

Submission to the Standing Committee on Justice and Human Rights on Bill C-36, *An Act in Order to Combat Terrorism*

November 8, 2001

Introduction

We wish to thank the Committee for the opportunity to make a submission on Bill C-36. We appreciate the importance of complying with our international obligations with respect to terrorism. Believing that governments are established to “do good,” to seek “justice,” to punish evildoers and to defend the vulnerable,¹ we are in principle supportive of just laws that establish peace, order and good government. The government and this Committee face the difficult task of legislating measures that will thwart terrorist activity and enhance the security of Canadians, and in so doing balance our fundamental freedoms and principles of justice with limitations on these very freedoms for the purposes of our collective security and the protection of the innocent. This is a most difficult task. We pray that God will grant you wisdom.

The Evangelical Fellowship of Canada is a national association of 32 evangelical, Protestant denominations and over 100 Christian organizations. Our members include churches and relief and development organizations that are involved in religious and humanitarian work around the world. On October 27, we convened a meeting of 35 ministry leaders to discuss ministry in a post- September 11 environment. Our comments reflect the concerns expressed by these leaders, particularly those engaged in international work.

Let us illustrate our concerns through the lenses of two situations.

1) In the 1980s there was a UNHCR refugee camp in Thailand and on the border of Cambodia, the home of some 30,000 Khmer Rouge refugees. Some of the men from the refugee camp would, from time to time, clandestinely conduct raids into Cambodia. Two organizations, one religious the other not, were contracted to provide medical aid and food to the refugees.

2) Another Christian organization provides medical and dental care in a Central American country, in a region controlled by outlawed militia groups. The clinics function with the permission of the militia who may from time to time avail themselves of medical and dental services offered to anyone who asks for assistance.

In neither case does the definition of “armed conflict” arise. In both cases the humanitarian aid provided may, under this bill, be considered “participating in or contributing to an activity of a terrorist activity” as defined under proposed section 83.18 of the Criminal Code.

We are concerned that the very breadth and vagueness of the definitions of “terrorism”, “terrorist groups” and “facilitation of terrorism” will adversely affect the ability of some organizations to provide international humanitarian assistance. The scope of this bill is expansive. It applies to individuals, groups and governments, within Canada and without. It goes substantially beyond activities covered by International Conventions. These focus on acts of violence, or providing or collecting funds with the knowledge or intention that they are to be used in acts of violence, that target civilians for the purpose of intimidating a

population or to compel a government or an international organization to do or to abstain from any act. Bill C-36 covers a broader range of activities that affect economic interests, international relations, or which affect the security of an individual person. It could apply to non-violent blockades of abortion clinics or economic summits, nurses protests or protests in Tiananmen Square, and would criminalize a person or organization that facilitated any of these activities, whether they intended to or not. Given this broad scope, and without the requirement of criminal intent or knowledge, it will become difficult to undertake charitable activities internationally without potentially violating the terms of this legislation.

Christian organizations are prepared to be publicly accountable. We have a common interest with the government to ensure that charities retain the public trust. However, Bill C-36 sets up a situation where it is not clear whether one is acting lawfully. This will tend to put a chill on Canadian charities providing assistance where it is most needed, in conflict-ridden situations. We trust that the government of Canada recognizes the value of this kind of aid, particularly in alleviating the conditions that can give rise to terrorism.

Principles

There are several important Christian principles that are followed by Christian organizations. Among these are:

i. Care for the vulnerable

Christians have a long tradition of care for those in need as exemplified in the parable of the good Samaritan (Luke 10:33). This includes practical assistance such as food aid and medical care (Matt. 10:42). This means that Christians are actively engaged in humanitarian assistance where it is needed most. This includes conflict-ridden areas.

