

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 and the Special Rapporteur on trafficking in persons, especially women and children

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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 and Special Rapporteur on trafficking in persons, especially women and children, pursuant to Human Rights Council resolutions 49/10, 42/22, 44/5, 49/13 and 44/4.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the alleged arbitrary detention and inadequate detention conditions of Mr. Jack Letts, a Canadian citizen, currently detained in a detention center in the North-East region of the Syrian Arab Republic at least since 2017.

Your Excellency's Government has already received a communication on this issue (AL CAN 1/2021) on 26 January 2021. We thank your Excellency's Government for its response dated 14 March 2021 April.

According to the information received:

Mr. Jack Letts was a dual Canadian-British national, born on 14 November 1995. He was born in the United Kingdom and obtained Canadian citizenship by virtue of his parents both being Canadian. He had his British citizenship revoked by the United Kingdom Government in August 2019. He left the United Kingdom for Kuwait in 2014, where he studied Islamic studies and Arabic for three months. In September 2014, he informed his parents he was in Syria. Later that month until May 2015 he lived in Fallujah, Iraq with his wife whom he married around December 2014, and was working in a hospital and a school. In May 2015, he was injured in an airstrike and was taken to Raqqa, Syria. In May 2017, Kurdish YPG (People's Protection Units) forces captured Mr. Letts whilst he was fleeing Syria. He has remained in detention in North-East Syria since then, and his last known place of detention is Chirkin Prison, Qamishli.

In 2009, when he was 14 years old, Mr. Letts was diagnosed with obsessive-compulsive disorder (OCD). Mr. Letts dropped out of school at 16 years old. The same year he converted to Islam. His mental issues progressively worsened, and his parents and health professionals became increasingly

concerned that he might have other undiagnosed health issues. Mr. Letts left the United Kingdom in 2014 before these mental health issues could be formally assessed and diagnosed.

According to the information received, throughout his stay in Raqqa, between December 2015 to 2017, Mr. Letts' communications were under surveillance. It is reported that his Facebook account, which contained ISIL-related posts and messages, was allegedly being used by someone else at the time. Therefore, he could not disassociate himself from content sent or published around that period. In a later interview with the newspaper the Independent in 2016, Mr. Letts appeared to confirm this. From late 2015 until 2017, Mr. Letts expressed the desire to return to the United Kingdom and repeatedly asked his family for assistance in doing so. His family was in regular contact with the police in the United Kingdom throughout this time and were clearly under the impression that the police would assist in Jack's return.

In May 2017, Mr. Letts was captured by Kurdish YPG forces whilst he was fleeing Syria with a group of refugees. He has remained in detention in North-East Syria since. On 8 July 2017, the contact between Mr. Letts and his family ceased. In October 2017 the Kurdish authorities confirmed that Mr. Letts had been charged with being a member of ISIL and that his case was still being investigated by the Asayish (local police force). In August 2019, Mr. Letts was stripped of his British citizenship. Mr. Letts has publicly and privately denied being a member of ISIL.

Mr. Letts' parents have appealed to both the British and Canadian Governments, for their son's repatriation, to no avail. Mr. Letts' parents have reportedly provided the Canadian Government with detailed information about his location and detention conditions. Since 2017, they have been in constant communication with the Canadian Government, including the consulate in London and Global Affairs Canada. It is reported that the Canadian Government had initially expressed some willingness to repatriate Mr. Letts. Nevertheless, after his British nationality was revoked, the Canadian Government allegedly indicated to the family that it could not offer any active assistance to detainees.

The Global Coalition to Defeat ISIL, led by the United States and composed of 84 members and of which Canada is a member, has provided substantial stabilization assistance to increase the security of prisons in North-East Syria, notably training and equipment to increase local authorities' capacity to manage the detention facilities. In 2020, the Coalition provided more than \$2 million dollars for riot equipment and security equipment, including cameras, structural security wire, improved doors, and personal protective equipment to stop the spread of COVID-19. There are also reports about the financing for improvement to and expansion of existing detention facilities, crediting the Coalition generally as the source of funds, notably with plans to expand the capacity of rehabilitation centres for boys to accommodate up to 500 more children.

While we do not wish to pre-judge the accuracy of these allegations, we express our serious concern regarding Mr. Letts' continued detention since 2017 in North-East Syria and his rights to life, security, and physical and mental health due to the dire conditions of detention. We also expressed our concerns about his allegedly arbitrary detention. According to the information received, there is allegedly no legal basis, no judicial authorisation, review, control, or oversight of his detention which entirely lacks in predictability and due process of law.

