

March 27, 2023

The Right Honourable Justin Trudeau, P.C., M.P.  
Prime Minister of Canada

Office of the Prime Minister  
80 Wellington Street  
Ottawa, ON  
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**via email**

**RE: Urgent repatriation of Canadians detained in northeast Syria**

Prime Minister:

As members of the legal community, we write to express our serious concern regarding the Canadian government's continuing refusal to repatriate all Canadians detained in camps and prisons in northeast Syria<sup>1</sup> – urgent repatriation being “the only international law-compliant response,” in the assessment of the UN Special Rapporteur on counter-terrorism and human rights.<sup>2</sup>

Indeed, on January 20, the Federal Court of Canada ordered several of the detained Canadian men returned under section 6(1) of the *Charter of Rights and Freedoms*, which guarantees Canadian citizens the right to enter Canada: a protection for all Canadians against banishment and the concomitant expulsion from the “right to have rights.”<sup>3</sup> Yet instead of honouring this decision that gives meaningful life to Charter provisions, the federal government is appealing it. In doing so, it is not only prolonging the dire and life-threatening conditions of the detainees, but also putting forward the troubling legal argument that the Court, in performing its essential function of upholding basic rights, is impermissibly “interfering in the exercise of Crown prerogative over matters of foreign affairs.”

This is particularly disturbing given the scale of rights violations involved. As described by the Federal Court and documented by UN experts and international human rights organizations, the deplorable conditions and abuses experienced by Canadian and other detainees in northeast Syria include: long-term, extrajudicial, indefinite, and in many cases incommunicado detention

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<sup>1</sup> <https://globaljustice.queenslaw.ca/news/human-rights-and-citizenship-abandoned-in-ne-syria-a-special-issue-of-the-global-justice-journal>.

<sup>2</sup> <https://www.ohchr.org/en/special-procedures/sr-terrorism/return-and-repatriation-foreign-fighters-and-their-families>.

<sup>3</sup> <https://decisions.fct-cf.gc.ca/fc-cf/decisions/en/item/522819/index.do?>  
[https://link.springer.com/chapter/10.1007/978-3-319-92719-0\\_31](https://link.springer.com/chapter/10.1007/978-3-319-92719-0_31).

without the possibility of trial;<sup>4</sup> torture and ill-treatment;<sup>5</sup> life-threatening denial of food, water, sanitation, shelter, and medical treatment;<sup>6</sup> failure to provide education;<sup>7</sup> sexual violence and exploitation, particularly against women and children;<sup>8</sup> extreme physical danger for children, at least 371 of whom died in just one of the camps (al-Hol) in 2019 alone, including from malnutrition, dehydration, tent fires, shooting, stabbing, and drowning in open sewage pits;<sup>9</sup> and child separation,<sup>10</sup> including the mass “culling, separation and warehousing of adolescent boys from their mothers” in “detention facilities [where they] endure untreated war injuries, missing limbs, and severe trauma.”<sup>11</sup> Such treatment violates international and Canadian constitutional provisions protecting the rights to life, liberty, security of the person, fair trials, equality, and of children; and prohibiting secret and arbitrary detention, enforced disappearances, collective punishment, and torture and ill-treatment.<sup>12</sup>

Thirty-five countries have done what the Federal Court has asked the Federal government to do: repatriate its citizens.<sup>13</sup> States that have repatriated their citizens to date include Australia, Belgium, France, Germany, and the United States.<sup>14</sup> More than 6,000 detainees across 35

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<sup>4</sup> <https://www.hrw.org/report/2020/06/29/bring-me-back-canada/plight-canadians-held-northeast-syria-alleged-isis-links>; <https://www.justsecurity.org/85049/repatriating-alleged-isis-linked-men-from-northeast-syria-the-start-of-judicial-responses-to-the-political-stalemate/>.

<sup>5</sup> <https://www.hrw.org/report/2020/06/29/bring-me-back-canada/plight-canadians-held-northeast-syria-alleged-isis-links>; <https://stj-sy.org/en/detainees-tortured-and-maltreated/>.

<sup>6</sup> <https://www.doctorswithoutborders.org/sites/default/files/documents/MSB141137%28High%29.pdf>.

<sup>7</sup> <https://www.savethechildren.net/news/children-abandoned-their-governments-are-%E2%80%98wasting-away%E2%80%99-syrian-camps-%E2%80%93-save-children>.

