

**Mandates of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism; the Working Group on Arbitrary Detention; the Special Rapporteur on extrajudicial, summary or arbitrary executions; the Special Rapporteur on the right to food; the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context; the Working Group on the use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination; the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance; the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment; the Special Rapporteur on trafficking in persons, especially women and children and the Special Rapporteur on the human rights to safe drinking water and sanitation**

Ref.: AL USA 2/2022

(Please use this reference in your reply)

1 February 2022

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism; Working Group on Arbitrary Detention; Special Rapporteur on extrajudicial, summary or arbitrary executions; Special Rapporteur on the right to food; Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context; Working Group on the use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination; Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance; Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment; Special Rapporteur on trafficking in persons, especially women and children and Special Rapporteur on the human rights to safe drinking water and sanitation, pursuant to Human Rights Council resolutions 40/16, 42/22, 44/5, 32/8, 42/16, 43/14, 42/9, 43/36, 43/20, 44/4 and 42/5.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the situation of a number of boys and men holding your Excellency's citizenship currently detained in North-East Syria.

According to the information received:

Since 2019, there are approximately 10,000 men and 750 boys, some as young as nine, detained for alleged association to ISIL in approximately fourteen detention centres throughout North-East Syria, mostly converted schools and hospitals. Of these at least 2,000 men and 150 boys are reportedly third country nationals. Some boys are allegedly detained together with adult men, some are held in the same facilities but separated from adults, and at least 100 boys between the ages of 11 to 17 from 35 nationalities are detained in the closed Houry "rehabilitation" centre. Most of these boys were reportedly transferred from the camps of al-Hawl and Roj to detention centres upon reaching the age of 10 -12, some taken away from the care of their mothers and separated from their siblings. Incarcerated third country national boys are not allowed to visit

their families in the camps. None of these detention sites or “prisons” allegedly meet the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Mandela Rules). Prisoners are held in overcrowded collective cells of 20 to 25 people in inhumane conditions, with limited access to food and medical care, open latrines, and poor ventilation, which means that infectious diseases, such as tuberculosis and scabies, might be rampant. Concerns about the spread of COVID-19 in these conditions remain high. Hundreds of individuals have died in the prisons, and there have been several riots which appear to be aimed at improving their extremely poor detention conditions, demanding family access and some form of legal process. The detainees have allegedly not gone through any judicial process to determine the legality or appropriateness of their detention, nor have they been brought before a judicial authority. There are also reports of incommunicado detention.

One of the largest of these prison facilities is Al-Sina’a military prison, found in the Ghwayran neighbourhood of Hasakah, which reportedly holds approximately 5,000 individuals. While approximately 50 children are detained together with men, most are detained in a separate annex for children, which holds approximately 640 children, including 150 third country nationals. It was reported that on 20 January 2022 this prison was attacked by ISIL and that significant numbers of the children held there are being used as human shields.

The Global Coalition to Defeat ISIL, led by the United States and composed of 84 members, has provided substantial stabilisation assistance to increase the security of the prison, notably training and equipment to increase local authorities’ capacity to manage the detention facility. In 2020, the Coalition provided more than \$2 million dollars for riot equipment and security equipment, including cameras, structural security wire, improved doors and personal protective equipment to stop the spread of COVID-19. There are also reports about the financing for improvement to and expansion of existing detention facilities, crediting the Coalition generally as the source of funds, notably with plans to expand the capacity of rehabilitation centres for boys to accommodate up to 500 more children.

The United States has a budget for security improvements to the prison facilities in the region, primarily targeted at hardening the external perimeter security and intelligence.

Special Procedures mandate holders have expressly affirmed the obligations of States regarding their third country nationals to urgently repatriate those nationals, subject to the principle of non-refoulement. Your Excellency’s government has already received a communication on this issue (AL USA 8/2021) on 26 January 2021. We thank Your Excellency’s government for its response dated 7 June 2021.

While we do not wish to pre-judge the accuracy of the above-mentioned allegations, we would like—through the present communication—to express our profound concern regarding the detention situation of the men and boys in North-East Syria, including that of citizens of your Excellency’s government.

