



ARTICLE 19

GLOBAL CAMPAIGN FOR FREE EXPRESSION

The Impact of UK Anti-Terror Laws on Freedom of Expression

Submission to ICJ Panel of Eminent Jurists on
Terrorism, Counter-Terrorism and Human Rights

London
April 2006

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1. SUMMARY OF CONCERNS

ARTICLE 19 is an international human rights organisation which defends and promotes freedom of expression and freedom of information around the world. We believe that freedom of expression and access to information is not a luxury but a fundamental human right. The full enjoyment of this right is central to achieving the full enjoyment of individual freedoms and to the healthy functioning of democracy; and it is a potent force to pre-empt repression, war and conflict.

ARTICLE 19 is increasingly concerned at the impact of the UK's¹ anti-terror laws and policies on the legitimate exercise of the right to freedom of expression. While we acknowledge that freedom of expression may be restricted in order to protect public order and national security – indeed, that the State has a duty to protect its people from terrorist threats – we are concerned at the broad reach of several of the measures that have recently been enacted. Recent years have seen the adoption of a vague and wide definition of “terrorism” and an increase in the use of anti-terror laws to stifle legitimate political and social protest. In addition, recent laws and policies outlaw not just acts of terrorism, or their direct incitement, but also the “indirect encouragement” or “other inducement” of terrorism, including its glorification. We are concerned that, together as well as individually, these vaguely phrased prohibitions criminalise the legitimate exercise of freedom of expression and have a real chilling effect on debate on matters of public interest.

This Submission outlines our concerns, focusing on the following three themes:

1. the broad definition of terrorism;
2. the use of anti-terror laws to stifle legitimate social and political protest;
3. the new prohibitions on the “encouragement”, “other inducement” or “glorification” of terrorism.

The following Section first briefly sets out the international law standards regarding the restriction of freedom of expression.

2. RESTRICTING RIGHTS UNDER INTERNATIONAL HUMAN RIGHTS LAW

The United Kingdom has ratified a number of international treaties that require it to respect and implement various rights for its citizens and others under its control or jurisdiction, including the right to freedom of expression. These treaties set out which rights are absolute, such as the right to freedom from torture, and provide strict parameters regarding the circumstances under which other rights may be restricted.

The rights to freedom of expression and freedom of assembly are among the rights that, under certain limited conditions, may be restricted; they are also among the rights that are particularly affected by the UK's terrorism laws. The precise conditions under which these rights may be restricted are broadly similar for each. Article 10(2) of the *European*

¹ We will not comment on laws and practices in Northern Ireland, which has its own specific circumstances and where we have no experience of working.

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Convention on Human Rights,² which guarantees the right to freedom of expression and the substance of which is given domestic effect through the provisions of the Human Rights Act 1998, can be used as a template to explore the conditions for restrictions on rights:

The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.

This translates to a three-part test, according to which interferences with freedom of expression are legitimate only if they (a) are prescribed by law; (b) pursue a legitimate aim; and (c) are “necessary in a democratic society”.

Each of these elements has specific legal meaning. The first requirement will be fulfilled only where the restriction is ‘prescribed by law’. This implies not only that the restriction is based in law, but also that the relevant law meets certain standards of clarity and accessibility. The European Court of Human Rights has elaborated on the requirement of “prescribed by law” under the ECHR:

[A] norm cannot be regarded as a “law” unless it is formulated with sufficient precision to enable the citizen to regulate his conduct: he must be able – if need be with appropriate advice – to foresee, to a degree that is reasonable in the circumstances, the consequences which a given situation may entail.³

This is akin to the “void for vagueness” doctrine established by the US Supreme Court and which is also found in constitutional doctrine in other countries.⁴ The US Supreme Court has explained that loosely worded or vague laws may not be used to restrict freedom of expression:

