

# **Civil Liberties, National Security & International Solidarity**

## How the “war on terror” affects international co-operation

by the  
International Civil Liberties Monitoring Group

March 27, 2017

There are few countries today in which citizens and their civil society organizations are not severely affected by the encroachment of the national security state, and the use of “anti-terrorism” to repress dissent and political opposition.

Canada has seen its own lurch in that direction, starting with the first Anti-Terrorism Act of 2001, up to its successor, Bill C-51, the Anti-Terrorism Act, 2015, and with a myriad other policies and laws in their orbits: no fly lists, limits on citizenship, changes to immigration policies, audits of charities, funding cuts, and attacks on freedom of association, expression, movement and privacy rights.

These laws and policy decisions don’t simply have an impact at home. They also pose severe consequences abroad, both in their effect on Canadian organizations working in solidarity with allies internationally, and in the social license these policies grant to other governments to follow suit.

For 16 years, the International Civil Liberties Monitoring Group (ICLMG) has been taking up this cause: defending rights and freedoms in Canada and internationally from the impact of the war on terror, from the ongoing creep of anti-terror laws and from the secretive dealings of national security agencies.

This has been a difficult task. However, with the current context of a Canadian government nominally more favourable to the protection of rights, and an international landscape that presents major threats to fundamental freedoms, this is an important moment for action. The ICLMG’s broad membership and international partners – ranging from human rights to environmental to labour to faith-based groups – positions the coalition well to work to address the shrinking space for civil society.

This document presents our understanding of the overlap in issues of interest to the ICLMG and the international cooperation and development sector, and presents opportunities for what we see as powerful areas for further collaboration.

## **What is the ICLMG?**

The International Civil Liberties Monitoring Group was founded in early 2002, a response to the aftermath of September 2001 and the introduction of Canada's own anti-terror and enhanced national security regime. It currently brings together over 40 human rights, labour, faith-based, environmental, civil liberties, and development organizations, including the Canadian Council for International Co-operation (CCIC).

ICLMG protects the rights of people in Canada affected by national security policies and legislation, as well as those of Canadian citizens and permanent residents outside of Canada. It carries out policy research to examine and critique the ways that Canadian policy decreases safety, security and fundamental freedoms domestically and internationally, including the capacity of civil society organizations (CSOs) to carry out their international programs.

ICLMG emerged from a far-sighted instinct that what was coming was precisely the world that we inhabit today.

### **A coalition born in the international development sector**

ICLMG's founders recognized that the consequences of the new policy regime on civil liberties needed to be addressed both domestically and at an international level. Several international development and cooperation organizations, including CCIC members, were among the charter members of ICLMG, and together they provided a significant source of funding of ICLMG's work.

Until 2010, the CCIC housed ICLMG and its secretariat, and until 2012, hosted and co-chaired its meetings and general assemblies. CCIC regularly collaborated in ICLMG policy advocacy and public actions.

From its inception, ICLMG has been working closely with the international sector, including CCIC and its members, to incorporate concerns from the international development sector. In the current context, we have an opportunity to address these issues even more systematically.

### **International context**

In the geopolitical aftermath of September 2001, most countries have developed national security and anti-terrorism laws as the primary framework for the repression of dissent and political opposition.

This is the reality as much in the global South as it is in the global North, in the Persian Gulf and Middle East, and throughout Asia, Africa, and Latin America. It is also the reality here in Canada

and amongst Canada's NATO allies, driven inexorably by US imperatives, policies and actions. And it just as deeply affects other northern powers, such as Russia and China.

In a profound sense, this new reality links Canadian CSOs with our colleagues and counterparts globally in a way that is different than perhaps ever before. Rather than merely promoting the *aspiration* of One World, we now find ourselves actually living in one. However it is not the One World that we long aspired to, in which humanity moves ever-closer to achieving the principles of global peace, benevolent planetary interdependence, and universal social, political and economic equality. Rather it is One World of increasing social control and inhibition, of terror and repression, of untrammelled militarism, of [widespread erosion of civil liberties and human rights](#).

This is the circumstance we share with our counterparts, friends, allies, in countries and communities around the world, affecting the context and conditions of our humanitarian and development action.

It is imperative that we acknowledge this reality with clarity and vision, framing our open resistance to this state of affairs as part of our international social solidarity and common cause action as international NGOs within global civil society.

