



Submission to the Universal Periodic Review of Canada

Human Rights Watch

April 2023

Introduction

1. Human Rights Watch submits the following information regarding Canada's implementation of recommendations it accepted through its third Universal Periodic Review (UPR) in 2018, as well as information about additional international human rights obligations and issues not addressed in the 2018 review. This submission is not a complete review of the implementation of all recommendations either fully or partially supported by Canada, nor is it a comprehensive review of Canada's protection of human rights in the domestic sphere.

Counterterrorism

2. Since at least March 2019, Kurdish-led authorities in northeast Syria, known as the Autonomous Administration of North and East Syria (AANES) and the region's Kurdish-led armed force, the Syrian Democratic Forces (SDF), have arbitrarily detained an estimated four dozen Canadians in locked desert camps and prisons for Islamic State (ISIS) suspects and their families. Although these detainees are held in conditions that are life-threatening, deeply degrading, often inhuman, and that may amount to torture, Canada continues to fail to take adequate steps to assist and repatriate their nationals. To date, none of the Canadians have been charged with a crime or brought before a judge to review the legality and necessity of their detention. More than half of the Canadian detainees are children. None of the Canadian men has been heard from since 2019.
3. In January 2021, Global Affairs Canada adopted a consular policy framework specifically for this group of citizens that makes it near-impossible for them to return home. The policy, made public in [February 2022](#), was not shared with the detainees or their family members seeking assistance for nearly a year.
4. In May 2020, two UN working groups and several UN Special Rapporteurs [wrote to Canada](#) concerning the need to protect the right to life of a Canadian orphan detained in northeast Syria.
5. In June 2022, the UN Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, the Working Group on Arbitrary Detention, the UN Special Rapporteur on extrajudicial, summary or arbitrary executions, the UN Special Rapporteur on the right to food, and the UN Special Rapporteur on trafficking in persons, especially women and children sent an [urgent appeal](#) to Canada concerning the apparent indefinite, arbitrary detention of a Canadian man detained in northeast Syria. on grounds of Canada's positive obligation to ensure access to the basic conditions necessary for the maintenance of life.
6. In November 2022, the UN Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, the Working Group on Arbitrary Detention, the UN Special Rapporteur on extrajudicial, summary or arbitrary executions, the UN Special Rapporteur on the right to food, the UN Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, the UN Special Rapporteur on torture and other inhuman or degrading treatment or punishment, the UN Special Rapporteur on trafficking in persons, especially women and children, and the UN Working Group on discrimination against women and girls sent [a letter to Canada](#) concerning the arbitrary detention and inadequate detention conditions, including restricted access to food, water and medical care of Canadian citizen Kimberly Polman who is detained in northeast Syria.
7. UN officials including Secretary-General António Guterres have repeatedly called on all countries with nationals held in northeast Syria to repatriate their citizens for rehabilitation, reintegration, and prosecution as warranted.

8. In September 2021, a group of these [Canadian detainees and their families](#) filed an application in federal court in Ottawa against the government for violating the *Charter of Rights and Freedoms* by failing to repatriate these citizens. The proceeding was filed on behalf of 11 families referred to as the “Bring Our Loved Ones Home” or “BOLOH” litigation to protect their identities.
9. On January 20, 2023, the government confirmed that they had reached an [out-of-court settlement](#) with several of the families that filed the application, agreeing to bring home 19 Canadians (13 children and 6 women) within an undisclosed but mutually agreed-upon time frame.
10. On January 20, 2023, a [federal court judge ruled](#) that the government must repatriate the four Canadian men who are part of this lawsuit. The decision ordered the government to 1) make a formal request to the Autonomous Administration of Northeast Syria (AANES) to allow the voluntary repatriation of the Canadian men; 2) provide passports or emergency travel documents as soon as AANES agrees to their return; and 3) appoint a Canadian representative to engage with AANES as part of the handover. On February 10, 2023, the Canadian government [appealed the court decision](#).
11. In addition, Global Affairs in January and February 2023 notified four foreign mothers that their 10 children, all of whom are Canadians through their respective fathers, may be eligible to come to Canada but that the mothers are not. In keeping with the rights of the child, Canada should recognize children first and foremost as victims. Children should not be repatriated without their mothers—who may themselves be victims of ISIS—absent compelling evidence that separation is in the best interest of the child.
12. *Canada should:*
 1. Repatriate, as a matter of urgent priority, all Canadian citizens detained in northeast Syria, giving priority to children, persons requiring urgent medical assistance, and other particularly vulnerable detainees. Canada should authorize mothers or other adult guardians to accompany their children to Canada absent compelling evidence that separation is in the best interest of the child, in line with the Convention on the Rights of the Child with respect to family unity. Repatriation measures that Canada should take include promptly verifying citizenship, issuing citizens travel documents, and providing or coordinating safe passage from northeast Syria to Canadian consulates or territory.
 2. Pending repatriations, immediately provide effective and robust consular assistance to Canadian citizens arbitrarily detained in northeast Syria and take all feasible measures to ensure their humane treatment. As part of this effort, ensure all detained citizens have an effective means to communicate with consular officials, promptly respond to requests for consular assistance from the detainees as well as from their family members in Canada or elsewhere, clarify policies on verification of Canadian citizenship, and regularly provide Canadian families with timely information about their detained relatives.
 3. Upon detainees’ return, offer them rehabilitation and reintegration services and, as appropriate, investigate and prosecute those suspected of serious crimes in line with international fair trial standards.

