International Civil Liberties Monitoring Group (ICLMG)
UPR Submission – Canada, October 5th, 2017

Submission of Information by the ICLMG to the Office of the High Commissioner for Human Rights (OHCHR) in relation to the Human Rights Council's Universal Periodic Review (UPR) of Canada to take place in May 2018

The ICLMG

1. The ICLMG is a pan-Canadian coalition of civil society organizations that was established in the aftermath of the September 11th, 2001 terrorist attacks in the United States. The coalition brings together 45 international development and human rights NGOs, unions, professional associations, faith groups, environmental and refugee organizations. Its purpose is to monitor the impact of anti-terrorism legislation on human rights standards, to advocate against abuses and violations, and in certain cases, to take up the cause of those who have become innocent victims of such abuses.

Methodology and Consultation

2. The ICLMG, with its 45 member organizations, serves as a round-table for discussion and exchange, and to provide a point of reflection and cooperative action. The ICLMG has participated in many conferences, advocated with government officials and before Parliamentary committees, was an intervenor before the Supreme Court of Canada in the Security Certificate case (Adil Charkaoui versus A.G. Canada), an intervenor in the O'Connor Commission relating to Maher Arar and the Iaccobucci Commission relating to Messers. Almalki, El Maati and Nurredin.

Canada's Human Rights Framework

3. Canada is a member of the United Nations and has ratified the following international human rights instruments which relate to the issues dealt with in this submission :

- The *International Covenant on Civil and Political Rights*
- The *Convention Against Torture*
- The *Convention to Eliminate Racial Discrimination*
- The *Geneva Convention – Treatment of Prisoners of War*
- *The Universal Declaration of Human Rights*

4. Canada has a constitutionally entrenched *Charter of Rights and Freedoms* and there are human rights acts and commissions at both the federal and provincial levels of jurisdictions in Canada.

Submission Summary

5. The ICLMG submits that Canada, in adopting certain anti-terrorism laws and policies, has contravened its obligations under the Universal Declaration of Human Rights, several international human rights treaties and certain provisions of its own *Charter of Rights and Freedoms*. These laws have expanded police and intelligence-gathering powers, and restricted human rights. Specific examples of these contraventions are set out in the paragraphs to follow and include failure to respect due process and the rule of law, arbitrary arrest, preventative detention, racial profiling and suspension of the principle of innocence until proven guilty.

6. The ICLMG supports all legitimate efforts to combat terrorism which is in itself a serious attack on human rights, but argues that these efforts must always respect human rights norms. We do not properly defend democracy, the rule of law and a culture of human rights by abdicating these very principles. Security and freedom are not opposites. Respect for fundamental rights is an essential condition, a vital component of security.

Security Certificates

7. Despite changes to the security certificate regime, the ICLMG argues that Security Certificates still contravene both the *Canadian Charter of Rights and Freedoms* as well as the ICCPR (Art. 2, 9, 13 and 14). The person affected is still held in detention without trial, does not have the right to know the case against him, nor the right to answer that case.

8. In 2009, the courts quashed the security certificates against Messers. Charkaoui and Almrei and, in 2016, found the certificate against Mr. Jaballah unreasonable. Because Mr. Mahjoub faces a risk of torture if returned to Egypt, he has remained in Canada, essentially in a state of limbo. He was released from detention in 2009 under strict conditions, eased substantially since then, but upheld in July 2017. Although the conditions of his detention have been significantly relaxed as well, deportation procedures have started two years ago against Mr. Harkat, an Algerian refugee. He lives in constant fear of being deported as he risks potential detention and torture if sent back to Algeria.

Ministerial Directives on Information Tied to Torture

9. Last week, without prior notice or consultation, the Canadian government unveil new directives: *Ministerial Direction on Avoiding Complicity in Mistreatment by Foreign Entities.* Although the new directives clearly mention a strong rejection of torture, they still allow for the sharing, requesting and use of information that could lead or could have been obtained through torture, among other problems of scope, transparency, retention of information and oversight.

