

Mandates of the Special Rapporteur on extrajudicial, summary or arbitrary executions; 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 minority issues and the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism

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20 July 2022

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on extrajudicial, summary or arbitrary executions; Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; Special Rapporteur on minority issues and Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, pursuant to Human Rights Council resolutions 44/5, 42/16, 43/8 and 49/10.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning **the indiscriminate airstrikes allegedly carried out by the Turkish armed forces as part of ongoing counter-terrorism operations against the Kurdistan Workers Party (PKK) on civilian areas in northern Iraq, resulting in the death and injury of civilians, including a medical personnel, and damage to civilian facilities, including a medical facility and a refugee camp, and the lack of investigations into these events.**

According to the information received:

Since June 2020, the Government of Türkiye has launched a number of military operations as part of ongoing counter-terrorism efforts in the northern parts of Iraq, allegedly targeting strongholds of the Kurdistan Workers Party (PKK) and its perceived allied groups, with whom they have been at war since 1978.

Consequently, Operation Claw-Eagle and Claw-Tiger was launched on 15 June 2020, in the Qandil Mountains, Makhmur and the Sinjar District; Operation Claw-Thunderbolt and Operation Claw-Lightning on 23 April 2021, in the Metina, Zap and Avashin-Baysan regions; and more recently Operation Winter Eagle on 2 February 2022, in Derik, Sinjar and Karachak regions. Many of these attacks have been publicly condemned by the Iraqi Government, although it is unclear if a tacit agreement might be in place between the two authorities.

Throughout these operations, the Turkish military reportedly failed to take adequate precautions to minimize civilian harm and respect the principle of distinction, nor to have established whether predictable civilian harm would outweigh the concrete and direct military advantage it anticipated from the attack.

Operation Claw-Eagle and Claw-Tiger

On 14 June 2020, Türkiye's Defense military announced the launch of Operation Claw-Eagle, allegedly targeting the strongholds of the PKK, and its allied groups, in the Qandil Mountains, the Sinjar District and Makhmur. The Defense Ministry reported having carried out 81 attacks during the course of the operation.

On 25 June 2020, Turkish airstrikes in Sharbazar district in the Sulaymaniyah Governorate allegedly killed a member of the Iranian Kurdistan Free Life Party (PJAK) and injured three others. The governments of Iran, Türkiye, Japan and the United States of America have designated the armed group as a terrorist organization due to its alleged ties to the PKK. The drone strike, which is reported to have targeted a white pickup truck with four PJAK members aboard, and a grocery shop where a PJAK member had entered, reportedly seriously injured six nearby civilians, including two children, and damaged civilian facilities, when a fragment landed in a pool at the Kuna Masi water resort. Video footage shows the fragment landing in the water next to families with children; reportedly, around 40 civilians were present at the time of the strike. The size of the impact crater and the amount of fresh blast and fragmentation damage point to the use of airdropped munitions. Additionally, all injured civilians were reportedly not affiliated with any armed group, nor posing any imminent threat to life and could be seen wearing civilian clothing at the time of the strike.

Furthermore, it was alleged that the PJAK had no presence in the region nor were there any checkpoints, police stations or fixed military positions confirming the presence of the group. The nearest PJAK position was reportedly situated 30 kilometers away from the place of the strike.

Operation Claw-Thunderbolt and Operation Claw-Lightning

On 23 April 2021, Türkiye launched two cross-border military operations, Claw-Thunderbolt and Claw-Lightning, against targets allegedly linked to the PKK, in the provinces of Sinjar and Makhmour. Shelters, tunnels, caves, ammunition depots, bases and training camps were targeted during the campaign.

During the same operations, on 5 June 2021, Turkish airstrikes hit a United Nations supported Kurdish refugee camp, in the north of the country, killing three persons, allegedly civilians holding refugee status, including a camp leader who was a suspected PKK official. The Government of Türkiye reportedly justified the air strike on the Makhmour refugee camp by claiming that new PKK members would be recruited there. The refugee camp is located in the Nineveh Governorate in the Erbil province, around 180 kilometers south of the Turkish border. The camp hosts, since its creation in 1998, around 12,000 predominantly Kurdish refugees, who fled from Türkiye during the civil war in the 1990s. There are 13 federal schools in the camp and several health facilities. On 3 September 2021, the camp was attacked again, this time, no casualties were reported.

