

AMNESTY INTERNATIONAL

Public Statement

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United Kingdom: The Killing of Jean Charles de Menezes

The next hearing of the inquest into the fatal shooting of Jean Charles de Menezes by officers of the Metropolitan Police Service on 22 July 2005 is scheduled for 7 September 2006 at Southwark Coroner's Court, London. Her Majesty's Coroner, John Sampson, will be likely to consider the future conduct of the inquest into Jean Charles de Menezes' death.

Amnesty International understands that the Crown Prosecution Service of England and Wales (CPS) has reportedly written to the Coroner and invited him to adjourn the inquest proceedings. The organization is extremely concerned that the CPS is seeking to block the immediate resumption and completion of the inquest.

Amnesty International understands that the CPS will argue that the inquest should be postponed until the completion of the ongoing criminal proceedings against the Commissioner of Police of the Metropolis for an offence under the Health and Safety at Work, etc. Act 1974 of failing to provide for the health, safety and welfare of Jean Charles de Menezes. As such, the ongoing criminal proceedings are not against Sir Ian Blair, the Metropolitan Police Commissioner, in his personal capacity, but will be a prosecution of the Office of Commissioner, as the deemed employer of the Metropolitan Police officers involved in the death of Jean Charles de Menezes.

Amnesty International has recently written to the Director of Public Prosecutions expressing concern about the CPS's reported intention to seek the postponement of the inquest, as well as asking for a detailed explanation of its reasons for doing so.

The organization would oppose any such postponement on the grounds outlined below.

Given the amount of time that has already elapsed since Jean Charles de Menezes' killing, Amnesty International is concerned that his family has yet to be provided with critical information about all the circumstances surrounding his death. In this connection, the organization emphasizes that the provision of such information is a key component of the family's right to an effective remedy under human rights law.

Thus, Amnesty International is concerned that the postponement of the inquest until the completion of the criminal case would result in an unnecessarily prolonged delay in the holding of the inquest. In this respect, the organization would be seriously concerned that the right of the family to redress under human rights law, in particular, Articles 2 and 13 of the European Convention on Human Rights (ECHR), may be violated by the disproportionate delay in the taking place of the inquest.

Under human rights law, the family is entitled to a prompt investigation into the disputed circumstances of the death of Jean Charles de Menezes. In addition, under the above-mentioned law the family is entitled to

participate in the proceedings as next-of-kin to the deceased in the process of investigation, including access to witness statements and the ability to pose questions to witnesses.

It is partly through the prompt holding of a coronial inquest that the UK authorities would be discharging their obligations under human rights law in this respect. For example, in *McCann and Others v United Kingdom* the European Court of Human Rights found that the inquest held into the deaths of the three IRA suspects shot dead by the SAS in Gibraltar satisfied the procedural obligation contained in Article 2, as it provided a detailed review of the events surrounding the killings and provided the relatives of the deceased with the opportunity to examine and cross-examine witnesses involved in the operation.

Therefore, Amnesty International is concerned that any unnecessary postponement of the inquest may give rise to a breach of the right of the family to redress, including through a prompt, thorough, independent and effective investigation.

The organization is also concerned that any unnecessary delay in the holding of the inquest may compound the distress, pain and suffering already experienced by the family of Jean Charles de Menezes.

In addition, any unnecessary and protracted delay may undermine public confidence in the rule of law and the conduct of law enforcement officials.

In the case of *Jordan v United Kingdom*, the European Court of Human Rights ruled that “a prompt response by the authorities in investigating a use of lethal force may generally be regarded as essential in maintaining public confidence in their adherence to the rule of law and in preventing any appearance of collusion in or tolerance of unlawful acts”. For the same reasons, in *McKerr v. United Kingdom*, the European Court found that “there must be a sufficient element of public scrutiny of the investigation or its results to secure accountability in practice as well as in theory.”

