

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 Working Group on Enforced or Involuntary Disappearances; 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 minority issues; the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance; 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

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26 September 2022

Excellency,

We have the honour to address you in our capacity as Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism; Working Group on Arbitrary Detention; Working Group on Enforced or Involuntary Disappearances; 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 minority issues; Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance; 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 49/10, 42/22, 45/3, 44/5, 49/13, 42/16, 43/14, 42/9, 43/8, 43/36, 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 three Australian children currently being held in Roj camp in North-Eastern Syria.

According to the information received:

██████████ born on ██████████ ██████████, born on ██████████ and ██████████ born on ██████████ are three Australian boys who have been in detention in Al Roj camp in North-eastern Syria since they were between ages six to eight. These three children, all under the age of 12, have been deprived of their liberty in conditions that we believe constitute a violation of a number of human rights including the right to be free from torture and other cruel inhuman or degrading treatment or punishment for more than four years, without any steps being taken for their repatriation to Australia for reunification with their families. These three boys

will be transferred to one of the detention centres in North-East Syria since they will soon be turning 12 years old.

We continue to have deep concerns about the deteriorating security and humanitarian conditions of detention in Al Roj camp where these children are deprived of their liberty without any judicial process. General concerns regarding the conditions in that camp have been raised in communications to Your Excellency's Government on 26 January 2021 ([AUS 1/2021](#)) and on 16 February 2022 ([AUS 2/2022](#)). We are also deeply concerned about the risks of trafficking in persons, for children in the camps, for the purposes of sexual exploitation and labour exploitation, including worst forms of child labour. This present communication raises further extremely serious concerns about the possibility of the transfer of these three boys to one of the detention centres in North-East Syria because of their age and their gender, a general concern that we have already raised in the above referenced communication to Your Excellency's Government ([AUS 2/2022](#)).

Indeed, we have been made aware through consistent reporting and first-hand information that most third country male children around the age of 12 are violently taken away from their mothers and siblings, often in traumatic circumstances, in the camps in North-East Syria and transferred to adult detention centres. These centres are primarily locales in which adult males are detained without judicial process. The spectre of a 'cradle to grave' detention cycle for young male children in North-East Syria supported by third country States, including Your Excellency's Government, is of extremely profound concern to us.

We note that the situation in the prisons is extremely fraught, and increasingly so. Children are at particular risk, as clearly evidenced by the attack on Al-Sana'a prison in Hassakah in January 2022, where children were allegedly used as human shields.¹ Since the attack, it is alleged that children detained there still suffer from untreated wounds and malnourishment, and that the fate of an estimated 100 children who were arbitrarily detained in that prison still remains unknown, including one Australian boy, who is missing.² These cases may amount to enforced disappearances. It is further reported that any access – humanitarian or otherwise, including for the purpose of the provision of medical health care and medical supplies – to the children detained in this prison has almost grounded to a complete halt. We are therefore acutely concerned at the possibility that any child would be transferred to these detention centres where their lives, physical and mental health and well-being would clearly be at immense risk.

This practice of transfer and separation of children reaching the age of 12, from one place of detention where they are living with their mother, to a prison setting absent any human rights and rule of law compatible process to justify their indefinite detention, either in the camps or the prisons must be called out as a complete abrogation of their best interest and a serious violation of numerous fundamental human rights. This includes their right to life, the absolute prohibition of torture, inhuman or degrading treatment and the absolute prohibition of arbitrary detention.

¹ <https://www.ohchr.org/en/2022/01/syria-un-expert-urges-states-save-their-boys-caught-isil-prison-attack>

² <https://www.ohchr.org/en/press-releases/2022/04/syria-un-experts-profoundly-concerned-missing-and-injured-children-after>

We recall that under any circumstance, the detention of children must always be used as a measure of last resort and for the shortest duration possible as required by Article 37 (b) of the Convention on the Rights of the Child and Article 9 of the International Covenant on Civil and Political Rights. It is also a violation of children's right to liberty and security, of children's right to a fair trial under juvenile justice standards, and of their presumption of innocence, as well as right to health, to a family life including to not be separated from their parents.

Discriminatory views and practices that all male children over the age of 12 in these circumstances are to be presumed violent extremists or terrorists remain unacceptable and inconsistent with international law standards protecting all children equally. The application of these stigmatizing and dehumanizing terms to boy children who have experienced systematic violations of their human rights is profoundly regrettable. It is a clear discriminatory practice that would be decried if it applied solely to the girl child.

Children detained for their association with individuals themselves detained for association with armed groups also designated as terrorist are first and foremost victims of grave abuses of human rights and humanitarian law. These are also victims of terrorism. We underscore that under international law, any child association with a non-State armed group, even those designated as 'terrorist', is always considered as engaging some form of coercion or constraint. Children do not enjoy the independence, agency and range of choices open to adults, and these three boys who were between the ages of six and eight when their detention started can never be said to have given any meaningful consent to the situation they find themselves in.

In light of the above, our mandates consider that the voluntary and human rights compliant repatriation of these boys who are Australian citizens is the only international law-compliant response to the complex and precarious human rights, humanitarian and security situation in North-East Syria. Given the geopolitical fluidity of the region currently controlled by various State and non-State armed groups, and the metastatic growth of non-State armed groups also designated as terrorist in the region, repatriations are critical to States' long-term security interests. It is clear to us, as well as to many national security experts that we have engaged with, that the current situation cannot be reconciled with any position that States who are leaving their nationals in the camps and prisons in North-East Syria, including Your Excellency's Government, are effectively addressing international threats to peace and security, notably terrorism and violent extremism.

