

18 September 2020

## Rights and Security International's Briefing on the Counter-Terrorism Sentencing Bill

### Background on Rights and Security International

1. For over three decades Rights and Security International [www.rightsandsecurity.org](http://www.rightsandsecurity.org) (formerly, Rights Watch (UK)) has been successfully advocating for a rights-based approach to national security, and holding Governments to account for unlawful actions taken in the name of national security.
2. Our vision is of a world which recognises that our individual freedoms are essential to our collective security.

### Introduction

This briefing outlines a number of key legal and policy concerns with the provisions of the Counter-Terrorism and Security Bill (CTSB) and list proposals with respect to the relevant provisions. Firstly, we highlight our concerns with clause 1 in that it significantly expands the number of non-terrorism related offences in relation to which a court can increase a person's sentence if it is established that the offence has a 'terrorism connection'. Secondly, we highlight our concerns with the proposed removal or restriction of early release for terrorist prisoners given on the basis that there is insufficient evidence with respect to the efficacy of such measures for reducing crime or acts of terrorism. Thirdly, in relation to clauses 37 and 38 concerning the Terrorism Prevention and Investigation Measures (TPIMs), we highlight two key concerns, firstly the lowering of the standard of proof required for a TPIM, and secondly, enabling continuous and enduring TPIMs by removing the current two-year limits on a TPIM. Finally, we raise concerns with respect to clause 47 as it removes the timetable for the conclusion of the independent review of Prevent without explanation of the newly envisaged timetable, and we highlight the opportunity this Bill presents to ensure that the terms of reference for the Independent Review are sufficiently broad and provide for an effective Review.

3. Specifically, we propose:

#### **4.1. Clause 1** (Offences aggravated by a terrorist connection) -

That the power of the courts to increase a person's sentence, for a non-terrorism related offence, if it is established that the offence has a 'terrorism connection', should remain limited to those offences currently listed in Schedule 2 of the 2008 Counter-Terrorism Act.

#### **4.2 Clause 27** (Removal of early release for terrorist offenders) –

That provisions for the removal or restriction of early release for terrorist prisoners should be withdrawn on the grounds of insufficient evidence with respect to the efficacy of such measures for reducing crime or acts of terrorism.

#### 4.3 **Clause 37** (standard of proof for TPIMS) and **Clause 38** (Indefinite/Enduring TPIMS) –

That the standard of proof for the implementation of TPIMs remains the balance of probabilities, and that the two-year cap on the imposition of a TPIM, as a non-criminal administrative measure, is not lifted.

#### 4.4 **Clause 47** (Timetable for Independent Review of the Prevent Strategy and Terms of Reference for the Review) –

That it is made clear in the legislation that the timeframe for the Review should be no less than 12-months from the time that the Independent Reviewer is appointed; and

As per Rights and Security’s proposed Terms of Reference for the Review,<sup>1</sup> it should be made clear in the legislation that the scope of the Review is sufficiently broad so as to encompass the impact and necessity of, and the evidential basis for, the Prevent strategy. In line with this, it should be made clear that the Review should be established on six key principles: (i) independence; (ii) full and effective cooperation on behalf of the government; (iii) consultation and participation; (iv) effective resourcing and support; (v) transparency and parliamentary oversight; (vi) holistic and comprehensive.<sup>2</sup>

## Background

### Clause 1 - Offences aggravated by terrorist connection

- 5 Terrorism as an aggravating factor in sentencing was introduced in the Counter-Terrorism Act 2008, section 30. Where a person is found guilty of a non-terrorism offence, this enabled courts to increase the sentence if it is established that the offence has a ‘terrorism connection’. The Counter-Terrorism 2008 Act currently limits the use of this power to offences specified in Schedule 2 of the 2008 Act. The listed offences are those that are commonly connected to plans for terrorist attack, with the primary offences concerning explosives, murder, manslaughter, violence to the person, nuclear and biological material, and specific hijacking offenses. A determination that an offence has a terrorist connection has implications beyond sentencing as it also triggers the terrorism notification requirements, and restrictions on early release that are contained in the Terrorist Offenders (Restriction of Early Release) (TORER) Act 2020.
- 6 Clause 1 increases the number of non-terrorist offences that can be found to have a terrorist connection. Clause 1 extends the offences that can be aggravated by a terrorist connection to include any offence committed after the Act comes into force and is punishable with imprisonment for more than 2 years. The offence no longer has to be a listed offence. Thus, Clause 1 moves beyond existing legislation by

