

Mandates of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism; the Working Group on Arbitrary Detention; the Special Rapporteur on extrajudicial, summary or arbitrary executions; the Special Rapporteur on the right to food; the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment; the Special Rapporteur on trafficking in persons, especially women and children and the Working Group on discrimination against women and girls

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26 November 2021

Excellency,

We have the honour to address you in our capacity as Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism; Working Group on Arbitrary Detention; Special Rapporteur on extrajudicial, summary or arbitrary executions; Special Rapporteur on the right to food; Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment; Special Rapporteur on trafficking in persons, especially women and children and Working Group on discrimination against women and girls, pursuant to Human Rights Council resolutions 40/16, 42/22, 44/5, 32/8, 42/16, 43/20, 44/4 and 41/6.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the arbitrary detention and inadequate detention conditions, including restricted access to food, water and medical care, of Ms. **Kimberly Polman**, a Canadian citizen, currently detained in Roj camp in the North-East region of the Syrian Arab Republic at least since 19 March 2019.

According to the information received:

Ms. **Kimberly Polman** is a Canadian national, born in 1972. She left for Syria from Canada in 2015. She traveled to Syria at the behest of her future husband, whom she met online, and who convinced her that she would be well cared for in her married and future family life. Ms. Polman believed that she would be working outside the home providing healthcare for women and children in her new life.

On 28 January 2019, she was arrested for alleged association with the Islamic State and was detained by the Kurdish-led authorities in Northeast Syria (Baghouz). Ms. Polman was detained first at Al Hol camp, and she was later moved to Roj camp. While detained at the camps without any legal charges ever levied against her, Ms. Polman has suffered a steady decline in her mental and physical health. Reportedly, she has no access to adequate medical care, fresh food or clean water and has no money to procure them herself. Her family has requested on numerous occasions that the Canadian government

facilitate the transfer of money for medical supplies, food, and water. However, the Canadian government has not facilitated these requests. Her family runs serious legal risk of being accused of material support to terrorism should they seek to provide her with the means to protect her right to life.

Ms. Polman reportedly suffers from several health issues including hepatitis, kidney inflammation/enlargement, untreated Hashimoto's disease, bone/muscle issues, post-traumatic stress disorder and other mental health issues. Additionally, she has several broken teeth and has been deprived of her prescription eyeglasses. A medical report was carried out months ago by Doctors Without Borders, and recently interpreted along with her current medical issues by a doctor from Reprieve. The reports state that her condition is life-threatening, and that she needs more testing and medical care not available in the camp. She also needs to go to a hospital where English is spoken. Her family is aware that Ms. Polman has been suicidal. As a result of food deprivation, the dire conditions of detention and the hunger strike she has undertaken in protest since September, Ms. Polman has lost more than half her body weight, exacerbating her compromised health conditions. Her family has requested assistance from the Canadian government (Global Affairs Canada) for immediate medical help for Ms. Polman.

Ms. Polman has been detained without charge, without trial and without access to an attorney. Ms. Polman has not been brought before a judge to determine the necessity and legality of her detention, nor has she been charged with any crime. Ms. Polman's family alleges that Kurdish-led detaining authorities have held Ms. Polman at gunpoint to ensure compliance with their commands and are present when Ms. Polman speaks to journalists, researchers, or other parties. The dire conditions in which she is detained are life-threatening and may amount to cruel, inhuman or degrading treatment or punishment. Ms. Polman no longer has her Canadian passport and cannot travel without it. Further, the Canadian authorities will not issue her travel documents, preventing her return to her country of origin.

While we do not wish to pre-judge the accuracy of these allegations, we express our concern regarding Ms. Polman's rights to life, to security, to health and not to be subjected to arbitrary detention. We are also concerned about the dire conditions of detention that she, as well as other camp inmates, has been subjected to including lack of access to adequate food, drinkable water, and medical care, in the context of her being formerly associated with ISIS. In addition, given the extreme precarious situation this person is in, she may be vulnerable to all sorts of abuses and trafficking. In this respect, we wish to reiterate our views that States have a positive obligation under international law to protect the right of, and repatriate, their nationals. We have previously addressed similar concerns to your Excellency's government (AL CAN 1/2021) and acknowledge your letter of 14 April 2021. We regret that these concerns are ongoing.

