British Anti-Terrorism:
A Modern Day Witch-hunt

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Woodhill Detainee Babar Ahmed (August 2004)

I.

INTRODUCTION

"It is all too easy for us to respond to terror in a way which undermines commitment to our most deeply held values and convictions, and which cheapens our right to call ourselves a civilized nation."

- Cherie Booth, (26 July 2005)[1]

[1] 19th Sultan Azlan Shah Law Lecture delivered by Cherie Booth in Kuala Lumpur, Malaysia on 26 July 2005

The Twenty First Century was supposed to herald in a new era of freedom, liberty and human rights throughout the world. World leaders and politicians swore that the mistakes and atrocities of the Twentieth Century would never be repeated and that a new epoch of tolerance and co-existence would exist irrespective of differences in race, gender or creed.

For Muslims living in Twenty-First Century Britain, the reality is a far bitterer pill to swallow. Since the introduction of the Terrorism Act 2000 and the events of September 11 2001, Muslims in Britain have found themselves under severe persecution by the British government, Police Force and other state institutions. Draconian anti-terrorism measures such as internment without charge, control orders and house arrest are normally associated with Burma and Zimbabwe. Yet this is what is happening in Britain today. Daily stop and search of tens of thousands of Muslims and hundreds of arrests of innocent Muslims have effectively demonised the Muslim community in Britain as "the enemy within". This, in turn with wholly irresponsible media coverage, has lead to a rapidly increasing level of resentment and intolerance of the community by the wider society. This has been a direct cause of the huge upsurge in Islamophobic attacks in Britain, particularly in the wake of the London bombings.

The new Terrorism Act 2006 will confer previously unthinkable powers on law enforcement authorities to counter terrorism and will effectively remove what few civil liberties remain in Britain today. They bear the hallmarks of authoritarian dictatorships rather than liberal democracies. Such laws are only the latest in a series of such measures which have been used to victimise British Muslims even before the events of September 11 2001.

However, such measures will not prevent terrorism similar to how draconian laws in police states around the globe do not prevent terrorism in those countries. As long as there is a perceived injustice held by a section of the population against the government and this injustice is not addressed, the threat of terrorism will remain. If we are truly committed to defeating terrorism, it is crucial that the root causes of terrorism are correctly identified and efficiently tackled. Not to do so will only perpetuate this "war" that has indiscriminately claimed the lives of thousands of innocents.[2]

[2] This report is a follow-up to *Terror in the Name of Anti-Terrorism* published in 2004, dealing with the British government's erstwhile policies.

II.

THE TERRORISM Act 2006

"Let no-one be in any doubt. The rules of the game are changing."

- Tony Blair (5 August 2005)[3]

[3] Prime Minister Press Conference, 5 August 2005

On 30 March 2006, following months of debate, three new pieces of legislation designed in full or in part to counteract terrorism received royal assent, becoming law. These were the Terrorism Act 2006, the Immigration, Asylum and Nationality Act 2006, and the Identity Cards Act 2006. These Acts are the latest pieces of anti-terrorism legislation introduced by the government, following on from the Terrorism Act 2000, the Anti-Terrorism Crime and Security Act 2001, and the Prevention of Terrorism Act 2005. The new measures introduced by these Acts will confer previously unthinkable powers on law enforcement authorities to counter terrorism and will effectively remove what few civil liberties remain in Britain today.

The Terrorism Act 2006 is a culmination of numerous proposals mentioned by the Prime Minister[4] and the Home Secretary over the past twelve months and in particular, since the London bombings, such as the Home Secretary's proposals for three new offences[5], the Association of Chief Police Officers' demand for more powers[6], the Prime Minister's twelve point statement[7], and the Home Office consultation document on deportation and exclusion[8]. Although, the final act omitted some of these proposals, the government continues to insist that such measures are necessary. Consequently, it is imperative to examine all measures suggested by the government in order to form an accurate analysis of what the future holds for Britain in terms of civil liberties and human rights.

Among the new measures introduced are the following:

- new offences of encouraging or indirectly inciting terrorism through glorification of terrorist acts
- preparation of terrorist acts
- attending a terrorist training camp anywhere in the world, and dissemination of terrorist publications
- extending the maximum period of pre-charge detention from 14 days to 28 days
- extending the grounds to proscribe organisations, namely those who glorify terrorism. [9]

It is important to note that the definition of "terrorism" used in the legislation is that incorporated from the Terrorism Act 2000. 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 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

[4] For example, Tony Blair's speech on the London bombings, delivered at the Labour Party national conference on 16 July 2005; Prime Minister's Press Conference 5 August 2005
[5] 18 July 2005
[6] 21 July 2005
[7] Prime Minister's Press Conference, 5 August 2005
[8] Home Office Consultation Document, 5 August 2005
[9] Parts of the following have been extracted from a joint briefing document entitled 'United to Protect our Rights' (Sept 2005), prepared and signed by the UK's leading civil society organisations, including Birnberg Peirce & Co., CAMPACC, Christian Khan Solicitors, East London Communities Against State Terror, Hizb ut-Tahrir, Islamic Forum Europe, Islamic Human Rights Commission, Liberty, National Civil Rights Movement, Muslim Association of Britain, and Muslim Council of Britain.

system."[10] 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 Robert Mugabe or Muhammar Qadhafi[11] 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 subjected to all the consequential measures.

Encouragement of Terrorism[12]

The new offence itself focuses mainly on the issue of glorification of acts of terrorism. This vague concept, modelled on the Spanish law of "apologia de terrorismo", and based on the principle of criminalising people for what they say rather than what they do, is at the heart of a number of the current legislation.

"On 5 August 2005, the Prime Minister suggested that the new offence of "indirect incitement" will now cover "condoning", "glorifying" or "justifying" terrorism (point 2 of the statement)[13], broadening its potential scope significantly. The obvious concern is that people who express support for armed resistance to the occupation of Palestine or Iraq, for example – resistance that many people around the world feel is legitimate – could be caught-up in the new laws."[14]

The legitimacy of this resistance to occupation and oppression is not just a matter of public support but also something both justified and recognised under international law. In essence, the law "makes a criminal offence out of a belief shared by almost every society, religion or philosophy throughout history: namely that people have the right to take up arms against tyranny and foreign occupation."[15] To vocalise one's support for the enforcement of this right may constitute 'glorification' for the purposes of the legislation. Furthermore, the law is drafted very broadly to include the 'glorification' of "acts of terrorism" in the past. Despite the government's apparent concession that intent is required for an offence to be committed under this provision, the measure remains problematic for its vagueness.

Furthermore, there is no need to prove intention on the part of the person committing the offence. A person commits the offence if they publish (including speech) a statement believing, or having reasonable grounds to believe that people will take it as a direct or indirect encouragement to commit terrorist acts. "Reasonable grounds" means reasonable according to what members of the public would understand to be direct or indirect encouragement given the

[10] Terrorism Act 2000, Section 1(1)
[11] Indeed on 3 October 2005, five Libyan refugees were arrested on suspicion of being members of the Libyan Islamic Fighting Group, an armed opposition group seeking to overthrow Qadhafi. The men face no charges in this country but are facing deportation to Libya where they face a serious risk of being tortured or even executed.
[12] Terrorism Act 2006, Section 1
[13] This offence is incorporated in Section 1 of the Terrorism Bill 2005 as "Encouragement of Terrorism"
[14] 'United to Protect our Rights', (Sept 2005), p5
[15] Milne, S., 'This law won't fight terror – it is an incitement to terrorism', *Guardian*, 13 October 2005

contents, circumstances and manner of the statement. It is irrelevant whether anyone was in fact encouraged or even where the statement was felt to be encouragement by third parties.

Furthermore, the provision may prove potentially discriminatory in its application. Certain statements made by Muslims will be regarded as "glorification" due to the Muslim audience. Similar comments made by members of other communities will not be held to the same standard of accountability. For example, both the Egyptian cleric Sheykh Yusuf al-Qaradawi and Cherie Blair[16] have publicly stated that they can understand why oppressed Palestinians become human bombers. However, there is infinitely more chance of Sheykh Qaradawi being arrested for glorification than there is of Cherie Blair."[17]

There is already sufficient incitement to hatred and incitement to murder legislation in place in Britain to deal with such issues. These laws are much tighter and more defined than the vague law of "glorification" which can potentially even criminalise careless banter.

The Association of University Teachers (AUT) and Natfhe have come out in virulent opposition to the creation of this offence as well as other offences such as terrorist training and dissemination of terrorist publications (see below) as a threat to academic freedom.[18] Its objection to the offence of "glorification" is that it would severely restrict the "legitimate study of controversial historical events, terrorist activity, the motivation of those who use terrorist means and the use of violence for political ends" during which "students are required to read, listen to or watch texts and statements that do indeed glorify terrorism or could be seen to encourage it." This would mean that a lecturer would commit an offence if he/she had reasonable grounds to believe that a student was "likely to understand it as a direct or indirect encouragement or other inducement to the commission, preparation or instigation of acts of terrorism or Convention offences."

Preparation of Terrorist Acts[19] and Training for Terrorism[20]

> *"**I question whether it is the role in our law, or even enforceable, to make it a criminal offence triable in our country to fight in a revolution the aims of which we support. The example of the ANC before the release of Nelson Mandela almost automatically springs to mind."***
>
> *- Lord Carlile[21]*

"The reason for creating new offences of "acts preparatory to terrorism" is still quite unclear. Under the Terrorism Act 2000, the "possession of an article in circumstances which give rise to a reasonable suspicion that [it] is for a

[16] "As long as young people feel they have got no hope but to blow themselves up you re never going to make progress" (June 2002)
[17] 'United to Protect our Rights', (Sept 2005), p5
[18] Association of University Teachers, *'The Terrorism Bill and Academic Freedom'* (October 2005)
[19] Terrorism Act 2006, Section 5
[20] Terrorism Act 2006, Section 6
[21] Proposals for HM Government for Changes to the Laws against Terrorism, Report by the Independent Reviewer, Lord Carlile of Berriew Q.C., para 35

purpose connected with the commission, preparation or instigation of an act of terrorism" already carries a ten year jail sentence (s.57). It is an equally serious offence under the Terrorism Act to "collect information" or "possess documents" that could be used for terrorism (s.58). The Home Secretary has stated that "the new offence will lead to the capture of those planning serious of acts of terrorism", implying surveillance powers rather than additions to an already broad offence. It is also possible that visiting a "jihadist" website could also be in some way criminalised, notwithstanding the fact that visiting a website is obviously completely different to planning "a serious of act of terrorism"."[22]

"A "new offence" of "terrorist training" can similarly add little to the existing Terrorism Act under which those who give or receive training in the making or use of weapons or explosives, or recruit persons for this purpose, are also liable to ten years in prison (s.54)."[23] The law however is much broader in that Section 8 makes it an offence to merely be in attendance at any place in the world, where such instruction is taking place. As Lord Carlile points out, this would leave it open to prosecute respected journalists reporting in the public interest from "camps of fighting groups revolting against despotic regimes whose overthrow is greatly desired by the United Kingdom and others."[24]

Furthermore, the new offence criminalises the person who gives the training or who "knows or suspects" that the training will be used for terrorist purposes. Thus, as Liberty have pointed out, "those who gave flight training to the September 11 bombers should have had their suspicions aroused by the lack of interest in certain parts of the training" , thus rendering them potentially liable for prosecution.

The teaching of science would be severely effected as the offence outlaws any instruction or training in the handling of noxious substances if the person "knows or suspects" that the student might use the skills for terrorism. The AUT quite rightly has stated that it cannot begin to implement a policy whereby university lecturers would refuse to teach individual students based on their "suspicion" that many years down the line, that particular student may use his skills for the purposes of terrorism. [25] The AUT is resolute that it will not be used to spy on its students under the threat of prosecution.

Dissemination of Terrorist Publications[26]

The offence will be one of publishing and possessing for distribution of publications that indirectly incite terrorist acts through glorification or are likely to be useful to a person committing or preparing an act of terrorism. In the context of the anti-terror legislation as a whole, this clause is extremely frightening. In his report of 6 October 2005, the Independent Reviewer of anti-terrorism legislation, Lord Carlile of Berriew QC, concluded that these new laws were necessary to counter "people being persuaded towards terrorism by apparently authoritative tracts wrapped in a religious or quasi-religious content."

[22] 'United to Protect our Rights' (Sept 2005) p4
[23] ibid
[24] Carlile Report, para 38
[25] 'Anti-terror bill 'threatens academic freedom', *Guardian*, 11 October 2005
[26] Terrorism Act 2006, Section 2

A single example will suffice to show how menacing such a law will be for the Muslim community. As we have seen, glorification is likely to be interpreted as support for those who fight oppression and injustice around the world, using diplomacy where possible and violence where necessary. The sacred book of the Muslims, the Qu'ran, and certain statements of the Prophet Muhammad (peace be upon him) discuss the issues of fighting oppression in much depth. Ultimately, those who fight against oppression are exalted and praised as heroes and promised Paradise in return for their blood. For anyone to even give a Qu'ran as a gift to another may be likely to fall foul of this provision as it glorifies those who die fighting in the way of Allah against injustice.

There is a deep concern that this law will stifle the honourable traditions of freedom of speech and debate within the Muslim world where issues of politics and jihad are often discussed. In particular, this will have a very chilling effect on Islamic bookstores and distributors who publish and sell a variety of literature including those which discuss Islamic politics and warfare.

The AUT has also expressed its deep concerns that such an offence would have grave repercussions for academic freedom and debate, with lecturers risking prosecution even if their intentions were utterly benign.[27] Such a situation could arise through the handing out of primary or secondary source materials which themselves constitute encouragements to terrorism.

Pre-Charge Detention of Terror Suspects[28]

Habeas Corpus is an ancient tradition of the civil law. "No freeman shall be taken or imprisoned or disseised[29] or exiled or in any way destroyed, nor will we go upon him nor will we send upon him except upon the lawful judgment of his peers or the law of the land."[30]

More recently, Article 5 of the Human Rights Act 1998 provides protection of liberty and security for the person. Section 5(3) of the Act states that anyone arrested or detained must be brought before a judge within a reasonable time and tried or bailed.

Although both the government and the Association of Chief Police Officers both lobbied heavily for detention for up to 90 days without charge, ultimately a maximum of 28 days was imposed. The proposal to hold suspects for such a lengthy period must be seen in the context of the government's intention to revisit administrative detention (without charge) which was struck down by the House of Lords, leading to the "control orders" legislation … [these] violate the right to a fair trial and the prohibition against arbitrary detention under Article 5 of the ECHR, from which the UK has already infamously derogated.

Before this Act, British law already allowed terror suspects to be detained for up to 14 days without charge.[31] A Foreign Office dossier from October 2005 showed that this was the longest period of pre-charge detention throughout Western Europe, the US, Canada, and Australia.[32]

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[27] Association of University Teachers, *'The Terrorism Bill and Academic Freedom'* (October 2005)
[28] Terrorism Act 2006, Section 23
[29] i.e. removed
[30] Magna Carta 1215, Clause 39
[31] Increased from 7 days on 20 January 2004
[32] Counter-Terrorism Legislation and Practice: A Survey of Selected Countries, FCO, 12 October 2005

"There is no evidence that this is not enough time to make decisions on whether to charge suspects or not. The longer period of detention without charge is likely to encourage the police to make arrests not based on concrete intelligence but as "fishing expeditions" This aggressive policing would constitute harassment and alienate the Muslim community, who will feel increasingly criminalised."[33]

There is also a serious concern as to where suspects would be detained for 28 days. Police stations do not have the facilities to cater for such lengthy periods of detention and should they be transferred to a prison, there is great uncertainty as to whether suspects will have access to solicitors and family.

Extended Powers of Proscription[34]

Section 21 of the Act allows the Home Secretary to proscribe organizations involved in or associated with the glorification of acts of terrorism. Due to the broad definition given to "terrorism", this is an extremely dangerous development as it opens the door for non-violent groups to be proscribed for defending the right of resistance under international law.

Intercept Evidence

Consistently opposed by intelligence services for many years, the Act will, for the first time, allow evidence obtained from intercepted communications to be admissible in court. The UK is the only country in the world, apart from Ireland, to have an absolute ban on the use of such material. The use of such evidence would also be subject to the normal safeguard of the judicial discretion to exclude under section 78 of the Police and Criminal Evidence Act 1984.[35]

Despite this move, this will not put an end to secret courts and secret evidence, whose reason for being existed because of the inadmissibility of intercept evidence. Now the government is proposing to hold secret courts in which intercept evidence will be admissible.

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

The government has consistently contended that the powers being proposed are in line with other Western Democratic countries and in October 2005, it commissioned a report to be drafted by the Foreign and Commonwealth Office to this end. The results of the report, which examined legislation and police powers in 10 other Western Liberal Democracies, revealed that Britain was proposing the toughest anti-terror legislation in all.[36] For example, in countries

[33] 'United to Protect our Rights' (Sept 2005), p8-9
[34] Terrorism Act 2005, Section 21
[35] 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."
[36] 'Counter-Terrorism Legislation and Practice: A Survey of Selected Countries' (FCO; Oct 2005)

such as France and Spain, suspects could be held without charge for only 4 and 13 days respectively.

