

July 3, 2018

The Honourable Chrystia Freeland
Minister of Foreign Affairs
125 Sussex Drive
Ottawa, Ontario K1A 0G2

Email: chrystia.freeland@international.gc.ca

**Re: Call for independent, external review into reports of misuse of Canadian military exports
by Saudi Arabia**

Dear Minister Freeland,

As civil society organizations with expertise and long-standing interest in strengthening Canada's arms export controls, we are writing to call for an independent external review of the reports that emerged in the media last year that Canadian-built armoured vehicles may have been used by Saudi Arabian armed forces in violence directed at civilian populations in the Kingdom's Eastern Province.

We issue this call because it is our view that the internal government report on the allegations released by your department to the public in May 2018 reveals major shortcomings both in the investigation of the allegations and in interpretation of Canadian obligations under international law. These shortcomings suggest that a thorough review conducted by an independent and impartial expert is now required to adequately address the serious questions and concerns that remain unresolved.

Following the media reports, the decision by your department to suspend the relevant export permits was a prompt and welcome response that underlined the important human rights concerns at stake. We welcomed your directive to department officials to investigate and to prepare a "Memorandum for Action" for your consideration that we later learned was completed by September 29, 2017. We particularly welcomed the public release of the report in May of this year, not only as a demonstration of the government's commitment to arms control transparency but also for its potential boost to international reporting standards within the Arms Trade Treaty that Canada is soon to join.

In contrast to the welcome transparency, however, in our view the report contains failings that undermine public confidence in its documentation and analysis. In particular we are concerned about the:

- lack of independence of the primary sources relied upon;
- standard of proof that was applied;
- approach taken to analyzing information that was available; and
- the fact that a number of irrelevant considerations appear to have featured in the analysis.

Sources

Sources that are central to the assessment are unnamed, redacted or far from independent. For example, the report cites (in Paragraph 19) an August 2017 meeting between the Canadian Embassy in Riyadh and "the quasi-independent Saudi National Society for Human Rights" when

“the NSHR did not express concerns about the conduct of the [Eastern Province] operation.” Yet, as an organization dependent on Saudi royal family money, the NSHR is hardly a credible source on security operations and should have been given very little weight in the analysis. [The U.S. State Department in its 2015 Human Rights Report on Saudi Arabia notes that the NSHR is “supported by a trust funded by the estate of the late king Fahd.”] Elsewhere the report cites unnamed “Saudi authorities” as the source for the uncorroborated claim that “criminal elements in the area are supported by Iran and have links to jihadi groups, including Daesh.”

Standard of Proof

Another failing is that the report is based solely on a search for “credible information” (Summary paragraph 3), that is, evidence, of recent human rights violations involving the Canadian armoured vehicles. Yet, domestic and international obligations require a very different process, namely an assessment of the potential risks of future misuse of transferred equipment. Under Canada’s existing export control process, in the case of countries like Saudi Arabia, “whose governments have a persistent record of serious violations of the human rights of their citizens,” Canadian authorities are bound to demonstrate “that there is no reasonable risk that the goods might be used against the civilian population.”

Similarly, a central obligation of the Arms Trade Treaty, to which Canada is committed to accede, is a case-by-case process that requires an export assessment of the risks related to several important criteria including “the potential that the conventional arms or items ... could be used to ... commit or facilitate a serious violation of international human rights law”.

A central, even self-evident, aspect of the risk assessment process is that the assessment is based on measuring risk, and not limited to compiling evidence. While evidence clearly is beneficial in assessing risk, “conclusive evidence” (the term used by you before the House of Commons Foreign Affairs Committee in February), especially evidence of the prior use of the Canadian-made equipment under consideration, is not a prerequisite to concluding there is an unacceptable level of risk.

Canada will be bound by the Arms Trade Treaty to make risk assessments of the export of all military equipment within the scope of the Treaty, and especially in the case of end-users that have been accused of serious legal violations, it will be obligated to assess – before it is delivered -- the risks of the use of the equipment following delivery. That is the approach that should be used in this particular instance.

Analysis of Evidence

Arguably, the most telling reference to risk occurs in paragraph 24 when the report states “as the security operation appears to have ended, the risk of further casualties is minimal. It is reasonable to expect that the Kingdom of Saudi Arabia would continue to use Ghurkas to mitigate risk to security forces during the conduct of legitimate security operations.” The report thus reveals a clear bias in the limited risk analysis it provides. Immediately following suggestion that there is little need for risk mitigation to protect civilians, the report endorses the use of Canadian vehicles in risk mitigation for Saudi security forces. Consequently, it is our view that a more thorough assessment of the human rights risks related to future deployment of Canadian-built vehicles by Saudi forces would result in very different report recommendations.

