CALL FOR ACTION

REGULATE INTELLIGENCE SHARING!

INCLO
INTERNATIONAL NETWORK OF CIVIL LIBERTIES ORGANIZATIONS

PRIVACY INTERNATIONAL

BACKGROUND

Intelligence sharing between countries is one of the most pervasive and least regulated surveillance practices carried out by governments across the world. It is facilitated by rapidly evolving surveillance technologies that enable intelligence agencies to collect, store, analyse and share ever larger amounts of people's personal information.

In recent years, the Edward Snowden disclosures and the resulting examination of intelligence practices have revealed the staggering scope of state surveillance in the digital age. However, we still know little about the way intelligence is shared between governments and the arrangements that regulate such sharing. What we do know points to a systematic lack of regulation and oversight, in violation of international human rights law.

The *International Network of Civil Liberties Organizations* (INCLO) and *Privacy International* (PI) have undertaken extensive research into the issue of intelligence sharing and its implications for human rights.

Our research has led us to formulate urgent recommendations that governments must adopt in order to ensure their intelligence sharing is compliant with international human rights law.

HUMAN RIGHTS AT STAKE

Unregulated intelligence sharing can have serious implications for human rights, especially for our rights to privacy, freedom of expression and freedom of association.

Furthermore, intelligence sharing - particularly in states with authoritarian governments, weak rule of law or a history of systematically violating human rights - may facilitate serious human rights abuses, including extrajudicial killings, unlawful arrest or detention, or torture and other cruel, inhuman or degrading treatment.

REPORTS

In 2017 and 2018, INCLO and PI conducted separate studies on intelligence sharing practices around the world. The research conducted by INCLO targeted **state intelligence agencies in ten countries** while PI reached out to **oversight bodies** in **42 countries**. The findings were published in two separate reports and point clearly to similar conclusions:

- **Most countries lack domestic legislation that governs intelligence sharing;**
- **In most countries, oversight of intelligence sharing is weak or non-existent;**
- **In most countries, there is limited or no public access to intelligence sharing agreements.**

SECRET GLOBAL SURVEILLANCE NETWORKS: INTELLIGENCE SHARING BETWEEN GOVERNMENTS AND THE NEED FOR SAFEGUARDS

PI, APRIL 2018

This report is a follow-up to PI's outreach to oversight bodies in 42 countries, as part of a project to increase transparency and accountability around intelligence sharing. At the time it was published, PI had received responses from the oversight bodies of 21 countries.

