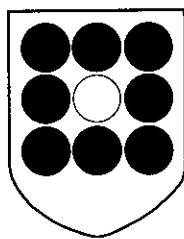


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Hon. John Baird
Minister of Foreign Affairs
House of Commons
Ottawa, Ontario
K1A 0A6

By email: john.baird@parl.gc.ca

August 15, 2011

Dear Mr Baird:

I am writing on behalf of the Canadian Civil Liberties Association ("CCLA"). The CCLA requests that you urgently address the case of four Canadian citizens in Saudi Arabia: Ms. Nathalie Morin, and her three children Samir Morin (age 9), Abdullah Al Sharani (age 5), and Sarah Al Sharani (age 2.5).

Ms. Morin's mother Johanne Durocher, and her contacts in Saudi Arabia, have not received any communication from Ms. Morin since June 13th, 2011. Ms. Durocher informs us she has written to DFAIT three times since then, and received no response.

Given the documented history of domestic violence and abuse, there is serious concern for the life and safety of Ms. Morin and her three children. Ms. Morin has repeatedly communicated her request to Canadian officials to intervene to assist her to return with her three children to Canada.

In these circumstances, the CCLA argues that it is Canada's duty to take positive action to work with Saudi Arabia to remove Ms. Morin and her three children to immediate safety, and to take immediate steps to facilitate their return to Canada.

In 2010, the CCLA wrote to your honourable predecessor, Mr. Lawrence Cannon, setting out the reasons in international law why Ms. Morin and her children are legally entitled to leave Saudi Arabia and return to

Canada.ⁱ We relied upon the *UN Convention on the Elimination of Discrimination Against Women*, which is legally binding upon Canada and Saudi Arabia and requires both countries to protect the mobility rights of a woman and her children. International law and the *Canadian Charter of Rights and Freedoms* also legally entitle Ms. Morin and her three children, as Canadian citizens, the right to return to Canada.

We received a response from your predecessor's office that the matter was "domestic" and that "DFAIT can neither become involved in private legal matters, nor interfere in foreign countries' laws and legal processes."ⁱⁱ

We urge you to reconsider : Private legal matters that pertain to domestic violence engage the State's duty to prevent torture. Women and children have the legal right in international law to be free from torture including domestic violence. The right to be free from torture is a peremptory norm of international law, from which no derogation is permitted, and which is legally binding upon Canada and Saudi Arabia. This norm supercedes any conflicting norm of customary law. In our view, in light of the history of domestic violence and the current worries about her safety and whereabouts, there is a positive duty on both Saudi Arabia and Canada to intervene to ensure her safety and her equality and mobility rights. Canada and Saudi Arabia have each ratified the *UN Convention Against Torture*, the *UN Convention on the Elimination on the Discrimination Against Women*, and the *UN Convention on the Rights of the Child*; these treaties together prohibit domestic violence and place positive obligations on State Parties to investigate, prevent, prosecute and punish domestic violenceⁱⁱⁱ. States also have the positive obligation to provide redress, compensation and rehabilitation to victims. Any failure by State Parties to do so is to acquiesce, condone, and through inaction to provide *de facto* permission and impunity to abusers.^{iv}

The UN Committee Against Torture^v, and the UN Committee on the Elimination of Discrimination Against Women^{vi}, have each recognized that domestic violence against women and children constitutes torture, and is absolutely prohibited.

In February 2010, then Special Rapporteur on Torture and other Cruel, Inhuman and Degrading Treatment or Punishment, Manfred Nowak, addressed the issue", stating:

"Domestic violence, in particular against women and children, is a widespread practice in most countries, and not enough action is taken by States to protect women and children against ill-treatment by their husbands, partners or parents....By not acting with due diligence to protect victims of domestic violence...States may commit torture or cruel, inhuman or degrading treatment or punishment by acquiescence."^{vii}

Accordingly, Canada cannot take a response that domestic violence is a private matter, in which it cannot act. To the contrary: domestic violence can constitute torture, and it demands Canada's immediate action to protect the harmed Canadian individuals, three of whom are minors, from any further torture.

