



NEITHER JUST NOR EFFECTIVE
Indefinite Detention Without Trial in the United Kingdom
Under Part 4 of the Anti-Terrorism, Crime and Security Act 2001

Human Rights Watch Briefing Paper

June 24, 2004

Summary	2
Introduction.....	3
Background.....	5
Is Derogation Warranted?.....	7
Discrimination Against Foreign Nationals	10
The Cost of Indefinite Detention	12
Parliamentary Reviews of Indefinite Detention Under Part 4	17
Diplomatic Assurances Are Not a Solution	18
Toward a More Just and Effective Counter-Terrorism Strategy	19

We are not persuaded that the powers are sufficient to meet the full extent of the threat from international terrorism. Nor are we persuaded that the risks of injustice are necessary or defensible –

U.K. Parliament Privy Counsellor Review Committee¹

Summary

The U.K. government is detaining foreign terrorist suspects indefinitely, a serious violation of its international human rights obligations. Rather than crafting counter-terrorism measures that comply with domestic and international human rights law, the government instead declared a state of emergency and officially suspended (“derogated” from) key human rights protections.

Part 4 of the Anti-Terrorism Crime and Security Act 2001 (ATCSA) allows for the indefinite detention of foreign nationals designated as terror suspects. Those currently detained without charge under it have no expectation of release. Their detention amounts to internment² with no end in sight.³ Some of those detained under the act have been held since December 2001 in maximum security facilities, with an adverse impact on their physical and their mental health. The mechanism by which they are able to challenge the lawfulness of their detention falls far short of the standards required for those charged with a criminal offence.

In seeking a solution to indefinite detention, the U.K. government is considering deporting the suspects to third countries, including to countries where the suspects face a risk of torture or ill-treatment. International human rights law forbids governments from sending people to places where they face a risk of torture. The U.K. government has signaled it may seek “framework agreements” (also called “diplomatic assurances”) with governments in countries of return that the detainees will not face torture or ill-treatment if returned. The use of such agreements has proved an ineffective safeguard

¹ U.K. Parliament, Privy Counsellor Review Committee, “Anti-terrorism, Crime and Security Act 2001 Review: Report,” December 18, 2003, para. 185.

² “Internment” generally refers to preventive detention without trial during time of war or public emergency. The U.K. government introduced internment powers in Northern Ireland in August 1971. Hundreds of people -- the great majority of them Irish republicans or nationalists -- were subject to indefinite detention under the powers. According to the European Court of Human Rights judgment in the case of *Ireland v. United Kingdom*, “...the duration of internment was unlimited. In many cases, after prolongation under later legislation...it lasted for some years.” *Ireland v. U.K.* (1979-1980) 2 EHRR 25, para. 84. The last of internees were released in December 1975.

³ The Part 4 powers under the Act would lapse in 2006 if they were not renewed. However, the U.K. government recently pointed to an assessment by Eliza Manningham-Buller, the Director General of the Security Service: “I see no prospect of a significant reduction in the threat posed to the UK and its interests from international terrorism over the next five years, and I fear for considerable number of years thereafter.” Secretary of State for the Home Department, “Counter-Terrorism Powers, Reconciling Security and Liberty in an Open Society: A Discussion Paper,” February 2004.

against torture in the past, and would not shield the U.K. from its obligation not to expose people to such treatment.

The U.K. government should repeal the part 4 detention powers and replace them with measures that apply to U.K. and foreign nationals alike, and that do not require derogation from the U.K.'s international obligations, including the European Convention on Human Rights and the International Covenant on Civil and Political Rights.

The U.K. government should not rely upon “diplomatic assurances” in the form of framework agreements to return a person in danger of being subjected to torture or prohibited ill-treatment, to any country for which there is substantial and credible evidence that torture and prohibited ill-treatment are systematic, widespread, endemic, or a “recalcitrant or persistent” problem; to any country where government authorities do not have effective control over the forces in their country that perpetrate acts of torture and ill-treatment; or to any country where the government consistently targets members of a particular racial, ethnic, religious, political or other identifiable group and the person subject to return is associated with that group.

This briefing paper looks at the use of indefinite detention under the ATCSA and its consequences for human rights and for an effective counter-terrorism strategy in the United Kingdom. It examines the legal and factual basis of the derogation from human rights law on which the Part 4 detention power rests, and whether the power constitutes permissible discrimination on the ground of nationality. The paper highlights concerns by U.K. parliamentary and international human rights bodies about the efficacy and necessity of indefinite detention under the ATCSA. It also details the cost of indefinite detention—for counter-terrorism efforts, race and community relations, the willingness of British Muslims to cooperate with the police and security services, and to the detainees themselves.

Introduction

The U.K. government introduced emergency legislation in the wake of the September 11 attacks in the U.S. The resulting Anti-Terrorism Crime and Security Act became law on December 14, 2001.⁴

Human Rights Watch expressed grave reservations about the powers of indefinite detention contained in part 4 of ATCSA while the legislation was being debated by Parliament, arguing it was incompatible with the U.K.'s human rights obligations, and that the government had failed to provide evidence of a state of emergency upon which

⁴ The Anti-Terrorism Crime and Security Act 2001 (ATCSA) received Royal Assent on December 14, 2001.

the derogation from its human rights obligations was justified.⁵ The implementation of the act has given Human Rights Watch no reason to alter its position.

Concern about Part 4 of ATCSA is widely shared. The United Nations Human Rights Committee, the U.N. Committee on the Elimination of Racial Discrimination (CERD), the Council of Europe's Commissioner on Human Rights, and its Committee on the Prevention of Torture (CPT), have all expressed reservations about Part 4, while other leading human rights and civil liberties organizations have called for its urgent repeal.⁶ These organizations have questioned whether the suspension of fundamental human rights obligations is warranted by the threat to the U.K. from terrorism, and have condemned the differential treatment of foreign nationals compared to U.K. citizens as discriminatory.

Significantly, the Privy Counsellor Review Committee (known as the "Newton Committee"),⁷ a group of senior U.K. parliamentarians convened by the U.K. Home Secretary to review the ATCSA, called for the urgent repeal of Part 4 in December 2003. The Newton Committee recommended that the powers under Part 4 be replaced with measures that address the terrorist threat from U.K. nationals as well as non-nationals through the criminal justice system, and that do not require derogation from human rights obligations. The Committee has recommended alternative methods to fight terrorism that do not involve indefinite detention without trial.⁸ Its findings are echoed in a February 2004 report by the Joint Human Rights Committee, a parliamentary committee which reviews the compatibility of U.K. law with its human rights obligations.

