

Campaign Against Criminalising Communities (CAMPACC)

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To: Lord Carlile of Berriew Q.C.

RE: Inquiry into the Statutory Definition of Terrorism

1. Introduction and Background

1.1 We welcome the opportunity to make a submission on the issue of the definition of terrorism. The Campaign Against Criminalising Communities (CAMPACC) was founded five years ago in response to the passing of the Terrorism Act 2000, which laid out a definition of terrorism in English law¹. We opposed the 2000 Act and subsequent legislation on several grounds. Details of previous submissions may be found on our website, www.campacc.org.uk.

1.2 We are a non-party campaign supported by many lawyers, human rights campaigners, advocates for refugee and migrant communities, as well as by migrant organisations. CAMPACC works directly with individuals who have been targeted or affected by the UK's anti-terror legislation. Consequently we have special expertise in its effects and political uses.

2. 'Terrorism': the problem of definition

2.1 It has been impossible in the past for a definition of 'terrorism' to be drawn up that could be used globally. There have even been several failed attempts to create an international definition that meets the requirements imposed by the principles of legality and at the same time is 'ideologically neutral'². Even the European Court of Human Rights, while developing a strong body of jurisprudence imposing human rights constraints on States in their response to terrorist acts, has never formulated a definition of 'terrorism'³.

2.2 An increasing number of anti-terrorism 'suppression conventions' have been agreed and are gradually expanding the list of objective acts which States may criminalise in their national laws as 'terrorism', regardless of their motivation. Terrorism is a colloquial term, over-used today by politicians and the media⁴. It describes a phenomenon studied by many disciplines, but there is no common understanding of its meaning. The word means a very many different things depending on the context that it is used and who is using it. This could explain why the term 'terrorism' has been used in international treaties and UN General Assembly and Security Council resolutions without it being defined under international law.

¹ Terrorism Act 2000, s.1.

² In 1996, a UN *ad hoc* committee was set up to draft a comprehensive convention on terrorism but the definitional problem made this attempt a failure. In 2003, the UN General Assembly recommended that a working group be established to 'settle outstanding issues in two draft conventions on terrorism, including the definition of terrorism itself', United Nations, 'UN Committee Recommends Working Group for Anti – Terrorism Treaties', *UN News Service*, 3rd April 2003.

³ See C. Warbrick, 'The Principles of the European Convention on Human Rights and the response of States to Terrorism', *European Human Rights Law Review*, 2002, 3, 287 – 314.

⁴ Joseba Zulaika and William A. Douglas, *Terror and Taboo, the follies, fables and faces of terrorism*, Routledge, New York and London, 1996, p.97.

2.3 The word ‘terror’ was first used to describe Robespierre’s *terrorisation* of royalists during the French Revolution. Since then, the term has been used to describe acts or situations that vary, depending on the context and subjects applying the word. Hence the famous phrase ‘one man’s terrorist is another man’s freedom fighter’⁵. Its meaning has no consensus, except perhaps agreement that there is no consensus⁶. This brings to mind a quote from a US Supreme Court Justice Potter Stewart, when he was asked to define another term which different people interpret in different ways: ‘I can’t define obscenity but I know it when I see it.’

3. The UK’s definition of terrorism

3.1 Prior to the Terrorism Act 2000, the United Kingdom’s anti-terror legislation consisted of temporary laws that were subject to annual renewal. While in opposition the Labour party had opposed these acts, but when in government they published a permanent anti-terror Bill, which became the 2000 Act.

3.2 That law was informed by a government inquiry, in which a key advisor emphasised violence by oppressed groups, while ignoring state violence against them. In particular he problematised trans-national support for ‘the weak’:

... almost any prolonged and significant terrorist campaign is likely to have an international dimension: almost every terrorist group tends to look across the borders of the state where it is based, and further afield, not only for weapons, funds, training and safe-haven, but for any ideological, political or diplomatic support it can manage to obtain; sub-state terrorism is typically the weapon of the weak.⁷

Such diagnoses justified permanent anti-terrorist legislation to target the weak and to label their resistance as terrorism.

3.3 The Terrorism Act 2000 created new terrorist offences, based on defining ‘terrorism’ more broadly than before:

1 (1) in this Act ‘terrorism’ means the use or threat of action where –
the action falls within subsection (2),
the use or threat is designed to influence the government or to intimidate the public or a section of the public, and
the use or threat is made for the purpose of advancing a political, religious or ideological cause.

