

**Mandates of the Working Group on Arbitrary Detention; the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Special Rapporteur on the situation of human rights defenders; and the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism**

REFERENCE:  
AL GBR 13/2018

1 February 2019

Excellency,

We have the honour to address you in our capacities as Working Group on Arbitrary Detention; Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; Special Rapporteur on the situation of human rights defenders; and Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, pursuant to Human Rights Council resolutions 33/30, 34/18, 34/5 and 31/3.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the prosecution on alleged terrorism related charges of fifteen individuals, including Messrs. Nathan Clack, Joseph McGahan, Nicholas Sigsworth, Alistair Tamlit, Edward Thacker and Benjamin Metters, and Mss. Helen Brewer, Lyndsay Burtonshaw, Laura Clayson, Melanie Evans, Emma Hughes, May McKeith, Ruth Potts, Jyotsna Ram and Melanie Strickland, also known as the Stansted 15, for the exercise of their right to peaceful and non-violent protest and freedom of expression.

According to the information received:

**Summary of the case:**

On 28 March 2017, the aforementioned fifteen individuals were arrested by the British police for what appears to be a non-violent protest at a part of Stansted Airport designated as a restricted area. They protested against the alleged unlawful deportation by airplane from the United Kingdom of sixty people believed to be asylum seekers to Nigeria, Ghana and Sierra Leone. As a result of the protesters' actions, the deportation of at least eleven of the people on board an assigned airplane was canceled and they remain in the UK as of today. Initially, the protesters were charged with an offence under the Stansted Airport Bylaws 196. Subsequently, the prosecution changed the initial charge to an aggravated offence under the Aviation and Maritime Security Act 1990 ("AMSA"), which carries a maximum penalty of life imprisonment. This change in the charge required the review and direction of the Attorney-General. On 10 December 2018, following several weeks of trial hearings, a guilty verdict was delivered by the Chelmsford Court's jury against the aforementioned individuals, convicting them for intentional disruption and endangering safety at an aerodrome, contrary to section 1(2)(b) of AMSA. After the Jury reached its verdict, the trial judge

ordered the pre-sentence reports and adjourned sentencing to the week of 4 February 2019.

### **28<sup>th</sup> March 2017 peaceful protest:**

Reportedly, after careful preparation of the protest, which included training sessions to ensure, inter alia, safety during the planned action and shortly before 9:30 pm, on 28 March 2017, the protesters used bolt cutters to cut through the perimeter fence of Stansted Airport. They walked a short way across a grassy area to Stand 505, approximately 341 feet away from the runway, where a Titan Airways aircraft was parked, chartered for deportation that night. The protesters were accompanied by two journalists, who entered Stansted Airport with them. The journalists were also arrested but not charged. Footage filmed by one of them was played at the trial hearing. Furthermore, the entire incident was filmed on CCTV cameras. The video evidence played at the trial hearing shows that none of the protesters were on the runway, and thus, none of them could clearly endanger the safety of the aircrafts or the traveling public.

The protesters were dressed in bright colours, including bright hats and high visibility jackets, and their clothing bore slogans to make clear that they were engaged in a protest action against deportations. The banner that was erected on one of the tripods next to the Titan Airways aircraft also made it clear to observers and officials that they were protesters.

The protesters split into two groups: four locked-on around the front wheel of the Titan Airways aircraft; one climbed on a tripod and nine locked themselves around its base, using “lock-ons” (extended steel cables combined with locks) which had been prepared for that purpose. One of the protesters was in the process of locking on when two police officers arrived at the scene; he ran a short distance around the rear steps attached to the plane, and back to the group locked on behind the wing in order to attempt to lock on. He was arrested before managing to lock on. Throughout the evening, a number of other police officers attended the scene, including negotiators, a specialist team which worked for six hours to remove the protesters from the lock boxes and the tripod, and at least one officer from the main terminal.