Attack on a medical clinic

On 17 August 2021, at around 14:30 local time, Turkish airstrikes targeted the Sikeniyé Medical Clinic, located in the village of Sikeniyé, district of Shengal. The facility is allegedly run by the Yazidi Protection Unit (YBS) group and reportedly serves the local civilian population. The medical clinic was helping combat the coronavirus pandemic at the time of the strike. Eight people were killed in the attack, four of them medical personal and allegedly four members of the YBS. Additionally, four other medical workers were injured as a result of the attack. The Turkish Defense Ministry reportedly denied that a medical clinic was hit as well as reports that four civilians and one medical personnel were among those killed. The Government of Türkiye allegedly stated that its action against the YBS was part of its counterterrorism strategy and its right to self-defense. It also reportedly claimed that the YBS was acting as an offshoot of the PKK and that those targeted were to be considered “terrorists”. However, according to sources, there is no substantiating evidence that the YBS would engage in terrorist acts that would pose a threat to Türkiye and its citizens.

Operation Winter Eagle

On 2 February 2022, cross-border military Operation Winter Eagle was launched, in Sinjar and Makhmour regions, targeting PKK sites in Derik, Sinjar and Karachak. Reportedly, 20 airstrikes took place in the Sinjar mountainous area. During the attacks, eight people were killed and 17 others injured, it is reported that among them were civilian casualties and members of the PKK. The Government of Türkiye reportedly justified these attacks by claiming that the two targeted regions had become areas where terrorist activities were allegedly flourishing, forcing the Government to take countermeasures.

It is alleged that several of these airstrikes have targeted Yazidi communities, who remain in a vulnerable position in Türkiye and Iraq due to constant threats to their lives and physical and mental integrity. The Government of Türkiye reportedly failed to initiate investigations into the use of lethal force against members of the YBS and civilians in the course of the above operations and airstrikes.

While we do not wish to prejudge the accuracy of these allegations, we express our most serious concern at what appear to be indiscriminate attacks on civilian-populated areas as part of the above-mentioned military operations, which allegedly killed and injured several civilians, including children, and a medical personnel and damaged civilian objects, one of which was a medical clinic.

If the above-mentioned allegations prove to be accurate, they may indicate *prima facie* violations of various rights enshrined in the Universal Declaration of Human Rights (UDHR), the International Covenant on Civil and Political Rights (ICCPR), which Türkiye ratified on 23 September 2003, the International Covenant on Economic, Social and Cultural Rights, ratified by Türkiye on 23 September 2003,

the Convention on the Rights of the Child (CRC), ratified by Türkiye on 4 April 1995, the 1951 Convention relating to the Status of Refugees, ratified by Türkiye on 30 March 1962, and the four Geneva Conventions which applies alongside with international human rights law.

We are alarmed at the allegations of indiscriminate killings and targeting of civilians, including by the allegedly indiscriminate use of airdropped munitions, which may constitute a breach of customary international law as the principle of distinction constitutes a customary international law standard consistently affirmed by States (St. Petersburg Declaration & Hague Regulations article 25). Considering the alleged attacks launched against the YBS, we recall that in line of article 71 (2) of the Additional Protocol I and Customary International Humanitarian Law Rule 31, relief personnel must be respected and protected at all times.

We express further grave concern that the alleged acts as part of ongoing counter-terrorism operations appear to be indiscriminate and disproportionate use of force against civilians and civilian objects, including health care facilities and refugee camps, which may constitute, inter alia, a violation of the right to life and the right to health. Under international law any loss of life that results from the excessive use of force without strict compliance with the principles of necessity and proportionality is an arbitrary deprivation of life and therefore illegal. If it were to be established that health care facilities were deliberately attacked, this would constitute a grave breach of the Geneva Conventions and may amount to a war crime in contravention with the central founding notion of modern international humanitarian law (IHL): the protection of the wounded and sick, including medical units. We further recall your Excellency's Government that the Security Council, following the General Assembly (see Assembly resolutions 70/291, para. 22, and 72/284, para. 79), has recently urged States, when designing and applying measures to counter-terrorism, to take into account the potential effect of such measures on exclusively humanitarian activities, including medical activities, that are carried out by impartial humanitarian actors in a manner consistent with international humanitarian law (see Council resolutions 2462 (2019), para. 23, and 2482 (2019)) (A/75/337).

