

July 6, 2015

UN Human Rights Committee

Oral Submissions of the Canadian Civil Liberties Association

Sukanya Pillay, Executive Director and General Counsel, CCLA

Honourable Committee Members,

Thank you for the opportunity to appear before you this morning on behalf of the Canadian Civil Liberties Association CCLA. I am Sukanya Pillay, the Executive Director and General Counsel of CCLA.

BILL C-51

1. Bill C-51 – the *Anti-Terrorism Act, 2015* -- which received royal assent last month – contains serious threats to liberty, security of person, fundamental freedoms, due process, and privacy rights as outlined in our written submissions. There has been no evidence it is necessary. In particular:
2. **The *CSIS Act* is amended to allow CSIS to obtain a judicial warrant from the Federal Court, on an *ex parte, in camera* basis, with no adversarial process to challenge the government’s case presented to the court -- the warrant is to pre-authorize CSIS actions which would otherwise violate the Canadian Charter of Rights and Freedoms or any other Canadian law.** This is contrary to rule of law, independence of judiciary, and constitutional supremacy – it also vitiates the very purpose of legal safeguards. Further, there is no monitoring or review even of how the warrant will be exercised, consequent rights violations, and whether a CSIS officer however well meaning has exceeded authority, pursuant to terms of the warrant.
3. The ***CSIS Act*** is amended allowing the agency to engage in disruption at home and abroad – with the only limits imposed being not to engage in “bodily harm, obstruction of justice, or violations of sexual harm” leaving a large sphere within which CSIS can now act.
4. **Bills C-51 and C-44 operate to permit CSIS to act at home and abroad without regard to Canadian constitutional law, foreign domestic law, or international law** – posing in our view a direct threat to the international legal framework, the legal obligations of the Covenant, and the duties of State parties to respect and uphold the Covenant. This respect in our view should be heightened in the face of threats to international peace and security.

Immigration and Refugee Protection Act

5. **The IRPA is amended to allow the Minister of Public Safety and Emergency Preparedness to withhold relevant evidence from Special Advocates in Security Certificate cases.** Prior to this amendment, Special Advocates received all information in the government's possession concerning the individual's case. The whole point of the liberty protection is to know the case against the person whose liberty is in jeopardy and to make full answer and defence. This amendment violates the liberty and security of person protection in a manner that cannot be justified. (consider the case of Hassan Almrei).

Security of Canada Information Act

6. C-51 creates the *Security of Canada Information Sharing Act* which permits information to be shared among 17 agencies – 14 of which have no review mechanisms. The scope of the information sharing is overbroad and vast – defined by the exceptionally broad language of “**activity that undermines the security of Canada.**” It sets the stage for mass surveillance, profiling and big data analytics. Further information can be shared with domestic private actors, with foreign governments and with foreign private actors. SISA provides no enforceable legal safeguards – and to the contrary, permits civil immunity for good faith mistakes. While the Act pays lipservice to existing legal safeguards, in Canada the tragic consequences to human life by information sharing mistakes shows that our existing safeguards have been tragically inadequate. Nor is there any existing mechanism that could review this process – it is possible that in the case of privacy in particular rights violations will occur without individuals being aware. This does not contribute to security.

TORTURE

7. CCLA is seriously concerned that the unearthed 2011 Ministerial Directives regarding information sharing where there has been or will be a risk of torture – has not only not been corrected but the risk is now amplified by SCISA Bill C-51.
8. CCLA is seriously concerned by the widespread and continued use of solitary confinement or segregation in Canadian prisons, which we believe violates the right to be free from torture, cruel, inhuman or degrading treatment. CCLA is challenging the federal legislation in court and we have cited our concerns over violations of international law.

CITIZENSHIP AND EQUALITY

9. Recent legislative amendments (Bills C-24, Bill C-44) now permit the revocation of citizenship for individuals who may hold dual citizenship or be eligible for dual citizenship. This creates two tiers of citizenship contrary to equality rights before the law. It reintroduces a punishment of exile and banishment, and an excess of power of the State over an individual, that has no place in a modern free and democratic state.

OPTIONAL PROTOCOL

10. We are concerned about Canada's decision to deport Jama Warsame to Somalia, notwithstanding the Committee's findings that Canada was 'his own country' and that Mr Warsame faced 'a real risk of harm'. The commitment to protection of rights, to security of the person, to non-refoulement – these commitments must be upheld and honoured lest the very protections and guarantees of international human rights law be rendered illusory.