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UNITED KINGDOM

Human rights: a broken promise

Citizens should have statutory rights to enforce their human rights in the UK courts. We will by statute incorporate the European Convention on Human Rights into UK law to bring these rights home and allow our people access to them in their national courts. The incorporation of the European Convention will establish a floor, not a ceiling, for human rights. [emphasis added]

1997 Labour Party's General Election Manifesto

Should legal obstacles arise we will legislate further, including, if necessary, amending the Human Rights Act in respect of the interpretation of the European Convention on Human Rights.

Prime Minister Tony Blair, 5 August 2005

1. Introduction

The 1997 general election returned a Labour administration to power after a period of 18 years of Conservative government. Under Prime Minister Tony Blair, the Labour government, true to its 1997 election promise, published a White Paper entitled: "Bringing Rights Home", presaging the momentous introduction of the Human Rights Act 1998 (HRA) which gave effect in domestic law to most of the rights enshrined in the (European) Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR). Rather than incorporating the ECHR into domestic law, the HRA sets out in primary legislation, domestically, human rights that are "expressed in the same terms" as their equivalents in the Convention.

Amnesty International commended the UK authorities for the introduction of the HRA as an initial step to deepening a human rights culture.

However, the erosion of human rights by government policies purporting to fight terrorism – a tendency well-developed over decades in relation to the conflict in Northern Ireland – was given renewed impetus by the UK's actions in response to the attacks in the USA on 11 September 2001.

"Let no one be in any doubt. The rules of the game are changing." So warned on 5 August 2005 Prime Minister Tony Blair in the aftermath of the July bombings in London

when outlining a package of measures,¹ described as countering terrorism, that threaten human rights, the independence of the judiciary and the rule of law. In fact the government started changing the rules well before then.

Since 11 September 2001, the UK authorities have passed a series of new laws, even though the UK already had some of the toughest “anti-terrorism” laws in Europe. These laws contain sweeping provisions that contravene human rights law, and their implementation has led to serious abuses of human rights.

People suspected of involvement in terrorism who have been detained in the UK under the new laws have found themselves in a Kafkaesque world. They have been held for years in harsh conditions on the basis of secret accusations that they are not allowed to know and therefore cannot refute. Amnesty International considers that the UK authorities have effectively persecuted men they have labelled “suspected international terrorists” and a “threat to national security”, with devastating consequences for the men and their families.

After the events of 7 and 21 July 2005 in London, more draconian measures were proposed. These included a new Terrorism Bill currently before Parliament. Some of its most sweeping and vague provisions, if enacted, would undermine the rights to freedom of expression, association, liberty and fair trial.

Many of the measures introduced since September 2001 involve punishment of people against whom there is insufficient evidence to present to a court but who the authorities have decided are a threat to national security. Such measures fly in the face of human rights law which demands that people should only be punished if they have been charged with a recognizably criminal offence and tried in fair and transparent proceedings.

Another fundamental principle of criminal law is that offences should be clear so that everyone knows what behaviour is criminalized. The anti-terrorism legislation passed since 2000 has included an increasing number of broad and vague terms, including the government’s definition of “terrorism” itself.

A criminal justice system that includes such features is neither fair nor just nor lawful – and soon results in the loss of public confidence.

For several years Amnesty International has also been concerned that the UK government has successfully sought the enactment of legislation that curtails judicial powers. This has been evident in its counter-terrorism legislation; in determining asylum claims; and

¹ Fifty-two people were killed and hundreds of others wounded as a result of four bomb attacks on London’s transport system on 7 July 2005. Four other people, thought to be suicide bombers, died in the attacks. In addition, on 21 July 2005 there was a series of serious security incidents on London’s transport system.

in legislation governing the terms of reference and powers of judicial inquiries tasked with ensuring public accountability and scrutiny of executive and administrative action.

Legislation in these fields has compromised the role of judges in upholding the rule of law and human rights for all by undermining the proper separation of powers between the judiciary and the executive in the UK.

Ominously, since the July bombings in London senior government officials, including the Prime Minister, have made statements that intimated that if the courts do not heed government's expressed policies, they will amend the HRA.

Internationally, the UK's actions and policies are having an equally detrimental effect, especially in undermining the prohibition of torture both at home and abroad, and in seeking to limit the applicability of human rights law. The UK has attempted to reverse the legal ban on the admissibility in judicial proceedings of "evidence" obtained through torture or other ill-treatment. The UK government is also eroding the international prohibition of torture or other ill-treatment by seeking "diplomatic assurances" that foreign nationals suspected of terrorist activities will not be subject to serious human rights violations, including torture or other ill-treatment, upon deportation from the UK. These assurances are unenforceable, and seriously damage the prohibition of torture.

Senior UK government officials, including the Prime Minister, have publicly condemned all acts of abuse and brutality, and have pledged that any allegation of wrongdoing by UK armed forces personnel abroad would be treated extremely seriously. Several UK armed forces personnel have also been charged in connection with allegations by Iraqis of serious human rights violations. However, Amnesty International remains concerned about the adequacy and extent of the accountability of UK armed forces personnel and UK agents for their actions abroad. The organization has consistently called for civilian-led investigations of serious allegations of human rights violations, as well as greater recourse in law for victims of these abuses.

In addition, Amnesty International is profoundly concerned that the UK government has sought to circumvent its obligations under domestic and international law, including the ECHR and the HRA, in relation to allegations of abuses committed by UK officials and armed forces personnel abroad, including in Iraq.

The global impact of the UK's counter-terrorism measures and its actions abroad should not be underestimated. By undermining fundamental human rights at home and abroad, the UK has effectively given a green light to other governments to abuse human rights, while its own credibility in promoting human rights world-wide has been seriously weakened.

One of the main reasons for Amnesty International's concern about legislation governing the terms of reference and powers of judicial inquiries and about various anti-terrorism measures is the same. Namely, that their implementation has undermined the

independence of the judiciary and the rule of law by arrogating to the executive powers that are properly those of the judiciary. A vacuum now exists in ensuring that public judicial inquiries into government misconduct -- including allegations of serious human rights violations arising in connection with anti-terrorism measures and/or UK actions abroad -- be conducted in compliance with relevant international and domestic standards.

Having monitored the human rights impact of a number of legislative and other measures taken by the UK authorities since the adoption of the HRA, and in particular in the aftermath of 11 September 2001, Amnesty International considers that the UK government has failed to deliver on its promise to “bring rights home”. Indeed, the organization has been increasingly dismayed by the UK government’s sustained attack on human rights, the independence of the judiciary and the rule of law.

Amnesty International is not alone in expressing concern about the UK human rights record. Many others have expressed serious concern, including the UN Committee against Torture, the UN Committee on the Elimination of Racial Discrimination, the UN High Commissioner for Human Rights, the UN Special Rapporteur on Torture, as well as the European Committee for the Prevention of Torture (CPT) and the Commissioner for Human Rights of the Council of Europe. Within the UK, the parliamentary Committees on Constitutional, on Foreign Affairs, and on Human Rights, members of the judiciary and the legal profession, as well as non-governmental organizations, and others have expressed serious concern.

In early 2006, Amnesty International held meetings with senior UK government Ministers to communicate the profound concern within the Amnesty International membership world-wide about the actions of the UK. At these meetings, Amnesty International expressed concern that some of the government’s policies and measures are a serious threat to human rights of all, domestically and abroad, and to the rule of law and independence of the judiciary. In this context, while recognizing the government’s willingness to listen, Amnesty International continues to question its commitment to full protection of human rights domestically and internationally.

This report was compiled from interviews carried out by Amnesty International representatives with people detained by the UK government under anti-terrorism measures, their families and lawyers, both in prison and in their homes. Amnesty International representatives have monitored judicial proceedings in the UK arising from the implementation of measures described as countering terrorism; the organization has also engaged in litigation in the UK courts, intervening as a third party in two legal challenges arising from the implementation of the above-mentioned measures. The report is also the result of exchanges with UK government Ministers; with members of the legal profession;

other non-governmental human rights organizations, both domestic and international; journalists; academics; and others.²

2. “Anti-terrorism” measures

Human rights law makes ample provision for strong counter-terrorist action, even in the most exceptional circumstances. But compromising human rights cannot serve the struggle against terrorism. On the contrary, it facilitates achievement of the terrorist’s objective — by ceding to him the moral high ground, and provoking tension, hatred and mistrust of government among precisely those parts of the population where he is most likely to find recruits.

Upholding human rights is not merely compatible with a successful counter-terrorism strategy. It is an essential element in it.

Kofi Annan, UN Secretary-General³

States have an obligation to take measures to prevent and protect against attacks on civilians; to investigate such crimes; to bring to justice those responsible in fair proceedings; and to ensure prompt and adequate reparation to victims. An integral part of fair proceedings is to ensure that anyone arrested or detained on reasonable suspicion of having committed an offence, regardless of the real or imputed motivation for its commission, or whether the crime is classified as a “terrorist offence” or not, is charged promptly with a recognizably criminal offence – or released.

² This report highlights some of the human rights issues that Amnesty International has focussed on more closely over the last few years, in particular in relation to government measures taken with the stated aim of countering terrorism. However, there are numerous additional areas of concern in which Amnesty International considers that the UK authorities have failed to deliver on their promise to “bring rights home”. For additional information on other areas of concern, see www.amnesty.org.

³ Keynote address to the Closing Plenary of the International Summit on Democracy, Terrorism and Security, 10 March 2005 (a.k.a. the Madrid meeting).

2.1. London bombings

Four bomb attacks on the London transport system on 7 July 2005 killed 52 people and injured many hundreds of others. Four other people, thought to be suicide-bombers, also died. Amnesty International unconditionally and unreservedly condemned the attacks and called for those responsible to be brought to justice.

The UK authorities have a further duty in the aftermath of the attacks – to make sure that victims and their families receive prompt and adequate reparation. Concern has been expressed by some of those whose lives were shattered by the July bombings about the lack of prompt and adequate reparation.

Amnesty International recognizes that it is incumbent on the UK authorities to review legislative and other measures with a view to preventing further attacks. But it is equally incumbent on them to ensure that measures taken to bring people to justice, as well as measures taken to protect people from such crimes, respect fundamental human rights.⁴ Respect for human rights is the route to security, not an obstacle to it.

The UK government must respond to attacks on human rights by defending human rights. Any other course of action is wrong, unlawful and counter-productive.

2.2. Background

The erosion of human rights in the UK under counter-terrorism legislation is not new. Emergency legislation in the UK has been of concern to Amnesty International for decades. Since the early 1970s, when the UK authorities began introducing emergency measures in the context of the conflict in Northern Ireland, human rights have been sacrificed in the name of security. Among the serious abuses facilitated by emergency measures have been torture or other ill-treatment and unfair trials.

More recently, the organization has 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. These have included the detention without charge or trial of foreign nationals and other measures against these and other people whom the UK authorities have labelled as “suspected international terrorists”, mostly on the basis of secret intelligence which the executive has refused to disclose to the individuals concerned or their legal counsel of choice. In addition, the UK authorities have attempted to undermine the prohibition of torture or other ill-treatment.

⁴ The absolute necessity for states to ensure that all anti-terrorism measures be implemented in accordance with international human rights, refugee and humanitarian law has repeatedly been made clear by the UN Security Council, the European Court of Human Rights, and the Committee of Ministers of the Council of Europe, among others. See respectively, UNSC Resolution 1456 (2003), Annex para.6; *Aksoy v Turkey* (1996) 23 EHRR 553, para. 62; the Council of Europe Guidelines on Human Rights and the Fight against Terrorism, 11 July 2002, UN Doc. S/RES/1624 (2005), para. 4, UN World Summit Declaration 2005, para. 85, adopted by the Heads of State and Government gathered at the UN Headquarters from 14-16 September 2005, UN Doc. A/60/L.1, A/RES/60/1.

Since coming into power in 1997, the current Labour government has successfully sought the enactment of four pieces of legislation with the stated aim of countering terrorism, namely the Criminal Justice (Terrorism and Conspiracy) Act 1998, the Terrorism Act 2000, the Anti-terrorism, Crime and Security Act 2001 and the Prevention of Terrorism Act 2005. And in October 2005, the UK government introduced into Parliament the fifth such piece of legislation, the Terrorism Bill, whose enactment it is currently pursuing. Amnesty International considers that each of the above-mentioned pieces of legislation, as well as the Terrorism Bill in its current form, contains provisions which are incompatible with human rights law and standards. The implementation of these laws has given rise to serious human rights violations.

2.3. The Terrorism Act 2000 and the definition of “terrorism”

When the attacks in the USA took place on 11 September 2001, the Terrorism Act 2000 had been in force for less than a year. It grants the authorities far-reaching powers – powers described by the Commissioner for Human Rights of the Council of Europe as “amongst the toughest and most comprehensive anti-terror legislation in Europe.”⁵ Amnesty International considers that some of its provisions contravene UK obligations under international human rights law and standards, and are open to abuse by law enforcement officials.⁶

The Terrorism Act’s broad definition of “terrorism” became the standard for all future anti-terrorism laws in the UK. “Terrorism” is defined as the use or threat of action where the action is designed to influence the government or advance a political, religious or ideological

⁵ *Report by Mr Alvaro Gil-Robles, Commissioner for Human Rights, on his visit to the United Kingdom, 4-12 November 2004*, CommDH(2005)6, 8 June 2005, p.7.

⁶ Some of the provisions that Amnesty International continues to be concerned about, in addition to the ones described in the above text, are:

- wide-ranging powers of arrest without warrant;
- denial of a detainee’s access to a lawyer immediately upon arrest: the right to legal assistance can be delayed, up to 48 hours, if the police believe the granting of this right may impede the investigation;
- the Act allows for a consultation between lawyer and detainee to be held “in the sight and hearing” of a police officer, if a senior police officer has reasonable grounds to believe that such consultation would lead to interference with the investigation;
- the power to hold people detained under anti-terrorism legislation for up to 14 days without charge. Instead, under ordinary legislation, the maximum period of detention without charge is four days, where the initial 36 hours of detention in police custody can be extended for a further 36 hours and a further 24 hours with judicial authorization.
- the shifting of the burden of proof from the prosecution to the accused in various provisions of the Act;
- concern that the right to fair trial may be infringed if people are charged on the basis of intelligence information provided by other governments or on the word of informants, if this information is then kept secret from the defendant for alleged security reasons through the use of public interest immunity certificates;
- provisions allowing police officers to obtain court orders to force journalists to hand over to the police information in their possession which the police claim may be useful to their investigation.

cause.⁷ The Act also brought into permanent statutory form numerous provisions identical or similar to offences which had been enshrined in so-called “temporary” emergency legislation in the UK over the previous three decades at least.⁸

Amnesty International has repeatedly expressed concern about the vagueness and breadth of the definition of “terrorism”, which leaves scope for political bias in making a decision to bring a prosecution.⁹ The definition is open to subjective interpretation. In addition, such a broad and vague definition easily lends itself to abusive police practices. In the UK peaceful protestors have been stopped, searched and items have been seized from them on the basis of the broad powers that are granted under anti-terrorism legislation to the police.

All the subsequent anti-terrorism laws have been based on the broad and vague definition of “terrorism” set out in the Terrorism Act 2000. Because the definition of “terrorism”, and therefore any offence based on it, fails to meet the precision and clarity needed for criminal law, conduct that is criminalized under the various bits of anti-terror legislation may not amount to a “recognizably criminal offence” under international human rights law and standards. The danger is that people may end up being prosecuted for political reasons for the legitimate exercise of rights enshrined in international law.

The Terrorism Act 2000 also created a permanent distinct system of arrest, detention and prosecution for “terrorist offences” that Amnesty International considers may violate the internationally recognized right of all people to equality before -- and equal protection of -- the law without discrimination.¹⁰ 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”. This parallel criminal justice system provides fewer safeguards for the suspect than under ordinary criminal law. Amnesty International believes that any departure from ordinary procedures and safeguards may be unjustified and therefore unlawful.

The Terrorism Act also provides for the banning of terrorist organizations and for the offences of directing a terrorist organization; possessing items or collecting information for terrorist purposes; funding terrorism; and inciting terrorism overseas.

In light of its long-standing anxiety about the vagueness and breadth of the definition of “terrorism”, 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

⁷ Section 1 of the Terrorism Act 2000.

⁸ These provisions were enshrined in the Emergency Provisions Act 1973 and the Prevention of Terrorism Act 1974.

⁹ See, for example, *United Kingdom: Briefing on the Terrorism Bill* (AI Index: EUR 45/043/2000) and *United Kingdom -- Summary of concerns raised with the Human Rights Committee* (AI Index: EUR 45/024/2001).

¹⁰ These rights are enshrined in Articles 2(1) and 26 of the International Covenant on Civil and Political Rights (ICCPR), and in Articles 1 and 14 of the ECHR.

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.

The international community as a whole has 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.¹¹

In November 2005, in the context of the parliamentary passage of its fourth piece of legislation in this area since 2000, the Terrorism Bill, the UK government agreed to a review of the definition of terrorism given the seriousness of the concern expressed about that definition. The UK Home Secretary asked Lord Carlile of Berriew QC, the Independent Reviewer of anti-terrorism legislation, to conduct a review of the definition of terrorism within a year from the coming into force of the Terrorism Bill.

¹¹ See, for example, Article 55 of the Rome Statute of the International Criminal Court.

2.4. The case of Lotfi Raissi

On 21 September 2001, Lotfi Raissi, an Algerian man then aged 27, was arrested in Slough, England, reportedly at gun-point at 3 am, and forced to get into a police car, allegedly while still naked, along with his wife and brother. He was arrested on suspicion of involvement in “terrorist” activities. His brother was released without charge after two days, and his wife was released, also without charge, after five days. Lotfi Raissi was released after seven days’ questioning and immediately re-arrested on the basis of a warrant requesting his extradition to the USA. He was then detained for five months as a Category A (high security) prisoner in Belmarsh Prison, first in the High Security Unit (a prison within a prison) and then in the high-risk wing. The US authorities claimed that he was involved in the 11 September attacks in the USA as the flight instructor of some of the 11 September hijackers. At the time of his arrest, the US authorities claimed that they had sufficient evidence to show not only association with some of the 11 September pilots, but also evidence that he was actively involved in a conspiracy with members of the *al-Qa’ida* network. This evidence reportedly included correspondence, telecommunications and video footage. The extradition warrant, however, was not based on any such evidence; the US authorities brought instead so-called “holding charges” in connection with Lotfi Raissi’s failure to disclose, on an application for a US pilot’s licence, both a conviction for minor theft, for which he was fined ten years earlier, and a knee surgery to repair an old tennis injury. This minor offence, which provided the basis for the extradition warrant were, technically, extraditable offences, punishable by more than a year in prison.

Amnesty International was concerned that the US authorities’ reasons for seeking Lotfi Raissi’s extradition included the fact that his identity and professional occupation fitted a certain profile: an Algerian man and a Muslim, a pilot and a flight instructor in the USA.

Lotfi Raissi’s detention was justified on the basis of initial allegations by the US authorities that he would most likely be charged with conspiracy to murder and could face the death penalty.

In April 2002, the presiding judge brought the extradition proceedings against Lotfi Raissi to an end. The judge stated that there was no evidence whatsoever substantiating Lotfi Raissi’s involvement in “terrorism”. Addressing Lotfi Raissi’s legal representative, the judge added: “Your client has appeared before me on several occasions where allegations of involvement in terrorism have been made. I would like to make it clear that I have received no evidence to support that contention”. Despite such statements, the Crown Prosecution Service (the UK prosecuting authorities) on behalf of the US authorities, in turn, stated that: “Mr Raissi continues to be the subject of an on-going investigation into those responsible for the September 11 attacks.”

The US authorities have failed to date to substantiate the serious allegations they made against Lotfi Raissi. Amnesty International considers that what happened to Lotfi Raissi is a powerful illustration that in the FBI’s wide sweep in its hunt for conspirators in the attacks in the USA or for members of the *al-Qa’ida* network, innocent people could get caught up, violating their rights and those of their relatives to liberty and livelihood.

In light of Lotfi Raissi’s case, the organization remains concerned, in particular, about procedures which can be used to target someone on the basis of identity profiling, and to then

detain them for a prolonged period of time while evidence is sought to substantiate suspicions of their involvement in criminal acts. Amnesty International believes that Lotfi Raissi's case also shows the dangers of how the extradition process could be used to label someone as a "suspected terrorist" and to detain someone for a prolonged period of time, in the absence of a prompt and thorough assessment of the evidence.

