



The Association of
Muslim Lawyers (UK)

YEMEN:

WILL THE INACTION OF THE BRITISH GOVERNMENT CONTRIBUTE TO A SERIOUS MISCARRIAGE OF JUSTICE?

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The trial of the eight British Muslims in Yemen has received a great deal of publicity, some of which has been positive and some of which has been distinctly Islamophobic. For the relatives of the men and the wider Muslim community this is a situation where we naturally look to our government for assistance and to set the tone for public opinion. One of the worst stereotypes of Islamophobia is that Islam and terrorism are inextricably linked. This is a case which on the surface may be used by the media to feed that stereotype and thus to damage race relations in this country. The way in which it is handled by the British Government is therefore of the utmost importance. Given the preponderance of lawyers in the current Cabinet and the Government's apparent commitment to human rights, the men's UK defence team were optimistic that once they had been fully informed of the serious breaches of Yemeni and International law that were taking place and had seen that this was a miscarriage of justice in the making they would swing into action.

Five of the men were arrested in Aden on 24.12.98 and detained. No charges were brought at this stage. The men were denied legal representation and kept incommunicado. They were not given any reasons for their arrest. It took until 07.01.99, approximately two weeks later, for the Embassy to obtain the men's details. The next day the British Consul visited three of the men. Two of them informed him they had been tortured - but this did not emerge until later.

On 09.01.99 relatives of the detainees demonstrated outside the Foreign Office and succeeded in obtaining a brief meeting with officials as a result of the demonstration. They were told that the Consul reported that the condition of the detainees was good. The following day lawyers met with Foreign Office officials and informed them of the breaches of the Yemeni Constitution which had taken place regarding the arrests and detention. They requested that the Government intervene by making appropriate representations to the Yemeni authorities and stressed that already at this early stage it was clear that a fair trial could not take place. Officials disclosed that one detainee had complained to the Consul of ill treatment including being hit, slapped, blindfolded and made to sign a piece of paper, and another had complained of being tied upside down and having the soles of his feet beaten. A third detainee who had been seen later had complained that he had been assaulted from the start to make him talk. They also disclosed that General Tourek, Head of Security in Aden, was present at each interview together with 8-10 other people and that he engaged in questioning each detainee in the Consul's presence.

On 11.01.99 Robin Cook stated in Parliament that “The Consul-General has visited four of the five men. My hon. Friend asks about their health. The Consul-General reports that they appear fit and well and he did not see any evident points of ill-treatment. However, my hon. Friend is aware that one of those four has complained that he was ill-treated in the first week of his detention.” This directly contradicted what the lawyers had been told the previous day.

On 15.01.99 the men were charged with ‘being involved in an armed gang to carry out killings and the causing of explosions’. The charges were laid only after the torture and the ‘confessions’ had been extracted. All the men have retracted their ‘confessions’. On 26.01.99 Consular staff had a further visit to three of the detainees and this time recorded that there was clear evidence of torture - making it apparent that the British authorities were fully aware of the gravity of the situation at this early stage.

On 27.01.99 the trial commenced. The men demonstrated the marks of torture as they arrived in the court. Two claimed that they had been sexually abused. The defence lawyers demanded that an independent medical examination should be carried out immediately to investigate the claims of torture. They have been repeatedly denied access to the detainees and to date an independent examination has not been allowed. A British forensic pathologist, expert in the examination of victims of torture, was denied access to examine the men. The defence team in Yemen have also not been allowed access to the prosecution files in order to be able to properly prepare their case. Three more British Muslims were arrested on 27.01.99.

The trial continued and on 06.02.99 a prosecution explosives expert claimed that fingerprint evidence was taken but was unable to say where, when or by whom. No fingerprint evidence was produced to link the men to the alleged evidence against them. The defence team made the point that the police evidence should be treated as suspect as there is no separation between the police and prosecution in Yemen. On 13.02.99 the second three detainees were joined to the trial of the first five on the same charges. They had not had access to lawyers and the defence team were not informed that they would be in court. On 17.02.99 one of the new group of detainees reported that he had suffered a serious sexual assault by guards one and half weeks earlier. The lawyers in both countries have repeatedly pressed for an independent medical examination to take place and for the men’s right to a fair trial to be upheld. On 09.03.99, following a request from the UK lawyers and the families, a further meeting took place with the Foreign Office. They requested once again that the Foreign Office should make representations to the Yemeni authorities that there could be no possibility of a fair trial, that the defence team in Yemen should be allowed proper access to the detainees and the prosecution evidence, that an independent doctor should be allowed to examine the men and that their rights while detained, should also be protected. Following the meeting the lawyers sent a letter to the Foreign Office providing a non-exhaustive list of the breaches of Yemeni and International Law which had taken place.

