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# United Kingdom

## Briefing for the Committee against Torture

### Introduction

Amnesty International submitted this briefing to the Committee against Torture in view of the Committee's examination, on 17 and 18 November 2004, of the United Kingdom's (UK) fourth periodic report on the measures taken to implement the provisions of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Convention against Torture). On 26 November 2004, following its examination of the UK's report, the Committee against Torture issued its Conclusions and recommendations.<sup>1</sup>

This briefing focuses on some of the serious human rights violations that have taken place in the context of the UK authorities' response to the 11 September 2001 attacks in the USA.

Amnesty International considers that the UK authorities are violating the fundamental prohibition against torture and other cruel, inhuman or degrading treatment or punishment. Such prohibition is the basis on which the obligations of the UK under the Convention against Torture are premised.<sup>2</sup>

Specifically, the organization considers that the UK authorities, both the executive, including the Crown Prosecution Service (i.e. the prosecuting authorities in England and Wales), and the judiciary, are violating the prohibition against the use of statements obtained through torture as evidence in any proceedings, except against a person accused of torture.

In addition, Amnesty International considers that people held in high security establishments under severely restrictive regimes under Part 4 of the Anti-terrorism, Crime and Security Act 2001 (ATCSA) are being subjected to cruel, inhuman and degrading treatment within the meaning of the Convention as a result of their being detained indefinitely without charge or trial, principally on the basis of secret evidence, which, therefore, they have been unable to effectively challenge. Upon its examination of the UK's report, the Committee against Torture expressed concern about the UK's "resort to potentially indefinite detention under the Anti-terrorism, Crime and Security Act 2001".<sup>3</sup>

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<sup>1</sup> Committee against Torture, Thirty-third session, Geneva, 15-26 November 2004, CAT/C/CR/33/3, Conclusions and recommendations of the Committee against Torture on the United Kingdom of Great Britain and Northern Ireland, Crown Dependencies and Overseas Territories.

<sup>2</sup> Although no provision of the Convention against Torture enshrines a specific prohibition against torture or other cruel, inhuman or degrading treatment or punishment, this fundamental prohibition constitutes the *raison d'être* of the treaty. Part I of the Convention espouses a number of procedural obligations which are adjectival -- and are intended to give effect -- to the substantive prohibition.

<sup>3</sup> See at one *supra*, point 4.(e), page three.

This briefing also describes Amnesty International's concerns about army deaths in disputed circumstances, child soldiers, violence against women, the treatment of asylum-seekers and refugees, the UK role in Iraq, and the UK's failure to address human rights violations at the US Naval Base in Guantánamo Bay, Cuba, of people held in US custody.

## **1. Concerns about the implementation of Part 4 of the ATCSA**

Part 4 of the ATCSA allows for detention of non-UK nationals who have been certified by the UK Secretary of State as national security risks and "suspected international terrorists" without charge or trial, for an unspecified and potentially unlimited period of time, principally on the basis of secret evidence which the detainees have never heard nor seen, and which they have, therefore, been unable to effectively challenge. Prior to the enactment of this legislation, the UK authorities derogated from 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).

Amnesty International believes that, for all intents and purposes, under this shadow criminal justice system people have been effectively "charged" with a criminal offence, and have been "convicted" and "sentenced" to an indefinite term of imprisonment without a trial. In addition, in light of the fact that these powers can only be applied to non-UK nationals, the organization considers that Part 4 of the ATCSA violates the prohibition against discrimination enshrined in international law.

Amnesty International considers that the application of Part 4 of the ATCSA amounts to a perversion of justice. The organization believes that the emergency provisions of the ATCSA are inconsistent with international human rights law and standards, including treaty provisions by which the UK is bound.

Amnesty International has repeatedly expressed concern about serious human rights violations that have taken place in the UK as a consequence of the implementation of the ATCSA since its enactment on 14 December 2001.<sup>4</sup> The organization opposes detention under the ACTSA, and has consistently called on the UK government to release anyone detained under it unless they are charged with a recognizably criminal offence and tried by an independent and impartial court in proceedings which meet international standards of fairness.

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<sup>4</sup> For more information about the ATCSA and Amnesty International's concerns in relation to serious human rights violations that have taken place as a consequence of its enactment, see, *inter alia*, "UNITED KINGDOM - Justice perverted under the Anti-terrorism, Crime and Security Act 2001", published on 11 December 2003, AI Index: EUR 45/029/2003; "Amnesty International's Memorandum to the UK Government on Part 4 of the Anti-terrorism, Crime and Security Act 2001", AI Index: EUR 45/017/2002; and "UNITED KINGDOM - Rights Denied: the UK's Response to 11 September 2001", AI Index: EUR 45/016/2002, both published on 5 September 2002.

Amnesty International is also extremely disturbed at the willingness of the UK executive, including the prosecuting authorities, and the judiciary to accept the use of evidence extracted under torture (of a third party) in proceedings under the ATCSA. Following a ruling by the Court of Appeal of England and Wales on 11 August 2004, the scheme established under Part 4 of the ATCSA has been interpreted as allowing the admission of evidence obtained by torture or other ill-treatment where the torture or other ill-treatment was neither committed nor connived in by UK officials. In light of this, Amnesty International considers that Part 4 of the ATCSA violates, *inter alia*, Article 15 of the Convention against Torture, Article 3 of the ECHR, Article 7 of the ICCPR, as well as being incompatible with UK domestic legislation, for example, the Human Rights Act 1998.

The organization also continues to be concerned about detention conditions amounting to cruel, inhuman or degrading treatment in high security prisons in the UK of those detained under the ATCSA (see section 1.1. of briefing). Such concern has been heightened by the findings of a report -- published on 13 October 2004 -- prepared by 11 Consultant Psychiatrists and one Consultant Clinical Psychologist about the serious damage to the health of eight of the internees who continue to be detained under the ATCSA (see section 1.2. of this briefing).

The organization is also concerned at the extremely limited chances of the internees ever being granted bail. Under the ATCSA, the Special Immigration Appeals Commission (SIAC)<sup>5</sup> is empowered to grant bail to the ATCSA detainees. However, having monitored bail proceedings before the SIAC in the past, Amnesty International is concerned about the content of the right to bail under the ATCSA which is more restrictive than that provided for under international law and domestically. The organization understands that under the ATCSA, bail could only be granted if the detention conditions were such as to fall within the ambit of Article 3 of the ECHR, which enshrines the prohibition of torture or other ill-treatment. The cases of "G" and Mahmoud Abu Rideh below are apposite illustrations of the organization's concerns in this respect, and about the fact that bail applications under even such restrictive conditions have been disputed by the executive (see sections 1.3. and 1.4. of this briefing).

Amnesty International has closely monitored the operation of the measures relating to administrative detention under Part 4 of the ATCSA since its implementation. As part of this monitoring process, a delegate of the organization has attended a number of the open hearings, relating to the appeals against certification before the SIAC and before the Court of Appeal,

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<sup>5</sup> Under the ATCSA, section 35(3), the SIAC has been established as a tribunal with the same status as the High Court. The SIAC is empowered to grant bail to ATCSA detainees. Under the ATCSA, the SIAC also hears appeals against certification by the Secretary of State of non-UK nationals as "suspected international terrorists". In addition, the SIAC is mandated to review the certificate issued by the Secretary of State on a periodic basis. The SIAC is also empowered to hear challenges to the legislation. The SIAC is chaired by a High Court judge who sits with two others on appeals.

as well as the open sessions of the proceedings concerning the challenge against the derogation brought in July 2002 before the SIAC and in October 2004 before the Appellate Committee of the House of Lords. In addition, a delegate of Amnesty International has monitored a number of hearings before the SIAC arising from bail applications and review of bail conditions. Furthermore, Amnesty International intervened, in writing, as *Amicus Curiae*, in the proceedings before the UK's highest court, the House of Lords. These proceedings concerned a challenge brought by some of the internees against the UK's derogation (see section 1.5. of, and the appendix to, this briefing).

In November 2004, 11 people continued to be interned in prisons under the ATCSA in the UK. They are held in high-security facilities under severely restricted regimes. Most of the internees have been in detention for nearly three years. They are detained in two high security prisons (Belmarsh and Woodhill) and a high security psychiatric hospital (Broadmoor). A twelfth person, known to the public as "G" (see section 1.3. of this briefing) for legal reasons, has been "released" from indefinite detention under bail conditions amounting to house arrest.

### **1.1. Detention conditions of those held under the ATCSA - Article 16**

The 19 December 2001 arrests of nine non-UK nationals under the ATCSA were carried out very early in the morning, by dozens of police officers, traumatizing their wives and children; some of those arrested and their families were roughly and rudely treated; and those arrested were immediately detained in high security prisons.

Amnesty International received reports that when some of the detainees first arrived at Belmarsh Prison, they were referred to in a derogatory manner as "Bin men" (as in *Usama Bin Laden*) by prison officers.

Amnesty International continues to be concerned that the conditions in which ATCSA detainees have been held -- in two high security prisons in the UK HMP Belmarsh and HMP Woodhill -- violate their human rights, including their right to freedom from torture and cruel, inhuman or degrading treatment or punishment. Upon its examination of the UK's report, the Committee against Torture expressed concern about "the strict regime applied in Belmarsh prison"<sup>6</sup> to people detained under the ATCSA.

In particular, the organization is concerned that ATCSA detainees who have not been charged with any recognizably criminal offence were immediately classified as Category A<sup>7</sup>

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<sup>6</sup> See at one *supra*, point 4.(e), page three.

<sup>7</sup> Detainees, on remand for or convicted of serious offences, can be categorized as Category A if their escape is considered as highly dangerous to the public or the police or to the security of the state. Category A detainees are divided into three sub-categories: standard risk, high risk, and exceptional risk (of escape).

(i.e. high security risk) and subjected to a very restrictive regime, whether in Woodhill Prison or at Belmarsh Prison.

Amnesty International believes that their continued detention under a severely restrictive regime without charge or trial, for an unspecified and potentially unlimited period of time -- which has already lasted nearly three years -- at Belmarsh Prison and at Woodhill Prison has led to a very serious deterioration of their physical and mental health.

### **The Special Security Unit at Belmarsh Prison**

At Belmarsh Prison the ATCSA detainees were held together with other detainees in the Special Security Unit (SSU) between December 2001 and March 2002. The SSU is a prison within a prison.<sup>8</sup> While the UK authorities claim that the SSU at Belmarsh Prison has ceased to operate, Amnesty International believes that in fact there has only been a “cosmetic” change with the SSU being euphemistically renamed “High Security Unit” (HSU).<sup>9</sup> The SSU/HSU at Belmarsh Prison consists of four wings, with 12 cells in each (although all the cells in each unit are not always fully occupied). Detainees’ activities and movements are restricted to their wing, except for the gym, and their communication is restricted to only those detainees held in the same wing, except for religious worship; Amnesty International refers to this restriction of movement and association to a wing as “small-group isolation”.

While initially detained in the SSU/HSU at Belmarsh Prison, ATCSA detainees were subjected to both 22-hour-a-day lock-up and “small-group” isolation.

In the SSU/HSU, each wing has a small common space for association, and a small exercise yard/cage. The cells are approximately 3m by 1.8m, and although they contain windows, their access to natural light is limited by the mesh wiring on the windows; each cell has a solid door with a slot in it, thus blocking any view outside the cell. The cells contain a bed, a toilet and a sink.

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<sup>8</sup> For Amnesty International’s concerns about SSUs, see “*United Kingdom - Special Security Units: Cruel, Inhuman or Degrading Treatment*”, AI Index: EUR 45/06/1997, published in March 1997 and available at [http://web.amnesty.org/library/pdf/EUR450061997ENGLISH/\\$File/EUR4500697.pdf](http://web.amnesty.org/library/pdf/EUR450061997ENGLISH/$File/EUR4500697.pdf).

<sup>9</sup> See the 11 July 2002 response by a government Minister to a parliamentary question “**Mr. McNamara:** To ask the Secretary of State for the Home Department when and for what reasons the special secure unit at HMP[Her Majesty Prison] Belmarsh was redesignated a high secure unit; and what the principal differences in prison regime are. **Hilary Benn:** The high security unit at Belmarsh is a four spur, 48 cell facility holding both 'high' and 'standard' risk category A prisoners. In the event of a category A prisoner being received at Belmarsh with an 'exceptional' risk classification, then one spur of the unit will become a special secure unit. When this situation arises, the facility operates as a special secure unit. There are no principal differences in the regime offered to prisoners caused by change of designation. The main difference arising from the change of designation would be in respect of general security measures taken by staff.” The exchange is available at <http://www.publications.parliament.uk/pa/cm200102/cmhansrd/vo020611/text/20611w30.htm>.

Amnesty International was very disturbed by reports that Category A detainees held in the SSU/HSU were locked up in their cells 22 hours a day; that they had approximately one hour a day of exercise in a small exercise yard which was covered by metal grids and metal mesh, and that their one other hour out-of-cell had to be split between association with other detainees, showers, using gym facilities, making telephone calls, watching TV, etc. Their meals were taken in their cells. The gym facilities provided weights, but did not have any balls (e.g. football) for an active game of any kind. If detainees had visits it usually meant they would lose association time or exercise time.

In addition to the long hours of being locked up, detainees also complained that they were not allowed to work, and that there were no activities. The detainees initially stated that they were struggling to get educational facilities and effective library services.

Amnesty International believes that many of these aspects of the SSU/HSU regime violate international human rights standards: the lack of adequate association time and activities in communal areas; “small-group” isolation; the lack of educational, sport, and other meaningful activities and facilities; the lack of access to open air, natural daylight and exercise in a larger space.