Lotfi Raissi brought proceedings in the USA against the FBI seeking compensation under the *Federal Tort Claims Act*. However, a decision in the case of *US –v- Alvarez* in June 2004 ended the ability of non-US citizens to sue the US authorities for violations of constitutional rights committed by federal officials outside the USA.

The Home Secretary is committed to compensating people who have either spent time in custody as a result of serious default by a public authority and/or because of the exceptional circumstances of a case. However, the Home Secretary has so far rejected Lotfi Raissi's application for compensation on the basis that he was not charged and prosecuted in the UK but rather faced extradition proceedings. The Home Secretary also does not accept that there was a serious default on the part of a public authority or that the circumstances of Lotfi Raissi's case were exceptional. On 17 February 2006, a judge of the High Court of England and Wales ruled that Lotfi Raissi had an arguable case that the compensation scheme applied to extradition cases and that there should be a full hearing. Outside court Lotfi Raissi told the media that:

my life has been destroyed. I chose to be an airline pilot, I worked hard for it and I starved for it... But the reality is that because of my profile of being Algerian, Muslim, Arabic and an airline pilot, I suffered this miscarriage of justice I believe a man is innocent until proven guilty. I was "guilty" and I had to prove my innocence and that's the bottom line.

A full judicial review of the refusal of the UK Home Secretary to apply the compensation scheme to the extradition proceedings of Lotfi Raissi is pending.

Lotfi Raissi has also been pursuing a claim against the UK police which, while still ongoing, has been suspended by agreement pending the outcome of a complaint lodged with the Independent Police Complaints Commission. Lotfi Raissi's complaint, lodged this year, concerns the alleged misrepresentation of evidence by police officers resulting in his being linked to terrorism and being refused bail as a result.

2.5. A Shadow Criminal Justice System: Part 4 of the Anti-terrorism, Crime and Security Act 2001

Parliament should take a long view, and resist the temptation to grant powers to governments which compromise the rights and liberties of individuals. The situations which may appear to justify the granting of such powers are temporary – the loss of freedom is often permanent.

UK Parliamentary Joint Committee on Human Rights, November 2001¹²

¹² Joint Committee on Human Rights, Second Report, *Anti-Terrorism, Crime and Security Bill*, 6 November 2001, para 76.

In the aftermath of the events of 11 September 2001 in the USA, the UK government stated that the threat posed to the UK by the *al-Qa'ida* network made it necessary to enact new “anti-terrorist” legislative measures. In asserting the existence of “a public emergency” in the UK, the government stated that:

*[t]here exists a terrorist threat to the United Kingdom from persons suspected of involvement in international terrorism. In particular, there are foreign nationals present in the United Kingdom who are suspected of being concerned in the commission, preparation or instigation of acts of international terrorism, of being members of organisations or groups which are so concerned or of having links with members of such organisations or groups, and who are a threat to the national security of the United Kingdom.*¹³

On 13 November 2001 the UK government introduced the Anti-terrorism, Crime and Security Bill, the legislative precursor of the Anti-terrorism, Crime and Security Act 2001 (ATCSA). The ATCSA was enacted on 14 December 2001, barely a month after draft legislation had been laid before Parliament. Such a rushed legislative process raises doubts as to the thoroughness, adequacy and effectiveness of the legislative scrutiny that the ATCSA was afforded by the UK Parliament.

The ATCSA considerably extended the powers of the state. It provided for the forfeiture of terrorist property and freezing orders for terrorist assets and funds. It gave police greater powers to identify terrorist suspects in areas such as fingerprinting and photographing. It also introduced vague offences, such as having “links” with a member of an “international terrorist group”.

However, it was the now-lapsed Part 4 of the ATCSA that posed the gravest threat to human rights. It empowered a government Minister to certify foreign nationals, who could not be deported or removed from the UK, as “suspected international terrorists” and a “national security risk”. Once certified, such people could be detained indefinitely without charge or trial on the basis of secret intelligence that the detainees or their lawyers could not see and could therefore not challenge effectively. The reason such people could not be deported or removed is that the UK authorities recognized that this would put them at risk of torture or other ill-treatment or denial of fair trial in the countries to which they would be sent.

These internment provisions, under Part 4 of the Act, were discriminatory, draconian and unlawful – and a disturbing echo of the disastrous internment of the early 1970s that proved so counter-productive in the context of the conflict in Northern Ireland. Internment is inconsistent with the right to liberty guaranteed under international human rights treaty provisions by which the UK is bound. As a result, the UK was forced to derogate from Article 5(1) of the ECHR and Article 9 of the International Covenant on Civil and Political Rights

¹³ See *The Human Rights Act 1998 (Designated Derogation) Order 2001, No. 3644*, which came into force on 13 November 2001.

(ICCPR). The UK remains the only country in the Council of Europe that derogated from these standards in the aftermath of September 2001.¹⁴

2.5.1. Proceedings before the Special Immigration Appeals Commission: a veneer of legality

In 1997, following the judgment by the European Court of Human Rights in the case of *Chahal v United Kingdom*, the UK authorities established the Special Immigration Appeals Commission (SIAC). This is an immigration tribunal, empowered to hear appeals by foreign nationals against being issued with deportation orders on grounds that they pose a threat to the “national security” of the UK, and that their presence in the UK is not conducive to the public good. SIAC was also empowered to conduct closed hearings -- from which the deportee and their counsel of choice would be excluded, and at which the Home Secretary is allowed to present secret intelligence information -- so as to ensure the protection of “national security”.

Under immigration powers, the UK authorities are entitled to detain people pending deportation. Thus, commonly people issued with deportation orders on national security grounds are detained pending the outcome of their appeal against deportation to SIAC. Those who lose their appeal can normally be removed from the UK. Those who succeed are released from detention.

The ATCSA gave SIAC new powers. But the real difference between the ordinary SIAC procedure and SIAC regime under the ATCSA was that the outcome for those who lost their appeal was indefinite detention without charge or trial.

The UK government described Part 4 of ATCSA as exceptional immigration powers. It claimed that ATCSA proceedings before SIAC were civil in nature, rather than being provisions of domestic criminal law. The UK government maintained that the appeals against certification as “suspected international terrorists” were immigration proceedings. Amnesty International objected to this reasoning from the beginning for a number of reasons. As the UK government recognized, a suspicion of international terrorism is one of a criminal nature. The fact that the regime under Part 4 of the ATCSA was based on the definition of terrorism provided in the Terrorism Act 2000, a piece of criminal legislation, made this conclusion inescapable.

More importantly, Amnesty International considers that the Home Secretary’s certification of the internees as “suspected international terrorists” amounted to a “criminal charge”, and its actual and potential effect were “criminal” in nature. In determining whether a charge and proceedings are “criminal” in nature, international human rights law, including

¹⁴ Subsequent to the Law Lords’ ruling in December 2004 (see below) which quashed the derogation order and concluded that section 23 ATCSA was incompatible with the right to liberty and the prohibition of discrimination, the UK government withdrew its derogation from the ECHR and the ICCPR.

the jurisprudence of the European Court of Human Rights,¹⁵ considers not only the domestic qualification of a “charge” and its consequences as “criminal” or not, but the nature of the “charge” and the nature and severity of the potential and actual penalties. It considers whether the charge and/or the proceedings are capable of leading to the deprivation of liberty of the individuals concerned for an appreciable length of time, thereby being seriously detrimental to the person. From the beginning and irrespective of their categorization under UK law, given the nature of the charge (“suspected international terrorist”), the potential penalty (i.e. potentially indefinite detention) and the risk thereof, Amnesty International considered that the certification of a person under the ATCSA and the proceedings before SIAC were criminal under international human rights law.

Under Part 4 of the ATCSA, SIAC was given the task of reviewing the Home Secretary’s decision to certify that someone was a “suspected international terrorist”. The detainees were allowed to appeal the Home Secretary’s decision to label them “as suspected international terrorists” to SIAC.

The “appeal” procedure before SIAC allowed the Home Secretary to introduce secret intelligence before SIAC in closed hearings from which the detainees and their lawyers of choice were excluded. The detainee was allocated a Special Advocate, a security-cleared lawyer who was given access to the secret intelligence and the secret hearings. However, the Special Advocate was not allowed to tell the detainee what the secret intelligence was. The cumulative effect of this was to deny the detainee the right to a defence.

The procedure made a mockery of fundamental fair trial principles. As the Chairman of the UK parliamentary Constitutional Affairs Committee stated in April 2005: “The Special Advocate system lacks the most basic features that make for a fair trial.”

In 2003 an Amnesty International representative observed several hearings of the appeals that 10 men brought against certification and their indefinite detention without charge or trial. In October 2003 SIAC dismissed the 10 appeals. In light of its monitoring of the hearings, Amnesty International concluded that SIAC appeals amounted to a perversion of justice.

Despite the lack of compliance with fundamental due process guarantees, in March 2004 SIAC ruled that the case for detaining a Libyan man as a “suspected international

¹⁵ Since its judgment in the case *Engel v. Netherlands*, the European Court of Human Rights has established that, under the Convention, there exists an autonomous meaning of the term “criminal” applicable to any proceedings instituted to determine the veracity of an accusation, irrespective of the way in which such proceedings are characterized domestically. One of the criteria established by the European Court in *Engel v. Netherlands* to determine whether proceedings are “criminal” for Convention purposes hinges on the severity of the potential penalty. In the context of the Convention jurisprudence, this criterion is often decisive, especially when deprivation of liberty is at stake. If, in light of the test established by the Court in *Engel*, the proceedings in point are criminal, then all the due process guarantees applicable in the context of criminal proceedings should be accorded to the individual concerned. See, *Engel v. Netherlands* (1979-80) 1 E.H.R.R. 647.

terrorist” under ATCSA was “not established”, and that some of the authorities’ assertions had been “clearly misleading”, “inaccurate” and “unreasonable”. He was the only person to win an appeal against certification under ATCSA.

Amnesty International campaigned for the repeal of Part 4 of ATCSA from its enactment. It believed the law effectively allowed non-UK nationals to be treated as if they had been “charged” with a criminal offence, “convicted”, and “sentenced” to an open-ended term of imprisonment though they had never had a trial. The law thus created a shadow criminal justice system for non-UK nationals that did not provide the same rights as the ordinary criminal justice system. Amnesty International reiterated time and time again the fundamental principle that no one should be detained unless they are promptly charged with a recognizably criminal offence and tried within a reasonable period in fair proceedings. It also insisted that because these powers could only be applied to non-UK nationals, Part 4 of ATCSA was discriminatory.

Given the gravity of the human rights violations to which the implementation of the ATCSA regime had given rise, in a rare step, in 2004 Amnesty International intervened in an appeal against the lawfulness of the Part 4 regime before the Appellate Committee of the House of Lords (the Law Lords) – the highest court in the land.¹⁶ Another human rights non-governmental organization, the London-based Liberty, also intervened. Both organizations invited the Law Lords to find that the indefinite detention of non-nationals under Part 4 of ATCSA violated fundamental human rights.

On 16 December 2004, in a landmark judgment, the Law Lords ruled that detention under Part 4 of ATCSA was discriminatory and incompatible with the right to liberty.¹⁷

Amnesty International again urged the UK authorities to repeal the legislation and release all detainees immediately unless they were promptly charged with a recognizably criminal offence. The then newly appointed Home Secretary stated that the provisions of ATCSA in question would remain in force until Parliament agreed the future of the law, and that therefore he would not order the detainees’ release.

A few weeks later the Home Secretary indicated that the government accepted the Law Lords’ ruling, and would introduce fresh legislation. This was to be the Prevention of Terrorism Act 2005, enacted in March 2005 – the same month Part 4 of ATSCA lapsed.

While the Law Lords’ ruling of December 2004 vindicated Amnesty International’s and many others’ criticisms of ATCSA, it came only after people had been detained without charge or trial in harsh conditions for three and a half years.

¹⁶ Edward Fitzgerald, QC, Phillippa Kaufmann and Ruth Brander, barristers at Doughty Street Chambers, authored, *pro bono*, the organization’s written submissions. Amnesty International was also represented by Richard Stein, solicitor of Leigh, Day & Co. solicitors, who also acted *pro bono*.

¹⁷ *A (FC) and others (FC) (Appellants) v. Secretary of State for the Home Department (Respondent)*, [2004] UKHL 56.

2.5.2. The legal battle to stop the government from adducing evidence obtained through torture

...there are certainly circumstances where we may get intelligence from a liaison partner where we know, not least through our own Human Rights monitoring, that their practices are well below the line. But you never get intelligence which says, 'here is intelligence and by the way we conducted this under torture'... It does not follow that if it is extracted under torture, it is automatically untrue.

UK Foreign Secretary, 11 November 2004

“... torture is torture whoever does it, judicial proceedings are judicial proceedings, whatever their purpose – the former can never be admissible in the latter.”

Commissioner for Human Rights of the Council of Europe, June 2005

In July 2003, in the course of an appeal before SIAC against the certification of someone under ATCSA as a “suspected international terrorist”, an MI5 (security services) witness said that it was possible that information extracted under torture could be assessed as reliable by MI5. As a result, the witness said, the information could be relied upon by the Home Secretary in the context of SIAC proceedings.

On 29 October that year SIAC ruled that such “evidence” was not only admissible in judicial proceedings but could also be relied on by SIAC in reaching judgment. An appeal by 10 ATCSA internees was lodged against this shocking decision, which contravened a core safeguard against torture.

On 11 August 2004, in a disturbing judgment, the Court of Appeal of England and Wales, the second highest court in the country, dismissed the appeal. It ruled that the ATCSA permitted – indeed required – that information procured by means of torture could be admitted as evidence in UK courts, so long as its officials neither committed nor connived in the torture.

Amnesty International condemned the ruling, which amounted to outsourcing torture. It said that the Court of Appeal had shamefully abdicated its duty to uphold human rights and the rule of law, and that the judgment effectively encouraged torture by agents of foreign states. This view was echoed by many others.

The ruling also brought domestic law into conflict with the UK’s international obligations flowing from the absolute prohibition of torture or other ill-treatment. Article 15 of the Convention against Torture states: “Each state party shall ensure that any statement which is established to have been made as a result of torture shall not be invoked as evidence in any proceedings, except against a person accused of torture as evidence that the statement was made.”

In November 2004 the Committee against Torture also expressed concern about the ruling. It recommended that the UK authorities should not “rely on or present in any proceeding evidence where there is knowledge or belief that it has been obtained by torture”. Terry Davis, the Secretary General of the Council of Europe, said in October 2005:

European governments should not condone torture in other parts of the world. Information obtained under torture must never, under any circumstances, be accepted as evidence in judicial proceedings, regardless of where or by whom they were obtained... Any suggestion to change the Convention [ECHR] on this point endangers not only our rights, but also our security.

Rather than complying with this recommendation, or responding positively to the widespread criticism, the UK authorities sought to defend the Court of Appeal’s ruling before the Law Lords.

Eventually, in December 2005, the UK government lost its legal battle to reverse the total ban on the admissibility in judicial proceedings, as “evidence”, of information obtained through torture. In the case *A and others (Appellants) (FC) and others v. Secretary of State for the Home Department (Respondent) (Conjoined Appeals)*,¹⁸ seven Law Lords unanimously confirmed that such evidence is inadmissible. They also ruled that there was a duty to investigate whether torture had taken place, and to exclude any evidence if the conclusion was that it was more likely than not that it had been obtained through torture. As a result of the judgment, the cases of the 10 internees were to be referred back to SIAC for its reconsideration of the “evidence”.

In the leading opinion in the case, Lord Bingham of Cornhill, the Senior Law Lord, stated:

The issue is one of constitutional principle whether evidence obtained by torturing another human being may lawfully be admitted against a party to proceedings in a British court, irrespective of where, or by whom, or on whose authority the torture was inflicted. To that question I would give a very clear negative answer. ... The principles of the common law, standing alone, in my opinion compel the exclusion of third party torture evidence as unreliable, unfair, offensive to ordinary standards of humanity and decency and incompatible with the principles which should animate a tribunal seeking to administer justice. But the principles of the common law do not stand alone. Effect must be given to the European Convention, which itself takes account of the all but universal consensus embodied in the Torture Convention.

The Law Lords’ decision is highly relevant to forthcoming proceedings before SIAC and to the admissibility of “evidence” in hearings under the Prevention of Terrorism Act 2005 concerning the imposition of “control orders” (see below). Therefore, Amnesty International

¹⁸ [2005] UKHL 71, 8 December 2005.

considers it necessary to point out that, in a number of respects, the Law Lords' judgment gave cause for concern. In particular, the majority of four of the seven Law Lords ruled that such evidence should be excluded if the SIAC considers that it is more likely than not that the evidence was obtained by torture. As Lord Bingham states in his minority opinion: "This is a test which, in the real world, can never be satisfied. The foreign torturer does not boast of his trade."

Amnesty International had coordinated a coalition of 14 international and domestic organizations in making a joint intervention in the case by making written and oral submissions to the Law Lords, asking them to overturn the Court of Appeal's judgment.¹⁹ Other domestic and international organizations intervened separately. In the intervention to the UK's highest court, the lawyers representing the coalition put forcefully the argument that under international law torture is absolutely prohibited in all circumstances, and that no statement obtained through torture or other ill-treatment should ever be admitted as evidence except in proceedings against torturers.²⁰

2.6. Treatment of alleged terrorist suspects

On 19 December 2001, nine men were arrested under Part 4 of ATCSA early in the morning by dozens of police officers, traumatizing their wives and children. Reports at the time indicated that some of those arrested and their families were roughly and rudely treated. The detainees were immediately taken to high security prisons. Subsequently others were arrested and detained under these provisions.

In all, 16 foreign nationals were interned at various times under Part 4 of ATCSA. Most were detained for more than three years under severely restrictive regimes in two high security prisons (Belmarsh and Woodhill) and at Broadmoor high security psychiatric hospital. Amnesty International repeatedly expressed concern about the harsh conditions of detention, and the impact that both the conditions of detention and its indefinite nature were having on the men's mental and physical well-being. During a visit by Amnesty International delegates to Belmarsh in June 2002, some of the detainees described their situation as "mental torture" because they did not know for how long they would be held and the reasons why.

¹⁹ In addition to Amnesty International, the other organizations making up the coalition were the Advice centre on Individual Rights in Europe (The AIRE CENTRE), the Association for the Prevention of Torture, British Irish Rights Watch, The Committee on the Administration of Justice, Doctors for Human Rights, Human Rights Watch, The International Federation for Human Rights, INTERIGHTS, The Law Society of England and Wales, Liberty, the Medical Foundation for the Care of Victims of Torture, REDRESS and the World Organisation against Torture.

²⁰ The coalition was represented in this case, *pro bono*, by Keir Starmer QC, Mark Henderson, Joseph Middleton, Peter Morris, Laura Dubinsky and Professor Nicholas Grief, all barristers at Doughty Street Chambers, and Richard Stein, Jamie Beagent, Rosa Curling and Jo Hickman of Leigh Day & Co Solicitors.

2.6.1. Cruel, inhuman and degrading treatment in Belmarsh prison

Most of the ATCSA detainees were held in the High Security Unit (HSU) in Belmarsh between December 2001 and March 2002. The HSU is a prison within the prison. The cells are small with restricted natural light. Detainees are kept in their wing and can communicate only with detainees in the same wing, except during religious worship. Amnesty International refers to this restriction of movement and association as “small-group isolation”.

During their initial detention in the HSU, the ATCSA detainees were locked in their cells 22 hours a day and in the two hours out of their cell they were subjected to “small-group isolation”. Many of these aspects of the HSU regime violate international human rights standards: the lack of adequate association time and activities in communal areas; the lack of educational, sport, and other meaningful activities and facilities; and the lack of access to open air, natural daylight and exercise in a larger space.

In March 2002 the ATCSA detainees were decategorized from Category A “high risk” to Category A “standard risk” and transferred to House Block 4 in Belmarsh. When Amnesty International delegates visited the detainees in June 2002, the detainees said they were still being locked up 22 hours a day; that they were denied adequate health care; and that they were only allowed “closed” visits with their families (when a glass screen separates the detainee from family).

Amnesty International concluded that those held at Belmarsh were suffering conditions that amounted to cruel, inhuman and degrading treatment, and that the conditions had led to a serious deterioration of their physical and mental health.

