

Mandates of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism; the Working Group on Arbitrary Detention; the Working Group on Enforced or Involuntary Disappearances; the Special Rapporteur on extrajudicial, summary or arbitrary executions; the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment; the Special Rapporteur on violence against women, its causes and consequences and the Working Group on discrimination against women and girls

REFERENCE:
UA TUR 9/2019

15 November 2019

Excellency,

We have the honour to address you in our capacity as Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism; Working Group on Arbitrary Detention; Working Group on Enforced or Involuntary Disappearances; Special Rapporteur on extrajudicial, summary or arbitrary executions; Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment; Special Rapporteur on violence against women, its causes and consequences and Working Group on discrimination against women and girls, pursuant to Human Rights Council resolutions 40/16, 42/22, 36/6, 35/15, 34/19, 41/17 and 41/6.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the detention and interrogation of Ms. **Lisa Smith** and the situation of vulnerability of **her child**.

According to the information received:

Ms. Smith travelled to Syria some years ago, and was married to an individual associated with a UN-listed terrorist group. She became pregnant and gave birth to a child while in Syria. Ms. Smith and her child were previously held in the Ain Issa displacement camp in north-east Syria. Given the material conditions in the camp, Ms. Smith and her child's health and safety may have been seriously compromised.

Conditions in the camp were extremely poor with limited access to food, water and medical care. Sanitary conditions were precarious and extreme temperatures meant that women and children were subject to weather extremities that placed their health and welfare at serious risk. There was no known access to medical care or medical oversight. No information is available as to whether Ms. Smith and her child have received adequate medical care in Turkey following their detention and subsequent escape from Syria. The medical condition of both is unknown.

In October 2019, Ms. Smith and her child were forced to flee the camp on foot following bombing by Turkish military. She was then detained by Turkish-backed militia and at some undetermined point handed over to Turkish authorities.

Ms. Smith and her two year old infant child, both Irish nationals, are in custody of Turkish officials. Ms. Smith is being subjected to interrogation by security officials and it is believed that she is accused of supporting a terrorist group in Syria. It is unclear if Ms. Smith has been charged with a specific offence, has access to legal counsel or is being given appropriate consular assistance as required by the Vienna Convention on Consular Relations (1963). Her current place of detention is not known.

While we do not prejudge the accuracy of these allegations, we wish to express our grave concern over the deprivation of liberty of Ms. Smith, and the high risk of torture or cruel, inhuman or degrading treatment that she may be facing in violation of international human rights standards. We recommend that Ms. Smith and her child are given immediate access to Irish consular assistance; that steps are taken by the Irish and Turkish authorities to ensure, in due diligence, that she is protected against any abuse while detained; and that she safely repatriated to Ireland without delay. In the meanwhile, her protection should follow ad minima the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules) which provide guidance for specific characteristics and needs for women in prison in particular Rules 10, 11, 12 and 13. .

We are also concerned about the vulnerability of her child who is detained with her. In this regard, we would like to underscore the particular obligations to protect the well-being of the child, in accordance with the Convention on the Rights of the Child to which Turkey is a party.

We are equally concerned at allegations that Ms. Smith and her child may be subjected to enforced disappearance. At the time of writing her exact whereabouts, current detention conditions, and treatment remain unknown. The United Nations Declaration on the Protection of All Persons from Enforced Disappearances establishes that no State shall practice, permit or tolerate enforced disappearances. The Declaration also proclaims that each State shall take effective legislative, administrative, judicial or other measures to prevent and terminate acts of enforced disappearance in any territory under its jurisdiction. In particular, the Working Group recalls that the Declaration sets out the necessary protection by the State, in particular articles 9, 10, and 12, which relate to the rights to a prompt and effective judicial remedy to determine the whereabouts of persons deprived of their liberty; to access of competent national authorities to all places of detention; to be held in an officially recognized place of detention, and to be brought before a judicial authority promptly after detention; to accurate information on the detention of persons and their place of detention being made available to their family, counsel or other persons with a legitimate interest; and to the maintenance in every place

of detention of official up-to-date registers of all detained persons. Similarly, we would like to remind Your Excellency's Government of the obligation under article 20 of the Declaration which requires that all measures be taken to prevent and suppress the abduction of children of parents subjected to enforced disappearance and of children born during their mother's enforced disappearance.

