

Mandates of the Working Group on the use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination; the Special Rapporteur on extrajudicial, summary or arbitrary executions; the Special Rapporteur on the sale and sexual exploitation of children, including child prostitution, child pornography and other child sexual abuse material and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment

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Excellency,

We have the honour to address you in our capacities as Working Group on the use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination; Special Rapporteur on extrajudicial, summary or arbitrary executions; Special Rapporteur on the sale and sexual exploitation of children, including child prostitution, child pornography and other child sexual abuse material and Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, pursuant to Human Rights Council resolutions 42/9, 35/15, 34/16 and 34/19.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning **allegations that Turkey recruited, deployed and paid fighters, including children, from several Syrian armed groups to take part in military operations in the Libyan capital Tripoli in support of the Government of National Accord, thus effectively deploying mercenaries to an armed conflict.**

According to the information received:

In December 2019, Turkish authorities reportedly organised meetings with armed factions affiliated with the Syrian National Army (SNA) and operating in north and north-eastern Syria near the Turkish border. During these meetings, Turkey reportedly asked them to deploy their fighters to Tripoli in Libya in support of the Libyan Government of National Accord (GNA).

A number of fighters are believed to have agreed to be transferred to Tripoli, including but not limited to members of the Hamza Division, Sultan Murad Division, Suqur Al-Sham Brigades, Mu'tasim Division, Faylaq al-Sham, Ahrar al-Sharqiyah, and Suleyman-Shah Brigade. It has been alleged that, during the conflict in Syria, some of these factions have committed war crimes and serious human rights abuses, such as recruitment of children, severe restrictions on women's rights in areas controlled by some of the groups, and extrajudicial killings.

From late December 2019, leaders of the above-mentioned Syrian armed groups are thought to have started registering their members as well as new civilian

recruits to be deployed to Libya on a voluntary basis. Allegedly, this included children under the age of 18 years, who had the approval of their families and who, subsequently, were issued with forged identification documents in order to be registered in SNA personal status records. Some of the children were reportedly internally displaced due to the conflict in Syria and received military training by the armed group that recruited them prior to being transferred to Libya.

Reportedly, fighters were transported into Turkish territory through the Hawar Kilis military crossing and the Jarabulus border crossing and were subsequently issued with a Turkish temporary protection identification document and employment contracts for the duration of three to six months. Turkish authorities allegedly contracted private military and security companies to facilitate the selection as well as the preparation of official and contractual documentation for the fighters, apparently in coordination with the Turkish security services. One of the companies cited in this context was Sadat International Defence Consultancy.

Thereafter, the fighters were transferred to Libya, some of them on Turkish military planes from Gaziantep to Istanbul followed by commercial flights to Tripoli and Misrata, areas under the control of the GNA. An estimated one to two thousand fighters are said to have been deployed to Libya in January 2020, with thousands more joining thereafter.

The fighters appear to have been motivated to deploy to Libya by comparatively high wages as well as the prospect of obtaining Turkish passports. Allegedly, monthly financial compensation offered to the Syrian fighters varied between 500 and 2,000 US dollars, a significantly higher remuneration than the one received in Syria, in addition to promised compensation to family members in case of death or serious injury. Monthly compensation varied depending on the specialisation and experience of the individual fighters, with higher wages offered to those with experience in urban warfare. Moreover, Turkish authorities reportedly offered financial compensation to the armed groups themselves depending on the number of recruits they secured.

After arriving in Libya, some of the Syrian fighters were reportedly integrated into local armed groups affiliated with the GNA, which were operating on the Tripoli conflict frontline, while others were kept in the rear. Reports suggest that some of the Syrian fighters were captured and killed. Some of their bodies were repatriated via Turkey to Syria and handed over to their families, while those without relatives in SNA-controlled areas in north and north-eastern Syria were apparently buried directly in Libya.

Further information available indicates that the alleged deployment of Syrian fighters into Libya followed the signature of a Memorandum of Understanding on Security and Military Cooperation between Turkey and the GNA on 27 November 2019. The document available online covers a broad scope of activities, including,

upon invitation of the ‘receiving party’, training and consultancy services concerning joint military planning, experience transfer, training and education activities, and weapon systems and equipment utilization covering the fields of activity of the land, naval and air forces. Additionally, the Memorandum provides for the exchange of ‘guest personnel’, advisors and units. ‘Guest personnel’ is defined as ‘members of defence and security agencies and sent by one Party to the other Party’ without specifying whether such personnel is part of the formal state security institutions or whether they can be drawn from armed groups based in a third country.