III.

THE CLAMPDOWN

ON

“EXTREMISM”

"They demand the elimination of Israel; the withdrawal of all Westerners from Muslim countries, irrespective of the wishes of people and government; the establishment of effectively Taleban states and Sharia law in the Arab world en route to one caliphate of all Muslim nations."[37]

- Tony Blair (16 July 2005)

[37] Tony Blair's speech at the Labour Party national conference on 16 July 2005

In addition to these new laws, the government has also repeatedly expressed its desire to tackle "extremism". To do this, it is prepared to ban non-violent political groups, shut down places of worship, introduce biometric ID cards, exclude certain individuals from entering the country, and deport foreign nationals to countries notorious for the use of torture and extrajudicial killings.

Tony Blair's twelve point plan seemed to be as much to tackle "extremism" and "extremists" as to counter terrorism. The difficulty lies in the fact that such a term is relative, undefined and unrecognized under British law. However, in his speech at the Labour Party national conference on 16 July 2005, Blair outlined what he called the "barbaric ideas" of Muslim extremists who promote this "ideology of evil."

> *"They demand the elimination of Israel; the withdrawal of all Westerners from Muslim countries, irrespective of the wishes of people and government; the establishment of effectively Taleban states and Sharia law in the Arab world en route to one caliphate of all Muslim nations."*[38]

Given their widespread currency within the mainstream media, it is important to carefully examine more closely these ideas being labelled as "extremist".

The Elimination of Israel

The idea that Israel should be eliminated is portrayed as a violent and hate-filled desire, yet in practical effect this type of accusation has been used by pro-Israeli activists and advisors against anyone, including many Muslims who seek and / or struggle for the liberation of Palestine, many of whom advocate a one-state solution, be it as one secular Palestine, a bi-national Israeli state or indeed a theocratic state or some other form of religious state including khilafah and religious democracy. The solution of the Palestinian problem is warranted by both human conscience and the dictates of international law, and is a passion shared by most Muslims. This in no way means the elimination of Jews or the Jewish people, yet increasingly this charge has been used by Zionist activists against all those who would seek justice in the Middle East from whichever background they hail. The one-state solution idea is shared not just by many Muslims but also by numerous academics, journalists and international lawyers from a variety of faith and non-faith backgrounds.

It is alarming that what was once the rhetoric of the most right-wing Zionist groups and advocates is now being espoused by the British Prime Minister. Labelling Muslims in this way not only demonises them further in the public psyche but condemns a very legitimate and normative aspiration for liberation as unacceptable.

The Withdrawal of all Westerners from Muslim countries

No Muslim group, let alone al-Qaida, demands that all Westerners be removed from Muslim countries. What most Muslims in Britain and across the world do demand is that all foreign occupying troops leave Iraq and Afghanistan and that American military bases in Saudi Arabia be removed. Such a demand is in line with international law. Mr Blair's claims that such demands are made "irrespective of the wishes of the people and government" is particularly absurd

[38] Tony Blair's speech at the Labour Party national conference on 16 July 2005

as these very people are forced to live under authoritarian dictatorial regimes where freedom of political expression is denied.

Shariah Law and the Caliphate

Again the aspiration for shariah law, Caliphate etc. is portrayed as 'evil', 'violent' and at odds with all things considered acceptable by 'British' or at least 'Blairite' standards. This undermines not only the fact that there are hugely varying and disparate notions of what both are or might be that are held amongst Muslims, it condemns all forms of aspiration under these banners. If nothing else and taken on face value as a statement of fact the 'demand and striving to establish Islamic law or shariah in the Arab world' is a wholly legitimate aspiration of those who seek it, as is any other political project as a matter of democratic right. Shariah, Islamic law, political Islam in its many guises and other forms of political theory and aspiration based on religious values are probably ideas that inform and are sought by the vast majority of Muslims throughout the world and not of a radical fringe minority. Blair's statements condemns them all as hate-filled and hateful, despite the fact that many support these ideas on the basis that they may bring better cohesion and harmony to diverse societies. Although elements of Islamic law may not be agreed upon by Western powers, if democracy is to have any meaning whatsoever, those who yearn for Islamic law in their countries should be entitled to work toward this.

Likewise, the desire to unite the Muslim nations under one Caliphate is also a legitimate aspiration of Muslims, and many have argued that Muslim nations have the right to form political unity in a similar fashion to how American states united to form the USA or how European nations united to create the EU. It may seem an idealistic concept but to condemn the desire of Muslims to have one legitimately elected leader is similar to condemn the Pope's position in the Catholic Church.

This attack on Shariah and the Caliphate was repeated in even stronger terms by the then Home Secretary Charles Clarke in a speech made in Washington DC in October 2005. In his speech, Mr Clarke unequivocally stated that

> *" …there can be no negotiation about the re-creation of the Caliphate; there can be no negotiation about the imposition of Sharia law"*[39]

Such spiteful rhetoric by leading members of the government make it clear that when they condemn extremism, in reality they condemn opposing oppression, criticising British and American foreign policy, and all forms of political Islam.

Proscription of Hizb-ut-Tahrir

Already, the government has openly declared its desire to proscribe non-violent groups such as Hizb-ut-Tahrir[40] Although Hizb-ut-Tahrir has frequently been at odds with other members of the Muslim community on various issues, it is

[39] Speech by Home Secretary at the Heritage Foundation in Washington DC on 5 October 2005 regarding the UK's approach to terrorism and extremism. The Home Office has not placed the speech on its website but has stated that copies are available from the Home Office Press Office. The full text of the speech can be found at http://www.gnn.gov.uk/Content/Detail.asp?ReleaseID=172368&NewsAreaID=2&print=true

[40] Prime Minister's Press Conference 5 August 2005

universally recognised as a non-violent organisation which has routinely condemned violence and terrorism.

What is of particular concern is the grounds for such proscription and whether these will constitute the criteria for future proscription in any new anti-terror bill. If Hizb-ut-Tahrir is being proscribed for speaking out against British foreign policy, then what of the 2 million British people who marched against the Iraq invasion? If Hizb-ut-Tahrir is to be proscribed for criticising despotic rulers throughout the Muslim world, then how will the government deal with Amnesty International, Human Rights Watch and other NGOs who routinely condemn these regimes? If it is for calling for the uniting of Muslim lands under one Caliphate that Hizb-ut-Tahrir is being proscribed, then how will the government deal with all the other Muslims in Britain who share this belief? There is not one instance in British history of a non-violent group ever being proscribed. Even Sinn Féin, at the height of the Troubles in Northern Ireland, was never proscribed. To proscribe Hizb-ut-Tahrir is to follow the tradition of dictatorial regimes throughout the world which do not tolerate political dissent and proscribe non-violent organisations with alternative viewpoints.

"There can be no justification for prosecuting Hizb-ut-Tahrir and not the British National Party, whose members have been accused of inciting and perpetrating violent racist acts. In a democracy, neither should be proscribed. Those of us who disagree with them should confront them politically. If their members break the law they should be dealt with by the criminal justice system.

Since the 7 July bombings there has been a UK-wide increase in faith related and racially motivated attacks and widespread violence against individuals, their homes and families, businesses and places of worship.[41] The British National Party has been distributing leaflets with images from the London bombings and the question "isn't it about time you started listening to the BNP"? They have been spurred on – "indirectly incited" perhaps – by a rightwing media intent on an "extremist" witch-hunt. The government is not doing enough to confront this form of extremism. On the contrary, some of its proposals pander directly to it."[42]

Closure of Places of Worship

Mr Blair also mentioned a proposed new power to order the closure of places of worship that are used as centres for fomenting extremism.[43] On 6 October 2005, the Home Secretary published a consultation document with this very proposal.[44] Although ultimately the proposal was rejected due to almost universal criticism, it is important to study it to understand the underlying reasoning behind many of the government's proposals.

The proposed power would have required those controlling a place of worship (the trustees or the registered owner of the property) "to take steps to stop certain extremist behaviour occurring" in that place of worship. The definition of "extremist behaviour" was defined as what "the police reasonably believe

[41] Police figures revealed on 2 August 2005 showed a 600% increase in faith-hate crimes following the London bombings. See 'Faith hate crimes up 600% after bombings' *METRO*, 3 Aug 2005

[42] 'United to Protect our Rights', (Sept 2005), p9-10

[43] *"We will consult on a new power to order closure of a place of worship which is used … for fomenting extremism"*, Prime Minister Press Conference, 5 August 2005

[44] Home Office Consultation Document, 'Preventing Extremism Together, Places of Worship', (October 2005)

amounts to support for a proscribed organisation under section 12 of the Terrorism Act 2000, or encouragement of terrorism as proposed in the Terrorism Bill." If the controllers failed to take reasonable steps, they would be guilty of an offence. In addition, a further order could be given restricting the use of the place of worship which could include temporary closure of parts or all of the premises.

It is quite obvious from the wording of the document and from the Prime Minister's own wording that such a law was being designed to shut down only one specific place of worship – the mosque. Once again, it is fair to assume from the given definition of "extremist behaviour" above that any criticism of foreign policy or discussion of political Islam in a mosque would have resulted in it being shut down. This removal of politics from the mosque would only have resulted in such topics being forced underground.

"The talk of 'closing extremist mosques' suggests the government cannot differentiate between individual responsibility and blanket criminalisation. In a recent trial in which a number of defendants had an association with the Finsbury Park mosque, the prosecution itself emphasised that thousands of law-abiding persons worshipped at that mosque weekly. They did not and could not criminalise the mosque in its entirety."[45]

More worrying was the raising of the question within the consultation of whether place of worship would extend to "temporary meeting rooms" and "faith schools" for the purposes of the proposals. For the government to suggest such a proposal is for it to criminalise Muslim children as potential "extremists" for their choice of schooling. Even during the period when Britain was being subjected to a relentless bombing campaign by the IRA, no similar proposal was raised to close Catholic churches or Irish pubs where such "extremism" was being discussed.

ID Cards[46]

In spite of the widespread opposition to the plan, the Identity Cards Act Act 2006 was passed into law in April 2006. This will see the introduction of a British national identity card from 2008. From 2008 everyone renewing a passport will be issued an ID card and have their details placed on the associated database - the National Identity Register (NIR). Registration will become compulsory for all UK residents by 2013. It is estimated that by this date up to 80% of the working population will already have some kind of biometric identity document.

The NIR is the most intruding aspect of the scheme. Although the ID card itself will contain little information, the NIR will function as a central population register containing a wide range of details of every UK citizen and resident aged from 16 years and 3 months. Section 1 and Schedule 1 of the Act sets out more than fifty categories of information required for the register (subject to change by regulation). The Act contains no provision for Parliament to decide what information will be stored in or on the card. This will be left to the discretion of the Home Office. From October 2006, first time applicants for passports will have to attend an interview, have their fingerprints taken and

[45] 'United to Protect our Rights', (Sept 2005),, p6

[46] Much of the information in this section has been taken from Wikipedia and the excellent NO2ID website http://www.no2id.net/

irises scanned. From 2008 the same will apply to those wanting to renew their passports.

A person's details will be entered into a national identity database, and from 2010 they will be issued with a card that will include a microchip holding biometric information, including their fingerprints, iris or facial scans.

Section 18 of the Act allows the disclosure of information from the register without the individual's consent to (among other agencies) police organisations, the security services, Inland Revenue, the Department for Work & Pensions, the Serious Organised Crime Agency and Customs & Excise.

Due to the immense opposition to the scheme, the government has stated that the ID cards will be introduced on a voluntary basis, coming to be compulsory at a later date. However a number of bodies have pointed out that many people will not have this option to avoid getting an identity card in the voluntary phase. While agreeing that the scheme *could make a significant contribution to achieving the aims set out for it by the Government*[47] among their criticisms the Select Committee on Home Affairs pointed out that anyone needing a new passport or driving licence would be automatically added to the National Identity Register, and therefore *to describe the first phase of the Government's proposals as 'voluntary' stretches the English language to breaking point*[48]. There has also been speculation that motorists could be required to register for an identity card under Section 28 of the Road Safety Bill, which makes it a criminal offence to refuse to hand in a driving licence and buy a new one specified by the Secretary of State.[49] Discussions are also taking place which might lead to compulsory registration for those applying for a Criminal Records Bureau check[50].

The contention that such a scheme is necessary to tackle terrorism has been rejected by both the former Director General of Britain's counter-intelligence and security agency MI5, Dame Stella Rimington, and the government's own independent reviewer of anti-terrorism legislation, Lord Carlile of Berriew QC. In an interview to GMTV in January 2006, Lord Carlile said

"I can't think of many terrorist incidents, in fact I can think of very few... that ID cards would have brought to an earlier end… ID cards could be of some value in the fight against terrorism but they are probably of quite limited value…They would be an advantage but that advantage has to be judged against the disadvantages which Parliament may see in ID cards. I certainly don't think the absence of ID cards could possibly have any connection with the events of last July … There may be a gain from the security viewpoint in the curtailment of civil liberties, but Parliament has to be the judge about whether the proportion is right."[51]

In November 2005 former chief of MI5 Dame Stella Rimington also questioned the usefulness of the proposed scheme. Addressing the Association of Colleges

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[47] Home Affairs Select Committee – Fourth Report;
http://www.publications.parliament.uk/pa/cm200304/cmselect/cmhaff/130/13010.htm
[48] Home Affairs Select Committee – Fourth Report;
http://www.publications.parliament.uk/pa/cm200304/cmselect/cmhaff/130/13007.htm
[49] Road Safety Bill [HL] (Report Stage), 29 Nov 2005;
http://www.publications.parliament.uk/pa/ld199900/ldhansrd/pdvn/lds05/text/51129-04.htm
[50] Identity Cards Bill (Third Reading), 6 Feb 2006;
http://www.publications.parliament.uk/pa/ld199900/ldhansrd/pdvn/lds06/text/60206-08.htm
[51] Interview with GMTV, 29 January 2006

annual conference, she stated, "*My angle on ID cards is that they may be of some use but only if they can be made unforgeable - and all our other documentation is quite easy to forge …ID cards may be helpful in all kinds of things but I don't think they are necessarily going to make us any safer … ID cards have possibly some purpose. But I don't think that anybody in the Intelligence Services, particularly in my former service, would be pressing for ID cards*."[52]

Former Home Secretaries David Blunkett and Charles Clarke are both on record as saying that ID cards will not stop terrorism, Clarke admitting that they wouldn't have stopped the July 7 bombings.[53] In addition, experience from Europe has shown that a similar ID card scheme in place in Spain did nothing to prevent the Madrid bombings of March 2004.

Apart from concerns about privacy, costs and Britain's drifting into a totalitarian state, there is a danger of such information falling into the wrong hands. As pointed out on Wikipedia, "Governments of a number of countries have oppressed and even exterminated sections of their population for reasons including race, religion, or political views. Within living memory such events have taken place in countries normally regarded as civilised, including the USA (racial segregation and McCarthyism), Germany (during The Holocaust), Italy (against Socialists, Catholics and Jews under Mussolini), and France (against Jews under the Vichy regime). While the British mainland may have been relatively stable throughout these periods, there is no guarantee that this will continue indefinitely. Providing government with a database of information on all those in the country would make it easier, for the government as a whole, and for its civil servants to oppress citizens to lesser or greater extent. The machinery of government switches from being a servant of the people to being their master."

