

**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 Special Rapporteur on extrajudicial, summary or arbitrary executions; the Special Rapporteur on the right to food; the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; the Special Rapporteur on the human rights of migrants; the Special Rapporteur on the sale and sexual exploitation of children, including child prostitution, child pornography and other child sexual abuse material; the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment; and the Working Group on discrimination against women and girls**

REFERENCE:  
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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; Special Rapporteur on extrajudicial, summary or arbitrary executions; Special Rapporteur on the right to food; Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; Special Rapporteur on the human rights of migrants; Special Rapporteur on the sale and sexual exploitation of children, including child prostitution, child pornography and other child sexual abuse material; Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment; and Working Group on discrimination against women and girls, pursuant to Human Rights Council resolutions 40/16, 42/22, 35/15, 32/8, 42/16, 34/21, 34/16, 34/19 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 need to protect the right to life of a Canadian orphan, currently detained in Al-Hol camp in the North-East region of the Syrian Arab Republic since March 2019.

According to the information received:

Case of ██████████

██████████ is a Canadian national, born abroad to two Canadian citizens, on ██████████. She is 5 years old. In March 2019, ██████████'s parents, who had a suspected affiliation with ISIL, were reportedly killed in an airstrike and she was orphaned. ██████████ was brought to Al-Hol camp, in northern Syria, where she initially stayed in the camp with an adult caregiver. Upon confirmation of her location, Kurdish authorities transferred her to ██████████, where she remains to date. It is

reported that on 11 February 2020, the Government of Canada confirmed ██████'s identity and her Canadian citizenship.

██████████'s relative, is a Canadian citizen, residing in Canada. Mr. ██████ has been trying to obtain ██████'s repatriation to Canada since 13 April 2019, when he identified her as his relative based on a picture taken upon her arrival in Al-Hol. He has been in contact with officials at Global Affairs Canada (GAC) and Immigration Refugee and Citizenship Canada (IRCC). Unable to obtain her release, Mr. ██████ travelled to Syria on 30 January 2020 in an attempt to secure ██████'s release. Mr. ██████ was informed by the Kurdish de facto authorities that ██████ would be released if a Canadian delegation was sent to his office. According to information received, the Canadian Government refuses to send a delegate across the Iraqi-Syrian border under any circumstances at this time.

Five year-old ██████ has been held in Al-Hol camp with no capacity to leave, living under the care of non-relatives for more than a year.

While we do not wish to pre-judge the accuracy of these allegations, we wish to express our utmost concern over the situation of ██████, given her particular vulnerability in such a complex, unsafe and volatile situation. We remind your Excellency's Government of the overwhelming impact on a five year old girl of a conflict that she has experienced all her life, that has taken both her parents, and that continues to deny her of the most basic protection to which she is entitled under international human rights and humanitarian law.

Since the beginning of the conflict, children have borne the brunt of the violence perpetrated by warring parties.<sup>1</sup> The impact on their most basic rights is particularly severe and complete. The well-documented living conditions of children in Al-Hol show the inhumanity of the deprivation of liberty, the lack of basic care, of sufficient food, of shelter from the elements, of safe water, of adequate sanitation, of medical care and of education. Children in Al-Hol suffer from malnutrition, infectious diseases and measles.<sup>2</sup> In his report on early childhood (A/70/213), the Special Rapporteur on the right to health stresses the risk faced by millions of children to reach their developmental potential because of, inter alia, poor health; poor nutrition, including malnutrition; a lack of stable, nurturing and responsive environments with learning opportunities; and a lack of safe, supportive physical environments (para 26). Children's right to health is protected by, inter alia, article 12 of the International Covenant of Economic, Social and Cultural

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<sup>1</sup> Conference Room Paper of the Independent International Commission of Inquiry on the Syrian Arab Republic, "They have erased the dreams of my children": children's rights in the Syrian Arab Republic, A/HRC/43/CRP.6, 20 January 2020, para.2.

<sup>2</sup> A/HRC/43/57, para.96-97

Rights, acceded to by Canada on 19 May 1976. This right includes both children's survival and healthy development which is essential to their right to health and to other human rights and dignity, both in the short term and throughout their lives (para 31).

