

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

REFERENCE:
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Dear Ms. Ilham Ahmad,

We have the honour to address you in our capacities 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 connection, we would like to bring to your attention 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 alleged 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.

At the same time, the Kurdish authorities learned from the French media about 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 reportedly not allowed to meet Ms. König because of a directive received from the French Government requiring the local Kurdish authorities 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 reportedly 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 serious concern at the reported deprivation of liberty of Ms. König and her children in Camp Roj; the reported ill-treatment that she may have been subject to; and the reported poor conditions of detention, including the lack of access to adequate food and medical care. We also express our grave concern about the situation in Camp Roj where more than 400 women and children are deprived of their liberty.

International human rights law and humanitarian law impose on States and other parties to a conflict, whether international or non-international, a number of obligations and fundamental principles regarding the treatment and protection of persons in their custody, including civilians, combattants or former combattants. The deprivation of liberty of Ms. König and her children, and their current conditions of detention, appear to contravene such fundamental principles, including in relation to the respect for the right to liberty, personal security, the *jus cogens* norm prohibiting torture and ill-treatment, as well as the right to be treated with humanity.

We wish to recall that non-state actors have certain obligations to respect fundamental human rights recognized in customary international law. Therefore, as part of customary law, the YPG is under the obligation to comply with the Universal Declaration of Human Rights, the Geneva Conventions of 1949 and with Customary Rules of International Humanitarian Law identified in the study of the International Committee of the Red Cross (“Customary Rules”).

We thus appeal to you to redress the current situation, to ensure that the rights of Ms. König and of her three children are respected and that Ms. König and her children are not arbitrarily deprived of their liberty. In this respect, we wish to recall that “the prohibition of “arbitrary” arrest and detention has been recognized both in times of peace and armed conflict” and that “the prohibition of arbitrary deprivation of liberty is part of treaty law, customary international law and constitutes a *jus cogens* norm. Its specific content, [...] remains fully applicable in all situations” (Deliberation No. 9 in A/HRC/22/44, paras. 45 and 51).

We also wish to remind you that, regardless of the lawfulness of their detention, persons deprived of their liberty are entitled to conditions of detention that respect their inherent dignity under article 3 of the Geneva Conventions of 1949. Furthermore, this article prohibits “cruel treatment and torture” and “outrages upon personal dignity, in particular humiliating and degrading treatment” of civilians and persons *hors de combat*.

This also includes the need to provide the necessary medical assistance as it states that “[t]he wounded and sick shall be collected and cared for”. In addition, customary law provides a duty to provide food, shelter, water and medical treatment (Customary Rule 118).

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 factual and legal basis for the arrest and detention of Ms. König and her three children, which seem, according to the allegations received, incompatible with fundamental norms set out in international human rights law and international humanitarian law.
3. 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;
4. Please provide information on the conditions of detention in Camp Roj and Qameshli Prison, bearing in mind that women prisoners as well as children are a particularly vulnerable group in time of conflict, as recognized in the 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.
5. Please provide information on the allegations of lack of medical care and assistance in Camp Roj where tuberculosis cases have been reported as well as the means put in place to ensure the life and health of Ms. König and her children.

While awaiting a reply, we urge you to take all necessary measures to ensure the effective protection of the rights to life, security, liberty and to be treated with humanity of Ms. König and her three children, to investigate the allegations that she was subjected to ill-treatment during interrogation, and to ensure that the perpetrators of such acts, if the allegations prove to be accurate, are made accountable.

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

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

Please accept, Ms. Ilham Ahmad, the assurances of our highest consideration.

Elina Steinerte
Vice-Chair of the Working Group on Arbitrary Detention

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