

The Right Honourable Prime Minister Justin Trudeau, P.C., M.P.  
Prime Minister of Canada  
80 Wellington Street  
Ottawa, Ontario  
K1A 0A2

14 May 2020

**Re: Final Report – Review of Export Permits to Saudi Arabia**

Dear Prime Minister Trudeau,

The undersigned, representing a cross-section of Canadian civil society organizations focused on arms controls, human rights, and international security, are writing in response to your government’s decision to lift the moratorium on exports to Saudi Arabia.

Our organizations are deeply concerned by the analysis offered by Global Affairs Canada (GAC) in its *Final Report – Review of Export Permits to Saudi Arabia* (“Final Report”). The Final Report – which comes 19 months after you announced the moratorium following the killing of journalist Jamal Khashoggi, and 8 months after GAC deemed 48 Saudi arms export permits “ready for approval” – is unsatisfactory and demonstrates a weak commitment to Canada’s obligations under the Arms Trade Treaty (ATT). We are concerned that it contains an insufficiently robust analysis to effectively discharge Minister Champagne’s duty under Articles 7.3(1) and 7.4 of the *Export and Import Permits Act* (EIPA), and therefore wish to draw your attention to the following areas of concern: the “substantial risk” test; undermining peace and security; international humanitarian & international human rights law; gender-based violence; and diversion.

*Substantial Risk*

The Final Report contains the first articulation of how the “substantial risk” test will be interpreted by GAC when assessing arms exports. Unfortunately, the proposed working definition is internally inconsistent. It indicates that the concept is absolute, and will be satisfied when the negative consequence (e.g. undermining peace and security, serious international crimes) would “more likely than not” result from a given export. We agree with those statements. However, the definition indicates that a “key element” is whether the country of end use shows a pattern of repetitive behaviour with respect to the negative consequences. In GAC’s analysis of Canadian exports to Saudi Arabia, the search for repetitive misuse, rather than evidence of *risk*, is the standard that is applied. This approach, which waits for violations to take place before they are considered as part of the risk analysis, undermines the ATT’s preventive purpose of reducing human suffering.

### *Undermining Peace and Security*

The EIPA, as amended by Bill C-47 to include the standards set out in the ATT, prohibits the export of Canadian military goods where there is a “substantial risk” that such exports would “undermine peace and security”. The Final Report asserts that, “overall, Canadian exports of military goods and technology to KSA contribute to regional peace and security”. This astounding conclusion stands in direct contradiction to the findings of the September 2019 UN Group of Eminent Expert on Yemen Report, which observes that “the continued supply of weapons to parties involved in Yemen perpetuates the conflict and the suffering of the population”. This observation makes absolutely clear that all military exports to all parties to the conflict contribute to the peace and security problem.

Canada cannot have it both ways. There is a clear incoherence in supporting the UN Secretary-General’s call for a global ceasefire during the pandemic, while at the same time actively impeding that goal by continuing to arm a party to the deadly conflict in Yemen.

### *International Humanitarian & International Human Rights Law*

In spite of a substantial record affirming that Saudi Arabia has committed serious violations of international humanitarian law in Yemen, and the abysmal human rights record domestically, the Final Report concludes that the types of weapons that Canada exports do not meet the substantial risk threshold. This approach focuses on the nature of the exported arms to the exclusion of the end user. In this regard, it is shocking that the Final Report does not cite a single report from a non-governmental organization that has documented such violations.

Moreover, a number of troubling errors are committed in the analysis. For example, while the Final Report indicates that it will adopt European Council Common Position 2008/944/CFSP when evaluating the risk of international human rights law (IHRL) violations, it fails to note that the European Parliament has adopted multiple resolutions condemning weapons transfers to Saudi Arabia as violations of the very same policy. Moreover, with respect to its analysis of sniper rifles, the Final Report suggests that these types of weapons are used for precision targeting and thus unlikely to be used to commit violations of international humanitarian law (IHL). This demonstrates a profound misunderstanding of foundational IHL concepts by confounding the means of warfare (ie. the sniper rifle is a permitted weapon under IHL) and the methods of warfare (the weapon must be used within the confines of IHL).