Vague laws offend several important values. First, because we assume that man is free to steer between lawful and unlawful conduct, we insist that laws give the person of ordinary intelligence a reasonable opportunity to know what is prohibited, so that he may act accordingly. Vague laws may trap the innocent by not providing fair warning. Second, if arbitrary and discriminatory enforcement is to be prevented, laws must provide explicit standards for those who apply them. A vague law impermissibly delegates basic policy matters to policemen, judges, and juries for resolution on an ad hoc and subjective basis, with the attendant dangers of arbitrary and discriminatory application. Third, but related, where a vague statute “abut[s] upon sensitive areas of basic First Amendment freedoms,” it “operates to inhibit the exercise of [those] freedoms.” Uncertain meanings inevitably lead citizens to “steer far wider of the unlawful zone’ . . . than if the boundaries of the forbidden areas were clearly marked.” (references omitted)⁵

Laws that grant authorities excessively broad discretionary powers to limit expression also fail the requirement of “prescribed by law”. The European Court of Human Rights has stated that when a grant of discretion is made to a media regulatory body, “the scope of the discretion and the manner of its exercise [must be] indicated with sufficient clarity, having regard to the legitimate aim in question, to give the individual adequate protection against

² Adopted 4 November 1950, E.T.S. No. 5, entered into force 3 September 1953.

³ *The Sunday Times v. United Kingdom*, 26 April 1979, Application No. 6538/74, para.49.

⁴ See, for example, the Canadian Charter of Rights and Freedoms, Section 1; Dutch Constitution, Article 13.

⁵ *Grayned v. City of Rockford*, 408 U.S. 104, 108-9.

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arbitrary interference.”⁶ The UN Human Rights Committee, the body of independent experts appointed under the ICCPR to monitor compliance with that treaty, has repeatedly expressed concern about excessive ministerial discretion.⁷ National courts have expressed the same concern. For example, the South African Constitutional Court has warned in relation to the regulation of obscenity that:

It is incumbent upon the legislature to devise precise guidelines if it wishes to regulate sexually explicit material. Especially in light of the painfully fresh memory of the executive branch of government ruthlessly wielding its ill-checked powers to suppress political, cultural, and, indeed, sexual expression, there is a need to jealously guard the values of free expression embodied in the Constitution of our fledgling democracy.⁸

The second requirement relates to the legitimate aims listed in Article 10(2). To satisfy this part of the test, a restriction must truly pursue one of the legitimate aims; it is illegitimate to invoke a legitimate aim as an excuse to pursue a political or other illegitimate agenda.⁹

The third requirement, that any restrictions should be “necessary in a democratic society”, is often key to the assessment of alleged violations. The word “necessary” means that there must be a “pressing social need” for the limitation.¹⁰ The reasons given by the State to justify the limitation must be “relevant and sufficient”; the State should use the least restrictive means available and the limitation must be proportionate to the aim pursued.¹¹ The European Court of Human Rights has warned that one of the implications of this is that States should not use the criminal law to restrict freedom of expression unless this is truly necessary. In *Sener v. Turkey*, the Court stated that this principle applies even in situations involving armed conflict:

[T]he dominant position which a government occupies makes it necessary for it to display restraint in resorting to criminal proceedings, particularly where other means are available for replying to the unjustified attacks and criticisms of its adversaries ... Contracting States cannot, with reference to the protection of territorial integrity or national security or the prevention of crime or disorder, restrict the right of the public to be informed of them by bringing the weight of the criminal law to bear on the media.¹²

While States must act to protect their citizens from public order and terrorist threats, their actions must be appropriate and without excess.¹³ This implies that the relevant criminal offences should be narrowly defined and applied with due restraint. It also implies that the offence of ‘terrorism’, which triggers the most severe restrictions on the enjoyment of rights, is particularly narrowly defined and employed only in circumstances when the accompanying serious restrictions on rights are truly “necessary”.

⁶ *Wingrove v. United Kingdom*, 25 November 1996, Application No. 17419/90 (European Court of Human Rights), para. 40.

