

# SUBMISSION

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## CRIMES (SERIOUS CRIME PREVENTION ORDERS) BILL 2016

A submission of the New South Wales Bar Association.



NEW SOUTH WALES  
BAR ASSOCIATION®

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### Introduction and overview

*The Crimes (Serious Crime Prevention Orders) Bill 2016* (NSW) (the Bill) is an extraordinary and unprecedented piece of legislation with grave implications for the rule of law and individual freedoms in New South Wales.

The Bill was announced on 22 March 2016 by the Deputy Premier and Minister for Justice and Police the Honourable Troy Grant MP, joined by New South Wales Police Commissioner, Andrew Scipione. Notice of motion for the Bill and its second reading in the Legislative Assembly occurred on the same day.

The Bill provides for the making of serious crime prevention orders, and a consequential amendment to the *Criminal Procedure Act 1986* (NSW). The Explanatory Note for the Bill provides as follows:

The object of this Bill is to enable the Supreme Court and the District Court to make serious crime prevention orders, on the application of the Commissioner of Police, the Director of Public Prosecutions or the New South Wales Crime Commission, so as to prevent, restrict or disrupt involvement by certain persons in serious crime related activities.

The Bill confers power on an 'appropriate court', on the application of an 'eligible applicant', to make a serious crime prevention order (SCPO) against a specified person (clause 5). In the case of natural persons, a SCPO may be made against a person 18 years and older convicted of a

‘serious criminal offence’, or who has engaged in or been involved in ‘serious crime related activity’. The expression ‘serious crime related activity’ means ‘anything done by a person that is or was at the time a serious criminal offence, whether or not (a) the person has been charged with the offence, or (b) if charged been tried, or been tried and acquitted, or been convicted (even if the conviction has been quashed or set aside)’ (clause 4).

An ‘eligible applicant’ for a SCPO may be the New South Wales Commissioner of Police, the New South Wales Director of Public Prosecutions or the New South Wales Crime Commission (clause 3(1)).

Apart from the limitation in clause 6(2), the nature and scope of a SCPO is open-ended, and no guidance is provided in relation to the kinds of orders which might be ‘appropriate’ for ‘the purpose of protecting the public’ (see clause 6(1)). The potential for interference in the liberties of citizens of New South Wales and their day to day lives is extreme.

A natural person against whom a SCPO is in effect who contravenes a SCPO is liable to a penalty of 300 penalty units (\$33,000) or imprisonment for 5 years, or both (clause 8).

The New South Wales Bar Association opposes the Bill which effectively sets up a rival to the criminal trial system. The system proposed to be set up is contrary to the administration of criminal justice by a process of trial. The process for the making of a SCPO is antithetical to the process by which crime is punished following a criminal trial, and upon conviction, and proceeds on a false and disturbing dichotomy between the punitive and protective functions of the administration of criminal justice in NSW. Rather, a SCPO provides a means to restrict a person’s liberty where a prosecution fails, but the authorities (‘eligible applicants’) continue to believe the acquitted (or not convicted) person poses some identified threat to public safety. The Bill makes people targets for the operation of a SCPO if they have a conviction for an offence carrying a maximum penalty of more than five years. The SCPO need have no relationship at all to the offence, but provides a means of control of the lives of people who have been convicted.

In particular, the New South Wales Bar Association is of the view that:

- (a) the Bill creates a very real danger of arbitrary and excessive interference with the liberty of many thousands of New South Wales citizens. The powers to interfere in the liberty and privacy of persons, and in freedoms of movement, expression and communication, and assembly are extraordinarily broad and unprecedented, and are not subject to any substantial legal constraints or appropriate judicial oversight;
- (b) no case has been made as to why such draconian powers should be conferred on ‘eligible applicant[s]’, or why ‘appropriate court[s]’ should be, or can lawfully be, enlisted in their enforcement;
- (c) the interference with fundamental human rights and freedoms is contrary to Australia’s international obligations, the measures proposed lack conformity with principles of strict necessity and proportionality, are not of an exceptional and temporary nature, and do not limit rights only to the extent strictly required by the exigencies of the situation; and
- (d) the constitutional validity of the Bill must be regarded as highly doubtful. That is because it is an unacceptable diminution of the institutional integrity of the courts of the State to require them to conduct substandard simulations of criminal trials at the behest of the Executive.

