

# Leaving the War on Terror

*A Progressive Alternative to Counter-Terrorism Policy*



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# Table of Contents

<b>1 - Introduction</b>	<b>5</b>
<b>2 - The failures of counter-terrorism policy-making</b>	<b>7</b>
A - Failing to demonstrate a reduction in terrorism	7
B - Failing to uphold human rights	15
C - Prevent: Islamophobia and the undermining of public services	32
<b>3 - A bloated, unaccountable system</b>	<b>38</b>
A - An undemocratic policy-making process	39
B - A sprawling network of intelligence agencies	41
C - Miscommunicating the threat	43
D - Unaccountable intelligence agencies	47
E - No scrutiny of surveillance	48
F - Bypassing parliament	49
<b>4 - Outline of a progressive alternative</b>	<b>50</b>
A - Democracy	51
B - Evidence	52
C - Human rights	53
D - Community consent	56
E - Peace	58
<b>Authors</b>	<b>61</b>



# 1 – Introduction

Britain's counter-terrorism policies do not work. They do not work for the British people, who wish to live free of terrorism. They do not work for the various communities in the UK whose experience of counter-terrorism has been one of stigmatisation and criminalisation. And they do not work for the people of the Middle East, South Asia and Africa, whose human rights have been systematically violated in the War on Terror.

Just over two decades ago, the Irish and UK governments signed the Good Friday Agreement, the culmination of a negotiated peace process involving Republican and Loyalist armed groups in Northern Ireland. Principles of human rights, community consent and peace were key to achieving a dramatic reduction in lives lost to political violence. Indeed, by that measure, the Good Friday Agreement was the most successful instrument of counter-terrorism policy-making in recent history.

But the lessons of this success were not registered. The year after the Agreement was signed, Tony Blair's government introduced the first of the fifteen new Terrorism Acts that have been passed since then in what has become a near-annual parliamentary ritual. Each Act ratcheted up the powers available to the police and intelligence agencies, creating a shadow criminal justice system in which legal principles applicable in other spheres were dispensed with. Alongside this legislative agenda, norms shifted in other ways: the use of surveillance and propaganda was expanded and deepened; military force and extra-judicial killing as counter-terrorist methods became routine; and complicity with torturers was normalised. Intelligence agencies, police forces and the military doubled or tripled their counter-terrorism budgets and held onto this funding even as other sectors were ravaged by austerity measures. The logic of counter-terrorism was spread into every sphere of public life in Britain as workers across government services were expected to become the eyes and ears of national security surveillance. The definition of the threat was itself transformed: no longer simply a matter of individual acts of violence but a much broader danger, understood in terms of clashes of culture, ideology and values, and informed by the Islamophobic principle that Muslim political organisation and dissent should be cast as forms of extremism.

Concerns for human rights, for avoiding the stigmatising and criminalising of communities, or for basing policy on clear statements of goals and evidence of effectiveness were ignored. The number of civilian lives lost in ostensibly fighting "jihadist" terrorism were many times greater than those that have ever been lost or could have been lost due to "jihadist" terrorism itself. Even on the narrowest measure of success – the reduction of terrorism – the record of UK counter-terrorism over the last twenty years is a poor one.

The relentless expansion and proliferation of this War on Terror apparatus was underpinned by a consensus across the political class from the late 1990s. Central to that consensus were the claims that the UK faced an exceptional threat from "jihadist" terrorism, that this threat was the expression of an ideological rejection of British values among a generation of young Muslims and that, in response, the normal principles of domestic and international law should be suspended. Labour leader Jeremy Corbyn's Chatham House speech on the War on Terror in the 2017 general election campaign was the first sign of a crack in that consensus. In the days after the killing of

twenty-two concert-goers at the Manchester Arena, Corbyn argued that “the war on terror is simply not working” and opinion polls suggested a majority agreed.<sup>1</sup>

This report offers an account of the failures of current counter-terrorism policies, an analysis of the reasons why they do not work and an outline of a progressive alternative that we hope will be the basis for a future Labour government’s approach. We recognise the difficulty and complexity of the issue of terrorism and the various barriers that stand in the way of a different approach. But we believe the time is right to critically assess the legacy of the last twenty years and change course.

At the heart of our argument is a question of democracy. Counter-terrorism policy-making has failed because its development is unmoored from any substantial process of democratic accountability. Instead, the aims and means of current counter-terrorism policy have been set by a security establishment according to its own interests and values. This security establishment has not sought to provide a consistent and precise definition of terrorism or to seek to counter terrorism in an evidence-based way, based on academic studies of how terrorism comes into existence. It has not sought to ground security policy in the actual problems of political violence that communities in the UK face. And it has repeatedly placed loyalty to elite interests above the need to uphold human rights, especially with respect to Muslim populations, both within the UK and abroad.

The Labour Party has a particular responsibility to address the harms resulting from counter-terrorism as it was the Labour government led by Tony Blair that incorporated the War on Terror into British policy-making and his successor Gordon Brown who continued and extended the paradigm. Labour’s 2017 manifesto already contained policies that align with our argument and can be built upon, such as the call to review Prevent, to address civil liberties concerns with the Regulation of Investigatory Powers Act and to hold public inquiries on past injustices. However, counter-terrorism policy has been one of the least discussed topics within the Labour Party, despite its deep impact on the lives of the over two million Muslims in the UK. We hope this report will help to initiate a more vigorous discussion.

Clearly, any left-wing Labour government will be attacked by its opponents as weak on national security. The temptation will be to not rock the boat and allow counter-terrorism policy to remain unchanged, the better to secure political victories in the core economic policy areas Labour Party supporters are more focused on. We believe this would be a mistake. It would mean a Labour government failing to uphold principles of human rights and racial and religious equality. But as a political strategy, it would also likely be counter-productive. Conceding ground on security policy will not minimise the attacks from right-wing media organisations or Conservative politicians; and a Labour government would be left defending itself reactively and inconsistently within a policy framework not of its own choosing. In this way, a failure to develop a progressive approach to security could end up undermining the credibility of a Labour government’s broader policy agenda. A better strategy, we believe, is to adopt from the outset a coherent, explicitly stated, progressive policy that can be defended consistently and confidently.

## 2 – The failures of counter-terrorism policy-making

Considered as a whole, Britain's counter-terrorism policies over the last two decades have been a catastrophic failure. Quite simply, if the aim of those policies was to reduce the number of civilian lives lost to political violence, then they have made the problem many times worse. They have also been devastating to human rights, involving the UK in the traffic in prisoners around the world to face torture and inhuman treatment elsewhere, promoted Islamophobia and undermined Britain's public services.

### A – Failing to demonstrate a reduction in terrorism

There is no publicly available government assessment of UK counter-terrorism policy-making's effectiveness in reducing terrorism. The House of Commons Home Affairs Select Committee has published seventeen reports on counter-terrorism policy but none attempts to measure whether past policy has actually worked to produce a reduction in terrorism. Such an assessment is essential if counter-terrorism is to be grounded in evidence. In fact, the publicly stated purpose of counter-terrorism policy is not to reduce terrorism but to ensure that people can "go about their lives freely and with confidence", which suggests a more subjective measure of whether people feel the government is tackling terrorism forcefully enough.<sup>2</sup>

Developing an evidence-based counter-terrorism programme that effectively reduces terrorism requires: 1) a precise and consistent definition of terrorism; 2) a plausible account of how policy might intervene in the processes that cause terrorist acts to happen; 3) an assessment of whether past policy has been effective in reducing terrorism.

### Defining terrorism

A definition of terrorism matters because otherwise we cannot develop policy in an evidence-based fashion. The claim, for example, that the number of terrorist incidents is rising is meaningless if terrorism is undefined.<sup>3</sup> If we do not know whether terrorist incidents are rising or falling, we will not be able to find out if policies are working or not. Moreover, definitions that are imprecise or too broad will likely incorporate a variety of phenomena that may have distinct causal processes and therefore require distinct policy responses. What counts as terrorism matters especially because the acts we label as terrorist attract intense public attention and because policies claiming to respond to them can claim significant resources. What we label terrorism is an indication of what forms of violence our society cares about stopping and what forms we consider more tolerable. It is striking, for example, that the term "ecoterrorism" exists to refer to environmental protestors' damaging of private property but the word "terrorism" is never used to refer to the violent destruction of the environment we depend upon to survive as a species.

In fact, there is no generally accepted definition of terrorism. There are at least 109 different definitions that have been used by terrorism researchers.<sup>4</sup> Legal definitions are also imprecise and vary between jurisdictions and agencies.<sup>5</sup> The UK government's independent reviewer of counter-terrorism laws reviewed fifty-one jurisdictions in 2007 and found that thirty-four had developed separate national definitions of terrorism in their legislation.<sup>6</sup>

The definition of terrorism in UK law is extremely broad in its wording even though it is applied selectively. It includes any act or threat of violence “designed to influence the government [or an international governmental organisation] or to intimidate the public or a section of the public ... for the purpose of advancing a political, religious or ideological cause”.<sup>7</sup> Under this definition, many incidents that would not normally be considered terrorism – such as civil disobedience to prevent a deportation flight or throwing a placard at a police officer during a political protest – could be counted as such – and occasionally have been by prosecutors. If it were applied consistently, the UK definition would also imply the term “terrorism” could be applied to other forms of intimidatory violence with political dimensions, such as violence against women. In practice, a “political, religious or ideological cause” is taken to mean an extremist ideology of one sort or another and so violence against women is not counted as terrorism because it is not usually the result of consciously adopting a fringe ideology but the violent expression of socially acceptable norms.

This points to the ideological role of the very language of counter-terrorism in selecting certain forms of violence for public attention. Hidden from view by counter-terrorism policy-making are the more everyday forms of political violence that affect people’s lives in profound ways – such as domestic violence, racial harassment, military and police violence, and extreme poverty. Instead, the exceptional acts of spectacular violence that we call terrorism are foregrounded. Since one of the aims of these acts is to grab our attention, there is an irony in the way counter-terrorism enables that by aligning its concept of political violence to these kinds of acts.

For these reasons, we prefer the term “political violence” and understand the concept of “political” to refer to any arena of power relationships. From this perspective, counter-terrorism policy should be rethought as part of a broader policy framework of violence reduction. In the final section of this report, we will expand on this argument. Our point here is that, in the absence of a consistent definition of terrorism, a large question mark hovers over any claim that UK counter-terrorism policy-making is effective.<sup>8</sup>

## **Causes of terrorism**

Policy-making to reduce “terrorism” requires an understanding of the mechanisms that cause it to occur in the first place. Central to building up our knowledge of those mechanisms is an examination of the statistical associations between “terrorism” and different social, cultural, psychological, religious and political indicators. There have been multiple hypotheses offered to explain what gives rise to “terrorism”, from accounts that focus on poverty or military occupation to religious ideology and psychological vulnerability. Deciding between these accounts or explaining how various factors might fit together is a matter of testing hypotheses with empirical data.<sup>9</sup>

Various datasets now exist that hold a record of “terrorist” incidents over extended periods. These datasets include the RAND terrorism database, the Worldwide Incidents Tracking System, the Terrorism in Western Europe Event Data and the International Terrorism Attributes of Terrorist Events project. The most widely used and wide-ranging dataset is the Global Terrorism Database, collated by Maryland University.<sup>10</sup> The problems of definition listed above apply equally to these datasets. None of them, for example, counts state violence as a form of terrorism. But if

approached with caution and a clear understanding of what is and is not counted, these datasets can nevertheless yield some important insights on political violence.

### **General correlates of political violence**

A good deal of the statistical work has focused on seeking to find associations between “terrorism” and levels of poverty but there does not appear to be a linear relationship linking “terrorism” to poverty.<sup>11</sup> Research has also failed to establish a straightforward relationship between “terrorism” and levels of education, levels of democracy or “regime type”.<sup>12</sup> Inequality has been found to be more closely related to terrorism. Incidents seem to increase with more unequal income distributions but this has received less attention in the field.<sup>13</sup>

Another focus has been on “state failure”. A 2008 study found “terrorism” closely associated with state failure, even when controlling for war, regime type, economic development and ethno-religious diversity.<sup>14</sup> Developing this research, a further study found that while decreased state capacity is not in itself associated with “terrorism”, it is closely associated with international or civil war and with “political instability or emergent anarchy”, which in turn is associated with state failure.<sup>15</sup> And this relationship between “terrorism” and war or political repression is consistently found in other studies. The most wide-ranging statistical study of terrorism, published in 2015 by the Institute for Economics and Peace, found no significant correlation between “terrorism” and religious prevalence or the proportion of Muslims in a country. The strongest correlations were with ongoing armed conflict and “political terror”, meaning state-sanctioned killings, torture, disappearances and political imprisonment. Less than one per cent of terrorist incidents between 1989 and 2014 were found to have occurred in countries without either an ongoing conflict or some form of “political terror”.<sup>16</sup>

### **Correlates of political violence in richer countries**

Among richer countries, the Institute for Economics and Peace study found much less of a clear relationship between “terrorism” and a state’s involvement in armed conflict or its involvement in domestic “political terror”. However, there was a close relationship between “terrorism” and a range of notable factors, including hostility towards immigrants, higher levels of religious hatred and violence, “group grievances”, high proportions of young people out of work or not in education, high levels of militarisation, low confidence in institutions and a lower income share held by the bottom 20 per cent.<sup>17</sup>

Evidence from other studies, meanwhile, suggests a more direct relationship between “terrorism” in poorer countries and the foreign policies of some richer countries. The military, economic and cultural influence of the US has been found to be a significant factor in “jihadist terrorism” in particular – which currently makes up the vast majority of incidents globally.<sup>18</sup> It appears to be associated not only with discrimination against Muslim minorities and threats to Islamic identity and culture but also political grievances relating to corrupt secular governments and foreign military or cultural influence.<sup>19</sup> Terrorist attacks on US citizens are more likely to emanate from countries receiving US arms and military aid or countries in which US military personnel have been stationed.<sup>20</sup>

## Underlying causes

In general, it is clear that forms of political violence conventionally defined as “terrorism” are closely related to other forms of violence, particularly violent state repression and international or civil war. An evidence-based policy would therefore be geared towards reducing armed conflict and human rights abuses globally. International efforts to reduce religious oppression, corruption and political conflict between ethnic or religious groups within states would also likely reduce rates of “terrorism”.

Thinking specifically of affluent countries like the UK, the available data could be interpreted to suggest a distinct policy approach, focusing on alleviating poverty, social exclusion and racism, including Islamophobia, although this different set of factors might just be an artifice of the country-based methods employed in empirical studies. In addition, “terrorism” in richer countries appears to be related to conflicts elsewhere in which those more affluent countries are implicated or perceived to be implicated.<sup>21</sup> In this sense, “terrorism” in these countries can be understood not only as a symptom of various types of social exclusion but also as a “spill-over” from international conflicts in which they are involved. The role of foreign policy is confirmed by a recent review of eighty-eight studies examining the factors leading individuals to become terrorists. It states that the:

factor that appears most often in the literature is the relative deprivation of a social group, which has been also framed in terms of injustice, inequality, marginalization, grievance, social exclusion, frustration, victimization, and stigmatization. In the case of jihadist radicalization, numerous articles mention as a push factor the increasing frustration and sense of injustice derived from the aggressive foreign policies of Western states in Muslim majority countries, such as the Global War on Terror, the war in Afghanistan, Western attacks against the *ummah*, *Western colonization of Muslim-majority countries*, and more generally the perception of *Western dominance in world politics*.<sup>22</sup>

In the UK, this is consistent with the statements made by perpetrators of acts of political violence, which tend to cite the military actions of the War on Terror.

The UK government’s publicly stated view of what causes “terrorism” is remarkably simplistic: that “terrorism” is caused by the presence of extremist ideology.<sup>23</sup> Extremist ideology is defined as “vocal or active opposition to fundamental British values, including democracy, the rule of law, individual liberty and mutual respect and tolerance of different faiths and beliefs.”<sup>24</sup> Lack of allegiance to these British values creates, according to the official narrative, a cultural environment in which extremism, and therefore “terrorism”, is more likely.<sup>25</sup> This argument – linking “terrorism” to questions of values and identity – received its definitive statement with Prime Minister David Cameron’s “muscular liberalism” speech to the Munich Security Conference in 2011. There, he stated that behind Muslim “terrorism” lay “a question of identity”; that “the passive tolerance of recent years” had to be abandoned in favour of a much more assertive defence of British values against “Islamist extremism”; that British Muslims had to privilege their Britishness over their global allegiance to other Muslims.<sup>26</sup> Essentially the same argument was made on multiple occasions by ministers of the Tony Blair and Gordon Brown governments.<sup>27</sup> While this view has been avidly promoted by conservative think-tanks in the UK, such as Policy Exchange and the Henry Jackson Society, there is no empirical evidence to support the claim that “terrorism” is the

result of cultural separation from “British values”. Having a belief in “extremist” Islam, however defined, does not correlate at all with involvement in terrorism.<sup>28</sup>

### **Patterns of political violence**

The Global Terrorism Database records that incidents of “terrorism” rose from 1970 to 1991 and then declined steadily until 1998, when there was a brief rise before falling again by 2002; then, from 2004 onwards, the number of incidents rose sharply. Recent years have seen unprecedented levels of incidents and fatalities. The overwhelming majority of “terrorist” incidents so far this century have occurred in the Middle East and North Africa, South Asia and sub-Saharan Africa. In 2016, these regions together accounted for 84 per cent of all attacks and 94 per cent of all the resulting deaths.<sup>29</sup> Fatalities from “terrorism” in Western Europe have also increased in recent years, due to an unusually high number of high casualty “jihadist” attacks. But the number of incidents are tiny by comparison with the formerly mentioned regions and are still lower than the levels recorded in the latter decades of the twentieth century.

Within the UK, the number of lives lost to “terrorism”, as defined by the Global Terrorism Database, has shown two “jihadist” upsurges over the last twenty years: from 2005 to 2007 and from 2013 onwards (see Figure 1). The last five years have also seen a growth in fatal right-wing violence recorded by the database. This pattern is consistent with data on the number of people convicted of terrorism-related crimes in England and Wales (see Figure 2), although some caution is warranted because terrorist convictions are not an adequate proxy for “terrorist” acts. Between 2003 and 2006, the number of convictions more than doubled before halving again by 2009 and, from 2013, the rate of convictions increased again significantly.

However, these trends should be contextualised with data from Europol, the EU’s serious and organized crime prevention agency, which shows that the overwhelming majority of “failed, foiled or successful” attacks in the EU between 2006 and 2017 were not “jihadist” but other forms of “terrorism”, principally separatist (see Figure 3).<sup>30</sup> In the UK, the pattern is similar: from 2006 to 2009, there were 371 attacks related to the conflict in Northern Ireland and two “jihadist” attacks, which amount to just half a per cent of the total.<sup>31</sup> Thus, measured in terms of the number of incidents, the highest threat of violence stems from Republican and Loyalist armed groups.<sup>32</sup> However, each of these incidents is typically less lethal than successful “jihadist” attacks.

Overall, the data indicates that there is a threat of “jihadist” attacks in the UK, which rose and fell in the three years after 2003 and has increased again since 2013. But the threat of “jihadist” violence is not exceptional by historical standards. Measured in terms of incidents rather than fatalities, “jihadist terrorism” is a fraction of the total.

