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UNITED KINGDOM

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

> "*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-General[1]

Introduction

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.

Amnesty International unconditionally and unreservedly condemns attacks on civilians, including those in London in July 2005, and calls for those responsible to be brought to justice. The organization recognizes that in the aftermath of the July attacks it is incumbent upon the UK authorities to review legislative and other measures with a view to ensuring non-repetition of such attacks. It is equally incumbent on the UK authorities to ensure that all measures taken to bring people to justice, as well as all measures to protect people from a repetition of such crimes, are consistent with international human rights law and standards. Security and human rights are not alternatives; they go hand in hand. Respect for human rights is the route to security, not an obstacle to it.

The absolute necessity for states to ensure that all anti-terrorism measures be implemented in accordance with international human rights, refugee and humanitarian law

[1] Keynote address to the Closing Plenary of the International Summit on Democracy, Terrorism and Security, 10 March 2005 (a.k.a. the Madrid meeting) delivered by UN Secretary-General Kofi Annan.

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.[2]

Having carefully considered some provisions in the Terrorism Bill in light of international human rights standards, particularly those concerned with the rights to liberty, to the presumption of innocence and to freedom of expression and association, Amnesty International considers that a number of the Bill's provisions are inconsistent with the UK's obligations under domestic and international human rights law and that, if enacted, may lead to serious human rights violations.[3]

Background

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

Amnesty International considers that each of three pieces of anti-terrorist legislation enacted in the UK in the last five years[4] contains provisions which are clearly incompatible with human rights law and standards. Their implementation has given rise to serious human rights violations.

Amnesty International is concerned that the new Bill contains further sweeping and vague provisions which, if enacted, could violate the rights to freedom of expression and

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[2] 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.

[3] The organization made public its views on what was then the draft Terrorism Bill on 12 October 2005 when it published its briefing on it, see *United Kingdom – Amnesty International briefing on the draft Terrorism Bill 2005*, AI Index: EUR 45/038.2005.

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

association of people prosecuted under them, and would have a chilling effect for society at large on its exercise of the rights to freedom of expression and association. In addition, the Bill, if enacted in its current form, would extend the maximum time limit allowed under anti-terrorism legislation for detention in police custody of people purportedly suspected of involvement in terrorism without charge or trial from 14 days to up to three months. In turn, such prolonged detention would violate the right to liberty and freedom from arbitrary detention, given that one of its key constitutive elements, the right to be promptly informed of any charges against oneself, would be disregarded; detention in police custody without charge or trial for up to three months would also violate the right to a fair trial, by undermining the presumption of innocence and the right to silence.

Amnesty International is therefore greatly concerned that the implementation of this Bill would inevitably lead to serious human rights violations and to a further alienation of certain sectors of the UK population, particularly those identified as Muslims. Instead of strengthening security, it will further alienate already vulnerable sections of society.

1. Definition of "Terrorism"[5]

The Terrorism Act 2000 brought into permanent statutory form a definition of "terrorism" and numerous provisions identical or similar to offences grounded in that definition which had been enshrined in so-called "temporary" emergency legislation in the UK over the previous three decades at least.[6]

Among many others, Amnesty International expressed its concern about the vagueness and breadth of the definition of "terrorism" during the Parliamentary passage of the Terrorism Bill 2000[7] and has been reiterating its anxiety about it since the enactment of the Terrorism Act 2000.[8]

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[5] While there is no specific offence of "terrorism" in UK law, the definition of "terrorism" on the basis of which numerous offences have been codified is that provided in section 1 of the Terrorism Act 2000.
[6] These provisions were enshrined in the Emergency Provisions Act, which was first introduced in 1973 and the Prevention of Terrorism Act, which was first introduced in 1974.
[7] See, for example, *United Kingdom: Briefing on the Terrorism Bill*, AI Index: EUR 45/43/00, published in April 2000.
[8] See, for example, *United Kingdom - Summary of concerns raised with the Human Rights Committee*, AI Index: EUR 45/024/2001, published in November 2001, pp. 17-19. In particular, Amnesty International expressed concern that the enactment of the Terrorism Act 2000 created a permanent distinct system of arrest, detention and prosecution for "terrorist offences" which would violate the internationally recognized right of all people to equality before -- and equal protection of -- the law without discrimination. This different treatment is not based on the seriousness of the criminal act itself but rather on the alleged motivation behind the act, defined in the Act as "political, religious or ideological".

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

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

In addition, Amnesty International considers that various existing and proposed anti-terrorism provisions may violate the right to be free from discrimination[9] and the right to equality before the law and equal protection of the law without any discrimination, enshrined in, *inter alia*, Articles 2(1)[10] and 26[11] of the International Covenant on Civil and Political Rights (ICCPR), and in Articles 1[12] and 14[13] of the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR).

