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**Promotion and protection of all human rights, civil,
political, economic, social and cultural rights,
including the right to development**

Joint thematic visit to Germany and North Macedonia**Report of the Special Rapporteur on the promotion and protection of
human rights while countering terrorism, Fionnuala Ní Aoláin* *****Summary*

The Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism conducted a joint thematic visit to Germany and North Macedonia from 3 to 12 July 2023 to discuss the repatriation, return, integration and prosecution of persons returning from conflict zones, mainly Syria and Iraq.

She positively recognizes the efforts of both countries on repatriation, reintegration and prosecution and commends the innovative prosecution practices in place in Germany, including for core crimes and cumulative charging. She urges the German Government to continue to repatriate all its nationals, including men, and to ensure that repatriation processes advance the best interest of the child. Regarding North Macedonia, she commends the repatriation of women, children and men from Syria and positively acknowledges the development of an inter-agency and interdisciplinary reintegration model at the municipal level. She encourages the Government to expand the scope of these programmes and the return of all remaining nationals from conflict zones and the avoidance of stigmatization in countering violent extremism efforts.

* The summary of the report is being circulated in all official languages. The report itself, which is annexed to the summary, is being circulated in the language of submission.

** The present report was submitted to the conference services for processing after the deadline so as to include the most recent information.

Annex

Report of the Special Rapporteur on the promotion and protection of human rights while countering terrorism, Fionnuala Ní Aoláin, on her joint thematic visit to Germany and North Macedonia

I. Introduction

1. The Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism completed a joint thematic visit to Germany and North Macedonia with the goal to comprehensively address the repatriation, return, integration, and prosecution of persons returning from conflict zones where designated terrorist groups are active, primarily Syria and Iraq. The joint country visit took place from 3 to 12 July 2023.

2. This thematic visit offered a unique opportunity to assess the efforts and challenges faced by Member States to advance human rights-compliant repatriation and reintegration. The Special Rapporteur's mandate has prioritized the human rights and humanitarian law consequences of the mass, arbitrary detention of over 70,000 men, women and children in the North-East of Syria and other conflict zones.¹ In undertaking this joint visit to two countries substantially engaged in repatriation and reintegration, there is a valuable opportunity to identify good practices, demonstrate practical steps being taken at the national level, address ongoing challenges, and provide advice to other Member States on how to ensure that repatriation efforts continue, the human rights-compliant prosecution is advanced, that reintegration lessons are learnt and that common problems can be tackled at the multilateral, regional and national level.

3. She commends the cooperative approach with which both Governments facilitated her joint visit. She began her visit in Germany, meeting with the Foreign Office of Germany, including representatives of the divisions for United Nations and Counterterrorism, international cooperation, human rights, international criminal law, emergency help for Germans abroad, crisis response centre, Syria Task Force and the division for Iraq, Syria, Lebanon, Counter-Daesh-Coalition. At the federal level, she met with representatives of the Ministry of Interior, the Federal Criminal Police, the Federal Office for Migration and Refugees, the Ministry of Justice and Federal Public Prosecutor and the Foreign Intelligence Service. The Special Rapporteur also met with Higher Regional Court judges in Berlin and the former returnee coordinator of Berlin. During her mission, she visited the prison of Hamburg-Billwerder. She also met a wide range of civil society organizations, lawyers, social workers, and human rights experts involved in the repatriation, prosecution, rehabilitation and reintegration of German nationals from North-East Syria. She further met with returnees and families of individuals still detained in North-East Syria with alleged links to designated terrorist groups.

4. Subsequently, the Special Rapporteur travelled to North Macedonia, where she commenced her visit meeting with the Ministry of Foreign Affairs and concluded her visit by meeting the President of the Republic. In addition, she met with the National Committee for the prevention of violent extremism and countering terrorism, which is a multisectoral body composed of 22 members, including representatives from the Ministry of Interior, the Agency of National Security, the Ministry of Labour and Social Welfare, the Ministry of Education, the Ministry of Health, the Ministry of Justice, the Ministry of Foreign Affairs as well as the State Prosecutor. She also met with trial and pre-trial detention judges at the Basic

¹ <https://www.ohchr.org/en/special-procedures/sr-terrorism/return-and-repatriation-foreign-fighters-and-their-families>;
<https://www.ohchr.org/sites/default/files/documents/issues/terrorism/sr/statements/EoM-Visit-to-Syria-20230721.pdf> <https://www.ohchr.org/sites/default/files/documents/issues/terrorism/statements/EoM-Visit-to-Syria-20230721.pdf>.

Criminal Court in Skopje and the National Human Rights Institution. At the local level, she met with the Local interdisciplinary team for reintegration in Tetovo, the local Action Task Force for Reintegration in Gostivar and the Center for Social Affairs from the Plasnica municipality. During her mission, she visited the Idrizovo prison, where several individuals are serving prison sentences for terrorism-related charges, including returnees from Syria and Iraq. She also met with various civil society organizations (CSOs), social workers, psychologists and human rights experts, the UN Country Team, the IOM, the OSCE Mission to Skopje and the GCERF (Geneva), involved in the repatriation, prosecution, rehabilitation and reintegration of Macedonian nationals from Syria and Iraq. She met with returnees and families of individuals still detained in north-east Syria, including women and children with alleged links to designated terrorist groups. She is particularly grateful to the OHCHR in North Macedonia for the excellent support provided during the visit.

II. Background to the technical visit

5. The Special Rapporteur has maintained a sustained focus on the issues of arbitrary mass detention, primarily of women and children, in camps in North-East Syria. She has addressed the issue in multiple country reports and annual thematic reports to the HRC and the General Assembly.² With the Committee on the Rights of the Child (CRC), she has found that particularly egregious harms occur to children in detention and camp facilities and that the particular vulnerability of children creates specific and defined obligations for Member States.³ In July 2023, she conducted the first visit by an independent UN human rights entity to North-East Syria, where she visited Al-Hol, Al-Roj, Hassakah/Gweirwan (Panorama) prison, Hourri and Orkesh detention facilities for adolescent boys and Alayah prison. With 12 other Special Procedures mandate-holders and two Working Groups, she has identified a credible basis to hold that multiple human rights violations attach to persons detained in camps and detention facilities in North-East Syria.

6. During her technical visit in July 2023, she observed first-hand the conditions of confinement in camps, prisons, and other places of detention. She underscores that conditions in the detention facilities and prisons in North-East Syria remain absolutely dire, specifically finding torture, inhuman and degrading treatment including sexual violence and reproductive harm; arbitrary detention; right to life infringements; freedom of movement restrictions; erasure of the right to family life; fundamental infringements on the right to health; abrogation of the right to education; denial of the right to non-discrimination; lack of the right to clean and safe water alongside multiple violations of the rights of the child.

