



The Honourable Ralph Goodale
Minister of Public Safety
269 Laurier Avenue West
Ottawa, Ontario K1A 0P8

March 10, 2016

Dear Minister,

We are writing this Open Letter to offer a set of recommended principles to guide the anticipated consultations you will soon be launching further to the government's commitment to review and revise Bill C-51, the *Anti-Terrorism Act 2015*. We urge you to take an approach that demonstrates a commitment to protect national security by upholding human rights and rejecting the false dichotomy of rights or security.

Our organizations all have serious concerns about the numerous human rights problems associated with this new law. As a result, over the past year we have appeared before parliamentary committees, raised concerns with UN bodies, turned to the courts, spoken to audiences across the country, launched campaigns and carried out media interviews, pressing for the concerns to be addressed. We therefore welcome the prospect of reform.

Our organizations have decades of experience engaging in debates about Canada's national security laws and policies. We have frequently raised concern that new laws have been adopted in piece-meal fashion, propelled mainly by political pressure arising from a public climate of anxiety associated with a particular attack or threat. Those reforms have gone forward without a proper assessment of actual gaps and needs and in the absence of a strong underlying human rights framework. That was certainly the case with Bill C-51.

The upcoming consultations offer a valuable opportunity to launch a reform process that will enhance the effectiveness of Canada's national security laws and policies while also maximizing human rights protection. Towards that goal we offer the following Guiding Principles for the consultation process.

- Wide scope: go beyond C-51

It is vitally important that the consultations and the eventual law reform not be limited to Bill C-51. While that legislation undeniably contains many serious shortcomings, with respect to both human rights and national security, there are numerous other laws, regulations and policies – many longstanding – that need attention as well. Many of these laws interact in complex ways. As such, all should be examined in a holistic manner.

- Meaningful timing: before and after legislation is tabled

It would be unfortunate if the government were to proceed by way of drafting a Bill and then seeking expert and public input. Consultations then take on the character of political debate rather than thoughtful and constructive exchanges about broad principles and different options. Moreover, Members of Parliament do not have access to the legal opinions considering fundamental rights that preceded the tabling of the bill, and may be hampered in their ability to independently assess constitutional vulnerabilities. As such, we urge that consultations be carried out both in advance of legislation being drafted and then also through the conventional means of committee hearings once a Bill has been tabled.

- Champion human rights: uphold the Charter and international law

National security reform in Canada over the years has, at best, approached Canada's national and international human rights obligations as a secondary consideration and, at worst, has disregarded those obligations. That approach serves to reinforce the misguided and dangerous assumption that national security and human rights are contradictory, rather than mutually reinforcing, goals.

This miscalculation in official policy has led to considerable, and avoidable, harm to members of vulnerable groups within Canadian society, such as non-citizens and minorities. Well-known examples of overbroad, discriminatory and unconstitutional action by security agencies has eroded the faith members of targeted communities could reasonably put in basic human rights protections. The Canadian Muslim community at-large has been harmed by a hostile social and political climate, produced to some measure by poor public policy and messaging around human rights and national security issues.

This time we urge you to put human rights at the heart of the consultations and eventual reforms. One key premise should be that national security related recommendations that have been made to Canada by UN human rights experts and bodies will be implemented.

- Consult widely: wide expertise and experience, including affected communities.

Any pressure to limit the reach or accelerate the timing of consultations to save money or simplify the process should be resisted. That was a particularly glaring shortcoming during the parliamentary reviews of Bill C-51. The opportunity to truly get it right with this set of reforms will be lost if the government does not draw on the impressive expertise and experience with respect to national security and human rights. It is particularly vital that the perspective of those communities most directly affected by counter-terrorism measures is heard.

- Ensure transparency: be open to the public

National security is very often shrouded in secrecy, both with respect to individual cases and clarity around laws, policies and processes. But for national security to be truly effective, public understanding, confidence and support is essential. Canada has progressively entrenched a tendency for excessive secrecy with respect to national security matters, going beyond most of our allies. This consultation should be guided by a commitment to maximum possible access to information for the public. We further urge the government to be forthcoming about the potential *Charter* impacts of proposed legislation and transparent about their justifications for these impacts.

- Right past wrongs: remedy human rights violations

These consultations and subsequent law reform will proceed against a backdrop of several unresolved cases of individuals who have experienced serious human rights violations, often including torture, for which Canadian security agents have been directly or indirectly responsible. That responsibility has been documented and confirmed through court rulings and judicial inquiries. Yet in most of those cases there has been no redress or accountability. Ongoing failure to remedy these past injustices undermines any effort to demonstrate a new commitment to human rights in Canada's approach to national security. Parallel to the upcoming consultations we urge the government to empower a judge or other independent and impartial expert to review cases involving national security-related human rights violations and make recommendations for resolution.

- Evidence-based: assess gaps and evaluate needs

Past national security law reform has always suffered from a failure to properly evaluate existing laws, policies and resources and offer evidence as to gaps and needs. Consultations and proposals for reform will once again be undermined without information that properly analyzes what is already in place in Canada and carefully evaluates shortcomings to delineate whether what is needed is truly legal reform or whether it may instead relate to resources for proactive and preventative initiatives, training or improved systems.

We would welcome an opportunity to meet with you or your officials to discuss our recommendations.

Sincerely,



Alex Neve
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Amnesty International Canada (English branch)

On behalf of:

Amnesty International Canada (English branch)
Amnistie internationale Canada francophone
British Columbia Civil Liberties Association
Canadian Civil Liberties Association
International Civil Liberties Monitoring Group
La Ligue des droits et libertés
National Council of Canadian Muslims