(2) Action falls within this subsection if it –

- (a) involves serious violence against a person,
- (b) involves serious damage to property,
- (c) endangers a person’s life, other than that of the person committing the action,
- (d) creates a serious risk to the health or safety of the public or a section of the public, or
- (e) is designed seriously to interfere with or seriously to disrupt an electronic system.

(3) The use or threat of action falling within subsection (2) which involves the use of firearms or explosives is terrorism whether or not subsection (1) (b) is satisfied.

3.4 The above criteria include any use or threat of ‘action’ that takes would place abroad, against any persons or government, and not merely that which may take place within the United

⁵ ‘Terrorism and Human Rights’, Additional progress report prepared by Ms. Kalliopi K. Koufa, Special Rapporteur of the Sub – Commission on the Promotion and Protection of Human Rights, UN Document E/CN.4/Sub.2/2001/31, 27th June 2001, para.25, p.8.

⁶ See Galip Isen, *Discourse of Evil: Speaking Terrorism to Silence*, <http://www.reconstruction.ws/033/isen.htm>, citing Alex P Schmid and Albert J. Longman, that list 22 different elements which figure in over a hundred definitions: *Political Terrorism: A new guide to actors, authors, concepts, data bases, theories and literature*, North Holland Publishing Co., Amsterdam 1988, p.5.

⁷ Paul Wilkinson in *Inquiry into Legislation against Terrorism*, Vol. 2, Lord Lloyd of Berwick, Cm 3420, 1996, page 4.

Kingdom⁸. Since the 2000 Act all UK anti-terror legislation has been based upon this definition. The 2000 Act also gave the Secretary of State powers to proscribe organizations that could fall within the above definition of ‘a terrorist organisation’, and created offences of membership or support for a proscribed terrorist organisation⁹.

3.5 Since the subsequent anti-terror legislation in 2001 and 2005, the government has proposed new legislation, currently making its way through Parliament. The Bill contains proposed offences of indirect incitement and glorification of terrorism, increasing the grounds for proscription, and also expanding the definition of terrorism. The proposed new definition would include actions taken against not just governments but also against international governmental organisations as well¹⁰.

3.6 The definition in the Terrorism Act 2000 was very broad, and was recognised as such by the Government. When concerns were raised that ‘terrorism’ would catch many activities that the public would not so regard, Governmental assurances were given that the powers would not be used to infringe the right of peaceful demonstration; nor would anti-terror powers be used where normal public order powers would suffice¹¹. Despite these assurances, the UK’s anti-terror laws have been used to stifle debate and association which would be otherwise legal¹². Alas, there are many previous cases of governmental assurances being contradicted in practice, and of broadly drafted legislation being used in situations that it ostensibly would not cover¹³.

3.7 Armed with such a broad definition on a global scale, the UK government has enormous discretion and powers in labelling and targeting activities as ‘terrorism’. Such powers have been used as instruments of foreign policy – by protecting oppressive regimes allied with the UK, rather than protecting the public from violence. The government aim is to silence, deter or criminalise any solidarity with resistance movements abroad. As CAMPACC has documented in great detail, ‘anti-terror’ powers have been used for persecuting migrant and Muslim communities, especially any political links to their countries of origin. Many banned ‘terrorist’ organisations are regarded as a legitimate political leadership by migrant communities in the UK. Political activists have been prosecuted for supposedly supporting a banned terrorist organisation, e.g. by raising funds or by selling a magazine which the Home Office classified as ‘terrorist property’.¹⁴ The police have obtained a huge discretionary power to stop-and-search individuals, and anti-terror legislation has been used in an inherently discriminatory fashion¹⁵.

⁸ Terrorism Act 2000, section 4.

⁹ Terrorism Act 2000, sections 11 – 13.

¹⁰ Terrorism Bill, clause 33.

¹¹ For governmental assurances see especially *Legislation against Terrorism: A Consultation Paper*, Cm 4178 (1998), para. 3.18; Home Secretary, Mr Jack Straw MP, Terrorism Bill, 2nd Reading Debate (Commons), HC Debs, cols. 155, 160, 14th December 1999; Lord Bassam of Brighton, Parliamentary Under – Secretary of State at the Home Office, Terrorism Bill, 2nd Reading Debate (Lords), HL Debs, cols. 1430 – 1431, 6th April 2000.

