

# United Kingdom

## Submission to the UN Universal Periodic Review

First session of the HRC UPR Working Group, 7-18 April 2008

In this submission, Amnesty International provides information under sections B, C and D (as stipulated in the General Guidelines for the Preparation of Information under the Universal Periodic Review):

- Under B, Amnesty International raises concern over shortcomings of the ratification of international human rights standards, the extraterritorial applicability of human rights protection and the failure to initiate independent investigations.
- In section C, we describe concerns related to human rights violations in the context of counter-terrorism, failures to accountability, violence against women, asylum and refugee protection.
- In each section Amnesty International makes a number of recommendations in the areas of concerns listed.

### **B. Normative and institutional framework of State**

#### **Ratification of international human rights standards**

- Amnesty International recommends that the UK should ratify the Optional Protocol to the Convention on the Rights of the Child, on the sale of children, child prostitution and child pornography, and the Convention on the Rights of Persons with Disabilities; and that the UK should sign and ratify the Optional Protocol to the International Covenant on Civil and Political Rights, the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families and the International Convention for Protection of All Persons from Enforced Disappearance.
- Amnesty International recommends that the UK should set a deadline for the ratification of the Council of Europe Convention on Action against Trafficking in Human Beings, which it signed in March 2007; and should sign and ratify Protocol No. 12 to the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR).

#### **Extraterritorial applicability of human rights protection: accountability for UK armed forces serving overseas**

Amnesty International is concerned at attempts by the UK authorities to deny, or limit, the applicability of their obligations under international human rights treaties and domestic human rights law to the conduct of the UK's armed forces overseas.

Both the Committee against Torture (CAT)(1) and the UK parliamentary Joint Committee on Human Rights (JCHR)(2) have expressed concern at the narrow view taken by the UK of the extraterritorial application of the UN Convention against Torture. The UK has contended, including in appearances before the CAT, that the acts of UK service personnel overseas "comply with the prohibitions set out in the Convention", but that the UK is not required to ensure compliance with the "broader obligations under the Convention, such as those in Articles 2 and 16 to prevent torture or other acts of cruel, inhumane or degrading treatment or punishment"(3), even in overseas territory over which its forces are exercising *de facto* control.

- Amnesty International considers that there should be no limitation on the extraterritorial applicability of the Convention against Torture.

Amnesty International is similarly concerned at attempts by the UK to deny or limit the applicability of the ECHR, and of the domestic Human Rights Act (HRA), which is supposed to provide a remedy before the UK courts for violations of rights protected by the ECHR, to individuals who suffer violations of ECHR rights through the conduct of UK service personnel overseas. In this context Amnesty International draws the attention of the Council to the cases of Baha Mousa and Hilal Al Jedda (below).

- Amnesty International calls on the UK to make clear that any individual arrested or detained by UK service personnel abroad should be considered to be within the jurisdiction of the UK from the moment of arrest, wherever that arrest or detention takes place, and should therefore be afforded all the protection of human rights envisaged both by the HRA and by the UK's international obligations.

Amnesty International is concerned that these attempts to limit the applicability of the UK's human rights obligations to the conduct of its armed forces overseas would, if successful, have the effect of denying an effective remedy to

individuals whose human rights may have been violated by the conduct of UK service personnel.

In its ruling on six conjoined cases, referred to under the name *Al Skeini*, the UK's highest court, the Appellate Committee of the House of Lords (the Law Lords), held that **Baha Mousa**, who died whilst detained by UK forces in a UK-run detention facility in Iraq, should be considered to have come within the UK's jurisdiction for the purposes of Article 1 ECHR, and therefore for the purposes of the HRA, from the moment that he arrived in the detention facility.(4)

The effect of this decision was to confirm that the family of Baha Mousa was entitled to pursue, before a court in the UK, its claim that the UK authorities had failed to carry out the full, independent and thorough investigation into the circumstances of the treatment and eventual death of Baha Mousa which was required to give effect to his right to life, and to freedom from torture and inhuman or degrading treatment, under Articles 2 and 3 ECHR respectively.

Although the decision of the Law Lords in *Al Skeini* ensured some remedy for individuals who had suffered violations through the conduct of UK forces overseas, and the relatives of such individuals, it limited the effectiveness of that remedy in a number of ways.

