

New Zealand anti-terror legislation gives police sweeping new powers

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The New Zealand parliament voted last month to approve the Labour government's so-called "Counter-Terrorism" Bill at its third and final reading. The only opposition in the house came from the Greens' nine MPs, who voted against it. According to Foreign Minister Phil Goff, the passage of the bill was the government's "final step in adopting United Nations conventions aimed at fighting global terrorism". In reality, in New Zealand as elsewhere, the threat of "terrorism" is being used to enact previously unacceptable laws that establish the basis for sweeping attacks on basic democratic rights.

The legislation is part of a range of legal, police, anti-immigrant and security measures put in place over the 25-month period following September 11, 2001. While the "global war on terrorism" has purportedly provided the impetus, these changes build on earlier moves to increase powers to the intelligence services, begun in 1996 by the previous conservative National government. Under the 1996 legislation—the Security Intelligence Services Amendment Act—the crime of "economic disruption" was for the first time included alongside such offences as bombings and "subversion".

The public pretext for the Counter-Terrorism Bill was to deal specifically with vulnerability of New Zealand's farm-based economy to threats from bio-terrorism. A new set of terrorist offences—including infecting animals with diseases such as foot and mouth, contaminating food crops or water and unauthorised possession of radioactive materials—have been created, with punishments of up to 10 years' imprisonment.

However, as well as enacting laws on "bio-terrorism," the legislation gives significant new powers to law enforcement agencies. Threatening or "communicating information" about harm to persons or property, including making hoax calls, now carries a

maximum jail sentence of seven years. Anyone found harbouring or concealing "terrorists," defined very widely under previous legislation, can also be imprisoned for seven years. The Crimes Act has simultaneously been amended to provide prison terms of up to seven years for any person found guilty of carrying out an act with the intention of causing "significant disruption to commercial interests or government interests".

Of particular concern to civil liberties groups are new powers enabling police and enforcement agencies armed with search warrants to force suspects to open their computers and reveal passwords, pin numbers and encryption codes. Anyone who refuses to supply such information can be jailed for three months or fined \$2,000. As well as computer owners, any person with "a sufficient connection" to a computer system can be required by the police to help access data. The new powers apply not only to terrorism investigations, but to any case where agencies are able to obtain a search warrant. Legal experts have attacked this provision as fundamentally undermining the legal right to remain silent and not incriminate oneself.

Law enforcement powers have been further broadened to enable the widespread use of sophisticated electronic tracking devices previously restricted to serious drug investigations. The new law overturns a 1999 Appeal Court ruling and allows evidence collected under an interception warrant to be used in court as evidence for a different offence than the one identified in the warrant. Customs officers have been given new powers to seize cash or property, owned or controlled by any organisation designated as "terrorist". Terrorism also becomes an "aggravating factor" for sentencing purposes under the Sentencing Act, providing for harsher penalties and steeper

minimum jail sentences and non-parole periods for existing crimes committed as “terrorist” offences.

The legislation extends the substantial Terrorism Suppression Act 2001, which was rushed through parliament just six weeks after the attack on the World Trade Centre. At that time, an existing new piece of legislation—the Terrorism (Bombings and Financing) Bill—had just been presented to parliament and largely agreed to by the multi-party Foreign Affairs, Defence and Trade Select Committee. In the immediate wake of September 11, the Labour government rapidly replaced this bill and pushed through the far more draconian Terrorism Suppression laws, with minimal opportunity for public comment.

The legislation provided the basis for stepping up attacks on fundamental democratic rights. Any person inside or outside New Zealand could be designated a “terrorist” or “associated person” solely on the word of the Director of the Security Intelligence Service (SIS), with no right of judicial review. Anyone who participated in, recruited members for or funded, directly or indirectly, any identified “terrorist” group could be imprisoned for up to 14 years. The definition of a “terrorist act” was made so broad that even the docile trade union bureaucracy had to point out that routine protests and union activities could be branded as “terrorism”.

As the result of protests within Labour’s ranks, as well as by academics, civil liberties groups, the Greens and others, some exceptions were made to exempt strikes or “lawful protest, advocacy or dissent”. However, any protest construed as unlawful and not peaceful could still be defined as terrorism, as could any activity deemed to cause “major economic loss” or “serious disruption to the national economy”.

Other vague and easily manipulated definitions of a “terrorist act” included serious damage to “property of great value or importance”, or interference with an “infrastructure facility”. David Small, a Christchurch University lecturer who submitted an extensive critique the legislation, pointed out that most international solidarity groups active in New Zealand in recent years, including Philippines Solidarity, Nicaragua Must Survive, Kanak Solidarity and various anti-apartheid groups, could have been outlawed had the act been in force at the time. Individuals could be charged for donating money to an organisation designated by the

authorities as “facilitating terrorist activity”.

Under the legislation, the process of designating a group as “terrorist” simply required the prime minister to have “good cause to suspect” a group’s involvement in terrorist acts. A designation, valid for five years, could be issued if the prime minister believed “on reasonable grounds” that links with terrorism existed. Another section required the prime minister to treat security information from the UN Security Council or one of its committees as “sufficient evidence” to brand an organisation or individual as “terrorist”.

The designation of “classified security information” included unspecified and ill-defined threats to “security, public order, or public interest”. Among the material that security organisations could keep secret was any information, the disclosure of which would be “likely to prejudice the security or defence of New Zealand or the international relations of the Government of New Zealand.”

The introduction of the “anti-terror” legislation and its subsequent strengthening has been accompanied by a series of measures designed to increase the position of the repressive agencies of the state. These have included a \$NZ30 million boost for counter-terrorism measures by the intelligence agencies, police, immigration and defence.

A growing number of cases indicate that the Labour Government has begun to launch attacks on democratic rights. These include the 12-month incarceration without trial of former Algerian MP Ahmed Zaoui, solely on the basis of classified security information, which the government declared must remain secret. Other cases involve attempts to summarily expel refugees and asylum seekers and the targeting of antiwar demonstrators with previously unused legislation.



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