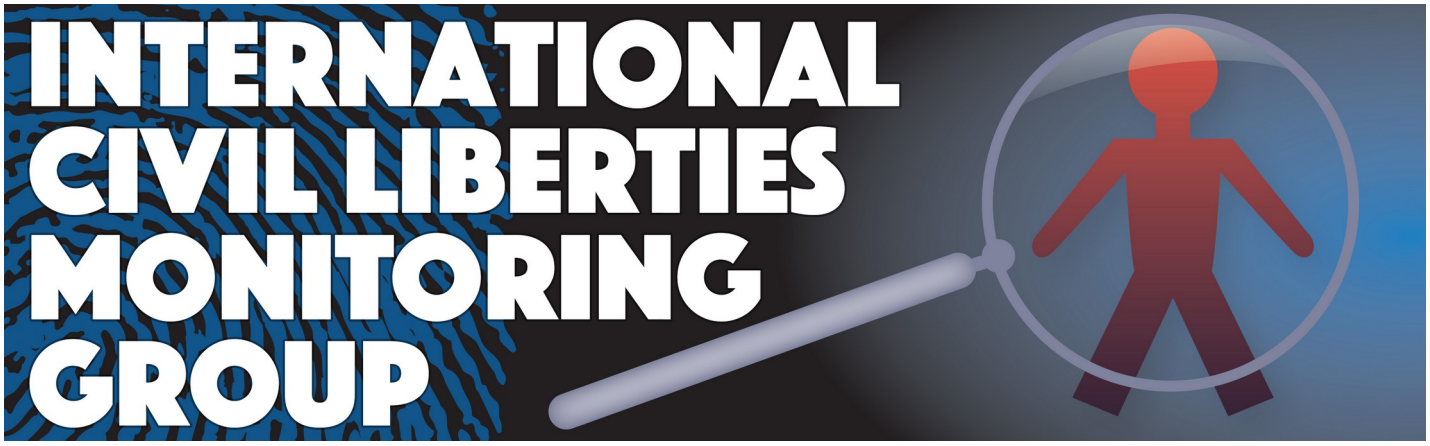

The Continuing Impact of the War on Terror on Human Rights in Canada

Submission 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 November 2023

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The ICLMG

1. The ICLMG is a pan-Canadian coalition of 45 civil society organizations that was established in the aftermath of the rushed adoption of the *Anti-terrorism Act* of 2001 in Canada following the September 11th, 2001 attacks in the United States. The coalition brings together unions, international development and human rights NGOs, professional associations, faith groups, and environmental and refugee organizations. Its purpose is to monitor the impact of anti-terrorism legislation and national security activities on human rights standards, such as those in the *Canadian Charter of Rights and Freedoms*, the *Canadian Bill of Rights*, the *Canadian Human Rights Act*, provincial charters of human rights and privacy legislation, the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. ICLMG also advocates against abuses and violations and, in certain cases, takes up the cause of those who have become the victims of such abuses.

2. The coalition 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), in the O'Connor Commission relating to Maher Arar and the Iaccobucci Commission relating to Messers. Almalki, El Maati and Nurredin (for more details, see Annex I, sections A & B), and much more.

The National Security Act, 2017 (C-59)

3. The *National Security Act*, *2017* – adopted in 2019 – introduced some improvements to Canada's national security framework, while reversing some, but certainly not all, of the very problematic aspects of the *Anti-terrorism Act, 2015* (see Annex I section E for more details). It created important new bodies to review and control national security activities; introduced a detailed and explicit new law for Canada's signals intelligence agency, the Communications Security Establishment (CSE); added new protections for the rights of youth involved in terrorism-related offences; and reformed the terrorist speech offences introduced by the *Anti-terrorism Act, 2015*.

