

## **Preliminary Conclusions and Recommendations**

### **Thematic Visit to Germany and North Macedonia on the repatriation, return, reintegration and prosecution of persons returning from conflict zones where designated terrorist groups are active (3-12 July 2023)**

1. The Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism (SR) completed a joint country visit to the Federal Republic of Germany and the Republic of North Macedonia with the goal to comprehensively address addressing the repatriation, return, integration and prosecution of persons returning from conflict zones where designated terrorist groups are active, primarily Syria and Iraq. This thematic visit offers a unique opportunity to assess the efforts and challenges faced by Member States to advance human rights compliant repatriation and reintegration. In undertaking this joint visit to two countries substantially engaged in repatriation and reintegration there is a valuable opportunity to identify good practices, demonstrate practical steps being taken at the national level, address ongoing challenges, and provide advice and evidence to other Member States on how to ensure that repatriation efforts continue, the human rights compliant prosecution is advanced, that reintegration lessons are learnt and that common problems can be tackled at the multilateral, regional and national level.
2. The SR commends the cooperative approach with which both Governments facilitated her joint visit. She began her visit in Germany, meeting with Foreign Office of Germany, including representatives of the divisions for United Nations and Counterterrorism, international cooperation, human rights, international criminal law, emergency help for Germans abroad, crisis response center, Syria Task Force and the division for Iraq, Lebanon, Syria and Anti-ISIS Strategy. At the Federal level, she met with representatives of the Ministry of Interior, the Federal Criminal Police, the Federal Office for Migration and Refugees, the Ministry of Justice and Federal Public Prosecutor and the Foreign Intelligence Service. The SR also met with Higher Regional Court judges in Berlin and the former returnee coordinator of Berlin. During her mission, the SR visited the correctional facility Justizvollzugsanstalt of Hamburg-Billwerder. She also met a wide range of civil society organizations, lawyers, social workers, and human rights experts involved in the repatriation, prosecution, rehabilitation and reintegration of German nationals from North-East Syria. She further met with returnees and families of individuals still detained in North-East Syria with alleged links to designated terrorist groups.
3. Subsequently, the SR travelled to North Macedonia, where she commenced her visit meeting with the Ministry of Foreign Affairs and concluded her visit by meeting the President of the Republic. In addition, she met with the National Committee for the prevention of violent extremism and countering terrorism, which is a multisectoral body composed of 22 members, including representatives from the Ministry of Interior, the Agency of National Security, the Ministry of Labour and Social Welfare, the Ministry of Education, the Ministry of Health, the Ministry of Justice, the Ministry of Foreign Affairs as well as the State Prosecutor. She also met with trial and pre-trial detention judges at the Basic Criminal Court in Skopje and the National Human Rights Institution. At the local level, the SR met with the Local interdisciplinary team for reintegration in Tetovo, the local action task force for reintegration in Gostivar and the Center for social affairs from the Plasnica municipality. During her mission, the SR visited the Idrizovo prison, where several individuals are serving the prison sentence for terrorism-related charges, including returnees from Syria and Iraq. She also met with various civil society organizations, social workers, psychologists and human rights experts, the UN Country Team, the International Organisation of Migration, the OSCE Mission to Skopje and the Global Community Engagement and Resilience Fund Geneva, involved in the repatriation, prosecution, rehabilitation and reintegration of North Macedonian nationals from Syria and Iraq. She met with returnees and families of individuals still detained in north-east Syria, including women and children with alleged links to designated terrorist groups. She is particularly grateful to the Office of the High Commissioner for Human Rights in North Macedonia for the excellent support provided during the visit.
4. The SR's mandate has maintained a sustained focus on the issues of arbitrary mass detention, primarily of women and children, in camps in North-East Syria. The urgent return and repatriation of foreign fighters and their families from conflict zones is, in the SR's view, the only international law-compliant response to the increasingly complex and precarious human rights, humanitarian and security situation faced by those women, men and children who are detained in inhumane conditions in overcrowded camps, prisons, or elsewhere in North-East Syria and Iraq. Given the geopolitical fluidity and insecurity of the region, repatriations are also key to States' long-term security interests. Any repatriation must comply with international law, including with the absolute prohibition of torture, ill-treatment, and refoulement.