In addition, the New South Wales Bar Association is deeply concerned at the manner in which a Bill with such profound implications for the liberties of the citizens of New South Wales was introduced in Parliament, without any prior consultation with appropriate legal professional bodies, law reform agencies or civil liberties organisations.

## I. Extraordinary, unprecedented breadth of powers conferred by the Bill

The Bill, if enacted, creates a very real danger of excessive interference with the liberty of many thousands of New South Wales citizens. The extraordinary powers to

constrain liberty conferred on a judge, on the application of the New South Wales Commissioner of Police, the New South Wales Director of Public Prosecutions or the New South Wales Crime Commission are unprecedented, and are subject to no substantial legal constraint or appropriate judicial oversight.

## A. PERSONS SUBJECT TO A SCPO

### Persons convicted of a ‘serious criminal offence’

The first group of persons who may be made the subject of a SCPO are persons 18 years or older who have been convicted of a ‘serious criminal offence’ (clause 5(b)(i)). The expression ‘serious criminal offence’ is defined in clause 3 to have the same meaning as in the *Criminal Assets Recovery Act 1990* (NSW). That Act defines a ‘serious criminal offence’ in s 6(2) to mean, inter alia,

an offence that is punishable by imprisonment for 5 years or more and involves theft, fraud, obtaining financial benefit from the crime of another, money laundering, extortion, violence, bribery, corruption, harbouring criminals, blackmail, obtaining or offering a secret commission, perverting the course of justice, tax or revenue evasion, illegal gambling, forgery or homicide.

Most of the offences in the *Crimes Act 1900* (NSW) are punishable by imprisonment for 5 years or more and would ‘involve’ one or other of the matters specified in s 6(2). In any event, most of those that might not involve one of those specified matters are caught by specific reference in s 6(2). One worth specific mention is an offence under s 197 of dishonestly damaging property worth more than \$500 with a view to making a gain.

Section 6(2) also defines as a ‘serious criminal offence’ almost all the offences in the *Drugs Misuse and Trafficking Act 1985* (NSW). Thus, an offence of cultivate or possess a ‘prohibited plant’ (s 23(1) *Drugs Misuse and Trafficking Act*) falls within the scope of the definition of a ‘serious criminal offence’.

The provision also expressly includes as a ‘serious criminal offence’ an ‘offence under section 50A, 51, 51B, 51BA or 51BB of the *Firearms Act 1996*’. Thus, for example, it is a ‘serious criminal offence’ to supply a firearm to another person who in fact has a licence to possess such a firearm

but the supplier failed to ‘inspect’ that licence prior to the supply (s 51(1)).

### Persons who have ‘engaged in serious crime related activity’

The second group of persons who may be made the subject of a SCPO are persons 18 years or older who have ‘engaged in serious crime related activity’ (clauses 5(b)(ii) and 4(1)(a)).

The expression ‘serious crime related activity’ is defined in clause 3 to mean:

anything done by a person that is or was at the time a serious criminal offence, whether or not:

- (a) the person has been charged with the offence, or
- (b) if charged, the person:
  - (i) has been tried, or
  - (ii) has been tried and acquitted, or
  - (iii) has been convicted (even if the conviction has been quashed or set aside)

There is no requirement of a conviction. A person may be found to have engaged in a serious criminal offence even if the person was charged and acquitted of that offence.

### Persons who have been involved in ‘serious crime related activity’

The third group of persons who may be made the subject of a SCPO are persons 18 years or older who have been ‘involved in serious crime related activity’ in the sense that the person has engaged in conduct:

- (a) that has facilitated another person engaging in serious crime related activity (clauses 5(b)(ii) and 4(1)(b)), or
- (b) that is likely to facilitate serious crime related activity (whether by the person or another person) (clauses 5(b)(ii) and 4(1)(c)).

That is, the person need not themselves have engaged in criminal activity, let alone ‘serious crime related activity’. It is sufficient that the person ‘has facilitated’, or engaged in conduct that was ‘likely to facilitate’, serious crime related activity. A person may ‘facilitate’ another person’s actions unintentionally and unknowingly. Facilitation might extend to a father lending the family car to his son, unaware that the son intended to use the car to commit ‘a serious criminal offence’.

## Voluntary corporations

The fourth group of 'persons' who may be made the subject of a SCPO are voluntary corporations who fall into one of the above three groups (but without the age-related exception).

