



The Honourable Harjit Sajjan
Minister of National Defence
National Defence Headquarters
Major-General George R. Pearkes Building
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Ottawa, Ontario, Canada
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July 12, 2018

Dear Minister,

We are writing in follow up to troubling revelations reported last month through a joint investigation carried out by CBC Radio's *The Current* and the Investigative Fund into serious and widespread allegations that the detention practices of the US Coast Guard with respect to individuals apprehended on the high seas on suspicion of involvement in drug smuggling violate a range of international human rights obligations related to arrest, detention, torture and mistreatment.

The particular reason we are raising this with you is that there are credible reports that Canadian naval ships and personnel have cooperated with the US Coast Guard on many occasions when cases of this nature have arisen. That gives rise to concerns about possible Canadian complicity in these serious human rights violations and leads us to ask questions about what steps have been taken to look into instances in which this may have occurred and what safeguards are being introduced to ensure that Canadian naval personnel do not become complicit in human rights violations related to high seas apprehension and detention.

Amnesty International and the British Columbia Civil Liberties Association have previously engaged with the Canadian government and Canadian military with respect to concerns about overseas prisoner apprehension and detention practices and resulting complicity in torture and mistreatment carried out by officials of another government. That was of course the central concern with respect to Canada's approach to handling battlefield detainees in Afghanistan, who were handed over initially for several years to US officials and thereafter to Afghan officials despite, in both situations, obvious and well-documented evidence that prisoners would face a serious risk of grave human rights violations including torture after being transferred.

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While the legal challenge we brought at the time was dismissed on the basis of a ruling that the Canadian Charter of Rights and Freedoms did not govern the actions of Canadian soldiers deployed abroad *vis-à-vis* non-Canadian citizens, the factual concerns about torture and mistreatment were clearly corroborated and there was also express recognition that the situation gave rise to concerns about compliance with relevant international human rights obligations and that criminal jurisdiction could extend, if substantiated.

It is disappointing to our organizations that a similar set of concerns has arisen again, more than ten years since we commenced that earlier court challenge. We had hoped that measures would be put in place to scrupulously ensure that never again would Canadian Armed Forces personnel be put in a position whereby the handling of detainees would lead to possible complicity in human rights violations committed by a foreign government.

Minister you will no doubt be aware of the disturbing evidence now well corroborated through investigative reporting, as well as court documents in the United States. It includes an extensive pattern of detainees held in the open air on coast guard vessels, regardless of the weather, shackled to the decks of ships, often for weeks at a time. They have reportedly often had insufficient food and been forced to sleep in harsh conditions. All of this while being denied access to family, legal counsel and consular representation and having no idea how long the situation would continue. Notably and very appropriately a former Coast Guard attorney has described the situation as being tantamount to “floating Guantánamos.”

It is also clear that Canadian naval boats and personnel have often played a role in these apprehensions, operating jointly with US counterparts. That is where the concerns about complicity arise. CBC’s *The Current* has reported that the Canadian government may be of the view that there is no Canadian responsibility because of technical arguments as to whether the individuals concerned truly are Canadian detainees:

... according to Canadian defence officials, the directive may not apply to Operation Martillo detainees. They argue the people the military helps the Coast Guard intercept are not, in fact, Canadian detainees, as they remain formally in U.S. custody the whole time. "We never have a detainee, we never have a person, under our custody," said Lt.-Cmdr. Collin Forsberg, commander of the HMCS Whitehorse, which recently returned from a drug interdiction mission in the Pacific. "The U.S. Coast Guard have care and custody of those personnel throughout the operation."¹

Similar arguments were advanced on occasion with respect to Afghan detainees; namely if they did not formally qualify as a detainee, directly in the hands of a Canadian soldier, there was no Canadian responsibility for what may have transpired thereafter. This would constitute a troubling and limited analysis of Canada’s duty rigorously to uphold international human rights obligations in the context of a collaborative and cooperative military operation of any description, including high-seas drug smuggling enforcement activities.

¹ *U.S. Coast Guard detentions of drug smugglers 'violating international law,' and Canada may be complicit*, CBC Radio, *The Current*, June 6, 2018.

At this time we seek clarification and further information with respect to the following questions:

- What investigations have been carried out into allegations that Canadian naval personnel were present and played a role alongside US Coast Guard personnel in joint high-seas operations leading to the apprehension and on-board detention of drug-smuggling suspects leading to detention conditions that violated international human rights standards?
- Will the Canadian Armed Forces publicly share the results of any such investigations?
- What is the Canadian Armed Forces' position with respect to the human rights obligations of Canadian naval personnel carrying out joint high-seas interdiction, apprehension and detention operations targeting suspected drug smugglers?
- Even in circumstances where a detainee may never be in the direct custody of a Canadian naval officer, what is the position of the Canadian Armed Forces with respect to collaboration with the US Coast Guard in operations that do result in serious human rights violations of prisoners?
- What safeguards have been put in place by the Canadian Armed Forces to ensure that military personnel operating in any context – on land, at sea or in the skies – are not put at risk of becoming complicit in human rights violations, including arbitrary arrest, unlawful detention, torture and ill-treatment, carried out by another government?

We look forward to hearing from you about these important matters and would welcome an opportunity to meet with you or your official to discuss these concerns and questions further. Arrangements can be made through Alex Neve's Executive Assistant, Thomas Ndayiragije, by email at tndayiragije@amnesty.ca or by phone at 613 744 7667, extension 263.

Sincerely,



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Josh Paterson
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