

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

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(Please use this reference in your reply)

19 October 2023

Excellency,

I have the honour to address you in my capacity as Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, pursuant to Human Rights Council resolution 49/10.

In this connection, I would like to bring to the attention of your Excellency's Government first-hand information I have personally gathered during my recent technical visit to the camps, prisons and detention facilities in Northeast Syria, which took place from 15 to 20 July 2023.¹ In the context of my visit, I was able to monitor the human rights situation in this extremely complex setting and interview individuals held in places of detention.

In particular, I would like to highlight the cases of two nationals of Trinidad and Tobago, a boy and his mother who are currently separated. The boy is arbitrarily detained in Hourri closed "Rehabilitation" Centre, and his mother in Roj closed camp, in the Northeast of the Syrian Arab Republic. I have previously communicated on the plight of this family (TTO 3/2022) and met with representatives of your Excellency's Government to discuss their case. Following my meeting with the boy and his mother. I would like to convey my extreme concern about the impact on this boy's fundamental human rights and his profound vulnerability in detention, his severe and evident state of trauma and suffering, primarily due to the separation from his mother and the lack of clarity about his fate or legal status. His mother is also suffering from the conditions of confinement in Roj detention camp as well as from the trauma and suffering which resulting from the separation and irregular contact with her son.

This mandate's longstanding position has stressed the obligation of Member States to urgently repatriate their nationals from conflict zones as the only international law-compliant response to the increasingly complex and precarious human rights, humanitarian and security situation in different detention locations in the Northeast of the Syrian Arab Republic. Following my technical visit, and in view of the findings, *inter alia*, of mass arbitrary detention specifically for children, incommunicado detention, disappearances, structural and systematic discrimination for detained persons on the basis of age and nationality, torture, cruel, inhuman and degrading treatment as well as the deprivation of the fundamental capacity to live a dignified life including access to water, food, healthcare and education, which undermine the right to life, I continue to insist that this return is an absolute imperative.

¹ Please see end of mission statement here:
<https://www.ohchr.org/sites/default/files/documents/issues/terrorism/sr/statements/EoM-Visit-to-Syria-20230721.pdf>

This return is a comprehensive response that amounts to a positive implementation of Security Council resolutions 2178 (2014) and 2396 (2017) and is considerate of a State's long-term security interests.²

As previously noted, Special Procedures mandate holders have addressed previous communications to your Excellency's Government on 26 January 2021, TTO 1/2021, raising concern about the inhuman conditions of detention in Al-Hol and Roj Camps in Northeast Syria, where your nationals, primarily women and children, remain arbitrarily detained, and on 27 December 2022 (TTO 3/2022), raising concern about the conditions of confinement of the two nationals - subject of the present communication - the psychological harm caused by the separation between the mother and son, and the risk of transferring the boy to an adult prison where he could be subjected to torture and enforced disappearance. I thank your Excellency's Government for the reply dated 24 February 2023, to the latter communication. In this respect, I regret the Government's stated lack of resources and "appropriate arrangements" to verify information about your nationals and ensure their rehabilitation and reintegration upon return, considering them a national security risk. My direct assessment of both mother and child underscores the victim status of both individuals and the lack of evidence to demonstrate that stated security risk. I continue to encourage your Excellency's Government to review the position regarding the State responsibility towards the protection of the human rights of your nationals detained in the Northeast of Syria, in compliance with international law and human rights' obligations, and to positively consider the repatriation of men, women and children detained in Northeast Syria, and make particular efforts to repatriate vulnerable and at-risk women and children nationals of Trinidad and Tobago, who face multiple and imminent threats to their safety, security, health and well-being.

According to the information received first-hand during the visit:

██████████ was born on ██████████ in Trinidad. Her son, ██████████, was born on ██████████ in Trinidad.

After losing her husband, ██████████'s father, in a hurricane and getting out of an abusive relationship with a man described as 'powerful and wealthy', ██████████ turned to the Muslim community for protection, converted to Islam and joined a local mosque. There, she met a man whom she married a week after their meeting, in September 2014, thinking that way she could keep her family safe.

A few days after their marriage, ██████████ and her son followed the husband to what they thought was a trip, as he had booked a return flight from Amsterdam to Trinidad. After visiting a few cities, ██████████ and her son, who was only ██████████ at the time, were brought to Syria, in territories under the control of the Islamic States in Iraq and the Levant (ISIL). Her husband later appeared in ISIL propaganda.

