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Response to the Government Counter-Terrorism Bill 2007

The UK government has made intentions to bring in a new raft of counter-terrorism legislation through a new bill to be discussed in November 2007. The legislation seeks to increase the powers the government already holds through lowering evidentiary standards and giving police further powers. The proposed legislation disregards the safeguards of justice systems that should be found within a democracy and go well beyond the powers sought by similar systems around the world.

Pre charge detention

1. The Terror Bill 2007 seeks to revisit attempts to extend the current 28-day limit on holding people without charge. The Government is arguing for an extended detention period, saying that detention needs to be longer because terrorism is of global proportions, and thousands of suspects, sympathisers and identified terror groups – many of which it is said, are actively preparing for a terror attack – need to be and are being kept under surveillance. It is said that these suspects are too dangerous to release pending investigation, and they must not be released to commit or help commit terror atrocities. Interestingly, the security forces somehow “know” that the terror suspects are involved in terror activities and yet they are not able to overcome the threshold charging test for prosecutors.
2. The state does have a responsibility to protect its citizens but it must not use methods that put other members of society in danger of losing their liberties. The purpose of Article 5 (the right to liberty and security of person) of the European Convention on Human Rights is to prevent arbitrary detention and to ensure that any detention is in accordance with legal procedure and that it is justified in accordance with Article 5(1)(c).
3. The rule of law demands that the protection of the liberty of the individual remains paramount, as does fairness and transparency of any legal proceeding that has the power to remove that right, and any decision that may remove liberty must be evidence-based and testable; not mere suspicions and conjectures.
4. We must recognise that, in responding to terrorism, democratic communities must do so in a way, as far as possible, consistent with the defence of civil liberties. Fairness and liberty are not ideas cast in stone but still they are high ideals that must be vigorously maintained and protected. The current proposals

to extend the current 28 day detention limit erode these liberties and the case for doing so has not been clearly made out to justify a further extension.

5. Reasons given by the police for increasing the 28 day detention without charge revolve around a concept that the police require extra time in order to sift through vast amounts of computer information and question individuals. Such periods of detention however are more used in order to break suspects and coerce them into giving falsified information than to actually interrogate.
6. Terrorism suspects are sent to Paddington Green Police Station where they are held in a solitary cell without access to sunlight or many of the amenities prisoners receive. Solitary confinement for a period of a month can affect that mindset of suspects greatly, with the extension of time to 56 days or even longer; such periods of detention without charge serve no purpose other than to disrupt the lives of those detained.
7. For those who are detained unfairly without any real evidence that will lead to charge for the entire period, their lives will be very much affected by the period of detention. No employer will be willing to keep on Muslims who have been detained for reasons of terrorism, demonised subsequently in the media, and then released after 56 days without charge. It is very much conceivable that any period of detention will greatly affect the lives of those held in this detention without charge.

Data Sharing powers for the intelligence agencies and the DNA database

1. The new measures seek to make two specific suggestions. Firstly, it recommends that the intelligence and security agencies are given the same data sharing powers to those provided to the Serious Organised Crime Agency. Secondly, that the police counter terrorist database is placed on a statutory footing similar to the National DNA Database.
2. Principally, there is no issue with either of these proposals. However, the concern lies with the practice of these proposals. Over the years, there has been a huge increase in the scope of data retention and dissemination. In addition to this, there have been moves towards data mining and data matching techniques used to imply potential illegality without the use of human intelligence sources.
3. These moves area cause for concern in that they seriously undermine data protection principles and are increasingly disproportionate.
4. Similarly, a database of those convicted of certain crimes, including terrorist related crimes, can be a useful detection tool. However, permanent DNA retention is now permitted on arrest even if no charge follows. This, in effect means that many thousand innocent persons are on the database.
5. By allowing for the DNA of those arrested and not charged to be placed on a database they will be automatically criminalised wherever they travel in the world. Undue suspicion will be placed on individuals whose name can be produced as a

suspect for simply having their name on such a database, regardless of the reason for it being there.