The CCLA calls upon Canada to urgently work with Saudi Arabia to remove Ms. Morin and her children to immediate safety where they receive proper medical care, and to immediately arrange for their return to Canada as Ms. Morin has repeatedly requested.

The CCLA notes that such action by Canada should not be viewed as Canada's interference with the laws of another country. Rather, the peremptory norm against torture binds Canada and Saudi Arabia and legally obligates them to take positive steps to prevent torture wherever it may be found.

In fact, Saudi Arabia has called upon Canada publicly to honour its obligations regarding torture, and regarding violence against women. At the Universal Periodic Review of Canada in March 2009, Saudi Arabia urged Canada to fulfill its legal obligations pursuant to the *UN Convention Against Torture*, and the *UN Convention on the Elimination of Discrimination Against Women*, as noted respectively by the treaty bodies for both conventions. In particular Saudi Arabia expressed its concerns over Canada's domestic violence contrary to the CEDAW, and "recommended Canada implement all international human rights instruments to..enhance and protect...rights against violations."^{viii}

As such, Canada and Saudi Arabia should mutually cooperate to immediately remove Ms. Morin and her three children, Samir, Abdullah and Sarah to safety where they can receive urgent and proper medical attention; and to take immediate steps to return them to Canada, in keeping with all international legal obligations binding upon both countries.

Mr. Baird, it has been over one year since CCLA's last letter, and we have waited and watched to see if informal measures would successfully secure the safety of Ms. Morin and her three children. It is clear that such measures have failed. The lack of any communication with Ms. Morin since June 13th, 2011, renders the matter one of urgency requiring the formal attention of your office.

Sincerely,



Nathalie Des Rosiers
General Counsel

ⁱ The CCLA wrote to the Honourable Lawrence Cannon on June 1, 2010. A copy of the letter is available at <http://ccla.org/wordpress/wp-content/uploads/2010/06/2010-06-02-Minister.pdf>

ⁱⁱ Response received June 24, 2010, from Foreign Affairs and International Trade Canada, signed by Lorraine Diguier, Director, Case Management Division, Consular Services and Emergency Management Branch. A copy of this letter is attached.

ⁱⁱⁱ See *UN Convention Against Torture and Other Cruel and Inhuman or Degrading Treatment or Punishment* (“UN CAT”), G.A. Res. 39/46 (1984). The Office of the High Commissioner for Human Rights has stated the proper interpretation of the definition of torture in Article 1 which refers to torture that occurs “with the consent or acquiescence of a public official or other person acting in an official capacity”, is interpreted to mean **“that privately inflicted harm against women, children, or groups may be covered under the definition if severe pain or suffering is caused and if the State fails to act with due diligence to prevent or protect individuals, since it would be committed for a discriminatory purpose”**, in *Preventing Torture: An Operational Guide for National Human Rights Institutions*, Office of the High Commissioner for Human Rights, the Asia Pacific Forum, and the Association for the Prevention of Torture, May 2010, at page 12. See also the *UN Convention on the Elimination of All Forms of Discrimination Against Women*, G.A. Res. 34/180 (1979), and see *UN Committee on the Elimination of All Forms of Discrimination Against Women General Recommendation No. 19: Violence Against Women*, available at <http://www.unhcr.ch/tbs/doc.nsf/0/300395546e0dec52c12563ee0063dc9d?Opendocument>, para 6.; para.7 which confirms the right of women to be free from torture, cruel, inhuman and degrading punishment; and para. 9 which imposes duties on States to protect women who are subjected to violence by private acts: “Under general international law and specific human rights covenants, States may also be responsible for private acts if they fail to act with due diligence to prevent violations of rights or to investigate and punish acts of violence, and for providing compensation.” See also the *UN Convention on the Rights of the Child*, (“UN CRC”) G.A. Res. 44/25 (1989), articles 19, 37 and 39. Article 37 (a), UN CRC provides, “No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment”, and Articles 19 and 39 impose special obligations upon the State in to protect the child and to promote recovery among other objectives. See also the *UN Committee on the Rights of the Child, General Comment 13(2011), The Right of the Child to Be Free from All Forms of Violence*, 18 April, 2011, CRC/C/GC/13, available at <http://www2.ohchr.org/english/bodies/crc/comments.htm>, and see paras. 3(a), 3(h), 4, 5, 6, 7, 26, 33, 36, 37, 45, 46, 59-67, 72, 73 76 as well as all comments in general.