## **How does this new reality impact Canadian NGO counterparts?**

The history of the Canadian international NGO movement is rooted in social justice and human rights, based on solidarity and North-South civil society partnerships.

It is based in a shared belief that genuine development can only be achieved under conditions of peace, justice and good governance. Guided by those principles, NGOs have a long history of engagement and experience related to the protection of human rights (e.g. refugee rights, right to humanitarian assistance, etc.), the promotion of the Rule of Law under principles of fundamental justice, and to peace-building and national reconciliation processes.

These fundamental principles are currently under threat worldwide, severely impacting the work of our counterparts in other countries.

### ***Official Development Assistance, civil liberties and political & human rights***

Many donor countries have imposed as a condition for official development assistance (ODA) that specific recipient countries adopt or cooperate with a variety of anti-terrorism laws and measures, diverting resources from human, social and economic development while undermining local CSO responses to deteriorating social and economic conditions.

Internationally, ODA has been re-directed from poverty reduction to anti-terrorism or so-called “security” programs by some donor countries. In one instance, the UK has used ODA money to fund a United Nations’ program to document refugees in U.N. camps by collecting biometric data, including DNA.

In its attempts to block African migration, the EU is providing “development funding” to, among others, Sudan’s Omar Al-Bashir (the first sitting president to be indicted by the International Criminal Court) to build detention centres for migrants. Similar funding has been provided in countries in West Africa.

In 2016, the OECD changed its definition of ODA to include counterterrorism and military activities or training, allowing this kind of national security funding to help donor countries attain the goal of allocating 0.7% of ODA as a percentage of GNI towards development funding.

### ***State control: restrictions on activities and access to international funding***

Many governments have in the past few years introduced legislation to selectively monitor, control, tax, and even prevent the receipt by national CSOs of international NGO contributions.

Similarly, the presence and activities of international NGOs are also increasingly constrained and monitored, with expulsions not uncommon.

Recent examples include Malawi and India. In Malawi, the government has [drafted a policy](#) that would ban all CSOs from receiving foreign funding and impose other financial and political restrictions on their work. The Indian government is using a law that requires local NGOs to register under the Foreign Contributions Regulation Act (FCRA) to [stifle dissenting opinions](#) and to undermine the constitutional rights of its citizens.

### ***Criminalization of dissent and alternative perspectives on social and economic development***

By the very virtue of their activities, partners of Canadian NGOs are often seen by their own national and local governments as critical of government policy and actions, and as a political opposition force.

Many governments have followed the lead of Northern donors, such as Canada, by introducing anti-terrorist legislation that is so broad in definition and arbitrary in application that local CSOs find themselves under real threat of charges of terrorist action (or sympathy with it) against the state and the nation. In October 2016, the UN Special Rapporteur on freedom of peaceful assembly and of association [raised alarms](#) over Ethiopia’s use of anti-terror and national security laws to arrest protesters and stifle dissent. Similar concerns have been [raised](#) over Brazil, Cambodia and Malaysia.

Legitimate action by communities and their organizations to protect and defend their communities, land and livelihoods, are increasingly criminalized as terrorist actions and a threat to national security and national interests, often defined explicitly in economic terms. This is particularly true in the context of organizing and advocacy against the negative effects of mega-projects and large-scale industrial production, including the impacts of agricultural mono-culture and unrestrained resource extraction. For example, a 2016 report entitled [\*In the National Interest?\*](#) (published by ICLMG and MiningWatch Canada) documents how land defenders in Latin America face criminalization and being labeled “terrorists” and “threats to national security” for opposing mining and other extractive industries.

Traditional and minority communities in particular have become a lightning rod in this polarizing situation. Legitimate debate about rights, autonomy and appropriate development options is now characterized in unflinching national security terms. This is often backed by repressive legislation that characterizes challengers of the official line as enemies of the state, subject to detention and worse, including extrajudicial detention and assassination. The report on repression of CSOs by the Indian government referred to in the previous section explains that it is often [\*minority CSOs\*](#) who are facing the greatest criminalization and attacks under the law.

Defense of people and communities caught up in these forces is now a critical obligation of the international NGO sector that has long promoted the very activities, and people, that are now threatened.

### ***Erosion of social fabric, community and community infrastructure***

Shut-down of political discourse and repression of social mobilization and community leadership, along with deteriorating material conditions in communities affected by these dynamics, contribute to the erosion of community, community infrastructure and social fabric. These are precisely elements that are the focus of the international social development sector, and upon which the progressive social transformation they promote depends.