There are also troubling questions and concerns that emerge from details contained in the report. For example, the report notes (in paragraph 18) that the Canadian-made Ghurka vehicles appeared to have had significant military equipment added after export from Canada. The equipment included “additional armour shielding” and “dismountable light weapons (e.g. machine guns, likely of .50 calibre or equivalent).” Later, (in paragraph 25) the report states “while turrets and light weaponry were not part of the original specification for the vehicles, their addition is consistent with the specified end-use for the vehicles” which is revealed in paragraph 5 as being for the “transport and protection of government officials and national security personnel.”

The report does not state whether the intention to add weapons and other equipment following shipment was known to Canadian authorities when the export permits were approved nor whether adding such equipment post-shipment is accepted practice. What is apparent is that the cited end-use is broad enough to allow for a wide range of armament following shipment from Canada. And case-by-case risk assessments become difficult to impossible if the final configuration of the equipment is unknown.

Irrelevant Considerations

Most importantly, the concerns that led to the report, the alleged human rights violations in the Eastern Province at the hands of Saudi security forces, appear to be downplayed or dismissed throughout. Following a summary of serious human rights concerns in Saudi Arabia, paragraph 21 of the report begins “despite its human rights record, Saudi Arabia remains an important partner for Canada.” The central purpose of the report is thus dismissed in a single sentence. Of equal concern are the subsequent observations that “Saudi Arabia is a regional leader and bulwark against terrorism” and that “Canada also has an important and growing commercial relationship with Saudi Arabia”.

Similarly, the report states that “Reuters reported five fighters and 23 civilians killed” (paragraph 16) in the Saudi operations and in its annex claims that “we have no clarity on circumstances of civilian death being accidentally or deliberately targeted.” Rather than acknowledge that Saudi operations led to civilian deaths, the report states (in the annex) “while one can question the wisdom of the Saudi plan to evacuate and raze the old section of Al-Awamiya and the manner in which the operation was conducted, one cannot dismiss the security-related motivations at play in the exercise.” Significantly, one of the report’s final paragraphs (paragraph 26) discusses the financial consequences of shipment suspension to Terradyne, the manufacturer of the Ghurka vehicle.

When human lives are at risk, these should be secondary considerations without bearing on an investigation into allegations of human rights violations. Their presence underlines the worrisome approach, raises concerns about the objectivity and independence of the analysis, and consequently undermines confidence in the recommendation that is made to reinstate the two Terradyne export permits.

Conclusion

As your government has emphasized, Canada’s accession to the Arms Trade Treaty is also an opportunity to strengthen Canada’s controls on the export of military goods. The policies and practices that Canada puts in place through Bill C-47 and future regulations will become import

ant not only to the success of Canadian implementation of the Treaty, and to improving Canada's export controls, but also to helping establish the international norms that can reduce human suffering from the global arms trade.

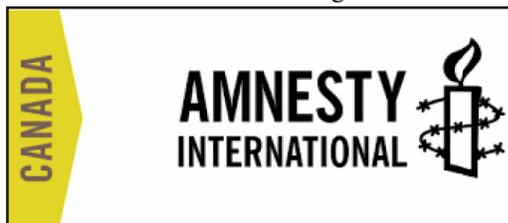
Consequently, it is our view that an independent and external review of the use of Canadian-made Ghurka vehicles by Saudi security forces in the Eastern Province is necessary to thoroughly determine the facts of the case and reach a sound conclusion as to the level of risk involved in authorizing these export permits. Such an independent review not only would demonstrate Canadian commitment to transparency, to international human rights law, and to stronger export controls. It would also serve as an example to other states as a possible standard for assessing risk and investigating alleged violations of arms export authorizations.

In your "Address to the High-Level Segment of the Conference on Disarmament" on February 27, you very importantly underscored that "Canadians are rightly concerned about how arms could be used to perpetuate regional and international conflicts in which civilians have suffered and lost their lives. We must be confident that our institutions are equipped to ensure we are not perpetuating these conflicts. We must hold ourselves to a higher standard."

We agree with your words wholeheartedly and we believe that the higher standard to which you refer would be well demonstrated by conducting an independent review of alleged 2017 breaches of Canadian export controls in Saudi Arabia.

With respect and good wishes,

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