^{iv} The UN Committee Against Torture, in its *General Comment 2*, 24 January 2008, CAT/C/GC/2, available at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G08/402/62/PDF/G0840262.pdf?OpenElement>, reiterates the duty upon States to prevent torture by private actors in cases of domestic violence. The Committee states at para. 18: “where State authorities or others acting in official capacity or under colour of law, know or have reasonable grounds to believe that acts of torture or ill-treatment are being committed by non-State officials or private actors and they fail to exercise due diligence to prevent, investigate, prosecute and punish such non-State officials or private actors

consistently with the Convention, the State bears responsibility and its officials should be considered as authors, complicit or otherwise responsible under the Convention for consenting to or acquiescing in such impermissible acts. Since the failure of the State to exercise due diligence to intervene to stop, sanction and provide remedies to victims of torture facilitates and enables non-State actors to commit acts impermissible under the Convention with impunity, the State's indifference or inaction provides a form of encouragement and/or de facto permission. The Committee has applied this principle to States parties' failure to prevent and protect victims from gender-based violence, such as rape, domestic violence, female genital mutilation, and trafficking." (emphasis added). See also Article 14, the UN Convention Against Torture.

^v Ibid.

^{vi} See *UN Committee on the Elimination of Discrimination Against Women, General Recommendation No. 19, supra note iii*, paragraphs 7(b) and 24. See also the *UN Committee on the Rights of the Child, General Comment 13(2011), supra note iii*, with respect to the right of the child to be free from torture, from cruel, inhuman and degrading treatment, and the duty of States and all levels of State authorities to act to protect, prevent, investigate, prosecute and punish any violations.

^{vii} See *Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment*, Manfred Nowak, Report to the General Assembly, Human Rights Council, 9 February 2010, A/HRC/13/39, at paragraph 62, available <http://www2.ohchr.org/english/bodies/hrcouncil/docs/13session/A-HRC-13-39.pdf>.

^{viii} See *Universal Periodic Review: Canada – Report of the Working Group*, General Assembly, Human Rights Council Eleventh Session, Agenda Item 6, A/HRC/11/17, 3 March 2009, at paragraph 63.



JUN 24 2010

Ms. Nathalie Des Rosiers
General Counsel
Canadian Civil Liberties Association
360 Bloor Street West
Toronto, Ontario M5S 1X1

cc: Nathalie.Tenorio-Roy@international.gc.ca

Dear Ms. Des Rosiers:

On behalf of the Honourable Lawrence Cannon, Minister of Foreign Affairs, thank you for your letter of June 1, 2010, concerning the situation of Nathalie Morin in Saudi Arabia.

I assure you that officials of Foreign Affairs and International Trade Canada (DFAIT) are in frequent communication with Ms. Morin to provide her with support and assistance. We are pleased to note the Saudi Human Rights Commission's implication in this file, and sincerely hope that Ms. Morin and her husband come to solve this difficult situation. As you may already know, the *Privacy Act* prevents me from disclosing detailed information on this consular case. This restriction applies to public servants and elected officials alike.

I must note that DFAIT can neither become involved in private legal matters, nor interfere in foreign countries' laws and legal processes. Moreover, we are not qualified to provide legal advice. Nonetheless, I assure you that we appreciate the delicate nature of this affair and that consular officials will continue to provide Ms. Morin with full assistance within the consular mandate. You can find additional information about consular services by visiting our website, www.travel.gc.ca.

Should you wish to further discuss our role in this situation, feel free to contact Nathalie Tenorio-Roy, DFAIT's lead for Ms. Morin's case in Canada, at 613-944-1988, or by email at Nathalie.Tenorio-Roy@international.gc.ca.

Again, thank you for taking the time to write.

Sincerely,

Lorraine Diguier
Director, Case Management Division
Consular Services and Emergency Management Branch