|  |  |  |  |
| --- | --- | --- | --- |
|  | United Nations | A/HRC/55/48/Add.2 | |
| _unlogo | **General Assembly** | | Distr.: General  8 March 2024  Original: English |

**Human Rights Council**

**Fifty-fifth session**

26 February–5 April 2024

Agenda item 3

**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 and fundamental freedoms while countering terrorism, Fionnuala Ní Aoláin[[1]](#footnote-2)\*, [[2]](#footnote-3)\*\*

|  |
| --- |
| *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, reintegration and prosecution of persons returning from conflict zones, mainly the Syrian Arab Republic 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 Government of Germany to continue to repatriate all its nationals, including men, and to ensure that repatriation processes advance the best interests of the child. Regarding North Macedonia, she commends the repatriation of women, children and men from the Syrian Arab Republic 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 those programmes and the return of all remaining nationals from conflict zones and to avoid stigmatization in efforts to counter violent extremism. |
|  |

Annex

Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms 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 to comprehensively address the repatriation, return, reintegration and prosecution of persons returning from conflict zones in which designated terrorist groups are active, primarily the Syrian Arab Republic and Iraq. The visit took place from 3 to 12 July 2023.
2. The visit offered a unique opportunity to assess the efforts and challenges faced by States to advance human rights-compliant repatriation and reintegration. The Special Rapporteur has prioritized the human rights and humanitarian law consequences of the mass, arbitrary detention of more than 70,000 men, women and children in the north-east of the Syrian Arab Republic and other conflict zones.[[3]](#footnote-4) In carrying out the 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 States on how to ensure that repatriation efforts continue, human rights-compliant prosecution is advanced, reintegration lessons are learned and common problems can be tackled at the multilateral, regional and national levels.
3. The Special Rapporteur commends the cooperative approach with which both Governments facilitated her visit. She began her visit in Germany, meeting with representatives of the Federal Foreign Office, including representatives of the divisions for the United Nations and counterterrorism, international cooperation, human rights, international criminal law, emergency help for Germans abroad, the crisis response centre, the Syria Task Force and the Division for Iraq, the Syrian Arab Republic, Lebanon, Anti-Isis-Strategy. At the federal level, she met with representatives of the Ministry of the Interior, the Federal Criminal Police Office, the Federal Office for Migration and Refugees, the Ministry of Justice, the Federal Public Prosecutor General and the Foreign Intelligence Service. She also met with Higher Regional Court judges in Berlin and the former returnee coordinator of Berlin. During her mission, she visited the Billwerder prison in Hamburg. 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 the north-east of the Syrian Arab Republic. Moreover, she met with returnees and families of individuals still detained in the north-east of the Syrian Arab Republic with alleged links to designated terrorist groups.
4. Subsequently, the Special Rapporteur travelled to North Macedonia, where she commenced her visit at the Ministry of Foreign Affairs and concluded it by meeting the President of the Republic. In addition, she met with the National Committee for Countering Violent Extremism and Counter-Terrorism, which is a multisectoral body composed of 22 members, including representatives of the Ministry of the Interior, the Agency for 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 Public Prosecutor. She also met with trial and pretrial detention judges at the Basic Criminal Court in Skopje and the Ombudsman Institution (North Macedonia). 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 centre for social affairs in the municipality of Plasnica. During her visit, she visited the Idrizovo prison, where several individuals are serving prison sentences for terrorism-related offences, including returnees from the Syrian Arab Republic and Iraq. She also met with representatives of various civil society organizations, social workers, psychologists and human rights experts, and representatives of the United Nations country team, the International Organization for Migration, the Organization for Security and Cooperation in Europe (OSCE) Mission to Skopje and the Global Community Engagement and Resilience Fund (Geneva), which are involved in the repatriation, prosecution, rehabilitation and reintegration of nationals of North Macedonia from the Syrian Arab Republic and Iraq. She met with returnees and families of individuals still detained in the north-east of the Syrian Arab Republic, including women and children with alleged links to designated terrorist groups. She is particularly grateful to the Human Rights Adviser of the Office of the United Nations High Commissioner for Human Rights in North Macedonia for the excellent support provided during the visit.

