Mandate of the Special Rapporteur ion extrajudicial, summary or arbitrary executions

REFERENCE:
AL TUR 17/2020

7 October 2020

Excellency,

I have the honour to address you in my capacity as Special Rapporteur on extrajudicial, summary or arbitrary executions, pursuant to Human Rights Council resolutions 44/5.

In this connection, I would like to bring to the attention of your Excellency's Government information regarding the killing of Mrs. Orouba Barakat and Ms. Halla Barakat, mother and daughter, in September 2017 and the conviction and imprisonment of their relative, Mr. [redacted] for their murders, purportedly over unpaid wages.

According to the information received and further investigated:

Ms. Halla Barakat, a United States citizen, and Mrs. Orouba Barakat, a Syrian citizen, were both residents of Istanbul, Turkey. They were both journalists and Mrs. Barakat was reportedly developing evidence on gross human rights violations by the Government of the Syrian Arab Republic and by the Islamic State of Iraq and the Levant (ISIL).

Prior to her murder, Mrs. Orouba Barakat had indicated to colleagues that she was investigating gross human rights violations by the Syrian Government and collecting evidence, apparently in relation to violations in the prisons. She was an active figure in the Syrian Opposition Council. Ms. Halla Barakat was a reporter who worked for the Syrian opposition outlet Orient News. She had also worked on an ABC News investigation into alleged war crimes by Iraqi special forces. Both mother and daughter had been friends of [redacted] a humanitarian worker who was abducted and ultimately killed by ISIL, and they had advocated for her rescue and release. Reportedly, both women had regularly received death threats from individuals affiliated with the Syrian government, from pro-government Syrian paramilitary troops and from ISIL and other armed groups, both on the phone and on social media.

Mr. [redacted] the grandson of Mrs. Orouba Barakat's uncle, confessed to both murders. Mr. [redacted] is a former Free Syrian Army fighter. His father died when he was young, and his mother is an Alawite. Mr. [redacted] uncle on his mother's side reportedly fought for the Shabiha, a paramilitary group that supports the Government of the Syrian Arab Republic.

Mr[redacted] initially confessed that he spent the night of 19 September 2017 at the [redacted]s apartment and that he killed Ms. Orouba Barakat on the morning of 20 September, in an argument over a relatively small amount of money he claimed he was owed. He purportedly stated that he then killed Ms. Halla Barakat when she came out of the bathroom and started screaming.

Mr[redacted] later recanted and claimed that his interpreter had tricked him and convinced him that he would be dealt with leniency if he confessed. The interpreter allegedly worked as a security guard at the Istanbul Anatolian Courthouse. Mr. [redacted] now claims that he is innocent. He claims that he went to the apartment on the night of 19 September, found no one at home and spent the night in a nearby park. He claims that he returned to the apartment in the morning and again no one responded to his knocks. Subsequently, he left. CCTV cameras show Mr. [redacted] on 20 September in a t-shirt that is different than the one he wore on 19 September. He claims his shirt had gotten dirty while he slept in the park. He might had changed other items of clothing at that time as well.

It is my understanding that the police suspected Mr. [redacted] for a number of reasons, including that he did not try to contact Mrs. Barakat or her brother at work on 19 September, and that he apparently did not tell family members at the funeral, which he attended, that he had attempted to see Mrs. Barakat and Halla Barakat on the night that they were murdered. In addition, by the time he was questioned by the police, he no longer possessed the clothes he wore on those two days and he indicated that he either lost or threw out the clothing. He indicated, for example, that he threw out his shoes that he wore then because they were torn, and that he has lost the hat he wore. Allegedly, the police also believed he may have been given a key to the apartment by Mrs. Barakat.

It is unclear whether the investigative authorities considered if Mr. [redacted] acted in concert with or at the direction of others, such as representatives of the Syrian Government, or of an armed group such as ISIL.

According to the 2012 Joint Declaration on Crimes Against Freedom of Expression[1] there should be a presumption that crimes committed against journalists are in relation to their work and reporting until proven otherwise, and all relevant lines of enquiry related to the victim's expressive activities have been exhausted. Investigations should lead to the identification and prosecution of all of those responsible for crimes against freedom of expression, including direct perpetrators and instigators, as well as those who conspire to commit, aid and abet, or cover up such crimes.

It has been reported that Mr. [redacted] was convicted and sentenced to two life sentences on 13 March 20182 and his conviction was affirmed by the local appeals court in February 2019. Mr. [redacted] may be pursuing additional appeals.