¹² The situation of Walter Wolfgang, the 84 year old detained and questioned under anti – terror laws after shouting ‘Nonsense’ at the 2005 Labour Party conference in Blackpool springs to mind.

¹³ See the case of *Chandler v DPP* [1964] AC 763, where the Official Secrets Act 1911, section 1, originally passed for the purposes of prosecuting German spies before World War One, was used to prosecute peace protestors. For commentary, see D. Thompson, ‘The Committee of 100 and the Official Secrets Act 1911’ [1963] Public Law 201, at pp. 204 – 205.

¹⁴ CAMPACC, *Terrorising Minority Communities with ‘Anti-Terrorism’ Powers: their Use and Abuse*, Submission to the Privy Council Review of the Anti-Terrorism Crime and Security Act 2001, July 2003, www.campacc.org.uk/ATCSA_consult-final.pdf

¹⁵ Only one out of the 18 control orders issued has been issued to a UK national, and the JCHR raised concerns as to possible discrimination in the control orders regime: Joint Select Committee on Human Rights, *Counter – Terrorism Policy and Human Rights: Terrorism Bill and related matters*, 3rd Report of Session 2005 – 06 (HL

3.8 The Joint Select Committee on Human Rights have expressed concerns that the United Kingdom's definition of terrorism is broad enough so as to potentially be incompatible with Article 10 of the European Convention of Human Rights¹⁶ and other related Articles¹⁷. The JCHR also stated that it is urgently essential that the definition be reviewed by your Lordship¹⁸. CAMPACC supports the JCHR's conclusion. While acknowledging that the United Kingdom is under a duty to prevent violence against the public¹⁹, the UK also has a duty to uphold human rights obligations within its preventive measures²⁰.

3.9 As facile labels, the terms 'terrorist' and 'terrorism' are used to delegitimise political activity, especially the use of force, regardless of the ends for which the force is being used and those who use it²¹. The UK definition would have criminalised the African National Congress in South Africa²², the anti-fascists campaigners rallying against Moseley's black shirts in the East End of London in the 1930's, and indeed Colonel von Stauffenberg, the German staff officer who conspired to assassinate Adolf Hitler in 1944. The UK definition has been used to deny the human and civil rights of so-called 'terror suspects' and any associates – partly through direct statutory powers, and partly through social isolation.

4. Relevant principles of international law

4.1 Clear definitions are very important in criminal law. The current definition contained in section 1 of the Terrorism Act 2000 does describe who may be a perpetrator and who may be a target of terrorist actions. However, by focusing on the 'motives' of the perpetrator that correspond to terrorism²³, rather than the *gravity* of the act, the definition includes acts that should not be criminalised under international law.

4.2 Since the definition uses the term 'serious', which is entirely a matter of subjective judgment, even actions such as graffiti could potentially be classed as causing 'serious damage to property'²⁴, meaning it would be classed as 'terrorism'. Indeed, the government's use of the word 'terrorism' can legitimise measures that it applies in the name of pre-empting the said activity.

4.3 A definition of terrorism should not remove 'rights' protected under international human rights and humanitarian law. International law protects the right to self-determination, freedom and independence; it also recognises exceptions, where violent acts are not penalised because they are political in context. Such an exception is limited under international law, as some acts are so heinous that they cannot be rightly regarded as 'political offences'. Nor can the political exception be claimed by anyone and everyone. Jurisprudence is clear that the perpetrator is a member of a political organisation engaged in an uprising²⁵.

Paper 75 – I, HC 561 – I), at para.88. There is evidence that stop and search powers under the Terrorism Act 2000 have been used disproportionately against Muslim communities.

16 This protects the right to freedom of expression.

17 Joint Select Committee on Human Rights, Counter – Terrorism Policy and Human Rights: Terrorism Bill and related matters, 3rd Report of Session 2005 – 06 (HL Paper 75 – I, HC 561 – I), at para.13.