⁷ Particularly in the context of media regulation: see, for example, its Concluding Observations on Kyrgyzstan, 24 July 2000, UN Doc. CCPR/CO/69/KGZ, para. 21; and its Concluding Observations on Lesotho, 8 April 1999, UN Doc. CCPR/C/79/Add.106, para. 23.

⁸ *Case & Anor. v. Minister of Safety and Security & Ors*, 1996 (5) BCLR 609 (Constitutional Court of South Africa), para. 63 (per Mokgoro).

⁹ Article 18, ECHR. See also *Benjamin and Others v. Minister of Information and Broadcasting*, 14 February 2000, Privy Council Appeal No. 2 of 1999, (Judicial Committee of the Privy Council).

¹⁰ See, for example, *Handyside v. the United Kingdom*, 7 December 1976, Application no. 5493/72, para. 48.

¹¹ See, for example, *Lingens v. Austria*, 8 July 1986, Application No. 9815/82, paras. 39-40 (European Court of Human Rights).

¹² *Sener v. Turkey*, Application no. 26680/95, 18 July 2000, paras. 40, 42.

¹³ See, for example, *Incal v. Turkey*, application no. 22678/93, 18 May 1998, para. 54.

3. UK ANTI-TERROR LAW AND PRACTICE AND ITS IMPACT ON FREEDOM OF EXPRESSION

This section outlines our concerns with UK anti-terror law and practice and its impact on the enjoyment of the right to freedom of expression. We will first set out our concerns with the current definition of terrorism. Then, we will outline our concerns regarding recent use of anti-terrorist powers to prevent legitimate exercise of freedom of expression and assembly. Finally, we will discuss our concerns regarding the recently enacted prohibitions on “encouraging” terrorism and related offences and prohibitions.

3.1. The Definition of Terrorism is Overbroad

We are concerned that the definition of terrorism in UK law, as found in the Terrorism Act 2000,¹⁴ is both vague and excessively broad in its reach. It criminalises not only acts that are widely understood to be ‘terrorist’ in nature, but also lawful gatherings and demonstrations as well as many forms of behaviour that, while unlawful, cannot be regarded as “terrorism”.

Section 1 of the Terrorism Act 2000 defines terrorism as follows:

- (1) In this Act "terrorism" means the use or threat of action where-
 - (a) the action falls within subsection (2),
 - (b) the use or threat is designed to influence the government or an international governmental organisation or to intimidate the public or a section of the public, and
 - (c) the use or threat is made for the purpose of advancing a political, religious or ideological cause.

- (2) Action falls within this subsection if it-
 - (a) involves serious violence against a person,
 - (b) involves serious damage to property,
 - (c) endangers a person's life, other than that of the person committing the action,
 - (d) creates a serious risk to the health or safety of the public or a section of the public, or
 - (e) is designed seriously to interfere with or seriously to disrupt an electronic system.

- ...

- (4) In this section-
 - (a) "action" includes action outside the United Kingdom,
 - (b) a reference to any person or to property is a reference to any person, or to property, wherever situated,
 - (c) a reference to the public includes a reference to the public of a country other than the United Kingdom, and
 - (d) "the government" means the government of the United Kingdom, of a Part of the United Kingdom or of a country other than the United Kingdom.

This definition is overbroad.

Anti-terror laws trigger executive powers that are very restrictive on human rights, often with reduced judicial oversight. As a matter of principle, their use should be confined to those circumstances when such severe restrictions can truly be deemed “necessary”. Anti-terror laws should therefore be narrowly drafted and be proportionate to the legitimate aim pursued – protecting national security. We are concerned that the definition of terrorism in Section 1 of the Terrorism Act 2000 does not follow this basic principle.

¹⁴ And as amended in the Terrorism Act 2006, which added ‘international organisations’ to the list of targets.

