Brief on Bill C-41

An Act to amend the Criminal Code and to make consequential amendments to other Acts

Presented to the House of Commons Standing Committee on Justice and Human Rights

Submitted by the International Civil Liberties Monitoring Group

April 14, 2023

1. Introduction

Bill C-41, *An Act to amend the Criminal Code and to make consequential amendments to other Acts,* is proposed legislation in response to concerns that counterterrorism provisions of Canada's *Criminal Code* have inhibited the provision of international assistance, including humanitarian aid,[1] in areas controlled by an organization deemed by Canada's *Criminal Code* to constitute a terrorist group which results in the likelihood of requiring the assistance organization to provide direct or indirect financial or other forms of support that would benefit the terrorist group.

Legislation in this area has long been required, and we welcome the government's action to address this problem. However, the approach taken by the government on this legislation raises significant concerns, both regarding the fundamental nature, as well as specific aspects, of the proposed authorization regime that Bill C-41 would create.

2. Counterterrorism and international assistance

The situation in Afghanistan brought the issue of the risk faced by humanitarian and other organizations working in complex political situations to the forefront of public debate, but it is one that existed before the Taliban seized power in 2021. International assistance organizations that work in areas where a terrorist group operates face the risk their interactions with members of these groups (or their associates), or face levies or tariffs that could go to benefit these groups, place them at the same kind of risk. This is a result of Canada's overly-broad anti-terrorism laws, which while prohibiting broad categories of activities that may benefit a terrorist group, provide no clear defense for groups carrying out beneficial activities in proximity to these groups or their members, or in regions controlled by these groups.[2]

Despite this risk, the situation in Afghanistan is, to our knowledge, the first instance where the Canadian government has formally stated that a foreign government is considered a terrorist group, and that therefore any funding or other forms of assistance that go to this government is considered terrorist financing. This novel legal interpretation has been criticized[3] by leading legal experts for several reasons, including that this interpretation would result in any individual in Afghanistan who pays taxes, tariffs, or otherwise provides benefits to the government, being liable for criminal prosecution, including Afghans who have been resettled in Canada since 2021. This interpretation also creates an elevated risk for aid organizations operating in, or individuals living in, other regions under the control of what could be considered a terrorist group.

We agree with this critique of the government's interpretation of terrorism financing laws; however, we also recognize that the broad nature of Canada's anti-terrorism laws allow for this risk to persist. As a

[1] In this brief, we use "international assistance" to encompass the breadth of activities included in 83.032 (1) of Bill C-41, including humanitarian aid.

[2] Canadian Bar Association letter to Ministers Lametti and Mendicino, re: Report of the House of Commons Special Committee on Afghanistan and Canada's Anti-Terrorism Legislation, 22 July 2022. Online at: https://www.cba.org/CMSPages/GetFile.aspx?guid=b7386a78-e843-4470-b77e-0c43221e440c

[3] See for example, letter from S. Choudry et al. to Minister Lametti, re: Section 83.08(b) of the Criminal Code and extrication of individuals from Afghanistan, 4 May 2022. Online at: https://www.ourcommons.ca/Content/Committee/441/AFGH/Brief/BR11826867/br-external/LandingsLLP-e.pdf

result, a legislative remedy is clearly required to provide certainty to Canadian international assistance organizations that they will not face criminal charges for carrying out their vital and often lifesaving activities.

3. Proposed authorization regime in Bill C-41

Bill C-41's new exemption regime would allow Canadians providing various forms of international assistance to apply to operate in areas under de facto control of an entity deemed by the government to be a terrorist group where the organization's activities risk providing financial support to said group.

a. Positive aspects

Any proposed solution must apply to a broad range of areas and activities. In this light, we welcome two aspects of this proposal:

First, it addresses not only the prohibition of international assistance in Afghanistan, but also other regions facing conflict or politically complex situations where the payment of fees and taxes to a governing entity could place Canadians at risk of criminal prosecution.