Human Rights Watch shares the view of the Newton Committee that Part 4 of the ATCSA should be urgently repealed and replaced with counter-terrorism measures that

⁵ Human Rights Watch, "UK Background Briefing: Commentary on the Anti-Terrorism, Crime and Security Bill 2001," November 16, 2001 [online], <http://www.hrw.org/backgrounder/eca/UKleg1106.htm> (retrieved June 4, 2004); Human Rights Watch, "Press Release: New Anti-Terror Law Rolls Back Rights," December 14, 2001.

⁶ See for example: U.N. Human Rights Committee, "Concluding Observations: United Kingdom of Great Britain and Northern Ireland," December 6, 2001 [CCPR/CO/73/UK]; U.N. CERD, "Concluding Observations: United Kingdom of Great Britain and Northern Ireland," December 10, 2003 [CERD/C/63/CO/11]; Council of Europe, "Opinion 1/2002 of the Commissioner for Human Rights, Mr. Alvaro Gil-Robles on certain aspects of the United Kingdom derogation from Article 5 par. 1 of the European Convention on Human Rights [CommDH (2002)7]," August 28, 2002; European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), "Report to the Government of the United Kingdom on the visit to the United Kingdom carried out by CPT from 17 to 21 February 2002," February 12, 2003; CPT, "News Flash: Suspected international terrorists detained in the United Kingdom, new visit by Council of Europe's Anti-Torture Committee," March 24, 2004; Amnesty International, "Justice perverted under the Anti-Terrorism Crime and Security Act 2001," December 11, 2003; Liberty, "Urgent Briefing: Anti-Terrorism Debates, House of Commons, House of Lords," February 2004; Justice, "Briefing on the Report of the Newton Committee on the Anti-Terrorism Crime and Security Act for debate in the House of Commons," February 2004.

⁷ After its chair, Lord Newton of Braintree.

⁸ U.K. Parliament, Privy Counsellor Review Committee, "Anti-terrorism, Crime and Security Act 2001 Review: Report," December 18, 2003 [online], <http://www.atcsact-review.org.uk/> (retrieved April 22, 2004).

operate within the framework of the criminal justice system and that do not require the suspension of fundamental human rights guarantees.

The response of the U.K. government to the carefully crafted and concrete recommendations offered by the Newton Committee and the Joint Human Rights Committee has been little more than a defense of the status quo.⁹ The government's response fails to take into account the very high costs of indefinite detention under part 4—to respect for human rights, to overall counter-terrorism strategy and not least to the detainees themselves.

Background

Seventeen persons have been certified as “suspected international terrorists” under the ATCSA.¹⁰ Certification by the Home Secretary requires only “a reasonable belief” that a foreign national present in the U.K. is a threat to U.K. national security and a “suspicion”¹¹ that the person is a “terrorist” as defined by the act.¹² Of the seventeen persons certified to date, twelve are being indefinitely detained without charge under the act, one is being detained under other unspecified powers, one has been released on bail (and is effectively under house arrest) and two have left the U.K. One has been released following a successful appeal against certification. Eight of those detained under the ATCSA have been in custody for more than two years. The men are being held in category “A” maximum security prisons and in one case a high security psychiatric hospital.

The ATCSA detainees are foreign nationals whom the U.K. government says it would deport to their home countries were it not for the risk that they would be tortured if sent there. Unlike the due process guarantees suspended by the U.K., the prohibition against torture cannot be derogated from under any circumstances.¹³ Because of the threat that the U.K. government says the men pose, it is unwilling to allow them to remain at liberty

⁹ Secretary of State for the Home Department, “Counter-Terrorism Powers, Reconciling Security and Liberty in an Open Society: A Discussion Paper,” February 2004.

¹⁰ Home Office, “Anti-Terrorism, Crime & Security Act 2001 – Detainees under Part 4,” n.d. [online], http://www.homeoffice.gov.uk/docs3/atcsa_detainees.html (retrieved April 16, 2004).

¹¹ The exact standard of proof required for a “reasonable belief” and “suspicion” is not clear but clearly is lower than either the criminal standard of proof in the UK, which is “beyond a reasonable doubt,” or the civil standard of proof, a “balance of probabilities.”

¹² According to s.21 of the act, “terrorist” means “a person who (a) is or has been concerned in the commission, preparation or instigation of acts of international terrorism, (b) is a member of or belongs to an international terrorist group, or (c) has links with an international terrorist group.” ATCSA, s.21.

¹³ Article 3 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR). The absolute nature of article 3 ECHR includes protection from being returned to a place where one will be subject to torture, and cruel, inhuman and degrading treatment or punishment (*non-refoulement*) *Soering v. United Kingdom* (1989) 11 EHRR 439, para. 91. Article 3.1 of the U.N. Convention against Torture to which the United Kingdom is a state party, contains an explicit protection against *refoulement*, “No State Party shall expel, return (“refouler”) or extradite a person to another State where there are substantial grounds for believing he would be in danger of being subjected to torture.”

in the U.K. The government also argues that because its evidence against the men is based on classified intelligence, it cannot successfully prosecute those certified under ATCSA. The men are therefore trapped in limbo. The U.K. government's argument that the men are "free to leave at any time" is fallacious. If the men were able to leave safely, they would surely have followed the two men certified under the act who have already done so, rather than face continued indefinite detention. Equally, if it were safe for the men to leave voluntarily, the U.K. could also safely deport them.¹⁴

International law does not permit indefinite detention without trial under any circumstances. Immigration detention is only lawful under the European Convention on Human Rights (ECHR) where "action is being taken with a view to deportation or extradition."¹⁵ It is settled law that the detaining state must be taking action with "due diligence" to deport (or extradite) the detained person.¹⁶ Where the person cannot be removed, the state clearly cannot meet the due diligence test, and the detention is incompatible with human rights law. In order to make ATCSA compatible with the U.K.'s obligations under international and regional human rights law and with the U.K. Human Rights Act (which incorporates the ECHR into domestic law), the U.K. government therefore had to derogate from human rights obligations.