5. The SR underscores that the conditions in the detention facilities and prisons in North-East Syria remain dire. With twelve other Special Procedures mandate holders and two Working Groups, she has identified a credible basis to hold that multiple human rights violations attach to persons detained in camps and detention facilities in North-East Syria, specifically finding torture, inhuman and degrading treatment including sexual violence and reproductive harm; arbitrary detention; right to life infringements; freedom of movement restrictions; erasure of the right to family life; fundamental infringements on right to health; abrogation of the right to education; denial of the right to non-discrimination; lack of the right to clean and safe water alongside multiple violation of the rights of the child.<sup>1</sup>
6. With the Committee on the Rights of the Child, the SR has found that particularly egregious harms occur to children in detention and camp facilities, and that the particular vulnerability of children creates specific and defined obligations for Member States.<sup>2</sup> The conditions in Al Hol and Roj camps are well-documented, and it is undisputed that the consequences for children are devastating. The camps are makeshift and locked. They are made up of unstable tent-like structures which collapse in strong winds or flood with rain or sewage, hygiene is almost non-existent, limited drinking water is often contaminated, latrines are overflowing, mounds of garbage litter the grounds, and illnesses including viral infections are rampant. Food, water, health care and essential non-food supplies are provided by under-resourced humanitarian groups and organisations. Violence in certain facilities is extensive, and children are at particular risk of ongoing harm including sexual exploitation and violation. The SR is profoundly concerned by the dire, and sometimes fatal, conditions children are facing in these camps. In addressing the calamitous humanitarian and human rights consequences of mass arbitrary detention the SR has communicated with governments;<sup>3</sup> addressed the severity of the humanitarian issues and human rights challenges and concurrent legal obligations of Member States concerning the situation of their nationals in North-East Syria in her General Assembly and Human Rights Council reports;<sup>4</sup> issued multiple position papers concerning intersectional issues including citizenship stripping and the situation of adolescent boys in so called rehabilitation facilities;<sup>5</sup> and submitted multiple amicus curiae briefing in national and regional legal proceedings.<sup>6</sup>
7. The SR was pleased to conduct this joint visit recognizing both 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.
8. From discussions with the authorities in both countries, the SR identifies five categories of persons for which issues related to repatriation, return, reintegration and prosecution arise. First, persons who departed to Syria and “self-returned” from the conflict zone. Second, persons who were deported to Germany or North Macedonia from another country following a period of time spent in the conflict zone. Third, persons who were returned following an organized return from a place of detention in North-East Syria or Iraq. Fourth, persons who remain incarcerated in Iraq or Syria. Fifth, German or North Macedonian nationals who remain at large in either Syria or Iraq and whose precise whereabouts are unknown.

a) **The Federal Republic of Germany**

9. Germany holds a long-term political and legal commitment to upholding values of a democratic society and promoting democratic resilience through addressing violent extremism and promoting disassociation from organizations whose ideology and practice reject democracy and co-existence. This commitment and work have roots in the rise of neo-Nazi ideologies and right-wing extremism in the 1990s, including in the context of the reunification of Germany. Countering violent extremism practice has, as a result, a much longer prevention history in Germany than in other countries. This background is of particular relevance to the depth of knowledge, experience, and community and tertiary-based engagement in Germany which provides a unique entry point to current practices with persons returning from conflict zones. The SR also notes the

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<sup>1</sup> See [57 letters](#)

<sup>2</sup> CAT/C/75/D/922/2019; CCRC/C/89/D/77/2019, CRC/C/89/D/79/2019, CRC/C/89/D/109/2019; ECHR, H.F. and Others v. France, Applications nos. [24384/19](#) and [44234/20](#), 14 September 2022.

<sup>3</sup> <https://www.ohchr.org/en/special-procedures/sr-terrorism/return-and-repatriation-foreign-fighters-and-their-families>

<sup>4</sup> See e.g. A/HRC/52/39 para 53-54; A/77/345 paras 43-44; A/HRC/46/36 paras 30-31.

<sup>5</sup> See e.g. [https://www.ohchr.org/sites/default/files/Documents/Issues/Terrorism/SR/UNSRCT\\_Position\\_human-rights- of-boys-adolescents-2021\\_final.pdf](https://www.ohchr.org/sites/default/files/Documents/Issues/Terrorism/SR/UNSRCT_Position_human-rights- of-boys-adolescents-2021_final.pdf).

<sup>6</sup> See e.g. BOLOH 1(A), BOLOH 2(A) male only, BOLOH 12, and BOLOH 13 (2023 FC 98) Federal Court of Canada (3 January 2023); H.F. and M.F. v. France (Application no.24384/19) ECHR (28 September 2020); SIAC, Case of Shamima Begum, <https://www.ohchr.org/en/special-procedures/sr-terrorism/return-and-repatriation-foreign-fighters-and-their-families>

significant role that the German Federal Republic has played in the Global Coalition Against Daesh formed in 2014, as well as its contribution to capacity building in conflict affected areas.<sup>7</sup>

