IN THE SHADOW OF THE LAW

A Report by the International Civil Liberties Monitoring Group (ICLMG) in response to Justice Canada's 1st annual report on the application of the *Anti-Terrorism Act* (Bill C-36)

MAY 14, 2003

INTRODUCTION

The International Civil Liberties Monitoring Group (ICLMG) appreciates this opportunity to respond to the first annual report on the application of Bill C-36, the *Anti-Terrorism Act*. The ICLMG has a broad and diverse membership that brings together international development and humanitarian non-governmental organizations (NGOs), church groups, unions, environmental, human and civil rights advocates, other faith groups and associations representing immigrant and refugee communities in Canada (a complete list of members appears in Appendix 1). Members of the ICLMG have come together out of a shared concern in protecting individual freedoms, democratic values and civil liberties in Canada.

Our report is divided into two parts. In the first, we respond to the annual report, and offer recommendations to address existing problems. In the second, we discuss serious related effects arising from the government's anti-terrorism initiative.

REPORT IS TOO NARROW IN SCOPE

Justice Canada's report on Bill C-36 (*Anti-Terrorism Act*), tabled in Parliament on May 1st, 2003, provided scant information on the use of merely two articles of the Act. It is too restrictive and limited in scope to offer a clear and just appreciation of the impact of the series of measures adopted (or still being considered) by Parliament since September 11, 2001. To achieve that appreciation, it is necessary to evaluate the overall impact of the full anti-terrorism agenda on rights and freedoms.

An ongoing independent monitoring of Bill C-36's impact on Canadian citizens and their fundamental civil liberties is necessary. The *Anti-Terrorism Act* (Bill C-36) grants police expanded investigative and surveillance powers, allows for preventative detention, undermines the principle of due process by guarding certain information of "national interest" from disclosure during courtroom or other judicial proceedings and calls for the

de-registration of charities accused of links with terrorist organizations. All of these changes occur on the basis of a vague, imprecise and overly expansive definition of terrorist activity. To fully and accurately measure and evaluate this impact, we must go beyond Bill C-36, and instead examine the overall anti-terrorism agenda put in place by our government.

Viewed together, ***this trend in legislative and policy initiatives has a far-reaching impact and represents a significant shift in the relationship between citizens and the state in Canada***. It is a trend that substantially modifies the way in which civil liberties and individual rights and freedoms have been regarded and protected by Canadian democratic values and under our *Charter of Rights and Freedoms*.

Bill C-36 amended twenty other laws, including the *Criminal Code*, and enacted the *Charities Registration (Security Information) Act.* In spite of this very broad application, the Bill has since been augmented by several other legislative measures. Even prior to Bill C-36, legislation had been introduced representing an unprecedented expansion of state power under the auspices of fighting organized crime, though never limited in its application only to organized crime. For example, in 2001, Bill C-24, *Criminal Code* amendments (Organized Crime) created an exemption from criminal liability not only for police, but also for agents of the police. The previous year, Bill C-22 received Royal Assent, creating a huge new federal agency called the Financial Analysis and Transaction Reporting Centre. It conscripted civilians in the fight against money laundering by requiring even lawyers bound by solicitor client confidentiality to report their clients' "suspicious transactions".[1]

Measures following Bill C-36 include the creation by Canada Customs and Revenue Agency, of a "Big Brother" type data bank to contain details on the foreign air travel of all Canadians. The data bank, announced in October 2002, was authorized by Bill C-23, *Customs Act* amendments. These amendments gave the CCRA power to obtain information collected by airlines as a result of the *Advance Passenger Information/Passenger Name Record Initiative*. While originally, the information was to only be retained for a 24-hour period, a Factsheet posted on the CCRA web site in October 2002 confirms that "CCRA customs enforcement data is currently kept for 6 years." The U.S. supports this standard under the *Smart Border Action Plan*. Although Minister Caplan has given assurances that the information will be used only for purposes consistent with the CCRA's mandate, and only shared subject to appropriate limitations and safeguards, there are several circumstances in which the information might be shared with security agencies and with other countries. ICLMG is concerned that the personal information contained in CCRA's data bank could become integrated into the *Total Information Awareness System* presently being developed as part of the *U.S. Homeland Security Project*. Any move in that direction ought to be reported.

