



***We are not any safer;  
we are less free***

**Ligue des droits et libertés**

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**September 11 marked a decisive break in respect for human rights. In the name of a “just war” against terrorism, many infringements were suddenly permitted.... The defenders of civil liberties have good reason to be worried. The general trend of our society towards increasing respect for the individual and individual freedoms has been brought to a brutal halt. And there is every indication that we are now drifting towards what appears like more and more of a paranoid police state....** - Ignacio Ramonet

Like many human rights organizations throughout the world, the *Ligue des droits et libertés* (formerly known as the *Quebec Civil Liberties Union*) has been deeply concerned about the erosion of fundamental rights since September 11, 2001 and has initiated a campaign of mobilization and action against the many attacks on human rights. There are lots of recent examples: Maher Arar, a Canadian citizen of Syrian origin, was arrested as he passed through the United States and was deported by the U.S. government to his country of origin instead of Canada, the usual procedure. In Canada, refugees and immigrants who do not have landed status are deported on the decision of a single Commissioner, without any right of appeal, to countries where they may face torture or death. In Montréal and Québec City, hundreds of individuals - demonstrators or mere bystanders - have been subjected to “preventive” arrest” during meetings of international organizations.

These attacks on human rights began well before September 1, 2001. During the 1990s, the globalization of trade and financial transactions accelerated in many countries, eliminating major social gains such as the access to jobs and decent wages; there was a further widening of the already considerable gap between ever-richer minorities and the growing mass of the most impoverished. On every continent, citizens and citizens’ groups have felt increasingly concerned and threatened by the imposition of trade agreements that favour big industrial and financial groups at the expense of the general population. As peoples’ protests grew and proliferated during the decade, most governments, complicit in neo-liberal globalization, resorted more freely to often-brutal repression of grassroots demonstrations of dissent. The same governments have also given their police forces broader powers of intervention and have supported the increased implementation of greater police surveillance of the general population.

In recent years, police surveillance has developed not only in many individual countries, but also on an international scale. To cite just a few examples: 1) “*Échelon*”, an international network, relatively unknown to the general public, was first established in 1946 with a mission of surveillance of international communications; Canada participates through its *Communications Security Establishment* (CST); 2) the “*Convention on Cybercrime*,” an idea launched in the mid-1990s by the United States

and the member countries of the European Union for the purpose of police surveillance of e-mail, Internet traffic and the use of computer systems by citizens of the countries signing the Convention; and 3) the monstrous “*Total Information Awareness*” launched in the United States and designed to collect dozens of pages of information about each of the 6.2 billion inhabitants of the Earth (!) – a project that continues to proceed despite criticisms and manipulations aimed at disguising its progress.

Though it did not start on September 11, it is true nonetheless that the events of that day triggered an unprecedented wave of repressive measures hastily adopted by governments and still being implemented today. By taking advantage of a climate of fear and insecurity - often deliberately perpetuated - governments have considerably extended the powers of their police forces and have mandated them to establish vast surveillance systems. Police forces are thus making use of all the possibilities offered by new technologies, aimed at tracking not only people suspected of criminal activity, and terrorist activities in particular, but entire populations as well. Measures rarely used in the past, such as security certificates, have become more commonplace. The presumption of innocence is being tossed out, as is the respect for people’s privacy.

The *Patriot Act* in the United States (with a new chapter is about to be added) is among the recent measures that are most threatening to civil liberties. But Canada does not lag far behind, with its arsenal of laws and draft legislation, including the *Anti-Terrorism Act* (C-36)<sup>1</sup>, the *Anti-Gang Act* (C-24)<sup>2</sup>, the creation of a mega-database on international (and soon national) travellers, the *Public Safety Act* (C-7)<sup>3</sup>, the *Citizenship Bill* (C-18)<sup>4</sup>, as well as projected legislation giving police legalized access to computer communications by all citizens (Convention on Cybercrime) and plans for a national identity card containing a computer chip and biometric data.

These new measures have profoundly altered our legal system and the values entrenched in our Charters, such as the right to a fair trial, the right to a full and complete defence, the right to remain silent, the right to privacy and the right to seek asylum. These new measures are here to stay if there is no public outcry to have them withdrawn. The Canadian government did not take the route of adopting special legislation of limited duration. It opted instead to amend numerous existing statutes, such as the *Criminal Code*, the *Canada Evidence Act*, the *Immigration Act* and the *Access to Information Act*. Fundamental values such as the presumption of

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<sup>1</sup> *Anti-terrorism Act*, L.C. 2001, ch. 41, assented to on December 18, 2001, <http://lois.justice.gc.ca/fr/A-11.7/index.html>.

<sup>2</sup> *An Act to amend Criminal Code (organized crime and law enforcement)*,

L.C. 2001, ch.32 (Bill C-24, 2001), assented to December 18, 2001, came into force le January 7, 2002.

<sup>3</sup> C-7: *Public Safety Act*

<sup>4</sup> Bill C-18: *An Act respecting Canadian citizenship*, First reading, October 31, 2002

innocence, the right to physical and psychological integrity and the right to asylum are being thrown into question on a daily basis.

With hindsight, the history of Canada, like that of other countries, clearly shows that legislation that introduced extraordinary measures in a climate of urgency and fear has proven to be harmful to rights and freedoms. It has paved the way for abuses and discriminatory practices and is potentially very dangerous for members of the political opposition, dissenters and activists.