While important evidence may indeed emerge as a result of the above-mentioned criminal proceedings, such proceedings are focussed on criminal liability and, therefore their focus is, by definition, narrow. Hence, it is unlikely that all relevant evidence in this case would be considered in the course of a criminal trial, particularly given that this trial will be for an offence under health and safety legislation. In addition, a criminal trial would conclude with a verdict of “guilty” or “not guilty”, unlike a coronial inquest in which a jury is empowered to return a verdict as to the cause of death, as well as a narrative about the circumstances surrounding the death. Therefore, Amnesty International considers that the ability of the ongoing criminal proceedings in this case to discharge the UK authorities’ obligations under human rights law, in particular, the procedural ones under Article 2 of the ECHR, is extremely limited, if any at all.

In light of the above, the organization considers that, at this stage, a coronial inquest is well placed to contribute to discharging the UK authorities’ obligation under human rights law to provide for full and public scrutiny of the extremely serious allegations that the killing of Jean Charles de Menezes resulted from unlawful use of force, as well as a detailed explanation of all the relevant events leading up to, and the circumstances surrounding, his fatal shooting.

Amnesty International has urged that there be full and public scrutiny of the actions of state agents and agencies involved so as to ascertain whether the killing of Jean Charles de Menezes was lawful -- specifically, whether the force used was no more than absolutely necessary and a proportionate response in the circumstances.

The organization considers that all the circumstances leading up to the killing, as well as its immediate aftermath, including initial official statements, should be investigated in a manner which strictly complies with relevant international and domestic human rights law and standards. There should therefore be full and public scrutiny of the full circumstances leading up to the shooting, including the terms of the rules of engagement; the policy permitting officers to “shoot to kill”, i.e. to shoot in the head, suspects believed to be suicide bombers, reportedly codenamed Operation Kratos; the planning of the operation which resulted in

the fatal shooting of Jean Charles de Menezes; how the police officers involved were briefed and what orders they were given; whether a senior officer was contacted before any action was taken; whether a sufficient warning was given; and whether the action taken by the officers was fully in compliance with human rights law and standards concerning the use of force in the context of law enforcement.

Background

On 22 July 2005, the day after a series of serious security incidents occurred in London, plain-clothes police officers of the Metropolitan Police shot dead Jean Charles de Menezes, an unarmed young Brazilian man who had been working in the UK for the previous three years, after they had reportedly restrained him on board a London underground train on his way to work.

Initial police statements claimed that Jean Charles de Menezes was a suspect linked to the incidents of the previous day. It was also reported that he had tried to evade arrest and that, though it was summer, he had been wearing a thick jacket thought to conceal explosives. However, two days later, on 24 July 2005, the Commissioner of the Metropolitan Police stated categorically that Jean Charles de Menezes had not been involved in any suspicious activities, and that he had been shot dead as a result of a mistake. The police later acknowledged that Jean Charles de Menezes was wearing a jeans jacket, and had not acted in any way to arouse suspicion.

The Metropolitan Police later confirmed that, in the immediate aftermath of the shooting, it had sought to block the Independent Police Complaints Commission (IPCC) -- the body with overall responsibility for the police complaints system in England and Wales -- from conducting from the outset the investigation into the killing of Jean Charles de Menezes on the grounds that it was linked to the Metropolitan Police ongoing anti-terrorist investigation. Such attempt resulted in a crucial delay in the IPCC assuming charge of the investigation. Despite statements to the contrary, even from the IPCC itself, the IPCC was only allowed to take over the investigation after three days.

The fact that the Metropolitan Police retained control over the investigation at the crucial initial stage runs counter to the need for it to be carried out independently of those responsible for the killing. Relevant international and domestic law and standards require that an investigation into an incident such as the killing of Jean Charles de Menezes be carried out promptly, and that it be conducted independently and thoroughly from the very outset. The investigative authority must have the power to obtain all the information necessary to the inquiry. The fact that the police retained control over the investigation at the crucial initial stage runs counter to the need for it to be carried out independently of those responsible for the killing.

Amnesty International expressed concern that this delay during the initial crucial stage of the investigation was contrary to relevant international human rights law and standards on the effective investigation and prevention of unlawful killings.

The initial post-mortem examination report dated 27 July 2005 concluded that Jean Charles de Menezes had died from multiple (seven) gunshot wounds to the head.

On 19 September 2005, in the wake of the killing of Jean Charles de Menezes, the former Metropolitan Police Commissioner, Lord Stevens, said that Prime Minister Tony Blair and former Home Secretary David Blunkett had been told of a shift to a "shoot to kill" policy three years earlier.

