



## Amnesty International Aotearoa New Zealand

### Submission to the Foreign Affairs, Defence and Trade Select Committee on the *Terrorism Suppression (Control Orders) Bill 2019*

10 November 2019

#### EXECUTIVE SUMMARY

1. This submission is made on behalf of Amnesty International Aotearoa New Zealand (AIANZ) to the Foreign Affairs, Defence and Trade Select Committee on the Terrorism Suppression (Control Orders) Bill 2019.
2. Amnesty International is a global movement of over 7 million people who protect human dignity and defend human rights. In New Zealand we have approximately 40,000 supporters and work on a wide range of human rights issues of both national and international significance. We promote and defend the observance of all human rights enshrined in the Universal Declaration of Human Rights and other international standards.
3. This Bill empowers the High Court to restrict an individual's human rights in a high degree of intrusion generally only imposed following a criminal conviction.<sup>1</sup>
4. This submission details some of AIANZ's concerns with the Bill. As necessitated by the unreasonable time frame for consultation, AIANZ is unable to submit a full assessment of the human rights implications of the Bill. However we believe this Bill risks New Zealand's human rights obligations<sup>2</sup> and **oppose its passage through Parliament under the current process.**
5. Whilst proposed amendments under Supplementary Order Paper 397 introduce some improvements, AIANZ still has significant concerns about this Bill and its process, in particular:
  - a. The unreasonable time frame for civil society and the public to provide input and analysis on a Bill that seeks to restrict fundamental human rights, with a submission process that amounted to three working days;
  - b. Individuals not being informed of the control order application until the control order is enacted;
  - c. The dangers of "non disclosable evidence" and the use of Special Advocates;
  - d. The low standard of proof – civil not criminal;

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<sup>1</sup> D. Perkins and G. Taylor, *Terrorism Suppression (Control Orders) Bill (version 22) – Advice regarding consistency with the New Zealand Bill of Rights 1990*, 7 September 2019, para. 2; Sections 3, 17, 18, 21, 22, 24, 27 of the New Zealand Bill of Rights;

<sup>2</sup> Including under the Universal Declaration of Human Rights and the International Convention on Civil and Political Rights



- e. The open-ended rather than exhaustive list of restrictions which give the Court wide-ranging powers and risk arbitrary restrictions being applied;
- f. The potential for arbitrary detention;
- g. The impact on the right to private and family life, and mental health impacts of the Control Order regime.

## POOR PROCESS

6. AIANZ is gravely concerned by the short time frame for civil society and the public to submit on this important Bill. Without giving an indication of time frames or when submissions would open, submissions were suddenly opened with only three working days in which to submit, and only two days have been made available for oral submissions in one location in New Zealand.
7. It is essential that all our proposed laws, particularly those which potentially impinge on human rights, have an opportunity for robust consultation and analysis from a wide range of **non-government perspectives** which can both highlight issues that may differ from the Crown perspective, and provide suggestions for improvement.
8. Control order regimes been a significant source of human rights breaches and litigation in the United Kingdom, illustrating the importance of careful legislation.<sup>3</sup>
9. These time frames do not allow for accountability in an area that is already shrouded by secrecy and undermines New Zealand's accountability and transparency processes. The Bill is not being passed under urgency and should not be treated as such. The minimum time for submissions to be lodged is usually six weeks to provide those who wish to submit with a realistic time frame to formulate their responses.<sup>4</sup> Short time frames should not extend beyond those which are justifiably declared "under urgency", and even then we advocate for meaningful consultation with the public.
10. This restrictive time frame mirrors the Parliamentary process with the Countering Terrorist Fighters Legislation Act 2014 under the previous Government,<sup>5</sup> where submissions only opened for two days (although that Bill was actually being passed under urgency, unlike the Bill at hand). There is a growing precedent that the public can be shut out of human rights policy making in the name of "security", which is deeply concerning.<sup>6</sup>
11. AIANZ urges Parliament to slow down the process to enable the submission period to be extended. Amnesty International's online petition asking the Government to slow down the

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<sup>3</sup> For example Lord Hope of Craighead in *Secretary of State v AF & another & one other action* (UKHL 28) (2009) para 81. The Law Lords based their decision in part on reasons given by the European Court of Human Rights in *A. and Others v. the United Kingdom* (3455/05), (19 February 2009) regarding fair trial rights implicated by the earlier ATCSA internment regime.