18 Ibid.

19 UN Resolutions 1368, 12th September 2001, and 1373, 28th September 2001.

20 UN Declaration of 20th January 2003.

21 C. Gearty, *Terror* (1991).

22 Which in a 1986 US State Department Report was described as 'one of the worse terrorist groups'.

23 Thus differentiating 'terrorism' and 'terrorists' from ordinary, decent criminals like murderers and rapists.

24 Terrorism Act 2000, s.1 (2)(b).

25 *In re Gonzalez*, 217 F. Supp. 717 (SDNY 1963) (Judgm. Of 23 May 1963), 34 ILR 139, 141 s (1967)).

4.4 However, no political exceptions are recognised in the section 1 definition, which of course includes acts committed in any country. Moreover, its broad definition (along with the list of banned organisations) could readily criminalise any refugees who reveal their political activities abroad in an attempt to claim refugee status. Conversely, the threat deters them from doing so, thus silencing refugee voices and impeding claims for asylum.²⁶

4.5 The ‘political offence’ exception also provided an exception to inter-state obligations to extradite individuals, thus protecting them from persecution in their home country²⁷. As the courts have reiterated, the United Kingdom has a duty not to deport individuals to any country if there is a risk that they will suffer treatment that is contrary to Article 3 of the European Convention on Human Rights²⁸. However, the United Kingdom has entered into Memorandums of Understanding (MoUs) with states that have been known to practice torture²⁹.

4.6 Since the use of MoUs involves individuals suspected of ‘terrorism’, its definition has an important bearing on what individuals will be affected. We have the apparent absurdity that someone could in principle be deported as a danger to national security, citing an MoU, merely because he was heard to discuss hacking a computer with a friend. After deportation to a country which has an MoU with the United Kingdom, to avoid the UK breaching the *Chahal* principle³⁰, he might be treated by the authorities as a terrorist and suffer a completely disproportionate punishment.

4.7 Questions arise about refugees whose actions may be part of a legitimate resistance of a regime in their home countries, but are caught under section 1 of the Terrorism Act 2000, and who are subsequently threatened with deportation or are requested for extradition by their home countries. What reassurances can be given to them? Would they be deported back to those countries to face any charges put against them? Since there is no ‘political exception’ within section 1, the actions of these individuals could readily be labelled as ‘terrorist’. If they were wanted in a country with which the UK had an MoU with, would they be so deported? By abolishing any political exception to ‘terrorism’ under the Terrorism Act 2000, the UK fails to protect those individuals who warrant protection. ‘Terrorism’ has always been linked with the political aim of changing a regime, so an unclear or broad definition helps States to label any dissident a ‘terrorist’³¹.

4.8 There is another danger that anti-terror powers will be used against drug-traffickers, organised and ordinary criminals. By permeating mainstream law enforcement, such powers would extend the denial of a fair trial under normal criminal law with its substitution by control orders, extraordinary powers of detention without trial for up to 28 days, the holding of closed hearings and the appointment of security cleared ‘special advocates’ to represent defendants

²⁶ Frances Webber, ‘The Terrorism Act: embracing tyranny’, in CAMPACC book, *A Permanent State of Terror?*, 2003, pp.19-24.

²⁷ Article 1 of the Charter of the United Nations, signed at San Francisco on 26th June 1945 and entry into force on 24th October 1945, in accordance with Article 110. the requested State has the discretion to refuse extradition if there are substantial grounds for believing that the fugitive will be persecuted on account of race, religion or membership of a political organisation.

²⁸ As laid down in the majority judgment of *Chahal v UK* (1996) 23 EHRR 413.

²⁹ Such agreements have been entered into with Libya and Jordan, with negotiations taking place with Algeria.

³⁰ *Chahal v UK* (1996) 23 EHRR 413. The European Court of Human Rights held that deporting an individual to a country where he may face treatment contrary to Article 3 ECHR (which absolutely prohibits torture, inhuman or degrading treatment) is in breach of Article 3 and cannot be lawful. Seeking diplomatic ‘assurances’ is the government’s way of trying to subvert this rule.

³¹ The case of the People’s Mojahedin Organisation of Iran (the ‘PMOI’) is relevant here. It seems as though the organisation was proscribed as a ‘gesture of goodwill’ by the USA and later the UK towards the Tehran government, who regarded the PMOI, the main rebel group, as a ‘terrorist’ organisation (Reuters, 13th October 1997, Newsweek, 26th September 2002).

while they are excluded from hearing all the evidence given against them. The ordinary criminal law should be used as widely as possible when dealing with crime, of any type³².