### **Assessing past policy**

The failure of UK counter-terrorism policy is to a large extent the result of the military actions carried out as part of the War on Terror. These were US-led military operations but Britain shares responsibility for the consequences because of its significant military contribution and role in legitimising them. According to the Watson Institute at Brown University, around half a million people were killed in Iraq, Afghanistan and Pakistan as a direct result of the military actions carried out in those three countries in the War on Terror from October 2001 to the end of 2018.

Around half of the deaths are thought to be of civilians. Like all estimates of civilian loss of life in underdeveloped countries, the counted deaths are likely to be significantly less than the actual total and do not include those who have died as a result of the destruction of the infrastructure that people depend on for food, water, electricity and health facilities. Deaths resulting from war-induced malnutrition and environmental damage are likely to far outnumber deaths from combat. Taking these factors into account, it is reasonable to conclude that the UK government shares responsibility for the deaths of over a million men, women and children as a result of the War on Terror. In addition, around eight million people have been internally displaced or become refugees.<sup>33</sup>

This human cost of the War on Terror is literally unthinkable in British public culture. While there has been extensive reflection on the political process that led to the UK's involvement in the invasion of Iraq in 2003, there is yet to emerge a set of images or words enabling us to envision the full consequences of that invasion for the people of Iraq. And there has been a near-complete failure to consider what accountability for Britain's actions might look like.

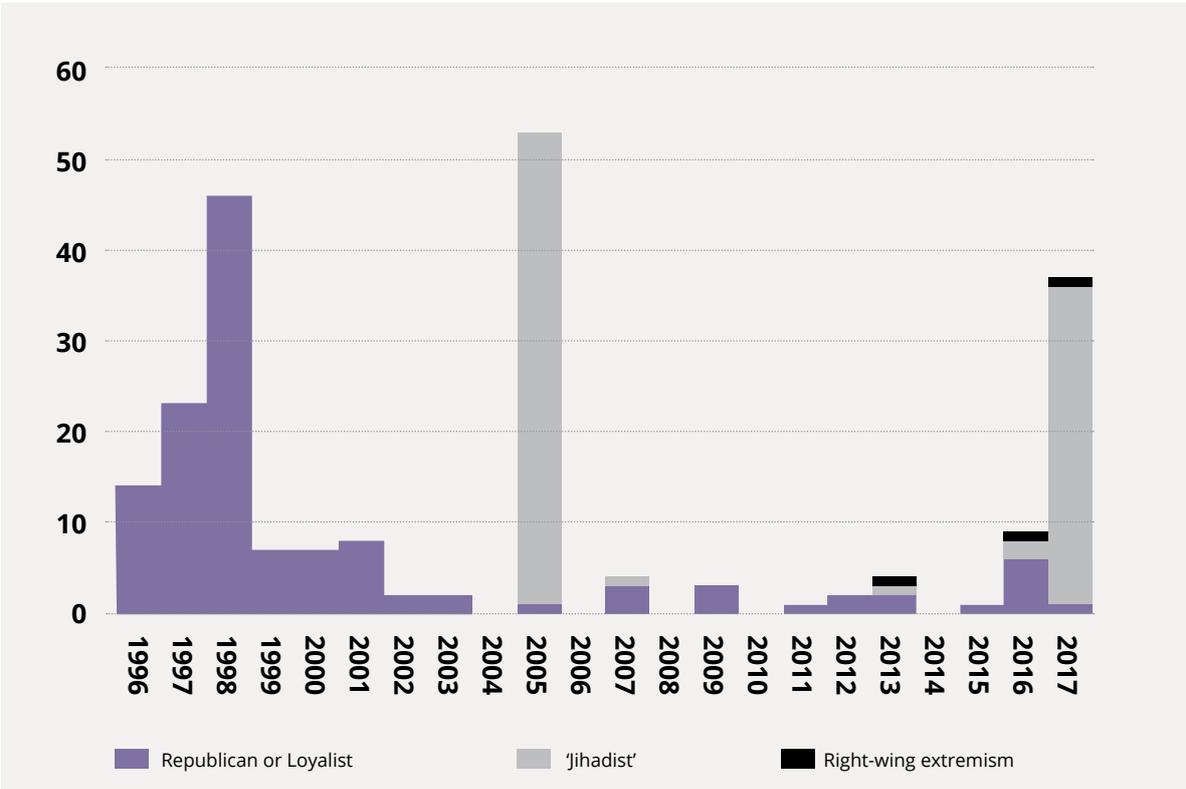
From the point of view of counter-terrorism policy-making, these military actions were clearly failures: the number of civilian lives lost in ostensibly fighting "terrorism" were many times greater than those that have ever been lost or could have been lost due to "terrorism" itself. Moreover, the wars themselves spawned new militant organisations in Pakistan and Afghanistan, and fuelled the rise of al Qaeda in Iraq, which later developed into ISIS.<sup>34</sup> Even Tony Blair now concedes that the Iraq war fuelled terrorism.<sup>35</sup>

Within the UK itself, there were no attempted "jihadist" plots before the decision to participate in the invasion of Iraq in 2003 but several attempted and fatal attacks of this kind in the following years. There is evidence that, among networks of radicals in the UK, the changed political context from 2003 shifted some activists from opposing violence within Britain to supporting it. For example, in January 2005, Omar Bakri Muhammad cited the intensifying War on Terror and the pressures it was putting Muslims under in Britain as reasons for saying the "covenant of security" he had followed since the 1990s, which meant a rejection of violence within the UK, no longer held.<sup>36</sup> For the first time he encouraged his followers to join al Qaeda, with the implication that acts of violence within the UK were now acceptable.<sup>37</sup> The first upsurge in "jihadist" violence from 2003 to 2006 can be explained in these terms and is consistent with the statistical research linking "terrorism" to foreign policy.

The second upsurge in violence from around 2013 is linked to the role of ISIS in inciting attacks within Europe. ISIS's success was itself a product of flawed counter-terrorism policies. First, ISIS's ability to capture territory in Syria and Iraq was a direct and predictable result of the failures of the US and UK's military policy in Iraq. Second, ISIS's strategy of incitement was probably made more compelling within the UK by the steady stream of new counter-terrorism powers and policies, primarily focused on Muslim populations, introduced through the 2000s. If, as the statistical research suggests, a significant factor causing "terrorism" in affluent countries is state repression and social exclusion, then it is likely the creation of a repressive political atmosphere within the UK for Muslims contributed to the worsening pattern of violence, for example by enabling ISIS to more plausibly claim that the West was at war with Islam and that Muslims could not live at peace in the West.

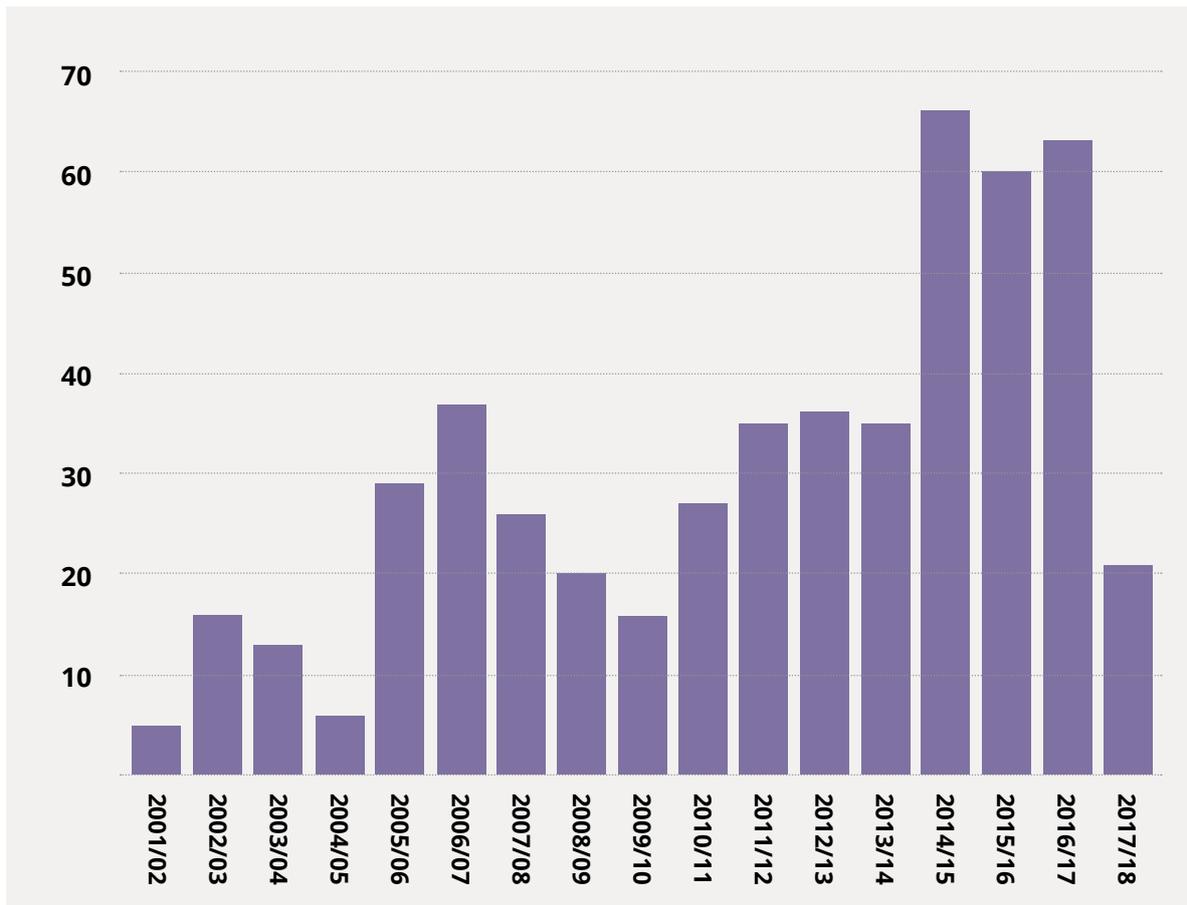
It also appears that, since 2013, the military actions of the War on Terror and, especially, the Islamophobic justifications offered for them, have provided an enabling environment for racially motivated political violence from the far Right – including fatal incidents within the UK. The “counter-jihad” movements of the far Right, in particular, have appropriated the discourse of the War on Terror and made it the basis for new forms of political violence. Because much of their ideology aligns with the War on Terror’s own rhetoric, they have not been visible to counter-terrorism policy-makers as substantial security threats. In general, the threat of right-wing political violence has been viewed within counter-terrorism policy-making as a matter of a small number of violent individuals – “lone wolves” who are not considered part of any broader ideological context. This is in stark contrast to “jihadist” violence, which is regarded as an expression of a much wider ideological issue among a generation of young Muslims.<sup>38</sup>

Setting aside the War on Terror’s military actions, two other observations can be made about the relationship between the patterns of political violence over the last two decades and the UK’s counter-terrorism policies. First, the number of fatalities resulting from Republican or Loyalist political violence declined sharply after the Good Friday Agreement of 1998. This is an important example of successful counter-terrorism policy-making: while incidents continue to occur, they have not resulted in anything like the level of fatalities during the period before 1998. The culmination of a negotiated peace process including Republican and Loyalist armed groups, the Agreement’s success rests on its principles of human rights, community consent and peace.



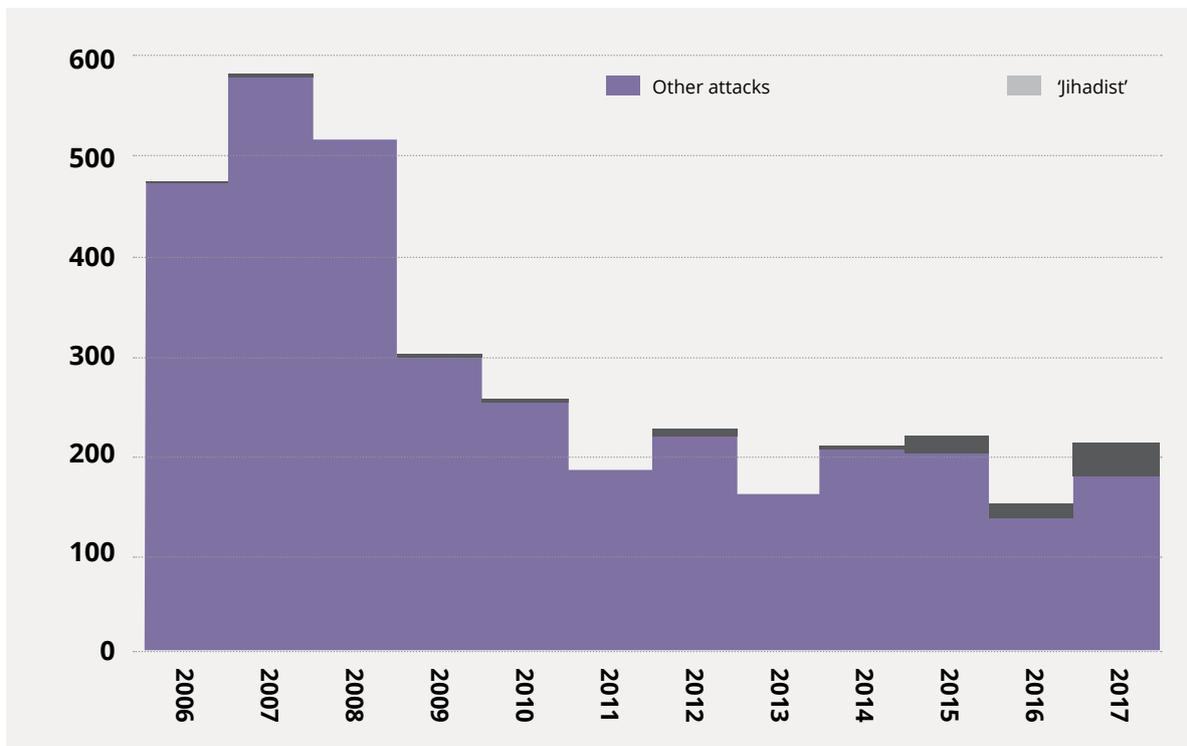
**Figure 1: UK fatalities due to terrorism, 1996–2017**

Source: Global Terrorism Database



**Figure 2: Convictions for terrorism-related offences in England and Wales, by year of arrest, 2001–2017**

Source: Home Office



**Figure 3: Failed, foiled and successful attacks in the EU, 2006–2017**

Source: EU Terrorism Situation & Trend Report

Second, a number of serious “jihadist” plots in the UK have been successfully intercepted by the intelligence agencies and police forces, thereby preventing what would have been significant fatalities. The last part of the following section considers whether current counter-terrorism legislation is well suited to enable the detection of these plots by the police and MI5.

## B – Failing to uphold human rights

Counter-terrorism policy in the UK has developed a wide range of measures that bypass the legal principles of the regular criminal justice system, evade due process and do not require the same evidentiary standards that are expected in other cases. Instead, the adjudication of counter-terrorism cases has drawn heavily on a shadow justice system operating through the Terrorism Acts, the immigration system, the policing of citizenship, and deportation and extradition measures through international agreements with other states. Through the War on Terror, the UK government has thus developed a whole arsenal of measures that have enhanced the powers of the home secretary and the intelligence agencies, restricted rights to fair and open trials, normalised pre-emptive punishment and facilitated torture. The major targets of these practices have been Muslim, Kurdish and Tamil communities but the existence of this shadow system within the structures of government means the potential is always there for these methods to cross over to other categories: for example, peaceful protestors opposing deportation flights at Stansted airport were prosecuted under counter-terrorism legislation; counter-terrorism partnerships between the police and universities were used to monitor student protests against austerity; and prosecutors are applying counter-terrorism methods to criminalise young people who publish “drill” music videos online.<sup>39</sup>

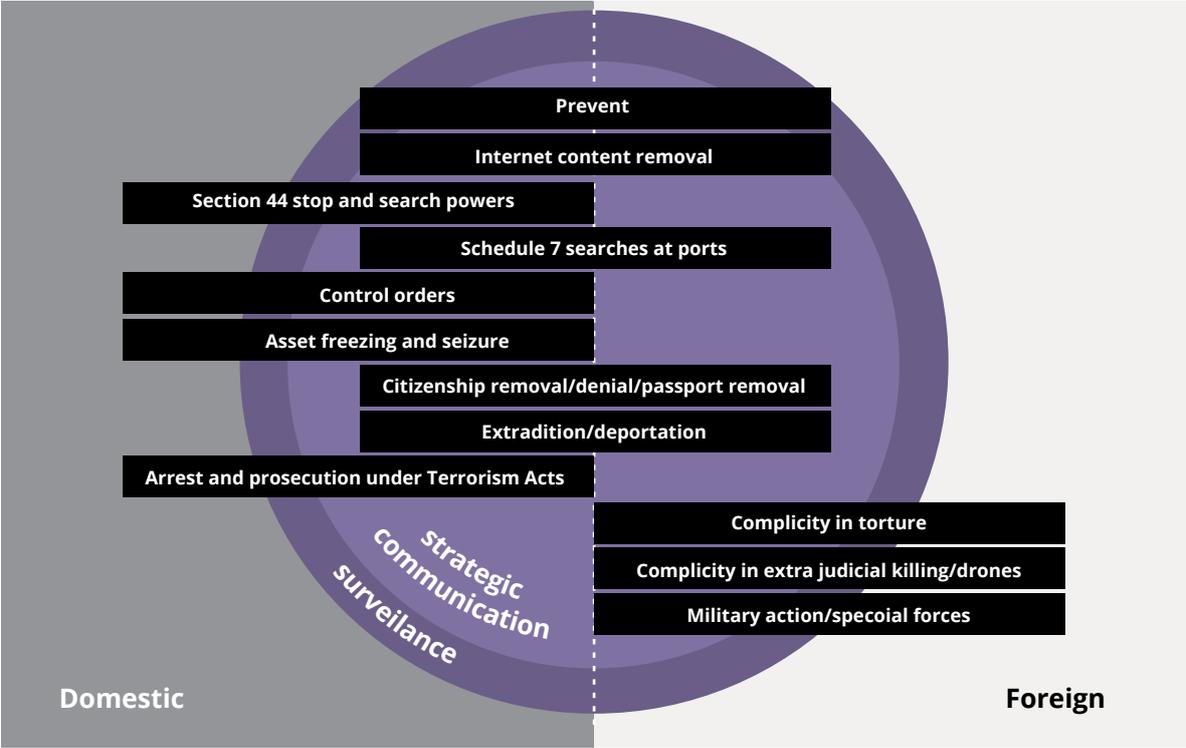


Figure 4: UK counter-terrorism methods

In this section, we examine some of the processes by which counter-terrorism policies undermine human rights. For reasons of focus, we have omitted discussion of a number of important policy areas, such as the enhanced powers the Terrorism Acts provide to stop and search people in a designated locality or travelling through ports, irrespective of whether there is a reasonable basis for the stop,<sup>40</sup> and the broad range of counter-terrorism initiatives applied in prisons and probation.