II. Background to the technical visit

1. The Special Rapporteur has maintained a sustained focus on the issues of arbitrary mass detention, primarily of women and children, in camps in the north-east of the Syrian Arab Republic. She has addressed the issue in multiple country reports and annual thematic reports to the Human Rights Council and the General Assembly.[[4]](#footnote-5) With the Committee on the Rights of the Child, she has found that particularly egregious harm occurs to children in detention and camp facilities and that the particular vulnerability of children creates specific and defined obligations for States.[[5]](#footnote-6) In July 2023, she conducted the first visit by an independent United Nations human rights entity to the north-east of the Syrian Arab Republic, where she visited Al-Hol, Al-Roj, Gweiran (Panorama) prison, Houri and Orkesh detention facilities for adolescent boys, and Alaya prison. With 12 other special procedure mandate holders and two Working Groups, she has identified a credible basis to hold that persons detained in camps and detention facilities in the north-east of the Syrian Arab Republic suffer multiple human rights violations as a result of their detention.
2. 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 the north-east of the Syrian Arab Republic remain absolutely dire, in particular torture and other cruel, inhuman or degrading treatment, including sexual violence and reproductive harm; arbitrary detention; infringements of the right to life; restrictions on freedom of movement; erasure of the right to family life; fundamental infringements of 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; and multiple violations of the rights of the child.
3. She wishes to draw attention to the abhorrent conditions in which citizens of Germany and North Macedonia are being arbitrarily detained and the consequent commission of core crimes under international law, and confirms the urgent need to bring them home.[[6]](#footnote-7)
4. The conditions in which third-country nationals (women and children) are detained in the Al-Hol annex are particularly dire, as it functions as a sub-prison within a broader detention facility. Al-Hol and Al-Roj are made up of unstable tent-like structures that 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 rubbish litter the grounds and illnesses, including viral infections, are rampant. Underresourced humanitarian groups and organizations 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 violations. 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 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.
5. The Special Rapporteur 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 Gweiran (Panorama) prison. She observed that tuberculosis was rife in prison, which was confirmed by the detaining authority. She estimates that tuberculosis affects 75 per cent of the population and no mechanisms have been introduced in the prison to treat it or separate those who are infected from those who are not. She also heard from the detaining authority and directly witnessed food deprivation, which she determined constituted de facto starvation of the male prison population. She confirms that approximately 700 boys are detained in the facility. She reminds States that denial of access to medical care during hostilities can constitute a war crime and that deliberate starvation of detained persons is a war crime.[[7]](#footnote-8) In addressing the calamitous humanitarian and human rights consequences of mass arbitrary detention, the Special Rapporteur has communicated with Governments;[[8]](#footnote-9) addressed the severity of the humanitarian issues, human rights challenges and the concurrent legal obligations of States concerning the situation of their nationals in the north-east of the Syrian Arab Republic in her reports to the Human Rights Council and the General Assembly;[[9]](#footnote-10) issued multiple position papers concerning intersectional issues, including the stripping of citizenship and the situation of adolescent boys in so-called rehabilitation facilities;[[10]](#footnote-11) and submitted multiple amicus curiae briefings in national and regional legal proceedings.[[11]](#footnote-12) While some countries are making serious and meaningful efforts to repatriate their nationals, many are doing nothing whatsoever and appear satisfied with leaving their vulnerable citizens to experience the most grave human rights violations without any concrete efforts to prevent harm.
6. The urgent return and repatriation of all individuals detained in the north-east of the Syrian Arab Republic is the only response available under international law to the undoubtedly complex and precarious human rights, humanitarian and security situation faced by those women, men and children who are detained in conditions that attain the threshold of torture or other cruel, inhuman or degrading treatment in overcrowded camps, prisons or elsewhere in the north-east of the Syrian Arab Republic and Iraq. For children born in detention, the spectre of cradle-to-grave detention appears to be tolerated 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 enshrined in the Convention on the Rights of the Child. For adolescent boys, the situation is dire as they experience violent separation from family members, which, coupled with boarder conditions of confinement, constitute acts meeting the threshold of crimes against humanity. As “new” conflicts, including in the Middle East, have preoccupied the international community, the ease with which the situation in the north-east of the Syrian Arab Republic is placed on the political “backburner” is deeply regrettable and posits a complacency in accepting the ongoing perpetration of the most serious crimes under international law, with no 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 their countries of origin, are also crucial to the long-term security interests of States*.* Any repatriation must comply with international law, including the absolute prohibition of torture, ill-treatment and refoulement.
7. The Special Rapporteur recognizes 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 in which the visit was 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.
8. 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 the Syrian Arab Republic 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 the north-east of the Syrian Arab Republic or Iraq. Fourth, persons who remain incarcerated in the Syrian Arab Republic or Iraq. Fifth, nationals of Germany or North Macedonia who remain in the Syrian Arab Republic or Iraq and whose precise whereabouts are unknown. Sixth, nationals of Germany or North Macedonia who may have been transferred to other countries.

III. Germany

1. At the time of the visit, Germany was ranked thirty-fifth in the Global Terrorism Index.[[12]](#footnote-13) To date, no transnational terrorist act 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.[[13]](#footnote-14)
2. Germany holds a long-term political and legal commitment to maintaining the values of a democratic society and promoting democratic resilience by addressing violent extremism and promoting disassociation from organizations whose ideology and practice reject democracy and coexistence. That commitment has roots in the rise of neo-Nazi ideologies and right-wing extremism in the 1990s, including in the context of the reunification of Germany. As a result, countering violent extremism has a much longer history in Germany than in other countries. That background is of particular relevance to the depth of knowledge, experience and community at federal and state levels in Germany, which provides a unique entry point to current practices in relation to persons returning from conflict zones. The Special Rapporteur also notes the significant role Germany has played in the international counter-Da’esh coalition formed in 2014, as well as its contribution to capacity-building in conflict-affected areas.[[14]](#footnote-15)

A. Background

1. Germany experienced significant departures of its nationals and persons having permanent or long-term residence (though not citizenship) in Germany to conflict zones in the Syrian Arab Republic and Iraq. Departures to other conflict zones, including Afghanistan, Somalia and, more recently, Ukraine, are also recognized. 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 nationals of Germany or persons having permanent residence in Germany have departed to the Syrian Arab Republic or Iraq since 2011, of whom 25 per cent are estimated to be dead. Germany has returned 108 individuals, namely 27 women, 80 children and 1 young man in organized repatriation operations. The Special Rapporteur 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 the north-east of the Syrian Arab Republic and Iraq; 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 the north-east of the Syrian Arab Republic. It is estimated that 22 women and 150 children remain detained in the Al-Hol and Al-Roj camps and adjacent facilities. Furthermore, she understands that less than 10 nationals of Germany, including women, are currently imprisoned in Iraqi jails after having been convicted. Between 30 and 40 per cent of those who left Germany for the conflict zones in the Syrian Arab Republic and Iraq (approximately, 300–400 persons) 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 those figures are approximative, there remains a large number of individuals who are unaccounted for, particularly considering that many children were born in the conflict zones.
2. In the case of self-returns from the Syrian Arab Republic and Iraq, individuals often returned directly to their families and communities with initially limited involvement of formal justice or social services oversight or engagement, although with time, authorized security monitoring was put in place for many. Despite significant global attention and human rights concerns, the practice of formal repatriation from conflict zones, specifically the Syrian Arab Republic, 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, although efforts were being made earlier to identify nationals and internally address, inter alia, international and consular law. A sizeable number of women and children have been repatriated, although a significant number remain in the detention facilities and prisons of the north-east of the Syrian Arab Republic, as observed first-hand by the Special Rapporteur.
3. The Special Rapporteur 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. Organized repatriation processes

