

Mandates of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism; the Working Group on Enforced or Involuntary Disappearances; 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 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; the Special Rapporteur on trafficking in persons, especially women and children and the Working Group on discrimination against women and girls

Ref.: UA SWE 5/2022
(Please use this reference in your reply)

14 November 2022

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 Enforced or Involuntary Disappearances; 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 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; Special Rapporteur on trafficking in persons, especially women and children and Working Group on discrimination against women and girls, pursuant to Human Rights Council resolutions 49/10, 45/3, 44/5, 49/13, 51/21, 43/22, 43/20, 44/4 and 50/18.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the situation of a 7 year old Swedish girl child who was wrongfully transferred to Sudan in April 2019 and whose fate and whereabouts remain unknown.

According to the information received:

████████████████████, a Swedish citizen, was born on ██████████ in Syria. Her father, ██████████ a Swedish citizen, was killed in 2014 and her mother, ██████████, also a Swedish citizen, was killed in Baghouz in 2019. The mother's last husband, a Sudanese citizen whose name we do not have, may be in a prison in Syria or may have been repatriated back to Sudan.

██████████ was one of five orphaned children repatriated to Sudan from Al Hol camp in North-East Syria in April 2019. The Kurdish-language regional news network Rudaw reported that an official from the Sudanese Ministry of Foreign Affairs travelled to North-East Syria to sign an agreement with the local authorities regarding repatriations to Sudan. In a joint press statement,

the representative of Sudan said that they had come to “take delivery of some citizens they could identify” and ██████████ name was included on the list of the children to be repatriated. Women detained in Al-Hol at the time have confirmed that ██████████ left the camp with the Sudanese delegation.

██████████ fate and whereabouts are unknown after she left North-East Syria for Sudan. Her family in Sweden on her mother’s and father’s side is deeply concerned for her welfare and protection and is actively looking to find her. The Swedish Embassy in Sudan is also actively looking for her.

We very much welcome the fact that your Excellency’s Government has repatriated some of its most vulnerable citizens. We have already stressed that voluntary repatriation is the only international law-compliant response to the complex and precarious human rights, humanitarian and security situation in north-east Syria. At the same time, we are extremely concerned that a young and vulnerable orphaned girl child may have been wrongfully transferred to a country that is not her country of nationality and returned to a family not known to her and with whom she has no biological ties, based on an assessment of her legal status which was associated with the nationality of her stepfather (her mother’s last husband). The various acts and omissions that led to the alleged repatriation of this young girl child to a country where she has no family and no nationality link raise profound concerns about her protection and the enforcement of her rights in a context where she was not in a position to assert her needs and rights. As a matter of fact, the described situation may amount to an enforced disappearance, considering that ██████████ was last seen in a situation that can be equated to custody of State agents and, after those authorities failed to provide information on her fate and whereabouts to her family in Sweden who are actively searching for her.

We recall at the outset that under the Convention on the Rights of the Child, because children are uniquely vulnerable, by age and capacity dependent on others, frequently not afforded an opportunity to express their views and unable to participate in decisions concerning themselves, they are entitled to special protection. We also note that international law requires that States adopt a human and child rights-based approach that situates particularly vulnerable children, such as those in the camps in North-East Syria, first and foremost as victims of violations of international law.

Article 3(1) of the Convention on the Rights of the Child provides the child’s right to have his or her best interests assessed and taken into account as a primary consideration in all actions or decisions that concern her, including by administrative authorities. Unaccompanied and separated children are exceptionally exposed to violence, and they are at risk of sale, exploitation, abuse, enforced disappearance and other violations of their fundamental rights. Correspondingly, States should provide additional safeguards in determining the child’s best interests. To mitigate the risks and avoid victimization during or ensuing the repatriation; preventive, protective and rehabilitative measures should be taken, and the children should be provided with adequate and effective access to justice, as well as support services, including by ensuring them access to health care services and psychological support.

We would like to bring to the attention of your Excellency's Government article 12, coupled with article 2.2 of the International Covenant on Economic, Social and Cultural Rights (ICESCR), ratified by Sweden on 6 December 1971, which enshrines the right of everyone to the enjoyment of the highest attainable standard of physical and mental health. We would like to refer your Excellency's Government to General Comment No. 14 of the Committee on Economic, Social and Cultural Rights (CESCR), which indicates that obligation to *protect* the right to health include, *inter alia*, the duties of States to take measures to protect all vulnerable or marginalized groups of society, in particular women, children, adolescents. (GC 14, Para. 35).

We note in particular that when authorities are making a decision relating to an individual child, they must establish formal processes, with strict procedural safeguards, to assess and determine the child's best interests. Specifically, addressing the rights of unaccompanied children outside their country of origin, the Committee on the Rights of the Child has stated that the determination of what is in the best interests of the child requires a clear and comprehensive assessment of the child's identity, including her or his nationality, upbringing, ethnic, cultural and linguistic background, particular vulnerabilities and protection needs. Consequently, allowing the child access to the territory is a prerequisite to this initial assessment process. The assessment process should be carried out in a friendly and safe atmosphere by qualified professionals who are trained in age and gender sensitive related interviewing techniques (General Comment 6, para. 20). Further, article 24 of the ICCPR entitles every child "to such measures of protection as are required by his status as a minor on the part of his family, society and the State". This requires the adoption of special measures designed to protect the life of every child including, the extension of protective measures even if the child is outside of the territory or jurisdiction of her state of nationality, particularly when the State's decision impacts the child's life in a foreseeable manner. In this connection, we wish to recall General Comment No. 36, indicating that the obligation to protect the right to life requires States Parties to take special measures to protect persons in vulnerable situations whose lives have been placed at particular risk by specific threats or pre-existing patterns of violence, including children (CCPR/C/GC/36, para. 23). The right to life constitutes an international customary and *jus cogens* norm, which cannot be derogated from under any circumstances (para. 2).