10. The ICLMG submits that not only are such policies in violation of the CAT Art. 2.2 but they also promote a market for information obtained from torture. In 2006, Justice Dennis O'Connor, reporting for the federal Arar Commission, recommended policies "aimed at eliminating any possible Canadian complicity in torture, avoiding the risk of other human rights abuses and ensuing accountability." The new directives fall short on this absolute principle. The emphasis should be on the illegality of sharing, requesting or using information unless there are guarantees that it won't lead to or hasn't been obtained through torture.

Afghan Detainees

11. There are very serious concerns that the Government of Canada knew — or had been warned — that prisoners handed over to Afghan authorities by Canada were tortured or faced the likelihood of abuse. If the government had been aware, and did nothing to stop it, then it could be considered a war crime. Federal Liberals who argued for a public inquiry, while in opposition, into the treatment of prisoners during the Afghan war, have said they will not conduct such an investigation now that they are in power. This decision was penned by Defence Minister Harjit Sajjan, who served three tours in Afghanistan as a member of the Canadian Forces, putting him in a conflict of interest. The Ethics Commissioner found no conflict of interest but based her conclusion only on Sajjan's account of his involvement in Afghanistan, which was different than what he told a military historian. Canada has potentially violated the *Convention against Torture* and the *Geneva Convention — Treatment of Prisoners of War.* This issue is grave enough, and murky enough, that we believe a public inquiry is necessary.

Extradition and due process – The Hassan Diab Case

12. Canadian citizen and professor Hassan Diab was extradited to France in 2014 in order to be investigated for the bombing of a synagogue in Paris in 1980. He was extradited on incredibly flimsy evidence that even the extradition judge in Canada expressed concern over. Under Canada's extradition law, there is first a hearing before a judge and then a reference to the Minister of Justice who makes the final decision. Contrary to international human rights standards, the hearing before the judge does not provide the recognized protections for a fair trial – there is a lack of due process, no procedure to test unreliable evidence, including secret evidence and evidence obtained through torture; nor is there protection against unjust extradition requests that are politically motivated. This is an example of a Canadian law which does not protect individuals against evidence resulting from torture and doesn't conform to Canada's obligations under the Convention against Torture, especially Art. 2 and 15.

13. Since then, multiple pieces of evidence have been shown to be faulty, and a French investigative judge found overwhelming evidence that Mr. Diab was in Lebanon at the time of the bombing. Judges have ordered his release 6 times, but each time it was blocked by the prosecution. He has now been held without charge in pre-trial detention for almost 3 years in France, away from his partner Rania and their two children. Art. 2, 9 and 14 of the ICCPR have been violated.

Protecting Canadians from Online Crime Act (C-13)

14. With the *Protecting Canadians from Online Crime Act*, the federal government aimed to "modernize" the lawful access provisions of the Criminal Code that allow the state to get access to electronic communications in appropriate circumstances. This had little to do with cyberbullying, the bill's supposed target. The lawful access provisions were recycled from past failed attempts at lawful access reform, the main parameters of which were set in the post-Sept. 11 world. They provide a tool kit that has long been sought by the state in relation to investigating terror cases although the case for the necessity of this tool kit is weak.

15. C-13 created new types of production orders that permit police to access "transmission data" as well as "tracking data" on a standard of reasonable suspicion. It also creates new warrants that allow authorities to collect transmission data through a transmission data recorder and tracking data

through a tracking device, again on a standard of reasonable suspicion. The authorities need to suspect that 1. an offence has been or will be committed, and 2. the transmission data "will assist" the investigation. These standards of suspicion fall below the usual requirements for a search warrant: reasonable grounds to believe that an offence has been committed and that the search will produce evidence of it. We submit that this law violates Art. 17, 19 and 21 of the *International Covenant on Civil and Political Rights*.

Criminalization of dissent

16. Over the last decade, Canadian Security Intelligence Service (CSIS) and Royal Canadian Mounted Police (RCMP) security reports, along with government policy documents — notably on anti-terrorism strategies — have equated economic interests with Canada's "national interests" and designated groups opposed to these interests as a threat to Canada's national security. Groups challenging government policy, particularly surrounding the energy and extractive sectors, have been infiltrated and subject to surveillance by both CSIS and the RCMP. The recent passage of the *Anti-Terrorism Act* of 2015 and the introduction of Bill C-59 raise further concerns about enhanced powers for Canadian intelligence agencies, among other provisions, being used against Indigenous groups and other organizations contesting the government's extractivist agenda. These actions and legislations negatively impact Art. 2, 17, 18, 19, 21 and 22 of the *International Covenant on Civil and Political Rights*.

