

**CAMPAIGN AGAINST CRIMINALISING COMMUNITIES  
SUBMISSION TO THE JOINT PARLIAMENTARY COMMITTEE ON HUMAN  
RIGHTS  
CONCERNING**

**POLICING AND PROTEST**

**June 2008**

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**General comments on the proportionality of legislative measures to restrict protest or peaceful assembly**

*a) Existing powers available to the police and their use in practice*

It is important that the scope of the Committee's deliberations about this question is not defined too narrowly. For example many powers available to the police, particularly in the City of Westminster, are derived from municipal regulations rather than from national law. Moreover the enforcement agency in some situations where protests are restricted or even attacked is not the police but a private security company. This arises not just in situations where trespass is occurring anyway, but in public spaces such as shopping malls and parks, where security and/or crowd management are contracted to private security guards. We offer examples later on.

We are particularly concerned about the use of anti-terrorism laws in relation to peaceful protest given the wide and growing powers to detain and punish without trial which are associated with these laws. Again we offer more detail later on. In particular the Counter-Terrorism Bill 2008 provides for the possibility of travel bans and long-term daily reporting or surveillance arrangements for anyone convicted of an offence under anti-terrorism legislation, without any regard for the seriousness of the offence.

*b) Reconciling competing interests of public order and protest.*

Any honest democracy must admit of the possibility of failure of the Parliamentary system, that is, issues or points in time when significant groups of people will become dissatisfied with its actual or expected decisions and turn to more direct means of expression. This is why the right to protest is vitally important in a democracy. We believe that to give full expression to the spirit of the ECHR on freedom of expression and peaceful assembly, there should be a positive right to protest which should over-ride temporary considerations of freedom of traffic circulation, noise control or use of open space, which may be relatively minor issues compared to the matter of the protest, unless there are specific and defensible arguments why a particular protest is unacceptable. In other words, the burden of proof should be on the authorities to show why protest should be restricted, rather than trivial obstructions of the highway or loudspeaker use being assumed to be disorderly unless they are specifically permitted.

**1. Are current legislative measures which restrict protest or peaceful assembly (such as SOCPA 2005 and the Public Order Act 1986) necessary and proportionate to the rights to freedom of expression and peaceful assembly?**

*a) To what extent should peaceful protest be facilitated by the State?*

The right to peaceful assembly is enshrined in the European Declaration of Human Rights and should be protected as a positive right. In view of this right, it would be logical for conditions regarding marches to be liberalised rather than those on assemblies to be tightened. The right to protest should be protected as a positive element of a democracy. Currently, any breach of this right has to be challenged through judicial review, which is time-consuming and costly. There should be a positive right to protest, with a quick, cheap and easy procedure for people to complain against the police or other parties if this right is infringed.

The obligations under the Public Order Act and under SOCPA to seek advance authorisation of protest are frequently burdensome and antagonistic towards the need for protest at short notice because of the essential nature of protest as a response to events. It should not be a criminal act merely to organise a protest without authorisation, although organisers clearly have a responsibility to avoid violence and also to minimise disruption to uninvolved passers-by and residents.

We are also concerned about the way in which privatisation of public space may affect the right to political expression. Whereas leafleting in a street is in principle legal, leafleting in a town square which has been re-developed as a shopping mall, or a park where the local authority has contracted out management to a private company, may attract prosecution for trespass. We believe that the right to protest should exist in any space to which the public have free access for shopping or recreation, regardless of whether it is managed by local authority or a private company. Company security personnel should be expected to respect this right and not to expel people who are leafleting or holding placards, any more than police would prevent them from assembling in a public street. It should also be clear to demonstrators who is giving them instructions and to whom those giving instructions are accountable. For example, on the occasion of the 'Make Poverty History' march in Edinburgh, mentioned earlier, it was not clear to participants whether the uniformed private security guards, who were telling people that they could not use certain exits from the Meadows, were acting on behalf of the police, or the local authority which manages the park, or the organisers of the event. Nor was it clear what authority or powers they had to tell people not to use those exit routes which offered the quickest access to shops, even when participants who had been waiting two hours or more only wanted to leave the area temporarily to buy drinking water.

We have also come across instances where council officials have insisted that leafleters should stop their activity or dismantle tables distributing free literature about peaceful campaigns, even where no obstruction or disruption was being caused. In the London Borough of Haringey this has occurred both to campaigners against ID cards and to the Green Party.