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[1] Note that following a series of constitutional challenges, this particular clause has recently been removed from what is now the *Proceeds of Crime Act*. The obligations of lawyers under the Act are being reconsidered in light of the bar's ethical obligations to its clients.

Bill C-17, *Public Safety Act*, is presently being examined by a legislative committee of the House of Commons, and would amend 23 existing Acts. It contains provisions for personal information to be collected by airlines and shared with CSIS, RCMP, other police forces and various government agencies and with foreign governments, for purposes that extend far beyond air safety and national security. In fact, Minister Collenette has stated that these provisions aim to facilitate the regular work of police forces and government agencies by harnessing the potential offered by new information technologies. This would be at the expense of Canadian constitutional protections. Far beyond measures necessary to respond merely to recent risks of terrorism, these provisions actually augment and expand the scope and scale of police and government monitoring and control over Canadian citizens.

Also part of the new legislative picture is Bill C-18, presently before the House of Commons Standing Committee on Citizenship and Immigration, which would amend the *Citizenship Act* to allow for revocation of citizenship of naturalized citizens on the basis of "national security". This revocation could occur without consultation, disclosure of evidence, independent review or the opportunity to appeal a decision. A similar breach of due process is a feature of Bill C-36, which allows individuals and organizations *suspected* of terrorist links to be placed on a list, and then subjected to very severe measures as a consequence.

Finally, Justice Canada's recent Consultation Document called *Lawful Access* suggests that legislation on that subject may soon be introduced. Proposals contained in the Consultation Document would allow electronic surveillance and monitoring by police and security forces of all e-mail communications and internet surfing. Other proposals suggest mandating internet service providers to develop capacity to intercept and report on all electronic communications.

These measures are augmented by non-legislated bilateral agreements with the United States such as the *Smart Border Declaration*, signed in June 2002, which calls for co-ordination and information sharing by Canadian and U.S. police and intelligence services. The declaration also requires both countries to "collaborate" in "managing refugees" and in moving toward the harmonization of immigration and visa policies.

Each of these legislative packages is, alone, drastic and unwarranted. However, their cumulative effect represents a serious erosion of civil rights, especially with regards to due process and the right to privacy. The overall direction of such measures has been denounced by civil and human rights experts across the country, including the federal Privacy Commissioner and several of his provincial counterparts.

PARLIAMENTARY RESPONSIBILITY AND POLITICAL ACCOUNTABILITY

In each of these laws, bills and other measures, there is an unprecedented delegation of judicial powers to a handful of ministers. This contributes to an arbitrary and potentially abusive use of secret coercive power in the form of such things as "orders in council" or

issuance of "security certificates", and ultimately, to the erosion of accountability to Parliament.

What Parliamentary oversight exists over each of these pieces of legislation falls under the responsibility of several different Parliamentary committees. Without one single oversight mechanism with a mandate to monitor and assess the overall application and impact of this complex and far-reaching web of laws and security measures, the legislation will be virtually irreversible and the lack of accountability exacerbated. Further, there is no continuity or consistency at the political level in the analysis and evaluation of the laws and of their impact. Finally, the ***application of the new legislation is basically internally monitored and regulated by security forces and government agents whose jobs are dependent upon such legislation and with virtually no accountability.***

OVERBROAD INVESTIGATIVE POWERS

Many of those analyzing these recent initiatives have concluded that existing *Criminal Code* and the *Canadian Security Intelligence Act* provisions, along with powers conferred by existing international conventions and international instruments, already provide sufficient powers to allow police to effectively combat terrorism. However, even those who argue that the fight against terrorism justifies wider powers of surveillance and detention, including infringements on civil liberties and individual freedoms, must adhere to basic constitutional principles and *Charter* values.

