



**UPR Submission
United Kingdom
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Summary

UK counterterrorism policy and legislation continues to undermine fundamental human rights. The UK is failing to meet its obligations to promote and protect women's human rights.

Since the coming into office of the Conservative-Liberal Democrat coalition government in 2010, several leading ministers, including the Prime Minister have publicly attacked the concept and application of human rights, both in general terms and specifically the UK's own Human Rights Act and the European Court of Human Rights. The Prime Minister said the prospect of complying with a ruling of the European Court on prisoners' voting made him 'physically ill' and blamed widespread riots in August 2011 on the 'misapplication' of human rights. The Home Secretary called publicly for the scrapping of the Human Rights Act.

Counterterrorism legislation and policies

The previous UK government accepted the recommendation to “*continue to review all counterterrorism legislation and ensure that it complies with the highest human rights standards*” made during the UPR in 2008.” The coalition government in power since May 2010 launched a comprehensive review of counterterrorism measures, and some positive steps have been taken. Human Rights Watch remains concerned that key elements of UK counterterrorism law and policy are incompatible with its obligations under international human rights law. The above-mentioned recommendation accepted by the United Kingdom therefore requires further efforts before it can be considered as implemented.

Diplomatic assurances

The government signalled its commitment to expand the use of diplomatic assurances as a means of returning terrorism suspects to places where they face the risk of torture and ill-treatment. The government has agreed “*memorandums of understanding*” with Jordan, Libya, Lebanon and Ethiopia to permit the deportation of foreign terrorism suspects based on assurances of humane treatment upon return. It has used informal assurances to remove terrorism suspects to Algeria and Pakistan.

The use of assurances to return suspects at real risk of ill-treatment violates the UK government's obligations under human rights laws. Arrangements for post-return monitoring included in the memorandums fail to provide an added measure of protection, because of the lack of confidentiality and the consequent risk of reprisals inherent in monitoring an isolated detainee.

While UK courts have blocked some returns with assurances, for example to Libya (under the Gaddafi government) and Pakistan, on the grounds they were unreliable, they have upheld deportations to Jordan and Algeria on the basis of similar assurances despite well-founded concerns about torture and other abuse of detainees. 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.

Control orders

At this writing, the control order regime, introduced by the Prevention of Terrorism Act 2005, remained in place until the end of 2011. Control orders impose such serious restrictions on an individual's movement, association, and privacy as to make them equivalent to criminal sanctions without trial. The procedure for imposing control orders, including the use of secret evidence and a low threshold of proof, violates the right to a fair hearing.

The government brought forward draft legislation in May 2011 to modify control orders to impose less severe restrictions for a maximum of two years and require greater evidence, but failed to improve insufficient judicial safeguards or end the use of secret evidence. In September 2011, the government presented a second bill that would allow it to reinstate the most severe restrictions—including communication bans, relocation, and curfews at any time of the day up to 16 hours—in exceptional circumstances.

The government seeks to justify the retention of the control order regime on the grounds that while prosecution is the preferred approach there are some terrorism suspects who cannot be prosecuted because the evidence against them is inadmissible in criminal court and who cannot be deported either because they are British nationals or because a risk of ill-treatment upon return to their country of origin.

Yet the UK continues to prohibit all use of intercept (phone tap) evidence in criminal prosecutions. Its unwillingness to relax the ban on the use of such material calls into question its commitment to prosecution.

Pre-charge detention

In January 2011, the maximum length of pre-charge detention for terrorism suspects reverted to 14-days, when the government purposefully allowed the 28-day maximum to lapse without seeking parliamentary renewal. The government tabled draft legislation in February 2011 to permanently limit pre-charge detention to 14-days; at this writing, the legislation had not yet been adopted. The government is, at the same time, seeking to create an emergency power to extend pre-charge detention back to 28 days in emergency situations.

