Islamic Human Rights Commission

Terror in the Name of Anti-Terrorism:
The UK in 2004

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"FOR NOW EVERYONE IN ALL MUSLIM COMMUNITIES SHOULD BE PREPARED FOR MORE RAIDS, ARRESTS AND HARASSMENT FROM THE AUTHORITIES AND THIS WILL INCLUDE BRITISH, WORKING PROFESSIONALS. THERE WILL BE MANY MORE B.P.P.'S (BRITISH POLITICAL PRISONERS) LIKE MYSELF AND OTHERS."

Woodhill Detainee Babar Ahmed (August 2004)

I. BACKGROUND

Following the events of 11th September 2001, the UK government hastily rushed new anti-terrorism legislation through parliament. The Anti-Terrorism, Crime and Security Act 2001 (ATCSA) was passed by parliament on 14 December 2001. The Act confers previously unthinkable powers on law enforcement authorities to counter terrorism and severely limits historically protected civil liberties and human rights.

The most controversial element of the Act is Part 4, which relates to immigration and asylum. The Home Secretary is empowered under Part 4 to certify any foreign national as a "suspected international terrorist" if he "reasonably (a) believes that the person's presence in the United Kingdom is a risk to national security, and (b) suspects that the person is a terrorist". Such a certification permits the Home Secretary to detain that person without charge, by categorizing him or her as someone that the UK intends to deport or to extradite, even where it is not actually possible to deport or extradite the person on the grounds that he or she would face torture if removed[1]. The ultimate effect of this measure is to permit the indefinite detention without charge of foreign nationals.

Since the Act came into force, seventeen persons have been certified as "suspected international terrorists" by the Home Secretary. Of those, twelve are being indefinitely detained without charge under the Act, one is being detained under other unspecified powers, one has been released on bail (and is effectively under house arrest) and two have left the U.K. One has been released following a successful appeal against certification. Eight of the detainees have been in custody for over two and a half years. The men are being held in category "A" maximum security prisons and in one case a high security psychiatric hospital.

Detainees can challenge their detention in the Special Immigration Appeals Commission (SIAC), but with far fewer procedural guarantees than are accorded to those charged with a crime. SIAC is a special tribunal that reviews deportation cases involving national security issues. It was established in 1998 after the government lost a case in 1996 at the European Court of Human Rights, involving a Sikh activist who had been held in jail in the UK for 6 years without charge, while the issue of him being tortured on his return to India, was litigated.[2] Previously, in such cases, appellants or their lawyers could not hear all the evidence relied upon by the Home Secretary. SIAC was designed to remedy this with a system of security-vetted lawyers, separate to the appellant's own legal team. These "special advocates" have access to all the classified information but are prohibited from revealing any of it to the appellants or their lawyers.

In July 2002, the detainees mounted their first legal challenge to the legality of their detention before the SIAC. The SIAC judges held that there was a public emergency, thus justifying the detention without trial. However, they ruled that it was unlawful and discriminatory because the internment only concerned foreign nationals. In October 2002, the Court of Appeal overturned the SIAC ruling and found that there was no discrimination as the detainees were unlike British nationals[3]. British nationals have a right to remain in the

[1] Anti-Terrorism Crime and Security Act 2001, s.23(1)
[2] Chahal v United Kingdom (1997) 23 EHRR 413
[3] A, X and Y and others v Secretary of State for the Home Department [2002] EWCA Civ 1502, 25 October 2002

country while the detainees merely have a "right not to be removed". In October 2003, the SIAC ruled against 10 of the detainees. On the 11th August 2004, the appeals of these ten men to have their cases reconsidered by the SIAC were dismissed by the Court of Appeal.[4] The remaining four detainees are not appealing as SIAC has yet to hand down decisions in their cases. In October 2004, a specially convened nine-judge panel in the House of Lords will hear an appeal against the entire legal basis of the suspects' detention, including the lawfulness of the derogation and the compatibility of the legislation with other human rights obligations from which Britain has not derogated.

In December 2003, the Privy Council Review Committee headed by Lord Newton of Braintree published its report on their review into the Anti-Terrorism, Crime and Security Act.[5] The Privy Council Review called for an end to indefinite internment. The committee says that these powers should be replaced "as a matter of urgency". Following publication, both houses of parliament were required to consider the report within six months or the entire legislation would have lapsed.[6] The Act was debated in the House of Commons on 25th February, 2004 and in the House of Lords on 4th of March, 2004 and remains in force today. In February 2004, the government published a "discussion paper" entitled 'Counter-terrorism Powers: Reconciling Security and Liberty in an Open Society'[7] and announced a consultation exercise on counter-terrorism measures. [8]

This report outlines our concerns regarding matters raised by the discussion paper and ideas generally mooted regarding extending current 'anti-terrorist' measures and their impact on civil liberties and human rights of individuals and communities in the UK.

[4] A & 9 Ors v Secretary of State for Home Department [2004] EWCA Civ 1123
[5] Privy Counsellor Review Committee, Anti-terrorism, Crime and Security Act 2001 Review: Report, HC 100, 2003–04, published on 18 December 2003. Hereon called 'The Newton Report'.
[6] ATCSA, s. 123
[7] Secretary of State for the Home Department, "Counter-terrorism Powers: Reconciling Security and Liberty in an Open Society: A Discussion Paper," February 2004
[8] This report is largely based on our submission to the Home Office in response to their discussion paper, in September 2004

II. INTERNMENT

Prior to the introduction of the ATCSA, the UK had three main options for dealing with suspected international terrorists who were non-nationals. These measures already seriously impinged certain human rights criteria:

a) Deport them to a safe country
b) Prosecute them under existing UK laws
c) Let them go free

Prosecution of these suspects however, the government argued, was impossible because the material forming the basis of their case would be inadmissible because it was hearsay or because of the illegal manner in which it was obtained (e.g. intercept evidence). Also, the government contended that disclosure of information would put sources at risk and limit the effectiveness of surveillance techniques, and threaten international relations. The UK was also prohibited from deporting such suspects because of the potential risk of torture or inhuman or degrading treatment on return.[9] Finally, the government was reluctant to allow those they suspected of being "international terrorists" to remain in public without any restraints.

Part 4 of the ATCSA introduced a fourth option for the UK: Internment

Internment can be defined as the indefinite detention of a person by a government, and the denial of the normal legal processes that would usually be available to them, such as the right to know the charges and evidence against them, the right to a public trial, the right to appeal to a higher judicial authority, etc. The problems associated with internment under Part 4 are numerous, and of grave concern.

a) Derogation from International Law

Firstly, in order to introduce the measure, it was necessary for the UK to derogate from Article 5 of the European Convention on Human Rights and Fundamental Freedoms which is incorporated into British law by the Human Rights Act 1998.[10] Article 5(1) protects against unwarranted state intrusions upon the liberty and security of a person by prohibiting unjustified detentions.[11] Article 5(1)(f) provides an exception to this rule for "the lawful arrest or detention of a person to prevent his effecting an unauthorised entry into the country or of a person against whom action is being taken with a view to deportation or extradition". The value of individuals being free from such detentions is so great that a person has the right to compensation if a Member State deprives him or her of his/her liberty and security in violation of Article 5.[12] Part 4 also necessitated derogation from Article 9 of the International Covenant on Civil and Political Rights, which guarantees similar rights and freedoms. On 18 December 2001, the government stated that it had "decided to avail itself of the right of derogation" from Article 9 "until further notice."[13]

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[9] The principle of non-refoulement is one which the UK has signed up to under both the Refugee Convention and Article 3 of the ECHR

[10] The Human Rights Act 1998 (Designated Derogation) Order 2001 [Statutory Instrument 2001, No. 3644]

[11] Article 5(1) stated that "Everyone has the right to liberty and security of the person."

[12] Article 5(5) European Convention on Human Rights and Fundamental Freedoms states that "Everyone who has been the victim of arrest or detention in contravention of the provisions of this Article shall have an enforceable right to compensation."

[13] Text of UK notification to UN Secretary General is available at http://193.194.138.190/html/menu3/b/treaty5_asp.htm

The UK government can derogate from its obligations under Article 5(1)(f) of the ECHR and Article 9 of the ICCPR by declaring a state of emergency as required by Article 15 of the ECHR and Article 4(1) of the ICCPR respectively. Derogations under these articles require that there is a public emergency threatening the life of the nation; that the measures are strictly required by the exigencies of the situation and that the measures are not inconsistent with other obligations under international law.[14]

The government has argued that a state of emergency threatening the life of the nation exists, due to the presence of foreign nationals in the UK who "are suspected of being concerned in the commission, preparation, or instigation of acts of international terrorism… and who are a threat to the security of the United Kingdom."[15] The UK bases its argument on the United Nations Security Council's recognition of the September 11 attacks as a threat to international peace and security, and on its resolution 1373[16] requiring all States to take measures to prevent the commission of terrorist attacks. The UK claims that it is necessary to detain these people as it is prohibited under Article 3 of the ECHR from deporting these men to their native countries for fear that they may be subjected to torture or inhuman or degrading treatment or punishment. Thus, they argue that they have no other option.

However, IHRC contends that it is debatable whether a state of emergency does exist which threatens the life of the nation, particularly in light of the fact that none of the other 44 members of the Council of Europe have felt the need to declare a state of emergency and derogate from Article 5 of the ECHR. In the case of 'Lawless v Ireland, the European Court of Human Rights defined a public emergency as "an exceptional situation of crisis or emergency which affects the whole population and constitutes a threat to the organized life of the community of which the state is composed".[17] In Lawless, the violence was occurring within the country which declared the public emergency. On the contrary, there has not been a single attack to date on British soil by terrorists linked to Al-Qaeda. The Home Secretary himself when announcing the proposal for the legislation in October 2001, stated that "there is no immediate intelligence pointing to a specific threat to the United Kingdom."[18] Furthermore, it is difficult to imagine that those detained are truly a threat to international peace when the UK itself offers them the option to voluntarily leave the UK for a third country[19].

b) Racial Discrimination

Detention is done on a racially discriminatory basis, in that Part 4 applies to foreign nationals only. A British citizen who fits the criteria of a "suspected international terrorist" must be brought to trial before even the possibility of detention may arise. Certain due process safeguards would have to be observed. But there are no such safeguards with non-nationals who fall within

[14] Article 15 states that "in times of war or other public emergency threatening the life of the nation, any High Contracting Party may take measures derogating from its obligations under the Convention to the extent strictly required by the exigencies of the situation."
[15] Special Immigration and Appeals Commission Act 1997, Section 5(1)
[16] UNSC Res. 1373 28 September 2001, U.N. SCOR, 56th Sess., 4385th mtg., U.N. Doc. S/RES/1373 (2001)
[17] Lawless v Ireland (No3) 1 EHRR 15 [1961]
[18] Hansard, House of Commons, November 15 2001, col. 925
[19] Under international law, the UK cannot deport the detainees to their country of origin if there is a risk that the men will be subjected to torture or cruel, inhuman or degrading treatment on return. However, the men may voluntarily leave for another country themselves.

sections 21-23. Thus the derogation from the ECHR is incompatible with Articles 5 and 14 because it discriminates on grounds of nationality. According to international law, one of the conditions in derogation from human rights obligations requires that derogations cannot be made whereby conditions are imposed discriminatorily. The Committee on the Elimination of Racial Discrimination in its Concluding Observations on the UK also expressed concern about the discriminatory nature of Part 4. In paragraph 17, CERD recalls its statement of 8 March 2002 in which it underlines the obligation of States to 'ensure that measures taken in the struggle against terrorism do not discriminate in purpose or effect on grounds of race, colour, descent, or national or ethnic origin'.[20] It is a concern with which IHRC concurs. No less a legal authority than Lord Woolf (the Lord Chief Justice) recently stated that the right not to be discriminated against "is now enshrined in Article 14 of the [ECHR], but long before the Human Rights Act came into force the Common Law recognised [sic] the importance of not discriminating."[21] In making this statement, Lord Woolf recognised that the danger of unlawful discrimination "is acute at the time when national security is threatened."[22]

c) Lack of Due Process

Basic laws of evidence are suspended denying the accused the right to a fair trial and due process. The suspects face no specific charges and are not shown the evidence against them. The Home Secretary is not obliged to reveal material that could help the suspect. Many hearings are held in secret from which the suspects and their solicitors are completely excluded. The reason given is that to make the "evidence" public could jeopardise the security services methods of operation, their sources of information, place other people in danger or create a security risk. It is impossible for a suspect to respond to this evidence in any way or shape or form. It is a basic principle of justice that a person should be able to challenge the evidence against them. The Home Secretary admits that he does not have sufficient evidence to pursue criminal charges otherwise he would have done so. By detaining people under the 2001 Act, he has effectively removed all the safeguards in the criminal procedure with regards to evidence which means the suspects will not receive a fair hearing. Furthermore, no legal aid is available to the detainees.

d) Very low standard of proof

The Special Immigration Appeals Commission which was established to review the cases of those detained, functions as an immigration tribunal rather than a criminal court. The detainees are being detained on suspicion of the gravest crimes. Yet, their detentions are being reviewed by immigration tribunals. Consequently, the burden of proof falls far below that of "beyond a reasonable doubt" necessary for a conviction in a criminal court. It does not even have to meet the "balance of probabilities" standard required in civil trials. Instead, the 2001 Act states that persons may be detained indefinitely without trial merely on the basis that the Home Secretary "suspects" that they may be "international terrorists."

