

# Lawyers' Rights Watch Canada

*NGO in Special Consultative Status with the Economic and Social Council of the United Nations*

## Check Against Delivery

Organization: Lawyers' Rights Watch Canada  
Item: Item 5 – General Debate: Human rights bodies and mechanisms  
Date: 20 September 2017  
Speaker: Catherine Morris

Oral Statement to the 35th Session of the UN Human Rights Council from Lawyers' Rights Watch Canada (LRWC), NGO in special consultative status

HRC bodies and mechanisms needed to ensure remedies, including consular protection, for hostages and others subjected to prolonged arbitrary detention outside their home States

Mr. President:

Thousands of persons, including rights defenders, journalists and travelers, are taken hostage by non-state actors, or otherwise subjected to extra-legal detention outside their home countries, suffering violations of peremptory norms<sup>1</sup> of international law, including torture and summary execution.<sup>2</sup> For example, Canadian citizen Joshua Boyle, kidnapped in 2012 in Afghanistan by Taliban insurgents, remains held in the region with his wife, Caitlan Coleman, a US citizen, and their two children born in captivity.<sup>3</sup>

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<sup>1</sup> *Jus cogens* (from Latin: compelling law; English: peremptory norm) refers to certain fundamental, overriding principles of international law, from which no derogation is ever permitted.

<sup>2</sup> Other *jus cogens* norms frequently violated include: Unlawful threats to or deprivations of the right to life; enforced disappearance, deprivation of children's rights to survival; physical, mental, spiritual, moral and social development, and protection from violence and harm, which all States Parties to the CRC have a duty to ensure "to the maximum extent of their available resources and, where needed, within the framework of international co-operation" (emphasis added); deprivation of protection of the children from economic or social exploitation, by holding them and their parents for purposes of prisoner exchange; deprivation of protection of the family including protection of girls and women before and after childbirth, and protection of parents' ability to care for their dependent children; gender-based discriminatory violence, including sexual assault; deprivation of the right to physical and psychological safety and well-being, and other violations of economic social and cultural rights; deprivation of a number of civil and political rights, including unlawful interference with families and privacy. See references in Catherine Morris, *Canadian Child Hostages Overseas: The Ultimate Commodity*. Vancouver: Lawyers' Rights Watch Canada, 25 August 2017, at pages 9-19, available at: <http://www.lrwc.org/canada-canadian-child-hostages-overseas-the-ultimate-commodity-working-paper-by-catherine-morris/>

<sup>3</sup> For details on this case and brief summaries of other cases of Canadians taken hostage or arbitrarily detained abroad, see *Canadian Child Hostages Overseas: The Ultimate Commodity*, note 2 at pages 24-25, 28-31. Also see Human rights and issues related to terrorist hostage-taking. Report of the Human Rights Council Advisory Committee, A/HRC/24/47, 4 July 2013, available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G13/154/42/PDF/G1315442.pdf?OpenElement> Canadians currently detained unlawfully abroad include **Mohamed El Attar**, a Canadian bank teller born in Egypt, arbitrarily detained and tortured in prison in Egypt since 2007 on spurious charges; **Huseyin Celil**, a Canadian imam born China, arbitrarily detained, tortured and ill-treated in China since 2006 and believed persecuted because of his Uighur and Muslim identity and political opinions; **Bashir Makhtal**, a Canadian information technologist born in Ethiopia, arbitrarily detained in Ethiopia since 2006.

Although such grave violations trigger *erga omnes* obligations<sup>4</sup> to ensure remedies, victims and their families are often unprotected by national courts, consular services and Council's Special Procedures.

State practice on consular protection is not consistent with international human rights law obligations. Some States guarantee consular protection to citizens suffering rights violations abroad. Other States, including Canada,<sup>5</sup> provide consular protection on a discretionary basis, leaving victims subjected to prolonged illegal detention, torture or execution.

Lawyers' Rights Watch Canada asks Council:

- to direct the Advisory Committee to study and recommend mechanisms to address gaps<sup>6</sup> in remedies for victims of hostage-taking and extra-legal detention, and
- to urge States to pass laws ensuring consular protection for all citizens illegally deprived of liberty abroad.

Thank you Mr. President.

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<sup>4</sup> The international law term *erga omnes* obligations refers to rights or obligations owed toward everyone. See *Barcelona Traction, Light and Power Company, Limited (Belgium v. Spain)*; Second Phase, International Court of Justice (ICJ), 5 February 1970, para 33, available at:

[http://www.worldcourts.com/icj/eng/decisions/1970.02.05\\_barcelona\\_traction.htm](http://www.worldcourts.com/icj/eng/decisions/1970.02.05_barcelona_traction.htm).

<sup>5</sup> Other states using a discretionary approach include the United Kingdom and Australia. For a discussion of Canada, see Gar Pardy, *Canadians Abroad: A Policy and Legislative Agenda*, Ottawa: Rideau Institute and Canadian Centre for Policy Alternatives, 2016, available at:

[https://www.policyalternatives.ca/sites/default/files/uploads/publications/National%20Office/2016/03/Canadians\\_A\\_broad.pdf](https://www.policyalternatives.ca/sites/default/files/uploads/publications/National%20Office/2016/03/Canadians_A_broad.pdf); Parliament of Canada, Standing Committee on Foreign Affairs and International Development, Number 038, 2<sup>nd</sup> Session, 40<sup>th</sup> Parliament, 5 November 2009, available at:

<http://www.ourcommons.ca/DocumentViewer/en/40-2/FAAE/meeting-38/evidence>;

<sup>6</sup> While the Advisory Committee has studied the matter of hostage taking in relation to terrorism, the issue of remedies is only generally discussed and there is no discussion of consular protection. See *Human rights and issues related to terrorist hostage-taking*. Report of the Human Rights Council Advisory Committee, A/HRC/24/47, 4 July 2013, available at: [https://documents-dds-](https://documents-dds-ny.un.org/doc/UNDOC/GEN/G13/154/42/PDF/G1315442.pdf?OpenElement)

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