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**Human Rights Council**

**Working Group on Arbitrary Detention**

 Opinions adopted by the Working Group on Arbitrary Detention at its ninety-seventh session,
28 August–1 September 2023

 Opinion No. 42/2023 concerning Muayad al-Obied and Abdulaziz al‑Obied (Syrian Arab Republic)

1. The Working Group on Arbitrary Detention was established in resolution 1991/42 of the Commission on Human Rights. In its resolution 1997/50, the Commission extended and clarified the mandate of the Working Group. Pursuant to General Assembly resolution 60/251 and Human Rights Council decision 1/102, the Council assumed the mandate of the Commission. The Council most recently extended the mandate of the Working Group for a three-year period in its resolution 51/8.

2. In accordance with its methods of work,[[1]](#footnote-2) on 23 May 2023 the Working Group transmitted to the Government of the Syrian Arab Republic a communication concerning Muayad al-Obied and Abdulaziz al-Obied. The State is a party to the International Covenant on Civil and Political Rights.

3. The Working Group regards deprivation of liberty as arbitrary in the following cases:

 (a) When it is clearly impossible to invoke any legal basis justifying the deprivation of liberty (as when a person is kept in detention after the completion of his or her sentence or despite an amnesty law applicable to him or her) (category I);

 (b) When the deprivation of liberty results from the exercise of the rights or freedoms guaranteed by articles 7, 13, 14, 18, 19, 20 and 21 of the Universal Declaration of Human Rights and, insofar as States parties are concerned, by articles 12, 18, 19, 21, 22, 25, 26 and 27 of the Covenant (category II);

 (c) When the total or partial non-observance of the international norms relating to the right to a fair trial, established in the Universal Declaration of Human Rights and in the relevant international instruments accepted by the States concerned, is of such gravity as to give the deprivation of liberty an arbitrary character (category III);

 (d) When asylum-seekers, immigrants or refugees are subjected to prolonged administrative custody without the possibility of administrative or judicial review or remedy (category IV);

 (e) When the deprivation of liberty constitutes a violation of international law on the grounds of discrimination based on birth, national, ethnic or social origin, language, religion, economic condition, political or other opinion, gender, sexual orientation, disability, or any other status, that aims towards or can result in ignoring the equality of human beings (category V).

 1. Submissions

 (a) Communication from the source

4. Muayad al-Obied is a national of the Syrian Arab Republic born on 1 March 1976. He is a cattle merchant and tribal sheikh, and normally resides in Qaryatayn town, Homs Governorate, in the Syrian Arab Republic. His son, Abdulaziz al-Obied, is also a national of the Syrian Arab Republic, born on 14 July 1996. He is also a cattle merchant and normally resides in Qaryatayn town.

 (i) Background

5. According to the information received, Mr. Muayad al-Obied and Mr. Abdulaziz al‑Obied were residents of the Rukban camp for internally displaced persons on the Syrian border with Jordan between November 2015 and August 2020. Mr. Muayad al-Obied was recognized for his anti-government stance before he relocated to the Rukban camp. He actively participated in peaceful demonstrations and civil activities against the Government. Following his move to the Rukban camp, he became known for his anti-government views among its residents. The camp’s residents frequently sought his assistance in resolving their problems and disputes.

6. The source submits that, in July 2018, Mr. Muayad al-Obied was summoned and asked by a brigadier general and head of the so-called Badia Military Security Branch to persuade the camp residents, as part of a reconciliation process, to leave the camp and return to their original places of residence. The camp’s residents allegedly refused to move, fearing being subjected to arbitrary detention, torture and enforced disappearance.

7. In early 2019, the so-called Centre for Reconciliation of Opposing Sides and Refugee Migration Monitoring allegedly initiated a process to dissolve the Rukban camp. On 26 March 2019, a coordination meeting was reportedly held at the Jalghum checkpoint under the supervision of the Chief of the Centre for Reconciliation. The meeting was reportedly attended by Syrian and Russian officials, representatives of the United Nations and Mr. Muayad al-Obied, as representative of the sheikhs of the Rukban camp.

8. Reportedly, on 15 August 2020, Mr. Muayad al-Obied, Mr. Abdulaziz al-Obied and the other residents left the Rukban camp. They surrendered themselves to the first checkpoint outside the camp, operated by the Badia Military Security Branch. It is alleged that they were transferred by the Badia Military Security Branch to the Al-Qatma reconciliation point (Abu al-Shamat Rest House) in Tanf, Homs Governorate. They allegedly stayed there for 46 days before being transferred to a temporary shelter, Mahmoud Othman School, in the Qusur neighbourhood of Homs, on 1 October 2020.

9. According to the source, arrivals from the camp at the temporary shelter were investigated by the so-called Joint Security Committee to Address the Issues of the Rukban Camp’s Returnees (the “Joint Committee”), a committee composed of different branches of the Syrian security services. The shelter was supervised by State security. During their time at the shelter, it is reported that only one member of each family was allowed to temporarily leave the shelter to buy daily necessities, leaving their identity documents as a guarantee that they would return.

 (ii) Arrest and detention

10. According to the source, on 7 November 2020, the Joint Committee arrested Mr. Muayad al-Obied and Mr. Abdulaziz al-Obied for allegedly concealing a terrorist crime, a misdemeanour under article 10 of Law No. 19 of 2022 on Countering Terrorism. The source alleges that the Joint Committee arrested them without any warrant, interrogated them and then referred them to the Counter-terrorism Court. They were reportedly taken into custody in Damascus Central Prison (or Adra Prison), pending investigation.

11. The source informs the Working Group that, on 18 November 2020, the Public Prosecutor of the Counter-terrorism Court ordered the release of Mr. Abdulaziz al-Obied as no charges could be brought against him under the Law on Countering Terrorism. However, it is alleged that he remained, without a legal basis, in Adra Prison. It is reported that Mr. Muayad al-Obied was referred to the Drug Control Department by the Public Prosecutor on 19 November 2020 and was interrogated on the same day. Allegedly, on 2 December 2020, the Public Prosecutor referred Mr. Muayad al-Obied to the Criminal Security Branch in Damascus, where he was interrogated the next day. On 17 December 2020, the Public Prosecutor of the Counter-terrorism Court reportedly ordered the release of Mr. Muayad al‑Obied as his alleged crime was pardoned by Amnesty Decree No. 6 of 22 March 2020.