4. In our 2018 submission, the ICLMG highlighted a number of specific aspects of Bill C-59 which required meaningful change. These have not been remedied since, and thus Canada must:

- allow the disclosure of information only with a warrant;
- abolish the Passenger Protect Program (no-fly list – see Annex I section F for more details);
- increase the threshold set for terrorism peace bonds;
- remove preventative detention powers;
- abolish CSIS immunity for "acts or omissions that would otherwise constitute offences" (see Annex I section G for more details) and threat reduction powers (see Annex I section H for more details);
- grant the new oversight and review agencies with binding powers;
- reverse the erosion of due process the *Anti-terrorism Act, 2015* extended in security certificate proceedings;
- abolish CSE "active" cyber security powers;
- remove CSIS and CSE mass surveillance powers (see Annex I sections I & J for more details); and
- outlaw any and all use or sharing of information unless there are guarantees that it won't lead to or hasn't been obtained through torture (see Annex I section K for more details).

5. Several of these issues are contrary to the *Canadian Charter of Rights and Freedoms*, as well as articles 2, 14, 17, 18, 19 of the ICCPR, and go beyond what is permitted under art. 4.

6. It is imperative that we have a public conversation — with answers and accountability — about the consistent failures of Canada's national security agencies to follow the law, and for the impact that Canada's anti-terrorism activities have on human rights, civil liberties and systemic discrimination in Canada and internationally. A public inquiry is needed to provide answers, and to chart a new direction for Canada's efforts to protect the safety of Canadians.

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 full case against them, 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 in 2015 against Mr. Harkat, an Algerian refugee. He and his family have now lived for twenty years in constant fear of him being deported as he risks detention and torture if sent back to Algeria (see Annex I section L for more details).

Extradition and due process – The Hassan Diab Case

9. Canadian citizen Hassan Diab was extradited to France in 2014 in order to be investigated for the bombing of a synagogue in Paris in 1980. Since our last UPR submission (see Annex I section M for more details), 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. He was finally released and returned to Canada in January 2018 after being held without charge in pretrial detention for more than 3 years in France. Art. 2, 9 and 14 of the ICCPR have been violated.

10. Despite all this, Hassan Diab has been ordered to stand trial starting on April 3, 2023. The Canadian government has refused to publicly denounce Hassan Diab's persecution by the French state, or to guarantee it would not extradite Dr. Diab if France requests it again.

11. Furthermore, despite the documented failings of Canada's extradition laws and the significant failures during Dr. Diab's hearings in particular, a review into the treatment of Hassan Diab mandated by the government of Canada found that the Department of Justice had not acted illegally, demonstrating once more the flawed nature of the *Extradition Act*. The Canadian House of Commons Standing Committee on Justice and Human Rights is now studying reforms to the act. This is necessary, given that the current law violates section 14 of the ICCPR, as well as the right to a fair trial guaranteed under section 11 of the *Canadian Charter of Rights and Freedoms.*

Criminalization of dissent

12. 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. A particularly egregious example is the incessant harassment and criminalization of the Wet'suwet'en land defenders by the RCMP since January 2020 for protecting their land against the construction of a pipeline, which is being built in contravention of article 32(2) of the United Nations Declaration on the Rights of Indigenous Peoples and section 35 of the *Constitution Act, 1982.* Furthermore, the UN Committee on Economic, Social and Cultural Rights has denounced the situation and urged Canada to remove the RCMP from Wet'suwet'en territory twice, to no avail.

13. The passage of the *Anti-Terrorism Act, 2015* and of the *National Security Act, 2017* 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 laws and actions negatively impact art. 2, 17, 18, 19, 21 and 22 of the ICCPR.

Discretionary powers, secret evidence, and misleading the courts

14. Since 2001, anti-terrorism and national security powers have continued to expand, granting new and troubling discretionary powers to government officials. Perhaps most troubling among these is the use of secret evidence out of reach of the impugned individual or organization. Examples include increasing ministerial discretionary powers to revoke passports, authorizing mass surveillance, putting individuals on the "no-fly list" and designating individuals and organizations as terrorist entities. The latter two, along with security certificates, and proposed new cybersecurity rules and humanitarian authorization licenses also rely on judicial reviews that may be held outside of public view and allow for the use of secret evidence. All these examples put at risk art. 2 and 14 of the ICCPR.

