

Submission
of the
New Zealand Catholic Bishops Conference
and
Caritas Aotearoa New Zealand
to the
Foreign Affairs, Defence and Trade Select Committee
on the
Countering Terrorist Fighters Legislation Bill

Young people travelling abroad to join the ranks of terrorist organisations are often youth of poor immigrant families, deluded by what they feel as a situation of exclusion and by the lack of values of some wealthy societies. Together with the legal tools and resources to prevent citizens from becoming foreign terrorist fighters, Governments should engage with civil society to address the problems of communities most at risk of recruitment and radicalisation and to achieve their smooth and satisfactory social integration.

Cardinal Pietro Parolin, Address at the United Nations Security Council, 24 September 2014

Summary of main points

- We recognise the significance of the ISIS war, and the need for the New Zealand community to be part of the international response.
- The New Zealand Catholic Bishops Conference has expressed support for the Prime Minister's measured and cautious approach to the question of military involvement in the war. However, we are concerned at the speed of this legislation and very limited time for public comment.
- We ask that the specific context giving rise to this legislation be clearly defined to ensure it is not applied to situations not related to the specific terrorist groups in Iraq and Syria.
- There are valid reasons for New Zealanders to travel to the Middle East, including family, religious and humanitarian reasons.
- We support the Human Rights Commission's recommendation for evidence based risk assessment, rather than decisions based on racial profiling.
- People must be able to access their natural right to justice when their passport is cancelled overseas, especially if based on misinformation. We are concerned about provisions that allow that people may not be directly notified of the cancellation of their passports.
- The provision of journey-specific emergency travel document for citizens to return to New Zealand need to be clearly included in the legislation, and a process for accessing this provided in the specific circumstances of the Middle East conflict.
- We note UN Security Council resolution 2178 also asks government to provide rehabilitation and reintegration as well as addressing underlying factors to radicalisation to terrorism
- We support the Human Rights Commission recommendation for interfaith dialogue and involvement of civil society, including the law-abiding and peaceful Muslim community in New Zealand and its leaders, in developing responses.
- We support the sunset clause in the legislation, which means special measures will expire on the 1st of April 2018.

Introduction

1. The New Zealand Catholic Bishops Conference represents the Catholic Bishops of the six Dioceses of New Zealand: Auckland, Hamilton, Palmerston North, Wellington, Christchurch and Dunedin.
2. Caritas Aotearoa New Zealand is the Catholic agency for justice, peace and development. We are mandated by the New Zealand Catholic Bishops Conference to work for the elimination of poverty and injustice both overseas and in New Zealand. Caritas currently supports Middle East development and relief work in Iraq, Syria, Lebanon and Palestine.
3. The New Zealand Catholic Bishops Conference has written to support the Prime Minister's measured and cautious approach to the question of military involvement in the war in Syria and Iraq.¹
4. We recognise the urgency of the situation facing the international community and the United Nations Security Council Resolution 2178 in response to foreign terrorist fighters and other matters to overcome the threat presented by ISIS.
5. However we are concerned at the speed of the passing of this Bill and the short time frame for public comment. The Bill could have significant implications for the rights of citizens.

Limitations of legislation and reporting

6. As this Bill is a response to the specific threat of foreign terrorist fighters connected to ISIS and provides power that limits the civil rights of citizens, it is important to ensure these powers are not applied to situations they are not intended for.
7. The particular concern expressed in United Nations Security Council Resolution 2178 is around foreign terrorist fighters being recruited by Islamic State in Iraq and Levant (ISIL), the Al-Nusrah Front (ANF) and other cells affiliates, splinter groups or derivatives of Al-Qaida. We agree it is this particular threat which requires addressing urgently.
8. We suggest the inclusion of this detail from the Resolution in the explanatory note of the Countering Terrorist Fighters Legislation Bill to give full context. This Bill should not be applied to other general situations.
9. Reporting, and monitoring of the government's use of these powers should be given at regular intervals to ensure transparency and accountability in the use of these powers. The formal reporting provided for under the emergency use of search and surveillance without a warrant should be extended also to the other special powers granted under this legislation.

Cancellation of passport

10. We recognise the recommendation of the United Nations Security Council Resolution 2178 include addressing the threat posed by foreign terrorist fighters by restricting foreign terrorist fighter movement. We are concerned about the increased ability to cancel a person's passport and other travel documents for up to three years when an individual is outside New Zealand without any requirement to notify the person of the suspension.

¹ <http://www.catholic.org.nz/news/fx-view-article.cfm?loadref=50&id=334>

11. Measures to counter terrorism need to be based on internationally recognised human rights norms and agreements, recognising that the State has a legal and moral duty to protect the fundamental human rights of citizens. We note that Article 12(4) of the 1966 International Covenant on Civil and Political Rights declares that: "No one shall be arbitrarily deprived of the right to enter his own country." and the Bill of Rights Act section 18(2) and (3) affirms the right of New Zealand citizens to enter New Zealand and for the right of everyone to leave New Zealand.
12. We recognise that these matters are somewhat addressed in the Bill of Rights assessment of the Bill; however, we remain concerned that innocent and vulnerable people may be caught up in its provisions.
13. There are valid reasons that a person might choose to travel to Iraq and Syria including religious, family and humanitarian reasons.
14. Our main concern is to ensure safeguards against significant action being taken that infringes a person's right to enter and leave New Zealand which could be based on misleading, incorrect information or misinformation provided as a result of malice or based on stereotypes, assumptions or racial profiling.
15. We support the Human Rights Commission's recommendation for greater evidence based risk assessment, avoiding racial profiling and stereotyping based on ethnicity or religious beliefs. It is important that sufficient checks and balances exist to ensure the discretionary powers given to the Minister and government agencies are not exercised arbitrarily or unreasonably.