National security creep, discretionary powers and the use of secret evidence

17. The Economic Action Plan 2015 Act, No. 1 [the Budget] includes provisions, in the case of a person whose passport has been cancelled as the result of a decision of the minister, allowing the judge to hear secret evidence at the government's request in the name of "national security". The ICLMG is greatly concerned by the present trend of increasing ministerial discretionary powers to revoke passports, allow mass surveillance, and put individuals on the "no-fly list" with little recourse except for judicial reviews potentially held outside of public view and allowing the use of secret evidence, putting at risks Art. 2 and 14 of the ICCPR.

Bill C-23, The Preclearance Act, 2016

18. Bill C-23 was introduced in 2016 but has only now reached the Senate. ICLMG and other groups have warned that the law will grant too much power to US officers operating in Canada, with absolutely no mechanism for accountability unless their actions cause death, bodily harm or damage to property. The *Preclearance Act, 2016*, will allow US officers to strip search a traveler, even if a Canadian agent declines to do so; allow US officers to carry firearms; and remove the ability of travelers to withdraw from preclearance areas without further interrogation and without triggering grounds for suspicion. ICLMG is also concerned with Canadian MPs' assertions that they are unable to strengthen protections when traveling to the US because of an agreement signed between the countries' governments. Human rights, and the democratic, legislative process, should trump agreements signed without public parliamentary debate and scrutiny.

The Protection of Canada from Terrorists Act (C-44)

19. The *Protection of Canada from Terrorists Act*, approved by Parliament in April 2015 provided for greater powers and resources for CSIS, permitted it to operate internationally, and expanded its power to share information as well as a blanket protection of its informants' identity in court. This law

should be read in conjunction with Bill C-51 which followed it and expands the role of CSIS still further.

Anti-terrorism Act 2015 (C-51)

20. The *Anti-terrorism Act 2015* was adopted in June 2015. The legislation provided for a massive increase in CSIS disruption policing powers — although it was created after human rights violating conduct to separate intelligence and policing activities and powers. In particular, the legislation increases the role of CSIS to engage in secret counter-terrorism actions in Canada, as well as in foreign countries.

21. It also introduces far-reaching and ambiguous changes to the *Antiterrorism Act of 2001* that potentially criminalizes now lawful activity. ICLMG argues that these provisions are contrary to articles 14, 17, 18, 19 of the ICCPR, and go beyond what is permitted under art. 4. Serious concerns have been raised about the impact of these measures on dissent in Canada, in particular dissent by indigenous and environmental activists who could be labelled as terrorists under the act.

22. With respect to security certificates, the bill makes a bad situation worse by providing that the minister can request the court to withhold information from the special advocates who were meant to assist the detainees in secret trials. This appears to be in complete violation of the Supreme Court decision in the Adil Charkaoui case.

23. Further the bill expands the list of those who may be put on the “no-fly list“ in contravention of articles 9, 12, 14, and 17 of the ICCPR. C-51 codifies a system for establishing a Canadian no-fly list without providing a clear mechanism for how a person on the list becomes aware of their status, and severely limits their ability to challenge the listing. The law allows for a judicial hearing that may occur outside of public view and allows for the use of secret evidence. It also boosts the wider sharing of intelligence information, which is contrary to recommendations in the O’Connor report, and which puts at risk, and could seriously harm many innocent individuals [art. 2, 9, 14, and 17 ICCPR].

24. ICLMG supports measures to combat terrorism which can be a serious attack on human rights, but such measures already exist in our criminal law. While we challenge the constitutional legality of provisions in Bill C-51, we also question their effectiveness. They will certainly open the door to the criminalization of now lawful activities and the suppression of dissent, but according to many experts they do very little to combat terrorism and protect the public.