Christians engaged in humanitarian assistance provide services on a non-discriminatory basis. Christians have Biblical instruction to love and care for their enemies, not just their friends (Matt. 5:44). This means that humanitarian assistance can be provided to those engaged in military conflict, terrorism or gross human rights violations.

ii. Prophetic Voice

The Church has long had an important role as a prophetic voice in society (Eph. 4:15). This can put the church, and Christians, in a situation where they are opposed to an

unjust regime or law. Some recent examples include pastors Lazlo Tokes and Peter Dugulescu who opposed the oppressive policies of the Ceausescu government in Romania, Archbishop Desmond Tutu in South Africa who spoke against apartheid and Catholic priests in Poland who stood firm against the repressive Communist government. In some situations, Christians have felt compelled to disobey the law in order to obey the dictates of their faith.

iii. Proselytization

The final instruction Jesus gave to his disciples was to go into the world and preach the gospel (Matt. 28:19-20). Many Christians will place themselves in situations where it is dangerous and even illegal to share the gospel of Christ.

Concerns and Recommendations

1. Religion

Proposed Criminal Code section 83.01(1)(b)(i)(A) (page 13 of Bill C-36) defines terrorism as that which is motivated by religion, ideology or politics. An act of violence should not become terrorism by reason that it was committed for religious or ideological purposes. Such a qualification can be seen to be either too broad or too narrow. Interpreting religion, ideology and philosophy as what political philosopher John Rawls calls a comprehensive doctrine, all activities are ultimately motivated by one's worldview or doctrine, in which case the clause adds nothing. Conversely, by interpreting religion, ideology and philosophy narrowly, other motivations such as greed or fame are excluded and the clause is found to be too limiting. It should be noted that religion can be a benevolent motivation as well as a malevolent one yet the clause, hence the legislation, fails to distinguish between the two types of motivation.

Motivation should not be criminalized. In the case of religion, to do so invites the court into a determination of what the state considers legitimate religious belief, an area the courts in Canada have purposely avoided.² This motivation is echoed in the "threats to Canada" treated by CSIS in section 89 of Bill C-36 (page 113 of Bill C-36). Likewise with proposed section 430 (4.1) of the Criminal Code, though we welcome protections for religious property, we are not convinced that criminalizing motivation or beliefs is the appropriate means to accomplish this.

This being said, religion or ideology should never be used as a justification for terrorism. Indeed, the UN

Declaration on Measures to Eliminate Terrorism³ states “...terrorist acts are in any circumstance unjustifiable, whatever the consideration of a political, philosophical, ideological, racial, ethnic, religious or of any other nature that may be invoked to justify them...” We agree. No consideration could justify terrorist acts. However, the C-36 apparently reverses the meaning of the UN Declaration and actually defines terrorism as acts motivated by specific ideas or beliefs. UN resolutions do not so qualify the definitions. Resolution 1269 (1999) adopted by the UN Security Council on October 19, 1999 “Unequivocally condemns all acts, methods and practices of terrorism as criminal and unjustifiable regardless of their motivation, in all their forms and manifestations, wherever and by whoever committed, in particular those which could threaten international peace and security.” The Justice Minister has repeatedly said that the intent of the government is to target terrorist activity, terrorist organizations and those who support them. Section (A) is not necessary to this laudable goal.

Recommendation:

- We urge that proposed Criminal Code sections 83.01 (1)(b)(i)(A) and 430(4.1) be removed.
- We urge that section 89 of Bill C-36 be removed.

2. “Lawful”

Proposed Criminal Code section 83.01 (1)(b)(ii)(E) (page 14 of Bill C-36) appears to include legitimate civil disobedience in the definition of terrorist activity. The phrase “serious interference with or serious disruption of an essential service, facility or system” applies not only to activities in Canada but internationally. It may capture demonstrations protest against a repressive regime or law. We also wish to note that under many repressive regimes, there is no such thing as “lawful” advocacy, protest or dissent. Non-violent civil disobedience could be included in this definition of “facilitating terrorism”. In India, for example, on November 4 there was a huge gathering of the Dalit, the outcasts, expressly to convert from Hinduism. Forty-eight hours before the scheduled event, the permit was revoked. As over 100,000 people were part of this event, roads and transit facilities were seriously disrupted. Since the permit was revoked, there is some question as to the legality of the meeting. The current Indian government is strongly nationalist Hindu, to the point where the government’s position is that to be a true Indian, one must be Hindu. For a group of over 100,000 Indian people to renounce Hindu would send a strong anti-government message. This event would appear to fit within the definition of “terrorist activity”.