## Collusion in torture

UK collusion in torture – both as part of the CIA's Rendition, Detention and Interrogation (RDI) programme, and at military detention facilities established in Afghanistan and Iraq – is now a matter of public and parliamentary record. Despite repeated denials by successive UK governments, as well as attempts to suggest UK involvement was minimal, it is now clear that UK complicity in torture was far more extensive than previously thought. The UK Parliament's Intelligence and Security Committee (ISC) published two reports following its investigation into Detainee Mistreatment and Rendition in June 2018.<sup>41</sup> The reports of the investigation, chaired by MP and QC Dominic Grieve, have revealed that the UK's role in prisoner abuse was even more extensive than academic research had found to date.<sup>42</sup> It is lamentable that the current government refused the ISC access to key intelligence officers with knowledge of British involvement.<sup>43</sup> Parliamentarians, human rights advocates, academics and journalists<sup>44</sup>

### “The officials are lying”

“Unless we all start to believe in conspiracy theories and that the officials are lying, that I am lying, that behind this there is some kind of secret state which is in league with some dark forces in the United States, ... there simply is no truth in the claims that the United Kingdom has been involved in rendition full stop, because we have not been.”

Jack Straw, Foreign Secretary, 13 December 2005<sup>45</sup>

Despite the constraints placed on the investigation by government, the ISC reports are hard-hitting. The first, documenting British involvement in torture in the early War on Terror, makes previous UK governments' denials of involvement completely untenable. Although then Foreign Secretary Jack Straw famously asserted in oral evidence to the Foreign Affairs Committee that only conspiracy theorists should believe the UK played any role in rendition or torture,<sup>46</sup> we now know that British intelligence knew about, suggested, planned, agreed to or paid for others to conduct rendition operations in more than seventy cases.<sup>47</sup>

Some of the details are excruciating – one MI6 officer was present while a prisoner was transferred in a coffin-sized box.<sup>48</sup> In hundreds of cases, UK officials were aware of detainees being severely mistreated by their allies, including on at least thirteen occasions directly witnessing it<sup>49</sup> and twenty-five incidents in which detainees reported abuse to UK officials.<sup>50</sup> While this was sometimes reported, the ISC found no evidence that UK personnel ever intervened directly to prevent the abuse. Indeed, the ISC concluded that there seemed to be “a concern not to upset the US”.<sup>51</sup> Despite being aware of abuse, UK personnel continued to supply questions to be asked of detainees under

torture and received intelligence from those who had been tortured, even though they were aware of the mistreatment. The ISC stated that, from their analysis of primary material, they found 232 cases “where it appears that UK personnel continued to supply questions or intelligence to liaison services after they knew or suspected (or, in our view, should have suspected) that a detainee had been or was being mistreated”.<sup>52</sup>

The second of the two reports published by the ISC in June 2018 is no less important than the first. It catalogues a series of failures in government policy, as well as in training and guidance provided to UK intelligence agencies. The implications are serious: there is every possibility British collusion in torture is being, or could be, repeated. Even without a judge-led inquiry, the ISC reports provide adequate grounds for urgent review and reform of the training given to UK intelligence and military personnel.

In January 2017, Ruth Blakeley and Sam Raphael, directors of The Rendition Project, gave evidence to the ISC investigation. In their testimony, they encouraged the Committee to scrutinise the “Consolidated Guidance”<sup>53</sup> issued to all security agencies and the military from 2010 onwards. The Guidance is intended to assist UK personnel in their dealings with overseas partners and to protect them from personal liability if abuse of prisoners occurs. They have long argued that the Guidance is little more than a rhetorical, legal and policy scaffold which enables the UK government to demonstrate a minimum procedural adherence to human rights commitments.<sup>54</sup> The ISC draws much the same conclusion, arguing that urgent review is needed.

We outline here the ISC’s key findings in terms of the weaknesses in the Consolidated Guidance and government policy. Many of these weaknesses stem from the core imperative underpinning the Consolidated Guidance. Rather than being underpinned by an ethical commitment to prevent the suffering of fellow human beings, the Consolidated Guidance is intended simply to shield UK intelligence and security personnel from prosecution. Indeed, every aspect of the Guidance seems to be geared towards allowing UK personnel and government ministers to operate as close to the wire as possible. Yet the conclusions of the ISC demonstrate gaps in the Guidance so wide that it fails both to offer the protections the security agencies are seeking and to protect prisoners.

### **No clear policy on rendition**

The ISC found that the UK government has no clear policy on rendition.<sup>55</sup> In 1999, the Court of Appeal ruled in *R v. Mullen* that the facilitation by MI6 of a transfer of Nicholas Mullen from Zimbabwe to the UK to stand trial on charges related to Irish republican violence represented an extremely serious failure to adhere to the rule of law and a clear abuse of process. As the ISC shows, this case provides the basis for the UK’s legal position on rendition and the UK has not itself sought to conduct such renditions to the UK since then.<sup>56</sup> However, there is insufficient clarity on what the UK government’s position is on enabling or supporting others to conduct a rendition and what the circumstances would be in which it would consider this acceptable. This led the ISC to conclude that the government “has failed to introduce any policy or process that will ensure that allies will not use UK territory for rendition purposes without prior permission”.<sup>57</sup> Furthermore, although the Foreign and Commonwealth Office supposedly has government oversight, it has failed to regularly review policy and was unable to provide a comprehensive picture of its areas

of responsibility.<sup>58</sup> The government has resisted including rendition in the Guidance as a form of “cruel, inhuman or degrading treatment” – the phrase used in the United Nations Convention Against Torture; it argues that the absence of a clear definition is grounds for its exclusion.<sup>59</sup> With the ISC, we share the view that this is unacceptable, not least because there is excellent academic work which provides clarity.<sup>60</sup>

### **“Dangerous ambiguities”**

There are “dangerous ambiguities” in the Guidance and the ISC concluded that, in fact, it contains very little guidance and that to present it as such is misleading.<sup>61</sup> This is most clearly illustrated by the considerable confusion among ministers about how concerns relating to prisoner abuse should be treated. Ministers were unclear whether they could lawfully allow operations to go ahead if there was a risk that prisoners would be tortured.<sup>62</sup> Disturbingly, when giving evidence, senior ministers including Theresa May, Amber Rudd, Boris Johnson and Philip Hammond all made references to ticking bomb scenarios as potentially justifying operations in which torture might occur.<sup>63</sup> This is despite the scientific record showing that intelligence obtained through torture is notoriously unreliable. The Guidance must be updated to specifically refer to the prohibition on torture enshrined in domestic and international law, and it should be crystal clear that ministers cannot lawfully authorise action which they know or believe would result in torture. Ambiguity and confusion also arise because the Guidance has to be supplemented by agency-level material but agencies differ among themselves in their interpretations of the Guidance.<sup>64</sup> The ISC insists that the supplemental guidance ought to be made public.<sup>65</sup>

### **Guidance does not cover collaboration with a range of external partners**

Operations conducted in collaboration with a range of external partners, including non-state actors, failed states and joint unit operations with third party states fall outside the scope of the Guidance. This means that prisoner abuse could be outsourced to external partners, as was done extensively from 2001 to 2010 to hide the UK’s role in abuse. The ISC states:

The Agencies (primarily SIS [MI6]) maintain close relationships with overseas partners with whom they engage in joint counter-terrorism operations: [material redacted]. In the counter-terrorism context, these may be referred to as ‘partner counter-terrorism units overseas’ but can be more commonly referred to as ‘joint units’. The Consolidated Guidance does not explicitly refer to such joint units; however, it is arguable that if the Agencies are [material redacted], then the obligations under which the Agency itself operates must then extend to that body. If those obligations are not carried over, then in effect the Agency could outsource action it is not allowed to take itself. Where HMG has financial and/or operational authority, it clearly must also carry ethical and moral responsibility.<sup>66</sup>

Nevertheless, in its evidence to the ISC, the Secret Intelligence Service (that is, MI6) insisted that it “cannot be responsible for operations carried out by a foreign service unit independently of SIS direction”. The ISC discussed the case of Michael Adebolajo with MI6. He had been arrested in Kenya in connection with the murder of Lee Rigby and was interviewed by the Kenyan Anti-Terrorism Police Unit (ATPU) and a Kenyan counter-terrorism unit which had a close relationship with the UK government (the ISC refers to it as ARCTIC rather than by its actual title, which was

presumably redacted at the request of MI6). Adebolajo alleged he was mistreated. MI6 insisted that the Consolidated Guidance did not apply in this case, since it had not been involved in Adebolajo's arrest, did not interview him, was not involved in his passage and did not receive intelligence relating to him. ISC took a contrary view – that because MI6 part-funded and part-tasked ARCTIC, its responsibilities were engaged when ARCTIC interviewed him.<sup>67</sup> The case provides a very clear example of the limitations of the Guidance, and the potential for UK agencies to circumvent it, absolving themselves of responsibility in cases where their overseas partners torture and abuse prisoners. Such overseas partners are not limited to states, as the ISC shows, but also include failed states and non-state actors.<sup>68</sup>

### **Over-reliance on assurances**

There is considerable reliance on seeking assurances from overseas partners that prisoners will not be abused. As the ISC states: “The Agencies cannot assume that an overseas partner – even a trusted one – will abide by international law, and they deal with this by seeking specific assurances.”<sup>69</sup> Several concerns arise. First, the assurances are not a prerequisite, according to the Guidance, and operations can still go ahead even if assurances cannot be obtained.<sup>70</sup> Second, assurances can be provided orally rather than in writing with very obvious scope for confusion and malfeasance.<sup>71</sup> Relatedly, the UK agencies have no real mechanism for following up on those assurances to ensure they are enforced. The ISC stated: “Whether assurances were adhered to is not routinely tracked and we were told [by MI6] that it was not seen as the best use of resources to do so.”<sup>72</sup> Lastly, record keeping on the securing of assurances was poor.<sup>73</sup>

### **Inadequate oversight of the use of UK territory and airspace**

The government has failed to develop adequate monitoring systems to prevent the use of UK airspace or territory for rendition operations.<sup>74</sup> It relies on annual statements of assurance from the US government that it has not used UK airspace or territory for the movement of prisoners in the preceding year. While the Foreign Office insists it can rely on these assurances, the ISC points out that the events of 2001 to 2010 “clearly demonstrate that the US is prepared to take action which will upset its closest allies should circumstances dictate”.<sup>75</sup> The UK has failed to tighten up requirements for passenger information for transit flights, overflights and for diplomatic and state flights.<sup>76</sup> The Ministry of Defence has insisted that, because they consider the Diplomatic Flight Clearance process to be robust, and because they have confidence in their relationships with their allies, “no rendition flights are facilitated without our knowledge”.<sup>77</sup> This suggests a failure to recognise that many CIA renditions were conducted using privately leased aircraft and would not fall under the Diplomatic Flight Clearance process.<sup>78</sup> Furthermore, because they are private aircraft, providing passenger information is purely voluntary.<sup>79</sup> There is no training for Border Force Officers to identify rendition flights.<sup>80</sup> The ISC “finds it astonishing that, given the intense focus on this issue ten years ago, the Government has still failed to take action”.<sup>81</sup> These risks are further exacerbated by President Trump's statements on increasing the number of prisoner transfers to Guantánamo and his acceptance of torture.

It is clear that there are considerable risks that UK intelligence and security personnel could again collude in torture and human rights violations. The ISC calls on all the agencies to “follow the Consolidated Guidance not just in letter but in spirit as well”. We are not convinced that these

issues will be overcome by minor adjustments to the Guidance (as proposed by the Cabinet Office and seen by the ISC in August 2017 in draft form)<sup>82</sup> or a greater commitment to the spirit of its meaning. This is because, rather than being underpinned by an ethical commitment to prevent the suffering of fellow human beings, the Consolidated Guidance is intended simply to shield UK intelligence and security personnel from prosecution.

## **Extradition**

A number of changes have been made to extradition arrangements between the UK and other European countries and the United States with the aim, in part, of improving the efficiency of global collaborations in prosecuting terrorism cases. Key revisions brought about by changes to extradition law in 2003 included the permission for requesting states, such as the United States, to submit requests without the need to offer prima facie evidence in support of them, the allowance of extradition for charges that would not be considered crimes in the UK and the removal of the forum bar which stipulates that a UK court can refuse to extradite someone if the offence, or part of it, takes place in the UK. The 2003 US-UK extradition treaty, passed with the 2003 Extradition Act, has been used in the War on Terror to extradite Muslims facing terrorism charges to the United States. Though the forum bar was re-established in 2013 and has been used to prevent extraditions in a number of non-terrorism cases, issues remain with evidentiary standards as well as with the political nature of extradition in terrorism cases.

While counter-terrorism has provided the political justification for the changes to the law and terrorism cases have been drawn upon as the principal impetus in calls for change, the reality is they have constituted very few of the total extradition cases from the UK.<sup>83</sup> Between 2001 and 2013 there were only nine extradition requests from the US to the UK for terrorism-related offences. Only 6 per cent of individuals extradited to the US between 2001 and 2013 were indicted for terrorism-related offences. Significant changes have thus been made to legal and policy procedures in the name of very few cases and, even in terrorism cases, as indicated below, the ways in which extradition has been used is problematic.

While the original purpose of extradition arrangements between states was to enable the transfer of individuals to the sovereign state where they were accused of committing a crime, in practice the use of extradition, particularly in terrorism cases, has been much more politically motivated. In the context of its use in the War on Terror, questions have been raised in numerous cases about why individuals facing terrorism charges in the UK have been transferred to the US when links to the United States in each of these cases are often tangential.<sup>84</sup> In the case of Fahad Hashmi, a US citizen studying in Britain and extradited to the US on material support charges in 2007, the charge concerned events that had taken place in Britain. Similarly, the US made a jurisdictional claim to the prosecution of Abid Naseer; the allegation that he plotted a terrorist attack in Manchester, England, was extrapolated into a planned international attack, linked to alleged plots in Norway and New York. In the case of Abu Hamza, while his alleged involvement in a "terrorist training camp" in Oregon linked the case to the US, the sovereignty over other charges – relating to taking hostages in Yemen and fighting in Afghanistan between 2000 and 2001 – was contested. For Babar Ahmad and Talha Ahsan, the only connection to the US was that one of the servers used to host their website had ostensibly been, for a short period, located in Connecticut. As the details of Babar Ahmad's case emerged, it became clear that, after his arrest,

the Metropolitan Police had given the bulk of evidence recovered from his London home to the US authorities, in anticipation of a request for extradition, rather than to the Crown Prosecution Service for possible prosecution in the UK. As human rights lawyers have indicated, there has been plenty of scope within the British judicial system for these men's cases to be heard by UK courts but there appears to have been a lack of will to do so.

The judicial systems and conditions of incarceration in the countries to which people are deported or extradited also often prohibit any possibility of due process. Extradition to the United States has involved years of detention in the UK followed by lengthy periods in pre-trial solitary confinement in US prisons, with restrictions on communication between defendants and their lawyers – all of which inhibits the ability to mount a defence.<sup>85</sup> Once transferred to the US, where lengthy periods of solitary confinement ensue, defendants often enter into a plea bargaining system as a result of the pressures of incarceration. Ironically, prison conditions are often less restrictive after conviction, which suggests solitary confinement and isolation operates to secure a conviction rather than to address a security risk. Talha Ahsan, extradited to the United States in 2012, described the plea bargaining process in his case as follows: “First they picked a number – fifteen years, then we negotiated the charges to suit the number, then we argued facts to suit the charges.”

### **Forty years in a US supermax prison “despite the complete absence of any evidence”**

Abid Naseer was one of twelve people arrested in 2009 by the North-West Counter-Terrorism Unit on suspicion of planning a terrorist attack at the Trafford Centre, a large shopping mall on the outskirts of the city of Manchester.

Most of the men arrested were Pakistani students based at various universities across the north west of England. Charges against all were dropped within thirteen days of their arrest after no significant evidence against them was found. But on the same day that the students were “released” without charge, they were handed over to the Border Agency for deportation on the grounds that their presence in the UK was not conducive to the public good or that they were in breach of their student visa status. The failure to bring a prosecution against these men was superseded by deportation powers. The conditions of incarceration meant that most of the students returned back to Pakistan “voluntarily” and the home secretary signed exclusion orders banning them from returning to the UK.

Two of the students, Abid Naseer and Faraz Khan, did pursue an appeal against deportation, arguing that, if they returned to Pakistan, their safety could not be guaranteed. Their appeals were heard by the Special Immigration Appeal Commission (SIAC), which agreed they would be at risk of torture if they returned to Pakistan but also endorsed the assessment from the Security Service that these men presented a threat to British national security.

The court ruled in favour of the government, asserting: “We have reached that conclusion despite the complete absence of any evidence of the handling or preparation of explosives by Naseer and his alleged associates. It is a fact that, despite extensive searches of buildings associated with them, nothing has been found, apart from an irrelevant trace of RDX in one of the properties.”

After their release following their successful appeals, the authorities continued surveillance of Abid Naseer and connected him with others they suspected of planning an attack on the New York subway. The US instigated an extradition request for Abid Naseer to be tried for terrorism-related offences in New York. Though the request was largely based on the same evidence the British state deemed insufficient to charge him, the request was granted and he was extradited in January 2013.

Abid Naseer maintained a “not guilty” plea in the US and his case was brought to trial in 2015 after two years in pre-trial solitary confinement. This time the trial took place in open court, where he chose to represent himself. The

trial experimented with the use of “light disguise”, as the judge permitted British MI5 agents to appear in masks and wigs for their own safety. The evidence that formed part of the decision to convict Abid included statements by MI5 agents that he had appeared “tense” while talking on the phone; it also included material collected from the Osama bin Laden compound, in which Abid was not named, and which did not indicate any direct links to the accusations against him. The judge overruled Abid’s assertion that the “inflammatory” documents were not relevant because he was not named in them, replying: “The more I read the documents the less significant I find them, but it seems to me on the face of it, it becomes relevant because of who it was said by and the allusions to the scope and activities of various cells.”

Additional evidence against Abid came from Najibullah Zazi, a man who entered into a cooperation agreement with the US government and acted as a key witness for the prosecution. Najibullah Zazi pleaded guilty in 2010 to plotting to bomb the New York City subway and agreed to testify against others in exchange for a reduced sentence. When cross-examined by Abid, he was asked if they knew each other. Zazi replied: “I don’t know. I don’t happen to remember your face.” Zazi admitted to the court he had not heard Abid Naseer’s name mentioned in any conversation while in New York or Pakistan.

Abid was found guilty and sentenced to forty years in a US supermax prison.<sup>86</sup>

## Deportations with assurances

Alongside extradition, the UK government uses diplomatic agreements with other states to enable the transfer of foreign nationals identified as security risks to states known for their use of torture. These “deportations with assurances” assume that the governments receiving these individuals will comply with their human rights obligations under international law. The British government has set up memoranda of understanding with Jordan (2005), Lebanon (2005), Ethiopia (2008) and Morocco (2011) that are considered as providing this assurance. An exchange of letters with Algeria in 2006 is taken to have an equivalent effect. Though such agreements are presented as a strategy for dealing with terrorism cases that meets human rights obligations, some of the rationalisations made by the European Court of Human Rights in support of these deportations have stretched the bounds of human rights safeguards. In the case of Abu Qatada, for example, the European Court noted that there was “no prohibition on seeking assurances when there is a systematic problem of torture and ill-treatment in the receiving State”.<sup>87</sup>

Concerns have also been raised about the validity of assurances. A Human Rights Watch report on diplomatic assurances noted that “the growing weight of evidence and international expert opinion indicates that diplomatic assurances cannot protect people at risk of torture from such treatment on return”.<sup>88</sup> There have been multiple cases where individuals have been deported based on assurances from receiving states and then subsequently subjected to torture.<sup>89</sup> Furthermore, there is a danger that the immigration system, through the use of deportation orders, is used as a way to punish suspects outside of an open and fair criminal justice system: the individuals being deported are typically either not charged or not brought to trial in the UK, perhaps because there is insufficient evidence to bring a charge or because the available evidence has been obtained by torture and so cannot be used in an open British criminal court.

