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The Terrorism Act 2000: an interview with Gareth Peirce

In 2000, a new Terrorism Act, incorporating the broadest ever definition of terrorism and giving police and prosecutors freedom to arrest almost anyone involved in some way with refugee solidarity work, was passed. Then, on 29 March 2001, under the first order made under the Act, twenty-one organisations were proscribed through provisions which allow for the banning of organisations which the home secretary believes are involved in terrorism, or promote or encourage terrorism. As refugee communities began mobilising against the law, and particularly its Proscribed Organisations Order, Liz Fekete asked the civil rights lawyer Gareth Peirce, who has defended those accused of terrorist offences for over two decades, to examine the historical and political context of this the latest addition to the UK’s anti-terrorist legislation.

Liz Fekete: Anti-terrorist legislation, previously targeted at the Irish, is now impacting on refugees. Do you see parallels in the Irish and refugee experiences?

Gareth Peirce: Over the last five years, the people I have represented accused of terrorist activity have all been refugees.

For about twenty-five years, the focus of so-called anti-terrorist law in Britain was directed against Irish organisations – and anti-terrorist laws had a dramatic and chilling effect on the whole of that community. In Britain as well as in Ireland, the Irish community was inhibited by the Prevention of Terrorism Act (PTA) not just in its freedom of
expression but also in relation to its freedom of movement, in particular at points of entry, where the police, the immigration authorities and customs had extended powers of detention. It was not an illusion, it was not paranoia, it was not hypersensitivity to believe that if you were Irish and flying in to the UK from Belfast or Dublin, you could be singled out for no other reason than that you were travelling to and from Ireland. If you were Irish, you would have to anticipate not completing your journey; you would have to anticipate family members disappearing into custody on the way. And, even worse, people were haunted by the memory of those who had been wrongly convicted of terrorist offences in the UK. I think particularly here of the case of Guiseppe Conlon, who travelled to England from Northern Ireland when his son, Gerry, was arrested, and was himself then arrested and detained – and died in an English prison.

Now that experience of perpetual fear in the Irish community is beginning to be replicated in refugee communities. And certainly, during the past four years, I have observed the repeated arrest and detention, under the terrorism acts old and new, of groups of people who have in common one thing, that they are refugees who face persecution in their own country because they are opposed to brutal and corrupt regimes there; or are perceived as being thus opposed.

LF: Did the targeting of refugee communities as a potential terrorist threat start with the Terrorism Act 2000?

GP: The passing of the Act has served to make visible what has been happening more covertly over the past few years. The precursor of the new Terrorism Act was a little noticed provision in the old Prevention of Terrorism Act, inserted in 1995, which made it a criminal offence to be in possession of items that could be said to be of use for terrorism abroad. The law did not define what was meant by ‘terrorism abroad’, except to say that terrorism was ‘the use of violence for political ends’; hence, the range of items which could conceivably be used for ‘terrorism’ gave police and prosecuting authorities very wide discretion which they used in a very focused and clearly arbitrary way. In addition, an Act passed in 1998 made it a criminal offence, triable in Britain, to conspire to commit any offence abroad. Although this Act encompassed all offences, it was targeted at support for ‘terrorism’ abroad. These two new laws established an almost unprecedented jurisdiction in British courts over offences planned or committed abroad. What was immediately noticeable was that the individuals detained under this provision were all members of refugee communities: Algerians, Egyptians, Pakistanis, people from Saudi Arabia, people in support of Kashmiri liberation, people who, in one way or another, have been concerned about atrocities in their own countries and wanted to achieve self-determination and to oppose tyranny.
In fact, what all these people shared was that they were regarded by the British state as ‘devout Muslims’ and, by extension, as ‘Islamic fundamentalists’, a term which is often used by the authorities in an extremely racist and pejorative way and as though it were interchangeable with terrorism. Thus, when the new Terrorism Act came in, what it actually did was to carry forward a number of legislative concepts and practices that were already alive and well but were not hitherto so easily detected because they had been focused on a very small minority of the population.

By contrast, the 2000 Terrorism Act is probably the most far-reaching criminal legislation that there has ever been in terms of the scope and breadth of its definitions and its potential to affect far more people than previous anti-terrorism acts, including through the specific innovation of the list of proscribed organisations. It is this that has brought home in a dramatic way to a number of refugee communities that now they are, indeed, deliberately being criminalised. The communities which will be affected are extensive, including Kurds, Tamils, Sikhs, Kashmiris. More than one million people from refugee communities which are involved in liberation movements, movements of self-determination, resistance against tyrannies, are now inescapably criminalised.

