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# Submission to the International Commission of Jurists

13 April 2006

## About the Campaign Against Criminalising Communities (CAMPACC)

CAMPACC was founded in early 2001 in response to implementation of the Terrorism Act 2000. Our campaign links lawyers, human rights campaigners, advocates for refugee and migrant communities, and those targeted or affected by anti-terror laws. Through those links, we have much knowledge and experience of how such laws are used politically, albeit with the pretext of preventing violence (see especially section 11 below).

Anti-terror laws have been promoted and justified as necessary means to deal with exceptional threats. The government has undertaken to use them on a reasonable basis, as a 'last resort', etc. However, the powers have been used for political agendas, not to protect us from violence.

We have opposed all anti-terror laws and their use as an unjustified infringement of civil liberties and human rights in this country. We defend the democratic freedom to dissent and to resist oppression, both nationally and internationally.

In an introductory section, this document first explains how the Terrorism Act 2000 established an anti-democratic, unjust framework for 'anti-terror' powers in general. In subsequent sections we address some of the 14 points in the ICJ call for evidence, numbered accordingly. We emphasise points which have special relevance to our campaign experience and activities. For more detailed background on anti-terror powers and their use through 2003, please see our submission to another inquiry.

**Outline** (section numbers corresponding to points in the ICJ call)

## ‘Terrorism’: broader statutory definition

In our view, the UK’s broad definition of ‘terrorism’ has been designed and used for political agendas, rather than to protect ordinary people from violence. Indeed, the UK statutory definition is used to deter and criminalise opposition to UK government policies, especially its collusion with oppressive regimes abroad.

As is well known, terrorism has no internationally recognised definition. There have been several failed attempts to create an international definition that is ideologically neutral and also meets the requirements imposed by the principles of international law.[1] The European Court of Justice has developed a strong body of jurisprudence imposing human rights norms upon states in their response to terrorist acts, but it has never formulated a definition of ‘terrorism’.[2]

Terrorism is an ideological term, now routinely used by politicians and the media for political agendas[3]. The word ‘terror’ was first used to describe Robespierre’s *terrorisation* of the Royalists during the French Revolution. Since then, the term has been used to describe acts or situations that vary depending on the context and subjects applying the word. Hence the famous phrase, “One man’s terrorist is another man’s freedom fighter”.[4]

The UK’s anti-terrorist legislation dates back to 1974. The first Prevention of Terrorism Act did not define ‘terrorism’, and it contained a ‘sunset clause’, so that it required annual renewal by Parliament to remain in force.[5] This requirement implied that the special ‘emergency’ powers were extraordinary and would be removed as soon as the Northern Ireland emergency was over. But instead such powers were extended, some of them permanently.

As the first permanent anti-terror law here, the Terrorism Act 2000 established a broad definition of terrorism:

> 1 (1) in this Act “terrorism” means the use or threat of action where –
> the action falls within subsection (2),
> the use or threat is designed to influence the government or to intimidate the public or a section of the public, and
> 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.
> (3) The use or threat of action falling within subsection (2) which involves the use of firearms or explosives is terrorism whether or not subsection (1) (b) is satisfied.

This broad, vague definition encompasses normal political activities, especially those which potentially threaten damage to property – hitherto a normal category of crime. Indeed, such activities are classified according to their political motive. Moreover, the 2000 definition applies to the use or threat of ‘action’ taking place anywhere – even abroad, against any persons or

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[1] In 1996, a UN *ad hoc* committee was set up to draft a comprehensive convention on terrorism but it was precisely the definitional problem that made this attempt a failure. In 2003, the UN General Assembly recommended that a working group be established to “settle outstanding issues in two draft conventions on terrorism, including the definition of terrorism itself”, United Nations, “UN Committee Recommends Working Group for Anti-Terrorism Treaties”, UN *News Service*, 3rd April 2003.

[2] See C. Warbrick, “The Principles of the European Convention on Human Rights and the response of States to Terrorism”, *European Human Rights Law Review*, 2002, 3, 287–314.

[3] Joseba Zulaika and William A. Douglas, *Terror and Taboo: the follies, fables and faces of terrorism,* Routledge, New York and London, 1996, p.97.

