



**JUSTICE Response to the  
Coalition Programme for Government**

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## Introduction

1. Founded in 1957, JUSTICE is a UK-based human rights and law reform organisation. Its mission is to advance access to justice, human rights and the rule of law. It is the British section of the International Commission of Jurists.
2. This response analyses the coalition's programme for government in the following areas.
  - Civil liberties
  - Crime and policing
  - Equalities
  - Europe
  - Foreign affairs
  - Government transparency
  - Immigration
  - Justice
  - National security
  - Political Rrform
3. This response does not address each individual proposal under the above areas. Instead, it focuses on the key proposals relevant to JUSTICE's main areas of work: human rights, criminal justice, EU justice and home affairs, and the rule of law. There is a general point to be made. Perhaps understandably in the circumstances, many of the proposals are made negatively in the form of repeal of existing legislation. We hope that, as the coalition proceeds, the government will be able to reformulate its policies around positive and comprehensive principles.

## Civil liberties

*'We will implement a full programme of measures to reverse the substantial erosion of civil liberties and roll back state intrusion'*

4. We welcome the coalition government's announcement that it will seek to reverse the erosion of civil liberties. Although the previous government was responsible for a great many positive measures in this area – most notably the Human Rights Act 1998 – it was also responsible for a number of retrograde steps, eg the disproportionate

retention of DNA, the introduction of ID cards, and limits on the right to trial by jury. It is a salutary reminder that new governments may often begin with good intentions that, over time, become blunted by the experience of governance itself. We hope that the new coalition government will avoid repeating such mistakes.

*'We will introduce a Freedom Bill'*

5. Like the government's commitment to reverse the erosion of civil liberties, the prospect of a 'Freedom Bill' is welcome but lacking in detail. On 25 May, the Queen's Speech to Parliament promised that legislation will be brought forward 'to restore freedoms and civil liberties, through the abolition of Identity Cards and repeal of unnecessary laws'.
6. In its various briefings on legislation, reports and responses to government consultations, JUSTICE has frequently recommended that particular provisions should either not be enacted or should be substantially amended. We do not doubt, therefore, that there are a significant number of provisions that could usefully be repealed in the name of better protecting fundamental freedoms. Nonetheless, we also note that many of the most pressing human rights issues in the UK cannot be adequately addressed by removal of the offending provisions alone. Issues such as DNA retention, stop and search and surveillance powers, for example, will require comprehensive overhaul and reform, rather than simple repeal.

*'We will scrap the ID card scheme, the National Identity register and the ContactPoint database, and halt the next generation of biometric passports'*

7. JUSTICE welcomes the announcement to scrap the ID card scheme and the National Identity register, both of which it opposed in parliamentary briefings. We note that the ContactPoint database is only one of a number of government-run databases introduced in recent years. Rather than debate the merits of particular measures, we recommend that the government undertake a comprehensive review of existing databases, in particular whether they are truly necessary and proportionate. We also recommend establishing a clear set of principles governing the creation of any new government databases.

*'We will outlaw the finger-printing of children at school without parental permission'*

8. JUSTICE welcomes the coalition government's commitment on this issue. In March 2007, we wrote to the Liberal Democrat Shadow Spokesman on Schools to express our view that the collection of biometric data by schools for purposes of monitoring attendance and allowing access to meals and libraries was a wholly unnecessary and disproportionate interference with pupils' right to respect for privacy.

*'We will extend the scope of the Freedom of Information Act to provide greater transparency'*

9. The Freedom of Information Act 2000 was one of the major positive measures of the previous government. We strongly support the new government's commitment to build upon the 2000 Act to extend its scope.

*'We will adopt the protections of the Scottish model for the DNA database'*

10. JUSTICE recommended the adoption of the Scottish model in its parliamentary briefings on the Crime and Security Bill. This would bar the retention of the DNA of any person arrested or charged but not convicted of a criminal offence (with an exception for the retention of a person's DNA for up to three years in cases of sexual or violent offences). This seems to us a proportionate response to the judgment of the European Court of Human Rights in *S and Marper v United Kingdom* in December 2008. We are therefore heartened to see these proposals taken up by the new coalition government.