Environment and Climate Change

13. As a [top 10 global greenhouse gas emitter](#), and one of the highest per capita emitters in the world, Canada is contributing to a climate crisis that is taking a growing toll on human rights around the globe. Since being re-elected in 2021, the Trudeau government has repeated its

pledges to pursue ambitious action to reduce greenhouse gas emissions. In March 2022, the government released a new Emissions Reduction Plan (ERP), setting out how it intends to meet its commitment to cut greenhouse gas emissions to between 40 and 45 percent below 2005 levels by 2030. Canada's [climate goals are not sufficient](#) to meet the Paris Agreement goal to limit global warming to 1.5°C above pre-industrial levels.

14. Canada is the [top public financier](#) of fossil fuels among G20 nations and projects increased oil and gas production through 2050. Canadian oil sands are among the most carbon intensive and polluting oil production methods globally. The government continues to permit oil and gas pipeline expansions, including [on First Nations' lands](#). Plans to [increase fossil fuel production](#) disregard the government's human rights obligation to adopt and implement robust climate mitigation policies.
15. Federal and provincial climate change policies have failed to put in place adequate measures to support First Nations in adapting to current and anticipated impacts of climate change and have largely ignored the impacts of climate change on [First Nations' right to food](#). A [2022 report](#) by the Canadian Climate Institute found that the climate crisis, especially permafrost thaw, is widening the Northern infrastructure gap and putting communities at risk. Much more government action is needed to address the impact of the climate crisis on First Nations and to ensure that appropriate [food subsidies and health resources](#) are available to all who need them.
16. In October 2021, Human Rights Watch [documented](#) that people with disabilities and older people had not been included in government climate adaptation or heat response planning at the local, provincial, or federal level. The inadequate government support compounded risks for people with disabilities and older people during the 2021 extreme and foreseeable heatwaves that killed hundreds of people in British Columbia, Canada. The British Columbia's [Coroner's report](#) from June 2022 confirmed there was inadequate government response during the June 2021 "heat dome" that resulted in 619 deaths— mostly among older people and people with disabilities. In March 2022, the province hosted small, limited engagements with heat-sensitive populations, including people with disabilities and older people. It remains unclear how the recommendations from people with lived experience will inform government policy. In July 2022, the BC government released its new [climate adaptation strategy](#) which includes steps to prepare for and address heat risks but fails to discuss how these can be applied to at-risk populations. The messaging by the BC government continues to focus on individual responsibility and action as opposed to government human rights obligations.
17. *Canada should:*
 1. Urgently strengthen its climate change policies to reduce emissions in line with the best available science, including by setting and implementing more ambitious Nationally Determined Contributions, as agreed under the Glasgow Climate Pact, which will align their emissions reduction targets with the Paris Agreement.
 2. Support a just transition towards renewable energy, including through rights-respecting policies providing necessary support for First Nations. Such measures are essential for Canada to contribute to global efforts to mitigate climate change under the Paris Agreement, which are necessary to reduce further negative impacts on Indigenous peoples' rights to food and health.
 3. Provide First Nations the financial and technical support needed to respond to current and projected climate impacts, including on food and health, and for them to lead the design and implementation of programs addressing these impacts.
 4. Develop more sustainable housing infrastructure and amend building codes to require higher standards of climate change and heatwave readiness, including ensuring shade and green spaces; ensuring access to air conditioning units as medical devices to allow

their distribution to people who need them through the province's disability support systems; subsidizing energy costs; creating a registration list for people at risk; and improving the 911 system to ensure people have access to timely emergency health care.

5. Acknowledge the danger, intensity, and frequency of heatwaves and take action to reduce emissions and use natural climate solutions, including by halting old growth logging and increasing tree planting.
6. Ensure that people with disabilities and older people, particularly those with lived experience of dealing with natural disasters, are included in climate change adaptation and heat action planning.