We underscore that the prohibition of arbitrary detention, recognised both in times of peace and armed conflict, is absolute and well-established under international law, a peremptory or *jus cogens* norm of international law. Together with the right of anyone deprived of liberty to bring proceedings before a court in order to challenge the legality of the detention, these rights are non-derogable under international treaty and customary law.¹ Arbitrary deprivation of liberty can never be a necessary or proportionate measure, given that the considerations that a State may invoke pursuant to derogation are already factored into the arbitrariness standard itself. Thus, a State can never claim that illegal, unjust, or unpredictable deprivation of liberty is necessary for the protection of a vital security or other interest or proportionate to that end. The sub-contraction or direct facilitation of liberty deprivation by non-State actors does not negate a State obligations to protect, promote and fulfil its human rights treaty obligations.²

We also note that administrative security detention presents severe risks of arbitrary deprivation of liberty. As noted by the Human Rights Committee and the Working Group on Arbitrary Detention, such deprivation of liberty would normally amount to arbitrary detention as other effective measures addressing the threat, including the criminal justice system, would be available in countries of citizenship.

We are deeply concerned about the facilitation of arbitrary detention by States both directly and indirectly in these detention facilities in North-East Syria. Administrative – including security – detention can only be invoked by States under the most exceptional circumstances where a present, direct and imperative threat exists. The burden of proof lies on States to show that an individual poses such a threat which cannot be addressed by alternative measures. States also need to show that detention does not last longer than absolutely necessary, that the overall length of possible detention is limited and that they fully respect the guarantees provided for by article 9 of the International Covenant on Civil and Political Rights (ICCPR), ratified by Canada on 19 May 1976. Prompt and regular review by a court or other tribunal possessing the same attributes of independence and impartiality as the judiciary is a necessary guarantee for those conditions, as is access to independent legal advice, preferably selected by the detainee, and disclosure to the detainee of, at least, the essence of the evidence on which the decision is taken. There is no legal basis in international human rights law for non-State actors to engage in administrative, security or other detention practices.³ We stress that there is no human rights-based legal basis for the detention by the non-State actor, which would be a

¹ A/HCR/30/37

² This obligation extends to the work in question between carried out by private entities Yassin et al. v. Canada, Comm. No. 2285/2013, Human Rights Committee, (26 July 2017) para. 6.5

³ <https://digital-commons.usnwc.edu/ils/vol91/iss1/5/>

necessary condition for any detention, during or after conflict. In any event, both international human rights law and international humanitarian law clearly prohibit arbitrary and indefinite detention where individuals are held without proper charge, due process of law, and on the basis of individual responsibility for imperative reasons, which requires an individual assessment of the risk, and a right of review by a judicial authority. There is also no permissible human rights basis for States to subcontract directly or indirectly administrative or security detention to non-State actors on the territory of third States.

We remain extremely concerned that in the case of deprivation of liberty of Mr. Letts, despite the exceptional circumstances, it appears that none of the conditions to prevent arbitrary detention – a right so fundamental that it remains applicable even in the most extreme situations – are respected, and that no steps towards terminating or reviewing the legality of detention have been taken, despite Mr. Letts having been detained for five years, which in practice amounts to the possibility of indefinite detention. We are further concerned about the lack of consular assistance to Mr. Letts by the Government of Canada.

We are also profoundly concerned that what is now emerging is capacity building and technical assistance provision supporting such indefinite detention of your nationals enabled and supported in part by the Coalition of which your Excellency's Government is a member. The entrenchment and protraction of allegedly arbitrary deprivation of liberty in these inhumane conditions in North-East Syria of men and boys is premised on the direct security assistance provided by the Coalition, which your Excellency's Government has supported, to a non-State entity. We maintain the firm opinion that the perpetuation of a situation where detainees' non-derogable right to not be arbitrarily detained and to have their detention judicially authorised and reviewed appears violated can raise serious questions of State responsibility and of complicity in the facilitation, sustainment and continuation of the serious human rights violations that are taking place in the prisons and detention centres in North-East Syria.

We recall that in addition to a due diligence duty aimed at ensuring that any security aid or assistance is compliant with international human rights law (A/76/261), where serious breaches of international law are committed, States must not render aid or assistance in maintaining the situation created by the serious breach and must cooperate to bring it to an end. The requirements of effectively demonstrated due diligence have an element of proportionality: the greater the links and control a State exercises, the greater the standards of diligence that this state shall demonstrate.