The definition of "terrorism" was incorporated into the 2001 Act from the Terrorism Act 2000[23]. This definition is extremely broad and vague and potentially outlaws any type of political activism: "For the purpose of advancing a political, religious or ideological cause", the use or threat of action "designed

[20] CERD/C/63/CO/11 (18 August 2003), para. 17.
[21] A,K & Y v Secretary of State for Home Department [2002] C.A.Civ. 1502, para 7 (C.A.Civ. 2002) (Lord Woolf)
[22] ibid at para 9
[23] ATCSA, s.2(5)

to influence a government or to intimidate the public or a section of the public" which involves any violence against any person or serious damage to property, endangers the life of any person, or "creates a serious risk to the health or safety of the public or a section of the public, or is designed seriously to interfere with or seriously to disrupt an electronic system."[24] However, neither the public not the government need necessarily be British. The public may be the public of any country and the government may be the government of any country. There is no requirement that the government should be of a democratic country. Even lawful political movements and lobbying aimed at removing brutal dictators such as Saddam Hussein or Muhammar Qadhafi could be covered by the definition. Once the Home Secretary reasonably believes that an individual falls within this definition, he may be certified as a "suspected international terrorist" and detained indefinitely without charge.

CASE STUDY 1[25]

In November 2002, a Muslim Libyan man, 'M', was detained at Heathrow airport and told he would be charged under the Terrorism Act 2000. But without explanation, the officers decided to hold him without charge under the Anti-Terrorism Crime and Security Act 2001 instead. He was not told why he was being detained in Belmarsh.

In March 2004, the Court of Appeal upheld a decision by the SIAC that M had been held on "unreliable" evidence and that the home secretary had "exaggerated" links to al-Qaida. Much of the evidence against M was heard in secret and the commission concluded some of it was "clearly misleading". A Special Branch report was "inaccurate and conveyed an unfair impression". In its ruling, the commission noted that M admitted being a member of the Libyan Islamic Fighting Group, an anti-Gadafy group, but that was not regarded as being a threat to national security. He had fought with the Mujaheddeen in Afghanistan in 1992 but the tribunal found it difficult to believe this meant he was linked to al-Qaida.

The commission had no doubt M had been "actively involved in the provision of false documentation", but this could not link him to terrorism. He had given £600 to an individual later alleged to have links to al-Qaida but the commission said it was not reasonable to suspect that he knew the money was going to someone who supported the organisation. Nor were M's links to Abu Qatada, the Islamic cleric detained in Belmarsh on suspicion of being linked to al-Qaida, as great as the home secretary asserted. "Confused and contradictory" allegations had led to M being put in Belmarsh, the commission said. Overall, the evidence was "wholly unreliable and should not have been used to justify detention."

e) Use of Torture Evidence

There is a real and substantial chance that evidence obtained from the torture of prisoners abroad is being used in these hearings. In the Special Immigrations Appeal Commission hearings to determine whether evidence against those detained justified their detention, it was revealed that the evidence is likely to have been obtained through torture in other jurisdictions. In his judgment, Mr. Justice Ouseley stated that because the appeal did not involve criminal proceedings, evidence obtained by torture was admissible.[26] In a House of Lords debate, Baroness Scotland confirmed that the Government's policy was that where national security is at stake it is the Government's duty

[24] Terrorism Act 2000, Section 1(1)
[25] M v Secretary of State for the Home Department.: [2004] EWCA Civ 324, [2004] HRLR 22 (18 March 2004)
[26] Ajouaou and A, B, C and D v. Secretary of State for the Home Department, 29th October 2003, paras 81 and 84.

to take into account all available information.[27] The Carlile Report also notes that the authorities are working closely with foreign intelligence and police agencies, including the US.[28] The Home Secretary has also conceded that the detentions may be based on intelligence obtained by torture from prisoners being held in Guantanamo Bay, Abu Ghraib, Afghanistan and elsewhere[29]. Most recently, in August 2004, the Court of Appeal ruled that evidence obtained under torture in third countries may be used in special terrorism cases, provided that the British government has "neither procured the torture nor connived at it."[30]

In August 2004, the parliamentary Joint Committee on Human Rights reported that there is a "significant risk of the UK being in breach of its international human rights obligations if SIAC or any other court were to admit evidence which has been obtained by torture."[31] The UN Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment 1984, to which the UK is a signatory without any reservations, requires each State Party to "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."[32] Furthermore, the Guidelines on Human Rights and the Fight against Terrorism issued by the Council of Europe in 2002 contained a reminder on the absolute prohibition of torture.[33]

Yet Lord Justice Laws stated that he was "quite unable to see that any such principle prohibits the [home secretary] from relying on evidence which has been obtained by torture by agencies of other states."[34] The Lord Justice's reasoning was that "if the Secretary of State is bound to dismiss [evidence from torture abroad] his duty becomes extremely problematic. He may be presented with information of great potential importance, where there is … a suspicion as to the means by which, in another jurisdiction, it has been obtained?"[35] However, as Amnesty International have documented very clearly over the last 40 years, "once torture has been legitimized, even on a small scale, the use of torture, cruel, inhuman and degrading practices inevitably expands to include countless other victims, and ultimately erodes the moral and legal principles on which society is based.

For example, the Israeli government legalized "moderate physical pressure," with controls to limit its use. However, once permitted, thousands of "suspects"

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[27] House of Lords debate, 26 April 2004, c WA 71

[28] The Carlile Review 2003, para 43

[29] After unreservedly condemning the use of torture, the Home Secretary stated: "However, it would be irresponsible not to take appropriate account of any information which could help protect national security and public safety" - Court of Appeal Judgment - Statement from the Home Secretary- Reference: Stat036/2004 - Date: 11 Aug 2004 11:17

[30] Court of Appeal Judgment, 11th August 2004. See 'Terror Detainees Lose Appeal', The Guardian Online, August 11 2003, 4:30 pm

[31] Joint Committee on Human Rights, Review of Counter-terrorism Powers; 18th Report of Session 2003-2004, HL Paper 158, HC 713; Published on 4 August 204, para 29

[32] The UN Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment 1984, Article 15

[33] "The use of torture or inhuman or degrading treatment or punishment is absolutely prohibited, in all circumstances, and in particular during the arrest, questioning and detention of a person suspected of or convicted of terrorist activities, irrespective of the nature of the acts that the person is suspected of or for which he/she was convicted." See Council of Europe, Guidelines on Human Rights and the Fight against Terrorism adopted by Committee of Ministers on 11 July 2002 at 804th Meeting of the Minister's Deputies.

[34] 'Is Torture OK for English Courts?', BBC News Online, 17th August 2004

[35] ibid

were tortured, and the practice became routine and systematic. Even though the Israeli High Court banned the practice in 1999, Amnesty International continues to document Israeli authorities' use of torture."[36] Leaving aside the moral repugnancy of legalising torture, this reasoning overlooks the very well proven fact that evidence obtained from torture in completely unreliable. The authorities may torture a suspect and he is liable to say anything, true or false, simply to diminish the pain, if only for a few seconds. Such methods of fighting terror are futile and rather than prevent terrorism, perpetuate it.

IHRC is deeply concerned at this development in legal thinking and concurs with Lord Justice Neuberger (dissenting) that:

> ***"By using torture, or even by adopting the fruits of torture, a democratic state is weakening its case against terrorists, by adopting their methods, thereby losing the moral high ground an open democratic society enjoys."***

f) Faulty Intelligence

The precise basis upon which these men are being detained is dubious. We are told that the evidence is all based upon 'intelligence'. Such intelligence has been used since 11th September 2001 to make numerous raids and arrests upon the homes of innocent people; to stop and search tens of thousands of innocent people, and to even go to war. As the case of 'M' demonstrates, British intelligence has the potential to be extremely weak in its judgment at the best of times.

CASE STUDY 2

On the 19th April 2004, an anti-terrorism operation took place in Greater Manchester involving 400 officers of the Greater Manchester Police, members of the security services and the Metropolitan Police's Anti-Terrorist Branch. The operation resulted in the arrest of 10 Muslims of North African and Iraqi Kurdish origin. Eight men, including three brothers, were held, along with one woman and a 16-year-old youth.

The arrest of 10 terror suspects prompted the front-page banner headline, "Man U Suicide Bomb Plot", in a popular national newspaper[37]. Rumours abounded in the mass media about a possible terrorist attack on Old Trafford having been foiled. The Manchester Police's decision to bring in extra officers and tighten security around Manchester United's game with Liverpool only served to further substantiate the rumours.

After 10 days in custody, all 10 were released without charge. The raids were prompted by "credible intelligence" that consisted of Manchester United posters, used-ticket stubs and a fixture list that had been seized in one of the raids. It later transpired that those arrested were Manchester United fans who happened to be Muslims.

[36] http://www.amnestyusa.org/stoptorture/talking_points.html
[37] The Sun, 20 April 2004

CASE STUDY 3

In March 2003, the British government joined the US government in declaring war on Iraq. The basis of going to war was that Saddam Hussein possessed weapons of mass destruction which he could prepare for usage within 45 minutes. As of yet, no weapons of mass destruction have been found in Iraq.

In July 2004, an inquiry headed by Lord Butler into the intelligence used to go to war concluded that the intelligence was unreliable. It criticised how the intelligence was presented, saying it seemed "firmer and fuller" than it was. It found that the 45 minutes claim was "unsubstantiated" and it should not have been included without clarification - doing so led to suspicions it was there because of its "eye-catching character". It also said that MI6 did not check its sources well enough, and sometimes relied on third hand reports.

Unreliable intelligence was used here to launch an illegal war bringing death and destruction to thousands of innocent human beings.

III. PRIVY COUNCIL RECOMMENDATIONS

Section 122 of the Anti-Terrorism Crime and Security Act 2001 requires the appointment of a committee to conduct a review of the legislation. In December 2003, the Privy Council Review Committee, chaired by Lord Newton published its report on the Act[38].

The Newton report is very convincing, powerful and ultimately condemns the government's policy of internment. 'We strongly recommend that the powers which allow foreign nationals to be detained potentially indefinitely should be replaced as a matter of urgency.'[39] In calling for these powers to be replaced, it makes a number of recommendations.

Newton committee recommended replacing the detention powers with new legislation which would

(i) deal with all terrorists, whatever their origin or nationality
(ii) would not require the UK to derogate from the European Convention on Human Rights

IHRC believes that it is crucial that should the government decide to follow this proposal, that the new legislation satisfy both points. Should the government simply give itself the power to intern British nationals as well as foreign nationals, many British Muslims will also find themselves interned as "suspected international terrorists."

This will just add to the injustice being committed against the Muslim community in Britain in the name of 'security'. IHRC is concerned that the government does not opt for extending its powers of internment but disassociates itself from this practice.