Bill C-59, An Act respecting matters of national security

25. Bill C-59 introduces some improvements to our national security framework, while reversing some, but certainly not all, of former Bill C-51’s excesses. It creates important new bodies to review and control national security activities; introduces a detailed and explicit new law for Canada’s signals intelligence agency, the CSE; adds new protections for the rights of youth involved in terrorism-related offences; and reforms the terrorist speech offences introduced by Bill C-51.

26. However, ICLMG and others identified a number of specific aspects of Bill C-59 which require serious attention and meaningful change, including: The newly-renamed *Security of Canada Information Disclosure Act* still permits departments to disclose far too much information in their pursuit of questionable security objectives, including the surveillance and targeting of minorities,

Indigenous peoples and activists; The no-fly list still lacks adequate due process while proposed redress mechanisms remain unfunded; The bill fails to reverse the low threshold Bill C-51 set for terrorism peace bonds; The preventative detention powers introduced in 2001 are still in place and remain deeply problematic; The risk for abuse of CSIS disruption powers is reduced, but the government has yet to demonstrate either their necessity or constitutionality; The newly created oversight agencies lack the guarantees necessary to ensure their effectiveness; The general risk that our security activities will once again contribute to torture remains; CSE "active" cyber security powers (i.e. offensive hacking) are introduced without a rationale for their necessity or measures to adequately prevent abuse; The new bill fails to reverse the erosion of due process C-51 extended in security certificate proceedings; and the bill legitimizes troubling conduct, including mass surveillance by our foreign intelligence agency and extensive data-mining. We believe that several of these issues are contrary to articles 2, 14, 17, 18, 19 of the ICCPR, and go beyond what is permitted under art. 4.

Conclusion

27. In this submission, the ICLMG requests the UNHRC to raise the above-cited issues with the Canadian government during Canada's next review (UPR) and to recommend changes in its laws and policies which would require Canada to conduct its anti-terrorism campaign within the framework of international human rights norms, including the Universal Declaration of Human Rights, the ICCPR and the CAT.

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ANNEX I

The following are issues that were included in previous UPR submissions but have yet to be addressed and fixed, as well as additional details on issues that are mentioned in this UPR submission:

The Anti-Terrorism Act of 2001 (C-36)

1. The *Anti-Terrorism Act* was adopted by the Canadian Parliament in late 2001. It contained provisions dealing with preventative detention, arbitrary arrest, investigative hearings, listing of alleged terrorist groups, delisting of charitable organizations, suspension of the right to remain silent and the principle of innocence until proven guilty. Many of these provisions are in contravention of the *International Covenant on Civil and Political Rights* (ICCPR), in particular Art. 9, 14, 17 and 18. While Art. 4 of the ICCPR allows for derogation of these articles in times of emergency ("…to the extent strictly required by the exigencies of the situation…"), the ICLMG argues that the measures go beyond what is strictly required and the Canadian government should be questioned about them.

2. These provisions in the *Canadian Anti-Terrorism Act* are also in contravention of Art. 7, 8, 9, 10 and 11 of the *Canadian Charter of Rights and Freedoms* and are not legitimized by Art. 1 of said Charter.

3. Two provisions of the Act – preventative detention and investigative hearings – became inoperative in 2006 due to a five-year sunset clause. After a failed attempt to reintroduce the measures in 2007, the government was finally successful in 2013 with the adoption of Bill S-7. Bill C-59, *An Act respecting national security matters* has been introduced in June 2017 and contains a provision getting rid of investigative hearings.

4. However, the preventative detention provision in Bill S-7 not only contravene the *Canadian Charter of Rights and Freedoms* and the *International Covenant on Civil and Political Rights* (ICCPR) but also open the door to cruel and inhuman treatment and other treaty violations.

The "No-Fly List"

5. Passenger Protect, Canada's "no-fly list" program, was introduced by the government in June 2007 under the authority of an obscure provision in the *Public Safety Act* (2004) granting discretionary powers to the Minister of Transport. The program allows the government to place the names of persons on a list of specified individuals prevented from boarding flights, without any judicial process or authorization and without notice to the listed person. The individual learns of the listing upon arriving at the airport but is not given the reasons for the listing. The information providing the basis for the listing is furnished by the police and intelligence authorities. The individual in question can apply to have his/her name removed from the list but has no access to the information forming the basis of the listing. While it is unknown how many individuals have been barred from boarding a flight since the program's inception, more than 100 individuals have been the subject of false positives which have caused them to be intercepted and delayed at airports each time they travel. Many listings appear to have been influenced by racial and religious profiling.