[4] “Terrorism and Human Rights”, Additional progress report prepared by Kalliopi K. Koufa, Special Rapporteur of the Sub-Commission on the Promotion and Protection of Human Rights, UN Document E/CN.4/Sub.2/2001/31, 27th June 2001, para.25, p.8.

[5] For an example, see the Prevention of Terrorism (Temporary Provisions) Act 1989, section 27 (5).

government there – not merely that which may take place within the UK.[6] This aspect of the definition has been designed and used to target groups legitimately resisting despotic foreign regimes. They have been banned as 'terrorist' organisations, in turn as a basis to criminalise any 'association' with them (see section 4).

Moreover, all subsequent UK anti-terrorist legislation has rested upon the broad definition. The latest piece of legislation, the Terrorism Act 2006[7], widens the definition further, so that action taken against non-governmental organisations, as well as against governments, could be classified as 'terrorism'.[8]

The broad definition leaves enormous discretion to the government, as regards what organisations to ban, whom to prosecute and indeed which activities fall under the definition of 'terrorism'. The Joint Select Committee on Human Rights have expressed concerns that the UK definition of terrorism is so broad as to be incompatible with the European Convention of Human Rights, especially Article 10, which protects the right to freedom of expression.[9] CAMPACC supports that view. While acknowledging that the UK is under a duty to combat terrorism, and also under an obligation to adopt specific measures to combat terrorism[10], the UK also has a duty to uphold human rights obligations within such measures and their use.[11] UK legislation has been designed to facilitate violation of those rights.

For extensive documentation on the use of anti-terror powers through 2003, see our submission to another inquiry.[12]

## 1 Length of pre-charge detention

UK anti-terror laws have progressively extended the limit on pre–charge detention limit to 7, 14 and now 28 days (as of April 2006). Already the 14-day detention period has been used as a substitute for a proper criminal investigation, instead intimidating and stigmatizing people as 'terror suspects'. Such detention has been an opportunity for bullying, sleep deprivation, pressure to confess or incriminate others. Such detentions have been used to extract real or imaginary 'information', e.g. to investigate political activities or to justify detention of yet more 'terror suspects'. Moreover, the 28-day limit amounts to internment, thus violating the principle of habeas corpus. It could have the effect of destroying people's livelihoods, even where insufficient evidence is ever produced to support a criminal charge.

## 2 Range of terrorist offences: Terrorism Acts 2000 and 2006

The Terrorism Act 2000 established new crimes of association with 'terrorist' activities, now more broadly defined (see section 4). It also created the basis to label almost anyone as a 'terror suspect', i.e. someone suspected of associating with or simply knowing about such vaguely defined 'terrorist' activities. This suspicion triggers new powers of stop-and-search, detention, etc.

The Terrorism Act 2006 established a new offence, 'glorification of terrorism', again based on the broad definition in the Terrorism Act 2000. The ordinary criminal law anyway prohibits efforts to incite violent crimes or conspiracy to organize crimes. The new 'glorification' offence

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[6] Terrorism Act 2000, section 4.

[7] Terrorism Act 2006, chapter 11.

[8] Terrorism Act 2006, section 34.

[9] Joint Select Committee on Human Rights, *Counter-Terrorism Policy and Human Rights: Terrorism Bill and related matters*, 3rd Report of Session 2005-06 (HL Paper 75-I, HC 561-I), at para.13.

[10] UN Resolutions 1368, 12th September 2001, and 1373, 28th September 2001.

[11] UN Declaration of 20th January 2003.

[12] CAMPACC, Terrorising Minority Communities with 'Anti-Terrorism' Powers: their Use and Abuse, Submission to the Privy Council Review of the Anti-Terrorism Crime and Security Act 2001, July 2003, www.campacc.org.uk/ATCSA_consult-final.pdf

seems designed to deter (or even criminalize) merely verbal support for resistance against oppressive regimes, especially those allied with or dependent upon the UK. The offence may also encompass verbal support for domestic political activities which fit the broad definition of terrorism. Such statements may include, for example, mere expressions of support for legal defence or 'solidarity' statements for peace protestors – who have been already arrested for entering military bases under 'anti-terror' powers. The PTA 2005 also established a new crime of disseminating 'terrorist publications', presumably those which sympathetically portray any activities which the government classifies as terrorist, according to the excessively broad definition of the 2000 Act. In all these ways, the new offences are designed to stifle legitimate political and academic debate within the UK.