### **House Block 4 at HMP Belmarsh**

In March 2002 the ATCSA detainees were decategorized from Category A “high risk” to Category A “standard risk” and transferred from the SSU/HSU to House Block 4 of Belmarsh Prison where they have since been detained. Notwithstanding this categorization, they were still subjected to:

- 22-hour-a-day 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 the detainee from family members);
- restrictions on opportunities, time and facilities to communicate with their lawyers; and
- strip-searches before and after all visits, including legal.

During Amnesty International’s visit to detainees in June 2002, the organization learnt that the ATCSA detainees continued to be locked up for 22 hours a day in single cells (except for Mahmoud Abu Rideh who, before his transfer to Broadmoor, was sharing a cell with another ATCSA detainee on a rota system as a preventive measure to ensure Mahmoud Abu Rideh’s safety as a result of the fact that he was at risk of suicide). As a result of their 22-hour-a-day lock-up, they had insufficient association time by any standard. In August 2002,

Amnesty International wrote to the Secretary of State for the Home Department about the detention conditions of the ATCSA detainees. This was the second letter sent by the organization to the Home Secretary since the ATCSA detainees' arrests. In its letter, Amnesty International urged the UK government to adopt the standard promoted by the European Committee for the Prevention of Torture, in their 2nd General Report [CPT/Inf (92) 3], that the authorities should "aim at ensuring that prisoners in remand establishments are able to spend a reasonable part of the day (8 hours or more) outside their cells, engaged in purposeful activity of a varied nature. Of course, regimes in establishments for sentenced prisoners should be even more favourable." They had also not been provided with an adequate program of purposeful activities. The little time out of their cells was spent associating with other detainees, showering, using gym facilities, and making telephone calls. However, because the time outside their cell was so short, in practice if an ATCSA detainee chose, for example, to use the gym, he would most likely not be able to use the telephone.

The ATCSA detainees also complained to Amnesty International about the dearth of educational courses available to them, namely English grammar and maths only. They also complained about the lack of library access and delays in getting a daily newspaper. In this connection, only one copy of a newspaper was made available to them and the ATCSA detainees had to share it among themselves.

Furthermore, Amnesty International was concerned at reports indicating that ATCSA detainees had been subjected to abuse and intimidation, both from other inmates and from prison officers, and that, as a result, the ATCSA detainees were uncomfortable about mixing with other inmates.

The ATCSA detainees also told the organization that they felt they were being treated unfairly by prison staff because of some prison officers' antipathy towards Mahmoud Abu Rideh, who was reportedly thought of as a troublemaker.

One detainee told Amnesty International's representatives that on 18 June 2002 he had been subjected to disciplinary adjudication proceedings for having breached prison rules as a result of allegedly having changed his physical appearance without seeking prior permission from the prison authorities. The change in his appearance was the result of a haircut. He told Amnesty International's representatives that he believed that such treatment was unfair and that he had been punished for purportedly breaching rules of which he had not been made aware in the first place. He and other detainees expressed concern at the fact that there was no information provided about prison rules in a language that the detainees understood.

In referring to the fact that they have no way of knowing for how long they will be held, some ATCSA detainees themselves described their situation to Amnesty International's representatives as "mental torture".

Amnesty International was also concerned at the fact that the detainees' initial contacts with the outside world were impeded. Some detainees were therefore unable to contact their families in London for between two to three weeks and it took over two months to get "clearance" to telephone family members abroad. In February 2002, detainees had complained to Amnesty International's representatives that they were still being subjected to "closed" visits with their family, more than two months following their arrival at Belmarsh Prison; at least one detainee was still being subjected to "closed" visits after three months. "Closed" visits make physical contact impossible, and have had a traumatic effect on the detainees' families and in particular on children who do not understand the reasons for this. It was reported that social visits were being tape-recorded, and that a prison officer was present during the whole visit, despite the glass screen. Moreover, despite the glass screen, detainees stated that they were strip-searched before and after every visit.

As far as Amnesty International is aware the detainees continue to be allowed to communicate with family members only in English or through an interpreter. This creates great difficulties for those detainees or family members who do not speak English. The following account highlights Amnesty International's concerns in this respect.

In June 2002 one detainee complained to Amnesty International that on one occasion, although he had applied for his visit and the interpreter two weeks before the visit took place, on the day of the visit he was told that the interpreter would not be present and that he was to conduct his conversations in English. When he inquired further about the absence of the interpreter, he was informed that the interpreter was not being admitted to the unit, as she was refusing to remove her headscarf. The visit was conducted in English, except for the last 30 minutes, when the interpreter appeared. Another detainee complained that because his wife wrote letters in French, they were placed into his property and he had no access to them; they refused to let him see these letters or to have them translated. Another detainee complained that he was only allowed one 15-minute telephone conversation per week in his language; the others had to be conducted in English which he found very difficult and his family members impossible. Similar complaints about the distress caused by these rules were made by other detainees. Telephone calls, except to lawyers, were reportedly taped.

In June 2002 the ATCSA detainees complained to Amnesty International's representatives about impediments in getting access to the telephone within the already extremely limited time they are allowed outside their cells. Telephone access was severely hindered despite the fact that they tried to follow procedures, booking well in advance. Reportedly, this was because there were only three telephones available to be shared among up to 70 detainees at any one time. As a result, the detainees spent most of their extremely limited daily association time queuing for the telephone.

With respect to health care at Belmarsh, in February 2002 Amnesty International received reports that the ATCSA detainees were not receiving adequate health care. During its June 2002 visit, Amnesty International's representatives heard that some of the ATCSA detainees continued to be denied appropriate medical care.

In conclusion, Amnesty International believes that those held at Belmarsh are subjected to conditions of detention which amount to cruel, inhuman and degrading treatment, thus constituting a violation of the right not to be subjected to ill-treatment enshrined in, *inter alia*, Article 16 of the Convention against Torture, which is non-derogable.

## **1.2. The October 2004 report on the Psychiatric problems of ATCSA detainees<sup>10</sup> - Article 16**

On 13 October 2004 a report prepared by 11 Consultant Psychiatrists and one Consultant Clinical Psychologist about the serious damage to the health of eight ATCSA internees was published. The report focuses on the impact that detention under the ATCSA has had on eight detainees and three of their spouses. The report outlines how all the detainees examined have suffered serious damage to their health and explains how such damage is inevitable under a regime which consists of indefinite detention. These conclusions were based on a series of reports originally commissioned for legal purposes from the doctors over the past two and a half years by the internees' solicitors. Progressive deterioration in the mental health of all those detainees and their families was observed. It describes how "their detention has had major adverse consequences for their mental health" and "a severe adverse impact on the mental health of all detainees and the spouses interviewed. All are clinically depressed and a number are suffering from PTSD [post-traumatic stress disorder]. The indefinite nature of detention is a major factor in their deterioration."

The report outlines the background of the detainees examined:

*Four of the 8 detainees had a previous psychiatric history prior to their arrest and 3 had a clear family history of mental health problems. Several had serious physical health problems including bilateral traumatic amputation of arms, the consequences of childhood polio, lower back injuries etc which interact with and influence mental state. Three of the detainees had experience of previous detention and torture but all had been in situations of political instability and unrest. All had felt themselves to be under serious threat prior to migration. (In the case of one, the perceived threat related to his wife.) All of the men and their families are devout Muslims. They originate in countries where mental illness is highly stigmatized. Islam prohibits suicide and the expression of hopelessness as this suggests a lack of faith in God. For*

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<sup>10</sup> "The Psychiatric Problems of Detainees under the 2001 Anti-terrorism, Crime and Security Act". The report is based on analysis of 48 reports and documents compiled by 11 psychiatrist and one psychologist, although it was written by seven psychiatrists and one psychologist: Professor Ian Robbins, Consultant Clinical Psychologist, Traumatic Stress Service; Dr James MacKeith, Emeritus Consultant Forensic Psychiatrist; Professor Michael Kopelman; Professor of Psychiatry, Consultant Neuropsychiatrist and Chartered Psychologist; Dr Clive Meux, Consultant Forensic Psychiatrist; Dr Sumi Ratnam; Dr Richard Taylor, Consultant Forensic Psychiatrist; Dr Sophie Davison, Consultant Forensic Psychiatrist; and Dr David Somekh, Consultant Forensic Psychiatrist.

*them to acknowledge mental health problems, including suicidal ideation, is likely to be extremely difficult.*

The following main findings are also outlined:

- 1 *All of the detainees now suffer from significant levels of depression and anxiety. The symptoms are of clinical severity and have shown a deterioration over time.*
- 2 *In a number of cases where there has been direct exposure to traumatic events there is also a diagnosis of post-traumatic stress disorder (PTSD). This may be in relation to pre-migration events, events pertaining to their arrest and imprisonment or both working in a synergistic fashion.*
- 3 *There is a high level of suicidal ideation and attempts at self-harm. The latter range from superficial cuttings to attempts at hanging.*
- 4 *Deterioration in mood state is clearly linked to a sense of helplessness and hopelessness which is an integral aspect of indefinite detention.*
- 5 *Where people have complex health needs, as for instance in the case of the polio survivor and amputee, these needs were not being adequately met within the prison system.*
- 6 *On a number of occasions detainees' behaviour has been interpreted by prison staff as manipulative, particularly where there has been a failure to co-operate with the healthcare regimes. There is a failure to perceive the serious possibility that this behaviour reflects a deterioration in mental state rather than deliberately manipulation.*
- 7 *A number of detainees as their mood has deteriorated, have developed significant psychotic symptoms. These symptoms were not present prior to detention.*
- 8 *In the case of "G" [see section 1.3. of this briefing] who was released on stringent conditions of house arrest the psychotic symptoms receded within a short period following release, but the underlying depressive features have been more slow to respond. In the case of Mahmoud abu Rideh [see section 1.4. of this briefing], (whose case is in the public domain) while transfer to Broadmoor produced an initial improvement in his clinical state this has since waned.*
- 9 *There is a strong consensus that indefinite detention per se is directly linked to deterioration in mental health and that fluctuations in mental state are related to the prison regime itself and to the vagaries of the appeal system.*
- 10 *There is also a strong consensus that, while indefinite detention continues, it is highly unlikely that the Prison Health Care team is adequately able to combat the deterioration in mental health.*
- 11 *Concern with regard to their wives' mental state is exacerbating the mental health problems of many detainees.*

The report outlines the following findings with respect to the impact of detention on family members:

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

....

*the following conclusions to be drawn.*

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

Amnesty International considers that people held in high security establishments under severely restrictive regimes under Part 4 of the ATCSA are being subjected to cruel, inhuman and degrading treatment as a result of being detained without charge or trial, principally on the basis of secret evidence, which they have never seen nor heard, and are, therefore, unable to effectively challenge.

### **1.3. The case of “G” – Article 16**

On 20 January 2004 the SIAC ordered that “G”, a 35-year-old Algerian man and former torture victim, be granted bail on humanitarian grounds. “G” had originally applied for bail in January 2004 given the serious deterioration of his mental and physical state as a result of being detained without charge or trial under the ATCSA in Belmarsh high security prison, London, since 19 December 2001, under a severely restrictive regime. He developed polio when he was two years old, which has left him with a permanently weak and paralyzed right leg so that he limps and has to wear a support. The SIAC granted him bail holding that continuing detention would cause the mental health of “G” to deteriorate further.

His lawyers argued before the SIAC that “G”’s mental and physical health had deteriorated severely as a consequence of his detention, particularly after he lost an appeal before the SIAC on 29 October 2003. Independent medical evidence was presented at the bail hearing attesting to his medical condition. The SIAC ruled that “G” should be released on bail under strict conditions amounting to house arrest. The UK government challenged the SIAC decision, and -- through protracted legal wrangling -- managed to prevent “G”’s immediate release after the 20 January ruling by the SIAC. Therefore, despite having been granted bail on humanitarian grounds on 20 January, “G” remained in detention at Belmarsh prison.

In light of this, in March 2004, Amnesty International expressed its urgent concern that “G” was being held in cruel, inhuman and degrading conditions in violation of domestic and international law. In particular, the organization expressed its urgent concern for “G”’s mental and physical health.

On 22 April an Amnesty International delegate observed the renewal of the bail application by “G” before the SIAC. At the end of the hearing, the SIAC granted bail to “G” under strict conditions amounting to house arrest. Following this, senior government spokespeople made strong statements criticizing the granting of bail. In turn, Amnesty International expressed concern that the government was undermining the judiciary and the rule of law.

In October 2004, an Amnesty International delegate monitored proceedings before the SIAC concerning a review of the bail arrangements imposed on “G”. At the end of the hearing, the SIAC relaxed some of the bail conditions imposed on him in April.

#### **1.4. The case of Mahmoud Abu Rideh – Article 16**

Mahmoud Abu Rideh, a 33-year-old Palestinian refugee and a torture victim, diagnosed as suffering from severe Post-Traumatic Stress Disorder, has been detained under the ATCSA since his arrest in December 2001. In June and July 2002, Amnesty International expressed concern that Mahmoud Abu Rideh’s detention conditions as a Category A detainee in House Block 4 at Belmarsh Prison amounted to cruel, inhuman or degrading treatment, and that he was at serious risk of taking his own life. Mahmoud Abu Rideh is currently detained under the ATCSA at the high security Broadmoor Psychiatric Hospital.

Mahmoud Abu Rideh was granted refugee status in the UK in 1997. In December 2001 he was arrested and has since been detained without charge or trial under the ATCSA. His mental and physical health seriously deteriorated in the several months since his arrest and detention. At a bail hearing on 24 June 2002 before the SIAC, an Amnesty International’s representative heard detailed expert testimony about Mahmoud Abu Rideh’s mental and physical health. In addition, on 26 June 2002 Amnesty International’s representatives visited Mahmoud Abu Rideh who was then still at Belmarsh Prison.