### ***Uprootedness, refugees and migration***

As these forces spread, entire populations are becoming uprooted, seeking refuge in wider concentric circles of migration from the locus of repression. Communities and entire regions are losing the demographic critical mass to continue to develop and thrive as a human place, socially, economically, and culturally. This is not merely a collateral effect, or accidental consequence of forces out of control; in many countries, from Syria to Myanmar, state violence is backed by legislation, and defended by the rhetoric of national security and the propaganda of nationalism.

Indeed, many of the humanitarian emergencies in which Canadian NGOs currently intervene are rooted in and exacerbated by the factors described here. And these same factors simultaneously undermine local and international capacity to provide such assistance. Not least, often the

affected populations are also cursed by the cloud of official defamation, and are described not as victims, but as the threat to be obliterated.

### ***Criminalization and marginalization of indigenous and traditional communities; ethnic minorities***

These dynamics are manifest most obviously in places where polarized interests have now lined up squarely to identify indigenous/traditional communities and ethnic minorities as a threat to the nation and the state. The strategy of characterizing the activists not only as “other”, but as potential terrorists and a mortal threat to the nation, has become a keystone of this struggle.

We have seen this in Canada, where Indigenous activists have [denounced](#) Bill C-51 as threatening their rights to protect their territory and resources. National security and anti-terror programs were used in the [shutdown](#) of the Dakota Access Pipeline protests in the United States, and the right wing in Chile has [called on the government](#) to brand Mapuche activists as terrorists and use the associated laws to prosecute them.

### **How does this new reality impact Canadian NGO operations?**

The current reality in Canada has been long in the making. Since the 9/11 attacks on the United States and the initial *Canadian Anti-Terrorism Act*, national security laws have been exerting pressure on our ability to protect human rights and civil liberties in Canada and abroad.

It was clear from the outset that security would win out over rights. This was exacerbated after the election of 2011, which saw a majority Conservative government elected. The Conservative government introduced numerous pieces of legislation, policy revisions and funding decisions that put a priority on “national security” above all else. The repercussions persist, and there has been little indication that – beyond softer words – concrete action will take place to significantly improve the situation.

Because of this, the type of peace-building activities necessary to the work of Canadian development organizations is now impossible to carry out in some zones of conflict where humanitarian assistance, protection of human rights and peace building are most needed.

This type of work inevitably implies having encounters and dialogue with all sides of a conflict at the local level. This could lead to accusations of collaboration, or “sympathy,” with terrorists being levelled against a Canadian NGO if one of its interlocutors is even associated with an organization listed by Canada as a “terrorist entity.”

Many NGOs also have traditionally worked directly in Canada to assist and fund human rights activity. Bill C-51, the new *Anti-Terrorism Act* brought in by the Conservative government in 2015, expanded the definition of what constitutes a terrorist act to cover a wide range of

activities. This includes interfering with “critical infrastructure” such as pipelines and highways; protests against this kind of infrastructure could clearly fall into this category.

As a result, some NGOs have disengaged from political or material support for such actions and programs, which are often in support of those most marginalized and in need of assistance.

### ***Constraints from Canadian Government***

Global Affairs Canada’s funding conditionality and bureaucracy are completely out of step with the world that NGOs must navigate, and with the transitional needs of beneficiary communities. This applies in both the political and logistical realms.

For example, in 2013 Canada became the only country to list the Taliban as a terrorist entity. This has made NGOs involved in local peace-building efforts in Afghanistan [vulnerable to government recrimination](#), resulting in a chill and a disregard for the respect of Humanitarian Law.

Quite aside from such chilling legal constraints, the incredibly insecure, onerous, and time-consuming bureaucracy of open-bidding proposals premised in obtuse frameworks, are inappropriate and counterproductive to agile NGO responses to the emergencies found in conflict situations and within repressive regimes that criminalize the actions of civil society organizations as political dissent.

There are also ongoing issues with government departments beyond Global Affairs. For example, under anti-terrorist legislation, if Canadian NGOs have relations with organizations linked with a listed terrorist entity, they can be accused of “facilitation” or “association” with terrorist entities, have their assets frozen and lose their charitable status. Often, no amount of due diligence can prevent such a situation. In such a case, an NGO is unable to defend itself, as it has no access to its own resources to secure a lawyer, and it is illegal for a lawyer to be associated with it.