*'We will protect historic freedoms through the defence of trial by jury'*

11. The right of any person charged with a serious criminal offence to a jury of his peers is plainly a fundamental right, and has been recognised as a constitutional right throughout the common law world. On this basis, we opposed the previous government's proposal to restrict trial by jury in cases of serious fraud and as a jury-tampering measure, on the basis that both were unnecessary restrictions whose purposes could be better achieved by other measures. We therefore welcome the new government's commitment to protect the right to jury trial in cases involving serious criminal offences.

*'We will restore rights to non-violent protest'*

12. JUSTICE opposed the various restrictions on public protest introduced by the Serious Organised Crime and Policing Act 2005, as well as such interferences as the disproportionate use of stop and search powers under section 44 of the Terrorism Act 2000. We also gave oral evidence to the Joint Committee on Human Rights inquiry into Policing and Protest in June 2008. We therefore welcome the coalition government's commitment to restoring the right to peaceful protest, a fundamental right under Article 11 of the European Convention on Human Rights.

*'We will review libel laws to protect freedom of speech'*

13. JUSTICE fully supports initiatives to reform existing libel laws to safeguard freedom of speech and expression. Most recently, we responded to the Ministry of Justice consultation on the double publication rule. Other key aspects of libel reform that must be pursued including reducing costs and ending conditional fee agreements, ending so-called 'libel tourism', and strengthening the defences of fair comment and public interest.

*'We will introduce safeguards against the misuse of anti-terrorism legislation'*

14. As detailed below, JUSTICE has long been engaged with the human rights aspects of the UK counter-terrorism legal framework. Although we do not doubt that the UK faces a serious threat from terrorism, it is plain that terrorism legislation is increasingly used against individuals and organisations with no connection to terrorism, such as the use of stop and search powers against protestors, the freezing of the assets of the Icelandic government under the Anti-Terrorism Crime and Security Act 2001, or the interference with photography in public places by police using section 76 of the Counter-Terrorism Act 2008. As with surveillance, this is an issue requiring a comprehensive overhaul of existing legislation and policy, in order to prevent the arbitrary and disproportionate use of terrorism powers by public officials.

*'We will further regulate CCTV'*

15. The UK has gained the unenviable reputation as a market leader in the field of CCTV, with more CCTV cameras per capita than any country on earth. We have repeatedly criticised the lack of regulation in this area, for instance in our oral evidence to the

House of Commons Home Affairs Committee inquiry on the 'surveillance society' in June 2007, and to the House of Lords Constitution Committee inquiry on Surveillance and Data Collection in February 2008. We welcome the coalition government's promise to regulate CCTV, but note that it is but one aspect of the more general issue of surveillance reform.

*'We will end the storage of internet and email records without good reason'*

16. JUSTICE has opposed the increasing trend of government to seek the retention of internet and email records, most recently in the Communications Data Bill published by the previous government. This issue is linked to the scope of the government's surveillance powers under the Regulation of Investigatory Powers Act 2000, as well as the more general trend of increasing government databases.

*'We will introduce a new mechanism to prevent the proliferation of unnecessary new criminal offences'*

17. In our many briefings on criminal justice and counter-terrorism legislation over the years, JUSTICE has repeatedly counselled against the creation of further criminal offences where existing powers are already more than adequate. Indeed, the proliferation of criminal offences is just part of a broader problem of unnecessary legislation generally, as well as unnecessary emergency or 'fast-track' legislation. (Among other things, we gave oral evidence to the House of Lords Constitution Committee's inquiry into emergency legislation in March 2009). We therefore strongly welcome the coalition government's commitment to govern well by legislating less, and are happy to discuss ways to identify a workable mechanism to prevent further legislation.

