

**Mandates of the Working Group on Arbitrary Detention; the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment; and the Working Group on the issue of discrimination against women in law and in practice**

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Excellency,

We have the honour to address you in our capacity as Working Group on Arbitrary Detention; Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment; and Working Group on the issue of discrimination against women in law and in practice, pursuant to Human Rights Council resolutions 33/30, 34/19 and 32/4.

In this regard, we would like to draw the attention of your Excellency's Government to the information we have received concerning the detention of **Emilie König and her three children** in the Roj camp in the Northeast of Syria.

According to the information received:

Ms. König was born in 1984 and is a French national. She left France in May 2013 to travel to Syria. Whilst there, she stayed in various cities under the control of the organization "Islamic State". She married a French national with whom she had a child, born in March 2015. After the father of this child died, Ms. König remarried a Belgian national and then became a widow a second time. In the meantime, she gave birth in January 2017 to twin girls.

On 12 December 2017, Ms. König and her three children were arrested near the town of Shaddadi by armed men belonging to the Syrian Democratic Forces. Ms. König and her children were then part of a convoy of about 100 women and children fleeing the fighting raging around the city.

Following her arrest, Ms. König and her children were taken to a camp near the Iraqi border and the town of Al Hawl. They remained there until 15 December 2017. They were then transferred to another camp, named "Roj Camp" which is about ten kilometers south of the city of Al Malikiyah and on the borders of Turkey and Iraq, in the so-called province of Western Kurdistan and more precisely in the canton of Jezireh.

This camp contains nearly 400 women and children of all nationalities. All of them were arrested from territories that were under the control of ISIS. This camp is restricted and placed under the protection of armed forces belonging to the

People's Protection Units ("YPG"); a fence encircles the camp and prevents the 400 detainees present from leaving it. No men are detained, but male teenagers are allowed to stay with their mothers. This camp is therefore not comparable to a refugee or displaced persons' camp even though originally it was meant to host Iraqi refugees. Refugees left the camp in early 2018. These departures led to the departure of UN agencies, which were assisting the refugee population. The only humanitarian workers who are still allowed to enter this camp are those of the International Committee of the Red Cross.

In addition, searches in tents are regularly organized by the YPG guards and detainees are not permitted to have a mobile telephone. They may exceptionally communicate with their family once every fortnight using a telephone that is temporarily available to them, and the content of the exchange is controlled. They have been formally prohibited from entering into contact with lawyers.

On 2 January 2018, a French radio station reported information about the arrest of Ms. König. This information was immediately broadcast by many French and foreign media and it gave rise to a debate on whether jihadists arrested in Syria should be repatriated to France. In this context, a spokesperson of the French Government reportedly said that French jihadists arrested in Syrian Kurdistan could be tried there if the judicial institutions were able to ensure a fair trial. The Foreign Ministry of the French Government has subsequently said that French jihadists arrested in Syria must be judged by local judicial authorities. The source also recalls that France is a member of the international coalition, is a stakeholder in the Syrian Democratic Forces and supports the *de facto* Kurdish authorities, both militarily and politically; as such, France is present in that region where its "special forces" have been deployed.

At the same time, the Kurdish authorities learned from the French media the public notoriety of Ms. König and transferred her and her children from the Roj camp to Qameshli prison. Ms. König spent nearly a month in the Qameshli Prison, occupying, together with nine other women and 24 children, a single room with straw mats on the floor. Reportedly, during this detention, Ms. König was questioned by YPG armed women and US soldiers. During the questioning, she was reportedly forced to stand on one leg, blindfolded and with her arms in the air. She was also slapped and insulted.

At some point in January, Ms. König's mother told the French media that she feared her daughter was going to be victim of degrading treatment or tortured. In response to these statements, on 9 January 2018, the YPG broadcast a video of several minutes in which Ms. König appeared, wearing makeup, declaring in front of the camera that she had not been tortured and that, to the contrary, she was

particularly well treated. Reportedly, the speech she gave to the camera was dictated by the people detaining her.

At the end of January 2018, Ms. König and her children returned to the Roj camp where they still remain today.

It is specified that Ms. König has not been sentenced by a national or supranational court to imprisonment, and her deprivation of liberty is therefore not linked to a criminal sanction. Ms. König also has not been criminally prosecuted and has not been formally placed under pre-trial detention. Since her arrest in December 2017, she has not been brought before a judge and has not been informed of any charges against her.

Moreover, Ms. König's deprivation of liberty is not administrative in nature, since this type of deprivation of liberty is not provided for by the legal provisions in force in the territory of the Syrian Arab Republic. Moreover, Kurdish local authorities who are detaining Ms. König do not apply the rules of law enacted by Syrian authorities.