These measures are expensive to enforce. The cost of implementing deportations with assurances in terrorism cases means that, until 2017, only eleven individuals had been deported in this way.<sup>90</sup>

It is estimated that the Home Office's legal bill in the Abu Qatada case was £1.7 million. David Anderson QC, the then independent reviewer of counter-terrorism, was informed in 2014 that the Home Office only had the resources to contemplate the use of deportation with assurances "in a maximum of two countries at any one time".<sup>91</sup> Alongside the legal costs and the difficulty of negotiating a memorandum of understanding, additional resources are required to monitor the deportee to ensure that assurance conditions are not breached. In the face of wide condemnation by non-governmental organisations and international lawyers, the government has had to fund the setting up of organisations to monitor the welfare of those deported with assurances.<sup>92</sup>

## **Citizenship deprivation**

Since 2002, Labour and Conservative governments have passed multiple pieces of legislation to enhance the home secretary's powers to deprive UK nationals of citizenship. The Nationality, Immigration and Asylum Act of 2002 expanded the grounds for removal of citizenship to include any person, including birthright citizens, who "has done anything seriously prejudicial to the vital interests of the United Kingdom or a British overseas territory".<sup>93</sup> In 2006, the terms for deprivation were expanded again: deprivation could be ordered simply if it was "deemed conducive to the public good".<sup>94</sup> Then, in 2014, an amendment to the Immigration Act was passed which granted additional powers to deprive a person of their citizenship "without regard to whether or not it will render them stateless".<sup>95</sup> The amendment effectively allowed for the home secretary to deprive naturalised citizens of citizenship on conducive grounds if it was *believed another citizenship could be acquired elsewhere*.

Citizenship deprivation has been presented as a key measure to enable the removal from the UK of individuals identified as a "terrorist threat" even if they hold British citizenship. In reality, this power has been used more frequently against individuals who are outside of the UK. The effect is to deny their right to return and any assistance or protection from the British government. In a number of cases, Muslims who have been deprived of their British citizenship have been subsequently killed by drone strikes, subject to rendition or extradited to the United States.

Citizenship deprivation is usually deployed on the basis of suspicion, drawing on information from intelligence agencies, rather than on conviction in a court. In most cases, the individuals served with deprivation orders have not been charged or prosecuted in a criminal court. Since the order is granted by the home secretary, it is not scrutinised by any independent judicial authority. Though an appeal against the order can be made within twenty-eight days of receiving it, most individuals are located outside of the UK when the deprivation order is issued, making it nearly impossible to appeal within the set parameters.

When appeals are made, they are presented to the Special Immigration Appeals Commission (SIAC), a court that is designed to enable the presentation of secret evidence in immigration cases where there are national security or terrorism-related concerns. SIAC decisions are made by three selected judges and no jury. The court hears evidence in a mix of open and closed sessions, and decisions can largely be set out in closed judgements. In the closed sessions, appellants and their lawyers are not allowed to see the evidence against them but instead they are assigned a security-cleared special advocate to represent them. The special advocates cannot communicate with

the persons they represent once they have seen the evidence against them. Prior to September 2001, a few deportation cases had been dealt with by SIAC but the number escalated significantly thereafter. Since 2007, appeals against citizenship refusal have been referred to SIAC adjudication in cases where national security concerns are cited as the reason for the refusal.<sup>96</sup>

This particular aspect of counter-terrorism policy has depended on and facilitated a revised notion of citizenship that emphasises it as conditional rather than a guaranteed, right. It has worked to normalise a less secure and more precarious way of thinking about citizenship, such that its deprivation has also extended into regular criminal justice cases. More than this, punishment through citizenship in national security cases is being used largely on the basis of suspicion, pre-emptive intervention or as a way to coax individuals into acting as informants, all of which move us away from democratic justice systems that conform to human rights principles. The particular repercussions for Muslim, black, immigrant and other marginal communities have been significant since they are made to feel much less secure about their rights to citizenship.

### **Deprived of citizenship, then killed in drone strike**

Born in Lebanon, Bilal al-Berjawi moved to Britain as a young child and spent most of his life living in north-west London as a UK citizen. In 2009, he traveled to Somalia. The following year, the home secretary stripped him of his citizenship based on his involvement with the Somali militant group al-Shabaab. Berjawi apparently wanted to appeal his deprivation. Yet communication with his lawyers was restricted due to his fears of being targeted in a drone strike. His fears were well founded, as the US targeted him twice. The first time he was injured in a drone strike less than a year after his citizenship deprivation. The second time he was targeted by drone was in 2012, only hours after he had called his wife in a London hospital where she had just given birth to their son. This time the US drone strike killed him.

His family suspects that his death was enabled by the monitoring of his phone calls by the British security services who then provided information to the US on Berjawi's whereabouts. Berjawi's friend, Mohamed Sakr, who lost his British citizenship around the same time as Bilal did, was also killed in a drone attack just a few weeks later.<sup>97</sup>

## **Passport removals**

Royal prerogative powers to remove passports have some historical precedent: they were first discussed in parliament in 1955 and revisited on several occasions.<sup>98</sup> The provisions were enhanced significantly in 2013 and set out in a written ministerial statement issued by then home secretary Theresa May.<sup>99</sup> The revised policy established that there was "no entitlement to a passport and no statutory right to have access to a passport" and reconfirmed that the "decision to issue, withdraw or refuse a passport" was at the discretion of the home secretary.<sup>100</sup> The statement asserted that the use of this measure "must be necessary and proportionate" and that refusal on the grounds of "public interest" was to be used "only sparingly". But the "public interest" criteria for refusing or withdrawing a passport was itself redefined. The new criteria of assessment would account for a person's "past, present or proposed activities".<sup>101</sup>

Largely aimed at targeting British nationals suspected of engaging "in terrorism-related activity or other serious or organised criminal activity", the passport policy specifically referred to "individuals who seek to engage in fighting, extremist activity or terrorist training outside the United Kingdom"

and who might subsequently return to Britain. In practice, passport removals have been used against individuals resident in Britain who are identified as suspicious, as well as a number of British citizens abroad.<sup>102</sup>

## **Refusal of naturalised citizenship**

Since 2008, the number of people refused naturalised citizenship on the grounds of “bad character” has been gradually increasing except for a small dip in 2014. In 2015, 43 per cent of those refused British citizenship were denied on this basis; the following year, the proportion was 44 per cent. As a consequence, “bad character” is becoming the principal reason why citizenship is denied in Britain. One category used by the Home Office to designate “bad character” refers to suspicion of engagement in terrorism-related activity. When a person applies for naturalisation, they are asked to answer three questions regarding involvement in criminal, terrorist or extremist activity:

- Have you ever been involved in, supported or encouraged terrorist activities, in any country? Have you ever been a member of, or given support to an organisation which has been concerned in terrorism?
- Have you ever, by any means or medium, expressed views that justify or glorify terrorist violence or that may encourage others to terrorist acts or other serious criminal acts?
- Have you engaged in any other activities which might indicate, that you may not be considered a person of good character?

Analysis of interview data and legal judgements for cases where individuals have been refused citizenship on national security grounds shows that individuals tend to be designated as not of good character either because of political beliefs they might hold, because of individuals they are suspected of associating with (which might include family members) or because they have refused to cooperate with or work for intelligence agencies as informants within communities under surveillance (most often, Muslim communities).<sup>103</sup>

In terms of the first category relating to political beliefs, while there are a broad range of political groups that have been criminalised and designated as extremist, refusal on this basis is not necessarily restricted to membership of a particular organisation but can also include those who are accused of preaching “non-Western views” or who have made public statements that were regarded to be “of an extremist nature”.<sup>104</sup> This contradicts democratic principles of freedom of speech and political expression – which in other contexts are identified as being synonymous with “British values”.

The second, and more prominent, reason for citizenship refusals based on national security concerns relates to associations with others deemed to be suspicious. This affects those who know people who are considered to be of bad character, such that there is a pattern of guilt by association – knowing someone deemed to be of bad character means you can also be labelled in such terms. This reason seems to underpin most of the rationalisations for refusing citizenship on character grounds when the specific reason is related to national security or suspicion of terrorism-related activity. In one case, known by the initials of the appellant, AQH, the Home

Office clarified that the third of the questions listed above, relating to involvement in criminal, extremist or terrorist activity, “was not merely focused on whether the applicant had engaged in terrorist or extremist activity, but was wide enough to encompass association with terrorists or extremists” and so acts as a catch-all question.<sup>105</sup> The implication is to effectively expand the scope of who can be criminalised and so refused citizenship on character grounds. In another case, the appellant, ARM, was deemed of bad character because of his association with Abu Qatada. The link was partially made using a newspaper article that pointed to the connection. Despite the newspaper later withdrawing this statement and issuing a correction, the article was nevertheless used as evidence.<sup>106</sup>

In the same case, in 2016, following challenges to the secrecy around the decision-making process, the Home Office disclosed the guidance issued to caseworkers considering applications where an individual is thought to have associated with individuals or groups that are considered “extremist”.<sup>107</sup> According to a witness statement, there is “Closed Home Office guidance entitled Chapter 6 Terrorism” that has, since September 2009, guided caseworkers on how to assess “association by an appellant with extremists”.<sup>108</sup> The guidance instructs that in the case of a person who has associations with such individuals yet is unaware of their background or activities, they must “cease that association” once they find out about it.

In the case of one female applicant, her main association to “Islamic extremism” was through her friendship with the girlfriend of someone who had engaged in terrorism-related activity.<sup>109</sup> Other cases involving women reveal that guilt by association operates through family connections and marriage. In such cases, the guidance stating that applicants should “cease” association as soon as they became aware of the background of these individuals is nearly impossible to achieve because the associations are based on family connections.<sup>110</sup>

The Home Office guidance goes on to state that a person might be able to satisfy the good character requirement by presenting “strong evidence of choosing such associates with the aim of trying to moderate their views and/or influence over others”.<sup>111</sup> By the same logic, applications should be refused if the applicant associates with individuals with “extremist views” but does not show evidence of a willingness to engage in moderating their views. This has helped to support the third key reason for refusals in this category which relates to pressure to act as informants for the intelligence agencies. In a number of the SIAC cases, individuals refused citizenship spoke of several ways in which MI5 was implicated in their naturalisation refusals. AQH said in a witness statement that “he does not know why he did not satisfy the requirement of good character but believed that it was linked to his refusal of working for the MI5”.<sup>112</sup> In another case, the appellant, MSB, argued that the evidence relating to his character was obtained by the Home Office through informants in the community.<sup>113</sup>

## **Counter-terrorism legislation**

Since 2000, the UK has adopted no less than fifteen substantive Acts of parliament specifically addressing counter-terrorism or containing counter-terrorism provisions.<sup>114</sup> While many of these measures were presented as somehow temporary, designed to respond to a particularly severe level of threat, or to counter a newly identified vulnerability, these measures have in effect

created a permanent legal structure that has normalized policies and practices once considered “exceptional” or anathematic to the British rule of law.<sup>115</sup>

UK law today thus contains extensive provisions to prevent and criminalise all forms of engagement with terrorism, including powers relating to data surveillance, the disruption of terrorist financing, the criminalisation of travelling for terrorist purposes, and the criminalisation of all forms of support for terrorist activities.

Several of these Acts or provisions therein were struck down by the UK’s higher court or the European Court and then required replacement or contingency legislation. Among the policies that courts have ruled unlawful were provisions allowing the internment of foreign terrorist suspects, legislation implementing asset-freezing provisions, the blanket use of stop-and-search powers in the name of counter-terrorism and the use of house arrest-like “control orders”. However, in general, human rights law – the European Convention on Human Rights, as affirmed in UK judicial decisions – has not prevented the UK from developing and implementing wide-ranging counter-terrorism powers.

As more and more offences have been added to the statute books, the law has been stretched in three directions. First, the net as to who may be deemed a terrorist by virtue of their actions or social network has been cast ever wider. Second, the range of conduct that may be criminalised as terrorist or supporting terrorism has moved further away from actual acts of terror to any form of material or immaterial support. Third, counter-terrorism has sought to criminalise the communication of “extremist” ideology with a host of speech crimes – lately even “thought crimes” – threatening to sever the link between terrorism law and actual terrorist acts altogether. The European Convention protects freedom of thought, expression and conscience. Yet UK counter-terrorism law has steadily chipped away at these protections to the point that they are now close to meaningless in many situations.<sup>116</sup> There is a fundamental difference in criminal law between forming the intention to commit a crime and carrying out the act. UK terrorism law has steadily eroded this difference: the thought – or an interpretation of the thought – is now punishable as if it were deed.

Terrorism-related offences in UK law cover a broad range of actions: serious violence against a person or damage to property; endangering a person’s life; creating a serious risk to the health or safety of the public or a section of the public; and action designed to seriously interfere with or seriously disrupt an electronic system. Planning, assisting and collecting information on how to commit terrorist acts are also criminalised. Under the Terrorism Act 2000, collecting or making a record of information of a kind likely to be useful to a person committing or preparing an act of terrorism and possession of a document or record containing information of that kind are offences.<sup>117</sup> This puts anyone viewing internet content deemed “terrorist” at risk of arrest or prosecution, and has had a particularly deleterious impact on young British Muslims.<sup>118</sup>

The Terrorism Act 2006 made it an offence to engage in the preparation of acts (or attempted acts) of terrorism, to assist others in the preparation of acts (or attempted acts) of terrorism, to provide or receive training for terrorism and to attend any place, whether in the UK or elsewhere, where terrorism training is being conducted.<sup>119</sup> These offences require proof that an individual had a specific intent to commit an act or acts of terrorism.

The Terrorism Act 2006 also criminalises the “encouragement” and “glorification” of acts of terrorism – a broader category of speech than incitement to violence – and the distribution of any publication that “could be useful to a person in the commission or preparation of acts of terror”.<sup>120</sup> Here there is no need to prove intent, it is enough that the accused is “reckless” or appears to encourage emulation.

The Counter-Terrorism and Border Security Act 2019 extended these offences to include: making supportive statements for a proscribed organisation, beyond directly inviting support, and being “reckless” as to whether one’s statements will encourage support for that group; and publishing an image of an item of clothing or other article (such as a flag) of a proscribed group online in circumstances arousing reasonable suspicion that a person is a supporter of the proscribed group.<sup>121</sup> Finally, the Act extended the offences in the Terrorism Act 2000 related to the possession of “terrorist” documents to criminalise viewing terrorist content online.<sup>122</sup> Where a defence of “reasonable excuse” is available to academics, journalists or others who may have a “legitimate reason” to view such material, ordinary people can now be jailed solely for the websites they visit. As the UN Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, and many others, have pointed out: “the mere consultation of material that is “likely to be useful to a person committing or preparing terrorist acts” cannot be persuasively qualified as conduct implicating a sufficiently pressing social need requiring criminalization... [It] is far removed from any recognized offense and lacks a clear *actus reus*, an essential element of a criminal act.”<sup>123</sup> The Special Rapporteur also stressed the “danger of employing simplistic “conveyor-belt” theories of radicalization to violence, including to terrorism”.<sup>124</sup>

### **Proscribed organisations and designated organisations and individuals**

Under the Terrorism Act 2000, the home secretary can proscribe any organisation believed to be “concerned in terrorism” in any way, including groups which are said to encourage or glorify terrorism.<sup>125</sup> The groups do not have to pose a specific threat to the UK and may effectively be banned for political reasons (“to support other members of the international community in the global fight against terrorism”) without any regard to legitimate claims for self-determination or resistance to occupation. Membership of and support for any proscribed terrorist organisation is a crime. Support for an organisation can include wearing clothing or displaying an article likely to arouse suspicion of membership of a proscribed organisation or arranging a meeting to encourage support for a proscribed organisation or to be addressed by a person who belongs to one.<sup>126</sup>

The current list of proscribed organisations includes ninety groups, seventy-six of which are “international” and fourteen of which are said to be active in Northern Ireland.<sup>127</sup> In December 2016, the first right-wing extremist group, National Action, was included in the list. It is one of two groups currently proscribed for the “glorification” of terrorism. Among the list of proscribed groups are separatist organisations such as the Kurdistan Worker’s Party (Partiya Karkeren Kurdistanî – PKK) and the Liberation Tigers of Tamil Eelam (LTTE). These organisations have engaged in peace processes to resolve violent ethnic conflicts resulting from histories of colonialism. The proscription of these organisations has fostered the criminalisation of Kurdish and Tamil communities in the UK that are made up of refugees from these conflicts.<sup>128</sup>

Members and supporters of proscribed organisations can also face “disruptive activity” such as asset freezing, the confiscation of funds and property, the use of immigration powers such as exclusion orders, the censorship of a group’s publications and communications, and prosecutions for other offences. Organisations subject to a proscription decision can challenge the designation via the Proscribed Organisations Appeals Commission and, subsequently, the Court of Appeal.<sup>129</sup> Three organisations have successfully challenged their bans to date.<sup>130</sup>

In addition to the proscription regime, groups or individuals may be designated as terrorist organisations or supporters of terrorism by the UN, the EU or the UK government and subject to asset-freezing, travel bans and other sanctions.<sup>131</sup> Although the proscription offences do not apply to designated persons, the terrorist financing offences do. Both regimes have far-reaching implications for affected parties who may be banned or sanctioned by the government without any prior notification or judicial proceeding. In addition to a lack of due process, these measures have also discouraged conflict resolution internationally because proscribed organisations are effectively removed from any process of engagement with other parties, paralyzing existing peace initiatives and making new ones extremely difficult to get off the ground.<sup>132</sup> Terrorist sanctions have also been used to curry favour in British foreign policy, with terrorist designations often traded like carbon credits, as Mark Muller QC has observed.<sup>133</sup>

Raising money for terrorist organisations is also comprehensively criminalised under the Terrorism Act 2000, including receiving or providing money or property where it is intended for, or there is reasonable cause to suspect that it may be used for, the purposes of terrorism.<sup>134</sup> Failing to report suspicions of terrorist finance offences to the police is also an offence.<sup>135</sup> The Terrorist Asset Freezing Act 2010 effectively extends many of these offences from proscribed terrorist organisations to “designated individuals”.<sup>136</sup> The Act criminalises anyone dealing with funds or economic resources owned, held or controlled by a designated person, subject only to limited exceptions.<sup>137</sup>

The Kafka-esque nature of proscription, designation and terrorist-financing cases cannot be overstated, with aid agencies, charity workers, fundraisers, political activists and many others directly and indirectly affected.<sup>138</sup> As John Letts and Sally Lane, recently convicted of funding terrorism in respect to money sent to their son in Syria explained, we “tried to do the right thing” and co-operate with police, “but instead of helping us they used the information we provided to prosecute us”.<sup>139</sup>

## Book bans?

In December 2011, Ahmed Faraz was convicted in Birmingham of possessing and distributing extremist books and sentenced to three years in prison (after a year of imprisonment, his conviction was quashed at the Court of Appeal).<sup>140</sup> Much of the trial discussion consisted of attempts to interpret the meaning of Sayyid Qutb’s book *Milestones, a widely read text of Islamic political thought. In sentencing, the judge described the book as Manichean, separatist, and excessively violent, and claimed it misinterpreted the teachings of the Qur’an in order to justify a skewed position on Islam.*<sup>141</sup> Not only was the state seeking to decide that certain ideas were too dangerous for its citizens; in order to do so, the judge sought to make theological claims about the correct interpretation of Islam, undermining secular principles of religious freedom.

