The Hidden Victims of September 11:

Prisoners of UK Law

Islamic Human Rights Commission
September 2002

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First published in Great Britain in 2002
by Islamic Human Rights Commission
PO Box 598, Wembley, HA9 7XH

Printed in England by Islamic Human Rights Commission

ISBN 1-903718-19-8

Introduction

One year on since the attacks of September 11, the Muslim community in the UK continues to suffer the repercussions of the event. Dozens have been harassed by the security forces, and dozens more have been arrested, some being released whilst others have been detained. The Home Office has yet to publish figures on the number of arrests.

One year on, attempts have continued to be made to extradite 'suspected terrorists' to the USA and to prosecute so-called Islamic militants under various laws in the UK, including the terrorist legislations. Embarrassingly for the government, and unsurprisingly, all these attempts have failed.

One year on, the practice of internment has led to the violation of basic human rights of foreign nationals seeking refuge in this country. Despite the Special Immigrations Appeals Commission, the body hearing their appeals, deeming their detention unlawful, they continue to be detained under harsh conditions.

One year on, these incidents have reinforced the fears of the Muslim community that the war against terrorism is really a war against Muslims and Islam, that they have been targeted by the government in its bid to show something is being done. These are the hidden victims of September 11.

Purpose of Report

This report seeks to provide a brief overview of what has taken place since September 11, providing brief summaries of the cases, their legal analysis and the implications for human rights.

Part 1 briefly looks at the number of arrests and incidents of harassment. Part 2 outlines the facts of the cases where the government has sought to extradite or to prosecute suspected terrorists or alleged militant Islamists. Part 3 looks at the practice of internment, and examines the decision of the Special Immigrations Appeals Commission.

Part 1 – Arrests and Harassment

Arrests

IHRC estimates[1] that under anti-terrorism legislation, around 50 persons have been arrested. The Home Office and some Police Services have yet to release figures, thus making it extremely difficult to give a definite number. Only some of the arrests have been reported by the media, while others remain unknown.

Failure to release facts and figures surrounding these arrests raises serious human rights concerns. All arrests must be made public so as to enable monitoring and scrutiny of the implementation of anti-terrorism measures and of the rights of the detainees, so as to prevent violation of their rights. It is particularly essential to do so to allay the fears of the Muslim community that feels that they are indiscriminately being targeted.

Harassment

It is estimated that MI5 and Special Branch officers have visited the Homes of 30 British Muslims[2]. These are part of a strategy to collect evidence and information about suspects that have links with Al-Qaeda. The Home Secretary David Blunkett issued an apology to Muslim leaders expressing regret for any distress suffered by those that had complained of harassment and intimidation by the security services while conducting these 'fishing expeditions'.

During interrogation, the persons were asked questions of why their names appeared in Afghanistan and what connection they had there. Many were alarmed at the detailed information the security forces had on them such as the mosques they attended, the people they spoke to there etc., which also raised fears that some Muslims in the mosques were working with them. [3]

Additionally IHRC has received numerous reports of people being not only interviewed by the security services, but also having their computers and documents confiscated by them.

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[1] Based on conversations with journalists, lawyers, activists, NGOs.

[2] The Muslim News, Issue 160, Friday 30 August 2002, 'British Muslims accuse security services of harassment'. The Observer, Ahmed K., Bright, M,., ward, S., Sunday 25 August 2002, 'Blunkett sorry for MI5 harassment'.

[3] Ibid

Part 2 – Collapsed Cases

i. Extradition

The USA sought the extradition of various persons it claimed to have links with Al-Qaeda and to have contributed to the attacks of September 11.

a) The case of Lotfi Raissi

One such person that the USA sought to extradite from the UK was Algerian pilot Lotfi Raissi. Had he been extradited he would most likely have been charged with conspiracy to murder and could have faced the death penalty. He was discharged by Bow Street magistrate's court in London on April 24 2002 after concluding there was not sufficient evidence to support allegations of terrorism and extradite him to the USA. His detention lasted seven months, five of which were spent in Belmarsh high security prison, before being released on bail.

Raissi was accused of training four September 11 hijackers including suspected ringleader Mohammed Atta.

In seeking his extradition the US government claimed that they had sufficient evidence of active conspiracy-proving correspondence and telecommunications with the September 11 hijackers as well as video footage with them, and proof that they travelled together.[4]

Despite such strong allegations, the FBI failed to bring anything apart from minor charges against him. Instead the US resorted to seeking his extradition on the charges that he lied on an application form for a pilot's license, for failing to declare a knee injury, and a conviction for theft when he was 17. Although these are extraditable offences for which Raissi could have faced a year in prison in the US, these were far removed from the initial accusations of links with the events of September 11.

