

## **Serious Crime Bill Submission**

1. CAGE<sup>1</sup> is answering the JCHR's call for submissions for feedback regarding the Serious Crime Bill, focusing specifically clause 65.
  - 1.1 It is CAGE's overall assessment that the bill is highly problematic as not only will it contravene universally accepted fundamental legal principles but it will also create many problems at the more practical and international level.
  - 1.2 Further, it is CAGE's submission that the government has been disingenuous in its assertion that the enactment of this bill is the only option available to tackle the perceived threat which travellers to Syria pose, a threat which has not even been properly examined or assessed.
2. The implementation of this bill will extend the jurisdiction of section 5 of the PTA 2006 to outside the UK, meaning that a person who travels abroad before having even conducted any 'preparation' inside the UK could be caught under this 'catch all' provision if they, at some later point, could be deemed to be 'preparing' an act of terrorism anywhere in the world. Naturally, this type of extra-territorial jurisdiction has potentially serious consequences, which CAGE asserts have not been properly considered.
3. Before examining the very real legal consequences of this bill, the more obvious practical issues ought to be considered.
  - 3.1 Firstly, nowhere in the discussion or planning of the bill have issues of gathering evidence abroad or international co-operation been discussed. What will be the framework for information sharing? Has the legality of this been examined? This is vital information for the British public. Will there be safeguards to ensure evidence gleaned through coercion or unlawful activity will not be permitted?
  - 3.2 Moreover, in the planning of this bill, examples illustrating the need for this bill are not given and so it is not clear what gap this bill is planning to bridge. Are there current cases in which no part of the 'preparation' is conducted in the UK? CAGE submits that a better assessment and examination of the need for this bill must be conducted. It would appear that this bill is merely an opportunity for the UK to be seen to be responding to fear mongering and media hysteria, a dangerous policy to adopt.
  - 3.3 A final and more glaring practical issue when reading the Impact Assessment document should be pointed out, namely that no other practical alternatives have been considered. Surprisingly, in this document, the alternative given to this bill is to 'do nothing'.<sup>2</sup> This means that no valid attempt has been made to find a middle

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<sup>1</sup> CAGE is an independent advocacy organisation working to empower communities impacted by the War on Terror.

<sup>2</sup> *Extension of Extra-Territorial Jurisdiction Impact Assessment*, pp. 4, available at [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/317593/2014-06-03\\_signed\\_IA\\_ETJ\\_TACT.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/317593/2014-06-03_signed_IA_ETJ_TACT.pdf)

ground between outright criminalisation and ‘doing nothing’. There has been no viable effort on behalf of the government to engage with the orthodox, mainstream religious figures whom those travelling abroad would consider as scholarly and academic leaders. Furthermore, the local communities where these travellers are based in the UK have not been engaged or consulted with. This would appear to go against some of the statements made in the House of Lords during the debate of the bill. Lord Rosser, in particular, voiced concern over whether “the Home Office is doing enough within communities”.<sup>3</sup>

3.4 If the UK government deems that the desire amongst Muslims to go abroad and help is so prominent and geographically widespread, then it would serve to hold candid discussions with the community. Further, these discussions with communities will verify that it is praiseworthy to aid an oppressed fellow Muslim and any criminalisation of aid work is in fact a point blank criminalisation of Islamic theology. Moreover, they would receive confirmation that returning travellers have no will or intention to commit acts in the UK and in turn that this is a pan Arab issue and there is no theological or evidential link for UK to be attacked. Indeed, there is no causal link between being in Syria and attacking the UK and evidence for this can be found in CAGE’s extensively researched “Blowback” report.<sup>4</sup>

4. Aside from the practical issues that the extension of section 5 will raise, there are many fundamental principles of law that extra-territorial jurisdiction of this section will contravene. These include the principle of legal certainty and also the notion that prosecution for preparation is pre-emptive and therefore is at odds with European legal tradition.

4.1 With regards to the principle of legal certainty being undermined by the implementation of this bill, it is important for the JCHR to recognise the volatility of the situation in the Middle East. This, combined with the UK government’s propensity to change its policy towards groups in Syria, means that potentially any British person could fall within the definition of ‘preparation’ for acts of ‘terrorism’. This leaves British foreign policymakers the discretion to decide which acts are acceptable and therefore worryingly grants the authorities a wide discretion to make subjective determinations.

4.2 In terms of the concerning trend towards pre-emptive prosecution, this bill would only worsen the situation, extending this pre-emptive approach of prosecuting pre-criminal behaviour to abroad. This practice of moving the goalposts from crime prevention to pre-criminal pre-emptive prosecution is even referred to in the Risk Assessment: “*In the case of returnees, it is often difficult to prove evidentially direct engagement in terrorism, but the very purpose of the ‘preparatory’ or ‘precursor’ offences in Part One of the Terrorism Act 2006 is to*

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<sup>3</sup> *Serious Crime Bill [HL], Second Reading*, available at <<http://www.publications.parliament.uk/pa/ld201415/ldhansrd/text/140616-0001.htm#14061611000321>>

<sup>4</sup> *Blowback: Foreign Fighters and the Threat They Pose*, available at <[http://www.cageuk.org/sites/files/reports/A4\\_CAGE\\_SYRIA\\_REPORT.pdf](http://www.cageuk.org/sites/files/reports/A4_CAGE_SYRIA_REPORT.pdf)>

***prevent escalation of criminal behaviours and to intervene before the public is in danger.***<sup>5</sup>

5. Finally, CAGE submits that no thought has been given to the potential problems that arise with creating long-arm bills such as the one under consideration here. This bill will provide a basis for anti-terrorism agencies to operate counter-terrorism strategies abroad and therefore it is likely to infringe upon fundamental principles of international law such as sovereignty. This type of infringement can then lead to further issues such as adverse reciprocity in the international community and overlapping jurisdiction which ultimately compromises both international and domestic law.
  
6. In conclusion, CAGE submits that, given the already very broad nature of current terrorism legislation, the need for this bill and the gap that it is supposed to fill has not been properly demonstrated. Moreover, it is of great concern that the gravity of enacting a long-arm bill such as this has not been considered.

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<sup>5</sup> *Extension of Extra-Territorial Jurisdiction Impact Assessment*, pp. 3, available at [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/317593/2014-06-03\\_signed\\_IA\\_ETJ\\_TACT.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/317593/2014-06-03_signed_IA_ETJ_TACT.pdf)