## Limited human rights safeguards in terrorism cases

Terrorism laws operate through the broader criminal justice system but persons arrested or charged under them face a host of special restrictions on their rights – creating, in effect, a parallel criminal justice system. Such restrictions can include: being denied the right to access a lawyer following an arrest, extended pre-charge detention,<sup>142</sup> the freezing of assets and bank accounts, electronic tagging and overnight residence requirements,<sup>143</sup> restrictions on meetings with associates and confinement to designated neighbourhoods, vetting of home visitors, including family, foreign travel bans and warrantless search and seizure. Upon conviction, persons may be subject to a disclosure regime – for example, with respect to their email addresses or bank accounts – and subject to a Serious Crime Prevention Order, which may impose a raft of restrictions upon their everyday activities.<sup>144</sup>

At trial, security agencies and prosecutors can present their evidence in secret in closed proceedings, preventing the defendant from seeing the evidence in the case. Secret evidence used to be considered a violation of the principle of open justice and of the fair trial requirements of the European Convention on Human Rights. But the use of secret evidence and proceedings has expanded rapidly under the War on Terror. Introduced to allow the government to present secret intelligence material to judges in the Special Immigration Appeals Committee and Proscribed Organisations Appeals Committee proceedings, then extended to control order cases, secret evidence can now be used in any civil proceedings with national security implications.<sup>145</sup> Since 2014, a small but growing number of criminal proceedings have relied upon secret evidence – predominantly terrorism cases.<sup>146</sup>

The justification provided for this fundamental change to the justice system is that the disclosure of sensitive intelligence material could undermine national security. In reality, these proceedings exist solely to keep secret the activities of the intelligence agencies – particularly in relation to their use of informants and their relationships with terrorism suspects and defendants. This, in turn, prevents persons who have been harmed by intelligence activities from seeking or obtaining redress by suing for damages based on material disclosed during trial proceedings.

## Censorship of “terrorist” content online

The UK Counter-Terrorism Internet Referral Unit (CTIRU) was initiated by the Association of Chief Police Officers in 2010. CTIRU is the central contact point for police and intelligence officers seeking to block web pages or close social media accounts. It refers these requests to internet service providers, search engines and content platforms. In late 2014, the Home Office introduced a referral site allowing members of the public to submit reports to CTIRU about “articles, images, speeches or videos that promote terrorism” and “websites made by terrorist organisations”.<sup>147</sup> In April 2016, the scheme was extended from “terrorist material” to “material promoting terrorism or extremism”, including content that “encourages violence” and websites made by “extremist organisations”.<sup>148</sup>

CTIRU claims to remove over 100,000 pieces of “extremist” content each year from around 300 platforms.<sup>149</sup> It presents its scheme as “voluntary” – stating that it simply conveys a belief that a particular content may fall within the scope of the numerous relevant Terrorism Act offences.

However, once adequately notified of potentially criminal content, the platform hosting the content may be regarded as the publisher and held liable for the content.

Internet service providers say they refuse about twenty to thirty per cent of the take-down requests received from CTIRU.<sup>150</sup> This suggests significant overreach. Reports suggest that content produced by journalists, academics and civil society organisations, as well as material that human rights organisations have been collecting as evidence of violations, have all been impacted by the CTIRU.<sup>151</sup> Because the scheme is voluntary and outside any legal process, there is no appeal process for those persons and organisations affected by the censorship. Similarly, when content is removed, there is no requirement to notify people viewing or seeking to view the content that it has been removed because it may be unlawful, what laws the content was found to violate or that the police requested its removal. CTIRU publishes no detailed information about the use and focus of its powers, the impact of its activities or the results of its take-down requests. CTIRU has also refused to respond to Freedom of Information requests concerning this information, claiming on appeal to the Information Commissioner that it does not keep such records.<sup>152</sup>

At the time of writing the EU is finalizing legislation that will see social media platforms and other website operators facing fines of up to four per cent of their global annual turnover for failing to remove “terrorist content” within one hour of notification.<sup>153</sup> Tech companies are also working proactively to use machine learning (“artificial intelligence”) and install “upload filters” to identify and prevent the dissemination of such content, and both the UK government and the EU have invested heavily in tools that promise to assist them. The combination of over-broad laws, privatized enforcement and inadequate judicial oversight threatens free speech at an unprecedented scale.<sup>154</sup>

### **Effectiveness of counter-terrorism powers**

As argued above, counter-terrorism powers have been used to criminalise a range of behaviours beyond involvement in violence. However, it is also the case that a number of serious “jihadist” plots have been detected and prosecuted since 2003. Counter-terrorism officials within the police and intelligence agencies claim that the broad range of powers granted to them were essential to detecting and disrupting these life-threatening plots within the UK. Assessing this claim is not straightforward. Many of these investigations were complex, involving informants, extensive human and electronic surveillance, and coordination with agencies in other countries. Some investigations drew upon information obtained by foreign intelligence agencies using torture or inhuman treatment.<sup>155</sup> At the prosecution stage, regular criminal charges, such as conspiring to cause an explosion likely to endanger life or injure property, were brought against some plotters while others, even in the same case, were prosecuted with Terrorism Act charges, such as possessing materials for the purposes of terrorism. To what extent, if any, outcomes would have been different in the absence of Terrorism Act powers and the broader arsenal of War on Terror measures, such as bulk surveillance, is difficult to know with certainty. To fully answer that question would require analysis of classified investigative materials by independent researchers.

However, there are strong reasons for believing that the steady expansion of counter-terrorism powers has been counter-productive to the goal of reducing political violence. First, as argued earlier, the use of information sourced from torture or inhuman treatment is unreliable. Access to it can only be considered a disadvantage to investigators. Second, it seems likely that plots

to commit acts of violence within the UK can generally be investigated and prosecuted under regular criminal powers, using normal methods of police and intelligence agency investigation, without needing recourse to the Terrorism Acts or other special measures. If there is evidence that a plotter is part of a conspiracy to bomb, a crime under the regular criminal justice system, then that would seem to be the most appropriate charge, rather than, for example, using the Terrorism Act charge of possessing materials for the purposes of terrorism.

As noted earlier, the main addition provided by the Terrorism Acts has not been to enhance the criminalisation of acts of violence or their preparation but to widen the pool of persons who can be prosecuted by making the communication of extremist ideology a crime. The belief that this leads to a reduction in political violence rests on the assumption that “terrorism” is caused by the circulation of extremist ideology. But this assumption has not been grounded in empirical research and there is no reason to think that the criminalisation of ideologues reduces political violence. A reasonable case can be made for the censorship of tactical knowledge, such as bombmaking skills, whether imparted online or at training camps, but the more general censorship of extremist ideology that counter-terrorism legislation aims at is likely to be counter-productive: it contributes to the alienation of communities targeted for ideological censoring and it means that investigative resources are wasted investigating ideological communication rather than those involved in actual plots of violence.

Another aspect of the prevailing approach to counter-terrorism is the desire to avoid regular, open criminal trials and especially jury trials. Jury trial is one of the means by which the powers available to counter-terrorism police and prosecutors are held to a measure of democratic accountability: those powers have to seem sufficiently reasonable to ordinary people serving on juries that they can in good conscience apply them to the specific case they are considering. The expectation that a police investigation will eventually be scrutinised by a jury tends to impose a healthy discipline and prevent wasted resources. But this check has been eroded as the application of counter-terrorism powers has shifted away from charges tested in open UK criminal courts and instead been pursued by other means, such as secret evidence, extradition and restrictions on movement and behaviour that do not require a criminal conviction. Again, there is a danger that this tendency ends up being counter-productive as it frees police from having to justify their work to ordinary jurors and leads communities targeted by counter-terrorism to draw the well-founded conclusion that they are subject to a different standard of justice.

## **C – Prevent: Islamophobia and the undermining of public services**

Prevent, first introduced by Tony Blair’s government in 2003, is one of four strands of the government’s counter-terrorism strategy, “CONTEST”. Its stated aim is to pre-empt the emergence of “violent extremism”.<sup>156</sup> Alongside the investigations carried out by police counter-terrorism units and MI5, which are focused on intercepting activities criminalised under the UK’s wide-ranging anti-terrorist legislation, Prevent policy aims at addressing a wider population whose values and beliefs are thought, according to government officials, to be indicative of extremism and precursors to “terrorism”. Prevent policy therefore necessarily depends upon accepting assumptions about the process of “radicalisation” that causes acts of “terrorism” to occur. The

dominant assumption has been that “terrorism” is rooted in the circulation of extremist ideologies and a failure to identify sufficiently with “British values”.<sup>157</sup> When Prevent was first introduced, the focus was on targeting “violent extremist ideology” but, since 2010, the policy has widened to include “non-violent extremism”, on the basis that it is “part of a terrorist ideology”.<sup>158</sup> As noted above, there is no reason to think that “terrorism” is caused by the rejection of British values or by the presence of extremist ideology. There is no publicly available evidence that Prevent policy has prevented any act of “terrorism”.

Prevent is directed towards identifying individuals who appear to be vulnerable to becoming extremists and future “terrorists”. Because the identified individuals are not supposed to have committed any crime, the interventions are aimed at disrupting their apparent radicalisation and involve a number of “soft power” methods rather than the “hard power” of arrest and prosecution. This work is mainly done through the Prevent programme known as “Channel”. In the first iteration of Prevent, there were attempts to bring about a broader cultural change in communities to reduce the influence of extremist ideology. One part of this was the promotion of a mainstream or “moderate” form of Islam to act as a bulwark against “extremist” Islam. Prevent also has two additional “enabling” objectives: to collect and develop intelligence about individuals and the general dynamics of communities and to craft and improve “strategic communication” in order to achieve behavioural changes within targeted communities.<sup>159</sup>

From 2007 to 2011, the Prevent policy was largely organised through a youth and community work paradigm directed at Muslim populations. The aim was to engage with large numbers of young Muslims and community figures through various kinds of mainstream community development work, from capacity building of mosques to sports and mentoring projects with young people. Hundreds of millions of pounds were spent each year.<sup>160</sup> A substantial part of the programme’s budget was channeled through the Department of Communities and Local Government (DCLG) to local authorities and the work was presented as “community-led”.<sup>161</sup> Some of this work was responsive to actual community needs and local authorities were able to vary, to some extent, how the policy rolled out locally but such local initiatives were marginalized and undermined by the overall structure of how Prevent was conceived.<sup>162</sup>

The youth and community work focus of early Prevent policy did not last long. Conservatives criticised Prevent’s community engagement work as expensively ineffective and alleged, inaccurately, that it led to state funding for extremists. Many Muslim organisations and civil liberties groups expressed concern about Prevent’s embedding of counter-terrorism surveillance in public services, such as youth work. Muslim communities increasingly refused to engage in a programme that saw them as a problem. Prevent was in danger of becoming a community partnership programme without a community partner.

In 2011, the Coalition government responded by shifting Prevent’s emphasis in a number of ways. First, the focus changed from “violent extremism” to “non-violent extremism”; this followed successful lobbying by neoconservative groups.<sup>163</sup> Second, the new strategy claimed to be addressing “all forms of terrorism” – meaning the government at least purported to be dealing with the issue of the far Right.

Third, in place of the youth and community sector, schools, colleges, universities and healthcare

providers became the primary institutional settings for the delivery of Prevent while police counter-terrorism units largely set the agenda locally.<sup>164</sup> The DCLG was removed from Prevent work entirely and funding decisions were centralised through the Office of Security and Counter-Terrorism at the Home Office, dominated by civil servants with an intelligence agencies background.<sup>165</sup>

Fourth, the government shifted from overt work with community groups towards working covertly with Muslim civil society groups. The Research Information and Communication Unit in the Home Office led this element of the strategy, commissioning public relations firms such as Breakthrough Media.<sup>166</sup>

The Counter-Terrorism and Security Act 2015 placed a statutory duty on “designated public institutions” to pay “due regard” to “prevent people from being drawn into terrorism”.<sup>167</sup> This placed a legal duty on public services to participate in Prevent surveillance to identify among service users those deemed vulnerable to radicalisation. Schools, colleges and universities usually implemented the Prevent duty as part of “safeguarding” policies designed to stem child abuse and domestic violence.

Below we discuss some of the problems with Prevent policy: its Islamophobia, its undermining of civil liberties, its undermining of the rights of children and young people in safeguarding practices, and its impact on education, mental health services, and youth and community work.

## **Islamophobia**

From the beginning, Prevent has been almost entirely focused on Muslim populations, in effect amounting to a form of racial profiling.<sup>168</sup> As such, it has fuelled the Islamophobic perception that only Muslims have a problem of extremism, heightened the isolation of Muslims from others living in Britain and created the impression in other communities that Muslims were being unfairly rewarded for “terrorism” with a lavish funding programme. It has also encouraged the idea that Muslim community leaders were responsible for policing their communities on behalf of the government.<sup>169</sup> There is a strong case to say that Prevent violates the Public Sector Equality Duty defined by the Equality Act 2010.<sup>170</sup> No Equality Impact Assessment was carried out to test the compatibility of the Counter-Terrorism and Security Act 2015 with statutory commitments to racial and religious equality.

The Islamophobic framework that informs Prevent policy derives from its premise that “terrorism” is a product of extremist ideology, which often reduces to a notion of religious ideology associated with Muslims. This is manifested in the various indicators of extremism that Prevent practitioners have adopted, which are largely dependent upon culturally deterministic frameworks that mark out and racialise Muslims and Islam as problematic.<sup>171</sup> This results in everyday Muslim activity being questioned and treated as dangerous, threatening and incompatible with British values.<sup>172</sup>

The discriminatory effects of Prevent are illustrated daily in a variety of institutional contexts. Typical cases include: Mohammed Umar Farooq, a University of Staffordshire student questioned under Prevent after he read a textbook on terrorism in his university library;<sup>173</sup> Rahman Mohammadi, referred to the police by teachers under Prevent for wearing a free Palestine badge;<sup>174</sup> and a Muslim student in London questioned about ISIS under Prevent after he used the word “eco-

terrorist” in a French lesson.<sup>175</sup> In January 2017, a local educational authority admitted racially discriminating against two brothers, aged five and seven, who were questioned by police officers after one of the children brought a toy gun into school.<sup>176</sup> The solicitor for the children’s family condemned the government’s Prevent strategy for encouraging marginalisation and alienation in the classroom and for creating scenarios, such as the one experienced by the brothers, where baseless and unfounded suspicions have serious psychological ramifications.

Since 2011, the Prevent strategy has officially claimed to deal with “all forms of terrorism” including the far Right. Yet the majority of referrals to Channel are consistently for Islamist extremism: 65 per cent in 2015/6 and 61 per cent in 2016/17.<sup>177</sup> From 2014 to 2016, young Muslims were forty-four times more likely to be referred to the Channel programme than individuals of other religions.<sup>178</sup>

Islamophobia should be understood in this context as not simply referring to individual attitudes and biases among Prevent practitioners but rather a structural feature of the policy itself.<sup>179</sup> In this sense, Prevent is one of the main channels by which Islamophobia has been embedded within, and enacted by, the British state.<sup>180</sup>

## **Civil liberties**

Throughout its deployment, workers in public services and in Prevent-funded community projects have been expected to share information on Muslims with police counter-terrorism officers. Non-policing public sector workers have, in effect, been drawn into a double role: on the one hand, they provided Muslims with public services; on the other hand, their interactions with Muslims were the basis for a wide-ranging surveillance programme that went beyond reasonable suspicion of criminal activity. As such, the boundaries between public service provision and the police’s investigative work were systematically blurred.<sup>181</sup> Through the expansion of Prevent, counter-terrorism surveillance measures have penetrated public life in Britain, institutionalising fear and distrust around Muslim communities. Moreover, Prevent was one of the drivers of the transformation of equalities and diversity departments in local authorities, shifting their work from a focus on institutional racism to partnering with the police to counter radicalisation. Local government support for tackling racial inequalities was thereby undermined.<sup>182</sup>

At its core, Prevent aims to foreground Muslim voices the government finds acceptable and marginalise those it considers politically or religiously objectionable. In this sense, it is founded on an inherently undemocratic logic that necessarily leads to the undermining of civil liberties and Muslim political participation.

## **Safeguarding**

In the two years following the implementation of the Prevent duty under the Counter-Terrorism and Security Act 2015, 27 per cent of all referrals to the Channel programme were of children under the age of fifteen, a total of 3,706 children considered to be at risk of radicalisation.<sup>183</sup> The Prevent work carried out with these young people is officially presented as “substantially comparable to safeguarding in other areas, including child abuse or domestic violence”.<sup>184</sup> However, there are important differences between Prevent’s agenda of countering extremism and longer established

safeguarding programmes to deal with child abuse and domestic violence. Significantly, there is a shared consensus on what constitutes domestic violence or child abuse and these are defined clearly in law. Extremism, on the other hand, is a nebulous and relative term that has no history of legal clarity. Moreover, safeguarding duties and Prevent duties have different aims: safeguarding is grounded in the principle of protecting the welfare of the child or a vulnerable adult while Prevent is grounded in preventing people from being drawn into terrorism.<sup>185</sup>

To conflate safeguarding and counter-terrorism in schools, universities and healthcare providers brings a number of problems. There is widespread evidence of discrimination against Muslim students and violations of the United Nations Convention on the Rights of the Child, which requires “the best interests of the child” to be “a primary consideration” in public policy and action. Under Prevent, children have been questioned about slogans on their clothing, pictures they have drawn, mispronunciations of words and their asking for the use of prayer facilities. Children can be questioned by Prevent officials without the presence of a parent or responsible adult and this practice seems widespread. Likewise referrals to the Channel programme do not require the consent of a parent or guardian. It is difficult to see how these measures are in the best interests of the child.<sup>186</sup>

## **Education**

### **Schools**

The 2011 Prevent strategy and subsequent policy documents proposed that schools implement Prevent within their existing safeguarding duties. Under the Counter-Terrorism and Security Act 2015, it is unlawful for schools to opt out of Prevent surveillance regimes and schools are monitored for their compliance through Ofsted. Indeed, in 2018 a nursery school in Brighton had its Ofsted rating downgraded after it was determined that it was not doing enough to prevent radicalisation and extremism.<sup>187</sup>

Prevent has had a chilling effect on classroom practice, creating an atmosphere in which certain opinions and topics are considered unacceptable or grounds for referral to the Channel programme rather than warranting educational engagement. Since 2014, teachers in England have been required to promote “British values” and this expectation – alongside safeguarding against radicalisation – falls under Ofsted’s inspection criteria. The National Union of Teachers has responded by calling for Prevent to be withdrawn, stating that its implementation is incompatible with schools’ existing safeguarding principles and stands in the way of enabling students to explore the world around them.<sup>188</sup>

### **Universities**

Universities are not only educational institutions but also key sites of civil society engagement, public discussion and knowledge production. Those roles rest on academic freedom and freedom of expression, which are protected under Section 202 of the Education Reform Act 1988, Section 43 of the Education (No. 2) Act 1986 and the Human Rights Act 1998. But Prevent has had a profoundly negative impact on freedom of speech and academic freedom at universities.

