

GOVERNMENT RESPONSE TO THE TWENTY-FIRST REPORT OF THE HOUSE OF COMMONS STANDING COMMITTEE ON FOREIGN AFFAIRS AND INTERNATIONAL DEVELOPMENT, ENTITLED “STRENGTHENING THE CANADIAN CONSULAR SERVICE TODAY AND FOR THE FUTURE”

RECOMMENDATION 1: The Government of Canada should continue to review the legal and policy regime governing Canadian consular services, with the objective of ensuring that Canadians are not subject to arbitrary treatment or discrimination in the provision of consular services.

Global Affairs Canada (GAC) agrees with this recommendation. GAC believes that Canadians are well served by the existing legal framework, which provides the flexibility to take into account the local context and evolving circumstances that affect Canadians abroad and allows consular officers to react nimbly using the available consular, diplomatic, political, legal, familial and financial tools at their disposal. However, GAC will continue reviewing the legal framework on an ongoing basis to ensure it continues to allow the Government of Canada to respond to the needs of the Canadians we serve and that it is effectively and consistently implemented. Furthermore, GAC continues to review its policies and to focus on identifying ways to better serve Canadians abroad, including with the view to avoid arbitrary treatment or discrimination in the provision of consular services.

While the Government has the right to exercise discretion with regard to the level of consular assistance provided, consular officers must respect and adhere to Canadian laws and regulations in the delivery of consular services. The Canadian Charter of Rights and Freedoms applies to all laws and actions of federal and provincial governments. In addition, the Charter may apply in situations where Canadian officials participate in activities of a foreign state that are contrary to Canada’s international obligations or fundamental human rights norms. It is also generally accepted that once the government begins to provide consular assistance, it must do so in a reasonable manner in the circumstances. A change in consular policy or practice on this matter could lead to a breach of duties of procedural fairness to the consular client. Other legislation could also apply in relation to providing consular assistance such as the Privacy Act regarding the collection, use, and disclosure of personal information. The Department is also guided by the Canadian Consular Services Charter, available online, which outlines the consular services the government may provide to Canadians. Internally, consular officials rely upon the Consular Manual to promote consistent service.

In addition, GAC is in the process of redefining consular service standards and tracking methods across all missions in consultation with the consular network and key stakeholders. These clear consular service standards will contribute to ensuring that services are effective and appropriate, and delivered in a consistent manner, with a view to help safeguard Canadians travelling abroad, especially those in vulnerable circumstances. They will also facilitate the measurement of the Department’s performance and our ability to meet reporting obligations. The standards will also be reviewed at least every five years, to ensure that they are adjusted or improved as necessary.

RECOMMENDATION 2: The Government of Canada should ensure that Canadian policy in kidnapping situations is always guided by one fundamental objective: ensuring the safety and security of each and every Canadian.

Global Affairs Canada agrees with this recommendation. The Committee's report addresses kidnapping in the context of "international critical incidents" or terrorist hostage-takings. The Government of Canada's guiding principle in responding to terrorist hostage-takings is the preservation of the safety and security of all Canadians. Since 2008, GAC has coordinated a whole-of-government response to terrorist hostage-takings, which includes the use of diplomatic, military (i.e. direct action, communications support, or intelligence support), and counter-terrorism tools, as required. This response is based on the following objectives: to take all reasonable steps to obtain the early and safe release of hostages, in accordance with Canada's national interests, while respecting Canada's domestic and international legal obligations; to support prosecution of the hostage-takers, where consistent with Canadian law; and, to respond to incidents in a manner that seeks to prevent or mitigate further hostage-takings.

These objectives are framed by a no ransoms/no concessions policy. That means that there are no ransom payments, no prisoner exchanges, no major policy changes, and no immunity provided to the hostage-takers.

This approach is consistent with those of our likeminded allies, and helps to ensure the safety and security of Canadians travelling, living and working around the globe. Ransoms are used to sustain terrorist organizations and underwrite their operations, which includes hostage-taking of new victims. The Minister of Foreign Affairs has stated that the Government of Canada is firm in its resolve to deny terrorists the resources they need to conduct attacks against Canada, its allies, and its partners.

RECOMMENDATION 3: The Government of Canada should review section 83.03 of the Criminal Code in order to clarify that Canadians who engage in peaceful actions to secure the release of a kidnapping victim, including through the payment of a ransom, will not be subject to criminal prosecution.

The Government does not agree with this recommendation. The Government of Canada acknowledges that a hostage-taking is a traumatic and unimaginable ordeal for families of a Canadian hostage who would do anything to secure the safe release of their loved one, including paying a ransom to a terrorist group.