7. She presses with compelling urgency the absolute and abhorrent conditions in which citizens of both Germany and North Macedonia are being arbitrarily detained, implicating the commission of core crimes under international law, and confirms the urgent need to bring them home.⁴

8. She highlights that the condition of third-country nationals (women and children) in the Al-Hol Annex is particularly dire, as this facility functions as a sub-prison within a broader detention facility. Al-Hol and Al-Roj are made up of unstable tent-like structures which collapse in strong winds or flood with rain or sewage. Hygiene is almost non-existent, limited drinking water is often contaminated, latrines overflow, mounds of garbage litter the grounds and illnesses, including viral infections, are rampant. Under-resourced humanitarian groups and organisations provide food, water, health care and essential non-food supplies. Violence in certain facilities is extensive, and children are at particular risk of ongoing harm, including sexual exploitation and violation. She observed a systematic practice of separating third-country national boys from their mothers in the camps upon reaching adolescence, causing irreparable harm, and highlights the vulnerability of German and Macedonian children to this practice, which constitutes a core crime under international law. She is

² A/78/520; A/HRC/49/45; A/HRC/46/36.

³ CAT/C/75/D/922/2019; CRC/C/89/D/77/2019, CRC/C/89/D/79/2019, CRC/C/89/D/109/2019; H.F. and Others v. France, Applications 24384/19 and 44234/20, (2022).

⁴ <https://www.ohchr.org/sites/default/files/documents/issues/terrorism/sr/statements/EoM-Visit-to-Syria-20230721.pdf>.

particularly concerned about the condition of German and Macedonian women who may be held in the Annex at Al-Hol camp, which functions as a prison within a prison, and the vulnerability of women and children to trafficking, sexual violence, obstetric and other forms of violence and profound material deprivation.

9. She highlights that German and Macedonian men and children are detained without any legal process and are subject to incommunicado detention and disappearances, notably in the Hassakah/Gweirwan (Panorama) prison. She observed and confirmed by the detaining authority the fact that tuberculosis is rife in prison, which she estimated affects 75 percent of the population, has been untreated, and there are no mechanisms in place in the prison to separate those who are infected from those who are not. She also heard from the detaining authority and directly observed food deprivation, which she found to constitute *de facto* starvation of the male prison population. She confirms that approximately 700 male children are detained in this facility. She reminds Member States that denial of access to medical care in a situation of hostilities can constitute a war crime, and that deliberate starvation of a persons detained is a war crime (A/78/520).⁵ In addressing the calamitous humanitarian and human rights consequences of mass arbitrary detention the mandate-holder has communicated with governments;⁶ addressed the severity of the humanitarian issues and, human rights challenges and concurrent legal obligations of Member States concerning the situation of their nationals in North-East Syria in her General Assembly and Human Rights Council reports;⁷ issued multiple position papers concerning intersectional issues including citizenship stripping and the situation of adolescent boys in so-called rehabilitation facilities;⁸ and submitted multiple *amicus curiae* briefings in national and regional legal proceedings.⁹ While some countries are making serious and meaningful efforts to repatriate their nationals, many are doing nothing whatsoever and appear satisfied to leave their vulnerable citizens to experience the most grave human rights violations without any concrete efforts to prevent harm.

10. The urgent return and repatriation of all individuals detained in North-East Syria is, in her view, the only international law-compliant response to the undoubtedly complex and precarious human rights, humanitarian and security situation faced by those women, men and children who are detained in conditions meeting the threshold for torture, cruel, inhuman and degrading treatment in overcrowded camps, prisons, or elsewhere in North-East Syria and Iraq. For children born in detention, the spectre of cradle-to-grave detention appears to be accepted in practice by countries of origin as an ‘acceptable’ status quo; for all children, the lack of access to water, adequate food, education and minimal health care undermines the supposed global commitment to advancing the rights of all children equally as expressed in the CRC; for adolescent-boys, the situation is dire as they experience violent separation from family members, which bonded with boarder conditions of confinement, in her view, constitute acts meeting the threshold for the commission of crimes against humanity against the boy-child. As conflict cycles have moved on, and “new” conflicts, including in the Middle East and elsewhere, have preoccupied the international community, the ease with which the situation in North-East Syria is placed on the political “backburner” is deeply regrettable and posits a complacency to accepting ongoing perpetration of the most serious crimes under international law without an end in sight. Given the geopolitical fluidity and insecurity of the region, repatriations combined with durable human rights-compliant solutions to the plight of those who cannot be returned to countries of origin are also crucial to States’ long-term security interests. Any repatriation must comply with international law, including the absolute prohibition of torture, ill-treatment, and refolement.

⁵ A.51(1) AP1, Customary Study, Rule 53; GCIV Arts. 56, 57; API Arts. 8–31; and APII Arts. 7–12.

⁶ SRCT has issued 90+ communications to governments: <https://www.ohchr.org/en/special-procedures/sr-terrorism/return-and-repatriation-foreign-fighters-and-their-families>.

⁷ A/HRC/52/39 para 53-54; A/77/345 paras 43-44; A/HRC/46/36 paras 30-31.

⁸ https://www.ohchr.org/sites/default/files/Documents/Issues/Terrorism/SR/UNSRCT_Position_human-rights-of-boys-adolescents-2021_final.pdf; Position of the SR on counter-terrorism and human rights on the human rights consequences of citizenship stripping in the context of counter-terrorism in North-East Syria.

⁹ BOLOH 1(A), BOLOH 2(A) male only, BOLOH 12, and BOLOH 13 (2023 FC 98) Federal Court of Canada (3 January 2023); SIAC, Case of Shamina Begum (26 October 2020).

11. She was pleased to conduct this joint visit, recognizing the common and distinct approaches of Germany and North Macedonia to the challenges of repatriation, return, reintegration, and prosecution. Both countries demonstrate unique and valuable approaches and programming. She welcomes the constructive and open way the visits were conducted and the willingness of both States to engage in such a thematic visit as evidence of a collective and cooperative approach to address complex, global challenges.

12. From discussions with the authorities in both countries, she identifies six categories of persons for whom issues related to repatriation, return, reintegration, and prosecution arise. First, persons who departed to Syria and “self-returned” from the conflict zone. Second, persons who were deported to Germany or North Macedonia from another country following a period spent in the conflict zone. Third, persons who were returned following an organized return from a place of detention in North-East Syria or Iraq. Fourth, persons who remain incarcerated in Iraq or Syria. Fifth, German or Macedonian nationals who remain in Syria or Iraq and whose precise whereabouts are unknown. Sixth, German or Macedonian nationals who may have been transferred to other countries.