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[9] In its General Comment 18 on non-discrimination adopted on 10 November 1989, the Human Rights Committee has clarified the meaning of the term <u>discrimination</u> by stating that "the Committee believes that the term 'discrimination' as used in the Covenant should be understood to imply any <u>distinction, exclusion, restriction or preference</u> which is based on any ground such as race, colour, sex, language, <u>religion, political or other opinion, national or social origin</u>, property, birth <u>or other status</u>, and <u>which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise by all persons, on an equal footing, of all rights and freedoms</u>". General Comment 18, paragraph 7. [emphasis added].

[10] Article 2(1) of the ICCPR states: "[e]ach State Party to the present Covenant undertakes <u>to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind</u>, such as race, colour, sex, language, <u>religion, political or other opinion</u>, national or social origin, property, birth <u>or other status</u>." [emphasis added].

[11] Article 26 of the ICCPR states: "[a]ll persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status."

[12] Article 1 of the ECHR states: "[t]he High Contracting Parties shall secure to everyone within their jurisdiction the rights and freedoms defined in Section I of this Convention."

Amnesty International recognizes that not all differential treatment amounts to prohibited discrimination.[14] However, the implementation of the above-mentioned anti-terrorism provisions has effectively given rise to a different regime for the administration of criminal justice with respect to people purportedly suspected of involvement in terrorism which is neither reasonable nor objective nor aimed at achieving a legitimate purpose. This regime provides fewer safeguards for the suspect than s/he would be entitled to under the ordinary criminal law. Amnesty International considers that, in the context of measures that can lead to the deprivation of liberty of an individual, any departure from ordinary procedures and safeguards recognizing and according rights to the suspect in a manner which is practical and effective is unjustified and, therefore, unlawful.

Furthermore, the organization notes that the majority of states, individually, and the international community as a whole, have recognized that even people suspected of the most heinous crimes, such as war crimes, genocide and other crimes against humanity have a fundamental and inalienable right to enjoy respect for the highest procedural rights precisely because of the nature and gravity of the crimes of which they stand accused and the severity of the penalties they may face if convicted.[15]

2. Clauses 1 and 2 in Part 1

Clauses 1 -- "encouragement of terrorism" – and Clause 2 -- "dissemination of terrorist publications" – of Part 1 of the Terrorism Bill purport to criminalize the making and dissemination of statements which may indirectly incite terrorism.

The organization considers that the formulations of these offences are vague because they rely on the definition of "terrorism" in the Terrorism Act 2000, and on concepts such as "direct or indirect encouragement or other inducement", "glorification", and the notion of "terrorist publication", all of which are widely open to ambiguity and lack clarity. Amnesty International further considers that the scope of these provisions is sweeping and disproportionate.

There already exists in domestic law in the UK a panoply of offences covering incitement, aiding and abetting, procuring and counselling of any terrorist offences. Since the

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[13] Article 14 of the ECHR states: "[t]he enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status."

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

[15] See, for example, Article 55 of the Rome Statute of the International Criminal Court.

proposed offences in Clauses 1 and 2 of the Terrorism Bill fail to squarely address the element of intent, Amnesty International considers that the UK government's aim in bringing these provisions forward is to criminalize conduct carried out without the necessary mental element requirement, i.e. intent, prescribed by the criminal law.

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

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

2.1. The Right to Freedom of Expression and its permissible restrictions under human rights law

As a party to the ECHR and the ICCPR,[16] both of which enshrine the right to freedom of expression, the UK is required to guarantee the freedom and right to hold opinions and to seek, receive, and impart information and ideas of all kinds, orally, in print or art form or through other media, without the interference of public authorities.

As the European Court of Human Rights has made clear, the right of freedom of expression

> *constitutes one of the essential foundations of a democratic society and one of the basic conditions for its progress and for each individual's self-fulfilment. Subject to paragraph 2 of Article 10* [relating to lawful restrictions of the right]*, it is applicable not only to "information" or "ideas" that are favourably received or regarded as inoffensive or as a matter of indifference, but also to those that offend, shock or disturb. Such are the demands of that pluralism, tolerance and broadmindedness without which there is no "democratic society".*[17]

[16] Article 10 of the ECHR and Article 19 of the ICCPR enshrine the right to freedom of expression.
[17] *Sürek and Özdemir* v. Turkey, Judgment of the European Court of Human Rights of 8 July 1999, at para 57.