Along the same lines, the prohibition of enforced disappearance and the corresponding obligations to investigate and prosecute those responsible have attained the status of *jus cogens*. In this regard, we wish to recall the 1992 Declaration on the Protection of All Persons from Enforced Disappearances, which today largely reflects, codifies and consolidates the customary international law that is legally binding on all States. In particular, we wish to refer to articles 7, 13 and 20 of the Declaration, which establish, respectively, the absolute prohibition of enforced disappearance, the obligation to investigate and the specific obligations when enforced disappearance of children is at stake. On this note, the general comment of the Working Group on Enforced or Involuntary Disappearances on children and enforced disappearances ([A/HRC/WGEID/98/1](#) and [A/HRC/WGEID/98/1/Corr.1](#)) emphasises that child victims of enforced disappearance suffer particularly severe harm in these situations and the separation of children from their families has specific and especially serious effects on their personal integrity that have a lasting impact, and causes great physical

and mental harm (paras. 1 and 6). Moreover, “any custody determination must take into account a child’s best interest, protect the child from discrimination, and respect the child’s views concerning the matter” (para. 21).

When allegations of the potential enforced disappearance of a child are at stake, States have enhanced obligations determined by the vulnerability of the person concerned and the imperative to prevent other possible ensuing human rights violations, including inter-country illegal adoptions. In this regard, we recall the 2019 Guiding Principles for the Search for Disappeared Persons ([CED/C/7](#)) and, in particular, principle 4, that details States’ obligations vis-à-vis the disappearance of children. Moreover, we refer to the recently adopted [joint statement](#) on illegal intercountry adoptions, which spells out in detail the existing obligations in terms of prevention, investigation and eradication.

We wish to recall that according to international human rights law, “the family” is a natural and fundamental unit and entitled to protection by States. The Convention on the Rights of the Child describes the family as “the fundamental group of society and the natural environment for the growth and well-being of all its members and particularly children.” Preventing family separation and preserving family unity, which goes beyond the parent-child relationship and includes the extended family, are considered key elements of the child protection system. Consequently, a child cannot be separated from her family arbitrarily, absent determination by competent authorities subject to judicial review that such separation is necessary for the best interests of the child.

We also highlight the importance of the right to a nationality under international law as a gateway right. For children born abroad, including under the aegis of a non-State armed group, the recognition of this right necessarily implies that States should adopt a flexible approach to the acceptance of evidence of that link, taking into account the specific context, including by facilitating the provision of documents and consular services. We note that some countries use DNA testing to determine parentage and eligibility for nationality of children born in North-East Syria. While this can be seen as a particularly intrusive measure, we note its practical effectiveness in complex conflict situations where young children are orphaned, in combination with a careful analysis of the child’s personal circumstances and family background, together with respect for the child’s human rights, particularly their rights to privacy.

We are well aware of the extremely complex environment in which repatriations have occurred since 2019. However, according to the information received, it remains that none of the measures that should have been taken to preserve the best interest of a young and at risk orphaned girl and prevent her alleged arbitrary repatriation to a country that is not of her nationality, away from her family in Sweden that is actively searching for her, have been taken.

The full texts of the human rights instruments and standards recalled above are available on 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 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 your observations on the following matters:

1. Please provide any additional information and/or comment(s) you may have on the repatriation of [REDACTED] and any information you may have about her current whereabouts.
2. Please provide information on the actions taken by your Excellency's Government to locate this young girl child as well as any support provided to her and/or her current caretakers. In particular, please also indicate what measures have been taken or are foreseen to ensure the protection of her right to life, as well as her right to the enjoyment of the highest attainable standard of physical and mental health.
3. Please provide any measure that your Government has taken more broadly to identify citizens in north-east Syria, as well as determine their nationality.
4. Please also provide any measure that your Government took to determine the nationality and parentage of this girl child prior to her repatriation.
5. Please provide any information on the measures that your Government took to determine the best interest of this girl child while she was in North-East Syria.
6. Please provide information on the measures taken to ensure that preventive and protective measures are undertaken for the girl child in view of combating the risks of sale, abuse, exploitation, illegal adoption and enforced disappearance. Please also outline the steps envisaged for her access to support services, including adequate and effective rehabilitation, as well as access to adequate healthcare.

While awaiting a reply, we urge that all necessary interim measures be taken to halt the alleged violations and 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 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 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.

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 also like to inform you that a similar communication has been sent to the Republic of the Sudan. 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

Aua Baldé
Chair-Rapporteur of the Working Group on Enforced or Involuntary Disappearances

Morris Tidball-Binz
Special Rapporteur on extrajudicial, summary or arbitrary executions

Michael Fakhri
Special Rapporteur on the right to food

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

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

Alice Jill Edwards
Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment

Siobhán Mullally
Special Rapporteur on trafficking in persons, especially women and children

Dorothy Estrada-Tanck
Chair-Rapporteur of the Working Group on discrimination against women and girls