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UK: time to abandon the policy of 'deportation with assurances'

On 9 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 Qatada, and those of two Libyan nationals, referred to for the purposes of legal proceedings in the UK as 'DD' and 'AS'. In both cases, although on different grounds, the Court of Appeal ruled that the UK could not lawfully proceed with the deportations.

In the light of today's decisions, Amnesty International called on the UK government to abandon its dangerous and discredited policy of relying on unenforceable promises to get around its obligations not to send people to countries where they will face a real risk of grave human rights violations.

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. Amnesty International welcomed this recognition, but considered that it should not have been necessary for the UK government to be told this. As recently as 2005, the UK's highest court – the House of Lords – reiterated the absolute abhorrence with which the courts in the UK regarded so-called 'evidence' obtained by torture. Amnesty International considers that the UK should not have even been contemplating returning anyone to face a trial where, as in this case, it was recognized in advance that a conviction, and a lengthy sentence, was likely to follow on the strength of information obtained by torture.

In the cases of the two Libyans, **DD** and **AS**, the Court of Appeal found no grounds to disagree with the decision of the Special Immigration Appeals Commission (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. Amnesty International welcomed this recognition of the real risk to which these men would undoubtedly be exposed if they were to be returned to Libya.

Disappointingly, the Court of Appeal ruled, in Abu Qatada's case, that the SIAC was entitled to find that so-called diplomatic assurances can sometimes be relied on to protect people against a real risk of very serious violations of their human rights – 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 by this approach. The unfair procedures which the SIAC follows, which include the use of secret material undisclosed to the person facing deportation, or to their lawyers, and the holding of secret sessions of the court, makes 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, then there is real doubt over whether there is any genuine route open to these men to challenge their use.

Amnesty International considers that these promises between governments, which are entirely unenforceable, are inherently unreliable. They are only sought from countries where international legal obligations to prevent torture and other grave human rights violations have not been respected. If those countries do not respect those obligations, which are binding as a matter of international law, there are absolutely no grounds for confidence that they will respect promises given at a bilateral diplomatic level.

Amnesty International considers that the obligation which all states are under is clear: not to send anyone to any country where there is a real risk that they will be subjected to grave human rights violations, including torture or other ill-treatment. This is a basic principle underpinning the international protection of human rights, and was recently re-affirmed by the European Court of Human Rights in the case of *Saadi v Italy*. It applies no matter what that individual is alleged to have done, or – as in these cases – what threat they are alleged to pose to national security. Rather than weakening this protection, the UK should be respecting it, and encouraging all states to bring their laws and practices into line with international human rights standards.

Respect for the absolute prohibition against torture does not prevent states from taking action against people who are suspected of posing a threat to national security. If there is sufficient admissible evidence that the individuals whom the UK is seeking to deport have been involved, as is alleged, in 'terrorism-related' activity, then they should be charged with recognizably criminal offences, and brought to trial in the UK, in proceedings that meet international fair trial standards. What is not acceptable is to use the suspicion, sometimes on undisclosed grounds, of involvement in such activities to justify exposing people to a real risk of grave human rights violations.

An Amnesty International delegate observed the open (i.e. public) part of the Court of Appeal hearing in March 2008 in the case of Abu Qatada, and part of the open hearing in the cases of DD and AS which immediately preceded it. Both cases also involved closed, i.e. secret hearings, from which not only the public but the lawyers representing the individuals involved were excluded.

Background

The UK has been seeking for some years to deport a number of individuals whom it alleges pose a threat to national security. It has acknowledged that these individuals could not ordinarily be deported, because of the real risk of grave human rights violations that they would face in the countries to which they are to be returned. The UK government has therefore sought, in each of these cases, so-called 'diplomatic assurances' from the countries to which these individuals are to be returned: promises, unenforceable in any court of law, that the individual will be treated in accordance with international human rights standards.

The UK government has argued that these promises are sufficient to reduce the risk of grave human rights violation to a level where the deportations can go ahead. Amnesty International, and many others, disagree.

Abu Qatada (also known as Omar Othman) is a Jordanian national. In 1993, after arriving in the UK, he sought asylum for himself, his wife and three children. In 1994 he was granted refugee status by the UK authorities.

He was interned without charge or trial in the UK under the now defunct Part 4 of the Anti-terrorism, Crime and Security Act 2001. In March 2005 he was "released" from detention under Part 4 and put under a "control order" under the Prevention of Terrorism Act 2005. He was then

rearrested in August 2005 and held under immigration powers pending deportation on national security grounds to Jordan. In February 2007 the Special Immigration Appeals Commission (SIAC) dismissed his appeal against the deportation order served on him, ruling that he could lawfully be returned to Jordan.

DD and **AS** are Libyan nationals. In April 2007 the SIAC allowed their appeal against orders for their deportation on national security grounds, on the grounds that there remained, despite the Memorandum of Understanding concluded between the UK and Libya, a real risk that their rights would be violated if they were returned to Libya. In particular it found that the existence of a monitoring mechanism (in the form of a foundation overseen by one of Colonel Ghaddafi's sons) was not a sufficient deterrent against such violations.

In the cases both of Abu Qatada and of DD and AS the SIAC upheld the Home Secretary's claim that the men posed a threat to national security. This finding was not challenged in the Court of Appeal.

The appeals before SIAC in which people can attempt to challenge orders for deportation on national security grounds are inherently profoundly unfair because of heavy reliance on closed hearings in which secret information, including intelligence material, is considered in the absence of the individuals concerned and their lawyers of choice, and because of the application of a particularly low standard of proof. In hearing appeals against SIAC decisions the Court of Appeal has also adopted the practice of holding closed hearings and considering secret information.

For further background on Abu Qatada's case, see the public statement issued by Amnesty International in February 2007, following the SIAC decision in his case: *United Kingdom/Jordan: 'National security suspect' facing prospect of torture in Jordan*, AI Index: EUR 45/002/2007.

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