Examining Magistrates

A proposal suggested in recent months has been to hold special trials for terrorism cases based upon the French system of *juges d'instructions* or examining magistrates. 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

[52] 'Ex-MI5 Chief Sparks ID Card Row', *BBC News Online*, 17 November 2005

[53] Asked by BBC Radio 4's Today programme if ID cards could have prevented Thursday's atrocity, Mr Clarke said: *"I doubt it would have made a difference. I've never argued ... that ID cards would prevent any particular act. The question on ID cards, but also on any other security measure actually, is on the balance of the ability to deal with particular threats and civil liberties, does a particular measure help or hinder it? I actually think ID cards do help rather than hinder. If you ask me whether ID cards or any other measure would have stopped yesterday, I can't identify any measure which would have just stopped it like that."* ; Today programme, BBC Radio 4, 8 July 2005

intelligence material which the defence has not had an opportunity to contest.[54] 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."[55]

However, such a method utilises the offence of "associating with wrongdoer" in order to convict suspects violating the fundamental freedom of association. 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. Such a law would have the additional effect of causing divisions within the Muslim community as Muslims would refrain from speaking to, meeting with or even shaking hands with other Muslims and would avoid mosques and Islamic events out of fear of being associated with a wrongdoer. The ultimate result of this would be a severing of the bonds Muslims have with one another both in the UK and abroad. Furthermore, a report by the International Federation for Human Rights into these prosecutions in France concluded that the French system violated the European Convention on Human Rights, adding that it had 'inflicted grave, often irreparable damage on the victims'.[56]

Deportation and Exclusion[57]

"To the Prime Minister's interpretation of "extremism" can be added the Home Office's list of "unacceptable behaviours" (which applies to "any non-UK citizen whether in the UK or abroad"): "writing, producing, publishing or distributing material", "public speaking including preaching", "running a website" or "using a position of responsibility such as a teacher, community or youth leader" to express views which the government considers:

- Foment terrorism or seek to provoke others to terrorist acts
- Justify or glorify terrorism
- Foment other serious criminal activity or seek to provoke others to criminal acts
- Foster hatred which may lead to intercommunity violence in the UK
- Advocate violence in furtherance of political beliefs

The Foreign Office is working on a database of foreign "extremists" and the Home Office a "list" of "specific extremist websites, bookshops, centres, networks and particular organisations of concern" in the UK". It is entirely predictable that the resulting "clampdown" will be perceived as censorship of those who might criticise British foreign policy or call for political unity among Muslims. This is disingenuous to say the least, carrying the dual risk of "radicalisation" and driving the "extremists" further underground, to use the government terminology."[58]

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[54] 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
[55] The Carlile Review 2003, para. 101
[56] As quoted in 'Now Blunkett Plans to Jail Friends of Terrorist Suspects', *The Observer*, 11 November 2004
[57] Home Office Consultation Document, 5 August 2005
[58] 'United to Protect our Rights', (Sept 2005), p6-7

"The Home Secretary has long enjoyed wide-ranging powers to exclude and deport people from Britain that he deems "not conducive to the public good" and, under a law drawn-up ingeniously to cover a single individual, can also strip British nationals of citizenship if they have a second nationality . . . The "problem" (as the government sees it), is Article 3 of the ECHR (as incorporated into the UK Human Rights Act) which prevents the government removing people to third countries in which they face a risk of torture or inhuman or degrading treatment (a proviso which has been upheld by the UK courts time-and-time again). The government's solution is a series of "memoranda of understanding" (MoUs) with third countries that persons being returned there will not be mistreated. The first such "understanding" was reached with Jordan … though it is not at all clear from the text that the MoU even expressly prohibits the death penalty. "Not worth the paper it's printed on" said Amnesty International. On 11 August the first ten "extremists" were seized pending deportation. These were the very same individuals who had been interned and then subject to control orders. A number have severe mental health problems as a result of their indefinite detention; one was seized from a psychiatric unit. Their families and lawyers were initially not told where they were taken to and the Home Office denied repeated requests for this information. Most of the men face expulsion to Algeria. The decision to rely on diplomatic assurances from a regime that the government knows on strong evidence make use of torture undermines the universal international rejection of such "assurances"."[59]

The case of these men must be studied in detail in order to truly understand the breakneck speed with which civil liberties have been eroded in Britain.

[59] ibid

IV.

THE DETAINEES

"The real threat to the life of the nation, in the sense of a people living in accordance with its traditional laws and political values, comes not from terrorism but from laws such as these. That is the true measure of what terrorism may achieve. It is for Parliament to decide whether to give the terrorists such a victory."

- Lord Hoffman (2004)[60]

[60] A and others v Secretary of State for the Home Department [2004] UKHL 56 at para 97.

Internment

Following the attacks of September 11 2001, new anti-terror legislation in the form of the Anti-Terrorism Crime and Security Act 2001 was fast-tracked through parliament coming into force in December 2001. The most controversial aspect of the legislation was contained in Part 4 Section 23 which empowered the Home Secretary to certify any foreign national as a "suspected international terrorist" if he reasonably (a) believed that the person's presence in the United Kingdom was a risk to national security, and (b) suspected that the person was a terrorist. Such a certification permitted the Home Secretary to detain that person without charge, by categorizing him or her as someone that the UK intended to deport or to extradite, even where it was not actually possible to deport or extradite the person on the grounds that he or she would face torture if removed[61]. The ultimate effect of this measure was to permit the indefinite detention without charge of foreign nationals.

Detainees were allowed to challenge their detention in a body called 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.[62] 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[63]. British nationals have a right to remain in the 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.[64] In October 2004, a specially convened nine-judge panel in the House of Lords heard 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. On 16 December 2004, the Law Lords made their ruling that the detentions were incompatible with Articles 5 and 14 of the European Convention on Human Rights in so far that they were disproportionate and permitted detention of suspected international terrorists in a way that discriminated on grounds of nationality or immigration status.[65]

[61] Anti-Terrorism Crime and Security Act 2001, s.23(1)
[62] Chahal v United Kingdom (1997) 23 EHRR 413
[63] A, X and Y and others v Secretary of State for the Home Department [2002] EWCA Civ 1502, 25 October 2002
[64] A & 9 Ors v Secretary of State for Home Department [2004] EWCA Civ 1123
[65] A & Ors v Secretary of State for Home Department, House of Lords, 16 March 2004

In total, seventeen persons were certified as “suspected international terrorists” by the Home Secretary. Two of these chose to leave the UK for a third country with three others being eventually released with their certifications revoked in 2004 and 2005 following lengthy periods in detention. Following the decision of the Law Lords, and the expiry of Part 4 in March 2005, ten detainees were released. Nine of the detainees had been in custody for over three years, held in category “A” maximum security prisons and in the case of three of the men, a high security psychiatric hospital. The two remaining detainees are still in Belmarsh, one reportedly serving a prison sentence for other offences and one detained under other powers.

Control Orders

In response to the Law Lords’ ruling, the Home Secretary, Charles Clarke, introduced new measures, namely control orders, to replace Part 4 of the ATCSA. The Prevention of Terrorism Act 2005[66] allows the Home Secretary to make “control orders” on people he suspects of involvement in terrorism. Control orders may contain restrictions that the Home Secretary or a court "considers necessary for purposes connected with preventing or restricting involvement by that individual in terrorism-related activity", including:

- restrictions on the possession of specified articles or substances (such as a mobile telephone);
- restrictions on the use of specified services or facilities (such as internet access);
- restrictions on work and business arrangements;
- restrictions on association or communication with other individuals, specified or generally;
- restrictions on where an individual may reside and who may be admitted to that place;
- a requirement to admit specified individuals to certain locations and to allow such places to be searched and items to be removed therefrom;
- a prohibition on an individual being in specified location(s) at specified times or days;
- restrictions to an individual's freedom of movement, including giving prior notice of proposed movements;
- a requirement to surrender the individual's passport;
- a requirement to allow the individual to be photographed;
- a requirement to cooperate with surveillance of the individual's movements or communications, including electronic tagging;
- a requirement to report to a specified person and specified times and places.

On 11 March 2005, the very day the Act came into force, the Home Secretary made 10 non-derogating control orders in respect of the men who had just been released from Belmarsh and Woodhill. On 26 April 2005, another control order was issued against another former detainee.[67] Seven more control orders were made by the end of 2005.

These measures involve the denial of normal legal processes that would usually be available to defendants in ordinary criminal trials, 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 control

[66] Passed into law on 11 March 2005
[67] House of Commons Hansard Written Ministerial Statements 16 June 2005

orders are numerous, of grave concern and remedy none of the difficulties associated with internment.

a) Lack of Due Process

"The first object of any tyrant in Whitehall would be to make Parliament utterly subservient to his will, and the next to overthrow or diminish trial by jury, for no tyrant could afford to leave a subject's freedom in the hands of twelve of his countrymen. So that trial by jury is more than an instrument of justice and more than one wheel of the constitution, it is the lamp that shows that freedom lives."

- Lord Devlin[68]

Identical to the problems with internment, the imposition of control orders involves the suspension of basic laws of evidence denying the accused the right to a fair trial and due process. The Act itself recognises that some, or the combination of some of these restrictions, may be incompatible with Article 5 of the European Convention on Human Rights on the right to liberty, and acknowledges the possibility of the UK derogating from its obligations in this respect if necessary. Consequently, the Act potentially creates two types of control order – derogating and non-derogating – in respect of which different procedures apply.

Non-derogating control orders are issued directly by the Home Secretary after having initially applied to and obtained permission from the court. These may include curfews, electronic tagging, restrictions on the use of certain items and on the use of certain communications, travel bans and limits on people with whom the individual may associate. The Home Secretary may also make a control order before receiving permission but the High Court must determine whether there is sufficient evidence to justify the imposition of the control order within seven days.

In either case, the court must give directions for a full hearing on the legality of the control order as soon as reasonably practicable. These hearings are essentially judicial review hearings. Consequently, the court is not empowered to make its own findings and arrive at its own determination. The court must only examine whether the decision of the Home Secretary to apply the control order based on his suspicion, might reasonably have been arrived at. The controlled individual need not be present or legally represented at this hearing. The proceedings foresee the use of secret evidence and closed hearings, to which a special advocate, appointed by the Attorney General to represent the interests of the suspect may have access, but following which he may no longer converse with the suspect. Non-derogating control orders are made for a twelve-month period and may be renewed indefinitely for further periods.

Similar proceedings in the Special Immigration Appeals Commission were used to assess certificates under the Anti-Terrorism Crime and Security Act. The reason given for these secret hearings is the same as that given for secret hearings under the ATCSA; 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, shape or form. It is a basic principle of

[68] Lord Devlin, *Trial by Jury* (1956),

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 imposing such control orders, he has effectively removed all the safeguards in criminal procedure with regards to evidence which means suspects will not receive a fair hearing.

In June 2005, the European Commissioner for Human Rights, Mr Alvaro Gil-Robles, raised the issue of whether the control orders would violate the fair trial requirements guaranteed by Article 6 of the ECHR.[69] Article 6 guarantees an individual a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law, equality between the parties, an adversarial process and the disclosure of evidence. Gil-Robles explains that in order for Article 6 to apply, the proceedings should be aimed at the determination of the "civil rights" of the suspect or of "any criminal charge" against him.

To date, the European Court of Human Rights has been reluctant to interpret restrictions on freedoms such as freedom of expression and association as the determination of "civil rights" within the meaning of Article 6. However, Gil-Robles was of the opinion that because of the severely punitive nature of the control orders for suspicion of criminal offences, they can be considered to be the equivalent of pressing criminal charges. In fact, he goes as far as saying that the "control orders are intended to substitute the ordinary criminal justice system with a parallel system run by the executive". This view is reinforced by the fact that breach of a control order is a criminal offence punishable upon conviction by up to five years imprisonment and/or a fine.[70] The lack of procedural safeguards seriously undermines the right to a fair trial, the presumption of innocence and the right to an effective defence.

b) Very low standard of proof

Clause 1(1) sets out the standard of proof required for the Secretary of State to impose a non-derogating control order – the Secretary of State need only have 'reasonable grounds for suspecting' a person's involvement in 'terrorism-related activities'. The definition of "terrorism" is incorporated from the Terrorism Act 2000 (see above for related problems).

This standard of proof is identical to that operating in proceedings before the Special Immigration Appeals Commission ('SIAC') under Part 4 of the 2001 Act, which the House of Lords found incompatible with the Human Rights Act in December 2004. In essence, SIAC was not asked by the government whether those detained were guilty of any criminal offence but only to determine – on a standard of proof below even that of the ordinary civil standard – whether the Home Secretary had reasonable grounds for suspecting that a detainee has been involved in terrorism and, hence, posed a risk to the national security of the UK. As SIAC itself noted in October 2003, 'it is not a demanding standard for the Secretary of State to meet'.

Section 1(3) provides that the Secretary of State may use a control order to impose 'any obligation' on an individual that he deems necessary to prevent or restrict 'further involvement by that individual in terrorism related activity'. Although Section 1(4) sets out a list of 16 different kinds of obligations (including prohibitions, restrictions and requirements) that the Home Secretary

[69] Country Report by EU Commissioner for Human Rights, Mr Alvaro Gil-Robles, 8 June 2005
[70] Prevention of Terrorism Act 2005, section 9(4)

may impose by way of a control order, the list is illustrative and not exhaustive. As a consequence, the scope of the Home Secretary's powers to impose restrictions is limited only by his view that a given restriction is necessary.

c) Use of Torture Evidence

"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."[71]

- Lord Justice Neuberger

The use of secret evidence raises the prospect that control orders may be founded in part on material obtained under torture from third countries, since the U.K. government insists that it is entitled to rely on such material provided that it was not involved in the torture. This was one of the major problems with regards to the evidence used to intern terror suspects.

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.[72] In a House of Lords debate, the Minister of State for the Criminal Justice System and Law Reform, Baroness Scotland confirmed that the government's policy was that where national security is at stake it is the government's duty to take into account all available information.[73] The Carlile Report also notes that the authorities are working closely with foreign intelligence and police agencies, including the US.[74] 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[75]. 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."[76]

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."[77] The UN Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment 1984, to which

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[71] per Lord Justice Neuberger (dissenting) in 'A & 9 Ors v Secretary of State for Home Department' [2004] EWCA Civ 1123

[72] Ajouaou and A, B, C and D v. Secretary of State for the Home Department, 29th October 2003, paras 81 and 84.

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

[74] The Carlile Review 2003, para 43

[75] 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

[76] A & Others v. Secretary of State for the Home Department, Court of Appeal Judgment, 11th August 2004. See 'Terror Detainees Lose Appeal', *The Guardian Online*, August 11 2003, 4:30 pm

[77] 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

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."[78] 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.[79]

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."[80] 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?"[81] 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" 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."[82] 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. The dangers of using torture evidence as intelligence is clearly shown by the alleged ricin plot which did not result in a single conviction of terrorism or a single ounce of ricin being found. Much of the intelligence used was based on testimony obtained under torture by the Algerian security services of a supergrass, Mohammed Meguerba.[83]

On 8 December 2005, the House of Lords overturned the 2004 Court of Appeal decision and held that torture evidence obtained by the government is inadmissible in court, even if the UK played no part in the torture and did not condone it.[84]

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

[79] "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.

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

[81] ibid

[82] http://www.amnestyusa.org/stoptorture/talking_points.html

[83] 'Doubts grow over al-Qaida link in ricin plot', *The Guardian*, 16 April 2005

[84] A (FC) and other (FC) (Appellants) v. Secretary of State for the Home Department (Respondent) (2004), A and others (Appellants) (FC) and others v. Secretary of State for the Home Department (Respondent) (Conjoined Appeals), House of Lords [2005] UKHL 71

d) Derogation from International Law

The other type of control orders foreseen by the Act are derogating control orders which would result in the house arrest of the suspects. In order to impose these, the Home Secretary must first obtain the permission of Parliament for a derogation from the UK's obligations under Article 5 of the ECHR, which is incorporated into British law by the Human Rights Act 1998[85]. The UK did derogate from Article 5 in order to introduce indefinite detention without trial under the ATCSA before this was struck down by the Law Lords in December 2004.

After Parliament has derogated, the Home Secretary may apply to the court for the making of a control order against an individual. In the initial hearing, the court may make a control order if there is material evidence which, if not immediately disproved, might subsequently be relied upon to establish the individual's involvement in terrorism-related activity and if there are reasonable grounds for believing the control order restrictions are necessary.

Initial decisions on house arrest will be made in the absence of the suspect and his legal representatives, on the basis of secret evidence which the person subject to the control order cannot challenge, even at the subsequent full hearing. In this full hearing, the court may confirm the control order if it is satisfied that the individual is, or has been, involved in terrorism-related activity and the control order is necessary. The standard of proof remains lower than the criminal standard. Derogating control orders are made for renewable periods of 6 months.[86]

Article 5(1) protects against unwarranted state intrusions upon the liberty and security of a person by prohibiting unjustified detentions.[87] 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.[88] It would also be necessary to derogate from Article 9 of the International Covenant on Civil and Political Rights, which guarantees similar rights and freedoms.

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

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

[86] Country Report by EU Commissioner for Human Rights, Mr Alvaro Gil-Robles, 8 June 2005

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

[88] 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."

exigencies of the situation and that the measures are not inconsistent with other obligations under international law.[89]

In defence of its derogation allowing it to intern terror suspects, the government argued that a state of emergency threatening the life of the nation existed, due to the presence of foreign nationals in the UK who were "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."[90] The UK based 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[91] requiring all States to take measures to prevent the commission of terrorist attacks. The UK claimed that it was necessary to detain these people as it was prohibited under Article 3 of the ECHR from deporting these men to their native countries for fear that they may have been subjected to torture or inhuman or degrading treatment or punishment. Thus, they argued that they had no other option.

At that time, IHRC contended that it was debatable whether a state of emergency did exist which threatened the life of the nation, particularly in light of the fact that none of the other 44 members of the Council of Europe had 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".[92] In Lawless, the violence was occurring within the country which declared the public emergency. On the contrary, there had not been a single attack to date on British soil by terrorists proven to be 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."[93] Furthermore, it was difficult to imagine that those detained were truly a threat to international peace when the UK itself offered them the option to voluntarily leave the UK for a third country[94].

IHRC firmly believes that those circumstances have not changed even after 7/7 – the circumstances necessary to declare a public emergency do not exist – and to introduce draconian measures such as extensive detention without charge, control orders and house arrest will not resolve the problem. Recent events have indicated that the security services themselves do not really know how great or how minimal the threat is or from where it emanates. In June 2005, the UK terrorism threat was lowered from "severe general" to "substantial".[95] The subsequent July bombings were not carried out by foreign nationals under

[89] 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."
[90] Special Immigration and Appeals Commission Act 1997, Section 5(1)
[91] UNSC Res. 1373 28 September 2001, U.N. SCOR, 56th Sess., 4385th mtg., U.N. Doc. S/RES/1373 (2001)
[92] Lawless v Ireland (No3) 1 EHRR 15 [1961]
[93] Hansard, House of Commons, November 15 2001, col. 925
[94] 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.
[95] 'UK terror threat level to be cut', *BBC Online*, 26 May 2005

surveillance but by British citizens who the intelligence agencies completely failed to pick up. Consequently, it is unjustifiable to punish innocent parties against whom no charges have ever been brought. It is British intelligence which needs to be improved in order for the threat to be tackled effectively. Imposing further injustices on innocent people will only increase the threat.