<sup>4</sup> New Zealand Parliament, *Chapter 26 The Legislative Process*, <https://www.parliament.nz/en/visit-and-learn/how-parliament-works/parliamentary-practice-in-new-zealand/chapter-26-the-legislative-process/>

<sup>5</sup> Amnesty International New Zealand, *Submission on the Countering Terrorist Fighters Legislation Bill*, 26 November 2014, p. 3.

<sup>6</sup> For an international review see Amnesty International, *Left in the Dark: the use of secret evidence in the United Kingdom* (Index: EUR 45/014/2012).



submission process garnered over 1,300 signatures in the first 48 hours it was available.<sup>7</sup> New Zealand's legislative process should be fair, transparent and meaningfully accessible for civil society and its citizens. **If there are legitimate grounds for urgency, this should be properly communicated and justified to the New Zealand public.**

12. **AIANZ recommends that the submission period is extended to enable meaningful consultation with civil society and legislative accountability.**

## HUMAN RIGHTS IMPLICATIONS

13. AIANZ recognises that a major role of any government is the protection of its citizens and others within its territory and jurisdiction. However, any measures taken by states in the name of ensuring such protection must also comply with all of the state's other human rights obligations, including natural justice and due process, and the rights to privacy, freedom of expression, and freedom of movement.
14. Counter terrorism strategies will not be successful if human rights are not respected and protected. Human rights are an essential component of the rule of law and have been recognised by the UN Global Counter-Terrorism Strategy as the "fundamental basis of the fight against terrorism."<sup>8</sup> As the United Nations resolution on Counter Terrorism notes:<sup>9</sup>

*"...respect for human rights, fundamental freedoms and the rule of law are complementary and mutually reinforcing with effective counter-terrorism measures, and are an essential part of a successful counter-terrorism effort."*

15. AIANZ is particularly concerned that purposes of the control orders regime under the Bill purportedly include to manage and monitor a "small number of people" who are "not able to be criminally prosecuted for their activities due to difficulty gaining evidence".<sup>10</sup>
16. AIANZ submits that these are particularly poor justifications particularly given that **in practice:**
- there are no restrictions on the numbers of people it may apply to in future, and the government cannot predict or guarantee the numbers of cases that it may apply to;
  - There are no restrictions in the Bill as to only being used in cases where it is indeed difficult to "gain evidence", which introduces an ability for the powers to be used much more widely beyond the intended purposes. The standards of evidence required for a criminal prosecution are there for a reason, including reflecting that the potential outcome can be significant restriction of an individual's liberty. Whilst the control orders regime may not technically "detain" a person, the Bill still empowers the High Court to restrict an individual's liberty, association and expression in a high degree of intrusion generally only imposed following a criminal conviction.

<sup>7</sup> Amnesty International New Zealand, *Minister Little: Don't Rush this Bill Through*, <https://www.amnesty.org.nz/>

<sup>8</sup> U United Nations, *United Nations Global Counter-Terrorism Strategy*, GA Resolution A/60/288, 20 Sep 2006, A/RES/60/288, para. 5.

<sup>9</sup> UNSC Resolution 2178 S/RES/2178 (2014), preamble, para. 5, <http://www.un.org/press/en/2014/sc11580.doc.htm>

<sup>10</sup> Explanatory Note of the Bill, p 1.