According to the evidence introduced at the 24 June 2002 bail hearing, Mahmoud Abu Rideh had frequent flashbacks of his torture which were triggered by his detention in very harsh conditions. At the time, he carried out frequent and repeated acts of self-harm. Mahmoud Abu Rideh had been suffering from lower back pain for years, including sciatica, and his condition had deteriorated since his arrest and, as a result, while at Belmarsh, he began using a wheelchair. According to reports available to Amnesty International, the mental and physical health care provided to Mahmoud Abu Rideh at Belmarsh Prison was seriously inadequate. In addition, his ability to instruct his legal representatives was greatly

undermined by the severe deterioration in his mental and physical health. Like the other ATCSA detainees, Mahmoud Abu Rideh was locked up in his cell for 22 hours a day.

At the bail hearing it was stated that due to his mental and physical state, Mahmoud Abu Rideh could only be a threat to himself. However, despite the wealth of evidence presented at the hearing, the SIAC judge refused Mahmoud Abu Rideh bail to a low level secure mental hospital as his legal representatives had requested.

Contrary to the expert medical evidence presented to the SIAC at the bail hearing on 24 June 2002, and against the advice of the medical authorities at Broadmoor Psychiatric Hospital -- and contrary to the wishes of Mahmoud Abu Rideh's family and legal representatives -- on 19 July 2002 the UK Home Secretary ordered his transfer from Belmarsh Prison to Broadmoor Psychiatric Hospital which took place on 24 July 2002. The psychiatric authorities at Broadmoor recommended against Mahmoud Abu Rideh's transfer there, on account of their considered opinion that it would not be conducive to improving his mental and physical well-being.<sup>11</sup> At the time of his forcible transfer to Broadmoor, Amnesty International expressed concern that such transfer had taken place and continues to believe that his detention in a high-security mental hospital is inappropriate. The deterioration of Mahmoud Abu Rideh's mental and physical health was attributable to his internment under the ATCSA in conditions amounting to cruel, inhuman and degrading treatment at Belmarsh Prison.

The organization believes that the detention of Mahmoud Abu Rideh in a high security prison was cruel, inhuman and degrading and, therefore, fell squarely within the ambit of Article 3 of the ECHR and Article 16 of the Convention against Torture. Furthermore, in Mahmoud Abu Rideh's case, at the bail hearing in June 2002, release from detention was being sought on humanitarian grounds as a way of: a) ensuring the provision of appropriate medical care; b) diminishing the risk of suicide and acts of self-harm; and c) removing him from a high security prison environment whose harsh conditions triggered frequent flashbacks of his torture. Under these circumstances, the fact that the UK government opposed the granting of bail in his case raises the legitimate question as to what exactly the content of the right to apply for bail under the ATCSA is.

### ***1.5. Use of "evidence" obtained through torture - Article 15***

In July 2003, in the course of an appeal before the SIAC against certification under Part 4 of the ATCSA, counsel for the internee concerned cross-examined an MI5 (security services) witness known as witness A. During his cross-examination, A made statements to the following effect: that it was possible that evidence extracted under torture could be assessed

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<sup>11</sup> Broadmoor Hospital provides high secure psychiatric care for about 360 patients with mental disorders who require treatment within a secure environment.

as reliable by MI5, and that, therefore, it could be relied upon by the Home Secretary in the context of the SIAC proceedings.

On October 29 2003, the SIAC ruled that “evidence” extracted under torture of a third party was not only admissible in judicial proceedings but may also be relied on by the SIAC in reaching judgment. This ruling was appealed. The admissibility of, and reliance on, “evidence” obtained through torture was one of the grounds on which the Court of Appeal England and Wales, the second highest court, ruled on 11 August 2004. In a most disturbing judgment, with a two-to-one ruling, the Court of Appeal “clarified” that “evidence” obtained by torture of a third party (i.e. not the ATCSA internees) would not be deemed admissible only if it had been directly procured by UK agents or if UK agents had connived in its procurement. Otherwise, “evidence” obtained through torture would be admissible and could be relied upon. A petition by the lawyers for the internees for leave to appeal this ruling of the Court of Appeal remains pending before the House of Lords.

Amnesty International continues to be profoundly concerned that the caveat introduced by the Court of Appeal does nothing to prevent torture at the hands of agents of other states; in fact, it effectively encourages and fosters it.

Amnesty International is gravely concerned at the UK executive’s and judiciary’s willingness to rely on “evidence” adduced as a result of torture. The organization considers that reliance on such “evidence” by the authorities, and its admission by the courts, undermine the rule of law and the very prohibition of torture. It in effect gives a green light to torturers.

An excerpt from Amnesty International’s Amicus Curiae brief to the House of Lords in the case of *A & others v the Secretary of State for the Home Department*, which is attached hereto as an appendix, sets out the organization’s views on these points more fully.

Upon its examination of the UK’s report, the Committee against Torture expressed concern that UK domestic legislation had been “interpreted to exclude the use of evidence extracted by torture only where the State party’s officials were complicit.”<sup>12</sup> With respect to this, the Committee recommended that the UK authorities should not “rely on or present in any proceeding evidence where there is knowledge or belief that it has been obtained by torture”.<sup>13</sup> The Committee also recommended that the UK authorities should “provide for a means whereby an individual can challenge the legality of any evidence in any proceeding plausibly suspected of having been obtained by torture”.<sup>14</sup>

Amnesty International continues to urge the UK authorities to comply fully with the international prohibition of torture, including by complying with Article 15 of the Convention against Torture. In order to render this prohibition effective, there must be a total ban on the

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<sup>12</sup> See at one *supra*, point 4.(a)(i), page two.

<sup>13</sup> *Ibid*, point 5(d), page four.

<sup>14</sup> *Ibid*.

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introduction of “evidence” obtained through torture or other ill-treatment, including long-term indefinite detention without charge or trial, in any proceedings, including judicial ones, except against a person accused of torture. Such ban must apply irrespective of the location at which the torture or other ill-treatment treatment took place and regardless of who was responsible for such acts.

## 2. Army deaths in disputed circumstances – Article 12 and 16

In June 2003, Amnesty International published a report entitled “*United Kingdom - Army Barracks Deaths: Families Demand Justice*”<sup>15</sup> detailing its concerns regarding the high incidence of deaths in disputed circumstances of UK Army personnel in non-combat situations in and around army barracks in the UK. The report highlighted the fact that since 1990 there have been nearly 1,800 “non-natural” deaths of members of the armed forces in or around UK Army barracks, some 200 of which have been described as self-inflicted. Amnesty International received allegations that some of these deaths may have involved unlawful killings, either intentional or as a result of negligence, through, for example, the misuse of lethal weapons; deaths during strenuous training exercises; and self-inflicted deaths, at times following bullying and other ill-treatment, including sexual harassment, by other soldiers and superior officers.<sup>16</sup> The circumstances surrounding many of these fatalities continue to be disputed. Serious questions have been raised about the adequacy and effectiveness of the authorities’ response giving rise to an increasing impression that there has been institutional collusion in, and cover-up of, some of these deaths. Amnesty International considered that such serious allegations demonstrated a pattern in which the UK authorities appeared to be failing to comply with their domestic and international human rights obligations -- including their obligations to ensure the right to life, the right not to be subjected to torture or other ill-treatment, and the right to an effective remedy before a national authority against human rights violations.

In light of the above, Amnesty International continues to support the families’ call for a wide-ranging public inquiry into all non-combat deaths of UK Army personnel in and around Army barracks in the UK since 1990. The organization has also called on the UK authorities to undertake prompt, thorough, effective, independent and impartial investigations into all deaths in disputed circumstances of UK armed forces personnel.

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<sup>15</sup> The report is available on the world-wide web at [http://web.amnesty.org/library/pdf/EUR450042003ENGLISH/\\$File/EUR4500403.pdf](http://web.amnesty.org/library/pdf/EUR450042003ENGLISH/$File/EUR4500403.pdf), AI Index: EUR 45/004/2003.

<sup>16</sup> For further information about bullying, sexual harassment and other ill-treatment, see also “*UNITED KINGDOM - U-18s: Report on Recruitment and Deployment of Child Soldiers*”, AI Index: EUR 45/057/2000.

Upon its examination of the UK's report, the Committee against Torture expressed concern about "reports of incidents of bullying followed by self-harm and suicide in the armed forces, and the need for full public inquiry into these incidents and adequate preventive measures".<sup>17</sup>

## **2.1. Deepcut Barracks suspicious deaths**

In February 2004 it was reported in *The Observer* newspaper that the UK Army claims that soldiers shot dead at Deepcut barracks committed suicide had not been corroborated by two of the world's leading forensic authorities: the Forensic Science Service - chief supplier of forensic analysis to UK police forces – and the German Bundeskriminalamt. These forensic institutions had been commissioned by Surrey Police to examine the deaths of Privates James Collinson, Geoff Gray, Cheryl James, and Sean Benton, who died in separate incidents at the Princess Royal Barracks, Deepcut, Surrey, between 1995 and 2002. According to *The Observer's* report, neither of the above-mentioned institutions could state conclusively that the deaths were self-inflicted. The documents containing their findings were expected to be made available to the pending inquests into the death of James Collinson and Geoff Gray.

On 4 March 2004 Surrey Police published their fifth and final report into the circumstances of the deaths at Deepcut Barracks. Surrey Police highlighted "[t]he essentially reactive and fragmented nature of the training, care, welfare and accountability regimes that operated between 1995 and the initiation of the Learning Account in 2002 [a joint Surrey Police/Army initiative to ensure that key lessons about risks, vulnerabilities and opportunities to improve the care regime were logged and progress recorded. The Deputy Adjutant General of the Army holds responsibility for its maintenance]". The Surrey Police final report also indicated that evidence of bullying in the Army was uncovered in sufficient quantity to raise concerns; and that the episodes of bullying revealed during the investigation showed the potential for it being a factor in escalating the risk of harm to recruits. The report reviewed a series of documents and episodes dating from 1988 to 2003, showing that areas of risk relating to the care, safety and welfare of recruits had been identified on a number of occasions in the past but had not been adequately addressed. In light of this, Surrey Police recommended that "the Ministry of Defence considers a broader investigation of: i) Whether the risks identified at Deepcut are replicated across the wider Army Training and Recruiting Agency and how these may relate to the issues of self-harm, suicide and undetermined deaths. ii) How the Army's care regime may be further improved. iii) How independent oversight might help the Army define and maintain appropriate standards of care for young soldiers."

Surrey Police acknowledged the shortcomings of the original investigations into the four deaths and apologized to the families for not taking the lead and ensuring a thorough inquiry at the outset. Surrey Police also recognized that the Army had acted to progress the

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<sup>17</sup> See at one *supra*, point 4.(h), page four.

lessons logged on the Learning Account and that there now existed a programme of work to improve practices and procedures relating to the care of soldiers in training. However, Surrey Police remained concerned that more needed to be done to address areas of risk and strengthen the care regime for young soldiers in training and suggested new arrangements for accountability and independent oversight.

In May 2004 it was reported in the press that the Defence Secretary was considering the establishment of a new body, independent of the Ministry of Defence, to address abuses in the Army and monitor the welfare of young recruits. It was reported that officials of the new body may be given powers to make unannounced visits to barracks and question trainee soldiers anonymously. The families of many UK Army personnel, who died in and around army barracks in suspicious circumstances, continue to campaign for an independent public inquiry into the circumstances of the deaths.

### **3. Child soldiers - Articles 2 and 16**

Amnesty International has also continued to express particular concern about the treatment of young soldiers: one-third of all recruits to the UK army are under 18. The organization considers that the recruitment of under-18s *per se* jeopardizes the right to mental and physical integrity and exposes them to violations of the rights to life and to be free from torture or other ill-treatment.

In October 2002 the Ministry of Defence informed Amnesty International that the army would no longer deploy anyone below the age of 18 years on “hostile” operations outside the UK. However, in June 2003 upon ratification of the Optional Protocol (OP) to the Convention on the Rights of the Child on the involvement of children in armed conflict, the UK confirmed that the “declaration” (which in fact has the effect of a reservation) entered when it signed the OP was reaffirmed with its ratification. This “declaration” sets out the circumstances in which the UK authorities anticipated that they *would* deploy under-18s in their armed forces to take a direct part in hostilities. As such it is against the object and purpose of the OP which is that “*States Parties shall take all feasible measures to ensure that members of their armed forces who have not attained the age of 18 years do not take a direct part in hostilities*”. Amnesty International considered that the reservation entered by the UK was “incompatible with the object and purpose” of the OP.<sup>18</sup>

In light of this “declaration”, Amnesty International is concerned that the UK authorities may, in the future, resort to deploying under-18s in their armed forces to take a direct part in hostilities. The organization considers that such deployment – as with recruitment – would expose them to violations of the rights to life and to be free from torture or other ill-treatment.

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<sup>18</sup> Article 19(c), Vienna Convention on the Law of Treaties.

## **4. Violence against women - Articles 2, 10, 12, and 16**

It is well established that certain forms of violence against women amount to torture or other ill-treatment. Those abuses can include -- but are not limited to -- acts of domestic violence, rape and other forms of sexual assaults, abuses to which trafficked women are subjected, and female genital mutilation.

Amnesty International is concerned that the UK is failing to take appropriate measures or to exercise due diligence to prevent, punish, investigate or redress the harm caused by such acts of violence against women.

### **4.1. Domestic Violence**

One in four women in the UK is expected to suffer domestic violence during her lifetime. Domestic violence accounts for 25 per cent of reported crime and on average two women are killed every week by a male current or former partner. However, it attracts the highest rate of repeat victimization of any crime and highest attrition rate for complaints that fail to result in prosecution and conviction. A joint report by the Crown Prosecution Service and the police found that only 11 per cent of domestic violence incidents recorded as crimes led to a conviction and that attrition rates in relation to domestic violence are higher than for other offences generally<sup>19</sup>. In light of this, Amnesty International is seriously concerned at the level of impunity enjoyed by perpetrators of acts of domestic violence.