In a report published in 2003, after visiting the ATCSA detainees in February 2002, the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) noted allegations that the detainees had been subjected to verbal abuse; expressed concern about the detainees’ lack of access to legal counsel; and remarked that the detention regime and conditions of the ATCSA detainees should take into account the fact that they had not been accused or convicted of any crime, and the indefinite nature of their detention.²¹

After its second visit to the ATCSA detainees in March 2004, in a report published in June 2005, the CPT expressed detailed concerns about some of the detainees. For example, it mentioned the circumstances of a 39-year-old Algerian man, referred to only as “P” for legal reasons, who is disabled and who at the time of the visit was interned in Belmarsh prison. He has had both forearms amputated, so he needs help with going to the toilet and other tasks. The CPT, reporting on his detention in Belmarsh prison, stated that “he did not always receive the necessary assistance. Moreover, his mental state had deteriorated seriously as a result of his detention, leading to both severe depression and post-traumatic stress disorder.” The CPT also noted:

²¹*Report to the Government of the United Kingdom on the visit to the United Kingdom carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 17 to 21 February 2002, CPT/Inf (2003) 18, 12 February 2003 .*

Detention had caused mental disorders in the majority of persons detained under the ATCSA and for those who had been subjected to traumatic experiences or even torture in the past, it had clearly reawakened the experience and even led to the serious recurrence of former disorders. The trauma of detention had become even more detrimental to their health since it was combined with an absence of control resulting from the indefinite character of their detention... For some of them, their situation at the time of the [CPT] visit could be considered as amounting to inhuman and degrading treatment.²²[emphasis added]

In October 2004, 12 senior doctors concluded that all the ATCSA internees they had examined had suffered serious damage to their health. They stated that the indefinite nature of their detention had been a major factor in the deterioration of their mental health and that of their spouses. The report outlines the following findings with respect to the impact of detention on family members:

There is clearly a high burden of stress imposed on wives and this is contributing negatively to their mental state. While having a husband in prison may be seen as stressful for many women their problems are seen as over and above what would normally be expected.... the following conclusions to be drawn.

- 1. All three women are showing signs of clinical depression.*
- 2. One is also showing signs of PTSD [post-traumatic stress disorder] in relation to her husbands arrest and another has a phobic anxiety state.*
- 3. Their symptoms relate directly to the incarceration of their husbands' and its indefinite nature.*
- 4. The isolation of their situation compounds their own mental health difficulties.*
- 5. Their own state fluctuates in relation to the problems which their husbands are experiencing.*
- 6. There is unlikely to be an improvement while the current situation is maintained.*

In November 2004, two internees were transferred to Broadmoor high security psychiatric hospital because of the effects of internment on their mental health.

Also in November 2004, the UN Committee against Torture expressed concern about the strict detention regime under which some internees were held at Belmarsh prison. In January 2005, the Royal College of Psychiatrists issued a statement expressing concern about the mental health of detainees held under ATCSA. The statement endorsed the October 2004 findings of the 12 senior doctors mentioned above. The Royal College of Psychiatrists also stated:

²² Report to the Government of the United Kingdom on the visit to the United Kingdom carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment from 14 to 19 March 2004, CPT/Inf(2005) 10, 9 June 2005, p.15.

the eight detainees examined do suffer from significant mental health problems. On balance, evidence points to the particular circumstances of this group's detention contributing significantly to those health problems. Our best estimate is that indeterminate detention, lack of normal due legal process and the resultant sense of powerlessness, are likely to cause significant deterioration in detainees' mental health....

we consider it unlikely that psychiatric treatment, however sophisticated it may be, can neutralize the impact of:

- separation from family, friends and supports;*
- indefinite detention without knowledge of the allegations upon which that detention is founded;*
- imprisonment on those who have pre-existing vulnerabilities arising from trauma or abuse in their home countries.*

2.7. Prevention of Terrorism Act 2005 and 'control orders'

In the wake of the ruling of the Law Lords in December 2004 that detention under Part 4 of ATCSA was discriminatory and incompatible with the right to liberty, the government failed to promptly release the internees. Instead, it waited until March 2005 for the legislative provision to lapse. However, even then, it did not respect their human rights.

Despite the fact that the government had had months to consider what to do in the event that it would lose its court battle to continue to detain non-deportable foreign nationals without charge under ATCSA, it convinced Parliament that it needed to enact another piece of anti-terrorism legislation; the Prevention of Terrorism Act 2005 (PTA 2005) was rapidly adopted and entered into force on 11 March 2005.

This legislation too is fundamentally antithetical to human rights, the rule of law and the independence of the judiciary. Amnesty International considers that the PTA 2005 also contravenes the spirit, if not the letter, of the Law Lords' judgment, replacing detention without trial under ATCSA with a regime of "control orders".

The PTA 2005 gives a government Minister unprecedented powers to issue "control orders" to restrict the liberty, movement and activities of people purportedly suspected of terrorism-related activity, whether they are UK nationals or not.

There are two forms of "control orders", derogating and non-derogating. The restrictions that can be imposed under them range from "house arrest", to tagging, curfews, controlling access to telephones and the internet, and restricting whom someone can meet or communicate with. "Control orders" are limited to a year's duration. However, they can be renewed at the end of each twelve-month period so that, effectively, they can be imposed indefinitely. Any "breach" of the restrictions imposed under a "control order" without reasonable excuse is a criminal offence, punishable by up to five years in prison.

Normally, a government Minister must apply to the courts to impose a “control order”. If the “control order” is allowed, there will automatically be a judicial review of the decision of the Minister to impose it. The “control orders” themselves and any restriction imposed under them can be challenged and the court will apply the principles of judicial review – namely that the order remains in place unless the decision to issue it was “obviously flawed”.

The Minister can also impose the first type of “control orders” – so-called non-derogating “control orders” in “emergency cases” -- when he or she has “reasonable grounds” to suspect that someone is or has been involved in terrorism-related activities, and considers it necessary to do so “for purposes connected with protecting members of the public from a risk of terrorism”. This imposition must be reviewed by the courts within seven days. Individuals subject to these orders can appeal against them on the principles of judicial review.

The second type of “control order” – so-called derogating control orders -- can be imposed on application to a judge where there is a belief that it is more likely than not that someone is or has been involved in terrorism-related activities. These orders involve “house arrest” and amount to deprivation of liberty. They are known as “derogating control orders”, as such deprivation of liberty breaches the ECHR and requires prior derogation from Article 5 of the ECHR.

Thus under the PTA 2005, the UK authorities have, in effect, retained the power to order indefinite deprivation of liberty without charge or trial on the basis of secret intelligence – only now this power applies to UK and foreign nationals alike.

Furthermore, the restrictions violate a wide range of human rights, including the right to respect for private and family life, freedom of expression, freedom of assembly and association, freedom of movement, their right to a fair trial, and their right to liberty and security of person. The cumulative effects of these restrictions may also breach people’s right to be free from torture or other ill-treatment. The restrictions under “control orders” may also infringe the right to private and family life of the relatives of the people on whom they are imposed.

Recently, Lord Carlile of Berriew QC, the independent reviewer of this legislation has noted:

On any view those obligations [the restrictions imposed under non-derogating “control orders”] are extremely restrictive. They have not been found to amount to the triggering of derogation, indeed there has been no challenge so far on that basis – but the cusp is narrow...The obligations include an eighteen hour curfew, limitation of visitors and meetings to those persons approved by the Home Office, submission to searches, no cellular communications or internet, and a geographical restriction on

*travel. They fall not very far short of house arrest, and certainly inhibit normal life considerably.*²³ [emphasis added]

The judicial review allowed after the imposition of a “control order” does not alter the arbitrary nature of the powers granted to the executive under this law. The government is allowed to present -- and the judiciary is bound to consider -- secret intelligence to deprive people of their liberty, potentially indefinitely. Since the person concerned can neither see nor hear the “evidence” used against them, the proceedings are devoid of the most basic safeguards and the person concerned is denied the right to a fair trial.

The judicial scrutiny fails in other areas too:

- the law empowers a government Minister to impose “control orders” without any prior involvement of the judiciary and not for the purpose of having the individuals concerned charged or tried with a recognizably criminal offence;
- the judiciary is empowered merely to review the Minister’s decision, rather than to make its own independent and impartial decision;
- the standard of proof required for the court’s approval of the imposition of “control orders” is significantly lower than the criminal standard of “beyond reasonable doubt”.

The Commissioner for Human Rights of the Council of Europe confirmed Amnesty International’s concerns. He said that the judicial review proceedings allowed are:

*inherently one-sided, with the judge obliged to consider the reasonableness of suspicions based, at least in part, on secret evidence, the veracity or relevance of which he has no possibility of confirming in the light of the suspect’s response to them. Quite apart from the obvious flouting of the presumption of innocence, the review proceedings described can only be considered to be fair, independent and impartial with some difficulty.*²⁴

Amnesty International is also concerned that the UK government may attempt to introduce information gleaned from places such as Bagram Airbase in Afghanistan, Guantánamo Bay and unnamed secret detention centres where people have been held without any legal basis in US custody and allegedly subjected to torture or other ill-treatment.

“Control orders” can be based on secret intelligence not disclosed to the people concerned or to their legal counsel of choice. If the court agrees with the Home Secretary that in the interest of “national security” the “evidence” should not be disclosed to the person

²³ *First Report of the Independent Reviewer Pursuant to Section 14(3) of the Prevention of Terrorism Act 2005*, 2 February 2006.

²⁴ *Report by Mr Alvaro Gil-Robles, Commissioner for Human Rights, on his visit to the United Kingdom, 4-12 November 2004*, CommDH (2005)6, 8 June 2005, p.11.

concerned or to their legal counsel of choice, then a Special Advocate is appointed who is able to participate in the secret closed proceedings. However, in the same way as with the ATCSA proceedings, the Special Advocate is not allowed to tell the person concerned what the secret intelligence is, nor receive instructions from them. The cumulative effect of this is to deny those subjected to “control orders” the right to a defence.

The PTA 2005 allows the stripping of a person’s right to a fair trial, including:

- the right to be informed promptly and in detail, of the nature and cause of the accusations against oneself;
- the right to trial within a reasonable time or to release pending trial;
- the right to the presumption of innocence which applies to all persons charged with a criminal offence, including during times of emergency, and requires the state to prove the charge “beyond reasonable doubt”;
- the right to equality before the law and equal protection of the law without any discrimination;
- the right to have a criminal charge against oneself determined by an independent tribunal which has the quality of finality and determinativeness; and
- the right to defend oneself in person or through legal assistance of one’s own choosing.

Amnesty International considers that the imposition of “control orders” is tantamount to a government Minister “charging”, “trying” and “sentencing” a person without the fair trial guarantees required in criminal cases. Like ATCSA, the PTA 2005 is an assault on human rights protection, the independence of the judiciary and the rule of law. It allows for the imposition of a punishment of a criminal nature without guaranteeing the right to a fair trial. Its implementation has given rise to serious human rights violations. Amnesty International continues to call for the PTA’s repeal.

In relation to non-derogating control orders, the Commissioner for Human Rights of the Council of Europe expressed his “concern over the introduction of orders obviating the need to prosecute and circumventing the essential guarantees that criminal proceedings provide.”²⁵ He added that, “Control orders raise not only general points of constitutional principle concerning the rule of law and the separation of powers, but also a number of specific concerns regarding their compatibility with the rights guaranteed by the ECHR.”

The UK parliamentary Joint Committee on Human Rights has also expressed concern. Its latest report on the PTA 2005 published on 14 February 2006 states:

²⁵ *Report by Mr Alvaro Gil-Robles, Commissioner for Human Rights, on his visit to the United Kingdom, 4-12 November 2004, CommDH (2005)6, 8 June 2005, p.9.*

The Committee's overall conclusion on this matter is that it has significant concerns about whether, in the absence of sufficient safeguards, this regime of control orders is compatible with the rule of law and with well-established principles governing the separation of powers between the executive and the judiciary. It also expresses its doubt as to whether the continuation in force of the control orders regime is compatible with Articles 5(4) and 6(1) ECHR, and says that on this ground alone it seriously questions the renewal of the Act without Parliament's first debating and deciding whether the special exigencies of the current security situation justify the extraordinary exceptions to traditional English principles of due process and what amounts to a de facto derogation from Articles 5(4) and 6(1) ECHR.²⁶

On 11 March 2005, on the same day that the power to intern people under ATCSA lapsed, within hours of the PTA 2005 being rushed through parliament and entering into force, "control orders" were imposed on 10 people who had previously been detained without trial under ATCSA. Lord Carlile has recently reported that between the entering into force of the PTA and the end of 2005, 18 people have been subjected to "control orders".

However, by the end of 2005 only nine orders were still in force, including one that had been imposed on a UK national.²⁷ This is because nine men were served on 11 August 2005 with deportation orders.²⁸ Those nine were formerly detained under ATCSA.²⁹ Their "control orders" were revoked at the end of August following their detention under immigration powers to enforce their deportation on national security grounds (see below).³⁰

²⁶ *Counter-Terrorism Policy and Human Rights: Draft Prevention of Terrorism Act 2005 (Continuance in force of sections 1 to 9) Order 2006*, Twelfth Report of Session 2005–06 (HL122/HC915), 14 February 2006.

²⁷ *First Report of the Independent Reviewer Pursuant to Section 14(3) of the Prevention of Terrorism Act 2005*, 2 February 2006, p. 4.

²⁸ *Ibid.*

²⁹ *Ibid.*

³⁰ *Ibid.*

2.7.1. The case of Mahmoud Abu Rideh

Mahmoud Abu Rideh is a 33-year-old stateless Palestinian refugee and a torture survivor. He is married with five children. He has lived in the UK since 1997. He was originally arrested and detained under ATCSA in December 2001, and held initially at Belmarsh high security prison in south London. Mahmoud Abu Rideh suffers from a severe form of post-traumatic stress disorder. The harsh detention conditions, when he was locked up for up to 22 hours each day, triggered frequent flashbacks of his torture; he started to self-harm, and attempted to take his own life on at least four separate occasions. He also suffers from sciatica, which had worsened during his confinement at Belmarsh forcing him to use a wheelchair at the time. After having been held in detention for more than three years, Mahmoud Abu Rideh was "released" under a "control order" under the PTA 2005 in March 2005. He remains seriously ill.

On 17 November 2005, Mahmoud Abu Rideh met with representatives from Amnesty International, including Kate Allen, the Director of Amnesty International UK, at his home in the UK. During the visit, he expressed his fear at the actions of the UK authorities, and his worry over the effects this is having on his family.

If I could go back, I would go back to Palestine tomorrow. I've never been interviewed or questioned. This was the first time I've been arrested. They say I am a terrorist, but they've never presented any evidence [of this] to me in all these years. They treat me like a criminal. In fact, they treat criminals better. The Home Office says I've breached my conditions. I don't know what's going to happen. Since 2001 they've been saying they can't deport me, now I don't know. They are now deporting the others [i.e. the former internees] who face the same conditions.

Mahmoud Abu Rideh had been held in Belmarsh prison for more than six months in 2002. His mental health deteriorated to such an extent that he was transferred to the high-security Broadmoor psychiatric hospital in July 2002, although experts deemed it was clinically inappropriate to place him in an institution responsible for caring for dangerous and violent patients.

Concerning his time in detention, Mahmoud Abu Rideh said: *There were many racist incidents at Broadmoor and Belmarsh. I have plenty of witnesses who saw what happened to me, and I want to ask the government to investigate these incidents.*

Mahmoud Abu Rideh described what it is like to be "at liberty" under a "control order": *I can't sleep. I spend all my time in the house. I don't go outside much; I'm just not up to it. I can't visit family or friends and [they won't come here] because they are too frightened. They are afraid of their names being given to the Home Office.*

At first, I had to call in every morning at 4.30am. I couldn't sleep. I had to take sleeping pills. I asked the Home Office to change this, and they changed it to 5am. I still can't sleep. It's quite upsetting for my wife and children.

I've asked to go to the mosque for an hour every day. [The Home Office] didn't reply. I ask things of the Home Office, and they don't reply. We keep going around in circles. I've asked [the Home Office] to have my travel documents [as a refugee living in the UK] renewed but they refused, saying I was involved in 'extremist activities in the UK and overseas' but I have never been questioned or charged with anything. Every time [things start

to seem better], *they pass an exception to the law.*

Mahmoud Abu Rideh's wife expressed her worry about her husband and her family during this ordeal: *All this stress, all the time. We have five kids, but we are here alone [without extended family support]. We're worried about our children. They don't like to see the police come, and they were coming often to check if we had electronic equipment or access to the internet. I can't leave my husband by himself, he's very unwell. All the time we're under stress. If [my husband] is guilty, then charge him. If not, then leave him alone.*

Mahmoud Abu Rideh continues to live in his home in the UK with his wife and family under a "control order". He has never been charged with a crime, nor questioned in relation to any alleged crime.

2.8. After the London bombings: new measures threaten human rights

We can't support a wide and vague offence that allows glorification of terror to become a crime. What on earth does that mean? One person's terrorist is another's freedom fighter... This is a dangerous proposal hard to define in theory, unworkable in practice and putting freedom of speech at risk.

Mark Oaten MP, the then Liberal Democrats' home affairs spokesperson,
22 September 2005

Fifty-two people were killed and hundreds of others wounded as a result of four bomb attacks on London's transport system on 7 July 2005. Another series of serious security incidents took place on 21 July 2005. At least four people were subsequently charged with offences in connection with the 21 July events.

On 5 August 2005 the Prime Minister announced a 12-point plan concerning a "comprehensive framework for action in dealing with the terrorist threat in Britain". He declared: "Let no one be in any doubt. The rules of the game are changing." He said his proposals were "necessary" and that administrative measures that did not need primary legislation would be put in place "with immediate effect". The statement, taken as a whole and combined with the answers he provided subsequently, amounted to a serious attack on human rights protection, the rule of law and the independence of the judiciary.

The Prime Minister's plan included: deporting people to countries where torture or other ill-treatment are known to be practised on the basis of "diplomatic assurances"; new grounds for deportation and exclusion; new offences criminalizing "indirect incitement of terrorism"; automatic refusal of asylum to persons deemed to be associated with terrorism; and significantly extending the maximum time limit of pre-charge detention of persons held under anti-terrorism legislation.

At the time, Amnesty International expressed concern that some of the announced proposals would threaten the independence of the judiciary and undermine the rule of law and fundamental human rights in the UK. The organization was also disturbed that the Prime Minister criticized the decisions of domestic courts to strike down deportation orders in cases where the individuals concerned faced expulsion to a country where there would be a real risk of torture or other ill-treatment.

2.9. Undermining the right to seek and enjoy asylum

Amnesty International expressed concern that the Prime Minister's announcement on 5 August threatened the right to seek and enjoy asylum. Any intention to exclude someone from refugee status should be considered in the context of regular refugee status determination procedures, and should be subject to fundamental principles of procedural fairness, including the right to appeal against the decision to exclude, and to remain in the UK while that appeal is being considered.

Amnesty International is concerned that persons may be excluded, who have been involved in acts of armed political groups or any other political activities which are not of such nature and severity that they currently should be excluded from refugee status under the 1951 UN Convention relating to the Status of Refugees (Refugee Convention) and its 1967 Protocol. In any event, even where someone is excluded from refugee status under the Refugee Convention, the UK authorities are nonetheless bound by customary international law and provisions set out in, *inter alia*, the Convention against Torture and the ECHR, to respect the principle of non-*refoulement*, i.e. the principle inherent to the prohibition of torture or other ill-treatment according to which a person should never be sent anywhere where she or he risks being subjected to torture or other ill-treatment. The protection against *refoulement* applies to all individuals, irrespective of whatever offence they may have committed or are suspected of having committed.

In December 2005, the Office of the United Nations High Commissioner for Refugees (UNHCR) made comments on the Immigration Asylum and Nationality Bill 2005 (IAN) -- the fourth piece of legislation in this area by this government. UNHCR's comments focussed on a particular clause of the Bill, then Clause 52. The Clauses "Refugee Convention: Construction" and "Refugee Convention: Certification" are the vehicle chosen by the UK government to implement the Prime Minister's intention to deny asylum to people deemed to be associated with terrorism.

While emphasizing that the Refugee Convention "provides the appropriate tools to ensure that refuge is not provided to terrorists", UNCHR expressed concern that the then Clause 52 of the Bill may give rise to an overly broad application of the exclusion clauses of the Convention "with the result that certain persons, who do not fall within the scope of the exclusion clauses, are denied the benefit of international protection". In this regard UNHCR noted that:

Indeed, the assertion in [UN] Security Council resolutions that an act is “terrorist” in nature would not by itself suffice to warrant the application of Article 1F (c) [one of the Refugee Convention exclusion clauses], especially, as there remains no universally accepted legal definition of terrorism at the international level. As such, the absence of such a definition further justifies the need to adopt a restrained approach in determining the applicability of Article 1F (c).