<sup>1</sup> Rights and Security International (formerly Rights Watch UK) proposed term of Reference and Briefing for the Independent Review of Prevent (PDF URL: <https://www.rightsandsecurity.org/assets/downloads/Proposed-Terms-of-Reference-and-Briefing-for-the-Independent-Review-of-Prevent.pdf>)

<sup>2</sup> Ibid (see page 2 of accompanying briefing note)

enabling the courts to find any offence with a maximum penalty of more than two years to have a terrorist connection. Evidence of a terrorism connection is produced and determined by a judge at the sentencing stage. This brings a huge swathe of offences (for example assault with intent to resist arrest, causing death by dangerous driving) and significantly and radically expands the number of individuals who can be treated as terrorist offenders without the need to convict them of a terrorism offence in a jury trial.

The lack of clarity on the precise nature of a link to a terrorism connection is exacerbated by the expansion of the criminal law in the past two decades to encompass an increasing range of pre-inchoate or pre-crime offences, as well as the overly broad and expansive definition of terrorism contained in the Terrorism Act 2000.

- 7 This clause may also engage Article 5 of the European Convention on Human Rights. In *Saadi v UK* (2008) ECHR 79, the European Court of Human Rights found that any detention due to a conviction by a competent court must follow and have “a sufficient causal connection with a lawful conviction”.

### **Clause 27 - Removal of early release for terrorist offenders**

- 8 The Bill’s introduction was signalled as a response to a terrorist incident at Fishmongers’ Hall in November 2019<sup>3</sup> and the subsequent call to introduce longer and tougher sentences for those serving terrorism offences. In light of this, clause 27 removes the possibility of any early release from custody for serious and dangerous terrorist offenders, aged under and over 18, who receive an Extended Determinate Sentence.

- 9 However, in response to a question raised by Lord Anderson of Ipswich in February 2020 regarding the recidivism rate of terrorist offenders, the Ministry of Justice indicated that, between January 2013 and December 2019, only 6 of the 196 individuals who were convicted of a terrorist offence went on to be convicted of another terrorist offence (or 3.06%).<sup>4</sup> In comparison, the Ministry of Justice also indicates that between October 2016 and December 2019, the proven re-offending rate of the general adult population was 28.6%.<sup>5</sup> Thus, according to the Ministry of Justice’s own data, the rate of recidivism amongst terrorist offenders is considerably lower than amongst the general adult population. Such statistics would call into question the underlying premise of introducing measures which have as their aim the reduction of instances of terrorism offending. Furthermore, the government’s own impact assessment of the provisions of the bill stated that there is “limited evidence” that such measures “will deter offenders long term or reduce overall crime”.<sup>6</sup>

### **Clause 37 and 38 (TPIMs) - Standard of proof for, and length of, TPIMs**

#### **Background on TPIMs**

- 10 In 2010, influenced by the Liberal Democrats,<sup>7</sup> and following a number of high-profile cases in which the courts ruled some of the measures imposed by Control Orders breached the UK’s human rights

<sup>3</sup> BBC NEWS 3<sup>rd</sup> December 2019 London Bridge: What we know about the attack. (<https://www.bbc.co.uk/news/uk-50594810>)

<sup>4</sup> Terrorism: Prisoner’s Release. Question for Ministry of Justice UIN HL782, tabled on 27<sup>th</sup> January 2020 URL: <https://questions-statements.parliament.uk/written-questions/detail/2020-01-27/HL782>

<sup>5</sup> Proven Reoffending Statistics Quarterly Bulletin, October 2016 to December 2016 (p1)

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/751109/proven\\_reoffending\\_bulletin\\_October\\_to\\_December\\_16.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/751109/proven_reoffending_bulletin_October_to_December_16.pdf)

<sup>6</sup> 16/09/2020 Impact Assessment MoJ066/2020 URL:

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/918191/overarching-impact-analysis.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/918191/overarching-impact-analysis.pdf) (pg 17/18)

<sup>7</sup> <https://www.theguardian.com/politics/2011/jan/02/nick-clegg-scrap-control-orders>



obligations,<sup>8</sup> the Conservative-led coalition government abolished Control Orders. TPIMs were introduced in the Terrorism Prevention and Investigation Measures Act 2011, to replace Control Orders. Like Control Orders, they enable the Secretary of State to place restrictions on individuals on the basis of their assessed risk to national security.