12. Allegedly, on 17 December 2020, Mr. Muayad al-Obied and Mr. Abdulaziz al-Obied were transferred from Adra Prison to Homs Central Prison, to complete the release procedures. However, the Prison’s officers reportedly refused to release them, claiming that they were wanted by the Military Security Branch and the Political Security Branch in Homs. Thus, the source reports that they were referred to those branches and interrogated. Allegedly, they returned to Homs Central Prison and were released on 31 December 2020. The source notes that Mr. Muayad al-Obied and Mr. Abdulaziz al-Obied remained in contact with their family, who were aware of their whereabouts, during their time in Adra Prison and Homs Central Prison.

13. According to the source, the detention of Mr. Muayad al-Obied and Mr. Abdulaziz al‑Obied was prolonged without legal justification, despite the Public Prosecutor’s order to release them. Mr. Muayad al-Obied and Mr. Abdulaziz al-Obied were detained until 31 December 2020, despite the orders of the Public Prosecutor to release them on 18 November and 17 December 2020, respectively. During that time, the source reports that they were not brought before a court nor did they have access to a lawyer. They only had access to a lawyer during their time at the Counter-terrorism Court. Even when Mr. Muayad al-Obied was transferred to the Drug Control Department and the Criminal Security Branch in Damascus, he was interrogated without a lawyer.

14. After their release, Mr. Muayad al-Obied and Mr. Abdulaziz al-Obied returned to their home in Qaryatayn town. However, on 5 February 2021, a patrol affiliated with the Badia Military Security Branch reportedly arrested them again without a judicial warrant. The patrol then took them to the Badia branch in Tadmur. It is alleged that, ever since the day of their arrest, their fate and whereabouts have remained unknown. The source reports that their family has relied on unofficial channels to obtain information about them.

15. Reportedly, Mr. Muayad al-Obied and Mr. Abdulaziz al-Obied were transferred from the Badia branch to the so-called Military Intelligence Division in Damascus on 27 April 2021, after being accused of espionage by the Badia branch. Espionage is reportedly a State security crime under the Penal Code, which means that it is prosecuted before military courts and is not covered by any amnesty. It can be punishable by death if it is committed to benefit an enemy State. Reportedly, the Badia branch recommended that Mr. Muayad al-Obied and Mr. Abdulaziz al-Obied be referred to the Military Field Court and the investigation into them expanded. The source reports that the Military Field Court is a special court established under Law No. 109 of 1968 and is tasked to try offences within the jurisdiction of the military courts when committed during war or military operations.

16. According to the source, on 1 May 2021, the Military Intelligence Division referred Mr. Muayad al-Obied and Mr. Abdulaziz al-Obied to Military Security Branch No. 235. They remained there under investigation from 1 May 2021 to 27 October 2021. The source notes that they were later returned to the Military Intelligence Division in Damascus.

17. On 1 December 2021, the family learned from informal sources that Mr. Muayad al‑Obied and Mr. Abdulaziz al-Obied had been allegedly transferred to Saydnaya prison. A member of their family then reportedly visited the Military Police Branch in the Qabun neighbourhood in Damascus to inquire about them, as that Branch is responsible for transferring prisoners to Saydnaya prison. However, according to the source, officials at the Branch denied the existence of Mr. Muayad al-Obied and Mr. Abdulaziz al-Obied in their records and even threatened the family member with arrest if the individual continued to inquire about them.

18. Reportedly, on 7 December 2021, the family learned from an unofficial source that Mr. Muayad al-Obied and Mr. Abdulaziz al-Obied were being tried before the Military Field Court. On 1 November 2022, the source notes that the family received information, through informal channels, that they had both died. It is reported that they had very likely been executed extrajudicially or died as a result of torture.

 (iii) Legal analysis

19. The source claims that the detention of Mr. Muayad al-Obied and Mr. Abdulaziz al‑Obied is arbitrary under categories I, II, III and V.

 a. Category I

20. The right to be presented with an arrest warrant is an inherent part of the prohibition of arbitrary detention and of the right to liberty and security of person. The right is outlined in various international human rights documents, including the Universal Declaration of Human Rights (arts. 9 and 3, respectively) and the International Covenant on Civil and Political Rights (art. 9). Any form of detention or imprisonment should be authorized by a judicial or other authority with strong guarantees of competence, impartiality and independence.

21. All those detained have the right to challenge the legality of their detention in court, as outlined in article 9 (4) of the Covenant. That right, which is a peremptory norm of international law, applies to all types and situations of deprivation of liberty, including administrative, military, security and counter-terrorism detention. The right to take proceedings before a court must be afforded without delay and the case’s adjudication should occur as expeditiously as possible. It also applies regardless of the location of the detention or the terminology used in the relevant law.[[2]](#footnote-3) To effectively exercise the right to challenge the legality of detention, detained individuals should have access to legal assistance of their own choosing from the moment of their arrest.[[3]](#footnote-4) Furthermore, pretrial detention must be justified through “an individualized determination that it is reasonable and necessary, for such purposes as to prevent flight, interference with evidence or the recurrence of crime”.[[4]](#footnote-5)

22. The source reports that, under the Criminal Procedure Code, an investigating judge should interrogate defendants summoned by a subpoena within 24 hours of their arrest.[[5]](#footnote-6) A new amendment to the Criminal Procedure Code was reportedly introduced in April 2011, extending the maximum period of detention without charge for certain offences, from 24 hours to 7 days, renewable for up to 60 days upon the approval of the Public Prosecutor.[[6]](#footnote-7) That amendment allows the judicial police and security branches to investigate crimes against State security, collect evidence and interrogate the suspects. The practice allegedly shows that the security apparatus does not adhere to that rule and detains individuals for extended periods without approval from the Public Prosecutor or any judicial authority. It functions with impunity and operates outside the scope of the law. Each agency has its own detention and interrogation facility, and some have control over multiple facilities.[[7]](#footnote-8)

23. The source alleges that it is evident that the first and second detentions of Mr. Muayad al-Obied and Mr. Abdulaziz al-Obied lack a legal basis, as they were arrested without a warrant. The Public Prosecutor ordered the release of Mr. Abdulaziz al-Obied and Mr. Muayad al-Obied on 18 November and 17 December 2020, respectively. However, their detention was prolonged without legal grounds or judicial review. As claimed by the officers at Homs Central Prison, the reason was that they were wanted by the Military Security and Political Security Branches. However, such a basis cannot be qualified as a legal ground for detention.