The European Court of Human Rights has also clarified that even "fighting words" may be protected by the right to freedom of expression.[18]

Domestic and international human rights law recognize that freedom of expression is not an absolute right. There are permissible grounds for the imposition of lawful restrictions on the exercise of the right to freedom of expression. The permissible restrictions, however, are to be strictly construed. Accordingly, any restriction on the exercise of the right to freedom of expression must be prescribed by law, and be necessary in a "democratic society" for one of the expressly set out grounds identified by human rights law which include, *inter alia*, "in the interests of national security… or public safety [and] for the prevention of disorder or crime… ".

To qualify as a measure "prescribed by law" any legal provision restricting the exercise of the right to freedom of expression must be "accessible and unambiguous", narrowly drawn and precise enough so that individuals subject to the law can foresee whether a particular action is unlawful.[19] The European Court of Human Rights clarified in *Sunday Times v. United Kingdom*, that:

> *In the Court's opinion, the following are two of the requirements that flow from the expression "prescribed by law". Firstly, the law must be adequately accessible: the citizen must be able to have an indication that is adequate in the circumstances of the legal rules applicable to a given case. Secondly, a norm cannot be regarded as a "law" unless it is formulated with sufficient precision to enable the citizen to regulate his conduct: he must be able - if need be with appropriate advice - to foresee, to a degree that is reasonable in the circumstances, the consequences which a given action may entail. Those consequences need not be foreseeable with absolute certainty: experience shows this to be unattainable. Again, whilst certainty is highly desirable, it may bring in its train excessive rigidity and the law must be able to keep pace with changing circumstances. Accordingly, many laws are inevitably couched in*

[18] See, e.g. *Arslan v. Turkey*, Judgment of the European Court of Human Rights of 8 July 1999, in particular the Concurring Opinion of Judges Palm, Tulkens, Fischbach, Casadevall and Greve.

[19] See Principle 1.1. of the Johannesburg Principles on National Security, Freedom of Expression and Access to Information, Freedom of Expression and Access to Information, U.N. Doc. E/CN.4/1996/39 (1996), which were developed by a group of international experts on human rights and media law from around the world, are considered authoritative on the subject and have been cited and commended by a range of UN and regional bodies and mechanisms. A copy of the Johannesburg Principles is attached to this document in Appendix III.
Principle 1.1. states:
"Prescribed by Law
(a) Any restriction on expression or information must be prescribed by law. The law must be accessible, unambiguous, drawn narrowly and with precision so as to enable individuals to foresee whether a particular action is unlawful.
(b) The law should provide for adequate safeguards against abuse, including prompt, full and effective judicial scrutiny of the validity of the restriction by an independent court or tribunal."

> *terms which, to a greater or lesser extent, are vague and whose interpretation and application are questions of practice.*[20]

In addition, any curtailment of the right to freedom of expression must both pursue one of the prescribed legitimate aims, and must be "deemed necessary in a democratic society" to protect that legitimate aim, such as the prevention of imminent violence. In order to meet the criterion of being "necessary in a democratic society", the restriction must be both rationally connected to the aim for which it is being introduced and must be proportionate. Proportionality in this context refers to the fact that the restriction must do no more than is absolutely necessary to meet the legitimate aim and that the nature and severity of any penalty imposed for a breach of the said restriction must also be proportionate.[21]

To meet the "necessity"/proportionality test, including in relation to criminalization of the making or dissemination of statements which encourage terrorism, it must be shown that the person accused 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.[22]

Amnesty International considers that Clauses 1 and 2 of the Terrorism Bill do not fulfil the requirements of the above-described permissible restrictions on the right to freedom of expression under international law.

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[20] Judgment of 26 April 1979, Series A, No.30; 2 EHHR 245 (1979-80).

[21] See, e.g., 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.

[22] See, e.g., Article 5 of the European Convention for the Suppression of Terrorism, set out at footnote 26 below. The European Court of Human Rights has also made clear, in the course of its reviewing cases of persons convicted for authoring or disseminating of statements alleged by the government concerned to encourage or incite acts of violence qualified as terrorism, that in determining whether a restriction of the right to freedom of expression is proportionate and necessary in a democratic society in pursuit of one of the legitimate aims it will have regard to a variety of factors including: whether the person intended to inflame or incite to violence; whether there was a real and genuine risk ('clear and present danger') that the statement might actually inflame or incite violence; the nature and severity of the penalty. See. e.g., *Arslan v. Turkey*, Judgment of the European Court of Human Rights of 8 July 1999, including the Concurring Opinion of Judges Palm, Tulkens, Fischbach, Casadevall, and Greve and the separate Concurring Opinion of Judge Bonello. See also, Principle 6 of the Johannesburg Principles.
"Principle 6: Expression That May Threaten National Security
Subject to Principles 15 [General Rule on Disclosure of Secret Information] and 16 [Information Obtained Through Public Service], expression may be punished as a threat to national security only if a government can demonstrate that:
(a) the expression is intended to incite imminent violence;
(b) it is likely to incite such violence; and
(c) there is a direct and immediate connection between the expression and the likelihood or occurrence of such violence."

