

Human Rights Council, Ninth session

Agenda item 3: Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development

Report of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, S. James Anaya

Addendum

Summary of cases transmitted to Governments and replies received

New Zealand

Allegation letter concerning the alleged arrest of 17 Maori social activists suspected of terrorism-related offenses

339. In an allegation letter dated 29 November 2007, the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, the Special Rapporteur on the promotion and protection of human rights while countering terrorism, and the Special Representative of the Secretary-General on the situation of human rights called to the attention of the Government information received concerning the arrest of 17 Maori social activists suspected of terrorism-related offenses.

340. According to the information received, on 15 October 2007, the police began a series of raids and home searches which resulted in the arrest of 17 Maori people as suspects of terrorism-related offenses in the cities of Auckland, Wellington, Christchurch, Palmerstan North, Hamilton, Whakatane and Ruatoki. The 17 individuals were described as social activists, members of the Maori organizations and other social and environmental support groups. It was reported that search warrants were obtained under the Summary Proceedings Act to search for evidence of the commission of offences against the Arms Act and the Terrorism Suppression Act. Information was obtained that the police were searching for items “of which there is reasonable ground to believe will be evidence as to the commission of an offense of participating in a terrorist group, unlawful possession of firearms and unlawful possession of restricted weapons”. Initially, all but one of the 17 individuals was denied bail.

341. It was furthermore alleged that the police operations leading to the arrest of the 17 individuals involved unnecessary disturbance of the life of one Maori community. According to the reports, blockades were set up by the police in the small township of Ruatoki, where all drivers and passengers were questioned by police officers. This also included the reported search of school buses of children on their way to pre-school by armed

police officers. These disturbances, as well as the search of several homes, have led to the claim that the operations targeted the entire Maori community.

342. According to article 67 paragraph 1 of the Terrorism Suppression Act, the consent of the Attorney-General is required to bring charges against any person for alleged offences against this Act. On 8 November 2007, the Solicitor-General, to whom this competence is currently delegated, announced that he could not authorise charges to be laid under the Terrorism Suppression Act since there was not sufficient evidence that a group or an entity was planning or preparing to carry out a terrorist act.

343. The police stated that these searches and arrests have been carried out in the interest of public safety. Investigations started in December 2005 when a camp was discovered in north eastern New Zealand where armed men were training. This camp and others were then put under surveillance. The police reportedly also intercepted telephone calls and monitored a number of computer accounts.

344. It was also in this context that information was alleged about the Government's intention to amend the Terrorism Suppression Act. It was reported that the Government was particularly looking at broadening the definition of a terrorist act, reducing judicial oversight, allowing courts to consider classified information without giving it to defendants, and giving the Prime Minister sole responsibility for designating groups and individuals as terrorists. Information was also received that the third reading of the Terrorism Suppression Amendment Bill was underway in the Parliament.

345. Concern was expressed that the arrests of the said 17 individuals may be connected to their activities in defence of the rights of Maori people, and particularly of the land rights of the Ngai Tuhone community, which has involved a claim before the Waitangi Tribunal regarding alleged taking by the Crown. Concern was further expressed that the planned amendments to the Terrorism Suppression Act, if adopted and implemented, would not be in accordance with international human rights standards.

Response of the Government

346. On 30 January 2008, the New Zealand Government responded to the allegation letter. With respect to the police investigation, the Government explained that the investigations were carried out for more than a year and which culminated in a series of searches and arrests over several days in mid-October 2007. The investigation related to the alleged operation of training camps, which included use of firearms and other weapons and related activities.

347. The searches and arrests were undertaken both under the Arms Act 1993, which concerns illegal use of firearms and other weapons, and under the Terrorism Suppression Act 2002 (TSA), which concerns terrorist acts. As a result of the investigation, 16 of the 17 Maori arrested have been charged with offenses under the Arms Act in relation to alleged

illegal acts involving firearms and other weapons. According to the information provided by the Government, no charges have been made under the TSA, in accordance with a decision by the Solicitor General of 8 November 2007, in which he stated “I am of the view that at this stage there is insufficient evidence to establish to the very high standard required that a group or entity was planning or preparing to commit a terrorist act as that term is defined in the legislation.”