1. Regarding organized returns, such operations took place in August and November 2019, December 2020, June 2021, and March, May and November 2022.
2. The Special Rapporteur finds that women and children were generally well treated, their immediate medical health and needs were assessed and children were cared for during the transfer process. Individuals may not have been fully aware of their legal rights in the context of the transfer. Positively, at the airport, the reception was inter-agency in nature, reflecting a broader inter-agency and multidisciplinary approach to the return, including non-governmental organizations (NGOs) that play an ongoing role in enabling and supporting reintegration and disengagement. Importantly, lawyers were present at the airport.
3. The Special Rapporteur 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 reintegration. She commends the establishment of a return 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 the project was envisaged to run for five years and that, as of 2023, the responsibility for funding had been transferred to the federal states, which will assess the need to continue such a project. In some federal states, the role of the return coordinator has been transferred to law enforcement agencies. She believes that an inter-agency, 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.
4. On return to Germany, women for whom arrest warrants had been issued were separated from their children. She was informed of cases of mothers and very young children being separated, including a breastfeeding baby. She notes with concern that the separation process was highly traumatic for both the women and children concerned and that, although it is recognized that the women were being investigated for serious offences, as mothers, they 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 human rights-compliant solution in most cases and is in the best interests of the child. In several instances in which separation occurred, children were placed in extended family care, mitigating family dislocation.
5. A similar regime appears to have been followed in all cases for women returnees charged with criminal offences. All were transferred to high-security prison facilities and their first 24–48 hours in detention were spent under intense scrutiny through 24-hour video surveillance. 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 such a regime and its compatibility with article 3 of the Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights) and article 7 of the International Covenant on Civil and Political Rights. She encourages review of that practice in the light of the standards on torture and other cruel, inhuman or degrading treatment enshrined in the European Convention on Human Rights and the International Covenant on Civil and Political Rights. She highlights the extreme psychological cost of not having access to children and family members, as well as limited contact with legal representatives.

C. Consular services

1. The Special Rapporteur notes positively that most of those returning to Germany are self-returns or those who took part in organized repatriations and were able to exercise their right to consular services. While such processes oblige returnees to bear the costs associated with processing their consular applications and associated travel expenses, consular action facilitates certain diplomatic complexities for Governments to be managed administratively, especially when the Government lacks diplomatic representation in another country. Recognizing the complexities that the repatriation of nationals from conflict zones represents for certain States without diplomatic representation, the Special Rapporteur considers that consular action may be a good alternative for these countries and encourages other States to explore this approach.

D. Civil society engagement

1. With respect to the role of civil society organizations, the Special Rapporteur 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 deradicalization, distancing and disengagement from violent extremist groups.
2. The Special Rapporteur credits the broad and rich ecosystem of civil society organizations with displaying availability, expertise and historical traction on the processes of engaging with vulnerable individuals who are in the process of re-establishing their lives 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 encountered. 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 that children could attend school.
3. The Special Rapporteur highlights the lack of consistent and long-term funding for the NGO sector working on disengagement and its inability to hold on to experienced clinical staff due to the unpredictability of funding. She strongly recommends, given the evident value of the sector and its important engagement, that the Government and donors develop long-term strategies to ensure capacity for long-term, sustained work and the retention of expert staff.

E. Prosecutions

1. The Special Rapporteur commends the novel German approach to the prosecution of individuals who have returned from the conflict zones of the Syrian Arab Republic and Iraq, specifically that the prosecution of individuals who are alleged to have committed serious crimes in such zones is engaged not only for terrorism offences, but also for core international crimes, through the use of cumulative prosecution.
2. The Special Rapporteur welcomes the close cooperation within the Office of the Federal Public Prosecutor General between the counter-terrorism unit and the war crimes unit. She acknowledges the burdens on the German judiciary that result from the prosecutions of individuals from the Syrian Arab Republic and Iraq. There have been 20 verdicts in cases against women returnees resulting from investigations of the Office of the Federal Public Prosecutor General. In addition, a further judgment was handed down against the son of an individual who went to a conflict zone and who has since reached the age of criminal responsibility. In 2022, 5 of the 12 charges of the Federal Public Prosecutor General against returnees were based on terrorism offences and core international crimes. Within the Office of the Federal Public Prosecutor General and the federal states themselves, there are currently 311 investigations of returnees. She also notes the primary role of regional courts in prosecuting those individuals. She highlights that fair trial rights need to be fully protected in such novel proceedings, including in respect of sentencing following cumulative prosecution.

F. Prosecution for terrorism offences

1. Those who travelled or were trained but did not actually enter the conflict zones were prosecuted under section 89a of the Criminal Code of Germany, a provision that was broadened following the adoption of Security Council resolution 2178 (2014) to address a gap identified in relation to foreign (terrorist) fighters, which had become a matter of global concern.[[15]](#footnote-16) That provision allows for criminal liability without proving membership of a terrorist group, as attempted travel to a conflict zone in which terrorist groups are active is not sufficient per se to establish membership of a terrorist group. While such provisions provide a basis for prosecution and assessment of criminal responsibility, a mosaic of regulations also operates at the federal state level.
2. Until 2018, most prosecutions of those who had returned from conflict zones proceeded on the basis of charges in relation to membership of, or participation in, a terrorist organization (Criminal Code, sect. 129a), combined with membership or support of a terrorist organization abroad (ibid., sect. 129b). A decision by the Federal Court of Justice on 22 March 2018 (StB 32/17) 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 organization as a basis for prosecution. German prosecutors have consequently developed prosecutorial strategies to address criminal responsibility through a gendered lens and actualize 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.The Special Rapporteur welcomes that 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. Those factors include the travelling of women to the Syrian Arab Republic and Iraq for which they are held criminally responsible, “identification” with a terrorist group, “marriage” with a fighter, including of higher rank, and being in an area controlled by a terrorist group.
3. 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 interpreting certain maternal or marital responsibilities, including pregnancy as per se creating criminal responsibility given the potential for overreach of the criminal law. She views those factors with caution and notes that, for example, the classification of “marriage” to a fighter as commensurate with or contributing to an act of membership of a terrorist group as highly questionable when determining criminal responsibility. Its use in the present context raises profound questions about the use of “marriage” criteria as a basis for establishing membership of a group and seems prima facie inconsistent with article 8 of the European Convention on Human Rights and article 17 of the International Covenant on Civil and Political Rights. She finds that collecting evidence of other offences, such as propaganda for recruitment and fundraising for the group, is more in line with international law in relation to criminal responsibility and carries more evidentiary weight.