Derogation required the U.K. government to make a formal declaration that there was a state of emergency threatening the life of the nation and making the suspension of rights necessary. On December 18, 2001, the U.K. government formally derogated from article 5(1)(f) of the ECHR, which protects against deprivation of liberty except for purposes of deportation or extradition.¹⁷ On the same date, the government informed the U.N. Secretary-General that a public emergency within the meaning of Article 4(1) of the International Covenant on Civil and Political Rights (ICCPR) exists in the United Kingdom and of its intention to "avail itself of the right of derogation" from article 9 of that treaty, governing the deprivation of liberty.¹⁸

Those detained under the ATCSA are able to challenge their detention in the Special Immigration Appeals Commission (SIAC), but with far fewer procedural guarantees than are accorded to those charged with a crime. Established in 1997 in the wake of the

¹⁴ The logic of this argument has been criticized by Council of Europe Committee for the Prevention of Torture. CPT, "Report to the Government of the United Kingdom on the visit to the United Kingdom carried out by CPT from 17 to 21 February 2002," February 12, 2003. Moreover, at least one of the detainees, Mahmoud Abu Rideh, is a stateless Palestinian. (Audrey Gillan, "Terror suspect tells of 'torture' that led to death wish," *The Guardian*, May 5, 2004).

¹⁵ ECHR Article 5(1)(f).

¹⁶ *Chahal v. United Kingdom*, (1997) 23 EHRR 413, para. 113.

¹⁷ The derogation was initiated by way of an order made by the UK Government a month earlier. An order is a form of delegated legislation that does not require parliamentary approval. The order also had the effect of suspending the UK's obligation under domestic law to respect ECHR article 5(1)(f). The Human Rights Act 1998 (Designated Derogation) Order 2001, S.I. 2001, No. 3644. (Entry into force on November 13, 2001).

¹⁸ International Helsinki Federation, "Anti-Terrorism Measures, Security and Human Rights: Developments in Europe, Central Asia and North America in the Aftermath of September 11," April 2003, pp. 34, 85.

landmark *Chahal* case in the European Court of Human Rights,¹⁹ SIAC is a special tribunal that reviews deportation cases involving national security issues. SIAC uses a system of dual hearings and legal representation adapted from the Canadian courts, with each detainee assigned a special advocate, in addition to his own legal representative of choice. The special advocates, all of them experienced barristers, have security clearance enabling them to review the classified material that forms much of the evidence on which terrorist certifications are based. They attend special closed sessions of the SIAC, from which the detainee and his legal representative of choice are excluded. The special advocate is not permitted to discuss the case with the detainee or his designated legal representative once the special advocate has been granted access to the classified material, unless the special advocate first obtains permission from SIAC. The system also includes open hearings, where non-classified evidence is heard, and which the detainee and his designated legal representative are permitted to attend.

Is Derogation Warranted?

Human Rights Watch acknowledges that where a public emergency threatening the life of the nation is shown to exist, governments may lawfully derogate from some human rights protections, provided that the measures taken are strictly required by the situation. In this case, however, it is far from clear that the threat to the United Kingdom since September 11, 2001, has met the high threshold for a public emergency required under article 15 of the ECHR. The government did not base its decision to derogate on the existence of a specific threat. In a statement to parliament on October 15, 2001, the Home Secretary said that “[t]here is no immediate intelligence pointing to a specific threat to the United Kingdom.”²⁰ Nor has the government convincingly demonstrated why ordinary criminal law measures and existing counter-terrorism legislation—described by the Joint Human Rights Committee as the most “rigorous” in Europe—are insufficient.²¹ Unless both conditions are satisfied, derogation is not simply inappropriate, but is also contrary to the U.K.’s obligations under human rights law.

The existence of a public emergency that threatens the life of the nation is a precondition for derogation under the ECHR and ICPPR.²² The U.K. government has repeatedly asserted that a public emergency within the meaning of both treaties exists in the U.K.²³ While the government plainly has access to classified intelligence, several

¹⁹ *Chahal v. United Kingdom*. The case, heard by the European Court of Human Rights, concerned an Indian national wanted in India on terrorism charges, whom the U.K. held in detention pending deportation for six years, while the issue of whether he would be exposed to torture if extradited to India was litigated. The *Chahal* case is often used to illustrate the absolute prohibition against torture under article 3 ECHR, and was explicitly referred to by the U.K. in the order derogating from article 5(1)(f) ECHR.

²⁰ House of Commons Hansard, volume 372, October 15, 2001, Col. 925, [online], <http://www.parliament.the-stationery-office.co.uk/pa/cm200102/cmhansrd/vo011015/debindx/11015-x.htm> (retrieved June 4, 2004).

²¹ Joint Human Rights Committee, “Second Report, 2001-02 session,” November 16, 2001, para. 30.

²² ICCPR Article 4(1) “In time of public emergency which threatens the life of the nation...”; ECHR Article 15 also allows derogation in wartime, “In time of war or other public emergency threatening the life of the nation...”

²³ Most recently in: Secretary of State for the Home Department “Reconciling Security and Liberty in an Open Society”, para. 30, “...while the current public emergency exists.”

factors point toward the conclusion that no such emergency has existed at any time in the UK since September 2001.

First, the threshold for the existence of a public emergency is a high one. According to the European Court of Human Rights, which has generally shown itself willing to grant wide discretion (or in legal terms, a “margin of appreciation”) to states in combating terrorism, a public emergency under article 15 is “an exceptional situation of crisis or emergency which affects the whole population and constitutes a threat to the organized life of the community of which the State is composed.”²⁴ Second, as the Joint Committee on Human Rights has observed: “No other State party to the [European] Convention or the International Covenant has made such a derogation in the wake of 11 September 2001.”²⁵ The ICCPR has 151 states parties and the ECHR 45 states parties.²⁶

Derogation also requires that even where a public emergency exists, any measures taken in breach of suspended human rights obligations must be strictly required by the situation. In particular, the state must establish why it believes that ordinary judicial intervention is not an effective tool for addressing the situation.²⁷ The U.K. has extensive experience in dealing with terrorism through the courts and has wide-ranging anti-terrorism criminal law provisions, including the Terrorism Act 2000, which allows the police to arrest a person suspected of terrorist activities without a warrant, and permits detention without charge for up to 7 days (compared to a maximum of four days in ordinary criminal cases).²⁸

The U.N. Human Rights Committee has expressed “concern” about the measures contained in the act, which it stressed in December 2001 “may have far reaching effects on rights guaranteed in the Covenant [the ICCPR].”²⁹ The U.N. Committee on the Elimination of Racial Discrimination has expressed “deep concern” about indefinite detentions under the act, and recommended in December 2003 that the U.K. government “balance [national security] concerns with the protection of human rights and its international legal obligations.” In December 2001, Council of Europe Human Rights Commissioner Alvaro Gil-Robles went further, arguing that “[e]ven assuming the existence of a public emergency, it is questionable whether the measures enacted by the United Kingdom are strictly required by the exigencies of the situation.”³⁰

²⁴ *Lawless v. Ireland* (1979-80) 1 EHRR 15, para. 28.

