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MINORITIES WILL BEAR THE BRUNT OF “SHOOT-TO-KILL” POLICIES

NEW REPORT DOCUMENTS DANGEROUS TREND TO SUBSTITUTE RELIABLE INTELLIGENCE WITH STEREOTYPED PROFILES OF TERRORISTS

“Shoot-to-Kill” policies discriminate against minorities and violate legal norms on the use of lethal force, the NYU Center for Human Rights and Global Justice (CHRGJ) charged in a report released today. The 71-page report, “Irreversible Consequences: Racial Profiling and Lethal Force in the ‘War on Terror’,” critiques Training Keys issued by the International Association of Chiefs of Police (IACP) that guide police officers on how to detect and neutralize a suspected suicide bomber.

The IACP is the world’s oldest and largest nonprofit organization of police executives with over 20,000 members in over 101 countries. The IACP trains law enforcement officers in the U.S. and abroad with a view to promoting the exchange of best practices. The Training Keys have the potential to influence police departments—particularly in the U.S. where the IACP is headquartered—to train police officers to use behavioral profiling techniques, and to adopt and implement “Shoot-to-Kill” policies in response to terrorism-related threats.

Officers are told to look for specific behavioral and physical characteristics to identify threats, and then aim at the suspect’s head and shoot-to-kill. The Training Keys are reflective of “Shoot-to-Kill” policies that have emerged in the wake of September 11, 2001. In 2005 a number of “Shoot-to-Kill” policies authorizing the use of lethal force against suspected suicide bombers came to light. Following the July 22, 2005 killing of Jean Charles de Menezes, the U.K. revealed the existence of its national “Shoot-to-Kill” policy named Operation Kratos, which includes behavioral indicators similar to those found in the Training Keys. In late 2005 the U.S. National Bomb Squad Commanders Advisory Board issued and distributed the first national protocol on suicide bomber response. Also in 2005, reports surfaced that the U.S. Capitol Police had become the first U.S. police department to adopt a “Shoot-to-Kill” policy for dealing with suspected suicide bombers. Other U.S. law enforcement agencies are considering following suit. On Thursday, May 11 the U.K. government is expected to release the results of its official inquiries into the London bombings, which will include wide-ranging recommendations on how security services can better respond to terrorism threats.

The CHRGJ report was co-authored by NYU Center for Human Rights and Global Justice Faculty Director and Professor Smita Narula, Research Director Jayne Huckerby, Vrinda Grover, and Adrian Friedman. According to the report, contrary to accepted legal norms, the Training Keys promote the use of lethal force even when the threat of harm is not imminent and where the very existence of a bomb has not been confirmed. Instead, officers are encouraged to infer such a threat on the basis of overly-broad and conflicting physical and behavioral characteristics, that will in the overwhelming number of cases target Muslims, Arabs, and South Asians, or those perceived to fit into these categories. The report concludes that behavioral indicators found in the Training Keys, which make explicit references to Muslims, are in fact proxies for racial, ethnic, and religious profiling.

“The power to deploy lethal force is an immense responsibility for any police officer,” said Professor Smita Narula. “Instead of giving officers sufficient guidance in the exercise of this responsibility, behavioral indicators substitute reliable intelligence with stereotyped profiles that encourage officers to treat innocent behavior as threatening.”

According to the report, the indicators contained in the Training Keys are overly-broad and prone to error. Officers are told to look for individuals who wear bulky clothing in the summer, pace back and forth, fidget with something beneath their clothing, fail to make eye contact, wear too much cologne, or have strange hair coloring. The indicators are also contradictory and inconsistent. Officers are told, for example, to look for individuals who are nervous *and* individuals who are calm, individuals who are overtly Muslim (those who mumble as if praying or who wear scented water for “ritual purification”) *and* individuals who seem to hide their Muslim identity so as to blend in.

In sum, the guidelines are meaningless to officers who only have a few seconds to decide whether an individual constitutes a real threat before deploying lethal force. “The lack of real guidance leaves officers to rely on their own assumptions and stereotypes on whom to treat as suspect. Studies have shown that officers will use racial and other stereotypes to read non-threatening behavior as criminal or threatening,” said Jayne Huckerby.

“The identification of suspects cannot be based on confusing indicators, or on the assumption that all Muslims, or those perceived to be Muslim, are potentially terrorists,” Narula added. “If people can be shot on the basis of these assumptions, mistakes are bound to be made.”

The potential for error has already been borne out in incidents in London and Miami. On July 22, 2005 Jean Charles de Menezes, a Brazilian national, was shot and killed by police officers in London. The police initially claimed that they suspected de Menezes because he was wearing a bulky jacket that could have been concealing a bomb. Factors such as “mumbling,” “pacing back and forth,” and “being overly protective of one’s baggage” could also lead to the erroneous targeting of the mentally ill, as was demonstrated when Rigoberto Alpizar, an airline passenger with bi-polar disorder, was shot and killed by U.S. federal air marshals in Miami on December 7, 2005.

Both Alpizar and de Menezes were also dark-skinned men who superficially matched what has become the generally accepted profile of the “terrorist”; namely, young Muslim, Arab, or South Asian men. In the “war on terror,” individuals profiled on the basis of their race, religion, ethnicity, and/or nationality have been subject to stops and searches while driving, flying, traveling through airports, and even while praying. They have been illegally detained, deported, required to submit to special registration, “disappeared,” and rendered to countries where it is likely that they will be tortured.

According to the report, “profiling sends the problematic message that the security of some is worth more than the security of others; or worse, that human rights abuses against those who fit into this ill-defined category of ‘terrorist’ are a necessary pre-condition to ensuring the security of the nation.”

“Profiling in the context of a ‘Shoot-to-Kill’ policy threatens the ultimate sanction—death by extrajudicial execution. The irreversible consequences of such a policy necessitate that police officers discharge lethal force only when necessary and only on the basis of reliable intelligence,” added Huckerby.

“Behavior pattern recognition” is already being introduced in airport and transportation security in the United States, and in counter terrorism operations in the United Kingdom. According to the report, both “Shoot-to-Kill” policies and behavior pattern recognition techniques have long been used in Israel, whose counter-terrorism experts are actively recruited to train law enforcement and security personnel worldwide.

The Center for Human Rights and Global Justice calls on states and police departments considering the adoption of such policies to ensure that these policies comply with fundamental human rights norms. Specifically, the Center calls on officials to: “Make public their plans to introduce these policies, invite dialogue with communities most threatened by them, and sufficiently train police officers on the prohibitions against racial profiling and the arbitrary use of deadly force.”

“Fundamental rights must not become casualties to the politics of fear that have characterized states’ responses to the ‘war on terror,’” Narula commented. “Only a faithful adherence to human rights norms can help ensure that *all* persons are truly secure and protected.”

The full report can be downloaded at www.chrgj.org

The Center for Human Rights and Global Justice (CHRGJ) at NYU School of Law focuses on issues related to “global justice,” and aims to advance human rights and respect for the rule of law through cutting-edge advocacy and scholarship. The CHRGJ promotes human rights research, education and training, and encourages interdisciplinary research on emerging issues in international human rights and humanitarian law. Philip Alston is the Center’s Faculty Chair; Smita Narula and Meg Satterthwaite are Faculty Co-Directors; and Jayne Huckerby is Research Director.