Immigration Detention

18. Over the past decade, Canada has [detained tens of thousands of people](#), including children and refugee claimants, on strictly immigration-related grounds. Immigration detainees are held exclusively under immigration law – not on criminal charges or convictions – but many experience Canada's most restrictive confinement conditions. Every year, hundreds of immigration detainees are incarcerated in provincial jails across the country, including maximum-security facilities. People can be held in immigration detention for months and even years without end in sight because Canada does not have a legislative limit on the duration of immigration detention.
19. Nearly two decades after its establishment, the Canadian Border Services Agency (CBSA) remains the only major law enforcement agency in Canada without independent civilian oversight despite its sweeping police powers. CBSA's unchecked exercise of its broad mandate and enforcement powers has repeatedly resulted in serious [human rights violations](#) in the context of immigration detention.
20. The CBSA has full discretion over where immigration detainees are held, with no legal standard guiding the Agency's decision to hold a detainee in a provincial jail rather than an immigration holding center dedicated to immigration detainees. Immigration detainees have no means to challenge CBSA's placement decisions at detention review hearings. CBSA relies on bilateral agreements and arrangements with provincial authorities to incarcerate immigration detainees in provincial jails. Canada's practice of incarcerating immigration detainees in provincial jails is a [violation of international human rights](#) standards as incarceration in these facilities is inherently punitive in nature.
21. In 2022, four provinces – [British Columbia](#), [Alberta](#), [Manitoba](#), and [Nova Scotia](#) – cancelled their immigration detention contracts with the federal government. This means CBSA will no longer have the power to detain refugee claimants and migrants in those provinces' jails solely on immigration grounds.
22. During the third UPR cycle, Costa Rica recommended that the Canadian government “give attention to the issue of immigration detention for an indefinite period and seek to amend legislation to set a time limit for detention. As well, Mexico recommended that Canada “take steps to limit the use and prorogation of immigration detention”. The federal government did none of the above. The federal government did not make any legislative or regulatory changes to prevent indefinite detention, or limit the broad discretion authorities have to detain people in even the most restrictive conditions of confinement in the country, such as maximum-security provincial jails.
23. *Canada should:*

1. Gradually abolish immigration detention. Under no circumstances should a person for immigration-related reasons be treated in a punitive manner, including being subjected to solitary confinement, or detained in facilities used for criminal law enforcement, such as jails, prisons, or police stations.
2. Immediately end the use of provincial jails and other criminal incarceration facilities for immigration detention. Cancel all agreements and contracts between the federal and provincial governments in relation to detention of immigration detainees in provincial jails.
3. Replace detention with community-based case management for those with pending immigration proceedings. Expand localized programs of community-based alternatives to detention that provide support rather than surveillance, and that are operated by local nonprofit organizations independently from CBSA.
4. Maintain effective, supportive, voluntary, and culturally-appropriate mental health services in the community that are available and accessible to citizens and non-citizens alike. Consider reallocating funding from the CBSA budget to support community-based health services and alternatives to detention.
5. Acknowledge the existence of systemic racism within the Canada Border Services Agency and the immigration detention system. Develop in close and transparent collaboration with communities of color a meaningful plan to address systemic racism within CBSA and the immigration detention system, including the collection and publication of de-identified race- and ethnicity-based data about immigration detainees with their free and informed consent.

Corporate Accountability

24. Canada is home to more than half of the world's mining companies, with Canadian companies operating in nearly 100 countries and [holding foreign mining assets](#) estimated at US\$130 billion.
25. Canadian companies are implicated in human rights abuses and environmental damage around the world. Canada has not taken adequate steps to ensure that Canadian authorities exercise meaningful oversight of Canadian extractive companies operating abroad. Communities and workers whose rights have been violated are often [unable to access justice](#) or remedy, and human rights defenders frequently face violence, intimidation, or criminalization.
26. The Canadian Ombudsperson for Responsible Enterprise (CORE), appointed in April 2019 to address corporate human rights challenges and receive complaints about Canadian garment, mining, oil and gas companies' conduct abroad, still does not have the authority or independence required to effectively investigate claims of wrongdoing or compel documents and witness testimony.
27. In the third UPR cycle, the Philippines recommended that Canada "ensure that Canada's mining, oil and gas companies are held accountable for the negative human rights impact of their operations abroad" and Namibia recommended that Canada "strengthen measures aimed at ensuring access to justice and remedies for violations of rights of persons by transnational corporations registered in Canada operating abroad." Canada has not taken adequate steps to meaningfully address these recommendations.
28. *Canada should:*
 1. Enact human rights due diligence legislation requiring companies to identify, prevent, and remedy adverse human rights impacts and environmental damage throughout their global operations and supply chains.

2. Ensure that legislation creates meaningful consequences for companies that fail to carry out and report on adequate due diligence.
3. Establish a legal right for people who have been harmed by Canadian companies to seek justice in Canadian courts.