5. Political agendas

5.1 The current definition in UK law stigmatises behaviour that would not be ordinarily described as ‘terrorist’. It has led to the criminalisation of entire communities, placing them under permanent suspicion of such broadly defined ‘terrorism’. To label individuals as ‘terror suspects’ stigmatises them, and in many cases their communities, even if those individuals are subsequently not charged with any crime.

5.2 The ‘War on Terror’ has created a racist culture of suspicion towards Muslim and migrant communities within this country. It generates and manipulates public fears to justify a perpetual state of war. It creates ‘terrorist suspects’ in many ways, most notably by the redefinition of terrorism in much broader ways, blurring distinction between anti-government protest and organised violence against civilians. To deal with threats of violence here, the criminal law within the UK already contains offences of incitement, as well as numerous public order offences that could just have well have been used in many cases where anti-terror legislation has. We particularly oppose the extension of anti-terror powers into areas which may have nothing to do with organised violence against civilians.

5.3 If governments apply anti-terror powers in such broad ways, then only the courts (and, ultimately the European Court of Human Rights) have the capacity to protect human rights³³. However, especially since the July 7th bombings, some politicians have called for the repeal of the Human Rights Act 1998, claiming that judges have too much political power³⁴. These are the same powers that judges could use to strike out any improper interpretation and use of the definition of terrorism by the executive.

5.4 This point is even more relevant after the Prime Minister’s statement of August 5th, declaring that, after the bombings of July 7th, ‘the rules of the game have changed’. To remove fundamental civil liberties in the name of security is self-defeating. In the words of Benjamin Franklin, ‘Those who give up essential liberties in order to gain a little temporary security deserve neither liberty nor security.’ As others have said more recently, ‘Parliament should take a long view, and resist the temptation to grant powers which compromise the rights and liberties of individuals. The situations which may appear to justify the granting of such powers are temporary – the loss of freedom is often permanent’³⁵ ‘The only long-term guarantor of security is through ensuring respect for human rights and humanitarian law’³⁶

6. CONCLUSION: how to redefine terrorism?

6.1 We believe that all persons suspected of a crime are entitled to be dealt with under the normal criminal law – with all its safeguards for the right of a fair trial, and against arbitrary detention. Broad, vague definitions of ‘terrorism’ have been designed to attack and deny those universal rights. From our inception in spring 2001, CAMPACC has advocated the repeal of all UK anti-terror legislation, especially its redefinition of terrorism. We oppose any extension of

³² See *Inquiry into Legislation Against Terrorism*, chaired by the Rt. Hon Lord Lloyd of Berwick, (Cm 3420), October 1996.

³³ Cited from C. Warbrick, ‘The Principles of the European Convention on Human Rights and the response of States to Terrorism’, *European Human Rights Law Review*, 2002, 3, at 288-9.

³⁴ Matthew Tempest and agencies, ‘Howard rails against “activist judges”’, *The Guardian*, 10th August 2005.

³⁵ Joint Committee on Human Rights, 2nd Report, ‘Anti-Terrorism, Crime and Security Bill’, 6th November 2001, para. 76.

³⁶ Mary Robinson, as then High Commissioner for Human Rights, statement given at 59th session of the UN Human Rights Commission, 20th March 2002.

anti-terror laws as an unjustified infringement upon civil liberties in this country. We defend the democratic freedom to dissent and to resist oppression, both nationally and internationally.

6.2 Any re-definition of terrorism should be precise, focusing upon the gravity and targets of acts, not just their motives. An alternative definition has been proposed by the Lord Bishop of Oxford, for example, during the Second Reading debate of the current Terrorism Bill in the Lords. He defined a terrorist act as ‘an act of violence or threatened violence directed against unarmed civilians’³⁷. This proposal could be clarified to include only systematic, severe violence.

6.4 Our argument goes further: The current injustice is not simply the broad definition of terrorism, but also its systematic use to trigger special powers which infringe civil liberties and facilitate political persecution under ‘anti-terror’ laws. Given that the UK may have such laws for the foreseeable future, we advocate a more narrow definition in order to limit abuses of human and civil rights.

Estella Schmidt for CAMPACC

³⁷ HL Debs., 25th January 2006, column 1190.