In a news release on September 11, 2003, the *International Federation of Human Rights* (FIDH) wrote that the anti-terrorist freedom-limiting measures adopted throughout the world had changed the global context: force now prevails over law. Some states are using the fallacious pretext of the anti-terrorist struggle to eradicate all forms of opposition to, or criticism of, authority: restrictions on freedom of expression, freedom of information, the right to demonstrate, freedom of association, freedom of movement, etc.

Analysing the anti-terrorist provisions, a group of lawyers in Québec emphasized that “*at a time in the globalization process when many observers are noting a trend to broader powers for the executive branch of government, particularly at the expense of the legislative branch, it is disquieting that the bill perpetuates this trend.*”<sup>5</sup> Enhanced powers for the executive branch constitute a disturbing challenge to the democratic process. For instance, unusual monitoring and surveillance measures, such as the mega-data base on travellers, are instituted through administrative directives. Similarly, government employees enjoy new immunity allowing them to commit most criminal offences, including certain terrorist-related financial operations.<sup>6</sup>

A very thorough report by the *Lawyers Committee For Human Rights*<sup>7</sup> shows that in the United States, the expansion of executive power and the relinquishment of legal guarantees is not just a temporary response to an emergency situation, but is becoming the “new normal” of life in America.

Canada must safeguard its sovereignty and distinguish itself from the United States. The large mobilization of public opinion in Canada and especially Québec against the war in Iraq is very significant. Many public figures have protested the Canadian government’s inertia in the defence of Canadian citizens detained in the United States or elsewhere because of their ethnic origins or religious beliefs. The recent example of Mr. Maher Arar, a Canadian citizen of Syrian origin, illustrates the security services’

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<sup>5</sup> *Projet de loi c-36 (loi antiterroriste)*, Document d’analyse juridique, November 2001, Legal opinion presented to la *Ligue des droits et libertés*.

<sup>6</sup> See the new subsections 25.1 and 83.09 of the *Criminal Code*.

<sup>7</sup> *Erosion of Civil Liberties Reflects a “New Normal” in America – not Temporary Sacrifices – since 9/11*.  
[http://www.lchr.org/media/2003\\_alerts/0918.htm](http://www.lchr.org/media/2003_alerts/0918.htm).

collaboration with U.S. authorities, going so far as to serve as informants. Although Jean Chrétien told a round table on terrorism in New York City that economic security for peoples was the key to reducing terrorism,<sup>8</sup> the current Prime Minister, Paul Martin, told the House of Commons that his foreign policy would be more closely tied to President Bush's than was Mr. Chrétien's. In fact, one of Prime Minister Martin's first decisions upon taking office was to create the Department of Public Security, which bears, for some, a curious similarity to the *Homeland Security* created in the United States after September 11.

An overview of measures taken in recent months shows that Canada is following a very disturbing international trend to roll back rights and freedoms.

### **Anti-terrorist provisions and other security measures**

Government measures, including the *Anti-Terrorism Act* (C-36), significantly strengthen the repressive powers of the State and the police, who now enjoy extensive latitude without being subject to any meaningful judicial or parliamentary review or control. Furthermore, amendments to the Criminal Code have given police officers broad immunity, including impunity for criminal offences committed in the course of an investigation.

#### **Overview of C-36**

The *Act to amend the Criminal Code, the Official Secrets Act, the Canada Evidence Act, the Proceeds of Crime (Money Laundering) Act and other Acts, and to enact measures respecting the registration of charities, in order to combat terrorism* (C-36), creates a new series of offences based on very broad definitions of « terrorist groups, » « terrorist activities, » « participation » and « facilitation » of terrorism. If a particular offence is committed for ideological, religious or political purposes, it can be deemed to be a terrorist activity, with two specific consequences: first, such a classification has an impact on sentencing, and second, it allows the use of extraordinary rules of evidence and procedure that do not comply with standard accepted judicial guarantees for persons suspected of committing an offence.

The *Anti-Terrorism Act* gives police forces extraordinary investigative and surveillance powers, authorizes arrests without warrants and preventive detention for interrogation on the basis of « suspicion » rather than the « reasonable grounds to believe » that is one of the legal cornerstones in a democracy and a crucial bulwark against abuses of power. Under the Act, a person can be detained

<sup>8</sup> Allison Dunfield, *Economic Security key to reducing terrorism* : PM, Globe and Mail, Sept. 23. 2003.

and questioned for 72 hours without being charged with any criminal offence. Finally, a judge can order the detention of a person who does not collaborate in an interrogation. This seriously jeopardises the right to remain silent.

When accusations of terrorism are brought, the defence only has access to a summary of the evidence. The *Canada Evidence Act* already provides for the non-disclosure of evidence for reasons of national security. C-36 now uses vague language, like « potentially injurious information » or « sensitive information. » A judge then has to restrict the accused's right to a full and complete defence on the basis of these vague criteria. Trials can take place *in camera* and the judge can even authorize the non-disclosure of the identity of witnesses, victims or legal personnel.

The sweeping powers thus conferred on the police allow them to question, keep under surveillance, detain and put on file persons against whom there are mere suspicions of « terrorist activity. » This concept can be extended to persons or organizations that contest the established order more vigorously or use various forms of civil disobedience, such as opponents of neo-liberal globalization. Aboriginal peoples, environmentalists and trade-unionists are liable to be victims of such measures and in fact are already being targeted by police surveillance forces.

