

# Lawyers' Rights Watch Canada

NGO in Special Consultative Status with the Economic and Social Council of the United Nations  
Promoting human rights by protecting those who defend them

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Thursday, January 09, 2020

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Dear Ministers of Foreign Affairs, Small Business, Export Promotion and International Trade and International Development and the Attorney General

## Re: Suspend all transfer and sale of arms to Saudi Arabia

Lawyers' Rights Watch Canada (LRWC)<sup>1</sup> asks Canada to ban the sale of arms to the Kingdom of Saudi Arabia (Saudi Arabia) and cancel the fulfillment of the \$15 billion contract for delivery of Light Armed Vehicles (LAVs) to Saudi Arabia. The contract involves the export of 928 LAVs to Saudi Arabia<sup>2</sup>, 127 of which were reportedly shipped to Saudi Arabia in 2018. During the first half of 2019, we understand that Canada delivered additional LAVs and parts worth approximately \$1.2 billion.<sup>3</sup>

The immediate suspension the sale and transfer of this contract and of all arms to Saudi Arabia is necessitated by several factors, including:

1. Saudi Arabia's persistent violation of its international law obligations to respect and ensure respect for human rights within Saudi Arabia;

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<sup>1</sup> LRWC is a committee of lawyers and human rights defenders who promote international human rights, the independence and security of human rights defenders, the integrity of legal systems and the rule of law globally through advocacy, education, and legal research. LRWC is a volunteer-run organization with Special Consultative Status with the Economic and Social Council of the United Nations.

<sup>2</sup> Brewster, Murray, *Canada's arms deal with Saudi Arabia includes 'heavy assault' vehicles*, *CBC News*, 19 March 2018, retrieved at: <https://www.cbc.ca/news/politics/canada-saudi-arms-deal-1.4579772>>

<sup>3</sup> Blatchford, Andy, *Trudeau pressed to give update on review of Canada's arms deal with Saudi Arabia*, *The Canadian Press*, 7 August 2019, retrieved at: <<https://www.nationalobserver.com/2019/08/08/news/trudeau-pressed-give-update-review-canadas-arms-deal-saudi-arabia>>

2. Reports of war crimes, crimes against humanity and grave human rights abuses against civilians in Yemen by Saudi Arabia and its coalition partners;
3. Canada's obligations as a State Party to the United Nations Arms Trade Treaty (ATT);
4. Canada's obligations to respect and to promote respect globally for international human rights and international humanitarian law arising from international instruments including but not limited to the Geneva Conventions of 1949 and their Additional Protocols, the Rome Statute of the International Criminal Court, the Charter of the United Nations and the Universal Declaration of Human Rights.

The UN High Commissioner of Human Rights in her September 2019 report on Yemen, states that “[t]he conflict has turned Yemen into the world's worst humanitarian crisis, with the population trapped in a relentless armed conflict and other forms of violence, which entail serious human rights violations and abuses and violations of international humanitarian law.”<sup>4</sup>

The August 2019 report of the Group of Experts concludes there are reasonable grounds to believe that Saudi Arabia is responsible for human rights violations that include: murder, torture, starvation, rape, denial of fair trials, enlistment of children under 15 and airstrikes violating principles of distinction, proportionality and precautions.<sup>5</sup> The Group of Eminent Experts recommends that other states, “[t]ake all reasonable measures to ensure respect for international humanitarian law by all parties to the conflict, taking into account their level of influence; in particular, refrain from providing arms that could be used in the conflict.” (emphasis added).

In September 2019 the Group of Eminent Experts on Yemen noted the “lack of international action to hold parties to the conflict accountable”<sup>6</sup>. Amnesty International has since reported many instances of violations of international humanitarian law by the Saudi led Coalition in Yemen, involving weapons from third countries<sup>7</sup>.

In 2016, video evidence showed Canadian LAVs involved in the suppression of protests in the Eastern Province of Saudi Arabia. Amnesty reported that images posted on social media depicted the movement of Canadian-made LAVs to the Yemeni border.<sup>8</sup> While the memo released by Global Affairs Canada claims that these are vehicles which may have been transported to Saudi Arabia from contracts in the 1990s<sup>9</sup>, this does not address either the allegations that they are currently used to commit serious violations of international human rights and/or humanitarian law or the inescapable risk that they will be so used in the future. Ignoring credible evidence that the LAVs have been used to commit serious violations of human rights and humanitarian law, the report does not address the fact that the LAVS have no lawful or peaceful purpose.

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<sup>4</sup> Report of the United Nations High Commissioner for Human Rights, Implementation of technical assistance provided to the National Commission of Inquiry to investigate allegations of violations and abuses committed by all parties to the conflict in Yemen, A/HRC/42/33, 9 September 2019, at para. 45.