LF: But how is it that whole refugee communities, and not just individuals suspected of specific terrorist offences, come to be criminalised in this way?

GP: Under the new Act, it is not just the use of violence that is criminalised. Terrorism is defined as the use or threat of any action, involving violence to people or property or serious risk to health and safety, which is designed to influence any government or intimidate members of the public anywhere in the world for political, religious or ideological reasons. If you are suspected of destabilising the ‘health or safety’ of a country – and not this country only, but any country – you fall under the scope of anti-terrorist legislation. In addition, a list has been published of organisations that are banned from now on. And the Act goes even further than just banning organisations. It specifies that anyone and everything connected to those organisations is now outlawed.

For instance, you cannot be a member of or supportive of a banned organisation. It is now an offence to organise or speak at a meeting of more than three people if you know that a member of a proscribed organisation will speak at it. And if you know someone who is a member of a banned organisation, then it is a criminal offence not to inform the police. If, in the course of your work, you come to know someone who has been involved in fundraising for a banned organisation, and you don’t tell the police, you are committing a criminal
offence. If you support or demonstrate in favour of a proscribed organisation, carry emblems or placards demonstrating your support, you are committing a criminal offence. That is a complete destruction of freedom of speech, as we understand it. It cuts off all potential for intelligent political argument or debate about any politics that involves a proscribed organisation. Yet, if you take as one example the concrete situation of Turkey and the Kurds, any intelligent person would realise that there can be no real debate about the future of Turkey and the future of the Kurds without involving the PKK – one of the proscribed organisations. Similarly, for Sri Lanka, there can be no political solution without involving the Tamil Tigers. The government has in its approach taken on an extraordinarily restrictive view of a number of liberation movements, which are engaged not only in military struggle but also have at their core political, social and cultural identity. There is no explanation as to the criteria adopted for proscription, even if the approach were to attempt to justify the banning of support for certain kinds of militaristic activity. Instead, the device of a blanket ban reduces highly complex political situations to simplistic caricatures that would be a disgrace in a comic book.

LF: *Commentators have suggested that the new Act is helping to 'restore the divine right of Kings' to tyrants abroad. How do you see this?*

GP: *This Act supports certain regimes, however tyrannical. And in this, the Act is a gift from our government to a number of governments. Indeed, it would be very easy if one did not know the list of organisations to create it oneself. All one would have to do would be to create a list of the oppressive regimes with which the UK has economic or strategic relations. You would then find that the organisations which appear on the list are those which are in resistance, in one way or another, to those oppressive regimes. Already, over the past three years, under existing legislation and now under the new Terrorism Act, we find that those who are detained are nearly always refugees from a country which has an atrocious record of treatment of its own citizens, including murder, genocide, torture, and that that country has close links with Britain. But what the Terrorism Act does is put into legislative form the existing economic and strategic links the UK has with those countries. This is demonstrably clear in relation to the Kurds, where the British government, by its actions under the Terrorism Act, has made a clear political statement that the Turkish government is a democracy and that resistance to the Turkish government must thereby constitute both 'terrorism' and, by transference, a threat to Britain. Thus, in one fell swoop, the new Act has achieved two objectives. It is a tough law-and-order act, a populist measure that will, however, not affect the majority of the population. It was an internal political*
achievement for the former home secretary of a kind that he was intent on making, the creation of new and repressive laws that will affect refugee communities. But the Act is also intended for export. It achieves external political gains for this government. It is a present to the Egyptian, Sri Lankan, Indian and Turkish governments and others. And there is no doubt that the government media in those countries, and in other countries like Russia, are applauding the New Labour government for introducing legislation which, as they see it, will stifle criticism of their regimes.

The Act’s focus is a mirror image of the reasons that brought people here in the first place as refugees. You come to this country as a refugee, you were forced to come. The last place that any of those refugees wants to be is in a foreign country: people are homesick, and they are here only until they can achieve a form of democracy in their own countries. But, from now on, their legitimate attempts to achieve that from the UK are being intentionally stifled and they will be criminalised for them, just as they were at home.

**LF:** Will the targeting of refugee organisations as suspected terrorist organisations lead to a wider stigmatisation of refugee communities, in much the same way that vouchers have stigmatised asylum seekers as ‘bogus’ and as benefit scroungers?