# 3 Control orders and domestic prisons

Internment has been perpetuated and extended by other means, through the power to impose 'control orders' or to detain individuals under the 1971 Immigration Act. Both powers have been used to turn homes into domestic prisons. This section first explains the background in the internment powers in the 2001 legislation.

These individuals have not been convicted of any crime, nor been charged with any offence. Yet they are held in conditions close to house arrest, affecting them and their families, in conditions that could be described as inhuman and degrading. Section 3.3 below shows how the government is using various powers to circumvent normal judicial procedures, even to circumvent the Law Lords' 2004 ruling against internment.

## 3.1 Internment under ATCSA 2001

After the attacks of September 11th (hereafter 9/11) the UK quickly enacted the Anti-Terrorism, Crime and Security Act 2001 (hereafter ATCSA), whose Part 4 authorised the indefinite detention of foreign terrorist suspects. According to the government, emergency powers were needed to counter the new threat facing the UK from international terrorism[13]. Under the new powers, suspects could be detained indefinitely if they cannot be deported from the UK due to a point of law relating to an international agreement or a practical consideration. This means that they could not be removed to a safe third country, or there was a risk of their being killed or tortured if deported back to their own country. It has been ruled a breach of Article 3 ECHR[14] by the European Court of Human Rights (ECHR) in *Chahal* v *UK*[15] to deport someone back to a country where there may be a risk of them suffering Article 3 treatment, whether by the State or by a third-party actor.

The provisions necessitated a derogation from both Article 5(1) of the European Convention on Human Rights (ECHR), and Article 9 of the United Nations International Covenant on Civil and Political Rights 1966 (ICCPR). Both these articles guarantee an individual the right to liberty and security of the person, and in particular freedom from arbitrary detention[16]. The government argued that international terrorist threats posed 'a public emergency threatening the life of the nation'.

CAMPACC led a campaign to defeat the internment powers, e.g. by holding protest events at relevant hearings and prisons. Along with the new group Stop Political Terror, we also provided support to the individuals who had been interned from December 2001 onwards. Our campaign highlighted the injustice of internment, its arbitrary basis in secret 'evidence', and the systematic

[13] Home Office, *Counter-Terrorism Powers: Reconciling Security and Liberty in an Open Society: A Discussion Paper*, Home Office, February 2004, at paras. 4-8.

[14] Prohibition of torture, inhuman and degrading treatment.

[15] (1996) 23 EHRR 413.

[16] The Human Rights Act 1998 (Designated Derogation) Order 2001 (S.I. 2001 No. 3644).

terrorising of migrant communities here. For example, Special Branch officers warned relatives and friends of the internees against any contact with them – or else 'You will be next'. Indeed, some were next to be interned.

After a three-year protest campaign by many organisations, in December 2004 the Law Lords ruled against the UK derogation from the ECHR, on grounds that the internment powers were incompatible with articles 5 and 14 ECHR[17]. Meanwhile the government had admitted that some secret 'evidence' may have been obtained by torture from detainees held abroad, and it justified such use as a legitimate basis for interment.

### 3.2 Powers of control orders under the PTA 2005

Following the decision of the Law Lords against the UK internment powers, the Home Secretary accepted their incompatibility with the ECHR. He argued that any new legislative measures must apply equally to nationals as well as non-nationals[18]. He also reiterated that there remains 'a public emergency threatening the life of the nation', as grounds to enact 'control orders' as a substitute for the Part 4 powers.[19] This led to the Prevention of Terrorism Act 2005, which was rushed to complete all its Parliamentary stages in 15 days.

A control order may be imposed upon a person suspected of involvement in terrorism-related activity by the Secretary of State[20]. This applies regardless of the nationality of the individual, and regardless of whether the terrorist activity is domestic or international. A control order can impose a range of conditions, from house arrest – which could breach the ECHR Article 5 (as the government acknowledges) – to tagging, curfews, controlling access to telephones and the internet, and restricting whom individuals may contact and communicate.

