

Campaign Against Criminalising Communities (CAMPACC)

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Submission to the Joint Committee for Human Rights
on the *Terrorist Asset-Freezing etc. Bill*
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1. CAMPACC: who we are

The Campaign Against Criminalising Communities (CAMPACC) was formed in March 2001 in response to the banning of 21 organisations under the powers of proscription contained in section 3 of the Terrorism Act 2000. CAMPACC seeks to highlight the effect of ‘anti-terrorism’ legislation in intimidating and criminalising communities, rather than protecting the public. The Campaign has brought together individuals and groups from communities which find themselves targeted by anti-terrorism legislation, lawyers, other human rights activists and increasingly members of the public who are concerned about the civil liberties implications of the ‘war on terror’. From those experiences, we have highlighted the human consequences and political roles of ‘anti-terror’ powers. Previously we sent the JCHR a detailed critique of the Control Order regime; this was included as Annex 4 in your February 2006 report, *Counter-Terrorism Policy and Human Rights*.

We welcome the opportunity to provide the Committee with this short submission and would be pleased to appear before the Committee to provide further evidence if required. It is our view that the question of whether it is appropriate to continue with the freezing regime should be referred to the Counter Terrorism Review. The current complex system of overlapping laws in relation to financing (such as those contained in the *Terrorism Act 2000*; the *Anti-Terrorism, Crime and Security Act 2001*) should rightly be considered as a whole in order to determine their necessity and their impact on human rights.

2. Findings of *Ahmed and Others v HM Treasury*

We urge the Committee to give due consideration to the reasoning of the majority decision in the case of Ahmed. The Supreme Court found the orders made regarding the freezing of terrorist assets violated basic fundamental rights and freedoms – without the authority of Parliament.

In summary, it is our submission that the current Bill simply embeds significant violations of human rights, including:

- The right to a fair trial
- The right to freedom of movement
- The right to privacy and family life
- The right to the protection of property

These violations amount to punishment without trial.

3. Low threshold for application

The Government’s amendments to the Bill require only that there be ‘reasonable grounds for suspecting’ that a person has been involved in terrorism to impose an interim 30 day order. A final order must then only be made by Treasury on the basis of a ‘reasonable belief’ that the person has been involved in terrorism. The Supreme Court pointed out that the UN requires member states to freeze the funds only of those who ‘commit or attempt to commit’ acts of terrorism. The Bill therefore goes considerably beyond the policy intention of the UN.

HM Treasury have argued that the tests of ‘reasonable suspicion’ and ‘reasonable belief’ are necessary to give effect to the preventative policy aim of the legislation. We submit that a more proportionate preventative aim may be achieved by judicial, rather than executive sanctions, against those who have been found by a court to have committed or attempted acts of terrorism.

Further, the legislation would not specifically target terrorist financing because the special powers do not require that a person be reasonably suspected of *terrorist financing* before they are designated.

The threshold of ‘reasonable belief’ is not an appropriate substitute for scrutinising evidence through the courts. This Bill will subject people who have not been charged with any offence to extra-judicial punishment inconsistent with a liberal democracy. The pre-emptive paradigm as expressed in this Bill is incompatible with the rule of law, human rights and procedural fairness standards.

4. The right to a fair trial

The Bill entrenches the current system of secret evidence, closed hearings and special advocates, whom the Attorney General appoints to act on behalf of the affected person. Yet the requirement of non-disclosure to the affected person of the critical evidence on which the freezing order was made, entrenches secret intelligence whose validity and relevance cannot be tested by the accused.

The Bill is in breach of the right to a fair trial and undermines the presumption of innocence. The abrogation of this right stems from the very nature of designation orders being made by the executive on a mere suspicion or belief of ‘involvement in terrorism’. To ensure due process, the affected person must be given the right to make full legal representations in their defence, and the right for the matter to be adjudicated by the judiciary. Further, the right to full merits review should be provided for, not simply the limited recourse to judicial review.