All children, including Ms. Smith's child, should enjoy special protection in accordance with the Convention on the Rights of the Child and its Optional Protocols, the UN Convention on the Elimination of Discrimination Against Women as well as under international humanitarian law. Children must always be treated primarily as victims, while the best interest of the child must always be a primary consideration. States have the obligation to undertake individualized assessments for each child, determining their integration needs based on comprehensive, multiagency and multidisciplinary approaches. Where possible and depending on the age of the child it is preferable that family separation be avoided or mitigated as far as is possible.

We would like to recall that the urgent return and repatriation of foreign fighters and their families from conflict zones is 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 northern Syrian Arab Republic and Iraq. Such return is a comprehensive response that amounts to a positive implementation of Security Council resolutions 2178 (2014) and 2396 (2017) as well as the CEDAW Convention and its General recommendation 30 (related to its extraterritorial application) and is considerate of a State's long-term security interests.

We also underscore the need for a thorough individual evaluation of each woman and child from their human rights perspective, including gender based violence and persecution against women who return from Syria and Iraq, including via third countries. We affirm that an effective return process includes holding individuals accountable for serious violations of national and international law for and systematic crimes committed in Syria and Iraq as appropriate and commensurate with the available evidence. We stress the need to recognize that women and children associated with ISIS may have also experienced extreme and significant human rights violations and gender based violence during and prior to their detention in camps such as Ain Issa. As the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism has previously found the conditions generally experienced in such camps meet the threshold for torture, inhuman and degrading treatment as understood under the International Covenant on Civil and Political Rights (Article 1), the UN CEDAW Convention and the European Convention on Human Rights (Article 3) to which Turkey is a Party.

The full texts of the human rights instruments and standards recalled above are available on www.ohchr.org or can be provided upon request.

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

1. Please provide any additional information and any comment you may have on the above mentioned allegations;
2. Please provide specific information on the current whereabouts, fate, conditions of detention, treatment and the health of Ms. Smith and her child;
3. Please provide the details of the legal basis for their detention in Turkey;
4. Please clarify if Ms. Smith has been provided with due diligence consular services and if the appropriate protection measures to ensure her safety, health and that of her child have been sought and guaranteed;
5. Please clarify if legal representation has been made available to Ms. Smith in the context of her current detention;
6. Please share information on the repatriation of Ms. Smith and her child to Ireland and on how your Government will ensure that such repatriation is compliant with international law including human rights law particularly in addressing the fact that Ms. Smith may have experienced torture, inhuman, or degrading treatment while in detention;

While awaiting a reply, we urge that all necessary interim measures be taken to halt the alleged violations and prevent their occurrence and in the event that investigations support or suggest the allegations to be correct, to ensure the accountability of any person responsible for the alleged violations.

We may be considering to express our concerns publicly in this case, given the wider human rights implications involved. In this regard, we would appreciate a prompt response to this urgent communication. Any public expression of concern on our part will indicate that we have been in contact with your Excellency's Government's to clarify the issue/s in question.

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.

We would like to inform your Excellency's Government that after having transmitted an urgent appeal to the Government, the Working Group on Arbitrary Detention may transmit the case through its regular procedure in order to render an opinion on whether the deprivation of liberty was arbitrary or not. Such urgent appeals in no way prejudice any opinion the Working Group may render. The Government is required to respond separately for the urgent appeal procedure and the regular procedure.

We would also like to inform that a copy of this communication will be sent to Ireland.

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

Fionnuala Ní Aoláin
Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism

Leigh Toomey
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