<u>Participation of family members in the investigation</u>

[1] Adopted by the United Nations (UN) Special Rapporteur on Freedom of Opinion and Expression, the Organization for Security and Co-operation in Europe (OSCE) Representative on Freedom of the Media, the Organization of American States (OAS) Special Rapporteur on Freedom of Expression and the African Commission on Human and Peoples' Rights (ACHPR) Special Rapporteur on Freedom of Expression and Access to Information

Despite being registered as complainants in the Turkish courts over these murders and repeatedly requesting information, family members were not given notice of the hearings for Mr. [redacted] so that they could attend. They were not given any significant information on the investigation as it progressed or following the verdict. I have been informed that at least one family member was actually in the court building seeking information on the day the verdict was rendered but was not told of the hearing. The family learned of the verdict the following day. The family and friends reportedly sought to provide the police and the prosecution with information and evidence, but it did not appear that the investigator considered it necessary. Because of the Barakats' work and the death threats they had received, their family, friends and professional colleagues are concerned that their murders were politically motivated, and that the parties ultimately responsible remain at large.

International human rights law mandates that investigations be transparent to avoid precisely the type of distrust that appears to currently surround the investigation of these murders. I understand and recognize that your Excellency's Government may have in fact thoroughly investigated the murders, but a lack of transparency can prevent family, friends and the public from understanding what investigative steps were performed. "Investigative processes and outcomes must be transparent, including through openness to general public scrutiny, and to that of the families of victims. Transparency promotes the rule of law and public accountability and enables external monitoring of the efficacy of investigations." A/HRC/41/CRP.1, para. 266. "Any limitations on transparency must be strictly necessary for a legitimate purpose, such as protecting the privacy and safety of affected individuals, ensuring the integrity of ongoing investigations, or securing sensitive information about intelligence sources or military or police operations." Minnesota Protocol on the Investigation of Potentially Unlawful Death (2016), Section II.D.3, para. 33.

This transparency is particularly critical with respect to the family. The "participation of the family members or other close relatives of a deceased or disappeared person is an important element of an effective investigation." Minnesota Protocol on the Investigation of Potentially Unlawful Death (2016), Section II.D.3, para. 35.

> "The State must enable all close relatives to participate effectively in the investigation, though without compromising its integrity. The relatives of a deceased person must be sought, and informed of the investigation. Family members should be granted legal standing, and the investigative mechanisms or authorities should keep them informed of the progress of the investigation, during all its phases, in a timely manner. Family members must be enabled by the investigating authorities to make suggestions and arguments as to what investigative steps are necessary, provide evidence, and assert their interests and rights throughout the process. They should be informed of, and have access to, any hearing relevant to the

investigation, and they should be provided with information relevant to the investigation in advance."

I note that a murder investigation does not meet international standards without these protections.

Alleged confession

The interpretation services provided to the accused are critical to ensuring the fairness of the proceedings. Article 14 (3)(f) of the International Covenant on Civil and Political Rights (ICCPR)[3] provides that everyone charged with a criminal offence has the right "to have the free assistance of an interpreter if he cannot understand or speak the language used in the court." Interpretation assistance is one of the "constituent elements of the general concept of a fair trial"; the "interpreter's conduct must not be of such a nature as to impinge on the fairness of the proceedings."[4] It has been alleged that the interpreter/security guard, wrongfully encouraged Mr. [redacted] to confess. I note that this allegation raises doubt as to the validity of the confession and the fairness of the subsequent proceedings and should be investigated.

Effectiveness of the investigation

It has been alleged that some of the evidence is unclear, in relation for instance to where the attacks occurred, how the wounds were inflicted, and what the wounds revealed, if anything, about the assailant(s).

For instance, there is reportedly a dispute over the injuries that the Barakats sustained, with relatives suggesting the wounds were more consistent with a targeted attack. An autopsy found that Ms. Halla Barakat had multiple wounds to her neck. According to reports, Ms. Orouba Barakat's autopsy indicates that she also received multiple wounds, again predominantly to the neck, including a severed jugular vein. A relative who washed the bodies for their funeral did not observe wounds other than the severed jugulars. Bruises on the arms of both women and deep blue discoloration around their mouths and noses were also observed. I note that it is possible for relatives, while washing bodies for burial, to miss wounds reported in autopsy or to misinterpret injuries.

Furthermore, a bloody cloth with an impression left of a nose and mouth was allegedly found at the apartment. Relatives attempted to provide that cloth to the authorities, as well as a bloody bracelet and an empty detergent bag possibly previously containing the substance poured on the bodies, but reportedly the police did not consider them to be relevant.

