

# UN Commission of Inquiry on Syria: Respect for the rule of law and fundamental rights must not be undermined for political expediency or sacrificed for security considerations

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**NEW YORK, 9 May 2019** – The Independent International Commission of Inquiry on the Syrian Arab Republic notes with grave concern that tens of thousands of civilians displaced by recent battles to capture the last enclaves of the so-called “Islamic State” in eastern Syria are languishing in makeshift camps. While many are being interned and undergoing security screening by Syrian Democratic Forces, others, including the families of ISIL fighters, are being held separately – in legal limbo – as their countries of origin refuse to repatriate them. All detained individuals are enduring appalling and inhumane conditions of shelter, health, and hygiene.

Inevitably, this has led to preventable deaths, primarily due to the lack of adequate humanitarian assistance together with untreated conflict related injuries and/or ill-health resulting from months of constant bombardment. Up to 240 children have reportedly already perished due to malnutrition or untreated infected wounds.

This untenable situation appears to be the result of a lack of preparedness by SDF and its international coalition partners for the scores of IDPs that have emerged from ISIL controlled areas in eastern Syria. This, however, is not the first time. In February last year, the Commission first reported on how hundreds of thousands of civilians displaced by international coalition and SDF battles to defeat ISIL were similarly interned in makeshift camps unfit to meet their basic needs. Since then, more battles has only meant that the situation has further deteriorated.

Al-Hol camp in Hasakah – which was initially built to house up to 10,000 IDPs – presently holds over 73,000 (92% of them women and children; 15% of them third-country nationals). The Commission notes that efforts are underway to improve this situation with the UN and international organizations providing relief assistance. The assistance provided thus far, however, has been wholly insufficient. Every effort must now be made by the international community to assist in speeding up the provision of humanitarian aid to these displaced individuals, including by Member States who have obligations under Security Council Resolution 2249.

Moreover, after individuals in SDF camps are vetted for potential security threats, there is no indication that they are in fact granted freedom of movement. Rather, tens of thousands remain confined to IDP camps including even after their status is deemed to be “civilian.” Bearing in mind over 60,000 of these individuals are Syrian nationals, encamped residents who are deemed not to pose an imminent threat to security must be immediately released.

Aside from Syrians, some 15% of the residents at al-Hol, or at least 11,000 persons, are third-country nationals, many of whose countries of origin are refusing to repatriate them solely because they are assumed to be families of ISIL fighters. Certain Member States have taken the further steps of either stripping these citizens of their nationalities to prevent their return, or approving their transfer to countries where they may be subject to torture, ill-treatment, or the death penalty in violation of the principle of *non-refoulement*. The Commission reminds all parties to the conflict including Member States that the ICCPR states very clearly “*No one shall be arbitrarily deprived of the right to enter his (her) own country,*” and the UN Human Rights Committee has noted that “*there are few, if any, circumstances in which deprivation of the right to enter one’s own country could be reasonable.*”

We note that states have argued they have the right to strip citizens of their nationalities if it does not render them stateless. If such drastic actions are to be contemplated, we urge that they be based on a high threshold which takes into account the principles of due process including the right to a hearing and to appeal. We are concerned that, in the present climate of “fighting terrorism,” individuals may be discriminated against, and urge a rights-based approach to dealing with foreign terrorist fighters, their families, and suspects which guarantees respect for fundamental human rights principles.

The Commission is particularly alarmed by the situation of children who are caught up in this quagmire and who are vulnerable to being left without a nationality. Of some 3,500 children at al-Hol camp, including those born as a result of rape, the majority lack or have lost birth registration documents. Some 335 children at the camp have already been registered as “unaccompanied,” but are receiving no gender or child sensitive counselling or trauma support. Stripping parents of their nationality will also have direct consequences for these children. Offers by states to repatriate children without their mothers, moreover, may run counter to the principle of the “best interests of the child.” Similarly, all children under 18, regardless of age, must be viewed as victims, and their rehabilitation and reintegration into society must be prioritized. A more rational approach needs to be adopted than one narrowly focused on punishment. In cases where punishment is necessary, however, prosecutions of children must be done in line with international fair trial and juvenile justice standards.

We note that several thousand detainees – mainly men and boys of fighting age – including hundreds of foreign terrorist fighters from nearly 50 countries, are being held incommunicado by SDF. As we have stated in the past, incommunicado detention risks creating an environment where torture and ill-treatment are perpetrated with impunity. We urge SDF to allow all detainees to be visited by an independent international humanitarian organization and human rights monitors.

The Commission has regularly reported on violations perpetrated by ISIL – including genocide, crimes against humanity, and war crimes. Holding suspects who may have been involved in such crimes in prolonged legal limbo, and incommunicado without access to legal counsel, risks undermining their successful prosecutions in future. Additionally, preventing them from returning to their countries of origin obstructs the obligations of those states to investigate and prosecute such crimes, and undermines the right to the truth for the victims and their families.

In accordance with its mandate, the Commission remains steadfast in its desire to ensure that the humanitarian situation in eastern Syria improves urgently, and that justice for victims is achieved. Indeed, for the past eight years the Commission has worked to strengthen efforts aimed at holding accountable perpetrators of atrocity crimes and grave human rights violations. The untenable situation in eastern Syria today, however, only contributes to further instability and the response by the international community has thus far done little for the overall cause of justice. This situation, moreover, belies a fear of the spread of radicalization that is often buoyed by popular and political pressures to apply a one-size-fits-all approach, where prolonged internment, incommunicado detention, or citizenship revocation are seen as the most suitable solutions. In pursuing this path, we not only fail to address properly the variety of motivations that foreign terrorist fighters and those connected with them may have, but more importantly, we risk failing to develop effective prevention strategies that should themselves be based on understanding these differences in motivations.

## **Background**

The Independent International Commission of Inquiry on the Syrian Arab Republic, which comprises Mr. Paulo Sérgio Pinheiro (Chair), Ms. Karen Koning AbuZayd, and Mr. Hanny Megally has been mandated by the United Nations Human Rights Council to investigate and record all violations of international law since March 2011 in the Syrian Arab Republic. Its reports can be found on the Independent International Commission of Inquiry on the Syrian Arab Republic's [webpage](#) and [Twitter](#) page.

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