17. The proposed control order regime will therefore essentially allow the government to bypass the ordinary criminal justice system wherever the government decides it is expedient, to avoid the safeguards for liberty and fairness that the ordinary criminal justice system includes.
18. **AIANZ submits that the government has not made a sufficient case for the purported necessity to create an alternative administrative regime that circumvents the ordinary criminal justice system.** Other countries have no system of control orders similar to that under the current proposal but rely instead on their criminal justice system as the means of preventing individuals from preparing for or carrying out acts of terrorism. In New Zealand, under the Terrorism Suppression Act 2002, it is already a crime to participate in a terrorist organisation and a conviction can carry a sentence of up to 14 years in prison. We note that recently a Judge issued a warrant for the arrest at the border of a high profile individual of concern in the event of their return to the country.
19. There have been mixed messages from the government as to the “necessity” of this Bill’s introduction. These include that the Bill has been developed in response to the evolving situation in Syria, and as part of the government’s already existing review of New Zealand’s current terrorism legislation, given some “uncertainty about the efficacy of existing laws.” These justifications have been extremely limited in detail, and without public scrutiny, including through an internal-only government department review. We note the Minister of Justice’s reported comments at the beginning of the government-led review at the end of 2018 that there needed to be a “public debate on any proposed changes.”<sup>11</sup> **This public debate has not been facilitated under this process.**
20. AIANZ believes that there are significant questions remaining regarding the control order regime’s ability to constitute necessary or proportionate limitations to human rights. This is particularly cogent given that the criminal justice system is a less sweeping means for obtaining the objective of preventing terrorism, which would result in the control order regimes not being proportionate because they are not the least restrictive means available to obtain the objective, as required under international human rights standards.
21. **AIANZ therefore recommends that the government:**
- c. **commit itself to using its ordinary criminal justice powers to investigate those individuals reasonably suspected of involvement in terrorism-related activities and, where sufficient evidence exists, to prosecuting them in the ordinary criminal courts in conformity with international fair trial standards, or;**
  - d. **Instruct the Law Commission, as an independent entity, rather than government departments, to carry out a full review of existing terrorism laws.**
  - e. **In the case of the Bill proceeding through Parliament, a provision is included stipulating that it undergoes a full review within a year.**

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<sup>11</sup> <https://www.stuff.co.nz/national/108488454/greater-counter-terrorism-powers-on-the-cards>



## RIGHT TO LIBERTY, FREEDOM OF MOVEMENT, EXPRESSION, ASSOCIATION and PRIVACY

22. The orders can place significant, and open ended restrictions on individuals' rights to liberty, freedom of movement, expression, association, and privacy.<sup>12</sup> Control orders can also be imposed for up to two years, repeatedly, and any breaches can result in imprisonment.<sup>13</sup> Despite the seriousness of the restrictions, there are determined by an opaque process and with a low burden of proof.
23. We also note that the drafting of clause 11(3)(b) stipulates that considering whether requirements are “justified limits on rights and freedoms in the New Zealand Bill of Rights Act 1990” is only classified as one *example* of “any other matters the Court thinks relevant”, rather than as a mandatory consideration. This is not an adequate safeguard on the imposition of restrictions that may not be necessary and proportionate in the circumstances.
24. **If this Bill does proceed, AIANZ recommends making it clearer in the Bill that a Court *must* consider whether requirements are justified limits on rights and freedoms under the New Zealand Bill of Rights Act and New Zealand’s international human rights obligations.**

## NATURAL JUSTICE & LACK OF PROCEDURAL FAIRNESS

25. The Bill allows for an interim order to be imposed without giving an individual a reasonable opportunity to defend themselves until the order is already in place.<sup>14</sup> These restrictions can be onerous and include surveillance, technology and association restrictions and being confined to one location for 12 hours a day.<sup>15</sup>
26. The Bill specifies that an interim order “must” be made without notice if the individual is overseas and the individual is only informed when the conditions are imposed in New Zealand.<sup>16</sup> As a result, if the individual is abroad there is no judicial discretion to be able to inform them of the process. The Police Commissioner can also apply to not inform an individual who is in New Zealand until the restrictions are in place.
27. The time period that the interim control order applies for is also at the court’s discretion and the legislation lacks a defined end point.<sup>17</sup>
28. The legislation is intended to apply narrowly, yet has a broad definition of whom it applies to,<sup>18</sup> a low standard of proof (determined on a balance of probabilities) and is enacted without needing to prove an act of wrongdoing. At the very least, individuals should be able to respond and challenge the order before the intrusive restrictions are enacted.

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<sup>12</sup> See footnote 1.