States Have a Positive Obligation to Return their Nationals

Under international law, your Excellency's government has an obligation to facilitate Ms. Polman's return in order that she may seek medical attention and terminate her indefinite arbitrary detention.¹ Her return is both a legal and humanitarian imperative.

States have a duty to take positive steps and effective measures to protect individuals in situation of vulnerability, especially women and children, located outside of their territory, where they are at risk of serious human rights violations, and where their actions or omissions can impact on their human rights.²

We wish to clarify that a state's responsibility may be engaged on account of acts which are performed, or which produce effects, outside its national borders, or which have sufficiently proximate repercussions on rights guaranteed under international human rights law, even if those repercussions occur outside its jurisdiction. This is particularly relevant, where a state's action or omission can impact on and provide protection to rights that are essential to the preservation of life and the values enshrined in international treaties and customary international law, the rule of law and amount to jus cogens or non-derogable customary law. We have observed numerous States, including Canada, enabling safe and secure repatriation based on extenuating humanitarian need. Ms. Polman is experiencing profound infringements on her human rights, we are concerned for her survival and believe that her return to Canada is critical to prevent those specific and identifiable harms.

In line with the foregoing, our mandates as United Nations special procedures have emphasized before the Human Rights Council and the General Assembly the important role that effective consular assistance plays as a preventive tool when faced with a risk of flagrant violations of human rights, while also noting the circumscribed remedial nature of diplomatic protection proceedings.³

Prohibition of Arbitrary Detention

As your Excellency's government knows, the prohibition of arbitrary detention,⁴ recognised both in times of peace and during armed conflicts,⁵ as well as of the right of anyone deprived of liberty to bring proceedings before a court in order to challenge the legality of the detention, is absolute.⁶ Article 9 of the International Covenant on Civil and Political Rights (ICCPR), prohibits arbitrary detention, a fundamental guarantee considered to be non-derogable (CCPR/C/GC/35, para. 66). Paragraph 1 of article 9 stipulates that no one shall be deprived of their liberty except

¹ <https://www.ohchr.org/Documents/Issues/Terrorism/PositionSRreturnsFFsOct2019.pdf>

² For the full position on this issue, see Submission by the UN Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism and the UN Special Rapporteur on arbitrary, summary and extra-judicial executions in the case of H.F. and M.F. v. France (Application no. 24384/19) before the European Court of Human Rights, https://www.ohchr.org/Documents/Issues/Terrorism/SR/Final-Amicus_Brief_SRCT_SRSummex.pdf.

³ Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism: visit to France, 8 May 2019, A/HRC/40/52/Add.4, para. 47.

⁴ UN Human Rights Committee, General Comment 35 (CCPR/C/GC/35), para. 12.

⁵ UN Human Rights Committee, General Comment 35 (CCPR/C/GC/35), paras 64 and 66.

⁶ A/HRC/30/37

on such grounds and in accordance with such procedure as established by law. Article 9 (2) and (3) specify that anyone who is arrested shall be informed, at the time of the arrest, of the reasons for such arrest and be brought promptly before a judge for the purpose of legal assessment and challenge of the detention. In addition, article 9 (3) establishes that pre-trial detention shall not be the general rule but used only in limited and specific cases, when required by the individual circumstances and for the shortest period of time. We are mindful of the exceptional circumstances of the deprivation of Ms. Polman's liberty; yet as a Canadian national, she has been detained for nearly three years, without charge of any offence, has not been informed of any likely future legal proceedings, has not been given access to a lawyer, nor had the legality of her detention assessed.

Conditions of detention

The Committee against Torture and the Human Rights Committee have consistently found that conditions of detention can amount to inhuman and degrading treatment. Article 10.1 of the ICCPR stipulates that "all persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person". Paragraph 28 of the General Assembly resolution 68/156 (2014) reiterates this obligation of human treatment of persons deprived of their liberty and calls upon States to address and prevent detention conditions that amount to torture or cruel, inhuman or degrading treatment or punishment. The Standard Minimum Rules for the Treatment of Prisoners (Mandela Rules), provides for the State's responsibility to guarantee for all prisoners the right to adequate and specialised health-care services for physical and mental health conditions (Principles 24-35).