III. The Federal Republic of Germany

13. Germany currently ranks 35 in the Global Terrorism Index, and its overall terrorism threat profile remains consistent with the previous two years.¹⁰ To date, no transnational terrorist act (al-Qa`ida or an affiliate) has been carried out in Germany. Concerns about the risk of domestic terrorism remain live, and radicalization conducive to terrorism both online and offline remains a pertinent concern for the government. Right-wing violent extremism conducive to terrorism remains of significant concern.¹¹

14. Germany holds a long-term political and legal commitment to maintaining the values of a democratic society and promoting democratic resilience through addressing violent extremism and promoting disassociation from organizations whose ideology and practice reject democracy and co-existence. This commitment and work have roots in the rise of neo-Nazi ideologies and right-wing extremism in the 1990s, including in the context of the reunification of Germany. Countering-violent-extremism practice has, as a result, a much longer prevention history in Germany than in other countries. This background is of particular relevance to the depth of knowledge, experience, and community and tertiary-based engagement in Germany, which provides a unique entry point to current practices with persons returning from conflict zones. She also notes the significant role Germany has played in the Global Coalition Against Daesh formed in 2014, as well as its contribution to capacity building in conflict-affected areas.¹²

A. Background

15. Germany experienced significant departures of its nationals and persons having permanent or long-term residence (though not citizenship) in Germany to conflict zones in Syria and Iraq. Departures to other conflict zones, including Afghanistan, Somalia, and, more recently, Ukraine, are also recognized. The Special Rapporteur notes that departures and returns occurred at different points to and from the conflict zone, raising specific issues of fact and law regarding returnees' legal and social processing. It is estimated that 1,150 German nationals or persons of permanent residence in Germany have departed for Syria or Iraq since 2011. Of this number, 25 percent are estimated to be deceased. Germany has returned 108 individuals, namely 27 women and 80 children, and one young man in organized repatriation operations. She has been able to ascertain that there are still, at the very least, 80 adults who have a close relationship with Germany held in detention in North-East Syria and

¹⁰ <https://www.visionofhumanity.org/wp-content/uploads/2023/03/GTI-2023-web-170423.pdf> p.45.

¹¹ On 7 December 2022, the largest counterterrorism operation in post-war Germany was conducted in eleven of Germany's 16 states. Approximately 3,000 officers were deployed in raids on the so-called “Reichsbürger” milieu, searching a total of 162 properties/25 individuals were arrested.

¹² <https://theglobalcoalition.org/en/partner/germany/#:~:text=As%20co%2Dchair%20of%20the%20Stabilization%20Working%20Group%20and%20chair,areas%20in%20Syria%20and%20Iraq.>

Iraq and she understands that warrants and entry bans have been issued to the vast majority of them. According to a range of figures obtained from various sources, there are approximately 40 men incarcerated in prisons in Syria. It is estimated that 22 women and 150 children remain detained in the camps of Al-Hol and Al-Roj and adjacent facilities. Furthermore, she understands that less than ten German nationals, including women, are currently convicted and imprisoned in Iraqi jails. Between 30-40 percent of those who left Germany for the conflict zones (between 300-400 are estimated to have self-returned or been transferred from third countries, with as many as 270 leaving after only a few months spent in the conflict zones. Although these figures are approximative, there remains a large number of individuals who are unaccounted for, particularly considering that many children were born in the zones of conflict.

16. In the case of self-returns from Syria and Iraq, individuals often returned directly to their families and communities with initially limited involvement of formal justice or social services oversight/engagement, though with time, authorized security monitoring was in place for many. Despite significant global attention and articulated human rights concerns, the practice of formal repatriation from conflict zones, specifically Syria, only appeared to extensively commence following a series of court decisions obligating the government to both locate and repatriate certain German minors and their mothers. The Government started the process of locating and thereafter repatriating children in August 2019, though efforts were being made earlier to identify nationals as well as to internally address *inter alia* international and consular law. Positively, sizeable number of women and children have been repatriated, though a sizeable number remain in the detention facilities and prisons of northeast Syria, observed first-hand by the Special Rapporteur.

17. She notes the significant and positive social and health infrastructure in Germany and the mobilization of resources and infrastructure at the State and Federal levels to address the needs and rights of returnees, particularly children.

B. Organised Repatriation Processes

18. Regarding organized returns, such operations took place in August and November 2019, December 2020, June 2021, March, May and November 2022.

19. The Special Rapporteur finds that women and children were generally well-treated, their immediate medical health and needs were assessed, and that care was taken with children during the transfer process. She highlights that individuals may not have been fully aware of their legal rights in this transfer context. Positively, at airport reception, the presence was interagency in nature, reflecting a broader interagency and multidisciplinary approach to the return and included non-governmental organizations that play an ongoing role in enabling and supporting reintegration and disengagement. Importantly, she notes the presence of lawyers already at the airport.

20. She positively acknowledges that many women returnees were able to return to their families and communities and that a highly active and structured process was put in place to enable their social, legal and personal integration. She commends the establishment of a returnee coordinator role that, in a complex federal and state system, brings together the key agencies and actors to optimize the government's role in this process. However, she observes that this project was envisaged for five years and that as of 2023, the funding responsibility has been transferred to the federal states, which will assess the need to continue such a project. She further notes that in some federal states, the role of the return coordinator has been transferred to law enforcement agencies. She believes that an interagency, multidisciplinary and social welfare-led reintegration process is the model most likely to yield long-term and positive reintegration results. She recalls that the work of repatriation, rehabilitation and reintegration of returnees is a long-term strategy and encourages the Government to continue providing financial support for such projects.

21. On return to Germany, women for whom arrest warrants had been issued were separated from their children. She was informed of cases of separation between mothers and very young children, including a breastfeeding baby. She notes with concern that this separation process was highly traumatic for both the women and children concerned and that

although it is recognised that women were being investigated for serious offences, as mothers, these women were still the primary point of security and safety for their children through the conflict and detention period. She finds that maintaining family bonds is the most effective and best interest of the child-compliant solution in most cases. She acknowledges that in several instances where separation occurred, children were placed in extended family care, mitigating family dislocation.

22. A similar regime appears to have been followed in all cases for female returnees charged with criminal offences. All were transferred to high-security prison facilities, and their first 24 to 48 hours in detention were spent under intense scrutiny through 24-hour video-surveillance. She noted that individuals were then placed under a regime that appears to be close to solitary confinement, including isolation for the first weeks (in some cases, months) of detention within the detention facility, solitary exercise for one hour a day, no contact with other detainees and external contact limited to their lawyer. She expresses concern about the isolated nature of this regime and its compatibility with Articles 3 ECHR and 7 of the ICCPR. She encourages review of this practice in light of the standards enshrined in the ECHR and ICCPR on torture, cruel, inhuman and degrading treatment. She highlights the extreme psychological costs of non-access to children and family members, as well as limited contact with legal representatives.

C. Consular services

23. The Special Rapporteur notes positively that most of these self-returns and organised repatriations have been treated under the right to consular services in Germany. While this obliges returnees to bear the costs associated with processing their consular application and associated travel expenses, consular action facilitates certain diplomatic complexities for Governments to be managed administratively, especially when the government lacks diplomatic representation in the country. Recognising the complexities that the repatriation of nationals from conflict zones represent for certain Member States without diplomatic representation, she considers that consular action may be a good alternative for these countries and encourages other Member States to explore this approach.

D. Civil Society Engagement

24. With respect to the role of civil society organisations, the Special Rapporteur positively acknowledges their role as a central and positive feature of the Government's approach to repatriation and reintegration, acknowledging the sophisticated and established role of civil society actors in processes of deradicalization, distancing and disengagement from violent extremist groups.

