

Mandates of the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence; the Working Group on Enforced or Involuntary Disappearances; the Special Rapporteur on extrajudicial, summary or arbitrary executions; the Special Rapporteur on the human rights of internally displaced persons; the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment; and the Special Rapporteur on violence against women, its causes and consequences

REFERENCE:
AL OTH 74/2020

6 November 2020

Mr. Al-Abadeh,

We have the honour to address you in our capacities as Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence; Working Group on Enforced or Involuntary Disappearances; Special Rapporteur on extrajudicial, summary or arbitrary executions; Special Rapporteur on the human rights of internally displaced persons; Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment; and Special Rapporteur on violence against women, its causes and consequences, pursuant to Human Rights Council resolutions 36/7, 36/6, 44/5, 41/15, 43/20 and 41/17.

In this context, we would like to bring to your attention information we have received concerning **the absence in the political process between the Syrian government and the Syrian opposition, of negotiations regarding the design and implementation of transitional justice measures to address the gross violations of international human rights law and serious violations of international humanitarian law committed against civilians since March 2011, as well as the absence of meaningful victim participation in the process, including women and internally displaced persons (IDPs).**

According to the information received:

Since the Syrian conflict started in March 2011, gross violations of international human rights law and serious violations of international humanitarian law have been committed on a staggering scale, leaving hundreds of thousands of persons in need of justice, truth, reparations and guarantees of non-recurrence.

Since the initial efforts to facilitate a political negotiation in 2012, the political process has resulted in several outputs including the establishment of de-escalation zones in Syria – which led to the recapture of formerly opposition-held areas by the Syrian government – and the creation of the Constitutional Committee to amend or re-draft the 2012 Constitution. Negotiations have also focused on the release of detainees, with the establishment of the Working Group on the Release of Detainees/Abductees, the Handover of Bodies and the Identification of missing persons in December 2017. The Working Group is comprised of the three guarantor States – the Russian Federation, the Islamic Republic of Iran, and Turkey – with the Special Envoy of the Secretary-General for Syria participating as an observer and the International Committee of the Red Cross as a legal resource. More recently, the guarantors have

introduced in negotiations the question of the promotion and facilitation of the return of Syrian refugees from Lebanon.

The political process has been grounded in UNSC resolutions including Resolution 2165 (2014), 2254 (2015), and 2336 (2016), and the guarantors have affirmed their commitments to conducting negotiations in line with these resolutions and the purposes and principles of the UN Charter. They also committed to implementing in full UNSC Resolution 2254 (2015), which sets out a roadmap for a peace process, to solve the Syrian conflict through a political solution.

The negotiations to date – including the intra-Syrian talks and the Astana talks – have failed to include negotiations concerning the adoption of measures to address the gross violations of human rights and serious violations of international humanitarian law committed during the Syrian conflict, aimed at advancing truth, justice, reparations, and guarantees of non-recurrence. While some military detainees have been swapped through the Working Group, civilian detainees have not been released, nor has the issue of missing persons been addressed. Despite the important establishment of the Civil Society Support Room and the Women’s Advisory Board by the Office of the UN Special Envoy for Syria, the negotiations have lacked meaningful participation of victims, including women, and civil society has not been meaningfully consulted and involved in the procedures of the Working Group or in the talks.

We express serious concern that the political process between the Syrian government and the Syrian opposition has failed to include discussions regarding the design and implementation of transitional justice measures to address the gross violations of international human rights law and serious violations of international humanitarian law committed against civilians in Syria since March 2011. We express further concern at the absence of meaningful participation of victims, including women and IDPs, in the talks as well as in the procedures of the Working Group on the Release of the Detainees/Abductees, the Handover of Bodies and the Identification of Missing Persons.

Failure to include in peace negotiations measures aimed at addressing those violations and promoting access to truth, justice, reparation and guarantees of non-recurrence contravenes international standards and risks undermining peacebuilding efforts and the achievement of sustainable peace, as well as the meaningful inclusion of women and IDPs in the process. A comprehensive and victim-centered transitional justice process can contribute to breaking cycles of impunity and marginalization, which, if left unaddressed, increase the risks of recurrence.

In connection with the above alleged facts and concerns, we would like to recall the obligation to ensure the rights to truth, justice, reparation and guarantees of non-recurrence for gross violations of human rights and serious violations of international humanitarian law, as guaranteed by various international human rights instruments.

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 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 and/or comment(s) you may have on the above-mentioned allegations.
2. Please indicate if the political process includes negotiations aimed at the design and implementation of transitional justice measures to address the gross violations of international human rights law and serious violations of international humanitarian law committed against civilians since March 2011.
3. Please indicate if the political process includes effective, informed consultation with victims, including women, families of victims, internally displaced persons, and civil society representatives, in line with UN SC Resolution 1325 and others.
4. Please provide information in relation to the functioning of the Working Group on the Release of the Detainees/Abductees, the Handover of Bodies and the Identification of Missing Persons and whether victims and their families are consulted or participate in its work.

We would appreciate receiving a response within 60 days. Passed this delay, this communication and any response received from the Coalition will be made public via the communications reporting [website](#). They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

While awaiting a reply, we 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.

Please note that a letter expressing similar concerns was sent to the Government of the Syrian Arab Republic.

Please accept, Mr. Al-Abadeh, the assurances of our highest consideration.