Under C-36, an act of political dissent or protest for political, ideological or religious reasons can be classified as an act of terrorism if it is aimed at intimidating part of the population, it interferes with « economic security » or it seriously disrupts essential services, be they public or private. A group of Canadian environmentalists that received, support or helped foreign ecologists planning to block a road in order to protest the shipping of nuclear waste could be considered a “terrorist group” because it would have “facilitated” a “terrorist activity,” even without any knowledge their part of so doing: under the amendments to the Criminal Code, it would be a gesture of intimidation committed during the transportation of nuclear materials, in Canada or abroad.<sup>9</sup> Such acts are certainly not the terrorism that has been targeted, but the possibility of using such exorbitant provisions of common law against conventional forms of protest certainly does exist. This is, in fact, what has happened in Great Britain, where authorities used their powers under the *2002 Terrorism Act* against dockers who were picketing in the Port of London.<sup>10</sup>

<sup>9</sup> Read together with 83.01 (1) (v) Cr. Code ,referring to 7 (3.4) Cr. Code and intimidation in 423 g) Cr. Code

<sup>10</sup> <http://www.liberty-human-rights.org.uk/press>. Liberty, affiliated with the FIDH, is challenging this method in court.



None of these exorbitant powers is subject to any meaningful independent controls. Ms. Shirley Heafey, chair of the *RCMP Public Complaints Commission*, stated that she has not managed to find out what use the RCMP is making of its new powers: « We can't investigate unless there is a complaint, and even when there is a complaint...we can't see the information...For all practical purposes, there is no civilian oversight.<sup>11</sup> She also said that she has received numerous reports about Moslems harassed by the police who don't dare file formal complaints.

C-36 requires the Departments of Justice and the Solicitor General to make annual reports, but the first ones contain very little information about except to say that the new powers of investigation and preventive arrest have not been used. The counter-report by the International Civil Liberties Monitoring Group (ICLMG), *In the Shadow of the Law* reports more extensively on the impact of anti-terrorist measures and gives a number of examples of abuses against the Moslem community, alter-globalization and aboriginal activists, as well as the effects on NGO advocacy and humanitarian assistance groups.

In Canada, « racial profiling » by government employees *is* a reality, one that is unacceptable.<sup>12</sup> Community leaders of Arab or Moslem origin have reported numerous cases of persons visited by the police or taken in for questioning. According to the *Canadian Islamic Congress*, the number of hate crimes against Canadian Moslems has risen by more than 1,600% since September 2001.

Charitable and rights advocacy organizations working at the international level are, for the most part, subject to new visa procedures and requirements. For example, CIDA requires NGO staff to ask for permission before travelling and to indicate with whom they are to be in contact; if they fail to do so, their funding can be withdrawn. This makes their work harder and endangers the human rights activists with whom they have contact.

### **Mega-data base on travellers and border problems**

In October 2002, the federal government established a mega-data base covering all passengers on international flights. This mega-file contains detailed information about all the passengers: name, flight, seat choice, destination, method of payment and credit card used, baggage and travel companions. The information will be stored for six years and can be cross-referenced with other data bases, including police records, for security reasons. Lobbying by rights advocacy groups and the *Office of the Privacy Commissioner of Canada*, led to the introduction in April 2003 of some restrictions on the content of the information collected (including eating habits) and

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<sup>11</sup> Bill Curry, *National Post*, July 4, 2003.

<sup>12</sup> *R. v. Brown*, [2003] O.J. No. 1251, April 16, 2003.

provisions making access to the nominal data base more difficult for civil servants. However, the data base is not intended to be used solely to combat terrorism.

The establishment of this mega-data base illustrates the dangers involved in the unlimited storage of information made possible by computer technology, and the linkage of data records: the impact of these technologies has an unprecedented impact on the capacity to monitor citizens. What would be the reaction if government employees could surreptitiously follow and monitor citizens in their comings and goings and store information about their daily movements?

The situation at Canada's southern border has changed radically: plans for a 'smart' border, a mega-file on travellers, a ban on entering the United States by persons with any criminal record whatsoever, the turning back of refugees to the United States, the ethnic targeting of Canadian citizens at the border, the lengthy detention of citizens living in border villages along the border... While measures are being taken to facilitate the transit of goods for economic reasons, the movements of people are being subjected to systematic and often arbitrary or discriminatory controls. On December 5, 2002, Canada signed the *Safe Third Country Agreement* with the United States, which will come into force as soon as the United States adopts the pertinent regulations. This new agreement will oblige refugees to apply for asylum in the first country in which they set foot. People who ask for refugee status at the Canadian border after travelling through the United States will be turned back. The agreement weakens the protection that Canada claims to offer refugees. For large numbers of asylum-seekers, the United States is not a safe third country because in many respects its treatment of refugees is below international standards.

The impact of these new measures is not limited to cross-border travel: it directly affect the rights and freedoms of all citizens, even those who will never cross any border. Intelligence agencies in the United States have files on 65 million Mexicans, 31 million Colombians and 18 million residents of Central America who are not aware of it.

What about Canadian sovereignty in light of Washington's imperatives? In September 2003, the Department of Foreign Affairs publicly stated that there was no guarantee that Canadians would be able to travel freely to the United States without running the risk of being detained and suspected of terrorism.<sup>13</sup> The Canadian government's lack of zeal in protecting the rights of Mr. Maher Arar - a Canadian citizen arrested in New York and deported to Syria where he was held for a year and tortured without any charges being brought against him - is a disgraceful example. Instead of clarifying the

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<sup>13</sup> *The Ottawa Citizen*, September 26, 2003.



causes of this tragedy, the government is trying to cover up its role and that of the RCMP in the deportation of Mr. Arar by U.S. authorities<sup>14</sup>.

### **Imposition of a compulsory biometric identity card**

In the fall of 2002, Citizenship and Immigration Minister Denis Coderre launched the idea of an identity card, or citizenship card, to make it easier for Canadians to cross the U.S. border. He argued that the war on terrorism made such a card more relevant, stating that “*things have changed since September 11.*”<sup>15</sup> The plans for a citizen ID card with biometric data comes from the *Ridge/Manley Action Plan*<sup>16</sup> for a smart border.

