

## **SUBMISSION ON: THE GOVERNMENT COMMUNICATIONS SECURITY BUREAU AND RELATED LEGISLATION AMENDMENT BILL.**

**From: Gerard Burns**, MIR (Victoria University, Wellington, 2007), Catholic Priest, Wellington, NZ. This submission is made in my capacity as a NZ citizen; these are my personal views and this is not an official submission on behalf of my Church.

### **Executive Summary:**

I oppose this Bill because: i) the broadening scope of government surveillance is a threat to individual freedom; ii) it enables the giving away of NZ sovereignty without the assent of the NZ public by means of information sharing with other intelligence services; iii) it opens the possibility of using NZ's state surveillance system on behalf of private entities; iv) there is insufficient oversight/supervision of the GCSB and its activities in the Bill; v) because of the intransparency of the budget of the GCSB there is a lack of possibility to auditing the expenditure and therefore greater possibilities of waste and fraud.

I wish to make a submission in person.

### **Section A: Principles on which my submission is based:**

1. Dignity of the individual human person and the right to privacy and security of correspondence.
2. Right of democratic participation of citizens
3. Duty of the state in promoting the common good to safeguard the dignity of the individual and protect the vulnerable.

**Section B: II. Background to the submission:** In my work as a priest I spent 8 years in Peru, South America. I was there at a time (1989-97) when two armed insurgencies sought to overthrow the Peruvian states. To combat these insurgencies the state used military, police and intelligence methods. This led to great suffering for the ordinary citizens caught in the middle of an insurgency on one side and a dirty-war anti-insurgent approach from the government side. The details of this conflict can be found in the report of the Truth and Reconciliation commission report of 2004.

To combat the insurgencies an expansion of state surveillance capabilities took place under President Fujimori (1990-2001) and this led to the capture of the leaders of both armed insurgent groups in 1992. With the capture and general dismantling of these groups a central purpose of the intelligence services was removed. The leader of the intelligence services (Vladimiro Montesinos) then turned the services into a political weapon to control the opponents of President Fujimori. This involved intimidation, tax investigations, bribery of senators, etc.

This was finally exposed in 2001 following a fraudulent re-election of the President leading to the fall and eventual trial and continuing imprisonment of both Fujimori and Montesinos. I learnt from this the need for strong regulation and supervision of intelligence agencies and an independence of them from those in government.

I have a strong belief in the need for an informed citizenry about the machinery of government to enable better democratic participation. Much of the history of the development of human rights theory and practice has been due to the struggle to protect the ordinary person against the potentially arbitrary might of the sovereign or the state.

I am also a believer in the proposal that the state exists to serve the common good. However when the state wishes to expand its powers of surveillance and control even when presented in terms of public safety and security I think citizens need to examine carefully what is being proposed.

**Disclaimer:** I write as an individual citizen informed by my Catholic faith and the social teaching of my Church. I am not presenting the official teaching of my Church on this matter but simply my own analysis, reflections and proposals in the light of my experiences, faith and study.

### **Section C: Key points of the Submission:**

#### **I. The Bill's expansion of the surveillance power of the state is a threat to individual freedom.**

The Bill purports to cover the context of expanding electronic technology and communications, threats to cybersecurity of governments and private entities, and new globally-mobile security threats. While these developments have occurred, does they justify the expansion of data-collection about NZ and foreign citizens proposed by the Bill. I do not consider it so. When the argument is couched in terms of making "us" safer it may seem foolish to oppose such changes. However, given the possibilities for abuse of access to even what is known as metadata, then I think stricter and greater safeguards need to be in place than are in this Bill. The possibilities for warrantless interception in the Bill, and for abuse of the information gathered through selective leaks, insinuation and blackmail are all threats to human dignity and personal freedom (commonly called a threat to privacy).

