

Request for information from the OHCHR for:	Best practices and major challenges in addressing the negative effects of terrorism on the enjoyment of all human rights and fundamental freedoms, particularly the right to life, liberty and security of person.
Information submitted includes:	<ul style="list-style-type: none"> • What work has EHRC done to ensure that the government does not breach the human rights of the public in general and terrorist suspects in particular in the government's actions against terrorism? • EHRC Stop and Search case – Malik versus the United Kingdom.
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1. Introduction

- 1.1. The Equality and Human Rights Commission (the Commission) is Great Britain's national equality body and has been awarded an 'A' status as a National Human Rights Institution (NHRI) by the United Nations.
- 1.2. As a statutory non-departmental public body established by the Equality Act 2006, the Commission operates independently. We aim to be an expert and authoritative organisation that is a centre of excellence for evidence, analysis and equality and human rights law. We also aspire to be an essential point of contact for policy makers, public bodies and business. We use our unique powers to challenge discrimination, promote equality of opportunity and protect human rights.
- 1.3. Our role as an 'A' status NHRI, the independent authority on Britain's human rights performance, is an important part of the infrastructure for protecting and promoting human rights in the international context.
- 1.4. The Commission recognises that since the 9/11 attacks, governments around the world have taken additional measures to protect their citizens from the threat of terrorism. While it is crucial for the state to protect public safety – and is indeed in line with the right to life - it must also meet its other human rights obligations.¹

¹ Equality and Human Rights Commission, Human Rights Review, 2012, page 114.

<https://www.equalityhumanrights.com/en/publication-download/human-rights-review-2012>

- 1.5. In response to this call for information on the “effects of terrorism on the enjoyment of all human rights”, the Commission will provide information relating to best practices and major challenges in addressing the negative effects of terrorism in Great Britain.

What work has EHRC done to ensure that the government does not breach the human rights of the public in general and terrorist suspects in particular in the Government's actions against terrorism?

2. Counter Terrorism and Security Act 2015

- 2.1. Prior to the Counter-Terrorism and Security Act being introduced, the EHRC produced the parliamentary briefing which provides the Commission’s analysis of the implications for equality and human rights law of measures contained in the Counter-Terrorism and Security Bill.
<https://www.equalityhumanrights.com/en/parliamentary-library/counter-terrorism-bill-house-lords-second-reading>
- 2.2. The Prevent duty (<https://www.gov.uk/government/publications/prevent-duty-guidance>) is the duty in the Counter-Terrorism and Security Act 2015 on specified authorities, in the exercise of their functions, to have due regard to the need to prevent people from being drawn into terrorism.
- 2.3. The Commission agrees that public safety is not the responsibility of the police and security services alone. It is plainly important that other public bodies play their part in preventing terrorist attacks, including alerting the police where the bodies in question have cause to suspect that one or more persons may be engaged in terrorism.
- 2.4. The Commission notes that imposing a statutory duty of this kind on such a wide range of public bodies requires certainty in order to be effective and this is particularly the case given the extremely broad scope of the statutory definition of terrorism. The EHRC suggests that the Prevent duty is unclearly defined and circumscribed, potentially limiting the effectiveness of this duty
- 2.5. The EHRC has also identified that the Prevent duty may pose challenges for public bodies in balancing their duties under Prevent with existing obligations such as Public Sector Equality Duty (PSED) and the right to freedom of expression.
- 2.6. The EHRC is supporting the development and rights-compliant implementation of Prevent strategies through producing a short briefing paper for Higher Education Institutions (HEI) which will provide practical guidance on how to comply with these duties and obligations.