[https://ap.ohchr.org/documents/dpage\\_e.aspx?si=A/HRC/42/33](https://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/42/33).

<sup>5</sup> Situation of human rights in Yemen, including violations and abuses since September 2014, Report of the Group of Eminent International and Regional Experts on Yemen, A/HRC/42/17, 17 August 2019, at para. 94 and 95. Online at [https://reliefweb.int/sites/reliefweb.int/files/resources/A\\_HRC\\_39\\_43\\_EN.pdf](https://reliefweb.int/sites/reliefweb.int/files/resources/A_HRC_39_43_EN.pdf).

<sup>6</sup> Press Release, Group of International and Regional Eminent Experts on Yemen, 3 September 2019. Online at <https://www.ohchr.org/EN/HRBodies/HRC/Pages/NewsDetail.aspx?NewsID=24937&LangID=E>

<sup>7</sup> *Air Strikes and Cluster Munitions Attacks: Amnesty International Documentation of Coalition Attacks in Yemen: 2015 - Present*, Amnesty International, 22 October 2019, retrieved at <https://www.amnesty.org/en/documents/mde31/1094/2019/en/>

<sup>8</sup> Stop Selling Arms to Saudi Arabia – Canadian Light Armoured Vehicles at risk of being used against civilians, Amnesty International <https://takeaction.amnesty.ca/page/35358/action/1?locale=en-US>

<sup>9</sup> MEMORANDUM FOR INFORMATION: Update on export permits to Saudi Arabia, Global Affairs Canada, 17 September 2019.

Canada is now a State Party to the ATT which prohibits the transfer of arms such as LAVs when the arms would (ATT Article 6 (3)), or could (ATT Article 7 (1) (b) (i) (ii)), be used to commit or facilitate a serious violation of international human rights or humanitarian law. Such violations have taken place consistently throughout the armed conflict in Yemen.

In March 2018 Prime Minister Trudeau stated that the sale of LAVs to Saudi Arabia was consistent with Canada's foreign and defence export requirements which include considerations of human rights.<sup>10</sup> Pressure to cancel the contract increased following the murder of Jamal Khashoggi. In October 2018 the Prime Minister indicated that Canada might freeze completion of the contract, stating, "We have frozen export permits before when we had concerns about their potential misuse, and we won't hesitate to do so again."<sup>11</sup> This was and remains the correct course of action, particularly due to evidence from Yemen, where there have been multiple reports of violations of international law by the Saudi led Coalition<sup>12</sup>. Some of these violations include the 2018 attack on a bus full of children resulting in the death and injury of over 100 civilians, primarily children<sup>13</sup>. There have been multiple attacks on fishermen, killing over 50 fishermen since 2018.<sup>14</sup> There was an attack by the Saudi led Coalition on a place of detention, where over 170 detainees, both civilians and those hors de combat (those who have laid down arms), were killed or injured<sup>15</sup>. All of these attacks must be classified as grave breaches of international humanitarian law<sup>16</sup>.

However, whether or not there is conclusive evidence that the Canadian made LAVs have been or will be involved in operations in Yemen, should not be the deciding factor, but rather the potential for these weapons to be used for such purposes. This is consistent with the judgment from the UK, which deemed the refusal of the UK to consider Saudi Arabia's international humanitarian law violations prior to the sale of weapons, as unlawful.<sup>17</sup>

The memorandum released by Global Affairs assessing the export permits to Saudi Arabia, is glaringly insufficient in its analysis. It focuses on its participation of initiatives such as its involvement in the Human Rights Council in a core group pushing for accountability for the human rights situation in Yemen. This justification for proceeding with the weapons contracts is irrelevant to the issue of Canada's duty not to transfer arms where there is a risk that the arms will be used to commit serious violations against civilians. Further, in a context where access to information on the ground is a significant challenge, the memo-

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<sup>10</sup> Ashifa Kassam, "Justin Trudeau defends Canada's arms sales to Saudi Arabia", *The Guardian*, 21 March 2018, retrieved at: <<https://www.theguardian.com/world/2018/mar/21/justin-trudeau-defends-canada-arms-sales-to-saudi-arabia>>.

<sup>11</sup> Justin Trudeau signals Canada could freeze Saudi arms export contract, *Financial Post*, 23 October 2018. Online at <https://business.financialpost.com/news/economy/justin-trudeau-signals-canada-could-freeze-saudi-arms-export-contract>

<sup>12</sup> On overview of select violations: Yemen Project, *Yemen Project Release: Attacks Causing Grave Civilian Harm*, Bellingcat, 2 September 2019, retrieved at <<https://www.bellingcat.com/news/mena/2019/09/02/attacks-causing-grave-civilian-harm/>>.

