

Submission of the Anti-Bases Campaign to the Intelligence and Security Review

12 August 2015

1. Preamble

The ABC wishes to express its very great disappointment with this review. We are very aware that the Review will not truly reflect opinion in this country because a great number of people who oppose the activities of both the Government Communications Security Bureau and the Security Intelligence Service have refused to take part in a process which they see as a managed charade and an attempt to legitimise the operations and existence of the two spy agencies.

The Review is seen as lacking any real authenticity because (a) the online format channelled the submissions into a narrow field which makes it difficult to address major problems with the two agencies and (b) the two reviewers appointed have no standing in the area under review.

Citizens who wish to make a submission and choose to use the online format have been given very limited opportunity to express their major criticism of the spies, and in particular, the GCSB. This major criticism involves the integration of the GCSB into the Five Eyes network. Amongst NZ citizens there is widespread anger (a) with the association of the GCSB with massive surveillance – as demonstrated from the Snowden revelations; (b) with murderous and extrajudicial drone attacks (one of which killed a NZ citizen) and US Central Intelligence Agency renditions and torture (some of which may be based on information collected by the Waihopai spy base and/or GCSB personnel); and (c) with bullying small Pacific Island states and citizens and using intercepted communications as the basis for political and commercial manipulation, both by this country and, more importantly, by the United States.

The two reviewers appointed to oversee this review have no credibility. Firstly, Dame Patsy Reddy has no background in the field and therefore none of the knowledge required to interrogate officials and experts who need to be asked some very penetrating questions. The spies have every opportunity to cover up whatever they want to. Unless the operational aspects of the agencies are investigated, this review will be pointless. Secondly, Sir Michael Cullen has demonstrated a complete inability to carry out duties related to review or oversight of the spies. He consistently maintained, when on the Intelligence and Security Committee, that the GCSB did not spy on New Zealanders and has never apologised for this gross dereliction of duty since it was revealed that the GCSB had been spying continuously on New Zealanders when Cullen denied it was happening. It should be noted that ABC was one of the groups which persistently maintained that the spying was occurring and that oversight was a failure.

2. Oversight

2.1. Five Eyes. Throughout the Five Eyes collaboration there is a consistent pattern of systemic oversight failure. The CIA actually spied on the Senate Committee responsible for its oversight. In the UK, the Parliamentary Intelligence and Security Committee (ISC) itself, responsible for oversight, has recently reported that legislation is “unnecessarily complicated” and the regime “lacks transparency”. In spite of the oversight in Britain the GCHQ was illegally spying on Amnesty International and others. The documented part MI6 played in the rendition and torture of alleged terrorists was never subject to proper Parliamentary control.

Even the UK former [Conservative] Home Office Minister David Davis, who played a large part in promoting the Bill that set up the British ISC, recently asserted that the ISC had been “captured by the agencies they are supposed to be overseeing” and that Malcolm Rifkind (until recently Chairperson of the ISC) acted as “spokesperson” for the spy agencies rather than a watchdog. To quote two members of the British House of Lords: “Recent events have shown that the Intelligence and Security Committee, as currently constituted, is not really effective”

(Foulkes). The Regulation of Investigatory Powers Act, which gives legislative justification for GCHQ surveillance, "... is plainly inadequate to deal with the situation caused by the advances in interception technology" (Sharkey).

2.2 New Zealand. It would take an act of considerable hubris and stupidity to assume that in this country we have better oversight than the demonstrably ineffective ones in the UK or other Five Eyes partners. Although the warrant system here is more stringent (having the issue of warrants overseen by an independent commissioner) there are fundamental issues related to preventing investigation of operational activities that make effective oversight impossible. This is why the ABC believes that the only truly democratic policy is to close down the GCSB and the SIS and pass their legitimate duties to more transparent agencies under Police control.

Up to the time of the Kitteridge Report, all NZ Prime Ministers assured our citizens that oversight meant the GCSB did not spy on New Zealanders. Knowingly or unknowingly, they promoted an oversight system that was fundamentally flawed. The fact that no-one has been held to account for the illegal spying is a shame on our democracy. However, the worst aspect of this sorry saga is that Sir Michael Cullen, head of the current Review and a senior member of the so-called intelligence oversight committee, also consistently assured us that there was no GCSB surveillance of New Zealanders.