Numerous Christian and Buddhist organizations participated in this event, some with ties to Canada. Any Canadian funding could be considered to have “facilitated” or “contributed to” this terrorism.

Recommendation:

- We urge that this subsection be removed.
- In the alternative, we urge that the word “lawful” be removed.

3. “Terrorist Group”

The definition of “terrorist group” in proposed Criminal Code section 83.01 (pages 14-15 of Bill C-36) not only includes “listed entity,” which can be known to the charity, it also includes “an entity that has one of its purposes facilitating or carrying out terrorist activity.” Given the broad definition of “terrorist activities” and “terrorist group,” it is questionable whether Canadian charities that work internationally and operate through, or in association with, local partners could attain the level of control to be confident none of its resources would assist someone who could be considered an insurgent or terrorist. Would providing humanitarian assistance to communities that contain or are associated with terrorists be caught within the scope of the legislation? A charity or organization in Canada could provide financing or resources to a group that is determined to be a “terrorist group” and face sanctions even though the entity was not considered a “terrorist group” at the time. What is needed is a common definition that is used internationally and which affords a process that allows Canadian verification of claims and due process for groups placed on the list.

Recommendation:

- We urge that the definition of “terrorist group” be amended by the removal of subsection (a).

4. Facilitation

The definition of facilitation in proposed Criminal Code section 83.01 (2) (page 15 of Bill C-36) contains no requirement of *mens rea* or knowledge. This is critical because the definition of a “terrorist group” includes the facilitation of terrorism. Reference to facilitation is also included in sections dealing with Financing Terrorism (83.02, 83.03 and 83.04), Lists of Terrorists (83.05), Freezing of Property (83.08), Forfeiture of Property (83.14) and in 83.18 on Participating, Facilitating, Instructing and Harboring. In some of these sections *mens rea* is included (83.19), in others it seems knowledge or purposefulness is required (83.03, 83.04

and 83.18). Where *mens rea* is included, it is unclear which standard applies, that of the specific section or that of the definition. We presume the failure to include criminal intent in the definition section was an oversight. While charities should exercise due diligence in ensuring that funds are not being used for terrorist activities, a strict liability standard is too high. The broad definition of terrorist activity and the lack of a *mens rea* requirement for a criminal offense are also contrary to basic principles of justice and our criminal law.

When a humanitarian organization has finished its work in a remote area, it may be more cost effective or even necessary to leave some things behind. If an organization leaves materials from a refugee camp or medical clinic, are they “contributing to” terrorism? These materials could include structures, water well, latrine, computer equipment, phone system, medical equipment and perhaps even a vehicle. The organization knows that it is likely that these materials will be used by local militia or militants that the government considers “terrorists” and could even be used as part of a “terrorist activity”. Does the organization have an obligation to destroy all the equipment before it leaves even if it could be used for benevolent purposes?

5. Intent

There are two consequences to being found to have “facilitated terrorism” under proposed Criminal Code section 83.01. The first is a criminal offence of “financing terrorism.” The second is being placed on the List of Terrorists. There are several sections establishing offences related to financing terrorism. We recognize that proposed Criminal Code sections 83.02-84.04 are intended to bring Canada into compliance with its international obligations under the International Convention for the Suppression of the Financing of Terrorism. However, Article 2 of that convention requires both knowledge and criminal intent. The relevant section in C-36 does not require any knowledge that the property is used for the purpose of facilitating terrorism.

Recommendation:

- Amend proposed Criminal Code section 83.01 (2) to require criminal intent (“know or ought to have known”).