<sup>8</sup> [https://www.rightsandsecurity.org/assets/downloads/Europes-guantanamo-THE\\_REPORT.pdf](https://www.rightsandsecurity.org/assets/downloads/Europes-guantanamo-THE_REPORT.pdf), <https://www.doctorswithoutborders.org/sites/default/files/documents/MSB141137%28High%29.pdf>, <https://reliefweb.int/report/syrian-arab-republic/assistant-secretary-general-humanitarian-affairs-and-deputy-emergency-relief-coordinator-ms-joyce-msuya-briefing-security-council-humanitarian-situation-syria-29-august-2022>, <https://reliefweb.int/report/syrian-arab-republic/syria-un-human-rights-chief-condemns-brutal-killing-two-girls-alarmed-sharp-rise-violence-al-hol-camp>, <https://syria.unfpa.org/en/news/without-rights-without-options-birthing-without-skilled-birth-attendant-al-hol-camp>.

<sup>9</sup> <https://www.hrw.org/news/2023/01/27/revictimizing-victims-children-unlawfully-detained-northeast-syria>.

<sup>10</sup> <https://www.ohchr.org/en/press-releases/2023/02/syria-un-experts-alarmed-reports-boys-taken-camp-roj-de-facto-authorities>.

<sup>11</sup> [https://www.ohchr.org/sites/default/files/Documents/Issues/Terrorism/SR/UNSRCT\\_Position\\_human-rights-of-boys-adolescents-2021\\_final.pdf](https://www.ohchr.org/sites/default/files/Documents/Issues/Terrorism/SR/UNSRCT_Position_human-rights-of-boys-adolescents-2021_final.pdf).

<sup>12</sup> *Charter of Rights and Freedoms*, sections 7, 9, 12, and 15; *International Covenant on Civil and Political Rights*, articles 2, 6, 7, 9, 10, 14, 24; *International Covenant on Economic, Social, and Cultural Rights*, articles 11, 13; *International Convention for the Protection of All Persons from Enforced Disappearance*; *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, [https://tbinternet.ohchr.org/\\_layouts/15/treatybodyexternal/Download.aspx?symbolno=CAT%2FC%2F75%2FD%2F922%2F2019&Lang=en](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CAT%2FC%2F75%2FD%2F922%2F2019&Lang=en) (decision by the UN Committee Against Torture finding France in violation of the Convention for failing to take effective measures to protect its nationals in the camps); *Convention on the Rights of the Child*; *Rome Statute of the International Criminal Court*, article 7; [https://casebook.icrc.org/a\\_to\\_z/glossary/collective-punishments](https://casebook.icrc.org/a_to_z/glossary/collective-punishments); <https://www.hrw.org/news/2023/01/27/revictimizing-victims-children-unlawfully-detained-northeast-syria>; <https://www.justsecurity.org/85049/repatriating-alleged-isis-linked-men-from-northeast-syria-the-start-of-judicial-responses-to-the-political-stalemate/>.

<sup>13</sup> <https://www.hrw.org/news/2023/01/27/revictimizing-victims-children-unlawfully-detained-northeast-syria>.

<sup>14</sup> <https://www.rightsandsecurity.org/action/resources/global-repatriations-tracker>.

countries have been repatriated.<sup>15</sup> Commending Kyrgyzstan’s decision to repatriate 59 detainees from the camps this February, the US Department of State emphasized: “Repatriation is the only durable solution to this urgent humanitarian and security situation [...] We urge all governments to follow Kyrgyzstan’s example and repatriate their nationals.”<sup>16</sup>

Calls for repatriation have now been issued by US President Joe Biden, the International Committee of the Red Cross, 22 United Nations experts, the Canadian House of Commons Standing Committee on Foreign Affairs and International Development, and the Kurdish authorities administering the camps and prisons.<sup>17</sup> The conditions for release outlined by Kurdish authorities could not be expressed more simply: that Canada write a letter requesting the detainees’ release, that Canada ensure travel documents are ready for issue, and that a Canadian representative appear in northeast Syria for a handover signing. The United States military has pledged to provide the security and resources necessary to fly detainees home.