348. With respect to investigations into the conduct of the investigation, the Government noted the actions of the police in the investigation are the subject of proceedings before several independent bodies. The charges under the Arms Act against 16 of the 17 people will be heard in court, according the Government, in due course, and in accordance with the New Zealand Bill of Rights Act 1990, common law and international human rights standards. The conduct of the investigation, searches, and arrests in the Rautoki area have been subject of a claim for compensation and other redress by people said to have been unlawfully treated or otherwise adversely affected. According to the Government, lawyers representing a number of such people have indicated that civil proceedings for compensation and other remedies will be filed in courts in the near future.

349. The Government further noted that the actions of the police have also been the subject of claims before two bodies: the Independent Police Conduct Authority is conducting an investigation into any misconduct or neglect of duty on the part of the Police, including in response to complaints made by lawyers acting for people in the Rautoki area and by others, and the Human Rights Commission has received a number of complaints under the Human Rights Act 1993 alleging discrimination and violation of other human rights standards, which can be pursued as civil proceedings for compensation and other redress before the Human Rights Review Tribunal.

350. Concerning the allegations of misconduct, the Government stated that, given the existence of current or proceedings before the courts of New Zealand, it was inappropriate for the government to comment at this time about factual allegations.

351. With respect to the relevance of human rights standards, the Government of New Zealand indicated that the consistency of the police actions with relevant human rights standards can be considered, and is currently being considered, by the New Zealand courts and other independent institutions. However, it stated that it was inappropriate to comment on these while they remain under consideration of the courts.

352. Regarding the Terrorism Suppression Amendment Bill 2007, the Amendment Act to this Bill was enacted in 19 November 2007, after the searches and arrests carried out. The primary purpose of the Amendment Act was to ensure New Zealand’s compliance with its obligations under the UN Charter and relevant Security Council resolutions on terrorism.

353. The Government indicated that, as originally enacted, the TSA implemented the two sets of Security Council obligations, in so far as they required the imposition of financial

and other sanctions against terrorists. Section 22 established a single procedure to designate: (1) terrorists on the UN terrorist list against whom New Zealand must take action; and (2) other terrorists against whom the Government has decided to take action in accordance with UNSCR 1373. As a result, the Prime Minister was required to designate UN listed terrorist entities under the TSA before those entities became subject to the provisions of the Act.

354. Under the Amendment Act, individuals and entities on the UN terrorist list are automatically designated as terrorist entities under New Zealand law, and will remain so until they are removed from the UN terrorist list. These changes were, according to the Government, made to better reflect the mandatory nature of New Zealand's legal obligations under the Security Council's Al Qaeda and Taliban sanctions regime and to remove the risk of inconsistency between New Zealand's international obligations and domestic legal regime. The Government also noted that, because the decision to designate under section 22 involves considerations of national security and national interest, it was considered that, subject to procedural safeguards, such decisions would be taken by the Executive rather than the Courts.

355. With respect to non UN list designations, the Amendment Act provides for a three-yearly review by the Prime Minister of these designations. In undertaking the review, the Prime Minister must apply the same test for the original designation and the decision is subject to judicial review, and must be reported to the Intelligence and Security Committee.

356. In addition, the Amendment Act inserted a new offence of committing a "terrorist act," set out in section 5 of the TSA. The Government noted that the previous approach of relying on ordinary criminal offenses was adequate where the relevant offence attracted a maximum penalty sufficient to meet the seriousness of the case. However, it stated that this was not always sufficient, and thus the maximum penalty proposed in the Amendment Act for committing a "terrorist act" is imprisonment for life.

357. The Special Rapporteur thanks the Government of New Zealand for the detailed responses it provided to the questions and will continue to monitor developments related to the matter.

A/HRC/9/9/Add.1, pp 64-67

Addendum: Summary of cases transmitted to Governments and replies received -
<http://daccessdds.un.org/doc/UNDOC/GEN/G08/150/81/PDF/G0815081.pdf?OpenElement>