In any event, the House of Lords ruled that the present threat from Al-Qaeda was incapable of justifying indefinite detention of foreign terrorist suspects without trial. Whatever threat does exist is not therefore capable of justifying the introduction of a similarly disproportionate scheme of control orders, applying to both foreign nationals and British nationals alike. Substituting house arrest for prison is irrelevant to the breach of human rights entailed, and cannot possibly justify the further breach.

e) Faulty Intelligence

"Over the past few weeks, we have seen powerful evidence of the continuing terrorist threat: the suspected ricin plot in London and Manchester .."

- Tony Blair, House of Commons, 3 February 2003

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 1: 'M' [96]

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

[96] M v Secretary of State for the Home Department.: [2004] EWCA Civ 324, [2004] HRLR 22 (18 March 2004)

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."

CASE STUDY 2: OLD TRAFFORD BOMB PLOT

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[97]. 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.

[97] *The Sun*, 20 April 2004

CASE STUDY 3: THE RICIN PLOT THAT NEVER WAS

In January 2003, in a series of anti-terror raids in North London and Manchester, a number of North African Muslim men were arrested and accused of manufacturing the poison ricin. At the time, David Veness, Britain's top anti-terrorist policeman, and Dr Pat Troop, the government's deputy chief medical officer, warned in a joint statement: "A small amount of the material recovered from the Wood Green premises has been tested positive for the presence of ricin poison." Embellished media reports of a thwarted plot to poison the London underground coupled with images of police officers in protective white suits and masks, going in and out of the apartment and prejudicial statements by Ministers and Police Officers alike sent waves of panic throughout the British public.

Claims that a terrorist cell was planning a lethal ricin attack in Britain were used by British and American governments in the run-up to the invasion of Iraq. Prime Minister Blair, Home Secretary Blunkett and very senior police officers all seized on the arrests to emphasise the threat. Politicians also implied there was a clear link between Saddam, al-Qaida, and terrorists planning chemical or biological attacks on targets in the West, including London. On 3 Feb 2003, Blair reported to the Commons after returning from Washington, "Iraq is not the only country posing a risk in respect of WMD. Over the past few weeks, we have seen powerful evidence of the continuing terrorist threat: the suspected ricin plot in London and Manchester …" Geoff Hoon congratulated the police and MI5 and suggested that if the defendants were convicted, the officers should indeed be given as much beer as they could drink.

On 13 April 2005, the entire truth about the ricin plot was exposed. There was no ricin. Two days after the January 5th search of the Wood Green "poison cell" flat, and well before the outbreak of war with Iraq, the chief scientist advising British anti-terrorism authorities, Martin Pearce - leader of the Biological Weapon Identification Group at Porton Down - had finished lab tests which indicated the ricin finding was a false positive. "Subsequent confirmatory tests on the material from the pestle and mortar did not detect the presence of ricin. It is my opinion therefore that toxins are not detectable in the pestle and mortar," wrote Pearce in one document. Indeed, no traces of biological or chemical weapons were detected. That finding was confirmed during the trial when Porton Down scientists gave evidence.

But in an astonishing example of sheer incompetence, another employee at Porton Down charged with passing on to British authorities the information that the preliminary finding of ricin was in error, turned around and did the opposite, informing that ricin had indeed been detected.[98]

Ultimately, in the biggest terror trial in British history, 119 Muslim men were arrested, 9 were charged and only 1, Bourgass, was convicted for "conspiracy to cause a public nuisance". Bourgass and his four codefendants were acquitted of terrorist-murder conspiracy charges involving ricin. No ricin was actually found at the flat in 352B High Road or at any of the defendants' other addresses. Yet, the government, the most senior police officers and the media combined to use the "intelligence" to cause mass hysteria, launch an illegal war on Iraq, and destroy the lives of the innocent men they detained in Belmarsh for over two years. On 11 September 2005, 7 of the men were rearrested and are now awaiting deportation to Algeria, despite their acquittals in a court of law. Plans to carry out these arrests were in place as far back as May 2005 prior to the London bombings. [99]

In April 2005, the Home Office was forced to apologise to the ten men placed under control orders after it linked them to the alleged ricin plot. The false intelligence used to detain the men for over three years and to subject them to control orders was dismissed by the Home Office as a "clerical error".[100]

[98] 'UK Terror Trial Finds no Terror', *Global Security*, 13 April 2005
[99] 'Cleared ricin suspects face deportation', *The Guardian*, 14 May 2005
[100] 'Home Office says sorry to suspects for ricin blunder', *The Guardian*, 16 April 2005

f) Impact on Family Members and Third Parties

Due to the broad range of restriction, prohibitions and requirements that may by applied to an individual under these powers, it is inevitable that the imposition of a control order would have a great impact on the life of both the controlled person and those who live with them, those who work with them and/or have daily or regular contact with them. Consequently, spouses and children living in the same house will also be seriously affected by the terms of an order, including by becoming the subjects of surveillance, having their communications intercepted, and having their residence subject to regular entry and search by police and security services in order to ensure compliance with the control order.

Indeed, under clause 5(6), the Secretary of State may authorise the entry and search of any premises (if necessary by force) merely in order to effect the *service* of a control order. Clause 6(3) moreover makes it a criminal offence intentionally to obstruct the exercise of these entry and search powers. In other words, any family member present who objected to, or refused to cooperate with, the search of the family home would be liable to arrest by those conducting the search.

CASE STUDY 4: MAHMOUD ABU RIDEH

Mahmoud Abu Rideh is a Palestinian refugee who was interned in Belmarsh maximum security prison and in Broadmoor hospital for the criminally mentally ill for over three years before being released and subjected to a control order, including limited house arrest.

The control order conditions require a telephone call be made to the police officers between 3-4 am and, because he is under medication and taking sleeping tablets, he cannot sleep. His wife and children are continuously worried that he won't wake up and make this call. His wife has two alarms in the room and the children wake up at night asking if it is the time for their father to make a call - they are so worried that he might miss the call and be re-arrested.

The monitoring company can visit at any time. Surprise searches by Scotland Yard officers leave his family on edge and his wife sleeps fully clothed in case of any eventuality. Officers have even rifled through his wife's underwear drawer during searches. His children worry every day that when they return from school, he will be gone again and his wife very rarely sleeps at night due to the extreme stress.[101]

Often the tagging equipment does not work properly, which causes the police to come and check alerting. His children are terrified if their father speaks to someone, they fear such contact could be breaking the order and result in re-arrest.

No visitors are allowed to visit the family until they submit photographs to the Home Office. This in effect means they have no visits from friends because they are unwilling to go through the vetting process. The children do not visit because their parents cannot visit. People are not willing to talk openly to the family members on the telephone because calls will be monitored. At the same time, his wife cannot visit them and leave her husband alone at home because he has tried to harm himself several times.

[101] 'Control Order Flaws Exposed', *The Guardian*, 24 March 2005

There are restrictions on the use of communication equipment which means the family have no internet access for the children's schoolwork and have to access information to help them outside the home, which causes difficulties.[102]

Any time they go out, they are always anxious to be home and often do not want to leave home at all, because breaking the control order means another five years in prison.

[102] Taken from speeches by wife and daughter of Mahmoud Abu Rideh in 'Families speak out on control orders' on Institute for Race Relations, 30 March 2006, http://www.irr.org.uk/2006/march/ha000032.html

Deportation

"I make dua'a (supplication) to Allah every day that if the brothers are deported to Algeria, they will be killed with one bullet to the head rather than face imprisonment there."

- Acquitted 'Ricin' plot defendant now facing deportation to Algeria

Despite the fact that the ex-detainees had no link whatsoever to the London bombings, and were under control orders already, they were duly rounded up and arrested on 11 August 2005 under national security terms of the 1971 Immigration Act. On 11 September 2005, seven other Algerian men, acquitted in a court of law of the "ricin plot", were arrested under the same legislation. Five more Libyan men were arrested on 3 October 2005 under the Act. Accused of "not being conducive to the public good", all these men are now once again incarcerated and facing deportation to countries such as Algeria, Libya and Jordan where there is a real and substantial risk of being subjected to torture and/or execution. As it is illegal under international law to deport these men if they risk being subjected to such ill-treatment, the government has announced that it will rely on "diplomatic assurances" or "memorandums of understanding" with such countries that they will not abuse the deportees.

These are essentially 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. In August 2005, the UN Special Rapporteur on Torture, Manfred Novak, expressed his alarm at the Memoranda of Understanding, stating that the UK's new policy "reflects a tendency in Europe to circumvent the international obligation not to deport anybody if there is a serious risk that he or she might be subjected to torture."[103]

Previous cases have shown that such agreements are not sufficient safeguards against torture on return.

[103] 'Expulsion illegal, UN tells Clarke', *Guardian,* 25 August 2005

CASE STUDY 5: EXPORTNG TORTURE: FROM SWEDEN TO EGYPT

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[104]. In October 2003, El-Zari was released after having spent almost two years behind bars without charge.[105] 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. In May this year, United Nations Committee Against Torture found that Sweden had breached the Convention Against Torture for facilitating the transfer of the two men.

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[106], 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."[107]

In spite of all this, the government has already signed three such agreements with Jordan, Libya and Lebanon. Even as the government signed the agreement with Libya, information available on the website of the Foreign and Commonwealth Office warned of "the human rights situation in Libya, including restriction on freedom of expression and assembly, political prisoners, arbitrary

[104] Human Rights Watch, 'Sweden Implicated in Egypt's Abuse of Suspected Militant', 5th May, 2004
[105] Amnesty International, 'Sweden: Concerns over the treatment of deported Egyptians', 28th May 2004
[106] Chahal v. United Kingdom, 70/1995/576/662, November 15, 1996
[107] Human Rights Watch, '"Empty Promises:" Diplomatic Assurances No Safeguard against Torture' April 2004

detention, and conditions in Libyan prisons."[108] Similar memoranda of understanding are now being negotiated with other countries such as Algeria, Syria and Pakistan, countries notorious for their gross human rights abuses.

The cases of the nine men arrested for deportation on 11 August 2005 is symbolic of the rapid demise of the British system of justice. Having not been charged with a single criminal offence to date, these men spent over three years in maximum security prisons and hospital before being released into limited house arrest and subject to control orders. Just as tragic is the case of the seven 'ricin' suspects re-arrested on 11 September 2005 having been acquitted in a court of law by a jury of their peers, after spending two years in prison. Now, all are imprisoned again facing deportation to Algeria and Jordan while the government negotiates memoranda of understanding with brutal regimes that the men will not be tortured.

In late March 2006, 11 of the men announced that they were considering voluntarily returning to Algeria because they could no longer withstand the "mental torture" imposed by the British government.[109] On 30 March 2006, 4 of the men withdrew their appeals to the SIAC against their detentions, stating that they had lost faith in the SIAC's ability to give them a fair trial.[110] All four now are stating they wish to leave for Algeria. Algerian officials have visited the men and informed them that they are ready to issue the men with travel documents as soon as the Home Office resolves their situation. Ironically, the government is now refusing to allow them to leave, and they remain imprisoned without charge.

[108] http://www.fco.gov.uk/servlet/Front?pagename=OpenMarket/Xcelerate/ShowPage&c=Page&cid=1007029394365&a=KCountryProfile&aid=1019149793547 (accessed 19 October 2005)
[109] 'Terror suspects volunteer to leave Britain', *Observer*, 19 March 2006
[110] 'Terror suspects withdraw appeals over detention', *Guardian*, 30 March 2006

V.

INSTITUTIONAL ISLAMOPHOBIA

The Terrorism Act 2006 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."[111]

The Runnymede Trust has identified eight components of Islamophobia[112]:

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,*

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

ignorance, thoughtlessness and racial stereotyping which disadvantage minority ethnic people"[113]

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."[114]

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.

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

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

VI.

PROCESSES

"We should not waste time searching old white ladies. It is going to be disproportionate. It is going to be young men, not exclusively, but it may be disproportionate when it comes to ethnic groups."

- *Ian Johnston (British Transport Police Chief Constable – 31 July 2005)*

Proscription

Under section 3 of the Terrorism Act, the Home Secretary has the power to proscribe organisations he believes are "concerned in terrorism"[115]. 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.[116] 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 19 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 28 February 2001, the then Home Secretary Jack Straw submitted a further 21 foreign groups for proscription. Four additional groups were proscribed in November 2002. A further 15 foreign groups were proscribed on 14 October 2005. Out of these 40 groups, 33 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.

The Islamophobic nature of the proscription can be seen in the fact that not a single Hindu or Zionist extremist group has been proscribed. Even Zionist terrorist organisations, such as Kach and Kahane Chai, have not been proscribed, despite being banned in the US, and in Israel itself. Furthermore, the application of the law seems to be heavily influenced by political considerations. A case in note is the Iranian terrorist group, the Mujaheddin-e-Khalq.

[115] Terrorism Act 2000, section 3
[116] Terrorism Act 2000, section 4-7

CASE STUDY 6: MUJAHEDEEN-E-KHALQ (MKO)

The MKO (MEK, PMOI, NCRI) is a violent anti-Islamic Iranian terrorist group opposed to the Iranian government and responsible for a wave of bombings and assassinations around the world, which have resulted in the deaths of thousands of civilians. Headquartered in Iraq and trained, armed and financed by Saddam Hussein for over two decades, the MKO has been proscribed by the UK, US and EU.

Nevertheless, the MKO operate freely without hinderance in the UK. It produces and publishes a freely available newspaper 'Mojahed' in the UK as well as operating a TV station, 'IranNTV', in London. Both of these are regularly used to fundraise for the MKO and advertise bank accounts based in the UK. The Terrorism Act prohibits proscribed organisations from such activities and empowers the authorities to seize their assets, arrest and imprison their members and also those who have supported them.

On 22 March 2005, the Anglo-Iranian Community co-chaired a symposium in support of the proscribed People's Mojahedin Organisation of Iran (PMOI) at Church House, Westminster, London. The gathering was addressed by Maryam Rajavi, president of the National Council of Resistance in Iran (NCRI), another proscribed wing of the MKO, and attended and supported by dozens of members of both Houses of Parliament from the three major political parties. These included Lord Corbett of Castle Vale, Lord Lester of Herne Hill QC, Lord Archer of Sandwell, Dr Rudi Vis MP, Steve McCabe MP, Win Griffiths MP, David Arness MP and Andrew Macinlay MP.

On 7 July 2005, the very day London was attacked by terrorists, a meeting of parliamentarians and lawyers was held in the House of Lords to announce the formation of a group of British lawyers to challenge the proscription of the PMOI. Another meeting is scheduled to take place on 27 October 2005 in the House of Commons in support of this proscribed organisation.

It is outrageous that while individuals such as Babar Ahmad, who have not been officially charged with any crimes whatsoever, are locked up on accusations of fundraising for terrorism, a proscribed terrorist organisation can openly hold a bank account and fundraise with the support of members of the Houses of Parliament. For the law enforcement authorities to retain any shred of credibility, it must be seen to be policing independently based on principle and not motivated by a higher political agenda

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.

Research published by the Home Office in March 2006 showed that Asian people were twice as likely to get stopped and searched in the street than white people and that black people were 6 times as likely to get stopped and searched in the street than white people. 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.[117] 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.

Home Office figures from December 2005 show that in 2004-05 there were 35,800 searches overall under the Terrorism Act 2000. Figures from 2001-2002 were as low as 10,200. Of the 35,800 searched in the last 12 months, only 455 (1.27%) were arrested. From 11 September 2001 until December 2005, over 111,000 people were stopped and searched. Of these just over 1500 (1.3%) were arrested. Some estimates, however, estimate that the true number of stop and searches is almost double the given figures, 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.[118]

The Home Office has itself admitted that "the majority" of these arrests "were not in connection with terrorism."[119] 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.

Following the London bombings, the use of counter-terrorism stop and search powers increased up to 15-fold, with none of the stops resulting in a terrorism charge. According to figures compiled by British Transport Police, people of Asian appearance were five times more likely to be stopped and searched than white people. Unpublished figures from 7 July to 10 August, reported in the *Guardian*, showed the transport police carried out 6747 stops under anti-terrorism laws, mostly in London. Although Asians only comprise 12% of the population in London, they constituted 35% of the total number of people stopped.[120] This disproportionality may be due to operational orders received by British Transport Police following the July bombings which instructed them to avoid racial profiling but to note that "recent suspects have included individuals of Asian, West Indian and east African origin, some of whom have British nationality."[121]

This policy of religious profiling has caused much consternation among the Muslim community. What has caused even more anxiety is that the policy has been publicly endorsed by senior police officers and members of the government. On 31 July 2005, British Transport Police Chief Constable Ian Johnston said,

[117] Report of the MPA Scrutiny on MPS Stop and search Practice', May 2004
[118] For more information, see Statewatch Bulletin, Volume 13 No 6, November- December 2003
[119] Home Office Statistical Report
[120] 'Asian men targeted in stop and search', *Guardian,*17 August 2005
[121] 'Anti-terror police told to target Asians', *Guardian,* 13 September 2005

"We should not waste time searching old white ladies. It is going to be disproportionate. It is going to be young men, not exclusively, but it may be disproportionate when it comes to ethnic groups."[122]

The following day, Home Office Minister Hazel Blears, came out in support of Ian Johnston, stating

"If your intelligence tells you that you're looking for somebody of a particular description, perhaps with particular clothing on, then clearly you're going to exercise that power in that way. That's absolutely the right thing for the police to do."