Section 83.03 of the Criminal Code addresses the financing of terrorism. The decision to investigate and prosecute individuals for violating section 83.03 of the Criminal Code is one made by the police and the Public Prosecution Service of Canada (PPSC). In deciding whether to initiate and conduct a prosecution, PPSC considers whether there is a reasonable prospect of conviction and whether a prosecution would best serve the public interest. To date, the Royal Canadian Mounted Police (RCMP) has not opened any investigation into ransom payments made by a family member, employer or insurer of a Canadian hostage in exchange for the return of their loved one(s). The RCMP would seriously take into consideration whether such an investigation would be in the public interest on a case-by-case basis.

RECOMMENDATION 4: The Government of Canada should review each kidnapping situation with a view to identifying and applying lessons learned and to establish best practices related to family engagement, including in the areas of communication and information sharing.

Global Affairs Canada agrees with this recommendation and recognizes the importance of lessons learned in continually improving its response to terrorist hostage-takings. As such, GAC conducts after-action reviews following the resolution of each hostage-taking incident, regardless of the outcome. In addition, government officials continually review practices and procedures with a view to reflecting lessons learned and best practices based on consultations with close international partners, NGOs, and feedback received from family members of former Canadian hostages. A joint GAC-RCMP family engagement policy is in development to enshrine best practices and improvements made in recent years. For example, GAC and RCMP have made concrete efforts to share more information with family members about their loved one's situation, and assist families to identify relevant resources and support services.

RECOMMENDATION 5: The Government of Canada should review the application of the Privacy Act as it relates to the sharing of information with the families or legal counsel of Canadians who are the subject of complex consular cases.

Global Affairs Canada agrees with the recommendation and will review the application of the Privacy Act as it relates to the sharing of information with the families or legal counsel of Canadians who are the subject of complex consular cases.

Consular officials are required to ensure that personal information collected from a client in the course of providing consular services is protected and safeguarded. The Privacy Act contains specific exemptions where the Government can share personal information without consent of the individual whose personal information it is. The Consular Policy Regarding the Use and Disclosure of Personal Information (the Policy) describes how GAC uses and discloses personal information collected in accordance with Canadian privacy laws in order to provide assistance to Canadians abroad.

While GAC endeavours to share as much information as possible with the families, legal counsel or designated representatives of Canadians who are the subject of complex consular cases, there are limits to this that can cause frustration and misunderstandings. These limits are outlined in the Policy and include the need, in most cases, to obtain consent from the individual before sharing personal information. The Policy also clearly indicates that consular officers will not share information obtained in confidence from a foreign government and will not share information expected to be injurious to international affairs.

In the event of a terrorist hostage-taking involving a Canadian citizen, government officials may also be limited in what they can share with families on the basis of the Security of Information Act. GAC endeavours to share as much information as possible with designated family members of Canadian hostages held by terrorists, while protecting information that is classified or which, if made public, could jeopardize the safety of hostage recovery efforts or investigations. In many or most instances, highly sensitive or classified information cannot be shared at all or even shared in part. Such situations may include when information is provided in confidence by a foreign government, or the information would tend to identify the source or method by which it

was obtained. GAC has made efforts over the past several years to downgrade information, when possible, in order to share as much as possible with family members.

GAC will review how these limitations are interpreted, communicated and applied, including the proactive downgrading of classified information, when feasible, in order to share as much information as possible with the families or legal counsel of Canadians who are the subject of complex consular cases.

RECOMMENDATION 6: The Government of Canada should work with provincial authorities to ensure that victims of kidnappings and their families are supported in the aftermath of critical consular incidents from a mental health perspective.

Global Affairs Canada agrees with this recommendation. GAC recognizes that the resolution of a hostage-taking incident is the start of a long road to recovery for returned hostages and their families. Appropriate support services are typically provided at provincial and municipal levels, and federal departments and agencies do not have this mandate. In the aftermath of a hostage incident, GAC and the RCMP work closely with provincial and municipal authorities to make every effort to facilitate a smooth transition to provincial and municipal medical, social, psychological, and other services as required or requested by families and returned hostages.

Over the duration of a hostage-taking incident and after its conclusion, GAC refers families to Justice Canada's Victims Fund for financial assistance with social and psychological support to help cope with their loved one's captivity, and to non-governmental organizations with specialized expertise. GAC also provides support letters for family members and returned hostages who need assistance with practical issues such as dealing with their employers, banks, taxes, etc.

