



Communist Party of Australia

Sydney District Committee

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Secretary: Rob Gowland

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The Hon. Paul Lynch

Chairman

Parliament of NSW

Committee on the Office of the Ombudsman and Police Integrity Commission.

Thursday, 18 May 2006

Dear Mr. Lynch,

Please find enclosed our submission re: Scrutiny of NSW Police Counter Terrorism and Other Powers.

This has been authorised on behalf of the Sydney District Committee of the Communist Party of Australia at a meeting of the committee on May 4.

Yours sincerely

Denis Doherty

For the Sydney DC of the Communist Party of Australia.

Scrutiny of NSW Police

Counter-Terrorism and other powers.

Introduction

In a world where the fear of 'terrorism' is fanned and promoted it is important for Governments to maintain a serious and calm approach to the issue. In Australia this fear has been inflated and exaggerated. What must be accepted is that there has not been a 'terrorist attack' or act in Australia for many years.

Prince Alfred (Queen Victoria's son) was attacked on a visit here by an Irish nationalist and suffered a 'flesh wound' from a revolver. There was the attempt on the life of Labor leader Arthur Caldwell.

The Hilton bombing of many years ago was probably the most recent. These events were quite shocking to the people of Australia at the time, but it was not thought necessary to respond by changing the laws to give massive powers to the police.

We submit that the new laws pertaining to police powers in NSW are a denial of democracy aimed at stifling dissent under the pretext of 'combating terrorism'. These laws are regressive and run counter to a democratic society and the acceptance of dissent.

Some basics

Australia has signed various international agreements that guarantee human rights of the citizens of Australia. Australia has ratified the International Convention on Civil and Political Rights, which proscribes torture and other inhumane or degrading treatment or punishments, and has similar obligations under the Convention against Torture and Other Cruel, Inhuman and Degrading Treatment and Punishment. Under these protocols Australia and its states are obligated to conform to the principles and norms of behaviour in a fair legal system.

The right to protest right to a fair trial and presumption of innocence etc are parts of our system and must not be tampered with. Our democratic traditions in this regard are reinforced by the International protocols above.

It is reasonable to expect that in a democracy one has democratic rights and people are free to pursue them without fear of unfair laws. It is our contention that the NSW Police powers, which are trumpeted as the most draconian in Australia and more oppressive than those laws proclaimed by the Federal Government, are overly harsh. Basically the 'terrorists have won' if we over react to threats (whether real or imaginary) and deny people their civil rights.

The powers prior to 9/11

As campaigners for peace, social justice and workers' rights the Communist Party of Australia have experienced the full impact of NSW police powers in this state. We see moves to increase of the powers of police as a trend towards authoritarianism.

In regard to protests and dissent police and the NSW Government from time to time have trouble recognising that this is a right. The police are not there to give permission but to protect the democratic rights of the people protesting. The attitude of the police sometimes indicates that they think only marginal people and undeserving people are protestors. The media encourages this attitude as they denigrate and/or ignore legitimate protest.

The powers the NSW police had before 9/11 was in our opinion plentiful and certainly sufficient and would have been more than adequate for post 9/11. Even in the pre 9/11 period it was illegal to organise and carry out a bombing of people, or any attack, which caused serious injury to people, doing their ordinary business. After 9/11 the situation in NSW did not need to change as the laws were already in place. However, for political rather than legal reasons, politicians took the opportunity to enact certain anti-terror laws claiming falsely that the situation was now very different.

The powers

“SOME of the most far-reaching changes to **police powers** and civil liberties in years - the **counter-terrorism** bill, which allows **police** to lock people up for 14 days without charge - passed through the NSW upper house at 2am yesterday, after just a day's debate.”

SMH December 2 2005

- a) **The functions of the PIC and the Ombudsman under the counter-terror laws of NSW and in relation to oversight of the police use of covert and coercive powers;**

Both of the above organisations regardless of how excellent and sincere their members may be in carrying out their duties in regard to police powers they are both part of the system of executive Government.

The court system is quite separate from the organisations above and can be called on to deliver an independent role in relation to these matters. The PIC and Ombudsman are not in a position to control and scrutinise the powers of police.

(1) For the period of 2 years after the commencement of this Part (as inserted by the Terrorism Legislation Amendment (Warrants) Act 2005), the Ombudsman is to keep under scrutiny the exercise of powers conferred on members of NSW Police, the Crime Commissioner and members of staff of the New South Wales Crime Commission by this Part.