6. Due Process

Under proposed Criminal Code section 83.05, a consequence of having facilitated terrorism is to be deemed a “listed entity.” Proposed Criminal Code sections 83.05(6)(b) (page 18 of Bill C-36) and section

6(1)(b) (page 13 of Bill C-36) do not meet the requirements for due process. Because much of the evidence will likely be suppressed as a matter of national security, the entity will not know the case that it must meet.

Recommendation:

- Proposed Criminal Code sections 83.05(6)(b) and section 6(1)(b) should be amended so that the entity has a formal right to see all the information against it, except that which is determined by a judge to be a matter of national security.

7. Evidence

Several of our members have expressed concerns about the evidence both for being found to be a “listed entity” or having a certificate under Part 6, such that a charity would be de-registered. The concern is that foreign governments who may not like the work of a particular charity, because it helps a minority population or because it proselytizes, may use the opportunities afforded by the provisions of Bill C-36 to give either false or misleading evidence about a charity. If the Canadian government is convinced that the evidence cannot be disclosed, proceeding to make the organization a “listed entity” or issue a certificate under Part 6 may be successful while the evidence is not accurate. As one agency indicated:

Our organization financially supports work in Malaysia, a Muslim controlled government, which has given our workers much trouble from time to time based on total false accusations. If our government officials were to inquire of the Malaysian officials as to whether our Malaysian work contributes to the proposed broad definition, then we could be in trouble. This is similar for Indonesia, Israel, India (where we are currently undergoing problems with hostility toward Christian organizations) and a number of other nations. We do have clear ministry agreements, reports and auditing procedures, however.... When a government changes in many of these countries, it can have profound effects on freedom of ministry activities even if it is humanitarian.

We must be careful not to provide foreign governments a vehicle with which to use Canadian law to achieve their own religious, political and ideological purposes against Canadian people or organizations, and in particular those who provide humanitarian aid (spiritual, emotional and physical aid) in countries around the world.

Recommendation:

- The Bill should be amended to make it clear that if the evidence against an accused organization is from a foreign government, the organization has a right to know which government or governments have given evidence.

8. Knowingly

Proposed Criminal Code section 83.08 (page 20 of Bill C-36) makes it an offence for a person in Canada to deal with property owned or controlled by or on behalf of a terrorist group. The difficulty in this section is that while there is a requirement that the property be dealt with knowingly, there is no requirement that the person know that the property is owned or controlled by or on behalf of a terrorist group.

Recommendation:

- We urge that it be made clear that there is only an offence if the person knew or ought to have known that the property was owned or controlled by or on behalf of a terrorist group.

9. “Participating in or contributing to”

Proposed Criminal Code section 83.18 (page 28 of Bill C-36) makes it an offence to participate directly or indirectly in an activity that enhances the ability of a terrorist group to carry out a terrorist activity. “Participating in or contributing to” (83.18(3)) an activity of a terrorist group includes “entering or remaining in any country for the benefit of, at the direction of or in association with a terrorist group” (83.18 (3)(d)). If a humanitarian aid agency signs an agreement with an organization deemed to be a terrorist organization but that controls a certain part of a country, does that meet the requirements of 83.18(3)(d)? This is the case in, for example, Southern Sudan where humanitarian assistance organizations must sign a Memorandum of Understanding with the SPLA.

Often humanitarian aid is required not as a result of a natural disaster but as a result of actions of governments or para-military organizations carried out against minorities. NGOs, including religious charities, often provide humanitarian assistance to people in areas where terrorists operate or even control. Under CCRA policy and CIDA guidelines, Canadian charities are permitted to work with partners in these situations in support of work consistent with their charitable purposes. Bill C-36 was likely not intended to inhibit charities from this vital work. However, it is not clear that it would not be “contributing to” terrorism to provide humanitarian assistance such as food and medicine in an area controlled by a terrorist or insurgent organization. Similar problems

arise in several other sections (83.03, 83.05, 83.23) identified in point 4 above.