RECOMMENDATION 7: The Government of Canada should continue to support efforts aimed at building international cooperation and consensus related to consular protection for dual citizens. In this regard, the Government of Canada should continue to support the Global Consular Forum, and consider hosting an upcoming summit of the Forum's member countries.

Global Affairs Canada agrees that, to improve the provision of consular assistance to Canadians with multiple citizenships, international engagement is particularly important. Canadian officials engage in a variety of bilateral and multilateral fora to enhance international consular engagement on the topic of dual nationality, among others, with traditional and non-traditional partners.

The Government of Canada has been instrumental in creating and building the Global Consular Forum (GCF), as a venue for international collaboration on sharing of best practices in the consular domain, and continues to be actively engaged with it. Canada will consider hosting a future meeting of the GCF taking into account the need for the GCF to deepen its engagement with a globally diverse membership, and facilitating dialogue between governments and stakeholders in different regions of the globe. Since the inception of the GCF, Canada has played a central role, hosting the Secretariat continuously since 2013; coordinating and leading the deliberations of the GCF Steering Committee; and organizing and supporting the three GCF

meetings that have been held since 2013, both as a significant contributor to the substance of these meetings, and financially.

RECOMMENDATION 8: The Government of Canada should review how it responds to consular cases involving Canadian permanent residents who request and require emergency assistance abroad to ensure a coherent approach to such requests.

Global Affairs Canada agrees with this recommendation. Currently, assistance to permanent residents is provided in exceptional circumstances, such as emergency events and humanitarian situations. GAC will develop guidelines for missions abroad and headquarters divisions regarding requests for consular-like assistance for non-citizens of Canada. Guidance would aim to clarify roles and responsibilities, taking into account existing Government of Canada policies, resources, and best practices.

However, even with these potential guidelines, foreign states would be under no obligation in international law to allow Canada to provide consular services to individuals who are not citizens of Canada. Under the Vienna Convention on Consular Relations (VCCR), receiving States are under no obligation to allow consular access or communications to individuals who are not nationals of the sending State. Similarly, the VCCR does not provide for consular notification in cases involving the arrest, death, or guardianship of a non-national.

The Government of Canada provides guidance to its officials regarding support for human rights defenders abroad, including non-Canadian citizens as outlined in the document entitled *Voices at Risk: Canada's Guidelines on Supporting Human Rights Defenders*.

RECOMMENDATION 9: The Government of Canada should undertake a review of the consular service fee to ensure that the fee is appropriate and that the consular program is financially sustainable into the future.

Global Affairs Canada agrees with this recommendation and recognizes that the revenues from the consular services fee have fallen short of the costs of delivering consular services in recent years. This gap will widen over the next few years, due to the impact of the introduction of the 10-year validity passport in 2013, before revenues start rising again in 2023-24. The Department also recognizes that the funding regime for the consular program should be appropriate to meet its needs and to ensure that the program is sustainable over the long term.

In response to the findings of the Office of the Auditor General (OAG), the Department completed a detailed review of the methodology used to calculate the costs of delivering consular services in 2018, in order to ensure that GAC can make reliable assessments of the costs. As a result of the review, refinements to the methodology for assessing the cost of consular services will be made for next fiscal year. These include, among others, modifications to the model to ensure that direct costs that clearly relate to consular services are included, that indirect costs are reflected more accurately, and that a consistent approach to apportioning personnel costs for consular officers is adopted. Updates to the model will help ensure a consistent and reliable estimate and will allow GAC to accurately identify the total costs of consular services.

GAC will rely on this updated costing methodology to undertake a review of the consular services fee, to determine whether it needs to be modified, taking into account the anticipated fluctuations in revenues over the coming years, and all other relevant factors.

RECOMMENDATION 10: The Government of Canada should review the role of Global Affairs Canada's Office of the Inspector General and consider expanding it to include the review of consular services and standards.

Global Affairs Canada agrees with this recommendation. The mandate of the Mission Inspection Division (ZIV), GAC's equivalent of an Inspector General, provides for the review and assessment of consular services and standards, operationalized through a detailed review and assessment that is undertaken in the context of on-site inspections conducted by ZIV as part of the oversight of Canadian diplomatic missions. On-site inspection of the consular program encompasses an assessment of consular program defined criteria, including their alignment with established departmental standards and policies, such as the processes in place by which client feedback is solicited, reviewed and corrective action is taken. Observations from mission inspections are synthesized into summary reports with detailed recommendations for improvements, alongside recognition of good practices. These reports are provided to the Head of Mission, the mission's Consular Program manager and the relevant divisions at GAC in Ottawa.