(2) For that purpose, the Ombudsman may require the Commissioner of Police, the Crime Commissioner or the Director-General of the Attorney General's Department to provide information about the exercise of those powers.

(3) The Ombudsman must, as soon as practicable after the expiration of that 2-year period, prepare a report on the exercise of those powers and furnish a copy of the report to the Minister, the Commissioner of Police and the Crime Commissioner.

Terrorism (Police Powers) Act 2002

The scrutiny by the Ombudsman as outlined in the text of act is of a very general nature. Reports that cover 2 years will make individual unjust cases almost irrelevant when this report is written. Individuals accidentally or innocently drawn into a situation where they are prosecuted under these laws may not get redress for 2 years and may be imprisoned unfairly until a report by the Ombudsman hits the Parliamentary floor. Even the 2 years is not mandatory but is covered by general words 'as soon as practicable', what could that mean? An Ombudsman of slow inclination could take that to mean 3 or 4 years!

In section 2) the Ombudsman 'may' require information on the exercise of these powers! In using the language of 'may require' means there is no absolute obligation on the Police Commissioner or the Attorney General's Department to provide information. Real protection would require that the all cases would be listed and all documents pertaining to those cases should be available to the Ombudsman and his staff.

The idea of a report and 'may require' is rather poor protection. Just write a report while NSW police act in random ways against the interests of individuals in NSW seems like no protection.

There is no comment available on the PIC in this context except to say that the PIC is part of the system and does not carry out prosecutions. We feel that the protection given by this organisation would be insufficient to give proper protection for the citizens of NSW.

b) Oversight of the conduct of NSW police officers involved in Counter-Terrorism Coordination Command (CTCC).

We agree with and support the statement provided by the NSW Council of Civil Liberties' website, which states:

[starts here]

What safeguards are included in the law? Are they adequate?

1. In the normal situation, an application will be presented to the NSW Supreme Court. The person against whom a preventative detention order or a prohibited contact order is sought will be entitled to be present. His or her lawyers can come too.

It is hoped that judges will resist revolving door applications, and that they will ensure that the suspicions which police have are at least reasonable.

The CCL (*and the CPA ed.*) also hopes that judges will resist requests that the evidence be kept secret; and where they accept that it should be kept secret, that they will resist admitting it at all.

It will depend, of course, on the individual judge.

Also in the normal situation, the application will be in writing, and the police officer who makes it will have to swear its contents. False evidence will thus be punishable by imprisonment.

But where the case is deemed urgent, these safeguards are omitted. Evidence can be given over the telephone, or even by fax or email, with the result that there is no opportunity for the judge to question the evidence. An *interim* court order may be made over the telephone, and the police can then arrest and detain a person at once. The first that they may learn that an application for detention has been made may be when they are arrested. They may never know the evidence that has been adduced against them.

2. An interim order lasts at most 48 hours, unless a hearing is held sooner. *By then, though, irreparable damage may have been done to the detainee. Moreover, the law says that one interim order may be followed by another in relation to the same alleged plot.*

3. The police officer who applies for an order is required to fully disclose all matters of which the applicant is aware that would tell against the making of the order (as well as, of course, those that favour it).

[CCL quote ends here]

c) Trends in anti-terror laws and oversight of these extraordinary powers;

The trends in anti-terror laws since 9/11 in the western world have been similar to the trends in NSW. Namely, these laws have tended to be over reactions accompanied by a heightened sense of fear and a loss of civil liberties. These trends have occurred in the US, UK and Australia including in the laws of the Australian.

Oversight of these laws is lax and seen as secondary to the main idea of suppression of any known or suspected 'threat'.

Regardless of these trends there is no excuse for NSW to follow suit. It is important that legislation in this area be enacted with due regard to the maintenance and protection of Australia's civil liberties. We believe that these fearful laws enacted in NSW since 9/11 need to be reversed and the previous laws and procedures reinstated in their stead.

d) Impact of the growth of police powers on the nature of external police oversight;

We are only in a position to state in most general terms that the powers of police seem to have outgrown the ability of external forces to give adequate oversight.

e) Any other matter that the Committee considers relevant to the inquiry

As this is a discussion of the scrutiny of the NSW Police powers it seems odd to us that a foreign police force (to wit, the United States Federal Bureau of Investigation, FBI) is allowed even encouraged into NSW. We have no way of knowing or any information on what scrutiny they come under.