24. Reportedly, during the first incarceration, pretrial detention was ordered and subsequently extended by the Public Prosecutor of the Counter-terrorism Court until they were released on 31 December 2021. Although in line with national law, the source stresses that that means that the public prosecution, which represents the public interest in criminal cases and requests pretrial detention, is also the authority that decides on the extension of detention. In other words, the prosecution is a party to the case and the judge at the same time. That allegedly violates article 24 of the Criminal Procedure Code, which states that judges may not rule on a case in which they have assumed the function of the public prosecution. Consequently, the Public Prosecutor reportedly lacks the institutional objectivity and impartiality needed to be considered an “officer authorized to exercise judicial power”, in accordance with article 9 (3) of the Covenant.[[8]](#footnote-9)

25. The source argues that the second arrest of Mr. Muayad al-Obied and Mr. Abdulaziz al-Obied started on 5 February 2021, with no official information about their fate or whereabouts. No arrest warrant was allegedly presented and no competent authority conducted a prompt and independent judicial review. It is reported that they have been transferred between different security branches since their arrest, while the security branches involved in the arrest did not disclose any information about them or their conditions of detention. All information reportedly obtained about their fate was through unofficial sources. Therefore, the source claims that the second detention of Mr. Muayad al-Obied and Mr. Abdulaziz al-Obied amounts to enforced disappearance and can be seen as part of the Government’s systematic and widespread practice of deprivation of liberty and enforced disappearance of political opponents and human rights activists. It is alleged that, since 2011, government security forces have deliberately engaged in large-scale enforced disappearances with the aim of spreading fear, stifling dissent and inflicting punishment.[[9]](#footnote-10)

26. It is alleged that Mr. Muayad al-Obied and Mr. Abdulaziz al-Obied were arrested without a warrant and were not presented before a competent judicial authority. Instead, they were reportedly interrogated by the security apparatus during their first detention and subjected to enforced disappearance after the second detention. They were also allegedly denied legal assistance, which is essential to challenge the legality of their detention. Accordingly, their rights under article 9 of the Covenant have been violated. For all these reasons, the source claims that the first and second detentions of Mr. Muayad al-Obied and Mr. Abdulaziz al-Obied are arbitrary, as they lack legal grounds and fall under category I.

 b. Category III

27. The right to a fair trial is a fundamental human right recognized in many international human rights documents, including the Universal Declaration of Human Rights (arts. 10 and 11) and the Covenant (art. 14). It includes various procedural guarantees, such as the presumption of innocence, the right to be informed of the charges, the right to adequate time and facilities to prepare a defence, the right to be tried without undue delay, the right to examine witnesses and present evidence, the right to have legal representation, the right to an impartial and independent court and the right to appeal and to have the decision reviewed by a higher court. The right to a fair trial also requires that trials be conducted publicly and that those accused can challenge the evidence presented against them.

28. During the first detention, Mr. Muayad al-Obied and Mr. Abdulaziz al-Obied were reportedly arrested by the Joint Committee and referred to the Counter-terrorism Court, which is a criminal court established in 2012, in response to the uprising in the Syrian Arab Republic, and tasked with adjudicating cases brought against individuals pursuant to Law No. 19 on Countering Terrorism. The Court has allegedly been employed by the Government to suppress political dissidents and human rights activists. Most of the cases heard by the Counter-terrorism Court have reportedly been political and related to exercising fundamental human rights, such as establishing civil society organizations, documenting protests and reporting to the media.[[10]](#footnote-11)

29. The source claims that the Counter-terrorism Court is explicitly exempted from adhering to the rules outlined in legislation, during all phases and procedures of prosecution and litigation.[[11]](#footnote-12) The judges, investigating magistrates and members of the public prosecution are all appointed through a presidential decree based on a proposal by the Supreme Judicial Council.[[12]](#footnote-13) The President, the head of the executive authority, presides over the Supreme Judicial Council, which is the main body responsible for the organization of the judiciary and court system.[[13]](#footnote-14) The powers of the Supreme Judicial Council include appointing, dismissing and transferring judges.[[14]](#footnote-15)

30. In the light of the above, the source alleges that the Counter-terrorism Court lacks impartiality and independence from the executive regarding the appointment and dismissal of its members. As such, its establishment and ad hoc nature give rise to doubts regarding its ability to guarantee a fair trial as outlined in article 14 of the Covenant. An indication of the lack of impartiality and independence of the Counter-terrorism Court is allegedly to be found in the fact that Mr. Muayad al-Obied was referred to the Court on 7 November 2020, even though the Public Prosecutor ordered his release on 17 December 2020 and his alleged crime was covered by an amnesty law promulgated nearly eight months before his arrest (Decree No. 6 of 22 March 2020). Therefore, the right of Mr. Muayad al-Obied and Mr. Abdulaziz al-Obied to be tried before an impartial and independent court, in accordance with article 14 (1) of the Covenant, has been violated.

31. Moreover, the source claims that Mr. Muayad al-Obied and Mr. Abdulaziz al-Obied were detained until 31 December 2020, regardless of the orders of the Public Prosecutor to release them on 18 November and 17 December 2020, respectively. That was allegedly because they were wanted by the Military Security and Political Security Branches in Homs. During that time, they were not brought before a court nor did they have access to legal assistance, allegedly violating their rights under article 14 (b) of the Covenant.

32. Following the second arrest on 5 February 2021, Mr. Muayad al-Obied and Mr. Abdulaziz al-Obied were allegedly subjected to enforced disappearance. According to the family of Mr. Muayad al-Obied and Mr. Abdulaziz al-Obied, the family learned about the trial of the two men before the Military Field Court and their possible death through informal sources, without any official confirmation from the Government.

33. Enforced disappearance is a grave breach of human rights as it results in a continuous violation of such rights for as long as the fate or whereabouts of the victims has not been disclosed. It violates other human rights, including the right to security of person, the right not to be arbitrarily detained, the right not to be subject to torture and the right to a fair trial.