Upon arrival in Syria, ██████████ and her son, ██████████ had their passports taken and were separated for some time. When later reunited, they were threatened to be

² <https://www.ohchr.org/Documents/Issues/Terrorism/PositionSRreturnsFFsOct2019.pdf>

killed if they tried to leave. ██████ found herself once again trapped in an abusive relationship where her husband was physically violent and forbade her and her son to go out of their home. ██████ reported that after she and ██████ were reunited her efforts were directed at keeping him in their accommodation, preventing his abduction or use into ISIL hands, and seeking to maintain his education by schooling him at home.

After a short marriage, ██████ was reportedly divorced from her husband, and forced by ISIL to marry at least five times in succession. Every time, she reportedly made it a precondition that her husband would protect ██████ and not make him fight for ISIL.

In 2019, ██████ and her son, ██████, managed to escape from ISIL to Kurdish-controlled territory. They were taken into custody by the Kurdish Forces and immediately separated.

██████ was brought first to Al-Hol Camp and is currently detained in Roj Camp. During the visit of the Special Rapporteur, ██████ was assisting a number of other visibly disabled women in the camp, who wanted to get access to the visiting team.

██████, who was dressed in white clothing, not traditional garments, was calm, composed and sad. She spoke about the trauma and anxiety she has experienced since her son, ██████, was taken from her. ██████ is profoundly concerned about her son's well-being and blames herself for his current situation of vulnerability and detention. She had limited contact with him since he was abducted and for some considerable time had no information whatsoever about his whereabouts or his conditions of confinement. Her current contact with her son is patchy and inconsistent. The few times she was allowed to speak to him by phone, the conversation lasted between 3 and 5 minutes.

██████ spoke about her conditions of confinement at some length. She is confined to a small tent, which has neither heating in winter nor air-conditioning in summer. During the visit, the Special Rapporteur observed the tents and found them to be inadequate for the harsh climate and health complexities of the population, including ██████. Noting that at the time of the visit the temperature was over 50 degrees centigrade. Medical care is limited at Roj camp and any medication ██████ needs must be paid for. Meanwhile, she has limited or inexistent access to financial resources to pay for her medical needs. Moreover, she stressed that the proximity of the camp to nearby oil fields brought layers of dust and pollution to the camp, causing asthma, and breathing challenges for all who inhabited it, including herself.

She reported having no contact or inquiry from your Government of Trinidad and Tobago and felt abandoned and frightened by her experiences to date. She is concerned that she has been branded in a way that will make it impossible for her to be returned home and stressed her desire to return to Trinidad and Tobago in order to give her son the opportunity to live a normal and full life.

█████ is currently detained in Houri closed rehabilitation center. After his arrest by the Kurdish forces, at sixteen years old, █████ was detained in Shaddadi prison for adults, and then transferred to Hassakah prison █████ was detained in the same cells with adult men, who he described as radicalized. He witnessed the brutal killing of an inmate who was stabbed in the neck by another in a fight. █████ expressed his fear for his safety, in this hostile environment, where he suffered extreme trauma and anxiety. This trauma is still affecting him today.

While in Hassakah prison, █████ was usually visited by security officials from the United States of America, as he pretended to be American as he hoped that would mean he would receive a better treatment by the prison administration.

After two months and a half detained in adults' prisons, █████ was transferred to Houri closed rehabilitation center, where he is currently detained. Until his transfer, he was not able to communicate with his mother and he was worried that she did not have any information on his fate or whereabouts. This separation compounded by the lack of contact was extremely distressing for both █████ and his mother.

At Houri closed rehabilitation centre, the condition of confinement in this facility are of a significantly higher standard than in Roj or Al Hol detention camp. The boys have sufficient space to sleep and study, there is an open courtyard with plenty of light which is well-maintained. The sleeping areas visited had air-conditioning and the boys appear to have access to adequate and age-appropriate clothing. Eating is communal and the boys, including █████, did appear to be adequately fed.

Despite all the hardships endured, █████ is a bright, articulate and highly communicative boy. He loves sports and is coaching other boys at the facility to remain active and not be left to boredom. He is known to be a very sociable person and mentioned learning languages through exchanges with other boys, with whom he became friends. █████ is also an artist and has been engaged in artistic endeavours while at the camp. We were able to see his artwork and note his skills including decorating the room he shares with other boys with art and decoration █████ also enjoys music, and spoke of his love of soccer, soccer heroes and music icons such as Shakira and Drake. He spoke and engaged with the Special Rapporteur as a teenager, with interests and an outlook that is younger than his numerical age suggests. █████ expressed a strong desire to have adequate education for his age and live a normal life.

█████ spoke openly, if painfully, of the experiences he had endured and the separation from his mother who is his sole source of security and with whom he never separated since he was born. During the visit, █████ mentioned with clear deep pain that he did not have any contact with his mother for six months. He also showed profound suffering and desperation talking about the lack of clarity about his fate or the possibility to be reunited with his mother.