Over the past decade, pre-charge detention increased from seven days in 2000, to 14 days in 2003, and 28 days in 2006. While a permanent maximum of 14 days is an improvement, it should be noted that the maximum pre-charge detention in other serious crime investigations is 96 hours (four days). Fourteen days is significantly longer than in comparable legal systems and by far the longest in the European Union. Human Rights Watch is concerned that a fourteen day limit remains incompatible with the right to liberty and personal security guaranteed in international human rights law. Moreover, the attempt by the government to retain the option of an emergency 28-day power creates a further risk of abuse.

Access to a lawyer

The UK accepted a recommendation during the previous UPR in 2008 that it ensure by law "*the right of access of detainees to a lawyer immediately after detention, and not after 48 hours*". In its mid-term report, the UK government asserted that this right is already enshrined in UK legislation, while noting that the Terrorism Act 2000 allows a senior police officer to delay access to a lawyer for up to 48 hours in terrorism-related investigations. The recommendation in question can therefore not be considered as implemented.

The right of all persons accused of a crime to the assistance of a lawyer is a fundamental procedural guarantee, enshrined in the International Covenant on Civil and Political Rights (ICCPR) and the European Convention on Human Rights. Authoritative interpretations and European Court of Human Rights jurisprudence emphasize that this right must be exercised promptly, both to ensure the right to an effective defense, and as a safeguard against ill-treatment in custody. The UN Human Rights Committee urged the UK in 2008 to “ensure that anyone arrested or detained on a criminal charge, including persons suspected of terrorism, has immediate access to a lawyer.”

Stop and search

Police retain counterterrorism powers to stop and search without suspicion in designated areas despite concerns about abuse and discriminatory targeting of minorities. The government introduced temporary powers in March 2011 in response to a January 2010 ruling by the European Court of Human Rights that found that existing powers under section 44 of the Terrorism Act violated privacy rights, and were “neither sufficiently circumscribed nor subject to adequate legal safeguards against abuse.”

While the new powers introduced greater safeguards with respect to authorizations for counterterrorism stop and search areas, and the numbers of stops has fallen significantly, they still allow police officers to stop people without individualized suspicion. At this writing, Parliament had not concluded its examination of an omnibus bill that would permanently legislate identical police powers to conduct counterterrorism stop and search operations. Similar stops at ports and airports under schedule 7 of the Terrorism Act 2000, continue, despite concerns about ethnic profiling of Black and South Asian people.

Accountability for Overseas Abuse

Credible allegations of serious abuse, including torture and deaths in custody, and complicity in renditions and torture, have emerged over the last few years.

Documents discovered by Human Rights Watch in Tripoli in September 2011 show that the UK was directly involved in the rendition of a terrorism suspect and his family to Libya. Human Rights Watch research has also established at least 5 cases where the UK security services were complicit in torture in Pakistan.

A judge-led inquiry into allegations of UK complicity in renditions and torture of terrorism suspects had also not yet begun at this writing. In August 2011, NGOs and victims’ lawyers withdrew their cooperation with the government-established inquiry on the grounds that government-imposed conditions announced in July, including limits on questioning witnesses who had given evidence in secret and government control over disclosure, made an effective process impossible.

The UK rejected the 2008 UPR recommendation to “*consider that any person detained by its armed forces is under its jurisdiction and respect its obligations concerning the human rights of such individuals*”. The UK should reconsider the rejection of this recommendation, in line with its international human rights obligations. The UN Human Rights Committee urged the UK in 2008 to state clearly that the ICCPR applies to all individuals subject to its jurisdiction or control, and to ensure prompt and independent investigations into all allegations of suspicious deaths, torture or cruel, inhuman or degrading treatment in UK-run facilities. The European Court of Human Rights affirmed in July 2011, in two separate cases, the extra-territorial application of the European Convention on Human Rights. In the case of *Al-Jedda v. the UK*, the Court applied the Convention to rule that the UK had arbitrarily detained an Iraqi civilian for over three years in a British-run detention center in Iraq. In the case of *Al-Skeini and Others v. the UK*, the Court also found that the UK had failed to conduct

independent and effective investigations into the deaths of five Iraqis apparently killed by British soldiers in Iraq.