In Canada, a compulsory ID card would constitute a major change in relations between citizens and the government. In societies based on Anglo-Saxon traditions of freedom like Canada, Great Britain and the United States, citizens are not obliged to carry ID cards and have no obligation to identify themselves to government employees unless they are under arrest. We are only obliged to produce a permit or licence identifying us when we engage in a specific activity that requires such a permit or licence (driving, hunting, etc.). The primary purpose of verification is not to check our identity but to ensure that we are legally authorized to engage in the activity in question. As well, there are other documents, such as health insurance cards, that give us access to specific services. Once again, the primary purpose of such documents is not to identify individuals. The proposed identity card is of a completely different nature: it introduces the idea that henceforth citizens must be able to identify themselves at all times. It challenges the right to anonymity which is one of our democratic principles.

M. Denis Coderre’s statements indicate that the proposed identity card will contain biometric data, most likely information on the iris and fingerprints. Given the minister’s objectives, one can imagine that the card will be used for identification purposes, linked to a central file. Without central records containing biometric data on all cardholders, there would be no way of ensuring that an individual didn’t acquire several cards corresponding to the same biometric data. The proposal implies that all citizens will have to put their fingerprints on file with the police, along with their iris and (probably) a picture of their face. Once the principle of a biometric data base for the entire population is accepted, what will prevent this data base from evolving, as

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<sup>14</sup> In July 2004, after three days of hearings, the *Commission of Inquiry into the Actions of Canadian Officials in Relation to Maher Arar* abruptly terminated the process in order to hold in camera hearings, following repeated demands for secret hearings on the part of government officials on the ground of preserving national security and international relations.

<sup>15</sup> Marco Fortier, *Création d’une super carte d’identité*, Journal de Montréal, November 15, 2002.

<sup>16</sup> Department of Foreign Affairs and International Trade, *Smart Border Accord*, Progress report, December 6, <http://www.dfait-maeci.gc.ca>.

technology advances, into the ultimate biometric identifier for each individual, i.e., including the genetic code contained in DNA? DNA is not just an identifier; it defines our biological being and reveals our most personal characteristics. Finally, what would prevent the police from using biometric records, in particular fingerprint records, for all kinds of investigations? A sordid crime provoking public indignation would be enough to give the police the chance to convince the public that it is in the public interest for the police to have access to such records. At best, a warrant might be required.

Another concern is how these records will be shared internationally. Sharing of criminal records among police forces of various countries, in particular the United States, is already a source of major problems for a certain number of Canadians. They are prevented from travelling to the United States, or even passing through the United States in transit, because of petty crimes committed years ago and for which they have served their sentence. The possibility of foreign powers, and in particular the United States, gaining possession of these records legally or illegally is certainly disturbing. The recent decision to award the contract for the Canadian population census to a U.S. company with close ties to the Pentagon sets a troubling precedent, to say the least.

Contrary to what Minister Denis Coderre says, the biometric card will cause numerous problems for citizens. Independent tests have shown that biometric technologies do not work as well as the industries promoting them claim. They have result in mistaken identifications, in particular when they are used to identify an individual by comparing that person's biometric data with the data for large numbers of people contained in a data base. The implications are enormous. What will happen when the system says that the person at the border or the airport is not who he or she claims to be, or worse, that his or her data correspond to those of someone sought by authorities? Apart from the humiliation, how long will the person be held before the mistake is corrected? Will people from Moslem countries once again be treated differently? Even a system that is 99.99% - and we still have a long way to go before achieving such an accuracy rate - will still produce 1,000 false alerts per 10 million travellers.

The unreliability of biometric technologies will also have consequences when police forces use biometric records to identify suspects in the course of an investigation. How many citizens will be wrongly suspected, with all the consequences that this entails?

Including a microprocessor on the card creates the possibility of inserting a substantial quantity of information about the bearer, such as the person's criminal record (police forces are requesting this), driving record, medical records, etc. The card will certainly become the preferred means of access to files created for surveillance purposes, such as the mega-file on travellers. Nothing will prevent the

card being use to authorize access to other files. What control will citizens have over the information contained on the card or in the files, or over who has access to the data?

The idea of an identity card has met with much opposition and the project has been put on the backburner. Nevertheless, the drive to impose biometric documents continues. To get around public opposition within each country governments are relying on international organizations to impose their agenda. Thus, the *International Civil Aviation Organization (ICAO)* adopted a biometric passport as its new international standard. This passport will include facial recognition technology. Fingerprint and iris recognition are optional for now and left up to each government. The passport will also contain a radio frequency identification device (RFID) which will make it possible to read the information contained in the passport from a distance.

### **Increased use of security certificates**

Since September 11, the number of persons held on security certificates has risen considerably. All of them are from the Moslem community.