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 provide the details, and when available the results, of any judicial or other investigation carried out in relation to the indicated cases of alleged killings. Please indicate whether an autopsy has been performed and if so, if this has been conducted in accordance with the international standards enshrined in the United Nations Revised Manual for the Effective Investigation of Extra-Legal, Arbitrary and Summary Executions (The Minnesota Protocol on the Investigation of

Potentially Unlawful Death (2016). Please also provide details on the efforts made to ensure that perpetrators of the alleged acts are brought to justice.

3. Please provide information on any investigation carried out into the above-mentioned airstrikes, as well as details on all casualties caused by these air campaigns.
4. Kindly indicate the steps taken by your Excellency's Government to limit harm to civilian facilities, including medical facilities and refugee camps, and indicate if any investigations have been taken after the attacks took place.
5. Please provide information on any assessment made, to your knowledge, by the Turkish air forces prior to carrying out the abovementioned airstrikes in order to determine and ensure that civilian populations and objects vital to its life and health are effectively protected against the effects of shelling. Please specify the targeting criteria used and the procedural safeguards, if any, employed to ensure that these actions complied with international law and safeguarded the non-derogable right to life of any individuals concerned.
6. Please indicate any steps that have been or will be taken to provide effective remedies and reparation, including compensation, to the victims of the above violations and their families, should the allegations prove to be accurate.
7. Please provide information in details of how your Excellency's Government's counter-terrorism efforts, specifically airstrikes and attacks involving civilians and medical units comply with the United Nations Security Council resolutions 1373 (2001), 1456(2003), 1566 (2004), 1624 (2005), 2178 (2014), 2341 (2017), 2354 (2017), 2368 (2017), 2370 (2017), 2395 (2017) and 2396 (2017); as well as Human Rights Council resolution 35/34 and General Assembly resolutions 49/60, 51/210, 72/123 and 72/180, in particular with international human rights law, refugee law, and humanitarian law.

We would appreciate receiving a response within 60 days. Past this delay, this communication and any response received from your Excellency's Government 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.

Kindly note that a copy of this letter will be transmitted to the Government of Iraq.

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

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Special Rapporteur on extrajudicial, summary or arbitrary executions

Tlaleng Mofokeng
Special Rapporteur on the right of everyone to the enjoyment of the highest attainable
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Annex

Reference to international human rights law

In connection with above alleged facts and concerns, we would like to draw the attention of your Excellency's Government to relevant international human rights and humanitarian law and standards.

At the outset, we would like to reiterate that international human rights law continues to apply in times of armed conflict, alongside international humanitarian law, and that both bodies of law are intended to be complementary, rather than mutually exclusive. This has been acknowledged, *inter alia*, by the International Court of Justice (Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion, I.C.J. Reports 1996, paras. 24-25) and the Human Rights Committee (General Comment 29, States of Emergency, para. 3).

Bearing in mind this framework, we wish to draw your Excellency's Government's attention to articles 3 of the Universal Declaration of Human Rights (UDHR) and articles 2 and 6 of the International Covenant on Civil and Political Rights (ICCPR), ratified by Türkiye on 23 September 2003, which indicates the obligation of States to provide effective remedies to victims, including through the duty to investigate alleged violations of human rights law, and guarantees the right of every individual to life, which shall be protected by law, and that no person shall be arbitrarily deprived of his or her life. The right to life constitutes an international customary law and *jus cogens* norm from which no derogation may be made by invoking exceptional circumstances as provided for in article 4(2) ICCPR. The article also provides that this right shall be protected by law and that no one shall be arbitrarily deprived of their life.

The allegations of indiscriminate killings of civilians may also constitute a breach of common article 3 to the four Geneva Conventions which applies alongside with international human rights law and establishes the minimum standards that all parties involved in a non-international armed conflict should observe concerning the treatment and protection of civilians, and provides that persons taking no active part in hostilities shall be treated humanely and should not be subject to violence to life and person, in particular murder of all kinds. Launching an attack which may be expected to cause incidental loss of civilian life, injury to civilians, or damage to civilian objects, which would be excessive in relation to the concrete and direct military advantage anticipated, is prohibited. We also recall that States parties to the conflict must "do everything feasible to verify that targets are military objectives" and take all feasible precautions to avoid and minimize incidental loss of civilian life.

In its General Comment No. 31, the Human Rights Committee has observed that there is a positive obligation on States Parties to ensure protection of Covenant rights of individuals against violations by its agents and by private persons or entities. States Parties permitting or failing to take appropriate measures or to exercise due diligence to prevent, punish, investigate and bring perpetrators to justice or redress the harm caused by private persons or entities could give rise to a breach of the Covenant (CCPR/C/21/Rev.1/Add.13, paras. 8 and 18).