34. Based on the information received, Mr. Muayad al-Obied and Mr. Abdulaziz al-Obied were tried before the Military Field Court. However, it is alleged that that Court cannot guarantee the right to a fair trial as enshrined in article 14 of the Covenant. The Military Field Court is a special court established under Law No. 109 of 1968. It is tasked to try offences within the jurisdiction of the military courts when committed during wartime or military operations.[[15]](#footnote-16) All verdicts from the Court are final and cannot be appealed; they only need to be signed by the Minister of Defence, while death sentences also require the approval of the President.[[16]](#footnote-17)

35. The source states that the Military Field Court is composed of three judges: a president and two members, who are all military personnel.[[17]](#footnote-18) With the exception of article 5, which allegedly exempts the court from applying procedural rules used by the ordinary courts, the law establishing the Military Field Court lacks any articles on procedure. The Public Prosecutor at the Court also reportedly enjoys all powers and authorities granted to the investigative judge.[[18]](#footnote-19) The judges are appointed by the Minister of Defence.[[19]](#footnote-20)

36. The source states that the Independent International Commission of Inquiry on the Syrian Arab Republic indicated that proceedings in the field courts bore no resemblance to a fair trial, and confessions obtained during torture were often submitted as the only evidence, to the extent any evidence was submitted at all.[[20]](#footnote-21) According to the source, the Military Field Court has been extensively used to issue punishments, including the death penalty against human rights defenders and political opponents. After 2011, these courts were allegedly responsible for most of the sentences behind the mass hanging and extrajudicial killings in Syrian prisons, particularly Saydnaya prison.[[21]](#footnote-22)

37. According to the source, the Military Field Court should not have jurisdiction to try civilians, as it violates the right of individuals to be heard by an independent and impartial tribunal, in accordance with article 14 (1) of the Covenant. The source argues that the present case is an example of the systematic and widespread use of the Military Field Court against individuals perceived as anti-government in the Syrian Arab Republic.[[22]](#footnote-23)

38. Accordingly, the source claims that the Military Field Court cannot guarantee the right to a fair trial, as it is neither impartial nor independent. In addition, defendants who appear before the Court do not benefit from the right to have legal representation, the right to a public hearing and the right to challenge decisions against them before a higher court. For all these reasons, the prosecution of Mr. Muayad al-Obeid and Mr. Abdulaziz al-Obeid before the Military Field Court allegedly violates their right to a fair trial under article 14 of the Covenant and falls under category III.

 c. Categories II and V

39. Freedom from discrimination is a cornerstone of human rights protection, as it ensures that all persons can enjoy their fundamental rights and freedoms without prejudice or disadvantage. It is recognized in numerous human rights instruments, including the Universal Declaration of Human Rights (art. 2) and the Covenant (art. 2). It entails that all individuals are entitled to the same rights and freedoms without any distinction, exclusion, restriction or preference based on their race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Moreover, article 7 of the Universal Declaration of Human Rights and article 26 of the Covenant further elaborate on the principle of non-discrimination, requiring States to ensure that all persons have equal protection under the law and to prohibit discrimination on any grounds.

40. In the present case, the source alleges that the arrest and detention of Mr. Muayad al‑Obeid and Mr. Abdulaziz al-Obeid are most likely based on discrimination for political opinions and violate the right to equal protection before the law. Mr. Muayad al-Obeid was known for his opposition and anti-government stance before moving to the Rukban camp. He reportedly participated in several peaceful demonstrations and civil activities against the Government. Allegedly, after he had moved to the Rukban camp, he was recognized among its residents for his anti-government position. He was greatly respected by the camp’s residents, many of whom used to seek his advice to resolve their problems and disputes. Moreover, the source argues that, in 2018, Mr. Muayad al-Obeid represented the Rukban camp’s residents and sheikhs in negotiations with the head of the Badia branch to dissolve the camp. Those negotiations were unsuccessful, and the camp was eventually disbanded, leading to his reported subsequent arrest by the Badia branch.

41. According to the information received, those unsuccessful negotiations in 2018 with the Badia branch resulted in the arbitrary detention and subsequent trial before the Military Field Court of Mr. Muayad al-Obeid and Mr. Abdulaziz al-Obeid. Reportedly, no one could save them due to the involvement of the brigadier general and head of the Badia branch in the case. The brigadier general allegedly perceived the unsuccessful negotiations as a refusal by Mr. Muayad al-Obeid to engage in reconciliation with the Badia branch and as an anti‑government act. That allegedly explains the reason for their second arrest without any legal basis and for their enforced disappearance.

42. Additionally, the source claims that the legal tools used against Mr. Muayad al-Obeid and Mr. Abdulaziz al-Obeid, such as the Counter-terrorism Court, the Military Field Court and Legislative Decree No. 55 of 2011, impede their equal protection and equality before the law. On the one hand, Legislative Decree No. 11 permits deviations from guarantees concerning pretrial detention, which de facto has the purpose of impairing the right not to be arbitrarily detained. On the other hand, the Counter-terrorism Court and the Military Field Court are formally permitted to not adhere to criminal procedural guarantees regarding fair trials, de facto nullifying the enjoyment of the right to a fair trial. Those tools have allegedly been extensively used since 2011 to provide cover for the arbitrary detention and unfair trials of opponents and human rights defenders, as explained above.

43. In the light of the above, the source argues that the detention of Mr. Muayad al-Obeid and Mr. Abdulaziz al-Obeid is most likely based on their political opinions and the role of the former in the unsuccessful negotiations of 2018. Therefore, it allegedly violates their right to non-discrimination and to equal protection and equality before the law, under articles 2 and 26 of the Covenant.

 (b) Response from the Government

44. On 23 May 2023, the Working Group transmitted the allegations from the source to the Government under its regular communication procedure. The Working Group requested the Government to provide detailed information by 24 July 2023 about the current situation of Mr. Muayad al-Obeid and Mr. Abdulaziz al-Obeid. The Working Group also requested the Government to clarify the legal provisions justifying their detention, as well as its compatibility with the State’s obligations under international human rights law and, in particular, with regard to the treaties ratified by the State. Moreover, the Working Group called upon the Government to ensure the physical and mental integrity of the above‑mentioned individuals.

45. On 24 July 2023, the Government provided the Working Group with the following information: legislation and laws in the Syrian Arab Republic related to arrest, trial and imprisonment take into account all related international legal and judicial standards. Legislation is applied strictly during all stages of arrest, trial and imprisonment and guarantee the rights of the persons through these stages in accordance with the provisions of the Constitution of the Syrian Arab Republic and its obligations under international law.