On 24.03.99 the defence team in Yemen resigned in protest at the continuing breaches of Yemeni and International Law and the obstacles that were being put in their way. Their simple requirements were that they should have unlimited and unsupervised access to their clients without the interference and presence of the prosecution or police officers, that there should be full disclosure of the complete prosecution file in order that they may be in a position to prepare a proper defence (key documents such as the ‘confessions’ taken under duress have not been given to the defence team) and that the issue of the validity of the “confessions” should be dealt with in the court. The British lawyers at the same time continued to press the Foreign Office requesting that representations should be made at the highest level to the Yemeni authorities that the trial was flawed and should not continue in these circumstances.

The response from the Government has consistently been that they cannot intervene in an on-going court case in a foreign country. It has been repeatedly clarified that what is being requested is not intervention in the court case, but representations at the highest governmental levels that the trial is not proceeding according to Yemeni and International Law and that the rights of these British citizens under both Yemeni and International Law are being violated so that it is impossible for there to be a fair trial.

On 30.03.99, approximately three months after the men had been arrested, Tony Blair finally wrote to the Prime Minister of Yemen requesting that the men be examined by a qualified independent doctor in the presence of an experienced human rights lawyer. On 15.04.99 the Judge ordered that an independent medical examination should take place and that a medical committee should be formed consisting of 2 Yemeni doctors and a third doctor from a neutral country. The defence team contacted possible neutral country doctors. On 22.04.99 the British defence team again met with the Foreign Office to discuss their growing concerns about the conduct of the trial and to request again that the Government intervene at the highest level. On 25.04.99 all the detainees were briefly 'examined' by a 'medical commission' consisting of 2 Yemeni doctors and one Dutch GP who works in Yemen for an oil firm and is not specialised in examining victims of torture. The examination took place without the knowledge of the defence team or even the trial judge. All the doctors were appointed by the Yemeni Ministry of Health and their independence is therefore suspect. On 27.04.99 the British defence team sent an urgent fax to the Foreign Office repeating their request that the Government intervene at the highest level to state that the trial is now so flawed, that there cannot be a safe verdict and should be halted. A further meeting took place on 30.04.99 to stress the urgency of the situation and to request that letters be sent by Tony Blair and Robin Cook to the Yemeni President and Foreign Secretary, and that a special envoy be sent by the Government to follow these up. Officials said that they would look into this, but at the time of writing nothing has been done. At present the British defence team are chasing this up with the Government and it remains to be seen what the final response will be.

On 03.05.99 following instructions from the UK lawyers, the Yemeni defence lawyers returned to court on the basis that they must be there to object to all the breaches of procedure as they happen and to monitor events, even if they are not in a position to conduct a proper defence. The 'confessions' continued to be read out. One detainee pointed out that he had written 'false' in English on each page of the statement and that his 'signature' also reads 'false'. On 26.05.99 three photographs taken on the first day of the trial of the men showing the wounds from torture were shown in court by the defence team. The prosecution argued that these were inadmissible in evidence and the judge said that he would rule on this issue soon. As there has been no independent medical examination these photos remain the only independent evidence that torture took place. If these are ruled inadmissible by the judge the 'confessions' will stand as evidence, despite the fact that the men have been denied their rights under the Convention Against Torture and other Cruel Inhuman or Degrading Treatment or Punishment to which Yemen is a signatory. Yemen has a Constitution and a Penal Code which in theory provide the internationally accepted rights for those accused, charged, detained and on trial. It is also a signatory to the ICCPR and by Article 6 of its Constitution is bound by the "UN Charter, the International Declaration of Human Rights, the Charter of the Arab League, and the dogma of international law which are generally recognised."

At the moment the trial is continuing in blatant breach of this legal framework and the British government has still not made the energetic representations to this effect that have been requested. It appears that the British government is completely failing to deal with the central issue, which is that they have a governmental duty to protect the rights of British citizens where ever they may be. They are surely obliged to do everything they can to ensure that their rights under Yemeni and international law are upheld. Unless and until the serious breaches of Yemeni and international law that have already taken place are actively brought to the attention of the Yemeni authorities by the British authorities and pursued energetically with them the relatives, the lawyers and the Muslim community will feel that the Government has not carried out its duties towards its citizens. If this continues the entire trial process will continue to be flawed and a miscarriage of justice will be directly assisted and endorsed by the inaction of the British government. This is a case where the intervention of the British government at governmental level is essential to ensure that the human rights of British citizens are protected and all the indications are so far that the British government is not protecting its citizens' rights with the vigour and urgency required by the gravity of the situation.

The question that must be asked is "Why not?"