A series of successive UK governments have improved the civil and criminal protections available to victims of domestic violence. The Family Law Act Part IV authorizes courts to issue a range of protective injunctions against family members and current and former partners and spouses. There is no specific offence of domestic violence, but there is a range of common law and statutory criminal offences with which perpetrators can be charged depending on the circumstances and severity of the abuse.

The current government has introduced the Domestic Violence, Crime and Victims Bill 2003 which will improve the interface between civil and criminal remedies. Proposed provisions include criminalizing breaches of civil injunctions, making common assault an arrestable offence and introducing multi-agency homicide reviews. Amnesty International has urged that this legislation be supplemented by a broad, comprehensive and fully resourced national strategy to eliminate all forms of violence against women.

The current government has also been proactive in policy developments, and the police and Crown Prosecution Service have issued “good practice” guidelines and circulars on

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<sup>19</sup> Violence at Home: A Joint Thematic Inspection on the Investigation and Prosecution of Cases Involving Domestic Violence, HM Inspectorate of Constabulary, February 2004.

domestic violence, while the Department of Constitutional Affairs issued Guidelines on Good Practice on Parental Contact and Domestic Violence.

There is overwhelming evidence that child contact is the primary avenue for continued post-separation violence between former spouses/partners. A survey<sup>20</sup> by Women's Aid found that only 10 per cent of respondents thought that court practice had improved since the introduction of the guidelines (see above). Although studies indicate that almost two-thirds of child-related applications to the family courts involve allegations of domestic violence by the father, 94 per cent of fathers are obtaining contact through the proceedings. Since 1999 at least 19 children have been killed during contact visits in England and Wales.<sup>21</sup>

## **4.2. Rape and Sexual Assault**

The judgments of the European Court of Human Rights in *C.R. v. United Kingdom* and *S.W. v. United Kingdom* have confirmed that there is no "marital exemption" and that, marital rape, is, as a result, criminalized in UK domestic law. Sexual intercourse with a girl aged 13 or under is a strict liability criminal offence. Sexual intercourse with a girl under the age of 16 is a criminal offence where the perpetrator is over the age of 18 and is likely to know or believe that the girl is under 16. Sexual intercourse without consent is classified as rape irrespective of the age of the parties.

The Sexual Offences Act 2003 clarifies the law on consent in regard to rape. A defendant's belief that the victim consented must be both honest and reasonable. There are new offences that cover those who actively encourage or incite sexual violations and a newly worded offence of sexual assault replaces indecent assault. The Act also contains new measures to strengthen the monitoring of offenders on the sex offenders' register and a range of new offences and harsher sentences for sexual offences against children and vulnerable people.

However, in 2003/2004 12,354 rapes were reported in England and Wales. Home Office figures for 1999 showed that of the 8,500 rapes recorded as a crime only seven per cent of suspects were found guilty or cautioned. Amnesty International is concerned that the conviction rates for rape in England, Wales and Scotland are now at their lowest point for 30 years, and compare unfavourably to many countries across Europe. In addition, despite legal reforms the government has failed to ensure that evidence with respect to the sexual history of complainants is not routinely introduced to undermine women's credibility in rape trials.

Amnesty International is also concerned that certain categories of rape offences -- gang rapes, rapes of women with learning disabilities or mental health problems and rapes of young women -- are much less likely to result in prosecution.

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<sup>20</sup> Survey conducted by Women's Aid in 2003 of 178 refuges and domestic violence services in England and Wales.

<sup>21</sup> Women's Aid Federation of England website [www.womensaid.org.uk](http://www.womensaid.org.uk)

The organization is also concerned at anecdotal evidence and media reports suggesting that the police and prosecution authorities are systematically failing to secure convictions for rape where the victim is under the age of 16, especially where the perpetrators are of a similar age, even where there are allegations of gang rape.

### **4.3. Trafficking**

In the UK, there is a lack of official statistical information on trafficking, but there is sufficient evidence to indicate that thousands of women and children are being trafficked into the UK for sexual or labour exploitation each year. In relation to adults, research carried out by Kelly and Regan for the Home Office (Police Research Series Paper 125, 2000) estimated that up to 1,420 women were being trafficked into the UK for sexual exploitation each year.

The Government has introduced an offence of trafficking for sexual exploitation in the Sexual Offences Act 2003, and a separate offence of trafficking for all forms of labour exploitation in the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004. Both offences carry a maximum penalty of 14 years in prison. There have been some successful prosecutions of traffickers, but the victims who testified have been returned to their country of origin without any assessment of the risk they face on return (source: The Poppy Project).

Amnesty International is concerned that persons trafficked into the UK for sexual exploitation are seen primarily as illegal immigrants rather than victims of violence who require redress, support and protection.

Trafficked women are usually regarded by UK authorities as illegal entrants. Section 2 of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 contains an offence of arriving in the UK with false documents (i.e. documents not in force and which do not establish their identity and nationality) punishable by a maximum sentence of two years in prison. Many trafficked people arrive with false documents and they are not specifically excluded from prosecution under this offence. In light of the Act, trafficked women who are detected by the immigration authorities or the police are now at risk of prosecution and are highly likely to be detained pending a prosecution. This increases the coercive power of traffickers as they will tell the trafficked person that they have already committed a crime and face imprisonment if they go to the police. It will also make prosecutions of traffickers more difficult as victims will be reluctant co-operate with the authorities for fear of exposing themselves to the risk of prosecution.

Trafficked women who apply for asylum may be entitled to some material assistance and accommodation. Trafficked women who claim asylum will be eligible for full health care until their claim is determined. Without additional protection, however, such women may be dispersed and vulnerable to further harm from their traffickers.

Amnesty International is concerned that trafficked women who do not claim asylum are at risk of immediate removal or detention. The organization is concerned about the apparent current practice to remove women within 48 hours from detection if they have yet to agree to cooperate with a possible future prosecution of their trafficker, without any assessment of their needs and the risks that they may face on their return.

The organization is also concerned that the UK government opposes introducing a reflection period for trafficked persons during which they could have an opportunity to recover from their trauma and make an informed decision about their future including whether they wish to co-operate with a prosecution. Evidence from other countries shows that there are higher rates of prosecution where a reflection period is offered. The UK government position means that trafficked women will not be given time to make an informed decision on co-operating with prosecutions, and traffickers will be able to continue sexually exploiting women with impunity.

Trafficked women who do not apply for asylum are treated as illegal immigrants, and as such are only eligible to access emergency health care. They are not entitled to work or to any form of public funds or accommodation save for access to a sole project (The Poppy Project) which is government-funded. The project supports women who have been trafficked into sexual exploitation. However, the criteria currently restrict access to the project to women who have been working as a prostitute in the last 30 days in the UK.

The restrictive criteria of the Poppy Project mean that women who were destined for exploitation in the sex industry, but escaped from traffickers before they were prostituted cannot access the project. This leaves them at risk of being re-trafficked. Furthermore, the Poppy Project is only funded for 25 places and these are fully occupied. Thus, in the same way as other women who do not meet the criteria, women who do meet the criteria will not be able to stay at the project and will have no means of support and assistance.

Amnesty International is concerned that insufficient measures have been taken to address the special rights and needs of trafficked persons under the age of 18. Children cannot access the Poppy Project. UK social services often do not have access to appropriate accommodation for trafficked children.

The UK government has chosen not to opt in to the EU Directive on short-term residence permits for trafficked persons that recommends issuing residence permits for a period of six months.<sup>22</sup>

#### ***4.4. Immigration/ Refugee and asylum-seeking women***

Women who enter the UK as spouses/long-term partners are required to remain in that relationship for two years in order to secure residence and access to state support. For the

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<sup>22</sup> Council Directive 2004/81/EC of 29<sup>th</sup> April 2004, Article 8 (3).

two-year duration they are not entitled to access welfare benefits or local authority accommodation. If the relationship ends within that period, including due to domestic violence, women are unable to access refuges as these are usually funded by welfare benefits. Southall Black Sisters, the leading NGO representing this group of women, estimates that 500-600 women and their children are trapped in abusive relationships each year as they cannot access safe, emergency accommodation.

Women represented just over a fifth of the asylum-seeking population in the UK (2001), amounting to a total of 15,930. Only 13 per cent of women seeking asylum obtained refugee status in the UK on their initial application; 72 per cent were refused international protection. Appeals against initial refusal are often successful, suggesting errors in asylum claims.

There is a Domestic Violence Immigration Rule that allows spouses and long-term partners to apply for indefinite leave to remain within the two-year period if they can prove their relationship broke down due to domestic violence. Between 2000 and 2002 only 119 women applied for stay on this basis. NGOs believe that many women are unable to make use of the rule because they are unable to leave their abuser in the first place, are unaware of the rule, or are unable to obtain the types of evidence required. This rule is not available to persons other than spouses and partners of British nationals/ residents.

There are no official statistics available on the incidence of domestic violence amongst immigrant/asylum-seeking women.

The UK has developed a more gendered approach to determining asylum claims in recent years. A House of Lords judgment in 1999 (*Islam and Shah*) recognized gender-related persecution for the first time and the realm of perpetrators was extended to include private individuals. However, the Law Lords made it clear that they did not find that women were a social group *per se*. The Immigration Appellate Authority introduced gender guidelines and the Home Office introduced gender guidelines for their caseworkers in 2004. However, officials are not required to comply with these guidelines, and anecdotal evidence from lawyers and NGOs suggests that these guidelines are not being implemented.

#### **4.5. Female Genital Mutilation**

Female genital mutilation (FGM) is known to be practised by communities living in the UK, both within the UK and by taking girls out of the country for the procedure. Estimates of the incidence of FGM reported in 1998 that about 6,000 girls in the UK were at risk of this practice.<sup>23</sup> Of the 303,454 migrants to the UK from countries in which FGM is practised, one

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<sup>23</sup> For further information, see “*CEDAW Thematic Shadow Report 2003 – Violence against Women in the UK*”, Written and compiled by Purna Sen, Cathy Humphreys and Liz Kelly with WOMANKIND Worldwide, p. 30, available on the world-wide web at [http://www.womankind.org.uk/news%20and%20events/CTSR%206\\_3.pdf](http://www.womankind.org.uk/news%20and%20events/CTSR%206_3.pdf).

study estimated that 148,291 women had either undergone FGM or were at risk.<sup>24</sup> Many girls are taken out of school for the practice and suffer physical and mental health consequences as a result.

In October 2003 the government passed the Female Genital Mutilation Act, which retains the crime of FGM in the UK (originally introduced in the 1985 Prohibition of Female Circumcision Act) and also extends the provisions of the Act to any offence of FGM which takes place outside the UK on a national or resident of the UK. The maximum penalty is 14 years in prison. There has not been one single prosecution under the 1985 Female Circumcision Act, despite evidence that FGM does indeed occur in the UK. Two doctors have been struck off the medical register but not prosecuted.

Girls at risk of FGM can in theory be referred to Social Services or the Police for assistance and protection.

Girls or adults who have suffered FGM can access healthcare in the UK provided their immigration status does not restrict access to health care (illegal entrants, overstayers and failed asylum-seekers are only entitled to emergency health care).

The Government has failed to collect any data indicating the prevalence of risk of FGM in the UK or assess service provision needs.

The FGM Act appears to be discriminatory given that it does not apply to non-residents based in the UK (i.e. students, workers, persons granted exceptional leave to remain) who can legally have FGM performed on their daughters abroad, although local authorities and the police would have a duty of care towards these girls as the majority are habitually resident in the UK.

There is no requirement for training or set protocols on FGM for relevant professionals including social workers, the police, teachers and health professionals although the latter are often the first point of contact for girls and women who have undergone FGM. No public education programmes have been carried out within communities or within schools to create attitude change or inform girls at risk of their right to protection.

## **5. Asylum – Articles 3 and 16**

Since 1997 there have been three pieces of asylum-related legislation. Amnesty International believes that their main aim is to deter asylum applicants and make access to the UK's territory, asylum procedures and welfare benefits difficult for those fleeing human rights violations.

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<sup>24</sup> International Centre for Reproductive Health (1999) Findings presented at Expert Meeting on Female Genital Mutilation, Ghent, 5 – 7 November 1998, in speech entitled “The Daphne Project on Female Genital Mutilation in Europe”, by Els Leye.

Asylum is one of the most contentious issues in the UK's political discourse. The latest Home Office statistics show that although the number of asylum applicants to the UK continues to fall the number of those held in detention, including children, has risen. Many are held throughout the duration of the process. Amnesty International believes that the main problem with the asylum system is the poor quality of Home Office decision-making. In the report "*Get it Right: How Home Office decision making fails refugees*"<sup>25</sup> Amnesty International UK identified a number of concerns with the initial decision-making on asylum claims.

Concerns on Home Office decision-making have also been expressed by the Home Affairs and the Constitutional Affairs Committees, the House of Lords, the EU Committee Report: "Handling EU asylum claims" and in June 2004 by the National Audit Office which scrutinizes public spending on behalf of Parliament.

The number of Home Office decisions overturned on appeal supports these concerns. In 2003 more than 16,000 Home Office decisions were overturned on appeal. Amnesty International believes that getting more decisions right first time will lead to fewer appeals, speedier results, lower costs and greater public confidence in the system.

Resources should be focused on good quality defensible asylum decisions. Asylum-seekers should have early access to good quality legal advice and representation so that the asylum claim can be set out in full and the initial Home Office decision is based on a full understanding of the applicant's case. However, restrictions to publicly funded immigration and asylum services since April 2004 have resulted in the withdrawal of established solicitors from this area of work which may leave many asylum applicants without access to such legal representation.

The quality of initial decision-making on asylum claims is of fundamental importance most particularly as the Asylum & Immigration (Treatment of Claimants) Act 2004 restricts appeal rights, replacing the two-tier Immigration appeals system with a single tier of appeal. Originally the legislation proposed to abolish the higher courts' powers to scrutinize decisions of the new appellate authority. However, due to immense pressure from interested parties including the Lord Chief Justice, the government amended this proposal.

