

UNITED KINGDOM

Amnesty International's briefing for the House of Lords' second reading of the Terrorism Bill

Introduction

This briefing details the concerns of Amnesty International on the Terrorism Bill:

- the definition of "terrorism";
- Clauses 1 and 2 – encouraging terrorism;
- Clauses 23 and 24 – detention of terrorist suspects.

Summary

Amnesty International has already commented on previous drafts on the Terrorism Bill.¹ We continue to be concerned that the Bill contains sweeping and vague provisions which, if enacted, could violate the rights to freedom of expression and association of people prosecuted under them, and would have a chilling effect for society at large on its exercise of the rights to freedom of expression and association.

In addition, Amnesty International is deeply concerned at the outcome of the vote in the House of Commons on 9 November 2005 pursuant to which, if the Bill were enacted in its current form, it would grant the police the power to detain people purportedly suspected of involvement in terrorism for up to 28 days without charge. We reiterate our unreserved opposition to any extension to the already extremely long period of detention in police custody without charge.

Having carefully considered some of the provisions in the Terrorism Bill in light of international human rights standards, particularly those concerned with the rights to liberty, to a fair trial and to freedom of expression and association, Amnesty International considers that a number of the Bill's provisions are inconsistent with the UK's obligations under domestic and international human rights law and that, if enacted and implemented, may lead to serious human rights violations. Amnesty International is also concerned that the enactment and implementation of the

¹ See *United Kingdom - Amnesty International's briefing for the House of Commons' second reading of the Terrorism Bill*, AI Index: EUR 45/047/2005, published on 25 October 2005; and *United Kingdom – Amnesty International briefing on the draft Terrorism Bill 2005*, AI Index: EUR 45/038.2005.

Terrorism Bill would inevitably lead to a further alienation of certain sectors of the UK population, particularly those identified as Muslims. Instead of strengthening security, it will further alienate already vulnerable sections of society.

Background

Emergency legislation in the UK has been of concern to Amnesty International since the 1970s. Throughout the last three decades the organization has been greatly concerned that various emergency provisions and other measures taken in the context of the conflict in Northern Ireland have resulted in human rights violations. More recently, we have been greatly concerned about the serious human rights deficit of policies and legislative measures that have been pursued in the UK in the aftermath of the 11 September 2001 attacks in the USA, including, in particular, the detention without charge or trial of non-deportable foreign nationals purportedly suspected of involvement in international terrorism, and the use in proceedings of information obtained as a result of torture or other ill-treatment by agents of foreign states.

Amnesty International considers that each of three pieces of anti-terrorist legislation enacted in the UK in the last five years² contains provisions which are clearly incompatible with human rights law and standards. Their implementation has given rise to serious human rights violations.

Definition of "Terrorism"³

Amnesty International notes that the Home Secretary has asked Lord Carlile to conduct a review of the definition of terrorism within a year from the commencement of the Terrorism Bill.⁴ In light of this, Amnesty International wishes to make the following points in respect of that definition.

The Terrorism Act 2000 brought into permanent statutory form a definition of "terrorism" and numerous provisions identical or similar to offences grounded in that definition which had been enshrined in so-called "temporary" emergency legislation in the UK over the previous three decades at least.⁵

² The Terrorism Act 2000, the Anti-terrorism, Crime and Security Act 2001 and the Prevention of Terrorism Act 2005.

³ While there is no specific offence of "terrorism" in UK law, the definition of "terrorism" on the basis of which numerous offences have been codified is that provided in section 1 of the Terrorism Act 2000.

⁴ *The Guardian*, 11 November 2005

⁵ These provisions were enshrined in the Emergency Provisions Act, which was first introduced in 1973 and the Prevention of Terrorism Act, which was first introduced in 1974.

Among many others, Amnesty International expressed its concern about the vagueness and breadth of the definition of “terrorism” during the Parliamentary passage of the Terrorism Bill 2000⁶ and has been reiterating its anxiety about it since the enactment of the Terrorism Act 2000.⁷

Amnesty International reiterates its concern that the definition of “terrorism”, and thereby any offence which is based on it, may violate the principle of legality and legal certainty by being too wide and vague and, therefore, fails to meet the precision and clarity requirements for criminal law. In this regard, Amnesty International continues to be concerned that conduct which may be criminalised pursuant to the definition of “terrorism” provided in the Terrorism Act 2000 may not amount to a “recognisably criminal offence” under international human rights law and standards. In turn, this may lead to a risk that people may be prosecuted for the legitimate, non-violent exercise of rights enshrined in international law, or that criminal conduct that does not constitute “terrorism” may be criminalised as such.

In light of its long-standing anxiety about the vagueness and breadth of the definition of “terrorism” enshrined in the Terrorism Act 2000, as well as its concern about the lack of compliance of the various anti-terrorism provisions with internationally recognized fair trial standards, Amnesty International continues to be concerned that any arrest, detention, charge and trial in connection with an offence bolted onto this definition may lead to injustice and risk further undermining human rights protection and the rule of law in the UK.