46. The Government submits that, despite the exceptional and sensitive situation in the Syrian Arab Republic, which has been facing a war of organized international terrorism for more than 12 years, during which hundreds of thousands of terrorists have entered Syrian territory and fought the Syrian State and the Syrian people, destroying most of the infrastructure, including the judiciary and police, the Syrian judicial authority and the law enforcement forces still exert tremendous efforts to implement laws related to arrest and imprisonment, even with regard to foreign terrorists who have fought the Syrian State and its institutions. A number of those terrorists have been extradited to their home countries at the request of their Governments, in accordance with the relevant provisions of international law.

 (c) Further comments from the source

47. In further comments dated 28 July 2023, the source submits that the Government’s response lacks specificity and fails to address the specific allegations presented in the source’s submissions. In particular, the source submits that the Government refers in general to Syrian laws without acknowledging the laws, practices and courts cited in the source’s submission. Reportedly, the legislation, laws and practices of the Government related to arrest, trial and imprisonment flagrantly violate international law. According to the source, specific examples in the initial submission, such as Legislative Decree No. 55, the Military Field Court and the Counter-terrorism Court, which the Government did not address in its response, underscore the gravity of those violations.

48. The source notes that the Government refers to the treatment and extradition of foreign terrorists, which is unrelated to the present case. Mr. Muayad al-Obeid and Mr. Abdulaziz al-Obeid are Syrian citizens, as demonstrated by their identification cards annexed to the source’s submission, and they are not associated with terrorist activities. Instead, according to the source, they are internally displaced civilians and residents of the Rukban camp. Furthermore, the source submits that Mr. Muayad al-Obeid was recognized for his peaceful political activism against the Government, leading to his and his son’s arrest.

49. The source highlights that the Government did not deny any of the allegations presented in the submissions, noting that the present case represents a pattern and a State policy of employing arbitrary detention, enforced disappearance and special courts against human rights defenders and political opponents.

 2. Discussion

50. The Working Group thanks the source and the Government for their submissions.

51. In determining whether the deprivation of liberty of Mr. Muayad al-Obeid and Mr. Abdulaziz al-Obeid is arbitrary, the Working Group has regard to the principles established in its jurisprudence to deal with evidentiary issues. If the source has established a prima facie case for breach of international law constituting arbitrary detention, the burden of proof should be understood to rest upon the Government if it wishes to refute the allegations. Mere assertions by the Government that lawful procedures have been followed are not sufficient to rebut the source’s allegations.[[23]](#footnote-24)

 (a) Category I

52. The Working Group will first consider whether there have been violations under category I, which concerns deprivation of liberty without any legal basis.

53. The source alleges that the first and second detentions of Mr. Muayad al-Obeid and Mr. Abdulaziz al-Obeid lack a legal basis as they were arrested without a warrant. The source submits that, while the Public Prosecutor ordered the release of Mr. Abdulaziz al-Obeid and Mr. Muayad al-Obeid on 18 November and 17 December 2020, respectively, their detention was prolonged without legal grounds or judicial review.

54. In the absence of a specific government response on the issue of a warrantless arrest, the Working Group finds a violation of article 9 (1) of the Covenant. Pursuant to article 9 (1) of the Covenant, no one shall be deprived of liberty except on such grounds and in accordance with such procedure as are established by law. To establish a legal basis for deprivation of liberty, the authorities must invoke that legal basis and apply it to the circumstances of the case.[[24]](#footnote-25) The international norms on detention include the right to be presented with an arrest warrant or the equivalent, except arrests that are made in flagrante delicto, under articles 3 and 9 of the Universal Declaration on Human Rights, article 9 (1) of the Covenant[[25]](#footnote-26) and principles 2, 4 and 10 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment. Any form of detention or imprisonment should be ordered by, or be subjected to the effective control of, a judicial or other authority under the law, the status and tenure of which should afford the strongest possible guarantees of competence, impartiality and independence, in accordance with principle 4 of the Body of Principles.

55. Reportedly, during the first incarceration of Mr. Muayad al-Obied and Mr. Abdulaziz al-Obied, pretrial detention was ordered and subsequently extended by the Public Prosecutor of the Counter-terrorism Court until both men were released on 31 December 2021. Although in line with domestic law, the source stresses that this means that the public prosecution, which represents the public interest in criminal cases and requests pretrial detention, is also the authority that decides on the extension of detention. In other words, the prosecution is a party to the case and the judge at the same time. In that regard, the Working Group finds a violation of 9 (3) of the Covenant, in relation to which the Human Rights Committee has stated that it is inherent to the proper exercise of judicial power that it be exercised by an authority that is independent, objective and impartial in relation to the issues dealt with. Accordingly, a public prosecutor cannot be considered an officer exercising judicial power under article 9 (3).[[26]](#footnote-27) The Working Group reiterates that, even if the detention is in conformity with national legislation, regulations and practices, it is entitled and indeed obliged to assess the circumstances of the detention and the law itself to determine whether such detention is also consistent with the relevant provisions of international human rights law.[[27]](#footnote-28)

56. The source submits that the second arrest of Mr. Muayad al-Obeid and Mr. Abdulaziz al-Obeid started on 5 February 2021 with no official information about their fate or whereabouts. The Working Group takes note of the source’s uncontested allegations that Mr. Muayad al-Obeid and Mr. Abdulaziz al-Obeid were transferred between different security branches, while the security branches involved in the arrest did not disclose any information about them or their conditions of detention. According to article 9 (3) of the Covenant, anyone arrested or detained on a criminal charge is to be brought promptly before a judge. As the Human Rights Committee has noted, 48 hours is ordinarily sufficient to satisfy the requirement of bringing detainees “promptly” before a judge following their arrest; any longer delay must remain absolutely exceptional and be justified under the circumstances.[[28]](#footnote-29) In the absence of any justification from the Government, the Working Group finds that, during their second detention, Mr. Muayad al-Obeid and Mr. Abdulaziz al-Obeid were not brought promptly before a judicial authority, in violation of article 9 (3) of the Covenant.

57. In addition, in the light of the source’s unrebutted submissions that there was no official information about the fate or whereabouts of Mr. Muayad al-Obeid and Mr. Abdulaziz al-Obeid during their second detention, the Working Group finds that they were subjected to enforced disappearance, which is an aggravated form of arbitrary detention.[[29]](#footnote-30) As a result, they were unable to effectively exercise their right to challenge their detention so that a court could decide without delay on its legality, in accordance with article 9 (3) and (4) of the Covenant.