The US however maintained that Raissi was the flight instructor of the hijacker of American Airline flight 77 into the Pentagon, Hani Hanjour. An FBI affidavit claimed both had taken flight simulator training at Sawyer Aviation in Arizona together on five days in 1998. However the FBI admitted that it was not determined whether they both actually trained together.

Key evidence submitted by the USA was what it claimed was video footage of them both together. This claim, however, was dropped after Raissi's lawyer clarified that the footage was in fact poor quality web-cam footage of Raissi with his cousin.

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[4] The Guardian, January 31, 2002, 'A suspect sits in jail while they work out why he's there', Audrey Gillian.

Further, claims by the prosecution that they had both been in frequent telephone contact were not substantiated. Another claim that Raissi called a suspected Al-Qaeda leader failed when it was discovered that Raissi was at the Paddington police station at the time he supposedly made the call.

Moreover, claims by the FBI that Raissi and Hanjour flew in the same aircraft on March 8, 1999 did not correspond with logbooks showing that Hanjour flew for 1.5 hours and Raissi flew for 1.7 hours. They claim that the entry on the logbook was incorrect and should have said March 9.

The type of evidence put forward was weak and could have easily been clarified by the US authorities. The failure to do so by the US authorities, as well as the reliance of UK authorities basing arrests and detentions on such unsubstantiated accusations shows that the fight against terrorism is being conducted with total disregard for justice or the truth. The tragedies of September 11 are used to justify indiscriminate targeting of Muslims without any real evidence, and severely infringing their civil liberties and basic human rights.

ii. Prosecution under the Terrorism Act 2000

a) The case of Suleyman Zain ul Abidin

As part of its crackdown on 'Islamic militants', the UK authorities arrested Suleyman Zain ul Abidin, a chef from southwest London under the Terrorism Act 2000. Having spent ten months in Belmarsh Prison, he walked free from the Old Bailey on 9th August 2002.

Ironically he was arrested after complaining to the police that he felt vulnerable after a newspaper had published an article about his website. He was accused of inviting Muslims to learn how to use weapons in the pursuit of a holy war on his website which promoted Sakina Security Services on a course entitled 'The Ultimate Jihad Challenge'.

The evidence against him was that he advertised a £3,000 fortnight long course in firearms training in the US. Further it was claimed that the site had links to banned group[5] Harkat ul-Mujahideen. A copy of Osama Bin Laden's 1998 fatwa against the US and her allies was also found in a police raid at the chef's home.

Although the prosecution stressed that Zain ul Abidin was not an Al-Qaida member, the security firm was a 'front or veil' for 'the pursuit of jihad, against the perceived enemies.'

The prosecution asserted that 40 anti-terrorism officers were working on this case 24 hours a day, seven days a week over 55 countries. The irony is that after such thorough investigations, such scarce 'evidence' was retrieved which failed to persuade the Court. As Zain ul Abidin put it 'Now I have appeared in the

[5] Banned by the Home Secretary in March 2001.

highest court in the land and what evidence have they produced? What was in my house all the time. I'm their trophy, I'm their prize.'[6]

The campaign against Zain ul Abidin was spearheaded by pro-Zionist Andrew Dismore, a Labour MP whose comments in the press led Zain Ul Abidin to initially complain to the police. Further, after the case was dismissed, Dismore again commented to the press how the result was a disappointment. This raises serious concerns about the implementation of the anti-terrorism legislations which are led and unduly influenced by politicians who have no basis to make allegations.

Reliance on such information, without verification, places enormous powers in the hands of such organizations to unduly influence arrests and prosecutions, and subsequently miscarriages of justice.

iii. Prosecution under other legislation

The case of Sheikh Faisal

Sheikh Faisal was arrested on February 18, 2002. He faces a sentence of up to life imprisonment if found guilty of the charge 'soliciting to murder' under section four of the Offences Against the Person Act 1891 on the basis that on or before February 18 this year he 'encouraged others to murder persons unknown'.

He was initially refused bail and was held in custody, but was later released on bail on 21 August 2002 after the prosecution failed to hand over evidence they intended to use to his lawyer. He is currently awaiting trial.

Conclusion

All the cases seeking to extradite or prosecute 'suspected terrorists' and 'Islamic militants' have so far failed on the grounds of insufficient evidence. What is perhaps remarkable about the various cases outlined above is that such weak evidence even led to the arrests let alone detention and trial of the persons. In the extradition case, the arrests were based on US intelligence. In the case of Zain ul Abidin, the arrest and trial were initiated by a politician. This raises concerns that arrests are not motivated by evidence but by politics.