In addition, Amnesty International considers that various existing and proposed anti-terrorism provisions may violate the right to be free from discrimination⁸ and the right

⁶ See, for example, *United Kingdom: Briefing on the Terrorism Bill*, AI Index: EUR 45/43/00, published in April 2000.

⁷ See, for example, *United Kingdom - Summary of concerns raised with the Human Rights Committee*, AI Index: EUR 45/024/2001, published in November 2001, pp. 17-19. In particular, Amnesty International expressed concern that the enactment of the Terrorism Act 2000 created a permanent distinct system of arrest, detention and prosecution for “terrorist offences” which would violate the internationally recognized right of all people to equality before -- and equal protection of -- the law without discrimination. This different treatment is not based on the seriousness of the criminal act itself but rather on the alleged motivation behind the act, defined in the Act as “political, religious or ideological”.

⁸ In its General Comment 18 on non-discrimination adopted on 10 November 1989, the Human Rights Committee has clarified the meaning of the term discrimination by stating that “the Committee believes that the term ‘discrimination’ as used in the Covenant should be understood to imply any distinction, exclusion, restriction or preference which is based on any ground such as race, colour, sex, language,

to equality before the law and equal protection of the law without any discrimination, enshrined in, *inter alia*, Articles 2(1) and 26 of the International Covenant on Civil and Political Rights (ICCPR), and in Articles 1 and 14 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR).

Amnesty International recognizes that not all differential treatment amounts to prohibited discrimination.⁹ However, the implementation of the above-mentioned anti-terrorism provisions has effectively given rise to a different regime for the administration of criminal justice with respect to people purportedly suspected of involvement in terrorism which is neither reasonable nor objective nor aimed at achieving a legitimate purpose. This regime provides fewer safeguards for the suspect than s/he would be entitled to under the ordinary criminal law. Amnesty International considers that, in the context of measures that can lead to the deprivation of liberty of an individual, any departure from ordinary procedures and safeguards recognizing and according rights to the suspect in a manner which is practical and effective is unjustified and, therefore, unlawful.

Furthermore, we note that the majority of states, individually, and the international community as a whole, have recognized that even people suspected of the most heinous crimes, such as war crimes, genocide and other crimes against humanity have a fundamental and inalienable right to enjoy respect for the highest procedural rights precisely because of the nature and gravity of the crimes of which they stand accused and the severity of the penalties they may face if convicted.¹⁰

Clauses 1 and 2 – Encouraging terrorism

Amnesty International continues to be concerned about these clauses despite the amendments of the House of Commons. We consider that that the formulations of these offences are vague because they rely on the definition of “terrorism” in the Terrorism Act 2000, and on concepts such as “direct or indirect encouragement or other inducement”, “glorification”, and the notion of “terrorist publication”, all of

religion, political or other opinion, national or social origin, property, birth or other status, and which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise by all persons, on an equal footing, of all rights and freedoms”. General Comment 18, paragraph 7. [emphasis added].

⁹ This has been noted by the UN Human Rights Committee, which has stated that: “not every differentiation of treatment will constitute discrimination”. The Human Rights Committee has clarified that differential treatment will not be prohibited “if the criteria for such differentiation are reasonable and objective and if the aim is to achieve a purpose which is legitimate under the Covenant”.

¹⁰ See, for example, Article 55 of the Rome Statute of the International Criminal Court.

which are widely open to ambiguity and lack clarity. Amnesty International further considers that the scope of these provisions is sweeping and disproportionate.

There already exists in domestic law in the UK a panoply of offences covering incitement, aiding and abetting, procuring and counselling of any terrorist offences. Amnesty International continues to be concerned that notwithstanding the inclusion of recklessness as a mental element in Clause 1 by the House of Commons, the proposed offences in Clauses 1 and 2 fail to squarely address the appropriate element of intent for such offences required by human rights law and standards, that is, actual intent. Amnesty International is concerned that the UK government's aim in bringing these provisions forward is to criminalize conduct carried out without the necessary mental element requirement. Thus, despite the House of Commons' amendments, a person may be found guilty of "encouraging terrorism" notwithstanding the fact that s/he had no intention of doing so. This would be particularly invidious to the right to freedom of expression.

Amnesty International is concerned that these provisions remain inconsistent with UK government's obligations under domestic and international human rights law. We conclude that these provisions violate the right to freedom of expression and fail to meet the necessary requirements with respect to clarity and precision of the criminal law.

In light of the above, we consider that, if enacted in their current form and implemented, these provisions would facilitate violations of the right to freedom of expression as they would allow the prosecution and criminalisation of persons for the lawful exercise of their right to hold and impart opinions and ideas. As a result, they would also have a chilling effect on society at large in its enjoyment of the right to freedom of expression, as enshrined in international human rights law.