2.1.1. Encouragement of Terrorism

Clause 1 of the Terrorism Bill 2005 would criminalize a person who publishes a statement (or causes another to publish it on their behalf) if, at the time, s/he knows or believes that those in the public who receive it are likely to understand the statement as a direct or indirect encouragement to commit, prepare or instigate "acts of terrorism".

Amnesty International considers that this provision does not meet the required criterion of being prescribed by law. It relies on the definition of "acts of terrorism" in the Terrorism Act 2000, which as noted above, the organization considers vague and overbroad. Additionally, it is likely that any person subject to this provision would have difficulty in trying to establish what any person who might receive the statement anywhere in the world might reasonably believe. Furthermore, what purports to be a clarification of "statements that are likely to be understood by members of the public as indirectly encouraging the commission or preparation of acts of terrorism" fails to meet the requirements of precision and clarity of the criminal law. In particular, the explanation offered -- that the offence extends to statements that "glorify the commission or preparation (whether in the past or in the future generally)" of terrorist acts, from which the members of the public who receive them "could reasonably be expected to infer that what is being glorified is being glorified as conduct that should be emulated in existing circumstances"-- is equally broad and inaccessible.

Amnesty International also considers that this provision fails to meet the required criterion of "necessity in a democratic society", given its failure to address squarely the element of intent and to criminalize the publication of a statement "encouraging terrorism" only if there is a direct and immediate connection between the expression and the likelihood or occurrence of such violence.[23]

In particular, Amnesty International is concerned about the way in which the provision addresses the element of intent. The organization notes that, as written, the provision does not squarely place on the state the burden of proving that the person who

[23] The recently adopted Council of Europe Convention on the Prevention of Terrorism, which the UK signed on the day of its adoption and opening for signature on 16 May 2005, makes clear the elements of intent, and the causal relationship between the publication of the statement and the danger that a terrorist offence may be committed. Article 5 of this Convention, requiring states parties to criminalize public provocation to commit a terrorist offence, states:
"Article 5 – Public provocation to commit a terrorist offence
1. For the purposes of this Convention, "public provocation to commit a terrorist offence" means the distribution, or otherwise making available, of a message to the public, *with the intent to incite the commission of a terrorist offence*, *where such conduct*, whether or not directly advocating terrorist offences, *causes a danger that one or more such offences may be committed*.
2. Each Party shall adopt such measures as may be necessary to establish public provocation to commit a terrorist offence, as defined in paragraph 1, when committed *unlawfully and intentionally*, as a criminal offence under its domestic law." (emphasis added)

published (or caused another to publish) the statement intended to encourage or glorify terrorism. Rather this provision focuses on whether the accused knew, believed or had reason to believe that at least some of those who would receive the statement are likely to understand it as encouraging terrorism. In fact, the provision seems to reverse the burden of proof on the key element of intent: it states that it is a defence for the accused to show that he or she only published the statement in the course of provision or use of a service provided electronically or that the statement neither expressed his or her views nor had his or her endorsement, and that it was clear that it did not express his or her views.

Furthermore, Amnesty International considers that the provision, as drafted, takes insufficient account of whether the publication of the statement created a real or genuine risk of incitement to "terrorism".

Such a sweeping provision in criminal law, punishable by up to seven years in prison, would be clearly contrary to the very principle of freedom of expression and have a chilling effect on individuals seeking to lawfully exercise their right to freedom of expression.

2.1.2. Dissemination of Terrorist Publications

Clause 2 of the Terrorism Bill seeks to criminalize the dissemination of "terrorist publications". A person is liable under this provision for disseminating or possessing with the view to its being disseminated, a "terrorist publication". A publication is a "terrorist publication" "if matter contained in it constitutes:

- a direct or indirect encouragement or other inducement to the commission, preparation or instigation of acts of terrorism; or
- information of assistance in the commission or preparation of such acts".

Amnesty International considers that this provision too fails to meet the criterion "prescribed by law" required for permissible restrictions of the right to freedom of expression. The provision is broad and sweeping. It refers back to, and relies on, the definition of "terrorism" set out in the Terrorism Act 2000. Its sweepingly broad content is also evident in the fact that it criminalizes the dissemination of publications which contain information that is capable of being useful in the commission or preparation of acts of terrorism and is likely to understood by at least some to have been made available mainly for that purpose. This, in Amnesty International's view, casts the net too widely.