Section 55 of the Nationality, Immigration and Asylum Act 2002 allowed the Home Secretary to deny any state support (accommodation and subsistence) to adult asylum-seekers who make their asylum claim after entering the UK who could not convince the Home Office that they did so "as soon as reasonably practicable after ... arrival in the United Kingdom". It is estimated that some 10,000 asylum-seekers were denied support since this was introduced in January 2003. In March 2004, the Home Secretary appealed against the High Court

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<sup>25</sup> The report is available on the world-wide web at [http://www.amnesty.org.uk/images/ul/ / Settings user My Documents Amnesty Work AIUK Asylum\\_report\\_2004.pdf](http://www.amnesty.org.uk/images/ul/ / Settings user My Documents Amnesty Work AIUK Asylum_report_2004.pdf).

decision to grant relief to three asylum-seekers denied support under Section 55. His appeal was dismissed in May by the Court of Appeal which suggested that Section 55 cannot in practice be reconciled with the UK's commitment to the ECHR (e.g. Article 3 of the ECHR, i.e. Article 16 of the Convention against Torture). Following defeat in the Court of Appeal, and pending further appeal to the House of Lords, the Home Secretary has been obliged to change the process so that the majority of applicants in need of welfare support will receive it and not risk destitution.

Due to legislative and policy changes, Amnesty International believes that there are now thousands of rejected asylum applicants who have exhausted all domestic remedies in the UK. Many of these come from countries such as Iraq, Somalia and Zimbabwe. Currently the only country to which as a matter of policy the UK does not generally enforce the return of failed asylum-seekers is Zimbabwe. According to the UK government, this policy is not based on asylum or human rights reasons but on the view that in the wider context of its position on Zimbabwe it would be inappropriate to forcibly return failed asylum-seekers at this time.

As of March 2004 the Home Office has forcibly returned a number of failed male asylum-seekers back to southern Somalia, which has no effective national government, justice system or police force and where fighting between armed factions continues. Somalia is currently the biggest single source of asylum applications to the UK.

Despite the manifest insecurity in Iraq, in February 2004 the Home Office pursued plans for the enforced return of asylum-seekers and announced that it would start enforced return of asylum-seekers to Iraq as soon as the necessary arrangements were in place. To date, no enforced removals have occurred.

Despite the continuing insecurity and instability, the UK continues to forcibly remove rejected Afghan asylum applicants back to Afghanistan at the rate of fifty per month. The fluidity of the political situation, worsening security situation, human rights abuses, lack of absorption capacity, particularly in Kabul, as well as the lack of basic infrastructure countrywide is having a destabilizing effect on the population. The control of the central government remains mainly limited to Kabul with the state unable to provide basic security to the majority of its citizens.

Upon its examination of the UK's report, the Committee against Torture expressed concern about "allegations and complaints against immigration staff, including complaints of excessive use of force in the removal of denied asylum seekers."<sup>26</sup>

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<sup>26</sup> See at one *supra*, point 4.(i), page four.

## **6. Concerns about the UK role in Iraq – Articles 2, 12, and 16**

Since May 2003, Amnesty International has issued several reports detailing allegations of gross human rights violations by Coalition Forces in Iraq, including torture, ill-treatment and deaths in custody, amounting to grave breaches of the Geneva Conventions.<sup>27</sup> Amnesty International has also raised its concerns relating to these violations with the Coalition Provisional Authority (CPA), as well as with government officials in the United States of America (USA) and the UK.

Many former detainees interviewed by Amnesty International alleged they were tortured or otherwise ill-treated during the first few days following arrest. They were forced to lie down on the ground, handcuffed, hooded or blindfolded for a long time. They were repeatedly beaten, restrained for prolonged periods in painful “stress” positions, while some were also subjected to sleep deprivation, prolonged forced standing, and exposed to loud music and bright lights.

**Baha Dawood Salem al-Maliki** was among eight Iraqi hotel workers arrested on 14 September 2003 by UK soldiers in Basra. All eight were reportedly subjected to severe beatings by the soldiers. Three days later Baha Dawood Salem al-Maliki’s father was handed his son’s body, severely bruised and covered in blood. Another detainee, Kefah Taha, was admitted to hospital in a critical condition, suffering renal failure and severe bruising. Amnesty International raised concerns about Baha Dawood Salem al-Maliki’s death and the other detainees with the UK’s Ministry of Defence in a letter sent on 22 October 2003. A Ministry of Defence official responded in November 2003 to say that the case was being investigated by the Royal Military Police.

### **6.1. Concerns about investigations – Article 12**

Between 1 May 2003 and 28 June 2004, Amnesty International expressed concern to the UK authorities in respect of allegations of torture or other ill-treatment and suspected unlawful killings at the hands of members of the UK armed forces stationed in Iraq. In particular, the organization expressed concern about allegations of torture or other ill-treatment of Iraqi civilians at the hands of members of the UK armed forces upon arrest and detention, as well as four cases of deaths in UK custody in circumstances which have given rise to allegations that these fatalities may have occurred as a result of torture or other ill-treatment.

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<sup>27</sup> External documents on Iraq can be seen on Amnesty International’s website: <http://web.amnesty.org/library/eng-irq/index>.

However, the UK Army's response to suspected unlawful killing of civilians and allegations of torture or other ill-treatment has undermined, rather than upheld, the rule of law. The UK authorities have failed to conduct investigations into all cases, and the investigations that have been carried out have failed to ensure that "justice was done and seen to be done" in the eyes of victims' families or the Iraqi or UK public. The investigations have been shrouded in secrecy -- some victims have not even been aware that they have been opened. Families of victims have also not been given adequate information on how to apply for compensation.

The UK authorities accept that a number of Iraqi civilians were shot and killed by members of the UK armed forces in Iraq between 1 May 2003 and 28 June 2004. The UK authorities also accept that the deaths occurred in areas of Iraq (namely Basra and Maysan provinces). The UK authorities also accept that at least one person died while in the custody of the UK armed forces.

In the event that a civilian is killed by UK army personnel in the UK, an investigation would be conducted and supervised by a civilian police force. Following various investigations at Deepcut barracks (see section 2.1. of this briefing), it is also accepted that even in case of a fatality involving a member of the UK Armed Forces, the investigation should be conducted and supervised by the civilian police. By the same token, investigations into deaths in custody of the police in England and Wales, or into allegations of torture or other ill-treatment by the police, are supervised, and at times conducted, by the Independent Police Complaints Commission.

In July 2004, a delegate of Amnesty International observed the proceedings before the High Court of England and Wales concerning the deaths of some Iraqis killed at the hands of, or in the custody of, UK troops in Iraq. The families of six victims challenged the government's decision not to hold an independent inquiry into the deaths. The claimants asserted that the UK Ministry of Defence had refused to carry out an investigation/inquiry as required by the procedural right enshrined in the ECHR. In five cases, the claims were made under Article 2 of the ECHR. A sixth case, concerning the death in UK custody of Baha Dawood Salem al-Maliki (see above), entailed a claim under both Articles 2 and 3 of the ECHR.

The Ministry of Defence claimed that neither the ECHR nor the Human Rights Act (HRA) was applicable to Iraq at the time of the deaths, because Iraq was outside Europe and was not a party to the ECHR. Judgment in this case is expected in the second half of November.

In its Conclusions and Recommendations upon its examination of the UK's report, the Committee against Torture expressed concern at "the State party's limited acceptance of the applicability of the Convention [against Torture] to the actions of its forces abroad, in particular its explanation that 'those parts of the Convention which are applicable only in respect of territory under the jurisdiction of a State party cannot be applicable in relation to

actions of the United Kingdom in Afghanistan and Iraq”<sup>28</sup>. In this connection, the Committee noted that “the Convention protections extend to all territories under the jurisdiction of a State party and considers that this principle includes all areas under the de facto effective control of the State party’s authorities”<sup>29</sup>.

In light of its concerns, the Committee recommended that the UK authorities “should make public the result of all investigations into alleged conduct by its forces in Iraq and Afghanistan, particularly those that reveal possible actions in breach of the Convention [against Torture], and provide for independent review of the conclusions where appropriate”<sup>30</sup>.

Amnesty International considers that the UK is bound by, *inter alia*, the ECHR, the ICCPR, the Convention against Torture and other relevant international law and standards insofar as the conduct of UK Army Personnel is concerned. As such these obligations were directly applicable to the conduct of UK troops in Iraq. In light of this, the UK authorities should carry out prompt, competent, thorough, independent, impartial and effective investigations in these and other cases. For example, in cases concerning allegations of torture or other ill-treatment the UK authorities are bound by their obligation under Article 12 of the Convention against Torture.

Amnesty International considers that the Royal Military Police-led investigations into the allegations of killings and torture of Iraqi civilians at the hands of, or in the custody of, members of the UK armed forces, do not comply with international standards as to effectiveness, thoroughness, independence and impartiality, e.g. Article 12 of the CAT.

In light of these concerns, Amnesty International continues to urge the UK authorities to establish a civilian-led mechanism to investigate all suspected killings at the hands, or in the custody, of UK Army personnel, including deaths in custody where there are allegations that fatalities may be the result of torture or other ill-treatment. Such a mechanism should be capable of applying international human rights law and standards relevant to the investigations of allegations of serious human rights violations by the military.

## **6.2. Concerns arising from the International Committee of the Red Cross report – Articles 2, 12 and 16**

In February 2004, the International Committee of the Red Cross (ICRC) presented a report to the Coalition Forces detailing a number of serious violations of international humanitarian law by these forces in Iraq,<sup>31</sup> including brutality against protected persons during arrest and

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<sup>28</sup> See *supra* at one, point 4.(b), page three.

<sup>29</sup> *Ibid.*

<sup>30</sup> *Ibid.*, point 5.(f), page four.

<sup>31</sup> “Report of the International Committee of the Red Cross (ICRC) on the treatment by the Coalition Forces of prisoners of war and other protected persons by the Geneva Conventions in Iraq during arrest, internment and interrogation”.

initial detention, sometimes causing death or serious injury, as well as various methods of torture and other ill-treatment inflicted on detainees.

In May 2004, Amnesty International wrote to the UK Prime Minister expressing concern about the UK government's response to the serious violations of international humanitarian law documented in the February 2004 ICRC report.

With regard to the substance of the February 2004 ICRC report, the Ministerial Statement of 10 May 2004 to the House of Commons by the Secretary of State for Defence, the Rt Hon Geoffrey Hoon MP, stated that the ICRC report "raised three specific concerns in respect of British forces' treatment of prisoners and internees". Amnesty International noted that the ICRC report dealt with arrests as well as detention issues. Having considered the report, Amnesty International expressed its belief that the ICRC had documented other issues of concern in addition to the three mentioned by the Secretary of State. They included: allegations of ill-treatment following capture in Basra; allegations of mistreatment in the former *mukhabarat* office in Basra; and detailed ill-treatment allegations in connection with the arrest of nine men in Basra in September 2003.

Amnesty International has also noted that the ICRC report states that it had made representations orally and in writing throughout 2003 to the Coalition Forces about ill-treatment of detainees. The ICRC report also states that "in spite of some improvements in the material conditions of internment, allegations of ill-treatment perpetrated by members of the CF against persons deprived of their liberty continued to be collected by members of the ICRC and thus suggested that the use of ill-treatment...went beyond exceptional cases and might be considered as a practice tolerated by the CF".

Amnesty International has urged the UK authorities to ensure that all allegations of human rights violations involving UK personnel documented in the February 2004 report by the ICRC, as well as those previously raised by the ICRC in 2003, be investigated as a matter of urgency by a civilian-led body. Such a body should comply with international human rights law and standards relevant to the investigations of allegations of serious human rights violations by the military.

### **6.3. Hooding – Articles 11 and 16**

In correspondence with the UK Prime Minister in May of this year, Amnesty International expressed concern, inter alia, about the admission that routine hooding of detainees had been practised by UK Army personnel in Iraq.<sup>32</sup> Amnesty International requested information from the UK authorities about the circumstances in which this practice was introduced and why.

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<sup>32</sup> See, for example, the 10 May 2004 Ministerial Statement to the House of Commons by the Secretary of State for Defence, Geoff Hoon, "The second concern raised by the ICRC [the International Committee of the Red Cross] relevant to the UK was in respect of the routine hooding of prisoners.

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

As noted by the former UN Special Rapporteur on torture, Prof. Sir Nigel Rodley, “[t]he practice of blindfolding and hooding often makes the prosecution of torture virtually impossible, as victims are rendered incapable of identifying their torturers. Thus, blindfolding or hooding should be forbidden.”

The Committee against Torture has made a similar recommendation. In addition, Amnesty International considers hooding to be a form of ill-treatment given that it *per se* constitutes sensory deprivation by impairing the sight, hearing and sense of smell of the individual who is subjected to it. Hooding is also cruel and inhuman because the disorientation resulting from it increases people’s vulnerability. There can be no justification for hooding detainees. Therefore, Amnesty International has urged the UK authorities to ensure that the practice of hooding detainees be banned and criminalized, and that personnel who engage in it, including by ordering it, or tacitly acquiescing in it, be prosecuted.

## **7. Concerns about the UK’s failure to address human rights violations at Guantánamo Bay – Articles 2, 12, and 16**

Since 2002 Amnesty International has expressed concern about the failure of the UK government to oppose what can only be termed as *the* human rights scandal that is the detention -- without any legal basis -- of some 600 people at US Naval Base in Guantánamo Bay, Cuba, in US custody, including UK residents and nationals.<sup>33</sup>

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This practice had already ceased in UK facilities from September last year, and this change had also been confirmed publicly.”

