Campaign Against Criminalising Communities
CAMPACC

22 September 2008

Counter-Terrorism Bill 2008: CAMPACC Submission to Lords

We have followed the debate in the House of Lords on 8th of July (Hansard Vol. 703 No.122) closely and deeply impressed about its quality and depth. The vision that many peers articulated of a society that is open, trusting, democratic was trenchant.

We represent a coalition of some 26 civil society organisations (listed at the end of this memorandum) who have come together to express concerns about the **COUNTER TERRORISM BILL 2008** and to campaign against the provisions which we believe will lead to greater injustice.

We deeply appreciate the overwhelming opposition to the extension of pre-trial detention from 28 days to 42 days. The arguments put a significant majority of your Lordships were comprehensive and we hope this proposal will be rejected. We are aware that amendments have been moved to oppose Clause 22 to Clause 32 of the Bill and hope that these will get a majority support.

However, this Bill is about more than 42 days. We agree with Baroness Hanham that these other provisions require the most detailed scrutiny and in her comment on the astounding debate that 'it has been astounding also

because it has concentrated almost entirely on the 42-day extension, although there are other matters in the Bill' (Clm731). Baroness Neville-Jones quite rightly remarked in her maiden speech that 'important concerns on these were largely obscured in another place (sic) by the debate on 42 days' detention.' (Clm637)

One of our major concerns is the special rules of the court proposed in Part 5 of the Bill (Clauses 70-71) for freezing assets. On 24th April , in a case before the High Court (A,K,M,Q, & G vs. H M Treasury), Justice Collins quashed the asset freezing Orders imposed on the five individuals by the Treasury and expressed his view that it was essential for Parliament to consider this issues. Some 106 individuals have been subjected to extra-judicial financial sanctions by H M Treasury.

Lord Goodhart dealt with this issue admirably during the debate (Clm682). The proposal to use of the special court procedure for asset freezing is an extension of the procedure used by the Special Immigration Appeals Commission (SIAC) which hears appeals against control orders. This allows evidence to be withheld from the appellant and his lawyers, a process more damaging to fairness than anonymous witnesses where at least the defendant knows what is said, even if he does not know who said it. We hope that amendments will be tabled to remove Part 5 as suggested by Lord Goodhart. We partly agree with Lord Goodhart when he said 'It is plain that the special procedure should, in any event be used as little as possible, whether for control orders, asset-freezing or anything else…' We believe that this procedure should never be used as it violates the most basic principles of fair trial.

Both Baroness Neville-Jones and Baroness Hanham both expressed concerns about the special rules of the court during the debate and we hope that Part 5 will be subjected to rigorous scrutiny and the punishment without due process (asset freezing without any trial) imposed on more than a 100 people will be swiftly brought to an end.

We have experience of the special court procedure used by SIAC for control orders. There are many misgivings about the use of special advocates. These are anomalous in terms of our system of justice. They have created a dual system of justice, one for terrorist offences and one for all other causes. There is a need for equality before the law, in which every defendant in

whatever court or process should have access to a barrister of their choice who they can instruct confidentially and without hindrance.

Lord Lester began his speech with the provisions on coroner's inquests in Part 6 of the Bill (clauses 78-79) and he argued with admirable incisiveness that these do not meet Article 6 of the EHRC (Clm653). In his words 'The Secretary of State thus seeks sweepingly broad discretionary powers going well beyond those needed to counter terrorism……Independence is essential, and a system based on special appointment of security cleared coroners by the Minster would inevitably involve serious breaches of convention rights and obligations'. Baroness Stern added her voice and that of the JCHR to these concerns about Part 6 (Clm710).

Baroness Miller similarly dissected these provisions and said 'The introduction of the concept of secret inquests…..flies in the fact of the very reasons for inquests' (Clm730). Her critical remarks (Clm731) on the definition of proposed special procedures in the interest of national security, or of the relationship between the UK and another country or otherwise in public interest are so wide as to deal a body blow to the traditional inquest system are absolutely right. We and other organisations such as INQUEST have campaigned against these measures and urge that they are removed. We hope that amendments that have been proposed are fully supported by the majority of the House.