...

UNHCR remains concerned that an automatic and non-restrictive use of Article 1F(c) to all acts designated as “terrorist” may result in a disproportionate application of the exclusion clause, in a manner contrary to the overriding humanitarian object and purpose of the 1951 Convention.

The current Clause 7, entitled “Deportation”, would also be applicable to people deemed to present a threat to national security. It provides for the national security case against the appellant to be heard before SIAC after the appellant has been removed from the UK. While the appellant can appeal from within the UK, before removal, on the grounds that removal would breach her or his human rights, she or he cannot appeal against refusal of asylum at this stage. Such an appeal would be considered together with the out-of-country, post-removal, appeal against the claim that the appellant is a risk to national security.

Amnesty International remains concerned that the IAN Bill -- currently being discussed in parliament -- contains provisions which, if enacted, would undermine one of the core aims of the UN Refugee Convention: to provide international protection for people seeking asylum on grounds of political persecution.

2.10. Locked up again pending deportation on national security grounds

In August 2005, following the UK government signing a Memorandum of Understanding (MoU) with Jordan (see below for a fuller discussion of this issue), 10 people were arrested and detained pending deportation on national security grounds. At least eight of them were former internees who had previously been held under Part 4 of ATCSA (see the cases of “A”, “G” and “H”). Since then, other foreign nationals have also been served with deportation orders on national security grounds, and held under immigration powers pending deportation, including seven Algerians who were arrested and detained in September 2005. Among them are four men who had been acquitted in a UK court of planning an attack using ricin. Jurors involved in the case told the London-based newspaper *The Guardian* that they were angry that their verdicts were ignored and were concerned that the men would face torture or death if deported to Algeria. One juror said, “If anyone has grounds for asylum in this country, it is these men.”

Amnesty International understands that, as of November 2005, 29 people were detained awaiting deportation as a “threat to national security”,³¹ and that they would risk torture or other ill-treatment upon their deportation from the UK.

They have the possibility of appealing the notice of deportation to SIAC. In any such challenge, the Home Office must persuade SIAC that deportation would not expose the person concerned to a breach of Article 3 of the ECHR, which prohibits torture or other ill-treatment.

³¹ The Home Secretary, Charles Clarke MP, stated on 22 November 2005 that “Notices of intention to deport where we would need to rely on assurances from the received state have been served on 29 individuals whose presence has been assessed to be a threat to national security”, see the reply given by Harriet Harman QC, the Solicitor General, cited in the Minutes of Evidence taken before the Joint Committee of Human Rights, 16 January 2006.

2.10.1. The case of "A"

"A" is a 36-year-old Algerian man, referred to as "A" for legal reasons, married with five children. He was arrested and detained by the UK authorities under Part 4 of ATCSA in December 2001. He was held in Woodhill high security prison, Buckinghamshire, without charge, until he was "released" from detention in March 2005. His "release" was followed by the imposition of severe restrictions on him under a so-called "control order" pursuant to the Prevention of Terrorism Act 2005. He remained under the "control order" until August 2005, when he was rearrested and detained under immigration powers pending deportation on national security grounds. During his latest detention "A" was on "suicide watch" and anti-depressant medication. Medical evidence indicated that his mental health had deteriorated as a result of being rearrested. "A" was granted "release" from detention on bail on very strict conditions amounting to "house arrest" in October 2005 partly on medical grounds.

"A" currently lives under "house arrest" with his wife and children while he awaits his appeal against the decision to deport him, anticipated to take place in March or April 2006. Amnesty International representatives, including Secretary General Irene Khan, visited "A" and his wife at their home in November 2005. The following is an account of what he said.

After the terror attacks in London on 7 July I remember telling my lawyer that I expected to be arrested. I was arrested after the 11 September attacks in New York, and so I didn't expect that things would be any different. But my lawyer insisted that it would be too scandalous. She was wrong. The police came to my home in the early morning [in August]. There were many of them and they handed me a deportation order telling me that I was liable to be detained pending deportation. They told me to pack my bags and insisted on handcuffing me before I could say good-bye to my family. After I remonstrated about this with them, they agreed to let me say farewell to my wife and children without being handcuffed.

Following my arrest, the police took me to Woodhill prison where my property was taken from me and I was strip-searched twice. As a Muslim, this was a deeply humiliating experience for me. After four or five hours, the police put me into a van with two other people, and then we travelled for hours while I was still handcuffed; I was thirsty, but was refused water. After three or four hours we arrived at Full Sutton prison. I was not allowed to contact my lawyer for nearly three days. The detention conditions were extremely bad. I would have never dreamt that such conditions existed in Britain.

"A" described the effects the "house arrest" conditions have had on him and his family. I am basically locked up at home for 24 hours a day. I cannot use the internet, and I am not even allowed into my own garden. I wear a tag so that the Home Office can monitor my movements. I have had many problems with the tagging device. The police have come to my home nearly 40 times since I was released on bail. They come because they say that the alarm from the tag has been triggered. It terrifies my children and the pressure of this situation is enormous on my family. I have a problem with depression and with high-cholesterol. I have asked the Home Office if I can see a doctor and they told me that they would arrange it in 24 hours. It has been two weeks now, and I am still waiting for approval to see a doctor.

"A"s' wife spoke of the toll that the last four years have had on her family. We have lost all sense of normality. We have had problems with [the tagging] equipment so

many times. There is always a loud knock, and then a house raid, but we live through it. We have problems that any normal family has, bringing up the kids and so on, but on top of all of this, we also have the pressure of this political and legal case. My daughter cries at the nursery all the time, she is crying for her father. My eight-year-old boy is hyper-active. I am sure that this is due to lack of discipline because his father has not been present. I am tired of all of this. I just want it to go away, but we have learned to live one day at a time. Both "A" and his wife are still waiting for the UK government to present charges against "A". Thus far, the government has only made allegations against me, allegations that have cost us the last four years.

Some of these men had already been held for years in harsh conditions under severely restrictive regimes in high security establishments without charge or trial under ATCSA. As a result, most of them, and members of their families, have suffered serious deterioration of their mental and physical health.

It has been an incredibly difficult four years for us. We have lived with the consequences of our loved ones being imprisoned indefinitely without charge or trial; we have lived under the strain of complicated and severe restrictions under control orders. Yet our loved ones have never been charged with any criminal offence. For four years we have had no peace of mind, no family life. Our lives and the lives of our children have been torn apart.

Excerpt from a "Statement on Behalf of the Families of the Deportees", 3
November 2005

In the wake of the December 2004 ruling of the Law Lords, between March and August 2005, these men had been subjected to "control orders" under the PTA 2005. Then in August 2005, inexplicably and without any prior warning, the UK executive re-arrested and re-imprisoned eight of them under immigration powers, purportedly pending their deportation on national security grounds.

Upon being re-arrested on 11 August 2005, the former internees were detained in Long Lartin prison in Worcestershire, a prison with security features and systems which operates as a dispersal prison, and Full Sutton prison near York, a maximum security prison. Both prisons were very far away from their families (for those who are married), their lawyers and crucially their doctors.

Amnesty International was deeply concerned at being informed that those detained at Long Lartin prison were placed on "suicide watch", including "G" (see below) who had been previously "released" on bail from detention under ATCSA because his mental health had been so affected by the protracted incarceration without charge.

According to the information made public at the time by their solicitors, those detained at Full Sutton prison were held in the High Security Unit that had previously been

found to be unfit for human habitation. Reports indicate that cells in that unit are even smaller than those in Belmarsh prison. In August 2005, the solicitors stated that the unit was literally covered in cobwebs, and that it remained unfit for human habitation.

Amnesty International expressed deep concern at what appeared to be the UK authorities' continued disregard of the recent serious psychiatric history of these individuals and the reasons for that history, and at the consequences which their renewed detention would almost inevitably have on their mental and physical health.

2.10.2. The case of "G"

"G" is a 36-year-old Algerian torture survivor who fled to the UK in search of refuge and protection. He is referred to only as "G" for legal reasons. He is married and has one daughter. "G" had polio as a child and suffered a permanent weakening of his right leg as a result. He suffers from a major depressive disorder. He was initially arrested and detained in the UK in December 2001 under Part 4 of ATCSA. He was held at Belmarsh high security prison in south London without charge, until April 2004 when he was granted "release" on bail under strict conditions amounting to "house arrest" because of severe mental illness as a result of being detained indefinitely. While in Belmarsh and under "house arrest" the weakening of his leg worsened, reportedly as a result of poor access to appropriate healthcare and his inability to exercise. In March 2005, a "control order" under the PTA 2005 was imposed on him with conditions much the same as the ones imposed following the grant of bail. Under a "control order" -- eventually relaxed slightly -- he was given more access to physiotherapy and to exercise, and therefore he was able to walk using crutches. He then continued to live under "house arrest" until he was re-arrested and detained under immigration powers pending deportation on national security grounds in August 2005. He was detained at Long Lartin prison, Worcestershire, where he made a serious attempt on his life. In October 2005, due to severe depression manifested in suicidal tendencies, SIAC ordered his "release" on bail on exceptional medical grounds. "G"'s fear of being forcibly returned to Algeria was accepted as a factor in his worsening health. He remains at home, once again under strict "house arrest" bail conditions. The weakening of his leg has worsened, yet again as a result of the inadequate access to healthcare, and when Amnesty International's representative met him, he told them that he was using a wheelchair. He is currently awaiting his appeal against the decision to deport him.

Amnesty International representatives, including Secretary General Irene Khan, met "G" and his wife at their home in November 2005. The following is an account of what "G" said.

I was re-arrested in August 2005 when more than 50 immigration, police, and special officers came to my home at 6am. Seven to 10 officers came inside the house while the rest waited in the street with four police vans. The police refused to let me phone my lawyer and also refused to tell me or my wife where they planned to take me. I don't understand why the police had to come at that time in the morning and why so many of them came. After all, I was already under 24-hour surveillance and house arrest. I was always strictly monitored.

Following my arrest, the police took me to Long Lartin prison where I was detained from August to October 2005. When I arrived at Long Lartin, I was told I could only make one phone call: to my lawyer or to my wife. After phoning my lawyer, I was taken to my cell which was extremely small and ill-suited to accommodate me and my wheelchair. I was therefore forced to reduce the width of my wheelchair in order to enter and exit the one-metre wide corridor directly outside of my cell. I ended up using my belt which I tied around the wheelchair seat. As I was unwell, I was transferred to the health care wing where I was prohibited from talking to any other patients, not allowed to talk to anyone; no association with any other patients!

Medical evidence, presented during a bail application, described "the prolonged distress, with

physical symptoms, which "G"'s travails were having on his wife and their daughter". "G" and his family now live under strict "house arrest" conditions while they await the hearing for his deportation, anticipated to take place in March or April 2006. "G" recounted his bail conditions and the effects of them on himself and his family.

My bail conditions forbid me to use a mobile phone and other electronic equipment. I am not allowed to talk to anyone outside of my wife and child and others that have received clearance from the Home Office. Although I have access to my garden (albeit for a limited portion of the day) I fear that if I reply to any one of my neighbours saying hello to me I will be in breach of my bail conditions. So, I don't even go out in the garden. Every night I fear that the police will come and arrest me again. I feel like I have lost all access to a normal life. I can no longer continue my studies and I continue to suffer from major depression. My physical state continues to suffer as well because I am unable to access the appropriate physiotherapy equipment while I am restricted to the confines of my home. The consequences of the state actions taken against me over the last four years, including the threat of deportation to Algeria, have been devastating to me and my family. My wife is receiving counselling for depression. We both have a hard time trying to answer the questions that my daughter has started to ask about our situation. Our neighbours have become suspicious of the family after witnessing my re-arrest in August. My wife and I live in a state of constant fear that the police will again come to our home unexpectedly, arrest me and deport me to Algeria. I'd rather die than be sent back to Algeria. I will hang myself if [they] send me to Algeria.

Please ask Mr. Blair and Mr. Clarke whether they would accept a son of theirs being arrested and held without charge the way that it has happened to me. I want justice: the opportunity to defend myself, in a fair trial. But given what has happened in the last four years I don't expect justice. I am not even allowed to know the evidence the state claims to have against me. His wife also hopes for a fair trial and the opportunity to resume her life with her husband and daughter. She asks only one thing of the government, "give us our lives back".

To Amnesty International's knowledge most if not all of these men are asylum-seekers or refugees. So too are their families. Most of them are victims of torture, some of whom now face being sent back to the very places where they were tortured.

Despite the wide-ranging anti-terrorism laws in the UK, at no point have these men been questioned, tried or found guilty in a court of law in the UK of an offence in connection with the authorities' claims since their detention under ATCSA. Nonetheless, the government maintains that they are "suspected international terrorists" and a "threat to national security". It makes such an assertion notwithstanding the fact that it has stated before the courts that in respect of all the former internees there is insufficient evidence to support a criminal charge, and despite the fact that, throughout their ordeal over the years, the police, the security services or the Crown Prosecution Service have still not questioned them since their initial arrest under ATCSA. In addition, the Attorney General stated in court that even if the UK Parliament lifted its self-imposed ban on the use of telephonic intercepts in criminal proceedings, there would not be sufficient evidence to support prosecution of these men.

In January 2006, in the context of a meeting with the UK Home Secretary, Charles Clarke, to communicate the high level of concern within the Amnesty International membership world-wide about the actions of the UK, the Home Secretary told Irene Khan, the Secretary General of Amnesty International and Kate Allen, the Director of Amnesty International UK, that there was a small number of people whom the government could not prosecute because of difficulties in placing intelligence before the courts.

Up until August 2005, the UK authorities recognized, and publicly asserted, that none of them could be deported or otherwise forcibly removed from the UK owing to the UK's international and domestic obligation not to return or transfer anyone to a country where s/he would be at a risk of being subjected to torture or other ill-treatment, or other serious human rights violations.

Then, on 11 August 2005, the day after the MoU with Jordan was signed, arrests took place and these men were held, under immigration powers, pending deportation on national security grounds. The government suddenly argued that people could be held pending deportation because of the agreement with Jordan. It apparently failed to notice that only one of the detainees was Jordanian, while most of them are Algerians, and that the MoU did not make legal deportations to a country with a known record of torture or other ill-treatment (see below for a fuller discussion of this issue).

Lord Carlile of Berriew QC, the independent reviewer of "anti-terrorism" legislation, has recently commented on the fact that the UK government has revoked the "control orders" imposed on nine people (including eight of the former ATCSA detainees referred above) so that they could be deported from the UK. However, as noted by Lord Carlile, only one of them is subject to deportation to Jordan. Thus, Lord Carlile has recently stated that:

[i]n relation to the remaining eight of the nine, they are not from Jordan. There are as yet no Memoranda of UnderstandingI have a real concern about the detention under deportation procedures (even where bail has been granted) of persons who in practice cannot be deported at present and are unlikely to be capable of legally compliant deportation within a reasonable time ... It would have been far preferable for Memoranda of Understanding to have been reached before the deportation detentions took place. How long the present situation for those persons can continue may be a matter for the courts to determine. Given that there is the control order system in existence, it would be preferable for that system to be used against the persons concerned until suitable Memoranda have been achieved ... In this context it should be said that I have not been told of any failing in the control orders whilst applicable to the nine persons described, such as placed national security at risk.³²

³² *First Report of the Independent Reviewer Pursuant to Section 14(3) of the Prevention of Terrorism Act 2005*, 2 February 2006.

In spite of this, since August 2005, the UK government has claimed that there now exists a reasonable prospect of effecting the forcible removal of these men, and of others who had since been arrested, from the UK within reasonable time. The UK government has asserted that it could forcibly remove these men, relying on the “successful” conclusion of MoUs containing bilateral agreements with certain foreign governments. The UK government asserts that these agreements relieve it of its domestic and international human rights law obligations not to forcibly remove these men because the receiving countries would provide guarantees that the men would not be tortured or otherwise ill-treated upon being forcibly returned. The UK government has so far agreed MoUs with Jordan, Libya and Lebanon, and is seeking further such agreements with Algeria, Egypt and other countries in North Africa and the Middle East.

Most of them are currently detained by the authorities, who have asserted that their removal from the UK will take place within a “reasonable” time. Given the strong likelihood of appeals, the men could remain behind bars for many more months or even years.

In October 2005, “A”, “G”, and “H” were granted “release” on bail on very strict conditions amounting to “house arrest”. Their bail conditions were stricter than those imposed on them through “control orders”. Subsequently, others were also granted bail. Mahmoud Abu Rideh and another former ATCSA detainee remain subject to “control orders” and have not been served with deportation notices.

2.10.3. The case of "H"

"H" is a 33-year-old Algerian man residing in the UK with his wife who is a Somali-born UK citizen. He is referred to only as "H" for legal reasons. He has no children but cares for his wife's nieces (aged 11 and 13). In 1998, the UK government granted "H" indefinite leave to remain in the UK. In February 2002, he was first detained at Belmarsh high security prison, south London, under ATCSA until his "release" under a "control order" imposed on him pursuant to the PTA 2005 in March 2005. "H" was re-arrested on 11 August 2005 and held at Full Sutton prison, near York, until his "release" under strict "house arrest" conditions on 26 October 2005, following a grant of bail. He is allowed outside of his home for only two hours each day, and is restricted to areas within a certain perimeter. "H" suffers from post-traumatic stress disorder and depression, and was on "suicide watch" while in detention.

On 17 November 2005, "H" met with representatives from Amnesty International, including Kate Allen, Director of Amnesty International UK. He told them: *The authorities are playing politics with our lives. We don't want to get caught up in their agenda, their politics. I would like to live like a normal person. I'm not sure why I've been labelled a 'suspected international terrorist'. We're being treated worse than 'lifers' in prison. We don't want to be treated as scapegoats. If they say we've done something, they should've charged us. They're ruining everyone's lives – me, my wife's and my family's. If they've got anything against me then why not charge me through the normal criminal process?*

"H" described his arrest on 11 August 2005 and subsequent detention: *When they came, it was 6am. I had just finished my prayers. My niece was with me. It was very hard to describe, hard to explain to my nieces and my wife. I was worried about their reaction. There were three police officers and an immigration officer. They banged loudly on our front door. There was someone filming the arrest. I was handcuffed. I wanted them to hurry so the neighbours wouldn't be alerted. They wouldn't say where they were taking me, but they said I had a right to appeal. They said I was to be detained pending deportation. What I don't understand is why they had to come that way at 6am? I was wearing an electronic tag [under 24-hour surveillance]. They could always tell where I was. Why come like that at 6am?*

They took me to Woodhill first, then to Full Sutton. There were five of us in the High Security Unit. It doesn't even look like a prison; the officers call it 'the Submarine'. I was allowed legal visits, but was strip-searched before and after. I didn't want my family to visit me there; it wasn't the right place for that.

The second detention [in 2005] was very hard to take. I began taking anti-depressants, started to self-harm and was under suicide watch.

"H" explained how he felt about his "release": *I was 'released', though not really. We haven't even tasted what freedom feels like because of the bail order conditions. We've been moving from one nightmare to another. I now expect them to come, and wake up every day at 6am. I always expect them to come; they've always got something up their sleeve. There's a perimeter where I'm allowed to go [outside] for only two hours each day. I can go to the mosque, but I can't go outside the perimeter. I have to call someone every day at a special 'check-in' time.*

Before [under the "control order" conditions], I had 12 hours a day outside. I could go

anywhere and had people cleared [to visit]. Now the conditions are stricter. People have to be cleared by the Home Office, send their names and pictures to the Home Office and they are too scared. We don't have social visits anymore, they're much more formal. My wife has four sisters, but only one of them has been cleared [by the Home Office]. One sister-in-law comes to visit, but the others are too scared. I want a normal life, not prestige. We have to use the back door to go out. I'm worried all the time about my family, how they're going to take this. The fear of deportation is terrible, not knowing your fate. We now don't feel safe. It's very tough on my family, and now they're talking about sending us back 'home'. They couldn't deport us for three and a half years, so what's changed that they can safely deport us now? "H"'s wife echoed his fears: This is not a normal life. I'm scared they might come again at night. The neighbours have asked me why this is happening, but I don't know what to tell them...I can't explain it.