After coming under heavy criticism for her comments, Ms Blears backtracked claiming to have never endorsed racial profiling.[123]

Port and Border Controls

Schedule 7 of the Terrorism Act[124] 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.

The approximate numbers for people stopped under Schedule 7 in 2003/04 was 900,000, an estimated 150,000 of whom were taken in for further questioning.[125] Although no official records exist, it is widely perceived that a disproportionate number of these have been Muslims, including Lord Nazir Ahmed of Rotherham on two occasions. 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.[126] 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

[122] 'Police 'must single out Muslims', *Evening Standard,* 1 Aug 2005
[123] 'Blears' U-turn on stop and search', *METRO,* 3 Aug 2005
[124] TACT, Schedule 7
[125] Figures presented by Bob Milton, now retired National Co-ordinator for Ports Policing at meeting of the Stop and Search Action Team's Community Panel in April 2005
[126] 'Profiling Muslims in Britain', *The Muslim News,* 28 November 2003

operation of the policy of Muslim profiling for stops and searches, targeted on the basis of their 'Muslim' appearance.

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 twenty-eight days.

Home Office statistics show that from 11 September 2001 until 30 September 2005, a total of 895 people were arrested under the Terrorism Act 2000.[127] Almost 500 of those arrested were eventually released without charge. 138 of the arrestees were charged under the Act and 156 under other legislation. There have been only 23[128] convictions to date. Out of the 23 convictions, only seven were Muslims. Seven of those convicted are white non-Muslims who were found to be supportive of proscribed Irish Republican and Loyalist groups involved in the Northern Ireland conflict. The men were convicted for offences such as wearing a ring or carrying a flag with the symbols of banned Loyalist organisations. Two were convicted of being involved with Sikh militants and one of supporting the Tamil Tigers. The 2000 Act makes it illegal even to wear a T-shirt supporting a banned organisation.[129]

Almost all arrests were based on intelligence, very few if any were based on the stop and search process.

There are real concerns that stop and search and arrest powers are being used arbitrarily and as a way of stifling dissent. For example, the use of terrorism laws to stop and search protestors outside an arms fair in September 2003, to arrest an octogenarian Holocaust survivor Walter Wolfgang from the 2005 Labour Party conference for heckling the Foreign Secretary, and to arrest 34-year old Sally Cameron for walking on a cycle path in Dundee in October 2005 indicate the absurd manner in which police are using their powers.

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, it has predominantly been Muslim charities which have been investigated. Fundraising for international causes and humanitarian relief for Chechen refugees in Ingushetia or for Palestinians living in occupied territory may be

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[127] Figures on Home Office website, accessed 02 June 2006; http://www.homeoffice.gov.uk/security/terrorism-and-the-law/terrorism-act/ since then at least 46 more men have been arrested, almost all who have been subsequently released without charge.

[128] There has been three more convictions for terrorism-related offences since 30 September 2005

[129] 'Analysis: Who are the Terrorists?' - Institute of Race Relations

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.[130] 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.

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

CASE STUDY 7: TERROR LAWS AFFECT HUNGRY ORPHANS

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 known 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 and Control Orders

Under Section 3(1) of the Prevention of Terrorism Act 2005, the Home Secretary has made a total of twelve non-derogating control orders. All twelve of these individuals are Muslims, one of whom is a British citizen. Prior to this Act, all seventeen men who were certified as "suspected international terrorists" under Part 4 of the Anti-Terrorism Crime and Security Act, were Muslims. Part 4 only allowed the Home Secretary to certify and detain foreign nationals whom he reasonably suspects of having links with groups linked to Osama Bin Laden and Al Qaeda[131]. This position was confirmed by both the SIAC and the Court of Appeal. The derogation did not therefore extend to other forms of international terrorism such as that perpetrated by Catholics, Protestants, Jews, Hindus or Atheists.

Extradition

Another way in which Muslims in Britain are being singled out for mistreatment is through extradition. Dozens of Muslims are currently languishing in maximum security prisons in Britain awaiting extradition to countries where they face a real risk of being subjected to torture or cruel, inhuman and degrading treatment. The government has found itself in a dilemma due to the illegality of it extraditing the suspects to such countries. Therefore, they have

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

detained the men without charge indefinitely. One Algerian asylum seeker, Rachid Ramda, has been detained in Belmarsh for over a decade now. Other suspects awaiting extradition include Farid Hilali, a Moroccan national who is the first person in the UK facing extradition on the new and allegedly quicker European Extradition Warrant. Despite its name, Hilali has been in Belmarsh for almost two years. He is wanted in Spain on suspicion of involvement in the 9-11 attacks, despite being cleared of the crimes by the official 9-11 commission of inquiry.[132]

Another controversial extradition agreement is that enacted with the US under the UK Extradition Act 2003, which was fast-tracked into UK legislation in 2003 without formal consultative parliamentary process, scrutiny or debate. It allows the UK to extradite any individual to the US without the need for the US to provide prima facie evidence to support the extradition request. In other words, the accused DOES NOT have the right to challenge any evidence provided by the US in a British Court of Law. The Extradition Act 2003 seriously erodes the judicial review for any individual sought by the US and allows the UK government to approve these requests unilaterally, without allowing the individual to defend himself against any provided evidence in a British Court of Law.

Babar Ahmad could be the first British citizen to be extradited under this treaty. He was arrested on the US extradition order in August 2004 and despite very strong evidence that he may be subjected to torture or even the death penalty should he be extradited, the District Court ruled on 17 May 2005 that Babar could be extradited. In his ruling the judge concluded that "This is a difficult and troubling case. The defendant is a British subject who is alleged to have committed offences which, if the evidence were available, could have been prosecuted in this country." On 20 February 2006, Ahmad lost his appeal against both the Home Secretary's decision to extradite him and the Magistrate Court's decision. Ahmad's appeal to the High Court is due on 11 July 2006.

CASE STUDY 8: RACHID RAMDA

Rachid Ramda is Britain's longest detained political prisoner. Originally from Algeria he was imprisoned in HMP Belmarsh in 1995 on an extradition request from France for alleged involvement in terrorism related activities. For the first seven years of imprisonment, he was held in the HSU (High Security Unit) at Belmarsh Prison, in isolation from most other prisoners. In 2002, he won his case at the High Court after it emerged that key evidence against him was inconsistent and had been obtained by torture. The High Court also found that there was a "real risk" of him being ill-treated if extradited. Yet, instead of being released, he was kept in detention without charge. , France then issued a new extradition request starting the process all over again.

During his period of incarceration he was tried and sentenced in absentia to 10 years in prison, of which he would have had to serve perhaps eight years. During his ten years imprisonment at Belmarsh Prison, he received only one visitor – a Scottish woman who travelled down from Scotland to London especially to visit him. He did not get to see his mother even once as her visa was refused by the British government on twelve occasions. In April 2005, the Home Secretary stated that the UK intended to extradite Rachid to France. On 1 December 2005, Ramda was finally given into French custody. On 29 March 2006, Ramda was sentenced to ten years in prison but still risks being tried on other charges risking life imprisonment.

[132] The 9-11 Commission Report, para 145, p530

Rendition

Described by Normal Finkelstein as “kindnapping and torture”, rendition is the “process of removing an individual from one territorial jurisdiction to another without any due process being applied”.[133] There is no legal precedent or international norm for such actions although the US has admitted to implementing such a policy for decades.[134] The British government however has denied that such activities take place on its soil or that it is complicit in such actions, despite much evidence that the UK has knowingly allowed rendition flights to pass through, land, and refuel in the UK, and that British secret service operatives were involved in interrogations of detainees where abuse and torture were used.

In March 2006, the human rights organisation Cageprisoners, produced an in-depth study of Britain’s involvement in rendition. The report, *Fabricating Terrorism: British Complicity in Renditions and Torture*, exposes the true horrors of Britain’s role in the War on Terror.

Shoot to Kill

On 22 July 2005, a Brazilian national, Jean Charles de Menezes, was shot dead by members of the Metropolitan Police on board an underground train at Stockwell. The police had mistakenly believed him to be a suicide bomber. It shortly emerged that he had been executed by SO19, the armed response unit of the police, under ‘shoot-to-kill’ orders in place since early 2002. The policy, known as ‘Operation Kratos’, was introduced with the assistance of and training by the Israeli Army, to counter possible suicide bombers. Operation Kratos and the "shoot to kill" policy was first mentioned publicly by the British government on 15 July 2005. It was asserted that "Armed police officers could be given more aggressive shoot-to-kill orders, telling them to fire at the heads of suicide bombers."[135]

Menezes was initially suspected of being an agent in the failed bombings of 21 July 2005, and Operation Kratos policies were activated to deal with him as a suspected bomber. Menezes was followed by surveillance officers from a block of flats suspected of being linked to the bombings, onto a bus to Stockwell Tube station, and eventually was confronted and shot to death by SO19 firearms officers. In actual fact, de Menezes had no explosives, was unconnected with the bombings and completely innocent. The full horror of Operation Kratos can be ascertained from the Commissioner of the Metropolitan Police, Sir Ian Blair’s statement that there were nearly 250 incidents between 7 July 2005 and 22 July 2005 where Kratos policies were implemented, 7 of which were serious enough that the "shoot-to-kill" policy was nearly utilized.

In the weeks following the shooting, it emerged that Sir Ian Blair had attempted to obstruct the investigation into the incident by the Independent Police Complaints Commission. The many discrepancies between the police’s official version of events and eye-witness reports are slowly beginning to emerge. Despite allegations of a cover-up, the police have still refused to suspend its shoot-to-kill policy.

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[133] Cageprisoners, *Fabricating Terrorism: British Complicity in Renditions and Torture* (March 2006)
[134] Statement by US Secretary of State Condoleeza Rice; ‘Remarks upon her departure for Europe’, 5 December 2005. http://www.state.gov/secretary/rm/2005/57602.htm
[135] ‘Police May Receive Shoot-to-kill Orders’, *The Scotsman*, July 15 2005.

As the statistics have shown, police intelligence is extremely unreliable. Until now, thousands of innocent Muslims have had their lives ruined by unnecessary stop and search, arrest and humiliation. Now, this intelligence is being used as a motivation to extra-judicially execute them. That up until very recently the operating procedure for Kratos included keeping a careful eye on young bearded Muslim men on public transport sitting down with prayer beads or murmuring or reading Qur'an, indicates the Islamophobic nature of such a terrifying policy.

VII.

ATTITUDES AND BEHAVIOUR

"Where is your God now? Why don't you pray to him?"

- Anti-Terrorist Police to Babar Ahmad during his arrest on 2 December 2003

"We are satisfied that there is no case to answer. In fact, the Officer acted professionally with great bravery. We support his actions: he should be commended and not castigated."

- Police Misconduct Tribunal fails to explain Babar Ahmad's 52 injuries suffered during his arrest (April 2005)

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 officers. 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 9: "WHERE IS YOUR GOD NOW?"

One of the most shocking cases was that of Babar Ahmad which 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 on the floor with his arms in cuffs and taunted him by saying, "Where is your God now? Why don't you pray to Him?" Ahmad, 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 seven days in custody. The victimisation of the Muslim community is further evidenced 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.

CASE STUDY 10: "I WILL BLOW YOUR SON'S HEAD OFF!!"

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 man 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 head off." The man's solicitor filed complaints against the police officers concerned. Since then, the Police complaints authorities are not pursuing the matter further.

CASE STUDY 11: "I WILL SMASH YOUR FING ARAB FACE IN"***

In May 2005, a police constable was suspended for threatening an arrested Kurdish teenager that he would "smash your fucking Arab face in". The youth managed to activate a recording device on his mobile phone and capture a tirade of abuse by the officer against him. In the course of the two and a half minute recording, the officer threatened violence, swore 18 times and accused the teenager of being a robber and a rapist.[136]

CASE STUDY 12: "WE WILL KILL EVERY FING ONE OF YOU MUSLIMS"***

*A British Muslim of Bangladeshi parentage was returning from his job at the London Underground where he had worked for several years. He was carrying his London Underground bag with him. It was about 1630 in the evening. In broad daylight and in front of many members of the public, he was suddenly aggressively approached by three armed police officers who pushed him to his knees and began shouting at him. Officers twisted his arms and subjected him to a series of kicks and punches. Guns were pointed at his head with the officers shouting abuse at him. One such taunt was, "we will kill every f***ing one of you Muslims". The man was never arrested and released after about half an hour without an apology. He has since decided to move with his wife and children to his "home" country, Bangladesh because "at least we are treated with some respect there".*

Even 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.[137] She alleges that the officers told her clients that they would be better off with another lawyer and passed them business cards of 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]

[136] 'Constable suspended 'after racist tirade caught on mobile', *The Guardian*, 19 May 2005
[137] 'Solicitor alleges police Islamophobia', *The Guardian*, 19 August 2004

erroneously be used by Al Qaeda and associated networks to mount attacks."[138] 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[139]. 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 pair of 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 then Deputy Commissioner of the Metropolitan Police Service, Sir Ian Blair[140]. 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 it is 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 victim of crime.

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

[139] 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.

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

CASE STUDY 13: YASSIR ABDELMOUTTALLIB

In June 2004, a young Moroccan Muslim student, Yassir Abdelmouttalib, 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. Yassir 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 Yassir until he was unconscious. A local shopkeeper rushed to rescue him but another man grabbed him to prevent him assisting Yassir. Yassir fell into a coma with doctors diagnosing that he was paralyzed in the left hand side of his body and that he would require nursing care for the rest of his life. (Yassir has since made a miraculous recovery regaining partial eye-sight, speech and is able to walk with the aid of a stick.)

The manner in which the police investigated the assault resulted in the victim being treated as a terrorist suspect. On the evening of the attack while Yassir was in a coma, the police arrived at his 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 Yassir, officers asked questions related to Yassir'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 Yassir's family and friends found her irritating and very suspicious. All this seems circumstantial but in mid-August 2004, Yassir's sister went to the police station to sign her statement. The family liaison officer produced two items she claimed belonged to Yassir. 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 Yassir'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 Yassir'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 am not saying that your brother is a terrorist, but …". Amazingly, the officer handed over the device to Yassir'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. Yassir had taken it off a friend who was using it, as stealing is forbidden in Islam.

In May 2005, after repeated questioning from IHRC the Police finally admitted that they did investigate Yassir while he was hospitalised.

Conditions of Detention

Another serious problem with the detention without trial of Muslims in Britain is the condition 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."[141] Amnesty International has described the conditions of detention as

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

amounting to "cruel, inhuman or degrading treatment".[142] The men are classified as Category A prisoners[143] 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 given for their families to visit them.

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. On 9 June 2005, the CPT published the report of its follow-up visit to the UK in March 2004. It found that many of the allegations in the 2003 report of verbal abuse from both prison staff and other inmates and the denial of legal rights continued to persist. It found that the physical and mental health of the detainees had deteriorated significantly and that "the situation at the time of the visit could be considered as amounting to inhuman and degrading treatment."[144]

In addition to this, the detainees have been treated with no respect for their religious obligations or principles.[145] 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. One prisoner, Mohammad Bhatti, was given permission in May 2005 to challenge such security measures imposed upon him as he awaits trial. Mr Bhatti is not expected to stand trial until April 2006 by which time he will have been in custody for 20 months. The frequent strip-searches coupled with the lengthy period of detention have induced severe mental illness in Mr Bhatti. The court will be asked to decide whether these measure amount to inhuman and degrading treatment, contrary to Article 3 of the European Convention on Human Rights.

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

[143] Category A is the highest security risk classification, reserved for prisoners whose escape it is considered would be highly dangerous to the public or the police or to the security of the State.

[144] 'Report to the Government of the United Kingdom on the visit to the United Kingdom carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 14 to 19 March 2004', 9 June 2005

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

CASE STUDY 14: DISABLED AND TORTURED IN BELMARSH

A Muslim prisoner, Abu Hamza, has been detained in Belmarsh since May 2004. He is diabetic, blind in one eye and has no hands. Since being detained, his prosthetic limbs and other utilities which have helped him live a normal life have been removed, leaving him reliant on the prison service to cater for his personal needs, giving them an extra psychological power as they are able to withhold help if it suits them.

Abu Hamza's health is rapidly deteriorating due to the cruel and inhuman conditions inflicted upon him. The surfaces of his cell are hard and cold and he has inadequate bedding, thus causing eczema. His arms have become swollen a very painful and are so badly infected that it has reached the bone. A recent doctor's visit concluded that this could result in further amputation if not treated immediately.