PI FINDINGS

Non-Existent Legal Framework

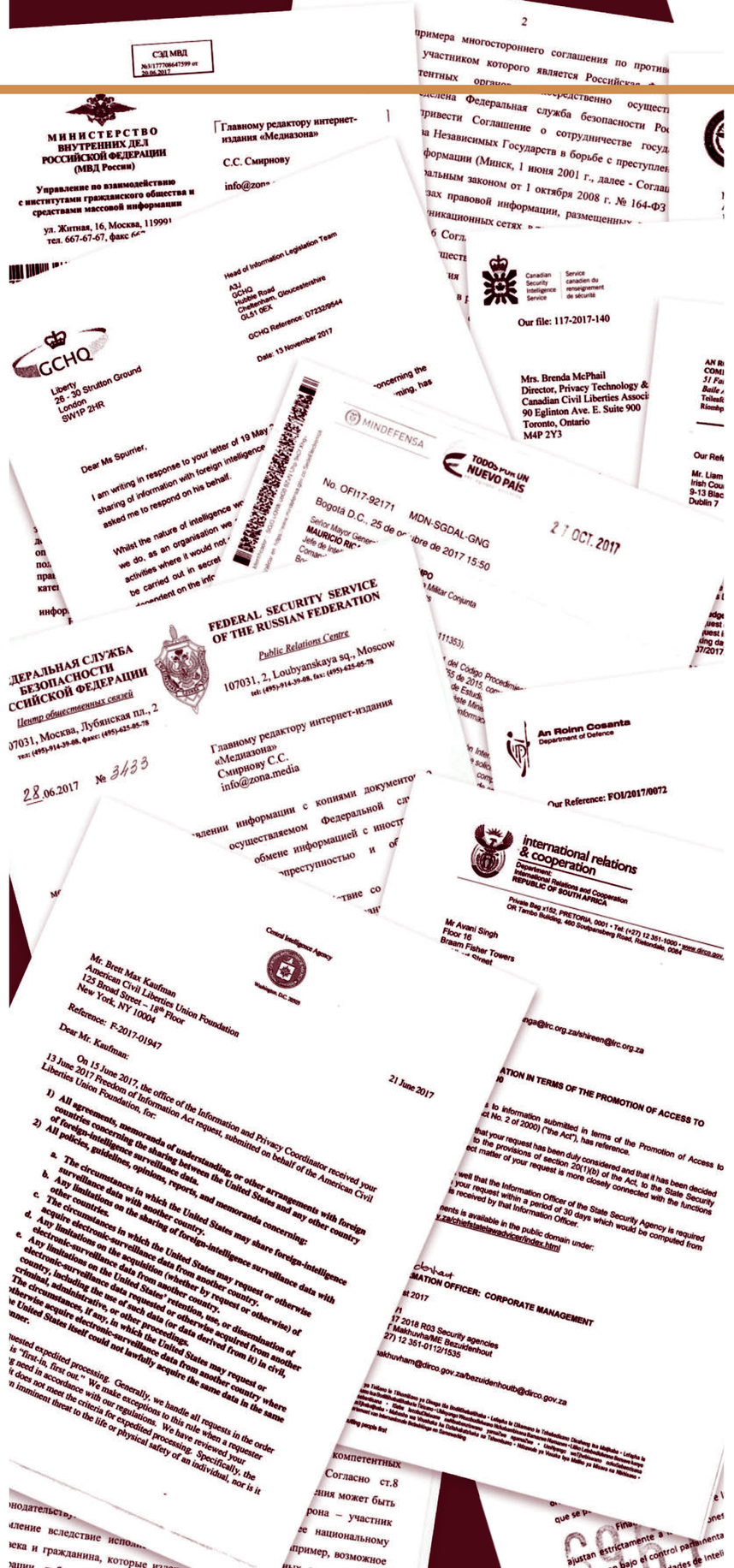
Nearly all of the countries targeted by PI lacked domestic legislation to govern intelligence sharing, with only one state having introduced specific legislation to explicitly regulate intelligence sharing.

Limited Access

Current agreements remain secret to the public. One oversight body indicated that it was prohibited from accessing information about its government's intelligence sharing activities. Seven responded that they have the power to access in full all relevant information about their governments' intelligence sharing activities, but the replies generally failed to clarify whether that power extends to information provided by foreign agencies.

Deficient Oversight

None of the oversight bodies indicated that they have powers to authorise decisions to share intelligence, either at a general level or in specific circumstances. In many of those countries, the process of authorising intelligence sharing appears to bypass any independent authority.



UNANSWERED QUESTIONS - INTERNATIONAL INTELLIGENCE SHARING

INCLO, JUNE 2018

This report sums up intelligence agency responses to Freedom of Information requests (FOI) sent by ten INCLO countries seeking details about current agency arrangements between countries. INCLO's research was based on FOI responses received, desk research and interviews with intelligence and oversight officials.

INCLO FINDINGS

Non-Existent or Weak Legal framework

In most INCLO member countries, intelligence sharing agreements with other governments are not governed by any domestic legislation. Even countries with relevant legislation often lack binding policies, regulations or procedures that would ensure effective governance of intelligence sharing.

Limited Access

Current agreements remain secret to the public. Many FOI requests received no response at all. Others were rejected outright, often in reliance on various exemptions.

Deficient Oversight

In most cases, the INCLO findings reveal a total absence of oversight of intelligence sharing.

CASE STUDY

TEN HUMAN RIGHTS ORGANIZATIONS V UNITED KINGDOM

The 2013 Snowden revelations, which disclosed the mass surveillance practices of the US and UK governments, raised the spectre that civil liberties and human rights organisations around the world were being subjected to surveillance both by their own governments as well as by agencies in other states.

Shortly following the revelations, ten human rights groups, including *PI* and *six INCLO members*, filed a complaint against the UK government before the Investigatory Powers Tribunal (IPT), a specialised court established to hear complaints of unlawful surveillance. The complaint challenged two aspects of the UK's surveillance regime revealed by the Snowden disclosures:

- UK mass interception of internet traffic transiting undersea fibre-optic cables landing in the UK;
- UK access to the information gathered by the US through its various mass surveillance programs.

