

Mandates of the Special Rapporteur on extrajudicial, summary or arbitrary executions; the Working Group on Arbitrary Detention; the Working Group on Enforced or Involuntary Disappearances and the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence

Ref.: AL OTH 28/2022
(Please use this reference in your reply)

12 May 2022

Dear Mr. İlham Ehmed,

We have the honour to address you in our capacities as Special Rapporteur on extrajudicial, summary or arbitrary executions; Working Group on Arbitrary Detention; Working Group on Enforced or Involuntary Disappearances; and Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence, pursuant to Human Rights Council resolutions 44/5, 42/22, 45/3 and 45/10.

In this connection, we would like to bring to your attention information we have received concerning allegations of the lack of measures taken to conduct comprehensive and thorough search for individuals disappeared by the so-called Islamic State of Iraq and Levant (ISIL) in Syria and lack of investigations compliant with international standards with regard to mass graves in areas now controlled by the Autonomous Administration of North and East Syria (AANES). We have also received information on the alleged operation of local counter-terrorism mechanisms which do not comply with international due process standards, the alleged failure to consistently question and prosecute former ISIL members in relation to acts tantamount to enforced disappearance and extrajudicial executions and the application of amnesties or similar measures to former ISIL members leading to impunity.

According to the information received:

Investigations of mass graves and places of detention

The AANES is now in de facto control of some areas which were formerly under the control of ISIL. Whilst ISIL was in control of these areas, the group widely detained individuals incommunicado in unknown locations in conditions tantamount to enforced disappearance. It is estimated that the fate and whereabouts of more than 8143 individuals detained by ISIL remain unknown. Relatives who approached ISIL officials for information about their family members rarely received information and were sometimes detained themselves.

Since AANES has come to control the territory in question, there has not been an overarching official system or responsible body tasked with registering or collecting information on these cases. There is no central focal point to submit or request information on missing civilians whereas reportedly there is a focal point for missing military personnel. Instead, different cities have addressed the issue in different ways. For example, in Kobani, the local de facto authorities

reportedly established a committee for the disappeared, while in Raqqa members of the governorate's Civil Council said that the intelligence services were responsible for investigating the issue. In 2021, the "Syrian Missing Person and Forensic Team" was established, which is in charge of opening mass graves in Raqqa, taking samples of bodies for further identification, storing documents and belongings of the victims, and receiving requests for information from the families of those disappeared.

Additionally, 28 mass graves reportedly containing thousands of bodies have been found. However, by October 2020, only 629 of the 6072 exhumed bodies had been identified, the identities of which were already known to many of their relatives. It is alleged that, in one excavation in Raqqa in 2018, while the excavating team worked carefully, they lacked forensic expertise or equipment and used a methodology appearing to fall short of international standards. Teams in other areas apparently face similar difficulties.

Furthermore, on-site investigations have not been conducted into former ISIL detention facilities and the facilities have reportedly not been guarded or preserved so as to safeguard any evidence they may contain, including documents and belongings of people who were kept in the facilities.

AANES Court System

AANES have detained thousands of ISIL suspects and family members. Some have been arrested without adequate evidence, and spent extended periods in pre-trial detention in seriously overcrowded conditions. In military raids and campaigns in Raqqa and Deir Ezzor governorates to arrest individuals suspected of belonging to ISIS, individuals were reportedly detained without presenting an arrest warrant, blindfolded, and forced into military vehicles without being informed at any stage of the reason for their detention. Clear regulations also do not appear to be in place regarding how long ISIS suspects may be legally detained prior to trial, potentially leaving individuals in custody for months or years. Reportedly, children have been held with adult prisoners and there is inadequate access to health care which has reportedly led to deaths.

Some individuals have been tried by local counter-terrorism courts known as People's Defense Courts applying a local counter terrorism law enacted in 2014. In many of these proceedings, it is alleged that crimes, such as alleged acts tantamount to enforced disappearance and extrajudicial killings, beyond the mere membership of ISIL are left unaddressed. Detainees are not questioned on the fate and whereabouts of the disappeared, ISIL's detention practices or regarding any role they may have played in the commission of international crimes. Some cases in relation to other crimes appear to have been taken up selectively, concerning Syrian Democratic Forces (SDF)-affiliated victims or Yazidi victims.

The courts reportedly operate with serious procedural flaws. The defendants are allegedly not allowed to hire lawyers or challenge court decisions. The courts do not allow victims to provide evidence against ISIL members. Victims do not have access to court proceedings or know the outcome of such hearings.

Moreover, the courts appear not to be recognized by actors other than AANES which raises issues regarding enforceability of the rulings.