25. She credits a broad and deep eco-system with having availability, expertise, and historical traction on the processes of engaging vulnerable individuals who are in the process of re-establishing life in this post-conflict, post detention and post-violent extremist organization context. She was impressed with the clinical knowledge, research base, cultural sensitivity, and practical know-how of the organizations she met. She positively highlights that their focus was not on undoing ideology but on providing practical solutions to establishing a new life, including obtaining employment, navigating the social welfare system, and ensuring children were accessing school.

26. She highlights the lack of consistent and long-term funding for the NGO sector working on dis-engagement and their inability to hold onto experienced clinical staff due to the unpredictability of funding. She strongly recommends, given the evident value of the sector and its important engagement, that long-term strategies are engaged to ensure the capacity for long-term, sustained work and the retention of expert staff.

E. Prosecutions

27. The mandate-holder commends the novel German approach to the prosecution of individuals who have returned from the conflict zones of Syria and Iraq, specifically that the

prosecution of individuals who are alleged to have committed serious crimes in the zones of conflict is engaged not only for terrorism offences, but also for core international crimes, through the use of cumulative prosecution.

28. She welcomes the close cooperation within the Federal Public Prosecutor's Office between the Counter-Terrorism Unit and specialised unit in charge of war crimes. She acknowledges the burdens on the German judiciary that result from the prosecutions of individuals from Syria and Iraq. She notes there have been 20 verdicts against female returnees resulting from investigations of the Federal Public Prosecutor's Office. In addition, a further judgment has been passed against the son of an individual who went to the conflict zone and who has since reached the age of criminal responsibility. In 2022, five out of twelve charges of the Federal Public Prosecutor General against returnees were based on terrorism offences and core international crimes, and both within the Federal Public Prosecutor's Office and at the level of States (Länder), there are currently 311 investigations of returnees. She also notes the primary role of regional courts in prosecuting these individuals. She highlights the need to ensure the full protection of fair trial rights in such novel proceedings including in respect of sentencing following cumulative prosecution.

F. Prosecution for terrorism offences

29. The Special Rapporteur notes that those who travelled or were trained but did not actually enter the zones of conflict were prosecuted under Section 89a StGB, a provision that was broadened following the adoption of UN resolution 2178 (2014) to address an identified gap in regulation as foreign (terrorist) fighters became a matter of global concern.¹³ This provision allows for criminal liability without proving membership in the terrorist group, as attempted travel to a conflict zone where terrorist groups are active alone is not sufficient to establish membership in a terrorist group. She recognises that while these national legislative provisions provide a basis for prosecution and assessment of criminal responsibility, a mosaic of regulations also operates at the Länder level.

30. Until 2018, most prosecutions of those who returned from the conflict zones took place under charges of membership in or participation in a terrorist association (Section 129a of the German Criminal Code (Strafgesetzbuch – StGB)), combined with membership or support of a terrorist association abroad (Section 129b StGB). She notes that the decision by the German Federal Court of Justice on 22 March 2018 (Az. StB 32/17, Bundesgerichtshof) has had an important impact on the prosecution of women who either self-returned or were repatriated by Germany, as it increased the need to provide evidence of positive acts of support for the terrorist organisation as a basis for prosecution. German prosecutors have consequently developed prosecutorial strategies to address the core of criminal responsibility through a gendered lens and actualise the complex roles played by women in the context of terrorism and the specificities of their situation as victims and perpetrators in situations that transverse both categories. She welcomes this innovation and the commitment of Germany to address the complexity and totality of criminal law responsibility for acts of terrorism that German citizens may have committed in other territories. In discussions with prosecutors and judges, various factors were identified to establish the legal and factual criteria for membership of a terrorist organization. These factors include the self-responsible travel of women to Syria and Iraq, “identification” with the terrorist group, “marriage” with a fighter, including of higher rank, and being in an area controlled by the terrorist group.

31. The Special Rapporteur's long-standing position is that prosecution for terrorism offences is necessary and should address the legal responsibility of both men and women, but that caution must be exercised when constructing certain maternal or marital responsibilities, including, for example, pregnancy as per se creating criminal responsibility given the potential for over-reach of the criminal law. She views these factors with caution and notes that, for example, the classification of ‘marriage’ to a fighter has expansive

¹³ She raises concerns about labelling individuals and their families, by association, as foreign terrorist fighters (per resolution 2178 (2014)), including blurring lines between terrorism and armed conflict, with consequences for both IHRL and IHL protection. She uses the term “foreign terrorist fighters” when referring to this term as reflected in the relevant UNSCRs.

consequences for finding a civil act of marital union as commensurate with or contributing to an act of membership in a terrorist group. Its use in this context raises profound questions about the use of ‘marriage’ criteria as a basis for membership in a variety of groups by a spouse and seems, *prima facie*, inconsistent with Article 8 ECHR and Article 17 ICCPR. She finds that accruing evidence of other offences, such as propaganda for recruitment and fundraising for the group, is more exactly in line with international law perimeters defining criminal responsibility and carries more evidentiary weight.

G. Prosecution of Core International Crimes

32. The Special Rapporteur commends Germany for undertaking its fundamental duty to exercise its jurisdiction over those responsible for core international crimes, as “the most serious crimes of concern to the international community as a whole must not go unpunished”.¹⁴ She has consistently held that an effective repatriation process includes holding individuals accountable for the serious and systematic crimes committed in Syria and Iraq. She notes that prosecution beyond terrorism offences importantly allows for the participation of victims in trial processes, highlighting that victims benefit overall from strong procedural rights in Germany, notably through the role of joint plaintiff, which allows victims of international crimes to actively participate in criminal proceedings.¹⁵

33. Importantly, she recognizes that for reasons historically linked to Germany’s particular efforts at accountability at the end of the Second World War as well as because Germany has welcomed on its territory many victims of crimes committed in Syria and Iraq, German prosecutors have started to use, through the practice of cumulative prosecution, other national and international legislation and statutes to prosecute individuals who have returned from the conflict zones of Syria and Iraq. This includes, in particular, the Military Weapons Control Act (Section 22a), as well as, crucially, the German Code of Crimes against International Law (the domestic implementation of the Rome Statute), including genocide (section 6), crimes against humanity (section 7) and war crimes (sections 8 to 12).

34. She notes in this context that Germany is advancing accountability for sexual and gender-based crimes, including conflict-related sexualized violence and acknowledges the broader lacunae in international law accountability for sexual and gender-based violence and the challenges of successfully pursuing such accountability. The prosecutorial strategies have a particular focus on gendered harms, including sexual harms experienced by Yazidi survivors of Daesh. She affirms the importance of such accountability and the critical role of survivors in providing testimony and evidence to such proceedings. She highlights that, to date, the prosecution has primarily been directed at ‘aiding and abetting’ such crimes,¹⁶ as German men have, so far, not been repatriated. She is conscious of the complexity of such charges and their material proof and highlights the continued need for the prosecution of the primary perpetrators where feasible, including when primary perpetrators are repatriated, particularly as the role of men and husbands pay are a prominent part of the execution of the prosecution strategy, and that this novel approach to the construction of liability engages some risk to the integrity of primary criminal responsibility.