Recommendation:

- We urge the amendment of proposed Criminal Code section 83.18 and other relevant sections such as 83.03, 83.05, 83.23 identified in point 4 above to make it clear that providing humanitarian assistance or engaging in other charitable purposes is not “facilitating terrorism”.

10. Communication/Conscience

We are concerned about Part V.1, interception of foreign communications (page 119 of Bill C-36). Some overseas missionaries live and work in areas that are officially closed to Christians and missionaries. Their communication back to Canadian offices is often highly confidential. This communication is also frequently encrypted. Mission agencies are concerned that the ability of the Canadian government to intercept this communication will compromise the safety of their employees. In addition, human rights non-governmental organizations in Canada that monitor human rights violations in other countries often receive their information in a highly confidential, encrypted fashion. If the integrity of this communication cannot be assured, foreign correspondents and investigators will no longer be able to forward confidential information. Proposed section 273.65 of the *National Defence Act* may, therefore, compromise both missionaries and those investigating or reporting on human rights violations internationally.

The investigative hearing provisions in section 83.28 are also troublesome for Canadians who may have highly confidential information about the identity of Christians and their activities in countries where converting to Christianity or practicing Christianity is a criminal offence.

Recommendation:

- We echo the Canadian Bar Association recommendation that proposed section 273.65 of the *National Defence Act* be amended to require that a judge order the interception of foreign communications. This provides greater procedural safeguards to charitable and NGO communication. We also urge that information disclosed in investigative hearings not be communicated to foreign entities or governments.

11. Charity

Part 6 of Bill C-36, the *Charities Registration (Security Information) Act* (page 129 of Bill C-36) provides for the de-registration of charities that are found to have facilitated terrorism. If the Solicitor General of Canada and the Minister of National Revenue agree that a registered charity “has made, makes or will make available any resources, directly or indirectly” to a terrorist organization, they can issue a certificate that the charity has facilitated terrorism. If the evidence is a matter of national security, the charity does not have access to it. The charity does have an opportunity to be heard but if it does not know the case against it, it is difficult to prove that it did not facilitate terrorism. The certificate is reviewed by the Federal Court and the judge’s decision is not appealable. If the certificate is upheld, it is valid for 7 years. The charity cannot be registered for the period of the certificate.

We are very concerned about Part 6 of Bill C-36. As the CBA notes, “It would impose significant liability on charities without providing any defenses”(p. 45 of the CBA submission). This new legislation imposes an additional level of scrutiny on charities, which are already subject to regulation under federal and provincial laws. Given the broad definitions and the definition of facilitation, our concern is that legitimate charities carrying out their purposes with due diligence will still be caught by the legislation and face receiving a certificate. As the CBA noted, the consequences would include liability for innocent directors, law suits from donors or the victims of terrorist activities on the ground of breach of trust, breach of fiduciary duty or negligence. While charities wish to be publicly accountable, the proposed *Charities Registration (Security Information) Act* imposes liability without providing any transparency or, indeed, any defences. It will likely have a chilling effect on the charitable activities of Canadian charities, particularly in the international activities. It will also put a chill on fundraising, particularly for projects in conflict-ridden areas. The possibility of criminal liability and civil liability for directors of charities that have a certificate registered against them is such that it may be difficult to find able people willing to be directors.

We have noted above the very broad definitions of “terrorist activity” and “terrorist group” as well as the lack of *mens rea* in facilitating and financing terrorism. This becomes extremely important when a charity faces de-registration for providing resources to a listed entity or an entity that engages in terrorist activities. The list is broad enough that it could include religious organizations that engage in advocacy or civil disobedience to protest

repressive regimes, human rights abuses, lack of religious freedom or unfair laws that dispossess people of their land and means of making a living. Under Part 6, a charity that is threatened with a certificate may not know the case against it because the evidence is considered a matter of “national security”. There is not adequate disclosure of information such that a charity could mount a reasonable defence or test the veracity, credibility or integrity of the information used by the government to issue the certificate. There is also no meaningful right of appeal despite the gravity of the action.