The family is unaware of what forensic investigations were carried out in the apartment and whether hair, fibers and other evidence was recovered, both from the apartment and from Mr. [redacted]. This has led to numerous claims

[3] Turkey signed the ICCPR on August 15, 2000 and ratified it on September 23, 2003.
[4] Ucak v. United Kingdom, ECtHR, No. 44234/98, 24 January 2002.

about possible evidence. It appears that the prosecutor's report identifies shoe prints in the apartment, and that the investigator initially appeared to be looking for multiple assailants. If these prints were shoe prints, this might suggest unauthorized entry, as the Barakats required visitors to remove their shoes, and it might also suggest multiple assailants, depending on the number of different prints. Allegedly, the murder weapon, a cell phone of Mrs. Orouba Barakat and some of her documents have not been found. Mrs. Barakat's cell phone reportedly sent signals to a tower near the apartment 20 minutes before Mr. [redacted] left the vicinity on 20 September, suggesting that it was in the apartment at the time of the murder and he (or others) may have taken it. The apparent theft of Mrs. Barakat's cell phone and documents could potentially constitute the removal of any incriminating evidence she may have been collecting as part of her work as a journalist.

There also appears to be evidence that Mrs. Barakat felt the need to hide an envelope just before her murder. An individual apparently told the police that Mrs. Barakat gave her something in a white envelope and told her to hide it. It appears that your Excellency's Government may have investigated this report but that this envelope was taken. It is unknown what further investigation your Excellency's Government may have done.

Digital data on phones and computers, as well as the social media accounts of Mrs. Orouba Barakat, Ms. Halla Barakat and Mr[redacted], could also prove critical in establishing exactly who threatened the victims, and whether others were involved in the murders. Mrs. Orouba Barakat's cell phone appears to have been taken. Soon thereafter, the home page of Mrs. Orouba Barakat's Twitter account was changed to show a picture of Bashar al-Assad, and the proclamation, in Arabic: "The Golden Condor sends his greetings, Assad soldiers are everywhere." In addition, it appears that Ms. Halla Barakat's Twitter account was deleted following the murder, while no relative requested its deletion.

International cooperation

Given Ms. Halla Barakat's US citizenship, the United States Federal Bureau of Investigation (FBI) allegedly offered assistance in the investigation which was reportedly declined.

In conclusion, I consider that these murders are a matter of international concern. The political nature of the Barakats' work, and the death threats they received, make it imperative that a possible politically-motivated killing be considered and investigated and the evidence for and against that conclusion shared with the family and the public. While an open and transparent investigation, involving family members, will not guarantee results, such an investigation would make it more likely that all culpable parties are identified. It would guard against any guilty party going unpunished and against any doubts to linger as to the independence and effectiveness of the investigation.

In connection with the above alleged facts and concerns, please refer to the **Annex on Reference to international human rights law** attached to this letter which

cites international human rights instruments and standards relevant to these allegations.

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

1. Please provide any additional information and/or comment(s) you may have on the above-mentioned allegations. If any information is inaccurate, I would welcome being provided with the correct information and evidence.

2. Please clarify whether the investigation into the murders of Mrs. Orouba Barakat and Ms. Halla Barakat considered and eliminated motives in relation to the journalistic work and reporting. Their profiles and the patterns of targeting of journalists and human rights defenders by the Syrian authorities, ISIL and other armed groups would make such hypothesis a logical line of inquiry.

   a. Please provide information regarding what other theories as to the murders were investigated, what steps were taken to investigate those theories, and what conclusions were reached?

   b. In particular, was the possibility of politically motivated murders considered? If that possibility was rejected, on which basis was it rejected and when? If it has not been rejected, is that possibility still being investigated?

   c. Did the investigation consider the possibility that other individuals may have been involved in the planning or execution of these murders? What was done to investigate that possibility and had any conclusions been reached as to that possibility?

   d. When precisely, and why, did investigators determine that [redacted] was a suspect of the murders and how long thereafter was he taken into custody?

3. What evidence is there, including photographs of the wounds, and what conclusions were reached as to where the attacks occurred, how the wounds were inflicted, and what the wounds revealed, if anything, about the assailant?

4. Has there been an investigation conducted with regard to the allegation that that the interpreter/security guard, wrongfully encouraged Mr. [redacted] to confess?

5. Given Ms. Halla Barakat's US citizenship, would your Excellency's Government reconsider receiving assistance from the FBI, particularly with respect to investigating aspects of the case relating to social media?

6. What efforts did the prosecution undertake to find out who modified Mrs. Barakat's Twitter account and cancelled Ms. Barakat's account?