**GP:** In the same way as recent asylum legislation is politically motivated and designed to have a deterrent effect, so, too, is this anti-terrorist legislation. ‘Terrorist’ is, of course, a largely meaningless, offensive word that carries with it a stigma both inside and outside Britain. Whether you accept the term as one that has any meaning at all, the very use of it carries a stigma that affects the courts, which refuse bail, and affects juries, who will be prejudiced by the term and, of course, included in that prejudice is the fact that defendants are denied bail. But equally important is the fact that anti-terrorist legislation has, itself, a terrorising effect. That is what is intended. It is intended to frighten people, individually and collectively, so that among the decisions people will have to make now, for the first time in this country, is whether they intend to go on exercising their right to freedom of speech.

Communities are being put in a kind of straitjacket of fear and the people who most experience this fear are those who have already demonstrated intense courage in opposing tyranny in their own countries. But a new kind of courage is being demanded. From now on, their legitimate attempts to achieve democracy in their own countries by their actions here are being intentionally stifled. The law has already had an effect, in that large numbers of people in every community in Britain which perceives it is likely to be the focus of terrorist laws are terrified. And, just as refugee communities experience real terror at
the prospect of return, or fear the refusal of asylum, so now people find themselves further entrapped. They are here, with no way to leave, other than by facing what they have fled from. Yet they are prevented from enjoying what is a basic freedom – the right to freedom of speech in a democratic society.

And what cannot be underestimated is the extra dimension of fear that this Act brings to refugees who anticipate the direct effect on their families ‘back home’ should they be arrested under the Act. Under previous terrorist laws, lawyers regularly found that family members of those arrested in Britain were also detained, interrogated and tortured elsewhere. To expose a refugee community to the stigma of the PTA and then add to that the psychological fear of potentially fatal consequences for relatives at home is a grotesque extension of an already much abused power. Further, it is a most reckless exercise of arbitrary power by a government that knows full well the vulnerability of refugees, knows what they have fled from and yet now acts, in part, as an agent for foreign regimes, very often in close contact with their police and very often, consciously and deliberately, notifying those police of arrests here.

LF: How does being picked up on suspicion of a terrorist offence impact on refugees?

GP: What is worse now than the situation that, for more than a quarter of a century, faced the Irish is that, for refugees, there is frequently a lack of contacts in England or any support network, as well as a serious language problem, so that a person is likely to have no recourse when he or she is scooped up and taken to a police station. They might not even have the telephone number of any friend to notify, let alone any one more experienced to offer advice and support. But the solicitor who acts for them – almost invariably the duty solicitor – will be equally uninformed about their situation or background. There will only be an interpreter provided by the police. There is absolutely no doubt that this constitutes a significant inhibition on private consultation because, at least in relation to Irish detainees, the lawyer and defendant shared the same language and much of the same context for their – admittedly very dissimilar – lives. Today, it is very different. If you are seeking advice, it is fundamentally necessary that you trust the advice you are getting and are guaranteed that what you say is in confidence. Now, because of the extra barriers and impediments, I would say that the experience for refugees must be even more terrifying than that which the Irish community underwent.

LF: But isn’t that lack of any understanding of the context of a refugee’s experience even more dangerous when it comes to their treatment by the police and the courts?
GP: How can you intelligently reconstruct for police officers, or for a jury at the Old Bailey, the complex reality of political conflict in another country? It was acutely obvious in relation to Irish defendants that frequently one did have to recreate life and a semblance of what normal living was like in Northern Ireland, so that an English jury could understand why people acted in the way they did. Even that experience was alien to an English jury. But under the new Act, the circumstances are even more different: to explain a reality there is simply not achievable. And one is constantly aware during police interrogations, for instance, that the police have absolutely no concept of what life is like for refugees in the country they have fled from nor of their religion, nor of their social or cultural patterns of behaviour. The police blunder on questioning people, for instance, about what is Jihad, what is your understanding of Jihad. Of course, Jihad is a fundamental tenet of Islam but it is one that is simply not answerable in one word to a non-Muslim. ‘Are you for or against Jihad?’ is the recurring question which, for the police, appears to equate with the question ‘Are you for or against terrorism?’ Paddington Green police station, where all terrorist suspects are taken, now keeps a Koran there in a chilling foretaste of what is to come.

