



CATHOLIC COMMISSION FOR  
**JUSTICE,  
DEVELOPMENT  
& PEACE**  
MELBOURNE

**Submission**  
**To the**  
**Senate Legal and Constitutional**  
**References Committee**  
**On the**  
**Australian Security Intelligence**  
**Organisation Legislation Amendment**  
**(Terrorism) Bill 2002**

November 2002

## INTRODUCTION

The Catholic Commission for Justice Development and Peace, Melbourne (CCJDP) welcomes the reference to the Senate Legal and Constitutional Committee of the Inquiry into Australian Security Intelligence Organisation (ASIO) Legislation Amendment (Terrorism) Bill 2002 (the ASIO Bill). CCJDP wishes to address item (vi.) of the terms of Reference: implications for civil and political rights of the bill and any proposed alternatives.

The CCJDP aims to help educate and give leadership to the Catholic and wider community in the gospel message of justice and in the social teachings of the Catholic Church. The Commission's Charter requires it to work for justice in public, local and national structures. It seeks to achieve these ends through research, analysis, working with parish networks, public forums, in schools and in the media. It actively seeks to explore ways that social justice can be improved in society and in the performance of mechanisms that have a role in public life. The CCJDP has raised the issue of violations of human rights of Australians and people such as asylum seekers in a variety of fora including the media.

The CCJDP monitors developments regarding the human rights of the community via the Australian Human Rights Register. The Register records entries from non-governmental organisations and the media about both positive and adverse developments in human rights. In addition to the promotion of and respect for universal human rights and standards that will be referred to throughout this submission, the CCJDP uses the principles of Catholic social teaching to test the justness of public policy.<sup>1</sup> Pope John Paul II has voiced his concern about States having “contempt for the fundamental human rights of so many people, especially children...”.<sup>2</sup>

CCJDP deplores the bombing of innocent civilians in Bali and condemns the crime of mass murder. CCJDP urges the Australian Government to continue to explore the question of what conditions give rise to terrorism in our region and examine the implications endemic poverty in many countries of our region. CCJDP concurs with observations that the primary aim of the terrorists involved in the Bali bombing was to

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<sup>1</sup> For example Catholic social teaching is concerned that public policy does not undermine the primacy of the family: “[T]he individual, the family and society are prior to the State, and...the State exists in order to protect their rights and not stifle them.” Catholic Social Welfare, Australian Catholic Social Welfare Commission, Vol.1, No.1, July 1992.

<sup>2</sup> John Paul II Novo Millennio Ineunte: At the Beginning of the New Millennium, Strathfield, 2001, p.68.

disrupt the Balinese and Indonesian economies and to potentially cause social and economic dislocation which might give fertile grounds for extremist ideology. CCJDP notes that Australian development aid has been in steady decline over the past decade and is at its lowest level ever [See graph attachment] and that an increase in aid by OECD countries like Australia would be part of strategy in tackling terrorism. CCJDP supports the cooperative effort made by the Government's of Australia and Indonesia to investigate the Bali bombing.

### **ASIO RAIDS**

In the wake of the Bali bombing, in late October and early November 2002, the Australian Security and Intelligence organisation (ASIO) raided fifteen homes in Perth, Sydney and Melbourne occupied by Australian citizens. The manner of the ASIO raids was described by the Australian Foreign Minister Downer as " a little ruthless."<sup>3</sup> Most raids were at dawn, ASIO officers were armed and in at least one instance (in Perth) a forced entry was made, albeit on the advice of the local police.<sup>4</sup>

The effect on Muslim communities was "heightened tensions in a community already anxious."<sup>5</sup> One comment from a Muslim community representative indicative. The president of the Manly Warringah Islamic Society, Nasser Abdul Gowi, said that the manner of the raids, " only serves to further damage our [Australian Muslim] public image, we do not subscribe to extremist views or support the work of terrorists financially or sympathizes with them and their extremist causes in any way. Anti-terrorists agencies such as ASIO have had our full cooperation in bringing the perpetrators to justice, but we don't condone harassment of innocent families, in our wider community through dawn raids, as they only serve to perpetuate fear and anxiety in an already demonized community."<sup>6</sup>

It is clear the manner of the ASIO raids and their effects have been damaging on the individuals concerned and wider Islamic community. Questions arise as to the grounds on which the manner and timing of the raids was determined.

The raids appear to have been conducted on the basis of suspicion, rather than prima face evidence. ASIO head Dennis Richardson has asserted that there was evidence about the people raided amounting to more than their mere presence,

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<sup>3</sup> ABC NewsOnline, November 1,2002.

<sup>4</sup> Sunday Age, 3 November 2002.

<sup>5</sup> Australian, November 2-3, 2002.

sometime in the late 1990s, at a teaching by alleged JI leader, Abu Bakar Bashir. The fact remains however, that ASIO may never allow the Parliament or the public to know about this evidence. We are being asked to accept in good faith, the claim of the ASIO head that the agency's suspicions are sufficient to justify its actions. In a charged climate where the Government has condoned raids on innocent people in manner that is "a little ruthless", ought we accept such claims from ASIO?

In the wake of the Bali bombing, as with the IRA bombings in Britain in the 1970s, there is an extreme political imperative for security agencies and police to investigate, and to apprehend suspects. This political imperative often outweighs concerns for civil liberties which might be stronger in times when the perceived threat is lesser. This imperative is understandable but is no justification for violations of civil liberties and heavy-handed approaches to raiding homes of citizens.

What is clear, however, is that as ASIO pursues its investigations, perhaps with further raids, innocents are going to be swept up, the anxiety levels of community raised and reputations of individuals, community groups and religions will be undeservedly damaged.