Some ISIL fighters have also been released through tribal mediation and other measures similar to amnesties, including through the SDF/AANES amnesty decree of October 2020. None of the individuals released were reportedly interrogated or investigated for crimes committed during their membership of ISIL. The release of such individuals places the families of ISIL victims at risk of retaliation, especially in cases where they are advocating for justice for past crimes.

Some ISIL fighters, after a period in custody were later allowed to join the SDF including the internal intelligence services, who are responsible for investigating perpetrators to be brought before the People's Defence Courts. This is an additional concern regarding the impartiality and effectiveness of such investigations.

Humanitarian Access and adolescent boys held in detention

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. Of these at least 2,000 men and 150 boys are third country nationals. Some boys are 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 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.

No detailed information regarding the nationalities or ages of these individuals have been communicated, raising serious concerns of secret and/or incommunicado detention. Prisoners are held in overcrowded cells and none of these detention sites or "prisons" meet the minimum United Nations *Standard Minimum Rules* for the Treatment of Prisoners (Mandela Standards). None of the detainees have gone through any judicial process to determine the legality or appropriateness of their detention, nor have they been brought before a judicial authority, raising concerns over their possible arbitrary detention. There does not appear to be any human rights based legal basis for the continued, potentially indefinite, detention of these men or boys.

One of the largest of these prison facilities is Al-Sina'a military prison, found in the Ghuwayran neighbourhood of Hasakah. Before the attack on this prison allegedly committed by designated terrorist groups, on 20 January 2022, the facility held approximately 5,000 individuals, including 700 children. Since the attack, at least 100 boys who had been detained there are still unaccounted for, which raises serious concerns relating to their right to life and the prohibition of enforced disappearance. These concerns are compounded by reports of an ongoing screening process to differentiate minors from adults, based on unreliable methods and parameters (such as the presence of facial hair or the

height of the individual) which appears primarily aimed at lowering the figures relating to underage boys previously in detention. Many boys who are currently in detention were seriously injured during the attack and they are not receiving any appropriate medical treatment. Poor prison conditions have further deteriorated, and boys are subject to severe malnutrition. Humanitarian agencies, including the UN, have had extremely limited access to the prisons, and the detainees have seen the limited contacts with their relatives in the camps or elsewhere ground to a complete halt.

While we do not wish to prejudge the accuracy of these allegations, we are concerned by the lack of progress in uncovering the fate and whereabouts of individuals disappeared by ISIL in territories now controlled by AANES, the lack of identification of remains excavated from mass graves and failure to investigate and preserve former ISIL detention sites. We are also concerned by the alleged failure of local counter-terrorism courts to comply with international due process standards, the alleged failure to consistently question and prosecute former ISIL members in relation to crimes such as enforced disappearance and extrajudicial execution and the application of amnesties or similar measures leading to impunity.

Should the facts alleged above be confirmed, they may amount to a violation of the right to life and the prohibition of enforced disappearance, both *jus cogens* norms, as well as several provisions of customary international humanitarian law. We recall that the AANES is bound under international law to respect core human rights obligations, such as the right to life, the prohibition of enforced disappearance and the prohibition of arbitrary detention.

We are deeply concerned by the reportedly insufficient progress or even complete lack of effective forensic investigation by experts into the cause of death of the deceased, including their exhumation and identification, discovered in 28 mass graves in the territory now controlled by AANES. We highlight the importance of conducting exhumations of mass graves in line with international standards and best practices such as the *Revised United Nations Manual on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions (the Minnesota Protocol on the Investigation of a Potentially Unlawful Death (2016))*, which includes detailed guidelines including on the excavation of graves, recovery and identification of remains and crime scene investigation. This is absolutely essential for ensuring that human remains are recovered and managed professionally and in a dignified manner, that their identities may be reliably established, and the causes and circumstances of their deaths accurately determined and documented. Similarly, we recall the crucial importance of implementing the 2019 Guiding Principles for the Search for Disappeared Persons.

We are deeply concerned that the detention of the above-mentioned children and men amounts to blanket arbitrary detention in extremely poor conditions. We remain extremely concerned that in the cases of deprivation of liberty of the men and boys in North-East Syria, 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 and 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 also

express our concern at the automatic transfer of all children, including potentially your nationals, at the latest when they turn 18, to adult detention centres, in a move from one place of arbitrary detention to another without judicial oversight or protection. 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 is of profound concern to us.

We are also very concerned that at least 100 of these children originally detained in Al-Sina’a prison have been missing or unaccounted for since 20 January 2022, which raises serious concerns regarding violations of the prohibition against enforced disappearance and the protection of the right to life.

