Campaign Against Criminalising Communities (CAMPACC)

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To: Nick Walker, Commons Clerk of the Joint Committee on Human Rights, Committee Office, House of Commons, 7 Millbank, London SW1P 3JA, jchr@parliament.uk

RE: INQUIRY INTO CONTROL ORDERS

We welcome your inquiry into powers to impose control orders.

By way of background to our submission, our campaign was set up in early 2001 to oppose the Terrorism Act 2000. We are a non-party organisation supported by a number of lawyers, advocates for refugee and migrant communities, and civil liberties campaigners. We opposed the 2000 Act and subsequent anti-terrorism legislation of 2001 and 2005 on several grounds, as argued in documents which can be seen on our web site, www.campacc.org.uk. Of particular relevance to the current submission, we opposed internment powers under the Anti-Terrorism, Crime and Security Act, and later the power to impose control orders, as well as the current proposal for extending the maximum detention period without charge. Our campaign links human rights campaigners with people targeted by the anti-terror powers and provides practical support for them, e.g. protest events, letters, bail surety and home visits to persons under control orders. From that experience we have special expertise in the human effects of anti-terror powers, as well as insights into how they are used.

By a coincidence of timing, your deadline comes a day after publication of Lord Carlile's report on control orders. His report warrants at least a brief comment, as a contrast to our submission. Overall his report reinforces the emergency mentality by which the government warns about further suicide bombings, labels individuals as 'terror suspects' and so justifies the use of control orders − with no need for evidence in court. He asks that police chiefs should explain why there is not enough evidence for prosecutions – rather than ask the government to demonstrate why control orders are necessary to protect the public from violence. Lord Carlile acknowledges concerns about 'potential psychological effects of control orders', and about 'family and other arrangements' for the suspects. He suggests the restrictions have been 'extremely restrictive' and close to what would need an opt-out from European human rights laws. As we will argue, his euphemisms sanitise gross abuses of human rights − indeed, punishment without trial − and downplays a great inconsistency with the ECHR.

When the government's proposal for control orders was going through Parliament about a year ago, CAMPACC denounced this new power to 'impose punishment on those not proven guilty'. As we further said:-

> Under the Home Secretary's proposals, people could be subject to a civil control order without any criminal charge. They would not necessarily be told of the evidence against them. Like the internment power which the Law Lords have rejected, such orders impose punishment without conviction through a proper jury trial. This would violate a fundamental principle of justice; the right to be presumed innocent until proven guilty. Such powers would impose a criminal-type sentence without trial, in the name of preventing hypothetical crimes (CAMPACC statement, 7 February 2005).

Our ominous prediction has been more than vindicated in practice, for the following reasons:

1. 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 not been given permission to visit even several months after applying. 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.

2. 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; copies to be included with our letter). Similar distress is documented in a statement from the bail-accommodation provider for Mr S (Appendix A). Likewise the distress and social isolation of an entire family as well as the person put under restrictions (Appendix B).

3. 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' (*Independent*, 15 December 2005, pp. 1-2, copy to be posted with our letter). 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.

Although your committee's investigation presently concerns only control orders, the 1971 Immigration Act has been used for similar purposes. That is, certain Immigration Act detainees have been bailed under conditions similar to control orders or even under greater restrictions. As we detail below, in effect it has been used to create a parallel regime to that of control orders. 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 Article 5 of the ECHR 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. Whatever changes may be made to the control orders regime, those changes (hopefully, improvements) will not touch the parallel regime under the 1971 Immigration Act ,which remains.

Regardless of which law is used to impose special conditions, they may amount to virtual house arrest. In this way the government in effect re-creates internment, pending a judicial process which could last for many years.

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.

Those patterns illustrate how the government is using a variety of powers to circumvent normal judicial procedures, even to circumvent the Law Lords' ruling that internment violated the ECHR. According to the government's own account of the Prevention of Terrorism Act 2005, no derogation from the ECHR would be necessary unless control orders impose house arrest. Yet in practice it has imposed virtual house arrest without the overt shame or burden of such derogation (see Appendix C).