We are extremely concerned at the continued detention of the male children and adult men in the various detention centres in North-East Syria, including nationals of your Excellency's Government. According to the information received, there is allegedly no legal basis for the blanket detention, no judicial authorisation, review, control or oversight of these detentions which entirely lack in predictability and due process of law.

We underscore that the prohibition of arbitrary detention, recognised both in times of peace and armed conflict, is well-established under international law and can be considered as a peremptory or *jus cogens* norm of international law. Together with the right of anyone deprived of liberty to bring proceedings before a court in order to challenge the legality of the detention, these rights are non-derogable under international treaty and customary law. Arbitrary deprivation of liberty can never be a necessary or proportionate measure, given that the considerations that a State may invoke pursuant to derogation are already factored into the arbitrariness standard itself. Thus, a State can never claim that illegal, unjust, or unpredictable deprivation of liberty is necessary for the protection of a vital security or other interest or proportionate to that end. The sub-contraction or direct facilitation of liberty deprivation by non-State actors does not negate a State's obligations to protect, promote and fulfil its human rights treaty obligations.<sup>1</sup>

We also note that administrative security detention presents severe risks of arbitrary deprivation of liberty. As noted by the Human Rights Committee, such detention would normally amount to arbitrary detention as other effective measures addressing the threat, including the criminal justice system, would be available in countries of citizenship.

We are deeply concerned at the facilitation of alleged mass arbitrary detention by States both directly and indirectly in these detention facilities in North-East Syria. Administrative – including security – detention can only be invoked by States under the most exceptional circumstances where a present, direct and imperative threat exists. The burden of proof lies on States to show that an individual poses such a threat which cannot be addressed by alternative measures. States also need to show that detention does not last longer than absolutely necessary, that the overall length of possible detention is limited and that they fully respect the guarantees provided for by article 9 of the ICCPR. Prompt and regular review by a court or other tribunal possessing the same attributes of independence and impartiality as the judiciary is a necessary guarantee for those conditions, as is access to independent legal advice, preferably selected by the detainee, and disclosure to the detainee of, at least, the essence of the evidence on which the decision is taken. There is no legal basis in international human rights law for non-State actors to engage in administrative, security or other detention practices.<sup>2</sup> We stress that there is no human rights based legal basis for the detention by the non-State actor, which would be a necessary condition for any detention, during or after conflict. In any event, both international human rights law and international humanitarian law clearly prohibit arbitrary and indefinite detention where individuals are held without proper charge, due process of law, and on the basis of individual responsibility for imperative reasons, which requires an individual assessment of the risk, and a right of review by a

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<sup>1</sup> This obligation extends to the work in question between carried out by private entities *Yassin et al. v. Canada*, Comm. No. 2285/2013, Human Rights Committee, (26 July, 2017) para. 6.5

<sup>2</sup> <https://digital-commons.usnwc.edu/ils/vol91/iss1/5/>

judicial authority. There is also no permissible human rights basis for States to sub-contract directly or indirectly administrative or security detention to non-State actors on the territory of third States.

We remain extremely concerned that in the cases of deprivation of liberty of the men and boys in North-East Syria including your nationals, despite the exceptional circumstances, none of the conditions to prevent arbitrary detention – a right so fundamental that it remains applicable even in the most extreme situations – are respected, and that no steps towards terminating or reviewing the legality of detention have been taken, despite many of these individuals being detained for almost three years, which in practice amounts to the possibility of indefinite detention. We are profoundly concerned that what is now emerging is capacity building and technical assistance provision supporting indefinite mass detention of men and boys including your nationals enabled and supported in part by the Coalition of which your Excellency's government is a member.

We are gravely concerned at the continued detention in multiple prisons and prison-like 'rehabilitation' centres of a large number of male children and adolescent boys – at least 850 – in North-East Syria on what appears to be multiple spurious grounds. We have confirmed that these children include citizens of your Excellency's government. The Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism stresses that boys were primarily brought to Syria or Iraq by parents or other family members or were born in Syria to individuals who travelled there. An unknown number of children were allegedly conceived from acts of rape and sexual coercion during the conflict or forced marriage. No child is responsible for the circumstances of his birth and cannot be punished, excluded, deemed unworthy of human rights protection by virtue of the status or acts of his parents. Children do not enjoy the independence, agency and range of choices open to adults, and the situations described above can never be considered as including meaningful consent.