Children’s rights, a key component of international law, should always be respected, even when the child is considered a potential security risk,¹ or where the child’s interests conflict with perceived security interests. We are very concerned about ill-grounded presumptions that all male children, over the age of 10 in the Syrian conflict zone are to be presumed violent extremists or terrorists. Given the lack of agreed definition on both 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, away from a child right perspective. Children who are detained for association with armed groups should be recognised as victims of grave abuses of human rights and humanitarian law. Under international law, child association with terrorist groups is considered as involving some form of coercion or constraint. In light of the reported severe malnutrition and inadequate medical care of the detained children, which have resulted in deaths, we reiterate that the AANES, as the entity in effective control of the area where the detention center in question is located, must ensure access to the basic conditions necessary to sustain life (CCPR General Comment No. 6, para 5; CCPR General Comment No. 36, para 21). Furthermore, when a state-like entity holds effective control over a territory in which a person is detained, it must exercise a heightened level of care in protecting that person’s rights.

We are concerned about the failure to conduct effective and expeditious investigations against the potential perpetrators, to preserve evidence and conduct on-site inspections at former places of detention, and to interrogate or investigate those released for crimes, including alleged acts amounting to enforced disappearances and extrajudicial executions, committed while they were members of ISIL. In this regard, we recall that the failure to investigate such serious crimes leads to a dangerous cycle of impunity that may result in the crime being repeated in future incidents.

¹ UN Counterterrorism Centre, “Handbook on Children affected by the FTF Phenomenon”, 2019, para. 62.

We wish to refer to the **Annex on Reference to international humanitarian and human rights law** attached to this letter which cites international 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 provide information on steps taken to ensure families of individuals disappeared by ISIL have a centralized and easy to access process for requesting information on search efforts and on how families are kept informed of any steps being taken to locate their relatives.
3. Please provide information on any efforts to locate and exhume mass graves, the extent to which families were consulted and kept informed of the process and the number of individuals identified. How many remains have been returned to families and which steps are being taken to ensure that this happens?
4. Please provide information on the capacity of the AANES to conduct prompt, impartial and effective investigations, into potentially unlawful deaths and acts tantamount to enforced disappearances in line with international standards. Please provide further information to what extent the excavation in Raqqa as well as future excavations of mass gravesites followed/will follow these standards as enshrined in the *Revised United Nations Manual on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions (the Minnesota Protocol on the Investigation of a Potentially Unlawful Death (2016))*, Please include information on its implementation, on forensic capacities and on any needs for technical assistance and capacity building in this regard. Please also provide further information on how the AANES intends to implement the recommendations of the Special Rapporteur on extrajudicial, summary or arbitrary executions in the report on mass graves (A/75/384), in particular the disclosure, preservation and protection of all mass graves from any interference, manipulation of evidence or loss of human remains, and what steps have been taken to date to that end.
5. Please provide information on the steps taken to safeguard locations previously used as places of detention by ISIL and to collect evidence in line with international standards. Please provide detailed information concerning the measures taken to implement the 2019 Guiding Principles for the Search for Disappeared Persons.
6. Please provide information on the operation of the People's Defense Courts and steps taken to ensure they respect fair trial and due process guarantees.

7. Please provide information on the legal grounds for the arrest and detention of the abovementioned men and children and the legal proceedings that have been carried out following such arrests, and explain how fundamental legal safeguards have been respected in line with international norms and standards.
8. Please provide information on steps taken to ensure individuals, including children, are detained in conditions which comply with international standards and that any deaths in custody are investigated.
9. Please provide information on the steps taken to ensure individuals believed to be former members of ISIL are questioned in relation to acts tantamount to enforced disappearance and extrajudicial executions and are prosecuted where appropriate.
10. Please provide information on steps taken to review the legality of the detention of the men and boys held in the multiple detention centres throughout North-East Syria.
11. Please provide information on the fate and whereabouts of the approximately 100 disappeared boys from Al Sana'a prison since the attack of 20 January 2022 and all measures taken or envisaged to ensure the protection of their right to life and personal integrity.
12. Please provide information on steps taken to ensure access to the various detentions centres to humanitarian actors.

This communication and any response received from you 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, 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.

Kindly note that a copy of this letter, as well as a similar communication, will be transmitted to the Syrian Arab Republic. Please also note that this letter does not in any way imply the expression of any opinion concerning the legal status of any country, territory, city or area, or of its authorities.

Please accept the assurances of our highest consideration.

