

**Submission by SACC
to Lord Carlile's Independent
Review of the Definition of
Terrorism in UK Law**

**Scotland Against
Criminalising Communities**

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1. Introduction

- 1.1. Scotland Against Criminalising Communities (SACC) is a grassroots group that campaigns for the repeal of the UK's current terrorism laws and offers solidarity to the communities most affected by them. SACC was founded in 2003 in response to a series of events that included the arrest of a number of Algerian men in Scotland under the Terrorism Act, and the consequent upsurge in racist and Islamophobic attitudes. We are a non-party campaign and are open to people of all faiths and no faith. More information about our campaign can be obtained from our website www.sacc.org.uk.
- 1.2. In general, we are sceptical about the need for "anti-terrorism" legislation – we feel that crimes of terrorism are generally better prosecuted under the ordinary criminal law. We are particularly worried by the broad definition of terrorism contained in the Terrorism Act 2000, and our concerns have been exacerbated by the creation of the new crime of "glorification" in the Terrorism Act 2006. We believe that Parliament should reconsider the whole basis for the UK's "anti-terrorism" legislation without any prejudice in favour of the current laws or in favour of recommendations made during the Inquiry into Legislation Against Terrorism conducted by Lord Lloyd of Berwick¹, which informed much of the thinking behind the Terrorism Act 2000. We welcome Lord Carlile's review of the statutory definition of terrorism as a small step in this direction. In this spirit, we offer our views on the definition of terrorism and we hope that it will be possible for them to be taken into consideration.
- 1.3. SACC gives direct support to individuals who have been targeted or affected by the UK's anti-terrorism legislation, and includes members of communities that have been so affected. Consequently we have special expertise in its effects and political uses. As a campaigning group with strong links to other campaigning groups such as the Stop The War Coalition we are acutely aware of the impact that anti-terrorism legislation can have on public participation in political activity.
- 1.4. Irrespective of the way that terrorism is defined, or of whether or not UK legislation embodies a general definition of terrorism, we remain opposed to the creation or maintenance of draconian police powers or special judicial procedures to deal with activities characterised as terrorist; we remain opposed to the imposition of punishment without charge or trial; we remain opposed to the creation or maintenance of offences based upon suspicion or association; we remain opposed to legislation that criminalises ordinary behaviour (such as the possession of ordinary items or the keeping of records or documents) and we remain opposed to measures that discriminate on the basis of ethnicity, faith or citizenship.

2. Definition of Terrorism – Some Issues

- 2.1. It has been impossible in the past for a definition of “terrorism” to be drawn up that could be used globally. Our view is that the principal utility of the word “terrorism” is in historical, political and colloquial discourse, where its meaning can be clarified by context and where the consequences of imprecision are fairly unimportant. We doubt that a definition capable of satisfactory application in law can be devised.
- 2.2. In historical, political and colloquial discourse, we feel that the word can be used with reasonable lucidity to denote acts of personal violence aimed at achieving a political effect through the creation of a widespread sense of terror. This loose definition has the merit of covering the core of common usage while excluding some tendentious usages that have not achieved widespread acceptance. Its application is nevertheless somewhat subjective.
- 2.3. We note that the requirement under this definition that the sense of terror must be widespread would normally mean that acts qualifying as terrorism would largely be directed at civilians.
- 2.4. We also note that the word “terrorism” tends to be used to describe acts carried out by non-state groups (whether or not they have the backing of a state), whereas the word “terror” has tended (until the phrase “war on terror” became popular) to be used to designate comparable acts carried out openly by a nation-state. Examples of the latter usage include the “reign of terror” during the French Revolution, the “Stalinist terror”, and the use of the phrase “terror-bombing”, particularly before and during World War II, to describe the aerial bombardment of civilians by state forces. The distinction between state and non-state actions appears to us to be an odd one. It is not made in a comparable way in either colloquial or legal usages concerning genocide.
- 2.5. We offer these comments as background to the discussion that follows. We do not suggest that they should form the basis of a revised statutory definition of terrorism.