Second, the exemption covers a broad array of activities, including humanitarian aid, education, and human rights defense. This will allow Canadian organizations to provide not just crisis relief, but to engage with local communities on crucial, ongoing projects to support their well-being and livelihoods.

b. Overarching concerns

Unfortunately, despite these positives, the government's proposed solution raises serious concerns that may ultimately undermine the stated goals of the legislation.

i. Undermining international humanitarian principles, international obligations and the provision of international assistance overall

We echo concerns that the proposed authorization regime contradicts the fundamental principles of independence and impartiality of humanitarian assistance under international humanitarian law.[4] This also applies to other forms of vital international assistance that while not considered humanitarian in nature, also provide crucial – often life-saving – support, including education, human rights defense, and food security, among others.

Upholding these principles is essential to delivering assistance quickly and safeguarding humanitarian workers and organizations who are increasingly targeted by violence during armed conflicts. Further, a regime that requires government authorization in order for such aid to be delivered puts at risk both the appearance and the actual impartiality of the ability to provide aid. Government authorization based on a security risk assessment will inevitably lean towards prioritizing the minimization of that risk.

Moreover, the definition of what consists of a terrorist group is so broad that it allows for both discretionary decision-making and the politicization of the process.[5] For example, Canada's Terrorist Entities List conflates groups originating under or responding to long-term military occupation, with

---

[4] Doctors Without Borders/Médecins Sans Frontières, *MSF response to new Canadian government counterterror laws*, 9 March 2023. Online at: https://www.doctorswithoutborders.ca/article/msf-response-new-canadian-government-counterterror-laws

[5] International Civil Liberties Monitoring Group, "Issues and Concerns Regarding the Use of the Terrorist Entities List in the Context of White Supremacist/Hate Based Violence in Canada," 24 April 2021. Online at: https://iclmg.ca/wp-content/uploads/2023/04/Listing-of-Terrorist-Entities-Discussion-Paper.pdf; and International Civil Liberties Monitoring Group, "Letter to Prime Minister Trudeau and Minister Blair, re: Terrorist Entities List and combatting white supremacist and hate-based violence," 29 January 2021. Online at: https://iclmg.ca/letter-pm-trudeau-terrorist-list-not-solution/

White supremacists and neo-Nazis, all under the rubric of a broad and inconsistent concept of "terrorism."[6]

This runs the real risk of aid from Canadian organizations in particular regions of the world facing greater scrutiny and more administrative hurdles than in others, which could result in reductions in provisions of aid, or changes in kinds of aid. Given that this regime also applies to sub-national regions, it could also result in individuals in one region of a country receiving aid, while neighboring regions are excluded.

ii. Securitization of aid and assistance

Beyond the impact on humanitarian principles, placing this regime in the scope of the Minister of Public Safety will result in both the real and perceived securitization of the provision of international assistance.

For example, there is a likelihood that the requirement of an approval from the Minister of Public Safety places the emphasis on terrorism-related risk assessments, leading to authorization decisions based on security priorities and not on need. Likewise, organizations may see the need to self-select or frame their work around the need to navigate or accommodate government security priorities. There is also the strong likelihood that it will become known in areas where Canadian organizations are operating that they must receive authorization from their Public Safety ministry, putting in question their neutrality and impartiality. This could damage relationships with local actors, and at worst lead to harm to staff.

The invasive provisions of the security assessment process would subject any potential partner organization of staff person to scrutiny by a wide array of Canadian national security agencies. Beyond the risks posed by such invasive information collection and sharing, it will likely also dissuade foreign organizations from partnering with or potential employees from applying to work for Canadian international assistance organizations.

Bill C-41's information sharing provisions allow the Minister to request any information from the organization seeking authorization. This once again risks that aid workers from Canada will be viewed with suspicion and face potential violence. This suspicion may not necessarily be misplaced, since information collected by the minister about conditions on the ground could be shared with national security agencies. This could lead to Canadian national security agencies taking action, or of the information being shared with foreign agencies who then take action. And none of this would need to be related to ensuring the provision of aid.

iii. Failing to address inherent problems in Canada's approach to anti-terrorism

Finally, an authorization regime will not address the central problem that Canada's overly-broad counter-terrorism laws allowed for this situation to occur in the first place. The inherent vagueness and political nature of "terrorism" will continue to have unintended consequences, including on Canada's international human rights and humanitarian obligations, evidenced by the current restrictions on the provision of aid. While an exemption regime may provide a route forward, it avoids how counter-terrorism laws create areas and entities that are considered 'no go,' and continue to primarily, and unjustly, impact majority-Muslim countries and regions. We renew our call for the government to fundamentally revisit its approach on counter-terrorism laws and their enforcement.