We recall that, according to international law, children are considered vulnerable and in need of special protection. Consequently, States must treat children, including children related to or associated with designated terrorist groups, primarily as victims when devising responses, including counter-terrorism responses. Children who are detained for association with armed groups should be recognised as victims of grave abuses of human rights and humanitarian law. We underscore that under international law, child association with terrorist groups is considered as involving some form of coercion or constraint. We stress the evidence at hand that many of the boys have been abused by ISIS as child soldiers and in that context forced to commit serious crimes under international law.

We therefore decry ill-grounded presumptions that all male children, over the age of 10 to 12 in the Syrian conflict zone are to be presumed violent extremists, terrorists, or foreign fighters. Given the lack of agreed definition on all of these terms their application to male children who have experienced systematic violations of their human rights is profoundly regrettable. Extending the arm of counter-terrorism to children allegedly associated with non-state armed groups designated as 'terrorist' shifts the discourse from protection to punishment, from protected victim to security threat. In turn, this also changes the protection to which they are entitled notably

regarding detention, applicability of criminal law and treatment under criminal justice, as well as their rights, away from a child right perspective and the question of responsibility for violations of the rights of the child, including recruitment and use. The interplay of serious violations of international law committed by persons who are or were previously child soldiers is not new to international criminal law. Recovery, reintegration and family reunification should be prioritized,<sup>3</sup> in line with the fundamental right to a child's family life, the right to not be arbitrarily separated from their parents and to maintain contact with their parents if separation occurs. States should always place the child at the centre of considerations, and help ensure their rights, even when the child is considered a potential security risk,<sup>4</sup> or where the child's interests conflict with the State's perceived security interests.

The Special Procedures mandate holders underscore that international law is very clear concerning the detention of children. In all cases, detention should be used as a measure of last resort and for the shortest amount of time possible, taking into account the extreme vulnerability and need for care of unaccompanied minors (CCPR/C/CG/35, para. 18). Yet, as far as we can assess, no human rights and rule of law compatible determination has been made to justify their detention, either in prisons or in rehabilitation centres. In all these contexts, the children concerned were treated with no attention to their best interests (UNCRC, article 3); no legal process has been undertaken to determine the appropriate care, responsibility rights or needs of these children (UNCRC, articles 27 and 40); traumatic separation from mothers has been conducted without any legal regulation or recourse (UNCRC, articles 9 and 16); physical and psychological violence to young boys has no remedy (UNCRC, articles 19, 20, 24, 34 and 37); health is profoundly compromised by sub-human standards of indefinite detention including augmented risks by virtue of the Covid-19 pandemic (UNCRC, article 24). Moreover, the technical and capacity building support to enable those actors to continue to secure and extend their detention, directly implicates your Excellency's government in the process of and responsibility for their continued detention. Moreover, the reports of the Special Rapporteur on trafficking in persons, especially women and children (A/HRC/47/34) highlight the principle of non-punishment, which must be applied without discrimination to all trafficked persons.

We are also concerned at the conditions in which prisoners are held in overcrowded collective cells, which amount to a violation of the right to an adequate standard of living, including food and housing, which applies to everyone without distinction of any kind, regardless of any status, as enshrined in article 25(1) of the Universal Declaration of Human Rights, as well as article 11(1) of the International Covenant on Economic, Social and Cultural Rights.

For the boys, including your nationals, placed in 'rehabilitation' centres, similarly, none have had any or adequate legal basis to justify their detention; none were legally represented in any judicial or administrative process placing them there; no 'best interest' test was or could have been adequately applied to decide on their detention; no assessment of their protection or other needs has been conducted; no child has meaningful exit from these places of detention unless and until he is repatriated to his country of citizenship in accordance with international law. The fact of their detention and the support of third country States to facilitate and sustain that

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<sup>3</sup> Manfred Nowak, "The United Nations Global Study on Children Deprived of Liberty", p. 615.

<sup>4</sup> UN Counterterrorism Centre, "Handbook on Children affected by the FTF Phenomenon", 2019, para. 62.

incarceration correspondingly creates direct obligations in respect of their conditions of detention.