First, ***Canada's response to terrorism needs to be proportional*** (taking into account the extent of the apparent risks in any given circumstance) ***and sharply focused on the goal of fighting terrorism***. ICLMG acknowledges the understandable prevalence of a strongly felt sense of urgency to prevent future acts of terrorism, but is aware of few proven facts shared with the public to date that justify the extent of Canada's current response. Many of these laws are not limited to anti-terrorism purposes, but have a dual purpose potential.[2] Human rights are even more likely to be eroded if anti-terrorism measures are extended to purposes unrelated to terrorism, without regard for the normal constitutional protections associated with criminal law enforcement. We are particularly concerned that ***Canada's anti-terrorism agenda is driven predominantly by a desire to meet U.S. demands to harmonize our policies with theirs (for example, immigration and refugee policies) and to subject Canadian intelligence services to imperatives defined by the draconian American security apparatus***.

Second, surely ***greater, rather than lesser accountability is called for where proposed laws would candidly compromise key rights and where, as a result, misuse is inherently more likely***. Unfortunately, that is not the case with these measures. Instead, ministerial

[2] For example, while the proposals in Bill C-17 are ostensibly for the purposes of "national security", passenger information collected by airline for travel purposes would be scoured for the purposes of domestic law enforcement completely unrelated to terrorism, and are akin to stopping traffic on bridges just to see if anyone in it is wanted.

discretion, police discretion, and official discretion are prevalent everywhere. Parliamentary oversight and the oversight of a myriad of Boards and Commissions designed to ensure appropriate performance are, at best, uncertain. For example, in an affidavit filed in the Federal Court of Canada on November 7, 2002, Shirley Heaffy, Chair of the Royal Canadian Mounted Police Public Complaints Commission, states that the RCMP is hampering the Commission's ability to probe allegations of police misconduct by refusing to hand over relevant information obtained from "confidential informants" in a case under normal review. The Chair of the Commission states that the issue is particularly important because of the broader powers to detain and arrest suspects under the anti-terrorism legislation, and she concludes that "[i]f the commission can't fully investigate complaints, the public oversight of the police will be rendered meaningless".

If greater state powers are necessary for a limited time to ensure public safety, they must be carefully tailored to meet any substantiated threat and adhere to the protections guaranteed under Canada's *Constitution* and *Charter*. They must be accompanied by recognition of a corresponding responsibility and need for accountability.

The ICLMG therefore recommends that:

1) Any increases in police powers must be accompanied by measures to reinforce the need for due process. People caught up in these security measures must have the means to defend themselves, and the public's right to know and judge state action must be preserved. Consequently, the *Anti-Terrorism Act* must be amended to guarantee due process, openness and transparency during trials related to a terrorist offence; the Act must include a hearing with full due process rights (right to notice, to disclosure and to counsel) and any decision must be subject to judicial review by the Federal Court and the Supreme Court of Canada. Similarly, sections of Bill C-18 (the *Citizenship of Canada Act*) must be redrafted to ensure at least that due process rights are respected in cases involving annulment of citizenship.

2) The broad impact of Bill C-36, Bill C-17 and other interrelated legislation, underscores the need for the creation of an overarching Parliamentary mechanism with the ability to examine and review the use and impact on fundamental rights and freedoms of all policies and legislation passed to combat terrorism. Possibilities include converting the Legislative Committee on Bill C-17 (*Public Safety Act*) into a Special Committee with responsibility for overseeing all legislation related to anti-terrorism, or by holding joint meetings of the Standing Committee on Justice and Human Rights with any other Committees charged with examining anti-terrorism legislation.

3) Any initiatives should guard against any extended and unrelated use of measures proposed to combat terrorism. For example, Bill C-17's regulations pertaining to the exchange and use of information on air travel passengers should be amended to ensure that they provide no inadvertent short-cuts for normal law enforcement

purposes, as is currently contemplated. Such short-cuts are unnecessarily costly to Canadians' basic rights and freedoms, and likely to erode both respect for the rule of law and respect for individual liberties and privacy.

4) The *safe third country* agreement between Canada and the U.S. regarding asylum seekers must be repealed. Given the proliferation of measures, many of them discriminatory[3], that undermine the rights of refugees in the U.S., to suggest that the U.S. is a "safe third country" for refugees is simply incompatible with Canada's humanitarian values and international obligations.