It also remains our clear position that given the presence of international military personnel in North-East Syria, the number of national and other delegations that have had access to the camps and the prisons, and the number of successful repatriations, including of children, that have taken place, the lack or the difficulties of access to the camps and prisons can no longer be put forward as a reason for not repatriating your nationals. The profound concerns for the extremity and uniqueness of the material situation in the camps have been recently addressed by the European Court of Human Rights in the case of H.F. and Others v France as constituting "a real and immediate threat to [women and children's] lives and physical well-being, on

account both of the living conditions and safety concerns in the camps, which were regarded as incompatible with respect for human dignity, and of the health of those family members and the extreme vulnerability of the children, in particular, in view of their age”.

In this regard, the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, ratified by Your Excellency’s Government on 14 September 2005, namely, to protect and assist victims of trafficking with full respect for their human rights. It is also set out in full in the Principles and Guidelines for Human Rights and Human Trafficking of the Office of the United Nations High Commissioner for Human Rights (OHCHR).

Furthermore, we also note the strict obligation imposed on States parties to the Trafficking in Persons Protocol regarding repatriation as stated in article 8 (1):“The State Party of which a victim of trafficking in persons is a national or in which the person had the right of permanent residence at the time of entry into the territory of the receiving State Party shall facilitate and accept, with due regard for the safety of that person, the return of that person without undue or unreasonable delay.”

We also deem it appropriate to make reference to article 34 of the International Convention on the Rights of the Child (CRC), which your Excellency’s Government ratified in 1990, which provides that States Parties undertake to protect the child from all forms of sexual exploitation and sexual abuse. We remind Your Excellency’s Government the positive obligation to identify child victims or potential victims and ensure effective protection against trafficking or re-trafficking.

We also wish to recall articles 2.2, 11 and 12 of the International Covenant on Economic, Social and Cultural Rights (“ICESCR”), ratified on 10 December 1974 by Australia to guarantee the right of all people without discrimination to an adequate standard of living, including adequate food, clothing and housing, as well as to the highest attainable standard of physical and mental health. We also recall General Comment No. 14 of the Committee on Economic, Social and Cultural Rights, which indicates that obligation to *protect* the right to health include, *inter alia*, the duties of States to take measures to protect all vulnerable or marginalized groups of society, in particular women, children, adolescents. (GC 14, Para.35). The former Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health noted that “[t]he scale and magnitude of children’s suffering in detention and confinement call for a global commitment to the abolition of child prisons” and added that “the Standard Minimum Rules for the Treatment of Prisoners did not prescribe conditions and protection for child detainees, because they contained the principle that young persons should not be sentenced to imprisonment, which was repeated in the Mandela Rules” (A/HRC/38/36, paras. 53 and 54).

Finally, we would like to draw your Excellency’s Government attention to Articles 7, 9-11 and 20 of the Declaration on the Protection of All Persons from Enforced Disappearance, which stipulate that no circumstances, including a state of war, may be invoked to justify enforced disappearance; the right to a prompt and

effective judicial remedy as a means of ascertaining the whereabouts or state of health of persons deprived of their liberty; the right of competent authorities to have access to all places where persons deprived of their liberty are being held; the right to be detained in an officially recognized place of detention and to be brought before a judicial authority promptly after detention; the right to have accurate information about the detention of such persons, including their transfer, provided promptly to their family members, legal counsel, or other persons associated with them; the right to be released in a manner that allows for reliable verification; and finally, that States have an obligation to suppress and prevent the abduction of children and an obligation to search for, identify, and return such children to their families of origin.

Alarmed by the fact that 100 of children may fall victim to enforced disappearance, we also refer to the General Comment on Children and Enforced Disappearances (A/HRC/WGEID/98/1) of the Working Group on Enforced Disappearances, which states that States should develop a comprehensive strategy to prevent and respond to enforced disappearances and pay particular attention to the prompt resolution of cases in which children are victims of enforced disappearance.

The full texts of the human rights instruments and standards recalled above are available on www.ohchr.org or can be provided upon request.

We are issuing this appeal in order to safeguard the rights of abovementioned individuals from irreparable harm and without prejudicing any eventual legal determination.

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 the three Australian children ██████████ ██████████, and ██████████ ██████████ in North-east Syria.
2. Please provide information on the actions taken by Your Excellency's Government to protect the fundamental rights of these three boys, as well as all other individuals in similar situations held in the camps to prevent their transfer to prison settings.
3. Please provide any measure that Your Excellency's Government might have taken to repatriate these and other boys from the prisons and detention centres in North-east Syria and to ensure their enjoyment of an adequate standard of living, including adequate food, clothing and housing, as well as the highest attainable standard of physical and mental health.

4. Please provide any information on the steps Your Excellency's Government may have taken to determine the fate and whereabouts of the children detained or disappeared in detention facilities in North East Syria and to keep the families in Australia – and other concerned countries - informed about the situation of the individuals detained and to assist them in searching for, locating and obtaining the release of their loved ones and, in the event of death, in exhuming, identifying them and returning their remains

Further, we would like to inform Your Excellency's Government that after having transmitted the information contained in the present communication to the Government, the Working Group on Arbitrary Detention may also transmit the case through its regular procedure in order to render an opinion on whether the deprivation of liberty was arbitrary or not. The present communication in no way prejudices any opinion the Working Group may render. The Government is required to respond separately to the allegation letter and the regular procedure.

We would also like to bring to the attention of your Excellency's Government that should sources submit the allegation of enforced disappearance mentioned in this communication as a case to the Working Group on Enforced or Involuntary Disappearances, it will be considered by the Working Group according to its methods of work, in which case your Excellency's Government will be informed by a separate correspondence.

We may publicly express our concerns in the near future in this case, as in our view, the information at hand concerning these children appears to be sufficiently reliable and indicates a matter warranting undivided attention. We also believe that the wider public should be alerted to the potential human rights implications of the 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.

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.

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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