Firstly, the Law Lords held that the alleged violations of the right to life of the relatives of the other five claimants in *Al Skeini*, all of whom were shot and fatally wounded in the course of "patrol" operations by UK servicemen, fell outside the jurisdictional scope of the ECHR, and therefore did not give rise to any obligation on the part of the UK under the ECHR, or under the HRA.

Secondly, the Law Lords found that Baha Mousa had come within the jurisdiction of the UK only from the time that he arrived at the temporary detention facility at the UK army base in Basra, and not from the moment of his arrest, at the hotel where he worked. Baha Mousa had reportedly been tortured or otherwise ill-treated at the time of his arrest, as well as subsequently in the detention facility.

- The effect of this decision is to deny a remedy under the HRA in the UK courts to those who are tortured or otherwise ill-treated at the hands of UK agents, and to the families of those who are unlawfully killed by UK agents, in cases where the ill-treatment or the death has occurred outside the UK anywhere other than at a UK-run facility.(5)

In its approach to another case considered by the Law Lords later in 2007, that of **Hilal Abdul-Razzaq Ali Al-Jedda**, the UK government appeared to attempt to restrict the scope of even the limited remedy provided by the decision in *Al Skeini*.

The case of *Al Jedda* concerned one of approximately 75 so-called 'security internees' detained without charge or trial by the UK contingent of the Multi-National Forces (MNF) in Iraq. Specifically, it focussed on whether the prolonged internment of Hilal Al Jedda was compatible with the right to liberty, as protected by Article 5 ECHR.

Despite having eventually conceded, in the course of the *Al Skeini* litigation, that an individual held by UK forces at a UK-run facility could be considered to come within the UK's jurisdiction for ECHR purposes, the UK sought to argue, in *Al Jedda*, that Hilal Al Jedda was nonetheless not entitled to the protection of the ECHR, and could not seek a remedy in the domestic courts under the HRA.

It did so by arguing firstly that the detention of Hilal Al-Jedda should be attributed to the UN, rather than to the UK, since UK forces were, at the time of his initial arrest in October 2004 and thereafter, acting as part of the MNF, which derives a mandate from UN Security Council resolutions adopted under Chapter VII of the UN Charter.

Secondly the UK argued that, even if the detention of Hilal Al-Jedda were attributable to the UK, the Security Council resolution which appears to authorize the use of internment by the MNF (Resolution 1546) overrides the UK's obligations under Article 5 ECHR, notwithstanding that the UK has not derogated from Article 5 ECHR(6). A decision in this case was still awaited, as of 20 November 2007.

- Amnesty International considers that the UK is under an obligation to respect the human rights of those whom it is detaining in Iraq, and that there is nothing in UN Security Council resolutions relating to Iraq or the UN Charter that relieves it from these obligations.

### **Accountability for other human rights violations: failures to initiate independent investigations**

Effective, independent, impartial and thorough investigations into serious allegations of human rights violations are essential components of human rights protection.

The Inquiries Act 2005 gravely undermined the possibility of public scrutiny of, and accountability for, state abuses in the UK. Under the Act the inquiry and its terms of reference are decided by the executive; no independent

parliamentary scrutiny of these decisions is allowed; each member of an inquiry panel, including the chair of the inquiry, is appointed by the executive, and the executive has the discretion to dismiss any member of the inquiry; the executive can 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 disclosure or publication of any evidence or documents given to an inquiry; the final report of the inquiry is published at the executive's discretion, and crucial evidence could be omitted at the executive's discretion, "in the public interest"(7).

- Amnesty International urges the UK authorities to repeal or amend the Inquiries Act, and to create a genuinely independent mechanism for judicial inquiries into serious allegations of human rights violations.

The UK continues to refuse to initiate an adequately thorough and independent inquiry into allegations of UK involvement in the US-led programme of secret detentions and renditions. On 25 July 2007 a report of the investigation by the Intelligence and Security Committee (ISC) into allegations of UK complicity in renditions was made public, in a partially redacted form. Although made up of parliamentarians, the ISC reports directly to the Prime Minister, not to Parliament. It is the Prime Minister who decides whether to place before Parliament any ISC report, and the extent to which the report's content should undergo redaction prior to publication. Amnesty International considered that the ISC's investigation into renditions was not sufficient to discharge the UK's obligations under international human rights law, including because the ISC is inadequately independent from the executive.(8)

- Given the shortcomings of the ISC, Amnesty International considers that the UK has failed to provide an effective remedy for victims of alleged human rights violations in which the UK security services may be implicated.

