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*Winner of the 1998 Council of Europe Prize*

*A briefing on the*  
***Criminal Justice (Terrorism and Conspiracy) Act 1998***  
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# **A briefing on the Criminal Justice (Terrorism and Conspiracy) Act 1998**

**Prepared by the Committee on the Administration of Justice (CAJ)**

The Committee on the Administration of Justice (CAJ) is deeply concerned about the threat to respect for human rights posed by the Criminal Justice (Terrorism and Conspiracy) Act 1998 which the British government introduced in the wake of the Omagh atrocity.

It is undoubtedly incumbent upon governments to take steps to protect society from criminal acts and to bring those responsible to justice in the course of proceedings which meet international standards of fairness. Measures taken in the immediate wake of atrocities are rarely effective in achieving this goal. History has shown that they frequently lead to miscarriages of justice and undermine public confidence in the rule of law.

The Committee on the Administration of Justice (CAJ) believe that the new legislation introduced in the wake of the Omagh atrocity is not only "draconian" but violates the government's human rights obligations under international law. Furthermore we believe that the proposals conflict with the soon to be enacted Human Rights Act which will incorporate the European Convention on Human Rights into British law.

## *Changes to the right to remain silent, Sections 1 and 2*

These provisions essentially involve a relaxation of the rules of evidence to make it easier to obtain convictions for membership of certain specified proscribed organisations. Section 1 of the Act provides that in future the word of a police officer of the rank of superintendent or above will be admissible evidence against a suspect charged with membership of a proscribed organisation. In addition, if the accused fails to mention either before being charged or on being charged, a fact which is material to the offence and which s/he could reasonably be expected to mention, then the court may draw inferences of guilt from the failure. While the Act makes clear that an accused will not be returned for trial, found to have a case to answer or convicted on the basis of the statement by the police *or* the inferences, the clear intention of this legislation is to allow one to corroborate the other.

We believe that these provisions are contrary to the right to be presumed innocent until proven guilty beyond a reasonable doubt, as recognised in Articles 14 (2) of the International Covenant on Civil and Political Rights (ICCPR) and Article 6 (2) of the European Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention). These provisions also violate the right not to be compelled to testify against oneself or to confess guilt, as guaranteed by Article 14 (3) of the ICCPR.

Full respect of the right to silence is so fundamental that only a short time ago 120 states, including the UK, voted for the establishment of an international criminal court which would guarantee this right to persons suspected or accused of the worst crimes in the world: genocide, other crimes against humanity and war crimes. Similarly, the Rules of Procedure and Evidence of the

International Tribunals for the former Yugoslavia and for Rwanda guarantee this fundamental right to persons suspected or accused of these crimes.

Sections 1 and 2 of the Criminal Justice (Terrorism and Conspiracy) Act unacceptably shift the burden of proof from the prosecution to the accused and they violate the right not to be compelled to incriminate oneself. This is unacceptable and could lead to the conviction of innocent persons.

In July 1995, the United Nations Human Rights Committee, (the body of experts which monitors the implementation of the ICCPR, concluded that "the provisions of the Criminal Justice and Public Order Act of 1994, which extended the legislation originally applicable in Northern Ireland, whereby inferences may be drawn from the silence of persons accused of crimes, violates various provisions in article 14 of the [ICCPR], despite the range of safeguards built into the legislation and the rules enacted thereunder." The Committee recommended that the UK bring its legislation into conformity with the Covenant.

Similarly, the European Court of Human Rights in its February 1996 judgment in *Murray v. UK* concluded that these provisions, coupled with the restrictions on access to legal advice, violated the European Convention.

