



1. Introduction

- 1.1 British Irish RIGHTS WATCH (BIRW) is an independent non-governmental organisation that has been monitoring the human rights dimension of the conflict, and the peace process, in Northern Ireland since 1990. Our services are available, free of charge, to anyone whose human rights have been violated because of the conflict, regardless of religious, political or community affiliations. We take no position on the eventual constitutional outcome of the conflict.
- 1.2 BIRW welcomes the scrutiny by the Joint Committee on Human Rights of the Council of Europe Convention on the Prevention of Terrorism (CECPT). Although BIRW's remit does not extend to include international terrorism, our experience in Northern Ireland is relevant. We have only commented on areas which fall directly under our mandate.
- 1.3 We would like to express concern at the limited time period given in this inquiry for submissions, which is especially problematic for small NGOs such as ours. We respectfully ask the Committee to consider extending the deadlines for the presentation of evidence in future inquiries.
- 1.4 The Committee asked four questions as part of their inquiry into the UK's ratification of the Convention on the Prevention of Terrorism. These questions were:
 - Whether the new criminal offences in Part 1 of the Terrorism Act 2006 (encouragement of terrorism and dissemination of terrorist publications) have inhibited legitimate freedom of expression, association and religion, and if so, how
 - Whether the new grounds on which organisations can be proscribed in s. 21 of the Terrorism Act 2006 have inhibited legitimate freedom of association
 - Whether the UK complies with the duty to investigate and either extradite or prosecute terrorist suspects
 - Whether the measures adopted by the UK to protect and support the victims of terrorism are adequate

2. Criminal Offences in Part 1 of the Terrorism Act 2006

- 2.1 British Irish RIGHTS WATCH has a number of serious concerns about the Terrorism Act 2006 including the new criminal offences of encouragement of terrorism and dissemination of terrorist publications and their impact upon freedom of expression, association and religion. It is clear that the UK government has not taken account of Article 12 of the CECPT regarding respect for human rights obligations.
- 2.2 As we outlined in previous briefings to the Joint Committee, the outlawing of the encouragement of terrorism is a vague concept. In particular, it appears to make individuals responsible for the actions of the collective, over which they may have no or only limited control. This is particularly relevant

- at s. 1(2)(a) of the Terrorism Act 2006, which states: “A person commits an offence if – he publishes a statement to which this section applies or causes another to publish such a statement;” (our emphasis). This vagueness will have a serious impact when it comes to trying to convict individuals of these offences.
- 2.3 What makes the presence of the encouragement offence within the Terrorism Act 2006 so redundant is the fact that the following offences already exist in legislation, all of which clearly encapsulate the principles laid out in Section 1.:
- to “invite support for a proscribed terrorist organisation”¹; to “encourage, persuade or endeavour to persuade any person to murder any other person”²; to “counsel or procure” any other person to commit any indictable offence³; to “solicit or incite” another person to commit any indictable offence⁴; to incite another person to commit an act of terrorism wholly or partly outside the UK⁵; and to conspire with others to commit offences outside the UK⁶.
- 2.4 The criminalisation of the encouragement of terrorism and the dissemination of terrorist publication has a negative impact upon basic freedoms such as expression, association and religion. This can be clearly seen with s. 1(3)(a) of the Terrorism Act which states: “...the statements that are likely to be understood by members of the public as indirectly encouraging the commission or preparation of acts of terrorism or Convention offences include every statement which –
glorifies the commission or preparation (whether in the past, in the future or generally) of such acts or offences”.
- 2.5 We do not dispute the principle that the glorification of acts of violence is offensive. However, on highly contentious issues such as the war in Iraq or the ongoing conflict in Israel/Palestine, one person's terrorist is another person's freedom fighter. In other words, it is impossible for there to be any objectivity on certain contentious subjects. The right to freedom of expression in the UK allows these contentious views to be expressed both publicly and privately. This expression encourages debate, which in turn encourages the moderation of extremist views. In countries where freedom of expression is undermined, such as Egypt, we see a rise of underground, extremist politics, and an absence of democracy.
- 2.6 Similarly, the right to free association also contributes to the strengthening of democracy. If this right is curtailed then groups are driven underground and are thus harder to monitor. For instance, the views expressed by Abu

1 Terrorism Act 2000, s. 12

2 Offences against the Person Act 1861, s. 4

3 Accessories and Abettors Act 1861, s. 8

4 DPP v Armstrong (Andrew) [2000] Crime LR 379 DC

5 Terrorism Act 2000, s. 59

6 Criminal Law Act 1977, s.1A

Hamza al-Masri at the Finsbury Park Mosque may have been highly offensive, but the fact that they were so public enabled both him and other advocates of extremist Islam to be monitored. If the right to association had been undermined and Abu Hamza was forced to meet his supporters in secret rather than at a prominent London mosque, then this monitoring would have become even harder.

