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**Promotion et protection de tous les droits de l'homme,
civils, politiques, économiques, sociaux et culturels,
y compris le droit au développement**

Renseignements présentés par la Commission pour l'égalité des droits de l'homme, institution de Grande-Bretagne*

Note du secrétariat

Le secrétariat du Conseil des droits de l'homme fait tenir ci-joint la communication soumise par la Commission britannique pour l'égalité des droits de l'homme**, reproduite conformément à l'article 7 b) du règlement figurant dans l'annexe à la résolution 5/1 du Conseil des droits de l'homme, qui dispose que la participation des institutions nationales des droits de l'homme s'exerce selon les modalités et les pratiques convenues par la Commission des droits de l'homme, y compris la résolution 2005/74 du 20 avril 2005.

* Institution nationale des droits de l'homme à laquelle le Comité international de coordination des institutions nationales pour la promotion et la protection des droits de l'homme a accordé le statut d'accréditation «A».

** La communication est reproduite en annexe telle qu'elle a été reçue, dans la langue originale seulement.

Annexe

The Equality and Human Rights Commission's response to the United Kingdom's Government Review of Counter Terrorism Legislation

Text:

In this brief statement, the Equality and Human Rights Commission (The Commission) outlines its position on the UK government's review of counter terrorism (CT) legislation.

The Commission wishes to comment on specific measures under review that have been widely acknowledged as problematic for human rights. The Commission also outlines the preliminary findings of its research on the impact of CT legislation on the Muslim community.

Background

The Commission welcomes the Governments review of CT and security powers. The Commission recognises the duty on governments to protect public safety and accepts that circumstances might arise where specific measures are required to address the threat to public safety. The Commission notes that since the terrorist attacks of 9/11 there has been an unprecedented increase in CT legislation and powers.¹ There are now wider CT powers and legislation in the UK than almost any other country.²

The Commission considers this review is an important opportunity to ensure that CT powers are compatible with the UK's human rights obligations.³ The Commission welcomes the scope of this review and notes that the government is carrying out reviews of other CT measures⁴ and including an inquiry into allegations of UK complicity in torture of detainees. Other issues of significant concern, however, including accountability and redress mechanisms are not currently subject to any form of review.

The Commission suggests there should be a more extensive review of all CT powers and legislation as such a wide range of issues requires a longer and more thorough review and consultation period. Such a review could consider the need for consolidation of the current laws within a single CT statute.

¹ As of July 2009 the UK CT law was spread over 417 sections and 37 schedules. Terrorism Legislation: the Case for Reform. Justice 2009

² See *Report on the Anti- Terrorism. Crime and Security Bill 2001* (2001-02-HC 351) paragraph 1 http://www.opsi.gov.uk/acts/acts2001/ukpga_20010024_en_1

³ It was a recommendation of the UPR that the UK continues to review all CT legislation and ensures that it complies with the highest human rights standards. <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G08/136/44/PDF/G0813644.pdf?OpenElement>

⁴ including: intercept evidence, seizure of assets and the *Preventing Violent Extremism* Programme.

Control Orders (CO)

COs were introduced through emergency legislation⁵ in 2005. COs may include: curfew, residence, travel restrictions and restrictions on whom a person may associate with. COs have been subject to widespread criticisms and successful legal challenges. Concerns were raised by the UK courts and the European Court on Human Rights (ECtHR) over the compatibility of COs with the right to liberty, the right to a private life and the right to fair trial⁶. The Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism (the Rapporteur) and the Committee on Civil and Political Rights (CCPR) also raised concerns⁷.

The Commission strongly encourages the government to take these views into account in the review.

S 44 stop and search powers (SSP)

Criticisms of the S 44 power to stop and search without reasonable suspicion have been raised domestically and internationally by the courts and human rights institutions⁸. The Commission welcomes the announcement by the Home Secretary that guidance would be issued to police removing the provisions for stop and search of an individual under S 44, and requiring S 44 stops of vehicles to be subject to reasonable suspicion.

⁵ Control Orders enable the Home Secretary to make an order against any individual in the UK suspected of being involved in terrorist related activity.

⁶ In *JJ and others v Secretary of State*, the courts have held that a curfew of up to 16 hours may be acceptable under the Article 5 of the European Convention on Human Rights. However more recently, in *Secretary of State v AP*, the Court has held that in conjunction with Article 8 of the Convention, respect for private life, a 16 hour curfew, which added to the social isolation of the individual, and conditions requiring him to live away from his family and friends, could make a 16 hour curfew unlawful. Control orders are made by the Home Secretary, but may be challenged in the High Court in a procedure of open and closed hearings. Some or all of the proceedings may take place in secret, with the controlled person having little or no access to material against him and a special advocate appointed on behalf of the controlee. The case of *AF v UK* at the European Court of Human Rights confirmed the jurisprudence of the court that the substantive fair trial procedural guarantees under Article 6 of the Convention required that the person subject to a control order must have sufficient information about the allegations against them to be able to effectively instruct their special advocate.