Given that children were reportedly among those injured, we would like to refer to the right of every child to the protection measures required by their status as a minor, as enshrined in article 24 of the ICCPR and the Convention on the Rights of the Child (CRC), ratified by Türkiye on 4 April 1995. Furthermore, an attack on a refugee camp constitutes a breach of the 1951 Convention relating to the Status of Refugees, ratified by Türkiye on 30 March 1962. We also refer to General Assembly Resolution 39/140 (1984), which condemned all violations of the rights and safety of refugees and asylum-seekers, in particular those perpetrated by military or armed attacks against refugee camps and settlements.

In addition, we wish to recall article 12 of the International Covenant on Economic, Social and Cultural Rights, ratified by Türkiye on 23 September 2003, which recognizes the States' obligations to the right on everyone, to the enjoyment of the highest attainable standard of physical and mental health. In this connection, we would like to also refer your Excellency's Government to General Comment No. 14 of the Committee on Economic, Social and Cultural Rights, which states that the right to health, like all human rights, imposes three types or levels of obligations on States parties: the obligations to *respect*, *protect* and *fulfil*. (GC 14, Para.33).

In this regard, we would like to also recall article 4.2 of the Protocol Additional to the Geneva Conventions of 12 August 1949 and relating to the Protection of Victims of Non-International Armed Conflict, Protocol II (1949), which indicates that acts of violence to persons who do not take a direct part or who have ceased to take part in hostilities, as well as health and physical or mental well-being. In this regard, its article 9 states that “[m]edical [...] personnel shall be respected and protected and shall be granted all available help for the performance of their duties” and article 11 indicates that “[m]edical units [...] shall be respected and protected at all times and shall not be the object of attack”.

With regards to the alleged indiscriminate use of force, your Excellency's Government is under an obligation to distinguish between combatants and civilians and to direct attacks only against combatants (rules 1, 6 and 7 of the Customary Rules of International Humanitarian Law identified in the study of the International Committee of the Red Cross (“Customary Rules”). Indiscriminate attacks are prohibited (rule 11 of the Customary Rules). Further, launching an attack which may be expected to cause incidental loss of civilian life, injury to civilians, or damage to civilian objects, which would be excessive in relation to the concrete and direct military advantage anticipated, is prohibited (rule 14 of the Customary Rules). States party to the conflict must “do everything feasible to verify that targets are military objectives” (rule 16 of the Customary Rules) and take all feasible precautions to avoid and minimize incidental loss of civilian life (rule 15 of the Customary Rules).

With regards to the use of force by the Turkish military, under international law any loss of life that results from the excessive use of force without strict compliance with the principles of necessity and proportionality is an arbitrary deprivation of life and therefore illegal. The Basic Principles on the Use of Force and Firearms by Law Enforcement Officials provides that intentional lethal use of firearms may only be made when strictly unavoidable in order to protect life (principle 9). Exceptional circumstances such as internal political instability or any other public emergency may not be invoked to justify any departure from these basic principles (principle 8). According to the Basic Principles and the UN Code of Conduct for Law Enforcement Officials, law enforcement officials may only use force

when it is strictly necessary and only to the extent required for the performance of their duties. Force used must be proportionate to the legitimate objective to be achieved. Should lethal force be used, restraint must be exercised at all times and damage and/or injury mitigated. Medical assistance should be provided as soon as possible when necessary.

We would like to remind your Excellency's Government of the duty to investigate, prosecute, and punish all violations of the right to life. We refer to principles 4, 9 and 18 of the Principles on Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions, adopted by the Economic and Social Council resolution 1989), stating that effective protection through judicial or other means shall be guaranteed to individuals and groups who are in danger of extra-legal, arbitrary or summary executions; there shall be thorough, prompt and impartial investigation of all suspected cases of extra-legal, arbitrary and summary executions; and that States hold the obligation to ensure that persons identified by the investigation as having participated in extra-legal, arbitrary or summary executions in any territory under their jurisdiction are brought to justice.

We would like to highlight the importance of conducting independent, impartial, prompt, effective, thorough and transparent investigations into all potentially unlawful killings in accordance with international standards, particularly 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)*)¹. In particular, we note investigators and investigative mechanisms must be, and must be seen to be, independent of undue influence (para 28).