More than 500 individuals, mostly children, died in Al-Hol in 2019 alone. Children are exposed to harassment, violence, exploitation and sexual and other forms of abuse. The psychological impact on children of repeated exposure to violence and insecurity has far reaching consequences, including trauma, psychological and behavioural disorders, as well as chronic fatigue and acute stress.<sup>3</sup> In his report on mental health (A/HRC/35/21), the Special Rapporteur on the right to health elaborates on the damaging mental health and social impact that adversities and trauma have throughout childhood. Toxic stress, sexual, physical and emotional child abuse, and parental loss, among others, negatively affect brain development and the ability to form healthy relationships, affecting children's ability to fully realize their right to physical and mental health as they transition into adulthood (para 73). To secure the right to mental health in particular, States have the obligation to act on a range of health determinants including violence and supportive family environments (A/HRC/35/21, para 67). The environment is a fundamental determinant of the health and well-being of the child.

The Special Rapporteur on promotion and protection of human rights and fundamental freedoms while countering terrorism has taken the view that the conditions of life in the camp constitute exposure to torture, inhuman and degrading treatment under international law.<sup>4</sup>

On 4 November 2019, the Executive Director of UNICEF, once more, raised profound concern for the children struggling to survive amidst increasingly dire conditions in the camps and detention centres. UNICEF noted that the conditions are unfit for children urgently in need of adequate care and protection.

We recommend the urgency of avoiding by all means the deprivation of liberty of children. The Special Rapporteurs recall the UN Global Study on Children Deprived of Liberty,<sup>5</sup> which applies "the definition of deprivation of liberty under international law, which requires a decision by a judicial or administrative authority. Whether the place of detention is run by the State or a private organization is not a decisive factor, but there must be some government involvement in the decision that leads to the deprivation of liberty. The study also highlighted that the consequences of detention in the context of an armed conflict can be profound. Many children carry the stigma of association, whether

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<sup>3</sup> A/HRC/43/CRP.6, para. 3.

<sup>4</sup> <https://www.ohchr.org/EN/Issues/Terrorism/Pages/Research-papers-and-Inputs.aspx>

<sup>5</sup> <https://www.ohchr.org/EN/HRBodies/CRC/StudyChildrenDeprivedLiberty/Pages/Index.aspx>

they were involved or not, and face rejection, and reprisals from their home communities, which might lead to recruitment by armed groups<sup>6</sup>.

In November 2019, UNICEF called for the urgent voluntary repatriation of foreign children back to their countries of origin, noting that the preservation of family unity and the principle of non-refoulement are critical for protecting children.<sup>7</sup> In his report on people on the move (A/73/216), the Special Rapporteur on the right to health establishes that undermining family unity in the context of human mobility is a violation of the right to health which have detrimental impact on the mental health and well-being of children on the move (para 66). He calls for the immediate prohibition and prompt elimination of practices that are not in children's best interests, including family separation and obfuscation of family reunification (para 83.b).

UN Security Council Resolution 2196 (2018) stresses the importance of assisting children associated with "foreign terrorist fighters" who may have been victims of terrorism, taking into account gender and age sensitivities. It recognises the particular importance of providing timely and appropriate reintegration and rehabilitation assistance to children associated with foreign terrorist fighters returning or relocating from conflict and acknowledges that children may be especially vulnerable and in need of particular psychosocial support, such as post-trauma counselling. Children need to be treated in a manner that respects their rights and protects their dignity in accordance with applicable international law.<sup>8</sup> This echoes Security Council resolutions on children and armed conflict, which stress the need to pay particular attention to the treatment of children associated or allegedly associated with armed groups who commit terrorist acts.<sup>9</sup>

Returning children is a humanitarian and human rights imperative.<sup>10</sup> A five-year old orphan should be prioritized by her country of nationality, and every effort made to ensure her safe return. Children enjoy special protection in accordance with the Convention on the Rights of the Child and its Optional Protocols as well as international humanitarian law, without discrimination, including on the basis of the activities or status of their parents. Policy responses that lead to the detention or punishment of children because their parents or, in some cases, other family members, were related to or associated with ISIL, violate this key principle of international law.