*'We will establish a Commission to investigate the creation of a British Bill of Rights that incorporates and builds on all our obligations under the European Convention on Human Rights, ensures that these rights continue to be enshrined in British law, and protects and extends British liberties. We will seek to promote a better understanding of the true scope of these obligations and liberties'*

18. We await more detail on the terms of reference of this commission. We consider that the Human Rights Act has immeasurably benefited the constitutional framework of the UK and that, after teething problems as its effects became better understood, it has, overall, worked well. The European Convention on Human Rights (ECHR)

provides a principled framework for the protection of civil liberties which should continue to be enshrined in British law.

19. The reference to promotion of a 'better understanding' of the 'true scope of these obligations and liberties' is unclear. It may be a reference to public education, something to be welcomed. It may possibly be a reference to the idea of responsibilities. This would be an unnecessary step in our view.

## **Crime and policing**

*'We will amend the health and safety laws that stand in the way of common sense policing'*

20. It is unclear which health and safety laws have prevented common sense policing.

*'We will introduce measures to make the police more accountable through oversight by a directly elected individual, who will be subject to strict checks and balances by locally elected representatives'*

21. We are unconvinced by the arguments for directly elected police commissioners. We are conducting a joint pilot project with the Police Foundation in relation to a wider range of issues about policing and we consider that there should be a comprehensive review of policing powers, organisation and accountability before implementing reform in this area.

*'We will give people greater legal protection to prevent crime and apprehend criminals' and  
'We will ensure that people have the protection that they need when they defend themselves against intruders'*

22. JUSTICE has consistently opposed proposals to further extend the existing law governing the use of force in self-defence. In our view, the current law strikes a reasonable balance between the interests of suspects and occupiers. We note for instance that in the most recent *cause célèbre* of Munir Hussain in December 2009, self-defence was not even raised as a defence – Mr Hussain's defence was instead that he did not participate in the beating of his would-be kidnappers, which was not accepted by the jury. It would be unwise for the coalition government to legislate in circumstances where there is such significant public misunderstanding of the true state of the law.

*'We will introduce a system of temporary bans on new 'legal highs' while health issues are considered by independent experts. We will not permanently ban a substance without receiving full advice from the Advisory Council on the Misuse of Drugs.'*

23. We are troubled by the prospect of bans, even temporary ones, being imposed on the use of a lawful substances without the benefit of full advice from independent experts. Without sufficient evidence to show that it is either necessary or proportionate, a ban on the use of a lawful substance would be likely to breach the right to private life under Article 8 ECHR and the right to private property under Article 1 of Protocol 1 ECHR.

*'We will review the operation of the Extradition Act – and the US/UK extradition treaty – to make sure it is even-handed'*

24. The current US/UK extradition treaty is not even-handed. Specifically, unlike US courts, there is no requirement on UK courts to consider the equivalent of whether there is 'probable cause' for the extradition of a suspect. We therefore welcome the coalition government's commitment to reviewing the treaty and the Extradition Act generally. We would also welcome UK participation in a European review of the European Arrest Warrant. This was created to ensure that serious crime could not be committed with impunity in the EU as a result of escape across borders. Whilst the return of suspected and convicted criminals has increased substantially as a result of the warrant, there is no possibility of preventing the surrender of people to other countries in connection with very minor offences. Such surrender disproportionately affects established work and family life in this country. Furthermore, our courts consistently assume that the rights of suspects will properly be protected on their return. We consider that suspects should have a lawyer in each country concerned and other minimum procedural safeguards in order to properly defend their surrender.

## **Equalities**

*'We will promote equal pay and take a range of measures to end discrimination in the workplace'*

25. JUSTICE has for many years argued for improved equality and non-discrimination legislation, most recently for the Equality Act 2010, on the basis that equality is a fundamental human right. Equal pay is an important aspect of the right to equality, and we welcome the government's intention to promote this, but equal pay is not the only aspect that should be promoted. We also welcome the coalition government's commitment to end discrimination in the context of employment, but hope that it will

match this with a similar commitment to end discrimination in other areas, e.g. the provision of goods and services.