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Our concerns are twofold. First, the definition can be read to include legitimate gatherings and demonstrations. For example, for several years, groups of cyclists have taken to the streets in cities around the world in so-called ‘critical mass’ bike rides. The aim of the gatherings has been described as ‘to reclaim the streets’.¹⁵ However, because of the sheer number of participants these rides can seriously disrupt traffic and can be said to pose a danger to the health and safety of the cyclists as well as other road users. Given that the aim of the rides is ideological, namely to ‘reclaim the streets’, and that they could also be argued to be designed to intimidate a section of the public, they arguably fall within the definition of “terrorism”. The phenomenon of “flash mobs” raises similar issues.¹⁶

Second, the definition includes many acts or types of behaviour that, while unlawful, simply do not reach the level at which the extraordinary intrusive measures provided under anti-terrorism legislation can justifiably be used. The definition extends to forms of behaviour that would warrant a public order response, not an anti-terrorism response. For example, some anti-globalisation or animal rights protests have in the past been violent and would fall within the definition of terrorism; but we question whether the use of draconian anti-terrorist powers against the protests in question would be proportionate, bearing in mind the powers already available to the authorities to deal with such situations.

Under international human rights law, legal measures that restrict rights must be narrowly drafted and be proportionate to the aim pursued. Laws that fail these criteria cannot meet the ‘provided by law’ and ‘necessity’ tests set out in Section 2 of this Submission. It is significant to note that the UN Human Rights Committee now regularly criticises States for the broad scope of their anti-terror laws – particularly those that have been ‘toughened up’ in the years since 2001. In 2005, the Committee criticised the definition of ‘terrorism’ under Canadian law, which contains elements that are very similar to the UK definition, for being unnecessarily broad. The Committee recommended in its Concluding Observations that “[t]he State party should adopt a more precise definition of terrorist offences, so as to ensure that individuals will not be targeted on political, religious or ideological grounds, in connection with measures of prevention, investigation and detention.”¹⁷ The Committee has made similar criticisms of the definition of terrorism under Norwegian,¹⁸ Icelandic¹⁹ and Peruvian²⁰ law; and the UN Committee against Torture has voiced its concern at the broad definition of ‘terrorism’ under Bahraini law.²¹ We would suggest that the definition of “terrorism” in the Terrorism Act 2000 is similarly overbroad and should be replaced with a more precise definition.

¹⁵ For a description, see http://en.wikipedia.org/wiki/Critical_Mass.

¹⁶ See http://en.wikipedia.org/wiki/Flash_mob.

¹⁷ Concluding observations of the Human Rights Committee, Canada, 2 November 2005, UN Doc. CCPR/C/CAN/CO/5, par. 12.

¹⁸ Concluding observations of the Human Rights Committee, Norway, 24 March 2006, UN Doc. CCPR/C/NOR/CO/5, par. 9.

¹⁹ Concluding observations of the Human Rights Committee, Iceland, 25 April 2005, UN Doc. CCPR/CO/83/ISL, par. 10.

²⁰ Concluding observations of the Human Rights Committee, Peru, 1997, UN Doc. A/51/40.

²¹ Conclusions and recommendations of the Committee against Torture, Bahrain, 21 June 2005, UN Doc. CAT/C/CR/34/BHR, par. 6(i).

3.2. Use of Anti-Terror Laws to Stifle Legitimate Protest and Other Activity

The Terrorism Act 2000 provides various powers, including powers to stop and search.²² Over the past two years, these powers have increasingly been used to police lawful protests and trivial public order disturbances. Examples include the following:

- the detention of more than 600 people during the 2005 Labour Party conference, including, famously, the detention of an 82 year old activist who had earlier been evicted from the conference for heckling Jack Straw;²³
- the arrest of a pedestrian for walking along a cycle path in Dundee;²⁴
- the stopping and searching of an 11 year old girl who participated in a peaceful protest at an RAF base;²⁵
- the detention of trainspotters at Motherwell, Reading, Slough and Croydon railway stations;²⁶
- the detention of an 80 year old RAF veteran who carried a placard and wore a t-shirt with “anti-Blair info”;²⁷ and
- the detention of a 21 year old student for taking pictures of the M3 motorway for a web-design company.²⁸

