



Human Rights Watch

UPR Submission

**United Kingdom**

November 2007

This submission summarizes Human Rights Watch's key concerns with the United Kingdom's compliance with international human rights law in the context of the fight against terrorism. For fuller analyses, outlining our concerns in detail, please see the annexed Human Rights Watch briefing papers *UK: Counter the Threat or Counterproductive? Commentary on Proposed Counterterrorism Measures*; *Hearts and Minds: Putting Human Rights at the Center of United Kingdom Counterterrorism Policy*; and *Dangerous Ambivalence: UK Policy on Torture since 9/11*. Proposed recommendations to the United Kingdom are included in Annex I.

### **Diplomatic assurances**

One of the most damaging counterterrorism policies pursued by the UK government (hereafter "the government") has been its effort to circumvent the global ban on torture and cruel, inhuman or degrading treatment or punishment (hereafter "torture and ill-treatment") by seeking diplomatic assurances against torture as a means of deporting foreign terrorism suspects to countries where they face the risk of such treatment. Deportation with assurances became a central plank of the government's counterterrorism strategy following the December 2004 ruling by Britain's highest court, the House of Lords Judicial Committee (commonly referred to as "the Law Lords"), that the indefinite detention of foreign terrorism suspects violated the UK's international human rights obligations.

The government has agreed "memorandums of understanding" with Jordan, Libya and Lebanon to permit the deportation of terrorism suspects

based on assurances of humane treatment upon return. It has sought to negotiate similar agreements with Algeria and other North African and Middle Eastern governments. All these governments have well-documented records of torture, particularly of those suspected of involvement of terrorism or radical Islamism. The Special Immigration Appeals Commission, which reviews national security deportation cases, has blocked deportations to Libya on the grounds that assurances from that country are unreliable, but it has held that similar assurances from Jordan can be trusted despite overwhelming evidence of torture and abuse of detainees in Jordan. In assessing alleged threat to national security and risk on return it has relied on secret evidence not disclosed to the defendants or their lawyers of choice.

Arrangements for post-return monitoring included in the memorandums fail to provide an added measure of protection, as the government asserts, because of the lack of confidentiality and the consequent risk of reprisals inherent in monitoring an isolated detainee.

### **Undermining the absolute prohibition on returns to torture and ill-treatment**

The government has also sought at European level to weaken the absolute nature of the prohibition against returns to risk of torture and ill-treatment. It has intervened in several cases before the European Court of Human Rights, including *Ramzy v. The Netherlands* (yet to be heard) and *Saadi v. Italy* (Grand Chamber judgment pending), arguing that in national security cases, the risk that a person will be subject to cruel, inhuman or degrading treatment or punishment contrary to article 3 of the European Convention on Human Rights should be balanced against the risk to national security that the person is alleged to pose.

Although the ban on returns to torture and ill-treatment would remain intact under international law, in particular under the UN Convention Against Torture, the UK government's manifest effort to weaken the absolute prohibition on torture and ill-treatment under the European Convention on Human Rights has a corrosive effect and puts persons subject to removal at risk of ill-treatment.

### **Extended pre-charge detention**

Since 2000, the UK has progressively increased the amount of time a terrorism suspect may be held in police custody before being charged. The Terrorism Act 2000 instituted a seven-day period and the Criminal Justice Act 2003 lengthened this to 14-days. The Terrorism Act 2006 enacted the current 28-day maximum. We believe this excessive period—significantly longer than in comparable legal systems and by far the longest in the European Union—violates the right to liberty and

personal security guaranteed under international human rights law. The government has failed to demonstrate convincingly that such a serious interference with the fundamental right to liberty is necessary. Moreover, the scope of judicial scrutiny in such cases does not meet the requirements of the right to challenge the legality of detention enshrined in international human rights law.

Human Rights Watch is deeply concerned about the government's intention to further extend pre-charge detention in terrorism cases. At this writing, the government has announced plans for new counterterrorism legislation, including extended pre-charge detention. Although the government has said that the powers will be used sparingly, there is a real danger of unjust extended detention whereby terrorism suspects—many if not most of whom likely to be British Muslims—would be detained for a significant amount of time, only to be released without charge due to lack of evidence. Government figures for arrests since 2001 under the Terrorism Act 2000 indicate that more than half of those arrested on terrorism offenses under the law are eventually released without charge.

### **Control orders**

Human Rights Watch is troubled by the government's use of control orders for terrorism suspects that severely restrict liberty. The current control order regime, introduced by the Prevention of Terrorism Act 2005, imposes such serious restrictions on an individual's movement, association, privacy and other human rights as to make them equivalent to criminal sanctions without trial. The orders are imposed on the basis of secret and other evidence that falls well below that required to convict a person for a crime, and on the basis of a procedure that violates the right to a fair hearing.

