

CAJ's Submission no. S294

CAJ's response to the

**Home Office Review of Counter-Terrorism
and Security Powers**

January 2011

What is the CAJ?

The Committee on the Administration of Justice (CAJ) was established in 1981 and is an independent non-governmental organisation affiliated to the International Federation of Human Rights. CAJ takes no position on the constitutional status of Northern Ireland and is firmly opposed to the use of violence for political ends. Its membership is drawn from across the community.

The Committee seeks to ensure the highest standards in the administration of justice in Northern Ireland by ensuring that the government complies with its responsibilities in international human rights law. The CAJ works closely with other domestic and international human rights groups such as Amnesty International, Human Rights First (formerly the Lawyers Committee for Human Rights) and Human Rights Watch and makes regular submissions to a number of United Nations and European bodies established to protect human rights.

CAJ's activities include - publishing reports, conducting research, holding conferences, campaigning locally and internationally, individual casework and providing legal advice. Its areas of work are extensive and include policing, emergency laws and the criminal justice system, equality and advocacy for a Bill of Rights.

CAJ however would not be in a position to do any of this work, without the financial help of its funders, individual donors and charitable trusts (since CAJ does not take government funding). We would like to take this opportunity to thank Atlantic Philanthropies, Barrow Cadbury Trust, Hilda Mullen Foundation, Joseph Rowntree Charitable Trust, Oak Foundation and UNISON.

The organisation has been awarded several international human rights prizes, including the Reebok Human Rights Award and the Council of Europe Human Rights Prize.

Submission from the Committee on the Administration of Justice (CAJ) to the Home Office Review of Counter-Terrorism and Security Powers

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Introduction

Thank you for the invitation to the Committee on the Administration of Justice (CAJ) to participate in the Review of Counter-terrorism and Security Powers. CAJ is an independent human rights organisation with cross community membership in Northern Ireland and beyond. It was established in 1981 and lobbies and campaigns on a broad range of human rights issues. CAJ seeks to secure the highest standards in the administration of justice in Northern Ireland by ensuring that the Government complies with its international human rights obligations.

CAJ has been monitoring counter-terrorism measures in place in Northern Ireland since our establishment. This submission does not specifically address the six areas under consideration in this Review, but rather looks more broadly at the lessons from Northern Ireland which may cross-over and questions what the unintended, long-term impact of counter-terror legislation on communities may be. Over the years we have consistently advocated that the lessons on the use of counter-terrorism measures and their impact on the conflict in Northern Ireland should be learned by the UK Government. Disproportionate targeting by the security forces of particular communities, draconian legislation, and the erosion of human rights all contributed to the development and sustention of the conflict in Northern Ireland. The disregard paid to the UK's international human rights obligations has been particularly significant. It has thus been with serious regret that CAJ see similar measures being employed by the UK Government in recent years.

The Review process

The stated aim of the review 'is to ensure that the powers and measures covered by the review are necessary, effective and proportionate and meet the UK's international and domestic human rights obligations'. CAJ welcomes such a Review, but objects to the limitation of the terms of reference to consider only six powers. Time restraints have been cited as the reason for this limit, but we maintain that for a review of counter-terror powers to be most effective, it

should be holistic and consider all such powers as well as the impact, both legal and social, of their use. We believe such a review has an important role to play in ensuring that an appropriate balance is struck between the State's need to assure both national security and the protection of human rights. We advocate that there would be benefit in explaining how the six areas considered in this Review were chosen. Were they, for instance, the most controversial or the most frequently used measures? As this was not done in the Terms of Reference, it would still be informative if this information were included in the final report. We suggest that this review feed into a broader review to consider all counter-terrorism measures, and their impact, in both Great Britain and Northern Ireland.

At the meeting relating to the Review, which was held in Belfast on the 23rd September, it was suggested on a number of occasions that there is no way of 'meeting the concerns of civil liberties groups' whilst safeguarding against the threat of terrorism. In response, we stress that upholding human rights and ensuring fair trials and due process are in fact international obligations which the UK has signed up to, which cannot and should not be written off or regarded as merely the 'concerns of civil liberties groups'. We would highlight the work carried out by the Joint Committee on Human Rights (JCHR) which has analysed aspects of counter-terrorism legislation and policies, notably their March 2010 report *Counter-Terrorism Policy and Human Rights (Seventeenth Report): Bringing Human Rights Back In* and their remarks on the necessity that the laws of the UK be human rights compatible.

Bearing in mind the Home Office statistics published in October 2010, which state that of the 101,248 individuals who were stopped and searched by police under counter-terrorism powers in the previous year, none of them were subsequently arrested,¹ the use of statistics in this Review is important. CAJ hopes that research and statistics on, for instance, the number of those individuals subjected to 28-day detention who are subsequently charged and convicted, will be considered by the Review and contribute to its conclusions. We also hope that such information will be made publicly available by the Review.

¹ No terror arrests in 100,000 police counter-terror searches, figures show.' 28 October 2010. <http://www.guardian.co.uk/uk/2010/oct/28/terrorism-police-stop-search-arrests> Similarly, Human Rights Watch reported in July 2010 despite almost 450,000 stops and searches throughout the United Kingdom between April 2007 and April 2009, under section 44, no one was successfully prosecuted for a terrorism offense as a result. See: *Without Suspicion: Stop and Search Under The Terrorism Act 2000*. Available at: <http://www.hrw.org/en/news/2010/07/02/uk-terrorism-search-power-violates-rights>

Northern Ireland

The areas under consideration by the Review either do not apply to Northern Ireland, or have a limited impact in this context. We would question why, therefore, the Review has not considered the use of stop and search and other wide-ranging powers provided for by the Justice and Security (Northern Ireland) Act 2007? The Northern Ireland Policing Board has been monitoring the use of stop and search in Northern Ireland and recently stated that following the suspension of the powers under s.44 of the Terrorism Act 2000 following the judgment of the European Court of Human Rights, there has been a rise in the use of the more widely-drawn sections 21 and 24 of the Justice and Security (Northern Ireland) Act 2007. This is currently the subject of a thematic inquiry by the Policing Board. We encourage the Review to engage with the Policing Board on this issue.