## No time restriction

No time restriction is placed on when the person was convicted of 'a serious criminal offence', 'engaged in serious crime related activity' or was 'involved in serious crime related activity'.

Tens of thousands of persons would fall into the first group. It is impossible to predict how many persons would fall into the other groups. The second and third groups will inevitably include law-abiding citizens of New South Wales.

## B. PROCEDURE AND PROOF

Proceedings on an application for a SCPO are not criminal proceedings (clause 13(1)).

Rules of evidence that apply only in criminal proceedings to protect an accused person do not apply (clause 13(2) (b)).

The applicable standard of proof would be that applied in civil proceedings (satisfaction on the balance of probabilities).

The hearsay rule which generally applies in civil and criminal proceedings is effectively disapplied. Clause 5(5) provides that the court, in determining an application for a SCPO, may admit and take into account hearsay evidence if:

- a) the court is satisfied that the evidence is from a reliable source and is otherwise relevant and of probative value, and
- b) the person against whom the order is sought to be made has been notified of, and served with a copy of, the evidence before its admission.

Presumably, this would extend to evidence from a police officer who testifies that he has been given information about the person from a confidential source who has provided reliable information in the past.

While clause 5(4) provides that 'the person against whom

a serious crime prevention order is sought and any other person whose interests may be affected by the making of the order may appear at the hearing of the application and make submissions in relation to the application', there may be no opportunity to cross-examine that confidential source about his or her allegations.

The following example illustrates the extraordinary breadth of the provisions. Where an allegation is made that a person 'facilitated another person engaging in serious crime related activity' by providing assistance to another person who committed a break, enter and steal offence:

- a) no criminal conviction would be required in relation to either person;
- b) satisfaction on the balance of probabilities would be sufficient;
- c) special evidentiary rules that apply to a criminal accused, such as s 101 of the *Evidence Act 1995* which provides restrictions on tendency evidence and coincidence evidence adduced by the prosecution, would not apply; and
- d) hearsay evidence may be relied upon to establish the facilitation or the commission of the offence allegedly facilitated.

Further, as noted above, no proof would be required that the alleged 'facilitation' was intentional or knowing.

## C. TEST FOR MAKING A SCPO

A SCPO 'may' be made by a court if the court 'is satisfied that there are reasonable grounds to believe that the making of the order would protect the public by preventing, restricting or disrupting involvement by the person in serious crime related activities' (clause 5(1)(c)).

In *George v Rockett* [1990] HCA 26, 170 CLR 104 the High Court stated at [8]:

When a statute prescribes that there must be 'reasonable grounds' for a state of mind - including suspicion and belief - it requires the existence of facts which are sufficient to induce that state of mind in a reasonable person.

Then it was stated at [14]:

The objective circumstances sufficient to show a reason to believe something need to point more clearly to the subject matter of the belief [than where reasonable grounds to

suspect are sufficient], but that is not to say that the objective circumstances must establish on the balance of probabilities that the subject matter in fact occurred or exists: the assent of belief is given on more slender evidence than proof. Belief is an inclination of the mind towards assenting to, rather than rejecting, a proposition and the grounds which can reasonably induce that inclination of the mind may, depending on the circumstances, leave something to surmise or conjecture.

It follows that ‘the subject matter of belief’ need not be proved to any standard and need not be more likely than not. There may be an element of ‘surmise or conjecture’ in concluding that ‘there are reasonable grounds to believe’ the matter in question.

As was stated by the High Court at [15], it is necessary to identify the subject matter of belief. The ‘reasonable grounds to believe’ relate to consequences of making the SCPO – that it ‘would protect the public’ in a particular way. They need not relate to whether or not the person is likely to engage in serious crime related activities. Even if the risk of that is very small, the making of a SCPO may still protect the public ‘by preventing, restricting or disrupting involvement by the person in serious crime related activities’.

It follows that a SCPO may be made if there is a risk, even a very small risk, that the person will be ‘involved’ in ‘serious crime related activities’ and the judge is inclined to the view, on the basis of ‘objective circumstances’, that such an order ‘would protect the public’ in one of the specified ways.