EXTENDED EFFECTS OF THE ANTI-TERRORISM AGENDA

It is important, but insufficient, to monitor and review the application of the *Anti-Terrorism Act* alone. To measure the actual impact of all the measures either adopted or contemplated to fight terrorism over recent years, we must look beyond the strict application of the legislation and examine what is going on "in the shadow of the law".

CRIMINALIZATION OF POLITICAL DISSENT

The task of defining "terrorism" and identifying "terrorists" has been the subject of considerable debate, both in the context of Bill C-36 and beyond. The concern is that without carefully limited scope, these heavily charged terms are likely to be too loosely applied to justify intrusive state action beyond that previously tolerated. This is a particular issue for groups and individuals critical of current government policies.

In the early hours of September 21, 2002, the *Anti-terrorism Act* (Bill C-36) was formally invoked by the RCMP, with support from CSIS, to obtain a search warrant and then carry out a raid at the residence of two Native activists in Port Alberni, British Columbia. The high profile raid was carried out by the Integrated National Security Enforcement Team (INSET) --- a creation of Bill C-36 ---- accompanied by members of the local detachment of the RCMP, members of the force's Emergency Response Team, local ambulance and fire departments. The home belonged to two members of the West Coast Warrior Society, and the purpose of the raid was supposedly to search for weapons. The entire neighbourhood was evacuated "as a safety precaution".

No unauthorized weapons were found and no charges were laid as a result of the police action. Spokespersons for the Warrior Society were told that the information used to obtain the search warrant was sealed. The two individuals concerned had been involved in indigenous issues for a number of years through organizations including the Union of BC Indian Chiefs, United Native Nations, Native Youth Movement, Indigenous Sovereignty Network and the West Coast Warrior Society.

[3] For example, the detention of Haitian asylum-seekers arriving by boat.

In an article entitled "The Hands of Terror", published in late 2001 in the RCMP *Gazette*, groups and individuals actively monitored by the RCMP involved with advocacy regarding "genetically modified food and ongoing environmental concerns about water, forest preservations and animal rights" are similarly identified as examples of potential terrorists "operating under ideology as opposed to affiliation".

In its February 24, 2003 edition, the *National Post* reported that a CSIS briefing report on counter-terrorism prepared for Wayne Easter, following his nomination as Solicitor General, identified violent fringes of the anti-globalization movement as an ongoing security concern for Canada. The CSIS briefing report was dated November 2002, just months after Canada hosted the G8 Summit in Kananaskis, Alberta without incident.

In February 2003, La Ligue des droits et libertés du Québec was denied the use of a room at the Bibliothèque Nationale du Québec to host a meeting to discuss Justice Canada`s "Lawful Access" project. A spokesperson for the Bibliothèque Nationale informed La Ligue that, following the events of September 11, 2001, the institution had adopted a new policy to restrict the use of its meeting rooms for cultural events only.

In early March, 2003, on the eve of the U.S. invasion of Iraq, the Canada Customs and Revenue Agency seized and detained a shipment of anti-war videotapes of the film "*What I've Learned About U.S. Foreign Policy"* by American documentary producer Frank Dorrel. In a letter to the tape's importer, *Global Outlook Magazine*, CCRA said it took the action because "they [the videos] may constitute obscenity or hate propaganda ." The documentary features, among others, the late Martin Luther King Jr. and actor Susan Sarandon. After reviewing the video and concluding that it did not violate any laws, CCRA released the shipment on March 12. The Canadian Journalists for Free Expression (CJFE) make the very valid point that the CCRA's involvement in vetting political material is a worrisome departure for the federal Agency. Stating that Canadians have the right to expect that the CCRA will not become "the filter through which political debate is strained", CJFE has called upon the federal government to review CCRA operations to ensure the Agency does not become a political censor.

RACISM AND RACIAL PROFILING

The difficulties in narrowly and accurately defining "terrorism" and "terrorists" are compounded by the likelihood of insidious discriminatory attitudes and beliefs affecting that task.