<sup>33</sup> For further information, see “UNITED STATES OF AMERICA - Human dignity denied

Amnesty International has expressed concern about the role that the UK government may have played in the unlawful rendering to US custody of a number of individuals who were eventually transferred to Guantánamo Bay, and about the UK's refusal, despite clear obligations under international refugee and humanitarian law, to make representations on behalf of these individuals to the US authorities. In February 2003, Amnesty International wrote to the UK authorities to express concern about the role that they had allegedly played in the unlawful rendering to US authorities' custody of Bisher al-Rawi, an Iraqi national legally resident in the UK, and Jamil Al-Banna, a Jordanian national with refugee status in the UK. They continue to be held without charge or trial, access to the courts, lawyers or their families at the US Naval Base in Guantánamo Bay. Since then, the organization has also expressed concern at the refusal of the UK's authorities to make representations on behalf of Bisher Al-Rawi and Jamil Al-Banna to the US authorities urging them to uphold their human rights.<sup>34</sup>

In May 2002, the Secretary of State for Foreign and Commonwealth Affairs confirmed to Amnesty International that UK nationals held at Guantánamo had been "visited" by UK officials, including from MI5 (i.e. the UK Security Services), and that they had been interviewed in relation to issues relevant to the UK's national security.<sup>35</sup> The Foreign Secretary also stated to Amnesty International that he had repeatedly raised with the US authorities the circumstances in which UK nationals were being held and that, following receipt of assurances from the US authorities that the detainees were "being treated humanely and consistently with the principles of the Geneva Conventions", he was satisfied that that was the case. Finally, he informed Amnesty International that the Guantánamo detainees had not complained of any ill-treatment. However, in June 2004, the UK authorities admitted that a number of the "detainees questioned by UK intelligence personnel have complained about their treatment in detention. All complaints made by detainees interviewed by British Intelligence officers were passed onto the US authorities, who are responsible for the treatment of those detained in Guantanamo Bay."<sup>36</sup> In subsequent parliamentary exchanges, the UK authorities have refused to provide any further detail about these complaints.

Since 2002 Amnesty International has been expressing particular concern that UK intelligence officers have been taking advantage of the legal limbo in which UK nationals, residents and possibly others have been held at Guantánamo Bay to interrogate them. The organization has noted that anyone arrested in the UK and questioned in connection with *al-Qa'ida* activities would have the right to legal assistance, including having a lawyer present during questioning.

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*Torture and accountability in the 'war on terror'*", published by Amnesty International on 27 October 2004 and available on the world-wide web at

[http://web.amnesty.org/library/pdf/AMR511452004ENGLISH/\\$File/AMR5114504.pdf](http://web.amnesty.org/library/pdf/AMR511452004ENGLISH/$File/AMR5114504.pdf)

<sup>34</sup> For further information, see "UK: Government must act now on behalf of Guantánamo detainees", (AI INDEX: EUR 45/019/2003).

<sup>35</sup> In November 2004, the UK authorities stated that UK officials have "visited" UK nationals held at Guantánamo eight times.

<sup>36</sup> **Mr. Blunkett** [*Holding answer 7 June, 2004*] in answer to a parliamentary question.

On 9 March 2004 Ruhel Ahmed, Tarek Dergoul, Jamal Udeen (also known as Jamal Al Harith), Asif Iqbal and Shafiq Rasul, five of the nine UK nationals held in US custody at Guantánamo Bay, were released. On their arrival in London Jamal Udeen was immediately released without charge, while the other four were questioned by UK police and released -- also without charge -- the following day.

In August 2004 Shafiq Rasul, Asif Iqbal and Ruhel Ahmed released through their London-based solicitor a detailed report providing a graphic first-hand account of life at Guantánamo Bay. In this report they alleged that UK officials threatened them that they would be sent to a maximum security prison in the UK. Ruhel Ahmed alleged that while he was being interrogated by a UK officer "one of the U.S. soldiers had a gun to his head and he was told that if he moved they would shoot him."

Also in August of this year, Tarek Dergoul's lawyer made available to Amnesty International a witness statement from her client. In the said statement Tarek Dergoul alleged that he was interrogated by two UK officials while he was held in US custody in Afghanistan. "The British interrogators also interrogated me with a soldier in a corner with a gun. They saw that I was shaking and shivering and what a bad state I was in medically. However, they did nothing for me. They just asked me all the standard questions and then left."

In his statement Tarek Dergoul also referred to his interrogations at Guantánamo Bay: "British interrogators also came and showed me an article from a newspaper about British citizens being sent to Cuba. I told the British interrogators on at least five occasions every detail of what was going on in Guantanamo Bay, including the beatings."

The use of the so-called "stress and duress" techniques has been widely alleged by former detainees held in US custody in Afghanistan, some of whom were subsequently transferred to Guantánamo Bay. People held in US custody not only at Abu Ghraib Prison, but also in Afghanistan, at Guantánamo Bay, and possibly elsewhere at other undisclosed detention places, have been subjected to such practices by US personnel.

In light of the above concerns, and given the admissions from the highest echelons of the US administration about the above-mentioned so-called "interrogation techniques" in Iraq, and allegations that analogous methods were used elsewhere, including in Guantánamo, Amnesty International considers that not only has the UK government failed to make adequate representations about cruel, inhuman or degrading treatment of such detainees, but also it may, in effect, have actively colluded in it.

In light of this, Amnesty International continues to be concerned that the UK authorities have taken advantage of the legal limbo and the coercive detention conditions in which UK nationals, and possibly others, were and have been held at Guantánamo Bay to interrogate them and extract information for use in proceedings under the ATCSA before the SIAC here in the UK (see section 1.5. of this briefing).

Upon its examination of the UK's report, the Committee against Torture recommended that the UK government "should ensure that the conduct of its officials, including those attending interrogations at any overseas facility, is strictly in conformity with the requirements of the Convention [against Torture] and that any breaches of the Convention that it becomes aware of should be investigated promptly and impartially, and if necessary the State party should file criminal proceedings in an appropriate jurisdiction".<sup>37</sup>

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<sup>37</sup> See *supra* at one, point 5.(j), page five.

## **Appendix: Excerpts from Amnesty International submission to House of Lords opposing indefinite detention**

### **IN THE HOUSE OF LORDS ON APPEAL FROM HER MAJESTY'S COURT OF APPEAL**

**BETWEEN:-  
A and others  
Appellants**

**-v-**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT  
Respondent**

**INTERVENTION ON BEHALF OF  
AMNESTY INTERNATIONAL LIMITED**

....

“... Amnesty International submits that the scheme of Part 4 of the 2001 Act:

....

(ii) Is incompatible with article 3 of the Convention [ECHR], article 7 of the Covenant [ICCPR] and article 15 of the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment ("CAT") because, according to the Court of Appeal's judgment delivered on 11 August 2004, the scheme requires the admission of evidence obtained by torture or other ill-treatment where the torture or other ill-treatment was neither committed nor connived in by United Kingdom officials.

....

**PART 6: EVIDENCE OBTAINED BY TORTURE - THE APPLICATION OF ARTICLE 3 OF THE CONVENTION [ECHR] AND ARTICLE 7 OF THE COVENANT [ICCPR]**

6.1 Amnesty International submits that the prohibition on the admissibility in any proceedings (save those against the alleged torturer) of evidence obtained by torture is an essential component of the absolute prohibition on torture and inhuman or degrading treatment contained in article 3 of the Convention and article 7 of the Covenant. This prohibition is a *jus cogens* or peremptory norm of customary international law which has been

described as “a right inherent in the concept of civilisation”.<sup>38</sup> In *R v Bow street Magistrate, ex parte Pinochet (No.3)* [2000] 1 AC 147 at 198 C-E, Lord Browne-Wilkinson cited with approval the following excerpt from the judgment of the International Criminal Tribunal for the Former Yugoslavia in *Prosecutor v Furundzija* (unreported) 10 December 1998, Case No IT-95-171/1-T 10:

“Because of the importance of the values it protects, [the prohibition of torture] has evolved into a peremptory norm or *jus cogens*, that is, a norm that enjoys a higher rank in the international hierarchy than treaty law and even ‘ordinary’ customary rules. The most conspicuous consequence of this higher rank is that the principle at issue cannot be derogated from by states through international treaties or local or special customs or even general customary rules not endowed with the same normative force...the *jus cogens* nature of the prohibition against torture articulates the notion that the prohibition has now become one of the most fundamental standards of the international community. Furthermore, this prohibition is designed to produce a deterrent effect, in that it signals to all members of the international community and the individuals over whom they wield authority that the prohibition of torture is an absolute value from which nobody must deviate.”

6.2 It is submitted, for the reasons developed below, that it is essential to the effectiveness of this universal prohibition that evidence obtained by torture or other inhuman or degrading treatment never be given cognisance in judicial proceedings, save as evidence against the alleged perpetrator to prove that torture or other prohibited treatment occurred.

6.3 Article 3 of the Convention provides:

“No one shall be subject to torture or to inhuman or degrading treatment or punishment”

Article 7 of the Covenant provides:

“No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation.

6.4 In determining the scope and content of these rights, in addition to the principles of interpretation outlined at paragraph 5.5 above, the following principles are also of central importance:

(i) The interpretation given should be that which “is most appropriate in order to realise the aim and achieve the object of the treaty”<sup>39</sup>;

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<sup>38</sup> Lord Cooke in *Higgs v Minister of National Security* [2000] AC 228, p. 260E-F. See also *Filartiga v. Peña-Irala*, 630 F.2d 876, 882 (1980); *Abebe-Jiri v. Negewo*, WL 814304 (N.D. Ga., 1993), at 3; *Kadic v. Karadzic* 70 F.3d 232, 245 C.A.2 (N.Y.1995); *Estate of Cabello v. Fernandez-Larios*, 157 F.Supp.2d 1345, 1360 (S.D. Fla., 2001). For academic writers see for instance Antonio Cassese, *International Criminal Law*, Oxford, OUP, 2003, at 119; Christopher Greenwood, ‘International Law and the “War against Terrorism,”’ 78 (no. 2) *International Affairs* 301 (2002), at 316; Winston P. Nagan and Lucie Atkins, ‘The International Law of Torture: From Universal Proscription to Effective Application and Enforcement,’ 14 *Harvard Human Rights Journal* 87 (2001), at 113; Rebecca Wallace, *International Human Rights: Texts and Materials*, London, Sweet & Maxwell, 1997, at 310.

<sup>39</sup> *Wemhoff v Germany* (1979–80) 1 EHRR 55, reflecting article 31(1) of the Vienna Convention on the Law of Treaties, May 1969.

(ii) The Convention and Covenant are “living instruments” which “must be interpreted in the light of present-day conditions.” The “present-day” content of a right is informed by other international conventions and treaties: for example, in *Sigurjonsson v Iceland* (1993) 16 EHRR 462, the European Court of Human Rights drew on the European Social Charter and the International Labour Organisation Conventions 87 and 98 in interpreting article 11 of the Convention to include a right not to join an association; in *Selmouni v France* (2000) 29 HRR 403, the European Court of Human Rights looked to CAT to assess the evolution in the definition of torture and interpreted article 3 of the Convention accordingly.

6.5 In giving effect to these principles the European Court of Human Rights and the United Nations Human Rights Committee have frequently “read in” elements of Convention and Covenant rights which, although not expressly provided for on the face of the Convention and Covenant, are deemed to be “inherent” in the article in question because they are essential for the effective protection of the express right. Examples are the “procedural” or “adjectival” duty on the State under article 2 of the Convention to investigate deaths within its jurisdiction<sup>40</sup> and under article 3 of the Convention to investigate allegations of torture or inhuman and degrading treatment.<sup>41</sup> These “procedural” rights have been found to be essential for the effective guarantee of substantive rights and for ensuring future compliance.

6.6 Amnesty International submits that the substantive prohibition on torture and inhuman and degrading treatment is of such profundity that it comprises not only an absolute duty on states to refrain from committing such acts, but also an inherent obligation to take steps to combat their commission. One manifestation of this is the recognition of the obligation to exercise universal criminal jurisdiction in respect of acts of torture (*aut dedere aut judicare*):

“The *jus cogens* nature of the international crime of torture justifies states in taking universal jurisdiction over torture wherever committed... the offenders are “common enemies of all mankind and all nations have an equal interest in their apprehension and prosecution”.”<sup>42</sup>

6.7 Further, notwithstanding that article 3 is expressed in terms of prohibition rather than prevention, the European Court of Human Rights has repeatedly found a preventative obligation within it: it has, for example, ruled that State parties must provide adequate protection in domestic law criminalizing ill-treatment administered by private individuals<sup>43</sup>; that there is a duty to take reasonable steps to protect children from abuse<sup>44</sup>; that there is an obligation to refrain from deporting individuals to places where they risk torture or inhuman or degrading treatment<sup>45</sup>; and, as already noted, there is a duty on states to investigate alleged breaches of the substantive right. It is submitted that the prohibition on deporting individuals

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<sup>40</sup> *McCann v United Kingdom* (1996) 21 EHRR 97; *Jordan v United Kingdom* App.No.24746/94 judgment of 4 May 2001; *R(Amin) v SSHD* [2004] 1 AC 653.

<sup>41</sup> *R(Wright and Bennett) v SSHD* [2001] EWHC Admin 520.

<sup>42</sup> Lord Browne-Wilkinson in *R v Bow Street Magistrates, ex parte Pinochet* (No.3) [2000] 1 AC 147 at 198 F citing *Demjanjuk v Petrovsky* (1985) 603 F.Supp. 1468; 776 F.2d 571.

<sup>43</sup> *A v United Kingdom* (1998) 27 EHRR 611; *HLR v France* (1997) 26 EHRR 29.

<sup>44</sup> *Z v United Kingdom* [2002] 34 EHRR 3.

<sup>45</sup> *Soering v United Kingdom* 11 EHRR 439.