To use the example earlier given (where a judge is satisfied on the balance of probabilities that a person ‘facilitated another person engaging in serious crime related activity’ by providing assistance to that other person who committed a break, enter and steal offence), the judge may make a SCPO requiring the person not to associate with the other person on the basis that there are ‘reasonable grounds to believe’ that the making of that order ‘would protect the public by preventing, restricting or disrupting involvement by the person in serious crime related activities’, that is, involvement in the commission of another break, enter and steal offence by the other person.

This test imposes a very low hurdle for the making of a SCPO.

It may be contrasted with the test which currently applies in respect of persons convicted and imprisoned for very serious violence or sex offences where an order is sought for continuing detention or supervision at the end of the term of imprisonment. Under the *Crimes (High Risk Offenders) Act 2006*, a judge must be ‘satisfied to a high degree of probability that the offender poses an unacceptable risk of committing’ a serious violence or sex offence ‘if he or she is not kept under supervision’.

## D. THE CONTENT OF A SCPO

Clause 6(1) provides as follows in relation to the content of a SCPO:

A serious crime prevention order may contain such prohibitions, restrictions, requirements and other provisions as the court considers appropriate for the purpose of protecting the public by preventing, restricting or disrupting involvement by the person in serious crime related activities.

Clause 6(1) is subject to clause 6(2), discussed below. However, apart from that limitation, the nature and scope of a SCPO is open-ended, and no guidance provided to the judiciary in relation to the kinds of orders which might be ‘appropriate’ for the purpose of protecting the public.

An ‘appropriate’ order might be any of the following:

- an order imposing reporting conditions (for example, the person report to a police station on a regular basis)
- a non-association order (for example, the person not associate with or otherwise come into contact with a nominated person or group of persons)
- a place restriction order (for example, the person reside/work in a particular location, not leave that location except for specified reasons, not travel to any nominated place or places, or some combination of these orders)
- a time and place restriction order (otherwise known as a curfew, and which would otherwise constitute a false imprisonment)
- an employment restriction order (that the person not seek particular kinds of employment)
- an activity restriction order (that the person not engage in certain activities such as, for example, accessing the internet)

- an enforcement condition (requiring the person to comply with one or more specified kinds of police direction, including to continue to do such things as provide assistance to the authorities)

An order may operate for up to 5 years (clause 7(2)).

The scope for constraining the liberty of persons subject to a SCPO is enormous. The potential to interfere with privacy and in freedoms of movement, expression and communication, assembly and association is manifest.

Indeed, orders need not be limited to limitations on freedoms or prohibitions on conduct. Textually, they would extend to ‘requirements’ to engage in specified conduct, such as attend particular locations or events.

Clause 6(2) does prohibit a SCPO which, in certain circumstances, ordered a person to answer questions or provide information. However, significantly, it does not prohibit an order which requires the person to provide information other than orally (that is, in writing). The person may be required to provide information in relation to knowledge of the conduct of friends, relatives and associates. There is no ‘right to remain silent’ if such an order is made.

Such an order may be made even where that information may tend to incriminate that person. That is, the privilege against self-incrimination is effectively abrogated. While any information so provided is not generally admissible as evidence against that person in civil or criminal proceedings (clause 6(3)), that would not prevent it being used in other ways adverse to the interests of the person.

Further, it may be used as evidence in ‘proceedings for an offence against section 8’ (an offence of contravening a SCPO). Thus, a person who is the subject of one SCPO provision may be made the subject of another SCPO provision requiring the person to provide a written answer as to whether he or she has contravened the first SCPO provision – the answer may then be used to prove the offence constituted by that contravention. Of course, a refusal to comply with the second SCPO provision would itself constitute the offence of contravening the SCPO.

## E. CONTRAVENTION OF A SCPO

A person who contravenes a SCPO is liable to imprisonment for 5 years (clause 8(b)).

## F. RIGHT OF APPEAL

A right of appeal against a decision in relation to the making of a SCPO is available to the Court of Appeal (clause 11). An appeal lies as of right on a question of law and with leave on a question of fact (clause 11(2)). However, since the making of a SCPO involves an exercise of discretion, the Court of Appeal’s powers of review are necessarily limited. Further, since the discretion is expressed in very broad terms (‘... may ... make an order ... if ... satisfied that there are reasonable grounds to believe that ...’), the grounds for finding legal error will be particularly restricted.

## II. No case for conferral of such Draconian powers

The New South Wales Bar Association considers that the New South Wales Government has made no case for the conferral of such draconian powers on ‘eligible applicant[s]’ and ‘appropriate court[s]’.