⁷ See *Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism for the 64th session of the GA*, August 2009, paragraph 40
<http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N09/437/55/PDF/N0943755.pdf?OpenElement> and
CCPR Concluding Observations on the UK state report– 93rd Session July 2008 paragraph 17
<http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G08/433/42/PDF/G0843342.pdf?OpenElement>
 Notwithstanding amendments and recommendations to improve the CO regime (See Lord Carlile fifth report on the operation of control orders) the UK Parliament's Joint Committee on Human Rights (JCHR) concluded that the current regime is unsustainable, and called for alternatives, including surveillance, to be put in place.
<http://security.homeoffice.gov.uk/news-publications/publication-search/preventionterrorism-act-2005/lord-carlile-5th-report2835.pdf?view=Binary>

⁸ In *Gillan and Quinton v United Kingdom* case the European Court of Human Rights found that S44 Stop and Search breached article 8 of the Convention. *Gillan and Quinton v. the United Kingdom Application no. 4158/05*

See also *CCPR Concluding Observations on the UK state report*– 93rd Session July 2008 paragraph 29
<http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G08/433/42/PDF/G0843342.pdf?OpenElement>

The Commission's research found that stop and search powers are used disproportionately against ethnic minority communities⁹. Concerns over disproportionate use and racial profiling were also raised by the Rapporteur¹⁰.

Detention before charge

The Commission believes that long periods of pre-charge detention raise serious human rights concerns. These concerns are shared by a number of national and international human rights stakeholders, including the JCHR, the Council of Europe (COE), CCPR, the CERD Committee, CAT Committee and the CRC Committee¹¹. The Commission welcomes the statement given by the Home Secretary in the government's recent renewal of the 28 day pre trial provision that a period of 14 days pre trial detention would be more appropriate¹².

⁹ The Commission is also concerned regarding government proposal to "lessen the burden" of stop and search recording, and invites the government review process to carefully consider stop and search policies and devise ways to minimise adverse impact on communities in the UK. *Stop and Think; A critical review of the use of stop and search powers in England and Wales*, March 2010.

http://www.equalityhumanrights.com/uploaded_files/raceinbritain/ehrc_stop_and_search_report.pdf

¹⁰ See *Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism*, Martin Scheinin paragraph 23 Human Rights Council 13th Session, March 2010 <http://www2.ohchr.org/english/bodies/hrcouncil/docs/13session/A-HRC-13-37.pdf>

¹¹ See *Report of the Committee on Legal Affairs and Human Rights Parliamentary Assembly of the COE on Proposed 42-day pre-charge detention in the United Kingdom* and resolution 1634

<http://assembly.coe.int/main.asp?Link=/documents/workingdocs/doc08/edoc11725.htm>

CCPR Concluding Observations on the UK state report – 93rd Session July 2008 paragraph 15

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

CERD Concluding Observations on the UK state report – Session 63rd August 2003 paragraph 17

<http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G03/457/09/PDF/G0345709.pdf?OpenElement>

CAT Conclusions and recommendations on the UK state report – Session 33rd – November 2004 C paragraph 4 (e) <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G04/451/02/PDF/G0445102.pdf?OpenElement>

CRC Concluding observations on the UK state report 49th Session October 2008 – Paragraph 77 (h) and 78 <http://www2.ohchr.org/english/bodies/crc/docs/AdvanceVersions/CRC.C.GBR.CO.4.pdf>

¹² The Commission previously obtained counsels advice on the legality of proposals to increase the maximum period of detention to 42 days. The principles apply to any extended period of pre charge detention, in its engagement of the right to liberty, the right to a fair trial, the right to non discrimination and the prohibition of torture. <http://www.equalityhumanrights.com/legal-and-policy/parliamentary-briefings/crime-security-policing-and-counter-terrorism-bill-briefings/counter-terrorism-bill-including-proposals-to-allow-detention-for-up-to-42-days/>. 14 days pre-trial detention was the period established under the 2003 Counter terrorism Act- to be superseded in 2006 by 28 days. It may be that, with the associated judicial guarantees, a period of 14 days would meet the requirements of Article 5 (ECHR). The Commission would not oppose such a period as an improvement on the current 28 days. However, bearing in mind the draconian nature of such a power, the Commission would recommend that it should remain subject to annual renewal by parliament, and assessment by the CPS as to whether it continues to be necessary in light of the nature of the terrorist threat.