Furthermore, before Ms. König was arrested, France had issued an international arrest warrant against her. However, the French authorities seem to have renounced their right to execute this warrant, as it appears from the ministerial declarations that French nationals arrested in Syria who have joined the Islamic State will be judged by the Kurdish authorities. Following these statements, the representative of the Kurdish authorities in France has publicly stated that they are competent to try French jihadists and that the files are under investigation. However, since these statements, the Kurdish authorities have not informed Ms. König of the charges against her.

Ms. König would not be considered by the Kurdish local authorities as a prisoner of war within the meaning of article 4 of the Geneva Convention relative to the Protection of Civilian Persons in Time of War of 12 August 1949, since she was not a combatant and the Syrian Democratic Forces have refused to qualify the Islamic State as a "militia" within the meaning of article 4-2 of the Convention. On this point, it is stressed that the statements made in the press by the representative of the Kurdish authorities in France that Ms. König was arrested with weapons in hand have been refuted by the detainee's lawyer.

Furthermore, upon her arrest, Ms. König sought the assistance of a lawyer. Her French lawyer thus went to Malikiyah on 26 February 2018 to visit her and meet representatives of the Kurdish political and judicial authorities. Prior to his travel, he had obtained the agreement of the relevant authorities to enter the Syrian territory and the guarantee of being able to talk with his client as well as accessing

the file of Ms. König. However, once he arrived, after several meetings with various officers and ministers, he was not allowed to meet Ms. König because of a directive received from the French Government requiring the Kurds not to let any French national approach her. Two months later, a journalist from the French radio station Europe 1 was invited to enter the camp and interview a dozen women present, including Ms. König.

Ms. König and her children are currently in a situation of danger in view of the health situation in the camp. Indeed, there is no medical infrastructure in the camp and several cases of tuberculosis have been reported and two children died on 27 June 2018. Basic necessities, including nutritional and health supplies, are lacking. Ms. König had 900 USD when she arrived but that money was confiscated. Without it, she is not able to buy the goods that Kurdish guards offer for sale such as milk for children or nappies and appropriately care for her children. In addition, one of Ms. König's children is currently in poor health, and has had blood in his stool for several weeks.

A few weeks ago, Ms. König was again forced by the YPG to record a video message for the French authorities. The content of this message has not yet been released but its existence gives rise to concerns that the Kurdish authorities will use Ms. König's presence in their territory for political purposes.

While we do not wish to prejudge the accuracy of the information received, we wish to express our grave concern at the detention of Ms. König and her children in Camp Roj and Qameshli Prison in view of the above allegations relating to ill-treatment, conditions of detention including the lack of access to medical care, breach of the right to a fair trial and lack of legal basis for the detention of Ms. König and her children. We also express our concern about Camp Roj where more than 400 women and children are deprived of their liberty.

These allegations seem to contravene certain fundamental standards and principles set forth in the Universal Declaration of Human Rights, in particular articles 3, 5, 7, 8, 9, 10; in the International Covenant on Civil and Political Rights (ICCPR), ratified by the Syrian Arab Republic on 21 April 1969, in particular articles 7, 9, 10, 14, 24; in the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, acceded to by the Syrian Arab Republic on 19 August 2004, in particular articles 2, 5 and 12; the Convention on the Rights of the Child, acceded to by the Syrian Arab Republic on 15 May 2003.

We thus appeal to your Government to ensure that the rights of Ms. König and of her three children are respected and that they are not arbitrarily deprived of their liberty and that she is guaranteed a fair trial. These rights are protected by articles 9 and 14 of the ICCPR and by articles 9 and 10 of the Universal Declaration of Human Rights.

We would like to remind your Excellency's Government that the right to challenge the legality of detention before a court, as enshrined in article 9 (4) of the ICCPR, is a rule of customary international law that has acquired a status of *jus cogens*, which does not permit derogation. Moreover, in accordance with the international law applicable to situations of emergency, the domestic legislative framework should not allow for any restriction on the safeguards of persons deprived of their liberty concerning the right to challenge the legality of the detention before a court, including the right to be informed of the reasons for arrest, the right to be informed of the legal basis and of the judicial order for detention and the right to legal counsel. In addition, persons deprived of their liberty must have sufficient time to prepare their defence.