Given all this, the regime proposed in Bill C-41 risks undermining the government's goal of facilitating the provision of international assistance. Therefore, our first recommendation is that Canada should enact a full exemption for international assistance activities, similar to those listed in Bill C-41 at section 83.032(1). This would ensure that vital assistance to people affected by conflict is not impeded by laws meant to criminalize terrorism-related offences.

[6] A. Kanji and T. McSorley, "Open letter to Federal Political Party Leaders re: Use of anti-terrorism laws to combat racism and white supremacism," 22 February 2022, online at: https://iclmg.ca/letter-federal-leaders-terrorist-entities-list/.

This is in line with actions taken by other jurisdictions such as Australia and the UK, which have both implemented humanitarian exemptions to counterterrorism laws, as well as the United States, whose General Licenses system reflects the breadth of other activities included in the Bill C-41 authorization process. It would also meet the standards set in UN Security Council Resolution 2615 (2021) and the follow-up resolution 2664 (2022), in which the Security Council "decided that the provision, processing or payment of funds, other financial assets or economic resources or the provision of goods and services necessary to ensure the timely delivery of humanitarian assistance or to support other activities that support basic human needs are permitted and are not a violation of the asset freezes imposed by that organ or its sanctions committees."[7]

Recommendation 1:

That the federal government enact an exemption for the provision neutral, impartial, and independent provision of activities that support basic human needs to the *Criminal Code* in Part II.1, Section 83.01. Proposed text:

> **For greater certainty**
>
> **(1.3)** For greater certainty, Part II.1 does not apply with respect to the activities of nongovernmental organizations in the neutral, impartial, and independent provision of:
>
> (a) providing or supporting the provision of humanitarian assistance, including assistance for the purpose of saving lives or alleviating the suffering of a population that is affected by a crisis or that has immediate and acute needs;
>
> (b) providing or supporting the provision of health services;
>
> (c) providing or supporting the provision of education services;
>
> (d) providing or supporting the provision of programs to assist individuals in earning a livelihood;
>
> (e) providing or supporting the provision of programs to promote or protect human rights;
>
> (f) providing or supporting the provision of services related to immigration, including services related to the resettlement of individuals and the safe passage of individuals from one geographic area to another; and
>
> (g) supporting any operations of a federal minister or a department or agency of the Government of Canada that are conducted for a purpose other than one set out in any of paragraphs (a) to (f).
>
> **(1.4)** For the purposes of Part II.1, the collection, provision, processing and payment of funds, financial assets, or economic resources for the provision of goods and services necessary for the neutral, impartial, and independent provision of the activities in (1.3) (a) to (g) and the payment of ancillary expenses, including but not limited to taxes, import duties, permits and fees, does not constitute providing, collecting, or making available finances, property, or services to a terrorist group or for a terrorist activity as contemplated in Part II.1.

4. Specific concerns with C-41:[8]

Barring implementation of the above proposal, other amendments could be made to Bill C-41 that, while not fully alleviating our concerns, would be important to ensure the appropriate functioning of the regime.

a. Broadening the application of the authorization regime

Currently, an authorization issued under Bill C-41 would apply only to the proposed section 83.03 (2) of the *Criminal Code*. However, this is an overly narrow scope that does not address other areas of Part II.1 of the *Criminal Code* that international assistance organizations are at risk of contravening if operating in an area under the control of a terrorist group. This includes, for example, 83.08 (freezing of property), 83.18 (participating in activity of a terrorist group), or 83.19 (facilitating terrorist activity).

