

# *Anti-Bases Campaign*

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Clerk  
Foreign Affairs, Defence and Trade Select Committee  
Parliament Buildings  
WELLINGTON

## Submission on The Terrorism Suppression Amendment Bill (2007)

From the Anti-Bases Campaign, Christchurch

Our group has made submissions on several earlier New Zealand bills and reviews with the laudable goals of "fighting terrorists and terrorism". We appreciate the opportunity to make such submissions and fervently hope that eventually a select committee will have the courage to recommend to the House that such legislation be abandoned as useless in combating terrorism and a colossal waste of parliament's time and resources. We quote from our submission on the Review of The Terrorism Suppression Act (2002), which review we assume has led, at least in part, to the current Bill:

"In our submission on the [original] bill (November 2001) we expressed serious concerns about how the Act would operate, how it would impact on the civil liberties of New Zealanders, how it might subvert due process and the rule of law in the pursuit and apprehension of suspected terrorists, and how it would increase the licence of our so-called intelligence agencies to spy on New Zealanders. In the three years the Act has been in effect, not one report on the functioning of the Act has come to our attention.

"To our knowledge not one suspected terrorist has been apprehended in New Zealand under the provisions of the Terrorism Suppression Act. We believe this supports our position that its onerous provisions were effectively dictated by foreign powers and that passage was done in haste, without careful consideration as to what kind of anti-terrorist legislation, if any, might be more effective than existing provisions of our Crimes Act."

Regarding United Nations requirements we commented that -

"We can find no requirement in United Nations Security Council Resolution 1373, regarding actions to be taken by member nations to combat international terrorism, that basic human rights should be suspended, that the rule of law should be suspended, that intrusions into personal privacy should be increased, or that nations should forego other important provisions in law designed for the protection of their citizens."

We also made a similar point in our submission on the Terrorism Suppression Amendment Bill (No 2) 2004 with regard to complying with international standards for counter terrorist financing. But we see no evidence in the Explanatory Note or in the current Bill that bears in any way on our concerns (as summarised above) about New Zealand compliance with UNSC Resolution 1373 and/or standards set out by the Financial Action Task Force on Money Laundering.

We hoped that the process of review of the principle Act and amendments would lead the select committee to recommend that the principal Act be repealed. But alas, the proposed new amendments continue to breathe life into the Act and in fact make it worse. We make the following comments about the Amendment Bill.

1. We made the point in an earlier submission that at least our anti-terrorism act was less onerous than the US Patriot Act and similar acts in the UK and Australia. But the proposed amendments would be retrograde by removing some provisions that assured a judicial role and protected human rights to at least some degree. We object to the removal of judicial review of terrorist designations and the vesting of this power in the Prime Minister. Effective judicial review and avenues of appeal under the existing Law would be effectively ended, leaving persons or groups designated as terrorists at the sole mercy of a politician. The case of Ahmed Zaoui illustrates the extreme difficulty and expense involved in challenging a terrorist allegation, in Zaoui's case at the hands of the Security Intelligence Service.
2. New Zealand should not simply adopt without question any United Nations list of terrorists. Our parliament and judiciary should retain the power to make their own judgments as to the quality of the evidence against anyone on such a list. It is widely known that the UN does not compile such lists of terrorists independently and using its own staff. The process is anything but politically neutral since it depends on central governments making inclusions to the list. And once on such a list, a person becomes a suspected terrorist with almost no chance of expedient and just removal from the list based on consideration of proper evidence beyond the reach of political influence.
3. "Clause 7 repeals section 8(2)...This provision is being removed as it leaves scope for a donor [to an organization] to argue that funds provided to a designated terrorist entity were provided for legitimate reasons associated with democracy or human rights." (from Clause by clause overview of the Bill) An honest, law-abiding citizen who has made a donation to a liberation movement will no longer be able to argue against being labeled a terrorist. We strongly object to this repeal of protective wording as repeal would increase the chances of a person being unwittingly entangled in the terrorist designation process.
4. Clause 9 amends section 10. For reasons similar to those stated in (3) above, we object to repeal of section 10(2). New Zealanders who wish to support groups advocating democratic government or for the protection of human rights in other countries should have the right to do so without fear of terrorist designation.
5. In Clause 12 participating in terrorist groups, the phrase "or being reckless as to whether", proposed for insertion in section 13(1) would be a further retrograde step toward increasing the likelihood that ordinary non-violent New Zealanders could find themselves designated as terrorists. "Recklessness" is a term open to gross abuse by the entity responsible for terrorist designation. For a person to avoid any chance of being charged with recklessness in supporting a liberation movement or similar

group, he or she would have to have a comprehensive level of knowledge of that group's every activity and motivation – a completely unreasonable expectation.

6. We ask the Committee to read Clause 13 of the Amendment Bill carefully. This clause would amend section 13C(1) of the 2002 Act. Paragraph (g) says: "without lawful authority, commits an act, or threatens to commit an act against a nuclear facility..." What does "without lawful authority" mean in this context? A literal interpretation of the phrase leads one to conclude that there is some government entity in New Zealand (or in some other country) with the power to grant "lawful authority" to act against a nuclear facility (perhaps against Australia's lone reactor at Lucas Heights). We further note that "without lawful authority" also appears in the Counter-Terrorism Act in the context of actually using a nuclear weapon in war. Although we are well aware that some nuclear-armed nations consider it to be lawful to use nuclear weapons in anger or to preemptively attack the nuclear facilities of other countries, it seems absurd that New Zealand would mindlessly incorporate such wording into its own statutes.

We ask the Select Committee to recommend to the House that amendments to the Terrorism Suppression Act (2002) proposed in the current Bill not be passed into law and that the principal Act be repealed in its entirety.

But if the amendment Bill is to proceed we summarise our recommendations (above): (1) that judicial review of terrorist designation be retained, (2) that automatic transfer of the UN list of terrorists not be enacted, this in order to protect due process for New Zealanders, (3) that section 8(2) not be repealed, (4) that section 10(2) not be repealed, (5) that section 13(1) not be amended with the insertion of the phrase "or being reckless as to whether", and (6) that the phrase "without lawful authority" be removed from the proposed amendment to section 13C(1).

We thank the committee for the opportunity to make a submission on this amendment Bill.

We do not wish to appear before the committee regarding this submission.

Yours sincerely,

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CHRISTCHURCH