The Prevent statutory duty has led to new university policies for managing events with external speakers. Events discussing Islamophobia, Palestine and the War on Terror have been cancelled, for example at Birkbeck, University of London, the University of Southampton, the University of Huddersfield and Queen's University, Belfast.<sup>189</sup> These new measures have created barriers for student participation in extracurricular activities on campus. A survey conducted by the National Union of Students found that a third of Muslim respondents felt negatively affected by the Prevent duty and, of those, 43 per cent felt they were unable to express their views or be themselves because of it.<sup>190</sup> There is also a sense that lecturers, especially Muslims, have to take care when discussing "controversial" subjects, posing challenges for academic freedom.

Another issue is the clash between university Prevent policies and the principles of research ethics. Prevent-mandated information sharing agreements between universities and police counter-terrorism units create potential ethical breaches for academic research as well as breaches of privacy, data protection and human rights law. Some universities have created academic registers for broadly defined "security sensitive research". Such registers, which are potentially shareable with police counter-terrorism units, compromise researchers' ability to make confidentiality agreements with research participants, putting heavy restrictions on the possibilities for many areas of academic research. This sits alongside broader problems of security incursions on academic research whereby covert research partnerships with security and intelligence agencies are undermining core academic principles of peer review and scholarly oversight.<sup>191</sup>

The University College Union responded to such concerns in 2015 with a motion highlighting racism and discrimination, civil liberties and the undermining of academic freedom as a result of Prevent's deployment in universities.<sup>192</sup>

## **Mental health**

There is no evidence to suggest that persons with mental illness and learning disabilities are more likely to commit terrorism offences. Nevertheless, as a result of Prevent, some mental health trusts are routinely screening their service users for signs of radicalisation. Associating vulnerability to being drawn into terrorism with mental illness and learning disabilities can create suspicion around those with such conditions.<sup>193</sup> As in other branches of the public services, the danger comes from conflating matters of mental well-being and welfare with policing and counter-terrorism functions. Moreover, there is the likelihood that Muslim young people, in particular, may disengage from well-being services for fear of being reported, increasing risks to mental health.

Healthcare bodies have a duty of confidentiality to their patients. In exceptional circumstances, such as to detect serious crimes or to prevent abuse or serious harm, such confidentiality agreements can be breached. However, in the case of Prevent, the standard for disclosure is much lower, as staff are expected "to recognise and refer those at risk of being drawn into terrorism to the Prevent lead".<sup>194</sup> Aware of such reporting obligations, vulnerable individuals in need of support services may be deterred from accessing appropriate health bodies for their needs.

Like teachers and university lecturers, healthcare professionals have raised concerns about the conflict between Prevent and their professional ethics.<sup>195</sup> In particular, they have drawn attention to the lack of an evidence base underpinning the Channel assessment framework, the incoherent

nature of the support offered and the risk of data protection breaches.<sup>196</sup> Vulnerable people should only be receiving therapeutic treatments from qualified health professionals in the appropriate sectors and the Royal College of Psychiatrists warns against the danger of mistakenly referring those in need of mental health services to the Channel programme.<sup>197</sup>

## Youth and community work

The true purpose of youth work is not crime prevention but the fostering of young people's personal, social and emotional development, including their ability to participate actively in politically shaping the society in which they live.<sup>198</sup> Prevent's engagement with youth work and community development failed because it tried to co-opt the sector to solve problems of extremism and "terrorism". It did not, therefore, maintain a clear separation from the police and intelligence agencies. Trust cannot be built when participants fear that project workers are expected to share information with the police (beyond where there is a reasonable suspicion of a criminal offence). Young people ought to be engaged in discussion of controversial topics rather than their expressed opinions seen as a security risk.<sup>199</sup>

## 3 – A bloated, unaccountable system

The failure of counter-terrorism outlined in the previous chapter is rooted in a policy-making process that is unmoored from any democratic accountability. The resources available to counter-terrorism have expanded massively over the last twenty years. MI5, which currently directs four fifths of its resources to countering terrorism, has doubled its size.<sup>200</sup> Funding on counter-terrorism and intelligence more than doubled from 2001 to 2007.<sup>201</sup> Since then, the annual counter-terrorism budget has been maintained at over £2 billion.<sup>202</sup> The transformation effected by this increased funding, backed up with wide-ranging new powers introduced through the Terrorism Acts, has been dramatic. Yet this expansion has not been matched by the development of corresponding mechanisms of accountability. A number of issues stand in the way of accountability: an undemocratic policy-making process that privileges elites and excludes public participation, the miscommunication of the nature of the "terrorist" threat, a lack of specific mechanisms by which intelligence agencies can be held accountable, the absence of any effective scrutiny of surveillance powers and the bypassing of parliament in some counter-terrorism policy-making.

### Funding the War on Terror

The financial costs of the War on Terror have been considerable for the UK. Funding on counter-terrorism and intelligence was increased from £1 billion in 2001 to £2.5 billion by 2007.<sup>203</sup> The budget for the UK's counter-terrorism strategy has since then been maintained at above £2 billion per year, even as austerity policies have brought cuts to other sectors.<sup>204</sup> In 2015, the intelligence agencies received an additional £1.3 billion, spread over the following five years.<sup>205</sup> Police forces have also experienced a transformation: in the six years to 2009, the resources made available to them specifically to work on counter-terrorism almost doubled,<sup>206</sup> reaching £500 million annually.<sup>207</sup> By 2018, funding for counter-terrorism policing was £757 million.<sup>208</sup>

Similarly, the War on Terror brought a dramatic increase in military spending, producing the longest period of sustained real growth in the UK defence budget since the 1980s. The UK spent almost £4 billion annually on

fighting in Iraq and Afghanistan in the years after 2003.<sup>209</sup> By 2010, over £20 billion had been spent by the UK government on these wars.<sup>210</sup> Even after reducing direct military involvement in Iraq and Afghanistan, the UK government continued to deploy new military spending as part of its War on Terror: in 2015, the government announced an additional £2 billion would be spent to create Special Forces able “to strike terrorists wherever they are in the world”.<sup>211</sup>

## A – An undemocratic policy-making process

In the UK, counter-terrorism policy is determined by a narrow group of officials bound together by mainly elite family backgrounds, a shared allegiance to dominant economic interests, especially in the financial and defence sectors, and a commitment to the strategic alliance with the United States. These networks of national security, made up predominantly of men, hold the key positions of influence in the intelligence agencies, the relevant ranks of the military and civil service, the think-tanks, the university departments that work on national security, the private companies that win national security contracts and the media organisations that dominate coverage of national security, particularly the BBC. For these networks, national security means the security of “national interests” – in practice, the interests of big business, the arms industry and the “Western alliance”, that is NATO. The pursuit of these interests overrides the possibility that ordinary people, in Britain or elsewhere, might define their own security needs.

This architecture of power was inherited from the Cold War era yet remains intact even as the broader security environment has profoundly shifted. In that period, the public was normally not expected to involve itself in matters of national security and elected representatives did not ask for much in the way of democratic accountability. “Until the 1970s the British convention was that security intelligence was simply not a subject that could be discussed in front of the children, servants or electorate.”<sup>212</sup> Rather than discussion, there was security tutelage: citizens were simply told what the threats to their security were and some of what was being done to protect them. The major media organisations tended to accept their role as one-way channels of information from the security elite to the broader population.

In the War on Terror era, national security policy has increasingly sought to enlist others outside the national security agencies to collaborate in actively producing security. In different ways, local authorities, businesses, schools, universities, hospitals, landlords, media organisations, charities, communities and families have all been allocated active roles, especially through the Prevent policy’s requirement to surveil and challenge extremism. The government’s 2015 counter-extremism strategy, for example, calls for a mobilisation of “countless organisations and individuals” to come together across the UK to “fight” extremism. “Local people,” it adds, “have a key role in identifying extremist behaviour and alerting the relevant authorities.”<sup>213</sup>

In these ways, a national security logic has spread from the military, police and intelligence agencies to the whole of society. If ordinary people were missing from Cold War national security policy discourse, today they are ever present. Yet they continue to have a limited role in the actual shaping of policy, where the dominance of the national security elite remains. The policy process does not involve ordinary people in defining their own security needs. Rather the security elite presents to

them an image of the state as a strong protector from dangers they cannot comprehend – this is the top-down approach of the Cold War but in a new form.

## **Declining credibility**

There have been serious challenges to the security aristocrats over the last fifteen years. The lies about weapons of mass destruction in Iraq destroyed much of their credibility. Added to this was the failure to hold anyone to account for participation in an unnecessary war that caused the deaths of hundreds of thousands. The Intelligence and Security Committee's response was weak and repeated official inquiries failed to draw the logical conclusions from information now in the public domain. Moreover, there has been the growing realisation that the War on Terror, ostensibly aimed at reducing the number of civilian victims of political violence, has only achieved the opposite. Labour leader Jeremy Corbyn's May 2017 speech on the War on Terror demonstrated that politicians can now make fundamental criticisms of the prevailing approach to counter-terrorism without losing popularity.<sup>214</sup>

Coupled to this scepticism is growing criticism of the process by which security threats are identified, analysed and narrated. The production of knowledge on security threats continues to be shaped by elite interests. Short-term tactical responses are prioritised over long-term peace-making. The military directly control around 30 per cent of the state's total budget for research and development, and use most of this money to develop more efficient ways of inflicting violence.<sup>215</sup> Official understanding of what gives rise to political violence remains crude. As noted earlier, the government's narrative of what causes "terrorism" lacks any evidence base. Academics, affected communities and the wider public no longer find these official narratives compelling.

While this questioning of national security policy-making and knowledge production has not, as yet, led to any real change in policy, it has prompted efforts by the government to create the appearance of listening to communities. In the aftermath of the July 2005 attacks on the London transport system, the government invited a relatively wide cross-section of Muslim community representatives to form the Preventing Extremism Together taskforce to investigate how best to respond. It made sixty-four recommendations in its November 2005 report, including a public inquiry into the attacks and measures to tackle inequality, discrimination, deprivation and foreign policy. Unfortunately, these were ignored. Then, in 2008, the Foreign and Commonwealth Office began a programme of touring communities to engage on issues of foreign policy, as part of the Prevent policy. But the "Bringing foreign policy back home" roadshow was more security tutelage: its stated objective was "explaining" and "challenging myths" rather than discussion and dialogue.<sup>216</sup>

In 2018, the government launched the Commission for Countering Extremism, with a charter that claimed to protect its independence. The Commission's work was to involve engagement to "understand the public's comprehension of extremism" and "gathering and analysing a wide range of evidence from government, academics, experts, counter-extremism activists and from members of the public".<sup>217</sup> Unfortunately, any sense of genuine engagement was undermined by the decision to appoint as lead commissioner Sara Khan, a government-funded defender of Prevent. It was no surprise when, a few months after its launch, Khan announced that the Commission's research had led her to the evidence-free conclusion that: "People know extremism when they see it – and they want it to stop."<sup>218</sup> Any open discussion of the meaning of extremism

was effectively foreclosed. Initiatives such as the Commission for Countering Extremism seem less an attempt to engage the public's increasing questioning of official policy-making and more an attempt to manage it, while maintaining decision-making within the hands of a narrow elite.

## **Democratisation**

All of this places a glaring and unsustainable contradiction at the heart of counter-terrorism policy-making. The more ordinary people are enlisted to deliver counter-terrorism policy, the more the exclusion of ordinary people from shaping it becomes untenable. Prevent policy, in particular, has provoked so much tension precisely because it sits on the faultline of this contradiction: its rhetoric is of community participation and civil society involvement; its practice is the top-down imposition of policy and the analysis underpinning it. The only way to address the growing imbalance between a mass security mobilisation and a lack of mass input into what that mobilisation is directed towards is through the democratisation of the policy process, including the processes by which knowledge of threats is generated.

Counter-terrorism policy-making can no longer be a one-way communication from elites to audiences; instead, there must be substantial public involvement in identifying its aims, its methods and the kind of research necessary to support it.<sup>219</sup> Focus groups indicate that the public has an interest in engaging in deeper political deliberation on matters of counter-terrorism policy. There is a recognition among the public of the complexity of the issues, the need for greater knowledge and expertise, and the importance of a wide-ranging dialogue on the causes of "terrorism".<sup>220</sup>

## **B – A sprawling network of intelligence agencies**

The well-known intelligence agencies are MI5 (domestic intelligence), which is attached to the Home Office, and MI6 (foreign intelligence) and GCHQ (signals intelligence), both of which are attached to the Foreign Office. Apart from these three, there are also a significant number of other intelligence agencies and units. At the Home Office, there is the Office of Security and Counter-Terrorism. There is Counter-Terrorism Command (SO15) at the Metropolitan Police, along with counter-terrorism intelligence units in police forces around Britain. At the Ministry of Defence, there is a defence intelligence staff and a range of units in the military, including the Intelligence Corps and overlapping First Intelligence, Surveillance and Reconnaissance Brigade (1ISR). Special forces also work covertly and some are integrated into the 1ISR. There are also overt intelligence-related activities in the realm of psychological operations and propaganda, such as the 77th Brigade. Lastly, there is the Cabinet Office assessment staff and the associated Joint Intelligence Committee and the National Security Secretariat, which is at the pinnacle of intelligence-related policy-making.

The data compiled in Table 1 suggests there are more than 30,000 people employed directly in intelligence by the British government. By way of comparison, if the intelligence agencies were a department of government, they would constitute the fifth largest in terms of staff numbers, behind the Ministry of Defence yet larger than the Home Office.<sup>221</sup> A full process of accountability would imply examining all of these agencies for focused and concentrated reforms in addition to the most well-known organisations.

Domestic intelligence	Security Service/MI5	4,053 <sup>222</sup>	
	Office for Security and Counter-Terrorism (OSCT)	551 <sup>223</sup>	
Police intelligence	Counter Terrorism Command/National Counter-Terrorism Policing Headquarters/ National Counter-Terrorism Policing Network/National Domestic Extremism and Disorder Intelligence Unit (NDEDIU)	1,500 <sup>224</sup>	
	National Crime Agency (NCA)	4,516 <sup>225</sup>	
	National Ballistics Intelligence Service (NBIS)	40	
	National Fraud Intelligence Bureau (NFIB)	90 <sup>226</sup>	
Foreign intelligence Signals intelligence	Secret Intelligence Service (SIS)/MI6	2,594 <sup>227</sup>	
	Government Communications Head Quarters (GCHQ)	5,806 <sup>228</sup>	
Military intelligence	Defence Intelligence Staff (DI) in the Ministry of Defence	3,655 <sup>229</sup>	
	1st Intelligence, Surveillance and Reconnaissance Brigade. Including: 21 and 23 Special Air Service Regiments; Honourable Artillery Company, 1-7 Military Intelligence Battalions; Specialist Group Military Intelligence; Land Intelligence Fusion Centre; Defence Cultural and Linguistic Support Unit	6,300 <sup>230</sup>	
	Intelligence Corps	3,200 in total. 55% in the 1ISR (above), remaining 45% = 1,440 <sup>231</sup>	
	77th Brigade, including units engaged in Psyops formerly attached to 1 Military Intelligence Brigade and co-located with 1ISR at Denison Barracks near Newbury.	340 <sup>232</sup>	
	Directorate of Special Forces, includes 22 SAS, SBS, SRR, Special Forces Support Group, 18 Signal Regiment, Joint Special Forces Aviation Wing	3,000 <sup>233</sup>	
	Whitehall intelligence assessment	Joint Intelligence Organisation (JIO) (includes the Joint Intelligence Committee)	58 <sup>234</sup>
		National Security Secretariat (includes the National Security Council)	155 <sup>235</sup>
<b>Total</b>		<b>32,258</b>	

**Table 1: Staff numbers at UK intelligence agencies and special forces**

# C – Miscommunicating the threat

A major barrier to accountability is the failure to provide accurate information on the nature of the threat of “terrorism”.<sup>236</sup> Without a trustworthy process of communicating what kinds of threats of political violence the UK faces, the public cannot engage in the policy-making process in an informed way.

This failure to provide accurate and appropriately nuanced information is a result of a deliberate “strategic” approach to communication by the Home Office. The aim has been to encourage a simple “key message” that “terrorism is a real and serious threat to us all” and to reject any assertion that “terrorism is not a real and serious threat to us all” or that “the terrorist threat is exaggerated by the UK government”.<sup>237</sup> This messaging was developed by the Research, Information and Communications Unit, the Home Office’s strategic communications department. It is an indication of how, in government communications work, the “wrong” message for audiences to take from discussions of “terrorism” is that it is not a serious threat or that the government exaggerates the danger. The difficulty with this approach is that it brackets off empirical questions, assuming that the negative statements cannot be true – an indication of the propagandist nature of the communications.

Government ministers and other security officials have repeatedly promoted the unsubstantiated claim that “jihadist terrorism” represents an existential threat to the UK or a wide-ranging cultural problem across an entire generation of young Muslims. Table 2 contains a sample of official statements of this kind reported in the news media between 2003 and 2017. The extent to which this is deliberate or the result of errors is difficult to tell. The pattern of misinformation is certainly compatible with a strategic communication approach to the circulation of information on “terrorism”.

Year	Headline
2003	UK on missile terror alert: Blair orders security crackdown after aircraft threat – 1,500 troops, police patrol Heathrow <sup>238</sup>
2006	Al-Qaida plotting nuclear attack on UK, officials warn <sup>239</sup>
2009	Brown warns of enduring al-Qaida threat to UK <sup>240</sup>
2013	UK in ‘generational struggle’ against terror, says PM <sup>241</sup>
2017	Islamist attacks will threaten UK for decades, former head of MI5 warns as police say Isis is creating terror “cult” <sup>242</sup>
2017	UK facing most severe terror threat ever, warns MI5 chief <sup>243</sup>

**Table 2: British government statements on the terror threat, 2003–2017**

## The plot evidence base

Government statements on specific plots or the number of such plots being investigated also point to the unreliability of government information. An analysis of the number of plots that official sources said existed from 2006 to 2008 shows that the numbers were irregular and inconsistent:

- June 2006: “at least 20 major plots”<sup>244</sup>
- July 2006: “70 plots”<sup>245</sup>
- August 2006: “74 plots”<sup>246</sup>
- September 2006: “70 plots”<sup>247</sup>
- November 2006: 30 “major [Jihadist] terrorist plots”<sup>248</sup>
- July 2007: 30 plots<sup>249</sup>
- July 2008: “80 separate terror plots”<sup>250</sup>
- December 2008: “30 plots”<sup>251</sup>

In the news articles in which these figures were reported, there was never any explanation for the fluctuations or any explanation or definition of a “terrorist plot”. One possible explanation for these discrepancies is that security agencies were regularly disrupting significant numbers of plots while at the same time significant numbers of new plots emerged. On the other hand, it suggests that the definition of “plot” may be elastic enough to respond to the needs of strategic communication work.