*'We will stop the deportation of asylum seekers who have had to leave particular countries because their sexual orientation or gender identification puts them at proven risk of imprisonment, torture or execution'*

26. We welcome the government's promise to halt deportations in this area. It is well-established that, whether or not an asylum seeker is entitled to the protection of the Refugee Convention, no person should be deported to a country where they face a real risk of torture, inhuman or degrading treatment contrary to Article 3 ECHR. In addition, it is also well-established that no person should be deported to a country where it would give rise to a flagrant breach of another of their Convention rights, eg the right to private life under Article 8 ECHR. We note that the judgment of the Court of Appeal in *HJ (Iran) and HT (Cameroon) v Secretary of State for the Home Department* [2009] EWCA Civ 172, requiring 'discretion' on the part of gay and lesbian asylum seekers if returned, is currently under appeal to the UK Supreme Court. In the event that the appeal is dismissed, we trust that the government will nonetheless implement a policy of non-return in such circumstances.

*'We will use our relationships with other countries to push for unequivocal support for gay rights and for UK civil partnerships to be recognised internationally'*

27. We welcome the government's commitment in this area.

## **Europe**

*'We will ensure that there is no further transfer of sovereignty or powers over the course of the next Parliament. We will examine the balance of the EU's existing competences and will, in particular, work to limit the application of the Working Time Directive in the United Kingdom'*

28. The Lisbon Treaty is unlikely to be followed over the course of the next Parliament by another power changing instrument. Laws are however adopted each month in Europe across a wide range of disciplines which may require a change to practice and procedure in the UK. Every law requires the domestic parliaments in each EU member state to confirm that they are content for the matter to be dealt with at EU level ('the subsidiarity principle'). We consider it essential that this proposed provision is targeted only at significant transfers of sovereignty and not minor readjustments.

*'We will amend the 1972 European Communities Act so that any proposed future treaty that transferred areas of power, or competences, would be subject to a referendum on that treaty – a 'referendum lock'. We will amend the 1972 European Communities Act so that the use of any passerelle would require primary legislation'*

29. If a referendum is to take place on a new treaty it is imperative that information about the changes proposed is clear, impartial and widely available so that the decision voters take is properly informed.

*'We will examine the case for a United Kingdom Sovereignty Bill to make it clear that ultimate authority remains with Parliament'*

30. In our view, there is no sensible case for a UK Sovereignty Bill. The principle of parliamentary sovereignty is well-understood as a fundamental principle of the UK's common law constitution. Not only would it be utterly unnecessary to legislate to make this clear, but it may even have the unintentional effect of weakening the existing common law principle (eg by putting it in statutory form, rendering it liable to subsequent repeal). We strongly recommend against legislation in this area.

*'We will press for the European Parliament to have only one seat, in Brussels'*

31. Considerable funds appear to be expended on having plenary sessions of the European Parliament in Strasbourg and committee and daily activities in Brussels. We agree that the UK should work within the EU to have one location for the Parliament. It will be crucial to build consensus on this reform.

*'We will approach forthcoming legislation in the area of criminal justice on a case-by-case basis, with a view to maximising our country's security, protecting Britain's civil liberties and preserving the integrity of our criminal justice system. Britain will not participate in the establishment of any European Public Prosecutor'.*

32. We welcome the indication that the UK will continue to engage in the area of criminal justice, given the inevitable criminal activity generated by freedom of movement of people throughout the EU. It is crucial that the UK maintains its leading position in this area, to ensure that standards of policing and safeguarding suspects and victims of crime meet those within the UK. We consider it too early to reject the proposed role of a European public prosecutor in principle, since no detail as to the extent of its role has been decided. The UK would be sensible to engage in the consultation process about the use of this position, given that the current directors of Europol and Eurojust and the outgoing director general of justice, freedom and security in the European

Commission are British, and there may be a benefit to the UK in having a cross-border prosecutor for financial crime in the EU institutions.