It is essential that changes are made in the way the UK authorities have conducted their 'war on terrorism'; they should not rely on assumptions of guilty till proven innocent. Otherwise civil liberties and standards of justice will have been eroded for no reason whatsoever except to fuel and be fuelled by prejudices and phobias.

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[6] The Guardian, August 10, 2002, 'Cleared chef says he was terror scapegoat', Tania Brannigan.

Part 3 – Detention

Internment was introduced in the UK in the Anti-Terrorism, Crime and Security Act on December 14, 2001, in response to the attacks of September 11 on the USA. It gave authorities the power to detain people, who they did not intend to prosecute, on suspicion that they posed a threat to public order or national security.

Despite arguments from human rights organizations that such measures contravene fundamental European and international human rights guarantees,[7] the Home Secretary pursued these avenues. Eight months later the Special Immigration Appeals Commission has declared the illegality of these measures.

i. Challenge to the detention

Nine alleged international terrorists challenged the legality of the Anti-Terrorism, Crime and Security Act 2001, which allowed the detention of foreign nationals suspected by the Home Secretary of being terrorists, before the Special Immigration Appeals Commission. It heard of the harsh conditions that were imposed on them and held it to be 'an unprecedented and drastic interference with a range of basic fundamental rights including the right to liberty and the right to a fair trial'.[8]

All eleven men, foreign nationals, were arrested under the Act. Two men chose the voluntary repatriation option and returned to their countries. Seven have been held in Belmarsh high security prison in London for nearly seven months.

ii. Who are the detainees?

The identities of only a few of the men are known. It is reported that one man, of French Algerian origin, had been acquitted at the Old Bailey in March 2000 of conspiracy to provide support to an Armed Islamic Group.[9]

Another of the detainees is Mahmoud Abu Rideh, a Palestinian torture victim, arrested in London on 19 December and is currently being held in high security Belmarsh Prison in London as a category A detainee[10]. He was arrested under the Anti-terrorism, Crime and Security Act 2001 and continues to be held without charge.

His physical and mental conditions have given cause for grave concern. Rideh came to the UK in 1995 and was being treated for severe post-traumatic stress

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[7] See Tafadar, S., 'Internment, Military Tribunals and Persecution in the West', Islamic Human Rights Commission, February 2002.
[8] The Guardian, July 18 2002, 'Anti-terror law in the dock over human rights', Audrey Gillian.
[9] Ibid
[10] High risk prisoner

disorder following torture he suffered at the hands of Israelis while living in Gaza as a teenager.[11]

His condition in detention had deteriorated to the extent that Mr. Justice Collins, presiding on the panel of the Special Immigration Appeals Commission on 24 June 2002, said that the Home Secretary should consider moving him to a secure psychiatric unit. According to Mr. Collins, he had been 'neglected and allowed to rot'. Physically he is unable to stand for more than a few seconds, and relies on a wheelchair.[12]

iii. Conditions of detention

The conditions in which the seven suspects have been held at Belmarsh high-security prison in southeast London without charge since their arrest have been described by lawyers and Home Office medical experts as 'barbaric' conditions and as 'concrete coffins'.[13] In 1996, the former Government chief medical officer concluded that units like Belmarsh could contribute to mental illnesses. [14]

They were locked up for 23 hours a day and not allowed to see daylight, they were not given access to lawyers or family on detention, while being given five days to appeal against their internment. The detainees were initially denied access to lawyers. Prisoners were additionally refused prayer facilities and have been subjected to body searches by women. They were unable to speak to their families without an approved Arabic interpreter, who visited once a week. [15]

iv. Option of deportation/ repatriation

Djamel Ajouaou was seized on December 24 2001 was given the ultimatum of leaving the country or facing indefinite detention without charge. After being held at Belmarsh prison for two months, Ajouaou returned to Morocco. During his time in Belmarsh he was not informed of the crime he was alleged to have committed, nor presented with any evidence. The evidence against him was that he regularly visited two suspected terrorists in Belmarsh Prison, even though the Prison had cleared him as a translator, working for Gareth Pierce, the lawyer for some of the detainees.[16]

This act of deportation by the immigration authorities is ironic in that if these suspects are indeed international terrorists, then deportation leaves them free to continue their activities abroad.

v. Flaws with SIAC decision

[11] The Guardian, June 25, 2002, 'Terror suspect left to rot in prison', Audrey Gillian.
[12] See www.amnesty.org
[13] The Observer, January 20, 2002, 'UK terror detentions barbaric', Bright, M., Burke, J., Wazir, B.
[14] Ibid
[15] Ibid
[16] The Guardian, July 18, 2002, 'Anti-terror law in the docks over human rights'.