The legal concept of a positive right to peaceful assembly, protected by a fast-track complaints procedure against police, local authority or company action to infringe this right, would address all these concerns. We feel that the Public Order Act already went

too far by making it possible to criminalise marches and their organisers on the grounds, for example, that their scale exceeded the expectations of the organisers, or that placards were brought along which did not conform to organisers' or stewards' directions.

*b) Should the right to protest be more strictly curtailed in relation to certain geographical areas? If yes, where, why and what limits would be acceptable?*

The ban on the use of loudspeakers under SOCPA is unacceptable, because without loudspeakers it is impossible for people to hear speeches. This makes protest ineffective and impedes its proper function of intelligent argument and debate in a public place. Since there is very little restriction on noise from public entertainment in Trafalgar Square, and none at all on traffic noise close to Parliament, the ban on loudspeakers is exposed as a form of harassment of protest rather than a genuine pursuit of a quiet working environment in local offices. We would draw attention to the fact that even if this part of SOCPA is repealed, users of loudspeakers in the area of Parliament will still have to seek a licence from the City of Westminster, at a substantial cost, and that this local authority apparently has powers to impose its own restrictions of various kinds including the use of loudspeakers. It also requires expensive third party insurance as a condition of any organisation using the grassed area in Parliament Square. Without using the grassed area, only a very small crowd can find space in front of Parliament. In practice, therefore, the easing of SOCPA powers about restrictions on protest close to Parliament will have little effect; the police can continue to rely on the local authority to impose the same type of restrictions.

*c) The Government proposes to repeal sections 132-8 SOCPA dealing with protest around Parliament and invites Parliament to consider whether additional provision is needed to ensure that Parliament's work is not disrupted by protests in Parliament Square. What, if any, additional provision is required?*

Again, we suggest that a positive right to protest would be able to over-ride unreasonable restrictions or licence fees imposed by a local authority or by a private security company managing public space.

**2. How do existing common law and legislative police powers (such as the common law power to prevent a breach of the peace, stop and search under the Terrorism Act 2000 and the use of force) operate in practice? Do existing police powers pay sufficient regard to human rights?**

*a) Are existing police powers necessary? Are more or fewer required?*

The common law power to arrest for breach of the peace is frequently used excessively; for example to give a criminal record to people who have merely stepped into a roadway to avoid being crushed by others, or passed a police cordon without realising its importance for some innocent purpose like seeking a toilet or actually trying to go home. Arrest is not infrequently accompanied by physical roughness such as frogmarching, pushing arms up someone's back, kicking and hitting, and even the excessively tight use of handcuffs which may cause nerve injuries lasting several months. All these forms of treatment are common experiences of peaceful protestors on many occasions in many

parts of the country. (see, for some examples, <http://www.guardian.co.uk/environment/2007/aug/19/climatechange.travelandtransport> ;

We are concerned about the use of injunctions being sought by private companies to limit the expression of public concern against their activities. The right to protest must include the possibility of non-violent picketing outside company premises or company meetings using placards, leaflets and speeches to make a point.

We are also aware of an element of ‘function creep’ in the use of the Prevention of Harassment Act 1997. In the absence of powers to control the duration of an assembly or numbers participating under powers designed to control demonstrations, Sussex police and the arms manufacturer EDO sought to restrict protests outside the EDO factory near Brighton to ten people, who should remain silent, for two and a half hours per week. The application for this injunction was happily rejected by the courts. The establishment of a positive right to protest would prevent the time of the courts from being wasted by attempts like this to test alternative legal routes to the limitation of protest.

However SOCPA (sections 122 and 123) has separate powers on harassment which could be used very widely to intimidate and criminalise protestors. In the view of George Monbiot, these sections, in effect, ‘redefine harassing someone in his or her home in such a way as to permit the police to ban all protest in a residential area. Under the bill you don't have to go knocking on someone's door to merit a year inside and a £2,500 fine. You merely need to represent to "another individual" (i.e. anyone) "in the vicinity" of someone else's home "that he should not do something that he is entitled or required to do; or that he should do something that he is not under any obligation to do"’ . (See George Monbiot in the Guardian, February 22 2005, available at <http://www.guardian.co.uk/politics/2005/feb/22/ukcrime.uk> ). Monbiot’s article goes on to mention the prosecution of a protestor for sending two e-mails to a company, which ‘though courteous, constituted harassment as one person received two of them.’