- 2.7 The demonisation of Islam in the UK has substantially undermined the freedom of religion one would expect in a mature democracy. While the fact that there are mosques which preach an extremist version of Islam and encourage the use of violence in the UK is an issue for concern, the methods proposed by the government to combat this extremism are contributing to the curtailment of religious rights and freedoms, and are counter-productive in that they make such views seem more glamorous to those who are already alienated and/or disaffected.
- 2.8 Section 2 of the Terrorism Act 2006, which deals with the dissemination of terrorist publications, falls into a category similar to that of the encouragement of terrorism offence. Firstly, there is a substantial impact upon freedom of expression and the subsequent impact on public debate. Attempting to prevent the publication of texts will drive extremist publications underground where their content and distribution will be more difficult to monitor. Secondly, such an offence would be hard to police especially given the extensive use of the internet, which will enable contentious texts to be posted anonymously on web forums or circulated via third parties based outside the jurisdiction. Thirdly, the definition of a 'terrorist publication' is unclear. This could lead to innocuous publications such as science textbooks dealing with nuclear power being considered as terrorist publications. Similarly, a book about the Northern Irish hunger strikers could be considered a terrorist publication, if the prosecution argued that it could encourage acts of republican terrorism.

3. **The Proscription of organisations under the Terrorism Act 2006**

- 3.1 Many of the principles we have outlined above under the encouragement of terrorism and the dissemination of terrorist publications have covered the new grounds on which organisations can be proscribed, namely the glorification of terrorism. It is clear that the grounds for proscription will inhibit freedom of association. Proscribing organisations merely drives people underground which ensures that their activities are harder to monitor and their extremism can grow unchecked.
- 3.2 On a broader principle, BIRW has concerns about the Terrorism Act as a whole because this legislation typifies the wider erosion of human rights taking place in the United Kingdom today. Draconian legalisation is not the way to address terrorism. Indeed, the curtailment of freedoms and human rights standards seeks to push those already on the margins to the extreme, as well as undermining the rule of law. Our experiences in

Northern Ireland clearly show that similar legislation, such as that relating to internment, directly increased the numbers joining the IRA and participating in terrorist activities.

- 3.3 The Terrorism Act 2006 appears to focus heavily on one community – Muslims. We fundamentally oppose the use of racial or religious profiling in the legislative arena. The creation of an atmosphere of racial mistrust and suspicion can only contribute to an increase in alienated, angry people, playing straight into the hands of the terrorists. We have seen this with the stigmatisation of the Irish community in England during the 1970s and '80s. We believe that such measures undermine Article 3 of the CECPT which says that “Each party shall promote tolerance ...”

4 **Duty to investigate**

- 4.1 The government's duty to investigate terrorists suspects, and associated duties of extradition or prosecution, has been undermined by their failure to adequately execute these actions in Northern Ireland. As a result, few lessons appear to have been learned. BIRW has raised concerns about the methods used by the government in their attempts to prevent terrorist attacks. These have included UK complicity in extraordinary rendition, the use of evidence obtained under torture and the erosion of suspects' rights. Of particular concern was the government's desire to extend the length of pre-charge detention. We argued clearly against the case for extending detention time to a maximum of 90 days, instead we placed an emphasis on the need to expand the resources available to both the police and other security services in the form of translators, increased collaboration with mobile phone companies and the use of intercept evidence. It is clear that the UK is facing a threat from both domestic and international terrorism; however, as already noted, eroding human rights and condoning the use of torture simply serves to increase alienation and extremism. The strongest defence the UK has against these threats is a robust system for the administration of justice which is firmly rooted in compliance with domestic and international human rights norms.
- 4.2 The government has consistently failed in Northern Ireland to deliver justice for the families of those bereaved by acts of terrorism, whether on the part of paramilitaries or state actors involved in collusion. This can currently be seen in the trial of Sean Hoey, who is facing charges related to the Omagh bombing in 1998. Not only is the trial taking place years after the event, but it has been dogged throughout by concerns about forensic evidence and unreliable witnesses.⁷ Perhaps of more significance are cases where the UK government has placed the protection of informers over the principles of justice. Mark Haddock, a UVF terrorist, was