Further, we express our concern at the automatic transfer of all boys including potentially your nationals, from various child detention centres to adult detention centres at the very latest when they turn 18. We underscore that the unlawfulness of detention as a child does not render such detention lawful once a child crosses the threshold of adulthood. There is no lawful basis to detain an adult based on their newly acquired adult status when previous detention was in violation of international law. The “status” of such individuals remains that of presumed victim until evidence of specific acts constituting serious crimes under domestic or international law are adduced. The spectre of a ‘cradle to grave’ detention cycle for male children including your child nationals in North-East Syria, supported and enabled by third country States, is of profound concern to us.

The entrenchment and protraction of the alleged arbitrary deprivation of liberty in these inhumane conditions in North-East Syria of men and boys is premised on the direct security assistance provided by the Coalition, which your Excellency’s government has supported, to a non-State entity. This concern is heightened by the alleged presence of some of your Excellency’s nationals in the detention centres. We maintain the firm opinion that the perpetuation of a situation where detainees’ non derogable right to not be arbitrarily detained and to have their detention judicially authorised and reviewed remains violated can raise serious questions of State responsibility and of complicity in the facilitation, sustainment and continuation of the serious human rights violations that are taking place in the prisons and detention centres in North-East Syria.

While it is generally understood that jurisdiction by States is a territorial matter, it can also “sometimes” be exercised outside the national territory.<sup>5</sup> Article 2 of the International Covenant on Civil and Political Rights requires contracting States to “undertake to respect and to ensure” the realization of rights contained in the Covenant without distinction. It is our clear position that where serious violations of jus cogens rights are perpetrated through contiguous actions of a State, a jurisdictional link exists for the purposes of the application of human rights law.<sup>6</sup> She finds such capacity building and technical assistance directly engages Article 2(1) of the International Covenant on Political and Civil Rights namely creating responsibilities that are “subject to [your State’s] jurisdiction”.

The provision of technical assistance and capacity building which prima facie produces direct and identifiable effects outside one’s territory<sup>7</sup> in furtherance of maintaining mass arbitrary detention, including for your Excellency’s government own nationals held by non-State actors in overseas territories is simply incompatible with this core obligation under Article 2(1) of the Covenant.<sup>8</sup> Regional human rights courts

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<sup>5</sup> Para 109 of ICJ Wall decision

<sup>6</sup> ECtHR Al-Skeini.

<sup>7</sup> *Drozd and Janousek v. France and Spain* judgment of 26 June 1992, Series A no. 240, p. 29, para. 91

<sup>8</sup> Regional courts have found that consent /acquiescence of territorial authorities to exercise some form of public power normally exercised by territorial authorities can imply jurisdiction (ECtHR, Banković). The exercise of executive or judicial functions on the territory of another State can also lead to the recognition of jurisdiction (ECtHR, *Drozd and Janousek*; ECtHR, *Gentilhomme and Others v. France*).

have found prisons to be areas of total and exclusive de facto and de jure control.<sup>9</sup> We agree that military prisons have the status of “quasi-territorial enclave.”<sup>10</sup> In light of the closed and controlling nature of a prison or detention environment, the control exercised here is specific and tailored.

The express effect of sustaining and enabling such a rights’ negating environment has a direct link to actions taken by your Excellency’s government. The Special Rapporteur underscores a guiding principle of international human rights law, namely the need to avoid an unconscionable double standard, by allowing a State to perpetuate violations on foreign territory which would not be permitted on its own territory. A teleological understanding of effective human rights protection, as reflected by this proposition, implies that in all of its directly attributable actions outside of its territory a State must respect its human rights obligations and that responsibility follows causality.<sup>11</sup>

Given the provisions of direct and unequivocal capacity building assistance to the non-State actors detaining your Excellency’s nationals and other third country nationals, the Special Rapporteur is of the view that the ‘authority and control’ exercised by your government engages international legal responsibility. There has been no international or domestic legal authorization for these detention facilities and the Special Rapporteur sees no legal basis on which the detention regime supported by third country technical support and capacity building is justifiable under international law. We maintain the firm opinion that the perpetuation of a situation where detainees’ non derogable right to not be arbitrarily detained and to have their detention judicially authorised and reviewed remains violated raises serious questions of State responsibility and of complicity in the facilitation, sustainment and continuation of the serious human rights violations that are taking place in the prisons and detention centres in North-East Syria. This concern is heightened by the alleged presence of some of your Excellency’s nationals in the detention centres.