2.11. The killing of Jean Charles de Menezes

On 22 July 2005, the day after a series of serious security incidents occurred in London, plainclothes police officers shot dead Jean Charles de Menezes, an unarmed young Brazilian man, after he was restrained on board a London underground train on his way to work. The killing left many Londoners, particularly those from ethnic minorities, fearful not only of being bombed, but also of being shot by police.

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 though it was summer he had been wearing a thick jacket thought to conceal explosives. However, two days later the Chief Commissioner of the Metropolitan Police (Met) 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 Met later confirmed that it had sought to block the Independent Police Complaints Commission (IPCC) from conducting the investigation from the outset into the killing of Jean Charles de Menezes on the grounds that it was linked to the ongoing anti-terrorist investigation. Such attempt resulted in a crucial delay in the IPCC assuming charge of the investigation. The fact that the Met 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. This fact, together with the initial police statements about the circumstances of the killing, gave rise to allegations of a cover-up.

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.

In January 2006 the IPCC submitted the report of its investigation and a full file of evidence to the Crown Prosecution Service. A separate investigation by the IPCC into a complaint from the family of Jean Charles de Menezes, understood to focus on the statements made by the police in the aftermath of the killing, is ongoing.

On 19 September 2005, in the wake of the killing of Jean Charles de Menezes, the former Met Commissioner Sir John 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.

In accordance with international standards, all law enforcement officers should be guided in the use of force and firearms by the principles of absolute necessity and proportionality, and lethal force must remain the last resort. International standards underscore that law enforcement officials may resort to the intentional lethal use of firearms only when strictly unavoidable to protect life.

2.12. The Terrorism Bill: the fourth piece of “anti-terrorism” legislation in five years

A new piece of “anti-terrorism” legislation, the Terrorism Bill, introduced before Parliament in October 2005, contained sweeping and vague provisions. Amnesty International considered it draconian and ill-conceived. Its provisions, if enacted in their current form, would breach domestic and international human rights standards, by undermining the rights to freedom of expression, association, liberty and fair trial.

Amnesty International has already commented extensively on various drafts of the Terrorism Bill.³³ The organization continues to be concerned that the Bill contains sweeping and vague provisions which, if enacted, could violate the human rights 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.

As initially introduced, the Bill included provisions to:

- create a new offence of publishing, processing or disseminating publications that indirectly incite terrorist acts or are likely to be useful to a person committing or preparing a terrorist act;

³³ See *United Kingdom - Amnesty International’s briefing for the House of Lords’ second reading of the Terrorism Bill*, AI Index: 45/055/2005, 17 November 2005; *United Kingdom - Amnesty International’s briefing for the House of Commons’ second reading of the Terrorism Bill*, AI Index: EUR 45/047/2005, 25 October 2005; and *United Kingdom – Amnesty International briefing on the draft Terrorism Bill 2005*, AI Index: EUR 45/038/2005, 1 October 2005.

- extend pre-charge detention of people held under anti-terrorism legislation from 14 days to three months. This was later cut in a parliamentary vote to 28 days;
- create a new offence of indirectly inciting terrorism and glorifying terrorist acts;
- proscribe groups that “systematically” glorify terrorism; and
- create a new criminal offence of attending a “terrorist training camp”.

In addition to the continued reliance on the definition of “terrorism” (outlined above), Amnesty International is particularly concerned about the new offences based on the notion of “indirect incitement” of terrorism; the proposed new grounds for proscription; and the proposal to extend the time limit people suspected of involvement in terrorism can be detained for without charge.

Concern about these provisions was widespread. Among others, in November 2005, Louise Arbour, the UN High Commissioner for Human Rights, wrote to the UK government expressing concern about various aspects of the Terrorism Bill. Her concerns included: the absence of a precise definition of terrorism upon which the new offences would be based and the broad and sweeping nature of some of these offences, raising questions as to how the principle of legality would be respected; the lack of the actual intent requirement in some offences; their questionable scope in light of Article 19 of the ICCPR and Article 10 of the ECHR (on freedom of expression), resulting in a failure to strike a balance between national security interests and the fundamental right to freedom of expression; the overbroad reach of the provision concerning new grounds for proscription. Finally, in commenting on the period of pre-charge detention of up to 28 days for those held under anti-terrorism legislation, the High Commissioner said “I remain gravely concerned about how the rights guaranteed by Articles 9 of the ICCPR and 5 of the ECHR [the right to liberty and freedom from arbitrary detention] will be protected.”

2.12.1. New offences open door to abuses

Provisions in Part 1 would criminalize the making and dissemination of statements which may “indirectly incite terrorism”. 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 these terms lack clarity and their scope is sweeping and disproportionate.

In Amnesty International’s view, the provisions would facilitate violations of the right to freedom of expression as they would allow the criminalization of people for the lawful exercise of their right to hold and impart opinions and ideas. As a result, they would also have a wider and chilling effect on everyone’s enjoyment of the right to freedom of expression, as enshrined in international human rights law.

The European Court of Human Rights has stated that the right to freedom of expression relates to information and ideas “that are favourably received or regarded as inoffensive or as a matter of indifference, but also to those that offend, shock or disturb”.³⁴

Domestic and international human rights law recognize that freedom of expression is not an absolute right. There are permissible grounds for the imposition of restrictions, but these must be strictly construed. Any restriction must be prescribed by law, and be for one of the grounds identified by human rights law. These include “in the interests of national security... or public safety [and] for the prevention of disorder or crime.” Any restriction must also be “accessible and unambiguous”, narrowly drawn and precise enough so that everyone can foresee whether a particular action is unlawful.³⁵ In addition, the restriction must be proportionate – it must do no more than is absolutely necessary to meet the legitimate aim, and the nature and severity of any penalty imposed for a breach should be appropriate.³⁶

To meet these requirements in relation to criminalizing the dissemination of statements that encourage terrorism, it must be shown that the person intended to incite an act of violence (terrorist offence) and that the statement caused a clear and present danger that such an offence would be committed.³⁷ However, the provisions of the Bill do not squarely address the issue of intent.

The Bill additionally seeks to criminalize the dissemination of “terrorist publications”. A person is liable for disseminating or possessing with the view to its being disseminated, a “terrorist publication”. This provision fails to meet the criterion “prescribed by law” required for permissible restrictions of the right to freedom of expression. The provision is also broad and sweeping, and again relies on the definition of terrorism in the Terrorism Act. It also places the burden of proof on the accused. Amnesty International believes that enactment of this offence would be an unlawful restriction of the right to freedom to impart information, a component of the right to freedom of expression.

2.12.2. Proscription of organizations

In light of the above, Amnesty International is also concerned about the related provision in the Terrorism Bill which permits the proscription of any organization whose activities include the “glorification, exaltation or celebration of the commission, preparation or instigation (whether in the past, in the future or generally) of acts of terrorism or are carried out in a

³⁴ *Sürek and Özdemir v. Turkey*, Judgment of the European Court of Human Rights of 8 July 1999, para 57.

³⁵ See Principle 1.1. of the Johannesburg Principles on National Security, Freedom of Expression and Access to Information, UN Doc. E/CN.4/1996/39 (1996).

³⁶ See, for example, the Judgments of the European Court of Human Rights in the cases of *Sener v Turkey*, Judgment of 18 July 2000 and *Arslan v Turkey*, Judgment of 8 July 1999.

³⁷ See, for example, Article 5 of the European Convention for the Suppression of Terrorism, and Principle 6 of the Johannesburg Principles.

manner that ensures that the organisation is associated with statements glorifying, exalting or celebrating the commission, preparation or instigation of such acts”.

Given the vague and overbroad definitions of terrorism, “glorification, exaltation or celebration of terrorism”, Amnesty International considers that this provision would violate the internationally and domestically guaranteed right to freedom of association, and may lead to the criminalization of people for their legitimate exercise of this right.

2.12.3. Extension of pre-charge detention

The government’s initial draft of the Terrorism Bill contained a provision to extend the maximum time limit allowed for the detention without charge, of people arrested under “anti-terrorism” legislation, from 14 days to up to three months. However, Parliament rejected such an extension and provisionally agreed on allowing detention without charge for a maximum of 28 days instead. In the aftermath of this decision, the government maintained its position that a maximum time limit of detention prior to charge of three months was necessary.

Amnesty International remains unreservedly opposed to *any* extension of the maximum time limit for which people detained under anti-terrorism legislation 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. Anybody held on suspicion of having committed an extremely serious offence such as murder under the ordinary UK criminal law, may be held without charge for a maximum period of four days. On the other hand, if the proposed extension is enacted, anybody held on suspicion of having committed an offence under anti-terrorism provisions may be held without charge for seven times as long.

International treaties to which the UK is a party require that people detained in connection with a criminal offence are charged promptly and are tried within a reasonable time in proceedings which fully comply with international fair trial standards or are released. Amnesty International considers that prolonged detention without charge or trial undermines fair trial rights, including the right to be promptly informed of any charges, the rights to be free from arbitrary detention, torture and ill-treatment and the presumption of innocence, including the right to silence, and the right to prepare and present a defence.

Amnesty International also expressed concern that, under the Bill, the judicial scrutiny of requests for extension of detention would be no more than a cursory review of the reasons given by the police of the need for such extensions.

Amnesty International’s monitoring worldwide of the right to a fair trial over several decades has shown that a prolonged period of pre-charge detention creates a climate for abusive practices that can result in detainees making involuntary statements, including confessions. Prolonged detention without charge could have the unintended effect of increasing the likelihood of statements obtained from the suspect being deemed inadmissible

at trial precisely because of the oppressive nature of the conditions in which they were obtained.

Amnesty International is further concerned that the proposed extension of the maximum period of detention without charge could lead to other abusive practices, including detaining people without the intention or realistic prospect of bringing charges against them.

Since the early 1970s, and mainly in the context of the conflict in Northern Ireland, the majority of people arrested under anti-terrorist and emergency measures have eventually been released without charge. Amnesty International fears a repeat of this pattern if the provision allowing for pre-charge detention for up to 28 days is enacted. In turn, this would risk further alienating large sections of the UK population, who would consider that they were being targeted because of their real or perceived ethnic or religious identity, and would believe with some justification that the real purpose of prolonged detention was not to bring charges but to obtain information.

2.13. Ethnic minorities under siege

Many of the UK's three million Muslims and other minority communities have felt under siege in recent years. Like everyone else in the country, they experienced the fear associated with the attacks of 11 September 2001 and July 2005. But they also experienced increasing racism, fostered in part by the frequent linking by the government and media of the "terrorist threat" with "foreigners" and "Muslim extremists".

On top of this, they have suffered the consequences of anti-terrorism measures that are discriminatory in law or practice. The Minister for Counter Terrorism, Hazel Blears, even warned that Muslims must face up to the reality that the police would target them in "stop and search" operations because of the threat from people "associated with an extreme form of Islam".

The 2003 concluding observations of the Committee on the Elimination of Racial Discrimination in relation to the UK stated:

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'.³⁸

³⁸ Concluding observations of the Committee on the Elimination of Racial Discrimination, CERD/C/63/CO/11, 10 December 2003, para 17.

The discriminatory application of anti-terrorism powers was also highlighted by the parliamentary Joint Committee on 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.³⁹

Muslims in particular have felt targeted and under general suspicion, perceptions reinforced by government announcements and policies.

The impact of these policies is felt on the streets by people from the Muslim and ethnic minority communities. For example, the use of counter-terrorism stop and search powers increased sevenfold after the 7 July 2005 attacks, with Asian people bearing the brunt of the increase. According to British Transport Police figures, people of Asian appearances were five times more likely to be stopped and searched than white people. Since 2001, and particularly since 7 July 2005, there has also been a significant rise in the number of racist and faith-based attacks against individuals, homes and places of worship.

Police figures released on 3 August 2005 showed a 600 per cent rise in attacks motivated by religious hatred in London after 7 July 2005 – 269 compared with 40 the previous year. In the three days after 7 July, there were 68 faith hate crimes, compared with none in the same period in 2004.

There is a real danger that the proposed measures will further alienate members of the public that feel particularly targeted by them. If this happens, there is an increased risk that those on whose cooperation the authorities rely will be less willing to provide information to the police.

³⁹Joint Committee on Human Rights - Eighteenth Report, Session 2003-04, July 2004, para 46.

3. Human rights: a broken promise at home and abroad

In addition, to being concerned that the UK government has broken its promise to “bring rights home” as a result of its pursuit of measures implemented with the stated aim of countering terrorism, Amnesty International is concerned about the policies and actions the UK authorities have taken which undermine human rights abroad, including the absolute prohibition of torture or other-ill treatment.

In addition to their unsuccessful attempt to reverse the legal ban on the admissibility in judicial proceedings of “evidence” obtained as a result of torture (described above), the UK government is also currently seeking to undermine the absolute prohibition of sending “suspected international terrorists” to places where there is a real risk that they would be subjected to torture or other ill-treatment. It is doing so by negotiating bi-lateral agreements (“diplomatic assurances”, known as Memorandums of Understanding) with governments in countries where the practice of torture and other ill-treatment is well known to be persistent. The UK government is also seeking reform of international law so as to permit the balancing of the risk to the individual against the risk to national security.

The UK government has also sought to circumvent its obligations under domestic and international law in relation to abuses committed by other states (see for example the sections below on Guantánamo Bay and “Renditions”), and by UK officials and armed forces personnel abroad, including in Iraq.

Amnesty International is increasingly concerned that UK’s policies and actions at home and abroad are effectively sending a “green light” to other governments to abuse human rights. The organization considers that as a result of such policies and actions, the UK’s ability to promote human rights abroad has been seriously weakened.

3.1. ‘Diplomatic assurances’ to allow illegal deportations

[W]e are today signalling a new approach to deportation orders.... the circumstances of our national security have self evidently changed, and we believe we can get the necessary assurances from the countries to which we will return the deportees, against their being subject to torture or ill treatment contrary to Article 3. We have now concluded a Memorandum of Understanding with Jordan, and we are close to getting necessary assurances from other relevant countries... I had very constructive conversations with the leaders of Algeria and Lebanon. There are around 10 such countries with whom we are seeking such assurances.

Statement by Prime Minister Tony Blair, 5 August 2005

...The weakness inherent in the practice of diplomatic assurances lies in the fact that where there is a need for such assurances, there is clearly an acknowledged risk of torture and ill-treatment. Due to the absolute nature of the prohibition of torture or inhuman or degrading treatment, formal assurances cannot suffice where a risk nonetheless remains.

Commissioner for Human Rights of the Council of Europe, July 2004⁴⁰

The prohibition against sending any person to a country where there is a real risk that he or she may be subjected to torture or other ill-treatment (the principle of *non-refoulement*) is part and parcel of the absolute prohibition of torture or other ill-treatment.

The right not to be tortured or otherwise ill-treated, or to be sent to a country where there is a real risk of such treatment is absolute. It applies to everybody, irrespective of the seriousness of any crime which they may have committed. The prohibition of *refoulement* applies even if the person being deported is a suspected or convicted terrorist.

For several years, the UK government has been looking for ways to reinterpret or restrict its human rights obligations so as to permit it to deport people it believes are a threat to national security, notwithstanding the fact that there is a real risk of serious human rights abuses upon their deportation. The government has been backed by calls in the UK media for the repeal of the Human Rights Act or a withdrawal from ECHR if these instruments would obstruct deportation of such people.

With the aim of facilitating deportation of “suspected international terrorists” to countries where there is a real risk that they would be subjected to serious human rights abuses, the UK government has begun negotiating bilateral agreements, known as Memorandums of Understanding (MoUs), with the governments of the countries to which it plans to deport such people. The UK government asserts that a MoU, a bilateral “diplomatic assurance” between government officials, guarantees that people deported by the UK would not be tortured or otherwise ill-treated in the country to which they would be sent. It claims that these assurances are enough to relieve it of its domestic and international obligations not to send anyone to a country where they would be at risk of torture or other ill-treatment.

The government’s view is contrary to that of the international community and human rights experts. Among others, the UN General Assembly has made clear that such “diplomatic assurances do not release states from their obligations under international human rights, humanitarian and refugee law.”⁴¹ Amnesty International considers that only when an independent, impartial and competent court is convinced, based on reliable evidence, of the

⁴⁰ Report by Mr. Alvaro Gil-Robles, Council of Europe Commissioner for Human Rights, on His Visit to Sweden, April 2004. Council of Europe, CommDH (2004)13, 8 July 2004, p.9 para.19.

⁴¹ UN Doc: A/C.3/60/L.25/Rev.1, at para 8.

absence of a real risk of torture or other ill-treatment or other serious human rights abuse in the receiving state, may a person be sent there against his or her will.

Amnesty International considers that the MoUs which the government has and continues to negotiate seriously undermine the absolute prohibition of torture or other ill-treatment. The organization's view is shared by many others, including the Council of Europe's Commissioner for Human Rights, the UN High Commissioner for Human Rights, the UN High Commissioner for Refugees, the Committee against Torture, the UN Special Rapporteur on torture, international and domestic NGOs, and NGOs in the Middle East and North Africa. For example, Manfred Nowak, the UN Special Rapporteur on torture, stated that diplomatic assurances "are nothing but attempts to circumvent the absolute prohibition of torture and *refoulement*".⁴²

The UK government is aware that it has a legal obligation not to send people to countries where they risk torture or other ill-treatment. It is also aware that the countries to which it wishes to deport individuals have well-documented records of unfair trials and of using torture or other ill-treatment against those in custody, records which the UK government itself has previously publicly criticised. It has therefore sought or is seeking to negotiate MoUs with the view of relying on these bilateral promises to circumvent its *non-refoulement* obligations.

As of mid-February 2006, the UK government had signed MoUs with Jordan, Libya and Lebanon. Yet, in Jordan a report published in June 2005 by the government-funded National Centre for Human Rights (NCHR), entitled *The State of Human Rights in the Hashemite Kingdom of Jordan*, which covers the period of June 2003 to December 2004, states that the NCHR had received more than 250 complaints of torture, including in Jordanian security centres and criminal investigation departments, during 2004. In Libya, in the recent past Amnesty International has documented cases of incommunicado detention, often accompanied by torture, and of unfair trials before special and ordinary courts. In Lebanon, Amnesty International continues to document torture or other ill-treatment of detainees which is especially prevalent in incommunicado and pre-trial detention, in particular in centres operated by the Ministry of Defence.

The UK authorities are also currently in the process of negotiating MoUs with other North African and Middle Eastern countries, including Algeria and Egypt. Yet, the UK Foreign and Commonwealth Office notes in the country profile on Egypt published on its website, that: "one of the key human rights concerns in Egypt is the widespread mistreatment of detainees and use of torture in police stations, especially in cases involving political

⁴² "diplomatic assurances, which attempt to erode the absolute prohibition on torture in the context of counter-terrorism measures. ... are not legally binding and undermine existing obligations of States to prohibit torture, are ineffective and unreliable in ensuring the protection of returned persons, and therefore shall not be resorted to by States." *Report of the Special Rapporteur on the question of torture to the 62nd session of UN Commission on Human Rights*, E/CN.4/2006/6, page 2.

detainees.” Similarly, it is also well known to the UK government that the UN Special Rapporteur on torture has been seeking access to Algeria for some 10 years but the Algerian authorities have yet to agree to receive such a visit. In Algeria the Directorate of Information and Security continues to hold terrorism suspects in prolonged incommunicado detention in breach of national law, often holding them in secret locations, and to torture them. Judicial authorities continue frequently to fail to investigate alleged torture.

In Amnesty International's experience, states that systematically torture or engage in other forms of ill-treatment of detainees also systematically deny that they carry out such practices. They torture in secret and in violation of their international legal obligations. Their denials are often issued through their diplomats. Why then should the word of diplomats be trusted?

The truth is that the UK government is seeking MoUs only because it considers that there is a real risk of torture or other ill-treatment upon return. The MoUs are being pursued to deport the very individuals whom the government recognized for years could not be deported precisely because of the existence of a real risk that they would face human rights violations upon return. This was their justification for detaining them without charge or trial under ATCSA and then - after that legislation was ruled incompatible with human rights – for subjecting them to “control orders” under the PTA 2005.

As stated by the UN Special Rapporteur on torture:

*Diplomatic assurances are sought from countries with a proven record of systematic torture, i.e. the very fact that such diplomatic assurances are sought is an acknowledgement that the requested State, in the opinion of the requesting State, is practising torture.*⁴³

By pursuing MoUs, the UK in effect acknowledges that the receiving state practices torture, and will probably continue to do so. Thus, with these MoUs the UK government is in effect agreeing to ignore the torture or ill-treatment of other detainees who do not benefit from them. In light of this, Amnesty International considers that diplomatic assurances and MoUs are discriminatory. They favour specific individuals above others, and purport to give them special protection while giving tacit acceptance to the practice of torture or ill-treatment against the majority of detainees.