²⁵ Joint Committee on Human Rights, “Sixth Report, 2003-04 session,” February 24, 2004, para. 18.

²⁶ ICCPR states parties as November, 2, 2003 [online] <http://www.unhchr.ch/pdf/report.pdf> (retrieved April 21, 2004); ECHR ratifications as of April, 21, 2004 [online] <http://conventions.coe.int/Treaty/EN/CadreListeTraites.htm> (retrieved April 21, 2004).

²⁷ European Court of Human Rights, *Aksoy v. Turkey* (1997) 23 EHRR 553, para. 78.

²⁸ The Joint Human Rights Committee has noted that the “United Kingdom’s armoury of anti-terrorism measures is already widely regarded as among the most rigorous in Europe.” Joint Human Rights Committee, “Second Report, 2001-02 session,” November 16, 2001, para. 30.

²⁹ U.N. Human Rights Committee, “Concluding Observations: United Kingdom,” December 6, 2001.

³⁰ Council of Europe, “Opinion 1/2002 of the Commissioner for Human Rights.”

The derogation from the ECHR has been the subject of legal challenge in the U.K. In July 2002, the SIAC considered a challenge to the derogation as a preliminary issue to appeals by nine detainees against their certification as “suspected international terrorists.” SIAC determined that the derogation from article 5(1) was unlawful on the ground that it breached the non-discrimination provision under article 14 of the ECHR, from which the U.K. government had not derogated.³¹ Since the derogation was unlawful, the SIAC held that the detention provisions breached ECHR articles 5 and 14. In the words of the judgment: “[a] person who is irremovable cannot be detained or kept in detention simply because he lacks British nationality.”³²

The SIAC did accept that there was a public emergency within the meaning of article 15 of the ECHR.³³ The court based its decision on classified intelligence material and publicly available evidence. In October 2002, the Court of Appeal heard a cross appeal by both the government and the detainees against the SIAC decisions. The appeal was limited to reviewing potential errors of law. The Court of Appeal reversed SIAC’s finding on discrimination (discussed below), accepting the government’s arguments that foreign nationals had no right to remain in the U.K., thereby making differential treatment permissible. It also rejected the detainees’ appeal against the SIAC’s conclusion that a public emergency did exist. The detainees appealed to the House of Lords, which will hear the case in a specially-convened nine judge panel in October 2004.³⁴

The Joint Human Rights Committee has expressed doubts about the necessity of derogation from the right to liberty under the ECHR, albeit without having had access to classified intelligence material. In its first report on the ATCSA, published in November 2001 during the passage of the legislation, the committee stated that there were insufficient safeguards “to ensure that the measures in the Bill could be said to be strictly required by the exigencies of the situation” and concluded: “we are not persuaded that the circumstances of the present emergency or the exigencies of the current situation meet the tests set out in Article 15 of the ECHR.”³⁵ Its February 2004 report states: “we continue to doubt whether the very wide powers conferred by Part 4 are, in Convention terms, strictly required by the exigencies of the situation.”³⁶

³¹ Article 14 ECHR “The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, color, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.”

³² SIAC, *A, X and Y and others v. Secretary of State for the HomeDepartment*, para. 94.

³³ SIAC, *A, X and Y and others*, para. 35: “We are satisfied that what has been put before us in the open generic statements and the other material in the bundles which are available to the parties does justify the conclusion that there does exist a public emergency threatening the life of the nation within the terms of Article 15.”

³⁴ Andrew Clennell, “Government ‘keeps law lord out of rights appeal,’” *The Times* (London), April 9, 2004.

³⁵ Joint Committee on Human Rights, “Second Report, 2001-02 session,” November 16, 2001, paras. 30 & 78.

³⁶ Joint Committee on Human Rights, “Sixth Report, 2003-04 session,” February 24, 2004, para. 34.

The Newton Committee has also considered whether the derogation is warranted, and its conclusions should be given particular weight. The members of the committee are all privy counsellors, a title given to ministers and other senior parliamentarians with security clearances enabling them to review classified intelligence material. The committee had access to such information for the purposes of its review. While the act was being debated in the House of Lords, Lord Rooker, then a minister in the Home Office, explained to the Lords that “[t]he committee will complete a review of the operation of the Act with full access to all the information including that from the security services and so forth.”³⁷ The Newton Committee report states that “we have taken evidence from the police, the security and intelligence agencies and other counter-terrorist officials.”³⁸

The Newton Committee “strongly recommends” that “Part 4 powers which allow foreign nationals to be detained potentially indefinitely should be replaced as a matter of urgency. New legislation should ... not require a derogation from the European Convention on Human Rights.”³⁹ The committee would not, and indeed could not, have made such a recommendation had it believed that the derogation was warranted.

Discrimination Against Foreign Nationals

Part 4 of the ATCSA applies only to foreign nationals. U.K. nationals cannot be detained under immigration powers. Indefinite detention without trial on the basis of criminal law powers would be incompatible with international human rights and domestic law, even where a public emergency existed and the U.K. sought formally to derogate from its human rights obligations.⁴⁰ The power of detention under the act is therefore discriminatory on its face.

The United Kingdom’s human rights obligations apply to U.K. nationals and non-nationals alike. The ICCPR obligates signatories to “respect and to ensure to *all individuals within its territory* the rights recognized in the present Covenant (emphasis added),” while the ECHR obliges signatories to “secure [rights] to everyone within their jurisdiction.”⁴¹ The U.N. Human Rights Committee has emphasized in relation to the ICCPR that “the general rule is that each one of the rights of the Covenant must be

³⁷ House of Lords Hansard, volume 376, December 10, 2001, Cols 1203-1204 [Cited in: Privy Counsellor Review Committee, “Anti-terrorism, Crime and Security Act 2001 Review,” para. 444].