In a communiqué released on March 10, 2003, the Canadian Islamic Congress (CIC) indicated that hate crimes against Canadian Muslims have increased by more than 1,600% since September 2001. CIC also reported that despite such an increase, most local police services are not keeping proper data on the religion of hate crime victims, making it virtually impossible to link such crimes to hatred against Muslims.

Community leaders of Arab and/or Muslim origin have reported numerous cases of people being visited for interviews by security forces without warrants, and taken away for interrogation. Although the full extent of Bill C-36 was not implemented in these cases, it has been used as a threat to "encourage" voluntary interviews by citing the risk of preventative detention allowed under the Act. Victims of such police conduct have been afraid to come forward publicly for fear of further retaliation, but community leaders report that hundreds of such interviews have taken place.

In a commentary published in the October 16, 2002 edition of the *Globe and Mail*,[4] Sheema Khan, chair of the Council on America-Islamic Relations (CAIR), sheds light on the disappearance, secret detention and deportation by American authorities of Maher Arar and a half dozen other Canadian citizens of Arab or Islamic origin. CAIR and the Canadian Arab Federation have both accused the government of Canada of turning a blind eye to the violations of the rights of these Canadian citizens.

On February 10, 2003, the *Ottawa Sun* ran a story on CSIS activities on Canadian university campuses. It quoted a statement by the National Council on Canada Arab Relations to the effect that students of Arab origin were being approached by CSIS agents for questioning, and were being threatened with deportation and revocation of their citizenship if they did not provide information about community members.

On November 7, 2002, U.S. Attorney General John Ashcroft announced[5] heightened security measures at U.S. borders, including the introduction of the *National Security Entry-Exit Registry System*. He told Canadian media that up to that date, 14,000 people from 112 countries had been subjected to special security measures, including lengthy interrogations, fingerprinting and being photographed. Of that number, he said that 1,400 (10%) were Canadians. Of the total number of people targeted, 172 had been arrested for various reasons, but only one for reasons "related to terrorism". On November 14, 2002, *Radio-Canada* reported that in the first two weeks of that month, 100 Canadian citizens of foreign origin had lodged formal complaints with the Department of Foreign Affairs and International Trade (DFAIT) after being "filed" by U.S. immigration agents. Figures obtained from DFAIT by ICLMG indicate that between November 2002 and the end of February 2003, 59 complaints were registered. With few exceptions, these complainants are Canadians of Muslim and/or Arab origin. As a result of this situation, thousands of Canadian citizens are afraid to travel to or through the United States. Arab and Muslim organizations have asked DFAIT to post a travel advisory to this effect.

On September 26, 2002 Deputy Minister of Justice, Morris Rosenberg told a conference of security and intelligence experts that although he does not advocate racial profiling, neither would he automatically rule it out as a technique.[6] He also said the courts may eventually have to determine if racial profiling is justified.

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[4] Page A 17
[5] Announcement made during a press conference held at the U.S.-Canada border in Niagara Falls.
[6] Conference sponsored by the Canadian Association for Security Intelligence Studies.

In a commentary published in the *Toronto Star* on March 9, 2003, Raja Khouri, president of the Canadian Arab Federation, wrote: "The stereotypes and racist overtones put forward by some in the mainstream media confirmed the permissibility of singling out Arabs and Muslims for suspicious treatment. They are guilty by association, suspect by nature of their ethnicity and religion, therefore, an acceptable subject of hate". Questioning whether multiculturalism can survive the security agenda, Mr. Khouri said Canada "has effectively engaged in an exercise of self-mutilation: stripping away civil liberties it holds dear, trampling on citizens' rights it had foresworn to protect, and tearing away at its multicultural fabric with recklessness".

REFUGEE POLICIES

Much as Canadians of Muslim and/or Arab origin have experienced the brunt of our new anti-terrorism agenda, people seeking refuge in Canada have also felt the impact of that agenda, and with virtually no recourse for reporting discriminatory treatment.