We recall that in addition to a due diligence duty aimed at ensuring that any security aid or assistance is compliant with international human rights law (A/76/261), where serious breaches of international law are committed, States must not render aid or assistance in maintaining the situation created by the serious breach and must cooperate to bring it to an end. The requirements of effectively demonstrated due diligence have an element of proportionality: the greater the links and control a state exercises, the greater the standards of diligence that this state shall demonstrate.

Considering the above, and particularly in light of recent developments, we reiterate again that the voluntary and human rights compliant repatriation of boys and men who are citizens of your Excellency’s government is the only international law-compliant response to the complex and precarious human rights, humanitarian and security situation faced by those detained in inhumane conditions in overcrowded prisons or other detention centres in North-East Syria. As we had already stressed and

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<sup>9</sup> Al-Saadoon and Mufdhi v United Kingdom, paras. 87 and 88.

<sup>10</sup> Al Skeini para 123.

<sup>11</sup> Note that in the ICJ’s Nicaragua case, the United States was held responsible for its direct role in training, arming, equipping, financing and supplying the contra forces or otherwise encouraging, supporting and aiding military and paramilitary activities in and against Nicaragua, as well as for producing a manual that encouraged violations of international humanitarian law (para. 294), thus supporting the position, beyond the test of control, of primary responsibility for its own conduct abroad.

as recent security developments confirm, given the geopolitical fluidity of the region currently controlled by various non-State armed groups, repatriations are key to States' long-term security interests. Any repatriation must comply with international law, including with the absolute prohibition of torture, ill treatment, and refoulement. The building and support to the maintenance of prisons designed to keep these boys in 'cradle to grave' detention is incompatible with your Excellency's government obligations under international law, particularly given the specific nature of the prohibition of arbitrary detention as a jus cogens or non-derogable customary law norm.<sup>12</sup>

Given the proximity of an international military base very close to Hasakah prison, the number of civilian and other delegations that have had access to the camps and the prisons, and the number of successful repatriations including of men that have taken place, the lack or the difficulties of access to the detainees who are nationals of your Excellency's government should not be put forward as a reason for not repatriating your nationals.

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 assessment of the detention of boys and men, nationals of your Excellency's government.
2. Please provide any additional information and/or comment(s) you may have on the above-mentioned technical support, capacity building and security assistance to the security and enhancement of the prison in Hasakah.
3. Please provide information on the actions taken by your government to protect the fundamental rights of boys and men, particularly nationals of your country, held in the prison in Hasakah and other detention centres in North-East Syria.
4. Please explain the measures that your government has taken to repatriate your citizens from the prisons and detention centres in North-East Syria and provide them with adequate procedures that will ensure respect for their right to liberty and security and to a fair trial.
5. Please provide any additional information you may have regarding the security support and stabilization assistance provided by the Coalition, its funding and the use of these Coalition funds, as well the actual

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<sup>12</sup> On the question of functional jurisdiction, see UN Committee on the Rights of the Child, CRC/C/85/D/79/2019-CRC/C/85/109/2019 and CRC/C/86/D/R.77/2019 and AL USA 8/2021.

financial or other engagement of your Excellency's government in this process.

6. Please provide any information you may have on how access to safe drinking water, water for hygiene purposes and adequate sanitation, is being ensured in the detention centres, given the spread of diseases and the current COVID 19 pandemic.

We would welcome an early response to this letter. 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.

We may consider to publicly express our concerns in the near future as, in our view, the information at hand is sufficiently reliable and alarming to indicate a matter warranting immediate attention. We also believe that the wider public should be alerted to the potential implications of the above-mentioned allegations. Any expression of concern on our part will indicate that we have been in contact with your Excellency's Government's to clarify the issue/s in question.

We would like to inform that a similar communication has been sent to other countries whose nationals are also in detention in North-East Syria including in in prisons such as Hasakah, other detention centres and Al-Hawl and Raj camps.

A copy of this communication has been sent to the Syrian Arab Republic.