In his Second Reading Speech on 22 March 2016, the Deputy Premier and Minister for Justice and Police, Mr Grant, said:

The measures contained in these bills provide law enforcement agencies with **a more effective means of reducing serious and organised crime** by targeting their business dealings and restricting their behaviour. The bills deliver on the New South Wales Government’s election commitment to introduce **tough new powers** to give police the upper hand in the fight against organised crime. I commend the bills to the House.

(emphasis added)

The New South Wales Bar Association is not aware of any consultation with appropriate legal professional bodies, law reform agencies or civil society organisations prior to the introduction of the Bill. No evidence has been cited as to the ineffectiveness of the administration of criminal justice by a process of trial for ‘reducing serious and organised crime’ in New South Wales. No evidence has been provided as to particular threats of crime in New South Wales, or of an inability of police in New South Wales to investigate criminal activities and prosecute criminal offences. No case has been advanced as to how criminal activity would be thwarted and the public protected by the ‘tough new powers’ proposed to be given to police.

In particular, there has been no attempt to explain why the powers of eligible applicants should be expanded so radically, and in a manner so contradictory to long settled principles concerning the adjudication of criminal guilt by a fair trial. This failure is to be deplored especially (but by no means only) insofar as to the liberties of law-abiding citizens are concerned.

### III. Unacceptable interference with fundamental human rights and freedoms

The Bill effectively sets up a rival to the criminal trial system, and interferes unacceptably in the fundamental human rights and freedoms of citizens of NSW.

The system proposed to be set up is contrary to the administration of criminal justice by a process of trial. The powers conferred by the Bill are capable of being exercised in contravention of the prohibition on arbitrary arrest and detention in article 9(1) and the right to a fair trial in article 14(1) of the International Covenant on Civil and Political Rights (ICCPR). Whilst a SCPO does not involve detention in prison, it could impose a curfew requirement requiring a person to confine himself or herself to a specified location for the duration of the curfew period. In relation to a fair trial, a SCPO displaces prosecution and (only if the prosecution secures a conviction) punishment as the primary response to criminal activity. A SCPO can operate as an alternative to prosecution, and can be pursued in lieu of, or indeed after an unsuccessful, prosecution.

It is thus of grave concern to the New South Wales Bar Association that a SCPO can be imposed on a person where 'appropriate' for 'the purpose of protecting the public' if the court 'is satisfied that there are reasonable grounds to believe that the making of the order would protect the public by preventing, restricting or disrupting involvement by the person in serious crime related activities'. The proposed legislation requires, or at least invites, a judge to second guess a jury by deciding that a person who has undergone a trial in which the tribunal of fact, namely the jury, was not satisfied of his or her

guilt is nonetheless to be dealt with as an offender whose liberty may be denied on account of the very conduct the prosecution failed to prove.

In addition, the power to make a SCPO 'appropriate' for the purpose of protecting the public is capable of being exercised to interfere with the liberty of persons (including law-abiding persons) and their privacy, and in their freedom of movement, expression and communication, assembly and association, contrary to articles 9, 17, 12, 19 and 21 of the ICCPR.

Under international human rights law, these rights may be subject to limitations, but only if the limitations satisfy the conditions provided for under the Covenant. An authoritative formulation of the framework for analysing whether such limitations are permissible is provided by the Australian Parliamentary Joint Committee on Human Rights (established by the *Human Rights (Parliamentary Scrutiny) Act 2011* (Cth)). A limitation must be provided by law and the government must also demonstrate that:

1. the limitation is aimed at achieving a legitimate objective;
2. there is a rational connection between the limitation and the achievement of the objective; and
3. the limitation is a proportionate means for the achievement that objective. This includes consideration of whether there are less restrictive alternatives, and whether a measure is overbroad.

In this case, there is no suggestion that the powers proposed in the Bill are a necessary and proportionate response to achieve the purpose of 'protecting the public'. There is no suggestion they restrict rights only to the extent necessary to achieve the stated goal, for example, to prevent a terrorist act. The potential interference in rights to a fair trial, in the prohibition on arbitrary arrest and detention, and in privacy, freedoms of movement, expression and communication, assembly and association is open-ended and unconstrained, and thus overbroad. It cannot be contended that the measures in the Bill are carefully targeted at and necessary to achieve the objective identified. Nor has it been suggested that the purpose of 'protecting the public' cannot be achieved through less restrictive measures.