## Foreign affairs

*'We will never condone the use of torture'*

33. The prohibition against the use of torture is a fundamental principle of both common law and international human rights and humanitarian law. Despite this, JUSTICE has been gravely concerned at the previous government's apparent willingness to turn a blind eye to the use of torture by its allies as part of the US-led 'war on terror', whether by allowing rendition flights through UK airports, receiving material from third countries obtained using torture, or even alleged complicity in interrogations involving torture abroad. We gave evidence to the UN Committee against Torture concerning these issues in October 2004 and oral evidence to the EU Parliament's Temporary Committee on alleged CIA transportation and illegal detention of prisoners in October 2006. We intervened before the House of Lords in *A and others v Secretary of State for the Home Department (No 2)* [2005] to argue against the use of evidence obtained by torture, and we intervened before the Court of Appeal in *R (Binyam Mohamed) v Secretary of State for Foreign and Commonwealth Affairs* [2010] EWCA Civ 65 in February 2010 to argue for the disclosure of material indicating UK complicity in torture abroad.
34. In this context, we very much welcome the new coalition government's promise to never condone the use of torture. In light of the previous government's protestations to the same effect, however, we would note that promises alone are not enough. In light of mounting evidence suggesting complicity of UK officials in the use of torture abroad, nothing less than an independent public inquiry is needed to fully investigate the various allegations that have been made. This inquiry should look at, among other things, the guidance provided to members of the intelligence services, the degree of involvement of the government departments responsible for the services, and the adequacy of the existing oversight arrangements (including the role of the Intelligence and Security Committee). The statement of the Foreign Secretary William Hague MP on 20 May that a judicial inquiry will be held on the issue is an important first step in this direction.

## **Government transparency**

*'We will create a new 'right to data' so that government-held datasets can be requested and used by the public, and then published on a regular basis'*

35. JUSTICE welcomes this initiative. The right to access government data is an important complement to the principles of freedom of information, and the right to receive and impart information under Article 10 ECHR. More generally, it promotes democratic transparency and accountability, and more effective public policy.

## **Immigration**

*'We will introduce an annual limit on the number of non-EU economic migrants admitted into the UK to live and work. We will consider jointly the mechanism for implementing the limit'*

36. JUSTICE opposes the introduction of an annual limit for non-EU migrants, not least because it is likely to lead to significant injustice where existing citizens and residents seek to bring family members from abroad. The right to family life is protected under Article 8 ECHR, and existing mechanisms for the reunification of families should not be impaired by the imposition of an annual cap, which is certain to result in arbitrary refusals.

*'We will end the detention of children for immigration purposes'*

37. We strongly support the government's commitment to end the detention of children in this area. This should be accompanied by a comprehensive review of the use of immigration detention in general. In 2001, JUSTICE intervened in *Secretary of State for the Home Department ex parte Saadi* [2001] EWCA Civ 1512 to argue that detention should only be allowed where it is strictly necessary to do so, and must never be used purely for the sake of administrative convenience. Notwithstanding the previous government's claim to only use detention proportionately, the use of immigration detention has grown dramatically since the policy of so-called 'fast-track' detention was introduced in the late 1990s.

*'We support E-borders and will reintroduce exit checks'*

38. We question the need for the reintroduction of exit checks. Although the Liberal Democrats have said that exit checks would help with a more accurate assessment of the number of people in the UK, we do not think they are - by themselves - likely to

lead to significant improvements in accuracy. Moreover, any benefits in this area are likely to be outweighed by the considerable inconvenience they give rise to, not to mention interference with freedom of movement.