During the winter months the heating in his cell was deliberately turned off and he was denied extra bedding. Because of his disability, he was unable to pick up the blankets if they fell off his bed, thus becoming very cold. Consequently, he often slept on the floor so that he could reach the blankets. IHRC has received reports from as recently as June 2005 that every night around 2 AM, a series of raids and strip-searches begin and are repeated throughout the night at regular intervals. Abu Hamza is forced to stand naked for long periods of time until someone comes to dress him.

Abu Hamza is denied his regular medication which he needs. He can be locked up for up to 48 hours at a time. As he does not have his prostheses, he finds it extremely difficult to dress himself. He has been offered 'western' clothes with zips and buttons which he cannot manage. His Muslim clothes are practical and comfortably suited to his disability but he is denied these. The taps in his cell are not adapted to his disability; he needs a mixer tap, as cold water for washing is contributing to his skin problems.

Numerous doctors who have visited him have concluded that his treatment is leading to his deteriorating health and that Belmarsh is not a suitable place for him to be detained.

The Muslim prisoners have also reported that their religious dietary obligations have not been respected and that they have been served meat which has been falsely described as *halal*[146]. In August 2004, the Governor of Belmarsh, Geoff Hughes, apologised to Muslim prisoners for offering them "*halal* pork chops".[147] 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.[148] 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.[149] 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.[150] This means that they eat a lot of chocolates and other junk food in order to sustain their diet during that period. All detainees that are detained at HMP Belmarsh Prison lose weight due to their dietary requirements not being met.

The regime mandates that Islamic material cannot be provided to the prisoners unless the material is purchased from a bookshop which caters for all different religions. If Arabic literature is attempted to be purchased by the detainees,

[146] 'Halal' refers to things which are permissible in Islam. It is often used to refer to food products but is not restricted to this.
[147] 'Jail anger over 'halal' pork' , *The Times (London)*, August 21, 2004
[148] Prison Service Catering Manual, PSI 36/2003, para 4.2
[149] Prison Service Catering Manual, PSO 5000, para 3.23.45
[150] ibid

then the detainees have to pay for an interpreter to be able to be able to read the literature for translation costs, and only after the translation costs have been paid can the detainees be offered the literature. This cost is obviously prohibitive and precludes them doing so. Islamic CDs of the Qur'an or of Ahadith, and any other Islamic literature is not afforded to the detainees.

The High Security Unit, which is based in HMP Belmarsh Prison is a Unit which is separate from where the other prisoners are detained, and has a very strict regime which is run. Namely, the detainees have only two hours association time in order to bathe, clothe, exercise, feed themselves, wash clothes and make telephone contact with families, friends and loved ones. This is a fixed regime which takes place, and they are locked up for the remaining 22 hours of the day.

CASE STUDY 15: MORE ABUSE OF BELMARSH DETAINEES

During the period of Monday 23rd – Tuesday 24th May 2005, for 48 hours, there was an alleged "security operation" within the High Secure Unit. This regime, which is operated in with the High Secure Unit was curtailed, i.e. the detainees who were being held there were not even allowed out for 2 hours.

They could not exercise, nor could they receive social visits or even legal visits during this time – as were all other normal regime activities – in fact they had neither fresh air or natural light for the period. The only prisoners who were unlocked for the duration of the operation were those attending Court, and no-one else. Meals and medication were allegedly supposed to be provided at the doors - this did not occur.

Certain disabled detainees who were not even provided with their medication on time, were also dehydrated by their inability to use the taps in their cell due to their disability and the total lack of adjustments in their cells for their disabilities.

It was stated that the prisoners would be able to have alternative dates offered for social and legal visits to take place which were cancelled, which to date has not materialised despite repeated requests being made.

The detainees in the HSU were strip searched, and made to squat down. Ignoring the abject humiliation of being strip searched - but additionally they were forced to squat for no reason? If the detainee refused to comply with the strip search and squatting, pressure was placed on various parts of their bodies (pressure points) in order to compel them to do so.

HMP Belmarsh's treatment of visitors has also caused huge offence within the Muslim community.

CASE STUDY 16: THE THREAT OF HIJAB

A female Muslim charity worker who has worked with prisoners for over 12 years has repeatedly suffered humiliation at the hands of the HMP Belmarsh authorities. Despite being cleared by the Home Office to visit the detainees, she was consistently refused permission by the Belmarsh authorities. When she was finally granted permission, she was unable to see any of the prisoners as the authorities demanded that she remove the safety pin holding up her hijab, explaining that it could be used as a dangerous weapon. This effectively meant she would have to remove her hijab.

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.[151]

One endemic problem is victims' failure to achieve justice following their abuse or ill-treatment at the hands of the police or security services. Frustration builds up to breaking point when the system is used for redress but consistently fails in giving such redress due to the innate Islamophobia within it.

CASE STUDY 17: POLICE BRUTALITY COMMENDED

Following his initial release without charge in December 2003, Babar Ahmad lodged an official complaint of police brutality against the officers who arrested him. Despite photographic evidence of his injuries, independent medical reports and eye-witness statements, the Crown Prosecution Service decided that there was "insufficient evidence" to prosecute any of the officers involved.

In January 2005, following an enormous outcry, the Independent Police Complaints Commission recommended that one of the 6 police officers face a disciplinary charge for "excessive force". In April 2005, an internal Police Misconduct Tribunal found no case to answer against the officer in question. Having heard evidence from Ahmad, his wife and five of the Police officers concerned, the panel concluded:

"We are satisfied that there is no case to answer. In fact, the Officer acted professionally with great bravery. We support his actions: he should be commended and not castigated."

To date, not a single officer has been sanctioned for the assault on Babar Ahmad. The entire investigation into the complaint was wholly unfair and in no way thorough. Crucial expert medical evidence was excluded from the investigation, the Police changed their story on four separate occasions, one officer was made a temporary "scapegoat", and numerous questions are still left unanswered, not least of all, how Ahmad was left with over 50 injuries to his body.

[151] 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

Care of British Muslims Abroad

"The British government should stop treating British Muslims as second class citizens and change their foreign policies towards Muslims. I call upon them to state publicly that our trial was a miscarriage of justice… with all the miscarriages of justice, abuse of our rights, physical and mental torture, disappointedly the British government did not fulfil its obligations towards us as British citizens. The British government is continuing to allow this to happen to other British Muslims in prisons in foreign countries."

- British Muslim Malik Nassar Harhra on 11 April 2004 following his release from prison in Yemen where he was jailed for 5 years

An extremely dangerous pattern that has developed recently is a dual track system of justice implemented by the Foreign & Commonwealth Office in respect of British citizens in trouble abroad; one system for British Muslims and another for Britons of other faiths or of no faith. Where British Muslims have been detained, arrested, imprisoned or tortured, the FCO has been extremely reluctant to defend their rights or come to their aid. In many instances, there is serious evidence of collusion between the British authorities and other governments in such detention and torture. This may be contrasted with the extreme lengths the British government will go to protect a British citizen of another faith or of no faith who is in an identical situation.

CASE STUDY 18: MONEAR ELDRISSY

On 13 June 2005, a British citizen, Monear Eldrissy, was sentenced to 12 years in prison in Baku, Azerbaijan after being found guilty of charges related to terrorism in a secret trial, denying him the most basic requirements of due process.

Monear Eldrissy (27) was arrested and detained in Baku on 15 October 2005, a day before he was due to return home to Britain. The same night, Anti-Terrorist Police in London raided Monear's home, his mother's home and his in-laws home. The raids took place at 11pm and Monear's entire family including his mother, his 2 year old son and 11 year old sister were forced out of their home by the Police while the search took place. They were not allowed take any money with them and were left to roam the streets of London until 4 am when they reached Monear's home. They were allowed to return three days later only to find the locks of their home had been changed.

There are very serious concerns about the relationship between the British and Azeri authorities in detaining Monear. The warrant for the search was issued on 29 September 2004 indicating that Monear was already under surveillance. Nevertheless, the authorities allowed him to travel to Baku on 2 October. On 15 October, Monear spoke to his wife arranging for her to collect him at the airport the following day. A few hours later he was arrested with his home being raided that very night.

The British government has been very reluctant to come to Monear's assistance. Following his arrest and detention, he was not visited by any British consular or Foreign Office officials for over two months and consequently did not have any legal representation during that time. Since then, British officials have visited him only after almost daily phone calls to the Foreign Office from his wife. The trial, which began in April 2005, was held in complete secrecy, Monear was unable to communicate effectively with his state-appointed lawyer and no British officials were granted permission to attend the hearings.

Monear is being held in the notorious Bailov prison which has been routinely condemned by the UN and human rights groups such as Amnesty International and Human Rights Watch for its lack of due process and its use of torture and cruel, inhuman and degrading treatment. Yet, in a letter from Monear to his wife in February 2005, he told her that the British Vice-Consul Derek Lavery informed him that the prisons in Azerbaijan were "the best in the world".

The minimalist role played by the Foreign Office in Monear's case may be sharply contrasted with its extremely active efforts to secure the release of another British citizen, Almas Guliyeva, who was arrested in Baku in early June 2005. After three weeks, Mrs Guliyeva was released by the Azeris following intense public and private pressure from the Foreign Office. The media attention surrounding Mrs Guliyeva's arrest was enormous whereas until now, there has not been a single news item on Monear's arrest, detention and subsequent sentencing. Both are British citizens with one crucial difference: Mrs Guliyeva is not a Muslim; Monear Eldrissy is.

CASE STUDY 19: NADIR REMLI

A British national, Nadir Remli, went on a holiday to Italy with his 11 year old son on 22 February 2005. He was arrested on arrival at Milan airport.

When his wife contacted the British Embassy, she was informed that Nadir had been arrested on an international arrest warrant and that there was not much they could do about it. They said they would try and speak with a police-appointed solicitor and also arrange to go visit him.

Nadir had been living in Britain since 1982 and has been a British national for over a decade. He is married to a British woman and has five young children. Nadir is a law-abiding citizen who has never been in trouble with the police. The British anti-terrorism legislation is so broad that if he was even suspected of involvement in any form of illegal activity, he would have been arrested here in the UK, particularly if there was an international arrest warrant for him.

Algeria is notorious for its use of torture of detainees and has been routinely condemned for its use of torture by Amnesty International, Human Rights Watch and the UN among others. Under the Convention Against Torture, to which Italy is a party, governments cannot send people to places where they risk being tortured. However, Italy has violated this agreement in the past and has extradited and deported people back to Algeria on "diplomatic assurances" that they would not be ill-treated. Promises of fair treatment by states with well-known records of torture are inherently unreliable as has been seen in previous cases.

Nadir is a member of the opposition Islamic Salvation Front which makes him especially at risk of persecution, torture and possibly death if he is extradited to Algeria. The Algerian government has a brutal reputation of persecuting members of the opposition. Yet the British government had stated that its hands are tied as it is a matter for the Italian courts to deal with.

On 30 September 2005, Nadir Remli was finally released by the Italian authorities after the judge ruled there was no case for extradition.

Monear Eldrissy and Nadir Remly are not the only British Muslims to have found themselves in such situations. There is a clear pattern emerging whereby British Muslims who are suspected by the authorities of terrorism but without sufficient evidence to prosecute them are detained abroad with the help and collusion of the British government and then abandoned to their fate. Numerous other cases include the imprisonment and torture of three British citizens[152] in Egypt for holding peaceful Islamic political viewpoints, the detention of a British citizen in Abu Ghraib prison in Iraq[153], the miscarriage of justice in Yemen in which eight British Muslims served between five and seven years in prison[154], the two British Muslims who were detained in Pakistan but whose whereabouts are now completely unknown,[155] and the detention without trial and torture of 17 British citizens and residents in Guantanamo Bay[156]. Even after many of these men were released from Guantanamo, they continued

[152] Ian Nisbet, Reza Pankhurst and Majid Nawaz
[153] Mobeen Muneef
[154] Ayad Hussein, Ghulam Hussein, Malik Nassar Harhra, Mohsin Ghalain, Muhammad Mustapha Kamel, Sarmad Ahmed, Shahid Butt, Shehzad Nabi
[155] Tariq Mahmud, Munir Ali
[156] Asif Iqbal, Feroz Abbasi, Jamaludeen al-Harith, Martin Mubanga, Moazzem Begg, Richard Belmar, Ruhal Ahmed, Shafiq Rasul, Tarek Derghoul, Bisher al-Rawi, Jamal Kiyemba, Jamil El-Banna, Omar Deghayes, Shaker Abdul Raheem Aamer, Mohammed 'Yusuf' El Gharani, Binyamen Mohammed, Sami Muhyideen,

to be persecuted in Britain by the authorities. This persecution included the men being rearrested and interrogated upon arrival in Britain and in at least two cases, the men's passports were withdrawn.[157] In addition to this, countless numbers of British Muslims have been detained in inhuman conditions in Pakistan, Egypt and throughout the Middle East.

Contrast this attitude with the ardent efforts made by the British government to secure the release of Deborah Parry and Lucille McLauchlan, the two British nurses, arrested, charged, tried and found guilty of murder in Saudi Arabia in 1998. Their claims of torture were accepted at face value whereas those of British Muslims around the world are regarded as "allegations". The FCO's concern for the nurses even prompted them to send British doctors to check on their health. British Muslims languishing in prisons in the Middle East are fortunate to receive consular visits, let alone British doctors. Finally, the Prime Minister himself visited Saudi Arabia to request the nurses' pardon and release. On the other hand, the British government seems to be colluding with foreign governments to detain and torture British Muslims.[158]

Campus Watch

In a manner eerily reminiscent of the shameful era of McCarthyism, Muslim students at university have all come to be regarded as potential "fifth columnists." Traditionally, university has been associated with freedom of thought and exchange of academic ideas. It is a place for debate and development. Unfortunately, in the post 9-11 world, it is rapidly developing into an arena of censorship, intolerance and thought control. This frenzied hunt to root out "extremists" on campus has not only been endorsed, but actively encouraged, by the government. Both the Higher Education Minister, Bill Rammell[159], and the Education Secretary Ruth Kelly[160] have called on vice-chancellors of universities to crack down on extremism and "unacceptable behaviour" on campus. We will have to wait to see the complete consequences of this crack-down but indications already exist that another McCarthyite witch-hunt has begun on campus against Muslims and their sympathizers.

[157] 'No Passports for Guantanamo Pair', *BBC News Online*, 15 February 2005
[158] For further information contrasting the cases of the British nurses with the British Muslims detained without charge in Yemen, see *Merali*, 'Innocent until Proven Muslim' 3 Feb 1999 at http://www.ihrc.org.uk/show.php?id=112
[159] 'Minister urges action on campus extremism', *Guardian*, 20 July 2005
[160] 'Call for campus extremism watch', *BBC Online*, 15 September 2005

CASE STUDY 20: SUSPENDED FOR DEFENDING FREE SPEECH

The Islamic group Hizb-ut-Tahrir had been invited by the Student Union of Middlesex University to take part in a Question & Answer meeting on 28 September 2005. On 19 September 2005, the Vice Chancellor of the University, Professor Michael Driscoll, ordered the Student Union to cancel the invitation to Hizb ut-Tahrir due to its "extremist views". After the Student Union refused to cancel the event, the university informed them that it would not permit the event to take place on university premises. Consequently, the SU chose to move the event to the SU building only to be told that if it did not cancel the invitation, the meeting would be "banned". Student Union President Keith Shilson refused to cancel the invitation arguing that it should be allowed on the ground of freedom of speech. This refusal resulted in Mr Shilson being suspended from the university, having his studentship revoked indefinitely and being escorted from campus by university security. Only after issuing a full apology and agreeing not to invite such "controversial" speakers again was Mr Shilson reinstated 10 days later.

Hizb ut-Tahrir has not been banned by the government or on campus in Middlesex University and promotes a non-violent approach to political change. It has repeatedly condemned acts of terrorism such as the London bombings as having no justification in Islam.

A report on extremism on campus by Anthony Glees, director of Brunel University's Centre for Intelligence and Security Services, is a sign of the worrying times ahead.[161] The report lists over twenty-three institutions where "extremist and/or terror groups" of an "Islamist" nature have been "detected". With the possibility of hundreds of potential terrorists on campuses throughout the UK. Glees makes a number of recommendations, each one designed to effectively stifle freedom of speech and thought on campus. Firstly, he argues that the security services need to begin to fight against, not only terrorism, but also "subversion", the precursor to terrorism. Glees's broad definition of "subversion" can be drawn from three diverse groups whom he accuses of being supportive of terrorism – Hizb-ut-Tahrir, Al-Muhaajiroun, and the Muslim Public Affairs Committee UK (MPAC). Glees recommends that to counter these groups, plainclothes officers must be active on campus.