FBI

In September of last year it was announced that the Minister for Police had arranged for an FBI office to be set up in Sydney. We were told that this would facilitate better anti-terror coordination worldwide.

We expressed our horror at this attitude in a party congress resolution and began an education of the premier and other elements of the NSW Government of the record of the FBI.

Historically the FBI has been responsible for persecuting Martin Luther King and his wife and other Black civil rights activists, for persecuting Native American civil rights activists, for persecuting people campaigning for the preservation of Californian redwood forests, for spying on US citizens who organise for peace, and many more.

Nevertheless, NSW Commissioner for Police Ken Moroney and his second-in-command are strong supporters of the FBI setting up shop within NSW. On April 17, 2006, the SMH Quoted Mr Moroney saying: "I'm biased when it comes to the FBI. I've been there and I've done their program. Scippie's done their program. It is the business."

What can we expect from people so uncritical and so uncaring of what the FBI is and what it is doing? Apparently, since both the present and 'heir apparent' NSW Police Commissioner are fans of the FBI, we are in for a long period of unfettered, unscrutinised FBI activity in NSW.

We dread to think what this is going to do for the human rights of the people of NSW. We can hold parliamentary enquiries etc into our own police and they may have some impact but we feel that our structures will have no influence on the FBI. We ask again what scrutiny will there be of the FBI?

Conclusion

We belong to those in the community who believe these laws need repealing and not scrutiny. We do not need these laws and the sooner they are repealed the better.

Appendices

1. Congress Resolution
2. Original FBI office in Sydney Media outlet
3. Sample of article critical of the FBI

1.

Resolution of the 10th Congress Communist Party of Australia held Oct 2005

Condemnation of the FBI office in Sydney

We the delegates of the 10th Congress of the Communist Party of Australia condemn the establishment of an office of the United States' Federal Bureau of Investigation (FBI) in Sydney.

As recently as December 2004 the American Civil Liberties Union (ACLU) issued a report highlighting FBI spying and infiltration of grassroots organisations which oppose the Iraq war and other right-wing policies of George W Bush.

Historically the FBI has been used to fight dissent by ordinary US citizens, the most famous victim of this intimidation was Martin Luther King.

We condemn the NSW Premier Morris Iemma and NSW Police Minister Carl Scully for organising and welcoming the establishment of this office.

We state that the FBI is concerned with the suppression of civil rights and particularly the right to dissent in a democratic society.

We further contend that foreign police agencies have no role in Australia and particularly ones such as the FBI, with an enormous history of working against their own population. If the FBI is prepared to be so offhand about the rights of US citizens how can we expect them to respect Australian citizens' rights? The presence of the FBI here is a violation of our sovereignty and of our own legal systems.

We call on the Premier to remove his offer to the FBI to set up an office in Sydney.

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2.

SMH Sept 22 2005

The FBI is setting up shop in Sydney, establishing its first permanent base outside Canberra and only its second in the immediate region.

The Premier, Morris Iemma, will today announce the FBI's appointment of a legal attache as part of counter-terrorism co-operation measures that the Police Minister, Carl Scully, secured from a trip to the US last month.

Mr Iemma said the attache, operating from within the US consulate, would improve the exchange of information between Australian and US law enforcement bodies and provide legal support to NSW agencies.

The position, which will be permanent, has been advertised within the FBI and the successful candidate is to be selected later this year in time to take up his or her position early in the new year.

"Global terrorism does not respect international boundaries, and we want our officers to learn from the best," Mr Iemma said.

"The level of co-operation and access we have secured with the world's pre-eminent law enforcement bodies is a huge advantage for the people of NSW."

During his US visit, Mr Scully met senior officers in the FBI, Secret Service and New York and Los Angeles Police Departments. He has since secured 12-month secondments for a NSW Police officer to the counterterrorism units of the NYPD and LAPD.

An NYPD officer will be seconded to the NSW police counterterrorism co-ordination command for a similar period, Mr Iemma said. "We have forged relationships with the FBI, and New York and Los Angeles Police Departments that will allow our officers to reap the benefits of their knowledge and experience."