### **Impact of the protest and defence of justification:**

In its submission to the Special Procedures of the United Nations Human Rights Council, the source claims that the protest against the alleged unlawful deportation of sixty people, believed to be asylum seekers, on the chartered Titan Airways flight from the United Kingdom to Nigeria, Ghana and Sierra Leone was justified. The justification for the action was necessity based on the threats to those being deported, particularly to LGBTQI persons who faced imminent harm if forcibly returned. The justification also includes the legitimate right to protest as guaranteed by articles 10 and 11 of the European Convention on Human

Rights, which is incorporated into the UK's domestic law. Furthermore, it is confirmed that eleven of the individuals who were scheduled to be on that flight remain in the UK.

Allegedly, two individuals were subsequently granted leave to remain, and one has been recognised as benefiting from EU treaty rights as a family member. The remaining eight individuals have outstanding asylum claims. Four of the eleven have had positive reasonable grounds trafficking decisions, and of those four, two had positive conclusive grounds trafficking decisions. Notably, one of them remains in the country and has an outstanding asylum claim based on material of which the Home Office was aware at the time of the flight. According to the source, this information is known through official responses to the requests pertaining to the UK's Freedom of Information Act.

### **Procedural history of the trial:**

On 28 March, all fifteen protesters were charged with aggravated trespass and breach of the Stansted Airport Bylaws 196, in particularly bylaw 3(17). This provision criminalises organising or taking part in any demonstration, procession or public assembly likely to obstruct or interfere with the proper use of the airport or obstruct or interfere with the comfort and convenience or safety of passengers or persons using Stansted Airport. They were released on bail pending trial, which was scheduled to take place in the magistrates' court in July 2017.

However, in August 2017, after securing the consent of the Attorney General, the prosecution changed the initial charges with the charges of intentional disruption and endangering safety at an aerodrome, contrary to section 1(2)(b) of AMSA.

The AMSA is an important legislative enactment which was adopted in response to the 1988 Lockerbie bombing and in order to give effect to the 1988 Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, supplementary to the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation (Montreal Protocol), which is listed as one of nineteen international legal instruments to prevent terrorist acts<sup>1</sup>. Since then the offence is included under the "convention offences" schedule in the 2006 Terrorism Act.<sup>2</sup>

On 19 March 2018, the trial commenced at the Chelmsford Court, Essex County. During the trial, all fifteen protestors pleaded not guilty to the charge of intentional disruption and endangering safety at an aerodrome. However, they accepted that they had deliberately disrupted the services of the Titan Airways flight. They further argued that their actions were justified, including to prevent serious harm to those scheduled to be deported. The trial lasted for nine weeks.

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<sup>1</sup> <https://www.un.org/counterterrorism/ctitf/en/international-legal-instruments>

<sup>2</sup> <http://www.legislation.gov.uk/ukpga/2006/11/schedule/1>

There were, in total, 42 trial-hearing days, during which the defence and prosecution presented their cases to the Jury.

On 31 October and 5 November, the trial judges dismissed two defence motions. One was for the case to be stayed on the grounds that there was no case to answer. And the second dismissed motion was on the grounds of abuse, including on the basis that the Attorney General's consent had been given in error, improperly or otherwise unlawfully. On 22 November 2018, the trial judge withdrew from the Jury the defence of justification advanced by the defendants' lawyers that their clients acted to stop human rights abuses and to exercise legitimately their rights to freedom of assembly and expression guaranteed by articles 10 and 11 of the European Convention on Human Rights. On 10 December 2018, a guilty verdict was delivered by the Jury against all fifteen individuals. The trial judge ordered the pre-sentence reports and adjourned sentencing to the week of 4 February 2019.

While we do not wish to prejudge the accuracy of these allegations, we express our grave concern that Messrs. Nathan Clack, Joseph McGahan, Nicholas Sigsworth, Alistair Tamlit, Edward Thacker and Benjamin Metters, and Mss. Helen Brewer, Lyndsay Burtonshaw, Laura Clayson, Melanie Evans, Emma Hughes, May McKeith, Ruth Potts, Jyotsna Ram and Melanie Strickland were prosecuted and convicted based on AMSA, a statute which is primarily concerned with the translation of the state's international aviation security obligations into national law, and following from which offences are listed in the schedule to the 2006 Terrorism Act.