<sup>13</sup> Clauses 24, 25, 30, 31 of the Terrorism Suppression (Control Orders) Bill 2019.

<sup>14</sup> Clause 14 of the Bill.

<sup>15</sup> Clauses 16-19 of the Bill.

<sup>16</sup> Clause 14(2)(a) of the Bill.

<sup>17</sup> Clause 14(5).

<sup>18</sup> Clauses 6, 7 of this Bill.



29. **AIANZ recommends that that the individual whom the control orders are brought against is informed when the application for the orders is made, not only once the control orders come into effect.**

## THE DANGERS OF SECRET EVIDENCE

30. As a result, the individual cannot properly respond to the accusations they face. The ability to use “non-disclosable” information, including in this Bill, is deeply problematic.<sup>19</sup> In a 2009 House of Lords case which dealt with the control order regime at the time in the UK, it was held that the individual had not been given sufficient information about the allegations against him. Lord Hope of Craighead stated “If the rule of law is to mean anything, it is in cases such as these that the Court must stand by principle. It must insist that the person affected be told what is alleged against him.”<sup>20</sup>
31. The dangers of secret evidence are especially poignantly felt where much of the evidence originates from foreign intelligence agencies. Although cl 6A of the Bill *cautions* the reliability of foreign evidence or information, the dangers of the individual directly not being able to challenge international evidence are still significant. The New Zealand case of Ahmed Zaoui illustrated that an individual can be misidentified as a security risk then struggle to defend themselves if they cannot properly respond to the case against them.<sup>21</sup> Through the admission of intelligence evidence which cannot be fully scrutinised by defence counsel, there is also the risk of the inadvertent admission of evidence derived from torture or other forms of cruel and degrading treatment.
32. Cerie Bullivant, a 28-year-old UK national who attempted to visit Syria and was then subject to a control order in the UK, stated “You don’t know the evidence or what you are accused of, you run through every single conversation you have had, everything you have done, again and again. You become almost paranoid, constantly trying to remember, to double guess. [...] I came close to losing my sense of who I was, especially in prison”.<sup>22</sup>

## LIMITATIONS OF “SPECIAL ADVOCATES”

33. The supplementary order paper to the Bill introduces a security-cleared Special Advocate to represent the accused’s interests in the determination process, and enables them to be instructed by the individual’s counsel.
34. However, AIANZ remains of the view that the court procedures that involve secret evidence against a person who faces the combinations of restrictive measures typically imposed in control order proceedings remain unfair in a manner that **cannot be remedied by the use of Special Advocates.**
35. Lawyers from the UK who spoke with Amnesty International stated that they face profound difficulties effectively representing their clients where a closed material procedure applies and

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<sup>19</sup> For an international review see Amnesty International, *Left in the Dark: the use of secret evidence in the United Kingdom* (Index: EUR 45/014/2012).

<sup>20</sup> Lord Hope of Craighead in *Secretary of State for the Home Department v AF (No. 3)* (UKHL 28), United Kingdom House of Lords (2009).

<sup>21</sup> *Attorney-General v Zaoui (No 2)* (1 NZLR 289) New Zealand Supreme Court (2005).

<sup>22</sup> Amnesty International interview on 3 March 2010 with Cerie Bullivant, a 27-year-old UK national, subject the control order regime, between June 2006 and January 2008.



questioned how such procedures can achieve meaningful equality of arms between the parties. Challenges raised by lawyers include:

- a. how to meaningfully respond to general allegations against your client;
  - b. how to represent your client effectively when you simply do not have access to much of the evidence that underpins the government's case;
  - c. problems developing legal strategy for the same reasons; the fear that adopting a certain line of questioning might result in negative consequences in the secret part of the hearing;
  - d. challenges in maintaining the trust of their clients;
  - e. difficulties properly advising their clients as to the likelihood of success in their case;
  - f. a large disparity in terms of their ability, compared with the government lawyers, to effectively cross-examine witnesses; challenges instructing their own expert witnesses who are unable to access the secret evidence;
  - g. not always understanding the reasons why a case has been lost because much of the reasoning is given in a closed judgment; and challenges in effectively appealing a case if part of the judgment is closed."<sup>23</sup>
36. One lawyer described it as “shadow boxing”,<sup>24</sup> opting to either saying the clients full life story, hoping to say something relevant, or saying very little out of fear that what is said would be perceived as confirming confidential information. Without knowing the evidence against their client, lawyers may not be able to meaningfully represent their client.
37. Special Advocates themselves in the UK have also raised issues with the system. They highlighted:<sup>25</sup>
- h. the inability to effectively challenge non-disclosure by the government;
  - i. the admittance of second and third hand hearsay, or even more remote evidence where the primary source is unattributed and unidentifiable making it difficult for that evidence to be properly tested in the closed hearing;
  - j. the limits they have to represent the individual, particularly when evidence refers to specific times or events.
38. The New Zealand Court of Appeal *Dotcom* (2019) case also notes the concern of “deference”, when the courts do not scrutinise the confidentiality request for information, as they decide that they do not have the expertise to do so and accept the opinion of the State (as was the case in *Choudry*).<sup>26</sup> In *Dotcom*, an amicus curiae was appointed to better advise the judges.<sup>27</sup>

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<sup>23</sup> Amnesty International, *Left in the Dark: the use of secret evidence in the United Kingdom* (Index: EUR 45/014/2012), p. 5.

<sup>24</sup> Amnesty International, *Left in the Dark: the use of secret evidence in the United Kingdom* (Index: EUR 45/014/2012), p. 11; also see Joint Committee on Human Rights report, *Counter-Terrorism Policy and Human Rights (Sixteenth Report): Annual Renewal of Control Orders Legislation 2010*, Ninth Report of Session 2009–10 (HL 64/HC 395) (23 February 2010).

<sup>25</sup> Amnesty International, *Left in the Dark: the use of secret evidence in the United Kingdom* (Index: EUR 45/014/2012), p. 5.

<sup>26</sup> *Dotcom v Attorney-General* (NZCA 412) Court of Appeal (2019); *Choudry v Attorney-General (No 2)* (3 NZLR 399) Court of Appeal (1999).

<sup>27</sup> *Dotcom v Attorney-General* (NZCA 412) Court of Appeal (2019), para 7.



39. AIANZ therefore believes that the current amendments including the use of Special Advocates remain problematic, and are inadequate to counter the risks of secret evidence and the implications they have for a fair process.
40. **If the Bill proceeds, AIANZ recommend that alongside their legal counsel, the individual whom the control orders are brought against is able to access and be informed of the information that orders are based on so they can meaningfully respond.**

## LOWER STANDARD OF PROOF

41. The control orders allow the court and legislature to bypass the protections of the ordinary criminal justice system. The civil standard of proof of “on a balance of probabilities” therefore makes it easier for the court to impose control orders.
42. In its advice on compliance with the Bill of Rights Act, Crown Law acknowledged that a control order has some of the same features of a **criminal** Extended Supervision Order. This is informed by New Zealand jurisprudence including *Belcher v Chief Executive, Department of corrections* (2007), where the Court of Appeal determined that Extended Supervision Orders, which are most akin to control orders, are criminal in nature.<sup>28</sup> The restrictions that made ESO criminal were similar to those in the control orders, such as the “example restrictions” and that breaches can result in imprisonment.
43. Crown law however ultimately concluded that “on balance” control orders are primarily civil in nature, and therefore do not trigger criminal process rights such as presumption of innocence and protection against double jeopardy. Reasons for this (very briefly summarised) conclusion included that entry to the regime does not require proof to a criminal standard that conduct occurred, and the entry point into the scheme is “not necessarily a prior conviction”.<sup>29</sup> However, the Bill does allow consideration of overseas convictions, and can result in imprisonment in the orders are breached.
44. AIANZ considers that there are still significant questions as to whether control orders do indeed constitute a “civil” regime and therefore even justify use of a lower civil burden of proof. We therefore still have concerns about this regime being created as a circumvention of the criminal process and thus its removal from the usual safeguards and standards.
45. **If the Bill proceeds, we recommend that the court decision requires a criminal, not civil standard of proof. The Bill is intended to apply narrowly, and must be treated as such.**

## ARBITRARY DEPRIVATION OF LIBERTY

46. The International Covenant on Civil and Political Rights, to which New Zealand is a party, prohibits arbitrary deprivation of liberty.<sup>30</sup> The United Nations Human Rights Committee, responsible for interpreting the Covenant defines arbitrary deprivation of liberty:

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<sup>28</sup> 1 NZLR 507.