In this case, the NSW Government has not adequately addressed any one of these key questions and has therefore failed to demonstrate the permissibility of the proposed limitations on human rights which will follow if the Bill is enacted.

#### IV. Doubtful Constitutional validity

A law is not a good, or even acceptable, law simply by reason of the fact that Parliament has the power to enact it. This bill is for a bad law for the reasons explained by Hayne and Kirby JJ in their separate dissenting reasons for judgement in *Thomas v Mowbray* (2007) 233 CLR 307 concerning Federal control orders. It is not to the point that a majority of the High Court in that case upheld the power of Parliament to enact that legislation.

But there is a further argument in the case of this proposed law that casts considerable doubt on the power of the New South Wales Parliament validly to enact it. It is not disposed of by reliance on *Thomas v Mowbray*, which concerns very different legislation and did not consider such an argument. The central proposition of this argument is that it is an unacceptable diminution of the institutional integrity of the courts of the State to require them to conduct substandard simulacra of criminal trials at the behest of the Executive.

The eligible applicants are all officers or agencies of the Executive. Worse, the DPP is an officer, as the title of the office entails, responsible for that central aspect of the rule of law, that is the impartial and fair consideration of and, when considered appropriate, the prosecution of criminal cases.

Under this proposed law, the same officer, as well as officers of agencies that are investigative rather than officers of the court, can force a judge to proceed to consider alleged guilt of or 'involvement' in a crime even if a criminal trial includes prosecution would not be warranted - or even if one had occurred and had resulted in an acquittal.

The court in a trial on indictment includes the jury, sworn to return a true verdict on the evidence. Under this

proposed law, a judge who may be the same judge who presided at the trial that produced an acquittal, will be required to contradict that outcome by seriously addressing the question whether the acquitted person's conduct was in fact a crime - on the probabilities assessed by reference to hearsay inadmissible at a trial according to law, and without the fundamental protection of a prosecutor's duty to disclose material of potential assistance to the opponent.

The consequences the judge would then have to entertain are on any sensible view punitive like a criminal sentence. It is wrong in principle and on authority (eg *Rich v ASIC* (2004) 220 CLR 129) to regard protective orders as definitionally not punitive. The protection of the public is an indispensable aspect of ordinary criminal sentencing (see eg *Veen v The Queen* (No 2) (1988) 164 CLR 465).

In this way, the proposed law in question must be seen as a basal contradiction of the finality and solemnity of a criminal trial. It poses the demoralising and shocking possibility that a person whom a jury's decision has prevented from being punished may yet be punished by a judge's contrary decision.

In summary the legislation contemplates a process with the following features:

1. hearings for orders can follow acquittal or a decision not to prosecute;
2. such hearings to be conducted on the balance of probabilities;
3. with evidence to consist of hearsay and layers of hearsay;
4. before the same court as conducted a criminal trial (but now without a jury) in circumstances where a person may have been found (incontrovertibly) not guilty;
5. where the applicant for an order has no prosecutorial obligation of disclosure;
6. where the applicant for such an order may be the very officer of the executive charged with prosecution in this State;
7. to secure orders containing prohibitions of the widest potential reach.

This contemplated process represents a sufficient contradiction to fundamental aspects of judicial power and the judicial process to be beyond the power of the parliament: *Kable v DPP* (1996) 189 CLR 51. Whatever be the fate of the legislation it can be said with confidence that very grave issues are raised by its prospect, and that our High Court will give them the attention they deserve.

## Endnotes

1. For example, assault occasioning actual bodily harm, assault a police officer in the execution of duty, larceny, housebreaking, dishonestly obtaining a financial advantage by deception.
2. For example, damaging your own property in order to make an insurance claim.
3. Practice Note 1; also *Annual Report 2012-2013* at [1.53].
4. See, for example, the following General Comments of the UN Human Rights Committee: General Comment No 29, States of emergency (article 4), paras 2 to 6; General Comment No 34, Freedoms of opinion and expression (article 19), paras 22, 34 and 35; General Comment No 35, Liberty and security of person (article 9), paras 15 and 66; General Comment No 27, Freedom of movement (article 12), paras 14 and 15; General Comment No 31, The Nature of the General Legal Obligation Imposed on States Parties to the Covenant, para 6.