In the fall of 2002, Citizenship and Immigration Canada undertook a project at Pearson International Airport to detain arrivals, most of them refugee claimants, of uncertain identity. According to the *Standard Operating Procedures* [A55(2)(b*)*] *Detention at Greater Toronto Enforcement Centre*, persons are to be detained on the following grounds: "claimed identity questionable, concerned person's overall credibility and/or evasiveness, lack of co-operation." Those most affected by the project are refugee claimants, many who must travel without valid documentation. Paragraph 1, Article 31 of the United Nations *Convention Relating to the Status of Refugees* recognizes that refugees may have to use illicit means to enter a safe country, and requires that host countries "shall not impose penalties on that account". Yet, one border guard told the *Globe and Mail*: "Before we were expected to release, now we're encouraged to detain."[7]

On December 5, 2002, Canada and the U.S. signed a "*safe third country*" agreement as part of the *Smart Border Declaration* adopted between the two countries after the September 11 terrorist attacks. The agreement came about as a result of complaints from some U.S. politicians that Canada's refugee system is too wide open and presents a security risk. Under this agreement, Canada can turn back refugee claimants who arrive at land borders, so they would instead be compelled to make their claims for asylum in the United States, based on the principle that refugees should claim protection in the first country they reach.

On January 27, 2003, Citizenship and Immigration Canada issued new instructions permitting "direct backs" of refugee claimants at the U.S.- Canada border without assurances from U.S. authorities that the claimants would be able to appear for their appointments. "Direct backs" is the term used to refer to temporary returns to the U.S. of claimants who are given a future appointment to pursue their claims. Those directed back are processed and possibly detained by the U.S. authorities, thus potentially depriving them of the right to pursue their claims in Canada. As of March 5, 2003, 432

[7] *Globe and Mail,* November 28, 2002, Page A8.

claimants had been directed back from the Lacolle border point alone. Of these, 133 were detained by the U.S. authorities. Eighty four of those detained had posted bond, leaving 49 still in detention as of March 5th. Collectively, those released on bond have paid well over $125,000 U.S. in bond money, most of which they will never be able to reclaim. Those unable to secure release from detention, either because they cannot pay the bond or because they are detained without possibility of release, also lose the possibility of pursuing their claim in Canada.

In the *Regulatory Impact Analysis Statement* (RIAS) accompanying the draft *safe third country* regulations, published in the *Canada Gazette*, 26 October 2002, the government acknowledged that the agreement "will likely have differential impacts by gender." The RIAS goes on to say that "Canada and the United States have different approaches to the treatment of claims based on gender-based persecution." There are reports that U.S. Attorney General John Ashcroft is preparing to issue new regulations that would severely restrict protection for women fleeing gender-based persecution in the United States.

CHILLING EFFECT ON INTERNATIONAL DEVELOPMENT NGOS AND HUMANITARIAN ASSISTANCE

The new *Charities Registration (Security Information) Act* enacted as part of Bill C-36 enables the government to revoke the charitable status of an existing charity or deny a new charitable status application if it is determined that the charity has supported or will support "terrorist activity". It can also lead to the freezing or seizure of the charity's assets and expose its directors to civil liability for breach of their fiduciary duties if not adequately protecting these assets. The process is initiated by the issuance of a security certificate by the Solicitor General and the Minister of National Revenue where they have "reasonable grounds" to believe that the organization has made, makes or will make resources available, directly or indirectly, to an entity that has engaged or will engage in a "terrorist activity". After a charity has been served notice of the issuance of a certificate, it is then reviewed by a judge of the Federal Court for a determination of its reasonableness. During this judicial consideration, the judge must give the charity a summary of the grounds giving rise to the issuance of the certificate, but may limit the disclosure of information on the grounds of "national security", especially if the evidence is based on information obtained from a foreign government or other foreign sources. Furthermore, evidence submitted by the ministers to the judge can include information that would be inadmissible in a court of law. This procedure severely limits the capacity of the charity to defend itself and raises serious concerns from the point of view of basic principles of natural justice and due process.