³⁸ Privy Counsellor Review Committee, “Anti-terrorism, Crime and Security Act 2001 Review,” Foreword, p.5.

³⁹ Privy Counsellor Review Committee, “Anti-terrorism, Crime and Security Act 2001 Review,” para. 25.

⁴⁰ The protections offered to those charged with a crime are far more extensive, and it would be impossible to construct a derogation that would meet the requirements of necessity. Moreover, the protections accorded to criminal suspects are fundamental principles of English domestic law, which neither the courts nor parliament would permit the government to bypass.

⁴¹ ICCPR Article 2; ECHR Article 1.

guaranteed without discrimination between citizens and aliens.”⁴² While international human rights law contemplates some distinctions between nationals and non-nationals, e.g. with respect to voting rights, in general discrimination in the guarantee of rights on the basis of nationality is forbidden.

The SIAC ruled that the derogation from the ECHR was unlawful because it did not comply with the non-discrimination provisions of the European Convention. The SIAC noted that the application of indefinite detention provisions “would properly be confined to the alien section of the population only if, as the Attorney-General contends[,] the threat stems exclusively or almost exclusively from that alien section.”⁴³ As the SIAC then pointed out:

But evidence before us demonstrates beyond argument that the threat is not so confined. There are many British nationals already identified – mostly in detention abroad – who fall within the definition of “suspected international terrorists,” and it was clear from the submissions made to us that in the opinion of the [the UK government] there are others at liberty in the United Kingdom who could be similarly defined. In those circumstances we fail to see how the derogation can be regarded as other than discriminatory on the grounds of national origin.⁴⁴

The Court of Appeal reversed the SIAC’s findings on discrimination, holding that the measures constituted a permissible distinction compatible with the U.K. government’s obligations under human rights law. The court acknowledged the threat from terrorism posed by U.K nationals. Its reasoning rested on the fact that the right of an alien to reside in the U.K. was not unconditional, even if present circumstances prevented deportation.⁴⁵

Given the obligation under the ECHR and ICCPR to respect the right of all persons present in the territory, the distinction between aliens who cannot be removed and nationals who have a right to remain provides an insufficient basis for different treatment. One is therefore left only with treatment based on nationality. The SIAC’s

⁴² U.N. Human Rights Committee, General Comment No. 15: The position of aliens under the Covenant, May 11, 1986. The Comment further emphasizes that non-citizens have “the full right to liberty and security of the person.”

⁴³ SIAC. *A, X and Y and others*, para. 94.

⁴⁴ SIAC, *A, X and Y and others*, para. 95.

⁴⁵ “[A]n alien’s right to reside in this country is not unconditional. True it is that the respondents cannot be deported, but that does not mean that they are in the same position as nationals. They are still liable to be deported, subject to the decision of SIAC on their personal circumstances, when and if this is practical.” Court of Appeal, *A, X and Y and others v. Secretary of State for the Home Department* [2002] EWCA Civ 1502, October 25, 2002, para. 50.

findings remain logically persuasive. The arrest of eight U.K. nationals by anti-terrorism police on March 30 in connection with an alleged bomb plot underscores the SIAC's point that the threat is not confined to foreign nationals.⁴⁶

The discriminatory nature of Part 4 was highlighted by the Joint Human Rights Committee in its February 2004 report: "the Committee remains of the view that there is a significant risk that the powers under Part 4 violate the right to be free of discrimination under ECHR Article 14 because they have a particular impact on only part of the resident community of the United Kingdom."⁴⁷ This conclusion implicitly rejects the distinction devised by the Court of Appeal.

The U.N. Commission on the Elimination of Racial Discrimination takes a similar position. In December 2003, it expressed "deep concern" about indefinite detentions under the act, and emphasized the obligation of states "to ensure that measures taken in the struggle against terrorism do not discriminate in purpose or effect on grounds of race, colour, descent, or national or ethnic origin."⁴⁸

The Cost of Indefinite Detention

The fact that detention powers under Part 4 cannot be used against U.K. nationals highlights a fundamental weakness of the reliance on indefinite detention as a means of combating terrorism. Such a detention regime cannot counter the terrorist threat from nationals of the U.K., providing only the illusion of security. Moreover, undue reliance on indefinite detention of non-nationals may hamper the development of a comprehensive counter-terrorism strategy based on effective law enforcement and enhanced capacity to address terrorism through the criminal justice system.

This weakness is at the core of the Newton Committee's concerns about indefinite detention under Part 4. The committee notes that "what is important is the nature of the threat, not the ideology behind it, or the nationality of the perpetrator," adding "we have been told that, of the people of interest to the authorities because of their suspected involvement in international terrorism, nearly half are British nationals."⁴⁹ The Newton Committee thus recommends the repeal of Part 4 of ATCSA and its replacement with legislation to deal with all terrorism "whatever its origin or the nationality of its suspected perpetrators."

⁴⁶ Stephen Filder, Mark Huband, and Friederike Tiesenhausen Cave, "Bomb-making material discovered in London warehouse following 24 dawn raids by five forces and MI5 officers," *Financial Times*, March 30, 2004; Rosie Cowan and Richard Norton-Taylor, MI5 agents foil bomb plot: Security services claim huge attack was halted with arrests after dawn raid by 700 police, *The Guardian*, March 30, 2004.

⁴⁷ Joint Committee on Human Rights, "Sixth Report, 2003-04," summary, and para. 35.

⁴⁸ U.N. CERD, "Concluding Observations: United Kingdom," December 10, 2003.

⁴⁹ The committee also states "The British suicide bombers who attacked Tel Aviv in May 2003, Richard Reid ('the Shoe Bomber'), and recent arrests suggest that the threat from UK citizens is real. Almost 30% of Terrorism Act 2000 arrests in the past year have been British." Privy Counsellor Review Committee, "Anti-terrorism, Crime and Security Act 2001 Review," para. 193.