7. Please provide information in relation to the steps your Excellency's Government took to let the family participate in the investigation and any court proceedings.

8. Would your Excellency's Government consider meeting with me and/or the family to discuss the evidence that it found and how it reached its conclusions?

I would welcome the opportunity of speaking with the investigators about the following, specific issues, related to the evidence.

1. The Prosecutor's Report indicates that photographs and possibly videos were taken of the crime scene. Could copies of this evidence be released to the family or to their experts for independent examination?

2. Were any photographs taken during the autopsies of Mrs. Barakat and Ms. Barakat? If so, could copies of these photographs be released to the family or to their experts for independent examination?

3. Did your Excellency's Government make any conclusion as to whether the assailant was left-handed or right-handed, whether the wounds were made from behind the victim or from the front, and from what angle the wounds were made? What conclusions were reached? Was any blood spatter analysis done? Was your Excellency's Government able to conclude that only one assailant made the wounds? Was the weapon ever recovered, or at least conclusions made as to the type of weapon?

4. Did your Excellency's Government monitor Mr[redacted] movements or activities, or his phone and/or other devices? If so, what monitoring occurred, for what period, and what conclusions were reached?

5. Did your Excellency's Government investigate the victims' phone calls, social media interactions, e-mail, and other electronic communications before and after the murder to determine who might have attacked them and why? What evidence did your Excellency's Government collect? What investigation was carried out regarding the threats made against the victims?

6. Has your Excellency's Government located all of the victims' cell phones, computers and other devices? If not, what devices are missing and what efforts did your Excellency's Government make to find any missing devices? With respect to those that it found, did it review their devices to determine whether they had been pursuing sensitive investigations that might have been a motive for the crime?

7. Have the possessions of the Barakats, including any cell phones, computers or documents, been returned to their family and if not, why not?

This communication and any response received from your Excellency's Government will be made public via the communications reporting website within 60 days. They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

While awaiting a reply, I urge that all necessary interim measures be taken to halt the alleged violations and prevent their re-occurrence and in the event that the investigations support or suggest the allegations to be correct, to ensure the accountability of any person(s) responsible for the alleged violations.

I may publicly express our concerns in the near future as, in my view, the information upon which the press release will be based is sufficiently reliable to indicate a matter warranting attention. I also believe that the wider public should be alerted to the potential implications of the above-mentioned allegations. The press release will indicate that I have been in contact with your Excellency's Government to clarify the issue/s in question.

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

Agnes Callamard
Special Rapporteur on extrajudicial, summary or arbitrary executions

Annex
Reference to international human rights law

I would also like to refer to article 3 of the Universal Declaration of Human Rights and article 6 (1) of the International Covenant on Civil and Political Rights (ICCPR), ratified by Turkey on 23 September 2003, which respectively guarantee the right of every individual to life and security and provide that these rights shall be protected by law and that no one shall be arbitrarily deprived of his life.

In its General Comment No. 31, the Human Rights Committee stated that there is a positive obligation on States Parties to ensure the protection of the rights contained in the Covenant against violations by private persons or entities, which includes the duty to take appropriate measures to prevent, investigate, prosecute and punish those responsible and repair the damage caused by private persons or entities (CCPR / C / 21 / Rev.1 / Add.13, paras. 8 and 18). A failure to investigate and bring perpetrators of such violations to justice could in and of itself give rise to a separate breach of the ICCPR.

In line with the Principles on Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions (Prevention and Investigation Principles), in particular principle 9, there must be thorough, prompt and impartial investigations of all suspected cases of extra-legal, arbitrary and summary executions. This principle was reiterated by the Human Rights Council in Resolution 17/5 on the "Mandate of the Special Rapporteur on extrajudicial, summary or arbitrary executions" (OP 4). The Council added that this includes the obligation "to identify and bring to justice those responsible … to adopt all necessary measures, including legal and judicial measures, in order to bring an end to impunity and prevent the recurrence of such executions."

Furthermore, articles 19 and 20 of the Universal Declaration of Human Rights and articles 19 and 21 of the ICCPR guarantee the right to freedom of opinion and expression and of peaceful assembly. As indicated by the Human Rights Committee, attacks against individuals for exercising their right to freedom of expression, including through the arbitrary detention, torture, inhuman or degrading treatment or punishment, and enforced disappearance is incompatible with the ICCPR, see CCPR/C/GC/34. The duty to respect and ensure the rights of the Covenant entails a positive obligation to prevent attacks by other actors, including other States, see CCPR/C/21/Rev.1/Add. 13.