---

[7] https://press.un.org/en/2022/sc15134.doc.htm

[8] In the suggested amendments that follow, modified or added text is highlighted in yellow, and text to be removed is struck through and in red.

We therefore support recommendations made by others[9] to broaden the authorization regime to apply to all of Part II.1 of the *Criminal Code*.

Recommendation 2:
Broaden the authorization regime to apply to all of Part II.1 of the *Criminal Code*. This could be accomplished by, for example, creating a new section 83.01 (3) or modifying 83.02 to read:

> On application, the Public Safety Minister may authorize an eligible person to carry out, in a specified geographic area that is controlled by a terrorist group, a specified activity that would otherwise be prohibited under Part II.1 — or a specified class of such activities — for any specified purpose from among the following :…

b. Geographic application

The legislation requires clarity around which geographic areas are determined to be under the control of a terrorist group. Placing the onus on applicants to ascertain for themselves whether a region where they are carrying out activities meets this threshold would invite a high level of uncertainty, which could itself lead to either applications where none are necessary or, worse, a chilling effect of avoiding operating in a region under fear that it is – or could be – considered under control of a terrorist group.

We support similar recommendations that the Ministers responsible for the authorization process should be responsible for identifying and publishing a list of such areas. Moreover, the language should be clarified to specify that the areas in question are under the substantial control of a terrorist group and that such a group exerts significant influence.

Recommendation 3:
That the Ministers responsible for the authorization regime are also responsible to identify and publish a list of geographic areas to which the authorization process applies. Proposed amendment could read:

> **Control**
> 83.032 (2) For the purposes of this section, a terrorist group substantially controls a geographic area if the group exerts significant influence over the area such that the carrying out, in the area, of an activity involving property or financial or other related services could reasonably be expected to result in the terrorist group using or benefiting from the property or services, in whole or in part.
>
> **Determination**
> (3) The Ministers responsible for the authorization process shall determine which specified geographic areas are under substantial control of a terrorist group, and cause such a list to be published

c. Ministerial risk assessments

The grounds on which the Minister of Public Safety may evaluate an application are unacceptably broad. For example, in section 83.032(10)(a), the minister may assess whether any person involved in carrying out a proposed activity has an "links" to a terrorist group. "Links" is not defined anywhere in the legislation, nor does it carry any legal weight. This is much too discretionary; for example, would distant family ties, former work or school associates, or membership in the same religious community or congregation be considered links? In our work, we have seen how each of these types of "links" have been identified by security agencies as being grounds for suspicion based solely on guilt by association. The example of Afghanistan, a Muslim majority country, is apt in this instance, as we have particularly observed how Muslims in Canada are subject to this exact kind of guilt by association, leading to

[9] Including the brief submitted by Humanitarian Sector Partners on 13 April 2023

increased surveillance, loss of security clearances and employment, and even the sharing of information which has led to rendition, arbitrary detention and torture.

Not only could this lead to unacceptable decisions by the Minister of Public Safety, but applicants may feel pressure to broaden their screening criteria for potential employees to avoid such "guilt by association," or simply refrain from applying altogether.

Similarly, 83.032(10)(b) contains language which is much too discretionary by setting a low threshold of "likelihood" that an applicant or person involved in the applicant's activities will act to benefit a terrorist group.

Finally, in 83.032(10)(c), the Minister may also take into account not just whether an applicant or any person involved *is* being investigated for a terrorism offence, but whether that person *has* been investigated, or *has ever* been charged with a terrorism offence. The simple fact of being investigated or charged therefore presumes guilt, opening the door to discriminatory and overly discretionary decisions.

For example, we know that people of color, and particularly Muslims, are more likely to be charged with a terrorism offence in Canada. According to a study in *Criminal Law Quarterly,* as of 2019, 98% of terrorism charges had been against Muslims; at the same time, those who have committed mass murder against Muslims in Canada have not faced terrorism charges. Security agencies have also admitted the presence of systemic racism and Islamophobia, but little has been done to substantially address this issue. For example, Muslim-led charities in Canada also face disproportionate scrutiny from the CRA, leading to investigations of their operations and their staff for ties to terrorism. Despite these investigations not resulting in terrorism charges, they could be viewed as already being disqualified based simply on being investigated due to unproven allegations based in systemic Islamophobia.