G. Prosecution of core international crimes

1. 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”.[[16]](#footnote-17) She has consistently held that an effective repatriation process includes holding individuals accountable for the serious and systematic crimes committed in conflict zones. She notes that importantly prosecution beyond terrorism offences 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.[[17]](#footnote-18)
2. Importantly, for historical reasons linked to the efforts of Germany to establish accountability at the end of the Second World War and because it has welcomed on its territory many victims of crimes committed in the Syrian Arab Republic 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 those conflict zones. That includes, in particular, the War Weapons Control Act (sect. 22a) and, crucially, the German Code of Crimes against International Law (domestic legislation implementing the Rome Statute), including genocide (sect. 6), crimes against humanity (sect. 7) and war crimes (sects. 8–12).
3. The Special Rapporteur notes that Germany is advancing accountability for sexual and gender-based crimes, including conflict-related sexualized violence, and acknowledges the broader lacunae in international law in relation to 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 Da’esh. She affirms the importance of such accountability and the critical role of survivors in providing testimony and evidence to such proceedings. To date, prosecutions have primarily been directed at “aiding and abetting” such crimes,[[18]](#footnote-19) as German men have, so far, not been repatriated. She is conscious of the complexity of such charges and the material proof involved and highlights the continued need for the prosecution of the primary perpetrators where feasible, including when they are repatriated, particularly as the roles of men and husbands are a prominent part 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

1. While the Special Rapporteur acknowledges the inherent difficulties in prosecuting core international crimes in the context of the conflicts in the Syrian Arab Republic and Iraq, she welcomes the efforts made by the German authorities to alleviate these challenges, notably through cooperation with international mechanisms, such as the International, Impartial and Independent Mechanism to Assist in the Investigation and Prosecution of Persons Responsible for the Most Serious Crimes under International Law Committed in the Syrian Arab Republic since March 2011 and the United Nations Investigative Team to Promote Accountability for Crimes Committed by Da’esh/Islamic State in Iraq and the Levant, and 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, witness testimonies, the use of “battlefield evidence” and secret evidence. She is reassured that what the prosecutorial authorities refer to as “battlefield evidence” is used in accordance with regular criminal procedure and the rules of evidence. Using the term “battlefield evidence” may not be helpful to other Governments because it suggests a departure from the regular principles of the rule of law and a lowering of the most basic principles of the right to a fair trial.[[19]](#footnote-20)

I. Convictions

1. The Special Rapporteur affirms and commends the independence of the German judiciary. Trials in all cases involving terrorism and core crimes are substantial and meaningful, with full adjudication of evidence and contestation and engagement by defence counsel.[[20]](#footnote-21) Sentencing is generally considered and deliberate.
2. Criminal proceedings in repatriation cases have significant and sometimes negative consequences for family law proceedings.[[21]](#footnote-22) The Special Rapporteur underscores the need to maintain the integrity of familial relations, particularly when they 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. Stigma can attach as an unintended consequence of federal and 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 steps necessary to ensure that parents are capable of taking primary responsibility for their children.[[22]](#footnote-23) Even when separation is determined to be in the best interests of the child, it should be for the shortest time possible. In situations in which the detention of mothers cannot be avoided, children have the right to regularly visit their mothers, as long as it is in their best interests.[[23]](#footnote-24) She stresses the need to address stigma and exclusion as one of the primary barriers to human rights-complaint reintegration.

J. Further repatriations

1. The Special Rapporteur stresses the urgent 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 the north-east of the Syrian Arab Republic, where evidence of core international crimes related to detention was identified.[[24]](#footnote-25) She highlights the increasing insecurity of the north-east of the Syrian Arab Republic, the ongoing security vulnerabilities highlighted by the breakout from Gweiran (Panorama) prison in January 2022 and the interest in advancing accountability for core crimes. She encourages a considered approach to the repatriation of men, including identification of risks, health status, age, family situation and responsibility for serious crimes as a basis for preliminary stratification and prioritization.

IV. North Macedonia

1. Since North Macedonia gained its independence from the former Yugoslavia in 1991, the system of parliamentary democracy has been consolidated. It was granted European Union candidate status in December 2005 and the European Union held its first intergovernmental conference with North Macedonia in July 2022. North Macedonia became a member country of the North Atlantic Treaty Organization in March 2020. The risk of terrorism remains extremely low in North Macedonia as measured by the Global Terrorism Index.[[25]](#footnote-26) The country has experienced a backdrop of ethnonationalist conflict, erupting in 2001 when Albanian separatists attacked security forces. Isolated terrorist incidents include the Kumanovo shootings in May 2015 and violent political unrest following the parliamentary elections in 2017. Courts in North Macedonia have experience in addressing territorially based terrorism incidents and more recent experience in adjudicating cases involving persons who had travelled to conflict zones where designated terrorist groups were active.
2. Citizens of North Macedonia were identified as having travelled to the Syrian Arab Republic during the early period of unrest in 2011 and the subsequent conflict in the country. 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 the Syrian Arab Republic involved family groups and individual men departing without spouses or children. Motivations for departure were reported to the Special Rapporteur as being varied, including financial, religious, ideological and familial incentives.
3. Statistics on how many persons travelled and remain in the north-east of the Syrian Arab Republic and how many have returned are incomplete. It is estimated that 143 citizens, excluding children, travelled to the conflict zones of the Syrian Arab Republic and Iraq. Of those, 38 are estimated to have died in the conflict zones. Some 69 have returned, of whom 23 returned in a government-facilitated manner: 4 men, 5 women and 14 children. Statistics on the number of self-returns or expulsions from third countries are unavailable. The Special Rapporteur has determined that there is still, at least, one woman and three children between the ages of 5 and 11 in the camps. Although the number of nationals of North Macedonia remaining in the north-east of the Syrian Arab Republic remains indeterminate, the Special Rapporteur understands that several men married Syrian or other nationals who remain in the conflict zones, with children who have the nationality of North Macedonia through their (returned or deceased) fathers. Approximately, 44 men have been prosecuted, 19 remain in detention and 25 have returned to their communities.
4. Return to North Macedonia has occurred from the earliest period of the conflict in the Syrian Arab Republic. Self-return constitutes the largest category of returnees. Organized returns also constitute a significant category as a matter of law and policy. The communities of origin and families remain largely receptive to returnees, particularly women and children. The stance of the wider population is more nuanced, with concerns expressed in some quarters about the security risks such individuals may pose. Overall, however, the conditions for positive and accepting reintegration exist in North Macedonia and there is a good community basis to ensure that individuals, particularly children, return to society in a positive and rights-compliant manner. A key aspect of return is the stance towards, and understanding of, the prevention of violent extremism in society and the broader capacity of society to advance non-discriminatory social inclusion as the fundamental basis for rights-based return and reintegration.
5. Although all returnees are, in principle, covered by government and non-State programmes, a large proportion of resources is being expended on one particular group of returnees: those repatriated through organized governmental processes. That appears to leave a sizeable gap in human-rights-based inclusive support to all returnees and their broader communities, particularly individuals and families who self-returned before 2016. The exceptional elevation of attention and resources on one highly visible group in a resource-constrained environment for vulnerable communities may create negative unintended consequences, which include competition among social groups for scarce resources, stigma by exceptionalizing one group in society as “radicalized” or “extreme” and the broader threats of violent extremism conducive to terrorism in ethnonationalist contexts being ignored. While recognizing many positive aspects of the return and reintegration process outlined below, the Special Rapporteur encourages a holistic approach to addressing violent extremism beyond the narrow group returning from conflict zones.