In late December 2019, the GNA reportedly requested military and security assistance from Turkey on the basis of the Memorandum of Understanding and, on 2 January 2020, the Turkish parliament authorised the deployment of personnel and other assets in support of the former. In public statements cited by the media, Turkish State representatives claimed, however, that this bill was not likely to lead to a sizable deployment of regular Turkish troops on the ground in Libya but rather to the use of other security actors.

As of 31 March 2020, in the one year since the offensive on Tripoli was launched, there were at least 685 civilian casualties, around 150,000 people displaced and some 893,000 people in need of humanitarian assistance. Since the beginning of April, these figures have significantly increased due to a further escalation of the fighting and despite the threat of the Covid-19 pandemic.

While we do not wish to prejudge the accuracy of these allegations, we are gravely concerned about the recruitment and transfer of mercenaries from Syria to Libya, notably the impact this may have on the protracted armed conflict in Libya and the right of the Libyan people to self-determination.

We note that the way in which the Syrian fighters have been allegedly recruited, transported and used in the armed conflict in Libya appears consistent with the definition of a mercenary, as set out by relevant international legal instruments and prohibited by the arms embargo imposed by the UN Security Council with respect to Libya. Furthermore, the deployment of mercenaries to an armed conflict may threaten several human rights, including, inter alia: the right to life, freedom from torture and other cruel, inhuman or degrading treatment or punishment, the right to liberty and security of person, and freedom from arbitrary arrest and detention.

The deployment of mercenaries to Libya is all the more concerning given the multitude and opacity of armed groups and other actors operating in a context of impunity. We are especially concerned that those deployed to Libya are affiliated with armed groups that, in some cases, have been accused of serious human rights abuses during the conflict in Syria, thus seemingly perpetuating a cycle of abuse and impunity. The lack of transparency concerning the command and control exercised over the fighters in question as well as the precise nature of their activities in Libya raises serious

accountability concerns as well as questions about the respect of relevant international law.

We are also alarmed by the alleged recruitment of Syrian children to take part in the hostilities in Libya, some of whom had reportedly received military training in Syria prior to being transferred to Libya. We wish to recall that children recruited to take part in hostilities are exposed to a broad range of human rights abuses, as observed by the Working Group on the use of mercenaries in its report on the recruitment of children by non-State armed groups, including mercenaries and private military and security companies (A/HRC/39/49). The recruitment of Syrian boys who have been deprived of most of their childhood by the long and brutal conflict in Syria only to see their vulnerable social and economic situation being exploited and to be recruited and used as mercenaries is a matter of utmost concern. As further noted in a joint report by the Special Rapporteur on sale and sexual exploitation of children and the Special Rapporteur on trafficking in persons, especially women and children, situations of armed conflict expose children to multifaceted vulnerabilities and put them at a higher risk of, *inter alia*, being trafficked, sold and sexually exploited, and used in the worst forms of child labour (A/72/164).

Furthermore, the reported role of Turkish private military and security companies in facilitating the recruitment and contracting of Syrian fighters, in apparent coordination with Turkish authorities, is an additional element of concern. Not only have these companies facilitated the recruitment and deployment of mercenaries from Syria to Libya, but, according to the available information, they have also contributed to the recruitment of children under 18 years of age to take part in an armed conflict.

We also express our concern at the transfer of foreign mercenaries to and from a conflict zone in the current context of the Covid-19 pandemic. The conflicts in Syria and Libya have left local communities severely ill-prepared to face the pandemic, and the transfer of mercenaries and the continuation of hostilities is in disregard for the health and safety of the civilian populations. In this context, we are alarmed by the continuing escalation of violence in Libya in disrespect for the repeated calls by the Secretary-General for a humanitarian pause.

For further specific references to international human rights instruments and standards relevant to these allegations, please refer to the **Annex on Reference to international human rights law** attached to this letter.