It has also been reported that police forces across the country operate wildly different interpretations of the Act and that the number of stops and searches under the 2000 Act has gone up dramatically in the last year.²⁹ While we acknowledge that to some extent, this reflects the different level of the terrorist threat in different parts of the UK, we believe there is evidence that different police forces interpret and use the powers available to them much more widely than others. For example, Kent police, who patrol the sensitive Channel Tunnel, use anti-terror laws very rarely; while Hampshire police, which patrols a largely rural area, carried out nearly 4,500 anti-terror stops and searches in the July-October 2005 period.³⁰

In a landmark decision on the use of the anti-terror stop and search powers, the House of Lords recently declined to rule that they constituted a violation of the rights to liberty, freedom of expression or assembly. Lord Bingham, with whom the other judges agreed, stated that the powers under the Act were sufficiently narrowly circumscribed, and that police officers would not want to stop and search persons that do not pose a threat as this would be “futile and time-wasting”.³¹ We are concerned that evidence suggests that this may not be the case. Particularly following the London bombings, police are under great pressure to prevent terrorist acts and they will – almost necessarily – err on the side of extreme caution, stopping anyone who might remotely pose a threat. We believe that the problem of this over-use of anti-terrorism powers cannot be solved other than by narrowing the statutory definition, as recommended in Section 3.1 of this submission, and issuing clear and publicly

²² See, in particular, Section 44 of the Act.

²³ As reported in *The Scotsman*, 3 October 2005.

²⁴ As reported in *The Times*, 17 October 2005.

²⁵ Widely reported, including in *The SundayTimes*, 18 December 2005.

²⁶ As reported in *The Scotsman*, 9 February 2006.

²⁷ As reported in *The Sunday Times*, 18 December 2005.

²⁸ As reported in *This is Hampshire*, 20 October 2005.

²⁹ BBC, ‘Are police misusing stop-and-search?’, 23 October 2005, <http://news.bbc.co.uk>.

³⁰ *Ibid.*

³¹ *R. (on the application of Gillan (FC) and another (FC)) v. Commissioner of Police for the Metropolis and Others*, [2006] UKHL 12. See, in particular, par. 35.

available guidelines on their use. The existing guidance, in Home Office Circular 38/2004, still leaves constables significant discretion in the use of the powers. The examples quoted above show that the police are prone to overreact; it is therefore of the utmost importance that both the legislation and the regulations under which they act provide clear and narrow guidance on the circumstances under which anti-terrorism powers may be used.

3.3. Encouragement, Justification and Glorification of Terrorism

Recent legislation and policy has gone beyond prohibiting direct acts of terrorism or their instigation to prohibit the ‘encouragement’, ‘glorification’ and even ‘justification’ of terrorism. The Terrorism Act 2006 creates a number of new offences, including the “direct or indirect encouragement or other inducement” of terrorism;³² while a 2005 Home Office Policy³³ envisages exclusion or deportation of non-UK citizens for justifying or glorifying terrorism, amongst other things.