Like internment, control orders can be based upon secret evidence which is not disclosed to the individual concerned or to their lawyer. Thus the powers impose a wide-ranging punishment, yet without the normal protection of a fair trial.

### 3.3 Use and effects of control orders

By early 2006 there had been 18 control orders issued. The nine men held in Belmarsh prison under the detention powers of ATCSA had control orders issued against them as soon as they were released in March 2005. The men are currently being held back at Belmarsh under immigration legislation, pending deportation. Out of the 18 orders, at least one has been issued against a British citizen. According to a High Court decision on 12th April, one such order breached the individual's human rights under the ECHR.

Our campaign supporters have given direct assistance to the individuals and families targeted by control orders. We have highlighted the injustice in leaflets and at a public meeting in the House of Commons on 29th March. In particular control orders have had the following effects:

i) Control orders have been used to isolate individuals and their families, including children, from the wider society, even from friends or relatives. In some cases, detainees' relatives have felt intimidated from applying for permission to visit them, or they have not been given permission to visit. The punishment without trial extends to wives and children, and even to those providing accommodation, since visitors to the whole household are restricted by Home Office vetting arrangements. This is a form of collective punishment which violates natural justice and international law.

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[17] *A and others* v *Secretary of state for the Home Department* [2004] UKHL 56, para. 222 per Baroness Hale.

[18] Rt. Hon. Charles Clarke MP, 26th January 2005, Hansard HC, cols. 305-309.

[19] See especially Clare Dyer and Richard Norton-Taylor, "Terror laws face new court test", *The Guardian*, 7th February 2005, reporting on the proposed challenge to the UK's state of emergency by the men detained under Part 4.

[20] Prevention of Terrorism Act 2005, section 1 (1).

ii) Considerable mental distress has been caused by the requirement that the detainee's accommodation can be searched by the police, or by a monitoring company checking tagging apparatus, at any time. Distress to the entire family is apparent in the testimony of Mahmoud Abu Rideh to journalists. For example, 'My kids worry that when they get back from school I will be gone and they might not find me again. My wife can't sleep. She is asking me not to go out again' ('Control order flaws exposed', *The Guardian*, 24 March 2005). A month later he visited a police station, asking for a return to prison custody rather than having an electronic tag re-fitted ('Tagged terror suspect sent back to jail, *The Guardian*, 29 April 2005). Similar distress has been endured by providers of bail-accommodation. Likewise the distress and social isolation is suffered by an entire family as well as the person put under restrictions.

iii) Anyone applying for permission to host or visit individuals under control orders − as well as some persons detained and bailed under the 1971 Immigration Act − is officially classified as 'a known associate of a terror suspect'. As volunteers to visit and support people who are victims of a law we oppose, we proudly defy that ridiculous stigma. But many other people are intimidated, especially friends or relatives who do not hold UK citizenship and so rightly feel more vulnerable to persecution. All this illustrates the more general role of anti-terror laws in terrorising Muslim and migrant communities.

iv) Moreover, they create a domestic prison for anyone who acts as a host, e.g. the person's family, friend or volunteer (e.g. supporters of our campaign). All such people are subject to impromptu searches and removal of property including computers. The household is prohibited from having visitors not approved by the Home Office. All this amounts to punishment without trial for the host, as well as for the person directly under restrictions. Thus the government extends punishment to the detainee's associates. In this way, the system deters people from acting as host and so makes bail more difficult to obtain.

### 3.4 Parallel regime under the Immigration Act 1971

Beyond control orders, the 1971 Immigration Act too has been used to create domestic prisons. After individuals were detained for deportation to countries notorious for torture, some have been bailed under conditions similar to control orders or even under greater restrictions. Under their bail conditions, for example, they must speak to no one who has not been authorised by the Home Office. Some even undergo full house arrest, which should require a 'derogation' from the ECHR Article 5 unless it can be shown that deportation will take place within a reasonable period. Bail has been granted precisely because it seems doubtful that this is the case. Thus the 1971 Act has been used to create a parallel regime to that of control orders.