As it is our responsibility, under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention, we would be grateful for your observations on the following matters:

1. Please provide any additional information and/or any comment(s) you may have on the above-mentioned allegations.

2. Please provide detailed information on Turkey's role and the circumstances surrounding the recruitment, financing, transportation and deployment of Syrian fighters, including children under 18 years old, to participate in the hostilities in Libya.
3. Please indicate the number of Syrian fighters deployed to Libya, the names of the Syrian armed groups with which they are affiliated, the nature of their activities in Libya, and the numbers of Syrian fighters who have been killed, injured or taken into custody by enemy forces in Libya.
4. Please explain the command and control structure over the Syrian fighters deployed in Libya, including any measures in place to hold these fighters accountable for violations of international humanitarian law and international human rights law, including specific examples.
5. Please explain how the recruitment, transfer and use of Syrian fighters in Libya, including children under 18 years old, is compatible with international legal obligations of your Excellency's Government, as well as the applicability of the Memorandum of Understanding on Security and Military Cooperation between Turkey and the Government of National Accord of Libya in this regard.
6. Please provide information about the role of Turkish private military and security companies in allegedly assisting with the recruitment, financing and transfer of the Syrian fighters through Turkey to Libya, as well as information on the relationship between such companies and your Excellency's Government and the extent to which respect for human rights and accountability for related abuses are built into contracts and other agreements with such companies.
7. Please explain the measures taken by your Excellency's Government to prevent the recruitment of Syrian children under the age of 18 years to be deployed to Libya, and whether there are any measures in place to repatriate those children reportedly deployed to participate in the hostilities in Libya.
8. Please indicate whether the above-mentioned allegations have been or are the subject of an investigation and/or prosecution by the relevant Turkish authorities and provide information about their outcomes, including as regards remedies for victims.
9. Please indicate what measures your Excellency's Government has taken, or is considering to take, to prevent and protect against human rights violations and abuses in the context of the deployment of Syrian fighters to the conflict in Libya, particularly in the current context of the Covid-19 outbreak.

This communication and any response received from your Excellency's Government will be made public via the communications reporting website within 60 days. They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

While awaiting a reply, we urge that all necessary measures be taken to investigate the allegations made above and to prevent their re-occurrence and in the event that the investigations support or suggest the allegations to be correct, to ensure the accountability of any person(s) responsible.

We may publicly express our concerns in the near future as, in our view, the information upon which the press release will be based is sufficiently reliable to indicate a matter warranting immediate attention. We also believe that the wider public should be alerted to the potential implications of the above-mentioned allegations. The press release will indicate that we have been in contact with your Excellency's Government's to clarify the issues in question.

Please note that a letter expressing similar concerns was sent to the Government of National Accord of Libya.

Please accept, Excellency, the assurances of our highest consideration.

Chris Kwaja
Chair-Rapporteur of the Working Group on the use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination

Agnes Callamard
Special Rapporteur on extrajudicial, summary or arbitrary executions

Mama Fatima Singhateh
Special Rapporteur on the sale and sexual exploitation of children, including child prostitution, child pornography and other child sexual abuse material

Nils Melzer
Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment

Annex

Reference to international human rights law

In connection with the above-mentioned allegations, we would like to draw the attention of your Excellency's Government to the relevant international norms and standards that are applicable to the issues brought forth by the situation described above.

The right to self-determination is one of the principles of the United Nations, as per article 1(2) of the Charter of the United Nations as well as a fundamental principle of international human rights law, found in common article 1 to the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the International Covenant on Civil and Political Rights (ICCPR). "Its realization is an essential condition for the effective guarantee and observance of individual human rights and for the promotion and strengthening of those rights", as observed by the Human Rights Committee in its General Comment 12.

The Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States reaffirmed this right and the obligation of States to refrain from any forcible action which deprives peoples of the enjoyment of such a right (A/RES/2625 (XXV)). The Declaration further sets out the duty of States to "refrain from organizing or encouraging the organization of irregular forces or armed bands including mercenaries, for incursion into the territory of another State".

We wish to stress that the recruitment, use, financing and training of mercenaries impedes the right of peoples to self-determination and violates the purposes and principles enshrined in the UN Charter, as recalled by the Human Rights Council (A/HRC/RES/42/9) and by the General Assembly (A/RES/74/138) in 2019. This practice is also incompatible with the prohibition of providing armed mercenary personnel to Libya under the arms embargo imposed by the UN Security Council in Resolution 1970 (2011). In 2020, the Security Council reiterated its demand for full compliance with the arms embargo, including by ceasing all support for and withdrawing all armed mercenary personnel (Resolution 2510).