### **C. Promotion and protection of human rights on the ground**

#### **Human rights violations in the context of counter-terrorism**

Amnesty International is concerned that legislation and policy in the UK aimed at countering terrorism is giving rise to serious human rights violations, and is undermining the framework of human rights protection both in the UK and internationally(9).

The UK continues to attempt to use so-called 'diplomatic assurances' to return individuals to states where they face a real risk of grave human rights violations, including torture or other ill-treatment.

Since August 2005 the UK authorities have sought to deport a number of people whom they assert pose a threat to the UK's "national security", despite the fact that there are substantial grounds for believing that the men concerned would face a real risk of human rights violations, including torture or other ill-treatment, if returned to their country of origin. The UK has maintained that the risk the men would face has been sufficiently reduced by "diplomatic assurances" that the UK has obtained as to their treatment on return.(10)

- Amnesty International considers that reliance on such assurances, which are inherently unenforceable, is in effect an attempt to circumvent the absolute prohibition on torture, and that the use of such assurances undermines international protection against *refoulement*.

The practice of secrecy in the implementation of counter-terrorism measures in the UK is leading to individuals facing serious detriments, including the deprivation of liberty or the prospect of return to countries where they face a real risk of torture or other ill-treatment, on the basis of unfair judicial proceedings.

Appeal proceedings against orders for deportation on "national security" grounds (see above), which take place before the Special Immigration Appeals Commission (SIAC), are profoundly unfair. They deny individuals the right to a fair hearing, including because they are heavily reliant on closed hearings in which secret information, including intelligence material, is considered in the absence of the individuals concerned and their lawyers of choice(11).

The system of 'control orders' created by the Prevention of Terrorism Act 2005 (PTA) has been used by the government as an alternative to prosecution, to impose severe restrictions on a number of individuals who have not been charged with any criminal offence. The judicial procedures by which the imposition of a control order can be challenged are gravely unfair, in particular because the court will consider secret material, advanced in secret sessions, to support the allegation that the person on whom the order is served (the 'controlee') is or has been involved in terrorism-related activity, and constitutes a risk to the public. Neither the controlee nor his lawyer of choice is allowed to see that material. The controlees are therefore denied the opportunity to mount an effective challenge to the allegations against them.(12)

- Amnesty International calls on the UK authorities to reform SIAC procedures to bring them into line with international standards for a fair hearing; Amnesty International calls on the UK to repeal the PTA and commit themselves to charging people suspected of involvement in terrorism with a recognizably criminal offence and bringing them to a fair trial.

On 6 November 2007 the government announced a proposal for another piece of counter-terrorism legislation, the sixth major piece of legislation aimed at countering terrorism since the current government came to power in 1997.

Among the proposals for inclusion in the Bill is a further extension of the period for which the police can detain without charge an individual suspected of involvement in terrorism-related activity. Although the government has not yet stated how far the Bill will seek to extend the maximum period of pre-charge detention, it had indicated in a consultation paper that its preferred option was an extension from 28 to 56 days.

Amnesty International is absolutely opposed to any further extension, considering that 28 days – and indeed the previous limit of 14 days – is already too long. Anybody held on suspicion of having committed an extremely serious offence, such as murder, under ordinary UK criminal law may be held without charge for a maximum period of four days.(13)

- Amnesty International considers that the proposed extension would be incompatible with the UK's obligations under international law, including Article 9 ICCPR, which requires that a person detained should be "promptly informed of any charges against him".