The impact of Part 4 on U.K. nationals, however, is not neutral. First, the indefinite detention of foreign nationals creates a disincentive to the overall development of a criminal justice counter-terrorism strategy. An analogy can be drawn from the experience of “M,”⁵⁰ the first ATCSA detainee to be released by the SIAC on the grounds of insufficient evidence to merit certification. M, a thirty-eight-year-old Libyan national, was held in Belmarsh maximum security prison for sixteen months. During that entire period M was never interviewed about what he knew or might have known by the police, security services or any other agency.⁵¹

Were M to have been arrested on terrorism charges under the Terrorism Act 2000, he could have been held for a maximum of seven days and questioned extensively, with a view to his prosecution and to obtain intelligence and evidence against others. Neither prosecution, nor intelligence and evidence gathering appear to have been objectives of the U.K. authorities with respect to M, raising serious concerns that the indefinite detention regime does not contribute to the effort to combat terrorism on key operational measures. The fact that M was released after sixteen months due to lack of evidence against him indicates that his detention did not meet the most obvious objective of Part 4 of the act: taking suspected terrorists into custody, even indefinitely, in order to inhibit future terrorist activity.

Second, the internment of foreign nationals under Part 4 has had an adverse impact on race and community relations in the U.K. The ATCSA detainees are predominantly (if not exclusively) Muslims who are being held indefinitely and have not been charged with any crime. A number of the detainees have alleged ill-treatment in detention, and groups such as Amnesty International have challenged the conditions of detention as cruel and degrading.⁵² The ATCSA detentions are regarded by some observers as an injustice suggestive of the detentions at Guantanamo Bay. The concern among British Muslims, in particular, over the treatment of the detainees is linked to a perception that the U.K. government and security services regard all Muslims as potential terrorists. The Newton Committee commented that “we have heard evidence that the existence of these powers, and uncertainty about them, has led to understandable disquiet among some parts of the Muslim population.”⁵³ Speaking of seven men arrested during a January 2003 raid on a mosque in London, Inayat Bunglawala, who is the Secretary of the Muslim Council of

⁵⁰ The majority of the detainees have not been publicly identified, and are referred to by letters of the alphabet and numbers. According of the Home Office, “The identities of the individual detainees are protected by court order issued by SIAC and as a result, their names and other identifying features are not included unless the individual in question has chosen to release his details into the public domain.” Home Office, “Anti-Terrorism, Crime & Security Act 2001 – Detainees under Part 4.”

⁵¹ Audrey Gillan, “For detainee M, still no explanation why he was locked up for 16 months,” *The Guardian*, April 23, 2004; Jamie Lyons, Terror Suspect ‘Was Never Questioned in Prison,” *Press Association*, April 23, 2004. The PA article is based on a report on the BBC Radio 4 “Today Programme” from April 23, 2004. In it Prisons Minister Paul Goggins confirms that M was not questioned, and claims “it is not extraordinary.”

⁵² Amnesty International, “United Kingdom: Cruel, inhuman and degrading treatment/Medical concern: Algerian former torture victim, known as ‘G,’” March 9, 2004; Amnesty International, “Justice Perverted.”; Amnesty International, “Rights Denied: the UK’s Response to 11 September 2001,” September 5, 2002.

⁵³ Privy Counsellor Review Committee, “Anti-terrorism, Crime and Security Act 2001 Review,” para. 196.

Britain's Media Committee, argued "[t]o detain them indefinitely – as is already the case with several suspected terrorists in Belmarsh prison – will only undermine the trust of Muslims in our judicial system and the rule of law."⁵⁴

The practical consequence is that British Muslims are less likely to have confidence in the actions of the security services, courts and police, and are thus less likely to cooperate with those institutions.⁵⁵ The spokesman for Muslim issues at the Commission for Racial Equality, who has noted the "tremendous disquiet within the [Muslim] community," argues that "[t]he community has the responsibility to co-operate with security agencies to ensure our own safety - but the way to get that co-operation is not by terrorising people."⁵⁶ The U.K.-based Islamic Human Rights Commission has made a similar argument: "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."⁵⁷

The government has justified the use of its powers under Part 4 on the ground that it has done so "sparingly."⁵⁸ When assessing this argument, it is important to examine the human cost of indefinite detention. Two recent SIAC cases make clear that for the detainees it has been extremely high.

Detainee M was released on March 18, 2004, after sixteen months in detention under the ATCSA. M was detained at Heathrow airport in November 2002 and certified the same month, but his appeal was not heard until January 2004—largely due to the very slow pace at which the SIAC has heard ATCSA appeals.⁵⁹ As the Newton Committee noted before M's release, this period "is equivalent to a significant custodial sentence," adding "[s]ome of those involved argue that this [delay] is not intrinsic to the process, and draw

⁵⁴ Inayat Bunglawala, "We Muslims are also the victims of terror," *The Daily Telegraph*, January 21, 2003.

⁵⁵ A widely praised March 2004 letter from the Muslim Council of Britain sent to Mosques, religious and community leaders throughout the UK which called upon British Muslims to cooperate with the police against terrorism, expressed concern about "hasty pronouncements of guilt" and underscored that "[e]very person is to be considered innocent unless proved guilty." Muslim Council of Britain, MCB Guidelines to Imams and British Muslim Organizations, March 31, 2004 [online], <http://www.mcb.org.uk/> (retrieved April 27, 2004).

⁵⁶ Domimic Casciani, "UK extremism threat 'growing,'" BBC News Online, April 20, 2004, [online], <http://news.bbc.co.uk/1/hi/uk/3649137.stm> (retrieved April 23, 2004).

⁵⁷ Islamic Human Rights Commission, "The Hidden Victims of September 11: Prisoners of UK Law," (September 2002), [online], <http://www.ihr.org/> (retrieved April 19, 2004).

⁵⁸ Secretary of State for the Home Department, "Reconciling Security and Liberty in an Open Society," para. 29.

⁵⁹ The reasons for the delays are complex. Potential causes identified by the Newton Committee include: "...argument over the legality of Part 4...; the initial denial of legal aid; [and] the need for detailed arguments between the special advocates and the Government's lawyers over whether more of the closed material could be disclosed without harm (Privy Counsellor Review Committee, "Anti-terrorism, Crime and Security Act 2001 Review," fn. 100).

attention to earlier, pre-Part 4, [SIAC] cases relating to attempted deportations on national security grounds, which were less protracted.”⁶⁰

In allowing M’s appeal against his certification, the SIAC variously characterized the evidence against him as “unreliable,” “inaccurate,” and “clearly misleading.”⁶¹ It concluded that the certification was unreasonable and that the government had failed to provide evidence establishing a reasonable suspicion that M was involved in international terrorism. M therefore spent sixteen months in detention without cause.