That there are various Reviews either specific to Northern Ireland or which include Northern Ireland (Review of the Justice and Security (Northern Ireland) Act 2007, Review of Arrangements for National Security in Northern Ireland, and the UK-wide Review of Terrorism Legislation) suggests, we believe, that there is the need for a seamless and holistic approach to reviewing such counter-terror measures. We also have questions about how this Review sits with the recent Government publications *Securing Britain in an Age of Uncertainty: The Strategic Defence and Security Review* and *A Strong Britain in an Age of Uncertainty: The National Security Strategy*. These documents appear to almost use the terms United Kingdom and Britain interchangeably and CAJ maintains that a more holistic review would highlight the extra-ordinary position occupied by Northern Ireland, notably in relation to counter-terrorism measures. Both documents send a mixed message about the significance of the threat posed by dissident republicans. Similarly, since devolution there appears to be a drive by the Northern Ireland Office to somewhat downplay the threat posed by dissident republicans with emphasis on a normalisation process – the rebranding of dissidents by the NIO as ‘residual terrorist groups’. On the contrary, however, according to the latter of these two documents ‘terrorism related to Northern Ireland’ has been judged by the National Security Council as part of the ‘four highest priority risks’. Yet, while both documents note that the threat from terrorism linked to Northern Ireland is a priority area, the documents refer to the need to protect Great Britain, and not the United Kingdom. This ignores the constitutional status of Northern Ireland and the fact that for the purposes of national security, MI5 have primacy over the Police Service for Northern Ireland. The understanding of this threat as solely focused on ‘national security targets’ ignores the impact of such attacks on ordinary civilians and the wider disruption caused to Northern Irish society. These documents also lack clear reference to

international human right obligations and standards, which does little to promote the idea that the Government is committed to protecting human rights. This issue and the impact that this ambiguity has on national security and human rights should be explored further.

The UN Human Rights Committee, in its 2008 examination of the UK Government, expressed concern that despite improvements in the security situation in Northern Ireland, *'some elements of criminal procedure continue to differ between Northern Ireland and the remainder of the State party's jurisdiction'*. The Committee stated that the Government *should 'carefully monitor'* whether the situation in Northern Ireland justified any such distinctions *'with a view to abolishing them'*.² The repeal of distinct and special powers, such as those set out in the Justice and Security (Northern Ireland) Act 2007, would be a way to acknowledge and commend the enormous political and social strides which Northern Ireland has made in the past decade, resulting in reciprocal confidence between the people and the state. We hold that the present situation in Northern Ireland, despite recent activity, does not warrant special powers being granted to police. To continue to treat Northern Ireland extra-ordinarily and as an emergency situation perpetuates a lack of confidence in the rule of law. Normal powers and legal provisions would serve as a symbol of normality and inspire public confidence.³

Drawing on the experience of Northern Ireland

In 2008, CAJ published *War on Terror: lessons from Northern Ireland*, which examines the use of counter-terrorism legislation in Northern Ireland and the relationship with human rights. We have posted a copy of this report to the Review. The report demonstrated that draconian legislation led to human rights abuses and the subversion of the rule of law, which in turn, directly fuelled and prolonged the conflict. The UK Government seems not to have acknowledged or learned from the experiences of Northern Ireland.

²<http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G08/433/42/PDF/G0843342.pdf?OpenElement>

³ Further to the point made above that of the more than 100,000 people stopped and search, none were arrested for terrorist-related offences and only 504 were arrested for any offence. Importantly this amounts to 'an arrest rate of 0.5%, compared with an average 10% arrest rate for street searches under normal police powers'. This demonstrates the point long made by CAJ that normal legislative and policing powers are sufficient to combat crime and terrorism. 'No terror arrests in 100,000 police counter-terror searches, figures show.' 28 October 2010. <http://www.guardian.co.uk/uk/2010/oct/28/terrorism-police-stop-search-arrests>

A critique of the Government's PREVENT strategy by the Institute of Race Relations found that:

There are strong reasons for thinking that the Prevent programme, in effect, constructs the Muslim population as a 'suspect community', fosters social divisions among Muslims themselves and between Muslims and others, encourages tokenism, facilitates violations of privacy and professional norms of confidentiality, discourages local democracy and is counter-productive in reducing the risk of political violence.⁴

Although it is not possible to equate the two situations, there are parallels that can be made between Northern Ireland historically and present day Britain in relation to the Muslim community. We encourage the Review to engage with the lessons that may be learned from Northern Ireland on the relationship between human rights and counter-terrorism measures and the ramifications of not upholding human rights in the process of fighting terrorism. For this reason we again highlight the need for a holistic review to consider not just the legal implications, but also the social.

Conclusion

The powers under consideration in this Review were primarily designed in response to the events of 11 September 2001 in the United States and of 7 July 2005 in London. CAJ has continually emphasised that tackling terrorism is more likely to be successful if a measured, proportionate and human rights compliant response is used. We thus argue that post 9/11 counter-terrorism measures have failed to engage with these principles. Counter-terrorism measures such as administrative detention, the use of torture evidence, and broad stop and search powers *inter alia* represent the response of a state in danger of subsuming the very values it seeks to protect.

⁴ Kundnani, Arun (2009) *Spooked! How not to prevent violent extremism*. London: Institute of Race Relations.