### **Failures of accountability – individual cases**

An independent mechanism for investigating complaints against the police, and incidents where the actions of the police have, or may have, led to the death or serious injury of members of the public, is an essential component of human rights protection. For the effective operation of such a mechanism it is crucial that the police respect the statutory duty of the independent mechanism to conduct all such investigations from the outset. In this context Amnesty International was concerned that the Commissioner of the Metropolitan Police sought to prevent the Independent Police Complaints Commission (IPCC) – the body with overall responsibility for the police complaints system in England and Wales, with a statutory duty to conduct investigations into deaths and serious injuries arising from incidents involving the police – from conducting from the outset the investigation into the death of Jean Charles de Menezes.(14)

Amnesty International continues to call on the UK authorities to establish without further delay a truly independent judicial inquiry into allegations of collusion by state agents with Loyalist paramilitaries in the 1989 murder of human rights lawyer Patrick Finucane, and into allegations that different government authorities played a part in the subsequent cover-up of collusion in his murder. Such an inquiry cannot possibly be delivered if established under the provisions of the Inquiries Act 2005 (see above)(15).

Amnesty International calls on the UK authorities to establish an independent inquiry into all cases where there are credible allegations that individuals have suffered human rights violations as a result of the UK's alleged involvement in the US-led programme of renditions and secret detention (see above).

Among these cases would be those of Bisher al-Rawi and Jamil el-Banna, two UK residents who were detained in Gambia in November 2002, handed over to US custody and subsequently unlawfully transferred first to Afghanistan and then to the US naval base at Guantánamo Bay, Cuba. Bisher al-Rawi was released from Guantánamo and returned to the UK in March 2007; as of November 2007 Jamil el-Banna remained in detention in Guantánamo. He has reportedly been cleared for release, and the UK has now made representations on his behalf, seeking his release and return to the UK.

There is strong evidence to suggest that the arrest and detention of Jamil el-Banna and Bisher al-Rawi was prompted, at least in part, by information supplied by UK security services to their American counterparts. The UK government has repeatedly stated – most recently in a letter from the Foreign Secretary to Amnesty International received in October 2007 – that "the UK did not request the detention of either Mr Al-Rawi or Mr El-Banna in Gambia and did not play any role in their transfer to Afghanistan and Guantánamo Bay". Amnesty International does not consider the fact that the UK did not "request" the detention of the two men to be sufficient to establish that the UK does not share part of the responsibility for their arrest and detention.

### **Violence against women**

An NGO coalition called *End Violence Against Women*, of which Amnesty International is part, is calling for the government to introduce an integrated strategy to tackle all forms of violence against women. Current strategy focuses on distinct areas – for instance domestic violence, and forced marriages.

In this context Amnesty International recalls the pledge made by the UK at the time of its election to the Human Rights Council, to "continue to support international processes to advance gender equality, including through implementation of the Beijing Declaration and Platform for Action [...], and to take this forward through a National Action Plan".

Women who are subject to immigration control and have experienced violence in the UK, including domestic violence and trafficking, find it almost impossible to access housing benefit or income support, as a result of the 'no recourse to public funds' rule. This rule provides that certain categories of immigrants who have leave to enter and remain in the UK for a limited period only have no right (subject to a few strictly limited exceptions) to access income-related benefits or housing and homelessness support.

- Amnesty International calls for an exception to the 'no recourse to public funds' rule to be provided for people fleeing violence or the threat of violence here in the UK.

### **Asylum and refugee protection**

Amnesty International and other NGOs estimate that more than 280,000 refused asylum seekers are destitute in the UK; they are not permitted to work and they no longer receive asylum support. The UK Borders Act, passed in October 2007, failed to address this problem.

- Amnesty International recommends that refused asylum seekers who cannot be safely returned should be granted a form of temporary leave to remain that allows them to work and access support while in the UK.

### **Appendix: AI documents for further reference**

#### Extraterritorial applicability of human rights protection: accountability for UK armed forces serving overseas

- *UK: Amnesty International's reaction to Law Lords' judgment in the Al-Skeini & Others case*, AI Index: EUR 45/008/2007, <http://web.amnesty.org/library/Index/ENGEUR450082007>
- *UK: Court Martial acquittals: many questions remain unanswered and further action required to ensure justice*, AI Index: EUR 45/005/2007, <http://web.amnesty.org/library/Index/ENGEUR450052007>
- *UK: Law Lords hear key case on detention without charge or trial by UK forces in Iraq*, AI Index: EUR 45/017/2007, <http://web.amnesty.org/library/Index/ENGEUR450172007>

