional" to the goal of arresting her for removal from the United Kingdom. Given that the flight to Jamaica was not due to depart from London for another seven hours, it appears that there would have been ample time to allow Joy Gardner to regain her composure without the use of all the restraints employed: handcuffs, a restraining belt with handcuffs, leather ankle and thigh straps and an adhesive mouth-gag. The United Nations Human Rights Committee, in consideration of the fourth periodic report of the United Kingdom on 20 and 21 July 1995, stated that they were "gravely concerned at incidences of the use of excessive force in the execution of deportation orders".

**Article 10 of the International Covenant on Civil and Political Rights (ICCPR)**, to which the United Kingdom is a party and thus bound to comply, provides that "**all persons**

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<sup>23</sup>The United Nations Code of Conduct for Law Enforcement Officials states that "the term 'law enforcement official' includes all officers of the law, whether appointed or elected, who exercise police powers, especially the powers of arrest or detention".

deprived of their liberty shall be treated with respect for the inherent dignity of the human person". Amnesty International believes that Joy Gardner was not accorded the dignity or respect due a woman who was not expecting the police to arrive at her doorstep in the early morning hours of 28 July 1993 with a deportation order in hand.

**Article 7 of the ICCPR**, the **UN Convention against Torture and other Cruel, Inhuman or Degrading Punishment** and **Article 5 of Universal Declaration of Human Rights** all state that "no one shall be subjected to torture or to cruel, inhuman or degrading punishment". Amnesty International is concerned that the unauthorized restraint equipment (body-belt and mouth-gag outside an aircraft) was used on the Joy Gardner in such a manner as to lead to cruel, inhuman or degrading treatment and, ultimately, her death in custody.

**Article 6 of the ICCPR** states that "every human being has the inherent right to life [and] no one shall be arbitrarily deprived of his life". Amnesty International believes that the authorities failed to protect Joy Gardner's right to life.

**Article 12 of the UN Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment** calls for a "prompt and impartial investigation" of allegations of ill-treatment. The only investigation of the death in police custody of Joy Gardner has been conducted by the police themselves.<sup>24</sup> The Police Complaints Authority is not empowered to examine the specific role of all agencies involved in the attempted forcible deportation of Joy Gardner; it is authorized only to supervise investigations into complaints against police officers. The United Nations Human Rights Committee further stated on 27 July 1995 that they were concerned that investigations of deaths in police custody "are still carried out by the police [as] they lack sufficient credibility".

## **AMNESTY INTERNATIONAL RECOMMENDS:**

### **1. A FULL AND IMPARTIAL INQUIRY:**

Amnesty International calls on the Government of the United Kingdom to initiate an independent and impartial inquiry into the death of Joy Gardner as it is only through such an inquiry that the role and accountability of all agencies involved in the Joy Gardner case and other forcible deportations can be thoroughly examined. The results of this investigation should be published and those found to be responsible for actions leading to the death of Joy Gardner should be held accountable. Amnesty

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<sup>24</sup>The Chairperson of the Police Complaints Authority (PCA) stated in the 1994-1995 Annual Report of the PCA that "civilians cannot investigate police as well as police can".

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International strongly urges the Police Complaints Authority to make a special report to the Home Secretary about their investigation of the death of Joy Gardner.

## **2. EFFECTIVE MECHANISMS FOR INVESTIGATION**

The current complaints procedures do not satisfy the requirements set out in international standards; the government should establish mechanisms for the prompt and independent investigation of all allegations of ill-treatment and complaints against immigration officials and private security guards hired to assist in forcible deportations. This could be facilitated by the creation of a statutory authority to regulate the Immigration Service and the private security guards it employs, as neither are currently accountable for their actions to an independent body.

## **3. PUBLICATION OF REMOVAL PROCEDURE GUIDELINES**

The Home Office should publish and widely circulate the guidelines regarding forcible deportations, including those pertaining to the use of restraint. Although the Home Office has banned the use of a mouth-gag, they have stated that they will consider other means to prevent biting, spitting and shouting by those who are being forcibly deported. In any event, Amnesty International recommends that any mouth restraint should only be used in extreme circumstances and under medical supervision.

## **4. GREATER ACCOUNTABILITY OF PRIVATE SECURITY FIRMS**

When private security guards are participating in the deportation process, they are acting in a public function. However, they are not held to the same level of scrutiny as the police officers who perform the same duties. Amnesty International believes that private security companies should be accountable to an independent statutory authority; the organization urges the government to implement the recommendations made by the Home Affairs Select Committee to create such an authority that would be able to, among other things, monitor the restraint usage training of private security guards to ensure that it is at least equivalent to that received by police. Amnesty International believes that the Government of the United Kingdom should hold all individuals and agencies who participate in the deportation process to the same high international standards applicable to law enforcement officials, whether they belong to the public or private sector.

## **CONCLUSION**

It is the government's responsibility to ensure that deportations are carried out – in accordance with international standards – in a manner that respects the human rights of those persons arrested for removal from the United Kingdom. Unless legislation and

regulations are enacted to provide safeguards that ensure that a deportee's inherent dignity is respected, there is no guarantee that forcible deportations will not be carried out in a cruel, inhuman or degrading manner that could threaten their safety and possibly lead to another death in custody.