Amnesty International also is concerned about the way Clause 2 addresses the element of intent. In the same way as described above in reference to Clause 1, Amnesty notes that Clause 2 may be read in such a way as to reverse the burden of proof on the element of intent. The provision does not appear to squarely place on the state the burden of proving that the person who disseminated the information did so for the purpose of encouraging or otherwise inducing another to commit an "act of terrorism". Rather, Clause 2 places the burden on an accused to show (as a defence) that she or he had: no intent to provide

or make available assistance to any person committing or preparing to commit an act of terrorism, or; no reasonable grounds for suspecting that the material she or he disseminated or possessed with a view to its dissemination was a "terrorist publication", or; that the publication neither expressed the views of the accused nor had their endorsement.

Considering that the provisions of Clause 2 of the Terrorism Bill fail to meet the criteria of being "prescribed by law" and proportionate to pursue one of the prescribed aims, the organization believes that enactment of the offence as drafted would be an overbroad and unlawful restriction of the right to freedom to impart information, a component of the right to freedom of expression. Amnesty International therefore believes that the implementation of Clause 2 of Part 1 would facilitate violations of that fundamental right.

3. Clause 6: Training for terrorism

Amnesty International is concerned that Clause 6 is too broad in scope. Given the absence of the requirement that a person intended to train for terrorism the provision as worded risks criminalizing otherwise lawful activity. Amnesty International notes, in contrast, Article 7 of the Council of Europe Convention for the Prevention of Terrorism -- which requires states parties to this treaty to criminalize training for terrorism -- requires proof that the skills provided in the training are intended to be used for carrying out or contributing to a terrorist act.

4. Clause 8: Attendance at a place used for terrorist training

Article 8 criminalizes a person who is present at a place in the United Kingdom or abroad where and while instruction or terrorist training is being carried out.

This provision does not require either that the person participated in the training or that they had prior knowledge that such activity was being carried out in that place. Nor does it require that the state prove that the person intended to be in the place for an unlawful purpose. Amnesty International considers that, as drafted, this provision is overbroad and disproportionate; it risks punishing -- for up to 10 years in prison -- someone for being in the wrong place at the wrong time.

5. Clause 21: Grounds of proscription

In the light of the concerns described above about Clause 1 of the Terrorism Bill, Amnesty International is also concerned about the related provision in Clause 21 which permits the proscription of any organization whose activities include the "unlawful glorification"-- including any form of praise or celebration -- of the commission or preparation (whether in the past, in the future or generally) of acts of terrorism or in which activities of the

organization are carried out in a manner that ensures that the organization is associated with statements containing any such glorification.

Given the vague and overbroad definition of glorification, etc. of terrorism, Amnesty International considers that this provision, if enacted in its current form, 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.

6. Extension of the maximum time-limit of detention in police custody without charge or trial: internment in anything but name

Clause 23 (Extension of period of detention by judicial authority) and Clause 24 (Grounds for extending detention) of the Terrorism Bill outline provisions which, if enacted, would permit an extension of the maximum time limit allowed under the anti-terrorism legislation for the detention, in police custody, without charge or trial, of people purportedly suspected of involvement in terrorism from 14 days to up to three months.

The organization notes that the judicial authorization of extensions is simply a review of the reasons adduced by the police of the need for such extensions; already under existing provisions it is not particularly onerous for the police to convince the judiciary of a need for extending the period of detention.

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

In this regard, Amnesty International notes that anybody held on suspicion of having committed an extremely serious offence such as murder would, under the ordinary criminal justice system, be held without charge for a maximum period of four days. On the other hand, if the proposed clauses are enacted, anybody held on suspicion of having committed an offence under anti-terrorism provisions could be held for more than 20 times longer.

Amnesty International opposes unreservedly the proposed extension of the already long maximum period of detention during which people can be held under anti-terrorism legislation by the police without charge. People are entitled to be charged promptly and tried within a reasonable time in proceedings which fully comply with internationally recognized fair trial standards, or to be released. Arguably, therefore, the existing power allowing for people purportedly suspected of involvement in terrorism to be detained in police custody without charge for up to 14 days before charge or release already violates one's right to be informed promptly of any charges against oneself.[24]

[24] Article 5 -- Right to liberty and security -- of the ECHR requires in paragraph 5(2) that:

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

In light of its long-standing experience in monitoring the right to a fair trial worldwide, Amnesty International has found that prolonged periods of pre-charge detention provide a context for abusive practices which can result in detainees making involuntary statements, such as confessions. The organization considers that the likelihood of suspects making self-incriminatory statements or other types of admissions or confessions increases with the length of time people are held for interviewing – or otherwise -- in police custody. Oppressive or otherwise coercive treatment in order to obtain confessions is unlawful under domestic and international human rights law, and undermines the suspect's right to fair trial. In addition, prolonged detention in police custody without charge could have the unintended effect of increasing the likelihood of statements obtained from the suspect being deemed inadmissible as involuntary at trial, precisely because of the coercive or otherwise oppressive nature inherent in such detention and questioning during which the said statements would have been obtained.