As can be seen from the recent raids, not even the current checks and balances themselves prevented damage to innocent people and to groups within the wider community. Additionally, the Government has brushed concerns voiced about the manner of the raids aside.

CCJDP contends that despite the amendments which have been made to the ASIO Bill, there is nothing to prevent ASIO from being "a little ruthless" towards Australian citizens in the execution of the warrant or in manner of treatment during their detention and interrogation. While CCJDP totally supports investigation into possible threats to the Australian community and recognises at times it may be necessary, for ASIO to make raids, the manner of these recent raids has left us with no confidence that providing increased powers to ASIO is desirable.

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<sup>6</sup> Ibid.

**CCJDP's concerns are:**

**1. Nature of Detention**

The Bill provides for people to be detained without charge and held for 48 hours, which can be extended for up to 168 hours. The detention of people on the basis of suspicion in a highly charged political climate of a “war against terrorism” is worrying. where methods that are “a little ruthless” is worrying. The amendments do not ensure that suspects are either charged or released within a reasonably limited period. Australia has a long history of opposition to detention for questioning on mere suspicion which falls short of justification for charging the suspects with an offence. The proposal in the Bill appear to breach Article 9.1, 9.3 and 9.4 of the International Covenant on Civil and Political Rights (ICCPR), which Australia ratified in 1975, and states:

*Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention... (Art.9.1.)*

*Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or another officer authorised by law to exercise judicial power and shall be entitled to a trial with a reasonable time or to a release.... (Art.9.3.)*

*Anyone who is deprived of their liberty by arrest or detention shall be entitled to take proceedings before a court, in order that the court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful. (Art.9.4.)*

**2. Own counsel and being held incommunicado**

The CCJDP submits that the proposed provisions concerning powers of denial of access to legal advice and authorising extended periods of detention incommunicado, each of which are obvious cases of denial of fundamental human rights, are unnecessarily wide. A person detained in the heightened emotional context of terrorist activity is the very type of person whose human rights require adequate protection. Article 14.3 (b) of the ICCPR confers rights: "To have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing".

### **3. Presumption of Innocence**

The Bill removes the right to silence and removes the right to be presumed innocent by reversing the onus of proofs in relation to answering or failing to answer a question. These provisions appear to breach Article 14.3 (g) of the ICCPR: "[A person] Not to be compelled to testify against himself or to confess guilt;" and Article 14. 2 of the ICCPR: " everyone charged with a criminal offense shall have the right to be presumed innocent until proved guilty according to law."

### **4. Children**

The Bill applies to children of the age of 14 and over and appears to breach of Article 37 of the Convention on the Rights of the Child, ratified by Australia in 1991, which states:

*No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort for the shortest appropriate period of time; (Art.37.b) and*

*Every child deprived of his or her liberty shall have the right to prompt access to legal and other appropriate assistance, as well as the right to challenge the legality of the deprivation of his or her liberty before a court or other competent independent and impartial authority, and to a prompt decision on any such action. (Art.37.d)*

Given the appalling treatment of children in immigration detention centres over the past decade including arbitrary detention, CCJDP is skeptical of new powers which give ASIO the right to hold and interrogate children. CCJDP concurs with Recommendation 10 of the Parliamentary Joint Committee on ASIO, ASIS and DSD:

*The Australian Security Intelligence Organisation Legislation Amendment (Terrorism) Bill 2002 be amended to ensure that no person under the age of eighteen years may be questioned or detained under the legislation.*

### **The Thin End of the Wedge**

CCJDP notes that the erosion of civil liberties began over a decade ago with a systematical denial of human rights to people seeking asylum, and now with many inured to these violations, the Government is seeking to extend the same sort of

incommunicado detention to Australian citizens. CCJDP notes that the ad hoc scrutiny by statutory bodies and parliamentary committees of violations of human rights of people held in detention has done little to decrease such violations of the human rights of asylum seekers. Arbitrary detention is still occurring. Child asylum seekers and the disabled have been held for periods over two years. CCJDP is therefore concerned that the proposed oversights of ASIO by the Ombudsman, the Inspector General of Intelligence and Security, or through annual reporting to Parliament is inadequate and cannot sufficiently protect the rights of individuals. Such scrutiny still occurs after the event and ultimately, there is no obligation for the Government to heed and act on the concerns of these bodies, especially if political imperatives dictate otherwise. In a culture of war against terrorism, it is observed that civil liberties are sacrificed on grounds of national security and over time, such security concerns can inure parliamentarians to the loss of liberties and violations. The loss of civil liberties in Sri Lanka, Malaysia, Northern Ireland and the US *post* September 11 are all relevant examples of this trait.

CCJDP concurs with the assessment of David Jull MP, Chairperson of the Joint Committee on ASIO, ASIS and DSD Inquiry into the ASIO Legislation Amendment (Terrorism Bill 2002), who stated in the Committee's report that: " The Bill is one of the most controversial pieces of legislation considered by Parliament in recent times. ...The Bill, in its original form, would undermine key legal rights and erode civil liberties that made Australia a leading democracy." <sup>7</sup> CCJDP believes that the amended bill is little better. On these grounds, CCJDP recommends that the Parliament refuse to pass the ASIO Bill.

CCJDP would does not support the powers to detain under the conditions outlined in the Bill being conferred to a body such as the Australian Federal Police as the same concerns would arise.

CCJDP recommends that the Government look to other relevant means to improve counter terrorist capacity such as improving communication across agencies, better language training and capability, and increasing financial resources and staffing.

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<sup>7</sup> Joint Committee on ASIO, ASIS and DSD: An advisory report on the ASIO Legislation Amendment (Terrorism Bill 2002), Canberra, May 2002, Foreword.