On 30 July 2002, the detainees won their appeal against detention without trial, the SIAC dismissing their detention as unlawful.

Although the panel held that there did exist a state of emergency which would allow the British government to opt out of its Article 5 obligations, the detentions were unlawful on the basis that they were discriminating against foreign nationals. It further went on to state that if the UK opted out of its Article 14 obligations, then the ruling would be of little consequence.

This was the first time the panel examined the legality of the legislation. They heard the case in public for three days before continuing in secret.

The decision was welcomed by the detainees as well as by human rights organisations. However the argument put forward by the Special Immigrations Appeals Commission remains flawed in several areas which may be overcome by the government.

a) Does a State of Emergency Exist?

It is IHRC's view that whilst there seems to be a vicious circle of media provocation and public pressure to deal with a perceived threat from within Britain, there is little to substantiate such a threat except for the opinions as opposed to facts expressed in the media and the consequent public pressure on politicians that results from such media coverage.

There does not seem to be an acknowledged statement from the Home Office or any other organ of government that there is an internal threat to British security, rather that events on September 11 have jeopardised international security in a generalised and non-specific sense. Article 15 of ECHR states that:

"In time of war or other pubic emergency threatening the life of the nation any High Contracting Party may take measures derogating from its obligations under this Convention to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with its other obligations under international law…"

Article 4 of the ICCPR also allows derogation from some obligations including Article 9, which also protects the right to liberty 'in time of public emergency which threatens the life of the nation and the existence of which is officially proclaimed.' The derogation must be limited 'to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with their obligations under international law and do not involve discrimination solely on the ground of race, colour, sex, language, religion or social origin.'

According to the Human Rights Committee, the state bears the burden of proving that there is such an emergency and imposes a strict test of proportionality. The measures should not be practiced when a state of emergency no longer exists.

Moreover measures must not be applied that would discriminate against some categories of persons, in this case non-nationals.

The derogations made under Article 15 of ECHR by the British government with respect to the treatment of certain foreign nationals whom the Home Secretary perceives to be a threat to national security who are present in the UK in such circumstances appear dubious.

International and regional bodies frequently refer to each other's decisions when interpreting their own legislation. The European Commission and Court of Human Rights adopt the same approach as the Human Rights Committee in terms of derogations, with additional consideration that the state has a margin of appreciation to decide whether a state of emergency does exist and whether current legislation is sufficient to deal with the situation.[17]

In Lawless v Ireland[18], the European Court of Human Rights interpreted Article 15 as: "referring to an exceptional situation of crisis or emergency which affects the whole population and constitutes a threat to the organised life of the community of which the State is composed."

In comparing this decision to Brannigan and McBride v UK[19], the European Court of Human Rights held that: "national authorities are in principle in a better position than the international judge to decide both on the presence of such an emergency and on the nature and scope of derogations necessary to avert it."

Despite granting the State a wide margin of appreciation, it retained a supervisory role for itself as it held: "It is required for the Court to rule on whether inter alia the States have gone beyond the extent strictly required by the exigencies of the crisis".

To derogate, a State must give notice to the Secretary General of the Council of Europe[20]. The UK government however, before giving notice, made an Order in Council under section 14 of the Human Rights Act 1998[21], which if the derogation is deemed valid, means the courts or tribunals will interpret rights under Article 5 as being immediately subject to the qualification made in the derogation for the purposes of the 1998 Act. The Schedule to the order in Council (in the form of a draft letter to the Secretary General of the Council of Europe) argues that there is a pubic emergency within the meaning of Article 15(1) of the Convention.

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[17] See D.J. Harris, M. O'Boyle and C. Warbrick, *Law of the European Convention on Human Rights* (London: Butterworths, 1995), ch.16

[18] (No. 3) 1 EHRR 15 [1961]

[19] [1994] 17 EHRR 539

[20] Article 15(3)

[21] Human Rights Act (Designation Derogation) Order 2001, S.I. 2001 No. 3644, which came into force 13th November 2001.

The UK government bases its argument on the United Nations Security Council's recognition in the September 11 attacks as a threat to international peace and security, and in resolution 1373 requiring all States to take measures to prevent the commission of terrorist attacks. The threat is said to exist in the United Kingdom, particularly because there are foreign nationals here who are suspected international terrorists and who threaten national security of the UK. The Schedule goes on to assert that the measures in Part 4 of the Anti-Terrorism, Crime and Security Bill, which addresses the issue of indefinite detention of immigration and asylum seekers, are strictly required by the exigencies of the situation.