### **Background**

10. The German Federal Republic experienced significant departures of its nationals as well as persons having a permanent residence (though not citizenship) in Germany to conflict zones in Syria and Iraq. Departures to other conflict zones including Afghanistan, Somalia, and more recently Ukraine are also recognized. The SR notes that departures and returns occurred at different points to and from the conflict zone, raising specific issues of fact and law regarding the legal and social processing of returnees. It is estimated that 1,150 German nationals or persons of permanent residence in Germany departed to Syria or Iraq since 2011. Of this number 25 percent are estimated to be deceased. Germany has returned 108 individuals, 27 women and 80 children, as well as one young man in organized repatriation operations. The SR has been able to ascertain that there are still at the very least 80 adults who have a close relationship with Germany held in detention in North-East Syria and Iraq, and that warrants have been issued in respect a significant number of them. In addition to a range of figures obtained from various sources by the SR, it is estimated that there are at least 37 men with a close relationship to Germany incarcerated in places of detention in Syria.<sup>8</sup> It is estimated that 22 women and a sizeable number of children remain detained in the camps of Al Hol and Al Roj and adjacent facilities. Furthermore, we understand that less than ten German nationals, including women, are currently convicted and imprisoned in Iraqi jails. Between 30-40 percent of those who left Germany for the conflict zones, (between 3-400), are estimated to have self-returned or been transferred from third countries, with as many as 270 after only a few months spent in the conflict zones. She notes that although these figures are approximative, it remains a large number of individuals who are unaccounted for, particularly considering that many children were born in the zones of conflict.
11. In the case of self-returns, individuals often returned directly to their families and communities with initially limited involvement of formal justice or social services oversight/engagement, though with time, authorized security monitoring was in place for many. Despite significant global attention, and articulated human rights concerns,<sup>9</sup> the practice of formal repatriation, specifically from Syria only commenced following a series of court decisions obligating the government to locate and repatriate certain German minors and their mothers.
12. The SR notes the significant and positive social and health infrastructure in the German Federal Republic and the mobilization of resources and infrastructure both at the State and Federal level to address the needs and rights of returnees, particularly children.

### **Organised Repatriation Processes**

13. Organized returns operations took place in August and November 2019, December 2020, July 2021, and March and October 2022. In addition, one German family has been repatriated with an operation of an EU partner in November 2022. The SR finds that women and children were generally well-treated, their immediate medical health and needs were assessed, and that care was taken with children during the transfer process. She highlights that individuals may not have been fully aware of their legal rights in this context of transfer. Positively, reception at airport was interagency in nature, reflecting on a broader interagency and multidisciplinary approach to return and included NGOs that play an ongoing role in enabling and supporting reintegration and disengagement. Importantly, lawyers were present already at the airport.
14. The SR positively acknowledges that many women returned to their families and communities, with a highly active and structured process to enable their social, legal and personal integration. She commends the establishment of a returnee coordinator role that brings together key agencies and actors to optimize coordination the federal and state government levels. However, she observes that this project was envisaged for five years and that as of 2023, funding responsibility was transferred to the Länder, now responsible for assessing its continued necessity. The SR further notes that in some Länder, the role of the return coordinator has been transferred to law enforcement agencies. As repatriation, rehabilitation and reintegration is a long-term strategy, she hopes that the Government will continue to provide financial support for such projects.
15. On return to Germany, women for whom arrest warrants had been issued were separated from their children. The SR was informed of cases of separation between a mother and very young children, including a breastfeeding baby. She notes with concern that this separation process was highly traumatic for both the

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<sup>7</sup>[The Global Coalition: Germany](#)

<sup>8</sup> Sofia Koller, Prosecution of German Women Returning from Syria and Iraq, CEP Policy Paper (2022)

<sup>9</sup> DEU 3/2021

women and children concerned, and that although it is recognised that women were being investigated for serious offences, as mothers, these women were still the primary point of security and safety for their children through the conflict and detention period. She acknowledges that in several cases where separation occurred, children were placed in extended family care, which had a mitigating effect on family dislocation.

16. For women returnees who were charged with criminal offences, all appear to have been transferred to high-security prison facilities, and their first 24 to 48 hours were spent under intense scrutiny through 24-hour video-surveillance. The 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, solitary exercise for one hour a day, no contact with other detainees, and external contact limited to their lawyer. She expresses concern as to the isolated nature of this regime and its compatibility with Article 3 ECHR and Article 7 ICCPR. She highlights the extreme psychological costs of non-access to children and family members, as well as limited contact with legal representatives.

#### *Consular services*

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

#### *Civil Society Engagement*

18. With respect to the role of civil society organisations, the SR positively acknowledges the role of civil society actors as a central and positive feature of the Government's approach to repatriation and reintegration, acknowledging the sophisticated and established role of civil society actors in processes of deradicalization, distancing and disengagement from violent extremist groups. She credits a wide and deep eco-system with having both availability, expertise, and historical traction on the processes of engaging vulnerable individuals who are in process of re-establishing life in this post-conflict, post detention and post-violent extremist organization context. She was impressed with the clinical knowledge, research base, cultural sensitivity, and practical know-how of the organizations she met. She positively highlights that their focus was not on undoing ideology, but on providing practical solutions to establishing a new life; included obtaining employment, navigating the social welfare system, ensuring children were accessing in school.
19. She highlights the lack of consistent and long-term funding for the NGO sector working on dis-engagement and their inability to hold onto experienced clinical staff due to the unpredictability of funding. She strongly recommends, given the evident value of the sector and its important work that long term strategies are engaged to ensure the capacity for long-term, sustained work and the retention of expert staff.