This mandate is also complemented by the work of the Evaluation and Results Bureau (PRD), who conducted an Internal Evaluation of Canada's Consular Affairs Program, in 2016-17. As indicated earlier in the response to recommendation #1, GAC is in the process of redefining consular service standards and tracking methods across all missions, in response to this evaluation, and to the recent audit of the OAG on Consular Services to Canadians Abroad.

RECOMMENDATION 11: The Government of Canada should develop a strategy to promote the Registration of Canadians Abroad system to target audiences of Canadians travelling to, or living in, locations that are particularly susceptible to natural disasters or political instability. As part of this strategy, the Government of Canada should leverage its outreach capacity by working with stakeholders and partners in the travel and tourism sector.

The Government of Canada agrees with this recommendation. The promotion of the Registration of Canadians Abroad (ROCA) system is an important part of GAC's prevention mandate. This service is currently being heavily promoted through various channels such as the Travel Smart app, the Government of Canada's most downloaded application, Travel.gc.ca's social media accounts, GAC's hurricane season and spring break media technical briefings, departmental statements and consular outreach activities. Its promotion is one of the main objectives of GAC's consular communications roll-out for 2018-2019, which includes various outreach initiatives.

Many travel industry stakeholders have a unique opportunity to communicate information as travellers plan or book their trip, or buy insurance through them. By ensuring that Travel.gc.ca safe travel tools are presented during these transaction points, we can help to better prepare Canadians and reduce problems for stakeholders. To better reach our audiences, the Department developed an action plan and devoted an additional resource dedicated to outreach and partnerships. GAC participates in travel-related trade shows and airport outreach in several cities

across the country. The Department will continue to broaden its network of travel and tourism stakeholders and to share its communication products with key organizations.

As part of its multi-year consular communications strategy, which aims to increase Canadians' awareness of consular services, including during large-scale emergencies abroad, and increase Canadians' use of the Government of Canada's safe-travel resources, the Department is working on a targeted communications plan for the ROCA. The plan will include sharing safe travel messaging and promoting the ROCA among the Department's clients and network through web and social media activities, outreach events, as well as internal communications to continue to ensure that Travel.gc.ca products are made available to all Canadian missions abroad for promotion within their local Canadian communities. GAC is also working on a multi-year advertising proposal, which would allow more efficient targeted consular communications efforts.

RECOMMENDATION 12: The Government of Canada should modernize its communication tools with regard to consular services, including greater use of digital tools such as online applications and social media.

The Government of Canada agrees with this recommendation. Global Affairs Canada is adapting to a changing consular landscape by developing new digital tools to modernize information management systems and improve services to Canadians. Going Digital, one of the four key initiatives of the 21st Century Consular Plan, has been guiding the modernization efforts of delivery of consular services to Canadians abroad. Under the Going Digital initiative, several projects have been developed, including:

- Continuous improvement of Travel.gc.ca: Operational tasks and activities are continuously being done to maintain, support and improve the quality of Travel.gc.ca.
- Travel Smart App: a mobile application where travel advice and advisories are available and provides up-to-date information on security, entry and exit requirements, health, local laws and culture, natural disasters and emergency contact information for over 200 destinations worldwide.
- Ask Travel: a web-based service available from Travel.gc.ca which enables Canadians to navigate through intuitive questions designed to quickly answer their frequently asked and routine consular inquiries.
- Online Appointment Booking Solution (OABS): a user-friendly system where clients are able to book their own appointments for some services. More than 50 Canadian offices will implement this system by March 2019.

GAC's enhanced 2018-2021 Digital Innovation, Web and Social Media Support Strategy for Travel.gc.ca includes web content, social media and technical digital initiatives planned for the next three years to enhance and maintain the various assets and platforms under Travel.gc.ca to inform, educate and promote safe travel abroad for Canadians. The strategy includes information on how the Department is diversifying communications channels and sharing information across social media (including Twitter, Facebook, and YouTube tools).

Furthermore, at the core of the Going Digital initiative is the ongoing development of a new case management system, the Case, Contact, Emergency Management system (CCEM). Expected to

be in place by 2021, the new system addresses the need to modernize the delivery of consular services to Canadians abroad, monitor performance and ensure sound resource management. The implementation of the new CCEM system is expected to streamline service delivery and improve the availability and reliability of the data required to manage the Program, including resourcing decisions.

Leveraging technology solutions applicable to the delivery of consular services, in collaboration with other government departments, is a priority for GAC as the Department focuses on renewing the 21st Century Consular Plan.

