



Peace Movement Aotearoa

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Foreign Affairs, Defence and Trade Select Committee,
Parliament Buildings,
Wellington.

27 November 2014

Submission on the Countering Terrorist Fighters Legislation Bill

Introduction

We are totally opposed to the enactment of this legislation for two main reasons:

- concerns around the lack of good process - including the short time frame between introduction and enactment, and for public submissions (as outlined in section B below); and
- concerns around multiple breaches of New Zealand's domestic and international human rights obligations (as outlined in Section C below).

We recommend that the amendments proposed in this legislation be put on hold until a comprehensive review of existing legislation has taken place to properly identify any gaps in the existing legislation; that any proposed legislative changes arising from that review be subject to a proper process with a reasonable time frame that allows for full public and Select Committee scrutiny and consideration; and that any such changes are fully compatible with New Zealand's domestic and international human rights obligations.

We would like the opportunity to speak to the Committee about our submission.

A) About Peace Movement Aotearoa and our interest in this legislation

Peace Movement Aotearoa is the national networking peace organisation, registered as an incorporated society in 1982. Our purpose is networking and providing information and resources on peace, social justice and human rights issues.

Promoting the realisation of human rights is an essential aspect of our work because of the crucial role this has in creating and maintaining peaceful societies. Legislation such as this Bill is therefore of particular concern to us.

We regularly provide information to United Nations (UN) human rights treaty monitoring bodies and Special Procedures on New Zealand's compliance with its legally binding human rights obligations under domestic and international law.¹

B) Concerns around the lack of good process

Our first set of concerns is around the lack of good process in relation to this legislation, and the unseemly and unnecessary haste to enact it before the end of this parliamentary year.

The legislation was introduced and had its first reading on 25 November 2014, when it was referred to this Committee with a reporting back deadline of 2 December 2014. As of yesterday morning, 26 November, the relevant page on the parliament web site stated, "submissions not called for". During the course of the day, that was been changed to, "Public submissions are now being invited on the Countering Terrorist Fighters Legislation Bill", with a deadline of today, 27 November.

A time frame of approximately 24 hours is clearly not sufficient for any organisation or individual to read legislation comprising a 44 page document - especially legislation such as this which provides for major and unwarranted expansion of both state surveillance and Ministerial powers - nor to provide detailed analysis of it. To offer the opportunity for public submissions to be made within a 24 hour period is a travesty of democratic process.

Similarly, a time frame of several days is clearly insufficient for a Select Committee to consider changes of such magnitude.

The process around this legislation has been quite extraordinary - and we find it even more extraordinary that it was introduced on the same day as the Inspector-General of Intelligence and Security released a report highlighting inadequacies around the release of "incomplete, inaccurate and misleading information" by the SIS.

Surely Committee members can appreciate that in these circumstances we, and others, have little confidence in the proper exercise of the existing powers of the SIS, and that this is a particularly inappropriate time to be rushing through legislation which expands those powers.

Further, in relation to this point, we cannot see any necessity for such a hasty process because the scenarios outlined as potentially "requiring" this change appear to be already covered by existing counter-terrorism and criminal law, the Passports Act 1992 and arguably the Mercenary Activities (Prohibition) Act 2004, among others.

We note that the Explanatory Note to the legislation refers to "the comprehensive review of legislative settings that will occur in a broader intelligence review that is required to commence before 30 June 2015 under the Intelligence and Security Committee Act 1996".

We therefore recommend - with regard to the concerns outlined in this section - that the amendments proposed in this legislation be put on hold until a comprehensive review of existing legislation has taken place to properly identify any gaps in the existing legislation; and that any proposed legislative changes arising from that review be subject to a proper process with a reasonable time frame that allows for full public and Select Committee scrutiny and consideration.

C) Concerns around human rights obligations

In the short time frame permitted to read and analyse this legislation, it is evident that its provisions are not consistent with New Zealand's domestic and international human rights obligations, and if enacted, will set in place multiple breaches of such obligations.

Firstly, with regard to domestic human rights legislation, our preliminary analysis of the legislation in the time available is that it may involve breaches of seven sections of the New Zealand Bill of Rights Act 1990, namely: Section 13 (freedom of thought, conscience, religion and belief); Section 14 (freedom of expression); Section 18 (freedom of movement); Section 19 (freedom from discrimination); Section 21 (freedom from unreasonable search or seizure); Section 25 (right to minimum standards of criminal procedure); and Section 27 (right to justice). In relation to freedom from discrimination, the legislation appears to also involve breaches of the Human Rights Act 1993 - in particular, in relation to the potential for racial profiling, and profiling on the grounds of religion and belief.