Recommendation 4:

That the security assessment portion of Bill C-41 be amended to limit the criteria for assessment:

> **83.032(10)** …
>
> **(a)** whether the applicant or any person who is to be involved in carrying out the activity proposed in the application
>
> (i) is a member of a Listed Entity; or
>
> (ii) is a Listed Entity; or
>
> **(b)** the Public Safety Minister has a reasonable belief that the applicant or any person who is to be involved in carrying out that activity will be knowingly acting for the direct benefit of, at the explicit direction of or in direct association with a terrorist group in carrying out the activity.
>
> ~~(c) whether the applicant or any person who is to be involved in carrying out that activity is being or has been investigated for having committed a terrorism offence or has ever been charged with a terrorism offence.~~

In carrying out their security assessment activities, both before and after an approval is granted, sections 83.032 (11) and 83.034 grant the Minister broad powers to provide any additional information in respect of the application that are specified by that Minister.

These powers are much too broad. Bill C-41 should clearly state what the requested information may be used for, as well as include provisions for the disposal of such information once it is no longer necessary.

Recommendation 5:

That the Minister of Public Safety's powers to request "any additional information" in sections 83.032 (11) and 83.034 be clarified and narrowed along the following lines:

83.032 (11) … The additional information requested must relate to the application or renewal of the application and for no other purpose.
(12) The Public Safety Minister shall retain the information collected to them under subsection (11) only so long as is reasonably necessary for the administration and enforcement of sections 83.031 to 83.0392, and will then dispose of the information.

And

83.034 **(1)** … The additional information requested must relate to the application or renewal of the application and for no other purpose.
(2) The Public Safety Minister shall retain the information collected to them under subsection (1) only so long as is reasonably necessary for the administration and enforcement of sections 83.031 to 83.0392, and will then dispose of the information.

d. Assistance to the Minister

Section 83.038 allows nine entities, as well as any others prescribed by regulation, to assist the Minister of Public Safety "in the administration and enforcement of sections 83.031 to 83.0392." This includes allowing these entities to collect information from, and disclose information to, the Minister of Public Safety and each other. This raises concerns about the likeliness of over-disclosure of information between entities, as well as the possible use of this information in ways not intended by the legislation, for several reasons.

First, the bill does not limit the collection or sharing of information to what is necessary to assess the application. Given that the regime as currently proposed allows the Minister to examine any information, and that the grounds on which an assessment may be determined are very broad, it would allow for the sharing and disclosure of information beyond what is necessary and possibly allowing for sharing of information in ways that would not be possible otherwise.

Second, this is rendered more problematic by the fact that the nine entities listed in 83.038, including CSIS, the RCMP, the CSE, National Defense, the CRA and CBSA, are allowed to not just disclose information to the Minister, but also to collect information from the Minister, and to disclose information to each other, without any clear restrictions. While it is understandable that the Minister may need to discuss certain files with these organizations, the flow of information from the Minister's office should be much more restrictive than what the Minister receives.

National security agencies in particular view information they collect for one purpose as being open to use for other purposes, including mounting investigations and engaging in surveillance. This creates the real possibility of these agencies using the information disclosed to them for other purposes. These national security agencies also share information with foreign governments and agencies over which the Canadian government has no control. This again raises the specter of the real or perceived securitization of Canadian aid and the possibility that international assistance becomes an unwilling, or possibly unwitting, arm of Canada's national security surveillance apparatus.

For example, if the Minister requests information about conditions on the ground or about the vetting of international partners could be shared with national security agencies. This could lead to Canadian national security agencies acting based on this information, or it being shared with foreign agencies who then take action including in ways that may not respect human rights or even undermine the stated goal of this regime. None of this would need to be related to ensuring the provision of aid, nor would the organization applying for an authorization know or consent to this use of the information they provided.