Currently police can impose conditions on a march under section 13 of the Public Order Act 1986 if they think it will entail serious damage to property, serious disruption to life of community, serious disorder, or coercion by intimidation. These conditions can in theory include limitation of the content or wording of placards, etc., as well as conditions about the duration and number of participants in a march. George Monbiot (Guardian 22.2.05, see <http://www.guardian.co.uk/politics/2005/feb/22/ukcrime.uk> ) mentions the prosecution of someone for holding a placard with a picture of a dead cat. Such limits on placards are an unjustified restriction on freedom of speech unless there is a clear case that the placards may infringe the law on incitement to violence or to racial or religious hatred.

Police photography is sometimes used in an intimidating way and is not even confined to the site of protest. For example in June 2006, a group of only seven people walking quietly from the railway station in Leatherhead through the town centre, and not displaying any placards, were stopped and asked where they were going, on the day of an environmental protest in the suburbs of the town. The stop and question procedure was

accompanied by photographing the group, presumably for some record of 'suspect' persons.

Groups of protestors may be dispersed under anti-social behaviour laws, without any regard for the proportionality of this measure to their conduct or the seriousness of their demands. They may also be incriminated under SOCPA for trespass within a designated site (no justification for designation is required).

*b) Are counter-terrorism powers appropriately used in the policing of protests?*

We abhor the growing use of anti-terrorist powers and of legislation against anti-social behaviour to control peaceful protest. This is a clear case of 'function creep' which threatens to criminalise and intimidate what should be normal forms of political expression in a democratic society.

Anti-terrorism powers can be used to disperse protestors without reason within a 'designated area'; the whole of London has in fact been made a designated area and anywhere can be designated without clear justification. In 2004, protestors at the arms fair in Docklands were stopped and searched under the Terrorism Act 2000 although they were not committing or threatening any violent act. (see <http://www.liberty-human-rights.org.uk/news-and-events/1-press-releases/2005/arms-fair-05.shtml> ). In the well-known Fairford coach incident in 2003, anti-terrorist powers were used to prevent a coach load of people from attending a demonstration altogether (see <http://www.liberty-human-rights.org.uk/issues/pdfs/casualty-of-war-final.pdf> )

This is not the only way in which anti-terrorism laws are used to ban freedom of expression in designated areas. For example, Walter Wolfgang was removed from the Labour party conference for heckling Jack Straw. People have been searched simply for wearing slogans on their T-shirts (one example in Brighton during the Labour Party conference was 'Bollocks to Blair') or for carrying banners. John Catt, aged 81, was searched in Brighton for "carrying placard + T-shirt with anti-Blair information" The police record said the purpose of the stop and search was "terrorism". The T-shirt, in this case, accused Bush and Blair of war crimes (see <http://www.independent.co.uk/news/uk/crime/helen-and-sylvia-the-new-face-of-terrorism-472993.html>). On another occasion, a man was detained while collecting signatures against the government's ID card proposals. (See Henry Porter, Guardian, 12 December 2007; available on <http://www.guardian.co.uk/commentisfree/2007/dec/12/whatjackstrawforgottomention> )

Anti-terrorism powers were again used to question anyone approaching the Climate Camp near Heathrow airport in August 2007, (see <http://www.guardian.co.uk/uk/2007/aug/14/transport.greenpolitics>) and even against residents in a nearby village who were preparing to march against loss of their homes to airport expansion. This type of stopping and questioning is intimidating and creates a powerful deterrent to exercising the right to freedom of expression. The police already have wide powers to stop and search people whom they suspect of planning an offence; to label such persons as potential terrorists appears to be political strategy to create a climate of fear of the police.

### **3. Can the competing interests of public order and the right to protest be reconciled?**

- *How should the balance be struck between the rights of protesters and other competing interests (such as the rights of others or the prevention of disorder or crime)? Would legislative changes be desirable to strike a better balance between competing rights, or is the current legislative framework about right?*

We draw attention to the suggestion made under heading 1, for a legal right to peaceful protest which would put the burden on the authorities to show why a protest should not be permitted, rather than on demonstrators to show why it should.