Impracticability of control order regimes for single men using rented accommodation

Lastly, the viability of control orders as an alternative to the (completely unacceptable) practice of internment depends on it being practical for persons subject to these orders to live in the community outside of prison. This is not the case for control orders, nor for the parallel regime under the Immigration Act 1971 (see Appendix C). These regimes have been operated in such a way as to make it impractical to expect detainees without families and family homes to be released from prison or detention centres to live under control orders, even where their house arrest is only partial. If detainees' friends, supporters and lawyers try to rent them a self-contained flat which can be proposed as bail accommodation, the need for access and equipment installations by the tagging company makes landlords unwilling to let, especially if informed by the police of the nature of their proposed tenant. If accommodation with a resident landlord is proposed, then the conditions of life for the host are made impossible. The host may not receive his or her friends as visitors, since they are not vetted to visit the detainee, and must accept searches and inspections by the tagging company and police at any time. These issues mean that finding accommodation where the conditions of a control order can be met is extraordinarily difficult for single detainees, so that there is nowhere they can stay outside of a prison. For this reason alone, the regime of both control orders and the 'parallel regime' of bail under the 1971 Act needs to be made less strict, even if it were not for the overwhelming concerns about the injustice and inhumanity of any system of punishment without trial.

Conclusion

Drawing on our direct experience, this letter has outlined gross abuses of human rights under both the PTA 2005 and the Immigration Act 1971. Do these practices conform to the intention of Parliament when enacting those laws? Do these practices comply with human rights law, especially the ECHR? We urge your committee to investigate those abuses. Our supporters would be pleased to send further information or to present oral evidence at any hearings.

Estella Schmid
On behalf of
Campaign Against Criminalising Communities (CAMPACC)

Appendix A: ***Mr Qavi's personal account as a bail-accommodation provider***

I came in contact with Mr S for the first time, on 19th April, 2005, when, before Asylum and Immigration Tribunal, I undertook to provide a bail address for him. He stayed with me in my flat for about 4 weeks, after which he moved to a NASS-provided accommodation elsewhere.

On the morning of 15th September 2005 he was, in a highly publicised raid, arrested and taken to Long Lartin. He was ordered released by SIAC [Special Immigration Appeals Commission] on 17th January, 2006 on bail conditions which are more restrictive than the control orders system. The bail conditions of his release oblige Mr S to wear a tag at all times, to report to the police station every day between 12 noon to 2 pm, not to leave the bail address at all times save for the period from 10.00 am to 4.00 pm etc. His movements are restricted to a marked area which he is required not to leave. He is forbidden to receive any visitor other than his solicitor while staying at my place. The police and Immigration personnel and others working on behalf of Home Secretary can call at any time and without prior notice to enter the bail residence to check on him.

I offered to stand surety and provide him a bail address early in December 2005. On this occasion, the Home Office chose to impose "surety conditions" in drips, seemingly designed to prolong the process and to dissuade me from providing a bail address by sheer unreasonableness of the conditions they initially sought to impose. The result being that Mr S's release on bail was delayed for weeks.

The "surety conditions" require me not to permit my friends, neighbours and acquaintances to enter my residence unless I provide the visitor's name, address, date of birth and a photograph at least 3 days beforehand to the Home Office and seek its approval as to the time and date and the expected duration of the visit. My lap top can be inspected and taken away for up to 48 hours. My residence can be entered by police and immigration officials at any time without prior notice, etc. The "surety conditions" are grossly restrictive and infringe on my civil liberties as a British citizen. I have been obliged to place myself and my residence under quarantine in order to seek the release of a friendless, young asylum seeker from unjust and unlawful imprisonment.

Since 17th January 2006 my home has been visited by various police and immigration people on three difference occasions - all without notice and at abrupt hours of their choosing. The last visit took place on Saturday 28th January 2006 when 3 officials called at 6.30 pm, just as I had sat down with my newspaper. They wanted to check the tagging equipment. For the next 50 minutes they wandered around all over my place in their unclean shoes, checking each and every corner over and over again. They tacked a lead of wire to one of the door frames and fixed a portable antenna for their equipment to the top of the door. A hideous sight which none of the "surety conditions" say they are allowed to do.