7 *Omagh DNA evidence 'unreliable'*. BBC News, 16 November 2006

complicit in numerous acts of violence, yet as a Special Branch informer, was able until very recently to operate with impunity.⁸

- 4.3 The Inquiries Act 2005 has long been criticised by BIRW for its incompatibility with Article 2 of the European Convention of Human Rights. The judicial review taken by David Wright, father of the late Billy Wright, leader of the LVF, has huge implications for the future of the Inquiries Act, as David Wright has applied for a declaration that the Act is incompatible with the Human Rights Act 1998 and the European Convention on Human Rights. That contention has the support of Amnesty International, the Northern Ireland Human Rights Commission, BIRW and the Committee on the Administration of Justice. The conversion of the statutory basis of the Robert Hamill Inquiry to the Inquiries Act has already resulted in interference by the Secretary of State in the costs lawyers involved in the Inquiry can claim and the hours they can work, which is heading for another judicial review. That inquiry has also been delayed over claims for anonymity by police officers.
- 4.4 While BIRW welcome the creation of the Historical Enquiries Team (HET) to examine conflict related deaths in Northern Ireland, we do not believe that they are fully independent, and thus not Article 2 compliant, because they report to the Chief Constable of the Police Service of Northern Ireland, who in turn reports to Her Majesty's Inspectorate of Constabulary, which is headed by Sir Ronnie Flanagan, former head of the Royal Ulster Constabulary, who presided over many of the investigations now under scrutiny by the HET. Concerns have also been raised about the number of missing records and case files which will undermine the quality of the investigations
- 4.5 We have previously raised with the Committee the failure by the government to investigate deaths involving the security forces. In particular, the delay in the implementation of the European Court of Human Rights' judgments in the cases of McKerr, Shanaghan, Jordan, Kelly & Ors, McShane and Finucane is inexcusable.

5. Protection and support of victims of terrorism

- 5.1 In our view, the measures adopted by the UK government to protect and support the victims of terrorism, have been woefully inadequate. Our experience in Northern Ireland has indicated that despite 30 years of conflict, few lessons have been learned by the government in how to address the rights and needs of victims.
- 5.2 Firstly, the use of informers and the value placed on intelligence by the security forces rather than on the right to life has enabled acts of terrorism

8 *Haddock inquiry called over judge's comments, Belfast Telegraph, 21 November 2006*

- to take place which could have been stopped. For instance, the murder of Francisco Notarantonio in 1987 by loyalists with state collusion, apparently enabled Alfredo Scappaticci, a high ranking IRA member and Force Research Unit informer to be protected. Scappaticci's involvement with the IRA's internal discipline unit means that he was allegedly involved in multiple killings which could have been prevented. Loyalist informers such as Mark Haddock have also enjoyed similar protection, with the same outcome.
- 5.3 Secondly, a sectarian police force meant that deaths by terrorists did not receive effective investigations, and thus perpetrators went unpunished. This undermined the rule of law in Northern Ireland and failed to provide a suitable deterrent to further acts of terrorism. It prevented bereaved families from accessing the mechanisms of truth and justice about their loved ones' deaths.
- 5.4 Thirdly, the measures which were taken by the government to protect Northern Ireland's citizens from acts of terrorism fuelled rather than dampened the conflict. As mentioned earlier, the policy of internment alienated many young Catholics and substantially aided the recruitment efforts of the IRA. The 'shoot to kill policy' and the events of Bloody Sunday has similar consequences. Fourthly, compensation to victim's families was often woefully inadequate with some families having to fight for years to get any money at all.
- 5.5 Finally, recent attempts by the government to provide a voice for victims, in the form of a Victim's Commissioner have resulted in controversy. The appointment of Bertha McDougall, the widow of an RUC officer, alienated many in the nationalist community. The appointment was viewed as being highly political, without due concern for the rights and needs of victims. The resulting judicial review into the appointment has further undermined the status of the post and left victims without a champion.
- 5.6 In conclusion, the failure of the government to adequately investigate terrorist crimes and to protect and support the victims of terrorism in Northern Ireland does not bode well for victims of more recent terrorist attacks such as those on 7 July 2005. Until the government is prepared to acknowledge its mistakes in Northern Ireland, then there is little chance that lessons can be learned and best practice applied. It is unclear how the government will respond appropriately to the demands of the Council of Europe's Convention on the Prevention of Terrorism. However, undermining human rights standards within the UK through the design and application of draconian legalisation does not bode well for this process.