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

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Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism

Miriam Estrada-Castillo  
Vice-Chair of the Working Group on Arbitrary Detention

Morris Tidball-Binz  
Special Rapporteur on extrajudicial, summary or arbitrary executions

Michael Fakhri  
Special Rapporteur on the right to food

Tlaleng Mofokeng  
Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health

Balakrishnan Rajagopal  
Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context

Sorcha MacLeod

Chair-Rapporteur of the Working Group on the use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination

E. Tendayi Achiume

Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance

Nils Melzer

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

Siobhán Mullally

Special Rapporteur on trafficking in persons, especially women and children

Pedro Arrojo-Agudo

Special Rapporteur on the human rights to safe drinking water and sanitation

## **Annex**

### **Reference to international human rights law**

In connection with the above alleged facts and concerns, we respectfully call your Excellency's Government's attention to the relevant provisions enshrined in the Universal Declaration of Human Rights (UDHR), the International Covenant on Civil and Political Rights (ICCPR) and the United Nations Convention on the Rights of the Child (UNCRC). More specifically we consider the international human rights standards applicable under article 9 of the ICCPR; article 14 of the ICCPR and 10 of the UDHR which guarantee the right to fair criminal proceedings and a set of protecting provisions contained in the UNCRC. We also consider several concrete interpretations provided by the Human Rights Committee on related issues and protective norms contained in several General Assembly and United Nations Security Council's resolutions on this matter.

#### Prohibition of arbitrary detention and detention of boys:

In its 2021 Report (A/HRC/46/55), the Independent International Commission of Inquiry (IICI) on the Syrian Arab Republic explained that regardless the security threat posed by many alleged former ISIL members, blanket internment of civilians who originally resided in areas formerly controlled by ISIL through violence cannot be justified. Moreover, this Commission specified that among the civilians interned since 2018 there are tens of thousands of children, elderly, infirm, disabled persons, and other individuals who do not represent any imperative security threat. Consequently, the ongoing internment of these encamped residents continues to amount to arbitrary detention.

The Working Group on Arbitrary Detention has consistently sustained that all forms of arbitrary deprivation of liberty are prohibited by international law. In its Deliberation No. 9 (2012), this Working Group thoroughly analysed the definition and scope of arbitrary deprivation of liberty and concluded that this violation of fundamental freedoms constitutes a peremptory or jus cogens norm of international law. The Human Rights Committee (Comment No. 29) attained the same conclusion adding that the right to take proceedings before a court to enable the court to decide without delay on the lawfulness of detention also falls under the category of non-derogable rights. The Committee also insisted on the fact that even in emergency situations, these guarantees must be upheld.

We also wish to recall that anyone detained has the right to challenge the legality of his or her detention before a court, as envisaged by article 9 (4) of the Covenant. According to 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),<sup>13</sup> the right to challenge the lawfulness of detention before a court is in fact a peremptory norm of international law which applies to all forms of deprivation of liberty and to all situations of deprivation of liberty, including not only to detention for purposes of criminal proceedings but also to situations of detention under administrative and other fields of law, including security detention and

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<sup>13</sup> See also A/HRC/13/30, at paras. 76-80.

detention under counter-terrorism measures. Moreover, it also applies irrespective of the place of detention or the legal terminology used in the legislation.

Additionally, the UN Human Rights Committee (Comment 35, para. 15) considers that administrative detention or internment as a security measure disregarding prosecution on a criminal charge presents severe risks of arbitrary deprivation of liberty. This kind of detention amounts to arbitrary detention as other effective measures addressing the threat, including the criminal justice system, would be available. Even if, under absolutely exceptional circumstances, a present, direct and imperative threat is invoked as the basis of the detention of persons considered to present such a threat, the burden of proof lies on States parties to show that the individual poses such a threat and that it cannot be addressed by alternative measures, and that burden increases with the length of the detention.