## 4 Proscription of 'terrorist' organisations

The 2000 Act also gave the Secretary of State powers to proscribe organizations that could fall within the definition of 'a terrorist organisation'. It also created offences of supporting and being a member of a proscribed terrorist organisation[21]. In early 2001 the proscription power was used to proscribe a many organisations, ranging from al-Qaeda to mass organisations which have considerable support among migrant communities in the UK. The proscriptions have been used in turn to stigmatise, silence and even criminalise solidarity activities in this country.

In 2002 campaigners for Kurdish rights were prosecuted for 'terrorist' links, e.g. on grounds that they had held placards listing several banned organizations at a protest event. In reality they had been among 6000 demonstrators ridiculing the ban on various organizations, e.g. by wearing T-shirts which said 'I am the PKK' (Kurdistan Workers Party). Moreover, a defendant was encouraged to act as a state informant about political activities here, with the understanding that

[21] Terrorism Act 2000, sections 11-13.

the criminal charges would be dropped as a result; instead he disclosed this 'offer' to other activists.

As another alarming example, distributors of the Turkish-language magazine *Vatan* were harassed since 2000. Entire shipments to the UK were confiscated as 'terrorist property'. Eventually in December 2002 the distributors were arrested on grounds that the magazine sales were promoting and financing a banned organization. In the run-up to the trial, moreover, Special Branch officers visited over a hundred shops in north London and asked shopkeepers to testify in court against the defendants, e.g. on grounds that they had supposedly demanded money with threats. The prosecution was abandoned only because of a technicality.

Thus the proscriptions have been used to attack freedom of expression. Moreover, the targets have been selected according to UK foreign policy – to persecute opponents of regimes allied with the UK.

## 8 Deportation of foreign terrorist suspects

The Government has been trying to deport the nine men originally interned under the ATCSA 2001 detention powers and subsequently under the PTA 2005 control orders, as well as other individuals, some of whom were acquitted in a 'terrorism' trial. It has sought Memoranda of Understanding from the countries to which they would be deported. The Government is trying to get concrete assurances that they would not suffer any torture, inhuman or degrading treatment if sent there. In this way, it seeks to circumvent the *Chahal*[22] principle: that individuals may not be deported to the prospect of torture.

Such assurances would be worthless. They would never be asked of countries that truly guarantee human rights. Assurances carry no sanction if breached, they are unenforceable. Regimes that use torture regularly subcontract that work, so they can claim that rogue torturers operate without state approval. Clearly it cannot be "safe"' to deport people to regimes from whom special assurances must be sought that certain individuals will not be tortured. Both governments will have every incentive to turn a blind eye to violations, just as happened in previous deportations from the UK and other EU member states. The attempt at deportation amounts to UK collusion with torture. (See also section 13).

## 10 Stop and search powers under the 2000 Act

Section 44 of the Terrorism 2000 Act grants to a constable, of any rank, a power to search any person whom he 'reasonably suspects' to be a terrorist[23]. Moreover, entire areas have been designated for such powers, especially all of London. Combining this power with the broad definition of terrorism, this stop-and-search power has been used disproportionately to stop young Asian men, especially since 9/11. In the year following 9/11, the number of stops and searches of young Asian men increased by 41%, compared with a 9% increase of searches of young white men. After the terrorist attacks of 7th July 2005, there was another significant increase in such stop. These practices intensify a climate of fear among Muslim and migrant communities, as well as popular suspicion towards them.

The same powers have been used to target political activists. In the run-up to the 2003 attack on Iraq, a wide area around Fairford Air Force Base was designated as a stop-and-search zone under anti-terror powers. Protestors were repeatedly stopped for no apparent reason other than their presence near the Base. Likewise the powers have been used against protestors at the DSEI arms fair in East London.

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[22] (1996) 3 EHRR 413.

[23] Terrorism Act 2000, section 44.