#### ***“What’s a security certificate?***

*“Security certificates are reviewed and signed by the Minister of Citizenship and Immigration and by the Minister of Public Safety. They can be issued against permanent residents and foreign nationals.*

*“Once signed, security certificates are referred to the Federal Court. The judge hears all or part of the evidence from the Minister or the Solicitor General, in the absence of the person named. Evidence and information are heard in private by the judge to protect national security or the safety of any person. The judge will also hear evidence and testimony from the person named in the certificate.*

#### ***“What is the effect of a security certificate?***

*“When a security certificate is issued, all other immigration proceedings are suspended until the Federal Court makes a decision on the reasonableness of the certificate.*

*“Foreign nationals who are the subject of a security certificate are automatically detained. Permanent residents may be detained on a case-by-case basis.*

*“If the judge determines that the certificate is unreasonable, the certificate is quashed. If, however, the judge decides that it is reasonable, then the certificate*

*automatically becomes a removal order. The Federal Court's decision cannot be appealed... This eliminates the necessity of holding an admissibility hearing.*<sup>17</sup>

This procedure is a denial of the principles of fundamental justice. Full disclosure of evidence and the right to respond, so that the accused has an opportunity to challenge it, are essential conditions of a full and complete defence. The role of a court (judge or jury) must not be limited to a mere finding on the whether the evidence is *reasonable*, but must rather be to render a verdict in the context of a just and equitable trial. The public nature of the trial allows the public to see that the principles of fundamental justice are being respected. Furthermore, the right to an appeal has always been considered a protection against injustice.

All these basic rules of justice are infringed in the case of security certificates. Everything happens *in camera*, behind closed doors. The accused is not informed of all the evidence against him or her. Part of the evidence may even be kept hidden from the judge. In such conditions, it is impossible for the accused or his or her lawyer to contest the charges. The judge must then rely solely on the evidence and arguments of the department's prosecutors. The judge's sole role is to rule whether the evidence is reasonable, i.e., whether the allegations are sufficient to justify the certificate. Experience has shown that in nearly all cases, judges will endorse the version provided by the *Canadian Security Intelligence Service (CSIS)*. The accused cannot appeal the decision. However, in the rare cases in which a first judge rejects the security certificate, a second one can be issued and brought to another, more 'understanding' judge.

Five persons are currently being held on security certificates: Mahmoud Jaballah, Muhammad Mahjoub, Hassan Almrei, Mohamed Harkat and Adil Charkaoui. They have served a total of a dozen years of imprisonment.

In August 2003, 18 men of Pakistani origin and one of Indian origin were arrested in a spectacular sweep in Toronto. The next day, security services announced that they had just uncovered an Al Qaeda sleeper cell whose members were training to fly over nuclear power plants. Shades of September 11, 2001! Information disclosed since then has shown how ridiculous the allegations were. The RCMP even had to admit that it didn't have any evidence connecting these individuals to Al Qaeda.<sup>18</sup> At most, Immigration Canada seemed to have discovered a fraudulent immigration network.

These examples show how dangerous it is to leave the administration of justice in the hands of security forces. Security certificates allow the bureaucracy to put people in

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<sup>17</sup>Citizenship and Immigration Canada, *Keeping Canada Safe*, <http://www.cic.gc.ca/english/irpa/fs%2Dkeeping.html> (our emphasis).

<sup>18</sup>M. Jimenez, *Terror Suspects pose no risks, Immigration decides*, *Globe and Mail*, September 26, 2003.

prison without having to prove their guilt in accordance with the rules of fundamental justice.

Bill C-18, amending the *Citizenship Act*, introduces procedures similar to the security certificate process that can be used to withdraw citizenship from a naturalized citizen. The minister of Citizenship and Immigration and the Solicitor General can sign a certificate asserting that a citizen obtained citizenship through misrepresentations and that if the person were not a citizen, he or she would constitute a risk for national security under the *Immigration and Refugee Protection Act*. “«Under these rules, the judge must hear the case and guarantee the confidentiality of the information justifying the certificate if he considers that the communication of the information would adversely affect national security or the safety of others. The judge must examine the information and other evidence *in camera* within seven days of the filing of the certificate. He may examine certain elements of the evidence in the absence of the person concerned and his or her counsel, when justified.”<sup>19</sup>

### **Expanded powers of electronic surveillance of the privacy of all citizens**

On August 25, 2002, the Canadian Department of Justice published a consultation paper on “Lawful Access.” The paper announced the basic principles of future legislation, aimed in part at expanding the legal powers of the police with respect to electronic surveillance and, as well, obliging public and private providers of all forms of computerized communications (including “servers” like Bell, Vidéotron, VISA, banks and government departments) to store and keep their circulation data so that they can eventually be turned over to the persons charged with implementing the Act, including the employees of certain government departments and specifically the Department of Revenue. The legislation would allow them to intercept e-mail and obtain any data (routing and contents) pertaining to any subscriber’s or user’s use of the Internet or a computer network. The proposed legislation is based on the Canadian government’s intention to comply with the *Convention on Cybercrime* that it already signed on August 25, 2002, without, however, ratifying it or qualifying its support. The proposal to give police forces access to new parts of the private life of all citizens - like that of allowing the sharing of this information with the police forces of other countries that have signed the Convention - goes far beyond the requirements of a legitimate struggle against cybercrime, which is the purpose of the Convention.

The “Lawful Access” project could have consequences that go far beyond the mere repression of specific crimes related to cybercrime. Its implementation could propel us into a world in which our e-mail, visits to web sites and smallest gestures could be spied on continuously, without our knowledge, where we would be like microbes

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<sup>19</sup> <http://www.cic.gc.ca/francais/politiques/c18/c18-article-3.html> (our translation)

under a microscope. Although no specific bill has yet been tabled, advocacy groups and concerned organizations expect legislation to be introduced soon.