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to places where they risk torture or inhuman or degrading treatment demonstrates that the Strasbourg Court recognises the inter-connectedness of *prima facie* lawful acts by state parties and the violative actions of non-state party third countries; it has not sought to draw a veil between the two.

6.8 The contours of the preventative obligations inherent in the prohibition were considered by the ICTY in *Furundzija*:

“The existence of this corpus of general and treaty rules proscribing torture shows that the international community, aware of the importance of outlawing this heinous phenomenon, has decided to suppress any manifestation of torture by operating both at the interstate level and at the level of individuals. No legal loopholes have been left. [para. 146]

...

“States are obliged not only to prohibit and punish torture, but also to forestall its occurrence: it is insufficient merely to intervene after the infliction of torture, when the physical or moral integrity of human beings has already been irremediably harmed. Consequently, States are bound to put in place all those measures that may pre-empt the perpetration of torture. As was authoritatively held by the European Court of Human Rights in *Soering*, international law intends to bar not only actual breaches but also potential breaches of the prohibition against torture (as well as any inhuman and degrading treatment). It follows that international rules prohibit not only torture but also (i) the failure to adopt the national measures necessary for implementing the prohibition and (ii) the maintenance in force or passage of laws which are contrary to the prohibition.” [para. 148]

...

“The value of freedom from torture is so great that it becomes imperative to preclude any national legislative act authorising or condoning torture or at any rate capable of bringing about this effect. [para.150, emphasis added]

6.9 The ICTY is here clearly identifying that the universal prohibition is not limited to a negative duty to refrain from committing acts of torture, but includes an obligation to condemn torture, to deter its future commission and to suppress all of its manifestations. Amnesty International submits that article 3 of the Convention and article 7 of the Covenant must not be read any more restrictively. Further, the obligations in articles 3 and 7 make no distinction in the nature of the prohibition of torture and that of inhuman and degrading treatment: both are absolute and no derogation is permitted from them under article 15 of the Convention [ECHR] and article 4 of the Covenant [ICCPR].

6.10 Amnesty International submits, therefore, that the acceptance in evidence of statements obtained by torture or other inhuman or degrading treatment (other than as proof of such acts against their perpetrators) is fundamentally antithetical to the preventative obligation, which is inherent in the universal prohibition: the nexus between the use of evidence obtained by torture or other ill-treatment and its procurement, however remote, will never be negligible. It is an aspect of the very definition of torture<sup>46</sup> that its infliction is often for *the purpose of obtaining information*. The acceptance of such information as evidence in judicial proceedings cannot but lend succour to such a purpose, even where it is not the torturer but a third party who seeks to rely on the statements thereby obtained. At very least,

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<sup>46</sup> See, for example, article 1 of the UNCAT.

the use of such evidence may be viewed as turning a blind eye to its provenance and runs the real risk of being viewed as condonation.

6.11 The situation with regards to evidence obtained by torture and other inhuman or degrading treatment is not analogous to that of evidence obtained by other unlawful means or in breach of other, qualified, rights. The prohibition on torture and inhuman or degrading treatment is absolute. It permits no derogation or qualification even in times of war or other public emergency threatening the life of the nation or in combating the most heinous crimes, including terrorism.<sup>47</sup> Further, as detailed above, its status as one of the most fundamental and universal standards carries with it a positive imperative to deter and suppress its future commission, as is evidenced by, among other things, the obligation on states to exercise universal criminal jurisdiction over such acts. Just as it would be “inconsistent on the one hand to prohibit torture to such an extent as to restrict the normally unfettered treaty-making power of sovereign States, and on the other hand bar States from prosecuting and punishing those torturers who have engaged in this odious practice abroad.”<sup>48</sup> so, it is equally inconsistent to require the prosecution of those who commit torture and yet allow our courts in other proceedings to rely on statements thereby obtained: a course which at best fails to register the requisite condemnation and at worst gives effect to the perpetrator’s purpose, by providing an outlet for the information obtained.

6.12 This causal connection has been expressly recognised by the UN Human Rights Committee. In its General Comment on article 7 Covenant [General Comment 20 (1992) para.12], the HRC states:

“It is important for the discouragement of violations under article 7 that the law must prohibit the use of admissibility in judicial proceedings of statements or confessions obtained through torture or other prohibited treatment.”

In its concluding observations on Georgia [UN Doc. A/57/40 vol. I (2002) para. 8(e)], the HRC recommended that:

“All statements obtained by force from detained persons should be investigated and may *never* be used as evidence, except as evidence of torture. [Emphasis added]

In its concluding observations on Ukraine [UN DOC. A/57/40 vol. I (2002), para. 74(15)], the HRC recommended that:

“All allegations of statements of detainees being obtained through coercion must lead to an investigation and such statements must never be used as evidence, except as evidence of torture.”

In its concluding observations on the Republic of Korea [01/11/99. CCPR/C/79/Add.11 para. 14], the HRC explained the link between admitting statements obtained through torture and other ill-treatment and the prevalence of these crimes:

“the seemingly widespread reliance of the prosecuting authorities and the courts on confessions by accused persons and accomplices, facilitate acts of torture and cruel, degrading and inhuman treatment by interrogating officials.”<sup>49</sup>

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<sup>47</sup> *Tomasi v France* (1992) 15 EHRR 1 para. 115.

<sup>48</sup> *Furundzija* para. 156.

<sup>49</sup> For similar statements see concluding observations and recommendations regarding Cambodia, UN Doc. A/54/40 vol. I (1999), para. 305; Mexico, UN Doc. A/54/40 vol. I (1999), para. 61; Syrian Arab

6.13 The connection has similarly been noted by the United Nations Committee against Torture: “the existence in procedural legislation, of detailed provisions on the admissibility of unlawfully obtained confessions and other tainted evidence” is “one of the essential means of preventing torture” [A/54/44, para 45, referring to Yugoslavia].

6.14 It is submitted that this clear and obvious reasoning is just as valid across international borders as it is within individual states.

6.15 The General Comment and concluding observations cited above make clear that the HRC has interpreted article 7 of the Covenant as including the prohibition on the admissibility of torture evidence as an essential component. Amnesty International submits that article 3 of the Convention must also be read in this way: the admission into evidence of material obtained by torture or other inhuman and degrading treatment is fundamentally incompatible with the obligation to condemn and deter such action. To risk encouraging, or worse, by providing an outlet, fulfilling the very purpose for which the torture was inflicted, strikes at the heart of article 3.

#### *Burden of proof*

6.16 Amnesty International submits that where, before the Commission or the higher courts on appeal, a *prima facie* case is made out that statements on which the Secretary of State has relied upon in certifying and/or seeks to rely upon before the Commission have been obtained by torture or other inhuman or degrading treatment, it must be for the Secretary of State to disprove that they were so obtained. To place the burden of proof on the detainee, where he is faced with multiple hearsay from anonymous witnesses presented at hearings to which neither he nor his counsel of choice has access, would be to render the prohibition on the admissibility of such evidence entirely illusory.

6.17 In the context of articles 7 and 10 of the Covenant, the HRC has observed that the burden of proving that evidence has been obtained by prohibited means should not lie on the individual seeking to exclude it.<sup>50</sup>

6.18 It is submitted that these factors are determinative of the burden of proof in relation to the prohibition on the admissibility of evidence obtained by torture or other inhuman or degrading treatment inherent in article 3 of the Convention and article 7 of the Covenant. However, were it to be argued that article 15 of CAT suggests a different interpretation, the specific wording of that provision in relation to the burden of proof is considered at paragraphs 7.8 to 7.11 below.

### **PART 7: THE APPLICATION OF OF CAT**

7.1 For the reasons set out above, Amnesty International considers the prohibition on the admissibility of evidence obtained by torture or inhuman or degrading treatment to be an

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Republic, UN Doc. A/56/40 vol. I (2001), para. 81(8); and Uzbekistan, UN Doc. A/56/40 vol. I (2001), para. 79(8).

<sup>50</sup> See, for example the HRC’s concluding comments regarding the Philippines: UN Doc. CCPR/CO/79/PHL, 1 December 2003, para 12.

essential element of the substantive prohibition on such treatment in article 3 of the Convention and article 7 of the Covenant, thus rendering the scheme of Part 4 of the 2001 Act incompatible with the Human Rights Act and the derogation in violation of article 15 of the Convention [ECHR]. However, in addition, CAT articulates the preventative obligations inherent in the substantive prohibitions in article 3 of the Convention and 7 of the Covenant, thereby constituting a further source in which the international obligation to prohibit the use of torture evidence is located.

7.2 Article 2 of CAT provides:

“1. Each State Party shall take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction.

2. No exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification of torture.

...”

Article 15 of CAT provides:

“Each State Party shall ensure that any statement which is established to have been made as a result of torture shall not be invoked as evidence in any proceedings, except against a person accused of torture as evidence that the statement was made.”

7.3 The UK ratified CAT on 8 December 1988, without any reservations.

7.4 Following the 9/11 attacks, the United Nations Committee against Torture (“the CAT Committee”) issued a statement condemning the atrocities in the strongest terms, and reminded State parties of the non-derogable nature of the obligations undertaken by them in ratifying the Convention:

The obligations contained in Articles 2 (whereby “no exceptional circumstances whatsoever may be invoked as a justification of torture”), 15 (prohibiting confessions extorted by torture being admitted in evidence, except against the torturer), and 16 (prohibiting cruel, inhuman or degrading treatment or punishment) are three such provisions and must be observed in all circumstances. [CAT Committee annual report, UN Doc. A/57/44 (2001), para. 17]

7.5 Nowhere does CAT limit the application of article 15 to statements used against the person from whom they were obtained through torture, or to cases where the state conducting the proceedings has itself procured or connived in the obtaining of the statement by torture. Indeed, the CAT Committee has specifically stated that:

“Statements obtained *directly or indirectly* under torture should not be admissible as evidence in the courts.<sup>51</sup>

7.6 Further, in *PE v France* 10 IHRR 421, the CAT Committee clearly contemplated the application of article 15 in circumstances where one state sought to adduce evidence allegedly obtained by torture in another state.

7.7 The UN Special Rapporteurs on Torture (Special Rapporteur/s) have consistently followed the line of the CAT Committee in their reports.<sup>52</sup>

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<sup>51</sup> UN Doc. A/52/44 (1997), para. 109. See also, UN Doc. A/51/44 (1996), para. 137; UN Doc. A/53/44 (1998), para. 193; and UN Doc. A/54/44 (1999), para. 51.

<sup>52</sup> See general observations and recommendations UN Doc. E/CN.4/1993/26, 15 December 1992, paras. 587, 589, 590, 591; UN Doc. E/CN.4/1995/34, 12 January 1995, paras. 926 (a), (b), (d); UN Doc.

### Burden of proof under article 15 CAT

7.8 The majority of the Court of Appeal in *A and ors v Secretary of State for the Home Department*, [2004] EWCA Civ 1123 (11<sup>th</sup> August 2004) found that the burden of proof under article 15 CAT lies on the party alleging that the impugned statement was obtained by torture: Pill LJ at para 136 and Laws LJ at para 271.

7.9 However, it is submitted that this is both out of step with the jurisprudence of the HRC (as cited at para. 6.17, footnote 53 above) and is based on a misinterpretation of the reasoning of the CAT Committee in *PE v France*.

7.10 It is right that in *PE v France*, the CAT Committee dismissed the author's complaint because:

"bearing in mind that it is for the author to demonstrate that her allegations are well founded, [the Committee] considers that, on the basis of the facts before it, it cannot conclude that it has been established that the statements at issue were obtained as a result of torture." (para 6.6) However, in Amnesty International's submission, this passage refers to the burden of proof in relation to the CAT Committee's own procedures in considering individual communications and *not* to that contained within article 15. This is apparent from an earlier passage in the judgment:

"The Committee considers in this regard that the generality of the provisions of article 15 derive from the absolute nature of the prohibition of torture and imply, consequently, an obligation for each State party to ascertain whether or not statements constituting part of the evidence of a procedure for which it is competent have been made as a result of torture. The Committee finds that the statements at issue constitute part of the evidence of the procedure for the extradition of the complainant, and for which the State party is competent. In this regard, in the light of the allegations that the statements at issue, which constituted, at least in part, the basis for the additional extradition request, were obtained as a result of torture, the State party had the obligation to ascertain the veracity of such allegations." (para. 6.3)

These passages only make sense when recognised as referring to different tests: when they are read as referring to the same test, they are directly contradictory.

7.11 The approach which places the burden of disproving torture on the state has been adopted by the Special Rapporteur: in relation to Turkey, he recommended that, on the question of the admissibility of statements or confessions, "the burden of proof should be on the State to demonstrate the absence of coercion."<sup>53</sup>

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A/54/426, 1 October 1999, paras. 12(e), 60(i); UN Doc. E/CN.4/2001/66, 25 January 2001, paras. 1316(a), (d), (f); UN Doc. A/56/156, 3 July 2001, paras. 39(d), (f); UN Doc. E/CN.4/2002/76, 27 December 2001, Annex I(d), (f); UN Doc. A/57/173, 2 July 2002, para. 22; UN Doc. E/CN.4/2003/68, 17 December 2002, paras. 26(e), (g); UN Doc. E/CN.4/2004/56, 23 December 2003, paras. 33, 34, 38. See also their observations regarding specific states, for instance Azerbaijan, UN Doc. E/CN.4/2001/66/Add.1, 14 November 2000, para. 120(e); Brazil, UN Doc. E/CN.4/2001/66/Add.2, 30 March 2001, para. 169(h); India, UN Doc. E/CN.4/1994/31, 6 January 1994, para. 313; Kenya, UN Doc. E/CN.4/2000/9/Add.4, 9 March 2000, paras. 92(d), (g); Romania, UN Doc. E/CN.4/2000/9/Add.3, 23 November 1999, para. 57(i); Uzbekistan, UN Doc. E/CN.4/2003/68/Add.2, 3 February 2003, paras. 26, 70(j), (k); and Venezuela, UN Doc. E/CN.4/1997/7/Add.3, 13 December 1996, para. 85(i).

