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***SPECIAL RAPPORTEUR ON THE PROMOTION AND PROTECTION OF
HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS WHILE
COUNTERING TERRORISM***

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Honourable Chair, Excellencies, Distinguished delegates, Ladies and Gentlemen,

It is a privilege to be here with you in person for the first time since the global Covid-19 pandemic commenced. I have met with many delegations and regional groups over the past week and have appreciated the opportunity for open and constructive dialogue.

This year has been, despite the pandemic an exceptionally busy year for the mandate of the Special Rapporteur on counter-terrorism and human rights. As a member of the Global Counter-Terrorism Coordination compact the mandate provided substantive technical assistance to the Global Counter-Terrorism Strategy 7th biannual review process. I acknowledge the important work carried out by the Sultanate of Oman and the government of Spain as co-chairs of that process and commend their sustained inclusion of civil society in the process of review. The mandate met with over 100 civil society and human rights organizations throughout the course of the past year from six continents. I continue to raise my undulating concerns that counter-terrorism and countering violent extremism law and policy is being used to target, constrain, and attack civil society across the globe. A vibrant and healthy civil society is at the heart of a functional and human-rights based-society. Targeting civil society always makes us less free and less secure. The Special Rapporteur continues to address and prioritize the rights of victims of terrorism, meeting individuals and organizations regularly. The mandate was pleased to provide technical support and assistance to the production of model legislative provisions to address the needs and rights of victims of terrorism, supporting the work of the IPU, OCT and UNODC. I have issued multiple communications on counter-terrorism, counter-terrorism financing, and extremism legislation this year to Algeria, Austria, Belarus, Brazil, China, Denmark, France, Haiti, the Netherlands, New Zealand, Nicaragua, Sri Lanka, Thailand, Turkey, the United Kingdom of Great

Britain and Northern Ireland, Uzbekistan, Venezuela and Zimbabwe, as well as to the European Union.

Excellencies,

As our world slowly returns to a new normal after the deep and challenging years of pandemic loss and exceptionality I was pleased to be ‘back on the road’. I conducted two working level visits to Washington D.C. and thank the United States government for constructive and sustained dialogue on a range of issues related to counter-terrorism and human rights. I was also very pleased to carry out a country visit to Uzbekistan in November/December 2021. I commend the government for enabling a visit to take place during the pandemic and ensuring it was full, robust and comprehensive. It is important that this example be followed by other States so we can all get back to the regular business of human rights engagement, direct dialogue, and oversight at the national level. The Report addressed a wide range of issues including extremism legislation, prisons, the security and humanitarian situation in the region, counter-terrorism financing and repatriation and reintegration. I was particularly pleased to be able to carry out a comprehensive assessment of the repatriation and reintegration practices being implemented by Uzbekistan from multiple conflict zones. I have commended the comprehensive approach taken by the government, the interdisciplinary, expert and inter-agency nature of the work. I underscore the humane approach by the government and the emphasis on meaningful integration and acceptance of returnees with clear provision for their medical, psycho-social, educational and economic needs. There is deliberation and mercy at the heart of the political and legal process in play. Other countries who have systematically failed to return their nationals have a great deal to learn from the approach being pioneered by Uzbekistan. The Report also addressed the need to systematically review national counter-

terrorism and extremism framework to ensure that they are human rights compliant, to revise the CTF regulation to prevent the negative impact of those measures on civil society and human rights defenders, to secure the status of persons who have fled Afghanistan seeking refuge and safety, and to consolidate and extend measures to prevent torture in prison and detention settings, noting the mandate's support for the modernization of the prison system. The Special Rapporteur recommended establishing a comprehensive review process for all those persons convicted of terrorism or extremism before 2016 to ensure that full accountability for past human rights violations occurs. She commends the government of Uzbekistan for their positive dialogue, their commitment to the work of reform and for our ongoing work together.