Furthermore, we note that while the word terrorism is not used in the statutory language of the AMSA, a review of Hansard reveals that the term was used multiple times in the discussion that led to the adoption of this statutory enactment.<sup>3</sup> We are of the view that the charging, prosecution and conviction fails to take sufficient account of the statutory intent of the AMSA, the mischief it was designed to remedy, and the potential for abuse of these statutory provisions in the circumstances of this case. We are concerned about the application of disproportional charges based on AMSA for what appears to be the exercise of the rights to peaceful and non-violent protest and freedom of expression. It appears that such charges were brought to deter others from taking similar peaceful direct action to defend human rights and in particular the protection of asylum seekers.

We call on your Excellency's Government to refrain from applying the ASMA and other security and terrorism related legislation as a basis for prosecuting peaceful political protesters and critics of State policy, who are engaged in non-violent expression, protest and political advocacy.

Without expressing at this stage an opinion on the facts of the case and on whether the detention of the aforementioned individuals is arbitrary or not, we would like to appeal to your Excellency's Government to take all necessary measures to guarantee

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<sup>3</sup> <https://api.parliament.uk/historic-hansard/commons/1990/jan/10/aviation-and-maritime-security-bill>

their right not to be deprived arbitrarily of their liberty and to fair proceedings before an independent and impartial tribunal, as well as their rights to freedom of opinion and expression and to peacefully assemble, in accordance with articles 9, 14, 19 and 21 of the International Covenant on Civil and Political Rights (ICCPR), ratified by the United Kingdom on 25 May 1976.

In connection with the above alleged facts and concerns, please refer to the **Annex on Reference to international human rights law** attached to this letter which cites international human rights instruments and standards relevant to these allegations.

As it is our responsibility, under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention, we would therefore be grateful for your observations on the following matters:

1. Please provide any additional information and/or comment(s) you may have on the above-mentioned allegations.
2. Please clarify the legal grounds for the arrest, detention, prosecution and conviction of the aforementioned individuals and how these measures are compatible with international norms and standards as stated, inter alia, in the ICCPR particularly in respect of the right to a fair trial in all its aspects.
3. Please explain how the Attorney General has reached his decision that AMSA is applicable and can be used as a legal basis for the prosecution of the aforementioned individuals for what appears to be the exercise of the rights to peaceful and non-violent protest and freedom of expression.
4. In this respect, please explain in detail what changed when, in August 2017, the prosecution replaced the initial police charge of aggravated trespass and breach of the Stansted Airport Bylaws 196 to what appears to be a disproportional charge of the intentional disruption and endangering safety at an aerodrome, contrary to section 1(2)(b) of ASMA, which is included under the “convention offences” schedule in the 2006 Terrorism Act.
5. Please explain the avenues for appeal that are open to the defendants whereby defences of necessity and respect and fulfillment of the rights to assembly and expression can be fully heard in compliance with the ICCPR and the protections contained in article 6 of the European Convention.

While awaiting a reply, we urge that all necessary interim measures be taken to halt the alleged violations and prevent their re-occurrence and in the event that the investigations support or suggest the allegations to be correct, to ensure the accountability of any person(s) responsible for the alleged violations.

This communication and any response received from your Excellency's Government will be made public via the communications reporting [website](#) within 60 days. They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

We would like to inform your Excellency's Government that after having transmitted an allegation letter to the Government, the Working Group on Arbitrary Detention may transmit the case through its regular procedure in order to render an opinion on whether the deprivation of liberty was arbitrary or not. Such letters in no way prejudice any opinion the Working Group may render. The Government is required to respond separately to the allegation letter and the regular procedure.