58. Holding persons so that they have no access or restricted access to the outside world, in particular to their family and lawyers, violates their right to challenge the lawfulness of their detention before a court under article 9 (4) of the Covenant.[[30]](#footnote-31) Given that Mr. Muayad al-Obeid and Mr. Abdulaziz al-Obeid were unable to challenge their detention, their right to an effective remedy under article 8 of the Universal Declaration of Human Rights and article 2 (3) of the Covenant was also violated. In those circumstances, the Working Group finds that their right to contact with the outside world was denied, contravening rule 58 of the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules)[[31]](#footnote-32) and principles 15 and 19 of the Body of Principles.

59. For those reasons, the Working Group considers that the deprivation of liberty of Mr. Muayad al-Obeid and Mr. Abdulaziz al-Obeid lacks a legal basis and is thus arbitrary, falling under category I.

 (b) Category II

60. The source alleges that the arrest and detention of Mr. Muayad al-Obeid and Mr. Abdulaziz al-Obeid are most likely a result of their political opinions and discrimination and the former’s participation in several peaceful demonstrations and civil activities against the Government.

61. Allegedly, Mr. Muayad al-Obeid was known for his opposition and anti-government stance before moving to the Rukban camp. He participated in several peaceful demonstrations and civil activities against the Government. After he moved to the Rukban camp, he was recognized among its residents for his anti-government position. Moreover, in 2018, he represented the Rukban camp in negotiations to dissolve the camp with the head of the Badia branch. According to the information received, those unsuccessful negotiations resulted in his and his son’s arbitrary detention and subsequent trial before the Military Field Court.

62. In response, the Government submits that the Syrian judicial authority and the law enforcement forces are still exerting tremendous efforts to implement laws related to arrest and imprisonment, even with regard to foreign terrorists who fought the Syrian State and its institutions, noting that a number of those terrorists have been extradited to their home countries at the request of their Governments. The Government has not provided any information linking Mr. Muayad al-Obeid and Mr. Abdulaziz al-Obeid to its submission on foreign terrorists, nor has it demonstrated how they engaged in terrorist activities. The source notes that the Government’s response refers to the treatment and extradition of foreign terrorists, which are unrelated to the present case. The source highlights that Mr. Muayad al‑Obeid and Mr. Abdulaziz al-Obeid are Syrian citizens, as demonstrated by their identification cards. The source submits that they are not associated with terrorist activities. Instead, according to the source, they are internally displaced civilians and former residents of the Rukban camp. Furthermore, the source submits that Mr. Muayad al-Obeid was recognized for his peaceful political activism against the Government, leading to his and his son’s arrest.

63. The Government has not explicitly denied the source’s submission that the detention of Mr. Muayad al-Obeid and Mr. Abdulaziz al-Obeid stemmed from the expression of their political opinions. Absent any information from the Government that substantiates in any way the accusations of espionage or the links of the two to any terrorist activities, the Working Group determines that their detention is a result of the exercise of Mr. Muayad al‑Obeid’s right to freedom of expression under article 19 of the Universal Declaration of Human Rights and article 19 of the Covenant.

64. For those reasons, the Working Group finds that the deprivation of liberty of Mr. Muayad al-Obeid and Mr. Abdulaziz al-Obeid is arbitrary under category II. The Working Group refers the present case to the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression.

 (c) Category III

65. Given its finding that the deprivation of liberty of Mr. Muayad al-Obeid and Mr. Abdulaziz al-Obeid is arbitrary under category II, the Working Group wishes to emphasize that, in such circumstances, no trial should have taken place. However, as they were prosecuted, the Working Group will now consider whether the alleged violations of the right to a fair trial and due process were grave enough to give their deprivation of liberty an arbitrary character, such that it falls within category III.

66. The source submits that, during their first detention, Mr. Muayad al-Obeid and Mr. Abdulaziz al-Obeid were reportedly arrested by the Joint Committee and referred to the Counter-terrorism Court, which has allegedly been employed by the Government to suppress political dissidents and human rights activists. The source claims that the Counter-terrorism Court is explicitly exempted from adhering to the rules set out in legislation, during all phases and procedures associated with prosecution and litigation.[[32]](#footnote-33) The source alleges that the Counter-terrorism Court lacks impartiality and independence from the executive regarding the appointment and dismissal of its members. The source also submits that Mr. Muayad al‑Obeid and Mr. Abdulaziz al-Obeid were tried before the Military Field Court, which does not guarantee the right to a fair trial, as elaborated above.

67. According to the source, the Counter-terrorism Court and the Military Field Court are allowed to waive criminal procedural guarantees regarding fair trials, thus de facto nullifying the enjoyment of the right to a fair trial. The Government, in its response, does not address those specific allegations nor does it engage with the specific laws, practices and courts referred to above. The Working Group recalls that the Special Rapporteur on the independence of judges and lawyers has previously raised concerns about the independence of the Counter-terrorism Court.[[33]](#footnote-34)

68. As Mr. Muayad al-Obeid and Mr. Abdulaziz al-Obeid are civilians, the Working Group finds that their trial by the Military Field Court violates their right to be heard by an independent and impartial tribunal, as provided for in article 10 of the Universal Declaration of Human Rights and article 14 (1) of the Covenant. In its previous opinions concerning the Syrian Arab Republic, the Working Group expressed its concerns about denial of access to counsel and the use of military tribunals.[[34]](#footnote-35) The Working Group also recalls that, in its concluding observations on the Syrian Arab Republic, the Human Rights Committee stated that it remained concerned about numerous allegations that the procedures of military courts did not respect the guarantees laid down in article 14 of the Covenant.[[35]](#footnote-36) Regretfully, that appears still to be the case.

69. The source submits that Mr. Muayad al-Obeid and Mr. Abdulaziz al-Obeid only had access to a lawyer during their time at the Counter-terrorism Court. Prior to that, they did not have access to a lawyer following their arrest and detention. The source also submits that Mr. Muayad al-Obeid was interrogated without a lawyer present. The Working group recalls that all persons deprived of their liberty have the right to legal assistance by counsel of their choosing, at any time during their detention, including immediately after the moment of apprehension, and such access must be provided without delay.[[36]](#footnote-37)

70. Furthermore, the fact that Mr. Muayad al-Obeid and Mr. Abdulaziz al-Obeid faced terrorism charges made the violations of due process all the more egregious. The Working Group thus finds that their right to adequate time and facilities for the preparation of their defence and to communicate with counsel of their choosing, under article 14 (3) (b) of the Covenant and principles 17 (1) and 18 (2) of the Body of Principles, was violated.