In September 2011, a three-year public inquiry found a British military regiment responsible for the 2003 death in custody of Iraqi civilian, Baha Mousa, after being subject to inhuman and degrading treatment and sustaining multiple injuries. The inquiry recommended comprehensive steps against hooding and stress techniques in detention, as well as independent inspection of battlefield detention centers. Another inquiry into allegations that up to 20 men were tortured and murdered in British custody in southern Iraq in 2004 had yet to begin at this writing. At this writing the UK government had not produced any comprehensive response to the European Court of Human Rights rulings, and the Baha Mousa Inquiry, in terms of ensuring the application of human rights to the conducts of its armed forces everywhere in the world, especially on detention issues.

Women's Human Rights

The UK accepted a recommendation in its last UPR to “*set up a strategic oversight body, such as a commission on violence against women, to ensure greater coherence and more effective protection for women*”. The government's actions over the past few years have contradicted this pledge.

Domestic violence

The UK played a negative role in the lead-up to the historic adoption, in May 2011, of the Council of Europe Convention on preventing and combating violence against women and domestic violence. The UK made proposals that would have weakened the core of the convention, pushing for limitations on protections for women immigrants and asylum seekers.

The convention is the first legally binding instrument in the region that creates a comprehensive legal framework to combat violence against women through prevention, protection, prosecution, and victim support. It defines and criminalizes multiple forms of violence against women: physical, sexual and psychological violence, as well as forced marriage and female genital mutilation. The treaty also establishes an international group of independent experts to monitor its implementation at the national level. Sixteen countries have signed the convention; the UK has thus far refused to sign.

Domestic workers

At a time when the international community has come together to endorse rights and protections for domestic workers, the UK is going in the opposite direction. In June 2011, the government announced its intentions to eliminate the Overseas Domestic Worker visa. This visa guarantees to domestic workers access to labor courts and the right to change employer—widely-recognized safeguards against abuses. Domestic workers worldwide face a range of abuses, including excessive working hours, non-payment of wages, forced confinement, physical and sexual abuse, forced labor, and trafficking.

The same month, the International Labour Organization (ILO) adopted the Convention on Decent Work for Domestic Workers, setting standards for millions of domestic workers worldwide. The UK was one of a handful of states to abstain in the vote for the Convention and has thus far not signed the convention.

Fast-track asylum

The UK accelerated asylum procedure is used inappropriately for complex claims involving sexual violence, trafficking, female genital mutilation and domestic violence. Women claiming asylum on gender-related grounds may be detained and subject to this accelerated procedure, in which claims are decided in just a few days, impeding their ability to adequately prepare their asylum claim and

seek medical advice. Rejected asylum seekers under this procedure have only two working days to appeal. While the Border Agency has guidelines setting out particular considerations around gender-related claims, women with complex and sensitive claims encounter disbelief, a lack of expertise, and a system that makes it nearly impossible for them to present their protection needs. Some women have had no access to female interpreters, case workers or medical staff.

Recommendations

Regarding counterterrorism legislation and policies, the UK should:

- 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.
- Reform criminal law to ensure access to all suspects in police custody at the outset of detention, including terrorism suspects.
- Repeal the control order regime.
- Further reduce pre-charge detention for terrorism suspects to 7 days. Withdraw draft legislation allowing for the extension of pre-charge detention to 28 days in an emergency.
- Demonstrate commitment to prosecution as the preferred approach by relaxing the ban on intercept material as criminal evidence.
- Introduce a requirement of reasonable suspicion for all counterterrorism stops, including at ports and airports.

Regarding accountability for overseas abuse, the UK should:

- Adopt a clear policy that all human rights treaty obligations are applicable to UK operations and facilities outside the UK.
- Amend the rules governing the detainee inquiry to permit detainees and other interested parties effectively to challenge evidence given in secret and ensure that final say on disclosure rests with an independent judge or the inquiry panel rather than the government.

Regarding women's human rights, the UK should:

- Sign and ratify the Council of Europe Convention on preventing and combating violence against women and domestic violence.
- Sign and ratify the ILO Convention Concerning Decent Work for Domestic Workers.
- Retain the Overseas Domestic Workers visa.
- Include claims based on gender-related persecution to the list of exceptions to the Detained Fast Track asylum procedure.