11 Although similarities between Control Orders and TPIMs remain, the law has placated some of the human rights concerns relating to Control Orders, primarily in relation to the less onerous conditions which can be imposed and the maximum time period of two years.<sup>9</sup> In comparison to Control Orders, TPIMs provide for a more limited range of restrictions, but still include limitations on a suspect's movement (including electronic tagging), communications and property.<sup>10</sup> Under the current legislation, overseas travel is prohibited without prior permission from the Secretary of State.<sup>11</sup>

12 The measures that can be imposed - restrictions on movement, communications, association, dealing with money and other property, as well as residency and monitoring requirements – nevertheless amount to significant interferences of the rights of individuals who have not been convicted of any crime. As administrative measures, TPIMs are outside the criminal justice system and the safeguards it provides to protect the rights of individuals.

### **Clause 37 - TPIMS standard of proof**

13 **Clause 37** of the CTSB, **lowers the standard of proof** applied to assessing whether an individual was engaged in 'terrorist-related activity'. Currently, the Secretary of State must be satisfied that the suspect has, on the 'balance of probabilities', engaged in 'terrorist related activity', prior to issuing a TPIM.<sup>12</sup> Clause 37 allows a TPIM to be imposed where the Secretary of State has "reasonable grounds for suspecting" an individual has engaged in 'terrorist-related activity'.<sup>13</sup>

14 The present 'balance of probabilities' standard of proof was introduced in the Counter-Terrorism and Security Act 2015<sup>14</sup> on the recommendation of the then Independent Reviewer of Terrorism Legislation, Lord Anderson QC, who had advised that the standard of proof be raised from the previous threshold of "reasonably held belief" of involvement with terrorism.<sup>15</sup>

15 The Independent Reviewer of Terrorism Legislation, Johnathan Hall QC, in his evidence to the Bill Committee noted that he was not aware of any cases in which the current 'balance of probabilities' standard of proof had been a barrier to imposing a TPIM, and that the current standard was 'useable and fair'.<sup>16</sup> Assistant Chief Constable Tim Jacques, in his evidence also confirmed that there is no case in which the current standard of proof has prevented the imposition of a TPIM.<sup>17</sup>

### **Clause 38 – Indefinite/Enduring TPIMS**

<sup>8</sup> See for example: *Secretary of State for the Home Department v AP* [2010] UKSC 24

<sup>9</sup> *Ibid*, section 5.

<sup>10</sup> Terrorism Prevention and Investigation Measures Act 2011, Schedule 1, para. 12.

<sup>11</sup> *Ibid*, Schedule 1, para. 2(3).

<sup>12</sup> See section 3 TPIM Act 2011. This higher standard of proof was introduced

<sup>13</sup> The courts have interpreted the standard of suspicion as a belief not that the person is a terrorist, only that they may be a terrorist. See for example, *HM Treasury v Ahmed* [2010] UKSC 2, per Lord Brown at para 199.

<sup>14</sup> <https://www.legislation.gov.uk/ukpga/2015/6/contents>

<sup>15</sup> TPIMs in 2012 Report, [https://www.legislationline.org/download/id/4605/file/terrorism%20prevention%20and%20investigation%20measures%20in%202012\\_independent%20reviewer\\_2013.pdf](https://www.legislationline.org/download/id/4605/file/terrorism%20prevention%20and%20investigation%20measures%20in%202012_independent%20reviewer_2013.pdf) at 11.47 - 11.52.

<sup>16</sup> Counter-Terrorism and Sentencing Bill, Hansard 25 June 2020, col.7

<sup>17</sup> Counter-Terrorism and Sentencing Bill, Hansard 25 June 2020, col.23



16 When introducing TPIMs, the government stated that they were intended as targeted, temporary measures, and not to be used “simply as a means of parking difficult cases indefinitely”.<sup>18</sup> Yet **clause 38** of the CTSB attempts to frustrate this purpose, by removing the two-year cap on TPIMs, in turn risking the creation of enduring TPIMs with no automatic end point. This is a direct reversion to the governmental powers under control orders,<sup>19</sup> and manifestly contradicts the intentions of the TPIMs system. The CTSB does

not require that any extension beyond two years be reserved to particularly serious or exceptional cases, nor that there be any upper maximum or heightened degree of judicial scrutiny after two years; there is likewise a failure to include any additional mitigating safeguards to minimise the negative impacts of such a policy. The removal of the time limit contradicts the temporary purpose of TPIMs and directly reverts to the oppressive control orders strategy.