Prosecution under Normal Criminal Justice System

The Newton committee also recommended using the normal criminal justice system to prosecute suspected terrorists. It suggested the government define a set of offences which are characteristic of terrorism and for which it should be possible to prosecute without relying on sensitive material, but that it raise the potential penalty where links with terrorism are established.[40]

IHRC feels this proposal should be implemented as part of the reforms. The current legislation is more than adequate to prosecute those suspected of international terrorism.

Intercept Evidence

To meet the challenge of evidence obtained from intelligence being held inadmissible due to evidentiary requirements[41], the Newton committee recommended removing the UK's blanket ban on the use of intercepted communications in court.[42] The UK is the only country in the world, apart from Ireland, to have an absolute ban on the use of such material.[43] The use of such evidence would also be subject to the normal safeguard of the judicial

[38] The Privy Councillors' Report is available at www.atcsact-review.org.uk
[39] Anti-terrorism, Crime and Security Act 2001 Review Report, para. 25
[40] The Newton Report, para 207
[41] Under section 17 of the Regulation of Investigatory Powers Act 2000
[42] The Newton Report, paras 208-215
[43] Joint Committee supra n.35, para 55

discretion to exclude under section 78 of the Police and Criminal Evidence Act 1984.[44]

IHRC believes that the dangers associated with allowing evidence obtained from intelligence intercepts are grave. There is the serious possibility of a wholesale invasion of people's privacy.

IHRC believes it is absolutely imperative that the evidence used be made available to the defendant to challenge its validity.

Examining Magistrates

Another suggestion of the Newton Committee was to hold special trials for terrorism cases based upon the French system of *juges d'instructions* or examining magistrates[45]. The idea is to have a security cleared judge assemble a fair, answerable case, based on a full range of both sensitive and non-sensitive material. The case would then be tried in a conventional way by a different judge. This allows the suspects to be confronted with specific accusations and evidence without damaging intelligence sources and techniques.

This method was used to prosecute suspected Algerian terrorists in France during the early 1990s. The defence is given an opportunity to see and contest all the evidence which the examining magistrate collates and places on the file, including any sensitive intelligence material. The case which the examining magistrate presents to a court cannot be based even in part on sensitive intelligence material which the defence has not had an opportunity to contest.[46]

Surveillance

Another alternative to internment proposed by the Newton committee is the use of more intensive surveillance.[47] It was considered that the right to privacy may be infringed through such surveillance but that it a less restrictive alternative to indefinite detention without trial.

IHRC believes that the reasoning behind this proposal is that it is not as bad as internment. Such reasoning should not be advanced for a measure which has the potential to flagrantly violate the fundamental right to privacy of the individual, guaranteed by numerous human rights instruments.[48]

Civil Restriction Orders

Another alternative to internment proposed by the Newton Committee was to impose restrictions on the liberty of the individuals concerned, for example, on their freedom of movement by curfews, tagging, or daily reporting requirements, on their freedom of association, or on their ability to use financial services or to communicate freely.[49]This power is already within Part 4

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[44] Section 78(1) states that "In any proceedings the court may refuse to allow evidence on which the prosecution proposes to rely to be given if it appears to the court that, having regard to all the circumstances in which the evidence was obtained, the admission of the evidence would have such an adverse affect on the fairness of the proceedings that the court ought not to admit it."

[45] The Newton Report, para 224

[46] Joint Committee on Human Rights, Review of Counter-terrorism Powers; 18th Report of Session 2003-2004, HL Paper 158, HC 713; Published on 4 August 204, para 58

[47] The Newton Report, para 248

[48] See Universal Declaration of Human Rights, Article 12; European Convention of Human Rights, Article 8; International Covenant on Civil and Political Rights, Article 17.

[49] The Newton Report, paras 251-253

of the ATCSA as the SIAC decision to release “G” on bail, under strict conditions amounting to house arrest, demonstrated.

Again, such a proposal is draconian in substance when one considers that these restrictions are imposed on those who have not been charged with any offence. To merely hold it up as a practical solution in comparison to detention without trial is exhibits failed logic. Besides, such a measure may still require derogation from the ECHR as there is no permission under the Convention to impose such draconian restrictions on the liberty of individuals who have neither been charged nor convicted of any criminal offence.

IV. NEW PROPOSALS BY THE HOME SECRETARY

Home Secretary David Blunkett has recently outlined new counter-terrorism measures being proposed. These go even wider than before and constitute an even further erosion of the civil liberties normally associated with liberal democracies, such as the UK.

Creation of New Criminal Offences

The Home Office discussion paper suggested creating new criminal offences such as a more broadly drawn offence of acts preparatory to terrorism[50], amendments to the existing law of conspiracy[51], and an offence modelled on the French crime of "association with a wrongdoer.[52]" Lord Carlile offered his support to such a move, stating that "if the criminal law was amended to include a broadly drawn offence of acts preparatory to terrorism, all could be prosecuted for criminal offences and none would suffer executive detention."[53]

IHRC feels however, there already exists in the UK an abundance of criminal laws under which suspected terrorists could be prosecuted. The creation of new offences based on guilt by association will undermine even further civil liberties and fundamental human rights.

Deportations on "Diplomatic Assurances"

The government has also announced that it is considering relying on "diplomatic assurances" as a safeguard against torture in deportation cases involving ATCSA detainees, and other suspected international terrorists. Diplomatic assurances are framework agreements between the deporting government and the government of the country of return guaranteeing that the deportee will not be subject to torture, cruel or inhuman treatment on return. Previous cases have shown that such agreements are not sufficient safeguards against torture on return.

CASE STUDY 4

On the 18th December 2001, two Egyptian asylum seekers, Ahmed Hussein Mustafa Kamil 'Agiza and Muhammad Muhammad Suleiman Ibrahim El-Zari, were forcibly deported from Sweden. The Swedish government agreed to deport the suspected terrorists only after receiving diplomatic assurances from the Egyptian government that they would be given fair trials and "would not be subjected to inhuman treatment or punishment of any kind," according to a confidential memo prepared by Swedish diplomats six days before the expulsion. Their lawyers, relatives and human rights groups however have said there is credible evidence that they were regularly subjected to electric shocks and other forms of torture. On the 27th April 2004, Agiza was sentenced to 25 years in prison by a military tribunal after a trial that lasted less than six hours[54]. In October 2003, El-Zari was released after having spent almost two years behind bars without charge.[55] The U.N. Human Rights Committee, as well as numerous international and national human rights organizations, has criticized Sweden for violating the prohibition against returning a person to a country where he or she is at risk of torture.

[50] Counter-Terrorism Powers: Reconciling Security and Liberty in an Open Society, Part 1, para 48
[51] ibid para 49
[52] ibid, para 56
[53] The Carlile Review 2003, para. 101
[54] Human Rights Watch, 'Sweden Implicated in Egypt's Abuse of Suspected Militant', 5th May, 2004
[55] Amnesty International, 'Sweden: Concerns over the treatment of deported Egyptians', 28th May 2004

This case illustrates well the lack of reliability of diplomatic assurances from nations in which torture is routinely practiced.

The European Court of Human Rights itself previously addressed the issue of states' parties' reliance on diplomatic assurances as a safeguard against violations of states' obligations under article 3 (prohibition against torture) of the European Convention on Human Rights. In Chahal v United Kingdom[56], the court ruled that the return to India of a Sikh activist would violate the U.K.'s obligations under article 3, despite diplomatic assurances by the Indian government that Chahal would not suffer mistreatment at the hands of the Indian authorities. Human Rights Watch has pointed out that the Chahal ruling establishes that diplomatic assurances are an inadequate guarantee where torture is "endemic," or a "recalcitrant and enduring problem" that results, in some cases, in fatalities. "The court's acceptance that Indian assurances were given in good faith and that the government had embarked on reforms, but that serious abuses persisted, indicates that it took into account the credibility of the requesting government and whether the requesting government had effective control over the forces responsible for acts of torture."[57]

[56] Chahal v. United Kingdom, 70/1995/576/662, November 15, 1996

[57] Human Rights Watch, '"Empty Promises:" Diplomatic Assurances No Safeguard against Torture' April 2004

V. INSTITUTIONAL ISLAMOPHOBIA

The ATCSA is only the latest piece of legislation which has been deliberately used to target Muslims. Running concurrently with it is the Terrorism Act 2000. The wholly Islamophobic manner in which this legislation has been operated is symbolic of the rise in institutional Islamophobia in the UK.

Although no official definition exists, Islamophobia can be roughly defined as an irrational fear or hatred of Muslims and/or Islamic culture. "Islamophobia is characterized by the belief that Muslims are religious fanatics, have violent tendencies towards non-Muslims, and reject as directly opposed to Islam such concepts as equality, tolerance, and democracy. It is a form of racism where Muslims, an ethno-religious group, not a race, are, nevertheless, constructed as a race. A set of negative assumptions are made of the entire group to the detriment of members of that group."[58]

The Runnymede Trust has identified eight components of Islamophobia[59]:

1. Islam is seen as a monolithic bloc, static and unresponsive to change.

2. Islam is seen as separate and 'other'. It does not have values in common with other cultures, is not affected by them and does not influence them.

3. Islam is seen as inferior to the West. It is barbaric, irrational, primitive and sexist.

4. Islam is seen as violent, aggressive, threatening, supportive of terrorism and engaged in a 'clash of civilisations'.

5. Islam is seen as a political ideology and is used for political or military advantage.

6. Criticisms made of the West by Islam are rejected out of hand.

7. Hostility towards Islam is used to justify discriminatory practices towards Muslims and exclusion of Muslims from mainstream society.

8. Anti-Muslim hostility is seen as natural or normal.

The manner in which the anti-terror laws have been implemented has been wholly Islamophobic and used primarily to target the Muslim community in Britain. This fact has been recognized by the Joint Committee on Human Rights. The effect of this has been to institutionalise Islamophobia.

In his inquiry into the death of black teenager Stephen Lawrence, Lord Macpherson, after considering a number of proposed definitions of "institutional racism", defined it as follows:

> *"the collective failure of an organisation to provide an appropriate and professional service to people because of their colour, culture or ethnic origin. It can be seen or detected in processes, attitudes and behaviour which amount to discrimination through unwitting prejudice, ignorance,*

[58] Winkipedia, the Free Encyclopaedia http://en.wikipedia.org/wiki/Islamophobia
[59] The Runnymede Trust, *Islamophobia: A Challenge for us all* (1997)

thoughtlessness and racial stereotyping which disadvantage minority ethnic people"[60]

This definition does not discuss "overt racism, or about organised intentional prejudice or bias against Black and ethnic minority people, but rather, about police priorities, actions and arrangements that have differential outcomes based on race."[61]

If we substitute 'religion', and more specifically, 'Islam' for 'colour, culture or ethnic origin', we can formulate a working definition of institutional Islamophobia. If we now examine how certain provisions of the anti-terror laws have been implemented and the behaviour and attitudes of the government, the law enforcement authorities and the media, we will discover that these institutions have collectively failed to provide an acceptable and professional service to Muslims because of their religion. Through such an examination, we will see how there is a shadow system of justice in operation for Muslims which can be "detected in processes, attitudes and behaviour which amount to discrimination through unwitting prejudice, ignorance, thoughtlessness and [religious] stereotyping which disadvantage" Muslims.

VI. PROCESSES

Proscription

Under section 3, the Home Secretary has the power to proscribe organisations he believes are "concerned in terrorism"[62]. Both the wide definition of terrorism and the vagueness of the grounds for proscription could lead to this being abused to shut down legitimate protest organisations. Proscription occurs without a case being proved in court**.** The organisation does not get to defend itself against the proscription. It can only appeal against proscription after the fact.[63] Thus the Home Secretary can in effect criminalise the members and supporters of an organisation without even having to prove any wrongdoing on their part.

