

New Zealand government amends surveillance laws after “anti-terror” case collapses

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New Zealand’s conservative National-led government has invoked parliament’s urgency provisions to push through legislation to allow covert police video surveillance on private property. The Video Camera Surveillance Act overrides a recent Supreme Court judgment that video footage submitted as prosecution evidence in an “anti-terror” case was collected unlawfully. The bill was passed into law last Thursday with the support of the Labour Party opposition and the far-right ACT party.

In October 2007, under the previous Labour government, some 300 police raided seven centres across the country. Covert video footage was used to allege that up to 40 people had been taking part in illegal weapons training in bush camps in the remote Uruwera Ranges. The Ureweras, the traditional homeland of the Tuhoe Maori tribe, were placed under siege while armed police manhandled and intimidated local people. The operation was accompanied by a lurid media campaign about “home-grown terrorists” preparing for attacks.

Sixteen people were charged with firearms offences and twelve had their cases referred under the Terrorism Suppression Act (TSA). While the firearms charges remained in place, the TSA charges were quickly dropped. The solicitor general stated that while there was evidence that a number of the accused were involved in “very disturbing activities,” there was insufficient evidence to meet the “high threshold” required for charges to be laid under the TSA.

Last month, the Supreme Court threw out charges against 13 of those arrested in the 2007 raids on the grounds that police did not have the right to use video surveillance on private land to obtain evidence. It

declared that the filming breached unreasonable search and seizure provisions under the Bill of Rights Act.

Chief Justice Sian Elias described the police actions as “deliberately unlawful,” noting that they had involved “covert filming, maintained over many entries and over a period of some 10 months.” Elias warned that blatant illegal practices by police were “destructive of an effective and credible system of justice.” The judges then advised the government how to proceed, unanimously recommending that parliament change the law to make covert filming legal, and criticising successive governments for failing to have done so earlier. The court also ruled that charges against four defendants should proceed under a provision of the Evidence Act, which gives the courts discretion to hear unlawfully obtained evidence in cases that are deemed “serious.”

Prime Minister John Key declared that the ruling had “potentially significant implications for law and order in New Zealand.” He claimed that unless retrospective legislation was pushed through to nullify it, 50 ongoing investigations and 40 current trials would be affected. “Some very serious criminals,” Key darkly warned, would “walk free.”

Criticism erupted from legal experts and civil liberties organisations. Peter Williams QC, a lawyer for the Tuhoe tribe, said the retrospective legislation was “abhorrent,” adding: “Most governments will not pass retrospective penal legislation ... It’s really repulsive to anyone who is interested in criminal law.”

Rodney Harrison QC, another Tuhoe lawyer, said the move to overturn the Supreme Court decision was “contrary to fundamental constitutional principle and a serious violation of individual human rights.” The Law

Society declared the legislation was “inconsistent with the rule of law” and would cut across the Bill of Rights Act.

Labour and the minor parties, including most of those in the governing coalition, initially indicated they would oppose the bill. When it was presented to parliament, however, both Labour and ACT declared they would support it in the first reading in order to send it to a select committee for public submissions. With parliament in urgency mode, public submissions remained open for just one day.

Labour agreed to support the law in an amended form, giving the government the backing it needed to pass it before the November elections. Under the deal, the bill will not apply to investigations currently underway or cases before the courts, and will remain in force for six months, after which time a new law will be required. The resumption of covert surveillance is permitted, while people already convicted using covert video surveillance evidence will be barred from appealing.

Labour’s support for the latest attack on democratic rights is a continuation of its record in office. The Helen Clark-led Labour government rushed through the original TSA in 2001, just six weeks after the 9/11 terrorist acts in the US. With the full knowledge of the government, the police used the “anti-terror” legislation to legitimise surveillance and other anti-democratic methods.

In the wake of the 2007 Uruwera raids, Labour pushed through amendments to strengthen the TSA. Among the new provisions was a vague definition of a terrorist act as one intended to “induce terror in a civilian population,” carrying a possible life sentence. The power to designate “terrorist” groups was removed from the High Court and placed solely in the prime minister’s hands.

Diplomatic cables published by WikiLeaks in May this year showed that behind the scenes, US officials had applied pressure to have the powers of the TSA radically increased. According to a November 2007 cable from US ambassador William McCormick, police told the embassy that those arrested in the Uruwera raids were likely to face a fine, not a jail term. “In the post-9/11 world, one would expect that New Zealand would have an adequate law to deal with foreign as well as domestic terrorism—it does not,” McCormick

stated. Clark promptly complied, announcing that the shortcoming would be addressed.

The Video Camera Surveillance Act, combined with a new Search and Surveillance Act, establish vast powers for the state. The legislation sanctions video surveillance, watching private activity on private property, installing tracking devices, detaining people during a search, stopping vehicles without a search warrant, warrantless seizure of “items in plain view,” hacking into computers remotely, and detaining anyone at a search scene. Authorities can force the media to reveal confidential sources.

These powers have been extended beyond the police to a web of state agencies, ranging from Inland Revenue to the Ministry of Agriculture and Forestry and the Pork Industry Board. With Labour’s assistance, the government rode roughshod over the Human Rights Commission’s warning of the “chilling” implications of widening such police powers to all agencies with enforcement responsibilities.



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