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<sup>6</sup> <https://www.ohchr.org/EN/HRBodies/CRC/StudyChildrenDeprivedLiberty/Pages/Index.aspx> para. 67.

<sup>7</sup> Statement by UNICEF Executive Director Henrietta Fore, "Governments should repatriate foreign children stranded in Syria before it's too late", New York, 4 November 2019.

<sup>8</sup> Security Council resolution 2396 (2017) and e.g. General Assembly resolution 72/284 (2018).

<sup>9</sup> Security Council resolution 2427 (2018), para. 19.

<sup>10</sup> Noting the joint position of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism with the Special Representative of the UNSG on Children in Armed Conflict <https://childrenandarmedconflict.un.org/2019/11/joint-statement-on-human-rights-and-humanitarian-concerns-related-to-conflict-affected-women-and-children-in-syria-and-iraq/>.

States hold a fundamental duty to always take measures in the best interest of the child, and to respect, protect and fulfil the right to life, and the right to be free of inhumane and ill treatment and all forms of physical and mental violence, neglect, and exploitation. In all cases, deprivation of liberty should be used as a measure of last resort and for the shortest amount of time possible, in conformity with the best interest of the child. Further, States must treat children, including children related to or associated with designated terrorist groups, primarily as victims when devising responses, including counter-terrorism responses.<sup>11</sup> All feasible measures to ensure the protection and care of children affected by armed conflict, and all appropriate measures to promote the physical and psychological recovery and social reintegration of child victims of armed conflict, must be taken.<sup>12</sup> The UN Committee on the rights of the child has clarified, in this regard, that ‘[p]reservation of the family environment encompasses the preservation of the ties of the child in a wider sense. This applies to the extended family, such as grandparents, uncles/aunts as well as friends, school and the wider environment.’<sup>13</sup>

Canada, therefore, has a positive obligation to take necessary and reasonable steps to intervene in favour of their nationals abroad, particularly if there are reasonable grounds to believe that their non-derogable human rights have been violated, contrary to international human rights law. The necessity of such intervention is underscored by the age, vulnerability and gender of this child. There is reasonable basis to believe that ██████████ a highly vulnerable child, faces very serious violations of her rights, flagrant denial of justice, ill-treatment, deprivation of liberty in grave violation of human rights standards, including arbitrary deprivation of liberty, and deprivation of liberty that fails to comply with the most basic standards of humanity. Returning children is a humanitarian and human rights imperative. The argument that children are not deserving of protection constitutes a profound failure by their home countries, particularly those who have ample resources. State and non-state actors at all levels should affirm and respect the fundamental vulnerability of children caught up in armed conflict, through a range of circumstances almost always not of their own making, or from contexts which have no meaningful exit. Children enjoy special protection in accordance with the Convention on the Rights of the Child and its Optional Protocols as well as international humanitarian law.<sup>14</sup> Canada signed the Convention on 28 May 1990 and ratified the Convention on 13 December 1991.

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<sup>11</sup> See United Nations Office on Drugs and Crime (UNODC), Handbook on Children Recruited and Exploited by Terrorist and Violent Extremist Groups: The Role of the Justice System (Vienna, 2017), chap. 2.

<sup>12</sup> UNCRC articles 38-39.

<sup>13</sup> Committee on the rights of the Child, General Comment No. 14 on the right of the child to have his or her best interest taken as a primary consideration, CRC/C/CG/14.

<sup>14</sup> Position of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism on the return of “Foreign Fighters” and their families <https://www.ohchr.org/Documents/Issues/Terrorism/PositionSRreturnsFFsOct2019.docx>

Continued deprivation of liberty in Al-Hol camp can never be considered as being in the best interest of a five year old orphan. We are therefore particularly concerned that, according to information received, the Canadian authorities have failed to secure her repatriation after being orphaned and being deprived of her liberty. Moreover, the Government appears to have not availed itself of the opportunities made possible through the repeated efforts of ██████████'s relative to repatriate her. The Government also appears to have failed to find a lasting solution to her plight that respects, protects and fulfills her most basic rights as a child.

