

# AMNESTY INTERNATIONAL

## Media Briefing

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## **UK: Government in the dock for indefinite detention without charge or trial**

On 17 July eleven men, all non-UK nationals, are challenging the lawfulness of the Anti-terrorism, Crime and Security Act (ATCSA) 2001 on the grounds that it violates their human rights.

Amnesty International is concerned about the consequences of the implementation of provisions of the ATCSA which have resulted in serious human rights violations. Under this legislation, a person who is not a UK national may be detained for an unspecified period of time, without charge or trial, if the Secretary of State certifies that s/he reasonably believes that the person is "a risk to national security" and a suspected "terrorist". The Secretary of State's decision to direct detention without charge or trial may be based entirely on evidence which the detainees may never get to see or know about.

ATCSA detainees can only be released if the certificate is either revoked by the Secretary of State or cancelled by the Special Immigration Appeals Commission (SIAC), the tribunal empowered to hear challenges against the ATCSA, grant bail, and review and hear challenges to detention orders. ATCSA detainees may also "voluntarily" leave the UK if they can find another country willing to accept them, although this is likely to prove difficult once a person has been labelled a "terrorist".

As such power is inconsistent with the right to liberty and security of person guaranteed under Article 5(1) of the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) and Article 9 of the International Covenant on Civil and Political Rights (ICCPR), the UK government has temporarily suspended (i.e. derogated) its obligations under these provisions. The government justified such measures by stating that the UK is facing a "public emergency threatening the life of the nation". However, when the Secretary of State announced the proposal for the legislation in October 2001, he said that "(t)here is no immediate intelligence pointing to a specific threat to the United Kingdom...". The UK remains the only country that has derogated from the ECHR in the aftermath of the 11 September 2001 attacks in the United States of America.

Amnesty International opposes indefinite detention without charge or trial. The organization calls on the UK government to release those held under the ATCSA unless they are charged with a recognizably criminal offence in a court of law and tried in proceedings which meet international standards of fairness.

Amnesty International considers that detention without charge or trial under the ATCSA violates a number of other rights of those detained under it which, under international law, the UK remains bound to respect, including the right to bring proceedings to have a court determine speedily the lawfulness of

detention, and order release if detention is deemed unlawful. This safeguard, enshrined in, among others, Article 5(4) of the ECHR, is a fundamental protection against arbitrary detention and torture and has been deemed non-derogable at all times.

Indefinite detention under the ATCSA may be tantamount to charging a person with a criminal offence and convicting them without a trial. In this respect, Amnesty International considers that the ATCSA violates the right to be brought promptly before a judge, as well as the right to trial within reasonable time and the presumption of innocence. These rights, which the UK remains obligated to respect, are guaranteed in, among others, Articles 5(3) and 6 of the ECHR, as well as Article 14 of the ICCPR.

Amnesty International is also concerned about the consequences of other aspects of the ATCSA. The ATCSA does not contain provisions which would give people detained under it the right to immediate access to a solicitor. Also, given that secret evidence can be entirely withheld from those against whom it has been adduced, SIAC proceedings violate the right to a fair hearing. Despite the appointment under the ATCSA of Special Advocates (SAs) to represent the interests of the ATCSA detainees, SAs are no substitute for legal counsel. Once the SA sees the secret evidence, s/he cannot discuss it with the individual concerned or her or his legal representatives. This secrecy undermines the ATCSA detainees' ability to challenge effectively the evidence on which they may be held indefinitely.

Amnesty International considers that the conditions under which the ATCSA detainees have been held in two high security prisons in the UK: Woodhill prison, Buckinghamshire, and Belmarsh prison in London, also violate their human rights. Upon their detention, they were immediately classified as Category A (initially, in fact, as Category AA). As a result of this categorization, they have been subjected to the most restrictive regime, including 22-hour lock-up with no meaningful activities or adequate access to association time; denial of adequate health care; impediments to contact with the outside world, including denial of access to family for months because of delays in the granting of security clearance and, once clearance was granted, being subjected to "closed" visits with their families (i.e. a glass screen separates completely the detainee from family members); strip-searches before and after legal and social visits; and restrictions on opportunities, time and facilities to communicate with their lawyers.

Such detention conditions, coupled with the fact that the ATCSA detainees have no way of knowing for how long they will be held, amount to a violation of the right not to be subjected to torture or other ill-treatment, enshrined in, among others, Article 3 of the ECHR, non-derogable at all times. The detainees themselves have described the situation to Amnesty International representatives as "mental torture". In this respect, the organization is concerned that their ability to instruct legal representatives could be seriously undermined by a deterioration in their mental and physical health caused by the conditions in which they are held.

Amnesty International has been particularly concerned about Mahmoud Abu Rideh, one of the ATCSA detainees currently held in Belmarsh. In 1997 Mahmoud Abu Rideh, a 31-year-old Palestinian refugee, was granted refugee status as a torture victim and diagnosed as suffering from severe post-traumatic stress disorder. His mental and physical health have seriously deteriorated as a result of his detention. He is suicidal and has been involved in frequent incidents of self-harm. Amnesty International is concerned that his continued detention at Belmarsh constitutes cruel, inhuman and degrading treatment. A request by Mahmoud Abu Rideh's legal representatives for him to be bailed to a low level secure mental hospital was refused for a second time on 24 June 2002 by SIAC.

### **Background:**

Eight people were initially arrested and detained under ATCSA on 19 December 2001. Subsequently, two of those originally detained have "voluntarily" left the UK, and three others have since been arrested. Thus, of a total of 11 people challenging the UK government tomorrow, nine remain in detention.

To the best of Amnesty International's knowledge, most, if not all, of the ATCSA detainees are either asylum-seekers or have previously been recognized as refugees in the UK. Amnesty International is concerned that those detained under the ATCSA, whether recognized refugees or asylum-seekers, are being denied the opportunity to enjoy refugee protection under the 1951 Convention relating to the Status of Refugees. In particular, ATCSA detainees are not afforded the opportunity to challenge, in the context of fair proceedings, any decisions pursuant to the ATCSA which negatively affects their status or rights.

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