17 The necessity of a two-year cap has already been considered in detail by Lord Anderson QC, in his 2012 report on TPIMs.<sup>20</sup> His Lordship concluded that the two-year limit was an “acceptable compromise” on account of the fact that TPIMs should not be allowed to become a shadow alternative to criminal prosecution, as well as due to the considerable length of time that two years can amount to in a person’s life. The government cited Lord Anderson’s observations that there was no need “to put the clock back”, that the majority of the changes brought in with TPIMs had not made the regime any less effective, and that the “two-year limit is a reminder that executive constraints of this kind are no substitute for the criminal process, and no long-term solution.”<sup>21</sup>

#### **Clause 47 - Independent Review of the Prevent Strategy**

18 In the Counter-Terrorism and Border Security Act 2019 section 20(8), Parliament mandated the government to make arrangements for an Independent Review of the Prevent Strategy. Section 20(9) required the review to submit its report and recommendations to Parliament within 18 months. Lord Carlile was appointed as the Independent Reviewer of Prevent in August 2019. However, in December 2019, he was removed from this position following a judicial review challenge by Rights and Security International.<sup>22</sup> At the moment there is no reviewer in place and so a change to the timetable is necessary. However, clause 47 while removing the original 18-month timetable does not provide any deadline or timetable for the completion of the review, risking indefinite or undue delay. Rights and Security International suggests that it is made clear that the timeframe for the Review should be no less than 12-month from the time that the Independent Reviewer is appointed.

19 Furthermore, the Secretary of State, issued terms of reference for the review that limited the scope of the review by imposing narrow terms of reference, running counter to Parliament’s intention of conducting a rigorous and independent scrutiny of the Prevent strategy. The CTSB therefore provides an important opportunity to ensure the review adopts robust and comprehensive terms of reference.

20 Since its inception, and particularly since its expansion in 2015, concerns have been raised about the Prevent strategy from civil society including Rights and Security International who published a landmark

<sup>18</sup> 5 Hansard 26 January 2011 – col 307.

<sup>19</sup> See Prevention of Terrorism Act 2000, section 2(4)(b).

<sup>20</sup> [https://www.legislationline.org/download/id/4605/file/terrorism%20prevention%20and%20investigation%20measures%20in%202012\\_independent%20reviewer\\_2013.pdf](https://www.legislationline.org/download/id/4605/file/terrorism%20prevention%20and%20investigation%20measures%20in%202012_independent%20reviewer_2013.pdf) at 11.36 to 11.38.

<sup>21</sup> [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/540543/CTS\\_Bill\\_-\\_Factsheet\\_4\\_-\\_TPIMs.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/540543/CTS_Bill_-_Factsheet_4_-_TPIMs.pdf) (p1)

<sup>22</sup> <https://www.rightsandsecurity.org/impact/entry/government-removes-lord-carlile-as-prevent-reviewer-conceding-rwuks-legal-challenge-to-his-independence>



report on the impact of Prevent on children and education<sup>23</sup>, international human rights bodies,<sup>24</sup> the independent Reviewer of Anti-Terrorism legislation,<sup>25</sup> senior police officers,<sup>26</sup> and Parliamentarians.<sup>27</sup> These concerns have focused on the structural problems of the Prevent Strategy, such as its basis upon the discredited conveyor-belt theory of radicalisation<sup>28</sup> - which contributed to the Strategy's expansion to encompass the perceived risks of non-violent extremism as it was believed that this would lead individuals to be drawn towards violent extremism. This expansion has been the subject of considerable criticism, including the widespread perception that the policy is discriminatory and harmful to Muslim communities; the subsequent infringement on human rights (in particular the chilling of free speech and religious expression); and its undermining of trust in relationships between affected communities and public bodies. These concerns have been raised consistently since 2016, including by Parliamentary bodies<sup>29</sup> and with evidence and input from those affected communities.<sup>30</sup>

