Britain: Anti-terror legislation opens up broad attack on civil liberties

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8 November 2003

Two court verdicts last month have not only highlighted the anti-democratic nature of the legislation passed on the basis of supposedly fighting terrorism post-September 11, but added significantly to the draconian powers the Labour government and the police have accrued to themselves.

On October 29, 10 men accused of being involved in international terrorism lost an appeal against their detention without charge or trial since 2001. The men were arrested solely on the say-so of Home Secretary David Blunkett, who alleges that they were connected to groups linked to Al-Qaeda. Most of them have been held for the past two years in high-security prisons or mental hospitals.

The 10 were interned under the Anti-terrorism, Crime and Security Act 2001, which added to the powers contained in the Terrorism Act 2000 and came into force two months after the September 11 bombings. Sixteen foreign nationals have been held under its remit. Under the ATCSA, non-UK nationals certified as "suspected international terrorists and national security risks" by the home secretary can be detained without charge or trial for an unlimited period. Detention can be based on secret evidence—which the detainee and their counsel cannot see, hear, or challenge.

The appeal was also heard largely in secret by the Special Immigration Appeals Commission (SIAC), a panel of three judges and no jury. As a result of these Kafkaesque procedures, the names of only two of the detainees are known. One, Jamal Ajouaou, is a Moroccan citizen who has already agreed to return to his home country. The other is Palestinian asylum seeker Mahmoud Abu Rideh, a 32-year-old father of five who has lived in Britain since 1995 and is now held in Broadmoor high-security mental hospital. The remaining eight are known only by a letter of the alphabet.

None have been accused of actual crimes, but only of membership of one of the 39 organisations proscribed under the Terrorism Act. Representatives of the security services presented testimony, and the men were not allowed to know the nature of this evidence against them.

In making its verdict, SIAC operated on the assumption that the government only had to prove it had "reasonable grounds to suspect" the men were linked with terrorism. Admitting that the evidence presented would not stand up in a court of law, the judges' ruling stated that "the standard of proof is below a balance of probabilities."

The judgement also explicitly considered whether evidence might have been extracted against the defendants from people who were tortured. It ruled that if that had occurred, the evidence would not necessarily be dismissed by the court.

Evidence extracted through torture is already used by the Republican administration in the United States against detainees held at Camp X-Ray on Guantanamo. US officials have admitted that its own interrogators use such methods as holding prisoners in prolonged painful positions, sleep and light deprivation, and withholding access to food, water and medical attention. Worse still, they also allow the transfer and detention of prisoners in other friendly countries where worse crimes can be committed with impunity. Now Britain's government and judiciary has made clear its intention to avail itself of this sordid and tainted "evidence."

Commenting on the verdict, Blunkett said:

"The new anti-terror laws were in response to the public emergency to ensure that foreign nationals, who we believe are international terrorists posing a risk to our national security and who we want to deport but are unable to for a variety of reasons, are not allowed to remain in the UK unchecked. Those detained are free to leave the UK voluntarily at any time and two have done so."

This is a crude falsification. The detention powers in part four of the Anti-terrorism, Crime and Security Act are immigration powers that can presently only be used regarding foreign nationals. They allow for detention of a foreign national whom the government wants to deport but cannot. And in this is the lie, for the reason the individuals concerned cannot be deported is because they face death, torture or inhuman and degrading treatment in their home state—so sending them back would be against international law. They could be accepted by a third country, but this is highly unlikely given that they have been publicly identified

as members of terrorist groups. In the majority of cases, therefore, Blunkett's claim that those detained are free to leave means that they are free to chose between possibly being detained in Britain for the rest of their lives and going back to face a possible violent death.

Amnesty International called the judgement a "perversion of justice." It commented, "Disconcertingly, the SIAC ruled that under the ATCSA the burden of proof that the Secretary of State has to meet to justify internment of the ten is not the criminal standard of 'beyond reasonable doubt' but, instead, is even lower than that needed in a civil case.

"The shockingly low burden of proof, which the SIAC ruled that the Secretary of State had met, violates the right to the presumption of innocence to which anyone subject to criminal proceedings is entitled...

"Furthermore, Amnesty International is alarmed that today's judgements by the SIAC may have relied on evidence extracted under torture. Some of the secret evidence relied upon by the Secretary of State reportedly includes statements which were obtained at Bagram airbase and elsewhere in American custody, where there have been serious allegations of torture. Under international law any statement that has been established to have been made as a result of torture is inadmissible."

Shami Chakrabarti, director of Liberty, said of the verdict, "I have two questions for the Home Office. If they are so convinced these men, held in jail for nearly two years, are involved in terrorism, why will they not put them on trial? Is it because they know that this so-called evidence has been obtained from prisoners tortured by the secret police of countries regarded as friendly to Britain but with a proven record of human rights abuse?

"The fact is that we are following the example of the US and allowing our dirty work to be done in the torture chambers of foreign countries."

He added that the men "expect now to remain locked up for the remainder of their lives. Each knows that he has been involved in no action in support of terrorism. Since the largest percentage of the hearings have been held in secret no one knows what in particular has been said against him. A number have been said to be members of groups of which they have never heard... Secrecy has been chosen over due process and is a dangerous precedent for the future, not just for these detainees. Their arrest and continuing detention without due process marks the entry of this country into a new dark age of injustice."

In a letter to the *Guardian*, Sherman Carroll of the Medical Foundation for the Care of Victims of Torture pointed to the significance of the low-key response to the abuse of democratic rights, asking rhetorically, "People can now be locked up, perhaps for ever, on the basis of secret evidence because they might be 'linked' to terrorist groups? Yet you report this only on page six?"

The reporting of the verdict elsewhere in the media was if anything more low-key than that of the *Guardian*—a response echoed the next day when the courts issued another verdict directly threatening civil rights.

On November 30, civil rights campaigners lost their appeal to the High Court against Metropolitan Police Commissioner Sir John Stevens and Blunkett for employing special powers to stop and search under the Terrorism Act 2000 against peaceful demonstrators at Europe's largest arms fair, held at the ExCel Centre in London's Docklands in September.

The case was brought by Liberty on behalf of a student, Kevin Gillan, and a freelance photo-journalist, Pennie Quinton. Dozens of protesters were stopped and at least 2 of the 154 people arrested were detained under the Terrorism Act.

The court found that "The exercise and use of the power was proportionate to the gravity of the [terrorism] risk."

Justice Henry Brooke added, by way of mitigation, "If there were any question of the police using these powers as part of day-to-day policing on the streets of London, there would be considerable force in this submission."

But routinely employing these powers is precisely what the police can now do, and in fact have been able to for years. Testimony to the hearing revealed that London has been operating under an undisclosed state of emergency for the past two years, with the police granted the necessary special powers. Authorisations under the Terrorism Act have been in force for the greater London area continuously since February 19, 2001, allowing random searches of buildings and people under Section 44 of the act for a period of up to 28 days with the agreement of the home secretary.

Liberty noted that no one could say how many other counties were presently covered by the extraordinary police powers.

The judges made only one concession by granting the civil rights campaigners permission to appeal against their decision to the Court of Appeal because a matter of wide public importance had been raised. But the record of the judiciary so far argues powerfully against placing any confidence in it as a restraint on an increasingly authoritarian government and police apparatus.