When the Act was first passed on 19th February 2001, there were 14 proscribed organisations listed under Schedule 2. All 14 were Republican or Loyalist groups operating in Northern Ireland who were already proscribed under the Prevention of Terrorism Act. On 28th February 2001, the then Home Secretary Jack Straw submitted a further 21 foreign groups for proscription. Four additional groups were proscribed in November 2002. Out of these 25 groups, 18 are 'Islamic' / 'Muslim' groups, the vast majority of which have never threatened the UK nor pose a threat to UK but are engaged in conflicts or in struggles against repressive regimes abroad.

Stop and Search

Section 44 of the Terrorism Act 2000 introduced wider powers of stop and search which have been in regular use since the 11 September attacks and, more recently, heightened security fears in the UK.

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[60] *The Stephen Lawrence Inquiry: Report of an Inquiry* by Sir William Macpherson of Cluny (Feb 1999) para 6.34

[61] Metropolitan Police Authority, Report of the MPA Scrutiny on MPS Stop and Search Practice, May 2004, para 90

[62] Terrorism Act 2000, section 3

[63] Terrorism Act 2000, section 4-7

Recent figures released by the Home Office in July 2004 revealed a 302 per cent rise in the number of Asian people being stopped and searched by police. The Home Office report, Statistics on Race and the Criminal Justice System, showed that Asians suffered the highest increases in stop and searches under the Terrorism Act 2000 powers, rising from 744 in 2001-02 to 2,989 in 2002-03. Although the religion of those stopped is not recorded, the majority of these Asians come from the Pakistani and Bangladeshi communities who are predominantly Muslim in faith. A recent report from the Metropolitan Police Authority discussed the negative impact such disproportionate stop and search figures is having on community relations.[64] The Report stated that the current stop and search practice has create deeper racial tensions and has severed valuable sources of community information and criminal intelligence.

Earlier Home Office figures from December 2003 show that in 2002-03 there were 32,100 searches overall under the Terrorism Act 2000. Some estimates, however, put this number at 71,100 as it can be inferred from statistical data that some police forces are recording "anti-terrorist" stops and searches of pedestrians and vehicles using Section 60 of the Criminal Justice and Public Order Act 1994 rather than the Terrorism Act 2000.[65]

Based on the 32,100 figure, this is 21,900 up on the previous year and over 30,000 more than in 1999-2000. Of these 32,100, only 380 (1.18%) have been arrested. The Home Office has itself admitted that "the majority" of these arrests "were not in connection with terrorism."[66] The low arrest rate and the large number of people stopped and searched suggest that these powers are being widely used to little effect. Again, people originating from predominantly Muslim countries have been the subject of a hugely disproportionate number of these.

Arrests

Section 41 of the Terrorism Act 2000 allows the police to arrest someone without warrant on suspicion of being a terrorist as defined under section 40. There is no requirement for the police to give the grounds for their suspicion. A person can then be held for up to 48 hours (with normal arrests it is only 36 hours) before applications to extend the detention are required or the person has to be released. A person can be detained for a maximum of fourteen days.

Police records show that from 11th September 2001 until 30th June 2004, a total of 609[67] people were arrested under the Terrorism Act 2000. Of these 61 were charged under the Act and 38 under both the Terrorism Act and other legislation. There have been only 15 convictions to date. Six of those convicted are white non-Muslims who were found to be involved in proscribed Loyalist groups such as the Loyalist Volunteer Force, the Ulster Volunteer Force, and the Ulster Freedom Fighters. The men were convicted for offences such as wearing a ring or carrying a flag with the symbols of banned Loyalist organisations. The 2000 Act makes it illegal even to wear a T-shirt supporting a banned organisation.[68]

More than half the people arrested in anti-terror raids in the UK since 9/11 have eventually been released without charge. Of those arrested 289 were released without charge and 283 faced further police action. The Home Office

[64] Report of the MPA Scrutiny on MPS Stop and search Practice', May 2004
[65] For more information, see Statewatch Bulletin, Volume 13 No 6, November- December 2003
[66] Home Office Statistical Report
[67] This figure has since risen to 625
[68] 'Analysis: Who are the Terrorists?' - Institute of Race Relations

believe there have been six convictions for terror-related offences over the same period. A further 99 people have been charged with other crimes not related to terrorism, six have been given a caution for criminal matters, and 27 are currently on police bail for criminal matters not related to terrorism. The Immigration Service have been handed 54 of those arrested to deal with matters relating to immigration offences. Another six have been sectioned under the Mental Health Act. Almost all arrests were based on intelligence, very few if any were based on the stop and search process.

Port and Border Controls

Schedule 7 of the Terrorism Act[69] allows the interrogation of individuals to take place at ports and borders controlled by police officers. Any person embarking or disembarking from a ship, aircraft or vehicle at any port and border can be questioned under Schedule 7. An officer has the power to stop, question and detain a person, whether or not an officer has grounds for suspecting that a person is "concerned with the commission, preparation or instigation of acts of terrorism". A person can be detained for up to nine hours beginning when his examination begins. His property may be searched and detained for up to seven days. A detained person is under a duty under the Schedule to answer any questions relating to their involvement in terrorism, even without a solicitor present. Wilfully failing to comply with such a duty is an offence with a penalty of up to three months imprisonment and/or a monetary fine.

A disproportionate number of Muslims, including Lord Nazir Ahmed of Rotherham on two occasions, have been detained in ports of entry and exit under Schedule 7. Leading Muslim scholars in Britain, such as Shaykh Suleman Motala, have been detained for hours at Heathrow causing them to miss their flights to Mecca for pilgrimage.[70] Interrogations routinely involve questions about one's religious beliefs, what mosques one visits and whether one has any association with "jihadi" groups. The perception among the Muslim community is that these are clearly "fishing expeditions" which catch anybody whose appearance displays the fact that he/she is a Muslim.

In this context it seems that the greater stop and search powers have simply created a culture of suspicion within the police force and wider society that profiles Muslims as suspect; yet finding little if anything to incriminate them using this process. The Muslim community finds itself under siege by police forces and this feeds a sense of alienation from state institutions within the Muslim community. Thousands of innocent Muslims have been affected by the operation of the policy of Muslim profiling for stops and searches, targeted on the basis of their 'Muslim' appearance.

Disruption of Charitable Work

Another aspect of the Islamophobic implementation of the anti-terrorism legislation has been to impede the noble work of many charities on unsubstantiated allegations that they are funding terrorism. The charity funds are frozen and as a result, the charities are not able to function properly. Once the investigations are complete the stigma continues to be attached, leading to charities being closed down or having to start afresh. This leaves low morale and it is an impossible position for fundraising to recommence again. To date, all of the charities that have been investigated for terrorism have been Muslim charities. Fundraising for international causes and humanitarian relief for Chechen refugees in Ingushetia or for Palestinians living in occupied territory

[69] TACT, Schedule 7

[70] 'Profiling Muslims in Britain', *The Muslim News,* 28 November 2003

may be construed as "passive" support for terrorism on the grounds that even though the emergency relief was not destined for terrorist organizations, some of it may have ended up in their hands.[71] Furthermore, there has not been any finding made against any of the Muslim charities where money is wasted on legal battles. Further time is wasted where no collections can be made and charities eventually seize and phase out.

CASE STUDY 5

A Bradford man, involved in assisting a Muslim charity, was arrested and released without charge after 36 hours. However, the charity funds were frozen and the charity came under investigation, thus creating an unsavoury reputation in the community. Furthermore, it also has the consequences of the charity having to recommence once the investigations have concluded that none of the funds have been provided for any terrorist groups. Had there been any evidence of this nature, then the arrested man would have been charged with funding a terrorist organization. The mere fact that no such charges were levied is an indication of the vindictiveness from the government that is directed against the charities which results in funds not going to the charity and people who need the funds not being able to have access to the funds.

CASE STUDY 6

A Muslim man in London who is involved in charity work involving orphaned children was arrested and alleged to be a terrorist financer. After being detained for 48 hours, an application was made for an extension. This was the first time the suspect and his solicitor learned what was being alleged against the man when the application was made in the magistrate's court for the further detention of the man. When a second application for a further 48 hours was made, further new information was made know to the man and his solicitor. After 6 days in custody, the man was released without charge. However, his property is still being detained by the police.

Police officers then attended the man's home in order to return his passport. The police stated that they were aware the man was innocent and that he was a compassionate individual, in that he helps orphan children. The police stated that the man should assist the police by becoming an informer for them. The man was shocked and was not interested in becoming an informer for the police. The money that the man collects for orphan children is still being retained by the police. As a result of legal aid not being available, the man does not have the means to pay for legal representation in the magistrate's court. The police have in their possession documents showing the breakdown of the money that the client has for each orphan child, photos of the children and the people who have donated money for each of the orphaned children.

Furthermore, money has also been given by individuals for meat to be distributed to the poor and needy in developing countries. These sums of money are still being detained by the police despite the police officers stating to the man on an unofficial visit that was made to his home that he is innocent and that he collects money for a very good cause. The man has been deemed guilty until proven innocent. He is not entitled to forward the money to the orphaned children. There is an abuse of the process taking place whereby the funds are not reaching their destinations and the very children whose lives they are intended to save are starving.

Internment

Under Part 4 of the Anti-Terrorism Crime and Security Act, 17 people in total have thus far been certified as "suspected international terrorists". All 17 have been Muslims. Part 4 only allows the Home Secretary to certify and detain foreign nationals whom he reasonably suspects of having links with groups

[71] Liz Fekete, 'Anti-Muslim Racism and the European Security State', *Race & Class Vol. 46(1) (2004) 3 at 9*

linked to Osama Bin Laden and Al Qaeda[72]. This position has been confirmed by both the SIAC and the Court of Appeal. The derogation does not therefore extend to other forms of international terrorism such as that perpetrated by Catholics, Protestants, Jews, Hindus or Atheists. Consequently, it is without very unlikely that any further persons detained under Part 4 will also be Muslim.

[72] Secretary of State for the Home Department, "Counter-Terrorism Powers: Reconciling Security and Liberty in an Open Society," Para. 27.

VII. ATTITUDES AND BEHAVIOUR

The behaviour of members of the Police, the MI5 and Special Branch in their dealings with members of the Muslim community has also opened it up to allegations of institutional Islamophobia. Whether it is during a pre-dawn raid, a stop and search, interrogation or when simply taking a witness statement, there have been numerous racial and Islamophobic references and anti-Muslim statements made by the officers in question. Such behaviour and attitudes only serve to further isolate the Muslim community and function essentially as an own goal in the war on terror.

CASE STUDY 7

One of the most shocking cases occurred in December 2003. It involved a pre-dawn raid of a British Muslim man's home in which he was brutally assaulted despite making no attempt to resist arrest. Police forced him to prostrate with his arms in cuffs and taunted him by saying, "Where is your God now?" The detainee, after being kicked and punched all over his body, suffered over 40 injuries including urinary bleeding, a black eye and severe bruising. He was eventually released without charge after a seven days in custody. The victimisation of the Muslim community is further evidence by the fact that despite not finding any evidence to charge him in those seven days, Babar Ahmad was once again arrested on 5th August 2004 after the United States requested his extradition on charges of terrorism. His complaint against the police has not been concluded as of yet, although a file has now been passed to the CPS.

CASE STUDY 8

A Muslim man was stopped by the police in London for a minor road traffic offence. Arrangements were made for his friends and other relatives to collect the car. A group of clean-shaven young Muslim men collected the car. On their journey back from collecting the car, they were stopped by armed police officers who pointed guns to their heads. Abusive, racist and vulgar language was directed at the men. Further police officers made threats as follows: ***"Fucking Pakis, if you look at me, I will blow your head off."*** *The men were taken to the police station, strip-searched, and detained in custody for 36 hours and eventually released without charge. No interviews took place in relation to these men. The following day, one of the men was taking his 10 year old son to a shop in order to purchase some toys. On his way back, the car was surrounded by armed police officers and* ***guns*** *were placed not only on the man's head but on the* ***10 year old child's head*** *as well. Abusive and racist language was directed against the man. Furthermore, the police officers made threats to the client that they would* ***blow*** *his* ***son's head off.*** *Subsequently, it was realised that there was an error made by the police in that previously they had failed to remove the vehicle registration from their database.*

Again, this client was released with his son. Yet he was subjected to racial and abusive language directed and threats were made by police officers to blow his son's brains off. The man's solicitor filed complaints against the police officers concerned. Since then, the Police complaints authorities are not pursuing the matter further.