With this in mind, we wish to recall General Comment No. 35 of the United Nations Human Rights Committee, which states that "States parties should permit and facilitate access to counsel for detainees in criminal cases from the outset of their detention" (para. 35) as well as General Comment No. 32 which states that "[t]he right to communicate with counsel requires that the accused is granted prompt access to counsel" (para. 34). We also recall that international law requires that anyone arrested and detained be brought to trial as soon as possible. The Working Group on arbitrary detention has translated this standard into Principle 8, read in conjunction with Principles 4 and 6 of the United Nations Basic Principles and Guidelines on Remedies and Procedures on the Right of Anyone Deprived of Their Liberty to Bring Proceedings Before a Court (A/HRC/30/37).

We also wish to emphasize that States must ensure that "[n]o child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time" (article 37 (b) of the Convention on the Rights of the Child).

As to the allegations concerning acts of torture and/or ill-treatment, we would like to remind your Excellency's Government of the absolute prohibition of torture and other ill-treatment as codified in articles 2 and 16 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. According to article 5 (1): "Each State Party shall take such measures as may be necessary to establish its jurisdiction over the offences referred to in article 4 in the following cases: (a) When the offences are committed in any territory under its jurisdiction or on board a ship or aircraft registered in that State; (b) When the alleged offender is a national of that State; (c) When the victim is a national of that State if that State considers it appropriate". According to article 12 of the Convention against Torture: "Each State Party shall ensure that its competent authorities proceed to a prompt and impartial investigation, wherever there is reasonable ground to believe that an act of torture has been committed in any territory under its jurisdiction". We would also like to recall article 14 (1) of the Convention against

Torture, which states that “[e]ach State Party shall ensure in its legal system that the victim of an act of torture obtains redress and has an enforceable right to fair and adequate compensation, including the means for as full rehabilitation as possible”.

In addition, we wish to refer to the resolution on the United Nations Minimum Rules for the Treatment of Prisoners (A / RES / 70/175), adopted by the General Assembly on December 17, 2015 and the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules, A/RES/65/229) adopted by the General Assembly on 21 December 2010. We would like to highlight the section on health services in custody, including rules 22 to 26.

The full texts of the human rights instruments and standards recalled above are available on [www.ohchr.org](http://www.ohchr.org) or can be provided upon request.

In view of the urgency of the matter, we would appreciate a response on the initial steps taken by your Excellency’s Government to safeguard the rights of the above-mentioned person(s) in compliance with international instruments.

As it is our responsibility, under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention, we would be grateful for your observations on the following matters:

1. Please provide any additional information or comments related to the aforementioned allegations;
2. Please provide information on the legal basis for the arrest and detention of Ms. König and her three children, which seem, according to the allegations received, incompatible with international human rights standards, in particular articles 9 and 14 of the ICCPR as well as the Convention on the Rights of the Child;
3. Please provide information concerning the restrictions of right to a fair trial of Ms. König, since she has not been informed of the charges against her, has not been brought before a judge and cannot benefit from the assistance of a lawyer;
4. Please provide information regarding the allegations of ill-treatment inflicted during Ms. König's interrogation and whether any steps have been taken to investigate and punish such alleged behavior;
5. Please provide information on the conditions of detention in Camp Roj and Qameshli Prison, bearing in mind that women prisoners are a

vulnerable group, as recognized in Bangkok Rules, and on the possibilities of women to adequately care for their children, bearing in mind HRC Resolution 10/2 of 25 March 2009.

6. Please provide information on the allegations of lack of medical care and assistance in Camp Roj where tuberculosis cases have been reported and the means put in place to ensure the life and health of Ms. König's and her children.
7. Please provide information on the application of article 36 of the Vienna Convention on Consular Relations and the protections to be granted to Ms. König and her children;

While awaiting a reply, we urge your Excellency's Government to take all necessary measures to ensure the protection of the rights and freedoms of Ms. König and her three children, to investigate on the alleged violations and to ensure that the perpetrators are brought to justice by the competent national authorities. We also urge your Government to take all necessary measures to prevent the repetition of the mentioned facts. We respectfully ask your Excellency's Government to take all necessary measures to ensure their safety.

We would like to inform your Excellency's Government that after having transmitted an urgent appeal to the Government, the Working Group on Arbitrary Detention may transmit the case through its regular procedure in order to render an opinion on whether the deprivation of liberty was arbitrary or not. Such appeals in no way prejudice any opinion the Working Group may render. The Government is required to respond separately for the urgent appeal procedure and the regular procedure.

In accordance with our respective mandates, we follow closely the fate of the people mentioned in this communication and are aware of the extreme sensitivity of their situation.

Your Excellency's Government's response will be made available in a report to be presented to the Human Rights Council for its consideration.

We wish to indicate that a similar letter has been sent to the Permanent Mission of France.

Please accept, Excellency, the assurances of our highest consideration.

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