H. Collection and Use of Evidence

35. While the Special Rapporteur acknowledges the inherent difficulties in prosecuting core international crimes in the context of the conflicts in Syria and Iraq, she welcomes the efforts made by the German authorities to alleviate these challenges, notably through cooperation with international mechanisms such as IIIM and UNITAD, as well as other States, and the efforts to alleviate these challenges through the involvement of experts, such as scholars of Islam, to testify in criminal proceedings, extensive interviews of returnees,

¹⁴ Rome Statute, Preamble.

¹⁵ Gesetz zur Stärkung der Opferrechte im Strafverfahren of 21 December 2015, known as the Third Victims’ Rights Reform Act (3. Opferrechtsreformgesetz).

¹⁶ Taha Al-J., judgment of the Frankfurt Higher Regional Court of 30 November 2021 - 3 StE 1/20-4, Federal Court of Justice 30 November 2022-3 StR 230/22.

witness testimonies the use of “battlefield evidence” and secret evidence. She is reassured that what the prosecutorial authorities refer to as “battlefield evidence” in the context of these trials remains fully consistent and compliant with regular criminal procedure and rules of evidence relating to the legal principles that govern the proof of facts in legal proceedings. She highlights that using the term “battlefield evidence” may not be helpful to governments in this context because it suggests a departure from the regular rule of law principles and a lowering of the most basic principles of the right to a fair trial.¹⁷

I. Convictions

36. The Special Rapporteur affirms and commends the independence of the German judiciary. She notes that trials in all terrorism and core crimes are substantial and meaningful, with a full adjudication of evidence and contestation and engagement by defence counsel.¹⁸ She observes sentencing to be generally considered and deliberate.

37. Criminal proceedings in repatriation cases have significant and sometimes negative consequences for family law proceedings¹⁹ and underscores the need to maintain the integrity of familial relations, particularly when these serve the best interests of the child and provide a critical basis for full reintegration into society. Travel and return create significant challenges for immediate and extended families. She highlights how stigma can attach as an unintended consequence of state action in the criminal and family law spheres. States are encouraged to respect the primary responsibility of parents, including mothers, and urged to take all necessary steps to ensure that parents are capable of taking primary responsibility for their children.²⁰ Even when separation is determined to be in the best interests of the child, it should be for the shortest possible time. Where mothers’ detention cannot be avoided, children have the right to regularly visit their mothers, as long as it is in their best interests.²¹ She stresses the need to address stigma and exclusion as one of the primary barriers to human rights complaint reintegration.

J. Further Repatriations

38. The mandate-holder stresses the urgency and need to return all citizens and individuals with close links to Germany who wish to return from conflict zones, all the more so following her visit to places of detention in North-East Syria, where evidence of core international crimes related to detention was identified.²² She highlights the ongoing and increasing insecurity of the territory of North-East Syria, the ongoing security vulnerabilities highlighted by the prison breakout from Al-Hassakah in January 2022, as well as the interest in advancing accountability for core crimes. She encourages a considered approach to the repatriation of men, including structured identification of risk, health status, age, family situation, and responsibility for serious crimes as a basis for preliminary stratification and prioritization.

IV. North Macedonia

39. Since North Macedonia gained its independence from the former Yugoslavia in 1991, a system of parliamentary democracy has consolidated. It was granted EU candidate status

¹⁷ https://www.ohchr.org/sites/default/files/Documents/Issues/Terrorism/SR/UNSRCT_Position_Battlefield-evidence-2021.pdf.

¹⁸ She highlights concerns expressed by some defence counsel that access to exculpatory evidence in such cases is challenging and that defence counsel expressed a sense of disadvantage in practice.

¹⁹ A/HRC/46/36 para. 24.

²⁰ CRC, GC No. 7 (2005).

²¹ CRC, Report and Recommendations of the Day of General Discussion on “Children of Incarcerated Parents” (2011).

²² Under existing German law time served in prison facilities is counted threefold for time which may be served in Germany.

in December 2005, and the EU held its first intergovernmental conference with North Macedonia in July 2022. North Macedonia has been a member state of NATO since February 2019, having been identified as a potential candidate for membership during the Thessaloniki European Council. The risk of terrorism remains extremely low in North Macedonia as measured by the Global Terrorism Index.²³ The country has experienced a backdrop of ethno-national conflict, erupting in 2001 when Albanian separatists engaged in attacks on security forces. Isolated terrorist incidents include the Kumanovo shootings in May 2015 and violent post-election political unrest following parliamentary elections in 2017. Courts in North Macedonia have experience in addressing territorially-based terrorism incidents and more recent experience in adjudicating persons who travelled to conflict zones where designated terrorist groups are active.

40. Travel of Macedonian citizens was identified during the early period of the unrest and subsequent conflict in Syria in 2011. Security officials identified that there were a small number of departures to other conflict zones or areas where designated terrorist groups were active before 2011, primarily to Afghanistan and Pakistan. Early departures to Syria involved cohesive family groups and individual men departing without spouses or children. Motivations for departure were reported to the mandate-holder as varied, including financial, religious, ideological, and familial incentives.

41. Statistics on how many persons have travelled and remained in North-East Syria and have returned contain certainties and some opaqueness. It is estimated that 143 citizens, excluding children, travelled to the Syrian and Iraq conflict zones. Of these, 38 are estimated to have died in the conflict zones. Sixty-nine have returned, of which 23 returned in a government-facilitated manner: four men, five women and 14 children. Statistics on the totality of self-returns or expulsions from third-countries were unavailable. She has determined minimally that there is still one woman and three Macedonian children between the ages of 5-11 in the camps. Although the number of Macedonians remaining in North-East Syria remains indeterminate, she understands that several men married Syrian or other nationals who remain in the conflict zones, with children who have Macedonian nationality through their (returned or deceased) fathers. Approximately 44 men have been prosecuted, 19 remain in detention, and 25 have returned to their communities.

42. Return to North Macedonia has occurred from the earliest period of the conflict in Syria. She confirms that self-return constitutes the largest category of returnees. Organized returns also constitute a significant category as a matter of law and policy. She identifies that communities of origin and families remain largely receptive to returnees, particularly regarding the return or repatriation of women and children. The stance of the larger body politics is more nuanced, with concerns expressed in some quarters about the security risks such individuals may pose. Overall, however, she finds that the conditions for positive and accepting reintegration exist in North Macedonia, and there is a good community basis to ensure individuals, particularly children, return to society in a positive and rights-compliant manner. A key aspect of the context of return is the stance towards and understanding of the prevention of violent extremism in society and the broader capacity of society to progress non-discriminatory social inclusion as the fundamental basis for rights-based return and reintegration.