Even the Muslim solicitors representing suspects who have been arrested on suspicion of terrorism have experienced the full weight of police Islamophobia. Muddassar Arani, who represents many Muslims arrested under the Terrorism Act 2000, filed a formal complaint in August 2004 against officers in Paddington Green police station in London, whom she alleges treated her in a racist and Islamophobic manner.[73] She alleges that the officers told her clients that they would be better off with another lawyer and passed them business cards of

[73] 'Solicitor alleges police Islamophobia', *The Guardian*, 19 August 2004

other firms, even after the men expressing their satisfaction with her representation of them. She also alleged that detectives told the men that they could be interviewed without their lawyer present if they preferred. Ms Arani further alleged that officers from SO13, the anti-terrorism branch, had told her that they were searching her clients because they had "so many consultations" with her and that they had not allowed her to explain to the men that charges were about to be put to them. This is not the first time Ms Arani has encountered such problems with the police. Non-Muslim lawyers representing terror suspects have not stated that they have been subjected to similar treatment. Ms Arani was previously the victim of a smear campaign by 'The Sun' after it was revealed she was representing the Muslim preacher, Abu Hamza.

Muslim festivals have also come to be associated with terrorism due to the actions and rhetoric of the police and the government. In February 2003, British authorities deployed tanks and 450 extra armed troops at Heathrow airport for fear "that the end of the religious festival of Eid [al-Adha]… [could] erroneously be used by Al Qaeda and associated networks to mount attacks."[74] The suggestion that Muslims would plant bombs and attempt to kill Christians at the end of the Eid festival was both provocative and Islamophobic. It was similar to suggesting that Christians would use Christmas to bomb Jewish, Muslim or Buddhist communities.

Even the anti-terrorism posters and leaflets widely distributed by the Metropolitan Police have a sense of anti-Muslim demonisation about them. The recent poster, entitled 'Life Savers', depicts a pair of eyes surrounded by a black background, which British Islamic groups pointed out resembled a Muslim woman in niqab[75]. IHRC believes that such an image has the effect of subconsciously associating terrorism and a Muslim woman's dress. During the war on the IRA in the past, the anti-terrorism poster displayed throughout the country did not depict a par if eyes but a picture of a bag. In May 2004, following a series of complaints by Muslim organisations and leaders, the controversial poster was withdrawn with a public apology by the Deputy Commissioner of the Metropolitan Police Service, Sir Ian Blair[76]. Despite the withdrawal, the posters are still in circulation and are being displayed in respectable institutions throughout the UK.

Muslims targeted even when victims of crime

A more dangerous aspect of this demonisation of Muslims is that many members of the public may feel that they themselves must take action against the "terrorists". If its tolerable for the law enforcement agencies to stop and search and assault Muslims they "suspect" are "terrorists", then what is to stop the ordinary man on the street from making his own "citizen's arrest".

What is most worrying however is the conduct of the investigations into crimes in which the victim is of the Muslim faith. Very often, the police have conducted the investigation as if the victim was himself a "suspected terrorist". This causes extreme stress and worry for people whose only "crime" was to become the victims of crime.

[74] Metropolitan Police Statement, 'Heightened Levels of Security in London', 11 February 2003, Bulletin 2003/0028

[75] The niqab is a veil which covers the head and all of the face except the eyes. It is worn by many Muslim women, notably in Pakistan and the Arabian Peninsula.

[76] The Guardian, 'Letter: Met says sorry for ad', May 15th 2004

CASE STUDY 9

In June 2004, a young Moroccan Muslim student, 'X', dressed in traditional Arab dress and on his way to the mosque for Friday prayers was brutally assaulted in North West London by four men, 3 of whom were in their teens. 'X' was verbally abused and spat on by the teenagers on the bus. The teenagers followed him off the bus and assaulted him. Using a Council sweeper's brush which had been negligently left out, they severely beat 'X' until he was unconscious. A local shopkeeper rushed to rescue him but another man grabbed him to prevent him assisting 'X'. 'X' is now in a coma and is paralysed on the left side of his body. Doctors have said that he will require nursing care for the rest of his life.

The manner in which the police have investigated the assault has resulted in the victim being treated as a terrorist suspect. On the evening of the attack, the police arrived at 'X''s lodgings and took away all of his belongings, including his books, CDs, clothes and personal belongings and documents. They claimed it was in order to identify his family. Most of the items were returned within 2-3 weeks. Other items were only returned after almost two months. When interviewing family and friends of 'X', officers asked questions related to 'X''s religious and political beliefs, the frequency with which he visited the mosque, the type of books he used to read, how much money his father sent him, whether he changed his mobile often and other questions irrelevant to the case in hand. One friend who was interviewed was later detained under Schedule 7 of the Terrorism Act 2000 at Heathrow airport on his way to Mecca for pilgrimage. He was detained for 7 hours and accused of travelling to Iraq. At the end of the detention, they asked him to join MI5. He was released but, like many other Muslims detained under Schedule 7, had missed his flight. Furthermore, the family liaison officer appointed also displayed great insensitivity to all concerned by continuously searching for information from visitors to the hospital. Members of 'X''s family and friends found her irritating and very suspicious. All this seems circumstantial but in mid-August 2004, 'X''s sister went to the police station to sign her statement. The family liaison officer produced two items she claimed belonged to 'X'. She said she had them in her bag for weeks and intended on returning them to the family but kept forgetting. One was an envelope containing 'X''s telephone book, his application to the Home Office for a visa extension, and other papers such as bank receipts. The other item was a device which the family liaison officer stated was used for explosives. When 'X''s sister asked whether it could be used for any other purpose, she was told that it couldn't be and that it was only used for explosives. The officer stated three of four times during the course of the conversation that "I amn't saying that your brother is a terrorist, but …". Amazingly, the officer handed over the device to 'X''s sister, even though she believed it was used in explosives. The device turned out to be nothing other than a device used to manipulate electricity meters for procuring electricity. 'X' had taken it off a friend who was using it, as stealing is forbidden in Islam.

Conditions of Detention

Another grave problem with the detention without trial of Muslims in Britain is the conditions in which they are being detained. The conditions in which the suspects have been held at Belmarsh high-security prison have been described by lawyers and Home Office medical experts as "barbaric" and as "concrete coffins."[77] Amnesty International has described the conditions of detention as amounting to "cruel, inhuman or degrading treatment".[78] The men are classified as Category A prisoners and are locked up in solitary cells 3m by 1.8m for 22 hours a day and not allowed to see daylight. They were not given access to lawyers or family on detention. They must now wait between three and four months for security clearance to be give for their families to visit them.

[77] 'UK terror detentions barbaric', *The Observer*, January 20, 2002

[78] Amnesty International, *Rights Denied: The UK's Response to 11th September 2001* (September 2002)

In February 2003, the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) published the report of its February 2002 visit to the UK to review the detention conditions of those held under the ATCSA in Belmarsh and Woodhill prisons. The CPT noted allegations of verbal abuse; expressed concern about the detainees' access to legal counsel; and remarked that the detention regime and conditions of ATCSA detainees should take into account the fact that they had not been accused or convicted of any crime and the indefinite nature of their detention. In addition, the CPT expressed concern that since at least some of the internees were victims of torture, the "belief that they had no means to contest the broad accusations made against them also was a source of considerable distress, as was the indefinite nature of detention". The prospect of indefinite detention without charge or trial, principally on the basis of secret evidence, has had a profoundly debilitating effect on the internees' mental and physical health.

In addition to this, the detainees have been treated with no respect for their religious obligations or principles.[79] The ignorance and thoughtlessness of the Prison Service has also disadvantaged Muslim inmates. Prisoners have been refused prayer facilities and have been subjected to body searches by women. They are strip-searched before and after all visits, whether they are legal or social visits. This is particularly humiliating for them as Muslims. The Muslim prisoners have themselves reported that their religious dietary obligations have not been respected and that they have been served meat which has been falsely described as *halal*[80]. In August 2004, the Governor of Belmarsh, Geoff Hughes, apologised to Muslim prisoners for offering them "*halal* pork chops".[81] Besides being a well known fact that it is prohibited for Muslims to eat pork, this is explicitly mentioned in section 4.2 of the Prison Service Catering Manual.[82] The Prison Service is under an obligation to provide sealed and pre-packaged *halal* meals to Muslim prisoners similar to the kosher packages provided to Jewish prisoners.[83] The result of this fiasco has been the deterioration of health of many of the Muslim detainees who are boycotting meat products inside the prison due to lack of confidence in the food.[84]

No Accountability

One crucial factor in preventing the situation from deteriorating further is the total lack of accountability for the actions of the law enforcement officers. There is no avenue for redress for those adversely affected by these measures. For example, regarding stop and search powers under section 44, there is no public record as to how many authorizations have been given or the results of such authorization. There is no analysis of those who have been stopped and searched versus those who have been charged, versus those who are convicted. Neither is there a breakdown of resulting charges by terrorism related offences and other offences.[85]

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[79] Garcia, N., *Report to the Islamic Human Rights Commission on the Detentions Under the Anti-Terrorism Crime and Security Act 2001,* (September 2002)

[80] 'Halal' refers to things which are permissible in Islam. It is often used to refer to food products but is not restricted to this.

[81] 'Jail anger over 'halal' pork' , *The Times (London),* August 21, 2004

[82] Prison Service Catering Manual, PSI 36/2003, para 4.2

[83] Prison Service Catering Manual, PSO 5000, para 3.23.45

[84] ibid

[85] The Home Secretary stated that such "information could therefore be obtained only at a disproportionate cost.", Hansard, House of Commons, October 20 2003, col. 418W

VIII. EFFECTS ON THE MUSLIM COMMUNITY

Demonisation

A social effect of this institutional Islamophobia has been the demonisation of the Muslim community and of Islam by the media as a "suspect" community. There seems to be a real motivation by the British media to incite hatred and fear of the Muslim community in Britain. Although this aspect of Islamophobia is not a post 9/11 innovation, it has largely accelerated since that date. An enormous effort is being made to stigmatise all Muslims in Britain as the enemy within.

A recent example from July 2004 involved someone, writing under the pen name, Will Cummins, who wrote a series of venomous Islamophobic articles overflowing with hatred and fear of Muslims. His vitriolic attack on Islam includes comments that Christians are the original inhabitants and rightful owners of almost every Muslim land, and behave with a humility quite unlike the menacing behaviour we have come to expect from the Muslims who have forced themselves on Christendom, a bullying ingratitude that culminates in a terrorist threat to their unconsulted hosts."[86]

Will Cummins's secret identity has since been revealed as Harry Cummins, press officer for the British Council whose aim is to promote British culture and traditions to the entire world, including the Muslim world.[87] Harry Cummins has denied the allegations and has been suspended on full pay pending a full investigation. Remarks such "it is the black heart of Islam, not its black face, to which millions object"[88] and "all Muslims, like all dogs, share certain characteristics"[89] would not be tolerated if made about any other religion. But it has become politically correct today to target and demonise Muslims.

The Spectator further advanced the 'clash of civilizations' theory with a cover page headline, "The Muslims are coming."[90] Inside Anthony Browne wrote and inflammatory and inciting article on the Muslim plot to take over the world.[91]

Even Muslim solicitors who work to ensure anyone accused of a crime is given their right to a fair trial, have been targeted and demonised (case study 10).