Examining some of the most high-profile plots reported in this period suggests that the government’s communication record has been highly unreliable. For example, Operation Volga, an “anti-terrorism” raid carried out in Forest Gate, London, in the early hours of 2 June 2006, was reportedly launched after “security sources” acquired intelligence indicating a “viable” chemical bomb was being built by two Muslim brothers.<sup>252</sup> “Intelligence had suggested”, reported the BBC, that it was “a fatal device that could produce casualty figures in double or even triple figures.”<sup>253</sup> *The Sun* reported that “senior officers are convinced” of “an ‘imminent’ attack in the UK” either “by a suicide bomber or in a remote-controlled explosion”.<sup>254</sup> Throughout the raid and the subsequent investigation, an air-exclusion zone was imposed which banned aircraft from flying up to 2,500 feet above the house.<sup>255</sup>

After eight days of enquiries, no chemical weapon was found and no evidence emerged to suggest that the men had ever been involved in “terrorism”. Both men were released without charge. “Intelligence sources” told the *Guardian* that the police did not have “time to bug the house” and that “intelligence is patchy. Even if it suggests a 5 per cent likelihood of something nasty, we can’t take that risk.”<sup>256</sup>

During the raid, Muhammad Abdulkahar was shot and injured. The story from official briefings was that a struggle between an officer and the two brothers broke out, in which one of the men tried snatching the gun, resulting in a shot being fired.<sup>257</sup> Abdulkahar maintained that he was shot without warning or signal.<sup>258</sup> *The News of the World* reported a “highly-placed Whitehall source” as saying “the officers are adamant that they did not pull the trigger and have told bosses at Scotland Yard the DNA evidence will prove this”.<sup>259</sup> Eventually the Independent Police Complaints Commission reported that the shot had in fact been fired by the officer as a “mistake” exacerbated by the “bulky clothing and gloves”.<sup>260</sup> And “no identifiable fingerprints [were] found on the weapon except those attributed to the officer who would have handled the weapon”.<sup>261</sup> In other words, contrary to the claims made in the *News of the World*, neither of the brothers had touched the weapon. *Official briefings on alleged plots are clearly not always reliable, whether by mistake or design.*

There are also various examples of officials proclaiming a plot existed only for the claim to evaporate when subjected to public or legal scrutiny.

- *Hogmanay Plot, Edinburgh, 2002* – Seven Algerians were systematically surveilled for months. The evidence against them generated by this surveillance was that they were found in possession of a poster and a map of Edinburgh with “jottings” on it. The defendants were able to show that neither item belonged to them. As the Scotsman asked: “On one hand, an MI5 agent says there was an al-Qaeda plot to launch a terrorist attack on Edinburgh’s Hogmanay celebrations; on the other, Lothian and Borders Police insist there is no specific evidence to suggest a planned atrocity. So who’s telling the truth?”<sup>262</sup>  
In this case, the police. All charges were dropped.<sup>263</sup>
- *Ricin Plot, Wood Green, London, 2003* – This involved no ricin and indeed no plot.<sup>264</sup>
- *Operation Zoological: a plot to blow up Old Trafford, Manchester, 2004*<sup>265</sup> – This was a plot hatched in the minds of the Manchester police. However, “tickets to a Manchester United game found during anti-terrorist raids ... were for an old match and had been kept as souvenirs by the suspects, who were fans of the club.”<sup>266</sup>
- *Atif Siddique case, 2006* – An alleged plot to behead the Canadian prime minister did not exist and Siddique was subsequently released in what was acknowledged to be a miscarriage of justice.

In all of these cases, dramatic stories made their way into the news media from government sources. They were at best exaggerations and at worst simple fabrications.

## **Government communications**

The apparatus for government communication has been overhauled and expanded markedly in the War on Terror period.<sup>267</sup> Since 2011, covert communication and propaganda activities have been embraced in ways not seen since the height of the Cold War. Both MI5 and MI6 most likely have sizable staff groups working on propaganda or “I/ops” as it is called in MI6.<sup>268</sup> Three government communications units involved in these activities warrant particular attention.

### **Research, Information and Communications Unit**

The Research Information and Communications Unit (RICU) of the Home Office is part of the Office of Security and Counter-Terrorism and, therefore, effectively an intelligence operation. Created in 2007, RICU has responsibility for counter terrorism communications. In the first few years of its existence, it focused on the production of communications guides, audience research and efforts to understand how language used by government is received and understood by target audiences. RICU appears to have changed strategy from June 2011. Then home secretary Theresa May told the Intelligence and Security Committee in 2012 that, as a result of the review of Prevent policy, RICU “has a new focus”.

The Committee’s report noted: “RICU has focused on engaging credible civil society organisations in order to encourage these organisations to challenge radical and extreme views in their local communities.” The home secretary herself told the committee: “Often it is more effective to be working through groups that are recognised as having a voice and having an impact with that

voice, rather than it being seen to be government trying to give a message. Indeed, it's always better to be using those people to whom people look naturally to hear the message, rather than simply doing it as RICU itself." This was an admission of a deceptive approach to communications. What it meant in practice was the commissioning by RICU of a private sector communications company, Breakthrough Media, to produce government propaganda messages "at an industrial scale and pace", as RICU insiders put it.<sup>269</sup> These messages were then issued in the name of Muslim civil society groups as if they were their own work – as was the case with the "women's rights" group Inspire.

### **Joint Threat Research Intelligence Group**

The Joint Threat Research Intelligence Group (JTRIG) was a secretive propaganda group inside GCHQ. Its existence was disclosed in documents leaked by US National Security Agency whistleblower Edward Snowden. In 2011, 120 people were housed at JTRIG. Among the Snowden documents was a review of the group written by a UK academic, which states that JTRIG engages in operations "characterised by terms such as 'discredit', promote 'distrust', 'dissuade', 'deceive', 'disrupt', 'delay', 'deny', 'denigrate/degrade', and 'deter'." JTRIG works closely with the Defence Science and Technology Laboratory (DSTL) – based at Porton Down. In addition to the work it does on chemical and biological warfare agents, DSTL carries out a significant amount of work on propaganda. It has been a key agency in undertaking research on "information operations" and "psy ops" – military euphemisms for propaganda. It currently advertises an Orwellian-sounding "influence programme". Amongst other things, it was influential in the creation of RICU at the Home Office.

### **77<sup>th</sup> Brigade**

The 77<sup>th</sup> Brigade was created in 2014 by amalgamating a range of existing communications units in the military including the unit formerly known as "psy ops". The 77th is co-located at Denison Barracks in Thatcham, near Newbury, with several military intelligence units, including the Specialist Group Military Intelligence. Like its predecessor unit, the 15th Psychological Operations Unit, the 77th engages in all kinds of communications, including "black" propaganda, which involved the deceptive pretence that messages are from a third party.<sup>270</sup> The 77th also engages in social media activities using false identities.<sup>271</sup>

## **Untrustworthy government information**

As discussed in the previous chapter, the threat of "jihadist terrorism" is real. But it has been overstated in official statements. The UK's then independent reviewer of terrorism laws, David Anderson QC, said in 2013 that the "terrorists" are not the only ones who "have an interest in magnifying the threat". Security officials and even industry have a vested interest in the seriousness of the threat and over-egging it can lead to "unnecessary fears and powers".<sup>272</sup>

We cannot trust the government to tell us what the real "terrorism" threat is in the UK. Nor can we rely on the government's account of what causes that violence to happen. This has two important implications. First, if the threat is less dramatic than the government has stated, it is more easily amenable to democratically accountable law enforcement and emergency measures

are less warranted. Second, there is a question about the practice of elements of the security state, whether deliberately or carelessly, allowing the media and the public to be fundamentally misinformed about the threat in general and about specific cases of threat.

## D – Unaccountable intelligence agencies

The intelligence and security agencies of the UK are not democratically accountable. They are not accountable to ministers, parliament or – most importantly – the public. This is admitted, if not exactly extolled, by the government itself.<sup>273</sup> The War on Terror has led to a significant expansion in their covert activities, including industrial-scale surveillance, complicity in torture and renditions, extrajudicial executions and other actions of questionable legality. As one longtime observer of the intelligence agencies has written, the last twenty years have been characterised by “overturning both legal norms and considered military doctrine” and “a new ideology where anything goes”.<sup>274</sup>

Intelligence agencies are characterised by their having far greater powers of surveillance than that allowed to police forces. A core assumption in liberal democracies is that, for that very reason, intelligence agencies should not have coercive powers, such as the power to make arrests. By establishing a separation between the intelligence agency power to spy and the police power to arrest, a line is demarcated between “seeing” and “doing”. This assumes that the role of intelligence agencies is solely to provide intelligence, which is then to be interpreted and acted upon by police forces based on their own mandate and in accordance with their legal powers.

In the UK, this separation of powers has never been easy to discern. As counter-terrorism policy and practice has expanded, the line of separation has blurred even more. The intelligence agencies are clearly not only in the business of surveillance: they have been involved in renditions, extra-judicial detention, complicity with torture, interrogations and stops and questioning at ports of entry. MI5 does not just gather counter-terrorism intelligence but plays a central role in planning and implementing counter-terrorism operations and policing more generally.

*Not only have the intelligence agencies acquired a de facto policing role, the police have steadily acquired more and more of the kinds of powers that were traditionally reserved to the intelligence agencies. This is due to the transition to the “intelligence-led policing” model in the 1990s, with its emphasis on proactive rather than reactive enforcement, and the formalisation of powers to “bug and burgle”, conduct undercover operations, run covert intelligence programmes and use informants.*

Since the Cold War, MI5 and MI6 have taken steps to give the appearance of public accountability. For instance, they began to publicly name their agency heads. And the creation in parliament of the Intelligence and Security Committee (ISC) in 1994 was meant to be a major means by which the intelligence agencies would be subject to democratic scrutiny. However, the ISC’s ability to hold the intelligence agencies to account has not kept pace with their expanding power and range in the War on Terror. Until 2013, the ISC’s remit and powers were limited and its members were appointed by the prime minister after consultation with opposition leaders, rather than by parliament as a whole.<sup>275</sup> The ISC has chosen not to investigate the role of the intelligence agencies in the miners’ strike or in Northern Ireland.<sup>276</sup> It tends to avoid making specific allegations of wrongdoing and focuses on more general questions of policy and process.<sup>277</sup>

As the journalist Richard Norton-Taylor has written:

The committee's members, who have to be approved by the prime minister (and, we can assume, are vetted by MI5 and MI6), meet in private. The ISC's record is not good. It has been misled by MI5 and MI6 in the past, specifically about Britain's role in rendition. The ISC has already said that MI6 officers deployed to Iraq and Afghanistan in 2001 were "not sufficiently trained" in the law, notably the Geneva Conventions. How long have they needed to learn?<sup>278</sup>

In a similar vein, Democratic Audit concluded in 2016 that:

The Intelligence and Select Committee remains an imperfect and very limited body for the regulation of the large, powerful, and secretive intelligence services. Despite recent reforms ... it is still a body over which the government and Prime Minister exercise an enormous amount of influence. Choreographed evidence sessions between the committee and the Service heads suggest an over-co-operative, too close relationship. So too does the past willingness of the committee to very promptly exonerate the GCHQ in regard to the Snowden revelations and the charges of data collection and surveillance exceeding the agency's remit – a clearance that occurred while the revelations were still emerging.<sup>279</sup>

An exception to this general pattern was the ISC's investigation of detainee mistreatment and rendition, discussed earlier. The government attempted to severely limit the scope of the investigation by prohibiting the ISC from interviewing intelligence officers who were on the ground at the time of the CIA's Rendition, Detention and Interrogation programme. But the ISC went on to publish two hard-hitting reports on detainee mistreatment and rendition, which subjected the intelligence agencies to an unprecedented level of rigorous scrutiny.

## E – No scrutiny of surveillance

The release of intelligence agency documents by US National Security Agency whistleblower Edward Snowden in 2013 prompted a vigorous debate among civil liberties and human rights organisations about surveillance. Central to these discussions was a distinction between "bulk surveillance", the indiscriminate monitoring of mobile and fixed line communications data, internet traffic, etc., and "targeted surveillance", the use of intrusive powers deployed against known groups and individuals on the basis of credible suspicions about their activities. Various legal challenges against GCHQ ensued.<sup>280</sup> Then came the "investigatory powers" and "bulk powers" reviews by the UK's then independent reviewer of counter-terrorism, David Anderson QC.<sup>281</sup> Crucially, Anderson was asked to assess the utility and not the proportionality of UK surveillance powers.

The subsequent Investigatory Powers Act 2016 was rightly dubbed a "snoopers charter" by its critics. In addition to restating existing bulk and targeted surveillance powers, the Investigatory Powers Act introduced new powers, for both police and intelligence agencies, to "hack" into computers and other devices to access private information.<sup>282</sup> It also introduced new obligations on internet service providers to assist in these endeavours, including by removing encryption.<sup>283</sup> The Chinese government has referred to the law on numerous occasions in justifying its own widely criticised surveillance practices.

The 2016 Act put the surveillance activities of the UK intelligence agencies on a proper legal footing for the first time and created a new Investigatory Powers Commission with enhanced powers. But accountability is for the most part after-the-fact and leaves individuals in the invidious position of having to know they were surveilled in order to mount a challenge. In any case, the prospects for a successful challenge are slim due to the workings of the Investigatory Powers Tribunal. An opportunity to introduce further reforms to the way surveillance is conceived, implemented, regulated and controlled was missed.

The failure to develop deeper reforms of surveillance is especially troubling in light of the ongoing undercover policing inquiry, launched after it was revealed that undercover police officers had used the identities of dead babies as covers and, while undercover, entered into sexual relationships and fathered children with women who were unaware of their actual identity as police officers. Investigative journalists have since discovered that a staggering 121 left-wing and environmental organisations and three right-wing groups were infiltrated by the police over a thirty-seven year period. Whereas there is some minimal level of judicial and political scrutiny in the interception of telecommunications content and the use of “bug and bungle” operations, the use of undercover officers and informants need only be authorised by a senior staff member of the relevant police force or intelligence agency.<sup>284</sup>

It is also the case in Britain that powerful surveillance technologies are regularly adopted by police forces without meaningful scrutiny. Any ensuing debate comes after they have already been put into operation. In recent years, police forces have adopted the use of international mobile subscriber identity-catchers (IMSI-catchers) that allow them to collect the identification numbers of the mobile phones of everyone in a given vicinity – for example, at a protest or demonstration. They have also adopted facial recognition technologies, which will soon be able to “follow anyone anywhere, or for that matter, everyone everywhere”, as Microsoft recently put it.<sup>285</sup> In neither case was there any public consultation and no regard given to the kind of society these technologies may engender. The establishment of ethics panels or bodies has come too late to have any meaningful impact on the crucial questions that should be resolved before these technologies are deployed.

Finally, it should be remembered that the UK government makes massive public investments in security and surveillance technology to both bolster security and invest in what has become a key part of the UK defence industry. In turn, the export of security and surveillance technologies has become a source of significant revenues, despite concerns that these technologies are being sold to authoritarian regimes to be used to identify dissidents and quash protest. In June 2019 the UN Special Rapporteur on freedom of opinion and expression called for a moratorium on surveillance technology until “effective” national or international controls are put in place to lessen its harmful impact, describing the *status quo* as a “free-for-all”.<sup>286</sup>

## F – Bypassing parliament

Counter-terrorism policies are often initiated without effective parliamentary scrutiny. There are two ways this happens: through statutory instruments and international treaties.

## Statutory instruments

In addition to primary legislation passed through parliament, the UK has since 2000 adopted a further 137 statutory instruments expressly concerned with terrorism. Just over a quarter of these related to the criminalisation of specific terrorist groups, using the proscription power defined in the Terrorism Act 2000; a fifth were commencement orders that determine when statutory provisions come into force; the remainder, however, cover a range of highly significant issues including codes of practice, guidance, implementing regulations, administrative procedures, the territorial application of specific counter-terrorism provisions and national security determinations on matters such as the use of biometric data and the exclusion of persons from the UK. Statutory instruments have also been used to amend existing counter-terrorism laws or establish new laws, for example on matters related to extradition, asset-freezing and the mandatory retention of telecommunications data. Statutory instruments have been used excessively and expansively. They are not subject to effective parliamentary scrutiny and can be used to sidestep entirely debate on key issues. In some instances of counter-terrorism decision-making, there has been no legislative decision whatsoever. This was the case, for example, with respect to the establishment of the UK's Counter-Terrorism Internet Referral Unit, which was discussed earlier.

## International treaties

Counter-terrorism law can also effectively be instituted through international treaties signed by the UK government – for example, the UK-US extradition treaty agreed in 2003, discussed above. The UK government can sign international treaties without any prior consultation of parliament. It can also circumvent parliamentary scrutiny of the ratification process through an arcane process known as “orders in council”, in which international treaties are agreed by the privy council, in the name of the Queen.<sup>287</sup> This process was, for example, used to enter into the recent agreement between the UK and the US on mutual assistance in cases of cross-border access to personal data held by companies in one country that is sought by police or security agencies in the other. The bilateral treaty, which was agreed in 2016 and required legislation in the USA, was not subject to any parliamentary scrutiny on the UK side – it has not even been published. Likewise, none of the “five eyes” agreements that underpin the global surveillance partnership between the UK, US, Canada, Australia and New Zealand have been published. Parliamentary scrutiny and debate must have a meaningful role wherever, as in the case of counter-terrorism, international treaty-making affects the fundamental rights of persons in the UK.

## 4 – Outline of a progressive alternative

The foregoing analysis has presented a picture of UK counter-terrorism policy-making as failing to reduce “terrorism”, lacking in a plausible evidence base, undermining human rights, fostering Islamophobia and unmoored from accountability. In this section, we propose a progressive transformation of policy.

Our approach is grounded in five key principles: democracy, evidence, human rights, community consent and peace. These principles enabled the most significant counter-terrorism success story in the UK since the end of the Cold War: the peace process in Northern Ireland. That success – though incomplete<sup>288</sup> – rested on a human-rights-driven reform agenda in policing, a deep commitment

to democratic accountability and public involvement in policy-making, and a recognition that the aim of policy is not greater state coercive powers but a reduction in violence.

## A – Democracy

Central to any transformation process is the need for policy-making to move away from the security elite's assumptions about the national interest and root itself instead in the actual security needs of ordinary people.<sup>289</sup> If reducing peoples' fears is to be the purpose of policy, then there needs to be a recognition that "fear is an emotional response more strongly rooted in lives, local topographies and daily experiences of insecurity than representations of distant threats".<sup>290</sup> Moreover, for many, the fear of counter-terrorism is as great or greater than the fear of terrorism. A genuine democratic approach means starting with people's actual experiences rather than with a state-centred concept of the "national interest". From this perspective, security should be defined "not as the absence of risk, but as the presence of healthy social and ecological relationships".<sup>291</sup>

This implies a holistic view in which policy is informed by a broader conception of social well-being. Rather than seeing social policy as a domain to be securitised in the interests of counter-terrorism, security policy should be seen as a domain to be socialised in the interests of a people's security. Issues such as racism, including Islamophobia, domestic violence, social exclusion and everyday violence are likely to be central to this notion of security. This approach also means moving away from the "hegemonic masculinity" of national security policy-making, in which the discourse is "reduced to a calculus of threats and coercive responses, at the expense of a comprehensive conversation about the social and ecological conditions of security".<sup>292</sup>

To develop such a people's security programme, a national audit of security needs, with genuine local community involvement across the UK, should be conducted to provide a comprehensive view of the expressed concerns of ordinary people. Women should be guaranteed equal participation in this process and the involvement of diverse ethnic groups, with specific needs, should be emphasised. This audit of security needs should provide the basis for defining the goals and methods of UK security policy, how resources are to be allocated and the priorities for future publicly-funded research on security.