The bulk of Glees's recommendations however are directed towards the university authorities. He calls for universities to work with MI5 to exclude potentially dangerous students by abolishing clearing and interviewing, with the assistance of MI5, all students about their involvement in terrorist activities. Glees also calls for the banning of all faith societies, more security cameras, "proper screening to exclude dangerous students" (in fact, over the past 4 years, security services have barred over 200 foreign scientists from studying as British universities amid fears they could present a terrorist threat[162]), and "direct links between university registrars and immigration officers at ports of entry". Most shocking of all is Glees's recommendation to "ensure that the ethnic composition of any single university reflects, broadly, the ethnic mix of the UK as a whole." As one former trade union official for NATFHE observed,

[161] Glees A. & Pope C., '*When Students Turn to Terror: Terrorist and Extremist Activity on British Campuses'*, Social Affairs Unit (2005); See also Glees A., *'Beacons of truth or crucibles of terror?'*, The Times Higher Education Supplement, 23 September 2005

[162] 'Foreign scientists barred amid terror fears', *Guardian,* 19 July 2005

"The black and minority ethnic population of Britain stands at around 8 percent. Because this population is over-concentrated in one city (London) and in particular age groups, some universities have a majority of black students. For metropolitan universities with a black student population of 50 or 60 percent what does Glees propose: the physical removal of all those students who take the university above this 8 percent limit?"[163]

The report is filled with factual errors and seems to have "been undertaken without any academic or credible research; indeed the authors have systematically opted to rely on hearsay and allegations rather than fact."[164] For example, one of the institutes listed as having an extremist presence on campus is Cranford Community College, a secondary school for 11-18 year olds. Another clear example is with regard to Dundee University. The only "proof" of extremism on Dundee University campus is a paragraph that informs that "Suspected or confirmed terrorists who have studied in Britain in recent years include the lecturers Dr Azahari Husin, 45, who went to Reading University, and Shamsul Bahri Hussein, 36, who read applied mechanics at Dundee. They are wanted in connection with the Bali bombings in October 2002, when 202 people, including 26 Britons, died." The Sunday Times reported that Hussein did indeed study at Dundee during the 1980s. This is a rather tenuous link at best between one man's student life in Dundee and his alleged involvement in terrorism over twenty years later.[165] This case is only illustrative of the underlying problem with Glees's report. The final word should be left for NUS National President Kat Fletcher who said: *"NUS fears that the reports' unsubstantiated claims have the potential to endanger Muslim students by inflaming a climate of racism, fear and hostility, and place a cloud over perfectly legitimate student Islamic societies."*[166]

[163] Dave Renton, '18 October: Against Anthony Glees', http://www.dkrenton.co.uk/glees_report.html
[164] An open letter compiled by the Federation of Student Islamic Societies (FOSIS) as quoted in 'Dundee students refute extremism smear', *The i Witness*, 24 September 2005
[165] 'Dundee students refute extremism smear', *The i Witness*, 24 September 2005
[166] 'NUS Statement on Glees Report into extremism on campus', http://www.officeronline.co.uk/news/271354.aspx

CASE STUDY 21: NASSER AMIN

SOAS (School of Oriental and African Studies) masters student Nasser Amin wrote an article in his university magazine defending the right of Palestinians to resist occupation by violence. After the publication of the article Amin became the focus of a bitter witch hunt which resulted in him being reprimanded by SOAS University. The reprimand was published on the university's official website without even informing Amin.

His article 'When only violence will do' was written in response to an article by Hamza Yusuf that urged Muslims in Palestine to 'turn the other cheek' in the face of Israeli aggression. The article was not "extreme" or even unusual, and similar arguments have been used and promoted in academia e.g. by Professor Michael Neuman. The article was set in a context of open debate about the moral rights and wrongs of Palestinian resistance.

Amin has received death threats on Zionist websites, and calls have been made in parliament by Home Office Minister Hazel Blears for action to be taken against him. Not only is this unacceptable but it has been fuelled by SOAS's failure to defend academic freedom and moral discussion. Contrast this with Director of SOAS, Colin Bundy's jump to defend the academic freedom of Shirin Akiner, a lecturer at SOAS who justified the Uzbekistan regime's massacre of hundreds of peaceful protestors in Andjian on 13 May 2005.

National newspapers reporting on the rise of anti-Semitism on campus have referenced Amin's article as an example of such[167]. The incident is also being used by pro Israeli groups to justify a need for incitement to religious hatred legislation. This clearly shows how this law, if passed, will be used against those criticizing the illegal and aggressive actions of the State Israel.

Instead of defending Amin from this witch hunt SOAS announced they had issued him a public reprimand. They did not follow correct procedure or allow him an opportunity to defend himself; in fact, they did not even bother to contact him. Since that time, Amin's article has been mentioned in the context of "extremism" on campus in the wake of the London bombings.[168]

The net result of all this has been for a dangerous stigma to attach to campus Islamic societies which will dissuade Muslim students from joining them. This comes at a time when Muslim students have begun to politically participate far more than at any other time. However, incidents such as Special Branch approaching university registrars requesting names of the members of the Islamic Society, and the establishment by the Metropolitan Police Service of CampusWatch, a scheme to have students and staff act as special constables

[167] 'Tide of Extremism is rising against us, say Jewish students', *The Times*, 12 March 2005
[168] 'Drive to root out extremists on campus: Universities fear students are being targeted by religious fanatics', *Financial Times*, 16 July 2005

on campus[169], have acted as concrete barriers to Muslims becoming involved in the Islamic Society, the Students Union, or indeed any political society.

As highlighter earlier, the AUT has been virulently opposed to the new Terrorism Bill because of the negative effect it will have on academic freedom. A culture of suspicion and atmosphere will be created in which academic thought will be stifled. Lecturers may have to tone down their content and rephrase their language to avoid disgruntled students reporting them to the police for glorifying terrorism.

[169] 'Is it the end of an era?', *Eastern Eye*, 23 September 2005

VIII.

EFFECTS

ON THE MUSLIM

COMMUNITY

"[the Prime Minister] has ideologised the whole situation and problematised us beyond redemption …as both a community and a religion"[170]

- Arzu Merali[171] (6 August 2005)

[170] 'He has made us the problem', *Guardian* 6 Aug 2005
[171] Director of Research, Islamic Human Rights Commission

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 inciting 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."*[172]

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.[173] Harry Cummins denied the allegations but following a full investigation, he was dismissed by the British Council.[174] No action however was taken by the Telegraph Group against Dominic Lawson, the editor of the Sunday Telegraph. Remarks such as "it is the black heart of Islam, not its black face, to which millions object"[175] and "all Muslims, like all dogs, share certain characteristics"[176] 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."[177] Inside Anthony Browne wrote an inflammatory and inciting article on the Muslim plot to take over the world.[178]

A real effort is being made by certain elements in the media to equate Islam with Nazism and consequently as an ideology which requires just as powerful a response to defeat it.[179] Following the London bombings, this demonisation has by and large gone unchallenged, despite the inciting nature of the articles. The articles' most dangerous aspect is that they argue that there is no such thing as a peaceful law-abiding Muslim; rather each and every Muslim is as dangerous as a Nazi. Far from condemning such hateful comments as might be expected, senior politicians competing for the leadership of the Conservative

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[172] Will Cummins, 'Dr Williams, Beware of False Prophets', *Sunday Telegraph, 4 July 2004*
[173] The Guardian Diary, Martina Hyde, July 29 2004
[174] Hamed Chapman, 'British Council sacks 'Islamophobic' press officer', *The Muslim News, 24 September 2004*
[175] Will Cummins, 'The Tories Must Confront Islam instead of kowtowing to it', *Sunday Telegraph, 18 July 2004*
[176] Will Cummins, 'Muslims are a Threat to our Way of Life', *Sunday Telegraph, 25 July 2004*
[177] The Spectator, 24 July 2004
[178] Anthony Browne, 'The Triumph of the East', *The Spectator, 24 July 2004*
[179] See for example, Richard Littlejohn, 'War Office memo. Anyone caught fighting on the beaches will be prosecuted for hate crimes', *The Sun,* 15 July 2005*;* Tom Bower, 'BETRAYED How British Intelligence has been neutered by politicians in its quest to infiltrate the enemy within', *Daily Mail,* 15 July 2005*;* Patrick O'Flynn, 'Muslim fanatics 'are no better than the Nazis'', *Daily Express,* 25 August 2005

party, such as the Shadow Education Secretary David Cameron, have endorsed them.[180] The witch-hunt has accelerated so much that even mainstream moderate Muslim organisations such as the Muslim Council of Britain have been accused of "extremism".[181]

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 22).

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."[182]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 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.

[180] Ben Russell, 'Cameron: Don't repeat errors of 1930s with 'jihadists'', *The Independent,* 24 August 2005
[181] 'A Question of Leadership', Panorama, 21 August 2005
[182] Liz Fekete, 'Anti-Muslim Racism and the European Security State', Race & Class Vol. 46(1) (2004) 3 at 14

CASE STUDY 22: ARANI V THE SUN

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.[183] In reality, 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 was 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[184] 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.[185]

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 and her staff to receive a barrage of death threats, hate mail and abusive telephone calls.

On 11 August 2005, the Evening Standard attempted to demonise Ms Arani further after she took representation for Ibrahim Mukhtar Said, one of the men accused of the failed bus bombings of 21 July 2005. Running a story with pictures of Ms Arani, her offices and contact details, the newspaper tried to criminalise her advice to her clients to maintain their legal right to silence, standard advice given by criminal defence solicitors.[186] Once again, Arani & Co. was bombarded with threatening phone calls and malicious mail.

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*

[183] '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
[184] Arani & Co Solicitors, Press Release, 11 February 2004
[185] Letters Page, *The Sun*, February 12, 2001
[186] 'Bomb suspect's solicitor advises clients: Don't tell them anything", *Evening Standard,* 11 Aug 2005

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 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'."[187]

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.[188]

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.[189] 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"[190], those responsible were strictly liable as interfering in the course of justice regardless of intent to do so[191]. In a famous case, which indicates how powerful this law can be, the editor of the Sunday Mirror, Colin Myler,

[187] 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.
[188] 'Terrorism tops public concern', *The Guardian,* 20 August 2004
[189] Contempt of Court Act 1981
[190] Contempt of Court Act 1981, s.2(2)
[191] Contempt of Court Act 1981, s. 1

resigned[192] following a contempt verdict against the paper for publishing information which caused the collapse of the trial of two Leeds United footballers.[193]

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'.[194] 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, senior members of the government and the police force seem to be complicit in this contempt of court.[195] Tony Blair, Sir John Stevens, the former Metropolitan police commissioner, and his successor, Sir Ian Blair, have all spoken of "several hundred" people in Britain plotting attacks.[196] Senior anti-terrorist officials on the other hand say that the number of people in Britain believed to be willing to carry out terrorist attacks is between 30 and 40. But they say that it is misleading to give figures, and to talk about several hundred is meaningless. 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".[197] 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 connections with Al-Qaeda.[198]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".[199]

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 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.

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[192] 'Editor Resigns after trial collapse', *BBC News Online*, 12 April 2001
[193] A.G. v Mirror Group Newspapers Ltd. [2002] EWHC 907
[194] Daily Mail, 27 April 2004
[195] Nick Cohen, 'How to Stitch up a Terror Suspect', The Observer, January 12, 2003
[196] 'Scaremongering', *The Guardian*, 8 March 2005; 'Words of warning backed by little clear evidence', *The Guardian*, 23 April 2005
[197] 'Terror Police find Deadly Poison', BBC News Online, 7 January 2003 http://news.bbc.co.uk/1/hi/uk/2636099.stm
[198] 'Al Qaeda suspect arrested in Gloucester', *Guardian*, November 27 2003
[199] 'Blunkett to change law over suspect's bail', *Guardian*, 23 April 2004

CASE STUDY 23: SULAYMAN ZAIN-UL-ABIDIN

On the 1st October 2001, a British Muslim, Sulayman Zain-ul-Abidin, was arrested in London and charged under the Terrorism Act for inviting others to receive weapons training. He was arrested after his website offering "the Ultimate Jihad Challenge" was attacked by a London newspaper. In fact, Zain-ul-Abidin himself went to a police station expressing fears for his safety following the publication of the article and left them his business card. He told them about his company, 'Sakina Security Services', which offered security training to people from all ethnic backgrounds. What Sakina Security Services offered was nothing more than training offered by 125 other firms in the UK, none of which have ever been prosecuted.

On 9th August 2002, after spending 10 months locked up in Belmarsh, Zain-ul-Abidin was acquitted of all charges. Andrew Dismore, Labour MP for Hendon, was the man who initially brought the case to the public's attention and who pressed the police for the prosecution. Despite the acquittal, he refused to accept Zain-ul-Abidin's innocence, and publicly stated he was disappointed with the outcome.

Zain-ul-Abidin died in hospital on 22 December 2002

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.

In April 2005, a Home Affairs Select Committee report concluded that relations between British Muslims and the wider community have "deteriorated" since 9-11 and the resultant war on terrorism.[200] In the same month, research presented at the annual conference of the British Psychological Society in Manchester revealed that children as young as 13 are displaying signs of Islamophobia and are voicing their support for extreme far-right groups such as the British National Party.[201] The research found that young teenagers were increasingly saying that they have negative views towards Muslims and do not want Islamic culture expressed in the classroom. In the study of 1500 students between the ages of 13 and 24, over 43% stated that their attitudes towards Muslims had got worse or much worse since the 9-11 attacks. A quarter said they had worsened still further following the invasion of Iraq. 10% stated that they agreed strongly with the views of the BNP with 15% saying they were neutral. Such statistics are horrific reminders of the long-term inter-communal effects of the 'war on terror'.[202]

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[200] Home Affairs Select Committee, 'Terrorism and Community Relations' (April 2005)
[201] 'Fear and Hatred of Muslims on increase in young generation' *The Independent,* 2 April 2004
[202] see Ameli, S, Azam, A and Merali, A. *Secular or Islamic? What Schools Do Muslims Want for their Children* Islamic Human Rights Commission (2005) to read accounts of prejudicial treatment in schools from the experiences of Muslim children.

CASE STUDY 24: LOFTI RAISSI

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.[203] 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."[204] 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.[205]

CASE STUDY 25: MUSTAFA LABSI

Mustapha is an Algerian man who has been detained in Belmarsh since January 2001. His initial detention in Belmarsh lasted three months over suspected links to a terrorist group in Germany. When the case was dropped and he was due to be released, he was rearrested on an extradition order from France. Mustapha spent three more years in Belmarsh until all the prisoners in France who he was allegedly connected with were released. After it was clear that he that he had served all the time he would have been required to serve if he had been extradited, he was due to be released on bail. The day before this happened, Mustapha was detained without charge under the Anti-Terrorism Crime and Security Act.

Mustapha's wife is Slovakian and was three months pregnant at the time of the initial anti-terror raid on his home. When she went to the hospital for an ultrasound, the hospital refused her and told her that her husband was a terrorist. When Mrs Labsi insisted on having the ultrasound, she was told that the ultrasound showed that her unborn baby was dead. After going to another hospital for an ultrasound, she was told that the baby was alive and that the previous hospital were told by the security services to treat her in that way.

Even after her son was born, the security services continued to haunt her. She was threatened with eviction and eventually evicted without food or money. A Muslim who saw her dilemma took her to his home to assist her. The security services approached him and threatened him with prosecution if he continued to support her, after which the man asked her to leave his home. As Mrs Labsi's health deteriorated, she neglected her son who was taken away from her.

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 it is 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 and more recently since 7/7. Current

[203] Islamic Human Rights Commission, *The Hidden Victims of September 11: Prisoners of UK Law* (Sept. 2002)
[204] 'Special Report: Lofti Raissi', *The Guardian*, 11 September 2002
[205] ibid

discrimination legislation is incomplete as it fails to prohibit discrimination against Muslims.[206]

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 led to Muslims suffering from various forms of mental torture. 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. An ICM poll conducted by the *Guardian* found that more than over 60% of the Muslim population in UK have considered leaving the UK since the London bombings.[207]

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. The BBC has reported that police and security services have compiled lists – some containing names of innocent people – to show to terror suspects when interrogating them. One incident in Strathclyde involved a list of names and photographs of 82 people being shown to terror suspects. Over one third of these were never charged or convicted of any offence, yet they remained on the list months after being released without charge.[208]

CASE STUDY 26: KIDS THREATENED WITH GUANTANAMO

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 do not add to the public having confidence in the police force.

[206] 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

[207] 'Two-thirds of Muslims consider leaving UK', *Guardian*, 26 July 2005

[208] 'Suspects shown al-Qaeda lists' *BBC Online*, 26 April 2005

CASE STUDY 27: PERSECUTED ALGERIANS

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.[209] A ninth Algerian was arrested in February 2003. On 14th March 2003, all nine men were released on bail.[210] In December 2003, the Crown Office announced that "based on the evidence presently available, no further proceedings will be taken at this time."[211] 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.[212] These men are now extremely worried of being deported to Algeria where they face a strong possibility of being imprisoned, tortured and even executed.[213]

CASE STUDY 28: INTERNATIONAL HARASSMENT

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 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, alleging that they were taken from his computer, 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.

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[209] '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

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

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

[212] 'Revealed: 20 al-Qaeda suspects on Scots hit-list', *Scotland on Sunday*, 15 August 2004

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

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 29: LIFETIME OF PERSECUTION

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 was detained without charge in Belmarsh since December 2001 under the Anti-Terrorism Crime & Security Act. Already traumatised, Mahmoud's mental health began to deteriorate rapidly. He was unable to eat and too weak to be out in 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. In Broadmoor, he endured frequent episodes of verbal abuse by members of staff as well as assaults from other patients.