#### *Prosecution of individuals who have returned*

20. The SR commends the novel German approach to prosecution of individuals who have returned from the conflict zones of Syria and Iraq, specifically the prosecution of individuals who are alleged to have committed serious crimes in the zones of conflict is engaged not only for terrorism offences, but also for core international crimes, through the use of cumulative prosecution.
21. She welcomes the close cooperation within the Federal Public Prosecutor's Office between the Counter-Terrorism Unit and specialised unit in charge of war crimes. She acknowledges the burdens on the German judiciary that result from the prosecutions of individuals from Syria and Iraq. She notes that 18 verdicts against female returnees resulted from investigations of the Federal Public Prosecutor's Office, and that in 2022, five out of twelve charges of the Federal Public Prosecutor General against returnees were based on terrorism offences and core international crimes, and that both within the Federal Public Prosecutor's Office and at the level of States (Länder), there are currently 310 investigations of returnees. She also notes the primary role played by regional courts in the prosecution of these individuals.

#### *Prosecution for terrorism offences*

22. The SR notes that those who travelled or were trained but did not actually enter the zones of conflict were prosecuted under Section 89a StGB, a provision that was broadened following the adoption of UN resolution 2014 (2014) to address an identified gap in regulation as the issue of foreign (terrorist) fighters became a

matter of global concern.<sup>10</sup> This provision allows for criminal liability without the need to prove membership in the terrorist group, as attempted travel to a conflict zone where terrorist groups are active alone is not sufficient to establish membership in a terrorist group. The SR recognizes that while these national legislative provisions provide a basis for prosecution and assessment of criminal responsibility, there is a mosaic of regulation that also operates at the Länder level.

23. Until 2018, most prosecutions of those who returned from the conflict zones took place under charges of membership in or participation in a terrorist association (Section 129a of the German Criminal Code (Strafgesetzbuch - StGB)), combined with membership or support of a terrorist association abroad (Section 129b StGB). The SR notes that the decision by the German Federal Court of Justice on 22 March 2018 (Az. StB 32/17, Bundesgerichtshof), has had an important impact on the prosecution of women who either self-returned or were repatriated by Germany, as it increased the need to provide evidence of positive acts of support for the terrorist organisation as a basis for prosecution. German prosecutors have consequently developed prosecutorial strategies to address the core of criminal responsibility through a gendered lens and actualise the complex roles played by women in the context of terrorism and the specificities of their situation as victims and perpetrators in situations that transverses both categories. She welcomes this innovation and the commitment of Germany to address the complexity and totality of criminal law responsibility for acts of terrorism that may have been committed by German citizens on other territories. In discussions with prosecutors and judges, a range of factors were identified that aim to establish the legal and factual criteria for membership of a terrorist organization. These factors include the self-responsible travel of the women to Syria and Iraq, “identification” with the terrorist group, “marriage” with a fighter, including of higher rank, and being in the area controlled by the terrorist group.
24. The SR’s long-standing position is that prosecution for terrorism offences is necessary and should address the legal responsibility of both men and women, but that caution must be exercised when constructing certain maternal or marital responsibilities including for example pregnancy as per se creating criminal responsibility given the potential for over-reach of the criminal law in this regard, even where this is only one element taken into consideration. She views these factors with caution noting that for example the classification of ‘marriage’ to a fighter has expansive consequences for finding a civil act of marital union as commensurate with or contributing to an act of membership in a terrorist group. Its use in this context raises profound questions about the use of ‘marriage’ criteria as a basis for membership in a variety of groups by a spouse and seems, *prima facie*, inconsistent with Article 8 ECHR and Article 17 ICCPR. Accruing evidence of other offences such as propaganda for recruitment and fundraising is more exactly in line with international law perimeters defining criminal responsibility and carries more evidentiary weight.

### ***Prosecution of Core International Crimes***

25. The SR commends Germany for undertaking its fundamental duty to exercise its jurisdiction over those responsible for core international crimes, as established in the Rome (ICC) Statute.<sup>11</sup> She has consistently held that an effective repatriation process includes holding individuals accountable for the serious and systematic crimes committed in Syria and Iraq. She notes that prosecution beyond terrorism offences importantly allows for the participation of victims in trial processes, highlighting that victims, overall, benefit 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.<sup>12</sup>
26. Importantly, the SR notes that it is in part to ensure that the issue of support and membership would not prevent the prosecution of returnees but, more fundamentally, for reasons linked to Germany’s particular efforts at accountability at the end of the Second World War as well as because Germany has welcomed on its territory many victims of crimes committed in Syria and Iraq, that German prosecutors have started to use, through the practice of cumulative prosecution, other national and international legislation and statutes to prosecute individuals who have returned from the conflict zones of Syria and Iraq. This includes, in particular, the Military Weapons Control Act (Section 22a), as well as, crucially, the German Code of Crimes against International Law including genocide (s. 6), crimes against humanity (s. 7) and war crimes (ss. 8 to 12).