<sup>13</sup> *Yemen: Dozens of civilians killed in school bus attack*, *Al Jazeera*, 9 August 2018, retrieved at <<https://www.aljazeera.com/news/2018/08/yemen-dozens-children-killed-wounded-school-bus-attack-180809085843444.html>>.

<sup>14</sup> *Yemen: Coalition Warships Attack Fishing Boats*, Human Rights Watch, 21 August 2019, retrieved at <<https://www.hrw.org/news/2019/08/21/yemen-coalition-warships-attack-fishing-boats>>.

<sup>15</sup> "Yemen: Scenes of devastation as every single detainee either killed or injured in attack", International Committee of the Red Cross, 01 September 2019, retrieved at <<https://www.icrc.org/en/document/yemen-scenes-devastation-every-single-detainee-either-killed-or-injured-attack>>.

<sup>16</sup> *Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I)*, 8 June 1977, 1125 UNTS 3 at Article 85.

<sup>17</sup> *Campaign Against Arms Trade v. The Secretary of State for International Trade and Amnesty International, Human Rights Watch, Rights Watch UK and Oxfam International*, UK Court of Appeal, Case No: T3/2017/2079, 20/06/2019, [2019] EWCA Civ 1020. <https://www.judiciary.uk/wp-content/uploads/2019/06/CAAT-v-Secretary-of-State-and-Others-Open-12-June-2019.pdf>

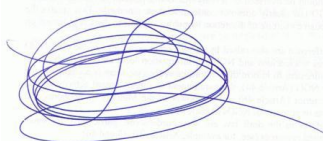
random rests on the fact that there are no confirmed reports of Canadian military equipment being deployed by Saudi Arabia in the territory of Yemen. A lack of irrefutable evidence cannot support concluding there is no evidence particularly in the situation where information is difficult to acquire and confirm.

The conclusion that there is indeed no Canadian military equipment being deployed by Saudi Arabia in Yemen is neither credible nor supported by evidence. In addition, inclusion in the memo of an analysis on the negative impact on Canadian economic interests of a cancellation or suspension, does not relate to whether the continuation of the arms contract would result in serious violations of international human rights or humanitarian law. Further, while the memo cites the position of states continuing to transfer arms to Saudi Arabia, it fails to include the positions of states such as Denmark, Finland, Norway and Switzerland that have suspended or terminated their weapons transfers to Saudi Arabia<sup>18</sup>. Germany has also placed a moratorium on the sale of arms to Saudi Arabia<sup>19</sup>. The conclusion therefore that there are no existing or pending permits or applications is contrary to the known facts.

While the contract was made by a previous administration, it is the legal obligation of the present government authorities to cancel the contract based on the information currently available. Current information indicates a consistent pattern of grave violations of international humanitarian and human rights law by Saudi Arabia, and the likelihood that Canadian-made LAVs are, have been or will be used in the commission of past, ongoing or future violations. Continuing with the contract in light of this information would result in Canada being in violation of its legal obligations under the ATT. It would also be in violation of common Article 1 of the Geneva Conventions of 1949, obligating parties to both respect and ensure respect for international humanitarian law<sup>20</sup>. Suspending this contract will ensure Canada is not in violation of its international legal obligations, and send a positive message about the priorities of the current government and Canada's commitment to preventing and ensuring accountability for serious breaches of international law.

LRWC urges Canada to immediately ban the sale of arms to the Kingdom of Saudi Arabia (Saudi Arabia) and cancel the fulfillment of the \$15 billion contract for delivery of LAVs to Saudi Arabia in compliance with international law duties. the contract for the sale of LAV's to Saudi Arabia in light of its obligations under international law, and to pursue the general respect and promotion of human rights and humanitarian law throughout the globe.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Gail Davidson', with a stylized, scribbled flourish.

Gail Davidson, Executive Director, LRWC

Copied to:

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Minister of Justice, Attorney General of Canada  
Email: [David.Lametti@parl.gc.ca](mailto:David.Lametti@parl.gc.ca)

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<sup>18</sup> Justin Mohammed, *Canada's go-ahead for new Saudi exports leaves questions unanswered*, Open Canada, 9 December 2019, retrieved at <https://www.opencanada.org/features/canadas-go-ahead-for-new-saudi-exports-leaves-questions-unanswered/>

<sup>19</sup> *German arms expert freeze on Saudi Arabia extended*, Deutsche Welle, 18 September 2019, retrieved at >.

<sup>20</sup> *Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field (First Geneva Convention)*, 12 August 1949, 75 UNTS 31 at Article 1.

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