We share Baroness Falkner's concerns about Part 1 of the bill with the powers to gather information and the changes where it would become a criminal offence to obstruct the gathering of information (Clm6760). Each clause needs careful scrutiny. The issue she raises about the extent to which language or cultural barriers could lead to obstruction charges is pertinent to all our migrant, asylum seekers and refugee communities including those who

have long settled here. She is right in seeking to probe clauses of taking and holding fingerprints and non –intimate samples from those on control orders.

Furthermore as pointed out by Baroness Stern (Clm709), there are problems with the disclosure and use of information by the intelligence services in terms of respecting people's privacy and ensuring that such disclosures do not breach the conventions on torture and human rights.

Baroness Falkner rightly points out that Part 4 (Clauses 51 to 68) dealing with notification and foreign travel restrictions are catch all and target a group rather than individuals. These requirements are not based on risk assessment of an individual and therefore capable of being disproportionate when applied broadly (Clm675).

In summing up the debate, Baroness Hanham observed that although the new powers such as the collection of information and DNA in Part 1 and the notification requirements in Part 4 seem innocuous enough when looked in isolation, they represent another step towards criminalisation of the innocent.

Although there seems to be overall support for clause 34 of the Bill which permits further questioning on the subject matter after a charge of a terrorist offence, we still have many reservations in spite of the amendments. Prolonged questioning would undoubtedly oppressive given the trauma the accused is likely to be in on arrest and detention and to raise an inference of guilt for failure of the suspect to answer questions is entirely unacceptable. Lord Thomas posed pertinent questions about the usefulness of such questioning. He drew attention to the side effects of such process and whether confessions so obtained would ever be accepted by a judge as untainted by oppression (Clm643)

The Lord Bishop of Chelmsford highlighted the case of two young people in his diocese who were held for 28 days after an incident in 2006 and released on the 28th day without charge. He asked 'What is it going to be like after seven weeks of detention, if that is what happens, for young people to

return to their communities? What is going to be the impact of that?' (Clm661)

We must say that these cases are not exceptional and such arrests are routine. There is ample evidence that to use Lady Kennedys' words ' when large scale arrests take place, innocent people – merely friends or family members –can be caught up in the sweep' (Clm684).

The Home Office website provides facts and figures from 11 Sept 2001 to 31st March 2007 which are revealing. Of the 1228 arrests, only 132 (10.7 per cent) were charged under Terrorism Acts and 109 (8.9 per cent) were charged for terrorism legislation offences and criminal offences. 195 others were charged under other legislations.

Of those arrested, only 41 were convicted (3.3 percent) under Terrorism Acts and almost five times (14.9 per cent) more convicted for other offences such as criminal and immigration offences.

Some 669 individuals (nearly 55 percent) were released without any charge. All these potentially could have been held for 28 days- we just do not know how long they were detained.

Lord Imbert mentioned that this year, up to the end of last week (sic), 33 people have been prosecuted 11 of whom pleaded guilty to the charges (Clm669). Lord Joffe pointed that in 2007, 36 individuals were convicted in 14 significant terrorist cases of whom 21 pleaded guilty (Clm716). In view of the fragmented nature of such information, The House needs to request that the Home Office provide up to date fact and figures from Sept 2001 to Sept 2008 for all of us to get a comprehensive picture. Worryingly, the Home Office has not updated its website facts and figures for the last 17 months.

It is only to be expected that the figures would rise, given that the Terrorism Act 2006 created new terrorist offences such as glorification of terrorism, thereby lowering the threshold of terrorist offences. People are being prosecuted for possessing and downloading documentations, for browsing

websites, for possessing ‘radical DVDs’ and writing lyrics etc. Our argument here is that far too many innocent people are arrested under the low threshold of ‘reasonable suspicion’ and lives are damaged.