*'We will introduce new measures to minimise abuse of the immigration system, for example via student routes, and will tackle human trafficking as a priority'*

39. We welcome the government's commitment to tackle human trafficking. JUSTICE is one of a number of organisations that had urged the previous government to sign and ratify the Council of Europe Convention on Action against Trafficking in Human Beings, and we submitted written evidence to the Joint Committee on Human Rights inquiry on the issue in January 2006.

40. We are much more doubtful at the prospect of 'new measures to minimise abuse of the immigration system'. It seems much more uncertain and much will depend on the details of the measures, including whether they are strictly necessary and proportionate. In the context of student visas, for instance, we note that there have been numerous 'crackdowns' in the past on so-called 'bogus colleges', and that students are now subject to ever-increasing restrictions – most recently under the Borders, Citizenship and Immigration Act 2009. We therefore question the need for new measures in this area, especially in light of the wealth of existing regulation.

*'We will explore new ways to improve the current asylum system to speed up the processing of applications'*

41. We agree that the processing of asylum applications leaves much to be desired, and that delays can give rise to considerable hardship and injustice. However, delay in processing applications is but one of a number of flaws in the current system, the most problematic of which is the *quality* of the decision-making process. As JUSTICE has made clear in numerous submissions on immigration legislation, most recently in relation to the Borders, Citizenship and Immigration Act 2009 and the draft Immigration and Citizenship Bill in 2008, poor quality decision-making at first instance is an endemic problem, giving rise to considerable pressure on the appeals process. This problem was made worse by the previous government's repeated attempts to limit the appeal rights of applicants. In our view, the most effective way to reduce the overall waiting time in processing asylum applications would be to ensure that the decisions made at first instance are made by properly qualified staff who, among

others things, have a good understanding of the UK's obligations under the Refugee Convention and the European Convention on Human Rights. More accurate decisions at first instance would, in turn, reduce the need for appeals and delays.

## Justice

*'The Government believes that more needs to be done to ensure fairness in the justice system. This means introducing more effective sentencing policies, as well as overhauling the system of rehabilitation to reduce reoffending and provide greater support and protection for the victims of crime'*

42. There is a major need to reduce the inappropriate use of prison. There should be renewed interest in techniques like those related to 'restorative justice' in dealing with offenders.

*'We will introduce a 'rehabilitation revolution' that will pay independent providers to reduce reoffending, paid for by the savings this new approach will generate within the criminal justice system'*

43. An overly mechanistic approach to the reduction of offending may not be helpful: it might, after all, be most effective simply to pay offenders not to re-offend. Attention, in any event, should be given to rehabilitation both within and outside prison.

*'We will conduct a full review of sentencing policy to ensure that it is effective in deterring crime, protecting the public, punishing offenders and cutting reoffending. In particular, we will ensure that sentencing for drug use helps offenders come off drugs' and 'We will explore alternative forms of secure, treatment-based accommodation for mentally ill and drugs offenders'*

44. The current statutory purposes of sentencing are set out in s142 Criminal Justice Act 2003. They include the 'reform and rehabilitation of offenders'. The omission of this aim seems regrettable and it should be added to the terms of reference of the review.

*'We will implement the Prisoners' Earnings Act 1996 to allow deductions from the earnings of prisoners in properly paid work to be paid into the Victims' Fund'*

45. We support this proposal subject to a sufficiently high figure of prescribed earnings that a prisoner may keep.

*'We will carry out a fundamental review of Legal Aid to make it work more efficiently'*

46. The Labour government undertook a 'fundamental review' of legal aid that reported in 2004 but it was never published. This was one of at least six reviews since 1997. Legal aid needs a clear statement of purpose and a credible strategy for meeting its budget. It is vital that 'poverty law' services are maintained even if resources are scarce and a dedicated poverty law service could be fashioned out of elements of the rather looser concept of a Community Legal Service which has struggled to be coherent.