Mahmoud was released from Belmarsh in March 2005 and subjected to control orders, including tagging and temporary house arrest. Within the first week of his release, he was admitted to hospital twice for taking an overdose of pills.[214] On 28th April 2005, Mahmoud handed himself into a police station in Fulham pleading that he did not want to wear the electronic tag stipulated in the control order. He was sent to Brixton prison where he tried to kill himself twice. Despite this, on 5th May 2005, Judge Timothy Workman sent Mahmoud back to jail in spite of his chance to get treatment at the psychiatric unit at Charing Cross hospital. The Judge claimed that only the Home Office could change the terms of the orders and allow him the treatment.[215]

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

[214] 'Terror suspect overdoses after release', *The Independent*, 23 March 2005
[215] 'Terror suspect returned to jail', *The Guardian*, 5 May 2005

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.

This feeling of distrust is rapidly spreading to other people outside the Muslim community who have witnessed the full extent of the terror laws. Recently, three jurors from the 'ricin' trial who acquitted the suspects, expressed their outrage at the men's rearrest.[216] As one juror stated:

> *"[There was] poor intelligence, police having misinformation and not really understanding the background, the government willing something along because of the impending war, and it gathered its own momentum … Now they are trying to justify why the arrests happened.*[217]

> *"Before the trial, I had a lot of faith in the authorities to be making the right decision on my behalf … having been through this trial, I'm very sceptical now as to the real reasons why this new legislation is being pushed through."*

CASE STUDY 30: THREE GENERATIONS OF TERRORISTS

In July 2005, Somali mother Aziza Hassan, 39, her young son Ahmed Omar, 12, and 74-year old grandmother Kadija Hassan were walking from their house to the local mosque. Suddenly undercover, plain-clothed police with guns jumped out of a car and confronted them. The officers were shouting 'put your hands up, against the wall, face the wall …'

They pointed a gun at Ahmed's head who was only 12 years old at the time; he thought they were going to kill him. His grandmother Kadija leaped forward to protect her grandson, putting herself between him and the armed officers. When she was pushed away by the officers she fell and suffered a heart attack. Kadija walks with a stick and has trouble controlling her balance. When the officers pushed her away, her walking stick fell down and she fell against a wall.

Police eventually called an ambulance when Kadija began to breathe heavily. However, the ordeal continued when the officers separated Ahmed from his mother and questioned him.

The family has yet to receive any apology or even explanation from the police. The incident has destroyed the family's faith in the force.

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

[216] 'Ricin jurors attack new terror laws', *Guardian*, 9 October 2005
[217] 'Interviews with jurors from the Ricin trial', *www.Cageprisoners.com*, 22 September 2005

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, 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.[218] . 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 this 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 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 and more recently since 7/7, noted a growing number of incidences of this type of behaviour. A report on discrimination by the Islamic Human Rights Commission from December 2004 found that over 80% of respondents reported experiencing discrimination because they were Muslim.[219] This was a huge increase on figures of 35% and 45% in similar reports for 1999 and 2000 respectively. Since the 7 July bombings there has been a UK-wide increase in faith related and racially motivated attacks and widespread violence against individuals, their homes and families, businesses and places of worship.[220]

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

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

[219] Ameli, Elahi, Merali, 'Social Discrimination: Across the Muslim Divide' (Islamic Human Rights Commission; December 2004)

[220] Police figures revealed on 2 August 2005 showed a 600% increase in faith-hate crimes following the London bombings. See 'Faith hate crimes up 600% after bombings' *METRO,* 3 Aug 2005

On an organisational level, since 9-11, British Muslim leaders have regularly met with the Metropolitan Police Service in consultations on policy matters. Over this time, it has become painfully clear that the forum was nothing more than a pacification session whereby upset Muslim leaders could vent some of their frustration. Despite opposition by the community to a range of issues, their comments were never taken seriously. One stark example of this is Operation Kratos. Despite numerous challenges to the police's adoption of Israeli tactics in dealing with Palestinians, IHRC was repeatedly told that no excessive tactics would be implemented in Britain. In fact, this brutal policy was introduced through the back door in 2002 without informing the Muslim community with whom they were allegedly consulting. This is a clear indication that this consultation process that the Muslim community has been engaged in has largely been a farce and has operated more as an exercise in rubber-stamping. Consequently, and in light of the killing of Jean Charles de Menezes, IHRC felt duty bound to sever all formal relations with the police.

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 the experience of using internment in Northern 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).[221]

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.[222] 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.

While the vast majority of the British public were shocked in July 2005 when it emerged that British police had a 'shoot-to-kill' policy in place, experts on the Irish experience were far less surprised. Professor Paddy Hillyard explains that for years, allegations abounded that a "shoot-to-kill" policy was in place during the Troubles, particularly targeted on the IRA and other Republicans. As was initially the case today, then also the policy was repeatedly denied. John Stalker, the then Assistant Chief Constable of the Greater Manchester Police, who investigated the deaths of six young men at the hands of the Royal Ulster Constabulary in the 1980s pointed out in a letter to *The Times*: "I never did find evidence of a shoot-to-kill policy as such". However, he went on to say

[221] Bronwen Walter, Runnymede Trust, '*The Irish Community: Diversity, Disadvantage and Discrimination*'
[222] Paul Donovan, 'Are Muslims becoming the new Irish?', *The Muslim News*, 28th May, 2004

that "there was a clear understanding on the part of the men whose job it was to pull the trigger that that was what was expected of them".[223]

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, then Home Secretary Roy Jenkins described it as a "draconian measure."[224] 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."[225]

Ironically, in the same period that the current Prime Minister is pushing through the most severe and draconian legislation in its history, he has personally apologised to Guildford Four and the Maguire Seven, innocent Irish victims of anti-terror laws thirty years earlier.[226]

Internment

"In Northern Ireland, the government felt the way to resolve the conflict and prevent political violence was to institute draconian measures, rather than address the larger problems underpinning the violence. Their attitude was myopic. In fact, the more draconian the measures, the more marginalized a community felt and the more support developed for paramilitary groups. We saw that after internment, after the hunger strikes and beyond."[227]

- Dr Kathleen Cavanaugh, lecturer in International Human Rights Law at National University of Ireland Galway, expert on Northern Ireland and the Middle East

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.

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[223] *The Times* 14 February 1988 as cited in Paddy Hillyard, 'The "War on Terror": lessons from Ireland', *European Civil Liberties Network* (2005)
[224] House of Commons, Official Report, November 25 1974, col. 35
[225] Hansard, House of Lords, November 27 2001, col. 199
[226] 'How Times Change', *Independent,* 10 Feb 2005
[227] *Guardian*, 6 Aug 2005

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"[228], 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[229]. Over three times as many people (467) were killed in terrorist attacks in 1972[230]. 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 those innocent of any involvement in political conspiracy, into an organic unit."[231]

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.[232]

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

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[228] Secretary of State for the Home Department, "Reconciling Security and Liberty in an Open Society," Para. 29.
[229] Ibid at 1223
[230] ibid
[231] 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*
[232] CAIN Web Service, Internment - Summary of Main Events, at http://cain.ulst.ac.uk/events/intern/sum.htm

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.[233]

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."*[234]

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."*[235]

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 be regarded as a political act which would be matched in the form of a ban on [mainly loyalist Orange] marches."*[236]

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."*[237]

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*

[233] Ireland v UK (1978) 2 EHRR 25
[234] *Guardian*, 1st January 2002
[235] Ibid
[236] Ibid
[237] Ibid

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.[238] The Bill received its Second Reading on the 19th November.[239] A timetable motion was passed declaring that the Committee Stage and the Third Hearing should be completed in a further two days.[240] The derogation order was debated for only ninety minutes.[241] The Committee Stage of the full house occurred on the 21st and 26th November and finished at 23:57.[242] This was immediately followed by the Third Reading which was concluded at 00.00[243], i.e. the Home Secretary spoke for just three minutes.[244] The Shadow Home Secretary's opening comment was interrupted by the vote that went 323-79.[245] 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

[238] Philip A. Thomas, 'Emergency and Anti-Terrorist Power: 9/11: USA and UK', *26 Fordham International Law Journal 1193 (April 2003) at 1217*
[239] ibid at 1218
[240] ibid
[241] ibid
[242] ibid
[243] ibid
[244] ibid
[245] ibid

inappropriate in emergency legislation which was required to be considered at such speed."[246]

On the 19th December 2001, eight men (all Muslims) were detained under the new legislation.[247]

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.

[246] 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.

[247] 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

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RECOMMENDATIONS

"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"

- Tony Blair (10 March 1993)

The current system of scaremongering and demonisation is completely abhorrent to systems of justice. 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."[248]

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."[249]

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"[250]

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 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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[248] *'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

[249] ibid

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

Recommendations

General

1. Anti-terror legislation must be drafted more precisely and definitively so as to minimize the threat of innocent people being arbitrarily punished.

2. The laws must be implemented in an indiscriminate manner and not single out any specific community for collective victimization.

3. The existing legislation should be repealed and terror suspects prosecuted under pre-existing criminal legislation through the normal criminal justice system. The government should 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.[251]

4. All suspects must be brought before a judge and jury and be given the opportunity to challenge the evidence against them in a court of law in accordance with due process.

5. Any punitive sanctions, such as internment or control orders, against individuals who have not had the opportunity to clear their name are wholly abhorrent and morally repugnant to the values of justice and equality.

6. Evidence obtained from torture must not be admissible in court or otherwise used in building a case against an individual. Such evidence is unreliable and immoral. It must not be used even where torture was not procured by the British government.

Institutional Islamophobia

7. Similar to the recommendation made by Lord MacPherson in the Lawrence Enquiry, Islamophobia must be recognized and acknowledged as existent from the victim's subjective perspective until such time as evidence is shown that it is not the case.

8. Police officers must be held to account for their actions and behaviour. With such wide and unfettered powers under the anti-terror laws, there needs to be an adequate system of checks and balances put in place such as a police complaints system that has the necessary funding, man power, sufficient investigative powers and the will and commitment to credibly hold the police to account. The current system involving the Independent Police Complaints Commission is ineffective and frustrating.

[251] As recommended by the Privy Council Review Committee chaired by Lord Newton (December 2003); para 207

9. The government must invest in third party independent groups who can help victims with their complaints and monitor the way anti terror powers are being used.

10. Policing must be based upon the principles of justice and protection and not to promote a higher political agenda.

11. Faith-based recording of stop and search and arrest must be carried out in order to ascertain the true level of institutional Islamophobia.

12. Racial and religious profiling must be abandoned as a method of policing. It is ineffective and counter-productive and will only lead to further alienation and marginalization of the victimized community.

13. The policy of 'shoot to kill' must be suspended with immediate effect and proper debate in public and by members of parliament should take place.

14. Released suspects must be issued with a full public apology by the police so as to help remove the stigma of arrest from them.

15. Muslim charities must not be arbitrarily closed or subjected to stricter surveillance than other charities. If charities are restricted only to be later cleared, a full public apology must be issued with the offer of compensation.

16. British Muslims abroad must be treated with the same care and concern as other British citizens in similar situations. The current dual track system causes widespread alienation and disillusionment with a government which is supposed to protect its citizens.

17. Terror threats must not fluctuate based on the occurrence of religious festivals. Religious festivals are not and must not be associated with terrorism.

18. Muslim solicitors must not be impeded from carrying out their duties towards their clients. Their mistreatment is nothing more than an obstruction of justice.

19. An independent inquiry must be carried out into HMP Belmarsh, its conditions of detention and specifically, its treatment of Muslim inmates and visitors.

20. Members of the government must refrain on commenting on individual cases in which the guilt of the accused has not been proven in court. Such statements constitute contempt of court and must be treated as such.

21. Members of the government must refrain from making attacks on the judiciary; such attacks lead to a decline in public confidence in the system of justice.

The Terrorism Act 2006

22. The right of people anywhere in the world to resist invasion and occupation is both legitimate and moral and within the framework of international law. Therefore the attempt to criminalise the "glorification" of such self defence appears to be intended to stifle discussion about, and support for, such resistance.

23. The creation of an offence of "encouragement of terrorism" is unnecessary as the requisite elements of the offence are already covered by existing legislation relating to incitement, which have been used, albeit selectively but where used effectively in the past.

24. The creation of an offence of "dissemination of terrorist publications" constitutes a huge impediment to freedom of speech, thought and expression. Not only will it become religious censorship but it will stifle academic thought on campus and introduce a level of censorship more at home in the former Soviet Union than in the UK.

25. The offences of "acts preparatory to terrorism" and "training for terrorism" are already adequately covered by the Terrorism Act 2000. As with "dissemination of terrorist publications", this offence is drafted very broadly so as to potentially put university lecturers and librarians at risk of prosecution.

26. The proposal to detain individuals for 28 days without charge is an affront to due process. No other country in Europe empowers itself to detain terror suspects for even 14 days, the previous limit under British law. Similar to internment in Northern Ireland, this may become the greatest recruitment sergeant for those who wish to harm Britain.

27. 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. It is absolutely imperative that the evidence used be made available to the defendant to challenge its validity.

Extremism

28. The government must refrain from using the term “extremism” in its discourse on terrorism. The term has no tangible legal meaning or definition and is thus unhelpful and emotive.

29. To equate “extremism” with the aspirations of Muslims for Shariah laws in the Muslim world or the desire to see unification towards a Caliphate in the Muslim lands, as seemed to be misrepresented by the Prime Minister, is inaccurate and disingenuous. It indicates ignorance of what the Shariah is and what a Caliphate is and will alienate and victimise the Muslim community as a whole.

30. To denounce anybody who questions the legitimacy of the State of Israel will be seen as an attempt to silence academic thought and legitimate political expression. If the government hopes to pander to Zionist pressure by condemning and excluding from this country people who are critical of Israeli apartheid, it is in fact supporting apartheid.

31. The proposal to ban non-violent organisations like Hizb ut-Tahrir is unwarranted, unjust and unwise, and runs counter to all the principles which Western democracies are currently trying to promote abroad. Any disagreement with a political organisation must be expressed through debate not censorship and proscription. If it is suggested that any laws have been broken by any individuals or groups then this must be proven by due legal process. Criminalising the mere possession of certain opinions is the hallmark of dictatorships.

32. The same reasoning applies to the proposal to close mosques if they are arbitrarily defined as being ‘extremist’ or to try and politically influence what may or may not be said during a religious talk. This would amount to collective punishment of the community and will be likely to create fear and prevent legitimate political discussion within mosques. This repression could lead to the very radical sub-culture which we all seek to prevent. The government must not attempt to control or otherwise influence places of worship. To extend this to faith schools and meeting rooms is abhorrent and fuels further the aforesaid process.

33. Compulsory ID cards would not have prevented the London bombings and will not prevent any future terrorist attack. As such, they are a waste of tax-payers money and only serve to violate further the right to privacy.

34. The proposal to deport and/or extradite foreign nationals to countries known for gross human rights abuses is abhorrent to a civilized nation, irrelevant of whether or not a diplomatic assurance that deportees will not be mistreated is obtained. This recent move comes across as a

cynical attempt to resolve the problem of dealing with those currently under “control orders” after the judiciary found their continued detention without trial to be unlawful. Given that the alleged bombers on 7 July in London were British nationals; such an exploitation of the events to move against foreign nationals as well as unwanted asylum seekers is indeed shameful.

35. Rendition and Extradition without trial is abhorrent to the system of due process and should never take place, particularly where the country requesting extradition is known for its human rights abuses.

36. Initiatives such as CampusWatch which aim to have students spy on one another will lead to mistrust and religious segregation on campus, and must therefore be discontinued.

Demonisation

37. The remit of the Commission for Racial Equality is not wide enough to effectively tackle the problem of religious discrimination. The issues involved in religious discrimination are very different from racial discrimination. Consequently, a separate body needs to be created for this purpose with the relevant experts in the area and the necessary resources to create religious equality.

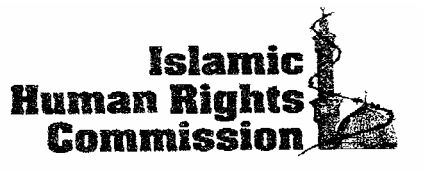
38. The proposal to create an offence of incitement to religious hatred must be wholeheartedly opposed. Due to the depth of institutional Islamophobia in Britain, there is a real chance that rather than protect the Muslim community, such legislation will be used disproportionately against it, similar to how the incitement to racial hatred was used disproportionately against the Black community.

39. In order to protect the rights of Muslims in Britain, religious discrimination must be outlawed. Anything less creates the impression that Muslims are not full citizens entitled to protection in Britain.

40. Attempts to equate Muslims with Nazis are incitement to hatred and violence. Journalists and politicians who incite hatred against Muslims must be investigated by the Commission for Racial Equality as well as the police.

41. Terror suspects should not be tried by media. The Contempt of Court Act 1981 must be used to prevent news reports which are likely to prejudice the right to a fair trial and to punish those who breach it.

42. Solicitors, barristers, NGOs and campaign movements and individuals protesting these measures, or defending those affected by these laws must not be bullied by the media to stop their activities with impunity.



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