The Canadian government’s highly restrictive approach to repatriation is incompatible with international and constitutional legal norms. For example, Global Affairs Canada’s “Policy Framework [for repatriation] appears drafted to exclude the Canadian men [...] in which] case the Policy Framework as presently advised could not withstand subsection 6(1) Charter scrutiny,” as the Federal Court concluded.<sup>18</sup> Moreover, the refusal to admit detained non-Canadian mothers with their Canadian children effectively mandates forcible child-parental separation, in contravention of the Convention on the Rights of the Child.<sup>19</sup>

Canada’s failure to repatriate perpetuates a pattern of Canadian governmental complicity with the overseas torture, arbitrary detention, and forced exile of Muslim Canadians, as recorded in the two official inquiries on the cases of Maher Arar, Ahmad Abou El-Maati, Abdullah Almalki, and Muayyed Nureddin,<sup>20</sup> and multiple legal complaints.<sup>21</sup>

Instead of advancing legal interpretations that would vitiate fundamental rights protections, we call on the Canadian government to honour the Federal Court’s repatriation order; to work to urgently bring back all Canadian detainees and, with respect to detained children, any non-Canadian caregiving parents as well; and to finally address the underlying deficiencies in Canadian policies – many of them identified in unimplemented recommendations from the 2006 Arar Inquiry<sup>22</sup> – that have led to this deplorable situation, to prevent any future recurrence.

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<sup>15</sup> <https://www.hrw.org/news/2023/01/27/revictimizing-victims-children-unlawfully-detained-northeast-syria>.

<sup>16</sup> <https://www.state.gov/u-s-welcomes-kyrgyzstans-repatriation-of-nationals-from-northeast-syria/>.

<sup>17</sup> <https://www.thetimes.co.uk/article/joe-biden-urges-western-allies-to-bring-back-isis-families-held-in-syria-sng77cngg>; <https://www.icrc.org/en/document/remarks-fabrizio-carboni-icrc-near-and-middle-east-regional-director-record>; <https://www.ohchr.org/en/press-releases/2021/02/syria-un-experts-urge-57-states-repatriate-women-and-children-squalid-camps>; <https://www.ohchr.org/en/press-releases/2023/02/syria-un-experts-alarmed-reports-boys-taken-camp-roj-de-facto-authorities>; <https://www.ourcommons.ca/DocumentViewer/en/43-2/FAAE/report-7/>;

<sup>18</sup> <https://decisions.fct-cf.gc.ca/fc-cf/decisions/en/item/522819/index.do?>, para 190.

<sup>19</sup> Article 9, <https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-rights-child>.

<sup>20</sup> <https://publications.gc.ca/site/eng/295791/publication.html>; <https://secretlaw.omeka.net/items/show/74>.

<sup>21</sup> For example, relating to the cases of Abousfian Abdelrazik (<https://decisions.fct-cf.gc.ca/fc-cf/decisions/en/item/56734/index.do>), Omar Khadr (<https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/4638/index.do>), and Mohamedou Slahi (<https://files.constantcontact.com/3ffcf3a6301/2c1019a8-43eb-487e-b54d-6e5f7be42aab.pdf>).

<sup>22</sup> <https://publications.gc.ca/site/eng/295791/publication.html>.

We urge this course of action both to address the grave human rights concerns in these pressing cases, and to convey a strong and much-needed message that Canada does indeed take its human rights obligations seriously in a world and at a time when those universal principles are increasingly undermined.

Signed by:

1. Allan Rock, former Minister of Justice and Attorney General of Canada, former Ambassador to the United Nations and President Emeritus of the University of Ottawa
2. Sharry Aiken, Faculty of Law, Queen's University
3. Paul Champ, constitutional lawyer
4. Kent Roach, Professor of Law, University of Toronto Faculty of Law
5. Carmen Cheung Ka-man, Senior Fellow, Munk School of Global Affairs and Public Policy, University of Toronto
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9. Husein Panju, Chair of Canadian Muslim Lawyers Association
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48. Aadil Nathani, lawyer
49. Éline Simon, staff lawyer at Community Legal Services of Ottawa
50. Mahmoud Khodr, financial controller
51. Justin Safayeni, lawyer
52. Mudasir Marfatia, General Counsel and Vice President, Legal at First Ontario
53. Del Atwood, retired judge
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64. Alastair Clarke, immigration lawyer based in Winnipeg
65. Basmah Osman, Canadian Muslim Lawyers Association
66. Mary Boyce, lawyer
67. Karina Thompson, lawyer

68. Amina Younas, corporate lawyer, Vancouver
69. Rebeka Lauks, lawyer
70. Mustafa Khan, lawyer
71. Omair Jafrani, lawyer, McCarthy Tetrault
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