While the Act makes clear that no convictions will arise from it unless the suspect first has the right to consult with his/her solicitor, the European Court of Human Rights stated that future judgements on cases involving adverse inferences being drawn from silence would depend on all of the circumstances of the case, "having particular regard to the situations where inferences may be drawn from silence, the weight attached to them by the national courts in their assessment of the evidence and the degree of compulsion inherent in the situation." (*Murray v UK 1996*)

The aim of this Act is to impose such a degree of compulsion on suspects that they are forced to answer questions put to them by the police. This could lead to situations where there is a considerable degree of compulsion on a person detained or charged, where the only evidence proffered is the suspicion of the police, and where the courts will attach significant weight to the inference drawn from the suspect's silence. In these circumstances we are concerned that the provisions will violate the ICCPR, the European Convention and the Human Rights Act.

While these provisions relate to membership of proscribed organisations, they are targeted against only certain proscribed groups. The groups which the Secretary of State has specified as being susceptible to the Act are the INLA, LVF, "real" IRA and Continuity IRA. Three of these groups have now declared cease-fires. While of course it is the intention of the framers of the legislation that it should not be used against those from the mainstream paramilitary groups who are operating cease-fires, its use will be subject to the discretion of the RUC. Given the history of the RUC and its involvement in widespread and egregious violations of human rights, we are particularly concerned that this legislation is going to be entrusted to them.

#### *Provisions allowing for the seizure of land, section 4*

Section 4 of the Criminal Justice (Terrorism and Conspiracy) Act 1998 allows for the courts in Northern Ireland to order the seizure of property belonging to an accused person who has been convicted of membership offences under the Act. Any property or money may be seized if the court is satisfied that the accused had it in his/her possession or under his/her control at the time of

the offence and it has been used in the furtherance of or in connection with the activities of the specified organisation or the court believes it may be so used if not forfeited.

While we are concerned at any provisions which introduce a punishment in addition to loss of liberty for a criminal offence, we also believe that certain safeguards should have been put in place. Section 4 (5) establishes that the standard of proof in relation to the forfeiture of such property is civil, that is, on the balance of probabilities. In other words, property can be seized if the courts feel it more likely than not that it may at some point in the future be used in connection with the activities of a specified organisation. We believe that this test is much too wide, particularly when one considers that there is no obligation on the courts to have regard to the impact of a forfeiture order on other individuals, for instance the children of the accused.

*Conspiracy to commit Terrorist Offences Abroad: violations of the rights to freedom of expression and association, sections 5,6 and 7.*

The Act also criminalises conspiracy to commit terrorist offences abroad. While we fully support the need to take measures to prevent atrocities such as those which have recently occurred, such measures must also be taken within the framework of respect for internationally protected human rights.

We are concerned that the legislation is drafted in such a manner that it fails to set out a recognisable criminal offence, with a clear definition of terrorist offences and specification of acts which would constitute conspiracy. Additionally, we believe that the provisions violate international law, including solemn treaty commitments of the United Kingdom under Articles 19 and 22 of the International Covenant on Civil and Political Rights and Articles 10 and 11 of the European Convention on the Protection of Human Rights and Fundamental Freedoms, guaranteeing rights to freedom of expression and association.

Although Articles 10 and 11 of the European Convention permit state parties to limit the exercise of these freedoms when such limitations are prescribed by law and are necessary in a democratic society in the interests of national security, territorial integrity or public safety, such limitations must be narrowly construed so that they limit the exercise of these fundamental rights to the minimum extent necessary and for the shortest time possible. Similar limitations clauses in Articles 19 and 22 of the International Covenant on Civil and Political Rights must also be narrowly construed to ensure that the essence of these fundamental rights is not eviscerated in the name of such nebulous concepts as national security, territorial integrity and public safety.

**CONCLUSION:**

The Good Friday Agreement, in its commitment to human rights, recognised that past human rights abuses have been part of the problem and have exacerbated the conflict. Indeed, the Agreement looked to the early removal of emergency powers. The Criminal Justice (Terrorism and Conspiracy) Act is the antithesis of this approach. The governments of the UK and Ireland have publicly recognised that the intention of those who planted the bomb at Omagh was to undermine the search for peace and the Agreement. That must not be allowed to happen. A future for all the people of Ireland, underpinned by the human rights protections of the Agreement and international standards, is too precious a prize to risk by repeating the mistakes of the past.