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<sup>10</sup> The SR has raised concerns over about blurring of lines between terrorism and armed conflict, with consequences for IHRL and IHL. She uses the term “foreign terrorist fighters” when referring to the use of this term per relevant Security Council resolutions.

<sup>11</sup> Rome Statute, Preamble.

<sup>12</sup> Law to Strengthen the Rights of Victims in Criminal Proceedings (Gesetz zur Stärkung der Opferrechte im Strafverfahren) of 21 December 2015, also referred to as the Third Victims’ Rights Reform Act (3. Opferrechtsreformgesetz).

27. She notes in this context that Germany is advancing accountability for sexual and gender-based crimes, in particular conflict-related sexualized violence. The SR acknowledges the broader lacunae in international law accountability for sexual and gender-based violence. The prosecutorial strategies shared with the SR have a particular focus on gendered harms, including sexual harms experienced by Yazidi survivors of Daesh. She affirms the importance of such accountability, and the critical role of survivors in providing testimony and evidence to such proceedings. To date, prosecution has been directed at ‘aiding and abetting’ such crimes. She recognizes the complexity of such charges and their material proof highlighting the continued need for prosecution of primary perpetrators where feasible, particularly as the role of men/husbands are a prominent part of the execution of prosecution strategy, and that this novel approach to the construction of liability engages some risk to the integrity of primary criminal responsibility.
28. **Collection and Use of Evidence:** The SR acknowledges the inherent difficulties in prosecuting core international crimes in the context of the conflicts in Syria and Iraq. She positively acknowledges the efforts made by the German authorities to alleviate these challenges, notably through cooperation with international mechanisms such as IIM and UNITAD, as well as other States, and the efforts to alleviate these challenges through the involvement of experts, such as scholars of Islam, to testify in criminal proceedings, extensive interviews of returnees, witness testimonies the use of “battlefield evidence” and secret evidence. She is reassured that what the prosecutorial authorities refer to as “battlefield evidence” in the context of these trials remains fully consistent and compliant with regular criminal procedure and rules of evidence relating to the legal principles that govern the proof of facts in legal proceedings. She highlights that the use of the term “battlefield evidence” may not be helpful to governments in this context because it suggests a departure from regular rule of law principles and a lowering of the most basic principles of the right to a fair trial.
29. **Convictions:** The SR affirms and commends the independence of the German judiciary. She notes that trials in all terrorism and core crimes are substantial and meaningful with a full adjudication of evidence, and contestation and engagement by defence counsel.<sup>13</sup> She observes sentencing to be considered and deliberate.
30. The SR takes note that criminal proceedings in repatriation cases have significant and sometimes negative consequences for family law proceedings. She underscores the need to maintain the integrity of familial relations particularly when these serve the best interests of the child and provide a critical basis for full reintegration into society. The fact of travel and return, creates significant challenges for immediate and extended families. She highlights the ways in which stigma can attach as an unintended consequence of state action in both the criminal and family law sphere. States are encouraged to respect the primary responsibility of parents, including mothers, and urged to take all necessary steps to ensure that parents are capable of taking such primary responsibility for their children<sup>14</sup> Even when separation is determined to be in the best interests of the child, it should be for the shortest possible time. Where mothers’ detention cannot be avoided, children have the right to regularly visit their mothers, as long as it is in their best interests.<sup>15</sup> She underscores the need to address stigma and exclusion as one of the primary barriers to human rights complaint reintegration.
31. **Ongoing Repatriation:** The SR continues to stress the need to return all citizens who wish to return from conflict zones, including men who remain imprisoned.<sup>16</sup> She highlights the ongoing insecurity of the territory of North-East Syria, the ongoing security vulnerabilities highlighted by the prison breakout from Al Hassakah prison in January 2023, and the interest in advancing accountability for core crimes. She encourages a considered approach to the repatriation of men including structured identification of risk, health status, age, family situation, and responsibility for serious crimes as a basis for preliminary stratification and prioritization.

## **b) North Macedonia**

32. The SR recognises that since North Macedonia gained its independence from the Former Yugoslavia in 1991, a system of parliamentary democracy has consolidated. North Macedonia was granted EU candidate status in December 2005 and the EU held its first intergovernmental conference with North Macedonia in July 2022. North Macedonia is a member state of NATO since February 2019 having been identified as a potential candidate membership during the Thessaloniki European Council. The risk of terrorism remains extremely

<sup>13</sup> She notes concerns expressed by defence counsel of disadvantage and that access to exculpatory evidence is challenging.

<sup>14</sup> Committee on the Rights of the Child, General Comment No. 7 (2005).