A. Repatriation

1. Organized repatriations followed identification by the State of individuals in detention camps or prisons in the north-east of the Syrian Arab Republic. Women and children report a positive experience of the return process, with a focus on their welfare and the welfare of their children. Organized repatriation occurred during the coronavirus disease (COVID-19) pandemic and, as a result, a two-week quarantine period was observed on arrival in the country. Women returnees reported only having access to family by phone at the time. Medical evaluations were carried out. Critical care issues were also addressed. Women and their children returned to their families and communities after quarantine. There was a challenge establishing legal identity and producing identity documents for children born in conflict zones. However, for most children, that issue has now been resolved. For future repatriations, the process could be streamlined, ensuring seamless access to health care, education and other social services and ensuring that reintegration is as effective as possible. The Special Rapporteur recommends that an audit be conducted for returning and repatriated families to ensure that legal identity has been secured equally for all. For repatriated men who were facing specific criminal charges or investigations transfers involved strong security protocols, including shackling and eye-covering. Men interviewed, however, did not report ill-treatment during transfer and all expressed their profound relief at being taken out of the inhumane conditions in Gweiran (Panorama) prison. She commends the Government of North Macedonia for its decision to return men and encourages it to transfer the remaining men, particularly given the dire and inhumane conditions that currently prevail in Gweiran (Panorama) prison.

B. Legal framework

1. The main provisions relating to terrorism are considered offences against public order and are contained in articles 394-a, 394-b and 394-c of the Criminal Code, which criminalizes the creation or membership of a terrorist organization, terrorism and the financing of terrorism. Those provisions are used for domestic acts of terrorism, including for acts committed by groups with an ethnonationalist motivation. The Office of the Public Prosecutor confirmed that those provisions were most frequently used and led to the most severe penalties, including life sentences. Moreover, article 313 of the Criminal Code relating to endangering the constitutional order, which is currently considered an act of terrorism, will no longer be in the terrorism category in a pending amendment to the Criminal Code.
2. Following the adoption of Security Council resolution 2178 (2014), Parliament adopted article 322-a of the Criminal Code, entitled “service in a foreign army, police, paramilitary or parapolice formation”, which criminalizes anyone who creates, organizes, recruits, transports, organizes transportation, equips or trains a person or group outside the territory of North Macedonia or provides financial means to that end; any citizen of North Macedonia who participates in or is trained by a foreign army, police, paramilitary or parapolice formation, organized group or individually, outside the territory of North Macedonia; and anyone who spreads messages to the public to recruit or encourage others to commit such offences. While that article covers attempts to enter conflict zones, it does not criminalize travel or entering the conflict as such; adding the terms “in another manner” or “in whatever manner” to the acts described above gives extremely broad leeway to prosecutors. In discussions with judicial representatives, it appears that, although some positive action is required for conviction, the threshold for action and, thus, conviction is low, which highlights concerns about both legality (legal certainty) and the threshold of action for criminality as expressed in the law.
3. While the Special Rapporteur recognizes positive and inter-agency work to produce and update national action plans on counter-terrorism and countering violent extremism, including updates to the law on the prevention of money laundering and the financing of terrorism in 2022, progress is recommended on prosecution and adequate sentencing in relation to money laundering and the financing of terrorism, and beneficial ownership regulations.[[26]](#footnote-27) The Special Rapporteur recognizes the positive example set by North Macedonia in the terrorist financing risk assessment of non-profit organizations for the fifth round mutual evaluation of the Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism, which was later reflected in the strategy to prevent money laundering and the financing of terrorism, adopting a “risk-based approach” to counter the financing of terrorism.[[27]](#footnote-28) The Special Rapporteur recommends adopting a similar process for any further revisions to the national action plans on counter-terrorism and countering violent extremism. She highlights the lack of a definition of 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

1. 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 take the lead implementing the model, it includes all relevant stakeholders, including clinical psychologists, employment specialists, the police, the intelligence services and other local services as needed. Local interdisciplinary teams work only on a voluntary basis with returnees. The approach of those teams is built on an intervention plan tailored to the needs of returnees. The teams assist and advise returnees during their administrative procedures, such as obtaining identity documents for children born in the Syrian Arab Republic and child benefits and can provide access to vocational training and psychological support to reintegrate returnees into their communities. The Special Rapporteur finds the local, connected, multidimensional team approach to be a good practice; it focuses on the returnees’ functional reintegration, specifically on women and children. In several cases, the intervention of the teams can be expanded, at the family’s request, to the extended family of the returnees and to returnee men. She confirms the openness, intergroup 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 that kind of local structure is one to be prioritized by the Government and supported by the international community.
2. Nonetheless, the Special Rapporteur highlights some challenges. In practice, the number of families engaged in such structures appears very limited. The interventions appear to primarily focus on repatriated families and not those who self-returned. Moreover, such teams may only work with certain families who have been security-cleared. She also highlights the complex role of 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. She underscores the right to privacy and family life (International Covenant on Civil and Political Rights, art. 17) under international law and 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 (Convention on the Rights of the Child, art. 2).