<sup>53</sup> UN Doc. E/CN.4/1999/61/Add.1, para.113 (e).

### **The burden of proof in the present cases**

7.12 It is submitted that in light of the above, whenever the Secretary of State proposes to rely on evidence and there is *prima facie* information suggesting that torture or other ill-treatment are widely or systematically being used at the location at which the source of that evidence has been detained or by the questioning authorities, the burden of proving that the evidence on which he seeks to rely was not obtained by such torture or other inhuman or degrading treatment lies on the Secretary of State.

7.13 In Amnesty International's submission there is clear *prima facie* evidence to suggest that torture and/ or other inhuman and degrading treatment are widely or systematically being practised in US interrogation of detainees including at the detention facilities in Bagram, Afghanistan; Guantanamo Bay, Cuba and in Iraq. Further there are reasonable grounds to believe that the Secretary of State has relied upon evidence so obtained both in certifying detainees and in the appeals before the Commission.

### **PART 8: PRIMA FACIE EVIDENCE OF TORTURE AND/OR OTHER INHUMAN AND DEGRADING TREATMENT**

8.1 In a memorandum dated 7 February 2002, to the Vice President, the Secretary of State, the Secretary for Defence and others, President George W. Bush set out his view of the status and rights of "Taliban and al-Qaeda" detainees:<sup>54</sup>

The President determines, *inter alia*, the following:

- (1) That "none of the provisions of Geneva apply to our conflict with al Qaeda in Afghanistan or elsewhere throughout the world" [para. 2(a)];
- (2) That, specifically, "common Article 3 of Geneva does not apply to either al Qaeda or Taliban detainees" [para. 2(b)];
- (3) That, specifically, "because Geneva does not apply to our conflict with al Qaeda, al Qaeda detainees also do not qualify as prisoners of war" [para. 2(d)].

"Of course, our values as a Nation, values that we share with many nations in the world, call for us to treat detainees humanely, including those who are not legally entitled to such treatment. Our Nation has been and will continue to be a strong supporter of Geneva and its principles. As a matter of policy, the United States Armed Forces shall continue to treat detainees humanely and, to the extent appropriate and consistent with military necessity, in a manner consistent with the principles of Geneva." (para 3)

8.2 By this the President established the following:

- (i) That there are detainees, and (in light of the above) presumably "al Qaeda" detainees are among them, who in the USA's view "are not legally entitled" to be treated humanely. It has been the USA's consistent position that "by its own terms, the Covenant is inapplicable to conduct by the United States outside its sovereign territory." (emphasis in original).<sup>55</sup> Further,

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<sup>54</sup> President of the United States Memorandum, February 7, 2002, Subject: Humane Treatment of al Qaeda and Taliban: Detainees.

<sup>55</sup> See *Rasul et al v. Bush*, Brief for the Respondents, March 2004, at 50.

the Department of Justice memorandum<sup>56</sup> submitted to the White House in preparation for the President's memorandum, concludes, *inter alia*, that:

"...customary international law has no binding legal effect on either the President or the military."

(ii) That The USA would nevertheless treat those detainees humanely, but "as a matter of policy" rather than as a matter of the state's international legal obligations. It should be noted that this position has been reiterated officially by the USA, see for instance "letter dated 2 April 2003 from the Permanent Mission of the United States of America to the United Nations Office at Geneva addressed to the secretariat of the Commission on Human Rights," UN Doc. E/CN.4/2003/G/73, 7 April 2003, at 4.

(iii) That the USA may treat those detainees "in a manner consistent with the principles of Geneva," but only do so "to the extent appropriate and consistent with military necessity". This is fundamentally inconsistent with the Geneva Conventions in particular and international humanitarian law in general, which prohibit certain acts absolutely, such as targeting civilians or mistreating detainees and prisoners, regardless of whether or not doing so could be militarily beneficial, and categorises any breach thereof, in all circumstances, as "grave breaches" or war crimes. In addition, the Geneva Conventions contain a fundamental obligation to treat all detained persons humanely: Article 3, common to all four Geneva Conventions, provides:

"Persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed hors de combat by sickness, wounds, detention, or any other cause, shall in all circumstances be treated humanely..."

See also, articles 13, 20 and 26 of the 3<sup>rd</sup> Geneva Convention and articles 27, 37 and 127 of the 4<sup>th</sup> Geneva Convention.

8.3 In practice, this "*ex gracia*" "humane treatment" has been given the following interpretation: in his memorandum of 11 October 2002,<sup>57</sup> Secretary for Defense Donald Rumsfeld approved "[T]he use of stress positions (like standing) for a maximum of four hours"; "[U]se of the isolation facility for up to 30 days"; "[D]eprivation of light and auditory stimuli"; use of "a hood placed over his head during transportation and questioning,"; "[R]emoval of clothing"; "[U]sing detainees individual phobias (such as fear of dogs) to induce stress"; and "[U]se of mild, non-injurious physical contact such as grabbing, poking in the chest with a finger and light pushing". There is no explicit limitation on combining some or all of these methods.

8.4 In this context, the judgment of the European Court of Human Rights in *Ireland v United Kingdom* 2 EHRR 25 is apposite: the five techniques of wall-standing, hooding,

<sup>56</sup> Memorandum for Alberto R. Gonzales, Counsel to the President, and William J. Haynes II, General Counsel of the Department of Defense. Re: Application of treaties and laws to al Qaeda and Taliban detainees. From Jay S. Bybee, Assistant Attorney General, Office of Legal Counsel, US Department of Justice, 22 January 2002.

<sup>57</sup> Memorandum for Commander Joint Task Force 170, Dated: 11 October 2002.

subjection to noise, sleep deprivation and deprivation of food and drink were found to constitute inhuman and degrading treatment in violation of article 3 of the Convention.<sup>58</sup>

8.5 In Amnesty International's submission, the fact that the USA has officially and explicitly purported to strip "terrorist" detainees of all legal rights, including the right to "humane treatment," is sufficient to establish a *prima facie* case for excluding reliance on statements extracted by US interrogators, unless it is established that neither torture nor other ill-treatment were in fact used.

8.6 This presumption is supported by media and other reports of torture and other ill-treatment of "terrorist" detainees. These began surfacing soon after the war in Afghanistan, and have since increased in detail and volume.<sup>59</sup>

8.7 Media reports of interrogation techniques include accounts such as the following: "...interrogators used graduated levels of force, including a technique known as "water boarding," in which a prisoner is strapped down, forcibly pushed under water and made to believe he might drown."<sup>60</sup>

8.8 To these reports should be added those of international human rights NGOs, for example: Amnesty International, "Guantánamo Bay: a coercive regime"; Amnesty International, *United States of America: Memorandum to the US Government on the rights of people in US custody in Afghanistan and Guantánamo Bay*, AI Index: AMR 51/053/2002, 15 April 2002; Lawyers Committee for Human Rights, *Imbalance of Powers: How Changes to U.S. Law & Policy Since 9/11 Erode Human Rights and Civil Liberties*, New York, LCHR, 2003, Ch. 4.

8.9 Following the scandal that broke when photographs depicting the humiliation and sexual abuse, at times amounting to torture, of Iraqi detainees at Abu Ghraib in mid-2004, a string of investigative reports were issued by the US authorities, some of them linking the abuse to interrogation policies and techniques used against "terrorist" detainees elsewhere.

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<sup>58</sup> It is submitted that, in light of the stricter approach which the European Court of Human Rights now takes under article 3, the same treatment would today be characterised as torture. See also the conclusions of the Committee against Torture in respect of Israel: UN A/52/44, paras 253-260, 9 May 1997.

<sup>59</sup> See for example, Michael Elliott, "The Next Wave," *Time Magazine*, 17 June 2002; Dana Priest and Barton Gellman, "U.S. Decries Abuse but Defends Interrogations: 'Stress and Duress' Tactics Used on Terrorism Suspects Held in Secret Overseas Facilities," *Washington Post*, 26 December 2002; Paul Harris and Burhan Wazir, "Briton tells of ordeal in Bush's torture jail," *The Observer*, 29 December 2002; Steve Johnson, "Unraveling the psyche of al-Qaida: Experts say painful torture is wrong method for questioning Mohammed," MSNBC News website, <<http://www.msnbc.com/news/881132.asp>>, 5 March 2003; Don van Natta Jr., "Questioning Terror Suspects in a Dark and Surreal World," *New York Times*, 9 March 2003; Olga Craig, "'They will do what is needed to get the information - and fast'," *The Daily Telegraph*, 9 March 2003; Michele Orecklin, "Why They Crack," *Time Magazine*, 24 June 2003; Mark Bowden, "The Dark Art of Interrogation," *The Atlantic Monthly*, October 2003. David Johnston and Neil A. Lweis, "Harsh C.I.A. Methods Cited in Top Qaeda Interrogations," *New York Times*, 13 May 2004.

<sup>60</sup> James Risen, David Johnston and Neil A. Lewis, "Harsh C.I.A. Methods Cited in Top Qaeda Interrogations," *New York Times*, 13 May 2004.

The Final Report of the Independent Panel To Review DoD Detention Operations, August 2004 (“the Schlesinger Report”) stated (at p. 9):

“During July and August 2003, the 519th Military Intelligence Company was sent to the Abu Ghraib detention facility to conduct interrogation operations. Absent any explicit policy or guidance, other than FM 34-52, the officer in charge prepared draft interrogation guidelines that were a near copy of the Operating Procedure created by SOF [“Special Operations Forces”]. It is important to note that techniques effective under carefully controlled conditions at Guantanamo became far more problematic when they migrated and were not adequately safeguarded.

Similarly, an internal USA army investigation<sup>61</sup> found that:

“The JIDC [Joint Interrogation and Detention Centre] October 2003 SOP [Standing Operating Procedure] ... created by CPT [Captain] Wood, was remarkably similar to the Bagram (Afghanistan) Collection Point SOP. Prior to deployment to Iraq, CPT Wood’s unit (A/519 MI BN) allegedly conducted the abusive interrogation practices in Bagram resulting in a Criminal Investigation Command (CID) homicide investigation. [...]

8.10 It is clear from these reports that the interrogation methods and practices employed at Abu Graib were carried across from documents and personnel in Afghanistan and Guantanamo. The techniques employed in JTF-GTMO [Joint Task Force Guantanamo] included the use of stress positions, isolation for up to thirty days, removal of clothing, and the use of detainees’ phobias (such as the use of dogs) as the 2 December 2002 Counter-Resistance memo, and subsequent statements demonstrate. As the CID investigation mentioned above shows, from December 2002, interrogators in Afghanistan were removing clothing, isolating people for long periods of time, using stress positions, exploiting fear of dogs and implementing sleep and light deprivation. Interrogators in Iraq, already familiar with the practice of some of these methods, implemented them even prior to any policy guidance from CJTF-7 [Combined Joint Task Force Seven]. These practices were accepted as SOP by newly-arrived interrogators. Some of the CJTF-7 ICRPs [Interrogation and Counter-Resistance Policies] neither effectively addressed these practices, nor curtailed their use.

8.11 Even after the investigations, the recommendations and the changes, including the withdrawal of authorisation for some interrogation techniques and the reaffirmation of the applicability of the Geneva Convention to detainees in Iraq (but not to detainees in Guantanamo, Bagram and other detention facilities), the following facts remain:

- (i) The USA does not recognise “terrorist” detainees in its custody outside of the USA as having any legal rights;
- (ii) Detainees have been held incommunicado for months and years;
- (iii) Interrogation methods which violate the absolute prohibition on torture and other inhuman and degrading treatment are authorised and approved, while others have been used possibly without authorisation;
- (iv) Both the memoranda and the investigations concentrate on the various forces subject to the authority of the Department for Defense. Another force, deeply involved in

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<sup>61</sup> AR 15-6 Investigation of the Abu Ghraib Detention Facility and 205th Military Intelligence Brigade MG George R. Fay, p. 29.

interrogations, the CIA, seems to have escaped scrutiny, and possibly the limitations imposed on DoD-related interrogations. According to the Schlesinger report (p. 70):

“No memorandum of understanding existed on interrogations operations between the CIA and CJTF-7, and the CIA was allowed to operate under different rules.”

8.12 In light of the above and in view of the official denial of the applicability of international human rights and international humanitarian law by the US authorities to detainees within their responsibility, Amnesty International strongly reiterates its submission that there exists ample *prima facie* evidence that torture and other ill-treatment are used in a systematic or widespread manner by US interrogators. As a result, neither the Secretary of State nor the Commission should consider or rely on any statements resulting from such interrogations, unless the Secretary of State can prove that they have not been obtained by means of torture or other inhuman and degrading treatment.

#### **Conclusions in relation to the admissibility of evidence obtained by torture or inhuman or degrading treatment**

8.13 In light of the above, Amnesty International is strongly of the view that there is clear *prima facie* evidence that information obtained by US interrogators has been procured by use of methods previously found by both the European Court of Human Rights and the Committee against Torture to constitute torture and inhuman and degrading treatment. Amnesty International submits, for the reasons given, that admission in any proceedings of evidence obtained by torture or inhuman or degrading treatment is antithetical to the universal, absolute and non-derogable prohibition on such treatment. It is clear from the comments and observations of the HRC, the Committee against Torture and the Special Rapporteur that reliance on such evidence is recognised as a significant driver in perpetuating the “market” for, and thus the generation of, such evidence. Participation in the fuelling of such demand is, in Amnesty International’s submission, clearly incompatible with the preventative obligation inherent in article 3 of the Convention and article 7 of the Covenant, in the *jus cogens* prohibition at customary international law and as articulated expressly in the CAT.”