At odd hours and for no discernable reason, the tagging company telephones to enquire of Mr S where he was 3 minutes or 7 minutes ago. At other times, the tagging company rings and when Mr S picks up the telephone, there is no one on the line. When he calls back to ask why the telephone rang, he is told we did not call you. All this is happening in my presence and within my hearing.

During 4 months of incarceration, Mr S has lost some 20 kg in weight and looks a shadow of himself. He is psychologically traumatised by the circumstances of his arrest on 15th

September, 2005 when his front door was smashed and he was severely beaten up by immigration and police personnel. He carries injuries to his knee and leg which require medical attention.

Appendix B: ***Les Levidow's account as a visitor***

When the solicitors Birnberg Peirce requested volunteers to visit individuals put under control orders in spring 2005, I responded as a supporter of CAMPACC. Previously I had no personal contact with such individuals, though I had actively campaigned for their release from unjust detention. On my behalf, Birnberg Peirce applied to the Home Office for permission for me to visit such individuals. By the time I was assigned to one, Mr G, he had been re-arrested for deportation to Algeria and then placed under house arrest under the Immigration Act 1971.

Mr G was released from prison on the basis that he had a family here who could host him. His house has been effectively turned into a domestic prison, in many ways. Guests are prohibited unless approved by the Home Office. It still had not given approval to some friends and relatives, many months after they submitted a request. Great distress results from the family's isolation, as well as from the constant apprehension about police raids, about security companies checking the electronic tag, etc. The latter seems all the more absurd, given that Mr G remains bound to a wheelchair, physically unable to move around without it.

When I have visited Mr G, he and his family were very appreciative because human rights campaigners have become an important contact with the outside world. He explained to me the difficulty of his bail conditions, which prohibit any conversation with anyone not approved by the Home Office. Eventually the judge allowed him to go out to his back garden for a couple of hours per day, but Mr G decided not to take up this opportunity. Why? Probably neighbours in his housing co-operative would say hello. As a human being, Mr G would find it unbearable to ignore them. If he simply says 'hello', then he could be returned to prison for breaking his bail conditions. The dilemma well illustrates how these conditions abuse human rights, as well as serving a political agenda of social isolation.

As I eventually learned from a newspaper article, when someone applies to the Home Office for permission to visit such a person, s/he classified as 'a known associate of a terror suspect' (*Independent*, 15 December 2005, pp.1-2). Such a stigma is a primary political purpose of the 'anti-terror' laws. It effectively deters many people from such 'association'.

Appendix C: ***The 'parallel regime' of control-order style bail conditions under the Immigration Act 1971***

This issue has emerged in relation to some immigration detainees whom the government wants to deport to Algeria, Libya and Jordan. These are countries notorious for torture, with which the government has been seeking `no-torture' agreements for some time. Some individuals released from ACTSA internment to a control orders regime under the PTA 2005 were re-detained in prison under the Immigration Act 1971 in August 2005, apparently because it was thought that such agreements would soon be concluded and the government then intended to deport them. Other individuals who had been accused, but not convicted of terrorism, in the well-known 'ricin' trial and released as innocent men in spring 2005 were also re-detained in August-September under the Immigration Act 1971.

When it became apparent that deportation would not be imminent because the agreements with other governments had not yet been concluded, bail was granted to a few such people. This immigration bail has been under conditions even stricter than those previously used or envisaged under control orders. Four such cases were featured in an excellent article in *The Independent* (15 December, pages 1-2). In one of these cases, which may not be the only one, the detainee is not permitted to leave his accommodation at all, yet no derogation from Article 5 of the ECHR has been sought from Parliament as laid down as necessary for those control orders under the PTA 2005 which constitute full house arrest. Our supporters have direct experience of hosting or visiting some of these individuals (see Appendix B).