5. Impacts on people designated: the right to freedom of movement, privacy and family life, and protection of property

The Supreme Court found that the ‘draconian nature’ of the asset-freezing orders could ‘hardly be overstated’. Lord Hope stated that ‘..designated persons are effectively prisoners of the state’ and, ‘their freedom of movement is severely restricted without access to funds or other economic resources and the effect on both them and their families can be devastating.’¹

We have spoken with individuals who have family members subject to asset-freezing orders. They have experienced the asset-freezing regime as a cruel, disproportionate form of administrative punishment. The regime inflicts a debilitating suffering not only on the person designated but also on their families and friends.

The restriction to a person’s funds has subjected those on freezing orders to a life of extreme state intervention into daily life. The current Order regime and the Bill allow designated individuals to have access to funds to meet ‘basic expenses’. A person is not entitled to access their own funds, but can obtain only basic expenses, and only if they have a Treasury license to do so. Basic expenses are not defined, and there is no definitive list or guidance provided to designated people. Instead the Treasury has insisted on a ‘case-by-case’ determination of what constitutes a basic expense. Consequently, people have sought constant permission from the Treasury to allay fears that they may be breaching the

¹ *Ahmed and Others v HM Treasury* [2010] UKSC 2 at para 11.

conditions of their license. The licensing system is an unjustifiable intrusion into people's lives – creating uncertainty, anxiety and another level of administrative punishment.

For some people on freezing orders, there is increased dependence on family members for food and basic supplies. For example, according to one individual whom we consulted, a freezing order had devastating impacts — severe emotional psychological consequences on her entire family. Alisa's Uncle has been subject to a freezing order.² The family is terrified about providing anything other than a minimal amount of food and household items to their Uncle.

The Bill maintains a highly oppressive regime by making it an offence to provide a 'significant financial benefit' to a designated person. This vague concept remains undefined and provides no guidance to families. In practice, families have been frightened to provide any amount of money or even support in kind such as the use of vehicles.

The Bill allows that public benefits may be paid to non-designated family members. However, the prohibition remains that a family member cannot provide any part of that payment amounting to a 'significant financial benefit' to the designated person. For example, it is unclear whether a spouse who routinely pays the entirety of the rent/mortgage on the home, in the designated person's name, contributes a 'significant financial benefit'. Freezing Orders have created an oppressive level of anxiety and uncertainty for entire families that they may be committing an offence.

Alisa's extended family has been subject to on-going harassment by intelligence services for several years. This has included multiple dawn raids on family members which have not resulted in charge or formal questioning; stop-and-search of vehicles of family members without explanation; and intimidating family members by requesting that they not communicate to the public the nature of the authorities' interactions with them, nor to identify the agency involved. The harassment of Alisa's family has by no means been experienced by them as a one-off event.

6. Punishment without trial to be extended?

In sum, the current powers of asset-freezing inflict punishment without trial, violating the basic rules of due process. Why is this happening? Not an isolated example, the above case points to a systemic practice designed to intimidate and punish. We have received anecdotal evidence that such impacts – harassment, poverty and mental trauma – are commonplace among those who have been designated.

Individuals and families are given no reasons for why they are under order. Nor do they have any viable prospect to challenge the orders. This contributes to a sustained emotional and physical state of siege, where the system provides every indication that the orders could continue indefinitely without real accountability. The families we consulted have justifiably lost any hope for pursuing justice in the UK legal system.

Moreover, in practice freezing orders in effect prohibit controlled persons from communicating with the public or the press about their persecution. This effect typifies dictatorships. It contributes nothing to the supposed aim of preventing terrorism. By silencing its victims, the state conceals its systematic punishment without trial under the pretext of 'anti-terror' powers. The extra asset-freezing powers in the Bill would extend current injustices and so should be rejected. Instead the current regime should be held accountable for its injustices.

² An alias has been used, identities altered and family experiences referred to in composite to protect anonymity.