This is not hypothetical. In April 2011, the Canada Revenue Agency (CRA) revoked the charitable registration of IRFAN-Canada, arguing on tenuous grounds that the charity had directly or indirectly provided funding to Hamas, which is listed as a terrorist entity in Canada. IRFAN-Canada challenged the revocation and its appeal was scheduled to be heard before the Federal Court of Appeal in May 2014.

In April 2014, just days before IRFAN-Canada’s scheduled appeal, the Minister of Public Safety listed it as a terrorist entity under the Criminal Code for alleged links to Hamas. The fact of the listing and its timing, only days before IRFAN-Canada’s scheduled court hearing on the revocation of its charitable status, were severely criticized by the organization and human rights advocates. IRFAN-Canada asked the Court to defer its appeal while it sought to have its name removed from the terrorist list. The Court granted this request.

However, by virtue of the listing, it became an offense to provide material or financial assistance to IRFAN-Canada. This meant that IRFAN-Canada could neither raise funds to cover legal costs nor receive external support in seeking legal counsel. It is also important to note that the evidence used by Public Safety Canada to place IRFAN-Canada on the terrorist entity list was based on the flawed logic that IRFAN-Canada sought to challenge in its appeal of the CRA decision.

When an organization is listed as a terrorist entity, there is no procedural fairness in the legal process allowing for appeal. The accused organization is denied access to the full evidence and the hearing at the Federal Court is held in secret without the presence of the accused or the lawyer. This violates the Canadian Charter of Rights and Freedoms, which guarantees an accused the right to know the evidence in order to effectively argue the case.

IRFAN-Canada's case is ongoing.

### ***Border & visa restrictions***

Canada has severely tightened border controls, such that visa denials for legitimate visitors to Canada are increasingly the rule rather than the exception. These policies affect NGO counterparts from Africa, Latin America, the Middle-East and Asia, and threaten North-South solidarity. They render it impossible to develop and nurture genuine partnerships with southern counterparts whose mobility rights are restricted.

A recent example was the denial of visas for participants in the World Social Forum in Montreal in August 2016. Over 200 delegates saw their visas rejected, and many others reported not even attempting to receive a visa, based on the negative reputation Canada has developed. This comes in the context of a well-known, well-regarded international gathering that focuses on debate and discussion. Organizers complained that Canada's policies severely limited participation and the ability to engage in truly international discussions.

International agreements such as the Safe Third Country Agreement with the United States and Designated Countries of Origin have raised concerns since their inception. They are even more dangerous now that the United States has implemented draconian new immigration rules.

Canada's implementation of such rules is problematic domestically, but just as concerning is that the example Canada gives encourages similar regimes to flourish internationally.

### ***Financial controls and tracking***

The Financial Transactions and Reports Analysis Centre of Canada (FINTRAC) keeps records of what the government deems to be suspicious transactions. But its vague rules mean that many international NGO financial transactions may be reported and stored by the national security apparatus, both of Canada and of other governments.

Information gathered by the CRA can also be shared with the RCMP. The information can then be used for other investigations. This was exacerbated by recent politically motivated audits that targeted human rights and development charities, among others.

### ***Domestic and international information sharing***

The above issues are made worse by new rules of information sharing, brought in through various pieces of legislation, but most importantly the *Security of Canada Information Sharing Act* (SCISA, part of Bill C-51 and established in 2015).

Information collected by government agencies can now be shared with 17 agencies and departments – ranging from CSIS to Health Canada, to the Canadian Border Services Agency and to Global Affairs – on the basis of national security concerns. The wording is vague and the rules unclear. But the result is that the work of NGOs is monitored and profiled to an ever-greater degree.

Even when such monitoring does not result in charges, it creates a chill that any form of dissent will be recorded and potentially used against an NGO and humanitarian activists. This invasion of private information impacts and implicates both the Canadian NGO staff *and* the staff of counterpart organizations travelling on program-related business to and from Canada.

The No fly-list (officially the Passenger Protect Program) is also of concern. Not only is it problematic in restricting travel, but also necessitates the gathering and sharing of information about the movement of people throughout Canada and internationally. Such information is shared with other jurisdictions without the knowledge of travellers.