We may publicly express our concerns in the near future as, in our view, the information upon which the press release will be based is sufficiently reliable to indicate a matter warranting immediate attention. We also believe that the wider public should be alerted to the potential implications of the above-mentioned allegations. The press release will indicate that we have been in contact with your Excellency's Government's to clarify the issue/s in question.

Please accept, Excellency, the assurances of our highest consideration.

Seong-Phil Hong  
Chair of the Working Group on Arbitrary Detention

David Kaye  
Special Rapporteur on the promotion and protection of the right to freedom of opinion  
and expression

Michel Forst  
Special Rapporteur on the situation of human rights defenders

Fionnuala Ní Aoláin  
Special Rapporteur on the promotion and protection of human rights and fundamental  
freedoms while countering terrorism

## **Annex**

### **Reference to international human rights law**

Without expressing at this stage an opinion on the facts of the case and on whether the detention of the aforementioned individuals is arbitrary or not, we would like to appeal to your Excellency's Government to take all necessary measures to guarantee their right not to be deprived arbitrarily of their liberty and to fair proceedings before an independent and impartial tribunal, as well as their rights to freedom of opinion and expression and to peacefully assemble, in accordance with articles 9, 14, 19 and 21 of the International Covenant on Civil and Political Rights (ICCPR), ratified by the United Kingdom on 25 May 1976.

In connection with the alleged use of national security and counter-terrorism legislation, we highlight that article 19(3) of the ICCPR sets out the requirements that any restrictions to the right to freedom of expression must be necessary, proportionate and prescribed by law that in itself is compatible with international human rights. While national security is a legitimate basis for restricting the right to freedom of expression under article 19(3), it is not enough to simply claim it as a justification to pursue illegitimate purposes such as silencing critical voices. The state has to demonstrate that it is necessary to do so to achieve a legitimate objective. We reiterate the statement by the Human Rights Committee in General Comment 34 that article 19(3) may never be invoked as a justification for the muzzling of any advocacy of human rights (CCPR/C/G/34).

In this regard, we would like to draw the attention of your Excellency's Government to the importance of the right to peaceful protest and to the danger that the use of terrorism related security legislation as a prosecutorial strategy may impinge on this right.

In her report to the Human Right Council, the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism stressed that “[e]mergency or not, States must reach the same threshold of legality, legitimacy, necessity and proportionality for each [terrorism related security] measure taken, and each measure shall be directed to an actual, clear, present or imminent danger. The measures taken must be the least intrusive possible to achieve their objective. Importantly, the discretion granted to States is not unfettered (AHRC/37/52, paras 48 and 49).”

We wish to draw the attention of your Excellency's Government to the UN Declaration on Human Rights Defenders. In particular, articles 1, 2, 5, 6 and 12, which state that everyone has the right to promote the protection and realization of human rights, that the State has a prime responsibility and duty to protect, promote and implement all human rights, that everyone has the right to meet or assemble peacefully and to know, seek, receive, and impart information about all human rights.

In this context, we would like to draw attention of your Excellency's Government to paragraph 28 of the report of the Special Rapporteur on the promotion and protection

of human rights while countering terrorism, in which he “strongly condemns the use of counter-terrorism legislation with penal sanctions against individuals peacefully exercising their rights to freedom of expression, as well as freedom of religion or belief and freedom of peaceful association and assembly. As a matter of international law, the imperative of effective counter-terrorism cannot lawfully be misused as an excuse to quash public advocacy by peaceful critics, human rights activists and members of minority groups” (A/HRC/40/42/Add.2).

Finally, we would like to remind your Excellency’s Government that, in its resolutions, HRC noted its grave concern that “in some instances, national security and counter-terrorism legislation and other measures, such as laws regulating civil society organizations, have been misused to target human rights defenders or have hindered their work and endangered their safety in a manner contrary to international law” ([A/HRC/RES/25/18](#), [A/HRC/RES/27/31](#), [A/HRC/RES/32/31](#) and [A/HRC/RES/34/5](#)).