<sup>15</sup> CRC, Report and Recommendations of the Day of General Discussion on “Children of Incarcerated Parents” (2011)

<sup>16</sup> Noting under German law time served in prison facilities will be counted threefold for time which may be served in Germany.

low in North Macedonia as measured by the Global Terrorism Index.<sup>17</sup> The county has experienced a backdrop of ethno-national conflict, erupting in 2001 when Albanian separatists engaged in attacks on security forces. Isolated terrorist incidents include the Kumanovo shootings in May 2015, and violent post-election political unrest following parliamentary elections in 2017. Courts in North Macedonia have experience of addressing territorially based terrorism incidents and more recent experience in adjudicating persons who travelled to conflict zones where designated terrorist groups are active.

33. Travel of North Macedonian citizens was identified during the early period of the unrest and subsequent conflict in the Syrian Arab Republic in 2011. Security officials identified that there were a small number of departures to other conflict zones or areas where designated terrorist groups were active before 2011, primarily to Afghanistan and Pakistan. Early departures to Syria involved both cohesive family groups as well as individual men departing without spouses or children. Motivations for departure were reported to the SR as varied including financial, religious, ideological, and familial incentives.
34. Statistics on who many persons have travelled, remain in North-East Syria, and returns contain both certainties and some opaqueness. It is estimated that 143 citizens excluding children travelled to the Syrian and Iraq conflict zones. Of these, 38 are estimated to have died in the conflict zones. 69 have returned, of which 23 in a government facilitated organized manner, including 4 men and 5 women and 14 children. Statistics on the totality of self-returns or expulsions from third countries were not available to the Special Rapporteur. The number of North Macedonians remaining in North-East Syria remains indeterminate, as the SR understands that a number of men married Syrian or other nationals that remain in the conflict zones, with children who have North Macedonian nationality through their (returned or deceased) fathers. Approximately 44 men have been prosecuted, with 19 still in detention, while 25 have returned to their communities.
35. Return to North Macedonia has occurred from an earliest period of the conflict in the Syrian Arab Republic. The SR confirms that self-return constitutes the largest category of returnees. Organized returns also constitute a significant category as a matter of law and policy. The SR identifies that communities of origin and families remain largely receptive to returnees, particularly regarding the return or repatriation of women and children. The stance of the larger body politics is more nuanced, with concerns expressed in some quarters about the security risks individuals may pose. Overall, however, she finds that the conditions for positive and accepting reintegration exist in North Macedonia, and there is a good community basis to ensure individuals, particularly children, return to society in a positive and rights-compliant manner. A key aspect of the context of return is the stance towards and understanding of the prevention of violent extremism in society, and the broader capacity of society to progress non-discriminatory social inclusion as the fundamental basis for rights-based return and reintegration.
36. The SR observes that, although all returnees are in principle covered by government and non-State programmes, relatively speaking a large amount of social and political resources is being expended towards one particular group of returnees, those who were repatriated through organized governmental processes. This appears to leave a sizeable gap in human-rights based inclusive support to **all** returnees and their broader communities, particularly individuals and families that self-returned before 2016. The exceptional elevation of attention and resources to one highly visible group in a resource constrained environment for vulnerable communities more broadly, may create negative unintended consequences. These include competition between social groups for scarce resources, stigma by virtue of exceptionalising one group in society as “radicalized” or “extreme” per se and leaving aside the broader terrain of threats of a violent extremist conducive to terrorism form that can persist in the ethno-national contexts. While recognizing many positive aspects of the return and reintegration process below, she encourages a holistic approach to addressing violent extremism conducive to terrorism and a holistic approach to preventing that goes beyond a narrow group returning from conflict zones.
37. **Repatriation:** Organised repatriation followed from the identification of individuals in detention camps or prisons in North-East Syria. Women and children report a positive experience in the process of return, with a focus on their welfare and the welfare of their children. The SR acknowledges that organized repatriation occurred during the Covid-19 pandemic and as a result on arrival in country a two-week quarantine period as observed. Women returnees reported access to family by phone in this time. Medical evaluations were undertaken. Critical care issues were addressed. At the end of this quarantine period, women and their

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<sup>17</sup> North Macedonia global terrorism index was at level of 0 index in 2021, down from 0.11 index previous year.

children returned to families and communities. A challenge of legal identity existed for children born in conflict zones. Despite challenges in the production of such documents, for most children this issue has been resolved. The SR recommends an audit be conducted for returning and repatriated families to ensure that legal identify has been secured for all equally. For men repatriated, as individuals facing specific criminal charges or investigation transfer engaged strong security protocols, including shackling and eye-covering. Men interviewed by the SR however did not report ill-treatment during transfer and all addressed their profound relief at being taken out of the inhumane conditions in Al Hassakah prison.