In light of the allegedly indiscriminate use of airdropped munitions, including drones, we refer to the report on targeted killings (A/HRC/14/24/Add.6) by the Special Rapporteur on extrajudicial, summary or arbitrary executions which recalls that inherently indiscriminate weapons are prohibited (para. 79). The use of drones may lead to the fact that “policy makers and commanders will be tempted to interpret the legal limitations on who can be killed, and under what circumstances, too expansively” (para. 80). The report on the use of armed drones for targeted killings (A/HRC/44/38) by the Special Rapporteur also reiterates that civilian harm caused by armed drone strikes extends far beyond killings, as many more people have been wounded by such strikes. It further establishes that evidence “continues to suggest that drone operations are also characterized by violations of the international obligation to investigate (...) as targeted killings by drones are wrapped in secrecy extending to the investigation of civilian deaths” (para. 22). In this regard, the Special Rapporteur recommended that States should “set up a dedicated civilian casualty mitigation and investigation team with commensurate resources to understand the impact of drone operations and accurately record civilian harm” (para. 92 b)).

Referring to the observations made by the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, we remind you Excellency's Government that, in any case in which civilians have been, or appeared to have been, killed, the State responsible is also under an obligation to conduct a prompt, independent and impartial fact-finding inquiry and to provide a detailed public explanation. This obligation is triggered whenever there is a plausible indication from any source that civilian casualties have

¹ Available at <https://www.ohchr.org/Documents/Publications/MinnesotaProtocol.pdf>

been sustained, including where the facts are unclear or the information partial or circumstantial, and whether civilian casualties were anticipated or not (A/HRC/29/51). Any action carried out under the banner of counter-terrorism action requires full compliance with international law, human rights and international humanitarian law as mandated by multiple Security Council resolutions (A/75/337). Under no circumstances shall any person or object be punished/targeted for having carried out medical activities regardless of the person benefiting from them. All parties to the conflict have the obligation to ensure that constant care is given to spare civilians from harm (AL SYR 1/2019).

In this connection, we further recall the model definition of terrorism advanced by the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, which provides clear guidance to States on appropriate conduct to be proscribed and best practice.² Those elements include: a) acts, including against civilians, committed with the intention of causing death or serious bodily injury, or the taking of hostages, b) irrespective of whether motivated by considerations of a political, philosophical, ideological, racial, ethnic, religious or other similar nature, also committed for the purpose of provoking a state of terror in the general public or in a group of persons or particular persons, intimidating a population, or compelling a Government or an international organisation to do or to abstain from doing any act, c) such acts constituting offences within the scope of and as defined in the international conventions and protocols relating to terrorism.³

We recall your Excellency's Government that the UN General Assembly has affirmed and unanimously recognized that effectively combatting terrorism and ensuring respect for human rights are not competing but complementary and mutually reinforcing goals in the Global Counter-Terrorism Strategy. (A/HRC/60/288). Moreover, relevant provisions of Security Council resolutions 1373 (2001), 1456 (2003), 1566 (2004), 1624 (2005), 2178 (2014), 2341 (2017), 2354 (2017), 2368 (2017), 2370 (2017), 2395 (2017) and 2396 (2017); as well as Human Rights Council resolution 35/34 and General Assembly resolutions 49/60, 51/210, 72/123 and 72/180 require that any measures taken to combat terrorism and violent extremism, including incitement of and support for terrorist acts, comply with States' obligations under international law, in particular international human rights law, refugee law and international humanitarian law. Counter-terrorism measures must conform to fundamental assumptions of legality, proportionality, necessity and non-discrimination. Wholesale adoption of security and counter-terrorism regulations without due regard for these principles can have exceptionally deleterious effects on the protection of fundamental rights, particularly for minorities, historically marginalized communities and civil society. We wish to reaffirm the importance of the full implementation of these obligations and standards in the context of EU counter-terrorism strategies and regulation.

Finally, we would like to draw the attention of your Excellency's Government to States' obligations to provide victims of human rights violations with effective remedies. 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, adopted by the General Assembly in 2006, provide that victims of a gross violation of international human rights law or of

² [A/59/565 \(2004\)](#), para. 164 (d).

³ [E/CN.4/2006/98](#), para 37.

a serious violation of international humanitarian law must be guaranteed of: equal and effective access to justice; adequate, effective and prompt reparation for harm suffered; and access to relevant information concerning violations and reparation mechanisms.