*'We will change the law so that historical convictions for consensual gay sex with over 16s will be treated as spent and will not show up on criminal records checks'*

47. We welcome this reform

*'We will extend anonymity in rape cases to defendants'*

48. We oppose this reform. It is generally acknowledged that women report very few cases of rape. A false accusation may lead to injustice but it allows open reporting of the case. Indeed, this can encourage women to report cases. There is no evidence that more false allegations of rape are made than of other crimes. It also is not unreasonable to expect the general public to understand the difference between an allegation and a conviction, not to mention the presumption of innocence in general. Introducing anonymity of suspects would, in our view, only tend to undermine the importance of the presumption.

*'We will introduce effective measures to tackle anti-social behaviour and low-level crime, including forms of restorative justice such as Neighbourhood Justice Panels'*

49. We support greater use of restorative justice measures.

## **National security**

*'We will urgently review control orders, as part of a wider review of counter-terrorist legislation, measures and programmes.'*

50. JUSTICE has long opposed the use of control orders under the Prevention of Terrorism Act 2005 on the basis that they are unnecessary, expensive, ineffective, and offend basic principles of our justice system. We intervened in all the major

control order appeals, including *Secretary of State for the Home Department v MB* [2007] UKHL 46 and *Secretary of State for the Home Department v AF and others* [2009] UKHL 28. We have also briefed both Houses of Parliament on the annual renewal of the 2005 Act, recommending against renewal. We therefore welcome the new coalition government's commitment to urgently review control orders as part of a broader review of counter-terrorism legislation and measures.

51. We have long argued for a comprehensive review of the UK's counter-terrorism legislation, and this was also one of the central recommendations of the February 2009 report of the Eminent Jurists Panel on Terrorism, Counterterrorism and Human Rights entitled *Assessing Damage, Urging Action*, an initiative of the International Commission of Jurists of which JUSTICE is the UK section. Since the Terrorism Act 2000, which was itself intended to be a comprehensive framework for counter-terrorism measures, Parliament has enacted the Anti-Terrorism Crime and Security Act 2001 (in response to 9/11), the Prevention of Terrorism Act 2005 (in response to the Belmarsh judgment), the Terrorism Act 2006 (in response to the 7/7 bombings) and the Counter-Terrorism Act 2008 (which was built around the government's proposed increase of the maximum period of pre-charge detention to 43 days). In addition to the problems caused by the broad statutory definition of terrorism under the 2000 Act, subsequent Acts have given rise to a number of measures offending fundamental rights including indefinite detention under the 2001 Act, control orders under the 2005 Act, and the extension of the maximum period of pre-charge detention to 28 days under the 2006 Act. Among other things, the previous government's preference for exceptional measures in the name of national security has led to an unprecedented rise in the use of closed proceedings and special advocates in British courts since 1997, as detailed in our June 2009 report *Secret Evidence*. We urge the new coalition government to review the use of secret evidence as part of its broader review of counter-terrorism measures.

*'We will seek to find a practical way to allow the use of intercept evidence in court'*

52. JUSTICE first argued for the ban on intercept to be lifted in our 1998 report *Under Surveillance: Covert Policing and human rights standards*. In October 2006, we published *Intercept Evidence: Lifting the ban*, which set out in greater details the arguments in favour of using intercept in open court. The report also included a comparative study of the use of intercept evidence in Australia, Canada, Hong Kong, Ireland, South Africa and the United States. We subsequently gave oral evidence to

the Privy Council review of Intercept as Evidence chaired by Sir John Chilcot, and the 2008 report of the committee cited our 2006 report.

53. We remain of the view that the case for lifting the ban on intercept is as strong as ever, not least because of the prominent role played by intercept material (ultimately obtained from California) in the conviction of three men of conspiracy to blow up transatlantic airliners in September 2009, as well as the most recent decision of the Special Immigration Appeals Commission in the case of Abid Naseer earlier this month. The use of intercept as evidence would be a major step towards closing the gap between suspicion and proof that has been the engine of so many disproportionate measures adopted since 9/11, including indefinite detention, pre-charge detention and control orders.