#### ***Legal Framework including criminal law regarding departure to conflict zones***

38. The SR notes that the main provisions relating to terrorism are considered as offences against public order and are contained in Articles 394a, 394b, and 394c of the Criminal Code, which criminalise, respectively, the creating or belonging to a terrorist organisation, terrorism, and the financing of terrorism. The SR was made aware these provisions are used for domestic acts of terrorism, including for acts committed by groups with an ethno-nationalistic motivation. The Prosecutor's office confirmed these provisions are most frequently used and lead to the most severe penalties, including life sentences. In addition, she was informed that article 313 of the Criminal Code relating to the endangerment of the constitutional order, currently considered as an act of terrorism, will no longer be in the category of terrorism in a pending amendment to the Criminal Code.
39. She notes that in 2014, following the adoption of UN Security Council resolution 2178 (2014), the Parliament adopted Article 322a of the Criminal Code, which criminalizes inter alia the creation, organization, recruitment, equipping or training a person or a group outside the territory of North Macedonia and providing financial means to that end. The SR notes that while this Article does not criminalize travel or entering in the conflict alone, the addition of the terms "in another manner" or "in whatever manner" to the acts describe give an extremely broad leeway to prosecutors. In discussion with members of the judiciary, it appears that although some positive action was required for conviction, the threshold for action and thus conviction was very low. The SR highlights concerns of both legality (legal certainty) and the threshold of action for criminality as expressed in the law.
40. The SR recognizes positive and interagency work in the production and updating of national action plans on counter-terrorism and countering violent extremism. She recognises the positive example that North Macedonia has previously set in the NPO Terrorist Financing Risk Assessment for the Moneyval mutual evaluation in a partnership between the FIU and civil society which was then reflected in the AML and CFT Strategy. This partnership was a positive example of the "risk-based approach" in the countering terrorism finance sector. She recommends that a similar inclusion process is adopted for any further revisions to the national action plans on counter-terrorism and countering violent extremism. She highlights the lack of definition for the term 'extremism' in international law and the human rights concerns that apply to overly board policy and practice in the counter-extremism context. She highlights that any national action plan must fully integrate and mainstream the human rights obligations of government and ensure that its implementation is human rights compliant.

#### ***Community and Integrated Approaches to Return and Reintegration.***

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



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

### ***Civil Society***

42. The SR positively acknowledges the developing role of civil society in addressing social inclusion, vulnerability and human rights in society. During her visit, she met with two recently created consortia of civil society organisations working broadly on issues of preventing and countering (violent) extremism. She welcomes the creation of these two consortia, which bring together expertise and acknowledges their broad focus on inclusion, vulnerable communities, discrimination, and exclusion. Generally, the SR notes that NGOs can play a valuable role in programmes focused on preventing and countering violent extremism. She heard that some of the work of these consortia engage with the broader communities in which returnees live. She is nonetheless concerned that the basis for engagement both directly and indirectly 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 the practices of prevention. She also highlights risks of overlap between the NGOs and with government models, highlighting again the very small target group and the very real risk of stigma that such attention entails.
43. Overall, she notes that the target group for all programmes relating to the repatriation and rehabilitation of Macedonian nationals is relatively small, as it only includes those returnees who returned in the framework of repatriations organised by the Government and who have been security "vetted". The SR is concerned that a larger group of individuals who would benefit from social inclusion programmes, psycho-social and trauma informed intervention are not part of either direct or indirect programming. On several occasions, the SR heard concerns from stakeholders about these beneficiary groups' lack of engagement and recalls that these programmes, in particular when they target a small ethnically homogeneous population in a small country, may create a stigma for their beneficiaries, which could discourage their participation. Furthermore, noting that North Macedonia is a multi-ethnic society, the SR encourages civil society organisations to ensure due representation to ensure that any decision-making can be fully representative.

### ***Prosecutions and the Right to a Fair Trial***

44. Prosecutions for terrorism offences, money laundering and corruption are carried out by a specialized unit based in Skopje. The SR’s long-standing position is that prosecution for terrorism offences is necessary and should address the legal responsibility of both men and women, but that caution must be exercised when constructing maternal and household obligations as per se creating criminal responsibility given the potential for over-reach of the criminal law in this regard. The SR notes that none of the women returnees in North Macedonia have been charged or convicted of criminal offences, although this is not excluded in principle. She understands that two returnee women were investigated, but evidence of active support, beyond marriage and living in the zone of conflict, was lacking. She notes that the classification of ‘marriage’ to a fighter has expansive consequences for finding a civil act of marital union as commensurate with or contributing to an act of membership in a terrorist group. North Macedonia has taken a restrained view of criminal responsibility in this regard, without excluding that women may be properly found responsible for criminal acts should evidence exist to sustain a conviction.
45. She notes that the individuals (men) who have been prosecuted upon return have mostly entered into plea bargaining arrangements, which has lowered their sentences, and that the sentences also take into consideration several mitigating circumstances, including the individual’s age upon departure, the situation of the family and whether the individual is a re-offender. She has concerns however, that individuals who have already been convicted in other countries for the same or similar offences linked to their presence in conflict zones may be re-convicted upon return to the North Macedonia. She recalls the fundamental principle of non bis in idem, a cornerstone of the principle of legality under international law as enshrined in Article 15 of the ICCPR. She notes that no child has been convicted.