As a result of this legislative change, there is a growing concern among Canadian religious and humanitarian non-governmental organizations (NGOs) that humanitarian assistance could be compromised or discouraged in areas of conflict where it is often impossible to avoid relating to all involved combatants in the process of delivering assistance to those in need. Organizations might be reluctant to get involved in those conflicts because of the risk of "proximity" with organizations on the UN list of

suspected "terrorist organizations" and the dramatic consequences for any humanitarian NGO accused of "links" to those organizations. Even by following best practices and international standards, taking considerable precautions and using due diligence to avoid situations that might bring about liability, many organizations feel that the vague definition of "terrorism" in the legislation and the lack of due process leave them vulnerable.

There is also concern that the legislation will have an ongoing detrimental impact on the public's perception of charities by associating charities with financing of terrorism. This would have a significant chilling impact on charities' ability to pursue their objectives in a climate where many organizations are already struggling to secure sufficient support to continue their operations.

Canadian NGOs' ability to implement development programs and/or deliver humanitarian assistance has already been hampered by tightened visa requirements, both in Canada and in countries where these organizations operate. Canadian NGOs have reported cases where southern partners are being refused visas to attend meetings in Canada. Inversely, Canadian aid workers and human rights defenders have experienced increased difficulty in obtaining visas for certain countries in situations of conflict, civil violence and human rights abuses, such as Colombia.

One mainstream church-based NGO reported to ICLMG that its financial institution refused on two occasions to transfer funds earmarked for humanitarian relief and reconstruction projects in Iraq.

In February 2003, the Canadian International Development Agency (CIDA) asked certain NGOs involved in the Middle-East for more detailed information about any program or project that could be related to Iraq. The inquiry seemed to be prompted by a Freedom of Information request, and by concerns at CIDA that any CIDA funded program not involve an organization on the UN list of suspected terrorists. Humanitarian agencies are concerned that programs in countries such as Lebanon or Colombia, for instance, could be jeopardized by fear of potential "proximity" with "listed entities", like Hezbollah or FARC.

POLICY ENVIRONMENT AND CIVIL LIBERTIES

The policy environment and discourse in government, corporate, media and even some academic circles are increasingly dominated by the "security agenda" and a very palpable desire to respond to U.S. interests and demands in that area. This is best illustrated by proposals by the Canadian Council of Chief Executives to move toward the creation of a "North-American Security Perimeter" and the proposal by Minister of Citizenship and Immigration Denis Coderre about the introduction of a national ID card. For her part, Customs and Revenue Canada Minister Elinor Caplan has said that Canada has not ruled out forcing people to notify officials when they leave the country, a measure similar to the U.S. stringent entry and exit control system to be in place by the end of 2005. On

March 29, the *Ottawa Citizen* also reported that officials within the Solicitor General's Department are keen to link justice and police computer data systems not only between federal and provincial law enforcement and justice agencies, but also to explore expansion of the Canada Public Safety Information Network (CPIC) to include exchange of information between Canada and the United States.[8] This initiative, as well as provisions for the use and disclosure of information from the Canada Customs and Revenue Agency's data bank on airline passengers, is daunting in light of the U.S. *Total Information Awareness System*, a project to create a centralized data bank on every single U.S. citizen.

We could soon find ourselves in a situation where all personal information on Canadians will be in the hands of, and managed centrally by American security agencies unaccountable to Canadian Parliament and the Canadian public. There is a very disturbing trend in this emerging discourse that "security" will only be achieved at the expense of sovereignty and the civil liberties that Canadians have always regarded as fundamental. These fundamental protections are also enshrined in our *Charter of Rights and Freedoms*.

Canada's Privacy Commissioner and several of his provincial counterparts have stated that combined police and bureaucratic surveillance powers from initiatives such as CCRA "Big Brother" database, Bill C-17, the proposed Lawful Access legislation and the proposal for a national ID card represent an unjustifiable intrusion into the fundamental human right of privacy. In a press release dated November 1, 2002, the federal Privacy Commissioner warned that "the events of September 11 should not be manipulated into becoming an opportunity – an opportunity to expand privacy-invasive police powers for purposes that have nothing to do with anti-terrorism". He also declared that since the introduction of Bill C-55 (predecessor to Bill C-17), he has used every means at his disposal to make the crucially important privacy issues at stake known and understood by all ministers and top government officials involved, but that he has been unsuccessful in obtaining an appropriate response. Mr. Radwanski concluded that "it is now up to Parliament to explain to these people that privacy is a fundamental human right of Canadians that must be respected, rather that treated with the apparent indifference that the Government is showing."