Despite the fact that the Home Secretary has cited the SIAC’s independent review powers to justify detentions under Part 4 of the ATCSA,⁶² and despite the SIAC’s highly critical findings regarding the quality of the evidence on which the certification was based, the government appealed the decision in M’s case to the Court of Appeal.⁶³ The appeal was effectively a disagreement with the SIAC’s findings of fact, equivalent to an appeal against acquittal in a criminal case. The Court of Appeal led by the Lord Chief Justice Lord Woolf dismissed the government’s appeal and refused to grant permission for an additional appeal to the House of Lords, on the ground that the SIAC judgment disclosed no error of law.⁶⁴ Lord Woolf stated in the judgment: “It has not been shown that this decision was one to which SIAC was not entitled to come because of the evidence, or that it was perverse, or that there was any failure to take into account any relevant consideration.”⁶⁵

The government’s determination to enforce detention no matter the human cost is also evident in its approach to the case of a second ATCSA detainee, known as “G.” As one of the first ATCSA detainees, G was detained at Belmarsh prison following certification on November 2001. His appeal against certification was dismissed by the SIAC on October 29, 2003, after the court accepted the U.K. government’s assessment that G posed a threat to national security. G is disabled from polio and suffers from mental illness. Medical evidence was presented at his appeal demonstrating that he had suffered a mental breakdown and as a consequence of his detention had become “psychotic” and a suicide risk.⁶⁶ SIAC subsequently granted G bail on January 20, 2004, on the ground that his mental health had further deteriorated after the dismissal of his appeal.⁶⁷

⁶⁰ Privy Counsellor Review Committee, “Anti-terrorism, Crime and Security Act 2001 Review,” para. 197.

⁶¹ Audrey Gillan, “For detainee M, still no explanation why he was locked up for 16 months,” *The Guardian*, April 23, 2004; Amnesty International, “U.K. v M: UK authorities’ refusal to accept yesterday’s judgment amounts to persecution,” March 9, 2004.

⁶² Brian Barder, “On SIAC: Brian Barder explains why he resigned from the Special Immigration Appeals Commission,” *London Review of Books*, March 18, 2004.

⁶³ Amnesty International, “U.K. v M...” March 9, 2004.

⁶⁴ Robert Verkaik, “Terror laws in disarray as Woolf frees Libyan,” *The Independent*, March 19, 2004; Philip Johnston, David Rennie and George Jones, “Appeal Judges free Libyan held without trial,” *The Daily Telegraph*, March 19, 2004.

⁶⁵ Court of Appeal, *Secretary of State for the Home Department v. M*, [2004] EWCA Civ 324, March 18, 2004.

⁶⁶ Audrey Gillan, “Blunkett stops judges’ release of ‘terrorist,’” *The Guardian*, March 15, 2004.

⁶⁷ Immigration Law Practitioners Association, “Note from Raza Husain on SIAC cases,” March 2004.

Extremely strict bail conditions amounting to house arrest were imposed on G. Under the bail terms, G is electronically tagged and cannot leave his house except under police escort, is forbidden to have contact with persons not pre-approved by the government, and is forbidden to have access to the Internet. His telephone is also monitored. The SIAC President Mr. Justice Collins explained the court's decision: "Were he to remain in custody there would be a very real risk of a deterioration in his condition. House arrest with very stringent conditions ... will mean the public can be adequately protected."⁶⁸

Despite the medical evidence and strict bail terms, the U.K. government immediately obtained an injunction preventing G's release and appealed the grant of bail to the Court of Appeal. The Court of Appeal eventually determined it had no jurisdiction to hear the appeal,⁶⁹ and G was released on bail on April 22, 2004, subject to the stringent conditions imposed by the SIAC.⁷⁰ G's legal representatives argued that his mental and physical health had deteriorated as a consequence of the indefinite nature of his detention, suffering a marked decline after the dismissal of his appeal in October 2003.⁷¹

The Home Secretary criticized the bail decision as "extraordinary" and announced his intention to seek legislative amendments to a pending immigration bill to permit him to challenge future SIAC decisions to grant bail.⁷²

The impact of indefinite detention on mental and physical integrity can be further assessed by reference to another detainee: Mahmoud Abu Rideh. Rideh is a Palestinian stateless person and recognized refugee with a history of being tortured prior to his arrival in the U.K. He was transferred to Broadmoor high security psychiatric hospital in July 2002 against his wishes.⁷³ While his consultant at Broadmoor acknowledges that Rideh is not ill enough to warrant detention at the high security hospital, a Mental Health Review Tribunal has determined in January 2004 that Rideh's "mental and physical health would rapidly and seriously deteriorate if he were returned to Belmarsh."⁷⁴

While the cost of indefinite detention on the detainees and its incompatibility with human rights standards should be reason enough for the U.K. government to reconsider its exercise of the powers, its adverse impact hardly ends there. The detention regime does nothing to counter the threat from U.K. nationals involved in terrorism, and may actually inhibit the development of effective counter-terrorism strategy that would

⁶⁸ Tania Branigan, "Blunkett angered by suspect's bail," *The Guardian*, April 23, 2004.

⁶⁹ *The Times* (London), "Terror suspect bail powers; Law report," March 15, 2004.

⁷⁰ Robert Verkaik, "Blunkett vows to tighten law after terror suspect is freed," *The Independent*, April 24, 2004.

⁷¹ Amnesty International, "United Kingdom: Algerian former torture victim, known as 'G,'" March 9, 2004. Helen Williams and Tim Ross, "Bailed Terror Suspect Spends First Day under House Arrest," *Press Association*, April 23, 2004.

⁷² Philip Johnson, "Blunkett to amend law after terror suspect is bailed," *Daily Telegraph*, April 24, 2004; Robert Verkaik, "Blunkett vows to tighten law after terror suspect is freed," *The Independent*, April 24, 2004.

⁷³ Amnesty International, "Rights Denied: the UK's Response to 11 September 2001," September 5, 2002.

⁷⁴ Audrey Gillan, "Terror suspect tells of 'torture' that led to death wish," *The Guardian*, May 5, 2004.

address that threat. Worse still, the indefinite detention regime has served to alienate British Muslims and weaken their trust in the work of the police and security services at a time when the cooperation and support of that community is most needed.