3. Investigatory Powers Bill

- 3.1. The Commission has produced Parliamentary Briefings for this Bill and provided recommendations to ensure it meets human rights requirements.
- 3.2. During the UN Human Rights Committee's examination of the UK's compliance with the International Covenant on Civil and Political Rights, the UK's Investigatory Powers Tribunal (IPT) confirmed the Government Communications Head Quarters (GCHQ) has used its surveillance powers to intercept the emails of Amnesty International.
- 3.3. While the IPT confirmed the use of these powers had been lawful in the circumstances, a lack of transparency within the IPT system means Amnesty does not know which emails have been intercepted, or why, so is unable to challenge this. Nor does Amnesty know whether this surveillance means its contacts – human rights defenders around the world – are at risk.
- 3.4. In its Concluding Observations, the Human Rights Committee raised concerns about the UK's surveillance regime, including:
 - that it allows for mass surveillance, including the interception of Amnesty International's emails under a general warrant;
 - a lack of safeguards for obtaining and sharing communications with foreign agencies; and
 - the wide powers available for retention and access to communications data and lack of adequate safeguards, for example restricting such access to investigation of the most serious crimes.
- 3.5. The Investigatory Powers Bill is intended to address these concerns. Key issues include: the power to access web logs; whether the proposals for judicial supervision of warrants are adequate; whether powers for bulk interception, acquisition, and retention of communications, and interference with equipment are too widely drawn; and whether proposed safeguards are adequate. Concern has also been expressed about the short timetable for scrutiny of the Bill.
- 3.6. The proposals in the Bill go some way towards meeting the human rights requirements that there should be clear and detailed rules governing the scope of investigatory powers and robust legal and operational safeguards against arbitrary use and misuse of powers. However, the Commission calls for further safeguards to improve compliance with human rights, for example of disclosure of material overseas, retention and destruction of information, and safeguards for sensitive information.
- 3.7. In scrutinising the Bill, we have had particular regard to the need to protect the right to privacy. The right to privacy is not absolute – it can, and must, be balanced against the need to, for example, fight crime and protect the public.

However, the powers in the Bill, which are highly intrusive of privacy, must be subject to careful scrutiny to ensure that they are necessary and proportionate.

- 3.8. Under the Bill as drafted, the unlawful use of investigatory powers may not be subject to sufficient scrutiny because often those subject to surveillance will be unaware of it and, therefore, not in a position to be able to make a complaint. The EHRC supports the amendment which improves the safeguards in the Bill by addressing this problem.
- 3.9. The Bill, as it stands, does not empower the IPT (Investigatory Powers Tribunal) to make a declaration of incompatibility with a Convention Right, under the Human Rights Act 1998. The Draft Bill Committee recommended that the IPT should have this power and made the point that this would improve access to justice. The EHRC agrees with this recommendation.

4. Legal Interventions

Big Brother Watch UK

- 4.1. The EHRC has coordinated an intervention in **Big Brother Watch v UK** (BBW) in collaboration with its partner NHRIs in ENNHRI. This is a European Court of Human Rights challenge to the Government's surveillance of human rights organisations.
- 4.2. The applicants allege that they are likely to have been the subject of generic surveillance by GCHQ and/or that the United Kingdom security services may have been in receipt of foreign intercept material relating to their electronic communications, such as to give rise to interferences with their rights under Article 8 ECHR.
- 4.3. They contend that these interferences are not "in accordance with the law" and that generic interception of external communications by GCHQ, merely on the basis that such communications have been transmitted by transatlantic fibre-optic cables, is an inherently disproportionate interference with the private lives of thousands, perhaps millions, of people.

10 Human Rights Organisations and Others v UK

- 4.4. Following on from BBW, the EHRC has led on an intervention by ENNHRI in **10 Human Rights Organisations and Others v UK** (10 HRO). This is a European Court of Human Rights case concerning lawfulness of bulk interception of communications by the UK and receipt of foreign intercept material from US.
- 4.5. 10 human rights organisations allege that their communications will have been intercepted as part of the Government's surveillance programme. The information in their communications is frequently sensitive and confidential and sometimes legally privileged.
- 4.6. This issue under consideration is whether the UK has breached the ECHR by bulk interception of communications, including those of the applicants.

Malik v UK

- 4.7. The Commission intervened in Malik v UK, a case relating to stop and search under schedule 7 of the Terrorism Act 2000.
- 4.8. This intervention aimed to deal with racial and religious disparity in Schedule 7 stop and search cases.

Should you require further information, please contact:

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