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

Amnesty International is also concerned at reports that the authorities are already using the existing powers as a blank cheque for holding people without charge or trial for up to 14 days. The organization's concerns about the scope for abuse in detaining people, without in fact having reasonable suspicion of their involvement in a criminal offence -- a key component of, and safeguard giving effect to, the right to liberty under domestic and international human rights law[25] -- have not been allayed by the briefing note attached to the letter by Andy Hayman, Assistant Commissioner (Metropolitan Police), to the Home Secretary of 6 October 2005. The said briefing note provides an explanation which purports to

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"Everyone who is arrested shall be informed promptly, in a language which he understands, of the reasons for his arrest and of any charge against him." (emphasis added)

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

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

….

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

justify the need for an extension of the maximum police custody time limit. Amnesty International considers that whatever the justification provided, no such draconian incursion into the fundamental right to liberty could be lawful.

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

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

> *While acknowledging the State party's national security concerns, the Committee recommends that the State party seek to balance those concerns with the protection of human rights and its international legal obligations. In this regard, the Committee draws the State party's attention to its statement of 8 March 2002 in which it underlines the obligation of States to "ensure that measures taken in the struggle against terrorism do not discriminate in purpose or effect on grounds of race, colour, descent, or national or ethnic origin".*[26]

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

> *We also note that there is mounting evidence that the powers under the Terrorism Act are being used disproportionately against members of the Muslim community in the UK. According to the Metropolitan Police Service data, the stop and search rates for Asian people in London increased by 41% between 2001 and 2002, while for white people it increased by only 8% over the same period. We are concerned that the strikingly disproportionate impact of the Terrorism Act powers on the Muslim community indicates unlawful use of racial profiling in the exercise of these powers, contrary to basic norms prohibiting discrimination on grounds of race or religion.*[27]

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

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

Appendix I - The Johannesburg Principles on National Security, Freedom of Expression and Access to Information, Freedom of Expression and Access to Information[28]

INTRODUCTION

These Principles were adopted on 1 October 1995 by a group of experts in international law, national security, and human rights convened by ARTICLE 19, the International Centre Against Censorship, in collaboration with the Centre for Applied Legal Studies of the University of the Witwatersrand, in Johannesburg.

The Principles are based on international and regional law and standards relating to the protection of human rights, evolving state practice (as reflected, *inter alia*, in judgments of national courts), and the general principles of law recognized by the community of nations.

These Principles acknowledge the enduring applicability of the Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights and the Paris Minimum Standards of Human Rights Norms In a State of Emergency.

PREAMBLE

The participants involved in drafting the present Principles:

Considering that, in accordance with the principles proclaimed in the Charter of the United Nations, recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world;

Convinced that it is essential, if people are not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law;

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[28] U.N. Doc. E/CN.4/1996/39 (1996).

Reaffirming their belief that freedom of expression and freedom of information are vital to a democratic society and are essential for its progress and welfare and for the enjoyment of other human rights and fundamental freedoms;

Taking into account relevant provisions of the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the UN Convention on the Rights of the Child, the UN Basic Principles on the Independence of the Judiciary, the African Charter on Human and Peoples' Rights, the American Convention on Human Rights and the European Convention on Human Rights;

Keenly aware that some of the most serious violations of human rights and fundamental freedoms are justified by governments as necessary to protect national security;

Bearing in mind that it is imperative, if people are to be able to monitor the conduct of their government and to participate fully in a democratic society, that they have access to government-held information;

Desiring to promote a clear recognition of the limited scope of restrictions on freedom of expression and freedom of information that may be imposed in the interest of national security, so as to discourage governments from using the pretext of national security to place unjustified restrictions on the exercise of these freedoms;

Recognizing the necessity for legal protection of these freedoms by the enactment of laws drawn narrowly and with precision, and which ensure the essential requirements of the rule of law; and

Reiterating the need for judicial protection of these freedoms by independent courts;

Agree upon the following Principles, and recommend that appropriate bodies at the national, regional and international levels undertake steps to promote their widespread dissemination, acceptance and implementation:

Principle 1: Freedom of Opinion, Expression and Information

(a) Everyone has the right to hold opinions without interference.