43. Although all returnees are, in principle, covered by government and non-state programmes, a large proportion of social and political resources is being expended towards one particular group of returnees: those repatriated through organized governmental processes. This appears to leave a sizeable gap in human-rights-based inclusive support to all returnees and their broader communities, particularly individuals and families that self-returned before 2016. She highlights that the exceptional elevation of attention and resources to one highly visible group in a resource-constrained environment for vulnerable communities may create negative unintended consequences. These include competition between social groups for scarce resources, stigma by virtue of exceptionalising one group in society as “radicalized” or “extreme” per se and leaving aside the broader terrain of threats of a violent extremist conducive to terrorism form that can persist in ethno-national contexts. While recognizing many positive aspects of the return and reintegration process outlined

²³ At a level of 0 index in 2021, down from 0.11 index 2020.

below, she encourages a holistic approach to addressing violent extremism conducive to terrorism and prevention beyond the narrow group returning from conflict zones.

A. Repatriation

44. Organised repatriations followed by the identification of individuals in detention camps or prisons in North-East Syria. Women and children report a positive experience in the process of return, with a focus on their welfare and the welfare of their children. The mandate-holder acknowledges that organized repatriation occurred during the COVID-19 pandemic, and, as a result, a two-week quarantine period was observed on arrival in the country. Women returnees reported access to family by phone at the time. Medical evaluations were undertaken. Critical care issues were also addressed. Women and their children returned to their families and communities after this quarantine period. A challenge of legal identity and the production of identity documents existed for children born in conflict zones, but for most children, this issue has now been resolved. For future repatriations, this process could be streamlined, ensuring seamless access to health care, education, and other social services and ensuring that reintegration is as effective as possible. She recommends an audit be conducted for returning and repatriated families to ensure that legal identity has been secured equally for all. For men repatriated, as individuals facing specific criminal charges or investigations, transfer engaged strong security protocols, including shackling and eye-covering. Men interviewed, however, did not report ill-treatment during transfer, and all addressed their profound relief at being taken out of the inhumane conditions in Al-Hassakah prison. She commends the Government of North Macedonia for its decision to return men and encourages all remaining men to be transferred, particularly given the dire and inhumane conditions that currently prevail at Hassakah/Gweirwan (Panorama) prison.

B. Legal Framework

45. The Special Rapporteur notes that the main provisions relating to terrorism are considered offences against public order and are contained in Articles 394a, 394b, and 394c of the Criminal Code, which criminalises the creating or belonging to a terrorist organisation, terrorism, and the financing of terrorism. She understands that these provisions are used for domestic acts of terrorism, including for acts committed by groups with an ethno-nationalistic motivation. The Prosecutor's office confirmed these provisions are most frequently used and lead to the most severe penalties, including life sentences. Additionally, she was informed that article 313 of the Criminal Code relating to the endangerment of the constitutional order, currently considered an act of terrorism, will no longer be in the category of terrorism in a pending amendment to the Criminal Code.

46. Following the adoption of UN Security Council resolution 2178 (2014), the Parliament adopted Article 322a of the Criminal Code, entitled "participation in a foreign army, police, paramilitary or parapolice formations", which criminalizes the creation, organization, recruitment, equipping or training a person or a group outside the territory of North Macedonia and providing financial means to that end; the participation of a national or his/her receiving training by a foreign army, police, paramilitary or parapolice formations, organized groups or individually, outside the territory of North Macedonia and the spreading of messages to the public to recruit or encouraging others to commit such offences. She notes that while this article covers attempts to enter conflict zones, it does not criminalize travel or entering the conflict alone; adding the terms "in another manner" or "in whatever manner" to the acts described gives extremely broad leeway to prosecutors. In discussion with judicial representatives, it appears that although some positive action was required for conviction, the threshold for action and, thus, conviction was shallow, and highlights concerns of both legality (legal certainty) and the threshold of action for criminality as expressed in the law.

47. While she recognizes positive and interagency work in the production and updating of national action plans on counter-terrorism and countering violent extremism, including updates to its Law on Money Laundering and CFT in 2022, progress is recommended on the prosecution and adequate sentencing in CFT/AML sectors, and beneficial ownership

regulation.²⁴ She recognises the positive example that North Macedonia has previously set in the NPO Terrorist Financing Risk Assessment for the MONEYVAL mutual evaluation in a partnership between the FIU and civil society, which was then reflected in the AML and CFT Strategy, adopting a “risk-based approach” in the countering terrorism finance sector.²⁵ She recommends adopting a similar inclusion process for any further revisions to the national action plans on counter-terrorism and countering violent extremism and highlights the lack of definition for the term ‘extremism’ in international law and the human rights concerns that apply to overly broad policy and practice in the counter-extremism context. Any national action plan must fully integrate and mainstream the human rights obligations of the government and ensure that its implementation is human rights-compliant.

C. Community and Integrated Approaches to Reintegration

48. During her visit, the Special Rapporteur travelled to Tetovo, Gostivar and Plasnica, where she met three local multidisciplinary reintegration teams. She positively notes the development of an inter-agency and interdisciplinary reintegration model at the municipal level. Although social workers lead this model, it includes all relevant stakeholders, e.g. clinical psychologists, employment specialists, the police, the intelligence services and other local services as needed. Local interdisciplinary teams shared that they work only on a voluntary basis with returnees. She highlights that the approach of these teams is built on an intervention plan tailored to the needs of returnees. These teams assist and advise returnees during their administrative procedures, such as obtaining identity documents for children born in Syria and child benefits and can provide access to vocational training and psychological support to reintegrate returnees into their community. She finds this local, connected, multi-dimensional team approach to be good practice and focused on the returnees' functional reintegration, specifically on women and children. She also notes that, in several cases, the intervention of these teams can be expanded, at the family's request, to the extended family of the returnees and to returnee men. She confirms the openness, inter-group collegiality and willingness of the teams she met to discuss frankly and even set out different viewpoints forthrightly and finds that investment in social functionality and inclusion is far more likely to lead to positive results in reintegration than security-led processes that stigmatize and marginalize families. Investment in this kind of local structure is one to be prioritized by the Government and supported by the international community.

49. Nonetheless, she highlights some challenges. In practice, the number of families engaged in these structures appears very limited. The interventions appear to primarily focus on repatriated families and not those self-returned. Moreover, she understands that such local teams may only work with certain families who have been security-cleared. She also highlights the complex role of the security sector engagement and knowledge sharing (both ways) with social services and clinical professionals whose ethical responsibilities to the well-being of their clients may directly conflict with other competing interests to gather intelligence or security information. In this regard, she underscores the right to privacy and family life (Article 17, ICCPR) under international law, as well as the need to protect the rights of children under the Convention on the Rights of the Child from undue interference by the State based on a presumed profile of a parent or family member (Article 2 CRC).

D. Civil Society

50. The Special Rapporteur positively acknowledges the developing role of civil society in addressing social inclusion, vulnerability and human rights in society. During her visit, she met with two recently created consortia of civil society organisations working on preventing and countering (violent) extremism. She welcomes the creation of these two consortia, which bring together expertise and acknowledges their broad focus on inclusion, vulnerable

²⁴ MONEYVAL Fifth Round MER (May 2023); NM is rated compliant/largely compliant in 28 out of 40 FATF recommendations.