<sup>29</sup> D. Perkins and G. Taylor, *Terrorism Suppression (Control Orders) Bill (version 22) – Advice regarding consistency with the New Zealand Bill of Rights 1990*, 7 September 2019, para. 26.

<sup>30</sup> Article 9(1) of the International Covenant on Civil and Political Rights (ICCPR).



“The notion of “arbitrariness” is not to be equated with “against the law”, but must be interpreted more broadly to include elements of inappropriateness, injustice, lack of predictability and due process of law, as well as elements of reasonableness, necessity and proportionality.”<sup>31</sup>

47. The requirement to reside at a specific location for a specific amount of time is concerning and in many cases globally this has constituted a deprivation of liberty.
48. Whilst UK jurisprudence has established that a control order with a 12 hour curfew overnight itself does not amount to a deprivation of liberty per se, Amnesty International is of the view that the current Bill, which allows an *inexhaustive* list of conditions (explored further below) to be potentially imposed *in combination* with a 12 hour curfew, over a significant period of time, on the basis of secret evidence, still **has the potential to amount to a deprivation of liberty**.
49. If this is the case, we note that it is particularly concerning that Crown Law noted that “if the control order restrictions ever *did* qualify as detention/deprivation of liberty, they would **be arbitrary and in breach of s 22 of the New Zealand Bill of Rights**.”<sup>32</sup>

## OPEN-ENDED LIST OF RESTRICTIONS

50. The Bill establishes “example restrictions” for a control order, and it is clear that these examples do not limit the ability of the Court to make additional restrictions under a control order.
51. In the United Kingdom, when the Terrorism Prevention and Investigation Measures Bill 2011 replaced the Prevention of Terrorism Act 2005 (PTA), one of the improvements of the new legislation was that it contained a limited **exclusive** list of restrictions to clarify the Act. Although the severity of the restrictions can vary, those facing a control order should have a level of certainty as to the scope of what could be imposed upon them.
52. The lack of transparency about the restrictions is particularly problematic because the control orders can be varied throughout their time period. This both opens the door to further restrictions that in combination with others, could significantly impinge on human rights, and creates uncertainty for the individual who is under a control order.
53. The principle of legal certainty dictates that it is a necessity that people can understand the legal consequences of their actions; and that the executive and courts are provided with a clear framework by which their powers are defined.
54. **AIANZ therefore recommends that the Bill be amended to clearly state that any restrictions imposed under a control order are only those from a limited, exclusive list that is clearly defined in the legislation.**

## IMPACT ON HEALTH

55. The impact of control orders on mental health can be deeply concerning. Individuals who have not been convicted of any crime in New Zealand and have come from oppressive regimes may have had traumatic experiences outside the country, which could potentially be exacerbated by the arbitrary nature of the control order regime.

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<sup>31</sup> UN Human Rights Committee, *General Comment no 35: Article 9 (Liberty and security of person)*, (CCPR/C/GC/35) para. 12.

<sup>32</sup> D. Perkins and G. Taylor, *Terrorism Suppression (Control Orders) Bill (version 22) – Advice regarding consistency with the New Zealand Bill of Rights 1990*, 7 September 2019, para. 14.