Obligation to prevent human trafficking

Victims or potential victims of trafficking should be particularly paid attention to, and not be placed in a detention that expose them to various forms of abuses. They should be promptly identified and referred to the appropriate services for early support and long term assistance. It is imperative that State responses or lack thereof do not perpetuate or contribute to further victimisation of those who have already experienced violence and trauma.⁷

We respectfully refer your Excellency's Government to the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (Palermo Protocol); as well as the OHCHR Recommended Principles and Guidelines on Human Rights and Human Trafficking, which reminds States that they have an international obligation not only to identify traffickers but also to identify and take positive action to protect victims of trafficking. Failure to protect a trafficked person correctly is likely to result in a further abuse of that person's rights. Recommended Principle 7, concerning protection and assistance to victims of trafficking, provides that "trafficked persons shall not be detained, charged or prosecuted." The reports of the Special Rapporteur on trafficking in persons,

⁷ The UN Global Compact/CTITF Working Group on promoting and protecting human rights and the rule of law while countering terrorism, "Guidance to States on Human Rights-Compliant Responses to the Threat Posed by Foreign Fighters" (2018)

especially women and children (A/HRC/47/34) highlight the principle of non-punishment, which must be applied without discrimination to all trafficked persons.

The Right to Health

Under Article 6 of the ICCPR, all persons have an inherent right to life. In its General Comment No. 36, the Human Rights Committee reaffirms that the obligation to protect life means that States should take measures "to create adequate conditions to protect the right to life [which] may include, where necessary, short-term measures to ensure access to essential goods and services such as food, water, shelter, health care, electricity and sanitation". States parties have an obligation "to respect and ensure that the right to life extends to reasonably foreseeable threats and life-threatening situations that may result in loss of life." States parties may violate article 6 even if such threats and situations do not result in loss of life.

Canada is obliged under article 12 of the International Covenant on Economic, Social and Cultural Rights ("ICESCR"), ratified 1976 to guarantee the right of all people, including prisoners and detainees, to the highest attainable standard of physical and mental health, and underscores that states have the obligation to refrain from denying or limiting equal access for all persons, including prisoners or detainees, to health services (see Committee on Economic, Social and Cultural Rights, General Comment 14, para 34).

Right to Food

All persons deprived of their liberty, in any form, have the right to receive adequate food and clean drinking water, which is part of the right to be treated humanely and with respect for one's inherent dignity. Article 11(1) of ICESCR provides for the right to an adequate standard of living, including adequate food. The Committee on Economic, Social and Cultural Rights, in general comment No 15, para 16(g), emphasized that where a person cannot gain access to adequate food and water by means at their disposal, the State must step in to provide it. The right to adequate food in detention derives from the right to be treated with humanity and with respect for a person's inherent dignity in article 10(1) of the ICCPR. The provision of food and water to detained persons is also covered in other instruments, such as the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Mandela Rules), rule 22.

The right to adequate food applies to all places where persons are deprived of their liberty, including police stations, jails, hospitals, immigration centres and other institutions or places of detention. It is vital to the fulfillment of other rights, including the right to health and the right to life. Provision of food of nutritional value adequate for health and strength is a minimum requirement for all States regardless of their level of development and must be provided to all persons deprived of liberty without discrimination. Failing to provide adequate food, when combined with other poor detention conditions, or denying of food and water altogether for some length of time, has been found to constitute cruel, inhuman or degrading treatment or punishment.

Specific Impact on Women

Ms. Polman has been detained due to her past association with the Islamic State, and we are concerned that this factor is the basis for not facilitating her return to Canada. We stress the need to understand that women's and girls' association with terrorist groups is highly complex, notably regarding the distinction between victims and perpetrators. States must be mindful of the potential for coercion, co-option, trafficking, enslavement, sexual exploitation, and harm on joining or being associated with non-state armed groups, on-line grooming and recruitment for marriage, sexual or household services or labour for the organization. States must always undertake individualised assessments pertaining to the specific situation of individuals concerned, especially women and girls.⁸ We understand that Ms. Polman may have been groomed online. The unique circumstances of her travel to Syria, the alleged coercion of her spouse, the specific gender harms she experienced while married, and now during her detention require individual assessment and fair legal process. We urge your Excellency's government to be conscious of the gender-specific traumas experienced by women and girls, as well as the various human rights violations that they are subjected to in the context of their detention and the impact of those conditions on their mental and physical health. It is imperative that State responses do not perpetuate or contribute further harm to those who have already experienced profound violence and trauma.⁹