Now aged 21, ██████ is at extreme risk of being moved from the Houri Centre to one of the prisons for men in Northeast Syria, where he would be held in conditions that amount to torture and other cruel, inhuman or degrading treatment or punishment, likely incommunicado detention and completely lose even sporadic contact with his mother. His return home is urgent because of his likely transfer due to his aging out of the Houri facility.

I am deeply concerned by the ongoing arbitrary and indefinite detention of ██████, in Houri Centre, and his mother, ██████ in Roj Camp, absent legal basis, judicial authorisation, review, control or oversight, which entirely lack in predictability and due process of law. I am further alarmed by ██████'s intense trauma and psychological suffering, primarily due to his separation from his mother, the lack of clarity on his fate, and his deep longing to return home.

My first-hand observations during my visit confirmed that the placement of boys in 'rehabilitation' centres, such as the Houri Centre, and other prisons for adults, such as Shaddadi or Hassakah, has no legal basis. None of these boys were legally represented in any judicial or administrative process placing them there; no 'best interest' test was adequately applied to decide on their detention; no legal process was undertaken to determine the appropriate care, responsibility rights or needs of these children. Traumatic separation from mothers has been conducted without any legal regulation or recourse; physical and psychological violence to young boys has no remedy; and health is profoundly compromised by sub-human standards of indefinite detention, in violation of articles 3, 9, 16, 19, 20, 24, 34, 37 and 40 of the Convention on the Rights of the Child (CRC).

Such detention, as well as its extreme psychological consequences on children and adolescents, is a clear breach of articles 7, 9, 10, 14 and 24 International Covenant on Civil and Political Rights (ICCPR), articles 37 and 40 of the Convention on the Rights of the Child (CRC) and articles 2 and 16 of the Convention against Torture (CAT). I would like to underscore that the fundamental non-derogable rights and dignities of each child and adolescent, regardless of their parents, place or birth or exposure to conflict must be observed during armed conflict,³ as well as in contexts in which counter-terrorism operations are being conducted.

I reiterate that the detention of boys and adolescents, including ██████ who was detained at the age of sixteen, in various centres and prisons is solely based on 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, shifting the discourse in relation to children from protection to punishment, from victim to threat. I further recall that, according to article 2(2) of the Convention on the Rights of the Child, it is a violation of the principle of non-discrimination to punish a child based on the "status, activities, expressed opinions, or beliefs" of their parents. Detention on such discriminatory grounds constitutes collective punishment,⁴ which my mandate has

³ See also, Article 38 Convention on the Rights of the Child.

⁴ United Nations Office of Counterterrorism, "Children Affected by the Foreign-Fighter Phenomenon: Ensuring A Child Rights Based Approach", para. 52.
https://www.un.org/counterterrorism/sites/www.un.org.counterterrorism/files/0918_ftf_handbook_web_reduced.pdf

qualified as a clear breach of international law.⁵ Children and adolescents who are detained for association with armed groups should be first and foremost recognised as victims of grave abuses of human rights and humanitarian law, and their best interest should be taken into consideration in all decisions that concern them. Furthermore, the UN Human Rights Committee has emphasized that detention based on alleged criminality of family members is an “egregious” example of arbitrary detention.⁶

I critically underscore that the unlawfulness of detention remains even as these boys cross the threshold of adulthood: when previous detention was in violation of international law, newly acquired adult status is no lawful basis for detention.

In the case of ██████ despite the adequacy of the material conditions of detention in Hourri “rehabilitation” centre, I continue to raise deep concerns about the lack of adequate psychological support for severely traumatized boys like him, due to their forced removal from the camps and the lack of contact with members of their families, which leave them in extreme mental pain and suffering that amount to torture or other cruel, inhuman or degrading treatment or punishment.

I am extremely alarmed that the arbitrary detention of boys, and in most cases, such as the case of ██████, their transfer from one place of detention to another, including adult prisons, according to varying and moving criteria, leave them with no prospect of release or reintegration into society. I underline that “there is no legal basis in international law for the forms and organization of boy-concentrated centres of confinement currently being operated in Northeast Syria. There is no legal basis for such mass indefinite confinement in international law.” (EOM statement, para. 15).

I further stress that the stigmatizing and dehumanizing language used by the detaining authority in referring to the boys held in rehabilitation centres, primarily to justify exceptional measures taken in the name of security, is inconsistent with the international law prohibitions on discrimination, and in fact may function to perpetuate the conditions conducive to further social exclusion and violence in the region.