54. Since 2008, we have met the Home Office team working on the implementation of the Chilcot report on two occasions, and have made clear our view that it is perfectly feasible to introduce legislation allowing the use of intercept material in criminal and civil proceedings in a manner that would both protect sensitive details about interception capabilities while remaining compatible with the European Convention on Human Rights.

*'We will deny public funds to any group that has recently espoused or incited violence or hatred. We will proscribe such organisations, subject to the advice of the police and security and intelligence agencies'*

55. Incitement of violence has been a criminal offence since at least the 19<sup>th</sup> century, and there are also more recent offences covering the incitement of racial and religious hatred. To this extent, we would be extremely surprised if there were any groups engaged in this activity found to be in receipt of public funds, rather than being prosecuted. The Terrorism Act 2000 already provides the power to proscribe groups involved in terrorism, and the scope of the proscription powers were extended by the Terrorism Act 2006. In our many briefings on counter-terrorism legislation, and in particular in our submission to Lord Carlile's review of the statutory definition in March 2006, we have noted that the definition of 'terrorism' under the 2000 Act remains unacceptably broad, and would in principle apply to the democratic resistance in countries such as Burma or North Korea. We urge the new coalition government to exercise its proscription powers under the 2000 Act in a way that respects the legitimate and proportionate use of force against oppressive and non-democratic foreign governments.

*'We believe that Britain should be able to deport foreign nationals who threaten our security to countries where there are verifiable guarantees that they will not be tortured. We will seek to extend these guarantees to more countries'*

56. JUSTICE strongly opposes the use of assurances against torture as a means to seek the deportation of persons to countries which are known to use torture. As we made clear in our interventions before the House of Lords in *RB (Algeria) v Secretary of State for the Home Department* [2009] UKHL 10 in October 2008, and before the European Court of Human Rights in *Othman v United Kingdom* (pending), virtually all the countries in this category are already signatories to the UN Convention against Torture and therefore are already known to have broken their promise not to use torture. The coalition government should not be so unrealistic as to believe the promise of a government that is known to use torture. Not only are such assurances unenforceable and unreliable, but they are likely to undermine the international prohibition against torture. Rather than seek to negotiate special exemptions from countries which practise torture in relation to specific individuals, the UK government should work with foreign governments to end the use of torture. More generally, deportation of suspected terrorists is an ineffective way of addressing the threat of terrorism, as the Privy Council Review of the Anti-Terrorism Crime and Security Act 2001 noted in December 2003. The new coalition government should concentrate its efforts on prosecuting terrorists, rather than exporting them.

## **Political reform**

*'The Government believes that our political system is broken. We urgently need fundamental political reform, including a referendum on electoral reform, much greater co-operation across party lines, and changes to our political system to make it far more transparent and accountable'*

57. We believe that our constitutional and political systems are in need of review and adaptation to the modern world. This needs to include a wide range of measures, including ways in which the House of Commons may provide more effective scrutiny of government legislation and action.

*'We will establish five-year fixed-term Parliaments. We will put a binding motion before the House of Commons stating that the next general election will be held on the first Thursday of May 2015. Following this motion, we will legislate to make provision for fixed-term Parliaments of five years. This legislation will also provide for dissolution if 55% or more of the House votes in favour'*

58. Although it is not necessarily unconstitutional for Parliament to seek to bind itself against dissolution, and introduce fixed terms, it is far from clear why the threshold of 55 per cent should be preferred. If the mischief to be legislated against is the government of the day being free to dissolve Parliament when it likes, it should be obvious that a 55 per cent threshold will not be an obstacle to any future government with 56 per cent support or greater in the House of Commons. Rather than legislate on this issue from Parliament to Parliament, the question of fixed term Parliaments would be better addressed by way of a Royal Commission, perhaps dealing with other aspects of political reform such as proportional representation.