# 11 Impact of counter-terrorism measures on minority groups

## 11.1 Communities stigmatised and terrorised

Since 2000 a series of 'anti-terror' laws have been used to target ethnic minority groups, as means to terrorise them into silence and isolation. These laws underpin the 'War on Terror', which creates a racist culture of suspicion towards Muslim and migrant communities within this country. It generates and manipulates public fears to justify a perpetual state of war. It creates 'terrorist suspects' in many ways, especially by redefining terrorism in much broader ways, thus blurring distinction between anti–government protest and organised violence against civilians. Entire communities have been placed under suspicion of associating with such broadly defined 'terrorism'. Anti–terror measures have been used to detain individuals who could have been handled under other legislation, thus justifying 'anti-terrorist' laws and their special powers.

After the 7th July terrorist attack in London, the Prime Minister declared, 'The rules of the game have changed', as a rationale for additional 'anti-terror' powers. In response, we joined several organizations in producing a document, 'United to Protect our Rights'. Its summary included the following points:

> The UK's counter-terrorism legislation is among the most developed in the world. There is no evidence that the wide-ranging powers, already in place, are in anyway inadequate to investigate and prosecute those involved in any way in the incidents that have recently occurred…
>
> The greatest threat to our security comes not from an inability to counter terrorism but the government's refusal to conduct an honest debate on the causes of the attacks against London in July 2005. In place of that debate, Tony Blair has turned the spotlight on Britain's Muslim communities. British tolerance has fertilised terrorism, he suggests. Multiculturalism and human rights are to be the scapegoats.
>
> In the context of an ill advised and counter productive "war on terror", these proposals pave the way for an equally misguided "war on Islamic extremism". There can be no doubt that the measures they envisage – restrictions on free speech, freedom of association and freedom of conscience - coupled with the simplistic and inflammatory portrayal of Islam as a "dangerous" religion, will further alienate and marginalise the very communities in which the government professes to be combating radicalisation.[24]

## 11.2 Charities persecuted

Economic resources of minority communities have been resources of minority communities have been jeopardized by anti-terror powers, again deploying a vaguely broad definition of terrorism. The ATCSA 2001 empowers the authorities to seize property or cash, and to freeze bank accounts, in cases of suspected 'terrorist' purposes. These powers have been used to investigate charities of ethnic minorities. Some bank accounts have been frozen.

Regardless of whether any wrongdoing is eventually found, such a severe action damages reputations and destroys trust among communities.

> Muslim international humanitarian relief agencies and charities have been adversely affected through the discriminatory and disproportionate application of freezing orders. Although most Muslim charities that have been investigated by the Charity Commission due to their possible links with terrorism have been exonerated, they have suffered heavily. The psychological impact of apply freezing orders has meant a haemorrhaging of donations for Muslim charities as a result of the stigma of being affiliated with terrorism .[25]

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[24] Protect Our Rights: a briefing document on the government's anti-terrorism proposals. A joint analysis from UK's leading civil society organisations, August 2005.

[25] *ATCSA 2001 Review: a submission from FAIR*, Forum Against Islamophobia & Racism, 2003/

Moreover, police investigations misinterpret and effectively punish cash transactions, beyond any judicial procedure. Ethnic minority communities fear that their cultural custom of cash transactions may be treated as suspicion of terrorist links. This is specially the case for Muslims, many of whom have distrusted banks since the BCCI disaster; some also oppose usury.

## 13 Renditions and 'evidence' from torture

Beyond the UK attempts at deportation to countries notorious for torture (section 8), Britain has been colluding with torture in several ways:

- Turning a blind eye to US practices of extra-ordinary rendition to illegal detention centres.
- Giving other governments information which lead them to kidnap individuals and send them to illegal detention centres where they are mistreated or tortured.
- Obtaining and using 'intelligence' from foreign security services who practice torture.
- Arguing that evidence obtained under torture is acceptable in court, provided that the torturers were not British, even if British agents were present during torture.

Dubious 'information' gained from torture abroad is used to label more and more people here as 'terror suspects', thus justifying the domestic 'war on terror', including detentions and prosecutions. When refugees flee here, they fear being deported back to torture, beyond their brutal treatment by UK immigration authorities. Torture also contributes to a political strategy which links UK intelligence services with its foreign counterparts. Thus the UK is not simply an innocent recipient of statements resulting from torture. Rather, UK agents collaborate with those who violate human rights abroad and even encourage such violations.