I would like to emphasise that boys detained in these circumstances must be treated primarily as victims of terrorism consistent with the Convention on the Rights of the Child, Security Council Resolution 2427 (OP20) and General Assembly Resolution 60/1. She stresses that these boys were primarily brought to Syria or Iraq by parents or other family members considered or suspected of affiliation with ISIS and did not or could not provide meaningful consent to being brought to the territory or were born to an individual from Syria or a foreign national considered or suspect of affiliation with ISIS (F(T)F). 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. Even in cases where boys may have travelled to Syria to join ISIS or were not otherwise forcibly recruited, most child

⁵ See Position of the Special Rapporteur on the promotion and protection of human rights while countering terrorism on the human rights of adolescents/juveniles being detained in North-East Syria, May 2021.

⁶ Human Rights Committee, General Comment No. 35: Article 9 (Liberty and security of person), 16 December 2014, CCRP/C/GC/35, para. 16

association with terrorist groups involves some form of coercion or constraint.

Regarding the brutal separation of ██████ from her son, ██████, I stress that preventing family separation and preserving family unity are key components of the child protection system. Separation from parents should not happen unless such separation is considered to be in the best interests of the child, subject to judicial review and in accordance with applicable law and respect for fundamental procedural guarantees (Convention on the rights of the child, article 9(1)). According to the Committee on the Rights of the Child, separation from parents in general and from mothers in particular have potentially serious implications on children, including on their right to development. Given the gravity of the impact on the child of separation from their parents, such separation should only occur as a last resort, when there are no less intrusive measures to protect the child (general comments No. 7 (2005) para. 36 and No. 14 (2013), paras 60 and 61).

I further express my concern regarding the detention of ██████ in conditions that amount to cruel, inhuman, or degrading treatment or punishment. My technical visit to Syria further confirmed the severity of living conditions in Roj Camp, including housing, access to water, food, education and health care.

Finally, I urge for the repatriation of ██████ and her son, ██████ to Trinidad and Tobago and that they be provided with all the safeguards and protections so abjectly absent for them in North-East Syria. It is my mandate's view that States, including your Excellency's Government have positive obligations to take necessary and reasonable steps to intervene in favour of their nationals abroad, in particular where there are reasonable grounds to believe that they face treatment in serious violation of fundamental international human rights law and amounting to *jus cogens* or non-derogable customary law norms. This duty to act with due diligence to ensure that the lives of your nationals are protected from irreparable harm to their life or to their physical integrity also applies where acts of violence and ill-treatment are committed by State actors or non-State armed groups, and in our view apply in this extreme context. It is also our view that the failure of States to facilitate their nationals' release from detention and repatriate them not only does not permit to adequately assess their situation but may also be in violation of the principle of non-punishment, which guarantees that victims of trafficking are not punished for unlawful acts committed as a consequence of their trafficking (A/HRC/47/34, para. 18).

I recognize that it is within the purview of your Excellency's Government to undertake comprehensive and human rights compliant inquiries into the information presented upon their repatriation to Trinidad and Tobago and to apply applicable domestic law to their cases in conformity with the rule of law and applicable international standards, including the presumption of innocence.

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

In view of the urgency of the matter, I would appreciate a response on the initial steps taken by your Excellency's Government to safeguard the rights of the above-mentioned person(s) in compliance with international instruments.

As it is my responsibility, under the mandate provided to me by the Human Rights Council, to seek to clarify all cases brought to my attention, I would be grateful for your observations on the following matters:

1. Please provide any additional information and any comment you may have on the above-mentioned allegations.
2. Please provide information on what steps have been taken to address the risk and prevent the transfer of [REDACTED] from the Hourri Centre to an adult detention facility.
3. Please provide detailed information on the nationals of Trinidad and Tobago repatriated from Northeast Syria, including figures, and indicating their gender and age range.
4. Please provide information on measures taken or foreseen by your Excellency's Government to identify and localise your nationals, held in different detention facilities (camps, rehabilitation centres, prisons) in Northeast Syria, including [REDACTED] and her son, [REDACTED], in order to protect their physical and mental health and integrity, to safeguard their rights, to end their detention, and to ensure their safe repatriation.
5. Please provide information on the criteria based on which nationals of Trinidad and Tobago are being identified and cleared for repatriation and explain how your Excellency's Government assesses the cases of boys who reached the age of adulthood while in detention in Northeast Syria.
6. Please provide details on the domestic mechanism and/or procedure that has been set up to identify and protect the rights of individuals who have been trafficked into Northeast Syria, in particular women and children.

While awaiting a reply, I 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 responsible of the alleged violations.

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.

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

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

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