Clauses 23 and 24 – Detention of terrorist suspects

Amnesty International is unreservedly opposed to any extension of the maximum time limit for which people purportedly suspected of terrorism can be held without charge. The organization considers that the current 14 days is already a very long period for people to be held without charge. People are entitled to be charged promptly and tried within a reasonable time in proceedings which fully comply with internationally recognised fair trial standards, or to be released. Arguably, therefore, the existing power allowing for people purportedly suspected of involvement in terrorism to be

detained in police custody without charge for up to 14 days before charge or release already violates one's right to be informed promptly of any charges against oneself¹¹.

In light of the above, Amnesty International was opposed to the 90 days' extension and is opposed to the current 28 days' extension that the government is seeking.

Amnesty International wishes to reiterate the following concerns with respect to the extension.

Amnesty International is concerned that the provisions governing detention in police custody without charge under existing anti-terrorism legislation are already substantially more draconian than under ordinary legislation.

In this regard, Amnesty International notes that anybody held on suspicion of having committed an extremely serious offence such as murder would, under the ordinary criminal justice system, be held without charge for a maximum period of four days. On the other hand, if the proposed clauses are enacted, anybody held on suspicion of having committed an offence under anti-terrorism provisions could be held for more than 7 times longer.

Prolonged detention without charge or trial undermines the right to a fair trial which includes the presumption of innocence, including the right to silence, the right to be promptly informed of any charges, freedom from arbitrary detention, and the right to be free from torture or other ill-treatment.

In light of its long-standing experience in 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. We consider 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 domestic 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

¹¹ Article 5 -- Right to liberty and security -- of the ECHR requires in paragraph 5(2) that: "Everyone who is arrested shall be informed promptly, in a language which he understands, of the reasons for his arrest and of any charge against him."

involuntary at trial, precisely because of the coercive or otherwise oppressive nature inherent in such detention and questioning during which the said statements would have been obtained.

Amnesty International is further concerned that the proposed extension would lead to other abusive practices, including detaining people without the intention or realistic prospect of bringing charges against them, in a way which would effectively amount to internment in all but name.

Amnesty International is also concerned at reports that the authorities are already using the existing powers as a blank cheque for holding people without charge or trial for up to 14 days. The organization's concerns about the scope for abuse in detaining people, without in fact having reasonable suspicion of their involvement in a criminal offence -- a key component of, and safeguard giving effect to, the right to liberty under domestic and international human rights law¹² -- have not been allayed by the briefing note attached to the letter by Andy Hayman, Assistant Commissioner (Metropolitan Police), to the Home Secretary of 6 October 2005. The said briefing note provides an explanation which purports to justify the need for an extension of the maximum police custody time limit. Amnesty International considers that whatever the justification provided, no such draconian incursion into the fundamental right to liberty could be lawful.

Since the 1970s, and mainly in the context of the conflict in Northern Ireland, the great majority of people who have been arrested under anti-terrorist and emergency measures have been subsequently released without charge. Once again, Amnesty International is concerned that the implementation of Clauses 23 and 24 would result in the alienation of certain communities, who would consider that they were being targeted because of their real or perceived ethnic or religious identity, and that the purpose of prolonged detention was not to bring charges against them, but in order to obtain information.

¹² Article 5 -- Right to liberty and security -- of the ECHR requires in paragraph 5(1)(c):

"1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:

....

c. the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so;...."

In this regard, Amnesty International notes, *inter alia*, the 2003 Concluding observations of the Committee on the Elimination of Racial Discrimination upon its examination of the UK's sixteenth and seventeenth periodic reports under the International Convention on the Elimination of all Forms of Racial discrimination:

While acknowledging the State party's national security concerns, the Committee recommends that the State party seek to balance those concerns with the protection of human rights and its international legal obligations. In this regard, the Committee draws the State party's attention to its statement of 8 March 2002 in which it underlines the obligation of States to "ensure that measures taken in the struggle against terrorism do not discriminate in purpose or effect on grounds of race, colour, descent, or national or ethnic origin."¹³

Moreover, the discriminatory application of the anti-terrorism powers were highlighted by the parliamentary Joint Committee for Human Rights, in its July 2004 report.

We also note that there is mounting evidence that the powers under the Terrorism Act are being used disproportionately against members of the Muslim community in the UK. According to the Metropolitan Police Service data, the stop and search rates for Asian people in London increased by 41% between 2001 and 2002, while for white people it increased by only 8% over the same period. We are concerned that the strikingly disproportionate impact of the Terrorism Act powers on the Muslim community indicates unlawful use of racial profiling in the exercise of these powers, contrary to basic norms prohibiting discrimination on grounds of race or religion.¹⁴

¹³ Concluding observations of the Committee on the Elimination of Racial Discrimination, CERD/C/63/CO/11, 10 December 2003, para. 17.

¹⁴ Joint Committee On Human Rights - Eighteenth Report, Session 2003-04, July 2004, paragraph 46.