²⁵ September 2022, asset freezing was undertaken using the Law on International Restrictive Measures against fifteen FFs.

communities, discrimination, and exclusion. Generally, she notes that NGOs can play a valuable role in programmes focused on preventing and countering violent extremism. She heard that some of the work of these consortia engages with the broader communities in which returnees live. Nonetheless, she is concerned that the basis for direct and indirect engagement with returnee communities is a very broad understanding of “extremism” and of a possibly prejudicial view of ‘at risk’ communities that open up arbitrariness in engagement with prevention practices.²⁶ She also highlights the risks of overlap between the NGOs and government models, highlighting again the very small target group and the genuine risk of stigma that such attention entails.

51. As the target group for all programmes relating to the repatriation and rehabilitation of Macedonian nationals is relatively small and only includes those returnees who returned in the framework of repatriations organised by the Government and who have been security “vetted”, she is concerned that a larger group of individuals who would benefit from social inclusion programmes, psycho-social and trauma-informed intervention are not part of either direct or indirect programming. On several occasions, she heard concerns from stakeholders about these beneficiary groups’ lack of engagement and recalls that these programmes, in particular when they target a small ethnically homogeneous population in a small country, may create a stigma for their beneficiaries, which could discourage their participation. Furthermore, noting that North Macedonia is a multi-ethnic society, she encourages civil society organisations to ensure due representation to ensure that any decision-making can be fully representative.

E. Prosecutions and the Right to a Fair Trial

52. Prosecutions for terrorism offences are carried out by a specialized unit based in Skopje. The Special Rapporteur’s long-standing position is that prosecution for terrorism offences is necessary and should address the legal responsibility of both men and women. She notes that none of the women returnees in North Macedonia have been charged or convicted of criminal offences, although this is not excluded in principle as two returnee women were investigated, but evidence of active support beyond marriage and living in the zone of conflict was lacking. She notes that the classification of ‘marriage’ to a fighter has expansive consequences for finding a civil act of marital union as commensurate with or contributing to an act of membership in a terrorist group, and caution must be exercised when constructing maternal and household obligations as per se creating criminal responsibility given the potential for over-reach of the criminal law in this regard. North Macedonia has taken an appropriately restrained view of criminal responsibility in this regard, without excluding that women may be properly found responsible for criminal acts should evidence exist to sustain a conviction.

53. She notes that the individuals (men) who have been prosecuted upon return have mostly entered into plea bargaining arrangements, which have lowered their sentences, and that the sentences also take into consideration several mitigating circumstances, including the individual’s age upon departure, the situation of the family and whether the individual is a re-offender. She has concerns, however, that individuals who have already been convicted in other countries for the same or similar offences linked to their presence in conflict zones may be re-convicted upon return to North Macedonia. She recalls the fundamental principle of non-bis in idem, a cornerstone of the principle of legality under international law as enshrined in Article 15 of the ICCPR. Positively no child has been convicted.

F. Collection and Use of Evidence

54. The Special Rapporteur notes that evidence for convictions under article 322a of the Criminal Code can be gathered from a wide variety of sources, including witness evidence, which can lead to a lowering of the sentences for co-returnees. She cautions, however, that the use of witness evidence in the case of returnees from conflict zones carries numerous complexities that may not be present in other forms of crimes, including obvious challenges

²⁶ A/HRC/43/46.

to the right to a fair trial. There are risks to the presumption of innocence and the right not to self-incriminate when one returned individual can serve as a witness across several cases and when the same individual is also serving as a defendant in their own case.²⁷ She also notes that this practice may seriously impact the returnee's ability to reintegrate into society.

55. She underscores the complexities of evidence gathering but notes that the offences for which the individuals have been charged upon return require low evidence thresholds. She welcomes the use of mutual judicial cooperation agreements to collect evidence and the exclusion of intelligence information, including from abroad. She notes that in such proceedings, however, in which the prosecution can access inculpatory evidence from an array of sources, including international sources, witness statements or confessions, has a severe impact on the ability of defendants to provide exculpatory evidence, with serious impacts on the principle of equality of arms.

G. Prisons

Conditions of Detention

56. The Special Rapporteur visited one place of high-security detention during her visit and met with men convicted of terrorism offences. She thanks the prison authorities for their excellent cooperation and openness. The prison is old, and its physical infrastructure is poor, a facet openly addressed and acknowledged by prison officials. Officials acknowledged that overall conditions have recently improved with investment in new buildings in the broader prison architecture, but challenges remain, including manpower shortages to guard the prison, necessitating the recent deployment of military personnel to support perimeter security. She was told a new high-security facility is being built on the site. As regards current conditions, she finds that the living areas are overcrowded and that hygiene is poor, water systems appear to work inconsistently, ventilation is outdated, and sanitation infrastructure (toilets and showers) is in urgent need of repair. She notes positively that the prisoners were able to live communally, cook, eat, and pray together. Those she interviewed positively acknowledged the benefits to their mental health and prison discipline from these open arrangements. Prisoners benefit from substantial periods of free time. She observed outdoor activities and access to large green open and exercise space. She also notes that individuals can receive visits from their families, including conjugal visits, depending on the sentence completion stage.

57. The Law on Execution of Sanctions of 2006 regulates the execution of sanctions for criminal offences and provides the principles for the re-socialization of prisoners. Although prisoners convicted for crimes under Article 322a of the Criminal Code should benefit from educational and training activities as informed by the penitentiary authorities, the Special Rapporteur's understanding is that these are not available to them. She recommends making these activities available to this category of prisoners to allow smooth reintegration upon release. She also notes a broader lack of de-radicalization, distancing and psycho-social work with the entire high-security population, including those convicted of domestic terrorism offences.

De-radicalization and de-engagement programmes

58. The Special Rapporteur was informed that the returnees were "model" prisoners and did not pose disciplinary challenges to the prison authorities. She was surprised to identify that within the high-security facility, a group of individuals convicted for acts of 'domestic' terrorism were isolated from the other inmates, even when exercising outside. This group was described as posing a specific and ongoing threat to prison staff, with several having received life sentences. She was very concerned to see that despite the risk posed by this group, the pilot de-radicalisation / de-engagement programmes would only target those individuals who had returned from conflict zones and not all those convicted of terrorism

²⁷ https://www.echr.coe.int/documents/d/echr/guide_art_6_criminal_eng. See e.g. ECtHR *Bahić v. North Macedonia*, 2021. App. No. 2833/13, paras 69-70; *Böhmer v. Germany*, 2002, App. No. 37568/97, para.67; *Navalny v Russia*, 2016, App. No. 46632/13 para. 104.

offences, specifically domestic terrorism offences. She highlights that such programmes should engage all individuals who have carried out acts of terrorism or violent extremism, recalling that such differentiated treatment of one category of individuals can only create additional stigma, which will ultimately limit the returnees' ability to reintegrate into society. Such differentiated programs also make it unlikely that one group of returnee prisoners would choose to engage in deradicalization programmes within the prison.