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

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

Luciano Hazan
Chair-Rapporteur of the Working Group on Enforced or Involuntary Disappearances

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

Annex

Reference to international humanitarian and human rights law

In connection with abovementioned allegations and concerns, we would like to draw your attention to the following:

In a report to the Human Rights Council, the former Special Rapporteur on extrajudicial, summary or arbitrary executions considered that, while States have a central role in upholding human rights law, the same may also apply to other actors depending on a context-dependent assessment based, in particular, on three interlinked indicators: (i) the nature and extent of armed non State actors' (ANSAs) control; (ii) the level of ANSAs governance and (iii) consequently, the extent of their capacity.²

In the present case, the AANES is bound under international law to respect core human rights obligations, such as the right to life. We reiterate that the right to life constitutes peremptory norm (*jus cogens*) and cannot be derogated from (CCPR/C/21/Rev.1/Add.6).

We would like to refer to the report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, A/75/384, which notes that “Governments and parties to a conflict should ensure that mass graves are preserved and protected until, based on an inclusive consultative process, decisions have been made as to their treatment and management.... Governments, parties to a conflict and/or international actors present in a country or region should provide a list of known locations of mass graves in the country and proactively search for additional sites, including those that may have been desecrated or further concealed. Safe and confidential processes for individuals to report the existence and location of mass graves should be provided, (para. 62).” In addition, we underline the need to implement the recommendations of the report, in particular to take all necessary measures to locate, disclose, protect and preserve all mass graves, and to develop a legal framework for the respectful and lawful management of mass graves. In this context, the Special Rapporteur stressed that “hiding, damaging or destroying mass graves is strictly prohibited, as is the criminalization of those seeking to uncover mass graves. Such acts would constitute a violation of the right of families and society to know the truth about the circumstances behind the existence of the mass graves, including executions and enforced disappearances or failure to protect (para. 88).”

We further refer to the Minnesota Protocol on the Investigation of Potentially Unlawful Death, which provides detailed guidance on investigating unlawful deaths. The Protocol notes it is relevant to cases where “armed non-State groups exercising State or quasi-State authority, or business entities have a responsibility to respect the right to life and to remedy any abuses they cause or to which they contribute.” The Protocol includes guidance on all stages of the investigation process and has detailed guidelines on crime-scene investigation, interviews, excavation of graves, autopsy and analysis of skeletal remains. In this connection, we stress that forensic investigations contribute to combating impunity by providing the evidentiary basis on which

² A/HRC/38/44.

prosecutions can successfully be brought against persons responsible for grave violations of human rights and international humanitarian law (E/CN.4/2003/135).

We also stress that the obligation to protect the right to life requires States Parties to take special measures to protect persons in vulnerable situations whose lives have been placed at particular risk by specific threats or pre-existing patterns of violence, including children (CCPR/C/GC/36, para. 23). International humanitarian law also affords children general and special protection as persons who do not take part in hostilities and find themselves in a particularly vulnerable situation (article 4 (3) of the 1977 Protocol II to the Geneva Conventions; Customary International law Rule 135).

With respect to death in custody under extremely poor conditions, such as malnutrition and lack of access to medical care, we recall that the entity which has effective control over a territory and which detains a person, must also exercise a heightened degree of care in protecting that person's rights.

In the context of the extent of impunity for crimes that violated the right to life, highlighted by the release without investigation of persons who may have committed such crimes, we recall that the failure to initiate investigations and bring the perpetrators of such violations to justice may lead to impunity that may encourage repetition of the crimes by others in subsequent incidents (paragraph 15, General Comment No. 31 [80] The Nature of the General Legal Obligation of States Parties to the Covenant).

We emphasize the duty to investigate, prosecute, and punish all violations of the right to life. We refer to the Principles on Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions (Prevention and Investigation Principles), in particular principle 9, that 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) and is also retained in General Comment No. 36 para. 28.

The Updated Set of Principles for the Protection and Promotion of Human Rights through Action to Combat Impunity and the Basic Principles and Guidelines on the Right to a Remedy (principle) and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law further establish the duty to investigate, prosecute, and punish those responsible of gross violations of international human rights law and serious violations of international humanitarian law constituting crimes under international law.

In relation to international humanitarian law, we note that all parties to non-international armed conflicts, are bound by common article 3 of the Geneva Conventions, which establishes minimum standards concerning the treatment and protection of civilians, those no longer actively participating in the hostilities and civilian objects. They are also bound by the customary law norms. In this regard we would like to refer to relevant rules of the International Committee on the Red Cross' study on customary international humanitarian law (IHL) including:

- Rule 98: Enforced disappearance is prohibited.

