



TO: Canadian Senate Committee on National Security and Defence regarding *Bill C-51, An Act to enact the Security of Canadian Information Sharing Act and the Secure Air Travel Act, to amend the Criminal Code, the Canadian Security Intelligence Service Act and the Immigration and Refugee Protection Act and to make related and consequential amendments to other Acts (Anti-Terror Act, 2015)*

April 24, 2015

Dear Members of the Senate Committee on National Security and Defence:

We, the undersigned national human rights organizations, members of the International Network of Civil Liberties Organizations (INCLO), are writing with respect to your pre-study of the proposed *Anti-Terror Act, 2015*. We have been informed of this pre-study by the Canadian Civil Liberties Association.

Each of our non-governmental organizations works independently in our countries to ensure compliance of our respective governments with their legal obligations pursuant to international law. In particular, the *International Covenant on Civil and Political Rights*¹ protects individual rights to robust due process protections, to liberty and security of the person, to mobility rights, to fundamental freedoms including expression and association, and to information and the right to privacy, and creates binding legal obligations upon state parties.² Furthermore, each state party to the ICCPR has an interest in the compliance of each other's undertakings pursuant to the treaty, as noted in *General Comment 31*³ of the UN Human Rights Committee (the treaty body responsible for monitoring state implementation of the ICCPR). We also note the *UN Charter*⁴ obligation of each state to promote universal respect for, and observance of, human rights and fundamental freedoms,

¹ UN General Assembly, *International Covenant on Civil and Political Rights*, 16 December 1966, United Nations, Treaty Series, vol. 999, p. 171.

² See generally Articles 9, 12, 14, 17, 18, 19, 21 and 22 of the *International Covenant on Civil and Political Rights* ("ICCPR").

³ United Nations Human Rights Committee, *General Comment 31, Nature of the General Legal Obligation on States Parties to the Covenant*, U.N. Doc. CCPR/C/21/Rev.1/Add.13 (2004).

⁴ United Nations, *Charter of the United Nations*, 24 October 1945, 1 UNTS XVI.

and the principle that “rules concerning the basic rights of the human person” are *erga omnes* obligations.

As national organizations working in our own countries to advance civil liberties and human rights, we have an interest in the application of the *ICCPR*.

We write to respectfully request that the Senate Committee consider the impact of the proposed legislation upon Canada’s legal undertakings pursuant to the *ICCPR*, which Canada ratified on October 29, 1979. Adherence to these obligations is a vital component for the advancement of international peace and security, and for global counter-terror efforts.

While some of the rights guaranteed by the *ICCPR* are not absolute but may be limited or restricted, any derogation must be of an exceptional and temporary nature, and limited to the extent strictly required by the exigencies of the situation. Certain non-derogable rights should never be curtailed or suspended⁵.

In our view, people must not be forced to sacrifice their basic rights and freedoms in the name of national security. We note the *International Commission of Jurists (ICJ) Declaration on Upholding Human Rights and the Rule of Law in Combating Terrorism (“Berlin Declaration”)*, 28 August 2004⁶, which states in the preamble:

“A pervasive security-oriented discourse promotes the sacrifice of fundamental rights in the name of eradicating terrorism. There is no conflict between the duty of states to protect the rights of persons threatened by terrorism and their responsibility to ensure that protecting security does not undermine other rights. *On the contrary, safeguarding persons from terrorist acts and respecting human rights both form part of the same seamless web of protection incumbent upon the state.*” (emphasis added)

In addition to fundamental rights and freedoms, we note the critical role of information gathering and the role of intelligence agencies in global counter-terror efforts. We believe that increases in the powers and practices of intelligence agencies must be accompanied by commensurate increases in effective accountability mechanisms. Accountability mechanisms operate to guard against mistakes and rights violations, and to ensure efficacy in protecting national security. States must ensure that their intelligence agencies respect and uphold human rights and fundamental freedoms.

Finally, we note that the international legal framework is a universal tool in the global counter-terror strategy. UN Security Council Resolution 1373⁷ (2001) called upon the international community to work together to fight global terrorism and UN

⁵ Indeed, Article 4 of the *ICCPR* sets out procedural requirements for state parties to provide notification of intent to derogate.

⁶ International Commission of Jurists (ICJ), *Legal Commentary to the ICJ Berlin Declaration; Counter-terrorism, Human Rights and the Rule of Law*, 2008, Human Rights and Rule of Law Series No. 1

⁷ S/RES/1373(2001)

Security Council 1456⁸ (2003) reiterated this commitment while also affirming in paragraph 6 that “States must ensure that any measure taken to combat terrorism comply with all their obligations under international law, in particular international human rights, refugee, and humanitarian law.” As such, it is our view that no state should promote breaches of international or foreign laws in the interests of its own domestic security.

Sincerely,

American Civil Liberties Union (ACLU)

Association for Civil Rights in Israel (ACRI)

Centro de Estudios Legales y Sociales (CELS, Argentina)

Egyptian Initiative for Personal Rights (EIPR)

Human Rights Law Network (HRLN, India)

Hungarian Civil Liberties Union (HCLU)

Kenya Human Rights Commission (KHRC)

Liberty (UK)

⁸ S/RES/1456(2003)