Diplomatic assurances have proven to be ineffective, especially in situations where the criminal justice system is flawed, the judiciary lacks sufficient independence and impunity for human rights violations prevails. Persons, who have been transferred on the basis of diplomatic assurances, even when a system for the sending state to monitor the welfare of the person sent was included, complained later of torture.

⁴³ *Report of the Special Rapporteur on the question of torture to the 62nd session of UN Commission on Human Rights, E/CN.4/2006/6, p. 10.*

At the practical level, as the case of Ahmed Agiza illustrates, there is ample evidence to show that diplomatic assurances have not worked and there is nothing to suggest that refining them would result in adequate protection against torture or ill-treatment. This is true, even if the assurances, like the MoUs, contain arrangements for a post-return monitoring mechanism. In May 2005, the UN Committee against Torture ruled in the case of Mustafa Kamil 'Agiza, who was forcibly deported (with Muhammad Suleiman Ibrahim El-Zari) from Sweden to Egypt by US agents in 2001. The Committee held that Sweden had breached its *non-refoulement* obligations. Despite the fact that assurances were provided by the Egyptian government at a senior level, and despite monitoring of his situation by an official of the Swedish Embassy, Mustafa Agiza alleged that he was held incommunicado, and told the Egyptian court that tried him that he had been tortured. He remains detained following a conviction after an unfair trial.

Amnesty International believes that the idea that post-return monitoring mechanisms bolster the effectiveness of such assurances is misguided. They ignore the very serious limitations of such monitoring, especially the fact that the MoUs make provision for only occasional visits to a detainee who has every reason to fear reprisals if he or she reports mistreatment. Furthermore, Amnesty International is concerned that the UK government is "contracting out" its duty to monitor the treatment of people it seeks to return on the basis of the MoUs to national human rights institutions and NGOs in the countries of return. For example, in the course of its negotiation with Egypt, according to the information available to Amnesty International in September 2005, the UK's Ambassador to Egypt requested that the Egyptian National Council for Human Rights undertake to help ensure protection of the rights of Egyptians who might be forcibly returned from the UK, and stated that the UK government wished to include a note to this effect in its proposed MoU with Egypt. According to information available to Amnesty International, the Council has not agreed to play a post-return monitoring function.

Furthermore, once the UK government deports people to a country, it would not be in its interests to discover or acknowledge that they had been tortured because by doing so the government would be liable to accusations that it had contravened its *non-refoulement* obligation.

The safeguards MoUs provide fall below those contained in international law. They lack an enforcement mechanism, and do not provide for a remedy in case of a breach. What would happen, for instance, if a person is tortured or otherwise ill-treated upon being sent to one of these countries where judicial redress for torture is almost unheard of? What support can the UK government give to the human rights organizations that may agree to take on post-return monitoring tasks should they come under pressure?

As noted by Manfred Nowak:

post-return monitoring mechanisms are no guarantee against torture - even the best monitoring mechanisms (e.g. ICRC [the International Committee of the Red Cross])

and CPT [the European Committee for the Prevention of Torture]) are not “watertight” safeguards against torture ... The individual concerned has no recourse if assurances are violated... there is no accountability of the requested or requesting State, and therefore the perpetrators of torture are not brought to justice.... Both governments have a common interest in denying that returned persons were subjected to torture. Therefore, where States have identified independent organizations to undertake monitoring functions under the agreement, these interests may translate into undue political pressure upon these monitoring bodies, particularly where one is funded by the sending and/or receiving State.⁴⁴

Amnesty International considers that the UK government’s conclusion of MoUs and its continued attempts to negotiate additional agreements undermine international law and human rights protection abroad by sending the message that multilateral international obligations can be ignored and circumvented. Thus, MoUs containing diplomatic assurances with respect to torture do not just undermine the absolute prohibition on torture, they are undermining the whole system designed over 50 years to protect human rights.

As noted by Louise Arbour, the High Commissioner for Human Rights, in her address on Human Rights Day, on 10 December 2005:

even if some post-return monitoring were functioning, the fact that some Governments conclude legally non-binding agreements with other Governments on a matter that is at the core of several legally-binding UN instruments threatens to empty international human rights law of its content. Diplomatic assurances basically create a two-class system among detainees, attempting to provide for a special bilateral protection and monitoring regime for a selected few and ignoring the systematic torture of other detainees, even though all are entitled to the equal protection of existing UN instruments.⁴⁵

A judgment of the High Court of England and Wales in 2004, in the case of *Hani El Sayed Sabaei Youssef v the Home Office*, revealed in stark terms the real attitude of the UK government to ensuring the safety of persons it suspects of involvement in terrorism which it seeks to deport. The following correspondence between the Prime Minister and other UK officials is quoted in the judgment.

*By letter dated 19 April 2004, the Prime Minister’s Private Secretary wrote to the Private Secretary at the Home Office, inter alia, in these terms:
The Prime Minister thinks we are in danger of being excessive in our demands of the Egyptians in return for agreeing to the deportation of the four Islamic Jihad members.*

⁴⁴ *Report of the Special Rapporteur on the question of torture to the 62nd session of UN Commission on Human Rights*, E/CN.4/2006/6, p. 10.

⁴⁵ *Human Rights Day Statement*, by Louise Arbour, High Commissioner for Human Rights, “On terrorists and Torturers”, United Nations, New York 7 December 2005.

He questions why we need all the assurances proposed by FCO [i.e. the Foreign and Commonwealth Office] and Home Office Legal Advisers. There is no obvious reason why British Officials need to have access to Egyptian nationals held in prison in Egypt, or why the four should have access to a UK- based lawyer. Can we not narrow down the list of assurances we require?

In general the Prime Minister's priority is to see these four Islamic Jihad members returned to Egypt. We should do everything possible to achieve that. I should be grateful for a further report, allowing time for the Prime Minister to intervene himself, if necessary, before any action is taken to release the four from custody.⁴⁶

....
the Prime Minister believes that we should use whatever assurances the Egyptians are willing to offer, to build a case to initiate the deportation procedure and to take our chance in the courts. If the courts rule that the assurances we have are inadequate, then at least it would be the courts, not the government, who would be responsible for releasing the four from detention. The Prime Minister's view is that we should now revert to the Egyptians to seek just one assurance, namely that the four individuals, if deported to Egypt, would not be subjected to torture. Given that torture is banned under Egyptian law, it should not be difficult for the Egyptians to give such an undertaking. He understands that additional material will need to be provided to have a chance of persuading our courts that the assurance is valid. One possibility would be for HMG [Her Majesty's Government] to say that we believed that, if the Egyptian government gave such an assurance, they would be sufficiently motivated to comply with it. We would need some independent expert witness to back that up.⁴⁷

The UK government, of course, knows full well the steps necessary to combat torture and to seek to guarantee human rights protection. It took many of these steps in the past to seek to eradicate torture or other ill-treatment in police custody in the UK. The current government knows from its own and previous governments' experience that the eradication of torture requires systemic reform, including -- first and foremost -- ensuring the enjoyment of fundamental human rights such as access to legal counsel of choice, the outside world, videotaping of interviews, etc., to all people deprived of their liberty. It also requires the establishment of independent complaints and investigation mechanisms and an effective and independent judiciary.

If the UK government is serious about efforts to eradicate torture and other ill-treatment and ensure fair trials abroad, it should be pushing for root-and-branch reforms across the administration of criminal justice in the countries concerned. The UK government should establish and implement comprehensive strategies to encourage all states to adopt

⁴⁶ *Hani El Sayed Sabaei Youssef v the Home Office*, 30 July 2004, [2004] EWHC 1884 (QB), para. 18, http://www.hmcourts-service.gov.uk/judgmentsfiles/j2758/youssef-v-home_office.htm.

⁴⁷ *Ibid*, para. 38.

mechanisms which contribute to the eradication of torture and ensure fair trials for all detainees, in line with their obligations under international law.

Amnesty International urges the UK government not to proceed with the implementation of the MoUs already concluded with Jordan, Libya and Lebanon, and to refrain from seeking additional MoUs with other governments. Instead, in each of these countries, the UK government should be pushing for the implementation of systematic reforms which guarantee the respect and the protection of human rights and for the ratification and implementation of the Optional Protocol to the Convention against Torture.

3.2. The Ramzy case: the UK's government's latest attempt at undermining the prohibition of torture

The UK government is also attempting to undermine the absolute prohibition of torture or other ill-treatment by seeking to persuade the European Court of Human Rights to reconsider its jurisprudence establishing that the prohibition of torture or other ill-treatment encompasses an absolute prohibition against sending a person to a country where there is a real risk that they would be subjected to such a treatment. The Court's jurisprudence makes it clear that there is no balance to be struck between the right of the individual not to be exposed to such risks and the national security interests of the sending state (see the European Court of Human Rights judgment in the case of *Chahal v United Kingdom*).

In October 2005 the UK was given permission to intervene in a case already lodged against the Netherlands at the European Court of Human Rights by Mohammed Ramzy, a 22-year-old Algerian challenging deportation. His asylum application was rejected and he is challenging a decision to deport him, arguing that he would face a real risk of torture or other ill-treatment in Algeria. The Dutch government is not seeking to reverse the *Chahal* precedent; it is simply arguing that the Mohammed Ramzy's return to Algeria would not expose him to a real risk of torture.

The UK government – and three others – have decided to intervene in this case. Amnesty International is very concerned that this intervention is attempting, in the context of this case, to persuade the European Court of Human Rights to abandon its jurisprudence in *Chahal v the United Kingdom* in favour of a position that the risk to the individual should be balanced against the national security interests of the state.

3.3. Attempts to circumvent domestic and international law for its actions abroad

The UK government has also tried to circumvent its obligations under domestic and international human rights law in relation to abuses committed abroad – by other governments, by UK officials and by UK armed forces personnel.

3.3.1. Guantánamo Bay

Since January 2002, the US authorities have detained hundreds of people of some 35 different nationalities, including UK nationals and UK residents, without charge or trial at the US naval base in Guantánamo Bay, Cuba. Detainees effectively remain in a legal black hole, many with no access to any court, legal counsel, or family visits.⁴⁸ Denied their rights under international law, there are mounting allegations that detainees at the camp have been subjected to torture and other ill-treatment. On 16 February 2006, five UN human rights experts released a report following an 18-month joint study into the situation of detainees at that US Naval Base.⁴⁹ They found that the detention of people at Guantánamo amounted to arbitrary detention; that there were violations of fair trial rights; that the interrogation techniques, particularly if used simultaneously, amount to degrading treatment and in some cases amounted to torture; and that the “general conditions of detention, in particular the uncertainty about the length of detention and prolonged solitary confinement, amount to inhuman treatment and to a violation of the right to health as well as a violation of the right of detainees to be treated with humanity and with respect for the inherent dignity of the human person.” The experts, among other things, called on the US government “to refrain from any practice amounting to torture or cruel, inhuman or degrading treatment”.

Amnesty International is concerned at the failure, to date, of the UK government to oppose with any real vigour the human rights scandal that Guantánamo Bay represents. From 19 January 2002, within a week of detainees first arriving there, UK’s security services and Foreign and Commonwealth Office officials have had access to interview UK detainees in Guantánamo Bay. Since then, Amnesty International has repeatedly expressed concern about the failure of the UK government to make adequate representations to the US administration aimed at safeguarding the rights of the UK nationals and UK residents who have been detained there.

In May 2002, the Foreign Secretary informed Amnesty International that UK nationals held at Guantánamo had been “visited” by UK officials, including MI5 officers, and that they had been interviewed in relation to issues relevant to the UK’s national security. The Foreign Secretary told Amnesty International that he had repeatedly raised with the US authorities the circumstances in which UK nationals were being held and that, following assurances from the US authorities that the detainees were “being treated humanely and

⁴⁸ For more information about Amnesty International’s concerns about Guantánamo, please visit the organization’s website at www.amnesty.org.

⁴⁹ *Situation of detainees at Guantánamo Bay*, Report of the Chairperson of the Working Group on Arbitrary Detention, Ms. Leila Zerrougui; the Special Rapporteur on the independence of judges and lawyers, Mr. Leandro Despouy; the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Mr. Manfred Nowak; the Special Rapporteur on freedom of religion or belief, Ms. Asma Jahangir and the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, Mr. Paul Hunt; 62nd Session of the UN Commission on Human Rights, Future E/CN.4/2006/120, 15 February 2006.

consistently with the principles of the Geneva Conventions”, he said that he was satisfied that that was the case. He also told Amnesty International that the UK nationals held at Guantánamo had not complained of any ill-treatment.

Some two years later, in June 2004, however, the UK government finally admitted that a number of the detainees questioned by UK intelligence personnel in Guantánamo had indeed complained about their treatment. In a statement to the UK Parliament the then Home Secretary, David Blunkett MP, said, “All complaints made by detainees interviewed by British Intelligence officers were passed onto the US authorities, who are responsible for the treatment of those detained in Guantánamo Bay.” In subsequent parliamentary exchanges, the UK authorities have refused to provide any further detail about these complaints. In July 2004 the Prime Minister was reported as saying that Guantánamo Bay was “an anomaly that at some point has to be brought to an end.”⁵⁰

Amnesty International expressed dismay at the government’s denial for two years that it had detailed knowledge of allegations of abuses going on in Guantánamo.

On 5 March 2004, three months before the UK government acknowledged the abuses, five UK nationals -- Ruhul Ahmed, Tarek Dergoul, Jamal Udeen, Asif Iqbal and Shafiq Rasul -- were released from Guantánamo Bay and flown back to the UK after negotiations between the US and UK authorities. Jamal Udeen was released immediately without charge. The other four were questioned by UK police and released, again without charge, the following day. All described the grim conditions at Guantánamo and stated that they had been subjected to torture or other ill-treatment.

Since 2002 Amnesty International has also been expressing concern that UK intelligence officers have been taking advantage of the legal limbo and coercive detention conditions in Guantánamo Bay, Bagram Airbase in Afghanistan, and at other undisclosed locations where people are held in US custody, to interrogate UK nationals, residents and possibly others and obtain information for use in proceedings in the UK and for intelligence purposes. Such interrogations have taken place without respect for the rights of the detainees, including the right to have a lawyer present during questioning, thereby circumventing both domestic and international human rights law. Amnesty International has noted that anyone arrested in the UK and questioned in connection with *al-Qa’ida* activities would have the right to legal assistance, including having a lawyer present during questioning.

In November 2004, the Committee against Torture recommended that the UK government

should ensure that the conduct of its officials, including those attending interrogations at any overseas facility, is strictly in conformity with the requirements of the Convention [against Torture] and that any breaches of the Convention that it

⁵⁰ “WMD may never be found – Blair”, *BBC news*.

*becomes aware of should be investigated promptly and impartially, and if necessary the State party should file criminal proceedings in an appropriate jurisdiction.*⁵¹

According to the March 2005 report of the Intelligence and Security Committee, UK intelligence personnel had conducted or witnessed over 2,000 interviews in Afghanistan, Guantánamo Bay and Iraq. It said its investigations indicated there were fewer than 15 occasions when UK intelligence personnel reported actual or potential breaches of UK policy or international human rights law. It found no evidence that UK intelligence personnel abused detainees.

Reports have indicated that UK officials have taken part in, witnessed or condoned the interrogation under duress of UK suspects and others in US custody and the custody of other countries.

⁵¹ *Conclusions and recommendations of the Committee against Torture on the United Kingdom of Great Britain and Northern Ireland, Crown Dependencies and Overseas Territories*, Committee against Torture, Thirty-third session, Geneva, 15-26 November 2004, CAT/C/CR/33/3.

3.3.1.1. The case of Benyam Mohammed al-Habashi

"I never thought the British Government would allow me to be slashed with a razor blade for a full year. I never thought they would let me be hauled to the Dark Prison in Kabul for further abuse before my trip to Guantánamo."

Benyam Mohammed al-Habashi

Benyam Mohammed al-Habashi, a 27-year-old Ethiopian, sought asylum in the UK in 1994 and was granted temporary residence. In 2001 he left the UK to travel. On 10 April 2002, as he was about to return to the UK, he was arrested at Karachi airport by Pakistani immigration officials.

While in custody in Pakistan, Benyam Mohammed al-Habashi was allegedly tortured. He says that he was interviewed by UK intelligence agents, but that the torture stopped while they were present. One UK agent reportedly told him that he was going to be transferred to an Arab country to be tortured.

On around 21 July 2002 he was taken to Islamabad airport, handed over to US officials, and flown to Morocco. For the next 18 months he was held incommunicado and, he alleges, systematically tortured at the behest of US authorities. He says that the Moroccan interrogators told him that they were collaborating with the UK intelligence services. He alleges that he was shown photos of individuals that were taken by UK agents and that he was asked questions that he believes could only have been provided by the UK authorities while he was being tortured in Morocco.

Benyam Mohammed al-Habashi also alleges that UK officials promised him that they would intervene on his behalf. To date there is no indication that the UK officials have fulfilled this promise.

In late January 2004 Benyam Mohammed al-Habashi was reportedly told by his captors that he was "going home". Instead, he was flown to Afghanistan, taken to a detention centre in Kabul called the "Dark Prison", and held there until May 2004. He alleges that he was tortured there, and that he was interrogated by US officials.

Benyam Mohammed al-Habashi was then taken to Bagram Airbase in Afghanistan where he alleges he was forced to sign "confessions". From there, on 19 September 2004, he was transferred to Guantánamo Bay where he says he has been "routinely humiliated and abused and constantly lied to". In February 2005 he was placed in Camp V, the harsh "super-maximum" facility at Guantánamo Bay where, reports suggest, "uncooperative" detainees are held.

Benyam Mohammed al-Habashi remains detained in Guantánamo Bay. He has not had access to a court to challenge the legality of his detention. His hope, he says, is that "the British people will hold the British Government to its word" so that he can "go back home" to London.

Benyam Mohammed al-Habashi is not alone in reporting the involvement of UK officials in interrogations abroad that were conducted in the context of torture or ill-treatment.

The reports indicate that sometimes the UK officials took part; sometimes they were present; and sometimes they simply ignored what everyone knew was happening.

Rhuhel Ahmed is one of five UK nationals who were released from Guantánamo Bay in March 2004 and returned to the UK. He said that while a UK officer was interrogating him at Guantánamo Bay, a US soldier held a gun to his head and he was told he would be shot if he moved.

Another of those released, Tarek Dergoul, said he was interrogated by two UK officials while in US custody in Afghanistan. "The British interrogators also interrogated me with a soldier in a corner with a gun. They saw that I was shaking and shivering and what a bad state I was in medically. However, they did nothing for me. They just asked me all the standard questions and then left." He added that while being interrogated at Guantánamo Bay, "British interrogators also came and showed me an article from a newspaper about British citizens being sent to Cuba. I told the British interrogators on at least five occasions every detail of what was going on in Guantánamo Bay, including the beatings."

In January 2005 the last four remaining UK nationals were released from US detention in Guantánamo Bay.

In December 2005, a UK court ruled that David Hicks, an Australian national detained at Guantánamo Bay, was entitled to be registered as a UK citizen and therefore to receive assistance by the UK authorities. Amnesty International is dismayed at reports that the UK government intends to appeal the ruling, and also that it is planning to introduce legislation which would give the Home Secretary the power to strip David Hicks of his UK nationality as soon as it has been granted to him.

At least eight UK residents continue to be held in Guantánamo Bay, including Bisher al-Rawi and Jami al-Banna (see box). In the past the UK authorities have consistently refused to make adequate representations on behalf of the UK residents despite their long-term residency in the UK, and the fact they have family members who are UK nationals. In early January 2006, correspondence from the Foreign Office to an Amnesty International member indicated that "it is a longstanding policy that the British Government cannot provide consular assistance for individuals who are not British nationals", and that the extent of the UK government's engagement on this issue has been to meet with the families of the detainees once, and that they had "passed on the concerns expressed to us by the families to the US authorities".

For the UK residents still languishing in Guantánamo, the waiting for help from the UK authorities continues. Amnesty International continues to urge the government to seek the return of the UK residents unless they are charged promptly with a recognizably criminal offence, and tried in proceedings meeting international standards for a fair trial, and excluding the possibility of the imposition of the death penalty.