It is submitted that while the events of September 11 may arouse fears of further attacks towards the USA, the implications for the UK are not as dire as the rhetoric suggests. The UK is not facing the same threat as the USA, despite being highlighted as legitimate terrorist targets by various groups. Moreover, the emergency is not of the same order as previously existed in Northern Ireland and as pleaded by the government in Brannigan.

It would be sufficient to say that the only effects of the September 11 attacks on the UK are to place it under high alert and at best to strictly implement already existing security measures.

Contrary to the decision held in Lawless v Ireland, the events do not constitute a threat to the organised life of the community of which the UK nation is composed.

It should be noted that according to the Home Secretary David Blunkett, a declaration of a state of emergency is a legal technicality, and that "[there] is no immediate intelligence pointing to a specific threat to the United Kingdom."[22] The implication of his statement is two-fold. Firstly, that by Mr. Blunkett's own admission, a state of emergency does not exist. Secondly it suggests that the government does not and has not seen the fulfilment of the requisite criteria as necessary in its declaration. If this is seen only as a technicality, then it must be assumed that no real assessment was made as to whether there is a real terrorist threat.

Moreover, it must be noted that none of the Member States of the Council of Europe have felt that they are under a state of emergency and derogations from their human rights obligations are necessary to deal with the threat of terrorism.[23]

The Joint Committee on Human Rights stated in their report[24] that they are "concerned about a lack of specificity in the reasons given in the order of Council for asserting that there is a public emergency threatening the life of the nation."

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[22] Statement by Home Secretary on 15 October 2001.

[23] Liberty, 'Anti-terrorism, Crime and Security Bill 2001, 'Briefing for the Second Reading in the House of Commons, 21 November 2001.

The tests of validity for derogation are very stringent as are the tests for the extent of measures taken under derogation. The Joint Committee on Human Rights cannot categorically state that evidence of the existence of a public emergency threatening the life of the nation exists but suggests, "…there may be evidence of the existence of a public emergency threatening the life of the nation, although none was shown by him to this Committee."

The Report continues:
"…But even if it is accepted that there is an emergency, the lack of safeguards built into this Bill, particularly in relation to detention powers, causes us to doubt whether the measures in the Bill can be said to be strictly required by the exigencies of the situation."

This is consistent with the decision of the European Commission of Human Rights, which in Ireland v UK stated:

"There must be a link between the facts of the emergency on the one hand and the measures chosen to deal with it on the other. Moreover, the obligations under the Convention do not entirely disappear. They can only be suspended or modified "to the extent that is strictly required", as provided in Article 15."

b) Discrimination

Secondly, SIAC's decision regarding discrimination is flawed in presuming that the government can discriminate against certain categories of persons by derogating from its Article 14 obligations. According to international law, one of the conditions in derogation form human rights obligations requires that derogations cannot be made whereby conditions are imposed discriminatorily.

The panel's decision leaves open for the Home Office to argue that discrimination between foreigners and British citizens has always been an inherent part of immigration law. Indeed it has based its appeal on this basis.

However this point overlooks that fact that if a state of emergency does exist, then surely it comes from foreigners as well as British citizens.

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[24] Joint Committee on Human Rights Session (200-1002) Reports 16/ 11/ 01, second Report. Report together with the proceedings of the committee relating to the Report and Minutes of Evidence. Antiterrorism, Crime and Security Bill.

Conclusion

The targeting of Muslims in the war against terrorism has served no purpose but to alienate the Muslim community, increasing fears that the security forces and the judiciary are not serving them equally. The danger is that it makes policing with consent difficult.

All the incidents highlighted in this report show that the arrests and detentions are not based on any real evidence. Nor has there been any incident throughout the year that does indicate that the UK is indeed in a state of emergency, which is the excuse the authorities have used to justify conduct that is in violation of human rights standards.

Further, political interference in the judiciary is cause for serious concern. The crackdown on suspected terrorists and alleged Islamic militants in the past year was initiated by a number of politicians that have been putting pressure on the security forces to carry out arrests, detentions and trials, and have then expressed dissatisfaction even when the suspects have been dragged through the whole process and acquitted at the end of it.

The erosion of civil liberties has failed to serve any section of the community and has indeed been damaging for all. It is essential that the Government reconsider the way it has been conducting this apparent fight against terror before it causes irreparable damage.

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ISBN 1-903718-19-8