Considering the above, we reiterate again that the urgent, voluntary and human rights compliant repatriation of all the citizens of your Excellency's Government is the only international law-compliant response to the complex and precarious human rights, humanitarian and security situation faced by those detained in inhumane conditions in overcrowded prisons or other detention centres in North-East Syria, with limited access to food and medical care putting detainees' lives at increased risk. In light of such exposure to extremely dire detention conditions, such as malnutrition and potential infection with diseases without adequate medical care, we wish to emphasize that the right to life, as enshrined in Article 3 of the Universal Declaration of Human

Rights (UDHR) and Article 6 ICCPR, constitutes an international customary law and *jus cogens* norm from which no derogation may be made by invoking exceptional circumstances such as internal political instability or other public emergency as provided for in Article 4(2) ICCPR. We note that the right to life is accompanied by a positive obligation to ensure access to the basic conditions necessary for the maintenance of life, including access to food and medical care (ICCPR General Comment No. 6, para. 5; ICCPR General Comment No. 36, para. 21). In addition, article 12 of the International Covenant on Economic, Social and Cultural Rights (“ICESCR”), ratified in 1976 by Canada to guarantee the right of all people, including prisoners and detainees, to the highest attainable standard of physical and mental health and article 6(1) ICCPR states that no one shall be arbitrarily deprived of life. Accordingly, States parties must also exercise due diligence to protect the lives of individuals from deprivations caused by persons or entities whose conduct is not attributable to the State. This obligation requires States to take special measures to protect individuals in vulnerable situations whose lives are particularly endangered by specific threats (Human Rights Committee, General Comment No. 36, para. 23). Moreover, we recall that under Article 2 UDHR and Articles 2 and 26 ICCPR, as well as several other United Nations declarations and conventions, everyone is entitled to the protection of the right to life without distinction or discrimination of any kind, and all persons must be guaranteed equal and effective access to remedies for violations of this right.

As we had already stressed and as recent security developments confirm, given the geopolitical fluidity of the region currently controlled by various non-State armed groups, repatriations are key to States’ long-term security interests. Any repatriation must comply with international law, including with the absolute prohibition of torture, ill-treatment, and refoulement. The building and support for the maintenance of prisons designed to keep these individuals in detention are incompatible with your Excellency’s Government obligations under international law, particularly given the specific nature of the *prohibition of arbitrary detention as jus cogens or non-derogable customary law norm*.⁴

Given the presence of international coalition forces and other security agencies in North-East Syria, the number of civilian and other delegations that have had access to the camps and the prisons, and the number of successful repatriations including of men that have taken place, the lack or the difficulties of access to the detainees who are nationals of your Excellency’s Government should not be put forward as a reason for not repatriating your nationals.

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 Mr. Letts in compliance with Canada’s international human rights obligations.

⁴ On the question of functional jurisdiction, see UN Committee on the Rights of the Child, CRC/C/85/D/79/2019-CRC/C/85/109/2019 and CRC/C/86/D/R.77/2019 and AL AUS 1/2021.

We are issuing this letter in order to safeguard the rights of the above-mentioned individual from irreparable harm, without prejudicing any eventual legal determination.

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 the above-mentioned allegations.
2. Please provide information on the measures taken by your Excellency's Government to protect the most fundamental rights of Mr. Letts, including his right to life and health.
3. Please provide any information on the steps your Excellency's Government has taken to maintain contact with Mr. Letts in view of the protection of his rights, safety and well-being, as well as ensure contacts with his family.
4. Please provide information on the measures taken by your Excellency's Government to repatriate Mr. Letts to Canada and provide him with adequate procedures that will ensure respect for his right to life, to liberty and security and to a fair trial.
5. Please provide any additional information you may have regarding the security support and stabilization assistance provided by the Coalition, its funding, and the use of these Coalition funds, as well as the actual financial or other engagement of your Excellency's government in this process

While awaiting a reply, we urge that immediate consular assistance is provided to Mr. Letts and that all necessary interim measures be taken to halt the alleged violations and prevent their re-occurrence and in the event that the investigations support or suggest the allegations to be correct, to ensure the accountability of any person responsible of the alleged violations.

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.

We may publicly express our concerns in the near future as, in our view, the information upon which the press release will be based is sufficiently reliable to indicate a matter warranting immediate attention. We also believe that the wider public should be alerted to the potential implications of the above-mentioned allegations. The press release will indicate that we have been in contact with your Excellency's Government 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.

We would like to inform you that a communication concerning the above-mentioned person has also been sent to the United Kingdom of Great Britain and Northern Ireland.

A copy of this communication has also been sent to the Syrian Arab Republic

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

Fionnuala Ní Aoláin
Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism

Mumba Malila
Vice-Chair of the Working Group on Arbitrary Detention

Morris Tidball-Binz
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