Fabian Salvioli
Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence

Tae-Ung Baik
Chair-Rapporteur of the Working Group on Enforced or Involuntary Disappearances

Agnes Callamard
Special Rapporteur on extrajudicial, summary or arbitrary executions

Cecilia Jimenez-Damary
Special Rapporteur on the human rights of internally displaced persons

Nils Melzer
Special Rapporteur on torture and other cruel, inhuman or degrading treatment or
punishment

Dubravka Šimonovic
Special Rapporteur on violence against women, its causes and consequences

Annex

Reference to international human rights law

In connection with the above alleged facts and concerns, and without prejudice to the accuracy of these allegations, we would like to draw your attention to the relevant international norms and standards.

We would like to refer to the obligation to investigate and punish gross human rights violations and to provide redress to victims. Article 2 of the Covenant on Civil and Political Rights, acceded to by the Syrian Arab Republic on 21 Apr 1969, establishes the duty to adopt measures to ensure that persons whose rights or freedoms are violated have an effective remedy, and that such remedies are enforced when granted. Furthermore article 12 of the Convention Against Torture and other cruel, inhuman and degrading treatment or punishment (CAT), acceded to on 19 August 2004, requires the competent authorities to undertake a prompt and impartial investigation wherever there are reasonable grounds to believe that torture has been committed, and article 7 of the CAT, which requires State parties to prosecute suspected perpetrators of torture.

Human Rights Council resolution 12/11 on Human rights and transitional justice reaffirms the duty to prosecute perpetrators of gross violations of human rights and serious violations of international humanitarian law constituting crimes under international law, with a view to ending impunity (paragraph 7). Moreover, in its General Comment No. 31, the Human Rights Committee established the duty to investigate and punish serious human rights violations, including summary or arbitrary killings, torture and other cruel, inhuman or degrading treatment, and enforced disappearances (paragraph 18). Failure to investigate and prosecute such violations is in itself a breach of the norms of human rights treaties. Impunity for such violations can be an important element contributing to the recurrence of violations.

We would also like to refer to the inalienable right to know the truth about past events concerning the perpetration of heinous crimes and about the circumstances and reasons that led, through massive or systematic violations, to the perpetration of those crimes, as established in the updated Set of Principles for the Protection and Promotion of Human Rights through Action to Combat Impunity of February 2005 (principle 2). Full and effective exercise of the right to the truth provides a vital safeguard against the recurrence of violations (principle 5).

Furthermore, the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law establish the right of victims to receive adequate, effective and prompt reparation for the harm suffered, and to have access to relevant information on reparation mechanisms (paragraphs 10, 11 and 15).

In addition, General Comment 31 (par. 17) recalls the duty, pursuant to article 2 of ICCPR, to take measures to prevent the recurrence of violations. In this regard the Human Rights Committee recalls the need to adopt measures, beyond a victim-specific remedy, to avoid recurrence of human rights violations. Such measures may require changes in laws or practices.

The mandate of the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence has underscored the importance of adopting a comprehensive approach to address gross violations of human rights and serious violations of international humanitarian law and to prevent their recurrence, an approach that combines the elements of truth-seeking, justice initiatives, reparations, memorialization and guarantees of non-recurrence in a complementary and mutually reinforcing manner (A/HRC/21/46, summary). Although transitional justice should not be conceived primarily as a peacemaking instrument, numerous indicators demonstrate that it can contribute to sustainable peace and security by helping to break cycles of violence and atrocities, delivering a sense of justice to victims and prompting examinations of deficiencies in public institutions that may have enabled, if not promoted, those cycles. Lingering perceptions of injustice, failure to recognize crimes committed and continued discrimination against communities are risk factors for further violence and atrocities. A comprehensive transitional justice policy can contribute to breaking cycles of impunity and marginalization and, thus, reduce the risks of recurrence (A/HRC/37/65 paras. 11,13 and 84).

In its General Recommendation No. 30, the CEDAW Committee has noted that gender-based violence undermine women's equal and meaningful participation in political and public life, including in post-conflict contexts and peace negotiations. According to the Committee, women's equal, meaningful and effective participation are prerequisites for creating a society with lasting democracy, peace and gender equality. In that regard, the Committee recommended that States prevent, investigate and punish all forms of gender-based violence, in particular sexual violence perpetrated by State and non-State actors; ensure women's and girls' access to justice; ensure women's equal representation at all decision-making levels in national institutions and mechanisms, including in the armed forces, police, justice institutions and the transitional justice mechanisms (judicial and non-judicial) dealing with crimes committed during the conflict; and ensure that women and civil society organizations focused on women's issues and representatives of civil society are included equally in all peace negotiations and post-conflict rebuilding and reconstruction efforts (CEDAW/C/GC/30, paras. 37, 38, 42 and 46). UN Security Council Resolution No. 1325 (2000), and subsequent ones on Women, Peace and Security, have urged Member States to ensure increased participation of women at all decision-making levels in national, regional and international institutions and mechanisms for the prevention, management, and resolution of conflict.

Finally, the mandate of the Special Rapporteur on the human rights of internally displaced persons has highlighted that "Appropriate consultation and participation is needed in order for transitional justice approaches to take the views, needs and objectives of internally displaced persons fully into account. Ensuring that internally displaced persons are included at the outset in the design and planning, to the extent possible, and in the implementation of transitional justice measures directed towards them must be at the core of transitional justice processes. The enjoyment of human rights by internally displaced persons and progress towards durable solutions rest upon the fundamental principle that internally displaced persons have the right to be involved in decisions affecting them" and "The recognition that internally displaced persons have the right to participate fully in transitional justice mechanisms and peacebuilding processes must be reinforced, as must the responsibility of Governments to guarantee such participation in practice" (A/73/173 paras. 49 and 61).