Amendment to Passports Act 1992

16. Considering the political rhetoric and stated intention of the Bill prevent the brutal actions of ISIS, we question the necessity of subclause 2(a)(iii), subclause 3(a)(iii), subclause 4(a)(iii), subclause 5(a)(iii), and subclause 6(a)(iii) of new Schedule in Clause 5 Amendments to Passport Act 1992.
17. These subclauses state that passports and other travel documents may be cancelled if the Minister believes on reasonable grounds that the person is a danger to the security of New Zealand because the person intends to engage in, or facilitate – "any unlawful activity designed or likely to cause devastating or serious economic damage to New Zealand, carried out for purpose of commercial or economic gain".
18. We do not see that this subclause is necessary in a tightly targeted legislation aimed at restricting the movements of foreign terrorist fighters. We are concerned that this subclause widens the scope of what is considered terrorism.
19. This subclause could be used beyond the stated scope of this legislation to restrict the civil rights of New Zealand citizens.

Access to Right of Justice

20. Every person whose interests are affected by a decision by a public authority has the right to the observance of the principles of natural justice, including opportunity for prior notice of an impending decision and having the opportunity to be heard.

21. New Zealand citizens must be able to return to New Zealand and have access to natural justice, including access to appeal processes and to face trial. They must not end up being exiled or stateless.
22. The Bill of Rights assessment provided by the Ministry of Justice notes that it is identified that Section 23(3) of the Passports Act requires the Minister to issue a journey-specific emergency travel document to a citizen outside New Zealand if the person has been refused a passport or their passport is cancelled, and the emergency travel document is necessary to enable the person to return to New Zealand.
23. This obligation should be more clearly included in the Countering Terrorist Fighter Legislation Bill (at the moment it is a small exclusion in clause 4 of section 5). A realistic process for accessing this must be provided in the specific circumstances where a New Zealander's passport could be cancelled in Syria or Iraq.
24. An innocent person whose passport is cancelled based on misinformation or incomplete information while in a dangerous country could have their life put in danger with no access to judicial review and processes, in particular if they are not notified of this cancellation.
25. We also wish to see New Zealanders engaged in fighting have an escape route if they decide that they no longer wish to participate in the conflict any longer. We do not want to see the war prolonged because people who would like to stop fighting have no way out.

Reintegration and rehabilitation

26. In United Nations Security Council Resolution 2187, prohibiting foreign terrorist fighter travel is only one of several suggestions given to counter their involvement in the war. Facilitating reintegration and rehabilitation, promoting political and religious tolerance, economic development and social cohesion and inclusiveness are all key measures noted in the resolution that we need to take in response to New Zealanders wishing to become involved in the ISIS war as foreign terrorist fighters.
27. It is essential that the New Zealand government work with the families and communities of potential foreign terrorist fighters and returnees to work out programmes and responses that offer opportunity for reintegration and rehabilitation.
28. In Aarhus, Denmark a programme aimed at rehabilitating individuals returning from conflict zones and discouraging individuals considering going to join the fighting has seen a decrease in the number of people going to Syria.² In 2014 there is only one person intending to leave Aarhus to go to Syria compared to 31 in 2013 prior to the programme.
29. The programme works with the local mosque, teachers, parents and social workers to identify at-risk individuals considering joining the fight and offering mentoring to assist individuals towards more balanced perspectives.
30. Returning individuals are offered assistance to reintegrate into the community through mentoring, counselling and assistance into work. The individual is investigated if they are suspected of having committed crimes and remain under surveillance.

² <http://www.theguardian.com/world/2014/nov/12/deradicalise-isis-fighters-jihadists-denmark-syria>

Involving civil society

31. We support the Human Rights Commission recommendation for interfaith dialogue and involvement of civil society, including the law-abiding and peaceful Muslim community in New Zealand and its leaders, to address the conditions conducive to the spread of terrorism.
32. We see in New Zealand the need to ensure that at all levels, dialogue occurs with Muslim communities to address the underlying issues that could compel a person towards radicalisation towards terrorism. It is very important that this Select Committee ensures that the perspectives and experiences of New Zealand Muslim communities are heard in your consideration of this Bill.

Sunset clause

33. We support the sunset clause in the legislation, which means special measures will expire on the 1 April 2018.

Conclusion

34. United Nations Security Council Resolution 2178 includes addressing the threat posed by foreign terrorist fighters by restricting foreign terrorist fighter movement. We recognise the violence of the ISIS conflict is a real and significant issue that needs to be addressed by the whole international community, including New Zealand.
35. We also recognise there are valid reasons individuals and groups choose to go to Syria and Iraq such as religious, family and humanitarian reasons. We ask the government to use evidence based risk assessment and avoid discrimination based on race or religion in exercising powers which could infringe a person's civil rights.
36. New Zealand citizens must be able to return to New Zealand and access their right to natural justice. We are concerned that vulnerable individuals could find themselves stranded in dangerous situations due to misinformation, with no real access to judicial review.
37. We call upon the government to place more emphasis and effort in working with civil society and the peaceful New Zealand Muslim community in addressing the underlying factors that can motivate some individuals to radicalise towards terrorism.
38. In accordance with Security Council Resolution 2178, New Zealand should also be offer programmes of reintegration and rehabilitation to potential foreign terrorist fighters and returnees.