Excellencies, Ladies and Gentlemen

I now come to the subject of my Report to the Council today. In 2010, four special procedures mandate holders produced a unique joint study on global practices of secret detention in the context of countering terrorism. The Human Rights Council had variously charged my mandate, the Special Rapporteur on torture, the Working Group on Arbitrary Detention and the Working Group on Enforced or Involuntary Disappearances to address various dimensions of secret detention that fell within the scope of their mandates in the years following the events of September 11th. The 2010 Report was a testament to their collective cooperation and underscored the cross-cutting, profound and extensive human rights violations that were normalized in the name of 'fighting terrorism'. That study set out the international legal framework applicable to secret detention, explaining and condemning the wide range of human rights violations that follow from secret detention, identifying States responsible for individual and collective acts of secret detention, and concluding with specific and concrete recommendations to remedy past violations and prevent future

harms in counter-terrorism contexts. Following that Study, a follow-up to its assessment and recommendations was welcomed. With no resources available that follow-up languished until now. With the twentieth anniversary of the events of 9/11 in 2021, and the 20th anniversary of the transfer of the first detainee to the detention site at Guantanamo Bay, Cuba in January of this year, I made the determination that a follow-up report was urgently needed.

Excellencies

This Report **does not** make for easy reading. It **should not** make for easy reading. We should all feel profoundly troubled by the ongoing reality of sustained arbitrary detention and torture, cruel, inhuman, and degrading treatment that have continued since 2001, despite the unequivocal call by the Joint Study and other human rights bodies to end it. This Report draws a clear and sustained line between the torture and extraordinary rendition that accompanied the so-called ‘war on terror’ to contemporary practices of mass arbitrary detention and torture, cruel, inhuman and degrading treatment in **Xinjiang** China and **North-East Syria**. It is precisely the lack of access, transparency, accountability and remedy that has enabled and sustained a permissive environment for contemporary large-scale detention and harm to individuals.

The most important part of this Report is its Annex. This lists the names of **every single individual identified in the Joint Study** who was subject to secret detention. Counter-terrorism discourse, law and practice justified the most egregious of human dignity violations. The practice of waterboarding (simulated drowning) was legally justified and brutally carried out in “black sites” controlled by the United States. Detainees were placed in coffin-like structures for extended periods of time. They were kept in solitary confinement, many for months at a time. They were subject to mock executions, extreme

cold, and sleep deprivation. They were denied medical treatment and deprived of food and water. They were stripped naked, violently slapped, shaken, kicked, and thrown to the ground. They were not allowed to pray and they were taunted for their religious beliefs and practices. They were subjected to anal penetration by objects, actions which amount to sexual violation and appear to reach the threshold for rape as set out under the International Criminal Court Statute. They were told that multiple serious harms would befall their family members including physical violence, economic distress, social shaming and sexual violence.

My report reinforces the international law position that secret detention is a violation of the right to personal liberty and breaches the prohibition of arbitrary arrest or detention. Secret detention denies and subverts the right to a fair trial. It unequivocally amounts to enforced disappearance, and when its use is widespread and systematic, as was the case in the aftermath of the events of 11 September 2001, it must be assessed under the rubric of a crime against humanity.

Excellencies

I wish I could report to you that the practices of secret detention and torture are historic. But we all know that they are not. With the Working Group on Arbitrary Detention, Working Group and Enforced Disappearances and the Special Rapporteur Torture there is documented evidence of ongoing practices in multiple States [(footnote 31 of the Report) including Algeria, China, DRC, Egypt, Iran, Iraq, Israel, Jordan, Libya, Pakistan, Saudi Arabia, Sri Lanka, Sudan, Syrian Arab Republic, Turkmenistan, Uzbekistan, Yemen and Zimbabwe.]

But I also make clear that the situation of the 38 remaining Muslim men held at Guantanamo Bay Cuba engages ongoing violations of international law.