## **Freedom of expression in jeopardy**

While governments are steadily establishing new ways of monitoring and engaging in surveillance of the private life and daily actions of citizens, in the past few years there has been an intensification of repression and restrictions on freedom of expression and the right to demonstrate and be heard. For instance, alter-globalization demonstrations regularly draw disproportionate police reaction: forceful police operations, mass preventive arrests, numerous accusations of unlawful assembly, many of which prove to be unfounded and are subsequently abandoned, abusive conditions for release or interim release pending trial (limitations on the right to demonstrate and freedom of movement, obligation to keep the peace, etc.). The *Ligue's* report on its observation of the demonstrations at the Summit of the Americas in Québec City<sup>20</sup> in April 2001 concluded that there were massive violations of rights and freedoms: with their the abusive and random use of various weapons, gas, plastic bullets, water cannon, dogs and others means, authorities violated both freedom of expression and the integrity and safety of individuals. The rights of those arrested and detained were also violated on a massive scale. The *Ligue's* conclusions are borne out by the recent report by the Chair of the RCMP Public Complaints Commission, in which she also condemns the abusive use of gas, plastic bullets and other weapons and recommends that legal proceedings be taken against those responsible.

Citizens who work for a wide variety of causes, and not just alter-globalization activists, are now being targeted by provincial, federal and even municipal police (investigations, questioning and arrests). We have heard, for example, that citizens and groups working for municipal demergers, childcare services, the right to housing (and what else?) are also coming under police scrutiny.

These tactics are increasingly decried as measures that have the effect of denying the right to demonstrate and criminalizing dissent. Recently, Riccardo Petrella<sup>21</sup> condemned the preventive security measures in the context of demonstrations against globalization which put into doubt the “*constitutional right to demonstrate.*” Susan George considers that “*it is not enough for Western leaders to simply repress alter-*

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<sup>20</sup> *Violations des droits et libertés au Sommet des Amériques*, Québec, April 2001, Ligue des droits et libertés en ligne <http://www.liguedesdroits.ca>

<sup>21</sup> Petrella, Riccardo, *Les remparts du capitalisme*, Manière de voir no 71, Monde diplomatique, October-November 2003, page 62.



*globalization demonstrations; they organize ideological and legal harassment aimed at turning opponents into outlaws.”<sup>22</sup>*

The *Ligue des droits et libertés* has on a number of occasions emphasized the abusive nature of mass arrests, in particular those that took place on April 26, 2002, and July 28, 2003, in Montréal. In both cases, the *Ligue* condemned the “*abusive and recurrent invoking of unlawful assembly to give police forces wide latitude to arrest, detain and charge any individual participating in a demonstration,*” since the mere fact of being present at the site of an unlawful assembly can be enough to be denied the right to demonstrate.

As emphasized in the August 2000 report by CSIS and as the spokesperson for police forces explicitly stated before the Québec City Summit, the authorities act on the basis of a well-established principle whose objective seems to be to *minimize* the size or scope of rallies in opposition to neo-liberal globalization. In the case of July 28, 2003, for example, this meant not intervening to arrest the persons who committed acts of violence but “taking advantage” of their actions to conduct mass arrests of people who were not involved in the violence and thus put an end to the demonstration. On April 26, 2002, police proceeded with mass “preventive” arrests of hundreds of people on the pretext that they included some persons “known to the police” who had in their possession objects that could have been used to commit various acts of mischief.<sup>23</sup>

It is not up to police forces to determine the parameters for exercising the right to demonstrate. Allowing a link to be created in public opinion between protests and violence, or assimilating legitimate and lawful forms of expression with unlawful acts, is highly detrimental to the right to demonstrate.

Furthermore, freedom of expression in Canada is curtailed in insidious and at times surprising ways. In February 2003, for example, the *Ligue des droits et libertés* was refused use of a room at the Bibliothèque nationale du Québec (Québec’s National Library) for a meeting it wanted to organize to discuss Justice Canada’s “Lawful Access” project. A spokesperson for the Library informed the *Ligue* that in the wake of the events of September 11, 2001, the institution had adopted a new policy limiting the use of its meeting rooms to cultural activities.

## **The deception of the logic of “security”**

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<sup>22</sup> Ibid, page 60.

<sup>23</sup> On September 23, 2004, Judge Evasio Massignani acquitted the 115 persons accused of having violated a municipal bylaw for having taken part in a «*meeting, demonstration or gathering representing a threat to peace, security or order on the public domain.* »

The process used to justify the introduction of these measures is not entirely new. It is based on a climate of fear that has been deliberately fostered. From Code Green to Code Yellow to Code Orange, the population of the United States is under the impression that they live with the perpetual threat of devastating terrorist attacks, even though the facts belie these fears. Except for the four or five people killed by the anthrax episode in the fall of 2001, no American has died since September 11, 2001 because of a terrorist attack on U.S. soil. Moreover, the murderous march 11, 2004 bombing in Madrid only underlines the fact that terrorism will not be defeated by attacking countries like Iraq. Most of the other attacks are related to local disputes – Chechnya, Israel, Colombia – and have nothing to do with international terrorism. There has not been any attack at all on Canadian soil and no arrests have been made under the *Anti-terrorism Act*.<sup>24</sup> Nonetheless, the danger is supposedly so great that it is even suspect to want to think about the causes of terrorism: “*This is war... you’re with us or against us.*” (Bush).

This conditioning of public opinion was already under way before September 11. Media coverage of certain spectacular crimes gives citizens the impression that they are living in an increasingly dangerous world<sup>25</sup> requiring tougher police action and more severe laws. For example, the image of increasingly violent youth was used to justify repressive amendments to the *Young Offenders Act*. Citizens’ sense of a lack of safety in a society that is more and more competitive and in which traditional reference points are eroding is channelled into a fear of the ‘other’: youth, Arabs, Moslems, refugees. In the name of the struggle against terrorism, in a world in which conflicts between the affluent and the excluded are becoming more acute every day, conditions are created for repressing any challenges to the established order.