71. Based on the above, the Working Group concludes that the non-observance of the international norms relating to the right of Mr. Muayad al-Obeid and Mr. Abdulaziz al-Obeid to a fair trial are of such gravity as to give their detention an arbitrary character under category  III. The Working Group refers the present case to the Special Rapporteur on the independence of judges and lawyers, for appropriate action.

 (d) Category V

72. The source argues that the detention of Mr. Muayad al-Obeid and Mr. Abdulaziz al‑Obeid is most likely based on their political opinions and the role of the former in the unsuccessful negotiations of 2018. As the Working Group noted above, Mr. Muayad al‑Obeid was known for his opposition and anti-government stance before moving to the Rukban camp. He participated in several peaceful demonstrations and civil activities against the Government. After he moved to the Rukban camp, he was recognized among its residents for his anti-government position.

73. Moreover, in the discussion above concerning category II, the Working Group established that the detention of Mr. Muayad al-Obeid had resulted from the peaceful exercise in his rights under international law. When detention results from the active exercise of civil and political rights, there is a strong presumption that the detention also constitutes a violation of international law on the grounds of discrimination on the basis of political or other views.[[37]](#footnote-38)

74. In relation to Mr. Abdulaziz al-Obeid, the Working Group considers that he was detained on a discriminatory basis, namely on the basis of birth and family ties, as his detention was a reprisal against his father for his activism. That appears to be a case of guilt by association.[[38]](#footnote-39) The Working Group reaffirms that no one should be deprived of their liberty for the crimes, real or not, committed by a family member by birth or marriage, in a free, democratic society.[[39]](#footnote-40)

75. In the light of the source’s uncontested prima facie credible submissions, the Working Group finds that Mr. Muayad al-Obeid and Mr. Abdulaziz al-Obeid were deprived of their liberty on discriminatory grounds. Their detention violates articles 2 and 7 of the Universal Declaration of Human Rights and articles (2) (1) and 26 of the Covenant. It is therefore arbitrary, falling within category V.

 (e) Concluding remarks

76. The Working Group expresses great sadness that Mr. Muayad al-Obeid and Mr. Abdulaziz al-Obeid have reportedly died in custody. On 1 November 2022, their family received information through an informal source that they had very likely been extrajudicially executed or died as a result of torture. The Government has neither confirmed nor denied their alleged deaths.

77. The Working Group requests the Government to urgently conduct a thorough, effective and independent investigation into the circumstances that led to the alleged deaths of Mr. Muayad al-Obeid and Mr. Abdulaziz al-Obeid while in custody. The investigation must include a detailed report by an independent expert on the medical and other care provided to them after their arrest and must be conducted in a transparent manner with the full involvement of their family members and legal and medical representatives.[[40]](#footnote-41) The Working Group refers the present case to the Special Rapporteur on extrajudicial, summary or arbitrary executions, for appropriate action.

 3. Disposition

78. In the light of the foregoing, the Working Group renders the following opinion:

The deprivation of liberty of Muayad al-Obied and Abdulaziz al-Obied, being in contravention of articles 2, 7, 8, 9, 10 and 19 of the Universal Declaration of Human Rights and articles 2, 9, 14, 19 and 26 of the International Covenant on Civil and Political Right, is arbitrary and falls within categories I, II, III and V.

79. The Working Group considers that, taking into account all the circumstances of the case, in particular the alleged deaths of Mr. Muayad al-Obeid and Mr. Abdulaziz al-Obeid in custody, the appropriate remedy would be to accord their family an enforceable right to compensation and other reparations, in accordance with international law.

80. The Working Group urges the Government to ensure a full and independent investigation of the circumstances surrounding the arbitrary deprivation of liberty of Mr. Muayad al-Obeid and Mr. Abdulaziz al-Obeid and to take appropriate measures against those responsible for the violation of their rights.

81. In accordance with paragraph 33 (a) of its methods of work, the Working Group refers the present case to the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, the Special Rapporteur on extrajudicial, summary or arbitrary executions, the Special Rapporteur on the independence of judges and lawyers and the Special Rapporteur on the human rights of internally displaced persons, for appropriate action.

82. The Working Group requests the Government to disseminate the present opinion through all available means and as widely as possible.

 4. Follow-up procedure

83. In accordance with paragraph 20 of its methods of work, the Working Group requests the source and the Government to provide it with information on action taken in follow-up to the recommendations made in the present opinion, including:

 (a) Whether compensation or other reparations have been made to the family of Mr. Muayad al-Obeid and Mr. Abdulaziz al-Obeid;

 (b) Whether an investigation has been conducted into the violation of the rights of Mr. Muayad al-Obeid and Mr. Abdulaziz al-Obeid and their death in custody and, if so, the outcome of the investigation;

 (c) Whether any legislative amendments or changes in practice have been made to harmonize the laws and practices of the Syrian Arab Republic with its international obligations in line with the present opinion;

 (d) Whether any other action has been taken to implement the present opinion.

84. The Government is invited to inform the Working Group of any difficulties it may have encountered in implementing the recommendations made in the present opinion and whether further technical assistance is required, for example through a visit by the Working Group.

85. The Working Group requests the source and the Government to provide the above‑mentioned information within six months of the date of transmission of the present opinion. However, the Working Group reserves the right to take its own action in follow-up to the opinion if new concerns in relation to the case are brought to its attention. Such action would enable the Working Group to inform the Human Rights Council of progress made in implementing its recommendations, as well as of any failure to take action.