15. Further, multiple court rulings in 2016, 2018, 2020 and 2021 found CSIS had withheld evidence or mislead the courts about its use of evidence obtained by unlawful means in its pursuit of judicial authorizations for surveillance activities. This led to a finding that CSIS had breached its duty of candour towards the courts. While this issue has been raised multiple times, including in outside reviews, the problem has persisted, with little done to address the culture of opposition to the warrant process or to implement accountability mechanisms for when the duty of candour is breached (see Annex I section N for more details).

Surveillance

16. State surveillance also continues to expand in Canada. Revelations in 2020 of the use of facial recognition technology, and in 2021 of online surveillance tools, by law enforcement and national security agencies highlighted the growing use of biometric and algorithmic surveillance. Such surveillance has been conducted without appropriate legislation in place, allowing for it to take place in secret, with no public consultation, and without adequate oversight or review. New legislation is being considered, including the current Bill C-27 (the *Digital Charter Implementation Act*), which fails to appropriately account for these developments (see Annex I section O for more details).

17. Canada has also joined the US and other Five Eyes partner countries in arguing for the need to create greater law enforcement access to encrypted communication platforms used not only by the public but by human rights defenders and whistleblowers, ignoring the dire risk that any such "back-

doors" places on private information, communication and advocacy efforts. These issues violate art. 17, 19, 21 of the ICCPR (see Annex I section P for more details).

Provision of humanitarian aid and other forms of international assistance

18. Since August 2021, Canadian international assistance organizations, including humanitarian aid groups, have been unable to deliver aid to Afghanistan, under the advisement of the Canadian government that doing so would provide – via taxes and tariffs – financial support to the Taliban government, a listed terrorist entity in Canada, and thereby place these organizations in contravention of Canada's laws to counter terrorist financing and at risk of criminal prosecution. Canada failed to act for more than 18 months, despite UN resolutions, introducing legislation only in March 2023. The legislation would create a government licensing regime that would exempt Canadian organizations from prosecution for terrorist financing infractions when operating in areas controlled by what Canada considers a terrorist entity. However, by requiring government pre-approval of humanitarian assistance and other forms of aid, the regime undermines fundamental principles of international humanitarian and human rights laws (see Annex I section Q for more details).

Canadians detained in Northeastern Syria

19. More than 40 Canadians – including a majority of children – have been left in Northeast Syria, in conditions akin to torture according to the UN, for years now. Despite numerous calls for repatriation from authorities in the region, the UN and domestic human rights organizations, Canada has only repatriated four nationals, forcing the families of 23 of the arbitrarily detained to sue the government. As a result, Canada committed in January 2023 to repatriate 19 Canadian women and children. Today, April 5th, media have reported that they are on their way to Canada.

20. In January 2023, a Federal Court decision ruled Canada must repatriate four Canadian men illegally and arbitrarily detained in northeast Syria "as soon as reasonably possible." The judge found the government was in breach of section 6 of the *Canadian Charter of Rights and Freedom* – guaranteeing all Canadians the right to enter, remain in, and exit Canada. In February, the Canadian government filed an appeal and asked for a partial stay, which the Court of Appeal agreed to pending its ruling on the appeal. Every day the government fails to bring these Canadians home, it places their lives at risk from disease, malnutrition, violence, and ongoing military conflicts. Canada's actions also violate article 12 of the ICCPR.

21. Furthermore, Canada issued an ultimatum to four non-Canadian mothers of Canadian children in the Northeast Syrian camps that they must relinquish their parental rights if they want their children to travel to Canada. The four mothers have made the agonizing decision to forfeit an opportunity to repatriate their ten children at the cost of family separation. Canada's actions here violate article 9 of the *Convention on the Rights of the Child*.