RECOMMENDATION 13: The Government of Canada should ensure ongoing dialogue between Canadian consular officials and experts drawn from civil society, the private sector, the legal community, and diaspora communities, for regular discussions about best practices and lessons learned in the area of Canadian consular affairs.

The Government of Canada agrees with this recommendation. GAC is committed to engaging stakeholders and partners in Canada and abroad to improve Canada's consular services. Serving Canadians is a cornerstone of the consular mandate for GAC and we are committed to improving consular services with our partners and with stakeholders to make sure they are effective and appropriate in exceptional circumstances, as well as through the delivery of timely routine services. As part of the Department's modernization process, consular officials in Canada have begun to engage partners, including from other federal government departments, non-government organizations, diaspora communities and civil society organizations whose activities relate to consular work, and with stakeholders from the private sector, travel and tourism and travel insurance industries. Roundtables have begun and will continue to take place over the coming months. This enhanced engagement will provide the opportunity to discuss challenges and identify opportunities and gaps, assess best practices and services to better inform and serve our consular clients.

RECOMMENDATION 14: The Government of Canada should develop service standards that set out concrete timelines for the formal assessment of allegations of torture or mistreatment of Canadians detained abroad, and for the notification of the Minister of Foreign Affairs and the Deputy Minister of Foreign Affairs in all cases where there is credible information that a Canadian detained abroad has been tortured or mistreated. Those timelines should respect the seriousness of these consular cases, while also reflecting the need for a prompt, consistent and effective response on the part of the Government of Canada.

Global Affairs Canada agrees with this recommendation and takes allegations of mistreatment or torture by Canadians detained abroad very seriously. In all instances, GAC takes immediate steps to address such allegations, and to ensure that the Minister and Deputy Minister are promptly notified in writing of allegations of torture or mistreatment.

GAC developed protocols in 2012 on how to respond to consular cases involving allegations of torture or mistreatment by Canadians detained abroad. These protocols specify that a Director-General level Consular Ad Hoc Working Group on Torture and Mistreatment (AWG) assess whether allegations/suspicions are serious and credible, and provide advice to the Director General of Consular Operations on the management of these cases. The protocols now direct that

an email notification be provided to the Minister of Foreign Affairs immediately upon receipt of any allegation that is assessed as requiring consideration by the AWG. Following this, in the case of mistreatment, if the AWG assesses that the allegations are serious and credible, the Deputy Minister is informed by memorandum. In the case of torture, if the AWG assesses that the allegations are serious and credible, the Minister is informed by memorandum.

GAC is also developing minimum global standards for initial contact with detainees and subsequent contact and adding vulnerability factors to guide our consular responses. These factors include allegations of mistreatment or torture. In addition, formal service standards are being developed addressing timelines for the assessment of allegations of mistreatment or torture and their subsequent reporting to the Minister or Deputy Minister. These service standards will reflect that fact that each and every case is unique. In some cases, circumstances dictate that formal assessments will take time to conduct. For example, consular access to a Canadian citizen may be denied for an initial period of time, in which case our efforts initially focus on obtaining access and information about the Canadian's conditions of detention. In other cases, mistreatment may arise because of the duration or persistence of factors affecting a Canadian detained abroad. As has been our practice to date, our focus will remain on taking swift action to protect Canadians in such cases. These actions do not wait on formal assessments, which we conduct to ensure oversight on these critical files.

Steps taken to respond to allegations of mistreatment range from making more frequent consular visits, advocating for access to medical care and improved conditions of detention, to raising the allegations with local authorities, requesting that they investigate these and ensure appropriate remedies are made available to the individual affected. In the most extreme cases, Canada has advocated for the release of individuals who have made serious and credible allegations of torture, where these were found to have irremediably tainted the legal proceedings against them.

RECOMMENDATION 15: The Government of Canada should ensure that Canadian consular officers receive in-depth and cyclical training on how to conduct prison visits in relation to Canadians arrested or detained abroad, and that Canadian consular officers also receive such training on how to detect incidents of torture, abuse, or mistreatment.

Global Affairs Canada agrees with the recommendation for in-depth and cyclical training for consular officers in relation to Canadians arrested and detained abroad, and that training is maintained throughout an officer's career. GAC also agrees with the recommendation that consular officers receive training on how to conduct prison visits and how to detect torture, abuse and mistreatment. In 2018, new regional training initiatives devoted to arrest and detention and mistreatment and torture were launched for consular officers in Canada's missions abroad. Additionally, new tools including evergreen online training, job aids and soft skills are also being developed allowing officers to renew their knowledge on a regular basis.