FAAE Opening Remarks by Justin Mohamed and Stacia Loft for Amnesty International

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- **Introduction**
  - Thank the committee for invitation
  - Land acknowledgement

- **Legal Context: Canada's Obligations Under the ATT**
  - As committee members are likely aware, Canada acceded to the Arms Trade Treaty (or, as we will refer to it, the ATT) on 17 September 2019. As such, Canada is now bound at international law by the terms of the treaty. It's purposes are threefold: 1) to contribute to international regional peace, security and stability; 2) reducing human suffering; and 3) to promote cooperation, transparency and responsible action in conventional arms trade.
  - In the view of Amnesty International, this treaty is an important instrument that can help prevent the commission of serious international crimes, including genocide, war crimes and crimes against humanity. That is why we have campaigned, in Canada and around the world, to encourage states to adopt domestic laws that fully implement its terms.
  - While we acknowledge that the Canadian legislation introduced to implement the ATT in Canada, namely Bill C-47, did strengthen Canada's export control laws, the legal and regulatory regime fails to fully implement the treaty. Several civil society organizations (including those on this evening's panel) provided written briefs about these deficiencies to the Senate Foreign Affairs committee in November 2018, and again when Global Affairs Canada undertook consultations to develop a regulations package to accompany C-47 in April 2019. I'd like to take a moment to point out just two of them:
    - First, there is the ATT's article 6 absolute prohibitions on certain transfers, which includes UN Security Council arms embargoes and, of particular interest to Amnesty International, transfers where there is knowledge that the arms "would be used in the commission of genocide, crimes against humanity, grave breaches of the Geneva Conventions of 1949, attacks

directed against civilian objects or civilians protected as such, or other war crimes as defined by international agreements to which it is a Party." This absolute prohibition on certain transfers does not exist in Canadian law.

- Second, there are significant deficiencies in the assessments of US weapons exports. Through the use of a so-called "General Export Permit," almost all US weapons exports are exempted from the review mandated by Articles 6 and Article 7 of the ATT. Indeed, they are not subject to substantial risk test in s. 7.4 of the EIPA as amended by Bill C-47.

- Amnesty International is encouraged by this committee's decision to study the "controls protocols, and policies" around the granting and freezing of exports. However, we respectfully submit that these measures – frequently relied upon to justify claims that Canada has one of the most stringent export processes is the word – are, quite simply, not law. The starting point must be to ensure that Canada's legal framework fully implements our international legal obligation under the ATT. The consequences of failing to do so, as my colleagues will elaborate, are that Canada continues to export weapons where there are significant concerns about their use in the commission of serious international crimes.

- **The Final Report**
  - The deepest insight that civil society organizations, like ours, have into the Canadian process for reviewing exports post Bill C-47 is Global Affairs Canada's "Final Report" on the topic of weapons exports to Saudi Arabia. As you may be aware, it was ordered to be publicly released by the Minister of Foreign Affairs earlier this year. This exercise in transparency is to be commended. However, the Final Report betrays serious gaps in Canada's export evaluation process.
  - I wish to outline three that are of particular concern:
    - First, the Final Report improperly suggests that the definition of "substantial risk" of misuse consider whether "a pattern of repetitive behaviour" can be identified with respect to human rights violations in Saudi Arabia. This is not the correct metric of the assessment under the ATT; the **prospect of risk** is what needs to be considered. In looking for repetitive use rather than

risk, the Final Report applies incorrect standard; while a pattern of repetitive behaviour could be an indicator of risk, but it is not required for risk to be present

- Second, the report does not rely on the reporting of human rights or civil society organizations, which have long documented Saudi human rights violations and possible violations of international humanitarian law. It is selective in its treatment of UN reports noting that 2019 Group of Eminent Experts on Yemen report "did not question the legality of Canadian arms transfers to KSA, likely because these have not been items used in operations in respect of which IHL violations have been alleged." I note, parenthetically, that Canada now has been specifically called out for its weapons transfers, by that same UN group, in September this year.
- Finally, the report makes basic errors in interpreting international humanitarian law by failing to distinguish between the means and methods of warfare. For example, the report is dismissive of concerns about sniper rifles, saying that they are "intended to support precision-targeting and as such are considerably less vulnerable to being used in a way that would result in unintentional civilian casualties." While a sniper rifle is a permissible **means** of warfare (it is, indeed, capable of sufficient discrimination between civilian objects) this does not mean that the **methods** of their use have been compliant (ie. that they haven't been used to harm civilians). If this is the rigor that is applied to questions of IHL violations when Canada conducts arms exports, it is undoubtedly lacking.

- **Impact: Why Canada Needs a Rigor in Weapons Exports Controls**
  - I would like to conclude our remarks by recalling the impact of flawed export assessments. Saudi Arabia's human rights record is beyond debate: it is an established violator of human rights both domestically and internationally. It has a history of censorship of the free press and dissidents, it uses a discriminatory male guardianship system for women and girls, it exploits migrant workers. The UN panel of experts on Yemen found that individuals in the Government of Yemen, Saudi Arabia and the United Arab Emirates, may have

conducted airstrikes in violation of the principles of distinction, proportionality and precaution, and may have used starvation as a method of warfare, which are acts that may amount to war crimes.
    - Furthermore, the experts also noted that the acts committed may amount to war crimes, as they included murder, torture, cruel or inhuman treatment, rape, outrages upon personal dignity, denial of a fair trial, and enlisting children under the age of 15 or using them to participate actively in hostilities
    - These acts all raise the question: if such a record does not constitute a risk of Canadian weapons being used to commit serious human rights violations, then what does?

- **Recommendations / Conclusions**
    - I'd like to conclude by sharing two recommendations for the committee's consideration:
        - First, Canada should amend its domestic legislation to ensure that it is fully complaint with the terms of the ATT. In the interim, the Governor in Council could enact regulations that would give those obligations the force of law.
        - Second, Canada should reassess existing Canadian export permits to countries where violations of IHL, IHRL and GBV have been reported on and substantiated by domestic and international investigative bodies, as well as human rights and civil society.
            - Even after a permit has been issued, where Canada becomes aware of new relevant information, the ATT encourages that the exporting state reassess the authorization after consultations, if appropriate, with the importing State.