Although NZ has an established warrant system in place there is no evidence of it providing proper oversight. Firstly, warrants can be avoided by asking other agencies to do the surveillance. The GCSB and SIS have access to a vast amount of data, including data on citizens of this country, gathered by Five Eyes partners. Secondly, because of the closed nature of the spy agencies, operations can be carried out that are unwarranted and undetected. In 1991, a whistleblower from the GCHQ explained to media that when anyone came to investigate the organisation, files that they did not want outsiders to see were simply hidden away; there is no reason to doubt that this modus operandi continues today, and is even easier because computer-stored data is much harder to penetrate than paper files). Thirdly, in 2014, the GCSB was unable to present a proper count of the numbers of warrants it had open. Fourthly, in 2015, the Acting Director of the GCSB and the agency's *Annual Report* gave differing accounts as to whether the amount of surveillance was increasing or decreasing.

While a Commissioner of Security Warrants has to approve a warrant there is no guarantee that the information given to him will be balanced. When police are given a warrant on the basis of information that does not fulfil requirements, the issue emerges in a court case. If spy agencies present selective information to get a warrant, no-one can know.

Finally, the current oversight committee is a charade as, firstly, it seldom meets; secondly, it is extremely limited in the matters that can be discussed; and thirdly, the Prime Minister has almost complete control over the agenda. Recent manoeuvres to eliminate minor parties from the committee demonstrate how easy it is for major players to control the process.

3. General comments.

3.1 Surveillance abuses. Because of our Five Eyes subservience, the spy agencies are entangled in a system of domination by overseas interests. Our spies serve other countries' interests in political and trade manipulation through spying on such as UN representatives, international trade representatives, and political activists. We participate in a "war on terror" that in spectacularly circular fashion requires surveillance to seek "terrorists" in this country who might be inspired by the war on terror to commit some criminal act.

While we are committed to serving the hegemonic interests of the UKUSA (Five Eyes) axis, NZ has absolutely no possibility of limiting Western intelligence and security agency excesses - renditions, torture, drone attacks, subversion, blackmail (all documented over the last decade) although we, directly or indirectly, contribute to these.

When a New Zealand citizen was murdered in a drone attack in Yemen, no judicial process or enquiry transpired. An April 2013 US National Security Agency information paper highlighted GCSB intelligence gathering in Bangladesh as one of the agency's "success stories". It states that counter terrorism work by the GCSB "provided unique intelligence leads that have enabled successful CT (counter terrorism) operations by the Bangladesh State Intelligence Service, CIA, and India over the past year". In its 2015 *World Report*, Human Rights Watch stated: "The Bangladesh government failed to prosecute security forces for serious abuses including killings, disappearances, and arbitrary arrests..."

3.2 Agency weaknesses.

GCSB staff have been kept on when not properly doing their jobs. Staff morale in secret organisations suffers because of closeted lifestyles. The secretive nature of the job encourages paranoia and inability to properly balance judgement. Released SIS files demonstrate systemic unwarranted suspicion and more recently it has been alleged that totally inappropriate comments were made by officers about Kim Dotcom's wife, showing that the unacceptable attitudes of the past persist.

4. Recommendations

1. New Zealand immediately exits from the Five Eyes regime.
2. The GCSB and the SIS be closed down and their legitimate functions be taken up by properly transparent organisations.
3. The absolute minimum reform must be that the current Intelligence and Security Committee becomes a proper Parliamentary Select Committee. The proceedings must involve outsiders with the required in-depth technical and/or legal knowledge, and wider community input.

5. Summary

Oversight has failed and is ineffectual at best and a useful cover-up at worst. Official secrecy means the failures and the mistakes of the agencies are buried in secret archives. The present review must incorporate David Lange's comments of 1996, that "... it is an outrage that I and other Ministers were told so little, and this raises the question of to whom those concerned (in the agencies) saw themselves ultimately responsible." There is no evidence that anything has changed in the last twenty years, and considerable evidence that democratic control has actually weakened.

No oversight system will secure the required effectiveness when dealing with extremely powerful secret agencies. Only closure of the GCSB and the SIS will achieve full and proper democratic control.