The Privacy Commission on its website talks of how tense people can become when constantly under scrutiny ('A common understanding of privacy'). By extension, constant electronic surveillance as is being carried out and authorized under this Bill, can have a chilling effect on individuals and civil society. As someone engaged in various groups working for the human rights of Palestinians I have presumed I have been under elec-

tronic surveillance for that activity which can be presented as challenging the status quo of the western military-political alliance.

I know that some people find that possibility intimidating and step back from the work of activism. There have been various kinds of surveillance of human rights and environmental groups over the years but the electronic surveillance technology that state have now take such surveillance to new levels. This is to the detriment of keeping alive a healthy and active public debate that can bring change and renewal to societies. If not, societies become sclerotic and oppressive. The surveillance societies of the old Eastern bloc are a case in point.

I have met members of the GCSB, have received personal kindness and assistance from some of them and the few that I know have earned my respect. However my concern is not about the personal integrity of employees of the GCSB, important as that is, but about the structural surveillance of society and the arrangements for the GCSB, its instruments and its work.

## **II. This Bill enables cession of NZ sovereignty to foreign powers without the assent of the NZ public.**

Because of the links of the GCSB's technology with foreign powers there is the possibility of these foreign powers accessing knowledge about NZ citizens without those citizens' permission and without assent from the NZ public, and without necessarily the possibility of recourse for those affected by the loss of their privacy. This is an invasion of personal dignity and freedom, a cession of NZ's sovereignty and a threat to the dignity of NZ citizens and foreign citizens living in NZ.

## **III. The Bill enables the state to spy on behalf of private entities.**

Such entities could be business corporations because the Bill also is about safeguarding NZ's economic security. This raises the possibility not just of the GCSB protecting the cybersecurity of Fonterra or oil-exploration or petroleum-production companies but of spying on their behalf on citizens organizing protests around their work or production methods. It could also involve the surveillance of competitors or potential customers to enable these corporations to establish a competitive advantage. The potential placing of the state at the service of private corporations undermines the state's responsibility to act for the common good rather than the individual or private interest of a few.

## **IV. There is a lack of strong oversight of the activities of the GCSB.**

While there are some expanded powers for the IGIS and the appointment of a deputy IGIS the oversight mechanisms are still relatively 'in-house' and dependent on the will of the Minister in charge of the GCSB which is the Prime Minister. With the intelligence and security committee not being a parliamentary select committee there is less chance for public input and

scrutiny. The ability of a director of security services to refuse to answer questions when a matter is declared sensitive limits the scrutiny too. I am not saying there is never a time for secrecy and discretion in these matters but such secrecy can also be a weakness. I would advocate for a public dimension to the security and intelligence committee and the active participation of the Human Rights Commission and the Privacy Commissioner to ensure that human rights are respected under the Universal Declaration of Human Rights, the NZ Bill of Rights, the Treaty of Waitangi and various covenants to which NZ has signed.

In this respect also I think the relationship of the Prime Minister as Minister in Charge of the GCSB has to be a very professional one. In the case of the recent appointment of the present head of the GCSB I was alarmed at the selection method of an 'old family friend' of the PM. Given the potential power of the GCSB to investigate people's lives and the lack of recourse if mistakes are made then the last impression that should be given is that the head of a security service is the PM's 'mate'. The potential for doing favours for his master and 'mate' is dangerous for democracy and political and social freedom.

I propose also that the appointment of the IGIS be made on the recommendation of Parliament and not just of the Minister in charge of the GCSB. I also propose that the GCSB should publish each year the number of warrants that have been issued for specific surveillance. These changes would bring a greater degree of parliamentary oversight and public knowledge about the agencies that 'watch over them'.

#### **V. The possibility of fraud and waste in the activities of the GCSB.**

I do not see anything in the role of the IGIS or anyone else in terms of the financial auditing of the GCSB. Its budget is intransparent, Given various very public failures of computer-programmes for government departments under various governments, is there a role for the Auditor-General to have oversight of the systems bought and paid for by the NZ taxpayer or is the GCSB effectively exempt from that process?

**Gerard Burns**

Wellington, 17 June, 2013.