### *Gender-Based Violence*

Another troubling affirmation of the Final Report is that it “found no credible evidence linking Canadian-made military goods or technology to gender-based violence by KSA personnel in relation to the conflict in Yemen and no evidence of repeated use of such equipment for such acts”.

There is evidence that Saudi-led forces have committed acts of GBV during the conflict in Yemen that was left unexposed in the Final Report. For example, as documented in the Oxfam report *Gendered Impacts of the Use of Explosive Weapons in Yemen*, armoured vehicles attacked Al

Thawra hospital in late 2018, during the battle for Hodeidah. The maternity ward and paediatric intensive care unit of the hospital were badly affected. Women were unable to reach the hospital to give birth, increasing the risk of maternal and infant mortality. This is a serious violation of IHL and an example of GBV through the use of armoured vehicles.

In its review, the Final Report ought to have considered whether there is a substantial risk that Saudi forces may be involved in similar acts in Yemen. It should have also asked itself whether such vehicles might be used to control the civilian population and facilitate GBV in a war where rape and other sexual violence have alarmingly increased by 70% since 2015 as documented in UN reports.

The ATT is the first legally binding global instrument to recognize and create obligations around the connection between arms transfers and GBV. Therefore, the ATT plays a critical role and contribution to global efforts to address GBV and is a further step in extensive UN efforts. If Canada wants to be consistent with its Feminist Foreign Aid Policy and its future Feminist Foreign Policy, it must contribute to international efforts and ensure that GBV is systematically and thoroughly considered in arms export assessments.

### *Diversion*

As a state party to the ATT, Canada is obligated to assess the risk of diversion through its national control system. The substantial risk test is the instrument used by Canadian officials to determine the likelihood exports may be misused and, in turn, establishes eligibility for authorization. Excluding diversion from the substantial risk test is a significant oversight that must be remedied.

This glaring omission is especially troubling considering Saudi Arabia's persistent track record of diverting weapons from its suppliers, including Canada. Despite the government's claims to the contrary, there remains persuasive and growing evidence that Canadian weapons have been diverted for illicit end-use and to illicit end-users in the war in Yemen. This includes images of Canadian Light Armoured Vehicles reportedly used within Yemen's borders, and PGW Defence Technologies sniper rifles brandished by Yemeni forces and allied militias. Unless Canada includes diversion under its risk assessment protocol – as is obligated under the ATT – the Minister will not have all the information he is required by law to consider before approving a permit.

### *Conclusion*

Prime Minister, we remain optimistic about the announcements that your government will establish an arms-length advisory panel of experts to ensure that our arms export process is as robust as possible, as well as the announcement that Canada will spearhead multilateral discussions to strengthen compliance with the ATT. These are positive ideas that we look forward to shaping through engagement with Minister Champagne.

However, these efforts will lack credibility among civil society organizations, members of the international community, and the victims of war and conflict if Canada does not start with faithful adherence to its own obligations under the treaty. That begins with Canadian exports to Saudi Arabia. As you conduct your case-by-case review of application permits, we urge that your

government and, Minister Champagne in particular, fully consider the many omissions that the GAC Final Report contains. We are confident that, at least with respect to certain exports, this will lead to the conclusion that permits should be denied.

Sincerely,

Amnesty International Canada (English branch)  
Amnistie internationale Canada francophone  
Canadians for Justice and Peace in the Middle East  
Oxfam Canada  
Oxfam-Québec  
Project Ploughshares  
Rideau Institute

cc: Hon. François-Philippe Champagne, Minister of Foreign Affairs  
Hon. Mary Ng, Minister of Small Business, Export Promotion and International Trade  
Hon. Andrew Scheer, Leader of the Official Opposition  
Yves-François Blanchet, Leader of the Bloc Québécois  
Jagmeet Singh, Leader of the New Democratic Party of Canada  
Elizabeth May, Parliamentary Leader of the Green Party of Canada  
Leona Alleslev, Conservative Party of Canada Foreign Affairs Critic  
Stéphane Bergeron, Bloc Québécois Foreign Affairs Critic  
Jack Harris, New Democratic Party of Canada Foreign Affairs Critic  
Paul Manly, Green Party of Canada Foreign Affairs Critic