46. She notes that evidence for the purpose of convictions under article 322a of the Criminal Code can be gathered from a wide variety of sources, including witness evidence, which can lead to a lowering of the sentences for co-returnees. She cautions, however, that the use of witness evidence in the case of returnees from zones of conflict carry with them 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 to the right not to self-incriminate when one returned individual can serve as a witness across a number of cases, and when the same individual is also serving as a defendant in their own case. She notes also that this practice may have a serious impact on the returnee's ability to reintegrate into society.
47. She underscores the complexities of evidence gathering, but notes that the offences for which the individuals have been charged upon return require low thresholds of evidence. She welcomes the use of mutual judicial cooperation agreements to collect evidence, and the exclusion of intelligence information, including from abroad. She notes that in such proceedings, however, in which the prosecution can access inculpatory evidence from an array of sources, including international sources, witness statements or confessions, has a severe impact on the ability for defendants to provide exculpatory evidence, with serious impacts on the principle of equality of arms.

### **Prisons**

48. **Conditions of Detention:** The SR 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 poor, a facet openly addressed and acknowledged by prison officials. Officials acknowledged that overall conditions have improved in recent times with investment in new buildings in the broader prison architecture, but challenges remain including manpower shortages to guard the prison, necessitating the recent deployment of military personal to support perimeter security. She was told that a new high-security facility is in process of being built on the site. As regards current conditions, she finds that the living areas were overcrowded, and that hygiene was poor, water systems appeared to work inconsistently, ventilation is out-dated, and sanitation infrastructure (toilets and showers) is in urgent need of repair. She notes positively that the prisoners were able to live communally, cook, eat, and pray together. Those she spoke with positively acknowledged the benefits to their mental health and prison discipline from these open arrangements. She observed outdoor activities and access to large green open and exercise space. She notes that individuals can receive visits from their family including conjugal visits, the latter depending on the stage of sentence completion. The law on Execution of Sanctions regulates the execution of sanctions for criminal offences and provides the principles for the re-socialization of prisoners. Although prisoners convicted for crimes under Article 322a of the Criminal Code should benefit from educational and training activities as informed by the penitentiary authorities, the SR's understanding is that these are in fact not available to them. She recommends that these be made available to these prisoners to allow smooth reintegration upon release. She also notes a broader lack of de-radicalization, distancing and psycho-social work with the entire high-security population including those convicted of domestic terrorism offences.
49. The SR was told that the returnees were "model" prisoners and do not pose disciplinary challenges or the prison authorities. She learned that within the high security facility, a group of individuals convicted for acts of 'domestic' terrorism were isolated from the other inmates, even when exercising outside. This group was described as posing a specific and ongoing threat to prison staff, with several having received life sentences. She was very concerned to see that despite the risk posed by this group, the pilot de-radicalisation /de-engagement programmes would only target those individuals who had returned from conflict zone and not to all those convicted of terrorism offences. She highlights that such programmes should engage all individuals who have carried out acts of terrorism or violent extremism, recalling and that such differentiated treatment of one category of individuals can only create additional stigma which will ultimately limit the returnees' ability to reintegrate into society. Such differentiated programs also make it unlikely that one group of returnee prisoners would choose to engage in deradicalization programmes within the prison. She also notes that these programmes assess individuals' "radicalisation" through a series of 'indicators' of 'extremism' and 'radicalisation', that relate inter alia to the physical appearance of persons and their religious practice. She is concerned that such indicators can be tainted by prejudice and are placeholders for limitations on the absolute right of freedom of belief (Article 18, ICCPR) and allow for arbitrariness in interventions and entirely lack judicial supervision.
50. In her conversations with detainees, she observed a number to have serious dental issues, and she was made aware of ongoing medical health challenges experienced by them. All prisoners, including those convicted

of terrorism have the right to the highest attainable available standard of health (Article 12 ICESCR). She found that the maintenance of family relationships was of absolute importance to the men, including their role as fathers, a right protected even during incarceration by Article 17 ICCPR. She stresses that positive and sustained family relationship are one of the strongest means to advance reintegration and ensure that the prison experience can function as a positive step to a return to community and family. She highlights that many of these men face relatively long sentences and recommends that as an essential aspect of their reintegration their relationships to family be enabled and positively facilitated. Her prison interviews also highlighted the situation of men whose wives and children (who are Macedonian nationals) remain in Syria. In this regard, she encourages the government to take a constructive and broad view of repatriation of family members, to ensure family reunification as a means to advance both security and human rights values for returnees, as well as to protect Macedonian children that remain in the conflict zone.

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