This culture of suspicion against Muslims has been compounded by the media collusion with the current political agenda. "The intelligence services and the police are often the only sources of information for the media, which then feed off them to construct alarmist and distorted pictures of spectacular threats."[92]When Muslims are rounded up under the anti-terror laws, we see a whole new attack launched on Muslims. Volumes of print are dedicated to increasing the fear of Muslims in society. An identical pattern of reporting is followed every time. Following a series of "terror" arrests, government ministers make statements demonising the suspects and exaggerating the threat posed to the UK. Even though no charges are even made in the majority

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[86] Will Cummins, 'Dr Williams, Beware of False Prophets', *Sunday Telegraph, 4 July 2004*
[87] The Guardian Diary, Martina Hyde, July 29 2004
[88] Will Cummins, 'The Tories Must Confront Islam instead of kowtowing to it', *Sunday Telegraph, 18 July 2004*
[89] Will Cummins, 'Muslims are a Threat to our Way of Life', *Sunday Telegraph, 25 July 2004*
[90] The Spectator, 24 July 2004
[91] Anthony Browne, 'The Triumph of the East', *The Spectator, 24 July 2004*
[92] Liz Fekete, 'Anti-Muslim Racism and the European Security State', *Race & Class Vol. 46(1) (2004) 3 at 14*

of cases, the media takes it upon itself to assume the role of judge, jury and executioner. Indeed, this trial by media is from the outset biased against the accused. The prosecution's case is given lengthy coverage in terms of "anonymous sources" and "secret intelligence". The suspect, the suspect's family, the local mosque and the entire social network is demonised as a threat to the UK. The accused himself is denied the right to defend himself.

Case Study 10

In February 2004, the Sun began a smear campaign against Muddassar Arani, a solicitor with Arani & Co., who represents many of those accused of plotting acts of terrorism. On 9th February 2004, under the headline, 'Hamza's lawyer hits you for massive legal aid bill", the Sun stated that Hamza's "Mercedes-driving" solicitor received over £200,000 in legal aid in 2003 representing Abu Hamza.[93] The fact of the matter is that neither Miss Arani nor her firm received even a penny in legal aid as regards Hamza's case. The article also published details of the area and type of house that Miss Arani lives in and the car that she drives, in breach of Part 3 of the Press Code of Practice. The articles also referred to the headscarf Miss Arani was wearing when witnessed by Sun journalists. References to her religious clothing were made to project her as a lawyer who shares the views of her client, Abu Hamza. This had absolutely no relevance to the story in question and is an entirely spurious association and was published in a prejudicial manner, thus breaching Part 13 of the Press Code of Practice. Miss Arani wrote a letter to the Sun and issued a press release on 11 February 2004[94] stating the inaccuracies of these articles but the Sun never published any of these, denying Miss Arani the opportunity to reply in breach of Part 1 and Part 2 of the Press Code of Practice. Instead, the Sun published readers' letters calling for her to be struck off the roll of solicitors and deported from the UK.[95] Miss Arani is one of several solicitors from various firms that have taken on terrorism casework No other non-Muslim lawyers who represent rapists, terrorists, and paedophiles have been subjected to a similar smear campaign. The effect of this hate campaign which lasted several weeks was for Miss Arani to receive a barrage of death threats, hate mail and abusive telephone calls.

However, when the suspects are released without charge after a few days, it is done in silence. There is often no mention in the media or by the Home Office. There are no apologies or admissions of error. Therefore, as far as the general public is aware, all those arrested have been charged and found guilty of being terrorists. If the general public feel as if there are indeed terrorists living within the Muslim community; people whom they go to university with; people who they work with and people whose children go to the same school, they will begin to ostracise the entire community. The element of trust is completely lost.

Home Affairs editor of The Observer, Martin Bright, gave evidence to the Special Immigrations Appeals Commission in July 2002 in the first case brought by nine of the men detained under the ATCSA. His evidence offered a rare insight into the influence of the security services over the media.

> *"Until very recently the British intelligence services didn't officially talk to newspapers at all. Certain favoured journalists who had connections to people who worked in the services were passed information from time to time if it was thought useful to put it in the public domain. Sometimes the stories that resulted were true and sometimes not. In recent years, after intense pressure, MI5 and MI6 instituted a new*

[93] 'Pounds 200k Right Hook', *The Sun*, February 9 2004. The allegation has been repeated several times. See 'GET ME OFF HOOK', *The Sun*, Mach 19, 2004

[94] Arani & Co Solicitors, Press Release, 11 February 2004

[95] Letters Page, *The Sun*, February 12, 2001

system whereby each service has an unofficial press officer who talks to the media. Most organisations then designate a journalist who will deal with each service. They are then given a telephone number and the name of the individual intelligence officer. … This individual has no expertise in Islamic or Arab affairs and simply acts as a conduit for those who deal with the Islamic terrorist threat within the Security Service … Most journalists agree that this is less compromising than the old system, but it is far from ideal. Any conversations remain strictly off-the-record and, for the most part, any quotes are attributed to 'sources'. Since September 11 newspapers, including the Observer, have become increasingly reliant on these briefings for information. Most journalists feel that, on balance, it is better to report what the intelligence services are saying, but whenever the readers see the words 'Whitehall sources' they should have no illusions about where the information comes from. In the period immediately following the events of September 11 and up to the new internment legislation, these journalistic briefings were used to prepare journalists for what was to come. Immediately before the men were taken into custody I was not alone in being told that the choices had been very carefully made and that these men constituted a 'hardcore'."[96]

However, it is almost always the case that when these suspects are released slowly throughout the week without charge, this is buried away in a small corner of the newspaper, if it even makes it into it. Consequently, the general public are misled into thinking that the UK is crawling with Muslim terrorists who are foiled time after time in their efforts to launch an attack on British soil. This is evidenced by the results of a recent Mori poll for the Financial Times which revealed that the fight against terrorism is the greatest concern for the British public, ranking much higher in importance than the NHS, unemployment, education and race relations.[97]

Further, IHRC feels such prejudicial reporting denies those arrested the right to a fair trial should charges be made.

It is at times of hysteria like this where the laws of contempt must be implemented in full. The Contempt of Court Act 1981 is a piece of legislation which used to literally freeze the ink of the pens of journalists throughout the land. Designed to prevent journalists and newspapers from prejudicing juries and thereby denying the accused the right to a fair trial, "evidence" of guilt could not be broadcast until it had been tested by a court of law.[98] Truth was no defence. If the publication created "a substantial risk that the course of justice in the proceedings in question … [would] be seriously impeded or prejudiced"[99], those responsible were strictly liable as interfering in the course of justice regardless of intent to do so[100]. In a famous case, which indicates how powerful this law can be, the editor of the Sunday Mirror, Colin Myler, resigned[101] following a contempt verdict against the paper for publishing

[96] Martin Bright, 'Imprisonment without Trial: Terror, Security and the Media', Evidence to the Special Immigrations Appeal Commission (SIAC) hearing, 21 July 2002. Called as an expert witness by Tyndall Woods Solicitors, acting for two of the detainees.
[97] 'Terrorism tops public concern', *The Guardian,* 20 August 2004
[98] Contempt of Court Act 1981
[99] Contempt of Court Act 1981, s.2(2)
[100] Contempt of Court Act 1981, s. 1
[101] 'Editor Resigns after trial collapse', BBC News Online, 12 April 2001

information which caused the collapse of the trial of two Leeds United footballers.[102]

Today, however the pens are overflowing with prejudice and hysteria. On 27th April 2004, the Daily Mail's front page screamed out 'The Wife Who Kept Suicide Bomber's Secret' alongside a picture of a suicide bomber's widow smiling with the caption reading, 'ACCUSED: TAHIRA TABASSUM 'SOUGHT A PLACE IN PARADISE'.[103] This was the beginning of her trial in the court of law and the media. Tahira was later acquitted of all charges after a ten-week trial in the Old Bailey.

Moreover, the government seems to be complicit in this contempt of court.[104] Following the arrests of seven men in North London in anti-terror raids in January 2003, Tony Blair stated that the arrests showed "this danger is present and real and with us now and its potential is huge".[105] Again, on 27th November 2003, Sajid Badat was arrested in Gloucester under anti-terrorism laws. Within hours of the arrest, the Home Secretary suggested that Badat posed "a very real threat to the life and liberty of our country" and that security services believed he had connection with Al-Qaeda.[106] It remains to be seen whether a trial may be prejudiced by these comments. In April 2004, Blunkett criticised as "extraordinary" the decision of the SIAC to release into house arrest a man known as "G", one of the men interned without charge under Part 4 of the ATCSA, adding that others may describe the decision as "bonkers".[107]

Such comments as those made by the Prime Minister and Home Secretary should have been sanctioned with a contempt of court order by the Attorney General. Once individuals of such status in society have made such prejudicial remarks, what is to stop the media from doing so?

IHRC is deeply concerned that this complete disregard complete disregard by both the media and the government for laws such as the Press Code of Practice and the Contempt of Court Act 1981, is a reflection of how institutionalised Islamophobia has become. Only in a climate of fear and hatred of the "Other", can such contempt for the rule of law be tolerated.

Social Discrimination

The manner in which these powers have been used has resulted in the terrorisation of the Muslim community in Britain. Their community, friendships and political networks are stigmatised as "suspected" terrorist networks. Mere arrest can undermine people's reputations, livelihoods and freedom to travel. Moreover, police harassment and threats have clearly aimed to spread fear, especially among Muslim communities. People feel that they live in a state of siege, as populist prejudice is whipped up against them. At the same time, the public has been encouraged to fear foreigners, especially those from Muslim countries. IHRC is concerned that this policy breeds suspicion of Muslims in wider society.

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[102] A.G. v Mirror Group Newspapers Ltd. [2002] EWHC 907
[103] Daily Mail, 27 April 2004
[104] Nick Cohen, 'How to Stitch up a Terror Suspect', The Observer, January 12, 2003
[105] 'Terror Police find Deadly Poison', BBC News Online, 7 January 2003 http://news.bbc.co.uk/1/hi/uk/2636099.stm
[106] 'Al Qaeda suspect arrested in Gloucester', The Guardian, Press Association, November 27 2003
[107] 'Blunkett to change law over suspect's bail', The Guardian, 23 April 2004

CASE STUDY 11

Ten days after 9/11, an Algerian pilot, Loft Raissi, was arrested and accused of training key 9/11 hijackers. In seeking his extradition, the US produced "evidence" that he lied on his application form for a pilot's licence, failed to declare a knee injury, and was convicted for theft when he was seventeen.[108] After spending five months in Belmarsh high security prison, Raissi was released on bail on 12 February 2002. On 21st April 2002, a judge ruled that there was no evidence whatsoever to connect him with terror. Raissi's experiences have left him emotionally scarred. He reports that while in Belmarsh, he was verbally abused by both guards and inmates and accused of killing 7000 people. One guard told him "We will feed you to the dogs."[109] Even after he was released, Raissi claims he is still followed and photographed. Following his arrest, Raissi lost his house; his wife lost her job with Air France; his brother's wife lost her job at Heathrow airport; his mother and brother fell ill and his father went into thousands of pounds of debt because of the case. Raissi has been unable to get another job in any airline in Europe or overseas due to the overzealous security services. "My life has been destroyed, my reputation has been destroyed, my family has been destroyed.[110]

A more dangerous aspect of this is that many members of the public may feel that they themselves must take action against the "terrorists". If its tolerable for the law enforcement agencies to stop and search and assault Muslims they "suspect" are "terrorists", then what is to stop the ordinary man on the street from making his own "citizen's arrest". This has been evidenced by the enormous increase in Islamophobic attacks on Muslims and on mosques which have taken place in the UK since 9/11. Current discrimination legislation is incomplete as well as it fails to prohibit discrimination against Muslims.[111]

Mental Torture

> ***We did nothing wrong. Our crime is that we believe in another religion. I was living here for years and everything was fine and suddenly I am a suspect. I would like to know why I was arrested."***
>
> *(Salah Moullef, Algerian asylum seeker being harassed by anti-terrorism police)*

This constant and continuous demonisation and scrutiny of the Muslim community in Britain has lead to Muslims suffering from mental torture of sorts. This is due in part to police harassment and threats which instil a fear of detention or torture in Muslims should they refuse to assist the intelligence agencies. Muslims across Britain, both practising and non-practising, feel that they are under constant surveillance. There is a feeling that every statement they utter will be manipulated and exploited to further raise the terror threat.