Lord Sheikh expressed his concerns about the demonization of the Islamic Faith (Clm661), and Lord Dholakia deplored the drumbeat of hysteria that has targeted the Muslim community by both politicians and the media (Clm697). This is the most distressing development for us who have been defending these communities. There has been a concerted move by the Government, the politician, the media and the intelligence services to target the most vulnerable communities in our society through over-hyping the terror threat, headlining arrests and raids, projecting non-existent threats such as the ricin plot and associating terrorism in the public mind with Islam. Lord Dholakia’s warning that ‘We have a duty to ensure that no community feels isolated and lives in fear. The measures we take should not stereotype communities as extremists’ (Clm698) should be heeded.

The Lord Bishop of Leicester movingly asked everyone to imagine the consequences of detention without charge on the families, the police and the local community. He pointed out the stigma attached to an innocent detainee living with consequences of detention without prospect of clearing his or her name in court (Clm662). More often than not, such arrests are met with a trial by media. Our experience is that we as a society have not begun to examine this costs to individuals- what happens to their jobs or job prospects, what happens to their financial status, their mental health and how can they can be rehabilitated into the broader society. We need an inquiry into the effect of the implementation of the anti-terror legislation on individuals, families and communities.

Some peers looked back on the experience of this country during the Northern Irish conflict. Lord Lester of Herne Hill reflected that ‘One lesson of the IRA experience is that excessively repressive responses are counterproductive.’(Clm654) Lord Maginnis passionately asserted that ‘It is

wrong, unjust and potentially the repetition of a 1970s mistake in Northern Ireland' (Clm727). Lord Mayhew's foreboding 'just as internment in Northern Ireland in1970s put us on the back foot and encouraged the violence we were resisting, so this proposal will predictably harm us' (Clm691) sounded a tocsin to be heeded.

We see clear parallels with all the caveats that surround any analogy drawn. From 1979s to 1990s the Irish were the suspect communities. The figures quoted by Lord Soley that of 6000 arrested per annum for questioning of which 5 percent were charged and about 2.5 percent convicted (Clm726), far from justifying an effective strategy to contain civil conflict, bear witness to the injustices committed. The miscarriages of justice such at the Guilford Four, Maguire Seven and Birmingham Six are well known. We believe that since 2000 the Muslims have become the 'suspect' community under siege and we need to recognise this and change direction.

Several peers dealt with the spectre of global jihad. We need to reflect on the historical roots of this. Our knowledge of the individuals incarcerated in Belmarsh and subsequently place under control orders shows that they were largely from the Arab world, mostly Algerians, and some Egyptians, Jordanians, Tunisians and Libyans. Whilst so much time and money was expended in their incarceration, our view is that they did not pose any terrorist threat in our country. They were subjected to this because of the Government's foreign policy interests. There were opportunity costs. The terrorist attacks came from our citizens who had links with Pakistan where the roots of the global Jihad were implanted. The United States and Saudi Arabia principally put in more than 8 billion dollars to support the Mujahedeen fighters including the Taliban to counter Soviet occupation of Afghanistan. Thousands of Muslim young men were recruited across from pales far apart as Algeria and the Philippines including Britain to join this Jihad, receiving military training under the strict guidance of various Islamic Parties. President Regan described them as the Muslim world's 'moral equivalent of our founding fathers' in welcoming Afghanistan's hard-line Islamists to the White

House. The United States saw in this process a Cold War opportunity to pit militant Islam against communism. This was the juncture when facilitated al-Qaeda to launch a global Jihadi movement, concerns about which were expressed by Baroness Falkner (Clm674). Today the consequences of such foreign policy have come to haunt us.