We are extremely concerned that these prohibitions violate the right to freedom of expression. The new terrorist offence of “direct or indirect encouragement” of terrorism uses the broad definition of the 2000 Act, and adds to that the vague and broad terms of direct or indirect “encouragement” or “other inducement”. In addition, the 2006 Act prohibits the “glorification” of terrorism, if “members of the public could reasonably be expected to infer that what is being glorified is being glorified as conduct that should be emulated by them in existing circumstances”. The Home Office Policy adds the even broader term of “justification” to the list of prohibited forms of expression – but only for non-citizens. These will combine to form extraordinarily broad and vague offences that fail the three-part test for restrictions on rights set out in Section 2 of this Submission. “Encouragement” and “inducement” are vague terms already; “indirect encouragement or other inducement” is so vague as to be virtually without meaning. The terms “glorification” and “justification” can be understood to include expressions of support, sympathy with or even understanding of “terrorism”. Introduction of these new offences and prohibitions is likely to result in the criminalization of perfectly lawful statements, including, in the current climate, statements that seek to initiate debate around the issue of suicide bombers and offensive, insulting or abusive statements by Muslim leaders who are critical of the liberal western way of life. This is likely to have a serious chilling effect on freedom of expression in places such as mosques or at campaign rallies and is likely to result in the marginalization of a community that already feels under threat.

We recall, first, that freedom of expression protects not only views that are favourably received; but precisely those that are controversial, shocking or offensive. The press and others have a right to air such views; and the public as a whole has a right to hear them. As the European Court of Human Rights has often emphasised, it is exactly these views that require protection.³⁴ While the Government may legitimately restrict incitement to violence

³² See Section 1 of the Act. Section 2 creates the offence of disseminating terrorist publications. Section 2 uses terminology that is identical to Section 1 and we will not discuss it separately.

³³ Home Office List of Unacceptable Behaviours, as published in *Tackling Terrorism – Behaviours Unacceptable in the UK*, Press Release 124/2005, 24 August 2005.

³⁴ See, for example, the Court’s judgment in *Castells v. Spain*, 23 April 1992, Application No. 11798/85. See also the Court’s decision in *Süreç And Özdemir v. Turkey*, in which a conviction for publishing an interview with a PKK activist in which he called for a separate Kurdish State was held to violate the right to freedom of

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and terrorism – it is under a positive obligation to protect its citizens’ right to life – its actions are circumscribed by the requirement to also protect every person’s right to receive and impart information and ideas.

Second, the terminology employed in the new legislation and policy is so vague as to fail the requirement that restrictions on freedom of expression should be provided by law.³⁵ The use of the terms “encouragement”, “inducement” and “glorification” in the Terrorism Act 2006 is of particular concern; with regard to the Home Office Policy, we are similarly concerned with the inclusion of the terms “to justify or glorify terrorist violence”, “in furtherance of particular beliefs”, “seek to provoke” and “foster hatred”.³⁶ The interpretation of all these words is likely to be highly subjective; they may be contrasted with the term “incite” used in international human rights law in the context of prohibiting hate speech.³⁷

Third, we do not believe that the glorification, justification or any other form of expression concerning terrorism or any form of violence can be prohibited unless it is clearly intended to directly incite such conduct. It is fundamental to the guarantee of freedom of expression that any restriction for the purpose of national security, including preventing terrorism, is closely linked to preventing imminent violence. Restrictions of this sort have historically been abused and courts have sought to promote an appropriate balance between the need to ensure security and the fundamental right to freedom of expression by requiring a close nexus between the speech sought to be sanctioned and the risk of harm to security.

One of the principles set out in the ‘Johannesburg Principles’,³⁸ a set of principles on freedom of expression and national security developed by a group of experts from around the world, is that restrictions on freedom of expression in the name of national security may be imposed only where the speech was intended to incite imminent violence and there is a direct and immediate connection between the expression and the likelihood or occurrence of such violence. Principle 6 provides:

[E]xpression may be punished as a threat to national security only if a government can demonstrate that:

- (a) the expression is intended to incite imminent violence;
- (b) it is likely to incite such violence; and
- (c) there is a direct and immediate connection between the expression and the likelihood or occurrence of such violence.

This test has been endorsed by the UN Special Rapporteur on Freedom of Opinion and Expression³⁹ and has often been recommended to States for their consideration by the UN

expression because, “the domestic authorities in the instant case failed to have sufficient regard to the public’s right to be informed of a different perspective on the situation in south-east Turkey, irrespective of how unpalatable that perspective may be for them.” - 8 July 1999, Application Nos. 23927/94 and 24277/94, para. 61.