Many Muslims fear that rumours that they are involved in terrorism will be passed around among international intelligence agencies, especially those in their countries in origin. This leads them to remain in constant fear for the safety of any family members who may still be at risk in such countries.

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[108] Islamic Human Rights Commission, *The Hidden Victims of September 11: Prisoners of UK Law* (Sept. 2002)

[109] 'Special Report: Lofti Raissi', *The Guardian,* 11 September 2002

[110] ibid

[111] For more on this, see European Union Accession Monitoring Program: *Monitoring Minority Protection in the EU: The Situation of Muslims in the UK* (2002); Hepple, B. and Choudhury, T., *Tackling Religious Discrimination: Practical Implications for Policy-Makers and Legislators; Home Office Research Study 221*, London: Home Office (2001); *JUSTICE: Protecting Rights To Religion And Belief: Priorities For Reform (Religious Discrimination Seminar)* 9 July 2003

CASE STUDY 12

In May 2004, two detectives, on a mission to gather intelligence about another Muslim who had been arrested, visited a Muslim community in South London. They attempted to recruit young Muslims to become informers for the police. One young Muslim was threatened with the words, "I can't force you to talk to me but let me give you some advice, you are a young man of 21; be careful of the company and counsel you keep. We've seen people getting involved in these kinds of things and some go too far and then they end up in places like Guantanamo Bay. Do you know what I mean …?" This is a completely inappropriate manner for an officer to speak to a member of the public. Implied threats to indefinitely detain members of the public in Guantanamo Bay or elsewhere does not add to the public having confidence in the police force.

CASE STUDY 13

In December 2002, eight Algerian asylum seekers in Edinburgh were arrested on suspicion of planning a terrorist attack on the Hogmanay festival under section 57 of the TACT.[112] A ninth Algerian was arrested in February 2003. On 14th March 2003, all nine men were released on bail.[113] In December 2003, the Crown Office announced that "based on the evidence presently available, no further proceedings will be taken at this time."[114] However, such a statement fails to declare the innocence of the men and still presumes them to be "the ones that got away." In August 2004, it was revealed that the men are still under intense surveillance and have been placed on a MI5 list of 82 al-Qaeda suspects.[115] These men are now extremely worried of being deported to Algeria where they face a strong possibility of being imprisoned, tortured and even executed.[116]

CASE STUDY 14

On 19th February 2004 at approximately 11:00pm a Muslim man in London was told by police officers that he was no longer being detained under the terrorism act and that they would be more then happy to provide him with a lift home. One officer stated to the man that he had a name of a police officer based at another station who could assist him with regards to the racial insults that he had suffered as a result of the raids that took place at his home.

One of the officers who was giving him a lift home asked him if he wanted to sit in the front or the back of the car. He stated that he would sit in the front of the car, then the officer stated to him to come and sit with him in the back of the car and the man agreed to do so. The two officers then started bombarding the man with questions. They claimed that the statements that had been written were not his words and that they were his solicitor's words. They could not understand why the man had not answered the questions. They asked him the questions that had been asked of him in the interview. Out of fright the man answered some of the questions but not all of them.

The man did not feel comfortable with the line of questioning that was taking place and the route that the officers were taking. The man asked them why they were taking the long route and not the quickest route. The officers were also driving slowly. They …waited in order to allow others cars that were behind them to pass by so they were not seen clearly, and they

still continued to take a longer route. They wanted to know who he saw and whether he was involved in something. They went on to state that the man would not be able to go to Malaysia and they were fully aware that he wanted to go to Malaysia in order to

[112] 'Target Scotland: Police Swoop on Al-Qaeda cell in our capital', The Mirror, 19 December, 2002; see also 'Hogmanay Party is terrorist's target; Plot to blow up Princes Street', Sunday Express, 22 December 2002 on how such information is leaked to the press by the security services

[113] 'Terrorism Accused given bail', BBC News Online, 8 April 2004

[114] 'Anti-Terrorism action dropped', BBC News Online, 9 December 2003

[115] 'Reveled: 20 al-Qaeda suspects on Scots hit-list', Scotland on Sunday, 15 August 2004

[116] 'Algerians claim lives at risk over terror 'slur'', The Scotsman, 18 August 2004

Case Study 14 continued

visit his wife. They stated that they had spoken to the authorities or they intended to speak to the authorities in the future to prevent the man entering Malaysia.

There were a number of cars that had passed and the man was afraid that he was going to be beaten up by the police officers. The police officers then brought out some pictures of naked women and they stated that they had done the man a favour by not showing these nude photos in front of the solicitor. The man stated that he did not have any concerns in relation to the photos. They were not his photos and that it was a second hand computer that he had purchased.

The man told them to stop the car. The police officers said that they could not stop the vehicle. The man told them again to stop the vehicle but they continued to drive. When the car stopped at some traffic lights, the man tried to get out of the car. One officer tried to hold on to him. He managed to pull himself free of the officer's grip on his upper arm and to get out. The man went to the bus stop, and asked a person if they had witnessed what had happened. Unfortunately the person had not. The man was very nervous and frightened at the incident that had taken place. He seriously thought that he was going to be assaulted by the officers. As he was too frightened to go back home, he decided to go to his relatives home in order to stay there.

Since the search had been carried out the man has been infringed of his privacy and has also been subjected to racial abuse by the neighbours. The man is too frightened to go back to his house because of the neighbours' insults.

On the 3rd March 2004, the man landed at a Malaysian airport and was denied the right to enter the country. He was brought back on the same day to the UK. He was informed by the immigration officers that the minister had made the decision that he could not enter the country and as a result he was not granted permission to enter the country.

CASE STUDY 15

Mahmoud Abu Ridah, a Palestinian victim of Israeli torture, was a very well know and much loved member of the community. Although highly eccentric following extensive Israeli torture, he was heavily committed to helping others and fundraised for charities in Afghanistan. He frequently travelled within the UK with an exhibition of photographs of schools, projects for wells, projects for work for widows and the details of a recognised UN charity for humanitarian aid to which these funds were transmitted. Mahmoud has been detained in Belmarsh since December 2001. Already traumatised, Mahmoud's mental health began to deteriorate rapidly. He was unable to eat and too weak to be out on a wheelchair. In June 2002, the Home Secretary ordered that he be removed to Broadmoor Psychiatric Hospital. This was against the wishes of Broadmoor who said he was not at all dangerous and mentally ill, but clearly suffering the effects of being confined in Belmarsh. To date, Mahmoud remains confined in Broadmoor.

Lack of Trust in the System

> ***"My family and I are living in a nightmare… I never thought the day would come when I would regret my 40 years in this country."***
>
> *(Ashfaq Ahmad, father of detainee awaiting extradition to US, Babar Ahmad)*

This regular harassment and abuse adversely affects the faith the Muslim community has in the British justice system. Men who are released without charge after months or years in detention may never again trust a law enforcement official. Their wives and children, who witness their husbands and fathers beaten and humiliated during pre-dawn raids, may not become faithful servants of the system. Stories spread with lightning speed within tight-knit

communities such as the Muslim community. The overall effect is complete distrust for a system which is perceived to be targeting them.

Lack of Cooperation with Authorities

As faith in the system diminishes, Muslim communities may feel themselves under attack and may fade away into ghettoes and away from the mainstream British community. Communities that perceive themselves as under attack withdraw into themselves where they feel safe. They will not seek redress for social ills in a system which they have lost faith in, they and this will only lead to further polarisation of the Muslim community.

A recent *Guardian/ICM* poll indicates that many Muslim see the "war against terrorism" as a "war against Islam" and believe that British anti-terror laws are being used unfairly against the Muslim community.[117] . The interviews with 500 Muslims showed that the desire to integrate into Britain's multicultural society had weakened over the previous 18 months, and a growing minority of Muslims felt that they have given up too much already.

In terms of counter-terrorism operations, this marginalisation may also be counter-productive and potentially dangerous. Thus far, it should be noted that the Muslim community has been a highly law abiding community, and even its opposition to issues such as discriminatory stops and searches, has been muted in its response.

The question must be asked however, how long can remain the case if the current effects of discriminatory legislation and institutionalised Islamophobia do not abate. If there are indeed a handful of Muslims who may wish to use violence to resolve grievances, they may be protected by sections of the community unwilling to cooperate with the authorities. The family of an individual who has been stopped and searched for no reason, who has been verbally abused and humiliated by the authorities, may not alert the police if they notice anything suspicious happening within the community. A community which perceives itself as under threat from the rest of society may sympathise with such individuals and their aims. Those falsely arrested and interned may be regarded as martyrs in the West's crusade against Islam. Alienation amongst some British Jews during and despite Britain's stand against Nazi Germany in the Second World War saw many join illegal militias in Palestine committed to perpetrating violent acts of terrorism against British soldiers policing the mandate in order to further their goal of a utopian Jewish state where they would be free from the persecution they felt in the country of their birth.

Likewise other communities including mainstream communities may feel justified to take the law into their own hands against individuals or groups of Muslims whom they perceive to be a threat based on their religious affiliation alone. IHRC has since 9/11 noted a growing number of incidences of this type of behaviour.

This feeds into the idea of "clash of civilizations" which is not conducive for a secure and cohesive Britain.

[117] 'Desire to integrate on the wane as Muslims resent 'war on Islam'', *The Guardian,* 16 March 2004

IX. LESSONS FROM THE PAST: FIGHTING THE IRA

> ***"Those who refuse to learn the lessons of history are condemned to repeat its mistakes"*** *(Winston Churchill)*

To truly understand the full extent and horrors of the suspension of civil liberties for security reasons, it is imperative to study Britain's previous war on terror against the IRA. In particular, Britain's criminalisation of its Irish community as well as experience of using internment in Ireland proved to be a complete disaster from which many important lessons must be learned.

Criminalisation of Irish Community in Britain

For 30 years during the period of unrest in Northern Ireland, known as "The Troubles", the Irish community in Britain was targeted as a suspect community. The actions of the IRA resulted in the largest ethnic community in Britain being judged guilty until proven innocent. For 30 years, millions of Irish people were stopped and detained at ports and airports. A study carried out by the Commission for Racial Equality in 1993 found that 60 per cent of Irish people surveyed in Britain had been stopped and questioned under the Prevention of Terrorism Act (PTA).[118]

Irish homes were regularly raided and thousands detained for anything from a few hours to seven days. Most were released without charge. Of the 7052 detained under the PTA between the 29th November, 1974 and the 31st December, 1991, 6097 were released without charge.[119] Many of these were held for days at a time, denied access to a solicitor, interrogated without any safeguards, and then released again – left with the stigma of being an Irish person arrested on suspicion of being involved in terrorism. An estimated ninety per cent of Irish people detained upon entry into Britain under the PTA were released without charge. 197 of those detained were charged with an offence under the PTA. Of these, three quarters were found guilty. Over half of this number received non-custodial sentences and of those who were jailed, many received terms of one year or less.

Miscarriages of justice involving the Guildford Four, the Birmingham Six and Judith Ward, who were framed for the IRA bombings of 1974 and then released after being found innocent in 1989, 1991 and 1992 respectively, proved the racism of the police and intelligence operatives, who were quite happy to see innocent Irish people remain in prison for long periods of time. It was all part of a climate of hysteria fostered by anti-terrorist legislation that effectively criminalised the Irish community.

The effect of the operation of PTA and the miscarriages of justice was to force the Irish community in Britain to isolate itself from the rest of British society. The Irish community retreated into itself. Irish pubs became haunts where people could go and mix with their own. Irish people were regularly forced to recall what they were doing and where they were at the time of a bombing. Many Irish regularly went absent from work the day after a bombing for fear of reprisals. The community was completely discriminated against and marginalised as a "suspect" community.