Both Lord Dholakia (Clm697) and Lord Judd (Clm698) saw the need to recognise the political agenda which do impinge on the current situation. The war in Iraq, the occupation of Palestine, the invasion of Afghanistan and the existing order in the Arab countries cannot be ignored since they generate grievances. It is transparent that our Government's double standards in ignoring the violations of human rights in Turkey against Kurds, in occupied Palestine by Israel, in Algeria and Egypt against the political opposition and by the occupying forces in Iraq and Afghanistan. This can potentially fuel anger and resentment. Peace and justice at home are indivisible from peace and justice abroad. The fact that this nation's foreign policy has a direct bearing on its internal security has rarely been acknowledged openly by politicians and the media.

This is the fifth anti-terrorist legislation that is being pushed through Parliament since the year 2000. Baroness Falkner captured the dynamic of this process forcefully in saying 'As one set of laws is passed, anomalies come up. New plots and the trials that follow reveal the existence of new loopholes. We face the possibility that every time we add a fresh bolt on the door, we find screws too short, the hinges are too loose and it might yet be possible that the door will smash open. So we forge bigger and bigger bolts. That is called the politics of fear. That is where we substitute a grown-up debate with citizens about the duty to keep them safe with midnight whispers of barbarians at the gate' (Clm674).

It is this climate of politics of fear that creates a fog providing a cover for rupturing the foundations of justice and scattering personal rights like dust to the winds. In the rush to have greater and greater police powers, more often

in reaction to an event, there has been not opportunity for Parliament to carry out a full and considered review of the laws on terrorism.

Lord Goodhart (Clm681) and Baroness Stern (Clm708) are absolutely right in regarding the definition of terrorism under the 2000 Act as controversial. The definition is so broad and vague covering violence against people and property and actions taken outside the UK. The definition is the basis of all subsequent laws and new offences such as encouragement to terrorism and glorifying terrorism. The law has been used against legitimate protests. It is also defined in a way that ignored any justification of use of violence against an oppressive and undemocratic regime as observed by Lord Goodhart (Clm682). Part II of the Act proscribes more than 40 organisations banning membership, property, publications, and meetings. The African National Congress in the apartheid days would be listed as a terrorist organisation and the Anti-Apartheid Movement that brought together civil society organisations including the churches would have been illegal. Ironically, Nelson Mandela who has been an iconic figure in our world was removed from the terror list this year in the United States which our Government follows in terms of listing of organisations and people that are deemed as terrorist.

Today, more than million people who have settled in our society such as Kurds, Kashmiris, Palestinians, Algerians, Tamils, Afghanis, Iranians, Basques, Balochis, and many others are affected by this. Their political and civil society organisations, which oppose the policies of the regimes in their countries, cannot operate politically, hold meetings, disseminate publications, speak publicly, and raise funds in the United Kingdom. The intelligence services have stigmatised whole communities as terrorist networks with communal, friendship and political networks stigmatised as “associated with terrorism”. These communities are intimidated and criminalised. This is in contravention to Article 10 (freedom of expression) and Article 11 (freedom of assembly) of the EHCR, yet receives no attention because of the prevailing double standards.

The Terrorism Act 2000 is a formidable primary legislation which declared a permanent 'state of emergency' after almost 30 years of temporary provisions since 1974 so succinctly described by Lord Ahmad (Clm693). This act is deeply problematic and its provisions should be part of a fundamental review. Section 41 is widely used to arrest without warrant, Section 42 to search premises, Section 43 to search persons on grounds of reasonable suspicion rather than evidence. Lord Dholakia expressed this concern with clarity 'police have at their disposal substantial powers over citizens. If wrongly used, these could be oppressive' (Clm696). There is a large body of evidence that these powers are used disproportionately against minorities and also against peaceful protesters.

Any review should include the review of control order regime which was put in place by Prevention of Terrorism Act 2005 which was rushed through following the House of Lords judgement of December 2004 that the indefinite detentions under ATCSA 2001 were incompatible with ECHR.

Lord Goodhart's suggestions that control orders should be made by a judge and not by the Secretary of State, and that the level of proof required should b the balance of probabilities and not merely reasonable grounds suspicion should be followed up (Clm682). The Joint Human Rights Committee's view, emphasised by Baroness Stern, that the control orders regime will not be human rights compatible unless measures are introduced to ensure that there is priority to instigate prosecution, should be fully endorsed (Clm709).