At a meeting in early February 2006 between the UK Foreign Secretary, Jack Straw MP, and a delegation of Amnesty International representatives led by Irene Khan, the Secretary General of Amnesty International, the Foreign Secretary told the organization's representatives that the UK government did not agree with the detention practices at Guantánamo and that the issue of the UK residents was under consideration. Amnesty International calls on the UK to follow up these words with strong action.

3.3.1.2. The case of Bisher al-Rawi and Jamil al-Banna

Dear Mr Tony Blair,

Firstly, how are you? I sent a letter two years ago, why didn't you reply?!? I was waiting for a long time but you did not reply. Please can you give me an answer to my question? Why is my dad in prison? Why is he far away in that Guantánamo Bay?! I miss my dad so much. I have not seen my dad for three years. I know my dad has not done anything, because he is a good man. I hear everybody speak about my dad in a nice way. Your children spend Christmas with you, but me and my brothers, and sisters have spent Eid alone without our dad for 3 years. What do you think about that?

*I hope you will answer me this time. Thank you, From: Anas Jamil al-Banna, 9 years old
Anas al-Banna, one Jamil al-Banna's sons*

Bisher al-Rawi, an Iraqi national legally resident in the UK, and Jamil al-Banna, a Jordanian national with refugee status in the UK, continue to remain in US custody at Guantánamo Bay, Cuba. The UK authorities were implicated in their unlawful transfer to US custody in 2002 and have refused to make representations on their behalf. The men were arrested in Gambia on 8 November 2002. Six days earlier, at London's Gatwick airport, UK authorities had detained and questioned them for two days about their alleged links with "terrorism" before releasing them without charge. In Gambia, the men were questioned by US investigators. They were then transferred to a US base in Afghanistan before being sent to Guantánamo Bay. Amnesty International asked the UK authorities whether they had informed the Gambian or US authorities about the two men before they travelled to Gambia, but has not received a response to date. Amnesty International considers that if the UK government has indeed been complicit in the unlawful transfer of Jamil al-Banna and Bisher al-Rawi to US custody, it has an additional obligation to make representations on their behalf to the US authorities because it would be through its own involvement that these two men have come to be detained at Guantánamo Bay. On 16 February 2006, a judge of the High Court of England and Wales ruled that there was an arguable case to judicially review the refusal of the UK government to petition the US authorities for the release of Jamil al-Banna, Bisher al-Rawi and Omar Deghayes, a Libyan and a UK resident detained at Guantánamo Bay who had been granted refugee status in the UK. A full judicial review of the refusal of the UK government is pending.

3.4. “Renditions”

Since the end of 2005 the UK government has faced mounting accusations that it had allowed the USA to use UK territory in the context of secret transfers of individuals without any judicial process (known as “renditions”) to countries where they were reportedly tortured and to various US detention centres around the world.

Amnesty International believes that these practices are illegal under domestic and international law because they bypass any judicial or administrative process, such as extradition.

Moreover, “rendition” usually involves multiple human rights violations, including abduction, arbitrary arrest, detention and unlawful transfer without due process of law. Most victims of “rendition” were arrested and detained illegally in the first place: some were abducted; others were refused access to any legal process. “Rendition” also violates a number of other fair trial guarantees - for example, victims of “rendition” have no possibility of challenging their detention, or the arbitrary decision of being transferred from one country to another.

“Rendition” is a key element in the global system of secret transfers and arbitrary detention. This system is designed to detain people, often for obtaining intelligence from them, free from any legal restriction or judicial oversight. Many victims of “rendition” have been or continue to be held in prolonged arbitrary detention, and they have been or continue to be subjected to enforced disappearance. Most of those held in secret detention centres (so-called “black sites”) have been subject to “rendition”. All of the victims of “rendition” Amnesty International has interviewed have also been subjected to torture and other ill-treatment. Prolonged incommunicado detention in secret locations itself amounts to torture.

Under international law, states are obliged to prohibit the transfer of an individual to another state where that person faces a real risk of serious human rights violations, including enforced “disappearances”, torture or other ill-treatment, arbitrary detention or flagrant denial of their right to a fair trial. States are also obliged to prevent, criminalize, investigate and punish all of those acts, including conspiring and aiding and abetting in them.

In January 2006, in light of research undertaken by Amnesty International, and supported by extensive media reporting, Amnesty International wrote to the UK Prime Minister to express concern about the fact that UK airspace and airports may have been used to facilitate flights by CIA-chartered aircraft known to have secretly transported detainees to countries where they risk enforced “disappearance”, torture or other ill-treatment.

Specifically, of interest to the UK, Amnesty International's information concerns a Gulfstream V turbojet, then registered as N379P, which between 2001 and 2005 made at least 78 stopovers at UK airports while en route to or from destinations such as Baku in Azerbaijan, Dubai in the United Arab Emirates, Larnaca in Cyprus, Karachi in Pakistan, Doha in Qatar,

Riyadh in Saudi Arabia, Tashkent in Uzbekistan, and Warsaw in Poland. Records show that three of these flights were directly connected to known cases of “rendition”:

- On 23 October 2001, witnesses saw Jamil Qasim Saeed Mohammed being bundled on board the Gulfstream V turbojet, registration N379P, by a group of masked men in a remote corner of Karachi International airport. The plane flew Jamil Qasim Saeed Mohammed to Jordan. The following day, the same Gulfstream turbojet flew to Glasgow Prestwick in the UK to refuel, then flew back to Dulles International near Washington DC in the USA. Amnesty International has repeatedly requested information from the US authorities about the current whereabouts and legal status of Jamil Qasim Saeed Mohammed, but has received no reply.
- On 18-19 December 2001, according to an inquiry conducted by the Swedish Parliamentary Ombudsmen, the above-mentioned Gulfstream turbojet took Ahmed Agiza and Mohammed al-Zari from Sweden to Cairo in Egypt. Amnesty International's records show that the plane had made several trips between Cairo and Prestwick earlier in the month, and stopped to refuel at Prestwick after leaving the two detainees in Cairo, where they were reportedly tortured. In March 2005, the Chief Parliamentary Ombudsman in Sweden, having reviewed the Swedish government's role in the transfer to Egypt of the two detainees, concluded that “the Swedish Security Police lost control of the situation at the airport and during the transport to Egypt. The American security personnel took charge ... Such total surrender of power to exercise public authority on Swedish territory is clearly contrary to Swedish law.”
- On 12 January 2002, according to Indonesian security officials, the above-mentioned Gulfstream V turbojet, took Muhammad Saad Iqbal Madni from Jakarta to Cairo. Amnesty International records confirm previous media reports that when the plane left Cairo, it flew to Prestwick to refuel. Muhammad Saad Iqbal Madni has since been returned to US custody, and is currently being held at Guantánamo Bay. He does not have a lawyer, and other detainees have said in the last month that he is in poor condition and “at risk of losing his mind”.

Given the mounting evidence that UK territory has been used in the process of unlawfully transporting detainees to countries where they may face “disappearance”, torture or other ill-treatment, Amnesty International has urged the UK government to launch an immediate, thorough and independent investigation.

As part of such an investigation, Amnesty International has further called on the UK government to ask the US government to declare whether or not it has used, UK airports, airspace or US military airbases on UK soil for the purposes of “rendition” since 1998, with or without the approval of the UK authorities. This would include transporting detainees from, to or through UK airspace, as well as servicing planes about to embark on, or returning from, a “rendition” mission. Amnesty International asked to be informed of any responses on the subject that the government may obtain from communications with US authorities on this subject.

Amnesty International also asked to be informed of what steps have been taken or are being considered to prevent future use of airspace and airports in the UK by aircraft being used for such illegal activities.

Amnesty International has noted the statements that various UK government officials, including the Prime Minister and the Foreign Secretary, have given so far in response to the mounting concern about the issue of “renditions” in the UK. For example, in late January 2006, the Prime Minister was reported as having stated that as far as he was aware the US authorities did not operate “renditions” “except in circumstances where the law of the country concerned and the consent of the country concerned are compatible with what they are doing. I don't know any more about it than that”. The Foreign Secretary gave Amnesty International assurances in February 2006 that he was satisfied that “renditions” involving the UK were not taking place.

However, Amnesty International remains concerned about the allegations that the UK authorities played a role in the unlawful transfers of a number of individuals to US custody (see for example, the case of Jamil al-Banna and Bisher al-Rawi described above), which, to date, the UK government has not denied.

Amnesty International considers that the UK government should have put in place all necessary measures to prevent any action or omission which may, wittingly or unwittingly, have resulted in the UK territory being used to transfer anyone to another state where that person faces a real risk of serious human rights violations, including enforced “disappearances”, torture or other ill-treatment, arbitrary detention or flagrant denial of their right to a fair trial.

Amnesty International continues to urge the government to ensure that the UK cooperates fully with, including by providing all relevant information to, the UK parliamentary investigation and to the Council of Europe and EU Parliament inquiries into the issue of “rendition”.

3.5. UK armed forces in Iraq

The UK government has also undermined human rights protection by making repeated attempts to circumvent its domestic and international human rights obligations in respect of its actions in Iraq. In response to well-substantiated allegations that UK soldiers have committed serious human rights violations, although in some instances investigations have been opened and prosecutions brought (see below), the government has repeatedly asserted, including in court proceedings, that neither the ECHR nor the HRA applies to the conduct of UK personnel in Iraq.

Between May 2003 and June 2004, when the UK was recognized as an occupying power in Iraq, UK armed forces personnel are alleged to have committed serious violations of international human rights and humanitarian law. There have been reports that UK forces

have ill-treated detainees in Iraq in the past, and in some cases have tortured them. There have also been allegations of unlawful killings at the hands of UK armed forces personnel. The parliamentary Foreign Affairs Committee acknowledged that there have been abuses, concluding in its March 2005 report that “some British personnel have committed grave violations of human rights of persons held in detention facilities in Iraq.”

In November 2004 representatives of the UK government expressed their view to the UN Committee against Torture that certain provisions of the UN Convention against Torture could not be applied to actions of the UK in Afghanistan and Iraq. In response, the Committee stated that the Convention applied to all areas under the *de facto* control of the UK authorities. The Committee recommended that the UK authorities "should make public the result of all investigations into alleged conduct by its forces in Iraq and Afghanistan, particularly those that reveal possible actions in breach of the Convention [against Torture], and provide for independent review of the conclusions where appropriate".

3.5.1. The Al-Skeini case

On 14 September 2003 in Basra, Iraq, Baha Dawood Salem al-Maliki (also referred to as Baha Mousa) was among eight Iraqi citizens arrested and reportedly beaten in a hotel by members of the UK military. Four days later Baha Mousa's father was asked by a military police unit to identify his son's body, severely bruised and covered in blood. Another of the eight, Kefah Taha, was admitted to hospital in a critical condition.

On 21 December 2005, the Court of Appeal of England and Wales ruled in the case of *R (Al-Skeini) v Secretary of State for Defence* related to the death in custody of Baha Mousa and the deaths of five other Iraqis killed in separate incidents involving the use of armed force by members of the UK military. The families of the six victims challenged the UK government's decision not to hold an independent inquiry into the deaths. They said that the Ministry of Defence (MoD) had refused to carry out independent and thorough investigations as required by Articles 2 and 3 of the ECHR and by the Human Rights Act 1998. The MoD claimed that neither the ECHR nor the Human Rights Act was applicable to the conduct of its military in Iraq at the time of the deaths, because Iraq was outside Europe and was not a party to the ECHR.

The following is a short account of the facts surrounding treatment and death in UK custody of Baha Mousa set out in the leading judgment in the case given by Lord Justice Brooke.⁵²

Baha Mousa was 26 years old. He worked as a receptionist at a hotel in Basrah City. In the early morning of 14th September 2003 a unit from 1 QLR [Queen's Lancashire Regiment] raided the hotel

The troops were particularly concerned to ascertain the whereabouts of one of the partners who ran the hotel. Brig Moore himself took part in this operation and was up on the roof of the hotel when the troops were effecting arrests.

It was in these circumstances that they rounded up a number of the men they found there, including Baha Mousa. Baha Mousa's father, Daoud Mousa, had been a police officer for 24 years and was by then a colonel in the Basrah police. He had called at the hotel that morning to pick up his son at the end of his shift, and he told the 1 QLR lieutenant in charge of the unit that he had seen three of his soldiers pocketing money from the safe. During this visit he also saw his son lying on the floor of the hotel lobby with six other hotel employees with their hands behind their heads. The lieutenant assured him that this was a routine investigation that would be over in a couple of hours. Colonel Mousa never saw his son alive again. Four days later he was invited by a military police unit to identify his son's dead body. It was covered in blood and bruises. The nose was badly broken, there was blood coming from the nose and mouth, and there were severe patches of bruising all over the body. The claimants' witnesses tell of a sustained campaign of ill-treatment of the men who were taken into custody, one of whom was very badly injured, and they suggest that Baha Mousa was picked out for particularly savage treatment because of the complaints his father had made. The men who were arrested had been taken from the hotel to a British military base in Basrah City

⁵² [2005] EWCA Civ 1609, see paragraphs 28 and following, in Lord Justice Brooke's judgment. The Al-Skeini case was one of six test cases brought by the families of Iraqi civilians who are alleged to have been killed by UK soldiers during the UK occupation of South-Eastern Iraq.

called *Darul Dhyafa*.

Court-martial proceedings remain pending in February 2006 against seven military personnel, including the commanding officer who has been charged with negligent performance of duty. Three of the seven military personnel have been charged with “inhuman treatment” of Baha Mousa.⁵³

The Court of Appeal ruled that the ECHR and the HRA applied to the case of Baha Mousa and thus the authorities are required to ensure an independent, impartial investigation into this death. However, the Court held that the notion of jurisdiction was not broad enough to apply to those persons who were at liberty and not yet in the control of UK forces, including the other five named persons who were shot dead by UK soldiers. The Court also found that the system for investigating deaths at the hands of UK armed forces personnel was seriously deficient, including in its lack of independence from the commanding officer, and it needed to be scrutinized. It is anticipated that the Court of Appeal’s judgment will be appealed against, and this appeal is likely to be heard by the Law Lords before the end of 2006.

In another case, Lord Goldsmith QC, the UK Attorney General, announced in July 2005 that four UK armed forces personnel would stand trial in connection with the death of Ahmed Jaber Karim ‘Ali, who was one of four men arrested on suspicion of looting in May 2003 in Basra. It has been alleged that UK servicemen punched and kicked the suspected looters before forcing them into the Shat Al-Basra canal where Ahmed Jaber Karim ‘Ali could not swim and drowned.⁵⁴

In relation to yet another incident, a court martial convicted three UK armed forces personnel in February 2005 of abusing detainees in May 2003 at Camp Breadbasket, near Basra, and sentenced them to between 140 days and two years’ imprisonment.⁵⁵

On 13 February 2006, the UK MoD announced that an investigation had been initiated into fresh allegations of abuse by UK armed forces personnel that had emerged in connection with video footage obtained by *The News of the World* newspaper. The footage showed UK soldiers beating a number of Iraqis who had been detained in a “snatch and grab” operation in the aftermath of a demonstration in 2003 or 2004 which had turned violent. The MoD stated that “[t]he images in this video amount to very serious allegations.... They are disturbing images.” The MoD also confirmed that a serving soldier had been arrested in connection with the allegations, and that the investigation being conducted by the Royal Military Police (RMP) aimed to identify all the armed forces personnel appearing in the footage.

As with previous allegations, in the wake of these latest allegations, various UK government officials have made statements condemning all acts of abuse and brutality, and pledging that any allegation of wrongdoing by UK armed forces personnel would be treated

⁵³ *BBC, UK soldiers face war crimes trials*, 20 July 2005.

⁵⁴ *CNN, British trio charged with war crimes*, 19 July 2005.

⁵⁵ *The Guardian, Audrey Gillan, Soldiers in Iraq abuse case sent to prison*, 26 February 2005.

extremely seriously. The MoD in its 13 February 2006 statement said that “The Army always initiates a Royal Military Police investigation whenever serious allegations of wrongdoing are made. This fulfils the Army’s obligation always to uphold the rule of law.”

Amnesty International notes that the UK and other international military forces in Iraq enjoy immunity from criminal and civil prosecution under Iraqi law; they may, however, be prosecuted under their national laws. It is therefore crucial that the procedures established for investigating and prosecuting suspected human rights violations of Iraqi civilians by UK forces are adequate and comply fully with relevant international standards. These procedures are the only means by which UK forces operating in Iraq can be held accountable for their actions, and to ensure that Iraqi victims are afforded adequate redress.

Amnesty International is concerned that the UK authorities have, to date, failed to establish prompt, independent, thorough and effective investigations into alleged human rights violations, and to ensure adequate reparations to victims and their families. The UK army’s response to suspected unlawful killing of civilians and allegations of torture or other ill-treatment has undermined, rather than upheld, the rule of law. The UK authorities have failed to conduct investigations into all credible allegations of serious human rights violations, and the investigations that have been carried out have failed to ensure that “justice was done and seen to be done” in the eyes of victims’ families, the Iraqi and UK public. Some of the investigations have been shrouded in secrecy -- some victims have not even been aware that they have been opened. Families of victims have also not been given adequate information on how to apply for compensation.

Moreover, Amnesty International is concerned that serious allegations of human rights violations came to light because individuals saw pictures or video footage and reported them and not because UK officials took action. Thus, some of the official investigations and subsequent prosecutions may never have been initiated or publicized if nobody had come forward to complain.

When UK army personnel in the UK kill a civilian, an investigation is conducted and supervised by a civilian police force. By the same token, investigations into deaths in police custody, or into allegations of torture or other ill-treatment by the police, are supervised, and at times conducted, by the Independent Police Complaints Commission. But this is not how investigations are conducted in Iraq.

At present, investigations into allegations of serious human rights violations by members of the UK military in Iraq are conducted by the RMP. Amnesty International considers that the RMP-led investigations into allegations of serious human rights violations of Iraqi civilians at the hands of members of the UK armed forces, including unlawful killings and torture and other ill-treatment, do not comply with international standards of promptness effectiveness, thoroughness, independence and impartiality.

Amnesty International also continues to be concerned about the role of the commanding officer in the investigation of alleged criminal acts by UK armed forces personnel as highlighted by the Court of Appeal of England and Wales in the Al-Skeini case described above.

The organization continues to urge the UK authorities to establish a civilian-led mechanism to conduct human rights compliant investigations into all allegations of human rights violations of people in Iraq by members of the UK forces.

The UK Attorney General, Lord Goldsmith QC, has publicly expressed concern about the need for justice not only to be done but also to be seen to be done in connection with serious allegations of abuses by UK armed forces in Iraq. In particular, Lord Goldsmith has expressed concern about the adequacy of military investigations of serious allegations of abuses at the hands of UK troops and of their impact on the administration of justice.

Amnesty International considers that the UK is bound by the HRA, the ECHR, the ICCPR, the Convention against Torture and other relevant international law and standards insofar as UK military personnel's control or authority over persons or territory in Iraq is concerned.

3.5.2. Hooding

Amnesty International has expressed concern about the admission that routine hooding of detainees had been practised by UK armed forces personnel in Iraq.⁵⁶ Amnesty International requested information from the UK authorities about the circumstances in which this practice was introduced and why. In replies to Amnesty International and in written answers to Parliamentary Questions, the UK authorities stated that hooding is only unacceptable “during interrogation or tactical questioning”, but that “there may be operational circumstances where there are clear military reasons for obscuring detainees' vision and which is [sic] fully compatible with the terms of the Geneva Conventions.” For example, Lord Bach stated in July 2004 that “The hooding of detainees for the purposes of arrest or transit was a standard procedure for UK troops prior to Operation TELIC [at that time UK military operations in Iraq were conducted under the name of Operation *Telic*] and, as such, was not specifically brought to the attention of Ministers. The UK believes that hooding during arrest and transit is acceptable when there is a strong military reason, for example to offer security to our own forces and locations and to provide protection to the detainee (through the prevention of identification by other detainees). The practice of hooding was discontinued when there was no longer a military justification for continuing to do so.”

Amnesty International considers that there can be no justification for hooding detainees. It is ill-treatment because it leads to sensory deprivation by impairing the sight, hearing and sense of smell of the prisoner. Hooding a person is also disorientating, increases vulnerability and may impair breathing.

In November 2004, the UK Ministry of Defence began a review of the practice of hooding. To date, the outcome of that review, if any, is not known.

Amnesty International continues to urge the UK authorities to end and criminalize the practice of hooding detainees.

3.5.3. Internment

Amnesty International considers that the UK is also breaching international and domestic human rights law in its actions relating to the internment without charge or trial of some 14,000 people (as of November 2005) in Iraq.