The information gathered under both SCISA and the no-fly list are also subject to sharing arrangements with the Five Eyes countries – Canada, the USA, Australia, New Zealand and the UK. Canada exerts no control over how this information is used by these other jurisdictions. The current government in the United States makes this information-sharing even more concerning.

### **Lack of clarity and public information**

While governments collect information on the work of NGOs, their partners and individual activists, they do little to publicize the impacts of their policy decisions:

- Laws like Bill C-51 use vague language to define a terrorist action, the promotion of terrorism offences, or what is related to national security.
- Information-sharing systems are byzantine mazes, where even government officials cannot adequately answer what the limits are on where personal data can go and be used,

and saved.

- Rules are applied differently in different cases, depending on who is suspected of committing a crime, particularly targeting Muslim, Arab, and Indigenous NGOs/CSOs, and racialized communities.
- Governments are reluctant to have real conversations about the trade-offs in rights that come with these laws.

The result is few people know these laws, and even fewer understand how they can be applied. Only once an organization is charged under one of them does it become apparent how the laws are being used.

The impact is also felt by donors: they understand neither the context nor the impact of the rules, but simply that they could suddenly and inadvertently find themselves involved in a national security operation.

## **New risks require new strategies and renewed relationships**

All of these issues mean the level of risk on the ground for NGOs and humanitarian and development workers has changed. It has required a re-thinking of strategy and allocation of resources. All too often it has also meant that the power and breadth of these laws induce organizations to limit their activities and to self-censor, under the legitimate concern that they could lose the ability to carry out any work at all.

But we have also seen the flip-side of this. Coalitions, both ad hoc and formal, have formed, allowing us to use our collective strength to protect our work and to continue to champion our belief in fundamental human rights. Coalitions are holding the ground during changing government policies, and pushing for improvements when the opportunity arises.

It will be important – over the coming months – for us to build more alliances like these to protect rights during a stormy period, and come out even stronger.

## **Going forward**

While these issues are daunting, we believe that there are clear paths forward. There are several steps that we believe organizations can take, and which the ICLMG would be happy to assist in:

- *Further educate NGO staff, members and boards*  
While the overall concern about national security and anti-terror laws might be well-known, the particular impacts on the development sector should be more fully shared and

discussed. ICLMG representatives are available to help facilitate these discussions or provide materials.

- *Engage in frank discussion with counterparts*  
Collaboration is essential, particularly between Northern and Southern partners. Frank dialogue could help clarify the real impact of national security laws on relationships and the work being done.
- *Examine how to adapt policies*  
Once these discussions take place, implementing appropriate policies can help address the concerns that arise. The ICLMG could help provide materials and support in developing such policies.

While these can certainly be done on an individual basis, we believe that this would be best accomplished through coalition work and taking advantage of our shared knowledge and skills, including:

- *Framing issues and forming a common front with international co-operation groups at the national, provincial and local levels*  
These issues have a sector-wide impact. Working together, we can create stronger, sector-wide practices and responses.
- *Reinforcing and participating in existing fronts, especially the ICLMG*  
Outside of the development sector, there are organizations that work on national security and could use your support. For over 15 years, the ICLMG has focused on the international context of anti-terror and national security laws in Canada, and the impact on human rights. At this turbulent time, the more groups that engage, the more impact we can have.

Specific examples of collaboration could include:

- A discussion on how Canada's national security laws criminalize dissent at home and abroad, and its impact on solidarity work. This would build on *In the National Interest?*, the aforementioned report co-written by ICLMG and MiningWatch Canada about attacks on anti-extraction activists in Canada and Latin America.
- A workshop on the growing concerns regarding travelling across borders with sensitive work or personal information. This could include discussing one's rights, and tips and tools for secure travelling (including protection and security of personal computers, cell phones and others electronic equipment).
- Providing information about the impact of national security laws on the ability to travel internationally, both for Canadian and international activists.

- Providing information on the impact of current national security laws on the operations and finances of charities.
- Discussing the effect of current national security laws on domestic rights and freedoms, and their relation to solidarity work at home and internationally.

If you believe your organization could benefit from this knowledge and collaboration, or if you would like to contribute to our ongoing work of protecting and promoting human rights and civil liberties in the context of the war on terror, please contact Tim McSorley, ICLMG National Coordinator, at [national.coordination@iclmg.ca](mailto:national.coordination@iclmg.ca).