- 21 The Community and Local Government Select Committee's 2010 report *Preventing Violent Extremism* highlights that, "The single focus on Muslims in *Prevent* has been unhelpful. We conclude that any programme which focuses solely on one section of a community is stigmatising, potentially alienating, and fails to address the fact that that no section of a population exists in isolation from others."<sup>31</sup>
- 22 The Parliamentary Joint Committee on Human Rights 2016 Report on *Counter-Extremism*<sup>32</sup> outlines the "acute crisis of confidence" that the Prevent Strategy has given rise to in schools in the UK. The same Committee also outlined the chilling effect on freedom of expression and religion in universities<sup>33</sup> - a criticism echoed by the National Union of Teachers.<sup>34</sup>
- 23 The House of Commons Home Affairs Committee's report *Radicalisation: the counter-narrative and identifying the tipping point* pointed towards Prevent's reputation, among members of the UK's Muslim community, as a surveillance programme.<sup>35</sup>

<sup>23</sup> Rights and Security International (as Rights Watch UK) July 2016 Preventing Education? Human Rights and UK Counter-Terrorism Policy in Schools (URL: <https://www.rightsandsecurity.org/assets/downloads/Preventing-Education.pdf>)

<sup>24</sup> These include the Committee on the Rights of the Child (CROC, Concluding Observations on UK 2016 (<http://www.crae.org.uk/media/93148/UK-concluding-observations-2016.pdf>) at C20(b) and C21(b); the Committee on Elimination of Racial Discrimination (CERD, Concluding Observations on the 21<sup>st</sup>-23<sup>rd</sup> report at [18] (accessed: [https://tbinternet.ohchr.org/Treaties/CERD/Shared%20Documents/GBR/CERD\\_C\\_GBR\\_CO\\_21-23\\_24985\\_E.pdf](https://tbinternet.ohchr.org/Treaties/CERD/Shared%20Documents/GBR/CERD_C_GBR_CO_21-23_24985_E.pdf)); and the Special Rapporteurs on Racism and the Rights to Freedom and Peaceful Assembly ([https://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session35/Documents/A\\_HRC\\_35\\_28\\_Add.1\\_AEV.docx](https://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session35/Documents/A_HRC_35_28_Add.1_AEV.docx))

<sup>25</sup> Anderson D. Supplementary written evidence submitted by David Anderson Q.C. (Independent Reviewer of Terrorism Legislation) to Home Affairs Committee Countering Extremism Inquiry. 2016; 29 January (<http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/home-affairs-committee/countering-extremism/written/27920.pdf>) (accessed 8 March 2016).

<sup>26</sup> The negative outcomes of the strategy for community cohesion has been identified by Lord Brian Paddock, the Metropolitan Police Commander. See [https://www.huffingtonpost.co.uk/brian-paddock/manchester-bombing-2017\\_b\\_16856296.html?1496000426&gucounter=1](https://www.huffingtonpost.co.uk/brian-paddock/manchester-bombing-2017_b_16856296.html?1496000426&gucounter=1)

<sup>27</sup> As above, negative outcomes have been identified by the Liberal Democratic Party, and Naz Shah MP. See <https://www.middleeasteye.net/news/uks-liberal-democrats-vote-scrap-prevent-strategy-annual-conference>; <https://www.theguardian.com/politics/2016/dec/18/naz-shah-mp-bradford-british-muslim0>

<sup>28</sup> Rights and Security International (as Rights Watch UK) July 2016 Preventing Education? Human Rights and UK Counter-Terrorism Policy in Schools (Para 31 and 32) (URL: <https://www.rightsandsecurity.org/assets/downloads/Preventing-Education.pdf>)

<sup>29</sup> Such as the House of Commons Women and Equalities Committee *Employment Opportunities for Muslims in the UK* Second Report of Session 2016-17 (HC 89; and the HoC Home Affairs Select Committee Report, 25 August 2016 (Eighth Report of 2016-17): *Radicalisation: the counter-narrative and identifying the tipping point* (HC 35) (accessed: <https://publications.parliament.uk/pa/cm201617/cmselect/cmhaff/135/135.pdf>)

<sup>30</sup> Evidence substantiating the harm of Prevent has been provided from numerous community groups, such as Mashala (Evidencing concerns of the impact of the *Prevent* duty in schools before the Home Affairs Select Committee on Radicalisation at [57]; Quilliam (Providing evidence to the Home Affairs Select Committee on Radicalisation that genuine dialogue and engagement with communities would help to work towards restoring trust and confidence: at <https://publications.parliament.uk/pa/cm201617/cmselect/cmhaff/135/135.pdf> at [50].) Faith Matters (Ibid at [51]); MEND (<https://www.mend.org.uk/news/the-new-prevent-strategy/>); and the Muslim Women's Network UK (At 143; and [http://www.mwnuk.co.uk/go\\_files/resources/629031-MWNUK%20submission%20for%20PVE%20Inquiry.pdf](http://www.mwnuk.co.uk/go_files/resources/629031-MWNUK%20submission%20for%20PVE%20Inquiry.pdf)).