56. In the UK, Mahmoud Abu Rideh was a stateless Palestinian and a torture survivor who was subjected to a control order. The European Committee for the Prevention of Torture (CPT) visited him in Broadmoor high-security mental hospital in 2004 and described him as suffering from a “most severe post-traumatic stress disorder.”<sup>33</sup>
57. Cerie Bullivant, a UK national formerly subject to a control order, held that “I actually don’t think anyone in the Home Office really understands what a control order is and what it does. It’s so hard to explain what impact these 10 conditions can have on your life [...] the way they merge together and interplay. Written down they don’t seem like a big deal, but they become all-encompassing, all-pervasive in your life. I was becoming very distant from everyone; I felt like everything I touched died. I had this reverse Midas touch.”<sup>34</sup>
58. Whilst Clause 11(3)(a) requires the Court to consider how requirements, if imposed, will or may affect the person’s financial, health, and other personal circumstances, it remains unclear how these will be mitigated and whether adequate specialist support will be available.

## **IMPACT ON FAMILIES**

59. Onerous control orders also impact the rights of the family members of those under control orders. Their rights, including to liberty, expression, and association, and to freedom from cruel, inhuman or degrading treatment or punishment, must also be protected.
60. The wife of “G” explained the impacts of control orders in the UK on her family to Amnesty International:<sup>35</sup>

*“To get [home office] clearance for visitors it’s difficult, children up to 14 can now come to the house, so the children’s friends can finally come. But anyone else has to be cleared, and the Home Office often doesn’t give clearance. It’s hard too to ask people to go through clearance, to ask them to give details to explain everything. So if a friend comes to the door I can’t let them come inside the house, that’s hard. The midwife, after I had my youngest daughter, she couldn’t come to the house so I had to go to the centre for check-ups for the baby. Even the doctor if you want a house visit they can’t do that, I can’t just pick up a phone and ask the doctor to come – even though my husband has medical problems. Everything needs clearance and we don’t always get it [...]”*

*My husband wears a tag, but we all have an invisible tag. We all need to be freed, so the kids don’t have to live with these conditions. The children they think this is normal, for them this life is normal but it shouldn’t be. They should live a full life, not living like this seeing people come and search your house, seeing their father with his tags, controlling the hours he can take them to school. The fights to get small things changed [...] I hope they’ll relax things – make it easier for the doctor, for women to visit. You just have to accept it and try to be strong, that is all you can do. If I’m not strong, everything would fall apart. My husband is not well. This is on my shoulders and I have to carry it and be strong for my children.”*

<sup>33</sup> Report to the Government of the UK on the visit to the UK carried out by the CPT from 14 to 19 March 2004, CPT/Inf (2005) 10, para. 7.

<sup>34</sup> Amnesty International interview on 3 March 2010 with Cerie Bullivant, a 27-year-old UK national, subject the control order regime, between June 2006 and January 2008.

<sup>35</sup> Amnesty International, *Left in the Dark: the use of secret evidence in the United Kingdom* (Index: EUR 45/014/2012), p. 21.



61. The rights of the individual's family should not be ignored. The right to protection from arbitrary interference with family life is protected by the International Covenant on Civil and Political Rights, and may be violated by the control order regime proposed by the Bill.<sup>36</sup>
62. **If the Bill proceeds, AIANZ recommends that clause 11(3)(a), which requires the Court to consider how requirements, if imposed, will or may affect the person's financial, health, and other personal circumstances, also includes consideration of impacts on the person's family.**

## CONCLUSION

63. The international treaties that recognise and protect the human rights infringed by the Terrorism Suppression (Control Orders) Bill 2019, require among other things, that any limitations of those rights be restricted to those measures that are demonstrably necessary and proportionate to the objective for which the limitation is imposed.
64. The fact is that many other states have developed other less drastic means of seeking those objectives while relying on the ordinary criminal justice system, rather than such control order schemes, to prevent individuals from preparing or carrying out attacks. AIANZ has significant concerns that the introduction of a control order scheme in New Zealand has not been adequately justified as a demonstrably necessary or proportionate limitation to human rights.
65. This is compounded by the poor process that has surrounded the introduction of this Bill, preventing alternative lenses on the Bill and adequate opportunity for engagement and analysis by the public and civil society for an important piece of legislation. Potential reasons for legitimate grounds for urgency, and for reform, have not been communicated adequately to the New Zealand public. We recommend that this Bill does not proceed given the significant concerns both regarding the process itself and the problematic content of this Bill, and the restrictions on human rights that are at stake.

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<sup>36</sup> Article 17 of the ICCPR.