The IPCC submitted the report of its investigation into the killing of Jean Charles de Menezes and a full file of evidence to the CPS on 19 January 2006. This IPCC investigation became known as Stockwell 1, from the name of the underground station in London where Jean Charles de Menezes was killed. The IPCC report and the accompanying evidence focussed on the individual actions of 15 police officers, whether any of them may have committed a criminal offence, and the question of whether there had been a breach of health and safety legislation.

A separate investigation by the IPCC, known as Stockwell 2, into a complaint from the family of Jean Charles de Menezes, focussing on the statements made by the police in the aftermath of the killing, is still ongoing.

On 17 July 2006, following its completion of the review into the circumstances surrounding the death of Jean Charles de Menezes, the CPS announced that it did not intend to prosecute any individual police officer for murder, manslaughter or any other criminal offence in connection with the fatal shooting of Jean Charles de Menezes on 22 July 2005. The CPS indicated that it had considered a number of criminal offences, including murder, manslaughter, forgery, and breaches of health and safety legislation; it had concluded that there was insufficient evidence to provide a realistic prospect of conviction against any individual police officer. However, the CPS announced that it intended to prosecute the office of Commissioner of Police of the Metropolis under s. 3 of the Health and Safety at Work etc Act 1974 of failing to provide for the health, safety and welfare of Jean Charles de Menezes.

In announcing its decision, the CPS stated that:

the two officers who fired the fatal shots did so because they thought that Mr de Menezes had been identified to them as a suicide bomber and that if they did not shoot him, he would blow up the train, killing many people.

In order to prosecute those officers, we would have to prove, beyond reasonable doubt, that they did not honestly and genuinely hold those beliefs. In fact, the evidence supports their claim that they genuinely believed that Mr de Menezes was a suicide bomber and therefore, as we cannot disprove that claim, we cannot prosecute them for murder or any other related offence.

Given that Jean Charles de Menezes was not a suicide bomber, the CPS had gone on to consider the whole operation as a result of which he had been killed to understand "how it was that an innocent man came to be mistaken for a suicide bomber."

The CPS concluded that, while a number of those involved had made mistakes in respect of planning and communication, the cumulative result of which had been the killing of Jean Charles de Menezes, no-one had been culpable to the extent necessary for a criminal offence to be made out.

In addition, the CPS stated that a log book recording the incident had been submitted for forensic examination with a view to establishing whether it had been altered and, if so, by whom. However, the experts who had examined the relevant passage could not agree to the standard required whether it had been altered or, if there had been any alteration, who may have been responsible for it. As a result, the CPS maintained that no prosecution of any individual in relation to the log book was possible.

It was also confirmed that the CPS's prosecutorial decisions in the case had been agreed and approved by the Director of Public Prosecutions (DPP) who heads the CPS. The CPS is responsible for prosecuting criminal cases investigated by the police in England and Wales.

The Metropolitan Police has not yet entered a plea in respect of the outstanding prosecution, and the case has been adjourned until 19 September 2006. However, Sir Ian Blair, the Metropolitan Police Commissioner, has expressed concern about the appropriateness of the prosecution under health and safety legislation; and on 4 August 2006 the Metropolitan Police Authority, whose members support and scrutinize the work of the Metropolitan Police, wrote to the Attorney General requesting him to reconsider whether the decision to prosecute the office of the Metropolitan Police Commissioner under health and safety legislation was "in the public interest".

Whether disciplinary proceedings should be taken against any police officer will be considered at a later date.

It is envisaged that the IPCC report into its investigation into the killing of Jean Charles de Menezes will not be made public until the legal process, including the possibility of both criminal and disciplinary proceedings, will allow it. The IPCC report has not been disclosed to the family of Jean Charles de Menezes or their lawyers either.

The inquest into Jean Charles de Menezes' death has yet to take place. On 7 September 2006, the Coroner at Southwark Coroner's Court will hear arguments on behalf of the family of Jean Charles de Menezes about the CPS's reported application to adjourn the inquest until the completion of the ongoing criminal proceedings.