In light of the inhumane, degrading and increasingly dangerous situation that ██████████ finds herself in, through absolutely no fault of her own, the stated practical challenges in securing her return reportedly put forward by the Canadian authorities, including lack of consular representation and lack of willingness to send a representative in Syrian territory currently under Kurdish authority, appear to be excuses to obstruct her return. The Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism has seen through work with other States that similarly do not have diplomatic representation anywhere near the camp or in-country, that partnerships can be optimized and assistance obtained from other State partners and non-State actors which have direct control over territory, to extract individuals from camps, including Al-Hol. This can include securing air transport and the provision of humanitarian assistance and medical care, and ensure their safe return to home countries.<sup>15</sup> She reaffirms, in line with the UN Key Principles for the Protection, Repatriation, Prosecution, Rehabilitation and Reintegration of Women and Children with Links to United Nations Listed Terrorist Groups, that Member States have “primary responsibility” for ensuring that their citizens are treated in accordance with international law, including international human rights law, international humanitarian law and international refugee law, including through the provision of consular assistance”.<sup>16</sup>

Additional practical and detailed guidance to enable human rights compliance in return is available in the *UN Key Principles for the Protection, Repatriation, Prosecution, Rehabilitation and Reintegration of Women and Children with Links to United Nations Listed Terrorist Groups* of April 2019<sup>17</sup> and in the *Guidance to States on Human Rights-Compliant Responses to the Threat posed by Foreign Fighters*, produced by the Counter-

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<sup>15</sup> Preliminary Findings of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism on her visit to Kazakhstan:  
<https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=24637&LangID=E>.

<sup>16</sup> UN, “Key Principles for the Protection, Repatriation, Prosecution, Rehabilitation and Reintegration of Women and Children with Links to United Nations Listed Terrorist Groups”, April 2019.

<sup>17</sup> Available at:

[https://www.un.org/counterterrorism/sites/www.un.org.counterterrorism/files/key\\_principles-april\\_2019.pdf](https://www.un.org/counterterrorism/sites/www.un.org.counterterrorism/files/key_principles-april_2019.pdf).

Terrorism Implementation-Task Force Working Group on Promoting and Protecting Human Rights and Rule of Law while Countering Terrorism.<sup>18</sup>

The full texts of the human rights instruments and standards recalled above are available on [www.ohchr.org](http://www.ohchr.org) or can be provided upon request.

In view of the urgency of the matter, we would appreciate a response on the initial steps taken by your Excellency's Government to safeguard the rights of the above-mentioned person(s) in compliance with international instruments.

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 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 clarify what if any due diligence consular services have been provided to [REDACTED] and if the appropriate protection measures to ensure her safety, health and well-being have been sought and guaranteed;
3. Please share information on the possible repatriation of [REDACTED] to Canada and how your Government will ensure that such repatriation is compliant with international law including human rights law particularly in addressing the fact that [REDACTED] is a five-year-old orphan in need of special protection.
4. Please share what measures are being taken to continue working with and supporting [REDACTED] surviving family in Canada.
5. Please share information about what reintegration and rehabilitation assistance your Government would envisage for [REDACTED] upon return.

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

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

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<sup>18</sup> Available at: <https://www.un.org/sc/ctc/wp-content/uploads/2018/08/Human-Rights-Responses-to-Foreign-Fighters-web-final.pdf>.

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 issue/s in question.

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 appeals in no way prejudge any opinion the Working Group may render. The Government is required to respond separately for the urgent appeal procedure and the regular procedure.

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.

A copy of this communication has been sent to the Syrian Arab Republic.

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  
Vice-Chair of the Working Group on Arbitrary Detention

Agnes Callamard  
Special Rapporteur on extrajudicial, summary or arbitrary executions

Michael Fakhri  
Special Rapporteur on the right to food

Dainius Puras  
Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health

Felipe González Morales  
Special Rapporteur on the human rights of migrants

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

Meskerem Techane  
Chair-Rapporteur of the Working Group on discrimination against women and girls