CONCLUSION

The events following September 2001 have made some people think that weakening legal safeguards and trampling on human rights will make us safer. In fact, though, we are made safer by laws and processes that guarantee respect for everyone's rights.

We deplore the fact that many within Canada's policy elite bow to persistent U.S. pressure – direct and indirect - to bring our laws and practices into conformity with theirs. Many Americans also consider that their essential liberties and constitutional guarantees are being threatened. Last year for instance, surveillance requests by the U.S. federal

[8] In an article authored by Jim Bronskill, titled *Cash woes plague anti-terror data bank*

government under the *Foreign Intelligence Surveillance Act* – intended to hunt down foreign spies- outnumbered all requests under domestic law for the first time in U.S. history. The *Homeland Security Project*, the *Total Information Awareness System*, the *National Security Entry-Exit Registration System*, the profiling and registering of residents based on country of origin, religious background and/or gender, and many other related initiatives, threaten to undermine Canadian values and constitutional guarantees, as well as national and international human rights. There is an alarming tendency to bring our laws, administrative practices and regulations into greater "harmony" (sic) with those of the U.S. without adequate public or Parliamentary debate.

We believe that Parliament and the government of Canada must reassert a commitment to the essential rights and protections of Canadians as embodied in Canada's *Constitution* and *Charter of Rights and Freedoms*. All proposed legislation dealing with security and concerns like international terrorism must be tested in the light of these prior and fundamental claims.

Finally, we reiterate our call for the immediate restitution of due process in all judicial procedures and for the creation of a Parliamentary mechanism to examine and to oversee the combined effect of all the legislation and other measures (present and future) that form part of Canada's anti-terrorism agenda.

> "*The true danger is when liberty is nibbled away, for expedience, and by parts*."
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> Edmund Burke.

International Civil Liberties Monitoring Group

The International Civil Liberties Monitoring Group is a coalition made up of NGOs, churches, unions, environmental advocates, civil rights advocates, other faith groups and groups representing immigrant and refugee communities in Canada. Members include Amnesty International, Association québécoise des organismes de coopération internationale, Canadian Association of University Teachers, Canadian Arab Federation, Canadian Bar Association, Canadian Auto Workers Union, Canadian Centre for Philanthropy, Canadian Council for International Co-operation, Canadian Council for Refugees, Canadian Ethnocultural Council, Canadian Friends Service Committee, Canadian Labour Congress, CARE Canada, Centre for Social Justice, Council of Canadians, CUSO, B.C. Freedom of Information and Privacy Association, David Suzuki Foundation, Development and Peace, Greenpeace, International Development and Relief Foundation, Inter Pares, Muslim Lawyers Association, Ontario Council of Agencies Serving Immigrants, Primate's World Relief and Development Fund, Quebec Civil Liberties Union, Rights and Democracy, United Steelworkers of America, and World Vision Canada.

Friends of the ICLMG

Hon. Warren Allmand; Mr. Allmand is a former Solicitor General of Canada and the immediate past president of the International Centre for Human Rights and Democratic Development now known as "Rights and Democracy".

Hon. Edward Broadbent; Mr.Broadbent is a former leader of Canada's New Democratic Party. He was the first president of "Rights and Democracy".

Hon. Gordon Fairweather; Mr. Fairweather is the first chief commissioner of the Canadian Human Rights Commission. He has been Attorney General of New Bunswick and a member of the Canadian House of Commons.

Hon. David MacDonald; Mr. MacDonald is a former Canadian Secretary of State and Minister of Communications. Mr. MacDonald has been Canada`s ambassador to Ethiopia.

Hon. Flora MacDonald; Ms. MacDonald is a former Canadian Minister of Foreign Affairs and a former Minister of Communications.

The Very Reverend the Honorable Lois Wilson; Rev. Wilson is a former Moderator of the United Church of Canada and a recently retired member of the Canadian Senate.