Many of these men are entering their twentieth year in the custody of the United States. Many of the men are torture survivors. Twelve of them have been charged with terrorism-related crimes and are being processed through the military commission system, which in my view may fail to meet the requirements of fair trial and procedure required by international law. The Special Rapporteur on torture, supported by my mandate, has determined that the ongoing conditions at Guantánamo Bay constitute circumstances that meet the threshold of torture and other cruel, inhuman and degrading treatment or punishment under international law. These men live with the profound psychological and physical trauma of torture. No adequate torture rehabilitation programme has been made available to them, and the continuation of their detention in the site where they experienced such profound violations constitutes an unrelenting violation of their fundamental and non-derogable human rights. These men are aging rapidly and have increasingly complex medical conditions.

Excellencies

The Report also addresses the Special Rapporteur's profound concerns about the evolution of Secret Detention practice into practices of assurances, and formally legal transfer which by-pass fundamental human rights protection. I observe practices of transfers justified under the banner of countering terrorism or extremism that engage non-refoulement concerns and result in the transfer of persons who have in fact engaged in activities that are protected under international law, including expression, assembly and participation in public affairs. I am particularly concerned at the scale and consequences of such practices involving the Russian Federation and countries in the Commonwealth of Independent States. I highlight that the practices of lawful transfer appear to target minorities, religious and ethnic groups and, as such, raise profiling and non-discrimination concerns.

This Report further identifies grave concerns about practices of arbitrary mass and secret detention with other serious violations of international law directed at the **Uighurs and other ethnic groups in the Xinjiang Uighur Autonomous Region** have been the subject of multiple communications by multiple Special Procedure mechanisms and experts of the Human Rights Council. Justified under the banner of “re-education”, we have found that these detention practices impinge on the most fundamental of rights, including the right not to be arbitrarily deprived of liberty; the right to respect for family life, including the prohibition of forced separation; and the rights to freedom of expression, association and religion or belief, as well as other cultural, economic, and social rights. I also highlight my concerns on the credible and sustained reports of sustained ill-treatment including forced labour taking place in these detention sites. I stress my profound concern at the language of ‘extremism’ being used to justify mass arbitrary detention and underscore the incompatibility of such practices with China’s international law obligations. That such rights-abusing practices appear directed at Muslim Uighurs raises fundamental questions of discrimination. I stress that independent assessment and meaningful and unfettered access to these sites of detention is necessary.

North-East Syria

My mandate continues to highlight the scale of human rights and humanitarian law violations that follow from holding thousands of men, women and children in a situation of mass arbitrary detention in North-East Syria. The conditions in these camps meet the threshold of torture, cruel, inhuman and degrading treatment under international law. Repatriation is the only international law compliant solution to the existence of these camps and sites of

detention. No humane or decent society should accept leaving their children in a situation of cradle to grave arbitrary detention.

Excellencies

These are all dark stains on our collective conscience. Sites of collective mass arbitrary detention and torture simply should not exist and are not acceptable.

I close by reflecting on remedies. Not a single individual who was subject to extraordinary rendition and torture has received an adequate remedy. There is a clear obligation to provide adequate remedy to individuals and their families who experienced these profound violations. Persons who were transferred from black sites and from Guantanamo Bay also continue to live in legal limbo – lacking remedy, legal status or rehabilitation in countries of resettlement or countries of origin. Their ongoing harms cannot and should not be ignored. There is no statute of limitations on these grave violations of international law. Moreover, those who planned, executed, or colluded in such grave violations must be held accountable, despite the desire to engage in a process of collective forgetting and a compact of comfortable amnesia on torture and rendition.

To date, none of these detention sites – black sites, Guantanamo Bay Cuba, Xinjiang, or camps in North-East Syria have been made fully accessible to independent human rights oversight able to assess the harms experienced within them. However, I am pleased to report at this Council session that the United States government has extended a preliminary invitation to my mandate to engage in a technical visit to the U.S. Naval Station, Guantanamo Bay, Cuba. This is a positive step toward addressing the challenges raised in my report, and my mandate looks forward to discussing the parameters of a potential technical visit.

In conclusion, I sincerely hope that a decade on from the Joint Study that the costs of rendition, arbitrary detention, and torture are sufficiently obvious that States are prepared to close such facilities, remedy those harmed and learn the hard lessons that are necessary to prevent repetition.