D. Civil society

1. 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 consortiums of civil society organizations working on preventing and countering (violent) extremism. She welcomes the creation of those two consortiums, which bring together expertise, and acknowledges their broad focus on inclusion, vulnerable communities, discrimination and exclusion. Generally, NGOs can play a valuable role in programmes focused on preventing and countering violent extremism. Some of the work of those consortiums engages with the broader communities in which returnees live. Nonetheless, the Special Rapporteur 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.[[28]](#footnote-29) She also highlights the risks of overlap between the models of NGOs and that of the Government, highlighting again the very small target group and the genuine risk of stigma that such attention entails.
2. As the target group for all programmes relating to the repatriation and rehabilitation of nationals of North Macedonia is relatively small and only includes those returnees who returned in the framework of repatriations organized by the Government and who have been security “vetted”, the Special Rapporteur is concerned that a larger group of individuals who would benefit from social inclusion programmes and psychosocial and trauma-informed intervention are not part of either direct or indirect programming. On several occasions, she heard concerns from stakeholders about those beneficiary groups’ lack of engagement and recalls that those 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 organizations to ensure due representation to make sure that any decision-making is fully representative.

E. Prosecutions and the right to a fair trial

1. 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. 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 conflict zone was lacking. The classification of “marriage” to a fighter has wide-ranging consequences. In finding a civil act of marital union commensurate with, or contributing to an act of, membership of a terrorist group, caution must be exercised. Constructing maternal and household obligations as though they inherently imply criminal responsibility creates the potential for overreach of the criminal law. North Macedonia has taken an appropriately restrictive view of criminal responsibility in that regard, without excluding that women may be properly found responsible for criminal acts should evidence exist to sustain a conviction.
2. The men who have been prosecuted and convicted upon return have mostly made plea bargains, which have lowered their sentences; those sentences also take into consideration several mitigating circumstances, including an individual’s age upon departure, the situation of the family and whether the individual is a reoffender. The Special Rapporteur 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 reconvicted 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 International Covenant on Civil and Political Rights. Positively, no child has ever been convicted.

F. Collection and use of evidence

1. Evidence for convictions under article 322-a 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. The Special Rapporteur 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 to the right to a fair trial. There are risks to the presumption of innocence and the right not to self-incriminate when returned individuals can serve as witnesses in several cases and when the same individuals are also acting as defendants in their own cases.[[29]](#footnote-30) That practice may seriously affect the returnee’s ability to reintegrate into society.
2. The Special Rapporteur 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. In such proceedings, however, in which the prosecution can access inculpatory evidence from an array of sources, including international sources, witness statements or confessions, there is a severe constraint on the ability of defendants to provide exculpatory evidence, with serious consequences for the principle of equality of arms.

G. Prisons

1. Conditions of detention

1. 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 fact 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 shortages of staff to guard the prison, necessitating the recent deployment of military personnel to support the security of the perimeter fence. A new high-security facility is being built on the site. As regards current conditions, the Special Rapporteur finds that the living areas are overcrowded and that hygiene is poor, water systems appear to work inconsistently, ventilation is outdated and sanitation infrastructure is in urgent need of repair. On a positive note, prisoners were able to live communally, cook, eat and pray together. The inmates whom the Special Rapporteur interviewed 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 exercise spaces. Individuals can receive visits from their families, including conjugal visits, depending on the length of term served in relation to the sentence.
2. The Law on Execution of Sanctions of 2006 regulates the execution of sanctions for criminal offences and provides the principles for the resocialization of prisoners. Although prisoners convicted of crimes under article 322-a of the Criminal Code should benefit from educational and training activities, the Special Rapporteur’s understanding is that these are not available to them. She recommends making such activities available to that category of prisoner to allow smooth reintegration upon release. She also notes a broader lack of deradicalization, distancing and psychosocial work with the entire high-security population, including those convicted of domestic terrorism offences.

2. Deradicalization and de-engagement programmes

1. 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 learn 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. That 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 that group, the pilot deradicalization and de-engagement programmes only targeted those individuals who had returned from conflict zones and not all those convicted of terrorism offences, specifically domestic terrorism offences. Such programmes should engage all individuals who have carried out acts of terrorism or violent extremism. 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 programmes also make it unlikely that one group of returnee prisoners would choose to engage in deradicalization programmes within the prison.
2. Those programmes assess individuals through a series of “indicators” of “extremism” and “radicalization” that relate, inter alia, to the physical appearance of persons and their religious practices. She is concerned that such indicators can be tainted by prejudice, act as placeholders for limitations on the absolute right of freedom of belief (International Covenant on Civil and Political Rights, art. 18), allow for arbitrariness in interventions and entirely lack judicial supervision.
3. 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 standard of health (International Covenant on Economic, Social and Cultural Rights, art. 12). 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 of the International Covenant on Civil and Political Rights. 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 towards a return to community and family. The Special Rapporteur highlights that many of those men face relatively long sentences and recommends that, as an essential aspect of their reintegration, their relationships with family be enabled and positively facilitated. Her prison interviews also highlighted the situation of men whose wives and children (who are nationals of North Macedonia) remain in the Syrian Arab Republic. 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, sexual violence, arbitrary detention, torture and separation of children.[[30]](#footnote-31) In that 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 and to protect Macedonian children that remain in the conflict zone.

H. Core international crimes

1. North Macedonia has signed (1998) and ratified the Rome Statute of the International Criminal Court (2002). The Statute’s provisions have been incorporated into its Criminal Code: genocide (art. 403), crimes against humanity (art. 403-a), and war crimes (arts. 404–407). She encourages the Government to, where appropriate, use those provisions to ensure that serious violations of international law committed in the Syrian Arab Republic and Iraq do not remain unpunished and unaccounted for.