Lack of redress regarding complicity in torture

22. Canada has continued to fail to provide full redress for five Canadians who were tortured abroad, with Canada's complicity: Abdullah Almalki, Ahmad El Maati and Muayyed Nureddin, who were all subjects of the Iacobucci Inquiry (more details in Annex I section B), which found that Canadian security agents were complicit in their torture abroad; Omar Khadr, who was illegally imprisoned, and tortured in the Guantanamo Bay prison (more details in Annex I section R); and Abousfian Abdelrazik, who was arbitrarily imprisoned and tortured in Sudan, while the Canadian govern-

ment blocked his attempts to return home until the Federal Court ordered his return. Mohamedou Ould Slahi, a former Canadian resident, was renditioned from Mauritania to Guantanamo Bay prison by the US based on Canadian intelligence, where he was held without charge and tortured for 14 years. Canadian officials have been found or are alleged to have been complicit in torture in each of these cases.

23. For the first four men, Canada has provided cursory apologies and financial compensation. Regarding Abousfian Abdelrazik, the government has been criticized for refusing to negotiate a settlement or proceed to trial, and instead taking action that will draw the case out — now for more than four years (more details in Annex I section S). The Committee Against Torture reported that Canada has failed to meet some of the most important requirements of redress under the Convention Against Torture, namely: an investigation into those complicit in torture and mistreatment, and criminal prosecution where warranted; a verification of the facts, and full and public disclosure of the truth, ideally through a public inquiry; and, an official declaration or judicial decision restoring the dignity, the reputation and the rights of the victims. The government has also refused to apologize to Ould Slahi, leading to his filing of a civil suit in 2022 (more details in Annex I section T).

24. The Committee also noted Canada's continuing failure to provide adequate training about Convention duties for law enforcement officials, judges, prosecutors and medical personnel. Ensuring in full this kind of redress is necessary to prevent reoccurrence of participation in torture by Canadian officials. Marking the seriousness of these concerns, the Committee also took the extraordinary step of requesting that the Canadian government file an interim report in one year; however, the Committee found Canada's responses in this update to be largely unsatisfactory, noting that it had failed to comply or to provide adequate information in all follow-up areas of concern.
25. Finally, Canada has yet to launch a public inquiry into the serious allegations that the government knew — or had been warned — that prisoners handed over to Afghan authorities by Canada were tortured or faced the likelihood of abuse (more details in Annex I, section U).

Systemic Islamophobia

26. We have observed racial, religious and political profiling abetted by the vague and overreaching definitions of terrorism and national security found in Canada's laws and policies. The most pervasive of this profiling has been the targeting of Muslims, Arabs, and those perceived to be Muslim or Arab, as the leading threat to the security of Canadians, despite evidence to the contrary. This systemic Islamophobia has had a massive negative impact on Muslims in Canada and around the world – including through drone strikes on majority-Muslim countries (see Annex I section V for more details on Canada's plan to purchase armed drones).

27. Studies have documented the disproportionate impact of national security measures on Muslims in Canada, including a 2019 study which found that 98% of individuals prosecuted under Criminal Code anti-terrorism provisions have been Muslims or linked to Muslim groups. The vast majority of these cases did not involve any executed act of violence, whereas most white perpetrators of actual mass violence have not been prosecuted as terrorists.

28. Our research has shown the prejudiced targeting of Muslim charities by the Canada Revenue Agency under the guise of countering terrorist financing (see Annex I section W for more details). Other examples include: discrimination and profiling in immigration; racial profiling at the border and while traveling; dubious counter-radicalization programs focused on the Muslim community (see Annex I section X for more details); information-sharing with rights-violating regimes; and harassment of Muslims at work, on campus and in their places of worship by Canadian intelligence agencies.

29. In recent years, laws like the *Anti-terrorism Act, 2015* and the *National Security Act, 2017* have expanded national security powers without adequate rights-protections and failed to address the profiling and systemic discrimination faced by Muslims in Canada. We have called on the federal government to forego policies that are predicated on the vague and politically malleable idea of "terrorism" and to implement legislative reform, real accountability, and justice for the survivors of rights violations in the name of counter-terrorism.

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