Overall, the PTA was a complete disaster in terms of counter-terrorism operation and Anglo-Irish relations. When he introduced it initially in 1974,

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[118] Bronwen Walter, Runnymede Trust, '*The Irish Community: Diversity, Disadvantage and Discrimination*'

[119] Paul Donovan, '*Are Muslims becoming the new Irish?*', The Muslim News, 28th May, 2004

then Home Secretary Roy Jenkins described it as a "draconian measure."[120] During the debate about the Anti-Terrorism Crime and Security Act, Roy Jenkins, now Lord Jenkins of Hillhead, commenting on the original Bill commented, "I think that it helped to steady a febrile state of opinion at the time and to provide some limited additional protection. However, I doubt it frustrated any determined terrorist …If I had been told at that time that the Act could still be on the statute book twenty years later, I used have been horrified …it is not one of the legislative measures of which I can be most proud."[121]

Internment

An infamous weapon used to fight the IRA in the past is one which is being used today to fight the new war on terror: internment.

On 9th August 1971, internment was introduced into Northern Ireland, as a weapon to fight the IRA. At dawn that day, 3000 British soldiers supported by RUC Special Branch officers, conducted raids on Catholic houses throughout Northern Ireland arresting a total of 342 suspected IRA members. Within 48 hours, 104 of these "suspects" were released without charge. The remainder were imprisoned at Crumlin Road Jail or on the Maidstone, a prison ship moored at Belfast Docks. As the arrests continued, the army had to open a disused RAF base called Long Kesh to accommodate the prisoners. Similar to the Home Secretary's statement today that internment would be used "sparingly"[122], the British army in Northern Ireland also promised selectivity; internment would be in the dozens, not the hundreds. By 1975, when internment was finally phased out, thousands of men had passed through the gates of Long Kesh, infamously known as "The Maze".

The policy of internment was introduced as a counter-terrorism measure officially to fight the IRA. The policy completely backfired. People were outraged when they see their families and neighbours being taken away. Armed raids on family homes often resulted in rioting. Up until 9th August, 34 people had died in the violence that year but just three days later, 22 more people had been killed. The following four months saw 147 more people killed[123]. Over three times as many people (467) were killed in terrorist attacks in 1972[124]. Thousands of people were forced to leave their homes in Belfast due to sectarian attacks and many left for refugee camps across the border. Internment increased support for the republican movement both within Ireland and abroad in the USA, and deepened hostility to the unionists and the British.

The overreaction of the state fuelled this violent response. Looking back on the period, many commentators have observed that internment acted as a "recruiting sergeant" for the IRA, radicalising many detainees without previous IRA contacts, and rallying supporters to their cause in response to the perceived injustice and oppression. "Internment had produced intense rage and resentment among those affected, prisoners and extended families alike. It had brought together men from all parts of the country and bonded them, even

[120] House of Commons, Official Report, November 25 1974, col. 35
[121] Hansard, House of Lords, November 27 2001, col. 199
[122] Secretary of State for the Home Department, "Reconciling Security and Liberty in an Open Society," Para. 29.
[123] Ibid at 1223
[124] ibid

those innocent of any involvement in political conspiracy, into an organic unit."[125]

Like today, the secret evidence used to identify the "terrorists" back then was based upon 'intelligence'. However, the Special Branch intelligence was so outdated and poor that scores of innocent people were arrested. Catholics were even more furious because internment was directed exclusively at their community. Of the 1,981 people detained without charge or trial during this period, 1,874 were Catholic Nationalists; only 107 of those interned were Protestant Loyalists, the first of whom was not taken into custody until February 2, 1973.[126]

Also similar to the conditions of detention of the Muslim detainees in Belmarsh and Woodhill today, those interned in Northern Ireland were kept in barbaric conditions. The police subjected detainees to interrogation often comprising of the use of the "five techniques," later branded as "torture" and "inhuman and degrading treatment" by the European Commission on Human Rights and Court respectively.[127]

Furthermore, it has now come to light that leading members of the British establishment and the British army, including the Defence Secretary and the Chief of General Staff of the time, completely opposed the policy of internment, and warned that it was solely a political act that would further destabilize the security situation. Confidential cabinet papers declassified in January 2002, after 30 years, reveal how the British government introduced internment in complete disregard of all advice from Whitehall and the counsel of Army chiefs.

On the 21st July 1971, the then defence secretary, Lord Carrington, sent Downing Street a letter advising against the move:

"The view of the GOC [Tuzo], with which the defence secretary entirely agrees, is that the arguments against resorting to internment remain very strong and other possibilities for disrupting the IRA should be tried first."[128]

A "note for the record" minutes a meeting subsequently held in the Commons on the 2nd August 1971 between Prime Minister Edward Heath, home secretary Reginald Maudling and Lord Carrington. It reads,

"The defence secretary confirmed, after consultation with the chief of the general staff, that General Tuzo still felt introduction of internment would have, on balance, a harmful effect on the security situation in Northern Ireland."[129]

Three days later, prime minister Heath told the unionist prime minister of Northern Ireland, Brian Faulkner that

"Internment was a major decision which could not be said – as the GOC had earlier made clear – to be justified by any military necessity. It must therefore

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[125] Feeney, Brian, *Sinn Fein: A Hundred Turbulent Years* (2002) as quoted in O'Connor and Rumann, 'Into the Fire: How to avoid getting burned by the same mistakes made fighting terrorism in Northern Ireland', *24 Cardozo Law Review 1657 at 1680*

[126] CAIN Web Service, Internment - Summary of Main Events, at http://cain.ulst.ac.uk/events/intern/sum.htm

[127] Ireland v UK (1978) 2 EHRR 25

[128] The Guardian, 1st January 2002

[129] Ibid

be regarded as a political act which would be matched in the form of a ban on [mainly loyalist Orange] marches."[130]

On the 21st September, over a month after the introduction of internment, Lord Carrington reported to the cabinet that

"It was too early to say internment had failed but it was known recruitment to the IRA was rising."[131]

Carver, the Chief of General Staff (1971-1973) gave an interview to the BBC's 'UK Confidential' programme in December 2001, regarding his role in the military preparations for internment. In it, Lord Carver states a number of reasons why both he and the department were opposed to internment.

> *"First of all, there was no agreement on how many or who should be interned and secondly, the preparations were not really ready, and thirdly were all the political objections to internment. And concern as is always the case when you shut up a lot of people all together who are troublemakers that they use their detention centre as a place for plotting more trouble."*

Lord Carver also revealed the real rationale behind the raids of Catholic homes:

> *"General Tuzo suggested – as something to show that the forces were doing something anyway – a policy of harassing known leaders, picking them up, interrogating them and then letting them go again. It was thought that you would be seen to be doing something, and secondly it might have an effect on interfering on what they were trying to do."*

'Here's one we made earlier'

> ***"The result of the passage of the Anti Terrorism Crime and Security Act 2001 is once again a legislative morass …there was no time for considered or sustained review."***
> *(Clive Walker, The Anti-Terrorist Legislation 7 (2002))*

In light of the above, noting the opposition of many members of the Establishment to the policy of internment, it is worthwhile to briefly study the passing into law of the Anti-Terrorism Crime and Security Act 2001, part 4 of which allows for internment. The Bill was introduced into parliament on the 12th November 2001. It contained 118 pages, 125 clauses and eight schedules. Yet it was hastily rushed through parliament… The government allowed a total of just 16 hours for a debate within the Commons on the Bill.[132] The Bill received its Second Reading on the 19th November.[133] A timetable motion was passed declaring that the Committee Stage and the Third Hearing should be completed in a further two days.[134] The derogation order was debated for only ninety minutes.[135] The Committee Stage of the full house occurred on the 21st and

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[130] Ibid
[131] Ibid
[132] Philip A. Thomas, 'Emergency and Anti-Terrorist Power: 9/11: USA and UK', *26 Fordham International Law Journal 1193 (April 2003) at 1217*
[133] ibid at 1218
[134] ibid
[135] ibid

26th November and finished at 23:57.[136] This was immediately followed by the Third Reading which was concluded at 00.00[137], i.e. the Home Secretary spoke for just three minutes.[138] The Shadow Home Secretary's opening comment was interrupted by the vote that went 323-79.[139] The Bill received Royal Assent on the 14th December 2001.

The Joint Committee on Human Rights expressed concern that "many important elements of the Bill were not considered at all in the House of Commons" and that it shared "the view of the House of Lords Select Committee on the Constitution that the inclusion of many non-emergency measures were inappropriate in emergency legislation which was required to be considered at such speed."[140]

On the 19th December 2001, eight men (all Muslims) were detained under the new legislation.[141]

The documents revealing the huge opposition to internment in Northern Ireland and the disastrous effect it had on the conflict were due to be released on the 1st January 2002. It is questionable whether the Act would have been passed and the eight men detained had the Bill been thoroughly debated in light of the new information, released just over two weeks later.

[136] ibid
[137] ibid
[138] ibid
[139] ibid
[140] Joint Committee on Human Rights, Anti-Terrorism Crime and Security Bill & Further Report, House of Lords, Official Report Vol. 51, 2001-2003, House of Commons, Official Report Vol. 420, 2001-2002 at para 2.
[141] Two of these men have chosen to leave the UK but are continuing to challenge their label as "terrorist". A third has been released on bail into house arrest after it was found he was going insane.

X. CONCLUSION

> ***"It is in conditions of conflict and emergency that states are most likely to trample on individual rights in the name of the public good, yet it is in relation to just such situations that states are most unwilling to accept any restraints on their power. The risk is that, in consequence, human rights come to be treated like lifts or elevators, which, one is told, should not be used in fires, just when they are what seem to be urgently needed."***
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> *(Simpson, B., Human Rights and the End of Empire: Britain and the Genesis of the European Convention, (Oxford, 2001)*

The current system of scaremongering and demonisation is completely abhorrent to system of justice associated with liberal democracies, like the UK. Whether the threat of terrorism on British soil is true, false or exaggerated, a suspension of fundamental freedoms and civil liberties is not the solution.

IHRC agrees with Professor Conor Gearty in that whatever legislation is passed to counteract terrorism should satisfy three fundamental principles in order to be both compatible with human rights and effective in its application:

1. Equality before the law: "terrorist violence should be treated in accordance with the ordinary criminal law and that departures from that law should be permitted only in situations of overwhelming necessity."
2. Fairness: "fair legislation should be clear, certain and internally consistent, with its effectiveness on these scores being judged … by reference to the requirements of the rule of law."
3. Human Dignity: "no system of counter-terrorism laws should be allowed to undermine the fundamental dignity of the individual."[142]

Professor Gearty further explains that "Britain is not vulnerable or more vulnerable to a terrorist attack because arrested persons are given access to their lawyers; because the prosecution is required to prove the commission of some objective crimes or because detention without trial is generally frowned upon. Where crimes are planned, attempted or committed, then the mechanisms for arrest and punishment are already firmly in place, surveillance and vigilant law enforcement are alternative to detention without trial by all the other European states (none of which have felt the need of emergency legislation) have shown."[143]

Indeed the current Prime Minister himself once recognised the futility of draconian legislation in the fight against terror. In 1993, as Shadow Home Secretary, he stated: "If we cravenly accept that any action by the government and entitled Prevention of Terrorism Act must be supported in its entirety without question, we do not strengthen the fight against terrorism, we weaken it. I hope that no Honourable Member will say that we do not have the right to challenge powers, to make sure that they are in accordance with the civil liberties of our country"[144]

Like the Irish community of yesteryear, the Muslim community in Britain today, regardless of nationality, background or ideology, has become suspect in the eyes of the law and in turn society. The direct targeting of Muslims under

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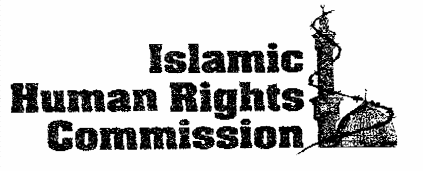
[142] *'Anti-Terrorism Crime and Security Act 2001 Review'* Professor Gearty (Rausing Director for the Centre of Study of Human Rights and Professor of Human Rights, LSE), 12 December 2002, Evidence for Public Hearing

[143] ibid

[144] Hansard, House of Commons, March 10, 1993, Col. 971

such draconian measures can only be of detriment to society at large. A culture of suspicion and suspension of civil liberties is not the way forward in the fight against terror. History has shown us on many occasions - from Nazi Germany to Bosnia and Rwanda - that the demonisation of any ethnic, racial or religious community is the first step towards a tragic destination.



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