6. Through an agreement between the Canadian and U.S. governments, things are worse than what was reported in the 2009 UPR submission since Canadian citizens are now subject to the U.S.

Secure Flight List regarding all flights that pass through U.S. airspace, even if the planes do not touch U.S. soil. Furthermore, the *Anti-terrorism Act of 2015* brought in the *Secure Air Travel Act* (SATA) which modified the Canadian "no-fly" scheme (the Passenger Protect Program) to be more like the US model. Some amendments are included in the new Bill C-59 mentioned above but they are only meant to deal with false positives, notably those pertaining to more than 60 Canadian children.

7. The ICLMG argues that this "No-Fly Program" contravenes the ICCPR, and in particular, Art. 9, 12, 14 , 17, 18 and 19 – and Art. 2 (equality rights). These contraventions go beyond what is strictly required for an emergency under Art. 4. There has been a serious loss of freedom without any trial, due process or transparency.

Security Certificates

8. Security Certificates (or Certificates of Inadmissibility) are provided for in the *Canadian Immigration and Refugee Protection Act* (IRPA). The Act allows the Minister of Immigration and the Minister of Public Safety to issue such a Certificate leading to the detention and deportation of a permanent resident or a foreign national deemed to be inadmissible on security or certain criminality grounds. The definition of security inadmissibility is extremely broad, including people who are not alleged to represent any security danger (for example, who are merely members of an organization that is believed to have committed terrorist acts). The information used to issue such a Certificate is provided by the police or the intelligence services. The Certificate is subject to review by a judge to determine if it is reasonable (a very low level of proof) and the review is based on intelligence, not on evidence as generally required in a trial. The judge may hear evidence in secret (which is often the case) that is not disclosed to the person concerned or their lawyer, and use that evidence in deciding whether the Certificate is reasonable. Security Certificates cannot be used against Canadian citizens.

9. On February 23rd, 2007, the Supreme Court of Canada ruled that this non-disclosure of evidence contravened the Canadian *Charter of Rights and Freedoms* and decreed that a fair hearing leading to detention must include the right to know the case put against one, and the right to answer that case (*Charkaoui vs Canada*). At the time of the ruling, five Muslim men had been in detention or under house arrest with control measures, without charge or a fair trial for a combined twenty-six years.

10. In February 2008, the Canadian Parliament passed a law to offset the 2007 Supreme Court ruling and to resurrect the Security Certificate process. The key difference between the new law and the one ruled unconstitutional is the provision of Special Advocates to protect the interests of the persons named in the Certificates at the review process. However, these Special Advocates do not have the right to discuss the so-called evidence with the persons subject to the Certificate. In these circumstances, the ICLMG argues that these Security Certificates still contravene both the *Canadian Charter of Rights and Freedoms* as well as the ICCPR (Art. 2, 9, 13 and 14). The person affected is still held in detention without trial, does not have the right to know the case against him, nor the right to answer that case. The security certificate regime has been amended by *Anti-terrorism Act of 2015* to reduce the access of Special Advocates to the evidence, and the contraventions of the ICCPR have become more serious.

11. Additionally serious is information contained in a letter sent in 2008 by the Director of the Canadian Security and Intelligence Service (CSIS) to the Minister of Public Safety. The letter warned

that if certain opposition amendments were made to the *Immigration and Refugee Protection Act*, it could become impossible to use Security Certificates to arrest suspected terrorists since it would prohibit the use of information from regimes known to use torture, thus indicating that such cases might not stand up without information obtained under duress. This information vindicated the suspicions of the five men who had been detained in Canada for long periods under Security Certificates, i.e., Messers. Charkaoui, Harkat, Almrei, Jaballah and Mahjoub. In 2009, the courts quashed the security certificates against Messers. Charkaoui and Almrei and, in 2016, found the certificate against Mr. Jaballah unreasonable. Because Mr. Mahjoub faces a risk of torture if returned to Egypt, he has remained in Canada, essentially in a state of limbo. He was released from detention in 2009 under strict conditions, eased substantially since then, but upheld in July 2017. Although the conditions of his detention have been significantly relaxed as well, deportation procedures have started two years ago against Mr. Harkat, an Algerian refugee. He lives in constant fear of being deported as he risks potential detention and torture if sent back to Algeria.