In February 2015, for the first time in its then-15-year history, the IPT made a finding against the government. It held that the UK's access to information gathered via US mass surveillance was unlawful because the legal framework governing such access was secret and hidden from the public. However, it found that the disclosures made by the government during the litigation was sufficient to render intelligence sharing lawful from that point forward. The IPT also held that the UK's mass interception program was lawful.

In March 2015, the ten human rights organisations filed an application to the European Court of Human Rights challenging the IPT's ruling that the UK's mass interception program is lawful, and that the UK's access to US mass surveillance is rendered lawful by the government's disclosures during the proceedings. The judgment in this case remains pending.

In June 2015, the IPT also delivered a further ruling revealing that two of the claimant organizations had been subjected to unlawful surveillance by the UK government - Amnesty International and the South African organization, the Legal Resources Centre.

> ***"With very few exceptions, legislation has failed to place intelligence sharing on a proper statutory footing, compliant with the principle of legality under international human rights law."***
>
> **ZEID RA'AD AL HUSSEIN**, UN HIGH COMMISSIONER FOR HUMAN RIGHTS FROM PRIVACY IN DIGITAL AGE REPORT

RECOMMENDATIONS

INCLO and PI appeal to governments, intelligence agencies and oversight bodies to adopt the following recommendations in order to adequately protect our human rights, including the rights to privacy, freedom of expression and freedom of association, when undertaking intelligence sharing activities.

TO GOVERNMENTS

- **Establish**, through primary legislation, publicly accessible legal frameworks governing intelligence sharing, which **require**:
  - Intelligence sharing agreements to be subject to executive and legislative approval and to be presumptively public;
  - International and domestic legal constraints that apply to direct surveillance by intelligence agencies to apply equally to information obtained through intelligence sharing agreements;
  - Prior independent authorisation for sharing intelligence with a foreign partner;
  - Intelligence agencies to conduct due diligence and risk assessments when sharing information;
  - Intelligence agencies to regularly report on intelligence sharing activities with foreign partners;
  - Independent oversight bodies that oversee the intelligence agencies to exercise their powers with respect to intelligence sharing, including by accessing information shared by foreign partners;
- **Develop** written and publicly available guidelines governing intelligence sharing;
- **Develop** written agreements to govern intelligence sharing with foreign partners, which mandate that any sharing of information be in compliance with international law, including international human rights and international humanitarian law;
- **Conduct**, before entering into agreements to share intelligence, a review of the compatibility of such agreements with international and domestic law;
- **Facilitate** the establishment of independent oversight bodies that have access to all information held by their intelligence agencies, including information related to intelligence sharing, as well as to information shared by foreign partners;

TO INTELLIGENCE AGENCIES

- **Develop** written and publicly available policies on intelligence sharing that:
  - **Mandate** compliance with domestic and international law, including international human rights and international humanitarian law;
  - **Prohibit** information sharing with foreign partners where there is a credible risk that such sharing will contribute to or facilitate the violation of human rights;
  - **Require** and establish due diligence and risk assessment procedures to determine whether there exists a credible risk that sharing information with a foreign partner will contribute to or facilitate the violation of human rights;
  - **Prohibit** the use of information when there is a credible risk that the foreign agency obtained it in violation of international law;
  - **Require** analysing the provenance, accuracy and verifiability of information shared by another agency;
  - **Require** regular reporting to oversight bodies;

TO INDEPENDENT OVERSIGHT BODIES

- **Conduct** regular reviews and investigations into the intelligence sharing policies and practices of their intelligence agencies;
- **Cooperate** with foreign oversight bodies in states with whom intelligence is shared, including to inform each other of and share reports on issues of mutual concern.

ABOUT

INCLO
INTERNATIONAL NETWORK OF CIVIL LIBERTIES ORGANIZATIONS

INCLO is a network of 13 independent, national human rights organizations from the global South and North. We work together to promote fundamental rights and freedoms. We advocate on behalf of all people in their respective countries through a mix of litigation, legislative campaigning, public education, and grassroots advocacy.

For more information: https://www.inclo.net

PRIVACY INTERNATIONAL

PRIVACY INTERNATIONAL is a London-based charity that works at the intersection of modern technologies and rights. We shine a light on overreaching state and corporate surveillance, with a focus on the sophisticated technologies and weak laws that enable serious incursions into our privacy. We investigate, litigate, advocate and educate, all with one aim - for people everywhere to have greater security and freedom through greater personal privacy.

For more information: https://privacyinternational.org