We also would ask why non-profit corporations and for profit businesses are not treated in similar fashion. If a business is found to have participated in terrorist activities, should not the business, like the charity, be put out of business for a period of time?

Recommendation:

- We echo the CBA recommendation and urge that Part 6 be deleted. The procedural safeguards on charities under the *Income Tax Act* are adequate to meet the concerns for financial accountability for charities. In the alternative, we urge that Part 6 be amended to provide a “due diligence” defence for charities that may inadvertently provide resources to entities that are considered to engage in terrorism. We also urge that there be a greater requirement for disclosure of evidence so that a charity has a reasonable opportunity to meet the case against it.

12. Religious Communities

Religious intolerance and misunderstanding between religious communities are intensifying in the current world environment. They play a growing role in issues affecting Canada’s foreign and domestic policy. Several years ago Canadian religious communities proposed that the government appoint a multi-faith advisory group on religion. The model proposed at the time was along the lines of the group created by the Organisation on Security and Co-operation in Europe at the end of the Cold War. That group was designed to draw on the expertise of religious communities committed to pluralism and therefore to strengthen the problem-solving abilities of governments and of civil society organizations.

Recommendation:

- We join the Canadian Council of Churches in asking the committee to recommend that a multi-faith advisory group be created to assist the government in building up the capacity of Canadian policy makers to address the religious component of relevant public policy issues.

Summary of Recommendations:

- We urge that proposed Criminal Code sections 83.01 (1)(b)(i)(A) and 430(4.1) be removed.
- We urge that section 89 of Bill C-36 be removed
- We urge that 83.01 (1)(b)(ii)(E) be removed. In the alternative, we urge that the word “lawful” in the section be removed.
- We urge that the definition of “terrorist group” be amended by the removal of subsection (a).
- Amend proposed Criminal Code section 83.01 (2) to require criminal intent (“know or ought to have known”).
- Proposed Criminal Code sections 83.05(6)(b) and section 6(1)(b) should be amended so that the entity has a formal right to see all the information against it, except that which is deemed by a judge to be detrimental to national security.
- The Bill should be amended to make it clear that if the evidence against it is from a foreign government, the organization has a right to know which government or governments have given evidence. The Bill should be amended to make it clear that if the evidence against it is from a foreign government, the organization has a right to know which government or governments have given evidence.
- We urge that it be made clear in section 83.08 that there is only an offence if the person knew or ought to have known that the property was owned or controlled by or on behalf of a terrorist group.
- We urge the amendment of proposed Criminal Code sections 83.03, 83.05, 83.18 and 83.23 to make it clear that providing humanitarian assistance or engaging in other charitable purposes is not “facilitating terrorism”.
- We echo the Canadian Bar Association recommendation that proposed section 273.65 of the *National Defence Act* be amended to require that a judge order the interception of foreign communications. This provides greater procedural safeguards to charitable and NGO communication. We also urge that information disclosed in investigative hearings not be communicated to foreign entities or governments.
- We echo the CBA recommendation and urge that Part 6 be deleted. The procedural safeguards on charities under the *Income Tax Act* are adequate to meet the concerns for financial accountability for charities. In the alternative, we urge that Part 6 be amended to provide a “due diligence” defence for charities that may inadvertently provide resources to entities that are considered to engage in terrorism. We also urge that there be a greater requirement for disclosure of evidence so that a charity has a reasonable opportunity to meet the case against it.
- We join the Canadian Council of Churches in asking the committee to recommend that a multi-faith advisory group be created to assist the government in building up the capacity of Canadian policy makers to address the religious component of relevant public policy issues.

Endnotes:

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- ¹ For example, see Romans chapter 13 and Psalm 72.
 - ² *Ross v. Moncton School District 36*, [1996] 1 S.C.R. 825.
 - ³ GA Res. 49/60.