3. Problems with the current statutory definition of terrorism

- 3.1. In a memorandum to Parliament's Joint Committee on Human Rights², the Home Secretary writes that "the Government does not believe that a better definition of terrorism could easily be constructed." We have some sympathy with his appreciation of the difficulty of defining terrorism. But we differ from him in that we believe that a worse definition than the current one could not easily be constructed.
- 3.2. Objections to the current statutory definition of terrorism have been well documented by Parliament's Joint Committee on Human Rights³, in the submission to the current review by CAMPACC⁴, in the memorandum to the review from the Religious Society of Friends (Quakers)⁵, in CAMPACC's *Submission to the Privy Council Review of the Anti-Terrorism Crime and Security Act 2001*⁶, in Amnesty International's United Kingdom report "*Human rights: a broken promise*" (published February 2006)⁷, and in the Islamic Human Rights Commission's *Submission to the Home Office in response to the discussion paper Counter-terrorism powers: Reconciling Security and Liberty in an Open Society* (August 2004)⁸. We endorse all these objections, but we will not repeat them here in detail.
- 3.3. It is clear that the current statutory definition of terrorism goes far beyond any plausible interpretation of the natural-language understanding of the term that we propose in Section 2. We object to it in this general sense, in addition to the objections referred to in 3.2.
- 3.4. Activities not ordinarily considered as terrorism are characterised as such under the current definition, and secondary offences derived from this definition on the basis of suspicion or association have the effect of criminalising activities that would otherwise be entirely legal. Threat analyses used to make the case for "terrorism" legislation assume that the current situation in the Middle East provides an important stimulus for terrorism, and that some Muslims living elsewhere in the world are likely to engage in terrorism in consequence of this. The effect of the legislation is therefore to place Muslims in a different situation to non-Muslims in relation to the law and law-enforcement agencies, and also to the rest of society. This isn't merely a predictable consequence of such legislation; it is a structural characteristic of it. It gives rise to a suspicion that the legislation has as one of its purposes the political containment of the Muslim community and by extension, of the wider community with whom Muslims might find common cause. Discrimination of this kind is unacceptable. Pre-conditions for avoiding it are that activities not ordinarily considered as terrorism should be excluded from "terrorism" legislation and that care should be taken not to create vague offences derived from the concept of "terrorism" (whether explicitly defined or not).

3.5. We particularly support the Religious Society of Friends (Quakers) in saying that:

While those undertaking civil disobedience, recognise that their activity may lead to imprisonable offences, a definition of terrorism that equates such activity with the type of actions involving the killing of civilians on the London Underground, both offends natural justice and undermines respect for the rule of law.

3.6. Since the founding of the United Nations, the UN Charter has been widely interpreted as implying that people have a right to resist tyranny and a right to struggle for self-determination. A number of UN resolutions make these rights more explicit. Anyone exercising these rights is almost certain to find themselves classified as a terrorist under the UK's current legislation. People in Britain expressing support for such activities overseas may also find themselves in breach of UK law. This is unacceptable.

3.7. We respect anyone who is working sincerely for a world without violence. But we see no merit in various statements made by government ministers in recent months suggesting, in effect, that it is proper for the UK to use "terrorism" legislation to outlaw the use of force by non-state groups around the world. We believe that this is incompatible with current international law. And we find it morally and politically inappropriate for the government to make such a suggestion while it continues not only to reserve for itself and its allies the right to use violence, but is freely deploying violent measures in the Middle East in circumstances that cannot reasonably be called self-defence.

3.8. It is sometimes suggested that difficulties over the breadth of the statutory definition of terrorism are of little importance because the intention behind the legislation is that it should be used against people suspected of being "genuine" terrorists, rather than against protestors. We find this unsatisfactory on many counts, including:

3.8.1. Police must enforce the law as it is written. They cannot be expected to make bad laws workable by applying political judgements of their own.

3.8.2. Protestors have been stopped and searched or even arrested under terrorism laws on a considerable number of occasions since the Terrorism Act 2000 became law.