When responding to the Law Lords' ruling on internment under the ATCSA 2001, Parliament sought an alternative which did not breach the ECHR. The spirit of their judgement, which should surely be reflected in all subsequent treatment of 'terror suspects', was that imprisonment without trial or charge is simply unacceptable. However, the scope of their judgement related to people with a right to reside in the UK or those who could not be deported due to a risk that they would be tortured if returned to their country of origin. Since the summer of 2005, we have seen the emergence of a parallel regime of internment under the Immigration Act 1971, using the excuse that those affected are being detained pending deportation. At least one person (Detainee G) who was first interned under ATCSA 2001, then released under a control order, then re-arrested and detained in prison under the Immigration Act 1971, has now been bailed under complete house arrest under that Act.

Full house arrest under the Prevention of Terrorism Act 2005 requires a decision to derogate from the ECHR, justified by a `national emergency', yet this parallel regime somehow escapes that requirement; no such derogation has been made or sought. The justification for house arrest or detention without trial or charge under the Immigration Act 1971 is apparently that deportation is imminent. Yet when G was placed under a control order, it was precisely because he could *not* be deported due to the risk of torture. Nothing had changed with regard to that question by the time he was re-arrested in August 2005 (with others in somewhat similar circumstances, of whom more shortly). The UK government had merely decided to negotiate with the Algerian government with a view to obtaining assurances that returned persons would not be tortured. Here lies an important legal issue: whether someone can be regarded as 'detained pending deportation' when the agreement that is supposed to make that deportation acceptable under Article 3 of the ECHR as a procedure for a whole category of persons has not yet been tried and tested in the UK courts. It is illogical to maintain that G's situation changed because a 'no torture' agreement was *under negotiation*. This argument is quite separate from our considerable scepticism that the Algerian government's undertakings can be trusted.

A similar but slightly different argument can be applied to those who were re-arrested in August under the Immigration Act 1971 having been acquitted (or had charges against them dropped) in the so-called 'ricin trial'. These men are still in Immigration Act detention or have been bailed under partial house arrest. These are innocent men; to deny this would be to reject the outcome of the normal and proper judicial procedure which they went through. Nor was any new evidence put forward against them, nor were they subjected to control orders under the procedure that Parliament (in our view unjustly) approved in 2005 for 'terror suspects' who 'cannot be prosecuted'. Instead they have been subjected first to imprisonment without trial or charge, virtually indistinguishable from ATCSA internment but for the excuse that it is 'pending deportation'. Following that ordeal, some have been bailed under conditions which amount to a control orders regime − partial house arrest. Yet they are all either persons who in law cannot be deported because of the risk of torture, until and unless

that risk is deemed to have been eliminated, and/or persons whose asylum claim process was unfinished according to normal procedures.

The label ‘pending deportation’ which has been used to justify their internment and then house arrest thus appears to have no justification. It is in fact being used to create a parallel or alternative route to punishment without trial, without even the safeguards which Parliament laid down in the PTA 2005. Whilst we opposed that Act as unjust, our point here is that the intentions of Parliament in 2005 are being flouted by this dangerous, illogical parallel regime. Even the detention regime for other asylum seekers, which we also oppose, is much less harsh than the conditions to which these men have been subjected.

We would, moreover, question whether the bail conditions which have actually been imposed in the case of Mr S (see Appendix A) are justified by the Immigration Act 1971. It does permits the Secretary of State to impose conditions with regard to residence and reporting to the police, and (as later amended) permits tagging of detainees. As far as we know, however, this Act has not previously been interpreted to justify restrictions on visitors or constant searches of the accommodation. As reported above, the searches experienced by one host (Appendix A) extend to the whole premises, not just to checking the tagging apparatus. Moreover his computer ‘may be removed for up to 48 hours for inspection’, according to the conditions which have been set – a gross imposition on an innocent volunteer who has offered to help a person already judged innocent in a British court. Again, from the example of this case, the arrangements for detention and bail under the 1971 Act are being transformed into a control order regime.

Notes for editors

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