59. She also notes that these programmes assess individuals through a series of 'indicators' of 'extremism' and 'radicalisation' that relate inter alia to the physical appearance of persons and their religious practice. She is concerned that such indicators can be tainted by prejudice, act as placeholders for limitations on the absolute right of freedom of belief (Article 18, ICCPR), allow for arbitrariness in interventions and entirely lack judicial supervision.

60. In her conversations with detainees, she observed serious dental issues, and she was made aware of ongoing medical health challenges experienced by them. All prisoners, including those convicted of terrorism, have the right to the highest attainable available standard of health (Article 12 ICESCR). She found that the maintenance of family relationships was of absolute importance to the men, including their role as fathers, a right protected even during incarceration by Article 17 ICCPR. She stresses that positive and sustained family relationships are one of the strongest means to advance reintegration and ensure that the prison experience can function as a positive step toward a return to community and family. She highlights that many of these men face relatively long sentences and recommends that as an essential aspect of their reintegration, their relationships to family be enabled and positively facilitated. Her prison interviews also highlighted the situation of men whose wives and children (who are Macedonian nationals) remain in Syria. She underscores the precarious and harsh treatment experienced by third-country nationals (women) in the Al-Hol Annex and the intensity of human rights and humanitarian law violations committed there, including enforced disappearances, incommunicado detention, vulnerability to sexual violence, arbitrary detention, torture, and separation of children.²⁸ In this regard, she encourages the Government to take urgent steps to enable further repatriation of family members, to ensure family reunification as a means to advance both security and human rights values for returnees, as well as to protect Macedonian children that remain in the conflict zone.

H. Core international crimes

61. The Special Rapporteur notes that North Macedonia has signed (1998) and ratified the Rome Statute (2002). The provisions have been incorporated in its Criminal Code: Genocide (article 403), Crimes against Humanity (article 403a), and war crimes (articles 404 to 407). She encourages the Government to, where appropriate, use these provisions to ensure the serious violations of international committed in Syria and Iraq do not remain unpunished and unaccounted for.

V. Conclusions

62. The Special Rapporteur recognizes the positive work of both the governments of North Macedonia and the Federal Republic of Germany undertaking substantial efforts to return a significant number of their nationals from the conflict zone of North-East Syria. She affirms the life-changing consequences for both German and Macedonian children, which she witnessed first-hand in return for the ruinous and dignity-denying realities of arbitrary and tortuous conditions in camps and prisons and the transformative possibilities that a return to countries of nationality facilitate. The return of children redeems the commitments of these States to the Convention on the Rights of the Child and affirms the potential of the Children in Armed Conflict Agenda (CAC) through meaningful practice and practical implementation. She particularly

²⁸ <https://www.ohchr.org/sites/default/files/documents/issues/terrorism/sr/statements/EoM-Visit-to-Syria-20230721.pdf>.

commends the Government of North Macedonia for its positive practice of returning men from prison facilities in North-East Syria. She positively supports the efforts of both governments to facilitate positive repatriation, based on a fundamental commitment to reintegrate individuals back into society and demonstrate faith in individuals' capacity to transform their lives and positively engage in society. She acknowledges Germany's unique efforts to serve the human rights of victims of terrorism, pursue justice for the most serious international crimes and fill the evidence lacunae for violations of human rights and humanitarian law which have followed the conflict in North-East Syria.

63. Given the positive practice demonstrated in both States as well as innovative solutions developed for community integration, prosecution, and preventing and countering violent extremism, she urges both States to be leaders in the ongoing work of returning all their nationals from conflict zones, including men, women, and particularly children. She urges the return of all nationals' men, women and children from a situation of detention in which core international crimes are being committed through indefinite arbitrary detention, incommunicado detention, disappearances, torture, enforced separation, sexual violence, starvation and the denial of necessary medical treatment.

64. Given the evidence of positive practice documented by this joint visit, she urges other States whose nationals (men, women and children) remain detained in North-East Syria to live up to their international human rights and humanitarian law obligations, to actively pursue return and repatriation in cooperation with all relevant actors, to seek innovative interdisciplinary and community-based approaches to integration, to pursue international criminal justice (in compliance with international law) and to cease toleration of systematic human rights violations committed with impunity against their civilians held in mass arbitrary detention in North-East Syria.

VI. Recommendations

65. The Special Rapporteur recommends that the Governments of Germany:

- (a) Repatriate, as a matter of utmost urgency, all citizens from Germany and individuals who have close ties with Germany who are still detained in North-East Syria. Special attention should be paid to minors and their mothers, and the boys and men in prisons;
- (b) Engage all relevant parties in North-East Syria to ascertain the precise detention locations of citizens of Germany or those who have close ties with Germany, as well as their current health and welfare situation. Particular attention should be paid to those individuals who have been contaminated with tuberculosis or other life-threatening illnesses, as well as identifying nationals who have died in prisons;
- (c) Fully engage and support families of individuals detained in North-East Syria. Communicate with families and update on the status and whereabouts of those detained, particularly if there have been deaths or illnesses in custody;
- (d) Continue to pursue accountability for victims of terrorism through the innovative, courageous, and path-breaking use of national criminal law and in accordance with international human rights law to ensure accountability for core crimes committed in conflict zones;
- (e) Continue to uphold international fair trial standards in cumulative charging cases, including due care in the use of plea bargains, witness evidence, the use of 'battlefield evidence', and new criteria for criminal liability. She encourages particular caution in the use of gendered criteria such as marriage as the basis for any criminal liability;
- (f) Adequately fund NGOs doing critical reintegration work in the medium/long term and refrain from creating a hostile environment for these NGOs

through surveillance or prosecutions of civil society actors working on reintegration. Consistently validate the work of civil society;

(g) Treat with dignity individuals who have served their sentences for travel, association or core crimes. Support for their full reintegration into German society should be provided, including continuing meaningful contact and early reunion with their family, including children;

(h) Proactively share knowledge and learning of both reintegration and prosecution strategies developed by Germany with other states.

66. The Special Rapporteur recommends that the Government of North Macedonia to:

(a) Repatriate, as a matter of utmost urgency, all citizens from North Macedonia and individuals who have close ties with North Macedonia who are still detained in North-East Syria. Special attention should be paid to minors and their mothers, and the boys and men in prisons;

(b) Continue the positive practice of North Macedonia of returning men from North-East Syria and share positive learning from the integration of men with other States;

(c) Expand the use of community-led and social services-driven reintegration programs to include all returnees from North-East Syria, including self-returnees, and scale up capacity and provide adequate resources for new returnees;

(d) In devising and refining countering violent extremism programming, address the possible stigmatization of whole communities and reflect on the broader learning of conditions conducive to violent extremism, which applies equally to the challenge of right-wing violent extremism;

(e) Continue structural improvements to prison infrastructure and address the health and dental needs of the prison population in high-security prison settings as a matter of urgency;

(f) Consider, where appropriate, to prosecute returnees for core international crimes as enabled by domestic law, in accordance with international human rights law and the principles of due process and fair trial guarantees.