V. Conclusions

1. **The Special Rapporteur recognizes the positive work of the Governments of Germany and North Macedonia in making substantial efforts to repatriate a significant number of their nationals from the conflict zone of the north-east of the Syrian Arab Republic. She affirms the life-changing consequences for both German and Macedonian children, as a result of the ruinous and dignity-denying realities of arbitrary and tortuous conditions in camps and prisons and the transformative possibilities that are facilitated by returning to the country of nationality. The return of children is an integral part of a State party’s obligations under the Convention on the Rights of the Child. It affirms the potential of the children and armed conflict agenda through meaningful practice and practical implementation. The Special Rapporteur particularly commends the Government of North Macedonia for its positive practice of returning men from prison facilities in the north-east of the Syrian Arab Republic. 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 the unique efforts of Germany to support 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 that have followed the conflict in the north-east of the Syrian Arab Republic.**
2. **Given the positive practice demonstrated in both States, as well as innovative solutions developed for community integration, prosecution, and preventing and countering violent extremism, the Special Rapporteur 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 all relevant Governments to facilitate the return of all of their 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.**
3. **Given the evidence of positive practice witnessed during the joint visit, the Special Rapporteur urges other States whose nationals (men, women and children) remain detained in the north-east of the** **Syrian Arab Republic to live up to their international human rights and international humanitarian law obligations, to actively pursue return and repatriation in cooperation with all relevant actors, to seek innovative interdisciplinary and community-based approaches to reintegration, to pursue international criminal justice (in accordance with international law) and to no longer tolerate systematic human rights violations committed with impunity against their civilians held in mass arbitrary detention in the north-east of the Syrian Arab Republic.**

VI. Recommendations

1. **The Special Rapporteur recommends that the Government of Germany:**

(a) **Repatriate, as a matter of utmost urgency, all its citizens and individuals who have close ties with it who are still detained in the north-east of the Syrian Arab Republic. Special attention should be paid to minors and their mothers, and the boys and men in prisons;**

(b) **Engage with all relevant parties in the north-east of the Syrian Arab Republic to ascertain the precise whereabouts of its detained citizens and those who have close ties with the country, as well as the current state of their health and welfare. Particular attention should be paid to those individuals who have contracted 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 the north-east of the Syrian Arab Republic and communicate with families and update them 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 groundbreaking use of national criminal law, 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 cases involving cumulative charging, including due care in relation to the use of plea bargains, witness evidence, “battlefield evidence” and new criteria for criminal liability. The Special Rapporteur recommends a particularly cautious approach to the use of gendered criteria, such as marriage, as the basis for any criminal liability;**

(f) **Adequately fund NGOs carrying out critical reintegration work in the medium or long term, refrain from creating a hostile environment for such NGOs through surveillance or prosecution of civil society actors working on reintegration and consistently validate the work of civil society;**

(g) **Treat with dignity individuals who have served their sentences in relation to travel to conflict zones, 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 experiences of both reintegration and prosecution strategies developed by Germany with other States.**

1. **The Special Rapporteur recommends that the Government of North Macedonia:**

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

(b) **Continue the positive practice of returning men from the north-east of the** **Syrian Arab Republic and share with other States positive learning in relation to their reintegration;**

(c) **Expand the use of community-led and social services-driven reintegration programmes to include all returnees from the north-east of the** **Syrian Arab Republic, including self-returnees, and scale up capacity and provide adequate resources for new returnees;**

(d) **In devising and refining programmes to counter violent extremism, address the possible stigmatization of whole communities and reflect on the broader conditions that lead to violent extremism, which applies equally to the challenge of right-wing violent extremism;**

(e) **Continue to improve 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, prosecuting 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.**