Parliamentary Reviews of Indefinite Detention Under Part 4

The ATCSA is subject to considerable scrutiny by the U.K. parliament. The Newton Committee review of the act is mandated by the legislation itself.⁷⁵ Under the act, Part 4 is subject to additional annual review by Lord Carlile, a member of the House of Lords and former judge, as well as periodic consideration by Parliament, most recently in February and March 2004.⁷⁶ Lord Carlile takes no position as to whether the powers should continue. His mandate is limited to the question of whether the detention powers under Part 4 are being exercised in a manner consistent with the act.⁷⁷ But while Lord Carlile considers that the Home Secretary has certified persons “only in appropriate cases,” he shares “SIAC’s view that what may be reasonable for an arrest for a short period of detention may be insufficient for indefinite detention.”⁷⁸

The act has also been reviewed for human rights compliance by the Joint Human Rights Committee of the U.K. parliament, which has expressed concern both about discriminatory aspects of Part 4 detention powers and the necessity of the derogation arising from it. The committee’s most recent report endorsed the findings of the Newton Committee, and recommended that “the Government should give a firm undertaking that it will actively seek, as a matter of priority, a new legal basis for its anti-terrorism tactics to be put in place speedily and in accordance with the principles developed in the Newton Committee report.”⁷⁹

Following publication of the Newton Committee report in December 2003, both houses of parliament had to consider the report within six months or the entire legislation would have lapsed.⁸⁰ Following debate in the House of Commons on February 25, 2004, and the House of Lords on March 4, 2004, the act remains in force. On February 25, the government published a “discussion paper” entitled *Counter-terrorism Powers: Reconciling Security and Liberty in an Open Society* and announced a consultation exercise on counter-terrorism measures.⁸¹

⁷⁵ ATCSA 2001, s.122.

⁷⁶ ATCSA 2001, ss. 28-9. Part 4 was renewed by a House of Commons committee on February 26, 2004, and the House of Lords on March 11, 2004. Renewal did not require an affirmative vote by either house.

⁷⁷ Lord Carlile of Berriew Q.C., “Anti-terrorism, Crime and Security Act 2001, Part IV s. 28 Review 2003”: para. 7.

⁷⁸ Lord Carlile, “Anti-terrorism, Crime and Security Act 2001 Review 2003,” para. 25, and conclusions.

⁷⁹ Joint Human Rights Committee, “Sixth Report, 2003-04,” para. 37.

⁸⁰ The Act provides that any part of the legislation specified by the privy counselor committee in its report will lapse unless considered by both houses within 6 months. ATCSA s. 123.

⁸¹ Secretary of State for the Home Department, “Counter-Terrorism Powers, Reconciling Security and Liberty in an Open Society: A Discussion Paper,” February 2004.

Notwithstanding its title, the principle objective of the government paper is to defend Part 4 and to rebut the Newton Committee's conclusions: "we reject the [Newton] Report's central conclusion that Part 4 powers should be replaced."⁸² Part one of the paper argues that indefinite detention is a "proportionate response;" that "it is defensible to distinguish between foreign nationals and our own citizens;" and that "the obligation to derogate is unavoidable."⁸³ Part two of the paper is a detailed response to the Newton Committee report. The paper's approach is at odds with the comment in its introduction that "the government's mind is open." To date, the government has been unwilling to engage with the very serious concerns about Part 4, even when expressed by a group of senior parliamentarians who expressly state that "it is the arguments of limited efficacy in addressing the terrorist threat that weigh most heavily with us."⁸⁴

Diplomatic Assurances Are Not a Solution

Human Rights Watch is concerned that the U.K. government intends to rely on "diplomatic assurances" as a safeguard against torture in deportation cases involving ATCSA detainees, as well as other persons suspected of involvement in terrorism. Diplomatic assurances are formal guarantees from the government in the country of return that a person will not be subject to certain treatment on return. Such assurances are commonplace in criminal extradition cases for offenses involving the death penalty.

The government discussion paper noted above, issued in February 2004, states that "work is underway to try to establish framework agreements with potential destination countries of the kind set out in paragraphs 254-257 of the Newton Report."⁸⁵ In fact the Newton Committee expresses "considerable reservations" about deportation "as a way of dealing with suspected international terrorists," including the fact it arguably amounts to "exporting terrorism."⁸⁶

Human Rights Watch research indicates that reliance on diplomatic assurances from countries where torture is commonplace is not a sufficient safeguard against torture on return, even where the sending state engages in post-return monitoring.⁸⁷ Such assurances in relation to torture have already been rejected by a U.K. criminal court in a recent case involving an extradition request by Russia, and by the SIAC in a non-ATCSA case.⁸⁸

⁸² Secretary of State for the Home Department, "Reconciling Security and Liberty in an Open Society," para. 46.

⁸³ Secretary of State for the Home Department, "Reconciling Security and Liberty in an Open Society," paras. 34-37.

⁸⁴ Privy Counsellor Review Committee, "Anti-terrorism, Crime and Security Act 2001 Review," para. 195.

⁸⁵ Secretary of State for the Home Department, "Reconciling Security and Liberty in an Open Society," para 38.

⁸⁶ Privy Counsellor Review Committee, "Anti-terrorism, Crime and Security Act 2001 Review," para. 195.

⁸⁷ Human Rights Watch, "'Empty Promises': Diplomatic Assurances No Safeguard Against Torture," *A Human Rights Watch Report*, vol. 16, no. 4(D), April 2004.

⁸⁸ The extradition of Akhmed Zakaev to Russia was refused by the Bow Street Magistrates' Court in November 2003, see 'Empty Promises,' pp.29-30; *Singh and Singh v Home Secretary* July 2000 "assurances that the UK government had obtained did not, in light of other evidence, provide a sufficient degree of reassurance about

Toward a More Just and Effective Counter-Terrorism Strategy

The consultation period set out in the Home Office discussion paper expires in August 2004. It is hoped that the U.K. government will use that period to consider carefully the necessity of derogation from its human rights obligations and the cost and efficacy of indefinite detention. In particular, the release of detainee M, the mental health impact of the indefinite detention of detainee G, the effect on race and community relations, and the conclusions of a group of senior parliamentarians motivated primarily by the need to protect the public, should give the government considerable pause about the wisdom of its present approach.

the safety of the deportee on his return.” (Privy Counsellor Review Committee, “Anti-terrorism, Crime and Security Act 2001 Review,” para. 256 and fn. 136).