It should be noted that that the 1971 Immigration act has been used to imposed bail conditions similar to control orders. Regardless of which law is used to impose binding obligations, they amount to virtual house arrest and create a domestic prison for anyone who acts a host e.g. the person's family, friend or volunteer who are subject to impromptu searches and confiscation of personal computers and no visitors are allowed without prior Home Office approval. Far from strengthening the control order measures (Clauses 85-88)

our view is that the whole regime should be abolished and trial by jury, in an open court, is the only just way to deal with these cases.

In her maiden speech, Baroness Neville-Jones said ‘At the heart of the debate is one central question: what type of society are we trying to create, protect and secure? After all, it is on the effects of our actions, not our intentions- however virtuous these may be that we will be judged’. And she went on to say ‘Citizens must be able to repose their trust in each other, not in the state for fear of each other. The impact of this legislation on different communities is, therefore, not a minor, subordinate mater. It goes to the heart of our chances of reconciling freedom with security.’(Clm637) We concur and observe that the substantial parts of the Government’s anti-terror legislation contradict its express intention of social cohesion.

We applaud three other key statements :Baroness Kennedy’s forceful assertion that law depends on principles which were forged in the fires of human experience(Clm685); Lord Steyn’s argument that this law touches on high constitutional principles, fundamental civil liberties and Magna Carta (Clm686); and Lord Judd’s succinct recapitulation of the principles of justice ‘habeas corpus; justice being seen to be done; equality before the law; not being held without charge; presumption of innocence; cross-examination of witnesses, and the rest’(Clm699).

We appreciate the plea from some peers that the minorities and Muslim communities should be protected and in some cases they should not have special treatment. We are not calling for special treatment. All we ask is that they should have the protection under the rule of principled law as stated above.

After quoting the chilling poem by Martin NielmÖller, Lord Dear ended concluded his speech poignantly ‘ We have gone far enough already in eroding our long-cherished and long-guarded rights which, as I have already said, we have been so far proud to advocate to the world. Enough is enough and I would commend that we stand firm.’(Clm660) Lord Steyn observed

that in a era of terrorism it is the first duty of Government to protect citizens from harm ‘but it does not excuse the endless excesses an acts of lawlessness committed in the name of the war on terror’(Clm686). These perceptions are shared by many of us who have been involved in defending civil and human rights.

Yes, the government has a duty to protect all its citizens from terrorism. Parliament equally has a duty to protect the public from draconian measures. This duty heavily rests on the shoulder of your lordships.

Yours sincerely

Saleh Mamon

On behalf of

CAMPAIGN AGAINST CRIMINALISING COMMUNITIES

Organisations supporting the National Campaign Against Anti-Terror Powers

1. 1990 Trust
2. Baluch Human Rights Group.
3. Cageprisoners;
4. Campaign Against Criminalising Communities (CAMPACC);
5. Campaign Against Racism and Fascism (CARF);
6. Centre for the Study of Terrorism (CFSOT);
7. Haldane Society of Socialist Lawyers;
8. Index on Censorship;
9. Institute for Policy Research and Development (IPRD);
10. Islamic Human Rights Commission (IHRC);
11. July 7th Truth Campaign
12. Justice not Vengeance(JNV);
13. Kurdish Federation UK;

14. London Guantanamo Campaign (LGC);
15. Muslim Parliament
16. Panjaab National History Society;
17. Peace & Progress;
18. Peace and Justice in East London;
19. Scotland Against Criminalising Communities (SACC);
20. Sheffield Muslim Association(MAB)
21. Sheffield Guantanamo Campaign
22. Solidarity (Scotland's Socialist Movement)
23. South Asia Solidarity Group(SASG);
24. Stop the War Coalition (STWC);
25. Tamil Campaign for Truth and Justice;
26. Tamil Centre for Human Right