#### International law provisions applicable to children in camps:

Regarding the detention of boys, we wish to stress that detention should be used as a measure of last resort and for the shortest amount of time possible, taking into account the extreme vulnerability and need for care of unaccompanied minors (CCPR/C/CG/35, para. 18). No human rights and rule of law compatible determination has been made to justify their detention, either in prisons or in rehabilitation centres. The UN Convention on the Rights of the Child (UNCRC, art 37(b)) provides that no 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. The Paris Principles and Guidelines on Children Associated with Armed Forces or Armed Groups, (art. 8) also refer to this aspect. Through article 40 of the UNCRC, States recognize the right of every child alleged as, accused of, or recognized as having infringed the penal law to be treated in a manner consistent with the promotion of the child's sense of dignity and worth, which reinforces the child's respect for the human rights and fundamental freedoms of others and which takes into account the child's age and the desirability of promoting the child's reintegration and the child's assuming a constructive role in society.

We respectfully recall that the particular rights applicable to children, protected under the UN Convention on the Rights of the Child (UNCRC) and its Optional Protocols, state that children must always be treated primarily as victims and the best interest of the child must always be a primary consideration (UNCRC, article 3). Under the UNCRC, children have the right to life (article 6); physical and mental wellbeing, care and protection (article 20 and 37), and to prevent the abduction of, the sale of or trafficking in children for any purpose or in any form (articles 3, 19, 36 and 35); birth registration, name and nationality (article 7); identity (article 8); play, leisure and culture (article 31); and an adequate standard of living (article 27), all of which are severely impaired in the camps. We stress, in particular, the right to health (article 24(2)), especially in the Covid-19 pandemic context and the right not to be arbitrarily deprived of liberty (article 37 and Paris Principles). Indeed, deprivation of liberty for children should be used only as a measure of last resort and for the shortest appropriate period. Furthermore, children shall not be separated from his or her parents against their will (article 9) and shall not be subjected to any arbitrary or unlawful interference with his or her family (article 16). States must ensure that the rights provided for in the

UNCRC are respected and that appropriate measures are taken to protect and care for the child (article 3), to the maximum extent of available resources and, where needed, within the framework of international co-operation (article 4). States also have an obligation to take all appropriate legislative and administrative measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, mistreatment or exploitation, including sexual abuse (articles 19 and 34).

In line with the Convention on the Rights of the Child, UN Security Council Resolutions 2427 (OP20) and 1314 (2000), General Assembly Resolution 60/1, the 2007 Paris Principles and the Guidelines on Children Associated with Armed Forces or Armed Groups, the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism (Position on the human rights of adolescents/juveniles being detained in North-East Syria, 2021), considers that children detained for their alleged association with terrorist groups must be treated primarily as victims of terrorism. Children do not enjoy the independence, agency and range of choices open to adults. Even in cases where boys may have travelled to Syria to join ISIS or were not otherwise forcibly recruited, most child association with terrorist groups involves some form of coercion or constraint (Report UN HCHR, A/HRC/40/28, para. 36).

Duty to act with due diligence to protect the rights of nationals deprived of their liberty in the camps

As stated above, both States and international entities must respect a due diligence duty to ensure that any assistance in the area of security is consistent with international human rights standards. Moreover, article 41 of the International Law Commission's provisions on Responsibility of States for Internationally Wrongful Acts stipulates that where a serious human rights violation occurs, States must not contribute to its perpetration and must take action to put it to an end.

The Human Rights Committee in its General Comment No. 36 (2018) on the right to life (article 6 of the ICCPR) established that the determination of whether States have acted with due diligence to protect against unlawful death is based on an assessment of: (a) how much the State knew or should have known of the risks; (b) the risks or likelihood of foreseeable harm; and (c) the seriousness of the harm. In its Report Application of the death penalty to foreign nationals and the provision of consular assistance by the home State (A/74/318), the Special Rapporteur on extrajudicial, summary or arbitrary executions indicated that this duty to act with due diligence to ensure that the lives of their nationals are protected from irreparable harm to their life or to their physical integrity applies where acts of violence and ill-treatment are committed by state actors or other non-State actors party to a conflict.

It is noteworthy that according to the Standard Minimum Rules for the treatment of prisoners, approved by the UN Economic and Social Council, prisoners should be provided with water and articles necessary for health and cleanliness as well as drinking water, that shall be available to every prisoner whenever needed (Resolutions 663 C (XXIV) of 31 July 1957 and 2076 (LXII) of 13 May 1977). These standards are minimum and should always be granted, even more, with the current spread of COVID 19, which has shown worldwide the paramount relevance of water for hygiene and cleanliness purposes.