While the majority of people have been interned by US forces, as of October 2005, the UK forces were interning some 33 people. People who are interned by the UK forces have their cases reviewed by a body called the Divisional Internment Review Committee (DIRC). The DIRC has the following members: Chief of Staff, another senior officer, the chief legal

⁵⁶ See, for example, the 10 May 2004 Ministerial Statement to the House of Commons by the then Secretary of State for Defence, Geoff Hoon, “The second concern raised by the ICRC [the International Committee of the Red Cross] relevant to the UK was in respect of the routine hooding of prisoners. This practice had already ceased in UK facilities from September last year, and this change had also been confirmed publicly.”

officer and the chief political advisor and another legal officer.⁵⁷ However, while the DIRC reviews the cases, the final decision for release or continued internment rests with the Governing Officer Commanding (GOC).

Under the relevant regulations, the initial review is required to take place within 48 hours of the internment and thereafter monthly.⁵⁸ An interned person may address written submissions to the DIRC, but neither the internee nor his or her legal counsel may be present at the review sessions of the DIRC. Internees are informed of the decision of the GOC in writing. The decision sets out the reasons for internment.

Amnesty International is concerned that even after months of internment the UK continues to hold internees without providing them or their legal counsel with adequate information to enable them to refute the evidence being used to continue their internment.

⁵⁷ Foreign and Commonwealth Office, Human Rights – Annual Report 2005, July 2005, page 63.

⁵⁸ Foreign and Commonwealth Office, Human Rights – Annual Report 2005, July 2005, page 64.

3.5.3.1. The case of Hillal ‘Abdul Razzaq ‘Ali al-Jedda

Hillal ‘Abdul Razzaq ‘Ali al-Jedda, a 48-year-old dual national with UK and Iraqi citizenship, who resides in London and is married with four children, has been interned since his arrest on 10 October 2004 in Baghdad. Hillal ‘Abdul Razzaq ‘Ali al-Jedda was seized by US troops in Baghdad and handed over to UK armed forces personnel. Since then he has been detained without charge or trial (“interned”) in Iraq by UK armed forces at Shu’aiba Divisional Temporary Detention Facility near Basra. His detention has been reviewed periodically, following which the Commander of the Multi-National Division had decided that detention continued to be necessary. He has not been granted the right to appeal to a fully independent and impartial tribunal the decision detain him.

The treatment of Hillal ‘Abdul Razzaq ‘Ali al-Jedda and of other Iraqi internees is a further example of attempts by the UK authorities to circumvent their obligations under human rights law in respect of their actions in Iraq. The UK authorities have asserted that the authority to intern people derives from UN Security Council Resolution 1546 on the grounds of “imperative reasons of security”. They have claimed that this resolution displaces the obligations (relating to the right to liberty and security of the person) of the UK authorities under domestic and international human rights law.

The case of Hillal ‘Abdul Razzaq ‘Ali al-Jedda concerns one of the most fundamental rights - the right to liberty and security of person. Amnesty International considers that human rights obligations guaranteeing this right remain fully applicable to all people held by UK forces in Iraq. Moreover, internment violates a number of human rights, including the right to be free from arbitrary detention.

Hillal ‘Abdul Razzaq ‘Ali al-Jedda filed a case against the UK Ministry of Defence relating to his internment in Iraq. In July 2005, his case was heard before the High Court of England and Wales in London. Hillal ‘Abdul Razzaq ‘Ali al-Jedda’s legal team argued that his detention, ordered as a “preventive security measure”, is illegal because he has not been charged with any offence. They said that his continued detention breached the ECHR and the HRA. His lawyer said: “If the government was right it would mean that an individual member state could unilaterally interpret a Security Council resolution to overrule fundamental human rights treaties [and] that human rights principles could be regarded as of secondary importance.”

In August 2005 the High Court ruled in favour of the government. However, the court stated that “Although detained for imperative reasons of security, the claimant has not been charged with any offence; and the Secretary of State acknowledges that, as matters stand, there is insufficient material available which could be used in court to support criminal charges against him. The claimant is therefore detained simply on a preventive basis.” It appears that much of this “material” has been kept secret from Hillal ‘Abdul Razzaq ‘Ali al-Jedda and his lawyer. In January 2006, an appeal against the decision of the High Court was heard in the Court of Appeal of England and Wales; in mid-February 2006 judgment remained pending.

In November 2005 the UK Ministry of Defence wrote to Amnesty International stating that: *Mr Al-Jedda is being held in Iraq under procedures authorised by United Nations Security Council Resolution 1546 and the letters annexed to it, which give coalition forces in Iraq the*

power to intern people, where necessary, for imperative reasons of security. Internment is an important component of our approach to force protection in Iraq, but it is a power UK forces use sparingly. We have no interest in interning individuals in Iraq other than to protect British servicemen and women, Iraqi security personnel and Iraqi civilians from attack.

Mr Al-Jedda is held as a security internee by UK forces because it is assessed he poses a serious security risk and is therefore a threat to the lives of coalition servicemen and women in Iraq, and to Iraqi security personnel and Iraqi civilians.

Mr Al-Jedda's continued detention is reviewed regularly and the legality of his detention by UK forces in Iraq was upheld in a High Court judgment in August this year. The judgment is currently the subject of an appeal, although we are confident that the Court of Appeal will uphold the original judgment and find in favour of the Ministry of Defence.

As of mid-February 2006, Hillal 'Abdul Razzaq 'Ali al-Jedda continued to be held without charge or trial by UK forces in Iraq. Amnesty International urges the UK authorities to release Hillal 'Abdul Razzaq 'Ali al-Jedda and other internees similarly held unless they are promptly charged with a recognizably criminal offence and brought to trial before an independent and impartial court in proceedings which meet international standards.

4. The Inquiries Act 2005: an attack against the rule of law and the independence of the judiciary

For several years Amnesty International has been concerned that the UK government has successfully introduced legislation that curtails judicial powers. The “anti-terrorism” measures described above are illustrative examples. In addition, in the field of determining asylum claims, legislative provisions have limited judicial discretion in finding facts favourable to asylum-seekers.

In this section, Amnesty International outlines its profound concern at a recently introduced legislative framework under which public judicial inquiries tasked with ensuring public accountability and scrutiny of executive and administrative action are to be established. In Amnesty International’s view this legislation, the Inquiries Act 2005, has fundamentally compromised the role of judges in upholding the rule of law and human rights for all by undermining the proper separation of powers between the judiciary and the executive in the UK.

During the parliamentary debates which preceded the adoption of this legislation, Amnesty International and many others expressed concern that the UK government was attempting to eliminate independent scrutiny of its agents' actions by provisions, which dictate that inquiries conducted under this law would largely be controlled by government Ministers.⁵⁹ Amnesty International called for the withdrawal of this draft legislation, and for the government to engage in a serious consultation process about any future changes in the running of public inquiries.⁶⁰

Notwithstanding the strong criticism and opposition expressed, Parliament voted to adopt the Bill on 7 April 2005, the last possible day before it was dissolved pending the general election. The Inquiries Act 2005 entered into force in June 2005. It enables the executive to control inquiries initiated under it, effectively blocking public scrutiny of state actions.

Amnesty International and others have expressed concern that a public judicial inquiry held under the Act would be one in which the executive has the power to:

- decide upon the inquiry and its terms of reference; no independent parliamentary scrutiny of these decisions is contemplated;

⁵⁹ See for example *UK: The Inquiries Bill - the Wrong Answer*, a joint statement by Amnesty International, British Irish rights watch, The Committee on the Administration of Justice, Human Rights First, The Human Rights Institute of the International Bar Association, INQUEST, JUSTICE, Lawyers’ Rights Watch Canada, The Law Society of England and Wales, Pat Finucane Centre and Scottish Human Rights Centre, issued on 22 March 2005, AI Index: EUR 45/008/2005.

⁶⁰ See *UK: The government must withdraw the Inquiries Bill and act on its promise*, 11 February 2005, AI Index: EUR 45/003/2005.

- appoint each member of an inquiry panel, including the chair of the inquiry, and the executive is empowered with extensive discretion to dismiss members of the inquiry;
- impose restrictions on public access to the inquiry, including on whether the inquiry, or any individual hearings, are held in public or private. The executive can also impose restrictions on attendance by witnesses at the inquiry, on production of any evidence or documents, and the public disclosure of this evidence or documents. Indeed, the executive can impose all of the above-mentioned restrictions irrespective of views and/or rulings to the contrary expressed or made by the inquiry panel on these matters; and
- decide whether the final report of the inquiry will be published, and whether any evidence will be omitted from the report “in the public interest”, though this term is nowhere clearly and unambiguously defined.

In light of the above, Amnesty International considers that the Inquiries Act 2005, which governs the conduct of any public judicial inquiry, fails to comply with relevant international standards. Most importantly, a judicial inquiry held under the Inquiries Act would fail to comply with the requirements identified by the European Court of Human Rights in its case-law under Articles 2 and 3 of the ECHR.⁶¹ Amnesty International further considers that a judicial inquiry held under the Act may not comply with the requirement of “an independent and impartial tribunal” under Article 6 of the ECHR.

Lord Saville of Newdigate, the chair of the Bloody Sunday Tribunal of Inquiry, expressed the view that the Inquiries Act 2005 “makes a very serious inroad into the independence of any inquiry; and is likely to damage or destroy public confidence in the inquiry and its findings”. Lord Saville also said: “As a Judge, I must tell you that I would not be prepared to be appointed as a member of an inquiry that was subject to a provision of this kind.”⁶² Other senior judges and the parliamentary Joint Committee on Human Rights of the UK Parliament have expressed concern about the Act.

Since the enactment of the Inquiries Act 2005, Amnesty International and others have called for its repeal. Given that the Act does not provide the foundation for effective, independent, impartial or thorough public judicial inquiries into allegations of serious human rights violations, Amnesty International has opposed the government’s stated intention to hold an inquiry into the murder in Northern Ireland of Patrick Finucane.

⁶¹ See, e.g., the judgments of the European Court of Human Rights in the case of *Jordan et al v UK*.

⁶² “Finucane widow urges judges to shun inquiry”, *The Guardian* newspaper, 14 April 2005.

4.1. An inquiry into the Finucane case under the Inquiries Act: a sham

Patrick Finucane, an outspoken human rights lawyer, was shot dead on 12 February 1989 at his home in front of his wife and children in Belfast, Northern Ireland, by loyalist paramilitaries.

Substantial and credible allegations of state collusion began to emerge almost immediately after Patrick Finucane's death. Since then, evidence of criminal conduct by police and military intelligence officers acting in collusion with members of a loyalist paramilitary group in the killing has come to light. In addition, allegations of a subsequent cover-up have implicated government agencies and authorities, including the police, the British army, the UK security service (MI5), and the Office of the Director of Public Prosecutions in Northern Ireland. It has also been alleged that his killing was the result of state policy.

His was just one among a number of killings in Northern Ireland alleged to have been carried out with the collusion of UK security forces.

In the past, the Special Representative of the UN Secretary-General on human rights defenders and the UN Special Rapporteur on the independence of judges and lawyers, as well as international and local human rights organizations, including Amnesty International, the International Federation for Human Rights, Human Rights Watch, the Committee on the Administration of Justice, British Irish Right Watch and the Pat Finucane Centre have called on the UK government to proceed to an independent inquiry without delay.

In May 2002, the UK and Irish governments appointed Justice Peter Cory – a former Canadian Supreme Court Judge – to make recommendations as to whether public inquiries were warranted in a number of unlawful killings in which state officials were alleged to have colluded.

In April 2003, the then Metropolitan Police Commissioner, Sir John Stevens, delivered his long-awaited report into collusion in Northern Ireland, only a short summary of which was published. Among other things, it confirmed widespread collusion between state agents and Loyalist paramilitaries, including state agents being involved in murder such as the killing of Patrick Finucane. It also confirmed the existence of the British Army's secret intelligence unit known as the Force Research Unit which had actively colluded with Loyalist paramilitaries in targeting people, including Patrick Finucane, for assassination.

In July 2003, the European Court of Human Rights found that the UK authorities had violated Patrick Finucane's right to life, including by failing to promptly investigate allegations of security personnel collusion in his murder.

In October 2003 Justice Cory submitted his reports, but it was not until six months later that the UK authorities finally published them. As to the Finucane case Justice Cory's conclusion was unequivocal: "only a public inquiry will suffice". He also added that "[t]his may be one of the rare situations where a public inquiry will be of greater benefit to a community than prosecutions."

In September 2004, Kenneth Barrett, a former loyalist paramilitary, pleaded guilty to the murder of Patrick Finucane and was convicted. His was the only outstanding prosecution arising from the case. Kenneth Barrett's conviction removed any purported justification on the part of the UK authorities not to initiate a public inquiry into the allegations of collusion in Patrick Finucane's killing.

Amnesty International and others observed the trial of Kenneth Barrett. As a result, the organization was able to confirm that Kenneth Barrett's guilty plea led to no significant information about the circumstances surrounding the murder being made public.

Shortly after the conviction of Kenneth Barrett, the UK government finally announced that an inquiry into the killing of Patrick Finucane would be established. However, instead of announcing a *public* judicial inquiry under the Tribunal of Inquiry (Evidence) Act 1921 then in force, the UK authorities stated that the inquiry would be held on the basis of legislation that it planned to introduce to take account of "the requirements of national security".

Amnesty International expressed concern that the UK authorities were using "national security" to curtail the ability of the inquiry to shed light on: state collusion in the killing of Patrick Finucane; allegations that his killing was the result of an official policy; and the role that different government authorities played in the subsequent cover-up of collusion in his killing.

The Inquiries Act was enacted in April 2005. The UK government has repeatedly stated that it intends to hold an inquiry into the murder of Patrick Finucane under the Inquiries Act 2005. It has added that it was likely that a large proportion of the evidence would be considered in private since it involved issues "at the heart of the national security infrastructure in Northern Ireland". The Northern Ireland Office described this as "genuinely the only way in which the inquiry can take place effectively... whilst taking into account the legitimate need to protect national security".

To date the UK government has yet to establish any inquiry.

Patrick Finucane's widow, Geraldine Finucane, has called on senior judges in England, Wales and Scotland not to serve on an inquiry into her husband's case under the Inquiries Act. Amnesty International supported her call. Since then, the organization has urged those members of the judiciary who may be approached by the UK authorities to sit on an inquiry into the Finucane case held under the Inquiries Act 2005 to decline to do so. The

Finucane family have publicly stated that they will not cooperate or take part in an inquiry held under this legislation. Seventeen years after the killing of Patrick Finucane, his family are still awaiting a public independent judicial inquiry into his death.

Amnesty International and others have denounced the prospect of an inquiry in relation to the murder of Patrick Finucane under the Inquiries Act as a sham.

In commenting about the prospect of an inquiry under the Inquiries Act, Justice Peter Cory has said:

It seems to me that the proposed new Act would make a meaningful inquiry impossible. The Commissions would be working in an impossible situation. For example, the Minister, the actions of whose ministry was to be reviewed by the public inquiry would have the authority to thwart the efforts of the inquiry at every step. It really creates an intolerable Alice in Wonderland situation. There have been references in the press to an international judicial membership in the inquiry. If the new Act were to become law, I would advise all Canadian Judges to decline an appointment in light of the impossible situation they would be facing. In fact, I cannot contemplate any self-respecting Canadian Judge accepting an appointment to an inquiry constituted under the new proposed Act.

Other senior judges in the UK and abroad have also intimated that they would not be prepared to sit on a Finucane inquiry held under the Inquiries Act.

Recently, media reports attributed to Peter Hain MP, Secretary of State for Northern Ireland, indicated that he had intimated that the Finucane inquiry would be held under the Inquiries Act or there will be “none at all”.

The Committee of Ministers of the Council of Europe, which supervises the implementation by member states of the judgments of the European Court of Human Rights, is continuing to consider whether a Finucane inquiry under the Inquiries Act 2005 would, as the UK government claims, comply with the European Court of Human Rights judgment in the case.

Amnesty International continues to call on the UK government to establish without delay a truly independent public judicial inquiry into the Finucane case which fully complies with relevant domestic and international human rights standards.

5. Amnesty International's Recommendations

Amnesty International calls on the UK authorities to implement the following recommendations as a matter of urgency:

Anti-terrorism legislation and measures

- abandon policies and measures involving punishment of a criminal nature unless imposed by an independent judiciary upon conviction for a recognizably criminal offence following a trial fully compliant with international fair trial standards;
- stop the use of “control orders”; ensure instead that when there exists a reasonable suspicion that someone has committed a crime, he or she is charged promptly with a recognizably criminal offence, and tried within a reasonable time in proceedings which fully comply with international fair trial standards;
- repeal all legislative measures, including in particular the Prevention of Terrorism Act 2005, that curtail the independence of the judiciary and thereby undermine the rule of law;
- desist from enacting further anti-terrorism measures, including in the Terrorism Bill, which would contravene domestic and international human rights and refugee law and standards and would, if implemented, give rise to serious human rights violations;
- in view of the announcement that the government will bring forward a consolidated Bill on anti-terrorism in 2007, ensure that Amnesty International's concerns are addressed, and that any measure be in full compliance with international and domestic human rights law and standards;
- ensure that any measures taken are not carried in a discriminatory manner;
- provide “A”, “G”, “H”, Mahmoud Abu Rideh and the other former internees with reparation for the grave human rights violations they have endured for more than four years;
- stop undermining the prohibition of torture or other ill-treatment at home and abroad, for example by attempting to persuade the European Court of Human Rights to reconsider its jurisprudence establishing that the prohibition of torture or other ill-treatment encompasses an absolute prohibition against sending a person to a country where there is a real risk that they would be subjected to such a treatment.

Memorandums of Understanding

- desist from attempts to deport individuals who would be exposed to a real risk of torture or other ill-treatment or flagrant denial of justice upon being sent to another country;
- do not proceed with the implementation of the MoUs already concluded with Jordan, Libya and Lebanon, and refrain from seeking additional MoUs with other governments. Instead, in each of these countries, the UK government should be pushing for the implementation of systematic reforms which guarantee the respect and the protection of human rights and for the ratification and implementation of the Optional Protocol to the Convention against Torture.

Human rights protection

- do not amend the Human Rights Act 1998 in any way that undermines human rights protection in the UK and abroad;
- ensure instead that effective redress is provided in domestic law for human rights violations caused by the implementation of legislation found to be incompatible with ECHR rights;
- pay heed to the concerns expressed by, and fully comply with the recommendations of, international human rights bodies and institutions, including the UN treaty bodies, the UN Special Procedures and the institutions of the Council of Europe.

Accountability for UK actions abroad

- ensure full accountability for actions of UK armed forces and officials abroad; in particular by establishing a civilian-led mechanism to conduct independent, impartial and thorough investigations into serious allegations of human rights violations at the hands of UK armed forces personnel abroad;
- stop attempting to circumvent the UK's domestic and international obligations with respect to the actions of the UK military and officials abroad by arguing that the UK is not bound by the ECHR, the ICCPR or the HRA;
- charge promptly with a recognizably criminal offence all those interned in Iraq, and bring them to trial within reasonable time in proceedings that comply with international fair trial standards, or else release them;

- provide reparation, including adequate compensation, rehabilitation, redress, satisfaction and guarantees of non-repetition, to the victims of human rights violations at the hands of the UK abroad.

Guantánamo Bay

- demand that the US authorities either promptly charge all persons being detained at Guantánamo Bay, including the UK residents, and bring them to justice in fair proceedings, or release them. If the UK residents are not to be charged promptly, make adequate representations to the US authorities asking for their return to the UK;
- ask the US authorities to provide adequate reparation to all persons, including UK citizens and residents, who have been subjected to human rights violations in Guantánamo Bay or in other places where they were held in US custody.

“Renditions”

- thoroughly investigate the use of UK airspace and facilities used in the context of “renditions” and make public the outcome of such investigation;
- clarify the role that the UK has played, if any, in any unlawful transfer of individuals to the custody of the USA and other states;
- extend full cooperation to the investigations already ongoing into the issue of “renditions”, specifically, those being conducted by UK parliamentarians, the Council of Europe and the European Parliament;
- review all legislative and administrative policies and measures to ensure that the necessary steps are taken to prevent the UK territory being used for “rendition” purposes.

Inquiries Act 2005

- repeal the Inquiries Act 2005;
- establish a truly independent public judicial inquiry into the killing of Patrick Finucane and fully cooperate with it.