<sup>31</sup> House of Commons Communities and Local Government Committee. *Preventing Violent Extremism*, Sixth Report of Session 2009-10, HC 65 (London: The Stationary Office, 2010), 3.

<sup>32</sup> House of Lords/House of Commons Joint Committee on Human Rights *Counter-Extremism* Second Report of Session 2016-17 (HL Paper 39; HC 105), accessed: <https://publications.parliament.uk/pa/lt201617/ltselect/ltrights/105/105.pdf>.

<sup>33</sup> House of Lords/House of Commons Joint Committee on Human Rights *Freedom of Speech at Universities* Fourth Report of Session 2017-19 (HC 589/HL 111) (accessed: <https://www.parliament.uk/business/committees/committees-a-z/joint-select/human-rights-committee/inquiries/parliament-2017/inquiry/>)

<sup>34</sup> <https://www.theguardian.com/politics/2016/mar/28/teachers-nut-back-motion-calling-Prevent-strategy-radicalisation-scrapped>.

<sup>35</sup> HC Home Affairs Select Committee Report, 25 August 2016 (Eighth Report of 2016-17): *Radicalisation: the counter-narrative and identifying the tipping point* (HC 35) (accessed: <https://publications.parliament.uk/pa/cm201617/cmselect/cmhaff/135/135.pdf>). P54)





24 The House of Commons' Women and Equalities Committee published a report on *Employment Opportunities for Muslims in the UK*,<sup>36</sup> which noted that individual Muslims were reluctant to engage in the enquiry itself due to fear that it was attached to Prevent.

25 The Citizen's Commission on Islam, Participation and Public Life in 2017 (chaired by the Rt Hon Dominic Grieve QC MP) in its report: *The Missing Muslims: Unlocking British Muslim Potential for the Benefit of All* noted Prevent's poor definition of extremism and the consequent securitisation of safeguarding mechanisms amongst public authorities.<sup>37</sup>

26 The British Medical Association has expressed serious concerns that the duty to refer individuals to Prevent has resulted in racial profiling.<sup>38</sup>

27 Alongside domestic civil society criticism, concerns have been raised by United Nations human rights bodies and Special Rapporteurs. These include the Committee on the Rights of the Child,<sup>39</sup> the Committee on Elimination of Racial Discrimination,<sup>40</sup> and the Special Rapporteurs on Racism and the Rights to Freedom and Peaceful Assembly.<sup>41</sup>

28 Each of the abovementioned reports called for an independent review to assess the impact of Prevent on affected communities and in so doing, better understand why the controversy existed, continued, and how best to address the controversy and issues that the Strategy has and continues to give rise to. Unfortunately, such calls have been repeatedly dismissed by the Government, Home Office, and Prevent advocates as fictitious or unfounded. Each report also emphasised clearly that the mistrust in the Government's delivery of Prevent had to be addressed by an independent and transparent Review process that actively engaged with impacted communities. It is within this context that Parliament required the Government to establish an independent review of the Prevent strategy.

29 On 16<sup>th</sup> September 2019, the government published terms of reference of the independent review, which were adopted by the then independent reviewer of Prevent Lord Carlile.<sup>42</sup> These placed both temporal and substantive limitations on the scope of the review that fundamentally undermine its effectiveness.

30 The terms of reference limit the temporal scope of the independent Review by excluding from consideration any "past delivery" or "past decisions" of the Prevent strategy. This frustrates the intentions of Parliament by avoiding the evidence-based scrutiny of the Government's policy to date. Additionally, the intention of Parliament is to use this evidence-based assessment to inform future counter-extremism strategy. This necessitates consideration of Prevent's delivery to date. The very object of requiring a review by an individual independent of the Home Office is to provide a mechanism by which to resolve the controversy raised by members of affected communities. It stands to reason that such a resolution will require examining "past delivery" and "past decisions".

<sup>36</sup> House of Commons Women and Equalities Committee *Employment Opportunities for Muslims in the UK* Second Report of Session 2016-17 (HC 89) at [25].