The Arar Commission

12. Maher Arar is a Canadian citizen who was a victim of extraordinary rendition. On September 26, 2002, while passing through JFK Airport in New York, Mr. Arar was arrested, detained by U.S. officials for twelve days and then removed against his will to Syria where he was imprisoned and tortured for nearly a year. He was released without any charge and returned to Canada on October 5th, 2003. On February 8th, 2004, in response to public pressure, the Canadian government appointed Justice Dennis O'Connor to conduct a public inquiry to investigate and report on the actions of Canadian officials in relation to Mr. Arar's experience and to make recommendations concerning an independent review mechanism for national security activities.

13. Justice O'Connor carried out his inquiry from February 8th, 2004 and tabled his first report in September 2006. He found that the Canadian police (RCMP), without any justification, had labelled Mr. Arar as an "Islamist extremist linked to Al Qaida", and then shared this inaccurate information with U.S. law enforcement agencies. Judge O'Connor concluded that it was likely that in arresting Mr. Arar in New York and sending him to Syria, the U.S. authorities relied on the false information provided to them by the RCMP.

14. On December 12th, 2006, Judge O'Connor released his second report, making strong recommendations to establish a comprehensive review and oversight mechanism for security and intelligence operations in Canada. While there were several review bodies already existing in Canada, they were narrowly focused, diverse in their mandates and powers, ineffective against joint force operations and unable to protect Mr. Arar from the abuse which he endured. Judge O'Connor's recommendations would provide greater assurance that security and intelligence activities respected the rule of law, due process and human rights standards. We were happy to learn that Bill C-59, *An Act respecting national security matters*, introduced in June 2017 the National Security and Intelligence Review Agency (NSIRA), an overarching review mechanism like the one suggested by Justice O'Connor. We are nonetheless worried that the mechanism will not be as strong as necessary. We believe the NSIRA's recommendations should be public and binding, the agency's membership should be diverse and independent, the procedures should not be secret, and the complainants should be able to have counsel to represent their interests.

The Iacobucci Commission

15. During his inquiry, Judge O'Connor came across three other cases similar to that of Maher Arar. Three Arab-Canadians (A. Almalki, A. Abou-Elmaati and M. Nureddin) were all arrested in Syria, detained and tortured in the same prison as Mr. Arar and were subject to the same questioning and abuse. They were finally released without charge and returned to Canada. Since Judge O'Connor did not have a mandate to investigate these three cases, he recommended a new, separate enquiry to carry out this task. As a result, on December 11th, 2006, the Canadian government appointed former Supreme Court Justice Frank Iacobucci as a Commissioner to determine whether any Canadian officials were directly or indirectly responsible for the abuse suffered by these three Canadians. The Commission found that the actions of Canadian government officials respecting these three men were deficient and indirectly led to their detention and mistreatment. In March 2017, the Canadian government finally settled the lawsuit launched by the three men, officially apologized and compensated the torture survivors.

Benamar Benatta

16. Benamar Benatta was detained by Canadian border guards on September 5th, 2001 at the Peace Bridge crossing between Buffalo (NY) and Fort Erie (ON) as he applied for asylum in Canada. Canadian officials handed him over without due process to U.S. authorities on September 12th, 2001, one of roughly 1,200 mostly Muslim men arrested by the U.S. after the terror attacks of September 11th. Benatta spent nearly the next five years in detention centers in Buffalo and Brooklyn, where he was subjected to ill treatment and torture, even though the FBI cleared him of any links to terrorism in November 2001. Benatta has asked the Canadian government to explain the legal basis on which he was handed over to American authorities but no explanation has been given. This is another case where Canada has violated its obligations under international human rights standards. The Government of Canada has finally settled a lawsuit with Benamar Benatta in March 2015.