(b) Everyone has the right to freedom of expression, which includes the freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers,

either orally, in writing or in print, in the form of art, or through any other media of his or her choice.

(c) The exercise of the rights provided for in paragraph (b) may be subject to restrictions on specific grounds, as established in international law, including for the protection of national security.

(d) No restriction on freedom of expression or information on the ground of national security may be imposed unless the government can demonstrate that the restriction is prescribed by law and is necessary in a democratic society to protect a legitimate national security interest. The burden of demonstrating the validity of the restriction rests with the government.

Principle 1.1: Prescribed by Law

(a) Any restriction on expression or information must be prescribed by law. The law must be accessible, unambiguous, drawn narrowly and with precision so as to enable individuals to foresee whether a particular action is unlawful.

(b) The law should provide for adequate safeguards against abuse, including prompt, full and effective judicial scrutiny of the validity of the restriction by an independent court or tribunal.

Principle 1.2: Protection of a Legitimate National Security Interest

Any restriction on expression or information that a government seeks to justify on grounds of national security must have the genuine purpose and demonstrable effect of protecting a legitimate national security interest.

Principle 1.3: Necessary in a Democratic Society

To establish that a restriction on freedom of expression or information is necessary to protect a legitimate national security interest, a government must demonstrate that:

(a) the expression or information at issue poses a serious threat to a legitimate national security interest;

(b) the restriction imposed is the least restrictive means possible for protecting that interest; and

(c) the restriction is compatible with democratic principles.

Principle 2: Legitimate National Security Interest

(a) A restriction sought to be justified on the ground of national security is not legitimate unless its genuine purpose and demonstrable effect is to protect a country's existence or its territorial integrity against the use or threat of force, or its capacity to respond to the use or threat of force, whether from an external source, such as a military threat, or an internal source, such as incitement to violent overthrow of the government.

(b) In particular, a restriction sought to be justified on the ground of national security is not legitimate if its genuine purpose or demonstrable effect is to protect interests unrelated to national security, including, for example, to protect a government from embarrassment or exposure of wrongdoing, or to conceal information about the functioning of its public institutions, or to entrench a particular ideology, or to suppress industrial unrest.

Principle 3: States of Emergency

In time of public emergency which threatens the life of the country and the existence of which is officially and lawfully proclaimed in accordance with both national and international law, a state may impose restrictions on freedom of expression and information but only to the extent strictly required by the exigencies of the situation and only when and for so long as they are not inconsistent with the government's other obligations under international law.

Principle 4: Prohibition of Discrimination

In no case may a restriction on freedom of expression or information, including on the ground of national security, involve discrimination based on race, colour, sex, language, religion, political or other opinion, national or social origin, nationality, property, birth or other status.

II. RESTRICTIONS ON FREEDOM OF EXPRESSION

Principle 5: Protection of Opinion

No one may be subjected to any sort of restraint, disadvantage or sanction because of his or her opinions or beliefs.

Principle 6: Expression That May Threaten National Security

Subject to Principles 15 and 16, expression may be punished as a threat to national security only if a government can demonstrate that:

(a) the expression is intended to incite imminent violence;

(b) it is likely to incite such violence; and

(c) there is a direct and immediate connection between the expression and the likelihood or occurrence of such violence.

Principle 7: Protected Expression

(a) Subject to Principles 15 and 16, the peaceful exercise of the right to freedom of expression shall not be considered a threat to national security or subjected to any restrictions or penalties. Expression which shall not constitute a threat to national security includes, but is not limited to, expression that:

(i) advocates non-violent change of government policy or the government itself;

(ii) constitutes criticism of, or insult to, the nation, the state or its symbols, the government, its agencies, or public officials [3], or a foreign nation, state or its symbols, government, agencies or public officials;

(iii) constitutes objection, or advocacy of objection, on grounds of religion, conscience or belief, to military conscription or service, a particular conflict, or the threat or use of force to settle international disputes;

(iv) is directed at communicating information about alleged violations of international human rights standards or international humanitarian law.

(b) No one may be punished for criticizing or insulting the nation, the state or its symbols, the government, its agencies, or public officials, or a foreign nation, state or its symbols, government, agency

Expression, whether written or oral, can never be prohibited on the ground that it is in a particular language, especially the language of a national minority.

Principle 10: Unlawful Interference With Expression by Third Parties

Governments are obliged to take reasonable measures to prevent private groups or individuals from interfering unlawfully with the peaceful exercise of freedom of expression, even where the expression is critical of the government or its policies. In particular, governments are obliged to condemn unlawful actions aimed at silencing freedom of expression, and to investigate and bring to justice those responsible.