- Rule 112: Whenever circumstances permit, and particularly after an engagement, each party to the conflict must, without delay, take all possible measures to search for, collect and evacuate the dead without adverse distinction.
- Rule 113: Each party to the conflict must take all possible measures to prevent the dead from being despoiled. Mutilation of dead bodies is prohibited.
- Rule 114: Parties to the conflict must endeavour to facilitate the return of the remains of the deceased upon request of the party to which they belong or upon the request of their next of kin. They must return their personal effects to them.
- Rule 115: The dead must be disposed of in a respectful manner and their graves respected and properly maintained.
- Rule 116: With a view to the identification of the dead, each party to the conflict must record all available information prior to disposal and mark the location of the graves.
- Rule 117: Each party to the conflict must take all feasible measures to account for persons reported missing as a result of armed conflict and must provide their family members with any information it has on their fate.
- Rule 135: Children affected by armed conflict are entitled to special respect and protection.

Reference is also made to the WGEID's General Comment on the right to truth (A/HRC/16/48), which states that the right of the relatives to know the truth of the fate and whereabouts of the disappeared persons is an absolute right, not subject to any limitation or derogation. No legitimate aim, or exceptional circumstances, may be invoked to restrict this right. 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, is also 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). We recall that the full and effective exercise of the right to the truth provides a vital safeguard against the recurrence of violations (principle 5).

We also refer to the Guiding principles for the search for disappeared persons issued by the Committee on Enforced Disappearances in 2019. In particular, we highlight principle 2.4 indicating that the body or remains of a disappeared person should be handed over to the family members under decent conditions; principle 3.3 outlining that public policy on searches should be built on the basis of States' obligations to search for, locate, release, identify and return the remains, as appropriate, of all disappeared persons; principle 5 which outlines the right of relatives, their legal representatives, counsel or any person authorized by them, to take part in the search; principle 7.3 which states that the search for a disappeared person should continue until

his or her fate and/or whereabouts have been determined with certainty; principle 11.2 and 4 indicating that States should establish registers and databases on disappeared persons that cover the entire national territory that include disintegrated data on the reason for the disappearance, location and status of the disappeared person, and in case of death, if the human remains have been identified and handed over to the respective families and that these registers and databases should be maintained even after the search has ended; principle 12.4 indicating that States should take the necessary measures to guarantee the transfer of the knowledge and technology needed for search processes, including those of national and international organizations specialized in searching for disappeared persons and identifying human remains; and principle 13 which stipulates that the search for the disappeared and the criminal investigation of the persons responsible for the disappearance should be mutually reinforcing. The comprehensive search process for disappeared persons should be initiated and conducted with the same effectiveness as the criminal investigation.

In this regard, we also make reference to the WGEID's report on standards and public policies for an effective investigation of enforced disappearances (A/HRC/45/13/Add.3). The Working Group recalls in the report that completion of the criminal investigation, along with any conviction or acquittal of the persons accused of having committed an offence of enforced disappearance or the declaration of absence by reason of enforced disappearance, should not constitute an obstacle to the continuation of search activities or be invoked to justify their suspension. These activities should be pursued until it has been possible to determine with certainty the circumstances of the disappearance and the fate and whereabouts of the disappeared person or their remains. The report also finds amnesties and similar measures that may contribute to impunity are in direct violation of the rights of the families to an effective remedy and to be heard before a competent, impartial and independent court in order to determine and learn the truth.

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 detained 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 absolutely 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 further wish to remind your Excellency's Government that, according to the Working Group's jurisprudence as well as General Comment No. 35, enforced disappearances violate numerous substantive and procedural provisions of the Covenant and constitute a particularly aggravated form of arbitrary detention.

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 and A/HRC/13/30), 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 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 detention centers:

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 detention centers. 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 17). 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).

International law provisions aiming at preventing and eliminating enforced and involuntary disappearances:

We would also like to refer to the Declaration on the Protection of All Persons from Enforced Disappearance, which establishes provisions to ensure that enforced disappearances will not be authorized or tolerated and that all available means will be used to prevent and eliminate enforced disappearances (articles 2 and 3). Likewise, in its article 13, the Declaration establishes the obligation to protect all those who participate in the investigation, including the complainant, the lawyer, the witnesses and those in charge of the investigation, against mistreatment, intimidation or

harassment, retaliation and that provisions will be made to ensure that any ill-treatment, any act of intimidation or retaliation, as well as any form of interference, on the occasion of the presentation of a complaint or during the investigation procedure, are punished.