<sup>37</sup> Citizens Commission on Islam, Participation and Public Life "The Missing Muslims: Unlocking British Muslim Potential for the Benefit of All" (2017) at 53 onwards ([https://d3n8a8pro7vhmx.cloudfront.net/newcitizens/pages/1261/attachments/original/1499106471/Missing\\_Muslims\\_Report\\_-\\_Electronic\\_copy.pdf?1499106471](https://d3n8a8pro7vhmx.cloudfront.net/newcitizens/pages/1261/attachments/original/1499106471/Missing_Muslims_Report_-_Electronic_copy.pdf?1499106471)).

<sup>38</sup> <https://www.telegraph.co.uk/news/2018/06/28/doctors-should-not-have-report-suspected-terrorists/>

<sup>39</sup> CROC, Concluding Observations on UK 2016 (<http://www.crae.org.uk/media/93148/UK-concluding-observations-2016.pdf>) at C20(b) and C21(b).

<sup>40</sup> CERD, Concluding Observations on the 21<sup>st</sup>-23<sup>rd</sup> report at [18] (accessed: [https://tbinternet.ohchr.org/Treaties/CERD/Shared%20Documents/GBR/CERD\\_C\\_GBR\\_CO\\_21-23\\_24985\\_E.pdf](https://tbinternet.ohchr.org/Treaties/CERD/Shared%20Documents/GBR/CERD_C_GBR_CO_21-23_24985_E.pdf)).

<sup>41</sup> Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association on his follow-up mission to the United Kingdom of Great Britain and Northern Ireland (accessed [https://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session35/Documents/A\\_HRC\\_35\\_28\\_Add.1\\_AEV.docx](https://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session35/Documents/A_HRC_35_28_Add.1_AEV.docx))

<sup>42</sup> <https://www.gov.uk/government/publications/independent-review-of-prevent-terms-of-reference/independent-review-of-prevent-terms-of-reference>



31 The terms of reference also sought to limit the substantive scope of the independent review by making no provisions for consideration of whether the strategy has had a negative impact upon affected communities or individuals. These terms of reference do not make clear that the Review must consider whether Prevent has had significant harmful effects on communities and individuals to date, to what extent, and in what ways. It was the clear intention of Parliament that the independent review examine both the efficacy of the Prevent strategy and its potential negative impacts (i.e. whether the concerns that the Strategy has negatively impacted upon affected communities and individuals are valid). Given that the intentions of Parliament are to inform future counter-extremism policy, evidence of widespread harmful consequences cannot be precluded from the assessment. The object of the review was to re-establish trust and confidence within affected communities. Such mischief can only be remedied through proper investigation and evaluation of concerns regarding the strategy's negative impacts – with a particular examination of the relevant human rights impacts.

32 The CTSB provides an opportunity to place the terms of reference on a statutory footing and ensure a full, effective and holistic review. Indeed, in response to the Review being established, RSI published a proposed a [Terms of Reference for the Review](#) and accompanying briefing<sup>43</sup> which was the result of extensive consultations with impacted communities (in Bradford, Manchester and London), persons involved in counter-terrorism related legislative Reviews (including a former Independent Reviewer of Counter Terrorism legislation) as well as those involved in other non-security related Reviews (including the widely acclaimed Windrush Review). These proposed Terms of Reference make clear that it was necessary that the appointment of the Reviewer is made in transparent manner in accordance with the Public Appointments Process, and the scope of the Review was sufficiently broad so as to encompass the impact and necessity of, and the evidential basis for, the strategy.

33 As set out in our draft terms of reference, we recommend the Review be established on six key principles: (i) independence; (ii) full and effective cooperation on behalf of the government; (iii) consultation and participation; (iv) effective resourcing and support; (v) transparency and parliamentary oversight; (vi) holistic and comprehensive. We suggest that at least these principles be incorporated in the legislation.

For further information or to discuss these issues please contact Tufyal Choudhury, Principal Legal and Policy Adviser at Rights and Security International on [tchoudhury@rightsandsecurity.org](mailto:tchoudhury@rightsandsecurity.org)

---

<sup>43</sup> Rights and Security International (formerly Rights Watch UK) proposed term of Reference and Briefing for the Independent Review of Prevent (PDF URL: <https://www.rightsandsecurity.org/assets/downloads/Proposed-Terms-of-Reference-and-Briefing-for-the-Independent-Review-of-Prevent.pdf>)