#### Accountability for other human rights violations: failures to initiate independent investigations

- *UK: Amnesty International urges judiciary not to partake in inquiry sham*, AI Index: EUR 45/010/2005, <http://web.amnesty.org/library/Index/ENGEUR450102005>
- *Partners in crime: Europe's role in US renditions*, AI Index: EUR 01/008/2006, <http://web.amnesty.org/library/Index/ENGEUR010082006>

#### Human rights violations in the context of counter-terrorism

- *UK: Human rights: a broken promise*, AI Index: EUR 45/004/2006, <http://web.amnesty.org/library/Index/ENGEUR450042006>
- *UK: Deportations to Algeria at all costs*, AI Index: EUR 45/001/2007, <http://web.amnesty.org/library/index/ENGEUR450012007>
- *UK: Secret judicial proceedings again expose individuals to risk of torture or ill-treatment on return to Algeria*, AI Index: EUR 45/019/2007, <http://web.amnesty.org/library/index/ENGEUR450192007>
- *UK: Amnesty International's briefing on the draft Terrorism Bill 2005*, AI Index: EUR 45/038/2005, <http://web.amnesty.org/library/index/ENGEUR450382005>

#### Failures of accountability – individual cases

- *UK: The death of Jean Charles de Menezes: full and public scrutiny still needed*, AI Index: EUR 45/018/2007, <http://web.amnesty.org/library/Index/ENGEUR450182007>
- *UK: Amnesty International urges judiciary not to partake in inquiry sham* (reference above)
- *Partners in crime: Europe's role in US renditions* (reference above)

#### Asylum and refugee protection

- *Down and out in London: The road to destitution for rejected asylum seekers*, Amnesty International UK, November 2006, [http://amnesty.org.uk/uploads/documents/doc\\_17382.pdf](http://amnesty.org.uk/uploads/documents/doc_17382.pdf)

- (1) See Conclusions and recommendations : UK. 10/12/2004, CAT/C/CR/33/3, para. 4(b).
- (2) See The UN Convention against Torture (UNCAT): Nineteenth Report of Session 2005–06, HC 701-I, para. 73.
- (3) UK – Opening Address to the Committee against Torture, 17-18 November 2004, para. 92.
- (4) Al-Skeini and others v. Secretary of State for Defence, [2007] UKHL 26
- (5) See UK: Amnesty International’s reaction to Law Lords’ judgment in the Al-Skeini & Others case, AI Index: EUR 45/008/2007, and, for more details of the case of Baha Mousa, UK: Court Martial acquittals: many questions remain unanswered and further action required to ensure justice, AI Index: EUR 45/005/2007.
- (6) See UK: Law Lords hear key case on detention without charge or trial by UK forces in Iraq, AI Index: EUR 45/017/2007
- (7) See UK: Amnesty International urges judiciary not to partake in inquiry sham, AI Index: EUR 45/010/2005
- (8) See the relevant sections of Partners in crime: Europe’s role in US renditions, AI Index: EUR 01/008/2006
- (9) See, for an overview, UK: Human rights: a broken promise, AI Index: EUR 45/004/2006
- (10) See, for a statement of AI’s objections in principle to such use of ‘diplomatic assurances’, Reject rather than regulate, AI Index: IOR 61/025/2005.; and for AI’s concerns at the implementation of this policy in relation to Algeria, UK: Deportations to Algeria at all costs, AI Index: EUR 45/001/2007.
- (11) See, for the most recent statement of AI’s concerns in this area, Secret judicial proceedings again expose individuals to risk of torture or ill-treatment on return to Algeria, AI Index: EUR 45/019/2007
- (12) See s.2.7 of UK: Human Rights: a broken promise, AI Index: EUR 45/004/2006
- (13) For a detailed statement of AI’s concerns around prolonged pre-charge detention see s.4 of UK: Amnesty International’s briefing on the draft Terrorism Bill 2005, AI Index: EUR 45/038/2005
- (14) See UK: The death of Jean Charles de Menezes: full and public scrutiny still needed, AI Index: EUR 45/018/2007
- (15) See UK: Amnesty International urges judiciary not to partake in inquiry sham, AI Index: EUR 45/010/2005.

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