Legal attaches such as that being established in **Sydney** are posted in more than 50 US embassies and consulates and constitute the **FBI's** official international presence.

The FBI legal attache, or legat, in Canberra is currently the only one in Australasia.

3.

DECLASSIFIED FBI FILES REVEAL YEARS OF SURVEILLANCE OF SOA WATCH BY FBI's COUNTER-TERRORISM DIVISION

ACLU and School of the Americas Watch filed for documents; FBI blacks out information, refuses to declassify some pages.

The American Civil Liberties Union and the ACLU of Georgia last week released new evidence that the Federal Bureau of Investigation is conducting counter terrorism investigations into School of the Americas Watch. As we've seen time and again when the FBI targets social change organizations, the files demonstrate a clear attempt to stifle political opposition.

In the released documents, the FBI noted that the [SOA Watch November vigil] has grown dramatically over the past several years. The FBI elevated its concern to priority level and subjected SOA Watch to counter terrorism surveillance. The Bureau monitored the media attention that the annual November vigil and the trials of people arrested for non-violent civil disobedience received, and agents noted which court tactics had chilling effects on people's decisions to participate in civil disobedience.

Nothing in the FBI files justifies counter terrorism as a basis for the spying. In fact, the FBI never identifies any criminal activity outside of public civil disobedience, and they consistently describe the SOA Watch Vigil as peaceful.

These files unmask the political nature of the actions of the FBI, an agency that has a long history of being used as political police, targeting groups in the United States who are working for social change.

When congressional investigations, political trials and other traditional legal methods of repression failed to counter the growing movements of the 1950s, '60s and '70s, the FBI moved outside the law. They used secret and systematic methods of fraud and force, far beyond mere surveillance, to sabotage constitutionally protected political activity. The purpose of COINTELPRO, the FBI's domestic counterintelligence program, was, in FBI Director J. Edgar Hoover's own words, to "expose, disrupt, misdirect, discredit and otherwise neutralize" specific groups and individuals.

The FBI's targets in this period included the American Indian Movement, the Communist Party, Black Nationalist groups, and many social justice activists, including Martin Luther King and Cesar Chavez.

According to Brian Glick, in *War at Home*, COINTELPRO used a broad array of methods, including infiltration; psychological warfare from the outside (false media stories, forged correspondence); harassment through the legal system; and extralegal force and violence (in the case of radical Black, Puerto Rican and Native American activists, these attacks, including political assassinations, were so extensive, vicious, and calculated that they can only be accurately called a form of official "terrorism").

But COINTELPRO tactics are clearly not a thing of the past. In September of 2005, 72-year-old Filiberto Ojeda Rios, a leading figure in the fight for Puerto Rican independence, was killed by the FBI in a raid that coincided with the Grito de Lares, the annual pro-independence celebration of the 1868 anticolonial revolt in Puerto Rico. Ojeda Rios was wanted by the FBI for his role in a 1983 bank heist. (See <http://www.soaw.org/new/article.php?id=1190> for more info).

The death of Ojeda Rios and the spying against SOA Watch and many partner peace organizations like the American Friends Service Committee and the Thomas Merton Center, as revealed by other ACLU filings illustrate the dangerously vague, politicized and expanding definition of "terrorism" employed by the Bush administration.

Instead of responding to political opposition with political means, the U.S. Government is responding to it as a threat. This same type of mind set responds to Latin American protests against social inequalities with the training of repressive militaries at the School of the Americas (SOA/WHINSEC).

When military action is the default solution for any problem abroad and the FBI is being employed against social justice activists in the United States, it becomes vividly clear that none of us are safe. The actions and values of the U.S. government are out of alignment with the majority of the people of the Americas.

Now is the time when it's more important than ever that we build principled alliances with other social change organizations and build stronger ties with fellow movements for justice. Together we can overcome the racist system of violence and domination to work towards a culture of justice and peace.

READ MORE:

Matthew Rothschild, The Progressive:

http://www.soaw.org/new/newswire_detail.php?id=1116

Democracy Now! interviews with SOA Watch and ACLU (read, listen or watch):

<http://www.democracynow.org/article.pl?sid=06/05/05/1432207>

SOA Watch press release: <http://www.soaw.org/new/pressrelease.php?id=109>

More info from the ACLU:

<http://www.aclu.org/safefree/spying/25437res20060504.html>