86. The Working Group recalls that the Human Rights Council has encouraged all States to cooperate with the Working Group and has requested them to take account of its views and, where necessary, to take appropriate steps to remedy the situation of persons arbitrarily deprived of their liberty, and to inform the Working Group of the steps they have taken.[[41]](#footnote-42)

[*Adopted on 29 August 2023*]

1. [A/HRC/36/38](http://undocs.org/en/A/HRC/36/38). [↑](#footnote-ref-2)
2. Opinion No. 53/2022, para. 65. [↑](#footnote-ref-3)
3. Ibid., para. 68. [↑](#footnote-ref-4)
4. Ibid., para. 71. [↑](#footnote-ref-5)
5. Criminal Procedure Code (Legislative Decree No. 112/1950), art. 104. [↑](#footnote-ref-6)
6. Legislative Decree No. 55 of 21 April 2011. [↑](#footnote-ref-7)
7. European Union Agency for Asylum, *Country Guidance: Syria* (Luxembourg, Publications Office of the European Union, 2023), p. 55; and European Union Asylum Support Office, *Syria Actors: Country of Origin Information Report* (Luxembourg, Publications Office of the European Union, 2019), p. 30. [↑](#footnote-ref-8)
8. Human Rights Committee, *Kulomin v. Hungary*, communication No. 521/1992, para. 11.3. [↑](#footnote-ref-9)
9. [A/HRC/46/55](http://undocs.org/en/A/HRC/46/55), para. 18. [↑](#footnote-ref-10)
10. Syrian Network for Human Rights, “At least 10,767 persons still face trial in Counter-terrorism Court, nearly 91,000 cases heard by the Court and 3,970 seizures of property” (2020), p. 25. [↑](#footnote-ref-11)
11. Legislative Decree No. 22 of 26 July 2012, art. 7. [↑](#footnote-ref-12)
12. Ibid., art. 2. [↑](#footnote-ref-13)
13. Legislative Decree No. 98 of 1961, art. 65. [↑](#footnote-ref-14)
14. Ibid., art. 67. [↑](#footnote-ref-15)
15. Legislative Decree No. 109 of 1968, art. 1. [↑](#footnote-ref-16)
16. Ibid., art. 8. [↑](#footnote-ref-17)
17. Ibid., art. 3. [↑](#footnote-ref-18)
18. Ibid., art. 4. [↑](#footnote-ref-19)
19. Ibid. [↑](#footnote-ref-20)
20. See the conference room paper of the Independent International Commission of Inquiry on the Syrian Arab Republic, “Out of sight, out of mind: deaths in detention in the Syrian Arab Republic”, para. 35, available on the website of the Office of the United Nations High Commissioner for Human Rights, www.ohchr.org/en/hr-bodies/hrc/iici-syria/documentation. [↑](#footnote-ref-21)
21. Amnesty International, “Human slaughterhouse: mass hangings and extermination at Saydnaya Prison” (London, 2017). [↑](#footnote-ref-22)
22. [A/HRC/46/55](http://undocs.org/en/A/HRC/46/55), para. 16; opinion No. 5/2015; and Independent International Commission of Inquiry on the Syrian Arab Republic, “Out of sight, out of mind”, paras. 34 and 35. [↑](#footnote-ref-23)
23. [A/HRC/19/57](http://undocs.org/en/A/HRC/19/57), para. 68. [↑](#footnote-ref-24)
24. Opinions No. 9/2019, No. 33/2019, No. 46/2019 and No. 59/2019. [↑](#footnote-ref-25)
25. Opinion No. 88/2017, para. 27. [↑](#footnote-ref-26)
26. Human Rights Committee, general comment No. 35 (2014), para. 32. [↑](#footnote-ref-27)
27. Opinions No. 1/1998, para. 13; No. 82/2018, para. 25; No. 36/2019, para. 33; No. 42/2019, para. 43; No. 51/2019, para. 53; No. 56/2019, para. 74; No. 76/2019, para. 36; No. 6/2020, para. 36; No. 13/2020, para. 39; No. 14/2020, para. 45; and No. 32/2020, para. 29. [↑](#footnote-ref-28)
28. Human Rights Committee, general comment No. 35 (2014), para. 33. See also [CCPR/C/BHR/CO/1](http://undocs.org/en/CCPR/C/BHR/CO/1), paras. 39 and 40. [↑](#footnote-ref-29)
29. Human Rights Committee, general comment No. 35 (2014), para. 17. See also opinion No. 37/2021, para. 65. [↑](#footnote-ref-30)
30. Opinions No. 32/2019, No. 33/2019, No. 45/2019, No. 59/2019, No. 5/2020 and No. 41/2020. [↑](#footnote-ref-31)
31. Opinions No. 35/2018, para. 39; No. 44/2019, paras. 74 and 75; and No. 45/2019, para. 76. [↑](#footnote-ref-32)
32. Legislative Decree No. 22 of 26 July 2012, art. 7. [↑](#footnote-ref-33)
33. See communication SYR 4/2022 and the response of the Government thereto, available at <https://spcommreports.ohchr.org/Tmsearch/TMDocuments>. [↑](#footnote-ref-34)
34. Opinions No. 37/2011, No. 38/2011 and No. 5/2015. [↑](#footnote-ref-35)
35. [CCPR/CO/71/SYR](http://undocs.org/en/CCPR/CO/71/SYR), para. 17; and opinions No. 37/2011, para. 13; No. 36/2014, para. 16; No. 5/2015, paras. 24 and 25. [↑](#footnote-ref-36)
36. United Nations Basic Principles and Guidelines on Remedies and Procedures on the Right of Anyone Deprived of Their Liberty to Bring Proceedings Before a Court ([A/HRC/30/37](http://undocs.org/en/A/HRC/30/37), annex), principle 9 and guideline 8; and Human Rights Committee, general comment No. 35 (2014), para. 35. [↑](#footnote-ref-37)
37. Opinions No. 88/2017, para. 43; No. 13/2018, para. 34; No. 59/2019, para. 79; No. 36/2020, para. 75; No. 42/2020, para. 93; No. 62/2020, para. 74; and No. 75/2022, para. 91. [↑](#footnote-ref-38)
38. Opinions No. 1/2017, para. 59; No. 33/2017, para. 98; No. 83/2017, paras. 87 and 88; No. 65/2019, paras. 83–85; and No. 2/2021, para. 82. See also opinions No. 34/2013, para. 29; No. 35/2013, para. 31; and No. 36/2013, para. 30. [↑](#footnote-ref-39)
39. Opinion No. 65/2019, para. 83. [↑](#footnote-ref-40)
40. Body of Principles, principle 34. See also opinions No. 36/2020, para. 79; and No. 57/2021, para. 77. [↑](#footnote-ref-41)
41. Human Rights Council resolution 51/8, paras. 6 and 9. [↑](#footnote-ref-42)