### **Intelligence agencies accountability**

At the level of parliamentary oversight, concrete proposals to throw open the intelligence agencies to proper democratic scrutiny are few and far between. What is needed is a far more robust and inquisitorial process in which the Intelligence and Security Committee or any successor: has more power to compel evidence; includes in its oversight all intelligence and related covert activities; makes a presumption in favour of openness and accountability; and is not subject to a veto on committee members by the agencies being examined. Crucially, the government should not have the power to constrain the Committee in its investigations.

More importantly, the institutions of parliament are themselves inadequate to the task of holding the intelligence agencies to account. A much wider process of transparency and accountability will be needed to open up the intelligence agencies to democratic scrutiny. Accountability processes

need to be spread from the executive and from parliament to the judiciary and the public. An obvious step is the creation of an Office of the Intelligence Commissioner on the model of the Information Commissioner's Office. This would allow whistle-blowers and members of the public to raise issues with the Commissioner about the conduct and activities of all intelligence agencies. The Commissioner would need to have a significant budget and be able to compel the agencies to disclose documentation. There would need to be a right of appeal which would take the form of an intelligence tribunal, on the model of the Information Tribunal, with full powers to investigate and decide on remedies.

## **Surveillance**

New mechanisms are necessary for determining whether particular surveillance technologies should be developed and implemented. The role, nature and recipients of security technology investment need to be reviewed and novel processes introduced to ensure that technology is only developed for legitimate purposes and in responsible ways. For this to happen, the UK government needs to start looking at surveillance policy and technology in the round, moving beyond the solely legal and technical discussions that characterised debates in the aftermath of the Snowden revelations. This will require a reaffirmation of basic principles of democracy.

Indiscriminate surveillance systems must be subject to an overwhelming public interest justification and used sparingly and reactively – not to profile, assess and target people going about their normal business. Targeted, intrusive surveillance – whether in the form of undercover police officers, the hacking or bugging of a smart-phone or access to a person's internet browsing history – must be subject to the highest legal protections and only ever authorised by an independent judicial authority which is itself subject to scrutiny and democratic control. Those organisations and agencies tasked with developing and using surveillance systems must be able to demonstrate that their use is necessary, proportionate, effective and free from bias. Individuals with concerns or complaints about the use of surveillance must have easy access to meaningful information and an effective remedy. All of this will require a fundamental recalibration of police and intelligence oversight and significant investment in monitoring and accountability mechanisms.

## **B – Evidence**

Developing an evidence-based programme that effectively reduces political violence requires a precise and consistent definition of the problem and a plausible account of how policy might intervene in the processes that cause political violence to happen. In the absence of such an evidence base, policy-making will inevitably be skewed by misplaced assumptions and special interests. It is also clear that such an evidence base cannot be reliably developed in secret by the intelligence agencies.

We believe an independent commission on the nature and causes of political violence should be established with the involvement of a broad range of academics, other experts and communities. The aim should be to provide a body of knowledge that can reliably inform policy-making and public debate. The Commission should be empowered to access and review classified material

and provide an independent assessment of existing intelligence agency knowledge. Unlike the currently existing Commission for Countering Extremism and the Extremism Analysis Unit, the research work of a commission on political violence should meet academic standards of scholarship and be credibly independent of government and think-tank influence.<sup>293</sup>

## **Government communication**

Public debate on “terrorism” needs to be informed by accurate data from official sources. This requires a return to the public interest conceptions of government communications that were effectively abolished by the Phillis Review in 2004.<sup>294</sup> “Strategic communications” units within government that have misled the public on the extent and nature of “terrorism” would have to be closed.

There is also a case for outlawing covert communications activities, such as government employees creating and managing fake online identities and apparently independent civil society groups acting as mouthpieces of the government.

A new public interest-led communications policy might consider a significantly reformed version of the model previously existing in the Government Information Service, in which all those involved in communications advice would belong to a specific class of civil servants and would have separate professional management from a very senior civil servant. The requirement to be strongly committed to an ethical approach to communications in the public interest would be a fundamental professional obligation.

## **C – Human rights**

We welcome Labour Party leader Jeremy Corbyn’s emphasis on human rights as central to foreign policy.<sup>295</sup> More specifically, we believe the UK should commit to ending diplomatic or military support for states involved in widespread human rights abuses. Political repression, such as state-sanctioned killings, torture, disappearances and political imprisonment, is a key driver of political violence. In the long-term, allying with states that carry out such practices is counter-productive. These alliances are regarded as valuable due to the “intelligence” that allies share with the UK but any information gathered by security agencies using torture and inhuman treatment is unreliable. The UK should also support international efforts to reduce corruption, sectarianism and religious intolerance.

Within the UK, the separate justice system that enables counter-terrorism to operate without adequate scrutiny and accountability ought to be ended. The regular criminal justice system should be used to bring any charges against individuals accused of terrorism-related offences to jury trial. If there is insufficient evidence to bring a charge, there should be no alternative punishment such as extradition, deportation or restrictions on movement and behaviour that do not require a criminal conviction.

The use of Terrorism Act powers to criminalise freedom of expression and association should be ended.

## Preventing torture

All of the issues raised by the the Intelligence and Security Committee need to be addressed but a prior move for the UK government is to recommit to the absolute prohibition of torture and of cruel, inhuman or degrading treatment, and to instil a respect for this prohibition throughout the state security apparatus. This will require a radical overhaul in training and some serious work to re-educate security personnel and members of parliament alike in relation to the assumptions they make about torture. As the US Senate Select Committee on Intelligence concluded,<sup>296</sup> torture is neither effective nor useful and indeed has the opposite effect to that intended, serving as a key recruiting tool for groups pursuing political violence. All training and guidance must be underpinned by a very clear articulation of the moral and ethical reasons not to collude in torture and cruel, inhuman or degrading treatment.

The Consolidated Guidance used by the intelligence agencies should be replaced with a clear policy on torture and cruel, inhuman or degrading treatment, which should:

- Establish an absolute prohibition on UK action by all UK personnel where there is a “serious risk” that such action may lead to torture or cruel, inhuman or degrading treatment;
- Include a clear statement on the inefficacy of torture and cruel, inhuman or degrading treatment, in line with the long established scientific finding that torture and cruel, inhuman or degrading treatment do not result in the acquisition of reliable intelligence;
- Explicitly include rendition as a form of cruel, inhuman or degrading treatment;
- Establish a clear process for assessing risk of torture and cruel, inhuman or degrading treatment where UK agencies are collaborating with overseas partners.

## Extradition

In the past, it was understood that political motivations can underpin or influence extradition in political offence cases. For this reason, political offence exception clauses existed within extradition law.<sup>297</sup> Such exceptions have gradually been repealed since the 1970s. However, evidence from extradition for terrorism cases indicates the need to reintroduce deeper scrutiny of extradition requests in political offence cases, including terrorism cases. Provisions that allow the motivations for requests to be scrutinised before consenting to extradition should therefore be reintroduced. To this end, our recommendedations are that:

- All extradition agreements should require the requesting state to provide prima facie evidence to support their charges.
- Requesting states should in addition present a clear justification for why the case ought to be heard under their jurisdiction as opposed to under the British judicial system if the accused is resident there. If there is ambivalence over sovereignty in a terrorism case, due consideration should be paid to the justifications for extradition.

We also recommend:

- Maintaining the use of the forum bar introduced into legislation in 2013 which bars extradition where a substantial part of the alleged criminal activity took place in the requested state (UK) and when it would not be in the interests of justice to deport the accused. To ensure that the forum bar is consistently applied and not suspended in terrorism cases.
- Ensuring rights to a speedy trial apply in all terrorism cases. There should be no long term pre-trial incarceration of accused while they wait for extradition requests to be dealt with by British courts.
- Reconsideration of extradition at all to states that do not follow procedures of due process or allow for a fair trial, including states that practice long term pre-trial incarceration and pre-trial incarceration in conditions of solitary confinement, since all of these measures inhibit the ability to mount a fair defence.

## **Deportation**

- There should be no new memoranda of understanding established and no additional deportations under existing memoranda in light of the fact that assurances from states that have poor human rights records and are known for engaging in torture are not reliable, and that evidence from previous cases highlighted by human rights organisations shows diplomatic assurances do not guarantee people deported will not be subject to torture.
- If deportation is on the basis of an individual being charged with offences in another sovereign state, this should only be permissible if the requesting state meets international human rights conventions.
- The regular criminal justice system should be used to bring any charges against individuals accused of terrorism related offences to trial where they concern the UK. If there is insufficient evidence to bring a charge there should be no alternative punishment. Foreign nationals should thus not face deportation as an alternative.

## **Citizenship, passport removal and denial of naturalisation**

A number of measures must be taken to move us towards a more transparent and accountable justice system in such cases:

- All legal amendments passed since 2002 which have enhanced state powers to deprive citizenship in the context of national security must be repealed in order to reaffirm that citizenship is an unconditional right.
- Changes made to “public interest” criteria of royal prerogative powers in 2013, which allow the home secretary to cancel, withdraw or refuse the issue of a passport based on “past, present or proposed activities”, must be repealed. The criminal justice system

ought to be used where there is a case to be made for criminal conduct but access to a passport must not be conditional on one's past or projected behaviours.

- The right to freedom of movement must be upheld, which means travel in itself should not be criminalised.
- Decisions on naturalisation of citizenship need to ensure that the character requirement does not lead to racial and religious discrimination.
- Open court systems should be used in all terrorism cases. SIAC should be abolished and in all terrorism cases the defendant and their lawyer should have access to all the evidence against them in order that they can mount a defence or appeal.

## D – Community consent

Community consent is crucial to achieving a genuine reduction in political violence. The lesson of the War on Terror is that peace has been impossible to achieve so long as Muslim communities have been treated as objects of Islamophobic suspicion and subjected to various forms of exceptional coercion. The various Muslim community engagement efforts launched by the UK government since the mid-2000s – Preventing Extremism Together, Preventing Violent Extremism, the Commission for Countering Extremism – have paid lip service to this lesson without ever putting into practice the principle of community consent. We believe the establishment of a genuinely independent commission on the nature and causes of political violence and the development of a locally grounded audit of security needs, as discussed above, are vehicles for an effective, bottom-up process of community involvement in the development of knowledge about political violence and how to prevent it.

Irrespective of its original presentation as “community-led”, Prevent policy has not been a two-way communication with communities; rather, the government has used strategic communication methods to influence Muslim attitudes and sought to instrumentalise community processes for the purposes of surveillance. After more than a decade, it is time to abandon Prevent and the thinking that gave rise to it. The task before us is to remedy the harms caused by Prevent's corroding effects on our public services and to enshrine a renewed commitment to rights, equality and democracy. We recommend the following steps towards achieving these goals:

### **End Prevent**

- The Prevent duty in the Counter-Terrorism and Security Act 2015 should be repealed and Prevent policy ended.

### **Schools**

- Schools should renew efforts to promote a children's rights framework in their practice. In the language of the Convention on the Rights of the Child, the obligation should be to consider ‘the best interests of the child’ as ‘a primary consideration’ in ‘all actions

concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies'. This would mean children should be involved in the decision-making processes that affect their access to and experiences within the education system. The Labour Party's pledge to enshrine the Convention of the Rights of the Child into domestic law would be a positive step in this direction.<sup>298</sup>

- Ofsted should remove from its inspection criteria the requirements to promote "British values" and safeguard from radicalisation. Instead, educational practice should be based on student-centred, active learning initiatives.
- Democratic structures within schools and further education colleges should be strengthened, including through links to local democratic accountability. Schools and further education colleges should have mechanisms to involve students in drawing up their policies, alongside other mechanisms of institutional accountability. The Labour Party's proposed policy to increase democratic accountability of education through links to local democratic structures would be helpful in achieving this objective.<sup>299</sup>
- Children's independent access to welfare services needs to be secured. This includes access to independent counselling services and improvement of provisions for children with Special Educational Needs and Disability. The Labour Party's pledge to commit significant resources in this area and its proposed policy to improve the working conditions of support staff in schools will help address this.<sup>300</sup>

## Higher education

- Universities need to be protected as independent bodies for research and knowledge production. They should be transparent about their research activities. Covert or secret research should not be undertaken.
- Universities should have academic-led research ethics procedures which are guided by disciplinary and professional ethical codes of conduct. The current Universities UK guidance on security sensitive research should be rescinded and replaced with academic-led procedures.<sup>301</sup>
- Decision-making on freedom of speech within the student community should be grounded in student union democracy rather than subject to the oversight of university management.

## Mental health

- It is essential to ensure adequate provision of mental health services tailored to address specific needs without incorporating a counter-extremism risk assessment framework into routine mental health practice.<sup>302</sup> The Labour Party's 2017 manifesto details a range of initiatives including the development of evidenced based therapeutic treatments, increased allocation of resources for both child and adult mental health services and

for adequate support provisions for those with disabilities.<sup>303</sup> This plan for investment in welfare provision would be a key to offering tailored means of supporting children and vulnerable adults and safeguarding them from harm. As noted in the Labour Party's 2017 "race and faith" manifesto, there should be specific support for the mental health needs of black and minority ethnic people.<sup>304</sup>

## **Youth and community work**

- Programmes should emerge from a community-led process of identifying needs, rather than based on flawed assumptions about the causes of terrorism.
- Youth and community workers must have the integrity of their professional norms protected against the expectation that they become the eyes and ears of counter-terrorist policing.
- Democratic political education across all communities through youth work is essential. Local authority spending on universal youth services in England dropped by 52% in real terms from 2012 to 2018, leading to the loss of 140,000 places for young people at youth centres. The Labour Party's proposal to introduce a compulsory minimum level of youth service for local authorities is to be welcomed in this context.<sup>305</sup>

## **Investigations**

- There is evidence to suggest that Prevent implementation may have resulted in breaches of the Data Protection Acts.<sup>306</sup> The Information Commissioner should review any breaches resulting from Prevent's data collection and information sharing agreements in place at public institutions.

There needs to be a renewal of efforts to ensure compliance with the Public Sector Equality Duty across public sector institutions. In the current context, institutions can only be held to account for violations of the Equality Act if individuals themselves take up cases. There should be a strengthening of the capacity of the Equalities and Human Rights Commission to carry out investigations and enforcement to hold institutions to account.

## **E – Peace**

The aim of security policy should be the establishing of the long-term social and ecological conditions for well-being and justice – the necessary bases for genuine peace – rather than a reactive approach to short-term threats. Jeremy Corbyn has emphasised that central to a future Labour foreign policy will be the strengthening of efforts to resolve conflicts justly and peacefully.<sup>307</sup> We believe this is an important component of an effective, progressive programme of reducing political violence. As noted earlier, the military actions of the War on Terror have had disastrous consequences for the regions affected and for Britain. The UK should commit to ending involvement in unilateral military interventions.

The UK's role with regard to civil wars and ethnic conflicts in other parts of the world should typically

be to support multilateral efforts to reduce armed conflict, including by reducing international arms sales and facilitating peace processes between armed groups. There should be no support to one side or the other based on perceived geopolitical interests or ideological considerations. Indeed, the UK has a special responsibility to work towards peaceful resolution, given that its colonial history is at the root of many of these conflicts. To the extent that the proscription of armed groups under the Terrorism Act hinders this process, by preventing communication and engagement with armed factions, it should be repealed.

## **Reparations, truth and the past**

In many areas of foreign and counter-terrorism policy, there is a need not only to move to new policies but to deal with the damaging legacy of the failed policies of the past. This means practical action to dismantle structures of institutional discrimination and repression as well as investigations and inquiries that bring to the surface what has been long suppressed by secrecy, misinformation and a lack of accountability.

The key way that this has been advocated in the past has been through a process of truth and reconciliation. This can have the advantage of clarifying the abuses of the past as a means of moving on. One issue that is faced in such processes is the question of justice. If former combatants and state officials are given guarantees of immunity from prosecution for their crimes, this is thought to have the effect of encouraging more truth but at the cost of less justice.

As Bill Rolston notes in the Irish case:

There are many claims made on behalf of truth commissions. At their best, they are said to end past impunity by uncovering the truth. The victims whose memory has been sullied and the relatives whose struggle for truth has been marginalised by the previous regime can now be vindicated by the official acknowledgement that a wrong has been committed. Even in the absence of prosecutions of those state functionaries who have carried out abuses or their political masters, this official acknowledgement is, in itself, undoubtedly a symbolic victory for victims and campaigners. It can contribute to their task of finding closure for the events of the past. Finally, the ending of past impunity is said to send out a powerful message about the avoidance of human rights abuses in the future, thus encouraging a vibrant culture of human rights. As we shall see, the reality of truth commissions is usually less than the promise.<sup>308</sup>

We propose that there are three major ways in which the past and ongoing injustices of the War on Terror be dealt with: public inquiries, reparations and prosecutions.

### **Public inquiries**

We are pleased to see the commitment of the Labour Party to inquiries on the blacklisting of workers, on what happened at Orgreave and on the Amritsar massacre of 1984.<sup>309</sup> There also ought to be a judge-led public inquiry with wide terms of reference to fully investigate Britain's role in human rights abuses in the War on Terror. Its aims would be to enable a public acknowledgement of past injustices, develop policy and legislation to prevent future abuses from occurring, and to generate

evidence in order that individuals criminally complicit with torture and military aggression can be prosecuted.<sup>310</sup> The inquiry's success would depend on popular participation and engagement.

In addition, there are many extrajudicial killings and massacres carried out by the British military which need investigation and remedy. For example, there should be a public inquiry on the conduct of the British military in the Ballymurphy massacre in Belfast in 1971 and in other cases of state killings in the conflict in the north of Ireland.<sup>311</sup> Existing inquiries should also be examined to ensure that they are able to deliver on their mandate – most obviously the undercover policing inquiry under Sir John Mitting.<sup>312</sup>

### **Reparations**

Too often in the past, public inquiries have either resulted in a whitewash – because of restrictive terms of reference, biases of those appointed to run the inquiries or lack of co-operation by sections of the state. On those occasions when inquiries have discovered and reported on significant wrongdoing by the state, there have been no follow-up actions to make reparations or pursue justice on the basis of the findings. Reparation should include significant material compensation but it also means that future activities by the state are regulated in the light of the failures of the past. This means a serious transformation of the machinery of the state and in particular of its coercive apparatus, including the military, the police, the intelligence agencies and the criminal justice system. In relation to the intelligence agencies, there should be a public process to consider what exactly their role and purpose should be in a mature democracy.

### **Prosecutions**

Justice should involve the ability and practical will of the state to prosecute official wrongdoers. Individuals criminally complicit with torture and military aggression should be prosecuted. The UK should also explore ways to support the International Criminal Court in the Hague to take action on war crimes committed during the War on Terror.

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This report offers an account of the failures of current counter-terrorism policies, an analysis of the reasons why they do not work and an outline of a progressive alternative. The time is right to critically assess the legacy of the last twenty years and change course. Counter-terrorism policy-making has failed because its development is unmoored from any substantial process of democratic accountability. An alternative progressive counter-terrorism policy must be grounded in five key principles: democracy, evidence, human rights, community consent and peace.



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