Secondly, with regard to New Zealand's binding international human rights obligations, we briefly outline here some of the breaches of the International Covenant on Civil and Political Rights (ICCPR) - this focus on the ICCPR is solely due to time constraints, as the legislation also involves breaches of other human rights and humanitarian international law obligations which there is insufficient time to summarise.

The legislation involves breaches of at least six Articles of the ICCPR, namely: Article 2 (freedom from discrimination); Article 14 (the right to justice, including the right to be presumed innocent until proved guilty according to law); Article 17 (freedom from arbitrary or unlawful interference with privacy, family, home or correspondence, and from unlawful attacks on honour and reputation); Article 18 (right to freedom of thought, conscience and religion); Article 19 (right to hold opinions without interference, and to freedom of expression); and Article 26 (equality before the law, freedom from discrimination on any ground, and effective protection against such discrimination).

It should be noted that the Human Rights Committee (which monitors state party compliance with the ICCPR) made the following comments when it considered New Zealand in 2010 in relation to the government's then counter-terrorism measures:

“While noting the obligations imposed under Security Council resolution 1373 (2001), the Committee expresses concern at the compatibility of some provisions of the Terrorism Suppression Amendment Act 2007 with the Covenant. It is particularly concerned at the designation procedures of groups or individuals as terrorist entities and at the lack of a provision in the Act to challenge these designations, which are incompatible with article 14 of the Covenant. The Committee is also concerned about the introduction of a new section allowing courts to receive or hear classified security information against groups or individuals designated as terrorist entities in their absence. (Arts. 2, 14 and 26).

The State party should ensure that its counter-terrorism legislation is in full conformity with the Covenant.”² [Our emphasis]

Furthermore, the List of Issues sent to the government by the Human Rights Committee earlier this year - which New Zealand is required to respond to by March 2015 - asks specifically for information to be provided on counterterrorism measures and respect for rights guaranteed in the Covenant, in particular, with regard to Articles 2, 14, 17 and 26.³

When the Committee next considers New Zealand, it will undoubtedly express increased concern at provisions of this legislation because it further extends the incompatibility of the government’s counter-terrorism measures with the ICCPR.

While we understand the government’s desire to be seen to give effect to UN Security Council Resolution 2178 (UNSC 2178)⁴, however, UNSC 2178 repeatedly stresses the requirement on UN member states to act in “in accordance with domestic and international law”⁵, that their actions must be “consistent with international human rights law, international refugee law, and international humanitarian law”⁶, and reminds states not to resort “to profiling based on stereotypes founded on grounds of discrimination prohibited by international law”⁷. UNSC 2178 additionally calls upon member states to take any counter-terrorism measures in the context of “respecting human rights and fundamental freedoms and in compliance with other obligations under international law”⁸.

It is our view that this legislation meets none of these requirements.

Recommendations

We therefore recommend:

- that the amendments proposed in this legislation be put on hold until a comprehensive review of existing legislation has taken place to properly identify any gaps in the existing legislation;
- that any proposed legislative changes arising from that review be subject to a proper process with a reasonable time frame that allows for full public and Select Committee scrutiny and consideration; and
- that any such changes are fully compatible with New Zealand’s domestic and international human rights obligations.

Thank you for your consideration of our submission.

Edwina Hughes,
Coordinator, Peace Movement Aotearoa

References

¹ Including: the Special Rapporteur on the Situation of Human Rights and Fundamental Freedoms of Indigenous People in 2005; the Committee on the Elimination of Racial Discrimination in 2007 and 2013; jointly with the Aotearoa Indigenous Rights Trust and others, to the Human Rights Council for the Universal Periodic Review of New Zealand in 2008, 2009, 2013 and 2014; the Human Rights Committee in 2009, 2010, 2012 and 2014; the Committee on the Rights of the Child in 2010 and 2011; the Committee on Economic, Social and Cultural Rights in 2011 and 2012; the Sub-Committee on the Prevention of Torture in 2013; and the Working Group on Arbitrary Detention in 2014.

² Concluding observations of the Human Rights Committee: New Zealand, 7 April 2010 (CCPR/C/NZL/CO/5), paragraph 13

³ List of issues prior to submission of the sixth periodic report of New Zealand, Human Rights Committee, Adopted during its 110th session, 10 to 28 March 2014 (CCPR/C/NZL/QPR/6)

⁴ Resolution 2178 (2014), Adopted by the Security Council at its 7272nd meeting, 24 September 2014 (S/Res/2178 (2014))

⁵ As above, for example, paragraph 3

⁶ As above, for example, paragraph 5

⁷ As above, for example, paragraph 2

⁸ As above, for example, paragraph 12