1. \* 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. [↑](#footnote-ref-2)
2. \*\* The present report was submitted to the conference services for processing after the deadline so as to include the most recent information. [↑](#footnote-ref-3)
3. See [www.ohchr.org/en/special-procedures/sr-terrorism/return-and-repatriation-foreign-fighters-and-their-families](http://www.ohchr.org/en/special-procedures/sr-terrorism/return-and-repatriation-foreign-fighters-and-their-families); and [www.ohchr.org/sites/default/files/documents/issues/terrorism/sr/statements/EoM-Visit-to-Syria-20230721.pdf](http://www.ohchr.org/sites/default/files/documents/issues/terrorism/sr/statements/EoM-Visit-to-Syria-20230721.pdf). [↑](#footnote-ref-4)
4. A/78/520, A/HRC/49/45 and A/HRC/46/36. [↑](#footnote-ref-5)
5. Committee on the Rights of the Child, *S.B. et al. v. France* (CRC/C/89/D/77/2019, 79/2019 and 109/2019). See also Committee against Torture, *L.V. et al. v. France* (CAT/C/75/D/922/2019); and European Court of Human Rights, *H.F. and others v. France*, Applications Nos. [24384/19](https://hudoc.echr.coe.int/eng#{"appno":["24384/19"]}) and [44234/20](https://hudoc.echr.coe.int/eng#{"appno":["44234/20"]}), Judgment, 14 September 2022. [↑](#footnote-ref-6)
6. See [www.ohchr.org/sites/default/files/documents/issues/terrorism/sr/statements/EoM-Visit-to-Syria-20230721.pdf](http://www.ohchr.org/sites/default/files/documents/issues/terrorism/sr/statements/EoM-Visit-to-Syria-20230721.pdf). [↑](#footnote-ref-7)
7. Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), art. 54 (1). See also Jean-Marie Henckaerts and Louise Doswald-Beck, *Customary International Humanitarian Law: Volume I – Rules* (Geneva, International Committee of the Red Cross; Cambridge, United Kingdom of Great Britain and Northern Ireland, Cambridge University Press, 2005), rule 53; Geneva Convention relative to the Protection of Civilian Persons in Time of War (Fourth Geneva Convention), arts. 56 and 57; Protocol I Additional to the Geneva Conventions of 1949, arts. 8–31; and Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), arts. 7–12. See also A/78/520. [↑](#footnote-ref-8)
8. The Special Rapporteur has issued more than 90 communications to Governments; see [www.ohchr.org/en/special-procedures/sr-terrorism/return-and-repatriation-foreign-fighters-and-their-families](http://www.ohchr.org/en/special-procedures/sr-terrorism/return-and-repatriation-foreign-fighters-and-their-families). [↑](#footnote-ref-9)
9. A/77/345, paras. 43 and 44; A/HRC/52/39, paras. 53 and 54; and A/HRC/46/36, paras. 30 and 31. [↑](#footnote-ref-10)
10. See [www.ohchr.org/sites/default/files/Documents/Issues/Terrorism/SR/UNSRCT\_  
    Position\_human-rights-of-boys-adolescents-2021\_final.pdf](http://www.ohchr.org/sites/default/files/Documents/Issues/Terrorism/SR/UNSRCT_Position_human-rights-of-boys-adolescents-2021_final.pdf); and www.ohchr.org/sites/default/files/documents/issues/terrorism/sr/Final-Report-Deprivation-Citizenship.pdf. [↑](#footnote-ref-11)
11. Federal Court of Canada, *BOLOH 1(A), BOLOH 2(A) male only, BOLOH 12 and BOLOH 13 v. The King and the Minister of Foreign Affairs and International Trade*, Case No. 2023 FC 98, letter of 3 January 2023 from the Special Rapporteur to Mr. Lawrence Greenspon, available at www.ohchr.org/sites/default/files/documents/issues/terrorism/sr/2023-01-25/Letter-Canada-repatriations.pdf; and Supreme Court of the United Kingdom, *Shamina Begum v. Special Immigration Appeals Commission and Secretary of State for the Home Department*, Case No. UKSC 2020/0156, 2020/0157, 2020/0158, written submission of 26 October 2020 by the Special Rapporteur, available at www.ohchr.org/sites/default/files/Documents/Issues/Terrorism/SR/Submissions26Oct2020.pdf. [↑](#footnote-ref-12)
12. See [www.visionofhumanity.org/wp-content/uploads/2023/03/GTI-2023-web-170423.pdf](http://www.visionofhumanity.org/wp-content/uploads/2023/03/GTI-2023-web-170423.pdf), p. 45. [↑](#footnote-ref-13)
13. On 7 December 2022, the largest counter-terrorism operation in post-war Germany was conducted in 11 of its 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. [↑](#footnote-ref-14)
14. See <https://theglobalcoalition.org/en/partner/germany.> [↑](#footnote-ref-15)
15. The Special Rapporteur raises concerns about labelling individuals and their families, by association, as foreign terrorist fighters (in accordance with Security Council resolution 2178 (2014)), including blurring lines between terrorism and armed conflict, with consequences for both international human rights law and international humanitarian law protection. She uses the term “foreign terrorist fighters” when referring to this term as reflected in the relevant Security Council resolutions. [↑](#footnote-ref-16)
16. Rome Statute of the International Criminal Court, preamble. [↑](#footnote-ref-17)
17. Act to Strengthen Victims’ Rights in Criminal Proceedings of 21 December 2015 (also known as the Third Victims’ Rights Reform Act). [↑](#footnote-ref-18)
18. Higher Regional Court of Frankfurt, Taha Al-J., Case No. 3 StE 1/20-4, Judgment, 30 November 2021; and Federal Court of Justice, Case No. 3 StR 230/22, Judgment, 30 November 2022. [↑](#footnote-ref-19)
19. See [www.ohchr.org/sites/default/files/Documents/Issues/Terrorism/SR/UNSRCT\_  
    Position\_Battlefield-evidence-2021.pdf.](http://www.ohchr.org/sites/default/files/Documents/Issues/Terrorism/SR/UNSRCT_Position_Battlefield-evidence-2021.pdf.) [↑](#footnote-ref-20)
20. The Special Rapporteur highlights concerns expressed by some defence counsel that access to exculpatory evidence in such cases is challenging and that they were at a disadvantage in practice. [↑](#footnote-ref-21)
21. A/HRC/46/36, para. 24. [↑](#footnote-ref-22)
22. Committee on the Rights of the Child, general comment No. 7 (2020). [↑](#footnote-ref-23)
23. Committee on the Rights of the Child, “Report and recommendations of the day of general discussion on children of incarcerated parents”, 30 September 2011. [↑](#footnote-ref-24)
24. A recognized barrier to repatriation is that, under existing German law, time served in prison facilities in the Syrian Arab Republic is counted threefold for time served in Germany. [↑](#footnote-ref-25)
25. North Macedonia was ranked ninety-third in 2023. [↑](#footnote-ref-26)
26. Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism, *Anti-Money Laundering and Counter-Terrorist Financing Measures: North Macedonia – Fifth Round Mutual Evaluation Report* (Strasbourg, May 2023); North Macedonia is rated compliant or largely compliant in 28 out of 40 recommendations of the Financial Action Task Force. [↑](#footnote-ref-27)
27. Asset freezing was carried out, in September 2022, against 15 individuals who participated in foreign armies, police, paramilitary or parapolice formations using the Law on International Restrictive Measures. [↑](#footnote-ref-28)
28. A/HRC/43/46. [↑](#footnote-ref-29)
29. See [www.echr.coe.int/documents/d/echr/guide\_art\_6\_criminal\_eng](http://www.echr.coe.int/documents/d/echr/guide_art_6_criminal_eng). See also, for example, European Court of Human Rights, *Bajić v. North Macedonia*, Application No. 2833/13, Judgment, 10 June 2021, paras. 69 and 70; *Böhmer v. Germany*, Application No. 37568/97, Judgment, 3 October 2002, para. 67; and *Navalnyy and Ofitserov v Russia*, Applications Nos. 46632/13 and 28671/14, Judgment, 23 February 2016, para. 104. [↑](#footnote-ref-30)
30. See [www.ohchr.org/sites/default/files/documents/issues/terrorism/sr/statements/EoM-Visit-to-Syria-20230721.pdf](http://www.ohchr.org/sites/default/files/documents/issues/terrorism/sr/statements/EoM-Visit-to-Syria-20230721.pdf). [↑](#footnote-ref-31)