3.8.3. It is hard to escape the suspicion that assurances like this will be widely understood as meaning that Muslims are the intended targets of the legislation, and that non-Muslims need not worry. Besides being contradicted by experience, this suggestion is racist and deeply offensive.

4. Recommendations

- 4.1. For the reasons explained in Section 2, we do not offer a definition of terrorism suitable for embodiment in statute.
- 4.2. In view of the widely recognised difficulty of defining terrorism, and the risk that legislation directed against terrorism, however formulated, could criminalise people exercising necessary rights, we recommend that any such legislation should incorporate explicit safeguards acknowledging and protecting rights to dissent and rights to struggle against oppression and for self-determination.
- 4.3. As a minimum, we recommend that these safeguards should include the provision made in clause 14 of Resolution 42/159 of the United Nations General Assembly (passed in December 1987)⁹, on measures to prevent international terrorism, which says that:

...nothing in the present resolution could in any way prejudice the right to self-determination, freedom and independence, as derived from the Charter of the United Nations, of peoples forcibly deprived of that right referred to in the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations, particularly peoples under colonial and racist regimes and foreign occupation or other forms of colonial domination, nor, in accordance with the principles of the Charter and in conformity with the above-mentioned Declaration, the right of these peoples to struggle to this end and to seek and receive support.

- 4.4. It would be insufficient for such safeguards to be provided in the form of a possible defence, for example by the use of a phrase such as “it is a defence to show that...” This would place too much of the burden of proof on the defendant. We recommend a formulation such as “nothing in this Act could in any way prejudice...”

5. Conclusion

We particularly endorse the following conclusion taken from the memorandum on the statutory definition of terrorism submitted by CAMPACC:

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 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 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. References

- ¹ Inquiry into Legislation Against Terrorism, Vol 2, Lord Lloyd of Berwick (1996)
- ² Letter dated 24 January 2006 from Rt Hon Charles Clarke MP, Secretary of State for the Home Department, published as the Tenth Report for the session 2005-2006 of the Joint Committee on Human Rights: Government Response to the Committee's Third Report of this Session: Counter-Terrorism Policy and Human Rights: Terrorism Bill and related matters (HL 114/HC 888); 7 February 2006 - <http://www.publications.parliament.uk/pa/jt200506/jtselect/jtrights/114/11404.htm>
- ³ Third Report for the session 2005-2006 of the Joint Committee on Human Rights - *Counter-Terrorism Policy and Human Rights: Terrorism Bill and related matters*, Volume 1 (HL Paper 75-I, HC 561) and Volume 2 (HL 75-II/HC 561-II); 5 December 2005 - <http://www.publications.parliament.uk/pa/jt200506/jtselect/jtrights/75/7502.htm>
- ⁴ Memorandum sent by CAMPACC to Lord Carlile of Berriew Q.C. on 4 March 2006 - http://www.campacc.org.uk/Library/carlile_submission_040306.pdf
- ⁵ Society of Friends: Memorandum to Lord Carlile's independent review of the definition of terrorism in UK Law - <http://www.quaker.org.uk/Templates/Internal.asp?NodeID=92046>
- ⁶ CAMPACC: Submission to the Privy Council Review of the Anti-Terrorism Crime and Security Act 2001 - Terrorising Minority Communities with 'Anti-Terrorism' Powers: their Use and Abuse; August 2004 - http://www.campacc.org.uk/ATCSA_consult-final.pdf
- ⁷ Amnesty International; *United Kingdom Human Rights: A Broken Promise*; 23 February 2006 - <http://web.amnesty.org/library/index/engneur450042006>
- ⁸ Islamic Human Rights Commission; Submission to the Home Office in response to Discussion Paper, "Counter-terrorism powers: Reconciling Security and Liberty in an Open Society"; August 2004 - <http://www.ihrc.org.uk/file/HomeOfficeSubmissionFinal.pdf>
- ⁹ Resolution 42/149 of the General Assembly of the United Nations, of 7 December 1987 - <http://www.un.org/documents/ga/res/42/a42r159.htm>