But, ironically, this very inability to reconstruct the situation in another country in a British court offers an avenue of hope. Tellingly, of those charged over the past five years under existing anti-terrorist provisions, no one has actually been convicted. Of course, there have been many people arrested and questioned, and a number of people charged. But they fought back through the courts, using every legal way to demonstrate their innocence. The only case to come to trial under the old Prevention of Terrorism Act (which incorporated the concept of terrorism abroad) was the prosecution of three Algerians. In the case of one of them, Kebilene, lawyers argued that the prosecution contravened the incoming Human Rights Act. The case went to the House of Lords. At their trial, the defendants demonstrated that what the British defined as terrorism was actually an attempt to assist the self-defence of Algerians against government massacres and to attempt to prevent their repetition by liaising with threatened communities in Algeria. But in order to argue this, it was impossible for lawyers in this country to obtain compelling defence evidence to produce in court. In the course of defending the Algerians, their lawyers were able to say on their behalf to the Crown, ‘you know what happens in Algeria, you employ MI6 to inform you on what happens in Algeria. If we have been able to ascertain that it is the government and security forces carrying out massacres, then surely you must also know this’. The Crown went away for a year and eventually came back with a few bits of paper with a great deal crossed out, but what was not crossed out said exactly that. Yes, the Algerian government was involved in
carrying out massacres and executions (i.e., state terrorism) and the British government had been aware of this throughout. And I suspect that in any future attempt to prosecute, refugee organisations are going to find that there will be an opportunity to turn the tables, both on this government, which will be put on trial for its conscious breach of the European Convention on Human Rights, and on the governments against which terrorism is supposed to be plotted. Any jury in this country which, for instance, begins to find out some of the history of Turkey could not convict anyone who was charged with, for example, inciting support for the PKK, could not but find people anything less than heroic in resisting Turkish oppression and seeking a democratic society there.

LF: Do you believe then that a legal challenge to this law is possible?

GP: What the Act has done is create legislation that makes a nonsense of the new Human Rights Act. When you ask, what is the legislative intent of both these Acts, the hypocrisy of it all is glaringly obvious. If you look at the legislative intent expressed by the Human Rights Act, and then put the Terrorism Act which was drafted much later next to it, it is patently obvious that the two pieces of legislation cannot co-exist. They are completely incompatible and a legal collision is inevitable. Everybody who lives in the UK, whether citizen or non-citizen, has an absolute right to the human rights that are set out in the European Convention on Human Rights. Among the most important rights in this context are the rights to freedom of association, freedom of speech and freedom of expression – moreover, there is a complete ban on these rights being withheld on a discriminatory basis, on the basis of religion, politics or ethnic origin. To abridge the rights of people as is being done under this Act is a complete negation of human rights as set out in the European Convention. The European Court has repeatedly put a very high premium on freedom of speech because, as it rightly says, freedom of speech is the only protection there is against tyranny and it can only be limited where it is strictly necessary in a democratic society. How can one argue that it is necessary in this country, at this point of time, to proscribe any of these organisations? It simply is not. There is absolutely no imperative that the government can use to justify these proscriptions other than the justification that it will not articulate, i.e., its own political expediency.

What that means is that the Act is vulnerable. It is a most atrocious piece of legislation in its scope and its far-ranging effect. There is no doubt that a number of organisations and individuals will challenge it on the grounds of its incompatibility with the Human Rights Act. And there is also little doubt that any defendant facing a charge under the new Act will be able to assert a large number of rights, as a defendant, which have been annihilated by the Act. What that
means is that the Act may not necessarily be demolished immediately. But it is not an Act that, in my view, will survive in its application intact. Either the Terrorism Act, representing legislation for tyranny, stands or we really do recognise the guarantees brought into legislation via the Human Rights Act – in which case many, if not all, of the Terrorism Act’s provisions will fall, including the definition of terrorism itself.

At some point, somewhere along the line, this latest terrorism law will have to yield because it breaches too many fundamental human rights. It is anathema to a democracy.

Reference

1 The twenty-one proscribed organisations are Al-Qa’ida; Egyptian Islamic Jihad; Al-Gama’at al-Islamiya; Armed Islamic Group (Groupe Islamique Armée – GIA); Salafist Group for Call and Combat (Groupe Salafiste pour la Prédication et le Combat – GSPC); Babbar Khalsa; International Sikh Youth Federation; Harakat Mujahideen; Jaish e Mohammed; Lashkar e Tayyaba; Liberation Tigers of Tamil Eelam (LTTE); Hizballah External Security Organisation; Hamas-Izz al-Din al-Qassem Brigades; Palestinian Islamic Jihad – Shaqaqi; Abu Nidal Organisation; Islamic Army of Aden; Mujaheddin e Khalq; Kurdistan Workers’ Party (Partiya Karkeren Kurdistan – PKK); Revolutionary Peoples’ Liberation Party – Front (Devrimci Halk Kurtuluş Partisi-Cephesi – DHKP-C); Basque Homeland and Liberty (Euskada ta Askatasuna – ETA); 17 November Revolutionary Organisation (N17).