In its resolution 2331 (2016), the Security Council recognized the nexus between trafficking, sexual violence, terrorism and transnational organized crime. The resolution also laid a crucial normative framework for tackling previously unforeseen threats to international peace and security, including the use of sexual violence as a tactic of terrorism by groups that traffic their victims internally, as well as across borders, in the pursuit of profit and with absolute impunity. The resolution sets out that the link emerges from the implication of terrorist groups in the trafficking of women and girls in conflict-related areas and from the fact that trafficking serves as an instrument to increase the finances and power of those organized criminal groups.

The Convention on the Elimination of All Forms of Discrimination against Women, which your Excellency's government ratified in 1981, recognizes that trafficking constitutes a violation of human rights and establishes State obligations in this regard (art. 6). In this context, we would also like to refer to CEDAW General Recommendation No. 38 on trafficking in women and girls in the context of global migration.

The Working Group on Discrimination against Women and Girls emphasizes in its report on Women Deprived of Liberty (A/HRC/41/33) that women's deprivation of liberty is a significant concern around the world and severely infringes their human rights. In the context of addressing conflict, crisis, terrorism and national security, the Working Group recommended States to include women's rights focus and do not

⁸ See in particular CTED Trends Report on the Gender Dimensions of the Response to Returning Foreign Terrorist Fighters (2019) and UNDP/ICAN, *Invisible Women* (2019).

⁹ The UN Global Compact/CTITF Working Group on promoting and protecting human rights and the rule of law while countering terrorism, "Guidance to States on Human Rights-Compliant Responses to the Threat Posed by Foreign Fighters" (2018)

instrumentalise women's deprivation of liberty for the purposes of pursuing government aims. As highlighted in its thematic report on Health and Safety (A/HRC/32/44), the Working Group stresses that women's safety should be addressed as an integral aspect of women's health. Women's exposure to gender-based violence in both the public and private spheres, including conflict situations, is a major component of women's physical and mental ill health and the destruction of their well-being, and constitutes a violation of their human rights.

The full texts of the human rights instruments and standards recalled above are available on www.ohchr.org or can be provided upon request.

In view of the urgency of the matter, we would appreciate a response on the initial steps taken by your Excellency's Government to safeguard the rights of Ms. Polman in compliance with Canada's international human rights obligations.

As it is our responsibility, under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention, we would be grateful for your observations on the following matters:

1. Please provide any additional information and any comment you may have on these allegations.
2. Please provide information on the measures taken by your Excellency's Government to protect Ms. Polman, whose detention in these camps makes her vulnerable to multiple harm, abuse and violation of her most fundamental rights, including the risk of trafficking in persons.
3. Please provide any information on the steps your Excellency's Government has taken to maintain contact with Ms. Polman in view of the protection of her rights, safety and well-being;
4. Please provide information on the measures taken by your Excellency's Government to repatriate Ms. Polman to Canada.

We would like to inform your Excellency's Government that after having transmitted this urgent appeal to the Government, the Working Group on Arbitrary Detention may transmit the case through its regular procedure in order to render an opinion on whether the deprivation of liberty was arbitrary or not. This letter in no way prejudices any opinion the Working Group may render. The Government is required to respond separately to the urgent action procedure and the regular procedure.

We may publicly express our concerns in the near future in this case as, in our view, the information at hand appears to be sufficiently reliable and indicates a matter that warrants prompt attention. We also believe that the wider public should be alerted to the human rights implications of these allegations. Any public expression of concern on our part would indicate that we have been in contact with your Excellency's Government's to clarify the issue/s in question.

This communication and any response received from your Excellency's Government will be made public via the communications reporting [website](#) within 60 days. They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

Please accept, Excellency, the assurances of our highest consideration.

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Miriam Estrada-Castillo
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Nils Melzer
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