Britain: Court of Appeals rules evidence obtained through torture is admissible

Julie Hyland
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The August 11 ruling by the Court of Appeals that "evidence" obtained by torture is admissible in UK law is a fundamental repudiation of international legal norms, that graphically underscores the absence of any real commitment to democracy within Britain's ruling circles.

The ruling by Britain's second highest court not only means that ten foreign nationals currently detained without charge for more than two years can continue to be held indefinitely, but it effectively sanctions collusion by the British authorities in human rights abuses, including torture.

With the Blair government having already made clear its intention to extend the authoritarian powers it has gathered under the guise of the "war against terrorism", the Appeals Court has cleared the way for a regime of state-terror to be instituted against anyone deemed a potential threat to national security.

Ten foreign nationals had gone to the Court of Appeals to challenge the decision made by the Special Immigration Appeals Commission (Siac) that the government was right to imprison them indefinitely.

The ten were amongst 14 Arab Muslim males rounded up immediately after the 2001 Anti-Terrorism, Crime and Security Act was rushed into law in the wake of the September 11 attacks on New York and Washington. None of the men detained are accused of terrorist offences, only with membership of organisations deemed to be supporting terrorism.

Under the ATCSA, foreign nationals can be held indefinitely on the say-so of Home Secretary David Blunkett in top security prisons and psychiatric facilities. Most are held in Belmarsh high security prison, rightly dubbed "Britain's Guantanamo Bay", under severely restricted conditions that the Home Office's own medical experts have condemned as "barbaric".

Of the 14 originally held, two subsequently "volunteered" to leave the country. One, known only as "G", has been granted bail under conditions of house arrest and another, "M", won appeal against certification as a suspected international terrorist.

The Home Secretary does not have to provide evidence of the case against those he is seeking to detain, just that he has "reasonable grounds to suspect" they may have links to terrorism based on "closed material".

Neither the detainees, nor their lawyers, are allowed details of this "closed material", thought to involve intelligence derived from phone taps and surveillance operations, and "evidence" supplied by third parties. The only means through which those held can challenge their imprisonment is by application to Siac. But even here, detainees and their legal representatives are not allowed full details of the charges, again on the grounds of national security. Staffed by vetted-lawyers, Siac's appeals jettison such legal protections as the presumption of innocence and the right to full defence and consul. Its hearings are held in secret, and its rulings never fully made public.

In October 2003, Siac had upheld the ten's imprisonment—a ruling that the detainees had sought to challenge at Wednesday's Court of Appeals.

At the Appeals Court, lawyers acting for the ten had argued that their continued detention was "morally repugnant", given that the evidence against them may have been extracted through torture at the US military concentration camp Guantanamo Bay, in Cuba.

But in their ruling, Lords Justice Pill, Laws and Neuberger unanimously dismissed the appeal, stating that the government had acted legally in holding the men without charge.

Lord Justice Laws said that the suggestion that the Home Secretary had relied on material derived from torture was "purely hypothetical".

In a two-to-one ruling, he and Lord Justice Pill went even further, ruling that torture evidence could be used in

a British court so long as the state itself had not "procured" it or "connived" at it.

"I am quite unable to see that any... principle prohibits the Secretary of State from relying... on evidence... which has or may have been obtained by torture by agencies of other states over which he has no powers of direction," Lord Justice Laws ruled.

The Home Secretary's decision as to the use of such evidence was "extremely problematic", the judgement continued. The Home Secretary could not be expected to inquire into the methods of how information had been obtained. "He may be presented with information of great potential importance, where there is, let us say, a suspicion as to the means by which, in another jurisdiction, it has been obtained? What is he to do?"

Only Lord Justice Neuberger dissented on the admissibility of evidence obtained through torture, stating that he did not consider it conducive to a fair trial, especially since the person responsible for the evidence would not be available for cross-examination.

Just last week, three Britons released from Guantanamo Bay in March released a 115-page dossier, *Detention in Afghanistan and Guantanamo*, detailing torture and sexual degradation by US forces at the camp, and accusing British authorities of knowingly colluding in it.

The Court of Appeals findings amount to a legal benediction of the government's complicity in such abuses.

The ruling was immediately condemned by civil liberties organisations. Amnesty International's UK Director Kate Allen said, "It is a fundamental duty of all courts to act as a bulwark against human rights violations.

"Today, the Court of Appeals has shamefully abdicated this most important duty.

"If there is sufficient evidence to warrant holding these individuals, they should be charged with a recognisably criminal offence, and tried in proceedings which fully meet international fair trial standards. Otherwise, they should be released."

Ellie Smith, a human rights lawyer at the Medical Foundation for the Care of Victims of Torture, said that the Court of Appeals ruling was tantamount to contracting out the torture. "We have seen recent instances where the US forces have sent people to other countries for the purpose of extracting evidence," she said.

Lawyers acting for the ten said that they would now take the case to the House of Lords. Gareth Pierce said that the Appeals Court's decision "shows that we have completely lost our way in this country legally and morally."

"We have international treaty obligations which prevent the use of evidence obtained by torture in any proceedings.

"What this judgement says by a two-one majority is that if it is obtained by agents of another country, and not procured or connived at by UK agents, it is usable without any restriction and there is no obligation on the secretary of state to inquire into the origins of it."

Natalia Garcia, lawyer for two of the detainees said that civil liberties had become "a casualty of the so-called war on terror".

"We have sunk to an all-time low where a court can even contemplate that evidence obtained under torture could be admissible and where there is no attempt to provide any effective remedy against abuse of power."

The government applauded the Appeals Court ruling. Writing in the *Independent* newspaper, August 12, David Blunkett said that it had vindicated his actions.

Under the heading, "Freedom from terrorist attack is also a human right", Blunkett cynically argued that his commitment to civil liberties meant that he would not release the men "on to our streets in order to resume the activities that they were engaged in before they were picked up".

Blunkett is to renew the powers set out in the ATCSA in the autumn and is reportedly planning to merge the 2001 Act with the Terrorism Act 2000, which covers domestic terrorism. Any new legislation would apply to "everybody irrespective of nationality", he has said.

Writing in the *Guardian* newspaper earlier this year, Gareth Pierce warned: "We should not be deceived. What is happening in Guantanamo; what is happening in the secret hearings with foreign nationals already taking place in this country; and what is proposed for the future, is in the nature of an ongoing experiment.

"This is the pooling of access to internationally condemned methods of investigation. Since their utilisation will be covert, the overt experiment is into how willing the public of this country and those concerned in the passage of legislation are to allow basic safeguards to be jettisoned without protest."