Ministerial directives on information tied to torture

17. Despite the good news of the apologies and the compensation given to Messers. Almalki, Elmaati, Nureddin and Benatta, the ICLMG is very concerned by the Canadian government's refusal to instruct its policing and intelligence agencies not to share, request or use information that could lead to or was obtained through torture. In 2011, Vic Toews, the Public Safety Minister at the time, sent ministerial directives to the Canadian Security Intelligence Service (CSIS), giving them the authority to use and share information that was likely extracted through torture in "exceptional circumstances". One year later, Toews sent similar memos to the RCMP and Canadian Border Services Agency (CBSA). It is worth noting that if it wasn't for a request of access to information, we would not have known about the directives, commonly known as the "torture memos". The directives apply to the use of this information for investigative purposes and to information-sharing with foreign government agencies, armies and international organizations. The instructions were criticized by human rights advocates and opposition Members of Parliament as a violation of Canada's obligations under the *Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment.*

18. These directives are even more troublesome in light of the Canada/U.S. *Joint Statement of Privacy Principles* under the North American Security Perimeter. The "principles" released in 2013

permit the sharing of personal information gathered at the border with third countries – in some cases, without informing the other government until after the fact.

The Communications Security Establishment

19. The Communications Security Establishment (CSE), originally created in 1946 by order-in-council, was given a new legislative mandate and powers in the *Anti-terrorism Act (*ATA) of 2001. It allows the minister of Defence to authorize the CSE to intercept private communications coming into and out of Canada in relation to any activity or class of activities specified in the authorization, for the very broad purpose of obtaining foreign intelligence. While the CSE used to be restricted to spying outside of Canada, the legislation now allows it to spy on domestic communications as long as it involves someone outside Canada. There is no requirement for judicial authorization. The CSE needs only to seek a discretionary authorization from the Defence minister who is given an open-ended range of grounds in making his decision. The language of the legislation mirrors that of the National Security Agency [NSA] in the USA which has allowed spying without warrants on emails, faxes, and telephone calls. The CSE provisions in the ATA have opened the door to massive domestic and international spying on ordinary citizens. The ICLMG argues that the powers and operations of the CSE constitute a major violation of articles 2 and 17 of the ICCPR, which combined with the new provisions set out in Bill C-51 described below, result in a massive attack on human rights.

ANNEX II

The following are concerning developments that are not yet final or enshrined in law but that we must keep an eye on:

Encryption

1. In July 2017, a ministerial meeting of the security officials of Australia, Canada, New Zealand, the United Kingdom and the United States was held in Ottawa, where possibilities for facilitating increased state access to encrypted data were discussed. The meeting occurred under the auspices of the 'Five Eyes' – a surveillance partnership between intelligence agencies within the five countries, including Canada's Communications Security Establishment (CSE). It generated a joint Communique, which presented encryption as a serious barrier to public safety efforts and an impediment to state agencies wishing to access the content of some communications for investigative reasons.

2. ICLMG and others called on the Five Eye governments to respect the right to use and develop strong and uncompromised encryption, as it protects our most sensitive data, our increasingly critical online interactions, even the integrity of our elections. We argue that actions and legislation that would undermine encryption violate Art. 2 and 17 of the *International Covenant on Civil and Political Rights*.

Counter-radicalization

3. The government has dedicated millions of dollars to a Office for Counter-Radicalization. They have publicly committed to addressing all forms of violent extremism. However, experts state that the causes of "radicalization" and "extremism" are still little understood. And in other countries, such offices have mostly ended up targeting Muslim and Arab communities. We do need to address violence in society, but shouldn't the focus be on all forms of violence and its causes – such as poverty, lack of social services, underfunded education systems, racism, homophobia, sexism — rather than on one path to violence which has lead to the disproportionate profiling and targeting of minorities as well as "radical" dissent, activists and even thoughts. Such irresponsible initiatives undermine Art. 2, 17, 18, 19, 21 and 22 of the *International Covenant on Civil and Political Rights*.