Collection of information likely to be of use to terrorists

1. Section 58 of the Terrorism Act 2000 states that a person commits an offence if he collects or makes a record of information of a kind likely to be useful to a person committing or preparing an act of terrorism, or he possesses a document or record containing information of this kind. The proposals seek to take this a step further by legislating against the gathering of targeting information about individuals, particularly Service personnel. If charged with this, a defence has to be provided (see Section 118) that the defendant's possession or collection of the information has a reasonable excuse behind it.
2. Given the wide definition of “terrorism” and the possible categories of information that could be useful for “terrorism”, this law could be used to harass activists who might not have any intention of committing terrorist acts, who are not members of terrorist organisations and who do not condone terrorism, e.g. perfectly innocent activists.
3. For example, all of the following information could be useful for terrorism under the Act’s definition: names and addresses of MPs, businessmen or organisations; details of security flaws in a major operating system such as Windows; details of which chemicals can form explosive combinations; information about which substances are harmful to humans and where to buy tools that could be used to cause damage to property (e.g. the address of the local hardware store). The concern here is that anyone who has this sort of information could be harassed by use of this law.

Post charge questioning

1. The proposals seek to increase the scope for post charge questioning. Generally, after charge, the police cannot interview defendants. However, the Police and Criminal Evidence Act 1984 (PACE 1984), para 16.5 of Code C permits interview in relation to an offence: to prevent or minimise harm of loss to some other person, or the public; to clear up an ambiguity in a previous answer or statement; or in the interest of justice to comment on information which has come to light since the suspect was charged.
2. Thus, post charge interviewing is permitted and it is reasonable to add other reasons to interview. A suspect may be interviewed in relation to a separate further offence once charged, and if post charge interviews are permitted they can be made subject to those PACE 1984 protections already afforded. It is clear that the extending the grounds would not require a significant amendment to the codes of practice under PACE 1984. It is arguable that re-interviews in many terrorism cases would already be permitted under the existing grounds. However, to allow certainty, a further exception could be included in the interest of national security.

3. The main concern here is that any re-interview MUST be subject to the same PACE safeguards and protections afforded to any other person arrested including time limitations and access to legal representation.
4. Another measure in the discussion paper makes reference to the nature of the caution to be given and suggests drawing adverse inference from a failure to answer questions. Currently, no adverse inference can be drawn for not responding to questions after charge. This measure is problematic in that it fails to take into account that there are many number of legitimate reasons as to why a might not be willing or able to answer to questions during an interview. An extension to the introduction of adverse inference would shift the burden of proof away from the presumption of innocence.
5. There is a real danger that the police will use post-charge questioning as a means to harass individuals after they are released in order to intimidate them into giving up information about others in the community. Essentially it may result in a culture of coerced spying which would only serve to increase mistrust within certain communities.

Enhanced Sentences

1. The Discussion paper suggests the introduction of enhanced sentences for non terrorism specific offences.
2. In principle, there is no issue with this proposal. However, the introduction of enhanced sentencing should require an evidential burden to be satisfied. In order to secure an enhanced sentence the jury should be satisfied to a criminal standard that the offence was committed with the relevant mental element. This means that the jury must be satisfied that the non terrorism offence has been committed and that there was an intention on the defendant's part that the offence was committed for connected terrorism purposes. Without an appropriate evidential burden there is a danger that characteristics associated with certain types of terrorism, such as racial and religious demographics, might by themselves become enhancing factors.

Overall Conclusion

1. Criminal laws deal with terrorism and preparing for terrorism acts. Long standing laws dealing with conspiracy allow the police to arrest people who are preparing for such acts or conviction of such people to long terms of imprisonment.
2. Given the existence of these provisions, there is no need for further powers to be given to the police/government in respect of these matters. These proposals, if enacted will become a method of effectively retaining people without ever having to face a criminal charge or trial. These provisions also have a negative effect to the freedom of expression and the right to liberty in the UK which is inconsistent with that of a healthy democracy.
3. The proposals will further only serve to disenfranchise the Muslim community who will feel that they are being specifically targeted. There is already widespread concern amongst Muslims living in Britain that they are under attack over the

actions of a few individuals; such policies will only heighten that sense of mistrust.

4. In general, we submit that these proposed measures are an unwarranted massive intrusion of the civil liberties of UK citizens and should be totally rejected.

Cageprisoners Ltd is a human rights NGO that exists solely to raise awareness of the plight of the prisoners at Guantanamo Bay and other detainees held as part of the War on Terror. We aim to give a voice to the voiceless.