Other legal instruments proscribe the recruitment, use, financing and training of mercenaries in general, notably the International Convention against the Recruitment, Use, Financing and Training of Mercenaries and the Organisation of African Unity Convention for the Elimination of Mercenarism in Africa. These instruments contain a largely similar definition of a mercenary with several cumulative criteria, including, inter alia: being specially recruited to fight in an armed conflict, being motivated by private gain, not being a national of a party to the conflict, and not being a member of the armed forces of a party to the conflict.

With respect to the treatment and protection of children in situations of armed conflict, the Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict, ratified by Turkey in 2004, requires State Parties to take all feasible measures to ensure that persons who have not attained the age

of 18 years do not take direct part in hostilities, either as members of State armed forces (article 1) or on behalf of armed groups (article 4). To that effect, States are obliged to “take all necessary legal, administrative and other measures to ensure the effective implementation and enforcement [...] within its jurisdiction” (article 6(1)). Moreover, States are required to make the principles and provisions of the Optional Protocol widely known (article 6(2)) and take all feasible measures to demobilise or otherwise release victims of such practices from service and, when necessary, accord them “all appropriate assistance for their physical and psychological recovery and their social reintegration” (article 6(3)). In addition, UN Security Council resolution 1261 (1999) identifies and condemns the recruitment and use of children in armed conflicts by States and non-State armed groups as one of the six grave violations committed against children in times of armed conflict.

We further wish to recall that both international humanitarian law and international human rights law continue to apply in a situation of armed conflict. In its General Comments 31 (CCPR/C/21/Rev.1/Add.13, para 11) and 36 (CCPR/C/GC/36, para 64), the Human Rights Committee has affirmed the applicability of the International Covenant on Civil and Political Rights (ICCPR) and international human rights law more generally to situations of armed conflict.

In particular, States have an obligation to respect and ensure respect of the Geneva Conventions as provided by their common Article 1. To this end, States are required to adopt all measures necessary to ensure respect for the Geneva Conventions not only by their organs but also by private individuals within their jurisdictions as well as other States and non-State parties. Furthermore, the absolute and non-derogable prohibition of cruel, inhuman or degrading treatment as codified in article 7 of the ICCPR and articles 2 and 16 of the Convention against Torture (CAT) is also included in article 3 common to the Geneva Conventions, which the International Court of Justice has held to reflect a general principle of law, namely “elementary considerations of humanity” (*Nicaragua v. United States of America*, ICJ Reports 1986, pp. 14).

Similarly, States have positive obligations to protect and fulfil human rights. In this respect, we would like to recall that it is now widely accepted that States’ obligations to protect and fulfil human rights, such as the right to life, extend beyond their own agents and also encompass protecting against human rights abuses by third parties, including private actors, and to take positive steps to fulfil human rights. This includes taking appropriate measures to prevent, punish, investigate and bring perpetrators to justice and redress harm caused by both State and private actors (CCPR/C/21/Rev.1/Add.13, para. 8).

Furthermore, in its General Comment No. 36, the Human Rights Committee further recalled that States have a due diligence obligation to take adequate preventive measures in order to protect individuals against reasonably foreseen threats to life originating from private persons and entities whose conduct is not attributable to the State (CCPR/C/GC/36, para 21). It follows that States have the responsibility to take steps to prevent human rights abuses by those providing private military and security services,

including by adopting legislative and administrative measures to regulate their actions. This includes taking adequate measures to “prevent, investigate, punish and remedy arbitrary deprivation of life by private entities, such as [...] private security firms” (Ibid). States are further required to effectively regulate, monitor and control the conduct of private individuals or entities empowered or authorized to employ force with potentially lethal consequences (CCPR/C/GC/36, para 15).

With respect to the possible involvement of private security providers, we would like to recall that the UN Guiding Principles on Business and Human Rights urge authorities to protect against human rights abuse by business enterprises and by adopting appropriate steps to prevent, investigate, punish and redress such abuse through effective policies, legislation, regulations and adjudication (Guiding Principle 1). States may be in breach of their international human rights obligations if they fail to take such measures. Guiding Principle 6 sets out that States should promote respect for human rights by business enterprises with which they conduct commercial transactions.