The restrictions imposed under the control order regime and the procedure for their imposition affect a range of rights guaranteed under international human rights law, including: the right to liberty, the right to a fair hearing, freedom of movement, freedom of association, freedom of expression, and the right to privacy and family life.

The Law Lords ruled in late October 2007 that control orders based solely on secret evidence violate the right to a fair hearing. While they upheld the lawfulness of the control order regime, the Law Lords affirmed lower court rulings that orders confining suspects to their homes for 18 hours a day breach the right to liberty.

### **Undue infringements on the right to free speech**

Another area of grave concern is undue infringements on freedom of expression in the context of the fight against terrorism. The Terrorism Act 2006 introduced the crime of "encouragement of terrorism," defined broadly as covering statements "likely to be understood...as a direct or indirect encouragement or other inducement to...the commission, preparation or instigation of acts of terrorism," including any statement that "glorifies the commission or preparation (whether in the past, the future or generally) of such acts." There is no requirement of a causal link between the offending speech and actual encouragement; it suffices that members of the public, anywhere in the world, are likely to understand the speech as encouragement or glorification of terrorism.

There is little or no evidence that criminalizing such speech will deter terrorism, while there is very strong evidence that it will deter free expression through a chilling effect that provokes self-censorship and inhibits political discourse, including criticism of the government.

Recent prosecutions for possession of "terrorism-related materials" and inciting terrorism over the internet also raise concerns about improper restrictions on free expression. In trials which concluded in July 2007, two men each tried separately and a group of five students tried together were sentenced to prison terms ranging from two to nine years for possession of "terrorism-related" documents. In the first trial of its kind in the UK, three men were given sentences, also in July 2007, ranging from six and a half to ten years after pleading guilty to inciting terrorism over the internet. Another man was sentenced in October 2007 to eight years in prison for distributing "terrorist materials," including via the internet. Finally, a woman who described herself as the "lyrical terrorist" was convicted in November 2007 of possession of "material useful to terrorism." She awaited sentencing at the time of writing.

### **Definition of terrorism**

Human Rights Watch is concerned that the definition of terrorism in UK law is overly broad and lacks legal precision. The Terrorism Act 2000 defines terrorism as "the use or threat [of action] designed to influence the government or to intimidate the public or a section of the public, and the use or threat is made for the purposes of advancing a political, religious or ideological cause." International human rights law requires that any law creating a criminal offense must be clear and precise enough for people to understand what conduct is prohibited and to regulate their behavior accordingly.

The authorities in the UK have relied on the current definition to justify the application of counterterrorism powers to non-violent protestors whose

actions fall outside any common sense definition of the term "terrorism." The use of stop and search and arrest powers under the Terrorism Act 2000 during the protests against Heathrow airport expansion in mid-August 2007 is a recent example.

The government has proposed a revision of the definition that would do nothing to address the concern that the definition is overbroad. While seeking to implement a recommendation from Britain's "independent reviewer of terrorism legislation" to explicitly include in the definition of terrorism actions motivated by a racial or ethnic cause, the government has ignored the reviewer's other recommendation to tighten the language with respect to the purpose of a terrorist act so as to criminalize only those acts aimed at intimidating the government, rather than the currently broad "influencing."

## Annex 1: Recommendations

We hope to see the Universal Periodic Review of the United Kingdom reflect the concerns outlined in our submission, and include the following recommendations in its outcome document:

- Urge the UK government to cease reliance on diplomatic assurances against torture and ill-treatment as a means of removing foreign terrorism suspects at risk of such treatment on return, regardless of whether or not these unenforceable pledges are formalized in Memorandums of Understanding.
- Urge the UK government to desist in its efforts to weaken through jurisprudence the absolute nature of the prohibition on returns to risk of torture and ill-treatment.
- Urge the UK government to reject any further extension of pre-charge detention and improve safeguards for the existing period, including:
  - broadening judicial scrutiny to include whether reasonable grounds exist to believe the detainee has committed a terrorist offense;
  - requiring the Director of Public Prosecutions to approve all applications for detention beyond seven days.
- Urge the UK government to improve safeguards for the imposition of control orders. These safeguards should include:
  - Control orders should be imposed only by a court and only through a process in which credible evidence of necessity is presented to the court and the person subject to the order;
  - The criminal standard of proof (“beyond a reasonable doubt”) should be applied in the determination of necessity;
  - Control orders should be time-limited and open to rescission and amendment on the presentation of new evidence.
- Urge the UK government to repeal the offense of “encouragement of terrorism” in the Terrorism Act 2006 and reaffirm the importance of freedom of expression in a democratic society.

- Urge the UK government to amend the definition of terrorism in UK legislation to tighten the language with respect to the purpose of a terrorist act so as to limit its potential misapplication against peaceful protesters. At a minimum, an act of terrorism should be defined as an act aimed at "intimidating" or "coercing" the government into taking or abstaining from any action.