Government discourse today is based on the urgent need for measures that, it is claimed, will ensure the public’s safety and ward off certain perils. According to Professor Kent Roach, however, there are ways other than repression to make us safer.<sup>26</sup> Recent events have clearly demonstrated our vulnerability: SARS, mad cow disease, the Walkerton scandal. If we are powerless against accidental contamination, we are also powerless against deliberate contamination.

There is endless talk about security, but what are the real concerns of governments when it comes to the basic necessities of life for humanity? What about the protection of individuals’ integrity and their right to life? Global food security and underdevelopment endanger a large proportion of humanity. According to World Bank

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<sup>24</sup> M. Momin Khawaja, a young computer programmer, has been arrested in Ottawa in April 2004 and is the only person accused under the *Antiterrorism Act*. He is still awaiting trial.

<sup>25</sup> Whereas Canadian statistics indicate a decline in violent crimes.

<sup>26</sup> *September 11 : Consequences for Canada*, McGill-Queen’s University Press, 2003.

experts, the current evolution of the world economy is unlikely to produce a noticeable reduction in infant mortality or low levels of education between now and 2015.<sup>27</sup>

Countries are withdrawing from government programmes of support for agencies helping people with AIDS at a time when, according to the UN, this health problem constitutes “*the worst epidemic humanity has ever known.*” And *Health Canada* estimates that 55,000 Canadians – 20,000 of them Québécois – are infected by the virus.<sup>28</sup> In the past year, about 600 people have died in Québec hospitals from C Difficile bacterial infection. A fair number of these deaths are the result of a lack of hygiene in hospitals on account of budget cuts.

Although there is a consensus in scientific circles on the need for urgent and essential measures to repair damage to the environment, economic forces slow down their implementation. Canada and other Western countries delay signing or implementing adequate environmental policies and measures despite various agreements and treaties.<sup>29</sup> Canada, for example, one of the leading producers of genetically modified organisms (GMOs), refuses to ratify the *Protocol on Biosafety* and recognize the “precautionary principle” as well as the right of countries to refuse to import GMOs if there is a potential risk for human health and biodiversity.<sup>30</sup> Be it the underfunding of services deemed essential (water, health, education), the water scandal in Walkerton or Québec’s gradual abandonment of its tools for effective environmental monitoring, the conclusion is the same: the lack of willingness on the part of government and economic powers to respond to these urgent and vital problems is in sharp contrast with their haste to establish anti-terrorist surveillance and repression in the name of a “safe environment.”

It is crucial to examine the causes of terrorism in order to combat it more effectively. The wealthiest countries pursue their interests to the detriment of equity, solidarity and the right of peoples to self-determination, causing entire populations to lose all hope for a better life and fostering the emergence of the most disastrous ideologies. Universal peace and security depend on a sincere commitment by the entire community of states to build a more just and balanced international order.

In the final observations in her progress report on *Terrorism and Human Rights*, Special UN Reporter Ms. Koufa wrote:

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<sup>27</sup> *Le Devoir*, September 22 2003, p. A6.

<sup>28</sup> *Le Devoir*, , September 22 2003, pp. A1 & A8.

<sup>29</sup> For example, the Kyoto Protocol, the Stockholm treaty on organochlorides and the Carthage Protocol on Biosafety.

<sup>30</sup> «*Gâteau géant pour le Protocole sur la Biodiversité*», Communiqué of *Greenpeace*, September 10, 2003.

“An analysis of contemporary terrorism reveals that, roughly speaking, the States that are the most respectful of human rights are also the ones least likely to be confronted with problems of domestic terrorism.... So the reduction of terrorism requires the full exercise of human rights and recourse to genuinely democratic practices throughout the world. Everything must be done to make human rights a reality, in particular with respect to self-determination, racism, ethnic and political representation within each State and economic or social disparities based on social class.”<sup>31</sup>

Security and freedom are not opposites. Respect for fundamental rights is an inescapable condition, a vital component of security. The measures taken by Canada do not make us safe; they make us less free. If we react to terrorism by collectively relinquishing our rights and freedoms, then terrorism and the discourse of ‘total security’ will have won a major battle.

## **From a multitude of struggles to a movement of resistance**

These multiple attacks on our rights and freedoms have provoked reactions. The *Ligue des droits et libertés* created an observation committee to monitor respect for civil liberties during the 2001 Summit in Québec City and produced a detailed report on police abuses at that event. In the fall of 2001, the *Ligue* worked with a team of lawyers to produce an in-depth study of Bill C-36 and joined with other groups and organizations in Québec to demand its withdrawal. Numerous groups across Canada have also taken stands against this bill’s abuses. In response to this public outcry, some of the worst aspects were amended. For example, the definition of *terrorist activity* was changed so that it doesn’t include legal strikes. The *Ligue* has issued numerous press releases condemning the mega-files on travellers, violence against undocumented Algerians, mass arrests (April 2002 and July 2003), the use of security certificates, etc. In October 2002, following the Canadian government’s semblance of consultations on the “Lawful Access” project, a number of groups, alarmed by the infringements of privacy that such a project could entail, joined together to create the *Collectif sur la surveillance électronique* to examine the project. Subsequently, the collective invited groups to sign a statement asking the government to abandon its “Lawful Access” project. So far, several hundred have signed.

After September 11, many activists from unions, international co-operation groups, women’s groups and rights advocacy groups joined together in *Concertation Comprendre et Agir pour une paix juste* (Concertation Understanding and Acting for a

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<sup>31</sup> E/CN.4/Sub.2/2001/31, par 129, June 27 2001 (our translation).

