Permanent Mission of Canada
to the United Nations
and the World Trade Organization

Mission permanente du Canada
auprès des Nations Unies
et de l'Organisation mondiale du commerce

GENEV-9549

The Permanent Mission of Canada to the United Nations and the World Trade Organization at Geneva presents its compliments to the Office of the High Commissioner for Human Rights and has the honor to refer to the communication letter from Special Procedures regarding the repatriation of Canadians from Roj Camp, Syria (UA CAN 1/2023) dated 12 May 2023. In this regard, the Permanent Mission of Canada has the honour to submit Canada's response.

The submission consists of one document.

The Permanent Mission of Canada to the United Nations and the World Trade Organization at Geneva avails itself of the opportunity to renew to the Office of the High Commissioner for Human Rights the assurances of its highest consideration.

Mission permanente du Canada auprès de l'ONU, de la
Permanent Mission of Canada to the UN
Geneva - Genève

[redacted]

Geneva, 28 August 2024

Canada

Permanent Mission of Canada
to the United Nations
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Response by the Government of Canada to the Joint Urgent Appeal from Special Procedures
Reference UA CAN 1/2023

1. **Information and comment on the allegations in the letter.**

Canada takes very seriously its international human rights treaty obligations, including those described in the Joint Urgent Appeal, and fully supports the important mandates of the Special Rapporteurs enumerated therein. Canada does its utmost to cooperate with the Special Rapporteurs and gives serious, good faith consideration to their views.

After careful consideration of the views of the Special Rapporteurs in this case, Canada has the following comments regarding the Joint Urgent Appeal:

Pages 4 and 5 of the Joint Urgent Appeal include comments on the extraterritorial scope of Canada's obligations under international law, including on the issue of family separation and preserving family unity under the *Convention on the Rights of the Child* (CRC). Furthermore, page 6 of the Appeal includes comments on the issue of the right to the enjoyment of physical and mental health under the *International Covenant on Economic, Social and Cultural Rights* (ICSECR).

Canada's position is that the obligation to respect and ensure human rights is primarily restricted to the sovereign territory of a state and is limited by the sovereign rights of the other relevant states. International human rights law (including the CRC, ICSECR, other human rights treaties, and customary international law) does not create a positive obligation on states to protect the rights of persons who are detained by foreign entities in another state's territory. Such persons are entirely outside of Canada's territory and jurisdiction. Rather, the obligations apply to the state in whose territory the detentions are occurring. While this does not preclude the possibility that a state might be held responsible for aiding or assisting human rights violations in another state, this would require that the aid or assistance be given with a view to facilitating those wrongful acts. That is plainly not the case here.

Moreover, the Government of Canada is aware of the reports mentioned in the letter and appreciates that the Special Rapporteurs share Canada's concern. The Government of Canada is monitoring the situation closely and is concerned by the ongoing health challenges facing Canadians in Syrian Kurdish detention. Canadian government officials are engaging with Syrian Kurdish authorities and with international organizations on the ground for information on, and assistance to, Canadians in the Syrian camps and prisons.

2. **Details on the domestic mechanism in place for the assessment of the case of [redacted] under the Policy Framework in Canada, and any information as to why the process has taken 5 months in [redacted] case.**

Due to the unique nature of the complex cases of Canadians in Syria, the Government of Canada adopted a Policy Framework in early 2021 to guide decision-making on whether to extend extraordinary assistance, including repatriating an individual to Canada, to Canadian citizens, or presumed Canadians, detained in northeast Syria. Under this policy, Canada may provide extraordinary assistance on a case-

by-case basis, only in specific and defined circumstances, where the situation of the individual meets one or more of the following threshold criteria:

- the individual is an unaccompanied child;
- extraordinary circumstances make it necessary for a child who is unaccompanied to be separated from their parents, leaving the child unaccompanied; and/or
- the Government of Canada has received credible information indicating that the individual's situation has changed significantly since the adoption of the Policy Framework.

If one or more of the threshold criteria are determined to have been met, the Government of Canada will assess whether to provide extraordinary assistance to the individual, considering a number of guiding principles, including the prioritization of unaccompanied children and the need to mitigate potential threats to public safety.

Due to privacy concerns, the Government of Canada cannot publicly comment on the assessment process as it relates to any specific case.

3. **Information on what steps have been taken to address [redacted] and her children's deteriorating health situation including securing urgent interim medical assistance to Roj camp.**

The safety and well-being of Canadian citizens abroad is a priority for the Government of Canada. Canada aims to deliver consular services to its citizens in a consistent, fair and non-discriminatory manner. Consular services are delivered in accordance with the rules of international law applicable to consular matters.

In the context of providing consular assistance to Canadian citizens who travelled to Syria the Government of Canada took measures as early as 2011 to advise Canadian citizens to avoid travel to Syria and to depart the country. In 2012, Canada closed its embassy in Damascus and further updated its travel advisory for Syria to reflect the closure of the Embassy and to advise Canadians that, due to the lack of a physical presence in country, Canada's ability to provide consular and other support throughout Syria is very limited.

Nevertheless, Canada continues to reach out to Syrian Kurdish authorities and to international organizations on the ground to provide medical assistance to all Canadians in the camps and prisons to the extent possible. Canadian officials have also conveyed to Syrian Kurdish authorities the expectation that all Canadian citizens in their custody be treated humanely, in line with the applicable principles of international humanitarian law and international human rights law.

Furthermore, despite the existing challenges mentioned above, Canadian government officials continue to explore possible ways to extend assistance to Canadians detained in northeastern Syria.

Due to privacy concerns, the Government of Canada cannot publicly comment on the provision of consular services to specific individuals.

4. **Clarification on Canada's legal position on the separation of children from their families in the context of armed conflict.**

Canada's legal response to this question from an international law perspective depends significantly on several factors and is context specific. Canada is responding to this question as it pertains to the context relayed in the Joint Appeal.

As mentioned in the response to question number 1, Canada's position is that unless otherwise outlined in a treaty and except in limited circumstances, a state does not have international human rights obligations that apply outside of the territory of the state. While the international law instruments relied on in the Joint Appeal might inform the scope of the obligations of the state in which [redacted] and her children are currently detained, they do not reflect Canada's obligations in this context. International human rights obligations apply to the territory, where the state has jurisdiction.

Canada takes its international legal obligations seriously, and respects its obligations under the CRC and the ICESCR. In order to respect state sovereignty, Canada has to rely on the fact that other States Parties have the same obligations within their own territory.

Under Canada's Policy Framework, consular officials will not proactively separate children detained in north-eastern Syria from their parents. Government of Canada officials recognize that it is the parents' legal responsibility to make decisions for the best interests of their children including by requesting Canada's assistance with the children's travel to Canada in instances where the parents would remain in detention and would not be able to travel with their children immediately. GAC will evaluate requests for assistance from parents in these situations, on a case-by-case basis, in accordance with the principle of the best interests of the child.