

Press Release

Friday 4 April 2008

Immediate

Government proposes legislation to make BAE-Saudi corruption judicial review impossible in future

Draft Constitutional Renewal Bill increases Executive powers over Judiciary and Parliament

As The Corner House and Campaign Against Arms Trade await judgment on their landmark judicial review of the decision by the Serious Fraud Office to halt its BAE-Saudi Arabia corruption investigation,[1] the Government has introduced draft legislation that would prevent such a judicial review in future.

Clauses 12-14 of the draft Constitutional Renewal Bill [2] propose to create a new power for the Attorney General – a political appointee and member of the Government – to stop a criminal investigation or prosecution on the grounds of 'national security'. This new power allows for extremely limited oversight by Parliament and prevents and future review by the judiciary of such a decision.

Campaign Against Arms Trade and The Corner House are alarmed that, if these clauses become law, sensitive or embarrassing investigations and prosecutions could be halted – or appear to be halted – for political reasons simply by invoking 'national security', without any meaningful accountability to Parliament, the Courts or international bodies.

Susan Hawley of The Corner House said, "This new power is potentially unconstitutional and is an extremely worrying concentration of power in the hands of the Government. It allows for no meaningful oversight and effectively prevents any recourse to justice for those concerned by potential abuse of national security arguments."

Had the draft Constitutional Renewal Bill been law since 2004, when the Serious Fraud Office (SFO) began its investigation into alleged corruption in BAE's dealings with Saudi Arabia, the Attorney General could have directed at any moment the SFO Director, an independent prosecutor, to terminate the investigation or not to prosecute. (At present, the Director alone is supposed to make that decision.) The Attorney General's order would have been legally binding on the SFO Director.

If this draft Bill becomes law, the Courts would not be able to review the Attorney General's decisions that invoke 'national security'. The Attorney General would have to inform Parliament of any decision, but would not have to provide any information that s/he judged might harm not only national security but also international relations.

Legal submissions to the Organisation for Economic Co-operation and Development (OECD) on the draft Constitutional Renewal Bill prepared by barristers Dinah Rose QC and Ben Jaffey, and solicitors Richard Stein and Jamie Beagent warn that:

"There is always the risk when national security is relied upon by politicians that it will be elided with the interests of the government, especially where there is no democratic or legal scrutiny of the relevant decision . . .

"There is a serious risk that the opaque and unaccountable decision making process envisaged under the draft Bill could lead to breaches by the UK of its international law obligations, which would be extremely difficult to detect or challenge because the relevant information would never be made public, or available to the Courts [or] Parliament . . . "

They conclude:

"a powerful criminal who was able to make a credible threat to the UK's national security could thereby escape prosecution". [3]

The Corner House and CAAT forwarded these legal submissions to the OECD, which visited the UK this week to review the UK's compliance with the OECD's Anti-Bribery Convention and the decision to halt the SFO's BAE-Saudi Arabia investigation. They stressed that the draft Bill would violate and contravene the UK's obligations under the OECD Anti-Bribery Convention.[4]

The Corner House and CAAT are calling upon the public and parliamentarians to voice their concerns about the draft Constitutional Renewal Bill.

Nicholas Hildyard of The Corner House said:

"With corruption, climate change, energy supplies, food and agriculture now being interpreted by the Government as 'national security' issues, the wider and long-term implications of this draft Bill are profound."

Symon Hill of CAAT said:

"This draft Bill would effectively put BAE above the law, to the detriment of Britain's democracy, economy and security. The Government cannot be allowed to get away with this. "

NOTES

1.

--**The Corner House** is an environmental and social justice NGO.

--**Campaign Against Arms Trade (CAAT)** works for the reduction and ultimate abolition of the international arms trade.

--The **Serious Fraud Office** is a UK government department that investigates and prosecutes complex fraud.

--The **Attorney General** is the chief legal adviser to the Government and is responsible for all crown litigation. The Attorney General is appointed by the Prime Minister and is a member of parliament. The Attorney General superintends the Director of the Serious Fraud Office.

The Director of the Serious Fraud Office (SFO) announced on 14th December 2006 that he was halting the SFO investigation into bribery and corruption by BAE Systems since 2002 in relation to the Al-Yamamah military aircraft deals signed between the governments of the UK

and Saudi Arabia in 1985 and 1988. The CAAT and The Corner House judicial review of this decision was heard on 14th – 15th February 2008 in the high court before Lord Justice Moses and Mr Justice Sullivan, who said they would give their judgment "as soon as possible".

For more information on the judicial review, go to <http://www.controlbae.org>; <http://www.caat.org>, or <http://www.thecornerhouse.org.uk>

2. The Government published the draft Constitutional Renewal Bill on Tuesday 25 March 2008. It implements proposals in its White Paper, "The Governance of Britain – Constitutional Renewal, that was published on the same day.

–Clause 12 empowers the Attorney General to direct a prosecutor to discontinue an investigation or prosecution if satisfied it is necessary to do so to safeguard 'national security', which is not defined.

–Clause 13 makes such a direction binding on prosecuting authorities. If the direction's necessity is questioned, a certificate signed by a Government Minister certifying that the direction was necessary would be considered as conclusive evidence of that fact.

–Clause 14 obliges the Attorney General to report to Parliament on the giving or withdrawal of a direction, but allows the Attorney General to exclude information that could prejudice national security or international relations.

–Clause 17 defines 'prejudice to international relations' widely as including:
-relations between the UK and another other state, or international organization or court;
-the interests of the UK abroad;
-the promotion or protection by the UK of its interests abroad.
'The interests of the UK' are not defined.

<http://www.justice.gov.uk/docs/draft-constitutional-renewal-bill.pdf>

<http://www.justice.gov.uk/docs/constitutional-renewal-white-paper.pdf>

<http://www.justice.gov.uk/whatwedo/governance.htm>

3.

'Note on draft Constitutional Renewal Bill for OECD', Dinah Rose QC, Ben Jaffey, Richard Stein, Jamie Beagent, 31 March 2008,
<http://www.thecornerhouse.org.uk/pdf/document/ConstRenBillOECD.pdf>

4.

The OECD Anti-Bribery Convention is a multilateral treaty aiming to ensure that all OECD countries present a combined and united front against bribery and corruption of foreign public officials.

Article 1 of the Convention requires parties to make it a criminal offence to bribe a foreign public official. The UK did so in the 2001 Anti-Terrorism Crime and Security Act.

Article 5 makes provisions to enforce Article 1. It provides that the investigation and prosecution of the bribery of a foreign public official shall not be influenced by considerations of national economic interest or the potential effect upon relations with another state.

Under the OECD Anti-Bribery Convention, political appointees should not make decisions on corruption cases.