Information sharing provisions should include limits on retention. Protections must also be placed on any use of personal information. Strict rules on use, disposal, notification and correction of erroneous information must be enacted.

Finally, 83.038 (j) must be narrowed to include only Canadian entities.

Recommendation 6:

That Bill C-41 be amended to place limits on information collection and disclosure by and to entities assisting the Minister of Public Safety in in the administration and enforcement of sections 83.031 to 83.0392, including in regards to thresholds for disclosure, limits on retention and use, and the protection of personal information. Proposed amendment:

> **Assistance to Public Safety Minister**
>
> 83.038 (1) The following entities may assist the Public Safety Minister in the administration and enforcement of sections 83.031 to 83.0392, including by ~~collecting information from and~~ disclosing information to that Minister ~~and each other~~:
>
> …
>
> (j) any other Canadian entity prescribed by regulation.
>
> (2) The Minister may disclose information to the entities listed in subsection (1) only if the Minister has reasonable grounds to believe that such disclosure is necessary to assist the Minister in the administration and enforcement of sections 83.031 to 83.0392.
>
> (3) Information disclosed to or by the Minister under subsections (1) and (2) shall only be used by the Minister or the entity to which the information was disclosed in the administration and enforcement of sections 83.031 to 83.0392
>
> (4) The Minister shall retain the information disclosed to them under subsection (1) only so long as is reasonably necessary for the administration and enforcement of sections 83.031 to 83.0392, and will then dispose of the information
>
> (5) Any entity to which the Minister discloses information under subsection (2) will retain the information only so long as is necessary to assist the Minister, and once that assistance is complete will dispose of the information
>
> (6) If any of the information disclosed under subsection (1) or (2) is personal information as defined in section 3 of the *Privacy Act*, the Minister must alert the individual of the disclosure and the information contained in the disclosure, and provide the individual with the opportunity to correct any error this information may contain

e. Judicial Review

For such an authorization system to function, it is crucial that there be a fair, impartial and appropriate system of recourse in the instance of a denial. Such a system not only provides recourse for the applicant, but also a crucial check on government power.

Recourse in Bill C-41 is provided in the form of judicial review. While this is an appropriate approach, the bill goes on to set-out wide-ranging powers for the government to restrict applicants' access to information. This includes barring them from being present to hear aspects of the government's information or evidence, and restricting what can even be shared with the applicant in the form of a summary. These decisions would be based on whether "in the judge's opinion, its disclosure would be injurious to international relations, national defence or national security or would endanger the safety of any person." This low threshold for refusing access to an applicant to potentially key information in challenging the Minister's determination is unacceptable. Unfortunately, it reflects a tendency in other areas of Canada's national security laws to lean towards greater secrecy rather than openness in such proceedings.

The judge may also rely on information even if it cannot be included in the summary provided to the applicant; in clearer terms: completely secret information.

Applicants should have access to all information, barring that which would endanger the safety of a person; section 83.039 (2) should be amended to reflect this. Barring that, a higher threshold for a decision to exclude the applicant should be put in place. The legislation should explicitly allow for a

judge to appoint an *amicus curiae* to challenge the Minister's attempts to limit disclosure, and to challenge the nature of the information being heard in secret.

Recommendation 7:

That section 83.039 (2) be amended to remove all provisions allowing for secret hearings outside the presence of the applicant, unless the judge is of the opinion that doing so could endanger the safety of any person; and that

Should those provisions be retained, that the following amendments be made to restrict the use of secret hearings and secret evidence in the judicial review process:

> **Judicial review**
>
> 83.039 (2) The following rules apply for the purposes of subsection (1):
>
> (a) at any time during the proceeding, the judge must, on the request of the relevant Minister, hear submissions on evidence or other information in the absence of the public and of the applicant and their counsel if the judge has reasonable grounds to believe the disclosure of the evidence or other information could be injurious to ~~international relations,~~ national defence or national security or if, in the judge's opinion, it could endanger the safety of any person;
>
> …
>
> (c) the judge must ensure that the applicant is provided with a summary of the evidence and other information available to the judge that enables the applicant to be reasonably informed of the reasons for the relevant Minister's decision but that does not include anything that the judge has reasonable grounds to believe would be injurious to ~~international relations,~~ national defence or national security or if, in the judge's opinion, it would endanger the safety of any person if disclosed;
>
> …
>
> (h) the judge may allow an *amicus curiae* who is appointed in respect of the proceeding to participate in a hearing under paragraph (a) in the absence of the public and of the applicant and their counsel as well as any decision to exclude information from a summary provided to an applicant as provided in paragraph (c);
>
> (i) The role of the amicus curiae is to assist the judge in whatever fashion the judge deems relevant, including but not limited to:
>
>> (i) challenging the Minister's claim that the disclosure of information or other evidence would be injurious to national security or endanger the safety of any person; and
>>
>> (ii) challenging the relevance, reliability and sufficiency of information or other evidence that is provided by the Minister and is not disclosed to the permanent resident or foreign national and their counsel, and the weight to be given to it.

f. Reporting and transparency

Rigorous transparency and reporting provisions are essential to monitoring the proposed authorization regime and implement necessary changes, not just because of the novel nature of this regime, but also because of the sensitive and vital nature of the work being authorize, the level of secrecy around decision making, and the broad powers of information collection and sharing.

In addition to an annual public report from the Minister of Public Safety to be tabled by the end of June each year, requirements should be added for what kind of information must be included in this report.

Further, all three ministers involved in the authorization process, as well as any department assisting them, are likely to rely upon sensitive information that the government would not render public. While we believe as much as possible should be shared publicly, consideration should be made for either the public report or a classified report to be shared directly with the National Security and Intelligence Review

Agency (NSIRA) and/or the National Security and Intelligence Committee of Parliamentarians (NSICOP). This would ensure outside, independent review of the process. Consideration should also be made to amend the *National Security and Intelligence Review Agency Act* to include an annual review of the authorization system.

Recommendation 8:
That, in order to bolster transparency and accountability, the following amendment be made to require specific information be included in the Minister of Public Safety's annual report:

> **Annual report**
> 83.0392 (1) The Public Safety Minister must prepare and cause to be laid before ~~the~~ each House of Parliament, within 90 days after the first day of January of every year, a report on the operation of sections 83.031 to 83.0391 for the previous calendar year.
> (2) The report must include:
> (a) the number of applications for authorizations in the previous calendar year;
> (b) the number of approved authorizations in the previous calendar year;
> (c) the number of denied authorizations in the previous calendar year;
> (d) any other criteria prescribed by regulation
> (3) The Public Safety Minister must forward the report to both the National Security and Intelligence Committee of Parliamentarians as well as the National Security and Intelligence Review Agency;

That consideration be made to the sharing of a classified annual report with NSIRA and/or NSICOP;
And that the *NSIRA Act* be amended to require an annual review by the Agency of the authorization regime.

g. Conclusion

Despite the abovementioned amendments, we re-iterate our substantial concerns with the creation of an authorization regime based on governmental approvals of vital international assistance, including humanitarian aid, even within the narrow scope of regions proposed in Bill C-41. The current framework run a significant risk of the over-securitization of international assistance, as well as an onerous system that will have difficulty responding to the needs of the delivery and provision of this assistance.

These security provisions also run the risk of discouraging organizations, particularly those with less resources or with an interest in operating in more complex regions, from applying. These concerns are larger for Canadian organizations based in racialized communities, particularly Muslim-led organizations, who already face systemic bias in how government agencies evaluate whether they pose a risk of terrorist financing. Ultimately, it risks undermining the very goal of the legislation, which is the timely provision of vital, and often life-saving, assistance.

We maintain that the Canadian government could still follow in the steps of other, similar jurisdictions and implement a blanket exemption within the *Criminal Code* for the envisioned international assistance activities. Barring this, we hope that the proposed amendments laid out above provide clear recommendations for addressing some of the key concerns with the envisioned authorization process.

We also hope that the concerns and issues we have raised are helpful for monitoring and evaluating the regime as it is established, and provide possible areas to address during the five-year review envisioned by Bill C-41.