Extension of the use of Deportations with Assurances

In January 2005 the government announced that in order to deport suspected terrorists to countries which had some history of torture it would seek to enter into "memorandums of understanding" with these countries.¹³

The implications of these measures for human rights have been raised by a number of international human rights institutions (CCPR, CAT, COE¹⁴) and the Courts¹⁵.

Given the real and practical problems the UK has had in establishing MOUs with a small number of States, the Commission is concerned with the possibility that these schemes may be expanded.¹⁶

The impact of CT measures on the Muslim Community:

The Commission has commissioned research into the impact of CT measures on the Muslim community. The final research is due to be published in the winter. The Commission has drawn on interim findings¹⁷ to assess the impact of CT measures on racial and religious discrimination:

- The impact of CT law and policies are experienced and felt more acutely and directly amongst Muslims than non-Muslims.
- Amongst Muslims concern focused on those measures that was felt were targeted or applied to Muslims as a group or community, (stop and search, in the streets and at

¹³ Memorandums have been concluded with Jordan, Lebanon and Libya, Algeria and Ethiopia. Hansard, HC debates, 26 January 2005: Col 307;

¹⁴ *CCPR Concluding Observations on the UK state report*– 93rd Session July 2008 paragraph 12 <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G08/433/42/PDF/G0843342.pdf?OpenElement> *CAT Conclusions and recommendations on the UK state report*– Session 33rd – November 2004 C paragraph 4 (i) Also see *Agiza v Sweden*, CAT/C.34/D.233/2003 (2005); <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G04/451/02/PDF/G0445102.pdf?OpenElement> *Venice Commission Report on Counter Terrorism measures and Human Rights*, June 2010 p 19-20 [http://www.venice.coe.int/docs/2010/CDL-AD\(2010\)022-e.pdf](http://www.venice.coe.int/docs/2010/CDL-AD(2010)022-e.pdf)

¹⁵ Recently the UK Court of Appeal has held that the Memorandum of Understanding with Libya did not reduce the risks of torture to levels, which would not infringe article 3 of the ECHR (equivalent of article 7 of the ICCPR). See *Chahal v United Kingdom (1996) 23 EHRR 413*. In the cases of OO and RB (Jordan and Algeria respectively) the House of Lords confirmed that the DWA procedure, and in particular the use of closed evidence and SIAC procedures was compatible with Convention rights. <http://www.publications.parliament.uk/pa/ld200809/ldjudgmt/jd090218/rbalge.pdf>

¹⁶ The Commission is particularly concerned regarding the adequacy of the human rights record, and commitments of States where MOUs are likely to be sought; the ability and adequacy of any monitoring regime subsequent to an individual's return, and the ability of the UK to ensure that States, and those within a State that are responsible for holding individual in detention abide by the terms of the MOU. By way of example the Commission refers to the evidence given in the recent case reviewing transfer of detainees to the NDS in Afghanistan under an MOU, see *The Queen (on the application of Maya Evans) v. Secretary of State for Defence* http://www.haguejusticeportal.net/Docs/NLP/UK/Maya_Evans_v_SSDefence_Judgment_25-06-2010.pdf The Commission reiterates the requirement that any MOU must reduce the risks of torture to such a level that will not infringe Article 3- the Courts undoubtedly will subject any future MOUs to scrutiny to ensure this.

¹⁷ These are based on findings that are emerging from field work to June 2010, comprising of the first round of national policy interviews, and data from discussion group, interviews with practitioners and policy makers in three case study areas. At this stage these findings should be regarded as tentative.

ports and airports, PVE, surveillance) rather than measures targeted at individual suspects (arrest, raids, pre-charge detention, CO).

- There appeared to be particular concern around the use of stop and search powers, both under the Terrorism Acts and more general use of stop and search. Most Muslims interviewed either had direct experience of being stopped and searched, had close friends and family that had been or had witnessed the police carrying out stops in their local area. Concerns focused both on the number of stops carried out as well as the actual experiences of people when they were stopped. There were also significant concerns regarding the experience of being stopped at ports and airports. Interviews suggest this experience is often more stressful than a stop in the street.
- Amongst Muslims who were ordinary local residents the general sense of insecurity, being treated as part of a suspect community and increased hostility towards Muslims were a major concern.
- The need for more information and accountability around CT policing and policies was a recurring theme in the findings
- A further concern, amongst interviewees was the use and sharing of data collected in relation to CT. There was concern regarding the use of surveillance, and information being collected on individuals, including at Mosques, universities, and in the course of stops and questioning at ports and airports.