III. RESTRICTIONS ON FREEDOM OF INFORMATION

Principle 11: General Rule on Access to Information

Everyone has the right to obtain information from public authorities, including information relating to national security. No restriction on this right may be imposed on the ground of national security unless the government can demonstrate that the restriction is prescribed by law and is necessary in a democratic society to protect a legitimate national security interest.

Principle 12: Narrow Designation of Security Exemption

A state may not categorically deny access to all information related to national security, but must designate in law only those specific and narrow categories of information that it is necessary to withhold in order to protect a legitimate national security interest.

Principle 13: Public Interest in Disclosure

In all laws and decisions concerning the right to obtain information, the public interest in knowing the information shall be a primary consideration.

Principle 14: Right to Independent Review of Denial of Information

The state is obliged to adopt appropriate measures to give effect to the right to obtain information. These measures shall require the authorities, if they deny a request for information, to specify their reasons for doing so in writing and as soon as reasonably possible; and shall provide for a right of review of the merits and the validity of the

denial by an independent authority, including some form of judicial review of the legality of the denial. The reviewing authority must have the right to examine the information withheld.

Principle 15: General Rule on Disclosure of Secret Information

No person may be punished on national security grounds for disclosure of information if (1) the disclosure does not actually harm and is not likely to harm a legitimate national security interest, or (2) the public interest in knowing the information outweighs the harm from disclosure.

Principle 16: Information Obtained Through Public Service

No person may be subjected to any detriment on national security grounds for disclosing information that he or she learned by virtue of government service if the public interest in knowing the information outweighs the harm from disclosure.

Principle 17: Information in the Public Domain

Once information has been made generally available, by whatever means, whether or not lawful, any justification for trying to stop further publication will be overridden by the public's right to know.

Principle 18: Protection of Journalists' Sources

Protection of national security may not be used as a reason to compel a journalist to reveal a confidential source.

Principle 19: Access to Restricted Areas

Any restriction on the free flow of information may not be of such a nature as to thwart the purposes of human rights and humanitarian law. In particular, governments may not prevent journalists or representatives of intergovernmental or non-governmental organizations with a mandate to monitor adherence to human rights or humanitarian standards from entering areas where there are reasonable grounds to believe that violations of human rights or humanitarian law are being, or have been, committed. Governments may not exclude journalists or representatives of such organizations from areas that are experiencing violence or armed conflict except where their presence pose a clear risk to the safety of others.

IV. RULE OF LAW AND OTHER MATTERS

Principle 20: General Rule of Law Protections

Any person accused of a security-related crime involving expression or information is entitled to all of the rule of law protections that are part of international law. These include, but are not limited to, the following rights:

(a) the right to be presumed innocent;

(b) the right not to be arbitrarily detained;

(c) the right to be informed promptly in a language the person can understand of the charges and the supporting evidence against him or her;

(d) the right to prompt access to counsel of choice;

(e) the right to a trial within a reasonable time;

(f) the right to have adequate time to prepare his or her defence;

(g) the right to a fair and public trial by an independent and impartial court or tribunal;

(h) the right to examine prosecution witnesses;

(i) the right not to have evidence introduced at trial unless it has been disclosed to the accused and he or she has had an opportunity to rebut it; and

(j) the right to appeal to an independent court or tribunal with power to review the decision on law and facts and set it aside.

Principle 21: Remedies

All remedies, including special ones, such as habeas corpus or amparo, shall be available to persons charged with security-related crimes, including during public emergencies which threaten the life of the country, as defined in Principle 3.

Principle 22: Right to Trial by an Independent Tribunal

(a) At the option of the accused, a criminal prosecution of a security-related crime should be tried by a jury where that institution exists or else by judges who are genuinely independent. The trial of persons accused of security-related crimes by judges without security of tenure constitutes a prima facie violation of the right to be tried by an independent tribunal.

(b) In no case may a civilian be tried for a security-related crime by a military court or tribunal.

(c) In no case may a civilian or member of the military be tried by an *ad hoc* or specially constituted national court or tribunal.

Principle 23: Prior Censorship

Expression shall not be subject to prior censorship in the interest of protecting national security, except in time of public emergency which threatens the life of the country under the conditions stated in Principle 3.

Principle 24: Disproportionate Punishments

A person, media outlet, political or other organization may not be subject to such sanctions, restraints or penalties for a security-related crime involving freedom of expression or information that are disproportionate to the seriousness of the actual crime.

Principle 25: Relation of These Principles to Other Standards

Nothing in these Principles may be interpreted as restricting or limiting any human rights or freedoms recognized in international, regional or national law or standards.