³⁵ As elaborated in Section 2 of this Submission.

³⁶ The UN HRC has also expressed concerns about the vague definition of ‘extremism’ in relation to Russian legislation that sought to outlaw ‘extremist’ activities. See concluding observations of the Human Rights Committee, 6 November 2003, UN doc. CCPR/CO/79/RUS.

³⁷ See article 20(2) of the *International Covenant on Civil and Political Rights*, adopted and opened for signature, ratification and accession by UN General Assembly Resolution 2200A (XXI), 16 December 1966, entered into force 3 January 1976.

³⁸ *Johannesburg Principles on National Security, Freedom of Expression and Access to Information*, adopted October 1995.

³⁹ See, for example, UN Doc E/CN.4/1996/39, 22 March 1996, para. 154.

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Commission on Human Rights in its annual resolutions on freedom of expression since 1996.⁴⁰

A similar standard has been embraced by the European Court of Human Rights, whose decision in the case of *Karatas v. Turkey*⁴¹ is particularly instructive. The complainant had been convicted for the publication of poetry that allegedly condoned and glorified acts of terrorism (note the similarity to the new offences under the Terrorism Act 2006). The Court accepted as a matter of fact that in Turkey violent terrorist attacks occurred regularly. But even in the context of regular threats to national security, the Court emphasized the fundamental nature of the applicant's right to freedom of expression and held that his conviction constituted a violation of that right. Highlighting that there was simply no causal connection between the poems and violence, the Court held:

In the instant case, the poems had an obvious political dimension. Using colourful imagery, they expressed deep-rooted discontent with the lot of the population of Kurdish origin in Turkey. In that connection, the Court recalls that there is little scope under Article 10 § 2 of the Convention for restrictions on political speech or on debate on matters of public interest ... In a democratic system the actions or omissions of the government must be subject to the close scrutiny not only of the legislative and judicial authorities but also of public opinion. Moreover, the dominant position which the government occupies makes it necessary for it to display restraint in resorting to criminal proceedings, particularly where other means are available for replying to the unjustified attacks and criticisms of its adversaries ...

[E]ven though some of the passages from the poems seem very aggressive in tone and to call for the use of violence, the Court considers that the fact that they were artistic in nature and of limited impact made them less a call to an uprising than an expression of deep distress in the face of a difficult political situation ...⁴²

It is clear from the Court's judgment in *Karatas* that a general prohibition of glorification of violence cannot be justified; only those statements of glorification that can be said to actually incite violence may be legitimately prohibited. We doubt whether the prohibition in Section 1 of the Terrorism Act 2000, which prohibits glorification if "members of the public could reasonably be expected to infer that what is being glorified ... should be emulated by them in existing circumstances" reaches this standard. The same concern applies to statements that "indirectly encourage" or otherwise "induce" terrorism; the prohibition is simply too broad to stand under international law.

4. RECOMMENDATIONS

Recommendations:

- The definition of terrorism in the Terrorism Act 2000 should be tightened.
- Precise and binding guidance should be issued on the use of anti-terrorist powers.
- The use of broad and vague terms such as "glorify", "encourage", "induce",

⁴⁰ See UN Doc. E/CN.4/1996/53, 19 April 1996. The Johannesburg Principles have also been referred to by superior courts of record around the world. See, for example, *Athukoral v. AG*, 5 May 1997, SD Nos. 1-15/97 (Supreme Court of Sri Lanka) and *Secretary of State for the Home Department v. Rehman* [2001] UKHL 47 (United Kingdom House of Lords).

⁴¹ 8 July 1999, Application No. 23168/94.

⁴² *Ibid*, paras. 50-52.

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“provoke” and “foster” in legislation and policy should be abandoned in favour of internationally accepted terminology, such as “incite”.

- Only the direct incitement of terrorist and other violence should be prohibited.