Just Peace). Information sessions in ten different regions of Québec, three seminars analysing the current situation, and the production of information sheets have been used to educate and raise awareness in many networks about the issues of human rights, immigration, development and peace in the context of the discourse on security.

In Canada, some thirty organizations created the International Civil Liberties Monitoring Group (ICLMG), an umbrella group whose objective is to monitor the implementation of “anti-terrorist” and “security” measures, to do education work on their impact and develop concerted responses when vulnerable organizations or communities are affected. The ICLMG has spoken out regularly in conferences, press releases, briefs to legislative committees on various bills as well as *In the Shadow of the Law*, a report in response to Justice Canada’s first annual report on the application of the *Anti-terrorism Act* (C-36). Right now, the ICLMG is preparing an international conference in February 2004 that will bring together representatives of organizations in various countries concerned by the situation of human rights around the world.

During the past year, groups in Québec mobilized against the end of the moratorium for undocumented Algerians, and others are working to prevent the deportation of Palestinian refugees to the United States or elsewhere. A committee is conducting a campaign to demand that the use of security certificates be dropped, notably in the case of Adil Charkaoui. In January 2004, after repeated demands on the part of Maher Arar and civil rights organizations, the Martin government decided to set up a public inquiry commission. However, until now, the inquiry has taken place behind closed doors since the government persists in invoking secrecy for motives of national security and international relations.

In the United States, citizens have been organizing across the country, setting up local committees to defend the *Bill of Rights* (the ‘charter of rights’ in the United States). So far, these citizen groups have persuaded 216 cities and three states to pass resolutions protesting the *Patriot Act* and declaring their territory “a civil liberties safe zone.” As well, these groups are campaigning to demand the repeal of the *Patriot Act* and other repressive laws aimed at immigrant communities and expanding the FBI’s powers of investigation (*Clear Act, Intelligence Authorization Act*). They seek to have local committees created in schools, neighbourhoods and workplaces and invite the general public to provide assistance to people being held in detention centres.

## **Uniting around demands**

The public has begun to mobilize, but it mustn’t stop there. We must be even more vigilant. We must oppose even more vigorously the erosion of our most fundamental

rights. We must make our voices heard even more loudly and clearly. While it is legitimate to want to take steps to protect ourselves against terrorist attacks, this must not be done by adopting measures whose effect would be to curtail a society based on law to the benefit of one driven by the market, and to subordinate human rights to economic imperatives. It is in this perspective that the *Ligue des droits et libertés* is launching a campaign with the primary goal of raising public awareness as broadly as possible. The more numerous we are to realize the deception of the logic of “security,” the better we will be able to resist the measures introduced under the cover of “anti-terrorism.” For in the society that is proposed to us, we would not be any safer; we would only be less free.

All actions taken by various groups - be they political pressure for the right to demonstrate, or a demonstration against the deportation of refugees, or a petition against a bill that violates the right to privacy – are important and essential. However, the *Ligue’s* campaign should help them overcome the isolation in they find themselves now and broaden support for them.

The *Ligue* invites community groups, unions, student associations, women’s groups, rights advocacy groups and international development organizations – in short, all the dynamic forces of civil society – to join this campaign and endorse its demands. In the course of coming months, and depending on specific current conditions, we will contact the signatory groups to participate in a joint action, sign a press release or invite their members to an information session. There will be posters, leaflets, buttons, etc. in support of this campaign.



We propose that the campaign be structured concretely around a number of demands:

#### For the repeal or review of certain laws

- We demand the repeal of the *Anti-terrorism Act*;
- We demand the repeal of provisions allowing the forces of law and order to commit criminal offences with impunity (C-24), i.e., the abrogation of police immunity;
- We demand that governments and the forces of law and order be truly accountable to the public and elected representatives for their use of all extraordinary powers they have been given in the context of the struggle against terrorism and crime in general; to this end, we demand the creation or reinforcement of the obligation for ministers, government departments and agencies, police services and Canadian intelligence services to be accountable to the Canadian Parliament and the Canadian public on the use made of these powers.

#### To protect the rights of refugees and immigrants

We demand that the Canadian government:

- Ensure the right to appeal for refugee claimants, as provided by the *Immigration Act*;
- Repudiate the *Safe Third Country Agreement* with the United States and put a halt to all temporary removals of refugee claimants to the United States unless it is certain that they will not be detained and can return to claim refugee status at the border crossing on the scheduled date;
- Honour its signature on the *International Convention Against Torture* by putting a stop to the deportation of persons to countries practising torture;
- Respect the demands of the UNHCR by limiting to a minimum the use of detention for refugee claimants;
- Revise the *Immigration Act* on security certificates in such a way as to respect the rule of law and procedural fairness and abandon its plans to amend the *Citizenship Act* to extend this measure to Canadian citizens, and until the Act is reviewed, to cease all use of security certificates.

## To protect the right to privacy

We demand:

- parliamentary review of agreements on information-sharing with other countries on intelligence and security matters;
- that the Federal government stop hiding the facts pertaining to the Maher Arar case in order that the *Commission of Inquiry into the Actions of Canadian Officials in Relation to Maher Arar* may be a true public inquiry;
- that the government abandon its “Lawful Access” project.

## To respect freedom of expression

- We demand an end to preventive, mass and abusive arrests during demonstrations, and the dropping of charges brought during these arrests.

We therefore call on all those concerned about the measures and practices which have been reducing freedoms in recent years to endorse this campaign. The future of our society and the world that we will leave to our children is at stake. We must not be taken in by the discourse on security. Do not forget that in the world being proposed to us, we will not be any safer; we will just be less free.